No. 11839

Supreme Court of Illinois

Randolph et al.

vs.

People.

71641 7

Ct

Jer. Randolph et al.
vs
The People etc. from ve.

La Salle

104

1857

1857

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of La Salle — **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 La Salle county, before the Judge thereof, between The People of the State of Illinois for the use of the inhabitants of School Township No. thirty three North of Range No. four East of 3rd P. M., complainants

~~plaintiff~~ and Jeremiah F. Randolph & others —

defendant~~s~~ it is said manifest error hath intervened, to the injury of the aforesaid defendants Jeremiah F. Randolph, Edgar F. Randolph, George F. Randolph, Charles W. Underhill & James Day 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 distintly and openly, without delay, send to our Justices of the 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 Ottawa, in the county of La Salle, on the second Monday in June 1850 ~~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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this 12th day of June — in the year of our Lord one thousand eight hundred and fifty —

L. Leland *Clerk of the Supreme Court.*

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Jer. Randolph chalg. inspr.
vs
People &c. for use &c.

Writ of error

Filed June 12. 1851.
L. Leland Clk.

Jeremiah J. Randolph
Edgar J. Randolph
George J. Randolph
Charles W Monhill &
James Day

} Error to La Salle

(vs)

The People of the State of Illinois for the use of the Inhabitants of School Township Thirty Three North Range 4 East of the Third Principal Meridian.

We do hereby Enter ourselves Security for Costs in this cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this Court in pursuance of the laws of this State

Dated at Ottawa this 12th day of June 1860

J. P. A. Rose

M. H. Smith

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Jeremiah F. Randolph
& als.

(vs)

The People &c.
for the use of &c

Bond

Filed June 12. 1850.
J. Leland Clk.

Pleas before the circuit court of La Salle county Illinois at the March term of said court A.D. 1846

The People &c for the use of J. W. R. & C.

vs

In Chancery

James Day, Charles R. Swards, William M Halstead, Edward Corning, Lyman Breces, Charles W Weed, William H Weed, Winthrop Eaton ~~Jno~~, Charles B Grannis, Henry B Grannis, John D Cluts, Henry M Mead, Elbridge Maltby, Eliakim L Bolles, Jeremiah Randolph, Edgar F. Randolph, George F. Randolph & Charles W Underhill.

Be it remembered that heretofore to wit on the 22d day of January A.D. 1846 the Plaintiff by Glover & Cook their solicitors filed the bill in words and figures following to wit:

State of Illinois }
La Salle Co } And circuit court thereof to March term A.D. 1846

To the Honorable John Dean Caton one of the Justices of the supreme court of the State of Illinois and presiding Judge of the ninth judicial circuit of said State

The People of the State of Illinois for the use of the inhabitants of School Township No. thirty three North of range No four East of the third principal meridian Complainants respectfully give this Honorable court to know and be informed that on the seventh day of August A.D. 1835. David Letts who was the school Commissioner of said La Salle county duly appointed and qualified offered for sale at the court house in said county Section Sixteen on Township No thirty three North of range No four East

of the third principal meridian and then and there sold all of said section excepting lots three and four of said section the same being the North West fractional quarter of said section upon a credit of one, two and three years. And they further shew that at said sale James Day whom they pray may be made a party defendant to this bill bid for lot No seven of said section being the east half of the south west quarter of said section containing eighty acres the sum of twelve dollars and sixty two cents per acre and that said lot No seven was struck off to him by said School Commissioner at that price upon a credit as aforesaid. And the said Complainants shew that said sale was not made upon petition signed by two thirds of the male inhabitants of said Township over the age of twenty one years and said Complainants shew to your Honor that said Letts commissioner as aforesaid gave to said defendant Day a certificate of purchase for the tract of land aforesaid and that said Day executed and delivered to said Letts his three several promissory notes for the purchase money aforesaid signed by himself and also by Asa Holdridge and Benjamin Harris, and they shew that said Holdridge and said Harris executed said notes as security only and had no interest in the land aforesaid which said notes were in the words and figures following to wit.

