

No. 13296

# Supreme Court of Illinois

Williams

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vs.

Crean

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# SUPREME COURT

APRIL TERM, A. D. 1860.

THIRD GRAND DIVISION.

JOHN M. WILLIAMS

vs.

MARGARET CREAN.

*Appeal from Cook County Circuit.*

IN CHANCERY.

## ABSTRACT OF THE RECORD.

On the 20th day of October, A. D. 1859, Margaret Crean, the above named defendant, filed her bill of complaint against the said John M. Williams, in which she alleges that before the year 1842, one Jeremiah Sullivan was in possession of certain "Canal Lands," to wit: Lot 6 in Block 7, original Town of Chicago, and had a house on the west half of the lot, that he resided in the house and occupied the lot until he sold the same to Canute Hansen, some time in 1842, who took possession, and in October, 1843, Hansen sold to John Holderson one half of his right of preemption, and agreed with Holderson that he should have possession of and occupy the east half of the lot, that accordingly Holderson took possession of the east half of the lot, and enclosed and improved and occupied the same until January, 1851, when he sold to the complainant his interest in the lot and the improvements upon the east half of the lot, of which east half and the improvements thereon the complainant has been in the exclusive possession ever since.

That in April, 1843, Hansen sold his remaining interest in the lot to A. Solverson, and delivered him possession of the west half of the lot, with the improvements thereon, that in March, 1846, Solverson sold to Aslackson, that in March, 1848, Aslackton sold to Knud Anderson; that in June the said John M. Williams bought all the right and interest of the widow and heirs of the said Knud Anderson.



5 The bill further states that on the 4th July, 1855, Williams applied  
to the canal trustees for leave to purchase said lot as a pre-emptioner and  
falsely and fraudulently represented that he had a pre-emption right to the  
whole lot, and produced in support certain ex parte affidavits, which made  
no mention of the house erected on the east half by Holderson, or that  
any part of said lot had been occupied by Holderson or by the complain-  
ant; that by means of such affidavits Williams induced the Trustees to  
allow him a pre-emption claim to the whole lot, upon payment of the ap-  
6 praised value thereof, to wit: eighteen hundred dollars, payable one-fourth  
down, balance in one, two and three years, with interest at six per cent.  
in advance, and the Trustees gave him a certificate for the same.

7 That from the time Holderson bought of Hansen until the purchase  
by Williams, Holderson and complainant had the exclusive possession  
and occupation of the East half of the Lot: that Williams purchased with  
full notice of the rights of the complainant, and in fraud thereof and  
without her knowledge, and that as to one-half of said lot, he holds the  
same in trust for the complainant: that Williams has brought an action  
of ejectment to turn the complainant out of possession, and will succeed  
unless restrained by injunction:

8 The bill further states that the complainant, presuming that Williams  
might have made the payments to the Trustees according to the terms of  
the purchase, on the 15th day of May, 1858, tendered to him \$850, and  
demanded an assignment of one-half of the certificate, or that he allow  
her in some form the benefit of her equitable right in said pre-emption,  
and in the said one-half of said Lot, and offered to give security for the  
9 payment of the remaining one-fourth of the purchase price when due,  
but Williams refused to receive the money or comply with such request.

10 Prayer of the bill, that Williams may answer, but not on oath, that  
he may be restrained from prosecuting his ejectment suit, and from ob-  
taining or receiving from the Trustees a deed of the portion of the Lot  
claimed by the complainant, and for such other and further relief, &c.

