The State of Missouri vs. Prewett, George et al. 1853 Washington 333/1
at the relation of the Justices
of Washington County

567/21

Motion to dismiss
affirmed
Scott

/

State of Missouri }
Washington County } ss

Be it remembered that heretofore to wit" On the 3d day of February in the Year of Our Lord One Thousand Eight Hundred And Fifty Two John Deans. B K. Hersey And William Lucas Justices of the County Court of Washington County filed in the office of the Clerk of the Circuit Court of said County their petition which said petition is as follows "to wit"

The State of Missouri At the relation of John Deans B K. Hersey And William Lucas. Justices of the County Court of Washington County	Plaintiff
vs	
Mary Ann Tullock, Samuel Tullock George Prewitt. Israel McGready Adm^r with the Will annexed of Gabriel Prewitt Dec^d	Defendants
	In the Circuit Court of Washington County

Petition

Plaintiff says that the relators heirein are Justices of the County Court of Washington County And as such, it is by law made their duty to watch over the welfare of Orpham Children within their County. They State that some time in the year 1851 Gabriel Prewitt departed this life in Washington County leaving a will which has been duly proved (a certified copy of which and the probate thereof is herewith filed) after giving legacies of One Dollar to each of his brothers And Sisters And where any were dead to their Children And also One Dollar to George Prewitt the Defendant he then devises as follows - "I bequeath unto my blind wife Mary Ann Prewitt Eighty Acres of land in Section Nine Entered in my wife name. Also Forty Acres in Section

eight which lies joining the first Eighty acres. Said Land is the Land that I am a living on which I leave to my wife during her life time. And if she should have any Children the above named Land is to fall to said Children And further she is to have the use of all my Lands during her life time that I may have at my death if I should depart this life before she does. And if she should die without Children, I want all the Lands sold to the best advantage and appropriated to use of educating Orphan Children." The Testator failed to appoint an Executor in his will. And the County Court Granted letters of Administration with the will annexed to Israel McGready Plaintiffs further says that the Testator died before his wife without Children And the operation of the will is to give to his wife Mary Jane a life estate in all the Lands which he owned and possessed at ~~the time of~~ his death. And at her death the said Lands are to be sold And the proceeds applied to the education of Orphan Children At the death of the Testator he owned the following Lands viz" 80 Acres entered in the name of Mary Jane Prewitt with the Money of the Testator supposed to be numbered as follows Sec 9 Town 35 - W R 2 E - the Certificate of entry being in the possession of said Mary Jane — — 80 acres

W.W 1/4 of W.E 1/4 of Sec 17 T.35 - W.R.2.E Containing		40 "
W.E 1/4 of S.E 1/4 of Sec 8 T.35 W R 2 E	"	40 "
S.E 1/4 of W.W. gr & S.W 1/4 of W.E 1/4 Sec 17 T35 R2E	"	80 "
S.W 1/4 of W.W 1/4 of Sec 20 T.35 - R 2 E	"	40 "
E 1/2 of W.W 1/4 Sec 20 T 35 - R 2 E	"	80 "
E 1/2 of W.E 1/4 Sec 8 T 35 - R 3 E	"	80 "
S.W 1/4 of W.E 1/4 Sec 8 T 35 - R 3 E	"	40 "
E 1/2 of S.W 1/4 Sec 17 T.35 - R 2 E	"	80 "
E 1/2 of S.E 1/4 Sec 17 T 35 - R 2 E	"	80 "
		640 "

The Deeds and patents for the aforesaid Lands are in the possession of Israel McGready the Admr and Plaintiffs

prays that he may be required to produce them in Court And if there is any errors in the description of the aforesaid lands that the same may be Corrected.

