Langham, Elias T.; Langham, Mary; Rector, Betsey Ann v. Darby, John F, admin. of Langham, Argus L. 1850 St. Louis 165/14

(20) Petition for Partition of Real Estate

Affirmed; Admins. will ent. of proceeds from sheriff's sale

Real Estate; Sheriff

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Eighth Judicial Circuit in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the St Louis Circuit Court

wherein John O'Fallon and others were petitioners and Martin Taym and others defendants in an action for partition of real estate, manifest Error hath intervened to the great damage of Chas I Langham, Betsey Ann Rector and Mary Langham three of the petitioners therein

~~in an action of~~ ~~manifest error~~ ~~hath intervened, to the great damage of the said~~ as by complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of ~~Jefferson~~ St. Louis, in the county of ~~Cole~~ St. Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, HAMPTON L. BOON, Clerk of our said Supreme Court, at office, in the City of ~~Jefferson~~ St. Louis, the 28th day of September, in the year of our Lord one thousand eight hundred and forty-forty nine

H. L. Boon

$1.50 paid by Gamble & Bates.

State of Missouri }
County of St Louis } ss

In obedience to the within writ I herewith furnish a Complete transcript of the record and proceedings in the within Named Case.

In Testimony Whereof I hereto set my hand and affix the Seal of said Court at Office in the City of St Louis this Tenth day of October A D. Eighteen hundred and forty Nine.

M J Carr Clk

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State of Missouri } &
County of St Louis } Be it remembered that on the third day of September in the year of our Lord one thousand eight hundred and forty six was filed in the Circuit Court within and for the County and State aforesaid a petition for partition which is in the words and figures following to wit,

Petition

To the Honorable St Louis Circuit Court,

The petition of the undersigned John O'Fallon, Louis A. LaBeaume, Theodore Labeaume, Louis T. Labeaume, Chauvet Edmund Labeaume, Jonas Newman & Susan Newman & ~~Susan Newman~~ his wife late Susan LaBeaume Peter E. Blow and Eugenie Blow his wife late Eugenie LaBeaume Etienne Roussin & Aspasie his wife John Valle (L'Anglais) Napoleon Aubuchon Henry Von Phul Elias T. Langham Betsey Anne Rector & Mary Langham most respectfully represents That they are interested and hold as tenants in Common with Martin Tayon, Antoine Tayon Agatha Vien and her husband Antoine Vien and Joseph Tayon heirs at law of Ignace Tayon deceased and the unknown heirs of Celeste Tayon deceased who had intermarried with Joseph Cote now also deceased in a certain tract piece or parcel of land situate lying and being in the County of St Louis in the State of Missouri near the Northern Circuit of the city of St Louis containing two by forty arpens of land Confirmed to the widow Hebert by the act of Congress of the twenty ninth of April eighteen hundred and sixteen entitled "An act for the Confirmation of Certain Claims to land in the Western District of the State of Louisiana and in the Territory of Missouri" The said two by forty arpens of land being situate in what was called "Prairie La Grange" and des-

2 =ignated and Known as Survey number fourteen hundred and eighty Seven (No. 1487) bounded on the east by the Mississippi River on the South by Survey No. 1486 Confirmed to De Bonisseau. This petition further rep=resents that a portion of said tract of land on the Eastern end thereof Containing fourteen acres and fifty eight hundredths of an acre is Covered by an older Con=firmation made to Louis LaBeaume and designated as Survey number 2974 and which said fourteen acres and fifty eight hundredths of an acre are thus described:

Beginning on the Mississippi River immediately on the Northern line of said tract of two by forty arpens of land and running thence North seventy five degrees fifteen minutes West (N. 75° 15' W.) twenty five Chains and ten links to where the Eastern line of Survey No 3209 strikes the Northern line of of the Widow Hebert tract of two by forty arpens thence South=twenty degrees forty five minutes east five Chains and forty four links (S. 20° 45' E. 5 Chs 44 lks) thence South seventy four degrees thirty minutes west five Chains and twenty two links to the Southern line of the Widow Hebert tract of two by forty arpens of land (S. 74° 30' W. 5. 22.) thence South seventy five degrees and fifteen minutes east by and with the Southern line of said two by forty arpens twenty eight Chains and fifty links (S. 75° 30' E. 28 ch. 50 lks) thence North twenty eight degrees thirty minutes west seven Chains and ninety four links to the place of beginning (N. 28° 30 W. 7 ch. 94 lks) Containing the aforesaid quantity of fourteen acres and fifty eight hundredths of an acre which has been taken off the said Survey No 1487 by the older Confirmation made to said Louis LaBeaume. This petition further represents that in an=other portion of said two by forty arpens of land granted to the said Widow Hebert as aforesaid and Containing the

3 quantity of twenty five acres and twenty two hundredths of an acre they are interested in the manner which they will proceed to State hereinafter in this petition after they shall have described said twenty five acres and twenty two hundredths of an acre part of said two by forty arpens and which is as follows "beginning at a point on the Northern line of said two by forty arpens tract where the eastern line of survey No. 3209 strikes the same and running thence north seventy five degrees fifteen minutes west by & with the northern line of said two by forty arpens tract forty four chains & ten links (N. 75° 15' W. 44 Chs 10 Lks) to where the Western line of Survey No 3209 strikes the Northern line of said two by forty arpens granted to the Widow Hebert - thence South twenty degrees forty five minutes East seven chains and ten links to the Southern line of said two by forty arpens granted to the Widow Hebert thence South seventy five degrees fifteen minutes east by and with said Southern line of said Widow Hebert tract of two by forty arpens forty one chains & two links, thence North seventy four degrees thirty minutes east (N. 74°, 30' E.) five Chains and twenty two links thence north twenty degrees and forty five minutes West (N 20° 45' W.) five chains & forty four links to the place of beginning. Containing the aforesaid quantity of twenty five acres and twenty two hundredths of an acre in which said last piece of ground as above described your petitioners state that Louis A Labeaume as one of the heirs of Susan LaBeaume deceased & Theodore LaBeaume, Louis T. Labeaume, Chauvet Edmund LaBeaume, Peter E. Blow & Eugenie Blow his wife in right of said Eugenie formerly Eugenie LaBeaume Jonas Newman and Susan Newman his wife in right of said Susan formerly Susan LaBeaume as heirs at law of Susan LaBeaume

deceased are entitled each to one undivided thirtieth part of said twenty five acres and twenty two hundredths of an acre - That Henry Von Phul is entitled to & has one undivided fifth part of said twenty five acres and twenty two hundredths of an acre - That Napoleon Aubuchon is entitled to and has one undivided fifth part of said twenty five acres and twenty two hundredths of an acre: That Etienne Roubin and Appasie his wife in right of said Appasie is entitled to one undivided tenth part of said twenty five acres and twenty two hundredths of an acre - That John Valle in his own right is entitled to and has one undivided tenth part of said twenty five acres and twenty two hundredths of an acre. That Elias T. Langham Betsey Anne Rector and Mary Langham are each entitled to and has one undivided thirtieth part of said twenty five acres and twenty two hundredths of an acre - That Louis A. LaBeaume as having acquired by purchase is also entitled to & has an undivided interest of one fifteenth more of said twenty five acres and twenty two hundredths of an acre in addition to the part inherited by him as aforesaid as one of the heirs of Susan LaBeaume deceased - That Martin Tayon Antoine Tayon and Agatha Tayon who intermarried with Antoine Vien her present husband in right of said Agatha & Joseph Tayon are each entitled as heirs at law of Ignace Tayon deceased to one undivided two hundred and fortieth part of said twenty five acres and twenty two hundredths of an acre above described - And that the unknown heirs of Celeste Tayon deceased who intermarried with Joseph Cote also deceased are entitled to and have an undivided part of one sixtieth part of said tract of twenty five acres and twenty two hundredths of an acre as above described. This petition further represents that the western part of said two by forty

