

No. 14268

Supreme Court of Illinois

Snow

vs.

Benton

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14268

No. 219

*August 9
1862*

Benton

1862

1862

Ruth Snow

Richard Blaf

Betsy Blaf

et al

Simon Benton

Rufus Benton

et al

Deu to Rine

And the said
defendants in error by A
M Huntington the attorney come
and say that there are no
such errors upon the record
as stated in the assignment
of error by Plaintiffs And
they ask that the judgment
& decree of the Circuit Court
may be affirmed with
costs;

A M Huntington
for defendant

215
Route Snows

Et- al
As

Simone Bentons

Et- al

Loimelus in linn

Filed April 25th 1860

L. Leland

Clk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

RUTH SNOW ET AL. }
vs. } *Error to Kane.*
SIMEON BENTON ET AL. }

I. There must be the testimony of two witnesses that testator had a disposing memory.

Cook's Stat. Ill. 1180.

II. The admissions of the principal legatee, a party to the record, in disparagement of the will, are competent evidence.

8 Missouri, 627, *Armstrong v. Farme*, and authorities there cited.
Breese R. 345, *Atkins v. Sanger*.
1 Pick. 191, *Burnam v. Redman*.
7 D. & E. 663, *Rex v. Hendrick*.
11 East, 277.

III. He left out Mrs. Bloss on account of his defect of memory. He must have memory enough to recollect the natural objects of his bounty.

1 Jarman on Wills, last ed., 62, note.
3 Addams Ecc. 437.
2 Blackstone Com. 503.

This was not disputed on trial.

IV. 13th instruction of plaintiffs refused, contained a correct proposition of law, and should have been given.

1 Green Chy. R. 82, *Lowe v. Williamson*.

219 - 104

Snow

as

Benton

Pliffs ~~of~~ ~~fruits~~

219

Snow

as

Benton

Filed May 3^d 1882
L. Leland
Clerk

United States of America }
State of Illinois Kane County }

Recd

Pleas before the Honorable
Isaac G. Wilson judge of the 38th judicial circuit
of the State of Illinois, and presiding judge of the
circuit court of Kane County, in the State aforesaid, at
a regular term of said court begun and held at the
Court House in Geneva in said County on the third
day of February in the year of our Lords, one thousand
eight hundred and sixty two, and of the independence of
the United States the eighty-fifth.

Present Honorable Isaac G. Wilson judge
 Charles J. Metzner States Attor
 De Marcus Clark Sheriff

Attest
Thomas C. Moore
Clerk

Be it remembered that heretofore, to wit,
on the eighth day of October A.D. 1860 the following
"Bill" was filed in the office of the Clerk of said Court,

State of Illinois }
Kane County }

To the Honorable Isaac G. Wilson
Judge of the Kane County Cir Court In
Chancery sitting

Humbly complaining your Orators Charecy H.
Snow and Richard Blof and your Oratresses Betsy Blof
and Ruth Snow would most respectfully show unto your
Honor, that your Orators Charecy H. Snow and Ruth Snow
are duly and lawfully married, and that your Orator Rich

and Blop and Betsey Blop are duly and lawfully married and that your Oratrixes Betsey Blop and Ruth Snow are the children and heirs at law of Gilbert Benton late of Kane County State of Illinois deceased, And your Orators and Oratrixes would further most respectfully show unto your Honor that on the 5th day of July A.D. 1859 Gilbert Benton died at Kaneville County of Kane and State of Illinois leaving the following children to wit Simeon Benton Ruth Snow Betsey Blop Rufel Benton James McHair Ezra Smith Lucinda Gregory, William Benton and Charles Benton all of whom were at the time of his death living and still are and also leaving an estate worth at least twelve thousand dollars, consisting of lands situate in the County of Kane and State of Illinois and personal property, the nature kind and description of the estate will more fully appear by the records of the probate Court of Kane County where administration of said estate is now progressing, to which your Orators & Oratrixes pray leave to refer — And your Orators and Oratrixes would further show unto your Honor, at the time of the demise of said Gilbert Benton he was not indebted to any extent, there was not to exceed one hundred dollars of indebtedness against his estate, as your Orators and Oratrixes are informed and believe and so charge the fact to be.

And your Orators and Oratrixes would further show unto your Honor that on the 4th day of July, ^{A.D. 1859} the said Gilbert Benton being on his death not being of sound mind and memory was induced by the fraud covin and persuasion of others as they are informed and believe and so charge the fact to be, and not of his own free will and accord to sign a paper purporting to be his last will and testament a copy of which paper is herewith attached and made a part of this bill of complaint marked exhibit "A" to which the complainants

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beg leave to refer. And your Orators and Oratrices directly
 and directly state and charge that at the time that Gilbert Ben-
 ton signed and sealed that paper he had not a sound mind
 and memory. That he had lost his memory to that extent that
 he could not recollect his own children that his mind was
 unsound and knew not what he was doing, and that the paper
 as copy of which is attached to this bill of complaint marked "A"
 was not and is not the last will and testament of said
 Gilbert Benton late of Kansas County deceased. And your
 Orator and Oratrices would further show unto your Honor, that
 for many years previous to the death of said Gilbert Benton he had
 been subject to fits of insanity, that to such an extent was he
 afflicted that seventeen year prior to his death, he was carried to an
 Insane Asylum in the City of Chicago, and there confined for a
 considerable period of time, that the Mother of Gilbert Benton
 insane at the time of his birth and for many year subsequent to
 his birth, that the said Gilbert Benton was afflicted with her-
 editary insanity: that he recovered in some degree from his
 insanity for the cure of which he was carried to Chicago, but
 always after when he was sick or indisposed it would again
 come upon him, that at all times for the last ten years
 when sick, his insanity would recur, and he would be
 wholly unfit to do any business or have any mind or judg-
 ment for the transaction of any business whatever. That his last
 sickness of which he died was typhoid pneumonia. that during
 the continuance of that disease his hereditary insanity and men-
 tal disorders were upon him and it was during that condi-
 tion of his mind that he signed the paper marked "A". And
 your Orators & Oratrices would further show that he did not
 and could not remember his own children, but from loss of
 any and unsoundness of mind he forgot to mention the name
 your Oratrix Betsy Blop and from no other cause whatever.

and had no domestic or other causes for so doing but from mere weakness of mind + memory — And your Orators and Oratrix further charge that the paper purporting to be the last will and testament of Gilbert Benton late of Kane County deceased a copy of which is herewith attached marked "A." is not the last will and testament of Gilbert Benton deceased was not made by him when he was of sound mind and memory and should not control the disposition of his Estate in any degree, And Your Orators and Oratrix would further show that Ruth Snow and Betsey Blop are the children of Gilbert Benton and the said Orator Chauncy K. Snow is the husband of Ruth Snow and the said Richard Blop is the husband of Betsey Blop are legally and directly interested in the disposition of the estate of Gilbert Benton late of Kane County deceased and have a right to call in question the validity of said will and contest the same — And your Orators and Oratrix would further most respectfully show unto your Honor that on the 15th day of July A.D. 1859 Jermina Benton, the person named as executrix in the paper purporting to be the last will and testament of Gilbert Benton late of Kane County deceased having released and renounced her right to act under the said paper purporting to be said will on the 15th day of July A.D. 1859 the said paper purporting to be the last will and testament of Gilbert Benton late of Kane County deceased was probated and admitted to records in the Office of the County Clerk of Kane County Illinois by the judgment and determination of the County Court of Kane County and Simon Benton was appointed administrator of the estate of Gilbert Benton with the will annexed and letters were granted to him and the administrator has procured notice to creditors has been given inventories have been filed, of the real and personal estate of the deceased all of which will more fully appear by the records and proceedings now existing in the

office of the County Clerk of Kane County to which your Orators and Oratrixes by leave to refer. And your Orators and Oratrixes would show that the said Simeon Benton has paid no legacies and proposes to distribute the property not according to the law of the land but according to the said paper purporting to be the last will and testament of Gilbert Benton which action your Orators and Oratrixes state to be against equity and good conscience.

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And your Orators and Oratrixes bring this bill of complaint for the purpose of contesting the validity of said paper called and purporting to be the last will and testament of Gilbert Benton which was probated by the County Court of Kane County July 15th 1859.

