Buchanan, George W.; Johnson, Gordon P., exec. of Johnson, Jacob v. Overton, William P.; Darton, Richard W.; Darton, Deborah; Overton, James F., by his guardian, Palmer, Jonathan R. 1853 Jackson 189/13

19

Ejectment

Tape

State of Missouri } ss Pleas in the Circuit Court
Jackson County } begun and held at the City of Independence
for the County of Jackson in the Sixth Judi-
-cial Circuit of the State of Missouri on the
Second Monday of September in the Year
of our Lord One Thousand Eight Hun-
-dred and fifty before the Honorable
Henderson Young Judge of Said
Circuit,

Best Remembered that heretofore
To wit on the 17th Day of August Eighteen
Hundred and fifty William P. Overton
Richard W Darton Deborah Darton and
James F Overton by Palmer & Hicks their
attorneys filed in the office of the Clerk of the
Circuit Court for the County aforesaid their
Petition against Jacob Johnson and Franz
Dittmar. Which said Petition is in the Words
and figures following To wit,

Petition

" William P. Overton Richard W. Darton. Deborah Darton and James F Overton by his Guardian Jonathan R Palmer, Plaintiffs against Jacob Johnson and Franz Dittmar, Defendants	In the Circuit Court of Jackson County of Sept Term 1850

Plaintiffs State that on the first
day of August Eighteen Hundred and fifty
They were legally entitled to the possession of
the following described Tract of Land with the
appurtenances thereto belonging Situated in the
County of Jackson To wit The South West Quarter
of the South East Quarter (with the Exception of
Two acres thereof in the South West Corner thereof)

of Section Five (5) in Township Forty Seven (47) of Range Thirty Two (32). And being so entitled to the possession thereof the Defendants on the Second day of August in the year aforesaid unlawfully entered into the possession of said land and premises and unlawfully withholds from the Plaintiff the possession thereof. Plaintiff ask that Defendants may be compelled to surrender possession of said land and premises and that the Court cause the possession of the said premises to be delivered to the Plaintiffs.

Palmer & Vick Attys
for Plaintiff

William P. Overton one of the above named Plaintiffs makes oath and says he believes the above petition and the matters therein as stated are true.

William P. Overton

Sworn to and subscribed before me this 17th day of August A.D. 1850

Van D. Crews Clerk.

And afterwards to wit on the day of the filing of the said petition on said Clerk endorsed thereon a writ of summons which said writ is in the words and figures following to wit

"The State of Missouri

To the Sheriff of Jackson County: Greeting, You are hereby commanded to summon Jacob Johnson and Thomas Dillmore if they be found in your County that they be and appear before the Honorable Judge of our Jackson Circuit Court at the Court House in the City of Independence on the Second Monday in September next it being the 9th day of said month then and there

Writ.

to answer unto the Complaint of William P Overton Richard C Darton Deborah Darton and James F Overton by his Guardian Jonathan R Palmer as Selfarth in the foregoing Petition and that you have there and there this Writ and that you Certify how you Execute the Same

L.S.

Witness Saml D Lucas Clerk of our said Court Witto the Seal thereof hereto affixed at Office in Independence this 17th Day of August A.D. 1850

Saml D. Lucas Clerk

Ans afterwards To Wit On the Second Monday of September one Same Sheriff To Wit George C Buchanan Esq Sheriff of Jackson County Returned said Writ as follows, Point,

Return of Sheriff

" I Certify that I executed the Within Writ by reading the Within Petition and Writ to the Within named Jacob Johnston and Franz Dittman and delivering the Certified Copy of Said Petition Which accompanied Said Writ to the Said Johnston he being the first Defendant Served on the 21st day of August A.D. 1850 in Jackson County

Sheriffs fees $2.00

George C Buchanan Sheriff

And afterwards To Wit on the 5th day of Said Term it being the 13th Day of September A.D. 1850 among other proceedings the following Were had and made Point

" William P. Overton & others
vs
Jacob Johnston & others } Petition

Now at this day Came the Parties aforesaid by their attorneys and Said

Defendant Jacob Johnston files his Separate Answer to Said Petition,

Which Said Answer is in the Words and figures following Point

"William P Overton Richard C Denton. Deborah Denton and James F Overton by Jonathan R Palmer his Guardian Plaintiffs

Against

John Johnston and Franz Dillman Defendants

} In the Court Court Jackson County Mo.

Defendant Johnston States that his Co Defendant Dillman has no interest in the Event of this Suit and therefore prays that no Default of the Said Dillman Shall effect the Said Johnstons rights in the Suit Defendant States that Plaintiffs on the day in Said Petition Mentioned were not legally entitled to the possession of the Tract of Land With its appurtenances as by their Petition they have alleged. nor are they so Entitled now, Defendant States that he nor his Co Defendant did not unlawfully enter into the possession of Said Premises nor does he nor his Codefendant unlawfully With hold the possession thereof from said plaintiffs. because he says that Plaintiffs are not Entitled as aforesaid. Defendant therefore prays that Said plaintiffs take nothing by their Said Petition and that they pay the Costs of this Suit

I Brown Henry Attorney for Defendant Johnston

Jacob Johnston defendant makes oath

Answer

and says he believes the above answer and the matters therein as stated are true.

Jacob Johnston

Sworn to and subscribed before me on this 12th Day of September A.D. 1850

S. D. Lucas Clerk

Be it Remembered that at the March Term A.D. 1851 of the Jackson Circuit Court aforesaid the above entitled Cause was adjourned over for want of time to try it until the 2nd Monday in July A.D. 1851. Be it Remembered that afterwards to wit on the said 2nd Monday in July 1851 there was no Court held in consequence of the indisposition of the Judge of said Court.

Be it Remembered that afterwards to wit at a Term of the Circuit Court begun and held at the Court House in the City of Independence for the County of Jackson in the State of Missouri on the Second Monday in September A.D. 1851 it being the day of said Month Court met pursuant to adjournment present the Honorable Henderson Young Judge of said Court,

And afterwards to wit on the 10th Day of said Term it being the 18th Day of September A.D. 1851 among other proceedings the following were had and made to wit.

Death Suggested

"William P. Overton & others
vs
Jacob Johnston & others } Petition

Now at this day came the Parties aforesaid by their attorneys and

Said Defendants attorney gives the Court to understand and be informed that since the last Term of this Court Jacob Johnston one of said Defendants has departed this life. Whereupon on motion It is adjudged that this Cause proceed in the Name of George W Buchanan & Gordon P Johnston Executors of said Deceased and that they be substituted Defendants herein in place of said deceased. and this Cause is continued,

And afterwards To wit "At a Term of the Circuit Court begun and held at the Court House in the City of Independence for the County of Jackson in the State of Missouri on the Second Monday in March AD 1852 it being the 8th Day of said Month Court Met pursuant to adjournment Present the Honorable Henderson Young Judge of said Court,

And afterwards To wit on the 3rd Day of said Term it being the 10th Day of March AD 1852 among other proceedings the following Were had and made to wit.

"William P. Overton & others
vs
George W Buchanan & Gordon P. Johnston Escrs H. & others } Petition

Now at this day Came the Parties aforesaid by their Attorneys and on motion of said plaintiffs this Cause is put at the Foot of this days Docket at plaintiffs Costs and thereupon the said Parties again appear as aforesaid and on motion and by consent this Cause is continued at the Costs of said Plaintiffs,

And afterwards To wit: At a Term of the Circuit Court begun and held at the Court House in the City of Independence for the County of Jackson in the State of Missouri on the Second Monday in September A.D. 1852 it being the 13th day of said Month Court met pursuant to adjournment Present the Honorable Henderson Young Judge of said Court,

And afterwards To wit on the 8th day of said Term it being the 21st day of September A.D. 1852 Among other Proceedings the following Case had and made To wit,

William P. Overton Richard C. Darton, Deborah Darton and James F. Overton by his Guardian Jonathan R. Palmer
vs
George C. Buchanan and Gordon P. Johnston Executors of the Estate of Jacob Johnston deceased and Franz Dittman

} Petition

Now at this day come the Parties aforesaid by their Attorneys and said Plaintiffs file their Motion to Exclude as Evidence in this Cause the Record and Proceedings of the Jackson County Court had in relation to the said Land in Controversey and also the Deed of the Executors of Jesse Overton deceased for the said Land to said Jacob Johnston deceased, and thereupon all and singular the facts in this Cause being Submitted to the Court Without a Jury the Court finds the facts of this

Finding & Judgment

Case to be That Jesse Overton Made his last Will and testament. Thereby appointing John R Swearengen and Aaron Overton Executors of Said Will. that Said Jesse Overton after Making Said Will died in the fall of 1841 that after his death Probate Was taken of Said Will. and the Same duly recorded in Jackson County. where Said Testator resided that Said Executors Swearengen and Overton. Qualified under Said Will and took upon themselves the Administration of the Estate of Said Testator, That Said Testator at the time of his death was seized and possessed of the Land in Controversey. together With other tracts of Land Situate in Jackson County and left Considerable Personal Property. That Said Testator left the Plaintiffs William P. and James F and Jesse Overton and Elizabeth Overton his Children and only heirs and the Plaintiff Deborah his Widow. And the Two Children Jesse and Elizabeth Shortly after the death of Said Testator and before the Commencement of this Suit. died leaving the Plaintiffs William P. and James F their Brothers and the Plaintiff Deborah their Mother their only heirs and representatives. That all the Children of Said Testator Were Minors. that the Plaintiffs William P. and James F. Were Minors When the Land in Controversey Was Sold as hereinafter Stated that Said Executors Presented a Petition to the County Court of Jackson County at the April Term 1843 of Said Court Praying for an order of Said Court to Reserve from Sale the Lines belonging to the Estate of Said Testator and for the Sale of the Real Estate of Said Testator for the Payment of the Debts of Said Testator

that said Court made an order requiring said said Executors to notify all persons interested in said Estate to appear at the May Term following which order was duly published and at said May Term said proceedings were continued to the August Term following and at the August Term 1843. said Court ordered a portion of the Land described in the Schedule annexed to the Petition of said Executors to be sold for the payment of the Debts of said Testator and also that the Slaves belonging to the Estate be reserved from sale. that said order of sale did not include the Land in Controversy but that at the February Term following said Court made an additional order for the sale of other portions of Land described in said Schedule to be sold for the payment of debts which last order includes the Land in Controversy. that said Executors in pursuance of said order sold said Land in Controversy at the May Term 1844 of said Court and that Jacob Johnson the Defendants Testator became the purchaser of said Land that said Executors Swearingen and Overton reported their proceedings of said sale to said Court and that said Court at the said May Term 1844 approved of said sale and said Executors Executed a Deed in Pursuance of said sale to the said Jacob Johnson which said deed and a Transcript of the Record and proceedings of said County Court are set forth in the Bill of Exceptions and also the Will of said Jesse Overton, which said Will contains the following clause "I will and bequeath that all my just debts be paid out of the

personal effects of my Estate." That Said Defendants as the Executors of Said Johnson are and were at the bringing of this Suit in possession of Said Land in Controversy that there were sufficient personal property belonging to the Estate of Said Jesse Overton in the possession of Said Executors to pay all the Debts of Said Testator. That plaintiffs Deborah intermarried with the plaintiff Richmond before the Commencement of this Suit. The Court thereupon decised that the Said County Court of Jackson County had no Power under the Will of Jesse Overton to order the Slaves belonging to Said Estate to be reserved from Sale and the Real Estate to be Sold for the payment of the Debts, and that Said Sale by Said Executors under Said Order did not pass the title of Said Land out of the heirs of Said Jesse Overton;