$336.67/100 Ottawa Augt 7th 1835

One year after date we or either of us promise to pay David Letts School Commissioner of La Salle county or his successor in office three hundred and thirty six ~~dollars~~ and 67/100 dollars at ten per cent per annum for value received in lands in Township No 33 North Range 4 east. (signed)

James Day
Asa Holdridge
Benjamin Harris

$336.67/100 Ottawa August 7th 1835

Two years after date we or either of us promise to pay David Letts School Commissioner of La Salle county or his successor in office three hundred and thirty six 67/100 dollars with interest at ten per cent per annum for value received in lands in Township 33 North Range 4 east. James Day

(Signed) Asa Holdridge

Benjamin Harris

$336.67/100 Ottawa August 7th 1835

Three years after date we or either of us promise to pay David Letts School Commissioner of La Salle county or his successor in office three hundred and thirty six 67/100 dollars with interest at ten per cent per annum for school lands in Township 33 North Range 4 east James Day

(Signed) Asa Holdridge

Benjamin Harris

and to which notes they refer for greater certainty — And they further show that said Letts took no mortgage to secure the payment of the purchase money aforesaid as he was required to do by law — And they show that said Letts Commissioner as aforesaid made no report of the sale aforesaid either to the County Commissioners Court of said County or to the Auditor of public accounts of said State as required by law — And they further show that William Stadden who was school Commissioner of said County and successor in office to said David Letts on the sixth day of March AD 1838 made a report to the County Commissioners Court of said County of the sale aforesaid and also transmitted to the Auditor of public accounts of said State a similar report which was in the words and figures following to wit.

State of Illinois }
La Salle County } S.S.

To the Auditor of Public accounts of the State of Illinois. I herewith transmit

a report of the sale of section No 16 in Congressional Township No 33 north of Range No 4 east of the third principal meridian in said County made on the seventh day of August A.D. 1835 by Nancy Letts Esq. at the court house in Ottawa in lots of eighty acres as near as the situation of said section would admit the Illinois river running through said section from east to west leaving a fraction of ten acres on the south side of the river belonging to the north half and sold as lot five. The condition of the sale was a credit of one, two and three years and the notes to draw interest from date at ten per cent per annum. It appearing that lots three and four remained unsold I sold at private sale on the seventh day of February A.D. 1838 on a credit of one two and three at an interest of ten per cent from the day of sale

No of lot.	Names of purchasers.	Residence.	No of acres.	price per acre.	amt of sale.	description of tract
1	Lovell Kimball.	LaSalle county.	76	5.00	380.	E½ NE¼
2	Henry Matson	" "	64	4.00	256.	W½ NE¼
3	James Alexander	" "	57	5.20 15/100	296,47	E½ NW¼
4	Same	" "	43	5.20 15/100	256,66	W½ NW¼
5	H L Bush	" "	10	14.00	140,00	SE NW¼
6	H Green	" "	80	12.12½	970,00	W½ SW¼
7	James Gay	" "	80	12.62	1009.60	E½ SW¼
8	Ben Harris	" "	75	11.75	881.25	W½ SE¼
9	R S Wordworth	" "	51	9.00	459.00	E½ SE¼

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Ottawa March 6th 1838

Wm Stadden School commissioner of LaSalle Co — Which was the only report ever made of said sale either to the County Commissioners Court or to the auditor aforesaid and to which report they for greater certainty refer — And said Complainants show to your Honors that by reason of the irregularities of the sale aforesaid to wit: the want of a petition for said sale ~~aforesaid~~ signed by two thirds of the male inhabitants of said Township over the age of twenty one years and the neglect of said Commissioner to take

a mortgage to secure the payment of said purchase money and the omission of the said Commissioner to make a report of the said sale to the said County Commissioners Court and to the Auditor the said makers of the said promissory notes given for the purchase money of the tract of land aforesaid were not liable for the payment of the purchase money or notes aforesaid and the said payee of said notes was not able to enforce the collection of said notes for the reason that the consideration of the same had wholly failed — And the said Complainants further show that prior to the eleventh day of February A.D. 1838 the said makers of the promissory notes aforesaid had wholly and absolutely rescinded the contract on their part and wholly and entirely refused to pay said notes or any part thereof — And they show that the sale aforesaid was and is entirely void — And they further show that upon the report aforesaid made as aforesaid by said Stadden Commissioner as aforesaid to the Auditor of Public accounts of said state on the eleventh day of May A.D. 1838 a patent was issued by the Governor of the State of Illinois to said James Day for the tract of land struck off to him as aforesaid which said patent was in the words and figures following to wit: Joseph Duncan

