

8464

No. _____

Supreme Court of Illinois

^{P.}
George S. ~~A.~~ Ridgeon

vs.

Trustees of Schools,

T. 15, 5 R.1.

71641  7

Copy of Records

Trustees of Schools T 15 -
S R 15 1 20 Pulaski Co
To

Circuit Court of
Pulaski County
State of Illinois
Aug Term 1862

Thomas Mansfield & wife
and George Pidgeon

Bill to foreclose mortgage
" "

Page Line

1

1 Do it remembers that heretofore on the
2 26th day of June A D 1862 the above named
3 Complainants filed in this Court their bill
4 of Complaint as follows - State of Illinois
5 Pulaski Co Cir Court Aug Term 1862 - To the
6 Hon Justice Lewis Judge of sd Court in Chancery
7 sitting - complaining sheweth to your Hon your
8 Orator the Trustees of Schools of Township 15 S R 1 20 in
9 Pulaski County Illinois that on or about the 13th
10 day in the year A D 1857 that Thomas Mansfield then
11 a citizen of said County became & was fully
12 indebted to your Orator for the use of the
13 wharftanks of said Township in the sum of \$180⁰⁰
14 & being so indebted in order to secure the payment of
15 said sum affd with interest at the rate of 10 per cent
16 per annum from date until paid & such interest
17 to be paid half yearly and in advance did
18 make execute and deliver unto your Orator
19 for the use affd his certain bond or obligation for
20 said sum and interest as affd dated the 13th day of
21 June A D 1857 and payable 2 years after its date which
22 is here shown to the Court marked A & made part of this
23 bill and your Orator further sheweth that the said
24 Thomas & Mansfield in order further to secure the
25 payment of the said sum of money with the
26 interest in manner and form affd and being on

Page
2

Line

27 pretending to be heirs of Cuthbert. Under treatment and
 28 sale of ground executed and delivered to your Orators
 29 a certain deed of Mortgage herewith filed marked
 30 R bearing date the 13th day of June 1857 the said deed
 31 of Mortgage the said Thomas Mansfield did assign
 32 transfer and Convey to the trustees of School for T
 15 & R 1 E in said County - Your Orators for the use of the
 34 inhabitants of said Township the N E 1/4 of the NW
 1/4 sec sixteen in T 15 - R 1 E containing 40
 36 acres which said estate he declared to be in
 Mortgage for the payment of \$185 - bound to
 38 him and for the payment of all interest that
 should accrue thereon to be computed at the
 40 of 10 per cent per annum from its date until paid
 and covenanted to pay the said sum of money in
 42 two years from its date and to pay interest
 at the rate aforesaid half yearly and in
 44 advance and further covenanted that he
 had a good and valid title to said estate
 46 that the same was unincumbered and to pay
 all taxes and assessments to be levied on
 48 said estate &c and if said estate should be
 sold to pay said debt or any part thereof
 50 or for any failure or refusal to comply
 with or perform the conditions and covenants
 52 aforesaid to deliver immediately possession
 of said premises and in consideration of
 54 the premises Mildred wife of said Thomas
 Mansfield released to the said trustees of
 56 School aforesaid Your Orators all her right
 title or dower in the said granted premises
 58 for the purpose aforesaid and your Orators further
 sheweth that after the execution of the said
 60 deed of Mortgage the same was in due form

3
 62 before It & thence a writing public in and for
 said Pulaski County Illinois and duly recorded
 64 in the Office of the records at St. Caledonia in
 Pulaski County Illinois on the 22 day of June
 66 1837 - In which deed of Mortgage and security
 your orator for grantees Certainly beg leave to
 68 refer and your orator further sheweth that
 the sum of one hundred and fifty five dollars
 70 the principal yet remains due and unpaid
 to your orator together with the interests thereon
 72 at the date aforesaid from day of
 by reason whereof the said deed of Mortgage and
 74 the estate therein mortgaged has become absolute
 in your orator subject only to the equity of
 76 redemption in this Hon Court and your
 orator have frequently applied to said debtors
 78 and requested payment of the principal money
 and interest due to your orator upon the
 80 said deed of Mortgage and well hoped they
 would have complied with such reasonable
 82 request & have paid said principal sum and
 interest as an equal and good Conscience ought
 84 to have been done but the debt have wholly
 neglected and still do neglect & refuse to pay
 86 the same or any part thereof and your orator
 further sheweth that one George S. Pidgeon of
 88 said County set up some claim against said
 mortgaged premises as a subsequent incumbrance
 90 of some kind or other
 Your orator with the aid of this Hon Court in the
 92 collection of the principal money & interest
 mentioned & remaining due in and by virtue of
 94 the premises aforesaid - and that the

Page line defendants respectively may answer all and
4 96 Singular The matters herein before contained
pertinent to them according to the best of their
98 knowledge information and beliefs and that said
George & Polyzon may be Compelled to show to
100 This Court his claim or right to said premises
herein in order to its disposal and that all
102 and singular The mortgaged premises that the
appurtenances may by the order and decree of
104 This Hon Court be sold & out of the money
arising from the sale thereof your orators
106 may be paid the full amount of the principal
sum due on said bond or obligation and
108 and of mortgage and interest money due and
to become due thereon together with all costs
110 and charges by your orators in this behalf
incurred and that your orators may have
112 such other and further relief as may be
agreeable to equity & good conscience and
114 may it please your Hon to grant unto your
orators the people with of out poena
116 going out of and under the seal of this
Hon Court directed to the said Thomas J
118 Mansfield Mildred Mansfield his wife and
to the said George & Polyzon Commanding
120 them to be and appear before your Hon in
this Hon Court and then & there to answer
122 all and singular The premises contained
in this your orators bill of Complaint and to
124 stand to & abide by such order and decree
in the premises as shall seem meet &
126 agreeable to equity and good conscience &c
Watts & Davids
Solicitors for Complainers

5 13 Be it further remembered that on said
130 26th day of June 1862 said Plaintiff filed
the following affidavits

132 State of Illinois }
134 Pulaski County } SS

136 Justice J. S. R. & Affy }
27


138 Thomas J. Mansfield } Bill to foreclose
Mildred Mansfield } Mortgage

140 George S. Pidgeon -
Deft -

142 I do swear that I
am informed and verily believe that
144 the two first named defendants are not
residents in this State that as affiant is
146 informed and verily believes they reside
in the State of Texas

148 In witness whereof I have hereunto
signed & subscribed my name & seal
150 before me the 26th June
AD 1862 Henry M. Smith

152
154
156
158
160
Original filed June 26th 1862
H.M. Mansfield


\$185 - two years after date for value received I promise to pay the trustees of School for Township fifteen One East for the use of the inhabitants of said Township one hundred and eighty-five Dollars with interest at the rate of ten per cent per annum from date until paid such interest to be paid half yearly in advance. Witness my hand and seal this 13th day of June AD 1857 (fifty seven)
Thos Mansfield 

And on the same day the following

- 164 Writ was issued -
- State of Illinois }
166 Palumbo County } 55

The people of the State of

168 Illinois to the Sheriff of Palumbo County greeting
We command you to summon Thomas J
170 Mansfield Mildred Mansfield & George
Palumbo if to be found in your County to
172 appear before the Circuit Court of Palumbo
County on the first day of the next term
174 thereof to be holden in North Caledonia on the
4th Monday in the month of August next
176 1862 to answer the Trustees of School of
Township fifteen South Range one east in
178 Palumbo County - Illinois a bill in Chancery
to foreclose mortgage & thereof make due
180 return. Done said Court at the law directs
Witness Henry M. Smith Clerk from said
182 Court and the judicial seal
thereof at North Caledonia this 26th day
184 of June AD 1862



Henry M. Smith Clerk

7
 186 Endorsed on the back thereof -
 "Served by reading and Copy to the within
 188 George & Ridgion August 13th 1862"
 W M Bonn Shys
 By Thos Muttis deff Shys
 1900 Thos J & Mildred Mansfield not found"

And be it further remembered that at
 194 The August Term AD 1862 - said Cause
 was continued -

196
 And be it further remembered that at the
 198 April Term of said Court begun and held
 on the second Monday in the month of
 200 April AD 1863 the following proceedings were
 had -

202	Trustes School \$15-18	} April Term 1863 Bice to foreclose mortgage
204	Thos J Mansfield & wife Et als	
206		

And now on this
 day comes George & Ridgion one of the
 208 above named defendants and files his
 plea as follows -

210	Thos J Mansfield Et als als	} Circuit Court April Term 1863
212	Trustes School \$15 \$18 & 10	

The several plea
 214 of George & Ridgion one of the defendants to
 Complainants bill -

216 This defendant by protestation not confessing
 all or any of the matters and things in said
 218 Complainants bill of Complaints mentioned and

8
220 Contained to be true in such both manner
and form as the same are therein set forth
222 and alleged for plea to the whole of said
bill do say and plead thereto that before
224 and at the time of making the said poll or
mortgage mentioned in said bill by the said
226 Thomas J Mansfield and Mildred Mansfield
his wife the said piece or parcel of land
228 in said bill described as being the North east
fourth of the North West fourth of section
230 or ten in Township fifteen South of Range
one east in the County of Palauke State of
232 Illinois together with the buildings thereon
was the lot of ground and buildings owned
234 and occupied by the said Thomas J Mansfield
and Mildred Mansfield his wife as a residence
236 and their homestead being part and parcel
thereof - that the said Thomas J Mansfield
238 was a household and the head of a family and
resided on and occupied said lot of ground and
240 the buildings thereon as his homestead at
before and after the making of said deed poll
242 to wit from the 10th day of June A.D. 1855
to the 2nd day of October A.D. 1858 that the
244 debt for which the said bond and mortgage deed
mentioned in said Complainant's bill was given
246 to secure was not for any debt or liability
of the said Thomas J Mansfield and his wife
248 Mildred Mansfield or either of them
incurred prior to and before the fifth day
250 of July A.D. 1851 or for the purchase or
improvements thereof - that the said lot of
252 ground and the buildings thereon at all times
before at and after the making of said deed

9- 254 of Mortgage in Complainant's bill mentioned
and so long and at all times whilst owned
256 and occupied as aforesaid by the said Thomas
J Mansfield and Mildred Mansfield were worth
258 less than one thousand dollars and that the
said Thomas J Mansfield and Mildred Mansfield
260 never released or waived all or any of their
rights in and to said Homestead whilst
262 owned held and occupied by them as aforesaid
that on the 2nd day of October AD 1888 being
264 then held owned and occupied as aforesaid
The said Thomas J Mansfield and Mildred
268 Mansfield for a valuable Consideration
(to wit the sum of \$300~~00~~ or thereabouts)
270 Conveyed the said Ground and Appurtenances
in fee to this defendant George L Pidgeon his
272 heir and assigns by deed poll signed and sealed
by them and acknowledged and recorded in due
274 form of law bearing date the day and year last
aforesaid and now here shown to the Court
276 that afterwards to wit on the day and year
last aforesaid the said Thomas J Mansfield
278 and Mildred Mansfield vacated and delivered
possession of the said premises to the said
280 George L Pidgeon one of defendants to
said bill - This defendant does therefore
282 plead the same and the Statute and act of
February 11th 1857 and all other acts and
284 parts of Acts made in aid thereof and prays
the judgment of this Court whether it behooves
286 him to make any other or further defenses
to said bill that said bill be dismissed
288 and that this defendant have his Costs in
this behalf &c

George L Pidgeon

Culbert County } SS

292 George & Bedyon whose
name appear to the foregoing plea being
294 sworn on oath say that said plea is
True in substance and in fact
296 H. M. Smith Clerk

298 And let it remembered that on the 23rd
day of April A.D. 1863 That Thomas &
300 Mansfield and Mildred Mansfield two
of the defendants to Complainant's bill
302 by their attorney filed the following
plea to said bill -

304 Thomas & Mansfield & alij }
306 at } Bill of foreclosure
Trustee Sec 15 & c Off } & alij

308 The joint and several plea of Thomas
310 & Mansfield and Mildred Mansfield to
said Complainant's bill -
312 These defendants by prostration not
waiving the insufficiency of said bill
314 or in any manner confessing the matters &
therein alleged for plea thereto do
316 say - that the said lot or parcel of
land in said bill described & with the
318 N E N W Sec 16 T 15 R 1 East was
at the time and long before the making
320 of the said mortgage in said bill alleged
& c the Homestead of these defendants
322 being part and parcel thereof that said
premises were owned by said defendants

