

12480

No. _____

Supreme Court of Illinois

Boylan

vs.

Boylan

State of Illinois
Cook County ss

Now before the Honorable J. Dickey
Judge of the seventh Judicial Circuit of the State
of Illinois and presiding Judge of the Circuit Court
of the County of Cook, in the State of Illinois, at
a term thereof begun and held at Chicago in said
County of Cook, on the first Monday, being the sixth
day of December in the year of our Lord one
thousand eight hundred and fifty two and of the
Independence of the United States the seventy sixth.

Present: The Honorable Hugh J. Dickey.
Judge of said Court.
Danz M^r Troy State Attorney pro tem,
Cyrus J. Bradley Sheriff

Attest:
Louis D. Hoard, Clerk of the Circuit Court of Cook County

As it is remembered that heretofore to wit, on the
5th day of Novbr. 1852. William Boyland the Complainant
by Thomas Hoagie his Sol^r, filed in the office of the
Circuit Court, Clerk a precept for a summons Chancery
against Margaret Boyland which said precept is in
words & figures following that is to say.

Cook County }
Circuit Court }

William Boyland

December Term 1852

vs.
Margaret Boyland }

Bill for Divorce

The clerk of the Court will please issue summons in the above entitled cause against Defendant returnable to the next Term of the Court and oblige.

Chicago Nov. 4. 1852.

Yours truly
Thos. Hoynes
Sol^r for Compl^r.

And thereupon afterwards on the same day last aforesaid, summons issued out of the office of the clerk of said Court in words & figures following that is to say

State of Illinois }
Cook County } ss.

The People of the State of Illinois, to the Sheriff of said County Greeting:

We command you that you summon Margaret Boyland if she shall be found in your county, personally to be and appear before the Circuit Court of said County, on the first day of the next Term thereof, to be holden at the Court House in Chicago in said County, on the first day of the next Term thereof, to be holden at the County House in

Chicago in said County, on the first Monday in December
next to answer unto a Bill for Divorce filed in said Court
on the Chancery side thereof by William Boyland
And have you then & there this writ, with an endorsement
thereon in what manner you shall have executed
the same.



Witness Louis D. Hoard Clerk of our said
Court and the seal thereof at Chicago
afore said this 5th day of November A.D. 1852
L. D. Hoard. Clerk of the said Court

Services.

On the back of which Summons aforesaid was the
following Endorsement:

"Executed the within writ by leaving a copy of the within at
the dwelling house of John McCawley with a female white
person over 12 years of age & informing her of the contents thereof
said place being designated by Jff. Nov. 5th 1852.

1 Serv. 50 1 copy 50 1 ret. 10 1 mile 5 - \$1.15 pd by Jff. Atty
W L Church Sheriff
by J. S. Woods Deputy."

And afterwards to wit on the 5th day of November
of the year aforesaid, there was filed in the Office of the
said Court the following Bill for divorce in said cause
which is in the words and figures following viz:

"To the Hon^{ble}: Hugh T. Dickey Judge of the Cook County
Circuit Court in Chancery sitting:

Your Petitioner William Boyland would respectfully show unto your Honor that he was lawfully united in marriage to one Margaret Boyland on the 25th day of May in the Year of our Lord, One thousand eight hundred & thirty three and hath thence hitherto up to the 15th day of September A.D. 1850. cohabited as Husband & wife, with, said Margaret Boyland.

And your Petitioner would also show unto your Honor that although your Petitioner hath at all times conducted himself as a good, true & faithful Husband unto, said Margaret Boyland his wife and from the time of said marriage up to the day hereinafter specified, faithfully discharged the marital duties imposed upon him by the marriage aforesaid and behaved as an affectionate Husband towards said Margaret Boyland, yet that said Margaret Boyland, in gross disregard of all her duties as such wife towards your Petitioner and in violation of Law did afterwards to wit, on or about the first day of September 1850. or more than two years ago, wilfully & wickedly desert your Petitioner within the City of Chicago County of Cook and State of Illinois aforesaid, and hath thence hitherto continued to desert and wilfully absent herself from your Petitioner her said Husband without excuse or provocation therefore whatever.

And Petitioner would further show that at the time of said desertion he was possessed of some small means, acquired by his industry & frugal habits as a Mechanic and had made every provision for her the said Margaret's support and subsistence, and that they were then comfortably

situated and resided in a House well furnished, and owned by your Petitioner, and had all the appliances of a well regulated and comfortable home which a respectable couple could afford to persons in their position in life - But that said Margaret instigated by her own wilfulness and a wicked disregard of all her marital obligations and duties did then and there desert her Husband your Petitioner & hath since continued wilfully absenting herself from Petitioner as aforesaid alleged.

