

8417

No. _____

Supreme Court of Illinois

Lewis Lavender

vs.

Rose Latimer

71641  7

Lewis Garrison et al v James
Rip Latimer &c

Aggrieved by Wesley
Shaw. Counsel for Stephen Erwin

At the October Term of the Hardin Circuit Court
1846, on a Bill in Chancery at the suit of Richard
L Threlkeld and Phineas C Barnett vs James Anderson
heirs, to foreclose a mortgage ^{a decree was made} as follows "This cause came
on to be heard upon the bill answers and exhibits therein
referred to, the same being submitted to the consideration
of the Court, it is decreed and ordered, that S. Russell & Co
recover in this suit the sum of fifteen hundred dollars
and forty eight dollars and twenty six cents and interest
to be computed after the rate of 6 per centum per annum
from the 23rd Oct 1846 until paid and his costs in that
behalf expended, to be taxed by the Clerk of this Court.
and that Richard L Threlkeld and Phineas C Bar
net complainants in this Cause also recover the sum
of eleven hundred and ninety six dollars and seven
ten cents and interest thereon from the 23rd day of October
1846 to be computed after the rate of six per centum per an
num until paid and also their costs in this behalf expen
ded to be taxed by the Clerk of this Court. It is further or
dered that executions for said sums, {be issued} to be lev
ied upon the mortgage premises in the Mortgage men
tioned in said Mortgage or so much thereof as will
be sufficient to satisfy and pay the aforesaid demands
and interest and costs aforesaid, and that Lewis Gar
rison be appointed Commissioner and after advertis
ing in four public places for six weeks previous to
the day of sale and that the same be sold at the
Court house door in Elizabethtown on some County Court
day and the premises when sold to be sold subject
to the lease made by James Anderson in his lifetime
to a certain James T Barbour and the parties are herein
dismissed"

(8417-1)
These words seem to be ~~being~~ left out of the ~~original~~ of the copy
furnished me
not very well connected or filled up

The above is the decree at least in substance having taken it from a copy of the record. It is not written in the usual language of decrees of Foreclosure. It does not say that the defendants be forever barred and foreclosed of their equity of redemption, and the mortgaged premises be sold &c; but it does that which amounts to the same thing. It orders executions to be levied upon the mortgaged property, which is to be sold to pay the demands: and Lewis Larned is appointed Commissioner &c. The only informality in the decree, is the ordering of the executions. Still a Court of Chancery may adopt that plan of selling the property or rather the informality consists in ordering the executions, and also appointing a Commissioner to execute the decree. The law is that "When there shall be no Master in Chancery or Commissioner to execute a decree the same may be carried into effect by execution or other final process according to the nature of the case directed to the Sheriff or other officer of the proper County &c" Rev Laws Ch 21. sec 46. If there is no Master in Chancery and the Court appoints no Commissioner to execute the decree, it may be executed by the Sheriff on execution issued by the Clerk. And ^{doubtless} the Court may in its wisdom order the decree to be executed by execution, and where the Court orders execution in the decree, and also appoints a Commissioner, it is the judgment of the Court, and must stand until reversed. But when it comes to executing such a decree; How is it to be done? Shall it be executed

by the Sheriff or by the Commissioners? That way which will make the decree consistent with itself is the one to be adopted, and that is, to allow it to be executed either way, as Complainants may choose. In this case they choose to have it executed by the Sheriff and probably they were influenced to do so to some extent by the fact that Lewis Lavender the Commissioner was also the Sheriff. The record shows that Lewis Lavender was the Sheriff, and therefore if it should be wrong for him, as Sheriff and on execution, to carry out the decree, still his sale of the property might be regarded as made by him as Commissioner. True, he went through the whole business as Sheriff, and if his ~~as Sheriff~~ ^{as Commissioner} were wrong, it may be ~~as Sheriff~~ ^{as Commissioner} but take away the execution, ^{say they are absolutely void,} and his capacity as Sheriff, and still he is Commissioner deriving his power upon the decree, and has done just what the decree ordered him to do. I say the Complainants were doubtless influenced to some extent by these considerations, in selecting the alternative of carrying out the decree by execution. For the record shows that on the 11th November 1846 executions in both cases were issued and on same day came to the Sheriff's hands, were levied upon the mortgaged property, and on the 4th day of January 1847 said property levied on was sold as follows by Lewis Lavender Sheriff at public sale as follows

under the execution in favor of Russell & Co
a part of said property was sold to Calvin
J. Allen for \$1667.54 which satisfied the same
and left a balance of \$24, to be applied
to the other execution, and under the execution
in favor of Threlkeld & Barnett a part of
said property was sold to John Mitchell
for \$145. another tract to Noah Cravens
for \$355. another tract to Phineas C. Barnett
for \$120. and another tract to William
Pell for \$305 making in all \$925. The
record shows that the purchasers paid
their money for the land thus bought
to the sheriff.

