No. 13938

Supreme Court of Illinois

Mott et al.

vs.

Danville Seminary et al

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SUPREME COURT,

Central Grand Division,

JANUARY TERM,

1889.

CIVIL DOCKET.

1478

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IN THE SUPREME COURT.

STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OF THE JANUARY TERM, A. D. 1889.

LAURA D. MOTT, et al.
Appellants,
vs.
THE DANVILLE SEMINARY, et al.
Appellees.

BRIEFS AND ARGUMENTS OF APPELLANTS.

R. D. McDONALD,
Attorney for Appellants.

W. R. LAWRENCE
Of Counsel for Appellants.

DANVILLE PRESS CO., DANVILLE, ILL.

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IN THE SUPREME COURT.

STATE OF ILLINOIS.

THIRD GRAND DIVISION.

OF THE JANUARY TERM, A. D. 1889.

LAURA D. MOTT, et al. *Appellants.* *vs.* THE DANVILLE SEMINARY, et al. *Appellees.*	APPELLANT'S BRIEF.

Appellants obtain their interest in the land, in question, by conveyance from defendant, Melissa B. Lamon.

The defendant, The Danville Seminary, resists the bill.

On the 15th day of November, 1850, Melissa B. Lamon owned the land in fee, and on that day she conveyed it to The Board of Trustees of The Danville Seminary, a corporation organized under an act of the Legislature, approved January 26, 1849, and in force April 13, 1849.

See 1 Gross page 105, and Session Laws of 1849, page 85.

The said corporation, The Board of Trustees of the Danville Seminary was dissolved by judgment of Court at the October term, 1880, of the Vermilion County Circuit Court.

The charter of this corporation provides, in Section 12, for its dissolution, but no provision is made in the act, as to what would become of property belonging to the corporation, in case of dissolution, thus leaving it to go as directed by the common law.

At common law, upon the dissolution of a corporation, its real estate reverted to the grantor, for, says Blackstone, Vol. 1, page 484, "the law doth annex a condition to every such grant; that if the corporation be dissolved, the grantor shall have the lands again, because the cause of the grant faileth. The grant, is indeed, only during the life of the corporation, which may endure forever, but when that life is determined by the dissolution of the body politic, the grantor takes it back by reversion, as in the case of every other grant for life."

Again, in Volume 2 at page 256, the same author commenting on the law of escheat, says: "If that (the corporation) comes by any accident to be dissolved, the donor or his heirs shall have the land again in reversion, and not the lord by escheat, which is perhaps the only instance where a reversion can be expectant on a grant in fee-simple absolute. But the law, we are told, doth tacitly annex a condition to every such gift or grant, that if the corporation be dissolved, the donor or grantor shall re-enter, for the cause of the gift or grant faileth."

Coke upon Littleton 13b.

Coke, by J. H. Thomas, Vol. 1, page 157.

Angel & Ames on Corporations, Sec. 195, 779 and 779a.

State Bank of Indiana v. The State, 1 Blackford 282.

Bingham v. Windermox, 2 Comstock 509.

Life Association of America v. Fassett, 102 Ill. 315.

The dissolved corporation owed no debts. It had no stockholders. It was not a banking, trading or moneyed corporation. It was an eleemosynary corporation.

Angel & Ames, in Section 799a, refering to the rule that lands owned by corporations revert to the grantor. Say, "at this day it may well be doubted whether, in the view, at least of a court of equity, it has any application to other than public and eleemosynary corporations. * * * The sound doctrine of equity is that the property and debts due to banking, trading and moneyed corporations, constitute a trust fund pledged to the payment of creditors and stockholders, and that a court of equity will * * apply it to the purposes of the trust.

Angel & Ames on Corporations, 10th edition, Sec. 779a.

In every case where this rule of the common law was not followed there was such an equity in favor of creditors, or stockholders as to render the rule odious in the particular case. In the case in 1 Blackford 282, the court enforced the rule even against creditors and stockholders.

In Baker v. Scott, 62 Ill., 95, this court said, after quoting our statute enacting the common law: "This law was enacted in 1845 having been first substantially enacted in 1819, and renacted in 1829, and again reenacted in 1833 in the revision of that year. Here is an emphatie declaration of the people, speaking through their representatives in the General Assembly that the common law of England, so far as the same is applicable shall be the rule of decision and shall be considered of full force until repealed by legislative authority."

The rule appellants contend for is a "Rule of property," and as to eleemosynary corporations it cannot be considered as less "Applicable to our condition, to the genious and spirit of our institutions, and to

their purposes and objects" than the rule in Shelly's case, which was held in Baker v. Scott, to be in force in this State. That is a very arbitrary rule and well calculated to surprise unprofessional grantors and to frustrate the intention of testators. Still being the law, it is presumed to enter into the consideration of grants and devises and must be applied when a case falls within the rule.

