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No. _____

Supreme Court of Illinois

Bonham

vs.

Badgley

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State of Illinois }
County of St. Clair } 308

That and proceedings had in the Circuit Court within and for the County of St. Clair and State of Illinois, in Chancery sitting, in a certain cause in which Abraham Badgley and others were Complainants and Sarah Bonham and others were Defendants, as follows:

The said Complainants having on the sixth day of March A. D. 1845 filed their Bill of Complaint in words and figures following to wit:

Bill: State of Illinois } Of the May term of the St. Clair
St. Clair County. } Circuit Court A. D. 1845.

To the Hon. the Judge of the St. Clair Circuit Court, in Chancery sitting:

Humbly complaining sheweth unto your Honor your orators Abraham Badgley, Martin I. Badgley, George W. Atchison and Polly his wife, Wesley Johnson and Sophia his wife, James L. Ogle and Martha his wife, which said Martha is a minor and sues by her next friend Abraham Badgley, Hannah Badgley, Rhoda V. Badgley and Rachel Badgley, which said Hannah, Rhoda and Rachel are minors and sue by their next friend Abraham Badgley, that the East half of the North East quarter of Section eight in Township one North of Range eight West lying in St. Clair County was patented to Malakiah Bonham by the Government of the United States on the nineteenth day of March A. D. 1819; and that afterwards on the fourteenth day of November A. D. 1821 the said Malakiah Bonham

conveyed the said tract of land to his son Joseph Bonham by warrantee-deed executed by himself of Sophia his wife, of that date, as appears by the same now of Record in the Records office of St. Clair County in Book C. page 174 and recorded April the 15th A. D. 1823; that the said Joseph Bonham under the said conveyance entered upon the said land in his lifetime and improved the same by cultivating the soil and erecting fences & thereon; that the said Joseph Bonham is reputed to have married Sarah Beer, one of the Defendants herein after named, the daughter of the sister of him the said Joseph Bonham in March A. D. 1823; that the said marriage if any by reason of the said consanguinity was illegal and void; that the said Sarah at the time of said reputed marriage had a child about eight months old, that the said Joseph Bonham about one month after said marriage died, and that he had no children by the said marriage and left no legitimate children, who could inherit his estate; that at the time of the death of the said Joseph Bonham he left no father but a mother, to wit Sophia Bonham, who died some time in the year 1834 leaving no husband or children and grand children, except the persons herein after named as the brothers and sisters and children of brothers and sisters of the said Joseph Bonham; that at the time of the death of the said Joseph Bonham he left six brothers and sisters to wit Susannah Beer, mother of the said Sarah, William Bonham, Samuel Bonham, Rachel Badgley, Martha Blair and Amelia Nelson, that the said Susannah Beer died A. D. 1843 leaving no husband, but the following children, to wit: the said Sarah Bonham

William Beer, like B. Beer, Jane New, who has intermar-

William Beer, Peter B. Beer, Jane Shew, who has intermarried with David N. Shew, Robert Beer, Matilda Vanorsdal, who intermarried with William Vanorsdal, & the following grandchild to wit: Adeline Beer, a minor and only child of Bonham Beer, being the son of the said Susannah Beer, who died A.D. 1840.; that the said Samuel Bonham died A.D. 1826 leaving Bertheba Bonham his widow, and the following children to wit: Nelson Bonham, Nancy who intermarried with Jacob Holt; and Elizabeth Bonham; that the said Nelson Bonham conveyed his interest in said premises to William Tate before the commencement of this suit; that the said Rachel Badgley intermarried with the said Abraham Badgley and died A.D. 1835, leaving her said husband and the following children to wit: Martin J. Badgley, Polly, who has intermarried with George W. Atchison, Sophia, who intermarried with Wesley Johnson, Martha a minor, who intermarried with James L. Ggle, Hannah Badgley a minor; Rhode Y. Badgley a minor and Rachel R. Badgley a minor; that the said Martha Blair, who intermarried with James Blair died A.D. 1826 leaving her said husband and the following children to wit: Mary, who intermarried with Sylvester Stone, George W. Blair, a minor, and Ameline Blair a minor, that the said children and grandchild of the said Susannah Beer are each entitled to one seventh of one sixth of the said tract of land; the said William Bonham one sixth of said land; the said Amelia Nelson one sixth of the same; the said children of the said Samuel Bonham and the said Wm. Tate each the one third of one sixth of the said land, subject to the right of dower of the said Bertheba Bonham in the said one sixth of the said tract of land; the said children of the said Rachel Badgley are each entitled to

