No. 11868

Supreme Court of Illinois

Frisbee.

vs.

Cooper.

71641 7

No. 1
Ellen Frisby et als.
vs
Jona. K. Cooper adm'r &c.

1869
11868

Replevin
&c

Be it remembered that on the sixteenth day of January in the year of our Lord one thousand eight hundred and forty seven there was filed in the office of the clerk of the Circuit Court of Peoria county in the State of Illinois a Bill of complaint which as amended with the Exhibits attached thereto is in the words and figures following, to wit,

Bill -

To the Honorable John D. Caton, Judge of the Circuit Court of Peoria county, in Chancery sitting: Humbly complaining showeth unto your Honor, your orator Jonathan R. Cooper, that sometime in the year A.D. 1835, Lewis Bigelow Esq. deceased, of Peoria borrowed of Aaron Brooks junior Esq. of Petersham, Mass. who has also since deceased the sum of One thousand dollars. Said sum in pursuance of a previous agreement between said Brooks and Bigelow was on the sixth day of May of said year, transmitted to said Bigelow at Peoria, by said Brooks, in the form of a draft on the United States Branch Bank at the City of St. Louis, which said Bigelow received and accepted as cash on the sixth day of June of said year. In the purchase of said Draft, which was done for the accomodation and at the request of said Bigelow, said Brooks necessarily had to pay, and did pay for said draft the amount thereof in cash and five dollars over by way of a premium, which five dollars were justly chargeable to said Bigelow. Said sum of money was borrowed upon the terms of said Bigelow paying to said Brooks interest thereon at the rate of ten per cent until paid.

Stricken out

Your orator further showeth unto your Honor, that to secure the repayment of said sum of money, said Bigelow executed a mortgage to said Brooks and sent it to him by mail to said Petersham, but without having had it recorded, and said Brooks transmitted it back to said Bigelow to have it recorded in the Recorders office of said Peoria county,

but although said Bigelow received said mortgage, he did not get it recorded, nor did he send it back to said Brooks, nor has said Brooks ever seen it since, nor is it in the power of your orator to produce it. Your orator does not know all the Real Estate included in said mortgage, but he is informed and believes and therefore charges that it included one half of the South East fractional quarter of section nine of Township 8 North, of Range 8 East of the 4th principal Meridian together with an undivided half of the ferry franchise thereunto belonging and appertaining. It being the same half of said land that was set off and quit-claimed to said Bigelow in a division between him and one Isaac Underhill.

Strike out

Your orator further showeth unto your Honor, that said money was by said Bigelow expended in building a house on Lot No. Ten in Block thirty four, in the Town of Peoria; which house said Bigelow occupied and resided in until his death, and from the time of his death to the present time his heirs, but especially his daughter Ellen Bisby late Ellen Bigelow, have been in the possession and in the receipt of the rents and profits of said house; yet neither the said Bigelow, nor his heirs, nor administrators hereinafter named have paid said sum of money, nor any part thereof, nor any of the interest thereon to said Aaron Brooks, nor to your orator, nor to any one else authorized to receive the same.

Your orator further showeth unto your Honor that on or about the 2nd day of October A.D. 1848, said Bigelow departed this life leaving the following heirs at law to wit. William Bisby and Ellen Bisby late Ellen Bigelow, James C. Armstrong and Sarah Armstrong late Sarah Bigelow; Leander Harding and Elizabeth Harding late Elizabeth Bigelow and George W. Metcalfe and Caroline Metcalfe late Caroline Bigelow. The said Ellen, Sarah, Elizabeth and Caroline being the daughters of said Bigelow who had no other children. All of whom together

with said James, Leander and George are hereby prayed to be made defendants to this bill.

Your orator further showeth unto your Honor, that said Bigelow died intestate and that said Bisby and Metcalfe took out letters of administration from the office of the Probate Justice of the Peace of Peoria county, of the estate of said deceased, and filed the usual bond for that purpose, a copy of which is hereunto attached marked A. and prayed to be made a part hereof.

Your orator further showeth unto your Honor, that said Bigelow died possessed of considerable personal chattels, and choses in action, but how much your orator has no means of knowing, and therefore cannot state, but that said administrators took no steps in the administration after getting possession of said estate, but disposed of it as they thought proper, without filing in the Probate Office any inventory, appraisement bill, sale bill, or in any wise accounting with the Probate Justice for any part of said estate, or paying the debts against the estate of said Bigelow. Afterwards, to wit on or about the 16th day of August AD. 1842 said William Bisby departed this life.

Your orator further showeth unto your Honor, that said Bisby and Metcalfe as administrators as aforesaid, offered to Ballance & Cooper the attorneys of said Aaron Brooks, that if they would make a deduction of three hundred dollars from the amount due at that time on said demand, they would pay it, and the said Ballance & Cooper without supposing justice required any deduction, agreed to make it for the sake of making sure of that much. This agreement was made in the office of Edward Dickinson, probate justice, on the 4th day of October 1841, and the amount then due was sixteen hundred dollars, which after deducting said sum of $300, would have left Thirteen hundred dollars to have been paid to said Brooks, but said Bisby & Metcalfe did not pay this

latter sum or any part thereof to said Aaron Brooks or any one authorized to receive it. There was no suit, trial or adjudication of this matter before said Dickinson, nor was he called on to decide anything about it, yet several years after this transaction and after all opportunity for an appeal was past, your orator discovered to his astonishment an entry made in the books of the said Probate Justice of which a copy is hereto appended marked B. and prayed to made a part hereof.

Your orator further showeth unto your Honor that said administration bond was signed by Elihu N. Powell and James C. Armstrong as sureties of said Sisby Metcalfe, and that, on the 5th day of August 1843 said Brooks brought a suit in the Bona Circuit Court on said bond against said Metcalfe, Powell and Armstrong to recover said debt, all of whom are prayed to be made defendants to this Bill. Said suit after many vexatious delays, produced by said defendants, was finally, on the 22nd day of October A.D. 1846, brought on for trial in said Court and after the jury was sworn it was discovered for the first time, that the said administration bond had been stolen or lost from the bundle of papers in which it belonged and had always been kept and thereupon the plaintiff being unable to supply the place of said bond by secondary evidence, submitted to a non-suit. Your orator alleges that said bond is not in his power to produce, nor is he able to prove its contents or its existence by the subscribing witness thereto.

Your orator further showeth unto your Honor that on or about the 3rd day of May A.D. 1845, said Aaron Brooks departed this life and on the 21st day of July A.D. 1846, your orator obtained letters of administration on his estate, which are hereunto appended, marked C. and prayed to be made a part hereof.

Your orator further showeth unto your Honor, that besides the personal estate aforesaid, of which said Bigelow died

seized, he died seized of a large amount of Real Estate, but how much and what real estate he died seized of, your orator has no means of knowing precisely, but he is informed and believes, and therefore charges, that he owned much more than enough to pay all his debts; a considerable portion of which however, your orator is informed and believes, said heirs have conveyed away; but your orator is informed and believes and therefore charges that said heirs now hold enough of said Real Estate to pay off said debt. And your orator well hoped that the said Metcalfe, as administrator or his said securities, or said heirs would have paid said debt. But now so it is, may it please your Honor, that neither the said administrator, nor his said securities, nor said heirs, nor any of them, have paid said sum of money or any part thereof to your orator or any one authorized to receive the same, but to pay the same wholly neglect and refuse — All of which actings and doings of said defendants are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises.

