

15
Wm. M. Daniel

vs
A. Will et al

Chancery Court - Montgomery County -

Filed July 6th 1874

10th Equity.

The guardian in Sec. 3339 of the Code
is a regular guardian & not one ad
litem. Therefore a purchase by Daniel is
not affected not affected by this section.
The decree is affirmed with costs.

Nichols

ELDP
Pope

Ent. p. 411
March 11, 1874
Ex. 3889.

Enrolled
1873

607

Transcript of the record in the cause of
Hon. M. Daniel vs A. Weill et ux et al, in
the Chancery Court at Clarksville.

— Injunction Bonds —

Know all men by these presents that we, H. M. Daniel
& H. B. Merritt are held firmly bound unto A. Weill
et ux et al in the penal sum of five thousand
dollars, which payment, well truly to be made,
we bind ourselves, our & each of our heirs, executors &
administrators, jointly & severally, firmly by these
presents. Sealed with our seals & dated this the 9th
day of August, in the year of our Lord 1873.

The condition of the above obligation is such that
whereas the above bound Hon. M. Daniel hath this
day obtained from Hon. C. W. Tyler Judge &c, a
fiat ordering ~~that~~ an injunction ^{to} issue, enjoining
L. W. Beaumont Guardian of Ida W., Georgia Co.,
& Franklin S. Beaumont from appropriating cer-
tain funds in his hands arising from the sale
of the lot of ground in the bill mentioned & en-
joining A. Weill from transferring the notes of
said Daniel to him, executed for the purchase of

said property. Now if the said Daniel shall prosecute said injunction with effect or in case the same shall be dissolved, he will pay to the said Mill et al, & shall moreover prosecute his said bill with effect, or on failure therein shall pay all such costs as may be adjudged by the Court upon a final hearing of said cause, shall further abide by, perform & discharge such judgment or decree as the Court may make in said cause upon a final hearing; then the above obligation to be void, otherwise to remain in full force & effect.

Wm. M. Daniel L.S.

A. C. Merritt L.S.

Original & Injunction Bill.

Filed August 9th 1873. at 4 o'clock P.M.

To Hon. C. G. Smith Chancellor & residing at Clarksville.

The bill of complaint of W. M. Daniel a citizen of Montgomery
VS.

A. Mill wife Lizzie Mill, Ida H. Beaumont, Georgia C. Beaumont, Frank S. Beaumont & C. H.

Beaumont & in all citizens of Montgomery County
Complainant shows to your Honor that on the
8th of Jan'y 1869 deft C. W. Beaumont filed his
bill in the Chancery Court at Clarksville against
s't J. H., G. C., & F. S. Beaumont, alleging that he was
the regularly qualified guardian for defts Jaa
H., Georgia C., & Frank S. Beaumont, minors under
twenty one years, that s't minors were the children
& heirs at law of F. S. Beaumont dec'd & as such
were the owners of certain real estate in & about
the city of Clarksville, that they owned no other
estate, or very little, that said realty was unpro-
ductive of any income, & that a sale of s't property
was necessary in order to obtain a fund for the
support, maintenance & education of s't minors.
Complainant was appointed guardian ad litem
in the cause & filed his answer. After proof had been
taken as required by law, the Court at the Oct Term
1869 decreed the sale of said lands on the 31. of Dec
1869, the exec having advertised the same, proceeded
to sell as advertised as directed by s't decree & said sell,
among others, one lot on the corner of Franklin & 3rd
Streets to A. Weill for about the sum of twenty nine

hundred (2900) dollars which was the highest
 bid & a full fair price for said property. said sale
 was confirmed on the 19 of April 1870. the will
 excepted to the action of the Court in confirming
 the report of sale & prayed an appeal to the Supreme
 Court. The cause was heard by the Supreme Court
 in Jan'y 1872. said Court being of opinion that said
 sale was made in substantial compliance of law
 that the purchasers took a good title. so decreed &
 dismissed the appeal. all the foregoing facts fully
 appear from the record on file in said cause of C. H.
 Beaumont Edm v Ida Beaumont et al.