Shortly after the Probate of the will of Said Gabriel Pruitt. George Pruitt the Defendant on the 4th Sept 1851 instituted Suit in this Court against Mary Jane Pruitt & Israel McGrady alleging that he was the only surviving Child of Gabriel Pruitt. that he was entitled to all the Lands of the Said Gabriel after the termination of the life estate of Mary Jane that the devise for the Education of Orphan Children was void for uncertainty that the Testator had failed to dispose of his Notes, bonds & Cash on hand. tho he being the only Son And Child of Said Gabriel was entitled to the Same & he prayed that the will so far as the devise over for the Education of Orphan Children was concerned might be declared void & that Israel McGrady be ordered to hand over to him the Cash And proceeds from the Notes And bonds. This Suit was returnable to the October Term 1851 At which time Mary Jane Pruitt appeared And obtained leave to answer in vacation. In the meantime to wit About 11th December 1851 George Pruitt And Mary Jane Pruitt compromised the Matter And agreed to prosecute that Suit no further Adversely to each other. They divided the Lands of the Testator Among themselves- the Widow getting the 80 Acre tract entered in her name And the W½ of the N E¼ Sec 17 Town 35- N. R 2. E Containing 40 Acres And the N.E. qr. of the S.E¼ of Sec 8 T 35- N R 2 East Containing 40 Acres And George Pruitt Got the residue They each to each relinquished to other the Lands held by them respectively. It was also agreed that Mary Jane Should have the Land warrant which was expected would issue to Gabriel Pruitt for 160 acres of Land And She was to pay George Pruitt $30 If it issued

for 80 Acres She was to have it without paying anything and if no warrant issued. then George Prewitt was to pay Mary Jane Prewitt Fifty Dollars. As to the personal property it was agreed that the Hogs and Rails sold at the Administrators Sale should be equally divided between them, George paying to Mary Jane one half of the amount they sold for at the Sale and as to all other personal property consisting of Money, Notes, accounts farming tools of it was to be equally divided between them. This Article of Compromise is of record and recorded in Book. H p 37 + 38 - And so may it please the Court the effect of this Compromise is to render Israel McGuady no longer a necessary party and binds the remaining party to suffer a Collusive Judgment declaring the devise over for the benefit of Orphan Children null and void

Plaintiff says that since the said Compromise was made and entered into Mary Jane Prewitt has married Samuel Tullock Plaintiff further states that the Lands are are not necessary for the payment of debts - that the devise over is a good legacy to Charity which equity will effectuate according to its own principles. And if a literal execution of it cannot be had that the Court will execute it as nearly as it can according to the original purpose.

Plaintiff is informed that Mary Jane Prewitt is claiming the Eighty Acres of Land entered in her name as her individual property whereas in truth & in fact the same was entered with the money of Gabriel Prewitt and belongs to his estate Plaintiff further states that said Mary Jane is a very young and healthy woman and may live a half Century and they pray the Court to hear the testimony while it is accessable and living and declare by decree that said Eighty Acre tract entered in the name of said Mary Jane is the property of the Estate of Gabriel Prewitt Decd They pray the Court to direct Israel McGuady to apply for the Land Warrant

And locate the Same And permit Mary Ann Tullock to use Said Lands during her life. They pray the Court to establish by decree or Judgment Said devise as a Charity And declare the Same good and valid in Equity to direct the Adm- with the will annexed of Gabriel Prentiss Decd after the termination of the life Estate to sell the aforesaid Lands and the Lands located under the warrant for Cash and bring the Money into Court to be invested under the Sanction of the Court. And as the will of Said Prentiss has not given the details for carrying out Said bequest Plaintiffs suggest to the Court the following facts to guide its discretion in forming a Scheme to effectuate the objects of the Charity - that Gabriel Prentiss lived And died in Washington County and made all his property here that all his Sympathies were here. And had his attention been called to it he would have declared that he intended his bounty for the Orphan Children of Washington County. they further suggest that the principal be kept inviolate And the interest only be applied to the objects of the Charity that Should the Court be of opinion that it could not be managed practically as a separate fund for the Education of Orphans it might be added to the County School fund And applied to Education of the ~~County~~ of the Children of the County generally. They further State that the aforesaid article of Compromise was entered into under a mistake of the rights of each & should be set aside that Said Agreement stands in the way of a Compromise which may be made between the tenant for life And Trustees ~~and~~ of the Charity under the Sanction of the Court And Plaintiffs pray that Said Agreement Called a Compromise may be held null and void And Plaintiffs further pray that the Court would grant such other & further relief as the Case warrants & Justice requires

Thos C Johnson Atty for Pltff

State of Missouri
County of Washington

John Deane being Sworn Says that the foregoing Petition and the Matters therein as Stated he believes to be true

Sworn to & Subscribed before me Feby 2d 1852

John Deane

W. A. Matthews Clerk

Upon which the following writ issued

Washington County Sct.

