

James Kent estate (1847),  
Tippecanoe County Historical Association  
Alameda Mc Colough Library / Archives  
1001 South Street, Lafayette, Indiana 47901  
(765) 476-8711, ext. 265  
Rec'd by Michelle M. Roy, 15 April 2012.

## SUPREME COURT, INDIANA.

### APPEAL FROM THE COMMON PLEAS COURT OF TIPPECANOE COUNTY.

**JAMES D. SHAW, Administrator of JAMES KENT, Deceased,**

vs.

**JAMES KENT, Junior.**

#### Facts of the Case.

I.—During the last sickness of James Kent, deceased, he conveyed by three several Deeds, bearing date 18th June, 1847, *all* of his real estate, to *three* of his children, to the exclusion of his son, the Appellee, viz: a portion thereof to John Price, (who is the husband of Susannah, a daughter of the deceased). Also a portion thereof to this Appellant, (who is the husband of Nancy, a daughter of deceased). Also a portion thereof to Rachel Prater, (likewise a daughter of deceased), for and during her life, remainder in fee to her lawful issue, and in the event of her having none such, to the right heirs of the grantor. See Record from page 10 to 19, where said deeds are set forth.

These deeds were executed and delivered by deceased to the several grantees shortly before his death, and in view of a final disposal of his real estate, and doubtless for the purpose, and with the intent of dis-inheriting his Son, James Kent, the Appellee, as to all his real estate, except such *contingent* interest as *might* arise under the deed to Rachel Prater. See on this point the testimony of James D. Shaw, commencing on page 19 of record, and especially his cross-examination.

II.—James D. Shaw, the Appellant, administered on the estate of deceased (who died shortly after the execution and delivery of said deeds), and as such made his final report at the January term 1855 of the Common Pleas Court. In which report he exhibits his total debtor \$989,01½ and his total credits \$738,51, leaving on hand for distribution \$240,50½, out of which amount he deducts a credit due in right of his wife as one of the four heirs of the personal estate of \$185,40, leaving a balance on hand and paid to the Clerk of the Court, of \$55,01½ which balance he reports as due to Susannah Price and Rachel Prater, two of the heirs of the deceased, the said James Kent Junior the Appellee herein, having been paid \$200 for his interest in the personal estate, and for which amount he had receipted; as set forth in voucher No. 17 of the report.

III.—This report for confirmation was referred to David P. Vinton, as Master Commissioner of said Court. James Kent Jr. the Appellee, herein filed his objections to confirmation of the same. (See record from page 6 to 19).

The Master Commissioner, Vinton, brought before him for examination as a witness the Appellant, who was the *only* witness produced, and reported to the Court that the heirs, Mrs. Price, Mrs. Prater, and this Appellant, were chargeable for the value of the lands conveyed to them by the deceased, and set forth in said deed by way of *advancements*.

To this report the Appellant excepted, and claimed the right to have the question of *intent* of the deceased tried, and determined by a jury. (See record pages 25 and 26, 29 and 30). The Court ruled the Appellant not entitled to a trial by jury, and rendered judgment against Appellant as administrator for all the surplus of the personal estate after payment of the debts, in favor of the Appellee. To all of which rulings of

James Kent estate (1847) received 15 April 2012 by Michelle M. Roy. Synopsis of file by Michelle M. Roy <michelle@gavinroy.com> on 01 August 2013:

- James Kent, Senior was a resident of Tippecanoe Co., Indiana.
- His wife had predeceased him.
- He had been sick for a period of time and ultimately died of Enycypelus[?] of his leg on 3 July 1847.
- He was described as “a stout and hearty man up to the time of his sickness.
- His daughter, Nancy (Kent) Shaw had been his caretaker before his death.
- Nancy (Kent) Shaw was married to James D. Shaw in January 1847 after which time all three of them lived together at Tippecanoe Co.
- A few weeks prior to James Kent, Senior’s death, his intent was clear to disinherit his only son, James Kent, Junior, from the majority of his estate.
- He gifted three land deeds to his three daughters, Susannah Kent (wife of John Price of White Co., Indiana), Nancy Kent (wife of John Shaw of Tippecanoe Co., Indiana) and Rachel Kent (wife of Newman R. Prater of White Co., Indiana).
- All of the land gifted was located in White Co., Indiana. When the estate administrator, (son-in-law) James D. Shaw was auditing the estate he found a bond for property owned by James Kent, Sr. in Harrisonville, Tippecanoe Co., Indiana.
- His daughter and son-in-law, Rachel (Kent) Prater and Newman R. Prater resided at the Harrisonville property.
- Rachel (Kent) Prater was about age 40 in 1847 and although she was of “good constitution and good health” never had any children (at time of deposition in 1855).
- Rachel (Kent) Prater’s land given to her by her father was to revert back to his estate if she died without any legal heirs.
- As testified by his son-in-law, John Shaw, all the while James Kent, Senior lived with him, he never talked about his son, James Kent. On one occasion when the subject of the son was addressed, the father implied that James Kent, Junior was ‘doing poorly’ and ‘is taking courses not taught by his father.’ It was stated here that the elder James Kent was an honest and good man. The implication received from the father was that his son’s circumstances were due to money mismanagement.
- As testified by his son-in-law, John Shaw: James Kent, Junior was home very little for several years before James Kent, Senior died – he had been living in Ohio at the time of his father’s death. The only occasion he had spoken of his son was when the subject was brought up, the father remarked that he, James, was getting along very poorly, that he was pursuing a course never taught by him. “I supposed he had referenced to his , James’ money affairs.” “Kent sen[ior] was a frugal and good man.”
- In Spring of 1849, James Kent, Junior came from Ohio to the James D. Shaw house of to collect his portion of the estate. He was told that it was not settled yet and money had not been distributed yet. James Shaw testified that “James Jr. was anxious to get money and he [Shaw] advanced him \$100 and paid for two horses.” “He was paid \$200 total.”
- When the final estate was submitted to the court in 1851, it totaled \$9???.00, and it was to be split between James Kent, Senior’s four children equally (Susannah, Nancy, Rachel and James). This was for all sales of his personal property. There was not an accounting of the land deed to the three daughters right before their father’s decease. All three deeds were dated 17 June 1847, about two weeks prior to his decease,
- James Kent, Junior challenged the court stating legal precedent that the land deeded to the daughters was an ‘advance’ on their inheritance and the value of those lands should be included in the total sum of their father’s estate to be divided equally with him.
- The sisters and two of the husbands, John Shaw and John Price, asserted that the properties were “gifts” to the daughters and were not advancements on inheritance and stated this was the son’s attempt to thwart his father’s clear wishes to disinherit him.
- They asserted that James Kent, Junior had received \$200 from the estate (portion value of personal assets), which was slightly more than his fourth portion of the estate’s final worth.
- The case was fought between 1851 until 1859. After attempted resolutions, trials, and an appeal that went to the Supreme Court in Indiana, a local jury found in favor of the three sisters.
- James Kent, Junior was ordered to pay the sisters back for any court costs incurred.



the Court, the Appellant excepted. (See record at pages 25, 26, 29 and 30). The Appellee withdrew before judgment, all of his objections to the final report of the Appellant as administrator, except as to the distribution of the personal estate, (see page 24 of record). The foregoing it is believed are all the material facts of the case, and it is due to the Court that confirmed this report to say that the counsel of the Appellant was not present and made no argument before it.

We insist the judgment of the Court below is erroneous and should be reserved for the following reasons:

1st. It appears as well from the Appellee's exceptions to the administrator's report (see page 8 of record), as also from the testimony of Appellant, (see page 23 of record), that the Appellee had sold his contingent interest as heir-at-law, of deceased, reserved by the deed of deceased to Mrs. Prater, to Price and this Appellant, some three years before he excepted to the administrator's report for the sum of \$150; and yet the Commissioner makes *that contingent* interest of which Appellee had wholly divested himself by sale, a basis for his report.

2nd. The Appellee is entitled to no portion of the surplus arising from the personal estate of deceased, because as appears from his receipt to the administrator, as also from the administrator's testimony, the administrator had long before paid him \$200, which is a greater sum than his distributive share of the personalty after payment of the debts would amount to (see voucher No. 17 bottom of page 2 of record, and testimony on pages 21 and 22 of record).

