No. 8462

Supreme Court of Illinois

People, for use of B.A. Jennings

vs.

Charles H.Jennings et al

71641  7

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State of Illinois
Marion County } ss

Pleas and Proceedings had in the Circuit Court in and for the County of Marion and State of Illinois before the Hon. Silas L Bryan in a cause heretofore pending wherein The People of the State of Illinois for the use of Butia A Jennings was Plaintiff and Charles A. Jennings Green L Chitwood & John G. Vaughn Defendants

Be it Remembered that on the 25th day of July A D 1866 the above named Plaintiffs filed in the office of the Clerk of said Circuit Court their Praecipe for Summons against said Defendants, together with costs bond which are in words and figures following Towit

"State of Illinois } In the Marion County Cir
Marion County } cuit Court A D 1866 August Term

The People of the State of Illinois for the use of Butia A Jennings

vs

Charles A Jennings,
Green L Chitwood &
John G. Vaughn

Debt $3000.00
Damages $1000.00

The clerk will issue a

[8442-1]

2 above as above

O'Melveny & Merrill
Atty's for pltf

State of Illinois }
Marion County }

I do hereby enter myself security for costs in the above cause and acknowledge myself bound to pay all costs which shall accrue in this cause to the adverse party or to any of the officers of this Court in pursuance of the laws of this State

July 9th 1866 H K S O'Melveny

Approved by me this 25th day of July 1866

H C Moore Clk

Whereupon Summons issued in words and figures to wit

"State of Illinois }
Marion County } ss The People of the State of Illinois to the Sheriff of said County Greeting. We Command you to Summon Charles W Jennings Grant S Chilton & John G Vaughn if to be found in your County to appear before the Circuit Court of Marion County on the first day of the Term thereof to be holden at the Court House in Salem on the third Monday in the month of August next, to answer The People of the

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State of Illinois for the use of Julia A Jennings of a plea that they render unto her the sum of $3000 Dolls which they owe to and unjustly detain from her to her damage $1000 as She says, and have of this writ and return to said Court as the law directs

Witness Wm C Moore Clerk of our said Court and the Seal thereof at Salem this 27th day of July A D 1866

W C Moore Clerk

Stamps 50c

"Endorsed by the Sheriff as follows

Served within Summons by reading same to John G Vaughn & by showing him the Original Seal thereon Aug 1st 1866

Charles H Jennings not found in Marion County

Joel K Finley Sheff

I have duly served the within writ by giving a true Copy of same to Ruth Chitwood wife of the within named defendant Green L Chitwood she being a white person over the age of Ten years and residing at the Residence or place of abode of the said Green L Chitwood in Marion County Illinois the said G L Chitwood refusing to absent himself from home to evade service of within writ Aug 10th 1866

Joel K Finley

Sheff

[illegible]

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And afterwards To wit on the 11th day of August A D 1866 said Plaintiff filed in the Office of the Clerk of said Court their Declaration which is in words and figures following To wit

State of Illinois } In the Circuit Court of Marion
Marion County } County August Term A D 1866

The People of the State of Illinois who sue for the use of Bulia A Jennings plff in the this suit by Milvery & Murrell. Complain of Charles H Jennings Green L Chitwood and John G Vaughn Defts of a Plea that they render unto the said plff for the use aforesaid the sum of three thousand Dollars which they owe to and unjustly detain from them for the use aforesaid For that whereas heretofore To wit on the 20th day of June A D 1864 at the County of Marion and State of Illinois the said Defts by their Certain writing obligatory (the said Charles H Jennings signing the same thus "C H Jennings" and the said Green L Chitwood thus "G L Chitwood" and the said John G Vaughn thus "Jno G Vaughn") Sealed with their seals and now to the Court here shown the date whereof is the day and year aforesaid acknowledged themselves held and firmly bound unto the people of the State

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of Illinois in the Penal sum of three thousand Dollars Current Money of the United States for the payment of which $3000. Well and truly to be made the sd Defts thereby bound themselves their heirs executors administrators & assigns jointly and severally Which sd writing obligatory was and is subject to a certain Condition thereunder written Whereby after reciting to the effect following to wit' If the said Charles H Jennings discovering himself thus "C H Jennings" administration of all & singular the goods and chattles rights & Credits of Isaac Jennings late deceased do make or cause to be made a true and perfect inventory of all and singular of all the goods and chattles rights and Credits of the said deceased which should come to his hands possession or knowledge of him the sd Charles H Jennings or such administrator or to the hands of any other person for him and the same so made do exhibit or cause to be exhibited in the County Court of Marion County agreeably to law and such goods and chattles rights and Credits do well and truly administer according to Law and all the rest of the said goods & chattles rights and Credits which should be found remaining upon the account of the said administrator the same being

[D612-3]

6 first examined and allowed by the County Court (aforesaid) should deliver and pay unto such person or persons respectfully as might be legally entitled thereto and further if he the sd Deft Charles W Jennings as such Admr should cause a just and true account of all his actings and doings therein when thereunto required by sd Court and further among other things should as such Admr do and perform in general all other acts which might be by any time required of him by Law then said obligation to be Void otherwise to remain in full force and Vertue Which sd writting obligatory was duly Taken and approved as the Bond of the sd Deft and filed in the said County Court. And the sd Plff avers that the sd Deft Charles W Jennings took upon himself to discharge the duties of Admr of all and singular the personal effects of the estate of the sd Israel Jennings dec'd and became and was then & there the Admr of all the personal estate rights and Credits of sd Israel Jennings dec'd and so continued to be such Administrator from thence hitherto until after the commission of the grievances and misconduct hereinafter

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mentioned. Yea the Def. Pltf for the use aforesaid &c in fact say that the said Defr Charles H Jennings did not faithfully discharge all the duties required of him as such Administrator as aforesaid, according to the Condition of said writing obligatory but during the time he was Such Admr as aforesaid wholly neglected refused so to do. But on the contrary thereof the Def avers that the Defr Charles H Jennings broke the Condition of the sd writing obligatory in this that is to say He the sd Defr Charles H Jennings as such Admr of estate of Israel Jennings Jnr did receive a large sum of money to wit the sum of $1000. of the rights and credits of said estate of Israel Jennings Jr from the executors of the estate of Israel Jennings Jnr which said sum of one thousand dollars so received by the sd Defr Charles H Jennings he the sd Defr as Admr in no way or manner reported to the said County Court nor did he in any manner account for the same to said estate of Israel Jennings Jnr. on final settlement of said estate of Israel Jennings Jnr dec'd. And the sd Pltf for the use aforesaid further avers that the said Bucia H Jennings for