324 they being householders and the said Thomas of
 Mansfield being a householder and the
 326 head of a family living with the same
 and residing and occupying said premises
 328 with the buildings thereon as such householders
 at the time aforesaid that said supposed
 330 mortgage was not given to secure any
 debt or liability incurred in the purchase
 332 or improvements thereof nor for any debt
 or liability of either or both of these
 334 defendants incurred prior to the fifth
 day of July AD 1861 and that said
 336 defendants never in any manner
 waived or released all or any of their
 338 rights in and to said premises as such
 householders and that the same were
 340 at and before and at all times after
 the making of said supposed mortgage
 342 worth less than one thousand dollars
 so long as held owned and occupied
 344 as aforesaid wherefore they do plead
 the same the statutes in such cases
 346 made and provided the several
 amendments thereto and whether
 348 it behooves them to make any other
 or further answer and their costs
 350 and charges in this behalf most
 wrongfully sustained

352

Thomas Mansfield and
 Mildred Mansfield

354

By the sole Gt. Juror

Filed April 23rd 1863

Attest Clerk

Page Six State of Illinois }

358 Pulaski County } SS

360 County Circuit Court AD 1863 -

Trustees of Schools N-S-R 1 E Pulaski Co Ill
862 371

George & Ridgway Thomas of Mansfield
364 Mildred Mansfield - These replenents
having and reserving to themselves all
366 and all manner of advantage of excep
tion which may be had and taken to
368 the manifold errors, uncertainties and
insufficiency of the answer or plea
370 of the said defendant for replication
thereunto saith that they do and will
372 aver maintain and prove their said
bill to be true certain and sufficient
374 in the law to be answered unto by
the said defendant and that the
376 answer or plea of the said defendant
is very uncertain evasive and insuf
378 ficient in the law to be replied
unto by these replenents without that
380 that that any other matter or thing
in the said answer contained
382 material or effectual in the law
to be replied unto and not herein
384 and hereby null and sufficiently
replied unto Confessed or avoided
386 traversed or denied in true all which
matters and things these replenents
388 is ready to aver maintain & prove
as this Hon Court shall direct and
390 humbly pray as in and by their said

13 392

bill they have already prayed -

James M. Davidge

Sole for Complamant

394 Filed April 25th 1863 H. Melville Clerk

And now again comes the said

396 Partis and this cause is continued generally - 27 April Term 1863 -

398

Sept Term Peluttis' Case 1863

400 And now again comes the said party the Plaintiff by Davidge

402 And the Defendants by Pederson their atty and on motion of Pff

404 leave is given to withdraw replication and to reply by 406 Wednesday 9 Oclober Dec

408 And now again comes said party by their attys and on motion

410 leave is given Defendant to Amend plea and leave to the 412 Complamant to Amend the bill

414 And be it further remembered that Complamant filed the following

416 Amendment to their Original bill to be inserted and read after the words

418 "As a subsequent incumbrance of some kind or other" -

420 Your Orator further shows that they are informed and believe that the said

422 defendant asserts and claims among many other things to be entitled to

424 the Homestead exemption right

Page find in and to said mortgaged premises
14 426 And claims that rights under and by
virtue of a conveyance from his Co-defendant
428 Aunt, The mortgagor, true it or may it
please your Hon that the defendants
430 George A purchased from his said Co-
defendants the said mortgaged premises
432 but that the conveyance from his said
Codefendants to him said George A bears
434 date long subsequent to the mortgage
herein mentioned and in and by virtue
436 of said conveyance his said Codefendants
expressly stipulated that for and in
438 consideration of thirteen hundred and
eighty five dollars four hundred dollars in
440 current money and four hundred dollars
in the interest & scrips paid by the Emporium
442 Real Estate & Manufacturing Company of
Monmouth Palumbo County at Par in hand
444 paid to his said Codefendants the receipts of
which they acknowledged and the payment
446 of five hundred and eighty five dollars
and the interest accruing by three
448 hundred and eighty five dollars and
interest to the School Commissioners for
450 Palumbo County in Illinois and two
hundred \$200 and interest to Henry W
452 Smith as trustee and Guardian or other
person or persons authorized to receive
454 the same when lawfully required to
do so to each and all of the said
456 Commissioners and trustees mortgagers
upon &c did convey to said defendant
458 George A And your oratory aver

15 460 over and expressly charged the truth
and the fact to be that the sum of money
462 named as principal and the accruing
interest named and mentioned in the
464 mortgage herein to be a part and
parcel of the sum of \$385 and its
466 interest named in conveyance from his
said George & Co defendants to him and
468 directed to be payable to the School
Commissioners and your orator further
470 over and charged the fact to be that the
defendant Pidgeon so understands it
472 and without the payment of which
said defendant George & Co could claim
474 no right of Homestead exemption and
none could accrue to him -
476

478 And but also remembered that on the 23rd
day of September AD 1863 the defendants
480 George & Pidgeon filed the following

482 Trustees School 115 10 } Plaintiff's bill
37 } Sept Term 1863
484 Thomas & Mansfield Et al } Bill to foreclose
Mortgage &c
486 George & Pidgeon one of the defendants
to the above named Complainants
488 amended bill of Complaint having
and reserving to himself all manner
490 of objections and exceptions to said
amended bill and expressly protesting
492 against and refusing in any manner
to waive his plea in and to said

16 494 Original bill of Homestead rights as
assigned of said Thomas J & Mildred
496 Mansfield - Answering said amendments
and additional facts stated and recited
498 in said bill - Avails that the additional
facts and allegations made in said
500 Amended bill are not nor any of them
true in manner and form as
502 therein stated set forth and charged
and now having fully answered
504 said Amended bill prays to be
hence dismissed with his reasonable
506 Costs in this behalf expended

George S. Pigeon
for himself

508 Signed and sworn to before me
510 This 23rd Sept 1863

H. W. Smith Clerk

512 Filed Sept 23rd 1863

514 H. W. Smith Clerk

516 And now again comes the said
parties and on motion leave is
518 granted to Complainants to file
replication and Cause continued
520 generally - J. W.

522 And be further remembered that
at the April Term AD 1864 of said
524 Court the Complainants filed the
following which were made matter
526 of record

17 530 State of Illinois } Of the April Term of
Palucki Compt } SS The Palucki Compt }
} Ad 1864

532 Master, School T 15 SR 18 Palucki Compt }
} Bill to foreclose mortgage

534 George & Pidgeon } Repleation
Impleaded with Thomas, Mansfield Et al

536 This repliants having and receiving to
538 themselves all and all manner of
advantages & exception which may be
540 had and taken to the manifold errors
uncertain and insufficiency of the
542 answer or plea of the said defendant
for repleation that they do and will ever
544 maintain and prove their said bill to be
true certain and sufficient in the law
546 to be answered unto by the said defendant
and that the answer or plea of the said
548 defendant is uncertain evasive and
insufficient in the law to be replied
550 unto by these repliants without that they
any other matter or thing in the said
552 answer contained material or effectual
in the law to be replied unto and not
554 herein and hereby will and sufficiently
replied unto Confessed or avoided traversed
556 or denied is true all which matters and
things these repliants is ready to ever
558 maintain and prove as this Hon Compt
shall direct and prays as in & by their bill
560 they have already prayed -

James McDermott atty

562 Filed Apr 23rd 1864 Hon Compt Clerk

18
564 State of Illinois } Of the April Term A.D. 1864
564 Pulaski County } Circuit Court -

Replication to answer to Amended Bill &c

566 The Trustees of Schools of Township 15 SR 10 Pff
30

568 George & Pezron - impl into Thomas Mansfield -
Et al - Bill in Chancery - &c

570

These replants having and meaning to themselves all

572 manner of exception which may be had need
taken to the manifold errors uncertainties

574 and insufficiency of the answer of the said
defendant for replication therefore saith

576 that they do and will ever maintain & prove
said bill to be certain and sufficient with

578 law to be answered unto and that the answer
of the said defendant is very uncertain

580 insufficient and evasive without that any
other matter or thing in said answer conta

582 ined material or effectual in the law to
be replied unto and not herein and ten

584 by will and sufficiently replied unto
confused and avoided traversed or denied

586 is true all which these replants are
ready to ever maintain and prove

588 at this Hon Court shall direct and humbly
pray as in and by their said bill they have

590 already prayed

James M. Davison

Attorney for Complainants

592

Filed April 23rd 1864

594

Thomas M. Clark

19 596 And now again at said term comes the
said parties and the said plaintiff by
598 David then attorney move to strike the plea
of Thomas J Mansfield and Mildred Mansfield
600 from the files - Defendants by Pidgeon then
attorney moved to withdraw the plea of said Thomas
602 and Mildred Mansfield - and plea withdrawn
by leave of the Court - Sat
604

606 And now again comes the plaintiffs by their
attorney - and the defendants having failed
608 to answer - although three times solemnly
called come not but make default as to
610 Thomas J Mansfield and Mildred Mansfield
and decree pro confesso as to them and
612 cause set down for hearing at the next
term will leave to both parties to take
614 depositions - Cause continued generally
2nd
616

And Be it further remembered that
618 at the September Term of said Court
AD 1864 the following proceedings
620 were had and made matter of record
in said Cause -

622
On motion leave is given to complainant
624 to open depositions -

626 And now again comes the defendant
George R Pidgeon and files his exception

20 628th To Plaintiffs depositions as follows

630 Trusts of School T 15 SR 18th }
vs } Exceptions
632 Thomas of Mansfield Et al }

634 Exceptions of George S Pidgeon one of the
defendants to Complainant's bill to

636 foreclose mortgage -
to the Depositions of Henry M Smith

638 Nathan M Thompson and James M
Davids -

640 This defendant comes and excepts
to the reading of Complainant's 2nd 3rd

642 and 4th interrogatories to the witness
644 Henry M Smith - and the answers thereto

and to the reading of the interrogatories
646 and answers of the witness Nathan

648 M Thompson and to the deposition
of James M Davids on the hearing

of this cause because the same
650 are not pertinent to the issue and

because the same for any of them
652 are relevant or proper evidence in said

654 cause Filed Sept 15th 1864
George S Pidgeon pro se
H M Smith Clk

656 Which exceptions were overruled and

and said Defendant then and then excepted

21 658 to said ruling of said Court —

Trustee of School No 15 — } Bill to foreclose

660 S R P & O Pulaski Co Ill } Mortgage

71

662 Thomas J Mansfield

Mildred Mansfield

664 George S Sedgwick

Now comes the plaintiff

666 by David's then attorney and upon his motion
have is given to open depositions —

668 Again at this day comes the defendant
and files his exceptions to depositions —

670 Exceptions to depositions overruled and
Thomas J Mansfield and Mildred Mansfield

670 although thus times solemnly called
came not but made default — Decree

672 pro confesso as to them and the cause
submitted to the Court upon bill answer

674 replication exhibits and proofs — The Court
being sufficiently advised of and concerning

676 the premises decrees that defendants pay
to the said plaintiffs the sum of three

678 hundred and eighty four dollars and sixty
five cents and costs of suit in twenty

680 days from the date of this decree and
that in default thereof that the said

684 estate embraced and described

in complainant's bill and mortgage herein
22-684 filed with the notes each found of the north
west quarter, of section sixteen, Township fifteen
686 north of range One east in Pulaski Co Illinois
be sold to pay the same - That Augustus O
688 Bartlett be appointed a commissioner to see
That he be required to give notice of the time
690 terms and place of sale thereof as in Cases of
Sheriff's sales at Common Law And that he
692 report the same to this Court Whereupon the
Defendant George & Ridgway prays an Appeal
694 to the Supreme Court of the State of Illinois
Which is allowed on his executing bond
696 Conditioned as the Law directs, with Henry
W Smith as security in the sum of eight
698 hundred dollars within thirty days from
the date of this decree -

700

And now comes said Defendant George
702 & Ridgway and presents his bill of
exceptions to said Cause which
704 was signed sealed and
allowed by said Court in the
706 words and figures following to wit

