

No. 12574

Supreme Court of Illinois

Hempstead, et al

vs.

Dickson

71641  7

133 — 153

Ch. Miller v. H. impetud

by

William Dickson

133

12574

1858

~~X~~

Disputed

Transcript

In case of
Hempstead & Washburne
vs
William Pickson

From
Jo Davies C Cir Court

State of Illinois
So Davis County
Fourteenth Judicial Circuit

Pleas in the Circuit
Court begun and held within & for said County
of So Davis on the third Monday in the
month of October A.D. 1857. before the
Hon^{ble} Benjamin R. Sheldon Judge of
the fourteenth Judicial Circuit of the
State of Illinois

Wm R Rowley Clerk

S H Miner Sheriff

W D Meacham Prosecuting Attorney

Charles S Hempstead
& Elisha B Washburn

Ejectment

vs
William Dickson

Be it remembered
that heretofore to wit at the October Term
A.D. 1855. to wit on the 10th day of November
as yet of the said October Term A.D. 1855 of
said Court in the record of the proceedings
thereof in the above entitled cause appears
the following entry to wit

Charles S Hempstead &
Elisha B Washburn

Ejectment

vs
William Dickson

Now at this day come the plaintiffs by their attorney and file their declaration affidavit & copy of service & thereupon it is ordered by the Court that this cause be docketed and that the defendant be ruled to plead in twenty days.

The Declaration Notice & Affidavit referred to in the foregoing entry is in the words and figures following to wit:

State of Illinois = In Circuit Court
 Joe Davis County = Oct Term 1855

Charles S Hempstead and
 Olin B Washburne the plaintiffs in this
 suit complain of William Dickson the
 defendant in this suit in a plea of Tresspass
 and Ejectment for that whereas heretofore
 to wit on the first day of September A.D. one
 thousand eight hundred and fifty five
 at the County aforesaid the said plaintiffs
 were possessed in their own right in fee simple
 of one undivided fourth part of the following
 described premises or lot of ground to wit
 Lot Number One in Block "A" on the west
 side of Terre River in the city of Galena
 in said County according to the plat of
 the late Town now City of Galena and
 afterwards the said defendant to wit on

The day and year aforesaid to wit at the County aforesaid while the said plaintiffs were so possessed of the said premises as aforesaid entered into the same and possessed himself of the said premises unlawfully & wrongfully and still withholds possession of the same from the said plaintiffs unlawfully and wrongfully to the damage of the said plaintiffs five hundred dollars wherefore they bring suit &c by their atty

J M Douglass, atty for Plffs.

To William Dickson the above named defendant

You are hereby notified that the above declaration in ejectment will be filed in the Circuit Court of Cook County Illinois at the present term of the said court and that upon filing the same a rule will be entered against you requiring you to appear and plead to the said declaration within twenty days thereafter and that if you neglect so to appear and plead a judgment by default will be entered against you and the said plaintiff will recover possession of the premises in said declaration mentioned.

Nov 3rd 1855

J. M. Douglass
Atty for Plffs

Endorsed

State of Illinois
 So Daviep County *vs* William R Rowley
 Sheriff of the County of So

Daviep being sworn do state under oath that
 I did this day serve the within declaration &
 notice upon the within named William Dick-
 son by delivering to him a true & correct copy
 thereof which service was upon this 8th day of
 November A.D. 1855

Sworn & subscribed before
 me this 9th day of
 Nov 1855

W R Rowley shff

W B Green clk

Filed Nov 10th 1855

W B Green clk

And afterwards to wit on the ~~30th~~^{23rd} day of ~~Nov~~
 November 1855 the said defendant by his Attorney comes
 & files his plea which is in the words and
 figures following to wit:

The State of Illinois

So Daviep County *vs*

In the Circuit Court In vacation
 after the October Term A.D. 1855

William Dickson

vs.

Charles S Hempstead

& Elisha B Washburne

Exponent

And the said defen-
 -dant by Wiegley &
 Jewett his Attorneys comes

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and says that he is not guilty of unlawfully withholding the premises claimed by the said plaintiffs as is alleged in the said declaration of the said plaintiffs and of this he the said Defendant puts himself upon the Country

Wigley & Jewett. Attys for Dfs.
And plaintiffs doth the like

McClellan Atty for plff.

Endorsed

Filed 21st Nov 1855

Geo. M. Mitchell clk

And afterwards to wit on the 30th day of March AD 1857 as the March Term AD 1857 of said Iodavies County Circuit Court in the records of the proceedings thereof in said cause appears the following entry to wit

Charles S Hempstead et al

vs

Wm Dickson

Ejectment

By consent

of the parties it is ordered by the Court that this cause be continued generally

And afterwards to wit on the 21st day of November AD 1857 as the 1st of the October Term AD 1857 of the said Iodavies County Circuit Court in the record of the proceedings thereof in said cause appears the following

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entry To wit

Charles S Hempstead

E. B Washburne

Ejectment

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vs

Wm Dickson

Now at this

day come the parties

by their attorneys and by agreement they waive the intervention of a jury & for trial put themselves upon the court upon an agreed statement of facts and the court after hearing the evidence in the cause and the arguments of Counsel. Takes the case under advisement.

And afterwards To wit on the 23^d day of November AD 1857 as yet of said October Term AD 1857 of said Circuit Court in the record of the proceedings thereof in said cause appears the following entry To wit

E. B Washburne

Charles S Hempstead

vs

William Dickson

Ejectment.