And this Petitioner would further state, that he is a Resident of this County and State and hath resided in this State for one whole year previous to the filing of this his Petition.

May it therefore please your Honor to grant unto your Petitioner the Writ of Summons directed to the Sheriff of this County commanding said Margaret Boyland by a day to be therein named to appear and answer unto the premises, and that your Honor will decree a dissolution a vinculo of the Marriage contract existing between your Petitioner & said Margaret in pursuance of the Statute in such case made & provided and will grant unto your orator such other & further relief in the premises as may be agreeable to Equity & good conscience and your Orator will ever pray &c

Thos Hoynes Sol^r for Pet^r

State of Illinois }

Cook County }

ss.

William Boyland being by me duly sworn deposes and saith that he hath heard read the foregoing

6
Petition and knows the contents thereof and that the facts therein
are true of his own knowledge except so far as therein
stated to be on information & belief & that he believes to
be true

" Subscribed & sworn to before
me the 5th day of November
A. D. 1852.

William Boyland."

L. D. Hoard
Clerk."

And afterwards to wit on the 9th day of December
A. D. 1852. it being one of the days of the December Term
of said Circuit Court in said year the following among other
proceedings were had & entered of record to wit

William Boyland }
v. } Divorce
Margaret Boyland }

This day comes the said complainant
by his Solicitor and it appearing to the Court that the said
defendant has been duly served with process, It is on motion
of said complainants solicitor ordered that said defendant
answer said complainants Bill instantly and no answer
having been interposed it is ordered that said Bill be taken
as confessed for want of an answer, against the said defendant
And it is further ordered that said Bill be referred to the
Master in Chancery of this Court to take proof of the
material facts and allegations contained in said Bill

7
of complaint, and that he report the same together with
his opinion thereon to this Court, with all convenient
speed.

And afterwards to wit on the 11th day of December A.D.
1852. there was filed in said clerk's office aforesaid the
Masters Report in the cause aforesaid in the words &
figures following to wit:

State of Illinois }
Cook County } M.

Office of Master in Chancery
Chicago December 10. 1852.

In the Cook Circuit Court of the December Term 1852
William Boyland }
vs. } In Chancery
Margaret Boyland }

Hon^{ble} Hugh S. Dickey, presiding Judge of said Court
in Chancery sitting

In Pursuance of an order made by said Court in
the above entitled cause, by which it was referred to me to take
proof of the material facts and allegations set forth in the Com-
plainant's Bill and report my opinion thereon. I George
Manierre, Master in Chancery of said County, do hereby
report, that on this the 11th day of December 1852. the com-
plainant appeared before me in person and by Thomas Haynes
his solicitor, at my office in the City of Chicago, at which

time and place the following examination was had and proofs taken

Henry Miller being first duly sworn deposes and says.

I am acquainted with both the complainant and defendant, I have known them seven or eight years in the City of Chicago where I have resided for the last ten years. When I first became acquainted with the parties, they were living together as man & wife, and continued so to live together, until the defendant went off from the complainant. A year ago last July, the defendant came to my house to board. The complainant has previously requested me to take the defendant into my family, he said he did not know what was the matter with her, that she refused to live with him and he wanted a good place for her, so that she would not be wandering around. The complainant paid defendant's board whilst she lived in my family. From the defendant's talk and actions she did not wish to live with the complainant. Since she came to my house, I have never known the parties live together as man & wife. Before she came to my house the defendant had been gone from the complainant and did not live with him for a good many months to my knowledge. The complainant has lived here for the last seven or eight years to my knowledge and is still a resident of Chicago. The defendant is not now living with the complainant to my knowledge, nor has she lived with him since she

left him. I do not know where she now is.

Sworn to & subscribed before
me this 11th day of Decr 1852.

George Manierre

Just. in Chy

Henry Miller

Sarah Kellogg being first duly sworn deposes and
says.

I have known both complainant and defendant about
three years last past. They lived together as man & wife in
this city when I first knew them. The defendant left
complainant's house, where I then lived in the same house
with them, about two years ago last September. She
gave as a reason for leaving her husband that he was
unkind to her and she could not & would not live with
him. I have never known of any unkind treatment of
the defendant by the complainant. He provided well for
her, so far as I know, and I should probably have known
if he had not. To appearance there was abundance
provided for the defendant. Previous to the defendant's
leaving, complainant, she had refused to cohabit with him
for several days & slept in my part of the house. I
endeavored to persuade her to return to her husband,
but she refused to do so, and on the 10th September 1850
left him altogether since which time she has not lived
with the complainant to my knowledge. In October
1850. defendant came to the house in complainant's
absence and took away what she chose of the furniture

I think the most of it, at least the most valuable part. The defendant informed me, that she and the complainant were married in the City and State of New York.