Your Orators and Oratrixes ask that Simeon Benton, Jennima Benton widow of Gilbert Benton, deceased, Jane McHair and her husband John McHair, Eliza Smith Thomas Smith, her husband, Lucind Gregory and Mallie Gregory her husband, Russel Benton, William Benton and Charles Benton may be summoned to answer this your Orators and Oratrixes bill of complaint - the said Simeon Benton, Jennima Benton, Russel Benton, William Benton and Charles Benton to each answer without oath, the answer of the remaining defendants to be upon the said corporeal oaths. And your orators and oratrixes ask that a decree may be entered declaring said paper probated by the County Court of Kane County a copy of which is herewith attached marked "A" may be declared null and void, and without any form and effect and that a decree may be entered distributing the real and personal property of the estate of the said Gilbert Benton according to the law of the land as though no will had ever been made and for such other and further relief as shall be agreeable to equity and good conscience.

May it please your Honor to grant unto your Orators a summons for the appearance before this Honorable Court of Simeon Benton, Jennima Benton, Russel Benton, Charles

Benton, William Benton Eliza Smith, Thomas Smith, Sus-
cinda Gregory, Wallace Gregory, Jane McHair, John Mc
Hair, according to the usual course and practice of this land,
and thus they will ever pray.

B. F. Parks self
for complets

Richard Blop
Betsey Blop
Chauncey H. Snow
Ruth Snow

In the name of God Amen—

I Gilbert Benton of the town of Karreville County of Kane and
State of Ill. of the age of 55 yrs and being of sound mind and
memory do make publish and declare this my last will and tes-
tament in the manner following that is to say— First I give and
bequeath to my wife Jennima Benton one undivided third of
my real and personal estate of every name and nature whatsoever—
To be accepted by her and received in lieu of Dower Provided how-
ever on this condition that she remains my widow: but in case
she marries again after my decease— the above named prop-
erty then and in that case I give and bequeath to my sons William
and Charles ^{Decided to my sons William and Charles Benton} ~~Bentons~~ their heirs— I give and devise in eg-
ual shares the rest, residue and remainder of my real and
personal estate together with all the hereditaments and appur-
tenances thereunto belonging or otherwise appertaining— To have and
to hold the above described property to said Wm + C. and their
heirs forever— Third I give and devise to my Daughter Su-
cinda Gregory the sum of \$200.00 Two hundred Dols—
The above sum to be paid in sums or payments to be realized
from the products and interest of the estate at such times as
shall be convenient without disposing of the principal of the es-
tate— Fourth I give and devise to my Daughter Jane
McHair the sum of \$250 two-fifty Dols— to be paid in

Exhibit marked "A" copy of will

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sums or payments to be realized from the Products & Interest of the Estate at such times as shall be convenient without disposing of the price of the estate — 5th I give and devise to my Daughter Eliza Smith the sum of \$ 275 Two hundred and seventy five dollars to be paid as before &c in sums &c — Sixth — I give and devise to my Daughter Ruth Snow \$100 — to be paid in sums or payments &c — Seventh I hereby appoint my wife Gemina Benton Executrix and my son Simon Benton Executor of this my last will and testament ^{by overruling all former wills and testaments} by me made — I desire also that my wife G. B. and S. B. my son shall be guardians for the above named minor children Mrs + Charles B. and further desire that my son said Simon Ben — have fair compensation for such services as he may render — such Ex and Guardian —
 In Witness Whereof I have hereunto set my hand and seal this fourth day of July A.D. 1859.

Gilbert Benton *Gilbert*

The above instrument consisting of three sheets was at the date thereof signed sealed and published and declared by said Gilbert Benton as and for his last will and testament in presence of us who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto

John A. Scott Residing at Kaniville Kanawha Co Mo
 R. W. Lee of same place

Attached thereto is aff of S. B. that this is last will & testament of G. B. &c &c

On which is the following endorsement, viz:

Filed October 8th 1860

P. R. Wright
 Clerk

State of Illinois }
Kane County }

Ruth Snow being first duly sworn on oath
does depose and say that she has heard read
the foregoing bill of complaint by her signed
and knows the contents thereof, that the same is true of her own knowledge
except as to those matters stated upon information and belief as to those
matters she verily believes the same to be true

Sworn & Subscribed before me

this 6th day of October A.D. 1860

B. F. Parks Judgeoc }

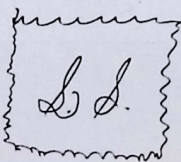
Ruth Snow

And afterwards, to wit: on the 8th day of October A.D. 1860, there was issued out of the office of the Clerk of said Court, a summons, of which the following is a copy:

State of Illinois (res.)
Kane County } The People of the State of Illinois to
the Sheriff of said County, Greeting:

We command you that you summon Simeon Benton, Jennima Benton, Russel Benton, Charles Benton, William Benton, Eliza Smith, Thomas Smith, Lucinda Gregory, Wallier Gregory, Jane McStair and John McStair, defendants if they shall be found in your County, personally to be and appear before the Circuit Court of said Kane County, on the first day of the next Term thereof, to be holden at the Court House, in Geneva, in said Kane County, on the third Monday of November next, to answer unto the Bill of Complaint, of Chauncy H. Snow, Ruth Snow, Richard Bloss and Betsy Bloss, filed in said Court on the Chauncy side thereof to set aside the will and testament of Gilbert Benton, deceased.

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

S.S.

Witness, Paul C. Wright Clerk of our said Court, and the Seal thereof at Geneva, in said County, this Eighth day of October A.D. 1860.

P. C. Wright Clerk

Which summons is endorsed in the words and figures following, to wit:

Executed this writ October 25 1860, by delivering a true copy hereof to each of the within named defendants Simeon Benton, Jennima Benton Russel Benton, Charles Benton, William Benton + Jane McStair —

E. J. Allen Sheriff of Kane County

I further executed this writ October 27th 1860 by delivering a copy hereof to John McHain

E. J. Allen Sheriff

By W. R. S. Hunter Deputy

Eliza Smith, Thomas Smith, Lucinda Gregory, Wallace Gregory

not found in my County, Nov. 17, 1860

which summons is endorsed as follows, to wit:

E. J. Allen Sheriff

Filed Nov 17, 1860

R. R. Wright, Clerk.

And afterwards, to wit; on the 1st day of Dec. 1860 there was filed in the office of the clerk of said Court, an answer, which is in the words and figures following, to wit:

State of Illinois } vs. Kane County Circuit Court Nov Term
Kane County } A D 1860

Simon Benton et al

vs

Chauncy A. Snow et al

The answer of Simon

Benton, Jennina Benton, Russel Benton, also Charles Benton & William Benton, who are minors ~~heirs~~, by their Guardian Simon Benton, defendants to the Bill of Complaint of Chauncy A. Snow et al.

The Defendants saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which can or may be had or taken to the said complainants said Bill of Complaint, for answer thereto, or to so much thereof as these defendants are advised in any wise material or necessary for them to make answer therunto, answer and say; that the said complainants Ruth Snow, & Betsey Bloss, are daughters of said Gilbert

Benton, deceased, but as to their lawful marriage with Cham-
 cey N. Snow & Richard Blof, neither, admit or deny, having
 no legal information upon that subject, and these defendants
 admit that Gilbert Benton died on or about the 5th day of
 July A.D. 1859, leaving not only the children mentioned
 in said Bill, but also another named Simeon Benton, all of
 which are still alive, to the best of these defendants knowledge; and
 that Gilbert Benton at the time of his death, was possessed of
 considerable Real and personal property, whither to the amount
 of Twelve thousand Dollars, these defendants are not advised, but
 believe not: And these defendants further admit, that the said
 Gilbert Benton at the time of his death, was not much in debts,
 but do not admit that it will not exceed the sum of One Hundred
 Dollars, as the administration of said Estate is not yet closed,
 and they are not yet fully advised:

And these defendants further answering most distinctly
 deny, that said Gilbert Benton on the 4th day of July A.D. 1859, at
 the time he made his will was not of sound mind and memory;
~~and also deny that he was induced~~ but aver that he was then & there
 of sound mind and memory; and also deny that he was induced
 by the fraud, coin and persuasion of others, and not of his own free
 will and accord to sign a paper purporting to be his last will
 and testament. And these defendants further answering, deny
 that said Gilbert Benton, at the time he signed and sealed his will,
 had not a sound mind and memory, also deny that he had lost
 his memory to that extent, that he could not recollect his children,
 or that his mind was unsound & that he knew not what he was do-
 ing, and that the paper referred in said Bill was not and is
 not the last will and testament of said Gilbert Benton.