It is therefore Considered by the Court here that Said Defendants Quit the possession of the Said Land & Premises Toart the South West Quarter of the South East Quarter of Section No 5. Township No 49 Range No 32 (with the Exception of Two acres thereof in the South West Corner of the Same) and that the possession of the Said Land and Premises as aforesaid be delivered to the Said Plaintiffs and that the Said plaintiffs recover against the Said Defendants the Sum of One Cent Damages together with their Costs and Charges in this behalf and out and Expended and that they have thereof Execution.

Which Said Motion to Exclude the Transcript of the Record of the County Court and deed made by Executors to Jacob Johnston is in the Words and figures following To Wit:-

"William P. Overton & others
vs
George Buchanan & Gordon P. Johnson Executors of Jacob Johnson.
} In the Jackson Circuit Court.

The Plaintiffs move the Court to Exclude as Evidence in this Cause the Record of the Proceedings of the Jackson County Court had in relation to the Sale of the Land in Controversy and offered in Evidence on the Part of Defendants in Said Cause and also the Deed of the Executors of Jesse Overton for the Said Land to Said Jacob Johnson offered in Evidence by Defendants in Said Cause Because the Said Proceedings of the Said County Court as set out in Said Record were illegal and void and the Sale of Said Land made by virtue of Said Proceedings of Said County Court conferred no title to Said Land in the purchaser

Hicks & French
Attys for Plff

Motion to Exclude

And afterwards To Wit on the 12th Day of Said Term it being the 25th Day of September A.D. 1852 among other Proceedings the following Were had and made To Wit

William P. Overton
Richard C. Dowton & others
vs
George C. Buchanan and Gordon P. Johnston Executors & Co.
} Petition

Now at this day come the

Parties aforesaid by their Attorneys and Said Defendants file their Motion in Arrest of the Judgment herein which Said Motion being by the Court here Seen and heard is by the Court Overruled And thereupon Said Defendants file their Motion for a New Trial in this Cause which Said Motion being by the Court here Seen and heard is by the Court Overruled to the Opinion of the Court in So Overruling Said Motion in Arrest Arrest And Motion for a New Trial the defendants Except,

And afterwards To wit on the 14th Day of Said Term it being the 28th Day of September A.D. 1853 Among other Proceedings the following Were had and made To wit

"William P Overton Richard
W Denton & others
vs
George W Buchanan & Gordon
P Johnston Executors &c & others
} Petition

Now at this day Come the Parties aforesaid by their Attorneys and Said Defendants file their Bill of Exceptions to the Opinion of the Court in So Overruling their Motion in Arrest of Judgment and Motion for a New Trial, which Said Bill of Exceptions is Signed Sealed and Made a Part of the Record in this Cause, and thereupon Said Defendants file their Applications and Affidavit for an Appeal from the Decision herein to the Supreme Court of this State, which Said Application and Affidavit being by the Court Seen and heard is by the Court Sustained. It is therefore Ordered

Appeal allowed

by the Court here that an appeal in this Cause be allowed said Defendants to the Supreme Court,

Which said affidavit for appeal is in the words and figures following to wit

Affidavit.

"William P Overton & others
Against
George W Buchanan &
Gordon P Johnson Executors
of Last Will and Testament
of Jacob Johnson dec^d and
Franz Dellman

The affidavit of George W Buchanan

This affiant (~~George W Buchanan~~) makes oath and says that Defendants Buchanan & Johnson do not make their appeal to the Supreme Court herein of vexation or delay but because affiant believes that appellants are aggrieved by the judgment and decision of this Court

Geo W Buchanan

Sworn to and subscribed in open Court this 28th Day of September A.D. 1852

Saml D Lucas Clerk

Bill of Exceptions,

Which said Bill of Exceptions is in the words and figures following to wit

"William P Overton Richard
W Dorton, Deborah Dorton &
James F Overton by his Guardian
Jonathan R Palmer Pl^ffs
Against
George W Buchanan & Gordon
P. Johnson Executors of the

Last Will and Testament of
Jacob Johnson and Franz
Dillmann Defts.

Bot Remembered that on the Trial of this Cause Plaintiffs gave and Rent in Evidence the following Certificate of E M Rylaind Receiver &c.

"Receivers office Lexington May 16th 1834.
Received from Jesse Overton of Jackson County the Sum of Fifty Dollars in full for South West Quarter of the South East Quarter of Section No Five of Township No Forty Nine in Range No Thirty Two Containing Forty Acres at $1.25/100 per acre

~~$50~~ Duplicate

E. M. Rylaind Receiver

John R Swearengen Was then Sworn as a Witness for Plaintiff Who testified that Jesse Overton died in the fall of the Year 1841 leaving as his Widow the Plaintiff Deborah Darton Who has Since intermarried With Plaintiff Richard W Darton and that Said Overton also left as his Children and heirs the Plaintiffs William P Overton and James F Overton and also Jesse Overton and Elizabeth Overton all then Minors and that the two last named Children and heirs him Since and before the Commencement of this Suit died and Without issue and Without having been Married and that Said Overton had no other Children or heirs and it Was admitted that Defendants Buchanan and Johnson at the Commencement of this Suit Were and Still are in possession of the Land in Petition mentioned as the Executors of Jacob Johnson and that Said Land lies in Jackson County here Plaintiff rested his Case Defendants then rent in Evidence the

following document being a transcript of the Letters Testamentary on the Estate of Jesse Overton dec.d together with the Will and also of the proceedings relating to the Sale of the Real Estate of said Jesse Overton dec.d,

Will

In the name of God Amen I Jesse Overton of the County of Jackson and State of Missouri being Weak in body though of sound and disposing mind and knowing the Certainty of Death and the uncertainty of life do make and publish this as my last Will and Testament hereby revoking all former Wills and Codicils heretofore by me made,

1st I Will that all my just debts be paid out of the personal effects of my Estate.

2d I Will and bequeath unto my beloved wife Deborah Overton during her natural life the eighty acres of land on which my house now stands and twenty five acres immediately East of said Eighty acres and including my orchard for her to have the full control and management of during her natural life. I further Will and bequeath unto my beloved Wife Deborah Overton my negro man Ralph and my negro woman Judah for and during her natural life. the balance of all my personal Estate except some Spanish moss it is my Will shall remain upon the farm as joint property to my Wife and Children except three Waggons with equipage and three or four yoke of oxen. which Waggons and Oxen it is my Will that my Executors should dispose of at private sale on or before the first day of June next, hereby authorising my Executors to give such credit as they may think prudent and advisable. the Horse, Bridle and

Saddle And I have already given my Nephew Jesse (16)
Overton is to be absolutely his. And I give to his Brothers
William P Overton And Albert Perry Overton Each
a horse Saddle And Bridle to be Worth Sixty
Dollars. Any Property at Such time as my Executors
May Think it Prudent for them to receive An Same
It is my Will And An Mill I am now Buil-
-ding on Rock Creek Should be Completed
And that my Executors after it is Completed
rent An Same out for Such lenghts of time as
they May Think Proper. on An Event my Ex-
-ecutors May deem it more advantageous to
my Estate not to rent Said Mill it is Hereby to
become joint Property to my Wife And Children
My Executors Are hereby Empowered to hire out
my Negro Woman Dinah At Private to hire and
it is my desire And She Should not be hired
out of An Neighbourhood. Furthermore it is my
Express Will And no division of my personal
or real Estate Should take Place between my
Children until my oldest Son William
becomes of Age. And When Such division
takes Place my Children William Overton
James Franklin Overton Jesse Overton & Elizabeth
Jane Overton Are each to receive An Equal
Share thereof, Lastly I hereby Appoint John
R Swearingen And Aaron Overton Executors to this
my last Will And Testament And I hereby re-
-quest of my Executors Aaron Overton And he
take a Superintending Control of all Personal
And real Property And that my Executor John
R Swearingen Superintend the Collecting of
All Monies that are or may be due me
And the Paying out of the Same,
In testimony Whereof I have

hereunto set my hand and affixed my Seal
this 16th Day of November AD 1841

Signed Sealed & Published as the Last Will & Testament of Jesse Overton in Presence of Samuel C Owens
J. B. Tomblin.

Jesse his X mark Overton

Seal

The Words "Mann" on first Page interlined and the Word "Franklin" on first Page interlined before Signed.

Codicil to the above Will. Made this 26th Day of November 1841 I Jesse Overton being this day Still Weak in body through of Sound and disposing Mind do make the following Codicil to my above Will. My Will and desire is that my Executors if they can recind the Contract made by me with William Harper for building a Mill on Rock Creek if they can by paying full Compensation for the Work he has already done and if Said Harper will not recind the Contract. When it is fulfilled on his part that my Executors sell on such Terms as they may think best for my Estate the forty acre Tract of Land on which Said Mill is Situate and I further Will that Mrs McDowell now living on the place be permitted to Stay on Said until the first day of January One Thousand Eight Hundred and forty Three. Should my Executors sell the Mill and land on which it is Situated and possession needed immediately my Executors must furnish Mrs McDowell an other House some Where on my possessions and I further Will. Should it be necessary my Executors will sell and additional acre off of my adjoining Land to Said Mill tract for Mill Yard.

