

No. **12078**

Supreme Court of Illinois

Hines.

vs.

Knightlinger.

71641  7

60.
Kingsley Hines
vs.
Jacob Knightlinger

60

Repaired
12078

1853

Kingsley Hoimes
vs
Jacob Knightlinger

Trespass on the Case

Precept for Summons Filed in the above
Entitled Cause August-30th 1852 in the words and figures
following to wit. State of Illinois
County of Knox

Knox Circuit Court
September Term A.D. 1852

Kingsley Hoimes
vs

Jacob Knightlinger Clerk of said Court please issue
a summons in said cause in a plea of trespass on the
case damages Five hundred dollars

Manning & Lander
Attys for plf

And afterwards to wit on the 30th day of August A.D. 1852
a summons was filed in said cause in the words
and figures following to wit

State of Illinois

Knox County vs The people of the State of Illinois
To the Sheriff of Knox County Greeting: We command
you to summon Jacob Knightlinger if he may be
found in your County to appear before the Circuit Court
of said County of Knox at the next term thereof to be holden
at the Court house in Knoxville on the Monday
in the month of September next to answer unto Kingsley
Hoimes in a Plea of Trespass on the Case to his damages in
the sum of Five hundred dollars as he saith and
make return of this writ with an endorsement of the time
and manner of serving the same on or before the
first day of the term of said Court to be held as aforesaid

L. H. Hall

Witness T. Judson Hale Clerk of our said
Court and the seal thereof at Knoxville this thirtieth
day of August A.D. 1852
T. Judson Hale Clerk

And afterwards to wit on the 7th day of September 1852 the said
Summons was returned into Court with the following
return thereon (to wit) I Certify that I have this ^{third} day of
September A.D. 1852 served the within Summons on the within
named Jacob Knightlinger by reading the same to him in
his hearing & presence

Samuel W Brown Sheriff

By Peter Burtnett Deputy

And now on the 3rd day of September 1853 The said Plaintiff
by Messrs Manning & ~~Land~~ ^{Land} came & entered and filed the
said Plaintiff's Declaration herein in the words & figures
following to wit-

State of Illinois

County of Knox

September Term A.D. 1852

Jacob Knightlinger the defendant in this suit was summoned
to answer Kingsley Wimes the plaintiff in this suit in a plea
of Trispart on the case and thereupon the said plaintiff by
his attorney complains

For that whereas heretofore to wit
on the Eleventh day of September A.D. 1847 at the County of
Knox in the State of Illinois One Thomas F. Watts entered
into a certain agreement in writing with the said plaintiff
in substance as follows to wit:

Article of an agreement made this 11th day of
September in the Year of our Lord one thousand eight
hundred & forty seven between Kingsley Wimes of the first
part and Thomas F. Watts of the second part whereas
the said Kingsley Wimes of the first part for himself his
heirs Administrators & assigns doth Covenant and agree
to and with the said Thomas F. Watts his heirs admi-
-nistrators & assigns as follows (to wit) That the said
party of the first part doth Covenant and agree with
the party of the second part to sell Convey & transfer

a certain piece of Land known and described as follows:
being Lot No. Eight (8) of the sixteenth section of Township
10 North Range 4 East of the fourth principal meridian in the
County of Knox & State of Illinois for and in consideration of
Two hundred and fifty dollars payable as follows That on
or by the first day of December next twenty dollars
in good current ~~money~~ paper money and on or the first
day of May next one hundred dollars in neat cattle & an
ox wagon at its value the balance of the two hundred &
fifty dollars as follows: the one half in Cash at the last
Specified time and the remainder in Cattle on or by the
first of November 1848 to be paid by the party of the second
part The said party of the first doth further agree that
on the receipt of the twenty dollars in money and one hun-
dred dollars in stock One Ox wagon and twenty five
dollars in Cash as above Specified that he will give
to the said party of the second part a good Warranty
deed of the aforesaid premises subject to a mortgage
of ninety one dollars and sixteen Cents bearing date
December 5th 1846 payable to the trustees of Township
10 North Range 4 East - also free & peaceable possession
Either party failing on his part with the aforesaid Stip-
ulations shall forfeit and pay the sum of fifty
dollars. Witness our hands & seals this day
and Year within written

Witness

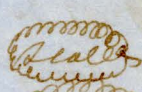
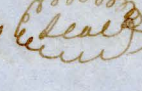
J. W. Himes

Kingsley (Times Seal)
Thomas F. Watts (Seal)

