No. 13199

Supreme Court of Illinois

Loberg

vs.

Iverson et al

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 72.

Iverson
vs
[illegible]

3199

1861

[illegible]

Supreme Court

Edward Lawson et al

vs

Seth P. Lobery

It is hereby stipulated that this cause shall be submitted upon written arguments, Apl 15th 1861.

Rucker & Page

Pltffs attys

Lowell & Smith

Attys for Deft

72

Supreme Court

Edward Lawson
vs
Nels P. Lohery

Stipulation

Filed Sept. 16th 1861

L. Leland
Clerk

Printed by Beach & Barnard, 14 Clark Street, Chicago

SUPREME COURT OF ILLINOIS.

Third Grand Division,

APRIL TERM, A. D. 1860.

NELS P. LOBERG, *Appellee.*

ADS.

EDWARD IVERSON et al, *Appellants.*

Appellee's Points --- Statement of Facts.

Halver Iverson died August 15, 1850, intestate, leaving a widow and three infant children — Edward, Charlotte E. and Albert. Nels Oleson was appointed administrator of the estate, and, also, guardian of Charlotte E. and Albert. The property consisted of two lots of land and certain household furniture used by the family, and ~~$1.200~~ 1200 in money and a good claim of $3 50.

The administrator filed an inventory, and, also, an appraisal bill, in which the personal property was appraised at $167.74. The appraisers also reported the family entitled to receive, under the statute, $342.50; which report was approved by the Court, and that sum was awarded them. Various claims were proved against the estate, which, including funeral expenses, amounted in the aggregate to $103.90. To this is to be added the expenses of administration, $38.67.

The administrator had sold the personal property for $172.50, and had filed a sales bill of the same ; but this had not been approved, nor had any action been taken thereon, evidently for the reason, that the family were entitled to all of the personal property appraised, as aforesaid, at $167.74, and to the further sum of $174.76, to be paid out of the proceeds of the real estate, making together, the sum allowed by the Court, $342.50.

Such being the condition of things, in September, 1852, the administrator petitioned the Court for leave to sell the real estate; but the proper notice not having been given, no action was had until the March term of 1853, at which time, the notice, required by the statute, having, in the mean time, been given, the matter came before the Court. The situation of the estate, as above set forth, appearing from the records and files of the Court, an order of sale was made. The appellants admit that all the subsequent proceedings were regular, but they say that the Court never acquired jurisdiction of either the persons or of the property, and that, therefore, the proceedings were void.

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The first objection made by the appellants is, that the petition does not contain any averment that the administrator had filed an inventory, appraisment bill and sale bill.

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The second objection made is, that there is no averment in the petition nor recital in the order, that the administrator had applied the personal estate to the payment of the debts ; and that, in fact, he had paid all the indebtedness and cost of administration, and had a balance of $42.80 remaining in his hands.

To this we answer :

1. It appeared that there was no personal property which the administrator had a right to sell for the payment of debts. It was appraised at only $167.74 which left a balance of $174.76 due the family. This was a good claim against the estate. *Cruce vs. Cruce*, 21 Ill 46.

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1. The authorities are not uniform on this question and the *weight* seems to be in favor of the doctrine that a failure to appoint a guardian does not make the proceedings void as against the infant but is only error.

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FARWELL, SMITH & THOMAS,

Attorneys for Appellee.

No ~~1564~~ ~~1569~~ 72

Supreme Court

Nels P. Lodberg
Appellee
vs
Edward Swenson et al
Appellants

Appellees Points

Farwell Smith & Thomas
Attys for Appellee

Filed Apr 11. 1861
L Leland
Clerk

Printed by Beach & Barnard, 14 Clark Street, Chicago

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No ~~289~~ ~~154~~ 72

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Attys for Appellee

Filed Apr 11th 1861
E. Leland
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SUPREME COURT.

STATE OF ILLINOIS, THIRD DIVISION.

EDWARD IVERSON,
CHARLOTTE E. IVERSON } Minors.
ALBERT IVERSON,
Appellants,

vs.

NELS. P. LOBERG, Appellee.

ABSTRACT OF RECORD.

Ejectment to recover Lots 1 and 2, in Block 10, in Butterweight & Webster's Addition to Chicago. There are three counts. In the first all the plaintiffs are joined. In the second, Edward claims an undivided third, and in the third, Charlotte E. and Albert claim two undivided thirds.