The rule that in case of grants of lands to eleemosynary corporation the title reverts to the grantor on the dissolution of the corporation is not an arbitrary rule, but is in harmony with every principle of real estate law as well as corporatio law. The title is vested in the corporation forever, provided the corporation exists forever, and when the corporation ceases to exist, the title reverts like that of any other estate on condition.

The grantor conveys to the corporation in view of this possibility of reversion and in view of the powers conferred upon the corporation by its creator, and in view of the objects of its creation. This possibllity and these powers and objects enter into the consideration of the grant and influence the grantor to make the donation and conveyance as a free gift, or at a less money consideration than he otherwise would.

Certain individuals pretending to be officers of the dissolved corporation pending the proceedings to dissolve it, attempted to convey the land in question, by which instruments it is claimed the title passed to the appellee corporation.

Did those instruments convey the title? This question involves two questions:

First. Had the dissolved corporation power to convey?

Second. Are the instruments sufficient to convey the title if the corporation had such power?

The only power given in the charter to convey land is confined to

conveyances "For the use of said institution, in such manner as shall seem most beneficial thereto." See Section 4 Session Laws 1849, page 86.

The conveyances through which appellee corporation claims, were not made "For the use of said institution," (See Abstract page 3), but were made long after it had ceased to carry out the objects of its creation, and while it was on its death bed, and only a corporation in name if it existed at all. That is pending the proceedings to dissolve it.

Section 2 of the charter of the dissolved corporation enumerates the powers and attributes that would belong to the corporation without such enumeration. Among others it specifies the power, "to acquire, hold and convey property in all lawful ways."

This language is too general to confer power to convey land. Land, or real property, is not mentioned. If to alienate their lands was not incident to a corporation at common law this section does not confer the power Statutes changing the common law are strictly construed. Powers conferred on corporations are strictly construed.

The only "lawful way" the dissolved corporation could have conveyed, was pointed out in Section 4 of its charter, namely : For the use of said institution in such manner as should be most beneficial thereto.

The powers given the corporation must be construed with refference to the objects in view in creating it.

Angel & Ames, 10 Edition, Section 110.

Betts v. Menard, 1 Breese, 398.

Kinzie v. Chicago, 1 Scammon, 187.

Fitch et. al. v. Pinckard et. al. 4 Scammon, 78 & 79.

Metropolitan Bank v. Godfrey et. al. 23 Ill., 602.

Webster v. The People, 98 Ill., 347.

The dissolved corporation had no power to convey the land in question as a gift, to another person, either natural or corporate.

In Town of Petersburg v. Mappin et. al. 14 Ill., 194, this court said : "They must keep within the limits prescribed by the charter. If they transend authority c nferred thereby, their acts are not binding on the town or third persons. They have no power to give away the funds of the town, or appropriate them to purposes not warranted by the charter. They must faithfully apply the corporate property to the uses and objects specified in the charter. As they cannot directly dispose of it by way of gratuity, so they cannot accomplish the same result by device or indirection. They cannot, under color of sale, transfer the property of the corporation without consideration."

The instruments, under consideration, the pretended deeds, are not deeds of the dissolved corporation, because they were not made for the use and benefit of that corporation. They were made for the purposes of depriving the original grantor of her reversinary rights, and for the purpose of diverting the property into hands that had no title thereto, either legal or equitable. Abstract page 3.

In Abbot v. American Hard Rubber Co., 33 Barbor, 592, the court held that "corporations have no power to alienate property necessary for their business."

In adopting the act under which the dissolved corporation was organized, the legislature wisely, and evidently for a purpose, left the common law rule of forfeiture in force, except where it might be necessary for the benefit of institutions organized under it, to sell its property As long as the managers, in good faith, carried out the objects of the institution according to the provisions of the charter, the corporation could hold the property, but if the managers should betray the trusts reposed in them, by converting the property to other uses, the forfeiture would take place, on judgment of dissolution under

Section 12 of the act. The real estate going to the grantor. The personal property to the state. Thus holding a check over the managers similar to *qui tam* actions.

What better security could be provided for a faithful administration of the franchises conferred than this power of the grantor, to cause the corporation to be dissolved in case of their abuse, and then have his land. It would deliver the managers from all temptation to divert the property to their own use, or to uses more favored by them.

That at common law, corporations have power to alienate their lands is far from an undisbuted question.

At common law natural persons could not convey. They obtained the right by positive enactment.

