

No. 407

Supreme Court of Illinois

John Thos., and Wm. Jones, John Doe
ex dem.

vs..

Betsy and Nancy Bramblet

(379)  7

Pream-
ble

Pleas held at Equality in the County
of Gallatin & State of Illinois on the
first Monday of April 1835 before
the Honorable Alexander F. Grant
Judge of the Circuit Court for the
County aforesaid. →

Be it remembered that heretofore to wit on the
18th day of February 1834 John Doe by his at-
torney filed in the Clerk's office of the said Court
his declaration against Richard Roe in the
following words and figures to wit

State of Illinois Gallatin County, Set,

Declara-
tion

In the Circuit Court of said County at the March
Term 1834 John Doe, Complainant of Richard Roe at-
tendant has been summoned, &c. of a plea of Trespass & Ejectment
for that where as, Nancy Bramblet and Betsey Bramblet
Minors, under the age of Eighteen year, by their Guardian
Samuel Elder, on the 31st day of August 1832, at
the County of aforesaid, had demised the Southeast
quarter of Section numbered fourteen, in Township Eight
South, in Range numbered Six, East situated in said
County, and containing One hundred & Fifty Acres,
with the appurtenances, to the said John Doe, he came
& to hold the same, to the said John Doe, and his
assigns, from the 30th day of August, in the year aforesaid,
for and during and unto the full end & term
of seven years, from thence next ensuing, fully to be
complete and ended, by virtue of which said demise,
the said John Doe, entered into the said
Covenant, with the appurtenances, and became & was

thereof possessed, for the said Term, so to say thereof
granted as aforesaid; And the said John Doe being
so thereof possessed the said Richard Roe, afterwards to wit
on the 13th day of Sept, in the year of aforesaid, with force
and arms &c entered into the said tenements, with the
opportunities, in which the said John Doe was so
interested, in manner, and for the term of aforesaid, which
is not yet expired, and ejected him the said John Doe,
out of his said farm; and otherwise to the said John
Doe; then and there did, to the great damage of the
said John Doe, and against the peace & dignity
of the people of the State of Illinois; Wherefore the said
John Doe saith, that he is injured and hath sustained
damages, to the value of three hundred dollars, and there-
fore he brings his said &c

Gutwond & ally
per P. P. P.

notice
Mr. Horatia Coffey

Sir I am informed that you are
in possession of, or claim title to, the premises in this decla-
ration of ejectment mentioned, or to some part thereof, and
I being sued in this action as a casual ejector only;
and having no claim or title to the same, do advise
you to appear, at the next term of the Gallatin Circuit
Court, on the first day thereof, to be commenced & holden
on the first Monday of March next, by some Attorney of
that Court, and then and there, by rule of the said
Court, to cause yourself to be made defendant in my
suit, otherwise I shall suffer judgment therein to
be entered against me by default, and you will
be turned out of possession before the 1st day of February

in the year of Our Lord 1834.

Your Loving Friend

Richard Roe

affidavit
of service
of notice

State of Illinois, Gallatin County, ss,

John Doe ex. dem., Bramblets,

Willis Pinnell makes oath, that he this deponent
did on the 19th day of February 1834, deliver to Mr.
Horatio Coffey the tenant in possession of the premises
in the declaration heretofore annexed, mentioned or
of some part thereof a true copy of said declaration,
and of the notice thereon then written, and did at the
same time inform him the said Horatio Coffey,
that it was a declaration in ejectment, and that
unless he appeared by some attorney of this Court, on
the first day of this present March Term, and cause
himself by rule of Court, to be made defendant in the
worn of the casual ejector Richard Roe, judgment
would be entered against the casual ejector Richard
Roe, by default and that he the said Horatio Coffey
would be turned out of possession or words to that
effect,

Sworn to and subscribed in open Court, March
Term Gall, Cir. 1834 3 March 1834.

Ld. P. White Clk

Willis Pinnell

consent
rule

And at the March Term 1834 the following consent
rule was taken to wit on the 14th day of said mo-
nth, In the Gallatin Circuit Court March T 1834
Between John Doe on the demise of Nancy & Mary Bram-
blets, Plaintiffs Richard Roe, defendant for the S &

Consent
rule
cont-

quarter of Section No 14, in T. 14 N. 6, S. R. 12 W. East
Containing 160 acres, situate in Gallatin County,

It is ordered, by consent of the Attorneys of both parties
that the heirs of Sarah Brown; to wit; The said Mrs
Forest John Jones be made defendants instead of the
now deft. Rich. Roe & do appear forthwith at the suit
of the plaintiff, & receive a declaration in an action
of Trespass & Ejectment, for the premises in question in
this Cause forthwith, plead that he is not guilty, & upon
the trial of the issue, confess lease, entry & ouster ⁱⁿ
~~and~~ ^{not} upon title only - otherwise, let judgment be
entered for the plff. & the now deft. R. Roe by default.