To the end therefore, and forasmuch as your orator is remediless by the strict rules of the Common law, and relievable only in a Court of Chancery, where matters of this sort are properly cognizable and relievable; May it please your Honor to grant unto your orator the People's writ of summons, to be directed to said defendants, commanding them and each of them to be and appear in this Honorable Court on a day to be therein specified, then and there full, true and perfect answers to make under their respective corporal oaths to all and every of the above charges and allegations according to the best of his and her knowledge, remembrance and belief as fully and particularly as if each of said charges and allegations were here again repeated and he or she particularly interrogated respecting the same.

And may the said James C. Armstrong,

and Sarah Armstrong, Leander Harding and Elizabeth Harding, George B. Metcalfe and Caroline Metcalfe and Ellen Frisby be compelled to answer under their corporal oaths, according to the best of their several knowledge, remembrance and belief, whether said sum of one thousand dollars was not borrowed by their said ancestor as aforesaid? and whether said charge of five dollars by way of premium for said bill of exchange is not a proper and just charge? Whether said money or any of it, and how much was expended in building said house whether said house was occupied by said Bigelow as a dwelling to the day of his death, and whether they or either of them and which of them have received the rents and profits thereof ever since or for any part of said time and how much of said time? And how much is the use of said house worth per year? Whether they or either of them and which of them have seen said mortgage, and when and where did they see it last and where is it now? How much and what personal property belonged to said Bigelow, at the time of his death? What lots or tracts of land have been conveyed by his heirs and to whom have they been conveyed?

And that said Metcalfe, Powell and Armstrong may answer as aforesaid whether they did not sign a bond of which the copy attached is a true copy; and when they saw it last, and what has become of it so far as they know or believe?

Attachment writ

And may the said George B. Metcalfe be decreed to pay said demand, with interest as aforesaid and in case he shall not, that your orator shall have an execution for the amount thereof to be levied, first, on the real estate of said Bigelow, of which he died seized and which has not been conveyed by his said heirs and in case said lands cannot be sold for enough to make said demand with interest and cost, the residue of said lands

and which have been sold since his death, be levied upon and sold, and if that shall prove insufficient, that the residue be made of the goods and chattels lands and tenements of said securities.

And may it please your Honor to grant unto your orator such other and further relief as the nature and circumstances of this case may require and to your Honor shall seem meet, equitable and just: And your orator as in duty bound will ever pray &c.

* Stricken out

May the said lost or suppressed mortgage be set up and foreclosed against said heirs and an account be taken of the amount due from said Bigelow's heirs to your orator on account of said loan, and said mortgaged property sold to pay the same in case the same be not paid within a certain time to be limited and fixed by your Honor: such sale to be made at such time and in such manner as your Honor shall direct.

Further explanatory of the facts above alleged your orator appends hereto copies of two letters from said Bigelow to said Aaron Brooks, which he prays may be taken and considered as a part of this bill. said copies marked D. & E. The original of which are on file in the Probate Justice of the Peace of said County; but your orator charges that the copies above referred to are true and genuine copy from letters written by said Bigelow: which original letters are in the handwriting of said Bigelow, and your orator alleges that said Metcalfe and Powell are acquainted with the handwriting of said Bigelow and have seen said originals. And your orator will ever pray as above he has prayed.

Jonathan R. Cooper.

A complainant by leave of the court first had and obtained makes the following allegation part of said bill

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to wit. Said Lewis Bigelow died seized of the following town lots in the town [now city] of Peoria to wit. Lots Four, Five and ten in Block thirty four - Lot Five in Block Fifty one - Lot Seven in Block Thirty five - Lots Two, Three, Five and Six, Nine, Ten, Eleven and Twelve in Block Forty nine - Lots Three, Four, Seven, Nine, Ten and Eleven in Block Thirty Eight - Lots Ten, Eleven and Twelve in Block Forty eight - Lots Eleven and Twelve in Block forty three - Lots Nine, Ten and Twelve in Block Thirty nine, all in that part of Peoria called Bigelow and Underhills Addition to Peoria, also much of Lot Ten in Block Thirty Four as lies in the original town plat of Peoria as laid out under the order of the County Commissioners of the county of Peoria, wherefore complainant prays that a decree be made subjecting said lots to sale to pay said judgment.

Jonathan R. Cooper.

[attached]

Exhibit A.

Know all men by these presents, that we William Frisby, George T. Metcalfe, James C. Armstrong and Elihu N. Powell all of the county of Peoria & State of Illinois are held and firmly bound unto the People of the State of Illinois in the penal sum of Ten thousand dollars, current money of the United States, which payment well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors, administrators & assigns, jointly, severally & firmly by these presents - witness our hands & seals this 27th day of October in the year of our Lord 1838 - The condition of the above obligation is such, that if the said William Frisby & George T. Metcalfe administrators of all and singular the goods and chattels, rights & credits of Lewis Bigelow deceased, do make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which shall come to the

hands, possession or knowledge of them the said Frisby & Metcalfe as such administrators, or to the hands of any person or persons for them, and the same so made do exhibit or cause to be exhibited in the court of Probate for the said county of Peoria agreably to law and such goods and chattels, rights and credits, as well & truly administer according to law, and all the rest of the goods and chattels, rights & credits which shall be found remaining upon the account of the said administrators the same being first examined & allowed by the court of probate shall deliver & pay unto such person or persons respectively as may be legally entitled thereto, and further do make a just & true account of all their actings and doings therein when thereunto required by the said court; and if it shall hereafter appear that any lost will & testament was made by the deceased and the same be proved in court & letters testamentary or of administration be obtained thereon and the said Frisby & Metcalfe do in such case on being required thereto render & deliver up the letters of administration granted to them as aforesaid, and shall in general do & perform all other acts which may at any time be required of them by law, then this obligation to be void, otherwise to remain in full force & virtue.

William Frisby (seal)
George T. Metcalfe (seal)
James C. Armstrong (seal)
E. N. Powell (seal)

Executed in my presence this 27th day of October A.D. 1838
G. B. Parker

Filed in my office this 27th of October A.D. 1838.
G. B. Parker P. J. P."

Exhibit B. "Probate Court, Regular Term Octr. 4th 1841.

Aaron Brooks Jr.
vs
Estate of Lewis Bigelow, decd.

This day came Aaron Brooks by his attys Ballance & Cooper

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filed a claim against the administrators of the estate of Lewis Bigelow deceased for the sum of One thousand dollars loaned the said Bigelow by the said Brooks in the month of June A.D. 1835 and for the sum of six hundred dollars as the interest due thereon up to this date and the said Brooks also admits that the sum of Three hundred dollars has been paid on the said claim, and thereupon William Frisby & George G. Metcalfe the administrators of said Bigelow's estate also appeared and by consent and agreement of the said Brooks and the said administrators judgment is rendered in favor of the said Brooks against the said Frisby & Metcalfe as administrators as aforesaid for the sum of Thirteen hundred dollars to be paid out of the goods and chattels of the said deceased in their hands to be administered. It is thereupon ordered by the court that the said claim be allowed against said estate and that the same be paid as a debt of the 4th class — Edward Dickinson P. J. P.
Reported to Oct. Term 1841"

Exhibit C. State of Illinois } The People of the State of Illinois,
Peoria County, } To all to whom these presents shall come Greeting:

Know Ye, that whereas Aaron Brooks Jr. of the county of Worcester, and State of Mass.tts died intestate, as it is said, on or about the 3rd day of May 1845 having at the time of his decease personal property in this state, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Jonathan R. Cooper of the county of Peoria and State of Illinois, administrator of all and singular the goods and chattels, rights and credits which were of the said Aaron Brooks Jr. at the time of his decease in this State,

with full power and authority to secure and collect the said property and debts wheresoever the same may be found in this State, and in general to do and perform all other acts which now are or hereafter may be required of by law.

