

Phillips Hoffmann -
Appellant.

by

Henry Borcher &
H. C. Talbot

Appellees -

Appeal from answer

8460

Cont'd on Page 510.

Order entered on Page 211 -
in Book "13"

Copy of final order - Proceeds distributed out 21. Apr. 62.

John J. Bothwell -
Appellant.

by

Richard Lekany
Appellee.

Appeal from delay -

65.00
10
\$65.00

Indorsement of 65.00

Order entered on Page 211 -
in Book "13"

Cont'd bill on Page 511

Authentic Copy of final order - Proceeds distributed out 25 Apr. 62.

Valentine Byson
Appellant

by

Mark Madden and
Isaac H. Jaggess -
Appellees -

8462

Appeal from Laurence

Order entered on Page 211 -
of Book "13"

Cont'd bill on Page 512.

Copy of final order - Proceeds distributed out 25 Apr. 62 -

8461

No. _____

Supreme Court of Illinois

Elizabeth J. McFarland et al

vs.

Emily J. Conlee et al

71641  7

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Page 1
Be it remembered that at a regular Term of the Circuit
Court of Washington County begun & holden at the Court
house in Nashville on the 2nd Monday of April AD 1866
There were present Silas Le Bryan Judge and presiding
of Perry Johnson States Attorney James W. Sawyer
Sheriff and John A. Vernon Clerk all officers of said
court. present & holding said court, The following orders were
made in the following cause to wit,

Emily J. Conlie & A. J. Conlie } Bill in Chancery to enforce Trust
vs } & for relief. And now April 9th
Elizabeth M. Farland & Wm. M. Farland } Come complainants per Hays & Hos-
mer their Attys & defendants etc. make it to answer by 1st Fri-
day. April 10 and now comes said defts by Durham
Atty & demur to said Compts Bill and the Court on considera-
tion sustains said demurrer and gives said Compts
leave to amend their Bill.

And said defts are ruled to answer by
1st Friday. April 12th leave to file a Cross Bill.
and this cause is set for hearing and is
continued

Heretofore to wit on the 29th day of March 1866 the
following Bill in Chancery was filed in said cause
Emily J. Conlie } In Washington Circuit
& Andrew J. Conlie } Court April Term 1866
vs } Bill in Chancery for
Elizabeth M. Farland } Relief -
& William M. Farland }

ES-11

Page 2 To the Honorable Silas T. Bryan, Judge of the
2nd Judicial Circuit in the State of Illinois
presiding & holding court in Washington County
in said Circuit. In Chancery sitting your
Orators Emily J. Leonic & Andrew Leonic her
husband humbly praying would most
respectfully represent & shew that in Cold-
well County State of Kentucky one Gilbert
S Hinds was appointed Guardian of your
Oratrix about the year 1855. she then being
a minor by the name of Emily J. Bledson
That said Gilbert S Hinds as Guardian
as aforesaid received into his hands as
Guardian at the time of his appointment
the sum of \$200.⁰⁰. That afterwards about
the year 1858 said Hinds removed to Washing-
ton County Illinois & purchased in Rich-
mond Illinois the following real Estate to wit- Lots
seven and eight (7 & 8) Block four (4) & Lots 2
Block 3 in Town addition to Rich-
mond Washington County Illinois & took a bond for a deed to the
same when paid for and went in & built on
said real estate a brick house, That said Hinds
expended & used in the purchase of said real
estate & building of said house the money he
had received as Guardian as aforesaid
& the interest accumulated thereon, in all three
hundred dollars. That said Hinds died

Page 2 intestate in said County of Washington Wm
H. Logan Administered upon his said Estate
That in the year 1860 Alexander Shipley
was appointed Guardian of your oratrix &
as such filed ~~that~~ allowed against the estate
of said Hinds on the 19th day of June 1860, \$233.78
in favor of your oratrix by the Probate Court
of said County of Washington the amount
found due your oratrix per said Hinds her
former Guardian. That said Hinds left at
his decease a widow named Elizabeth Hinds
That said Elizabeth Hinds after the death of
her husband paid \$20 to said Lowe the
balance due for said real estate & said Lowe
made a deed conveying to said Elizabeth said
real estate & took up the bond aforesaid That
afterwards said Elizabeth married & is now
the wife of Wm McFarland. That afterwards
in the year 1861 said Wm McFarland &
Elizabeth McFarland conveyed said
real estate to one Andrew Hooper & said Hooper
in consideration thereof & in exchange therefor
caused to be conveyed by one John Stephens to
said Elizabeth the following real estate to wit
Lot 11 in Block 14 in Shipley & Barber's addition
to Richview Washington County Illinois. That
said Elizabeth well knew before the death of her
husband said Gilbert S Hinds that he had
invested the money of your oratrix in

Page 3 intestate in said County of Washington W^m
H. Logan Administered upon his said Estate
That in the year 1860 Alexander Shipley
was appointed Guardian of your oratrix &
as such filed ~~that~~ allowed against the estate
of said Hinds on the 19th day of June 1860 \$233.78
in favor of your oratrix by the Probate Court
of said County of Washington the amount
found due your Oratrix per said Hinds her
former Guardian. That said Hinds left at
his decease a widow named Elizabeth Hinds
That said Elizabeth Hinds after the death of
her husband paid \$20 to said Love the
balance due for said real estate & said Love
made a deed conveying to said Elizabeth said
real estate & took up the bond aforesaid That
afterwards said Elizabeth married & is now
the wife of W^m McFarland. That afterwards
in the year 1861 said W^m McFarland &
Elizabeth J McFarland conveyed said
real estate to one Andrew Hooper & said Hooper
in consideration thereof & in exchange therefor
caused to be conveyed by one John Stephens to
said Elizabeth the following real estate to wit
Lot 11 in Block 14 in Shipley & Barber's addition
to Richview Washington County Illinois. That
said Elizabeth well knew before the death of her
husband said Gilbert S Hinds that he had
invested the money of your Oratrix in

in the purchase of said real estate & improve-
ment thereof as aforesaid & since the death
of said Hinds & at the time & after taking
said deed per said Love in her own name
as aforesaid & whilst a widow promised your
oratrix to pay your oratrix what was due
your oratrix per said Hinds as her share
drawn but has up to the present time failed
& neglected to do so although frequently requested
to do so. That said Hinds estate was & is intestate
& your oratrix has never received any thing of
her allowance aforesaid against said estate
that on the day of 186 as your orator &
oratrix are informed said Elizabeth McFarland
conveyed by deed said real estate by her per
said Hooper to her said Husband Wm. McF.
Farland for no valuable consideration that
said Wm. McF. Farland well has known even
since he married said Elizabeth that your
oratrix has an equitable claim upon said
real estate on account of the investment of
her money therein as aforesaid. That on the
22nd day of August 1864 your oratrix &
your orator Andrew & Corbie were married in
said County of Washington and that your
oratrix was 18 years of age 21st April,
1863. Wherefore as your oratrix & orator are
without an adequate remedy at Law they pray

that the people's most gracious writ of subpoena
may issue requesting said W^m & Elizabeth
McFarland who are made defendants to this
bill to appear and answer this bill not under
oath their oath's being expressly waived & that
an account may be taken to ascertain the
amount due youratrix from her former
guardians Gilbert S Hinds & interest in the
real estate as aforesaid & that the amounts
due be declared a lien upon said real
estate conveyed by said papers to said
defendant Elizabeth McFarland and
that said defendants be ordered to pay the same
to youratrix by a day certain to be fixed
by your Honor & in default of such payment
that real estate be sold by the master &
youratrix paid out of the proceeds of
such sale the amount due youratrix
and make such other & further order as seemeth just
in the premises & thus will ever pray &c.

May 2nd Thomas,

Solicitors, Pro Comp^{ts}.

