

No. 13755

Supreme Court of Illinois

People

vs.

White

Hears held at Manchester, County
of Scott and State of Illinois
On Monday the 27th day of September
A.D. 1850, before the Hon J W
Woodson Judge of the first Judicial
Circuit in the State of Illinois

The People of the State of
Illinois for the use of
Richard Markham et al
vs Jm Chancery
John White and others

Be it remembered
that on the first day of June A.D. 1850
the plaintiffs in this cause filed the follow-
ing, as their amended bill of complaint
in said cause, to wit:

"In the Circuit Court of Scott County
State of Illinois May Term A.D. 1850
The People of the State of Illinois complainants
To the use of Richard Markham others
vs Jm Chancery
John White James Webb & David Smith Ad-
ministrators de bonis non cum testamento annexo
defendants.

The complainants by their solicitor have filed
a transcript of the certificate & opinion of the
Supreme Court in this cause - pursuant to
which complainants exhibit this their amended
bill in the above entitled cause, and respectfully
represent them to this honorable Court, that at
the time of the accrual of the demand in
favor of John Maynard, mentioned in the original

Bill in this case, he was, and ever since hath continued to be a resident citizen of the State of Missouri, and so he has been subject to the disability "beyond the seas" in the exhibition of his claim against the Estate of Lewis Ryder alias Lewis Riter deceased provided for in the 115th (5) of 109th chapter of the Revised code of 1845 -

Complainant further represents, that by the County Court of Morgan County State of Missouri David A. Smith has been duly appointed Administrator de bonis non cum testamento annexo of the said Lewis Ryder alias Lewis Riter deceased & that this suit is presented against him as a party defendant in this case, & they, referring to their original bill filed in this case pray for the relief therein asked for, and as in duty bound they will ever pray &c

Winchester

David A. Smith Solicitors

June 1. 1850

for Complainants

Thereupon the following decree was made in said cause to wit; -

"The people of the State of Missouri complainants to the use of Richard - Bankham Sothers vs of Duchesneuy

John White James Webb & David A. Smith Administrators de bonis non cum testamento annexo of Lewis Ryder alias Lewis Riter deceased defendants.

June 1, 1850 complainants filed transcript of certificate of opinion of the Supreme Court in this case & filed amended bill - The said Smith as Administrator as aforesaid entered

his appearance
in this case and says ^{that} he is willing to abide
by any decree or order that the court may
render in this case the defendants
White & Webb, on motion of complain-
ants solicitors are ruled to answer the amended
bill filed in this case in forty (40) days
from this date & that in respect of pro-
=wering. Said amended bill be taken
pro confesso as to them severally. Leave
is granted to parties to reexamine their
witnesses, Defendant White by his solicitor
excepted to the right of complainants to
file the amended bill as to non residence
of John Maguire which exception is con-
=tinued

The defendant
White filed the following answer:

In the circuit court of
Scott county State of Illinois
John White James Webb &
David & Smith administrators
de bonis non, cum testamento
Annexo, defendants

Att. } In chancery
The people of the state of Illinois to the
use of Richard Markham & others

And for answer to
such parts of the amended bill filed
herein, as he is required to answer, the
defendant White saving and reserving
every benefit of the exceptions filed to a

part of said amended bill say as ~~by~~ the
order of the court herein he is authorized (as
he is advised) to do, answers and says, that
He is informed & believes that David A
Smith hath been appointed administrator de
bonis non cum testamento annexo, of the
estate of Louis Peter dec^d as charged in
said amended bill. He also states that he is
advised to say - that the rights of John
Maguire, have been adjudicated upon by
the decrees & orders, of the courts in this cause
& that He ^{Relies} believes upon said decrees & orders, as
a bar to any further investigation of the rights
of said Maguire as is sought for by the alle-
gations of the amended bill and as a
bar to any ^{decree} ~~proceedings~~ or relief in behalf of
said Maguire other & different from that
which hath been already made & ordered
Said White has no personal knowledge of
the residence of said Maguire & relies upon
the allegations hereof & the exceptions
filed herein to so much of said amended
bill, as relates to said Maguire & his claim
Your respondent referring to his original
answer would state that He is now more
fully advised & that He believes & there-
fore changes

That William Parker lived in a place within a short distance of the shop occupied by Webb & Ryder. and after the death of Ryder by said Webb, that he said Parker was well advised of the fact that Webb had taken possession of the effects of Webb & Ryder. and was making the same & appropriating them as surviving Partner after the sale thereof & spoken of in said original bill and answer, and that with the ^{assent and} approval of said Parker, said Webb had the possession and disposition of said Partnership property.