3rd. The Appellee by the sale of his contingent interest in virtue of the reservation in the deed of the record, to Mrs. Prater, to Price and this Appellant, as also from his receipt, being voucher No. 17, before referred to, has long since ratified and confirmed the acts of his Father, (the deceased), as being gifts or devises, and is estopped at this late day from setting up or asserting the contrary.

4th. The question as to whether deceased *intended* his conveyance to operate as advancements, is a question of *fact*, and the Court erred in refusing Appellant to have the same passed upon by a jury.

5th. The conveyance of the deceased could only operate by way of advancements by *intent* of deceased that they should *thus* operate, and the Court erred in holding they did *thus* operate, for the reason that the evidence *repels* such intention; the more especially as the deceased conveyed *all* of his lands which amounted to a large number of acres and of great value, when he had but a very *small* personal estate.

6th. It is not averred in the exceptions taken by James Kent Junior, the Appellee, to the Appellant's report as administrator of deceased. That the lands conveyed by deceased in his last sickness were conveyed or *intended* to be conveyed to the heirs therein named by way of advancement: and the proof clearly shows that said lands were *not* conveyed or *intended* to be conveyed by deceased as *advancements*, but as gifts or devises. (See testimony of Appellant commencing at page 19 of record, and particularly his cross-examination commencing on page 22 of record).—5 Barbour's N. Y Rep. 424. The right of property is merely conventional, and the Appellee has no lawful right to complain of his father's dis-inheriting him on account of his improvidence, as it appears he did, from the testimony as also from the *acts* of the deceased.

7th. The term *advancement* means a yielding up a *part* of the estate, to an heir expectant, to be thereafter accounted for by the heir of the intestate out of that which the heir inherits, and no case can be found where the *whole* of an estate has been conveyed to a *portion* of the children of the decedent, and *such conveyance* has been held to be an advancement. The manifest *intention* (and that governs) of deceased was to *exclude* his son from any title in his lands. It is the duty of the administrator to see that the *intent* and *will* of the deceased be carried into effect and not become disregarded, therefore the appeal.

EDWARD H. BRACKETT,

Attorney of Appellant.

James Kent estate (1847)  
 Tippecanoe Co. Historical Society  
 1001 South Street, Lafayette, Indiana 47901  
 (765) 476-8711



James Kent } This Indenture, made this eighteenth day  
To & Seem } of June, in the year of our Lord, one thousand  
James Shaw } eight hundred and forty seven, between James  
Kent of the county of Tippecanoe, and State of Indiana  
of the first part, and James Shaw, of the county of  
Tippecanoe, and State of Indiana, of the second part, witnesseth  
that the said party of the first part, for and in consideration  
of the sum of one dollar, to the said party of the first by the  
party of the second part, in hand paid, the receipt whereof  
is hereby acknowledged, have granted, bargained and sold  
and by this presents do grant, bargain, sell convey, and con-  
firm unto the said party of the second part, his heirs and assigns  
forever, all the following described pieces, or parcels of land  
laying and being in the county of White, and State of Indiana  
to wit: The North half of the East half of the South West  
quarter of Section number (3) three, in Township number (25) twenty five North, of Range number (14) four West, containing  
forty acres. Also the East half of the West half of the  
South West quarter of Section number (3) three, in Township  
number (25) twenty five, North of Range number (14) four  
West, containing forty acres. Also, the West half of the  
North half of the North West quarter of Section number (3)  
three, in Township number (25) twenty five, North of Range  
(14) West, containing thirty seven acres and sixty four  
hundredths. Also the East half of the North half of North  
East quarter of Section number (14) four, of Township num-  
ber (25) Twenty-five, North of Range number (14) four  
West containing thirty-eight acres and eighty three hun-  
dredths. To have and to hold the above described prem-  
ises, with all the improvements and appurtenances to the  
same belonging, to the said party of the second part, his  
heirs and assigns forever, and the said party of the first  
part, for himself and his heirs, doth hereby covenant with  
the said party of the second part and his heirs, that he is  
lawfully seized in fee of the premises aforesaid, that the

Land deed transfer from James Kent (1847) to daughter, James D. & Nancy (Kent) Shaw  
dated 18 June 1847  
James Kent estate (1847)  
Tippecanoe Co. Historical Assoc.  
1001 South Street, Lafayette, Indiana 47901  
(765) 476-8711

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Lafayette, IN



premises are free and clear from all incumbrances whatsoever and that he will forever warrant and defend the same and the quiet and peaceable possession thereof, together with the appurtenances to the same belonging or appertaining unto the said James Kent his heirs and assigns against the lawful claims of all persons whatsoever.


In witness whereof, the said James Kent has hereunto set his hand and seal the day and year first above written

Signed sealed and delivered

in presence of

John Shaw, Junr

John Price

James Kent 


State of Indiana

Tippecanoe County

} ss.

I, John Shaw, Junr, one of the Justices of the Peace of said county, do hereby certify that the above named James Kent, came personally before me and acknowledged the foregoing instrument of writing to be his voluntary act and deed for the purposes therein mentioned.

In witness whereof I hereunto set my hand and seal this eighteenth day of June A.D. 1847.

John Shaw, Junr.   
A Justice of the Peace

State of Indiana

Tippecanoe County

} ss.

I, Mark Jones, Clerk of the Tippecanoe Circuit Court, in the State of Indiana do hereby certify that John Shaw, Junr, whose signature is affixed to the within certificate of acknowledgment to the within deed of conveyance, and by whom the same appears to have been taken, was at the date of said certificate to wit: the eighteenth day of June A.D. 1847, an acting Justice of the Peace in and for the County of Tippecanoe in the State of Indiana, duly elected commissioned



and qualified, and as such, his official acts are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in Lafayette on the fourth day of August, A.D. 1847

Mary Jones, Clerk

Recorded September the 14th, 1847.

Ramon M. Connaughton, Recorder



Page 3 of

Land deed transfer from James Kent (1847) to daughter & son-in-law

James D. &

Nancy (Kent) Shaw

James Kent estate (1847)

Tippecanoe County Historical Association

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711, ext. 205



James Kent estate (1847)  
 Tippecanoe County Historical Association  
 Alameda McHugh Library/Archives  
 1001 South Street, Lafayette, Indiana 47901  
 (716) 476-8711, ext. 265

James Kent et al { Deed John Price & James O Evans	a certified copy of (Deed)	Copy — \$1.00 Certification — 30 \$1.30
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State of Indiana } ss.  
 White County }

I, Ransom McConahay,  
 Recorder in and for said County, do hereby certify  
 that the within and foregoing is a correct copy of  
 the deed now on Record in my office

Witness my hand and Official Seal  
 this 17th day of January, 1885

Ransom McConahay  
 Recorder W.C.



James Kent <sup>3</sup> This Indenture, made this eighteenth day  
To <sup>3</sup> and <sup>3</sup> of June, in the year of our Lord, one thousand  
John Price <sup>3</sup> eight hundred and forty seven, between James  
Kent, of the county of Tippecanoe and State of Indiana, of  
the first part, and John Price of the county of White and  
State of Indiana, of the second part, Witnesseth, that the  
said party of the first part, for and in consideration of the  
sum of one dollar to the said party of the first part, by the party  
of the second part in hand paid, the receipt whereof is hereby  
acknowledged, have granted, bargained and sold, and by these  
do grant, bargain, sell, convey and confirm unto the said  
party of the second part his heirs and assigns forever, all the  
following described piece or parcel of land laying and being  
in the county of White and State of Indiana, to wit: The  
West half of the South West Quarter of Section number (3) three  
in Township number (25) twenty-five, North of Range (4)  
four West, containing Eighty acres. Also South half of the  
North East quarter of Section number (3) three, in Township  
number (25) twenty-five, North, of Range number (4) four West,  
Also the East half of the North West quarter of Section number  
(3) three, in Township number (25) North, of Range number (4)  
four West. Also the East half of the South East quarter of  
Section number (33) thirty-three in Township number (26) twenty  
six, North of Range number (4) West. To have and to hold  
the above described premises, with all the improvements and  
appurtenances to the same belonging, to the said party of the  
second part, his heirs and assigns forever; and the said party  
of the first part, for himself and his heirs, doth hereby cove-  
nant with the said party of the second part, and his heirs,  
that he is lawfully seized in fee ~~simple~~ of the premises  
aforesaid; that the premises are free and clear from all in-  
cumbrance whatsoever; and that he will forever warrant  
and defend the same and the quiet and peaceable possession  
thereof, together with the appurtenances to the same belonging  
or appertaining, unto the said John Price, his heirs and

Land deed transfer from James Kent (1847) to daughter, John and Savannah (Kent) Price  
dated 18 June 1847.  
James Kent estate (1847)  
Tippecanoe Co. Historical Assoc.  
1001 South Street, Lafayette, Indiana 47901  
(765) 476-8711.

