

No. 14523

Supreme Court of Illinois

Pardee

vs.

Lindley

3
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 130

Pardee

M. H. H.

Lindley

1000

14523

STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1868.

THERON PARDEE, }
vs. } ERROR TO McLEAN.
WILSON LINDLEY. }

Reply of defendant to argument of plaintiff in error.

The only errors assigned by the plaintiff in error upon the record, are to the court allowing the defendant a homestead upon the land.

The only point I desire to make in reply to the argument of the plaintiff, is simply this: It was proven that the defendant was, at the time of the trial, and had been for the last twenty-five years, a householder, the head of a family, consisting of a wife and children, residing with his said family, upon this land, as a homestead. The trust deed or mortgage, was made after the amendment of 1857, to the homestead act, and the wife had not joined in the trust deed or mortgage.

No alienation can be made of the homestead, without the joinder and acknowledgment of the wife. (See amendment to the homestead act, session acts of 1857, page 119.) The meaning of the Legislature in this amendment, is too plain, to admit of misconception.

They have used the broadest term known to the law, and say "It being the object of this act to require in all cases the signature and acknowledgment of the wife, as conditions to the alienation of the homestead." It would be hard to make human language stronger and plainer than this; and it is insisted whether the attempted alienation be by deed, absolute common mortgage deed in trust to sell, or mortgage with power to sell. That the attempt is vain. No alienation of the homestead can be made by the husband, without the signature and acknowledgment of the wife. In this case the wife neither signed nor acknowledged the conveyance, under which the plaintiff claims title; therefore said conveyance did not affect the homestead, and the court did not err in allowing the defendant his homestead in the premises.

The first three assignments of plaintiff in error, go directly to this point, and the 4th is only to the same effect, as the only ground for a new trial was the previously alleged errors of the court in permitting defendant to set up his homestead.

Hence, I conclude the court did not err for any of the reasons assigned by the plaintiff, and the judgment should not be reversed for any of the causes shown by plaintiff.

Argument for defendant in error on cross errors assigned by defendant in error by argreement.

1ST ASSIGNMENT.

The court erred to the prejudice of defendant in error, in admitting copy of trust deed.

POINT I.

Gridley, who made the affidavit as a foundation for the admission of the transcript of the record, shows no connection with the case in his affidavit; and it does not appear from the affidavit but that the plaintiff might have had the original. I submit that the affidavit does not comply with the statute. (See session acts of 1857, page 174,) which says "If the party, his agent or attorney, shall make affidavit, &c.

Gridley was neither party, agent nor attorney. Neither does it comply with the common law, as there was no proof of the existance or genuiness of the original *Wariner vs. Sanders, 5 Gillm, 113; Rankin vs. Crow, 19 Ills., Rep. 623.6 25 Ills 186*

It is not deemed necessary to accumulate authorities on this point. If the proper foundation was not laid for the introduction of the transcript, of course the plaintiff showed no title, and for this reason the cause should be reversed.

POINT II.

The deed offered in evidence, did not purport to convey the lands of defendant WILSON Lindley, but the lands of JAMES Lindley. (See deed on page 10, 11, 12, 13 and 14, of records.

The deed or mortgage authorized the mortgagee to convey the estate of James Lindley, in and to the mortgaged premises. Even should the mortgage be deemed good as a common mortgage, to convey the interest of Wilson Lindey, the mortgagor, so that it might be foreclosed in a court of equity; yet as by all the rules of law powers are to be strictly construed; the mortgagee could not under and by virtue of a sale under the power, convey the estate of Wilson Lindley. And it is submitted that this point is well taken, and for this error the judgment should be reversed. 4th Kent 329, 330, and 331.

2ND ASSIGNMENT.

Is not relied on.

3D ASSIGNMENT.

The court erred in admitting the deed from Gridley to Perry, to be read to the Jury.

POINT I.

The deed did not show on its face that it was made in execution of the power in the deed or mortgage, from Wilson Lindley to Gridley, already in evidence as the foundation for this. As is above shown, that deed or mortgage empowered the mortgagee or his assigns, to convey the interest of James Lindley, in the lands; and the deed to Perry purported to convey the interest of

Wilson Lindley, in and to the lands. Therefore, as it did not follow the power, it was void. 4th Kent, 330 and 331 supra.

POINT II.—3D ASSIGNMENT.

The deed to Perry, sets out a mortgage with power of sale, from Wilson Lindley to Gridley, (see Record, from 20 to 31, for this deed,) under and by virtue of which the sale and deed to Perry were made. But this mortgage set out in the deed to Perry, varies materially, from the one previously given in evidence; in this, that the one already in evidence, as above shown, authorized a sale of the interest of James Lindley, in and to the lands, and the one recited in the deed to Perry, authorized a sale of the interest of Wilson Lindley, in and to the lands. Therefore, as the deed to Perry shows that it was made by virtue of the power in the deed recited in it, and no such deed having been given in evidence, but another and entirely different deed; this deed to Perry should not have been admitted in evidence. (See authorities above.)

POINT III.—3D ASSIGNMENT.

The note was already in evidence with its endorsements, by which it was shown that before the sale, and before the maturity of the note, the note had been assigned by Gridley the payee, to A. Gridley & Co.

This assignment of the debt, carried with it all the securities; of course, was an assignment of the mortgage, and by the terms of the mortgage, the power of sale was to the mortgagee, or his assigns of the debt. The assignment of the debt was an assignment or transfer of the power, and it could only be executed by the assignees A. Gridley & Co.

"These powers," (says Kent. Com. vol. 4, page 146 and 147,) "fall under the class of powers, appendant or annexed to the estate, and they are powers coupled with an interest; are irrevocable and are deemed part of the mortgage security, and vest in any person, who, by assignment or otherwise, becomes entitled to the money secured to be paid."

This being the case, Gridley having parted with the debt by assignment, had no right or authority to execute the power: because that right was by the assignment of the note vested in the assignees, and the attempted sale by Gridley, was void, and passed no title, and for this reason, the deed should have been excluded. 4 Kent, 147; 2 Cowan, 195; 4 Kent, 327; 1 vnet 338, 21 Ills., R 148.

POINT IV.—3D ASSIGNMENT.

In the language of the Bill of Exceptions, this deed was altered apparently in a different hand writing, from the body of the deed, by erasing the name James, and inserting the name Wilson, before the name Lindley, in that part of the mortgage or deed, giving the power of sale. This certainly was a material alteration, (and not being a simple interlineation in the same hand-writing, as the body of the deed, which may be presumed to have been done at the same

14.
(Caines Cases in error)

time.) It is admitted by the Bill of Exceptions, that it is an alteration and apparently in a different hand writing from the original. And its materiality appears from the fact that it is in the name of the person whose estate was attempted to be conveyed by the deed.

The deed should not have been admitted without proof that this alteration was made before the delivery of the deed. 27 Ills., R. 29 and 30; Greenl., ev. 599; 5 Bing, 183; 1 Gillm., 489.

POINT V.—3D ASSIGNMENT.

The deed did not recite any advertisement, before the sale. *except by ref*

By the power in the mortgage, a sale could not be made until after the land had been advertised for so long, and in such a manner. *to a printed slip attached*
All the pre-requisites to the exercise of the power, should be shown by the deed itself, to have been complied with, and not by a separate paper. This not being done, the deed was void. 4th Kent, 329 and 330.

It is confidently submitted that all the points under this assignment, are well taken, and for the error in this assignment, the cause should be reversed.

4TH ASSIGNMENT.

The court erred to the prejudice of defendant in error, by permitting proof of the value of the land.

POINT I.—4TH ASSIGNMENT.

The land was one entire tract, and already proven to be a homestead.

This mortgage was made after the amendment of 1857, to the homestead act. The wife had not joined.

The questions are: 1st. Was not the mortgage void, as to this whole tract; and 2nd. If not void in itself, was not the attempt to sell the whole tract, entirely disregarding the homestead, such an excess of the power conveyed by this mortgage, as to entirely avoid the sale, as to this tract.

