LINDELL, WILLIAM v GORDON, ROBERT C. et al MARCH 1867 COUNTY OF ST. LOUIS 574/1

OLD 655/20

DISMISSED

State of Missouri
County of St Louis } ss.

Be it remembered That heretofore to wit, On the Thirteenth day of January A.D. eighteen hundred and Sixty four there was filed in the Office of the Clerk of the St Louis Circuit Court a petition in the words and figures following to wit:

Petition

William C. Lindell Pltff

"

Robert C. Gordon Sr
Jesse G. Lindell, Peter
Lindell and Albert Lindell
Minor Children of Peter
Lindell Jr. deceased,
& Robert C. Gordon Jr &
Anna Eliza Gordon Minor
Children of Robert C. Gordon Sr
and Linus Jackson, Guardian
of the above Minor children of
P. Lindell Jr. Defendants.

State of Missouri
County of St. Louis.
In the Circuit Court
Feb 7. Term 1864.

The plaintiff states that on the 15th day of May 1862. there was recorded in the Recorder's Office of this County, a deed purporting to have been executed by the plaintiff to the defendant Robert C. Gordon, conveying to the said Gordon, as trustee, all the lands, hereditaments, and appurtenances of which the said plaintiff was then seized or possessed as heir at law of Peter Lindell, his uncle, now and then deceased, situate in the city and county of St. Louis and in other portions of the State of Missouri, and all other lands, tenements and hereditaments of

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which the said plaintiff was seized wherever situated, in trust to pay over the nett proceeds of the annual income of said estate, in monthly instalments to the said plaintiff, for his support and maintenance, and resting the remainder, upon the death of said plaintiff, with heirs of his body living at his decease, in such heirs in fee simple absolute, and in the event of his dying without issue or without legal heirs of his body, resting the entire estate in the said three children of Peter Lindell Jr (made defendants) and the said two children of Robert C. Gordon (defendants) as joint tenants for equal portions, to them and the survivors or survivor of them forever. It was further provided, in said deed, that the said Gordon trustee as aforesaid, should have power to execute whatever deeds might be necessary to carry into effect a certain agreement among the heirs of Peter Lindell deceased, the uncle of said plaintiff, in reference to a division of said Lindell's estate. This deed was signed by the plaintiff and by said Gordon, as parties of the first and second part, in the presence of Ernest Henry Vortriede, Britton A. Hall and M.R. Collins, attesting witnesses, under the circumstances hereafter stated - and was acknowledged by the plaintiff to be his act and deed, before the said E.H. Vortriede, a notary Public for the city and county of St. Louis, and recorded in the office of the Recorder for this county, all of which, the signature, acknowledgement and recording, was done on said 15th day of May 1862. Plaintiff states, that what he has heretofore said, in reference to the execution of this deed, its attestation

acknowledgement, and record, and its leading provisions is stated from an examination of the deed itself, recently made, and from the information of others. He states, that when the existence of the deed was called to his attention, by a friend and relation about the day of December last, he had no recollection of having ever executed such a deed, nor any impression that such a disposition of his property had been made. He had not then, nor has now any consciousness of any explanation of the contents and objects of the deed having been made to him. He states that for several years previous to the date of this deed, and at its date and for some months subsequent thereto, he (the plaintiff) was addicted to the continuous and excessive use of intoxicating drinks, which had so depraved his intellectual faculties as to impair all his powers of memory, judgment and reflection, so that even, when the excitement of stimulants had passed away, his mind was a confused and disorganized wreck, and totally incapable of comprehending or passing judgment upon the provisions of such an instrument. The plaintiff avers, that at the time of the execution of this deed, his mental faculties were so impaired and prostrated by long continued intoxication as to render him incompetent to make a contract, and that, if he appeared otherwise to the defendant, the grantee in the deed, Robert C. Gordon and the witnesses who attested the instrument, such appearance was deceptive and his intellect was really clouded and confused, and he did not understand what he

was doing. Plaintiff further states, that this habit of mind and body continued for some months after the 15th of May 1862 the date of the execution of said deed, but that sometime in the month of October 1862 he was placed under the charge of a medical gentleman of this city; by whose care and prescriptions his health was restored, his habits of drinking intoxicating liquors broken up and his mind and body restored to their natural condition. He avers, that now and for about twelve months past, he has entirely abstained from all stimulating or intoxicating drink, and that he is competent to manage his own affairs and take charge of his own property. The plaintiff disclaims all imputation upon the motives of the defendant, Robert C. Gordon, who is his brother in law, in assuming the management of his property under the provisions of the deed aforesaid, during the plaintiff's state of imbecility, drunkenness and insanity; on the contrary he has reason to believe that the conduct of said defendent in this respect was prompted by good will to this plaintiff and a wish to save his property from being squandered on unworthy objects. But as there was no consideration for said deed and it was made by him (the plaintiff) at a time when he was incapable of contracting, he now presumes to say to the Court that he is of sufficient capacity and understanding to manage his own affairs with ordinary prudence, and he expects to be able to satisfy the Court of this, not merely by his own

assertion, but by the opinions of competent, respectable and intelligent witnesses. The plaintiff further states, in reference to the partition of the estate of the late Peter Lindell Sr. referred to in said deed, that he is willing and desirous of confirming all that has been done by the said defendant, Gordon, or others in his behalf, and hereby does ratify and confirm the same. The plaintiff further states, that in addition to, and apart from his incapacity to contract, at the time of the execution of said deed, which he is advised will be sufficient ground for annulling it, there are provisions in it, making a disposition of plaintiff's property, not entirely conformable to his present or past intentions and wish. The plaintiff has two sisters, one of whom is the wife, as heretofore stated, of said defendant Robert C. Gordon, for whose children or for a portion of whose children provision is made in said deed: the other sister of plaintiff is the wife of L. W. Patchen, for whom no provision is made nor for any children she may have. He is also advised, that a joint tenancy, such as is made by this deed, has the effect to cut of all descendants of such of his nephews and nieces as might die before the vesting of the estate, from any participation in the ownership of his property. Plaintiff states that he has no desire and never had any to make any discrimination between his sisters, and that he does not wish to create a joint tenancy in his

nephews and nieces, in the event of his own death without issue. For these additional reasons he asks leave of the Court, to be permitted to repudiate and disavow said deed and begs that the Court will order, adjudge and decree said deed to be void and of no effect; that he the plaintiff may be restored to the possession and management of his estate.

Napton & Casselberry.
for plff.

Wm. C. Lindell, plaintiff, makes oath and says the above petition and the matters therein as stated, he believes to be true.

Sworn to and Subscribed before me Jany 14. 1864
Witness my hand and Seal
Seal of St Louis Circuit Court } W C Lindell.
S Rice Clk.

Upon the filing of which petition a Summons issued in tenor and form following

County of St Louis, - ss.

Sum'd. The State of Missouri

To the Sheriff of St Louis County - Greetg.

We command you to summon Robert C. Gordon Sr., Jesse G. Lindell, Peter Lindell and Albert Lindell minor children of Peter Lindell Jr. deceased, and Robert C. Gordon Jr and Ann Eliza Gordon, Minor Children of Robert C. Gordon Sr. and Linus Jackson Guardian of the above Minor Children of P. Lindell Jr. to appear before the Judge

of our Circuit Court on the First day of the next Term thereof, to be held in the City of St. Louis, within and for the County of St Louis on the first Monday of February next, then and there to answer the complaint of William C. Lindell as set forth in the annexed petition; and have you then and there this writ.

(Seal) Witness Stephen Rice, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St Louis this 13th day of January in the year of our Lord, eighteen hundred and sixty four. S. Rice - Clerk.

Upon Which Writ the Sheriff made Return as follows.

Sheriff's Return. "Executed this Writ in the County of St Louis On the 15th day of January 1864 by delivering a Copy of the writ and petition as furnished by the Clerk to Robert C Gordon Sr. And further by delivering a Copy of the Writ as furnished by the Clerk to each of the following named defendants to wit: Jesse G. Lindell, Peter Lindell, Albert Lindell, Robert C. Gordon Sr., Anna Eliza Gordon and Linus Jackson.