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Tippecanoe County  
Historical Association  
Lafayette, IN



James Kent estate (1847)  
Tippecanoe Co. Historical Assoc.  
1001 South Street, Lafayette, Indiana 47908  
(765) 476-8711

Land deed from James Kent (1847) to daughter  
and son-in-law, John and Susannah (Kent) Price  
dated 18 June 1847.

a signs, against the lawful claims of all persons whomsoever.


In witness whereof, the said James Kent have hereunto  
set his hand and seal, the day and year first above written.

Signed sealed and delivered  
in presence of  
John Shaw, Jun  
James Shaw

James Kent 

To the State of Indiana  
Tippecanoe County } ss. I, John Shaw, one of the Justices  
of the Peace of said County, do hereby certify, that the above  
named James Kent came personally before me, and ac-  
knowledge the foregoing instrument of writing, to be his volun-  
tary act and deed, for the purpose therein mentioned.

In witness of which I hereunto set my hand and seal at  
this 18th day of June, A.D. 1847.

John Shaw, Jun 

The State of Indiana }  
Tippecanoe County, } ss. I, Mark Jones, Clerk of the  
Tippecanoe Circuit Court, in the State of Indiana, do hereby  
certify that John Shaw, Jr., Esq., whose signature is affixed to  
the within certificate of acknowledgment to the within deed of  
conveyance, and by whom the same appears to have been ex-  
ecuted, was at the date of said certificate to wit on the 18th  
day of June, 1847, an acting Justice of the Peace in and for the  
County of Tippecanoe, in the State of Indiana, duly elected, com-  
missioned and qualified, and as such, his official acts are  
entitled to full faith and credit.

In testimony  
whereof, I hereunto set my hand and affix the seal of  
Court, at office in Lafayette, on this tenth day of  
July, A.D. 1847.

Mark Jones, Clerk

Recorded September 4, 1847.

Wesley McConahay, Recorder



Land deed from James Kent (1847) to  
daughter and son-in-law, John and Susannah (Kent) Price,  
dated 18 June 1847.

James Kent estate (1847)  
Tippecanoe Historical Assoc.

1001 South Street, Lafayette, Indiana 47901  
(765) 476-8711

James Kent  
To }  
John Price

A Certified Copy  
of Record

New Copy 1.12 $\frac{1}{2}$   
Certificate value \$0  
\$ 1.62 $\frac{1}{2}$

State of Indiana, } ss.  
White County, }

I, Ransom W. Conahay,  
Recorder in and for said County, do hereby certify  
that the within and foregoing is a correct copy of  
the Deed now on Record in my office.

Witness my hand and Official seal  
this 17<sup>th</sup> day of January 1855.

Ransom W. Conahay  
Recorder W.C.



James Kent, Sen } This Indenture, made this eighteenth  
To } Deed  
Rachel Prater } day of June, in the year of our Lord  
one thousand eight hundred and forty  
seven, between James Kent, of the County of Tippecanoe  
and State of Indiana, of the first part, and Rachel Prater  
wife of Herman Prater, heretofore Rachel Kent, (daughter  
of the said James Kent, the grantor in this deed,) of the County  
of White State of Indiana, of the second part. Witnesseth,  
That the said party of the first part, for and in consideration  
of natural love and affection, and the sum of one dol-  
lar, lawful money of the United States, to him in hand  
paid by the said party of the second part, the receipt  
whereof is hereby acknowledged, by the said party of the  
first part, has granted, bargained and sold, and by  
these presents grant bargain and sell, unto the said  
Rachel Prater, as aforesaid, all the tracts or parcels  
of land, lying and situated in the County of  
White and State of Indiana, to wit: The West half  
of the West half of the South West quarter of Section  
number (3) three, in Township number (25) twenty five  
North of Range four West, containing forty acres. Also  
the West half of the South half of the North West Quarter  
of Section number (3) three, in Township number (25)  
twenty five, North of Range (4) four West, containing  
forty acres. Also, the East half of the South half  
of the North East Quarter of Section number (4) four  
in Township number (25) twenty five, North of Range  
number (4) four West, containing forty acres. Also,  
Also, the South half of the East half of the South West  
Quarter, of Section number (3) three, in Township  
number (25) twenty five North, of Range number  
(4) four West, containing forty acres. To have and  
to hold the said tract or parcels of land above par-  
ticularly described, together with all and singular the  
hereditaments and appurtenances thereunto belonging

Land deed from James Kent (1847) to daughter Rachel (Kent) Prater  
dated 18 June 1847.  
James Kent estate (1847),  
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(765) 476-8711.

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Lafayette, IN



or in any wise appertaining, to her, the said Rachel's  
own separate use, during the full term of her natural  
life, the remainder in fee to the heirs of her body law-  
fully begotten, or to be begotten, forever; and should  
the said Rachel die, leaving surviving her no lineal  
descendants, then to the right heirs of the said James  
Kent, grantor in this deed forever. And the said  
party of the first part, for himself, his heirs, executors  
and administrators, does covenant and agree to and  
with the said party of the second part, and her heirs  
as aforesaid; that the said party of the ~~second~~ <sup>first</sup> part  
~~now~~ is lawfully seized of the premises hereby conveyed  
as of a good, sure, perfect and absolute estate of inheritance  
in the land in fee simple, that the same are free and  
clear of all incumbrances, whatsoever, and that he  
has good right to sell and convey the same in man-  
ner and form aforesaid; and further, that the said  
party of the first part, his heirs, administrators and  
Executors shall and will warrant and forever defend  
the said party of the second part and her heirs ~~as~~  
aforesaid, in the quiet and peaceable possession of  
the aforesaid granted and bargained premises aforesaid  
against all and every person or persons whomsoever,  
lawfully claiming or to claim the same and every  
part and parcel thereof.

In testimony whereof the said James Kent,  
party of the first part, has hereunto set his hand  
and affixed his seal, the day and year first above  
written

Signed sealed and delivered

in presence of

John Shaw, Junr.

John Price

James Kent



Land deed transfer from James Kent (1847) to  
daughter, Rachel Prater (husband is Newam Prater)  
dated 18 June 1847.

James Kent estate (1847)

Tippecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711



State of Indiana }  
Tippecanoe County } ss.

I, John Shaw, Jun., one of  
the Justices of the Peace of said County, do hereby certify that  
the above named James Kent, came personally before me  
and acknowledged the foregoing instrument of writing to be  
his voluntary act and deed for the purposes therein mentioned.  
In witness whereof I have hereunto set my hand and seal  
this 18th day of June A.D. 1847.

John Shaw, Jun., J.P. 

N.B. - The words "sold" and "by these presents does grant bargain  
~~and~~, were interlined in the space between the 11th & 12th lines  
before signing.

State of Indiana }  
Tippecanoe County } ss.

I, Mark Jones,  
Clerk of the Tippecanoe Circuit Court, in the State of Indiana  
do hereby certify, that John Shaw, Jun., before whom the  
foregoing deed of conveyance was acknowledged, was at  
the State of taking such acknowledgment and making the  
foregoing certificate, an acting Justice of the Peace, within  
and for said County, duly elected, commissioned and  
qualified, and that full faith and credit are  
due to all his official acts. In testimony  
whereof, I have hereunto set my hand and affixed  
the seal of said Court, at Office in Lafayette, on  
this 6th day of September, A.D. 1847.