And if upon the trial of the issue the said heirs shall
not confess lease, entry & ouster, whereby the plff. shall
not be able further to prosecute his suit against the
said heirs, then no costs shall be allowed for not prose-
cuting the same, but the said heirs shall pay costs to
the plff. in that case to be taxed. And it is further
considered, that if upon the trial of the said issue, and
should be given for said heirs or it shall happen that the
Plaintiff shall not further prosecute his said suit for any
other cause, then for not confessing lease, entry & ouster,
then the heirs of the plff. shall pay to the said heirs
his costs in that behalf to be adjudged - By the Court,

Gatwood & Eddy for heirs of plff.
Jesse L. Robinson for deft.

And at the same term to wit on the 15th day of
the same month, the defendants by their Attorney filed
the following plea to wit;

Doe Ex. dems. Bramblits

March Term 1834,

Plea Richard Roe and now at this Term
Come the defendants - ~~bram~~ parties herein by consent
of Counsel & order of Court. John Jones - Thos. Jones - Mrs.
Jones & defend the force & injury when &c. & say that they
are not guilty in manner & form as the plaintiffs have
above declared against them. and of this day put them
selves upon the Country &c.

Lepus J. Robinson

after attorney

and the plaintiff doth the like,

Galewood & ready for plff

contin
uance

Ordered that this case be continued, until the
next term of this Court.

Noting on the 8th day of February 1834, the plaintiff
filed the following cost bond, to wit; -

John Doe. Ex. demine -

Nancy & Betsey Bramblits, by their next Friend,

Samuel E. Elder - } In Equity Court Circuit

Cost
Bond

Richard Roe } Court February 8th 1834,

I Samuel Elder having been selected as the
next Friend of Nancy & Betsey Bramblits & having
accepted the appointment, do hereby enter my self as
and acknowledge myself bound to pay or cause to be paid, as
security for costs, ~~that~~ pay or cause to be paid, all
costs that may legally accrue or devolve upon the said
Nancy & Betsey, they being Minors, in the above cause
dated this 8th day of February 1834.

Samuel Elder

And at the Sept. Term of the said Court
Came the parties by their attorneys and on
motion, and by consent ordered that this case
be continued at the costs of the defendants, therefore
it is considered by the Court that the plaintiff
recover against the said defendants their costs and
charges in and about their suit at this term
expended. &c.

And afterwards at the April Term 1835 -
Came again the parties by their attorneys and
the defendants having filed their plea of not guilty,
upon which the plaintiffs took issue wherefore let
a jury come, and thereupon came a jury to
wit: - Isaac Hogan, Benjamin Barlow, Abner
Overfield, Turner Cook, George B. Mayhew, David
Duggar, Fountain W. Smith, Barton Scroggins, John
Dawson, Daniel Paine, James S. Burroughs &
Stephen Fields, who being elected tried and sworn upon
their Oaths do say, we of the Jury find the defendant
guilty and assess the plaintiffs damages to One Cent,
whereupon the defendants by their attorney moved the
Court for a new trial herein, and filed the follow-
ing grounds, to wit;
1st The Court erred in allowing the ^{purpose} of the
evidence for any other ~~purpose~~ than that of proving that
the ^{life} of the plaintiffs continued to live with Mrs Sarah
Brown, after John Brown, the testators death, and
that Mrs Sarah Brown had also died.

1st The Court erred in allowing parol evidence to be given of the sayings of Mrs Sarah Brown; and of those of the ^{commission} ~~commissioners~~ of the Lepars & B. Bramblets - and of Mrs Nancy Browns, willingness to have the said N. & B. Bramblets bound to Mrs Sarah Brown; and at the same time in rejecting evidence of the defendants - offered to disprove such willingness - & to show that said Commission ^{and} of Mrs Nancy Brown never intended. & so said that the said N. & B. Bramblets should be bound to Mrs Sarah Brown.

2nd. The verdict of the Jury was Contrary to Law & evidence, the devise in the Will, read to the Jury, & in evidence to ^{the} them, being in the following language: - namely -

Grounds
for
new
trial
cont.
&
copy
of
will

" I John Browns of the State of Illinois & County of Gallatin, being in perfect Mind & Memory, do make & ordain this my last will & testament and it is my will that my earthly property should be disposed of in the following manner: ^{Viz}: first I give and bequeath to my well beloved wife, Sarah, the following quarter section of land, ^{Viz}: the South East quarter of section Eleven Township Eight South in Range 6 East - also the South East quarter of section fourteenth in Township Eight, South of Range Six East in the lands sold at Shumetown, for to have the benefit & profit of the farms and improvements that are on both quarter sections during her natural life & at her death to descend to her heirs, except the South East quarter of section fourteenth, which is given equally

to two Infant Children, that are now living with
us named and Called Nancy Bramblet & Betsy
Bramblet daughters of Benjamin & Dolly Bramblet.
This Land is given to the aforesaid Nancy & Betsy, if
they should continue to live with my wife and are
bound to her, and continue to live with her till
marriage, and further should both or either of them
marry with my wife's consent. they are authorized to
settle and improve on the aforesaid South east 1/4
of Section fourteen, but my wife is to have the
benefit of the present improvement during her natural
life. Also I further give & bequeath to my
beloved wife aforesaid, all the personal property,
that I am now possessed of, secondly I give & bequeath
to my Beloved Brother Francis Brown, the west
half of the N.E. quarter of Section twenty in Town Eight
South Range seven East of the Lands sold at Equality.
Thirdly I give to my Friend Mrs. Bennett, three lots
that I hold in Twp N. 17. 34 & 35. I do hereby constitute
& appoint my beloved wife Sarah & Mr. Brown Executors
of this my last will & testament. In testimony & having
I have hereunto set my hand & seal this first day
of March One thousand eight hundred & Thirty
signed in presence of
Elijah Jones
Peggy X Murry
marks
given an Estate dependent on its vesting in the
Lifors of plffs upon Condemnation proceedings which were

John Brown (Seal)

not proved to have been completed with; therefore it never
rested in them.