On the 29th day of March A D 1866 the following
summons was issued in said cause in said Court.
State of Illinois vs The People of the State of Illinois
Washington County To the Sheriff of said county Greeting:
We command you to summon Elizabeth McFarland &
Wm McFarland if to be found in your county to 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 Nashville on the 2^d Monday in the month of April next to answer to a Bill of Complaint filed in our said Court on the Chancery side thereof against them by Lemuel J. Bonlee and Andrew J. Bonlee to subject certain real estate to payment of a claim & for relief & further to do and receive whatever the said Court may then and there consider in this behalf and hereof make due return to our said Court as the law directs.

Circuit Court } Witness John A. Bernor Clerk of our said
Seal of Washington } Circuit Court and the Judicial Seal
Co. Illinois } hereof at Nashville this 29th day of March
50 cent Int. rev } A.D. 1866,
Stamp cancelled } John A. Bernor, Clerk

On the back of said summons are the following indorsements,

1st. "I appoint John W. Perrin Special Bailiff & authorize him as such to serve this writ. This March 29th 1866. J. H. Sawyer Sheriff of Washington Co., Illinois"

2^d. Served the within by reading and delivering a copy of the same to the within named Elizabeth M^{rs} Farland and William M^r Farland, March 30th 1866

J. H. Sawyer Sheriff
By John W. Perrin Special Bailiff

On the 9th day of April 1866 the following Demurrer was filed in said cause,

Page 7 Elizabeth McFarland & } To the April Term of the Wash
 William McFarland } ington County Circuit A.D.
 ats } 1866 In Chancery.
 Emily J. Conlee & } And the said defendants
 Andrew J. Conlee } by their Attorney J. M. Durham
 comes and defends the wrong and injury when &c
 and said that the complainants Bill and the matters
 and things therein contained in the manner and
 form therein set forth are not sufficient in law
 for the said complainant to have or maintain
 their aforesaid action thereof against them the said
 defendants and they the said defendants are not in law
 bound to answer the same and this they are ready to
 verify, wherefore they pray judgment &c
 J. M. Durham
 Solicitor for Complt.

On the 12th day of April 1866 the following answer
 was filed in said cause.

Emily J. Conlee } In the Washington County
 Et Al. Vs } Circuit Court To the April Term
 Elizabeth Conlee } thereof A.D. 1866
 Bill in Chancery

The answer of Defendants
 To the Hon. Silas S. Bryan Judge &c &c
 The joint answer of Elizabeth McFarland &
 William McFarland who reserving & saving
 all manner of errors & defects in complain-
 ants Bill of complaint for answer

says - That the allegation in Complainant's Bill That Gilbert S Hinds dec. was in his lifetime in the State of Kentucky appointed Guardian of Complainant Emily J Condie is wholly untrue & ~~the~~ defendant states the truth to be that the said Hinds never was at any place or time appointed Guardian of the said Complainant -

That the allegation in Complainant's Bill that two hundred dollars was put into the hands of the said Gilbert S Hinds dec. as the Guardian of the said Complainant is wholly untrue but defendant states the truth to be that defendant

Elizabeth McFarland & the said Gilbert Hinds was in his lifetime about the year A.D. 1852 intermarried & the said Complainant

Emily J Condie was a minor of six or seven years old & was left in the care of your respondent Elizabeth McFarland & her said husband & the sum of about \$150, dollars was put into their hands for the purpose to pay them for the care & nurture & education of the said Complainant

210 & that while so living with them she was ^{not} to render any service of value she lived with them & was fed clothed & educated for about the term of seven years & the above sum was all the

recompenses that was ever paid to them
 That is true a claim was probated against
 the estate of the said Hinds by Shipley as
 the Guardian of the said complainant-
 (Emily J) but as the exact amount they are
 unable to state but state truth to be that
 the above claim is unjust & unequitable &
 ought not in law nor in equity to be allow-
 ed against the said Estate. That the alle-
 gation in Complainant's Bill that the sum
 of three hundred dollars of the purchase money
 or thereabouts for the real estate in complainant's
 Bill was paid by Gilbert S Hinds of & with
 the money of Emily J Bentie. His word is
 utterly & totally untrue & misstatement of
 facts & a misde of language & the said Respon-
 dent state the truth to be that every part of
 the purchase money for the same was paid
 by respondent Elizabeth McFarland out of
 her own private & individual money &
 that too after a right to complete the purchase
 contract made by the said Gilbert S Hinds
 dec - was forfeited & long after his death
 That the allegation that Respondent con-
 veyed the said Real Estate to one Andrew
 Hooper is true but that part of the allegation
 that Respondent conveyed to him with-
 out consideration is untrue & that part of the
 same allegation that the said Hooper

reconveyed to respondents is also untrue
Page 10 + Respondents state the truth to be
that they conveyed the said real estate
to the said Hooper for a valuable consideration
+ in good faith + that he lives on the same
+ should have been made a party to this
Bill. Your respondents deny that
either of them ever had any knowledge
of any part of the money paid into the hands
of the said Hoops for the purpose mentioned
in this answer or any other purpose was paid
by the said Gilbert & Hurdle dec for the
said real estate or that the same was
improved by the said Hurdle with the
money of the said Emily & Corrie
Your respondents further show that
one William Logan is the administra-
tor of the said Gilbert & Hurdle dec +
renders this. Your respondents
further state the truth to be that de-
fendant Elizabeth McFarland was before she
was intermarried with defendant William
McFarland the widow at law on part of the
said Gilbert & Hurdle dec + as such widow
was entitled her share in the estate of
the said Gilbert & Hurdle deceased as
such widow + being so entitled the
claim of said Emily & Corrie is
unjust + should not be allowed for the

reason above shown, That the allegation in the complainants Bill that the estate of Gilbert-Hinds dec - is insolvent - is positively untrue. And for further plea in the respondents say that complainants Bill so far as the allegation of the same relates to the money paid for the real estate in question is not showing how much the improvements were made on the same & not show how much was paid for the said real estate are insufficient in law & that respondents are not bound by the laws of the land to answer the same & all of which respondents are ready to verify wherefore they pray judgement whether they are bound to answer the same & having the full answer the said respondents ask to be discharged with their reason cost -

J M Durham
Solicitor for Defendants

On the 3^d day of May 1866 the following replication was filed in said cause

Emily J Leoulee et al	}	In Washington
vs		Circuit Court April
Elizabeth M ^c Farland et al	}	Term A D 1866.
		Replication.

Now comes Complainants saving & reserving &c

and says by way of Replication that the answer of said defendants is evasive uncertain and untrue that the matters and things set forth in Complainants Bill are certain and true all of which they are ready to verify and humbly pray as in and by said Bill they have already prayed

Yeay & Hosmer
Sols's

On the 4th day of September 1866 the following was filed in said cause,

W^m M Logan Admr of Estate of G. S. Heinds dec'd Dr to Emily of Bledsoe by her Guardian Alex P Shipley,

1st Aug 1857	To money had & rec'd	\$ 300.00
" " "	To money had & rec'd as Guardian of said Emily	\$ 300.00
" " "	To ballance due from said Heinds as Guardian of Emily	\$ 300.00
" " "	To ballance due on Settlement	\$ 300.00

On the back cover of is the following Indorsement
 Emily of Bledsoe, Acpt }
 vs } Filed for allowance
 Estate of G S Heinds } April 16. 1866. S. C. Page, Clk.

On the 4th day of September 1866 the following was filed in said cause,

I do hereby certify that Emily of Bledsoe by her Guardian A. P. Shipley was allowed \$ 233.78

P 13
against estate of G S Hinds dec'd April 16th 1860
by Co. Court of Washington Co, Ills for Probate
Business as appears by the records of said Court
Witness my hand and seal of said Court this May 3^d
1866, Washington County, Y B Needles
Court Illinois
Seal
clerk

On the 4th day of September 1866, the following was
filed in said cause.