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whose use this action is brought is the
Widow of the late Israel Jennings Jun
deceased and that she is entitled to the
one third part of the Money accruing from
the personal estate of S[d] deceased Israel
Jennings Jun after payment of all just
Claims and demands against said estate
And C[o] pl[f] further aver that after all
just Claims and demands more proved
and allowed against said estate of
Israel Jennings Jun by the S[d] County Court
there remained in the hands of the S[d]
Deft Charles H Jennings as such Admr the
said sum of $1000 so received by him
from the said Executors of the estate
of Israel Jennings Jun[r] the one third
part of which belongs to the said Rutha
A Jennings Widow as aforesaid which
he the said Deft wholly refuses to acco
unt for and pay over to her Wherefore
an action hath accrued to the S[d] Pl[f]
Jun the use aforesaid to demand and have
of and from the S[d] Deft the S[d] sum of
$1000 Debt aforesaid to be discharged on paym
ent of the said 3[rd] part of the said sum of
One thousand Dollars damages. Yet the said
Deft although often requested so to do hath not
paid the said sum or either or any part

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thereof to the damage of the said Plff for the sum aforesaid of $3000 & therefore they bring suit &c O'Melveny & Morrill for Plff

Know all men by these Presents That we C H Jennings G L Chitwood and Jno G Vaughn of the County of Marion and State of Illinois are held and firmly bound unto the people of the State of Illinois in the penal sum of three 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 and assigns jointly severally and firmly by these presents Witness our hands and seals this 20th day of June A D 1864

The Condition of the above obligation is such That if the said C H Jennings Administrator of all and singular the goods and chattels rights and credits of Benj Jennings late 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 him the said C H Jennings

as such Administrator or to the hands of any person or persons for him and the same so made do exhibit or cause to be exhibited in the County Court of the said County of Marion agreeably to law and such goods and chattles rights and credits to do well and truly administer according to law and all the rest of the said goods and chattles rights and credits which shall be found remaining upon the account of the said Administrator the same being first examined and allowed by the County Court shall deliver and pay unto such person or persons respectively as may be legally entitled thereto. And further do make a just and true account of all his actings and doings therein when thereunto required by said Court and if it shall hereafter appear that any Last Will and Testament was made by deceased and the same be proved in Court and letters Testamentary or of Administration be obtained thereon and the said C H Jennings do in such case on being required thereto render and deliver up the letters of Administration granted to him as aforesaid and shall in general do and perform

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all other acts which may at anytime be required of him by law then this obligation to be void, otherwise to remain in full force and virtue

Taken signed and sealed
Before me this 20th Day of June A.D. 1864
Dwight Tracy Clerk

B. K. Jennings (S S)
G. T. Chitwood (S S)
Jno G. Vaughn (S S)

And afterwards at the August term of said Court the following order appears of Record herein Viz

The People of the State of Illinois
For the use of Benia K Jennings
vs
Charles Jennings Green T Chitwood
and John G Vaughn
} Debt

Monday Aug 29th 1864 This cause being called comes the Defendants by attorney and enter motion to quash service as to Green T Chitwood which motion the Court allows and orders that the cause stand continued for service and that the writ issue to any County.

Whereupon Alias Summons issued

[P452-L]

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in words and figures as follows Davis
Summons Alias
State of Illinois } ss. The People of the State of Il
Marion County } inois to the Sheriff of said Co
-ty Greeting
We Command you as heretofore to Sum
mon Charles H Jennings Green L Chitwood
and John G Vaughn if to be found in
your County to appear before the Cir
cuit Court of Marion County on the first
day of the Term thereof to be holden
at the Court House in Salem on the third
Monday in the month of March next
to answer the people of the State of Illinois
who sue for the use of Julia A Jennings
of a plea that they render unto her
the sum of $300.00 Dollars which they owe
to and unjustly detain from her to the
damage $1000.00 as she says and have
make due return to said Court as
the law directs
Witness Henry Moore Clerk of
our said Court and the Seal thereof
at Salem this 16th day of November
A D 1866 H C Moore Clerk
Endorsed by the Sheriff as follows
Executed the within Summons by reading
the same to the within named Defts Green

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L Childrood & showing him the official
Seal thereon as I am thereon commanded
Nov 24th 1866 Joel K Fenley Sheriff by A Fenley Dep
John G Vaughn the within named defe
endant August Term 1866 Charles H Jennings
Was found in Marion County Nov 24th 1866
Joel K. Fenley Sheriff
And afterwards at said August term of
said Court to wit on the 21st day of August
1866 said defendants Vaughn by his Attorney
files plea to Plffs declaration in words
and figures following to wit
Circuit Court of Marion County Illinois
March Term 1866
The People &c for the use of
Charles H Jennings
vs
Charles H Jennings
Green L Childrood
John G Vaughn
} Debt

And the Defendants
by W Schaeffer his Attorney come and
defends the wrong and injury when &
and says that the said supposed writing
obligatory is not his deed and of this
the said defendants Vaughn puts himself
upon the Country &c
W Schaeffer Atty for Defts

(1468-27)

14 And for a further plea in this behalf the said defendants Craves oyer of the said supposed writing obligatory in said Declaration mentioned and it is read to them and they Crave oyer of the condition of the said supposed writing obligatory and it is read to him in these words That if the said C H Jennings Administrator of all and singular the goods and chattels rights and credits of Israel Jennings Jun 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 him the said C H Jennings as such Administrator or to the hands of any person or persons for him and the same so made do exhibit or cause to be exhibited in the County Court of the said County of Warren agreeably to Law and such goods and chattels rights and credits do well and truly administer according to Law and all the rest of the said goods and chattels rights and credits which shall be found remaining upon the account of the said Administrator the same being first examined and allowed

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by the County Court shall deliver and pay unto such person or persons respectively as may be legally entitled thereto And further do make a just and true account of all his writings and doings therein when thereunto required by said Court And if it shall hereafter appear that any Last Will and Testament was made by deceased and the same be proved in Court and Letters Testamentary or of Administration be obtained thereon and the said C H Jennings do in such case on being required thereunto render and deliver up the Letters of Administration granted to him as aforesaid and shall in general do and perform all other acts which may at any time be required of him by Law then this obligation to be void otherwise to remain in full force and virtue. Which being read and heard the said Defts say actio non because they say that the said Charles H Jennings at all times since the making of the said writing obligatory and the Conditions thereof has truly kept and performed all and singular the articles clauses payments conditions and agreements in the said condition

$ 8462-8

16 of the said writing obligatory contained to the true intent and meaning thereof and this the said Defts are ready to verify Wherefore they pray Judgment &c

W Schaffer Atty for Defts

3 And for a further plea in this behalf the said Defendants say that they ought not to be charged with the said debt by virtue of the said supposed writing obligatory because they say that whatever money came into the hands of the said Charles D Jennings other than such that he has truly and fully accounted for as administrator from the executors of the estate of Israel Jennings Junior came to him not as administrator but as one of the children of Israel Jennings Junior by virtue of a provision and bequest in the last will and testament of the said Israel Jennings Junr which was duly proved in the County Court of Marion County as follows towit "It is further my will that should there be anything remaining after paying my just debts funeral expenses, bequests and the necessary expenses of the settlement of my estate

