

12105

No. _____

Supreme Court of Illinois

Cartwright.

vs.

Wise, et al.

Darius B Cartwright Complainant

vs

Bill for Debt

Andrew Wise & William Wise Defendants

Precept for Summons Filed in the above entitled
Case March 3^d 1853 In the words and figures following to-wit:

State of Illinois
County of Knox

Knox Circuit Court
April Term A.D. 1853

Darius B Cartwright Complainant

vs

Andrew Wise & William Wise Defendants Upon the filing of this Bill
in said Case please Issue Summons in Chancery directed to
the Sheriff of Henry County to Execute

Manning & Douglass

Furnish 2 Copies.

Saled for Campbell

Thereupon to wit. upon the filing of the Precept as aforesaid
a summons was issued in the words and figures following:

State of Illinois
Knox County

To the Sheriff of Henry County Greeting- We command
you to summon Andrew Wise and William Wise if to be found
in your County personally to be and appear before the Circuit
Court of said County on the first Monday of the next Term
thereof to be holden in the Court House in Knoxville on the
second Monday in the month of April next to answer certain
Bill of Complaint filed in our said Court on the Chancery side
thereof against them by Darius B Cartwright and have you
then and there this writ and make Return thereon in what manner
you Execute the same



Witness My hand & the seal of our said
Circuit Court at Knoxville this 3^d day of March
A.D. 1853 the seal of said Court being hereto affixed

Wm Mory Clerk



Which said Summons was Returned duly served and was filed
by me March 19th 1853. Upon which is the following Return
State of Illinois —

County of Henry 3 Matthew B. Patter Sheriff of said County
do hereby Certify and Return that I did on the 10th day of March A.D.
1853 serve the within Summons on the within named Andrew
Wise and William Wise by delivering to each of them a true
Copy of said Summons; dated this 10th day of March A.D. 1853
Fees: Service on each 50 10 00 (Signed) Matthew B. Patter Sheriff
2 miles travel 10 00 of Henry County
Return 10 & 120

And upon the said 3^d day of March aforesaid the said
Complainants Bill of Complaint was filed herein which said
Bill is in the words and figures following to wit;

To the Honorable the Judge of the Ninth Judicial
Circuit of the State of Illinois in Chancery sitting
Humbly complaining sheweth unto your Honor Your Orator
Darius B. Cartwright that heretofore to wit, on the seventeenth
day of October in the Year of our Lord one thousand eight
hundred and fortythree Andrew Wise was legally indebted
to divers persons in divers large sums of money Justly due
and owing from the said Andrew Wise unto his Creditors and
that the said Andrew Wise was worth but very little if
any property and far less than was sufficient to pay his
just debts as aforesaid. And your Orator further shews
that the said Andrew Wise heretofore to wit, on the seventeenth
day of October in the Year of our Lord one thousand eight
hundred and fortythree purchased from the United States
(The United States being the owner thereof) at the United States
Land Office at the Town of Quincy in the State of Illinois by
deed entry thereof and payment therefor the East half of
the North East quarter of Section Number twenty eight
in Township Number Ten North of Range Two East
of the fourth principal Meridian and paid his own
proper money therefor the purchase money therefor

amounting to the sum of one hundred dollars And your Orator further shows that at the time of the purchase of said land by the said Andrew Wise the said Andrew Wise was apprehensive of and expecting a prosecution would be instituted against him for neglecting and refusing to produce the last Will and Testament of Peter Wise then deceased for Probate of the same. And your Orator further shows that with the fraudulent intent & purpose of delaying and hindering the Creditors of the said Andrew Wise from making their just debts out of the property of the said Andrew Wise and the collection of any fine or penalty that might by Law be recovered against the said Andrew Wise for refusing and neglecting to produce said Will for probate. The said Andrew Wise did procure the Certificate of purchase of and receipt for the money paid for said land purchased by the said Andrew Wise of the United States as aforesaid to be made out in the name of William Wise as by reference to the receipt for the money so paid by Andrew Wise for said land as aforesaid which is filed with this Bill and marked Exhibit "A" will more fully appear which is made a part of this Bill.