State of Kentucky Caldwell
County I James L Weller Clerk
of the Caldwell County Court hereby
certify that G. S. Hinds as guardian of
Emily J Bledsoe did on the 3^d day of
May 1856 make a settlement as such
guardian stating that he had received
the sum of two hundred and eighty six
dollars & 18 cents (\$286.18) and that he
had paid out of said sum of \$286.18
the sum of ninety seven dollars and
seventeen cents (\$97.17) leaving still a bal-
ance in his hands as per settlement
on the 3^d May 1856, the sum of one hun-
dred and eighty nine dollars and one
cent \$189.01 all of which appears upon the
records of said Court In testimony whereof
I have hereunto set my hand & affixed my
my seal at office in Princeton this 16th day of
May 1866. James L Weller Clerk
By W E Mitcheson S. C.

8 14

State of Kentucky }
Baldwell County }

I, J. N. Turner Sole and Presiding Judge
of the Baldwin County Court do hereby
certify that on the 11th day of May 1860 James
K. Weller was clerk of said Court & that W. E.
Mitchelson was Deputy clerk of said Court
under said Weller and that the signature to
the foregoing certificate is genuine and
the attestation of said certificate in due
form of law, Given under my hand
this 17th day of July 1860

J. N. Turner Jfccc

On the 5th day of September 1860 the following
depositions were filed in said Cause

State of Illinois }
Washington County }

Emily J. Conlie Et al } In the Washington Circuit
vs } Court

Elizabeth McFarland Et al } Bill in Chancery
Depositions in the above entitled Cause taken
before Henry J. Sumner a Justice of the Peace by
Consent of the Parties without notice July
9th 1860 at the office of said Justice in
Nashville Washington County Ill.

1 folio

Present Hay and Hosmer Sols for Plaintiff
James M. Durham Esq solr for defendant
Depositions for Plt's 1

C 15

The Plaintiff introduced George Lowe who being duly sworn according to law deposes as follows

"I am acquainted with the parties in this suit. I know Gilbert S Hinds in his life time

I sold to ^{said} Hinds in his lifetime lots 7 & 8 in block number four and lot number two in block number 3 in George Lowe's addition to Richview in Washington County Illinois. I sold these lots in 1857 to said Hinds on credit; gave a bond for a deed & took his notes for two hundred dollars more or less deed to be made when notes were paid before the notes were paid said Hinds died. I was paid for the lots but how I do not recollect. Mrs Hinds came and paid me the money and I made her a deed March 12, 1858 and I took up the bond at that time. My impression is that Mr Hinds did not pay me anything. but I am not positive as to that. Mrs McFarland the deft in this case was the widow of said Hinds,

2 folio

3 folio

There was a brick house built on these lots by Mr Hinds in his life time, said house was built on lot no-8. Mr Hinds was living in the house when he died. do not know that he fenced the lots. I should think the house built by said Hinds would cost between five hundred and eight hundred dollars or thereabouts at that time as things were then. I do not know that Mr Hinds in his

4th f

life had money from Mrs Leonic as
guardian, never heard anything said
about it. (Cross examined by Mr Durham
Ex in chf resumed) Mr W^m M Logan took the
bond at the time the notes were paid &
I have not seen it since. My impression
is that I sold the property spoken about
one year before I made the deed above
mentioned

Subscribed & sworn George Lowe
to before me this 9th day
of July 1866

Henry Sumner J.P.

5th f

The Plff next introduced Andrew Hooper who
being sworn deposes as follows, "I know the
parties to this suit did not know Gilbert
& Hinds dec'd. I bought the lots spoken of by
George Lowe in his deposition from the widow
Hinds now Mrs McFurland left in this case,
and had conveyed to her in payment thereof
lot no eleven in Black motts in Shipleys & Bakers
addition to Richards in Washington County &
State of Illinois. The Deft's live on said
last mentioned property at the present. (Cross
exam by Mr Durham) I am the owner of
the property conveyed by George Lowe to
Mrs Hinds. I am now in occupation of
the same () knew nothing of any claim

P 15
in favor of anyone on said property when I
purchased it. I bought this property in
January 1861, & made the deed to Mrs Ames
at that date, the property conveyed by me
to the deft-Elizabeth M^c Furland is worth
about \$800,

Andrew C Hooper,
William M Phillips introduced and sworn
for for P^tf, deposes as follows: 'I am acq-
ainted with the parties ~~Ames~~ Ames, knew
Gilbert H Steins in his life time. Mrs
Steins before she married Deft M^c Furland
and at the time she sent for me to admin-
ister on Steins Estate, it being his request
as she said among other things in
reference to the estate told me that Emily
Bledsoe now Plaintiff in this suit, had in
M^r Steins hands four hundred dollars
in money, he being guardian of the said
Emily which had been invested in the
house we were then in being the one
a brick house in which said Gilbert
Steins died, and that the lots were
not all paid for, that there was still
due George Lowe as I understood from
her twenty dollars. And Mrs Steins
wanted to know of me if she was to pay
George Lowe the balance on the bond and
take a deed for said lots if it would be

good, I told her I thought it would. She then inquired if she could get pay for raising Emily Bledsoe and if so would it not offset this four hundred dollars above alluded to, I told her I thought it would offset. She remarked that Emily would have to be paid if it took the house to pay it. Her Heins told me Perkins was appointed guardian of the Plt in Kentucky. (Cross Ex by Mr Durham) All I know about it I learned from Mrs Heins. I do not remember of Mr Heins telling me about it in his life time (Direct ex resumed) Mr Heins had the house built that he died in.

William H Phillips

Subscribed & sworn

to before me this

2nd day of July 1868

He J Hammer J P.

Wm M Logan introduced and sworn for the Plt deposes as follows. I knew the parties knew Gilbert H Heins in his life time. Plt's name was Emily Bledsoe before her marriage. I was the administrator of the estate of Gilbert H Heins decd. said Heins was guardian of Emily Bledsoe as I was informed by Mrs Heins while a widow. Mrs M^r Garland told me while the widow of said

Heines that Emily Bladsois folks left
with said Heines four hundred dollars
to pay the expenses of raising her &
that said Heines had resigned or given
up his guardianship before they came
to this state, there was one George Lowe
for lots ~~two~~ hundred dollars I think
Mrs Heines took up the notes before &
administered on the estate. she told me
the above conversation after I took out
letters of administration on Mr Heines
estate & about the time ~~they~~ was prosec-
uting her claim against the estate, (cross
ex by Mr Durham) Mrs McFarland paid
the notes to George Lowe with her own
effects. I think there were four notes of
fifty dollars each when she took them
up. Mr Heines his two brothers & Mrs
McFarlands brother built a brick a
house on the lots bought of George Lowe
I do not know that the bond was
forfeited before Gilbert Heines died
but the time of pay ment of the notes
had expired before the notes was paid
George Lowe offered to sell the property
to any one who would pay the notes. I
knew ~~Heines~~ at the time the house was
built. I do not know how much was
expended in building the house I suppose

there could not have been much money. I think the work and material was paid principally by labor, don't know that Gilbert Heines went in debt for material to the stores. I guess Ashbury Rice claimed from \$25. to \$35. for lumber, to the best of my recollection & that it was allowed against the estate. I think it was material for improving the lots, can not say that the house was finished when Mr Heines died, Mrs M^r Garland and my self were present in the probate court and resisted the claim of Emily Leontie the P^lff and brought in off set against it Mrs M^r Garland claimed that the money was all used up in raising the P^lff. She did not tell me the money was all used up untill the claim was probated, she thought she ought to be paid more than the four hundred dollars () I done the best I could for a d^r to resist the claim of Emily Bledsoe there was between two & three hundred dollars allowed the Plaintiff after allowing off sets for her support. Mr Heines estate was insolvent.

William H Logan
 Subscribed & sworn to
 before me this 9th day of July 1866,
 H. J. Summerfield.