708 The Trustees of Schools 115 16 &c } Sept Term 1864
of the Pulaski Co
Thomas Mansfield Et al } Circuit Court -

710 Bill to foreclose mortgage
Be it remembered that on this the 8th day of the
712 September Term of said Court AD 1864 the above
714 styled Cause came on for trial before the Hon
716 Wesley Sloan Judge &c and thereupon the Complainants
by James McDavid their attorney offered in
718 evidence the following affidavit and copy
of Original Mortgage mentioned in Complainants
Bill - And wit -

720 States of Illinois - Pulaski County ss
Trustees of Schools 115 16 }
722 Thos J Mansfield Et al } Bill to foreclose &c

James McDavid being
724 first duly sworn states under oath that
the Original deed Mortgage mentioned in
726 Complainants bill and which affiant further
states on oath was acknowledged according
728 to the Laws of Illinois and which by law
was required to be acknowledged to entitle it
730 to be recorded is not in the power or
possession of the Complainants herein that it
732 could be used on the trial of this Cause
sworn & subscribed } James McDavid
734 before me this 23 }
Sept AD 1863 }

736 H M Smiths Clerk
- Copy of Mortgage -
738 I Thomas J Mansfield of the County of Pulaski
State of Illinois do hereby assign transfer
740 and convey to the Trustees of Schools for Townships

fifteen South Range One east in Said
25- 742 County for the use of the inhabitants of said
Township the following described real estate situate
744 in said County to wit the North East fourth of
The North West quarter of Section sixteen in
746 Township fifteen South Range One east
Containing forty acres which real estate I declare
748 to be in mortgage for the payment of one hundred
And eighty five dollars loaned to me and for
750 the payment of all interests that may accrue
thereon to be computed at the rate of ten per cent
752 per annum from date until paid and I
herby Covenant to pay the said sum of money
754 in two years from the date hereof, and to pay
interest on the same at the rate aforesaid half
756 yearly in advance I further Covenant that
I have a good and valid title to said estate
758 and that the same is free from all incumbrances
that I will pay all taxes and assessments that
770 may be levied on said estate and that I will
give any additional security that may at any
772 time be required by said Trustees of Schools
if said estate be sold to pay said debt or
774 any part thereof or for any failure or
refusal to comply with or perform the Condi-
776 tions and Covenants herein contained I will
deliver immediate possession of the premises
778 and in Consideration of the premises Mildred
Wife of the said Thomas J Mansfield doth hereby
780 release to the said Trustees of Schools all her rights
and title of dower in the aforesaid premises
782 for the purpose aforesaid a testimony whereof we
have hereunto set our hands and affixed our seals
784 this 13th day of June AD 1857 - Tho^s J Mansfield
Mildred ^{Wife of} Mansfield
mark

State of Illinois }

26 786 Pulaski County } SS

Personally appeared before

788 the undersigned a notary public for and
within said County - Thomas J Mansfield to

790 me personally well known as the person
who subscribed to the within mortgage and ack -

792 now holds the execution thereof as his voluntary
act and deed hand and seal for the uses

794 therein mentioned and Mildred wife of said
Thomas J Mansfield whose name is

796 also subscribed to the within mortgage and
who is also to me personally well known

798 to be the person who executed the same
upon being by me made acquainted with

800 the true intent and meaning of the within
recited mortgage and examined separate

802 and apart from her said husband
acknowledges that she had executed the

804 same and relinquishes all her rights
and title of dower in the premises

806 therein conveyed of her own free
will and accord and without fear

808 or coercion from her said husband
Given under my hand and seal

810 Notarially this 13th day of June
A.D. 1857 W J Spencer N.P.

812 Filed for record June 22nd 1857 and

814 duly recorded
James M Davidge
Clerk Co & Recdr

27 §18 State of Illinois
Pulaski County

§20 — Henry W. Smith Clerk
of the Circuit Court and recorder in and
§22 for said County - here certify that the
§24 foregoing is a true copy from my office
§26 of the record of the deed of mortgage its
acknowledgment & recording from Thomas
§28 Mansfield and wife to Trustees of
Schools of Township of Plein South
Illinois, Witness my hand and the
§30 Seal of said Court this
June 26th 1862
§32 Henry W. Smith Clerk

§34 And therefore the defendant George A. Ridgway
§36 pro se moved the Court to exclude the
§38 same and each of them which motion was
excepted &c

§40

28 840 The plaintiff also offered the following
842 Notarials evidenced -

842 \$185⁰⁰

Two year after date for value received

844 I promise to pay the trustees of Schools for
Township fifteen one cent for the use of the

846 inhabitants of said Township one hundred and
eighty five dollars with interest at the rate

848 of ten per cent per annum from date
until paid such interest to be paid

850 half yearly in advance Witness my hand
and seal this 13th day of June ad 1857 -

852 (fifty seven) Thos J Mansfield (Seal)

854 Which said instruments the said defendant
moved to exclude as evidence motion

856 overruled and defendant then and
there excepted &c

858

The Plaintiff also offered the following
860 depositions of Henry M Smith

Ques 1st Are you Clerk of the Circuit Court of Peoria
862 County - Illinois -

Ans I am

864

866 Ques 2 Will you state whether you have recently
or at any other time made an examination
of the records of Peoria County - relation to
certain mortgages executed by Thomas J
Mansfield and wife - if so state the result
of said examination when it was and
what mortgages executed by said Mansfield

868

870

Exhibits

Exhibits
By Deft ally

29 872 And wife - When found recorded to Whom
and when executed for what sum and
874 On what property and when recorded and
book and page on which find recording
876 May be found -

Ans yes Sir - I have made an examination
878 of the records I find a mortgage executed
by Thomas J Mansfield & wife to the School
880 Commissioners of Pulaski County for the use
of the inhabitants of Township 15 1 East
882 upon the NE NW 1/4 Sec 16 T 15 1 E on
book D page 221 & 222 amount of said

884 Mortgage fifty dollar recorded Oct 11 - 1849
Mortgage dated 19 Sept 1849 -

886 On book E page 52 I find a deed
from William Spence School Commissioners
888 to Thomas J Mansfield for the NE NW 1/4
Sec 16 T 15 1 E deed bears date 10th June
890 1850 & recorded July 26th - 1850

On book F page 5 a mortgage from
892 Mansfield & wife to the trustees of school
T 15 SR 1 E Mortgage for the payment of
894 one hundred dollars dated 4th Feb 1852
& recorded Feb 28th 1852 marked satisfied

896 June 13th - 1857

On Book H page 149 a mortgage from
898 Thomas J Mansfield and wife to the
trustees of school T 15 SR 1 E on the NE
900 NW 1/4 Sec 16 T 15 SR 1 E for the sum
of eight-five dollars dated 19th Sept
902 1854 and recorded 21 Dec 1855 marked
satisfied June 13th - 1857

904 I find in book I page 469 Mortgage
executed by Thos J Mansfield & wife

- 30 906⁵ Trustee of School T15-SR1E on the
 NE $\frac{1}{4}$ Sec 16 T15-SR1E for one
 908 hundred and eight - five dollars
 dated June 13th 1857 - recorded June 13th
 910 1857 same book page 470 I find a mortgage
 executed by Thomas J Mansfield & wife to
 912 the School Commissioners on the NW $\frac{1}{4}$ of
 the NW $\frac{1}{4}$ Sec 16 T15-SR1E for the sum of
 914 One hundred dollar dated 13th June 1859
 recorded 25 June 59 I find on book I
 916 page 83 mortgage from Thomas J Mansfield
 & wife to the Trustee of School of Town 16
 918 Range 1 East on the NE NW $\frac{1}{4}$ Sec 16 T15-
SR1E for one hundred dollar made
 920 January 15 1858 recorded Feb 15 1858
 I find on same book at page 59 mortgage
 922 mortgage executed by Thomas J Mansfield
 & wife to Henry M Smith guardian for
 924 heirs of J G Hughes on NW NE Sec 16
 T15-SR1E for the sum of two hundred
 926 and two dollar dated 28 day of Oct
 1857 recorded 28 Dec 1857 & marked
 928 satisfied Oct 12th 1863

Qut 3 From and to what date did your
 930 examination extend -

Ans My examination extended from
 932 about the year 1848 to 1858

Qut 4 Was your search and examination
 934 a careful one

Ans So far as the index it was -
 Henry M Smith

Int 105 to 109 Dept

31 936 Deposition of Nathan M Thompson
938 a trustee of Township 15 S R 1 E Polk
940 Co Illinois - if so state about what
time & how long you acted in that
Capacity -

Ans I have I think I commenced
about 1843 and acted as such
944 a considerable portion of the time
until 1862

948 Qut 2 During your service as a trustee
was any disposition made by your
board of the NW 1/4 sec 16 T 15
S R 1 E situated in said County -
950 if so state what disposition - state its
whole history if known to you

Ans - sometime in 1847 or 1848 the SW 1/4 NW 1/4
sec 16 T 15 S R 1 E was sold to Thomas J
954 Mansfield by Thomas Forker Treasurer
of T 15 acting under direction of the
956 board of trustees of said town of which
I was a member at \$12 1/2 per acre
958 for which Mansfield gave his promissory
note and a mortgage on the land. He
960 subsequently got the SW 1/4 of the SW 1/4
released from said mortgage and the
962 whole of that mortgage together with
other indebtedness placed on the S E 1/4
964 of the NW 1/4 sec 16 T 15 S R 1 E

966 Qut 3 What do you know of any thing
you have spoken being the purchase
968 money for said premises or any
portion thereof -

Ans - The first mortgage was to secure the
payment of the purchase money - The
972 second mortgage was to secure the
purchase money together with other
974 indebtedness which was not for the
purchase of said land

Cross Ex

Int 1 Was the first mortgage spoken of by
978 you as being for the purchase money
relinquished to Mansfield at the
980 time you spoke of his having got the
NW 1/4 of the NW 1/4 Sec 16 T 15 R 1 E released
982 from the first mortgage and a new
one taken

Ans - The first mortgage was cancelled and
a new one taken on the NE NW Sec
984 16 T 15 S R 1 E

Int 2 - State whether Thomas Mansfield purchased the
988 land mentioned by you in the foregoing answer
to reside upon or otherwise also whether the said
990 Mansfield lived on the SE 1/4 NW 1/4 Sec 16 T 15
S R 1 E in Pulaski County Ill and whether the
992 same constituted the whole or part of his
Homestead & how long did he reside thereon & whether
994 Mansfield was the head of a family & a household
& what improvements were on said land & by
996 whom occupied & how long -

Ans - Mansfield bought said land to live on and
33 998 decided on said NE NW Sec 16 T157 R in said
County - The tract constituted part of his
1000 Homestead &c At Mr Thomson -

The Plaintiff ^{admitting} that the said land was
1012 occupied as a homestead as alleged in
the defendants plea - The further examination
1014 of witness was waived

Deposition of W H Hathaway -

Int 1st You will please state whether you are School
Commissioner of Pulaski County & whether you
1018 have the School Commissioners records -

Ans - I am School Commissioner I have the records -

Int 2 State whether you have examined your loan
book showing entry of notes & mortgages
1022 executed to School Commissioners on account
of loans if so state the result of your exam

1014 ination as to dates Commencement & Conclusion
thereof and whether you found any entry of a

1016 Mortgage or mortgages having been executed by
Mrs Mansfield & wife & for what sum executed

1018 when payable & on what property -

Ans - Cant remember as to dates - Have

1020 examined the loan book found no entry of
any such loan or mortgage as far as

1022 examined W H Hathaway

Deposition of James M. Davids -

34

"
Some time on or about the year 1857 and 1858
1026 the defendant George S. Pidgeon frequently
Conversed with me in relation to the purchase
1028 of certain real estate owned by Thomas J. Mansfield
The N. E. 1/4 NW 1/4 Sec 16 T 15 S R 1 E Cont 40 acy
1030 in Pulaski Co. Ark. being a portion of
The same and spoke in relation to certain
1032 incumbrances against the property we
Conversed relative to the mortgage now in
1034 suit. The Pidgeon said if he purchased
The property he would have to pay off
1036 and discharge said mortgage. The
Pidgeon subsequently purchased said
1038 property and came to me and told
me he had purchased it subject to
1040 the mortgage in suit and paid me
interest on the same. I was Treasurer
1042 of Township 15 R 1 E in Pulaski Co. Ark.
at that time. I further state that the
1044 mortgage from Mansfield & wife to
the trustees of schools of T 15 S R 1 E
1046 mortgage for the payment of one hundred
dated 4th Feb'y 1852 satisfied June 17th
1048 1857 and the mortgage from Mansfield &
wife to trustees of schools of T 15 R 1 E \$85
1050 dated 19 Sept 1854 satisfied June 17 1857
were satisfied by way of giving the
1052 mortgage on which the present suit
was based and includes therein the consideration
1054 money mentioned in the two mortgages satisfied
as aforesaid