Bill for reference and Evidence

And your Orator shows that all the purchase money paid for the purchase of said Real Estate from the United States was the money of the said Andrew Wise, that by entering the said land in the name of the said William the said Andrew never intended to vest the legal and equitable title of said land in said William; and that said Andrew Wise immediately after said purchase from the United States of said land entered into the possession thereof as in his own right and occupied the same until the time of your Orator's purchase herein after mentioned and made lasting and valuable improvements

thereon; and that thereby the said Andrew Wise was in Equity and in favor of any subsequent bona fide purchaser for a valuable consideration the owner of said Land. And Your Orator further shows that the said William Wise is the son of the said Andrew Wise and that the said William Wise never paid a valuable or any consideration to the United States or any person for said land or the purchase thereof. And your Orator further shows that said William Wise is an idiot and incapable of taking care of or defending his interest in the premises.

And your Orator further shows that on the second day of March in the Year of our Lord one thousand Eight hundred and fifty. Your orator was desirous of purchasing said land to wit, the East half of the north East quarter of section twenty-eight in Township Ten North of Range two East of the fourth principal meridian and that the said Andrew Wise in a conversation with your Orator then and there had and held with the said Andrew Wise represented to your Orator that he the said Andrew Wise was the owner of the aforesaid Land. he the said Andrew Wise then and there represented that he was the purchaser thereof from the United States and your Orator placing full faith and credit in the representations of the said Andrew Wise so then and there made as aforesaid agreed to purchase of said Andrew Wise and the said Andrew Wise agreed to sell to your Orator the said land herein before described & that the said Andrew Wise was then and there in possession of said land or some part thereof and had made lasting and valuable improvements thereon. And your Orator further shows that in pursuance of said agreement so entered into between your Orator and the said Andrew Wise your Orator purchased of the said Andrew Wise the aforesaid land on the second day of March in the Year of our Lord one thousand Eight hundred and

fifty And that your orator paid to the said Andrew Wise
a large sum of money to wit; the sum of Two hundred
and fifty dollars as the purchase money of said Land and
in pursuance of said sale and purchase of said Land -
between your orator and the said Andrew Wise and in con-
sideration of the money so as aforesaid paid by your orator
to the said Andrew Wise the said Andrew Wise with Helah
his wife on the second day of March in the year of our
Lord One thousand Eight hundred and fifty Executed
acknowledged in due form of Law and delivered to
your orator a good and sufficient warranty deed
of and for said Land so as aforesaid purchased by
your orator from the said Andrew Wise which said
deed marked "B," is herewith filed and made a part of
this Bill for the purpose of convenience and reference
And your orator further Shows that said purchase so made
by him of said Land from the said Andrew Wise was
made by your orator Bona fide and in good faith
for a valuable consideration and without any fraud on the
part of your orator or the knowledge of any fraud collusion
or wrong on the part of the said Andrew Wise
And your orator further Shows that the legal title to said
land so purchased by your orator from the said Andrew
Wise is in William Wise aforesaid and that the said William
Wise is incompetent in Law to convey the title to said
premises to your orator All of which is contrary to
Equity and good conscience and tends to the manifest
wrong and injury of your orator
And for as much as your orator can only have 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 William Wise and
Andrew Wise may be required full, true direct and
purport answer to make to all and singular the matters

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aforesaid and that as fully and particularly as if the same were
here again repeated and they and each of them specifically in-
terrogated thereto (Your Orator hereby expressly waiving their
oaths to their respective answers thereto) Your orator asks
that a Guardian be appointed by your Honorable Court to
appear for and defend the interests of the said William Wise
in the premises and that upon a final hearing of this bill
your honor will decree that the said William Wise by
his Guardian do for the said William Wise appointed by your
Honor Execute and deliver to your Orator a deed in proper
form conveying to Your Orator the said tract of land
herein before described and that in default thereof a
Commissioner be appointed to Execute such deed in his
name 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 Con-
science