And afterwards to wit: on the first day
of May A.D. 1848 at the County aforesaid the said plaintiff
for the purpose of performing and for the purpose of showing
his the said plaintiff readiness and ability to perform
the said agreement on his the said plaintiffs part
and in default of the said Thomas F. Watts performing
the said agreement on his part for the purpose

of claiming that the said Watts on his part by such default had forfeited all rights under the said agreement to the premises therein described and for the purpose of preserving proper evidence of the said plaintiffs act in that behalf; he the said plaintiff together with Lucy Ann Himes his wife signed sealed and acknowledged a deed in substance as follows:

This indenture made this first day of May in the year of our Lord one thousand Eight hundred and forty Eight Between Kingsley Himes and Lucy Ann Himes his wife both of the County of Knox and State of Illinois of the first part Thomas F. Watts of the second part Witnesseth that the said party of the first part for and in Consideration of the sum of two hundred and fifty dollars in hand paid by the said party of the second part (the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom) have granted bargained sold remised released aliened and Confirmed and by these presents do grant bargain sell remise release alien and Confirm unto the said party of the second part and to his heirs and assigns forever all of the following described premises situate lying and being in the County of Knox and State of Illinois known and described as follows: 1. wit Lot numbered Eight of the seventh section of Township numbered ten north Range numbered four East of the fourth principal meridian subject however to a mortgage of ninety one dollars and seven Cents bearing date December 5th 1846 payable to the trustees of Township ten north Range four East - aforesaid. Together ~~Together~~ with all and singular the hereditaments and appurtenances therunto belonging or in any wise appertaining and the reversion and reversions remainder and remainders Rents issues and

profits thereof; and all the Estate right title interest claim
or demand whatsoever of the said party of the first part
either in law or Equity of in or to the above bargained
premises with the here detiments 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 Kingsley Himes and Lucy Ann his wife for themselves
their heirs Executors and all ministrators do covenant bar-
gain and agree to and with the said party of the second
part his heirs and assigns that at the time of the Ensealing
and delivering of these presents the said Kingsley Himes
and Lucy Ann his wife are well seized of the premises
above conveyed as of a good and ~~indefeasible~~ ^{indefeasible} sure
perfect absolute and indefeasible Estate of inheritance
in the law in fee simple and have good right full
power and lawful authority to grant bargain sell
and convey the same in manner and form aforesaid
and that the same are free and clear of all former and
other grants bargains sales liens judgments tapes agreements
and incumbrances except the said mortgage of what kind
or nature soever: And the above bargained 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 shall and will
warrant and forever defend except against those claim-
ing under said mortgage. In witness whereof
the said party of the first part have hereunto set their
hands and seals the day and year first above written
Sealed and delivered in
presence of - L. A. Jones
J W Himes L F Jones
Ara Thrasher
Kingsley Himes 
Lucy Ann Himes 

Which said deed so signed and sealed the said plaintiff and the said Lucy Ann his wife duly acknowledged before Jacob Keightlingher the said defendant then being a Justice of the peace in and for the said County of Knox in the State of Illinois and as evidence of such acknowledgment the said defendant then and there subjoined to the said deed his Certificate of such acknowledgment in substance as follows to wit:

State of Illinois \

County of Knox } I Jacob Keightlingher a Justice of the peace in and for the said County in the State aforesaid Do hereby Certify that Kingsley Haines and Lucy Ann his wife who are personally known to me as the real persons whose names are subscribed to the annexed deed appeared before me that day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth And the said Lucy Ann Haines wife of the said Kingsley Haines having been by me examined separate and apart and out of hearing of her husband and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband and that she does not wish to retract the same Given under my hand and official seal this first day of May A.D. 1848

Jacob Keightlingher

Justice of the peace of Knox County

And the said plaintiff afterwards to wit; on the same first day of May A.D. 1848 at and upon the said premises in the said deed described to wit; at the County

of Knox aforesaid further for the purpose of showing his the said plaintiff's readiness and ability to perform the said agreement on his the said plaintiff's part and further for the purpose of claiming and insisting that if he the said Watts then and there failed to perform the said agreement on his the said Watts part that he the said Watts thereby would forfeit all rights under and by virtue of said agreement and that thereby the said agreement would become inoperative as against and no longer binding upon the said plaintiff and leave the said plaintiff the owner of the said premises in the said agreement described in Law and Equity as if the said agreement had not been made he the said plaintiff at the time and place last aforesaid Exhibited Exhibited the said deed so signed sealed and acknowledged as aforesaid before witnesses of whom the said defendant was one and then and there offered to deliver the said deed to the said Watts and tendered the said deed to be delivered to said Watts before the said witnesses on condition that the said Watts should then and there perform so much of the said agreement as then by the terms of the said agreement were to be performed on the part of the said Watts but neither the said Watts nor any one for him appeared then and there to perform in any manner the said last-mentioned portion of said agreement And the said plaintiff afterwards to wit: on the same first-day of May A.D. 1848 at the County aforesaid proposed to the said defendant that he the said plaintiff would deposit the said deed with the said defendant, he the said defendant being one of the witnesses to said offer deed tender of the said plaintiff, so that the said defendant could if called upon as a witness in that behalf identify the said deed as the same deed which the said plaintiff offered to deliver and tender to be delivered as aforesaid and that the said defendant should keep the said deed

