

Ed

Alexander Youngblood
vs

Edward Krogh

1850

DePaul

1850

11858

No. _____

Supreme Court of Illinois

Young, et al.

vs.

Keogh.

State of Illinois }
J. Damp County } 3

Pleas in the J. Damp County, Court begun and held
within and for the County of J. Damp aforesaid on
the first Monday in the Month of April a d 1848
before the Hon. Judge S. Dutton, presiding Judge of said
Court

Julia Ann Bates by Alexander
Young her next friend J. C. Galt } Plaintiffs
Young & Alexander Young

Edmund Hoag } Defendant

Be it remembered that hereofore to
wit on the 31st day of March a d 1848 the Plaintiffs
above named by their attorneys filed in the office
of the Clerk of the J. Damp County Court a transcript
from the Records of the J. Damp County Court
together with their Declaration & Notes which are
in the words and figures following to wit

State of Illinois }
J. Damp County } 3

Pleas in the Circuit Court of
said County before the Hon. Thomas C. Brown one
of the associate Justices of the Supreme Court and
Presiding Judge of the Sixth Judicial Circuit
in said State at the term of said Court begun
and held at Galena in said County on the second
Monday of the Month of March a d 1848

2
Sally Ann Bates by Alexander
Jonny her next friend and
Elizabeth Jonny & Alexander
Jonny

Plaintiff

vs
Edmund Stagh

Defendant

Be it remembered that hereof
to wit on the 13th day of March A D 1848 in the Record
of the Proceedings of said Court in March term
thence A D 1848 in the above entitled cause appears
the following entry and order of said Court to wit

Sally Ann Bates by Alexander
Jonny her next friend & Elizabeth
Jonny & Alexander Jonny

Defendant

vs
Edmund Stagh

The Plaintiff by their attorney
comes and files their Declaration and notes and
on motion of the Plaintiff by their attorney it is
ordered by the Court that the Cause be docketed
and that the Defendant be ruled to plead
to said Declaration within twenty days from
this date

and afterwards to wit on the 18th day of March
A D 1848 in said March term of said Circuit
Court A D 1848 in the record of the proceedings thence
in said Cause is the following entry to wit

Sally Ann Bates by her next
friend Alexander Jonny
Elizabeth Jonny and
Alexander Jonny

Defendant

14
Edmund Keogh

Now at this day came the plaintiffs by their attorney and the said Julia Ann Bates by her next friend Alexander Young and the defendants in proper person and agree in open court as per agreement on file that the venue in this case be changed to the 3d Damp County Court expressly Waiving all exceptions to the regularity of the proceedings or to the right of the said 3d Damp County Court to try this cause and execute its judgment or in any manner to the jurisdiction of said Court & it is therefore ordered by the Court that the venue herein be changed to the 3d Damp County Court

State of Illinois

3d Damp County

I William H. Bradley Clerk

of the Circuit Court in and for said County do hereby Certify, the foregoing transcripts to be a true and correct Copy from the Record of all the orders and entries of said Court as appears of Record in said Cause of Julia Ann Bates by her next friend Alexander Young Elizabeth Young & Alexander Young against Edmund Keogh and that the original declaration & notice in said Cause marked

A & the written agreement on file marked

B are herewith enclosed and transmitted to the

Said 3d Damp County Court with this transcript

in testimony whereof I have hereunto set my hand

and affixed the seal of said Court at my

office in Galena in said 3d Damp County this

29th day of March A. D. 1848
Attest W^m H. Bradley clerk

Seal

Endorsed Filed March 31st 1848

Geo M Middle
Clerk

Declaration

State of Illinois to defendants of

Julia Ann Bates
Alexander Young
& Elizabeth Young

vs
Edward Keogh

In the March term A.D. 1848
of the Circuit Court

Declarator

Alexander Young and Elizabeth Young his wife and Julia Ann Bates who was by Alexander Young her next friend complain of Edward Keogh in a plea of trespass and Ejectment - That whereas the said Alexander Young & Elizabeth his wife on the first day of January A.D. one thousand eight hundred and forty eight were seized in fee in right of the said wife Elizabeth of the one undivided half and the said Julia Ann was seized in fee in her own right of one undivided half of the following described tracts and parcels of ground situate in the City of Galena in the County of State of Missouri to wit Lots numbered Five (5) and Six (6) in Block numbered twenty three (23) on the East Side of Jones River in the said City of Galena and the said plaintiff found of the same on the day & year aforesaid, and being so possessed thereof, the said defendant afterwards to wit on the day and year aforesaid entered into the said tracts and parcels of ground and unlawfully withheld from the said plaintiff the possession thereof to the damage of the said

Plaintiff and against the peace of the people
of the state of Illinois -

And the said Alexander Young
& Elizabeth his wife also complain as aforesaid
of the said Edmund Hoag for that whereas on the
first day of January A.D. one thousand eight hundred
and forty eight the said Alexander & Elizabeth
were possessed of the one undivided half of the
following other described tracts and parcels of
ground situate in the City of Galena, County and
State aforesaid to wit Lots ^{5 & 6 in Block numbered} numbered twenty three
(23) on the East Side of Fever River in the said
City & being so possessed thereof the said Hoag
afterwards to wit on the day and year aforesaid
entered into the said premises and unlawfully
withholds from the said Alexander & Elizabeth
the possession thereof, to their great damage &
against the peace of the people of the state of
Illinois - And the said Alexander & Elizabeth
his wife claim the said undivided half of
the tracts and parcels aforesaid in fee in right
of the said wife Elizabeth - And the said
Julia Ann Bates also complains by Alexander
Young her next friend of the said Edmund
Hoag as aforesaid, for that whereas on the first
day of January A.D. one thousand eight hundred
and forty seven the said Julia Ann was pos-
sessed of the one undivided half of the following
other described tracts and parcels of land situate
in the City of Galena and in the County and
State aforesaid to wit Lots numbered five
(5) and six (6) in Block numbered twenty
three (23) on the East Side of Fever River
in the said City and being so possessed

through the said Keays afterwards to wit on the
day and year aforesaid entered into the said prem-
ises and unlawfully withholds from the said Julia
Ann the possession thereof to the great damage
of the said Julia Ann and against the peace
of the people of the State of Illinois. And the
said Julia Ann claims the said undivided
half of the tract and parcels aforesaid as her
own right. Wherefore the said plain-
tiffs say that they are injured to the amount
of one thousand dollars and therefore being
satisfied

Hope & Wilson }
J M Douglass } their attys

Mr Edward Keays

Sir You will please take notice
that on the first day of next term of the Circuit
Court to be holden within and for the County of
Hamp and State of Illinois at Galena on the
second Monday of March next we will file in
said Court the declaration in Attachment a copy
whereof is herewith served upon you and upon
filing the same shall move said Court for a
rule upon you to appear and plead to said decla-
-ation within twenty days thereafter upon your
failing to appear and plead accordingly
a judgment by default will be entered against
you and we shall recover possession of the premises
Galena Feb 23rd 1848

Alexander Young } By Hope
Elizabeth Young } & Wilson
attys
Julia Ann Bates by Alex^r Young her next friend

State of Illinois }
In Damp County } p

W^m P Millard being first
duly sworn on his oath states that on the 28th day
of February a d 1848 he delivered a copy of the
foregoing declaration and notice attached thereto
to Edmund Keagh the Defendant within named
sworn & subscribed before
me this 29th day of July } W^m P Millard
a d 1848 }
W^m H Bradley etc } per 81/4

Edmond Keagh in Execution.

Filed March 13th 1848

W^m H Bradley etc

also Filed March 31st 1848

In M. D. Keagh etc

And afterwards to wit on the first day of April
a d 1848 the said Defendants by their attorneys
& files their plea to the foregoing Declaration of
the Plaintiff in the words & figures following
to wit

Edmond Keagh
vs

In Damp County
Court

Julia Ann Bates et al

Execution

And the said Defendants Com
& defends the wrong & injury when he & says that
he is not guilty of unlawfully withholding the
said premises claimed by the said Plaintiff
as alleged in their said Declaration & of this he
puts himself upon the Country &

of Plaintiff's Attorney
Douglas & Wilson
for Deft

Camplish & Shelton for Deft

Enousin Plea

Filed 1st April 1848

Geo M. Mendenhall

Chf

And afterwards to wit on the 8th Day of May 1849
in the May term a d 1849 of said J^d Samp County
Court in the Records of said Court in said Case is
the following entry to Wit

Alexander Young and Elizabeth
Young his wife and Julia Ann
Bates by her next friend Alexander } Execution
Young
vs
Edmund Keagh }

On motion of the Plaintiffs atty
the Marriage of Julia Ann Bates one of the Plaintiffs
to Thomas Marchildon is suggested on the record, and
on his Motion the name of the said Thomas Marchildon
is ordered to be placed upon the record as one of the
parties Plaintiff herein, and by agreement of the
parties by their attornys - It is ordered by the Court that
this Case be continued at the cost of the defendant
and that Execution issue therefor

and afterwards to Wit on the 8th Day of January
a d 1850 in the Jan^y Special term a d 1850 of said
J^d Samp County Court, in the Records of said Court in
said Case is the following entry to Wit

Alexander Young and
Elizabeth Young his wife &
Thomas Marchildon and
Julia Ann Marchildon his wife } Execution

²³
Edmund Keagb

The Defendant by his attorney comes and moves the Court on affidavit filed for a continuance herein & the facts of said affidavit being admitted by the Plaintiff Council for the purpose of a trial in this cause the Motion for a continuance is overruled by the Court

Also afterwards to wit on the same day to wit on the 8th Day of January A D 1850 as yet of the jury Special Term A D 1850 of said Court in the Records of said Court in said case is the following entry to wit

Alexander Jony & Elizabeth
Jony his wife and Francis
Marchildon & Julia Anne
Marchildon his wife

Exigent

²⁴
Edmund Keagb

Now at this day came the parties by their attorneys, and upon issue found thereupon came a jury of good and lawful men to wit J. I. Duncan, W. M. Oliver, William Logan Laddis, Walling, Edward Adams, Francis Townsend, Lyman Sisson, J. S. Kelly, Thomas Blish, Eleazar Graham George Hoy and M. Selunby who were duly elected tried and sworn and after hearing a part of the testimony the further consideration of this case is postponed until tomorrow morning

and afterwards to wit on the 9th day of January

16
A.D. 1850 as yet of the January Special Term A.D.
1850 of said Court, in the records of said Court in
said Case is the following entry to Wit^o

Alexander Young & Elizabeth
Young his wife and Francis
Marchaldon & Julia Ann
Marchaldon his wife
vs
Edmond Hoag

Exhibent

Now at this day came
again the jury heretofore empanelled in this Cause
and after hearing further testimony. It is ordered
by the Court that the further consideration of this
Cause be postponed until tomorrow morning

and afterwards to Wit on the 10th Day of January
A.D. 1850 as yet of the January Special Term A.D.
1850 of said Court, in the records of said Court in
said Cause is the following entry to Wit^o

Alexander Young and
Elizabeth Young his wife
& Francis Marchaldon &
Julia Ann Marchaldon
his wife
vs
Edmond Hoag

Exhibent

Now at this day came again
the jury heretofore empanelled in this Cause and
after hearing the remainder of the evidence and
arguments of Counsel they retired to consider of
their verdict and after a short absence they

off a town on Bean River (former River) in the State
 of Illinois and for other purposes approved fifth
 February 1829 for Lots numbered one two three four
 five six seven eight nine ten Eleven and twelve
 in Squares numbered three four twenty two and
 twenty three, and Lots numbered four five and
 six in Square numbered twenty eight and twenty
 nine East of former River in the town of Galena
 containing ten acres and three hundred and
 twenty five thousandths of an acre according to the
 official plat of Survey of the said town returned
 to the General Land office which said lots has been
 purchased by the said Elizabeth Bates and Julia
 Ann Bates as aforesaid. Now know ye that the
 United States of America in consideration of the
 promises and in conformity with the several acts
 of Congress in such case made and promised have
 given and granted and by these presents do give
 and grant unto the said Elizabeth Bates and
 Julia Ann Bates heirs as aforesaid and to their
 heirs the said Lots above described to have
 and to hold the same together with all the
 rights privileges immunities and appurtenances
 of whatsoever nature thereunto belonging unto
 the said Elizabeth Bates and Julia Ann Bates
 heirs as aforesaid and to their heirs and assigns
 forever as tenants in common and not as joint
 tenants. In testimony whereof I James K
 Polk President of the United States of America
 have caused this letter to be made patent
 and the seal of the General Land office to be
 hereunto affixed. Given under my hand
 and at the City of Washington the twelfth
 day of September in the year of our Lord one

thousand eight hundred and forty five and
of the Independence of the United States the Court

By the President James K Polk



R. I. Knox Master Secy

Rec'd vol 1 page 365^o S. H. Laughlin Receiver
of the General Land office

which was admitted by the Court as evidence.

