No. 8864

Supreme Court of Illinois

Wilhite

vs.

Pearce

71641 7

In the Supreme Court of the State of Illinois
First Grand Division

James S. Willitts et al
vs
Zadock A. Pearce et al
} Error to Crawford

Assignment of Errors in this cause

The Plaintiffs in Error herein say there are manifest errors and informalities in the record and proceedings in this cause of which the record is filed in this viz;

1st The said Bill of complaint is wholly insufficient to entitle the Complainants to the relief sought or to any relief whatever inasmuch as it is not shown in the character of the lien claimed to be due said trustees; nor are they made parties in said proceeding; Authorities See Statute of 1858 page 160 Sec 3 Illinois repts Vol 23 page 36 Chaffin & Hins vs Kimble Vol 27 page 22 Wintelman et al vs Kimmel &c

2nd There is a decree pro confesso against J. P. Murphy one of the Defendants to said ~~proceeding~~ petition without first having obtained proper and legal service of process upon him Gilman reports volume 2nd page 47 to

McCall et al vs Lisher et al

3rd The Decree of said Court is erronious because the court does not therein find or decree that there is any sum whatever due said trustees or that they have any lein on said lands for any sum whatever

Illinois reports Vol 23 page 47 to of Loyd et al vs Malone et al

4th The order confirming the report of the Master in chancery is erronious because the said report does not show a proper disposition of the funds arising from the sale of said real estate

~~See record 1st to 4th page lines from 4 to 112~~

Statute of 1858 page 164 Sec 11

5th The decree of the court is erronious because the record does not show that Zadoock A. Pearce Louisa J. Pearce Joseph R. Stanford and Clipper Stanford or any of them were children or heirs at law of Enoch Wilhite dec'd

See record 1st to 4th page lines from 4 to 112

Illinois Statute of 1845 page 400 Sec 2d

6th The decree of the court is erronious because the record does not declare or contain evidence against the minors to sustain the decree Illinois reports Vol 23 page 36 Chaffin vs heirs of Kimble

[8924-2]

and Illinois reports Vol 33 page 182
Wayne et al vs Robins

For these and many other errors manifest in said record the Plaintiffs in error ask that proper process may issue, and that the parties Zadock A. Pearce, Joseph R. Stanford and Cliffe Stanford may be made defendants thereto and required to defend in this action

J. P. Barlow and
J. K. Albright
Attys for Plffs in error

And the defts in error say that manifest error hath not intervened in the record and proceedings aforesaid.

E Pollock
Atty

To the Honorable Alfred Kitchell Sole
Judge of the 25th Judicial Circuit in and for
the County of Crawford in Chancery Sitting.
Your Orators Zedoc A. Pearce of the County
of Crawford and State of Illinois and Louisa
Jane his wife. Show unto Your Honor that
on or about the day of 18 Enoch
Willitt late of said County departed this life
intestate and that he died Seized of the following
described real Estate Situated in the said Co=
=unty of Crawford in the State of Illinois. To wit.
Commencing at the north west corner of Section
twenty nine in Township Eight North of Range
Eleven west and running thence East on the
Section line to a parallel line with the Town
Plat of the town of Hutsonville lost laid off
By Robert Harrison. Thence in a Southerly
direction with the western side of the laid
off Lots of the Said town of Hutsonville to a
Stake on the North side and at the west
end of Down Street. Thence South with the
west line of Land known as the McCord
Lot to Lands formly owned by John Musgrave
now Preston & Barlows addition to the Town
of Hutsonville at or near the west end of
Mechanic Street. Thence in a westwardly direction
with the line of the said land formly owned by John
Musgrave to Lands formly owned by William Mc=
=Coy now owned by John R. Hurst. Thence in a

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30 North westerly direction along the line of said Lands
31 owned by said J. R. Hurst and the line of Land now
32 owned by Mary Callehan until it strikes the
33 West line of said fraction twenty nine at a point
34 fifty rods South of the place of beginning thence
35 North to the place of beginning containing one hundred
36 and ten acres more or less. Subject however to
37 Lien in favor of the Trustees of Schools of Township
38 Seven Range Eleven in the County of Crawford
39 and State of Illinois. Amounting in principal
40 and interest to the sum of nine hundred dollars
41 and fifty Eight cents. Your Orators further
42 show unto your honor that the said Enoch
43 Willitt died leaving the following children
44 heirs at Law John M. Willitt James S. Willitt
45 Milton A. Willitt, William C. Willitt Joshua
46 B. Willitt, Louisa Jane intermarried with
47 Zadoc A. Pearce. Ellen intermarried with
48 Joseph R. Stanford and
49 intermarried with Anderson Murphy. That
50 the said Joshua B. has since died leaving Su=
51 =rah Willitt and Lula Willitt his children
52 and heirs at Law. That the said
53 who intermarried with Anderson Murphy
54 has since died leaving J. P. Murphy, Mary Murphy and
55 John Murphy her children and heirs at Law
56 That the said Ellen who intermarried with
57 Joseph R. Stanford has since died leaving

Cliffe Stanford his child and heir at Law
subject however to the aforesaid Lien upon said
Lands. Your Orators show unto your honor
that the said James S. John M. Milton H.
William E. Wilkite and the said Cliffe Stanford
in right of the said Ellen deceased and your
Orators in right of the said Louisa Jane would
each be entitled to one eighth part of said Lands
that the said Curah and Lula Wilkite would
each be entitled to one Sixteenth part thereof
in right of their Father the said Joshua B. deceased
that the said J.P. Murphy, Mary Murphy
and John Murphy would each be entitled
to one twenty fourth part thereof in right
of their said Mother deceased. Your Orators
pray that the said John M. Wilkite, James
S. Wilkite, Milton H. Wilkite William E. Wilkite
J.P. Murphy Mary Murphy John Murphy
Curah Wilkite Lula Wilkite and Cliffe
Stanford be made parties defendants hereto
and that they and each of them be required to answer
all and singular the matters and things hereinbefore
stated and charged as fully and particularly as if
the same were hereinafter repeated and they thereunto
specially interrogated (the necessity of ~~which~~ said answer
being under oath is hereby waived) and that the
Court will appoint a guardian ad litem to defend
for William E. Wilkite. John Murphy Curah Wil-
kite Lula Wilkite and Cliffe Stanford who

are Minors without guardian and that process may issue &c

Your Orators further show unto your Honor that there is no funds belonging to the estate of the said Enoch Wilkite deceased out of which to discharge and pay the said Lien in favor of the said Trustees of Schools against the said Lands. That in the opinion of your Orators said Lands exceed in value the amount of the said Lien. Your Orators therefore pray that on a final hearing of this ~~Court~~ cause your Honor will cause to be entered of record an Order or decree of this Honorable Court directing and ordering that a Sale be made of the said Lands and premises under the direction of the Court. And that the proceeds of such sale be first applied to the discharge of the said Lien and the payment of costs and that the remainder of such proceeds shall be divided and distributed according to the respective rights of the parties as herein set forth. And your petitioners pray that the Court will grant such other and further relief special and general as may be consistent with the laws of the Land and as in duty bound will ever pray &c

