

8804

No. _____

Supreme Court of Illinois

Rachel Rigg, et al

vs.

Harry Wilson, et al

71641  7

State of Illinois
County of St. Clair. 3rd Set.

In the Circuit Court within
and for the County of St.
Clair and State of Illinois.

Be it remembered, that on the
ninth day of November A.D. 1847. Rachel Rigg,
Marcy Quick and Daniel P. Quick complain
of Malinda Semint, Isaac Semint, Harry
Wilton, Betsey Wilton, Ann Easton, Israel
Phillips, George Stout, Thebe Stout, Thebe Morgan
Horse Hagerman, Reuben Hagerman, Ransom
Hagerman & John Rigg in a plea of trespass
on the case on promises: for that whereas heretofore
to wit to, at to, aforesaid a certain discourse
was had and moved of and concerning a certain
paper writing bearing date 26th day of May A.D.
1847 purporting to be the last will and testament
of Clement Rigg, and which had been admitted
to Probate in said County of as such, and which
the said Plaintiffs then and there asserted and
affirmed was not the last will and testament
of the said Clement Rigg deceased, which said
assertion and affirmation the said Defendants then
and there contradicted and denied, and then &
there asserted the contrary thereof. And thereupon
afterwards to wit on to, at to, aforesaid in
consideration that the said Plaintiffs at the request
of said Defendants had then and there paid to
the said Defendants fifty Dollars, they the said
Defendants undertook and then and there faithfully
promised the said Plaintiffs to pay them the sum

of one hundred Dollars if said paper was not the last will and testament of the said Clement Rigg. And the said Plaintiffs in fact say, that said paper writing was not the last will and testament of the said Clement Rigg, whereof the said Defendants on $\&$, at $\&$, had notice, whereby the said Defendants then and there became liable to pay the said sum of one hundred Dollars to said Plaintiffs; yet the said Defendants although often requested have not paid the same or any part thereof to the said Plaintiffs to their damage of one hundred Dollars and therefore they bring Suit $\&$
Underwood & Trumbull for
Pltffs.

And the said Defendants come and defend the wrong and injury when $\&$ a lay actor non because they say, that though true it is, that said discourse between said Plaintiffs and these Defendants wherein the said question did arise as aforesaid, and that the said Defendants did undertake and promise as therein alleged, nevertheless for plea in this behalf the said Defendants say the said paper writing was and is the last will and testament of the said Clement Rigg in manner and form as these Defendants in that behalf alleged, and of this they put themselves upon the Country $\&$.

Morrison for Defs.
Plaintiffs do the like
Trumbull v Underwood
attys for Pltffs

Whereupon appeared at the April term of the said Circuit Court A. D. 1848, on the second Saturday thereof April 15th: came the Plaintiffs by Reynolds, Trumbull and Underwood their attorneys, and the Defendants by J. L. Morrison their atty, and a jury is called to wit: C. Ball, Jacob Mordick, Wm Laramie, Parker

Adams, Andrew Bell, W^m S. Thomas, Edmund Howard, W^m D. Ross, W^m Morgan, Jas. Bagby, Jas. Simpson & W^m Maddox, who are duly sworn, well and truly to try the issue and a true verdict to render according to law and evidence. And after the testimony is heard and argument of counsel, the jury return into Court the following verdict: We the jury find the issue for the Defendants, and that the will is the will of Clement Rigg.

Here the Plaintiffs enter their motion to set aside the verdict and to grant a new trial, which motion is denied by the Court. It is therefore considered by the Court that the Defendants recover of the Plaintiffs their proper Costs to be taxed, and that they have execution thereof &c. -

Whereupon the said Plaintiffs file their Bill of exceptions in words and figures following, to wit:

Be it remembered, that upon the Trial of this cause before the jury under the decision of the Court those affirming the validity of the will were allowed to open and conclude the case; and upon the trial testimony was offered to the jury tending to show that the testator was of unsound mind and memory at the time of the execution of said pretended will, and both of the subscribing witnesses to the same as well as other persons were sworn and testified before the jury. After the closing of the testimony the said Rachel Rigg & others by their counsel asked the Court to instruct the jury as follows:

1. The Court is requested to instruct the jury in this case, that proof by one subscribing witness, that the testator executed said will, and that said witness believes the testator to be of sound mind and memory at the time, is not sufficient to establish said will.

2. That if the jury believe from the evidence and circumstances in proof before them, that said C. Rigg at the time of

the execution of said paper writing was unable either from severe sickness or ~~and~~ other cause to comprehend and understand the contents of the paper he was signing, they are bound to find said paper writing not to be his will).

3. That the sanity of the testator at the time of the execution of said paper writing is an affirmative fact to be established by those affirming the validity of said will, and who hold the opening and conclusion of the case before the jury.

4. That unless the jury are satisfied from the evidence, that the sound mind and memory of the said Clement Rigg at the time of the execution of said paper writing has been established either by the concurring testimony of the two subscribing witnesses to their belief of his sound mind and memory at the time, or by other circumstances satisfying them of his sound mind and memory at that time, they are bound to find said paper writing not to be the will of said Rigg.

all of which instructions the Court refused to give, except the second, which was given; and the decision of the Court refusing to give each of the other instructions asked, was at the time excepted to by the said Rachel Rigg & others. And the Court is now asked to sign and seal this bill of exceptions, and make the same part of the Record. After the coming in of the verdict said Rachel Rigg & others moved for a new trial, which motion was overruled, and the said Rachel & others excepted at the time to the opinion of the Court overruling said motion. —

Gustavus Koerner Secy

State of Illinois }
County of St. Clair } Dec 9

Theodore
Engelmann Clerk of the Circuit Court within &
for the County of St. Clair and State of Illinois
hereby certify, the foregoing to be a correct and com-
plete transcript of the pleas and proceedings in
the within named case, as they appear on file and
of Record in my office.

On testimony whereof I
have hereunto signed my name
and affixed the seal of said
Court at Office this second day
of December A. D. 1848.

Theodore Engelmann

Rachel Rigg & others

vs.

Harry Wilton & others

Error from St Clair

And the said plffs. in error come &
say that in the record & proceedings
aforesaid there is manifest error in this
to wit:

The court below error in refusing to
give each of the instructions of the said
plffs. in error to the jury.

The court below erred in refusing
to grant the said plffs. in error a new
trial, wherefore they pray that the
judgment below be reversed &c.

Wm. H. Underwood

Atty for plffs. in error.

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vs.

Harry Miller & others

Com from St Clair

The Clerk of the Supreme Court will issue a writ of habeas corpus to the Sheriff of St. Clair, Washington, Clinton & Montgomery counties & oblige.

Given at

Wm. H. Woodward

Att for plaintiff

[Signature]

Filed Dec 6th AD 1848

Wm. H. Woodward

PLT Casey, DC.

14749

Rachel Rigg

vs.

Harry Miller & others

Com from St Clair

Harry Wilson

vs.

Sept.

Record.

8804

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