The Plaintiff Counsel then offers
in evidence the following parts of a deposition of
Archangels Mc Dowell to wit

State of Illinois

Warrick County

The People of the State of Illinois

Deposition
do Jesse B Brown of Warrick County of Sec and
State of Iowa and in case of his absence or inability
to attend to any prep or justice of the peace in and
for said County last aforesaid as a Commissioner
appointed in and for the said County of Sec & State
of Iowa greeting & know ye that we in conference
of your peace and fidelity have appointed
you and by these presents do give unto you full power
& authority and do hereby require & authorize you that
at a certain time & place to be designated & appointed
by you for that purpose you do cause the witness
whose name is mentioned in the caption of the
enclosed interrogatories as well on the part of the
said Plaintiff as on the part of the said defen-
dants in the said different suits hereto annexed
to come before you and then and there diligently
and faithfully examine him upon the said
interrogatories on his corporal oath first taken
before you both on the part of the said plaintiffs
and defendants and none others; and that

You do take said his examination and cause
 the said interrogatories as they are propounded
 together with the answers thereto to be reduced to
 writing in the order in which they shall be proposed
 & answered and when you shall have so taken
 them you shall cause the said Petrus to sign his
 name to the same in its proper place in your
 presence; and thereupon you will annex at
 the first thereof a certificate subscribed by yourself
 in which you must state that they were sworn
 to and signed in your presence by the deponents
 and the time & place when and where the same
 were taken - and after which you are to send
 the said depositions together with this Commission
 and the enclosed interrogatories carefully enclosed
 and sealed up to the clerk of the said Jo Damp
 County Court in and for the County of Jo Damp &
 State of Illinois with the names of the said par-
 -ties litigant enclosed thereon. And this you shall
 do no wise omit.

Seal

Petrus George M. Mitchell clerk
 of said Court and the seal
 thereof at Salem this 13th day
 of August a. d. 1849
 Attest Geo. M. Mitchell clerk

State of Illinois }
 Jo Damp County } p

Alexander J. J. & Elizabeth }
 J. J. J. & James Marchildon }
 & Julia Ann Marchildon }
 vs }
 Edward Cowner }

In Jo Damp County
 Court in
 Execution

Same Plaintiffs

Remond Dowling

Same Plaintiffs

Edmund Keogh

Same Plaintiffs

W^m A Jordan

Same Plaintiffs

Elias Bayless

Same Plaintiffs

James Conroy

Same Plaintiffs

John Corrain et al

Same Plaintiffs

Thompson Campbell

Same Plaintiffs

Jacob Hryszinger

In the above named defendants in the above entitled cases in Ejectment now pending & undetermined in the Jo Davis County Court in and for the County of Jo Davis or to Thompson Campbell Ex^{rs} them etty

You will please take notice that on Monday the twentieth day of August next we will see out of the Jo Davis County Court in and for Said County a Commission directed to Jesse B Brown of Keokuk County of the State of Iowa and in case of his absence or inability to attend to any judge or justice of the peace in & for Said County last aforesaid as a Commissioner to take the depositions of Archange W Dornell of the last named County & State on the annexed interrogatories to be read as evidence on the trial of each of the above named cases now pending upon the above named titles in ejectment in the Said Jo Davis

16
County Court - You can attend & Corp examine
if you see proper
Gulman a d 1849
Hays & Wilson
Jr Depts

Interrogatories referred to in the above notice to
be administered to Archange M. Dowell a witness
to be produced, sworn & examined in the above
named cases now pending & undetermined in
the said Jo Samp County Court on the part & behalf
of the plaintiffs as follows to Wit:

Quest 1st Do you know the parties Plaintiffs
in the above entitled cases to Wit Alexander Young
& Elizabeth Young, Francis Marchaldon & Julia Ann
Marchaldon or either & which of them & how long
have you known them respectively -

Quest 2^d State the original family name of
said Elizabeth & Julia Ann - whether they are
Respectively married to Alexander Young and
Francis Marchaldon & when

Quest 3rd State whether you sustain any relation
ship to said Plaintiffs or any of them & if you,
what, & whether you have had an opportunity
of becoming acquainted with them Circumstances
& fortunes

Quest 4th State what more than (said Elizabeth
and Julia Ann) Circumstances as to property
or means of support in the years 1842. 1843 & 1846
what amount of property was owned by them

whether the rents & profits of their estate real & personal was sufficient or insufficient for their education & nurture during these years

Quest 5th State if you know the same whether or not the personal estate of said Elizabeth & Julia Ann (if they had any) or the rents and profits of their real estate were faithfully applied to the purpose of their ~~education~~ education & nurture during said years 1842. 1843 & 1846

Quest 6th State whether you were acquainted with Abraham Bates deceased in his life time if yea when he died & who were his heirs & what children he left himself surviving whether any others than said Elizabeth young late Elizabeth Bates & Julia Ann Marchildon late Julia Ann Bates - give the day of the month & year of the death of said Bates deceased & also the respective ages of said Elizabeth & Julia Ann with their birth days

Quest 7th State any thing else you may know of benefit to the said Plaintiff

Hoge & Wilson
for Plaintiffs

Received the within notice August 2nd 1849 and I hereby agree that all exceptions shall be waived to the reading of the depositions in the within entitled cases on account of the same being embraced in one Commission

Thompson Comptell
attor for Defts

Endorsed filed 1st August 1849

Geo M. Prichard Clerk

Deposition of a witness produced pursuant to an order
at Keokuk in the County of Lee and State of Iowa
before me Jesse B Brown a Justice of the Peace
in and for the Township of Jackson in said
County and State in the following entitled Causes
to wit

Alexander Young	}	In vs. Damp County Court
Elyahute Young		
Thomas Marchildon		
Julia Ann Marchildon		
by Edward Corner	}	In vs. Ejectment

Same Plaintiffs	}	Same Plaintiffs
by Bernard Dowling		
Same Plaintiffs	}	James Conroy
by Edmund Hoag		

Same Plaintiffs	}	Same Plaintiffs
by Edmund Hoag		
Same Plaintiffs	}	John Lorrain et al
by Wm A Jordan		

Same Plaintiffs	}	Same Plaintiffs
by Wm A Jordan		
Same Plaintiffs	}	Thompson Campbell
by Elias Bayless		

Same Plaintiffs	}	Same Plaintiffs
by Elias Bayless		
Same Plaintiffs	}	Jacob Hryszinger
by Elias Bayless		

Said Causes being now pending in the County
Court of the County of W Damp in the State of
Illinois, on behalf of the Plaintiff in said Suits

At charge Mr. Somell of lawful age being produced sworn and examined on the part of said Plaintiff deponent and saith in answer to the following interrogatories as follows

Quest 1st do you know the parties plaintiff in the above entitled cause to wit Alexander Young and Elizabeth Young, Francis Marchildon and ~~Julia~~ Julia Ann Marchildon or either and which of them and how long have you known them respectively

Ans 1st Yes I know all of them I have known Alexander Young ten years or thereabouts, I have known Elizabeth Young about twenty years I have known Francis Marchildon about one year I have known Julia Ann Marchildon about eighteen years

Quest 2nd State the original family name of said Elizabeth & Julia Ann, whether they are respectively married to Alexander Young and Francis Marchildon and when

Ans 2nd The original family name of said Elizabeth & Julia Ann was Elizabeth Bates & Julia Ann Bates, I am satisfied they are married, Elizabeth married Mr Young in August 1847 and Julia Ann was married to Francis Marchildon about the 16th of August 1848

Quest 3rd State whether you sustained any relationship to said Plaintiffs or any of them

and if you wish, and whether you have had an opportunity of becoming acquainted with their Circumstances and fortunes

Ans 3rd I do I am the Mother of the Said Elizabeth & Julia Ann and I have had good opportunity of becoming acquainted with their Circumstances and fortunes

Quest 6th State whether you were acquainted with Achemiah Bates deceased in his life time if you when he died who were his heirs & what children he left himself surviving whether any others than Said Elizabeth Young late Elizabeth Bates & Julia Ann Marchildon late Julia Ann Bates give the day of the Month and year of the death of Said Bates deceased & also the respective ages of Said Elizabeth & Julia Ann with their birth days

Ans 6th I was acquainted with Achemiah Bates deceased in his life time he was my husband he died the 12th of May 1835 he left when he died Elizabeth Young late Elizabeth Bates and Julia Ann Marchildon late Julia Ann Bates - and he left no other heirs surviving himself the Said Elizabeth was born on 6th day of March 1829 which would make her twenty years old in March 1849 the Said Julia Ann was born the 2nd day of May 1831 which would make her Eighteen years old last May

Question 7th State any thing else you may know

of benefit to the said Plaintiffs

I don't know of any thing else of advantage
to the plaintiffs

Archang W Dowell

State of ~~Illinois~~ Iowa

Lee County }
 } p

I Jesse B Brown Commissioner
named in the foregoing Commission do hereby certify
that in pursuance of said Commission I caused
Archang W Dowell the witness in the caption to
the interrogatories annexed to said Commission named
to come before me at my Office in Keokuk Lee
County Iowa on the 25th day of August A D 1849
at time & place by me designated for that purpose
and then and there faithfully examined her upon
said interrogatories having first caused her to be
duly sworn before me to testify the truth the whole
truth & nothing but the truth in said causes and
have reduced the said Interrogatories together with
the answers thereto to writing myself in the order
in which they were proposed and answered and
have caused the said witness to sign her name
to said depositions in my presence & in testimony
whereof I have herunto subscribed my name this
25th day of August A D 1849

J B Brown Justice of the
Peace

all of deposition (except questions and answers
4th & 5th) which was admitted by the Court as
evidence

It was then and there in the presence
of the Court & jury admitted & stated by the Counsel

for the defendant that at the time of the service of the declaration & notice in said suit, the said lots in said declaration mentioned were unoccupied and vacant lots & were claimed by said defendant in fee simple & said counsel for said defendant waived the proof of said last named facts by said plaintiffs -

which was all the evidence offered by the plaintiffs at that time,

The Counsel for the defendant thereupon in support of the defense of said cause, produced Richard Seal a witness, who testified that he was the Clerk of the County Court of Jo Daruap County & the Keeper of the Records of the late Probate Court & who produced one of the Records of said late probate Court of its acts & doings from his office, and testified that the entries in said Record on pages 71 & 72 were in handwriting of Elijah Charles who was Probate Justice of the peace of Jo Daruap County during the year 1840 & at the date of said entry on pages 71 & 72 signed Elijah Charles & that the signature "Elijah Charles" is the proper signature & hand writing of said Elijah Charles that he had seen said Charles write & was acquainted with his handwriting, said defendant then offered in evidence the said entry on pages 71 & 72 as follows to wit:

Evidence of Seal

State of Illinois }
Jo Daruap County } 3^d Set

The People of the State of Illinois
Do Thomas Drum of said County Greeting
Whereas Robert B. M. Dowell Guardian for
Elyabeth Bates of the age of Eleven years in February

