

14584

No.

Supreme Court of Illinois

Gilbert

vs.

Guptill

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Y. A. T. H.
No.

229

J. W. Middleton & Co., Stationers, 126 Lake St.

Heads

78

Gilbert

Reception

STATE OF ILLINOIS, SUPREME COURT, }
APRIL TERM, A. D. 1864. }

In the matter of the Guardianship of }
DANIEL HARVEY PINNEO, deceased, } Appeal from the
Persons C. Gilbert, Guardian, Ap- } Court of Common
pellent, and } Pleas of the City of
D. W. GUPTILL, Administrator of said } Elgin.
Ward, Daniel Harvey Pinneo, de- }
ceased; Appellee. }

BRIEF AND ARGUMENT FOR D. W. GUPTILL, ADMINISTRA-
TOR OF DANIEL HARVEY PINNEO, (THE WARD,) DECEASED:

The facts in this case are substantially as follows: April 18th, 1851, the county court of Kane county, Illinois, appointed Persons C. Gilbert, (the appellant) Guardian of Daniel Harvey Pinneo, then a minor, aged 18 years, 3 months and 16 days. Gilbert gave bond with surety, and assumed the duties of the office. There was then property in Ohio, belonging to said minor, as heir of his father, John Pinneo, deceased. Shortly after his appointment, Gilbert authorized John A. Pinneo (a brother of his ward, and an equal heir to their father's estate) to receive in Ohio his ward's money, part of which he did receive, and paid the same over to Gilbert as follows:

1851 August 30th,.....\$344.05
1852 July 3d,..... 375.75

There yet remaining money coming from said estate to said ward and his brother, John A. Pinneo, in the summer of 1853 Gilbert and John A. Pinneo sent Daniel H. Pinneo (the ward

being still a minor) to Ohio to get the money coming to both. He got some of the money (how much is not certainly known, but Gilbert in his 2d report says \$400) and sent to Gilbert \$200, which Gilbert received July 5th, 1853. Gilbert as guardian, kept no account of the money received for his ward, made no report to, or filed any account or inventory, to the court (previous to May, 1862)—mingled the money with his own, used it as his own, and never loaned any in the name of his ward or in his own name as guardian. (See pages of record.)

December 30th, 1853, Daniel Harvey Pinneo, at Wheeling, Virginia, wrote a letter to Gilbert that he would be home in about three weeks, and would want his money. (See letter, pages of record 654) He (D. H. Pinneo) became of age Jan'y 2d, 1854. Since the writing of that letter said Pinneo has never been heard from by any of his friends, neither his mother nor any of his brothers or sisters, with whom he lived, he having never been married, and all of whom live in Illinois.

Gilbert claims that after receiving said letter he got together or where he could have on call, money designed for his ward, when he (Pinneo) should come for it. Gilbert in his mind made a rough estimate of what he thought the amount would be due to the ward, and had the same ready or within reach on short notice, the last of January, 1854, the time, according to the letter, that Pinneo might be expected. Pinneo, however, did not come, in fact never came, and, as above stated, has never been heard from since.

On the 30th day of April, 1862, the county court of said Kane county, appointed said D. W. Guptill, administrator of the estate of Daniel Harvey Pinneo, it having been shown to the court that he had been absent from his home, and unheard of by any of his friends and acquaintances for upwards of seven years, and that there was no business that kept him away, and that the last that was heard from him was that he should be home in three weeks from then, to wit: Dec. 30th, 1853. Facts, in the opinion of the court, to raise the presumption of death, sufficient to authorize the issuance of letters of administration to collect upon his estate.

Loring vs. Steinman, 1 Metcalf, 204; Newman vs. Jenkins, 10 Pick., 515; 1 Greenf. Evid. p. 48-9, § 41, note; 1 Phil. on Evid., 159; 1 Bouvier's Inst., p. 100-101; 3 Bouvier's Inst., 351-2.

After his appointment, Guptill called on Gilbert to account through the county court, for the money and interest he had received as guardian of said Daniel Harvey Pinneo, and belonging to said Pinneo. In pursuance of this request to account and pay over, Gilbert, on the 9th day of June, 1862, appears before the court and presents a report to the court, which bears date May 29th, 1862, and is the first report, or statement of any kind in the matter of his guardianship of said Pinneo, ever filed in or submitted to the court. For the purpose of ready reference thereto in this argument, as well as exhibiting the guardian as wanting in candor, fairness, and regard for an oath, this entire report is inserted, and is as follows, to wit:

FIRST REPORT.

STATE OF ILLINOIS, } ss. { County Court of Kane County,
County of Kane, } May Term, A. D. 1862.

To the Judge of said Court:

The undersigned, appointed Guardian of Daniel H. Pinneo, would respectfully submit the following account of his guardianship to this date, May 27th, 1862.

Said Guardian charges himself as follows:

1851. Aug. 30. To amount rec'd from estate of John Pinneo, (the father of Daniel,) by the hands of John A. Pinneo,	\$344 05
1852. July 3. To amount received as above,	375 75
1853. " 5. To amount rec'd from Daniel for John A. Pinneo, being the am't of John's portion of estate collected by Daniel,	200 75
To interest on amount in Guardians hands, to Jan. 2, 1854, (the time Daniel became of age,)	76 50
	\$997 05

Said Guardian paid previous to Jan. 2, 1854, on account of Guardianship.

1851. Aug. 30. By am't paid J. A. Pinneo, on account of services for collecting the 1st item of Dr. account from estate, \$21 85

1852. July 3. By am't paid as above, for collecting 2nd item above, Dr. account, 27 04

1851. May 5. By am't paid cost of Guardianship, 4 50

1853. Dec. 12. By am't paid J. A. Pinneo, part of his portion of estate, rec'd from Daniel as above, and by Daniel's order, 100 00

1854. Jan. 2. By am't on hand and subject to the call of Daniel, on Jan. 2, 1854, without deducting charges for services, 843 66

Account since 1854, Jun. 2nd. \$997 05

1854. Jan. 2. On hand at this time and remaining on hand by order of Daniel, \$843 66

1855. Oct. 12. By am't paid J. A. Pinneo, (bal. of amount his due from estate, collected by Daniel, \$100, Expenses, \$45 07, \$145 07

1855. Jan. 6. By am't loaned to E. Tefft, and J. S. Clark & Co., 698 59

\$843 66

The above amount of \$698 59, included in a judgment in the Kane Circuit Court, Jan. 27, 1858, in the case of Persons C. Gilbert vs. Erastus Tefft, Jason S. Clark and Demarcus Clark, not collectable at present, \$698 59

Costs paid in obtaining said judgment, Clerk's and Sheriff's fees, \$12 80, Attorneys fees, \$25 00, \$37 80

For my services and as Guardian, &c.

PERSONS C. GILBERT.

State of Illinois, } ss. { I, Persons C. Gilbert, do solemnly
 Kane County. } swear, that the foregoing account I have
 this day rendered, contains a just and true account of the
 moneys which I have received and expended for the said Dan-
 iel H. Pinneo, for whom I was appointed Guardian, and also
 all claims which I have against said Minor.

PERSONS C. GILBERT.

Sworn and subscribed to before me, this 27th day of May,
 1862. H. B. PEIRCE, Clerk.

This 1st report the court disapproved of, and rejected, and
 ordered Gilbert to make another report, for which purpose the
 case was continued to the next term of the court. (See page
 4 of record.) At the next term (July 19th, 1862,) Gil-
 bert again appeared before the court and presented his 2d Re-
 port, which is as follows:

SECOND REPORT.

STATE OF ILLINOIS, } ss. County Court of said County.
 KANE COUNTY. } To the Judge of said Court:

In conformity to the order of said court, the undersigned,
 heretofore guardian of Daniel H. Pinneo, submits the following
 report of his actings and doings in that matter.

The undersigned reports that the said Daniel H. Pinneo was
 a son of John Pinneo, that the said John Pinneo, at the time
 of his death, resided in the State of Ohio, and all the property
 belonging to the said Daniel, as heir of his deceased father,
 was situated in the State of Ohio. That soon after the appoint-
 ment of the undersigned as guardian of the said Daniel, he au-
 thorized one John A. Pinneo, who was a brother of said Daniel,
 and equally interested with Daniel in the proceeds of said es-
 tate, to proceed to Ohio, gather together, collect, and bring
 back to the undersigned, as guardian of the said Daniel, all
 that portion of said estate, or the proceeds thereof, to which
 the said Daniel might be entitled as heir of said estate. That
 the said John A. Pinneo procured from said estate as a part of
 Daniel's portion of the same, \$344.05, from which sum there
 was deducted by the said John, and allowed by me, the sum of
 \$21.85, as the one half of the necessary expenses incurred by
 him in selling the estate belonging to the heirs of the said John
 Pinneo, deceased, (and for which sum thus allowed the under-

State of Illinois, } ss. { I, Persons C. Gilbert, do solemnly
 Kane County. } swear, that the foregoing account I have
 this day rendered, contains a just and true account of the
 moneys which I have received and expended for the said Dan-
 iel H. Pinneo, for whom I was appointed Guardian, and also
 all claims which I have against said Minor.

PERSONS C. GILBERT.

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 report of his actings and doings in that matter.

The undersigned reports that the said Daniel H. Pinneo was
 a son of John Pinneo, that the said John Pinneo, at the time
 of his death, resided in the State of Ohio, and all the property
 belonging to the said Daniel, as heir of his deceased father,
 was situated in the State of Ohio. That soon after the appoint-
 ment of the undersigned as guardian of the said Daniel, he au-
 thorized one John A. Pinneo, who was a brother of said Daniel,
 and equally interested with Daniel in the proceeds of said es-
 tate, to proceed to Ohio, gather together, collect, and bring
 back to the undersigned, as guardian of the said Daniel, all
 that portion of said estate, or the proceeds thereof, to which
 the said Daniel might be entitled as heir of said estate. That
 the said John A. Pinneo procured from said estate as a part of
 Daniel's portion of the same, \$344.05, from which sum there
 was deducted by the said John, and allowed by me, the sum of
 \$21.85, as the one half of the necessary expenses incurred by
 him in selling the estate belonging to the heirs of the said John
 Pinneo, deceased, (and for which sum thus allowed the under-

signed has the receipt of said John A. Pinneo, leaving amount received by me as guardian, Aug. 30th, 1851. \$322.20

The said John A. Pinneo made, at the request of the undersigned as guardian, another trip to Ohio in the summer of 1852, for the same purpose as above, and collected money from said estate, Daniel's portion of which amounted to \$375.75, from which there was deducted and allowed to said John as Daniel's portion of expenses incurred, the sum of \$20.35 traveling expenses, \$5.99 tax on lands, 70 cents recording mortgages; total,..... \$27.04

Which deducted, leaves amount received by me as guardian, July 31, 1852,..... \$348.71

The undersigned would further report that, in 1853, he, together with the said John A. Pinneo, authorized the said Daniel to proceed to Ohio and to obtain the amount there due to himself and the said John A. from the said estate, and the undersigned has been informed that the said Daniel obtained from the said estate about the sum of 400, that portion of which belonging to the said John A., to wit: 200.00 the said Daniel sent to the undersigned, and directed him to pay the same to the said John A., which was so paid over. The remainder of the money so collected by the said Daniel the undersigned has never received, nor indeed has he since seen the said Daniel.

The undersigned would further report, that he also paid to said John A., on account of expenses and expenditures incurred in an about the management of the estate, and for and on account of bills made and expenses incurred by the said Daniel, and paid by the said John, the sum of..... 45.07
Also cost of guardianship paid clerk of court,..... 4.50

The undersigned would further report, that said Daniel became of lawful age on Jan. 2d, 1854. That at or about that time the undersigned received a letter from the said Daniel, stating that he should be at home in a few days, and he desired that his money should be ready for him. Accordingly the same was made ready and kept on hand a long time, but the said Daniel did not, nor has he at any time since, ever called for the same, and the undersigned has not since been able to learn his whereabouts, that he might communicate with him in regard to the disposition of the same.

The undersigned would further report, that after keeping said money on hand as above for a long time, to wit: about one year, he afterwards loaned the same, together with other money belonging to himself, to E. Tefft and J. S. Clark & Co., at that time responsible men, residing in Kane county. That since the loaning of the money as above, the said E. Tefft and J. S. Clark & Co., have become insolvent, and the undersigned has been hitherto wholly unable to collect the amount thus loaned, but he procured a judgment for the same in the Kane County Circuit Court, Jan. 27, 1858, but which judgment is yet unpaid. That he has paid to procure said judgment—

Clerk's and Sheriff's Fees,.....\$12.80

Attorney's Fees,.....25.00

And the undersigned, while submitting the above report, in obedience to the order of this court, would protest against the right or authority of this court to compel this report to be made or to enforce the payment of any sum received by the undersigned, as guardian as aforesaid to the said Daniel, or to his representatives, for the reasons, 1st, The undersigned is not now, nor has been for years, guardian of the said Daniel, and 2d, More than six years have elapsed since the said Daniel became of age, and for this reason the said Daniel or his representatives, are barred from claiming an account, or enforcing the same. All of which is respectfully submitted.

PERSONS C. GILBERT.

STATE OF ILLINOIS, }

KANE COUNTY, } ss. I, Persons C. Gilbert, do solemnly swear that the foregoing account I have this day rendered contains a just and true account of the moneys which I have received and expended for the said Daniel H. Pinneo, for whom I was appointed guardian, and also all claims which I have against said minor.

PERSONS C. GILBERT.

Sworn and subscribed before me, this 19th day of July, A. D. 1862.

HENRY B. PEIRCE, Cl'k

The court refused to accept this 2d report, and entered an order as to the account of said Gilbert as guardian, which is as follows:

ORDER OF COUNTY COURT, JULY 19th, 1862.

Ordered by the court, that the report this day filed by said

guardian be made and taken to conform to this order, and that this order stand for a report herein, in lieu of said Report filed to wit:

GUARDIAN, DR
To am't received Aug. 30th, 1851,.....\$344.05
" Interest on same from Aug. 30th, 1851 to
Jan. 2d, 1854, at 10 per cent..... 79.30
" am't received July 3d, 1852,..... 375.75
" Int. on same to Jan. 2d, 1854, at 10 pr ct.... 56.36
—————\$855.46

CR.

By expenses and money paid out Aug. 30, '51,...\$21.85
" Int. on same to Jan. 2d, '54, at 10 per ct.... 5.02
" expenses and money paid out July 3d, '52,... 27.04
" Int. on same to Jan. 2d, '54, at 10 per ct.... 4.05
" Amount paid clerk,..... 4.50
" Commissions on \$719.80 at 6 per cent..... 45.18
————— 105.64
\$749.85

Dr. To Int. on \$749.82 from Jan. 2d, 1854 to July
19th, 1862, at 6 per cent.....384.63
—————\$1,134.47
CR. By Bal. clerk's fees,..... 2.35

Amount due from Guardian,.....\$1,132.12

And it is further ordered by the court, that the said Persons C. Gilbert, guardian as aforesaid, pay over the said sum of eleven hundred and thirty-two and 12-100 Dollars to the said D. W. Guptill, administrator to collect of the estate of the said Daniel H. Pinneo, deceased, within ninety days from the date of this order.

Gilbert appealed from this order of the county court to the circuit court of Kane county, from whence by change of venue the case was taken to the court of common pleas of the city of Elgin, where, being heard, at the January term, A. D. 1864. the court entered an order therein, as follows:

ORDER OF ELGIN CITY COURT.