Respondent further answering asks to be hence dismissed with his reasonable costs.

John White

Brown & Gates &
Thomas Solicitors

Sworn to and subscribed before me this 8th day of July AD 1850

E. B. Kirby
Clerk

The Defendant ^{White} filed the following exceptions

State of Illinois in the Circuit Court of Scott County

John White, James Webb, & David A. Smith administrators de bonis non cum testamento annexo defendants

vs } in chancery

The People of the State of Illinois to the use of Richard Markham & others

And to so much of the amended bill filed herein as seeks to change the position and rights of complainant John Maguire by bringing new facts to the attention of the court, the Defendant John White excepts & sits down for the following causes of exception.

- 1st The allegation of facts touching the ~~non~~ residence of Maguire & the conclusion of law sought to be deduced therefrom if true, is not such an amendment as the Supreme Court authorized to be made.
- 2^d The rights of said Maguire have been adjudicated upon in this cause and the decrees and orders herein are relied upon as a bar into any further inquiry or investigation in reference thereto.

Brown Gates & Thomas, Sol
For White

The complainant files the following
Replication

In the circuit court of
Scott County State of Illinois
The People of the State of Illinois
to the use of Richard Markham and
Others ~~defendants~~ complainant
vs } in chancery

John White & others defendants
For replication to amend
Answer of the Defendant John White

Filed in this case on the 8th July 1850
Complainants say that the said answer
is evasive, insufficient and untrue and
that said amended bill is true and
complainants will from it so

David A Smith Solicitor

~~for the complainants~~

Winchester August 19th 1850

The complaint filed the
following stipulation and depositions

In the circuit court of Scott county
State of Illinois September term 1850

The People of the state of Illinois to the
use of &c

vs } in chancery

John White & James Webb Defendants.

It is proven in this cause that
the allegation in the amended bill
filed in this cause as to the non residen-
-ce of John Maguire (one of the Persons
to whose use this suit is brought) is true the
Defendant John White objecting to the
amendment of said bill by alleging
the non residence of said Maguire & to
the making proofs thereto & (Protesting as
he has by his exceptions filed in this case
against the right to allege in said amena-
-ed bill)

Pomeroy N Lewis called by defen-
dant proven that he had a debt of about
ten dollars against Webb & Rider, that
a short time after the death of Rider

He called upon Webb for the payment thereof, that Webb paid him said debt, remarking that He was settling up the Partnership business as fast as He could.

It is further stipulated that the testimony of John E Miller, who has been examined in this cause may be further examined before John Linkins Esq a Justice of the peace of Scott county upon Questions to be propounded by Deft^d and complainant.

Furthermore it is stipulated & Agreed between complainants and defendants White, that this cause be Submitted to His Honor Judge Woodson to be decided in vacation & decree to be recorded as of this term Signed at Winchester September the 20th 1850

David A Smith solicitor for
the complainants
Thomas Brown & Gates
For Defendant White

State of Illinois
In the circuit court of Scott county

The People of the State of Illinois
For the use of Markham & others
vs

John White & James Webb

In chancery

Depositions taken at the
court house in Jacksonville Morgan county

Illinois, before James Berdan County Judge
and *ex officio* Justice of the peace of said
county of Morgan, on the twentieth day of
September A.D. 1850, to be read in evidence in the
above entitled cause, at the trial or hearing, there-
by consent of parties subject to all legal ex-
-pious to wit

James Linkins of Lawful age, being duly
Sworn, deposes as follows, -

1st Interrogatory. After the death of Louis Rider
and after the sale of the partnership property
of the firm of Webb & Rider, which death and
sale are refered to in your former examination
in this cause, where did you live? Where did
William Parker administrator of said Rider live?

And where did James Webb live? And what
distance from the shop occupied by Webb and
Rider in the lifetime of Rider, and afterwards
by James Webb the surviving partner, did said
Parker live?