Complainant further states that in Octo 1871,
 he having prior to this time been appointed by the
 Chancery Court of Williamson County, Trustee
 for his wife M. M. Daniel, in accordance with a
 provision in the will of her father, & authorized by
 said Court to invest a certain part of her estate in
 realty, he purchased from S. H. Kennedy Trustee, a
 house & lot in Clarksville, adjoining the lot pur-
 chased as aforesaid by Will & lying on two sides of
 it. This place was bought with the ~~purpose~~ and
 intention of making it a permanent home for

Complet's family; that afterwards it became necessary in the estimation of Complet & his wife, that the lot owned by Will should be added to the above property for the purpose of comfort & convenience. Accordingly on the 7th day of June 1873 complainant purchased of Mrs Lizzie Will the said lot, & Will's purchase having been assigned to her title ordered to be made her by the Court. Complet paying therefor \$1200 cash & executing his two notes at 6 & 12 months for \$1000 each with int at the rate of 10 per cent & received a deed to said lot to himself the object & purpose being however to make this a part & parcel of the homestead mentioned as purchased by Complet as trustee for the said M. M. Daniel & to purchase & pay for the same with said trust fund. & to obtain from the Williamson Chancery Court at its Octo Term a ratification of the transaction in the mean time to secure the purchase by holding in his own name.

Complet states that at the time of its purchase the fact that he was the guardian ad litem in the suit of Beaumont vs Beaumont did not occur to him, but the purchase was made in total

forgetfulness of the fact without any intention on his part to violate any law. Compt. purchased in good faith with no intention of wronging any one & paid what is generally regarded a high price believing said lot necessary to the property he had bought for his wife. But Compt. is advised that said purchase having been in fact made in his own name, under sec 3339 of the Code of Tennessee said sale & purchase does or may under void the original sale & leave the title to said property in the hands of F. S. Beaumont. He further states, the guardian of said minors has rec'd the full price & value of said property & now has the same in his possession & that Mrs. Weill has rec'd from him \$1200. & now holds his said notes for \$2200.

Compt. is advised that in a Court of equity, if it should be determined that the facts stated under the sale were that the said heirs of F. S. Beaumont still having on hand the purchase money will not permit that they hold said purchase money & also retain the said land, which by an inadvertence & mistake, may under said law revert to them, nor will the Court permit the said Mrs. Weill to collect said notes or retain the cash paid in case

she can make to complet no title to it properly

The premises considered complet prays that all of the parties above mentioned as such be made defendants to this bill, that copy wth a fine, that they answer, that guardian ad litem be appointed for said minors who shall answer for said minors, that writs of injunction issue restraining s^d Guardian from the further appropriation of the fund arising from the sale of the lot mentioned, also enjoining the s^d A. Weill & Lizzie Weill from in any manner disposing of his said notes, to the end that in case the Court should be of opinion that the facts mentioned herein avoid the sale of said lot & deprive Complet or s^d Weill of the title to the same & should declare said sale void, that all of the parties may be placed in the same situation as before s^d sale, that is, that s^d Weill shall receive back from s^d Guardian the amt p^d him & complet's notes delivered up & that complet receive back the amt of money already p^d by him. Or if it shall appear to the Court that s^d sale is not avoided by the facts set out, but that the same is a valid sale & properly made for the interests of said minors, then that the Court will so adjudicate.

& determine so that complete may take its property with unincumbered & undoubted title & further that the Court will vest the title to said property in M. M. Daniel for whom the purchase was originally made, & for all other & further & general relief. This is first application for injunctions in this cause.

M. M. Daniel

State of Tennessee - Montgomery County

M. M. Daniel makes oath that the statements in the foregoing bill made as of his own knowledge are true & that those made on information he believes to be true.