Witness Wm H Fessenden Judge of probate in and for the said county of Peoria, at his office in Peoria, this 31 day of July A.D. 1845

Wm H Fessenden, Probate J.P.

Copy

Copy of letters attached to Bill

"Peoria April 4. 1835

Dear Sir, I shall probably want the money which you propose to loan to me by the first of June. As security I send a mortgage of nearly all my interest at this place, which is more ample than I first named. I wish however that you should feel perfectly secure, presuming that you will be willing to exchange the security for some other as circumstances may render it proper. My interest in the land consists of about twelve acres in a part, and an undivided half of about 18 acres in another part. Of the ferry down an undivided half, which is of itself ample security for the proposed loan.

Any alterations you may suggest in the mortgage shall be made. If it is satisfactory you can transmit it here to be recorded, or I can make a duplicate for that purpose. If it is recorded in six months it will be good and valid against subsequent conveyances, liens and incumbrances created by me.

If you wish for a note also, I am willing to give it. I am not yet determined whether I will buy a house or build one. It will depend on prices. I am in hopes that by waiting until June I shall be able to make a better bargain than I can now. If I should buy the house that I have in view you will probably be willing to take a mortgage of it as security for the price paid.

Yours sincerely Lewis Bigelow

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P. S. If you return the deed to be recorded I can then acknowledge it."

P. S. It would gratify me if you would be here on the first of June in proper person! If however you cannot come yourself, the money may be safely sent by mail"

Copy

Peoria June 3d 1835

Dear Sir. On yesterday I recd your favor of May 6th inclosing a draft on the branch of U. S. Bank at St. Louis for the sum of One thousand dollars payable to my order. As security for the repayment of the money to you I have already sent you a mortgage of property here until the matter shall be put into a different shape You may consider this letter as personal security collateral to the mortgage. I am to pay interest on the money at the rate of ten per cent

Not recollecting the precise date of the mortgage I found some difficulty in making a note to correspond with it. I had forgotten too whether any time for the payment of the money was named in the mortgage, I am willing and ready to make another mortgage like the one I sent you as has been proposed in order to save the necessity to send that back to be recorded and also to send a note for the money whenever you shall direct me specifically how you would have it. Let me know where the money shall be made payable and whatever other particulars you may think essential and I will make out the papers accordingly—

The security I have sent you I think is ample. The ferry is making at the rate of more than $2000 a year. The last month it made $189. Sometime ago I sent you a Charter granted by the Legislature for a bridge at this place. An Eastern capitalist who wishes to invest $40.000 could not

as better in my opinion, than to invest it in the bridge. It would certainly be better than the bank stock which has been eagerly sought after by eastern men. I have no doubt then in the course of ten years it would pay 25 per cent upon the amount invested. If you should know of any person who would like to embark in the enterprise I will endeavor to give him full satisfaction on the subject.

My children arrived here with Dr Harding about four days ago all in good health. They now occupy a part of Mr. Hamlin's house and are quite comfortably situated for a new country. I recently bought an unfinished house and as soon as I can get it finished which will be in a few weeks we shall all go into it. It is not such a one however as I had intended to construct. I shall probably sell it & build another. It was the best I could do for the present.

Yours truly, Lewis Bigelow"

And thereupon the clerk of said court issued writs of Summons out of said court under the seal thereof, which with the returns of the sheriffs thereto endorsed on each respectively are in the words and figures following, to wit:

Summons

The People of the State of Illinois, To the Sheriff of Peoria county, Greeting: We command you to summon Ellen Risby and Elihu N. Powell if they may be found in your county to appear before our Circuit Court, on the first day of the term thereof to be held at Peoria, within and for the said county of Peoria on the first Monday of March next, then and there in our said court to answer the matters and things contained in a certain bill of complaint exhibited against them and James C. Armstrong, Sarah Armstrong, Leander Harding, Elizabeth Harding, George T. Metcalfe & Caroline Metcalfe in our said court on the Chancery side thereof by Jonathan R. Cooper administrator of Aaron Brooks Jr. deceased, and make return of this writ with an endorsement of the time and manner of serving the same, on or

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before the first day of the term of the said court to be held as aforesaid. Witness Jacob Gale clerk of our said court, and the seal thereof, at Peoria, this thirteenth day of February in the year of our Lord one thousand eight hundred and forty seven - Jacob Gale, clerk -

(L.S.)

[Endorsed]

Served the within by leaving a correct copy with each of the within named Deffen, to wit, Elihu N. Powell & Ellen Frisby Feb 16th 1847 -

Wm Compher, sheriff

By J. E. Carter, Deputy -

The People of the State of Illinois, To the Sheriff of Peoria county, Greeting: We command you to summon James E. Armstrong, Sarah Armstrong, George T. Metcalfe and Caroline Metcalfe if they may be found in your county, to appear before our Circuit Court, on the first day of the term thereof, to be held at Peoria, within and for the said county of Peoria on the first Monday of March next, then and there in our said court to answer the matters and things contained in a certain Bill of complaint exhibited against them and Leander Harding, Elizabeth Harding, Ellen Frisby and Elihu N. Powell in our said court on the Chancery side thereof by Jonathan R. Cooper administrator of Aaron Brooks Jr. deceased - and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said court to be held as aforesaid. Witness Jacob Gale, clerk of our said court, and the seal thereof, at Peoria, this thirteenth day of February in the year of our Lord one thousand eight hundred and forty seven - Jacob Gale, clerk.

(L.S.)

[Endorsed]

Served the within summons by leaving a correct copy with each of the within named deffendants, to wit, George T. Metcalfe, Caroline Metcalfe, James E. Armstrong & Sarah Armstrong this 16th of Feb 1847 - Wm Compher sheriff

By J. E. Carter, Deputy -

The People of the State of Illinois, To the Sheriff of Whiteside County, Greeting: We command you to summon Leander Harding & Elizabeth Harding if they may be found in your county, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria on the first monday of March next, then and there in our said court, to answer the matters and things contained in a certain Bill of complaint exhibited against them and James C. Armstrong, Sarah Armstrong, George T. Metcalfe, Caroline Metcalfe, Ellen Frisby and Elihu N. Powell in our said court on the chancery side thereof by Jonathan R. Cooper, administrator of Aaron Brooks Jr. deceased — and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid. Witness Jacob Gale, clerk of our said court, and the seal thereof at Peoria, this thirteenth day of February in the year of our Lord one thousand eight hundred and forty seven. Jacob Gale, clerk.

L. S.

[Endorse]

Served the within summons on the 19th day of February AD 1847 by giving a true copy of the within summons to the within named Leander Harding & Elizabeth Harding.

J. W. M. Lemore, sheriff of Whiteside County Illinois

And afterwards at the October term of said court in the year of our Lord 1847 to wit, on the 23rd day of October AD 1847 the following proceedings were had in chancery in said cause, to wit.