E. Callahan

Atty for Petitioners

State of Illinois }
Crawford County } ss

Before the undersigned Personally appeared Zadoc A. Pearce and Louisa J. Pearce and being first duly sworn state that the matters and things stated and set forth in the forgoing petition so far as the same are stated from their own knowledge are true in substance and in fact and the several matters and things as derived from the information of others they believe to be true

Subscribed and sworn to Before me this 13th day of Dec 1860

E. Callahan J.P.

Z. A. Pearce
Louisa Jane Pearce

(With the following endorsement thereon)
Filed in my office this 13th day of December A.D. 1860 } Hiram Johnson clerk

Circuit Court Summons
State of Illinois
Crawford County } The people of the state of Illinois, to the Sheriff of said County Greeting.

We command you that you summon J. M. Wilhite J. S. Wilhite. M. H. Wilhite William C. Wilhite and Elijah Stanford if they shall be found in your County personally to be and appear Before the circuit Court of said Crawford County on the first day of the sept term thereof

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to be holden at the court-house in Robinson in said Crawford county on the fifth Monday of April 1861 to answer unto the matters and things contained in a certain bill in chancery exhibited in our said court against them by J. A. Pearce and Larisa J. Pearce

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Hiram Johnson clerk of our said court and the seal thereof at Robinson aforesaid this 13th day of December A.D. 1860

Seal

Hiram Johnson clerk

(With the following endorsement thereon)

I executed this writ by delivering a true copy of the same to the within J. M. Willite J. S. Willite, M. H. Willite, W. C. Willite and Clifford Stanford this 2d day of March 1861

Fees serving 2,50 Milage (60) 3,00
Returning 10 $5,00

William Reavill, Shff
by Chester K Knight Deputy

State of Illinois
Crawford County } ss

The People of the state of Illinois to the Sheriff of Moultrie County Greeting:

We command you that you summon Sarah Willite Sula Willite if they shall be found in your county personally to be and

7

appear before the circuit court of Crawford
County on the first day of the next term
thereof to be holden at the court house
in Robinson on the fifth Monday in the
month of april 1861 to answer the matters and
things contained in a certain bill in Chancery
exhibited in our said court against them
by Z. A. Pearce and Louisa J. Pearce and
have you then and there this writ; and
make return thereon in what manner you
execute the same

Witness Hiram Johnson clerk of our
said circuit court at Robinson
this 13th day of December in the
year of our Lord one thousand eight hun-
-dred and sixty

Seal

Hiram Johnson c.c.c.

(With the following endorsement thereon)
Duly executed the within by leaving a true copy
of the within with Arran Wilhite and Lucy
Wilhite and informing them of the contents of
the within this 28th day of December 1860
Fees for serving $1.00 Mileage 16 miles .80 retaining 10
$1.90

Samuel P. Earp Sheriff
of Montra County Illinois

Seal

State of Illinois
Crawford County } ss

The people of the state of Illinois to the
Sheriff of Lee County Greeting:

We command you that you summon J. P. Murphy, John Murphy, and Mary Murphy if they shall be found in your county personally to be and appear before the circuit court of Crawford county on the first day of the next term thereof to be holden at the court-house in Robinson on the fifth Monday in the month of April 1861 to answer the matters and things contained in a certain Bill in Chancery Exhibited in our said court against them by Z. A. Pearce and Louisa J. Pearce. And have you then and there this writ and make return thereon in what manner you execute the same

Seal

Witness Hiram Johnson Clerk of our said circuit court at Robinson this thirteenth day of december in the year of our Lord one thousand eight hundred & sixty

Hiram Johnson C.C.C.

Which has the following endorsement thereon,

Served the within writ by reading the same in the presence and hearing of an to the within named John Murphy and Mary J. Murphy and by leaving a copy of this summons with each of them the within named J. P. Murphy not found in my county

Aaron L. Porter Sheriff

Fees Serv & copy 150
Mil & Postage 15
Return 10
Served January 22 1861

and by Charles M. Benjamin Deputy

Rec'd $1 cash 50cts PO stamps D.

Circuit Court Summons
State of Illinois
Crawford County } ss

The people of the State of Illinois
To the Sheriff of Ogle County Greeting:
We command you that you Summon J. P.
Murphy if he shall be found in your County
personally to be and appear Before the Cir=
=cuit Court of said Crawford County on the first
day of the next term thereof to be holden at
the court house in Robinson in said Crawford
County on the fifth Monday of April 1861
to answer unto the matters and things contained
in a certain bill in Chancery Exhibited in our
said ~~circuit~~ court against him et. al. by
Z. A. Pearce and Louisa J. Pearce, and
have you then and there this writ with an
endorsement thereon in what manner you
shall have executed the same

Witness Hiram Johnson clerk of our said
Court and the seal thereof at Robinson
aforesaid this 12th day February A D 1861
Hiram Johnson Clerk

Seal

(With the following endorsement thereon)

State of Illinois
Ogle ~~Crawford~~ County } I have duly served the within
by reading the same to the within named
J. P. Murphy in his presence and leaving
this 18th day of March A D 1861

as I am therein commanded

John A. Hughes Sheriff
By S. J. Elar Dept Sheriff

Fees Service 50 Mileage 1,00 Return 10 —— 1,60

Crawford Circuit Court April Term
A. D. 1861 - 2d day

Hadoe A. Pearce
and Louisa Jane Pearce
vs
J. M. Wilkite J. S.
Wilkite M. H. Wilkite
Wm C. Wilkite and
Cliffe Stanford

Chancery

And now at this day come the said complainants by E. Callahan their solicitor and it being suggested to the court that some of the defendants are minors under the age of majority The court appoints N. Hayward Esqr Guardian ad litem for said infant defendants and allows the said Guardian ad litem three dollars for his services

(Answer of Guardian)