At the October term of the Circuit
Court of Hardin County 1847. Ross L. Lamer
admr of James Anderson deceased on behalf
of himself as such admr and on behalf of the
heirs of the said deceased the defendant in
error moved the Court to quash the said
executions and set aside the said sales
and also to amend the decree. No new mat-
ter or facts outside of the record were intro-
duced to sustain the motion except the man-
ner of the preceding Judge made at the Oct
term 1846. On hearing the motion the Court

ordered as follows "It is considered by the Court
and so ordered that the said executions in favour
of the said Barnett and Threlkeld and of the said
Russells improvidently issued as aforesaid were
illegal and unwarranted by said decree and that
the sales of the real estate of the said James Anderson
deceased under said executions were irregular
and not in conformity to with the true decree of
the Court and are therefore void and the same
and the executions under which they were made
are hereby quashed set aside and wholly for no-
thing esteemed and that the said heirs or other repre-
sentatives of the said James Anderson deceased be
and they are hereby restored to and replaced in
all their rights in respect to the premises so illegally
sold that they were possessed of at and previous
to the issuing said illegal ~~an~~ executions and the
illegal sales under the same and it is further or-
dered that the Clerk of this Court do amend the for-
mer decree entered herein at the October Term of
this Court A.D. 1846 so as to make the same corres-
pond substantially and in the true sense of
the judgment of said Court as evidenced and shown
by the minutes of the Honorable Walter B. Seaton
late Judge of this Court as noted in his hand
writing on the Docket of said October Term
A.D. 1846 to wit appointing Lewis Lavender Com-
missioner to sell the real estate of the said James
Anderson deceased described in the Mortgage

sought to be foreclosed by giving notice as under
executions at law when the same have been levied
upon real estate and the said premises to be sold
subject to James T. Barbour's lease to the extent of
the same and subject to the prior incumbrance
if any of Samuel and Robert Russell under their
Mortgage" and in pursuance of the said order
the original decree was amended, the amendment
being as follows "It is further ~~concluded~~ by the
Court ordered and decreed that the Mortgage
of J Russell & Company be foreclosed and the lands
mentioned therein be sold or so much thereof as may
be necessary to satisfy their debt interest and cost; and
it is further ordered that the Mortgage of Barnitt and
Thurkela be foreclosed and that the lands mention-
ed in said Mortgage be sold to satisfy their said
debt interest and cost. It is further ordered that
Lewis Lavender be appointed Commissioner to
sell the aforesaid lands by giving at least twenty
days notice by putting up advertisements in three
public places at least twenty days before the day
of sale the same to be sold subject to James T
Barbour's lease He continued for Report &c"

I have not got a copy of the
Judges Minutes before me, but if the above order
contains a correct statement of them it is ap-
parent that after all the amendment to the
original decree does not correspond with the
Minutes. The judgment as evidenced by them

From the judgment of the Court in the foreclosing on this motion, this appeal is taken by the administrators of
Nash Craven, who in his lifetime was one of the defendants to said motion

lands in
is that the Complainant's Mortgage be sold
subject to Russell's prior incumbrance, if
any, and to Barber's lease. From this it is
evident that the Court judging from these Min-
utes, merely intended to order the sale of the
lands in Complainant's Mortgage the same to
be subject to Whetum ^{prior} incumbrance Russell
he might have on the lands - a very differ-
ent judgment indeed from that contained in
the original decree; both before and after its
amendment. But the question more immediately
before the Court now, is, not whether the Court
made the amendment to the original decree
in accordance with the said order requiring
him to do so or not, but whether the Court
below decided correctly in ordering the
original decree to be amended and the ex-
ecutions and sales to be set aside. This ques-
tion may be considered in a two fold as-
pect.