And these defendants further deny, that for many years, pre-
 vious to his death, Gilbert Benton had been subject to fits of in-

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sanity, or that to such an extent was he afflicted, that some ten years previous to his death he was carried to an insane Asylum in the City of Chicago & there confined, but the facts are that about seven years prior to his death, he was sick & his mind appeared to be somewhat affected, and he was taken to a Doctor in Chicago & there remained a short time about a ^{month} & was cured & returned home, he was neither confined, nor was it necessary to confine, neither are these defendants aware that there was or is an insane Asylum in Chicago.

Neither do these defendants admit but deny that since said Gilbert Benton returned from Chicago, whenever sick, or indisposed, insanity would again come upon him, and these defendants most expressly deny, that at all times for the last ten years, when sick, his insanity would recur, and he would be wholly unfit to do any business, or have mind or judgment for the transaction of any business whatever; and they also deny, that during his last sickness at the time he signed his will, his hereditary insanity and mental disorder was upon him, and these defendants further answering further deny, that he did not, and could not remember his own children, and that he omitted the name of Betsy Blop in his will from loss of memory and unsoundness of mind, but he done it for good reasons satisfactory to himself, and he also omitted the name of two of these defendants Simeon Benton & Russel Benton, not from loss of memory or unsoundness of mind, but for reasons satisfactory to himself. And these defendants aver that the paper referred to in said Bill as being the last Will and testament of Gilbert Benton, is the last Will and testament of Gilbert Benton deceased, and was made by him when he was of sound mind and memory and should control in the disposition of his property. These defendants admit, that Ruth Snow, & Betsy Blop, are the children of Gilbert Benton, & that Chancy A. Snow & Richard Blop are their husbands, but as to whether

they are legally and directly interested in the disposition of the Estate of Gilbert Benton, and have a right to call in question the validity of his will and contest the same, these defendants are not advised but submit, the proof and law of the case to this honorable Court.

And these defendants admit, that femina Benton one of the Executors named in said Will did decline, acting as such, and that Simeon Benton was appointed Administrator of the Estate of said Gilbert Benton with the Will annexed, and that he has entered upon such duty, and proceeded in part in its discharge, and that he does propose to close up the affairs of said Estate in accordance with the desire of said Gilbert Benton expressed in said last Will and Testament, and the law of the land applicable thereto. And these defendants deny all and all manner of unlawful combinations and confederacies, wherewith they are by said Bill charged, without this, that there is any other matter cause or thing in the said complaint, said Bill of Complaint contained (material or necessary for these defendants to make answer unto, and not herein well and sufficiently answered, confessed, traversed or avoided or denied) is true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver maintain and prove, as this honorable Court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

Chas B Wells }
 Sol for the }
 defendants }

Simeon Benton
 Femina Benton
 Russel Benton
 Simeon Benton Guardian
 of Wiam Benton and
 Charles Benton

Which answer is endorsed in the words & figures

7
following, to wit:

Filed Dec. 1: 1860

P. R. Wright Clerk

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And afterwards, to wit; on the 6th day of Dec. 1861, there was filed in the office of the Clerk of said Court, a Replication, in the words and figures following, to wit:

In Chancery

The replication of Chancy H. Snow, Ruth Snow, Richard Bloss and Betsy Bloss to the answer of Simon Benton and others,

These replicants saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage to be had and taken to the many errors and insufficiency of the said answer, for replication thereto says they will ever maintain and prove their Bill to be true certain and sufficient to be answered unto, and that said answer is uncertain untrue and insufficient to be replied unto by these replicants without this that any other matter or thing whatever in the said answer contained material or sufficient in the law to be replied unto and not herein and hereby well and sufficiently replied unto confessed and avoided traversed or denied is true all which matters and things these replicants are and will be ready to ever maintain and prove as this Court shall direct and humbly pray as in and by their said bill they have already prayed.

B. F. Parks

Sol for Complts.

which Replication is endorsed in the words and figures following, to wit:

Filed Dec. 6th 1861

D. C. Moore Clerk

And afterwards, to wit; on the 22nd day of February 1861
the same being one of the days of the February Term of 1861
the following, among other proceedings was had and entered of
records, to wit

Chauncy A. Snow, Ruth Snow
Richard Blof^{and} Betsy Blof.

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^v
Simeon, Russel, Jermina^{and} Charles
Benton, William Benton, Eliza Smith,
^{Thomas Smith}
Lucinda Gregory, Wallace Gregory, John
McNair^{and} Jane McNair

} Bill to set aside
Will.

This day come the Com-
plainants by Parks and Coon their Solicitors and the Defend-
ants by Wells and Plato their Solicitors also come, and on
motion of Complainants Solicitors, it is ordered by the Court that
a jury come and thereupon comes a jury of good and law-
ful men of the County, to wit:

James Johnson, Henry J. Ash, Hilton Thornton,
Wm Johnson, E. Lathrop, E. M. Hoall,
A. S. Babcock, J. A. Spaulding, Aaron Gage,
J. Brown, Wm J. Moore, and David Gillett,

who are severally elected, tried and sworn well and truly to try
the issues herein, after hearing the statement of counsel, and
a portion of the evidence, are allowed to disperse and meet the
Court at nine o'clock tomorrow morning.

And afterwards, to wit; on the 23rd day of Feb.
the same being one of the days of the February Term of 1861
1861, the following among other proceedings were had and
entered of records, to wit:

Chauncy A. and Ruth Snow
and Richard and Betsy Blof

75-35

v

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Simeon, Jemima, Russel,
Charles and William Benton,
Eliza and Thomas Smith,
Lucinda and Wallace Gregory
and John and Jane McVair

Bill to set aside Will

This day ^{again} come the parties, by their respective attorneys, and the jury heretofore impannelled also come, and after hearing the balance of the evidence, the argument of counsel and instructions of the Court, retire in charge of a sworn officer to consider of their verdict, and afterwards come into Court, and say they are unable to agree upon a verdict, and the Court being satisfied thereof, orders that the jury be discharged from rendering a verdict herein, and are accordingly discharged.

And afterwards, to wit: on the 7th day of October 1861, the same being one of the days of the October Term of said Court for 1861; the following among other proceedings was had and entered of record in said Court, to wit:

Chauncey N. & Ruth Snow et als

vs

Simeon, Jemima, Russel, Charles
and William Benton et als

Bill to set aside Will.

7535

This cause is continued by

agreement

And afterwards, to wit: on the 18th day of February 1862 the same being one of the days of the February Term of said Court for 1862, the following among other proceedings was had and entered of record

Chauncey N. & Ruth Snow et als

vs

Simeon Benton et als

Bill to set aside Will

7535

This day come the

complainants by Parks their Solicitor, and suggest the death of the complainant Chauncey H. Snow

And afterwards, to wit: on the 20th day of Feb. ¹⁸⁶² the same being one the days of the February Term of said Court, for 1862, the following among other proceedings was had and entered of record, to wit:

Chauncey H. & Ruth Snow
and Richard & Betsey Blos

Bill to set aside Will.

Simon Benton, Jennima Benton,
Russel Benton, Charles Benton,
William Benton etals

This day comes the Complainant by Parks their Solicitor and the defendants by Wheaton and Herrington their Solicitors also come; and on motion of complainants Solicitor it is ordered that a jury come, and thereupon comes a jury of the jurors of good and lawful men, to wit, Ira D. Dyer, John Allison, S. M. Cook, O. C. Baird, Charles Norris, Benjamin Cox, John Buck, Dimothy Hayden, Levis Gage, John Stringer A. P. Farnsworth and John Wilcox who are severally tried, selected and sworn well and truly to try the issues herein, after hearing the evidence, argument of counsel and instructions of Court, retire in charge of a sworn officer of the Court to consider of their verdict, with instruction by agreement of ^{the} parties to seal their verdict and meet the Court tomorrow morning at eight and a half o'clock.

And afterwards, to wit: on the 21st day of February 1862, the same being one of the days of said last mentioned Term of said Court, the following, among other proceedings, was had and entered of record: to wit:

Chauncey H. Snow, Ruth Snow
Richard Blop & Pety Blop

Bill to set aside Will

7535

Simon Benton, Gemima Benton,
Russel Benton Charles Benton
William Benton et als

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This day again come the parties by their respective solicitors, and the jury heretofore impanelled herein also come, and for their verdict say, we the jury find the writing exhibited to be the last will and testament of Gilbert Benton deceased, which by order of the Court is entered of records, and thereupon, on motion of Parks Complainants Solicitor the jury is polled, and severally asked by the Clerk of Court, if this was, and is his verdict, and they respectively answer, it was, and is. And thereupon, again come the complainants by Parks their Solicitor and enter their motion for a new trial herein: after hearing the argument of Counsel, the Court being fully advised, over rules said motion, to which complainants by their Solicitors except, and pray an appeal to the Supreme Court.

