

C. W. H. - post -
1871
(17)

Estillville, March 20th 1871

Dear Henry

According to promise I write you hastily a few lines. The case of Mrs Ball is this. Her husband in his lifetime and before the war executed his note for \$500.00 or \$600.00 to Robert M Ely, Commissioner for Butcher's heirs being the price of a negro girl purchased by Mr Ball at a sale of property of Butcher's estate made by said Ely commr. The said Commr Ely died during the war and the Plegg McPherson administered on said Ely's estate and as Admin of Ely took possession of said note as property of the estate of Ely and brought suit on it against the obligor Ball and his security several years after the death of the obligor Ball and obtained a judgment by default against Ball & his security the said Ball being dead as aforesaid. The Pleggs Counsel then had a subpoena issued against Mrs Ball to have the judgment reversed against her as the Executrix of her husband and to obtain an execution to collect the money. She then employed me and Mr Lane and I prepared a motion under the Statute to reverse and annul the said judgment obtained by default 1st Because the Admin of the estate of R M Ely had no right to maintain the action, as the said note of Ball & his security was executed for property belonging to the estate of Butcher and was annexed to Robert M Ely Commissioner for Butcher's heirs and the right of action, at the death of R M Ely, vested in the succession of said Ely who might be appointed Commr of said Heirs of Butcher, and if no such Commissioner succeeded said Ely, then the right of action on said note vested in the Admin or Heirs of Butcher's estate and never vested in the Admin of said Ely's estate as said note was not the property of said Ely's estate as aforesaid
2nd Because the obligor Butcher was dead when the said

W. J. Lane June 21/71
At the same time

suit was brought and to these the said judgment by default was obtained on said note against said ~~Ball~~ Ball and his security by the Plff. Mr. Pherson Adm'r of R. M. Ely. For these errors and others to be assigned at bar the Plff. was duly notified that a motion would be made before the Judge of the County Court to reverse and annul the said judgment. The first objection and error assigned appears in the record as to the right of action on said note not being vested in the Plaintiff as Adm'r of Ely, and to make out the second objection and error in the judgment assigned in the notice you will have to introduce a credible witness or two to prove that at the time of the institution of the suit on the note against Ball and his security by Mr. Pherson Adm'r of Ely and at the time that he obtained said judgment by default the said debtor Ball was dead. In 1st Rob. Prae (which I pointed out to Mr. Sen) you will see that a suit brought and judgment obtained against a dead man is a nullity when proved to the Court by the evidence of one or two credible witnesses. The law I think will not be questioned and either of the errors assigned will be sufficient to reverse and annul the judgment and both errors clearly exist in the case.

The other case of Surgenor against Hickman and Chandler is an action on the case brought to recover damages for the non-delivery of hogs that the said Surgenor alleges he purchased of Defts, and Defts. contend that they were under the contract to have the rear of the market which he refused to give and they refused to let him have the hogs. The Plff. Surgenor paid nothing and sustained no damages, what money he had he invested in hogs and sold them and got the

legitimate profits of his real capital, but he wants to speculate on these men without using capital. If hogs had fallen he would have let Defts. hogs pass and not have called for them but as the price of pork advanced, some he wants to have all the profits without investing any thing or sustaining any damages but no jury I think will give him something for nothing. If the prices of Lee would permit him to speculate without capital on the farms of Lee in this way he would rapidly fill his coffers. I would like to be at this Court in Lee but can not.

I hope it will be in Mr. Sen's power to assist Mr. Holdway in the horse case of Stapleton and I will reciprocate his kindness which you will please mention to him.

I hope you will attend to my interest in any other matters that may arise at this Court, and you may say to those enquiring that I will be out at the Circuit Court and at the June Court.

Yours Truly

H. S. Kaman