Mark Jones, Clerk

By D. C. Coane

Recorded September the 14th day A.D. 1847.

R. W. Cunningham, Recorder

Land deed transfer from James Kent (1847) to  
daughter, Rachel Prater (husband is Newman Prater)  
dated 18 June 1847.

James Kent estate (1847)

Tippecanoe Co. Historical Association

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711.

Copied from  
Tippecanoe County  
Historical Association  
Lafayette, IN



James Kent  
 att  
 James & Thomas  
 Estate of James  
 Kent

James Kent  
 to } 9999  
 James Prater  
 Certified copy of  
 Record  
 9999  
 Copy 113 1/2  
 113 1/2  
 \$1.62 1/2

State of Indiana } ss  
 White County }  
 I, Ransom M. Conahay,  
 Recorder in and for said County, do hereby certify  
 that the within and foregoing is a correct copy of  
 the deed now on Record in my office.  
 Witness my hand and official seal, this  
 17th day of January, 1855.  
 Ransom M. Conahay  
 Recorder W.C.



Certified copy of  
 Land deed Transfer from James Kent (1847) to  
 daughter, Rachel (Kent) Prater  
 dated 18 June 1847.  
 James Kent estate (1847),  
 Tippecanoe Co. Historical Assoc.  
 1001 South Street, Lafayette, Indiana  
 (765) 476-8711 47901



County of Tippecanoe  
 Sale Bill of the personal property  
 of James Kent deceased late of Tippecanoe  
 as sold by James D Shaw administrator of  
 said Estate on the eighteenth day of September  
 1847

Articles Sold	buyers names	\$ Cts
1 breeding hog & bushel	James D Shaw	31
1 Feeding basket	" "	38
1 Pair Saddle bagg	Newman Prater	2.00
1 pair breast chains	Hiram Shaw	88
1 Jar can	John Price	18
1 Corn shovel	" "	88
1 Chopping axe	James D Shaw	75
1 Waggon Cover & bows	Newman Prater	3.13
1st Lot hogs & barrows	James D Shaw	17.25
1 Large sow	John Price	5.00
1 Smaller sow.	William M Stretch	2.63
1 Do Do	John Price	2.37
1 Boar skoot	John D Huff	1.15
1 Sow skoot	Hiram Shaw	1.10
1 Man's saddle & bridle	James D Shaw	5.50
1 Set of double harness	" "	12.50
1 Sorrel horse	" "	30.00
One half share of a line	Hiram Shaw	1.26
1 Hogshead	John Price	1.00
1 Two horse waggon	Ira M. Chesnoweth	66.50
7 pigs	William Long Jr	3.63
1 Sand shovel	George Bowman	25
		<u>159.65</u>

State of Indiana }  
 Tippecanoe County sct } Before me John Shaw jun a justice of  
 the peace within and for said county personally came William M  
 Stretch who being by me duly sworn upon his oath says that he acted  
 as clerk at the sale of the personal property of James Kent late of  
 said county deceased and the foregoing is contains a correct account  
 of the property sold and by whom bought and the price bid and  
 further says not subscribed and sworn to William M Stretch  
 before me this 18<sup>th</sup> day of September 1847 John Shaw jun

James Kent (1847) estate  
 Sale bill 18 Sept. 1847

Tippecanoe Co. Historical Assoc.  
 1001 South Street, Lafayette, Indiana 47901  
 (765) 476-8711.

Copied from  
 Tippecanoe County  
 Historical Association  
 Lafayette, IN



*Sale Bill  
of the Estate  
of Jas Kent-decd  
Tippecanoe County*

*Filed Oct. 16. 1847  
Mark Jones Clerk  
By J. M. Mallon*

James Kent (1847) estate, Page 2

Sale bill dated 18 Sept. 1847

Tippecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711



Sale Bill of the goods and chattles of James Kent late of Tippecanoe County Indiana deceased ~~and late of~~ sold by James S Shaw Administrator on the 20<sup>th</sup> day of September 1847 in White County Indiana near Kent's Grove. A Credit of Nine Months on all sums over three dollars under that amount Cash in hand was required

Articles Sold	by Whom purchased	Am't
1 Two prong fork	John Price	75
1 Three prong hay	" "	87 1/2
2 Stack of wheat	" "	22.50
1 Tack of wheat	John Warwick	3.00
1 Oat Stack	John Kious	4.25
		<u>\$1.37 1/2</u>

State of Indiana }  
 White County } Before me Robert Adam a  
 Justice of the peace in and for said County  
 personally came Ezekiel Matthews Clerk of  
 the above sale who being by me duly sworn  
 upon his oath says that the above sale  
 Bill is true and correct  
 Ezekiel Matthews

Subscribed and sworn to }  
 before me this 20<sup>th</sup> day }  
 of September 1847 }  
 Robert Adam  
 Justice of the Peace

NOTE by Michelle M. Roy, 07 May 2012  
 States James Kent is from  
 Tippecanoe Co., but this  
 auction is near Kent's Grove  
 in White Co.

James Kent (1847) estate  
 Sale bill dated 20 Sept. 1847  
 Tippecanoe Co. Historical Assoc.  
 1001 South Street, Lafayette, Indiana  
 (765) 476-8711

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*Sale Bill  
of the Estate of  
Jas Kent dec'd  
White County*

*Filed Oct. 16. 1847  
Mark Jones clk  
By J. Mahan*

*James Kent estate (1847)*

*Tippecanoe Co. Historical Assoc.*

*1001 South Street, Lafayette, Indiana 47901*

*(765) 476-8711*



James Kent  
against  
James D. Shaw as  
Administrator of the estate  
of James Kent deceased

Court of Common Pleas  
Tippecanoe County

James Kent for answer & exceptions to  
the final report of said James D. Shaw as  
Administrator of the estate of James Kent deceased.  
Says. That decedent departed this life about the first  
of July 1847, eighteen hundred and forty seven leaving  
him surviving, Rachel Proter & Annan H. Proter her  
husband, Susanah Rice and John Rice her hus-  
band, Stanley Shaw & James D. Shaw her hus-  
band. With this respondent, his heirs & law,  
That said decedent in his lifetime was the  
owner in fee simple of a large amount of real  
& personal estate,  
and

That said decedent on the eighteenth day of  
June 1847, eighteen hundred and forty seven, about fifteen  
days prior to his death & during his last sickness  
at the instance and urgent request of said John  
Rice and James D. Shaw, (the husbands of <sup>said</sup> Stanley  
& Susanah) executed a deed to said James D.  
Shaw for one hundred & fifty six & 4/100 acres of  
land which was at that date worth twenty four  
hundred dollars, and the whole consideration  
was money received, as appears by the deed, a  
copy of which is herewith filed as a part of this  
proceeding.

And, That at some time & place said decedent  
executed a deed in fee simple to said John

James Kent estate (1847)

Demand for estate settlement by James Kent Junior dated about Fall 1850

Tippecanoe Co. Historical Assoc.

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Price husband of said Susannah. thereby conveying  
to said Price three hundred and twenty acres of  
Land of the value of five thousand eight hun-  
dred dollars. for the nominal sum of one dollar  
a copy of which deed is filed herewith as a  
part of this paragraph.

Fourth

That said Deed, at the same time the  
two deeds also referred to, was made, executed & third  
to Rachel Proter for one hundred and sixty acres of  
Land. to be held by her during her natural Life  
if she had no Lineal Descendants, which was at that  
time of the value of twelve hundred dollars, as a  
Life estate, a copy of which deed is filed herewith  
as a part of this paragraph, and that said Rachel  
with her husband & her son H. Proter enjoyed the  
use and occupation of said one hundred and sixty  
acres thus conveyed to her for three years prior to  
said Conveyance & Decree of said James Kent, which  
was of the Yearly value of three hundred dollars.