Plea, general issue, and joinder. Jury waived, and cause submitted to the Court on the following statement of facts, agreed:

That the plaintiffs claim, as children and heirs of Halver Iverson, who died August 15, 1850, and are entitled to recover the premises in this action, unless they have been divested of title by proceedings had in the County Court of Cook County, by Nels. Olsne, as administrator fo said Halver Iverson. The proceedings in said County Court were in substance as follows: That on the 23d of September, 1852, said adminstrator presented his petition, stating "that under and pursuant to his appointment as such administrator, he has proceeded to adjust and settle the affairs of said estate in manner prescribed by law; that there are no available dues or demands, personal property, effects or assets belonging to said estate, so far as your petitioner has been able to learn, except as heretofore reported.

"That your petitioner, administrator as aforesaid, finds that there is a large balance, to wit: the sum of $225, or thereabouts, still standing against said estate, and which balance by the order and allowance of said County Court ought to be paid, but which your petitioner is entirely

unable to do, for want of property or assets subject to his control."

That said H. Iverson died seized of the aforesaid lots, and prays for leave to sell the interest that was of said Iverson in said premises.

Appended to said petition is certificate of publication for three weeks from Dec. 30, 1852, of the usual notice of presenting a petition for sale of said land to said County Court, at a term thereof to be held on the 3d Monday of March, 1853. Also, a similar certificate of publishing for three weeks, from Sept. 22, 1852, a notice of presenting a similar petition to said Court, on the first Monday in December, 1852.

At said March term, came "into Court Nels. Olsne, administrator, &c., and Edward S. Kimberly, guardian *ad litum*, to———(blank)—— who files his answer in behalf of said minors, neither admitting nor denying the allegations in said petition, but reserving the rights of said minors, by requiring proof, &c. And it appearing from the records and files of this Court, that said administrator has filed his inventory and appraisment bill of the effects of said deceased, but no sales bill for the reason that that there was no personal effects, and that there are claims against said estate unsatisfied, and that it is necessary to sell the real estate and property petitioned for, to pay the debts of said intestate." That the legal notice of presenting the petition has been given, and the proceedings in all respects been according to law, and that the intestate had an interest in said land, the said administrator ordered to make sale of said lots according to the provisions the statute, and to make report of any further action in the case.

Admitted that due notice of sale was given, and that pursuant to said notice Lot No. 1 was sold for $805, and Lot No. 2 for $475, to one Peter Page, that the sale was confirmed by an order of the Court, Dec. 17, 1853. Administrators' deed is in due form, and that said Page conveyed said premises to the defendant, and that the purchase price was paid to the administrator.

That said Halver Iverson died intestate, leaving three children, the

plaintiffs, two of whom resided with their mother in Chicago—the widow died within a week or two after the death of her husband.

Sept. 17. 1850, Nels. Olsne appointed guardian of said Charlotte E. and Albert.

Sept. 18, 1850, letters of administration issued to said Nels. Olsne.

Jan. 10, 1851, administrator presented inventory and appraisal bill showing that all personal property consisted of household furniture, &c., appraised at $151,34; cash in hand $12,90; one claim good $3,50; total $167,74. Same day administrator presented a sale bill, from which it appears that on Oct. 17, 1850, he had sold all personal property for $172,50. On same day, claims were allowed as follows:

Funeral Expenses, - - - - - -	$21,75
Physicians' Bill, last sickness, - - - - -	41,86
Claim of - - - - - - -	6,62
Sept. 8, 1851, another claim - - - - -	33,67

which comprise all the claims allowed against said estate.

Administrator paid as expenses of administration, $38,67, incurred previous to said proceedings which does not include expense of the sale of said land; September 20, 1852, an appraiser's bill was filed by which the appraisers report certain articles allowed to family of deceased, and appraise their value at $342,50, which was ordered recorded September 23, 1852; October 9, 1852, an order was entered, awarding to the family of deceased said sum of $342,50; June 8, 1858, administrator rendered account and produced vouchers, from which it appears that a portion of said claims against the estate, amounting to $56,37½, was paid before the presentation of said petition; said administrator died in 1858. Admitted that at the time of the order of sale all the children were minors, and that there is nothing in the records or in the papers on file further than what has been mentioned or referred to, going to show that a guardian ad litem was appointed for said minors, or that the administrator presented an account of the personal estate and debts of the deceased.

The plaintiff objected to the deed of the said administrator, and to

all the proceedings of the said County Court in reference to the said petition for said sale, for the reason that the said County Court had no authority or jurisdiction in the premises. and the proceedings thereof in their behalf were void for the following reasons, to-wit:

1st.—Because it does not appear by the petition that the administrator had filed either an inventory, appraisement bill, or sales bill, or that he had first applied the personal estate towards the payment of the debts of said intestate.

2d—Because in the proceedings to sell said premises, no guardian ad litem was appointed for said minors or either of them nor were they in any way made parties thereto.

