

14552

No. _____

Supreme Court of Illinois

Ayres

vs.

Lindley

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 69

1864

J. W. Middleton & Co., Stationers, 196 Lake St.

1864

Agnes
Lindley

14552

Wells. Ayres. ~~Wells~~ Erin
S. A. Carpenter

Cover from
S. A. Carpenter

Lindly S. Carpenter

Shall call on you for 2 cts
to run

If no one appears for
p. 10, in book, I will
dismissed - If not any

State of Illinois.

Supreme Court of the State of Illinois
Ottawa term AD 1862

Vincent MacAyes
Thomas F. Daoudpont
et al plaintiffs in sum

Lutellus Lindley
Martin B. Stonffer
administrators of the Estate
of Sam. Wade dec: et al in sum

Em. To
Henry

Abstract of Record

Page of
Record 1

Came before the Hon J. H. Horne judge
of the sixth judicial circuit at a
special term held April 16th 1860

The complainants file their bill of Complaint
to foreclose Mortgage

Page 6 The writ of Summons.

Page 7 The return of the sheriff

Page 8 The record suggest the resignation

of his honor Judge Dwyer, and the
adjournment of the ~~time~~ March term
1864, of said Court.

The appointment of a special
term. April 1860.

Decree to the bill of Complaint.

Page 9. The decree sustained and
leave given to the Complainants to
file an amended bill of
Complaint.

defendants were to answer by the
first day of June next

Page 10. Decree - judgment against the
defendants by default, and
a decree entered.

Page 13 Decree confirming master's sale

Page 14 Exhibit "A" referred to in the
bill of Complaint

Certificate Signature and
seal of the Clerk.

Mons Assignee

The plaintiffs in ever assign the following errors

1st That the writ issued by the clerk below was issued without any seal,

2nd That the writ was dated 1809 returnable to the ~~next~~ March term thereafter, and was not served until fifty years thereafter

3rd That the bill of complaint was dismissed to, and the decree sustained, and no amended bill filed

4th Because it does not appear that any endorsement of any indebtedness was of force in the Court below

5th Because it does not appear that the defendants below were indebted to the plaintiffs below,

6th Because of error in the amount decreed to be paid

7th Because there was no bill of Complaint filed in the Court below, N. D. Wells per plff in S.

~~100~~ 248 69

Ayers et al
Plaintiffs in Error

vs
Lundley et al
Defendants in Error

Filed Dec. 14. 1861
L. Leland Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Henry Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Henry County, before the Judge thereof, between Vincent M. Ayres, Thomas H. Davenport, John Port, Benjamin Derby, Abigail Bondit, James M. Payne, John H. Nye, Michael Grant Daniel Solander James L. Hayward, Joseph Kirkpatrick Simon Schack, Samuel P. Jewett, Hushai Thomas & Henry ~~plaintiffs~~ and W. Wells defendants and Lutellus Lundy and Martin B. Stouffer administrators of the estate of James Wade deceased. Complainants

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

as we are informed by their ~~complainants~~ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of December in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
J. D. Hill

248-69

Vincent M. Ayres &als

No.

vs.

Levellus Lindley &als

WRIT OF ERROR.

FILED December 17th A. D. 1864

L. Leland

Clerk.



Vincent M. Ayres, Thomas F. Davenport, John Post,
Benjamin Derby, Abigail Condit, James M. Payne,
John H. Nye, Michael Grant, Daniel Solander, James L. Hayward,
Joseph Kirkpatrick, Simon Sebach, Samuel P. Jewett,
Husnah Thomas, and Henry W. Wells, plaintiffs in error,
vs.
Latellus Lindley and Martin B. Stouffer, administrators
of the estate of James Wade, deceased, Defendants
in Error.

Error to the Circuit Court of Henry County.

WHEREAS, the above named Vincent M. Ayres,
Thomas F. Davenport, John Post, Benjamin
Derby, Abigail Condit, James M. Payne, John H. Nye,
Michael Grant, Daniel Solander, James L. Hayward,
Joseph Kirkpatrick, Simon Sebach, Samuel P. Jewett,
Husnah Thomas, and Henry W. Wells, plaintiffs in error,
as aforesaid, have sued out a writ of Error from said
Supreme Court, to reverse a decree which the said
Latellus Lindley and Martin B. Stouffer (administrators
of the estate of James Wade, deceased) obtained
against them the said plaintiffs in error in said Circuit
Court of Henry County, which said writ of error is
now pending in said Supreme Court; and whereas, a
writ of *scire facias*, returnable on the first day of the
next term of said Supreme Court, to be holden at Otta-
wa, in said State of Illinois, on the first Tuesday after
the third Monday in April next, has been duly issued
herein according to law; and whereas, also, it appears
by affidavit, on file in the office of the Clerk of said
Supreme Court, that the said Latellus Lindley and
Martin B. Stouffer, the said defendants in error, are
non-residents of the State of Illinois, and without the
reach of the process of said Supreme Court.