It is therefore considered by the Court, that the defendants recover of the complainants, their costs by them herein expended. and that they have execution therefor.

And afterward, to wit on the 22nd day of February 1862: the same being one of the days of the February Term of said Court for A.D. 1862, the following among other proceedings was had and entered of record, to wit:

Chauncey H. and Ruth Snow
& Richard & Pety Blop

Bill to set aside Will

7535

Simon Gemima Russel
Charles and William Benton et als

This day again come the parties
Complainants

by their respective attorneys, and the Jury before Parks Solicitor, and
on their motion, it is ordered that they file their bills of exceptions herein,
within two weeks from this day

And afterwards: to wit; on the 8th day of March 1861
there was filed in the office of the clerk of the court, a Bill of
Exceptions which is in the words and figures following, to wit:

Ruth Snow et al } Kane County Circuit Court Feb. Term
vs } 1862
Simon Benton et al } Bill to contest will

Be it remembered that upon the
trial of the above intitled cause, the supporters of the Will to
prove their case offered as a witness R. W. Lee who testified he
lived in Kaneville had known Gilbert Benton since A.D. 1844.
lived two miles from him (will handed to witness) have seen it, the
will - Saw it at ~~the~~ Bentons House - Gilbert Benton signed
it in the presence of myself + Mr. Scott and requested us to wit-
ness its execution. We signed as attesting witnesses. I went to Mr Ben-
tons at the request of Simon Benton - When Mr. Scott and my-
self arrived there Mr Gilbert Benton said to us "I suppose you
know what I have sent you for" He then asked me if any partic-
ular form was necessary to make a valid will - Said he had thought
of sending for Sgr White - but it was a good way to De Kalb and
he had concluded not to send for him. I said to him I thought
I could draw it up. I had a form book. He said he wanted it
fixed right so there could be no mistake about it and no law
grow out of it. He told me how he wanted to dispose of his prop-
erty and I took it down on a piece of paper, word for word as he
told it to me. After I had written it down Mr Scott + myself
went into the dining room and Scott wrote it down in form

and we then took it back to him and read it over to him. He said it was as he wanted it and signed it. When he named what he gave to his wife he said he did not object to her marrying again but he wanted to provide her a home there so that she could remain there if she chose, but if she married again he wanted her satisfied with her new home without taking any of the property with her. I saw nothing that indicated any unsoundness of mind, and I have no doubt that he was of sane, and of sound mind at the time of executing the will.

On Corp examination

Hee said Simeon Benton came after me. It was the 4th of July, got to the house about four o'clock P.M. was there about two hours. Gilbert Benton died the next day. He was a very sick man, said he thought of sending for Mark White. White is a lawyer living at De Kalb 15 or 16 miles from Bentons suppose White could have been got. Simeon came for me in the morning of the 4th day of July told him I would come after the celebration. Was no interest, taken no part, am friendly to family and all parties, boarded in family in an early day. I do not know why White could not have been got. Benton asked if it was necessary to have any particular form, told ^{him} it was not. I do not know what became of the original paper. I wrote memorandum on it may be among my papers at home and I may have destroyed it. Hee coughed some spoke low and feeble. Lung seemed affected, A Servant came in room when making the will. Do not remember of Dr. Burroughs coming in when I was in the room. Benton requested me not to have persons in the room while we were drawing the will. I am not much accustomed to a sick room. have tended my own family when sick and have set up occasionally with the sick People. I thought he was a sick man but did not think he was going to die so soon as he did. Can't say particularly how his face looked, ^{signs seen in his tongue} no blotches on

face, he appeared natural. Did not notice any particular difficulty in breathing, was not inclined to sleep. Was in Sick room about one half hour. Did not notice any one in the room when we were absent. He appeared weak - did not discern any particular difficulty in speaking. Do not remember Mrs Blof name being mentioned by him Russel Bentons name was mentioned - said he had done enough for him. Think I spoke to Mr Scott going home about Mrs Blof - that he did mention her name or give her anything. Know ~~Mrs~~ Blof well - Do not recollect of telling Blof did not know of Mrs Blof till saw her at the funeral. I think Scott said going home "Well the Deacon has given all his girls something. I knew Gilbert Benton was some ten or twelve years ago taken to the Insane Asylum at Chicago by Rowland & Brooks - ten years before he died - When I went in Gilbert Benton was bolted up in bed - cant say how he laid whether upon his side his head was elevated some did not notice that he moved his hands or feet.

Direct resumed

I boarded 3 winters in Mr Bentons family. Did not see Benton immediately before he was taken to Chicago saw him after his return. After his return he appeared natural. I saw him every few days after that for several years and never noticed anything unusual. I think Dr Burroughs was not in the room while making the will -

John A. Scott, has seen the paper (will handed to witness) It is Gilbert Bentons will. It is in my hand writing - I knew Gilbert Benton for three years - I lived two miles from him I lived in the village of Kraeville and was little ant was postmaster and ~~was~~ doing business as a merchant I w & myself were present I was present when Benton stated to us what disposition he wanted to make of his property. The will is just as he dictated word for word so far as the disposal of the property is concerned - Benton was

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quite weak but had his reason - I have no doubt of his sanity at the time. Lee took a small book and set down by bed and took minutes as Mr. Benton dictated. We then went into another room and wrote it off in form, then went back and read it over to him. He said it was right - just as he wanted it - and then signed it, and we also signed it as witnesses at his request saw nothing to indicate that he was not of sound mind and memory. When we ^{went} in Benton said - I suppose you come to do a little business for me - I had thought of sending for Mr White but it was so far had given up the idea - Thought perhaps Mr. Lee could do as well - He asked if we could get it in ^{proper} form. Lee said he had a form book & thought we could draw it properly. Benton was quite weak. It was difficult for him to talk - but we understood what he said without difficulty. We read the will over to him. I have no doubt he was of sound mind at the time - Had known him well, and ~~had~~ been intimate with the family.

On crop examination -

Knew Benton for 3 years. It was an effort for him to talk rather difficult. The Dr said his disease was typhoid pneumonia. I could not see much then when I saw him in Chicago, a few days before I saw him in Chicago the last of June or first of July. I did not know him when I first met him he was so changed. He was sick & pale & dirty: his coat all covered with spitte & flegm. I did not ~~have~~ know him until he spoke to me: he put out his hands to shake hands and said he was sick & asked ^{me} to get him a glass of water, I did so. He said they had abused him by putting up into the third story it was at the Hatch house. Said they had a Rail Road accident on his way from the east. He was on his way home. I staid with him that night and put him on the cars to go home next morning. The will was made on the 4th of July in the afternoon, ^{He did this next day in the afternoon near night} when he made the will he was propped up in bed, rather inclined to right side. We both sat close to him - It was in the afternoon - think it was three o'clock - before five

It was in the afternoon after the celebration. We were there an hour or more. Do not think anybody - in the room when I was there. Simeon Benton came after me - Gilbert Benton said had given up the idea of getting White, thought Lee would do as well. White lived 14 or 15 miles - Simeon Benton has a farm on one side of Gilbert Benton farm & Russel on the other side - I am a friend of Simeon Benton - Was well acquainted with Gilbert Benton. I might have said he has given all his girls something. Gilbert Benton said Russel Benton his son was well provided for - Russel, Simeon & Gilbert Bentons farms lay together - I do not recollect that Gilbert Benton mentioned Mrs. Blop - He did mention Russel and said he was well provided for. Don't recollect the expression of eyes - did not see his tongue - do ^{not} recollect particularly about the fever think he raised a good deal & with difficulty; breathed hard - Don't think his eyes were wild - Was very weak was not nervous; moved his hand a little; his hands out side the bed clothes; I did not know him when I first saw him at Chicago a week before the will was made: had seen him a hundred times before, know him intimately, he was changed poor pale sick & dirty, ordinarily he was a neat clean and tidy man. The lapels coat all covered over with what he had raised spit over himself - I put him on the train next day - When the will was made he was quite weak and worn - He had trouble in his throat - hard for him to talk - had to sit near the bed - I did not see him after the will was made - Saw him once after he got home before will was made - Was quite weak - Dr said he had typhoid pneumonia never knew him to be insane.

