

No. 12509

Supreme Court of Illinois

Eaton.

vs.

Bryan.

71641  7

State of Illinois }
County of Peoria }
In the Circuit Court
In Chancery

In the matter of the estate of
Joseph Mackin deceased

State of Illinois,
Peoria County, Ill.)

Pleas in the circuit court in and for
the county of Peoria and state of Illinois, before
the Honorable, the judge of the said court, presiding
therein according to law.

To all whom it may concern, Know ye,
that the records of said court being inspected
and examined, there appears of record among
the records and proceedings of said court,
the following matters and things - to-wit:-

Be it remembered that on the eleventh
day of November AD 1856, there was filed
in the office of the circuit court clerk
in and for said county, a petition in words
and figures following, to-wit:-

State of Illinois }
County of Peoria } p

In the Circuit Court
In Chancery -

In the Matter of the Estate of Joseph
Machin, deceased;

The petition of
William Eaton, William R. Phelps,
and Mary Ann Fox Machin, Executors
of the last will and testament of
Joseph Machin, deceased, for leave to
convey certain real estate of said deceased
to one William F. Bryan.

To the Honorable Judge of said Court

The above named
Petitioners respectfully represent to your
Honor, that they are the Executors of the
last will and testament of Joseph
Machin, late of the County of Peoria,
deceased; that the said Joseph Machin
in his life time, to-wit, on or about the
27th day of September A.D. 1832, in the
County aforesaid, made and concluded
with one William F. Bryan of the same
county, a certain contract or Articles of
agreement in writing for the conveyance

of certain land in this State, for a valuable consideration; a counterpart of which said contract or articles of agreement in writing, duly signed sealed and delivered by and between the said Joseph Machin, since deceased, and the said William F. Bryan respectively, is here inserted in this petition, and made part hereof, to wit;

Articles of Agreement, made and concluded the twenty seventh day of September eighteen hundred and fifty two, Between Joseph Machin of the County of Peoria and State of Illinois, party of the first part, and William F. Bryan of the same place, party of the second part, Witnesseth, that the party of the first part, at the request of the party of the second part, and in consideration of the money to be paid, and the covenants as herein expressed to be performed by the party of the second part, (the prompt performance of which payments and covenants being a condition precedent and time being the essence of said condition) hereby agree to sell to the said party of the second part, all that

certain tract of land situate in the County of Peoria, in the State of Illinois, known and described as Lot No. Three (3) in Machin's farm as laid out on the North east quarter of section No. Five (5) in Township No. Eight north in Range Eight East of the 4th principal meridian, with the privileges and appurtenances thereto belonging. And the said party of the second part in consideration of the premises, hereby agrees to pay the said party of the first part, or his executors or assigns, at the office of Phelps & Bourland in the City of Peoria, Illinois, Three hundred and seventy five (\$375) dollars as follows, viz: ninety three $\frac{75}{100}$ dollars cash in hand, and the balance in four equal payments of seventy $\frac{31}{100}$ Dollars each payable in one, two, three and four years respectively from date as per four notes of even date herewith, with interest at the rate of six per cen per annum from the date hereof, to be paid annually on the 27th day of September in each year, on the whole sum ~~remaining~~ from time to time remaining unpaid. And Also, that he will well and faithfully, in due season,

pay or cause to be paid, all taxes and assessments, ordinary and extraordinary, for any purpose whatever, levied or assessed upon the said premises or appurtenances, or any part thereof, subsequent to the year 1832. But in case the said party of the second part fail to pay any or all such taxes or assessments, upon the said premises or appurtenances, or any part thereof, whenever and as soon as the same shall become due or payable; and the party of the first part shall pay from time to time, or at any time, any or all such taxes assessments, or cause the same to be paid, the amount of any and all such payments so made by the party of the first part shall immediately thereupon become an additional consideration, and payment to be made by the party of the second part hereto, for the premises herein agreed to be conveyed. And the said party of the first part, further covenants and agrees with the said party of the second part, that upon the faithful performance by the said party of the second part of his undertaking in this behalf, and of the payment of principal and interest of the sum above mentioned,