1st The verdict of the Jury was contrary to law and
evidence generally.

John F. Robinson
Defts. attorney

overruled
motion
for
new
trial

The court overruled the Motion on the above grounds for
A new trial - whereupon the defendants except to the
decision, & pray this Bill of exceptions to be signed &
return sealed

Allen F. Grants Esq

Be it known that on the trial of this case the
Defts Counsel moved the Court to make the copy of this
will, under which both parties claim title - a part of the
record in this case, and a part of the case which
said copy was read in evidence to the jury, the Court
overruled the motion; upon which the defendants Counsel
objects

Allen F. Grants Esq

Exceptions

and also as follows. Be it known that on the trial of
this case the plffs. Counsel asked George Wright what
Sarah Brown said in relation to binding the Bramble
Children (plffs) and what she said about their living
with, he Wright said he never heard her say any thing
about the Children being bound to her, that Mrs. Brown
left her in the fall, but before that requested Mr. Nancy
Brown to keep the Children. Children are great nieces of
the Testator John Brown - who died 12th March 1830.
Mr. Tho^s Vaughan asked Mrs. Brown if she was to keep
and raise the plaintiffs Bramble Children, she said
she & Mr. Nancy Brown would not let the Children be
bound to her, if she would she was not able to keep
them. Had nothing against Children living there since

exception, all this was in the summer after the Testator Brown's
Death, she said she was going to break up house keeping
& going to Kentucky or Mississippi. Nancy Brown said
summer after testator Brown died, took the Brown's
Children to her Mrs Sarah Brown - who said she did
not want them, & was not able to take care of them,
never required them to be bound. They were 8 or 9 years
old that October. Sarah Brown died in Kentucky
in May 1833.

Defts Counsel asked witness if she had not frequently
said the Children never should be bound to Sarah
Brown. She is the Grand Mother of the Children & had
them in keeping. The Court refused to allow the question
to be answered.

The depts Counsel offered to prove by witness that
Nancy Brown - Keeper & Grandmother of the Preamble's
Children. That often said they never should be bound to
Mrs Sarah Brown. Which the Court refused. Whereupon
the depts Counsel objects to the introduction of all
the foregoing testimony & decisions & to the ^{oral} ~~admission of~~ ^{full}
testimony in said case - except to prove the death of
Mrs Brown - & the living with her of the Children, & insists
that the whole be excluded from the jury.

Atty. J. Grants 
asked also the following. Be it remanded that on
the trial of this suit which was in dispute the follow-
ing copy of of the Will of John Brown was read -
~~(The issue the copy of the Will) in evidence by the depts
Counsel in which the property in dispute, & described in
the Will, was devised to the Sons of the Plaintiff.~~

copy
of

will

I John Brown of the State of Illinois and County
of Gallatin, being in perfect Mind & Memory, do make and
ordain this my last will and Testament, It is my will
that my earthly property should be disposed of in the fol-
lowing Manner. Viz:

1st I Give and bequeath to my well beloved wife
Sarah, the following quarter section of Land. Viz:
The South East quarter of Section eleven, Township eight
South of Range Six East in the Lands of the
Shawnee Nation, for to have the benefit and profit of the
farm & improvements that are on both quarter sections
during her natural life, and at her death to descend to
her heirs, Except the South East quarter of Section Twelve
which is given ^{Equally} ~~equally~~ to two ^{named} ~~named~~ children that
are now living with us, I call them Betsey Brimblet &
Nancy Brimblet, Daughters of Benjamin & Polly Brimblet.

This Land is given to the aforesaid Nancy & Betsey if they
should continue to live with my wife, and are bound to
her, and continue to live with her till married. And fur-
ther I should both or either of them marry with my wife's
consent, they are authorized to settle and improve on the afore-
said South East quarter of Section fourteen, but my wife
is to have the benefit of the present improvements during her
natural life - Also I further give & bequeath to my
beloved wife aforesaid, all the personal property that I
am now possessed of.