Q 21 Alexander P Shipley sworn and introduced
by Pltff deposed as follows, "I know the parties
knew Gilbert Hinds in his lifetime I was
Guardian of the Pltff Emily during the last
part of her minority, I think Pltff is about
twenty years old, Mrs Ames requested me
to be appointed Guardian for Pltff, if I
recollect she stated to me there was about
\$170.00 in Hinds hands as Guardian of Pltff
I do not remember of Mrs Hinds telling me
what was done with the money, she told
me that amount should be paid Pltff if it
had to come out of her dower, this conver-
sation was about the time I was appointed
Guardian of Pltff which I think was in 1859
she told me in present conversations
before the allowance of Pltff's claim that it
should be paid, I sent to Kentucky and got
a statement from the court as to the amount
owing by said Hinds to Pltff as Guardian
There was due Pltff from said Hinds according
to the statement above referred to on the 3rd day
of May 1856 \$189.01 there was a claim presented
by Mrs Hinds for the maintenance of Pltff
when Pltff litigated her claim in the Probate
court, Mrs Hinds claimed at that time
\$96. for maintaining Pltff but it was not
allowed by the court, she did not claim
anything for support when she said

the \$100. should be paid if it took her down.
 Mr. Hines resided in the County near
 as far previous to his death to the best of
 my recollection (Lesso Ex) Mrs Hines I
 think was not present when the claim
 was probated.

subscribed and sworn to A P Shipley
 before me this 8th day of
 July 1866

Henry T Sumner J P
 State of Illinois }
 Washington County }

I Henry T Sumner Justice of the
 Peace do hereby certify that the foregoing are
 true and correct depositions of the persons
 therein named that said depositions were
 taken at my office in Nashville on the 8th
 day of July 1866 in presence of the Attys of
 the Parties & that each deponent subscribed
 to his deposition & that the depositions were
 duly sworn according to law

Given under my hand and seal
 this 8th day of July 1866

Henry T Sumner J P.

On the 5th day of September 1866. the following
 depositions were filed in said cause.

Emely J. Conkle Et Al	3	In Washington Cir
vs		
Elizabeth McFarland Et al	3	civil Court Sept Term

1866. Depositions taken by consent of Parties before the undersigned Justice of the Peace. Present P E Hosmer for Plff of M Durham for Defs. Taken before Sept 3^d 1866

George Y Hoke introduced by Plff testified as follows, I am acquainted with the Parties

I made and took acknowledgment of a deed from Elizabeth M^{rs} Garland to her husband William M^{rs} Garland of the property in dispute, who is one of the defs in this case, She was laying in bed at the time she executed the deed and was scarcely able to sign her name. There was no consideration paid in my presence, I heard nothing of a consideration. It was supposed that Mrs M^{rs} Garland would not recover at the time she made the deed: that was the general opinion

Geo Y Hoke.

Fengal M^{rs} Hinds introduced by Plff testified as follows, I know Mrs M^{rs} Garland. Her first husband G S Hinds was my brother. I was at my brothers house about two weeks before he died in Richview in this County. I had a conversation with my brother at that time as he did not expect he would live, concerning his business he told me there was ~~about~~ little over three hundred dollars of Emely J Bledsoes funds in his hands which he had invested in building the brick house in which he was then living. I understood he had this money as guardian of Emely J Bledsoe. She is now Emely J Bledsoe the complainant in this

action. He said as soon as he got well he would have another guardian appointed and pay the money over to him, he did not claim anything for her support but said she should have every dollar with interest; I understood that he had made a portion of it over two years & the balance not so long.

Y. H. Hinds.

State of Illinois }
Washington County }

I Henry Y Sumner @ Justice of the Peace in and for said county do hereby certify that the within Depositions were taken before me on the 3^d day of September 1866 in conformity to law that the testimony was reduced to writing sworn to and subscribed in my presence

Given under my hand & seal this 3^d day of Sept 1866
H. Y Sumner. J.P.

On the 7th day of September 1866 the following copy of a deed from Elizabeth McFarland to Wm McFarland, was filed in said cause.

This Indenture made this 14th day of August in the year of our Lord One Thousand eight hundred and sixty Five between Elizabeth A McFarland of the first part, and William McFarland of the second part, Witnesseth that the said party of the first part for and in consideration of Love & affectionate Regard for my husband and fifty dollars in hand paid by the said party of the

Second part. the receipt whereof is hereby acknowledged
 ha Granted, Bargained and Sold, and by these
 presents do Grant Bargain & Sell unto said party
 of the second part. his heirs and assigns, all the
 following described lot, piece, or parcel of land
 situated in Richview in the County of Washington
 and State of Illinois to wit - Lot Eleven (11) Block
 fourteen (14) in Shipley & Barber's addition to the
 town of Richview Ills. Together with all and
 singular the hereditaments and appurtenances
 thereunto belonging or in anywise appertaining
 and the reversion and reversions, remainder and
 remainders, rents, issues and profits thereof; And
 all the estate, right, title, interest, claim and
 demand whatsoever, of the said party of the first
 part either in law or in equity of, in and to the
 above bargained premises, with the hereditaments
 and appurtenances; To have and to hold the
 said Premises above bargained and described
 with the appurtenances unto the said party of
 the second part his heirs and assigns Forever
 And the said Elizabeth A McFarland part 2 of the
 first part hereby expressly waives, release and
 relinquish unto the said party of the second part
 his heirs, executors, administrators and assigns
 all right, title, claims interest and benefit whatever
 in and to the above described premises, and each
 and every part thereof. And the said Elizabeth A
 McFarland party of the first part for her heirs,

26 executors and administrators do covenant grant bargain and agree to and with the said party of the second part-his heirs and assigns that at the time of the enrolling and delivery of these presents are well seized of the premises above conveyed as of a good, sure perfect absolute and indefeasible estate of inheritance at law and in fee simple <sup>and has good right, full power and law-
ful authority</sup> ~~to and with the said party of the~~ full authority to grant bargain sell and convey the same in manner and form aforesaid and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes assessments and incumbrances of what kind or nature soever and the above bargain premises in the quiet and peaceable possession of the said party of the second part-his heirs and assigns against all, and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend in testimony whereof the said party of the first part has hereunto set her hand and seal the day and year first above written Signed sealed and delivered in presence of E. A. McFarland (seal)
G. T. Hake

State of Illinois } ss J. Geo W. Hoke
Washington County } in and for said coun-
ty in the state aforesaid do hereby certify that

27

Elizabeth A McFarland who is personally known to me as the same person whose name is subscribed to the annexed Deed appeared before me this day in person and acknowledged that she signed sealed and delivered the said instrument in writing as her free and voluntary act for the uses and purposes therein set forth

{ Seal }

Given under my hand and official Seal this 14th day of August A D 1866
Geo Y Hooper, Notary Public

On the day of 1866 the following was filed in said cause:

State of Illinois vs William L Logan being by Washington County one in due form of law sworn states on his oath that @ certain title bond given by George Lowe to Gilbert S Hinds for lots in a certain deposition of himself and also said Lowe mentioned in their Depositions taken in case of Emily Boulle et al vs Elizabeth McFarland et al in Chancery was @ bond under seal in the usual form, Lowe agreeing to convey the fee simple in the premises in said depositions mentioned in a specified time on the payment of certain promissory notes therein mentioned & that time was expired before Mrs Hinds paid the money for the said lots to Lowe, for the payment of the same by the terms of the Bond & Lowe was offering to convey to her or any other person who

2 9 would pay him the amount for which he sold
the said lots.

Silas L Bryon Judge

At the September Term 1866 the following order was
made in said cause by said court.

Emely of Boullee &

Ad Boullee

vs

Elizabeth M^{rs} Garland &

W^m M^{rs} Garland

} Bill in Chancery to enforce
Trust & for Relief

And now September 4th some
complainants per Key & Hoerner their Attys & defend
ants per Durham their Atty and the Demurrer filed
with answer to amended Bill is overruled and
leave is given to open depositions & now September 5th
cause is submitted & heard on Bill answer Replication
depositions and evidence and it is considered by the
court and ordered and decreed that prayer of Bill
be granted and that complainants have and recov
er from defendants the amount stated in Bill to
have been received by former Guardian of Emely of
Boullee, Gilbert S Helms to wit \$200.00 with six
per cent interest thereon from January 1st 1857 to this
date; in all \$316.00 & costs of this suit and if the
same is not paid in 90 days from this date the
said premises to wit lot eleven in Block fourteen
in Shipley and Barbers addition to the old town

99
of Richview in the county of Washington State of Illinois
be sold by the Master in Chancery at the Court house
door in said county for cash in hand after giving four
weeks notice of such sale by posting up notices thereof
in four of the most public places in said county &
by causing a similar notice to be published in the Nash-
ville Journal 4 weeks prior to day of sale stating time
place and terms of sale and description of the premises
to be sold and execute deed to purchaser and out of
proceeds pay Compts and of decree with six per
cent interest from this date to day of sale & the costs
of this suit and the balance pay to said defendants
Defts pray an Appeal to Supreme Court which is
allowed upon their filing Appeal Bond in 30 days
in the sum of two hundred dollars the bond to be
approved by Clerk of this Court &c.

