

N. J. Court of Errors and Appeals.

John Den, Ex dem, John
Blean, }
vs. } In Ejectment.
Allen B. Messenger.

Writ of error to the Circuit Court of the county of Middlesex. Returnable to November Term, 1851.

Return to Writ of Error.

[Filed June 22, 1852.]

Middlesex county, *ss.*—John Den puts in his place H. V. Speer, his attorney, against Allen B. Messenger, in a plea of trespass and ejectment.

Middlesex county, *ss.*—Allen B. Messenger puts in his place John S. Blauvelt, his attorney, at the suit of John Den, in a plea of trespass and ejectment.

Middlesex county, *ss.*—John Den complains of Allen B. Messenger, in the custody of the sheriff of the county of 10 Middlesex, for this, to wit, that whereas, John Blean, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-four, at North Brunswick, in the county of Middlesex, had demised, let, and to farm, let, to the aforesaid John Den, four messuages, four tenements, four barns, four orchards, four gardens, one hundred acres of arable land, one hundred acres of pasture land, one hundred acres of meadow land, and one hundred acres of woodland,

with their appurtenances, situate, lying, and being in the township of North Brunswick, in the county of Middlesex aforesaid, now or late in the tenure or occupation of Garret Wyckoff; to have and to hold the tenements aforesaid, with with the appurtenances, unto the said John Den, and his assigns, from the fourteenth day of May aforesaid, for, during, and until the end and term of seven years thence next ensuing, and fully to be completed and ended; by virtue of which demise, the said John Den entered into the tenements

10 aforesaid, with the appurtenances, and was thereof possessed, until the said Allen B. Messenger, afterwards, to wit, on the sixteenth day of May aforesaid, with force and arms, &c., entered on the tenements aforesaid, and the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and removed the said John Den from his said farm, his said tenure not being yet ended, and kept out, and still keeps out, the said John Den, so ejected, driven out, and removed from his said possession; and then and there did other injuries to the said John Den, against the peace of

20 this state, and to the damage of the said John Den five hundred dollars; wherefore he brings suit, &c.

And the said Allen B. Messenger, by John S. Blauvelt, his attorney, comes and defends the force and injury, when, &c., and says, that he is not guilty of the trespass and ejection above laid to his charge, in manner and form as the said John Den hath above thereof complained against him, and of this he puts himself upon the country.

And the said John Den doth so likewise.

Wherefore it is commanded the sheriff, that he cause to

30 come before the judge aforesaid, at New Brunswick aforesaid, on the fourth Tuesday of September next, twelve, &c., also, neither, &c., to recognize, &c., by whom, &c., because, &c.; and the same day is given to the parties aforesaid.

And now at this day, to wit, on the second Tuesday of March, in the year of our Lord one thousand eight hundred and forty-nine, until which day this cause was continued, by *vice comes non misit breve* before the judge aforesaid, at New Brunswick aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the sheriff of the county of Middle-

40 sex returned here into court the writ of the state of New

Jersey to him directed, in all things duly served and executed. And hereupon the parties presented to the court the following state of the case, agreed upon and signed by their respective attorneys, upon which the cause was to be argued before and decided upon by the court, viz.

Thomas Blean, late of the county of Middlesex, being seized of the land in controversy in this suit, made and executed his last will and testament in due form of law, and in such manner and form as to pass real estate, (*pro ut* said will.) The said Thomas Blean subsequently, but prior to 10 the seventeenth day of December, eighteen hundred and thirty-nine, departed this life, leaving the said last will and testament in full force and effect, unrevoked and unannulled; and on the day and year last aforesaid, the said last will and testament was admitted to probate, and proved in due form of law, before the surrogate of the said county of Middlesex.

Henry Clew, the devisee named in said will, had lived for a long time before and at the time of the execution of the said last will and testament, did live with the said Thomas Blean, and lived and remained with the said Thomas Blean 20 and his wife, during their joint lives, and the life of the said Jane Blean, (who survived the said Thomas,) the widow of the said Thomas, on the premises in dispute, until his death, and during the whole time continued to conduct himself in a proper manner.

Henry Clew, by his deed, dated the eleventh day of June, eighteen hundred and forty-one, conveyed the lands in dispute to the said Jane Blean, a devisee in said will, and the widow of the said Thomas Blean, in fee, (*pro ut* said deed,) and departed this life on the fourteenth day of the same 30 month of June, in the year last aforesaid, leaving the said Jane Blean him surviving.

Said Jane Blean, by her last will and testament, made and published in due form of law, and in such manner as to pass real estate, dated the twenty-fifth day of April, eighteen hundred and forty-four, devised her whole estate, real and personal, to the defendant and his wife, Mary Ann, the sister of the said Jane Blean, in fee (*pro ut* said will); the said Jane Blean died shortly afterward.

John Blean, the lessor of the plaintiff, is the only child and heir-at-law of the said Thomas Blean.

The said last will and testament of the said Jane Blean was admitted to probate and proved in due form of law, before the surrogate of the county of Middlesex, on the twelfth day of June, eighteen hundred and forty-four.

And because the court now here are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before the judge aforesaid, at New Brunswick aforesaid, until the second Tuesday of June next, to hear the judgment of the said court thereupon; for that the court now here are not yet advised thereof; at which day, before the judge aforesaid, at New Brunswick aforesaid, came the parties aforesaid, by their attorneys aforesaid; whereupon all and singular the premises being seen, and by the court now here fully understood, and mature deliberation thereupon had—it is considered by the court now here, that the said John Den, on the demise of the said John Blean, take nothing by his said writ; but that he and
 20 his pledges to prosecute be in mercy, &c.; and that the said Allen B. Messenger do recover against the said John Blean, lessor of the plaintiff, his costs and charges by him about his defence in this behalf expended, to twenty-seven dollars and seventy cents, by the court now here adjudged to the said Allen B. Messenger, and with his assent.