State of Illinois
Crawford County ss } Crawford circuit court
April Term 1861

H. A. Pearce and wife

245 vs } Chancery
246 J. S. Wilhite et al }

247 The undersigned having been duly ap=
248 =pointed Guardian ad litem to litigate and defend
249 herein for William C. Wilhite John Murphy Sa=
250 =rah Wilhite Lula Wilhite Cliff Stanford Mi=
251 =nors accepts the trust and hereby waives
252 the issuing and service of Process for his said
253 wards and enters their appearance herein and
254 answering says that of the correctness of the
255 alegations in said complainants bill he has
256 no knowledge and no means of ascertaining
257 that written admitting or denying the same
258 he asks that the complainants be held to
259 strict proof. and the rights of said Minors
260 be protected by this court. having fully
261 answered asks to be discharged with
262 his reasonable costs &c

Filed May 6th 1861 } J A Hayward
304 Hiram Johnson clerk } Guardian ad litem

305 Jadoc A. Pearce and Louisa
306 J. Pearce his wife } Chancery
307 vs
308 James S. Wilhite. John M. Wilhite. } Crawford cir
309 Milton H Wilhite. William C. Wilhite. } Court April
310 J. P. Murphy. Jane Murphy Mary Murphy } Term 1861
311 Sarah Wilhite Lula Wilhite and
312 Cliff Stanford

This cause Come on for hearing on this day upon
bill exhibits and testimony and the Defendants having
failed to appear answer plead or demur to
the bill of the said Plaintiffs except as to William
C. Wilhite ~~and~~ Mack Wilhite Lula Wilhite
John Murphy and Cliffe Stanford infant
defendants heir who answer by Horace
Hayward their Guardian at-litem. On
motion of the Plaintiffs Counsel it is Ordered
that plaintiffs be taken for confessed as
against the said defendants who are not
infants and the Court being fully advised
in the premises doth Order adjudge and
decree that the Lands described in the
Plaintiffs bill be sold as prayed for in the
bill of the said Plaintiffs and that the proceeds be
applied first to the payment ~~of~~ and discharge of
the Lien on said Lands in said Plaintiffs bill of
Complaint mentioned and that the Master in
Chancery be Ordered to make such sale on the
premises for cash in hand after having
first given notice of the time and place of
sale by posting up written or Printed Notices
of such sale at four of the most Public
places in the County of Crawford and one
other such notice posted on the Door of
the Court House in Robinson at least
four weeks before the time of such sale
and that the Master in Chancery

out of the proceeds of such sale to pay
and discharge to the Trustees of Town Town
Range Eleven west in Crawford County
Illinois or to their assigns the amount of
the said Lien on said Lands and to dis=
=tribute the balance remaining in his hands
according to the respective rights of the parties
to wit: to John M. Wilhite James S. ~~Wilhite~~
Milton A. and William C. Wilhite in their
own right. to your Petitioners in the right
of the said Louisa J and to Clipse Stanford
in right of his said Mother Ellen Stanford
died one Eight past thereof to each of
them. to the said Noah and Lula Wil=
=hite one sixteenth part each in right of
their Father Joshua B. Wilhite deceased
to the said J. P. Murphy, Mary Murphy
and John Murphy one twenty fourth part
each in right of their said Mother de=
=ceased and that he make a report of
his actings and doings in the premises
to the next term of this court to
which time it is ordered that this cause
stand continued

(masters report as follows to wit:)

Zadoc A. Pierce & Louisa Jane his wife

vs

James S. Wilhite. John M. Wilhite.
Milton A. Wilhite. William C. Wilhite.

[8014-9]

J. P. Murphy John Murphy Mary Murphy Susan Willitt Zula Willitt and Cliff Stanford } Chancery

To the Honorable James C. Allen Sole Judge of the 25th Judicial circuit of the State of Illinois in and for the County of Crawford in Chancery Setting.

The undersigned Master in chancery in and for the County of Crawford and State of Illinois. begs to report to your Honor, That after having advertised the time terms and place of Sale of the real Estate in said Complaints bill mentioned and referred to in the decree of this court rendered at the April term 1861 in the above entitled cause for ~~about~~ at least four weeks prior to the time of sale by posting up written notices stating at four of the most Public places in the said County of Crawford and one other such notice on the door of the Court-House in Robinson in said County. I did on the 20th day of July AD 1861 Between the hours of ten o'clock A.M. and five o'clock P.M. of said day and in pursuance of said advertisements expose to Public sale for cash in hand on the premises all of the said Lands and premises in said Complainants bill described as follows to wit: Commencing

at the north west corner of section twenty
nine in Township Eight north of range eleven
west in Crawford County Illinois and running
thence east on the section line to a parallel
line with the Town Plot of the Town of Hutsonville
last laid off by Robert Harrison thence in a
southerly direction with the western side
of the laid off lots of the said Town of Huts-
-onville to a stake on the north side and
at the west end of Down street, thence
south with the west line of land
known as the McCrea lots to land
formely owned by John Musgrave now
Preston & Borlands addition to the Town of
Hutsonville at or near the west end of
Mechanic Street. Thence in a westerly direction
with the line of the said Lands formly ~~for~~
~~merly~~ owned by John Musgrave to lands formly
owned by William McCoy now owned by John
R. Hurst thence a north westerly direction
along the line of said ~~line~~ Lands owned by said
J. R. Hurst and the line of Land now owned
by Mary Callahan until it strikes the west
line of said section twenty nine at a point
sixty rods south of the place of beginning thence
north to the place of beginning, containing one hun-
dred and ten acres more or less and that Joseph
R. Stanford and Zadoc A. Pearce being bid
at such sale for said Lands above described

the sum of one thousand dollars and that being the highest and best bid therefor the said lands were by me struck off and sold to the said Joseph R. Stanford and Zadoc A. Pearce for one thousand Dollars of which they have paid me in cash the sum of Eighty one dollars and fifty cents ~~and fifty cents~~ and the said Trustees of Schools of Town Seven Range Eleven West in said County, in whose favor said Lien in Complainants bill mentioned as existing upon said Lands. after the commencement of this action herein by their deed released and quit claimed and assigned to the said Stanford and Pearce all the rights title and interest of in and to the said premises of the said Trustees and their successors in office and that I have allowed the said Stanford and Pearce to retain of their bid the sum of nine hundred and Eighteen Dollars and fifty cents the amount of said Lien and the interest due thereon to be in discharge of said Lien to them as the assignees of the Trustees aforesaid and that I thereupon executed and delivered to the said Joseph R. Stanford and Zadoc A. Pearce a deed of conveyance for said Lands and premises all of which is respectfully submitted and the said Master further asks to be allowed for his services herein the sum of Twenty four Dollars.