the one seventh of one sixth of the said tract of land, subject to the life estate of the said Abraham Badgley their father, in the said one sixth of the said tract of land; the said Children of the said Martha Blair are each entitled to the one fourth of the one sixth of the said tract of land, subject to the life estate of the said James Blair their said father in the same. That the said Susannah Beer had the entire use of the said tract of land after the death of the said Joseph Bonham until she died A. D. 1845, and lived upon the same and cultivated most of the same, and received all the avails thereof with all all of her said children who resided with her; and the said Sarah her daughter has occupied and received all the avails of the same ever since; and that the use of the said premises during the last twenty two years has been worth at least thirty dollars a year. Your orators further show to Your Honor, that the said tract of land is so situated, and the interests of many of the parties interested are so small, that the same can not be divided between them without manifest prejudice; and it would be a useless expense to have commissioners appointed to attempt a partition of the same. In tender consideration of the premises and for as much as the said parties can only obtain their rights in the said land and a good title given to the purchaser of the same by interposition and decree of this honorable Court, Your orators pray, that the Defts hereinafter named may answer all and singular the allegations aforesaid, and upon a final hearing Your Honor will appoint Commissioners to sell the said tract of land at public sale, and after applying the proceeds towards paying all costs that accrue in this case, deliver the surplus to such of the said parties interested as will accord with their respective rights upon such terms and conditions, as to Your Honor shall seem

next; or that your orators may have the one sixth of the said land or such part as they may be found entitled to set apart to them by Commissioners appointed for that purpose; or that your orators may have such other and further relief in the premises as the nature of the case requires; and that your orators may have the Peoples writ of Subpoena commanding the said Sarah Bonham, William Beer, Peter B. Beer, David N. Shew and Jane his wife, Adeline Beer, Robert Beer, William Vanorsdal and Matilda his wife, Amelia Nelson, William Bonham, Berseba Bonham, William Tate, Jacob Holt and Nancy his wife, Elizabeth Bonham, James Blair, Sylvester Stone and Mary his wife, George W. Blair, John Blair & Amelina Blair Defendants in this Bill upon a certain day and upon a certain to appear personally in Court and answer this Bill and abide the order of your Honor in the premises; and that a guardian ad litem may be appointed for said minors, and your orators will ever pray &

W. H. Underwood

Solicitor for Complainants

thereupon afterwards at the May term of said Court before the Hon. Walter B. Scates, on the first Tuesday of the term:

At this day came the Complainants by W. H. Underwood their Solicitor, and it appearing to the Court, that some of the said Defendants to the said Bill of Complaint were duly served with process by copy of the Subpoena, and upon proof, that the other Defendants were duly notified of the pendency of this Suit by publication in the Belleville Advocate a newspaper printed in this State for four weeks successively and once in every week, N. Niles Esq. is appointed by the Court guardian ad litem to the minor Defendants and a rule is entered against the Defendants to plead

answer or demur to the Complainants Bill on or before Thursday morning nine o'clock or the said Bill would be taken as confessed by them; and afterwards on the first Wednesday thereof, the 14th of May:

At this day on motion of the Complainants leave is given to them by the Court to amend their said bill of Complaint.

whereupon afterwards on the fifteenth day of said month of May the said Sarah Bonham, filed her demurrer to the said Bill in words and figures following to wit:

Sarah Bonham, interpleaded vs. } St. Clair Circuit
as } Court May term
Abraham Badgley et al. } A. D. 1845. In
} Chancery for partition

The demurrer of Sarah Bonham, one of the Defendants in the Bill of Complaint of Abraham Badgley et al. Complainants:

This Defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said Bill of Complaint contained, to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said Bill and for cause of demurrer sheweth, that the said Complainants have not by their said bill made such a case as entitles him in a Court of equity to any discovery or Relief from or against this Defendants touching the matters contained in the said Bill or any of such matters.