5 arpens of land as above described as having been granted and confirmed to the Alcidow Hebert containing twenty eight acres and sixty nine hundredths of an acre and described as follows to wit, Beginning at a point on the Northern line of said two by forty arpens of land designated as Survey No 1487 where the western line of survey No 3209 strikes the same and running thence north seventy five degrees fifteen minutes West fifty Chains and thirty links by and with the northern line of said Survey No 1487 (N 75° 15' W. 50 Chs. 30 lks) to the North Western Corner or boundary of said Survey No 1487 thence South twenty eight degrees and thirty minutes east seven Chains and ninety four links to the South Western Corner of said Survey No 1487 (S 28° 30' E. 7 Chs. 94 lks) thence South seventy five degrees fifteen minutes East (S. 75° 15' E) forty eight Chains and ninety eight links by and with the Southern line of said Survey No 1487 thence North twenty degrees five minutes West seven chains and ten links to the place of beginning Containing the aforesaid quantity of twenty eight acres and sixty nine hundredths of an acre and which is held by your petitioners in the following portions and parts that is to say the said John O'Fallon has one equal undivided fifth part thereof That Henry Von Phul has also an equal one undivided fifth part thereof - That Napoleon Auberchon has an equal one undivided fifth part thereof - That Etienne Rouzeau and Aspasie his wife in right of said Aspasie is entitled to and has one undivided tenth part thereof and that John Valle has an equal undivided tenth thereof - That Elias T. Langham Betsey Anne Rector and Mary Langham are each entitled to and have one undivided tenth part thereof - That Louis A. LaBeaume is entitled to and has one undivided fifteenth part thereof That Martin Tayon Antoine Tayon Agatha Tayon who intermarried with

6 Antoine View her present husband in right of said Agatha and Joseph Tayon are each entitled to an undivided interest of two hundred and forty parts of said last mentioned piece of land and that the Unknown heirs of Celeste Tayon deceased who intermarried with Joseph Cote also deceased are entitled to an interest of undivided sixtieth part of said tract or piece of land last above described - Your Petitioners pray therefore for a division and partition of said land and premises herein before described according to the respective rights of the parties interested therein and for a sale thereof if it shall appear that partition cannot be made without great prejudice to the owners as is provided by the act of the General Assembly entitled an "Act to provide for the partition of land & personal property" And that said Martin Tayon, Antoine Tayon, Agatha View and her husband Antoine View and Joseph Tayon and the unknown heirs of Celeste Tayon deceased who intermarried with Joseph Cote now also deceased be made defendants to this their Bill of Partition & required to answer the same and as in duty bound your petitioners will ever pray &c

L. O'Fallon, Louis A LaBeaume, Theodore LaBeaume by Louis A. LaBeaume - Louis T. LaBeaume by his attorney in fact C. Edmund LaBeaume, C. Edmund LaBeaume Jonas Newman, Susan Newman, H. Vonthul, P. E. Blow Eugenia Blow, E. T. Langham, Betsey Ann Rector by Elias T. Langham, Mary Langham by Elias T. Langham Etienne Roupin & Aspasia Roupin his wife by their attorney John F. Darby, John Valle by his attorney John F. Darby Napoleon Auchon by his attorney John F. Darby -

State of Missouri }ss
County of St Louis }

Louis A LaBeaume one of the Petitioners in the foregoing petition named being duly sworn

on his oath States; that the facts stated and set forth in the foregoing petition by him signed with others for partition of the lands & premises ~~of the lands & premises~~ therein described are true to the best of his knowledge and belief. Louis A LaBeaume. Sworn to & subscribed before me this 29th day of August 1846

John W. Paul ding Justice of the Peace St Louis County

State of Missouri }
County of St Louis } Louis A LaBeaume one of the petitioners named in the foregoing petition being duly sworn on his oath states that he does verily believe that some of the heirs of Celeste Tayon whose names he can not know State who intermarried Joseph Cote deceased as having an interest in the lands and tenements sought to be devided in the foregoing petition are unknown to him said affiant & he believes also all the petitioners who are mentioned as petitioners in the foregoing petition and that after much enquiry for them he has been led to believe that they reside out of the State of Missouri or that they cannot be found within the State because so little is known of their ~~residence~~ present location

Louis A Labeaume

Sworn to & subscribed before me this 29th August 1846

John W. Paulding Justice of the Peace St Louis County

And on the twenty ninth day of August eighteen hundred and forty six the following notice was issued to the said defendants, "To Martin Tayon Antoine Tayon, Agathe Vien and her husband Antoine Vien Joseph Tayon and the unknown heirs of Celeste Tayon who intermarried with Joseph Cote deceased & all others interested in the estate of the Widow Hebert deceased, you and each of you are hereby required to take

Notice to Defts

notice that at the next term of the St Louis Circuit Court to be begun and held within and for the County of St Louis on the third Monday of November next or the first day of the term of said Court or as soon thereafter as a hearing can be had we shall present a petition for partition to the said Court of Certain real estate a Copy of which said petition is hereto attached and accompanies this notice - John O'Fallon, Louis A. Labeaume Theodore LaBeaume, Louis T. LaBeaume, Chouvet Edmund LaBeaume, Jonas Newman, Susan Newman Henry Von Phul, Peter E Blow Eugenia Blow Eliza T. Langham Betsey Ann Rector, Mary Langham, Etienne Roupin and Aspasia Roupin his wife, John Valle Napoleon Aubuchon by their attorney John F Darby St Louis 29 August 1846"

Upon which said notice the Sheriff made the following return "Served this notice - Petition in the County of St. Louis on the first day of September A.D. 1846 by delivering a true Copy of the same and of the petition hereto attached to Martin Tayon, Agatha Vien her husband, Antoine Vien - Joseph Tayon and Antoine Tayon

Return

Samuel Conway Sheriff -

And afterwards to wit on the Sixteenth day of November A.D. 1846 was filed an advertisement and affidavit which is in the words and figures following to wit, In the St Louis Circuit Court - In Vacation

Friday September 4th 1846

Ord. Pet + Advertisement

John O'Fallon Louis A. LaBeaume Theodore Labeaume Louis T. Labeaume Chauvet Edmund Labeaume Jonas Newman and Susan Newman his wife late Susan LaBeaume Peter E. Blow and Eugenia Blow his wife

late Eugenia LaBeaume Etienne Rousseau and Aspasia
his wife John Valle (L. Anglais) Napoleon Aubuchon
Henry Von Phul Elias P. Langhorne Betsey Ann Reeves
and Mary Langhorne -vs- Martin Tayon, Antoine Tayon
Agatha View and her husband Antoine View and Joseph
Tayon heirs at law of Ignace Tayon Deceased and the
unknown heirs of Celeste Tayon deceased who had inter-
married with Joseph Cote now also deceased - Petition for
Partition - Now on this day Come the petitioners by their
attorney and file their petition herein and on their motion
and affidavit having been filed in the office of the Clerk
of said Court with the petition that some of the heirs of the
said Celeste Tayon are unknown and that it is the belief
of the petitioners that they reside out of the State of Miss-
-ouri or that they cannot be found within this State it is
ordered that said unknown heirs be notified by Publication
that said petitioners have filed their petition praying for a
division and partition of the land and premises described in
said petition according to the respective rights of the above
named parties and for a sale thereof if it shall appear
that partition cannot be made without great prejudice
to the owners - The said land and premises are described
in the petition as follows "A Certain tract piece or parcel of
land situate lying and being in the County of St Louis in the
State of Missouri near the Northern limits of the City of St.
Louis containing two by forty arpens of land Confirmed to the
Widow Hebert by the act of Congress of the twenty ninth
of April eighteen hundred and sixteen entitled "An Act
for the Confirmation of Certain Claims to land in the West-
-ern district of the State of Louisiana and in the Territory
of Missouri" the said two by forty Arpent of land being
what situate it what was called "Prairie LaGrange" and

10 designated and known as survey number fourteen hundred and eighty seven (No. 1487) bounded on the east by the Mississippi River on the South by Survey No 1486 Confirmed to Debruisseau in which said tract piece or parcel of land the said petitioners claim that they are interested and hold as tenants in common with said defendants It is also ordered that said unknown heirs be notified that unless they appear at the next term of the said Circuit Court ~~Court~~ to be begun and held at the City of St Louis on the third Monday of November next and on or before the sixth day thereof plead to or answer said petition the Court will proceed therein expante.