Governor of the State of Illinois

To all to whom these presents shall come Greeting:

Whereas it appears from a return made to the Auditor of Public accounts by William Stadden school commissioner and agent for the inhabitants of La Salle County that in pursuance of the several acts of the General Assembly of the State of Illinois authorising the sale of sections number sixteen or such land as may be granted in lieu thereof for the use of schools the said Commissioner did on the seventh day of August eighteen hundred and thirty five sell to James Day of the County of La Salle and State of Illinois a certain lot of land lying in the County aforesaid being part of section number sixteen granted by the United States to the state of Illinois

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for the use of the inhabitants of Township number Thirty three North range number four east of the third principal meridian for the use of schools known as designated on the maps of the said section as made by the Trustees of Schools lands within the said Township as lot No seven of section sixteen being the east half of the south west quarter of section sixteen Township thirty three north range four east of the third principal meridian containing eighty acres by survey and that the said James Day has paid to the School Commissioner twelve dollars and sixty two cents per acre for the said lot of land the price at which the same sold. In consideration whereof the State of Illinois does hereby grant, bargain, sell and convey to the said James Day the lot of land aforesaid with the appurtenances thereof to have & to hold the same unto the said James Day and to his heirs and assigns forever in fee simple as a sure perfect and absolute estate. In testimony whereof I have caused these letters to be made patent and the great seal of State to be hereunto affixed. Given under my hand at Vandalia this seventh day of March 1838

By the Governor Joseph Duncan

(Seal) A. P. Field Secretary of State

Countersigned Levi Davis Auditor P.A.

And the Complainants further show that one Charles K Swanes and one William N Halstead and one Edward Corning and one Lyman Rhodes and one Charles W Weed, and one William H Weed and one Winthrop Eaton, and one Charles B Gammis, and one Henry C Gammis, and one John D Lute and one Henry N Mead and one Elbridge Mallty and one Elakim L Bolles and one Jeremiah Randolph and one Edgar F Randolph and one George F Randolph and one Charles W Underhill all of whom they pray may be made party defendants to this Bill. claim to have liens upon said

lands by virtue of judgments recovered against said Day by each of them respectively in the circuit court of said La Salle County. To the end therefore that full and ample justice may be done in the premises they pray that the above named defendants & each of them may be summoned to answer the matters and things herein set forth & that upon the final hearing hereof the Patent aforesaid may be decreed to be set aside and cancelled or that such other or further decree be made in the premises as justice shall require.

Glover & Cook Solicitors

Afterwards to wit: on the 6th of April 1846 the ~~following~~ proceedings were had in words and figures to wit as follows

The People &c for the use of Geo N. Kneast
vs
James Day, Charles R Swords, William N Halstead, Edward Corning, Lyman Rhodes, Charles W Weed, William H Weed, Winthrop Eaton, Charles B Grannis, Henry C Grannis, John D. Clute, Henry N Mead, Elbridge Walthy, Eliakim L Bolles, Jeremiah Randolph, Edgar F Randolph & Charles W Underhill.
} In Chancery

This day came the Complainants by Glover & Cook their Attorneys & made proof of due publication of notice of the pendency of this suit & the defendants failing to answer herein the bill is taken for confessed. Afterwards on motion of complainants Solicitors the default herein is set aside & leave given to amend the bill & thereupon the defendants were ruled to answer instanter & having failed to do so it is ordered by the court that the bill herein be taken for confessed.

Afterwards to wit on the 9th day of November 1846 the proceedings &c were had in words and figures to wit as follows

Ordered by the Court that the following Decree be entered as of the last March Term of this court to wit:

The People &c for the use of T 33 N. R 4 east

vs

James Day, Charles R Sweets, William N Halstead, Edward Corning, Lyman Rhodes, Charles W Reed, William H. Reed, Winthrop Eaton, Charles B Gannis, Henry C Gannis, John D Clute, Henry N Reed, Elbridge Maltby, Eliakim L Bolls, Jeremiah Randolph, Edgar F Randolph, George F. Randolph, & Charles W Underhill.