Resignation
W. McDonnell
Appointment
of
Dum
Last and July ann Bates of the age of Nine years
Minor heirs of Archibald Bates dec'd have in this
day filed in the office of Probate Court his Resignation
as such Guardian and the said Court having accepted
said Resignation and revoked the letters heretofore granted
to said McDonnell - do therefore hereby appoint you
Guardian for the said Elizabeth and Julia ann Bates persons
& property until they shall arrive at the age of Eighteen
years Witness ^{Probate} Elijah Charles Justice of the Peace in
and for said County at his office in Galena this
the 23rd day of May a^d 1840


objection
Elijah Charles Probate JP
to the admission of which the Plaintiffs objected because
of excess of power in appointing longer than to 14 years &
that said entry was not a decree of appointment ^{here} letters of
Guardianship - which objection was overruled by the
Court & the said entry read in evidence, to which
overruling the Plaintiffs counsel then & there excepted
The said defendants then affixed an instrument
in writing as follows to wit

Bond
I know all men by these presents that
We Thomas Drum John Atchison and Michael
McMurphy are held and firmly bound unto the People
of the State of Illinois in the Real sum of five thou-
-sand dollars for the payment of which well and
truly to be made we bind ourselves, our heirs exe-
-cutors and administrators jointly severally & firmly
by these presents witness our hands and seals this
the 23rd day of May a^d 1840

The condition of the above obliga-
tion is such that if the above bound Thomas Drum
who has been appointed Guardian for Elizabeth
and Julia ann Bates shall faithfully discharge
the office and trust of such Guardian according

to Law and shall render a fair and just account of his Guardianship to the Court of Probate for the County of Hamp from time to time as he may be therunto required by said Court and comply with all the orders of said Court lawfully made in relation to the goods chattels and moneys of said Minors and render & pay to said Minors all moneys goods chattels little papers and effects which may come to the hands or possession of him the said Guardian belonging to said Minors when said Minors shall be therunto entitled or to any subsequent Guardian should said Court so direct them this obligation shall be void or otherwise to remain in full force and virtue

Attest

His Dream 

M Murphy

John Alhison

Entered filed May 23rd 1840

C Charles P J P

~~And Seal testified that the said instrument was one of the files of his said office in his County as such~~

Proof as to bond

and proved by said Richard Seal that the same was on file among the papers in his office as clerk of said County Court delivered over to him by the late probate justice & was produced by said Seal which said instrument was admitted as evidence.

The defendants then appeared & the Court admitted in evidence a printed notice & certificate in writing as follows to wit Notice

The subscribers hereby give notice public notice to all concerned that he is guardian of Elizabeth Bates and Julia Ann Bates Minors under the age of Eighteen years and that his said Ward are jointly

Notice

Seized of the following described lots or parcels of
Land situate in the City of Galena in the County
of Adams and State of Illinois to wit Lots one
(1) two (2) three (3) four (4) five (5) six (6) sev-
en (7) eight (8) nine (9) ten (10) Eleven (11)
twelve (12) in Block No twenty three (23) on the
East side of Fever river in said Galena; also
lots No four (4) five (5) and six (6) in Block
No twenty eight (28) on the East side of Fever River
in said Galena, and that it is necessary for the
support and education of said wards and will
be conducive to their interest to have the said lots
or some portion of them sold and it is his intention
to petition the Circuit Court to be holden at Galena
aforesaid on the second Monday of March next
for license and authority to sell the same or so
many of said lots as shall be necessary for their
support and education; when and where all persons
concerned may appear and show cause if any they
have why the prayer of said petition should not
be granted

Thomas Driscoll
Guardian

Galena July 13th 1846

Certificate
of Houghton

I do hereby certify that the foregoing notice was
published for three weeks successively in the Anti
Western Gazette and Galena Advertiser the first of
which publications was on the 13th day of February
A D 1846 and the last on the 6th day of March A D
1846

H H Houghton
Ed & Publisher of said Paper

Endorsement

Silvan March 17th 1846

The Defendants Counsel then offered in evidence an entry on the records of the Circuit Court of Adams County made at its March term a d 1846 as follows to Wit:

In the Matter of Thomas
Drum Guardian of } On Petition for the Sale
Elizabeth & Julia Ann } of Real Estate
Bates Infants &c

Woods
Sheldon
enter
appearance

The said Thomas Drum Guardian of Elizabeth and Julia Ann Bates Infants &c Comes by his attorney and files his Petition for the Sale of Real Estate and also files proof of publication which is satisfactory to the Court of his intention to present this application and Messrs Trade & Sheldon enter their appearance for the Mother and Step Father of said Infants to resist this application

In the admission of which record the plaintiffs Counsel objected because said Drum had ceased to be and was not the Guardian of said Elizabeth & Julia Ann Bates at the time of said Entry which objection was overruled by the Court and the said entry admitted in evidence to which overruling the plaintiffs Counsel then & there accepted

The Defendants Counsel then offered in Evidence another entry on said Record of said Circuit Court made at its March term a d 1846 as follows to Wit:

In the Matter of Thomas
Drum Guardian of Elizabeth } On Petition for
Bates & Julia Ann Bates } Sale of Real Estate
Minors Children of A Bates dead }

Deore

And now at this day comes again the said Thomas
 Brown Guardian of the said Elizabeth & Julia
 Ann Bates and also Archange McDowell the
 Mother of said Infants and Robert B. McDowell their
 Step Father by Thrane & Sheldon their Counsel who
 resist the application of the said petitioners and file
 their reasons therefor and proof of publication hav-
 -ing been heretofore filed according to Law and the
 Court after hearing the proof and allegations of the
 said Petition and also the arguments of Counsel
 in favor of and in resistance of said application
 and after examination of the papers on file and
 due deliberation, the Court being satisfied as to the
 facts stated in said Petition and that there are
 just and reasonable Causes for the Sale of the
 real estate therein described doth now and decree
 that said Thomas Brown Guardian as aforesaid
 shall sell at public Sale the lots or tracts of land
 mentioned in said petition belonging to his said
 minors namely. Lots number one (1) two (2)
 three (3) four (4) five (5) six (6) seven (7) eight
 (8) nine (9) ten (10) eleven (11) twelve (12) in
 Block number twenty three (23) on the east side
 of Genoa River in Galena, also lots number four
 (4) five (5) and six (6) in Block number
 twenty eight (28) also on the east side of Genoa
 River all in the late town now City of Galena
 County of A. Deerp and State of Illinois according
 to the United States Survey of said Town now City
 of Galena, or so many of said Lots as shall be
 deemed necessary and expedient by the said Guardian
 for the purpose set forth in said petition on ~~Thursday~~
 Thursday the thirtieth day of April next between
 the hours of nine o'clock in the Morning and six in

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the afternoon of said day to the highest bidder and
that the said Petitioner give notice of said sale
by publishing notice thereof in the Jeffersonian or
any other newspaper printed & published in said city
of Galena for three weeks successively the last publication
whereof to be at least ten days before the said sale
said sale to be in the premises. Terms of sale one third of
the purchase money cash, one third in six months
one third in twelve months, with interest from date of
sale the purchaser or purchasers to execute a Mort-
gage on the premises sold to the said Guardian
for security of the notes taken for balance of purchase
money and the said Petitioner is hereby authorized to
make execute acknowledge and deliver to the purchaser
or purchasers in due form of Law a good and sufficient
Deed for the said premises or any part thereof convey-
ing all the right and title of his said owner - and it
is further ordered that he make a return of his doings
in this behalf to the next term of this Court to which
won and decree of this Court for the sale of said Real
Estate the said Archang and Robert B McDowell
by their Counsel except and pray an appeal
to the Supreme Court -

And together with said entry a certain
petition in writing as follows to wit

To the Hon Thomas C Brown
Judge of the Circuit Court in
and for the County of Adams
and State of Illinois

Respectfully Shows Thomas
Brown of Galena in said County of Adams that
he is Guardian of Elizabeth Bates and Julia Ann
Bates infants under the age of Eighteen years
children of Archibald Bates deceased by the

appointment of the Probate Justice of the peace
in and for the said County of Jackson and State
of Illinois, and that his said Wards are each seized
and possessed of an undivided half part of the
following described lots or parcels of Land situated
lying and being in the City of Galena in said
County of Jackson to wit Lot number one (1)
two (2) three (3) four (4) five (5) six (6) seven
(7) eight (8) nine (9) ten (10) Eleven (11) and
twelve (12) in Block number twenty three (23)
and Lots numbered four (4) five (5) and six
(6) in Block number twenty eight (28) on the
east side of Jones River, agreeably to the United
States Survey of the late town now City of Galena
aforesaid & Your petitioner further shows that he
was appointed guardian of his said Wards on
the twenty second day of May a d 1840 and that
he here brings his letters of guardianship into
Court. That there did not come into the hands
of your petitioner any personal Estate of his said
wards either at the time of his said appointment
or since & That your petitioner from the time
of his said appointment as guardian, aforesaid
to the Spring of a d 1843 had advanced monies
for support education and maintenance of his
said Wards and they were then indebted to your
petitioner for monies so advanced and being so
indebted, your petitioner at the March Term
of this Hon Court a d 1843 made an application
for the Sale of certain Real Estate and afterwards
under and by virtue of a decree of this Hon Court
upon said application on the 22nd day of April
a d 1843 your petitioner sold certain Lots in
pursuance of said decree amounting to the

Sum of \$2540.00 agreeably to your petitioners report to this Hon Court in October term thereof a D.W.43 six lots amounting to the sum of \$1355.00 - having been forfeited for non payment of the purchase money, and reverted to his said wards

Your Petitioner would further show that said Elizabeth was sixteen years of age in May ad 1845 and the said Julia Ann is about two years younger than Elizabeth - that they have been for the last three years the Academy of the Sacred Heart at St Louis and are now there being educated in a manner suitable to their condition and circumstances - that the proceeds of the sale of said lots have all been expended in paying and discharging the debts due at that time for their support and education in taking care of their property and rights, and in supporting and educating them since agreeably to the account annexed marked (A B) that his said wards are now indebted to your petitioners for money for their support and education after allowing and applying the proceeds of the sales of said lots as aforesaid, and that it has become necessary for their support and education and will be conducive to their interest to sell the said lots or to have some portion of them sold - Your petitioners further states that it will require another year for the said Elizabeth Bates to complete her education and the said Julia Ann Bates two years in a manner suitable to their condition and prospects in life at the said institution in the City of St Louis at a further expense of some fifteen hundred dollars, and that when they shall have respectfully finished their course of

instructions at said School, they will require
further means as a respectable outfit for apparel
and the decencies of life becoming their station
in Society & your Petitioner would further
represent that he has caused public notice
to be given to all persons concerned of this appli-
-cation by causing a notice thereof to be published
in the Galena Northwestern Gazette and Advertiser
a newspaper printed in Galena aforesaid for three
months successively before the sitting of this Hon
Court a certified Copy of which is herewith annexed
Wherefore he prays this Hon Court to order and decree
a sale of said lots or so many thereof as shall be
deemed necessary by your petitioner for the support
and Education of his said Grand, and that your
petitioner be authorized and empowered upon
making sale of said lots or any number or
part thereof at such time and place and upon
such terms as this Hon Court shall order and
decree and to convey the same to the purchaser
by good and sufficient deeds according to the
Statute in such case made and provided