A true Copy of the Order Attest, John Rul and Clerk

State of Missouri }
County of St Louis } Personally appeared before the undersigned a Justice of the Peace within and for the County aforesaid A B Chambers who being duly sworn deposeth and saith that the annexed advertisement was published in the "Missouri Republican" printed in this State the newspaper for which he is printer for eight times the first insertion being on the eleventh day of September and the last insertion on the thirteenth day of October 1846 as follows,

In No 492 Sept 11 1846
" " 493 Do 18 Do
" " 494 Do 25 Do
" " 495 Oct. 2 Do
" " 496 Do 9 Do
" " 497 Do 14 Do
" " 498 Do 23 Do
" " 499 Do 30 Do A B. Chambers
" "

Sworn to and subscribed before me this 17th day of

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11 November 1846 M. Butler Justice of the Peace - and afterwards to wit at the November term of our said Circuit Court for the year A.D. 1846 on the twenty seventh day of the month & year last aforesaid the following proceedings were had in said Cause to wit,

John O'Fallon and others = vs = Martin Tayon, Antoine Tayon, Agatha Vien and her husband Antoine and others

Guardian ad Litem

And now at this day on motion of said petitioners by their attorney it is ordered that Antoine Vien be appointed guardian ad litem of Joseph Tayon and thereupon the said Antoine Vien Comes into Court and accepts the said appointment and Consents to act as such guardian and files a plea of Confession on behalf of said infant defendant, which said Consent and Confession are in the Words and figures following to wit,

John O'Fallon & others = vs = Martin Tayon Agatha Vien Antoine Vien Joseph Tayon & the unknown heirs of Celeste Tayon who intermarried with Joseph Cote deceased - St Louis Circuit Court - And now Comes the said Antoine Vien who being apprised of his appointment of guardian ad litem of Joseph Tayon a minor here accepts the same and Consents to act as such guardian

Attest J. R. Shepley Antoine his mark Vien

John O'Fallon & als = vs = Martin Tayon Joseph Tayon & als - St Louis Circuit Court - And now Comes Antoine Vien who was by the Court appointed Guardian ad litem for the Minor Joseph Tayon and says that he cannot deny the matters and things in said petition Contained but on the Contrary thereof admits the matters & things therein Contained to be true - McPherson & Shepley Attys for A Vien Guardian of Jos. Tayon

And afterwards at the said November term of our said

12 Circuit Court to wit on the thirtieth day of November in the year last aforesaid the following further proceedings were had in said Cause to wit, John O'Fallon, Louis A LaBeaume Theodore LaBeaume Louis T. LaBeaume Chauvet Edmund LaBeaume Lomas Newman and Susan Newman his wife late Susan LaBeaume Peter E Blow and Eugenia Blow his wife late Eugenia LaBeaume, Etienne Rousseau and Aspasia his wife John Valle (L'Anglais) Napoleon Auberchon Henry Von Phul Elias T. Langham Betsey Ann Rector and Mary Langham -vs- Martin Tayon Antoine Tayon Agatha Vien and her husband Antoine Vien and Joseph Tayon heirs at law of Ignace Tayon deceased and the unknown heirs of Celeste Tayon deceased who had intermarried with Joseph Cote now also deceased - Petition for Partition - Now at this day Come the said petitioners by their attorney and the unknown heirs of Celeste Tayon defendants although duly notified by Publication of the pendency of this suit the proof whereof is herein filed being demanded Come not but make default nor have they pleaded to or in any wise answered said petition for partition wherefore Judgement of default is rendered herein against them and the said defendants Martin Tayon Agatha Vien and her husband Antoine Vien and Antoine Tayon although duly served with notice of the presentation of said petition to this Court and demanded Come not but make default nor do they appear to or plead to said petition wherefore Judgement of default is herein rendered against them whereupon all and singular the premises are by the said petitioners and the said defendant Antoine Tayon by his guardian the said Antoine Vien submitted to the Court which being seen heard & fully understood the the Court doth

13 ascertain and declare the respective rights and interests of the said parties petitioners and defendants to be as follows to wit, That the tract of land sought to be partitioned is situate lying and being in the County of St Louis in the State of Missouri near the Northern limits of the City of Saint Louis containing two by forty arpens of land confirmed to the Widow Hebert by the act of Congress of the twenty ninth of April eighteen hundred and sixteen entitled "An act for the Confirmation of Certain Claims to land in the Western District of the State of Louisiana and in the Territory of Missouri" - the said two by forty arpens of land being situated in what was called "Prairie La Grange" and designated and known as survey number fourteen hundred and eighty seven No 1487 bounded on the east by the Mississippi River on the South by No 1486 Confirmed to Debriasseau. And it appearing to the Court from said petition that a portion of said tract of land on the eastern End thereof containing fourteen acres and fifty eight hundredths of an acre is covered by an older Confirmation made to Louis La Beaume and designated as Survey No 2974 and which said fourteen acres and fifty eight hundredths of an acre are thus described Beginning on the Mississippi River immediately on the Northern line of said tract of two by forty arpens of land and running thence North seventy five degrees fifteen minutes West (N. 75° 15' W) twenty four chains and ten links to where the eastern line of Survey No 3209 strikes the northern line of the Widow Heberts tract of two by forty arpens thence South twenty degrees forty five minutes east five chains and forty four links (S. 20° 45' E. 5 Chs. 44 lks) thence South seventy four degrees thirty minutes West five chains and twenty two links to the Southern line of the Widow Hebert tract of two by

14 forty arpens of land (S. 74° 30 W. 5.22) thence South Seventy five degrees and fifteen minutes east by and with the Southern line of said two by forty arpens twenty eight Chains and fifty links (S. 75° 30' E. 28 chs 50 lks) thence North twenty eight degrees thirty minutes West seven Chains and ninety four links to the place of beginning (N. 28° 30' W. 7 ch. 94 lks) Containing the aforesaid quantity of fourteen acres and fifty eight hundredths of an acre which has been taken off the said survey No. 1487 by the older Confirmation made to said Louis LaBeaume the Court doth ascertain and declare the respective rights and interests of the said parties into the said property to be as follows to wit, that Louis A LaBeaume & Theodore LaBeaume Louis T. LaBeaume Chauvet Edmund LaBeaume & Peter E. Blow and Eugenie his wife Jonas Newman and Susan his wife are entitled each to one undivided thirtieth part that Henry Von Phul is entitled to the one undivided fifth part that Napoleon Aubuchon is entitled to the one undivided fifth part that Etienne Rouspin & Aspasie his wife and John Valle are each entitled to the one undivided tenth part That Elias T. Langham, Betsey Ann Rector and Mary Langham are each entitled to the one undivided thirtieth Part. That Louis A. Labeaume is also entitled as purchaser to one fifteenth part, That Martin Tayon, Antoine Tayon and Agatha Tayon who intermarried with Antoine Vien are each entitled as heirs at law of Ignace Tayon to one undivided two hundred and fortieth part and that the unknown heirs of Celeste Tayon who intermarried with Joseph Cote Deceased are entitled to and have an undivided part of one sixtieth part of a tract of twenty five acres and twenty two hundredths of an acre part and parcel of the

