

No. **12172**

Supreme Court of Illinois

Tuttle, et al

vs.

Garrett

71641  7

33
John G. Tuttle et al.
vs
A. C. Garrett

33

12172

1855

John G. Pettit } Supreme Court June Term 1855
et al

vs
Augustus A. Ganett } And the said plaintiffs
in error come and say that in the record
and proceedings aforesaid and in the render-
tion of the decree aforesaid there is manifest
error in this to wit for that whereas the
decree is rendered in favor of the said
Augustus A. Ganett the said defendant in
error and against the said plaintiffs in
error when by the law of the land the
said decree should have been rendered
in favor of the said plaintiffs in error
and against the said defendant in
error.

And the said plaintiffs in error assign
the following special errors viz

1. The Master in Chancery erred in not
giving notice to the guardian of the time
of the taking of the depositions or proofs
to sustain the allegations in said Bill
2. The Masters report does not authorize
a decree
3. The proof does not maintain the allega-
tions in the Bill sufficiently to authorize
a decree
4. Because the decree being against
infants a day should have been given
them after coming of age to come into

Court and show cause against said
decree

Wherefore plaintiffs pray that the
said decree may be in all things void
annulled set aside and wholly for nothing
Esteemed.

E. M. Powell
Atty for Plffs

5 Because no guardian ad litem was
appointed by the Court for said infants
when it fully appeared from the Bill
that the defendants were infants And the
general guardian had no right to defend
said suit

6 Because there was no evidence before
the Master ^{or court} to show that said Taylor
was the duly appointed guardian for said
infants.

And the said Defendant says that in
the Records and proceedings and in the
condition of the Judgment aforesaid
there is no Error and he prays that the
said Judgment may be affirmed
June 29th 1855.

M. B. Phipps
for Defs

Be it remembered that heretofore, to wit, on the twelfth day of January in the year of our Lord one thousand eight hundred and fifty four there was filed in the office of the clerk of the Circuit Court of Peoria County in the State of Illinois a Bill in Chancery, Preamble and Exhibit marked A, which are in the words and figures following, to wit:

Preamble =

State of Illinois
County of Peoria Peoria Circuit Court
January Special Term 1854
I request W. Garrett Complainant

vs
John S. Little Defendant, Little

Martha Little & Eugene Little

infant heirs of John Little dec'd

and James Taylor with guardian

of said infant heirs. Defendants,

Clerk of said Court upon the filing
of the bill in said cause please issue a summons in Chan-
cery in said cause returnable as aforesaid.

W. H. H. H. H.
Sols for Compt

Bill =

To the Honorable the Judge of the
Circuit Judicial Court

In Chancery Setting

Therewith complaining sheweth unto your Honor our
Orator Augustus W. Garrett that heretofore, to wit
on the twenty sixth day of September 54 D. 1854
at the County of Peoria and State of Illinois our
Orator was concerned to procure one John Little

to become his your Orator's security for the payment of
certain demands then due and owing from your Orator to
certain persons and also being desirous of procuring
said John Dutton to become security for said in certain
suits then pending in which your Orator was a party
and in certain appeals then about to be presented by
your Orator from the judgment of certain Circuit Court
then about to be and afterwards to be rendered and pro-
nounced against your Orator by certain Circuit Court
in the State of Illinois to the Supreme Court of the said
State. Your Orator for the purpose of securing to said
John Dutton in becoming your Orator's security as aforesaid
and for no other purpose whatever, and upon the express
agreement and understanding of the said John Dutton
that he would become your Orator's security as aforesaid
executed to the said John Dutton a certain deed of con-
veyance bearing date to the said 26th day of September
1841 by which said your Orator conveyed to
said John Dutton certain real estate situated in the
then town & now city of Peoria, in the County of Peoria
and State of Illinois known as Lot Three (3) fourth
and five (5) in Block Eight (8) as described on the
recorded plat of said town which deed is herewith
filed marked Exhibit D. and made a part hereof
for the purpose of evidence and reference; and which
deed was duly acknowledged and recorded as by the
attest of the said Lucy Appen. And to which your
Orator for Orator's Certainty refers.