On the 20th day of October the following Appeal
Bond was filed and by the Clerk of said Court ap-
proved in said cause.

Know all men by these presents that we William
McFarland and Elizabeth McFarland and Wm H
are held and firmly bound unto Emily J
Boulce and Andrew J Boulce in the penal sum
of two hundred dollars for the payment of which
to be well and truly made we bind ourselves
our heirs executors and administrators jointly
severally and firmly. Witness our hands and seals
the day of September A.D. 1866.

The condition of the above obligation is such that whereas at the March term of the Washington County Circuit Court A.D. 1866 Emily J. Louee and Andrew J. Louee filed their Bill of Complaint against the above bounden Elizabeth M^{rs} Farland and William M^r Farland on the chancery side thereof praying that certain real estate in the said bill mentioned be subjected to the payment of a demand of the said Emily J. Louee against Hilber & Thinds deceased and alleging the said Thinds had used the said money in the purchase and improvements now on said real estate in the said Bill of Complaint mentioned belonging to the said complainant Emily J. Louee as her guardian And also in the matter in the Bill issue was had at the last term of the Washington County Circuit Court and decree of Court in favor of said complainants and against the said defendants and from which said decree the said defendants prayed an Appeal to the Supreme Court of the State of Illinois.

Now if the said defendants shall prosecute their said Appeal with effect and shall in all things abide and perform to the decree of the said Court if modified changed or given against them according to the order of the said Court thereof therein then this bond to be void otherwise to remain in full force & virtue.

50 cts Ent Rec Stamps
Cancelled

E A M^{rs} Farland (Seal)
Wm M^r Farland (Seal)
Wm H. Hoar (Seal)

3 2

On the back of which said bond is the following
 Filed and Approved October 2nd 1866
 of A. Verror Clerk.

State of Illinois 3 ss
 Washington County 3

I John A. Verror Clerk of the
 Circuit Court in and for said county hereby
 certify that the foregoing is a true copy of the
 Bill, Summons indorsement of service demurrer, An-
 swer, Replication, Depositions, copy of Deed, certificate
 of allowance of claim by Co. Clk of said county, certifi-
 cate of litch of Caldwell County, Ky. Account on file in
 said cause between Emily J. Blodroe & estate of L. S.
 Hinds, & Statements made under oath & reduced to writing
 per Judge presiding Silas Le Bryan, of Wm. S. Geogon all
 orders & decrees of Court & Appeal Bond being
 the papers & proceedings in the case of Emily J.
 Boulle & Andrew J. Boulle vs Elizabeth M^{rs}
 Garland and Wm. M^{rs} Garland in Chancery
 tried at the September term of Circuit Court in
 & for Washington County, A.D. 1866, as appears
 from files of papers & records in my office.

plate copy of Record in said cause Witness my hand & seal of said
 Court this 26th day of November
 1866 at my office in Nashville
 John A. Verror Clerk

In the Supreme Court,
First Grand Division State of Illinois.

November term at Mt Vernon D. 1867.

Elizabeth McFarland,
and William McFarland,

Plaintiffs in Error,
vs.

Emily J. Bonlee,
and Andrew Bonlee,

Defendants in error.
Assignment of Errors.

And now the said Elizabeth
McFarland, and William McFarland
plaintiffs in error, comes and says,
that in the record and proceedings
aforesaid, there is manifest error in
this, to wit: 1. That the judgments of the
Circuit Court is erroneous.

2 That the judgment of the circuit
Court is contrary to equity.

3 That the judgment of the circuit
court is ~~contrary~~ against the weight
of evidence.

4 That the Circuit Court erred in
ordering sale of lot.

By reason whereof the said plaintiffs
pray that said judgments be reversed.

By J. M. Durham,

Attorney for Plaintiffs.

Yomida of Error

Hay & Hosmer

Atty for Sept in Error

The writ of error will be made a supersedeas
on plaintiffs in error executing a bond with
William A. Howe their security in the penal
sum of five hundred and thirty two dollars
conditioned awaiting to Court - Carle
Decr. 14. 1866

Wm. A. Howe
Jury. Comrs.

17 - 24

Elizabeth McFarland
& William McFarland
vs

Emily J. Corlies
& Andrew J. Corlies

Record

Filed December 19, 1866

Wm Johnson Clk
By C. A. Johnson Depy

17-18

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

ELIZABETH McFARLAND and WILLIAM }
McEARLAND, Plaintiffs in Error, }
vs. }
EMILY J. CONLEE and ANDREW J. CON- }
LEE Defendants in Error. }

PLAINTIFFS BRIEF.

To support a lien or implied trust two things must concur, namely, privity of estate and privity of notice. The legal or equitable estate of Hinds must subsist to predicate upon, either in his heir, alienee with notice, or his volunteer, and without any of these concurring facts it must fail. (A truism and needs no reasoning or authorities.) Butler's Coke Lit. 290, sec. 5.

Plaintiffs in error are not the heirs, alienees or volunteers of Hinds. They hold of Lowe for value and without fraud.

Hinds died without any legal or equitable estate in the land. He did not pay any part of the consideration money within the life of the bond, and for which the lots were sold.

No specific performance can be had where the consideration money has not been paid and the land has been sold for that purpose. Boon vs. Missouri Iron Co., 17 How. U. S. C. C. 340.

Specific performance is not a matter of right in either party, but a matter of discretion in the court. Story's Eq., 742.

If the money is not paid when due some satisfactory excuse must be shown. Doyet *et al.* vs. Taines, 4 Scam.

Part performance is entitled to great weight. 6 Wheaton R., 525.

Could Hinds improve himself into an estate in Lowe's lots? and if so, where is the authority to be found?

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There was no purchase of land with trust money in this case.

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Besides, the slightest mistake may totally alter the effect of it. It ought to stand wholly uncontradicted. Lench vs Lench, 10 Versy 518.

The admissions in this case are weakened if not totally destroyed by the testimony of Logan, showing the real facts to be different, as may be done. Ray vs Bell, 17 Ill., 444.

The testimony ought to be so clear and explicit as to leave scarce a

doubt. Farnger vs Ramsey, 2 Md., 365.

The oral testimony unsupported not sufficient. Loyd vs Lynch, 28 Penn. Stats.

The testimony of one witness not sufficient. James vs Fulcord, 5 Texas, 23. Lench vs Lench, 10 Ver., 518.

The case may be divided into several points :

1. Is there sufficient evidence to support an implied trust?
2. And if so, will it be a charge or an equitable ownership *protanto*?
3. Will oral evidence be competent to sustain a lien or charge?
4. And if so, will the evidence of one witness be sufficient?
5. And if so, will it be sufficient though the real facts are proved to be varient from the admissions?
6. Can there be a lien or charge when there has been no contract or express trust respecting the land in question?
7. What estate did Hinds have in the lot?
8. Could Hinds or his heirs at law enforce a specific performance?
9. Had Lowe never conveyed would there be any cause of action against him?
10. Did Mrs. Hinds hold by devotion or purchase?
11. Does she succeed to the rights of Lowe or her husband?
12. Admitting the defendant to have equity is not error to liken a trustee in equity without fraud, to a trustee in fact guilty of fraud and charge interest?

Mrs. Hinds holds the legal estate, and paid \$200 purchase money, which is held in the highest estimation in equity. Yet the rights of plaintiff are postponed by the decree, which is contrary in the legal and equitable rights of the parties, and right reason with which equity should accord.