Upon the first question I would submit, that the mortgage was good, without this tract. That, by its terms it will be seen, that it conveyed many other tracts entirely disconnected with this, and of course not affected by any right of homestead, so that in declaring it void as to this tract, it does not necessarily become void as to the others, for that reason. The husband alone could in no way alien a homestead. (See amend. of 1857, session acts 1857, page 119.) Suppose at the date of the mortgage, the whole tract was not worth over a thousand dollars; and at the time of the sale, or at the time of the trial, in ejectment it should have increased materially, in value, so that one half or even less might be worth \$1000, it would hardly be contended that the deed was good. If the deed was void in the beginning, it could not be made good by the subsequent appreciation in value of the land. At what time is the value to be fixed. The plaintiff in this case, was permitted to prove the value, at the time of the trial, to test whether the deed was good, as

5 Green 252 20 Ills 441

23 Ills 556

to any part, at the time it was made. The wife is as much interested in the homestead as the husband, and has as great power of alienation; and I insist that if a party undertakes to take a voluntary lien on the homestead, the wife should be consulted. I apprehend the head of a family, as against an execution creditor, has a right to elect upon what part of his land he will take his homestead; provided, it takes his house, and by the manner of division he would not do injustice to the creditor. If so, has not the wife a right to be consulted, when a voluntary conveyance is attempted to be made, of any part of the homestead tract; and if it is attempted to be made upon the whole, without her joinder, is it not void as to the whole?

Upon the second question, I would submit that the statute points out the mode in which the homestead may be set apart. When a party occupies a tract of land as a homestead, of greater value than one thousand dollars, and which is susceptible of division. (See Purples Statutes, vol. 1, page 651, sec. 46.)

The method is by a jury before sale allotting homestead, and then the plaintiff may sell the residue. This is the only method pointed out by the law, where a lien has attached to a part of the land occupied as a homestead, to ascertain to what part the lien so attaches, and the sale cannot be made until this is ascertained.

Suppose a sheriff should proceed upon the assumption that the tract was worth more than a thousand dollars, and was susceptible of division, and therefore he had a right to sell, and should proceed to sell the whole. It would hardly be contended that the sale would not be set aside on motion, or in case the purchaser took a deed and brought ejectment upon it for the whole, the deed would be declared void as to the whole, for want of power in the officer making the sale. Now what right had the mortgagee in this mortgage, to any part of this tract? Certainly no greater rights than a judgment creditor having a valid lien; and if he attempts to sell the whole without seeking the aid of the court to ascertain to what his lien attaches, the whole sale is void.

5TH ASSIGNMENT.

The court erred to the prejudice of the defendant in error in refusing to let him prove that a part of the land did not belong to defendant, so that it could not be set out as part of the homestead.

POINT I.

The defendant is entitled to his homestead in land that he owns, if he owns any of the tract. This seems so plain, as scarcely to admit of argument.

What is the object of this humane law? Is it not to provide the head of a family with a home, beyond the reach of all his creditors and all the world, and which cannot be taken from him, but by the consent of himself and wife, manifested in the most solemn manner known to the law; and would this object be effected by setting

apart to him as his homestead property, which he did not own, and of which he might be deprived at any day. The mere statement of the proposition, furnishes the answer. To so rule, is doing a palpable outrage to the whole spirit of the homestead exemption act.

That this homestead right is a favorite of the law (like dower) and that the act will be liberally construed to effect the plain object intended by the Legislature, in making the exemption, has now passed into legal axioms, as is apparent not only from the decisions of this, but of all other courts where the question has been discussed.

And compelling the defendant, as in this case, to take as part of his one thousand dollars worth of land, for his homestead; in land in which he had no title, and taking from him a part of his homestead in which he had title, in place of the other, is certainly an error for which this court will reverse the judgment. Purples Statutes, vol. 1, page 650.

Upon the whole case, I submit that the case should not be reversed for any errors assigned by plaintiff in error, but should be reversed for the causes assigned by the defendant in error. I now submit the case for the defendant in error.

