


No. 3592


Supreme Court of Illinois

Sanderson Lyon et al

vs.

W^m.Kain

(379)  7

State of Illinois
McDonough County.  1st.

Pleas before the Honorable
Chauncey S. Higbee Judge of the
fifth judicial Circuit of the
State of Illinois, at a Circuit
Court in and for said County begun
and held at the Court House in
Macomb, on the first Monday in the
Month of September in the year
of our Lord, one thousand eight
hundred and Sixty one. (it being
the second day of said month)

Present the Honorables

Chauncey S. Higbee Judge
Thomas E. Morgan States Attorney
Silas J. Kopper. Sheriff
John C. Cummings clerk.

'Caption'

William Kain

vs.

Sanderson Lyon &
John W. Lyon

 Ejectment


Plaintiff

Defendants.

Be it remembered that on the day of the date aforesaid
to wit on the second day of September A.D. 1861.

2 /
a declaration and notice of Ejectment was duly
filed in the foregoing entitled cause. which said
notice and declaration is in words and figures following to wit

"Declaration & Notice"

State of Illinois
McDonough County.  Circuit Court of McDonough
County Illinois. of the September A.D. 1861.

William Hain
by Bailey & Van Vleck his Attorneys complains of Sanderson
Lyon and John W Lyon defendants in a plea of Trespass and
Ejectment, for that whereas the said Plaintiff on the 2^d day
of August A.D. one thousand eight hundred and Sixty one
was possessed of a certain tract or parcel of Land with the
appurtenances, situate in the County of McDonough and
State of Illinois, and described as follows to wit: (The
undivided two thirds of the South West quarter of section
number Twenty one (21) in Township six / 6 / North
of range four West of the 4th principal meridian,
which said premises the said plaintiff claims in fee
And he the said Plaintiff being possessed thereof, the
said defendants afterwards to wit; on the same day
and year last aforesaid, entered into the said premises
and ejected the said plaintiff therefrom; and from the
time last aforesaid, has unlawfully withheld and does
now unlawfully withhold from the said plaintiff the

3/ possession thereof, to the damage of the said plaintiff the sum of One thousand dollars, and therefore he brings suit &c.

Bailey & Van Bleck
Attorneys for plaintiff

To Sanderson Lyon & John H Lyon

You are hereby notified that the declaration, with a copy whereof you are now herewith served and to which copy this notice is subjoined will be filed in the Circuit Court of McDonough County, State of Illinois on the first day of the next term of said Court, to be held at the City of Macomb in said County on the 1st Monday of September A.D. 1861. and that, upon filing the same, a rule will be entered, requiring you to appear and plead to the said declaration within twenty days after the entry of such rule, and that if you neglect to appear and plead a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the declaration

Dated this 3rd day of August A.D. 1861.

Yours truly
Bailey & Van Bleck
plaintiffs Attorneys.

State of Illinois
McDonough County

Silas J. Kopper after being duly sworn on his oath says that he did on the sixth day of

4)

August A.D. 1861. serve the foregoing Declaration and Notice by delivering a copy of said Declaration and of said Notice therunto subjoined to each of said defendants to wit Sanderson Lyon & John W Lyon the said defendants named therein who were at the time of said service, in the actual occupancy of the premises described in the said Declaration subscribed and sworn to before me this 7th day of August A.D. 1861.

John B Cummings clerk
By Alex McLean Deputy


S. J. Hopper.

William Kain
vs.
Sanderson Lyon &
John W Lyon

In the Circuit Court of Mc
Donough County, State of Illinois
of the September term A.D. 1861.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court in pursuance of the Laws of this State.

Dated this 3^d day of August A.D. 1861.

Bailey & Van Bock 

Taken and approved by
me this - day of A.D. 1861
clerk

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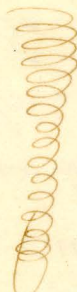
And Again on the day of the date aforesaid to wit, on the 2 day of September A.D. 1861. an order was entered of record in the foregoing entitled cause, which said order is in words and figures following to wit

Order.

William Kain

vs

Sanderson Lyon &
John W Lyon



Ejectment.

Plaintiff

Defendant

This day comes the Plaintiff by his Attorney and filed his declaration in Ejectment Notice and proof of service and on his motion it is ordered that the said Defendants be ruled to plead to the said Plaintiffs Declaration within twenty days from this date or else their default be entered herein, and it is further ordered that this cause be continued to the next term of this Court.

And afterwards to wit at a Circuit Court began and held on the Third Monday in the month of March 1862. at and within the County aforesaid. on the 18th day of March aforesaid a certain order was entered of record in the foregoing entitled cause which said order is in words and figures following to wit.

"Order."

William Kain

vs

Sanderson Lyon



Ejectment

Plaintiff

Defendant

6/ Ordered by the Court that this cause stand continued.

And afterwards to wit. at a circuit Court began and held. on the first Monday in the month of September A.D. 1862. at and within the County aforesaid. on the 2^d day of September aforesaid a certain order was entered of record in the foregoing entitled cause which said order is in words and figures following to wit.

"Order"

William Hain.

Plaintiff

vs

Sanderson Lyon and
John W Lyon

Ejectment

Defendants.

Now come the parties by their Attorneys and issue being joined herein and being ready for trial put themselves upon the Country. Thereupon come the jurors of a jury to wit Ewing Bowman, Isom J David Joseph Lowmes Andrew Lewis, Ezekiel J Humphrey Thomas J Pennington, A J Hankins, David Clarke Wm Swaddle Sr Tho^s Rabbitt Samuel Calvin, Patrick Mc Ginnis who being elected tried and sworn well and truly to try the issue joined herein after hearing the evidence and argument of counsel return into court the following verdict to wit We the jury find the defendants not guilty. whereupon come the Plaintiff and enters his motion for a new trial herein

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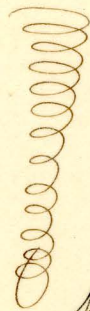
and afterwards to wit. at the Circuit Court. aforesaid on the 5th day of September A.D. 1862. an order was entered of record in the foregoing entitled cause. which said order is in words and figures following to wit.

Order.

William Kain

vs

Sanderson Lyon &
John W Lyon



Ejectment.

Plaintiff

Defendant.

Now come on to be heard the Plaintiffs motion for a new trial herein which motion being heard and fully understood by the Court is sustained and a new trial granted herein, and this cause is continued until the next term of this court.

and afterwards to wit. at a Circuit Court. began and held. on the third Monday in the month of March A.D. 1863. at and within the County aforesaid. to wit on 19th day of March aforesaid an order was entered of record in the foregoing entitled cause. which said order is in words and figures following to wit.

"order."

William Kain

vs

Sanderson Lyon &
John W Lyon



Ejectment.

Plaintiff

Defendants.

Now come the Defendants by their

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Attorneys and enter their motion to suppress the depositions of witnesses Abraham B Kain Isaac Ferris, Francis Kain and George Bredenberg filed herein which motion after being duly considered by the Court overruled, whereupon by consent of parties this cause is continued until the next term of this Court.

The following is a true copy of convening order of September term of the Circuit Court aforesaid

"Convening"

State of Illinois

set.

County of Mc Donough

Pleas before the Honorable Chauncey L Higbee Judge of the fifth judicial Circuit of the State of Illinois at a Circuit Court in and for said County began and held at the Court House in Macomb on the first Monday in the Month of September in the Year of our Lord one thousand eight hundred and Sixty three, it being the Seventh day of said Month

Present the Honorable.

Chauncey L Higbee Judge
Thomas E Morgan States Attorney
John S Bailey Master in Chancery
Amos Dixon Sheriff
John Cummings Clerk.

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And afterwards to wit on the 11th day of September
A.D. 1863. at the Circuit Court aforesaid began and held
as aforesaid. an order was entered of record in the foregoing
entitled cause, which said order is in words and figures
following to wit.

"Order"

William Kain

Plaintiff

vs

Sanderson Lyon and
John W Lyon

Ejectment

Defendant

Now come the parties by their Attorneys
and on motion leave is given the plaintiff to amend his
declaration herein, Whereupon issue being joined herein
and the parties being ready for trial by Agreement waive
a jury and for trial submit this cause to the Court.
Whereupon the Court after hearing the evidence and argument
of counsel find the issues for the plaintiff and that he is
the owner in fee of the premises described in the Plaintiffs
Declaration to wit; The undivided two thirds ($\frac{2}{3}$) of the
South West quarter of section number Twenty one (21) in
Township number six North of range four West of the
fourth principal meridian and that the said defendants
are guilty of unlawfully withholding the possession thereof
from the said plaintiff and assess the plaintiffs damages
at the sum of one cent; It is therefore ordered by the Court
that the said plaintiff have and recover of the said defend
ants the possession of the said premises, and also the
said sum of one cent his damages so assessed by the

Court as aforesaid together with his costs by him in this behalf expended and that he have execution therefor and it is further ordered by the Court that no writ of possession shall issue herein, Whereupon come the defendants by their Attorney and pray an appeal to the Supreme Court which is allowed by defendants entering into bond in the sum of Five hundred dollars (\$500.⁰⁰) within thirty days from this date with security to be approved by the clerk of this Court by Agreement of parties, and Bill of exceptions to be settled and signed within thirty days from this date.