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that the same may be equally divided between my following named Children to wit Charles W Jennings Israel Jennings Mary White and Richard W McElwain and in case of the death of either or all of my last mentioned Children then to be divided among their Children the Child or Children of each one taking their deceased parents portion in equal parts among them" And the said defendants say that the said Israel Jennings Jr one of the Children mentioned in the will and testament of the said Israel Jennings Sr had departed this life before he was entitled to the money in Pltffs declaration mentioned and before it was in the hands of the said Executors of the said Israel Jennings Sr and that it was never in the hands or possession of the said Israel Jennings Junior and that the said Pltffs are not entitled to any part thereof for the use of the said Rulia A Jennings And this the said Defts are ready to verify Wherefore they pray Judgment &c

W Shaffer Atty for Defts

[illegible]

18 And afterward at the March Term 1867 of said Court Davis on the 4th day of April the following agreement and Statement of facts was filed herein Davis

The People &c for the use
of of Bulla Jennings
vs
Charles H Jennings Edwin
of Israel Jennings Jr) & John
G Vaughn & Green S Chitwood

It is agreed that this suit be tried and determined on the following agreement and Statement of facts which it is admitted to be true and material

1 That Israel Jennings Sen died 7th Aug 1866 testate That his will is probated and in words and figures following Davis

In the name of God Amen. I Israel Jennings of the County of Marion and State of Illinois being sick of body but of sound mind and memory and considering the mortality of the flesh and wishing to dispose of my property both real and personal in a way that shall and after my death, cause strife and dissatisfaction among my children, do make

Ordain publish and declare this my last Will and testament hereby revoking and annulling all former Wills and Testaments by me heretofore made. First it is my will that all my just debts and funeral expenses be first paid after which I dispose of my property both real and personal as follows-That is to say. I give and bequeath unto my beloved wife S.P. Jennings the East half of the North East quarter of Section thirty three in Township one North of Range one East. Also one other tract of Land lying and situate adjoining and immediately South of the above described tract of Land all of which land is situate in the County of Marion and State of Illinois aforesaid containing in all one hundred and sixty acres. To my said wife to have and to hold the said land as long and for such time as she may remain sole and unmarried after my death and no longer upon which lands is situate the improvements and which also constitutes the homestead where I now reside. I also give and bequeath to my said wife the Rockaway carriage and one horse to be chosen by her out of my stock of horses, to work in the same

[P462-10]

I also give and bequeath unto my said
wife one third part of all my personal
estate after the payment of all my just
debts funeral and administration upon
as said carriage and horse above spe-
cified to be computed as a part of my
said wife's third part of my personal estate
I give bequeath and devise unto my son
Charles W Jennings in addition to what
he has already received from me
heretofore. The North West quarter of the
South West quarter of Section Seventy
six in Township Two one North of Range
No one East of the third principal Me-
ridian Containing forty acres and adjoi-
ning said Charles land on the East. I
also give and bequeath unto the said
Charles one hundred dollars in Cash
and also one hundred dollars worth
of Personal property at its valuation
I give bequeath and devise unto my son
Israel Jennings two hundred dollars in
Cash and also one hundred dollars
worth of personal personal property
to be taken at its valuation and shou-
ld the said Israel be indebted to my
estate at my death then and in that
case the amount of such indebtedness

to be taken out and deducted from the amount of cash above bequeathed to him I give and bequeath to my son William H Jennings two hundred dollars in cash I give and bequeath unto my daughter Mary White three hundred dollars in Cash which is to be loaned out at interest and my said daughter Mary is to have the interest accruing thereon from year to year for her own proper use and benefit and at her death the said sum of three hundred dollars to be equally divided between her three children Israel John and Martha and in case of the death of any or either of them to the survivor or survivors-

I give and bequeath unto my grand son Jefferson Davidson son of Susan Davidson and America Davidson one hundred dollars in Cash to be loaned out by my Executors at interest from year to year with the interest accruing thereon and to be paid together with the accruing interest to said Jefferson when he may arrive at twenty one years of age in case he the said Jefferson shall live to that age- and in case he the said Jefferson should die without issue before he arrives at twenty one years of age then and

in that case said sum of one hundred dollars together with the interest which may accrue thereon to go to and be paid over to my grand son John White in case he should survive the said Jefferson

I give and bequeath unto said Geo Davidson the sum of twenty five dollars to be deducted out of any amounts he may be owing my estate at my death provided he shall be owing my estate that amount.

I give and bequeath unto my daughter Richard Ann McElwain three hundred dollars. It is further my will that if there should not be an amount of money and property at my death sufficient to pay the foregoing bequests, then and in that case, each one as above specified is to be paid an equal ratio according to their several amounts as above specified and wait for the residue until the proceeds of my lands can be realized. It is also my will that my lands remaining undisposed of by this will shall be sold by my Executors at public sale after giving such notice as my Executors shall think

necessary upon the following terms
to wit: the purchaser paying one fourth of the purchase money at the time
of sale and the residue in three equal
installments of twelve Eighteen and twen-
-ty four months the purchaser also
giving bond and approved security
and Mortgage on the premises to secure
the payment of the purchase money
said lands to be sold in such quanti-
-ties and subdivisions as my said Execu-
tors may think best for the interest of
my estate. And it is also my will that
upon the death of my said wife or
upon her remarriage after my death
in case she should so marry that the
lands of which she is left possessed
under this will be sold in the same way
and upon the same terms as herein
above specified for the sale of my other
lands directed to be sold. The sale of
my lands to take place as soon after
my death as may be convenient except
the said lands of which my said wife
is hereby possessed

It is further my will that after the payment of
all my just debts funeral and other necessary
expenses in the settlement of my estate and

fully paid and satisfied and also after the full and compete payment of the legacies herein above specified should there be anything or sufficient remaining that my Executor shall loan out one hundred dollars at interest for the use of my said Grandson Jefferson Davidson until the said Jefferson shall become of age then the said sum of one hundred dollars together with the interest accruing thereon to be paid to the said Jefferson by my Executors provided that if the said Jefferson should die without issue before he arrives at full age then and in that case the said last mentioned sum of one hundred dollars together with the interest that shall or may accrue thereon to be paid to my children and their decendants as hereinafter mentioned

It is further my will that should there be any thing remaining after paying my just debts funeral expenses legacies and the necessary expenses of the settlement of my estate that the same or any be equally divided between my following named Children to wit Charles W Jennings Israel Jennings Mary White and