SUFFOLK REGISTRY
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first mentioned tract of land and which said part is as follows
to wit beginning at a point on the northern line of said two
by forty arpens tract where the Eastern line of survey No 3209
strikes the same and running thence north Seventy five deg-
-rees fifteen minutes west by and with the northern line of
said two by forty arpens granted to Aledor Hebert thence South
degrees forty five minutes east seven Chains and ten links
to the Southern line of said two by forty arpens granted
to the Widow Hebert thence South Seventy five degrees fif-
-teen minutes east by and with said Southern line of
said Widow Hebert tract of said two by forty arpens forty
one chains and two links thence South Seventy four degrees
thirty Minutes East (S. 74° 30' E.) five chains and twenty
two links thence north twenty degrees and forty five minutes
West (N. 20° 45' W. five chains and forty four links to the
place of beginning Containing the aforesaid quantity of twenty
five acres and twenty two hundredths of an acre. And the
Court doth further ascertain and declare the respective
rights and interests of the said parties in and to the
western part of said two by forty arpens to be as follows
to wit that the said John O'Fallon has one equal un-
-divided fifth part thereof that Henry Vonthal and
Napoleon Auberchon have also an equal undivided
fifth part thereof, that Etienne Roupin and Aspasia
his wife in right of his wife and John Valle have each
an undivided tenth part thereof. That Elias T. Langham
Betsey Ann Rector and Mary Langham have each an un-
-divided thirtieth part thereof - That Martin Payon, An-
-toine Payon, Agatha Payon who intermarried with
Antoine Vien are each entitled to an undivided inter-
-est of two hundred and forty parts of said land and
that the unknown heirs of Celeste Payon deceased who
intermarried with Joseph Cote also deceased are entitled

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* tract forty arpens and ten links (N. 75° 15' W. 40 chs 10 lks)
to which the western line of survey No 3209 strikes the northern
line of said two by forty arpens

to an interest of one undivided Six hundredth part of said tract of land described as follows, to wit beginning at a point in the northern line of said two hundred arpens of land designated as survey No. 1487 where the Western line of survey No. 3207 strikes the same and running thence South twenty five degrees fifteen minutes West fifty Chains and thirty links by and with the northern line of said survey No 1487 (N. 75° 15' W. 50 Chs 30 Lks) to the Northwestern Corner or boundary of said survey No. 1487 thence South twenty eight degrees and thirty minutes East seven Chains and ninety four links to the Southwestern of said survey No 1487 (S 28° 30' E. 7 Chs 94 Lks) thence South seventy five degrees fifteen minutes East (S. 75° 15' E.) forty eight Chains and ninety eight links by and with the Southern line of said survey No 1487— Thence North twenty degrees five minutes west seven Chains and ten Links to the place of beginning Containing the aforesaid quantity of twenty eight acres and sixty nine hundredths of an acre. The Court doth therefore order that partition of the said premises be made between the said parties according to their respective rights and interests as declared and ascertained by the Court and the Court appoints William Milburn John Maguire and Charles Mullikin three respectable freeholders residents of the County of St Louis where the said property is situate Commissioners to make said partition according to the order and Judgment of this Court and they are ordered to make report of their proceedings under this order to this Court without delay— Appended to which said appointment of Commissioners was their affidavit in the words and figures following to wit, State of Missouri County of St Louis ss. We William Milburn John Maguire and Charles Mullikin the Commissioners named in the foregoing order of Court to make partition of the lands and tenements in said order of Court

17 directed being duly sworn before the undersigned Justice of the Peace on our oaths state that we will honestly and impartially execute the trust reposed in us according to the best of our abilities. William Milburn — Jno Maguire C. Mullikin — Sworn to and subscribed before me this 19th day of January 1847. Mann Butler J.P. And afterwards at the November term of our said Court for the year 1846 to wit on the thirtieth day of February A.D. 1847 the following further proceedings were had in said Cause to wit, John O'Fallon, L.A. LaBeaume etal vs Martin Tayon Antoine Tayon etal — Partition. This day come William Milburn John Maguire and Charles Mullikin the Commissioners appointed by the Court to make Partition of the real estate in the petition described among the parties entitled thereto and file their report of their proceedings under their appointment as commissioners setting forth that partition of the premises cannot be made without great prejudice to the interest of the owners thereof ~~and acknowledge the same~~ and acknowledge the same as their true report in the premises. And which said report is in the words and figures following to wit, "John O'Fallon and others Martin Tayon and others In Partition in the St Louis Circuit Court November Term 1846. William Milburn, John Maguire and Charles Mullikin the Commissioners appointed by the St Louis Circuit Court to make Partition in the above entitled Cause make a report and state here to the St Louis Circuit Court that before proceeding to the execution of their duties as commissioners they were sworn before Mann Butler a Justice of the Peace of St Louis County as the law directs impartially and honestly to execute the trust reposed in them as will appear from the foregoing affidavit: That forthwith they proceeded to lay and make Partition of said Lands and premises described in the foregoing order of Court according to the Judg-

=ment of the Court and for this purpose employed
William H. Cozzens a Competent Surveyor to assist them
in Marking off Surveying & locating both the eastern
and western portion of said land as described in
the foregoing order of Court. the Commissioners report and
States further to the Court House that it appears
to all the Commissioners who have examined the
matter with much deliberation that partition of said
land and premises cannot be made without great
prejudice to the owners of the land either of the eastern or
Western portions of said land and premises as set forth
and described in the foregoing order of Court or any part
thereof which fact they now beg leave to State & make
here to the Court; they therefore recommend a sale of said land
and premises in lots and blocks of smaller parcels or
pieces; as shown by the plat and subdivision of said
land and premises which accompanies this report and
which is prayed to be made and taken as part of this
report marked "a". All of which is respectfully submitted
to this Honorable Court for its ratification and approval
St Louis 13. February 1847 William Wilburn —
Jno. McGuire — C. Mullikin

And afterwards at the April term of our said Circuit
Court for the year eighteen hundred and forty seven to wit
on the twenty sixth day of April in the year last aforesaid
said the following further proceedings were had in said
Cause to wit, John O'Fallon & L. A. La Beaume et al vs Martin
Tayon Antoine Tayon et al - On Motion of Petitioners by
their attorneys it is ordered that the Report of the said Com-
=missioners herein before filed and the matters therein Contained
be Confirmed as valid and effectual forever - And it is further
ordered that the Sheriff of St Louis County proceed to sell the
real estate in the petition described in lots and Blocks as

19 as laid off and divided on the plat accompanying the report of said Commissioners after having given notice of the time and place of sale according to law upon the following terms to wit one third of the purchase money to be in Cash one third in Six months and one third in twelve months from the day of Sale the deferred payments to be secured by notes of the pur=chasers with a deed of trust on the property sold.

And afterwards to wit at the November Term of our said Circuit Court for the year eighteen hundred and forty seven to wit on the sixteenth day of March AD 1848, the following further proceedings were had in said Cause to wit,

John O'Fallon and others = vs = Martin Tayon and others, Partition. On Motion of Attorneys for Plaintiffs and it appearing to the Court that that the sale herein before Ordered has not been made It is ordered that the said order of sale be renewed and that the said Sheriff proceed to sell the real estate in the petition described in lots and Blocks as laid out and divided on the plat accompanying the Report of said Commissioners after having given notice of the time place and terms of sale according to law upon the following terms to wit one third of the purchase money to be in cash one third in six months and one third in twelve months from the day of sale the deferred payments to be secured by notes and deeds of trust on the property sold.