May it please Your Honor that a Summons in Chancery
issue in due form of Law out of the Circuit Court in
and for the County of Knox in the State of Illinois
summoning the said William Wise and Andrew
Wise as defendants hereto to answer all and singular
the matters aforesaid and abide by and perform
the decree of Your Honor in the premises and
Your Orator will Ever pray &c

Manning & Douglass
Solicitors for Compt

Exhibit "A" Referred to in the said Complainant's Bill of
Complaint - filed March 3. 1843 which said Exhibit is in
the words and figures following to wit:

No 16695-

Receiver's Office Quincy Ill
17th October 1843

Received from William Wise of Knox County Illinois the
sum of One hundred dollars and 2 cents being in full

payment for the East Half of North East quarter of Section No
Twenty Eight in Township No Ten N of the Base line of Range
No Two East of the 4th principal meridian containing Eighty
acres and $\frac{100}{100}$ of an acre at the rate of One dollar and
twenty five cents per acre

\$ 100.00

Sam^l Leach Received

Exhibit "B" Referred to in the said Complainants Bill of
Complaint Filed March 3^d 1853 by Chiram T. May Clerk
of said Court &c which said Exhibit is in the words and
figures following to wit:

This deed made this second day of March in the
Year of our Lord one thousand Eight hundred and fifty
Between Andrew Wise and Wilkiah Wise his wife of
Knox County Illinois of the first part and James B Cartwright
of the same County and State of the second part Witnesseth
that the said party of the first part for and in consideration
of the sum of Two hundred and fifty dollars paid by
the said party of the second part the receipt of which
is hereby acknowledged do by these presents Grant Buy
-in and sell remise, Release, Convey and Confirm unto
the said party of the second part his heirs and assigns
one certain tract or parcel of land situated in the
County of Knox and State of Illinois known and
described as being the East half of the North East quarter
of Section Twenty Eight 28 in Township Ten North Range
Two East of the 4th principal meridian Together with
all and singular the hereditaments and appurtenances
thereunto belonging or in any wise appertaining To have
and to hold the said premises as above described with
the appurtenances to the said party of the second part
his heirs and assigns forever And the said party
of the first part for themselves & their heirs Executors and
Administrators do hereby Covenant To and with the
said party of the second part his heirs and his assigns

that they are well seized of the premises above Conveyed as of
a good and indefeasible Estate in fee simple and have
good right to sell and Convey the same in manner and form
as aforesaid that they are free from all incumbrances, and
that the above bargained premises in the quiet and peaceable
possession of the said party of the second part his heirs and
his assigns against the Claim of all persons whomsoever
they will forever warrant and defend. In Testimony
whereof the said Andrew Wise & Hilah Wise have herunto
set their hands and seals the day and Year first above
written: Signed, Sealed

and delivered in the presence of

Elkanah Moore

Andrew ^{his} Wise Seal
Hilah ^{her} Wise Seal

State of Illinois =

Knox County =

I Elkanah Moore an acting Justice
of the Peace within and for the County aforesaid do hereby
Certify that this day personally appeared before me Andrew
Wise and Hilah Wise his wife who are personally known
to me to be the identical persons described in and whose
names appear signed to the foregoing deed of ~~Conveyance~~
as having executed the same and acknowledged that
they had executed the said Conveyance for the uses
and purposes therein expressed. And the said Hilah
Wise wife of the said Andrew Wise being by me examined
separate and apart from her said Husband and the contents
of said deed having been by me made known to her ackn-
nowledged that she had executed the same and
relinquished her dower in and to the premises therein
conveyed freely, voluntarily and without any fear
or compulsion from her said Husband.