The State of Missouri To the Sheriff of ~~Said~~ Washington County Greeting We Command you that you Summon Mary Jane Tullock Samuel Tullock George Prewitt and Israel McGready Administrator with the will annexed of Gabriel Prewitt Decd that they Serually be and appear before the Judge of our Circuit Court at a Court to be held at the Court House in the Town of Potosi in and for said County on the last Monday of April next there and there to answer the Complaint of the State of Missouri at the relation of John Deane B.K. Hersey and William Lucas Justices of the County Court of Washington County and have you there there this writ. Witness William A Matthews Clerk of our Said Court at office in Potosi this 2d day of February A.D 1852

Summons

W. A. Matthews Clerk

Upon which the Sheriff returned as follows

Served the within on Samuel Tullock on the 18th day of February 1852 by reading the foregoing petition Affidavit and Summons in his presence and hearing in Washington and by delivering him a certified Copy of the petition and affidavit - Served the Same on Mary Jane Tullock February 18th 1852 by

reading the foregoing petition affidavit and summons in her presence and hearing in Washington County Served the same on Israel McGrady Admr of Gabriel Prewitt by his reading the petition and writ and acknowledging the Service of the same in Washington County on the 23d day of February 1852

S. A. Reyburn Sheriff

A Counterpart of the original petition was issued to Crawford County upon which was the following writ

Washington County Sct

The State of Missouri to the Sheriff of Crawford County Greeting We Command you that you Summon George Prewitt that he be and appear before the Judge of our Circuit Court at a Court to be held at the Court House in the Town of Potosi in and for the County of Washington on the last Monday of April next there and there to answer the Complaint of the State of Missouri at the relation of John Deane B K Hersey and William Lucas Justices of the County Court of Washington County and have you there there this writ Witness William A Matthews Clerk of our Said Court at office in Potosi this 27th day of February 1852

W. A. Matthews Clerk

Sums to Counter part

Upon which the Sheriff of Crawford County made the following return

Send the within on George Prewitt in Crawford County by reading the within Declaration and writ in his presence and hearing this 27th day of March 1852

H. H. Webb Sheff of Crawford County Mo

The will of Said Gabriel Prewitt in the Plaintiffs petition mentioned is in the words and figures following "to wit"

In the name of God Amen I Gabriel Prewitt being of Sound mind I make this my last will and testament. I bequeath unto my Brother Andrews Children One Dollar each and no more Charles Prewitt One dollar and no more. Elya my brother One dollar and no more Harden Prewitt One dollar and no more Contrust Prewitt One Dollar and no more David Prewitt One dollar and no more Molly Prewitt my Sister her Children One dollar and no more Betsy Prewitt my Sister her Children One dollar each and no more Earns my Sister One Dollar and no more Dricella my Sister One Dollar and no more. Vetitha my Sister One dollar and no more. Seworthea my Sister One dollar and no more. Diahasubry my Sister One dollar and no more Selvistry my Sister One Dollar and no more Sarah my Sister One Dollar and no more George Prewitt my Son One Dollar and no more Also I bequeath unto my beloved wife Mary Jane Prewitt Eighty Acres of Land in Section Nine entered in my wifes name Also Forty Acres in Section Eight which lies joining the first Eighty Acres Said land is the land that I am a living on which I leave to my wife during her life time and if She Should have any Children. the Above named land is to fall to Said Children. And further She is to have the use of all my lands during her life time that I may have at my death if I Should depart this life before She does and if She Should die without Children. I want all the Lands Sold to the best Advantage and Appropriated to the use of Education of Orphan Children I also wish my wife to have One Horse two or three Cows the ballance of my Stock Horses Cows. Hogs and Sheep and my farming utensils Sold and my wife to have the proceeds of the sale of my property the above as it is written is my wish

will

In witness whereof I set my hand and seal this 21st day of September 1848. I appoint William Aldridge Guardian for my life

Gabriel his mark Pruitt Seal

Witness
George Hatton
Mary L Maxwell
David Hanger

State of Missouri
Washington County } ss In the County Court
August Term 1851

Mary L Maxwell one of the subscribing witnesses to the foregoing will personally appeared in Open Court and being duly sworn deposes and says that she heard the testator Gabriel Pruitt request David Hanger to write his name to the foregoing will and saw said Hanger write his testators name. And said testator made his mark to the same. And the said testator published and declared that the foregoing was his last will and testament. Said Testator was at the time of sound mind and over twenty one years of age and that this deponent attested said will as one of the witnesses thereto by subscribing her name to the same in the presence of said Testator