in the manner specified, he, the said party of the first part, shall and will without delay, well and faithfully execute, acknowledge, and deliver in person, or by Attorney duly authorized, to the party of the second part, his heirs or assigns, a deed of conveyance of all the right, title and interest of the party of the first part, of, in and to the above described premises, with the appurtenances, with covenants of warranty against any act or thing done or suffered by the party of the first part, and against all lawful claims of all persons whatsoever. Provided always, and there presents are upon express condition, that in case of the failure of the said party of the second part, his heirs, executors, administrators and assigns, in the performance of all or either of the covenants and promises on his part to be performed, the said party of the first part, or his legal representatives, shall have the right to declare this contract void, and thereupon to recover by distress, upon the premises, or otherwise, all the interest which shall have accrued upon this contract, as rent for use and occupation

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of said premises, and to take immediate possession thereof; to regard the person or persons, in possession, on such termination of the contract as tenant or tenants holding over without permission, (if that should be necessary to regain the prompt possession of the premises) and to recover all damages, sustained by such holding over without permission, or by means of any waste committed or suffered on the premises by destruction of the timber or otherwise.

In witness whereof the party of the first part and the party of the second part, in their own proper persons have hereunto respectively set their hands and seals, on the day and year first above written

(Signed) W. P. Bryan LS

Signed Joseph Machin LS

Sealed and delivered {
in presence of {
(Signed) A. L. Merriman }

And these Petitioners respectfully further represent that the whole of the said sum of Three hundred and seventy five dollars

in the said contract specified as the consideration thereof, to the said Machin has been fully paid, discharged, and fulfilled by the said William F. Bryan, either to the said Machin in his life time or to these Petitioners since his decease, and that the said William F. Bryan hath not in any manner assigned or transferred the said contract in writing but still hath the same and demands a deed of conveyance according to the true intent, meaning and effect thereof, so that be the said William F. Bryan having kept and on his part fulfilled the contract aforesaid, is now justly entitled to a deed of conveyance, according to the terms of the said contract in writing.

And these petitioners further respectfully represent, that after the making of the said contract, and while the same remained in full force and effect, to wit, on or about the 16th day of October A.D. 1855, the said Joseph Machin, having first made and published his last will and testament, departed this life, without having in any manner either made, executed, acknowledged

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or delivered, to or for said Bryan any deed of conveyance according to the terms of said agreement, or otherwise, for the premises therein described; neither have the heirs of the said Joseph Machin, deceased, since his decease, complied with or in any manner fulfilled the terms and conditions of the said agreement in writing above mentioned.

Wherefore these Petitioners pray the aid of this Honorable Court in the premises, and a decree, authorizing and empowering these petitioners or one of them, to make, execute, acknowledge and deliver to the said William F. Bryan, the deed of conveyance whereunto he is in this behalf entitled.

And these petitioners bring into Court here the Letters Testamentary granted to them, which show to the Court that they are the executors of the last will and testament of the said Joseph Machin deceased, and have the execution thereof &c

Charles C. Bonney
Solicitor for Petitioners

And afterwards to-wit, on the 18th day of March
AD 1857, there was filed in the office of the clerk
aforesaid, a notice to Wm. F. Bryan in words
and figures following to-wit:-

State of Illinois }
County of Peoria }

In the Matter of the Estate
of Joseph Machin, deceased.

William P. Bryan Esq
Peoria, Illinois.

Sir

You are hereby notified
that the undersigned have lately filed in
the office of the Clerk of the Circuit Court
within and for the said County, a petition
for leave to make, execute, acknowledge
and deliver to you a deed of Conveyance
of lot No. three in Machin's farm ac-
-cording to the Contract in writing,
or article of Agreement therefor, made
and concluded between you and said
deceased, in his life time, to wit, on or about
the 27th day of September A.D. 1852; and
that you may appear and answer said
petition, or otherwise object to proceedings
thereon, if you think proper.

Peoria November 11th A.D. 1856

William Eaton }
William R. Phelps } Executors of
Mary A. P. Machin } Joseph Machin's
deceased.