And afterwards at the April term of our said Court for the year eighteen hundred and forty eight the following further proceedings were had in said Cause to wit,

Petition of Darby — John O'Fallon & others vs Martin Tayon & others } John F. Darby administrator of the estate of Angus L Langham deceased Comes & files his petition and also an abstract accompanying the same praying this Court for an order on the Sheriff of St Louis County to pay over to him the proceeds of sale of real estate sold in this Cause belonging to the

estate of said Langham on consideration thereof it is ordered by the Court that the said Sheriff pay the proceeds of said sale to the said Administrator –
Which said petition is in the words and figures following to wit; John O'Fallon & others vs = Martin Tayon & others p. In the St Louis Circuit Court – April Term 1848
To the Honorable the St Louis Circuit Court for the April term of said Court eighteen hundred and forty eight – John F. Darby public Administrator of St Louis County in the State of Missouri who has in charge & administers upon the estate of Angus L. Langham deceased most respect=fully represents that he administered upon the estate of Angus L. Langham deceased on the 22d of December 1847 that administration on said estate had previous=ly been granted to Elias T. Langham brother of the deceased which administration had been vacated before the grant of letters to your petitioner either by resignation or revocation – that the grant of said letters to your petitioner was made at the request & instance he believes of Elias T. Langham that a large amount of debts have been allowed in the St Louis Probate Court against the estate of said Angus L. Langham as will be seen by a Certified Copy of the same from the Judge of the St Louis Probate Court herewith filed including a Judgment due to the United States allowed against said estate on the 13th March 1839 for $4872 76 making the amount of all the debts now allow=ed against said estate $45.754.25. with interest that the interest of the estate of the deceased as he is informed & believes is greatly insolvent that one tenth (the word "fifth" stricken out & the the word "tenth" interlined by leave of Court 19th May 1849 J. F. Darby
Inv Ruland Clk by S. P. Lalumiere D. C. 1 of the estate sought to be divided & for which there is now an order

Angus L Langham deceased
21 of sale made in this Cause belongs to the deceased and
that Elias T. Langham Betsey Ann Rector and Mary Langham
as the sole heirs at law of said Angus L. Langham de-
ceased were made parties to the proceeding as such. This
petitioner further states that said heirs at law as above
named, are not entitled a any portion of said deceased's
estate the debts remain unpaid and still due by him
and for which his real estate mentioned in this case
stands bound and liable, and on which he believes
the judgment of the government, particularly has
a lien and priority: He therefore prays this Honor-
able Court for an order to be made on the Sheriff of
St Louis County; Commanding and directing
him to pay over and account to your petitioner
as administrator of the estate of Angus L Langham,
deceased, one entire tenth ~~fifth~~ the word "fifth" stricken
out and the word "tenth" inserted by leave of court 19
May 1848 J F Darby - Ino Ruland Clk per C.P. Sal-
-ashire D. C. of the proceeds of sale of real estate sold
under proceedings for partition in this case; being
the same which belonged to the estate of said Angus
L Langham, deceased and which of right ought to
go to his creditors; and for which said Elias T Lang-
-ham Betsey Ann Rector, and Mary Langham,
as heirs at law; were made parties to this proceed
-ing for partition; And as in duty bound your petitioner
will ever pray &c John F Darby Administrator of the
Estate of Angus L. Langham, decd

State of Missouri }
County of St Louis } ss. John F. Darby being duly ~~—~~ that
the facts stated in the foregoing petition by him
subscribed are true to the best of his knowledge and belief.
John F Darby. Sworn and subscribed before me April 29

22 1848 Jno. Ruland Clk.

And afterwards, to wit, on the Eleventh day of May Eighteen hundred and forty eight at the April term aforesaid of said Court the following further proceedings were had, to wit:

John O'Fallens et als } Partition
vs
Martin Tayon et als } Samuel Conway, Sheriff of the County of St Louis files his report of his acts & proceedings under the order of sale made in this cause on the 16th day of March A.D. 1848. It is ordered by the Court that the said report be approved.

Shff's Report

Which report is in the words and figures following to wit: In the St Louis Circuit Court
April Term 1848.

John O'Fallen and others } In Partition
vs.
Martin Tayon and others }

Report of Sheriff.

Samuel Conway Sheriff of the County of St Louis comes here into Court on this eighth day of May 1848 and makes report of all his acts and proceedings under the order of Sale made in the above entitled cause on the 16th day of March 1848 as follows.

Having advertised the real estate mentioned in said order according to law, by advertisements published in the "Daily Missouri Republican" a copy whereof is hereto annexed and makes part of this report. I did on the third day of May 1848 between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day at the East front door of the court house in the city and county of St Louis State of Missouri expose

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23 to sale, at public auction to the highest bidder on the terms in said order mentioned all the right, title, interest, claim estate and property of the said parties named in such petition of in and to the real estate mentioned in said order and described in said advertisement, according to the plat and division of the commissioners' Report in said case, having numbered the Blocks on said Map from one to twenty commencing at the east end of said tract at which said time and place the following persons became and were the highest ~~bidders~~ and best bidders and purchasers for the Blocks and tracts set opposite their respective names for the prices and sums set opposite to each Block or tract as follows to wit.

Names of purchasers	No. of tract or Block No.	Feet	inches	No of tract and acres	Price per Foot or acre	Total Amount
Eugene Miltenberger	Blk 1	197	4		14.00	2762.66
Frederick Schulenburg	2	137	9		13.50	1859.62
Eugene Miltenberger	3	261	3		10.70	2795.38
Arch^d S. Rutherford	4	261	3		12.30	3213.37
Frederick Schulenburg	5	256	6		10.25	2629.12
same	6	256	6		7.25	1859.62
Henry Von Phul	7	252	5		9.00	2271.75
Same	8	252	5		11.80	2978.51
Edward Eggers	9	252	5		9.25	2334.86
Fra^k Schulenberg for Adolphus Boeckeler	10	252	5		8.30	2095.06
Louis T. Labeaume	11	252	5		6.00	1514.50
Johann F. W. Gehner, Iride H. Janssen & Christiffer H. Lohmann	12	252	5		6.05	1527.12
John Machir	13	252	5		5.00	1262.08
Charles L. Palmer	14	252	5		5.15	1299.94
Louis A. Labeaume	15	252	5		3.75	946.56
Same	16	252	5		5.00	1262.08

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C Edmund Labeaume	17	252 5		5 30	1337 81
Joseph Hamill	18	252 5		4 85	1224 22
George R. Taylor	19	220 –		2 25	495 00
J.F.W. Gehner, D.H. Janssen & C.H. Lohmann	20				160 00
Eliza W. Hammond	Tract No 1	Contg	$5\frac{56}{100}$ acres	500 00	2810 00
Thomas Gray	" " 2	"	$5\frac{86}{100}$ acres	215 00	1259 90
Louis V. Bogy for Henry L Clark	" " 3	"	$7\frac{24}{100}$ acres	270 00	1954 80
Josiah Dent	" " 4	"	$7\frac{06}{100}$ acres	250 00	1765 00
					$43,619 96

The said persons above named did then and there become the purchasers for said several Block and tracts above named for said sums amounting in all to the sum of Forty three thousand six hundred and nineteen Dollars and ninety six cents all of which is respectfully submitted.

Saml Conway Sheriff
By Henry B. Bell Depty.

advert. smt. Sheriff's Sale-in Partition. John O'Fallen, Theodore Labeaume, Louis T. Labeaume Chauvet Edmund Labeaume, Jonas Newman, and Susan Newman, his wife, late Susan Labeaume, Peter E Blow, and Eugenia Blow his wife late Eigenia Labeaume, Etienne Rouissin and Aspasia his wife, John Valle, (L'Anglais) Napoleon Aubouchon, Henry Von Phul, Elias T. Langham, Betsey Ann Rector and Mary Langham vs. Martin Tayon Antoine Tayon, Agatha Vein, and her husband Antoine Vein, and Joseph Tayon, heirs at law of Ignace Tayon deceased, and the unknown heirs of Celeste Tayon deceased who had intermarried with Joseph Cote, now also deceased. (In partition)

In virtue and by authority of an order of sale by the St Louis Circuit Court on the sixteenth day