for the said plaintiff for the purpose of Evidence as aforesaid to which proposal of the said plaintiff the said defendant then and there assented; and thereupon in pursuance of said proposal and assent the said plaintiff then and there gave the said deed to the said defendant as the depository of the said plaintiff to be kept only for the purpose of Evidence as aforesaid by the said defendant, and the said defendant then and there accepted and took said deed to be kept by him to the intent and for the purpose last aforesaid; whereby it became the duty of the said defendant to retain and keep the said deed solely for the purpose last aforesaid without any gross negligence on the part of the said defendant and especially it became the duty of the said defendant not to place or procure to be placed the said deed on the proper Records of the said County of Knox, and not to use the said deed to the injury of the said plaintiff in any manner whatever: Yet the said defendant not regarding his duty in that behalf but contriving and intending to wrong injure deceive, damnify and defraud the said plaintiff in that behalf afterwards to wit: On the twenty fourth day of October A D 1848 and while the said defendant still retained possession of the said deed obtained as aforesaid to wit: at the County aforesaid wrongfully and fraudulently and without the knowledge or assent of the said plaintiff gave the said deed to the recorder of the said County of Knox and procured the said Recorder to record the said deed among the Records of his office as recorder as aforesaid, as if the said deed had been delivered to the said Thomas H. Watts unconditionally and absolutely; and the said deed by the said fraudulent and wrongful act and procurement of the said defendant

and was recorded duly and remains of record in the recorder's office of the said County of Knox in the said State of Illinois whereby it was wrongfully made to appear by means of the said wrongful and fraudulent act of the said defendant upon and by the said Record that the said plaintiff had conveyed the said premises to the said Thomas H. Watts By means whereof the said plaintiff not only lost large profits to wit: the sum of two hundred dollars which he otherwise would have made by the sale of the said premises: but also was compelled to incur great expenses and pay out large sums of money to wit the sum of one hundred and fifty dollars in necessary costs and attorney's fees in and about perpetuating the evidence of the manner in which and the terms upon which and the purpose for which the said deed was given to and deposited with the said defendant upon the matter of the petition of the said plaintiff to perpetuate the said evidence filed in the Circuit Court in and for the said County of Knox and the decree and proceedings thereunder now remaining of record in the said Court: and was compelled to lose a large amount of time to wit: One hundred days in and about said matter of the value of the ~~value~~ of one hundred dollars and to pay out a large sum of to wit: fifty dollars to and for agents and attorneys in serving the necessary notices and papers in and about said matter and a large sum to wit: fifty dollars for witness fees in said matter: and a large sum to wit: fifty dollars for sheriff's fees in and about said matter: and a large sum to wit: fifty dollars for clerk's fees in and about said matter and a large sum to wit: fifty dollars for attorney's fees in and about said matter all by means and on account of the said wrongful fraudulent deceitful and unlawful acts of the said defendant as aforesaid Wherefore the said plaintiff saith that he is injured and hath sustained damage to the amount of five hundred dollars and therefore he brings

Suit No

Manning & Lander
for Plaintiff

State of Illinois Knox Circuit Court September Term 1852
Monday September 13th 1852

State of Illinois
Knox County } Ct

Pleas before the Honorable William Kellogg Judge of the Tenth Judicial Circuit in the State of Illinois at a Circuit Court began and held at the Court house in Knoxville in said County on the second Monday in the month of September (said Monday being the thirteenth day of said month) In the year of our Lord one thousand Eight hundred and fifty two Present -

The Honorable William Kellogg Judge
Harman G Reynolds States Attorney
Samuel W Brown Sheriff
T. Hudson Hall Clerk

And afterwards to wit: on the 14th day of September 1852. the said defendant by Reynolds & Wood came and entered and filed a demurrer to the said plaintiffs declaration heretofore filed herein which said demurrer is in the words and figures following To wit:

Kingsley & Himes
vs
Jacob Reighlingher } In the Knox Circuit Court
September Term A.D. 1852.