25 Richard Ann McElwain, and in case of the death of either or all of my last mentioned Children, their to be divided among their Children, the Child or Children of each one taking their deceased parents portion in equal parts among them. I do hereby Constitute and appoint Charles W Jennings Rufus McElwain of Marion County and John W Watson of Mt Vernon Illinois my true and lawful Executors to execute and carry into effect this my last will and testament fully and in all respects

In testimony whereof I have hereunto set my hand and affixed my seal this the twentieth day of April in the year of our Lord one thousand eight hundred and fifty four

(Signed) Israel his X mark Jennings Sen[r] Seal

2 That Charles Jennings & Rufus McElwain qualified as Exs under their will

That Israel Jennings Jr was a son of Israel Sen and one of his legal heirs and devisees in said will. departed this life 19th of Sept 1861, and left at his death Rutia Jennings Jr whom on this suit is brought his widow and several children

[illegible]

26 with a Jennings wife and owned with Simeon
Nelson and further that Israel Jennings
died intestate

3 It is further agreed that the executors
paid off the debts of Israel Jennings the
Specified Legacies that were to be paid
in money That the Executors under
the will aforesaid made sale of Land
belonging to the estate of Israel Jennings
Senr on the 26th day of May 1863 for the
sum of $ 3451 00 which and after payment
of expenses, there was subject to
administration to the devisees under the
will the sum of $ to each of said
devisees to wit Charles W. Israel Wm
R A M & Elvain and Mary White

4 That the said Executors in Sept 1865 paid
over to the admr of Israel Jennings &
to wit to Sd Charles W Jennings the sum
of $ 357 00 which accrued from the Sale
of the Land of said Israel Senr as
aforesaid That the Administrator of the
estate of Israel Jennings Jr never account
ed for that money, which was paid
to him from the Executors of the will
of Israel Senr. but claims that as this
was paid to him from the sale of the
lands under the will of Israel Jennings

Jenr the same shall be wholly paid
to the heirs & Law of Israel Jenr and
that no part of it has been or by law
is distributable to the widow of the
said Israel Jennings Jr to wit the Dft Rulia
Jennings Jr whose use this suit is brought
It is further admitted that Dft Charles
R Jennings the admr of Israel Jennings
Jr never reported as assets the said sum
of $ 354.50 and without so doing paid
the whole amount to the children of
Israel Jr repelling the claims and
demands of said Rulia although she
has often requested him to pay the same
It is further agreed that the only point
for decision is whether Dft Rulia Jen-
nings the widow of Israel Jennings Jr
is or is not entitled to share in this dis-
tribution of the money arising from the
sale of the lands of Israel Jennings Jr
late deceased under the will
The parties hereto reserve the right of
appeal, or to prosecute a writ of error
at their option to the Supreme Court
from any decision which may be made
herein, & that the decision of the Supreme Court
be entered by that Court as final if the
Court be of opinion that Dft Rulia is

$ 8462-147

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entitled to share in the fund arising from the sale of said lands, Then Judgment is to be rendered for Pltff for $3000, Debt to be satisfied on payment of $118cc Dollars Damages & Costs But if the Court decides the Law on the first point to be against the Pltff Then the said suit is to be dismissed Pltff cost But if more than $118cc shall hereafter appear to be due on distribution of the money paid to the Admr of Israel for the judgment for the $118cc shall be no bar to further recovery

O'Mulvey & Merritt Attys for Pltff
M Strawfer Atty for Defts

Whereupon at the March term 1867 of said Court the following order is entered of Record to wit

The People of the State of Illinois for the use of Butler & Jennings
vs
Chas D Jennings
Edmund Chitwood and
John S Vaughn

Debt

And now at this day to wit April 4th 1867 this cause being called Come the plaintiffs by O'Mulvey and Merritt their attorneys

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And the Defendants by Scholfield their Attorney and this Cause is by agreement submitted to the Court for trial upon a written statement of facts and the Court being sufficiently advised in the premises finds Judgment for the Defendants

Whereupon the Plaintiffs by their said Attorneys enter their motion for new trial which motion is refused by the Court. It is therefore ordered and adjudged by the Court that said Defendants do have and recover of and from said Plaintiffs the costs herein accrued and that Execution issue therefor &c

And the Plaintiffs by their said Attorneys pray an appeal to the Supreme Court which is granted upon Pltffs entering into Bond of $600.00 within 60 days from the adjournment of this term of Court to be approved by the Clerk of this Court

And afterwards to wit on said 4th day of May 1867 said Plaintiffs filed Bill of exceptions herein which is in words and figures following to wit

State of Illinois } In the Circuit Court
Marion County } March Term 1867

[9462-15]

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The People &c for the use of Bulia Jennings
vs
Chas H Jennings adm of Israel Jennings dec'd et al

} Debt

Be it remembered that this cause was tried by Silas L Bryan Judge &c. without a Jury by consent of parties on the following statement of facts and stipulations which was all the evidence in the cause

(See Page 18 of this Record)

And the Court having considered & being fully advised finds the issues for the defts and thereupon the Plffs enter their motion for a new trial 1st because said verdict is against the evidence 2d, 3d the said verdict is against the law, 2d, 3d the verdict ought to have been for the Plff which motion was by the Court overruled to which judgment of the Court in overruling said motion for a new trial the said Plff by their Counsel at the time excepted

Whereupon the Court rendered judgment for the said Defts for their costs, and dismissed the said suit of the said Plffs

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from the docket to all which said
Pltf at the time excepted & prays that
this their Bill of exceptions be signed
and sealed & made a part of the
record which is done in open Court

Silas L Bryan Esq
Judge 2nd Jud Cir Ills

And afterwards to wit on the 15th day of April
1867 the Plaintiff file their Bond which
is in words and figures following to wit

Know all men by these presents that Bulia
Jennings and Thomas E Merritt are held
and firmly bound unto Samuel S Thom-
-as and Charles H Jennings & John G Vaughn
in the penal sum of $1000 lawful
money of the United States for the pay-
ment of which well and truly to be
made we bind ourselves our heirs
Executors and administrators jointly
severally & firmly by these presents Witness
our hands and seals this 15th day of
April 1867 The condition of this obli-
gation is such that whereas the above
named Bulia Jennings recovered a
Judgment at the March Term of the
Marion County Circuit Court A.D 1867
against the said Charles H Jennings

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Green L Chitwood and John G Vaughn Administrator and Obligors of Israel Jennings deceased Jr which Judgment the said Bulcia Jennings the appeal to the Supreme Court of the State of Illinois to be held in June next Now if the said Bulcia Jennings appellant shall well and truly pay the cost made and appealed from and made in said cause and shall duly and diligently prosecute said appeal then this obligation shall be void otherwise to remain in full force

Bulcia X Jennings Seal
her mark
J G Vaughn Seal

Approved April 15th 1867
H C Moon Clk.