Blackstone, Book 2, page 288.

Did corporations possess greater power over their lands than natural persons? That they sometime usurper the power to make long and unreasonable leases, is shown by 13 Elizabeth, chapter 10, which was meant to restrain them from such violations of law.

Some of the text books, lay down the principal, that to alienate lands was incident to a corporation at common law, but they give no reasons for it and base it on a statement in Coke, and some cases that have followed the statement in Coke upon Littleton, 44a.

It will be seen that Coke gives no reason for the principal. In the same section he refers to the restraining act of 13 Elizabeth, chapter 10. That act restrains corporations from making "gifts, grants, feoffments, conveyances, or estates." Is it not possible that as the power to make these was forbidden by parliament. Coke supposed, without examining the matter, that the power existed but for this statute.

There are no words of inheritance in a grant to a corporation for it could have no heirs. Without the word "heirs" there could not be

a fee vested in a natural person. In grants of lands to sole corporations the word "successors" supplied the place of "heirs," but the word "successors" was not necessary in case of grants to corporations aggregate, for in view of the *supposed* immortality of the corporation the grant was supposed to create a fee, although strictly only an estate for life.

Blackstone, Book 2, page 107, 108 & 109.

The only text writer, we have access to, who has examined the question critically, on both principle and authority, is Grant, in his work on corporations. Marginal pages 129 to 137. Top pages 138 to 149. He is emphatic in his denial of the existance of the power. Among other reasons for his opinion, at the end of marginal page 134, he says: "And the grant of lands, etc., to a corporation differs, in this, from a grant in fee of lands to an individual, that in the latter case the whole interest and property is out of the grantor. So as he has no possibility of a reverter, which is not the case in a grant to a corporation, where there always is a possibility of reverter, on the event of the dissolution of the corporation, for in such case the lands revert to the donors or their heirs, that being a *condition of law* annexed to the grant." At the beginning of same page, he says: "No decisions of the common law courts, directly in point, can be found, laying down the law to be, that to alien its real property at pleasure is incident to a corporation."

The courts of England always respected conditional grants to natural persons. Why an exception in case of conditional grants to corporations?

Obligations of contracts in this country are better secured than in England. Here they are protected by constitutional provisions. Even the sovereign state legislature cannot violate them.

If to alien lands was incident to a corporation at common law,

such power was taken away by statute 13 Elizabeth, chapter 13, section 3, which is in force in this state under chapter 28 of our statutes.

The corporation could exercise its powers, whether existing by virtue of the common law, or by legislative enactments, only within the scope of the objects of its creation.

Angel & Ames, Section 111.

The following cases show that in this state, a corporation aggregate is nothing but an association of persons clothed by law with certain powers, and that it can exert no other powers than those expressed in its charter, and those necessarily implied to carry out the expressed powers :

Betts v. Menard, Breese, 400.

Kinzie v. Chicago, 2 Scammon, 187.

Fitch et. al. v. Pickard, 4 Scammon, 70.

Town of Petersburg v. Mapin, 14 Ill., 197.

Metropolitan Bank v. Godfrey, 23 Ill., 602.

Webster v. The People, 98 Ill., 343.

Also, Angel & Ames on Corporations, Sec. 160.

We think the foregoing conclusively shows that the only power the dissolved corporation, The Board of Trustees of the Danville Seminary, had to make a conveyance of the land in question, must be found in its charter. That it has not the same power to deal with its land that a natural person has. But if it could be shown that there was power in the corporation, either by its charter or otherwise to make conveyances, the instruments in question are not sufficient.

The common seal of the corporation was not affixed to the pretended deeds, nor did The Board of Trustees, managers or directors of the corporation authorize them to be made. Abstract page 3.

Kinzie v. Chicago, 3 Scammon, 188.

Such power as the dissolved corporation had to convey, under its charter, could be exerted only by the corporation, or by an agent especially authorized by the corporation. The president appointed under section 8 had no such power by virtue of his appointment, nor could he and the secretary unless especially authorized by the corporation, make such conveyances.

Angel & Ames, Section 231, 232 & 277 to 280.

The instruments are only *prima facia* deeds of the corporation and we may show that they are not its deeds.

Koehler v. Black River Co., 2 Black, 715.

Phillips v. Coffee, 17 Ill., 157.

R. D. McDONALD,

Attorney for Appellants.

LAURA D. MOTT, et al. *Appellants.* *vs.* THE DANVILLE SEMINARY, et al. *Appellees.*	BRIEF OF W. R. LAWRENCE, of COUNSEL for APPELLANTS.