This Done

Enrolled Filed March 17th 1846

Wm H Bradley Clerk

to the admission of which entry & petition the
plaintiff's Counsel objected because as alleged
by said Counsel it appeared from said petition
& entry that the Circuit Court had no jurisdiction
of the subject matter & no power to order said
sale & that said petition did not show & the Circuit
Court when making said order were not satisfied that

between the hours of 9 of clock A M and 6
of clock P M of sd day Thomas Drown
as Guardian of Elizabeth Bates & Julia
Ann Bates appeared at Public sale to the
highest bidder Lots five and six in Block
twenty three East side of Penn River in said
City of Salem and that this affiant then and
then bid for said lots the sum of two hundred
and seven dollars being the highest and best
bid therefor, and that said Drown as such guard-
-ian then and then struck off and sold to this
affiant as the highest bidder the said lots for
the said sum of Money, that the terms of
said sale were one third of the purchase money
Cash, one third of it to be paid in six months
and one third in Twelve Months with interest
from the time of sale the purchaser to give a
Mortgage on the lots to secure the payment of the
unpaid part of the purchase Money & that said
Drown as such Guardian then executed
to this affiant a deed of said lots in fee simple
and of all the right and title of the said Elizabeth
& Julia Ann in said Lots, and this affiant
then paid to said Drown as such Guardian
the one third part of said sum of two hundred
and seven dollars of said purchase money
and then made and delivered to said Drown
his two notes of hand bearing that date for
the remaining two thirds of said purchase Money
one payable in six months for one third and
the other payable in twelve months for the other
third, both bearing interest at the rate of six
per cent and that at the same time he executed
to said Drown a Mortgage of said lots, to secure

the payment of the said two notes according to their tenor & That said sale was made in pursuance of the order of Sale of said lots and others made at the March term a d 1846 of the Sd Court, and that said order of sale of said lots was completed with except in the Making of a return by said Drumm to the said Court of his proceedings & That said Holmes has been duly subpoenaed as a witness for this affiant for this term in this Cause as will appear by the subpoena and return on file, but soon after the service of the said subpoena said Holmes left this State temporarily and has not yet returned This affiant expects to obtain his testimony on the trial of this Cause at any future term when the same may be tried, this affiant knows of no witness by whom he can prove the above specified facts so satisfactorily as he can by said Holmes and he knows of no other witness by whom he can prove the most part of them & This affidavit is not made for delay but that justice may be done

Sworn & subscribed
before me this 8th day
of Jan'y a d 1850

Edmond Neigh

In M Maguire Clerk } Endorsed filed 8th Jan'y 1850
 Geo M Maguire cler

the facts set forth in said affidavit to have been proven by said Holmes having been admitted by said Plaintiff to be true for the purposes of this trial & The Defendant then offered in evidence a deed from Thomas Drumm to said Defendant & a party app from said Defendant to said Drumm as follows to wit

11840-18

To all persons to whom these presents shall
Dud come, Thomas Drum of Galena, in the County
of Jo Daviess and State of Illinois Guardian
of Elizabeth Bates and Julia Ann Bates Minors
and Children of Nehemiah Bates, late of said
County deceased - send greeting, Whereas by
order of the Circuit Court holden at Galena
within and for the said County of Jo Daviess
at the March term thereof, in the Year of our
Lord one thousand eight hundred and forty
six the said Thomas Drum, in his Capacity
as Guardian as aforesaid, was empowered
and licensed to make sale of the real estate of
his said wards hereinafter described, on Thurs-
=day the thirtieth day of April, A. D. 1846, between
the hour of nine o'clock in the morning and six
o'clock in the afternoon of the said day, and
having given notice of said sale by publishing
notice thereof in the North Western Gazette and
Galena advertiser a Newspaper printed in said
Galena, for three weeks successively, the last pub-
-lication whereof was on Saturday the thirteenth
=nth day of April aforesaid, did on Thursday
the 30th day of April aforesaid within the hour
aforesaid cause the said Minors, Rights and Title
the premises therein described to be exposed for
sale, pursuant to the said decree, at a public auction
on the premises, and the same was there and there
thence off to Edward Kehoe, for the sum of
two hundred and seven dollars he being the
highest ^{bids}, therefore, & Now be it known that I,
Thomas Drum in my Capacity of Guardian as
aforesaid and by virtue of the license aforesaid
and in consideration of ^{the sum of} two hundred & seven dollars

To me paid by the said Edward Kehoe the sum of
 Receipt whereof I hereby acknowledge do hereby
 grant, bargain, sell and convey unto the said
 Edward Kehoe, his heirs and assigns, the following
 Sober Tracts of Land, Situate in said Galena
 to wit, Lots Number 3) five and six 6) in Block
 No 23) twenty three On the East side of Fever River
 as really to the United States Survey of the late
 Town of Galena. Excepting and Reserving a Right
 of way eight feet wide across and over the rear of
 said Lots so as to make an alley 16 feet wide through
 the Centre of said Block, to be forever kept open
 for the use of the owners of property therein
 Being all the right and title of the said Minor therein
 with all the privileges and appurtenances
 thereunto Belonging to have and to hold the
 Above granted premises to him, the said
 Edward Kehoe, his heirs and assigns forever,
 And I the said Thomas Drum for myself my
 Executors and administrators, do Covenant with
 the said Edward Kehoe, his heirs and assigns
 that I will warrant and defend the granted
 premises to the said Edward Kehoe against
 the lawful claims of all persons, claiming by
 person or under him in the Capacity aforesaid.
 In witness whereof I have hereunto set my
 hand and seal this 30th day of April A.D. 1846

Signed sealed and delivered
 In presence of
 John G. Gotts
 Tho. Drum
 Guardian

State of Illinois
 Jo Daviess County

Be it remembered that on this sixth
~~day of May A.D. 1846 before me John G. Gotts Justice~~
 of the peace in and for the County of said appeared Thomas

Sixth day of May A.D. 1846 Before me John
G. Potts Justice of the Peace in and for the County
aforesaid appeared Thomas Summ who is person-
ally known to me to be the real person whose name
is subscribed to the foregoing deed, as having executed
the same, and acknowledged that he signed
sealed executed and delivered the same as his
free act and deed

In testimony whereof I
have hereunto set my hand and seal the day
and year above written

John G. Potts J. P. {Seal}

State of Missouri
Jackson County ⁵⁵ Records office Galena May 7, 1846
Jeremiah Pettis Recorder in and for said County
do certify that the within deed of conveyance and
Certificate of acknowledgment are Recorded in
Book C. page 445 and 446
Attest Jeremiah Pettis Recorder

Mortgage

This Indenture made and entered into this
 thirteenth day of April in the Year of our Lord
 One thousand Eight hundred and Forty six
 Between Edward Kehoe of the County of Jo Daviess
 and State of Illinois of the first part. And
 Thomas Sum of the County of Jo Daviess and
 State of Illinois of the second part. Witnesseth
 that the said Edward Kehoe and Ellen his wife
 of the first part for and in consideration of one
 hundred dollar and thirty eight dollar in
 hand paid by the said party of the second part
 the receipt whereof is hereby acknowledged
 have granted, Bargained and sold and by these
 presents do grant, Bargain, Sell, Convey and
 Confirm unto the said party of the second part
 his heirs and assigns forever, the following
 described pieces or parcels of Land, situate
 lying and being in the County of Jo Daviess,
 and State of Illinois, and known and designa-
 ted as Lots Five (5) and Six (6) in Block Twenty
 three East side of River in the City of Galena
 as will more fully appear by reference to the
 Plat of the Town now City of Galena together
 with all and singular the Appurtenances thereto
 Belonging or in any wise appertaining.
 We have and to hold the above described premises
 unto the said party of the second part his
 heirs and assigns forever, and the said
 parties of the first part, the aforesaid Tracts
 or parcels of Land and premises unto the said
 party of the second part, his heirs and assigns
 against the Claims or Claims of all and every
 person whatsoever, do - and will warrant and
 forever defend by these presents

Approved always that there present are upon
this express condition, that If the said Edward
Kehoe and Ellen his wife their heirs Executors
or Administrators shall well and truly pay
or cause to be paid to the said Thomas Brown
his heirs Executors Administrators or assigns
the sum of One hundred and thirty eight
Dollars in manner particularly specified
in two promisory Notes bearing even date
herewith, executed by the said Edward
Kehoe to the said Thomas Brown, then and
thence forth these presents and every
thing herein contained shall be void and
be void, and every thing herein contained
to the contrary notwithstanding —

In witness whereof the said parties of
the first have hereunto set their hands
and affixed their seals, the day and year
first above written

Signed sealed and delivered

In presence of

John G. Fotts,

Edward Keogh

Edw

State of Illinois

Jo Darrius County ^{SS}

I John G. Fotts a Justice of the Peace in
and for said County do certify that

Edward Kehoe whose signature appears
to the foregoing deed of conveyance and who
is personally known to me to be ^{the} identical
person — who signed the same, this day appe-
-ared before me, and acknowledged that
he had signed sealed and delivered

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The same as his free act and deed for the
uses and purpose therein expressed
In witness whereof I have hereunto set
my name and affixed my seal at Galena
this sixth day of May A.D. 1846
John G. Roth J.P. Seal

State of Illinois
Jo Daviess County

Recorder Office Galena July 13th 1846
I Jeremiah Berris Recorder and for
said County do certify that the within
Deed of Mortgage and Certificate of
Acknowledgement are Recorded in Book
B. of Mortgages & folio 43
Attest Jeremiah Berris Recorder

to the admission of which the plaintiffs counsel objected because the statute does not contemplate any other conveyance but a return of the guardian approved by the Court & that said return approved by the Court was essential to the passing of the title from the said Elizabeth & Julia Ann to the said defendant & that said deed without said return & approval of the Court could not divest the title of said Elizabeth & Julia Ann & further that said deed was not executed in the name of the said Elizabeth & Julia Ann by their Guardian Thomas Drum, but in the name of said Thomas Drum Guardian & that the guardianship of said Drum as alleged by counsel had expired when said Elizabeth & Julia Ann had respectively arrived at the age of 14 years, which objections were overruled & the said deed & Mortgage admitted as evidence to which overruling of the Court the plaintiffs counsel then and then excepted - which was all the evidence offered by the defendant on the trial of said cause -

The Plaintiffs then produced William H Bradley who testified that he was the Clerk of the Circuit Court of Hamp County & had been for about ten years and that there were no other papers on file nor had been in his Office to his knowledge in the matter of the said application of said Drum for the said sale of said realty except the following papers to wit

Copies of Papers Filed }
in Circuit Court }

In the Hon Thomas C Brown judge of the Circuit Court in and for the County of Hamp and State

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of Illinois. Respectfully shows Thomas Drum
of Gallena in said County of H. Damp that he
is Guardian of Elizabeth Bates and Julia Ann
Bates infants under the age of Eighteen years
Children of Achemias Bates deceased by the
appointment of the Probate Justice of the Peace
in and for the said County of H. Damp and State
of Illinois and that his said Wards are each in-
-debt and possessed of an undivided half part
of the following described lots or parcels of Land
situated lying and being in the City of Gallena
in said County of H. Damp to wit Lot numbers
one (1) two (2) three (3) four (4) five (5) six (6)
seven (7) eight (8) nine (9) ten (10) Eleven
(11) and twelve in Block number twenty three
(23) and lots number four (4) five (5) and
six (6) in Block number twenty eight (28) on
the East side of Jones River, agreeably to the United
States Survey of the late town now City of Gallena
aforesaid.

Your petitioner further shows that he
was appointed guardian of his said wards on
the twenty second day of May A.D. 1840 and
that he here brings his letters of guardianship
into Court that there did not come into the hands
of your petitioner any personal Estate of his said
wards either at the time of his said appointment
or since. That your petitioner from the time
of his said appointment as guardian as aforesaid
in the Spring of A.D. 1843 had advanced
moneys for support education and maintenance
of his said wards and they were then indebted
to your petitioner for moneys so advanced
and being so indebted. Your petitioner

at the March term of this Hon Court a D 1843
made an application for the Sale of Certain Real
Estate and afterwards under and by virtue of a
decree of this Hon Court upon such application
on the 22^d day of April a D 1843 your petitioner
-or sold certain Lots in pursuance of said decree
amounting to the sum of \$2540.00 agreeably to
your petitioner's Report to this Hon Court at
the October term thereof a D 1843 Six lots
amounting to the sum of \$1355.00 having
been forfeited for non payment of the purchase
money and reunited to his said wards.