12 The answer of Williams *admits* that Sullivan was in possession of  
the Lot—had a house on it before and up to some time in 1842, when he  
sold to Hansen, who took possession: *denies* that Hansen sold to Hol-  
derson one-half of Hansen's right of pre-emption to the Lot, *denies* that  
Hansen agreed that Holderson should have possession of or occupy the  
East half of the Lot, *denies* that Holderson or complainant at any time  
possessed or occupied the East half of the Lot: *admits* that Holderson  
13 some time in 1844 put a small house on the North-East corner of the  
Lot, but claims that he was either a trespasser or was acting upon the  
parol license of Hansen: *admits* that Hansen sold to Solverson his right



and interest in the Lot and his improvements thereon, and gave him possession thereof, and that Solverson sold to Aslackson, and that Aslackson sold to Knud Anderson, and that the widow and heirs of Anderson sold to Williams, and claims that such purchase and possession embraced the whole Lot: *admits* that he applied to the Canal Trustees to purchase as a pre-emptioner, and that in the affidavits presented to them no notice was taken of the complainant, because he had been informed and believed that she made no claim, and would remove from the Lot whenever requested to do so: *states* that at the time he purchased from the widow and heirs of Anderson, the Lot was unenclosed, and there were situate upon it, beside the houses and out buildings occupied by the widow and children of Anderson, the house claimed by the complainant and several other small houses; but that neither the complainant nor any of the occupants of the other houses made any claim to any pre-emption right: that when the lot was sold to him by the Trustees, the complainant made no claim to the Lot or to any portion thereof, nor offered to pay any portion of the purchase money, nor made any objection to Williams purchasing the whole Lot: that after he purchased from the Trustees, and before he had made all the payments, he notified the complainant that he had made the purchase and should require her to remove from the Lot, and she made no claim to any portion of the Lot, but promised to remove: that he, relying upon such promise, delayed commencing any proceedings to eject her; but at length, finding that her house was not vacated nor removed, he commenced the suit in ejectment, and obtained a judgment by default; and not until after such judgment was obtained did she set up any claim to any part of the Lot.

The answer also sets up the Statute of Frauds: also that Def't purchased the pre-emption right of the widow and heirs of Anderson, and paid for the same, without any knowledge of the alleged claim of the complainant: that complainant knew defendant was making claim before the Trustees for the whole of the Lot, yet she kept silent, and neither objected to the claim of defendant nor made any claim of her own; and defendant therefore insists that she is now estopped from setting up her pretended claim: that defendant has paid the whole purchase price, and not until such payment did complainant come forward to make any claim or to offer to pay any portion of the purchase money; and defendant therefore insists that if complainant ever had any right to the land, she has lost it by reason of neglect and delay; that if complainant ever had any such right, she should have presented it before the sale by the Trustees: that either she did not present it to them, or if she did they rejected it, and that in either case she is precluded from further urging her claim.

To the answer the complainant put in a general replication.



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The complainant read the deposition of John Holderson, which is as follows:

John Holderson being of lawful age, duly sworn and deposeth as follows, to wit:

1st. State your name, your age, residence and occupation.

*Ans.* John Holderson is my name, my age is forty-nine years, I live in Chicago, State of Illinois, and am a carpenter.

2d. State whether you know the lot in controversy in this suit, being lot No. 6 in Block No. 7 in the original town of Chicago.

*Ans.* Yes, I was.

3d. State whether you ever lived on a part of it, and on which part of it?

*Ans.* I did; I lived on the East part of it.

4th. During what time did you live on the East part of it?

*Ans.* I commenced in 1844, and lived there seven years.

5th. Who occupied that portion of the lot immediately preceding you?

*Ans.* Canute Hansen did.

6th. Was he the father of Edward K. Hansen, just been sworn?

*Ans.* He was.

7th. From whom did you derive your right to the East part of said lot?

*Ans.* Of Canute Hansen.

8th. Did you give him any thing for it? if so, how much?

*Ans.* I gave him five dollars.

9th. Did you live in that house and on the East part of that lot after you gave five dollars?

*Ans.* I did.

10th. State whether Canute Hansen interfered with you living there, and prevented you exercising the rights of ownership?

*Ans.* He did not.



11th. Was the house which you lived in, on it at the time you paid him five dollars?

Ans. I could not say that very well.

12th. Who put the house there?

Ans. I moved the house there from the other side of the street.

13th. Whose house was it?

Ans. Mine.

14th. Was there a fence between your house and Hansen's?

Ans. Sometimes, and sometimes not.

15th. Who put the fence there?

Ans. I put part of it, and he put part of it.