M. M. Daniel.

Sworn to & subscribed before me
Aug 9, 1893 O. E. Smith Secy

To the Clerk & Master of the Chancery Court at Clarksville

I give oaths of injunction as prayed for in foregoing petition upon complainants entering into bond in the sum of five thousand dollars conditions as the law requires

Charles W. Tyler Judge

Injunction vs Will & wife

Dated Aug 9, 73, 4 o'clock P.M.

State of Tennessee to A. Will & wife Lizzie Will,
counsellors, attorneys, solicitors & agents & each & every
one of them Greeting: Whereas, it has been represented
to us in our Court of Chancery at Clarksville in a
certain suit in Chancery, between Hon M. Daniel
complainant and you & others defendants, on the
part of said complainant that Hon B. H. Tyler
Judge &c has granted a fiat ordering that you be
enjoined from transferring or in any manner dispo-
sing of certain notes, two in number, executed by said
Daniel to Mrs Lizzie Will, for \$1000. each, dated
June 7, 1873 & payable respectively six & twelve months
from date, the same having been given for the pur-
chase of a lot of ground on the corner of Franklin
& 3rd Streets in Clarksville Tennessee; We, therefore,
in consideration of the premises aforesaid, do strict-
ly enjoin & command you, the said A Will & Lizzie
Will, & all & every, the persons before mentioned, un-
der the penalty prescribed by law, of your & every of
your goods, lands & movables, to be levied to our
use, that you & every of you do absolutely assist

from in any way disposing of said notes above specified until the hearing of this cause in our said Court of Chancery. Witness P. G. Johnson, Clerk & Master of our said Court at office, in the town of Clarksville the 4th Monday of April, in the year of our Lord, one thousand eight hundred & seventy three

P. G. Johnson Clerk
by O. C. Smith Secy

- Sheriff's Return -

Came to hand same day instant. Executed Aug 11th 1873. by making known the contents of the within to A. Weill & Lizzie Weill.

J. W. Beaumont Off

- Injunction vs C. W. Beaumont -

Issued Aug 9, 1873 - 4 o'clock P. M.

State of Tennessee to C. W. Beaumont, counsellors, attorneys, solicitors & agents each & every one of them greeting
Whereas, it has been represented to us in our Court of Chancery at Clarksville, in a certain suit in Chancery, between Hon. M. Daniel complainant & A. Weill et al defendants, on the part of said complainant, that Hon. C. W. Tyler Judge & has

granted a fiat ordering that you be enjoined
from appropriating certain funds which you, as
Guardian of Ida H., Georgia C. & Frank S. Beau-
mont, received from the sale of a certain lot of
ground on the corner of Franklin & 3^d Streets in
Clarksville Tenn. We, therefore, in consideration of
the premises aforesaid, do strictly enjoin & command
you, the said C. W. Beaumont, all & every, the persons
before mentioned, under the penalty prescribed by law,
of your & every of your goods, lands & tenements, to be
seized to our use, that you & every of you do absolutely
desist from appropriating said money above named
until the hearing of this cause in our said Court
of Chancery. Witness, P. H. Johnson, Clerk & Master of
our said Court at office, in the town of Clark-
sville, the 4th Monday in April in the year of our
Lord one thousand, eight hundred & seventy three.

P. H. Johnson, C. W.

by Deputy Secy

- Sheriff's Return -

Came to hand same day issued. Executed by making
known contents of the within to C. W. Beaumont
Aug. 10. 1873.

J. W. Beaumont Shff.

—Spa to Answer—

Issued Aug 29, 1873.

State of Tennessee to the Sheriff of Montgomery County, greeting: You are hereby commanded to summons A. Will, Lizzie Will, Ida K. Beaumont, Georgia C. Beaumont, Frank S. Beaumont & C. W. Beaumont Guardian, personally to appear before the Chancellor at the Chancery Court to be held in Clarksville, in the Sixth Division, on the first Monday of court next, then & there to answer the bill of complaint of Wm M. Daniel, exhibited & now pending in said Court against them, & this you shall in no wise omit under the penalty of law: therein fail not. Witness: Joel G. Johnson, Clerk & Master of said Court at office in the City of Clarksville, the 4th Monday of April A.D. 1873.