This day comes again the said Persons C. Gilbert in person, Guardian as aforesaid, and Plato and Smith his Attorneys, and also comes the said D. W. Guptill by Wilcox, his Attorney, and the Court having duly considered the evidence in this case, and being now fully advised, finds and determines in this case as follows, to wit: That said Gilbert was duly appointed Guardian of the said Daniel Harvey Pinneo, on the 18th day of April, A. D. 1851, by the County Court of said Kane County; that as such Guardian, in the years 1851, 1852 & 1853, he received money belonging to his said Ward, Daniel Harvey Pinneo, that he neglected his duty as Guardian, that he mingled his said ward's money with his own and used it as his own, and kept no sepearte account of it, that it could have been loaned readily on good security, at ten per cent. payable annually during said years, that he neglected and failed to make any report of his said Guardianship, and his actings and doings therein, to the said County Court, until the 27th day of May, A. D. 1862. That there came to his hands as such Guardian, money belonging to his said ward, as follows:

1851, August 30th,.....\$344 05

1852, July 3rd,..... 375 75

1853, Some time between Sept. and Dec..... 100 00

That he paid as of August 30th, 1851, on account of his said Guardianship, as expenses to the Clerk of said Court, \$4 50, which the Court finds to be a proper charge, and allows the same to the said Guardian as a credit, that the other items (to wit: \$21 85 as of August 30th, 1851, and \$27 04 as of July 3rd, 1852, and \$45 07) presented by said Guardian as expenses alleged to have been incurred by him as Guardian as aforesaid, are rejected and not allowed, because the proofs fail to show them necessary and proper charges. That the said ward, Daniel Harvey Pinneo, would have become of age on the 2nd day of January, A. D. 1854. Since about which time the said Pinneo has not been heard from, and that the Court finds and determines the amount now due from said Guardian, to be Fourteen Hundred and Forty-three Dollars and Seventy-six Cents, as follows, to wit:

Am't rec'd August 30th, 1851,.....	\$341 05
Credit by amount paid Clerk,.....	4 50
Int. at 10 per cent. to Aug. 30, '52, 1 yr,	339 55
	33 95
Making.....	373 50
Int. at 10 per cent, to Aug. 30, 1853,....	37 35
	410 85
Int. at 10 per cent, from Aug. 30, 1853,	
to January 2nd, 1854,	13 69
	\$424 54
Amount received July 3rd, 1852,.....	375 75
Int. at 10 per cent, to July 3rd, 1853,....	37 57
	413 32
Int. at 10 per cent, to Jan. 2nd, 1854,....	20 56
	433 98
Amount received Fall of 1853,.....	100 00
Total amount in hands of Guardian, Jan. 2, 1854,	958 52
Credit by Commission at 6 per cent. on same,.....	57 51
Leaving.....	901 01
Int at 6 per cent. from Jan. 2, '54, to Feb. 3, '64,	545 10
Making.....	1446 11
Credit by balance of Clerk's fees paid,.....	2 35
Balance due Feb. 3rd, 1864, from said Guardian	
to the estate of said ward,.....	\$1443 76
Gilbert as Guardian of Pinneo, received money as follows:	
1851. August 30th,.....	\$344 04
1852, July 3rd,.....	375 75
1853, July 5th,.....	200 00
	\$919 80

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

In the Matter of the Guardianship of Daniel H. Pinneo—

PERSONS C. GILBERT, FORMER GUARDIAN,
Appellant,

vs.
D. W. GUPTILL, ADMINISTRATOR OF SAID PINNEO,
Appellee.

APPEAL FROM THE COURT OF COMMON PLEAS OF THE CITY OF ELGIN.

ABSTRACT OF THE RECORD IN THE CASE.

Page of Record.

4 On the 9th of June, 1862, Gilbert filed in the County Court of Kane County a report of Guardianship, to the approval of which the Counsel for Guptill objected, and the Court disapproved of the said report, and ordered that the said Gilbert prepare his amended report by July 19th, 1862.

5 On said last mentioned day, Gilbert filed the following report:

16 STATE OF ILLINOIS, }
KANE COUNTY. } ss. *County Court of Kane County.*

To the Judge of said Court,—

In conformity to the order of said Court, the undersigned, heretofore Guardian of Daniel H. Pinneo, submits the following report of his actings and doings in that matter. The undersigned reports, that the said Daniel H. Pinneo was son of John Pinneo, that the said John Pinneo at the time of his death resided in State of Ohio, and all the property belonging to said Daniel, as heir of his deceased father, was situated in the State of Ohio. That soon after the appointment of the undersigned as Guardian of the said Daniel, he authorized one John A. Pinneo, who was a brother of said Daniel, and equally interested with Daniel in the proceeds of said Estate, to proceed to Ohio, and gather together, collect, and bring back to the undersigned, as Guardian of the said Daniel, all that portion of the said Estate, or the proceeds thereof, to which the said Daniel might be entitled, as heir of said Estate.

17 That the said John A. Pinneo procured from said Estate, as a part of Daniel's portion of the same, the sum of \$344.05 from which there was deducted by the said John, and allowed by me, the sum of \$21.85, as one-half the of the necessary expenses incurred by him in settling the Estate belonging to the heirs of the said John Pinneo, deceased, (and for which sum thus allowed, the undersigned has the receipt of the said John A. Pinneo,) leaving amount received by me as Guardian, Aug. 30th, 1851, \$322.20.

The said John A. Pinneo made at the request of the undersigned, as Guardian, another trip to Ohio, in the summer of 1852, for the same purpose as above, and collected money for said Estate; Daniel's portion of which amounted to \$375.75, from which there was deducted and allowed to said John, as Daniel's portion of expenses incurred, the sum of \$20.35 traveling expenses, \$5.99 tax paid on lands, 70 cents recording Mortgage, total \$27.04, which deducted leaves amount received by me as Guardian, July 3rd, 1852, \$348.71.

18 The undersigned would further report, that in 1853 he, together with said John A. Pinneo, authorized the said Daniel, to proceed to Ohio, and obtain the amount then due to himself and the said John A. Pinneo, from the said estate : —and the undersigned has been informed, that the said Daniel obtained from the said estate about the sum of \$400, that portion of which belonging to the said John A., to wit, \$200, the said Daniel sent to the undersigned, and directed him to pay the same to John A., which was so paid over ; the remainder of the money so collected by the said Daniel, the undersigned has never received, nor indeed has he since seen the said Daniel.

The undersigned would further report, that he also paid to said John A. on account of expenses and expenditures incurred in and about the management of the estate, and for and on account of bills made and expenses incurred by the said Daniel, and paid to the said John A. the sum of \$45.07. Also costs of Guardianship paid Clerk of Court, \$4.50.

19 The undersigned would further report. that said Daniel became of lawful age, on Jan. 2nd, 1854,—that about that time the undersigned received a letter from the said Daniel stating that he should be at home in a few days, and desired that his money should be ready for him, accordingly the same was ready, and kept on hand a long time, but said Daniel did not, nor has he at any time since ever called for the same, and the undersigned has not since been able to learn his whereabouts, that he might communicate with him in regard to the disposition of the same.

The undersigned would further report, that after keeping said money on hand as above for a long time, to wit, about one year, he afterwards loaned the same, together with other money belonging to himself, to E. Tefft and J. S. Clark & Co., at the time responsible men, residing in Kane County. That since the loaning of the money above the said E. Tefft and J. S. Clark & Co., have become insolvent, and the undersigned has been hitherto wholly unable to collect the amount thus loaned, but he procured a judgment for the same in Kane County Circuit Court, Jan. 27th 1858, but which judgment is yet unpaid. That he has
20 paid to procure said judgment, Clerk's and Sheriff's fees \$12.80, Attorney's fees \$25.00.

And the undersigned, while submitting the above report in obedience to the order of this Court, would protest against the right or authority of this Court to compel this report to be made, or to enforce the payment of any sum received by the undersigned, as Guardian as aforesaid to the said Daniel, or to his representatives, for the reason, 1st. The undersigned is not now, nor has been for years the Guardian of the said Daniel ; and 2nd. More than five years have elapsed since the said Daniel became of age, and for these reasons the said Daniel or his representatives are bound from claiming an account or enforcing the same.

All of which is respectfully submitted,

PERSONS C. GILBERT.

21 Affidavit of correctness of foregoing report.

5 Report excepted to by Guptill, and matter referred to the Court.

6 July 19th, 1862, the Court "ordered that the report this day filed by said Guardian, be made and taken to conform to this order, and that this order stand for a report herein in lieu of said report filed, to wit :

7	GUARDIAN,	Dr.
To Amount received, Aug. 30th, 1851,	- - - - -	\$344.06
" Interest on same from Aug. 30, 1851, to January 2, '54, @ 10 p cent,	- - - - -	79.30
" Amount received, July 3, 1852,	- - - - -	375.75
" Interest on same to January 2, 1854, @ 10 p cent.	- - - - -	56.36
		\$855.46.

CR.

By Expenses and Money paid out, Aug. 30, 1851,	- - -	\$21.85
" Interest on same to January 2, 1854, @ 10 ¢ cent,	- - -	5.02
" Expenses and Money paid out, July 3, 1852,	- - -	27.04
" Interest on same to January 2, 1854, @ 10 ¢ cent,	- - -	4.05
" Amount paid Clerk,	- - -	4.50
" Commission on \$719.80, @ 6 ¢ cent,	- - -	43.18
		\$103.64
		\$749.82

DR.

To Interest on \$749.82 from Jan. 2, 1854, to July 19, 1862, @ 6 ¢ cent,	384.65
	\$1134.47
By Balance, Clerk's fees,	2.35

Amount due from Guardian, \$1132.12

And it is further ordered by the Court that the said Persons C. Gilbert, Guardian as aforesaid, pay over the said sum of eleven hundred and thirty-two and 12-100 dollars to the said D. W. Guptill, administrator to collect of the Estate of the said Daniel H. Pinneo, within ninety days from the date of this order."

Appeal prayed to the Kane County Circuit Court and allowed.

Appeal Bond filed, duly approved, and order for transmission of papers.

Feb. 3rd, 1863, Venue changed from Kane Circuit Court to Court of Common Pleas of the city of Elgin.

Nov. 16th, 1863, Case submitted to the Court.

Dec. 1st, 1863, Case heard and taken under advisement.

Feb. 3rd, 1864, Court ordered and adjudged, "That the said Persons C. Gilbert, Guardian, as aforesaid, pay over to the said D. W. Guptill, administrator "to collect of the estate of the said Daniel Harvey Pinneo, deceased, within ninety "days from the date hereof, the sum of fourteen hundred forty-three and 76-100 "dollars so found due from him as Guardian as aforesaid, and that he pay the "costs of this cause to be taxed."

Appeal to Supreme Court prayed, allowed, on condition of filing Bond in sum of three thousand dollars, conditional, according to law.

Feb. 6th, 1864, Bill of Exceptions filed, duly signed as follows: Be it remembered that on the trial of this cause, the plaintiff called upon the defendant to be sworn as a witness in said cause to which the defendant objected, the Court overruled the objection, compelled the defendant to testify, to which decision of the Court in overruling said objection, and compelling him to testify, the defendant by his counsel at the time excepted.

The defendant, Persons C. Gilbert, was sworn, and testified: I could not refer to any persons I loaned this money to when I first received it. I put it with my own, and when I had a chance to loan, did so with my own. It was never kept separate at all. I loaned money to Peasly and Adgate; whether this payment or not, can't say. I loaned the money in my own name—always in my own name. Can't tell the rate of interest I received. Peasly says I charged him 15 per cent. I did not get the highest rates. Can't say that I loaned at 20 per cent. between Aug. 5, 1851, and Jan. 1, 1854. I am a farmer. Can't tell how much I loaned to Peasly nor to Adgate; think not a hundred dollars to either. Presume I charged one of them as much as I did the other. I bought land in Cook County in March, 1855. I used my own money. The Ward's money was in Tefft's hands then. I paid \$1000 for the land. I sold it soon. I gave \$18 or \$19 ¢ acre, and sold for \$30. Myself and John A. Pinneo gave Daniel H. Pinneo a power of Attorney to go and get the money in Ohio that was due to him, (John A.) and Daniel. Daniel drew and sent me two hundred dollars. He said in a line to me that he had not drawn it all but would send the rest in a

few days. I supposed when the money came that it was undecided, and I handed one hundred dollars to John. No more was sent. That he had sent was intended for John, and not for himself. I learned afterwards that Daniel had drawn the money and used it, and when I found this out, I paid the other one
32 hundred to John A. I found this out by the way of John, and a letter from Daniel. I never heard of Daniel's sending a draft to John for four hundred dollars. I never went to Ohio to investigate the accounts myself. In 1853 & '4 John A. Pinneo lived at Kankakee. The expenses of forty-five dollars and seven cents was made by Daniel for clothing, and paid by John for Daniel, and I paid John. They had sued Daniel, and this was to pay the lawyer's fees and for his clothing. This forty-five dollars was paid after Daniel became of age. I should think money could be loaned @ 10 per cent., payable annually, from Aug. 1851 to '59. I never filed any report before this in Probate Court.

33 Cross-Examined.—I did not know till after the Guardianship had run out that it was my duty to make a report. The last time I saw Daniel here was in '53. The last letter I received from him was in December, '53. He wrote in this letter that he would be of age the next day. I had the money for Daniel in Feb. '54. Kept it when I could command it for a year. I then loaned it to Erastus Tefft and Clark and Company. Demarcus Clark and Jason Clark constituted the firm of Clark & Co. The note was endorsed by Mr. Ballard. When I loaned the money to Tefft he said he would give his word and honor that if Daniel should come for his money he would pay it over before it was due at
34 any time. The Note was a common Note, not a Judgment Note. I never was called on till the administrator was appointed. I considered those to whom I loaned the money to be good pecuniarily—were so considered by the persons I enquired of. I commenced suit on the Note, and got Judgment: not yet collected, could not be, the Defendants insolvent.

Re-Examination.—

I can't tell how much money I had on hand for Pinneo when he became of age. I had currency, and some kept in the Bank, and some by myself. I calculated to keep money enough together to pay Daniel when he should call. I
35 made an estimate of amount due him, the time Daniel wrote me. I figured legal interest in determining the amount. Tefft is a brother-in-law of mine. I think he was to pay more than 10 per cent. interest. Don't recollect that it was over 14 per cent. When the Note was due it was not collectable, could not have been collected out of either of the parties by law. Ballard had died. I made no effort to collect the note from Ballard's estate. I did not take real estate security of the note. (A letter dated Feb. 10th, '58, shown witness,) who said this is my writing. I kept no account of the money that I loaned, but mingled
36 it with my own. The last letter I received from Daniel is dated Dec. 31st, '53.

Plaintiff called Jonathan Tefft, who said; I went to Gilbert's in '53 to loan money. Don't know what per cent. he asked. The Plaintiff asked witness: "What rate of interest could have been obtained on good security in the town where Gilbert lived during the years '51-2-3-4-5-6-7 and 8?" To the answering of which by the witness, defendant objected; objection overruled, and exception taken. The lowest rate in that town, 12 per cent., highest 25 per cent. Ten per cent could have been obtained on good security.

Cross-Examination.—I did not borrow any money of Gilbert. I paid 25 per cent. in '51 and 2. I don't know of any one else doing so.

37 Plaintiff called James Peasly, who said:—I borrowed money of Gilbert in '53. Paid 15 per cent. The rates of interest from '51 to '58, from 15 to 25 per cent.