And afterwards to wit on the 3^d day of October A.D. 1863 the Bill of exceptions in the Above entitled cause were duly filed in the Office of the clerk of the Circuit Court of the County aforesaid; which said Bill together with deeds, depositions &c. are in words and figures following to wit.

Bill of Exceptions

State of Illinois
County of McDonough



William Kain
vs
Sanderson Lyon &
John W Lyon



Circuit Court. Sept term 1863
Ejectment.

Be it remembered that at the present term of this Court this cause coming on for trial

11.)

the parties waived a jury and consented to trial before the court. Whereupon the plaintiff offered and read in evidence a patent from the United States to James Emmonds dated Oct 6. 1817. as follows.

James Monroe

President of the United States of America
To all to whom these Presents shall come Greeting
Know Ye that in pursuance of the acts of Congress appropriating and granting Land to the late army of the United States passed on and since the sixth day of May 1813.

James Emmonds having deposited in the General Land Office a Warrant in his favour numbered 4610 there is granted unto the said James Emmonds late a private in Hartells Company of the twenty seventh regiment of Infantry a certain tract of Land containing one hundred and sixty acres being the South West quarter of section twenty one of Township six North in Range four West in the tract Appropriated (by the Acts aforesaid) for Military Counties in the Territory of Illinois, To have and to hold the said quarter section of Land with the Appurtenances thereof unto the said James Emmonds and to his heirs and assigns forever.

In Testimony whereof, I have caused these Letters to be made patent, and the seal of the General Land Office to be hereunto Affixed. Given under my hand at the City of Washington this sixth day of October



in the year of our Lord one thousand eight hundred and seventeen and of the Independence of the United States of America the forty second

By the President James Monroe

Joshua Meigs Commissioner of the General Land Office
Recorded Vol 7th p 37.

Exd E S Meigs

Plaintiff then offered in evidence the following deed from James Emmonds to David B. Hain, viz.

This Indenture, made the thirteenth day of December in the year of our Lord one thousand eight hundred and Seventeen Between James Emmonds late a soldier in Captain Hartells Company of the twenty seventh Regiment of U.S. Infantry of the first part, and David B. Hain of the second part Witnesseth that the said party of the first part, for and in consideration of the sum of sixty dollars lawful money of the United States, to him in hand paid, by the said party of the second part. the receipt whereof is hereby acknowledged hath granted bargained sold, and by these presents doth grant, bargain, sell remise, release, alien and confirm, unto the said party of the second part all that certain tract of Land containing one hundred & sixty Acres, being the South West quarter of section Twenty one of township six North in range four West in the tract appropriated for Military Counties in the Illinois Territory as will more

fully appear by certain Letters Patent granted to me by the President of the United States (under the Acts of Congress passed on and since the sixth day of May one thousand eight hundred and twelve) dated the sixth day of October 1817. (as a reference thereunto will more fully shew). So have and to hold the said South West quarter section of Land with the Appurtenances thereof, unto the said David B. Main and to his heirs and assigns forever

In Testimony whereof, I have hereunto set my hand and seal

signed sealed and delivered in the presence of
Ben Wood
David Wood.



James Emmons

State of New York
City and County of New York



On this second day of October 1818 before me came Benjamin Wood to me known who being by me duly sworn did depose and say that he knew James Emmons within named that he was present and did see him the said James Emmons sign, seal and execute the within deed, as his Act and that he together with David Wood became subscribing witnesses thereto, which is satisfactory evidence to me of the execution thereof, I do allow the same to be recorded.

Elijah S. Pinckney
Commissioner

of Elijah F Pinckney subscribed to the certificate
of the said proof is in the proper hand writing of the
said Elijah F Pinckney

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State of New York
City and County of New York

I Benjamin Ferris
clerk of the City and County of New York and clerk of
the Court of common Pleas in and for the said City and
County, do hereby certify that Elijah F Pinckney before
whom the Annexed deed or instrument in writing was
proven, was on the day when the said proof was taken
a commissioner for the City and County of New York
(in the State of New York,) and duly commissioned
and sworn; and that he as such commissioner is duly
authorised by Law to take the proof and acknowledgment
of deeds and discharges of Mortgages &c, and further that
I am acquainted with the hand writing of the said
Elijah F Pinckney and verily believe that the signature #

In Testimony whereof I have
hereunto set my hand and affixed
the seal of the said Court. this
second day of October 1818

Benj^r Ferris

clerk



State of New York
City and County of New York

I John Blancey clerk of
the City and County of New York, and also clerk of
the supreme Court for the said City and County, the same
being a Court of record do hereby certify that Elijah F
Pinckney whose name is subscribed to the Certificate of

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the proof and Acknowledgment of the annexed instrument and thereon written was, at the time of taking such proof and Acknowledgment a commissioner of deeds in and for the City and County of New York dwelling in the said City, commissioned and sworn and duly authorized to take the same, and further that I am well acquainted with the hand writing of the said commissioner and verily believe that the signature to the said Certificate of proof and Acknowledgment is genuine, I further certify that said instrument is executed and acknowledged, and proved in conformity to the Laws of the State of New York in force at the date of said Certificate



In Testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County the 21st day of Dec 1861.

John Blancey
Clerk

Defendants objected to such deed being read in evidence for irrelevancy and because of variance between name of grantor and that of Patentee, but the Court overruled the objection and permitted the deed to be read in evidence to which defendants excepted then and there.

Plaintiff then offered in evidence the following deed from Samuel B Postley and others to the plaintiff dated the 28th day of September 1859. viz.









"Deed"

This Indenture made the twenty eighth day of September in the year one thousand eight hundred and fifty nine Between Samuel B Postley of the City of New York and Agnes his wife, Washington W Postley of Philadelphia State of Pennsylvania and Amelia Ann his wife Francis Kain of the said City of New York, James Kain of said City and Abraham B Kain of the said City which said Agnes Postley, Amelia Ann Postley, Francis Kain James Kain and Abraham B Kain are the only heirs at Law of James Kain late of the City of New York, deceased of the first part and William Kain of the said City of New York of the second part. Witnesseth that the said parties of the first part for and in consideration of the sum of One hundred and twenty five dollars lawful money of the United States of America to them in hand paid by the said party of the second part at or before the enrolling and delivery of these presents the receipt whereof is hereby acknowledged have remised released and quit claimed and by these presents do remise release and quit claim unto the said party of the second part and to his heirs and assigns forever all the right title and interest of the parties of the first part of in and to a certain parcel of Land situate lying and being in the County of Macdonough and State of Illinois, which was heretofore conveyed by James Emmons, a soldier of the United States Army the Original Patentee, to David B Kain and known in the Government survey as the South West quarter section Twenty One, (21)

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Township Six/6/ North of Range four/4/ West of
 the fourth principal Meridian. Together with all
 and singular the tenements hereditaments and Appur-
 tenances thereunto belonging or in anywise Appertaining
 and the reversion and reversions, remainder and
 remainders, rents issues and profits thereof, and also
 all the Estate, right title interest dower and right of
 dower property possession claim and demand whatso-
 ever as well in law as in equity of the said parties of the
 first part of us, or to the above described premises and
 every part and parcel thereof with the Appurtenances,
 To have and to hold. all and singular the above men-
 tioned and described premises, together with the Appurten-
 ances. unto the said party of the second part. his heirs and
 assigns forever

In Witness whereof the said parties of the
 first part. has hereunto set their hands and seals the day
 and year first above written

sealed and delivered S. Brooke Postley  Francis Kain 
 in the presence of Agnes K Postley  A. Dondouine Kain 
 Edw Shippen } as to Wm Postley } W M Postley  M. Elizabeth Kain 
 } & wife } A. A. Postley  James Kain 
 Witness as to the signatures of }
 M. Elizabeth Kain & James Kain }
 W. S. Townsend }