In Chancery

This day come the said Complainants by Glover & Cook their solicitors and it appearing to the court that due notice of the pendency of this suit had been given to all of the defendants by publication of such notice in the Ottawa Free Trader a weekly newspaper published in this state for four weeks successively and that the first publication of such notice was more than sixty days prior to the first day of the last March term of this court and the said defendants having failed to file their answers herein it is ordered that the said Complainants Bill be taken as confessed as against each of the said defendants - And it further appearing to the court that on the seventh day of August A.D. 1835 David Letts who was then School Commissioner of La Salle County Illinois & agent for the inhabitants thereof duly appointed and qualified offered for sale at the court house in said County section number sixteen in Township number thirty three north of range number four east of the third principal meridian in said county the same being school lands & then & there sold the said section excepting lots three & four the same being the North West fractional quarter of said section upon a credit of one, two & three years - And it further appearing to the court that the said defendant James Day bid that time bid for lot number seven of said section being the East half of the South West quarter of said section containing eighty acres, the sum of twelve dollars and sixty two cent per acre

& that said lot number seven was struck off to him at that price by said School Commissioner upon a credit of one, two, & three years as aforesaid — And it further appearing to the Court that said sale was not made upon petition signed by two thirds of the white male inhabitants of said Township over the age of twenty one years — And it further appearing that the said Letts commissioner as aforesaid gave the said defendant Day a certificate of purchase for the tract of land aforesaid & that said Day executed & delivered to said Letts his three promissory notes for the purchase money aforesaid signed by himself, Asa Holdridge & Benjamin Harris & that said Holdridge & Harris had no interest in said land & executed the notes only as sureties for said Day which said notes were in substance as follows to wit:

$336.67/100 Ottawa August 7th 1835

One year after date we or either of us promise to pay Davis Letts School Commissioner of La Salle county or his successor in office three hundred and thirty six 67/100 dollars with interest at ten per cent per annum for value received in lands in Township 33 North Range 4 east

(Signed) James Day
Asa Holdridge
Benjamin Harris

336.67/100 Ottawa August 7th 1835

Two years after date we or either of us promise to pay Davis Letts School Commissioner of La Salle County or his successor in office three hundred and thirty six 67/100 dollars with interest at ten per cent per annum for value recd. in lands in Township 33 North Range 4 East.

(Signed) James Day
Asa Holdridge
Benjamin Harris

336.67/100 Ottawa August 7th 1835

Three years after date we or either of us promise to pay Davis Letts or his successor in office School Commissioner of La Salle County three hundred and thirty six dollars and 67/100 with interest at ten per cent per annum for school lands in Township 33 North Range 4 East.

(Signed) James Kay
Asa Holdridge
Benjamin Harris

and it further appearing to the court that said Letts took no mortgage to secure the payment of the purchase money aforesaid as he was required to do by law — And it further appearing that said Letts commissioner as aforesaid made no report of the sale aforesaid either to the county commissioners court of said county or to the Auditor of Public accounts of the State of Illinois as required to do by law — And it further appearing that William Staeden successor in office to said David Letts died on the sixth day of March A.D. 1847 make a report to the County commissioners court of said county of the sale aforesaid and also transmitted to the Auditor of public accounts of said State a similar report which was in the words and figures following to wit:

State of Illinois }
La Salle county } Set.

To the Auditor of Public accounts of the State of Illinois — I herewith transmit a report of the sale of section No 16 in Congressional Township No 33 North of Range No 4 East of the third principal meridian in said county made on the seventh day of August A.D. 1835 By David Letts Esq. at the court house in Ottawa in lots of eighty acres as near as the situation of said section would admit the Illinois river running through said section from East to West leaving a fraction of ten acres on the South side of the river belonging to the North half and sold as lot five. The condition of the sale was a credit of one, two & three years and the notes to draw interest from date at ten per cent per annum — It appearing that lot three & four

remained unsold. I sold at private sale on the seventh day of February A.D. 1838 on a credit of one two & three years at an interest of ten per cent from the day of sale

No of lot	Names of purchasers	Residence	No of acres	price per acre	amt of sale	description of tract
1	Lovell Kimball	La Salle Co.	76	$5,00	380,	E½ NE¼
2	Henry Matson	" "	64	4.00	256.	W½ NE¼
3	James Alexander	" "	57	5.20 67/100	296.47	E½ NW¼
4	Same	" "	49	5.20 37/100	256.66	W½ NW¼
5	H L Bush	" "	10	14.00	140.00	SE NW¼
6	H Green	" "	80	12.12½	970,00	W½ SW¼
7	James Ray	" "	80	12.62	1009.60	E½ SW¼
8	Ben. Harris	" "	75	11.75	881.25	W½ SE¼
9	R. P. Wordsworth	" "	51	9.00	459.00	E½ SE¼

Ottawa March 6th 1838. Wm. Stadden School commissioner of La Salle Co.