R. E. WILLIAMS,
Counsel for Defendant in Error.

No 180

Theron Pardee

vs

Wilson Lindly
~~~~~

Argument for Lindly

Filed Apr 29. 1863

L. L. L. M.

R. E. Williams



Mr. Justice Pease, J.

This was an action of Ejectment brought <sup>in</sup> to the McLean Circuit Court for the recovery of the West half of the South east quarter of the North east quarter of Section twenty nine, and the West half of the east half of the North east quarter and the West half of the North east quarter of Section thirty two in Township twenty three North in Range two east, all lying in that County.

On not guilty pleaded, the jury found a verdict for the plaintiff in due form that the defendant was guilty of withholding the possession of the West half of the West half of the North east quarter of Section thirty two, for which judgment was entered, and as to the residue ~~not guilty~~.

A motion was made by the plaintiff for a new trial, not under the statute, which was overruled and the case brought here by writ of error.

Both parties assign errors on the record. On the part of the plaintiff assign for error

- 1st. ~~Court~~ error in allowing defendant to prove that he was the head of a family, and lived with them on the land.
- 2d. In allowing defendant to claim and prove his homestead rights against plaintiff.
- 3d. In allowing defendant, out of land described, his homestead of the value of one thousand dollars.
- 4th. In not setting aside verdict, and not allowing plaintiff a new trial.



The defendant offers the following:

- 1st. ~~Offered~~ admitting copy of trust deed to be read to Jury.
- 2d. ~~Is~~ admitting <sup>the</sup> note to be read to <sup>the</sup> jury.
- 3d. ~~Is~~ admitting deed from Gridley to Perry to be read to <sup>the</sup> Jury.
- 4th. ~~Is~~ admitting evidence of value of <sup>the</sup> land.
- 5th. ~~Is~~ refusing to let defendant prove that a part of <sup>the</sup> land was not his; that there was a superior outstanding title to the same.

~~The defendant offers~~

2 Disposing of the errors assigned by the defendant, we will proceed to consider those assigned by the plaintiff, or upon them, brings the controversy for the most part, to an end.

As to the defendant's first error assigned, we see no force in it. The witness, A. Gridley was the grantor under the deed and therefore the custodian of it. His testimony is full to the point that he made diligent search for the deed in ~~all~~ <sup>the</sup> places where it ~~was~~ <sup>and in places</sup> ought to have been, <sup>in good faith</sup> where it was probable it might have been, with a view to finding it, bringing the case within the rule established in Moorhead vs Landers 5 Gilm. 113. Rankin vs Corn 19 M. 626 and Dickenson vs Readen 20 id. 186. As to the supposed attack of the ~~deed~~ by changing Jones to Wilson it must be regarded, as a copy only was in evidence, ~~that it was~~ <sup>or</sup> an error of the clerk in making the copy. The whole deed shows, that Wilson Gridley was the granting party. Hibbard vs McKinley 28 M. 240.



The second error assigned is not valid on. The third questions the validity of the sale by Gibley as Trustee, on the ground that it was made by him after he had assigned the note to other parties.

It is a well settled principle, that the assignee of a note secured by mortgage, carries the security with it. ~~However in the present case~~ In this case, the security contained a power to the mortgagee or his assigns to sell ~~and~~ <sup>and</sup> the assignee of the note, <sup>would have</sup> transferred this power also. It is a power ~~conveyed~~ appendant to the estate and coupled with an interest. It is irrevocable and is deemed part of the mortgage security and vests in any person, who becomes, by assignment or otherwise, entitled to the money thus secured to be paid.

4 Kent's com. 146. ~~But~~ This sole construction for the law, if the power be given to the donee and his assigns it will pass by assignment, if the power be annexed to an interest in the donee

Mid. 327. Wilson vs. Troop, 2 Conn., 197; Layport vs. Howe, 21 M., 148; Kendall vs. Almon, 13 id., 30. and Cases







~~X Refuse both for the  
and the paper is kept by Long Papers~~



indications we have already stated,  
that there is no evidence of any  
attention in the deed. It is simply  
a clerical error in writing in  
one part of the deed, the name Jones  
simply, instead of 'Wilson Jones',  
the true name of the grantor, as all  
other parts of the deed most plainly  
show. As to the other point, the  
deed to Perry does recite an adver-  
tisement of the sale and a sale in  
conformity to the advertisement, and the

Upon the fourth error assigned, it is  
contended that the value of the land  
was not in controversy, and therefore no  
proof of its value should have been  
allowed. That the premises, though  
made up of several distinct tracts  
of land <sup>was</sup> but one entire tract  
for the purposes of a homestead,  
and ~~was~~ which could not be sold or  
mortgaged, or otherwise conveyed by  
deed, without the assent of the wife as-  
signed in the mode prescribed by  
the statute.

The continuation of this point,  
~~involves~~ <sup>involves</sup> the errors assigned by the  
plaintiff. The <sup>real</sup> controversy is, were  
the premises a homestead, and if so,

\* advertisement was proved by  
the testimony of the printer.



did the purchaser under the mortgage take,  
acquire a right to eject the mortgagor and  
his family, the mortgage having been accounted  
satisfactory to the act of 1857, and the wife  
not having joined in the deed and released  
the benefits of the homestead act, in the work  
pointed out in that act.

7  
Although by the words of <sup>the original</sup> ~~this~~ act, ~~although~~  
~~and provided~~ <sup>unless</sup> ~~by the mortgagee or wife~~  
~~could~~ the homestead is protected <sup>only</sup> against  
a levy and forced sale under the process  
or order of any court of law or equity.  
unless it has been <sup>only</sup> released, yet when we  
consider the object and purpose of the <sup>amended</sup> act,  
~~we are forced to the conclusion that a perfect~~  
~~insurmountable barrier in the way of the mortgagee~~  
we can have no doubt, the intention  
of the Legislature was, ~~to~~ to protect  
the homestead, as to shield it from  
the claims of creditors, ~~in respect to~~ and  
from the improvidence of the husband,  
for the benefit of the wife and children.  
This is evident from the Amendment of 1857,  
which requires the wife's release of the  
benefits of the act, wherein it is em-  
phatically declared that it is the  
object of the act, to require in all cases,  
her signature and acknowledgment  
as conditions to the alienation of the



8  
homestead. It is a right cast upon  
her, for her benefit, and for that of her  
children, of which she and they, cannot  
be deprived, in ~~any~~ <sup>any</sup> other way than by  
that provided in the act itself. A  
proceeding by ejectment, to be followed  
by a writ of possession, accomplishing what  
the act designs shall not be accom-  
plished by a levy and forced sale, and  
the injury to ~~her~~ <sup>her</sup> is ~~not~~ <sup>perhaps</sup> equally as  
great, and the object of the act, <sup>completely</sup> defeated.  
The separate property of the wife which  
she may own in fee, cannot be taken  
from her without her free consent to be  
manifested as the statute directs, nor  
can she be deprived of dower in her hus-  
band's estate except by her own act.  
No judgments or decrees of a court,  
no deed to which she is not a  
willing party can deprive her of this  
right, and this right of homestead is  
equally inviolate, in spite of creditors  
or husband. Nor does the law require  
her or her husband to do any act to  
secure this right. They are both passive  
while the law liberally but effectually  
throws around them its protecting shield.  
It follows from this, that in any action  
looking to deprive them of this right, the



right can be interposed in defence. ~~It~~  
~~does not follow from this, that the deed~~  
~~conveying the land is therefore void.~~  
It may be the premises may be a homestead  
or a homestead, in which case the deed  
would be more effective, and ~~the deed~~  
~~is not a mortgage, which for~~  
~~all time may be in operation.~~ As long  
as the premises are occupied as a  
homestead, the deed without the release  
of the ~~premises~~ husband and wife, if he  
has one, can have no effect to de-  
prive them of the homestead, and this  
right can be set up in any action  
brought to eject them from premises  
so circumstanced. <sup>29 M. 568</sup> ~~Patterson vs. Keig~~ ~~and~~

It was then competent to show in  
this action of ejectment that the premises  
were the homestead and protected by  
the law, and that they ~~did not~~ <sup>or, inoperative in this kind of action.</sup> exceeded  
in value one thousand dollars. For  
the ~~exception~~ except, the plaintiff could  
recover according to his proof of title.  
In this case it appears the jury found  
a tract of twenty acres not parcel of  
the homestead, and for this the plaintiff



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~~does not follow from this, that the deed~~  
~~conveying the land is therefore void.~~  
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or a homestead, in which case the deed  
would be more effective, and ~~the deed~~  
~~is not a mortgage, which for~~  
~~all time may be in operation.~~ As long  
as the premises are occupied as a  
homestead, the deed, without the release  
of the ~~proctor's~~ husband and wife, if he  
has one, can have no effect to de-  
prive them of the homestead, and this  
right can be set up in any action  
brought to eject them from premises  
so circumstanced. <sup>29 M. 568</sup> ~~Patterson vs. Keig~~  
~~decided in 1858.~~

It was then competent to show in  