2nd I give & bequeath to my beloved Brother, Dennis
Brown, the east half of the South East quarter of Section
twenty in Town eight South, Range 6 East of the Lands

Sold at Equality:-

3^d, I Give to my Friend William Burnett ^{Three} Lots that
I hold in Equality Viz N^o 17, 37, & 59. I do hereby con-
stitute and appoint my beloved Wife Sarah and W^m
Burnett, Executors of this my last will & testament, I do
testimony whereof I have hereunto set my hand and
seal this first day of March One Thousand Eight
hundred & Thirty,

Signed in presence of

John Brown

Elijah Jones

Peggy Murry

Next

State of Illinois

Gallatin County

Probate of will
Certified that this 26th day of March 1830 personally appe-
ared before me Leonard White Judge of Probate in and
for the County of Gallatin of and said Elijah Jones &
Peggy Murry, in a last will and testament of John Brown
deceased being presented to me and it appearing that the aforesaid
Elijah Jones and Peggy Murry, are the subscribing Witnesses
thereto, who being of lawful age, and give a duly sworn
depose that they saw the Testator John Brown, sign his name
to the within last will & testament, and that they in the presence of
each other and in the presence of the testator subscribed their names thereto
as witnesses, that said Jones by writing his name, & the said Murry by making
her mark & further that at the time the testator signed the same as his
last will & testament he was of sound mind memory & understanding to the
best of their knowledge observation & belief, whereupon the said will is admitted
to probate, & better testimony thereupon granted to Sarah Brown & W^m Burnett
the day & date above written. In testimony whereof I have hereunto set my hand
as Judge of Probate aforesaid. Lrd White Judge of Probate
In compliance by the J^{ft} Counsel in which the property in dispute, & de-
scribed in the will, was devised to the L^{ds} of the Plaintiff.

The plffs Counsel then introduced parol evidence
which was objected to by the Dfts Counsel - except so
far as it went to show a compliance with that part
of the Will which made it necessary for the Executors of
plffs - to continue with Mrs Sarah Brown - and that
she Sarah Brown had since the making of said Will
died. The Court overruled the objections; whereupon
George Wright was examined. He states John Brown
died 12th March 1830. That on the 8th of said month the
children, Exors of plffs, were at John Browns, and were
about 8 years old. That sometime in the summer after the
Death of John Brown, the Witness, was there & Sarah
Brown was then laboring under the palsy she said she
had got Old Mrs Coleman Brown to take care of her
till she got better, she did not get better, & in the fall went
to Kentucky, where she died, she said nothing about the
binding of the children. John Brown had no children,
plffs Exors were Daughters of Polly Bramblet, who was
a daughter of Coleman Brown, Brother to the testator.

Mr. Vaughn's testimony was also objected to, objection over-
ruled. He said in the summer after a case of testator he
asked Sarah Brown, if she was going to raise the chil-
dren. meaning Mary & Betsy Bramblet. She said
Old Mrs Brown, the wife of Coleman Brown, would
not let her have them bound, and that if she would
she Sarah Brown could not take care of them. That
she was going to break up house keeping, & going to Ken-
tucky or Mississippi. Mary Browns evidence objected to. Objection

enrolled, States that in the summer after testators death
she took the children to Sarah Browne & told her
that she wanted the Old Lady to keep them for her to
have them if she wanted them, Sarah Brown said
she did not want them. Could not take care of them
not even herself, and wanted the Old Lady to keep
them, She never took charge of the children, nor
refused them to be bound to her nor stay nor their friends
never refused to have them bound, She, Sarah Brown,
died in May 1832 & from the fall of 1830, she was ab-
sent out of the State in Kentucky where she died.

The depts moved to exclude all the foregoing evidence
except the will, move to be excluded from the jury
by Depts. Counsel. This motion was overruled by the Court
whereupon he, Depts Counsel, offered & moved to introduce
Mrs. Johnson, Lepin Darby & Elizabeth Cox, to disprove
the willingness of Nancy Browne & the companions of the
Children, depts of pffs to have them bound, and to
show that said Nancy Browne had said that they
never should be bound. The Court ~~refused~~ refused to allow
said witnesses to be introduced, To which refusal depts.
by their Counsel - excepted - Signed & Sealed this 17th day
of April, 1835 -

Alex. J. Grant

And at the same term of the said Court, came again
the parties by their attorneys, and on motion of the pffs. ordered
that the Judgment on the verdict of the jury be now entered,
It is therefore considered by the Court, that the plaintiff recover

Judg.

against the said defendants his term yet to come in the premises in the declaration mentioned together with the damages aforesaid by the Jurors aforesaid assessed and his costs by him about his suit in this behalf incurred and may have execution &c. And on the Motion of the plff by their Attorney The writ of Habeas facias possessionis is awarded him. And in the progress of the trial of this Cause the defendants by their Counsel tendered a bill of exceptions to the opinion of the Court which is ordered to be filed & made part of the record in this Cause. The plffs pray an appeal in this Case, which is granted upon entering into bond with ~~them~~ living Security in the Sum of Two hundred Dollars within twenty days from this time.