John C. Vogel Shff

By Jas. Owens Deptg.

And Afterwards to wit: At the February Term of said Court for the year eighteen hundred and sixty four the following proceedings were had in said

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cause to wit:

On the Sixth day of February 1864 the following Answers were filed in the words and figures following to wit:

Answer of R.C. Gordon Ld.

William C. Lindell
Pltff
Robert C. Gordon et al
Defts

No 103 St Louis Circuit Court Feby Term 1864

Robert C Gordon the Trustee named in the said deed, impleaded with others for answer to plaintiffs petition says he never solicited the making of said deed nor the appointment of himself as Trustee therein

Defendant says that plaintiff for many years before the making of said deed was addicted to habitual intemperance, and after the death of Peter Lindell the plaintiff became heir to one tenth of his estate valued at about four millions of dollars and certain persons desiring to defraud said plaintiff of his inheritance had fraudulently procured from the plaintiff, while under the influence of liquor certain promissory notes to the amount of about Eighteen thousand dollars, and suits are now pending in the St Louis Court of Common Pleas for about Six thousand dollars, which cases this defendant is now defending as Trustee for said plaintiff, and the said

persons had also fraudulently attempted to procure a marriage to be celebrated before a Magistrate by and between the plaintiff and an unknown female who had been living in the plaintiff's house for a few days as a Servant or Housekeeper, And this defendant is the brother in law of the plaintiff, and offered the plaintiff his protection and assistance to defeat the fraudulent designs of said parties, And to prevent the ruin of the plaintiff, And the defendant says the plaintiff did accept the aid of the defendant and took up his abodein the house of this defendant, That said plaintiff relations desiring to reform and Cure the plaintiff of the intemperate habits to which she was then addicted and to protect and Secure plaintiff's property for the plaintiffs own use advised the plaintiff to Consult Button A Hill Esq the Counsellor of the estate of Peter Lindell deceased, as to the best method to be adopted to Secure his estate and himself from the Consequences of his intemperate habits and inadvertent acts, And this defendant Says that he is informed and believes that said Hill upon a full Consultation with said plaintiff advised the Making of said deed by plaintiff

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10. to this defendant, And the said deed was made and executed as it was drawn by said Hill, And this defendant was selected and was requested by the plaintiff to become his trustee, this defendant not being present but afterwards assented thereto in good faith And has performed his duties as such Trustee to the best of this his defendants ability

This defendant, believed and supposed at the time he accepted said trust that said plaintiff fully understood & knew the contents of said deed when he made it to this defendant.

And this defendant has leased some portions of the Real Estate conveyed to him by said plaintiff, And defendant has collected rents thereof, And defendant has also advanced to plaintiff divers sums of money for Court Costs Attorneys fees Doctors Bills Travelling expenses, Clothing, Board, Washing & Lodging, Boxes, House repairs and other necessaries to an amount considerably exceeding the rents and profits received from the property of plaintiff since the same has come to the possession of the defendant, And defendant prays that an account may be taken of all his receipts and expenditures on account

of said Trust,

And this defendant further says that the plaintiff has lived & travelled with this defendant and family for the whole period since the making of said deed, and defendant believes that plaintiff has entirely abandoned the use of all intoxicating drinks for about fifteen months past, and he has recovered his health, And the plaintiff now thinks he is wholly competent to take charge of his property and business, and this defendant has no objection to the plaintiff having the property or to the Court re-investing the title of said property conveyed by the said deed, in the plaintiff if in the discretion of the Court it shall be deemed fit so to do, and in accordance with the principles of equity,

And this defendant having fully answered prays to be hence dismissed with his costs.

R. C. Gordon

Robert C Gordon the said defendant being duly sworn says, that he believes the foregoing answer and the matters as therein stated are true

R C Gordon

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12. Sworn to and Subscribed before me this 6th day of February A.D. 1864.

S. Rice Clk.

Answer of Linus Jackson Guardian P.

William C. Lindell
Plff
Robert C. Gordon et al
defts.

In the Circuit Court of St Louis County No 103 Feby 1864

These defendants Jesse G. Peter and Albert Lindell by Linus Jackson their Guardian duly appointed by the Probate Court of St Louis County, impleaded with others, for answer to plaintiffs petition say, they have no knowledge or information sufficient to form a belief whether the plaintiff in December 1863 had no recollection of having ever executed said deed Nor whether the plaintiff had any impression that such a disposition of his property had been made, Nor whether the plaintiff at the time the deed was made or since had or has any consciousness of any explanation of the contents or object of said deed having been made to him the plaintiff

And these defendants further say that they are informed and believe that said plaintiff had been addicted

to the use of intoxicating drinks prior to the time of the making of said deed, but defendants deny that the same deprived plaintiff intellectual faculties and impaired all his powers of memory, judgment and reflection so as to make the mind of plaintiff a confused & disorganized wreck as averred in the petition, Defendants deny that plaintiff was incapable of comprehending or forming judgment upon the provisions of said deed, And they deny that at the time of making of said deed the mental faculties of the plaintiff were so impaired & prostrated by intoxication long continued as to render him incompetent to make a contract, And defendants deny that plaintiff's intellect was really clouded and confused so that he did not understandingly what he was doing.

Here defendants have no knowledge or information sufficient to form a belief, whether the plaintiff's mind and body are restored to their natural condition, Nor whether the plaintiff has entirely abstained from intoxicating drinks for the last twelve months, Nor whether the plaintiff

14 is now Competent to manage his own affairs and take charge of this own property.

These defendants aver that there is a good and Sufficient Consideration for said deed in law seguity and that the Consideration is love and affection for these defendants and others named in the deed who are the Nephews and Nieces of the plaintiff And also love and affection for the heirs of the body of said plaintiff, also described in the deed as the parties to take the whole of said Real Estate of said plaintiff of living at his death.

These defendants further say they are informed and believe that the plaintiff came into the possession of Two Thousand dollars in money from the estate of Peter Lindell and also inherited a large quantity of Real Estate as heirs of Peter Lindell, of the Value of about $500.000. dollars, And the plaintiff being generally intoxicated and under the influence of ardent Spirits, he fell into the Society of and under the Control of Certain Fraudulent Sharpers who soon obtained from him all his ready money and about $18.000 in promissory Notes, And said Sharpers further attempted

to cause a marriage to be celebrated between the plaintiff and a certain female who had been introduced into plaintiff's home as a house keeper, but failed in this scheme by reason of the interference of certain persons who accidentally were informed of the plot.

And these defendants are informed and believe that upon the discovery of the condition of his affairs, the plaintiff applied to his brother in law Robert C. Gordon a defendant in this case, for protection and advice, and the said Robert C. Gordon advised said plaintiff to consult Burton A. Hill Counsellor of the estate of Peter Liddell as to the best means to adopt to save his the plaintiff's estate from being squandered,

And the plaintiff having become fully entirely sober and fully aware of the great danger from which he had escaped held several consultations with the said Burton A. Hill concerning the said affairs and business of the plaintiff and under the advice and direction of the said Hill the plaintiff decided to make said deed to the said Robert C. Gordon, And plaintiff was fully advised of the

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Nature and effect of said deed and made the same for the consideration of love and affection and for the purpose of securing the income of his said estate for his avail use during his natural life and the remainder to his children if he had any and in default thereof then to his nephews and nieces the defendants herein,

And these defendants are informed and believes that under the kind care and protection of said Gordon, the plaintiff has for some months past abandoned the use of ardent spirits and has reformed and became a steady man, but whether the plaintiff has the strength of mind and the force of character to manage his estate these defendants are not informed, And defendants ask that plaintiffs bill be dismissed at his costs, and the costs of defending this suit including counsel fee.

Lewis Jackson Guardian
By Hill & Dewitt
Attys.

County of St Louis ss.

