No. 13542

Supreme Court of Illinois

Akin, et al.

---

vs.

Lloyd, et al.

71641 7

STATE O ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 135

1342

Akin

vs

Lacy

1862

Reversed

Box 22

Vault 1

SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

JAMES B. AKIN and
ISRAEL A. BOYDEN
vs.
RICHARD LLOYD and
EDWARD G. HALL.

ERROR TO BUREAU.

BRIEF FOR LLOYD, DEFENDANT IN ERROR.

1. A plea to the jurisdiction is not required to be verified by affidavit.

Howe *vs.* Thayer, 24 Ill. 246. 1 Cooke's Stat. p. 247 sec. 1. It is the same in equity. Same Stat. p. 249, sec. 14.

2. A plea to the jurisdiction has always to be pleaded in *person*, and never by counsel.

1 Saunders, pl. and evidence, p. 4. 1 Tidd's Practice p. 637. 24 Ill. 246. 25 Ill. 486.

The case referred to by the opposite counsel in 22 Ill. 201, that a plea in abatement must be signed by counsel, refers to 1 Tidd's practice 639 and 640. On looking at the last authority, it will be seen that it cites as its authority, 1 Chitty's R. 209, which was a case of a plea in abatement for *misnomer*.

No authority can be shown for requiring a plea to the jurisdiction, to be signed by counsel. If counsel did sign it, it would be a bad plea.

The plea is not required to deny that Lloyd was sued in Bureau county, where the suit was instituted. Jurisdiction does not depend on service of process but on the *residence* of the defendants.

The statute provides that all suits in equity shall be commenced in the county where the defendants or a major part of them *reside*, unless the suit may affect real estate. Neither of the defendants *resided* in Bureau county, where the suit was instituted.

1 Cooke's stat. p. 138, sec. 2.

In the case of Semple et al. *vs.* Anderson et al., 4 Gil. 559 and 560, the court decided that *service* of process upon a party in the county was *no evidence* that he resided there.

In 11 Ill. 477, that if the party insisted that service of process in the county afforded a presumption that the party sued lived there, that it should be *pleaded* that his residence was there.

If complainants wished to insist that Lloyd had been sued in Bureau, and that the service was evidence that he lived there, they should have filed a replication putting in issue the allegation in the plea of his non-residence in Bureau County.

This suit does not affect real estate. This question is expressly decided by this court in Enos et al. *vs.* Hunter 4 Gil. 211. In that case it was decided that a suit did not affect real estate unless the court acted *directly upon* the real estate, as in cases of petition, dower, &c.

In this case the complainants were in possession of the premises, and they do not, in their bill, ask the court to act in any way upon the land, but seek to have the defendants convey their title to complainants, and the complainant's title be adjudged to be the paramount title, and that the cloud be removed from complainant's title.

I wish to call the attention of the court to the copy of the plea as set out in the record, pages 9 and 10. The copy given in the abstract is not a *correct* copy. It omits the title of the court which appears in the copy of the plea in the record, and there may be other errors in the copy given in the abstract.

MILTON T. PETERS,
Att'y for Def't in Error, RICHARD LLOYD.

67 135

Akin vs Lloyd

Defts Brief

Filed May 6. 1842

L Leland

Clk

In Supreme Court, State of Illinois,
TO THE APRIL TERM, A. D., 1862.

JAMES B. AKIN & ISRAEL A. BOYDEN
vs.
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Page 1. This is a cause in chancery commenced by the Compl'ts Akins and Boyden in the Circuit Court of Bureau County, on the 15th February 1862.

The suit is brought to quiet and make perfect the title of Compl'ts to the land described in the
Page 1. Bill, to-wit: The south west quarter of section seventeen in township fifteen north, range seven east of the 4th P. M., in Bureau County.

The compl't Akin and his grantees are in possession of the land, and Boyden has a mortgage on part of the premises made to him by Akin.