In testimony Whereof I have

hereunto set my hand and affixed my Seal the day and year first aforesaid

Signed Sealed & Published in the Presence of I B Tomlin Thomas G Clarkson } Jesse his X mark Overton Seal

State of Missouri } ss
County of Jackson } Be it Remembered that on this Seventeenth day of December in the Year of our Lord one Thousand Eight Hundred and forty one personally appeared before me Samuel C Owens Clerk of the County Court Within and for the County aforesaid Samuel C Owens and James B Tomlin and Thomas G Clarkson who are personally known to me to be the identical persons whose names are subscribed to the foregoing Last Will and Testament and Codicil thereunto annexed and made oath that Jesse Overton whose name is subscribed to said Will and Codicil thereto was the Indentical person who executed the same and that he signed sealed and published the same in their presence to be his Last Will and Testament and that the said Samuel C Owens I B Tomlin and Thomas G Clarkson subscribed the same in his presence at his request as the witnesses and that said Testator was of sound and disposing mind.

In Witness whereof I have hereunto set my hand and affix the seal of said Court at office at Independence the day and year aforesaid

Saml C Owens Clerk By
John R Swearingen D C

State of Missouri } ss
County of Jackson } Samuel C Owens Clerk of the County Court Within and for the County aforesaid To all whom these present shall come, Greeting, Whereas Jesse Overton late of said County deceased

by his Last Will and Testament appointed Aaron Overton and John R Greenwood Executors of his Last Will and Testament. I do hereby give and grant unto the said Aaron Overton and John R Greenwood full power and authority to execute said Last Will and Testament of the said Jesse deceased and to administrate to collect and secure the goods and chattels rights and credits of the said deceased whenever the same may be found, and to demand collect levy and in a legal manner recover all manner debts due and owing to the said deceased and will and faithfully dispose of the same according to the true intent and meaning of the said Last will and Testament and the law requires and lastly I do hereby constitute and appoint the said Aaron Overton and John R Greenwood Executors of the Last Will and Testament of said Jesse Overton deceased to execute the same according to the true intent and meaning of the same and the law requires. The above letters Testamentary to remain in full force until revoked by the County Court

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in Independence this 20th of December 1841

Saml C. Owens Clerk

State of Missouri
County of Jackson } ss I Saml C Owens Clerk of the County Court within and for the County aforesaid do hereby certify that the foregoing letters Testamentary are duly recorded in my office in Book 66 page 147 and following

In testimony whereof I have

hereunto set my hand and affixed the Seal of Said County Court at Office at Independence this 20th day of December A.D. 1841

Samuel C Owens Clerk

Know all men by these presents that we Saron Overton and John R Swearengen as Principal and Saml C Owens and Russell Hicks as Securities are held and firmly bound unto the State of Missouri in the Sum of Twenty Thousand Dollars Lawful Money of the United States to the Payment of which Well and truly to be made We bind our selves our heirs and assigns Severally and jointly firmly by these presents Signed and Sealed this 20th Day of December A.D. 1841,

The Condition of the above Obligation is this that if the above bounden Saron Overton and John R Swearengen Executors of the Last Will and Testament of Jesse Overton deceased and thereby Executors of all and Singular the Goods and Chattels Lands and Tenements rights and Credits which were of Said Jesse Overton deceased do make a true and perfect Inventory of all and Singular the Goods and Chattels Lands and Tenements rights and Credits of said deceased which have come to their hands possession or Knowledge of the Said Saron Overton and John R Swearengen or into the hands or possession of any person for them and the Same so made Shall return and Exhibit in the Clerks office of the Jackson County Court Within Such time and in Such manner as is or may be prescribed by Law and all and Singular the moneys

goods and Chattels Lands and Tenements rights and Credits of the Deceased accruing from and arising out of his Estate which shall come to the hands or possession of the said Aaron Overton and John R Swearenger shall well and truly administer the same according to Law, and pay the Debts of the deceased as far as his Assets will Exclude and the Law direct. And further make or Cause to be made just and true accounts of their said Administration and make due and proper Settlements thereof from time to time according to Law or the order or decree of any Court having Competent Jurisdiction. then this obligation to be void and null otherwise to remain in full face and Effect,

Aaron his X mark Overton — Seal
John R Swearenger — Seal
Russell Hicks — Seal
Saml. C. Owens — Seal

State of Missouri
County of Jackson } ss The affidavit of Aaron Overton and John R Swearenger on application for Letters Testamentary upon the Estate of Jesse Overton decd. State that said deceased died Testate and that he left a Widow Deborah Overton and five children Vizt William Overton John Wesley Overton James Franklin Overton Jesse Overton & Elizabeth Overton. and furthermore that they will well and faithfully administer all and singular the goods and Chattels Lands and Tenements rights and Credits of the deceased and pay his debts as far as his Assets will exclude and the Law direct and that they will make a True and perfect Inventory of the goods

and Chattels rights and Credits of Said de-
-ceased and account for according to Law
all assets that shall come to their hands
possession or Knowledge

Aaron his + mark Overton
John R Swearengen

Sworn to by John R Swearengen 20th Dy of Decr 1841
Saml C Owens Clerk

Sworn to by Aaron Overton the 26th day of January
1842 S D Sudes Clerk

February Term A D 1842

The Court Appears of the Bond of Aaron
Overton and John R Swearengen Executors of
the Estate of Jesse Overton deceased for the
Sum of Twenty Thousand Dollars With
Samuel C. Owens and Russell Hicks as
Security,

To the Honorable County Court of Jack-
son County. Your Petitioners Aaron Overton & John
R Swearengen Executors of the Estate of Jesse Over-
ton deceased Would respectfully represent
unto your honors that they have in accordance
With the Will of Said deceased With the
Exception of the Slaves that they were by Said
Will authorised to make Sale of and that
the proceeds of Said Sale together With the
Monies due Said deceased are insuffici-
-ent to pay the debts due by Said decedent
as Will appear of the Same hereunto annexed
and for Want of a Sufficiency of personal as-
-sets to meet the debts due by Said Estate
We pray Your Honorable body to make an
order reserving from Sale the Slaves belong-
-ing to Said Estate and order for the Sale of So
much of the Real Estate of Said decedent

as Well pay his debts. Your Petitioners Would further represent that said deceased died possessed of Eleven Slaves of which one has died since the death of said decedent. (Your Petitioners Would further represent that it is their opinion that it Will be conducive to the interest of said Estate to make such order.) And that there has been two born since the death of said decedent and that said Eleven Slaves were appraised at the sum of Three Thousand Nine hundred Dollars Two of which one Woman and one Man were Willed to the Widow of said deceased during her Natural life. Your Petitioners Would represent that the Amount of Monies Collected and distributed Amounts to the Sum of $1710.33
The Amount of Assets Available belonging to Estate Amounts to about the Sum of $1520.00
of which Sum $480.00
Will be due after the Expiration of Three Years from Administration $1070.00
Your Petitioners Would further represent that their large Amount of Debts due said Estate that very little if any thing Will ever be realized from them to the Amount of $1510.00
Your Petitioners Would represent that the available assets of the Personal Estate of said decedent with the Exception of the Slaves Amount to the Sum besides interest to $2780.33
Besides the hire of Negroes and rent of Land due 1st January 1849 Amounts to the Sum of 360.00
$3140.00
Your Petitioners Would further represent that so far as Petitioners have been able to ascertain

the debts against Said Estate and allowed (24)
by the Jackson County Court Amounts to the Sum
of about $4500.00
besides interest which is a considerable amount.
Your Petitioners Would further represent that
there are other Claims against Said Estate
to a considerable Amount. ~~Your Petitioners Would further represent that~~ but whether
they will be established is more than we
can know. The Real Estate of Said Decaised
is as follows Point

E½ of the NW¼	Section 13	Township	56	Range	33 A	80.00
SW¼ of	Section 5	Township	49	Range	32 A	160.00
NW¼ of the NW¼	Sec 8	"	49	"	32 A	40.00
SW¼ of the SE¼	" 5	"	49	"	32 A	40.00
NW¼ of the NW¼	" 5	"	49	"	32 A	40.00
E½ NW¼	" 4	"	49	"	32 A	84.04
W½ NW¼	" 4	"	49	"	32 A	84.04
W½ SW¼	" 4	"	49	"	32 A	80.00
E½ SE¼	" 5	"	49	"	32 A	80.00
NE¼ part of	" 5	"	49	"	32 A	41.00
NE¼ part of	" 5	"	49	"	32 A	42.50
NE¼ part of	" 5	"	49	"	32 A	37.50

½ of Lot 57 old Town of Independence
The Undivided One half of the following Lands
With Jacob Johnson Point The S½ of Section 5 Township
49 Range 32 A 80 The East half of the SW¼ of Sec
tion 32 Township 50 Range 32 A 80 The NE¼ of the
NW¼ Section 5 Township 49 Range 32 A 42.08 The
Undivided One half of the following Lands With
Sarah Overton Point. The North half of Section 31
Township 50 Range 32 A 287.31 Fractional Section
36 Township 50 Range 33 A 34.23. Your Peti-
tioners Would further respectfully pray your
Honors to make such Orders in the

premises as may be conducive to the interest of said Estate and the accomplishment of the prayer of your Petitioners and We will Ever pray &c.

