No. 8641

Supreme Court of Illinois

Adam Cruce, Admr.

---

vs.

Lucinda Cruce, a minor, by

Ben L. Wiley

1

Pleas before the Circuit Court within and for the County of Union and State of Illinois on the nineteenth day of May in the year of our Lord one thousand eight hundred and fifty six,

Be it remembered that heretofore, to wit, on twenty sixth day of April in the year of our Lord one thousand eight hundred and fifty six, to wit, on Saturday the sixth day of the April Term AD 1856 of the Circuit Court within and for the said County of Union and State of Illinois in a certain cause of Appeal from the County Court of said County of Union on the Probate side thereof wherein Lucenda Cruse a minor by Ben L Wiley her guardian and Philip Cruse a a minor by David Sowers his guardian are plaintiffs and Adam Cruse Administrator of Peter Cruse deceased is defendant, the following final order and judgment was made and entered of record by the said Circuit Court, to wit,

Lucenda Cruse by Ben L Wiley her guardian
Philip Cruse by David Sowers his guardian
vs
Adam Cruse Administrator of Peter Cruse dec^d.
} Appeal,

On this day came the said plaintiffs by J Dougherty their attorney and the said defendant by C G Simons his attorney and submitted this cause to be tried ~~by the Court~~ upon an agreed state of facts on hearing argument and being fully advised in the premises It is considered by the Court that the order of the County Court on the Probate side thereof ought to be reversed and that the said defendant Adam Cruse Administrator

[8441-1]

of Peter Cruse deceased pay the money which come into his hands from the sale of the real estate of said decedent after paying the 1st & 2nd class claims proved and allowed against said estate, to the said defendants or so much thereof as will satisfy their claims allowed against the estate of said decedent instead of paying the same to the widow of said decedent on her Specific allowance certified to by the appraisers of said decedents personal estate and ordered that the Clerk of this Court ~~certify~~ copy and certify this order and judgment to the said County Court, and it is further considered that the said plaintiffs recover of the said defendant their costs in this behalf expended to be paid in due course of administration &c.

On motion to the Court the defendant prayed an Appeal in this cause to the Supreme Court which is allowed on condition that the said defendant with Joshua Roberts his security within fifty days enter into bond in the sum of five hundred dollars.

And afterwards, to wit, on the day and year last aforesaid ~~in open Court filed in said cause~~ the parties by their attorneys filed in said cause an agreement between them of the said cause, to be submitted and tried upon, by the Supreme Court, which agreement of the said cause is in the words and figures following to wit,

Lucenda Cruse a minor
by Ben L Riley her guardian
Philip Cruse a minor
by David Sowers his guardian
&
Adam Cruse Admr of
Peter Cruse decd

Citation for Settlement

Appeal

In this cause the parties waived process of Citation in the County Court on the Portrait side thereof at the August term thereof 1855 and the

proofs being heard by the County Judge sitting as a Probate Court the Court entered the following decree

" In the Union County Court August Term 1855

In the matter of the matter of } Citation to make
the estate of Peter Cruse decease } final Settlement

On this day came into Court David Sowers and Ben L Wiley Guardian of the heirs of John Cruse deceased by John Dougherty their attorney also came Adam Cruse Administrator of the estate of Peter Cruse deceased by C G Simons his attorney and on motion of the plaintiffs to apply proceeds of sale of real estate to the payment of their claims the motion was denied and it is ordered by the Court that the administrator apply a sufficient of the money in his hands arising from the sale of real estate towards the payment of the widows separate allowance, By agreement of Administrator and guardians this cause is appealed to the Circuit Court to take trial whether the widows claim to her separate property is to be paid to the exclusion of Guardian Claims"

The Circuit Court of Union County Illinois having taken said cause under advisement at the December Term of said Court 1855 Afterwards at this the April Term of said Court 1856 is of opinion that the widows claim to separate property should not be paid out of the proceeds of the sale of real estate to the exclusion of the demands of minor wards of the intestate and reversed the decision of the County Court in the words and figures following

(here insert order of Circuit Court)