Sworn to & subscribed before } Sarah Kellogg.
me this 11th day of December 1852.

Geo. Manierre

Just. in Chanc.

Facts proven by the foregoing Evidence.

That the complainant and defendant were married many years ago in the State of New York and lived in this State as man & wife about eight years previous to their separation.

That two years ago from the 10th day of last September, the defendant wilfully deserted and absented herself from the complainant, without any reasonable cause, and continued so to absent herself to the filing of the bill herein and to the taking of the evidence above set forth.

That the complainant was a resident of the State at the time of the filing his said bill and for a period exceeding one year previous thereto, and is still a resident thereof.

In my opinion therefore the prayer of the petition should be granted, and I so recommend to this honorable Court.

All of which is respectfully submitted

11
My fee I report at \$5.00 paid by Com-
plainants Solicitor

George Manierre
Master in Chancery

And afterwards to wit in the 11th day of December
A.D. 1852. it being one of the days of the December
Term of said Circuit Court of said County for the
year aforesaid the following among other proceedings were
had to wit:

William Boyland }
v. } Divorced
Margaret Boyland }

And now at this day comes the said complainant
by his Solicitor, and files the report of the Master
in Chancery of this Court, to whom it was referred, to
take proof of the material facts and allegations set forth
in said complainants Bill of Complaint, which said
report, is ordered to be confirmed, and it appearing to
the Court from the said report, that, the said Com-
plainant at the time of the filing of said Bill was
and still is a resident of the County of Cook and State
of Illinois, and it also appearing that, the said com-
plainant and defendant were lawfully joined in marriage
and cohabited together as man & wife, and it also appa-
ring that the said defendant has without any reasonable

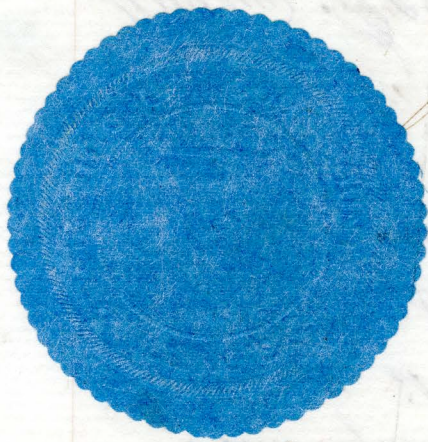
512450-2

cause deserted and absented herself from the said complainant for the space of two years and upwards, before the filing of the said bill.

It is therefore ordered adjudged and decreed by the Court that the bonds of matrimony heretofore existing between the said complainant and defendant be and the same are hereby dissolved annulled and forever held for nought. L.. And it is further ordered that the said complainant pay the costs of this proceeding.

State of Illinois }
Cook County }

ss. I Louis D. Hoard
Clerk of the Circuit Court of Cook
County in said State, do hereby certify that the above and
foregoing is a true and perfect copy of all the papers
filed and proceedings had herein, in the above entitled
cause.



In witness whereof I have hereunto
set my hand and affixed the seal of
our said Circuit Court at Chicago
this 3^d day of July A.D. 1856.

L D Hoard
Clerk

Fees \$ 3.⁵⁰

See the case of Montgomery vs. Brown Vol 2 Bill. 584. in point
that the service by sheriff must show to whom
he gave a copy of process, with a recital
of the family, to the name thereof - within of which
is shown in this case. We submit the case to the court on this point
Monr for bill & Error

State of Illinois } Supreme Court of
North District } the State of Illinois

Margaret Boyland }
vs. } Error to Cook Circuit Court
William Boyland }

The said Margaret Boyland
assigns for error to her prejudice in the
foregoing and annexed Record as follows
to wit. First. That the circuit erred in decreeing
the divorce, without evidence of the service of process
upon the said Margaret. - that she had ^{not} any notice
whatever of the pendency of said as required by law.
Second. That the decree of the circuit court is not
warranted by law or evidence.

Third. That the decree is not warranted by law ^{because}
~~she had no notice of the suit, whatever prior to said decree~~
~~she never having been given to said Margaret~~
as required by law. She having no notice thereof ~~when~~
was she ~~not~~ before the court. Wherefore she prays a
superseas and writ of Error to said William Boyland
and that said decree may be reversed &c.