State of New York
 City & County of New York  sp. On the fourth day of

November in the year one thousand eight hundred and fifty nine before me personally came S Brooke Postley, Agnes H his wife known to me — individuals described in and who executed the foregoing instrument and severally acknowledged that they executed the same and the said Agnes H on a private examination separate and apart from her husband having first been by me made acquainted with the contents thereof further acknowledged to me that she executed the same freely and without any fear or compulsion of her said husband and voluntarily relinquished her right of dower in the premises



Richard A McBurdy

Notary Public, residing in said City

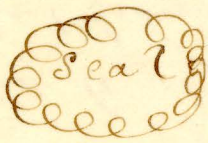
State of New York
City & County of New York

Monroe

I Richard A McBurdy a Notary Public within and for the City and County of New York and State of New York, do hereby certify that this day came personally before me, S Brooke Postley and Agnes his wife who are personally known to me to be the identical persons named in the foregoing and annexed deed of conveyance as the makers thereof and severally acknowledged that they had signed sealed and delivered the same as their free and voluntary act and deed for the uses and purposes therein mentioned and the said Agnes H wife of the said S Brooke Postley having been by me

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examined separate and Apart from her said husband and after having been by me made acquainted with the contents of the said deed acknowledged that she had executed signed sealed and delivered the same freely and voluntarily and without any compulsion on the part of her said husband and conveyed her interest in the lands therein described and that she does not wish to retract the same

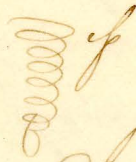


In Testimony whereof I have hereunto set my hand and affixed my Notarial seal this fourth day November 1859
Richard A McCurdy
Notary Public

New York Common Pleas.
Clerks Office No 13 City Hall.

New York Oct 30th 1861

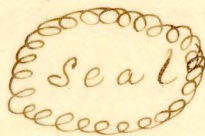
State of New York
City and County of New York



I Nathaniel Jarvis Jr
Clerk of the Court of common Pleas for the City and County of New York, State of New York the said Court being a Court of record do hereby certify that the foregoing certificate of the Acknowledgment of the execution of the annexed deed of conveyance is in conformity with the Laws of this State in force at the date of said certificate and that the said deed is executed acknowledged and proved in conformity with the said Laws of the said State of New York in

20.)

force at the date of said certificate



In Testimony whereof I have hereunto set
my hand and Affixed the seal of the said
Court this 30th day of October 1861.

Nath^l. Jarvis Jr
Clerk

State of Pennsylvania
City and County of Philadelphia



On the twenty eighth day
of September in the year one thousand eight hundred
and fifty nine before me the undersigned Edward Shippen
a Commissioner resident in the said City and County
duly commissioned and qualified by the executive auth-
-ority and under the laws of the State of New York to take
the Acknowledgment of deeds etc to be used or recorded
therein personally appeared Washington M Postley and
Amelia Ann his wife and then and there acknowle-
-ged that they executed the foregoing conveyance, and the
said Amelia Ann Postley on a private examination
apart from her said husband Washington M Postley
acknowledged that she signed sealed and delivered
such conveyance freely and without any fear or com-
-pulsion of - said husband



In Witness whereof I have hereunto set
my hand and affixed my official seal
the day and year aforesaid

Edw Shippen
A Comm. for New York.

21.)

State of New York
Office of the Secretary of State



I hereby certify that Edw-
Shippen of the City and County of Philadelphia and
State of Pa. was at the time of taking the Annexed ac-
knowledgment a commissioner for the State of New
York, to take the proof and acknowledgment of deeds
and other instruments to be used or recorded in this
State and to administer oaths and affirmations, pur-
suant to Chapter 270 Laws of 1850 and that such com-
missioner was at the time aforesaid duly authorized to
take the same; and that I have compared the signature
of the said commissioner to the certificate subjoined
to the Annexed instrument with the signature of such
Commissioner deposited in this Office, and have also
compared the impression of the seal affixed to such
certificate with the impression of the seal of such com-
missioner deposited in this office, and I verily believe
the signature and impression of the seal to the said
certificate to be genuine



Witness my hand and the seal of Office of
the Secretary of State at the City of Albany
this fourteenth day of November one thousand
eight hundred and sixty one

Henry J. Bellas, Dep.

Secretary of State

New York Common Pleas.
Clerks Office No 13 City Hall

New York Nov 18th 1861

State of New York
City and County of New York



I Nathaniel Jarvis Jr
clerk of the Court of Common Pleas for the City and
County of New York State of New York the said
Court being a Court of record do hereby certify that the
foregoing certificate of the Acknowledgment of the exe-
cution of the annexed deed of conveyance is in conform-
ity with the laws of this State in force at the date of
said certificate and that the said deed is executed
acknowledged and proved in conformity with the
said Laws of the said State of New York in force
at the date of said certificate

In Testimony whereof I have here-
unto set my hand & affixed the seal
of the said Court this 18th day of
November 1861.



Nathl. Jarvis Jr.
clerk

State of Pennsylvania
City and County of
Philadelphia



Es.
I Chs D Knight Prothonotary
of the Court of Common Pleas. within and for said County
and State the said Court being a court of record do,

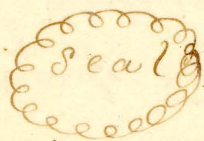
23. /

certify that the foregoing certificate of the Acknowledgment of the execution of the Annexed deed of conveyance taken before Edw Shippen commissioner for the State of New York is in conformity with the laws of the State of Pennsylvania in force at the date of said certificate and that the said deed is executed Acknowledged and proved in conformity with the Laws of the State of Pennsylvania in force at the date of the said certificate

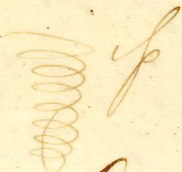
In Testimony whereof I have hereunto set my hand and affixed the seal of the said Court this 24th day of July 1862

Chs D Knight

Prothy



State of New York
City & County of New York



On this Sixteenth day of November A.D. 1859 personally came before me James Hain and Maria Elizabeth his wife known to me to be the individuals described in who executed the foregoing instrument and severally acknowledged that they executed the same, and the said Maria Elizabeth on a private examination separate and apart from her husband having first been by me made acquainted with the contents thereof further acknowledged to me that she executed the same freely and without any fear or compulsion of her said husband and voluntarily relinquished her right of dower in the premises mentioned in said deed

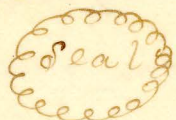


W L Townsend Notary Public
residing in Kings County

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City and County of New York *ip.*

On this 28th day of November A.D. 1859. before me personally appeared Francis Kain and Abraham B Kain both known to me to be two of the parties described in and who executed the within deed and severally acknowledged to me that they executed the same



W R English, Notary Public
34. Wall St. New York

State of New York *ip.*
City and County of New York *ip.*

I Nathaniel Jarvis Jr clerk of the Court of Common Pleas for the City and County of New York State of New York the said Court being a court of record do hereby certify that on this first day of November A.D. 1861. personally came before me A. Baudouine Kain, James Kain and M Elizabeth Kain his wife, Francis Kain and Washington M Postley who are personally known to me to be the identical persons whose names are subscribed to the foregoing deed of conveyance as having executed the same and severally acknowledged that they had executed and delivered the said deed for the uses and purposes therein mentioned freely and voluntarily. In Witness whereof I have hereunto set my



hand and affixed my seal of office this first day of November A.D. 1861.

Nathl Jarvis Jr. Clerk

But the defendants objected to the same being read in evidence generally and for want of sufficient proof or acknowledgment of execution as to each of the grantors, but the court overruled the objection and permitted the said deed to be read in evidence to all which defendants then and there excepted

The Plaintiff then offered and read in evidence the depositions of Abraham B Kain Francis Kain and Isaac Ferris, as follows.

Depositions

State of Illinois
Circuit Court.

William Kain
- Against -
Sanderson Lyon v
John W Lyon

The deposition of Abraham B Kain of the County of New York and State of New York and State of New York a witness of Lawful age produced sworn and examined upon his Corporal oath on the ninth day of August in the year of our Lord one thousand eight hundred and sixty two at the Office of Augustus W. Helason in the City of New York in the County of New York and State aforesaid by me Augustus W. Helason a commissioner or duly appointed by a Declinatus Protestatum or commission issued out of the clerks Office of the County Court.

of Mc Donough County in the State of Illinois bearing Teste in the name of John B. Cummings Esqr clerk of the said County Court with the seal of the said Court. Affixed thereto and to me directed as such commissioner for the examination of the said Abraham B. Kain a witness in a certain suit and matter in controversy now pending and undetermined in the said County Court wherein William Kain is plaintiff and Sanderson Lyon and John W. Lyon are defendants in behalf of the said plaintiffs on the Interrogatories of the plaintiff which were attached to or inclosed with the said commission and upon none others. The said Abraham B. Kain being first duly sworn by me as a Witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and the defendants so far as he should be interrogated, testified and deposed as follows.