John R Sweeneyer &
Aaron Overton Executors

State of Missouri }
County of Jackson } ss These Affiants John R Sweeneyer and Aaron Overton the above named Petitioners make oath and Saith that Account of their said Administration and the Matters and things set out in said Petition are correct and true

John R Sweeneyer
Aaron Overton

Sworn to and subscribed before the undersigned Clerk of the County Court of Jackson County this 4th day of April A D 1843

Samuel D Lucas Clerk

Filed 4th Day of April A D 1843

Saml D Lucas Clerk

April Term A D 1843

Aaron Overton & John R Sweeneyer Exc^r of the Estate of Jesse Overton Deceased } Petition to sell Land

Now at this day comes the Executors aforesaid and file their Petition herein praying the Court for an order to reserve from Sale the Slaves belonging to said Estate and that the Whole of the Real Estate of the said Deceased or so much thereof as Will be sufficient to pay the Debts of said Deceased may be sold for that purpose accompanied by a True Account of their Administration a list of Debts due to said

by Said deceased and remaining unpaid
and an Inventory of the Real Estate ~~[illegible]~~
~~[illegible]~~ and of the remaining Personal Estate with
its appraised Value and all other assets
in their hands the Whole Verified by the
affidavit of Said Executors, Whereupon it
is ordered by the Court that all Persons
interested in Said Estate be notified thereof
that unless the Contrary be Shown on the
first Monday in June next and order
Will be made for the reservation of Said
Slaves and for the Sale of the Whole or
So much of Said Real Estate in Said
Petition mentioned as Will pay the Debts
of the Said Deceased and it is further
ordered that notice thereof be published
in Some News Paper published in this State
for Six Successive Weeks and this Cause
is Continued until the first Monday in
June next.

June Term 1843

On Motion the Court Continues the Petition of
Aaron Overton & John R Swearengin Executors of the
Estate of Jesse Overton deceased for the Sale of
Real Estate and Reservation of Negroes until
the first Monday in July next

July Term AD 1843

John R Swearengin &
Aaron Overton Exc^a of the
Estate of Jesse Overton Deceased } On Petition to Sell Real Estate & Reserve Negroes

Now at this day comes the Said
Petitioner and on Motion this Cause is Continued
until the next August Term of this Court

August Term AD 1843

John R Swearengin & Aaron Overton Executors

of the Estate of Jesse Overton } on Petition to Sell Real Estate & 27
Deceased, } Reserve from Sale the Slaves belonging to Said Estate,

Now at this day comes the Executors aforesaid and prove to the Satisfaction of the Court here that Publication had been made pursuant to an order made at the April Term of this Court and it appearing to the Satisfaction of the Court that the personal property of said decedent is insufficient to pay his Debts and no objection having been filed to reserving from Sale the Slaves belonging to Said Estate. It is therefore ordered by the Court that the Slaves belonging to Said Estate be reserved from Sale and that the following Real Estate in Said Petition mentioned or so much thereof as will be sufficient to pay the debts of Said deceased be Sold Toast The NW ¼ of the NE ¼ Section No 8 Township No 49 Range No 32 and the undivided half of the SW ¼ of Section No 5 Township No 49 Range No 32 and the NW ¼ of Section No 5 Township 49 Range No 32 and the undivided fourth part of the NE ¼ of Section No 6 Township No 49 Range No 32. and the undivided half of the E ½ of the SW ¼ of Section No 32 Township No 50 Range No 32 and the undivided half of the N ½ of Section No 31 Township 50 Range No 32 lying and being situate in Jackson County and State of Missouri also the E ½ of the NE ¼ of Section No 13 Township No 56 Range No 33 lying and being situated in the County of Clinton in the State of Missouri The Court doth order that the said Land situate in Jackson County be Sold at the Court House House door in the Town of Independence on the first Monday in November next While the County Court of Said County is in Session and that said Land situate in Clinton County be Sold at

the Court House door on the Town of Plattsburgh on the fourth day of October next while the Circuit Court of Said County is in Session, all on a Credit of Nine Months Said Executors taking Bond with Security therefor And it is further Ordered that Notice of Said Sales be given by putting up Ten hand bills in the most Public Places in Jackson and Clinton Counties respectively at least Twenty days before the day of Sale

November Term AD 1843

John R Lineninger and Aaron Overton Executors of the Estate of Jesse Overton deceased. } on Petition to Sell Real Estate and Reserve from Sale the Slaves belonging to Said Estate.

Now at this day Comes the Executors aforesaid and on their Motion it is ordered that the Sale of the Real Estate in Said Petition mentioned required by an order of this Court made at the last August Term thereof to be Sold at this Term be and is hereby Continued until the 1st Monday in January next. The Court doth Order that the Land Situate in Jackson County be Sold at the Court House door in the Town of Independence on the Said first Monday in January next while the County Court of Said County is in Session on a Credit of Seven Months And that Said Executors give Notice of Said Sale by putting up Ten hand bills in the most Public Places in Jackson County And that the Order made at the August Term as aforesaid be carried into Effect by Said Executors in Every particular Except as to the time of Sale hereby prolonged.

January Term AD 1844

On Motion. Ordered that the Sale of a Portion

of the Land belonging to Estate of Jesse Overton deceased Say the Undivided One half of the North half of Section No 31 Township No 50 Range No 32 Containing 321 $\frac{54}{100}$ Acres be Continued Until the next May Term of this Court and the Same be Sold at the Court House door in the Town of Independence during the Session of the Said Term and that the Executors give notice of Said Sale by putting up Ten hundred Bills in Public Places in Jackson County at least Twenty days before the 1st day of Said May Term.

State of Missouri } In the Jackson County Court
County of Jackson } ss February Term A.D. 1844

John R Livearington and Aaron Overton Executors of the Estate of Jesse Overton deceased } On Petition to Sell Real Estate & Reserve from Sale the Slaves belonging to Said Estate filed at the last April Term of this Court A.D. 1843

Now at this day Come the Executors aforesaid and represent to the Court that the Real Estate Ordered to be Sold by an Order Made at the August Term A.D. 1843 of this Court is in sufficient to pay the Debts of Said deceased and pray the Court for an order for the Sale of Four other Tracts of Land in Said Petition Mentioned. It is therefore Ordered by the Court here that the following Real Estate in Said Petition Mentioned or So much thereof as will be Sufficient to pay the debts of Said Deceased be Sold Point The South half of the South East Quarter of Section No 5 of Township No 49 in Range No 32. and the North half of Section No 31 of Township No 50 in Range No 32 and the North West fractional Quarter of Section No 32 of Township No 50 in Range No 32 and the West half

of the North East Quarter of Section No 32 of Township No 50 in Range No 32. The Court doth order that the Same be Sold at the Court House door in the Town of Independence in Jackson County on the first Monday in May next to the highest and best bidder therefor. Whilst the Court of Said County is in Session on a Credit of Seven Months Said Executors taking bond with Security for the Same and it is further ordered that notice of Said Sale be given by putting up Ten hand bills on the most public places in Jackson County at least Twenty days before the day of Sale.

To the Honorable County Court of Jackson County. The undersigned Executors of the Estate of Jesse Overton deceased Would respectfully represent to your Honors that Said deceased and Aaron Overton are joint owners to the West half of the South East Quarter of Section 32 Township 50 in Range 32 Situate in Jackson County Mo and that Aaron Overton Executed to Said deceased in his life time a Bond for a Title for Said Tract of Land which Said Deed has not yet been made. The undersigned Would further represent to your Honorable Body that the Personal Estate (excepting Negroes) has fallen short of the payment of Debts including the Real Estate Said belonging to Said deceased, and that it will be necessary to dispose of Said decedents interest in Said Land or to sell Some of the Negroes of Said Estate and We think it most to the interest of Said Estate to sell Said Land. We therefore pray your honors to make an order authorising Said Aaron Overton to sell Said Tract of Land and account to the Estate of Said decedent for one half of the Price he may

sell the Same for. and when so done for said Swearingen his Co Executor to deliver to him his Bond heretofore Executed to said deceased for a Title to the Same. and your Petitions as in duty bound Will Ever pray

John R Swearingen &
Aaron Overton Executors of
Jesse Overton deceased

Filed 12th Day of August A.D. 1845 L D Snow Clerk

August Term A.D. 1845.

John R Swearingen and Aaron Overton Executors of the Estate of Jesse Overton deceased. } On Petition to Sell Real Estate and Cancel Bond.

Now at this day comes the said Petitioners and file herein their Petition Setting forth that said deceased and said Aaron Overton were the joint owners of the West half of the South East Quarter of Section 32 Township 59 in Range 32 Situate in Jackson County and that said Aaron Overton Executor to said deceased a Title Bond for said Land & a deed has never been made for the Same and the personal Estate of said deceased is insufficient to pay his debts and praying the Court for an order authorising said Aaron Overton to sell the interest of said Jesse Overton deceased in said Land and when said to authorise said John R Swearingen to give up to the said Aaron Overton his Bond as aforesaid, Whereupon it is ordered of the Court hereafter the said Aaron Overton be and he is hereby authorised to sell the interest of the said Jesse Overton deceased in said Land either at private or public Sale on Six Months Credit or for Cash in hand which ever to him Shall Seem best for the interest of said Estate. if Sold Publicly Notice to be given by Ten hand Bills put up

in public places 30 days before Sale and the Sale of Public to be at the Court House door in the Town of Independence during the Term of the County or Circuit Court of Jackson County. When said Land is Sold and said Amos Overton pays over the Proceeds thereof said John R Swearengen is authorised to give him up said Bond,