Fifth

That in the year 1818 eighteen hundred and thirty  
six said Deed was entered. Seventy seven acres &  
sixty seven hundredths, for one hundred dollars, which  
was entered in the name, and for the benefit of said  
Respondent, which was of the value of one hundred  
dollars, and further that Respondent received for  
his contingent interest in the Remainder, of the  
Land conveyed to said Rachel Proter, after her  
Life estate terminates, about one hundred & fifty  
dollars, which contingent interest was owned  
was in common with said Susannah & Henry with  
their husbands, and that Respondent received

Page 2

James Kent estate (1847)

Demand for Settlement, abt. Fall 1850

Tiptecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711



9

two hundred dollars from the said James D. Shaw, as such Administrator of said decedent's Estate, and through the false & fraudulent representations of said Shaw. Respondent signed a receipt for two hundred and twenty five dollars to said Shaw as such administrator as being in full of said ~~decedent's~~ share of the personal property of said estate. When in truth said Shaw as such Administrator well knew & designed by procuring said receipt, that, as here, he would pocket a large amount of money in fraud of the rights of Respondent.

Sixth

And further for exceptions to the third and final report of said James D. Shaw, as Administrator of said decedent's Estate. It is charged, that in addition to the articles and effects set forth and described in the inventory & sole bills filed by said Administrator, there came to his knowledge & possession certain other articles of value, to wit: a carriage of the value of eighty dollars. A mare of the value of fifty dollars. Six bedsteads, beds, & bedding of the value of one hundred and twenty dollars. Together with all the household & kitchen furniture of decedent of the value of seventy five dollars or more, which property upon some pretence said Administrator fraudulently withheld from being inventoried or sold. & in his final report for settlement of said Estate, he has failed & refused to account for the same, { and further that said Administrator by his neglect and want of attention to the collecting of the claims in favor of said Estate, has returned <sup>claims</sup> as worthless ~~the amount of~~ fifty dollars. which with reasonable diligence could have



collected and that the charges for services in  
settling of said estate are unreasonably high

Wherefore Respendent demands that said  
Administrator be examined under oath & be  
compelled to answer fully & specifically all and  
singular the matters herein set forth, That  
upon the final hearing, ~~that~~ Court decree that  
said Administrator account for the property belonging  
to said estate, received by him & not inventoried,  
and for the amount of the claims that could be  
has not collected by him, in favor of said estate &  
now returned heretofore, in addition to the amount  
with which he has charged himself in his first  
report, That the property herein mentioned &  
described be decreed to be delivered over to the  
several parties to whom it was conveyed by decedent,  
That the value of the real, be estimated with the  
value of the personal property received by & previous  
to said conveyances, That the several heirs may  
be equalized in the receipt of the property of decedent  
and that said Administrator be ordered to pay  
over unto Court for the benefit of Respendent so  
much of the personal property of said estate as  
will, with what he has received make his  
portion equal to the portion of the other heirs,  
~~that~~ <sup>be further</sup> such other specific relief as will  
accord with Law & good conscience.

Hoff Grewee  
for Respendent



THE STATE OF INDIANA, } ss.  
Tippecanoe County,

The State of Indiana to the Sheriff of Tippecanoe County, in said State, GREETING;

You are hereby commanded to Summon *James M. Shaw admr of*  
*the estate of James Kent deceased*

if *he* may be found in your bailiwick, to personally be and appear before the Judge of  
our Tippecanoe Probate Court on the first day of the next term thereof, to be holden at the  
Court House in the town of Lafayette in said County on the *first* Monday  
in *February* next, and then and there to *make a final*  
*settlement of said estate*

and then and there make and file an account exhibiting a perfect expose of all receipts and  
disbursements, and of the amount of the balance in *his* hands as such *administrator*  
\_\_\_\_\_ and have you then there this writ. By order of the Court.

Witness: Mark Jones, Clerk of our said Tippecanoe Probate  
Court, and the seal thereof affixed at office in Lafayette, on  
this 22<sup>d</sup> day of *November* A. D. 1850

*Mark Jones* Clerk.  
*J. W. Mearns* Dep

James Kent estate (1847)  
22 Nov. 1850  
Order to Appear  
to James D. Shaw

Tippecanoe Co. Historical Assoc.  
1001 South Street  
Lafayette, Indiana 47901  
(765) 476-8711

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Lafayette, IN







The State of Indiana }  
Tippecanoe County } p

In the Probate Court of said County  
of the August term thereof A.D. 1851.

In the matter of the  
Estate of James Kent dec'd. deceased }

To the Honorable John Killgore sole judge  
of said Court,

The undersigned, administrator of  
all and singular the goods and chattels, rights, cred-  
its money and effects which were of said decedent,  
in answer to the citation herein issued, respectfully  
represents to your honor that the condition of  
said estate does not allow of a settlement at  
the present term of said Court for the reason <sup>certainly</sup> that  
the notes due and payable to the estate of said  
decedent yet remain to be collected - and some  
of the notes for the same are not due and payable  
until the fall of the current year and one  
note in the year 1852 and another in the  
year 1853, and that this administrator has  
paid from time to time to the heirs entitled the  
sums received by him in proportion to the respec-  
tive shares of said heirs and holds their vouchers  
for the same, and on account of the present  
state of said administration (it requiring time  
to make further collection, as above stated) the  
undersigned requests the allowance of further  
time to settle the estate of said decedent -

All which is respectfully submitted. -

James D. Shaw Adminr

James Kent estate (1847)

27 AUG 1851

James D. Shaw response to citation of delayed settlement of estate.



The State of Indiana }  
Tippecanoe County }  
}

On this 7<sup>th</sup> day of August A.D. 1851  
before me Mark Jones, Clerk of the Probate Court  
of said County, personally appears in open  
Court James D. Shaw and made oath that  
the matters and things in the foregoing report by  
him subscribed are true as he verily believes.  
Subscribed and sworn to } James D. Shaw  
this day & year above written }

Mark Jones Clerk  
By O. M. Weakly Dep

07 Aug. 1851

Page 2 of 2

James Kent estate (1847) Association  
Tippecanoe Co. Historical Society  
1001 South Street, Lafayette, Indiana, 47901  
(765) 476-8711



Final Report of James D Shaw  
Administrator of James Kent deceased  
late of Tippecanoe County Indiana.

Said Administrator charges  
himself with proceeds of said Estate  
by him received as follows.

Debtor

1st To amt of Sale Bills of personally of said Estate filed Oct 18 <sup>th</sup> 1847 one of \$158.65 other \$31.37 Total \$	190.02
To Note of \$10. against James Murphy Collected with 25c int Total	11.20
To note of George Bonson not collected but assumed by undersigned	1.33
To note of Benj Harrison collected.	13.80
To amt of 7. for missing notes against Ephraim Loman & Niram Johnson amt of principal \$700. & int at time of collection \$4.75. Total	704.75
To \$5. bank bill on Cash. B. R. Lin.	5.00
" \$20. " " " Lafayette "	20.00
" Specie of rec <sup>d</sup> on hand	5.22 1/2
" Account collected of Will D. Peyton	6.81 1/4
" " John Price	25.00
" " George Goddard	.87 1/2
" \$5. rec <sup>d</sup> Harey & Stetches estate	5.00
	<hr/> \$989.01 1/4

James Kent estate (1847)

20 Jan. 1855

Final Report of Settlement of Estate by James D. Shaw

Tippecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711



Said Admr. Credits himself  
with the following amounts  
Paid out for said Estate &  
to the heirs thereof as follows  
viz:

To Am't Costs of Court paid in the  
Settlement of said Estate as per  
Voucher herewith filed No. 1. \$ 23.70

Paid M Scudder Coffin for dec'd 2. 1 10.00

" W K Rochester 3. 1 4.91

" J F Forgy 4. 1 1.50

" John Matthews 5. 1 .50

" Ezra Rebel Matthews 6. 1 .50

" Thomas Matthews 7. 1 .25

" Robert Adam 8. 1 .18

" Tax for Repts 9. 1 9.51

" " " " recording dec'd 10. 1 25.89

" Isaac Reynolds 11. 1 1.00

" G S Goddard 12. 1 .75

" Wm Martin 13. 1 .90

" A Sions 14. 1 4.69

" " " " 15. 1 3.38

" Note of dec'd for Theob 16. 0 70.00

" James Kent Jr in full  
of his interest in personally  
of said Estate 17. 0 215.00

" Susanna Price 4 Vouchers 18. 1 148.99

" Rachael Prater 19. 1 152.11

" Chou Hiltstach 20. 1 2.50

" E Lomon 21. 1 2.25

To Claim for services as admr  
of Estate - - - - - 70.00

Edu. B Brackett for this Report. 23. 1 5.00

other debts paid 144. 71 - paid in dis 850.10 - 1126. 07 738. 51

Re capitulation

Total debtor

\$ 984. 01 1/4

T.D.P. vs



The following is the testimony, <sup>in substance</sup> of James R. Shaw  
given before the undersigned in the matter of the  
estate of James Kent sen.