Plaintiff then offered note from Peasly to Gilbert in evidence, to the introduction of which as evidence Defendant objected, objection overruled, and note received in evidence, to which decision of Court the Defendant at the time excepted.

38 Lyman Black was then called. I know Gilbert. From '50 to '58 rate of

interest 10 to 25 cents. Could have been loaned at 10 per cent. on best of security.

Cross Examination.—Many who borrowed money at those high rates failed. In the spring of '55 to '56, Erastus Tefft considered good for \$1000, Clarks good also. The Clarks good till '57. Tefft began to run low in '56. Ballard not very good, but paid his debts prompt.

Re-Examined.—In '56, in October, I got a judgment against Tefft, but it could not be collected. In beginning of '56, if Gilbert had a judgment against Tefft it could have been collected. In '56 and part of '57 it could have been collected from the Clarks.

39 M. C. Town called, says:—I resided in Elgin, from '51 to '58. In '51 and 2 I operated some in money. Money was loaned from 6 to 25 per cent. We generally loaned @ 10 to 12 ½ cent. From '51 to 7 our regular rate was 12 per cent. No difficulty in getting 10 per cent. on first rate security. Gilbert kept money in my bank. Kept the account in his own name. We never allowed him interest on his deposits. Gilbert resides 3 or 4 miles from Elgin, on a farm.

40 Plaintiff then introduced the following letter:—

Elgin, Feb. 18th, 1858.

MR. J. PINNEO:—Sir, I received a line from you in due time, which I sit down to answer. Concerning that money, I can answer that in one breath, it has gone to Davy Jones's or to the Devil. Erastus Tefft and D. Clark & Co., have both failed. When I can raise it is very uncertain, for I am in the shorts in my own at this time, can hardly make out my tax, it but being little over \$100, that's so! About the money, I do not know what to say for my life, times are so very hard. I sued it last spring, he put it off till the fall term. I suppose it is in judgment now, but I do not know for certain, for I have not seen Willcox since the Court; if I can get it in the spring, it would go against Clark. I have no news to write, &c.

P. C. GILBERT.

41 It was here agreed by respective Counsel, that the suit by Gilbert vs. Tefft et al., on the Note given by Tefft et al. to Gilbert, (spoke of by Gilbert in his testimony,) was commenced the 28th day of May, 1857, in the Kane County Circuit Court in vacation, and summons returnable June 18, '57, and that before June 18, '57, Defendants filed a plea of usury in the case, in which it was stated that the Note was usurious, that 4 per cent. was added to the principal of Note, and whole due ten per cent., and which plea was sworn to by Tefft. The cause was for that reason put on the trial docket, and was not reached till January term, 1858, at which Judgment was obtained, suit being compromised by taking Judgment for actual principal @ 10 ½ cent.

49 Benjamin Burritt, sworn:—Have lived 26 years in Elgin. Acquainted with money market in Elgin. Money could have been loaned @ 10 ½ cent., on good security, interest annually, from 1851 to '52.

Cross-Examined.—I did loan money in those times. Names that I considered good I as soon have, as to have real estate security. I should think the practice about equal, between taking personal or real estate security. The grand practice thus was to let money for one year, or upwards. But few loaned money then. Gilbert was a farmer. Don't know as he was in the habit of loaning money in 1851 to '55. As far as my knowledge extends his sole dependance was on farming for living.

Re-Examined.—I consider Gilbert a man of good business habits. He has a valuable farm of 200 acres. Stands well as a man of property.

50 A. J. Waldron sworn.—Have lived in Elgin 17 years. Know the rates of interest from 1851 to 1862, in this community. It varied from 10 to 25 per cent. In 1853, 4, 5, the general rate was from 10 to 15 per cent. Ten per cent a low rate. No difficulty in loaning money at 10 per cent on the best security.

Cross Ex.—I regard good security for one year to require real estate. On paper of six months or over, the majority require real estate security; for less time the majority require personal security. All the foregoing testimony as to rate of interest received, and manner of loaning money by others, objected to by defendant as offered, objection overruled and exceptions taken.

EVIDENCE FOR PLAINTIFF CLOSED.

51 Defendant called Lyman Black, who testified: In Spring of 1856, Tefft began to be shaky. The last of October, 1857, a Judgment of \$1000, could have been collected from the Clarks. The first of October could have been.

52 Defendant read Dep. of Erastus Tefft, as follows: I am 45 years old, reside in
69 Topeka, Kansas. Known both the parties for 28 years. Resided in Kansas three years—before I resided in Elgin, Kane Co., Ill., for twenty-five years. Heard Gilbert was Guardian of Daniel H. Pinneo. Gilbert loaned me money belonging to said Pinneo. I borrowed about seven hundred and fifty dollars, and gave
70 a Note. This was in 1855 or '56. The Note run one year with the privilege to Gilbert to get it sooner if Pinneo came and wanted it. It was signed by me, and D. and J. S. Clark, and E. Ballard, on the back. At the time I considered myself worth \$25,000. I thought the Clarks worth as much more. I supposed Ballard was worth three or four thousand. I thought Gilbert was very exacting about security. The arrangement was that the money should be forthcoming at
71 any time Pinneo came and wanted it. The note has never been paid to my knowledge. Gilbert sued the Note and got a Judgment against me and Clarks, in the Kane Co. Circuit Court. The amount of the Judgment about nine hundred dollars. This is the only Judgment in favor of Gilbert against me in that Court.

74 CROSS EX.—I think I was able to pay said note between the 10th of January and the 1st of April, 1856. Think the Clarks could have done so. Think the note could have been collected by law at that time. I don't recollect of Gilbert wanting me to pay the note before the time specified, he said he did not want it till Pinneo came, then he must have it. I have no doubt I could have paid the
75 note at the time specified in 1856, on a few days' warning. Don't recollect the kind of money I received from Gilbert. I only know from Gilbert and others that Gilbert got money from Pinneo. The note was made payable to P. C. Gilbert, not as Guardian. My best recollection is that the interest was 12 per cent;
76 it might have been 14 per cent. I interposed the defence of usury and plea sworn to. I do not know whether immediately after the lapse of twenty days from the service of the declaration if judgment then had been rendered it could have been collected; the Clarks were then talking of putting the property out of their hands, and might have made the assignment a few days sooner, as well as a few days
78 after that time. I don't mean to swear that the money that I had of Gilbert was
79 the identical money he had of Pinneo. My impression is Gilbert said it was the same in kind. It was a common note I gave, I think. I cannot now state the exact time I became insolvent.

83 Lyman Black recalled.—Ezekiel Ballard, in 1855, was right, or about right—he paid promptly. In the winter of 1855 & 6 he was not considered good.

Defendant then introduced the following letters from Daniel A. Pinneo to P. C. Gilbert, the first dated at Wheeling, Va., December 23rd, 1853, in which Pinneo says: I am in Wheeling yet. I think of going to California. I want

84 you to send me my money without fail. Send \$500, if possible, so I can get it by the 8th of January. If you cannot get five send two hundred dollars. Direct to Wheeling, Ohio Co., Virginia.—D. H. Pinneo. A second letter dated Wheeling, December 30th, 1853, in which Pinneo says: "Your letter of the 25th
85 I received this morning. You wrote you wanted a settlement with me, I don't know what particular settlement we would have to make, but I will come and see you in three or four weeks, but if John wants any money I would like you to give him two hundred dollars. You wrote that you could not send me any until I was twenty-one, but that comes to-morrow if I am not mistaken. Direct your letter to St. Louis, I will make that my next stopping place; but you need not send me any money, for I will be there before long, but have it so that I can get it as soon as I come, for I do not expect to stay long in that part of the world. D. H. Pinneo."

86 Defendant then offered the following receipts in evidence; one from John A. Pinneo dated Elgin, Oct. 12th, 1855, acknowledging the receipt from Gilbert as Guardian, of \$145.07, money collected by D. H. Pinneo for John A. Pinneo. Also of \$100 received Dec. 12, 1853, on the same account. Also a receipt dated Elgin, Aug. 30, 1851, by John A. Pinneo to Gilbert for \$21.85, on account of the one-half of expenses incurred by him in selling the real estate of John Pinneo, deceased. Also a receipt from the same to the same, dated Elgin, June 3d, 1852, for \$27 04, traveling expenses to Ohio, tax paid, recording mortgage, &c. Receipt from County Clerk of \$4.50, paid by Gilbert, as costs of letters of Guardianship.
87

EVIDENCE FOR DEFENDANT CLOSED.

Plaintiff recalled M. C. Town, who said, I have examined my Bank books, and find that in 1854, Gilbert had an account at my Bank, as follows:

PERSONS C. GILBERT.					
1853.					
July 19.	By Currency Deposit	\$300,			\$300.00
Aug. 4.	" " To pd. Check		\$200		100.00
" 26.	" "	600			700.00
" 31.	" "		700		00
Dec. 5.	" "	683			683.00
" "	" "		683		
" "	" Gold	500			
1854.					
Jan. 25.	" Currency Deposit	200			700.00
" 31.	" Gold	230			930.00
Mar. 13.	" To Gold pd.		930		
" 25.	" Gold	800			800.00
" 31.	" "	6.90			806.90
April 1.	" "	193.10	1000		
Nov. 18.	" "	300			300.00
" 30.	" "		50		250.00
Dec. 8.	" "		25		225.00
" 14.	" "		25		200.00
" 27.	" "		31		169.00
" 30.	" "		10		159.00
1855.					
Jan. 2.	" "	355			514.00
" 15.	" "		400		114.00
" 19.	" "	184			298.00
" "	" "	50			348.00
		Balance		348	
			4402.00	4402.00	

88 For money loaned, Judgment Note generally taken from 1851 to 1858. Majority at least done so.

Cross Ex.—Among farmers some took Judgment Notes, some did not. The foregoing is all the testimony given in the case.

Page of Record.

89 The Record of the County Court failing to show the service of process on the defendant in that Court, it was admitted and agreed by the parties that the defendant Gilbert had been duly served with a citation from said Court.

91 Court rendered judgment against the defendant Gilbert, (as before stated in the
92 Record,) to which decision and judgment of the Court the defendant by his counsel at the time excepted, and this Bill of Exceptions signed and sealed in open Court.

R. G. MONTONY,
Judge of said Court.



93 February 26, 1864, Appeal Bond duly approved and filed.

ERRORS ASSIGNED.

1st. The Court erred in compelling the said Gilbert to testify.

2nd. The Court erred in the admission of improper testimony on the part of Appellee.

3rd. The Court erred in rendering judgment or decree against the Appellant for the amount rendered.

4th. The Court erred in rendering judgment or decree against the Appellant.

PLATO & SMITH,
Attorneys for Appellants.

²²⁹
In Supreme Ct.

Gilbert

^v
~~Prima~~
Faptill

Abet

Filed May 10. 1864
J. L. Leland Clk

P⁴/S.

Atty

1
United States of America }
State of Illinois Kane County }
City of Elgin Is: }

Hear before the Honorable
Richard G. Montony Judge of the Court of
Common Pleas of the City of Elgin in the County
of Kane and State of Illinois at a Special
Term of said Court began and held at the
Court House in the City of Elgin in said
County on the 19th day of May, in the Year
of Our Lord One Thousand Eight Hundred
and Sixty three

Present the Honorable Richard G. Montony Judge
Joseph H. Whipple Sheriff
Charles J. Metzger State Attorney

Attest
R. W. Padelford Clerk.

Be it remembered that heretofore to wit:
on the 28th day of April AD 1863. An Order
for a Special Term of the Court of Common Pleas
of the City of Elgin was filed and entered of
Record in this Court ~~to wit~~ in the words and
figures following to wit:

State of Illinois County }
of Kane City of Elgin } In vacation after the
April Term AD 1863, of the
Court of Common Pleas of the City of Elgin

April 28, 1863.

It having been represented to the undersigned at Chambers, that it is necessary that a Special Term of the Court of Common Pleas of the City of Elgin should be holden.

It is therefore hereby ordered that a Special Term of the Court of Common Pleas of the City of Elgin be holden at the Court House Room in the City of Elgin in the County of Kane and State of Illinois commencing on the first Tuesday after the third Monday of May A.D. 1863 for the hearing and trial of all cases, Civil Criminal and in Chancery.

The Clerk is directed to issue Writs for Petit Jurors according to law also to publish a notice of this Order according to the Statute in such case made and provided.

Done at Chambers this 28th day of April A.D. 1863.

R. G. Montony
Judge of said Court

Be it remembered that heretofore to wit on the 24th day of April A.D. 1863 was filed with the Clerk of our said Court of Common Pleas of the City of Elgin a Copy of Record in the words and figures following to wit:

3 United States of America }
State of Illinois Kane County } ss

Pleas before the Honorable
Richard A. Botzford County Judge of Kane
County in the State of Illinois and Presiding
Judge of the County Court in and for said
County in the State aforesaid at a regular
Term thereof began & held for the dispatch of
of Probate business at the Court House in
Geneva in said County on the third Monday
of July being the 21st day of said month in
the year of Our Lord One Thousand Eight
hundred and sixty two And of the Indepen-
dence of the United States the Eighty seventh

Present Hon Richard A. Botzford Judge

Demarcus Clark Sheriff

Attest

Henry B Price

Clark

Be it remembered that heretofore
to wit: On the 9th day of June AD 1862
the same being one of the days of the May
Term of said Court for said year the follow-
ing among other proceedings in said Court
were had and entered of record therein
to wit:

In the matter of the
 Guardianship of
 David St Pierre minor } Report of Guardian
 This day Comes

Persons C Gilbert Guardian of said Minor
 by Plato Smith his Attorney and presents
 his Report heretofore filed herein and moves
 the Court to Approve the same

Thereupon Comes D. W. Gaptill
 Administrator to Collect of the Estate of the
 said David St Pierre deceased by S. W. Carey
 Esq. his Attorney and objects to the Approval
 of said Report.

After hearing the Evidence
 and arguments of Counsel the Court being
 fully advised in the premises overrules the
 motion of the said Guardian

It is therefore Ordered by the Court
 that for irregularity and insufficiency said
 Report be and it is hereby disapproved.

And it is further ordered by
 the Court that this matter be Continued
 until the June Term of this Court to wit.
 July 19. 1862

And it is further ordered
 by the Court that the said Guardian
 prepare and present his amended
 Report at that time & pay the Costs of this Continuance

5

And afterwards to wit: on the 19th day of July AD 1862 the same being one of the days of the June Term of said Court for said year the following among other proceedings was had and entered of Record in said Court to wit:

In the matter of the
Guardianship of } Report of Guardian
Daniel St Pierre's minor }

This day comes again Person C Gilbert, Guardian of said Minor by Plato Smith his Attorney, and files herein his amended Report showing in what manner he has conducted the affairs of said Guardianship, and moves the Court to approve the same

Thereupon comes again DW Euphill Administrator to collect of the Estate of said Daniel St Pierre deceased by S. Wilcox his Attorney and excepts to said Report, and thereupon the said parties make issue on said report to be determined by the Court

And it appearing from the Records of this Court from the Evidence adduced before the Court on the trial of said issue, that the said Gilbert was duly appointed Guardian of the said Daniel St Pierre

on the 18th day of April AD 1851. by this Court and as such Guardian the said Gilbrish has failed failed and neglected to make any Report of his doings to the Court, and that there has come to his hands as such Guardian effects belonging to the said Minors as follows

Aug 1st. 1851

\$ 344.05

and on the 2nd day of July AD 1852 the sum of \$ 375.75

That the Expense of Collecting said first

sum of money was

\$ 21.85

And a like Expense on the last ~~sum~~

mentioned sum received, of

\$ 27.04

and that the Expense of obtaining

Letters of Guardianship paid was \$ 4.58

And that the said Prince would have been of ^{the} age of twenty one years on or about the 2nd day of January AD 1854. since about which time the said Prince has not been heard from

And the Court having heard and considered all the evidence offered by either party, and the Agreement of Counsel being fully advised in the premises it is

Ordered by the Court that the Report this day filed by said Guardian be made and taken to conform to this order, and that this order stand for a Report herein in lieu of said Report filed

7
Guardian

Dr.