And your Orator shows that although the
said deed is absolute on its face and purport to convey
a fee simple absolute in said lot to said Dutton in
said lot. Yet that said deed was executed and
delivered solely and exclusively for the purpose of securing

said Tuttle in becoming the surety of your Grator as above
set for and to no other intent nor upon any other con-
dition whatever.

I find your Grator shows that subject to the
Mortgage in said deed mentioned which is now ex-
tinguished, your Grator was the owner in fee of said
lot Three and that said lots four and five were
owned in fee by Mary S. Barrett your Grator's
wife and that your Grator had no interest in the said
last two mentioned lots except interest by the way
to your Grator's said wife.

I find your Grator shows that at the time of the
execution of said deed there was pending against your
Grator and his wife Mary S. Barrett a certain suit
upon the petition for a mechanics lien of Thomas
and Orrin Woodwell in the Circuit Court in and for the
said County of Poria, in which your Grator ~~was~~ expects
that it would be necessary for the preserving and pre-
serving of your Grator's rights and interests for your
Grator to take an appeal ~~and~~ to the Supreme Court
of this State and that your Grator specially executed
and delivered said deed to said Tuttle to secure
said Tuttle in becoming your Grator's security in taking
said appeal if it should be necessary and that
said Tuttle accepted the delivery of said deed for
that purpose. I find your Grator shows that af-
terwards the said suit remaining undetermined, to-wit:
in the year A. D. 1844, the venue of said suit was
changed to the County of Jayess in said State
where judgment was rendered and decree made
against your Grator at the Office Term of the
Circuit Court of said Jayess County at the Office

Term thereof A. D. 1846 and an appeal was taken
from the said judgment and decree by your Orator
to the Supreme Court of the State of Illinois and for the
purpose of taking which appeal your Orator was required
to enter into an appeal bond with good and sufficient
security, and the said John Little by reason of the
said understanding and agreement between him and
your Orator and relying upon his security of the said
decree upon request of your Orator consented to become
and did become your Orator's security in the said
appeal bond; and thereupon the said cause was appealed
to the said Supreme Court; and afterwards, that is
at the December Term A. D. 1846 of the said Supreme
Court the said cause was heard and affirmed in
the said Supreme Court and the decree and judgment
of the said Circuit Court of Sangamon County is made
final as that by decree and judgment of said Supreme
Court the said Stevenson and Wardwell recovered
of your Orator the sum of twelve hundred and eighty
three dollars and six cents and this case in the
Court below, and interest thereon which decree and
judgment of the said Supreme Court are reported
and set forth in the third volume of Gilman's
Reports on pages from 268 to 282 inclusive, and
which your Honor is referred for greater detail;
And your Orator shows that since the rendition of the
said judgment and decree of the said Supreme Court
your Orator has fully paid and satisfied the said
judgment principal, interest and costs and that thereby
the liability ~~the liability~~ of the said John Little as
security upon the said appeal bond has become entirely

extinguished and that after the payment of said last mentioned judgment the said John Little right fully held the said deed to secure and indemnify him being and becoming your Orator's security in said appeal bond yet that upon the payment of said last mentioned judgment and the extinguishment of his liability on said appeal bond the entire equity in the premises conveyed by said deed became re-vested in your Orator, and only the legal title remained in said Little as naked trustee to your Orator subject to be reconveyed to your Orator discharged of all trusts and uses at any time; that is so far as regards any right of said Little under said deed by reason of his becoming security for your Orator in said appeal bond and use or had been or might be concerned.

And your Orator shows that before and at the time of executing said deed your Orator was justly indebted to one O'Hain Bidder in the sum of thirteen hundred and fifty ⁹³/₁₀₀ dollars for which afterwards to wit, on or about the 23^d day of May A. D. 1843 your Orator gave his promissory note to said Bidder payable three years after date with six per centum interest per annum and that afterwards, to wit, on the 9th day of July A. D. 1845 the said John Little relinqing upon his security in said deed and upon the request of your Orator executed to the said O'Hain Bidder his the said Little's promissory note for the amount then due on the said promissory note of your Orator as a substitute for your Orator's said promissory note for the giving of which note the said Little received no

Consideration, whether, and the giving which note by said
Fittle was only intended as a security to said Stader
for the aforesaid debt of your Orator and aforesaid
and before the death of the said John Fittle herewith
mentioned your Orator fully paid and satisfied the said note
of the said Fittle to the said Stader whereby all liability
of said Fittle on this note is given as aforesaid was
extinguished and whereby all the rights of said Fittle
under said deed were ended and terminated.