Jonathan R. Cooper, administrator of Aaron Brooks Jr. deceased

Order of reference

vs

for discovery &c.

James C. Armstrong, Sarah Armstrong, Leander Harding, Elizabeth Harding, George T. Metcalfe, Caroline Metcalfe, Ellen Frisby, Elihu N. Powell,

This day came the complainant

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by Ballance and dismissed his Bill as to the defendant Elihu N. Powell, and on his motion leave is given him to amend his Bill herein — And on motion of complainant ordered that the defendants answer said Bill of complaint instantor, and the said defendants James C. Armstrong, Sarah Armstrong, Leander Harding, Elizabeth Harding, George G. Metcalfe, Caroline Metcalfe and Ellen Frisby having failed to answer said Bill and being now three times solemnly called came not but made default, on motion of said complainant ordered that said Bill be taken for confessed by said defendants, and it is farther ordered that this cause stand referred to William Mitchell master in chancery of this court, to take and state an account between the parties of the amount due the complainant, as administrator of the estate of Aaron Brooks Jr. deceased, from the estate of Lewis Bigelow deceased the ancestor of the defendants, also to enquire into and ascertain whether the lands in the said Bill set forth or any and what of them were owned by the said Lewis Bigelow at the time of his decease and have descended to said defendants or any or either of them, and report with all convenient speed to this court."

And afterwards at the May Term of said court A.D. 1848 on the ninth day of June A.D. 1848 there was filed in said cause a Report of William Mitchell, Master in Chancery, which is in the words and figures following, to wit,

Master's Report

Jonathan R. Cooper
admin^r of A. Brooks dec^d, } In the Circuit Court of Peoria county
vs
Ellen Frisby et al. } In Chancery —

To the Chancellor of said Court

In pursuance of an order of this Court made in the above cause & bearing date by which it was referred to me to compute and take an account of the sum of money

which may appear to be due & owing from the defendants to the complainant and report the same to this court with all convenient speed. — I do respectfully certify and report, that I have computed and ascertained the amount due to the complainant in this cause from the estate of Lewis Bigelow, deceased, the ancestor of the defendants and that the amount so due up to and including the date of this report is the sum of eighteen hundred and eight dollars & twenty & one third cents and that the schedule hereto annexed marked A and making a part of this my report contains a statement and account of the principal and interest moneys due the complainant as aforesaid, the interest being computed agreeably to the direction of the complainant's solicitor, the rate of interest being regulated by the proof before me -- And I do further certify & report that the said Lewis Bigelow had at the time of his decease some interest in the fractional Southwest quarter of section Nine in Township Eight North of the Base, ~~line~~ of Range Eight East of the 4th principal meridian, on which the addition to the town of Peoria known and described as Bigelow & Underhill's addition is laid off as appears from the records in the recorders office of said county, but the precise interest I have not been able to ascertain. All of which is respectfully submitted —

Dated this 9th June ~~AD~~ 1848 — William Mitchell

Master in Chancery, Peoria County, Ills.

Schedule marke A. referred to in the preceding report.

The sum of one thousand dollars acknowledged to have been received by Lewis Bigelow by letter dated June 3r 1835

principal $1000. 00

Interest on the same from 6th May 1835 to the 6th day of June AD. 1848, being 13 years & 1 month @10% is 1308. 33⅓

2308. 33⅓

Amount paid as admitted by complainants' solicitor

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$300.00 on the 4th October AD. 1841
to — — — $300.00
Interest from 4th October 1841 to
June 6th 1848 — — @ 10% — 200.13
6 years 8 months & 2 days — 500.13
Amount due complainant $1808.20⅓
dated this 6th June AD 1848

William Mitchell, Master in Chancery P.C."

And thereupon the following decree in chancery was made in said cause by said court, to wit.

Friday, June 9th AD. 1848

Decree

Jonathan R. Cooper, administrator
of Aaron Brooks Jr. deceased
vs for discovery &c.
Ellen Bisby, James C. Armstrong
Sarah Armstrong, Leander Harding
Elizabeth Harding, George Y. Metcalfe
& Caroline Metcalfe

This day this cause came on again to be heard upon the Bill and exhibits on file & the Report of the Master herein, which said report is approved by the court, and it is ordered that the same do stand ratified & confirmed & that it be filed and made of record in this cause, and it appearing to the court that the said defendants had been duly summoned more than ten days before this term of this court and being three times solemnly called came not but made default, It is ordered, adjudged and decreed that the said Bill and the matters and things therein contained be taken for confessed, and it further appearing to the court, that there is justly due and unpaid from the estate of the said Lewis Bigelow decd. to the said complainant the sum of Eighteen hundred and eight dollars and twenty & one third cents = And it further appearing to the

court, that the said defendants as heirs of the said Bigelow decd have some interest descended to them from the said deceased in the following described lots of land in Bigelow & Underhill's Addition to the Town now City of Peoria, to wit, Lots Four, Five & Ten in Block Thirty four, (34) Lot Five (5) in Block Fifty one (51) Lot seven (7) in Block Thirty five (35) Lots Two (2) Three (3) Nine, Ten, Eleven & Twelve in Block Forty nine (49), Lots Three, Four, Seven, Nine, Ten & Eleven in Block Thirty eight - Lots Ten, Eleven & Twelve in Block Forty eight - Lots Eleven & Twelve in Block Forty three - Lots Nine, Ten & Twelve in Block Thirty nine, being the same lots in said Bill of complaint mentioned = And the court being fully advised in the premises, it is ordered, adjudged and decreed by the said court, that the said defendants pay to the said complainant the said sum of $1808.20/3 within twenty days from this date and in default thereof, that the interest, right & title of the said defendants derived to them or either of them from, by or through the said Lewis Bigelow, deceased or so much thereof as may be necessary, be sold at public auction to pay and satisfy the said sum so due as aforesaid with interest at at 6 per cent. per annum from this date, together with costs of this suit, after giving 20 days public notice of said sale by advertisement in some newspaper printed in the City of Peoria, And that William Mitchell be a commissioner to sell the interest of said Defts so derived as aforesaid, in and to said lots and that upon such sale he make, execute and deliver to the purchaser or purchasers a certificate or certificates thereof - It is further ordered that said commissioner apply the proceeds of said sale to the satisfaction of said debt, interest & costs, and that he report his proceedings herein to the next term of this court."

State of Illinois
Peoria County ss: I Jacob Gale, clerk of the Circuit Court within and for the county of Peoria in the State of Illinois, do hereby certify that the foregoing is a full, true and complete transcript of the Records and proceedings in said court in a certain cause therein on the chancery side of said court, wherein Jonathan R. Cooper, administrator of Aaron Brooks Jr. deceased is complainant and Ellen Bisby, James C. Armstrong, Sarah Armstrong, Leander Harding, Elizabeth Harding, George G. Metcalfe and Caroline Metcalfe are defendants, as the remains of Record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at my office at Peoria this twentieth day of July in the year of our Lord one thousand eight hundred and forty eight.