Your petitioner would further
show that said Elizabeth was sixteen years of
age in May a D 1845 and the said Julia Ann
is about two years younger than Elizabeth
that they have been attending for the last
three years the academy of the Sacred heart
at St Louis, and are now there being educated
in a manner suitable to their conditions and
Circumstances & that the proceeds of the Sale
of said lots have all been expended in paying
and discharging the debts due at that time
for their support and education in taking
Care of their property and rights and in supporting
and educating them since agreeably to the
Account annexed marked (A B), that
his said wards are now indebted to your
petitioner for moneys for their support and
education after allowing and applying the
proceeds of the Sales of said lots as aforesaid
and that it has become necessary for their
support and education and will be continued

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to their interest to sell the said lots or to have some
portion of them sold - Your petitioner further states
that it will require another year for the said Elizabeth
Bates to complete her education, and the said Julia
Ann Bates two years in a manner suitable to their
condition and prospects in life at the said institution
in the City of St Louis at a further expense of some
fifteen hundred dollars, and that when they
shall have respectively finished their course of inst
ruction at said school, they will require further
means as a respectable outfit for apparel and
the decencies of life becoming their station in
society - Your petitioner would further
represent that he has caused public notice to be
given to all persons concerned of this application
by causing a notice thereof to be published in the
Gulfena Northwestern Gazette and Advertiser
a newspaper printed in Gulfena aforesaid for
three weeks successively before the sitting of this
Hon Court a certified copy of which is herewith
submitted - Wherefore he prays this Hon Court
to order and decree a sale of said lots or so many
thereof as shall be deemed necessary by your petitioner
for the support and Education of his said wards
And that your petitioner be authorized and empower
-ed upon making sale of said lots or any number
or part thereof at such time and place, and upon
such terms as this Hon Court shall order and decree
and to convey the same to the purchasers by good
and sufficient deeds according to the statute in
such case made and provided

Thos Dixon
Exonson Petition Filed March 17th 1846 Wm H Bondy etc

Notice

The Subscriber hereby gives public notice to all concerned that he is guardian of Elizabeth Bates and Julia Ann Bates Minors under the age of Eighteen years and that his said wards are jointly seized of the following described lots or parcels of Land situate in the City of Galena in the County of Adams and State of Illinois to wit Lots one (1) two (2) three (3) four (4) five (5) six (6) seven (7) eight (8) nine (9) ten (10) eleven (11) twelve (12) in Block No twenty three (23) on the east side of Jones River in said Galena; also lots No four (4) five (5) and six (6) in Block No twenty eight (28) on the east side of Jones River in said Galena and that it is necessary for the support and education of said wards, and will be conducive to their interest to have the said lots or some portion of them sold and it is his intention to petition the Circuit Court to be holden at Galena aforesaid on the second Monday of March next for license and authority to sell the same or so many of said lots as shall be necessary for their support and education when and where all persons concerned may appear and show cause if any they have why the prayer of said petition should not be granted

Thomas Drum
Guardian

I do hereby certify that the foregoing notice was published for three weeks successively in the North Western Gazette and Galena Advertiser the first of which publications was on the 13th day of February a d 1846 and the last on the 6th day of March a d 1846

H. H. Houghton
Ed & publisher of said Paper

Endorsed Jilled March 17th 1846
Wm H Bradley Clerk

1840 Estate of Artemus Bates

In amt with Jhos Drums

		To Deeds of Court by C Hempstead	13 00
		John Stark fees for counsel	35 00
		Stage fare to Springfield	17 00
		5 Days Boarding on Road	7 00
		17 " " at Springfield	25 00
		Boarding and Passage from Springfield	17 00
		4 Days Boarding on Road	6 00
1841		26 " at three dollars per day	78 00
June	22	Cash for Mapes W Donnels Letter	18 ³ / ₄
1840	May 1	By Cash from P Wall	11 25
November	1	" " " "	11 25
1841	" 30	" Home Rent from H Stahl for Sam W Dean	141 67
"	"	Advances for maintenance of heirs to R B W Donnell	187 83 ¹ / ₂
1842	July 3	A L Holmes for his bill & receipt	8 37 ¹ / ₂
April	4	advances for maintenance of heirs to R B W Donnell	100 81 ¹ / ₂
May	25	paid Legum for certificate of affidavit to Washington	25
"	"	de County Clerk for County Seal to do	50
June	16	paid H H Houghton Legat office for accounts	5 00
July	8	advances for maintenance of heirs to R B W Donnell	187 07 ¹ / ₂
Aug	25	Cash paid Register at Dixon for certificate of entry to lots in ^{Salina} ₃	1 00
Nov	2	" paid May fee in Rent with Stillmann	3 00
Dec	2	" paid for Copy of Lease to Record R B W Donnell to ^{At Stillmann}	1 12 ¹ / ₂
1843	Jan 1	advances for maintenance of heirs to R B W Donnell	209 91 ¹ / ₂
"	11	paid Costs of Rent with Nelson Stillmann per receipt	16 43 ¹ / ₂
		Postage to Springfield & back to Albany Lawyer	37 ¹ / ₂
Apr	15	Shampson Comptroler as diff in Rent with A Stillmann	25 00
	17	do as returning fee in Supreme Stillmann	10 00
May	6	Stillmann for Copy of Sale of city lots on 22 nd April	1 00
	9	J R Smith as auctioneer for sale of do	3 00

	20	P. Manual for moving State's share of lot East Galena	2 50
June	3	W. Cady for money lots (12) in East do	3 00
	27	Paid recording 5 Mortgages	5 76
July	4	To amount that remains from other side	963 14 ² / ₁₀₀ 164 17
		Leutenant office for mounting sale of lots	2 50
		for 50 hand Bills	3 00
		for 26 Blank deeds	2 50
	8	pd passage of Eliza Bates to Saint Louis	5 00
		Carrriage here to & from Pleasant	3 00
		Cost to do in Saint Louis	5 00
		Principle of the Commut in St Louis for board & tenting	50 00
	22	Ints for 1842 to State 7.50 County in adv 25.00 1/2 of the sum	20 00
	28	Cash to Eliza Bates forwarded for Capt Conley J.B. Galena	20 00
	31	for recording deed of St Hillman & wife to hers	1 00
Sept	9	Elizabath Bates Cash at Lemoris	92 50
		advances for maintenance of hers to R.B. McDonnell	511 18
		Dr. Cron for Medical attention on Eliza Bates in Feb 1843	5 00
		Paid recording 3 Mortgages	3 45
Nov	14	Paid Bill of costs in Suit with Hillman	4 93 ³ / ₄
		do do per Receipt	4 06 ³ / ₄
	17	Principle of the Commut in St Louis Board & tenting	31 31 ³ / ₄
		Paid postage on letter with Bill & receipt enclosed	58 ³ / ₄
Dec	8	on letter to E. Bates 18 ³ / ₄ to superior enclosed Sept 18 ³ / ₄	87 ³ / ₄
1844	29	on 2 ^d letter from do and answer	37 ³ / ₄
Jan	4	amt of Gurdal & Co Bill & Receipt for Indent	4 25
	6	Cash to Julian for share \$1.50. 9 th Cash to Julian \$3.00	4 50
	18	Cash 3.00 - 25 th Cash to Julian \$3.00	6 00
Feb	1	do 45.00 - 6 th do 3.00 - 17 th Cash \$5.00	12 00
	19	1 Champion Bills 25 th - 20 th Cash 4.00	4 25
	27	Cash \$2.50 March 2 ^d Cash \$1.00	3 50
March	4	Paid County clerk Petition for sale Real Estate	5 86
	7	Cash \$5.00 - 9 th Cash 3.00 15 th Cash \$10.00	18 00
	15	Cash 1.00 - 23 ^d Lu & Hartmanns Riv 7.25	8 25
	23	Cash	5 70
	26	Principle of the Commut St Louis board & tenting	92 50

1844		To amount Prot Payments from	1892 50 ⁷ / ₈
March	29	advances for maintenance of heirs R B W D	296 44
	30	Cash 75.00 apt 2 nd Drunk for Julia 5.00	11 00
April	2 nd	Cash 5.00 - 8 th Cash 3.00	8 00
	8	Don Stone per Receipt for costs & charges in care	
	"	of E. Indian Bats with Settlement	190 00
	13	Cash 6.00 - 20 th Cash 7 10.00 24 th Cash 3.00	19 00
May	16	Gerard's Bill for Julia Ann per Receipt	4 75
		Clark S B Amaranth's paid Julia	
		passage to St Louis per Receipt	5 00
		Julian to buy newspapers for convent	2 00
		For double & single Blankets best quality	6 00
		Elizabeth for clothing Books & stationery	20 00
		Paul Gammochius Bill for Elizabeth	50 00
	25	Procell for acknowledgment of Mortgage	
		taken by John Atchison	25
July	3	Principle of Convent St Louis Bonds & contents per	90 48 ¹ / ₂
		Smith for Drawing Lessons per Receipt	10 00
		do " Pierre de balamin	1 56 ¹ / ₂
	15	Goodell's Bill of clothing to Julianne	63 83
	19	Pa receiving Mortgage John Atchison	1 12 ¹ / ₂
Aug	24	Cash to Elizabeth by adv sent care of J B Procell	30 00
1845		do do Julia Ann	20 00
Jan		Elizabeth & Julian Bats 748 in City Paper	24 00
		" in Cash 23-22	23 22
March	10	City Taxes	21 25
Apr	5	Elizabeth & Julian per Capt Stone	75 00
May	7	To Atchison Bill	12 00
Apr	18	Stripes Bats into Elizth & Julian	20 00
May	8	Elizabeth & Julian Bats cash	60 00
June	21	Julia Ann cash paid Convent for Pension	20 00
July	30	Elizabeth " "	23 80
1842			28 40 21 ³ / ₄
November	26	By per mistake Recd of Benton de for Buck	37 50
		To R B W Downell for maintenance heirs	37 50

1846	23	To Sam Stone for a suit & Helen Stillmans in Equities for the state in 1843	50.00
		Brought forward	2929.71
1846	4	To City Exp ^s for 1844	32.06
		To paid state for 1845 for receipt	28.20
		County tax + 37.50 at 37 1/2 cts cent to the owner	11.10
		" A L Holmes aff	365.00
			<u>3377.07</u>

Enclosed A.B.

Hon^{ble} Dr. Dr. Dr.

Guardsman &c

Filed March 17th 1846

W^m H Bradley clerk

State of Illinois }
 Soc. Deerp County Circuit }
 March term of the 2^d
 Soc. Deerp County Circuit }
 for A D 1846

In the Matter of the petition of Thomas Dr. Dr. Dr.
 Guardsman of Elizabeth Bates and Julia
 Ann Bates infant heirs of Nathaniel Bates
 deceased for the Sale of real estate for the support
 and education of the said heirs - And now
 comes Thos. & Sheldon for and in behalf of the
 said heirs and as the request of Robert W. M.
 Dowell the stepfather and Archangel M. Dowell
 the Mother of the said Elizabeth & Julia Ann and
 resist and oppose the said petition, and show
 the following causes why the prayer of the said
 petition ought not to be granted by the Court
 namely -

First that there does not exist in fact any
 necessity for the Sale of the said Real Estate describ-
 ed in said petition for the purposes contemplated
 by law and stated in the said petition.

Second that the amount of the Sale of real

50
Estate heretofore made belonging to said heirs
is not correctly stated in the said petition;
But that to the contrary thereof, the true amount
of the Sale of the said real estate heretofore made
under the order of this Court at the March term
thereof in the year of 1843, as shown by the report
of said Guardian in the records of said Court at
the October term thereof in the said year of
1843 was four thousand and fifty dollars which
had it been economically and judiciously invested
and disbursed would have been amply for all
the purposes contemplated by law.