State of Illinois } ss.
Marion County }

I Henry C Moon Clerk of the Circuit Court in and for the County and State aforesaid do hereby certify the foregoing to be a true and correct Transcript of the Record and Proceedings had in the above entitled cause

Witness my hand and the seal of said Court at Salem this 17th day of April 1867

H C Moon Clk

And Come the said plaintiff, (appl) by H K S. O'Melveny their atty, and say that, the Court erred in the rendition of the judgment therein

1st Because on the evidence the judgment should have been rendered for the said plff, (the applts) and not for appees.

2. The judgment is contrary to the law, & and the evidence wherefore, they pray the same be reversed and final judgment rendered in this Court, &c which should have been rendered in this Court

H K S O'Melveny
for Appl

And the said Defts (appellees) by M. Schaeffer their atty say that the Court did not err as above by the pltff alleged or charged

M Schaeffer Atty
for Appellees

25
The People vs
Wm J Butler
Lumner
35
Charles H Jennings
Wm L Chitwood
& Dr E J Sampson

Filed May 10/1867
J Johnston Clk

$12.00

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

June Term, A. D. 1867.

THE PEOPLE OF THE STATE OF ILLINOIS, FOR THE USE OF BULIA A. JENNINGS, *Appellant*, vs. CHARLES H. JENNINGS, GREEN L. CHITWOOD, and JOHN G. VAUGHN, *Appellee.* } Appeal from Marion.

Page 1. Debt.

2 & 3 Bond for costs. Summons and return.

5 6 7 & 8 Declaration in usual form.

9 10 & 11 Copy of administrator's bond sued on in usual form.

11 Motion to quash service allowed and cause continued with *alias.*

12 *Alias*—writ and sheriff's return.

13 14 15 16 & 17 Pleas of defendant filed.

18 Cause submitted to the Court for trial on the following agreed statement of facts, in writing, viz: "It is agreed that Israel Jennings, sen., died on the 7th day of August, 1860, testate; that his will was probated in the words and figures following, to wit: (Here the will is set out in *haec verba*, upon pages 18, 19, 20, 21, 22, 23, 24 & 25.) No controversy exists as to the specific legacies, and they have all been settled up, but the only passages in said will, material in this case, are in the words and figures following, It is further agreed that the point for decision is whether said Bulia Jennings, the widow of Israel Jennings, junior, is or is not entitled to share in the distribution of the money arising from the sale of the lands of Israel Jennings, senior, late deceased under the will.

The parties hereto reserve the right of appeal, or to prosecute a writ of error at their option, to the Supreme Court, from any decision which may be made herein, and that the decision of the Supreme Court be entered by that Court as final, if the Court be of the opinion that the said Bulia is entitled to share in the fund arising from the sale of lands, then judgment is to be rendered for Plaintiff for $3000 debt, to be satisfied on payment of $118 00, damages and costs. But if the Court decides the law on the facts stated to be against the plaintiff, then the said suit is to be dismissed at plaintiff's cost. But if more than $118 00 shall hereafter appear to be due on distribution of the money paid to the administrator of Israel, junior, the judgment for the $118 00 shall be no bar to further recovery.

O'MELVENY & MERRITT, Atty's for Plaintiffs.
M. SHAEFFER, Attorney for Defendant.

29 Whereupon, the Court found the issues for defendants and gave judgment that the defendants recover their costs from plaintiffs, &c. Plaintiffs excepted at the time and filed their bill of exceptions, setting out the foregoing statement.

30 & 31 Prayer for an appeal granted, and appeal bond filed.

32 Clerk's certificate.

ERRORS:

1. The judgment should have been assessed for the Appellant and not for Appellees.
2. The judgment is contrary to law and the evidence.

PLAINTIFF'S BRIEF.

1. The *Will* constitutes the Executors, trustees to sell and convey all the real estate of the estate of Israel, senior, (not specifically devised to others) and to collect the money, and after payment of legacies, debts, and expenses of the trust, to divide the residue, equally, between Charles Jennings, Mrs. McElwain, Mrs. White, and the husband of Bulia Jennings, to wit, Israel Jennings, junior.

2. Israel, senior, died in 1860; left a large estate. After the payment of all legacies, debts, and expenses, the Executor sold a portion of the real estate, collected the money, and paid to the defendant Charles A. Jennings, administrator of the estate of Israel, junior, a portion of the funds; Israel, junior, having departed this life *intestate*, in 1861.

3. The will of Israel Jennings, senior, took effect at his death in 1860; *then* Israel, junior, was living; *then*, a vested interest, or right to the share of his father's estate, under the residuary distribution clause, took effect. It was a right to money, not to realty. He died intestate, and that right to so much money as should fall to his share, is the legitimate personal estate of Israel, junior, and subject to distribution as such.

4. That the grand-children should take the share of a deceased parent, was to prevent a "lapsed legacy;"—nothing seems indicated in the *will*, to prove that *the right* of Israel Jennings, junior, to the interest devised in his father's estate, did not vest, at the death of his father in 1860.

H. K. S. O'MELVENY, Att'y for Appellant.

[8462-18]

The People for the use
of Julia Jennings
vs.
Charles H. Jennings Etal

Error to Madison

Abstract & Brief
& Aff. in error

Filed June 5th 1867
Wood, Johnston & Co.

~~Beasley Ch. J.~~ The well established princi= ple in the construction of wills is, that the intention of the testator to be gathered from the words of the will must prevail. This is a settled canon of interpretation.

We are satisfied no present interest passed to Israel Jennings Jr. as the land was not converted into money until after his death, and by the express terms of the will, in case of the death of any one of testator's children, his share was to go to such children as he might leave.
Marsh vs Wheeler 2 Edw. Ch. 156. 1 Jarman on Wills 760 (side paging)

The ~~administrators and right in~~ Court decided correctly in adjudging that the amount paid over to the administrator of Israel Jennings Jr. by the executors was properly paid to him and that he holds the same as trustee for the heirs at law of said Israel Jr.

According to the agreement of the parties, the decision of this Court being against the plaintiff, the suit is dismissed at her costs.

25 — 15

People for the use &c

vs

Charles H. Jennings

Opinion by

Bruce Ch. J.

O.K.

C. J. 60
100

Suit dismissed.

H. K. S. O'MELVENY. LOUIS HOUCK.

O'MELVENY & HOUCK,

Attorneys at Law.

Cairo, Ill., May 9. 1867

Hon. Noah Johnston

Mt. Vernon.

Dear Sir:

Enclosed you will find a record of a cause, upon which you will please issue at once, ~~a Trans~~ writ of error to the Sheriff of Marion Co. I will pay fee when I come up in June

Yours &c.