3d—Because it does not appear by said petition that the personal estate was insufficient to pay the just claims against the said estate; and by the agreed statement of facts it appears affirmatively that the personal estate was sufficient to pay all just claims against said estate.

4th—Because the administrator previous to obtaining said order of sale, failed to make a just and true account, or any account, of the personal estate and debts of said intestate.

The Court overruled the objections, admitted the deed, sustained the proceedings of the County Court, and rendered judgement for defendant. Plaintiffs except, and exceptions allowed.

J. S. PAGE,
PLAINTIFFS' ATT'Y.

ERRORS ASSIGNED.

1. That the Court admitted the deed in evidence. 2. That the Court sustained the proceedings of the County Court. 3. That the Court gave judgement for the defendant and against the plaintiffs, whereas the judgment, by law, should have been for the plaintiffs, or for a portion of them.

28472-25

Ed. Iverson

v.

N. P. Loberg

Abstract

Filed Apr 19, 1861

L. Leland

Clerk

Pope atty.

Printed by Beach & Barnard, 14 Clark Street, Chicago

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In *Young vs. Lorain*, 13 Ill. 637, the rule is laid down as follows: "Enough must appear either in the application or the order, or, at least, somewhere upon the face of the proceedings, to call upon the Court to proceed to act; and, all agree, that when that does appear, then the Court has properly acquired jurisdiction, or, in other words, is properly set to work, &c."

In conclusion, we remark, that it is evidently for the interest of heirs, whether minors or adults, that this statute should have a liberal construction. If these sales are to be surrounded with difficulties and technicalities, then the natural and necessary result will be, that there will be but few bidders and but little or no competition, and the property will go for much less than its value into the hands of some speculator who may be willing to run the risk of the title.

FARWELL, SMITH & THOMAS,

Attorneys for Appellee.

no. ~~289~~ ~~1859~~ 72

Supreme Court

Nels P. Lobery
appellee
ads
Edward Iverson et al
appellants

Appellees Points,

Farwell, Smith & Thomas
Attys for Appellee

Filed Apr 11th 1861
A. Leland
Clerk

Supreme Court of Illinois
Third Division

Edward Iverson et als
v
Nels P. Seberg

And the said Plaintiffs now come and say that in the record and proceedings aforesaid there is manifest error in this to wit:

1 That the Court admitted the deed in Evidence

2 That the Court sustained the proceedings of the County Court

3 That the Court gave judgment for the defendant and against the Whereas the judgment, by law should have been for the Plaintiffs or for a portion of them

By L. S. Page
Pltfs Atty.

Supreme Court

Edmund Iverson
et al
Appellants

vs

Nils P Lobeng
Appellee

Comes the said appellee by Worrell Smith & Thomas his attorneys and says that there is no Error Either in the Record and proceedings aforesaid or in the giving of the Judgment aforesaid and he prays that said Judgment may be in all things affirmed &c

Worrell Smith & Thomas
attys for appellee

United States of America
State of Illinois Cook County ss.

Pleas before the Honorable the Judges of the Superior Court of Chicago within and for the County of Cook and State of Illinois, at a regular term of said Superior Court of Chicago. begun and holden at the Court House in the City of Chicago in said County and State on the First Monday being the fifth day of March in the year of our Lord eighteen hundred and sixty one and of the Independence of the United States of America the eighty fourth.

Present the Hon John M. Wilson Chief Justice
of the Superior Court of Chicago
Wm H Higgins & Grant Goodrich Judges
Carlos Haven Prosecuting Attorney
John Gray Sheriff of Cook County.

Be it remembered, that heretofore, to wit; on the 13th day of Sept. in the year of our Lord eighteen hundred and fifty eight Edward Denon, Charlotte E & Gilbert Denon by their attorney filed in the office of the Clerk of the Cook County Court of Common Pleas, their certain declaration, in the words & figures following, to wit:

State of Illinois }
Cook County } ss.

Court of Common Pleas
September Term 1858.

Edward Dresser of full age and Charlotte E. Dresser & Albert Dresser minors & his sue this action by the said Edward Dresser as their next friend by L. S. Page their Attorney Complains of Seth P. Loberg of Chicago in s^d County ss.

For that whereas heretofore to wit: on the first day of August A. D. 1858. at and within the said County and State, the said plaintiffs were possessed of a certain tract or parcel of land with the appurtenances situate in said County of Cook and State of Illinois, and described as follows. to wit: Lots one (1) and two (2) in Block ten (10) in Butler Wright and Webster Addition to Chicago said Lots being each twenty five feet front on Ontario st. by one hundred & nine feet deep. Lot one being on the Corner of Ontario & Market sts: which said premises the plaintiffs claim in fee simple and the said plaintiffs being so possessed of said premises, the defendant afterward, to wit: on the tenth day of August in the year aforesaid, entered into the said premises and ejected the said plaintiffs therefrom, and from the time last aforesaid hath unlawfully withheld and doth withhold

lawfully withheld from the said plaintiffs the possession thereof, to the damage of said plaintiffs of the sum of One Hundred Dollars.