Third and for that the said Guardian has
not made out nor exhibited either with or without
oath to the Probate Justice of the peace any account
of any or all of the Monies received by him as Guardian
of the said infant heirs as aforesaid for the Sale
of the said real estate of the said heirs under
the said previous order of this Court as by law
he was bound to do (See 11th § Act relating to Minors
orphans & Guardians) and without which report under
oath as aforesaid the Circuit Court ought not to grant
the prayer of the petition.

Fourth that the mere statement of the items in
the said Guardians account of the disbursement of
the Monies of said estate resulting and arising from
the said previous Sale of real Estate and all other
sources without oath or other proof is insufficient
under the law; as the law requires that this Court
commonly exercise the jurisdiction of ordering infants
and real estate to be sold upon being satisfied
that there exists just & reasonable causes for the
Sale thereof, of which fact this Court can only

be judicially & legally satisfied upon legal testimony
under oath, and that the said guardian had also
faithfully applied all the personal estate which had
come into his hands &c - Dec 10 -

Fifth for that the said previous report of the said
Guardian of the names of the purchasers of the
lots hereinafore sold as the obijetes are informed was
not and is not according to the facts; Now is it
true as stated in said petition filed at this term
of this Court (taking the said previous report as
true) that any of the said lots sold at said previous
Sale have reverted back to said estate, nor are any
of the said lots so said to have reverted back to said
estate been designated specific or in any manner
identified in or by said petition

Sixth, For that this Court has no jurisdiction to order
the sale of other and additional real estate of the said
infant heirs when a previous sale had taken place
under its order until the said guardian so petitioning
for such leave to sell shall have previously settled
all his accounts and had his vouchers proved to
the satisfaction of the Probate Justice of the peace
& allowed by him - whereas in this case no such
settlement has taken place nor has any account
of said Guardian been presented to or allowed
by said Probate Justice of the peace

Seventh The said Guardian has not stated
or shown in or by his said petition that he has
ever been directed by the Probate Court in what
manner to superintend the education & support
of his said wards - nor has he ever applied for
or received any such direction as by law he was
bound to do

Eighth for that the said Guardian has no

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right or discretion to allow claims accounts or demands against the Estate of the said wards until they shall have undergone the supervision of the said Probate Court and been approved and allowed by it. Nor had the said Guardian any lawful right or authority as Guardian to apply any of the Monies arising from the Sale of the real Estate of infant heirs to the payment of ~~pre-existing~~ pre-existing debts outstanding against the estate of the intestate, as that should be the duty of the administrator.

And for other & divers reasons and causes not herein particularly specified.

Strove & Shelton attys
oppositus to the prayer of the said
petitioners

Evidenced, Causes in appertenance to the said petition

Hiled March 23^o 1846

Wm H Bowdley, Clk

And that he had examined in his office to find a return of said Deed of said Sale but had not been able so to do - The said Bowdley further viewed the Record Books of said Court & examined the indexes of said Record & from the indexes the said Records & testified that he could find no other entries on said Record in the said Matter of said application of said Deed except the entries aforesaid offered in Evidence by said defendants & that he had never discovered error in them & believed them correct & that he knew of no other entries in said Records - that he had examined the Records of said Court at the next term after

Said over the term to which said return
was annexed & that there was no other entry
on said record in that matter. The plaintiffs
then appeared to read the balance of the deposition
Mrs. M. D. of Archang. Mr. Dowell being questions & answers
deposition 4th & 5th to Wit^o

Question 4th State what were then (said Elizabeth
and Julia Ann) circumstances as to property or
means of support in the years 1842, 1843 & 1846
what amount of property was owned by them
whether the rents and profits of their estate
real and personal was sufficient or insufficient
for their education and nurture during those years
Ans 4th during the years 1842, 1843 & 1846
they had a sufficiency of means of support
without the sale of any property, the rents
and profits derived from their real and personal
estate was considerable at that time, there were only
three in the family consisting of myself and
two daughters and the rents and profits amounted
to about twelve or thirteen hundred dollars besides
this amount there was a considerable sum of money
due from Central Rail road in the hands of Thomas
Drum Guardian I think the profits of the real
and personal estate was amply sufficient for
the education and nurture of my children
aforesaid during those years if it had been
faithfully applied

Question 5th State if you know the same
whether or not the personal estate of said
Elizabeth & Julia Ann (if they had any) or the
rents and profits of their Real estate were
faithfully applied to the purpose of their
education & nurture during said years

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1842. 1843 & 1846

Ans 5th Mr Thomas Drum was guardian during the years 1842. 1843 & 1846 for my said Daughters Elizabeth & Helen Ann in the year 1843 he sold real Estate belonging to said Minors to the amount of about three thousand seven hundred & twenty five Dollars in the year 1845 he again made sale of real Estate belonging to the Minors for a considerable amount I think about three thousand dollars I am sure that the amounts thus realized by Thomas Drum were not faithfully applied for my Daughters did not realize but very little of the proceeds of said sales and they never received any thing that I know of from claims against the Central Rail road,

which was objected to by the defendants and the objection sustained, & the said parts of said Deposition rejected, to which ruling of the Court the plaintiffs by their counsel objected - which matters aforesaid were all the evidence & proofs offered or admitted in said cause by said Plaintiff & said defendant & to all of which rulings & overrulings of the Court the Plaintiff then and there excepted the Plaintiff thereupon moved the Court to give to the jury the following instruction, asked for by the Plaintiff which instruction was in writing as follows to Wit

Instruction

The Counsel for the Plaintiff ask the Court to instruct the jury that if they

Refused & excepted

shall believe from the evidence that there never was any return of said sale made to the Circuit Court, and approved by said Court the legal title of said lots never passed out of the said Elizabeth & Julia Ann & vested in said defendant if they shall believe that they were seized of said legal estate in fee simple prior to the said sale

Ordered Hilary 10th Jan'y 1850
Geo M. Matthews clerk

which instructions the Court repeated & refused to give & wrote thereon as follows to "N^o" "Refused & excepted" to which refusing the plaintiffs by their Counsel then & there excepted

And the said Plaintiff moved the Court for a new trial in this cause & to set aside the verdict of the jury, for reasons on file which said Motion & reasons are as follows to "N^o"

Alexander Young	}	In & Dampl County
et al		Count & Dampl County
vs		Illinois
Edmund Peak	}	Exigent

And the said Plaintiff by Wilson & Douglass their attorneys come and move the Court for a new trial in the above entitled cause for the following reasons
1st That the Court erred in admitting as evidence an entry upon the records

of the Circuit Court of St. Louis County Illinois
showing an application by Thomas Drum
acting as Guardian, after the expiration
of his Guardianship -

Second - In admitting evidence of a
petition of Drum as Guardian for sale
of realty & entry of order of sale to be made
by said Drum as Guardian after
expiration of his Guardianship and when
the petition & records of said Court showed
that said Court had not jurisdiction to grant
said order of sale

Third - The Court erred in admitting
the deed purporting to have been made by
said Drum as Guardian after the expiration
of his Guardianship and in admitting said
deed to go to the jury as evidence of title without
evidence of a confirmation of said sale
according to law & because said deed was exe-
cuted in the name of Drum Guardian & not
in the name of wards

Fourth - said Court erred in refusing
the instructions asked by said plaintiffs
& rejected by the Court

5th Because no evidence of a return of
the Guardian & approval of the Court was
produced & offered to the jury -

6th Because it appeared in the evidence
that there was no return by the Guardian of
said sale & confirmation by the Court of said sale

7th Because said deed was executed in the name
of the Drum guardian or instead of in the name
of said wards by their Guardian

8th Because it appeared from the evidence before the Court when the said Record of the order of Sale was offered that the Court had not jurisdiction of the subject matter in said petition of said guardian contained & no power to grant & decree said Sale

9th Because the Court erred in refusing to admit the whole of the Deposition of Archibald Mc Dowell to go to the jury & for other reasons

Douglas & Wilson
for Plaintiffs

Endorsed Motion for New Trial
Filed 10th Jan'y 1850

Geo. M. Mitchell Clerk

which said Motion was overruled by the Court to which overruling the plaintiffs by their Counsel then & there excepted and to all of which rulings & overrulings they then and there at the respective times of said Ruling & overrulings excepted & pray that this their Bill of Exceptions may be signed sealed & made a part of the Record in this Cause which is accordingly done

Hugh J. Dickey Esq
Judge

Endorsed Bill of Ex^s
Filed 12th Jan'y 1850

Geo. M. Mitchell
Clerk

And afterwards to wit on the 12th Day of
January a 1850 as yet of the January Term
Term a 1850 of said Ju. Sup. County Court
in the Records of said Court in said Cause
is the following entry to wit

Alexander Young
Elizabeth Young
his wife & Minus
Marchalder and
Julia Ann Marchalder
his wife

by
Edmund Hoag



Execution

Now came on to be heard the
Motion heretofore filed by the Plaintiffs by their
attorney for a new trial in this case, which motion
after argument is overruled by the Court, & which
ruling & decision of the ^{Court} the Plaintiffs by their
attorney excepts - and the Defendant by his
attorney moves the Court for judgment upon the
verdict of the jury heretofore returned in this case.
It is thereupon considered by the Court that the
Plaintiffs take nothing by their writ and that
the Defendant go hence without day & and
also that the Defendant have and recover
of the Plaintiffs his costs by him about his
defense in this behalf expended and that
Execution issued therefor

State of Illinois }
Jo Damp County } set

I George Mitchell Clerk of
the Jo Damp County Court in and for said
County do hereby certify that the foregoing
transcript is a true full and correct copy
from the Record of all the proceedings which
were had in the said Jo Damp County Court
in the aforesaid case of Alexander Young
et al against Edmund Keogh

In testimony whereof I have
herein to set my hand and
affixed the Seal of said Court
at Joliet this 16th day of
February A D 1850

Attest G
Geo M Mitchell Clerk

Fees for transcript \$ 20.76
Embroider & Seal 35
\$ 21.11

Alex & Young & Co
by $\frac{1}{2}$ Transcript
Edward Hoyle



Fees for transcript
\$21.11

The Plaintiffs in Error assign the following Errors—

1st The Court erred in admitting the said entry on the Record of the Court of Probate at pages 71 + 72 as evidence—

2nd The Court erred in admitting the said entry on the Records of the Circuit Court at its March Term A D 1846, of the filing of said Petition &c—

3rd And in admitting the said Entry on the Records of said Circuit Court at its March Term 1846, of the order of Sale of said Real Estate—

4th And in admitting as evidence the said Petition of said Drum—

5th And erred in admitting said deed of conveyance signed "Thomas Drum Guardian"

6th And erred in admitting said Mortgage from said Keogh to said Drum—

7th The Court erred in rejecting and ruling out the said answers 4th & 5th of Mrs. Archange McDowell—

8th The Court erred in refusing said instruction asked for by the Plaintiffs Counsel—

9th The Court erred in overruling the motion for a new trial for reasons on file —.

10th And in rendering Judgment for the Defendant, when by the laws of the Land Judgment should have been given for the Plaintiffs —.

Hoge & Wilson attys
for plaintiffs in error.

And now at this day comes the said
Sect in Error, and says there is no
error in the proceedings and venue and
in the rendition of the judgment. He therefore
says that said judgment may be affirmed
Cumplere
att for sig a Error

State of Illinois ~~vs~~ Ottawa County &

Alexander Young
Elizabeth Young
Francis Marchildon
Julia Ann Marchildon

Plaintiffs in Error

^{vs}
Edward Keogh

Defendant in Error

Error to J. S. Daniel County

Supreme Court
3rd Grand Divi-
sion to June
Term 1857

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs that may accrue in this action either to the defendant or to any of the officers of this Court in pursuance of the laws of this State, or that may become chargeable to, or due from said plaintiffs in Error, or either of them to any person whatever in pursuance of the laws of this State.