Now, therefore, you the said Latellus Lindley and
Martin B. Stouffer, the said defendants in error, whose
non-residence appears as aforesaid, are hereby notified
to be and appear before the Justices of said Supreme
Court, at the next term of said Supreme Court, to be
holden at Ottawa, in said State, on the first Tuesday
after the third Monday in April next, A. D. 1852, to
hear the record and proceedings of said decree of said
Circuit Court of Henry County brought into said Su-
preme Court on return of said writ of error; and the
errors assigned, if you shall see fit; and further, to do
and receive what said Supreme Court shall order in
this behalf. [dec21-4w]

Dated this Seventeenth day of December, A. D. 1851.
Attest: LORENZO LELAND, Clerk.
HENRY W. WELLS, Attorney for Plaintiffs in Error.

State of Illinois

William Osma being first
duly sworn on oath says that
he is the publisher and
proprietor of the Ottawa
and Indian a weekly
newspaper of general circulation
published at Ottawa Ill.
that he did publish in
said newspaper a notice of
which the annexed is a true

copy - That the date of the first
publication of said notice was
December 21st ad 1851. and the date
of the last publication was, January 11th 1852.
that the said notice was published for four
successive weeks.

That said defendant ^{wherein} did on the first of January ~~ad~~
1852 mail a copy of said paper containing
said notice plainly marked to
Latellus Lindley and Martin B. Stouffer
at Camellville Penn. which defendant
was informed and believed was the
residence of said Lindley & Stouffer.

Wm Osma
Learns to and subscribes before
me this 28th day of April 1852. Wm Lockwood, Justice of the Peace

Printed for sale by W. W. W. \$5.00
W. W. W.

69 ~~707~~ 248
Lynch Stal

Lindley Stal

Green & H. W.

Filed April 24, 1862
L. W. W.
C. H.

State of Illinois.
Henry County }

Vincent M. Ayres
Thomas F. Davenport
et al. plaintiffs in error

Lutellus Lindley and
Martin B. Stouffer
admins of James Wade decd

In Supreme Court
Error to Henry

Vincent M. Ayres being first duly sworn
says that the said defendants reside at
Carmelsville in Pennsylvania. That he did
on the third day of March 1862 mail to the
said Lutellus Lindley and Martin B. Stouffer
a copy of the "Ottawa Free Trader" containing
a notice of which the annexed is a true
copy That said ~~newspaper~~ notice in said
newspaper was plainly marked to attract
attention, and was deposited with the
Postage paid in the Postoffice at Cambridge
Henry County Ills on the said 3rd of March
1862.