Jacob Gale, clerk

Clerk's fees: for transcript, 84 fol. - $10.50
certificate and seal to do. .50 } $11.00

James C. Armstrong
Sarah Armstrong
Ellen Finly
George T. Metcalfe
Caroline L. Metcalfe et al
v
Jonathan R. Corpe
Adm.r of Aaron Brooks

Supreme Court of
the State of Illinois

Dec. Term A.D. 1848

Error to Peoria

And now comes the said plaintiffs in Error and say that there is Manifest Error in the Record and proceedings of the Court below and in the Decree rendered therein in this Suit

1st The said Circuit Court erred in rendering any decree in favor of the respondent in Error, and against the Complainants in Error - for reasons

1st The Bill is wanting in equity & should have been dismissed -

2nd The Bill shows that there was personal property which should first have been appropriated, before subjecting the lands of the heirs of Aaron Bigelow dec.d to the payment of the alleged debt -

3 The Bill does not show that the personal property of Aaron Bigelow dec.d was insufficient to pay said debt -

4. The Bill does not show that there was any sufficient effort to collect the said debt from the Administrators of Bigelow, nor any sufficient excuse therefor

2nd Said Court had from the allegations in said Bill no Jurisdiction of the cause and to grant the prayer of said Bill, nor to make such a decree

3d The Court below erred in making any decree against the real estate of the plaintiffs in error as heirs at Law of said Isaac Bigelow deceased without having an account taken of the personal Property which was of said Isaac Bigelow at the time of his decease

3 The said Bill is not sustained by the proof of the cause—

4 The decree does not conform to the prayer of said Bill—

For these and other Errors apparent upon the Record of the proceedings & decree aforesaid, said Decree should be wholly reversed, set aside and wholly for naught esteemed—

Thomas Ford
H. O. Merriman
for plffs in Error

Filed July 31st 1848.
Alex. Clerk.

Thomas C. Armstrong
Ad
v
Johnson M. Cooper
Admr of Isaac Bigelow

Having inspected the aforegoing Record, the same is adjudged to be made a Supersedeas, upon the Complainant in Error Thomas C. Armstrong entering with a Bond in the sum of $500 with Matthew Brewer or John H. Rankin as Security, conditioned according to Law.

Hugh O'Neale
Judge of the 6th Judicial Circuit

Let the Clerk of this Court be made a supersedeas according to the foregoing order

J. D. Caton
Just. Sup. Court

State of Illinois,
La Salle County, } SCT.

The People of the State of Illinois, to George T. Metcalf and E. A. Powell Greeting.

You are hereby commanded personally to be and appear, instanter, before the ~~circuit~~ Supreme court of said ~~county~~ State, now in session at the court house in Ottawa in said County, to testify and the truth to speak in behalf of James C. Armstrong et als. in a certain cause now pending and undetermined in said court, wherein said Armstrong & others are plaintiffs in Error, and Jonathan N. Cooper adv. ac. is defendant in Error, and this you will in no wise omit.

Witness, ~~PHILO HINDLEY~~, Hon. Samuel H. Treat Chief Justice ~~Clerk~~ of said court, and the seal of said court, at Ottawa, this 12th day of July A. D. 1850.

L. Leland Clerk. Sup. Court.

[11868-12]

Acknowledge service
of the within subpoena
this 15th July 1850.

Geo. T. McCoulf

Peoria, 12 July

B. C. Cook

Send Subpoena for Metcalf & Powell, will come with them

A. K. Purple

[11868-13]

Armstrong et. vs Cooper
Praecipe

Filed July 12. 1881.
Leland Clk.

6th Becauso it is not Shewn by Said Bill that the Complainants Claim was ever filed before the Probate Justice or ever presented to the Administrators within the time prescribed by law or that any new assets belonging to Said Estate have ever been discovered.

Sept 15. 1849

Filed June 18. 1849.
S. Leland Clk.

and the said Deft. in error, says, that in the record & proceedings aforesaid, & in the rendition of the decree aforesaid, there is no such error as the said pltffs. in Error, have above alleged — wherefore the said Deft. prays that the said decree be in all things affirmed &c —

By C. Ballance for Plf —

By O. Peters for curiety —

Filed June 16, 1849.
L. Leland Clk.

James C. Armstrong & others
vs
Jonathan K. Cooper Adm. &c

In Supreme Court.
Term Tim. AD 1850.

Allen the said Defendants in Error come and say that the said George T. Metcalfe had no power or authority to make the Contract or agreement in the said Plea mentioned in manner and form as is therein stated & set forth and of this the said Defendants in Error Pile themselves upon the Country &c

J. W. E. Temple. Deft's Atty

And deft. in error doth the like
C. Ballonne

And the said Defendants by leave of the Court for further replication say that the said George T. Metcalfe did not make the said Contract in the said plea mentioned in manner and form as is therein stated and set forth and of this they put themselves upon the Country &c

J. W. E. Temple
Deft's Atty

And deft. doth the like
C. Ballonne

[11868-14]

1

Armstrong vs Cooper
Repl. ~~Reas~~. & joinder

Filed July 6. 1850.
L. Leland Clk.

Jonathan M. Cooper
Adm. &c.
vs
James C. Armstrong
Defendant

In Supreme Court.

And the said Plaintiff in Error comes and says that the Plea of the said Defendant filed herein is insufficient in law to bar or preclude the said Plaintiff in Error from prosecuting his said Writ of Error and from assigning and maintaining the Errors by him in the said Record assigned and that he is not bound in law to answer the same and this the said Plaintiff is ready to verify wherefore he prays Judgment &c.

J. H. Fuller
Atty for Plff in Error

And the said Plaintiff in Error comes and shews to the Court here the following special Cause of Demurrer to said Plea

1st. It is not shown that McCalla as Attorney in this suit made any Contract or agreement as stated in the Plea

2nd. The said Plea contradicts the Record by attempting to shew that the Decree was by Consent when in fact it was by default No Counsellor or atty appearing for the Defendants

[1868-15]

3. It is immaterial whether the said agreement mentioned in said Plea was made or not. The matters stricken out would not have conferred jurisdiction upon the court.

4th If the Court would have had juris-diction on account of the matter stricken out. Consent of the Party or Attorney would not give Jurisdiction after the same had been so stricken out.

5. No agreement of the kind could in any manner bind the heirs of Bigelow An agreement of an Administrator or Attorney could not create a lien upon the Real Estate of Bigelow – It would be void as against other creditors – and No Court in Chancery could even by con-sent of parties direct a sale of Real Estate of a decedent until it is shown that all the personal Estate of the deceased had been exhausted

6. The statements in the Plea contained do not amount to a release of Errors –

7. The said Plea is otherwise informal and insufficient

J. M. Pugsley
Atty for Plff in Error –

[11868-16]

1

Anthony Potter
vs
Cooper et al.

Demurrer to Plea

Filed June 22nd 1850
L. Leland Clk.

Jonathan K Cooper
adm. &c
vs
James C Armstrong
Ellen Finley et al

In the Supreme Court
June Term AD 1850

And the said defendant saith that the said plea of him the said Jonathan K Cooper to the said assignment of errors and the matters in said plea contained are sufficient in law to bar them the said plaintiffs from maintaining said assignment of errors which said plea and the matters and things therein contained he the said Cooper is ready to verify and prove ~~has~~ as the court here shall direct and award and because the said plaintiffs have not answered the said plea nor in any manner denied the same he the said Cooper prays judgement as before he has prayed and his damages &c.

C Ballance

[11868-17]

Jonathan K Cooper
adm. &c
ad
Jane C Armstrong
et al

Filed June 22. 1850.
S. Leland Clk.