Lewis Jackson Guardian of the defendants Rose G. Peter and Elbert Lindell, being duly sworn says

the foregoing Answer and the matters therein as stated are true to the best of affs'ants Knowledge information & belief,

L. Jackson.

Sworn to and Subscribed before me this 6' day of February A.D. 1864. Seal As witness my hand and Notarial Seal.

David S. Bishop.
Notary Public.

March 30. 1864.

Death of Jackson Guar' Sup' and Wm C Jamison Guar' Enters appearance.

William C. Lindell
Robert C Gordon et al } It is Suggested and Shown to the Satisfaction of the Court that Linus Jackson Guardian of the Minor defendants, Jesse G. Peter and Albert Lindell, has departed this life since the Commencement of this Suit, Thereupon Comes William C. Jamison Guardian of the said Minors duly appointed by the Probate Court of St Louis County and enters this appearance herein.

April 19. 1864.

Wm C Jamison app' Guardian ad litem &c.

William C. Lindell
Robert C. Gordon et al } Robert C Gordon Jr and Ann Eliza Gordon Minor defendants herein duly

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Summoned herein, having failed and neglected to appear and procure the appointment of a Guardian in their behalf, the Court doth appoint William C. Jamison Esq Guardian ad litem for the said Minor defendants Robert C Gordon Jr and Ann Eliza Gordon to defend this suit in their behalf. And the said William C. Jamison files his consent to act as such Guardian, and also files an answer for the said minor defendants.

Which said Consent is in the words and figures following to wit:

Consent of Jamison to act as Guardian

William C. Lindell
" Robert C Gordon } In the St Louis Circuit Court No 103. Feby Term 1864.

William C. Jamison hereby Consents to Act as Guardian ad litem for Robert C. Gordon Jr. and Ann Eliza Gordon Minors.

William C Jamison.

Answer of R C & A E. Gordon Minors by Guardian

And said Answer is in the words and figures following to wit:

William C. Lindell
" Robert C. Gordon et al } In St Louis Circuit Court No 103 Sept Feby T 1864

And the said Robert C Gordon Jr and Ann Eliza Gordon by their Guardian

ad Litem William C Jamison Come and Say that they are Minors under the age of Twenty one years and ask said Court to protect their interest,

Robert C Gordon Jr.
By his Guardian ad litem
Wm C Jamison
Ann Eliza Gordon
By Wm C. Jamison her
Guardian ad litem.

May 5. 1864.

Sub Decree William C. Lindell
Robert C. Gordon Jr.
Jesse G. Lindell,
Peter Lindell and
Albert Lindell Minor
Children of Peter Lindell Jr.
deceased, and Robert C.
Gordon Jr. and Ann
Eliza Gordon, Minor
Children of Robert C.
Gordon Jr. and William
C. Jamison Guardian of
the above Minor Children of
Peter Lindell Jr. deceased.

Now at this day Come the plaintiff and the defendant Robert C. Gordon Jr. by their respective Attorneys

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20. And also come the Minor Children Jesse G. Lindell, Peter Lindell, and Albert Lindell by their Guardian William C. Jamison and by their Attorneys, and the Minor defendants Robert C Gordon Jr and Ann Eliza Gordon by their Guardian ad litem William C. Jamison, and by Attorneys, And the parties submit this Cause to the Court upon the pleadings and proofs And the Court having duly heard and Considered the same and the arguments of Counsel thereon, and being fully advised in the premises, finds that on the fifteenth day of May eighteen hundred and Sixty two William C. Lindell the plaintiff was of unsound mind and incompetent to execute the deed set forth in the petition purporting to Convey to said defendant Robert C Gordon, as Trustee, all the Real and personal Estate of the said Lindell, And that he is now of sound mind and Competent to Manage his own affairs and to take charge of his property, It is therefore Ordered adjudged and decreed by the Court that the said deed made on the fifteenth day of May eighteen hundred and Sixty two (1862) by and between the plaintiff William C. Lindell party of the first part, Robert C Gordon party of the Second part, and Jesse G. Lindell

Peter Lindell and Albert Lindell Minor Children of Peter Lindell Jr. deceased, and Robert C Gordon Jr. and Ann Eliza Gordon Minors Children of Robert C Gordon and his wife, parties of the Third part, be and the Same is thereby declared Null and void, and of no effect, And the Court further Orders and decrees by and with the Consent of the Plaintiff that the leases and other acts of said Gordon as trustee aforesaid made in good faith be hereby declared Valid, And it is further adjudged that the plaintiff do pay the Costs herein expended and that execution issue therefor.

August 27. 1864.

William C. Lindell

Robert C. Gordon et al

Motion to Set aside & Overruled

The defendants Motion to Set aside the decree herein and dismiss this Cause for the want of jurisdiction being heard and fully Considered by the Court is Overruled

App for app^d filed App^d allowed

And the defendants motion to Set aside and Vacate the decree herein for irregularity in the proceedings and for want of jurisdiction over the defendants Jesse G. Lindell, Peter Lindell and Albert Lindell being heard and fully Considered by the Court is Overruled, And thereupon the defendants

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file an affidavit for an appeal and an appeal is allowed them to the Supreme Court from the judgment herein rendered.

Sept 24. 1864.

William C. Lindell

Bill of Ex. filed.

Robert C. Gordon et al

Bill of Exceptions filed.

Which said Affidavit for an appeal is in the words and figures following to wit.

Appt for appeal

In the above entitled cause D. T. Jewett Agent and Attorney for defendants on oath says that the appeal asked for in this case is not made for vexation or delay but because the affiant believes that the defendants appellants are aggrieved by the decision of the Court in this case.

D. T. Jewitt.

Sworn to before me August 27. 1864.

J. Thornburgh Clk.

And the said Bill of Exceptions are in the words and figures following to wit

Bill of Exceptions

William C. Lindell

Robert C. Gordon & others

In the Circuit Court St Louis County Feby Term 1864.

Best Remembered That on the Trial

of this Cause the plaintiff by his Counsel read in evidence a deed from plaintiff to defendant Robert C. Gordon as trustee dated May 15. 1862 as follows.

Deed from W C Lindell to R C Gordon Trustee.

This deed made this fifteenth day of May eighteen hundred and sixty two by and between William C. Lindell Nephew of Peter Lindell late of the City of St Louis deceased party of the first part, Robert C Gordon of same place party of the second part and Jesse G. Lindell, Peter Lindell & Albert Lindell minor children of Peter Lindell jr deceased and Robert C Gordon jr and Ann Eliza minors children of Robert C Gordon & wife parties of the third part part. Witnesseth that said William C Lindell for and in consideration of one dollar to him in hand paid by the party of the second part the receipt whereof is hereby acknowledged and for love and affection, doth hereby bargain sell convey enfeoff release and confirm unto the said Robert C. Gordon and his heirs all the lands tenements hereditaments & appurtenances of which the said William C Lindell is now seized or possessed as heir at law of Peter Lindell his uncle now deceased situate in the City and County of St Louis and in other portions of the State of Missouri, and also all other lands tenements & hereditaments of which the said William C Lindell is seized wherever situate, To Have and

24 To Hold the Same unto the said Robert C Gordon Sr. his heirs &c & for the following uses & trusts.

First. The said Gordon shall rent & lease all the Real Estate of said William C. Sindell hereby conveyed for years or term of years Not exceeding twenty years for such reasonable rents as may be agreed upon

Second to pay over to to William Sindell for his Supporting Maintenance in monthly instalments the nett proceeds of the annual income of the said Real Estate hereby conveyed after paying all taxes insurance rates assessments & expenses of collecting & realizing said income during the whole period of the Natural life of said William C Sindell,

Third In case the said William shall leave at his death legal heirs of his body the said heirs of his body shall take the whole of the said real estate hereby conveyed in fee simple absolute as purchasers.

Fourth, In Case the said William shall die without leaving legal heirs of his body then the whole of the said Real Estate lands & tenements hereby Conveyed shall rest in fee Simple absolute in the said three children of Peter Sindell Sr. and the said two children of Robert C.

Gordon & Wife as joint tenants for equal portions to the said five children as joint tenants to them and the survivor or survivors of them forever.