Given under my hand and seal at my office
this second day of March in the Year of our Lord one
thousand eight hundred and Fifty

Elkanah Moore J. P. Seal

that the defendants have had due and legal notice of the commencement & pendency of this action by the service of process it also appearing to the Court that William Wise one of the Defendants is an Idiot and incapable of seeing to & defending his interests in the premises. Now therefore it is hereby ordered adjudged & decreed that Patrick Mc Sanford he and he's hereby appointed Guardian ad litem to appear answer & defend for and on behalf of said William Wise

Dated this 25th day of April 1853

Chas W Mead

And afterwards to-wit: on the 28th day of April 1853 said day being the fourth day of said Term came Patrick Mc Sanford Guardian ad litem heretofore appointed by the Court and enters and files his answer herein in the words and figures following to-wit:

State of Illinois—
County of Knox }
Darius B Carlewright—

Knox Circuit Court
April Term A.D. 1853

Complainant

vs

Andrew Wise and William Wise
Defendants

son Chancery

Bill for Relief

The answer of Patrick

Mc Sanford Guardian ad litem of William Wise one of the Defendants in this cause for answer to the Bill of Complaint and the allegations therein contained saith that the said William Wise is entirely ignorant and unadvised of and concerning the allegations in said Bill contained or the merits thereof & therefore neither admits nor denies the same and prays that the complainant may be required to prove all the material allegations in said Bill contained & prays that the interests of said William Wise may be under the protection this Court

Dated this 25th day of April 1853. Patrick Mc Sanford
Guardian fees \$3 00

And now upon the coming in of the answer of J^{as} Sanford
Guardian as aforesaid. The said Bill was Referred To
Hearman J. Reynolds Master in Chancery, by decree
in the words and figures following To wit:

State of Illinois

County of Knox } Knox Circuit Court

April Term A.D. 1853

Darius B Cartwrights Complainant

vs

Andrew Wiles and William Wiles

For Chancery

Bills for Relief

And now this Cause coming on to be heard
and it appearing to the Court that the defendants in this suit
have had due and legal notice of the Commencement
and pendency of this suit by the service of process on the
coming in of the answer of Guardian ad litem & the Court
not being sufficiently advised of and concerning the merits
and of and concerning the truth of the allegations in the Bill
of Complaint on file in this Cause contained It is therefore
ordered a djudged and decreed that the Bill in this Cause
be and the same is hereby referred To Hearman J. Reynolds
Master in Chancery in and for the County of Knox in the
State of Illinois and that the said Master is hereby required
to inquire and ascertain by good and sufficient evidence
of and concerning all the material allegations in said
Bill contained and report the facts so inquired into and
ascertained to this Court

Dated this 25th day of April 1853

C. H. N. Wead

And afterwards To wit: On the 28th day of April came
Hearman J. Reynolds Master in Chancery and enters his
Report herein in the words and figures following To wit:

State of Illinois

County of Knox

Knox Circuit Court

April Term 1853

Darius B Cartwright

vs

Bill for Deed

Bill for Deed

Andrew Wice & William Wice

above entitled Cause in pursuance of the order made in the above entitled Cause by said Court on the first day of said Term by which it was among other things ordered that the said Cause be referred to Harman I Reynolds Master in Chancery in and for said County and State and report the testimony of and concerning specific matters therein named. Now therefore I Harman I Reynolds Master in Chancery as aforesaid do report that the following testimony written down & referred to is the testimony submitted in this said Cause

Andrew Wice one of the defendants sworn
Is acquainted with Darius Cartwright the Complainant in this suit Witness bought the Land described in the Paines Receipt marked "A" which Receipt is Identified by Witness Witness paid one hundred dollars of his own money for said Land. William Wice is my son William Wice furnished no part of the money to pay for said Land nor has said William furnished Witness any money for any purpose since said Land was purchased. When said Witness bought said Land he bought it for himself and not for said William and supposed it to be his own land as much as if it was entered in his own name and supposed he had a perfect right to convey the same At the time ^{Witness} entered said Land he did not intend to give said Land or to vest the title to the same in said William Witness sold and deeded said Land to said Complainant March 20 1850 for about the sum of two hundred and fifty dollars Witness told Mr Cartwright at the time of said sale that he Witness was the owner of said Land That the title was a convey title. — Deed marked Exhibit "B" on file in this Cause is the deed executed by Witness & wife to said Cartwright in pursuance of said sale of said Land as aforesaid

Cross Examination by Quar. ad. Litem

Witness has other Children besides said William, Witness supposed that he would own and controll said Land the same as if entered in his own name said William was a helpless boy, and Witness supposed that by Entering the Land in his name Witness would have no trouble about it. Witness lived on said Land two years, fenced it improved it and built on it. Witness had a Preemption on said Land and before the Preemption expired Witness Entered it in the name of said William broke up twenty acres of Land paid fifty dollars for the breaking paid about fifty dollars for grubbing, The buildings were worth from one hundred to one hundred and twenty five dollars. The same improvements were on said Land when Witness sold to said Cartwright, said William has never enforced any acts of ownership over said Land. He is a foolish Boy and is subject to fits and not able to help himself much.