- 1st Does the record show sufficient grounds,
to ~~be~~ set aside the sales and executions
and amending the original decree - and
- 2^d If so, is the summary proceeding by Mo-
tion the proper remedy -

As to the first proposition. The order of the Court
made at the Oct Term 1847 shows plainly that
it was made on the ground that the decree of Oct

1846 did not correspond with the proper Minutes that these Minutes were evidence of the true decree and that therefore the original decree should be made to correspond with them and that as these Minutes said nothing about the issuing of executions therefore the executions issued were illegal and the sales void, and should be set aside. This is evidently the view the Court took of the question because if you take away these Minutes from the case it cannot be pretended that the executions were illegal or "improvidently" issued. On the contrary the original decree expressly ordered the executions. What is an execution - a writ issued out of the Clerk's office in the name of the People of the State directed to the Sheriff commanding him of the property of the defendant to make the plaintiffs debt or damages to be listed by the Clerk and his official seal. Such was the process ordered by the original decree - such was the process issued by the Clerk which came to the Sheriff's hands and under which the sales were made. Under the original decree the executions and sales were all regular. And according to the views previously presented if

no executions had been issued, but Landon
in his Capacity of Commissioner had proceed
ed to sell such sales would also have been
regular and in accordance with the decree
Hence we expect that in the absence of these
Minutes the Court would decide the said ex
ecutions were illegal and the sales under them
void. No, it was these Minutes of his prede
cessor which influenced the New Judge's Opin
ion and pronounced the order of Oct 1847
there was nothing else to do it. There were no new
facts introduced by affidavit or otherwise. Nothing
pronounced on the hearing but the original de
cree, the executions, Lewis Sheriff's Returns of
sales, &c. and the Judge's Minutes. Although it
did appear that the decree of Oct 1846 did
not correspond with the Judge's ^{Minutes}, was that fact alone
of sufficient weight alone or to justify in law
the alteration of the record by the New Judge?
Such a rule as this, would lead to interminable
difficulties. We might go into the Clerk's office
hunt up the Judge's Dockets compare his Minutes
made in the several cases with the judgments and
decrees rendered therein and wherever a vari
ance was detected there would be ground
for amendment and for setting aside final
process, sales of property to third persons and
bona fide purchasers, &c.

The Minutes of the Judge are no part of the record
In the case of Strahl et al vs Webster et al 11th Illi
nois Reports, ^{the court say} that "it is a familiar doctrine that a
Court has control over its records to alter or amend
them during the term at which they are entered." And
in matters of form or mere clerical errors the Court
may at a subsequent term make amendment,
on giving notice to the opposite party. Hunter vs
Sherman 2 Scam 539. O'Connor vs Muller. 11th Ill Rep
59. ^{It is proper and legal} ~~There can be no objection~~ to amending a
clerical error either at the term it is made or
subsequently. What is it? a mistake or blunder
made by the Clerk. As in case of Judgment in debt
on bond for the performance of Covenant. In mak-
ing out the judgment of the Court, ^{suppose} it is for the
damages only, and not for the debt. This is a clerical
error, and in order to correct it, it is only necessary
to look into the papers. and finding the action is
in debt the declaration in debt. of course the judg-
ment should be in debt, and hence, it can be
amended, at any time because we have the papers
to amend by, the writ and the declaration. But af-
ter a term has expired, ^{and one intervening, and has} the old judge ^{has} left
the bench, it is a very different matter to amend
the record, by the Minutes of the Judge which is
no part of the record. "a record is conclusive proof
that the decision or judgment of the Court was as there
stated; and evidence to contradict it will not be ad-
mitted", and in order that the proceedings

The minutes of the Judge are merely memoranda taken during the progress of the Cause and it is an exclusion of the judgment of the Court is oftenwards enrolled or spread out upon the public records of the Court by the Clerk. In a case therefore where a difference occurs between the Judge's Minutes & the record, the presumption is in favor that the Judge himself has abandoned the substance & language of his Minutes and accepted and approved of the record.

of a Court may have the effect of a record, ~~and~~ the proceedings must be enrolled. Thus where on an issue of Null tiel record a judgment was produced and to rebut that evidence the plaintiff produced a rule setting aside the judgment for irregularity the Court held that the writing on the Minutes could not be received as evidence against the record. The Court say "It appears to be contrary to all the well settled technical rules upon the subject to give the entry that effect. A record imports verity and can only be tried by itself. The vacatur ought to be enrolled or entered of record as much as the rule for judgment. The Court could not receive the entry on the Minutes of the rule for judgment as evidence to support a plea of a former recovery, and why should an entry vacating a judgment be received to contradict the enrollment of the judgment. The maxim in this as well as in other cases is that "Nihil tam naturale quam quidlibet dissolvi eo modo quo ligatur". To give an entry on the Minutes that authority would destroy the certainty, order and solemnity of enrollment; and it has been frequently held that the Courts cannot regard any proceeding as a matter of record until it is enrolled." *Croswell vs Byrnes* 9 Johns Rpts 287. 0

Common law and common ^{reason} ~~sense~~ both sustain us in saying that the solemn decree of the Court as enrolled at the October Term 1846, ought not to have been amended

made by the Commissioner - the property may be purchased by other persons and thus two lots of purchase money ^{may be in} the Sheriff or complainant's hands for the same property. If there existed any grounds whatever for setting aside these sales in the summary proceedings by motion, the Court below still erred in setting them aside absolutely, and without affixing terms. But aside from this consideration we think it apparent that the record does not show sufficient grounds for setting aside the sales and execution, 1st because as we have shown it should not have been made to conform to the Minutes of the Judge, and 2nd because there was no irregularity in the ~~former~~ execution of the decree.