And your Orator shows that said Fittle
never acquired any other equitable right under said
deed except those which have been fully discharged
during his life time in manner aforesaid and your
Orator shows that in no manner did said Fittle
have any right under said deed except as a full
Trustee as aforesaid at the time of his death here-
inafter mentioned.

And your Orator shows that after the death
of on or about the 15th day of September A.D. 1881
the said John Fittle died intestate and without at
the County of Polk aforesaid without having conveyed
to your Orator the legal title to the said premises in
said deed described and that at the time of his
said death the said John Fittle left as his only
heirs at law John E. Fittle, H. det. St. Fittle,
O. Mather Fittle and Eugene Fittle all of whom are
now infants under lawfull age and that James R. Taylor is
the legally appointed Guardian of each and every of the
said heirs and infants.

And your Orator shows that by reason of
the premises your Orator was before and at the time
of the death of said John Fittle entitled to a release

of all the right of said John Little in law to the said premises in said deed described, and that only the strictly legal title to said premises descended to said his said heirs so that your Orator is entitled to a deed of release of said premises from the said heirs.

But inasmuch as said heirs are still infants and altho' being infants refuse to convey their said interests descended to them as aforesaid and protest that your Orator is not entitled to any conveyance of said premises from them and that they are not Trustees to your Orator in any manner and forasmuch as your Orator can only obtain adequate relief in the premises in a court of equity where such matters are properly cognizable and relievable.

To the end therefore that the said John S. Little, Herbert D. Little, Martha Little and Eugene Little and their said Guardian (for them James Doyle) may be made parties Defendant Hereto and required to answer all and singular the matters aforesaid specifically and that if on a final hearing of this bill the said heirs of the said John Little deceased may be required to convey by proper deed of quit claim and release all the estate which hath descended to them from their said Ancestor John Little deceased by reason of said deed to your Orator, and that your Orator may have such other and further relief as unto your Honor may seem meet and as shall accord with equity and good conscience.

May it please your Honor that a summons in Chancery issue in due form of law summoning the said Defendant to answer the matters aforesaid and abide the decree of your Honor in the premises and your Orator will ever pray &c.

Manning & Morrison for Compt.

[endorsed "Exhibit A"]

Exhibit A =

This Indenture made this twenty sixth day of September in the Year of our Lord one thousand eight hundred and forty two between Augustus C. Barnett of Ponia County in the State of Illinois of the first part and John Fettle of said Ponia County in the State of Illinois of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of four hundred and twenty Dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these present bargain, sell, transfer and Quit Claim, unto the said party of the second part his heirs and assigns, all his right, title, interest and claim, both legal and equitable, of, in and to three certain tracts or parcels of land situated in the Town and County of Ponia aforesaid and known and described on the recorded plat of said Town as Lots Three (3) Four (4) and Five (5) in Block Eight (8), reference being had to said recorded plat, Together with all and singular the hereditaments and appurtenances therewith belonging or in anywise appertaining, To have and to hold the said premises as above described with the appurtenances, unto the said party of the second part his heirs and assigns, forever. And the said party of the first part does hereby covenant and agree to and with the said party of the second part and his heirs, that he will forever warrant and defend the title to the premises above conveyed to be free from the claim of himself and his heirs, and from the claim of all and every person claiming by, through or under him or his heirs, except a certain mortgage given to William S. McKee on said Lot No. Three, but

Against none others. In Testimony whereof the said Augustus
I Garret has hereunto set his hand and seal the day and
year first above written.

Signed Sealed and delivered Augustus I Garret
in presence of Geo W. Hittman

State of Illinois
Perry County ss. I, Edward Dickinson a Justice of
the Peace in and for said county, do certify that on the day
aforesaid before me Augustus I Garret whose name appears
signed to the foregoing deed of conveyance and who is personally
known to me to be the identical person who signed said deed
and acknowledges that he had executed the same as
his voluntary act and deed for the uses and purposes
therein expressed. Given under my hand and seal at
Perry this 26th day of September A.D. 1842.