H. K. S. O'Melveny

25

People &c. on
of Jennings
vs
Jennings et al

Precipe

Issued May 10. 67
N. Johnston Clk

In the Supreme Court--State of Illinois.

FIRST GRAND DIVISION.

STATE OF ILLINOIS, } SS. JUNE TERM, A. D. 1867.
MARION COUNTY, }

The People &c. for the use of Bulia Jennings }
vs. [Chitwood. } Error to Marion.
Chas. H. Jennings, John G. Vaughn & Green L. }

DEFENDANT'S BRIEF.

1. This is a controversy arising from the construction of the will of Isreal Jennings, sr. The will makes special legacies, and then provides that the executors shall sell all the real estate, and after the payment of the debts, expences, &c., the balance of the proceeds of the sale shall be divided equally among the testator's four chlldren, and if any of the children die, the portion of the deceased shall go to the deceased's child or children in equal parts.

Isreal Jennings, sr., died in 1860.

Isreal Jennings, jr., (one of the four children named,) died in 1861 intestate. In 1863, the executors of the will of Isreal Jennings, sr., sold the land. Bulia Jennings, the widow of Isreal, jr., now claims one third of the one fourth of the proceeds of the sale of the land as dower.

2. In the construction of wills, the intention of testator expressed in the will in clear and unambigerous terms, must govern if it be not illegal or against good morals. In this case the intention of the testator is clear, beyond boubt, that the proceeds of the sale of the land should go to the children of the deceased in equal parts, and not to the widow; and I hold that if the widow, for whose use this suit is brought, will succeed, the intention of the testator will be frustrated in two particulars.

1st. The children of the deceased son will get but two-thirds, instead of *all* the portion of their father.

And 2ndly, the children by the first wife will get their proportion out of two-thirds *only*, whilst the children by the second will get their proportion of the two-thirds *now*, and the widow's third at her death. That is, the children will not inherit *all* their father's portion, neither will they take in *equal parts*, as the will provides.

3. What kind of a legacy was thus created? It is not legacy of real estate because no real estate was to pass to the legatee. It is not an ordinary legacy of personal estate, because there was no personal estate in existence when the testator died. *It is a legacy charged upon real estate.*

1. Redfield on Wills, page 278; Raferty vs Clark, 1 Bradf Sur Rep 473; Cox vs Corkendall, 2 Beasley 138; Massaker vs Massaker, 2 Beasley 264; Baker vs Copenbarger, 15 Ills, 103.

4. Where real estate is ordered to be sold and converted into personalty, the avails will not be held to be a portion of the general personalty of the estate.

1. Redfield on Wills, 275; Sheddon vs Goodrich, 8 Vesey 481; Hooper vs Goodwin, 18 Vesey 156; Gallin vs Noble, 3 Mer 691.

5. If I am correct in the position, that the legacy in controversy is a legacy charged upon real estate, (and I think the authorities referred to establish this point,) then the remaining important question is, When doesthis legacy take effect? The rule in England and America, in regard to legacies charged upon real estate is that they are deferred until the time of payment.

2. Redfield on Wills, 624; Remnant vs Hood, 6 Jur N S, 1173; White vs Baker, 6 Jur n s 591.

1. Jarman on Wills, 704; Hawkins vs Everett, 5 Jones, Exq., 42; Simpson vs Spence, id 208; Fairbault vs Taylor, 5 Jones, Exq., 219.

6. Legacies charged upon real estate, lapse if the legatee die before the time of payment.

2. Redfield on Wills, 504; Lyman vs Vanderspriegel, 1 Aikens et Reps 75—280.

7. The law not only justifies, but demands the construction of the will in controversy, in conformity with the intention of the testator. The judgment of the Circuit Court should be affirmed.

M. SCHÆFFER, Att'y for the Def'ts.

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The People &c for use of
Bulia & Jennings &
alg
vs
Chas H Jennings & alg

Deft's Brief

Filed June 5th 1867
Noah Johnston Clk

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

June Term, A. D. 1867.

THE PEOPLE OF THE STATE OF ILLINOIS, FOR THE USE OF BULIA A. JENNINGS, *Appellant*, vs. CHARLES H. JENNINGS, GREEN L. CHITWOOD, and JOHN G. VAUGHN, *Appellee*. } Appeal from Marion.

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22 & 23 to-wit: "It is also my will, that my lands remaining undisposed of by this will shall be sold by my Executors, at public sale, after giving such notice as my Executors shall think necessary, upon the following terms, to wit: The purchaser paying one-fourth of the purchase money at the time of sale, and the residue in three equal instalments of twelve, eighteen and twenty-four months; the purchaser also giving bond and approved security and mortgage on the premises to secure the payment of the purchase money. Said lands to be sold in such quantities and sub-divisions as my Executors may think best for the interest of my estate. The sale of my lands to take place as soon after my death as convenient, except the said lands of which my said wife is hereby possessed. * * * It is further my will, that should their be anything remaining after paying my just debts, funeral expenses, bequests, and the necessary expenses of the settlement of my estate, that the same may be equally divided between my following named children, to wit: Charles W. Jennings, *Israel* Jennings, Mary White, and

25 Richard Ann McElwain, and in case of the death of either or all of my last named children, then to be divided among their children, the child or children of each one taking their deceased parent's portion among them. I do hereby constitute and appoint Charles W. Jennings, Rufus McElwain of Marion county, and John Watson of Mount Vernon, Illinois, my true and lawful Executors, to execute and carry into effect this my last will and testament, fully and in all respects."

Secondly, it is agreed, that Charles Jennings and Rufus P. McElwain qualified as Executors under the will, that Israel Jennings, junior, was the son of the testator and one of his legal heirs and devisees in said will, and that he died 19th of September, 1861, leaving Bulia Jennings, for whose use this suit is brought, his widow, with several

26 children by a former wife, and several by her; and further, that said Israel, junior, died intestate.

Thirdly, it is further agreed, that the Executors paid off the debts of Israel, senior, and the specified legacies that were to be paid in money. That the Executors under the will, afterwards made sale of lands belonging to the estate of Israel Jennings, senior, on the 25th day of May, 1863, for the sum of $3,451 00, and after payment of expenses, there was subject to administration to the devisees under the will the sum of $ to each of said devisees, to wit: Charles W. Israel, Jr., R. N. McElwain and Mary White.