Subscribed & sworn to before me

This 16th day of April 1862

Amos Gould Clerk

By E S Bond Clerk deputy

Vincent M. Ayres

STATE OF ILLINOIS, Supreme Court within)
and for the Third Grand District of said State,) ss
Vincent M. Ayres, Thomas F. Davenport, John Post,
Benjamin Derby, Abigail Condit, James M. Payne,
John H. Nye, Michael Grant, Dan of Solander, James
L. Hayward, Joseph Kirkpatrick, Simon Schach,
Samuel P. Jewett, Hushai Thomas, and Henry W.
Wells, Plaintiffs in Error,
Lutellus Lindley and Martin B. Stouffer, administrators
of the estate of James Wade, deceased, Defendants
in Error.
Error to the Circuit Court of Henry County.
WHEREAS, the above named Vincent M. Ayres,
Thomas F. Davenport, John Post, Benjamin
Derby, Abigail Condit, James M. Payne, John H. Nye,
Michael Grant, Daniel Solander, James L. Hayward,
Joseph Kirkpatrick, Simon Schach, Samuel P. Jewett,
Hushai Thomas, and Henry W. Wells, plaintiffs in error,
as aforesaid, have sued out a writ of Error from said
Supreme Court, to reverse a decree which the said
Lutellus Lindley and Martin B. Stouffer (administrators
of the estate of James Wade, deceased) obtained
against them the said plaintiffs in error in said Circuit
Court of Henry County, which said writ of error is
now pending in said Supreme Court; and whereas, a
writ of *scire faciens*, returnable on the first day of the
next term of said Supreme Court to be holden at Otta-
wa, in said State of Illinois, on the first Tuesday after
the third Monday in April next, has been duly issued
herein according to law; and whereas, also, it appears
by affidavit, on file in the office of the Clerk of said
Supreme Court, that the said Lutellus Lindley and
Martin B. Stouffer, the said defendants in error, are
non-residents of the State of Illinois, and without the
reach of the process of said Supreme Court.
Now, therefore, you the said Lutellus Lindley and
Martin B. Stouffer, the said defendants in error, whose
non-residence appears as aforesaid, are hereby notified
to be and appear before the Justices of said Supreme
Court, at the next term of said Supreme Court, to be
holden at Ottawa, in said State, on the first Tuesday
after the third Monday in April next, A. D. 1862, to
hear the record and proceedings of said decree of said
Circuit Court of Henry County brought into said Su-
preme Court on return of said writ of error; and the
errors assigned, if you shall see fit; and further, to do
and receive what said Supreme Court shall order in
this behalf.
Dated this Seventeenth day of December, A. D. 1861.
Attest: LORENZO BENAND, Clerk.
HENRY W. WELLS, Attorney for P^{ts} in Error.

~~107~~ 245-69
Lyns et al
Lundley et al
Enon to Hanning

109
Lyns & Davenport
L. Lundley et al

Filed April 19/62

Amos Gougeon clk

Filed April 24, 1862
L. Deland
clk.

STATE OF ILLINOIS, }
SUPREME COURT, }

The People of the State of Illinois,

To the Sheriff of the County of Henry Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court — Court of Henry County, before the Judge thereof, between Vincent M. Ayres, Thomas F. Davenport, John Post, Benjamin Derby, Abigail Condit, James M. Payne, John H. Nye, Michael Grant, Daniel Solander, James L. Hayward, Joseph Kirkpatrick, Simon Struck, Samuel ~~plaintiff~~ and P. Jewett, Hushai Thomas & Henry W. Wells Defendants and Lutellus Lindley, and Martin B. Stouffer Administrators of the Estate of James Wade deceased Complainants — ~~defendants~~....., it is said that manifest error hath intervened, to the injury of the said defendants.....

..... as we are informed by their complaints..... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Lutellus Lindley and Martin B. Stouffer.....

that they..... be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they..... shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Lutellus Lindley and Martin Stouffer.....

..... notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of December in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
J. R. Rice Deputy

State of Ill.
Henry County

I cannot in my county find
the within named Martin B. Stouffer and
Lutellus Lindly, Cambridge Dec. 31st 1866,

Adam K. Keeney Sheriff
Henry County
Ill.

69 - 2248

Vincent M. Ayres vs the

No.

vs.

Lutellus Lindly and

SCIRE FACIAS.

FILED January 23 A. D. 1867

L. Lindly

Clerk.

Sheriff's fees.

Return 19^{cts}
Postage 1^{ct}

Adam K. Keeney

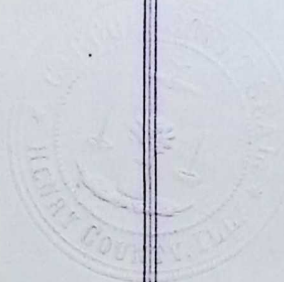
Sheriff

State of Illinois }
Henry County }

Thomas F. Davenport being first
duly sworn on oath says that
Martin B. Stouffer and Lutellus Lindsey
are defendants in error in a certain
suit of error about to be presented
to the Supreme Court of Illinois by
this affiant and others as plaintiffs
in error. That the said Martin
B. Stouffer and Lutellus Lindsey
are now residents of the State of
Illinois and are beyond the
reach of process from any of
its Courts.

W. F. Davenport

Subscribed and sworn to
before me this 11th day of
December 1861. Amos G. Allen



69 245
Agnes & others
20

~~L. L. L.~~
Lindley & Co.

Filed Dec. 14. 1861
L. Leland Clerk

Saprun land

Mcint M. Ayres et al

April Term. Ottawa
1863

^{or}
Lutellus Lindley
et al

— " —

It is stipulated, that this case, may be
reinstated, in the docket & the case continued,
April 28. 1863.

