

8816

No. _____

Supreme Court of Illinois

John J. Leshner

vs.

George Mith, Admr.

71641  7

State of Illinois, 1st Grand Div. 2^d.
Supreme Court, November
Error to Wabash: Term A.D. 1852 -
John Jacob Lasher, Plaintiff in Error.

vs.
George Smith, Administrator of
Adelia Fox, Defendant in Error.

This was a suit brought before
Henry Steed Esq. a Justice of the Peace in
the county of Wabash, in this State, by the
Plaintiff in Error, who is a physician, to
recover the amount of his medical bill for
services rendered the intestate in her last
illness. Judgment was rendered by the justice
against the Plaintiff upon an agreed case
from which an appeal was taken to the Wa-
bash Circuit Court. Then the case was again
heard upon such agreed state of facts, as set
forth in the record, and the judgment of the Jus-
tice of the Peace affirmed, and this writ of
error is presented now here to reverse the
Judgment of affirmance of the Wabash Circuit Court.

The simple question presented for
the decision of this Court now here is,

Does "Act XXXVII." in the Ap-
pendix to the Revised Statutes of 1845, go-
vern the disposition of the personal estate of a
woman, dying, being the head of a family &c.?

That it does not, See. Appendix Rev. Statutes, 1845.
Act Number XXXVII.

1st Grand Div. Sup. Court
State of Illinois &c.

John Jacob Lesker.
vs.

George Smith, Plaintiff
vs. Adelia Fox, &c.

Geo. A. M. & Co.

Attacks of Order by
Plaintiff in Error.

8816

Constable, Attorney

Leshur
u
Martha

R. S. 597-§ 76 Is a woman a man

R. 552 § 76 provision for applying provision

suppose a woman dies who
has never been married
leaving a family of children

It is contended that the widow
having once rec^d a part of the
deceased husband's estate
under the law & thus taken it from
the creditors, allowing her chil-
dren to take again is allowing
the family to withdraw property
from the creditors is allowing
two portions from the creditors
this is not so, for the creditors
of the husband can in no event receive
any benefit from the widow's estate
But if it were otherwise the same mischief
would occur when a man dies leaving no
widow but more children.

1 Story 25-5-
2 Scam 224

As to the construction
of these statutes

Laws of 47

~~Martha & Martha~~

Suppose the husband & wife both
die the same day but the wife last.

Leahur

Martha

McCombs Estate

J. J. Lusher
is } Error to Nabors.
of Mills Adm. v. S.

The court below construed the 4th sec of act N^o XXXVII. of Appendix, R.C. p 597. to allow to the children of Mrs Fox, the same property upon her death, as would have been allowed them by it, in case of the death of their Father leaving no widow.

The Plff. insists that this construction is wrong, and that the death of the Mother is not within the meaning or object of the foregoing section.

The Defendant insists that the proper construction includes the mother, & widow ~~dying~~ ~~at the~~ being the head of a family and house holder, at the time of her death, as well as of the father.

In support of this construction The Dft maintains ~~that~~

1st That the spirit object and intention of the statute is to protect families of orphan children, so that they may not be left destitute upon the death of parents.

2^d That the act of Feb 11th 1847. p 168, of the Statute of Mills, and the unrevoked sections of N^o 37 in Appendix all taken together show that ~~the~~ families of orphan children, are as much within the object and intention of the Legislature, as are the widows and Mothers,

3^d Sec 76. in the Statute of Mills. (R.C. p 552) expressly provides, that when a male party is named, females shall be included, whenever

it can with propriety be applied.

The following cases are referred to, ~~and~~
showing that the rules of construction upon
statutes like these, support the grounds above
taken for Dept.

"The Court looks to ~~the~~ all the objects, and the entire
intent of the Legislature, & all statutes on the same
subject matter are to be interpreted together"

1 Story R. p 255.

2 Scam. p 224. Mason vs Finch,

As to allowances to widow & family see
Sumner & Marshall p 520, McNulty vs Lewis

A. Hitchell for Dept

A. J. Leach

George Wickham

Error to Mahan

Chief of Dept.