16th. When was it put there—how soon after the bargain between you and him?

Ans. I could not say that very well.

17th. State as nearly as you can.

Ans. I can't tell when it was put there, precisely.

18th. What time of the year was it you paid him the five dollars?

Ans. In the spring.

19th. Was the fence put up during the same year?

Ans. I could not say that.

20th. How long did the fence continue up?

Ans. Sometimes we had a fence, and sometimes not.

21st. State whether at the time you purchased from Hansen, you and he staked off the quantity you were to have.

Ans. In the last of April or first of May.

22d. Who staked it off?

Ans. Hansen and I was together, staked it off.

23d. How much was staked off?

Ans. I could not say exactly how much front was staked off.

24th. How much depth did you get?



*Ans.* I got the length of the lot.

25th. Did Mr. Hansen reserve to himself any right to the portion which you got?

*Ans.* No, I guess not.

26th. After you purchased from him, had you the same right in yours that he had in his? [This question is objected to.]

*Ans.* I believe I had.

27th. What right did he sell to you? [Objected to.]

*Ans.* He said I should have it the same way he got it, and the same privilege he got.

28th. What did you do with this property?

*Ans.* I put my house upon it; sometimes I planted in it potatoes, sometimes nothing.

29th. You say you lived upon it seven years; what did you do with it at the end of that time?

*Ans.* I moved from it, and sold the house.

30th. Who did you sell it to?

*Ans.* To Margaret Crane.

31st. When you sold to Margaret Crane, did you keep back any right in the house or lot?

*Ans.* I guess not.

32d. Did you sell her all the right you got from Hansen, or less than all the right? [Objected to.]

*Ans.* I sold all my house to Margaret Crane. I said I would have no trouble about the lot.

33d. Did Margaret Crane pay you anything for the purchase? and if so, how much?

*Ans.* She paid me forty dollars for the house, and I gave her a little fence along the side of the house.

34th. Did you continue to live on the lot when you sold to her, or did you remove off?

*Ans.* I moved off the same day I got the money for the house.



35th. Who did you leave in possession of the portion of the lot in question?

*Ans.* Margaret Crane got the house, and the house was on the lot.

36th. Who moved into the house?

*Ans.* Margaret Crane got the house and got the key.

37th. Was there any writing given by you to Margaret Crane at the time she paid you the forty dollars?

*Ans.* No, I don't give her any.

38th. Did she ask you to sign any writing?

*Ans.* Yes, she asked me.

39th. Did she offer you a writing to sign? was there a writing drawn up?

*Ans.* She did; there was.

40th. Why did you not sign it?

*Ans.* I refused to.

41st. Why did you refuse to?

*Ans.* I could not understand it very well.

42d. Did you not state at the time that you would not sign the paper, because you had got no writing from Mr. Hansen? [Objected to.]

*Ans.* I don't think of that; I could not remember that.

43d. Where was the forty dollars paid? where were you at the time?

*Ans.* Right in the house Margaret Crane bought.

44th. How long was she to keep the house upon the lot? [Objected to.]

*Ans.* The house could stay on as long as it might, as for me.

45th. Did you ever move back to that part of the lot?

*Ans.* No, sir.

46th. Did you ever make any use of that portion of the lot afterwards?

*Ans.* No, sir.



47th. Did Margaret Crane occupy the whole of the ground staked out by you and Hansen?

*Ans.* I don't know.

48th. If she did not, who did? [Objected.]

*Ans.* I don't know. I saw some shanties there—don't know whether Margaret Crane occupied the lot.

49th. You speak of having sold her some fence at the time you sold the house; where was the fence standing?

*Ans.* *Between this house and Hansen's house. I sold the house and gave the fence to her.*

#### CROSS EXAMINATION.

1st Cross Int. Did you get any writing from Hansen?

*Ans.* No, sir.

2d. Was there anything said between yourself and Hansen about there being any pre-emption right?

*Ans.* No, sir.

3d. At the time you got permission from Hansen to move your house on to the east side of the lot did Hansen pretend to you that he had any right to the lot?