J. G. Johnson Clerk
by C. Smith Secy.

—Sheriff's Return—

Came to hand same day issued. Executed in full & left copy bill with C. W. Beaumont Aug 29, 1873.

J. W. Beaumont Shff.

- Answer of Weill & wife. -

Filed Nov 3. 1873

The answer of A. Weill & wife Lizzie Weill to the bill filed in the Chancery Court at Clarksville by Mrs M. Daniel against them & others.

For answer to so much of said bill as they are advised is material for them to answer, say it is true that on or about the 8th day 1869 their co-defendant C. M. Beaumont as guardian of the infant heirs of F. S. Beaumont, filed his bill in your Honor's Court as stated, alleging that the said heirs of F. S. Beaumont were the owners of certain real property & among others the lot on the corner of Franklin & 3^d Streets, that they owned no other estate or very little, that a sale of said realty in order that a fund should be raised or an investment made that would yield an income with which said wards might be maintained & educated: upon proper proof being made & the Court being satisfied of the propriety of the said sale it was so decreed, & the same in pursuance thereof, on the 31. Decr 1869 made a sale of said property & the lot on Franklin & 3^d Streets was bought by respondent A. Weill for the

price of \$2800. or \$2900.- said sale was confirmed by the court. exception was taken by respondent A. Weill to the action of the court as stated in Compt's bill, an appeal taken to the Supreme Court said Court being satisfied its sale was fair & properly made, affirmed the decree of the Chancellor. Respondent A. Weill then conveyed his said purchase & right to receive the purchase, to his wife, resp't Lizzie Weill, she paid the purchase money on said lot & the title to the same was vested in her & the C & M. directed to make her a deed.

Resps further state that it is true they sold said lot on the 7th day of June 1873 to Compt & executed a deed, reserving a lien for the deferred payments. Respondents state they know nothing of the facts of Compt's being the guardian ad litem; if they ever heard of it they do not remember it & don't think they ever did; they state they are advised this fact, if so, does not prevent their conveying a good title. Respt A. Weill states he bought the property in good faith, that the sale was a fair one & for a full consideration, more than it would now sell for, that some four years after his pur-

chase he transferred his transferred to purchase to his wife for the same sum he had bid, less his cash-payment, she having at the time some money which was her separate estate, that said property was then conveyed to complainant.

Depts state they bought & sold said property in good faith, knowing no reason why they could not make a good title & they are satisfied. Complot purchases in equally good faith. Their co-defendants, the heirs of F. S. Beaumont have received the purchase money & the same is now in the hands of their guardian C. W. Beaumont. They insist said sales are valid & that complot gets a good title, & having fully answered, ask to be dismissed with their costs &c.

State of Tennessee - Montgomery County.

A. Hill makes oath that the statements contained in the foregoing answer, made as of his own knowledge, are true & that those made on information he believes to be true

A. Hill.

Sworn to & subscribed before me Nov 3. 1873.

O. C. Smith J. C. C. C.

State of Tennessee

Be it remembered that at a Chancery Court for Montgomery County, begun this for ~~Montgomery~~ at the Court House in Clarksville on the first Monday in November 1873. Hon C. H. Smith Chancellor presiding the following proceedings were had, to wit:

— Decree appointing G'd ad Litem —

Rendered Nov 3, 1873.

Hon. M. Daniel vs A. Weill et al

In this cause it appearing to the Court that depts Ida H. Beaumont, Georgie B. Beaumont & Frank S. Beaumont are all minors under twenty one years & that they have been regularly served with process, it is ordered by the Court that H. C. Merritt, an atty of of this Court be & he is appointed Guardian ad litem for said minors to answer & defend this suit for them.