To the Honorable County Court of Jackson County. In pursuance of Sundry Orders of this Honorable Court the undersigned Executors of the Estate of Jesse Overton deceased have in pursuance of said Orders Sold Real Estate of said deceased for the payment of Debts to the following Amount Front On Monday the 4th Day of October 1844 at the Court House door in the Town of Plattsburgh in Clinton County after having advertised according to Law I Sold the East half of the North East Quarter of Section 13 Township 56 in Range 33 lying and being Situate in Clinton County to Silas McGuire At and for the Sum of One Hundred and forty nine Dollars he being the highest and best bidder therefor and that on the first Monday in January 1844 I Sold at the Court House door in the Town of Independence Jackson County after having advertised the Same according to Law. I Sold the NW¼ of the NE¼ of Section 8 Township 50 Range 32 containing 40 acres together with 2 acres out of the SW¼ of SE¼ of Section 5 Township 49 Range 32 to Aaron Overton at and for the Sum of Three Hundred Dollars he being the highest and best bidder and on the Same day and at the Same time and place under the Same advertisement I Sold the undivided One Half of the East half of Section 5 Township 49 Range 32 to Caswell Overton at and for

the Sum of One Hundred Dollars he being the highest and best bidder therefor, and at the same time and place and under the same advertisement I sold the undivided one half of the East half of SW 1/4 of Section 32 Township 50 Range 32 to Caswell Overton at and for the sum of Forty Dollars and Twenty five cents he being the highest and best bidder therefor, and at the same time and place and under the same advertisement I sold the undivided one fourth interest in the NE 1/4 of Section 6 Township 49 Range 32 to John Maxwell he being the highest and best bidder therefor at and for the Sum of Forty Dollars and Went on the 6th Day of May 1844 after advertising the same according to Law at the Court House door in the Town of Independence I sold to Thomas G Clarkson he being the highest and best bidder therefor the undivided one half of the West half of the NE 1/4 of Section 32 Township 50 Range 32 at and for the Sum of Ninety Six Dollars also to Said Clarkson the undivided one half of the NW fractional Qr of the Same Section Township and Range at and for the Sum of One Hundred and Sixty Dollars. also to Said Clarkson the undivided half of the North half of Fractional Section 31 Township 50 Range 32 Containing in the Whole Two Hundred and 289 31/100 acres at and for the Sum of Three Hundred and Twenty five Dollars, and at the same time and place and under the same advertisement I sold to Jacob Johnson With the Exception of Two acres in the NW Corner of the Quarter the SW 1/4 of the SE 1/4 of Section 5 Township 49 on Range 32 Containing 38 acres at and for the Sum of One Hundred Dollars he being

the highest and best bidder therefor. all of which Lands with the Exception of the first described piece is Situate in the County of Jackson. The undersigned would respectfully and further report that the Lands hereon before described were duly Appraised and Advertised According to Law. an Appraise Bill of which is hereunto filed in board. The The undersigned would further report that the Land Situate in Jackson County that was Sold on the first Monday in January 1844 was Sold on a Credit of Nine Months and that Sold on the 1st Monday in May 1844 was Sold on a Credit of Seven Months and that the Tract of Land lying in Clinton County was Sold on a Credit of Nine Months of all Purchasers the undersigned has been particularly careful to have the payments Secured by taking Bonds with good Security. The undersigned would further report that under mature deliberation that it would militate against the interest of Said Estate to Sell the SE¼ of the SE¼ of Section 5 Township 49 or Range 32 withheld the same from Sale. all of which is Respectfully Submitted. J R Swearingen on of the Executors of the Estate of Jesse Overton deceased

This Affiant John R Swearingen Makes Oath and Saith that the facts Contained in the above report are true he further States that he did not directly or indirectly purchase the Real Estate Sold as above Set forth or any part thereof or any interest therein and he is not interested in the property Except as Stated in the above report.

John R Swearingen

Sworn to and Subscribed this 29th Day of December 1843
S D Lucas Clerk

Filed 7th Day of May 1844
S D Lucas Clerk

May Term A D 1844

John R Swearingen and Aaron Overton Executors of the Estate of Jesse Overton deceased } This day presented their report of the Sales of Real Estate Sold Pursuant to order of this Court which Said Report is ordered to be filed for the Present

July Term 1844

The Court approves of the Report of the Sales of the Real Estate of Jesse Overton's Estate made by the Executors of Said Estate as regards the Real Estate Situate in Jackson County and continues the report as to the Sales of the Real Estate Situate in Clinton County for Proof of notice.

State of Missouri }
County of Clinton } ss These affiants John S Johnson Robert H Sammelis and William Richardson make oath and say they are not interested nor of Kin to any person interested in the Estate of Jesse Overton deceased as heir or devisee and they will to the best of their ability view and appraise the Real Estate of Said deceased Sworn to as lying and being Situate in the County and State aforesaid Whit The East half of the North East Quarter of Section No Thirteen Township 56 a Range 33

John S Johnson
William Richardson
Robert H Sammelis

Sworn to and subscribed before me the undersigned a Justice of the Peace Within and for the County and State aforesaid this 4th Day of October 1843

Silas McGuire Justice of the Peace

State of Missouri }
County of Clinton } ss We the undersigned Appraisers appointed and duly sworn to appraise the East half of the NE¼ of Section 13. Township 56 Range 33. belonging to the Estate of Jesse Overton deceased late of Jackson County Missouri do Value & appraise the same to the sum of $2.50 per acre Given under our hands this 4th Day of October 1843

Robert H Vanden
John S Johnson
William Richardson

State of Missouri }
County of Jackson } ss Best Remembered that on this 4th Day of November A.D. 1843 before me the undersigned Clerk of the County Court Within and for the County aforesaid Comes John Reed Alexander Collins and Thomas Pilcher Appraisers of the Real Estate of Jesse Overton deceased and make oath and say that they are not interested nor of Kin to any person interest as heir or devisee in the Estate of said deceased and that they will to the best of their ability appraise the Real Estate belonging to said Estate In witness Cheerof I hereto set my hand and affix the Seal of said Court at office in Independence this 4th Day of November A.D. 1843 Samuel D Lucas Clerk

We the undersigned Appraisers appointed and duly sworn to appraise the following Lands make the following Appraisement Bid Point The NW¼ of the NE¼ of Section 8 Township 49. Range 32 to the sum of $7.00 per acre

The SW 1/4 of Section 5 Township 49 Range 32 to the Survey $2.50 per acre
The NW 1/4 of the Same Section Township and Range to the Survey $2.00 per acre.
The East half of the SW 1/4 of Section 32 Township 50 Range 32 to the Survey $2.50
The NE 1/4 of Section 6 Township 49 Range 32 to the Survey $2.50

Alexander Collins
John R Real
Thomas Pitstone

State of Missouri
County of Jackson } Be Bert Remembered that on the 27th Day and the 29th day of April Anno Domini 1844 before me the undersigned Clerk of the County Court Within and for the County afore Said Came Jacob Stewart John R Real and Adam Hill appraisers of the Real Estate of Jesse Overton deceased and Make oath and Say that they are not interested nor of Kin to any person interested as heir or devised in the Estate of Said deceased and that they Will to the best of their ability appraise the Real Estate belonging to Said Estate

In Witness Whereof I have hereunto Set my hand and affixed the Seal of Said Court at Office in Independence this 29th day of April A D 1844

Saml D Lucas Clerk

We the undersigned appraisers appointed and duly Sworn to appraise the following Land do Make the following appraisement Total
The W 1/2 of the SE 1/4 of Section 32 Township 50 Range 32 We appraise to the Survey $3.00 per acre
The SW fractional Quarter of the Same Section Township and Range We appraise

to the Sum of $3.00 per acre.
The N for half of Section 31 of the Same Township and Range We appraise to the Sum of $600 per acre. The SW 1/4 of the SE 1/4 of Section 5 Township 49 Range 32 We appraise to the Sum of $400 per acre. The SE 1/4 of the SE 1/4 of the Same Section Township and Range we appraise to the Sum of $600 per acre.

Jacob his x mark Stewart
John R his x mark Reed
Adam Hill,

State of Missouri }
County of Jackson } ss. I John R Swearingen Clerk of the County Court Within and for the County aforesaid do hereby certify that the foregoing is a True and perfect Transcript of the Last Will and Testament of Jesse Overton decd With the Certificate of Probate thereon Endorsed of Letters Testamentary of the Executors Bond and Order of Approval Petition for the reservation of Slaves from Sale and Sale of Lands for the payment of Debts With all Orders made therein of the Appraisement of Real Estate and Report of Land Sold by Said Executors With all orders made thereon in as full or manner as the Same is of Record in my office

L.S. In testimony Whereof I have hereunto set my hand and affixed the Seal of said Court at office in the City of Independence this 12th Day of March A.D. 1851

Clerks fees Transcript $5.00. John R Swearingen Clerk

Deed

To all to whom these Presents shall come Know ye that Whereas the County Court of Jackson County in the State of Missouri

at the February Term of said Court in the Year
Eighteen Hundred and Forty four upon the
Petition of John R Swearengen and Aaron Over-
-ton as ~~Such~~ Executors ~~of~~ ~~xxxxxxx~~ the last
Will and Testament of Jesse Overton deceased
made an Order requiring the Said John R
Swearengen and Aaron Overton as Such
Executors as aforesaid to sell the Real
Estate Point The South West Quarter of the
South East Quarter of Section Four Township
Forty Nine in Range Thirty Two With the Excep-
-tion of Two acres in the South West Corner of Said
Quarter Quarter Section which Said Two acres I
John R Swearengen have heretofore deeded to
Aaron Overton which leaves Thirty Eight acres
in Said Quarter Quarter Section Situate lying
and being in the County and State aforesaid on
the 6th Day of May Eighteen Hundred and
forty four and While the County Court was in
Session on a Credit until the 25th Day of Decem-
-ber 1844 taking Bond With approved Secur-
-ty for the purchase Money and that Any
the Said Executors Should give Notice of the
Said Sale by Ten hand bills set up at Ten
public places in Jackson County at least Twenty
days before the day of Sale and Whereas af-
-ter the Makeing the Said Order the Exe-
-cutors did on the 6th Day of May in the Year
Eighteen Hundred and Forty four at the
Court House Door in the Town of Independ-
-ence County and State aforesaid and While
the County Court of Said County was in Session
having previously given Notice of the Time
and place of Said Sale With a Description of the
Property to be Sold by Ten hand Bills set up
in Ten public places in Jackson County at least

Twenty days before the day of Sale said Real Estate having been previously appraised by three disinterested householders of Jackson County at and to the sum of Four Hundred Dollars he did proceed to offer for Sale openly at Auction the above described Real Estate and all the right title interest and claim which the said Jesse Overton had in and to the same at the time of his death to the highest and best bidder on a Credit of until the 25th day of December 1844 and Jacob Johnson being the highest and best bidder therefor became the purchaser thereof at and for the sum of One Hundred Dollars this being the highest and best bid for the same and Whereas the the said John R Lemmon and Aaron Overton Executors as aforesaid did proceed to take the Bond of said Jacob Johnson for the said sum of One Hundred Dollars the purchase money for said Tract with approved security. and Whereas the said sum of One Hundred Dollars the purchase money has been paid by the said Jacob Johnson. Now therefore to the said John R Lemmon and Aaron Overton as such Executors as aforesaid for and in Consideration of the sum of One Hundred Dollars to us in hand paid by the said Jacob Johnson the Receipt whereof is hereby acknowledged hereby do grant Bargain and Sell and by these Presents do give grant Bargain and Sell unto the said Jacob Johnson the said South West Quarter of the South East Quarter of Section Five Township 49 Range 32 West the Exception of said Two acres sold to Aaron Overton in the