E. Callahan Master in Chancery

Which report is approved and confirmed by the court and said Master allowed the sum of $24.00 for his services herein and it is further ordered by the court that E. Callahan Esqr be allowed the sum of Forty dollars for attorneys fee in this cause

State of Illinois }
County of Crawford } ss

I Sing B Allen clerk of the Circuit Court within and for the County and State aforesaid do hereby certify that the foregoing is a true full correct and complete transcript of all the Papers and orders of Court made in the above case now on file in this Office

Witness Sing B. Allen clerk and the Seal of said Court at Robinson this 4th day of May AD 1867

Sing B Allen clk

224

James S. Wilkite et al

vs

Zador. A. Pearce et al —

Record

filed by Albright & Barlow May 9 1867

A. Johnston Cl

IN THE SUPREME COURT.

First Grand Division, State of Illinois.

JUNE TERM, A. D. 1867.

JAMES S. WILHITE, MILTON H. WILHITE, WILLIAM C. WILHITE, J. P. MURPHY, AURA WILHITE, LULA WILHITE, AND MARY MURPHY, Plaintiffs in Error, *vs.* ZADOK A. PEARCE, LOUISA JANE PEARCE, JOSEPH R. STANFORD, AND CLIFFE STANFORD, Defendants in Error.	Error to Crawford.

ABSTRACT.

The following is an abstract of the facts contained in the record in this cause, to-wit:

The petition shows that Zadok A. Pearce and Louisa Jane Pearce, his wife, filed their petition against John M. Wilhite, James S. Wilhite, Milton H. Wilhite, William C. Wilhite, Aura Wilhite, Lula Wilhite, J. P. Murphy, Mary Murphy, John Murphy, and Cliffe Stanford, in which it is alleged that Enoch Wilhite died seized of certain real estate in Crawford county, Illinois. In the Circuit Court of which county said petition was filed immediately prior to the April term of said Court, A. D. 1861, in which petition it was alleged that these defendants and said Louisa Jane Pearce were the heirs at law of said Enoch Wilhite, deceased, but it is not avered in said petition that they are the only heirs of said Enoch Wilhite, deceased. And it further shows that said lands descended to the heirs of said Enoch Wilhite, subject to a lien in favor of the Trustees of Schools of Township Seven of Range Eleven, in the county of Crawford, State of Illinois, amounting to $950 08, and avering that said real estate is of greater value than the amount of said lien, and then prays a sale of the lands to pay said lien, and for a distribution of the residue. See record, pages 1 to 4, line 4 to 112 inclusive.

The record further shows that process was properly served on all the defendants except J. P. Murphy, who, it shows, was only served by reading, and not by delivering a copy. See record, pages 9 to 10, line 230 to 261 inclusive.

The record further shows that there is no averment in the petition stating that Ellen, who intermarried with Joseph R. Stanford, or Cliffe Stanford, were heirs at law of Enoch Wilhite, deceased, and there is no averment in said petition showing that Louisa J. Pearce or Zadok A. Pearce are heirs at law of said Enoch Wilhite, deceased, and there is no averment in said petition stating in what manner or from what source they obtained

any right or interest in said real estate. See pages of record from 1 to 4, line 1 to 112 inclusive.

The record further discloses the fact that E. Callahan acted as Justice of the Peace, before whom the complainants made oath to their said petition, as solicitor for the complainants, and also as master in chancery to make sale of said real estate and distribution of the proceeds of said sale.

The record further discloses the fact that at the April term, 1861, the bill of complaint, except as to the infant defendants, was taken for confessed and the Court decreed that said lands in the petition described should be sold by the master, and out of the proceeds of said sale the master should first pay and discharge the lien of said trustees, and then distribute the residue. But the decree does not show in any way what the amount of such lien was, if any; nor does the petition or decree show the nature or character of such lien, so as to enable the master to know what amount he should pay to said trustees to discharge said lien, if any there was; nor does the Circuit Court find that any such lien had any legal existence. See record, pages 12 and 13, line 313 to 365 inclusive.

The record further shows that said land was sold by the master in chancery for one thousand dollars, and that the same was purchased by Joseph R. Stanford and Zadok A. Pearce, who were permitted by said master to retain nine hundred eighteen dollars and fifty cents, as the amount of said pretended lien, out of the purchase money, under the pretence that the trustees of said township had by their deed released and quit claimed to said purchasers their interest in the premises. See record, pages 14, 15 and 16, line 371 to 458 inclusive.

J. P. BARLOW and
J. K. ALBRIGHT,
Att'ys for Pl'ffs in Error.

ASSIGNMENT OF ERRORS.

The plaintiffs in error herein say there are manifest errors and informalities in the record and proceedings in this cause of which the record is filed in this, viz:

1st. The said bill of complaint is wholly insufficient to entitle the said complainants to the relief sought, or to any relief whatever, inasmuch as it is not shown in the character of the lien claimed to be due said trustees; nor are they made parties in said proceeding.

2d. There is a decree *pro confesso* against J. P. Murphy, one of the defendants to said petition, without having first obtained proper and legal service of process upon him.

3d. The decree of said Court is erroneous, because the Court does not therein find or decree that there is any sum whatever due said trustees, or that they have any lien on said lands for any sum whatever.

4th. The order confirming the report of the master in chancery is erroneous, because the said report does not show a proper disposition of the funds arising from the sale of said real estate.

5th. The decree of the Court is erroneous, because the record does not show that Zadok A. Pearce, Louisa J. Pearce, Joseph R. Stanford, Ellen Stanford, and Cliffe Stanford, or any of them, were children or heirs at law of Enoch Wilhite, deceased.

6th. The decree of the Court is erroneous, because the record does not declare or contain evidence against the minors to sustain the decree.

For these and many other errors manifest in said record, the plaintiffs in error ask that proper process may issue, and those parties, Zadok A. Pearce, Louisa J. Pearce, Joseph R. Stanford, and Cliffe Stanford, may be made defendants thereto and required to defend in this action.

J. P. BARLOW and
J. K. ALBRIGHT,
Att'ys for Pl'ffs in Error.

James S. Wilkeli et. al.

vs

Zadok A Pearce et al

Error to Crawford

Abstract &

assignment of errors

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

JAMES S. WILHITE, MILTON H. WILHITE, WILLIAM C. WILHITE, J. P. MURPHY, AURA WILHITE, LULA WILHITE, AND MARY MURPHY, Plaintiffs in Error. *vs.* ZADOK A. PEARCE, LOUISA JANE PEARCE, JOSEPH R. STANFORD AND CLIFFE STANFORD, Defendants in Error.	Error to Crawford.