Mary L Maxwell

Subscribed and sworn to in
Open Court this 7th day of August 1851
Sam. Harrison Clerk

State of Missouri
County of Washington } ss In the County Court
August Term 1851

D. E. Perryman come in Open Court and after being duly sworn according to saw deposeth and says that he was for many years personally acquainted

with David Hanger whose name appears as a subscribing witness to the forgoing bill of Gabriel Pruitt and that he was also well acquainted with his hand writing having seen him writing and seen him write many often says that the name of David Hanger which appears as a witness aforesaid is the genuine signature of said Hanger to his best knowledge and belief

C. C. Penyman

Subscribed and sworn to in open
Court Aug 8th 1857

Sam. Hanson Clerk

State of Missouri
Washington County } In the County Court
August Term 1857

W. A. Matthews come in open Court and after being duly sworn according to law deposeth and says that he has for many years personally acquainted with David Hanger whose name appears as a subscribing witness to the forgoing bill of Gabriel Pruitt and that he was also well acquainted with his hand writing having often seen him write his name and other instruments of writing says that the name of David Hanger which appears as a witness to said bill is the genuine signature of said Hanger to the best of his knowledge and belief

W. A. Matthews

Subscribed & sworn to in open
Court 8th August 1857

Sam. Hanson Clerk

State of Missouri
Washington County } In the County Court
August Term 1857

I Samuel Hanson Clerk of the County Court in and for the County aforesaid hereby certify that the

foregoing evidence of Mary L Maxwell D. C. Perryman and William A Matthews touching the foregoing instrument of writing purporting to be the last will and testament of Gabriel Prewitt Deceased was examined by the Court and considered by the Court that the said instrument of writing is duly proved to be the last will and testament of said Gabriel Prewitt Deceased Witness my hand and ~~Seal~~ official seal at office in Potosi this 8th day of August 1851

Sam. Harrison Clerk

Recorded August 8th 1851

Sam. Harrison Clerk

State of Missouri
Washington County } ss I Samuel Harrison Clerk of the County Court in and for the County aforesaid hereby certify that the foregoing contains a full true and perfect copy of the last will of Gabriel Prewitt Decd together with the proof and certificate of Probate as the same remains of record in my office

Witness my hand and seal of office at office in Potosi this 19th day of February 1852

Sam. Harrison Clerk

And afterwards at April Term of the Circuit Court of said County the following proceedings were had

Decree Nisi

The State of Missouri
At the relation of John Deane et al
vs
Mary I Tullock Saml Tullock
Geo Prewitt & I McGready Admr
Gabriel Prewitt Deceased

Now at this come the petitioners by their attorney and it appearing to the satisfaction of the Court that the said Defendants has been duly served with process

as the laws required And the said Defendants having failed to answer the Plaintiffs petition as required by law And the rules of this Court And being solemnly called comes not wherefore the said Plaintiffs petition is taken as confessed And unless the said Defendants shall be and appear at the next Term of this Court and shew good cause for setting aside the decree a final decree will be entered herein And this cause continued

And afterwards the Defendants filed their motion to set aside the Judgment by default which said motion is as follows "to wit"

Now at this day come the Defendants And move the Court to set aside the judgment by default in this cause for the reason that the Defendants were not called so as to call the attention of their attorneys to the fact that any such judgment was to be entered against them it being the general understanding of the bar that all business was to be laid over to the adjourned term.

Because the Plaintiff has no good cause of action And that the Defendants have a good defence to the Plaintiffs simulated cause of action

Perryman & Hussell
for Dfts

Motion to Set aside Judgt

Defendants motion to set aside the Judgment by default rendered in this cause filed

And afterwards the following order was made

Affidavit

And motion to strike out or set aside the Judgment by default heretofore rendered in this cause

And afterwards the following proceedings were had

Decree Set aside

Now at this day come the parties by their Attorneys and the motion of the said Defendants to set aside the Judgment of default heretofore rendered in this cause being submitted to the Court and matured deliberation thereon had. It is considered by the Court that the same be sustained with leave for Defendants to file their answer at the present term of this Court.

And afterwards the Defendants filed their demurrer to plaintiffs petition which said demurrer are as follows

Demurrer

Samuel Tullock and wife demur to Plaintiffs petition Because they say that Plaintiffs have no right to make them parties as said Mary Jane widow of deceased has renounced said will and cannot be bound thereby and because Petitioners asks this Court to what it has no power to do

D. C. Perryman
for Dfts

3 Demurrer

The Defendants come and demur to the petition of the Plaintiffs and assign the following causes for demurring.