Page 1. The Land originally belonged to Washington Hall, Sen., of Baltimore, Maryland, Asa Barney, of
Page 1. Bureau County, was the duly authorized agent of Hall to sell and convey the land and did as such
Page 2. agent bargain the land to David E. Akin and Walker Motheral and on the 24th September 1849, and as such agent made a bond for a deed to Akin & Motheral for said premises.

Page 2. Afterwards said Bond was assigned to Compl't James B. Akin and he paid the purchase money
Page 3. and said Barney as such agent, made to him a deed of said premises on the 11th day of Oct. 1852.

Page 3. The Def't Lloyd now claims that said Hall was dead at the time said deed was made and that the same was void because the agent had no right to make it—and said Lloyd in 1856, obtained a
Page 3. deed from all the supposed heirs of said Hall excepting the Def't E. G. Hall and now claims the legal title to said premises.

Page 3. Compl'ts insist that said Hall was living at the time of making such deed and call upon Lloyd to make proof of the death.

Page 4. Compl'ts also insist that said Hall was living at the time of making said bond—and that Akin and Motheral went into the possession of said premises immediately on getting said bond, viz: 24th September 1849, and that their assigns and grantees and the grantees of the Compl't have been in the actual possession of said premises ever since, under claim and color of title made in good faith and have paid all the taxes on said premises ever since.

That said deed is color of title and that said agent in making said deed acted in entire good faith and wholly ignorant of the death of said Hall, Sen., if he was then dead.

Page 5. Said Barney also as such agent received all the purchase money and immediately remitted the same to Hall, and the same was received without objections.

Page 5. The said supposed heirs of Hall, Sen. in their deed to Lloyd only convey all their interest and estate which they had or could claim to said premises.

Page 5. That even if said Hall, Sen., was dead at the time of making said deed—he was living at the time the bond was made which would give to compl't Akin the equitable title.

Page 6. That said premises are timber land and that Akin has conveyed all of them away except, twenty acres, to different persons by Warrantee Deeds and is bound to make the title good.

That the claim and said purported deed to Lloyd is a *cloud upon the true title to said premises* and that *the same ought to be removed.*

(The compl't Akin claims to own the true Title.)

Page 7. The oath of the def'ts is waived. Prayer that def'ts be requested to convey whatever interest they have to said premises to compl't Akin for his own benefit and to inure to the benefit of his grantees and that compl'ts title be *held and adjudged the paramount title and that said Lloyd be forever precluded from asserting* any right to said premises under his said pretended deed and for general relief.

Summons issued in due form which has not been returned.

Def't. Lloyd filed Plea in abatement to the jurisdiction of the Court, which is in the words and figures following:

RICHARD LLOYD & EDWARD G. HALL. } BILL IN CHANCERY.
ATS.
JAMES B. AKIN & ISRAEL A. BOYDEN }

Page 9 & 10. The plea of Richard Lloyd, one of the said defen'ts, to the Bill of Compl't of James B. Akin and Israel A. Boyden Compl'ts.

This defen't by protestation, not confessing or acknowledging all or any of the matters and things in the said Compl'ts bill of Complaint mentioned or contained to be true, in such sort manner and form, as the same are therein set forth and alleged, for plea to the whole of said bill, saith that before and at the time of the commencement of this suit, he the said defen't was, and ever since has been, and still is a resident of the County of Marshall in said State of Illinois and not of the said county of Bureau aforesaid, and that Edward G. Hall his codefen't, likewise before and at the time of the commencement of this suit (if living) was and ever since has been and still is a resident of the county of Schuyler in said State of Illinois, and not of the county of Bureau aforesaid, and that neither of said defen'ts resided in the said county of Bureau where the said Bill was filed, at the time of the filing thereof, and further this defen't doth aver that the said suit may not and cannot effect real estate, that the alleged cause of Complaint in Compl'ts said bill is transitory, and the relief sought in said Bill is wholly of a personal nature and character, as will appear by reference to said Bill so filed in and now remaing in this Court, and therefore this defen't ought not to be sued in the Circuit Court of the said county of Bureau, but in the Circuit Court of either of the counties of Marshall or of Schuyler in the said State of Illinois. That in each of said last named counties, there is a Circuit Court with Chancery jurisdiction, which said courts are each Courts of competent jurisdiction to determine the matters in question in this suit, which do not effect real estate. Therefore this defen't doth aver and plead the same, and humbly demands the judgement of this Honorable Court, whether it will hold plea thereupon, and enforce this defen't to answer the said Bill for the cause aforesaid, and prayers to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained. RICHARD LLOYD.