— Answer of G'd ad litem —

Filed Nov 4, 1873

The answer of Ida H. Beaumont, Georgie B. Beaumont

Frank S. Beaumont by their guardian ad litem
H. C. Merritt to the bill filed by Wm M. Daniel
against them & others - say they admit that the state-
ments made in relation to the property in the cause
of C. W. Beaumont Guard. vs Ida H. Beaumont et al
are true, that they have no doubt that the purchase
made by complainant from Will was done in
good faith & for a fair consideration, that C. W.
Beaumont, their Guardian has received the pur-
chase money for the property sold to Will & that
the same is now being used for the education, main-
tenance & support of themselves. Respondents ask
the Court to protect their interests in every respect
& having fully answered pray to be dismissed &c.

H. C. Merritt Gt & ad litem

H. C. Merritt personally appeared before me & made
oath that the statements made in the foregoing
answer are true to the best of his knowledge
& belief

Sworn to & subscribed
before me Nov 5. 1893

H. C. Merritt

Per G. Johnson c. r. u.

—Answer of C. W. Beaumont G'd.—

Filed Nov 8, 1873.

The separate answer of C. W. Beaumont Guardian to the bill of complaint filed in the Chancery Court at Clarksville by Mrs M. Daniel against himself & others. For answer to so much of said bill as he is advised is material for him to answer says, it is true the circumstances of the filing of the bill by respondent, the sale of the property & the facts in regard thereto, are truly set out in complainants bill. He states the said bill was filed by him in good faith, that said sale was necessary as decreed by the Court. He also admits the purchase money was paid as stated & that the same was paid over to respondent in accordance with ~~orders~~ of yr Honors Court is now by him held as Guardian. Respt states said sale was fairly made & for a full consideration. He states the necessities of his wards imperatively require the use of his funds for their support & education. Respt states he is not advised as to the effect in law of the purchase of Complt on said sale he having been the guardian ad litem in said cause, but he is satisfied the int of his wards

the affirmation of said sale & the recollection of the purchase money or the latter at least she insists that it sale having been fair & for full price the parties should take the title to the property & aspt's oaths the purchase money, having fully answered prays to be dismissed with his costs

C. H. Beaumont

State of Tennessee, Montgomery County.

Personally appeared before me Polk H. Johnson exr C. H. Beaumont who makes oath in due form of law that the statements contained in the foregoing answer of his own knowledge are true & those made upon information he believes to be true

Sworn to & subscribed

C. H. Beaumont

before me this 8 Nov 1873

N. A. Forbes s. c. & c.

— Deposition - C. H. B. —

Filed Nov 29, 1873

Wm. M. Daniel vs A. Neill et al.

Deposition of C. H. Beaumont taken before Polk H. Johnson C. & M. by consent to be read as evidence

in the above cause. present counsel for complt &c. e.
 Merritt Guardian ad litem.

Ques. Are you the guardian of Ida, Georgia & Frank
 Beaumont, minor children of F. S. Beaumont dec'd,
 when & where did you qualify, did you file or procure
 to be filed the bill in the cause of C. W. Beaumont & ad
 against Ida Beaumont & others, if so was there a nee-
 cessity for the sale of their realty for their support
 & maintenance, was the real estate mentioned in the
 bill productive of any income, did the property sell
 for a full & fair consideration, was the sale fairly
 conducted so as to realize the full value of the
 property, has the property risen any in value, have
 you as Guardian now on hand a sum of money re-
 alised from said sale, is it the interest of said minors
 that said sale should be affirmed or set aside, in
 other words is it the interest of said minors to take
 said land or the proceeds of sale thereof.

Ans. I am the guardian of Ida W. Beaumont, Georgia
 B. Beaumont & Frank S. Beaumont, minor children
 of F. S. Beaumont dec'd. I qualified as such guardian
 in the Montgomery County Court in, I think, 1871.
 I procured the bill to be filed in the Chancery Court

of Montgomery County for the sale of the real estate set out in complete bill & also other realty, I thought there was a necessity for said sale. & minors had no other estate than said realty & were dependent upon their relatives for support, maintenance & education & were at an age when their education should have been attended to. The said realty was productive of no income & it was very desirable that it should be put in some productive investment: the sale was a fairly conducted one at public auction & brought its full value, more than it would now sell for, property has very much depreciated in value in Clarksville since said sale. I now hold the proceeds of said sale as guardian: it is a necessity that they take the proceeds of said sale, they are compelled to have money & this they could not get from the land & it is decidedly their interest to retain said money & to let the sale be affirmed, if they were to take the land it would be inadvisable to their interest to sell it & they could not, I think, again realise as much for it. H. C. Merritt the administrator being present declined to ask any further questions or to cross-examine.