The heirs of James Kent at his death were,  
James Kent Jr. & S. D. P. & S. D. P. & S. D. P.

The undersigned Return Pouch  
the following accounts in  
the inventory of not collected  
W. G. Bousman ac. \$20. 20 70. 31 1/4  
D. Verden \$1. 25 - J. Johnson  
not \$1. - D. Archibald ac. \$15.  
D. Long ac. \$81. 1/4.

The following list of accounts  
were not approved were & are  
not ~~the~~ - & returned as such -  
by - acs. Endorsed in envelope  
marked TB -  
James J. Shaw

James D. Shaw Admin  
of James Kent sen.

Being on oath  
I do solemnly swear the foregoing report  
is true in substance & matter of  
fact as the deponent verily believes.  
James D. Shaw

Subscribed & Sworn in open court.

Jan. 20. 1855

Wm. C. C. C.

Page 3

James Kent estate (1847)

20 Jan. 1855

Final Report of Settlement

Tippecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana 47901

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lived there, or whether they paid rent or not I don't know. This was before the execution of the deed. Prater & wife lived on the land conveyed to them about a year after the conveyance, then sold to John Price.

James Kent in his life time, entered a fraction of an eighty acres lot, in the name of James Kent Jr. at the price of one dollar and a quarter per acre. James Kent Jr. sold his contingent interest in the Rachel Prater Estate to Price & myself for 150 dollars.

James Kent sen. died on the 3rd of July 1847 or about that time.

The receipt signed by James Kent Jr. for 225 dollars, embraces all the money that said James had received from his father's estate. The receipt is for 225 dollars but only paid him 200 dollars. This discrepancy was understood between James and myself. I thought that debts might turn up against the Estate of which I then knew nothing, and if so I was to use the receipt at its face, otherwise not.

There was owned by Kent some time before his death, a lot of house hold goods, beds and bedding, and a buggy, and one mare. The reason why these goods ~~were~~ were not inventoried is this. It was agreed that the mare belonged to Nancy, by myself and the other heirs. As regards the buggy and household goods, I did not inventory these for this reason. In a conversation which the old man had with the heirs, he said he wanted Nancy to have the household goods & buggy, that he had provided the other girls when they were married with such things.



Stook's possession of the goods, mare and buggy before the death of said Kent. The mare was given me and put in my possession in the Spring before his death. The other articles were in my possession in March previous to Kent's death, but they were not given to my wife Nancy till about the time the deeds were made.

The buggy was worth from 65 to 70 dollars. The mare was a good riding mare but would not plow. She was worth or ought to have been worth from \$60 to 65 dollars, but a short time after Stook her she became worthless by reason of the disease which was working on her when I took her. I doctored her about two years then traded her for a colt worth about 50 dollars. The balance of the goods were worth from 70 to 80 dollars.

James Kent Jr. was not at home when his father died. All the other children were there when the disposition of the property was made. Kent died a resident of this country.

I had a good deal of trouble with the settlement of the estate. I took much pains with certain accounts which were not appraised, to ascertain whether or not they were collectable. There were notes due the estate which did not fall due till shortly before I made a final settlement, which procrastinated the final settlement.

Cross examination by Brackett, gave following evidence. These deeds spoken of were executed some 15 or 20 days before Kent died. His object in executing these deeds was to give us the property. I don't know

James Kent estate (1847)

Filed 23 March 1855

Testimony of James D. Shaw

Tippecanoe Co. Historical Assoc.

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Filed 23 March 1855

Testimony of James D. Shaw  
Tippecanoe Co. Historical Assoc.  
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Page 4 of 6

whether the old man wanted to cut James off or not. He never mentioned James name while he was sick that I know of. James was in Ohio when the old man died. He died with Erysipelas in his leg. He was a stout hearty man up to the time of this sickness. — After his death I found among his old papers a bond for a lot in Keamsville. The old man was in his right mind when he died.

Along in the spring following the old man's death James Kent Jr. came out and wanted me to pay him his proportion of the personalty of his father's estate. I told him there was no money in my hands belonging to the estate. But he was anxious to get money and I gave him 100 dollars in money and paid for two horses which he got. I paid him 200 dollars in all.

I think that 70 dollars is very low for the services I performed as Administrator of the Kent estate. I settled it as soon as possible after the last note was due and paid. At the first term of court after I could have settled I was sick. — I think it was the intention of the old man to dispose of his property real and personal among the heirs to the exclusion of James Kent Jr. I was married to Nancy in January prior to the death of the old man. My wife had kept house for him before his death some time, and he lived with me when he died.

James Kent Jr. was paid by me in the summer after his father's death. I cannot say whether James knew of the household goods being in my



<sup>told James</sup>  
possession or not, I <sup>told James</sup> think I did not know  
the amount charged in the Sale bill & Inventory,  
stated him he should go and examine them,  
I had no desire to buy him out. ~~to~~ And only  
did so to accommodate him. I think James  
told me that he had examined the Sale bill  
and Inventory, and that the amount was  
so, and so, and that he was willing to take  
the amount I gave him. I think he had  
a memorandum of the affairs of the Estate,  
I and Price bought James' Contingency before  
mentioned some three years since.

The land entered by Kent sen for James  
was entered in 1836.

For several years before Kent died James  
was at home very little.

I heard the old man make one  
remark in regard to James, when the subject  
was up. He remarked that he, James, was  
getting along very poorly, that he was pursuing  
a course more taught by him. This was  
about all I ever heard him say on the  
subject - I supposed he had reference to his  
James' money affairs - Kent sen. was a fiscal  
good man.

About a week before these deeds were  
executed and while Kent was sick he spoke to me  
about the disposition of his property, and wanted  
me to procure blanks. I put the old man off  
at that time & told him I thought he would be  
better in a short time. This appeared to satisfy  
him <sup>for</sup> at that time. He made a proposition a second  
time. I put him off again, when I put him off  
a second time. Afterwards one morning one  
morning before daylight he told me he

James Kent estate (1847)

Filed 23 March 1855

Testimony of James D. Shaw

Tippecanoe Co. Historical Assoc.

1061 South Street, Lafayette, Indiana

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47901



Testimony of James D. Shaw

Tippecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana, 47901

(765) 476-8711

wanted that matter attended to and spoke with decision and earnestness. Some time before this last conversation he told me, also his wife & Doctor that he thought he would not recover. I used no kind of persuasion to have him dispose of his property, nor did anyone that I know of.

Rachel Prater at the time of the conveyance, when was about 40 years of age. She is a woman of good constitution & good health. She has no children and never had.

David P. Whiton  
 Mrs. Cons.

Testimony of  
 James D. Shaw  
 taken before D.P. Whiton  
 Master Commissioner

Filed Mar 23, 1855  
 D. P. Whiton  
 Notary Public



In the matter of the Final Report  
of James D Shaw admr. of James  
Kent deceased, and the exceptions  
thereto filed by James Kent Jr and  
the report of David P Vinton as  
Master Commissioner thereon -

Said administrator  
James D Shaw excepts and objects  
in toto to said report <sup>of said Commissioner</sup> and said final  
report by him made at the Term  
Term 1855 of this Court is in all  
respects correct and should not be  
disturbed or changed in any respect  
whatsoever - That the facts and  
the law thereon determine that there  
never was a single dollar advanced  
by said deceased to said Susana Price,  
Rachel Proter, Nancy Shown or either  
of them - but that all they thus received  
from said deceased during his life time  
was his own voluntary free gift &  
not intended in any manner however  
or advancements - That the intent  
of deceased never was that the same  
were to be advancements, but gifts -

Said admr. asks that a jury be empanelled  
to try & determine the question of fact as to  
what the intention of deceased was <sup>on the points herein</sup>  
indicated -  
Edw. H. Brackett for Shaw

James Kent Estate (1847)

23 March 1855

James D. Shaw files an 'Exception to Master's Report';  
Atty Edward R. Brackett requests Jury Trial for Shaw  
to reverse decision

Tippecanoe Co. Historical Assoc.