But admitting the contrary to be true that there were sufficient grounds to amend the decree and set the execution and sales ^{aside}, still the question recurs was the summary proceeding by motion the proper remedy -

We think not; we think the principle settled in the case of Day et al. vs. Graham 1 Gil 445 applicable to this case. This Court is fully acquainted with the facts in that case. It was a motion made to set aside a sale of real estate made by the Sheriff under an execution for irregularity. The decision of the Court in this case was that where the plain-

by the Court below on the motion of the defendant in error, by reason that it did not correspond with the Minutes of the previous judge.

Neither would it have been legal to introduce, on the hearing of the motion in the Court below, affidavits to qualify or controvert the statements of the decree, *Swart, vs Barnes* 89, 11th Ill Rpts. If the decree of Oct 1846 was erroneous the only means to cure the error was to bring the case up to this Court. It was the recorded judgment of the Court below - it ordered an execution in each case, it also appointed a Commissioner with power to sell the lands. Such a construction must and should be given to the decree as to carry out and accomplish the object for which it was made which is easily done by permitting it to be executed by the Sheriff or the Commissioner as the parties interested might prefer. This method was adopted - it was executed with all the necessary regularity by the Sheriff as the record shows the property was sold at public sale by him in his official capacity and purchased in ^{at full prices} by third persons and strangers to the proceedings with one exception, that of Barnette. These third persons who purchased at the Sheriff's sale as aforesaid paid their money for their purchases to the Sheriff. By this decision of the Court below, these sales are set aside without any order for refunding the purchase money to them, and new sales are ordered to be

tiffs in the executions purchase the property sold by the Sheriff. The law charges him with notice of all irregularities and the sale can be set aside for irregularity on motion. In such a case the parties on setting aside the sale are placed precisely in the same situation occupied by them before the sale; but when third persons become the purchasers the Court say "They will not determine in this summary way questions which may affect the rights of others not before the Court and without opportunity of explaining away those circumstances which might destroy his title" but "will leave the party to seek his remedy in a Court of equity where if the sale be set aside such terms may be imposed as may be equitable."

In this case the purchasers with one exception were third persons. Plaintiff's intestate, Noah Craven was a third person, who paid a full price for his purchase. His rights should not have been determined in this summary way, and that too without returning to him the purchase money and thus leaving him ~~in a situation without redress~~. For where can the plaintiff in error resort ~~for~~ to get back the purchase money from the Complainants in the decree. No - The law does not compel them to refund - From the estate of James Anderson we will say, yes, but suppose that estate to be insolvent in such a case contingency we would have an instance of an innocent purchaser purchasing property at Sheriff's sale losing his means ~~losing~~ by the operation of a judicial decree, he would then be cut off from all remedy.

In making these purchases neither Mr Craven, or any of the other purchasers were guilty of any act which should subject them to such unwarranted injury. It was at a public sale, by a public officer acting by virtue of process from a Court of competent jurisdiction and in pursuance of the order of such Court. They bid for the property - It is struck off from them they were innocent purchasers without notice, and as such risk change

all with impunity.
The communication of such cases
kept the case up by word of ear - the intention of the
several departments in the Indian holding ^{being} entirely the
entire

Lewis Lawrence del
a son of Noah Lawrence

W.

Ross Latimer H.

Em L. Harwin

Filed Oct 25th 1853
H. R. Parson del
by D. B. Cough copy

Arg^t. by Wesley Allen
Att for Resp^t S

Lavender
v
Sattermer

Opinion by Coarson

Whether the Court decided properly or not in determining to amend the decree originally entered, so as to make it conform more literally to the judges minutes, we are of opinion that the sales should not have been set aside upon motion. The original decree as entered ~~for sale of the premises~~ ^{advised} ~~that~~ that the complainants should recover severally the amounts of their respective mortgages, appointed Lewis Lavender a commissioner to sell the mortgaged premises to satisfy the decree, and "that execution for said sums be levied upon the mortgaged premises" & that the sale should be made at the county seat "on some county Court day" subject to a lease specified. The minutes of the judge are as follows "Decree of foreclosure and sale by Lewis Lavender Commissioner &c subject to lease & on giving usual notice of sale &c &c as under execution." General executions were ~~then~~ issued for the sums specified in the decree and with these were sent out ^{Copies} ~~Copies~~ of the decree. These were levied by Lewis Lavender who was Sheriff and Commissioner, upon the mortgaged premises which were duly advertised and sold to third persons, on the fourth day of January 1843. Lavender returns that "by virtue of the within execution and by order of a decree rendered" &c describing it, he had levied upon, advertised & sold the premises.