This is a bill in equity for partition. The defendant corporation interposed a ~~grand~~ general demurrer to the bill which the court sustained and dismissed the bill. This action of the court is assigned as error.

An act was passed by the legislature, in force April 13, 1849--see sess. laws 1849 p. 86--providing for the incorporation of institutions of learning. It prescribed the mode of formation, powers and means for adjudicating a dissolution, but was silent as to the disposition of the corporate property in the event of dissolution. There was then no general statute on the subject. In such case the rule of the common law must prevail. This court, in Life Association of America v. Fassett, 102 Ill. 323, has announced it to be as follows: "Upon the dissolution of a corporation all its real estate reverts to the original owners or their heirs.--In equity however the property is held for the benefit of creditors and stock holders." The bill in this case alleges that there were no creditors or stock holders at the time of dissolution, and the land was conveyed to the corporation by Melissa B. Lamon for the building and maintaining thereon an institution of learning as provided by said act, and without any valuable consideration received by her.

During the pendency of the prcoeeding by *scire facias* to dissolve the corporation, its officers pretended to convey the land in dispute to the defendant corporation.

We think the main question suggested by the record is: Did this deed, supposing it to be in good faith and for a valuable consideration, convey to the defendant the land in question so as to deprive Melissa B. Lamon of her right of reverter?

The proceedings for the dissolution ended in a judgment of the forfeiture of the franchise of the corporation and terminated its existence. The judgment related to the commencement of the preceeding of *scire facias*. It was on behalf of the People of the State for the ferfeiture of the franchise of the corporation and the effect was to work a forfeiture of the land to the donor.

All the causes for dissolution must have existed at the commencement of the proceeding. No correction of abuses, or of the violations of the charter after action brought, could relieve the corporation from the penalty of dissolution nor from the effects necessarily flowing from or incident to the judgment of forfeiture. Blackstone says: "An offender hath until conviction full power to alien his lands, and convey to a purchaser complete and legal though *defeasible* title, and, unless conviction follow the offense the alienation is good as against the world. But in case of convic ion the title forfeits and relates to the commencement of the proceedings. 4 Black. Com. marginal page 382: Hales v. Petit, Plowd. 260; U. S. v. The Mars, 1 Gall. 237.

More forcibly will the principle apply against a corporation, because, in a conveyance like this, the fee granted was conditional. There was annexed in law the condition that the fee should revert in the event of the dissolution of the corporation. Lord Coke says: (1 Thomas Coke top page 157) "If land be given in fee-simple to a dean and chapter, or to a mayor and commonalty, and to their successors,

and after such body politic is dissolved, the donor shall again have the lad and not the lord by escheat. And the reason for this diversity is for that in case of a body politic the fee is vested in fee-simple in their politic capacity, created by the policy of man, and therefore *the law doth annex a condition in law* to every such gift and grant that if such body politic be dissolved, the donor or grantor shall reenter, for that the cause of the gift or grant faileth; but no such condition is annexed to the estate in fee-simple vested in any man in his natural capacity." This principal laid down by Coke is not now meant to apply to trading corporations, with stock holders and creditors, because gifts are not made to such corporations, as a general rule. The property of such is the result of contributions of stock holders for profit, and in equity and of right should revert to them. And there may be found some authorites that hold that where a grantor to a corporation, like the one at bar, has been paid the value in full for the land conveyed that he has no further interest in it and hence there can be no reverter to him. But the great weight of authority is that in case of a gift of land to a corporation created for some public use and benefit, and the corporation shall cease to exist the gift reverts.

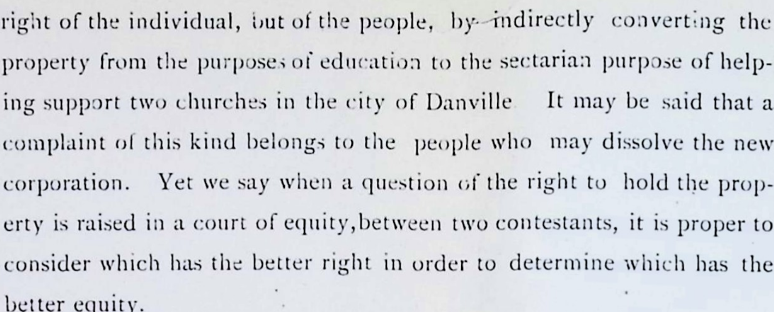
The grant in this case is supposed to have been made and received under the law then existing. It is supposed to have entered into and became a part of the transactlon, and there can be no wrong or hardship in now carrying out this intent of the parties.