Cross Examination -

Int 1 State the times and places when and where the
Page 514 Conversations mentioned by you taken place
35 - 1058 and whether you have given the Conversations
entire - was anything more said & what
1060 was it - Was any one present did you or
G & Ridgion have the Mortgage referred to
1062 at the time or any note or memorandum
Thereof state also if you reduced said Conversation
1064 to writing or not & if nothing more nor
nothing less was said by the said Ridgion

Ans

As to time I cannot speak - more definitely than
1068 what I have already spoken - the Conversations
referred to in my examination in chief were
1070 had in Caledonia We had other Conversations and
on board of a steamer another at Paducah Ky
1072 I cannot say that I have given the Conversations
entire I given the substance of the Conversations
1074 had in Caledonia those spoken of as elsewhere
I do not remember any thing more than you
1076 desired to purchase the Mansfield estate
and asked me to cooperate with you in its
1078 purchase others were present dont recollect who
they were - strangers to me at the time the
1080 interest was paid on the Mortgage by G &
Ridgion to me I had the Mortgage & note in
1082 my possession as Township Treasurer I
did not reduce said Conversation to writing
1084 I do not propose to give the exact Conversation
whether more or less - I have given the substance
1086 of all Conversations we had relative to
the purchase of said estate
Jas M David

36 1088 all objections as to form of depositions
and notices & returned by Parties
E B Watkins Clerk

1090 And thereupon the defendant moved to
exclude the depositions of Henry M Smith
1092 Nathan M Thompson W H Hathaway and
Jas M Davids as evidence in said cause
1094 Motion overruled and defendant then & there
excepted &c

1096 Said plaintiff also offers in evidence the
original deed from Tho J Mansfield & wife
1098 to Geo & Pidgeon admitted by defendant to
have been duly executed acknowledged and
1100 recorded - in the words following -

1102 This indenture made and entered into
this second day of October AD 1858 between
1104 Thomas J Mansfield and Mildred Mansfield
of Pulaski County and State of Illinois
1106 of the first part and George & Pidgeon of the
same county and State of the second part -
1108 Witnesseth that the said parties of the first part
for and in consideration of thirteen hundred
1110 and eighty five dollars - Four hundred
dollars in current money and four hundred
1112 dollars in the interest scrip issued by the
Emporium Real Estate & Manufacturing Company
1114 of Mound City Pulaski County at Par in hand paid
to the said parties of the first part the receipts
1116 of which is hereby acknowledged And the payments
of five hundred and eighty five dollars and
1118 the interest hereafter accruing as follows

three hundred and eighty five dollars and ~~two~~
37 1120 interests to the School Commissioner for Pulaski
County State aforesaid and two hundred and
1122 interest to Henry M Smith as trustee and guardian
or other person or persons authorized to receive
1124 the same - when lawfully required so to do
to each and all of said Commissioners and
1126 trustees mortgages upon certain portions or
parts of the lands herein demised have been
1128 given to secure said payment - The said
parties of the first part hath bargained and
1130 sold and by these presents doth bargain
grant and convey unto the said George
1132 P. Pedron his heirs and assigns forever
all of the following parcel or parcels
1134 of land - lying and being in the
County of Pulaski and State of Illinois
1136 and known as the North half of the North
West quarter of section sixteen Township
1138 fifteen North of Range One East containing
eight acres and the North West fourth
1140 of the North East quarter of section sixteen
Township fifteen North of range one East
1142 containing forty acres to have and to
hold together with all and singular the
1144 rights ways and appurtenances thereunto
belonging to the sole use of the said party
1146 of the second part his heirs or assigns
forever also the parties of the first part
1148 doth hereby surrender and relinquish all
their right title claim or interest in the
1150 aforesaid granted premises within an
law or in equity and covenant with the
1152 said party of the second part that they

38 1154 are the true and lawful owners in fee
simple absolute and that they will
1156 forever warrant and defend the said
premises in the peaceable and quiet
1158 possession of the said party of the second
part his heirs or assigns against the
1160 claims or claims of all persons whatsoever
other or greater than those hereinbefore
1162 described and set forth in witness
whereof we have herewith set our hands
1164 and seals this day and year before
written Thomas Mansfield (Seal)
1166 attest Mildred Mansfield (Seal)
A. W. McCormick (Mark)

1168 To the receiving of said deed in evidence the
defendant objected objection overruled -
1170 and left them & there excepted &c

1172 Which was all evidence given on the
part of said complainants

1174 And thereupon the defendant produced
James M. Davids a witness - who was
1176 sworn & testified as follows

1178 "I can say no more than I have
already said in my deposition
You conversed with me relative to this
1180 property prior and subsequent to your
purchase - The mortgage was in my
1182 possession as treasurer of the township
I don't say the mortgage was shown to
1184 you at the time of the conversation

I cant say that defendant Pidgeon saw
39 1186 the Mortgage on my possession I knew he
paid me interest on it but cant say
1188 whether mortgage was exhibited or not

1190 The defendant also offered ~~a copy of~~
the following agreement -
to wit -

Pulaski County Circuit Court

1192 Trustees of Schools T 13 S R 1 E }
vs } Bill to foreclose
1194 Thomas J Mansfield & wife } Mortgage -
& George P Pidgeon Defts }
It is hereby

1196 agreed that the N E 1/4 N W 1/4 sect 16
Township 13 S R 1 E as described in Compl-
1198 aiant's bill to foreclose in the above styled
Cause - was the Homestead of Thomas J
1200 Mansfield & wife as alleged in the plea
of George P Pidgeon one of the defendants
1202 to ~~the~~ ~~Complainant's~~ bill

Geo P Pidgeon Deft Atty
J M Davidge atty for
Complainant

Filed Sept 13th - 1864

1204 H W Smith Clerk

Which was all the evidence on the part
1206 of the defendant -

Wesley Swan (Seal)
Judge

And Afterwards Dicit on The 25th Day of October
1208 AD 1864 The Defendants George & Pidgeon
filed the following bond in said Cause - Dicit

1210 " Know all men by These presents that we George &
Pidgeon and Henry M Smith are held and firmly bound
1212 into the Trustees of School Township fifth and sixth of
range one East Pulaski County Illinois in the penal
1214 sum of eight hundred dollars for the payment
of which we bind ourselves here and assigns
1216 with our hands and seals this eighteenth day
of October AD 1864 -

1218 The above obligation is such that whereas the said
Trustees of School Plaintiffs did on the 16th day of
1220 September AD 1864 in the Circuit Court of the
County of Pulaski State of Illinois at the September
1222 term 1864 recover a judgment against the above
bounden George & Pidgeon et als for the sum of
1224 \$ 354⁶⁵ and Costs of Suit from which

judgment the said George & Pidgeon has taken an appeal
1226 to the Supreme Court of the State of Illinois Now if the
above bounden George & Pidgeon shall duly prosecute
1228 this appeal and shall pay said judgment Costs
interest and damages in case said judgment
1230 shall be affirmed then this obligation to be
void otherwise to remain in full force

1232 taken and acknowledged } George & Pidgeon (Seal)
before me October 15th } Henry M Smith (Seal)
1234 AD 1864
Henry M Smith Clerk

47-1236

State of Illinois }
Pulaski County } ss

J. Henry M. Smith

1238

Clerk of the Circuit Court in and for
said County. Do hereby certify that

1240

the foregoing is a full true and
perfect transcript from the files

1242

and records in my office in
the foregoing entitled Cause

1246



Witness my hand and the
Official Seal of said Court
at office in ^{St.} Calcedonia
This 13th day of Sept 1865
Henry M. Smith
Clerk

All objections as to the form of said depositions
and sufficiency of issues raised by defendants.

And the said Plaintiff in error makes the
following assignment of Errors
in the foregoing record.

1st The Court erred in overruling the motion
to exclude the Copy of Mortgage offered
in Evidence

2nd The Court erred in overruling defendants
exceptions to depositions of Amittie
Thompson Neathaway and Davidge and
in admitting same as evidence—

3rd The decree is Contrary to the Law
and the Evidence

4th The Court erred in not dismissing
Complainant's bill

5th The Court erred in rendering a decree
against Defendants for \$384 $\frac{65}{100}$ and
Costs

6th The Court erred in not rendering a
decree and judgment in favour of
Defendants

7th The Court erred in rendering a decree
pro Confesso as to Mansfield & Wife
Sunder an error
I hereby certify for Regd W^m A Green Esq^r atty.
at Law

The Clerk of the Supreme Court Fish and Game Division
will make the writ of error a supersedeas on
plaintiff in error executing a bond with Henry
M. Smith his security in the penalty of eight
hundred dollars conditioned according to law
Dred Chambers Jan. 12. 1867 Henry P. Reese
prop. Sup. Court

~~#0~~ 18
George D. D.

George S. Dwyer

no

Trustees of Schools of

D. 15, 57 R. 1. E. F.

Error from Duluth

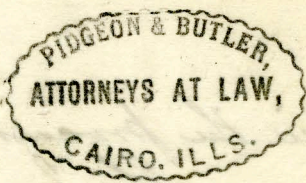
Refused July 20
1867 paid \$5000

A Johnston M

Filed Nov 8/65
A Johnston

Paid \$5000 Clerk

Returned from the City by Lewis
of the Court - Nov 9. 1867
John Johnston. Wash. Johnston M



Feb'y 14th 1867

Noah M Johnson Esq

Dear Sir

I have this day mailed record & bond for supersedeas - The order of Judge Bruce you will find on back of record I wish if you observe any defect in bond you would return it without filing and I will correct same - Otherwise please issue ^{no} Scire facias to the defendants in error - direct it as usual in such cases and please notify me - I herewith enclose \$5.00 Any other or further fees that ought if any to be paid in advance I will remit to you on request - I believe the practice now permits the filing of the record withdrawn in an

appeal suit - in the proceeding
or suit on error - If I am
mistaken return the papers
without filing And I will
have a new record made
up -

This case as you know was
pending on appeal at the
last term and was dismissed
because record was not
filed in that suit in apt
time as required by law
&c

And I dont want any thing
to happen which may
despise of the suit in error
to my disadvantage as I
have the "boys" by the necks
beyond a doubt on the
merits - I am dear Sir
Yours obt servant
Geo S Pilgrom

AB -

I have the brief abstracts
re withdrawn in the Appeal
Case which I will send
up before long - To be filed
in the error suit - Pigeon

Geo. S. Pidgeon }
27 } Error to Pulaski
Fustius & C. }

Enclos^d please find abt
Briefs & C. Which you
will please re-file in
the suit on Error & Obje
Don't forget to send
Geo S Pidgeon

Know all men by these presents that we George S. Ridgion
and Henry M. Smith are held and firmly bound unto the
Trustees of Schools of Township fifteen South of range
One east of the third principal meridian in the County
of Pulaski in the State of Illinois in the special sum of
eight hundred dollars Well and truly to pay which we
do bind ourselves our heirs administrators and executors
jointly and severally by these presents Under our hands
this 2nd day of February A.D. 1867

The Condition

Of the above obligation is such that whereas the said Trustees
of schools did At the September Term A.D. 1864 of the
Circuit Court of Pulaski County State of Illinois And on
the 16th day of said Month recover under (in) a certain bill
in Chancery to foreclose a Mortgage upon certain real
estate described therein a decree and judgment against the
above bounden George S. Ridgion and his Co-defendants Thomas
J. Mansfield and his wife Malinda Mansfield that they the
said defendants pay to the said Trustees Complainants in said
bill the sum of three hundred and eighty four dollars and
sixty five Cents (\$384⁶⁵/₁₀₀) And Costs of Suit within twenty
(20) days from the date of said decree And in default thereof
that the said estate described in said bill be sold to pay the
same sum And the said George S. Ridgion being
about to sue out of the Supreme Court of said State a
Writ of error (And to operate as a supersedeas) in said Cause
Now therefore if the said George S. Ridgion shall duly prosecute his
said Writ of error And stand to abide by And perform said
decree in Case the same shall be affirmed And shall pay all
such interest Costs And damages as shall be awarded to
said Complainants by reason of the wrongful suing out of said
Writ - Then this obligation to be void otherwise to remain in force
Signed in the presence of } George S. Ridgion, (Seal)
C. C. Davidson } Henry M. Smith (Seal)

Approved by me at my office in
Caledonia February 6th A.D. 1867
Henry M. Smith Clerk

Sup¹⁸ Co 1st Gr Division
Novr Term 1867

Geo S Person } Error
 " } do
Trustee of School } P. 100

Superior Court

Filed July 20. 1867.
At Johnston City

W. H. Green Atty

1867-18

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 DeWitt 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 DeWitt county, before the Judge thereof between

Trustee of Schools V. B. R. & E.

plaintiff and

Thomas J. Mansfield & wife and George S. Ridgeman

defendants it is said manifest error hath intervened to the injury of the aforesaid Thomas J. Mansfield & wife and George S. Ridgeman 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 twentieth day of February in the year of our Lord one thousand eight hundred and sixty seven

Noah Johnston

Clerk of the Supreme Court.