25 of March in the year of our Lord one thousand
eight hundred and forty eight in the above entitled cause
ordering and directing the undersigned, Sheriff of
the county of St Louis state of Missouri to sell the
real estate in the petition described, in lots and
blocks, as laid off and divided on the plat accom-
-panying the report of the Commissioners in said
cause according to the form of the statute in such
cases made and provided which said real estate
is described in the petition and judgment in said
cause as follows, to wit:
A tract of land lying and being in the county of
St Louis in the State of Missouri near the northern
limits of the city of St Louis containing two by forty
arpens of land, confirmed to the widow Hebert by
the act of Congress of the twenty ninth of April eighteen
hundred and Sixteen entitled "an act for the con-
-firmation of certain claims to lands in the western
district of the State of Louisiana and in the Territory
of Missouri" the said two by forty arpens of land
being situated in what was called Prairie La
Grange, and designated and known as survey
number fourteen hundred and eighty seven, bound
-es on the east by the Mississippi river on the
south by No. 1486 confirmed to Delreupeau from
which said tract the quantity of fourteen acres
and fifty eight hundredths of an acre is excepted
off the east end thereof, as being covered by an
order of confirmation to Louis Labeaume, and
designated as survey No. 2974 and which said
tract of fourteen and fifty eight hundredths acres
is particularly described in the judgment in said cause
I, the undersigned, Sheriff of the County of St Louis

will in obedience to said order, on Wednesday the third day of May next, between the hours of nine o'clock in the forenoon ~~of that day~~ and five o'clock in the afternoon of that day at the east front door of the Court House, in the city and County of St Louis State of Missouri, sell all the right, title interest claim estate and property of the above named parties of in and to the above described tract of land, (except said 14 58/100 acres) to the highest bidder on the terms in said order mentioned, to wit; One third of the purchase money in cash, one third in six months, and one third in twelve months from the day of sale the deferred payments to be secured by notes of the purchasers, with a deed of trust on the property sold. The following described portion of said tract will be sold in blocks as laid off and divided on the plat accompanying the report of the Commissioners on the file in said cause, to wit: A tract of twenty five acres and twenty two hundredths of an acre, part and parcel of the first mentioned tract of land, and which said part is as follows, to wit: Beginning at a a point on the northern line of said two by forty arpen tract, where the eastern line of Survey No. 3,209 strikes the same, and running thence north seventy five degrees fifteen minutes west, by and with the northern line of said two by forty arpen tract, forty four chains and ten links, to where the western line of survey No. 3,209 strikes the northern line of said two by forty arpens granted to Widow Hebert, thence south twenty degrees forty-five minutes east seven chains and ten links to the southern line of said two by forty arpens granted to Widow Hebert; thence south seventy five degrees fifteen minutes east

C

27 by and with said southern line of said Widow Hebert's tract of two by forty arpens, forty one chains and two links: thence north seventy five degrees thirty minutes east, five chains and twenty two links: thence north twenty degrees and forty five minutes west, five chains and forty four links to the place of beginning containing the aforesaid quantity of twenty-five acres and twenty-two hundredths of an acre.

The remaining or western portion of said tract will be sold in lots or tracts, as designated on the said plat accompanying the report of said Commissioners, which said remaining ~~portion~~ or western portion of said tract is described in the judgment in said cause as follows, to wit: Beginning at a point in the northern line of said two by forty arpens of land designated as survey No. 1487, where the western line of Survey No. 3,209 strikes the same, and running thence north seventy-five degrees fifteen minutes west fifty chains and thirty links, by and with the northern line of said survey No. 1487, to the north western corner or boundary of said Survey No. 1487; thence south twenty eight degrees and thirty minutes east seven chains and ninety four links to the south western corner of said Survey No. 1487; thence south seventy five degrees fifteen minutes, east forty eight chains and ninety eight links by and with the southern line of said Survey No. 1487: thence north twenty degrees five minutes, west seven chains and ten links to the place of beginning, containing the quantity of twenty eight acres and fifty-nine hundredths of an acre.

Samuel Conway
Sheriff of St Louis County.

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Bill &c
Filed Feb 5, 1849

John O'Fallen & others
vs.
Martin Taylor & others

Be it remembered that in this case the order of sale was made by the Court on the 18th day of March 1848 that and the third day of May 1848 the sale was made by the Sheriff of the land, the proceeds whereof were $43,619.96; that the Sheriff filed his report thereof on the 11th May 1848 which was approved by the Court on that day. That previous to the sale the report of the Sheriff of the sale or the approval thereof by the Court, that is to say, on the 29th day of April 1848. John F Daly administrator of Angus L Langham deceased, who is not a party to said Partition suit, filed in this Court his petition and prayer for an order on the Sheriff to pay over to him the amount of money arising from said sales, which, under the judgment of this Court in this cause, were required to be paid & distributed to Elias T Langham, Betsey Ann Rector and Mary Langham, who are stated in the record to be heirs at law of of said Angus L Langham dec'd which petition of said Daly is in the word and figures following; — (See pagees 29 and 30 of this Transcript.

The Court having satisfied itself by competent proof of the insolvency of the estate of Langham and that the said money had needed ~~to pay~~ to be applied towards the payment of claims established and existing against said estate by the Probate Court of this county, of which it owed pay but a fractional part only, granted the prayer of said petition, and to effectuate the same caused to be entered as of record an order in the words and figures following — (See page 19 of this transcript)

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And afterwards in the same term of April 1848 that is on the 13th day of May 1848, Elias T. Langham, Betsey Ann Rector and Mary Langham three of the parties to this proceeding in the Partition filed their motion in writing to set aside the order on the Sheriff to pay the said money to the said John F. Darby which motion is in the words and figures following

motion to rescind order to pay Darby.

John O'Fallon & others } In St. Louis Circuit Court
vs. April Term 1848
Martin Taylor & others } In Partition.

On the 29th day of April in this present term, after the Court had approved the sales made by the Sheriff of the real estate decreed to be sold, John F. Darby as administrator of Angus L Langham deceased filed here in this Court this petition and Motion praying this Court for an order on the Sheriff of St Louis County to pay over to him the proceeds of sale of real estate sold in this case, belonging to the estate of said Langham and thereupon it was ordered by the Court that the said Sheriff pay the proceeds of said sale to the said Administrator"

And now Elias T. Langham Betsey Ann Rector & Mary Langham, who are all parties to this proceeding in partition, come and move the Court to set aside & rescind the said order, and to cause the previous judgment of this court in favor of these movers and each of them to be made effectual. And they assign the following reasons:

1 The said order was improvidently made, this Court having no power & jurisdiction to make the same

2. The said John Darby as administrator of Augus S. Langham was no party to the suit, but a stranger— Represented no interest submitted to this court by the proceeding in partition

3. These movers had no notice of the petition and motion of said Administrator & no opportunity to defend their right against the same.

4. The order is against the statute of Partition § 40 which directs that the proceeds shall be paid to the parties whose right and interests shall have been sold or to their representatives, Gamble & Bates.

And afterwards, and after the payment over of said money to said Darby as admr of Langham, such proceedings were had in regard to said motion that the same at the November term 1848 that is on the 22nd day of January 1849. was argued by counsel and overruled by the court who refused to set aside and rescind the aforesaid order upon the Sheriff, to pay the said money to the said Darby.

To which decission and refusal of the Court the said Elias T. Langham, Betsey Ann Reeter and Mary Langham except & tender this their bill of Exceptions and pray that the same may be signed &c. Which is accordingly done.

A. Hamilton.

State of Missouri
County of St Louis } I M S. Cerré Clerk of the Circuit Court within and for the County aforesaid certify the foregoing to be a true and correct Transcript of the Record and Proceedings in the cause of John O'Fallen Louis

31 A LaBeaume, Theodore LaBeaume Louis F. LaBeaume Chauvet Edmund LaBeaume Jonas Newman and Susan Newman his wife, late Susan LaBeaume, Peter E. Blow and Eugenia Blow his wife late Eugenie LaBeaume, Etienne Roussin and Aspasia his wife, John Vallé (L'Anglais) Napoleon Aubouchon, Henry Von Phul, Elias T. Langham Betsey Am Rector and Mary Langham vs.

Martin Tayon, Antoine Tayon, Agathe Vien and her husband Antoine Vien, and Joseph Tayon, heirs at law of Ignace Tyon, Deceased, and the unknown heirs of Celeste Tayon deceased, who had intermarried with Joseph Coté now also deceased — as fully as the same remains in my office

In testimony whereof I hereto set my hand and affix the seal of Said Court, at office, in the city of St Louis this fourth day of October Eighteen hundred and forty nine.