And the said Edward Denson by his said Attorney complains of the said Silas P. Loberg: for that whereas, heretofore, towit: on the first day of August A. D. 1858. at and within the said County and State, the said plaintiff was possessed of one undivided third part of a certain tract or parcel of land situate in said County of Cook & State of Illinois & described as follows. towit: Lots One (1) and two (2) in Block ten (10) in Butler Wright & Webster's addition to Chicago. One undivided third part of which said premises the said Edward Denson claims in fee simple, and the said Edward Denson being so possessed thereof, the said defendant afterwards towit: on the tenth day of August A. D. 1858. entered into said premises and ejected the plaintiff therefrom, and unlawfully withholds from the said Edward Denson the possession thereof to the damage of said E. Denson One hundred dollars.

Also the said Charlotte E. Denson and Gilbert Denson minors aforesaid, by the said Edward Denson as their next friend. by the Attorney aforesaid complains of the said Silas P. Loberg for that whereas heretofore, towit: on the first day of August A.D. 1858. at and within the said County & State the said Charlotte E. and Gilbert Denson unlawfully

lawfully withheld from the said plaintiffs the possession thereof, to the damage of said plaintiffs of the sum of One Hundred Dollars.

And the said Edward Denson by his said Attorney complains of the said Silas P. Loberg: for that whereas, heretofore, towit: on the first day of August A. D. 1858. at and within the said County and State, the said plaintiff was possessed of one undivided third part of a certain tract or parcel of land situate in said County of Cook & State of Illinois & described as follows. towit: Lots One (1) and two (2) in Block ten (10) in Butler Wright & Webster's addition to Chicago. One undivided third part of which said premises the said Edward Denson claims in fee simple, and the said Edward Denson being so possessed thereof, the said defendant afterwards towit: on the tenth day of August A. D. 1858. entered into said premises and ejected the plaintiff therefrom, and unlawfully withholds from the said Edward Denson the possession thereof to the damage of said E. Denson One hundred dollars.

Also the said Charlotte E. Denson and Gilbert Denson minors aforesaid, by the said Edward Denson as their next friend. by the Attorney aforesaid complains of the said Silas P. Loberg for that whereas heretofore, towit: on the first day of August A.D. 1858. at and within the said County & State the said Charlotte E. and Gilbert Denson unlawfully

of the undivided third parts of in certain tract or parcel of land situate in the said County of Cook & State of Illinois, and described as follows. to wit: Lots one (1) and two (2) in Block ten (10) in Butler Wright and Webster's addition to Chicago, the undivided third parts of which said premises the said Charlotte E. and Gilbert Dimon claimed each one undivided third part thereof, in fee simple, And the said Charlotte E. and Gilbert Dimon being so possessed thereof the said defendant afterwards. to wit: on the tenth day of August in the year aforesaid, entered into the said premises and ejected the said Charlotte E and Gilbert Dimon therefrom, and doth not to this day withhold from the possession thereof. to the damage of said plaintiff the sum of One Thousand Dollars.

L. S. Page
Pltff Atty.

I, Felix O. Loberg the above named defendant.

You are hereby notified that the declaration, with a copy of which you are now herewith served and to which this notice is attached, will be filed in the Cook County Court

of the undivided third parts of in certain tract or parcel of land situate in the said County of Cook & State of Illinois, and described as follows. to wit: Lots one (1) and two (2) in Block ten (10) in Butler Wright and Webster's addition to Chicago, the undivided third parts of which said premises the said Charlotte E. and Gilbert Dimon claimed each one undivided third part thereof, in fee simple, And the said Charlotte E. and Gilbert Dimon being so possessed thereof the said defendant afterwards. to wit: on the tenth day of August in the year aforesaid, entered into the said premises and ejected the said Charlotte E and Gilbert Dimon therefrom, and doth not to this day withhold from the possession thereof. to the damage of said plaintiff the sum of One Thousand Dollars.

L. S. Page
Pltff Atty.

I, Felix O. Loberg the above named defendant.

You are hereby notified that the declaration, with a copy of which you are now herewith served and to which this notice is attached, will be filed in the Cook County Court

of Common Pleas on the first day of the September term of said Court. (September 13th 1858) and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule: and that if you neglect so to appear and plead, a judgment by default will be entered against you under the plaintiff will recover possession of the premises specified in said declaration.