Fourthly, that the said Executors in September, 1865, paid over to the administrator of Israel Jennings, junior, to wit: the said Charles H. Jennings, the sum of $345 00, which accrued from the sale of the lands of said Israel, senior, as aforesaid; that the

administrator of the estate of Israel Jennings, junior, never accounted for that money, which was paid to him from the Executors of the will of Israel, senior, but claims that as this was paid to him from the sale of the lands under the will of Israel Jennings, senior, the same shall be wholly paid to the heirs at law of Israel, junior, and that no part of it has been, or by law is, distributable to the widow of the said Israel Jennings, junior, to wit, the second Bulia Jennings, for whose use this suit is brought. It is further admitted that defendant Charles H. Jennings, the administrator of Israel Jennings, junior, never reported as assets the said sum of $354 00, and without so doing paid the whole amount to the children of Israel, junior, repeling the claims and demands of said Bulia although she has often requested him to pay the same. It is further agreed that the point for decision is whether said Bulia Jennings, the widow of Israel Jennings, junior, is or is not entitled to share in the distribution of the money arising from the sale of the lands of Israel Jennings, senior, late deceased under the will.

The parties hereto reserve the right of appeal, or to prosecute a writ of error at their option, to the Supreme Court, from any decision which may be made herein, and that the decision of the Supreme Court be entered by that Court as final, if the Court be of the opinion that the said Bulia is entitled to share in the fund arising from the sale of lands, then judgment is to be rendered for Plaintiff for $3000 debt, to be satisfied on payment of $118 00, damages and costs. But if the Court decides the law on the facts stated to be against the plaintiff, then the said suit is to be dismissed at plaintiff's cost. But if more than $118 00 shall hereafter appear to be due on distribution of the money paid to the administrator of Israel, junior, the judgment for the $118 00 shall be no bar to further recovery.

O'MELVENY & MERRITT, Atty's for Plaintiffs.
M. SHAEFFER, Attorney for Defendant.

29 Whereupon, the Court found the issues for defendants and gave judgment that the defendants recover their costs from plaintiffs, &c. Plaintiffs excepted at the time and filed their bill of exceptions, setting out the foregoing statement.

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32 Clerk's certificate.

ERRORS:

1. The judgment should have been assessed for the Appellant and not for Appellees.
2. The judgment is contrary to law and the evidence.

PLAINTIFF'S BRIEF.

1. The *Will* constitutes the Executors, trustees to sell and convey all the real estate of the estate of Israel, senior, (not specifically devised to others) and to collect the money, and after payment of legacies, debts, and expenses of the trust, to divide the residue, equally, between Charles Jennings, Mrs. McElwain, Mrs. White, and the husband of Bulia Jennings, to wit, Israel Jennings, junior.

2. Israel, senior, died in 1860; left a large estate. After the payment of all legacies, debts, and expenses, the Executor sold a portion of the real estate, collected the money, and paid to the defendant Charles A. Jennings, administrator of the estate of Israel, junior, a portion of the funds; Israel, junior, having departed this life *intestate*, in 1861.

3. The will of Israel Jennings, senior, took effect at his death in 1860; *then* Israel, junior, was living; *then*, a vested interest, or right to the share of his father's estate, under the residuary distribution clause, took effect. It was a right to money, not to realty. He died intestate, and that right to so much money as should fall to his share, is the legitimate personal estate of Israel, junior, and subject to distribution as such.

4. That the grand-children should take the share of a deceased parent, was to prevent a "lapsed legacy;"—nothing seems indicated in the *will*, to prove that *the right* of Israel Jennings, junior, to the interest devised in his father's estate, did not vest, at the death of his father in 1860.

H. K. S. O'MELVENY, Att'y for Appellant.

[8462-23]

The People for The use
of Julia Jennings
vs,
Charles H. Jennings
Et. al

Error to Marion

Filed June 3d 1867
Noah Johnston Clk

STATE OF ILLINOIS,
SUPREME COURT,
First Grand Division. } ss.

The People of the State of Illinois,

To the Sheriff of Marion *County.*

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof between The People of the State of Illinois for the use of Julia A. Jennings plaintiff, and Charles H. Jennings, Green L. Chitwood and John G. Vaughn defendant, it is said that manifest error hath intervened to the injury of said Plaintiffs as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at MOUNT VERNON, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Charles H. Jennings, Green L. Chitwood and John G. Vaughn that they be and appear before the Justices of our said Supreme Court; at the next term of said Court, to be holden at MOUNT VERNON, in said State, on the first Tuesday in ~~November~~ June next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Jennings, Chitwood & Vaughn notice together with this writ.

WITNESS, the Hon. P. H. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this tenth day of May in the year of our Lord one thousand eight hundred and Sixty Seven

Noah Johnston

Clerk of the Supreme Court.

[8462-34]

Executed by Reading to the within named Green L Chitwood & John G Vaughn

Not the within Charles Jennings not in the County this May the 17th A D 1867

Serving —— 1 50
Mileage —— 1 60
Returning —— 10
—— 3 20

J D Gear Sheriff
by W M Smith Dep'ty

25 25

SUPREME COURT.

FIRST GRAND DIVISION.

The People &c - use of Rufus A. Jennings

PLAINTIFF IN ERROR.

vs.

Charles A. Jennings, Green L. Chitwood & John G. Vaughn

DEFENDANTS IN ERROR.

Scire Facias.

FILED

STATE OF ILLINOIS
SUPREME COURT, } ss.

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Marion GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marion county, before the Judge thereof, between The People of the State of Illinois for the use of Benin A. Jennings plaintiff, and Charles A. Jennings, Green L. Chitwood and John G. Vaughn defendants it is said manifest error hath intervened, to the injury of the aforesaid Plaintiff's as we are informed by Their complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Count, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Mount Vernon, in the county of jefferson, on the first Tuesday in June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

P. H. Walker

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this tenth day of May in the year of Our Lord One Thousand Eight Hundred and ~~fifty~~ Sixty Seven.

Noah Johnston
Clerk Supreme Court.

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1962-25

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Supreme Court,
First Grand Division

The People &c. ex rel
Julia A. Jennings
Plaintiffs in Error
vs
Charles A. Jennings,
Green L. Chitwood &
John G. Vaughan
Defendants in Error

Writ of Error

Issued and filed
May 10-1867.
A. Johnston Clk

In the Supreme Court--State of Illinois.

FIRST GRAND DIVISION.

STATE OF ILLINOIS, } SS.
MARION COUNTY, }

JUNE TERM, A. D. 1867.

The People &c. for the use of Bulia Jennings }
vs. {Chitwood. } Error to Marion.
Chas. H. Jennings, John G. Vaughn & Green L. }

DEFENDANT'S BRIEF.

1. This is a controversy arising from the construction of the will of Isreal Jennings, sr. The will makes special legacies, and then provides that the executors shall sell all the real estate, and after the payment of the debts, expences, &c., the balance of the proceeds of the sale shall be divided equally among the testator's four children, and if any of the children die, the portion of the deceased shall go to the deceased's child or children in equal parts.

Isreal Jennings, sr., died in 1860.

Isreal Jennings, jr., (one of the four children named,) died in 1861 intestate. In 1863, the executors of the will of Isreal Jennings, sr., sold the land. Bulia Jennings, the widow of Isreal, jr., now claims one third of the one fourth of the proceeds of the sale of the land as dower.