To amt recd Aug 30 th 1851	\$ 344.05
Interest on same from Aug 30 1851 to January 2/54 at 10 per cent	79.30
To amt. received July 3 ^d 1852	375.75
Interest on same to Jan'y. 2/54 at 10 per cent	56.36
	<u>\$ 855.46</u>

Cr.

By Expenses & money paid out Aug 30/51	\$ 21.85
" Int on same to Jan'y 2/54 at 10 per cent	5.02
Expenses & money paid out July 3/52	27.04
Interest on same to Jan'y. 2/54 at 10 per cent	4.05
Amt paid Clerk	4.50
Cont. on \$719.80 at 6 per cent	43.18
Dr. To wit. on \$749.82 from Jan'y. 2/54 to July 19/62 at 6 per cent	<u>384.65</u>
	1134.47
Cr. By Bal Clerk's fees	<u>2.35</u>
Amount due from Guardian	<u>\$ 1132.12</u>

And it is further ordered by the Court that the said Person C Gilbert Guardian as aforesaid pay over the said sum of Eleven Hundred and thirty two & $\frac{12}{100}$ dollars to the said D W Gaptill Administrator to collect of the Estate of the said Daniel St. Pierre deceased within ninety days from the date of this order

8
And afterwards to wit on the 31st
day of July AD 1862 the same being one of
the days of the July Term of said Court for
said year the following among other pro-
ceedings was had and entered of Record
in said Court to wit:

In the matter of the
Guardianship of } Guardians Report
Daniel St. Pierre & minor }

This day comes Persons
C. Gilbert Guardian of said Minor by Plato T
Smith his Attorney and prays an Appeal to
the Circuit Court of Kane County from the
judgment of this Court heretofore entered herein

The Court being fully advised in the
premises it is

Ordered by the Court that the
said Appeal be allowed on condition that the
said Guardian first file his bond in the
penal sum of Twenty-three hundred dollars
conditioned according to law with security
to be approved by the Court.

Thereupon pursuant to the
foregoing order the said Gilbert comes and
files his bond in the penal sum aforesaid
with Lyman Black as security. It is
therefore Ordered by the Court that the said

9. Bond be and it is hereby Approved and the said Appeal granted -

And it is further Ordered by the Court that the Clerk of this Court Certify and transmit to the Clerk of the said Circuit Court, a transcript of the Record herein together with all the papers pertaining hereto filed herein.

State of Illinois }
 Kane County } I Henry B. Pierce Clerk
 of the County Court in and
 for said County do hereby certify that
 that the foregoing is a true and correct
 transcript of the Record in the foregoing
 entitled matter And that the accompan-
 -ying papers marked in red ink respectively
 A, B, C, D & E are all of the papers pertaining
 to said matter filed herein, as appears
 from the Records in my Office

Seal

Given under my hand and
 the Seal of said Court at
 Geneva this first day of
 August A.D. 1862.

Henry B. Pierce
 Clerk

10
And on the same 24th day of
April A.D. 1863 was filed with the
Clerk of our said Court of Common Pleas
of the City of Elgin a Copy of Record in the
words and figures following to wit:

United States of America
State of Illinois Kane County

Pleas at a Regular Term
of the Circuit Court of said County of Kane
begun and held at the Court House in Geneva
in said County on Monday the second
day of February in the Year of our Lord
One Thousand Eight hundred and
sixty three being the first Monday of
said month

Present Isaac H. Wilson Judge

Joseph H. Whipple Sheriff

Chas J. Metzner State Atty

Attest

Thomas C. Moore

Clerk

Be it remembered that heretofore to wit
on the 3^d day of February A.D. 1863,
the same being one of the days of
the February Term of said Court the
following amongst other proceedings was

had and entered of Record in said Court to wit:

8168 In the Matter of the }
Guardianship of } Appeal
Daniel St Pierre }

This day come the parties by their respective Attorneys and agree that the venue herein may be changed to the Court of Common Pleas of the City of Elgin. It is therefore ordered that the venue herein be changed to the said Court of Common Pleas and that the clerk of this Court transmit to the clerk of the said Court of Common Pleas the papers on file in this cause and a transcript of the proceedings had herein.

State of Illinois)
Kane County)

I Thomas C Moore Clerk
of the Circuit Court
within & for said County Certify the
foregoing to be a correct transcript of
the Record in said Court in a cause
lately pending therein entitled "In the
Matter of the Guardianship of Daniel
St Pierre" I further Certify that
the accompanying papers numbered
1 to 8 inclusive are all the papers

filed in said Cause

Seal

Stamp

(Witness Thomas C Moore
Clerk of said Court and
the Seal thereof in Geneva
in said County this 24th
day of April AD 1863.

T. C. Moore
Clerk

And on the same 24th day of April
AD 1863. was filed with the Clerk of our said
Court of Common Pleas of the City of Elgin
an Appeal summons in the words and
figures following to wit:

State of Illinois

Kane County

The People of the State of
Illinois to the Sheriff of
said County, Greeting: We Command
you to summon D. W. Guphill if to
be found in your County personally to be
and appear before the Circuit Court of
said Kane County on the first day of the
next Term thereof, to be holden at the Court
House in Geneva on the first Monday
of October next, to abide by and perform

13

the judgment of said Court on a certain Appeal in the Matter of the Guardianship of Daniel H. Finore and make due return of this writ

Equal
Cl

Witness Thomas C Moore
Clerk of our said Court and
the seal thereof at Geneva
in said County this 4th day
of August AD 1862

T. C Moore Clerk

And on the back of said Summons
is ~~the~~ an indorsement in the words
and figures following to wit:

Executed this writ the 7th day
of August 1862 by reading the same to
D W Gaptall, Demarcus Clark

Sheriff Kane County

Service 50

Mileage 65

Return 10

1.25

And on the same 24th day of April
AD 1863 was filed with the Clerk of our
said Court of Common Pleas of the City of
Elgin a Report of Guardian in the
words and figures following
to wit:

State of Illinois } County Court of Kane
 County of Kane } County May term A.D. 1862
 To the Judge of said Court.

The undersigned appointed Guardian of David H. Paine would respectfully submit the following account of his Guardianship to this date, May 27, 1862.

Said Guardian charges himself as follows:-

1851 Aug 30	To amt. rec ^d from Estate of John Paine (the father of David) by the hands of John A. Paine	\$ 344.05
1852 July 3	" Amount received as above	375.75
1853 July 5	" " " from David for John A. Paine (bring the amount of John's portion of Estate collected by David	200.75
	Interest on the amt in Guardian's hands to Jan 2 1854 (the time David became of age)	76.50
		<u>\$ 997.05</u>

Said Guardian paid previous to Jan 2, 1854 on acc of Guardianship

1851 Aug 30	By amt. paid J. A. Paine on acc of services for collecting the 1 st item of D. H. Paine from Estate	21.85
1852 July 3	By amt. paid as above for col 2 ^d item above	27.04
1851 May 5	" " " Costs of Guardianship	4.50
1853 Dec 12	" " " J. A. Paine part of his portion of Estate rec ^d from David as above by David's order	100.00
1854 Jan 2 nd	" Amt. on hand & subject to the call of David on Jan 2, 1854 without deducting charges for service	843.66
		<u>\$ 997.05</u>

Asc since 1854 Jan 2 nd	
1854 Jan 2	On hand at the time and remaining on hand by order of David } \$ 843.66
1855 Oct 12	By Amt. paid J. L. Ruineo (bal gant his due from Estate Collected by David \$100, Expenses \$45.07) } 145.07
1855 Jan 6	By Amt. loaned to E. Tiff and J. S. Clark &c } 198.59
	843.66

The above amount of \$698.59 included in a Judgment
in the Kane Circuit Court Jan 27, 1858 in the case
of Persons C Gilbert vs Erastus Tiff Jason S.
Clark and S Marcus, Clark not collectable
at present

Costs paid in obtaining said Judgment

Clerks & Sheriff fees

12.80

Atty fees

25.00

For my services as Guardian of

Persons C Gilbert

\$698.59

State of Illinois

Kane County } I Persons C Gilbert do solemnly

swear that the foregoing account
I have this day rendered, contains a just and true account
of the money which I have received & expended for the
said David Ruineo for whom I was appointed
Guardian and also all claims which I have
against said minor.

Sworn & subscribed to } Persons C Gilbert

before me this 27th day of

May 1862

H B Pierce

CLK

Filed May 27, 1862

H B Pierce Clerk of Co.
Court

And on the same 24th day of April A.D. 1863. was filed with the Clerk of our said Court of Common Pleas of the City of Elgin an other Report of Guardianship which is in the words & figures following to wit:

State of Illinois } County Court of
Kane County } Kane County

To the Judge of said Court

In conformity to the Order of said Court the undersigned heretofore Guardian of Daniel St. Pinneo submit the following Report of his actings & doings in that matter.

The undersigned reports that the said Daniel St. Pinneo was a son of John Pinneo that the said John Pinneo at the time of his death resided in the State of Ohio and all the property belonging to the said Daniel as heir of his deceased father was situated in the State of Ohio That soon after the appointment of the undersigned as Guardian of the said Daniel he authorized one John A. Pinneo, who was a brother of said Daniel and equally interested with Daniel in the proceeds of said Estate to proceed to Ohio gather together, collect and bring back to the undersigned as guardian of the said Daniel all that portion of

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the said Estate or the proceeds thereof to which the said Daniel might be entitled as heir of said Estate.

That the said John A. Ruineo procured from said Estate as a part of Daniel's portion of the same of \$344.05 from which sum there was deducted by the said John and allowed by me the sum of \$21.85 as the one half of the necessary expenses incurred by him in settling the Estate belonging to the heir of the said John Ruineo deceased (and for which sum thus allowed the undersigned has the receipt of the said John A. Ruineo) leaving amount rec'd by me as guardian Aug 30. 1851, \$322.20

The said John A. Ruineo made at the request of the undersigned as guardian another trip to Ohio in summer of 1852, for the same purpose as above and collected money for said Estate Daniel's portion of which amounted to \$375.75 from which there was deducted and allowed to said John A. Ruineo as Daniel's portion of expenses incurred the sum of \$20.35 travelling expenses \$5.99 tax paid on land 70 cents, recording Mortgage total \$27.04 which deducted leaves

Amount rec'd by me as guardian July 3. 1852 \$348.71

The undersigned would further Report that in 1853, he together with the said John A. Perkins authorized the said Daniel to proceed to Ohio and obtain the amount then due to himself and the said John A. ~~Perkins~~ from the said Estate and the undersigned has been informed that the said Daniel obtained from the said Estate about the sum of \$400.00 that portion of which belonging to the said John A. to wit \$200, the said Daniel sent to the undersigned and directed him to pay the same to the said John A. which was so paid over, the remainder of the money so collected ^{by} the said Daniel the undersigned has never received nor indeed has he since seen the said Daniel

The undersigned would further report that he also paid to said John A. on acc of Expenses and Expenditures incurred in and about the management of the Estate and for and on acc of Bills made and expenses incurred by the said Daniel and paid by the said John the sum of \$45.07
 Also Costs of Guardianship paid 4.50
 Clerk of Court

The undersigned would further Report that said Daniel became of

lawful age on Jan 2nd 1854 That at or about that time the undersigned rec^d a letter from the said Daniel stating that he should be at home in a few days and he desired that his money should be ready for him, accordingly the same was ready and kept on hand a long time but the said Daniel did not nor has he at any time since, ever called for the same and the undersigned has not since been able to learn his whereabouts that he might communicate with him in regard to the disposition of the same -

The undersigned would further report that after keeping said money on hand as above for a long time to wit about one year he afterwards loaned the same together with other money belonging to himself to E Triff and J. S. Clark & Co at the time responsible men residing in Kane County. That since the loaning of the money as above to said E. Triff and J. S. Clark & Co have become insolvent and the undersigned has been hitherto wholly unable to collect the same thus loaned but he procured a Judgment for the same in the Kane County

Circuit Court Jan 27, 1858, but which judgment is yet unpaid; that he has paid to secure said judgment Clerk & Sheriffs fees \$12.80 Attorneys fees \$25.00 And the undersigned while submitting the above report in obedience to the Order of this Court, would protest against the right or authority of this Court to compel this Report to be made or to enforce the payment of any sum received by the undersigned as Guardian as aforesaid to the said Daniel or to his Representatives for the reason 1st

The undersigned is not now nor has been for years Guardian of the said Daniel. And 2nd more than five years have elapsed since the said Daniel became of age, and for this reason the said Daniel or his Representatives are barred from clemency or enforcing the same —

All of which is Respectfully Submitted

Perrins C. Gilbert

State of Illinois,
Horne County

I Perrins C. Gilbert
do solemnly swear

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that the foregoing account I have
 this day rendered contains a just
 and true account of the moneys
 which I have received and expen-
 ded for the said Daniel St. Pierre
 for whom I was appointed guardian
 also all claims which I have against
 said minor

Sworn & subscribed to } Persons C. Gilbert
 before me this 19th day }
 of July AD 1862, }
 Henry B. Peirce }
 Co. Clerk }

There is an indorsement on the back
 of the above report in the words and
 figures following to wit:

Approved to Conform with Order
 Entered July 19th 1862.

R. N. Botsford
 Co. Judge

Filed July 19, 1862

St B Peirce Clerk Co Court

Filed Aug 4, 1862

J. C. Moore Clerk

And afterwards to wit on the 28th day of May AD 1863 the same being one of the days of the May Special Term of said Court of Common Pleas of the City of Elgin for said year the following among other proceedings was had and entered of Record in said Court to wit:

In the Matter of the Guardianship

Persons C. Gilbert of } Appeal
 David St. Pierre

This day comes the parties to this suit and by consent this suit is continued at the Costs of the Guardian Person, C. Gilbert and it is further agreed as a Condition of this Continuance that there shall be made no question about the right of the liability of the said Gilbert to pay interest (on whatever amount the Court may find due from him) from this date at such a rate as, to be determined by the Court

And afterwards to wit on the 16th day of November AD 1863, the same being one of the days of the November Special Term of said Court for said year the following among other proceedings was had and entered

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of record in said Court to wit:

$\frac{7}{459}$

In the Matter of
Persons C. Gilbert
Guardian of Daniel
St. Pierre } Appeal

This day come the parties
to this suit by their respective Attorneys
waive a jury and by agreement submit
this cause to the Court

And afterwards to wit: on the
1st day of December A.D. 1863, the same
being still one of the days of the November
Special term for said year the following among
other proceedings was had and Entered of
record in said Court to wit:

$\frac{7}{459}$

In the Matter of
Persons C. Gilbert
Guardian
of
Daniel St. Pierre } Appeal

This day comes the
said Persons C. Gilbert Guardian of Daniel
St. Pierre by Plato Smith his attorney
and in person And also comes D. W. Gaptell
Administrator to Collect of the said Daniel

St Pierre deceased by Wilcox his Attorney
 And upon motion of said Persons C
 Gilbert Guardian as aforesaid the said
 Appeal case comes on to be heard before the
 Court without a jury concerning the
 matter of the Guardianship of said
 Daniel St Pierre (minor, by said
 Persons C Gilbert his guardian, And
 the Court having heard the evidence and
 examined the Reports of the said Gilbert
 as Guardian aforesaid and heard the
 arguments of counsel of the respective
 parties - but not being fully advised
 in the premises takes the case under
 advisement until the next term of
 this Court.