Direct resumed

Heath house close to Depot - When I first met Benton then was not expecting to see any person of my acquaintance - Benton looked like a person who had been on a journey & traveling in the dust I thought he was very sick - I slept in room with him. I think

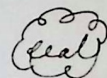
he was sane. Have no doubt about it.

The Plaintiffs then offered in evidence the will

In the name of God Amen, I Gilbert Benton of the Town of Kaneville County of Kane and State of Illinois of the age of Fifty five years and being of sound mind and memory do make publish and declare this my last will and testament in manner following that is to say, First, I give and bequeath to my wife Genima Benton one undivided third of all my Real and Personal estate of every name and nature whatsoever to be accepted by her and received in lieu of dower Provided however on this condition that she remains my widow, but in case she marries again after my decease, the above named property then and in that case I give and bequeath to my son William and Charles, Second to my sons, William and Charles Benton, their heirs, I give and devise in ~~all~~ equal shares all the rest, residue and remainder of my real and personal estate, together with all the hereditaments and appurtenances thereunto belonging or otherwise appertaining to have and to hold the above described property to said William and Charles Benton and their heirs forever. Third I give and devise to my Daughter Lucinda Gregory the sum of \$200. Two hundred Dollars. The sum to be paid in sums or payments to be realized from the proceeds and Interest of the estate at such times as shall be convenient without disposing of the principal of the estate Fourth, I give and devise to my Daughter Jane McNeir the sum of \$250. Two hundred and fifty dollars to be paid in sums or payments to be realized from the Products and Interest of the Estate at such times as shall be convenient without disposing of the Principal of the estate. Fifth, I give and devise to my Daughter Eliza Smith the sum of \$275, Two hundred and seventy five Dollars to be paid in sums or payments to be realized from the Products and Interest of the estate at such times as shall be convenient without disposing of the Principal of the estate Sixth I give and devise to my daughter Ruth Snow the sum of \$100 - one hundred Dollars to be paid in sums or payments to be realized from the Products and Interest of the Estate at such times as shall be convenient without disposing of the principal

of the Estate Seventh, I hereby appoint my wife femina Benton
Executrix and my son Dimeon Benton Executor of this my last will
and Testament hereby revoking all former wills & testaments by me made
I also desire that my wife femina Benton and my son Dimeon
Benton shall be guardians for the above named minor children Will-
iam and Charles Benton and further desire that my son said
Dimeon Benton have fair compensation for such services as he
may render as such executor and guardian - In witness whereof I
have hereunto set my hand and seal this fourth day of July in the year
of our Lord one thousand eight hundred and fifty nine.

Gilbert Benton



The above instrument consisting of three sheets was at the date thereof signed
sealed, published and declared by said Gilbert Benton as and for his last
will and testament in presence of us who at his request and in his presence
and in the presence of each other have subscribed our names as witnesses to
John A. Scott residing at Kaneville Kane Co Ill

R. W. Lee residing at Kaneville Kane Co Ill.

State of Illinois }
Kane County } I do solemnly swear that this writing contains the
true last Will and Testament of the within named Gil-
bert Benton deceased, so far as I know or believe; and that I will well and truly ex-
cute the same, by paying first the debts, and then the legacies mentioned therein, as
far as his goods and chattels will thereto extend, and the law charge me; and
that I will make a true and perfect inventory of all such goods and chattels,
rights and credits, as may come to my hands or knowledge, belonging to the
estate of said deceased, and render a fair and just account of my executorship,
when thereto required by law, to the best of my knowledge and abilities; so help me
God.

Subscribed and sworn to before me, this
15th day of July A.D. 1859

Dimeon Benton

John Green

clerk of the County Court of Kane County

Aaron Seary

Knew deceased; between 40 + 50 yrs saw him day + night before he died; except 1 or 2 hours with him all time; didn't see anything but what he was right: didn't see anything but was sound; some little things made me think it was sound; before that he + I had talked about getting gravestones for our parents; he had said he would go part in getting them. It run along until just as I was going to leave he remarked we had talk about grave stones; told his boy to hand him his wallet the boy handed it to him + he took some money ^{out of it} and gave it to me and asked if that was right - if that - what I expected; I said it was:

Corp examined -

Brother to Mrs. Benton - live 2 1/2 miles off; I came into the country first; B. came 17 or 18 years ago, children of Gilbert Benton are Simon, Russel, Ruth, Jane, Lucinda, Eliza, William, then Charles. It was in the morning he gave me the money; he raised a great deal; breathed difficult; couldn't spit it out; coughed; sweat some and moist; could not say he had much fever, restless; skin about as usual, gray eyes, eyes not uncommonly bright; nor or dull, did not hear of his being delirious; had to use cloth to get what he raised out of his mouth; this was about the time will was made; did not pick bed clothes moved his hands some; nothing unusual; not more than them all the time; lay some time on his back and and sometimes on ~~his~~ side; slept considerable the night before he died:

Direct resumed - could not spit it out the night will was made he said "Aaron we shall want a good many cloths" I got some; ^{said there was not enough; got more;} he said that was enough; wouldn't let cloth be used but once, was quite particular to have clean cloths; have seen a great deal of sickness; lip was swelled -

Corp examined -

Will was made just at night; that night I sat up with him.

John Gilman

Lives about 1/2 mile from place of Gilbert Benton - I was with Benton on Saturday & Monday night before his death - I staid with him the night previous to the day the will was made - He wanted Esy White to make his will - had no confidence in him but was well acquainted with him - did not tell me how he was going to make his will - was present at the death bed - S. Benton H. Acres & others - His mind seemed to be clear - he called all his family around ~~him~~, and gave them good advice - no delirium or incoherence

Crop Examined

At times ^{he} was sleepy - I waked him up that it might not injure him by sleeping too much. Fever at times - considerable fever - Am accustomed to sitting up with the sick - I woked him up because it injures sick people to sleep long a time

Dir. Res.

Said he wanted his property so fixed that the older should not wrong the younger children -

Josiah Wheaton

Lives in Kaneville 1/2 miles from Gilbert Bentons - Knew Gilbert Benton intimately for 3 or 4 months prior to his death - I was there 1 or 2 hours the day he came home from east - Also I was there when he died and saw the death bed scene - I thought he was clear in his mind & his mind was sound - One hour before death he wanted his children to come & wanted Russel to be sent for - Payed particular attention to Dimeon. When he came home he was weak and reduced -
Crop examined.

He had no fear that I discovered - after he finished talking ^{with} ~~the~~ ~~family~~ family he died in a few minutes -

Dr. S. Mc Hair

Knew Benton in his lifetime - am Physician - live in Kaneville - I saw him during his last illness & examined him - Bronchial inflammation of the Lungs was his disease - I was there two hours in the room - Most of the time Mr. Jenkins was present - This was Sunday the 3rd July

I called him rational - his mind was clear - nothing occurred to make me think he was insane -

Cross examined -

We conferred together Dr Burroughs + I - I don't remember ^{what} he called the disease - I thought almost sick enough to die then - Had little or no fever at that time - Went then as a neighbor - His pulse was 90 - or thereabouts - his breathing was hurried -

John Jenkins -

I knew Gilbert Beutou for 10 or 11 yrs prior to his death - went to his place twice during his last sickness - staid there 1 or 2 hours - his mind was clear as any body's

Cross examined

I thought him as very sick man + weak -

Here the Plff rested or rather those affirming the validity of the will -

The contestant as the defendants in the issue to prove their case offered

Dr G. M. Burroughs as a witness

I am a Physician of 14 yrs standing, I attended Gilbert Beutou during his last sickness. He died of Typhoid Pneumonia - Fever all the time, but it was higher in the latter part of day + evening - I discovered delirium or derangement and fever more the first day I saw him than afterwards - I saw him the first day he got home - he giving me a history of his journey he would lose his subject. Most of the time I saw him there was nervous twitching - he was inclined to sleep - low grade of fever - hurried breathing - Brown coating of the tongue red at the ends + sordes on the teeth - in voluntary twitching raised good deal - was there day the will was made - Scott + Lee sat at a table - one on each side one a pen the other a book when I came into the room they stopped operations - I saw they were in business and went away after a hurried examination of patient - and I have not a doubt but that he had the Typhoid pneumonia - at the last time