South West Corner of Said Quarter Quarter Section Containing Thirty Eight Acres Which is or may be designated by the following metes and bounds To Wit Beginning at a Corner A Rock 12.66 Poles North of the half mile Corner on South line of Section 5 Township 49 Range 32 thence East 25.30 Poles to Corner a Rock. Thence South 12.66 Poles thence East 55.68 Poles to the SE Corner of the SE Quarter of the SW¼ of the SE¼ of Said Section 5 Thence North 80 Poles to the NE Corner of Said Quarter of Quarter a Rock. Thence West 80.98 Poles to the North West Corner of Said Quarter Quarter a rock thence South 66.34 Poles to beginning together With all and Singular the rights and appurtenances, To have and To hold unto him the Said Jacob Johnson and to his heirs and assigns forever together With all and Singular the rights and privileges and appurtenances thereto belonging or in any Wise appertaining and all the right title interest and claim which the Said Jesse Overton had of in and to the same provided nevertheless the Words Grant Bargain and Sell herein Contained Shall not be so understood as to make as the Said Executors to any Extent personally liable

In testimony Whereof We the Said John R Swearingen and Aaron Overton Executors as aforesaid have hereto set our hands and affixed our Seals this 11th Day of August in the Year of our Said Eighteen Hundred and Forty Five.

John R Swearingen Seal

Aaron Overton Seal

Executors of the Estate of Jesse Overton deceased

State of Missouri }
County of Jackson } ss In the Jackson County Court
August Term A.D. 1845.

Best Remembered that on the Second day of said Term among other proceedings the following were hereto and made to wit, "This day personally appeared in open Court John R Lowenberger and Aaron Overton Executors of the Estate of Jesse Overton deceased who are personally known to the Court to be the persons whose names are subscribed to a Deed produced in Court Conveying to Jacob Johnson the following described Real Estate to wit The South West Quarter of the South East Quarter of Section 5 Township 49 Range 32 with the Exception of Two Acres on the South West Corner of said Quarter Quarter Section which said 2 acres John R Lowenberger has heretofore deeded to to Aaron Overton which leaves 38 acres lying and situate in Jackson County and State of Missouri which said deed and sale was made in pursuance of an order of the Jackson County Court of February Term A.D. 1844 and acknowledged the same to be their act and deed for the purposes therein mentioned

In testimony whereof I hereunto set my hand and affix the seal of said Court at office in Independence this 12th day of August A.D. 1845

Saml D Lucas Clerk
By John L Lucas D.C.

State of Missouri }
Jackson County } ss I Saml D Lucas Clerk of the Circuit Court & Ex officio Recorder within and for the County aforesaid do certify that the

foregoing Deed of Bargain and Sale together with the Acknowledgment thereon Endorsed from Swearingen & Overton Executors &c. to Jacob Johnson Was deposited and duly recorded in my office on the 1st Day of September A.D. 1845 in Book L Page 47 and following

In testimony Whereof I have hereunto set my hand and affixed the Seal of Said Court at office in Independence this 1st Day of September A.D. 1845 Saml D Swearingen Clerk
By John S. Swearingen D.C.

This Was all the Evidence given on the Trial of this Cause and thereupon this Cause by Consent of Parties having been Submitted to the Court Without a Jury and by further Mutual Consent the Court requested to find the facts and declare the Same Saving the right of Exception to the Parties respectively. the Court in Writing finds the facts and declares the Same as follows

"Wm P. Overton & others
vs
Buchanan & Johnson Exc^rs of J Johnson &c } The Court finds the facts of this Case to be that Jesse Overton made his last Will and Testament thereby appointing John R Swearingen and Aaron Overton Executors of Said Will. that Said Jesse Overton after making Said Will died in the fall of 1841 that after his death Probate was taken of Said Will and the Same duly recorded in Jackson County where Said Testator resided that Said Executors Swearingen and Overton Qualified under Said Will and took upon themselves the Administration of the Estate of Said Testator That Said Testator at the time of his Death Was seized and possessed of the Land in

Controversey together with other Tracts of Land
situate in Jackson County and left considerable
personal property. that said Testator left the Plaint-
iffs William P and James F and Jesse Overton and
Elizabeth Overton his Children and only heirs and
the Plaintiff Deborah his Widow that the Two
Children Jesse and Elizabeth shortly after the death
of said Testator and before the commencement of this
suit died leaving the Plaintiffs William P. and
James F. their Brothers and the Plaintiff Deborah
their Mother their only heirs and representatives
that all the Children of said Testator were minors
that the Plaintiff William P. and James F were
minors when the Land in Controversey was sold
as herein after stated that said Executors pre-
sented a Petition to the County Court of Jackson
County at the April Term 1843 of said Court
praying for an order of said Court to reserve
from sale the slaves belonging to the Estate of
said Testator and for the sale of the Real Estate
of said Testator for the payment of the Debts of
said Testator. that said Court made an order
requiring said Executors to notify all Persons
interested in said Estate to appear at the May
Term following which order was duly pub-
lished and at said May Term said pro-
ceedings were continued to the August Term fol-
lowing. and at the August Term 1843 said
Court ordered a Portion of the Land described
in the Schedule annexed to the Petition of said
Executors to be sold for the payment of the
debts of said Testator. and also that the slaves
belonging to the Estate be reserved from sale
that said order of sale did not include
the Land in Controversey but that at the

February Term following Said Court made
an additional Order for the Sale of other
Portions of Said described in Said Schedu-
-le to be Sold for the Payment of Debts
Which last Order includes the Land in
Controversey. That Said Executors in pur-
-suance of Said Orders Sold Said Land
in Controversey at the May Term 1844 of
Said Court and that Jacob Johnson the
Defendants Testator became the purchaser of
Said Land. That Said Executors Exchanged
and Overton reported their proceedings of
Said Sale to Said Court and that Said Court
at the May Term 1844 approved of Said
Sale and Said Executors executed a Deed
in pursuance of Said Sale to the Said
Jacob Johnson Which Said Deed and
a Transcript of the Record and proceed-
-ings of Said County Court are set forth
in the Bill of Exceptions and also
the Will of Said Jesse Overton, Which
Said Will contains the following clause
" I will and bequeath that all my just
debts be paid out of the personal effects
of My Estate". That Said Defendants
as the Executors of Said Johnson are and
Were at the bringing of this Suit in posses-
-sion of Said Land in Controversey. That
there Were Sufficient Personal Property
belonging to the Estate of Said Jesse
Overton in the possession of Said Executors to
pay all the debts of Said Testator, That
Plaintiff Deborah intermarried With the Plain-
-tiff Richard before the Commencement of this
Suit, The Court thereupon Decides that

that the Sum. County Court of Jackson County has no Power under the Will of Jesse Walton to order the Slaves belonging to said Estate to be Sold upon Sale. and ~~xxxx~~ the Real Estate to be Sold for the payment of the Debts and that said Sale by said Executors under said order did not pass the title of said Slaves out of the hands of said Jesse Walton

H. Young.

To which opinion and decision of the Court in finding the facts and in declaring the law as aforesaid Defendants Buchanan and Johnson Excepted and thereupon Defendants Buchanan & Johnson filed and made their Motions in Court to arrest of Judgment and for a new trial which said Motions are as follows,

William P. Walton Richard W. Dalton
James F. Walton & his guardian
Jonathan R. Palmer Plaintiffs
against
George W. Buchanan & Gordon P.
Johnson Executors of the last will
& Testament of Jacob Johnson dec'd
& Francis Dillman Defendants

Defendants Buchanan & Johnson now come to arrest the judgment herein Because 1st Plaintiffs Petition and the matters and things therein contained are not sufficient in law for Plaintiffs to have and maintain the same against Defendants

2d Because according to Plaintiffs own showing and according to the law and evidence judgment ought not to go for Plaintiffs but for Defendants,

3rd Because the finding of the Court is informal and insufficient in Law and does not warrant judgment for Plaintiffs

Hovey & Wood Attorneys for Defts.

William P. Overton Richard C. Dorton Deborah Dorton & James F. Overton by his guardian Jonathan R. Palmer Plaintiffs

Against

George W. Buchanan & Gordon P. Johnson Executors of the Last Will & Testament of Jacob Johnson dec'd and Franz Dettmann Defendants

Defendants Buchanan & Johnson move the Court to set aside the finding of the Court in this Cause and for a New Trial on the following Grounds

1st The Court Erred in deciding and declaring the Law of the Case as decided and declared by the Court,

2nd The finding of the Court is contrary to the Evidence.

3rd The finding of the Court is contrary to the Law.

4th The finding and Decision of the Court is against the Law and the Evidence

Hovey & Wood attorneys for Defts.

Which Joint motions in arrest and for a New Trial each and both of them Jointly the Court overruled and refused to arrest the judgment and also to set aside the finding of the Court and grant a New Trial herein and to which opinions and decisions of the Court in overruling

said motions on arrest of Judgment and for a New Trial and on refusing to set aside the finding of the Court and grant a New Trial said Defendants also Exceptions and pray that this their Bill of Exceptions may be Signed Sealed and allowed and made a part of the Record Which is done accordingly

H. Young. Seal

State of Missouri }
Jackson County } ss I Saml D Lucas Clerk of the Circuit Court Within and for the County aforesaid do Certify that the Preceding Forty Seven Pages and Part of the 48th Page contains a full True and perfect Transcript of all the Record and proceedings in the Case of William P. Overton & others against George W Buchanan & Gordon P. Johnston Executors &c & others as the same now remains of Record in said Court

In testimony Whereof I hereunto set my hand and affix the Seal of said Court at office in Independence this 19th Day of November A D 1852

Saml D. Lucas Clerk

Contents of Record

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19. ~~26~~

Wm P Overton et al, respdts.