And Whereas the heirs at Law of Peter Lindell the uncle of said William C. have made an agreement to divide the estate inherited from said Peter Lindell deceased into ten equal parts and to convey to each of the other heirs respectively of said Peter Lindell to each of the other heirs from all of the other heirs their respective portions allotted to them under said agreement: And the said Gordon is hereby empowered and directed to execute all deeds necessary to be executed under said agreement on the part of said William C Lindell with the same effect as if the same were executed by said William C Lindell before this deed was made.

In Witness Whereof the said parties of the first and second parts have hereto set their hands and seals And the said Gordon covenants faithfully to perform and fulfil execute the Trusts hereby created

W. M. Lindell (Seal)
Robt. C. Gordon (Seal)

Attest As Witnesses Who heard the foregoing

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26.

deed and acknowledgment to said Lindell, the Grantee.

Ernest Henry Vorhaede
Button A. Hill
M. R. Collins.

State of Missouri }
County of St Louis }

I, Ernest Henry Vorhaede a Notary Public duly Commissioned and qualified for the City of St Louis do certify that on this fifteenth day of May AD Eighteen hundred and sixty two appeared William C. Lindell, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto and duly acknowledged the same to be his act and deed for the purposes herein mentioned.

(Seal) E H Vorhaede Notary Public
for City & County of St Louis.

State of Missouri }
County of St Louis } The undersigned Recorder in for said County do hereby certify that the foregoing instrument of writing was filed for record in my Office May 15. 1862 and is duly recorded in Book 265 pg 167. (Seal)

Witness my hand and Official Seal the day & year aforesaid

A C Bernoudy
Recorder

Testimony of John Baker

The plaintiff then called as a Witness John Baker who being duly sworn testified as follows.

I am Cousin of plff. Acquainted with plff since 1842. (Witness is asked what are plaintiffs general habits) He (plff.) had been at Pike's Peak previous to 1861, When he returned in Nov or Dec 1861 he took to drinking and was constantly drunk and some times lying in the gutter, He was in our Office very frequently, Never saw him sober, he was constantly drunk. Saw very little of him in May 1862, In latter part of May after deed was executed and about the 21st or 22d he appeared to be sober. Dont think he was competent to attend to business since he returned, and during the years 1861 & 2, Saw him once or twice while a woman was living in the Bates house, Gordon took him off east in June or July 1862, Was not along with them, Gordon his wife and plff and a negro boy to take care of plff. Saw plff frequently in 1862, we were on good terms, Never saw him in a condition during that spring to make such a deed as has been read in evidence, Dr. Van Studdiford attended him at Gordon's house for several months, Plaintiff purchased horse and buggy from me in spring of 1862, I think

his capable of managing his affairs now. He has been sober for the last fifteen months, Pliff is 37 or 38 years old, Can't specify the latest day in May 1862 when I saw him, It was just a day or two before they took him to Boston's, When I saw him that time (last time in May 1862) he was drunk and pretty near insane

When he signed the Contract with the Saint, he was partially tight, Sober however than I had seen him for a long time.

Cross Examined.

Insanity means a loss of mind, I suppose a man don't have his mind when asleep, A Man sometimes loses his mind from fright & anger, Pliff's mind was never very bodycant, It was not affected at all from the use of liquor, I saw him every day till he moved to the Country, He returned from Pike's Peak in the fall of 1861, I saw him frequently was at my office sometimes twice a day, Sometimes every day, Sometimes once in 3 or 4 days, A week never elapsed without my seeing him, After he removed to the Country I am sure I saw him once in two weeks, There was influence to keep him from drinking, He drank a little all the time, My impression is that he had not his mind when he signed the deed, I know that he did not or could not

have his mind when he signed the deed, I believe it. (Question as to his acts) I have no interest in the breaking up this deed, There is no Contemplated marriage between the plaintiff and relative of mine, I am not influenced in my testimony by any motive.

Plaintiff was present at the agreement for partition of the Lindell property, I think he understood at that time what was going on, about the partition agreement. Am not positive he may have understood it, (Asked about certain matters that were talked about at the time of the partition agreement by pltff. Answer, I don't remember any such matters) I saw pltff about two dozen times from day of partition agreement to the signing the deed, I don't think he was capable of understanding the deed, He got worse from time of the agreement about partition,

Re-Examined.

I was an agreement between the heirs of Peter Lindell's estate - I don't think he comprehended the details of the agreement, I think he only knew he was to get an equal share with the others, At the time of the agreement I don't think he was competent to transact business of buying and selling, This was in April 1862 when the

agreement to divide was made

Re-Cross Examination.

Did not see Jeff the day he died was signed, was 3 or 4 days or a week before he signed it. Don't think I ever saw Jeff free from the influence of liquor from the time he returned from Pike's Peak until June 1862, was drunk when I saw him in the carriage.

Testimony of L. W. Patchin

Lyman W. Patchin was then called as a witness for plaintiff and being sworn testified as follows.

My Wife is Jeff's sister, when he came back from mountains he came to my house and stayed about 4 months, He was a habitual drunkard, drank every day, saw him every day and he was drunk every day up to our time six days after date of the deed, He was no more competent than a child to transact any business, Six days before he died and signed he took all his money from me, Never saw him except under the influence of liquor, up to the 6 days, He was worse at the Bates place than ever before, Always in bed, Whether under the immediate influence of liquor or not his mind was a wreck, His habits were very good, does not drink, His mind worried about the condition of his property, He

Some times absent minded. Some days he is very bright, The nett in come of his estate might not pay his Expenses, When he returned from the East he went to Gordon's, Did not see him then till last winter when he was taken sick, He was not allowed to come to my house.

Cross Ex.

My wife requested me to give up the money, Plaintiff came armed with a Pistol, I gave it up. I got it through the hands of Levin H. Baker, I had of his money some $ 1800. He was drunk when I paid it over to him, I have no children, my wife deeded to me one half of her estate, Was not present when Pltff made a will or when it was destroyed. I did not stuck Mrs Peter Lindell, My wife told me she burnt the will, It only gave her five dollars.

If Pltff had 5000.$ now, dont think any one could get the money from him, I don't think he could be induced to drink, Saw him most every day before this deed was made, I refuse to agree to the deed because he was drunk when he made it, because I don't think it is right to wrong a man out of his property, The last time I saw him was 6 or 7 days before he made the deed, Saw him at the

31.

32. Bates place previous to his making the deed, Six days before making the deed he was in my Store and drew his last money from me, This was on le. 7 or 8 of May, He came in from there and ordered the money to be paid, whatever day it was he came and I saw him on that day, I saw him at the Bates place after I paid him the money, I cannot say how long it was, My Wife went to the Bates place, I went because my wife went there, I was not invited by any one except my wife, I cannot tell how long it was after paying the money before the deed was made.

Monroe C. Collins was then called as a Witness for plff. and being sworn testified as follows.

Test of M C Collins

My wife is a Cousin of the plff, During 1861 & 2 I knew plff to be a habitual drinker, saw him about once a week, would not consider a drinker man fit to do business for me, knew him first in 1854. He has been a habitual drinker ever since I knew him. His Capacity to transact business would be like any other habitual drunkard. For a year or more he has lived near me, Have not known him to drink for over a year, or say one year more or less, Has said to me since his return from the east that going near a

drinking Shop would make him drink, He may or may not be competent to manage his estate at the present time, if he is not so he may become so. It is my opinion he could attend to his business with assistance, Suppose he could write a lease as well as any other man, think he is now in his proper mind, A man having a large property would require Agents to assist him, I presume Jeff could manage it with assistance, I once asked Mr Stell if there could not be something done, some instrumentality which Jeff's property could be secured from Sharpers.

Cross Exd.