And the said defendant comes & defends the wrong & injury when &c & says that the matters and things set forth in plaintiff declaration aforesaid are not sufficient in law for sd ptff to have and maintain his action aforesaid against the said

defendant and he is not bound to answer the same and this
he is ready to verify

Therefore he pray Judgment &c

By Reynold & Whead

his attorney,

Whereupon afterwards to wit: On Wednesday September
15th 1852 an Order was made and Judgment rendered in
said Cause in the words and figures following To wit:
Kingsley & Wines

vs Presump on the Case
Jacob Knightlinger } This day came the said
defendant by his attorney and files and enters his
Demurres to the said plaintiff's declaration And now
the Court having considered the said demurres doth
order that it be sustained Thereupon comes the said
plaintiff by his attorney and abides by the order of the
Court sustaining the ~~order~~ said demurres Therefore it is
adjudged and considered by the Court that the said
plaintiff take nothing by his said action and that the
said defendant may go hence hereof without day It
is further considered by the Court that the said defend-
ant have and recover of the said plaintiff his ~~costs~~ his
Costs herein expended and may have execution therefor
Kingsley & Wines

vs Unpublished or Case
Jacob Knightlinger } Plaintiffs Costs (2d & 3d Hall Clk fees
For Filing of papers 35- I pue Lund 35- Docket Lund 10 & 80
" I pue & 3d 70 Ent apper 35- atty 15 Ent pff abid Demure 85-
" 20 Take three affid 30 Ent Satisfaction 15- 2d Ent Bell of 65-
" Costs 30 Cert & Seal 35- 25 & 2.75

S W Brown Sheriff fees
" Ser Lund 50.16 2d D. 80 Return 10 & Ser Spa 100 2.40
" 55 2d D. 2.75 2 Returns 20 295 & 5.35

Witness fees

S A Jones 3 day 1.50 S W Himes 3 day 1.50 \$3.00

S M Handinson 3 days 1.50 1.50 \$4.50

Defendants Costs S A Hale Clk fees

For Filing 6 papers 30 S A Hale 105 Ent Deemur 20 1.55

" Ent-order returning 20 Ent Judgmt for Costs 25 Does 45

" Judgmt-10 Ent-order for Ex 20 n. ch. Ent Bill costs 30 60

" Certificate & Seal 35- 35 \$2.95

S W Brown Sheriff fees

" 6 Series Sps 150.90 Ind. P. 4 50 3 Returns 30 6.30 \$6.30

" Witness fees Henry Smith 3 day 1.50 1.50 \$1.50

Plaintiff Costs C W Mory Clk fees

" For making Copy of Records 5.00 5.00

" Certificate & Seal 35- 35 \$5.35 \$28.90

State of Illinois
Knox County
I, S. A. Himes, Clerk of
the Circuit Court in and for the County of Knox in
the said State of Illinois do Certify that the foregoing
is a full and correct Copy & Transcript from the
Records of all the proceedings in a certain Cause in said
Court wherein Kingsley Himes is Plaintiff and
Jacob Knightlinger is Defendant

In Testimony whereof I have hereunto
set my hand and affixed the Seal
of said Circuit Court at Knoxville this
21st day of May A D 1853

S. A. Himes Clerk

State of Illinois: Supreme Court
3^d Grand division -
June Term A.D. 1853.

Kingsley Himes, {
Jacob Knight ^{vs} { Error to Knox
And now comes the said
plaintiff by his attorney and says
that in the record and proceedings
of the said cause and in the rendition
of judgment therein there is manifold
and manifest error, and asks
for error therein

1. The said Circuit Court erred
in sustaining the defendant's demurrer
to the said plaintiff's declaration

2. The said Circuit Court erred
in rendering judgment upon said
demurrer ~~to~~ against the said plaintiff

Wherefore for cause of said
errors and others appearing upon the
face of said records the said
plaintiff prays that by the considera-
tion of the Court here the said
judgment may be set aside and
nullified reversed and for nothing
had held and extenuated

Julius Manning
Atty for plf

In malice or error

Robert H. Smith

And the said defendant in error by Blackwell
his attorney comes & says that in the
record of the proceedings aforesaid & in
the rendition of the judgment there
is not any error in manner & form
as the said plaintiff in error hath above
in his said assignment alleged
& this he prays may be tried by
the record &c.

Blackwell per

60
Wingley James

1st
Jacob Wrightberger

Records.

Filed June 14. 1857.
Deland Clk.

Himes vs Nightlinger.

