

No. 13904

# Supreme Court of Illinois

Goodell

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vs.

<sup>A</sup>  
Tackberry.

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Goodell  
vs  
Tackaberry

Points for Plaintiff in error, and Application  
for Supersedeas.

This suit should have been brought in  
the name of the Plaintiff's Wards; The Land leased belonged  
to the Wards of the Plaintiff, and was made by him  
as their Guardian, and should therefore have been  
brought in their names. Moore vs Davis 11 Illinois Rep  
25 and Bowles vs McAllen 16 Illinois Rep. 30. and Longstreet  
vs Tilton: 10 Tex. (N.J) Rep. 38 are all in point.

Moreover by the express provision of the Statute the  
Guardian can only lease the Real Estate of the Ward  
upon such Terms as the County Court shall direct  
, Purple Statute 595.; and this lease not being by the  
direction of the Court is void, and a recovery in the  
name of the Guardian is no bar to a suit by the  
wards for the use and occupation. The Court will  
also see that the suit is for the use and occupation  
of the land that was shown to belong to the Wards.  
Certainly the Guardian cannot maintain a  
suit in his own name for the use and occupation  
of the Wards Land

Roberts & Suland  
for Plaintiff in error

L. O. Goodell

vs.

M. Tackabury

Points for Plff in error

3

We neglected to send this  
with the Record. Please  
hand it to Judge Eaton  
immediately - R. S.

State of Illinois 3<sup>rd</sup> Grand Division  
Supreme Court 2<sup>nd</sup> April Term A.D. 1861.

Middletown Tackabury  
Guardian of David G.  
Bailey & basdine Bailey  
Minor Heirs of David  
Bailey deceased  
vs  
Lewis O. Goodell

Declaration

This was an action of  
assumpsit for the use and occupation, and the  
privilege of cutting and packing and putting up  
upon and over the SE part of the SE 1/4 of Section  
Twenty seven Town Twenty five for the Range five West,  
and also the usual Money Counts

The trial was by the Court without a jury.

The following was all the evidence

Middletown Tackabury  
vs  
Lewis O. Goodell

Be it Remembered that

Pages 5 & 6.

upon the trial of this cause the plaintiff called  
Daniel M. Bailey as a witness, who being duly  
sworn, said that he knew the parties, that

Defendant Goodell in the Winter of 1860 & 1861:  
agreed with Plaintiff to pay Plaintiff as Guardian  
of David G. Bailey and Caroline Bailey for the  
privilege of getting ice off the land described in  
Plaintiff's declaration, and allowing his boats upon  
the, one Hundred and Seventy five dollars, and  
that said defendant did use and occupy said  
Land for that purpose, and that Plaintiff put  
him in possession of the same said defendant  
agreed that he would pay said Plaintiff one  
Hundred and Seventy five dollars for the use and  
occupation as above stated one Half by April 1<sup>st</sup>  
1861, and the Balance when he sold his ice, which  
he sold before the Commencement of this Suit  
said Contract was made by said Tackabury as the  
Guardian of David G. Bailey and Caroline Bailey  
minor Heirs of David Bailey deceased, said  
Tackabury was then and is now their Guardian  
and said David G. Bailey and Caroline Bailey, minor  
Heirs of David Bailey deceased are the owners of the  
land described in the declaration the foregoing was  
all the evidence given in the cause - Thereupon the  
Defendant moved to dismiss said cause because  
the action should have been brought in the name of  
David G. Bailey and Caroline by said Plaintiff  
as their Guardian which motion the Court  
overruled and rendered judgment in favor  
of Plaintiff against defendant for one  
Hundred and Seventy five dollars, to the overriding

of which motion and the rendering of which  
judgment the defendant at the time expected

Robert, Ireland  
attys for plaintiff

Goodell

1911

Locke

Abstract

know all men by these presents that  
we Lewis O'Grady, Henry Myers  
and Stanley J. Dawson are held  
and firmly bound unto Middleton  
Tarkenton in the full sum of  
Four hundred dollars lawful  
money for the payment of which  
well and truly to be made and  
performed we bind ourselves, our  
heirs, executors and administrators  
jointly severally and firmly by these  
presents. given under our hands  
and seals this                      day of  
A.D. 1861.

The condition of this obligation is  
such that whereas the above named  
Middleton Tarkenton did on the  
17<sup>th</sup> day of June A.D. 1861 before the  
circuit Court of Tazewell County Illinois  
receive a judgment against the above  
bounden Lewis O'Grady for the sum  
of one hundred and seventy five  
dollars damages and costs of suit  
and whereas said O'Grady has also  
on the day of the date hereof obtained  
from the clerk of the Supreme  
Court of the State of Illinois a  
writ of Error directed to the  
clerk of the circuit Court of

said Sangamon County Illinois to  
bring the record and proceedings  
of said judgment before the  
judges of the Supreme Court  
for the Third Grand Division  
and whereas said writ of  
Error has also by the order  
of one of the judges of said  
Supreme Court been made  
a Supersedeas, Now if the said  
Lewis Goodell shall well and  
truly pay said judgment costs  
interest and damages in case said  
judgment shall be affirmed and  
also duly and effectually prosecute  
his said writ of Error then this  
bond to be void otherwise to be  
in full force

L. Goodell Seal  
W. Myers Seal  
S. P. Dawson Seal  
By W. Myers

The Clerk of the Supreme Court  
for the 3<sup>d</sup> Grand Division  
~~in~~ of the Supreme Court  
of the State of Illinois is hereby  
authorized to fill up ~~the~~  
the blanks in this bond with  
date to correspond with the day  
of issuing supersedeas  
Given Aug. 24 1861

L. O. Goodell

Myers & Dawson

To the Clerk of the Supreme Court, Ottawa Ills  
I think Myself v. Gust Dawson, or  
perhaps good for \$400. dollars as sum  
for L. O. Goodell, in any case of appeal or  
writ of error or may have taken or may  
take from the Townsill Circuit Court.

B. A. Dawson

Office Defendant in  
appeal or error

Paid Charge Box 55.

P 500

45

Supd



Wrote to [unclear]

Oct 4 1861

13904

I believe

ever

514

Thomas

Phillips