M. J. Perré Clk

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(20)

50.

March T. 1850

Langham et. al vs Darby

John O'Fallon et al

vs Transcript

Martin Tayon et al

Elias T Langham. Betsey Ann Rector & Mary Langham vs Error John F. Darby admr of Angus Langham.

Filed Oct. 10. 1849

H. L. Boon, clk.

Fee $13. 50/100 Paid by Gamble & Bates

Elias T. Langham
Betsy Ann Rector
& Mary Langham

John F. Darby

And the said Elias T. Langham, Betsy Ann Rector & Mary Langham come here into the Supreme Court and say that in the Record & proceedings aforesaid, and in the rendition of the said judgment there is manifest error in this, to wit:

1. That the judgment of the Circuit Court was given in favor of said Darby against the said Langham, Rector & Langham, Where said judgment ought to have been given against said Darby in favor of said Langham Rector & Langham.
2. The Circuit Court erred in making the order upon the Sheriff to pay to said Darby the shares of the purchase money of said land, belonging to said Langham Rector & Langham.
3. The Circuit Court erred in overruling the motion of said Langham Rector & Langham to set aside the said order on the sheriff, to pay the money to Wm Darby.

Wherefore, for the error aforesaid, & other error apparent in said record, they pray that the said judgment of the Circuit Court be reversed, annulled held for naught; and that they be restored &c

by atty.

Gamble & Bates

And the said Darby administrator of Augus L. Langham appellee comes by his at

tomy & says that there is no error in said record judgment & proceedings in manner and form as above set forth.

Spalding & Shepley
for appellee

Supreme Court March 7. 1850

E. T. Langham B.A. Rector
& Mary Langham
v.
John P. Denby, adm'r &c

Assignment of Errors

Filed 21. March 1850
W. B. Stark Clk

Langham & others vs Darby adm.

The Clerk will here copy the Statement made by Mr Spalding - copy also the points and authorities of both parties

From the above statement, the single question before this Court, involves the propriety of the order of the Circuit Court, directing the proceeds of the sale of the property, by the Sheriffs to be paid over to Darbey the administrator - The Commissioners reported that the land was not susceptible of partition without loss to the owners - A sale was ordered and made; and before report of such sale by the Sheriff, Darbey moved the Court to have the money coming to the Heirs of Langham, that is one tenth of the amount of the sale paid over to him, for the benefit of Langhams Creditors.

he having objected the Court, by most that Langham's Estate was largely indebted beyond the Value of the proceeds of said Sale, Coming to it—

"The Heirs of Langham object to Darby's being permitted to appear in this proceeding— But under our Law the Heirs of Langham must give way to his Creditors— Darby represents them in this business— He admits the Sale of the real Estate thus made and by his act sanctions it— I am not willing to force Darby to procure to have this land sold over— It is better for all parties interested really to abide by the present sale— The Heirs of Langham under the facts in proof have but a moral interest— And although

Danby might have been more formally introduced upon the record in this case; yet I am unwilling to disturb the order of the Court, directing the amount ~~[illegible]~~ coming to Langham heirs to be paid to him as the Administrator of said Langham

I overlook all formalities, and where complete justice can be done, in the premises by motion, and by the adopting of the partition sale by the administrator, I see nothing to be gained by directing a different proceeding — as to the want of notice, Langhams heirs were in court and did not ~~[illegible]~~ need notice of Danby's motion — they knew it as soon as it was made

Let the judgment below be affirmed —

John F. Ryland

I concur

W. B. Napton

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Langham & others
vs
John F Darbey ad.

Opinion of the Court
by Ryland Judge

Filed 26th Nov. 1850
W. B. Starke Clk

Elias T Langham &c

vs

John F Darby Admr of
Angus L Langham.-

The plaintiffs in error insist that

The Circuit Court had no authority to order the payment of the money of the plaintiffs in error to the defendant in error. The acts of the general assembly prescribe the duties of Administrators with regard to real estate, and the only mode in which they may dispose of real estate - See Revised Laws 1845 title Administration Articles 2 and 3.- An administrator cannot be a party to proceedings for partition. He has no title to real estate, but only a power to sell under the order of the County Court for the causes and in the manner prescribed in Article 3 of the Administration law.
The heir may sell land by private contract, subject however to the administration of the estate, and the purchaser takes only the title of the heir, which would be inferior to a title acquired under a sale by the administrator made in legal form and for proper cause. In like manner a sale in partition conveys only the title of the heir subject to the administration. The administrators right to sell for the payment of debts is not disturbed, and he has no right whatever to the proceeds of the sale by the heir, in partition. He would have had no right to the proceeds of a sale of the heirs interest by private contract or under execution, and has no

right to the proceeds of the sale of his interest in partition.

The 40th section of the act respecting Partition, enacts that the nett proceeds of such sales, shall be paid to the parties whose rights and interests shall have been sold, or to their guardians or legal representatives. — Darby's right as administrator to sell has not been impaired, and he may yet sell the land for the payment of the debts of Angus L Langhans. His interest in the land was not sold in the partition sale, and consequently he has no right to any of the proceeds of that sale.

Further, the Circuit Court had no authority, upon the motion of the Administrator, a stranger to the record, (and without notice) to order the payment of the money of the plaintiffs, to him, even had he a right to the money, which he unquestionably had not.

To allow such motion to prevail is to draw to the Circuit Court the jurisdiction of examining into the condition of estates and deciding the question whether or not it is necessary to dispose of real estate for the payment of debts which jurisdiction is vested solely in the Probate & County Courts. To shew the utter absurdity of such motion let the case be taken of an estate not utterly insolvent but of one where it may or may

not become necessary to sell real estate in order to pay debts - In such case real estate descends to the heirs - It is lawful for them to sell all of it or a portion of it and to receive the purchase money without the administrator interfering A part of it is so situated that they desire to make partition - If a partition in kind is effected no person can object - But when the commissioners examine it they think it necessary it should be sold - It is sold and the money brought into Court to be divided - Then comes the administrator and proposes to show that it will become necessary in order to pay debts that the ~~land~~ real estate should be sold and the Court institutes an enquiry into the condition of the estate not only as to personal apets but as to the other real estate which the heirs title to and determines whether the administrator shall take the money, and actually allows him to take the money produced in a proceeding to which he was not a party and in which he had no interest -

He was not bound by the proceeding - He was under no obligation to take part in it - The estate that passed under such sale was subject to the power given to the administrator by law Does it depend upon whether he may or may not choose to appear ~~whether the title~~ and claim the money what title passed by the sale?

Objections might be varied by the hour to this proceeding

Gamble & Bates
for pltff in
Error —

Elias S Langham & others
vs
John F Darby Administrator
of Angus L Langham decd

Brief of pltffs in error —

Sup, Court.

Elias T. Langham
Betsey Ann Reitord
Mary Langham
vs.
Jno F. Darby admr
of Augus L. Langham

In error.

A suit in partition wherein above plaintiffs in error and John O Fallon & others were petitioners and Martin Fagan & others defendants was commenced in St. Louis Circuit Court 3d. September 1846, on the 26th April 1847 and order of sale was made by the Court which was renewed on the 16th. of March 1848, The sale was made on the 3rd May 1848. The proceeds thereof were $43.619 86/100 & the Sheriff filed his report thereof on the 11th. May 1848 which was approved on the day. On the 29th. April 1848, ~~on the 29th~~ Darby, admr. of Augus L. Langham filed his petition in said suit setting forth that above plaintiffs in error were the only heirs at law of Augus L. Langham, and that one tenth of the land sought to be divided in said partition belonged to the estate of Augus L. Langham and of course the tenth of the proceeds: that said plaintiffs in error, the heirs were not entitled to the proceeds of the sale of

the estate was greatly insolvent that amounts allowed against said estate unpaid amounted to $45,754 25/100 among which was a judgment in favor of the United States for $4872,76 which was allowed in St Louis Probate Court against said estate in the year 1839: that the said judgment debt is a lien, and that all said debts are, by law, liens, & to be satisfied before said heirs could be entitled to any thing, & praying for an order that the proceeds should be paid to him.