Interrogatory First

What is your name Age, Occupation and place of residence.

Answer to First Interrogatory

My name is Abraham B. Kain - my Age is twenty four years. my Occupation is Clerk. my residence is in the City of New York.

Interrogatory Second

27)

Do you know the parties plaintiff and defendants, in the caption to these interrogatories mentioned, or either and which of them and how long have you known them respectively

Answer to Second Interrogatory

I know the plaintiff
I do not know the defendants - I have known plaintiff all my life

Interrogatory Third

If in answer to the foregoing Interrogatory you say you are acquainted with the plaintiff herein William Kain state whether or not you were acquainted with his father and mother - if yea - when did you know them - state whether or not they were married or lived together and were regarded in the neighborhood as man and wife - if they or either of them are now alive or if dead when and where did they die and what were their names?

Answer to Third Interrogatory

I knew the Mother of William Kain - she died I think in the Fall of 1844 his father had long been dead and I only knew of his marriage, existence and relationship to myself & said William from family record or rather story

Interrogatory Fourth.

If in answer to the foregoing question you say that the father and mother of William Kain were married and that they are dead state if you know - if there were any children born to them as the issue of such marriage - if yea, state the names time of birth and sex of all the children so born to the Father and mother of William Kain

Answer to Fourth Interrogatory:

I know from family tradition that my Grandfather and Grandmother the father and mother of William Kain were man and wife and had five children the issue of their marriage - viz. Francis, Richard, David B, James and William

Interrogatory Fifth

If in answer to the foregoing interrogatory you state that children were born in lawful wedlock to the father and mother of William Kain state if they are all now living and if any of them are dead, state when and where they or either of them died if any of such children were married state the names of them that were so married and to whom and when they were so married and if any of them have died, state whether they died with or without issue born in lawful wedlock

Answer to Fifth Interrogatory,

Francis married Henrietta Bervalen. James my father Amelia Ann Baudouine - the first never had any children - the second died in 1838 leaving widow and five children surviving him, Agnes H, Amelia Ann - James - Francis and Abraham P. Richard and David P died childless. I only know these things as matters of family history except in the case of my brothers and sisters

Interrogatory Sixth

If in answer to the foregoing Interrogatory you state that the father and mother of William Rain had children, and that any of them were married - state if any children have been born of such marriage, If yea give the names of such children the times of their birth - if they are now all living or if any of them are dead give their names and the time of their deaths - if any of them are married to whom, and when and where were they so married

Answer to Sixth Interrogatory

So much of this interrogatory as is not before answered in my answer to the last interrogatory relates to the marriages of my two sisters, Agnes H and Amelia - the first of whom married Samuel P Postley in or about 1844. and the second Washington M Postley in or about 1844. Both were married in the City of New York their ages are respectively

30)

thirty seven and twenty nine at the time of her death

Interrogatory Seventh

State whether or not Francis Kain, Richard Kain David B Kain and James Kain and William Kain were the only children of their father and mother aforesaid

Answer to Seventh Interrogatory

So far as I have heard they were.

Interrogatory Eighth

State if Francis Kain, Richard Kain - David B Kain are alive or dead - if dead when and where did they severally die, and State whether or not they were ever married,

Answer to Eighth Interrogatory

Francis, Richard and David B are dead - the two first were married the last not - the wife of Richard died before him the three were childless.

Interrogatory Ninth

State whether or not James Kain was ever married, if yea when and to whom and if married were there any children born of such

21/

marriage - If yea - state the names, times of birth of all such children and whether or not said James Kain and his wife are now alive or dead - if dead when and where did they die.

Answer to Ninth Interrogatory

James was married to Amelia Ann Baudouine in the year 1824. she is alive he died in 1838. The children of that marriage were Agnes K., Francis, ~~and~~ Amelia Ann - James and myself aged respectively 37, 34, 29, 28, and 24.

Interrogatory Tenth

If in answer to the last interrogatory you say that James Kain was married, and had children of such marriage - state if such children are now all living or if any of them are dead when did they die, and whether married or unmarried, and if any of them are alive state if they or any of them are married. If married state, when, where, and to whom were they married,

Answer to Tenth Interrogatory

Amelia Ann married Washington W Postley she died in October 1859. leaving two children - Agnes K married Samuel D Postley - James and Francis are both married the first in the year 1858 to Elizabeth Wood, - the second in

32.)

the year 1861. to Alice Kenedy;

Interrogatory Eleventh

State if you know whether or not, at the time of the death of David B Kain, he left surviving him any other brother or sister except the said Plaintiff William Kain and whether or not at the time of the death of the said David B Kain he left surviving him any other children of any deceased brother or sister than Agnes H. Postley - Amelia Ann Postley Francis Kain - James Kain and Abraham B Kain.

Answer to the Eleventh Interrogatory

David B. died in 1833 the first of the brothers.
Abraham B Kain.

State of Illinois
Circuit Court

William Kain
= Against =
Sanderson Lyon &
John W Lyon

The deposition of Francis Kain of the County of New York and State of New York a witness of lawful age produced sworn and examined upon his corporal oath on the fifth day of August in the

year of our Lord one thousand eight hundred and Sixty two at the Office of Augustus W. Helason in the City of New York in the County of New York, and State aforesaid by me Augustus W. Helason commissioner duly appointed by a *Quidam* Protestatum or commission issued out of the clerks office of the County Court of Mc Donough County in the State of Illinois bearing Teste in the name of John D. Cummings Esqr Clerk of the said County Court with the seal of the said Court affixed thereto, and to me directed as such commissioner for the examination of the said Francis Kain a witness in a certain suit and matter in controversy now pending and undetermined in the said County Court wherein William Kain is plaintiff and Sanderson Lyon and John M. Lyon are defendants in behalf of the said plaintiff on the interrogatories of the plaintiff which were attached to or inclosed with the said commission, and upon none others, The said Francis Kain being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and the defendants so far as he should be interrogated testified and deposed as follows,

Interrogatory First

What is your name, age occupation and place of residence

34.)

Answer to First Interrogatory

My name is Francis
Kain - my age is thirty four - my occupation clerk in the
Market Bank of the City of New York - my residence 65
East 12th Street New York City

Interrogatory Second

Do you know the parties plaintiff
and defendants, in the caption to these Interrogatories
mentioned or either and which of them, and how long
have you known them respectively;

Answer to second Interrogatory

I know the plaintiff
I do not know the defendants - I have known the
plaintiff from infancy,

Interrogatory third

If in answer to the foregoing in-
terrogatory you say you are acquainted with the plaintiff
herein William Kain state whether or not you were
acquainted with his father and mother - If yes - when
did you know them - state whether or not they were
married or lived together, and were regarded in the
neighborhood as man and wife if they or either of
them are now alive or if dead - when and where did
they die and what were there names,

Answer to Third Interrogatory

I did not know the father of William Kain - I knew his mother only. I only knew of the father from family tradition both are now dead, when the father died I do not know. The mother died and was buried from East Chester New York State in September 1844.

Interrogatory Fourth

If in answer to the foregoing question you say that the father and mother of William Kain were married and that they are dead - state if you know if there were any children born to them as the issue of such marriage. If you - state the names, time of birth, and sex of all the children so born to the father and mother of William Kain.

Answer to Fourth Interrogatory

The father and mother of William Kain were my grandfather and grandmother, I know as a matter of family history that they were married - that they had five children the issue of such marriage that the names of the children were. Francis, Richard, David B. James and William,

Interrogatory Fifth

If in answer to the foregoing

Interrogatory you state that children were born in lawful wedlock to the father and mother of William Cain state if they are all now living, and if any of them are dead state when and where they or either of them died If any of such children were married state the names of them that were so married, and to whom and when they were so married and if any of them have died state whether they died with or without issue born in lawful wedlock

Answer to Fifth Interrogatory

Francis married Henrietta Bervalen. - Both are now dead, never having left any children or had any James my father married Amelia Ann Baudouine, he left a widow him surviving and five children Agnes the wife of Samuel B Postley Amelia Ann wife of Washington M Postley who died in October 1859, James Cain - Francis Cain - Abraham B Cain,

Interrogatory Sixth

If in answer to the foregoing Interrogatory you state that the father and mother of William Cain had children - and that any of them were married state if any children have been born of such marriage if yea. - give the names of such children - the times of their birth - if they are now all living or if any of them are dead give their names, and the time of their deaths. If any of them are married - to whom and when and where

37/

were they so married;

Answer to Sixth Interrogatory

I only know from family tradition that David B Kain died in 1822 intestate unmarried and without issue - that Richard Kain died in 1825, without issue leaving no widow

Interrogatory Seventh

State whether or not Francis Kain - Richard Kain - David B Kain, and James Kain and William Kain were the only children of their father and mother aforesaid.