1st The petition in connection with the exhibits shows no cause of action

3d Neither the Plaintiffs nor relators have any right to sue if a cause of action is disclosed by the petition and exhibits

Perryman & Russell
for Defendants

And afterwards at the April Term 1853 the following proceedings were had.

Now at this day come

Demurrer overruled

the parties by their Attorneys And the Demurrer of the Said Defendants to the Plaintiffs petition being Submitted to the Court And mature deliberation thereon had it is Considered by the Court that the Same be overruled -

Appeal prayed & granted

And afterwards On the 31st day of August 1853 the following order was made in vacation - "to wit"

Now at this day Come the Defendants And filed their Bond for all Costs And damages which may Accrue in this Suit And prayed an Appeal to the Supreme Court which is granted by the under Signed Clerk

W. A. Matthews Clerk

State of Missouri
Washington County

Ss I William A Matthews Clerk of the Circuit Court within And for the County And State aforesaid do hereby Certify that the Above And foregoing is a full true And perfect transcript of the record And proceedings had in the Circuit Court of Said County wherein the State of Missouri, relation of John Deane B. K. Hersey & William Lucas are Defendants And Saml. Tullock Mary Jane Tullock George Prentt And Israel McGrady Adm^r with the will annexed of G Prentt Deed are Defendants as the Same remains of record in my office In witness whereof I have hereto set my hand And Seal of office at office in Potosi this 9th day of September 1853

W. A. Matthews Clerk

Index

Petition	page	1
Summons	"	4
Will & Proof	"	5
Decree Nisi	"	6
Motion to set Same aside	"	7
Same set aside	"	7
Two Demurers	"	7
Demurer overruled	"	8
Appeal prayed & granted	"	8

Bill of Costs

W. A. Matthews Clerk	$12.70
Same for the Transcript & Postage	6.30
S. A. Reyburn Sheriff	3.00
H. H. Webb Do	1.00
	$23.00
	7.00

(21) 19

March. T. 1854

State at the relation of John Deane et al
Respondents.
vs
M. I. Tullock et al
Appellants

Transcript

Appeal from Washington Circ. Court.

T. C. Johnson – p
M. Frisell – d.

Filed 24th September 1853
Wm. Glanville,
Clerk.

[167]

State of Missouri at the relation of John Deane B. K. Hersey and William Lucas justices of the County
vs
Mary Jane Tullock & others

In the Supreme Court.
October Term 1853
appeal from Washington County

The plaintiff now comes and by her attorney moves the Court to dismiss the appeal in the above Cause for the following reasons

1. There was no final judgement rendered in the Court below as appears from the record

2. The record does not shew that any application was made to the Court below to review its decision

D. A. Gayle and
John W. Noell attorney
for plaintiffs Respts

15

State of Missouri at
relation of Justices
of Washington County Court
vs.
Mary I Tullock et al

Motion to dismiss
appeal

Filed 20th October 1853.
Wm. L. Glanville
Clerk.

State of Wisconsin
at the relation of
John Deere & others
Justices of the County
Court of Washington
County

Against
Mary Ann Tullock
Samuel Tullock
George Prewett &
others

The defendants come and say that in the records and proceedings and in the judgment of the Circuit Court there is manifest error in this

Neither the plaintiff nor relators have any right to sue

The petition does not disclose any cause of action

The judgment is for the wrong party

For the aforesaid Errors the defendant prays that the judgment may be reversed.

M Frisbell atty
for George Prewett

15

State at the
relation of
John Deane &
others
against
Mary J. Tullock
George Prewitt
& others

Assignment of
Error

Filed 20th October 1853
Wm. L. Glanville
Clerk.

State at the relation
of John Deane &
others

against
Geo Prewett & others

The respondent comes and suggests to the court a diminution of the record in this case in this that the clerk has failed to send up a transcript of the final judgment in this cause

Defendant therefore prays that a certiorari be issued to the Clerk of the Circuit Court of Washington County that he certify to this court the final judgment in the above entitled cause

M Fitzsell atty
for Prewett

15

State at the
relation of
John Deane &
others
against
Geo Prewett et al

Motion for a
certiorari

Filed 21st October 1853
Wm L. Glanville