This being a contest between the grantees of the original owner and the grantee of the corporation the doctrine of *lis pendens* applies. This doctrine is founded on public policy. Bellamy v. Sabine 1 De G. & J. 566. The state was prosecuting the action to forfeit the franchise of the corporation, and of this the world must take notice. It was in the nature of a proceeding in rem to determine the status of the corporation. This notice involves all that is connected with the proceeding and that

directly results therefrom. The forfeiture of the title to the land was as much a part of the subject matter, as the forfeiture of the franchise. While Mellisa B. Lamon was not directly a party to the record she was directly a party in interest because her right of reverter depended on the judgment of dissolution.—It is a rule that the purchase of the subject matter in controversy *pendente lite* does not vary the rights of the parties in interest in that suit. Murray v. Lylburn, 2 Johns. Ch., 443; Murray v. Ballou, 1 Johns. Ch., 566.

It would be against public policy to allow parties to a suit, during its pendency, to avoid the effects of the penalty of forfeiture. In this case the penalty was the loss of its right to exist and its right of property. It does not differ in principle from the penalty for treason of a natural person, which is the forfeiture of life and property. Such is the rule of common law. True it is that a court of equity will not allow such forfeiture of corporate property to prejudice the rights of creditors, but no such equity arises in this case.

Putting aside the strict rule of the common law, are the equities in this case in favor of appellants? It is admitted by the demurrer that the land was a gift for a special purpose—a site for the buildings of the corporation—not to be devoted to the private benefit of the officers of the corporation, nor diverted from the purposes named in the charter. For the express purpose of defeating the right of reverter, two of the officers of the corporation, without the authority of the board of directors, without the seal of the corporation, and without any valuable consideration pretend to convey the land to two individuals. Then under the provisions of the general law of the state, a new corporation is formed for the pretended purpose of establishing an institution of learning, but in fact for the purpose of receiving the title from the said two individuals. The whole scheme was a shift and device to defeat the estate of another given by the laws of the land. Not only to defeat the

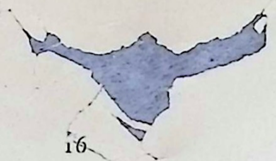


right of the individual, but of the people, by indirectly converting the property from the purposes of education to the sectarian purpose of helping support two churches in the city of Danville It may be said that a complaint of this kind belongs to the people who may dissolve the new corporation. Yet we say when a question of the right to hold the property is raised in a court of equity,between two contestants, it is proper to consider which has the better right in order to determine which has the better equity.

It is admitted that a conspiracy existed to deceive the People of the State and to defeat the right of the original owner, if the facts alleged in the bill constitute such condition of things.

It appears that the scheme of organization of the new corporation was to create a successor to the old one, The Board of Trustees of Danville Seminary, and thereby avoid the effect of the judgment of dissolution as to the reverter. A corporation cannot have a successor. The ingenuity of man has been able to create an artificial body, that may endure forever, but no plan has yet been devised to give it the power of procreation by which it may have a lawful successor or heir. We pronounce the one brought forth to be illegitimate. The name of "The successor of the Board of Trustees of Danville Seminary," in its certificate of birth granted by the secretary of state, has no more effect to give it legitimacy than would be the dating back a marriage certificate to cover the accident of the too early ripening of the fruit of the marriage.

It is doubtful if even the legislature has the power to create a successor in the manner attempted, as being within the constitutional inhibition to impair the charter of 1849. The donation was made impliedly in trust for the purposes indicated by this charter, and the performance of this trust was assumed by the corporation ; the obligation thereby created is deemed a contract within the meaning of the constitution and cannot be impaired by a law altering the purposes of the institution.



Dartmouth College v. Woodward, 4 Whea. 518.

2 Morawetz Cor. (2d Ed.) Sec. 1049.

It is apparent that the whole scheme was an attempt to do indirectly that which is not allowed to be done directly, and which the law justly abhors and condemns.

W. R. LAWRENCE

Of Counsel for Appellants.

United States of America

State of Illinois } ss: In Circuit Court
Vermilion County } May Term 1888.

Pleas before the Honorable Edward P. Vail one of the three Judges of the fourth judicial Circuit of the State of Illinois and Judge presiding of the Vermilion County Circuit Court in the State aforesaid, at a Term thereof begun and held at the Court House in Danville in said County on the 1st Monday being the first day of October in the Year of Our Lord Eighteen hundred and eighty eight and of the Independence of the United States the One hundred and thirteenth.

Present Honorable
Edward P. Vail,
Judge.
Joseph C. Gundy, Sheriff.
John G. Thompson States Attorney,
A. S. W. Hawes Clerk.

Attest A. S. W. Hawes Clerk.