2. In the construction of wills, the intention of testator expressed in the will in clear and unambigerous terms, must govern if it be not illegal or against good morals. In this case the intention of the testator is clear, beyond boubt, that the proceeds of the sale of the land should go to the children of the deceased in equal parts, and not to the widow; and I hold that if the widow, for whose use this suit is brought, will succeed, the intention of the testator will be frustrated in two particulars.

1st. The children of the deceased son will get but two-thirds, instead of *all* the portion of their father.

And 2ndly, the children by the first wife will get their proportion out of two-thirds *only*, whilst the children by the second will get their proportion of the two-thirds *now*, and the widow's third at her death. That is, the children will not inherit *all* their father's portion, neither will they take in *equal parts*, as the will provides.

3. What kind of a legacy was thus created? It is not legacy of real estate because no real estate was to pass to the legatee. It is not an ordinary legacy of personal estate, because there was no personal estate in existence when the testator died. *It is a legacy charged upon real estate.*

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7. The law not only justifies, but demands the construction of the will in controversy, in conformity with the intention of the testator. The judgment of the Circuit Court should be affirmed.

M. SCHÆFFER, Att'y for the Def'ts.

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The People for use of
Balis & Jennings
vs
Chas H Jennings

Def'ts Petition

Filed June 3rd 1867
Hook Johnston Clk

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

June Term, A. D. 1867.

THE PEOPLE OF THE STATE OF ILLINOIS, FOR THE USE OF BULIA A. JENNINGS, *Appellant* vs. CHARLES H. JENNINGS, GREEN L. CHITWOOD, and JOHN G. VAUGHN, *Appellee.* } Appeal from Marion.

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Thirdly, it is further agreed, that the Executors paid off the debts of Israel, senior, and the specified legacies that were to be paid in money. That the Executors under the will, afterwards made sale of lands belonging to the estate of Israel Jennings, senior, on the 25th day of May, 1863, for the sum of $3,451 00, and after payment of expenses, there was subject to administration to the devisees under the will the sum of $ to each of said devisees, to wit: Charles W. Israel, Jr., R. N. McElwain and Mary White.

Fourthly, that the said Executors in September, 1865, paid over to the administrator of Israel Jennings, junior, to wit: the said Charles H. Jennings, the sum of $345 00, which accrued from the sale of the lands of said Israel, senior, as aforesaid; that the

[5462-27]

administrator of the estate of Israel Jennings, junior, never accounted for that money, which was paid to him from the Executors of the will of Israel, senior, but claims that as this was paid to him from the sale of the lands under the will of Israel Jennings, senior, the same shall be wholly paid to the heirs at law of Israel, junior, and that no part of it has been, or by law is, distributable to the widow of the said Israel Jennings, junior, to wit, the second Bulia Jennings, for whose use this suit is brought. It is further admitted that defendant Charles H. Jennings, the administrator of Israel Jennings, junior, never reported as assets the said sum of $354 00, and without so doing paid the whole amount to the children of Israel, junior, repeling the claims and demands of said Bulia although she has often requested him to pay the same. It is further agreed that the point for decision is whether said Bulia Jennings, the widow of Israel Jennings, junior, is or is not entitled to share in the distribution of the money arising from the sale of the lands of Israel Jennings, senior, late deceased under the will.

The parties hereto reserve the right of appeal, or to prosecute a writ of error at their option, to the Supreme Court, from any decision which may be made herein, and that the decision of the Supreme Court be entered by that Court as final, if the Court be of the opinion that the said Bulia is entitled to share in the fund arising from the sale of lands, then judgment is to be rendered for Plaintiff for $3000 debt, to be satisfied on payment of $118 00, damages and costs. But if the Court decides the law on the facts stated to be against the plaintiff, then the said suit is to be dismissed at plaintiff's cost. But if more than $118 00 shall hereafter appear to be due on distribution of the money paid to the administrator of Israel, junior, the judgment for the $118 00 shall be no bar to further recovery.

O'MELVENY & MERRITT, Atty's for Plaintiffs.
M. SHAEFFER, Attorney for Defendant.

29 Whereupon, the Court found the issues for defendants and gave judgment that the defendants recover their costs from plaintiffs, &c. Plaintiffs excepted at the time and filed their bill of exceptions, setting out the foregoing statement.

30 & 31 Prayer for an appeal granted, and appeal bond filed.

32 Clerk's certificate.

ERRORS:

1. The judgment should have been assessed for the Appellant and not for Appellees.
2. The judgment is contrary to law and the evidence.

PLAINTIFF'S BRIEF.

1 Madd. Ch. P. 284. 1. The *Will* constitutes the Executors, trustees to sell and convey all the real estate of the estate of Israel, senior, (not specifically devised to others) and to collect the money, and after payment of legacies, debts, and expenses of the trust, to divide the residue, equally, between Charles Jennings, Mrs. McElwain, Mrs. White, and the husband of Bulia Jennings, to wit, Israel Jennings, junior.

Walker vs. Main, 1 Jac. & Walk. R. 1 2. Israel, senior, died in 1860; left a large estate. After the payment of all legacies, debts, and expenses, the Executor sold a portion of the real estate, collected the money, and paid to the defendant Charles A. Jennings, administrator of the estate of Israel, junior, a portion of the funds; Israel, junior, having departed this life *intestate*, in 1861.

Tazewell vs. Smith 1 Rand. 313. 3. The will of Israel Jennings, senior, took effect at his death in 1860; *then* Israel, junior, was living; *then*, a vested interest, or right to the share of his father's estate, under the residuary distribution clause, took effect. It was a right to money, not to realty. He died

Marsh v. Wheeler, 2 Edw. 156. intestate, and that right to so much money as should fall to his share, is the legitimate personal estate of Israel, junior, and subject to distribution as such. Ampblett vs. Parke, 1 Sim. 275

4. That the grand-children should take the share of a deceased parent, was to prevent a "lapsed legacy;"—nothing seems indicated in the *will*, to prove that *the right* of Israel Jennings, junior, to the interest devised in his father's estate, did not vest, at the death of his father in 1860.

H. K. S. O'MELVENY, Att'y for Appellant.

Tripp vs. Frazier 4 Har & John 446.
2 Bouv. Law Dic. (Word Legacy) Page 19
Redfield on Wills pp 276. 2d does no reference to a case like this.

N. B. We find the cases above referred to in 2 Barbour & Harrington's Digest under the head "Legacy" pp. 150 etc.

[8462-2]

The People for the use
of Belia Jennings
vs.
Charles H. Jennings
et al.

Error to Marion.

25—15—

People's copy

B. A. Jennings

by

C. A. Jennings et al

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