G. A. Clifford
att'y for Deft. in Error

J. G. Frost
att'y for Plaintiff

245. 69
" -

Supreme Court
" -

Vincennes. Agnes & al
Peffer & son

"
Lutellus Lindley
" Dep't in error

Stripes. to reinst. L. Antimur.

Trileel April 29 1863
L. Leland M

Page 1

State of Illinois
Henry County

Henry County Circuit Court
April Special Term A D 1860

Before the Honorable John W. Howe Judge of the 6th Judicial
Circuit. At a Special Term of the Circuit Court begun and
holden at the Court House in Cambridge in said County on
Monday the 16 day of April in the year of our Lord One Thousand
Eight Hundred and sixty, being the Third Monday of said Month
In Chancery sitting

Present John W. Howe Judge
Thomas Wiley Jr Clerk
Pamel W. Snuff Sheriff

Be it remembered that on the 24th day of December A D 1859
came Martin Shallenberger as the Solicitor of the Complainant
and filed his Bill of Complaint and also his bond for costs, which
are in the words and figures following to wit.

State of Illinois
Henry County

Henry County Circuit Court
March Term A D 1860

To the Hon John W. Drury Judge of the 6th Judicial Circuit of the
State of Illinois. In Chancery sitting. Your Orators Sateless
Sincley and Martin B. Shaffer administrators of the Estate of
James Wade late of the County of Fayette and State of Pennsylvania
deceased. humbly complaining respectfully shew unto your Honor
that on the fifteenth day of April in the year of our Lord One
Thousand Eight Hundred and Fifty Six, Vincent M. Ayres
Thomas F. Davenport and Henry W. Wells of the County of Henry
and State of Illinois became and were admitted unto your
Orators at the said County of Henry and State of Illinois
in the sum of Five Thousand Dollars, and being so admitted

Page 2
in execution thereof the said Vincent M Ayres, Thomas F
Davenport and Henry W Wells on the day and year aforesaid
made and executed under their hands and then and there delivered
to your Orators two certain promissory Notes in writing each for
the sum of Two thousand five hundred dollars bearing date the
day and year aforesaid. one of said promissory notes becoming
due and payable on or before the first day of November AD
1856. and the other becoming due and payable on or before the
fifteenth day of April AD 1857 with interest thereon from the
first day of November AD 1856. And your Orators further shew
unto your honor that the said Vincent M Ayres Thomas F
Davenport and Henry W Wells on the fifteenth day of April
in the year of our Lord One thousand eight hundred and
fifty six to receive the payment of the principal and
interest mentioned in said promissory notes made and executed
under their hands and seals and delivered to the said Luteilus
Lindley and Martin B Stauffer Administrators of the Estate
of James Wade Deceased a Mortgage executed for the
payment of the said sum of Five Thousand Dollars and
interest mentioned in the said promissory notes according
to the tenors of the said notes by which said Mortgage
the said mortgage mortgaged to the said Administrators
as aforesaid (your orators) in fee certain Lands and Real Estate
situated in the County of Henry in the State of Illinois and
described in the said Mortgage as follows to wit. The North
East quarter of Section Number Seven (7) in Township Number
fifteen North of Range Number Three East of the fourth
principal meridian in the State of Illinois. which said Mortgage
was duly acknowledged and afterwards Recorded as a Mortgage
in the Office of the Recorder of Deeds of the County of
Henry in the State of Illinois on the Seventeenth day of April
in the year one thousand eight hundred and fifty six

Page 3

in Book Twenty Two of Deeds on page 273. as by said Mortgage and the certificates of acknowledgment and recording endorsed thereon, and ready to be produced in Court, and to which your Orator pray leave to refer, will more fully appear. And your Orator states that said Note which became due on the first day of November AD 1856 has been paid. That afterwards, to wit on the fifteenth day of April AD 1857 at Cambridge in said County of Henry, said Ayres Davenport and Wells made their agreement in writing with your Orator bearing date the day and year last aforesaid whereby they agreed and promised in consideration that your Orator would extend the time of payment of said Note which then and then became due and was due and payable for the space of one year thereafter that they would pay to your Orator interest on said last named Note at the rate of two per cent per annum from the date thereof, and thereupon your Orator did extend the time of payment of said promissory note for the space of one year and forbore to ask or demand payment thereof for the space of one year from said 15th day of April AD 1857 which said agreement is hereto attached marked (Exhibit A) and made part of this Bill, yet said last named Note remains wholly unpaid. And your Orator states that the sum of Two Thousand Five Hundred Dollars with interest from the fifteenth day of April One thousand eight hundred and fifty six at the rate of ten per cent per annum remains due and unpaid to your Orator on the said Note agreement and Mortgage and that no proceedings at law have been had to recover the debt secured by the said Note and Mortgage or any part thereof. And your Orator further states and believes that said premises described in the said Mortgage are meager and scant security for the said sum of Two Thousand Five hundred Dollars and interest mentioned in the said Note agreement