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In this case it appears the jury found  
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Theron Parker

us.

Wilson S. Soley

c

opinion by

Mease J.

OK

Recount Book 13.

Rp. 68, 69, 70,



1  
Pleas continued and held at the Court house in Bloomington in the County of McLean and State of Illinois, before the Circuit Court of said County, in a certain cause pending in said Court wherein Theron Pardee was plaintiff and Wilson Lindley was Defendant.

State of Illinois }  
McLean County. }

Be it remembered, that here, to wit: on the 6<sup>th</sup> day of March A.D. 1862, at a term of the Circuit Court then in session in said County, came Theron Pardee by Hanna & Scott his attorneys, and filed in said Court his Declaration against Wilson Lindley, which Declaration, together with the notice & affidavit thereto attached, was in words and figures as follows, to wit:

State of Illinois }  
McLean County. }

On the McLean Circuit Court March Term A.D. 1862.  
Theron Pardee, plaintiff in this  
quit complains of Wilson Lindley defendant  
in a plea of Ejectment, for that whereas  
heretofore, to wit: on the fifteenth day of  
January in the year Eighteen hundred and  
sixty two, at the County of McLean aforesaid  
the said plaintiff was possessed in fee simple  
of the following described tracts & parcels of Land



to wit:

The West half of the South East <sup>= quarter =</sup> of the South East quarter of Section Twenty nine, in Township twenty three North, Range two East of the third principal Meridian; also the West half of the North East quarter of Section thirty two in Township twenty three North, Range two East of the third principal Meridian. Also the West half of the East half of the North East quarter of Section thirty two in Township Twenty three North, Range two East of the third principal Meridian, situate in said County of McLean, and being so possessed thereof, the said defendant afterwards on the Eight, tenth day of January in the year Eighteen hundred & sixty two, entered into said premises and unlawfully withholds from the said plaintiff the possession thereof to the damage of said plaintiff of five hundred dollars & hence he sues &c.

Theron Pardee  
per Hanna Scott.

Wilson Lindley Esqr.  
Sir!

You will take notice that the above declaration will be filed in the McLean Circuit Court, State of Illinois, on



Monday the third day of March 1862,  
 the same being the first day of the March  
 Term of said Court, That upon filing the  
 same a rule will be entered requiring you to  
 appear and plead to said declaration within  
 twenty days after the entry of such rule.  
 And that if you neglect so to appear & plead,  
 a judgment by default will be entered against  
 you & the plaintiff will recover possession of  
 said premises.

Theron Pardee per  
 Hanna & Scott.

State of Illinois }  
 McLean County. }

Peter Folsom being duly sworn  
 upon his oath says and swears that he did  
 on this 25<sup>th</sup> day of January A. D. 1862,  
 serve the foregoing declaration and Notice on  
 the said Wilson Lindley by delivering to him  
 a true copy of the above declaration and  
 notice.

Subscribed & Sworn to before  
 me Jan. 25<sup>th</sup> 1862.

Wm. McCullough, Clk.

By L. Burr, Depr

Peter Folsom

And thereupon on said 6<sup>th</sup> day of March  
 A. D. 1862, the following order was made by



4.

said Court in this cause as appears of record, to wit:

|                      |   |              |
|----------------------|---|--------------|
| Theron Pardee        | } | In Ejectment |
| vs<br>Wilson Lindley |   |              |

And now at this day comes the said plaintiff by his Attorneys, and files here in his Declaration against said Defendant, and makes due proof to the Court here that said Defendant has been duly notified of the filing of the same according to law. And now, on motion of said plaintiff, the said Defendant is by the Court ruled to plead to the Declaration aforesaid within Twenty days, or Judgment will be rendered against him by default.

And afterwards on the 7<sup>th</sup> day of March 1862, came said Defendant by his Attorney and filed herein his plea in words and figures as follows:

State of Illinois  
McLean Circuit Court.

|                       |   |                  |
|-----------------------|---|------------------|
| Theron Pardee         | } | March Term 1862. |
| vs<br>Wilson Lindley. |   |                  |

In Ejectment

And now comes the said



Defendant and defends the wrong & injury  
 whereof he and says he is not guilty in  
 manner & form as the said plaintiff hath  
 above thereof complained against him, and of  
 this he puts himself upon the country.

R. E. Williams  
 Atty. for Deft.

And afterwards at the Regular December term  
 of said Court held in and for said County on  
 the 18<sup>th</sup> day of December A. D. 1862,

Present: Hon. Chas. Emerson, Judge of 1<sup>st</sup>  
 Judicial Circuit presiding.

Luman Burr, Clerk

Norval Dixon, Sheriff

this cause came on for trial and the following pro-  
 ceedings were had as appears of record, to wit:

Theron Pardee

vs.

Wilson Lindley.

In Ejectment.

And now at this day came the  
 parties hereto by their attorneys, and this cause  
 now coming on for trial, thereupon comes a jury,  
 twelve good and lawful men, to wit: Marston  
 Hefner, John Luckey, David D. Thompson, James  
 B. Williams, Milton Bogarth, William C. Vincy,  
 Seth A. Adams, J. B. Orendoff, Joseph Young



Aaron Kitchell, Henry Winn & Israel W. Hall, who  
 being duly elected and sworn to will and truly try  
 the issue herein joined and a true verdict render  
 according to the evidence and having heard the  
 evidence produced and the arguments of Counsel, upon  
 their oaths do say that said Defendant is guilty  
 of wrongfully with holding from the said plaintiff  
 the possession of the West half of the West half  
 of the North East quarter of Section Thirty two  
 in Township twenty three, Range two East of the  
 third P. M. in McLean County Illinois, and they  
 further find that said plaintiffs Estate in said  
 premises is an estate in fee-simple, and as to the  
 remainder of the premises in said plaintiffs Dec.  
 laration mentioned the Jury find that said  
 Defendant is not guilty of wrongfully with-  
 holding the same from said plaintiff. And now  
 said Plaintiff by his attorney enters his motion  
 for a new trial in this cause, but not under  
 the statute, which motion is by the Court over-  
 ruled. It is therefore considered by the Court that  
 said plaintiff recover of and from said Defen-  
 dant Wilson Lindley the possession of the said  
 West half of the West half of the North East  
 quarter of Section Thirty two in Township Twenty  
 three North of range two East of the 3<sup>d</sup> prin-  
 cipal Meridian in McLean County, Illinois, and  
 that he have a writ of possession therefor in



Aaron Kitchell, Henry Winn & Israel W. Hall, who  
 being duly elected and sworn to will and truly try  
 the issue herein joined and a true verdict render  
 according to the evidence and having heard the  
 evidence produced and the arguments of Counsel, upon  
 their oaths do say that said Defendant is guilty  
 of wrongfully with holding from the said plaintiff  
 the possession of the West half of the West half  
 of the North East quarter of Section Thirty two  
 in Township twenty three, Range two East of the  
 third P. M. in McLean County Illinois, and they  
 further find that said plaintiffs Estate in said  
 premises is an estate in fee-simple, and as to the  
 remainder of the premises in said plaintiffs Des-  
 claration mentioned the Jury find that said  
 Defendant is not guilty of wrongfully with-  
 holding the same from said plaintiff. And now  
 said Plaintiff by his attorney enters his motion  
 for a new trial in this cause, but not under  
 the statute, which motion is by the Court over-  
 ruled. It is therefore considered by the Court that  
 said plaintiff recover of and from said Defen-  
 dant Wilson Lindley the possession of the said  
 West half of the West half of the North East  
 quarter of Section Thirty two in Township Twenty  
 three North of range two East of the 3<sup>d</sup> prin-  
 cipal Meridian in McLean County, Illinois, and  
 that he have a writ of possession therefor in



7  
pursuance of the Statute. And that said plaintiff recover of and from said Defendant his costs by him in this behalf expended, and that he have Execution therefor.

And afterwards, at said December term of said Court, to wit: on the 30<sup>th</sup> day of December A.D. 1862, came the said plaintiff and filed herein his Bill of Exceptions, which was signed and sealed by the Court and ordered to be made a part of the record of this cause, which Bill of Exceptions, was in words and figures as follows to wit:

Theron Pardee } In the Milan Circuit Court  
vs } In Ejectment.  
Wilson Lindley }

Be it remembered that on the trial of the above entitled cause, the plaintiff to maintain the issue on his part introduced Peter Folsom as a witness who testified that he served the declaration & notice on the defendant in this cause, that he is a surveyor and well acquainted with the location of the Lands in the declaration described, and that at the time of the service of said declaration & notice upon said defendant by him & previous thereto the said defendant was in the actual occupancy & possession of all the



Lands described in said plffs. declaration.

The plaintiff then read the following affidavit of Asahel Gridley.

State of Illinois }  
County of McLean. } p. Circuit Court  
Dec. Term 1862.

Asahel Gridley being duly sworn deposes & says that he was the owner & holder of a certain deed of trust made on the first day of April 1858 by Wilson Lindley of McLean County Illinois, to this affiant as trustee & in trust for certain purposes therein expressed wherein the said Lindley conveyed to this affiant the following real Estate to wit:

. Lot 2 & the West half of Lot one in the North West qrs. of Section four, East half Lot 2 in N. E  $\frac{1}{4}$  of sect. five and the North East quarter of sect. seven all in town twenty two North range two East. also W  $\frac{1}{2}$  S. E  $\frac{1}{4}$  Sec. twenty & the W  $\frac{1}{2}$  S. E. S. E. Sec. 29. W  $\frac{1}{2}$  E  $\frac{1}{2}$  of N E  $\frac{1}{4}$  & W  $\frac{1}{2}$  N E. act. thirty two all in Town 23 North in range two East, in McLean County Illinois and duly recorded in book F. of Mortgages pages 681 & 682 that said deed of trust was in the possession of this affiant on or about the 20<sup>th</sup> day of November A.D. 1861 & about the time that this affiant advertized said Land under said Trust deed, that since that time he



9  
has lost or mislaid said trust deed or the same  
has been abstracted; that since the loss of said  
deed this affiant has carefully & diligently search-  
ed all places where he keeps his papers of  
that kind, that he has carefully searched all  
places in his dwelling house, in his private apart-  
ments in the bank & the entire vault & all other  
places in the bank where he kept, or where any  
person or persons kept papers of any description;  
that said Deed the last he knew of said Deed  
it was in the possession of this affiant. This  
affiant further swears, that he has made careful  
& diligent personal search in all persons places  
where he or any person connected with him doing  
business kept or have kept their papers since  
the disappearance of said deed so that for these  
reasons this affiant says he has lost the said  
deed and that the said deed cannot now be  
produced nor is it in the power of this affiant  
to produce this said deed.

A. Gridley.

Subscribed & sworn to before me Dec. 18. 1862.

Luman Burr, Clerk

for the purpose of excusing the production of  
the original deed of Trust in the affidavit  
mentioned.

The Plaintiff then offered in evidence the  
following certified copy of a deed of Trust from



the defendant to Asahel Gridley:

This Indenture made this first day of April in the year of Our Lord One thousand eight hundred and fifty Eight, Between Wilson Lindley of the County of McLean and State of Illinois, party of the first part, and Asahel Gridley of said County and State party of the second part, Witnesseth, That, Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of Forty two hundred and fifty four  $\frac{75}{100}$  Dollars, secured to be paid by his certain promissory note for the said sum of Forty two hundred and fifty four  $\frac{75}{100}$  Dollars bearing even date herewith and payable one year after date.

Now therefore, this Indenture Witnesseth that the said party of the first part for the better securing the payment of the money aforesaid with interest, thereon according to the tenor and effect of the said promissory Note above mentioned; And also in consideration of the further sum of One Dollar to him in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged has granted, bargained, sold, and conveyed and by these presents does grant, bargain, sell and convey unto the said



party of the second part his heirs and, as,  
signs forever, all the following described lots,  
pieces or parcels of land, situate in the County  
of McLean and State of Illinois and known  
and described as follows, to-wit:

Lot two (2) and  
the West half of Lot One (1) in the North  
West quarter of Section four (4) and the East  
half of Lot Two (2) in the North East quarter  
of Section five (5) and the North East quarter  
of Section Seven (7) all in Town twenty two  
(22) North of Range two (2) East of the third  
(3<sup>d</sup>) Principal Meridian, - also the West  
half of the South East quarter of Section twenty  
(20). And the West half of the South East  
quarter of the South East quarter of section  
twenty nine (29) and the West half of the  
East half of the North East quarter and  
the West half of the North East quarter  
of Section thirty two (32) all in Town twenty  
three (23) North of Range two (2) East  
of the third (3<sup>d</sup>) principal Meridian, the  
whole containing Five Hundred and forty  
Eight (548) acres, more or less. Also the  
North East quarter of Section Eight (8)  
in Town twenty two (22) aforesaid.

To Have and  
to Hold the same together with all and privs,



gular the tenements, hereditaments, privileges and appurtenances thereunto belonging, or in any wise appertaining; and also all the Estate, interest and claim whatsoever in law as well as in Equity, which the party of the first part has in, and to the premises hereby conveyed unto the said party of the second part his heirs and assigns and to their only proper use benefit and behoof. Provided always and these presents are upon this express Condition that if the said party of the first part his heirs, Executors or administrators shall well and truly pay or cause to be paid to the said party of the second part his heirs Executors, administrators or assigns the afore-  
 said sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory notes according to the time, intent and meaning thereof then and in that case these presents and everything herein expressed shall be absolutely null and void - But it is further provided and agreed that if default be made in the payment of the said promissory note either of principal or of interest on the days or day whereon the same shall become due and payable the whole of said principal and interest secured by the said pro-



missory note in this Mortgage mentioned shall thereupon at the option of said party of the second part become immediately due and payable, anything herein or in said promissory note contained to the contrary notwithstanding - And this Mortgage may be immediately foreclosed to pay the same by said party of the second part his Heirs, Executors, administrators or assigns or the said party of the second part, his heirs, executors, administrators or assigns after publishing a notice in a newspaper printed in the City of Bloomington, Illinois, ten days before the day of such sale may sell the said premises and all right and equity of redemption of the said James Lindley party of the first part his heirs and assigns therein at Public auction at the Court House Door in said City of Bloomington to the highest bidder for cash at the time mentioned in such notice - And the said party of the first part hereby specially covenants and agrees to and with said party of the second part to waive his right of Equity and Redemption:

And the said party of the second part as the attorney in fact of the said party of the first part for such purpose hereby made, constituted and appointed is hereby fully



authorized and empowered to make execute and deliver to the purchaser or purchasers thereof a Deed or Deeds for the premises so sold and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises; also the principal and interest due on said promissory note and to render the overplus if any, to said Wilson Lindley, his heirs and assigns at the office of the said party of the first part in Bloomington aforesaid. And the said party of the first part do hereby covenant and agree with the said party of the second part, that at the time of delivery hereof the said party of the first part is the lawful owner of the premises above granted and seized thereof in fee-simple absolute that he will warrant and defend the above granted premises in the quiet and peaceable possession of the second part his heirs and assigns forever and they are free from all incumbrances whatsoever.

In Witness whereof the said party of the first part herunto set his Hand and Seal the day and year first above written.

Signed, Sealed and Delivered

in presence of  
Theron Tardie

Wilson Lindley (Seal)



State of Illinois }  
 McLean County }  
 City of Bloomington. } J. Theron Pardee a  
 for the said City, in the County and State }  
 aforesaid do hereby certify that Wilson }  
 Lindley personally known to me as the same }  
 person whose names is subscribed to the within }  
 instrument of writing appeared before me this }  
 day in person and acknowledged that he }  
 signed, sealed and delivered the said in- }  
 strument of writing as his free and volun- }  
 tary act, for the uses and purposes therein }  
 set forth.

Given under my hand and official  
 seal this first day of April A.D. 1858.

Filed April 1<sup>st</sup> 1858

Recorded, 16 1858.

J. Theron Pardee,  
 Notary Public

State of Illinois }  
 McLean County. }  
 J. Sumner Burr, Clerk }  
 of the Circuit Court and Ex-officio Rec- }  
 order of Deeds within and for said County, }  
 do hereby certify that the foregoing is a }  
 true Copy of the Record of a Mortgage, as }  
 appears in Book "F." pages 681 + 682, }  
 in my office.

= Witness my hand and the  
 = seal of said Court, this 15<sup>th</sup>



day of December A. D. 1862.

~~Sumner Burr~~ Clerk.

{L. S.} By Chas. Schneider, Deputy.

To the reading of which said Copy of said deed in evidence the defendant objected on the ground that there was no sufficient excuse shown for the non-production of the original deed, and on the further ground that the deed did not purport to convey the Lands of the defendant, which objections of the defendant were overruled by the Court & the copy of the deed read in evidence to which ruling of the Court the defendant then & there excepted.

The plaintiff then offered in evidence the following promissory Note:

\$4,254.  $\frac{70}{100}$  } - Bloomington, Ill April 1<sup>st</sup> 1858.

One year after date, we, or either of us, promise to pay to the Order of A. Gridley, at The American Exchange Bank, New York, Forty two Hundred & fifty four &  $\frac{70}{100}$  Dollars, for value received, with interest, at ten per Cent. per annum, after maturity.

Wilson Gridley

Pay A Gridley & Co.

A. Gridley