Court convened at 9½ Oclock A. M. by due proclamation according to law.

Laura D. Mott
& May Lamon
vs
Melissa B Lamon
The Danville Seminary
Et al

Partition

No 4068

4068

Be it remembered.
That On the 22nd day of March A. D. 1888,
prior to said Term of the said Court the
said Complainants filed their Bill of Complaint
in the Circuit Clerks office of said County,
in words and figures following to wit;

State of Illinois) In the Circuit Court,
(ss
Vermilion County) Of the May Term. 1888.

To the Honorable the Judge of said Court, in Chancery sitting:

Laura D. Mott, and May Lamon, complainants, respectfully show unto your Honor that Melissa B. Lamon, on the 21st, day of March, 1888, being the owner in fee simple by quit claim deed, duly executed, conveyed to them, the undivided one third part, of the following described real estate situated in said County and State, to wit: Beginning in the center of the public road leading west from Main Street in Danville, on the line between the east and west halves of north west quarter of section 8, township 19, north, range 11, thence north along said line (4) four chains and (85) eighty five links, thence east (4) chains and 12 1-2) twelve and one half links, thence south to center of said road (4) four chains and (85) eightyfive links, thence west along the center of said road to place of beginning, said road now being known as Main Street.

That complainants desire their said share partitioned and set off to them in severalty, if the same can be done without manifest prejudice to the rights of the said several co-owners.

They further show unto your Honor, as they are informed and believe, that "The Danville Seminary," a body corporate, claims to be the owner in fee simple of said described real estate, and is now in the actual possession of the same by its tenant, the Board of Education, of District 1, Township 19, Ranges 10 and 11 west, of Vermilion County, State of Illinois, also a body Corporate; but complainants aver and charge the fact to be that said claim of "The Danville, Seminary," is pretendend and colorable, because they say that said Melissa B. Lamon, on the 15th, day of November, 1850, being the owner in fee simple, in herown right, of said lands, and in the actual possession of the same, joined with her husband, Joseph B. Lamon, since deceased, in a deed granting and conveying the said lands to the Board of Trustees of the Danville, Seminary, a corporation organized under an act of the the legislature of said State, in force April 3rd, 1849, providing for the incorporation of institutions of learning; that said conveyance from said Melissa B. Lamon to said corporation was without any valuable consideration whatever, but was a gift and donation to it for the building and maintaining on said grounds an institution of learning as provided by said law authorizing said incorporation.

That about the year, 1852, said incorporation built upon said lands, a then commodious brick building, and began to operate and conduct an institution of learning as provided by said Law, known as the "Danville Seminary," and so

continued the same until about the year 1858, and has thence hitherto wholly ceased to operate and conduct any institution of learning.

That at the February Term, 1877, of this Court, the People of the State of Illinois, by the States Attorney of this County, began a proceeding of scire facias against the said, The Board of Trustees of Danville Seminary to dissolve and annul its incorporation, as provided by said act creating it; that said corporation appeared in said proceeding and answered said writ of scire facias and afterwards at the October term of this Court in 1880, it was ordered and adjudged by said Court that said corporation be, and the same was, dissolved, which order and judgement ~~of~~ is now of record in this Court in full force and effect.

During the pendency of said proceeding of scire facias and on the 5th, day of July, 1877, William H. Brown, pretending to act as President and Joseph G. English, pretending to act as Secretary of said Corporation pretended to execute a deed of conveyance of said described real estate to Edwin C. Abdill and James H. Phillips, for the pretended consideration of $6,000.00; and that afterwards, said Abdill and Phillips pretended to convey said premises , by deed of quit claim to "The Danville Seminary," a corporation organized on the 10th, day of October, 1879, under the statutes of this State, pro ~~xxx~~ viding for the formation of corporations not for pecuniary profit; and on said 13th, day of October, the said Brown as President and said English as Secretary, of said pretended corporation, The Board of Trustees of the Danville Seminary, pretended to execute a quit claim deed to said real estate

to said, "The Danville Seminary," corporate as aforesaid.

And these complainants charge that all of said several conveyances to said Phillips and Abdill and to the Danville Seminary, were merely colorable, and were shifts and devices to hinder and delay the said Melissa B. Lamon, in getting her reversionary title to said real estate; that said pretendexd deed of the Board of Trustees, of Danville Seminary, was without the common seal of said corporation, although it then had a common seal as provided by the said act; that the Board of Trustees, managers or directors of said corporation, The Board of Trustees of Danville Seminary, did not authorize, in any manner, the execution of said conveyance to said Abdill or Phillips, or the conveyance to said Danville Seminary; that it was not conveyed for any of the uses and purposes provided by the said act of incorporation.