The Court made the order accordingly before the Sheriff made report of said sale, having taken proof & been satisfied thereby of the insolvency of said estate and that the tenths of said proceeds would pay but a portion of said allowed demands against the estate of A. L. Langham

on the 13th May 1848 E. T. Langham & the other heirs of A. L. Langham, made their motion to set aside said order 1st it was improvidently made 2d. that Daly was no party to the suit, 3d- that the heirs had no notice of Daly's application: 4th that said order was against the statute of partition, Section 40,

at November Term of the Ct. money had been paid over to Daly under the order, to wit 22d Jany 1849 the motion was granted and absolute, and an exception taken to that decision,

The only question arising on the record, is whether the order of payment to Daly should have been set aside—

taken to that decision,

The only question arising on the record, is whether the order of payment to Darby should have been set aside —

(The above statement is adopted by the Court — Rylund Judge

1 The interest in the land belonging to the deceased Angus L. Langham, his heirs and administrator were his representatives, & the proper parties in the suit of partition, to represent that interest,

Rev. Code of 1845 p. 766 Sec. 2. 3.

2 But Elias T. Langham, one of the heirs of A. L. Langham was a party petitioner originally, in the suit, he being at the same time the administrator of Angus L. Langham.

3 Before the suit terminated his letters were revoked, & J. F. Darby was appointed administrator de bonis non, of Angus L. Langham; and soon after intervened as

Such in the suit & procure an order that the money should be paid to him in that capacity.

4th It was Darby's duty to have procured himself to be made a party: and although what was done was perhaps lacking in form, yet it is not ~~[illegible]~~ void. He appeared in the suit: he exhibited his letters establishing his character as said administrator, which he might do, without any notice to the other parties, other than by motion in open Court,

Rev. Code of 1845 p 766 Sect. 3. & 4.
" " " 771 Sect. 35 that the effect of the sale is, to bar rights in equity.

5 Darby having shown from the Probate records that Augus L. Langham's estate was indebted to amount of some fifty thousand dollars, without any other assets than the land, one of the debts being a special lien, and all of them allowed in the Probate Court, it became the duty of the Court to order the money into his hands. It would then be applied to the purposes of the estate, and the residue, if any after payment of debts, would go to the heirs, being guaranteed to them by the administration Bond of Darby.

6 Such a disposition of the money would not be in violation of the act providing for partition of land, but in consistency with it.

Rev Code of 1845 p. 772 Sec 40 directs that the money raised by a sale, shall be "divided among the parties whose rights "and interests shall have been sold — & "paid to them, their guardians or legal repre- "sentatives"; & Section 41 indicates that the word "parties", is used to mean parties in interest, not parties to the suit.

7 The case is not one coming within the provision of the 42d. & following Sections. The 43d. Section provides a mode of proceeding when a party claims the money as owner of the premises sold; which does not include the present case, of an administrator and heirs of a deceased person. This is not the case of "adverse claim" to a share. It is, of the representatives of the same share; whether the money shall be paid to one, or to the other; whether it shall be paid to the heirs, & leave the creditors to sue them to get it; or shall be paid to the administrator, which would expedite the payment to the creditors; for in either case, the creditors are entitled to the money. It belongs to them in equity.

& The whole tract of land (40 acres) which was sold in partition brought same $43,000 which was less considerably than the amount of unpaid demands still remaining unpaid against Augustus L. Langham's estate, & therefore he had owned the whole tract in severalty, the proceeds of the sale would not have sufficed, to pay his debts; and there would have been nothing left for his heirs, But he owned only one tenth: which was insufficient to pay only a small fraction of his debts, The heirs, are therefore, far from having a particle of interest in the land or proceeds, except nominally, and this attempt is really, an effort to misapply the money on the part of the heirs, & leave the creditors unpaid; or to drive the administrator to make another sale of A. L. Langham's tenth, which of course, if effective would nullify the present sale by the commissioners, and operate as a fraud on the purchasers at the partition sale,

I As there was no possibility of there being any residue for the heirs, if this tenth of A. L. Langham in the land were applied to the payment of his debts, why shall the commissioners sale be broken up? As the administrator ratifies and is willing to abide by it, and he only, with the creditors, are interested, why shall not the sale stand? The administrator acts on his own responsibility. If by this course he injures the creditors, he is liable to them. They have the right to have the tenth of A. L. Langham sold to the best advantage; and if at administration sale it would bring more, they have the right to require such sale, But Darby, undoubtedly understands himself; and knew well that the tenth brought much more, sold jointly with all the other aliquot parts of the land, at a general partition sale of the whole tract in lots, than it would have brought, had it been sold separately, as an undivided tenth. The fact of the partition sale, shows that this tenth could not

have been judiciously, set apart in severalty

10. Besides, the sale by commissioners, was binding on the administrator. The other joint owners were entitled to have partition; & as that could not be made they were entitled, as a matter of right to have a sale made of all the interests in the land; and such a sale as should be valid, and pass the absolute title; otherwise the price of the whole would be affected. The sale, therefore, bound all the representatives of A. L. Langham, administrator as well as heirs,

Supreme Court

Elias T. Langham & others

vs.

John F. Darby deft. in error

Brief & points of deft. in error

Gratding & Shepley for deft in error

11 I hold that the sale in partition, by order of court, passed the title, indefeasible; & that the administrator could not sell again. He had ~~not~~ no estate in law or equity in the land, either in possession, rever-

sion or remainder, all the persons required by the statute were made parties. But the heirs, in such case, hold the title for the benefit of the estate; & if partition is made, it binds the administrator; that is, the land of the deceased is set off in severalty, instead of remaining, as before, an undivided interest; and the administrator has the same power over it as he would have had, if the partition had not been made. So, if it is sold in partition, & converted into money, the relation of the administrator to it is not changed. It is changed into a new shape, but it still belongs to the estate of the deceased, and as it has now become personalty, the administrator is entitled to the possession of it for the purposes of the estate. The conversion into money has been by act of court & compulsory on the parties; and the administrator need not now, in order to use it for purposes of administration, go through the form of a sale. He finds this already done to his hand, and has therefore nothing more to do

than to apply to the Court that has possession of the money, to have it paid over to him.

It is desirable to have the points

Sup. Court
E. T. Langham
& al. vs.
J. F. Darby Ad-
mstr of Langham
Points & brief of
appellee

Spalding
for appellee

In the Supreme Court

Elias I Langham
Mary Langham and
Belsey ann Rector } plaintiffs in Error

John I Daily Admr of
Angus I Langham dec'd } defendant in Error

Statement of the Case. —

This was a petition for partition of real estate to which the plaintiffs in error with others were ~~petitioners~~ parties. There was a judgment of partition, and commissioners appointed who reported that partition could not be made, the Circuit Court then ordered a sale of the premises, the sale was made (partly upon a credit) and the Sheriff's report of the sale filed and confirmed. In the judgment of partition it was adjudged that the plaintiffs in error were entitled to one tenth of the premises to be divided, as heirs of Angus I Langham deceased, After the Sheriffs report of the sale was confirmed by the Court, John I Daily Administrator of Angus I Langham, who was no party to the proceedings for partition, came into the Circuit Court and proved that he was the administrator of the estate of Angus I Langham, and that the estate was in debt, and moved the Court that the money derived from said sale which was payable to the plaintiffs in error should be paid to him as such administrator, which motion the Court granted and all without notice to the plaintiffs in error.

Afterwards the plaintiffs in error moved the Circuit Court to rescind said order, directing payment to be made to said Administrator, which motion the

Court overruled, to which the plaintiffs in error excepted, and brought the case here by writ of error.

Elias T Langham & others

vs

John F Darby Administrator of Angus L Langham dec'd

Statement of case.