Edward Dickinson J. P.
I, Charles Hittman Recorder of the County of Perry
in the State of Illinois do hereby certify the foregoing
deed is duly recorded in said office in book 57
pages 51 & 52, and that the same was filed for
record on the 26th day of September A.D. 1842.
Charles Hittman R. P. Co

And afterwards on the same 17th day of January A.D. 1854 the clerk
of said court issued under the seal of said court a summons in
Chancery directed to the Sheriff of Perry County, as follows, to wit:

Summons =

The People of the State of Illinois
To the Sheriff of Perry County, Greeting:
We command you to summon John E. Hulse Plaintiff
Little Martha Little & Eugene Little infant heirs of
John Little dec'd and James Taylor co the guardian

of said infant heirs if they may be found in your county
to appear before our Circuit Court on the first day of the
next term thereof to be held at Peoria, within any of
the said County of P. Pona, on the fourth Monday of
January instant then and there in our said Court to
answer the matters and things contained in a return
of Complaint exhibited against them in our said Court
on the Chancery side thereof by Dequato I. Stewart
and make return of this writ with an endorsement
of the time and manner of serving the same on or before
the first day of the term of the said Court to be held as aforesaid.

1854

Witness Jacob Gale clerk of our said Court, and the seal
thereof, at Peoria, this twelfth day of January in
the year of our Lord one thousand eight hundred
and fifty four. Jacob Gale Clerk.

Which summons was returned by said Sheriff with his return thereon endorsed
in the words and figures following to wit

Sheriff's return

State of Illinois, I do hereby certify and return that I
Clara County, Ill. served this writ by reading the same
to James Taylor and also by delivering to him a true copy
of the same. I also served the same on John E. Little by
leaving a copy of the same at his usual place of abode with
James Taylor a white person about the age of ten years and
informed him of its contents. I also served on Violet A. Little
by leaving a copy at his usual place of abode with D. K. Little
a white person about the age of ten years and
informing her of its contents. I also served this writ on the within
named Martha Fetter and Eugene Little by delivering to each
a true copy of the same and informing them of their contents
January 13th 1854. L. J. Cornwall Sheriff P. C. Ill.

And afterwards on the 4th day of February A.D. 1854 there was
filed in said cause an answer to said Bill of complaint
which is in the words and figures following to wit

Guardian's Answer.

Augustus I. Barnett

Second Circuit Court,

vs

Henry Farm 1854.

John S. Little, Robert Little

McArthur Little Eugene Little

Pls Chancery.

infant heirs at law of

John Little deceased &

James Taylor their Guardian.

Your Respondent James

Taylor Guardian of the said infant defendants John S.
Little Robert Little, McArthur Little & Eugene Little
in answer to the said bill filed in this cause doth say
it is true that the John Little became deceased as
stated in said bill of complaint that he left the
infant heirs John S. Little McArthur & Eugene,
that Respondent was duly appointed their Guardian by the
County Court of Poria County as will more fully appear
by reference to the letters of Guardianship issued by said
Court to Respondent & which will be produced upon the
hearing of this cause as the Court shall direct.

Respondent further answering saith that he
knows nothing of the said several allegations in said
bill contained except as a bill answered and calls
for strict proof of the same and having fully answered
Respondent prays to be hence dismissed with his costs &c.

James Taylor

As Guardian of the heirs of John Little.

of this Court referred to take proofs &c, begs leave to report the testimony in the case as follows.

Deposition of Elrick Smith junior,

Interrogatory 1st Are you acquainted with the parties to this suit?

I answer I am.

Interrogatory 2nd Were you acquainted with Sam. Little in his life time?

I answer I was.

Interrogatory 3rd Did you ever have any conversation with said John Little in his life time in relation to the manner in which he held the title to lots three four & five in Block Eight in the City of Peoria? If yes state what the conversation was when & where it took place and the circumstances under which it was had.

I answer. I did have a conversation with said Little in his life time in relation to the manner in which he held the title to said lots three four & five above referred to. Said Little told me that he did not own the property referred to but the same belonged to one and was actually owned by Frederick S. Garrett & that said lots were deeded to him by Augustus S. Smith to secure from said Little against any loss he might incur by having executed bonds as security for said Garrett. Said Little also informed me that there ought to be a writing executed by him & said Garrett ^{to show} in what the title was (that if said Little should die without any such evidence of title that his heirs could be entitled to the property and that the premises did not belong to him). It was in the year 1847 in the summer I think the conversation was had & in Peoria. The circumstances under which said conversation was had were these, said Little & myself were agents of Mr. Garrett in taking charge & renting said property & as such

agents have been said properly & some difficulty arising in relation thereto, said Tuttle then informed me of the history of the title as it then stood & as I have related.