" Lucenda Cruse by Ben L Wiley her Guardian
" Philip Cruse by David Sowers his Guardian
"
" Adam Cruse Administrator of Peter Cruse decd } Appeal

" On this day came the said plaintiffs by J Dougherty
" their attorney and the said defendant by C G Simmons his attorney
" and submitted this cause to be tried upon an agreed state of
" facts on hearing argument and being fully advised in the
" premises It is considered by the Court that the order of the
" County Court on the Probate side thereof ought to be reversed
" and that the said defendant Adam Cruse Administrator
" of Peter Cruse deceased, pay the money which came into his
" hands from the sale of the real estate of said decedent
" after paying the 1st & 2nd class claims proved and allowed
" against said estate, to the said defendants or so much
" thereof as will satisfy their claims allowed against the estate
" of said decedent, instead of paying the same to the widow
" of said decedent on her specific allowance certified to
" by the appraisers of said decedents personal estate and
" ordered that the Clerk of this Court copy and certify this order
" and judgment to the said County Court, and it is further
" considered that the said plaintiffs recover of the said
" defendant their costs in this behalf expended, to be paid
" in due course of administration &c—

" On motion to the Court the defendant prays an appeal
" in this cause to the Supreme Court, which is allowed on
" condition that the said defendant with Joshua
" Roberts his security within fifty days enter into bond in
" the sum of five hundred dollars—"

The parties being desirous of making an agreed case on Appeal to the Supreme Court of the State of Illinois mutually agree to the following facts to be admitted as proven in this cause and on an Appeal to the Supreme Court, to be binding as

[S.C. 41-47]

4 facts in this cause in the Supreme Court,

1. That Peter Cruse defendant intestate in his lifetime was the Guardian of the said Lucinda Cruse & Philip Cruse and that the plaintiffs are now their guardians, Ben L Wiley the guardian of Lucinda Cruse & David Sowers the guardian of Philip Cruse, that said wards are minors

2. That Peter Cruse departed this life intestate in the year 1852 and that defendant is his administrator.

3. That Peter Cruse at the time of his death had in his hands money of his said wards amounting on the 18th day of February 1853 of Lucinda the sum of $182.35 and on the same day to Philip Cruse the sum of $164,28 That defendant had notice of this fact, and that said sums were duly proven and allowed as claims against said estate on the 18th day of February 1853. in the County Court of Union County Illinois

5. That Sophia Cruse is the widow of said intestate & that the amount of separate property allowed her by appraisers in lieu of specific articles of property & for 1 years provisions, she having elected to take the same in part in money on the 15th day of May 1852. was $675.25-

6. That the whole amount of the personal estate of the intestate was $247.60 and that the claims of the 1st & 2nd class claims amount to $30-

7. That the defendant Adam Cruse as administrator of said estate applied the personal estate to the payment of the 1st & 2nd classes of debts to their amount, to wit $30, and and the balance of the personal estate to the widow Sophia Cruse leaving a balance due her of $390 deficit of personal property to pay her separate property so allowed to her by the appraisers.

8. That defendant Adam Cruse afterwards at the April Term of the County Court of Union County Illinois obtained an order to sell the real estate of the deceased, Peter

[8641-5]

5 Cruse and in pursuance of said order did sell the real estate of Peter Cruse dec^d on the 21st day of May 1853 to the amount of $388. and he has received the same as assets into his hands as such administrator.

9. That the claims of the said Lucinda & Philip are in no part paid but remain due them and unpaid

10. That the claims of Lucinda & Philip are the only claims against the estate of the intestate of the 3rd class.

11. That these facts being agreed the question in law for the decision of the Supreme Court is as to who the proceeds of the real estate of Peter Cruse should be paid by the defendant If to the widow of intestate, the judgment of the Supreme Court is to be rendered reversing the decision of the Circuit Court. But if the Supreme Court shall be of opinion that the Wards are entitled to the proceeds of the real estate in preference to the Widows claim for deficit of personal estate to furnish her provisions for one year and the value of specific articles of property in personalty allowed by law when there was no such articles left by the intestate, then the decision of the Union County Circuit Court in this cause will be affirmed and the administrator ordered by the County Court to pay to said plaintiffs the entire proceeds of the sale of real estate in his hands, to wit, the sum of $388. pro rata according to the respective demands of said minor heirs.