*Ans.* No. He said he wanted to give me the lot the same way he got it himself.

4th. What was the house worth that you sold to Margaret Crane?

*Ans.* I don't know. I sold the house for forty dollars. I think it was cheap enough.

5th. Before you sold her the house, had you made inquiry to ascertain whether you had any right to that part of the lot which you occupied? [Objected to.]

*Ans.* Yes, sir.

6th. Had you become satisfied that you had not any right to the land? [Objected to.]

*Ans.* Yes; so I understood; I had no right to the land. [Objected to.]

7th. Why did you sell the house? [Objected to.]

*Ans.* I wanted to move on the West Side. [Objected to.]



8th. Had you been informed that you would have to remove the house from the lot before a great while? [Objected to.]

*Ans.* Somebody was talking about it; I had no written notice of it.

9th. If you had supposed you had a right to the land, would you have sold the house for \$40.00? [Objected to.]

*Ans.* I guess not. [Objected to.]

10th. At the time you sold the house, did they want you to agree or warrant that the sills were such that the house could be moved?

*Ans.* Yes, sir.

11th. What did you say to this?

*Ans.* I said they had to look around the house and look on the sill.

12th. With whom did you make the trade, or have the talk?

*Ans.* With Margaret Crane. I think Maurice Crane and James O'Connor were there.

13th. How much did you ask for the house in the first place?

*Ans.* Sixty dollars.

14th. Did they give any reason why they would not give so much as that?

*Ans.* If the house could stand there they could give that, if it was not they could not give it.

15th. How much of this fence you gave her, was there?

*Ans.* All I own, 20 or 24 feet, I can't say exactly.

JOHN HOLDERSON.

The complainant also read the depositions of other witnesses, from which it appears that the fence built by Holderson was 29 feet from the east line of the lot, and was kept in repair until some time in 1853; that the mother and brothers of the complainant occupied the house, the complainant also living with them a part of the time, from the time of the purchase from Holderson until the present time, except that soon after Williams commenced the ejectment suit the family removed from the house, and no person lived therein until more than a year afterwards, when they returned. The complainants witnesses also say, that during this time when the Crean family were living elsewhere, the house was not abandoned, but was kept locked, and that they left some articles of furniture, &c., remaining therein. Some of the complainants witnesses who were present at the time when complainant bought of Holderson, in



1851, say that Holderson said he had an interest in the land and that when it should come to sale complainant would get it at the valuation, and that Holderson sold her all the right and interest he had in the land. It also appears from testimony offered by the complainant, that Hanson is dead, and that when he lived on the lot he did not know that he had any preemption right to it.

### DEFENDANT'S EVIDENCE.

#### *Eli S. Prescott's Deposition :*

1. What is your name, age, occupation and residence, and are you acquainted with the parties to this suit, or either of them?

A. My name is Eli S. Prescott. I am 48 years of age. I am in no particular business. I reside in Portsmouth, New Hampshire. I am not acquainted with the comp't in this suit. I know the defendant.

2. Have you had anything to do with the canal lands of the Board of Trustees of the Ills. and Mich. Canal, as agent or otherwise? State what your relation has been to the Board.

A. I have had charge of the canal lands as an agent of the Board of Trustees, since A. D. 1845, under an appointment of the Board of Trustees of the Ills. and Mich. Canal.

3. Are you acquainted with the parcel of land known as lot No. 6 in block No. 7, in the original Town of Chicago? If so, how long have you known it?

A. I have known the lot of land in question since A. D. 1835.

4. Do you know whether any application was made to the Board of Trustees by any person to be allowed to purchase such lot, or any portion thereof, by virtue of any pre-emption right? If so, state what you know on the subject. (Int. objected to by comp't's sol's.)

A. There was an application made by a Norwegian woman, a Mrs. Anderson, I believe, who claimed by virtue of improvements she claimed to own upon the lots. My impression is that some other claim was made by another person, I think Jeremiah Sullivan. There was a pre-emption allowed to Mrs. Anderson, I think. The papers would show. I have forgotten the particulars; the other claim was not allowed.