Eldrick Smith Jr

Deposition of Otho N. Kiddle

Interrogatory 1st. Were you acquainted with the parties to this suit?

I answer. I am acquainted with Augustus L. Barrett & James Taylor, the other parties I do not know.

Interrogatory 2nd. Were you acquainted with John Tuttle in his life time?

I answer. I was

Interrogatory 3d. Did or not said Tuttle execute to you his note for an indebtedness of said Barrett if you state when, for how much & who paid said note?

I answer. Said Tuttle did execute to me a note for an indebtedness of said Barrett, due about the Spring of the year 1845, said note was given for between three or four hundred dollars, said note was paid by said Augustus L. Barrett, a few dollars which was due as a balance on said note was paid as follows, said Barrett came to me and asked how much was then due on the note. I informed him of the amount, said Barrett then said to me to go to John Tuttle he had the money to get it, I then went and obtained the said balance of said Tuttle which I duly paid & discharged the note.

Otho N. Kiddle

I further certify from the testimony as herein set forth I am of the opinion that the allegations & charges in the Complaint lie in this cause & that the prayer thereof should be granted at the expense of the defendants & the payment of the promissory note.

James S. Haskin
Martin Cherry, Jr.

Secres -

Proceedings in Chancery before the Circuit Court at a term thereof begun and held at the Court House in the City of Peoria, in and for the county of Peoria, in the State of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty four it being the sixth day of said month. The Honorable Andrew P. Briggs of the Circuit and District Circuit in the State of Illinois, presiding to wit:

Thursday March 30th A.D. 1854.

Augustus A. Garrett

For conveyance.

John S. Little, Adm'r of J. S. Little

Martha Little & Eugene Little

infants heirs of John Little deceased

James Taylor Guardian.

I find now on the day this cause came on to be heard upon the report of the Masters of this Court, and it appearing from said report and the evidence therein reported that John Little in his life time received from said Complainant a deed for lots three four five in Block Eight in the Town & County of Peoria, in the State of Illinois to secure said Little against any loss by reason of becoming security for said Garrett in said suits & for other debts which were settled by said Garrett and that said Little never had or claimed any interest in said lots other than as security as aforesaid but on the other hand during the latter portion of his life acted as agent for Complainant in taking charge of and leasing said lots, that said John Little became deceased as alleged in said bill leaving four children to wit: said defendant John Little, Herbert Little, Martha Little, & Eugene Little all minors and that said defendant James Taylor is their Guardian.

duely appointed. It is therefore ordered adjudged & decreed
that said James Taylor be and he is hereby appointed a
Commissioner to execute and deliver to said complainant a
deed conveying to said complainant all the legal title which
said John Suttle possessed at the time of his death
and that said Commissioner make his report at the earliest
opportunity.

And afterwards to wit, on the 25th day of May A.D. 1854
there was filed in said cause the Report of James Taylor
Commissioner as aforesaid, which is in the words & figures following to wit:

Report of conveyance

Augustus L. Barrett Poria Circuit Court
vs. May Term 1854
John S. Suttle & als.

The undersigned who was appointed
a Commissioner to execute to said complainant a deed
of lots three, four & five in Block Eight in the Town &
County of Poria in the State of Illinois makes the following
Report: That in pursuance of said decree he
did on the day of the date hereof executed a deed in
conformity therewith to said complainant.

James Taylor.

Confirmatory
Index -

Proceedings in Chancery before the Circuit Court at a term
thereof begun and held at the Court House in the City
of Poria, in and for the County of Poria, in the State of
Illinois on the second Monday of May in the year of
our Lord one thousand eight hundred and fifty
four, it being the eighth day of said month.
The Honorable Melzar Peter Judge of the sixth
Judicial Circuit in the State of Illinois presiding
to wit:

Thursday May 25th A.D. 1854.
Augustus C. Barnett

To For conveyance,
John G. Little Robert L. Little

Martha Little & Eugene Little
infant heirs of John Little deceased
James Taylor their Guardian.