And afterwards to wit on the 3^d day of
 February A.D. 1864 the same being one of
 the days of the January regular Term for
 said year the following among other pro-
 ceedings was had and entered of Record
 in said Court to wit:

In the Matter of the
 Guardianship of
 Daniel St Pierre a
 Minor Person C Gilbert his
 Guardian

} Appeal from the Order of the
 County Court of Kane County
 Change of Venue from Kane County
 Circuit Court

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This day comes again the said Persons C. Gilbert in person Guardian as aforesaid & Plato Smith his Attorney And also come the said D.W. Gaptill by Wiley his Attorney and the Court having duly Considered the Evidence in this case and being now fully advised finds and determines in this case as follows to wit: That said Gilbert was duly appointed Guardian of the said Daniel Harvey Pinneo on the 18th day of April AD 1851, by the County Court of said Kane County that as such Guardian in the year 1851, 1852 & 1853, he received money belonging to said Ward Daniel Harvey Pinneo that he neglected his duty as Guardian, that he mingled his said ward's money with his own, and used it as his own & kept no separate account of it, that he neglected and failed to make any Report of his said Guardianship and his actings and doings therein to the said County Court until the 27th day of May AD 1862. That there came to his hands as such guardian money belonging to his said ward as follows: 1851. August 30. \$344. ⁰⁵/₁₀₀ 1852 July 3rd \$375. ⁷⁵/₁₀₀ 1853. sometime between September and December \$100. That he paid as of August 30th 1851, on account of his said Guardianship as expenses to the clerk of said Court \$4.50 which the court finds to be a proper charge and allows the same to the said Guardian as a credit;

that the other items (to wit, \$21.⁸⁵/₁₀₀ as of August
 30th 1851 & \$27.⁰⁴/₁₀₀ as of July 3, 1852 and \$45.⁰⁷/₁₀₀) presented
 by said Guardian as expenses alleged to have been
 incurred by him as Guardian as aforesaid are
 rejected and not allowed because the proofs fail
 to show them necessary and proper charges. That
 the said Ward Daniel Harvey Pinneo would
 have become of age on the 2nd day of January A.D.
 1854, since about which time the said Pinneo
 has not been heard from. And that the Court
 find and determines the amount now due
 from said Guardian to be fourteen hundred and
 forty three dollars & seventy six cents as follows to
 wit: Amount received August 30th 1851 \$344.⁰⁵/₁₀₀
 Credit by amount paid Clerk \$4.50 is \$339.55
 Interest at 10 per cent to August 30th 1852, 1 year
 \$33.95 making \$373.50 Interest at 10 per cent from
 August 30 1853 to January 2^d 1864 \$13.69 is \$424.54
 Amount received July 3^d 1852 \$375.75 Interest at 10 per
 cent to July 3, 1853 is \$37.57 making \$413.32 Interest
 at 10 per cent to January 2, 1854, \$20.66 \$433.98. Am-
 ount received Fall of 1853, \$100. Total amount in
 hands of Guardian January 2, 1864 \$958.52
 Credit by Commission at 6 per cent on the same \$57.51
 leaving \$901.01. Interest at 6 per cent from January
 2^d 1854, to Feb 3, 1864, \$545.10 making \$1446.11. Credit
 by balance of Clerk's fees paid \$2.35. Balance

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due Feb 3. 1864. from said Guardian to the Estate of said Ward \$1443.76.

And it is Ordered by the Court that the said Person C. Gilbert Guardian as aforesaid pay over to the said D. W. Gaptill Administrator to collect of the Estate of the said Daniel Harvey Rinne deceased within ninety days from the date hereof the said sum of Fourteen Hundred & forty three & $\frac{76}{100}$ Dollars so found due from him as Guardian as aforesaid and that he pay the costs of this cause to be taxed -

Whereupon the said Person C. Gilbert Guardian of said Minor by his Attorneys Plato & Smith prays an appeal to the Supreme Court from the judgment of this Court heretofore entered herein. The Court being fully advised in the premises It is Ordered by the Court that said appeal be allowed on condition that the said Guardian first files his bond in the penal sum of Three Thousand Dollars conditioned according to law with security and by agreement of parties to be approved by the Clerk.

Afterwards to wit on the 6th day of Feb: A.D. 1864 the same being one of the days of the said February term for said year the bill of Exceptions was filed in said Court in the words and figures following to wit:

State of Illinois	}	Court of Common Pleas
City of Elgin		of the City of Elgin
Rock County		November Special Term A.D. 1863.

In the Matter of the Guardianship
of Persons E. Gilbert of Account of
Daniel Harvey Peneo the said Guardian.
Ward.

E. W. Gupthill admissions
Ward of the Estate of said Ward

Be it remembered that on the trial of the above cause at said term of said Court the plaintiff called upon the said defendant to be sworn (as a witness in said cause to which the defendant objected the Court overruled the objection compelled the defendant to testify to which decision of the Court in overruling said objection and compelling him to testify the

defendant by his Counsel at the time
excepted -

Persons C. Gilbert being sworn, testified as follows: -

When I received this money August 1st 1851, I could not refer to any person that I loaned it to, but I put the money with my own and when I had a chance to loan the money I did so with my own, it was never kept separate at all. I loaned money enough to Peasley & Adgate, but whether it was out of this payment or not I cant say - I loaned the money in my own name - always loaned in my own name - I cant tell what rate of interest I received.

Mr Peasley that I loaned to says that I charged him 15 per cent - I did not get the highest rate - I cant say that I loaned money at 20 per cent between August 3, 1851 and January 1st 1854 - I am a farmer by occupation No very extensive pecuniary matters weigh on my mind - I cant tell how much I loaned to Peasley - I cant tell how much I loaned to Adgate - I should not think I let either of them have one hundred dollars It did not exceed that sum think - I presume I charged one as much as I did the other I cant recollect

what money was ^{bringing} ~~belonging~~ then - I bought land in Cook County in March, A.D. 1855 - I used my own money it was not the ward's money - The Ward's money was in Dr. Tift's hands then - I paid one thousand dollars for the land - I sold it again soon - I bought the land for \$18. or \$19. per acre (and sold it for ~~\$30~~ thirty dollars per acre -

I did not loan any money to ^{me} than Tift I don't recollect - I don't recollect that I applied to him and asked him 20 per cent - Myself and John Pinneo gave Daniel H. Pinneo a power of atty to go and get the money in Ohio that was due to him ~~and~~ John Pinneo ^{and} the war Daniel H. Pinneo - He drew (and sent me two hundred dollars - He said in a line to me that he had not drawn it all but said he would send the rest in a few days - I supposed when the money came that it was undivided (and I handed over one hundred dollars to John Pinneo - It run along and no more was sent - That he had sent was intended for John (and not for himself - I learned afterwards that Daniel had drawn the balance of the

money and used it and when I found this out I paid the other one hundred to John - I found this out by way of John and letter from Daniel H. Pinneo - I don't know that Daniel sent a Draft to John for the four hundred dollars - I never heard of any such thing - I never went down to Ohio to investigate those accounts myself - I did not to my recollection take a note for the money that I let John have John was not at my house in December A.D. 1853 or Winter of 1854 John lived at this time at Keokuk Ill. I was there only once several years ago - it was about the time Daniel became of age I can't say whether John Pinneo was up there in February A.D. 1854

(A letter shown to witness) I should not think the figuring on this letter is mine but will not swear to it -

The expenses of \$45.87 was made by Daniel for clothing and paid by John for Daniel (and I paid John - They had sued Daniel and this was to pay the lawyers fees and for his clothing

I don't recollect of having John's Note I can't recollect that I allowed John interest on the one hundred dollars I owed him -

This forty five dollars was paid after Daniel became of age.

I should think money could be loaned at 10 per cent payable annually from August A.D. 1857 to 1869 - I never filed an report before this, before the Probate Court.

Cross Examination

I did not know until after the Guardianship had ~~been~~^{run} out that it was my duty to make a report. The last time I saw Daniel here was in 1853. The last letter I received from him was in December, 1853. He wrote in this letter that he would be of age the next day.

I had the money ready for Daniel in February 1854. I kept the money where I could command it for a year. I then loaned it to Erastus Tafft & Clark & Company. Lemercus Clark and Jason Clark constituted the firm of Clark & Co. the note was endorsed by Mr. Ballard.

When I loaned this money to Tafft he said he would give his word and honor that if Daniel should come for his money he would pay it over before it became due at any time.

The statements by and between Gil.

bert and Tefft in reference to the ownership of the money and the time of repayment & objected to and was subject to objection.

The note was a common note not a judgment note. I never was called on until the administrator was appointed on the estate of Daniel.

I considered those to whom I loaned the money to be good pecuniarily were so considered by the persons that I enquired of.

I commenced suit on the note and got a judgment - I could not collect the judgment - the defendants in the judgment were insolvent -

Examination.

I cant tell how much money I had on hand for Pinneo when he became of age - I had Currency ^{and} some I kept in the Bank and some by myself - I calculated to keep money enough together to pay Daniel when he should call for it - I made an estimate of what would be due the boy Daniel when he should become of age. This estimate I made about the time he wrote me - All I know about his wanting the money was through letters.

I figured legal interest in determining the amount that would be due to Daniel when of age - I cant tell whether it was 6 per cent or 10 per cent - I did not figure Compound or annual interest - I cant tell whether the money was kept in Town's Bank or not -

Tefft is a Brother-in-law of mine - I think he was to pay more than 10 per cent interest - I dont recollect that it was over 14 per cent - I dont recollect the amount of money put into the note - When the note was due it was not collectable it could not have been collected out of either of the parties by law. Ballard had died - I made no effort to collect the note from Ballards Estate -

I cant tell what year it was that I commenced to collect the note - It was a common promissory note - I did not take any real estate security but I did in 1851 & 2 of Peesly & Adgate -

A letter dated Feby 10th 1858, shown witness who said this is my hand writing - The book I referred to is at my house - I kept no account of the money that I loaned but I mingled it with my own and calculated to account to Daniel for it when

he came. The last letter I recd from Daniel is dated December 31, A.D. 1863.

Jonathan Telft sworn & testified as follows:
I went to Gilberts in 1853 or 1854 to him some money - I dont know what per cent he asked - The plaintiff asked the witness "What rate of interest could have been obtained on good security in the town where Gilbert lived during the years 1851, 2, 3, 4, 5, 6, 7, 8, to the answering of which by the witness the defendant's Counsel objected which objection was overruled by the Court and to which decision of the Court in overruling said objection and allowing the witness to answer the defendant by his Counsel at the time excepted - The lowest rate of interest in that town was 12 per cent, and the highest was 25 per cent - Ten per cent could have been obtained on good security -

Cross Examined. -

I did not borrow any money of Mr Gilbert -

I paid 25 per cent in 1851 & 1852 -

I dont know of any one else doing so

I will not be certain that I lent any in those years -

James Peasley Sworn testified as follows:

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Borrowed money of Mr Gilbert in 1853 - I paid him 10 per cent. - he took five per cent. out of the money by discount. The note I gave was on the face of it \$125 - date Nov. 30th 1853 and due one year from date. Gilbert loaned some money to Edgati in same way - His note was \$100, same date as mine - the general rates of interest from 10 to 25 per cent from A.D. 1851 to 1858 -

The plaintiff then offered the following note in evidence:

"

" Elgin Nov. 30, 1853.

\$125 One year after dated promise to pay Person Gilbert or order one hundred and twenty five dollars with interest at ten per cent for value received.

J. H. Peaslee "

to the introduction of which note as evidence the defendant by his Counsel objected which objection was by the Court overruled and said note received as evidence to which decision of the Court in overruling said objection and admitting said note as evidence the defendant by his Counsel at the time excepted -

Gyman Black. Sworn & testified as follows:-

I know Mr. Gilbert - I am his bail on this appeal. From 1855 to 1858 the rate of interest was 10 to 25 per cent. It could have been loaned on the best of security for 10 per cent.

Cross Examined

Many of those who borrowed money at those high rates of interest failed. In spring of 1855 to 1856 Erastus Tefft was considered ^{very} good for \$1000. & the Clarks were good also. The Clarks stood good to 1857. Tefft began to run low in 1856. Ballard was not very good though he paid his debts ^{promptly}.

Re Examined

In 1856 in October I got a judgment against Tefft but it has not been collected yet ^{and} it could not be.

In the beginning of 1856 if Gilbert had a judgment against Tefft it could have been collected. In 1856 and part of 1857 it could have been collected off the the Clarks.

W. C. Town sworn and testified as follows:
I resided in Elgin from 1851 to 1858. In

1851 & 1852 I was operating some in money. Money was loaned from 6 per cent to 25 per cent. — He generally loaned from 10 to 12 per cent. — In 1851 & 1852 or regular rate was 12 per cent & the same from 1852 to 1857. I don't recollect of any loaning for 6 per cent here — No difficulty in obtaining ten per cent on first-rate security during those years. — Mr. Gilbert kept money in my bank. Gilbert generally kept the account of money in our bank in his own name. He never allowed him any interest on his deposits.

Cross Examination

Mr Gilbert resides three or four miles from here on a farm —

The plaintiff then introduced the following letter:

It was here agreed by and between the respective Counsel for the parties in the case; That the suit by Gilbert vs Jefft et al. on the note given by Jefft et al. to Gilbert (spoken of by Gilbert in his testimony) was commenced the 28th day of May 1857 in the Kane County Circuit Court in vacation (under the vacation practice) & the summons was returnable June 18, 1857 & that before June 18, 1857 Jefft filed a plea of usury in the case in which it was stated that the note was usurious, that four per cent was added to the principal of the note and the note on its face drew ten per cent, which plea was sworn to by Jefft — The Cause was then for that reason was continued and put on the trial docket & it was not reached at the fall term and went over till the January term 1858 at which judgment was obtained the suit being compromised by taking judgment for the actual principal of the note and ten per cent. That Mr Wilcox was the atty for Mr Gilbert in the prosecution of the suit — & that he was never informed nor did he know that any one else had any interest in the note — beside Gilbert

The Counsel for Gupstill, here offered to read in evidence a letter from John A. Pinnus to Daniel H. Pinnus dated Feby. 1854 of which the following is a copy:

Olgin ist Feb/54 =

Dear Harvey

I have waited for you for the last two weeks but must leave now. Mr. Lillers does not feel safe in paying me the money that you owe me. So I shall figure up the amount & leave it for you to bring me or pay to Gilbert if you cannot come down to see us.

I find our first payment	\$ 3,54,5
The second	3,75,33 $\frac{1}{3}$
The third	4,02,85

This four hundred & two Dollars was due June the 14 53. We Recd it July 3, 53.

I shall count it the same as though I had Recd it when due.

The interest on it my part \$202 is \$10,15.
Dec 12 I Recd of Gilbert \$1,00 for you.