Now at this

day came again the

parties by their attorneys and the court being fully advised in the premises finds the issue for the Defendant to which finding of the court the plaintiffs by their attorney excepts. It is thereupon considered by the

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Court that the plaintiffs take nothing by their
suit herein and that they pay the costs of
this proceeding and that Execution issue
against them. Therefor, and the Plaintiffs
by their attorney come and file their Motion
with reasons for a new trial. Which is
overruled by the Court to which ruling of
the Court the plaintiffs by their attorney
except.

The Motion for a new trial referred
to in the foregoing entry is in the words
and figures following to wit:

State of Illinois } In Circuit Court
of Daviess County } Oct Term AD 1857.

Charles S. Hempstead
& Elihu B. Washburne

Ejectment

vs
William Dickson } And now
The said plffs by
McClellan their atty

move the Court to set aside the finding
of the Court & for a new trial herein & for
Cause shows;

1st The finding of the Court
is contrary to law

2nd The finding is contrary to the agreed state-
ment of facts.

3^d The finding is in other respects erroneous

McClellan atty for
plffs

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Endorsed

Filed Nov 23^d 1857

W. R. Rowley Clerk

And afterwards to wit on the 2nd day of Dec
AD 1857 as yet of the said October term AD
1857 of said Federal Circuit Court
in the records of the proceedings thereof in
said cause appears the following entry
to wit

E. B. Washburne &

Chas S Hempstead

Ejectment

vs

William Dickson

Now at this

day come the plaintiffs
by their attorney and pay
an appeal to the Supreme Court which is
granted by the Court conditioned that
they enter into ^{within thirty days from this date} file with the Clerk of this Court
an Appeal Bond properly conditioned with
either Robert H McClellan or Edward H Babo
as surety in the sum of Two hundred dollars
and the plaintiffs come & file their Bill of
Exception which is certified by the Court

The Bill of Exceptions referred to in the
foregoing entry is in the words and fig-
ures following to wit.

State of Illinois

Federal Circuit Court

In Circuit Court

October Term AD 1857

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Charles S Hempstead

Elihu B Washburne

Ejectment

vs
William Dickson

Be it remembered

That on the 21st day
of November A.D. 1857, being
still of the October Term A.D. 1857 of the said
Circuit Court the above entitled Cause
came on to be tried before the Court, the
parties having waived the intervention
of a Jury & for trial put themselves upon
the Court, the Cause was submitted to the
Court upon the pleadings in the Cause
& upon the following agreed state of fact.
To wit

Charles S Hempstead

Elihu B Washburne

Circuit Court

of Davis County Ill

of the October Term 1857

vs
William Dickson

Ejectment

Agreed state of facts to be admitted by the parties to the above entitled Cause on the trial and to be used for one trial only.

It is agreed admitted that Lawrence Regan, late of Davis County Illinois, deceased died on the 25th day of February A.D. 1851, seized in fee of Lot No One (1) in Block "A" in the City of Galena being the same property described in the declaration in this cause. That he left four children

his heirs at Law, the youngest of whom a daughter became eighteen years of age on the day of July A.D. 1852

It is further admitted that said Lawrence Ryan made a will, which was duly proved and recorded, a certified copy of which is hereto annexed marked "A" and made part of this statement and is in the words and figures following to wit

"A" In the name of the father son and the Holy Ghost, Amen, I Lawrence Ryan of Galena in the County of St. Davie and State of Illinois being of sound ^{disposing} mind and memory calling to mind the uncertainty of human life and being desirous of settling my worldly affairs and directing how the property with which it has pleased God to bless me shall be disposed of after my decease. Do make and publish this my last will and testament, hereby revoking and making null and void all other last wills and testaments by me heretofore made. All the property real personal and mixed of every name and kind of which I may be ^{dis} seized or possessed or to which I shall or may be entitled at the time of my decease I devise bequeath and dispose of as follows In witness

My will is that all just debts & funeral charges be paid out of my estate by my executors as soon after my decease as can conveniently be done

Item, To my beloved wife Ellen Howard Ryan I give and bequeath the sum of fifty dollars in money to be paid by my Executors within two months after my decease. I also give and bequeath to my said wife, all the furniture in my dwelling house to have and to hold to her heirs, executors and administrators for ever. And I also give and bequeath to my said wife the use of the lot of land on which my dwelling house now stands being lot Twenty Three (23) on Main Street in Galena together with the use of said dwelling house and the other improvements on said lot to have and to hold to her during her natural life without impeachment of waste. And this said legacy so given to my wife aforesaid I hereby declare is intended to be ^{and is so} given to her in full satisfaction and recompense of and for her dower and Thirds which she may or can in any wise claim or demand out of my estate. Item, I give and bequeath the lot on which my stable now stands being lot No Twenty four (24) on Main