Which was the only report ever made of said sale and it further appearing that upon the report so made as aforesaid by said Stadden Commissioner as aforesaid to the Auditor of Public accounts on the seventh day of March A.D. 1838 a patent was issued by the Governor of the State of Illinois to said James Ray for the tract of land struck off to him as aforesaid. which said patent was in the words and figures following to wit:

Joseph Duncan Governor of the State of Illinois

To all to whom these presents shall come — Greeting

Whereas it appears from a return made to the Auditor of Public Accounts by William Stadden School Commissioner & agent for the inhabitants of La Salle county that in pursuance of the several acts of the General Assembly of the State of Illinois authorizing the sale of number sixteen or such lands as may be granted in lieu thereof for the use of schools the said commissioner did on the seventh day of August eighteen hundred and thirty five sell to James Ray of the county of La Salle & State of Illinois a certain lot of land laying in the county aforesaid being part of section number sixteen granted by the United States to the State of Illinois for the use of the inhabitants of Township number

thirty three North range number four East of the third principal meridian for the use of schools known as designated on the map of the said section as made by the Trustees of School lands within the said Township as lot No seven of section sixteen, being the East half of the South West quarter of section sixteen Township thirty three North range four East of the third principal meridian containing eighty acres by survey and that the said James Day has paid to the School Commissioner twelve dollars and sixty two cents per acre for the said lot of land, the price at which the same sold — In consideration whereof the State of Illinois does hereby grant, bargain, sell & convey to the said James Day the lot of land aforesaid with the appurtenances thereof to have & to hold the same unto the said James Day and to his heirs & assigns forever in fee simple as a sure, perfect and absolute estate — In testimony whereof I have caused these letters patent to be made & the great seal of State to be hereunto affixed — Given under my hand at Vandalia this eleventh day of March 1838

By the Governor Joseph Duncan

A. P. Field Secretary of State

Countersigned Levi Davis Auditor P. A.

And it further appearing to the court that all of said Defts. except James Day claim to have liens upon said lands by virtue of judgments recovered against said Day in the circuit court of said La Salle county — And it further appearing to the court that by reason of the irregularities aforesaid in the sale aforesaid to wit: the want of a Petition for said sale signed by two thirds of the male inhabitants of said Township over the age of twenty one years & the neglect of said commissioner to take a mortgage on the land so sold as required by law and the omission to make a report of said sale to said county commissioners court and auditor the said makers of the premissory notes

aforesaid were not liable for the payment of the sum & the said payee not able to enforce the collection thereof — And it further appearing to the court that prior to the said eleventh day of May A.D. 1838 the said makers of the said promissory notes had wholly & entirely rescinded the said contract on their part & wholly & entirely refused to pay the said promissory notes or any part thereof — It is therefore ordered adjudged & decreed that the Patent aforesaid being improvidently issued without authority of law be set aside and cancelled and of no force and effect and that the notes aforesaid be also cancelled —

I certify that the above is a true copy of the proceedings in the above entitled cause as appears of record in my office.
Witness Lorenzo Leland, Clerk of our said circuit court, and the seal of said court at Ottawa this 2d day of September A.D. 1847

L Leland Clerk
By J. G. Nash Dept.

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And now comes the said Plaintiffs in error by E S Leland their attorney & say that there is manifest error in the record & proceedings in this cause to wit

1st The Court erred in rendering a decree for the defts in error.

2d The Court erred in rendering a decree in this cause without a Summons having been issued.

E S Leland for
pltffs in error

Joinder in Dmrr
Chamberlin Blackwell & Pelan
Nil

Jeremiah D. McCauley
& als
(vs)
The People &c
Error &c.

Filed June 12. 1854
Allan Cl