The ~~amended~~ decree as amended, forecloses the mortgages ^{advised} ~~that~~ that the complainants shall recover severally the amounts ^{due on} their respective mortgages, appointed Lewis Lavender Commissioner to sell ~~the~~ mortgaged premises, but ~~omitting~~ ^{omits} all that part of the decree as originally entered which related to the execution. This amendment of course, if rightfully made must relate back

to the original entry of the decree, as entered inure pro
time - Whether we consider this sale as made under the
decree as originally entered, or under the decree as amended
or whether we look to the ~~judge's~~ notes of the decree to be
entered, to determine in what manner the sale was to be
made and the decree satisfied, I am of opinion ^{that} the
sale should not have been set aside. The ~~sale~~ return
of the officer shows, that the proper premises were sold,
that they were properly advertised, and that they
were sold by the proper officer - The return of Lander
shows that he acted in pursuance of the authority con-
ferred upon him both by the execution and the decree.
Each authorized him to make the sale and by the
first decree his authority from each was ample.
The regularity of the sale under that, could not be questioned.
And if we look alone to the amended decree and
consider every thing which was done as done under
that, the sale was still good. The return still ~~said~~
shows that the sale was made under the authority conferred
by the decree, and because he had an execution in his
hands reiterating the mandate of the decree, shall it be
said that the sale was therefore improperly made.
For the first time we hear the objection raised that
the officer acted under too much authority, instead
of not enough. Indeed the authority under each is
the same, and the only peculiarity is that here is a reiterated
- ted command to make the sale, once ^{given} in the decree &
again in the execution. Suppose the execution was simply
void, and issued without any authority whatever, it is
difficult to perceive how that should vitiate the sale
and prejudice the rights of innocent purchasers, so
long as there was ample authority for making the sale.
~~and~~ Both decrees certainly show such authority, and
the minutes of the judge show that he designed that the
sale should be conducted in all things precisely
as it was conducted. He designed that Lewis Lan-
der should sell the premises which were sold, and
that the sale should be conducted as under an

an execution, with the usual notice. Every thing here indicated was strictly pursued. If he was to sell as if under an execution what harm was there that he had an execution. How could it prejudice the interests of the ^{heirs of the} mortgagor that the officer had an execution in his pocket as well as a copy of the decree when the law only required that he should have the latter. If the execution was unauthorised and void, how should it be capable of destroying that which was otherwise well done? Even if the return of the officer showed that he supposed that he was acting alone under the authority conferred by the execution, and without any direct authority conferred by the decree, I know of no positive rule of law which would render the sale void or would justify the court in ~~making~~ ^{declaring} it void so long as he had by the decree ample authority to do the very act which he did ^{do} and in the precise mode which he pursued. Suppose in any ordinary case of the foreclosure of a mortgage, the Clerk in addition to furnishing the master or commissioner with the copy of the decree should send out with it a mandamus in any form which he might choose to adopt, repeating the command to make the sale, and the master or commissioner should suppose that he was acting under the immediate authority of such mandamus, and should return that he had sold accordingly, & should ^{also} show by his return that he had pursued precisely the commands of the decree in making the sale, would the court at a subsequent time upon mere motion set aside that sale which had been made as it had commanded, regardless of the rights of innocent purchasers? But that is a stronger case than this, ^{supposing the amended decree alone in force} for here the officer shows that he did proceed under the authority of the decree as well as the execution. How much stronger than the rights of purchasers when they find upon the only records of the court which they are bound to examine, a formal decree, fully authorising the sale under the execution as well as the decree?

We must have some regard to the substance of the transaction and the ends assigned to be accomplished. These ends it is true must be accomplished in a legal mode. But here we think the sale was not illegal. It was made by the proper person, after the proper notice, at the proper time, and in all respects in the precise mode directed by the judge in his minutes and by the decree ~~as it is~~ as originally entered and as amended. The rights of no one have been violated or prejudiced. The premises brought as much as they would have ~~done~~ ^{brought} if no execution had gone out with the copy of the decree, and every thing ^{had been conducted} ~~was~~, as it ~~was~~ ^{should} and ~~as it~~ ^{as it} was assigned ~~it should be~~.