Page 11. Plea on motion of Compl'ts set down for an argument. Plea held to be good and writ quashed and suit dismissed.

ERRORS ASSIGNED.

1st. The Court erred in holding said plea to be good.

2nd. The Court erred in refusing to overrule said plea.

3rd. The Court erred in quashing the writ in said cause.

4th. The Court erred in dismissing said bill.

POINTS.

The said plea is defective:

1st. Because it is not sworn to.

2nd. Because it is not signed by counsel.

3rd. Because it does not deny that the deft. Lloyd was served with process by the Sheriff of the county where the suit was pending.

4th. Because it admits by implication that deft. Lloyd was served with process by the Sheriff of Bureau county where the cause was pending.

5th. Because it is argumentative in this, it avers that deft. Lloyd resides in Marshall county therefore he was served with process in that county.

6th. Because the suit may effect real estate in the county where the same is pending.

AUTHORITIES.

Story, Eq. Pl. Sec. 456, 697
same 658
same 662
same 665
same 715
Dunn vs. Keegin 3 Scam. 297
Holloway et al. vs. Freeman 22 Ill's, 201.

ROBT. FARWELL,
For Compl'ts.

135

James H Atkinson et al

vs

Richard Lloyd et al

Abstract of Record

Filed April 23. 1862
L. Leland
Clk.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Marshall County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Bureau County, before the Judge thereof, between James B Allen and Israel A Boyden

plaintiffs, and Richard Lloyd and Edward G Hall

defendants, it is said that manifest error hath intervened, to the injury of the said James B Allen and Israel A Boyden

as we are informed by said complainants That the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Richard Lloyd and Edward G Hall

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Richard Lloyd and Edward G Hall

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-two

S. Leland

Clerk of the Supreme Court.

James B. Atkin (caua)
Isaac A Boyden
No. 135 vs.
Richard Lloyd (cau)
Edward G Hall

SCIRE FACIAS.

Filed April 25th A. D. 1862
L Leland Clerk.

I have Served the within writ by reading the same to the within named Richard Lloyd also by delivering a true Copy of the writ to the said Richard Lloyd on this the 2d day of April A D 1862
I cannot find the within named Edward G Hall in my County
R. S. Hester Sherriff of Marshall Co
By J. E. Devalon Deputy Ills

Sherriffs fees
Service 50
Milage 40
return 10
Copy 50
$1.50

STATE OF ILLINOIS, } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Bureau — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Bureau County, before the Judge thereof, between

James B. Akin & Israel A. Boyden

~~plaintiff~~, and

Richard Lloyd & Edward G. Hall

~~defendant~~, it is said manifest error hath intervened, to the injury of the aforesaid Akin & Boyden

as we are informed by Akin ~~complainant~~ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

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L. Leland

Clerk of the Supreme Court.

James B. Akin and
Israel A Boyden
No. 135 vs.
Richard Sloyd and
Edward G Hall

WRIT OF ERROR.

FILED ..... A. D. 186

..... Clerk.

In Supreme Court, State of Illinois,
TO THE APRIL TERM, A. D., 1862.

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ROBT. FARWELL,
For Compl'ts.

135

James D [illegible]
et al
vs
Richard Lloyd
et al

Abstract of the
Record

Filed Apl. 23. 1862
L. Leland
Clk.

In the Supreme Court in the 3d Grand Division of the State of Illinois

[Ja]mes B Atkin &
Israel A Boyden
vs Bill in Chancery
Richard Lloyd &
Edward G Hall—

Error to Bureau Co,

The Clerk will issue docket the above cause for the next Term of Sup. Ct. & issue Writ of Error—to Marshall Co. for service upon Lloyd—

Robt Farwell
for Complt.