May 25. 1862. One Hundred fifty eight &  $\frac{50}{100}$



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Dollars paid by pro<sup>d</sup> sale personal property under Chattel Mortgage.

Mch. 19/61. \$ 1,626 <sup>78</sup> and int. to date paid by sale of real estate.

Dec 3/61. \$ 1,664 <sup>55</sup> + int. to this date paid by sale of real estate.

And endorsement, for the purpose of showing that the money secured by said deed of trust was unpaid & proved by one Burr that the credit on the back of said Note by sale of Land, was entered on said Note to account for & appropriate the proceeds of the Sale made on the trust deed of the defendant to Asahel Gridley, - To all of which evidence the defendant objected, but the Court overruled the objection, to which ruling of the Court the defendant then & there excepted.

The plaintiff then proved by one Briggs that he was one of the publishers of the Bloomington Pantagraph a newspaper printed in the City of Bloomington, Illinois, and that the following advertisement:

#### Public Sale.

Notice is hereby given, that in pursuance of a certain deed of Mortgage, with power of sale executed on the 1<sup>st</sup> day of April, A.D. 1858, by Wilson Lindley to the undersigned, conveying certain premises hereinafter described, to



secure the payment of a note for \$4,254.70. of date April 1<sup>st</sup> 1858, payable one year after its date and which said Deed of Mortgage is duly recorded in the Recorders Office of McLean County, Illinois, in book F. of Mortgages, at page 681, reference being thereto hereby made.

I shall offer for sale at the door of the Court house in the city of Bloomington, in McLean County, Illinois, on Tuesday the 3<sup>d</sup> day of December, 1861, at the hour of 2 P.M. of said day, at public auction, to the highest bidder for cash, the following described premises, in McLean County, Illinois, viz:

Lot 2, and the West half of Lot 1 in the Northwest quarter of Section 4; the East half of lot 2 in the North East quarter of section 5; and the North East quarter of section 8; all in Township 22 North of range 2 East of 3<sup>d</sup> principal Meridian. Also the West half of South East quarter of Section 20, and the West half of the Southeast quarter of the South East quarter of Section 29. and the West half of the East half of the North East quarter and the West half of the North East quarter of Section 32, in township 23, North of Range 2 East of 3<sup>d</sup> principal meridian.

Terms of sale - cash. - Asahel Bradley

November 20<sup>th</sup> - 1861.

Mortgagee



was published in two consecutive numbers of the Weekly Pantagraph, the first publication being on the 20<sup>th</sup> day of November 1861.

The plaintiff then proved by Reuben Benjamin that he was present at a sale made by Asabel Gridley of the Lands described in the deed of Trust from the defendant to said Gridley, on the 3<sup>d</sup> day of December 1861, at the door of the Court House in the City of Bloomington, McLean County, Illinois, That the Lands in said deed described were sold in separate parcels & that David J. Perry purchased the same & was the highest bidder at said sale, that said defendant was present & cautioned <sup>persons</sup> ~~persons~~ not to bid as he would not give possession of said lands.

Plaintiff then offered in evidence the following deed from Asabel Gridley, Trustee to David J. Perry:

This Indenture made this third day of December in the year of our Lord One thousand Eight hundred and sixty one between Asabel Gridley of the County of McLean and State of Illinois party of the first part and David J. Perry of said County and State party of the second part, Witnesseth, that whereas one



Wilson Lindley on the first day of April A.D. Eighteen hundred and fifty eight, at the County and State aforesaid, executed and delivered to said Asahel Gridley a certain Mortgage with power of sale in words and figures as follows; to wit:

This Indenture made this first day of April in the year of our Lord one thousand eight hundred and fifty Eight, Between Wilson Lindley of the County of McLean and State of Illinois, party of the first part, and Asahel Gridley of said County and State party of the second part, Witnesseth, that whereas the said party of the first part is justly indebted to the said party of the second part in the sum of Forty two Hundred and fifty four  $\frac{75}{100}$  Dollars, secured to be paid by his certain promissory Note for the said sum of Forty two hundred and fifty four  $\frac{75}{100}$  Dollars bearing even date herewith and payable one year after date. Now, therefore this Indenture Witnesseth that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon, according to the tenor and effect of the said promissory note above mentioned: and also in consideration of the further sum of One Dollar to him



in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged has granted, bargained, sold, and conveyed and by these presents does grant, bargain sell, and convey unto the said party of the second part his heirs and assigns forever all the following described lots, pieces or parcels of land, situate in the County of McLean and State of Illinois and known and described as follows, to wit: —

Lot two (2) and the West half of Lot One (1) in the North West quarter of Section four (4). And the East half of lot two (2) in the North East quarter of Section five (5). And the North East quarter of Section Seven (7) all in town twenty two (22) North of Range two (2) East of the third (3<sup>d</sup>) principal Meridian. Also the West half of the South East quarter of Section twenty (20) and the West half of the South East quarter of the South East quarter of Section twenty nine (29) And the West half of the East half of the North East quarter and the West half of the North East quarter of section thirty two (32) all in Town Twenty three (23) North of Range two (2) East of the third (3<sup>d</sup>) principal Meridian: the whole con,



taining Five Hundred and forty eight (548) acres, more or less. Also the North East quarter of Section Eight (8) in Town twenty two (22) aforesaid.

To Have and to Hold the same together with all and singular the tenements, Hereditaments, Privileges and appurtenances there, unto belonging or in anywise appertaining - And also all the Estate interest and claim what, soever in law as well as in equity which the party of the first part has in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns and to their only proper use benefit and behoof, Provided always and these presents are upon this express condition that if the said party of the first part his heirs Executors or Administrators shall well and truly pay or cause to be paid to the said party of the second part his heirs executors, administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory Notes according to the true intent and meaning thereof then and in that case these presents and every thing herein expressed shall be absolutely null and void.

But it is further provided and agreed



that if default be made in the payment of the said promissory Note either of principal or of interest on the days or day where, on the same shall become due and payable the whole of said principal and interest secured by the said promissory Note in this Mortgage mentioned shall thereupon at the option of said party of the second part become immediately due and payable anything herein or in said promissory Notes contained to the contrary notwithstanding. And this Mortgage may be immediately foreclosed to pay the same by said party of the second part his heirs, executors, administrators or assigns or the said party of the second part his heirs executors administrators or assigns after publishing a notice in a newspaper printed in the City of Bloomington, Illinois ten days before the day of such sale may sell the said premises and all right and equity of redemption of the said Wilson Lindley party of the first part his heirs and assigns therein at Public auction at the Court House door in said City of Bloomington to the highest bidder for cash at the time mentioned in such Notice - And the said party of the first part hereby specially covenants and agrees to and with the said party of the second part to waive his right of



equity and redemption: And the said party of the second part as the attorney in fact of the said party of the first part for such purposes hereby made constituted and appointed is hereby fully authorized and empowered to make execute and deliver to the purchaser or purchasers thereof a Deed or Deeds for the premises so sold and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises; also the principal and interest due on said promissory Note and to render the surplus if any to said Wilson Lindley his heirs and assigns at the office of the said party of the first part in Bloomington aforesaid, and the said party of the first part do hereby covenant and agree with the said party of the second part that at the time of delivery hereof the said party of the first part is the lawful owner of the premises above granted and seized thereof in fee-simple absolute, that he will warrant and defend the above granted premises in the quiet and peaceable possession of the second part his heirs and assigns forever, and that they are free from all incumbrances whatsoever.

In Witness whereof the party of the first part herunto set his Hand



and Seal the day and year first above written.  
 Signed, Sealed and Delivered { (Signed)  
 in presence of Theron Pardee { Wilson Lindley (Seal)

Which said Mortgage, on the 1<sup>st</sup> day of April A.D. 1858, at the County and State aforesaid was acknowledged in words and figures as follows, to wit:

State of Illinois {  
 McLean County. { I, Theron Pardee a Notary Public in and for the said City in the County and State aforesaid do hereby certify that Wilson Lindley personally known to me as the same person whose name is subscribed to the within instrument of writing appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this first day of April A.D. 1858.