Pidgen
Trustee of School

157

~~Imperial~~

Mansfield and wife executed to the school-trustees a mortgage upon their homestead, without the statutory waiver, and subsequently sold and conveyed it to Pidgen. The trustees filed a bill to preclude, making Pidgen a party. He ~~is~~ depends on the ground that Mansfield and wife had not released their homestead in executing the mortgage. But their deed to him provided that, as a part of the consideration money, he was to pay the debt to the school trustees. By the terms of his deed he assumed the payment of that debt as a condition of taking the title. The parties recognized the debt as a lien on the land, since since the deed to Pidgen described the debt as secured by a mortgage upon the premises. Having obtained the land by recognizing the mortgage as an existing lien, and assuming

its payment, he is stopped from
defeating it by setting up Pedgley
homestead rights. To do this would
to permit him to do this, would be
to permit him to practise a fraud
both on Mansfield and the School
Trustees.

It is admitted however that the
decree was for too large a sum.
Council ask leave to that a decree
be entered here for the proper amount,
but having found this practice to
lead to inconvenience, we demand
the case that the proper decree
may be entered in the circuit court.

Record & remanded.

Pedgley
Trustees of Schools

June June May

Opium

Lumina

O. R.

R & R

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

The People of the State of Illinois,

To the Sheriff of Sulaski 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 Sulaski county, before the Judge thereof between Trustees of Schools T. 15 S. R. 1 E. and R. 1 E.

Thomas J. Mansfield & wife and George S. Pirogion plaintiff and Thomas J. Mansfield & wife and George S. Pirogion defendant

it is said that manifest error hath intervened to the injury of said Thomas J. Mansfield & wife and George S. Pirogion 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 Trustees of Schools T. 15 S. R. 1 E.

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 Trustees of Schools T. 15 S. R. 1 E. notice together with this writ.

WITNESS, the Hon. J. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twentieth day of February in the year of our Lord one thousand eight hundred and sixty seven

Wash Johnson
Clerk of the Supreme Court.

SUPREME COURT,

FIRST GRAND DIVISION,

Geo. J. Ferguson

PLAINTIFF IN ERROR,

*Geo. J. Ferguson
John Chapman
John Chapman*

*Trustees of Schools
vs
Geo. J. Ferguson*

DEFENDANT IN ERROR.

Scire Facias.

FILED

The writ of error, issued and filed in this
Cause, is made a Supersedeas, and as such, is to
be obeyed by all concerned - July 20 - 1867

Noah Johnston Clk

The within executed by reading to James
Bagby and John Thompson Trustees of
School of Townships 15th & 1 East in
Pulaski County Illinois this 20th day of
March 1867

*S. J. Lewis Sheriff
By W. F. Gatten Depty*

fees same on June 1. 50	
printed	1 00
per	10
postage	6
	<u>\$ 2.66</u>

*S. J. Lewis Sheriff
W. F. Gatten Depty*



State of Illinois Supreme Court
 1st Grand Division Nov Term 1867
 George S Pidgeon }
 Trustee of Schools vs } Error to Pulaski -
 R. E. Pulaski et al } Application for Reversal &c

George S Pidgeon being first duly sworn on his
 oath deposes and says that Henry M Smith
 who has been proposed as his security in
 the above styled Cause is a resident of
 Pulaski County in the State aforesaid that
 said Smith is worth in his own right and
 liable to executions goods and Chattels lands
 and tenements of over the value of three
 thousand dollars - and further saith not
 George S Pidgeon

State of Illinois } ss -
 Alexander Connel }
 City of Cairo } I Alexander H Smith Clerk
 of the Court of Common Pleas of the City of
 Cairo County - do hereby
 Certify that on this day personally appeared
 before me the above named George S Pidgeon
 and subscribed and made oath to the truth
 of the foregoing Affidavit - In witness
 whereof I have hereunto affixed my
 name and the Seal of the
 Court in the City of Cairo on
 this 9th day of January AD 1867
 Alex. H. Smith Clerk

Stamp

19

Geo. S. Pidgeon
by
Trustees of
No. 4444 to opposite
Appt

Geo. S. Pidgeon
Trustees School
Pulaski

8464

Filed July 20-1867
Attest Wm

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

NOVEMBER TERM, 1865.

Geo S Pidgeon *Plf in Error*

TRUSTEES OF SCHOOLS T. 15, 5 R. 1 E.,

vs.

~~THOMAS J. MANSFIELD, et al.~~

Error

Appeal to Pulaski.

ABSTRACT.

Page 1 This suit was begun in the Court below by defendants ^{*Error*} in ~~appeal~~, filing on the
25th day of June, 1862, their bill to foreclose a certain mortgage to said Trustees,
2 executed by Thomas J. Mansfield and his wife Mildred, on the north-east fourth of
the north-west fourth in section 16, township 15 S., R. 1 E., in said County, con-
3 taining 40 acres—for the sum of \$185 00. Mortgage and note made and
acknowledged by M. and wife on the 13th of June, 1857, interest at 10 per cent.
payable semi-annually, and due in two years from date.

4 Bill in the usual form, stating that M. and wife were indebted to complainants,
and to secure the payment of \$185 and interest at 10 per cent. per annum, executed
said note and mortgage.

3 Bill also states that one George S. Pidgeon sets up some claim against said
premises, as a subsequent incumbrance of some kind or other.

4 Bill prays that process issue to the said M. and wife and Pidgeon, and that said
Pidgeon be required to set forth his title, and together with the other defendants
to answer said bill. That said mortgage be foreclosed and the premises sold, and
complainants paid the principal and interest mentioned in said mortgage and note.

5 On same day plaintiffs below filed a copy of note and mortgage, and an affidavit
setting forth the non-residence of Thomas J. and M. Mansfield.

24 The form of the mortgage is copied from the school law of 1857, and the
acknowledgment by M. and wife is in the usual form for the relinquishment of
dower, &c. The mortgage and acknowledgment, nor either of them, contains any
reference, relinquishment or waiver of the homestead.

6 June 26, summons issued and returned to the August, 1862, term—served as to
G. S. Pidgeon; not served as to M. and wife. Cause cont. gen'ly.

8 At the following April term, (1863,) George S. Pidgeon, one of the defendants,
filed his plea to said bill, setting forth that at ~~the~~ before the time of the said M.
and wife executing said mortgage, the premises described and the buildings there-
on constituted a part of the homestead of Thomas J. Mansfield. That said Mans-
field was a house-holder, the head of a family, and owned and occupied them as
such. That said premises together with the entire lot or parcel of land so occu-
pied, was worth less than \$1000. That the mortgage and note was not given to
secure the payment of any debt or liability incurred before the 5th day of July,
1851, or for the purchase or improvement of said premises.

Page 8

That the said M. and wife never abandoned waived, released or relinquished all or any of their rights to said homestead. That said M. and wife held, owned and occupied said premises as a homestead, and continued to do so up to the 2nd day of October, 1858, at which time, in consideration of about \$300, they sold and conveyed in fee simple the said premises to defendant G. S. Pidgeon, and at the same time delivered to him the possession thereof. Wherefore defendant pleads the same, and the several homestead acts of this State, &c.

Plea sworn to by defendant Pidgeon.

- 10 At the same time the defendants M. and wife filed to said bill their joint and several plea, setting up the homestead substantially as stated in plea of George S. Pidgeon, by their attorney G. S. Pidgeon—but not sworn to.

At same term complainants filed general replication to plea of defendant Pidgeon.

- 12 At the September term leave was given complainants to withdraw replication and to reply by Wednesday, 9 o'clock, A. M.

At same Term leave given to amend the bill.

- 13 Complainant's filed an amendment to original bill, stating that it was true that Mansfield and wife conveyed said premises to defendant Pidgeon, after the date of mortgage—but that the defendants M. and wife stipulated in said deed with the said Pidgeon for the payment of \$385 and interest to the school Commissioners of Pulaski County, and \$200 to Henry M. Smith, as trustee or guardian, or other person or persons authorized to receive the same when lawfully required so to do
- 14 —as part of the consideration for said conveyance of said premises—and aver that the \$185 mentioned in complainant's mortgage was part and parcel of the \$385 named in the deed to Pidgeon as payable to the School Commissioners of Pulaski County, and that said plaintiff so understood said stipulation.

- 15 Defendant Pidgeon filed his answer to amended bill, setting up his plea of homestead to the original bill, and denying the additional allegations and matters stated in the amended bill.

Answer sworn to.

Cause continued generally.

- 17 At the April term, 1864, complainants filed replication to defendant Pidgeon's answer to amended bill.

- 19 At the same term complainants moved to strike the plea of Thomas J. Mansfield from the files.

On motion, leave granted defendants to withdraw the plea of M. and wife.

- 19 And afterwards the defendants, M. & wife, having failed to answer, default taken and decree *pro confesso* as to them, and cause set for hearing at the next term, with leave to take proof, &c.

At the September term defendant filed the following agreement :

TRUSTEES OF SCHOOLS, T. 15 S., R. 1 E., <i>vs.</i> THOMAS J. MANSFIELD & WIFE, AND GEORGE S. PIDGEON.	}	Pulaski County Circuit Court. Bill to foreclose Mortgage.
--	---	--

It is hereby agreed that the N. E. quarter N. W. quarter Sec. ¹⁶ T. 15 S., R. 1 E., as described in complainants bill to foreclose in the above styled cause was the
 39 Homestead of Thomas J. Mansfield and wife, as alledged in the plea of George S. Pidgeon, one of the defendants to complainants bill.

GEO. S. PIDGEON, *Defendants' Attorney.*
 J. M. DAVIDGE, *Attorney for Complainants.*

Filed September 13, 1864.

20 The defendant also filed his exceptions to depositions—exceptions overruled, and defendant then and there excepted, &c.

24 Cause submitted, and plaintiffs offered in evidence a certified copy of original mortgage and acknowledgment, containing no release or waiver of homestead. Defendant objected, &c.; objection overruled—to which defendant then and there
 26 excepted, &c.

Also, the note described in complainants bill, for \$185 00, dated 13th June 1857, and payable to Trustees of Schools of T. 15, 1 E. for the use of inhabitants of said town.

To which defendant objected; objection overruled and defendant then and there excepted, &c.

Complainants, to prove that the \$185 00 mentioned in the mortgage and note was part of the \$385 00 described in deed of M. and wife to Pidgeon, as payable to the School Commissioners of Pulaski County, offered the deposition of *H. M. Smith* in substance as follows: Am Circuit Clerk; have examined County records and find mortgage for \$60, dated Septemper 19, 1849, to School Commissioner of said County from M. and wife. Also, find deed to M. and wife from School Commissioner for N. half N. W. quarter, section 16, T. 15, 1 E., dated June 10, 1850; also mortgage from M. and wife to Trustees of Schools T. 15 S., R. 1 E., for \$100, dated February 4th, 1852—marked satisfied 13th June 1857.
 28

Also, find mortgage from M. and wife to said Trustees on N. E. of N. W. S. 16, T. 15, 1 E., for \$85 00, dated Sept. 19, 1854, and satisfied Sept. 13, 1857.