I saw him, I called him a very sick man — As a general thing this disease is accompanied by delirium — At the time when he made this will I doubted his capacity to make a will —

Cross examined

I've practiced 14 yrs — practiced in Sycamore 2 or 3 yrs — read with Kilbom 3 mos — read with Gardner 18 mos — Read with a Dr Arnold — Keosha 1 year — He was an Eclectic a graduate about 50 yrs old — I stayed 4 mos at a time I am not a graduate have not been familiar with insane cases — I was at Gilbert Benton the 4th ~~xxx~~ of July about 1/2 past 3 o'clock P.M. went to sick room once only — made a very short stay Scott was writing — My recollections are that they were all in the same room a large sitting room — G. Snow first talked with me on the sanity of Gilbert Benton — I next talked with Judge Parks at Webster — At 2nd visit G. B. spoke to me about making a will Mrs. Benton was there I discouraged him — told him I thought it would hurt him — His pulse was from 90 to 110 — I gave him medicine for fever — expectorants a solution of Speac — a decoction of pleurisy root — For fever I gave him the fluid extract of Hellebore — gave Tonics — gave some Quinine — Sedlitz Powders — I have doctored an insane Person —

Direct resumed —

I discouraged him from making a will for the reason that I did not think his mind in a condition to make a will — I thought it would injure him — The disease of Typhoid Pneumonia always induces delirium — The Patient may be apparently rational but yet not know what he is talking about — From my Medical Knowledge and experience and from what I know of his case I do not think he was of sound mind — I thought he was delirious the first time I saw him — picked the bed clothes — was a very sick man —

The defendants then offered in evidence the deposition of Mrs. Wealthy Thompson —

Deposition of Wealthy Thompson and S. M. Burroughs
 of the County of Kane and State of Illinois Witnesses - aged about 42 +
 40 years produced and sworn and examined before Lyman Baldwin
 a Justice of the Peace in and for said County and State aforesaid
 on the 23rd day of August A.D. 1861 at the office of said Justice in
 said County by virtue of a notice herewith attached; to be read in evi-
 dence in a certain cause now pending and undetermined wherein
 Chauncy Snow et al are Plffs and Simon Benton et al are
 defendants, on the part of said Plffs

Deposition of Wealthy Thompson

Inty 1st

What is your name, age, Occupation and place of residence.

Ans.

My name is wealthy Thompson - age - years - Occupation farmer
 Residence Engar Grove Kane County Illinois

Inty 2^d

Do you know the parties to this suit Plff & Def.
 or either or which of them and how long have you known them re-
 spectively -

Ans

I do know all the parties have known them for several
 years -

Inty 3rd

Did you know Gilbert Benton in his life time
 if yes, how long did you know him?

Ans

I did know Gilbert Benton - quite a number of
 years some fifteen or sixteen -

Inty 4th

Some years since did Gilbert Benton live in the same house
 with you; if yes, was he ever sick? what seems in your opinion to
 be his mental condition?

Ans -

He lived in my house several months when he first came in
 the country - He was sick while there - I cannot tell -

Inty 5th

When you did see him was there anything strange
 in his action?

Ans. The same as there would be with any sick person I suppose

Inty 6th Was you present at his funeral?

Ans. I did not go to church

Inty 7th After the funeral was you present at his house when the will was read over?

Ans I was in the room

Inty 8th Who was present besides your self?

Ans. There was quite a number there

Inty 9th Was Mrs Benton there and other members of the Benton family?

Ans Yes

Inty 10th After the reading of the will what did Mrs. Benton say if anything about Mrs Blof's name being left out of the will?

Ans I do not recollect

Inty 11th What did she say about the will?

Ans She said she was afraid the will was not right for he appeared a little out of his wits during the day.

Inty 12th Did she say anything else in regard to it?

Ans. I cannot ~~recollect~~ tell I did not charge my mind with it

Inty 13th What was said about Mrs Blof if anything at the time?

Ans. I do not recollect.

Inty 14th Did Mrs Benton say anything about the fact that he ought to have made his will before if any thing?

Ans I cannot say for certain but there was something said that he was so sick he ought to have made it before

Inty 15th What did she say about hating to hear the will read, if anything, for she expected to hear a blunder in it?

),)))
, , , ,

Ans
Intg 16

I did not hear her say that
This Mrs Benton you have been speaking about - was she the
wife of the deceased Gilbert Benton?

Ans
Intg 17
Ans -

I suppose she was -
Was this conversation the day of the funeral?
It was

Crop examined (By Wells)

Wealthy Thompson

To each and every of the above Interrogatories
Each party reserves the right to any and all objections that may arise
upon ^{the} trial of the case -

State of Illinois }
Kane County }
I Lyman Baldwin a Justice of the Peace
in and for said County, do certify that the
foregoing deposition was taken by me at the
time and place mentioned in the caption thereof - that the said wit-
ness - were each first duly sworn and ~~that~~ after said Deposition
was written it was carefully read to each of them and they there-
upon signed the same -

Witness my hand and seal this the 23rd day of August
A.D. 1861

{ L. Baldwin
J.P.

At the reading of the 11 & 14 direct interrogatories and the an-
swers thereto the said Plaintiffs objected - The Court sustained
the objection and would not permit the said 11 & 14 interrogatories
and the answers thereto to be read to the jury - to which ruling
of the Court the defendants at the time excepted -

William Foster - Sworn

Live near Dycamore; lived in State 15 years last Oct.

come from N.Y. Wyoming Co. Known Gilbert Benton
nearly forty years ago; we lived with one man; knew his mother; she
was insane all the time I knew her. Deranged when I knew her:
knew her about time when Gilbert Benton was nine years old
we lived in same family 1 year: then I lived — another man 3
years: then came back to this man: we were always friendly:
Benton came here 17 years ago: settled near Kaneville: I came
15 years ago last fall: was here before: saw Benton first: he took
me to Mr Thompson & Mr Blof: I helped work his farm 1 year:
lived in Kaneville since until 6 years —: remember his going to Chi-
cago to Asylum: saw him few days before: was at my house:
he was fatigued: could not say about wildness: his subject was religion:
excited: never saw him so bad as at my house: just before he was
taken there was meeting: preacher did not come, I spoke in meeting
about Benton. after that our relations were not so friendly: he spoke
to me about it: I told him what I said: he seemed pacified: but not
the warmness as before: lived 2 1/2 miles off, and had not much
business with him; always have been intimate in family: worked a
great deal with him: could not be positive his doing something
for his daughters: had a talk about his girls when first came here
he seemed pleased with their situation: never — an expression of ill
feeling from Benton in regards to Mrs Blof: should have known
if there was: know Eliza Smith and husband by sight: know Gregory
Gregory is in Iowa, Smith in Kansas: they were poorly clad: were
coming to see their Parents: was year ago last fall: don't know about Smith
since marriage: Mrs Snow has 5 child —: oldest about 12: four boys:
she lives about four miles from father: Blof some 12 or 14 mi:
Snow is dead —

herof examined

Visited at Blofes: he has a good farm: Mrs Snow has 2 farms
in her care: heard her say one farm belongs to one boy: other farm to
other 4: her husband is dead. Blof and wife belonged to same

church with Gilbert Benton were great friends.

Deft. Officers & powers of attorney —

M. M. Ravlin.

Lives at Aurora; Mayor of City; lived in Kaneville; knew Mr. Benton in lifetime; went with him to Asylum north of Chicago about 12 years ago: Brooks went with us from Batavia; ^{they come to Batavia} took him at request of his family; was taken to be treated for insanity; took — at request of portion of family; Russel drove the team down. Arrangement was entered into before I knew it: his conduct was wholly unnatural; there was no doubt as to his condition: knew him from 44 to until death: he had a large farm — can't state number acres; quite large farm; Russel lives on portion of it. Dimon had deed of his before I left. I have had typhoid fever; first 8 weeks of sickness was an entire blank: generally I guess they considered me rational, but during the disease, I had no knowledge of what had happened during my sickness, though I was told I was perfectly rational. It was ten or 12 years ago. I took Gilbert Benton to insane asylum

Looks examined —

Lived 1 mile from him; he stayed in Chicago about 4 weeks; don't think he was exactly the same man — Immediately after he came home wife & self — went over to see him, but for ^{some} cause he was different. He was better than when we took him; few years before he died I did not see him; Physician told me I had typhoid fever; did not know much at first 8 weeks; during first 8 weeks can't say about thirst, but afterwards was very thirsty; recollect knew my family: some visiting from distance did not remember of seeing me; did not having trouble in breathing; did not use cloths to wipe mucous from mouth; had clear red; pulse about 100; don't mind eruption of skin: was not blind; don't mind pain in bowels from bloating.