1. A Bailee without reward is liable for gross negligence, or misfeasance or any fraudulent act in respect of the thing bailed whereby an injury results to the bailor. Story on Bailments 134 § 182^a. - 118, § 165 - 41, 562. 2. Nents Com. 559, 562, 569. Tracy v. Wood 3 Mason 132. Thome v. Deas 4 Johns. 96-99. Hyde v. Moffat 16 Vermont 271. and even per Redfield J. dissenting, ib, 283. Rutgers v. Lucet 2 Johns Mass. 92. Reg. on Carriers 19, § 19.

2. The declaration shows sufficiently that the deed was accepted by the defendant to be kept as the property of the plaintiff for his benefit, and for the purpose of evidence under the contract only, and that the defendant fraudulently procured it to be recorded: this was not only a misfeasance, but a malfeasance.

This deed being recorded, the record was prima facie evidence that the deed had been delivered. 2 Wend. 308. 23 Wend. 46. 13 Pick. 69. Rigler v. Cloud 14 Pa. Reps 364. Ingraham v. Gigg et al. 13 Smedes & Marshall (Mip.) 29. If this be so a purchaser without notice of the non-delivery, would hold the land, and the plaintiff had no remedy except to perpetuate the evidence of the non-delivery.

3. If the deed were used by the deft as a genuine and operative instrument, as it was by being recorded, equity would have decreed its delivery up and cancellation, as a cloud upon the plaintiffs title. 2 Story's Eq. Jurisp. 65694. *ib.* 12. 8700 et seq. *Hamilton v. Cummings* 1 Johns Chy 519. *Petrel v. Shepherd* 3 Paige 501. So that this use of the deed is an injury of which the law takes notice; but there is no case where equity has decreed the obliteration of a record - and there was no remedy but to perpetuate evidence

4. But aside of all this, the recording of this deed of itself, is sufficient to injure the sale of the premises, for who would purchase with a conveyance from the vendor on record, until such title ^{conveyance} was judicially determined to be void? - However a purchaser might himself be convinced, would he assume the risk of convincing a subsequent purchaser of the same, and pay the same price for the premises? If slander of a title be actionable, this is something more - it is fraudulently slandering a title on the record; - and is there no remedy?

[6-8603]

Homes
W. H. H.
Hightmeyer
Bent

Quinn v. Highfillingen.

1 It is essential to the validity of a deed that it should be delivered by the grantor to the grantee or to some person for his use.

The delivery may be absolute or conditional
This depends upon intention

The true test is whether grantor parted with all power & control over the deed.

6 Beaborn 190. 15 Wend 656.

Acts in part 4 W. Cond. R. 394. 4 Whea 77.

Delivery
Marriage
Death of ancestor
Infant
Lunatics.

The record of the deed by the voluntary act of the grantor may be prima facie evidence of delivery

12 Pick 146. Register accepts

6 Barb 98

"

& acceptance

16 Ohio 118.

"

"

13 S & M 22 actual delivery to trustees

15 Wend 545 executed before all parties traced by grantor

16 Pet 106. Delivered to recorder by grantor - Trust ^{deed}

deed 2 Wend 308. "Perhaps" "election"

23 Wend 43. founded on 2 Wend - read.

14 Pa 361. Election

14 Pa 519. no reason or authority.

13 Pick 75.

Where where by another without authority or authority - & no evidence of delivery

12 John 418

4 Carr 1.

10 Mass 456

3 Metcalf 275.

12 Mass 460-1.

1 Hall Ch R 450-3

1 Denio 323

1 Paige 385.

16 Vt 563.

6 Barb 190.

2 It is also essential that grantee shall accept the deed. 12 John 418. 12 John 460-1.

There is no averment in this declaration that he even had knowledge of its existence.

No probability of damage by his conveying the property to a third person.

unless Creditors should levy - & they would acquire no title.

3. Might have filed bill in Chancery for redelivery of deed & Cancellation of record. 20 Pick 28. 1 P.Wm 577. 1 Paige 385.

Mandamus to recorder.

Court would then have been taxed as defendant.

4. ~~As an~~ No averment of ^{by att. wally} sale or levy on land by his Creditors - damages speculative

never will occur he had an offer of purchase which he lost for this reason.

5. No averment of misconduct in proceeding to purchase evidence.

Ms. 230 sec. 19 & c.

6. Sec. Thov. equitable title in wally & a possessor - no allegation that he was not entitled to legal estate.

7. No allegation of ownership

Must show some intent - that Court may see he is damaged

Suppose a shuck delinquent cut up

James W. Knight

Brady