(Witness is shown deed of trust of May 15. and asked to read attestation)

I was not present when Jeff wrote his name to the deed. I heard the deed read till it came to "certain purposes", I asked Stell if it was a fee simple, and he said it was, Stell did not read it all, At that time Jeff was rational, I mean not Crazy, had been under the influence of liquor from day to day, Don't know whether he understood it or not, I think he said that day that he thought it was the best thing he could do to preserve him from Sharpers. When the agreement for partition was made he was a little

under the influence of liquor. He was very much opposed to an allowance which had been made to Baker's for some improvements on the property on Market & 5th Streets. He was almost wild upon the subject, Hill had to settle him — He did not say his sister Mrs Gordon cared more for him than anyone else, Mr. Wise, Atty, was present with Pfff at the signing of the agreement, Pfff was in anger & rather boisterous, Hill exerted an influence over him & got him quiet, Hill quieted him somehow.

Dewitt C. Gray was then called as a Witness for Pfff and being sworn testified as follows.

Testimony of D. C. Gray.

I first saw him in fall of 1858, Was drunk the only time I saw him before he went to Pike's Peak. Came back when I next saw him about 1st of Dec 1861, Came into the Office drunk, laid on the Sofa and rolled off onto the floor. Saw him often from that time up to the 6 of May 1862, and every time I saw him he was drunk, On the 6 May 1862 he signed a receipt for $525.00 to buy a Carriage, He was drunk, I boarded at Patchin's with him, saw him consequently every day, He was drunk all the time except early in the morning, He went out

to the Bates' place from Patchin's, I went with Gordon to see him at the Bates place, He was as I thought delirious, was in bed, When at the Bates place would come in once or twice a week, to at money, Was drunk at that time, From my Knowledge of him I do not think he was capable of signing any deed of the Kind, Same times he would be unconscious and often boisterous — when drunk. He is now unquestionably a Sober man, I consider him capable of taking care of his own affairs.

Cross Ex.

Was a partner of Patchins at that time, when he came last he was drunk and boisterous, A man came in with him either Shapleigh or English, Saw him twice when he had an aberration of mind, Once at the Bates house and once at Gordon's — Have seen crazy persons, He looked like a crazy man, Talked incoherently or disconnectedly, was under the effect of whiskey, At Gordon's he said his mother had been to see him last night, His mother has been dead a long time, His mind would have been incapacitated so much from former excesses, that even if he had not taken a drop that day he signed the deed, he would not be competent.

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36.

I never saw him sober up to the time he signed the deed.

Nathan Coleman was then called as a Witness for plaintiff, testified as follows.

Test of N Coleman

Have known plff 15 years. In 1861 & 2, met him several times, as a general thing he was not himself, In the Spring of 1862 my impression is that his mind was not sufficient to attend to business,

I saw him at Mr Gordon's, might have been in the month of May I saw him at Gordon's - from my observation of him I don't think he was capable of attending to his own business at that time, Have seen him more or less every day since he returned from the East, Think he returned from the East in the fall - Saw him sometimes whilst he was under the care of Dr Van Studdiford, Have seen him every day more or less since he returned, He lives with Mr. Gordon at this time, I have not known plff to drink any since he returned, He comes into the City every day, If he had drunk any I would have known it, He has said that the smell of Liquor made him sick.

Cross Ex.

Was present when the Contract was

Was present when the Contract was made, was signed on the 4th April 1862, Pltff was present Cant Say that I recollect any objections which pltff made with reference to improvements. I think he was Competent to sign that agreement, that he was Competent to Comprehend the terms of it. Pltff went with Gordon east twice, Never heard of his drinking, Never saw him drinking any thing since he came back Second time.

(In Answer to Question by the Court)

Plaintiff was dissipated from 4th April to 15th May

Frederick Spies was then called as a Witness, For Plaintiff, testified as follows.

Test of F. Spies

Was acquainted with plaintiff for last 18 years. About 1859 or 60 habit of drinking increased on him, Saw him in Dec 1861, his Condition was alarmingly bad, He would make cunning Shifts to get Liquor. There was a general Stupor Over him Some times, Don't Know that I ever Saw him Sober for 24 hours. Once he came into my Office and introduced me to a man that was with him, Another time he pulled out a Number of bank bills from his pocket and asked me if they were good, There was a $100 bill among them, Drew them from

37.

38

different pockets, Asked me if I didn't want any, Offering them to me — I told him I did not, Once I saw him at Mr Gordon's, he was prostrated, he asked me twice how was my wife, I told him you know my wife has been dead two years, He stared at me and said "Is she dead," he said we must all die, and turned his face to the wall and did not speak again to me while I was there. Think this was in May or June 1862, My impression was that where reason was required he was incapacitated for doing business, His mind was badly gone.

Cross Ex.

A few unimportant questions.

Dr Van Studdiford was then called as a Witness for Plff and being sworn testified as follows.

Test of Dr Van Studdiford

In Oct 1862 I attended plff from that time till he went away east from Gordon's, His Muscular, Vascular and Nervous System prostrated, His answers to questions were incoherent and silly, his excretions were involuntary was for days he could not keep food on his stomach, Could be kept down in a Concentrated form with the assistance of Signor, A months dissipation might

produce the Condition hereinbefore, Loss of mind is apt to be the result of a long course of dissipation, I infer from his Condition that he had been an inebriate for a long time, his mind has returned to its original Condition.

Cross Ex.

It was Same mind three months after. his Second return that his mind was restored, I impossible for me to say whether he was Competent to do business on 15th May 1862, I do not think he was Competent to do business in Sept 1862

Dr. John Barnes was then called as a witness for Pltff and being sworn testified as follows.

Test of Dr Barnes

Was the examining Surgeon of one of the Wards of the City in 1862, Examined Pltff in Sept 1862 at request of Gordon, Went to examine Pltff to that he could get Certificate of exemption from Military Service, Went to Gordon's house after he returned from the east, I decided that Pltff was unable to do Military duty, His body and Mind were both in an enfeebled State, Would Say that he was a Confirmed drunkard, His mind was feeble have been practicing as a Physician

Since 1812, I have observed the effect of drunkenness, His drunkenness seemed to have been of long standing, His Condition would not have originated from a spree, Was the result of drunkenness for years, He was sitting in bed I saw him previous to the time Van S. attended him. He was so imbecile that I would have considered it a Crime and a Sin for one to transact any business that would require any responsibility, So prostrate was he that I never expected to see him in Court here.

Cross Ex.

Was then at Gordon's a sufficient time to examine his case, Was there at least half an hour, Never saw him before nor visited him professionally since, I hardly think three months excessive drinking would produce so deplorable a Condition, I didn't give him any medicine, I know from my experience that medicine would not have responded greatly on his system, I cannot say that from imbecility he was unable to sign a deed on the 15 of May

Re Examined.

From his appearance I judged

Plff's was a chronic state of drunkenness of 4 years standing or more.

Re Cross Ex.

Some would show the symptoms of excessive use of ardent spirits in 3 months more than others would in 2 or 3 years. Knew a man (A. T. Carr,) went to bed drunk every night for 20 years, died at the age of 61, having the year before got a baby.

Levin H. Baker was then called as witness for plff and being sworn testified as follows.

Testimony of L. H. Baker.

Am a cousin of plff, he came back from Pike's Peak in fall of 1861, after his return saw him most every day, was under the influence of liquor more or less every day, sometimes apparently sober, at other times beastly drunk. I have seen him at times in spring of 1862 free enough from liquor to transact ordinary business, I don't think the plaintiff ever had the capacity to transact any large business, or involving any large interests — Think if he were sober early in the spring of 1862 he would comprehend the contents of a deed such as has been read in evidence and its results, but not if he was drunk. His habits of drinking got much

42 worse after he went to Bates place which was in March 1862, Did Not See him very often after he went there There was not a day I think after his return from Pike's Peak that he did not take Liquor — After he went to Bates place he might have been free from the direct influence of Liquor in the morning but in the afternoon he would become beastly drunk, Plaintiff is Over 30 years of age, I first saw him in 1831.

Cross Ex.