Power

of Attorney to make appeal Bond

And on the 4th day of May 1855 the following power of Attorney was filed in the clerk's office of said Court to wit: Whereas, heretofore Nancy & Elizabeth ~~Daughters~~ Infants under the age of Twenty One years, by their Guardian & next Friend Samuel Elder, instituted suit in the Circuit Court for said County of Gallatin & State of Illinois, against John Jones, Thos. Jones & others heirs at Law of Sarah Brown deceased, which said suit was determined in favor of said plffs from which said decision an appeal to the Court of Appeals is desired. Therefore for the purpose of taking and perfecting the decision aforesaid. We the undersigned Messrs. Thos. Jones Citizens of the County of Trigg & State of Kentucky do by these presents, nominate constitute appoint Our Friend William Smith of the County of Gallatin & State of Illinois Our true & lawful Attorney for us & our heirs, to execute, acknowledge & deliver an appeal bond in the said Case, and in all things necessary to be done to prepare said Case for the Court of Appeals and for the successful prosecution of the

Said Appeal when taken, and also as Our trust & lawful
Attorney to transact Any business which may be necessary
for the Settlement and calculations of any & every debt which
we or either of us may have in the estate of Said Sarah
Brown (decd.) hereby ratifying & confirming such & every
act. Our Said Attorney may do in the premises the
same as though we were personally present, performing the
same. Given under Our hands & seals this 23^d day
of April, 1835

In Testimony Whereof
I have hereunto set my hand & seal

John Jones Esq.
Clerk

Commonwealth of Kentucky
Trigg County

I William Cannon, Clerk of the County Court for the
County aforesaid do hereby certify that the within power
of Attorney from John Jones, & Thomas Jones to John Jones
was, on this day produced to me in my Office, and
acknowledged by said John Jones & Thomas Jones to
be their respective act & deed, for the purposes therein spec-
ified, which is accordingly Certified to all whom it may
concern.

Wm Cannon
Clerk

In testimony whereof I have here-
unto set my hand, and seal of Office of
said Court, at Office in Cadiz, this
24th day of April, 1835, and in the
43^d Year of the Commonwealth

Wm Cannon Clerk

And the following Bond was entered into & filed, to
said John Jones by those persons that are John
Jones, Thomas Jones, and John Jones are held and

firmly bound unto Nancy & Rebecca Bramblet in
sum of Two Hundred Dollars and good and lawful
money of said State, for which they will be
Appeal truly to be made for and for ourselves. Our each of
Bond Our heirs, Executors or administrators, firmly by their
presents signed with Our hands & sealed with Our
seals & dated this 4th day of May 1833.

The Condition of the above Obligation is such
that whereas the aforesaid John & Thomas Jones have taken
an appeal from the decision of the Circuit Court of the
County of Gallatin, State of Illinois to the
Court of said State, in the case of said Jones &

and said John & Thomas Jones are bound to, having they
the aforesaid John & Thomas Jones, shall pay the judgment
of the Supreme Court with costs interest and charges
in case the judgment shall be affirmed, and that they will
duly prosecute said appeal, or in case of failure on their
part, the said Lewis will do it for them, then this obligation
to be of no effect, or otherwise to be of full force & effect.

John Jones & Co

Thomas Jones & Co
they have promised their atty in fact

Abner Lewis Esq

State of Illinois
Gallatin County ss

I Leonard White clerk of the Circuit
Court in and for said County do certify that the
foregoing transcript of seventeen pages contains a true
full and complete transcript of the record and proceed

ings had and maintained in the cause there in specific
ed as fully as the same remains of record in my
office. In testimony whereof I have hereunto set
my hand and the seal of said
Court at Equality this 14th day
of May A D 1835
Geo. Whiteck

It is agreed between the parties in this case that the within record contains
all the evidence given upon the trial of it. It, however, the bill of exceptions
in the Court below does not state, in substance, that it contains all the evidence
given in the trial then this agreement is to be void.

3rd June 1835.

Henry Sady, atty. for Plffs.
L. Robinson, atty. for depts.

10

Don to Don

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Filed June 3

1835. In Bureau

Adgment taken

See com

Due on the same
of the Bramblets } Appene from Gallatin

27
James Lotters

This was an action of Ejectment
to recover possession of the S E q^r of section 14 in
T. & S. R. 6 East. The Lessee of the plff claimed
the land under the will of John Brown
who devised the Land named in his said will
as follows viz "First I give & bequeath to my
well beloved wife Sarah the following quarter
sections of Land viz the South East quarter of
section eleven in Township eight South of Range
6 East. Also the South East quarter of section fourteen
in ~~the~~ township eight South of Range 4 East, in the
Land sold at Shawneetown for to have the
benefit & profit of the farms & improvements, that
are on both quarter sections, during her
natural life; and at her death to descend
to her heirs. Except the South East quarter
of section fourteen, which is given equally
two infant children, that are now living
with us, named & called Nancy Bramblet,
Betsey Bramblet, daughters of Benjamin
Polly Bramblet. This Land is given to the
aforesaid Nancy & Betsey, if they should continue
to live with my wife, and are bound to her

That his wife Sarah Brown was feeble, and
infirm, and died in May 1892. That the Lefors
of the ~~plffs~~ offered in evidence the declaration
of Sarah Brown, as to her inability to receive
and take charge of them and did not desire
to have them come of her removal to Kentucky
without them, where she died. That the
Lefors were at the time infants of tender
age. not more than 8 or 9 years old.
This is the substance of the testimony objected
to under the first point as inadmissible. —
There can be no doubt that the testimony
was proper to show that, that portion of
the will, which made the estate created
in the Lefors of the ~~plffs~~ depend on the condition
of their living with Sarah Brown, and
being bound to her, was had been dispensed
with by Sarah Brown, and therefore, that
the performance of those acts, as conditions
~~subsequent~~ to their taking the estate, ~~has~~
~~been~~ was, by no means, necessary to the
perfection of such estate.