See Last Page

Page 4
and Mortgage. and now due your Orator. And your Orator
further shew unto your honor, that John Post, Benjamin
Derby, Abigail Conant, James M Payne, John W Nye
Michael Grant Daniel Solander, James I Hayward
Joseph Kirkpatrick, Simon Schock, Samuel P Jewett Henshaw
Thomas have or claim to have some interest in the said Mortgage
premises, or some part thereof, ^{as purchaser} Mortgage or otherwise which
interests if any have accrued subsequent to the time of the said
Mortgage of your Orator and are subject thereto. Your Orator
therefore asks the aid of this court in the premises, and that
the estate named John Post, Benjamin Derby, Abigail Conant
James M Payne, John W Nye, Michael Grant Daniel
Solander, James I Hayward, Joseph Kirkpatrick Simon
Schock, Samuel P Jewett Henshaw Thomas, Henry W Wells
Thomas J Davenport Vincent M Ayres defendants in this
suit may appear in the Court of Chancery and answer this
your Orators Bill according to the rules and practice of
said Court, without oath, their answers in oath being hereby
expressly waived, and that the usual decree may be made
for the sale of Mortgage premises aforesaid; and for the
payment of the amount due your Orator for principal
and interest in the said Note agreement and Mortgage and
the costs of suit, and that the said defendants and all persons
claiming under them subsequent to the commencement of
this suit, and all other persons although not parties to
this suit, who may have any liens by judgment or decree
upon the mortgage premises subsequent to the said Mortgage
of your Orator or any liens or claims thereon by or under
any such subsequent judgment or decree, either as purchaser
incumbrancers or otherwise may be barred and foreclosed of
all equity of redemption in said premises and that your
Orator may have such other and further relief as the nature

Page 5

of their case may require, and to this Court shall seem agreeable to equity and good conscience. And may it please your Honor to grant unto your Orator the People's Writ of Summons issuing out of and under the seal of this Honorable Court to be directed to the said defendants therein and thereby commanding them and each of them on a certain day and under a certain penalty to be therein inserted that they personally be and appear at the next term of the Circuit Court of said Henry County at the Court Room in Cambridge then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as shall seem agreeable to equity and good conscience. And your Orator will ever pray &c

M Shallenburger
Compt's Solicitor

Lutellus Linaley
Martin B Stauffer
Clerks of James Wade

Lutellus Linaley
Martin B Stauffer
Clerks of Estate of
James Wade Dec'd
vs

Vincent M Ayres
Thomas J. Davenport
Henry W Wells et al

Enclosed
Henry County Circuit Court
March Term A D 1860

I do hereby enter myself security for costs in this case and acknowledge myself bound to pay or cause to be paid all costs which may accrue on this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State dated the 21st day of December A D 1859

M Shallenburger

Page 6

And afterwards to wit, on the day and year last aforesaid
To wit the 24th day of December AD 1859 a summons
in Chancery issued out of the Office of the Clerk of said
Court, which is in the words and figures following to wit

State of Illinois
Henry County

The People of the State of Illinois to
the Sheriff of Henry County Greeting. We command
you to summon Vincent M Ayres Thomas F Danforth
and Henry W Wells John Joseph Kirkpatrick Simon
Schluck Samuel P Jewett, Nathaniel Thomas Post Benjamin
Derby Abner Conant James M Payne John Mc Nye
Michael Grant Daniel Solander James S Hayward
if to be found in your County personally to be and appear
before the Circuit Court of said County on the first day
of the next term thereof to be holden at the Court House
in Cambridge on the 1st Monday in the Month of March
next to answer to a bill of complaint filed in our said
Circuit Court on the Chancery side thereof against
them by Luteilus Sindley & Newton B Stauffer Administrators
of the Estate of James Wade deceased. And have you
there and there to wit, and make return therein in
what manner you execute the same