"A right cannot die," for of such high estimation is right in the eye of the law, as the law preserved it from death and destruction; trodden down it may be, but never trodden out.—*Coke*.

The decree trades out right. Shall law be more just than equity?

J. M. DURHAM,

Att'y for Pl'ff in Error.

Elizabeth McFarland
& William McFarland
vs

Emily J Conlee
Hector Conlee

Plaintiffs vs
Defendants

17

Filed June 5th 1867
Attest
J. J. Johnston, Clerk

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Exxon.

McFarland et al } In the Supreme
vs } Court of Illinois
Conlee et al } Submitted at the June
at Mt Vernon 1867

Written argument by Plf in error by
special leave

I argue, that there is
only testimony of one witness that
tends according to the rules of evidence
to show an investment with trust
funds by decedent Hinds.

This I argue because,
proof must sustain the allegations,
namely, that Hinds did invest trust
re which can only be done, namely
first, by proving what he really did
best second by proving what he said
he had done (poorest); and the latter
only was done in this case; and
that too eight years after his death.

The true limits of the testimony
of Philleps. The investment of
trust funds, if any was made, was
not such a fact as Mrs Hinds
could certainly know the truth.

It was not her act; whether such

a fact did or did not exist.

She could rightfully change her notions and expressions every moment. It was only her notion respecting the act of another.

What she said to Phillpps was not said when she ^{was} owner of the Estate, and not therefore, within the rule of admission against interest.

It is necessary for the defendants in error to establish two facts, namely, ^{1st} The allegation of trust investment ^{2nd} Notice thereof to the Plaintiffs in Error.

The testimony of Phillpps tends to establish priority of notice, and only that, nothing more, which I think is "as plain as a mark can be made".

The case must stand or fall on the testimony of Hinds.

He testified to a near oral declaration, made eight years ago. Judge Redfield in his addition to Greenleafs evidence Vol. 1. Page 200. Says that. Expects

ience has shown, that no
reliance can be placed on such
testimony. The Supreme Court of
this State has never to my
knowledge expressly decided, that
an oral declaration in proof by
a single witness, is not sufficient
to establish a result in trust
; but so far as I have been able
to examine, it is most clearly
the result of the cases. And the
Supreme Courts of this State of
Texas, Indiana, Maryland & Pennsylvania
have. See your written note to
Plfs in error brief.

The Courts of Texas and Indiana
hold, that there must be testimony
of two good witnesses, and such
seems to be the result of the
highest Courts in Chancery in
New York and England. See
your written notice to Plfs in
Errors brief Burr Vs Buxford,
and Lench Vs Lench cited.

And this near oral
declaration, is disproved by
Logan, showing the real facts to
have been different, and by the
record from Kentucky, which shows

that it could not wholly rest but true. And it further to be noted, that the witnesses all disagree, as in the case Ruxford Vs. Burr, and Chancellor Kent therefore, refused relief. But ~~more~~ & most, this Court can rightfully exercise its own opinion, and what is here said, is to direct, not controul.

What is above said is on the hypothesis, that the Estate of Hinds still subsist to feed the trust but this I deny.

It is one of the old fundamental principles of equity, that the use (trust) is fed by the legal estate and the priority of estates and priority of notice must continue to keep it a live, and when either fails, it elapses, dies out.

Hinds never had a legal Estate and his admissions were accordingly weakened. The trust in this case cannot be fed by a legal Estate, and if at all by ~~an~~ Equity upon an Equity, and that too, not upon a clear equity, but as most questionable Equity.

ience has shown, that no reliance can be placed on such testimony. The Supreme Court of this State has never to my knowledge expressly decided, that an oral declaration in proof by a single witness, is not sufficient to establish a result in trust, but so far as I have been able to examine, it is most clearly the result of the cases. And the Supreme Courts of this State of Texas, Indiana, Maryland & Pennsylvania have. See your written note to Plfs in error brief.

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The Equity of a specific performance
of right against ~~Law~~ by the Heirs of
Hinds of whom his widow is not one

And ~~a~~ specific performance
is never a right. Always a discretion
in the Court. & Rights are things
that cannot be denied. A result
in trust is an absolute title to
the fee in Equity.

Again both priority of estate and
priority of notice fails as to McFarland
husband, and the deed from his wife
to him is good in Equity I presume.

The evidence shows ~~the claimant~~ to
have been probated by lawful guardian
and it is submitted if the act of the
guardian was not the act of the ward
and an election to rely on the
judgement.

Other points made in
brief.

Most respectfully sub-
mitted

J. M. Durham
Sol for Plfs in &c

Judge, order me, said in a little
correction & mention of the fact.

17- 24

Prosser

McFarland et al

Comtee et al
Subscribed as
Miss Dem of the
Superior Court
at Milwaukee Wis
1867.

William Angerman
Gy. Phelps & Co

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

ELIZABETH McFARLAND and WILLIAM }
McFARLAND, Plaintiffs in Error, }
vs. }
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Plaintiffs in error are not the heirs, alienees or volunteers of Hinds. They hold of Lowe for value and without fraud.

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Could Hinds improve himself into an estate in Lowe's lots? and if so, where is the authority to be found?

If any trust funds were used, it was a waste, not an investment.

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J. M. DURHAM,

Att'y for Plff in Error.

T. W. DEBETHA

[illegible]

John, June 5. 1867
of Solomon ill

Elizabeth M^{rs} Poulson
William M^{rs} Poulson
no
Emily Conlee
Sarah Poulson
Mary Poulson

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

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McEARLAND, Plaintiffs in Error,
vs.
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Ashley, Mo. Dec 15th 1846

Wm Johnson Esq

Enclosed

please find Record Abstract &
Bond on which I want issued a
Writ of Error & Supersedeas—

You will see that the supersedeas
has been granted—

Very respectfully

J. M. Durham

Also please find \$11.50 fees

J. M. Durham

Pl Please mail the writ

to Wm Clayton

Sheriff

Richwood Mo

J. M. Durham

17

Letter

Wills December 19, 1866
Wash Johnson City
By E. W. Johnson City

STATE OF ILLINOIS, }
SUPREME COURT, } ss.
First Grand Division. }

The People of the State of Illinois,
To the Sheriff of Washington County.

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Washington county, before the Judge thereof between

Erniey J. Louee & Andrew J. Louee

plaintiffs and

Elizabeth M. Sealant & William M. Sealant

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

as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at MOUNT VERNON, 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

Erniey J. Louee & Andrew J. Louee

that they be and appear before the Justices of our said Supreme Court; at the next term of said Court, to be holden at MOUNT VERNON, in said State, on the first Tuesday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said E. J. & Defendants A. J. Louee notice together with this writ.

WITNESS, the Hon. P. H. Walker Chief

Justice of the Supreme Court and the seal thereof, at
MOUNT VERNON, this nineteenth day of

December in the year of our
Lord one thousand eight hundred and sixty six

Noah Johnston
Clerk of the Supreme Court.
By C. H. Johnson - Deputy

I have duly executed the within writ by
redding the same to the within named Emily S.
Conlee & Andrew S Conlee. December 27th 1866

W. H. Clayton
Sheriff Washington
County Illinois

Sheriff Fees
Serving \$150
Mileage 320
return 10
4.80

17
SUPREME COURT.

FIRST GRAND DIVISION.

Elizabeth M. Garland
William M. Garland
PLAINTIFFS IN ERROR.

vs.
Emily S. Conlee &
Andrew S. Conlee
DEFENDANTS IN ERROR.

Scire Facias.

FILED.

December 19 1866

Dec 19 1866
Application Clerk

The writ of Error was read and filed in this Court
in made a Supersedeas, and as such, is to be stayed
by all concerned - Dec 19, 1866
Attest John W. Clark
By C. M. Johnson, deputy

IN THE SUPREME COURT.

State of Illinois---First Grand Division.

JUNE TERM, A. D. 1867.

ELIZABETH McFARLAND, *et al.*,
Pl'tff in Error.

vs.