J. Dougherty for Ben L Wiley & David Sowers
Guardians of Lucinda & Philip Cruse their Wards

C G Simons Atty for Deft
Adam Cruse Admr.

[8641-6]

And afterwards to wit on the day and year first aforesaid, the said Adam Cruse Administrator of Peter Cruse deceased defendant filed in the Clerks Office of said Circuit Court ~~the following~~ an Appeal bond which is in the words and figures following, to wit,

Know all men by these presents that we Adam Cruse Administrator of the estate of Peter Cruse deceased and Joshua Roberts of the county of Union and State of Illinois are held and firmly bound unto Ben L Wiley Guardian of Lucenda Cruse and David Sowers guardian of Philip Cruse also of the same county and State in the penal sum of five hundred dollars current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents Witness our hands and seals this 19th day of May AD 1856.

The condition of the above obligation is such that whereas the said Lucenda Cruse by Ben L Wiley her guardian and Philip Cruse by David Sowers his guardian did on the 28th day of April AD 1856 in the Circuit Court in and for the County and State aforesaid recover a judgment against the said Adam Cruse Administrator of Peter Cruse dec^d ~~and~~ reversing an order of the County Court of said County and State on the Probate side thereof and ordered that the said Adam Cruse Administrator of Peter Cruse dec^d pay the money ~~which~~ which came into his hands from the sale of deceased real estate after paying the 1st & 2nd class claims proved and allowed against said decedents estate to the

said Philip Cruse and Lucinda Cruse on their respective claims or so much thereof as will fully satisfy them in case he has a sufficiency in his hands from the sale of the lands, after having first paid the said 1st & 2nd class claims instead of paying the same to the widow of said decedent on her specific allowance as certified to by the appraisers of said decedents estate also that Administrator pay costs in due course of administration from which said judgment and order of the said Circuit Court the said Adam Cruse administrator of the estate of Peter Cruse deceased has prayed for and obtained an Appeal to the Supreme Court of said State— Now if the said Adam Cruse Administrator of Peter Cruse deceased shall duly prosecute his said Appeal with effect and shall moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him in due course of administration in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void otherwise to remain in full force and virtue.

Taken and entered into before me at my office in Jonesboro this 19th day of May AD 1856
Thos Coleman Clk

Adam Cruse Admr (Seal)
of Peter Cruse decd

Joshua R Roberts (Seal)

State of Illinois
County of Union } I Thomas Wileman Clerk of the Circuit Court within and for the County of Union and State aforesaid hereby certify that the foregoing transcript contains and is a true and perfect copy of the order & judgment, Agreement of parties for Submission to the Supreme Court, and Appeal bond filed and of record in my office appertaining to the foregoing entitled cause.

In testimony whereof I do hereto subscribe my name and affix the seal of said Court at Office in Jonesboro this 1st day of August AD 1856

Thomas Wileman Clk

Adam Bruce Administrator of Peter Bruce deceased Plff in error	In Supreme Court. November Term AD. 1856
vs.	Error to Union
Lucinda Bruce by Benj. F. Wiley her Guardian and Phillip Bruce by David Lowers his Guardian	

And the said Plaintiff in error by Lyons & Simons his Attorny comes and says there is manifest error in the record and proceedings of the said Union County Circuit Court in this to wit:-

First That the said Court erred in reversing the judgment and Order of the said County Court.

Second And that the Court also erred in not affirming the judgment or Order of the said County Court

Wherefore the said plaintiff in error prays that the

judgment of the said Cir Ct. Court may be reversed for the costs aforesaid

Cyrus G. Simms
Atty for Plff. in error

Lander vs. Ross

I dissent for Colds

No 440 63

In Lafayette Court

November Term A.D. 1856

Adam Bruce Admr
of Peter Bruce decd

vs.