Signed to subscribers before me
Nov 29. 1873. John W. Johnson com.

C. W. Beaumont.

- Answer of Ida & Georgia Beaumont -

Filed Decr 5. 1873.

The separate answer of Ida H. & Georgia B. Beaumont to the bill filed against them, answering say, they admit the sale of the property in the cause of C. W. Beaumont & in answer to A. Will that Will & wife have since sold the same to the complainant Daniel & they also state that they have no doubt of the good faith of all parties concerned in the transaction & are satisfied that the price paid for the property was a fair & reasonable one. They state that it was absolutely essential for a sale of the real estate belonging to them in order to realize a fund for their education & support & maintenance & that they have been supported & clothed & schooled & boarded out of the proceeds of said sale. They state further that in as much as they have had the benefit of the proceeds of the sale of their property, they have no desire or intention whatever to interfere with or in any manner to molest or disturb the complainant in the quiet & peaceable enjoyment of the property bought by him of Will. Respondents state that they are aged respectively Ida H. seventeen years Georgia B. fourteen years and

although they are yet minors, they do hereby as fully
as they can sanction & approve the sales of the property
mentioned in the pleadings & ask that the sale from
Weill wife to Daniel be ratified & approved in no
manner interfered with by the court. Now having
fully answered ask to be dismissed with their costs

Ida H. Beaumont

Georgia B. Beaumont

- Deposition of W. M. Daniel. -

Filed Dec 9. 1873

Wm M. Daniel vs A. Weill et al

Deposition of W. M. Daniel taken before J. G. Johnson
C & M. by consent to be read as evidence in the above
cause. States. I am the complt in the above cause
was the Guardian ad litem in the cause of G. W.
Beaumont Guardian vs Ida H. Beaumont et al which
was disposed of as stated in the bill filed in this cause
At the time of my purchase from Mrs A. Weill, my
connection with said original, had for the time
passed from my mind nor did it occur to me
till after my said purchase. My whole connection
with said original with my after purchase was
in perfect good faith
Wm. M. Daniel.
Sworn to & subscribed before me Dec 9. 1873.
O. Smith Secy

State of Tennessee.

Be it remembered that at a chancery court for Montgomery County, begun there at the Court House in Clarksville on the 4th day of December 1873 - the same being a special term of said court as per order entered of record at the regular November Term 1873 - Hon. Jno. F. House Special Chancellor presiding, the following proceedings were had, to wit:

Final Decree

Rendered Decr 10. 1873

Now M. Daniel & Wife & Beaumont & others
The Chancellor C. G. Smith being incompetent by having been of counsel for the Beaumont children, Jno. F. House an attorney & solicitor of this Court was duly elected to try the cause by the attorneys & solicitors of the Court, residents of the State, & having taken the oath prescribed by law & being in all respects qualified, the cause was heard upon the pleadings exhibit its proof, & pro confesso.

When it appearing that the lands in the pleadings mentioned were sold by order of this Court upon a bill under sections 3323 to 3340 of the Code.

filed by the Guardian of the infant children of
Franklin S. Beaumont against said children & at
the sale was bought by A. Neile for a full price,
that he paid the purchase money afterwards, whilst
said children were still minors sold said land for a
full price to W. M. Daniel who in the proceedings
aforesaid had been guardian ad litem for said
infants defendants, but who at the time of his purch-
ase had forgotten that he had acted as guardian
ad litem for said infants, but within a few days af-
ter his purchase had his attention called to the fact
& brought this bill to rescind the contract or to have
his title quieted.