Dated this fourth day of September A. D. 1858.

I. S. Page
Pltff Atty

Dan and Benson Scott
vs
Wm S. Loberg

C. C. Pleas Sept T. 1858.

Joel S. Page being duly sworn deposes and says that the premises above described are actually occupied by the said defendant and his family, that he has this day served the declaration in the above case, by leaving a copy thereof with the above notice, with the wife of the said defendant at his dwelling house he being absent.

Joel S. Page

September 10th 1858.
Sworn to before me this 13th day of Sept 1858. H. Kimball C.C.

And afterwards, to wit: on the day & year last aforesaid, said day being one of the days of the September Regular Term of said Court, the following among other proceedings were had & entered of Record in said Court, to wit:

Edward Denson & Page
and Charlotte E. Denson & Albert Denson Minors
who sue by the said Edward Denson their next friend.
vs
Ejectment
Peter P. Loberg

And now on this day comes said Plaintiffs by L. S. Page their Attorney and file herein their certain Declaration and notice in Ejectment and it appearing to the Court that due service of a copy of said declaration and notice in Ejectment thereto attached has been had on the said defendant of the pending of this suit against him in Ejectment in conformity with the Statute in such case made and provided. Therefore on motion of said plaintiffs it is therefore ordered that said defendant plead or demur to said plaintiffs declaration within twenty days after entry of this rule to plead or in default thereof judgment will be entered of record against him for want of a plea.

And afterwards, to wit: on the 22nd day of the month & year last aforesaid. Nils P. Loberg by his Attorney filed in the office of the Clerk aforesaid, his certain Plea in the words & figures following, to wit:

York County Court of Common Pleas

Sept Term A.D. 1858.

Nils P. Loberg
vs
Edgrand Iverson
Charlotte Iver[illegible]
Albert Iverson

And the said Nils P. Loberg Defendant by Goodrich Fassett & Smith his Attorneys comes and defends the wrong and injury when &c. and says that he is not guilty of unlawfully withholding the premises in said Declaration mentioned in manner and form as therein set forth and of this he puts himself upon the Country &c.

Goodrich Fassett & Smith
Defts Attys

And the Plff doth the like

A. S. Page Plffs Atty

And afterwards, to wit: on the 4th day of October in the year of our Lord One Thousand eight hundred & fifty nine, said day being one of the days of the October Regular Term of the Superior Court of Chicago. the following among other proceedings was had & entered of Record in this Court, to wit:

Edward Iverson

vs Ejectment

Ira P. Loberg

This day comes said plaintiff by D. S. Page. his Attorney and said defendant by Fowler & Smith his Attorneys and comes and issue being joined herein, upon agreement of the parties, this cause is submitted to the Court for trial without intervention of a Jury.

Ages afterwards, towit: on the 9th day of March in the year of our Lord eighteen hundred & sixty, said day being one of the days of the March regular term of said Court, the following among other proceedings were had entered of Record in said Court, towit:

Edward Dorsey
vs Ejectment.
Nels P. Loberg

This day comes said plaintiff by L. S. Page his attorney, and said defendant by Swan Smith & Thomas his attorneys also comes, and issue being joined herein upon agreement of the parties made herein in open Court, this cause is submitted to the Court for trial without intervention of a jury and the Court now here after hearing the evidence adduced by both parties and arguments of Counsel and being fully advised in the premises finds issues for said defendant.

Therefore it is considered that the said defendant do have and recover of said plaintiff his costs and charges about his defence in this behalf expended and have execution therefor.

And thereupon said plaintiff prays an appeal herein to the Supreme Court of the State of Illinois, which is allowed on filing bond in One Hundred Dollars to be approved by a Judge of this Court during term.

And afterwards, to wit, on the 26th day of the month of June last aforesaid, the plaintiffs by their attorney filed in the office of the Clerk aforesaid their certain Bill of exceptions in the words & figures following, to wit:

In the Superior Court of Chicago
of the March Term 1866.

Edward Denson
Charlotte E. Denson
Albert Denson
v
Nels P. Loberg

Ejectment.

This cause came on to be heard before the Hon. David A. Higgins, one of the Judges of said Court, to whom the case was submitted to be tried, a jury being waived by agreement of the parties.

The Cause was submitted to the Court upon the declaration and pleadings and the following statement of facts as agreed upon by the respective parties

Edward Denson et al
v
Nels P. Loberg

Superior Court of Chicago
Oct Term 1865

Statement of facts agreed.

This is an action of Ejectment. The declaration and pleadings are made part of the case.