On the second point made, the offer to
give in evidence, the declaration & acts
of Mary Brown that the children should
not live with or be bound to Sarah Brown,
was wholly irrelevant being the declaration

and Acts of a third person, and was properly
rejected. The last point made necessarily
involves the construction of the will, of the
Testator, and upon that construction,
must depend the tenableness of the objections
that the verdict recovered of the Lessee of
the plaintiff is not justified by the evidence.
It is admitted that the language of the will
is by no means free from obscurity giving
to ~~the~~ ^{its} peculiar ~~construction~~ ^{phra-}
seology, and the seeming incongruities
of its several parts. Still as it is an
settled judicial maxim, that where
the Court can fairly ascertain the real
intention of the Testator, & give effect to
the several parts of the will without
rendering any component part inoperative,
it is bound so to do. It is believed that
in the present case that maxim can
be justly applied. I have come to the
conclusion that ~~in the~~ ^{in the} ~~view~~ ^{view} of the Testator
to his wife of the gives the two quarter
sections ~~referred~~ ^{referred} named to her for her natural
life ~~with~~ ^{with}

If there should be an adherence to the
literal interpretation of the first devise, in
the will, it is evident that the Testator
created an estate for life in both the gr.
Sections described in favor of his wife with
a remainder over to her heirs; but after
having done so, he then excepts Section 14,
being one of the two named, from the operation
of this devise, and devises it to the Lepros
of the self upon the condition "that they should
continue to live with his wife and be bound
to her, like with her until they are married".
Now, this second devise of the same Land,
evidently operated on, and destroyed the first,
as it relates to Section 14. And it gave this
Section, in present, upon a condition, which
might, or might not be performed. - The
performance would first depend on the consent
of his wife for unless she consented to
the Lepros residing with her, & being bound
to her, it is evident that they could not
perform either parts of the condition.
doubtless the Testator was desirous that they
being then of tender age, should continue
under the care & protection of his wife
& to effectuate that object more certainly
he designated the mode he supposed

most likely to accomplish the object, but
it is seen that both the living and enjoyment
of the Lepors was prevented by the voluntary
act of the wife, for whose benefit it may
be supposed the condition was ^{also, on some occasions} originally
created, & the more so, as when they became
of more mature age, the Testator must
have supposed that they would be of
great service to her. The accomplishment of
the ~~object~~ ^{however} object is eventually defeated by
the death of Sarah Brown, the wife of
the Testator, & thereupon the condition
annexed to the creation of the Estate on the
Lepors of the plaintiff, become an impossible
condition, to be performed, and consequently
the Lepors take the Estate given, without
the condition thus rendered nugatory.

That Estate, however, is but a life
Estate, ^{to take effect on the death of Testator} ~~there being no words of inheritance~~
~~in the devise~~ or perpetually contained
in the devise, and such words being indispensable
to make a fee. The verdict there was neither
against Law nor ^{to the} ~~in~~ Judgment of the court
Court is ^{to the} affirmed with costs.

Brown's will - Jones ex. dem. Brown v. the
Bramble children.

2 Eq. Abr. title "Conditions" p. 213.

A having issue three daughters, B, C. & D.
devises 1000^l to B. to be paid her at 21, or mar-
riage, upon condition that she married with
the consent of his executors, and likewise devised
to her several meynages, &c. and after several
other legacies, he devised the residue of the es-
tate to the executors for the benefit of his chil-
dren; tho' B. married a person who made
his address to her in her father's life time,
which the father knew and was dissatisfied
at, and after the father's death the Execu-
tors expressed their dislike thereof, and gave
B. notice of her father's will, yet there being
no limitation over, ^(a) this will not amount
to a forfeiture, being only in terrorem. Easter

Term 1721, Semphill et ux. & Bayley et ux. before Lichmere, ch. King C.B.
& Domes, &c. - Pres. in Chan. 582 - 1 Atk. 363.

Note (a) There being no limitation over, such a
condition as this is only in terrorem. Secus
if there had been a limitation over,
for in such case a court of equity
cannot interpose. Vide 2 Term. Rep.
10, 119 -

And. v. Hale } Testator bequeaths all personal, except plate "here"
1 Vesey. 396 } = in after given to daughter, "to his wife" and no further mention
made of daughter in will, & no further disposition made
of plate, held undisposed of

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Mem. of authority in the
case Bramble's children
Eq. Ca. Abr.

is given in the present

Doe & dem
Brennblits

Jones & others

Judge affirmed
Opinion
Smith

Filed Jan. 30
1837 J. W. Duman
Cof^d

Doct. E. dem. Bramblets - appeal from Gallatin.

vs. Appellees.