And, complainants further show unto your Honor, that said Danville Seminary in its application to the Secretary of the State of Illinois for a certificate of incorporation, therein set forth and stated the object of said corporation was:" to maintain and operate an institution of learning in "the City of Danville, County aforesaid, to provide general "means of education, and to succeedthe Board of Trustees of Danville Seminary," and they charge th e fact to be that since its said incorporation it has not maintained and operated or pretended to maintain and operate an institution of learning of any kind, it has not acquired or attemtpted to acquire any proprty of any kind, except the pretended acquisition of the said real estate, but that since the date

of the said deed of conveyance to it, it has leased to private persons and to said Board of Education, the said real estate, and its officers have applied the rents thereof to the support and maintainance of the North Street Methodist Episcopal Church, and the Kimber Episcopal Church of Danville, Illinois, as these complainants are informed and believe; and that Danville Seminary by its officers is offering for sale and attempting to sell said real estate to private persons for private uses, and not for the use of any educational purposes whatever.

And then complainants further show unto your Honor, that for the thrity years last past, the said grounds and building have been ~~used~~ diverted from the use for which it was granted as aforesaid, and as provided by the said act of the legislature of 1849; that the pretended officers of said pretended corporations have rented the said buildings and grounds to various persons, and a large portion of the rents arising therefrom have been devoted to helping maintain and keep up the Churches aforesaid.

And they further show unto your honor that said Board of Trustees of Danville Seminary at the time of its dissolution aforesaid had no property, no creditors and no stockholders.

And the complainants charge that the said Officers of the Board of Trustees, Edwin C. Abdill, James H. Phillips and the incorporation of said Danville Seminary, combined and confederated in doing the several acts charged against them as aforesaid for the purpose of defeating the reversionary right of said Melissa B. Lamon to said property, and to sell and divert the proceeds of the same from the uses and purposes

expressed in said act of incorporation, and from the uses and purposes of said grant by said Melissa B. Lamon to said Board of Trustees of Danville Seminary.

Inasmuch therefor as complainants are without relief save in a court of equity, they ask that said Melissa B. Lamon, The Danville Seminary and Board of Education of District 1, Township 19, north, Ranges 10 and 11, west, of Vermilion County, Illinois, be made parties defendant to this bill and be required to answer the same, but not under oath; that upon a final hearing the several shares and interests of themselves and said Melissa B. Lamon be determined in said real estate and that the same be set apart to them in severalty, if the same can be done without prejudice to their several interests, otherwise that Commissioners be required to appraise the same, and the same to be sold and the proceeds divided between them as is in such cases provided by the statute; also that the said pretended deed to the Danville Seminary be decreed null and void and of no effect, and the same be cancelled of record and the said Danville Seminary be forever injoined from claiming or asserting any title to said real estate under and by virtue of said deeds; that a writ of restitution issue against said seminary and said Board of Education, and for possession of said premises; that the usual writ of summons issue against said defendants and for such other and further relief in the premises as may be equitable, &c.,

W. R. Lawrence,

Solicitor for Complainants.

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No. 4068

Thereupon a Summons was issued out of said Court in words and figures following to wit;

"State of Illinois } ss The People of the State of Illinois
Vermilion County } To the Sheriff of said County
Greeting

We command you that you summon
Melissa B. Lamon. The Danville Seminary, The Board of Education of District 1 Townships 19 North Range 10 & 11 West in Vermilion County Illinois if they shall be found in Your County personally to be and appear before the Circuit Court of said Vermilion County on the first day of the next term thereof to be holden at the Court House in Danville in said Vermilion County on the third Monday of May 1888, to answer unto Laura D. Mott and May Lamon as to the matters and things alleged in their certain bill of complaint for Partition filed in said Court on the Chancery side thereof. And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same. Witness; Albert S. W. Hawes Clerk of our said Circuit Court and the seal thereof at Danville this 22nd day of March A. D. 1888.