5. What was the nature of the other claim of which you have spoken, or upon what ground was the other claim made, or how extensive was it?

A. When the question of pre-emption claims was up, Sullivan spoke to me about his claim. (It was lot 5 or 6, I am not certain which,



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I am pretty sure it was lot 6.) I requested him to make a written statement of his claim, and he did so. I don't remember whether he made it under oath or not; I think it likely enough he did, as that was the custom, and he made out his claim, and submitted it, and I remember that by his claim or statement he was not entitled to the lot; that he had already disposed of his claim. Sullivan claimed no more than one lot.

6. When and where was it that these claims were made, and during what time were the Board of Trustees hearing and adjudicating upon the claims for pre-emptions in this block.

A. These claims were made all along for two or three years previous to July, A. D. 1855. The claims were in the first instance made to myself, at my office in Chicago, likely at 177 Lake street. The papers were in the first instance filed with me, setting forth the nature of the claim. After the claims had been filed, Col. Joel Manning and myself, by order of the Board, appointed a time at my office in Chicago, when the claimants should come forward with proofs to substantiate their claims. They generally came forward, and the testimony was taken down in writing. At that time I don't remember whether Mr. Sullivan came forward to prove his claim or not. My impression is that we gave notice through the papers to the claimants to come forward and prove their claims. There was ample notice given in some way. The claimants were not heard all at one sitting, but on different days and at different times; sometimes we adjourned to give the parties a chance to produce their evidence. They may have all been heard within one year, perhaps within six months. After the testimony had been all taken, and before the Board took action, the opinion of Judge Theophilus Dickey, of Ottawa, was taken, and the State Trustees, Mr. Roberts and Col. Manning, were also consulted as to who were entitled to pre-emption claims under the proof and the law. The decision was made in writing by these parties, I think, and the Board of Trustees, I think, concurred with them.

7. Was any claim made to this lot or any portion thereof, by the complainant, Margaret Crane, or any one in her behalf?

A. I don't remember that there was, there might have been. I have no remembrance of this Margaret Crane. There were many claimants to different lots.

8. Did any person claim a portion or any undivided share or interest in the lot?

A. I have no remembrance of anything of that kind—I think not.

9. What was the practice of the board in allowing claims and issuing certificates, when there were different claimants, claiming not the



whole of the lot separately, but a portion or undivided share or interest in the lot?

A. They followed the general government plan, they issued the certificate jointly, to all the claimants entitled to pre-emptions under their decision.

The answer foregoing objected to by complainant's solicitor, Mr. Gookins, as being irrelevant and secondary, and cross-ex. waived.

E. S. PRESCOTT.

Sworn to and subscribed before me, this 2d day of December, 1858.

L. C. PAINE FREER,  
*Master in Chancery, Cook Co.*

J. H. Kedzie testified that he had known the lot in question ten years, during which time there had been situate thereon Mrs. Anderson's house and the Crean house, and also, until the purchase by Williams, some seven or eight shanties; that when he first knew the lot there was a fence between the Crean house and the Anderson house, but that there had been none of late years, but only a row of stubs or ends of posts; that he acted as attorney for the Andersons; that they sold out their preemption right to Williams, he paying them therefor eleven hundred dollars, and also, paying afterwards to the Canal Trustees eighteen hundred dollars, and also, agreeing to give the Andersons the east quarter of the lot, free of all charge; that previous to the commencement of the ejectment suit by Williams, and some time in the summer or fall of 1855, they called on the occupants of the different houses and notified them to vacate the premises; that they saw Mrs. Crane, the mother of the complainant, who promised that they would remove within a week or ten days; that they did not remove and the ejectment suit was commenced in November, 1855, and shortly after that the Cranes removed to the opposite side of the street, and the house remained unoccupied for some time.