And now on this ^{day} comes on to be heard upon the Report of the Commissioner appointed by this Court to execute and which Report is as follows to wit: "Augustus C. Barnett vs John G. Little & Robert L. Little Circuit Court, May Term 1854. The undersigned who was appointed a Commissioner to execute to said complaint a writ of Lot three four & five in Block Eight in the town and County of Poria, in the State of Illinois makes the following Report in That in pursuance of said writ he did on the day of the date hereof execute and did in conformity therewith to said complaint
Dated May 24 1854. James Taylor."
And the same being duly considered the same is hereby approved.

State of Illinois
Poria County
I Jacob Gate, clerk of the Circuit Court in and for said County hereby certify that the foregoing is a full correct & complete transcript of all the files and proceedings in a certain cause in said Court on the chancery side thereof wherein Augustus C. Barnett is complainant and John G. Little, Robert L. Little Martha Little & Eugene Little infant heirs of John Little deceased & James Taylor their Guardian are defendants.
In witness whereof I hereto set my hand and the seal of said Court at my office in Poria this 18th day of March A.D. 1855.
Jacob Gate, clerk.

And afterwards, to wit, on the twenty first day of March in the year of our Lord one thousand eight hundred and fifty five a notice with affidavit of service thereon enclosed was filed in said cause in the words & figures following, to wit:

Notice =

"Augustus C. Garrett

In the Circuit Court
of Peoria County,

John G. Fittle

Herbert Fittle

January Term 1854

Martha Fittle

Eugene Fittle

The Orphans,

infant heirs at law

of John Fittle, deceased

& James Taylor their Guardian.

The Defendants are notified that on Tuesday the 21st day of March inst a motion was made in said court in the above entitled cause, for leave to the late Sheriff of Peoria County to amend his return to the summons issued in said cause.

March 16 1855

McAnning & Morrison
Compts Solicitors.

[Endorse]

State of Illinois, ss.

Peoria County, ss.

Alfred R. Tidwell being duly sworn according to law, says, that he served the within notice on James Taylor Guardian within named and John G. Fittle on the 16th day of March A. D. 1855, and on Robert, Martha and Eugene Fittle within named on the 17th day of March A. D. 1855 by giving each of them a true copy of the same.

Subscribed & sworn to before me J. H. Tidwell
this 17th March A. D. 1855.

W. H. Purple

(Notary Public) Peoria City, Ill.

Of
proceedings in Chancery before the Circuit Court at a special term
thereof begun and held at the Court House in the City of Peoria,
in and for the County of Peoria, in the State of Illinois, on the
first Monday of March in the year of our Lord one thousand
eight hundred and fifty five, it being the fifth day of said month,
The Honorable Enslow Peter Judge of the Sixteenth Judicial
Circuit in said State presiding, to wit:

Wednesday March 21st A.D. 1855.

Augustus C. Garrett

In Chancery,

vs
John G. Tuttle Herbert Tuttle,
Nathan Tuttle Eugene Tuttle
infants heirs at law of
John Taylor, deceased.
James Taylor their Guardian.

Motion for leave to the late
Sheriff to amend his return
in this cause.

In motion of the counsel for the
Complainant in this cause, it appearing to the court that due
notice had been given to the defendants of an application for
leave to the late Sheriff to amend his return herein. It is
ordered and adjudged by the court that said Sheriff have leave
to amend his said return as he may be advised according
to the facts of the case at the proper costs and charges of the
said complainant, which said amendment is now made and
is as follows.

Amended return

State of Illinois, ss.
Peoria County, ss. I hereby certify and return that I served
this writ by reading the same to James Taylor and also by
delivering to him a true copy of the same. I also served the
same on John G. Tuttle by leaving a copy of the same at
his usual place of abode with James Taylor a white person
of the family in which said John G. Tuttle resided, above the

Amended return
to summons }

John G Tuttle et al } Supreme Court
vs } June Term 1855
Augustus O Garrett }

Argument of Plaintiffs
in Error

By a reference to the Bill and abstract it will be seen that it is alleged that the lots in controversy were conveyed to John Tuttle the father of the plaintiffs in error by Augustus O Garrett the defendant in error to indemnify said John Tuttle in becoming the security for said Garrett for the payment of certain demands owing by him to sundry persons and also as security for costs in certain suits then pending in which said Garrett was a party and in his giving security for said Garrett on an appeal Bond from the judgment of certain Circuit Courts then about to be and afterwards rendered against said Garrett. It is alleged that the deed although absolute on its face was only given to secure said Tuttle in becoming the security as aforesaid.