Answer to Seventh Interrogatory

According to family history - Francis Kain - Richard Kain - David B Kain - James Kain, and William Kain were the only children of their father and mother

Interrogatory Eighth

State if Francis Kain Richard Kain, David B Kain, are alive or dead - if dead - when and where did they severally die - and state whether or not they were ever married;

Answer to Eighth Interrogatory

Francis Kain.

Richard Kain, David B Kain, are dead

Interrogatory Tenth

State whether or not James Kain was ever married - if yes when and to whom and if married were there any children born of such marriage if yes - state the names - times of birth of all such children and whether or not ~~the~~ said James Kain, and his wife are now alive or dead. if dead when and where did they die -

Answer to Tenth Interrogatory

James was married he died in 1838. his wife is alive - his children were Agnes H. wife of Samuel B Postley, Amelia Ann wife of Washington M Postley - James Kain, Francis Kain and Abraham B Kain, Amelia Ann the wife of Washington M Postley died in the year 1859. leaving children - she died in Philadelphia

Interrogatory Tenth.

If in answer to the last Interrogatory you say that James Kain was married and had children of such marriage, state if such children are now all living or if any of them are dead when did they die, and whether married or unmarried and if any of them are alive state if they or any of them are married, if married state when where and to

39.

whom were they married

Answer to Tenth Interrogatory

I have answered
this in the answer to the ninth Interrogatory

Interrogatory Eleventh

State if you know whether
or not at the time of the death of David B Kain he
left surviving him any other brother or sister except the
said Plaintiff William Kain and whether or not
at the time of the death of the said David B Kain
he left surviving him any other children of any deceased
brother or sister that Agnes H Postley, Amelia Ann
Postley Francis Kain James Kain and Abraham
B Kain;

Answer to Eleventh Interrogatory

At the time
of the death of David B Kain he left him surviving
Richard, Francis^{James} and William Kain his brothers

Francis Kain

State of Illinois
Circuit Court

William Kain

= Against =

Sanderson Lyon &
John W. Lyon

The deposition of Isaac Ferris of the County of New York and State of New York a witness of lawful age produced sworn and examined upon his corporal oath on the fifteenth day of August in the year of our Lord one thousand eight hundred and Sixty two at the Office of Augustus W. Clason in the City of New York in the County of New York and State aforesaid by me Augustus W. Clason a commissioner duly appointed by a *Decernimus Protestatum* or commission issued out of the clerks Office of the County Court of Mc Donough County in the State of Illinois bearing Teste in the name of John B. Cummings Esqr clerk of the said County Court with the seal of the said Court affixed thereto, and to me directed as such commissioner for the examination of the said Isaac Ferris a witness in a certain suit and matters in controversy now pending and undetermined in the said County Court wherein William Kain is plaintiff and Sanderson Lyon and John W. Lyon are defendants, in behalf of the said plaintiff on the Interrogatories of the plaintiff which were attached to or inclosed with the said commission

H.1./

and upon, none others. The said Isaac Ferris being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendants in relation to the matters in controversy between the said plaintiff and defendants so far as he should be interrogated, testified and deposed as follows.

Interrogatory First

What is your name Age Occupation, and place of residence,

Answer to First Interrogatory

My name is Isaac Ferris, Minister of the Gospel, am Sixty four years of Age reside at 80 East Twelfth Street City of New York.

Interrogatory Second

Do you know the parties plaintiff and defendants in the Caption to these Interrogatories mentioned, or either and which of them and how long have you known them respectively

Answers to second Interrogatory

I know the plaintiff but neither of defendants I have known

42.) the plaintiff at least fifty years

Interrogatory Third

If in answer to the foregoing Interrogatory you say you are acquainted with the plaintiff herein William Kain state whether or not you were acquainted with his father and Mother If yes - when did you know them - state whether or not they were married or lived together and were regarded in the neighborhood as man and wife - if they or either of them are now alive or if dead when dead and where did they die and what were their names

Answer to Third Interrogatory

I was acquainted with the father and mother of William Kain plaintiff I knew them all through my early life and during the lives of both they lived together as man and wife and were known to the neighborhood as such - neither of them is now alive - I do not recollect the period of their respective deaths and as to me, a boy they were Mr. and Mrs. Kain I do not recall their christian names.

Interrogatory Fourth

If in answer to the foregoing question you say that the father and mother of William Kain were married, and that they are dead state

43.

if you know if there were any children born to them as the issue of such marriage if yea, state the names time of birth and sex of all the children so born to the father and mother of William Kain

Answer to Fourth Interrogatory

There were five children of the marriage, Francis, Richard, David B, James and William - the times of birth I cannot state.

Interrogatory Fifth

If in answer to the foregoing Interrogatory, you state that children were born in lawful wedlock to the father and mother of William Kain - state if they are all now living and if any of them are dead state when and where they or either of them died - If any of such children were married state the names of them that were so married and to whom and what they were so married and if any of them have died state whether they died with or without issue born in lawful wedlock.

Answer to Fifth Interrogatory

William is the only one now living - the times and place of the death of the others - I cannot recall - Francis I know was married - to whom I dont know

44.) I performed the marriage ceremony between James and a miss Paudemine - Richard and David, I do not recall anything in connection with marriage - the dates of the marriages of Francis and James I do not recall

Interrogatory Sixth

If in answer to the foregoing Interrogatory you state that the father and mother of William Kain had children, and that any of them were married state if any children have been born of such marriage If you give the names of such children - the times of their birth - if they are now all living or if any of them are dead - give their names and the time of their deaths if any of them are married to whom and when and where were they so married;

Answer to Sixth Interrogatory

Francis had no children. James I think left five children, but of them I know nothing

Interrogatory Seventh

State whether or not Francis Kain, Richard Kain - David Kain, and James Kain and William Kain were the only children of their father and mother aforesaid,

45.)

Answer to Seventh Interrogatory

So far as I know they were - I was intimate in the family as a boy

Interrogatory Eighth

State if Francis Kain, Richard Kain, David B Kain, are alive or dead, if dead when and where did they severally die, and state whether or not they were ever married,

Answer to Eighth Interrogatory

They are dead I cannot state when they severally died and as I before said Francis to my knowledge was married

Interrogatory Ninth

State whether or not James Kain was ever married, If yea - when and to whom and if married were there any children born of such marriage, If yea - state the names - times of birth of all such children and whether or not said James Kain and his wife are now alive or dead If dead, - when and where did they die?

Answer to Ninth Interrogatory.

I have already answered as fully as possible,

46.)

Interrogatory Tenth

If in answer to the last Interrogatory you say that James Kain was married and had children of such marriage state if such children are now all living or if any of them are dead when did they die and whether married or unmarried and if any of them are alive, state if they or any of them are married - If married state when, where and to whom were they married?

Answer to Tenth Interrogatory

I am unable to answer from personal knowledge more than I have already answered.

Interrogatory Eleventh

State if you know whether or not at the time of the death of David B Kain he left surviving him any other brother or sister except the said plaintiff William Kain, and whether or not at the time of the death of the said David B Kain he left surviving him any other children of any deceased brother or sister than Agnes W Postley, Amelia Ann Postley, Francis Kain - James Kain, and Abraham B Kain?

Answer to Eleventh Interrogatory

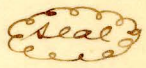
I only know that

47.)

David and Richard died before Francis and James - beyond that I cannot answer
Isaac Ferris.

And hereupon the plaintiff rested his case; and this was all the evidence offered in the case by either party and after hearing the argument of counsel the Court found the issues for the plaintiff finding defendants guilty, The defendants then moved for a new trial because the finding was against the Law and the evidence but the Court overruled the motion and rendered judgment for the plaintiff for the undivided two thirds of Land and for costs as per the record, to which refusal to grant a new trial and to the rendition of which judgment the defendants died then and there except

and because these matters do ^{not} sufficiently appear of record the defendants aforesaid pray that this bill of exceptions may be signed and sealed and be made of record. which is accordingly done

C. S. Higbee 

and afterwards to wit. on the 24th day of September 1863. a certain bond was duly filed & approved by the clerk. in the foregoing entitled cause. which said bond is in words and figures following to wit

48.)