Lucinda Bruce a minor
by Benj. L. Wiley her Guardian
and Phillip Bruce by David
Lawrence his Guardian

Error to Union County

C. G. Simons Atty for
Plffs in error

Record —

Filed Nov. 11. 1856.
N. Johnston Clk

8649

Adam Cruse adm

vs

Lucinda Adam Cruse minor
by B L Wiley her Guardian
Philip Cruse a Minor by
David Sams his Guardian

In the Supreme
Court — Ward
June 1857
Error to Sumner

Points of Deft relied on

1 The Statute of this State gives to widows of intestate estates, out of the lands of their husbands one third part of such lands during her life as her share of the realty which share she takes in no wise subject to the payment of debts.

See Purples Statutes p 496 Sect 1

2 That no provision is made by law for the sale of real estate by the admr to make up any deficit which he may find in the allowance to widows of personally. The admr can only sell the real estate to pay the debts of the deceased and the widows allowance or share of personal estate is not a debt,

See Purples Statutes p 1213 § 103. 104 & 110

J Lengsuly for
Defts in error

[8411-9]

Crise
vs
Crise

pants retained
by ~~Lepes in~~
error, appeal

In Supreme Court
Mar Term 1847
Error to
Sumner

Adam Cruse admr
vs
Lucinda Cruse Minor
by B L Wiley her Guardian &
Philip Cruse Minor by David
Somers his Guardian

Points relied on
by Defts in error

1st The Statutes of this State gives to widows of intestate estates out of the lands of her husband an third part as her share of the realty during her life & not subject to the payment of debts
See Purples Statutes. page 496, Sect 1.

2 That no provision is made by law for the sale of real estate by the Administrator to make up any deficit which he may find in the allowance to widows of personalty. The Admr can only sell the real estate of intestate estates to pay the debts of the deceased and the widows allowance is not a debt,
See Purples Statutes p 1213 § 103. 104 & 110

Chas Gray for
Defts in error

[ELH1-10]

Points & reflections
for appeals

Cause v. Cause

In the Supreme
Court Nov Term
1847

Error to Rensselaer

Adam Cruse adm
vs
Lucinda Cruse Minor
by B L Welty her Guardian
Philip Cruse Minor by David
Summs her Guardian

1 The Statutes of this State gives to widows of intestate estates out of the lands of their husbands one third part of such lands during her life, as her share of the realty; which share she takes, in no case subject to the payment of debts,
See Purples Statutes p 496 Sect 1.
R S - 597 11 Seats Com. 1202

2d That no provision is made by law for the sale of real estate by the adm, to make up any deficit which he may find in the allowance to widows of personalty. The adm can only sell the real estate of intestate estates to pay the debts of the deceased and the widows allowance is not a debt,
See Purples Statutes p 1213 S 103. 104 & 110
Seats Comp. 1208

I bring suit for
Appellees

[PCMI-12]

Points & Reference
for appellees —

Cruce
vs
Cruce

Ex. p 1200 in other pers and property
4, 61

To the Hon Judges of the
Supreme Court of the State of
Illinois

Your Petitioner Asa A. Brown
of the City of Springfield & County of
Sangamon in the State of Illinois,
would respectfully represent unto your Honors that
he is a resident of said County &
State and desires to be admitted to
practise law in the State of Illinois
and would respectfully pray your
Honors to appoint some time as soon
as convenient for the examination of
your Petitioner as to his qualifications
to practise law in said State & to
appoint a committee to examine him
and report his qualifications for
admission to the Bar and your
Petitioner would further represent
that he is a person of good
moral character and that he has
studied law continually for the space of
three years prior to this application
two years of which time has been with attys in said State
And your Petitioner will ever pray
&c

Asa A. Brown

Dated this 3d day of
Feb A.D. 1859.

[BC 41-12]

1859

Carlyle June 10. 1859

Dear Sir

Yours of the 7th is rec'd. You will please read the opinion in the Cause case. Mr. Brooks has not furnished me the required certificate of moral character. When that is dear, I will notify you to issue a license.

Yr. truly

Sidney Breese

Ottawa May 28. /59

Dear Sir -

I send the opinion in the case of Cause against Nov. Term 1857 and prop. affirming as the opinion - at the last Term we do not know that any thing was done tho' some motion & order may have been made in the case - If there is any order reversing do not file the opinion but notify the parties a reversal must be ordered - Send back by Express

Yours very
A D Caton
Atty Genl
P. H. Walker

[8641-14]

STATE OF ILLINOIS, SUPREME COURT, FIRST GRAND DIVISION.