Wherefore and for divers other good causes of demurrer, appearing in the said Bill of Complaint this Defendant doth demur to the said Bill and to all the matters and things therein contained and prays the Judgment of this Hon.

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Court & and to be dismissed with his reasonable costs
in this behalf contained.

Loy. Trumbull
Sol. for Sarah Bonham

Causes of Demurrer

- 1st. Bill does not show, that Sophia Bonham
decd seized as the owner of said land
- 2^d. Bill does not show the interest of Complainants
& Defendants or how they claim from said Sophia
- 3^d. Bill is multifarious, uncertain and contradictory
4. Bill Shows a case when the Complainants would

be barred by lapse of time
5th Bill Shows a possession of more than
twenty years by persons under such circum-
stances as bars the Relief sought
L. & G. Trumbull
for Compt.

and thereupon on the second Tuesday of said term:

At this day the said Sarah having filed her demurrer to the Complainants bill, and the other Defendant having failed to answer thereto according to the rule of this Court, entered against them on a former day of the term, on motion of the Complainants it is ordered by the Court, that the said Bill be taken pro confesso as to the said Defendants but the said Sarah, who has filed her demurrer as aforesaid; and it is ordered that this cause be continued to the next term of the Court,

And at the October Term of said Court, A. D. 1845. before the Hon. Gustavus Koverner, on the second Friday of said term, the 24th.

At this day the demurrer to Complainants bill filed by said Sarah Bonham, one of the Defendants, by L^og. Trumbull her solicitors, is argued and after full argument heard is overruled by the Court; whereupon on motion of the Complainants a rule is granted against the said Sarah to answer the said bill of Complaint on or before tomorrow morning nine o'clock, and on the second Saturday:

At this day the said Sarah Bonham having failed to answer the Complainants Bill in compliance with the said Rule of Court, on motion of the Complainants it is ordered by the Court, that the said bill be taken as confessed by her. And the Court having examined the bill and heard testimony.

in support of the allegations therein contained and set forth and being satisfied of the truth thereof and that the heirship of the parties to the said bill as therein set forth is correct, and also their title to the lands and tenements in said bill mentioned and described, to wit: the East half of the North East quarter of Sect. eight, Town 1. North of Range eight West, lying in the said County of St. Clair, established; and that the said tract of land can not be divided without manifest prejudice to the owners of the same, and that the prayer of said bill ought to be granted, it is ordered, adjudged and decreed by the Court, that the said tract of land be sold by Samuel B. Chandler, who is by the Court appointed Commissioner for that purpose, at the door of the Court-house in the town of Belleville at public vendue to the highest and best bidder for cash money, the said Commissioner giving previous to such sale notice of the time, place and terms thereof by publication for four weeks successively in some newspaper printed in said County of St. Clair; and after such sale the said Commissioner is to make, execute and deliver to the purchaser or purchasers at such sale on payment of the purchase money a good and sufficient deed for the said premises, thereby conveying to such purchaser or purchasers all the right, title, interest and estate of the parties to this bill in and to the said premises. And it is further ordered by the Court, that the said Commissioner bring the proceeds of said sale into Court for distribution of the same subject to further order of the Court. Ordered, that this case be continued.

And now here the Defendant Charles Bonham

prays an appeal, which is allowed upon her entering into bond to the Complainants in the sum of two hundred dollars, with either Michael Mottor or William Forquer her security within thirty days from this date, conditioned according to law.