Enclosed find Five dollars to apply on costs.

Robt Farwell

67 135

James [illegible]

Israel A. Boyden

vs

Richard Lloyd

—

Precipe for Writ of Error

—

Filed Oct. 21st 1862

L. Leland

Clk.

SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

JAMES B. AKIN and
ISRAEL A. BOYDEN
vs.
RICHARD LLOYD and
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If complainants wished to insist that Lloyd had been sued in Bureau, and that the service was evidence that he lived there, they should have filed a replication putting in issue the allegation in the plea of his non-residence in Bureau County.

This suit does not affect real estate. This question is expressly decided by this court in Enos et al. *vs.* Hunter 4 Gil. 211. In that case it was decided that a suit did not affect real estate unless the court acted *directly upon* the real estate, as in cases of petition, dower, &c.

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I wish to call the attention of the court to the copy of the plea as set out in the record, pages 9 and 10. The copy given in the abstract is not a *correct* copy. It omits the title of the court which appears in the copy of the plea in the record, and there may be other errors in the copy given in the abstract.

MILTON T. PETERS,
Att'y for Def't in Error, RICHARD LLOYD.

67

135

Akin vs Sloss

Defts Brief

Filed May 6. 1862

L. Leland
Clk

IN THE SUPREME COURT, 3D GRAND DIVISION

STATE OF ILLINOIS, APRIL TERM, A. D., 1862,

James B. Akin and Israel A. Boyden	ERROR TO BUREAU.
vs	
Richard Lloyd and Edward G. Hall.	BILL IN CHANCERY.

ARGUMENT OF COMPLAINANTS.

This Bill was filed by complainants Akin and Boyden, who were complainants in the Court below, to quiet and perfect their title to the S. W. 17, 15 N. range 7 east of the 4th P. M., by removing therefrom a cloud which is a pretended conveyance to the Defendant Lloyd, by the supposed heirs of Washington Hall, sr., he having previously conveyed the land to the complainant, Akin, by his duly authorized agent, and to have Akin's title adjudged to be the paramount title.

Lloyd pleaded in abatement to the jurisdiction of the Circuit Court, because at the commencement of the suit he was and now is a resident of the county of Marshal.

The land is in Bureau county, and the complainants reside there.

The plea was set down for an argument, and the court below held the plea to be good and quashed the writ and dismissed the suit.

The proper way to take advantage of a defective plea in chancery is to have the plea set down for an argument. A demurrer to a plea in Chancery is inapplicable.

—Story's Eq. Pl., Sec. 456.

The Plea in this case is clearly defective. It does not aver that Lloyd was not served with process by the Sheriff of Bureau county, where the suit was pending. It aught to have negatived that fact.

The Circuit Courts of this State are Superior courts of general Jurisdiction and and nothing will be intended to be out of their jurisdiction except what specially appears to be so.

—Kinney vs Green 18 Ills, 432.

With superior Courts of general jurisdiction, the presumption is, that they are in the proper exercise of jurisdiction until the contrary is shown.

In a Plea to the jurisdiction the Defendant must by his plea show that the Court had no jurisdiction *in any event*, and it *must appear by averment*.

—Diblee et al vs Davison, 25th Ills, 488.

Every presumption is made against the pleader, especially is it so in case of pleas of a dilatory character, which are not favored in law and which do not deny the justice of the plaintiff's demand.

Now in this case the Court is bound to presume that the writ *was* served by the Sheriff of Bureau county, where the suit was pending, because that fact is not denied in the plea, nor is it averred in the plea that Lloyd was served with process by the Sheriff of Marshal, and because the pleader omits the latter averment the Court is bound to presume that Lloyd was *not* served by the Sheriff of Marshal.

If process was served upon Lloyd in Bureau county, then the court below certainly had jurisdiction, even if Lloyd at the commencement of the suit did reside in Marshal county.

The second section of the Chancery act as to the mode of commencing suits was not intended to be exclusive.