Also, find from same to same, mortgage on N. E. of N. W. S. 16, T. 15, 1 E.,
 29 for \$185 00, dated, 13th June, 1857 recorded same day; also find from the same parties to the School Commissioner. mortgage on N. W. of N. W. S. 16, T. 15 S., R. 1 E., for \$100 00, dated 13th of June, 1859; also, find from same parties to Trustees of Schools of T. 16, R. 1 E., mortgage on N. half N. W. quarter Sec. 16, T. 15 S. R. 1 E., for \$100 00, dated January 15, 1858. Also, from same parties,
 30 mortgage to *H. M. Smith*, guardian of heirs of *F. G. Hughes*, on N. W. of N. E. Sec. 16, T. 15, R. 1 E., for \$202, dated 28th Oct. 1857—satisfied March 12, 1863. My examination extended from 1848 to 1858.

Also, the depositions of *N. M. Thompson*: I acted as School Trustee of T. 15 S.
 31 R. 1 E., in Pulaski County, a considerable part of the time from 1843 to 1862. Some time in 1848 the N. half of N. W. quarter section 16, township 15, 1 E. was sold to Mansfield by order of the School Trustees of said Town at one dollar and twelve and one-half cents per acre, for which M. gave his note and mortgage. The north-west of the north-west was subsequently released, and the amount of that mortgage together with other indebtedness was secured by a new mortgage on the north-east quarter of the north-west quarter of section 16, township 15, range 1 E. The first mortgage was to secure the purchase money; the second was to secure the same and other debts of a different kind.

Cross-Examined: The first mortgage was cancelled when the second one was

Page 32 given. Mansfield occupied the north-east quarter of the north-west quarter of section 16, T. 15, R. 1 E., as part of his homestead.

The complainants admitting the said premises to have been Mansfield's homestead as alleged in plea of defendant Pidgeon, the further examination of said witness waived.

33 Also, deposition of *W. M. Hathaway*: Am School Commissioner of said County. Have examined my record of notes and mortgages and loan book, and find no entries of mortgages from Mansfield, or loans to him.

34 Also, deposition of *J. M. Davidge*, complainant's Attorney: Some time on or about 1857 and 1858 frequently talked with defendant Pidgeon about lands owned by Mansfield, the N. E. of N. W. S. 16, T. 15, 1 E. being part of same; also talked about certain mortgages, and the one now in controversy. Pidgeon said he would have to pay it. Pidgeon subsequently bought it, subject to the mortgage in suit, and paid me interest on the same. I was then Treasurer. The mortgage from M. and wife to Trustees T. 15 S. R. 1 E., for \$100 00, dated Feb. 4, 1862—satisfied 13th June, 1857; and the mortgage from same parties to same parties, dated 19th September, 1854—satisfied June 13th, 1857, were satisfied by executing the mortgage mentioned in complainant's bill.

35 *Cross-Examined*: Cannot speak more definitely as to the conversations with Pidgeon; they occurred in Caledonia and other places. Cannot say that I have given them entire; have given the substance of those had in Caledonia. Cannot say as to those had elsewhere. He asked me to co-operate with him in the purchase; when the interest was paid I had the note and mortgage in my possession. Have given the substance of all the conversations relative to the purchase of said land.

Merely formal objections to the foregoing, waived by said defendant.

And upon the offering in evidence on said trial of said depositions, and each of them, the defendant then and there moved to exclude the same, and each of them, because irrelevant, and prove nothing pertinent to the issue. Motion overruled, and defendant then and there excepted, &c.

36 The complainants also offered a deed from M. and wife to Pidgeon, dated 2nd October, 1858. The recitals in said deed state, that in consideration of \$1385 00, \$400 in money, \$400 in scrip, and the payment of \$585 as follows: \$385 00 to the School Commissioner for Pulaski County, and \$200 00 to H. M. Smith, as trustee and guardian, or other person or persons authorized to receive the same—when lawfully demanded—to each of whom mortgages had been given—the said M. and wife conveyed the said N. E. of N. W. of Sec. 16, T. 15 S. R. 1 E., together with some other lands, to said Pidgeon and heirs in fee.

Which was all the evidence offered on the part of complainants.

38 The defendant produced *J. M. Davidge*, complainants' Attorney, as a witness, who testified: I can say no more than already stated in my deposition. Pidgeon conversed with me relative to the property before and after his purchase. Don't know that the mortgage in suit was ever shown to him at the time of the conversations; don't know that he ever saw it in my possession.

The defendant then read in evidence the agreement, filed in this suit, between complainants and defendant, that the premises mortgaged were part of Mansfield's homestead, as alleged in defendant's plea, on pages 7, 8 and 9 of record.

Which was all the evidence on the part of defendant.

21 And thereupon the Court decreed that said defendant pay to the said plaintiffs the sum of three hundred and eighty-four dollars and sixty-five cents, and costs of suit, in twenty days, and that in default thereof that said estate, to-wit: the N. E. N. W. S. 16, T. 15 S. 1 E., be sold to pay same, &c.

22 And thereupon the defendant G. S. Pidgeon prayed an appeal, which was allowed on filing bond in the sum of \$800 00 with Henry M. Smith security, within 30 days. Bond, as above, filed within 30 days.

ASSIGNMENT OF ERRORS.

- 1st. The Court erred in overruling motion to exclude the copy of Mortgage offered in evidence.
- 2nd. The Court erred in overruling defendants exceptions to depositions of Smith, Thompson, Hathaway and Davidge, and in admitting same as evidence.
- 3d. The decree is contrary to the law and the evidence.
- 4th. The Court erred not dismissing complainants' bill.
- 5th. The Court erred in rendering a decree against defendant for \$384 65 and costs.
- 6th. The Court erred in not rendering a decree and judgment in favor of defendant.
- 7th. In rendering a decree *pro confesso* as to Mansfield and wife.

W. H. GREEN, }
G. S. PIDGEON, } Attorneys.

B R I E F .

Under the first and second errors assigned no objection is intended to be taken that the same was not primary, or the best evidence of the facts,—but that the mortgage and acknowledgment, nor either of them, contain any evidence of any release or waiver of the Homestead, and therefore are not pertinent to the issue. And that the depositions offered with a view of showing that appellant stipulated in his deed from Mansfield to pay said mortgage—do not show that fact, and if they did, nothing contained in said deed could change the character of the mortgage or appellee's rights under it. Neither could appellees show anything contrary to their agreement that the premises were the Homestead of Mansfield, in manner and form as alledged in the plea of appellant Pidgeon.

The Court erred in rendering a decree *pro confesso* against M. and wife, as there had been no notice, either actual or constructive to them, and the plea filed by their Attorney not being under oath as required by the bill, and having been with-

drawn by leave of the Court, the parties stood as though no such plea had been filed.

The complainants' witness Thompson showed the mortgaged premises to have been the Homestead of Mansfield and worth less than \$1000, and their agreement filed in the case that the the appellant's plea of Homestead was true, and the allegations in their bill, and the deed from Mansfield to Pidgeon, all showing the fact that Mansfield had conveyed and actually delivered the premises to Pidgeon, and there being no evidence that the mortgage in question was given to secure the payment of purchase or improvement money, or any debt incurred prior to 4th July, 1854—the Court erred in not rendering judgment in favor of the defendant Pidgeon.

That any allegations or evidence in relation to any supposed promise or undertaking of the defendant Pidgeon to pay the mortgage in question was wholly immaterial in a suit to foreclose the mortgage.

That if the evidence of Thompson shows that the land (forty acres) was sold for \$50 00, and a mortgage given to secure the same, it also shows that afterward a *new* (mortgage and note) *promise* was made to pay a larger sum of money *in consideration* of the cancellation of the first. But whatever may be thought as to the extinguishment of the debt for the original purchase money—the evidence does not show the mortgage now attempted to be foreclosed covers any part of the original purchase money. See Phelps vs. Conover, 25th Ill.

Debts due corporations, either public, private or charitable, are not by any law placed on any different footing from that due individuals, as to the Homestead.

The Court erred in rendering judgment against appellant for \$384 65, as the whole principal and interest amounted to only \$319 12 to the 13th of September, 1864. The bill not stating or praying for anything more than the payment of the note and interest at ten per cent., the Court could not give more. Neither does it appear from the bill, the evidence, nor otherwise, that the debt was for *loaned money*. See Hamilton vs. Wright, 1 Scam.; Bradley vs. Case, 3 Scam.; and Trustees of Schools vs. Bibb, 14 Ill.

The pleadings and evidence show that the mortgage was given 13th June, 1857; that the premises were at the time the Homestead of Mansfield; that there was no release, waiver or abandonment of same; that on the 2nd of October, 1858, Mansfield sold by deed in fee and delivered the same to Pidgeon for a valuable consideration. See Kitchel vs. Burgwin, 21 Ill.; Vanzant vs. Vanzant, 22 Ill.

The defendant Pidgeon has the same rights as against the mortgagors that his vendor had. *See Dow vs. Mills 37 Ill. 1973 —*

And the premises being admitted the homestead of Mansfield, he could alien them free and discharged from any lien not good against him. Cole vs Green, 21 Ill.; Green vs. Marks, 25 Ill.; Vaughn vs. Thompson, 17 Ill.; Patterson vs. Krieg, 29 Ill.

W. H. GREEN, }
G. S. PIDGEON, } Attorneys.

Sup Co N.Y. Div
1867

18
George S. Ridgeman
School Trustees

Edward Pulaski
Abstract & Deeds

Filed Nov 8/65
Johnston Clerk
Refiled March 26-
1867 - N. Johnston Ct
W. H. Green &
G. S. Ridgeman Attys

G. S. RIDGEMAN
W. H. GREEN

20 III
The Green vs. Ridgeman et al. Judgment of the Court in the case of Green vs. Ridgeman et al. is affirmed from the first and disapproved from the second and third points. Cole vs. Green, 23

And the premises being admitted the possession of Ridgeman, he may give

And the Court in rendering judgment against defendant in favor of the

of the judgment in the case of Green vs. Ridgeman et al. is affirmed from the first and disapproved from the second and third points. Cole vs. Green, 23

And the Court in rendering judgment against defendant in favor of the

Supreme Court of the State of Illinois
First Grand Division
November Term A. D. 1866

Trustees of Schools of T. 15 R. 1 E.,

vs
Thomas J. Mansfield and
Mildred Mansfield his wife and
George S. Pidgeon

} Appellants
} Defendants

The facts in this Cause are as follows
Thomas J. Mansfield one of the ~~defendants~~ ^{plaintiffs} in
error, was the owner of the ~~40~~ North
half of the North West quarter of Sec 16
in T. 15 R. 1 E. Con. 80 acres, and the North
West fourth North East quarter of Sec.
16. T. 15 R. 1 E. Con 40 acres, upon which
Mansfield and his wife had executed Mortga-
ges - one to the Defts in error ~~on the~~ on the
North East 1/4 North West quarter being a part
of the tract first described, for the sum of one
hundred and eighty five dollars, dated June
13th 1857, a second to the School Commr
on the NW NW being residue of the first
tract above described, for the sum of one hun-
dred dollars, dated 13th June 1857, a third
Mortgage was executed to Trustees of Schools
of T. 16 R. 1 E. on the whole of the first above
described tract, for one hundred dollars
dated January 15th 1858, also a Mortgage

to H. M. Smith guardian of heirs of T. G.
Hughes on NW NE qr Sec 16. T. 15. R. 1 E
for the sum of \$200 - dated 28th Oct 1857.

Mansfield and wife, on the second
day of October 1858 conveyed said lands
to Geo. S. Pidgeon and the consideration
mentioned in the deed from Mansfield
and wife to George S. Pidgeon was \$1385 -
\$400 - in current money - \$400 - in the
interest scrip issued by the Emporium
Real Estate and Manufacturing Company
of Mount City, in hand paid, and the
payment of five hundred and eighty
five dollars and the interest thereafter
accruing as follows \$385 - and interest
to the School Commissioners of Pulaski County
and \$200 - and interest to Henry M. Smith
as Trustee and guardian, or other person
or persons authorized to receive the same
when lawfully required so to do, vide
said deed copied in record page 1036.