BRIEF OF AUTHORITIES RELIED UPON IN THIS CASE.

1st Error. Statute of 1858, page 160, sec. 3. Illinois Reports, vol. 23, page 36. Chaffin and heirs vs. Kimble. Ill. Reports, vol. 27, page 22. Winkelman, *et al.* vs. Kiser, use, etc.

2d Error. Gilman Reports, 2d vol., page 47. McCall, *et al.* vs. Lesher, *et al.*

3d Error. Illinois Reports, vol. 23, page 47 to 9. Loyd, *et al.* vs. Malone, *et al.*

4th Error. Statute of 1858, page 161, sec. 11. 400 sec 2d

5th Error. See record, 1st to 4th page, lines from 4 to 112. ~~Statute~~ of 1845 Page

6th Error. Illinois Reports, vol. 23, page 36. Chaffin vs. Heirs of Kimble. Illinois Reports, vol. 33, page 182. Waugh, *et al.* vs. Robbins.

J. P. BARLOW and
J. K. ALBRIGHT,
Attorneys for Plaintiffs in Error.

E2 4

James S. McKee et al

vs

Zadoh A. Pearce et al

Error to Crawford

Abstract assignment of errors & authorities

88 lines
13 words each

104
13

1144
7

8008
20

10016

8864

Filed June 4th 1864
Noah Johnston Clk

In Supreme Court 1st Grand Division
June term 1867

James S Wilhite et al
vs
Gadoh A Peace et al } Error to Crawford

Replication to Defts Plea of Statute of limitations

The said plaintiffs in error to the ~~said~~ plea of said defendants in error say they ought not be barred of their action aforesaid because they say that within a less period of time than five years the said cause of action accrued to them for the reason that within five years previous to the issuing of said writ of error the said plaintiffs in error and each of them were minors under the age of twenty one years and that said cause of action did accrue to the said plaintiffs in error within five years before the issuing of said writ of error aforesaid and this they are ready to verify &c

J P Barlow
& J. K. Albright
for Plffs in Error

(8814-16)

William C. Willitt et al
vs
Zadock A. Peaver et al

Error to Crawford

June Term A.D. 1867

Affidavit filed in support of replication of Plaintiffs in Error to Plea of statute of Limitations &c

Personally appeared J. P. Barlow who being duly sworn according to Law deposes and and saith that William C. Willitt one of the Plaintiffs in Error in this cause was a Minor at the time of the rendition of the said decree against him in the court below But arrived at the age of twenty six years ~~of age~~ on the first of the present Month June A.D. 1867 and that he did not arrive at the age of Majority five years next preceding the suing out of this writ of Error.

He further testifies that John Murphy one of the Defendants in the court below has departed this life since the entry of the decree in the court below and before the suing out of this writ of Error. that he died some time during the year of 1863. And that provided he were now living his right of action would not be barred by the statute of Limitation on account of the lapse of time. that he died without heirs. Other than the Plaintiffs in this Writ of Error who are all his heirs

No. 4

J. S. White et al
vs
Zadock A. Pierce et al

Supreme Court June
Term A.D. 1867

Replication and
Affidavit, to
Plea of Statute of Limitations
~~of Defendants~~

Stevens vs. West
Gale 18 M. 209

8864

Filed June 4th 1867
Wm Johnston Clk

Let Pltfs and that his rights would be
lost by them. He in his Repl. has
made no allegation of the claim
Subscribed & sworn
to before me June 5th 1867
A. Hutchinson Clk

J. P. Blackford

In Supreme Court
June Term AD 1868

James S Mitchell et al
vs
E A Pierce et al
Error to Crawford

In this case the plaintiffs in error ask the court to appoint James P Barlow next friend for infant plaintiffs in error

Section 13 of the Statute ~~XLVII~~ Guardian and Ward (Purples Statute Page 596) provides that "minors may bring suits in all cases whatever by any person they may select as their next friend: and the person so selected shall file bond x x x x for all the costs that may accrue and legally devolve upon such minor" The next friend is to be selected by the infant. not appointed by the Court and this should be done and the bond for costs filed in the court ~~before~~ before the writ of error is sued out

In the case of McCoy adm et al vs Morris 4 Gilman 382. it is said "If an infant sues out a writ of error he

(8064-18)

he should do so by his next friend" and that friend it is submitted should be selected ~~before~~ and before the writ is sued out, and this not having been done the writ should be dismissed

Callahan
atty for Defts in Error

Supreme Court
June Term 1868

no 4

James S White et al
vs
Eadock A Pierce

Suggestions of defts in error against the motion of plffs to appoint Prochien ami for infant plaintiffs

Filed 3rd June 1868
R H D Williams
Clk

Supreme Court State of Illinois
First Grand Division
June Term A.D. 1866

James S Wilhite, Milton H Wilhite
William C Wilhite, J. P. Murphy
by James P Boden their next friend
Aura Wilhite Lida Wilhite and
Mary Murphy. Plffs in error

vs

Zadok A Pierce Thomas Jan Pearce
Joseph R Standford and Cliff Standford
Defts in error

Error to Grundy

And now on this the 4th day of this term of Court, that is to say on the 5th day of June Come the said plaintiffs in error, by Jas. P Boden their atty and move the Court for leave, ~~the~~ to amend the writ ~~by adding~~ by dismissing ~~the cause~~ as to James S Wilhite, Milton H. Wilhite, J. P Murphy and Mary Murphy.