The plaintiffs claim title as Heirs and heirs at law of Halvor Iverson who died August 15th 1850. And it is admitted, that the plaintiffs are entitled to recover the premises in this action as such heirs unless they have been divested, thereof by virtue of proceedings had in the County Court of Cook County instituted by Ole Olsen administrator of the Estate of said Halvor Iverson for the purpose of making sale of said premises as such administrator for the alleged purpose of paying the debts of said estate—

The following is a copy of the record of said County Court in the case to the time of making report of the sale, by the administrator. And it is agreed that all proceedings subsequent to the order granting leave to the administrator to make the sale are in due form.

State of Illinois }
County of Cook } ss. Pleas before the Honorable Henry L. Rucker. Judge of the County Court in and for said County at a term begun and

Chicago in the County aforesaid on the twenty-
sixth day of September in the year of our Lord One
thousand eight hundred and fifty two, and of
the Independence of the United States of America
the Seventy Seventh.

Present Hon: Henry L. Rucker Judge
E. L. Kimberly Clerk
Wm L. Church Sheriff

Petition of Asa Olson,
Administrator of the Estate
of Major Dennison deceased } In matter of Petition
to sell real estate.

Be it remembered that on the
twenty-third day of September, in the year of
our Lord eighteen hundred and fifty two, the
following proceedings in this Cause were had and
before said Court had and entered of record.
to wit:

Administrator of the Estate of Major Dennison
deceased presents his petition for the sale of
certain real estate, belonging to said Estate which
was by order of the Court continued to October
Term Which petition is in the words and
figures following. to wit:

To the Hon. Henry L.
Rucker County Judge of the County of Cook

in the State of Illinois.

The undersigned administrator of all and singular the goods and chattels and effects of Walter Dixon late of said County deceased. would respectfully represent that under and pursuant to his appointment as such administrator he has proceeded to adjust and settle the affairs of said estate in manner prescribed by Law. that there are no available dues or demands. personal property, effects or assets. belonging to said estate, so far as your petitioner has been able to learn & ascertain as heretofore reported—

That your petitioner administrator as aforesaid finds that the [illegible] balances to wit. the sum of two hundred and twenty five dollars or there-abouts still standing against said estate and which balance by the order and allowance of said County Court ought to be paid. but which your petitioner is entirely unable to do for want of property or assets subject to his control—

And your petitioner would further show that the said Walter Dixon died seized and possessed of Lots Number one (1) and two (2) in Block number ten (10) in Butler. Wright & Wentworth addition to Chicago. in the County of Cook and State of Illinois.

Your petitioner therefore prays that he may be authorized and empowered to sell the interest

which was of the said Walter Brown in the said described premises, there being no other property of said deceased to enable him to pay the said debts of said estate, and that the necessary proceedings and order in and for said Court may be had and entered as provided by law. and your petitioner will ever pray &c.

Wm. Olson

Administrator.

Accompanying and appended to said petition is a certificate of publication with a notice annexed thereto — which certificate is in the words & figures following, to wit:

This certifies that the appended notice has been published in the "Daily Democrat" a newspaper printed and published in the City of Chicago. County of Cook and State of Illinois, three (3) weeks, consecutively, commencing with the 30th of December 1852. and that I have received — dollars for publishing the same.

H. G. Smith for the publisher

And which notice is in the words and figures following to wit:

Administrators Notice

Notice is hereby given that the undersigned Administrator of the Estate of Walter Brown

deceased late of Cook County, will present to the County Court of Cook County, at a term thereof to be holden at the Court House in Chicago on the third Monday of March A. D. 1853. a petition for an order to sell the real estate belonging to the estate of said Hakon Iverson deceased, or so much thereof as shall be necessary for the payment of the debts of said Estate: when and where all persons interested therein are required to show cause, if any they have, why the same should not be sold for the purposes aforesaid.

Chicago Dec 30th 1852. Iver Olson Administrator

And also according and attached to said petition is a certificate of publication with a notice thereto appended, which certificate is in the words and figures following. Viz:

This certifies that the appended notice has been published in the Daily Democrat a newspaper printed and published in the City of Chicago, County of Cook and State of Illinois three (3) weeks, consecutively, commencing with the 25th of September 1852. and that I have received two dollars for publishing the same. D. W. Bradley publisher for the proprietors

And which notice is in the words and figures following. Viz:

Administrators Notice. Notice is hereby given that the undersigned administrator of the estate of Walter Dreson late of Cook County deceased, will present to the Cir. Court of Cook County at a term thereof to be holden on the 1st Monday in December 1852. at the Court House in the City of Chicago. a petition for an order to sell the real estate belonging to the estate of said Walter Dreson, deceased. or so much thereof as shall be necessary for the payment of the debts of said estate at which time all persons interested therein are requested to show cause, if any they have, why it should not be sold for the purpose aforesaid