An objection was made on the argument as applicable to the proceeding ~~under~~ ^{under} the decree ~~as~~ ^{decreed} originally entered - That, directed that the sale should be made on some county court day - This undoubtedly must on some day during the term of the County Court. But there is nothing in the record to show, that the county court was not in session on the fourth of January 1847. It is true, that the law fixed the ~~regular~~ first day of the regular quarterly term of that court to be the first Monday of the preceding month, but the court cannot say that that term had ^{not} yet elapsed or that a special term had not been called and which was then in session. But the return of the officer settles this question, for that says the sale was in pursuance of the decree and if that is true the objection is answered.

We are of opinion the Circuit Court erred in making the order which was entered and that must be reversed so far as the judgment affects the plaintiffs in error. This reversal of course does not affect the judgment below as to those who have not joined in the writ of Error.

7
Lander

N

Latter

Opinion

Curator

Copied by the
Reporter.

Lewis Lavender & Mary Ann Cravens
adms of Noah Cravens deceased implead
ed in his lifetime with Phineas C Barnitt
and Richard L Thullkild, S. Russell, Rob
ert Russell, William Pell, Calvin Allard
Wm Mitchell

State of
Illinois
Supreme
Court

vs
Nep Latimer administrator of James
Anderson deceased on behalf of him
self as such administrator and in
behalf of the heirs at law of the said
James Anderson deceased

first Div's
in
first grade
division

on this day
personally appeared before me the undersigned Clerk
of the Hardin County Circuit Court in the State of
Illinois, Wesley Swan who being sworn
according to law deposes and says that Nep Lat
imer, defendant in the above entitled suit has gone
out of this State, so that process cannot be served
upon him, the precise residence at this time ~~not~~
~~being known~~ of said defendant not being known
but affiant states that he is informed and be
lieves the same to be somewhere in the State
of California, and further affiant deposes the
not.

Subscribed & sworn to be
for me at office in Eliza
beth town this 4th day of ~~April~~
May A.D. 1853
J. M. Farlan Clerk

Wesley Swan

Gulcruse. Ill
Oct 23^d 1853

Downing Baugh Esqr

Dear Sir - Inclosed I send
you an argument in the case of the adms of North
Craven's dec^d vs Rep Saturnus &c. Please file it
among the Papers. John Willis Allen is with me in
the case - I do not expect to be at the Court see -
I must count myself relying upon the attendance
of Major Allen.

Respectfully Yours
Wesley Sloan

State of Illinois
In Supreme Court First Grand Division

58

Lewis Savender & Mary Ann Cravens
Administrators & Administratrix of
Noah Cravens, deceased impleaded in
his life time with Phineas C. Barnett,
Richard L. Thrillfeld, S. Russell, Robert
Russell, William Pell, Calvin Allard
John Mitchell and Noah Cravens
against
Ross Sattimer, Administrator of
James Anderson deceased on behalf
of himself as such Administrator
and in behalf of the heirs at law
of the said James Anderson deceased

Ross Sattimer, Administrator as aforesaid
defendant in this Cause is notified that a
writ of error has been sued out in this Cause,
and summons issued against the said Ross Sat-
timer, Administrator as aforesaid directed to
the Sheriff of Hardin County returnable to
on the Second Monday in November, A.D. 1852
at a term of Court then holden at Mount Vernon

Now therefore the said Ross Sattimer
Administrator, as aforesaid is requested to appear
before said Supreme Court and unless he does ap-
pear, judgment will be entered against him by de-
fault.

A. D. Preston, ^{Clerk} of said Court

Mt. Vernon,

1852

Lewis Landon

v.

Ross Lachinen

Notice for
Publication

8417

Galena Ill
May 8th 1853

My Dear Sir:

Inclosed please find an affidavit of myself before the Harmon Circuit Clerk - I suppose it to be sufficient, tho' it is usual to draft to make it before yourself as ~~Supreme~~ Clerk of the Supreme Court. Please make out the advertisement as required by the rule of the Supreme Court and have it published in the Benton Standard. You can say to the printer that the state of Craven is perfectly good and I will attend to the collection of his fee