November Term, 1857.

Adam Cruce, Administrator of Peter Cruce, deceased, Pl'ff in Error, VS. Lucinda Cruce, a minor, by Ben L. Wiley, her guardian, and Philip Cruce by Davis Sowers, his guardian.	Error to Union:

p1 of Record

This was an action tried in the Union county Circuit Court between the abovenamed parties on an appeal from the Union County Court on the Probate side thereof upon an agreed state of facts. It is now brought to this court by appeal from the Circuit Court and upon the same agreed state of facts. The following are the facts agreed upon:

p4 of Record

1st, That Peter Cruce defendant intestate in his life time, was the guardian of the said Lucinda Cruce and Philip Cruce, and that the plaintiffs are now their guardians: Ben L. Wiley the guardian of Lucinda Cruce and David Sowers the guardian of Philip Cruce—that said wards are minors.

2d, That Peter Cruce departed this life intestate in the year 1852, and that defendant is his administrator.

3d, That Peter Cruce at the time of his death had in his hands money of his said wards, amounting, on the 18th day of February, 1853, of Lucinda, the sum of $182,55, and on the same day to Philip Cruce the sum of $164,28.—That defendant had notice of this fact, and that said sums were duly proven and allowed as claims against said estate on the 18th day of February, 1853, in the County Court of Union county, Ills.

5th, That Sophia Cruce is the widow of said intestate, and the amount of separate property allowed her by appraisers in lieu of specific articles of property allowed by law and one years provisions, she having elected to take the same in part in money, on the 15th day of May, 1852, was $675,25.

6th, That the whole amount of the personal estate of the intestate was $247,60, and that the claims of the 1st and 2d claims amount to $30,00.

7th, That the defendant, Adam Cruce as administrator of said estate applied the personal estate to the payment of the 1st and 2d class of debts to their amount, to-wit $30, and the balance of the personal estate to the widow, Sophia Cruce, leaving a balance due her of $390, as deficit of personal property to pay her separate property so allowed her by the appraisers.

p5 of Record

8th, That defendant, Adam Cruce, afterwards, at the April Term of the County Court of Union county, Illinois, obtained an order to sell the real estate of deceased, Peter Cruce, and in pursuance of said order, did sell the real estate of Peter Cruce dec., on the 21st day of May, 1853, to the amount of $388, and he has received the same as assets into his hands as such administrator.

Prospect R. S. 1200 §48-110-50-51.

[8641-15]

Daugherty

Purple Stat 1213 § 103

9th, That the claims of the said Lucinda and Philip are in no part paid but remain due them and unpaid.

10th, That the claims of Lucinda and Philip are the only claims against the estate of the intestate of the 3d. class.

11th, That these facts being agreed, the question in law for the decision of the Supreme Court is, as to who the proceeds of the real estate of Peter Cruce should be paid by the defendant. If to the widow of intestate the judgment of the Supreme Court should be rendered reversing the decision of the Circuit Court. But if the Supreme Court shall be of opinion that the wards are entitled to the proceeds of the real estate in preference to the widow's claim for deficit of personal estate to furnish her provisions for one year, and the value of specific articles of property allowed by law, when there was no such articles left by intestate, then the decision of the Union Circuit Court in this cause will be affirmed, and the administrator ordered by the County Court to pay said plaintiffs the entire proceeds of the sale of real estate in his hands, to wit, the sum of $388, PRO RATA, according to the respective demands of said minor heirs.

The foregoing constitute the sole facts in the case, and the plaintiff in error now assigns the following causes of error:

p 8 of Record

1st, That the circuit court erred in reversing the judgment or order of the said county court.

2nd, That the circuit court erred in not affirming the order of the said county court.

CYRUS G. SIMONS,

Att'y for Pl'ff in Error.

[8641-15]

No 12

In the Supreme Court
November Term A.D. 1856.