Supreme Court of Illinois
June Term A.D. 1850

Jonathan K. Cooper adm. of
Aaron Brooks dec'd
vs
Ellen Finsley et al
} Error to Peoria

Said defendant, Jonathan K. Cooper comes and defends, &c. and says that said defendants ought not to have and maintain their said suit in error, because he says that said George S. Metcalfe, by reason of his marriage to said ~~Ellen~~ Caroline Bigelow, was one of the heirs at law of said Lewis Bigelow, and was also the administrator of said Bigelow, duly qualified and commissioned, and was furthermore the attorney and counsellor at law of said heirs duly authorized to settle the debts and affairs of said estate, as he might think proper, and that one Elihu K. Powell, was surety with said Metcalfe, on his administration bond, and that after the bill herein was filed, said Metcalfe being then authorized, as aforesaid, made a proposition to Charles Ballance (who then and there had ample authority to act in the premises, for said defendant,) that if he would amend said bill, so as to release said Powell, and take a decree for the sum in said decree mentioned, and decreed, instead of a larger amount claimed by said defendant, and would strike out of said bill so much as attempts to set up said lost or supposed mortgage, and would take a decree against certain specified lots of ground, which said Metcalfe said had not been disposed of by said heirs, or said administrator, instead of a decree against the whole covered by said

[11868-18]

mortgage, he would make no further resistence, but permit said decree to be taken, and said lots sold to satisfy said decree; whereupon said defendant, by his said attorney, did then and there accept said proposition; and did then and there under the supervision, and with the consent of said McKelfe, make said amendments to said bill, and release said mortgage, and pay and take a decree for the amount aforesaid, against the lots aforesaid, instead of setting up and foreclosing said mortgage aforesaid. All of which said defendant is ready to verify, whereby he says said defendant is barred from asserting said error in this honorable court,

C. Wallance for deft. in error.

Jonathan W. Cooper
Admr &c.
vs
Ellen Cooper
Ellen Trustee et al
Error

Filed June 22-1858.
R. Leland Clk.

J. K. Cooper comm. &c
vs
J. C. Armstrong et al

In the case of Green vs Potcher 13 Wen. 296 establishes the doctrine that "Where a judgement has been entered according to the written agreement of the parties without fraud the court will permit the parties to enforce it and will not interfere to set it aside or examine its merits"

In Graham's practice 775 it is said "If a party or his attorney enter into an agreement not to bring a writ of error he is afterwards precluded from bringing, though there be manifest error in the record"

In the case of Wright's Ex. vs. Nutt 1 Dunn. & East 388 an agreement had been made by testators' attorney not to bring error: Error was nevertheless brought after testators death and rule on the attorney to shew cause why he should not be ordered to non pros the writ and rule made absolute

In Manchester vs. McKee 14 Gil. 518 The court will not allow him who is not injured by a decree to take object to it See also Schecker vs Risley 3 Scam. 486

In McLaughlin vs. Walsh 3 Scam. the party cannot object to the overruling of a motion for a new trial without incorporating all the evidence in a bill of exceptions

"It is a well settled principle that a party can never avail himself of an error to reverse a judgement which does him no wrong" Thorn vs. Watson 5 Gil. 30

"We consider the law upon this point as settled by this court that a defendant in a civil or criminal prosecution cannot assign for error a decision, order or judgement

[1818-19]

of a court which is manifestly in his favor McGuire vs the people 3 Gil. 81 and authorities there cited

Nothing is to be presumed against a judgment, but the inference is that it is right until the contrary appears and it will not be disturbed unless for error manifestly apparent. Graham vs Dixon 3 Scam. 117

Heirs only receive and hold the land of their ancestor subject to his debts They cannot alien nor have they any rights adverse to the creditors 16 Peters 62 & 63 — The case Watkins vs Holman et al

That suits may be brought against adm. heirs & all at once see Rev. laws 259

Where creditor has pursued property in a court of equity he is entitled to a preference as a reward of his vigilance 3 Scam. 206 No objection to appoint a commissioner to sell instead of the administrator Nor has defendant any right to raise objections as to the amount of title sold

The jurisdiction of the chancellor affirmed in such a case as this in Moore vs Waller 1 A K Marshall 189 side paging — The remedy cumulative

"No authorities need be cited to shew that a suit in chancery is an appropriate remedy by distributee against the administrator and her securities 2 A. K. Marshall 188

Same doctrine in Graves vs Downey 3 Monroe 354

Read Carow vs Mowatt 2 ~~Hoscards~~ Edwards Chancery rep. from near bottom of page 63 for three or four pages

A creditor may file his bill for payment of his own debt and seek a discovery of assets for this purpose only

Cooper adm &c
vs.
Armstrong et al

If he does and the bill is sustained and an account is decreed to be taken the court will upon the footing of such an account proceed to make a final decree in favor of the creditor without sending him back to law for the recovery of his debt 2 Story's Equity 515 at bottom

1st This suit is sustainable on common-law principles

2 It is sustainable on account of the loss of the bond

3 It is sustainable under our statute

4 Decree does no injury to defendants

Cooper and &c

vs

Armstrong &c

— — —

Ballantine's brief

State of Illinois - Set. -
Supreme Court - 3d Grand Division -

The People of the State of Illinois, to the Clerk of the Circuit Court of Peoria County - Greeting:

Because in the record & proceedings, & also in the condition of the Decree in a suit which was lately in the Circuit Court of Peoria County, before the judge thereof, between Jonathan K. Cooper administrator of Aaron Brooks Jr. deceased, Complainant, and Ellen Finsby, James C. Armstrong, Sarah Armstrong, Leander Harding, Elizabeth Harding, George T. Metcalf & Caroline Metcalf defendants, in Chancery, manifest error hath intervened, as it is said, to the great injury of the said defendants as by their Complaint we are informed: and we being willing that the said error, if any there be, should in due manner be corrected, and full & speedy justice done to the parties aforesaid, in this behalf; do command you, that you send to the Justices of our Supreme Court, at Ottawa, with all convenient dispatch, a transcript of the record & proceedings of the suit aforesaid, with all things concerning the same, distinctly & openly, under the seal of your Court, together with this writ; so that the said Justices may have them at the place of holding the said Supreme Court, in Ottawa, on the first Monday of February next; that the records & proceedings aforesaid being inspected, they may cause to be done, thereupon, for correcting that error, what, of right, & according to law, and the rules of said Court, ought to be done.

Witness, the Hon. William Wilson, Chief Justice of our said Supreme Court at Ottawa this 31st day of July 1848,

Leland Clerk Circuit Court LaSalle County & ex officio Clerk of the Supreme Court -

James C. Armstrong et als.
vs
Jonathan K. Cooper
adm. &c.

Writ of Error

This writ of Error is made a Supersedeas & is to be obeyed accordingly.
Ukeland Clerk.

Filed July 31st 1848.
Ukeland Clk.