Witness Thomas Wiley Jr Clerk of our said Circuit Court
and the seal thereof at Cambridge this 24th day of December
in the year of our Lord One thousand Eight hundred
and 9

No seal

T Wiley Jr Clerk

On which summons appears the following endorsement

" I have served on the within named persons in the following manner by delivering a true copy of the annexed summons to John Pat. Benjamin Derby. Abigail Lembeck. James M. Payne. John H. Nye. Michael Grant James L. Hayward Joseph Kirkpatrick December the 29th AD 1859. and by leaving a true copy with Mrs Solander at the residence Daniel Solander she being a member of the same family a white person above the age of 15 years & informing her of the contents thereof Dec 29th 1859. I have also served on J M Ayres by leaving a true copy of the annexed summons at the residence of J M Ayres with Catherine Petersen she being a member of the same family a white person above the age of 15 years and informing her of the contents thereof this 29th day of December 1859 I have served the same on Henry W Wells by delivering to him a true copy of the annexed summons this 3rd day of January 1860 I have served the within on Thomas F Davenport by delivering to him a true copy of the annexed writ this 13th day of January 1860 I have also served on Houshai Thomas by delivering to him a true copy of the within or annexed summons this 13th day of January 1860. Being all the residence of my County I therefore return the within summons served as to the above named person and not served as to Simeon Schock & Samuel P Jewett they being non Residents I return them not found within my County
January 13th 1860

P. H. Sniff
Sheriff Henry County Ill

March Term 1860

State of Illinois
Henry County

The Hon J Wilson Drury Judge of the
Circuit Court of the State of Illinois having resigned
his Office as Judge of said Court, therefore all cases docketed
for the term ending herein are continued by law to the
next term of said Court

Attest Thomas Wiley Jr. Clerk
By W L Dabrymple Deputy

Public notice is hereby given that a Special Term of the Circuit
Court of the County of Henry in the State of Illinois will be
held in said County on Thursday the 16th day of April next
Commencing March 23rd 1860

Thomas Wiley Jr. Clerk

And afterwards to wit at the Special April Term of said Circuit
Court ^{APR 1860} and on the 5th day May the following proceedings were
had in said cause to wit

Sutellus Smiley et al }
vs } Indorse
Henry W Wells et al }

At this day comes the said complainants
by Shellenbarger their solicitor and the said Defendants by
Wells & Loburgier their solicitors and this cause coming on
to be heard, and comes the said defendants by their solicitors
and demur to said complainants Bill, which said demurrer
is in the words and figures following to wit

Page 9

State of Illinois
Henry County

Henry Circuit Court
Special April Term AD 1860

The Defendants Vincent M. Cyres, Thomas J. Davenport Henry
W. Wells and others defendants to the Bill of Complaint of
Martin B. Struffer and Luteilus Lindley Administrators Compl-
aintants - The said defendants by protestations each of them, and
not denying any of the matters and things in said Complaints
Bill of Complaint explained of to be true in the manner and
form as the same are therein stated set forth and alleged -
they and each of them say that they are advised by counsel
that there is no matter or thing in the said Bill of Complaint
entitled good and sufficient in law to call this defendant
in question before this Honorable Court, but that there is good
cause of demurrer thereto. Therefore these said Defendants
each of them say, that the said Complaints Bill in case
the allegations were true (which the said defendants in no case
admit) contains no matter in equity wherein the this Court
can grant any decree or give the Complaintants any relief
against the said defendants. Wherefore and for divers other
errors and uncertainties in said Bill appearing these Defendants
do demur in law thereto, and humbly demand the judgment
of this Court whether they shall be compelled to put in any
other or further answer to said Bill of Complaint, and
also prays to be dismissed with all reasonable costs in this
behalf must wrongfully sustained

Wells & Lobugier
Sols for Defs

Much demurrer is by the Court sustained, since in motion
of Complaintants leave is given to answer Bill, and the
defendants ruled to answer by the first day of June next

and this cause stands continued to the next term of this court

And afterwards to wit at the October Term AD 1860 of said Henry County Circuit Court and on the 25th day of said Month the following proceedings were had in said cause to wit

Lutellus Lindley
Martin B. Stauffer
Administrators of the
Estate of James Wade Dec^d
vs