See Exhibit A Herewith

See Exhibit B Herewith

said Exhibit A is Receivers Receipt - No 16695 dated October 17th 1843 for East-half North East quarter Sec 28 Town Sen N, R, 3 East - Containing 80 acres - said Exhibit "B," Warranty Deed for same Land dated March 2^d 1850, Executed in presence of Elkanah Moore by said Andrew Wise and Philah Wise his wife and acknowledged in the usual form before said Elkanah Moore a Justice of the peace for Knox County March 2^d 1850 and Recorded in Vol 14 of deeds in the Records Office of said County on page 493

See Exhibit C

Registers Certificate dated April 4th 1853 certifying that William Wise Entered the 6th 1/2 Sec 28 T 10 N R 2 East 4th Per in Knox County Oct-17th 1843 for the sum of one hundred Dollars as appears of Record in said

Registers office at Quincy Ills

Copy of Exhibit C - Registers office Quincy Ills

April 4th 1853

I Henry Asbury Register of the United States Land office at Quincy Illinois hereby certify that William Wise did enter and purchase at this office the East half of the North East quarter of Section No twenty Eight in Township No Ten North of Range No two East of the fourth 4th Principal meridian in the County of Knox in the State of Illinois on the 17th day of October A.D. 1843 containing 80 acres for which he paid in full the sum of \$100 all of which appears of Record in the books and Records of this office

Henry Asbury Register

State of Illinois

Knox County } J. A. Harman & Reynolds Master in Chancery in and for said County do certify that the said Witness Andrew Wise was duly sworn and examined before me And would respectfully Report to the Circuit Court of said County that the foregoing testimony of said Witness and as taken from said Exhibits is truly written down all of which is Respectfully submitted

Knoxville April 27th 1853

Harman & Reynolds

Master in Chancery

Thereupon to wit; on the 28th day of April A.D. 1853 said day being the fourth day of said Term a decree was Rendered by the Court in the words and figures following to wit;

State of Illinois

County of Knox } Knox Circuit Court

April Term A.D. 1853

Darius B. Cartwright Complainant

vs

Andrew Wise and William Wise Defendants } and now the said defendants being called and appearing not to answer in said Cause It is ordered by the Court that the said

Bill and the matters and things therein contained be taken
and held as confessed by and as against the said Andrew
Wise
Cf M Mead

And thereafter To wit: on the same day another decree
was rendered by the Court in the words and figures following

To wit: State of Illinois
County of Knox } Knox Circuit Court
April Term A.D. 1853

Darius B Cartwright Complainant

vs

Andrew Wise and William Wise Defendants } And now upon
the coming in of the Report of the Master in Chancery of the evidence
taken before him in said Cause it is ordered that the same be
accepted and that the same together with the exhibits referred
to in said report and accompanying said report be made
and become matter of record in said cause And now this
cause coming on to be heard upon the merits thereof and the
Court having examined and heard the said exhibits and
evidence and being now sufficiently advised of and concern-
ing the merits thereof It is now finally ordered adjudged
and decreed that the said Bill be dismissed at the costs of
the said Complainant

It is further ordered adjudged and decreed
that the said Defendant have and recover of the said
Complainant their costs about this suit ~~expended~~ in this
behalf expended and that they may have due process of
Law for the collection of their said costs

Cf M Mead

And afterwards To wit: on the 28th day of April 1853 the
said 28th day aforesaid being the fourth day of said Term came
the said Complainant by his Solicitor and prays an appeal
to the Supreme Court of said State of Illinois which prayer
upon due consideration by the Court is granted on con-
dition that the said Complainant enter into Bond for