(Seal)

(Signed) Theron Pardee,

Notary Public.

Which said Mortgage was filed for Record in the Recorder's Office of said County of McLean on the first day of April A.D. 1858, and was recorded on the sixteenth day of April A.D. 1858, in Book F, of Mortgages, pages 681, 682.



And whereas default was made in the payment of said promissory Note secured by said Mortgage on the day whereon the same became due and payable Therefore the said Asahel Gridley caused the following notice to be published in the "The Weekly Pantagraph" in two consecutive numbers thereof the first publication of said notice being on the 20<sup>th</sup> day of November A.D. 1861; and the said notice being published in the said "Pantagraph" ten days before the day of the sale hereinafter mentioned and the said "Pantagraph" being a Newspaper published and printed in the City of Bloomington, Illinois.

And the said Asahel Gridley did thereafter, at the time and place mentioned in said Notice, on the third day of December A.D. 1861 at the hour of two o'clock P.M. of said last mentioned day, at Public Auction, at the Court House door in said City of Bloomington in McLean County, Illinois, by virtue of the power and authority in him vested by said Mortgage, and in pursuance of said Notice and Mortgage proceed to sell separately the said tracts of land described in said Mortgage (except the said North East quarter of Section Seven (7) And the said North East quarter of Section Eight (8) And all right and equity of redemption



of the said Wilson Sindley his heirs and assigns therein to the highest bidder for cash.

And the said David J. Perry having bid the sum of five dollars per acre for said Lot two (2) in the North West quarter of section four (4) in Town twenty two (22) North of Range two (2) East of the 3<sup>d</sup> principal Meridian, and this being the highest and best cash bid therefor, the same was at the said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage for the sum of Four Hundred Dollars, said Lot two (2) being estimated to contain Eighty acres. And the said David J. Perry having afterwards bid the sum of five dollars per acre for the said West half of Lot one (1) in the North West quarter of said section four (4) in the town and range last aforesaid estimated to contain forty acres - And this being the highest and best cash bid therefore, the same was at the said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage for the sum of Two Hundred Dollars. -

And the said David J. Perry afterward having bid the sum of five dollars per acre for the said East half of lot two (2) in the



North East quarter of Section five (5) in the town and range last aforesaid, estimated to contain forty acres. And this being the highest and best cash bid therefor, the same was at the said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage for the sum of Two Hundred Dollars.

And the said David J. Perry afterward having bid the sum of five dollars per acre for the said West half of the South East quarter of Section twenty (20) in Town twenty three (23) North of Range two (2) East of the third (3<sup>d</sup>) principal Meridian. And this being the highest and best cash bid therefor the same was at the said said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage for the sum of Four Hundred Dollars.

And the said David J. Perry afterward having bid the sum of five dollars per acre for the said West half of the South East quarter of the South East quarter of Section twenty nine (29) town and range last aforesaid, and this being the highest and best cash bid therefor, the same was at the said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage



for the sum of One Hundred Dollars.

And the said David J. Perry afterward having bid the sum of five dollars per acre for the said West half of the East half of the North East quarter of Section thirty two (32) town and range last aforesaid. And this being the highest and best cash bid therefor, the same was at the said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage for the sum of Two Hundred Dollars.

And the said David J. Perry afterward having bid the sum of five dollars per acre for the said West half of the North East quarter of Section thirty two (32) town and range last aforesaid. And this being the highest and best cash bid therefor, the same was at the said Public Auction stricken off to him the said David J. Perry as the purchaser thereof under said Mortgage for the sum of Four Hundred Dollars, the whole of said bids amounting to nineteen hundred dollars, and the cost of said Notice amounting to Three Dollars.

Now therefore, in consideration of the matters and things before recited and the said sum of Nineteen hundred dollars, to the said Asahel Gridley party of



the first part in hand paid by the said David J. Perry party of the second part at the said Public Auction, the receipt whereof is hereby acknowledged, the said Asahel Gridley has, according to the power in him vested by the said Mortgage, granted, bargained, sold and conveyed, and does by these presents grant, bargain, sell and convey unto the said David J. Perry his heirs and assigns forever all the following described lots, pieces or parcels of land situate in the County of McLean and State of Illinois, and known and described as follows to wit:

Lot two (2) and the West half of Lot one (1) in the North West quarter of Section four (4) And the East half of Lot two (2) in the North East quarter of Section five (5) all in Town twenty two (22) North of range two (2) East of the third (3<sup>rd</sup>) principal Meridian. Also the West half of the South East quarter of Section twenty (20) And the West half of the South East quarter of the South East quarter of Section twenty nine (29) And the West half of the East half of the North East quarter. And the West half of the North East quarter of Section thirty two (32) all in Town twenty three (23) North of Range two (2) East of the 3<sup>rd</sup> Principal Meridian.



To Have and to Hold the same together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, interest and claim whatsoever in law as well as in equity which the said Wilson Lindley had on the first day of April A.D. Eighteen hundred and fifty eight in and to the premises hereby conveyed unto the said David J. Perry his heirs and assigns and to their only proper use, benefit and behoof and also all right and equity of redemption of the said Wilson Lindley his heirs and assigns therein. And also all the right title and interest which he, said Asahel Gridley has in and to the said premises hereby conveyed unto the said party of the second part his heirs and assigns forever.

In Testimony whereof the said Asahel Gridley party of the first part has hereto set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of } Asahel Gridley (S)  
 Theron Pardce. } Mortgagee & Trustee.

State of Illinois }  
 McLean County } ss.  
 City of Bloomington. }

J. Theron Pardce, a



Notary Public in and for the said City in said County in the State aforesaid do hereby certify that Asahel Gridley who is personally known to me as the same person whose name is subscribed to the within deed as having executed the same appeared before me this day in person and acknowledged that he had signed, sealed and delivered the said instrument of writing as his free and voluntary act for the use and purposes therein set forth.

Given under my hand and Notarial Seal this tenth day of December A.D. 1861.

 Theron Pardee  
Notary Public

To reading which deed in evidence the defendant objected on the ground, that the Deed was <sup>altered</sup> apparently, in a different hand write from the body of the Deed, by erasing the names James, and inserting the name Wilson before the name Lindley in that part of the Deed or Mortgage giving the power of Sale, and because the Deed does not recite the advertisement only by referring to a piece of a newspaper pasted on a blank space in the Deed & that it did not show on the face of it that it was made in pursuance of & by virtue



of the power vested in said Trustee of the trust deed already in evidence. That there was a material variance between the trust deed set out in the deed offered in evidence & the trust deed already in evidence. And also that the deed now offered in evidence, does not show an appropriation of the proceeds of the sale on the trust deed. And also for the reasons that it being shown already that the note & indorsements read in evidence, had been assigned before the sale, that the said Gridley had no power to make said sale or deed.

All of which objections were overruled by the Court & said deed read in evidence, to which ruling of the Court in overruling said objections, said defendant then & there excepted.

Plaintiff then read in evidence a deed from David J. Perry to the plaintiff for the Lands in the declaration mentioned, and here closed his case.

The defendant then proved that the defendant was the head of a family & resided with the same upon the Lands in the declaration described & had so resided on said Land as a homestead for twenty five years, to all of which evidence the plaintiff objected on the ground that the same was irrelevant to the issue, but the Court over,



ruled the objection & the plaintiff then & there excepted.

The defendant here closed his case. The plaintiff thereupon proved that said lands were worth more than one thousand dollars, and that they could be divided without injury to the Estate, and claimed that the Jury should set off to the defendant, the dwelling house & lands supposed to make in value One thousand dollars, & that they should find as to the remainder of said Lands the defendant guilty. To all of which proof the defendant objected, which objection was overruled by the Court and the defendant then & there excepted.