Street and my lot on the bottom being
 lot No one in square A and also the
 reversion or remainder of the lot on which
 my dwelling house now stands together
 with the reversion or remainder of my
 said dwelling house and other ~~improvements~~
 improvements on said lot unto my said
 wife, the right reverend Matthias Soray, Esq.
 and Michael Murphy Esquire and to the
 survivor or survivors of them and to
 the Executors and assigns of such
 survivors. To have and to hold the
 same until my youngest child shall
 obtain if a male the age of twenty one
 years or if a female the age of eighteen
 years in trust for all my surviving
 children their heirs and assigns as
 tenants in common and until the deter-
 mination of said trust estate as above
 provided it is my will that the rents
 issues and profits of the said lot on
 which my stable now stands and of all
 improvements thereon and of the lot on
 the bottom and of all the improvements thereon
 or so much of the said rents issues and
 profits as my said Trustees shall deem
 necessary shall be expended in the
 proper support and education of my
 children being under full age and the

overplus if any Therebe shall as the determination of the said Trust Estate be divided equally share and share alike amongst all my surviving Children and Their heirs provided that in case my said Wife shall marry again she shall from thenceforth cease to be Trustee under this will and the other persons named in this bequest as trustees and the survivors of them and the executors and assigns of such survivor shall be sole Trustee.

Item. The residue of my estate real personal and mixed of every name and kind. I give and bequeath to be equally divided share and share alike amongst my wife and children and their heirs as Tenants in Common.

Item. I hereby commit the Guardianship of all my children until they shall respectively if Male attain the age of Twenty one years or if female the age of eighteen years unto my said wife so long as she shall continue a widow and to the Right Rev Matthias Sora, D.D. and Michael Murphy Esq. and to the survivors of them and the Executors and assigns of such survivors.

Item. I do hereby constitute and appoint the Rev Samuel Mayzukele and Philip Barry Esqs to be the sole executors of this my last will and testament and I do

hereby expressly declare that my said Execu-
tors and the Trustees heretofore named
and their Executors and assigns shall
not be chargeable with or accountable
for more of my property aforesaid than
shall actually come to their respective
hands by virtue of this my will or with
it for any ^{loss} ~~loss~~ of said property ^{as the same shall} which shall happen ^{without}
their wilful default or neglect

IItem upon the determination of the Trust
estate hereinbefore mentioned all the
property bequeathed in Trust is to be
equally divided amongst my sur-
viving Children their heirs and
assigns as Tenants in Common. In
virtue whereof I have hereunto set my
hand and seal this 28th day of April A.D. 1840

Lawrence Ryan. *(Seal)*

The above Instrument was now here subscribed
by Lawrence Ryan the Testator in the presence
of each of us and was at the same time
declared by him to be his last will and
Testament and we at his request
sign our names hereto as attesting
Witnesses This 28th day of April A.D. 1840

Michael Byrne

Nicholas Dowling

John Reilly

Remigus Pellet

all of Galena

Be it remembered that I Lawrence Ryan
of the County of St. Louis and State of
Illinois having made and published
my last will and testament dated this
day do hereby make and publish this
Codicil to my said Will and declare this
to be a part thereof. After paying all
just debts and ^{funeral} charges as in the said
Will directed it is my Will that out
of any money I may be possessed of
or out of my personal property (my said
wife) executors shall reserve the sum of
One hundred dollars to be paid by the said
executors within three months after my
decease to the right Rev Matthias Loring D.
and I hereby ~~assign~~ desire the said Dr
Loring to expend the same for Charitable
purposes hereby confirming my said
last Will and Testament of this date and
which this is only a Codicil and addition.
In Testimony Whereof I have hereunto set
my hand and seal. This 28th day of April
A D 1840

Lawrence Ryan 

The above Codicil was now here subscribed
by Lawrence Ryan the Testator in the presence
of each of us & was at the same time declar-
ed by him to be only a Codicil and addition
to his last Will of this date and the

said Lawrence Ryan also declared that he
Confirmed and published the last will and
testament aforesaid together with the above
Codicil as his last will and Testament And
me at his request sign our names hereto
as attesting witnesses This 28th day of April
in the year of our Lord 1840