Silas Olson Administrator

Chicago Sept 2. 1852

And afterwards to wit: on the thirtieth day of March Eighteen hundred and fifty three the same being one of the days of the March term of said Court for the year aforesaid, the following proceedings, in this cause were by and before said Court had and entered of record. to wit:

This day comes into Court Silas Olson administrator of the Estate of Walter Dreson deceased, and Edward S. Kimball Guardian ad litem to —

who files his answer in behalf of said minors neither admitting nor denying the allegations

in said petition but reserving the rights of said minors by requiring proof &c— And it appearing from the records and files of this Court that said administrator has filed his inventory and appraisement bill of the effects of said deceased. but no sales bill for the reason that there was no personal effects, and that there are claims against said estate unsatisfied and that it is necessary to sell the real estate and property petitioned for to pay the debts of said intestate: And it also appearing that due notice of publication of the time and and place and intention of presenting said petition, has been made by publishing the same in the "Chicago Daily Democrat" a public newspaper published in the City of Chicago. for six weeks previous to the present term of the Court. and that the proceedings of said Administrator have in all respects been in conformity of law. And it also having been shown to the satisfaction of the Court that said intestate or his legal representatives were then owners, or have an interest in the property asked to be sold—

It is therefore ordered and directed that said administrator proceed in pursuance of the directions and provisions of the statute in such case made and provided, to make sale of the real estate in said petition described to

Lots Nos One (1) and Two (2) in Block Forty (40) in Butler Wright & Webster's addition to Chicago belonging to said Estate, or whatever interest said Estate may have therein.

And it is further ordered by the Court that said administrator report to this Court any further action had on this order.

It is also admitted that due notice was given and said premises were sold to Peter Page pursuant to such notice, to wit Lot No One for $800.00 and Lot No Two for $475.00 that the sale was confirmed by an order of the Court Dec 1st 1853. That a deed in due form was executed and delivered by the said administrator to the said Peter Page, who subsequently conveyed to the Defendant, and that the whole of the purchase price was paid to said administrator.

It is further admitted that the said Gideon Dawson died intestate and left a widow and three children (the plaintiffs) two of whom Albert and Charlotte E. resided with their mother in Chicago. The widow died within a week or two after the death of her husband.

Sept 1st 1860. Seth Allen was appointed guardian for the infant children, Albert and Charlotte E. by the Cook County Court.

Sept 18th 1850. Letters of administration were issued from the said Court to the said Aiken upon the estate of the said Mayor Iverson.

Jany 10th 1851. The administrator presented to the Court an Inventory and appraisal bill of the property of the deceased, showing that all of the personal property and effects consisted of household furniture and other articles suitable for family use, appraised at $151.34. and Cash on hand $12.90. and one claim considered good $3.50. = Total $167.74

The administrator on the same day presented a sales bill from which it appears that on the 17th day of October 1851. he had sold all the personal property above mentioned, the sum of $177.50

On the same day (January 10th) claims were proved and allowed against the estate. viz—

Funeral Expenses	$21.75
Physicians bill in last sickness	41.86
Indebtedness from deceased before his death	6.62

Sept 8th 1851. another claim being a debt due from deceased, was allowed viz— 33.67.

Which comprise all the claims allowed against said Estate.

The administrator appears also to have paid out by the approval of the Court as expenses of administration $58.69. incurred previous to the presentation of the petition for the sale, and twenty dollars subsequent thereto, which does not include the expense of the sale of the real estate.

Sept 20th 1852. One appraisers bill was filed by which

the appraisers report certain articles and property allowed by law to the family of the deceased, and appraised the value thereof at $342.50. which was ordered to be recorded and was recorded Sept 23d 1852.

Oct 9th 1852. An order was entered awarding to the family of the deceased the said sum of $342.50.

June 8th 1858. The administrator rendered an account and produced vouchers of moneys paid and from such vouchers now on file it appears that a portion of the claims against the estate amounting to $56.37½ were paid before the petition for the sale of the real estate was presented.

The administrator died in 1858. after rendering such account.

It is further admitted that at the time of the order of sale was made all the children were minors. and that there is nothing in the record of the said County Court, or in the papers on file therein further than what has been mentioned or referred to, going to show that a guardian ad litem was appointed for the minors or that the administrator presented to the Court an account of the personal estate and debts of the deceased before the order for said sale was made.