Sept 20. 1836
By B.J. Morris her solr.
atly.

Margant Bay lands 3
" " " 3
Ortlia Bay lands 3

There was no appearance below
and the decree was taken by
default on the following terms -
"Exhibits ^{within} ~~the~~ ^{into} by having a
copy of the contents at the dwelling
house of John McBarbey with
a female white person on trial
years ago performing her of the
contents thereof - cards placed being
disseminated by plaintiff.
William L. Church -

This return is defective & gives the
court below no jurisdiction and
consequently the decree must be
reversed.

See

Prophet's Statutes Page

In Montgomery. ex. Bourn 2nd Dec R 584

the said question is decided.

The return does not show either that

the person into whom the sum was

was left was a member of the

defendants family. which is

necessary; or the name of

the person into whom left.

Townsend vs Briggs. 2nd Dec R 366

These authorities are clear & con-

clusive on the question.

Shumway Barto & Son
Plaintiff in error atty

Boy land

Plantiff answers
bills.

Shunday Waite
Hime
Plantiff in Error

85
Cook County Circuit Court

William Boylston

vs
Margaret P. Boyland

Record

Filed Sept 23, 1856
L. Leland
Clerk

Dec 3, 50 p.

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF Cook GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Cook county, before the Judge thereof, between William Beyland

Plaintiff and Margaret Beyland

defendant, it is said that manifest error hath intervened, to the injury of the said

Defendant

as we are informed by her complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND You, that by good and lawful men of your county, you give notice to the said William

Beyland

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William Beyland

notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this 23^d day of September in the Year of Our Lord One Thousand Eight Hundred and Fifty-six

L. Leland
Clerk of the Supreme Court.

By J. B. Rice Deputy

123
D. Supreme
Margaret Bayland
vs
William Bayland

Scire Facias

Service by reading to the within
named William Bayland
the 6th day of October 1856

Fees 1 Service 10
1 mile 5
1 Return 65-

James S Beach Coroner &
Acting Sheriff of Cook County
By John D Lart Deputy

Filed March 16 1857
L. Leland
CLM



good and lawful men of your county. You give notice to the said
one John and manner, according to law: Therefore We Command You that you
appear at Ottawa, before the Justices thereof to collect the errors in the same, in
judgment we have caused to be brought into our Supreme Court of the State of
Illinois, and are informed by your complaint the record and proceedings of which said

before the Judge thereof between

ment of a plea which was in the Circuit Court of Cook County

RECALL In the record and proceedings and also in the rendition of the Judge

TO THE SHERIFF OF THE COUNTY OF COOK

SUPREME COURT

STATE OF ILLINOIS The books of the said of Judges

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Cook* GREETING:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Cook* County, before the Judge thereof, between *William Boyland*

plaintiff, and

Margaret Boyland

defendant it is said manifest error hath intervened, to the injury of the aforesaid

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

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *23^d* day of *September* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*,

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy



Margaret Boyland
vs
William Boyland
Writ of Error



Filed Sept 23, 1856.
L. Seland
Clerk

Clerk of the Supreme Court.

the Judge thereof, between
of a plea which was in the Circuit Court of
RECUVER. In the record and proceedings, as also in the rendition of the judgment
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF
SUPREME COURT.
STATE OF ILLINOIS. } as. The People of the State of Illinois,
County, before
Clerking:

Margaret Higgins

William Boyland. Brief for plaintiff in error.

By the records and abstract, the Court will see that the Court below had no jurisdiction - the decree being by default.

The return is not a compliance with the statute. This point is distinctly decided in *Meatens*, & *Kempes*, 2 Scam 367, subsequently affirmed in *Montgomery* & *Brown*, 2 Gillman 58, and approved by Judge Skinner in *Ant. v. Rose* 17 Ill Reports 276.

The return does not designate the name of the person with whom left, which by the decision of *Montgomery* & *Brown* is necessary. It does not show that it was left ~~at~~ ^{at} the defendants residence. At the place the plaintiff at the dwelling house of John McCauley - said place being designated by plaintiff.

It does not show that it was defendants residence, or defendants family - or even that the plaintiff stated it was or that the person with whom the copy was left was a member of the family. She might a neighbor who happened to be there.

The matter is to clear away argument
W. Higgins

69

Margaret Boyland

9

Memo Boyland

19 Pauliff

in river

May 8. 1837

L. Leland
Clerk

Shumway, Martine
Donne

Committee
Pauliff river

69
Margaret Boyland
vs
William Boyland

69

1857

12480

X

~~James L. Johnson~~
vs
~~James L. Johnson~~

141