I don't think I would take plff to manage my estate, I would now however more than in 1862, The reasons I would not employ him would be on account of his want of business capacity, Think at the time the agreement was made 4th April 1862 he understood the Contents of it, He appeared to understand what he was about, Saw very little of him after the 4th of April, If he was in the same Condition on the 15th of May as he was on the 4th of April he may have understood what the deed of the 15th May Contained, I am Admr of the estate of Peter Lindell

Re Examined

All the heirs of Peter Lindell ten in Number were present on the 4th April

1862 for the purpose of agreeing to a division of the estate, I saw him riding his horse in a drunken condition about the 10th May 1862, Plaintiff has been a drunkard for many years.

R. Cross Exd

His Naturally a good hearted young man, If he got his property in his own hands I cannot say whether he would be easily influenced by interested persons, or not, He seems now to have a horror of those who formerly surrounded him, He has been well treated by Gordon,

Gordon seems to be as careful of Pltffs interests as of his own.

Robert Baker was then called as a witness for Pltff and being sworn testified as follows.

Test of Rob Baker

I saw Pltff frequently after his return from Pikes Peak, was frequently drunk, I have also seen him sober, saw him frequently in the Spring of 1862, He was oftener drunk than sober, I should say he was continually drunk, Known him for 18 years, Used to be drunk before he went to Pikes Peak. When he came back he was worse than he was before, Didn't see him at Gordon's house.

Cross Exd

43.

Not the least doubt in my mind that he understood the Agreement of April 4, 1862, I know of no reason why he could not understand what he was doing on the 15th of May 1862. Gordon has been the means of saving his life and property. I felt that some one ought to have taken care of him, Patchin or Gordon or some one else, He might probably be induced to drink, but he is very strong in his repugnance to liquor.

(In Answer to question by Court)

When I saw him the last time before the 15 May can't say whether he was drunk or sober, mostly likely he was drunk.

Plaintiff here rested his case.

The defendant then called Ernest Vochreide who being sworn testified as follows.

(Looking at the deed of May 15)

Test of E Vochreide

I took the Acknowledgement as Notary Public, Went to Gordon's house for the purpose, Hill Coleman and Collins were present when the acknowledgment was taken, Hill talked to him about the Conditions of the deed, Hill explained to him the Contents & Consequences of the deed, He seemed to be satisfied, He did not at that time act as a drunken man, seemed as if he had been drinking

He said the deed was as he wanted it. He signed and acknowledged the deed. I saw him last at Hill's Office.

Cross Ex.

Did not hear him say he did not know the deed was made. Only saw him when I went to take the acknowledgement. Never associated with him, don't know anything of his habits. Hill explained the contents of the deed to him. Think Gordon has children now. I had just commenced reading law with Hill, Had been in Hill's Office about a month. Don't know whether the children were to take the property as joint tenants or tenants in Common. Don't know the meaning of joint tenancy, or the difference between that and tenancy in Common.

Button A Hill was then called as a Witness for defts and being sworn testified as follows.

Test of B A Hill.

I wrote the deed, Have known Pfff since 1861 in the fall, Knew him when he was a boy, was Atty for Peter Lindell and for nearly all the heirs. There were two or three informal meetings of the heirs previous to the time of signing the agreement on the 4th of April. All the heirs met at Peter Lindell Sr's house, for the purpose of signing the agreement. Pfff was present on the 4th of April. The whole paper was read with

46. a great deal of care, and Plff objected to the claims of Levin and Robert Baker. The paper showed that those claims were abandoned. Plaintiff understood the paper better than Patchin. He could understand that he was getting a tenth.

Was spoken to by several of the heirs about Williams Condition, upon the request I think of Collins I went out to Gordon's to see Plff. He seemed to be sensible of his escape from the plot, told me how the woman had sed him on, that Owens was not his friend and wished to convey his property for his own use during his life remainder to his children if he had any, if none, then to his blood relations. Made the draft of the deed at the house, afterwards wrote it out and went to get it signed, Mr. Collins I invited to be present & Mr Coleman. To the best of my recollection I read the deed to him and explained it to him. He understood the whole matter perfectly, I think he understood it perfectly, Gordon was the person whom Plff selected. He did not want any thing to go to Patchin, said he had had a difficulty with Patchin. Did not wish Mrs Patchin to have anything. The Sharpers got some $18,000 in notes out of him, sent was brought on some of those notes Plff in those suits, some of

them were defeated on trial. Plff came and told me last fall that John Barker had told him that he (plff) had no property — That all of it had been given to Gordon, I explained to him the deed, He said if that was the case it was all right.

Cross Ex.

In the Suit I spoke of the defence was on the ground that it was fraudulent and no consideration. That it was a fraudulent Conspiracy to obtain his property. Were Negotiable Notes We tried to prove that plff was drunk when he made the notes, Taxes ought to be according to my estimate 2000 $ a year on plff's property.

Peter Lindell's property would be under our present Currency 5 millions, Plff's share is One half million at least. I found plff at Gordon's he had just escaped from the trammels of a woman, who had just before that time tried to enveigle him into a marriage and it was my intention to prevent any future interposing woman from getting down, It was not for the purpose of getting a Guardian for him, he needed one when he was drunk, I have seen him comparatively sober, When I invited him he took during the day Spirits to Stimulate him. I found a deed on record from Plff to Wise 400 & odd feet of

47.

48. ground on Washington Avenue, Consideration 5000 dollars. Went to Wise, Said it was conveyed to him to enable him to make a loan for Plff. He made a reconveyance to Plff. This property was worth about 15,000 dolls. Plff is more competent than Palatin to attend to his affairs, Palatin is fully competent.

C. C. Whittlesey was then called as a witness for defts and being sworn testified as follows.

Test of C. C. Whittlesey

Wrote two wills for Plff, first on 10th April 1862, The other April 21. 1862, 1st was drawn at Bates house, Coleman came to me to write the will, He said he wanted to give his property to his nephews and nieces, After this will was signed Mrs Palatin who was present tore it up. I wrote another pretty much the same words in pencil put it in my pocket. He told Mrs Palatin she had her share and no children, Plff told me how to draw the provisions of the will, He afterwards came and got me to draw another will, containing a clause ratifying the agreement for the partition of the Estate, When he came on the 21st April when I drew up the second will, he knew perfectly well what he was about,

Cross Ex.

I had no previous acquaintance with

him. Knew nothing of his habits except by report. The first time I went he looked to me like he had just came out of a terrible spree, second time he seemed perfectly straight.

It was admitted that Linus Jackson & W C Jamison, were respectively duly appointed Guardians of the Sindell children by Probate Court of St Louis Co.

The above is all the Testimony that was in the Case.

Upon the above testimony the Court made a decree setting aside the deed of May 15, 1862 and declaring the same to be void.

Afterwards and on the 20th day of August the defendants filed a motion to dismiss P. for want of jurisdiction said motion is as follows.

Motion to Set aside P for Want of jurisdiction.

In the above Cause the defendant Robert C Gordon for himself and as Guardian of Robert C. Gordon and Ann Eliza Gordon Minors moves this Court to set aside or annul the decree rendered in this Case for the pltff and dismiss the said action or petition from this Court or to transfer it change the venue to the Land Court, because this Court has not now and had not at & for a long time before the hearing and trial of and the making

49.

of said decree in this Cause any juris-
diction of said Action, or of the matter
set forth in the petition, or of the cause of
action as set forth in the petition, and
for the following reasons.

1st Because since the creation of
the land Court in this County by the
Act of the General Assembly of this
State, approved December 17. 1853, this
Court has not had any jurisdiction of the
cause of action set forth in the petition
Except by virtue of and until the passage
of the Act Genl Assembly approved Feby
18. 1859. by the fourth Section of which
Concurrent jurisdiction was given to this
Court in certain matters with said
Land Court. And all the jurisdiction this
Court had at the time this Suit was
commenced of the cause of action as
set forth in the petition was derived from
said fourth (4) Section of said Act of
Feby 18. 1859

2. That the Writ of process in this
Case issued from the Office of the Clerk
of this Court on the 13th day of January
1864 returnable to the February Term 1864
of this Court, and was personally served
on the defendants on the 5th day of
January 1864, and on the 26th day of
January 1864 by an Act of the General

assembly of Minouri, Approved on this day and to take effect from that day, the said 4th Section was unconditionally repealed, without any clause saving or excepting the proceedings in actions then pending in this Court.

