

Maconne Min April 20th 1849

Dear Lincoln,



The Lane & Down case was decided against us at the last term of the White Circuit Court. As we could not prove much in the way of rents & profits above repairs we demurred to the bill & stood by it when over-ruled.

Now, as I feel more interest in this case than all the business put together to which I ever attended I wish ^{you} to pay particular attention to what I shall say and after reflecting on it, to give me your views in time reach here before the 10th day of next month ~~at the time~~ given for appeal.

This case was sent back from the Supreme Court for amendment of the bill so as to account for the delay - but the amended bill being a new one entirely the whole equity of it will be subject to examination on appeal. It must be borne in mind that the original bill made no mention whatever of the sale by act of the Legislature, tho that question was before the Court being brought to its knowledge by the bill of exceptions. They allude to it in their opinions. Now, certainly it would seem that if they thought that ignorance of the powers of the Legislature ~~was~~ in respect to the authority assumed of ordering the sale of land was a good excuse for the long delay in making this application they would have ruled so. The amended bill simply sets out facts & dates without showing any extraordinary or other cause for delay of which the Court was not already aware. True it corrects an error into which the Court fell by showing that Lane was not administrator of the estate ^{at the time} from his marriage with the widow to the date of application for sale of the land in the Circuit Court, But how does that

affect the great principle of their decision based upon a variety of adjudications in other states. It matters not whether Lane was admr all the while or not. If not admr he could have compelled the application. He does not charge the admr (Brown) with refusal or inability to act. How therefore is the extraordinary delay accounted for except that Lane did not know the Legislature had no power to pass the act. Tho, not in the bill all that was before the Court when it reversed Scotts J^d & J^d. The application to the Legislature was not made ^{five years after I married Lane} for. But there are grounds of objection to the bill stronger still in my judgment.

1st - Lane has no right to administration.

His bill shows that the land was sold to pay a certain debt due him & that he rec^d more than the amt. This was an extrajudicial payment of the debt & of the administration. If the land was sold by mistake or illegally it does not alter the fact of payment & the rule is a nullity. His proper & only remedy would be in assumpsit against the heir.

2^d - He does not show that he has paid back the money to the purchasers or is liable to do so. Without this the bill is utterly defective & on this point I confidently look for victory.

3^d - The estate of Robertson owned the Bank. Instead of filing the notes in the Probate office as the law required they ^{to Brown & Lane} reserved them in their own names and thus became liable for the debt. They had no right to do so & in thus voluntarily assuming the debt of Robertson they must love it. They cannot make the heir pay it back. The bill gives us this history & defeats itself by showing.

4th - The bill does not show (as it should after such delay) ~~that~~ whether the assets were all realized or what portion of them - whether

the adm^r used due diligence. Whether Lane has
presented him on his bond -

3rd - The certificate of the Probate Justice (made
part of the bill) does not show the numbers of the
land belonging to the estate as the law requires.
Nor does it show to whom the debt is coming. It
says that on a settlement &c "a balance ~~was~~ of
\$1008.87 was found due John Lane or the admin-
istrators" &c Now the bill prays that the land
may be sold to pay a certain debt of that amount
due Lane & the certificate says that on the settlement
~~in 1826~~ there, was found due Lane or adm^r &c. The
bill & certificate do not show it but the fact is
the above balance was struck to the administra-
tors of whom John Brown was the only one
living. Lane was not adm^r at the time and no
allusion is made to him in the settlement (in 1826)
But this does not come up now. Admitting that the
certificate is an "abstract" it all & shows a "debt"
it does not show to whom it is due and therefore
for this as also for want of numbers of land the
demurrer should have been sustained.

There are other points - but there are many
important. I am extremely anxious to gain the
case out & out, E B Webb, who aided me with
his counsel, & I were both of the opinion that
the Supreme Court could not possibly grasp
down the case as it now stands. Can they decide
that ignorance is an excuse for this long delay
for it comes to this? or that a man who receives
a debt that he had no right to make and
which he is not bound to pay - Please think of
this and write at your earliest convenience.
Don't do as you did before, This is a
great matter with me, I don't want to put
on men to court if I can help it but am of

opinion that we can gain the case in the Supreme Court. What do you think?

Caldwell thinks (he was trying all the while for it) that he has some advantage in the record but he is mistaken - We complied with every order or our own - compliance was authorized by the Court - I have no fears of this but not being acquainted with either the practice of the Supreme Court or the mode of taking up suits I went according to the dictates of common sense. When the Judge finally overruled the demurrer I told him I would stand by the demurrer and that I wanted the fact stated on the record which was done. The judge then heard testimony as to the value of the land he and gave a decree - To this we excepted. Webb thought we ought to write out our exception & have it signed - but Harlan thought it unnecessary & so did I - If the Supreme Court believe there was no equity in the bill as presented by the demurrer, the decree will be reversed. This is the view I took - Harlan did not decide the demurrer it was Wilson - but the case was not reached at that time for trial & stood over - Please write soon but steady well -

Yours truly
S M Marshall

It is clear the Bank would have been barred why should those who have as it were bought her not face better -