My best respects to you
Finney & Preston Esqs Wesley Sloan

State of Illinois

Pepe County } set on the day of the date hereof
personally appeared before me the undersigned Clerk
of the Circuit Court of said County, Wesley Sloan, who
being duly sworn deposes and says that he is in-
formed & verily believes that Rep Latimer has gone
out of this State, ~~so that process cannot be served on him~~
and that he cannot be found there
^{so that process cannot be served on him}
in. Affiant further says that he is informed
and believes that the said Latimer is now residing
in the State of California but where or in what
part of said State affiant cannot say, the said
Rep Latimer being defendant, in a certain Cause
now pending and undetermined in the Supreme
Court, First Grand Division of said State of Illin-
ois, on writ of error from the County of Hardin
wherein Levi, Lavender and Mary Ann Craven,
adorns of Noah Craven, deceased implicated in
his lifetime with Phineas, C. Barnett and Richard
& Thelbela, J. Russell Robert Russell, William
Pell, Calvin Allard, John Mitchell are plaintiffs and
said Rep Latimer administrator of James Anderson
deceased on behalf of himself as such adminis-
trator and in behalf of the heirs at law of the said
James Anderson deceased is defendant, and further
affiant says that
Wesley Sloan

Subscribed & sworn to before me, Clerk of said

Circuit Court, as witness my hand
& the Judicial Seal of said Court
at office in Galena, in said
Pepe County, this 19th day of
July A.D. 1853.

Wm. R. Allen Clk

Simon Lacroix
et al

vs

Wm Lacroix et al

1874

Feb. 26th 1873

4th Wm Lacroix

by J. B. Lacroix

STATE OF ILLINOIS, } ss.
SUPREME COURT.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Hardin* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of

Hardin
County, before the judge thereof, between *Rep Latimer administrator of James Anderson deceased* on behalf of himself as such adm^r and in behalf of the heirs at law of the said James Anderson deceased, was plaintiff and *Phineas C Barnett Richard L Threlkeld, S. Russell Robert Russell, William Pitt Calvin Alford John Mitchell and Noah Cravens* were defendants,

~~defendant~~, it is said that manifest error hath intervened to the injury of ~~said~~ *the Lewis Lavender & Mary Ann Cravens adm^{rs} of the said Noah Cravens deceased impleaded in his lifetime, with the said Phineas C Barnett, Richard L Threlkeld, S. Russell, Robert Russell, William Pitt Calvin Alford, John Mitchell*

as we are informed by *their* 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 Mt. Vernon, 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 *Rep Latimer adm^r of James Anderson deceased on behalf of himself as such adm^r and in behalf of the heirs at law of the said James Anderson deceased*

that *they* be and appear before the Justices of our said Supreme Court, on the first day of the next term of

said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the

records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further

to do and receive what the said Court shall order in this behalf; and have you then there the names of those by

whom you shall give the said *Rep Latimer &c*

notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said

Court, and the seal thereof, at Mount Vernon, this *10th*

day *October* in the year of our Lord,

one thousand eight hundred and fifty- *Two*

Amey D. Preston
Clerk of Supreme Court.

Supreme Court

Lewis Laverder & Mary
Anna Craven admors

vs

Pop & Latimer admors

Sci Fa
To next term
Sep at 1852

The within named defendant not found
in my county
J. M. L. S. Cash
Shelby County, Mo.
November 13th 1852
Wm. J. Lee Attorney
\$5.10



State of Illinois
First Grand Division
Supreme Court

November Term
in the year of our
Lord eighteen hundred
and fifty two

Lewis Lavender and Mary
Ann Cravens administrators
of Noah Cravens deceased
impleaded in his lifetime with
Phineas C. Barnett, Richard
Threlkeld, J. Russell, Robert
Russell, William Pett, Calvin
Allard, John Mitchell

In Error

vs
Ross Latimer administrators
James Anderson deceased on
behalf of himself as such ad-
ministrators and in behalf of
the heirs at law of the said
James Anderson deceased

afterward, to wit

on the day of A.D.
at this same term of the Court before the
Judges thereof came the said plaintiffs by
Wesley Sloan their attorney and say that in
the record and proceedings aforesaid and
also in the rendition of the judgment aforesaid
said there is manifest error in this, to wit
1st The Court erred in amending the
original decree rendered at the October

Term of the said Hardin Circuit Court A.D.
1846.

2 The Court erred in quashing or setting
aside the said executions and the sales
of real estate under the same.

3 The Court erred in quashing or setting
aside the ~~sale of real estate~~ Sale of real
estate to the said Nath Craven since
deceased, he being a third person.

4th The Court erred in quashing or set-
ting aside the said executions and the
sales under the same without imposing
terms in respect to the return of the
Purchase Money to such ~~persons~~
purchasers as were third persons or not
parties to the said suit in Chancery.

and the said plaintiffs pray
that the judgment affirmed for the er-
rors affirmed and for other errors ap-
parent in the record and proceedings
affirmed may be reversed annulled
and altogether for nothing held, and
that they as such complainants may
be restored to all things lost by occa-
sion of such judgment &c.