William Kain

vs

Sanderson Lyon &
John W Lyon



Ejectment



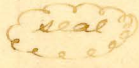
Know all men by these presents that we John W Lyon and Robert W Lyon, of the County of Mc Donough and State of Illinois are held and firmly bound unto William Kain in the penal sum of Two hundred dollars Current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and Administrators jointly severally, and firmly by these presents Witness our hands and seals at the clerks office at Macomb this twenty fourth day of September one thousand eight hundred and Sixty three. The condition of the above obligation is such that whereas the said William Kain did on the Eleventh day of September A.D. 1863. in the Circuit Court, in and for the County of Mc Donough and State of Illinois, obtain a judgment against Sanderson Lyon and the above bounden John W Lyon for the recovery of the possession of the undivided Two thirds of the South West quarter of Section twenty one (21) in Township six (6) North Range four (4) West of the fourth principal meridian also for the sum of one cent his damages and twenty one dollars and twenty cents costs from which said judgment of the said Circuit Court the said defendants Sanderson Lyon and John,

49.)



W Lyon have prayed for and obtained an Appeal to the Supreme Court of said State of Illinois

Now if the Said Defendants Sanderson Lyon and John W Lyon shall duly prosecute their said Appeal with effect and shall moreover pay the Amount of the judgments, Costs interest and damages, rendered and to be rendered Against them in case the said judgments shall be affirmed in the said Supreme Court; then the above obligation to be void otherwise to remain in full force and virtue

Taken and approved
by me at my Office
this 24th day of September
A.D. 1868.

John W Lyon 
Robert W Lyon 


John B Cummings
clk.

State of Illinois 
McDonough County 

I John B Cummings clerk of the Circuit Court in and for said County do hereby certify that the Above and foregoing 49 pages of written matter are true and correct copies of convening orders of Court & all orders entered of record. together with copies of notices of Ejectment. deeds. depositions. Bill of exceptions &c in the foregoing entitled cause. as appears from the records and files of my Office. (the deeds however not on file but used. in evidence in said cause)

50.)

in the County and State aforesaid



In Testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at my Office in Macomb
this 30th day of November A.D. 1863.

John B. Cummings Clerk
By Alex. McLean Deputy.

I hereby agree to waive any objection on account of
the appeal bond herein having been signed by but one
of the parties herein

J. S. Barclay atty,
per Wm. Kain

State of Illinois
McDonough County

of

I John B. Cummings Clerk of the
Circuit Court in and for said County do hereby certify that the
above entitled cause and foregoing 49 pages of written matter
is a full true and complete Transcript of the record and
proceedings in the above entitled cause as the same appear
of record in and from the files of my Office. excepting how-
ever the didimus. Notice and certificates of Commissioners
attached to depositions. which forms a part of this record
aforesaid. and further that the deeds copies of which are

51)

inculcated in this transcript, are not on file in my office. but ^{were} used in evidence, during the trial of said cause. as by ~~reference thereto~~ will fully appear



In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at my Office in Macomb. this 30th day of ~~December~~ November. A.D. 1863.

John B. Cummings clerk
By Alex M. Lean Deputy

Supreme Court
Second Grand Division
January Term, A.D. 1864.

Sanderson Lyon & Co.,
Appellants,
vs.
William Train, Appellee. } Appeal from N.C.
Donough.

And the said Sanderson Lyon and John W. Lyon, appellants, by Judd Boyd James their attys, come and say, that manifest error hath intervened in the record and proceedings whereof the above is a copy, to the great injury of the said appellants; wherefore they pray that the judgment of the circuit court may be reversed, annulled and altogether held for nothing, and the cause remanded, &c. And the

said appellants assign the following grounds of error viz:

1st. The court below erred in admitting improper evidence on behalf of the plaintiff below.

2nd. The court below erred in finding the issues for the plaintiff.

3rd. The court below should have found the issues for the defendants below.

4th. The finding of the issues for the plaintiff by the court below was against the law and the evidence.

5th. The court below, ⁱⁿ refusing to grant a new trial.

6th. The court below erred in rendering judgment against the defendant below.

7th. The recovery below was for too much.

8th. The record and proceedings are otherwise informal, defective and insubstantial.

Judd, Boyd & James,

Attys for Appellants.

and the said William Kain appellee herein says there is no error in the record and proceedings aforesaid and that the same are sufficient.

D J Buley atty
for appellee



72
Supreme Court

Sandersin Lyon, etc.,
Appellants!

vs.

J. M. Kain,

Appellee.

Record.

Filed Jan 27/84.
W. Turner
Clerk

Of the January Term of the Supreme
Court Illinois A D 1865 2nd Division

Sanctimon Lyons et al

vs On Appeal from M^cDonough

William Rain

Petition for rehearing

To the Hon Supreme Court

Your Petitioner appellee in
the above entitled cause decided at the January Term of
said court A D 1864 would respectfully apply for a
rehearing of said cause for the following reasons to wit
In the opinion of the court in deciding said cause it is
said by the court " That the certificate of acknowledgement
of the deed from Washington and Amelia Ann Postley to William
Rain was insufficient because it did not show the deed to have
been acknowledged freely and voluntarily." The certificate shows
that on a private examination Amelia acknowledged that she
signed sealed and delivered such conveyance freely and
without the compulsion of her husband. see record page 20
for certificate and record page 470. for opinion. It is true
The certificate does not show that the contents of deed was made
known to her. but it is submitted that in deciding that
the certificate is insufficient no effect is given to the second
section of the law of 1847. page 965 of Seaton & Blackwells
Statutes, which provides in substance that the deed of a feme
covert out of the state may be ~~the same~~ acknowledged as
a feme sole and the certificate shows that the deed was
acknowledged out of the state in the State of Pennsylvania
& certifies that it was ack according to the laws of Pennsylvania

wherefore your Petitioner prays that the Judgement heretofore
rendered in said cause be set aside and a rehearing of
said cause be ordered by said court and your
Petitioner will ever pray &c.

J. S. Bailey

atty for appellee

William Rain

Sanderson Lyon et al

vs On appeal from Mc Donough County
William Kain

In the Supreme Court of the State of Illinois
2^d Grand Division

To J Cairning Clerk Esq atty for appellants
Sir You are hereby notified that I will on the first day
of the next term
of the Supreme Court of the State of Illinois to be holden at
Springfield in said State in January A D 1865 or as soon
thereafter as counsel can be heard present as counsel for
appellee a Petition to said Court on his behalf praying that
a rehearing of said cause may be granted by said Court
to said appellee and that the judgement rendered in
said cause by said Court at the January Term A D 1864
may be by said Court vacated and set aside and that
said cause may be ordered by said Court to be reargued

John S Bailey

attly for Appellee

Recd a copy of the foregoing notice this 27 September 1864

Judd, Boyd & James,

attly for ~~Appellants~~

Sunderon Lyons et al

vs

William Kain

On appeal

Petition for rehearing

evidence, but simply "entitles it to record", and the 25th sec. of the same act only provides that such deeds "may be read in evidence" as "by virtue of this (that) chapter shall be entitled to be recorded, being acknowledged according to the provisions of this (that) chapter."

Now, under that chapter the deed of a non-resident *femme covert* was void, and no deed at all as above shown, and not entitled to record. * It is only a "deed," &c., entitled to record under that chapter that became evidence by virtue of its provisions. A void deed is no deed, any more than a blank sheet of paper would be. "That chapter", cannot be construed to give vitality to a deed for the purposes of evidence that it does not give vitality to for any other purpose. This certificate of conformity method of making evidence is in derogation of the common law, and must be strictly construed. Hence to make the deed of Amelia Ann Postley evidence, the provisions of the law of 1847 must be complied with; and under that law there is no evidence in the case at bar that the deed as to Amelia Ann Postley and husband was executed in conformity with the laws of Pennsylvania. The statutes of that State should have been introduced in evidence, then the court could have judged whether the acknowledgement was in conformity with the laws of Penn'a; and the court would have determined in that event, that the certificate of conformity was false.

§4. ~~And~~ And as to either of the two married women the deed was not entitled to be read in evidence, because there was no proof that it had been "recorded in the county wherein the land is situated." See Sec. 3 of the law of 1847. By the second section of that law the "acknowledgement of such deed" (i. e. by a married woman) "shall entitle such deed" [that is, referring back to those provided for in the second section as well as those indicated in section three,] "to be recorded as is authorized by this act." The third section provides "that deeds," &c., "executed without this State" [that is, referring back to those provided for in the second section as well as those indicated in section three,] and "acknowledged in conformity with the laws of the State" "where executed, shall be admitted to record in the county or counties where the real estate is situated;" and then follows a provision at the close of the same section that "such deeds," [that is, referring back to those provided for in the second section as those indicated in section three,] "when so recorded, may be used as evidence without further proof of the execution thereof." It follows, therefore, that until "so recorded" the deed of a non-resident *femme covert* cannot be used as evidence in Illinois.