Know all men by these presents that we James C Armstrong and Matthew Griswold of Peoria County Illinois, are held and firmly bound unto Jonathan K Cooper administrator of the estate of Aaron Brooks deceased in the penal sum of five hundred dollars lawful money of the United States to which payment well and truly to be made We bind ourselves our heirs executors and administrators jointly and severally, firmly by these presents sealed with our seals Dated this day of July A D 1848

The condition of this obligation is such that whereas at the May term of the Circuit Court of Peoria County for the year A D 1848 the said Court rendered a decree in Chancery in favor of said Jonathan K Cooper administrator of the estate of Aaron Brooks deceased for the sum of Eighteen hundred and Eight dollars and twenty & one third cents and costs of suit in a proceeding in which the said James C Armstrong and Sarah his Wife, George T. Metcalf and Caroline his Wife Ellen Fresby Leander Harding and Elizabeth Harding his Wife and others were defendants and said Cooper administrator as aforesaid was complainant, the said sum of Eighteen hundred and Eight dollars twenty and one third cents and costs having been decreed by said court to be made by a sale of certain lands and tenements situate in said County of Peoria, belonging to the estate of Lewis Beglow late of said County deceased they the said Ellen Fresby, Caroline Metcalf, Sarah Armstrong and Elizabeth Harding being the heirs at law of said Beglow And whereas the said defendants have sued out a writ of Error from the Supreme Court of the State of Illinois for the third Grand division at Ottawa, to the Circuit Court of Peoria County aforesaid for the purpose of reversing the said decree, which said writ is to be made a supersedeas, upon condition that the said James C Armstrong and Matthew Griswold do enter into bond in the sum of five hundred dollars conditioned as the law directs Now therefore if the said defendants in the said Chancery suit in said Circuit Court shall well and truly prosecute their said writ of error, and if the said James C Armstrong shall pay whatever judgment

may be rendered against him, and all costs interest and damages in case the said decree shall be affirmed in the said Supreme Court then the above obligation is to be void otherwise the same is to be and remain in full force and vertue

Witness

Jas. C. Anthony (Seal)

Macpherson (Seal)

James C. Armstrong
et als.
vs
Jonathan K. Cooper adm.r &c

Bond

Filed July 31st 1848.
Leland Clk.

Jonathan R Cooper
vs
Ellen Finley et al

Supreme Court
June Term 1850

Said defendant moves the court to dismiss the writ of error and supersedeas in this case for the reason

1st There is no sufficient bond in the cause to sustain the supersedeas

2nd The bond was not filed in the proper court

3rd Appellants have no right to come here and assign the errors they have assigned after the an amicable decree had been taken upon a bill amended at their instance so as to exhibit the errors complained of

C Ballance

L. M. Cooper
vs
Motion
Ellen Finsley et al

Filed June 18. 1850.
S. Melandeth

1111½

Peoria 10 May 1849

Clerk Supreme Court
Ottawa

Sir

Please inform me by return mail what are the errors assigned in the case of L. H. Cooper vs. Bigelow's heirs in Chancery Also what judge ordered the supersedeas and the date of the order and oblige

Your obt. servt.
C Ballance

Ellen Finsby et al.
vs
Jona. M. Cooper adm'r &c.

Praecipe for Deft.

Filed May 18. 1849
L. Leland Clerk.

Jonathan K Cooper adm
of Aaron Brooks dec.
vs
Ellen Frisby James
& Armstrong et al

Supreme Court
June Term AD 1850

I Charles Ballance do solemnly swear that I am the solicitor who wrote the bill in the above Chancery suit That I had previously instituted an action at law against George T. Metcalfe administrator of said Bigelow and his sureties on his administration bond which suit failed on account of the administration bond on which said suit was brought having been purloined or lost from said files. Said Metcalfe was not only liable as administrator but also as heir at law to said Bigelow and also an attorney and counsellor at law and solicitor in Chancery and during the lifetime of William Frisby who was also an administrator and one of said heirs and an attorney and counsellor at law and solicitor in chancery he and said Frisby were partners and transacted the legal business of said heirs After said Frisby's death said Metcalfe continued to act as their attorney in numerous law suits that came under my notice and although said Armstrong and wife and said Ellen Frisby lived in sight of the residence of said Metcalfe and said Ellen Frisby a considerable portion of the time in the family of said Metcalfe they never objected to his having the entire control of their legal matters so far as I know or believe said Armstrong was often in court where said Metcalfe was conducting said legal business and so far from objecting always seemed to acquiesce

[11868-26]

in said Metcalfe's management thereof

After said suit at law was dismissed and before the present suit in chancery was commenced said Metcalfe had an interview with me on the subject in which he said in substance that he had no objections to the estate of said Bigelow being made responsible for said debt but he had objections to a judgement being obtained on said bond for besides E. N. Powell Esq. being in that event made responsible which he did not wish it would operate unequally on said Bigelow's heirs but if I would file a bill in chancery he would not only make no resistance but would give a list of real estate which had belonged to said Bigelow that was still undisposed of and subject to said demand Partly on account of these assurances and partly because I believed under the circumstances a bill in equity was the best if not the only mode of relief ÷

Afterwards to wit at the June term of the circuit court of said Peoria county said Metcalfe said as the bill stood he would feel bound to resist it but if I would strike out such parts as are marked on the margin of said record "stricken out and would make a deduction of about four hundred dollars from the sum I claimed he would give me a list of real estate undisposed of and liable to the debt and permit me to take a decree against said real estate for the sum that would be left after making said deduction Whereupon I acquiesced in said proposition and said amount was fixed upon as it

I drew and filed the bill in this case as it stands before the amendments herein after mentioned

now stands in said bill with the consent and under the eye of said Metcalfe in open court and the said portions of said bill marked stricken and the portion added to it on the ninth of June was in like manner done under the eye and consent of said Metcalfe in open ~~court~~ court and said portions were stricken out and said sum reduced to the ~~sum~~ in said decree made and said Powell was released from the effects of said decree as the consideration for getting the decree then and being no longer delayed in collecting said sum of money. The whole matter of said decree was adjusted between said Metcalfe and myself the report of said master being a mere matter of form. The reason why he states that he has not been able to learn the precise interest of said Bigelow in said premises was as I suppose because there were conflicting titles to said real estate said Bigelow however held under a patent from the United States and I would be willing to buy his title for this debt and risk all other claimants

When this cause was brought by writ of error to this court I intended to be here and attend to it and if possible have it dismissed but I was engaged in several important land suits in the Circuit court of the United States at Springfield in some of which I was not only attorney but personally interest and so many facts and questions of law were involved in them that I did not think it safe to trust them entirely in the hands of one less acquainted with them than myself. Before I went to said District court I wrote to the clerk of this court in case I could not get through there in

with the

[11 8 8 0 2]

time to be here in time for my business at the opening of the court to inform this court of the cause of my absence. I did not get through with my business in United States court aforesaid until the twenty third day of June 1849 The next day I came to Peoria and would have come here immediately and made a motion to dismiss this writ of error but the state of my health made it impudent for me to come I had symptoms of cholera and took medicine and either the medicine or disease of both made me quite sick and before I was well enough to deem it safe to come to this court it had adjourned The joinder in error entered into by Mr. Peters was done without any authority but to do what he supposed a kindness to an absent friend and while I appreciate his motive I disavow the act

I further state that said James C. Armstrong has for years been notoriously insolvent and has gone to California and I submit to this Honorable court if the bond in this case is not altogether too small Certainly if the property which about to be sold is released it is and whether said bond is conditioned according to law and whether it was filed in the proper court

C Ballance

Subscd. & sworn to before me
June 18. 1850. L. Leland Clk.

A. H. Cooper
atty & Affidavit
Ellen Tracy Mac

Filed June 18. 1850.
L. Leland Clk.