Michael Byrne

Nicholas Dowling

John Reilly

Romiguis Petiot

~~~~~  
~~~~~  
~~~~~  
~~~~~  
~~~~~

All of Galena

Be it remembered that  
I Lawrence Ryan of the County of Jo Daviess  
and State of Illinois having heretofore on  
the 28<sup>th</sup> of April A.D. 1840 made and  
published my last will and Testament  
with a Codicil thereto of the same date do  
hereby make and publish this as a further  
Codicil to my last will and Testament  
Whereas I have this day leased and to  
William H Hooper the two lots on which  
my dwelling house & stable now stand for  
a certain term in the indenture mentioned  
of said lease expressed it is my will that  
the rents reserved in said lease be paid  
to my beloved wife during her life for hers-  
elf and children so long as she continues  
unmarried. But if my said wife shall  
marry during the continuance of the said



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lease then it is my will that Three sevenths  
 of the said rents be paid to her for her sole  
 use and the residue of such rents shall  
 be paid to the Trustees in my said Will named  
 to be by them expended for the support and education  
 of my Children according to the directions  
 contained in said will and it is further my will  
 that upon determination of the said lease  
 in any way the said two lots and all  
 improvements then being thereon be disposed  
 of according to the directions of my aforesaid  
 will as made and published on the aforesaid  
 28<sup>th</sup> day of April 1840

And I hereby request and  
 direct my executors and Trustees ~~to make~~  
 to make at the earliest day and to renew  
 from time to time as occasion may require  
 all necessary powers & order to enable  
 my said wife to receive the said rents  
 as in the Codicil directed and hereby con-  
 firming my said last Will and Testament  
 of the 28<sup>th</sup> day of April AD 1840 and the  
 Codicil of the same date to the same  
 This is only a codicil & addition

In testimony whereof I have hereunto set  
 my hand and seal this fifteenth day  
 of February AD 1841

Lawrence Ryan Seal



The above Codicil was now here subscribed by Lawrence Ryan the Testator in the presence of each & all of us and was at the same time declared by him to be only a Codicil and addition to his last will and Testament published on the 28<sup>th</sup> day of April 1840 and the said Lawrence Ryan declared that he confirmed the last will aforesaid & the Codicil thereto of the same date and this Codicil as his last will & Testament and we at his request & in his presence signed in presence of each other sign our names hereto as attesting witnesses this fifteenth day of February A.D. 1841

Wm L Postwick

Walter F. Franklin

Wm H Hooper

W  
W  
W

All of Galena

State of Illinois  
 Goddard County  
 I Richard Seal clerk of  
 the County Court in & for said  
 County do hereby certify that the annexed ~~and~~ fore-  
 going is a true copy of the original will of  
 Lawrence Ryan deceased, as the same is now  
 on file & of Record in my office.

Witness my hand & seal of the said Court at  
 Galena this 17<sup>th</sup> day of September A.D. 1857

Attest Richard Seal Clerk

Seal



That on the 13<sup>th</sup> day of November, A D 1849  
 Francis Ryan one of the heirs at law of  
 Lawrence Ryan deceased and one of the  
 legatees named in the will hereto attached  
 executed and delivered to the plaintiffs  
 a quit-deed of all his estate in said Lot  
 one (1) in Block "A" a copy of which deed  
 is hereto attached marked "B" and made  
 part of this ~~record~~ statement And is in  
 the words and figures following to wit;

"B"

Francis Ryan  
 To 3 Deed  
 Hempstead Washburne  
 Know all men by these  
 presents that I Francis  
 Ryan of the County of St  
 Davie and State of Illinois  
 for and in consideration of Two hundred  
 and fifty dollars to me in hand paid by  
 Charles S Hempstead and Elisha B  
 Washburne of said County at and before  
 the sealing and delivery of these presents  
 the receipt whereof I hereby acknowledge do  
 by these presents give grant bargain and  
 forever quit-claim unto the said Charles  
 S Hempstead and Elisha B Washburne  
 their heirs and assigns forever all my  
 right title interest and estate be the same  
 of possession reversion remainder or  
 otherwise which I now lease under and by  
 virtue of the last will and testament of



Lawrence Ryan deceased of in and to the  
 following described lot situate in the  
 City of Galena County & State aforesaid to  
 wit Lot Number One (nos) in Block A on  
 the west side of Peave River as designated  
 on the plat of survey of the late town now  
 City of Galena aforesaid to have and to  
 hold the above granted premises together  
 with all and singular my right title  
 interest and estate to the same of possession  
 reversion remainder or otherwise of in and  
 to all and singular the rights privileges and  
 appurtenances unto the said premises belong-  
 ing unto them the said Charles S Hempstead  
 and Elisha B Washburne their heirs and  
 assigns forever And the said Francis  
 Ryan do hereby Covenant with the said  
 Charles S Hempstead & Elisha B Washburne their  
 heirs and assigns that I will & my heirs  
 executors and administrators shall and  
 will from time to time hereafter and  
 upon the reasonable request and at the  
 cost of the said Charles S Hempstead and  
 Elisha B Washburne their heirs and assigns  
 make execute & deliver to them or either of  
 them every such further and other deed  
 in law as may be required for the further  
 and better assuring unto the said Charles  
 S Hempstead and Elisha B Washburne their



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heirs and assigns the said premises heretofore  
mentioned or intended to be mentioned  