Suppose in the 2d section of the Practice Act the words, "or may be found," were entirely omitted, would not the Circuit Court of Bureau county in an action at law, have jurisdiction of a person served within the county although he resided at the time in another county? It certainly would. If a person comes within the territorial limits of the Circuit Court, being a Superior Court of general jurisdiction, and service is had upon him within such limits then the Circuit Court would take jurisdiction, even if those words were not in the statute.

If any other doctrine were to prevail, it would be most inconvenient and oppressive.

Suppose for instance that a complainant residing in Cook county has an equitable demand against a party residing in Alexander county, and suppose, further, that the demand more or less affects title to real estate situated in Cook county, and also supose that the defendant, a good portion of his time is in Cook county, and service can be had upon him in the latter Co. Now is it possible that it will be contended that in such a case the complainant shall be compelled to be to the expense and inconvenience of going to Alexander county to institute his suit? Most certainly not. The Legislature certainly never intended such a wrong. In many cases it would be equivalent to a prohibition to bring suit.

A Court of Chancery will entertain a bill for relief when the defendant *is found within its jurisdiction*, and the relief can be obtained by acting directly upon the person.

—Enos et al vs Hunter 4 Gil. 211.

In Pleas in Chancery there must be in general the same strictness and exactness as in Pleas at Law.

—Story's Eq. Pl. Sec. 558.

A Plea should be direct and positive and not state matters by way of argument, inference and conclusion.
—Same, Sec. 662.

Averments are also necessary to exclude intendments, which would otherwise be made against the Pleader.
—Same, Sec. 665.

The plea in this case does not aver that the Court below had not jurisdiction. I call the attention of the Court to that. The plea is bad for that, if for no other reason.

Where the suit is brought in a superior Court of general equity jurisdiction, nothing will be intended to be out of its jurisdiction, except what is shown to be.

It is requisite therefore in a plea to the jurisdiction to *allege that the Court had not jurisdiction*, and to show by what means it is deprived of jurisdiction. If the plea does not properly set forth these particulars, *it is* bad in point of forw.

—Storey's Eq. Pl. Sec. 715.

It is also insisted that the plea is bad because it is not sworn to. The rule is inflexible in Chancery proceedings that a plea of matters *in pais* and pleas in bar of matters *in pais*, must be filed on oath.
—Dunn vs Keegin, 3 Scam. 297.

It is also insisted that the 1st Section of the Act entitled, "Abatement," does not apply to Chancery proceedings. It is also insisted that the plea is bad because it is not signed by counsel.

As to pleas in abatement, it is to be observed that great strictness is required in framing them, as they are dilatory, not going to the merits of the action ; they must be signed by counsel.
—Holloway et al vs Freeman, 22 Ills. 201.

The plea is bad because it is argumentative. It don't deny the jurisdiction of the Court below, but says, *arguendo*, that the defendant at the commencement of the suit resided in Marshal county, therefore the court had not jurisdiction.

—Storey Eq. Pl. Sec. 662.
— " " 715.

The plea is not good for another reason. If the suit may affect real estate in the county where the same is pending, then the Court has jurisdiction.

—2 Sec. Chancery Act.

The plea avers that the suit may not and cannot affect Real Estate, and refers to the Bill and thereby makes the Bill a part of the plea.

It is insisted that the suit may affect Real Estate in Bureau county.

I call the attention of the Court to the Bill. It is brought to quiet and perfect complainant's title and to have his title adjudged the paramount title. It is true in the prayer it is prayed, among other things, that the defendants be required to convey whatever interest they have in the premises, to the complainant Akin, but that is merely incident to the relief sought.

The Case of Enos et al vs Hunter, 4 Gil. 211, is not authority as to this point.

This suit may affect Real Estate. If the judgment, after a hearing upon the merits is in favor of the defendants, then the land belongs to them and in that event, if the defendants seek relief, the complainants would be required to surrender the possession to them.

The mere statement of the question makes it clear that the "suit may affect Real Estate," and it cannot be made more clear by argument. It is no answer to this to say that if the suit may affect real estate the complainants should have replied to the plea, because the plea refers to the Bill and thereby as to this point, makes it a part of the plea.