Geo. W Buchanan and

G P Johnston, Exrs

of Jacob Johnson decd Appts

filed Nov. 29 1852

Wm E Dunscomb

Clerk

Jackson

[illegible]

[50]

In the Supreme Court
January Term 1853

George H Buchanan and
G. P. Johnson Executors } appellants
last will of Jacob Johnson dec

Ats

William P. Overton & others Respondents.

The Appellants come and say that in the Record and proceedings aforesaid, as well as in the rendition of the judgement aforesaid, there is error in this Court, Circuit

The Court ~~[illegible]~~ decided and gave judgement for Respondents whereas by the laws of the land, judgement ought to have been given for appellants

The Court erred in ~~finding~~ the facts as found by the Court,

The Court erred in declaring the law arising on the facts as declared by the Court,

The Court erred, in overruling the motion of appellants for a new trial and in overruling appellants motion in arrest of judgment

W. S. Wood
Atty for appellants

There is no Error

R. Hicks Atty for
Respondent

Buchanan & Johnson Errors
Appellants
Atty. Assignment
of errors,
Wm. P. Overton & others
Respondents

Filed 13th January 1853
W. E. Dunscomb
clk.

Wood for appellants

Joinder in error filed 15th
January 1853
W. E. Dunscomb
clerk

Overton & others

vs

Johnson & others

This was a civil action for the recovery of the possession of a tract of land in Jackson County brought by the plaintiffs as the children of Sepe Overton deceased who are here appellees against Johnson and Dillman who are the appellants.

The case as presented on the record shows the title of the parties to be as follows. Sepe Overton died seized of the premises in controversy having first made his will whereby he directed that his debts should be paid out of his personalty and ordered certain portions of his personal chattels to be sold and the remainder to be kept on the farm for the use of his wife and children. The real estate was by the will to be equally devided among his children when the eldest became of age. The testator left a number of slaves and considerable real estate. The executors presented a petition to the County Court ~~praying that the slaves~~ alleging that the personal effects which they were directed by the will to sell had been sold and that it was insufficient to pay the debts of the deceased and praying that the slaves might be reserved from sale and the real estate sold for the payment of debts. This petition on its face professed to state the amount of money collected and distributed the amount of assets of the estate the amount of debts allowed against the estate and also stated that there were other debts not yet allowed and exhibited a list of the lands belonging to the estate. Upon the exhibition of this petition the County Court at what is called the April term made an order directing that all interested in the estate should be notified ~~to appear~~ that unless they appeared and showed

cause to the contrary on the first Monday in June next an order would be made for the reservation of the slaves and the sale of real estate to satisfy the debts of the estate. This order recites that the executors had presented their petition for the reservation of the slaves and the sale of the real estate "accompanied by a true account of their administration a list of debts due to and ~~from~~ by said decedent and remaining unpaid and an inventory of the real estate and the remaining personal estate with its appraised value and all other assets in their hands, verified by the affidavit of said executors" The order further directs that notice of the application "be published in some newspaper published in this state for six successive weeks and this cause is continued until the first monday in June next" At a term called "the June term" the court on the application continued "the petition" of the executors until the first Monday of July next" At a term called "the July term" the court on motion of the petitioners "continued the cause until the next August term of the Court" At neither of these terms was there any proof of the publication of the notice to the persons interested in the estate. At the August term an order was made for the reservation of the slaves and the sale of certain portions of the real estate. The execution of the order of sale thus made was postponed by orders of the Court for one or two terms and after the sale had been made the executors presented another stating that the sales made were insufficient to satisfy the debts of the decedent and praying for an order to sell other parts of the real estate. This petition was not accompanied by any account of the condition of the estate nor was any order for notice made by the Court nor does it appear

that any written report was made of the proceedings of the Executors under the previous order of sale Upon this last petition an order was made for the further sale of real estate and under this order the property now in question was ~~made~~ sold to Jacob Johnson to whom the property was conveyed. The executors made one report embracing all their proceedings under the different orders of sale which report was confirmed by the Court.

The objections to the proceeding which resulted in the sale and conveyance of the property, present the points which have been discussed at the bar and are to be decided by the Court. As this action for the recovery of the possession of the property rests upon the ground that no title passed to the purchaser by the sale and conveyance made by the Executors, we look for such defects as will render the proceeding void

It is first urged that the County Court had not jurisdiction of the cause so as order a reservation of the slaves and the sale of the real estate in order to pay the debts when the will directed "that all the testators debts should be paid" out of the personal effects of his estate" In order to determine the question of the jurisdiction of the Court we do not look to the provisions of the will but to the statute which confers the jurisdiction, and if we find a jurisdiction there conferred, which embraces all cases in which application may be made for the reservation of personalty and the sale of real estate the provisions of the will may furnish conclusive objections to the exercise of the power in the given case but do not take away the power itself.

The jurisdiction exists independently of the will by force of the statute. In the present case the testator directed the sale of a small part of his personal effects and made a disposition of the remainder in the will. ~~To sale~~ The sale of the property thus disposed of ~~was at least~~ would have been contrary to the expectation of the testator although he might have preferred that to a sale of the realty. ~~It is not~~ Whether the charge of the debts upon the personalty was an absolute charge that in law required the executors in executing the will of the testator to exhaust that fund before resorting to the real estate was a question that the County Court was to decide but in order to decide it there must be a case presented in a form that would bring the question before the Court. When it decided, however manifest the error of the decision may have been, it was acting upon a subject over which it possessed jurisdiction, if the statute is comprehensive enough to include all applications by executors for the reservation of personalty. The statute is in these words; "If <u>any executor or administrator or other person interested in any estate</u> file a petition, setting forth the facts describing the real and personal estate and praying that the personal estate be reserved, and real estate be sold for the payment of debts, the same steps shall be taken and the same proceedings and publication had, as above directed, upon a petition to sell real estate for the payment of debts, and the court may order, that the whole or any part of the personal estate be reserved, and the real estate, or any part of it, may be sold at public or private sale." Revised Code of 1835. page 52 Sec 14. This section allows the

power to exercise the power and to make the order not merely on the application of an executor or administrator but on the application of any person interested in the estate and the power is intended to be exercised in cases where without such order it would be the duty of the executor or administrator to sell the personalty, and not the real estate. For the purposes of jurisdiction, there is nothing in the statute to restrict its general terms, because of any provisions in the will; and whenever jurisdiction is acquired its erroneous exercise will not render the proceedings and judgment of the court void.

It is next urged that the Court had not jurisdiction because the petition was not accompanied by the accounts lists inventories and appraisements which the statute requires. The 8th section of Article 3 of the administration law in force when these proceedings were had (Revised code of 1835 page 52) directs that "if any person die, and does not leave sufficient personal estate to pay his debts the executor or administrator shall file a petition to the County Court stating the facts, and praying for the sale of real estate or so much thereof as will pay the debts." The next section provides "Such ~~petitions~~ shall be accompanied by a true account of his administration, a list of the debts due to, and by the deceased, and remaining unpaid, and an inventory of the real estate, and of the remaining personal estate, with its appraised value, and all other assets in his hands, the whole verified by the affidavit of the executor or administrator." The section of the statute in relation to the reservation of personal and sale of real estate to pay debts refers to the sections just

copied ~~as~~ for the mode of proceeding.

This objection to the jurisdiction of the County Court is not new in this Court. In the case of Fry & Edmonds vs Dillon Kimbal decided in St Louis this question was discussed. The case is not reported, and since the time of the decision two of the judges of the Court have ~~been changed~~ left the bench, and their places have been supplied by others, so that no certain reference can be made to the principles there settled.

In some of the States, and particularly in New York it has been laid down and enforced as a settled principle of law in relation to sales under the orders of their Surrogates, that there is to be shown a strict compliance with all the requirements of the law, in order to pass the title to land, and many of the cases show an astuteness in the detection of defects which must have the effect of shaking confidence in such sales. On the other hand, there are decisions of high courts, even as high as the Supreme Court of the United States, which apply very liberal principles in sustaining such sales. Grignons lessee vs Astor 2 Howard 335. If we examine our own statute to determine whether the Court has jurisdiction we ascertain that the administrator executor or other person who desires the action of the Court files a petition and then there is a direction that the petition shall be accompanied by certain accounts inventories and lists. The petition asks for the action of the Court the other papers which are to accompany the petition are intended to give evidence to the Court of the necessity or propriety of the action which the party seeks in the petition. The action of the Court is upon the petition and consists in granting or refusing its prayer.

Now it is not ~~perceived that~~ believed that upon any reasonable ground, the jurisdiction of the Court can be made to depend upon the fact that the petition is accompanied by all the accounts and other exhibits ~~directed~~ to be filed. It might as well be contended that as the letter of the statute requires the account to be "a true account of the administration" a defective or false account would prevent the jurisdiction from attaching. It is true that the statute directs that ~~upon~~ "when such petition and such accounts lists and inventories shall be filed the Court shall order that all persons interested in the estate be notified &c" but this provision is only designed to carry out the direction of the previous section and does not affect the question of jurisdiction. The jurisdiction is acquired by filing a petition praying the court to do an act or make an order which under the statute the Court is competent to do. Whether the petition is in proper form or sets forth sufficient facts or is accompanied with the proper evidence the Court must decide in the exercise of its jurisdiction.

Many of the decisions in other states justify the extreme strictness with which the proceedings of these tribunals are regarded, by considering them as inferior courts of limited and special statutory jurisdiction where the jurisdiction must be shown and the proceedings must be in strict conformity to the statutes under which the courts are organized. The proceedings of such courts are also considered as divesting the estates of heirs when land is sold under their orders for the payment of an ancestors debts and this is regarded as an additional reason for

requiring a strict compliance with the law. Under our judicial system, these courts although statutory, are required by the constitution to be established, Constitution Art 5 Sec 12. They are courts of record; Revised code of 1835. 157 Sec 18. An appeal lies from their order for the sale of real estate; Revised code 63 Sec 1. They are then in no other sense inferior tribunals, than are other courts whose judgments may be reviewed by a court of appellate jurisdiction. In the present case however this examination of the character and powers of these courts need not be further continued for the question which is raised ~~in this case~~ as to the jurisdiction of the County Court when proper accounts were not filed, does not properly arise. The order which was made by the County Court, recites, that the Executors presented their petition, and ~~recites~~ that it was accompanied by the account, lists, and inventories, which the Statute required to be filed, and in the body of the petition the general amounts of the different lists and inventories are stated.