and conveyed. In testimony whereof I  
have herunto set my hand and seal this  
The Tenth day of November AD 1849  
Signed sealed and delivered Francis Ryan Seal  
In presence of  
P. A. Hogue, B. P. Strother

State of Illinois  
In Daviess County  
Before me the undersigned  
Justice of the peace of said  
County personally appeared this day Francis  
Ryan to me personally known to be the identical  
person described in & who executed the foregoing  
instrument in writing and acknowledged to  
me that he had executed the same freely and  
voluntarily for the uses and purposes therein  
mentioned. Witness my hand and seal this  
14<sup>th</sup> day of November AD 1849

Wm. C. Bradrick J. P.  
Recorded November 14<sup>th</sup> AD 1849 at 2 O'clock P.M.  
Wm. C. Bradley Clk Circuit Court  
By W. Cady Deputy

That said last-mentioned deed was  
recorded on the 14<sup>th</sup> November AD 1849  
in Book L of deeds page 308.



It is further admitted that the Defendant  
 is the owner in fee of three fourths of said  
 lot being all the interests of the said heirs  
 of Lawrence Ryan deceased, except  
 Francis Ryan, whose interest was one undi-  
 vided fourth part of said lot, that  
 two judgments were rendered against  
 said Francis Ryan before he was twenty  
 one years of age that one of the said  
 judgments was rendered in the Circuit  
 Court of St. David's County Illinois at the  
 October Term A.D. 1844 by default  
 process having been duly served upon said  
 Francis Ryan. That a judgment was ren-  
 dered against said Francis Ryan whilst  
 an infant, upon due service of process before  
 John G. Dotts Esq. a Justice of the peace in  
 and for St. David's County, Illinois, on the  
 10<sup>th</sup> day of September A.D. 1844, for the sum  
 of Sixty two dollars and fifty cents and  
 costs upon which judgment an execution  
 was issued and duly returned by the  
 proper officer no property found and that  
 said judgment was duly certified to the  
 Circuit Court and that the interest of the  
 said Francis Ryan in said lot one in  
 Block A was subsequently sold by the  
 Sheriff on both said judgments and



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purchased by Thomas Drum. And that subsequently a deed was executed to said Drum by the Sheriff of the County of said interest it not having been redeemed according to law. A copy of which deed is hereto annexed marked D. and made part of this statement. and is in the words and figures following to wit

D

William P Millard Whereas Thomas Drum  
 Sheriff of Jo Daviess Co Ill did at the October Term  
 To Deed of the Circuit Court  
 Thomas Drum for the County of Jo Daviess  
 in the State of Illinois in  
 the year Eighteen hundred and forty four  
 recover a judgment against Robert  
 B McDowell and Francis Ryan for  
 The sum of <sup>Three hundred</sup> Forty four Dollars and three  
 cents & costs of suit upon which judg-  
 ment an alias Execution was issued  
 dated the thirtieth day of April A D 1843  
 directed to the Coroner of the County of  
 Jo Daviess aforesaid to execute and  
 when Thomas Drum and John Carley  
 Executors of the estate of Patrick Kelley  
 deceased did on the tenth day of  
 September A D 1844 before John B Potts  
 Esq a Justice of the peace for the said  
 County of Jo Daviess recover a judgment



against Francis Ryan for the sum of  
 Sixty two dollars and fifty cents <sup>costs</sup> upon  
 which judgment an Execution was  
 issued by said Justice and delivered  
 to Henry Warfield a Constable of  
 said County of So. Davie to execute  
 which said Execution was afterwards  
 returned by said Constable. "No personal  
 property found" endorsed thereon whereupon  
 The said Justice did certify to the Clerk  
 of the Circuit Court of said County  
 a Transcript of said Judgment which  
 was filed in said Circuit Court  
 on the 23<sup>rd</sup> day of December A.D. 1844 and  
 and an Alias Execution was afterwards  
 issued thereon out of the Circuit Court  
 dated on the 30<sup>th</sup> day of April A.D. 1845  
 directed to the Coroner of said County  
 of So. Davie to execute and by virtue  
 of <sup>the</sup> two said Executions issued out of  
 said Circuit Court William P. Mallard  
 The undersigned the Coroner of said  
 County levied upon the land herein-  
 after described and the same were  
 struck off and sold to ~~xxxx~~ Thomas  
 Drum he being the highest & best bid-  
 der therefor and the time and place  
 of the sales thereof having been duly  
 advertised according to law.



Now therefore know all by this deed that  
 I William P Millard Sheriff of said  
 County of Goddard and successor to that  
 office from that of Coroner of said County  
 in consideration of the premises have granted  
 bargained and sold and do hereby convey  
 to the said Thomas Drum his heirs and  
 assigns the following described tracts  
 or lots of land situate lying and being in  
 Galena in the County of Goddard of the  
 said to wit. Lot Number Twenty Three (23)  
 and Twenty four (24) Main Street and  
 Lot Number One (1) in Square (A) in  
 the City of Galena aforesaid. being all  
 the right title and interest of the said  
 Francis Ryan in and to the said lots  
 in possession reversion or remainder. To  
 have and to hold the said described  
 premises with all the appurtenances thereto  
 belonging to the said Thomas Drum his  
 heirs and assigns forever. Witness my  
 hand and seal the ninth day of September  
 in the year of our Lord one thousand  
 eight hundred & forty six.

Signed sealed & delivered Wm P. Millard  
 in presence of Sheriff of Goddard County, Ill.  
 A S Holmes  
 Harvey Mann



State of Illinois  
 In said County of <sup>3</sup>/<sub>3</sub> William H Bradley  
 Clerk of the Circuit Court  
 in <sup>and for</sup> said County do hereby certify that  
