

Jefferson County Circuit Court
Case files - Civ. 1
December 1874

Box

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Folder 38

Byrns, William C.

VS

Sullens, D. A., exec.
Sullens, Isaac

Appeal

Defendant appealed from
Probate Court on order to
pay \$500 to plaintiff according
to will

To the Honorable Probate Court of Jefferson
County Missouri -

I W^m C. Byns would respectfully
represent unto this Court that by the last
will of Isaac Sullen Five hundred
dollars was set apart by the 3rd Section
thereof for the education of my and
Sophia Byns Child or Children as we
might choose: that I have expended
the said Five hundred dollars for the
education of three of ^{the said} Children to wit:
Charles E, John A. and Edward C. Byns
whom we have chosen to be educated
out of the said Five hundred dol-
lars to the exclusion of all other
Children. I have sent these three
Children to school twenty four months
each, since the death of said Sullen,
at an expense of Five hundred dollars.

Wherefore I pray the Court to make an
order on D. A. Sullen, Executor of the Estate
of said Sullen for him to pay ~~me~~ to me
the said sum of Five hundred dollars,
the money so expended by ~~him~~ ^{me} for the education
of said three Children as aforesaid.

W. C. Byns
By John L. Thomas, & Bro
attys for

"A"

Est. Isaac Sullens

Petition to have order
made on Executor
to pay five hundred
dollars to W. C. Bynum
for education of his
children

Filed October 12th
1874 - W. C. Bynum
Judge of Probate

I hereby waive
notice of service
of the within notice
by an officer & enter
my appearance
this 12th Oct. 1874

Isaac Sullens
Executor Isaac Sullens & J.

I her

William b. Byrns, plff.

vs.

D. A. Sullens, Executor
of the Estate of Isaac
Sullens, deceased.

In the Probate
Court of Jefferson
County, Missouri,
September Term 1874.

Appeal from Judgment
of Probate Court, ordering
defendant to pay a legacy.

Now comes D. A. Sullens, Executor
of the Estate of Isaac Sullens, deceased,
and appeals from the Judgment of
the Probate Court in the above entitled
case, and for that purpose makes oath
and says, that the appeal is not
taken for the purpose of vexation
or delay, but because he, this affiant,
believes, that he, the appellant, is aggrieved
by the decision of said Probate Court.

Sworn to and sub-
scribed before me,
this 17th day of October
A.D. 1874.

W. Williams
Judge of Probate

D. A. Sullens
Executor of Estate
of Isaac Sullens

W. C. Bryant
vs.

Heitor of

Isaac Sullivan

affidavit for
appeal

Filed October

17th 1874

J. W. Williams

Judge of Probate

State of Missouri }
County of Jefferson }

Be it remembered that
on the 12th day of October 1874 there
was filed in the Probate Court
of Jefferson County aforesaid by
Wm. C. Byrns a petition for an
order on D. A. Sullens Executor of
Isaac Sullens which petition
marked "A" is hereto attached,
and thereafter to wit on the 17th day
of October 1874 said petition coming
on to be heard in said court the
following judgment was rendered
thereon as appears of Record in
said court from the Record &
Proceedings of said court for
that day, to wit,

"Estate of Isaac Sullens }
D. A. Sullens Executor"

"Motion for payment
of Legacy."

"Now at this day comes Wm. C. Byrns
and D. A. Sullens Executor of the
Estate of Isaac Sullens also comes
and the motion of said Byrns filed
herein praying for an order on

Said Executor to pay over to him
five hundred Dollars in accordance
with the third section of the will of
said Isaac Sullens by way
of reimbursing said Byrns for cash
expended in the Education of
Charles E. John A. and Edward C.
Byrns children of said Wm. C. and
Sophia Byrns coming on to be
heard by the Court is by the Court
sustained and the Court finding
from the Evidence that said Wm. C.
~~Byrns~~ and Sophia Byrns have
chosen said three of their children
to receive the benefits of said bequest
mentioned in said third section of said
Will by which five Hundred Dollars
was set apart to be used in the
Education of such child or children
of theirs as they might choose and
that said Wm. C. Byrns has expended
on them that sum in their Education
in pursuance of said clause of said
Will doth order and adjudge that
said Executor pay said sum
of five Hundred Dollars over to
said Wm. C. Byrns in accordance
with said clause of said Will

and thereupon said Helcutt
files his affidavit for an appeal
to the Circuit Court in said
cause which appeal is granted
by the Court,"