See Dennis v. Hopper, --- 18 Ill. 82.

§5. The law of 1853 is a rule of property, and not merely a rule of evidence. Both the execution and acknowledgement of the *femme covert* deed are essential to its "validity." See Mason v. Brock, 12 Ill. 276. ^{also Law 1853.} *Quere.* ^{is it} The law of 1853, (Purple 167) is it not a grave question whether the deed of a non-resident *femme covert* is not "invalid," unless acknowledged according to the provisions of that law, even if executed and acknowledged in accordance with the laws of her state?

See Sec 1, Law 1853, - Purple 167
Law 1847 - " 161-2

* *Mason v. Brock* 4 Rank 444-5

SUPREME COURT,

Second Grand Division,

- 6th. The court below erred in rendering judgment against the defendants below.
7th. The recovery below was for too much.
8th. The record and proceedings are otherwise informal, defective and insufficient.

JUDD, BOYD & JAMES,
Attorneys for Appellants.

724 59-49
Supreme Court

Sanderson Lyon et al

vs.

Wm Rain

Abstract

C. J. Walker

Filed Jan 14/13

SUPREME COURT

Second Grand Division

8th. The report and proceedings are reported in regular judgment against the defendants below.
1st. The report below was for too much.
2d. The report below was in regular judgment against the defendants below.

JUDG' BOYD JAMES'

Attorney for Appellants

- history, except in the case of my brothers and sisters. Agnes H. and Amelia, the first of whom married Samuel B. Postley in or about 1844, and the second Washington M. Postley in or about 1844. Both
30. 31. were married in the city of New York. Their ages were respectively 37 and 39 at the time of their death. So far as I have heard, Francis Richard, David B., James and William Kain were the only children of their father and mother, Francis, Richard and David B. Kain are dead. The two first were married; the last not. The wife of Richard died before him. The three were childless. James Kain was married to Amelia Ann Boudouine in the year 1824. She is alive. He died in 1838. The children of that marriage were Agnes H., Francis, Amelia Ann, James and myself, aged respectively 27, 34, 29, 28 and 24. Amelia Ann married Washington M. Postley. She died in Oct. 1859, leaving two children
32. Agnes H. married Samuel B. Postley, James and Francis are both married. David B. Kain died in 1822, the first of the brothers.

- Francis Kain* testifies: Name Francis Kain; age 34; occupation bank clerk; residence New York city.
34. 35. I know the plaintiff; did not know the father of William Kain, but knew his mother; knew of the father from family tradition. Both are now dead. When the father died I do not know. The mother died in New York State in 1844. The father and mother of William Kain were my grandfather and grandmother; know from family history that they were married, that they had five children, the issue of the marriage, named Francis Richard, David B., James and William. Francis was married. Both himself and
36. 37. wife are now dead, never having had any children. James, my father, married Amelia Ann Boudouine. He left a widow and five children surviving him, Agnes H., wife of Samuel B. Postley, Amelia Ann, wife of Washington M. Postley, who died in October 1859, James Kain, Francis Kain, Abraham B. Kain. I know only from family tradition that David B. Kain died in 1822, intestate, unmarried and without issue; that Richard Kain died in 1835 without issue and leaving no widow. According to family history Francis Kain, Richard Kain, David B. Kain, James Kain and William Kain were the only children of
38. 39. their father and mother. Francis, Richard and David B. Kain are dead. James was married. He died in 1838, leaving a widow. His children were Agnes H., wife of Samuel B. Postley, Amelia Ann, wife of Washington M. Postley, James Kain, Francis Kain and Abraham B. Kain. Amelia Ann died in Philadelphia in 1859, leaving children. At David B. Kain's death he left surviving him his brothers Richard, Francis, James and William.

- Isaac Ferris* testifies: Name Isaac Ferris; am minister of the gospel; 64 years old; reside in New York;
41. have known plaintiff 50 years; was acquainted with his father and mother; know them through my early
42. 43. life, and during the lives of both they lived together as man and wife and were known to the neighborhood as such. Neither of them is now alive; do not recollect the period of their respective deaths. There were five children of the marriage, Francis, Richard, David B., James and William. William is
44. 45. the only one now living. Francis was married. I performed the ceremony between James and a Miss Boudouine. Francis had no children. James, I think, left five children. So far as I know Francis, Richard, David B., James and William Kain were the only children of their father and mother. I was intimate in the family as a boy. Francis Kain, Richard Kain and David B. Kain are dead. I cannot
46. state when they severally died. I only know that David and Richard died before Francis and James.
47. 9. And hereupon the plaintiff rested; and this was all the evidence offered in the case by either party.

Supreme Court--2d Grand Division.

January Term, 1865.

SANDERSON LYON, *et al.* Appellants, }
vs. } *Appeal from McDonough.*
WILLIAM KAIN, Appellee.

POINTS AND BRIEF FOR APPELLEE.

The only question to be considered is the sufficiency of the certificate of acknowledgment of Amelia Ann Postley.

1st. It has always been the policy of the legislature to uphold deeds made in another state according to the laws of that State.

Laws of 1802, Purple's Real Estate Statutes, 456.

1807, Statutes 461.

1822, " 465.

1827, " \$14, 479.

\$16, 1845, B. & S. Statutes, 962.

182, 1847, " " 964.

Confirmatory Law, \$1, 1853, B. & S. Statutes, 966.

\$5, 1851, B. & S. Statutes, 972.

The language of the acts of 1845 and 1847, is "any Commissioner," without confining it to the Commissioner of a particular State.

Hurt vs. McCartney, 18 Ill., 129.

Irving vs. Brownell, 11 Ill., 416.

The deed then being acknowledged by the wife as a femesole the title passed under law of 1847.

And irrespective of the law 1847, the title passed under the certificates of conformity under the law of 1845.

The law of 1853 is called a confirmatory law, and not a restrictive law, and was not intended by the legislature to repeal any prior law.

J. S. BAILEY, *Att'y for Appellee.*

59-49
Sanderson Iron et al
vs
Mrs Kain

Appellees Brief

Jan 1857 / 1 57 57

Filed Jan 12/60
W. T. Wain
et

The law of 1855 is not a restrictive law, and not a mandatory law, and not in-
tended by the legislature to repeal any prior law.
And irrespective of the law 1844, the title passed under the certification of conformity was
of 1844.

The deed then being acknowledged by the wife as a feme sole she passed under the

Trust vs Brownell, 11 Ill. 410.

Hunt vs McCarty, 39 Ill. 130.

It is the Commission of a tortious act.

The language of the acts of 1845 and 1847 is "any Commission", without requiring

\$2, 1881, R. & S. Statutes, 415.

Confidential Law, §1, 1881, R. & S. Statutes, 380.

185, 1847, 384.

§10, 1846, R. & S. Statutes, 383.

1881, " §14, 410.

1881, " " 408.

1801, Statutes 401.

1801, Statutes 401.

1st. It has always been the policy of the legislature to uphold deeds made in violation

of Article Ann Postley.

The only question to be considered is the sufficiency of the certificate of acknowledgment

FORM AND DATE FOR STATUTES

WILLIAM KAIN, Appellee }
vs }
SANDERSON IRON, et al, Appellants }
} Affidavit from W. C. Duncanson.

JANUARY TERM, 1860.

Supreme Court--2d Grand Division.

SANDERSON LYON *et al*,
APPELLANTS,
VS.
WILLIAM KAIN,
APPELLEE.

Appeal from McDonough

POINTS AND BRIEF FOR APPELLANT,

By JUDD, BOYD & JAMES.

I.

VARIANCE, &C.

THE FACT.—The patent is to James *Emmonds*. The deed to David B. Kain bears the signature and was proven to have been signed by James *Emmens*. [Abstract, p. 1.]

POINTS AND LAW.—I. “Emmonds” and “Emmens” are not the same name.

Schoonoven and *Schoonover* are not *idem sonans*; *Schoonhoven v. Gott*, 20 Ill., 46. *Shakepear* and *Shakespeare* are not the same name; *The King v. Shakespeare*, 10 East. R. 83. Neither are *Rudolphus* and *Rodalphus*; 4 Bac. Abr. letter A, title Misnomer, 752. Neither are *Willison* and *Willitson*; 2 Spear, (Ark) 46.

☞ A stronger case still, if possible, and one that must be decisive of the case at bar, is that in which the court holds that *Cummins* and *Comyns* are not the same name. *Cruikshank v. Comyns*, 24 Ill. 603.