(Seal)

A. S. W Hawes Clerk
By W. T. Cunningham Deputy

Endorsed upon said summons is the Sheriffs return thereof in words and figures following to wit;

1
State of Illinois }
2
Vermilion County } ss
3
I have duly served the within by
4
reading the same to the within named Melissa B. Lamon
5
The Danville Seminary by reading the same to W.H. Johns,
6
President. The Board of Education District 1 Townships
7
19 North Range 10 & 11 West in Vermilion County Illinois
8
by reading the same to D. G. Moore President of said
9
Board. And at the same time delivering to each
10
of them a true copy thereof this 26th day of
11
March 1888. J. C. Gundy Sheriff.
12
By H. Brown Deputy.
13
14
15
Afterwards on the 31st day of May 1888 the said defendant
16
the "Danville Seminary" filed it's demurrer to said Complainants
17
Bill of complaint in words and figures following to wit:
18
19
"State of Illinois } Of the May Term AD 1888
20
Vermilion County } Vermilion County Circuit Court
21
22
Laura D. Mott. May Lamon,
23
vs
24
Melissa B Lamon, The Danville Seminary
25
The Board of Education of District 1 Township
26
19. North Range 10 & 11 West in Vermilion County
27
Illinois
28
And the said defendant the Danville Seminary says
29
that it is informed and believes that the said bill of complaint
30
by complainants filed herein sets forth no matter or thing
31
showing them to be entitled to the relief by them claimed in
32
said cause and that it has good cause for a demurrer
33
to said bill of complaint and it therefore doth demur

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to the same and prays the judgment of the Court whether it should be required to answer said bill of Complaint.

Danville Seminary
By J. B. Mann Solr.

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Afterwards towit on the 5th day of said term of Court towit on the 1st day of June 1888. certain proceedings were had and entered of record in said cause as follows towit:

Now comes said defendant the Danville Seminary by their Solicitor and demurs to said Complainants bill of complaint.

Afterwards towit; at the October Term A D 1888 of said Court, On the 24th day of said Term towit; on the 12th day of November 1888. certain further proceedings were had and entered of Record in said Cause in words and figures following towit;

No. 4066

Laura D. Mott, & May Lamon }
vs } Partition
Melissa B. Lamon, Danville Seminary et al }

Now again come said parties by their respective Solicitors And the Court having heard the argument upon the defendants demurrer heretofore filed in this cause, and being now fully advised in the premises sustains said demurrer. It is therefore ordered that said complainants Bill of Complaint be dismissed at the costs of said complainants. Thereupon said Complainants pray an appeal to the Supreme Court of the State of Illinois, which is allowed upon said complainants filing their appeal Bond in the sum of One hundred Dollars conditioned according to law

with sureties to be approved by the Clerk of this Court.
Said Bond to be filed within thirty days.

Afterwards on the 30th day of November A D 1888, said complainants filed their appeal Bond in the Clerks Office of said Court, in words and figures following to wit:

"Know all men by these Presents that we Laura D. Mott and May Lamon as Principals and W. T. Cunningham and Henry W. Mott as sureties of the Counties of Cook and Vermilion and State of Illinois are held and firmly bound unto the Danville Seminary in the Penal sum of One hundred Dollars for the payment of which well and truly to be made we and each of us bind ourselves our heirs executors and administrators, jointly and severally firmly by these presents, Sealed with our seals and dated at Danville this 28th day of November in the Year of our Lord one thousand eight hundred and eighty eight.

The Condition of the above obligation is such that whereas the said the Danville Seminary did on the 12th day of November One thousand eight hundred and eighty eight at a term of Circuit Court then being holden within and for the fourth Judicial Circuit in the County of Vermilion and State of Illinois obtain a decree against the above bounden Laura D. Mott and May Lamon dismissing a certain Bill in Chancery therein filed and for the costs. from which decree the said Laura D. Mott and May Lamon have prayed for and obtained and appeal to the Supreme Court of said State.

Now if the said Laura D. Mott and May Lamon shall duly prosecute

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said appeal and shall moreover, pay the amount of the said judgment costs interest and damages rendered and to be rendered against them the said appellants in case said decree shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue

Laura D. Mott (Seal)
May Lamon (Seal)
W. T. Cunningham (Seal)
Henry W. Mott (Seal)

Said Bond is endorsed
"Filed this 30th day of November A D 1888.
A. S. W. Hawes Clerk.

State of Illinois }
Vermilion County } I A. S. W Hawes Clerk of the Circuit Court in and for said County do hereby certify that the within and foregoing is a full true and correct copy of the Record proceedings and papers on file in the above entitled cause of Laura D. Mott and May Lamon vs the Danville Seminary et al No. 4068 as the same appear of Record and on file in my Office

Witness my hand and Official seal this 30th day of November A D 1888.
A. S. W. Hawes Clerk
by W. T. Cunningham Deputy

Appellants' Assignment of Error.

The court erred in sustaining demurrer to bill, and in dismissing the bill.

W. R. Lawrence
Atty for Appellants.

11 4068

Laura D. Mott and Mary Lamon vs Danville Seminary.

Transcript.

Appeal from Vermilion Circuit Court.

Filed Dec. 5, 1884
E. A. Snively
Clerk.