101 South St., Lafayette, Indiana, (765) 476-8711

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Page  
1 of 2



~~Fortin~~

~~v.~~

~~Howe~~

~~Repl. to and answer.~~

~~The plaintiffs answer Repl.~~

Kent

v.

Shaw

Exceptions  
to Masters  
Report

Filed Mar 23. 1885

J. D. Wackerell

Attorney

James Kent estate (1847)

23 March 1885

James D. Shaw files an "Exceptions to Masters Report"

Tiptecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana 47901

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In the Matter of James D Shaw  
Adm'r of James Kent and  
the exceptions taken to the final  
report of James Kent -

Said adm'r. files  
the following further exceptions and  
objections to the Master Commissioner's  
report herein as follows -

1<sup>st</sup> Said dec'd executed  
by said James Kent (son of dec'd) to  
said other heirs conveying his contingent  
interest in said land subject to the  
life estate of said Rachael Prater  
and with full knowledge of all facts  
~~operated as a confirm~~ and the  
receipt of the consideration (\$150. dollars  
therefor) operated as a confirmation  
of all the ~~acts of~~ advancements  
(if any there were) made by dec'd  
to said other heirs, and estops said  
claimant from asserting any interest  
in said estate other than the  
sum of \$185 - awarded him by said  
distribution as ~~set~~ set forth in  
said final report -

2<sup>nd</sup> The sale by said  
claimant James Kent of all his  
interest in said estate as evidenced  
by said receipt for \$220. of sale  
executed with full knowledge  
of all the facts & conditions of said estate  
& the receipt of the \$200 therefor as testified  
to by this adm'r divested said claimant  
of any interest in said estate, and said

James Kent estate (1847)

23 March 1855

Atty Edward R. Brackett declaration for James D. Shaw

Tippecanoe Co. Historical Assoc.

1001 South Street, Lafayette, Indiana

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47901



Commissioner should so have reported.

This Administrator claims  
the right to have the matters  
involved in said settlement & exceptions  
& especially the question of lack or  
to whether said records made  
adon cements to said other heavy  
ties by a jury, as also the  
questioning herein raised by these  
exceptions to said report -

Edw. H. Brewster

atty in admn  
Shaw

In the matter of  
James D. Shaw  
Final Report of  
Adm of Shaw  
Kent - further  
exceptions to  
Shaw's Report.

28 1855

Wm. H. Brewster  
Ind. No. 100

James Kent estate C1847

23 March 1855

Declaration on behalf of James D. Shaw

ASSOC

Tippecanoe Co. Historical

1001 South Street, Lafayette, Indiana 47901

(765) 476-8711



Common Pleas Court of  
Tippecanoe County, March term 1855

To the Hon. Mark Jones Judge of said Court,  
The undersigned a Master  
Commissioner of said Court, to whom was referred  
the final settlement of the estate of James Kent  
as made by James P. Shaw administrator thereof,  
together with the exceptions to said Settlement  
filed by James Kent, junior, would respectfully  
report.

That after careful examination of said  
Settlement and said exceptions, and after having  
examined under oath the said administrator,  
James P. Shaw, touching the matters in contro-  
versy—whose testimony, in substance, is here-  
with brought into Court—he thinks said  
final Settlement incorrect in the following  
particulars. To wit:

Said report represents that  
Susannah Price, Rachel Prater, and said  
administrator, husband of Nancy Shaw,  
are each entitled to the one fourth part of the  
moneys remaining after the final settlement  
of said estate, while in the opinion of the  
undersigned, said parties, by reason of  
advancements made to them in the lifetime  
of said decedent, <sup>by said decedent</sup> are not entitled to any  
sum whatever from said estate, but that  
James Kent jun. one of the children of said  
decedent, is entitled to the whole amount  
that may be remaining after expenses of  
final settlement.

It appears from the evidence

James Kent estate (1847)

23 March 1855

Master Commissioner David P. Vinton entering judgement in front of Judge  
declaring James Kent, Junior is entitled to full  
estate.

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James Kent estate (1847)  
23 March 1855  
Judgement declaring James Kent, Jr. entitled to full estate  
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as well as from the Copies of deeds filed as a part of the exceptions to said final report, that said decedent, on the 18th day of June 1847, conveyed to John Price, (husband of Susannah Price, daughter of said decedent) in fee simple, 320 acres of land, and on the same day said decedent conveyed in fee simple to James Shaw, (said administrator and husband to Nancy Shaw, a daughter of said decedent) 156  $\frac{47}{100}$  acres of land, and on the same day said decedent conveyed to Rachel Prater 16 1/2 acres of land, for the full term of her natural life, the remainder in fee to the heirs of her body lawfully begotten, or to be begotten, forever, and should the said Rachel die, leaving surviving her no lineal descendants, then to the right heirs of said decedent, forever. And it further appears from the evidence, that said decedent in his life time, entered, in the name of James Kent Jr., a fractional 80 acre lot.

The value of Shaw's conveyance, at the time of the conveyance, according to the testimony, was \$1716.00  
The value of Price's land, at the date of the conveyance, from the testimony, was \$2880.00

The value of the interest conveyed to Rachel Prater at the date of the conveyance, according to the Northampton tables, was \$1130.42

And the value of the land entered for James Kent Jr. at the time of entry, \$100.00

According to said final report, there was left for distribution, \$766.60 which amount, added to the advancement to said James Kent Jr., would make \$866.60, a sum less, by several hundred dollars, than was advanced to said Rachel Prater, who received the least



James Kent estate (1847)

23 March 1855

Judgement declaring James Kent, Jr. entitled to full estate

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Comm. Pleas Court  
March term 1855

Debate of  
James Kent

Report of Master

Filed Mar 23 1855  
D. Montpelier  
Wm. M. Co. etc.



D. Show as reported by said Court  
and said Court upon said  
evidence found & rendered judgment  
herein as elsewhere appears in the  
record of this Court to which decision  
of the Court said Administrator then  
& there excepted. and said Administrator  
then & there ~~was~~ at the proper time  
moved said Court to set aside  
said verdict <sup>or finding</sup> & grant a new trial  
on the ground that said judgment  
was contrary to law & evidence  
which motion the Court overruled  
& rendered final judgment as  
elsewhere appears in the record of  
this Court to which decision of the  
Court so overruling said motion  
said Administrator then & there excepted  
and says on appeal to the Supreme  
Court & prays that this his bill of  
exceptions be ~~being~~ signed & sealed by the  
Court & made a part of the record  
herein which is accordingly done

Mark Jones *(Seal)*

Filed Sept 1 1855  
D. W. V. C. H. C. L.  
H. C. L. C. L.

James Kend estate (1855)  
July 1855 Term  
Request for jury trial denied  
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advancement of any of the heirs except said Eunice,  
Said Settlement except as to the matter  
of distribution, is in all things substantially correct  
Respectfully Submitted  
J. P. Vinton  
Jus. Com.

For \$10-

James	\$200
Susanna	148.99
Radul	152.11
Mrs Shaw	185.46
	55.10
	<hr/>
	742 60
	25
	<hr/>
	767 60

James Kent estate (1847)

23 March 1855

Judgement declaring James Kent, Junior entitled to full estate

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In the Matter of Final Report of  
James D Shaw Admin of James  
Kent & Master Report and  
Exception thereto

Be it remembered  
that at the July term of the Court  
of Common Pleas of Tippecanoe  
County Indiana for the year  
1855.