The foregoing is a true copy
of the Record together with
the original petition in said
cause and the original affidavits
for appeal which are attached
hereto

Witness my hand
and the seal of the
Probate Court of said
County hereto affixed
at office in said County
December 30th 1874

Jos. Williams
Judge of Probate

Wm C. Dyer
ms 3869

D. A. Sullivan
Stecutor Est. of
Saac Sullivan

Judge's fees in
probate court 90¢
Paid by D. A. Sullivan
Stecutor 90¢

This Transcript due
Judge of Probate '40
cert. & seal 50
due J. W. Dyer = 90

3860



Filed Dec 31st 1874

Wm C. Dyer

William C. Byrns
Plff

In the Jefferson
Circuit Court

vs
D. A. Sullivan, Executor
of the Estate of Isaac
Sullivan deceased

William C. Byrns being sworn states on oath that since the death of Isaac Sullivan, dec'd he has sent three of his children to school for ^{about} twenty four months each. The three that went to school are Charles C. Byrns, John A. Byrns and Edward C. Byrns. They went to a public school and were board at home with their father this affiant. That their board and clothes and books furnished said children while they were at school as aforesaid was scarcely worth ten dollars per month, ^{each} over and above any work they did while at home mornings and evenings and Sundays and lost time. He says he intended and expected to get the legacy of \$500 left by said dec'd for the education of the children of this affiant and

Sophia Byrns. He does not know
what he would have done in
case no will had been made but
he sent said children to said school
with a view and intention of using
the legacy in pay for some
work and clothes and book.
He thinks it was more judicious
and to the best interests of said
children for them to go to school at
home than have expended \$500
at boarding & chow in their
education.

W. C. Byrns

Subscribed and sworn to before me this
17th A.D. 1874

W. H. N. Thomas
Notary Public for Jefferson Co. Mo.

Witness that the above statement
may be read in evidence by the
Plaintiff in the above cause
Oct 16 1874

John L. Howard & Bro
Atty for W. C. Byrns

Henry F. Ahlers

Atty for defendant

Amos C. Byrnes
against
Estate of Isaac Sullivan

Disposition of
A.C. Byrnes

William C. Byrns, plff. } In the Circuit Court
vs. } of Jefferson County, Mo.
Estate of Isaac Sullivan, } On appeal from the Pro.
D. A. Sullens, Executor. }bate Court of said County

It is agreed between the parties in the above case, that the following statement of D. A. Sullens, Executor of said Estate, be admitted in evidence in the above case on trial thereof.

Statement of D. A. Sullens, Executor.

~~The~~ No credits of any importance, that I at present can think of, and with which I would have to charge myself, are coming to or are due the Estate, beside those, that I have already charged myself ^{with} in my settlements of said Estate, already heretofore made and filed in the Probate Court of Jefferson County, except the interest, which I may be required to pay on part of the balance of the last settlement, or which some of the credits of the Estate, contained in said ~~sett~~ balance, draw, which interest since my last settlement, would be less than \$10. as I have charged myself with all interest up to last settlement, I shall receive some ^{farm} rent hereafter, but that will not much exceed the probable tax to be paid.

I expect to collect all outstanding bonds, notes and accounts, except perhaps \$18 or \$20.

I think there are no allmances against the

Estate, which have not yet been paid, and been accounted for in prior settlements.

However the result of the following law suit now pending in the St. Louis County Circuit Court, if the ^{final} decision thereon should be rendered against the Estate, aforesaid, would reduce the funds of the same considerably.