Poster recalled —

Saw the boys William & Charles Benton last May: they

are stout boys; should think would weigh 100 to 160 pounds.

L. A. Winslow

Physician of 15 yrs practice: have read and reflected on subject of insanity; religious excitement would lead to insanity of a person of insane mother; ^{typhoid fever might lead to chronic insanity} the poison of blood might leave chronic insanity; a person would be more likely to be insane who was of an insane mother: in typhoid the blood is poisoned; circulating through body affects brain; have seen a great many cases of typhoid fever where time was lost to patient: typhoid usually runs from 8 or 9 days to as many weeks: recognize Keely's and Wood as good standard authority:

Case examined

Heard the testimony of witnesses Lee, Scott, Seary, McTear, Jenkins + others; from what Dr. Burroughs said I should call it typhoid pneumonia; but from the testimony of others I should call it inflammation of the lungs; don't recognize Dr. Burroughs as a regular physician; refused to consult him in a case at Blackberry; knew Dr. Gardner (objected and overruled) did not recognize him as a physician; recollect being called to see one case; met Gardner at the door:

Direct

Don't recognize botanic Doctors nor homeopathy nor eclectic as regular physicians; I recognize only Alopathy Doctors as regular —

Hendrick Acres

Was witness on former trial: called by Dimeon Benton. Set one night with ~~the~~ deceased; remember what I said on former trial; the day he came home, he said he was on a train that smashed up; after the smash up they put him to ride on a coffin because there was no seat: I set the night of third of July: was some fever, asked for water; didn't talk a great deal; don't recollect about his hands; swear that night I sat up with him there was no delirium; there was

fever: gave him some medicine; the Dr was there that evening: don't mind how many times gave him medicines. Slept most time a middling heavy sleep: lives 2 miles from Benton; did not swear at former trial that deceased said to me he rode home on a coffin.

Crop examined

Never saw anything insane about him —

Dr P. A. Allaire —

Typhoid Pneumonia generally has effect of making persons delirious: generally after the first day; the disease exhausts the pa — so he does not remember what he does; but still he may be rational when he is doing it — there is such a thing a hereditary insanity: a person born of — insane mother and has been insane himself, there is a tendency to relapse to insanity: sickness (severe) might produce it; have practiced 20 yrs have reflected on insanity. The case of Myron Ravelin — He was sane but his memory was defective — the disease exhausts and destroys the memory —

Crop examined

Did not hear all the testimony — heard part of Dr Burroughs testimony — pneumonia and typhoid fever the expectoration is easy. The bowels usually loose: inclined to bloat in bowels and ulcerations; as a rule the pulse ^{is} would over 100 — from 100 to 140; would think Seltitz powder would be better practice in inflammation of lungs than in typhoid:

Rest — Here the defendant rest

The defendant then offered the appraisement bill showing the quantity, quality and kind of the estate also showing the names and ages of the children

State of Illinois }
— County }

In the Matter of the estate of — deceased.
The following is a full and perfect inventory of all the real and personal estate of the said deceased, so far as the same has come to the possession or knowledge of the undersigned

Real Estate

Value
Dollars cts.

Good Prairie	Bought from Government Spt. S.E. 1/4 Sec 25 Township 39. Range 6, acres 49 \$30 per acre	2070
do "	Township 39 Range 6 Spt. E 1/2 N 5/4 Sec 36. 21 \$30 per acre	631
Woodland	Bought from Government Spt. S 1/2 Sec. 30 Township 39. Range 7 118 acres \$20 per acre	2360
do	Brought of <u>not known</u> N.W. 1/4 S 1/2 Sec 30 Township 39 Range 7 acres 12. \$20 per acre	240

No Chattel Property

1	Stove and furniture	
9	Kitchen chairs	
4	Bed Stead	
8	Beds & Bedding	
1	Set of dishes	
1	clock	
2	Looking glasses	
1	Stand	
1	Table	
40	Milk Pans	
1	cheese press	
2	Wash tubs	
1	Leam Cultivator	
1	Wheat Coulter	
2	Stemmy plows old	
1	Breaking plow old	
2	drag and one set of drag teeth	
1	Post auger	
2	Log chains	
1	two horse sleigh	
2	ox yokes old	

6	trucks
1	Brace and two bits
2	chisels
1	Pick
1	levast bar
1	levast cut saw
1	hand saw
1	Sythe and flaths
1	Nail hammer
2	axes & 3 hoes
1	Scoop shovel & three pitch fork
1	Flouring Mill & 50 bags old
1/2	loom drill
1/3	Hand corn sheller
1	Grind Stone
1	loom & loat mill
1	2 horse wagon
1	Sett 2 horse harness
2	horses old
4700	fat fencing
40	tons hay
20	acres corn
1/2	acre Potatoes
1/4	acre Beans
10	hops
13	Pigs
50	Chickens
12	Milk cows
1	2 yr old steer
8	2 yr old heifers
3	one year old heifers
8	calves

1 leaden Kettle
 1 Spinning Wheel
 5 Pails
 2 Pork barrels
 1 Flour Chest
 300 bus. oats
 500 bushels wheat
 cash on hand at time of decease \$48.00

Notes and Accounts

By whom Owning	Date	Interest	Good	Doubtful	Deperate	Amount
Wm. Spear	Oct. 19 th 1857	10 pcts	Good			200 00
Daniel B. Sheldon	May 4 th 1859	10 "		Doubtful		22 00
George Deary	on account			Doubtful		17 00
Simeon Benton	Jan 1 st		Good			100 00
Thomas Smith two hundred and fifty dollars in Kansas to deed land - Also one land warrant for the same purpose				Doubtful		250 00
						130 00
						\$ 719 00

I do hereby certify that the above is a correct Inventory of the
 Real and Personal Estate of Gilbert Benton deceased.
 Given under my hand this 11th day of Oct 1859
Simeon Benton

Petition of *Dimeon Benton* in the matter of the Estate
of *Gilbert Benton* deceased, for *Letters Testamentary*
To THE HON *Daniel Eastman* JUDGE OF THE COUNTY COURT
OF *Kane* COUNTY.

The Petition of the undersigned *Dimeon Benton* respectfully
represents that *Gilbert Benton* late of *Kane County*
deceased, died at *Kanawille* in *Kane County*
State of Illinois on or about the *fifth* day of *July*
A. D. 1859, leaving property and effects in this County, and leaving his
last Will and Testament _____ as far as known to and believed by this petitioner.
and appoint *Jessima Benton* Executrix and *Dimeon Benton*
executor of his last will and testament

That said deceased left him surviving *Jessima Benton*
as his widow, and *nine children as follows Dimeon Benton and Ruth*
Snow and Betsy Bloss, Russel Benton, Jane McVain, Eliza Smith
Lucinda Gregory William Benton Charles Benton

Your petitioner being *son* of said deceased,
and appointed executor with *Jessima Benton* as executrix of the will of deceased
therefore prays that *Letters testamentary* the said

Will and testament of said deceased, may be granted.

Geneva July 9th 1859

Dimeon Benton

STATE OF ILLINOIS, }
Kane COUNTY, } ss.

Dimeon Benton

being duly sworn, deposes and says, that the facts averred in the above petition are true, accord-
ing to the best of his knowledge, information and belief.

SWORN TO AND SUBSCRIBED BEFORE ME,

John Greene
Clerk of the County Court of *Kane*
County, this *9th* day of *July*
A. D. 1859

Dimeon Benton

John Greene Clerk.