This was an Ejectment brought by John, Thos. & Wm. Jones - the March Term, of the Gallatin Circuit Court, A.D. 1834 - to recover the S.E. q. of Sec. 14 in T. 8 S. R. 6 East, at which Term John Jones, Thomas Jones & Wm. Jones were made parties - defendants - as heirs of Sarah Brown. At April Term 1835 the case was tried. The lessors of plaintiff claimed the above land under, & by virtue of, the will of John Brown who bequeathed as follows. First I give & bequeath to my well beloved wife Sarah the following quarter sections of land, viz, the south east quarter of section Eleven Township Eight South in Range 6 East also the south east quarter of section fourteen in Township eight South of Range Six East in the lands sold at Shawneetown for to have the benefit & profit of the farms & improvements that are on both quarter sections during her natural life & at her death to descend to her heirs (Except the south east quarter of section fourteen which is given equally to two infant children that are now living with us. named & called Nancy Bramblet & Polly Bramblet daughters of Benjamin & Polly Bramblet) (This land is given to the aforesaid Nancy & Polly if they should continue to live with my wife & are bound to her & continue to live with her til married) and further should both or either of them marry with my wifes consent they are authorized to settle & improve on the aforesaid south east q. of section fourteen but my wife is to have the benefit of the present improvements during her natural life. The defendants claimed title under the same will - & the above & the rest of it that gives rise to the respective claims, & rights, of the parties litigating this suit. The jury found for the plaintiff's lessors. The defendants assigned for Error the following Causes; - among others - to which they principally confine their attention - & request that of the Court.

That the Court admitted in proper parol testimony to be given in evidence to the jury on behalf of plaintiff's lessors; and all kind of ^{parol evidence} ~~the same~~ rejected on the part of the defendants - & excluded it from the jury.

That the verdict of the jury was Contrary to law & to the Evidence.

That the Court refused to grant a new trial - & overruled the motion & grounds therefor.

In relation to the Error of ^{admitting} introducing the parol testimony given in Evidence to the Jury. None whatever ought to have been ^{introduced} allowed; even if the gift in the will was sufficiently explicit - as to the thing, or description of the property, ^{or land} given, to Create a fee Conditional estate - except such as showed, or would prove, that the plff's - lessors Continued to live with Sarah Brown, wife of Testator; & that she, Sarah Brown, had died since the Testator.

If the lessors of plff - had been bound, under the will, to Sarah Brown, it should have appeared by record Evidence alone, ^{St. Dig. 58.} the parol evidence, of plff's lessors, had its effect upon, & with, the jury in making up their verdict & that of the defendants - offered & rejected - was intended to, & would, disprove - rebut - destroy & alter that, ^{allow or} admitted for the Lessors of plff. And any matter, or thing, that was - or was susceptible of being made appear by parol proof, on the one side, was equally Capable of being rebutted - disproved - altered & destroyed by similar proof on the other. If, therefore, it was admitted - tho' erroneously - for one party to the suit - it should not have been rejected as to the other; which was done - and this was more erroneous. Con. 170.

Where a fee simple is conveyed to one, there is no estate remaining. 5. Dane 501. Sec. 3. 4. Dana. As regards the verdict of the Jury, the defendants are entitled, 514. Sec. 5. under the will, to the bequeathed lands - as heirs of Sarah Brown -

the testator's wife; for it is given & bequeathed to them alone, absolutely & unconditionally, viz, "to Sarah Brown ^{during her natural life,} & at her death to descend to her heirs."

But the lessors of plff say the land ^{was, though, a fee estate given to Sarah Brown, & the fee to her heirs. This may be done, it is legal.} and for is excepted out of the gift & bequest to Sarah Brown & her heirs, & given to them in fee simple. ^{See 22. 27. 28.} This cannot be the fact - for, if the identical land given & bequeathed to Sarah Brown & her heirs, was all taken away from them by an Exception - the exception would be repugnant to the estate previously devised & vested; and therefore void. So that the former disposition of the land would remain as if the after excepting clause had never been made.

4. Dana's ab. ^{Sec. 1. 3. 4. 5. 9. 10. 11.} 72. 3. 4. = 1. Sheph. Touch. 79. But here the exception is also void because of the uncertainty in the description of the thing, land or estate Excepted - There being no words of reference, or specific identification - ^{such as a for and} as, in the gifts & bequests to Sarah Brown & her heirs. St. & also 4. Dana 505. Sec. 7.