 William P Millard Sheriff of said <sup>3</sup>/<sub>3</sub> County whose name appears <sup>subscribed</sup> to the  
 foregoing deed of Conveyance and who is  
 personally known to me to be the identical  
 person who executed the same this  
 day appeared before me and acknowledged  
 that he had executed the same freely  
 and voluntarily for the uses and  
 purposes therein expressed. In Testimony  
 whereof I have hereunto set my hand and  
 affixed the seal of said Court at my  
 Office in Galena this Tenth day  
 of September A.D. 1846

Wm H Bradley  
 Clerk

Attest Wm H Bradley Clerk

Recorded this Tenth day of September  
 A.D. 1846, at three O'clock P.M.

Jeremiah Pettis, Recorder.

It is agreed that the proceedings by  
 which the Sheriff's deed aforesaid  
 was obtained were regular except  
 that said Francis Ryan, at the  
 time of rendering said Judgment, was an  
 infant, under the age of twenty one years



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It is admitted That Thomas Drum  
by his Administrator S W Master  
Afterwards Conveyed his interest in  
said lot to Van H Higgins and Bolton  
F Strother by deed dated Nov 20<sup>th</sup> 1851  
which deed was made by order of  
County Court - at the March Term  
1851 & September Term 1851, which deed  
is recorded in Book C of Deeds page 122.  
which deed & the proceedings upon which  
it was founded were all regular

It is further admitted, That  
Bolton F Strother conveyed his interest  
in said lot - one in Block A. to Van H Higgins  
by Quit Claim Deed, dated Sept 16<sup>th</sup> 1852.  
which deed is recorded in book P. of  
Deeds page 281.

It is further admitted  
that Van H Higgins and wife conveyed  
to Horatio Newhall all his interest in  
said lot one by Warranty deed, dated  
March 16<sup>th</sup> 1853. Which Deed is recorded  
in Book Q. page 320.

It is further admitted  
that Horatio Newhall conveyed all his  
interest in said lot one in Block A. to  
the defendants William Dickson by  
Warranty deed dated January  
18<sup>th</sup> 1854 which deed is recorded in Book S. of deeds



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It is further admitted that said Francis Ryan was twenty One years of age or upwards on the 13<sup>th</sup> day of November, 1849, and that the defendant Dickson was in possession of the lot described in the declaration in this case as the commencement of the Suit and has remained in possession ever since.

It is agreed that the above statement of facts is to be taken upon the trial of said Cause as all the evidence offered in the trial with the privilege to either party to incorporate the same into a bill of exceptions and have it certified by the Judge, for the purpose of prosecuting an appeal or writ of error to the Supreme Court unless a new trial is granted.

R. A. McClellan *Att. for Df*  
W. H. Wigley *Att. for Plt.*

Endorsed

Filed October 28<sup>th</sup> 1857

W. R. Rowley *Clk*



29

No other Testimony was offered or received  
on said Trial except said Pleadings  
& Statement of facts - And the Court  
having taken the case under advisement  
on the 23<sup>d</sup> day of November AD 1857  
being still of said October Term AD 1857  
The Court found the issue for the Defendant  
so which finding of the Court the plaintiffs  
then & there excepted & moved the Court  
for a new trial & to set aside the finding  
which motion is as follows

State of Illinois      In Circuit Court  
In Davis County      October Term AD 1857

Charles S. Hampstead  
Elihu B. Washburne      vs      Ejectment  
And now  
William Dickson      The said plffs by

McClellan their Attys move  
The Court to set aside the finding of  
the Court & for a new Trial herein & for  
cause shows

1<sup>st</sup> The finding of the Court is Contrary  
to Law

2<sup>nd</sup> The finding is Contrary to the agreed Statem-  
ent of facts

3<sup>d</sup> The finding is in other respects erroneous &c

McClellan Attys for Plffs  
Endorsed Filed Nov 23<sup>d</sup> 1857

W R Rowley CLK



Which Motion was overruled by The Court  
to which ruling of The Court plaintiffs  
then & there excepted and The Court  
rendered The following Judgment on  
The finding to wit

E B Washburne

Charles S Hempstead vs Ejectment

William Dickson vs Now at this  
day came again

The parties by their attor-  
nies and the Court being fully advised  
in the premises finds the issue for the  
defendants to which finding of the Court  
the plaintiffs by their attorney except.  
It is thereupon considered by the Court  
that the plaintiffs take nothing by their  
suit herein & that they pay the costs  
of this proceeding and that execution  
issue against them. Therefore, and the  
plaintiffs by their attorney come after  
their motion with reasons for a new  
trial, which is overruled by the Court  
to which ruling of the Court the plaintiffs  
by their attorney except.

To which rendering  
of said Judgment & said finding & over-  
ruling of said Motion the plaintiffs then  
& there excepted & prayed that this



their Bill of exception might be signed sealed  
 & allowed by the Court which is accordingly  
 done in open Court this <sup>second</sup> ~~third~~ day of December  
 AD 1857. of said October term

(signed) Benj R Sheldon Esq

Endorsed

Filed Dec 2<sup>nd</sup> 1857

W. K. Rowley clk

And afterwards to wit on the 17<sup>th</sup> day of Dec:  
 AD 1857. The said plaintiffs by their Attorney come  
 and file with the Clerk of said Circuit  
 Court their Appeal Bond which is in the  
 words and figures following to wit;

Know all men by these presents that we  
 Charles S Hempstead Elisha B Washburne  
 & Robert H McClann of the County of  
 St Davids State of Illinois are held and  
 firmly bound unto William Dickson of  
 the same County in the penal sum of Three  
 hundred Dollars lawful money of the  
 United States for the payment of which  