Be it remembered that  
at the July term of said Court  
aforesaid the said James D Shaw  
as such Administrator of his  
Estate claimed the right to  
have the question ~~of fact~~ found  
& passed upon by the Master  
Commissioner. Motion herein  
heretofore passed upon or tried by  
a jury & moved the Court at  
the proper time & in the proper  
manner that a jury be impaneled  
herein to try the same which  
motion the Court overruled holding  
that said Administrator had no  
right to have the same tried by a  
jury to which decision said Admin  
thence there by his Counsel excepted.  
Be it also further remembered  
that said Court then & there  
thereafter at said term of said Court  
proceeded to hear & determine  
said Cause without a jury and  
on the evidence reported by said  
Commissioner that being the only  
evidence in the Cause being only  
the testimony of said Admin James D

13  
26  
40  
James Kent estate (1847)

July 1855 Court Final Report in front of Judge Mark Jones  
Request for jury trial denied.

(04 August 1855 per bond)

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Filed Nov 5. 1855  
O. W. W. W. W. W.  
W. W. W. W. W.

James Kent estate (1847)  
03 Nov 1855

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State of Indiana,  
SUPREME COURT.

November  
May Term, A. D. 1858.

2<sup>d</sup> day November 23<sup>d</sup> A. D. 1858.

Present the Honorable

JAMES M. HANNA, Ch. J.

SAMUEL E. PERKINS,  
ANDREW DAVISON,  
JAMES L. WORDEN. } JUDGES.

James D Shaw Admin  
of the Estate of  
James Kent decd

vs  
James Kent Junior

APPEAL FROM THE

Court of Common Pleas  
of Tippecanoe County

Now at this time come the parties by their attorneys, and the Court being sufficiently advised in the premises, give the following opinion and judgment.

Shaw the Administrator filed his account for final settlement of the estate, showing a balance in his hands for distribution among the heirs of deceased decedent, a part of which had been paid to Susannah Price and Rachael Prater two of the heirs, and claiming in right of his wife another heir, a part of the sum in his hands. James Kent for the appellee and remaining heir appeared and contested the account and set up a claim to the entire

James Kent estate (1847)

23 Nov. 1858

Appeal from James D. Shaw to State of Indiana Supreme Court.  
decision reversed in matter of  
requested jury trial requested by Shaw.  
Jury trial granted.

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amount in the hands of the Adm<sup>r</sup> on the ground that the other heirs had been advanced, in the lifetime of the deceased to a greater amount, than there was left for distribution.

The matter was referred to a referee or master Commissioner as he is styled in the record who reported that such advancement had been made, and that the appellee ~~had~~ was entitled to the sum in the hands of the Adm<sup>r</sup>. and judgment was entered accordingly.

It appears by a bill of exceptions that the appellant demanded to have the question as to the advancements alleged, tried by a jury, but the court overruled the application on the ground that he had no right to have the same tried by a jury.

The alleged advancement consisted of conveyances of real estate. These conveyances were made under the Statute of 1843 - It is insisted that the Statute of 1843 makes it an advancement for a parent to bestow property upon a child, and that therefore (the conveyances not being denied) the question presented was a mere question of law - We think however that the conveyance of land by a parent to a child would

James Kent estate (1847)

23 Nov. 1858

Trial by Jury granted

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not operate as an advancement unless it was so intended - What would be the presumption in such cases it is not necessary for us to determine -

The Statute referred to so far as it is necessary to allude to it in order to a correct understanding of the question is as follows - See 134 p 439 "Any estate real or personal that may have been given by any deceased person in his lifetime, as an advancement to any child &c shall be taken by such child &c towards his share of the estate of the deceased". This section clearly contemplates that the property must be given as an advancement that <sup>it</sup> is intended as such in order to charge him with it in the distribution of the estate. See 372 p 555. "If any child shall have been advanced by the deceased by settlement or portion of real estate or personal estate the value thereof shall be recovered &c"

This section <sup>we think</sup> does not in this respect at all enlarge or limit the other. To constitute an advancement to a child "by settlement or portion of real or personal estate" such settlement or portion must have been so intended -

If the giving of land to a child is prima facie evidence of an intent to

James Kent estate (1847)  
23 Nov. 1858

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advance him, still the door is open to rebut such evidence, or presumption and show that the intention was otherwise. This would involve questions of fact proper to be tried by a jury.

In addition to the Constitutional provision on the subject of the right of trial by jury, it is provided by <sup>this</sup> Statute for the settlement of decedent's estate, i.e. that "trials by jury shall be allowed at the request of any party in all cases where there is an issue of fact" 2 R 1832 p 290 Dec 188.

We are of opinion that the appellant was entitled to have the matter tried by a jury unless the record shows that he in some way waived such right.

It is suggested by Counsel for the appellee that the right was waived as the Court by Consent of parties referred the matter to a referee - the record does not show such consent unless it be implied from the fact that no objection affirmatively appears to have been made - After noting the filing of the account, the record proceeds to show that the Court referred it saying nothing about the Consent of parties or whether they were present.

The statute providing for trial by referees

James Kent estate (1847)

23 NOV. 1858

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2 RS 1832 p. 116 Sec 349 is as follows viz  
 "All or any of the issues in the action whether  
 of fact or of law, or both may be referred  
 upon the written consent of the parties"

The one of opinion that where the record  
 is <sup>entirely</sup> perfectly silent as this is, and where no  
 written consent appears to have been filed  
 a trial by a referee is erroneous - There  
 may possibly be facts and circumstances  
 which would make such trial valid, as  
 for instance the conduct and acts of the  
 party after the trial fully acquiescing in  
 it recognizing its validity, but we see  
 nothing in the record before us that  
 we think ought to dispense with the  
 "written consent"

If this reference is considered in the  
 light of a reference to a Master in Chancery  
 under the old chancery practice, and the  
 trial was really had before the Court  
 instead of a referee, the reference being  
 merely to aid the court it becomes material  
 to enquire whether the appellant waived  
 his right to a trial by a jury and consen-  
 ted to a trial by the court.

It is provided by Sec 340 Vol 2 RS 1832  
 p. 115 that "the trial by jury, may be waived by  
 the parties in all actions in the following  
 manner"

1<sup>st</sup> By failing to appear at the trial

James Kent estate (1847)

23 Nov. 1858

Jury trial granted

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Q

2<sup>d</sup> By written consent in person or by attorney filed with the clerk

3<sup>d</sup> By oral consent in open court entered on the record"

The records does not show that the appellant waived his right to a jury trial in either of the modes prescribed by the statute and therefore it was not waived at all

The familiar maxim Expressum facit cessare tacitum, or the familiar maxim aptly applies to such case. The Legislature have provided certain modes of waiving the right and this implicitly excludes the idea of doing it in any other way

It is suggested that as substantial justice has been done between the parties according to their respective rights, the Court ought not to disturb the proceedings for mere irregularities not touching the substantial rights of the case

This suggestion would have much force in considering some other points made by Counsel in the cause which we have not noticed and probably was intended to apply to them. But we may remark in reference to this point, that although we might be satisfied that a full and fair trial was had, and that full and ample justice had been done by the Court in



State of Indiana, } November Term, A. D. 1858.  
SUPREME COURT.

The 23<sup>rd</sup> day of November 1858.

Present the Honorable

reference to the merits of the case this would not authorize us to affirm the judgment. The right of a trial by jury is guaranteed to parties by the Constitution and laws of the state, and of this right they cannot be deprived in any case upon the ground that the Court fairly tried and correctly determined it.

The judgment below is reversed with costs and the cause remanded for a new trial.

James Kent estate (1847)

23 Nov. 1858

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State of Indiana

SUPREME COURT

November Term A.D. 1858

Before the Honorable

JAMES W. HAYNEY, Chief J.

JAMES T. HORDEN,  
ANDREW DAVISON,  
SAMUEL E. BARKER,

Justices.

To the Clerk of the Circuit Court of

Filed Nov. 24, 1858  
W. R. Ellis vs  
J. W. Meacham

James Kent Estate

in person and appearance entered by the Court  
and that from the date of said writ he appeared for said estate and for said J. W. Meacham

in person and appearance entered by the Court

WILLIAM D. BEACH, Clerk of the Supreme Court of said State

James Kent Estate (1847)

23 Nov. 1858  
Jury trial granted

Oct. 28, 1858

D. R. D.