Then the interest on the remainder up to this time at 10 per cent \$1,02 from 12 december. The Interest would be \$11,50.

You wrote me Harvey that you would pay me good interest for my money you see that I

have not charged you but 10 pr ct I
could had 25 if I had had it
The amount coming to me after you sent me
two hundred was :

Put on it to Dec. 12th is

Then I Recd one hundred Subtract

It leaves

Int on that

\$ 2,02,85

0,10,15
2,12,90

1,12,90

11,50

1,24,40

My Expenses in going to and returning from Ohio
was \$23,20 you know harvey that it was
necessary for me to go there to see to
Recording. Mortgages & paying taxes

Your half of that would be

Power of Atty I sent you

Add this to the other

Your half power Atty

\$11.00

50

1,24,40

11,00

25

1,36,25

That makes one hundred thirty six dollars
and twenty five cents \$1,50 Harvey would not
make me good but I shall be satisfied
with this Sherman has proclaimed that
tha you was dishonest but I cannot believe
if you ever pay any body you will ~~the~~ surely
pay me I do not expect to give you any
advice you know your own business I
would have liked well to have been here
to help you settle with Gilbert

I have a letter that I took from the post office for you I will leave it here Harvey Come and see us as soon as you can Mother wants to see you & bring me my money if you cant come leave it with Gilbert I do not think of any thing more If I could see you I could tell you more If you have any money that you can spare me I will secure you for it & give you fair interest for it. take up my note that Gilbert has & ^{destroy} ~~return~~ it I remain Dear Brother Affectionately
Yours
D. H. Pinneo. J. A. Pinneo

to the reading of which in evidence the the Counsel for Gilbert at the time objected The Court sustained the objection to which decision of the Court the Counsel for Guptill at the time excepted —

The Counsel for Guptill then offered to read in evidence a letter from Daniel Harvey Pinneo to his mother dated June 27th 1853 of which the following is a copy:

Springfield June 27, 1853
Dear Mother

45.

I take my pen in hand to write you a few lines to let you know that I am well (at present) and hope these few lines will find you the same.

I received your letter of the 16 and was very glad to hear from you the folks are all well on the Ridge your father's folks are all well at present Elizabeth lives with Sy. Neagleys Bill Caunter hires the farm of the old man and gives him 33 dollars a year and boards the old folks Thomas Gablaugh and Charlott Hawkins is married I make my home with Charley Shumaker I am working in harvest and getting 1.50 cents per day Charley talks of coming to Illinois in the Fall or the spring I will come the last of September or the first of October I have not heard from John for some time that money was due and I sent him four hundred dollars as a draft of that amount I dont know whether he got it or not I will go to Fox River from here and then I will come and see you all James Craig talks of coming to Illinois this fall Eliza Suptill has come from the Illinois a few days ago ^{from} she came in about 28 hours she had a ^{very} time coming George Mason is getting so he

drinks very hard never goes to Springfield and comes home sober Old John Hawkins drinks very hard but that is nothing for an Englishman the old man Pinneo so called looks as young as he did five years ago Grandmother Sally has been a visiting to Indiana and has just got back George Pinneo lives in Hawkins old hut when he died when you was here It has been very dry here this summer wheat is very good corn looks very doubtful there was no rain here from the first of may until the first of June of any account or to do any good. I have no more to write that would be new to you Write as soon as you get this So no more at present.

Your affectionate son
 Daniel J. Pinneo.
 To Polly Gaptill.

to the reading of which in evidence the Counsel for Gilbert at the time objected the Court sustained the objection to which decision of the Court the Counsel for Gaptill at the time excepted -

The Counsel for Gaptill then read in evidence the letters of administration granted to him

by the County Court upon the estate of
Said Daniel Harvey Pinneo - of which the
following is a copy:

State of Illinois } The People of the State of
Kane County } Illinois to all to whom these
Presents shall come Greeting:
Know ye That whereas
Daniel Harvey Pinneo late of the County of
Kane and state of Illinois deceased as it
is said had at his decease personal prop-
erty within this state the administration
whereof can not be immediately granted
to the persons by law entitled thereto, but which,
if speedy care be not taken may be lost
destroyed or diminished, to the end, therefore
that the same may be preserved for those
who shall appear to have a legal right or
interest therein we do hereby request and
authorize D. W. Guphill of the County of
Kane (and) state of Illinois to collect and
secure the said property whenever the
same may be in this state, whether it be
goods, Chattle, debts or Credits and to make,
or cause to be made a true and perfect inven-
tory thereof and to exhibit the same with all
convenient speed to the Court of probate of the
said County of Kane together with a reasonable

account of his collection, acts and doings
in the premises aforesaid.

[Large decorative flourish]

Witness Henry B. Peirce Clerk
of the County Court in and
for the said County of
Kane at his office in Es-
sena this thirtieth day of
April A.D. 1862.

Henry B. Peirce,
Clerk.

Kane County
State of Illinois } 8.

I Henry B. Peirce Clerk
of the County Court of
said County & State aforesaid, do hereby certify
that D. W. Gupill to whom the foregoing
letters were issued duly filed his Bond
in this Court in the penal sum of Four
thousand dollars. Said Bond as given in
reference to the real & personal Estate of Dan-
iel Harvey Pinneo in this state which is
supposed to be about the value of one thousand
dollars and also the Estate of said Pinneo
in Ohio

Witness my hand and the



seal of said Court at
Genoa this 9th day of
June A.D. 1862
Henry J. Pierce,
Clerk

Benjamin Burritt sworn who testified
I have lived nearly 26 years in Elgin
and from 1851 to 1862 I was acquainted
with the money market in Elgin. Money
would have brought 12 per cent. This
could have been loaned at 10 per cent
on good security and interest paid
annually during those times —
Cross Examined

I did loan money in those
times names ~~some men~~ ^{that} I considered
good I as soon have as to have real
estate security I should think the
general practice was about even
between taking personal ~~and~~ ^{or} real
estate security — during those
times the general practice was
to let money for one year and
upwards — Those engaged in
loaning money in those times
were scarce — Mr Gilbert was

a farmer - He has lived most of the time about two miles from Elgin I don't know whether he was in the habit of loaning money much from 1851. to 1855. In as my knowledge extends his whole dependence was on farming for a living I don't think his Capacity and Circumstances were such as to make him compete with money loaners in the City of Elgin.

Re Examination,

I Consider Mr Gilbert a man of good business habits - He has almost 200. acres of land - It is a valuable farm - I don't know much about his pecuniary matters - but he stands well as a man of property - I have known Gilbert for more than twenty years

A. J. Waldron sworn and testified: Have lived in Elgin for seven years know W. Gilbert - I know the rates of interest from 1851 to 1853 in this Community, it varied from 10 to 25 per cent

In 1853, 4 & 5 the general rate was from 10 to 15 per cent for one year, 10 per cent was considered a low rate - There was no difficulty in loaning money at ten per cent on the best of security - I loaned

no money for Gilbert during those years.

I know of one instance of his loaning money during that time

Cross Examined

I regard good security for the loan of money for one year to require real Estate - Bankers for short paper take personal security on paper of six months or over the majority require real Estate security - for a less time the majority require personal security - For one year or over real estate is regarded as the best.

All the foregoing testimony as to the rate of interest named and the manner of loaning money by others objected to as offered by the defendant which objections was overruled by the Court to which decision in overruling said objections - and allowing the same to be given, the defendant by his counsel at the time objected.

The Evidence for the Plaintiff ^{has} Closed and Deft Called
Lyman Black who testified;

In the Spring of 1856, I considered Jeff to begin to be shaky - The last of October AD 1857, a judgment of \$1000, could

52 — not be collected against the Clarks
but the first of October it could have
been —

Cross Examined

I don't know of Gilbert, promising
the plaintiff to pay him this claim.

The defendant Gilbert then introduced
the following Deposition of Erasmus Jeffs

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State of Illinois,
Kane County and
City of Elgin, } The People of the State

of Illinois.
To David Brockway, Esq., of Topeka
in the State of Kansas

Whereas it has been represented to us
that Erastus Tift of Topeka aforesaid is
a material witness in a certain cause
now pending in our Court of Common Pleas
of the City of Elgin, in the County of Kane
aforesaid. In the matter of the guardianship
of Daniel H. Pinneo, Plaintiff, and
Persons C. Gilbert, Defendant, and that
the said witness reside at Topeka in the
State of Kansas aforesaid, without the State
of Illinois, and that the personal attend-
ance cannot be procured at the trial of said
cause. Now know ye that we, in confidence of
your prudence and fidelity, have appointed
you Commissioner to examine the said witness,
and do therefore authorize and require you
to cause the said witness to come before you
at such time and place as you may there-
for designate and appoint, and diligently
to examine the said witness, on the oath
or affirmation of the said witness by you
first duly in that behalf administered,
and faithfully to take the deposition of the said
witness upon all interrogatories inclosed with,
or attached to these presents, both on the part

of the said Plaintiff and of the said Defendant and none others; and the same when thrust upon, together with this Commission and the said interrogatories, to certify into our said Court of Common Pleas of the City of Elgin, with the least possible delay.



Witness Rodolphus W. Padelford,
Clerk of our said Court, and the
Seal thereof, at the City of
Elgin, in said County, this
22nd day of Augt A.D. 1863.
R. W. Padelford
Clerk

State of Illinois } In the Court of Common
County of Kane } Pleas of the City of Elgin
City of Elgin. } October Term 1863.
In the Matter of the Guardianship of Daniel H. Pinneo }
vs } Change of venue
from Cir. Court
of an Appeal from
the probate Court
Persons C. Gilbert }
To D. W. Gupta the adm^r of
the said Pinneo or to Sylvanus Wilcox his
att^y

You are hereby notified that on the 22nd day of August, A.D. 1863 at 11 o'clock in the forenoon of said day we shall apply to the Clerk of the said Court of Common Pleas of the City of Elgin for a Dedicimus Protestatum or Commission to be issued out of and under the seal of said Court and directed to David Brockway, Esq. of Topeka, in the State of Kansas authorizing and requiring him to Cause Erastus Jefft, of said Topeka in said state (who is a necessary witness on the part of the said defendant residing without the State of Illinois and in said State of Kansas) to come before him (the said Brockway) and to take his deposition upon such interrogatories as may be enclosed with or attached to said Commission to be read as evidence in the above cause on the part of the defendant a copy of which interrogatories is hereto attached; when and when you may appear and file cross interrogatories and join in said Commission if you see fit.

Plato (and) Smith
 Genoa, August 12. 1863. Atty for Gilbert.

State of Illinois
 Kane County and
 City of Elgin

Interrogatories to be administered to Erastus Tift of Topeka in the State of Kansas a witness to be produced sworn and examined under and by virtue of the annexed Commission before David Brockway, Esq. of Topeka in said State of Kansas in a certain cause now pending and undetermined in the Court of Common Pleas of the City of Elgin in said Kane County wherein D. H. Gubtail as the adm^r of Daniel H. Pinneo is plaintiff and Persons C. Gilbert is defendant on the part of the defendants —

Interrogatory 1st What is your name, age, occupation and place of residence?

Interrogatory 2nd

Do you know the parties plaintiff and defendant in the Caption to these interrogatories mentioned or either and which of them and how long have you known them respectively?

Interrogatory 3rd

How long have you resided in Kansas and where did you live before you went there?

57 and how long had you resided in your prior place of residence before you removed to Kansas?

Interrogatory 4th

Did you ever know of the defendant Gilbert acting as Guardian of one David or Daniel H. Pinneo?

Interrogatory 5th

If you state that you do know of such fact state whether or not you know of the defendant Gilbert having at any time loaned any money belonging to said Pinneo?

Interrogatory 6th

If in answer to the last question you state you do know of such loaning by said Gilbert state to whom the same was loaned, and as near as you can recollect the amount loaned and whether a Note to secure the repayment of the same was given.

Interrogatory 7th

If you state that said Gilbert did loan money belonging to said Pinneo and that a note was given to secure the repayment of the same, state as near as you can recollect the amount of said note, its date, when the same was due and by whom signed?

Interrogatory 8th

What was the pecuniary responsi-

bility of those signing said note and what were they worth?

Interrogatory 9th

Do you know of any arrangement or agreement between the said Gilbert and the one loaning said money of him in regard to its repayment before the expiration of the time of payment (as mentioned in said note, if so state fully what that arrangement was?—

Interrogatory 10th

Was said note paid when due? If not, has it ever been paid?

Interrogatory 11th

Was ever any proceedings taken by said Gilbert to collect said note, if so, what?—

Interrogatory 12th

If in answer to the last interrogatory you state that suit was brought on said note and judgment obtained thereon, state (as near as you can recollect when said judgment was rendered and in what Court and as near as you can the amount of said judgment

Interrogatory 13th

If in answer to the 6th interrogatory you state that you loaned of said Gilbert said money and gave a note for the same

signed by you and J. S. and Demarcus Clark, state whether you ever gave said Gilbert any other note for money loaned of him signed by you and the said Clark, and if so, what was the amount of the same.

Interrogatory 14th

If you answer that judgment was rendered against you and J. S. Clark and Demarcus Clark in the Kane County Circuit Court upon said note state whether there was ^{ever} any other judgment rendered in said Kane County Circuit Court in favor of said Gilbert against yourself and the said J. S. and Demarcus Clark, and if so when and what was the amount thereof.

Interrogatory 15th

Supposing the records of said Kane County Circuit Court show a judgment to have been rendered on or about the 27th day of January 1858 in said Court in favor of said Gilbert against yourself and J. S. Clark and Demarcus Clark for the sum of \$904.⁴⁰/₁₀₀ is the same the judgment obtained on said note given for said loaned money.

Interrogatory 16th

Was there any judgment of a like amount rendered at or about that time in said Court in favor of said Gilbert and against you and J. S. Clark and Demarcus Clark for or on any other account than on said Note I.

Cross Interrogatories to be propounded to the said witness, Crastus Jefft, - on the part of the Plaintiff.

1st Cross Int. If in answer to any of the direct interrogatories you say the Defendant Porson C. Gilbert sued you and Jas. S. Clark and Demarcus Clark in the Kane County Circuit Court (Illinois) upon a promissory note and recovered a judgment thereon in said Court against you and them then state -

Whether you at any time between the 10th of January and 1st of April 1856 were able to pay said note -

Also, whether during said time the said Clarks or either of them were able to pay the same

Also whether during said time the amount of said note could have (by law) been collected of you.

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Also, whether during said time the amount of said Note could have been Collected (by law) of said Clarke—

Also, whether said Gilbert wanted or asked you to pay said Note during said time—

(Also, whether you would have paid the same during said time if said Gilbert had asked you—

2^d Crof. Int. State what kind of money you received of Gilbert, for which said note was given— was it Specie— Bills or checks or Certificate of Deposit on a Bank or a part of each? If you say it was in whole or part check or Certificate of Deposit on a Bank, state the amount thereof and date thereof and the name of the Bank.

3^d Crof. Int. Do you of your own knowledge and independent of what said Gilbert may have told you— know that said Gilbert ever had or received any money belonging to Daniel H. Finney.