 well and truly to be made we bind  
 ourselves our heirs Executors & adminis-  
 trators jointly & severally & firmly by these  
 presents. Witness our hands & seals  
 This 17<sup>th</sup> day of December AD 1857  
 The Condition of the above obligation



is such that whereas the said Charles S Hempstead and Elisha B Washburne were the plaintiffs in a certain suit in Ejectment in which said William Dickson was the defendant, tried in the Circuit Court of said Jackson County at the October Term AD 1857 thereof in which said suit Judgment was rendered against the said plaintiffs for the <sup>costs</sup> ~~costs~~ of suit from which said Judgment of the said Circuit Court the said Hempstead & Washburne have prayed an appeal to the Supreme Court of said State of Illinois. Now if the said Hempstead & Washburne shall duly prosecute their said appeal with effect and shall moreover pay the amount of said Judgment costs interests & damages rendered & to be rendered against them in case said Judgment be affirmed in the said Supreme Court, then the above obligation to be void otherwise to remain in full force & virtue

Chas S Hempstead Seal

E B Washburne Seal

By Chas S Hempstead his Atty in fact

Robert H McClellan Seal

Endorsed

Filed Dec 17<sup>th</sup> 1857

W R Rowley

Clk



State of Illinois  
In Daviess County *Wm* J. W. Rowley Clerk of  
The Circuit Court in and  
for said County hereby Certify the foregoing  
to be a True and correct copy of the Record  
& proceeding of said Court together with  
the Bill of Exceptions as certified by the  
Court. in the above entitled cause of  
Charles S. Hempstead & Eliza B. Washburne  
vs William Dickson



In Testimony Whereof I have  
hereunto set my name and  
affixed the seal of said Court  
at my office in Galena this  
13<sup>th</sup> day of January A.D. 1858  
Wm J. W. Rowley  
Clerk

Fees  
Transcript 8.20  
Cert & Seal 35  
\$ 8.55



133

Charles S. Hempstead et al

vs

William Dickson



Filed April 17 1888.

Sealand  
Clerk

2812  
1000  
1812



Hempstead & Mackinnon

~~Ad~~  
William Dickson

Apprentice from J. D. Davis -

The children of  
Lawrence Ryan each took a vested  
interest under the will. The words  
of survivorship refer to the death  
of the testator and not to the period  
when the youngest child attains the age  
of majority. 25 Wend 119 - Moore & Lyons -  
2 Roper on Legacies 1578 vide note -  
5 Barr & Rep. 503 Minnig & Batclough -  
2 Sandf ch Rep 533. Williamson & Field -  
3 Sandf - ch - 184 Beechman & Schermerhorn  
9 Leach Mag Rep 526 Eldridge & Eldridge -  
1 id - - 134 Furness & Fox  
1 Stobbs v. Eg. & c. 48 Bentley & Long -  
1 Ben. Monroe 251 Caldwell & H. Kentland -  
5 Dana 570 Roberts & v. H. Brinkley

The present capacity of taking effect  
in possession, if the possession were to become  
vacant, distinguishes a vested from a  
contingent remainder; It is the uncertainty  
of the right of enjoyment, not the uncertainty  
of its actual enjoyment, which renders a  
remainder contingent.

2 Sand ch Rep 538 Williamson & Field -



A sale of an infants property on  
Execution, may be prevented by a direct  
proceeding, but cannot be questioned  
collaterally - The proceedings may  
be erroneous but they are not  
void - 1 Hill 150. Bloom & Burdick  
18 Vermont Rep 290 Barker & Graves -  
3 A. R. Mar. 282 Beecher & Kim & Bullitt & Kim  
3 Barb S. C. Rep 494 Hastings & Ellis -  
15 Vermont 330 Palchin & Brownack

How can the Court collaterally  
inquire into the merits of a judgment  
rendered by a Court of competent  
jurisdiction - Perhaps the judgment  
was for necessaries, in which case  
it was rightfully rendered even against  
an infant - and no defence could  
be made to it directly or collaterally -

or it may have been rendered  
for a tort, or for something  
of advantage to the infant, in  
which case no defence could be  
interposed - If the Court in any  
case could have rendered a  
valid judgment against the  
infant, then the presumption  
is that it did its duty in the



premises, and as it had jurisdiction  
its judgment cannot be attacked  
collaterally - A sale of an infect  
property on an execution which  
is acquiesced in, is not set aside by a  
direct proceeding is as valid and  
binding as if the property had belonged  
to an adult

Saml. H. Higgins  
Atty for Dickson

---



14 em pteal Harkness

W

William Dickson

Points & authorities  
of V. K. Higgins  
for Dickson -

Filed May 12, 1898

L. Leland

Calif.



## STATE OF ILLINOIS—SUPREME COURT.

CHARLES S. HEMPSTEAD and )  
ELIHU B. WASHBURNE ) EJECTMENT.  
vs. ) *Appeal from the Jo Daviess Co.*  
WILLIAM DICKSON. ) *Circuit Court.*

### ABSTRACT OF THE RECORD.

- Record  
pp. 1, 2  
page 3
- 1 Plaintiffs file declaration and notice in ejectment; filed Nov. 10, 1855,  
for the undivided fourth of lot No. one, block "A," on the west side of  
Fevre river, in the city of Galena, Jo Daviess county, Ill.
- 5 Defendant files plea, "not guilty"; filed Nov. 21, 1855.  
At March term, 1857, cause was continued by consent.
- 6 At October term, 1857, (on Nov. 21, 1857,) jury waived, and cause  
submitted to the court upon agreed statement of facts. Court finds issue  
for defendant.
- 7 Plaintiffs file motion and reasons for new trial; overruled and excepted  
to by plaintiffs.
- 8 Appeal to Supreme Court, by plaintiffs, allowed, and plaintiffs file their  
bill of exceptions.
- 9 Bill of exceptions sets out submission of cause to court upon the plead-  
ings and agreed state of facts. Statement of facts admits Lawrence Ry-  
an died Feb. 25, 1851, seized in fee of lot in dispute, leaving four  
10 children his heirs at law; the youngest, a daughter, became 18 years of  
age on the — July, 1852; that Lawrence Ryan left a will, which is  
set out in full.
- 12 The lot in dispute given and bequeathed by will of said Lawrence Ryan,  