EMILY J. CONLEE, *et al.*, Def't
in Error.

Def'ts in Error.

DEFENDANT'S BRIEF.

Pl'tff in error, Elizabeth McFarland, inherited and succeeded to whatever interest Hinds had in said estate and as such heir became possessed of said property, and for a nominal sum with deceased's interest, obtained a deed and does not hold as an innocent purchaser.

From the evidence of Philips obtained from said pl'tff in error it appears that said Hinds did pay for lot all but about \$20, (Towes evidence on that point is not positive,) and also invested \$400 of def't in error's, (Emily J. Conlee's) money, in said house, hence Hinds did have an equitable and legal interest in said property and if def't afterwards purchased said property it was with the full knowledge of said Hind's interest and can not claim to be an innocent purchaser.

If A invests the money of B in building a house on his, A's land without the consent of B, he A, and those claiming under him are accountable and must answer to B for his said money. 2 Kent, Pge 361. *Side page 362, 3, 4, 5*

Whatever alteration of form, any property has undergone the owner may seize it in its new shape and be entitled to ownership of it in its new state of improvement if he can prove the identity of the original money. 2 Kent, page 362. *Side page 362, 3, 4, 5*

Money converted or invested in property may be possessed and recovered as long as it can be identified. 19 Ill., Brush vs. Blanchard, page 37.

An abuse of trust can confer no rights on the party abusing it or those claiming in privity with him. 19 Ill., Brush vs. Blanchard, page 37.

HAY & HOSMER,

Att'ys for Def'ts in Error.

11
Elizabeth J. McFarland
depos in error

B
Emily Howland
depos in error
depos in error
Banc

846

Filed June 3 B. 1867
Wm. Johnston

IN THE SUPREME COURT

State of Illinois,
SUPREME COURT,
First Grand Division.

} SS

The People of the State of Illinois,

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

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Washington county, before the Judge thereof between Emily J. Louder & Andrew J. Louder

plaintiffs and

Elizabeth M. Garland & William M. Garland

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

as we are informed by their complaint, and we being willing that error, if any there be, should be corrected 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 our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the First Tuesday in November 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. P. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this nineteenth day of November in the year of our Lord one thousand eight hundred and sixty six

Book Johnston

Clerk of the Supreme Court.

By E. A. Johnston Deputy

SUPREME COURT.

First Grand Division.

Elizabeth Th. McFarland
William McFarland

Plaintiffs in Error,

vs.
City of New Orleans
Andréas J. Rouleau
Defendants in Error.

WRIT OF ERROR.

FILED.

December 19, 1866
Arch. Johnson clk
By S. McJohnson Reply

This writ of Error is made a Supersedeas
and is to be stayed accordingly
December 19, 1866
Arch. Johnson clk
By S. McJohnson Reply

Kennedy
9
Pleas Ch. J. This was a bill in Chancery
in the Washington Circuit Court, exhibited by
Emily J. Coulee and Andrew J. Coulee her
husband against Elizabeth M. Faland
and William M. Faland her husband, to subject
certain real estate in the town of Rich view in
that County, held in the name of William M.
Faland, to the claim of complainants, on
the allegation that the same was purchased
and improved, ^{in part,} with money belonging to ~~the~~ the
complainant, which defendant Elizabeth's first
husband, ~~James~~ ^{Silbert} J. Hinds, whilst guardian of
complainant Emily, invested in such real
estate -

The defendants answered, ~~the~~ denying
the most material allegations of the bill, and
on replication filed and proofs taken, the
Court ~~advised~~ granted the prayer of the bill and
found that hundred and fifteen dollars
~~there~~ had been received by Silbert J. Hinds whilst
guardian of complainant Emily, and decreed
if the same was not paid in ninety days
the premises should be sold at public
vendue to raise the money.

The cause is brought here ^{with errors} by ~~appeal~~
and various errors are assigned.

In the first place, it no where ap=
pear from the decree, that this money
received by Hinds was ~~trust money~~ ^{trust money}

interested by Hinds in these premises, and
 if not, the complainant Emily, had no
 equitable rights therein. The account shows
 simply, that Hinds as her guardian had
 received, of complainant's money, the
 amount for said fee, which is far from
 sufficient to clothe her with a presumable
 equity, to the exclusion of all others in
 the premises in question. The testimony goes
 to show most clearly, that although Hinds in
 his life time contracted for these premises, on
 for other premises for which there were received in
 exchange, and ~~which~~ created a ~~bad~~ mort-
 gage house ~~thereon~~ before his death, yet he
 had made no payment on the lots and ~~was~~
 his widow, now Elizabeth McFarland, paid
 the purchase money therefor out of her own
 funds, and took the deed therefor in her
 own name, he Hinds having only a little
 bond for the premises which had become
 forfeited and ~~there~~ Lowe the holder
 was offering to sell the lots to any one who
 would pay the purchase money, being two
 hundred dollars, which was paid by
~~Elizabeth~~ his widow who afterwards intermarried
 with William McFarland, having before that
 exchanged the premises bought of Lowe
 with one Shopley for other premises, which this
 bill seeks to subject to the payment of this

claim, and which complainant had conveyed
by a paper deed to her husband William
McFarland on the 14th of August 1865

Hall
But admitting this money was
vested by Acts in these premises, it is
very apparent from the testimony the
money of defendant Elizabeth was also,
and she has the legal title. Her equity
is equal to that of complainant, and
she has the legal title, therefore, it seems
~~improper~~ just that defendant should
have the preference, and right to relieve
the premises from this claim of Complain-
ant by paying the amount due to her
Equity. Should defendant decline to
do so, if then, if the property is not
susceptible of division, it should be
ordered to be sold, and the money
advanced by defendant Elizabeth
to procure the legal title, with interest,
be first paid to her. The claim of
defendant Equity should then be paid
with interest, and the surplus, if any
paid over to Elizabeth McFarland
the defendant. A reference ought to be had
to the Master to ascertain the ~~correct~~
amounts of interest due on each claim,
stating that of Elizabeth McFarland as two
hundred dollars or paid to Lane, in 1868 and

then paid receive proof, as the record fails
to show it. The claim of dependent
Emily will be stated at \$316, and interest
computed from the date of the decree.

~~Reversed by the Circuit Court is~~
~~Reversed and the case remanded~~

The finding of the Court of the
amount due Emily, was doubtless based
on the testimony of Fingoe Hinds the brother
of Gilbert Hinds the guardian, and we
have been much impressed by that testimony.
He states his brother told him in his sickness
and when he did not expect to live that there
was about three hundred dollars of Emily's
money ^{in the} in the house, in which he was then
living - ~~He said~~ He said as soon as he
got well he would have another guardian
appointed and pay the money over
to him - he claimed nothing for the
support of Emily, but said she should
have every dollar with interest.

The decree of the Circuit Court is
reversed, and the case remanded
for further proceedings consistent with
this opinion.

17 - 24

W. F. Talbot et al.

or

Charles et al

—

opinion by

Reese Ch. J.

P. R.

R. R.

R. 7. 42. 20

State of Illinois
Washington County

William McFarland a
resident of Richview Illinois being by me
duly sworn according to Law State on
his oath that he is worth \$1000.⁰⁰/₁₀₀ of
personal and real property and worth
the sum of \$1000.⁰⁰/₁₀₀ more than all
liabilities that William H House
Surety on bond in certain cause
wherein Elizabeth McFarland and himself
are plaintiffs and Emily Gleason and
Andrew Gleason are defendants in a
suit of Exar and Superedeas applied
for in the Supreme Court 1st Grand Division,
State of Illinois for the November term of said
Court at Mt Vernon 1866 and that the
said House is worth the sum of
\$1000.⁰⁰/₁₀₀ personal and real
property and worth the sum of
\$1000.⁰⁰/₁₀₀ above all liabilities
as he is creditably informed and
believes & he wholly true & exemptions
by law included.