If yes— state how you know, the amount and kind of money so had and received (and when he received the same—

4th " " Was not, and is not, the said note made and payable to Person C. Gilbert, and not to him as administrator executor Guardian

- 5th " " or agent of any one - but to him individually
 What rate of interest did said Gilbert
 ask you for the money when you first spoke
 to him about loaning you the money for
 which said note was given -
- 6th " " Was said Gilbert at or about that time
 loaning other money - if yes - state to whom
 and the rates of interest he charged
- 7th " " What rate of interest did you pay or
 agree to pay to said Gilbert for the use of
 the money for which said note was given -
- 8th " " Did not you and said Gilbert agree that
 the rate of interest should be 14 per cent
 and did you not agree to pay 14 per cent
 and was not the amount put into the note
 as principle made up of the money you act-
 ually loaned of him and four per cent ad-
 ded thereto and then was not the note
 drawn with interest at 10 per cent
- 9th " " Was not the said suit upon the said Note
 commenced in said Court in Vacation in
 the Spring or Summer of 1857 and did you not
 in order to prevent a recovery of judgment 20
 days after you were served with a copy of the
 declaration set up in a plea sworn to by you
 the defence of usury
- 10th " " Did you not prevent a recovery after 20 days
 service of the copy of the declaration by filing

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a plea of usury, to the declaration founded on said Note and did you not swear to said plea and by reason thereof did not the case stand over for trial until the Term of the Court next thereafter -

11th Cross Ex. If judgment had been rendered against you and the said Clarke immediately upon the lapse of the 20 days after the copy of the declaration was served -

Could not the same then have been collected of each or some one or all of the defendants

12th " " Did you not state in the said plea and swear to the same, that the rate of interest for said loan of the money for which said note was given, was 4 per cent, that 4 per cent was added into the note, and then the note drew 10 per cent -

13th " " Was not E. J. Joslyn, Esq., of Elgin your Attorney in said suit and did he not draw said plea for you - also the oath thereto which you took -

14th " " Do you swear or do you wish to be understood as swearing in answer to any of the direct interrogatories, that the money which you received of said Gilbert and for which said Note was given, was the identical money or any part of it

which came into said Gilbert ^{hands} as Guardian of Daniel H. Finnes.

15th Q^y Did any body ever tell you that it was such identical money

16th " " Did said Gilbert keep the money which he received as Guardian of and belonging to said Finnes, separate from his own funds -

Did he not mingle the same with his own money, (and) with that and his own, did he not buy land and other property (and) loan the money (as his own money "that is" on his own account

17th " " What kind of a note ("that is," was it a common promissory note or what was, and is called a "judgment note") was the said note which was given for said money (and) upon and for which the said judgment was recovered.

18th " " If you failed and became insolvent in Illinois, State the time up to which you were able to pay your debts (and) the time when you became insolvent (and) unable to pay your debts

20th " " Did you (not) prior to the year 1861 receive a letter or letters from Persons C. Gilbert, or his wife in which payment of the money loaned you as aforesaid was requested -

21st " " Did they not also state therein that they

65- wished to use the said money for the purpose of liquidating said Gilbert's individual indebtedness

22nd " " State to what use, (as stated by them) the said money (was to be applied

23rd " " Are you not at the present time, able to pay all of your debts in Illinois -

24th " " Is not the defendant, Pison C. Gilbert, the husband of your sister and a brother-in-law to you -

Elgin, Aug. 21st 1863,

S. J. Wilson
Atty for Gupstall (Adm.)

The Deposition of Erastus Tafft of the County of Shawnee and State of Kansas a witness of lawful age, produced, sworn and examined, when his corporal oath, on the second day of September in the year of our Lord one thousand eight hundred and sixty three at the office of David Brockway in the City of Topeka, in the County of Shawnee and State aforesaid by me David Brockway, a Commissioner duly appointed by a *Recessus Potestatum* or Commission issued out of the Clerk's office of the Court of Common Pleas of the City of Elgin, Kane County, in the State of Illinois, bearing Teste in the name of Rodolphus H. Packlifford Esq., Clerk of the said Court, with the seal of said Court affixed thereto, and to me directed as such Commissioner, for the examination of the said Erastus Tafft, a witness in in a certain suit and matter in controversy, now pending and undetermined in the said Court. "In the matter of the guardianship of Daniel H. Pennec" Plaintiff and Persons C. Gilbert, Defendant in ~~behalf~~ ~~in behalf~~ of the said Persons C. Gilbert, as well upon the Cross interrogatories of the said Plaintiff as on the interrogatories

of the Defendant which were attached to, or enclosed with the said Commission and upon none others. The said Erastus Tift being first duly sworn by me as a witness in the said case previous to the commencement of his examination to testify the truth as well on the part of the plaintiff, as the defendant in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated, testified and deposed as follows:

"Interrogatory 1st. - What is your name, age, occupation and place of residence?"

Answer to first Interrogatory, My name is Erastus Tift, I am about forty five years of age, am a physician and reside in the City of Topeka, in the State of Kansas.

Interrogatory 2nd. - Do you know the parties, plaintiff and defendant in the Caption to these interrogatories or either and which of them, and how long have you known them respectively?

Answer to Second Interrogatory. - I know both of the parties and have known both of them about twenty eight years.

Interrogatory 3rd. - How long have you resided in Kansas and where did you live before you went there? and how long had you resided in your prior place of residence before you removed to Kansas?

Answer to 3rd Interrogatory - I have resided in Kansas

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about three years and three months. I lived in Elgin Township Kane County Illinois and had lived there about twenty five years before I came to Kansas.

Interrogatory 4th — Did you ever know of the defendant Gilbert acting as guardian of David or Daniel H. Pinneo?

Answer to 4th Interrogatory — I have heard by Gilbert and others that P. C. Gilbert was guardian of said Pinneo.

Interrogatory 5th — If you state that you do not know of such fact state whether or not you know of the defendant Gilbert having at any time loaned any money belonging to said Pinneo?

Answer to 5th Interrogatory — Said Gilbert loaned me some money belonging to said Pinneo.

Interrogatory 6th — If in answer to the last question you state you do not know of such loaning by said Gilbert, state to whom the same was loaned, and as near as you can recollect the amount loaned, and whether a note to secure the repayment of the same was given?

Answer to 6th Interrogatory — It was loaned to me. I borrowed about seven hundred and fifty dollars, but I do not recollect the amount exactly. A note was given for it.

Interrogatory 7th — If you state that said Gilbert did loan money belonging to said Pinneo and

that a note was given to secure the repayment of the same, state as near as you can recollect the amount of said note, its date when the same was due, and by whom signed?

Answer to 7th Interrogatory - The amount of said note I do not recollect exactly but I think it was about seven hundred and fifty dollars and given I should think about 1855 or 1856, I think it run one year, with the privilege to Gilbert to get it sooner if Pinneo come and wanted it. It was signed by me, D. Clark J. S. Clark, or that firm and E. Ballard on the back.

Interrogatory 8th - What was the pecuniary responsibility of those signing said note and what were they worth?

Answer to 8th Interrogatory - I considered myself worth at least twenty five thousand dollars at that time, I thought the Clarks were worth as much more and I supposed Ballard was worth three thousand to four thousand and told Gilbert so at the time. I thought he was very exacting about security at the time.

Interrogatory 9th - Do you know of any arrangement or agreement between the said Gilbert and the one loaning said money of him in regard to its repayment before the expiration of the time of payment as mentioned in said note? If so,

76 state fully what that arrangement was?

Answer to 9th Interrogatory — The arrangement was that the money should be forthcoming at any time said Pinneo should come and want it.

Interrogatory 10th — Was said note paid when due? If not, has it ever been paid?

Answer to 10th Interrogatory — It was not and has never been paid to my knowledge.

Interrogatory 11th — Has ever any proceedings taken by said Gilbert to collect said note, if so what?

Answer to 11th Interrogatory — Said Gilbert did sue on said note and got judgment against me and the Clarks.

Interrogatory 12th — If in answer to the last interrogatory you state that suit was obtained there on state as near as you can recollect when said judgment was rendered and in what Court, and as near as you can the amount of said judgment?

Answer to 12th Interrogatory, — Said judgment was rendered in the Keane County ^{Circuit} Court — The amount of the judgment was about nine hundred dollars I think a little over that.

Interrogatory 13th — If in answer to the sixth Interrogatory you state that you loaned of said Gilbert said money and gave a note for the same signed by you and J. S. & Demarcus Clark, state whether you ever gave said Gilbert any other

note for money loaned by him signed by you and the said Clark and if so what was the amount of the same?

Answer to 13th Interrogatory — I have no recollection of ever giving Persons C. Gilbert any other note signed by these parties.

Interrogatory 14th. If you answer that Judgment was rendered against you and J. S. Clark and Demarcus Clark in the Kane County Circuit Court upon said note state whether there was ever any other judgment rendered in said Kane County Circuit Court in favor of said Gilbert against yourself and the said J. S. and Demarcus Clark and if so when and what was the amount thereof?

Answer to 14th Interrogatory. I know of no other judgment in Kane County Circuit Court in favor of said Gilbert against the Clarks and myself.

Interrogatory 15th — Supposing the Records of the said Kane County Circuit Court show a judgment have been rendered in said Court on or about the 27th day of January 1858 in favor of said Gilbert against yourself and J. S. Clark and Demarcus Clark for the sum of \$904.¹⁶/₁₀₀. is the same the judgment obtained on said note given for said ~~and~~ loaned money?

Answer to 15th Interrogatory — It is.

Interrogatory 16th - Has there any judgment of a like amount rendered at or about that time in said Court in favor of said Gilbert and against you and J. S. Clark and Demarcus Clark for or on any other account than on said note?

Answer to 16th Interrogatory. - There was not.

Cross Interrogatories and answers thereto by the witness on the part of the Plaintiff.

1st Cross Interrogatory - If in answer to any of the Direct Interrogatories you say ~~the~~ defendant Person C. Gilbert said you and Jason S. Clark and Demarcus Clark in the Kane County Circuit Court (Illinois) up on a promissory note and recovered a judgment thereon in said Court against you and them, then state,

Whether you at any time between the 10th of January and ~~first~~ 1st of April 1856, were able to pay said note? Also whether during said time the said Clarks or either of them were able to pay the same.

Also whether during said time the amount of said note could have (by law) been collected of you

Also whether during said time the amount of said note could have been collected (by law) of said Clarks

Also, whether said Gilbert wanted or asked you to pay said note during said time -

Also whether you would have paid the same during said time if said Gilbert had asked you?

Answer to 1st Cross Interrogatory - I think I was abundantly able to pay said note at that time. I also think the Clarks or either of them were able to pay it. I think said note could have been collected by law against me at that time. I think said note could have been collected against said Clarks by law at the time specified. I do not recollect of said Gilbert wanting me to pay said note within the time specified but always said he did not want it until Pinneo came for it, then he must have it, but he wanted it to run on interest. I have no doubt I should have paid said note with a few days warning at the time specified in 1856.

2nd Cross Interrogatory - State what kind of money you received of Gilbert for which said note was given. Was it Specie? Bills or Checks or Certificates of Deposit on a Bank or a

75 part of each. If you say it was the whole or part checks or Certificates of Deposit on a Bank - state the amount thereof and date thereof and the name of the Banks.

Answer to 2nd Cross Interrogatory. I do not now recollect whether it was a check, draft, specie or Bank bills.

3rd Cross Interrogatory - Do you of your own knowledge and independent of what said Gilbert may have told you - know that said Gilbert ever had or received any money belonging to Daniel H. Pinneo. If yes - State how you know, the amount and kind of money so had and received and when he received the same -

Answer to 3rd Cross Interrogatory - I do not know except from Gilbert and others that Gilbert got money from Pinneo. I do not know the kind of money.

4th Cross Interrogatory - Has not - and is not the said note made and payable to Persons C. Gilbert and not to him as administrator, Executor, Guardian, or Agent of any one - but to him individually?

Answer to 4th Cross Interrogatory - I think the note was made payable to P. C. Gilbert and not as guardian, administrator or any other way.

5th Cross Interrogatory - What rate of interest did

said Gilbert ask you for the money when you first spoke to him about loaning you the money for which said note was given?

Answer to 5th Cross Interrogatory—My best recollection is that it was twelve per cent.

6th Cross Interrogatory—Was said Gilbert at or about that time loaning others money— if yes—state to whom and the rates of interest charged.

Answer to 6th Cross Interrogatory—I do not know but my impression is that Black loaned some for him for from 20 to 25 per cent.

7th Cross Interrogatory—What rate of interest did you pay or agree to pay to said Gilbert for the use of the money for which said note was given?

Answer to 7th Cross Interrogatory—I do not recollect, but think it was twelve per cent.

8th Cross Interrogatory—Did not you and said Gilbert agree that the rate of interest should be 14 per cent and did you not agree to pay 14 per cent and was not the amount put into the note as principal made up of the money you actually loaned of him and four per cent added thereto and then was not the note drawn with interest at 10 per cent.

Answer to 8th Cross Interrogatory—I cannot tell you what the rate was but think it was 12 per cent and I do not know whether it was put into the note

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or draws that on the face but it might have been 14 per cent and put into the note for the first year.

9th Cross Interrogatory - Was not the said suit upon the said note commenced in said court in vacation in the spring of 1857 and did you not in order to prevent a recovery of judgment 20 days after you were served with a copy of the declaration set up in a plea sworn to by you the defence of usury?

Answer to 9th Interrogatory - I did.

10th Cross Interrogatory - Did you not prevent a recovery after 20 days service of the copy of the declaration by filing a plea of usury, to the declaration founded on said note and did you not swear to said plea - and by reason thereof did not the case stand over for trial until the Term of the Court next thereafter

Answer to 10th Cross Interrogatory - I did, and the case did stand over.

11th Cross Interrogatory - If judgment had been rendered against you... and the said Clark's immediately upon the lapse of the 20 days after the copy of the declaration was served - could not the same then have been collected of each or some one or all of the defendants?

Answer to 11th Cross Interrogatory - I do not know for it was at a time when the Clarks were talking

of putting their property out of their hands and they could have made the assignment a few days before as well as a few days after that time

12th Cross Interrogatory - Did you not state in the said plea, and ~~swear~~ swear to the same, that the rate of interest for said loan of the money for which said note was given was 14 per cent, that 4 per cent was added into the note, and then the note drew 10 per cent?

Answer to 12th Cross Interrogatory - I stated in the affidavit what the interest was but I do not now recollect whether it was 14 or 12 per cent but I think the ~~excess~~ was put into the face of the note but am not certain.

13th Cross Interrogatory - Was not E. S. Joslyn Esq., of Elgin your attorney in said suit and did he not draw said plea for you - also the oath thereto which you took?

Answer to 13th Cross Interrogatory - He was my attorney & I think he did but I am not certain.

14th Cross Interrogatory - Do you swear or do you wish to be understood as swearing in answer to any of the direct interrogatories - that the money which you received of said Gilbert and for which said note was given was the identical money or any part of it which came into said Gilbert's hands as Guardian of Daniel

79 H. Pinneo?

Answer to 14th Interrogatory - I do not.

15th Cross Interrogatory - Did any body ever tell you that it was such identical money?

Answer to 15th Cross Interrogatory. My impression is that Gilbert said that it was the same in kind or the identical money he had of Pinneo but I may be mistaken about it.

16th Cross Interrogatory - Did said Gilbert keep the money which he received (as guardian of, and belonging to said Pinneo) separate from his own funds? Did he not mingle the same with his own money, and with that and his own, did he not buy land and other property and loan the money as his own money, "that is," on his own account?

Answer to 16th Cross Interrogatory - I do not know any thing about how he kept it

17th Cross Interrogatory. What kind of a note ("that is," was it a common promissory note or what was and is called a "judgment note" was the said note which was given for said money and upon & for which the said judgment was recovered?