On the hearing the complainant amended her bill in the particulars mentioned in the decree, which decree was as follows:

MARGARET CRANE  
vs.  
JOHN. M. WILLIAMS. } *In Chancery.*

Comes now the complainant, by Messrs. Gookins, Thomas & Roberts, her solicitors, and the defendant, by Messrs. Farwell, Smith & Thomas, his counsel, and this cause is now set down for hearing upon the bill, answer, replication and proof, and whereupon, it is on motion of the complainant ordered, that she have leave to amend her bill to



make it conform to the case proved, by inserting in said bill, after the word preemption, where it occurs in the fourteenth line of the second page of said bill, the words "and all his right and claim to east half of said lot," and also, by so amending her bill as to claim only twenty-nine feet in width, extending through the whole depth, to be taken off the east side of said lot number six in said bill mentioned, which amendment the said complainant now files, to which order allowing the said amendment and the filing thereof, the said defendant at the time thereof by counsel excepts, and the Court being sufficiently advised of and concerning the premises. It is thereupon ordered, adjudged and decreed, by the Court now here, that the equity of the case is with the complainant, and that she is entitled, as against the said defendant, to twenty-nine feet of ground in width, and extending through the whole depth, to be taken off the east side of lot number six, in block number seven, in the original Town of Chicago, said County of Cook, in the complainants bill mentioned, upon the payment by her to the said defendant, of the proportion of purchase money paid by the said defendant to the Board of Trustees of the Illinois and Michigan Canal, which the said twenty-nine feet bears to the whole value of the said lot, without improvements, and it is further ordered, adjudged and decreed, that the said defendant execute and acknowledge a deed of conveyance of the said twenty-nine feet of said lot, conveying the same to the said Margaret Crane, by such title as will transmit to the said Margaret Crane, all the right, title and interest of the said defendant in and to the same, held by him under his purchase and certificate from the Board of Trustees of the Illinois and Michigan Canal, and all the right, title and interest in and to the same which he may acquire by any conveyance of the said lot to him, by the said Board of Trustees of the Illinois and Michigan Canal, and that within twenty days from the date of this decree he deposite such deed with the Clerk of the Court, to be delivered to the said complainant, upon the performance of the part of this decree to be performed by her. And it is further ordered, adjudged and decreed, that the said complainant, within twenty days from the date of this decree, pay unto the office of the Clerk of this Court, for the use of the said defendant, the sum of eight hundred and forty-four dollars, being the proportion of the purchase money of the said lot, paid by the said defendant to the Board of Trustees of the Illinois and Michigan Canal, with interest thereon, from the time of payment by him to the fifth day of May next, which the said twenty-nine feet bear to the whole width of said lot, to wit, eighty feet, to be paid to the said defendant upon the execution and delivery of such deed from the said defendant to the said complainant.

And it is further ordered, adjudged and decreed, that until the said fifth day of May next, the said defendant be enjoined and restrained from prosecuting his action of ejectment against the said complainant in the said complainant's bill mentioned, and upon the payment of the said



money by the said complainant, and the execution of the said deed by the said defendant, the said defendant be perpetually enjoined and restrained from prosecuting the said action of ejectment, and from setting up any claim or title to the said twenty-nine feet of ground, in width, off the east side of the said lot number six, by virtue of any title or claim derived from his purchase aforesaid from the Board of Trustees of the Illinois and Michigan Canal.

And it is further ordered, adjudged and decreed that the said complainant recover against the said defendant her costs and charges in this behalf expended.

And it is further ordered and decreed that in case the complainant shall fail to pay the said sum of (\$844) Eight Hundred and Forty-four Dollars within the twenty days above mentioned, then the complainant's bill be dismissed with costs.

And the defendant prays an appeal to the Supreme Court, which is granted upon his executing a bond in the penalty of one hundred dollars, with Dwight T. Williams as surety, within ten days.

The defendant appealed, and assigns as error that such decree was not warranted by the law nor by the evidence given, and that the bill of complaint should have been dismissed.

FARWELL, SMITH & THOMAS,  
*Sol'rs for Appellant.*



Supreme Court

John M. Williams

Morganella Cream

Abstract by Record

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Dorrell Smith

& Thomas

all for appd

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