James C. Armstrong adm'r
vs
Jonathan M Cooper adm'r

Abstract

In 1835. Lewis Bigelow borrowed of Aron Brooks $1000.

He - Bigelow died in Oct 1838 leaving wife who with the Securities on the Administrators Bond and the Administrators are the appellants. Frisby & Mitcalfe were appointed Administrators. Filed their Bond with Armstrong & Powell as Securities Oct 27. 1838. Bigelow had personal estate amount unknown. Administrators disposed of it as they thought proper. filed no inventory appraisement and sale bill - did not account with Probate Justice or Pay any debts against Bigelows Estate
Frisby died Augt 16. 1842.

Frisby & Mitcalfe offered to pay if Brooks would deduct $300.00. to which he agreed. But they did not paid.

Claim never presented to the probate Justice for allowance or settlement. agreement to Pay by Administrators made 4th Oct 1841

Brooks brought a suit on the Administrators Bond in Peoria Circuit. But the Bond was lost and Plaintiff took a non suit. because he could not prove the bond.

Brooks died in May 1845 and Cooper was appointed his administrator 31. July 1846

[1868-28]

Bigelow died seized of Real Estate. large amount, owned much more than enough to pay all his debts. Some had been conveyed away by his sons, but they still hold enough to pay off Brooks debt.

Bigelow died seized of certain town lots describing them.

Prayer for General relief and that the lots may be sold to pay this debt.

Oct. 23. 1847. Bill dismissed as to Powell & Tolen for confessed and to the other defendants

Referred to Mattlin to state an account & whether Bigelow owned the lots mentioned in this bill.

Report of Mattlin 9th June 1848 that there was due $1808.21 to Complt and that Bigelow had some interest in the land or lots but that he could not ascertain what it was.

June 9th 1848.

Decree for sale of Bigelow's interest in the lots &c

74

[1868-29]

1

Armstrong vs.

Cooper admr. &c.

Abstract

Filed June 15. 1850.

L. Leland Clk.

James C Armstrong & others
vs
Jonathan K Cooper Admr

Abstract,

In 1835 Lucie Bigelow borrowed of Aaron Brooks $1000.

Mr Bigelow died Oct 1838 leaving heirs who with the securities on the Administrators Bond are the appellants. Frisby & Mcalf were appointed administrators; Filed their Bond with Armstrong & Powell as securities Oct 27. 1838. Bigelow had personal estate amount unknown, Administrators disposed of it as they thought proper, filed no inventory appraisement and sale bill, did not ~~ed~~ account with Probate Justice or Pay any debt against Bigelows estate.

Frisby died August 16 1842, Frisby & Mcalf offered to pay if Brooks would deduct $300,00 to which he agreed, But they did not paid, Claim ~~was~~ never presented to the probate Justice for allowance or settlement, Agreement to pay ~~made~~ by administrators made 4th Oct 1841, Brooks brought suit on the Administrators Bond in Peoria Circuit But the Bond was lost and Plaintiff took a non suit because he could not prove the Bond,

Brooks died in May 1845 and Cooper was appointed his administrator 31, July 1846, Bigelow died seized of Real Estate large amount, Owned much more than enough to pay all his debts, Some has been conveyed away by his heirs, but they still hold enough to pay off Brooks debt,

[11868-30]

Bigelow did sign of certain town lots describing them. Prayer for general relief and that the lots may be sold to pay this debt.

Oct 23, 1847. Bill dismissed as to Pocock & Taken for confessed as to the other defendants.

Referred to Master to state an account & whether Bigelow owned the lots mentioned in the bill.

Report of Master 9th June 1848 that there was due $1868.21. to Compt. and that Bigelow has some interest in the land or lots but that he could not ascertain what it was.

June 9th 1848

Decree for sale of Bigelows interest in the lots &c.

1

Armstrong et als.
vs
Cooper adm. &c.

Abstract

Filed June 15. 1850.
V. Leland Clk.

Armstrong & others
vs
Cooper Ad.r

Points

1 The Court of Chancery have no Jurisdiction

2 The Probate Court had original & exclusive Jurisdiction in the settlement of Estates.
R. S. 562. Sec. 123. 124. 126 – 139
" " 426.

3rd The claim should have been presented to the Administrators, or to the Probate Court and allowed thereon. The Administrators were not bound to pay nor could they legally do so, until this was done

4th The Court Erred in making a decree that particular lands or lots should be sold for the payment of a particular debt or claim

5th It is not shown by the bill that the personal Estate of Bigelow has been exhausted or that the administrators have not in their hands effects or moneys sufficient to satisfy this claim

[1868-32]

6

The administrators have not been called upon (as they may be, and must be) before any real Estate can be sold) to settle their accounts with the Probate court
R. J. 562.

7 The Claim is barred by the Statute of Limitations, not having been presented within 2 years &c. 5 Gill 26.

May be taken advantage of on Demur
4 Wash. C.C.R. 638
Witness Pleas 213
1 Burn. 418
19 Pickey 182.
3 Brown 646
3 Atkins 395

8. Decree in this case not sought on the ground of newly discovered Effects

9. No Ground for interference of a court of Equity.

10. Decree improper being for the sale of an interest in specific property without shewing what that interest is

[11868-33]

11. Heirs of Bigelow can not be compelled to pay this claim out of Real Estate descended to them until it is shown that the personal Estate which came to the hands of Administrators has been exhausted.

Amendment

Bigelow
vs
Pratt

James C. Armstrong & others
vs
Jonathan R. Cooper adm. } Abstract.

In 1835 - Lewis Bigelow borrowed of Aaron Brooks $1000.

He, Bigelow, died in Oct. 1838 leaving Lewis who with the securities on the administrators Bond & the administrators are the appellants -

Frisby & Ellestalf were appointed administrators. Filed their Bond with Armstrong & Powell as securities Oct. 27. 1838. Bigelow had personal estate, amount unknown. Administrators disposed of it as they thought proper - filed no inventory, appraisement & sale bill - did not account with Probate Justice or pay any debts against Bigelows estate. Frisby died Augt. 16. 1842.

Frisby & Ellestalf offered to pay, if Brooks would deduct $300.00 to which he agreed, but they did not pay.

Claim never presented to the Probate Justice for allowance or settlement.

Agreement to pay by administrators made 4 Oct. 1841.

Brooks brought a suit on the administrators bond in Peoria Circuit - but the Bond was lost & plaintiff took a non-suit, because he could not prove the bond.

Brooks died in May 1845 and Cooper was appointed his administrator 31st July 1846.

[11848-34]

Bigelow died seized of Real Estate - large amount - owned much more than enough to pay all his debts - Some has been conveyed away by his heirs, but they still hold enough to pay off Brooks' debt.

Bigelow died seized of certain Town Lots describing them.

Prayer for general relief and that the Lots may be sold to pay this debt.

Oct. 23. 1847. Bill dismissed as to Powell & taken for confessed as to the other defendants.

Referred to Master to state an account & whether Bigelow owned the Lots mentioned in the bill —

Report of Master 9th June 1848, that there was due $1808.21 to Complt. & that Bigelow had some interest in the land & Lots but that he could not ascertain what it was.

June 9th 1848 - Decree for sale of Bigelows interest in the lots &c. —

[1186-35]

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Armstrong et al.
vs
Cooper admr. &c.

Abstract

Filed June 18th 1851.
L. Leland Clk.