Answer to 17th Cross Interrogatory - I do not now recollect - but I think it was a common note for had it been a judgment note he would have taken judgment without waiting an answer in

the case.

18th Cross Interrogatory - If you failed ~~and~~ became insolvent in Illinois, state the time up to which you were able to pay your debts ~~and~~ the time when you became insolvent ~~and~~ unable to pay your debts?

Answer to 18th Interrogatory - I cannot state the exact time.

20th Cross Interrogatory - Did you not prior to the year 1861 receive a letter or letters from Persons C. Gilbert or wife in which payment of the money loaned you as aforesaid, was requested?

Answer to 20th Cross Interrogatory - I did from his wife.

21st Cross Interrogatory - Did they not also state therein that they wished to use the said money for the purpose of liquidating said Gilbert's individual indebtedness?

Answer to 21st Cross Interrogatory - Mrs. Gilbert wrote me that they wanted ~~me~~ it to pay this Pinneo matter up.

22nd Cross Interrogatory - State to what use (as stated by them) the said money was to be applied?

Answer to 22nd Cross Interrogatory - To pay the Pinneo matter up.

23rd Cross Interrogatory - Are you at the present time, able to pay all of your debts in Illinois?

Answer to 23rd Interrogatory. I am not.
 24th Cross Interrogatory. Is not the Defendant
 Person C. Gilbert the Husband of your sister and
 a brother-in-law to you.

Answer to 24th Cross Interrogatory. He is.

Erastus Tift.

I, David Brockway of the County of
 Shawnee and State of Kansas, a Com-
 missioner duly appointed to take the depo-
 sition of the said Erastus Tift a witness
 whose name is subscribed to the foregoing
 deposition, do hereby certify that previ-
 ous to the Commencement of the examina-
 tion of the said Erastus Tift as a witness
 in the suit between the said — "In the matter
 of the Guardianship of Daniel H. Pinner,
 plaintiff" and the said Person C. Gilbert
 defendant; he was duly sworn by me as such
 Commissioner to testify the truth in relation
 to the matters in controversy between the said
 plaintiff and the said defendant so far
 as he should be interrogated concerning the
 same; that the said deposition was taken

at my office in the City of Topeka, in the County of Shawnee and State of Kansas on the second day of September A.D. 1863; and that after said deposition was taken by me aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness and that thereupon the same was signed and sworn to by the said deponent Erastus Tefft before me, the oath being administered by me as such Commissioner at the place and on the day and year last aforesaid.

David Brockway.
Commissioner

Fees for taking deposition
38 folios at ten cents per folio \$ 3.80
Postage .21
Stamp .05
(Paid by Defendant) \$ 4.06

D. Brockway.
Commissioner.

~~State of Illinois
Hawke County (fs.
City of Elgin)~~

~~The People of the State~~

Stamp

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Lyman Black recalled -

Ezekiel Ballard in 1855. was right or about ^{right} he paid promptly - His reputation was good enough at that time in the winter of 1855 & 6 he was not considered good

Cross. Examined

I know of no pecuniary misfortune to which Ballard was subjected except the fuss with his wife - His farm was worth \$40 per acre and he had 60 acres

Defendant then introduced the following letters & Receipts

Wheeling Ohio Co Dec 23, 1853

Sir,

Its with pleasure that I write these few lines to you to let you know that I am well at this present time and hope these few lines may find you enjoying the same blessings I am in Wheeling yet and am going to stay here three or four weeks, I wrote a letter to you the other day and requested you to send my money to me here I am going to stay here until the 12 of Jan. then I think of going to California

but I want you to send my money
without fail send me five hundred
if any way possible, send it so
that I can get it by the 8 of January
and if you cant get me five hundred
send me two hundred without fail

I think you had better send it in
a draft or check I have nothing
more of importance to write give
my respects to Louisa and George
direct your letter to Wheeling Ohio
County Virginia

Yours truly
D. St. Pierre

P. C. Gilbert

On the back of which is a superscription
as follows to wit: P. C. Gilbert ^{Esq}, Elgin
Kane Co. Illinois -

Sir. I received your letter of the
25 this morning I did not like
the news that was in it very much
but I suppose I must put up with it
I owe Mr. Sherman nothing and if
you pay him any thing you may pay
him at your expense not at mine
you stated in your letter that he
had bought me cloths and boarded me

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and had got nothing for it, but I have a receipt to show to the contrary Mr Sherman is a thriving rascal and a damned liar besides

You wrote that you wanted a settlement with me, I don't know what particular settlement we would have to make but I will come and see you in three or four weeks but if John wants any money I would like for you to give him two hundred dollars but if you give Mr Sherman any don't charge it to me You wrote that you couldn't send me any until I was twenty one, but that comes tomorrow if I am not mistaken - direct your letter to St Louis I will make that my next stopping place, but you need not send me any money for I will be there before long but have it so that I can get as soon as I come for I don't expect to stay long in that part of the world - No more at present
Wheeling Dec 30 53

D. H. Pinneo

on the back of the above letter is a superscription as follows to wit: J. C. Gilbert, Elgin Cain Co Illinois -

Recd, Elgin Oct 12. 1855 of Persons C
Gilbert guardian One hundred
and forty five $\$7\frac{7}{100}$ Dollars for and
on account of money Collected by
Aid D. S. Pinneo for me. This money
to be accounted for by me in a settle-
ment with him, Also Received One
Hundred Dollars Dec. 12th 1853. on the
same account as above

John S. Pinneo

Elgin August 30th 1851

Received of P. C. Gilbert twenty one
dollars and Eighty five cents being the
Equal half of the Expenses incurred in
selling the real Estate belonging to the
heirs of John Pinneo deceased,

J. A. Pinneo

Received Elgin June 3rd 1852
of Persons C Gilbert twenty dollars &
thirty five cents Expenses travelling
to Ohio and five dollars thirty nine
cents tax on the lands and seventy
cents for Recording Mortgages the whole
amounting $\$27.14$ twenty seven and
four cents

J. A. Pinneo

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Received of R.C. Gilbert by the
hands of Capt. Lylla \$4.57 to apply on
my fees as clerk of the County Court
in the matter of the Guardianship of Daniel
H. Pinneo James Harrington
Geneva May 5th 1851

To the introduction of
which three first receipts as evidence
the counsel for Gaptill at the time objected,
The Court overruled the objection and the
counsel for Gaptill then and there excepted

Evidence for the defendant here closed.
Plaintiff then ^{Re} called

M.C. Torow who says I have exam-
ined my bank books & find that in
1854, Gilbert had an account at my
bank as follows

1853	Persons	C. Gilbert		
July 19	By	Cury Dep	300	300.00
Aug 4	"	" " " To paid Chk	200	100.00
26	"	" " "	600	700.00
31	"	" " "	700	00
Dec 5	"	" " "	683	683.00
" "	"	" " "	683	00
54 Jan 25	"	Gold	500.	
54 Jan 25	"	by Dep	200	700.00

	31	" Gold	230		9 30.00
March	13	" " Gold		930	.00
	25	" Gold	800		800.00
	31	" "	6.90		806.90
Apr.	1	" "	193.10	1000	.00
Nov	18	" "	300.00		300.00
	30	" "		50	250.00
Dec	5	" "		25	225.00
	14	" "		25	200.00
	27	" "		31	169.00
	30	" "		10	159.00
550 Jan,	2	" "	355		514.00
	15	" "		400	114.00
	19	" "	184		298.00
Feb	7	" "	50		348.00
Balance			348.		
			4402.00	4402.00	

Balance Carried to 188 do

For money loaned judgment notes were generally taken from 1851. to 1858 The majority at least did so.

Cross Examination

I think among farmers in loaning money some took judgment notes & some did not.

The foregoing was all the testimony given in this case

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The record from the County Court failing to show the service of process on the defendant in that Court, it was here admitted and agreed that the defendant had been duly served with a citation from said Court.

The Court rendered a judgment against the defendant as follows

In the Matter of the Guardianship of Daniel St Princes a Minor Person, Gilbert his Guardian	}	Appeal from the Order of the County Court of Kane County Change of venue from Kane County Circuit Court.
---	---	--

This day comes again the said Person, C Gilbert in person Guardian as aforesaid & Plato & Smith his attorneys And also Com. the said W. Gaptill by Miles of his attorney and the Court having duly considered the Evidence in this Case and being now fully advised finds and determines in this Case as follows to wit: That said Gilbert was duly appointed Guardian of the said Daniel Harvey Prince on the 18th day of April AD 1851 by the County Court of said Kane County that as such Guardian in the year 1851, 1852, & 1853, he received money belonging

to said Ward Daniel Harvey Pinneo that he neglected his duty as Guardian, that he mingled his said Ward's money with his own, and used it as his own & kept no separate account of it that he neglected and failed to make any Report of his said Guardianship and his actings and doings therein to the said County Court until the 27th day May AD 1862, That there came to his hands as such guardian money belonging to his said Ward as follows: 1851. August 30. \$344.⁰⁵/₁₀₀ 1852 July 3^o \$375.²⁵/₁₀₀ 1853. Sometime between September and December \$100. That he paid as of August 30th 1851. on account of his said Guardianship as Expenses to the Clerk of said Court \$4.50 which the Court finds to be a proper charge and allows the same to the said Guardian as a credit, That the other items (to wit \$21.⁸⁵/₁₀₀ as of August 30th 1851. & \$27.⁰⁴/₁₀₀ as of July 3, 1852 and \$45.⁰⁷/₁₀₀.) presented by said Guardian as Expenses alleged to have been incurred by him as Guardian as aforesaid are rejected and not allowed because the proofs fail to show them necessary and proper charges, That the said Ward Daniel Harvey Pinneo would have become of age on the 2nd day of January AD 1854 & since about which time the said Pinneo has not been heard from, And that the Court finds and determines the amount now due from said Guardian to be fourteen hundred dollars

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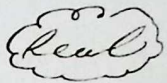
and forty three dollars & twenty six cents as follows
to wit: Amount received August 30th 1851, \$344.⁰⁵/₁₀₀
Credit by amount paid clerk \$4.50 is \$339.55
Interest at 10 per cent to August 30th 1852, 1 year
\$33.95 making \$373.50 Interest at 10 per cent from
August 30. 1853 to January 2^d 1864 \$13.69 is \$424.57
Amount received July 3. 1852, \$375.75 Interest at 10 per cent
to July 3. 1853. is \$37.57 making \$413.32 Interest at
10 per cent to January 2. 1854, \$20.66 \$433.98 amount
received Fall of 1853, \$100. Total amount in
hands of Guardian January 2^d 1864 \$958.52
at 6 per cent on the same, \$57.51 leaving \$901.01 interest.
Credit by Commission at 6 per cent from January
2^d 1854 to Feb 3. 1864 \$545.10 making \$1446.11 Credit
by balance of clerks fees paid \$2.35 Balance
due Feb 3. 1864 from said Guardian to the
Estate of said Ward \$1443.76.

And it is ordered by the Court that the
said Person C. Gilbert Guardian as aforesaid
pay over to the said DW Haptill Administrator
to collect of the Estate of the said Daniel Harvey
Pinneo deceased within ninety days from the
date hereof the said sum of fourteen hundred
and forty three & two dollars so found due from
him as Guardian as aforesaid and that
he pay the costs ^{of this cause} to be taxed -

To which decision & Judgment of the
Court the defendant by his Counsel at the
time Excepted and prays that this his

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Bill of Exceptions may be signed which
is done in open Court.

R. G. Montony 
Judge of said Court

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Know all men by these presents that we Persons C. Gilbert and Lyman Black of Kane County and State of Illinois are held and firmly bound unto D. W. Guptill administrator to collect of the Estate of Daniel Harvey Pinneo deceased, in the sum of Three Thousand Dollars to be paid unto the said D. W. Guptill administrator as aforesaid to the payment of which well and truly to be made we bind ourselves, our heirs, Executors administrators and assigns jointly & severally & firmly by these presents sealed with our seals and dated this 26th day of February AD 1864

The condition of the above obligation is such that whereas the said D. W. Guptill (administrator to collect of the estate of Daniel Harvey Pinneo) did on the 3^d day of February AD 1864 Recover in the Court of Common Pleas of the City of Elgin in Kane County & State of Illinois a judgment against Persons C. Gilbert Guardian of Daniel Harvey Pinneo (a minor) in the sum of Fourteen Hundred ~~Dollars~~ and forty three Dollars and seventy six cents together with their costs and charges from which judgment the said Persons C. Gilbert

immediately prayed an Appeal to the Supreme Court which was allowed by the Judge of said Court of Common Pleas on Condition the said Person C Gilbert file his Bond in the penal sum of Three thousand Dollars with Surety^{to be} (by agreement of parties) approved by the Clerk of said Court of Common Pleas of the City of Elgin within thirty days from the 3^d day of February AD 1864 as the law directs

Now therefore if the said Person, C Gilbert shall pay the said Judgment, Costs, interest and damages in case the said Judgment shall be affirmed and shall prosecute his said Appeal with due diligence then this obligation to be void otherwise to remain in full force

Person C. Gilbert Seal
 Lyman Black Seal
 On the back of which bond is an indorsement in the words Figure, following to wit: Approved and Filed
 Feb 26. 1864

R. W. Padelford Clerk

State of Illinois
 Kane County
 City of Elgin

I Rodolphus W. Padelford Clerk of the Court of Common Pleas of the City of Elgin in the County of Kane and State of Illinois Do Certify the foregoing to be a correct Transcript of the proceedings had and entered of Record in said Court and full & correct copies of papers filed therein in a cause lately pending therein Entitled "In the matter of the Guardianship of Daniel St. Pierre a Minor Person C. Gilbert his Guardian"



Witness Rodolphus W. Padelford Clerk of the Court of Common Pleas of the City of Elgin & the Seal thereof this 14th day of April AD 1864

R. W. Padelford
 Clerk

226 fol
 at 10 fol
 \$ 22.60

State of Illinois } in the Supreme Court
Third Grand Division } April Term 1864

In the Matter of the
guardianship of Daniel
W. Purno - Person C
Gilbert guardian
Appellant

D. Whipple Adm^r of
said Purno, Appellee

Assignment of
Errors -

And now comes the said Person C
Gilbert the appellant and says that
in the record and proceedings aforesaid
there is manifest error in this Court:

- 1st The Court erred in compelling the
said Gilbert to testify in said Cause
- 2nd The Court erred in the admission of
improper testimony on the part of the
Appellee
- 3rd The Court erred in rendering judg^{ment}
-int^{erdict} against the appellant for the
amount rendered -
- 4th The Court erred in rendering ~~any~~
judg^{ment}^{or decree} against the Appellant
~~rendered~~ -

By reason whereof the said Appellant
prays that said judgment may be
annulled &c

State of Illinois
Attest my hand
this 10th day of April 1864

Said matter of Guardianship of
Daniel H. Pinner. P. C. Gilbert
Guardian -

Sup. Court April Term
A.D. 1864

D W Gupstall admn of } appeal
Said Pinner -

And now comes the
said Gupstall admn of said Daniel H. Pinner
by S Millox his attorney and says that there
are no such errors in the foregoing
record as the said Person C Gilbert has
thereof alleged - Wherefore he prays that
the foregoing judgment or order and proceedings
in all respects be affirmed

S. Millox
atty for Gupstall

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In the Matter of the
Guardianship &c

Record

Filed April 20. 1864
L. Leland
Clerk