Answer. At the time inquired about, Parker, Webb
and myself lived in Naples, within a stone's
throw of each other. And all of us lived about
equi-distant from the shop inquired about.

2^d Interrogatory. Was or was not said William Par-
-ker upon intimate terms at said shop, after the
said sale, and was or was he not there very
frequently, and did or did you not often meet
him there?

Answer. He was upon intimate terms at the shop
after said sale, and I met him there very
often

3^d Interrogatory. Did or did not said Webb after

Said Sale, with the knowledge and without objection on the part of said Parker, occupy and control the partnership property of Webb & Rider sold at the Sale, as he did before the sale, claiming the right to possess hold use and dispose of it as surviving Partner in winding up the affairs of the partnership of Webb and Rider? and did or did not said Webb with the knowledge and without objection on the part of said Parker, proceed use said partnership property in winding up the partnership affairs of Webb & Rider

Answer. after the sale he used the tools and other property of the firm in the same manner as he had previously used them, without any objections that I ever heard of from Parker or any other Person. He used the property in winding up the affairs of the firm, as I understood from him and without objection from ~~Part~~ who knew that he was using them

4th Interrogatory. from what you saw of Parkers conduct towards Webb after said Sale, and of their conduct and conversations in the Shop, did or did ^{you} not understand that said Webb as surviving Partner, and with the knowledge and without any objection on the part of said Parker to his so doing, and with his acquiescence, held possession of the partnership property for the purpose of using and disposing of the same in winding up the partnership affairs, as Webb claimed he had a right to do (Objected to by complainant)

Answer Webb claimed the right to use the Property for the purpose of settling the affairs

of the firm. and appeared to be using it in this way. At first there did not appear to be any objection on the part of Parker to any part of Webb's conduct whatever, but afterwards heard him complain that Webb was not doing right, but in what

right. I do not now precisely recollect. I think his complaint to me was that Webb had collected money and was not applying it to the payment of debts.

5th Interrogatory, from your being frequently with Webb & Parker, will you say whether you would or not most likely have known of objections on the part of said Parker if any had existed to the possession use and disposition, after said sale, of the partnership property sold at the sale by Webb in winding up the affairs of the Partnership, upon his claim or right so to do? -

Answer, I think if any such objections on the part of Parker to Webb's use of the property inquired about, after the sale, in the manner inquired about, had existed, I should have known of them, I heard of no such objections. -

Being cross examined by complainants - 1st cross interrogatory, Were you not present on the day of the sale of the property by Parker? if yes, was Webb present and well? and did he or not insist on any right to the property or possession of it as surviving Partner

of Webb & Rider? -

Answer. I was present at the sale Webb was there, apparently well, and He did not insist on any right to the property as surviving Partner. He appeared to be perfectly satisfied every way.

2^d cross Interrogatory, Do you or not know the property was taken and sold by Parker ago the consent of Webb? -

Answer, I do not, if it was sold without Webb's consent I have no knowledge of it, It might or might not have been so.

3^d cross Interrogatory, Do you or not know that Parker and Webb subsequent to the sale, made any arrangement cancelling the sale, or by which Webb was to have the property as surviving partner and apply it in the adjustment of the partnership concerns?

Answer, I know of no such arrangement.

4th cross Interrogatory, Do you or not know of Webb's paying any of the partnership debts out of the property he had in possession of after the sale?

Answer, I did not.

5th cross Interrogatory, Did you or not hear any conversations between Parker and Webb at the time of the sale

to make of the property?

Answer, I did not.

6th Interrogatory, from your position and your knowledge of the relations between Parker and Webb about the partnership matters of Webb & Rider might there not

have been difficulties between Webb & Parker
of which you were unapprized? -

Answer. there might have been

James Linkins

Subscribed and Sworn to before me
This 20th day of September 1850. ~~any~~

~~particulars~~
or authenticity of the said depositions
being waived by the parties.

W Berdan county Judge
& ex off J.P. Morgan county
Illd

The People of the state of Illinois
for the use of Markham & others

vs { In chancery

John White & James Webb

By consent of Parties in
the above cause the deposition of John E
Miller is to be taken before { John Linkins
or any other Justice of the peace of Scott
county Illinois } to be & used as evidence
in the above cause, upon the following inter-
rogations.