James P Boden
Atty. for Plaintiffs

No. 4

James S Wilkie
et al

vs

Zadok A Pierce
et al

Motion to Quash
the Writ & Ser

Filed 5th June 1858.
R. A. D. Williams
Clk

of the June Term AD 1867 of
the Supreme Court First Grand
Division of the State of Illinois

Zadak A Pearce, Louisa Jane Pearce
Joseph R Stanford & Cliffe Stanford
vs
James B Wilhite, Milton H Wilhite, William C Wilhite, J. P. Murphy
Laura Wilhite, Lulu Wilhite and
Mary Murphy

} Error to Crawford

and the said
~~Defts in Error appellees~~ by E Callahan their atty
come and defend &c Because
they say that more than five years e-
lapsed between the rendition, by the
Circuit Court, of the final decree
in this cause and the suing out
of the writ of error in this cause
and that the right of the plaintiffs to
maintain their writ of error did
not accrue within five years
next before the issuing of said
writ of error. And this the said
defts in Error are ready to verify
wherefore they pray judgment &c

E Callahan
atty for
Defts in Error

[9864-81]

~~II~~ 4

Wilkins et al
vs
Pearce et al

Plea

Filed, June 4. 1867
N. Johnston Cl

of the June Term A.D. 1867 of the Supreme Court of the State of Illinois

James S Wilhite et al
vs
Eadock A Pierce et al
} Error to Crawford

Objections to the motion of Plffs in error to strike the plea of Defts in error from the files of this cause

The motion of Plffs in error to strike this plea from the files is based on the 24th rule of this court which provides that "When a motion is intended to be based on matters which do not appear by the record. the facts must be disclosed and supported by affidavit"

The plea filed is the Statute of Limitations. It appears from the record that James S Wilhite Milton H Wilhite and J P Murphy three of the plaintiffs in error were adults at the time the final decree was rendered by the Circuit Court at its April Term A.D. 1861 and "It appears from the record" that the plffs writ of error was not sued out until May 9th 1867.

The last order made in the case

by the Circuit Court ~~in this cause~~ was at the October Term A.D. 1860, more than five years before suing out the writ of error herein But this is a mere formal order from which error does not lie

If it be objected that some of the plffs were infants at the time of the rendition of the decree and that their right to sue out a writ of error may have accrued within five years before suing of the writ of error then that fact should be shown by a replication to the Plea and even then the writ must be dismissed. The authority in 4 Gilman page 317 is decisive on this point

Would it not be reasonable, on the other hand to presume that the infancy of the infants defts below still continues, and hence could only sue out a writ of error by Guardian or prochein ami

All the facts stated in the plea do appear by the record

[9544-33]

Query – Does this rule apply to pleas regularly filed in a cause in order to make up an issue of fact, or is it applicable to <u>motions</u> only as the language seems to indicate

Wm Allen McCallahan

Atty for Defts in Error

~~46~~ 52 4

Supreme Court
June Term A.D. 1867

James B. Wilhite et al
vs
Zadock A. Pearcastle

Error to Crawford

Objections by defts in error to pltffs motion to strike a plea from the files

Filed, June 6. 1867.
N. Johnston Clk

Caldwell & Lane atty

In the Supreme Court
State of Illinois, First Grand Division
June term at Mt Vernon AD 1867

James S. Wolhite
et al Plaintiffs in Error

vs

Zadock A. Leora
et al Motion to Amendment

And the said Aura Wolhite and Lula Wolhite come and suggest to the court that they are Plaintiffs in Error without Guardian or next friend and that the error is prosecuted for their benefit and ask leave of the court to Amend by James B Barlow being made a party to the suit of error as their next friend he to file Bond for all cost, they paying all cost heretofore accrued

Authorities

Blood & Wife vs Harrington Page 552 Pickering Mass reports 8 vol
Statute of Pleadings, R.S. page 51 Sec 135

J. B. Barlow
Atty for
Plaintiffs in error

Illinois Reports Vol 22 nd page 140 Stamp vs Kelly

[Endorsed]

State of Illinois }
Jefferson County }

James P. Barlow being duly sworn states on oath that Cora & Lula Wilhite are parties to the record & beneficial parties in the court of error & are now minors —

James P. Barlow

Subscribed & sworn to before me this 30 day of May A.D. 1868

R. A. Williams
Clk

(8214-25)

No 4

James S. White et al
vs
Zadock A. Pearce et al

Motion

Filed June 3 - 1868
Rich D. Milbourne, Clk

delivered the opinion of the Court

Mr Chief justice Reese Ch. J. This was a proceeding in Chancery in the Crawford circuit Court by Zadok A. Reece and Louisa Jane his wife against John M. Wilkite and others as heirs at law of Enoch Wilkite deceased, for the partition of certain real estate, of which, it was alleged, Enoch Wilkite died seized and possessed.

Process was duly served on all the defendants except J. P. Murphy, who was served by reading. Some of the defendants were infants under the age of twenty, namely, William C. Wilkite, John Murphy, Anna Wilkite, Sala Wilkite and Cliff Stanford for whom a guardian ad litem was appointed.

A formal answer was put in by the guardian ad litem for the infants. The adult defendants suffered a default, and the bill was taken as confessed as against them including J. P. Murphy, and the Court decreed that the lands described in the petition be sold, and the proceeds applied first to the payment and discharge of the lien on the lands mentioned in the bill of complaint, and the balance paid over to the parties entitled.

To reverse this decree the defendants Jane S. Milton H. William C. Anna and Sala Wilkite and J. P. Murphy and Mary Murphy

[80 ill 427]

bring the record here by writ of error, making Zadok R. Peace Louisa Jane Peace Joseph R. Stanford and Cliff Stanford defendants thereto.

Various errors are assigned, the most important of which are, that the evidence on which the decree was made, is not preserved in the record, and no evidence to charge the minors defendants was heard, and further that J. P. Murphy was not duly served with process, and the judgment pro confesso against him was therefore, irregular.

The statute regulating proceedings in chancery partition provides by section 6 that the parties shall have notice of the application by summons only serve. Scates Comp. 181. By section 7 of the chancery code, it is provided that service of summons shall be made by delivering a copy thereof to the defendant, or leaving such copy at his usual place of abode with some white person of the family of the age of ten years or upwards, and informing such person of the contents thereof. Ibid. 139

As J. P. Murphy was not thus served with the summons and as he did not enter an appearance, the decree against him was erroneous. Kleman vs Deloss 28 Ill. 317. Ditch vs Edwards 1 Scam. 127. Sweet vs Phelps ib. 331

It is the well established doctrine of this Court, that the facts on which a decree is based must appear somewhere, in the record, either by bill of exceptions or by recitals in the decree, that certain facts were found. It must appear from the record that the Court heard evidence and found the allegations of the bill to be true. Davis vs Davis 30 Ill. 180.

A most important fact alleged in the petition was, that the land bought to be paid for was subject to an incumbrance to secure its payment in favor of the trustees of schools of a certain District, and not a particle of proof was adduced of the fact, nor is it recited in the decree that such an incumbrance in fact existed. For this reason also the decree is erroneous.