3rd. That afterwards and on the 5th day of May 1864 this Court heard and tried this action and rendered the decree therein for the plaintiffs according to the prayer in the petition,

4th. This defendant therefore says that all the proceedings of this Court in said action that since the 26th January 1864 and especially said decree are null and void And never have been of any binding force or effect, because since said 26th January this Court has not had any authority or jurisdiction to hear or try said cause or to make any decree therein, granting the prayer of the petition, And that said decree should be reversed and set aside and declared void, And the whole case dismissed from this Court or transferred to the Land Court of this County which alone has any jurisdiction in the matter,

Robert C. Gordon.
By Hill & Sewell
his Attys.

Also the Affidavit of Defendant.

51.

Gordon Containing Suggestions why said decree ought to be vacated and set aside, Which Suggestions were as follows

Sug^s of Deft R C Gordon

In the above entitled cause the undersigned defendant in his own behalf and that of the above defendants all of whom are minors respectfully suggests to this Court: That the decree rendered in the above entitled cause be reversed and set aside and that the case stand for a further hearing if desired by the parties, because substantial justice has not been done in the case and because the decree opens the door for a great fraud to be perpetrated upon the rights of minors and married women by designing persons operating upon an easy and yielding disposition as will appear from the following facts and circumstances,

Immediately after the decree was entered in this case the plff went to board at the Lindell Hotel in this City and forthwith relapsed into his habits of drunkeness & intoxication, from which it was insisted before this Court that he had entirely reformed & which apparent reformation at that time his friends hoped would be permanent, Although plff boarded at the Lindell Hotel after said decree he was in the habit of frequently coming to the undersigned house & staying all night and frequently was badly under

the influence of liquor when he came
On the nights of the 26 & 27 of May 1864
Pliff slept at the undersigned house & was
intoxicated when he came on both nights,
On the night of the 27 he was so sick
as well as intoxicated that he requested a
Physician And one was sent for by the
undersigned but he did not arrive till after
the pliff had fallen asleep, And was not
heard by the Physician that night, The
next morning which was Saturday Pliff
came down to town And as he did not re-
turn to the undersigned house on Saturday
night, On Sunday the undersigned went to
the Hotel to see what had become of him
And found that he had not been there since
Saturday morning, when he was seen in the
Company of Mrs Peter Tindell Jr. On
examining his room at the Hotel it was
found that he had not taken any of his
clothes or even that he had on and had
not even changed the shirt he had worn
nearly a week, On Monday May 30. Mrs
Peter Tindell jr returned from DeSoto in
this State and it was then learned that
on the Saturday before the pliff had been
taken by her and Geo L Davis or by their
influence & carried to DeSoto, And on
Monday the 30 married to Elizabeth
L Davis, a sister of Geo L Davis and

53.

a young girl about Seventeen years old. Wm Pltff had never been before, as the undersigned is informed and believes, except for a few days, near two years ago, when he was carried there for a few days & left for the purpose to get him out of the way of those four whose hands he had just been rescued at the Bates house, and when he was in no condition to make the acquaintance of any woman, and probably did not but.

After this marriage the plaintiff remained at Desoto, except one short visit to St Louis, but still as the undersigned is informed and believes, did not reform so but that he was occasionally intoxicated

On the 7 of July 1864 the said Geo W Davis and Mrs Ellen Liddell were married at Desoto, and on that day it is admitted by the family of this Pltff's wife that the plaintiff became quite intoxicated and kept up his drinking pretty freely till the 17 day of July 1864 on which day he died,

On the 7 day of July 1864 the Pltff joined in a deed with his wife by which he conveyed in consideration of forty dollars, absolutely and unconditionally

all of his real Estate which had been set off to him in the division among the Lindell heirs to Wm L Davis a brother of his wife, said deed was filed for record on the 11th July in this County.

On the 5th day of August 1864 and long after said Wm L Davis knew that the Validity of the deed to him would be contested, he acknowledged the execution of a deed which purports to have been written on 7th of July by which he conveyed to James I. Davis his father the Real Estate conveyed to him as aforesaid The deed reciting that said James I. was to hold the property in trust for the sole use and benefit of Elizabeth L. Lindell wife of the plff. with full power to lease or sell the same at the said Elizabeth's request. This deed was filed for record on the 15th of August 1864. Since that time the undersigned has been reliably informed that Geo W Davis has declared that his sister has sold all the property to some Doctor at Corin the Vicinity of DeSoto, but no such deed is yet found upon the record. The Undersigned further suggests and ~~shows~~ says. That at the time of the hearing in this Case & previously though he knew that the plff when he executed the deed

55.

56. sought to be vacated by the petition was free from the influence of signers and was as capable of knowing what he was doing as he ever has been since and did then fully comprehend and understand the purport and object of the deed, and though he stated that the plff, after it was made repeatedly declared he was glad it was done and that his property was where they could not get it away from him when he was drunk and that he was satisfied with the disposition made of it, still when the undersigned found that some of the plffs family connections sought the deed set aside and found that the plaintiff had been influenced, not by counsel, to bring the suit: the undersigned determined and so repeatedly declared to his counsel and to others, not to make any further resistance to the petition than just what was necessary to rebut the imputation of having designedly taken any advantage of a weak mind in his right mind,

The undersigned was further especially influenced to this by the hope that the plaintiff had reformed his habits and that he might be trusted with his property and by the feeling that it was right and proper, if he had reformed,

and wished to have the management of his own property that it should be restored to him, And the undersigned respectfully suggests that the same feeling might have had a very strong influence upon the mind of the Court and might have to a great degree induced the Court to overlook for the time the strong testimony of the Witnesses to that deed, in favor of the soundness of the plaintiffs mind, And his full understanding of the import of the deed, at the time he signed it.

The undersigned declares that he justly and truly believes that upon a rehearing of this Case, (if the Court decides he has jurisdiction) And the production of all the testimony, he can satisfy this Court upon the testimony that the deed ought to stand, And that its cancellation will inflict great wrong and injury upon the lawful heirs of the Pltff.

The transaction is recent, the witnesses are all alive and in due course of proceeding a rehearing could be had in a short time from this,

The Undersigned therefore respectfully and earnestly suggests to this Court to review all the facts in the Case, And the law applicable to the Case, to consider the

57.

Suggestions made and this to determine whether substantial justice to all parties entitled to the probation of this Agmt does not require the reversal of this decree, and an opportunity for a further and more full hearing.

R. C. Gordon.

Sworn to and subscribed before me August 22nd 1864.

J. Thompson Clerk.

Also on the 23rd day of August 1864 Defts filed motion to set aside said decree for irregularity because no guardian ad litem was appointed for three of defts minors, which motion was as follows.

Mo to set aside decree for irregularity

And now the said Robert C Gordon for himself and the other defendants asks the Court to set aside and vacate the decree made in this — for irregularity in the proceeding and want of jurisdiction in the Court over the defendants Isaac G. Lindell, Peter Lindell & Albert Lindell, all of whom if appearance of record were minors at the time of trial and were not properly before the Court in this suit

1st No guardian ad litem was appointed by the Court for said minors according to the requirements of the Statute

2. The Guardians Lewis Jackson and Wm C Jamison who entered their appearance for said minors were not authorized by law so to appear, because the property in controversy in this suit was no part of the estate of said Minors and was not committed to the care of said Guardians or Curators by the Probate Court as the said William C Lindell was alive at the time of trial and his estate had not descended to said minors

Robert C Gordon
By Hill & Sewitt
his Attys.

All of which Motions and suggestions the Court after hearing Counsel Overruled. And to all of which judgments & rulings of the Court the defendants then and there Excepted, And pray that their exceptions may be allowed And that all the above proceedings be made a part of the record. Which is accordingly done.

James C. Moodey Seal
Judge.