The defendant was found within the jurisdiction of the Court below, (and the fact is dot denied) and the subject matter of the suit is Real Estate in the county of Bureau, and *may be* affected by this suit, and therefore and for the reasons above mentioned, the plea should have been overruled and held not good. The judgment of the Court below should be reversed.

ROBERT FARWELL,
For Complainants.

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James Baker
et al
vs
Richard Lloyd
et al

Campbells Argument
Points & authorities

Filed May 1. 1812
L Delaunay
Clerk

State of Illinois Bureau County ss.
To wit:- On the fifteenth day of February in the year of our Lord one thousand eight hundred and sixty two came James B. Akin and Israel A. Boyden by Robert Farwell their Attorney and filed their Bill of Complaint in the Circuit Court of said County on the Chancery side thereof, in the words and figures following, to wit:-

To the Hon. Judge of the 9th judicial Circuit of the State of Illinois in Chancery sitting within and for the County of Bureau in said State.

Humbly complaining your orators James B. Akin and Israel A. Boyden of the County of Bureau and State of Illinois unto your Honor would respectfully show, That on the 24th day of September A. D. 1849 one Washington Hall sr. then of the City of Baltimore and State of Maryland was the owner in fee simple of the South West qr. of Section Seventeen in Township Fifteen North of Range Seven East of the 4th P. M. in the County of Bureau and State of Illinois and your orators also show that one Asa Barney also of said County and State was at that time the duly authorized agent of the said Hall to sell and convey the said premises. That said Barney at that time had a Power of Attorney duly made to him by the said Hall under his Hand and seal authorizing the said Barney to sell and convey the said

premises and the said Hall did through his said agent on that day sell the said premises to David E. Akin and Walker Motheral and made to them a Bond for a deed whereby he obligated himself to make a good and sufficient deed of conveyance of said premises to the said Akin & Motheral upon their complying with the Terms of said Bond, to wit, paying the purchase money therefor for which purchase money they gave their promissory notes and your orators show that afterwards the said Akin & Motheral assigned and transfered the said Bond to your orator James B. Akin and that your said orator paid to Halls said agent the purchase money for said premises and that said agent as attorney in fact for said Hall made to your said orator a deed of said premises and your orators further show that said sale was made upon credit. That said Hall at the time he appointed said Barney his agent expected any sale that might be made of said premises would be made upon credit. That it was for the best interest of said Hall to make such sale upon credit & to sell Real estate upon credit was then the custom of the Country and had been from time immemorial & the said Barney also upon making such sale notified said Hall of the fact, and Hall approved and ratified the same At least he made no objections to

the same. And your orators also show that at the time of making such sale & giving said Bond the said Hall was living and your orators also show that said James B. Akin having paid in full such purchase money on the 18th day of October 1852 received a deed from said Barney for said premises made by the said Barney as attorney in fact for said Hall to your orator James B. Akin and your orator also shows that one Richard Lloyd now claims that said Hall at the time such deed was made was dead and that said Barney had no right to make such deed & that the death of the principal was the revocation of the authority of the agent, and that nothing passed with such deed, and said Lloyd in 1856 obtained a deed from all the supposed heirs of said Hall, except Edward G. Hall, for said premises and now claims to own the legal title to said premises, and your orators also show that they do not know whether said Hall sr., was dead at the time of making such deed or not, but they insist he was not, & they insist that said Lloyd whom they pray may be made a party defendant herein shall be required to make strict proof of the fact if such is the fact, these respondents insisting upon the legal presumption that said Hall sr. was living at the time of making said deed - and aver that he was then living

your orators also show that even if said Hall Sr. was dead at said time it would make no difference as to the title of your orators.

Your orator James B. Akin went into possession of said premises as soon as he got said Bond which was in 1850 - That said David E. Akin and Motheral went into possession of said premises immediately on the delivery of said Bond to them which was in September A.D. 1849 - & they & their assigns and grantees & the grantees of your orator James B. Akin have been in the actual possession of said premises ever since under claim and title made in good faith & have paid all taxes upon said premises ever since.