Deft. then offered to prove an outstanding title in one Hair to the  $W\frac{1}{2}$  S.  $E\frac{1}{4}$  sec. 29, town 23 - 2 E by virtue of a sale on an execution on a judgment in this Court against Deft. older than the Trust Deed from Defendant to Gridley, with a view of asking the Court to instruct the jury, if they believed from the evidence that Deft. did not own said tract of land, that it could not be set aside to Deft. as any part of his homestead, to which plaintiff objected, and the Court sustained the objection, to which ruling of the Court defendant then & there excepted.



The foregoing was all the evidence in the cause, and to all the rulings of the Court against the said plaintiff, the said plaintiff excepted, and to all the rulings against Defendant excepted. -

The Jury brought into Court the following verdict: -

We the Jury find that the Defendant is guilty of unlawfully withholding from the plaintiff the possession of the  $W\frac{1}{2}$  of  $W\frac{1}{2}$  of N. E  $\frac{1}{4}$  of Section Thirty two, Township Twenty three Range 2 East of 3<sup>d</sup> P.M. and that Plaintiffs Estate in said tract is an Estate in fee-simple. And as to the remainder in the premises in the plaintiffs Declaration mentioned, we find the Defendant not guilty.

And thereupon the plaintiff entered his motion for a new trial but not under the Statute which said motion was overruled by the Court & judgment pronounced on said verdict to all of which said ruling the plaintiff then & there excepted & now tenders to the Court this Bill of Exceptions & prays that the same may be signed, sealed & made a part of the records in said cause & it is so done.

Chas. Emerson, Judge (S)





State of Illinois }  
 McLean County. } J. Luman Burr, Clerk  
 of the Circuit Court within and for said  
 County, do hereby certify that the foregoing  
 is a true and complete Transcript of the  
 records and files of said Court, pertaining to  
 a certain cause wherein Theron Pardee was  
 Plaintiff and Nelson Lindley was Defendant  
 Given under my hand and seal  
 of office at the City of Bloom-  
 ington, this seventeenth day of  
 January A.D. 1863.

Luman Burr. Clerk.



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Theron Pardon } Error from McLean County  
 as  
 Wilson Lindley } Assignment of Errors by plaintiff

- 1 The Court erred to the injury of the plaintiff in error in permitting ~~for~~ defendant to prove that he was the head of a family residing with the same on the Land in said declaration mentioned
- 2 The Court erred to the injury of the plaintiff in allowing the defendant to claim for his rights against of homestead against plaintiff.
- 3 The Court erred to the injury of the plaintiff in allowing the defendant out of the Land in said declaration mentioned his homestead of the value of one thousand dollars
- 4 The Court erred to the injury of the plaintiff in not setting aside the verdict of the Jury as contrary to Law granting the plaintiff a new trial.

For these causes plaintiff insists that so much of said judgment as is against him should be reversed

Hanna Moore for plat

In Nulla est erratum

R. E. Williams of  
 counsel for deft



39 State of Illinois

Supreme Court 3<sup>d</sup> Grand Division

Ottawa April Term 1863.

Theron Pardee

v

Wilson Lindley

} Error to the McLean County  
Circuit Court.

The Defendant in error by agreement has leave to assign Cross errors which are to be considered by the Court as if he were Plaintiff in error as to said cross errors.

And Whereupon said defendant by his Counsel assigns upon the said record the following errors, to the prejudice of Defendant

- 1<sup>st</sup> The Court erred to the prejudice of defendant in admitting in evidence the Certified Copy of the Mortgage or deed of Trust.
- 2<sup>nd</sup> The Court erred to the prejudice of defendant in admitting in evidence the note
- 3<sup>d</sup> The Court erred to the ~~plaintiffs~~ prejudice of defendant in admitting in evidence the deed from Gidley to Perry
- 4<sup>th</sup> The Court erred to the prejudice of defendant in admitting evidence as to the value of the lands
- 5<sup>th</sup> The Court erred to the prejudice of defendant in refusing to let defendant prove



That - a part - of the land was not - his  
but - that - there was a superior outstanding  
title to the same -

And for these errors the Cause shall  
be reviewed and not - for the errors assigned  
by the defendant

R. E. Williams of counsel  
and the plaintiff comes says for defendant  
there is no error in the record to the injury of defendant  
Hanna Moore

It is agreed by the parties that - this Cause is to be  
heard both upon the errors assigned by plaintiff  
and the cross errors assigned by defendant, as if  
each party had separately and out - a  
writ - of error

Hanna Moore for plaintiff  
R. E. Williams for defendant,



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Theron Pardee

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Wilson Lindley

Manuscript.

Filed Apr 22 1863

L. L. Loomis  
M

Fee for Transcript \$8.75



# SUPREME COURT, STATE OF ILLINOIS.

THERON PARDEE,  
vs.  
WILSON LINDLEY.

} ERROR FROM McLEAN COUNTY.

## IN EJECTMENT.

Pages 1, 2 and 3, declaration notice and affidavit of service for  $w \frac{1}{2}$  se of se 29, township 23, range 2 east;  $w \frac{1}{2}$  ne 32, township 23, range 2 east;  $w \frac{1}{2}$  of e  $\frac{1}{2}$  ne 32, town 23, range 2 east.

Pages 4 and 5.—Order of Court on filing declaration and plea of general issue.

P. 6 and 7.—Verdict of Jury that defendant wrongfully withholds from the plaintiff the  $w \frac{1}{2}$  of  $w \frac{1}{2}$  of ne section 32, town 23, range 2 east, and for defendant as to remaining two tracts, and Bill of Exceptions.

P. 7.—Peter Folsom sworn—says he is a surveyor, knows the land described in the declaration; that he delivered a copy of this declaration as described in his affidavit to Wilson Lindley, who was at that time in possession of all the land described in the declaration.

P. 8 and 9.—Affidavit of Asahel Gridley, showing the loss of original deed of trust, made by defendant to him for the land in declaration described, and other lands.

P. 10, 11, 12, 13, 14 and 15.—Certified copy of a deed of trust, made by Wilson Lindley to Asahel Gridley, dated April 1, 1858, in which Lindley acknowledges he is indebted to Gridley, in the sum of \$4,254.75, payable in one year after date, and in consideration of that indebtedness, and to secure the same, Lindley conveys to Gridley, as trustee and in trust, for the purpose of paying the above debt, land in McLean County, as follows: Lot 2 and west half lot 1 in nw  $\frac{1}{4}$  sec. 4, and e  $\frac{1}{2}$  lot 2, sec. 5, and ne  $\frac{1}{4}$  sec. 7, all in town 22 north, in range 2 east. Also,  $w \frac{1}{2}$  se sec. 20,  $w \frac{1}{2}$  se of se sec. 29, and  $w \frac{1}{2}$  e  $\frac{1}{2}$  of ne sec. 32, and  $w \frac{1}{2}$  ne  $\frac{1}{4}$  sec. 32, all in town 23 north, range 2 east, (548) acres. Also, ne  $\frac{1}{4}$  8, town 22, range 2 east, which includes land in declaration described.

P. 13.—Conditioned that if default be made in the payment of said sum, then the said Gridley to advertise said land for ten days, then sell the same.

P. 16.—Defendant's objections to reading of said copy—overruled by the Court, and copy of deed of trust read to the Jury. Copy of note and indorsements made by Lindley to Gridley, April 1, 1858, for \$4,254.70, due one year, and introduced one Burr, who swore that the credits on said note, of date March 19, 1861, and Dec. 3, 1861, were made to account for and appropriate the proceeds of sales of land under the trust deed, made by Lindley to Gridley, and to show that note was then unpaid; defendant objected to reading note, objection overruled, and defendant excepted notice of sale under deed of trust; and testimony of Briggs that said notice was published in weekly PANTAGRAPH, a weekly newspaper published in Bloomington, McLean County, Ills., for two successive weeks, the first insertion having been made Nov. 20, 1861.

P. 19.—Plaintiff then proved, by one Benjamin, that he was present at the sale made by Gridley, Dec. 3, 1861, at Court House door, in Bloomington, of the Lindley lands in the trust deed mentioned; that they were sold in separate tracts, and bid off by David I.

*The land mentioned  
are all the land described  
in the declaration. is all  
160 acres -*

*The verdict is correctly  
of with holding  $w \frac{1}{2}$   
of  $w \frac{1}{2}$  of NE 32*

*The property for the  
same*



Perry, who was the highest and best bidder; that defendant Lindley was present, and cautioned persons not to bid, as he would not give possession of the land.

P. 20 to 31—inclusive. Copy of the deed from Gridley, as trustee, to David I. Perry, for the land in the declaration mentioned, which deed contains a copy of deed of trust.

P. 32.—Defendant objected to the reading of deed to Perry, because said deed appeared to be altered in a different hand-writing, by erasing the name James, and inserting Wilson before the name Lindley in that part, giving power of sale. 2d. Because deed does not recite advertisement, only refers to a newspaper advertisement pasted on a blank space in the deed. 3d. That the deed did not show, in its face, that it was made in pursuance of the powers contained in trust deed. P. 33.—4th. That the copy of the trust deed contained in Gridley's deed to Perry, varied from the copy of trust deed first offered. 5th. That said deed did not show an appropriation of proceed of sale. Also, that it appears, from the note, that it had been assigned before the sale, and that Gridley had no power to make the sale—which objections were overruled by Court, and excepted to by defendant. Here the plaintiff rested his case.



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Pardue

vs

Lindley

Abstract

Filed Apr 22, 1863

J. L. Card

OK