Judgment signed as of the 12th June, 1849.

JAMES S. NEVIUS.

State of New Jersey, Middlesex county, ss.—I, Nicholas Booraem, clerk of the Circuit Court of the county of Middlesex aforesaid, do hereby certify that the foregoing is a
 30 true copy from the records of judgments remaining in my office.

In witness whereof, I have hereto subscribed my
 [L. s.] name, and affixed the seal of said court, this
 15th day of June, A. D. 1852.

N. BOORAEM, *Clerk.*

Assignment of Error.

New Jersey Court of Errors and Appeals of the Term of June, in the year eighteen hundred and fifty-two.

Afterwards, to wit, on the third Tuesday of June, in the year eighteen hundred and fifty-two, before the judges of the Court of Errors and Appeals at Trenton, comes the said John Den, by Henry V. Speer, his attorney, and says—that in the record and proceedings aforesaid there is manifest error in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said Allen B. 10 Messenger, against the said John Den; whereas, by the law of the land the said judgment ought to have been given for the said John Den, against the said Allen B. Messenger, and the said John Den prays that the judgment aforesaid, for the error aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and for nothing holden; and that he may be restored in all things which he hath lost by occasion of the said judgment, &c.

H. V. SPEER,

Attorney and of counsel with the said John Den. 20

New Jersey, *ss.*—John Den puts in his place Henry V. Speer, his attorney, to prosecute this writ of error against Allen B. Messenger.

Will of Thomas Blean.

State of New Jersey, Middlesex county, *ss.*—I, James C. Zabriskie, surrogate of the county of Middlesex, do [L. s.] certify the annexed to be a true copy of the last will and testament of Thomas Blean, late of the county of Middlesex, deceased; and that Jane Blean and Henry Clew, the executors therein named, proved the same 30 before me, and are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to said will.

Witness my hand and seal of office, this seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-nine.

JAMES C. ZABRISKIE, *Surrogate.*

In the name of God, amen. I, Thomas Blean, of the township of North Brunswick, in the county of Middlesex, and state of New Jersey, being of sound and disposing mind, memory, and understanding, do make this my last will and testament.

10 After the payment of all my just debts and funeral expenses, I do give, devise, and bequeath, as follows:

In the first place, I give, devise, and bequeath to my beloved wife Jane, all my estate, both real and personal, wheresoever and whatsoever, for, during, and until the full and term of her natural life; provided she remain my widow and do not marry again.

Second. After the death, or upon the marriage of my said wife, I do give, devise, and bequeath all the estate, real and personal, herein before given to my said wife, to Henry
20 Clew, the young man who is now, and has for a long time passed, lived with me, to him, his heirs, and assigns forever, upon the express condition, however, that he, the said Henry Clew, do remain with me and my wife during our lives, and the life of the survivor of us, and continue to conduct himself in a proper manner.

Third. In case the said Henry Clew should depart this life, leaving me and my wife both him surviving, in that case I give, devise, and bequeath all my estate aforesaid, to my said wife, Jane, her heirs and assigns forever.

30 *Fourth.* I give to my son, John Blean, a note which I hold against him for one hundred dollars, dated the twentieth of October, eighteen hundred and thirty-seven, and I do hereby direct my executors to deliver the same to him without demanding anything therefor.

Lastly. I do hereby nominate, constitute, and appoint my wife Jane, and Henry Clew, executors of this my last will and testament.

In witness whereof, I have hereunto set my hand and

seal, this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and thirty-eight (1838).

THOMAS BLEAN. [L. s.]

Signed, sealed, published, and declared, by the said Thomas Blean as and for his last will and testament, in our presence, and in the presence of each other.

JOHN B. HILL,

GEO. ELLIS,

LITTLETON KIRKPATRICK.

Middlesex county, New Jersey, ss.—I do hereby certify 10 the foregoing to be a true copy of the last will and testament of Thomas Blean, late of Middlesex county, deceased, as recorded in Book D of wills, page 323.

Witness my hand and seal of office, this third day of May, eighteen hundred and fifty-two.

THEOPHILUS M. HOLCOMBE, *Surrogate*.

Will of Jane Blean.

I, Jane Blean, of the city of New York, widow of Thomas Blean, late of North Brunswick, in the county of Middlesex, in the state of New Jersey, deceased, do make, publish, and 20 declare this to be my last will and testament in manner and form following, that is to say—I give, and devise, and bequeath all my estate, real and personal and mixed, whatsoever and wheresoever, unto my sister, Mary Ann Messenger, and her husband, Allen B. Messenger, of the city of New York, and to their heirs, executors, administrators, and assigns forever. And I constitute and appoint my said brother-in-law, Allen B. Messenger, executor of this my last will and testament; hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand and seal, 30 at the city of New York, the twenty-fifth day of April, in the year one thousand eight hundred and forty-four.

JANE BLEAN. [L. s.]

Signed, sealed, published, and declared, by the said Jane Blean, to be her last will and testament, in the presence of us, who, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses. "Word 'mixed' interlined before execution."

ELLEN COUSIN, 209 Seventh, New York.

ELEANOR WERNHAM, 306 Delancy, New York.

JANE IRWIN, 220 Seventh st., Yew York.