Your orator also shows that said Barney acting as attorney in fact for said Hall Sr. made a deed to your orator James B. Akin of said premises on the 15th day of October 1852 and that such deed is color of title under what is commonly called the seven years limitation law of this State and that said Barney in making said deed acted in entire good faith as also did your said orator said Barney being entirely ignorant of the death of said Hall if he was dead at that time and never heard or had any intimation of such being the fact until it was quite recently asserted by the said Lloyd -

Your orators also show that Barney as such agent received the purchase money for said premises and remitted the same to the said Hall and the same was duly received without objection- And your orators specially insist & rely upon the aid of said limitation Law.

Your orator also shows that the said purported heirs of said Hall in their said deed to Lloyd only convey all the interest and estate which they had or could claim in and to said premises, and your orators apert that if at that time they had no interest, then of course said Lloyd took nothing by said deed and your orators insist that they had no interest even if said Hall sr. was at that time dead, and your orators also show that even if said Hall was dead at the time of making said deed he was living at the time of making said Bond which would give to your orator Akin the Equitable title to said premises, the purchase money having been paid in full, and your orators apert that said Lloyd had due notice of the rights of said Akin & his grantees to said premises at the time he got said deed from said supposed heirs, as your orator Akin and his grantees was in the actual possession of said premises. Your orators also show that said premises were timbered land and that your orator Akin has disposed of all of such

Land except Twenty acres off of the South End of the West half of the same - That he made conveyances by Warranty deeds to a great many different of different parts of said premises, and that he is bound by the deed he so made to make the title good and that your ors Bryden has a mortgage on said twenty acres, And your ors also show that the said claim and purported deed of the Lloyds is a cloud upon the true title to said premises and that in Equity your orators are entitled to have the same removed and that said Lloyd has been requested to quit claim his a pretended interest in said premises and a reasonable compensation has been offered him therefor, but he has neglected and refused to do so but has talked about commencing suit to recover the land all which is contrary to equity and good conscience and your ors inasmuch as they are without remedy according to the strict rule of the common Law and can obtain adequate relief only in a Court of Equity where matters of this sort are properly cognizable pray that the said Richard Lloyd and Edward E. Hall may be made party defendants herein and that summons in Chancery issue to them and that they be required full true and perfect answer to make to all the matters and things herein contained but not under oath

such answer under oath being hereby expressly waived and that on final hearing of this cause that said defendants be required to convey whatever interest they may have to your orator James B. Akin for his own benefit to inure to his grantees and that the said Title of your orator be held and adjudged the pasamount title and that said Lloyd be forever precluded from asserting any right to the said premises under his said pretended deed and the said deed of said Lloyd be held of no use or benefit to the said Lloyd and that your orator may have such other and further relief as to your Honor may seem meet

Robert Farwell
for Complts.

Whereupon Summons issued according to the prayer of said Bill and according to the Statute of this State in such case made & provided

such answer under oath being hereby expressly waived and that on final hearing of this cause that said defendants be required to convey whatever interest they may have to your orator James B. Akin for his own benefit to inure to his grantees and that the said Title of your orator be held and adjudged the pasamount title and that said Lloyd be forever precluded from asserting any right to the said premises under his said pretended deed and the said deed of said Lloyd be held of no use or benefit to the said Lloyd and that your orator may have such other and further relief as to your Honor may seem meet

Robert Farwell
for Complts.

Whereupon Summons issued according to the prayer of said Bill and according to the Statute of this State in such case made & provided

Pleas before the Hon^r M. E. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois at a term of the Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau, State aforesaid, on the second Monday in the month of March in the year of our Lord One Thousand Eight Hundred and sixty two

Present Hon^r M. E. Hollister Judge
Geo. M. Radcliffe Clerk
Daniel M^c Donald Sheriff

To wit, on the Chancery side of said Court.