A decree passed against the infant defendants without any proof to charge them. Nothing can be admitted, but every thing essential must be proved against an infant. Hitt vs Ormsbee 12 Ill. 166 Hamilton vs Gilman ib. 266. Tuttle vs Garrett 16 ib. 354 Reddick vs State Bank 27 ib. 148. And whether the Guardian ad litem answers or not, the record must furnish proof to sustain a decree against an infant. Masterson vs Winwood et ux. 18 ib. 48 Chaffin vs The Heirs of Kimball 23 ib. 36. Tibbs vs Allen 27 ib. 129

[8864-29]

The Court should have found the amount of the lien and that it was then outstanding, and if referred to the Master to ascertain the amount he should have reported his finding to the Court for approval. The Master had no right to adjudicate on this question.

It appears from the record that the solicitor who drafted the bill for partition, was the Master in Chancery, to whom the case was referred, ~~and the~~ was not a proper person to act as the Master in the case of his client. ~~He~~ It was improper and improper to refer the case to him. It should have gone to a special Master. White vs Buffaker 27 Ala. 349.

The record also shows that besides his allowance of twenty four dollars for his services as Master, the Court allowed him fifty dollars for his ~~services~~ fees as solicitor. This was also erroneous. ~~Erwin~~ Strawn vs Strawn decided January Term 1868 and Erwin vs Erwin June term 1868. Adams vs Payson 11 Ala. 20. Constant vs Matteson 22 ib. 456. The decree must be reversed and the cause remanded.

Decree reversed.

18864-30

4 — 49

Pillsbury et al.
vs
Perce et al.

opinion
Rem Ct. J.

P. K.

29
4
116
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18560

In the Supreme Court. First Grand Division

June Term A D 1867

James S Walker et al
vs
Zadock A Pearce et al
} Error to Crawford

And the said defendants in error say that the said replication of pltffs in error to the plea of the Statute of limitations interposed in this case by defts ~~in error~~ and the matters therein contained in manner and form as the same are therein stated and set forth, are not sufficient in law

And the said defts in error show to the Court here the following special causes of demurrer to said replication. That is to say

1st Because it is argumentative

2d Because in stating that five years previous to the issuing of the writ of Error, said pltffs in error were under the age of twenty one years, it shows no right in the female defts who have of the age of eighteen years of age

3d And also that it is in other respects uncertain, insufficient & informal

By E Calhoun Atty

[8864-31]

54

Supreme Court
June Term 1867

Pilcher et al
vs
Pearce et al

Demurrer to Replication

Filed, June 7 - 1867
N. Johnston Clk

Excellent atty

In the Supreme Court

June Term A.D. 1868

James S Wilhite. Milton H Wilhite
Wilson S Wilhite. J P Murphy
Anna Wilhite Lulu Wilhite
and Mary Murphy Plffs in error

vs

Error to Crawford

Radoh A Pearce Louisa Jane
Pearce. Joseph R Stanford
and Cliffe Stanford defts
in error

The plaintiffs in error have amended their writ by striking out the names of James S Wilhite. Milton H Wilhite. J.P. Murphy and Mary Murphy who were shown by the record to be adults, at the rendition of the decree of the circuit court and of course barred by the Statute of Limitations, which is pleaded by the defts in error. The case of Moore et al vs Copps 4 Gilman 315 presents a case like this and in that case the Court held that the joint writ of those barred by the Statute and of the infants not barred must be dismissed and that those who were within the saving clause of the Statute must resort to their separate writ of error to reverse the decree. Under this authority the writ in this case should be

[5214-32]

dismissed

The plaintiffs in error filed their petition "to amend their writ" and to appoint Mr Borlow next friend for the infant plaintiffs in error. The petition does not inform the court in what respect the writ was to be amended the court in deciding the motion made no mention of the writ, and the defts in error do not understand that any leave was granted to amend the writ and that the amendment should not have been made

E Colloher for defts in error

No 4

Mehlter et al
vs
Pearce et al

Cases
motion to dismiss
writ of error

filed 6th June 1868
R A D Wilmouth
Clk

Supreme Court 1st Grand Division
June term AD 1867

Withite et al
vs } Error to Crawford
Pearce et al

Plea of the Statute of Limitations
by Defts in error

Motion by plaintiffs in error to strike said plea from the files

The plaintiffs in error suggest as reasons in sustaining said motion

1st " That the record shows the parties plaintiffs in error to have been minors at the time of the rendition of the Decree in the court below (See record Pages 3 & 4 line 43 to 48)

2nd " That this Court cannot presume that said defendants below have been barred in this action by the Statute of Limitations without any evidence either in the record or by affidavit to support said Plea

3rd " That there is no Evidence in the record to sustain said Plea (See record)

4th " That said Plea is not supported by affidavit (See Plea on file)

Allright & Barton
attys for pltffs in error

[3264-34]

White et al
vs
Pearce et al

Suggestions to sustain motion to strike Plea of Statute of limitations from the files

Filed, June 6. 1867
N. Johnston Clk

J. S. Wilhite et al
vs
Badoel A. Pearce et al

Error to Crawford

Jun Term A.D. 1867

In the Supreme Court first Grand division of the State of Illinois.

In support of motion to strike Plea of Statute of Limitations from the files of this court, Appeared J. P. Barlow who after being duly sworn according to Law deposes and saith that John Murphy one of the Defendants in the court below departed this life some time during the year of 1863 since the rendition of the decree in the court below and before the suing out of the Writ of Error from this court in this cause, and that all of the Plaintiffs in this cause are his heirs at Law, and his rights belong and survive to them, He in his life time having made no disposition of the same he having died leaving no Parents & without issue ~~from~~ nor having been Married. He further testifies that provided the said John Murphy deceased was now living that his rights would not be barred by the Statute of Limitations, because he

[8864-35]

No 224

Supreme Court
June Term A.D. 1867

J. S. White et al
vs
Zadock A. Pearce et al

} Error to Crawford

Affidavit of J. P. Barlow in support of motion to strike Plea of statute of Limitations from the files of this court

Filed, June 6. 1867
A. Johnston Clk

would not be open to trial this year or at this term, fully expect to be ready at next term.

J. P. Barlow

Sworn to & subscribed before me, June 6. 1867.
A. Johnston Clk

IN THE SUPREME COURT.

First Grand Division, State of Illinois.

JUNE TERM, A. D. 1867.

JAMES S. WILHITE, MILTON H. WILHITE, WILLIAM C. WILHITE, J. P. MURPHY, AURA WILHITE, LULA WILHITE, AND MARY MURPHY, Plaintiffs in Error, *vs.* ZADOK A. PEARCE, LOUISA JANE PEARCE, JOSEPH R. STANFORD, AND CLIFFE STANFORD, Defendants in Error.	Error to Crawford.

ABSTRACT.