State of Missouri
County of St Louis } I the undersigned Clerk of the St Louis Circuit Court Certify that the foregoing is a True Transcript of the Record and Proceedings of said Court in the Case of William C Lindell

59.

Co. against Robert C. Gordon et al, as the same remain of Record and on file in my Office

In Witness Whereof I hereto set my hand and affix the Seal of said Court at Office in St Louis this the first day of October A D 1864

T. Thornburgh Clk

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March Term 1867

William C. Lindell
Res

vs Transcript

Robert C. Gordon Sr. et al
appt.

Appeal from Circuit Court

Mr. Sustained

Filed October 1. 1864
A. W. Mead
Clerk

Sharp & Broadhead

~~Napton & Casselberry~~
for Res

Hill & Jewett
for appt.

Tax 18.00 Paid
$10 paid by Mr Jewett

1864
Nov 14 Assignment of Error
1866 Apr. 18 Motion to substitute party.
" 23 " sustained
May 14 Continued.
" Oct 31st Continued
1867 Mch 19 Dismissed

Wm C Lindell
Respt
vs
Robt C Gordon & ely
Appellants

IN SUPREME COURT,
Oct TERM, 1864
St Louis Co

AND now come the said Appellants and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Appellants assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Respondent
2. That said Court rejected proper and legal testimony offered by Defts below
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Defts below
5. That the ~~verdict~~ decree of the court was against the evidence.
6. That the ~~verdict~~ decree of the court was against law.
7. That the ~~verdict~~ decree of the court was against both law and evidence, and against the law under the evidence.
8. That the ~~verdict~~ decree of the court was against the weight of evidence.
9. That the judgment was rendered in favor of the Pltff below when it should have been rendered for the Defendants below
10. That said Court overruled the motions ~~for a new trial~~, made by Defendants below - to dismiss for want of jurisdiction - to set aside decree & change venue - & to set aside decree & judgment for irregularity -

Hill & Jewett
Attys for
Appellants

And now comes the Appellee and for joinder in error say, that there is no error in the record and proceedings of said Circuit Court in said cause, as assigned by said Appellants -

Shark & Broadhead
Attys for Appellees -

Lindell
v
Gordon et al
No 244

Assignment
of Errors

Filed November 12. 1864
A. W. Mead
Clerk

William. C. Lindell
Vs.
Gordon & others

In the Supreme Court of Missouri

Now at this day comes Elizabeth S. Lindell by her atty and moves the Court that she may be permitted to become a party ~~Defendant~~ in the above Entitled Cause - for she says that she was the wife of William. C. Lindell now deceased - that after the judgment and decree of the Circuit Court of St. Louis County rendered in this cause her husband William. C. Lindell conveyed the property in controversy or a large portion thereof to William S. Davis - who conveyed the same to James. J. Davis in Trust for her seperate use & benefit - that said conveyances were made since this suit was instituted to set aside the conveyances from William. C. Lindell to the Defendants in this cause - that the said William C. Lindel is now deceased and that she claims to be the owner of the property in controversy in this cause and asks that she may be permitted to become a party to this suit and to prosecute her claims to said property -

Sharp & Broadhead
Attys for
Elizabeth. S. Lindell -

Supreme Court -
106

William C. Lindell
vs
Gordon & Others -

Motion to be
substituted as party -

Filed April 18. 1866
C. T. Fishback
Clk

William C. Lindell vs. Robert C. Gordon & others

In the Supreme Court - March Term 1864 -

This was a bill filed by the Plaintiff below - and returnable to the February Term of the Circuit Court of St. Louis County - for 1864 - to set aside a conveyance by him of a large amount of property to Robert C. Gordon in trust to pay over the net proceeds & the annual income to the Plaintiff for his support and maintenance - the remainder upon the death of the Plaintiff with heirs of his body living at his decease to such heirs in fee simple absolute, and in the Event of his dying without issue - then the entire Estate to go the three children of Peter Lindell deceased - and two children of Robert C. Gordon as joint tenants - The deed was asked to be set aside upon the ground that at the time of its Execution and for some time previous thereto he was addicted to the continuous use of intoxicating drinks, which had so depraved his intellectual faculties, as to impair all his powers of memory judgment & reflection, so that even when the Excitement of stimulants had passed away his mind was a confused and disorganized wreck, and that he was totally incapable

of passing judgment upon or comprehending the provisions of such an instrument - that this condition of mind continued for some months after the 15th of May 1862 - the date of the execution of the said Deed - but that in the month of October 1862 - he was placed under the charge of a physician by whose care & prescriptions his health of body & mind was restored - and his habits reformed -

Answers were filed by the Defendants and upon the issues framed and the testimony introduced by the parties the Circuit Court made a decree setting aside the Deed of May 15th 1862 - and declaring the same to be void -

This decree was rendered on the 5th of May 1864 -

Afterwards on the 20th day of August 1862 - the defendants filed a motion to set aside the decree so rendered and to dismiss the cause for want of jurisdiction -

which motion was on the 27th day of August 1864 overruled by the Court - and thereupon the Defendants appealed to the Supreme Court -

No exception was taken in the Court below to the judgment of the Court by which the deed of Wm. C. Lindell was set aside and declared

void –

Accompanying the motion to set aside the decree – was an affidavit of the defendant Robert. C. Gordon in the form of a suggestion to the Court and stating – that substantial justice had not been done in the cause – and because the decree opens the door for a great fraud to be perpetrated upon the rights of minors and married women by designing persons operating upon an easy & yielding disposition –

The affidavit then goes on to state facts in support of this suggestion substantially as follows:

That immediately after the decree of the Court was rendered setting aside the conveyance the Plaintiff relapsed into his former habits of intemperence – that by the influence of Mr. Peter Lindel Jr. and George. L. Davis he was induced to marry miss Elizabeth. L. Davis a young girl of seventeen – whom he had never seen before except for a short time – that on the 7th of July 1864 the Peff joined with his wife in a conveyance of all his real Estate to William. L. Davis a brother of his wife – and that Wm. L. Davis afterwards on the same day conveyed the said property to James. J. Davis in trust for the sole use & benefit of his wife

Elizabeth L. Lindell — Affiant also states that he can now satisfy the Court that the original deed made by Lindell to him ought to stand — that he was then of sound mind and asks for a re-hearing of the cause —

On the 23d of August the Defendants filed another motion to set aside the decree of the Court for irregularity because no guardian ad-litem was appointed for three of the minor Defendants — all of which motions were overruled by the Court and to this the Defendants excepted —

The motion to set aside the decree and dismiss the cause for want of jurisdiction is based upon the following statement of facts which raise the question of jurisdiction to wit:

That by the 4th section of the act of February 18th 1859 — concurrent jurisdiction was given to the Circuit Court with the Land Court over the subject matter of this suit —

That process in this case issued from the Clerk's Office of the Circuit Court on the 13th of January 1864 — returnable to the February Term 1864 — That on the 21st day of January 1864 — by an act of the General Assembly of the State

of Missouri approved on that day and to take effect on that day - the said 4th section of the act of Feb may 18th 1859 was unconditionally repealed, without any clause saving or excepting the proceedings in actions then pending in the Circuit Court - that the decree of the Court rendered on the 5th day of May 1864 was void for want of jurisdiction -

The appeal is from the judgment of the Court in overruling the several motions of Defendants - and the exceptions taken are only to the action of the Court in this behalf -

The only two questions presented by the record for the consideration of this Court were

1st Whether the Circuit Court had jurisdiction of the subject matter of the suit -

2nd Whether ~~Jackson~~ & Jamison was properly appointed Guardians ad litem -

Sharp & Broadhead
Attys for
Elizabeth L. Lindell

See Judge Moody's opinion
published in Republican -

No 106

Wm C. Lindell
vs.
Robert C. Gordon
& als

Statement of the
case

Appeal from St. Louis
Circuit Court

Sharp & Broadhead
Attys for
Elizabeth L. Lindell

Filed May 17th 1866
D. F. Fishback
Clk