But the most extensive estate - be it of what property it may - that is
given by the will to the lessors of plff, is no more than a life estate;
for the gift has no words of inheritance, or perpetuity, contained
in it; and such words are indispensable, to convey a fee. 2. Pl. Com. 108.
In ^{Sec. 12. 22. 5. 11.} Dane's ab. 305. 7. 609. 15. If, therefore, the lessors of plff - succeed
in this case - they must hold the land during life, & after their deaths the
defendants must come again into the possession of it; for the fee is in them, & will
be all the time of such life estate. 4. Dane 503. 4. If the testator meant the
estate of the defendants should be conditional - & liable to be defeated by acts
of the lessors of plff. subsequently to be performed - he used words so uncertain
as to be void, as "the south east q^r of section fourteen", without ^{any reference or} further des-
cription; and the words "is given equally - to - & - of - & - White Bramble" with-
out words of inheritance. So that, if the donor meant the estate should be con-
ditional in defendants, it is absolute - & in them in fee. 4. Dane 312. But no
such intention can be admitted - for there can be no intention - or devise by
implication - against words clear & express. 4. Dane 571. ^{Sec. 10.} If the testator had not
intended the defendants to have the land - he would not have said "at his death
to descend to her heirs"; but would, or ought to have, said "to descend to the plff's
lessors. A devise for life, remainder over, or of the use, or profits of of the land 4. Dane 501.
There are two distinct estates in land, devised to the wife & to one of them the life, and the other the fee. even sup-
posing the defendants are entitled to the land on other grounds - even sup-
posing the thing, property or land accepted, & given to them, to be sufficiently
described to shew that it was the same previously bequeathed to the
defendants - or to Sarah Brown their ancestor - because its vesting in
the plff's lessors - & divesting out of the defendants - depended upon three
separate & distinct conditions precedent; none of which were proven
to have been complied with, or performed: and until they, each & all
were performed no estate - not even life estate - or the thing, property or land
could vest in the said lessors, as devisees. Whatever estate was given the lessors
was conditionally given; & was to be created & vest, or arise, or not - accord-
ing to the performance, or nonperformance of said conditions. 2. Pl. Com. 154. 7.
4. Dane 162. 4. 782. 3. If the condition be only subsequent, & the estate is given to ano-
ther, it must strictly performed 4. Bac. 420. Condition that destroy an estate must
be performed strictly. 4. Dane 164. ^{Sec. 9.} The Court cannot make a will or interpret it by
an arbitrary construction, nor take into their consideration any subsequent alteration of
events. 4. Dane 503. ^{Sec. 6.}

The heirs of plff. altho' minors - are bound by Conditions in wills as other persons. 1. Bac. 401. = 4. Bac. 413. = 4. Dane 162. Conditions when attached, or annexed, to real estate are not in terrorem. But then Conditions precedent, or subsequent take place. 4. Bac. 411. 12. 13. 14. See further as to Executory estates; Freeholds & fees; Estates tail; Contingent remainders, &c. 4. Dane 302 to 6. If the heirs of plff. were to recover the land - who would take it after their death, not their heirs, clearly. Or would they not be joint tenants or tenants in common, with the defendants during life, & afterwards the defendants, or their heirs, have it again in possession - & in fee? 2. B. Com. 381 - in note by Christian.

The bill of Exceptions, last set forth in the record, contains all the Evidence that was introduced on the trial of the case; the jury, therefore, finding such a verdict - did manifestly err: for it is contrary to law & Evidence.

As regards the Court's refusing to grant a new trial, & overruling the motion therefor. The Court certainly erred in so doing - and altho' it is a general rule with this Hon. Court, that such refusal cannot be assigned for Error; yet, from some of their decisions, I am induced to believe that this is a case - so peculiarly situated - that this assignment of Error will be considered by the Court, and ^{this} as a case that ought not to fall within the rule - should the previous matters herein taken - & urged, not be sufficient to warrant a reversal of the judgment complained of. B. 13. 163. 201. also B. 46. 62.

Respectfully,
Atty - for appellants.

The word stand supra after
2 Bac. Abr. 53 - 54 55 X

1st Court committed improper - parole testimony -
The land was in individual - & the conditions are subsequent - Or if proved not they are in terrorem - Of what avail w^d it have been if the witness had answered his questions - The whole of the thing cannot be excepted - as per Touch. But due only a part is excepted.

As to nature of Estate - what words of inheritance
As to the description of the thing not complete

Atty for Defendants

Atty for Defendants

Atty for Defendants

Atty for Defendants

Doc Ex. dem. Bramble
vs. appellants

In the Supreme Court-

June Term 1835.

John Jones, Thos. Jones & Wm. Jones.

appellants

And now at this term come the
proceedings aforesaid, & in the rendering the judgment in this case,
it there is manifest error in this, to wit,

- 1st That the Court rendered judgment for the plaintiffs ^{the appellants} ~~before~~ and
against the defendants, ^{the appellants} when, by the law of the land, it
should have been against the ~~plaintiffs~~ & in favor of the defendants.
- 2nd That the land devised, & in dispute in this case, was bequeathed
absolutely & unconditionally to the wife of the testator & to her heirs.
- 3rd That afterwards, in the same will, the said land was given to plaintiffs
~~before~~, by an exception, & conditionally; which conditions are ~~prece~~
=not, & were not proven to have been complied with, & performed.
- 4th That the Court admitted ~~partial~~ testimony on behalf of ~~plaintiffs~~ ^{the appellants} ~~before~~; &
rejected it on the part of defendants, the appellants.
- 5th That the verdict of the Jury was contrary to law & to the evidence, ^{the}
~~will of exceptions, set forth in the record, containing all the evidence given on the trial.~~
- 6th That the Court refused to grant a new trial & overruled the motion therefor.

Wherefore, for the errors aforesaid, the Appellants pray
that the judgment aforesaid be reversed, & that they be restored
to all the rights they have lost by the said erroneous judgment.

Sepe J. Robinson,
Counsel for appls.

Order in Error

Entry for Sept in Error

Cor Ex. dem. Brambletz
T. S. Appellants.

John, Thomas Wm. Jones.
Appellants.

in liquidation

Emors a signed.

Filed June 3, 1855