(signed) by Charles C. Bouney
their solicitor

And afterwards to-wit:- On the day and date
last aforesaid there was filed, in the clerk's
office aforesaid, a "demurer to Petitioner & joinder
in demurer" in words and figures following
to-wit:-

State of Illinois }
County of Peoria }

Ch. 497 }
March term }
A.D. 1857 }

In the Circuit Court
In Chancery

In the matter of the Estate
of Joseph Machin, deceased.
The Demurrer of William F. Bryan
to the petition of the executors of said
deceased for leave to make deed to him
&c.

And the said William F. Bryan cometh
into Court here, and not denying all or
any of the matters and things in the
said petition contained, but confessing
the same to be true, nevertheless demurs
to the said petition and the matters and
things aforesaid, for that the heirs and
devisees of said deceased are not named
in or made parties to the said petition,
nor doth it appear that any notice hath
been given them of this proceeding: Wherefore
the said William F. Bryan prayeth judgment
and his costs and that the said petition
may be dismissed &c)

(signed) William F. Bryan
Pro se

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it and hereupon the said Petitioners say that ^{there} is
not just Cause of Demurrer to their petition
aforesaid, and that they are not required by
law to make the heirs or devisees of said
deceased parties to their proceeding, nor
to give them any notice of the pendency
hereof, wherefore they pray as in and by
their said petition they have already prayed
etc.

(signed) Charles C. Bonney
Solicitor for Petitioners

Proceedings at a term of the circuit court, sit-
ting as a court of chancery, began and held at the
court house in the city of Peoria and state of
Illinois, on the first Monday of March A.D.
1857, it being the second day of said month.

Present Hon. David Davis, by interchange with the
Hon. Elihu M. Powell, judge of the 16th judicial
circuit, in the state of Illinois - to-wit,

Thursday, March 1st, 1857

In the matter of the estate of

Joseph Machin, deceased

This day this cause came on to be heard
on the demurrer to the petition, and the court
being satisfied in the premises, sustains

said demurrer. The plaintiff not asking leave to amend his petition, it is ordered that said petition be dismissed, It is therefore considered that the defendants herein, have and recover of the said petitioner his costs and charges by him about his defence in this behalf expended, and that he have execution therefor.

State of Illinois
Peoria County, I, Enock Sloan clerk of the circuit Court in and for said county and state do certify that the foregoing is a true transcript of the records in the cause, In the matter of the estate of Joseph Mackin, deceased, as the same appears of record and on file in my office.

In witness whereof I hereto set my hand and affix the seal of said court at Peoria, this 9th day of April A.D. 1857,

Enock Sloan, Clerk

State of Illinois; et al;

In the Supreme Court
at Ottawa; Of the
April Term A.D. 1857.

William Eaton, William
R. Phelps, & Mary Ann
Machin, Executors of
the last will and testa-
ment of Joseph Machin
deceased, plaintiffs in
error v.

William H. Bayan
defendant in error -

Error to Peoria
Circuit Court

And thereupon come the
said William Eaton, William
R. Phelps and Mary A. F. Machin
by Charles C. Bourney their attorney,
and say that in the record and
proceedings aforesaid, and also in
the rendition of the judgment
aforesaid, there is manifest
error in this to-wit; that the said
circuit court sustained the said
demurrer to the said petition; there
is also error in this to-wit, that
the said circuit court dismissed

the said petition; there is also error in this writ, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid, was given for the said William F. Bryan against the said Eaton, Phelps and Machin, whereas by the law of the land the said judgment ought to have been given for the said Eaton Phelps and Machin, against the said William F. Bryan.

And the said William Eaton, William P. Phelps and Mary Ann Fox Machin, pray that the judgment aforesaid, for the errors aforesaid, and for other errors apparent in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

Charles C. Bonney
attorney for
plaintiffs in error

And the said William F. Bryan in his own proper person cometh into court here and saith that there is no

error either in the record and proceedings
aforesaid, or in the rendition of the
judgment aforesaid, and prays that
the justices of the said Supreme
Court here may proceed to examine,
as well the record and proceedings
aforesaid, as the matters aforesaid
above-assigned for error, and that
the judgment aforesaid in form
aforesaid given, may be in all
things affirmed &c.