The cause of action of that law suit, ^{and the circumstances} are as follows in substance, as nearly as I can state: The testator Osace Sullivan, till his death was Executor of the last will of one Elizabeth ~~Sip~~ ^{Sip}, probated in the St. Louis County Probate Court. By that will some Real Estate was devised to Osace Sullivan, the Executor ^{of Elizabeth Sip}, and some to other devisees, and some personal property was bequeathed to certain legatees. ~~During~~ After Osace Sullivan's ~~death~~ ^{after my father's death}, I became ^{admitted with will annexed} Executor of said Estate of Elizabeth Sip. The heirs of said Elizabeth Sip, during the Executorship of Osace Sullivan instituted a proceeding in the St. Louis Court, against Osace Sullivan, as devisee and other devisees and legatees, to have the last will aforesaid set aside; these proceedings were finally reversed in a decision in the Supreme Court during my ^{admission with will annexed} Executorship of said Estate. Let it be the Estate of Elizabeth Sip, according

by which said will of Elizabeth Gipp was set
aside. I made final settlement as ^{Administrator} ~~Executor~~
of said Estate of Elizabeth Gipp, and therein,
charged the said Estate, with all the costs
accrued in said suit for setting aside said
will, which amounted to about \$1065.00
I can not tell the exact amount, but believe
it was about the same. On the hearing
of the final settlement objections were made
by the heirs of Elizabeth Gipp, to the same,
as far as the charging of the Estate with these
costs was concerned, they claiming, that the
costs should not come out of the Estate
of said Elizabeth Gipp, but out of it that
the defendants in that suit for setting aside
the will should pay them; however the ob-
jections were overruled, and my final
settlement was approved by the Probate
Court of St. Louis; the heirs of said
Elizabeth Gipp have appealed from the
decision of the Probate Court to the Circuit
Court of St. Louis County; in which
the proceedings are now pending; It
is probable that whatever the decision
of said Circuit Court ^{heirs} may be, an appeal
will be taken therefrom to the St. Louis
Supreme Court. Thus that suit may
remain for some time in the courts.

and the demand may be called a grossly
one, as I had necessarily to employ a
lawyer in the proceedings, the fees of whom
~~may have~~ ^{will} have to come out of Isaac Sullens
Estate also, if the decision should be in favor of the heirs.

If the final decision in those proceedings
on the objection to the final settlement
should be against ~~the devisees and~~
~~legatees~~ of me as ^{Administrator} ~~Executor~~ of the Estate
of Elizabeth Sips, and in which case
I should have to refund to the heirs of
Elizabeth Sips the costs in the suit to
~~set~~ aside the will as aforesaid, ^{attending}
thing to as stated, about \$1065. as,
then this amount as well as the lawyers
fee in the said proceedings ~~and upon~~
the objection to the final settlement, and
the costs of that suit should have to
come out of the Estate of Isaac Sullens,
deceased, as nothing could be made out
of the other devisees and legatees, against
whom the suit to set aside the will
was brought, an account of their
misadventure.

Known to and sub-
scribed before me
this 17th day of January 1875.

Henry F. Allen
Notary Public
Jeff. Co. Mo.

D. Sullens

William C. Byrns, petff.
vs.

D. A. Sullens, Executor of
the last will Estate of Isaac
Sullens, deceased. defd.

Given
The court declares the law to be, that, un-
less the court, sitting as a jury, believe from
the evidence, that the said plaintiff has expend-
ed the whole or part of the money, claimed by
him in his motion, for the purpose of ed-
ucation of the children named in said mo-
tion or any one of them, and for that pur-
pose only, and no other purpose, - ~~the court~~
the finding must be for defendant;
and if the court, sitting as a jury, believe
from the evidence, that any of the amount
claimed by plaintiff, has been expended
by plaintiff for such purpose, ~~only~~ that
is the purpose of education only, and no
other purpose, in compliance with the
will, then the verdict should be for so
much only, as has thus been expended.

Byams

no.

Sullivan's Estate.

Instructions asked
by depts.

No 7.

William C. Byrns, plff.

vs.

D. A. Sullens, Executor of
the Estate of Isaac Sullens.
defend, defend

The Court declares the law to be; that
a testator is always presumed, to use the
words, in which he expresses himself, ac-
cording to their strict and primary accep-
tation, unless from the context of the
will it appears, that he has used them in
a different sense; ~~in which case and~~
that, unless it appears from the context of
the will in evidence, that the testator has
used the words in the clause of the will,
under which plaintiff claims, in any other,
than their strict and primary sense, such
words must be interpreted in their strict
and primary sense, and in no other.

Given

Byons
in
Lucas' Estate.

Instructions
asked by depts

No 1.

William C. Byrns, petff.

vs.

Estate of Isaac Sullins,
D. A. Sullens, Executor,
defendant.