The Court is of opinion & doth decree that the said
Daniel guardian ad litem is not forbidden by the
3339th section of the Code, from buying said lands
but had the right to buy as freely as any other person
& therefore the Court doth refuse to him the relief asked
& dismisses his said bill with costs for which execution
shall issue. And from this decree the said Daniel doth
appeal to the Supreme Court of Tennessee & has leave
given to execute bond with surety for costs on or be-
fore the January rules.

Appeal Bonds.

Filed Jan'y 3. 1874.

Know all men by these presents that we Wm M. Daniel & H. C. Merritt, of the County of Montgomery & State of Tennessee, are held firmly bound unto A. Will et al in the sum of five hundred dollars current money of said State to be paid unto the said Will et al, heirs for which payment we bind our heirs, executors, administrators &c, jointly & severally, firmly by these presents, sealed with our seals & dated the 3^d day of January 1874.

The condition of the above obligation is such, that whereas in a cause on an injunction bill, prosecuted in the Chancery Court at Clarksville by Wm M. Daniel complainant, against said Will et al defendants, a decree was rendered by said Court against Daniel on the 10 day of Decr 1873 from which decree the sd Daniel prayed an appeal to the next term of the Supreme Court to be held at Nashville; now if the sd Daniel shall prosecute said appeal with effect or in case of failure therein, shall pay & satisfy all costs which may be awarded against him, then the above obligation to be void else to remain in full force & effect. Signed, sealed & delivered, the day & date above written.

Wm M. Daniel &
H. C. Merritt esqy d.d.

Bill of Costs

State tax

5.00

P. G. Johnson Clerk & M.

Bill 25 off 25 bonding 50 procs bond 25 secy 25 1.50

req bonds 50 Inj 2⁰⁰ Spasans 75 copy 1²⁵ 4.50

ans 1⁰⁰ off 75 order 25 ac accus 40 socket 25 2.60

seps 2⁰⁰ enrolling 3¹⁰ transcript recors 5⁰⁰ 10.10

appeal bond 75 Bill cost 50 certif 25 seal 50 2.00 20.70

Simon Beaumont

2 Injunctions 2⁰⁰, 6 Spasans 6⁰⁰

8.00

\$33.70

State of Tennessee - Montgomery County
I, Polk G. Johnson Clerk & Master of the Chancery
Court at Clarksville, do certify that the foregoing
is a true & perfect transcript of the recors & Bill
of costs remaining in my office in the case of
Ann M. Daniel vs A. Will & wife et al.

In testimony whereof I hereunto set my
hand & affix the seal of my office, at
office in Clarksville, this the 31st day
of January 1874.

Polk G. Johnson Clerk

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Wm M. Daniel }
 vs }
 A. Weill & wife }
 and others }

Brief of Guardian ad Litem
 for Eda H. Georgie C. and
 Frank S. Beaumont - Infants -

No equity in complainants bill -
 1st because Sec 3339 of code does
 not ^{apply or} refer to Guardians ad Litem

2^d That if Sec 3339 Code did prohibit
 Guardians ad Litem from buying the
 real estate of persons under disability
 sold in accordance with the provisions
 of this Chapter of the Code. That com-
 plainant stands in no attitude to
 complain inasmuch as the sale to
 Weill was confirmed both by the
 Chancery Court and Supreme Court
 and complainant had actual knowl-
 edge of the whole proceedings in both
 Courts. having been their Guardian
 ad Litem in the case of C. W. Beaumont
 vs Eda Georgie & Frank Beaumont Infants
 under the orders of which case Weill
 bought the property in controversy -
 and complainant cannot now be
 heard to complain of his own acts
 and further that that the Courts cannot

allow the sales of property made under the law prescribed for sale of the property of persons under disability to be interfered with and set aside as is sought in this proceeding. The sale to Weill was legal. It was necessary for the support and education of the parties under disability, and the plaintiff who was the guardian ad litem for them in the proceedings instituted (and successfully carried out) for a sale of their real estate cannot now be heard to complain of his own unlawful purchase (if it is unlawful) to the detriment of these defendants.