Wm. J. Pryor
Jr. &c.

Eaton et al
v. Bayan } Errors

Record -
Errors &
joinder -

Filed April 23, 1857
S. Deland
CLK

\$ 4.50

William Eaton }
And others } Sup. Court
vs }
Ezra S. Ryer } Aprie Term
1884

Defendants Argument

The Petition admits that Machin left Heirs and that these Heirs are living.

The legal title to the land is therefore in these Heirs

It is a familiar principle of Equity that all persons materially interested in the subject matter of a suit should be made parties.

The Statute simply authorizes the Court to empower the Executors to transfer the title from the Heirs to the purchaser, under conditions therein prescribed

The proceeding involves a Sale

and adjudication of the right to the title as between Heir and Purchaser.

Sections 31, 32, 33 (Chap 24 Rev. Stat.) expressly require that Heirs be notified. —

There is no difference in principle between the cases provided for in these sections ~~and~~ that provided for in Section 34. The object of both is to transfer title from the Heir to the purchaser.

Sec. 34 provides for Application by Executor or Heir. If by the latter, the former would manifestly be a proper, and therefore necessary, party, as well because he is the sole representative of the creditors and personally, and therefore having a peculiar knowledge of payment of the purchase money, or of the ^{debts or} ~~existence of~~ liens, as because the conveyance must be made through him

But this Section only authorizes
a decree "under the same conditions
as provided in this Chapter" - one of
which as stated in Sec. 32 is ~~that~~
(virtually) that all parties interested
be notified.

Sec 35 expressly forbids any such
decree unless the Court shall be
satisfied that no "injustice" be done
to any "Heir or Creditor."

How can the Court be so "sat-
isfied" unless the Heir have an op-
portunity to be heard by himself
or guardian, & the Creditor by the
Executor? -

The Constitution contained for
by Petitioners is in direct violation
of Sec. 8 Art 13 of our Constitution

Wm G. Phelan
Yours

William Cutton
and others

vs
Esm J. Pryor

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Defendants
Argument

Filed April 28. 1857
S. Deland
Clerk

State of Illinois etc

In the Supreme Court
at Ottawa

Eaton et als &c

vs

Bryan -

} Error to Peoria

Plaintiffs Brief -

The petition in this case was made under the 34th Sec. of Chap. 24 R.S. 1845. entitled conveyances - The language here used is materially different from that found in sections 31. 32 & 33 of same act. Here notice is required only to the party to whom deed is to be made.

The reason of this provision is that if heirs petition, they do so against their own interests: if executors or administrators make application, they do so under the obligation of their oath and bond as such; and the inducement offered them so to do is that thereby, as in this case where the heirs are widely separated, and some of them are minors, the executors may save in each of a large number of cases a very considerable amount of costs. Here we require only a petition, notice and decree reciting appearance of party to whom deed is to be given. Should Bryan be left to make application, we must have 1. Bill in chancery: 2. Process thereon: 3. Service of process by copy: 4. Sub-

=lication of notice to non-residents: 5, Proof
of publication: 6, Answer of Executors: 7,
Answer of Adult heirs: 8, Appointment of
guardian ad litem: 9, Answer of Guardian:
10, Replications: 11, Reference to master for
proofs: 12, Report of Proofs: 13, Decree &c.

Should this Court hold that even though
Executors petition, still heirs must be made
parties and answer, then almost the
same delay, trouble and expense must
be entailed.

The letter of the law and the interest
of Suitors, alike require that the judgment
of the Court below should be reversed,
and the mode of proceeding adopted by
these Executors sustained by this Court.

Charles C. Dorrney
attorney for
Plaintiffs in error.

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Eaton & Co. v. Bryan

In Error -

Plaintiffs Brief -

Filed April 28, 1857
S. Leland
Clerk

Charles C. Bonney for Plf.

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Eaton

~~Bry~~

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Bryan

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