Interrogations in behalf of Deft White
1st Question. After the death of Louis Rider
and after the sale of the partnership property
of the firms of Webb & Rider by Mr. Parker
Administrator of Riders estate, Where did you
live? Where did said Parker, and said
Webb live, and how near to each other
and to the shop occupied by Webb & Rider
in the lifetime of Rider and afterwards by
Webb his surviving partner.

2^d Question. -

Was or was not said Parker upon intimate terms at the ^{said} shop of said Nett after said Sale and did or did ^{you} not often meet him there?

3^d Question. -

Did or did not said Nett after said Sale and with the knowledge of said Parker and with his acquiescence & without objection on the part of said Parker, possess, control and dispose of the partnership property of Webb & Rider, sold at the sale, claiming the right to possess, hold, and dispose of the same as surviving partner, in winding up the partnership affairs of Webb & Rider?

4th Question. -

Was or was not said Nett after said Sale, using said partnership property and working up and disposing of the materials (claiming a right ^{to} to do so specified in last Question) thereof, and when said Parker was passing in and out, and if so did or did you not hear said Parker object to his so doing so?

5th Question. -

From your being acquainted with Parker after said Sale, and with Nett Parker, will you say, whether you would or not, most likely have known of objection on the part of Parker if any had existed to the possession use & disposition (by Nett (after said Sale) of the partnership

property sold at the sale in winding up the affairs of the partnership, upon his claim of right so to do?

Cross Interrogatories in behalf of the complainants.

1st Were you or not present on the day

was Mebb present & was he well? And did he or did he not insist on any right to the property ^{or possession of} ~~and his stock~~, and of it as surviving partner of Mebb & Kider?

2^d Do you or not know the property was taken & sold by Parker against the consent of Mebb?

3^a Do you or not know that Parker and Mebb subsequent to the sale made any agreement cancelling the sale, or by which Mebb was to take the property, as surviving Partner & apply it in the adjustment of the partnership concerns?

3^b If you state all about such agreement or arrangement very fully.

4th Do you or not know of Mebb's paying any of the partnership debts, out of the property he had possession of after the sale, If yes: Specify any such debt or debts when what amount & to whom paid.

5th Did you or not hear any conversation ^{about} between Parker & Mebb after the sale ~~about~~ the use that Mebb was to make of the property: if you state it particularly when & where it occurred & who was present:

6th from your position & your knowledge of matters between Parker & Webb about the partnership affairs of Webb & Rider might there not have been difficulties between them of which you knew nothing?

7th When your deposition was taken in this case, ^a year or two since was not your recollection of the facts of the case fuller & fresher than it is now?

David A. Smith
Solicitor for complainants

Answer to interrogatory 1st

I lived in a shop within eighty feet of the shop occupied by Webb & Rider, and afterwards occupied by Webb. - Parker lived across the street ~~opposite~~ the shop of Webb & Rider. -

Webb lived about one hundred and fifty yards from the aforesaid shop.

Answer 2nd

Parker was on intimate terms at the shop after the sale, as far as I know, and I visited the shop frequently and seen him there.

Answer 3rd

I never

took on the part of Parker to Webb's holding and disposing of the property.

Answer 4th

Webb was using said property belonging to the partnership concern

after the sale, I do not know positively whether the materials was the same as sold at the sale, but I am under the impression it was the same materials. And I ^{never} heard Parker make any objection to his so doing:-

I was intimate with Webb & Parker and if there had been any objection I should have been likely to have known it.

Cross Interrogation in behalf of the complainants

1st I believe I was present on the day of the sale of the property by Parker. I do not think I was there all ~~the~~ time of ~~sale~~, I do not know if Webb was present or not, I do not know whether Webb was well or not, I have no knowledge of his laying any claim to the property.