T. S. Page
Atty for Defts
Fowell & Smith
Attys for Defts

The plaintiffs objected to the deed of the said administrator and to all the proceedings of the said County Court in reference to the said petition for said sale, for the reason that the said County Court had no authority or jurisdiction in the premises, and the proceedings thereof, in that behalf were void for the following reasons, to wit:

1st Because it does not appear by the petition that the administrator had filed either an inventory appraisement bill, or sale bill, or that he had first applied the personal estate toward the payment of the debts of said intestate—

2nd Because in the proceedings to sell said premises no guardian ad litem was appointed for said minors or either of them nor were they in any way made parties thereto.

3rd Because it does not appear by said petition that the personal estate was insufficient to pay the just claims against the said estate; and by the agreed statement of facts it appears affirmatively that the personal estate was sufficient to pay all just claims against said estate—

4th Because the administrator previous to obtaining said order of sale, failed to make a just

and true account, or any account, of the personal estate and debts of said intestate.

The Court overruled the said objections of the Plaintiffs, and admitted the said deed of the administrator, and sustained the proceedings of the said County Court in the premises. And rendered judgment for the defendant; to all which the plaintiffs then and there excepted.

And inas much as the matters aforesaid do not appear by the record of the said Cause the Counsel on behalf of the plaintiffs prayed that the said Judge would set his hand and seal to this Bill of exceptions according to the form of the Statute in such case made and provided and the said Judge hath accordingly set his hand and seal hereto this 26th day of March A. D. 1860.

Van H. Higgins (L.S.)
Judge

The above bill of exceptions is filed by Consent as of March 26. 1860.

Tunnell & Smith
Attys for Plff

And afterwards, to wit on the day and year aforesaid, the said Edward Doreon files in the office of the Clerk aforesaid, his certain appeal Bond, in the words & figures following, to wit:

Know all Men by these Presents. That we, Edward Doreon and Dore S. Page of the County of Cook and State of Illinois are held and firmly bound unto Nels P. Lobeng also of the same County and State. in the penal sum of One hundred dollars lawful 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 26th day of March A.D. 1860.

The Condition of the above Obligation is such. That whereas the said Nels P. Lobeng. did, on the Ninth day of March A.D. 1860. in the Superior Court of Chicago. in and for the County of Cook. and State aforesaid, and of the March Term thereof. A.D. 1860. recover judgment against the above bounden Edward Doreon, Charlotte E. Doreon & Albert Doreon for the sum of. dollars

and ____ cents costs of suit: from which said judgment of the said Superior Court the said Edward Denson has prayed for, and obtained an appeal to the Supreme Court of said State.

Now Therefore, if the said Edward Denson shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered, against him in case the said judgment shall be affirmed in 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 this 26th day of March A. D. 1866

E. Denson [Seal]
I. S. Page [Seal]

Approved
Van N. Higgins
Judge

The above bond is filed by consent as of March 26th 1866.

Farrell & Smith
Attys for Deft

and ____ cents costs of suit: from which said judgment of the said Superior Court the said Edward Denson has prayed for, and obtained an appeal to the Supreme Court of said State.

Now Therefore, if the said Edward Denson shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered, against him in case the said judgment shall be affirmed in 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 this 26th day of March A. D. 1866

E. Denson [Seal]
I. S. Page [Seal]

Approved
Van N. Higgins
Judge

The above bond is filed by consent as of March 26th 1866.

Farrell & Smith
Attys for Deft

State of Illinois }
Cook County } ss. I Walter Kimball
Clerk of the Superior Court of Chicago within
& for the County & State aforesaid. do hereby
Certify the forgoing to be a full, true & correct
Transcript of all the pleadings, on file in my office,
& of the proceedings & Judgment entered of record in said
Court in the case wherein Edward Dawson & others are
plaintiffs & Nels P. Loberg is defendant.
together with Bill of Exceptions

In Testimony whereof I have hereunto
set my hand & affix the seal
of said Court at the city of
Chicago this 16th day of Sept.
A. D. 1866. (Walter Kimball) Clerk

State of Illinois }
Cook County } ss. I Walter Kimball
Clerk of the Superior Court of Chicago within
& for the County & State aforesaid. do hereby
Certify the forgoing to be a full, true & correct
Transcript of all the pleadings, on file in my office,
& of the proceedings & Judgment entered of record in said
Court in the case wherein Edward Dawson & others are
plaintiffs & Nels P. Loberg is defendant.
together with Bill of Exceptions

In Testimony whereof I have hereunto
set my hand & affix the seal
of said Court at the city of
Chicago this 16th day of Sept.
A. D. 1866. (Walter Kimball) Clerk

~~249 - 154~~

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Edward Iverson et als
v
Nils P. Loberg

Filed April 12 1866
L. Lelean
Clerk

Fees $6 — Paid by
Riff atty