It is further alleged that said Tuttle became security for said Garrett on an appeal Bond to the Supreme Court and that a judgment had been rendered

against said Garrett on said appeal
and that he had paid the amount due
on such judgment in the Supreme Court

The Bill further alleges that said
Garrett was justly indebted to one Alvin
Kiddier in the sum of \$1250.93 for which
Garrett gave his note in May 1843 payable
three years after date with interest And that
on the 9th day of July 1845 said John
Pottle relying upon said deed as security
executed to said Kiddier his promissory note
for the amount then due on the said prom-
issory note given by said Garrett to said
Kiddier for the giving of which note said
Pottle received no consideration whatever
and the giving of which note by said
Pottle was intended as security for Garrett
to Kiddier

The Bill then alleges that before the
death of said John Pottle that he Garrett
had fully paid Kiddier the amount due
to him on the note given him by Pottle

The Bill alleges in substance that
the complainant is entitled to have the
property conveyed to him by the heirs
of said John Pottle

It is a well established

doctrine of equity that a "complainant is bound by the allegations of his Bill and if he fails to show himself entitled to the relief according to such allegations it is erroneous to decree it to him"

Gold et al vs Ryan 14 Ill 83

More especially is this the case where infants are parties.

It will be seen that the Bill alleges that the conveyance was made to Puttli in consideration that he was to become security for Ganett for demands owing by him to sundry persons.

By looking at the testimony of Elrick Smith Jr. it will be seen that if it proves any thing it only proves that ~~that~~ Puttli admitted that he held the lots as security against any loss he might incur by having executed Bonds as security for said Ganett. The testimony of Smith does not even pretend to establish by the admission of Puttli that he Puttli had been indemnified for any liability he might incur by reason of his having become Ganett's security on Bonds. It only shows that he held the lots as security against any liability

he might be under in consequence of his having become his Sonnets Secretary.

But there is no proof whatever that Sonnett ever paid the judgment rendered against him in the Supreme Court which was appealed to the Supreme Court by Sonnett and Puttles was his security on the appeal bond. This is alleged in the Bill and there is no evidence in the record to show such payment. There is then a clear want of proof to maintain a material allegation in the Bill.

The testimony of Shiddee does not maintain the allegation in the Bill in regard to the payment of the note given by Puttles to said Shiddee. It is true that Shiddee testifies that said note was paid by Sonnett "a few dollars which was due as a balance was paid as follows. Said Sonnett came to me (witness) and asked how much was then due on the note I informed him of the amount. Said Sonnett then said to me to go to John Puttles he had the money and to get it I then went and obtained the said balance of said Puttles which fully paid and discharged the note."

Now certainly this does ^{not}

prove that Ganett paid the whole of the note. The balance due on the note was paid by Pottle and no evidence to show that the money paid belonged to Ganett. The fact that Ganett told the witness to go and get the money of Pottle is no evidence to show that it was the money of Ganett. There is then a total want of proof to maintain this allegation in the Bill. It may be said that there was only a small balance which was paid by Pottle. This may be so but it is all the same however small may be the sum. This conveyance is sought from the heirs of Pottle on the grounds that the conveyance to Pottle although absolute on its face was only intended as a security therefore a mortgage. Still it is incumbent on the Complainant to show that the object of this conveyance has been fully satisfied. This he has not done.

But there is another fatal want of proof in another material allegation in said Bill. It will be seen that the Bill alleges that the conveyance was made to Pottle in consideration that he was

to become security for Ganett the
complainant for "demands owing by
him to sundry persons"

In the testimony of Elrick Smith
jr. taken by the complainant it is
clearly shown that Pottle admitted
that he held the lots in controversy
"against any loss he might receive
by having executed bonds as
security for said Ganett" This testimony
is to be taken as well for as against
the plaintiffs in error.