The defendants in appeal on the 25th
Jan 1862 filed their bill to foreclose
mortgage on the NE 1/4 NW qr Sec 16. T. 15.
R. 1 E containing 40 acres - for the sum
of 185 \$\$. Mortgage and note made and
acknowledged by M. and wife 13 Jan 1857
interest at 10 per Cent Bill in usual
form. Bill also states that George S. Pidgeon

Sets up some claim &c.

Copy of Mortgage & original note
filed with bill

Summons issued 26 June 1862
returned to Aug 1862, term - Series
on lpeo S. Pidgeon, Cause
cont. generally by operation of law
See record appended Page 1

At April term 1863 Defendants
by Pidgeon their Solicitor enter their
appearance, See record Page 1.

The pleadings are substantially as
stated in the Abstract of plff in error,
excepting Pages 13 & 14 of record in rela-
tion to Amending Part of the bill, is not
sufficiently clear. The amendment was to
the effect that, "Chansfield & wife, in Con-
sideration of \$1385 - \$400 - thereof Current
Money - and \$400 - interest Scrip of the
Empireum Real Estate & Manufacturing Com-
any at par in hand paid ~~to George S.
Pidgeon~~ and the payment of \$585 - and
the interest, \$385. to the School Com, and
\$200 - and interest as trustee guardian
or other person or persons, authorized
to receive the same for which Mortgage
had been given, to be paid by said
George S. Pidgeon conveyed said property
to him, charges that the sum of Money

and its interest named in the Mortgage
ought to be foreclosed was a part there-
of - but described in said deed from
H. & wife to Ridgen, to be payable
to School Commissioners &c.

The plaintiffs in the Court below, in
the trial of said Cause, introduced
an affidavit showing that the origin-
al mortgage mentioned in Complainant's
bill, was not in the power or poss-
ession of Complainant or her record-
her appended papers. And thereupon
offered in evidence a certified copy
of Mortgage & acknowledgment and
original note

To prove that the \$185- mentioned
in Mortgage was a part of the \$385-
described in deed of H. & wife to Ridgen,
as payable to School Com. of Pulaski
County, offered the deposition of H.
M. Smith ~~he stated, that exami-~~
~~ation extended from 1848 to 1858~~
and that portion of his deposition bear-
ing on this case is to the effect;

I am circuit clerk, have examined
records, I find Mortgage on N & N
S. 16, T. 15 R. 1 E for \$185. 00, dated 13th
June 1857 from Mansfield wife to
Trustees of School of T. 15 R. 1 E.; from the

Same parties to School Comm. Mort
gage on NW NW S. 16. T. 15. R. 1 E
for one hundred dollars, dated 13th
June 1857. ^(described in Abstract of plat. in abstract, dated June 13, 1857) also from same parties
to Trustees of School of T. 16. R. 1 E; Mortg
age on it, half NW or Sec 16 T. 15. S. R. 1 E.,
for \$100 - dated January 15, 1858
also from same parties, Mortgage to
Hill Smith, guardian of heirs of F. G.
Hughes on NW NE Sec 16, T. 15. R. 1 E. for
\$200 - dated ²⁸ Oct 1857. My examination
extended from 1848 to 1858, record pages
29180.

Shr. deposition of J. M. Davidge, County
attorney, some time on or about 1857 and
1858 Ridgen frequently conversed with me
in relation to the purchase of real estate owned
by Champden The North East, North West
or Sec 16, T. 15. R. 1 E, a part of it, & in
relation to the mortgage now in suit.

Ridgen told me if he purchased the
property he would have to pay off and
discharge said mortgage. Ridgen subse
quently purchased said property. Cam
to me and told me he had purchased
the same subject to the mortgage in suit,
paid me interest on the same. I was
Treasurer of the Township at that time & ex
am record page 34

The complainants then offered in evidence the deed from M. & wife to Pagen, the consideration therein mentioned has been herein before stated - in substance to which I respectfully call the attention of the Court, vide near page 36.

Hence, from the evidence, the Court must necessarily conclude

1st That Chancery conveyed the property in question viz the N.E. 1/4, N.W. 1/4, together with other property to George D. Pagen for the consideration mentioned in the deed and to be paid as therein stated

2^d That said property conveyed was encumbered by mortgages

3^d That from the deposition of the Circuit Clerk extending from 1848 to 1858

the only unsatisfied mortgages against the property deeded by M. & wife to Pagen found upon record, is a mortgage from M. & wife to defendants, in error on the N.E. 1/4, N.W. 1/4 S. 16 R. 1 E 40 acres for the sum of \$185.00, dated June 13th 1857, - a mortgage from same parties to School Commr. on N.W. 1/4 N.W. 1/4 S. 16 R. 1 E for \$100 - dated 13th June 1857, a mortgage from same parties to Trustees of School S. 16 R. 1 E for \$100, - dated January 15th 1858. And from same parties to H. M. Smith guardian or for \$200 -

dated 28^c Oct 1857 and as there were no other mortgages and being for the same sums viz \$385. and \$200 - as those mentioned in the deed from M. + wife to Ridgen an equitable conclusion would be that they are the mortgages intended to be described in said deed, which taken in connection with the testimony of J. M. Davidge Mayor of the Township wherein said Davidge states that after Ridgen had made the purchase he came to him and told him he had purchased the same subject to the mortgage in suit and paid him interest on the same, no reasonable doubt can be entertained by the Court as to the identity of the mortgage in controversy. With this view of the case I am of opinion that the homestead exemption would not attach as to Ridgen in as much as the payment of this mortgage was made a part of the consideration money ~~to~~ in the deed from M. + wife to Ridgen to be paid by said Ridgen which he failed and refused to do and still doth fail and refuse.

As to the decree pro Confesso against M. + wife it was perfectly proper their appearance having been entered before plea, vide annexed record

page 101.

The plaintiffs in error say the Court erred in rendering judgment against them for \$384.65

The sum of \$384.65 and even a larger sum appears due from the note and mortgage. But that sum, by charging interest at the rate of 12 per centum per annum on the principal and interest during time of default was decreed by the Court to be paid, being a less sum than which appears due from Note & Mortgage

The mortgage was for loaned money, the gentlemen's assertion to the contrary notwithstanding

It appears however that the true amount due upon said mortgage is \$362.88 that is to say \$185- principal and one hundred and seventy seven dollars and eighty eight cents and of interest on principal at and interest at 12 per centum during time of default, viz; from 13th ^{June} 1858 to 13th Sep 1864 The excess \$21.77- I do hereby order a remittitur for. at costs of the defendants in error, asking a judgment for \$362.88 vide Stephens vs Quincy 2 Gil., 577

The mortgage was for loaned money, because it was ~~not~~ denied

by ptts in error

L M Dauda
Attorney for Dependents
in error.

Yrestes of
Schunts

Lawdys

Argent.

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

NOVEMBER TERM, 1865.

George S. Pidgeon — *Plf in Error*

TRUSTEES OF SCHOOLS T. 15. 5 R. 1 E., } *Error*
vs. } *Appeal to Pulaski.*
~~THOMAS J. MANSFIELD~~ } *8th mo 1865*

ABSTRACT.

Error
Page 1 This suit was begun in the Court below by defendants in appeal, filing on the 25th day of June, 1862, their bill to foreclose a certain mortgage to said Trustees, executed by Thomas J. Mansfield and his wife Mildred, on the north-east fourth of
2 the north-west fourth in section 16, township 15 S., R. 1 E., in said County, containing 40 acres—for the sum of \$185 00. Mortgage and note made and acknowledged by M. and wife on the 13th of June, 1857, interest at 10 per cent.
3 payable semi-annually, and due in two years from date.

4 Bill in the usual form, stating that M. and wife were indebted to complainants, and to secure the payment of \$185 and interest at 10 per cent. per annum, executed said note and mortgage.

3 Bill also states that one George S. Pidgeon sets up some claim against said premises, as a subsequent incumbrance of some kind or other.

4 Bill prays that process issue to the said M. and wife and Pidgeon, and that said Pidgeon be required to set forth his title, and together with the other defendants to answer said bill. That said mortgage be foreclosed and the premises sold, and complainants paid the principal and interest mentioned in said mortgage and note.

5 On same day plaintiffs below filed a copy of note and mortgage, and an affidavit setting forth the non-residence of Thomas J. and M. Mansfield.

24 The form of the mortgage is copied from the school law of 1857, and the acknowledgment by M. and wife is in the usual form for the relinquishment of dower, &c. The mortgage and acknowledgment, nor either of them, contains any reference, relinquishment or waiver of the homestead.

6 June 26, summons issued and returned to the August, 1862, term—served as to G. S. Pidgeon; not served as to M. and wife. Cause cont. gen'ly.

8 At the following April term, (1863,) George S. Pidgeon, one of the defendants, filed his plea to said bill, setting forth that at ~~the~~ before the time of the said M. and wife executing said mortgage, the premises described and the buildings thereon constituted a part of the homestead of Thomas J. Mansfield. That said Mansfield was a house-holder, the head of a family, and owned and occupied them as such. That said premises together with the entire lot or parcel of land so occupied, was worth less than \$1000. That the mortgage and note was not given to secure the payment of any debt or liability incurred before the 5th day of July, 1851, or for the purchase or improvement of said premises.

Page 8

That the said M. and wife never abandoned waived, released or relinquished all or any of their rights to said homestead. That said M. and wife held, owned and occupied said premises as a homestead, and continued to do so up to the 2nd day of October, 1858, at which time, in consideration of about \$300, they sold and conveyed in fee simple the said premises to defendant G. S. Pidgeon, and at the same time delivered to him the possession thereof. Wherefore defendant pleads the same, and the several homestead acts of this State, &c.

Plea sworn to by defendant Pidgeon.

- 10 At the same time the defendants M. and wife filed to said bill their joint and several plea, setting up the homestead substantially as stated in plea of George S. Pidgeon, by their attorney G. S. Pidgeon—but not sworn to.

At same term complainants filed general replication to plea of defendant Pidgeon.

- 12 At the September term leave was given complainants to withdraw replication and to reply by Wednesday, 9 o'clock, A. M.

At same Term leave given to amend the bill.

- 13 Complainant's filed an amendment to original bill, stating that it was true that Mansfield and wife conveyed said premises to defendant Pidgeon, after the date of mortgage—but that the defendants M. and wife stipulated in said deed with the said Pidgeon for the payment of \$385 and interest to the school Commissioners of Pulaski County, and \$200 to Henry M. Smith, as trustee or guardian, or other person or persons authorized to receive the same when lawfully required so to do
- 14 —as part of the consideration for said conveyance of said premises—and aver that the \$185 mentioned in complainant's mortgage was part and parcel of the \$385 named in the deed to Pidgeon as payable to the School Commissioners of Pulaski County, and that said plaintiff so understood said stipulation.

- 15 Defendant Pidgeon filed his answer to amended bill, setting up his plea of homestead to the original bill, and denying the additional allegations and matters stated in the amended bill.

Answer sworn to.

Cause continued generally.

- 17 At the April term, 1864, complainants filed replication to defendant Pidgeon's answer to amended bill.

- 19 At the same term complainants moved to strike the plea of Thomas J. Mansfield from the files.

On motion, leave granted defendants to withdraw the plea of M. and wife.

- 19 And afterwards the defendants, M. & wife, having failed to answer, default taken and decree *pro confesso* as to them, and cause set for hearing at the next term, with leave to take proof, &c.

At the September term defendant filed the following agreement :

TRUSTEES OF SCHOOLS, T. 15 S., R. 1 E., } Pulaski County Circuit Court.
vs.
 THOMAS J. MANSFIELD & WIFE, AND } Bill to foreclose Mortgage.
 GEORGE S. PIDGEON.

It is hereby agreed that the N. E. quarter N. W. quarter Sec. ~~22~~¹⁶ T. 15 S., R. 1 E., as described in complainants bill to foreclose in the above styled cause was the
 39 Homestead of Thomas J. Mansfield and wife, as alledged in the plea of George S. Pidgeon, one of the defendants to complainants bill.

GEO. S. PIDGEON, *Defendants' Attorney.*
 J. M. DAVIDGE, *Attorney for Complainants.*

Filed September 13, 1864.

20 The defendant also filed his exceptions to depositions—exceptions overruled, and defendant then and there excepted, &c.

24 Cause submitted, and plaintiffs offered in evidence a certified copy of original mortgage and acknowledgment, containing no release or waiver of homestead. Defendant objected, &c.; objection overruled—to which defendant then and there
 26 excepted, &c.