Vincent M. Ayres
Thomas F. Davenport
Henry W. Wells et al

Indorsed

And now comes the said complainants by M. Schullenger their solicitor, and the said defendants being three times solemnly called came not but made default, and fail to file their answer herein. And It appearing to the Court that the said defendants Vincent M. Ayres Thomas F. Davenport, Henry W. Wells, John Post Benjamin Derby, Abigail Conant, James M. Payne John H. Nye, Michael Grant James S. Hayward, Newsham Thomas have been duly served with summons in this case more than ten days before the first day of the present term of this Court. It is therefore ordered adjudged and decreed by this Court that the said Complainants Bill be taken as confessed against the said defendants. This cause is therefore set down for hearing upon the said complainants Bill and Exhibits therewith filed, and the proofs to be offered. And it appearing to the Court that on the 18th day

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of April AD 1856 the said defendants Vincent M Ayres
Thomas F Dewnport and Henry W Wells were indebted
to the said complainants in the sum of Five Thousand Dollars
for the purchase money of the premises mentioned and described
in said Bill, and that for the purpose of securing the payment
of such purchase money to the said complainants, they made
executed and delivered to the said complainants two promissory
notes for Twenty Five hundred Dollars each of this description
date and effect as mentioned in said Bill and a Mortgage
upon said premises, for the purpose of securing the payment
of said notes according to their tenor and effect which was duly
acknowledged and recorded as stated in said bill. That one of said
notes which became due on the 1st day of November AD 1856
has been paid by the said defendants, that the other note is
wholly due and unpaid. That on the 15 day of April AD 1857
when said last mentioned note became due the defendants
Wells, Dewnport & Ayres for a good and valuable consideration
to them paid by complainants made their agreement in writing
to the complainants that they would pay interest on said last
mentioned note at the rate of two per cent interest per annum
from the date thereof in manner and form as is alleged in
said Bill, and that there is now due to the complainants on
said note Mortgage and agreement the sum of Three Thousand
one hundred and fifteen dollars and ninety seven cents. That
the other defendants who are served with process in this cause
claim to have some title or interest by bond, agreement possession
claim or otherwise derived or obtained from said defendants
Wells, Dewnport and Ayres in and to said premises, but that
all such interest title claim or possession all accrued and were
made subsequent to the making, executing delivery and
recording of the Mortgage mentioned in said Bill and are all
subject thereto, and in no respect affect or prejudice the rights

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of said Complainants under said Mortgage. And the Court being fully advised in the premises it is ~~therefore~~ ordered and adjudged and decreed by the Court, that the said defendants within the space of twenty days from the adjournment of the present term of this Court pay to said Complainants the said sum of money and lawful interest thereon, together with the costs of this Court, and that in default thereof the said premises to wit: The North East quarter of section numbered Seven in Township Number Fifteen North of Range Number three East of the fourth principal meridian in the State of Illinois, be by the Master in Chancery for said Henry County sold at Public Auction to the highest and best bidder for cash at the door of the Court House in Coahuila in said County, that said Master shall give such notice of the time and place of such sale as is now required to be given by Sheriff in cases of sales under execution; that he execute to the purchaser or purchasers a certificate of purchase in due form of law, that he pay out of the proceeds of such sale first the costs of this suit and the money due said Complainants and returning the surplus if any to said defendants and that he report his doings herein to the next term of this Court

J. H. Moore
Judge

And afterwards to wit at the March term of said Henry County Circuit Court and on the 5th day of March 1861 the following proceedings were had in said Cause to wit

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Lutellus Lindley
 Martin B Stauffer
 Adms of James Wade
 vs

Vincent M Ayres
 Thomas J Davenport
 Henry W Wells et als

Indorse

And now comes J S Winman Master
 in Chancery and makes his report herein. from which report
 it appears to the Court that the said Master in Chancery
 did on the 25 day of December AD 1860 at the Door of
 the Court House in Cambridge expose said premises described
 in the said Complainant's Bill. to sale at Public Vendue after
 having given due notice of the time and place of said sale
 as required by said decree. and that at said sale Lutellus
 Lindley and Martin B Stauffer administrators of James Wade
 bid for said premises the sum of Three Thousand two hundred
 and twenty six Dollars and twenty nine cents which was the
 highest and best bid therefor. and a certificate of purchase
 duly executed and returned to them for said premises. and
 that all the costs in this cause have been paid. It is
 therefore ordered by the Court that all the claims of said Master
 herein be and the same are hereby approved and ratified