Allen Cruce - Admr. of
Peter Cruce dec'd. Plff in Error.

vs

Lucinda Cruce a Minor,
by Ben. L. Miley - Guardian,
& Philip Cruce by David
Sowers his Guardian

~~Filed September 185~~

Filed 17. March 1857.
N. Johnston Clk

Abstract

Adam Bruce Administrator of Peter Bruce deceased. Plff. in error vs. Lucinda Bruce a minor by Rev. L. Wiley her Guardian and Phillip Bruce by David Sowers his Guar.ⁿ	Error to Union	In the Supreme Court November Term in the year of our Lord one thousand eight hundred and fifty six —

p. 1 of Rec. This was an action tried in the Union County Circuit Court between the above named parties on an appeal from the Union County Court on the Probate Side thereof upon an agreed state of facts. It is now brought to this Court by appeal from the Circuit Court and the same agreed state of facts. The following are the facts agreed upon

p. 4. of Rec. 1st "That Peter Bruce defendant intestate in his life time was the Guardian of the said Lucinda Bruce & Phillip Bruce and that the Plaintiffs are now their Guardians. Rev. L. Wiley the Guardian of Lucinda Bruce & David Sowers the Guardian of Phillip Bruce, that said wards are minors

2nd That Peter Bruce departed this life intestate in the year 1852 and that defendant is his Administrator

3rd That Peter Bruce at the time of his death had in his hands money of his said Wards amounting on the 18th day of February 1853 of Lucinda the sum of $182.55 and on the same day to Phillip Bruce the sum of $164.28; That

defendant had notice of this fact, and that same were duly proven and allowed as claims against said estate on the 18th day of February 1853 in the County Court of Union County Ills.

5th That Sophia Bruce is the widow of said Intestate and the amount of separate property allowed her by appraisers in lieu of specific articles of property allowed by law & one years provision she having elected to take the same in part in money on the 15th day of May 1852 was $675.25.

6th That the whole amount of the personal estate of the intestate was $247.60 and that the claims of the 1st and 2d class claims amount to $30.00

7th That the defendant Adam Bruce as Administrator of said estate applied the personal estate to the payment of the 1st and 2d classes of debts to their amount to wit. $30. and the balance of the personal estate to the widow Sophia Bruce leaving a balance due her of ~~$[illegible]~~ & $390.00 deficit of personal property to pay her separate property so allowed her by the appraisers

8th That defendant Adam Bruce, afterwards at the April Term of the County Court of Union County Illinois obtained an order to sell the real estate of the deceased Peter Bruce and in pursuance of said order did sell the real estate of Peter Bruce dec'd on the 21st day of May 1853

p. 5 of Rec.

[8641-18]

to the amount of $388. and he has received the same as assets into his hands as such Administrator

9th That the claims of the said Lucinda & Phillips are in no part paid, but remain due them and unpaid.

10th That the claims of Lucinda and Phillips are the only claims against the estate of the intestate of the 3d class.

11th That these facts being agreed, the question in law for the decision of the Supreme Court is, as to who the proceeds of the real estate of Peter Grace should be paid by the defendant. If to the widow of intestate the judgment of the Supreme Court is to be rendered reversing the decision of the Circuit Court. But if the Supreme Court shall be of opinion that the wards are entitled to the proceeds of the real estate in preference to the widows claim for deficit of personal estate to furnish her provisions for one year and the value of specific articles of property allowed by law, when there was no such articles left by the intestate. Then the decision of the Union Circuit Court in this case will be affirmed and the Administrator ordered by the County Court to pay said plaintiffs the entire proceeds of the sale of real estate in his hands, to wit. the sum of $388 pro rata according to the respective demands of said minor heirs

[8641-19]

The foregoing constitute the sole facts in the case and the plaintiff in error now assigns the following causes of error

p. 8. of R. 1st That the circuit court erred in reversing the judgment or order of the said county court

2d That the circuit court erred in not affirming the order of the said county court

Lafayette S. Simmons

Plaintiff in error

In the Supreme Court
November Term A.D. 1856

Adam Bruce Adm.r of
Peter Bruce deceased

vs.