Wesley Shown attor
for plaintiffs in error

received in
Circuit Court & brought
for appeal

State of Illinois
First Grand Division
Supreme Court

December Term
in the year of our
Lord eighteen hundred
and fifty two

Lewis Lavenex and Mary
Ann Cravens administrators
of Noah Cravens deceased
impleaded in his lifetime with
Phineas C. Barnett, Richard L.
Threlkeld, J. Russell, Robert
Russell, William Pitt, Calvin
Allard, John Mitchell

In Error

vs
Ross Latimer administrator of
James Anderson deceased on
behalf of himself as such ad-
ministrator and in behalf of
the heirs at law of the said
James Anderson deceased

Afterward, to wit

on the . . . day of . . . A.D.
at this Court term of the Court before the
Judges thereof Came the said plaintiffs by
Abby Sloan their attorney and say that in
the record and proceedings aforesaid and
also in the rendition of the judgment aforesaid
said there is manifest error in this, to wit

1st The Court erred in amending the
original decree rendered at the October

Lewis & Clark and
Mary Ann Cravens

Adm J. C.
as

Rep. L. C. L. C. L. C.
He at on behalf of
himself as such adm
and of others

In Case

Expenditure of
money

Filed 9 Oct.
1852

J. D. Preston, clk.

State of Illinois

Supreme Court 1st Grand division
Nov Term 1853

Lewis Lavender et al

vs

Ross Latimer et al

} Error to Hardin

By reference to the record in this Cause it will be seen that on the 4th day of January 1846 Noah Cravins (since dead), purchased the South East quarter of the South West quarter Sec 32 T12 Range 8 East containing 80 acres, at a public sale at the Court house door of Hardin County made by the Sheriff, in obedience to a decree of the Circuit Court rendered at the Oct Term 1846, for which he (Cravins) paid the sum of \$355. At the Oct Term 1847 upon motion of the administrator of the estate of James Anderson dead, the Court ordered among other things that the execution upon which the land was sold of which Cravins became the purchaser, was illegal and unwarranted by the decree rendered at said Oct Term 1846, that said sale of said land was irregular and not in conformity with said decree and therefore void, and quashed the execution and restored the heirs of James Anderson dead to their original rights in the premises, as if no decree had ever been entered against said land and no sale had in pursuance of such decree.

It was clearly error in the Court below to amend the original decree rendered at the Oct Term of said Hardin Circuit Court

1846 upon a mere motion, without any evidence except such as the minutes of the Court furnished. To give an entry on the minutes that authority would destroy the certainly order and solemnity of enrollments; and it has been frequently held that a Court cannot regard any proceeding as a matter of record until it is enrolled. 9 Johns Repts 28;

1 Ld Raym 243

It would not have been less erroneous to introduce, on the hearing of the motion in the Court below, affidavits to qualify or contradict the statements of the deene Swartz as Barnes 11th Al Repts 89. The only means to cure the error was to bring the Case up to this Court *(file petition for rehearing)*

Admit for the sake of argument that there were sufficient ground to annul the deene and set the execution and sales aside, the question recurs was the summary proceeding by motion the proper remedy. I think not. The principle settled in the Case of Day et al vs Graham 19 Al 445 is applicable to this Case.

It was an outrage upon the rights of Cravin who was an innocent purchaser for a valuable Consideration to thus dispose of his rights without even an order refunding to him the money he paid the Sheriff for the land.

If the record in this Cause disclosed any ground whatever for setting aside these sales in the summary manner

Recognized by the Court below, that
Court still erred in setting them aside
absolutely and without affixing terms
- Craven was a third party, and
should, according to every rule of
law and right, have been placed
in the same situation that he was
in before he made the purchase.

It was error to amend the record
after the term at which the decree
was rendered was over. 2 Ark Mar
(11 & 811) 2 Dan C D 1232,

The proper method of having a decree
rectified is by applying to have the cause
reheard. Bennett vs Winter 2 John C 205
7 Paige 382 2 John C 484

Generally a decree which has been
regularly obtained and enrolled, cannot
be altered except by bill of review. 2
John Ch 205 + 448, 3^d Vermont 148, 5
Masson 303-3 John Ch 415, 7 Paige 509

All decrees in the U S are deemed
to be deemed enrolled at the term in
which they were passed. 5 Mass 303 -
(See syllabus bottom of page)

Larsten

in

Wasson

Bruck

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