J H Howe Judge

In consideration of the agreement of Messrs Linsley & Stauffer
 Administrators of James Wade to extend the time of payment
 on a note given to them by us for \$2500 dated April 15 1856
 we agree to pay 10 per cent interest on said note from the
 date thereof instead of from Nov 1st 1856. and we agree to
 pay ten per cent interest on the said amount for one year
 in advance from April 1857

Witness our hand April 15th 1857

Wm Ayres
 Thos J. Davenport
 Henry W Wells

Received April 15 1857 of Davenport Ayres and
 Wells Five hundred Dollars in full of the interest in
 advance and due on the within

Jacob W Rogers

State of Illinois
 County of Henry

I Amos Gould Clerk of the Circuit
 Court in and for said County in said State do hereby certify
 that the above and foregoing is a full true and perfect copy
 of the Record of all the proceedings had in said entire
 cause as appears from the Records in my Office

Witness Amos Gould Clerk of said Court and two seal
 thereof this 7th day of December A.D. 1861

Amos Gould Clerk
 By E S Bond Deputy



State of Illinois

Supreme Court Third Grand Division
At Ottawa April term 1862

Vincent M. Ayres

et al's plaintiffs in error

"

vs Henry County

Lutetus Lindley et al

administrators of the estate of

James Wade deceased defendants in error.

The said plaintiffs in error come and show to the Court. That the said judgment decree, record and proceeding are wholly informal, erroneous, and contrary to the law of the land, and ought of right to be annulled, set aside and wholly for nothing esteemed.

For the following among other reasons to-wit: That by the record and proceeding aforesaid it appears that the said writ issued out of the office of the clerk of the Circuit Court was issued without the seal of said Court and was therefore wholly void.

2^d. It appears by said record and proceeding that said writ was dated and issued on the 24th day of December One thousand Eight hundred and 9 and was returnable on the first Monday

in the month of March next thereafter
and said writ was not served on the
said defendants until nearly fifty
years thereafter and was therefore wholly
void at the time of service.

3^d Because it appears from said
record and proceedings that, the ~~de~~
demurrer of the said plaintiffs in
error was sustained to the said
bill of Complaint of the said defendants
in error, and it does not appear that
the said defendants in error ever
filed an amended bill, the said
plaintiffs in error were not in default,
and the judgment and decree entered against
them was contrary to the law of the
land.

4th Because by the record and proceedings
aforesaid it nowhere appears that any
evidence was offered of any indebtedness
of the said plaintiffs in error, and to the
said defendants in error. The judgment
was therefore contrary to the law of the
land.

5th Because by the record and proceedings
aforesaid and the bill of ~~the~~ complaint of the said
defendants in error, it nowhere appears
that the said plaintiffs in error were liable to pay
the said defendants in error any sum of money
whatever, and the said judgment and decree
was therefore contrary to the law of the land.

6th Because there is manifest error in the amount
decreed to be paid to said defendants in error
and the said decree is manifestly erroneous and
contrary to the law.

7 Because there was no bill of complaint
on file in the Court below. - The bill
which appears in the record having been
dismissed to and the decision sustained.
It was therefore error, ^{in the Court below} to render judgment
against the said plaintiffs in error,

H. N. Wells for plaintiffs

State of Illinois }
Supreme Court } set. Vacation of the
April Term 1842

Lutellus Lindley
Martin B. Steuffer
administrators of the
Estate of James Wade
deceased

At

Henry W. Wells
Vincent M. Ayres
Thomas F. Darlapat
et al

In Error

And now
come the said defendants in Error
by M. Shallenbeger their Solicitor
and say that there is no error
in the record and proceedings aforesaid
or in the making of the decree
aforesaid and pray that the justices
of said Supreme Court may proceed
to examine as well the record and
proceedings aforesaid, as the matter
aforesaid above assigned for Error, and
that the decree aforesaid in favor
of plaintiffs made may be in all things
affirmed &c

M. Shallenbeger
Solicitor for Defendants in Error

Henry Wells
Vincent Magnan
Moses F. Davenport
2

Julia Lindley
etal

Smith & Son

Given June 23. 1842

L. G. Dana
CH

#1 243
Vincat. M. Ayres 69
et al
Plaintiffs in Error
,

Antetler Lindley et al
Defendants in Error

Ernest W. Henry

Filed December 14, 1881
L. Leland Clerk

\$6.00 Dk. fee paid

~~\$5.00 Dk. fee paid~~