Answer 2^d I do not know

Answer 3^d I do not know of any such arrangement being made

Answer 4th I do not know of his paying any of the partnership debts, with the exception of P & Lewis's demand

Answer 5th I do not recollect of any such conversation between Parker & Webb

Answer 6th

There might have been difficulties between them, but if there had been anything serious I think I should have known it

Answer 7th

I have thought the matter over a good deal since my deposition was taken in this cause before, and I think my recollection of the facts is as fresh now as then

John E Miller

State of Illinois }
Scott County } ss

I John Linkins a Justice of the peace within & for said county do hereby certify that the foregoing deposition was taken before me at my office in Naples in said county on the 30th day of September 1850. That before said deposition was commenced, the said John E Miller was by me duly sworn to testify the truth to the matter in controversy above stated. That the interrogations put to said Miller and his answers thereto were by me then and there in the order and language in which the same were pronounced & made were reduced to writing, on the foregoing pages, and when the said depositions was completed the same was sworn to before me by him and signed in my presence

This 30th day of September A.D. 1850
John Linkins J. P. Real

Thereupon the following decree was rendered in said cause, to wit:

The People of the State
of Illinois, to the use of
Richard Markham &
Others complainants
vs } in chancery
John White & others def

dated 26th September 1850, it came on to
be heard in vacation on the 20th day of
November 1850, and the same pleadings
& Proofs on which it was heard by this
court, at the September term 1849, as
also an amended bill of complainants
Answer & exceptions to the said amended
bill, filed 8th July 1850, replication to
said answer, & depositions of James Linkins
& John C Miller retaken at the instance
of the defendant White, & it appearing
to the satisfaction of the court that
William Parker as administrator of
Louis Ritter decd, sold on the 20th day
of October 1838 on a credit of 9 months
goods & chattels that were not bought
by the defendant Webb & said James
Linkins to the amount of an hundred
& ninety six dollars & 6 cents (\$196.06 cts)
and that the interest that has accrued on
said sum up to the date of this decree, amounts
to the sum of one hundred & thirty
three dollars 32 cts (\$133.32) said sums
amounting together to the sum of three
hundred and twenty nine dollars 38
cents (\$329.38 cts)

It is ordered adjudged & decreed by
the court, that Complainants recover
of the defendants in this case John White
and James Webb, only that sum and
interest thereon from this ~~last~~ date
and that the complainants have
execution therefor said sum when received
after the payment of costs of complain-
ants in this case which have accrued
or may accrue in this case in this & the
supreme court, to be disposed of in
due course of Administration by the
defendant Davis & Smith, the court
hereby sustaining the exceptions of the
defendant White, to the allegation in
said amended bill, as to the non
residence of the said John & Maguire
as not being allowable, by consent
of Solicitors of defendant White, as to
him, and the complainants, they are
to have the right to appeal this case to
the next term of the Supreme court
of this state for 2d grand Division
by filing within the first week of
said term a duly certified transcript
of the record in this case since it was
referred to the said court.

Record on file in said cause & in said
Court, to be used by consent of said par-
ties as a part of the record in this case
on the hearing of the said appeal.

State of Illinois }
 Scott County } J. C. B. Kirby Clerk of the
 Circuit Court within and for said County
 do hereby certify that the foregoing pages
 contain a true copy of the Pleadings in a

former Cause as appears from the papers
 on file in my office & of record.

Witness my hand & seal ^{officially} this 20th day
 of December A.D. 1850

J. C. B. Kirby Clerk

Fees

Transcribing 3900 words 390

Penalties to seal 55

\$4.25

And now come the said People of the State
 of Illinois who sue to the use of Richard Stark
 have taken by them by their solicitor Smith
 & say that in the record & proceedings aforesaid
 there are the following errors to wit:

1st That the Court below erred in render-
 ing a decree in favor of complainants only for
 the sum of three hundred & twenty nine dollars 38
 cents instead of six hundred & seventy four dollars 27
 cents or eight hundred & seventy six dollars 81 cents.

And The Court below erred in sustaining the
 exceptions of defendant White to the amended bill
 of complainants, alleging the non-residence of the
 said John M. Maffin, one of the creditors to whose use
 this suit was brought - whereas complainants pray
 that said decree may be reversed & such decree may be
 rendered in this Court as of right ought to be
 December 26th 1850
 J. C. B. Kirby for complainants.

Joining in error -

Thomas Brown ^{Hypocrite}
for Mite

52.

The People to
who we %
all for the same &
others
vs
John Welch &
others -

~~1375~~
1375

Filed Dec 27th