Ben. L. Wiley Guardian
of Lucinda Bruce and
others

abstract

A. G. Simons
Pltffs. Atty.

STATE OF ILLINOIS, SUPREME COURT, FIRST GRAND DIVISION.

November Term, 1857.

Adam Cruce, Administrator of Peter Cruce, deceased, Pl'ff in Error, VS. Lucinda Cruce, a minor, by Ben L. Wiley, her guardian. and Philip Cruce by Davis Sowers, his guardian.	Error to Union:

p 1 of Record

This was an action tried in the Union county Circuit Court between the abovenamed parties on an appeal from the Union County Court on the Probate side thereof upon an agreed state of facts. It is now brought to this court by appeal from the Circuit Court and upon the same agreed state of facts. The following are the facts agreed upon:

p 4 of Record

1st, That Peter Cruce defendant intestate in his life time, was the guardian of the said Lucinda Cruce and Philip Cruce, and that the plaintiffs are now their guardians: Ben L. Wiley the guardian of Lucinda Cruce and David Sowers the guardian of Philip Cruce—that said wards are minors.

2d, That Peter Cruce departed this life intestate in the year 1852, and that defendant is his administrator.

3d, That Peter Cruce at the time of his death had in his hands money of his said wards, amounting, on the 18th day of February, 1853, of Lucinda, the sum of $182,55, and on the same day to Philip Cruce the sum of $164,28.—That defendant had notice of this fact, and that said sums were duly proven and allowed as claims against said estate on the 18th day of February, 1853, in the County Court of Union county, Ills.

5th, That Sophia Cruce is the widow of said intestate, and the amount of separate property allowed her by appraisers in lieu of specific articles of property allowed by law and one years provisions, she having elected to take the same in part in money, on the 15th day of May, 1852, was $675,25.

6th, That the whole amount of the personal estate of the intestate was $247,60, and that the claims of the 1st and 2d claims amount to $30,00.

7th, That the defendant, Adam Cruce as administrator of said estate applied the personal estate to the payment of the 1st and 2d class of debts to their amount, to-wit $30, and the balance of the personal estate to the widow, Sophia Cruce, leaving a balance due her of $390, as deficit of personal property to pay her separate property so allowed her by the appraisers.

8th, That defendant, Adam Cruce, afterwards, at the April Term of the County Court of Union county, Illinois, obtained an order to sell the real estate of deceased, Peter Cruce, and in pursuance of said order, did sell the real estate of Peter Cruce dec., on the 21st day of May, 1853, to the amount of $388, and he has received the same as assets into his hands as such administrator.

p 5 of Record

[BLW1-A1]

9th, That the claims of the said Lucinda and Philip are in no part paid but remain due them and unpaid.

10th, That the claims of Lucinda and Philip are the only claims against the estate of the intestate of the 3d. class.

11th, That these facts being agreed, the question in law for the decision of the Supreme Court is, as to who the proceeds of the real estate of Peter Cruce should be paid by the defendant. If to the widow of intestate the judgment of the Supreme Court should be rendered reversing the decision of the Circuit Court. But if the Supreme Court shall be of opinion that the wards are entitled to the proceeds of the real estate in preference to the widow's claim for deficit of personal estate to furnish her provisions for one year, and the value of specific articles of property allowed by law, when there was no such articles left by intestate, then the decision of the Union Circuit Court in this cause will be affirmed, and the administrator ordered by the County Court to pay said plaintiffs the entire proceeds of the sale of real estate in his hands, to wit, the sum of $388, PRO RATA, according to the respective demands of said minor heirs.

The foregoing constitute the sole facts in the case, and the plaintiff in error now assigns the following causes of error:

p 8 of Record

1st, That the circuit court erred in reversing the judgment or order of the said county court.

2nd, That the circuit court erred in not affirming the order of the said county court.

CYRUS G. SIMONS,

Att'y for Pl'ff in Error.

[26 M-22]

No 12

In Supreme Court
Nov. Term A.D. 1856

Adam Crum, Admr. of Peter
Crum, Decd, Plff in error.

vs

Lucinda Crum, a Minor, by
Ben L. Riley, her Guardian &
Philip Crum by Daniel
Lucas his Guardian

Abstract

Filed 17 March 1857.
N. Johnston Clk

8641

Offices

Adam Bruce, Administrator of Peter Bruce, deceased, Pltff. in Error.

vs.