H. C. Merrill Guardian ad
Litem & Solicitor for Ida H.
Georgie & Frank S. Remondy

Tom M. Davis

My Brief of
Ex-act-ation
of their work
yethere

W. M. Hamel

by

S. Will W. Hamel

The pleadings and proof show that in 1869, a bill was filed in the Chancery Court at Knoxville, by C. M. Beaumont guardian for John & Georgie Beaumont, asking a sale of ~~the~~ an unimproved lot, in said town, being the only real estate belonging to said wards.

The proceeding was under the 3323 section of the Code and decreed -

Wm M. Hamel was appointed guardian ad litem for the infants, and answerer for them.

A sale was ordered, and the property bought by S. Will - but he believing there was some irregularity in the proceedings, resisted the confirmation of the sale, and appealed to the Supreme Court from the Chancellor's decree confirming it. The Supreme Court however, affirmed the Chancellor's decree at said term 1871.

After this, Will conveyed the property to his wife the def. Lizzie Will, and she sold it to couple. Hamel who paid in cash \$1200 - executed his notes payable to her for \$2100, and accepted & did convey the property to himself.

At the time of his purchase, Hamel had forgotten that he had acted as guardian ad litem for the infants, and

The fact, of Henry to Will's wife, seems to have been overlooked by them.

~~Henry~~ In making this purchase Daniel was acting as Commissioner for the Chancery Court at Franklin, which had directed him to ~~make certain~~ invest certain money belonging to his wife in the purchase of a home for her - This lot lay adjoining the home so bought, but his wife desired to have the Will lot also, as its acquisition made the home place more desirable. Daniel there fore bought it, taking the title in his own name, inasmuch as he believed it necessary to get the ~~ex~~ approval of the Chancery Court, to the purchase as an investment.

It is shown, that the lot sold for a full price - that all the parties have acted in good faith and with no intent to evade the law. The money for which the property sold is now in the hands of Beannoth guardian for George & the Beannoths, and the interest upon it is necessary to their support.

Daniel in his will says that the title he granted and established, or of pronounced to be valid, by section 3339 of the Code, that Will be required to pay back the money paid, & ordered to deliver up the notes.

The Chancellor, New F. House, sitting by election
of the bar, Chancellor Smith being incorn-
petent, held, that a guardian ad litem
was not within the purview of the 3339
section of the Code - that he had had a
good title and dismissed the
bill.

From this decree Daniel appealed.

For Mr Daniel.

The decree of the Chancellor
leaves complete just where he was where
the bill was filed, with his title subject
to the same doubt, suggested by it and he
brings the case here for a final and author-
itative exposition of the law.

It is evident that there was no
intent on his part to evade the law - His pur-
chase was made in good faith, in forgetful-
ness of the fact that he had acted as guardian -

Not of a guardian ad litem, he within the
letter or spirit of the law, he certainly could
not have been the intention of the Legislature
in a case where the parties have acted in
good faith, to visit upon them the severe
penalties, denounced by this section of the
Code - nor to hold the execution of the pen-
alty, in terrorem over them until the
minor should attain 21 years of age.

The money received by this guardian is still in his hands: and its amount is equal to the present value of the property.

The infants should now elect, on the cash for them, whether they would take the money or the land -

They should not have both.

2. The contract between Will & Blumie was made under a mistake of ~~an~~ ^{an} important fact viz. that ~~Blumie~~ Blumie had been the guardian all the time - both parties at the time of the sale and purchase - were ignorant of the fact.

If the fact thus be sufficient to a void the sale in behalf of the minors, it is clear that ~~the~~ ^{the} sale should be rescinded in between Will & Blumie.

Rescued

Mr. W. W. W. W.

By

Dr. W. W. W.

Dr. W. W. W.

Dr. W. W. W.