Dated this Seventeenth day of April 1857

M. H. Truitt Clerk

Alexander Young et al
Plaintiffs in Error
vs

Edward Keogh
Defdt in error

Filed April 21, 1850.
V. Ireland Clk.

Hago & Wilson attys
for plntffs in error—

State of Illinois, Sec.

The people of the State of Illinois,

To the Clerk of the ~~County~~ ^{County} Court for the county of *Jo Daviess*—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{County} Court of *Jo Daviess*—county, before the Judge thereof, between *Alexander Young & Elizabeth Young his wife & Francois Marchedon & Julia Ann Marchedon his wife*—

plaintiff and *Edward Keogh*—

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

plaintiffs

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 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 of June* — 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. *Daniel H. Treat*

Chief Justice of our said Court, and the seal thereof at Ottawa, this *21st* day of *April* — in the year of our Lord one thousand eight hundred and *fifty*—

V. Keland

Clerk of the Supreme Court.

Galena April 17th 1850

J. Seland Esq

Clerk Supreme Court

3rd Grand Division

Enclosed please find a transcript
of a case of Alex^r Young et al plaintiffs in error
vs Edward Neogh Defdt. in error, which file
& issue a Scire Facias to the Sheriff of Iowa
- Jefferson County for Defdt. returnable according
to law - No Superseder has been asked - You
will also find enclosed Ten Dollars of the
Bank of the State of Missouri - Five of which
we deposit as your advance fee in this case - and
five in the case of James plaintiffs vs John
Lorram et al, a transcript of which goes by the
same mail with this - Please issue the Sci fa
- immediately as we apprehend defendant may
leave the County, shortly -

Yours Obedt Servt

Stoge & Wilson
attys for plaintiffs in error.

Alexander Young et al.

of
Edward Keogh

Prinipe

Filed April 21, 1850.
N. K. Keogh et al.

State of Illinois,
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF Jo Daviess County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the ^{County} ~~circuit court~~ of Jo Daviess county, before the Judge thereof, between Alexander Young & Elizabeth Young his wife & Francois Charles Eldon & Julia Ann McLaucheldon his wife, plaintiffs— and Edward Keogh

defendant it is said that manifest error hath intervened to the injury of the said plaintiffs

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 Ottawa, 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 Edward Keogh

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he 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 Edward Keogh notice, together with this writ.

WITNESS, the Hon. Daniel H. Treat
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this 21th day of April
 in the year of our Lord, one thousand eight hundred
 and ~~forty-~~ fifty.

A. Ireland

Clerk of the Supreme Court.

Supreme Court at Ottawa

Alexander Young et al.

Edward Keogh

Sci. Fa. to Jodavisp Co.

To June Term 1850.

I Marshal B. Purce Sheriff of Jodavisp county Illinois do make return to the within writ that I have this 27th day of April A.D. 1850 according to the exigency thereof by John Doe & Richard Roe good & lawful men of my County I have caused the same to be read in the hearing of the within named Edward Keogh and delivered a certified copy of this writ to said Edward through at same time personally

M. B. Purce Sheriff

Shffs Fee
Serving 50
Mule & Hvy 15
Copy 50
\$1.15
Postage 5
\$1.20

Filed May 4. 1850.
J. Uland Clk.

Young et al vs On Error ~~in the~~ Supreme Court
Edward Keogh vs 3^d Grand Division

I -
On the trial of this cause the plaintiffs in error who were plaintiffs in the court below showed title in themselves, by patent from the Government of the ~~Government~~ United States, dated September 12th 1845 - issued to the plaintiffs Elizabeth & Julia Ann Bates, for the ground in controversy, to wit, lots numbered five (5) and six (6) in Block No 23, on the East side of Ferris River in the city of Galena, County of Jo Daviess & State of Illinois - the marriage of Elizabeth & Julia Ann Bates to the other plaintiffs respectively - that they were the children & heirs of Nehemiah Bates dec^d - who died on the 12th of May 1835 - that Elizabeth Bates was born on the 6th of March 1829, and became 14 years of age on the 6th of March 1843 - that Julia Ann Bates was born on the 2nd of May 1831, and became 14 years of age on the 2nd of May 1845 - and that the defendants claimed pro se a title to the premises, which were vacant lots, and then acted thereon.

The defendant to meet this case & show title out of the plaintiffs offered in evidence certain proceedings of the probate court appointing ~~Thomas~~ Thomas Duman guardian of Elizabeth & Julia Ann Bates, and the proceedings of the Circuit Court of Jo Daviess County upon the petition of the said Duman ordering the sale of the real estate of the said infants, including the premises in controversy, & the proceedings of the guardian under the order & the purchase &

of the defendant in error, to the admission of all which evidence, the plaintiffs in error objected, the objection was overruled by the court & the materiality of evidence was admitted to go to the jury in the order in which they were offered.

The formal decision of the Circuit Court in admitting the evidence thus offered & objected to are now assigned for error, a motion for a new trial having been made & overruled & a bill of exceptions embodying all the evidence on both sides having been allowed.

This record although voluminous, and pretty many exceptions, rarely taken during the progress of the cause, yet may be considered as pretty full for the determination of either of which favourably to the plaintiffs in error will dispose of this case.

I-

The first point relied upon by the plaintiffs in error involves the correctness of the decision of the Circuit Court in admitting the evidence offered from the records of the Probate Court showing the appointment of Drum as guardian for C. & J. K. Baby the plaintiff in error.

This record was clearly inadmissible, because it appeared on the face of the record that the Probate Court had no jurisdiction in the particular case in which they undertook to exercise it, and the appointment was void & conferred no authority.

- vity on Durn - and for two reasons -

1st Because the former guardian McDowell had no right to resign, nor had the court of Probate any authority by the law to accept such resignation & appoint another guardian - The appointment was therefore a nullity, and the former guardian remained in office notwithstanding the action of the Court of Probate -

Rev^d Statutes secⁿ 7. 14. & 20 of guardian etc secⁿ 34 will Act pp. 5-43 - Act of 1849 pp. 100. Jennie v Chase 4 Lewis 90 - ex parte Crunt 2 Dalt. ch. 439 - Griffith v Fraser 3^d Lond. W.S. 1 (envelopes war) Jollens Ex^{ts} 40 to 44 - Wason v Abri 2 title Exerts Dakin v Hudson 6 Cowen 225 (construction of the statute) - Upton v Upton 14th John 494 (app. when no power) many of the cases cited on other branches of the case will be applicable in their reasoning to this point - Waters Willard 2 Mass. 124 (app. after 20 years void)

~~Equities v Admton 21 Wend 448 - your construction of the statute~~

McHunt v Hapgood
Hobart 120-1

2nd The court of Probate undertook to appoint a guardian for minors under 14 years of age until they should arrive at the age of 18 years, when by law the

The second general question arising upon this second point for the consideration of this court is the correctness of the several decisions of the Circuit Court in receiving as evidence the proceedings of Dumm before the Circuit Court and relying in the order of sale of the premises in question, and in holding, unless it self into this single general proposition, - Had the Circuit Court power & jurisdiction to make the order in question; under which the defendant in error attempted to draw title -

The plaintiff in error insists that the whole proceedings before the Circuit Court were coram non iudice & utterly void - that the Circuit Court had no jurisdiction of the subject matter, upon which, nor of the persons over whom, that Court undertook to act, & that therefore the proceedings offered were inadmissible in evidence & could not affect the plaintiff's title as established.

And this upon several grounds -

1st

The original appointment of Dumm as guardian by the Probate Court was void & conferred no right or authority upon him to represent the plaintiff in error C. & John Ann Baly in their proceedings, or to bind their rights in any way - and this for the reasons assigned in the 1st point -

The authorities cited under first general head above -

2nd /

At the date of the filing of the petition and of the proceedings thereupon before the Circuit Court resulting in the order of sale, the guardianship of Drumm had ceased and determined by operation of law, and ^{no} longer the guardian of Elizabeth & Julia Ann Bates, they having respectively arrived at the age of 14 years, and entitled by law to choose their own guardians, upon due notice given according to law. In this case no such choice has been made, no notice given, & no new appointment made, so far as the record shows, or the court can know. The record in fact showing that Drumm acted entirely under his original appointment.

Revised Statute title Guardianship -
 Perry: Depu vs Braimard 11 Ohio 442
 Depu of Maxton vs Sawyer 12 Ohio
 207 - Campbell vs English
 Wright Ohio Rep. 119. In 1762 -
 Act Ohio title guardian act 247, 248.
 Sherman vs Ballou & Covert 307
 & cited - Hathaway & Clarke
 5th Peck. 491. Chan vs Hathaway
 14 Mass. 222. Waly vs Willard
 2 Mass. = 124 (app. adm. = 20 years after
 death said) (Dean vs Littlefield
 1 Peck. 243 discharges right of infant
 14 years old to make will of parents by
 responsibility - to punish & slight

[Faint handwritten notes, mostly illegible]

to show guardian / Conkey vs
Kriegman 24 Pick. 119. Waiters
Maxwell 5 Pick. 219. Esty vs
Strong 2^d Ohio 401 and many
show he was not guardian, & is not bound
by deed & guardian &c / Holyoke
& Hoskins 5th Pick. 24 & Curtis vs
Hoskins 9 Mass. 547, then two cases
show appl^g of adm^o by Prot. law wrong
courts void & law by such adm^o void
& cannot be cured by trustee /
Griffith & Francis above cited
& Weston & Weston also cited above

Bislow & Stearns 19 Johns. ⁴⁰⁻¹²⁰ 39
cited hereafter, Eddy & Knapp
2 Mass. 154 - Ruben Sen. Rel.
311. 713 - 1 Black R. = 462 distinguished
(8) - Wheaton. Selwyn 571 note -

4th vol. Bacon Abridg^g 553, 561, 562 - 540
543 - 544 - 550

Roxe vs den & Hodgson 2^d Wilson
129 & 130 =

Chalker & Chalker 1 court^g
79, in Parmater & Baldwin 313,
& also cited - Smoother & Sutton 5
Halsted 133 disimp^g doctrine generally /
Smith & Price applicable on the
general principle 11 Mass. 510-12.

also Sumner & Parker 7 Mass 82 - two
persons app^o - one dies, must be new app^o - Broadha
vs Bradshaw 1 Ryndal 528. Conklin &
Edgerton adm^o - men created by the statute / 21
Mendell 448 -

3d The petition & proceedings thereon & order of sale did not show on their face such a state of facts as authorized the court to deem a sale of the premises in question, but on the contrary it was apparent on the face of the record that the court had no jurisdiction of the subject matter, and no authority to make the order of sale. The petition does not state, nor does ^{the court} find that the process had been faithfully applied by the sheriff, as required by law, nor was the sale asked for purposes authorized by law.

upon that branch of the record
petition asking sale to pay debts,

- Hal. 123 Rep. 1101 - see the Statute in Rogers vs G.H.W. Dill 416-17. In the matter of Pettit a narrative 2 Page ch. 579 598. Mason vs Wait & al. 133-4. Hunt & al. vs Johnson 4 Ohio cond. 685 (constituted) Letter of Adams vs Jeffers 12 Ohio 271 274 Lincoln vs Tower 2^o McLean 479 480 - Whately vs Powell in 5^o Cond. U.S. Rep. 32 - Bank of Hamilton vs Dudley Letter 2^o Peters 523 - Gamett vs Wiggins 18 Common 339 - Elliott vs Purcell 1 Peters 340 Green vs M. Carroll 1 S. M. 368-70 - Smith vs Hillsman 18 Common 325 - Planters Bank vs Miff -