(On the second day of said Term)

To wit: Tuesday Morning 8 o'clock March 11th A. D. 1862 — Court met pursuant to adjournment — Present same as yesterday

James B. Akin et al
Israel A. Boyden
vs. Bill in Chancery
Richard Lloyd et al
Edward G. Hall

And now comes said defendant Lloyd by Peters his counsel and files herein his plea in abatement as follows, to wit:-

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State of Illinois } Circuit Court of said County
Bureau County } To the March Term thereof
A. D. 1862 - - -

Richard Lloyd &
Edward G. Hall
&c.
James B. Akin &
Israel A. Boyden

Bill in Chancery

The Plea of Richard Lloyd, one of the said defendants, to the Bill of Complaint of James B. Akin & Israel A. Boyden Complainants.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainants bill of complaint mentioned or contained to be true, in such sort manner and form, as the same are therein set forth and alleged, for plea to the whole of said bill, saith that before and at the time of the commencement of this suit, he the said defendant was, and ever since has been, and still is a resident of the County of Marshall in said State of Illinois and not of the said County of Bureau aforesaid, and that Edward G. Hall his codefendant, likewise before and at the time of the commencement of this suit (if living) was and ever since has been and still is a resident of the County of Schuyler in said State of Illinois, and not of the County of

Bureau aforesaid, and that neither of said defendants resided in the said County of Bureau where the said Bill was filed, at the time of the filing thereof, and further this defendant doth aver that the said suit may not and cannot effect real estate, that the alleged cause of Complaint in Complainants said bill is transitory, and the relief sought in said Bill is wholly of a personal nature and character, as will appear by reference to said Bill so filed in and now remaining in this Court, and therefore this defendant ought not to be sued in the Circuit Court of the said County of Bureau, but in the Circuit Court of either of the County of Marshall or of Schuyler in the said State of Illinois. That in each of said last named Counties, there is a Circuit Court with Chancery Jurisdiction, which said Courts are each Courts of competent Jurisdiction to determine the matters in question in this suit, which do not effect real estate. Therefore this defendant doth aver and plead the same, and humbly demands the Judgment of this Honorable Court, whether it will hold plea thereupon, and enforce this defendant to answer the said Bill for the cause aforesaid, and prays to be hence dismissed with his reasonable cost and charges in that behalf most wrongfully sustained

Richard Lloyd

(On the 7th day of said Term)

To wit:- Monday Morning 8½ oclock March 17th 1862.

Court met pursuant to adjournment -

Present same as yesterday (and as before)

James B. Akin and Israel A. Boyd }
vs. } Bill in Chancery
Richard Lloyd and Edward G. Hall }

And now come Complainants by Farwell their Counsel and defendant Lloyd also comes by his Counsel aforesaid, and it is ordered by the Court that Defendants said plea in Abatement herein filed be set down for Argument. And this Cause now comes on for Argument upon said plea in Abatement herein:- And after Argument of Counsel, the Court being now fully advised in the premises, orders that said plea in Abatement be sustained & held good; that the writ of summons issued herein be quashed and that this suit be dismissed, and that Complainants pay all costs made herein

State of Illinois }
Bureau County } ss- I George M. Radcliffe Clerk of the Circuit Court in and for said County in said State do hereby certify that the foregoing is a true copy from xiii the Records of all proceedings had in said Court in the above entitled Cause. Witness my hand and the seal of said Court at Princeton this 12th of April A. D. 1862.

Geo. M. Radcliffe Clerk By Chas D. Tinsley D.C.

Assignment of Errors

And now Came the said Campbells, and Assign for Error in the above Record as follows

1st The Court Erred in holding said Plea to be good.

2nd The Court Erred in Refusing to overrule said Plea

3d The Court Erred in Quash-ing the Writ in said Cause

4th The Court Erred in dismissing said Bill And they therefore pray that the said judgment be reversed

Robt Harvell
for Complts

Sept 6. 25

The Deft in Error Richard Lloyd Says that there is no Error in the record and proceedings or in the Judgment aforesaid. therefore Said Lloyd prays that the Said Judgment may be affirmed -

Millon T. Peters
atty for Deft in Error Lloyd

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James B Atkin &
Israel H Boyden
Compltts below

vs

Richard Slagle
et al

Record
assignment of Errors
& Joinder

Filed Apl. 23. 1862
L. Leland
Clk.