“Monds” and “mens” are certainly no nearer *idem sonans* than are “com” and “cum”. It would require a remarkable stretch of the imagination to fancy a *similar* not to say *the same sound* in either case.

II. But the proper legal signification of *idem sonans* is “meaning the same”—not strictly “the same in sound”. Webster unabridged, 1497. Who can say that *Emmonds* and *Emmens* mean the same man, without evidence *abunde* the names themselves? Whatever *imagination* may do in the way of hunting out a *similar* sound between the two names, when pronounced *with an effort to make them sound alike*, no person can look at the words on paper without knowing instantly that they are two different and distinct names. Title to real-estate ought not to rest on any such frail and doubtful tenure. If, in the solemnity of conveying title to land, the principle of *idem sonans* is to be applied, unaided by extrinsic proof, it should be with great caution. Stringency, not liberality, should be observed in its application. In real estate transactions there are already doors enough open to fraud.

If the party conveying by the name of “Emmens” was really the “Emmonds”

described in the patent, some proof of the fact should have been adduced, or else that he was as well known by the one name as the other.

Cruikshank v. Comyns, 24 Ill. 603.

Schoonhoven v. Gott, 20 Ib. 46.

II.

INTESTACY, &C.

THE FACTS.—David B. Kain is proven to have died intestate; but there is *no proof* as to whether Richard Kain, James Kain and the father and mother of William Kain, or either of them, died testate or intestate.

POINTS AND LAW.—In the absence of proof on the point, is there any presumption that these heirs died intestate? If not, then, in any event, the plaintiff should have recovered only one-sixth, instead of two-thirds, below.

It is against the legislative policy of this State to indulge in any such presumptions; for by Sec. 55 of the Statute of Wills, (R. S. 1845, 547,) it is provided that administration shall not in any case be granted, until *proof be made* not only of the death, but also that the person on whose estate letters are requested died intestate.

There ought to be no presumptions either of testacy or intestacy. This of course would not affect the *degree* of proof required to establish intestacy.

III.

TOO MUCH RECOVERED—DEFECTIVE DEED ACKNOWLEDGMENT, &C.

THE FACTS.—If the proof is sufficient that the father of David B. Kain died before the commencement of this suit, then the real estate of said David would have passed, at that time, into the plaintiff (Wm. Kain) and Francis Kain, (for tho' Francis is dead there is no proof as to when he died—whether before or after this suit was brought,) and the heirs of James Kain. The plaintiff's interest by inheritance, then, was one third, and if all the heirs of James are proven to have conveyed to him, then he held two-thirds—that is, if the court holds it to be a presumption of law that Richard Kain, James Kain, and the father and mother of William and David B. Kain died intestate.

James Kain, one of David's brothers, died in 1838, leaving a widow and Agnes H. Postley (wife of *Samuel B. Postley*,) Amelia Ann Postley (wife of Washington M. Postley,) James Kain, Francis Kain, and *Abraham B. Kain*, his children.— [Abs't pp 2, 3.]

Pages 1 and 2 of the Abstract will show what parties signed and acknowledged the deed to plaintiff, and from pp 1, 2, and 3, it will appear that all of the above named children of James Kain, deceased, resided in New-York and Pennsylvania at the date of said deed. There is no proof that *Samuel B. Postley* ever executed or acknowledged the deed. *S. Brooke Postley*, and Agnes his wife, did. [Abs't p 1.] Neither is there any proof that *Abraham B. Kain* ever signed or acknowledged the deed, unless the acknowledgment last copied on page 2 of the Abstract is good. *A. Boudouine Kain* does not appear to have signed and acknowledged it.

There is no evidence that said deed was ever recorded in McDonough County, Ill., where the land lies.

POINTS AND LAW.—I. Agnes H. Postley could not deed her interest without being joined by her husband *Samuel B. Postley*. Laws 1847. p 37, §2. 1 Purple's Statutes, 162.

In law the initial letter of a middle, or other name not used is no part of the name. *The law knows only of one Christian name.*

Erskine v. Davis, 25 Ill. 251. *Thompson v. Lee*, 21 Ill. 243. — *John R. Dyer*.

This being the law, we have *Samuel Postley* and *Brooke Postley* to deal with.— Then Agnes, the wife of *Samuel Postley*, does not attempt to convey; but Agnes,

the wife of *Brooke Postley* does. Who shall say that *Samuel Postley* and *Brooke Postley* are one and the same man? Where is the proof of it?

The deed from "S. Brooke Postley" does not prove that "Samuel B. Postley" has conveyed, without evidence *aliunde* to identify Samuel and Brooke as one and the same man.

Spear v. Craig, 22 Ill. 433.

Cruikshank v. Comyns, 24 Ib. 603.

Schoonhoven v. Gott, 20 Ib 46.

II. On the same principle and for the same reasons, the deed of *A. Boudouine Kain* cannot be taken to be the deed of *Abraham B. Kain*.

III. § 1. The acknowledgment by Washington M. Postley and his wife Amelia Ann, before Edw. Shippen, a commissioner of deeds for New-York residing in Philadelphia, Pa., is not good under the laws of Illinois for four reasons. 1st. A com'r "for New-York" residing in Penn., commissioned by the Executive authority of the former State "to take the acknowledgment of deeds, etc. to be used or recorded therein" (i. e. in New-York) cannot take acknowledgments of deeds to be used in Illinois. 2nd. The com'r does not certify that the parties were personally known to him. &c. 3rd. He fails to certify that the husband and wife acknowledged the same "freely and voluntarily." Laws 1853, p 89. 1 Purple's Statutes 168. 4th. The officer fails to show that the wife "knew the contents of the deed." Laws 1853 as above.

§ 2. Does the Pennsylvania certificate of conformity make the acknowledgment good? The N. Y. certificate does not, because it is not by a clerk of the State wherein the acknowledgment was taken. The certificate of the com'r and that of the Penn'a clerk must be taken together. The clerk says that the deed was acknowledged, &c., "according to the laws of Penn'a." Very well, it was "acknowledged according to the laws of Penn'a" in what view—for what purpose? The New York com'r says, in substance, that he took the acknowledgment of the deed to be "used or recorded in New York." The two certificates taken together, therefore, show substantially that the deed was "acknowledged according to the laws of Penn'a" in respect to deeds "to be used or recorded in New-York." These certificates present a queer medley, and that of the Pennsylvania clerk is ridiculously false; yet if we take it for truth, what does it prove? Why, it proves only that the Pennsylvania legislature has been providing rules of evidence and record for benighted New-York—that's all. This, however, is not a very good reason why the deed should be read in evidence in Illinois.

IV. The acknowledgment by Francis Kain and Abraham B. Kain, before W. R. English, notary public, is not good. The caption or venue of the certificate ("City and County of New York, ss:") has, judicially, no assignable locality, and the notorial seal affixed will not help it.

Vance v. Schuyler et. al., 1 Gilm. 163.

V. ~~But~~ *But the acknowledgment of the deed, by the non-resident married women, even if well taken, does not make it evidence as to them under the laws of Illinois.*

§ 1. A *femme covert* cannot except by express statute and in the mode prescribed, convey her title to real estate.

Mason v. Brock, 12 Ill. 276.

Lane v. Soulard et. al. 15 Ib 123.

§ 2. From the time the Revised Statutes of 1845 took effect, till the passage of the act of Feb'y 22, 1847, there was no law authorizing a *femme covert*, residing out of this State, to convey her land situated in this State.

Lane v. Soulard et. al., 15 Ill 123.

§ 3. Hence the two married women in this case could only convey under the law of 1847. Laws 1847, p 37. Purple's Statute 162. And their deed to be *valid*, must be properly acknowledged. 5 Gilm 125. 12 Ill. 276.

The deed as to Amelia Ann Postley and her husband Washington M. Postley is not properly acknowledged under the laws of Illinois, for the reasons above set-forth in § 1 of the 3rd clause of this the III general point or division.

This being the case, and the fee of the land being in Mrs. Postley, the acknowledgment is not good unless it is "in conformity with the laws of the State in which it was executed." See § 3, law of 1847, above cited. And the law of 1847 does not make the certificate of conformity evidence that the acknowledgement is "in conformity with the laws" of Pennsylvania. Neither does the conveyance act of 1845 make it evidence, in this particular case; because by the 16th Sec. of that act the certificate of conformity there provided for does not entitle the deed to be read in

Lyon

SUPREME COURT
OF
ILLINOIS.
SECOND GRAND DIVISION.

JANUARY TERM, 1865.

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