Davis & Handrup 18

1 Gilman - 178, 179.

Sydney & al. vs Conkling

1 Mitchell 320, 324.

Payson & How vs Still

373, Smith vs Philbrick

2 N.H. 395. Davis & Bond

7 Ham. Ohio, part 2^o 104.

Bridgman & Brookfield 3 Com 299 -

part paid & part had

in litigation vs Kenpton

13 Ill. Rep. 444 - 272.

Lithy vs Burnham 15 Ill. Rep. 44

144 - impossible to distinguish

legal part from illegal part

Waltham & Hyde

Gallatin vs
Cunningham
& Cowen 3704

Johnson vs Sell 454
 Campbell vs Brown 234
 6 Hill 234, Puckett vs Hill 20
 Mc Donald vs Hill 273 -
 Waldron vs Hill 1 Hill 111-114 -
 Bloom vs Burdick 1 Hill 135-137
 - 8-9 to 143 - Waltham & Hyde of
 Court - 10-14 x cited - (debt & by-
 - law) Maffinger vs Minter 8
 Birney 97, 104 - Hunt vs Hep-
 - good 4 Map. 120-121 - Lippin of
 Goforth vs Longworth 4 Hill
 129 (ind 2-75) Moore vs White
 6 Johns Ch. 388 - Ford vs
 vs Walsworth 15 - Wendell
 449, 450 - Deming vs Cowen
 11 Wendell 651 to 653 - Smith vs
 Fowler 12 Wendell 10-11 -
 Heath vs Wells 5th Hill, 143 -
 146 (count on Parker vs Fairfield &
 Lewis vs Harris) Smith vs Birn
 11 Map - 570-12 - (of the cited)
 Sumner vs Parker 7 Map 82
 by cited, Dakin vs Hudson
 6 Cowen 225 - Billington
 vs Jenkins 7 Hill 487 - Harris
 vs Bigelow 4 John - 400-1-2-3
 1 of the cited) Schrieffer vs
 Lynn 2 Howard 60, Ventripan
 vs Smith 10 Peters 174 - (strong
 case) Rowland vs Mosher 2
 Lewis 68 - Atkin vs Deane
 20 Wendell 2-48-92

Latham & Edgerton & Cowen 229-
 Mills & Martin 19 John - 33 in
 Borden & Fitch 15 John - 140.
 Harbuck & Murray 5 Wendell 154
 it Holbrook & Murray 165 - Gilbert
 & Columbia Turnpike Co 3^d John
 case 108-9 - Cleland & Rogers
 6 Wendell - 440-441 in - Lippin of Hickley & Hill
 & Stewart et al 3^d Howard S.C. 761
 to 763 - cit; Rose & Hines & Elliott & Kiser
 Adkins & Baumer 3^d - Cowen 208 -
 Bowman & Papp 6 Cowen 236 & case
 cited - Jackson & du Watson 157
 & Wendell 149-151 - Williamson
 & Doe of Blackford 14-16 & 17 -
 Thompson & Case S.K.H. 573. Knox
 & Dent of Map 492. Doe of
 du Walker & Turner 5 Cond S.C.
 690 - McChung & Papp 4 Cond S.C.
 605 - ib. Williams et al & Peyton
 Lippin 395 - Parker & Papp Lippin
 3^d - Cond S.C. 308 - N. Griffith &
 Frazer 96 & Pappin - Marchant
 & Armstrong et al 16 Ohio 190.
 with case court had confirmed but
 not decided - had and de of Lippin
 of Ludlow him in the Bride of Ohio
 240 - Lippin & Papp in Lippin &
 Brining 490 (Lippin & Papp in Lippin)
 Lippin Ludlow him in Wade 5 Ohio 327
 (Lippin & Papp in Lippin) Jackson &
 Morse 18 John - 441

Hutchings & Johnson
 12th Court 382 case
 cited - H.K.S. 4 K.H. 60
 when word did not show
 finding &
 Sharp & Spier 4 Hill 86
 & Sharp & Johnson 2 92
 Williamson & Williamson 3^d Hill 215

144

III

If the plaintiffs in error are wrong in the foregoing position, and the proceedings in the Circuit Court were regular & competent & binding upon the plaintiffs, then it is insisted that the defendant in error acquired no title by his purchase at the guardian's sale, because no return was ever made by the guardian of his doings under the order of the court as required by the law, and no approval or confirmation of the same by the Circuit Court was ever had, as required by the statute. It is insisted that such judgment of approval & confirmation was essential to the defendant's title & that nothing passed under the sale without it - the statute not contemplating any other or different conveyance than such judgment of confirmation -

See Statute - and also Statute on ²⁰²partition -

1 Single on Vendor
73-4-6 - Ex parte Simon
11 W. Va. 509, 13 West Va.
518. Anon., 2 West 335

Smith & Dunson 2 West
338 (Court case New York - Paig)
may resemble

Lesson of Curtis & Norton 1 Cond Ohio
139. Hall v McCalister of Ohio
19. Pea v McEachron 13 Wendell
265, same point in Aldrich v Allen man-
uscript decided at same place referred
to in Cowan & Hill, note - Matter
of Hemings 2 Paige 317, same case
3^d - Paige 308-9. Atkin v Kinman
20 Wendell 248-9. 2^d part Cowan
& Hill, note (3^d vol) 868-9.

Curtis v. Sherrington, Mass 101 that
complain with statutory require to
recopy & for all foreign authority
as to this matter -

Dickson v. Watson & Esby of Denmark
149-51 - Newtiff v. Smith 10 Petes
174 - Grant v. Wiggins 18 Conn
337 -

There was an ancient principle of
the common law that required
the recopying of a deed - It was a
rule that when a thing took
effect, out of a naked power
or authority, it was good without
deed - but when a thing took
effect out of an interest, there
must be a deed, if incorporeal
by law, if corporeal - In
pursuance of this rule it hath
been held, that if executors
be ordered in a devise to sell
land, they may do it by deed
or by parol, because the
vendor takes under the devise,
& not under the conveyance of the
executors, according to the princi-
-ple that whosoever claims
under the execution of a power,
must make title under the
 power itself -

Youngsall }
is }
Serranthal } On error to Supreme Court
3d Grand Division

In Equity, in the Jo Daviess County Court
for the North half of Lot No 5, and South half of
Lot No 6 Lotta in Block No 29 on the East side
of "Perre River in the city of Galena, County of Jo Daviess
& State of Illinois - On the trial of this cause in the
Court below, the plaintiffs in error showed title in Elizabeth
& Julia Ann Bates by Patent from the Government of the
United States, dated September 12th 1845 for the premises
in controversy, their marriage to their parents were
sacred lots & that depends claimed title in fee simple
and the birth & ages of the plaintiffs Elizabeth &
Julia Ann Bates respectively, as particularly described in
the foregoing case between the same plaintiffs & Edward
Krogh already presented to the Court

In this case the defendants in error offered in
evidence the same proceedings before the Probate Court
which were offered in the other cause, and also certain
proceedings before the Circuit Court of Jo Daviess Co,
resulting in an order of sale & the purchase by
the defendant of the Lot in controversy at the sale
by the guardian, and certain deeds & other papers to the

admission of all which several items of testimony the
plaintiff in error objected - the objection was overruled &
the testimony all admitted -

This record presents many of the same points raised
& discussed in the foregoing case against Krogh, and par-
-ticularly those arising under the 1 & 2 general branch vis-
-the foregoing case - and the same points & authorities
relied upon in that case are relied upon in this -
Upon this branch of the case there is only this differ-
-ence between the two cases, that at the date
of the application of Deane as guardian for the
sale of the premises in controversy, Elizabeth Bates
only had arrived at the age of 14 years, Julia Ann
Leig at that time under 14 - But it is insisted
that this does not vary the principle, and that
the proceedings are void as to both -

And for this reason, that the proceedings &
judgment of the Circuit Court ordering the sale,
was an entire thing - was a unit, and if void for
one was void for both - It would be impos-
-sible to distinguish between what passed & what
did not pass under the proceedings -

To this point the plaintiff in error cites the
following authorities

Holbrook v Murray 5th
Wendell 163 - Hall v William
6th Pick. 247. Richard vs
Walton 12 Johnson 434
cited in foregoing case -
Bacon Abid. "errata"
Smith v Bird 2 Gilman

413 Russell v Hogan Isaac
Simon 552 - Analogy
principles in Stinson v Kempton
13th May 1844 272 Lilly
v Burnham 15th May, 1844

At all events the declaration is so
drawn as to allow the hearing of
the interest of Mrs Young, if our point
be well taken -
Case

It is also insisted in this case that there was no confir-
-mation of the report of his doing under the order
made by the guardian to the Circuit Court that
Court does not appear to have acted judicially
upon the matter at all - the report is not filed
but no further action is taken upon it - It is
insisted that there should have been a judgment of
approval or confirmation, in order to carry the
legal title - in the record -

There are however some points arising upon this
record, which did not arise in the other case &
which will now be presented with the authorities
bearing upon them -

And first -

I

There is no sufficient evidence that
the guardian had complied with the requirements
of the statute in giving the requisite notice of his
intended application for an order to sell, and
no sufficient evidence of his having given the
notice required by the order of the court prior

to the fact, nor any evidence that the terms
& conditions of the lease of the order of the court
had been complied with - The power of the par-
-son is a naked power, unaccompanied with an interest,
and the requirements of the Statute authorizing him
to sell the realty of his church, must be strictly &
literally pursued: no condition, or prerequisite
having the semblance of benefit, can be dispensed
with -

Jackson & his Esty of Wendell

149-151 - Deming & Smith

3 - Johnson ch. 331 - Williams

= Fox & Doe of Blackb. 14-16-17

of Gantop Grossman & Little 353 - Williams

see Peyton's Rep. 4 cond. Sec. 398

Parker & Ruler 178 3rd ed. B. 308

Matter of Underwood & Love 61-

Thorne & de Baron & Mescalp

363-4 - Williams & Lawrence

15 Mass. 327-330. and all

the cases already cited as to

this part of power parson's -

III

The deed offered in evidence from Down to
the church in 1790 did not appear to be for the
same lands referred to in the plaintiff's declaration,
and therefore could not affect the plaintiff's title,
nor were the ~~and~~ church & book pages offered in appl-
-ication admissible for that purpose, for the

reasons assigned in the Record, & should have been excluded.

III -

The plaintiffs in error insist that the several proceedings of the Circuit Court, & the sale & conveyance to the defendants in error by the Guardian Donnan, could not affect the title made in the plaintiffs in error, that title having accrued long subsequent to those proceedings & conveyance by purchase & patent from the Government of the United States in September 1845. The plaintiffs in error are not estopped by those proceedings to set up this subsequently acquired title, nor does ~~that~~ their title so acquired inure to the benefit of the defendants in error purchasers at the guardian's sale.

Cook v Foster 2 Gilman 65-2.
Baquet v Broderick 13 Peters 450.
Wilcox v Jackson ib. 516-17.
Hullish v Scovil 4 Gilman 174
Lynn v Stewart 2 al v O'Brien 6
v Ohio 204-5. Easton v al v
Pe. v Ohio Canal 13 Ohio 79.
Jackson v Estlin 2 Johnson
248. Jackson v Ch. Cooper v Long
8 Johnson 389. Donahoe v Erving
9 Metcalf 63. Whiting v Denny
15 Pick. 428. Sumner v Williams

8th Map = 162 - Jones & Brew
1 Pick. 314-17 - Mason & Caldwell
5 Gilman 196. June No Report
185 - Hui St. Clair & Smith 1
Ohio Land. 603 - Comstock &
Smith 13 Pick. 119. Linn & Boyd
& Longworth 11 Ohio 253.

Allen & Parish 10 Ohio Land. 492
~~Green 18-19 180-666~~

1 Wendell 502 - Jones & Skinner
3 Pick. 60. Riggs & Cook 4th
Gilman 348. Jackson &
Wright 14 John = 193. Whitlock

& Mills 13 John = 463. 3 John

360 Allen & Sawyer 5

Green 231 - Jackson & Ohio

= How & Green 18-19 - Jackson

& Hubbs 1 Green 616 -

Oversen Bridgman &

Oversen Brookfield 3rd John

301 -

III

Young et al & Hoogh

Young et al & Loranier et al

Bruf