Plaintiff then to rebut offered the following testimony

G. W. Annis —

Was neighbor of deceased; met him in Chicago; knew after got back; never saw him insane either before or since his return — Did not recognize him as insane in Chicago:

Marcus White:

Knew deceased; was neighbor; come to my house one night and stayed over night; I did not think he was right; saw him afterwards; there was a time he seemed wrong; afterwards did not know much ^{about} him:

Crop examined

Am a lawyer wth Gilbert Benton & myself; knew all family but Mrs Blop; 1859 lived in DeKalb; on Dec. 29th of June left Chicago for east:

A. A. Pavlin

Knew deceased; lived 2 yrs from him; he was all right after he came from Chicago —

+ Saw him on his way to Chicago. I did not discover insanity when he went to Chicago:

The words Plaintiff are used in this bill of exceptions to represent those who affirm the validity of the will and defendants for those who contest the validity of the will —

Which was ^{all} the evidence offered in the case on the part of the Plaintiff or the defendant and no other evidence being offered — The Court gave the following instruction for Plff —

That if the Jury believe from the evidence that at the time Gilbert Benton made the will in question, his mind was sufficiently ^{clear and} strong to comprehend the business he was engaged in and the disposition he was making of his estate and that said will contains the disposition of his property to those of his family he intended should enjoy the same, and that the will was made ⁱⁿ such condition of mind as above stated then all the law requires of the testator to

make the will valid - therefore neither sickness nor extreme distress or debility of body attending him at the time of making the same will necessarily invalidate said will, and in such case the jury should find in favor of the validity of said will.

If the jury believe from the evidence that the will in question was made in accordance with the directions of Gilbert Benton and that at the time he fully comprehended and understood what he was doing and that after the will was written and it was clearly read over to him and that he then stated that the same was in accordance with his wishes and directions, and that at the time he signed the same he was able to recollect the particulars ^{which} he had so dictated then in contemplation of law said Benton was of sound disposing mind and memory - and in that case the jury should sustain said will by their verdict.

That if the jury believe from the evidence that at the time that Benton made the will in question he fully understood what he was doing, and comprehended the effect of the same, the mere fact that he was then sick and soon after died, and that the names of some of his children were not mentioned in his will as Legates or otherwise does not destroy said will nor prove that his mind was not sound at the time he made the same.

That if the jury believe from the evidence that Benton at the time of making the will in question, was sick ^{that his body was weak} & that his mind was weakened and its strength impaired thereby - yet if the evidence shows that at the time of the making said will he fully comprehended that he was disposing of his property and that he was bequeathing it to those persons that he intended should enjoy the same, then in law the will must stand, for such sickness of body and weakness of mind will not alone destroy said will.

The mere fact that Betsy Blop, one of the children of Gilbert Benton, was not mentioned in his will is not of itself alone sufficient evidence of a want of soundness of mind or memory or incapacity to make a will - and on

See 9th March 371

Given

Given

Given

to the giving of which instructions and each of them the defendant excepted there and then — The Court was requested to give the following instructions on the part of defendant

Given
The jury are instructed that the burden of proof that Gilbert Benton deceased at the time the will in controversy was made, was of sound mind as well as memory rests upon those affirming the validity of the will in this case, and in the absence of such proof the jury must find against the validity of the will

Given
What is meant in law by sound mind and memory is that the testator must have capacity ^{to know what he is doing:} know what his property is who are the natural objects of his bounty — If he has not memory enough left him to know his own children and without cause or provocation, from mere loss & weakness of memory forgets them, then he would not have that disposing memory requisite to make a will but the mere fact that he had omitted their names in his will would not of itself be sufficient evidence that he had forgotten them —

Given
If the jury believe from the evidence that the testator Gilbert Benton de^d had not capacity enough at the time the will was made, to know what he was doing, or to know what his property was, or to know who were the natural objects of his bounty — if he had ^{not} memory enough left to know his own children, and without cause or provocation, from mere loss and weakness of memory forgets them, or one of them, then he would not have that disposing memory requisite to make a will —

Given
In determining the condition of his, the testator's mind at the time of making the will the fact if proved that he had been insane, that his mother before him was insane — the nature and character of the disease of which he died, his nearness to death and all the facts and circumstances in proof, and if the jury believe from all the facts that he had not sound mind and disposing memory they should find against the will —

The Jury are instructed that a will which

Given
makes no mention of relations (such as Children) who have a natural claim on the bounty of the testator and in regard to whom he entertained only the kindest feelings creates a suspicion that his memory was at fault such fact (if the jury believe it exists in this case) unless it is satisfactorily explained raises a presumption against the validity of the will.

Given
If the Jury believe from the evidence that the will in question was made by the testator upon his death bed but a few hours before his death while he had a disease which naturally induces mental weakness + loss of memory the will should be closely and carefully scrutinized and slight evidence is sufficient to overthrow such will.

Given
If the fact of the insanity of the testator in this case is once established then the rest upon those asserting the ^{capacity of the} will to show that the testator has been cured of his insanity - or that he executed the will during a lucid interval - and in showing a lucid interval great precision and cleanness of proof should be required -

Given
If the Jury believe from the evidence that the will in controversy is contrary to natural duty then that fact may be taken into consideration in determining the condition of the testator's mind and the validity of the will.

Given
If the testator's memory was so defective that he could not remember the persons who should be the natural objects of his bounty then though he was neither an insane man nor a lunatic yet that would be sufficient to destroy the will: He must have a disposing memory -

Given
If the Jury believe from the evidence that Gilbert Benton was of sound mind yet if they also believe from the evidence that his memory was so defective as not to be able to recollect his own Children then the Jury should find against the validity of the will.

Given
If the Jury believe from the evidence that Betsey Blop one of the Children of Gilbert Benton was not mentioned in Gilbert Benton's will on account of his defect of memory then they should

If the jury believe from the evidence that Gilbert Centin had been insane ^{and} that when sick his mental weakness was present to a greater or lesser extent than the opinions of persons who casually saw him ^{and} that only for a short time if such facts exist by the proof then the opinions of such witnesses are the weakest kind of proof. And if the mental ^{and} bodily condition of the testator were inconsistent with such opinions the jury should reject these opinions and find against the validity of the will even though these opinions are honestly entertained.

find against the validity of the will

It is not for those opposing the will to show that the testator was not of sound mind and memory. It must be proven that the testator was of sound mind and memory by those claiming the will to be valid and in the absence of such proof the Jury must find against the validity of the will; — and to the refusal of Court to give defendants instructions and each of them the defendant at the time excepted. — The Jury retire and subsequently come into Court with a verdict that the paper produced is the last will and testament of Gilbert Benton —

Given

- And thereupon the defendants move the Court for a new trial —
- 1st; because the Court excluded the testimony of Mr Thompson —
 2. The Court erred in giving Plff instructions and each of them
 3. The Court erred in refusing Defts instructions —
 - 4th The verdict is contrary to law and contrary to evidence —
 - 5th The verdict is palpably and at first blush contrary to the evidence.
 - 6 The verdict is otherwise wrong, improper, illegal.

The Court overruled the motion for new trial and gave a decree affirming the validity of the will to all of which rulings of the Court the Defendants excepted and pray that this their bill of exceptions ^{may} be signed and sealed by the Court — which is done —

Saml G. Wilson *Seal*
Judge

Which Bill of Exceptions is endorsed in the words and figures following, to wit:

Atd March, 10th 1862

D. W. Moore

clerk

State of Illinois }
Kane County }

J. Thomas L. Moore Clerk of the
Circuit Court, in and for said County,
do hereby certify that the foregoing is and
full and correct copies of the papers filed, and orders of Court, entered of
records, in the records of my office, in a suit wherein Chanucy L.
Snow, Ruth Snow, Richard Blop, and Betsey Blop, are com-
plainants and Bimon, Gemina, Russel, William and Charles Ben-
ton and Eliza Smith, Thomas Smith, Jane McVair, John McVair,
Lucinda Gregory and Wallace Gregory are defendants, lately pending
in said Court.



Witness my name, and the seal of said
Court at my office in Geneva, this 17th
day of March A.D. 1862

J. T. Moore

CLM

And the said Plaintiffs in
error comes and appears first
in the foregoing venue
First the Court used in excluding
the 11th and 12th interrogatories and
the answer thereto in the deposition
of Wrentham Thompson

Second the Court used in admitting
the testimony of the defendants
in error

Third the Court used in
excluding the testimony of
Plaintiffs in error

Fourth the Court used in
refusing instructions of Plaintiffs
in error

Fifth the Court used in
giving defendants in error
instructions and each of them

Sixth the verdict is contrary
to Law and contrary to
evidence

Seventh the verdict is palpably
against the Law contrary to evidence

regards The above should have
been against the validity of
the will

Write The above should be
revised for other and justice
and manifest more appearing
upon the face of the record

The ~~complaint~~ ~~therefore~~ Plaintiff
therefore pray that the judgment
& decree of the court may
be revised amended and
held for right and also
that they may have judgment
for costs & c

B H Puck
for Plaintiff

Snow et al

vs

Banton et al

Record

Filed Apr 23 1882

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