And afterwards at the November special term of said Court, A. D. 1845. on the first Monday thereof:

At this day comes the said Sarah Bunham v. G. L. Trumbull her solicitor and moves the Court for leave to have this cause put on the docket, which said motion the Court allows. And the case being docketed the said Sarah moves the Court to amend the order allowing an appeal in this cause, obtained at the last term of this Court, by substituting Charles Coffelberry and William G. Goforth as securities on the appeal bond, to the persons named in said order of Court as securities. And it appearing to the Court, that the time to file said bond has not expired, the Court allows the motion and they are substituted; and thereupon the said Sarah files her bond with said Charles Coffelberry and William G. Goforth her securities in words and figures following to wit:

Know all men by these presents, that we Sarah Bunham, Charles Coffelberry and William G. Goforth of the County of St. Clair and State of Illinois are held and firmly bound unto Abraham Badgley, Martin G. Badgley, Geo. W. Atchison & Polly his wife, Wesley Johnson and Sophia his wife, James L. Ogle and Martha his wife, Hannah Badgley, Rhode B. Badgley and Rachel A. Badgley in the sum of two hundred dollars to be paid to the said Abraham


Badgley and the others above named, their heirs, executors and administrators to the payment of which well and truly to be made we bind ourselves, our heirs executors and administrators firmly by these presents. Sealed with our seals this twenty fourth day of November eight hundred and forty five.

The condition of this obligation is such, that whereas the said Abraham Badgley et al. above named, Complainants did at the October term of the St. Clair Circuit Court A. D. 1845 obtain a Judgment, order or decree in said Court on the Chagney side thereof, wherein the above bounden Sarah Bonham et al. Defendants for the partition of certain lands set forth in said Complainants bill of Complaint, and from which said Judgment, order or decree the said Sarah Bonham then and there prayed an appeal to the Supreme Court of the State of Illinois: Now if the above bounden Sarah Bonham shall duly prosecute her said appeal and shall well and truly pay or cause to be paid the Judgment, order or decree, Costs, interest and damages in case the Judgment, order or decree of the said Circuit Court shall be affirmed, then this obligation shall be void, otherwise to remain in full force and virtue.

Sarah Bonham
Chas. Casselberry
Wm. G. Goforth

State of Illinois }
County of St. Clair } J. Theodore Engelmann
Clerk of the Circuit Court within and for the
County of St. Clair and State of Illinois, do

hereby certify the foregoing to be a correct and complete copy of the Bill of Complaint and of the separate demurrers of Sarah Bonham one of the Defendants therein, and of the proceedings and orders of the Court thereon and also of the appeal bond in the above entitled cause, as the same appear on file and of Record in my office.



In testimony whereof I have hereunto signed my name and affixed the seal of said Court at Office this first day of December A. D. 1845.

Shew. Engelmann.

A. Badgley
& others

vs

Sarah Bonham
vs. appt.

2970 words ———— \$ 5.12½
copy. ———— 0.50
paid by appt. \$ 5.62½
by hands of L. Townsend Esq.
Att. in C. by direction

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hereby certify the foregoing to be a correct and complete Copy of the Bill of Complaint and of the separate demurrers of Sarah Bonham one of the Defendants therein, and of the proceedings and orders of the Court thereon and also of the appeal bond in the above entitled cause, as the same appear on file and of Record in my office.

In testimony whereof I have hereunto signed my name and affixed the Seal of said Court at Office this first day of December A.D. 1845.

Shew. Engelmann

Sarah Bonham v Abraham Badgley et al

The defendants filed a bill for a partition or sale of real estate, against the plaintiff and others. The plaintiff's demurrer to the bill was overruled, and that judgment is assigned for error, as is also the decree for a sale of the premises.