Now comes defendant by his Attorney,
and moves the Court, to set aside the
verdict and judgment in the above case
and grant a new trial for the following
reasons, to wit:

- 1st the verdict is against the evidence,
- 2^d the verdict is against the law,
- 3^d the verdict is against the weight of evidence,
- 4th the verdict is against the law and evidence,
- 5th the verdict and judgment should have been for
defendant instead of for plaintiff.

Henry F. Address,
Atty. for defendant.

Wm. L. Byrnes
pett.

vs.

Estate of Isaac
Sullens, decd.

(D. C. Sullens, Ad-
ministratoe)

Motion
for a new trial
by defendant.

Filed Jan'y 22nd 1875

C. H. Stone

Clerk



Know all Men by these Presents, That

Sophia Byrns
of *the County of Jefferson* and State of *Missouri*

has made, constituted and appointed, and by these presents do make, constitute and appoint

William C. Byrns of *Jefferson County - Missouri*

my true and lawful attorney, for *me* and in *my* name, and for *my* use, to ask, demand, sue for, recover and receive, all such sum or sums of money, debts, goods, wares, and other demands whatsoever, which are or shall be due, owing, payable and belonging to *me*, by any manner or means

whatsoever, especially *Do not use my name in signing any paper or papers which may be necessary in collecting my share of my father's estate money for schooling my children according to the will of my father*

Giving and granting unto *my* said attorney, by these presents, full power and authority, in and about the premises, to have, use, and take all lawful ways and means, in *my* name, for the purposes aforesaid; and upon the receipt of any such debts, dues, or sums of money, (as the case may be,) acquittances, or other sufficient discharges, for *me* and in *my* name, to make and give. And generally to do all other acts and things, in the law whatsoever, needful and necessary to be done in and about the premises; for *me* and in *my* name, to do, execute and perform, as fully, and to all intents and purposes, as *I* might or could do, if personally present; attorneys, one or more under him, for the purposes aforesaid, to make, constitute, and again at pleasure to revoke.

Hereby ratifying and confirming all and whatsoever *my* said attorney shall lawfully do, in and about the premises, by virtue hereof.

In Witness Whereof, *I* have hereunto set *my* hand and seal this *16th* day of *October* in the year of our Lord one thousand eight hundred and *Seventy Four*

Sophia Byrns 

STATE OF MISSOURI, }

COUNTY OF *Jefferson* }

ss.

Before me, *a Notary Public* personally appeared the within named *Sophia Byrns* who acknowledged that *she* signed, sealed and delivered the above Power of Attorney, on the day and year of its date, for the purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and seal, on this *16th* day of *October* 18 *74*

Waz of Price
Notary Public

W.C. Byrnes
vs
Estate of Same Sellers

Wm C Byrns

= vs =

Isaac Sullens, Admr,

Appeal from Probate Court,

Judgt for Plff, Jan'y 19 1875,

For,

\$ 500.00

Merces fees,

FEE BILL.

... Files ¹⁰ ... Writ ... Copy ... Ent. app'rance ...

10

Ent. recognizance ... Taking bond ... Discharging recogn' ance ...

Ent. demurrer ... Motion ²⁰ ... Ord'r ... C'tinu'nce ... Subpœnas ...

20

Com. to take depositions ... Copy of interrogatories ... Ent. judgment ³⁰ ...

50

Swearing jury ... Oaths ... Swearing special jury ... Taking verdict ...

Ent. spec. verdict ... Ent. rep. referees ... Sheriff ... Commissioner ...

Ent. recog. on appeal ... Writ certiorari ... Taking bond on certiorari ...

Writ of attachment ... Attach't witness ... Juror ... Ent. satisfaction ...

Transcript ... hundred words ... Prod. record or papers in court ...

Submission ³⁰ ... Ent. ack. deed ... Cert. & seal ⁵⁰ ... Scire facias ...

85

Venire for jury ... Dockets ¹⁵ ... Bill of costs ¹⁰ ... Fee bill ²⁰ ...

45

... Affidavits ... Filing and entering bill exceptions ... Docket. judg. ¹⁰ ...

10

rule in making new trial ²⁰

20

Copy ord. for injunction ... Issuing writ sequestration ... Stamps ...

copy of Judgt, ²⁵

25

\$ 2.65

Joas J Williams Judge -

90

\$ 3.55