Also, the note described in complainants bill, for \$185 00, dated 13th June 1857, and payable to Trustees of Schools of T. 15, 1 E. for the use of inhabitants of said town.

To which defendant objected; objection overruled and defendant then and there excepted, &c.

28 Complainants, to prove that the \$185 00 mentioned in the mortgage and note was part of the \$385 00 described in deed of M. and wife to Pidgeon, as payable to the School Commissioners of Pulaski County, offered the deposition of *H. M. Smith* in substance as follows: Am Circuit Clerk; have examined County records and find mortgage for \$60, dated Septemper 19, 1849, to School Commissioner of said County from M. and wife. Also, find deed to M. and wife from School Commissioner for N. half N. W. quarter, section 16, T. 15, 1 E., dated June 10, 1850; also mortgage from M. and wife to Trustees of Schools T. 15 S., R. 1 E., for \$100, dated February 4th, 1852—marked satisfied 13th June 1857.

Also, find mortgage from M. and wife to said Trustees on N. E. of N. W. S. 16, T. 15, 1 E., for \$85 00, dated Sept. 19, 1854, and satisfied Sept. 13, 1857.

29 Also, find from same to same, mortgage on N. E. of N. W. S, 16, T. 15, 1 E., for \$185 00, dated, 13th June, 1857 recorded same day; also find from the same parties to the School Commissioner. mortgage on N. W. of N. W. S. 16, T. 15 S., R. 1 E., for \$100 00, dated 13th of June, 1859; also, find from same parties to Trustees of Schools of T. 16, R. 1 E., mortgage on N. half N. W. quarter Sec. 16, T. 15 S. R. 1 E., for \$100 00, dated January 15, 1858. Also, from same parties,
 30 mortgage to *H. M. Smith*, guardian of heirs of *F. G. Hughes*, on N. W. of N. E. Sec. 16, T. 15, R. 1 E., for \$202, dated 28th Oct. 1857—satisfied March 12, 1863. My examination extended from 1848 to 1858.

31 Also, the depositions of *N. M. Thompson*: I acted as School Trustee of T. 15 S. R. 1 E., in Pulaski County, a considerable part of the time from 1843 to 1862. Some time in 1848 the N. half of N. W. quarter section 16, township 15, 1 E. was sold to Mansfield by order of the School Trustees of said Town at one dollar and twelve and one-half cents per acre, for which M. gave his note and mortgage. The north-west of the north-west was subsequently released, and the amount of that mortgage together with other indebtedness was secured by a new mortgage on the north-east quarter of the north-west quarter of section 16, township 15, range 1 E. The first mortgage was to secure the purchase money; the second was to secure the same and other debts of a different kind.

Cross-Examined: The first mortgage was cancelled when the second one was

Page 32 given. Mansfield occupied the north-east quarter of the north-west quarter of section 16, T. 15, R. 1 E., as part of his homestead.

The complainants admitting the said premises to have been Mansfield's homestead as alleged in plea of defendant Pidgeon, the further examination of said witness waived.

33 Also, deposition of *W. M. Hathaway*: Am School Commissioner of said County. Have examined my record of notes and mortgages and loan book, and find no entries of mortgages from Mansfield, or loans to him.

34 Also, deposition of *J. M. Davidge*, complainant's Attorney: Some time on or about 1857 and 1858 frequently talked with defendant Pidgeon about lands owned by Mansfield, the N. E. of N. W. S. 16, T. 15, 1 E. being part of same; also talked about certain mortgages, and the one now in controversy. Pidgeon said he would have to pay it. Pidgeon subsequently bought it, subject to the mortgage in suit, and paid me interest on the same. I was then Treasurer. The mortgage from M. and wife to Trustees T. 15 S. R. 1 E., for \$100 00, dated Feb. 4, 1852—satisfied 13th June, 1857; and the mortgage from same parties to same parties, dated 19th September, 1854—satisfied June 13th, 1857, were satisfied by executing the mortgage mentioned in complainant's bill. 1852

35 *Cross-Examined*: Cannot speak more definitely as to the conversations with Pidgeon; they occurred in Caledonia and other places. Cannot say that I have given them entire; have given the substance of those had in Caledonia. Cannot say as to those had elsewhere. He asked me to co-operate with him in the purchase; when the interest was paid I had the note and mortgage in my possession. Have given the substance of all the conversations relative to the purchase of said land.

Merely formal objections to the foregoing, waived by said defendant.

And upon the offering in evidence on said trial of said depositions, and each of them, the defendant then and there moved to exclude the same, and each of them, because irrelevant, and prove nothing pertinent to the issue. Motion overruled, and defendant then and there excepted, &c.

36 The complainants also offered a deed from M. and wife to Pidgeon, dated 2nd October, 1858. The recitals in said deed state, that in consideration of \$1385 00, \$400 in money, \$400 in scrip, and the payment of \$585 as follows: \$385 00 to the School Commissioner for Pulaski County, and \$200 00 to H. M. Smith, as trustee and guardian, or other person or persons authorized to receive the same—when lawfully demanded—to each of whom mortgages had been given—the said M. and wife conveyed the said N. E. of N. W. of Sec. 16, T. 15 S. R. 1 E., together with some other lands, to said Pidgeon and heirs in fee.

Which was all the evidence offered on the part of complainants.

38 The defendant produced *J. M. Davidge*, complainants' Attorney, as a witness, who testified: I can say no more than already stated in my deposition. Pidgeon conversed with me relative to the property before and after his purchase. Don't know that the mortgage in suit was ever shown to him at the time of the conversations; don't know that he ever saw it in my possession.

The defendant then read in evidence the agreement, filed in this suit, between complainants and defendant, that the premises mortgaged were part of Mansfield's homestead, as alleged in defendant's plea, on pages 7, 8 and 9 of record.

Which was all the evidence on the part of defendant.

21 And thereupon the Court decreed that said defendant pay to the said plaintiffs the sum of three hundred and eighty-four dollars and sixty-five cents, and costs of suit, in twenty days, and that in default thereof that said estate, to-wit: the N. E. N. W. S. 16, T. 15 S. 1 E., be sold to pay same, &c.

22 And thereupon the defendant G. S. Pidgeon prayed an appeal, which was allowed on filing bond in the sum of \$800 00 with Henry M. Smith security, within 30 days. Bond, as above, filed within 30 days.

ASSIGNMENT OF ERRORS.

- 1st. The Court erred in overruling motion to exclude the copy of Mortgage offered in evidence.
- 2nd. The Court erred in overruling defendants exceptions to depositions of Smith, Thompson, Hathaway and Davidge, and in admitting same as evidence.
- 3d. The decree is contrary to the law and the evidence.
- 4th. The Court erred not dismissing complainants' bill.
- 5th. The Court erred in rendering a decree against defendant for \$384 65 and costs.
- 6th. The Court erred in not rendering a decree and judgment in favor of defendant.
- 7th. In rendering a decree *pro confesso* as to Mansfield and wife.

W. H. GREEN, }
G. S. PIDGEON, } Attorneys.

B R I E F .

Under the first and second errors assigned no objection is intended to be taken that the same was not primary, or the best evidence of the facts,—but that the mortgage and acknowledgment, nor either of them, contain any evidence of any release or waiver of the Homestead, and therefore are not pertinent to the issue. And that the depositions offered with a view of showing that appellant stipulated in his deed from Mansfield to pay said mortgage—do not show that fact, and if they did, nothing contained in said deed could change the character of the mortgage or appellee's rights under it. Neither could appellees show anything contrary to their agreement that the premises were the Homestead of Mansfield, in manner and form as alledged in the plea of appellant Pidgeon.

The Court erred in rendering a decree *pro confesso* against M. and wife, as there had been no notice, either actual or constructive to them, and the plea filed by their Attorney not being under oath as required by the bill, and having been with-

drawn by leave of the Court, the parties stood as though no such plea had been filed.

The complainants' witness Thompson showed the mortgaged premises to have been the Homestead of Mansfield and worth less than \$1000, and their agreement filed in the case that the the appellant's plea of Homestead was true, and the allegations in their bill, and the deed from Mansfield to Pidgeon, all showing the fact that Mansfield had conveyed and actually delivered the premises to Pidgeon, and there being no evidence that the mortgage in question was given to secure the payment of purchase or improvement money, or any debt incurred prior to 4th July, 1854—the Court erred in not rendering judgment in favor of the defendant Pidgeon.

That any allegations or evidence in relation to any supposed promise or undertaking of the defendant Pidgeon to pay the mortgage in question was wholly immaterial in a suit to foreclose the mortgage.

That if the evidence of Thompson shows that the land (forty acres) was sold for \$50 00, and a mortgage given to secure the same, it also shows that afterward a new (mortgage and note) *promise* was made to pay a larger sum of money *in consideration* of the cancellation of the first. But whatever may be thought as to the extinguishment of the debt for the original purchase money—the evidence does not show the mortgage now attempted to be foreclosed covers any part of the original purchase money. See Phelps vs. Conover, 25th Ill.

Debts due corporations, either public, private or charitable, are not by any law placed on any different footing from that due individuals, as to the Homestead.

The Court erred in rendering judgment against appellant for \$384 65, as the whole principal and interest amounted to only \$319 12 to the 13th of September, 1864. The bill not stating or praying for anything more than the payment of the note and interest at ten per cent., the Court could not give more. Neither does it appear from the bill, the evidence, nor otherwise, that the debt was for *loaned money*. See Hamilton vs. Wright, 1 Scam.; Bradley vs. Case, 3 Scam.; and Trustees of Schools vs. Bibb, 14 Ill.

The pleadings and evidence show that the mortgage was given 13th June, 1857; that the premises were at the time the Homestead of Mansfield; that there was no release, waiver or abandonment of same; that on the 2nd of October, 1858, Mansfield sold by deed in fee and delivered the same to Pidgeon for a valuable consideration. See Kitchel vs. Burgwin, 21 Ill.; Vanzant vs. Vanzant, 22 Ill.

The defendant Pidgeon has the same rights as against the mortgagor^{us} that his vendor had. See *Ives vs. Mills* 37 Ill. 73—

And the premises being admitted the homestead of Mansfield, he could alien them free and discharged from any lien not good against him. Cole vs Green, 21 Ill.; Green vs. Marks, 25 Ill.; Vaughn vs. Thompson, 17 Ill.; Patterson vs. Krieg, 29 Ill.

W. H. GREEN, }
G. S. PIDGEON, } Attorneys.

Dupl Co 18th Dec
Judge
Term 1867

Geo S Ridgion
By

School Trustees -

Appeal Pulaski

Error to Pulaski

18

Filed Nov 8/65
A Johnston Clerk

Refiled March 26, 1867

A Johnston Clerk

86 45

W H Green
G S Ridgion, attys

G. S. RIDGION,
W. H. GREEN, } Notaries

89 III.
Ill: Green vs. Meigs 22 III. Verbu vs. Thompson, 15 III; Patterson vs. King
from free and discharged from any lien not good against him. Cole vs Green, 21
And the premises being admitted the correctness of Meigs' bill, he could obtain
vendor pay. See also in notes of Meigs.

The defendant Ridgion has the same rights in relation to the mortgage as that the
creditor. See Meigs vs. Thompson, 21 III. Verbu vs. Thompson, 22 III.
held sold by deed to the said defendant the same to Ridgion for a valuable consid-
eration, either on appointment of court; that on the 2nd of October 1858 Meigs
paid the premises were at the time the mortgage of Meigs' bill; that there was no
the proceedings and evidence was that the mortgage was given 13th June 1857;

item of Meigs vs. Thompson, 21 III. Verbu vs. Thompson, 22 III.
averred. See Hamilton vs. Walker, 15 Ill. Meigs vs. Thompson, 21 III. Verbu vs. Thompson, 22 III.
return from the bill, the evidence, the operation of the deed was for the
note and interest of the bill, the court could not give more. Meigs' bill, does it
1858. The bill not stating or praying for anything more than the payment of the
whole principal and interest amounted to only \$210 12 to the 13th of September.
The Court erred in rendering judgment against appellant for \$224 65 on the

drawn by leave of the Court. The bill was filed as though no such plea had been
made.
The complaint was filed on the 13th of September 1857. The defendant Meigs
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