Lucinda Bruce, a minor by Ben. L. Wiley her guardian and Phillip Bruce by Davis Sowers his guar.

Error to Union.

In the Supreme Court November Term in the year of our Lord one thousand eight hundred and fifty six.

p. 1. of Rec. This was an action tried in the Union County Circuit Court between the above named parties on an appeal from the Union County Court on the Probate side thereof upon an agreed state of facts. It is now brought to this Court by appeal from the circuit court and upon the same agreed state of facts. The following are the facts agreed upon.

p. 4. of Rec. 1st. That Peter Bruce defendants intestate in his life time was the guardian of the said Lucinda Bruce & Phillip Bruce and that the Plaintiffs are now their guardians. Ben. L. Wiley the guardian of Lucinda Bruce & David Sowers the guardian of Phillip Bruce — that said wards are minors.

2d. That Peter Bruce departed this life intestate in the year 1852, and that defendant is his administrator.

3rd. That Peter Bruce at the time of his death had in his hands money of his said wards amounting, on the 18th day of February 1853.

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of Lucinda, the sum of $182.55, and on the same day to Phillip Bruce the sum of $164.28. That defendant had notice of this fact, and that said sums were duly proven and allowed as claims against said estate on the 18th day of February 1853, in the county court of Union county Ill.

5th That Sophia Bruce is the widow of said intestate and the amount of separate property allowed her by appraisers in lieu of specific articles of property allowed by law & one years provisions, she having elected to take the same in part in money on the 15th day of May 1852, was $675.25.

6th. That the whole amount of the personal estate of the intestate was $247.60, and that the claims of the 1st. and 2d. class claims amount to $30.00.

7th. That the defendant Adam Bruce as administrator of said estate applied the personal estate to the payment of the 1st and 2nd classes of debts to their amount to wit, $30. and the balance of the personal estate to the widow Sophia Bruce, leaving a balance due her of $390. as deficit of personal property to pay her separate property so allowed her by the appraisers.

8th. That defendant Adam Bruce afterwards, at the April Term of the county court of Union county Illinois obtained

an order to sell the real estate of the deceased,
p. 5. of Rec. Peter Bruce, and in pursuance of said order did sell the real estate of Peter Bruce dec^d. on the 21st. day of May 1853, to the amount of $388. and he has received the same as assets into his hands as such administrator.

9th. That the claims of the said Lucinda & Phillip are in no part paid, but remain due them and unpaid.

10th. That the claims of Lucinda and Phillip are the only claims against the estate of the intestate of the 3d. class.

11th. That these facts being agreed, the question in law for the decision of the Supreme Court is, as to who the proceeds of the real estate of Peter Bruce should be paid by the defendant. If to the widow of intestate the judgment of the Supreme Court is to be rendered reversing the decision of the circuit court. But if the Supreme Court shall be of opinion that the wards are entitled to the proceeds of the real estate in preference to the widow's claim for deficit of personal estate to furnish her provisions for one year, and the value of specific articles of property allowed by law, when there was no such articles left by the intestate, then the decision of the Union Circuit Court in this cause will be affirmed, and the administrator ordered by the county

court to said plaintiffs the entire proceeds of the sale of real estate in his hands, to wit, the sum of $388. pro rata, according to their respective demands of said minor heirs.

The foregoing constitute the sole facts in the case, and the plaintiffs in Error now assigns the following causes of error.

p. 8. of Rec. 1st. That the Circuit Court erred in reversing the judgment or order of the said County Court.

2nd. That the Circuit Court erred in not affirming the order of the said County Court.

Cyrus G. Simons.
Atty for Pltff in Error.

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No 12

In the Supreme Court

November Term A.D. 1856

Allan Bruce Admr. of

Peter Bruce Deceased

vs

Benj. L. Wiley Guardian

of Lucinda Bruce and

others

Abstract

C. G. Simons A.C.

for Plff. in error

Prepaid by Simons $2.50

$2.50

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Brown &c

vs

Brown &c

8641