The following is an abstract of the facts contained in the record in this cause, to-wit:

The petition shows that Zadok A. Pearce and Louisa Jane Pearce, his wife, filed their petition against John M. Wilhite, James S. Wilhite, Milton H. Wilhite, William C. Wilhite, Aura Wilhite, Lula Wilhite, J. P. Murphy, Mary Murphy, John Murphy, and Cliffe Stanford, in which it is alleged that Enoch Wilhite died seized of certain real estate in Crawford county, Illinois. In the Circuit Court of which county said petition was filed immediately prior to the April term of said Court, A. D. 1861, in which petition it was alleged that these defendants and said Louisa Jane Pearce were the heirs at law of said Enoch Wilhite, deceased, but it is not avered in said petition that they are the only heirs of said Enoch Wilhite, deceased. And it further shows that said lands descended to the heirs of said Enoch Wilhite, subject to a lien in favor of the Trustees of Schools of Township Seven of Range Eleven, in the county of Crawford, State of Illinois, amounting to $950 08, and avering that said real estate is of greater value than the amount of said lien, and then prays a sale of the lands to pay said lien, and for a distribution of the residue. See record, pages 1 to 4, line 4 to 112 inclusive.

The record further shows that process was properly served on all the defendants except J. P. Murphy, who, it shows, was only served by reading, and not by delivering a copy. See record, pages 9 to 10, line 230 to 261 inclusive.

The record further shows that there is no averment in the petition stating that Ellen, who intermarried with Joseph R. Stanford, or Cliffe Stanford, were heirs at law of Enoch Wilhite, deceased, and there is no averment in said petition showing that Louisa J. Pearce or Zadok A. Pearce are heirs at law of said Enoch Wilhite, deceased, and there is no averment in said petition stating in what manner or from what source they obtained

any right or interest in said real estate. See pages of record from 1 to 4, line 1 to 112 inclusive.

The record further discloses the fact that E. Callahan acted as Justice of the Peace, before whom the complainants made oath to their said petition, as solicitor for the complainants, and also as master in chancery to make sale of said real estate and distribution of the proceeds of said sale.

The record further discloses the fact that at the April term, 1861, the bill of complaint, except as to the infant defendants, was taken for confessed and the Court decreed that said lands in the petition described should be sold by the master, and out of the proceeds of said sale the master should first pay and discharge the lien of said trustees, and then distribute the residue. But the decree does not show in any way what the amount of such lien was, if any; nor does the petition or decree show the nature or character of such lien, so as to enable the master to know what amount he should pay to said trustees to discharge said lien, if any there was; nor does the Circuit Court find that any such lien had any legal existence. See record, pages 12 and 13, line 313 to 365 inclusive.

The record further shows that said land was sold by the master in chancery for one thousand dollars, and that the same was purchased by Joseph R. Stanford and Zadok A. Pearce, who were permitted by said master to retain nine hundred eighteen dollars and fifty cents, as the amount of said pretended lien, out of the purchase money, under the pretence that the trustees of said township had by their deed released and quit claimed to said purchasers their interest in the premises. See record, pages 14, 15 and 16, line 371 to 458 inclusive.

J. P. BARLOW and
J. K. ALBRIGHT,
Att'ys for Pl'ffs in Error.

ASSIGNMENT OF ERRORS.

The plaintiffs in error herein say there are manifest errors and informalities in the record and proceedings in this cause of which the record is filed in this, viz:

1st. The said bill of complaint is wholly insufficient to entitle the said complainants to the relief sought, or to any relief whatever, inasmuch as it is not shown in the character of the lien claimed to be due said trustees; nor are they made parties in said proceeding.

2d. There is a decree *pro confesso* against J. P. Murphy, one of the defendants to said petition, without having first obtained proper and legal service of process upon him.

3d. The decree of said Court is erroneous, because the Court does not therein find or decree that there is any sum whatever due said trustees, or that they have any lien on said lands for any sum whatever.

4th. The order confirming the report of the master in chancery is erroneous, because the said report does not show a proper disposition of the funds arising from the sale of said real estate.

5th. The decree of the Court is erroneous, because the record does not show that Zadok A. Pearce, Louisa J. Pearce, Joseph R. Stanford, Ellen Stanford, and Cliffe Stanford, or any of them, were children or heirs at law of Enoch Wilhite, deceased.

6th. The decree of the Court is erroneous, because the record does not declare or contain evidence against the minors to sustain the decree.

For these and many other errors manifest in said record, the plaintiffs in error ask that proper process may issue, and those parties, Zadok A. Pearce, Louisa J. Pearce, Joseph R. Stanford, and Cliffe Stanford, may be made defendants thereto and required to defend in this action.

J. P. BARLOW and
J. K. ALBRIGHT,
Att'ys for Pl'ffs in Error.

James S Wilkite et al
vs
Zadok A Pearce et al

Error to Crawford

Abstract &
assignment of errors

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

JAMES S. WILHITE, MILTON H. WILHITE, WILLIAM C. WILHITE, J. P. MURPHY, AURA WILHITE, LULA WILHITE, AND MARY MURPHY, Plaintiffs in Error. *vs.* ZADOK A. PEARCE, LOUISA JANE PEARCE, JOSEPH R. STANFORD AND CLIFFE STANFORD, Defendants in Error.	Error to Crawford.

BRIEF OF AUTHORITIES RELIED UPON IN THIS CASE.

1st Error. Statute of 1858, page 160, sec. 3. Illinois Reports, vol. 23, page 36. Chaffin and heirs vs. Kimble. Ill. Reports, vol. 27, page 22. Winkelman, *et al.* vs. Kiser, use, etc.

2d Error. Gilman Reports, 2d vol., page 47. McCall, *et al.* vs. Lesher, *et al.*

3d Error. Illinois Reports, vol. 23, page 47 to 9. Loyd, *et al.* vs. Malone, *et al.*

4th Error. Statute of 1858, page 161, sec. 11. 1845 P 400 Sec 2

5th Error. See record, 1st to 4th page, lines from 4 to 112. Revised Statute 90

6th Error. Illinois Reports, vol. 23, page 36. Chaffin vs. Heirs of Kimble. Illinois Reports, vol. 33, page 182. Waugh, *et al.* vs. Robbins.

J. P. BARLOW and
J. K. ALBRIGHT,
Attorneys for Plaintiffs in Error.

12 11

James S Mulhollin et al

vs

Zadok A Pearce et al

Error to Crawford

Abstract assignment of errors and authorities

Filed June 4th 1867

Noah Johnston Clk