The allegation in the Bill is that
the conveyance was made to Pottle by
Ganett to "indemnify him in becoming
the security for said Ganett for the
payment of ~~a~~ certain demands owe-
ing by him (Ganett) to sundry persons
and also as security for costs in
certain suits"

Now there is an entire
absence of proof as to how much
liability Pottle has incurred by reason
of becoming security for Ganett. It is
evident from the testimony of Smith
that he went security for Ganett on
more than one bond. For Smith says
that Pottle told him that he held

the lots¹¹ to secure him against any loss he might incur by having executed bonds as security for Gonett¹¹ Now It is alleged that the conveyance was made to indemnify Tuttle for becoming his security in certain appeals then about to be prosecuted¹¹ It is evident then that the proof is not sufficient to authorize a decree and the court erred in rendering a decree

The master in Chancery should have given notice to the Guardian of the time and place of taking the testimony or proofs to sustain the allegations in said Bill

McClay Adm^r et al vs Barnes 4 Gilm 370
 1 Baybours Ch Pr 502 2
 2 Smiths Ch Pr 147

In a proceeding against infants it is erroneous to take a Bill pro confesso The guardian should be made to answer

Scounce et al vs Whitney	12 Ill.	150
Wells vs Ormsbee	12 Ill	166
Orms et al vs Caffers	12 Do	258
McClay et al vs Barnes	4 Gilm	370
Hugh et al vs Doyle	8 Blackf.	300

So in every other matter where infants
are parties

An infant defendant is entitled
to a day in court in which he must
show cause &c

B John Ch R 367, 4 Gilin 370

This day should be given in
the decree No such day is given

From the whole proceedings
I cannot come to any other conclusion
than that the decree should be reversed
& the Bill dismissed

E. M. Powell
Atty for Peffer in error

33
Tuttle st. 7 Garret

Arzt. of P. M.

Feb. July 11. 1844
L. Williams Oth.

33
John G. Tuttle & Co.

Augustus W. Garrett

Record

12172

Filed Apr. 12. 1855.
L. Deland Clk.

Carte Tard
33

Clerk's fees: for transcript \$4.75-
certificate filed 25- }

Received payment of Bill Ponder
Jas. Gale, clerk

Tuttle is heir
Sanctt et al

If this decree be
reversed it should be remanded
to take further proofs; which can
be obtained.

Aside from the records
the proof was fuller before the Master
than shown in the record. There
was proof of the satisfaction of
Tuttle's demands for the security
of which he held the land.

As it is it is doubtful
whether the proof is sufficient
to sustain the decree -

We desire if reversed that
it should be remanded.

Manning Merriam

33.

Little et al.

vs
Garrett.

Argt. for depts. in
Error

Manning & Merriam

Leland Eng

Prova April 7th 1855

Dear Sir

Enclosed you will
please find record in the case of
Augustus A. Sonett vs John G. Little
et al. which I wish you to file and
issue a writ of Error directed to the
Sheriff of Provia County

I take the case to the Supreme
Court on behalf of the defendants
in the Circuit Court

I also herewith inclose you
\$5. as required by rule of Court

Yours

Respectfully

E. A. Powell

Tuttle class.

13

Garratt

Parriffe

Filed April 12. 1855.

A. Delano Clerk.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Peoria* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Peoria* county, before the Judge thereof, between *Augustus Q. Garrett Complainant and John G. Tuttle, Herbert Tuttle, Elsie Tuttle, Eugene Tuttle infant heirs at law of John Tuttle, dec'd. & James Taylor their Guardian*

defendants it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Augustus Q. Garrett

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *2nd* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Garrett* notice, together with this writ.

John D. Caton
Witness, the Hon. ~~SIMON H. TREIT~~, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *12th* day of *April* in the year of our Lord one thousand eight hundred and fifty *five*.

L. Ireland Clerk of the Supreme Court.

33
John G. Vail & Co
vs
Augustus O. Garrett
Writ of Error

Filed June 27, 1855.
V. Ireland Ck.

State of Illinois
Peoria County. Served this
won't on Augustus O. Garrett
by reaching the same to him
and giving him a true copy
hereof this 14th day of
May A.D. 1855.

David S. Irons Sheriff
Peoria County
JL

Fee —
Deer 50
Mey 25
Copy 10
Ret 90

Received my fees in full of
Plaintiff D. Irons Sheriff P.C.