to wife of Lawrence Ryan, M. Loras and Michael Murphy, and to the  
survivor or survivors of them, and to the executors and assigns of such  
survivors, to have and to hold the same until youngest child of said Law-  
rence Ryan, if a male, should attain age of 21 years, or if a female, 18  
years, *in trust* for all said L. Ryan's surviving children, their heirs and  
assigns, as tenants in common.
- 13 If said wife of L. Ryan should marry, to cease to be trustee under said  
will.
- 14 Upon the determination of the trust estate aforesaid, all the property be-  
queathed in trust, to be equally divided amongst the surviving children of  
testator, their heirs and assigns, as tenants in common.
- 19 That on the 13th November, 1849, Francis Ryan, one of the heirs at  
law of said Lawrence Ryan, executed to plaintiffs deed of all his estate in  
20 & 21 said lot, a copy of which deed is set out.



- <sup>22</sup> That defendant is owner of three-fourths of said lot, being all interest of Lawrence Ryan's heirs, except Francis Ryan, whose interest was one undivided fourth of same; that two judgments were rendered against Francis Ryan before he was of age; and the interest of said Francis in said lot
- <sup>23 & 24</sup> was sold under said judgments to Thomas Drum, and a sheriff's deed executed to Drum set out in full.
- <sup>25</sup>
- <sup>26</sup> That the proceedings were regular, except that Francis Ryan was an infant when judgments were obtained.
- <sup>27</sup> That administrator of Drum conveyed interest of Drum to Higgins & Strother, Nov. 20, 1851. Strother conveyed to Higgins Sept. 16, 1852; that Higgins conveyed to Newhall March 16, 1853, and Newhall conveyed to defendant January 19, 1854.
- <sup>28</sup> That Francis Ryan was 21 years of age Nov. 13, 1849, and defendant was in possession of lot when suit was commenced, and ever since.
- <sup>29</sup> No other testimony was offered on trial—Court found for defendant, to which plaintiffs excepted and moved Court for new trial, which motion was overruled and plaintiffs excepted and Court rendered judgment for defendant, to which plaintiffs excepted.
- <sup>31 & 32</sup> Dec. 17, 1857, plaintiffs file their appeal bond, which is set out.

WASHBURN, GLOVER & COOK, for Appellants.



433-150

Charles S. Hempstead Ad

William Dickson

Filed April 28, 1838

L. Holland  
Belick



Charles L. Kempstead

& Edwin B. Washburne

133-

William Dickson

appeal from J. Davies -

### Argument for Appellant -

The real point in this case is this:

Had Francis Ryan any vested interest liable to sale on execution, when the judgment under which plaintiff below claims title, was rendered?

If he had no such interest then clearly the Defendant Dickson has no title -

The title was vested in the executors under the will of Lawrence Ryan until the daughter was eighteen which was long after this land was sold under the execution through which Defendant claims

3. Dredge 459.

3. Doversamp 270.



The legal Title was in the execution of Ryan when the land was sold by the Sheriff -

Francis Ryan did not have such an equitable Title as could be sold under an execution under our Statute -

The Sheriff could only sell such a Title as Francis Ryan could convey by deed and not what he might effect by estoppel, except by the provisions of our Statute -

An Equitable Title that might be sold by virtue of the provisions of our Statute must be a title that could have been made presently available, that is to say, he must have had a settled defined equitable interest in the land, coupled with the right of power certain and



forced, & indefeasible right by  
his own act, to enforce either then  
or at some future time a legal ti-  
tle -

This was not so for the reason  
that no interest was given to him  
specifically by the will, but only  
an interest to be vested in case  
he should live until the young-  
est son became twenty one or the  
youngest daughter eighteen years  
of age - Had he died be-  
fore that time, his survivors would  
have taken under the will and  
not as his heirs -

Suppose he had died on the day  
the execution was levied would  
he have had any interest in that  
land which would have de-  
scended to his heirs? If he  
would not then certainly he  
had no vested interest, his liv-  
ing or dying that day could have  
made no difference in his title  
to the lot in controversy -



No Estate can pass by deed, not  
vested in interest at the time of the  
grant -

2. Smith's Leading Cases 625-

Edwards v Barrick 5. Denio 665-

11. Wend. 110-

13. Wend. 178-

If it were not for the provisions of our  
Statute F. Ryan could not have con-  
veyed the land before the termination  
of the trust, but a sale of it by the  
sheriff conveys only such an interest as  
a quit claim deed would have con-  
veyed, at the common law -

Refined



Defendant relies on a case in  
25. Wendell 118-

We submit first, that the opinion of  
Nelson which was reversed by the Court  
of errors is better law than that laid  
down by the Court of Errors

Second that that case differs from this  
because it would be absurd to say  
that a present vested interest was con-  
veyed to F. Ryan by that will when  
by the very terms of the will it was  
uncertain whether said Ryan would  
have any interest at all in the  
Lot in

We make the point also that the  
judgment against F. Ryan was void  
it being rendered when he was a  
minor

R. B. Ostry  
of counsel for Appellant



Hempstead &  
Trash burners

133.      o — 153

Dickson

Argument for  
appellant —

Filed May 25, 1838  
S. Leland  
clerk

Book —



## STATE OF ILLINOIS—SUPREME COURT.

CHARLES S. HEMPSTEAD and  
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- 20 & 21



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WASHBURNE, GLOVER & COOK, for Appellants.