Costs on said appeal within twenty days in the sum of Fifty dollars with Julius Manning as Surety

And afterwards to wit: on the second day of May A.D. 1853 the said Complainant by his ~~Attorney~~ ^{Attorney} comes and files his appeal Bond herein in the words and figures following to wit:

Know all men by these Presents that we Darius B Cartwright as principal & Julius Manning as Surety are held and firmly bound unto Andrew Wise & William Wise of the County of Henry & State of Illinois in the Penal sum of fifty dollars current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors & administrators ~~firmly~~ by jointly severally & firmly by these presents Witness our hands and seals at the Clerk's Office in the City of Knoxville this second day of May A.D. 1853

The Condition of the above obligation is such that whereas the said Andrew Wise & William Wise did on the 28th day of April A.D. 1853 in the Circuit Court in and for the County of Knox and State of Illinois recover a Judgment against the above named Darius B Cartwright for the sum of Ninety dollars & fifty cents from which said Judgment of the said Circuit Court the said Darius B Cartwright has prayed for and obtained an appeal to the Supreme Court of said State Now if the said Darius B Cartwright shall duly prosecute his said appeal with effect - and shall moreover pay the amount of the Judgment Costs interest & damages rendered and to be rendered against him in case the said Judgment shall be affirmed in the Supreme Court then the above obligation to be void otherwise to remain in full force & Virtue

Signed sealed & delivered in presence of & approved by me
William L. Morry Clerk of the
Circuit Court Knox Co. Ill

(Signed) Darius B Cartwright
By his attorney in fact - James Knox
Julius Manning

State of Illinois—
Knox County—
I, Hiram Mory Clerk
of the Circuit Court in and for the County of Knox
in the said State of Illinois Do hereby Certify that
the foregoing and within Transcript is a full and
correct Copy & Transcript from the Records of said
Court of all the proceedings in a certain Cause in
said Court wherein Darius B Cartwright is Complai-
nant and Andrew Wise and William Wise are Defen-
dants which said Cause is taken by appeal to the
Supreme Court of said State

In Testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at Knoxville this 4th day
of June A.D. 1853

Hiram Mory Clerk

Darius B Cartwright

vs

Andrew Wise & William Wise
On appeal

Bill for Relief

Complainants Costs—May 1853

For Copying 6048 words .604

\$6.04

Take and approve Bond 30 Certify Transcript 35 85

I, Hiram Mory Clerk of the Circuit Court of Knox
County aforesaid do hereby Certify the above Bill of
Costs on appeal of Complainants Costs is truly Copied
from my Cost Docket

Witness Hiram Mory Clerk and
the seal of said Court at Knoxville
this 4th day of June 1853

Hiram Mory Clerk

59
Darius P. Carrington
vs
Andrew Wise et al.
Record

Filed June 14, 1859.
Meland Clk.

And now comes the said defendant William
Wise by J O Glover his guardian ad litem
And says, that in the record, proceedings
Judgment and decree aforesaid there
is no error Wherefore he prays judgment
And that the judgment & decree of the
Circuit Court aforesaid may be affirmed

J O Glover

Filed July 15th 1853.

L. Leland Clk.

By P.K. Leland Depy.

State of Illinois ss. Supreme Court
Third Grand Division
June Term A D 1853.

Darius B. Cartwright vs. Andrew Wice & William Wice ^{3rd} Appeal from Knox

And now comes the said Darius B. Cartwright by his attorney before the court here and says that in the record and proceedings in said cause and in the decree and judgment there rendered there is many assigns for error on the said record

1. The court erred in rendering the decree that the said Cartwright's bill in said cause should be dismissed.

2. The court erred in adjudging that the said complainant was not entitled to the relief prayed in said bill.

3. The court erred in not rendering a decree giving said complainant the relief prayed in said bill.

All which errors are to the prejudice of said complainant. Wherefore he prays that the said decree may be reversed
Maning, for appellant.

37.
David B. Cartwright
vs.
Andrew Wise et al.

59

1853

Prepared

12/25