Wm McFarland
Subscribed and sworn to before me this
11th day of December A.D. 1866
In witness whereof I have set my hand
and official seal as Notary Public for the
said county and state Geo J. H. H.
Notary Public



Elizabeth McHard
William McHard
Emily J. Gardner
Andrew Gardner
Qualification of
Subpoena Bond
Affidavit of
William McHard
Miss McHard

Filed December 19, 1860
Book Johnson & Co
By Esq Johnson & Co

State of Illinois
Washington County
Jesse McHard
born May 20, 1830
by marriage born of Lawrence McHard
on his oath that he is well acquainted
with William McHard under name
and that he is well acquainted with
Jesse McHard is a friend and
believes him and that he believes
him to be the last that a person above
all likelihood of him in connection
so he has written this certificate
is not returned
Jesse McHard

Elizabeth McHard
born May 20, 1830
by marriage born of Lawrence McHard
on his oath that he is well acquainted
with William McHard under name
and that he is well acquainted with
Jesse McHard is a friend and
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him to be the last that a person above
all likelihood of him in connection
so he has written this certificate
is not returned
Jesse McHard

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

ELIZABETH McFARLAND and WILLIAM }
McEARLAND, Plaintiffs in Error, }
vs. }
EMILY J. CONLEE and ANDREW J. CON- }
LEE, Defendants in Error. }

PLAINTIFF'S ABSTRACT.

1 This was a Bill in Chancery for relief in the Washington County Cir-
cuit Court, filed for the April term, 1866, charging: That in Caldwell
1 county, Kentucky, 1855, one Gilbert S. Hinds was appointed guardian of
complainant, Emily J. Bledsoe, and as such received \$200. That in 1857
he moved to Illinois, and purchased in Richview lots 7 and 8 in block 4,
2 and lot 2 block 3, Lowe's addition, of George Lowe, and took bond for
3 deed, and built house on lots and used trust money of ward to pay for lots
and house.

3 That Hinds died and Wm. M. Logan was appointed administrator and
that his estate was insolvent. That Alexander Shipley was appointed
guardian of said ward and probated claim of \$233.78 for the money afore-
said, June 19, 1860. That Hinds left widow, who paid Lowe balance due
of \$20, and took deed in her own name for said lots from Lowe. That his
4 said widow, Elizabeth, married McFarland and they conveyed said lots to
Hooper in exchange for lot 11, block 14, S. & B's. addition to Richview,
and that she conveyed the last mentioned lot to her husband August, 1865.
That defendants had notice of all the above facts. That ward Bledsoe
5 became of age April, 1865, and married Andrew J. Conlee. Bill asks that
the last mentioned lot be sold in satisfaction of the money received by
ward Hinds.

7.8 9 Answer denies that any trust money was used in the purchase of lots,
or for building.

COMPLAINANTS' EVIDENCE.

12 Allegations of amount probated by Shipley proved.

13 Found due and settled by guardian Hinds May 18, 1856, \$189.01, in
Caldwell county, Ky., by certificate of record.

14 Witness Lowe states a sale of lots to Hinds, 1857. That he gave him
bond for deed on payment of notes. That after Hinds death and notes
became due, his widow paid him for the lots, \$200, and he conveyed them
to her March 12, 1858. That Hinds built brick house on the lot worth
\$400 or \$500.

16 Witness Hooper states a transfer of lots as stated in bill.

16 Witness Phillips states that after Hinds died Mrs. Hinds wanted him
17 to administer on estate of her husband, and said that her husband had used
\$400 of wards money in building house and paying for lots, and that lots
was all paid for but \$20, and that he advised that she could pay the \$20,
and take deed and that it would be good.

23 Witness Hinds states that about two weeks before his brother's death
24 he had a conversation with him and that he stated that over \$300 of ward's
money was in house.

Witness Hope stated that in August, 1865, Mrs. McFarland was ex-

23 peeted to die and deceded to her husband lot 11, block 14 S. & B's. addition
to Richview. Consideration expressed in deed \$50 and affection. That
he saw no money paid.

21 Witness Shipley states an admission of Mrs. Hinds, \$170 due ward from
her husband. Nothing was said about investment.

16 Witness Logan states that he was administrator; that estate was in-
solvent; that he, for Mrs. Hinds, paid Lowe the entire consideration
money for lots, \$200. It was paid with her own funds. That note was
due, and that Lowe was offering to convey lots to any person who paid
him the amount for which he sold them to Hinds. That Mrs. Hinds told
him that her husband had had \$400 of ward's money while in Kentucky,
but had expended for ward in Kentucky.

27 *Cross Examined.*—That Lowe gave Hinds a bond under seal in the usual
form agreeing to convey fee-simple to lots in a time specified, on the pay-
ment of notes therein mentioned, four in number, and that the time speci-
fied for the payment of the same was expired before Mrs. Hinds paid
Lowe for the lots, and that Lowe was offering to convey lots to any person
who would pay him the amount for which he sold lots to Hinds. That
there could not have been much money expended in building the house.
That the material were principally paid for by labor and an account of
\$25 was probated. That Hinds, his two brothers and brother-in-law built
the house.

30 Decree grants the relief and orders lot 11 block 14, S. & B's. addition
to Richview sold, if \$200 and \$116 interest is not paid in 90 days.

J. M. DURHAM, Attorney for Pl'ffs in Error.

Elizabeth McFarland
Wm McFarland

vs

Emily Conlee

Andrew Conlee

17

Sept. 1881

Filed June 1st 1881

Noah Johnston Esq

Know all men by these Presents That we
Elizabeth McFarland William McFarland
and William H House are held and
firmly bound unto Emily J Coulee
and Andrew J Coulee in the penal
sum of six hundred and thirty two
dollars lawful money for the payment
of which well and truly to be made we
do jointly severally and firmly bind
ourselves our heirs executors and
administrators by these Presents.

Witness our hands and seals this 2th
day of November A.D. 1866.

The condition of the above obligation
is such; That whereas the above named Emily
J Coulee and Andrew J Coulee filed their
Bill of Complaint in Chancery in the Washington
County Circuit Court for the April term
thereof A.D. 1866 for relief against the above
bounden Elizabeth McFarland and Elizabeth
William McFarland and whereas also that the
said Complaint was heard on their Bill of
Complaint finally at the September term said
Court of said year and among other
things it was ordered and adjudged by the
said Court on final decree that there was
the sum of \$316. due the said Emily J.
Coulee from one Gilbert H Birds
deceased as her guardian and that

Lot eleven in Block fourteen of Shipley and
Barbours addition to the town of Nicholas
Washington County Illinois be sold to satisfy
the same if not paid within ninety days
together with cost of suit and six percents interest
thereon and on the said Record and
Proceedings found in the said cause the said
Elizabeth McFarland and William McFarland
believe there is manifest error and are about
to apply for a Supersedeas in the said cause
and to prosecute a writ of Error to the
November term of the Supreme Court of Illinois,
First Grand Division at Mount Vernon &c. D.
1867.

Now if the said Elizabeth McFarland
and William McFarland shall we and truly
pay or cause to be paid to the said Emily Houlce
and Andrew Houlce the judgements cost
and interest in case the judgements in the said
cause is affirmed and also all damages
occasioned by the suing out of such writ of
Error then this obligation is void
otherwise to remain in full force and
effect

Elizabeth McFarland *my*
William McFarland *my*
William H. Harker *my*

17
 Elizabeth McHard
 William McHard
 Esq
 City of London
 & Treasury of London
 L. per d. Bond

Filed December 19, 1866
 at New York
 By E. A. Johnston Clerk

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

ELIZABETH McFARLAND and WILLIAM }
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vs. }
EMILY J. CONLEE and ANDREW J. CON- }
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guardian of said ward and probated claim of \$233,78 for the money afore-
said, June 19, 1860. That Hinds left widow, who paid Lowe balance due
of \$20, and took deed in her own name for said lots from Lowe. That his
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J. M. DURHAM, Attorney for Plffs in Error.

Elizabeth McFarland
Wm McFarland

As
Emily Cleaveland
Andrew Cleaveland

17
Sept. 1864

Filed June 4. 1864

Wm. Johnson Clk.