The bill traces title from the U.S. to one Joseph Bonham, who entered into possession, fenced and cultivated the premises. The bill then proceeds to state, "that the said Joseph Bonham is reputed to have married Sarah Beer, one of the defendants, hereinafter named, the daughter of the sister of him, the said Joseph Bonham in March A.D. 1823; that the said marriage, if any, by reason of the said consanguinity, was illegal, and void; that the said Sarah, at the time of said reputed marriage, had a child about eight months old; that said Joseph Bonham about one month, after said marriage died, & that he had no children by the said marriage, and left no legitimate children, who could inherit his estate;" that at the time of his death, he left no father, but a mother, who died some time in the year 1834, leaving no husband or children and grandchildren, except the persons hereinafter mentioned, as the brothers and sisters, children of brothers and sisters of said Joseph &c. After setting forth the parties plaintiffs and defendants, and the interest of each, the bill proceeds to state: "That Isaaciah Beer, sister of said Joseph, and mother of Sarah, the plaintiff here, had the entire use of the said tract of land, after the death of the said Joseph Bonham, until she died in 1843, and lived upon the same, and cultivated most of

the same, and received all the avails thereof, with all of her said children, who resided with her; and the said Sarah, her daughter, has occupied and received all the avails of the same, ever since. And that the use of the premises, during the last twenty two years, has been worth at least thirty dollars a year"

If Joseph died without children, or descendants of a child, by the law then in force, the estate went by descent to the next of kin - and leaving only one another surviving, she would take the whole estate. Laws 1819 p 230. see 21. Such was the fact, by the bill, and the parties, therefore must derive title by descent from Sophia Bonham, the mother of Joseph. It is, therefore, contended that she was never in the seizure, but was disseized by Susanah Beer, who remained in possession until her death, when the premises descended to her daughter Sarah, the plaintiff in error. By which dis-^{seizure} seizure and descent it is contended, the ^{right of} entry of Sophia Bonham's heirs is tolled, and they are put to their action to recover the possession, if not barred. If the premises were true, the corollary would follow. But disseizins are not favoured in law, and are not to be raised by construction. We do not regard the facts stated ~~in~~ the bill as showing a case of disseizin. The legal owner may some times treat the entry of a trespasser, as a disseizin, or as lawful, at his election, and so proceed as will be most advantageous to himself. But this election does not belong to the trespasser. The view we take of this case, however, renders it unnecessary to decide further

upon this point.

We regard the allegations of the bill, as setting forth a marriage in fact between Joseph and Sarah, the plaintiff. The laws of 1819 p 26, Sec 1. provides that males of the age of seventeen, and females of the age of fourteen, may be joined in marriage, if "not prohibited by the laws of God". Whether the "laws of God", mean the Levitical degrees, in this respect, I will not undertake to determine. But this marriage was certainly within the Levitical degrees: yet it is not therefore, void - but only voidable 12 Mass Com 434; 2 Kent Com 94-95. 4 Br Com Abid 554.

They are esteemed valid to all civil purposes until sentence of separation - and which must be made in the lifetime of the parties for the courts will not annul the marriage after the death of either party, by which the issue would be bastardized. See same authorities also 2 Comyn Dig 216 to 219 - C16C7 inclusive

The marriage, not being annulled by sentence of separation, during the life-time of the husband, it is made good to all civil purposes, and the wife is entitled to dower 1 Black Com 434; note 3, citing Elliott v Gurr 2 Phil Ecc C 16. 1 Moore 225:8, Cro Car 352; 1 Poper 332:3.

The statute has saved the right of dower on lands descending (Laws of 1819 p 230 sec 21) - and has also provided a remedy for its assignment - if not done within a month, after demand made (id p 12 sec 1).
But she has been allowed to remain in possession

living with her mother, as shown by the bills. Upon
the premises, and so long, we should regard as
being seized, instead of the mother being possessed.
Thus having the possession of the whole estate,
she might well neglect, to demand, an assignment
This bill seeks a sale of the whole premises, without an
assignment, and so it is decreed. We are therefore
of opinion, that the decree is erroneous, and must
be reversed with cost, and the cause remanded, for
such further proceedings, as to law & equity may appertain

Sarah Bonham

vs
Abraham Badgley & al

Opinion by
Scates J

Filed 5th Feb, 1846

Copied & compared