It is next objected to the proceedings that the order made by the County Court on the presentation of the petition for the notification of persons interested was made at what is called the April Term when no such term existed by law, and required their appearance on ~~at~~ the first Monday in June when no such term could possibly have existed under the statute as the terms of the County courts were required to be held once in three months. It may be a sufficient answer to this objection as it is presented on this record that it does not appear that the Court may not have changed the terms as they were fixed by law, under the power which

the statute confirmed upon them. It is undoubtedly true, that when an order is made for the notification of parties interested in an estate, to appear and show cause against the prayer of the petition, the statute requires, that the notice shall be for the first day of the next term of the Court; but this record does not show, that the then next regular term of the Court, may not have commenced on the first Monday in June. Whether then any defect in the order would be available to the parties now impeaching ~~the sale~~ or not, the defect alleged is not shown on this record. In Grignon's lessee v Astor, the record from the Court which ordered the sale, showed no order for the notification of the parties interested in the estate, although the statute of Michigan required such order to be made, yet the Court held that the want of such order did not affect the validity of the sale. It is not necessary in this case to say whether we are prepared to go so far under our statute.

Another objection is made because the children of Overton were minors, and no guardians were appointed. The statute makes no provision for the appointment of guardians ad litem in a proceeding for the sale of land, nor does it provide that the fact that persons interested in the estate are minors, shall in any manner affect the course to be pursued. The real estate of intestates whose heirs may reside in distant parts of the Union, is to be sold for the payment of their debts, in the same manner, and under the same proceeding that is directed where the heirs reside here, and in neither case are they named in the record or their particular interests noticed. The effect of the proceeding, when the statute is complied with, is to vest the title of the property in the purchaser as it was in the deceased at the time of his death. ~~The title~~ In this state, all property real and personal, which is left by a debtor at his death, is subjected to the payment

of all his debts, without regard to their dignity, as specialty, or simple contract debts, and the application of the assets to this object, is made through an administration act, by the courts having probate jurisdiction. While the title to real estate, may be said to descend to the heir immediately on the death of the ancestor, such ~~descent~~ estate, is subject to be applied to the payment of debts, in the mode and by the proceeding prescribed by the statute. In the hands of the heir the title is subject to this power to be exercised by the Court. If the statute then directs a general notice to all interested, to be published, and authorises the sale upon proof of such publication, we are not justified in requiring that where there are minors interested, as is most generally the case, the record shall shew that ~~th~~ guardians were appointed for the minors. An infant may be bound by a statute unless expressly excepted, and so may be bound by a proceeding under a statute like the present.

It has been thought proper to notice the most prominent objections which in the argument of this case were made to the proceedings of the County Court of Jackson County, although the decision of the Circuit Court upon the trial of this case, was made upon a single point, which was, "that the County Court of Jackson County "had no power under the will of Jesse Overton, to order "the slaves belonging to the said estate to be reserved "from sale, and the real estate to be sold for the payment of debts" The decision was entirely upon the construction of the will and in the opinion of the Court the decision was erroneous. ~~Upon the power of the~~ The power of the County Court does not depend upon the correctness with which they have interpeted the will. The views of this Court have been expressed on the other points mentioned in this opinion, in order that when they are to be passed upon by the Circuit Court at a subsequent

trial they may be determined with the knowledge of the views which this court entertains

The judgment is with the concurrence of the other judges reversed & the cause remanded for further proceedings

A R Gamble

(23

Overton Lothers

v

Johnsons Exctor

Opinion

H R Gamble

filed March 15th 1853

Wm E Dunscomb

Clerk

[12]

William P. Overton Et al. Respondents
against
George W. Buckhan } Executors of Jacob Johnson, app. Ant.
Gordon P. Johnson }

Respondents William P. Overton, Richard W. Carton, Deborah Carton and James F. Overton, by his guardian Jonathan R. Palmer at the September term of the Jackson Circuit court 1850, Commenced an action of Ejectment, By petition against Jacob Johnson and ~~to~~ Francis Kitman, to recover the possession of a certain piece of land in the petition mentioned, which they alledged said Johnson and Kitman, unlawfully withheld from them, Defendant Johnson appeared and filed his answer to said petition, And denied that he or his Codefendant Kittman, unlawfully entered into the possession of said land, or that they or either of them unlawfully withheld the possession thereof from plaintiff, admitted possession of the land, and asked that the default of his Codefendant Kittman might not prejudice him, as Kittman had no interest in the land, At the September term of the said Court 1851, the death of Johnson was suggested, And it was thereupon ordered that the suit be revived ~~in~~ and proceed in the name against his Executors George W. Buchanan and Gordon P. Johnson, The cause came on for trial at the September term of said Court 1852 and the cause was submitted to the Court without a jury, and the following facts appear in the case from the Evidence

That Jesse Overton made his last and testament, thereby appointing John R. Swearingen and Asa Overton, Executors of said will, That said Jesse Overton, after making said will died in the fall of 1841, That after his death probate was taken of said will, and the same duly recorded in Jackson County, where testator at the time of his death resided, That Executors Swearingen and Overton qualified under said will, and took upon themselves, the administration of said estate, That said testator at the time of his death, was seized and possessed of the land in controversy, together with other tracts of land situate in Jackson County and left considerable personal property, That said testator left the plaintiff William P. and James F. and Jesse Overton and Elizabeth Overton, his children and only heirs, and plaintiff Deborah his widow. That the two children Jesse and Elizabeth, shortly after the death of testator and before the commencement of this suit died, leaving the plaintiffs William P. and James F. their brothers and the plaintiff Deborah their mother their only heirs and legal representatives, That all the children of said testator were minors, and plaintiffs William P. and James F. were minors, when the land in controversy was sold as hereinafter stated. That the Executors, presented a petition to the County Court of Jackson County at the April term thereof 1843. praying

For an order of said Court, to reserve from sale the Slaves belonging to the estate of said testator, and for the sale of the real estate of said testator for the payment of debts of said testator, That said Court made an order requiring said Executors, to notify all persons interested in said estate to appear at the May term following, which order was published, at said May term said proceedings were continued to the August term following, and at the August term 1843. said Court ordered a portion of said land described in the schedule annexed to executors petition to be sold for the payment of debts of testator, and that the Slaves belonging to said estate be reserved from sale, That said order of sale did not include the land in controversy, But that at the February term following of said Court, an additional order was made for the sale of additional portions of said land in said schedule described, for the payment of debts, which last order included the land in controversy, That said executors in pursuance of said order, ~~said executors~~ sold the land in controversy, at the May term of said Court, that Jacob Johnson, defendants testator, became the purchaser thereof and that said executors reported their proceedings of said sale to said Court and that said Court at the May term 1844, approved of said sale, and said Executors made to said Johnson a deed for the land

The will of said testator, expresly directed that the debts of testator should be paid out of his personal estate., That ~~these~~ the lands in Controversy, with all the other lands of which the testator died seized, with the exception of a small tract, which the Executors were authorized to sell, were devised by the will, to the widow, and heirs of testator. That there was plenty of personal property in the hands of the Executors belonging to testators estate to pay all his debts, at the time the petition of the Executors was filed to reserve the ~~land and~~ slaves and sell the land,

That said Deborah before the Commencement of this suit intermarried with plaintiff R. W. Darton, all the orders, reports proceedings petitions &c in Relation to the sale of the land in Controversy, had in the Jackson County Court, and reserving the personal property from sale, as well as the will of testator Overton, will be seen in the Bill of exceptions,

The Court found the facts in the Case, ~~and declared the~~ and declared the law thereon, to be for the plaintiffs, and gave judgement for the plaintiffs, accordingly, The ~~facts~~ findings of the Court will be seen at page 43 of the record.

During the progress of the trial and before the Cause was finally submitted to the Court, Respondents filed their motion to exclude, as evidence the record of

The Jackson County Court as well as the deed from the Executors, Swearingen & Overton to Johnson offered in evidence by appellants, which motion does not appear by the record, to be otherwise disposed of, than by the giving of the Court, appellants filed their motions in arrest of judgement and for a new trial, which were, by the Court overruled, And the opinion of the the Court in doing the same excepted to, a bill of exceptions filed tendered, signed, made a part of the record and the cause comes into this Court by appeal,

Respondent insist that the Court below committed no Error, in overruling the motion in arrest, For that the cause of action set forth in the petition, is sufficient in Law, See the petition at pages 1 & 2, of the record.

The Court committed no error in overruling the motion for a new trial, Because the sale of the land to Johnson, by said executors, Swearingen and Overton, under the Orders of the Jackson County Court was void, and the deed made by them to Johnson, for the land, conveyed no ~~title~~ interest, whatever, and the title to said land was, and still is in plaintiff, Respondents.

And the respondents make the following points.

pt. The orders of the Jackson County Court, ordering the executors, to notify all persons interested in the land, to appear at a certain term and show cause, why the the real estate of their testator should not be sold, ~~and~~ for the payment of his debts and ~~the~~ personal property ~~from sale~~ be reserved from sale, ordering the land

To be sold, and the, order confirmatory of the sale, are not conclusive on the rights of the Respondents, ~~are not concluded by them~~ and they being infants, have a right to look behind those orders, and see that the requisites of the law have been substantially complied with, before they can be divested of their property and rights, The county Courts, are Courts of limited jurisdiction, they are creatures of the Statute, and, when they are authorised to do certain ~~things~~ acts by the Statute, and that Statute requires certain formalities, to be performed, previous to the Courts action, such formalities and requisites, must be strictly performed, before such court, ~~ha~~ obtains any jurisdiction over the subject matter,

To establish this proposition the following cases are in point, × Blonne vs. Burdick 1, Hill 130. Bordon vs Fitch. 15th J. R. 121
× Bigelow vs. Stearns 19 J. R. 39
Miller vs. Martin 19. J R. 7
× Hakin vs. Hudson 6. Cowen 221 221
3. Cowen, 90. Jackson vs Collins
× 11. Wendal, 647. Denning vs. Corwin ×
× Messenger vs. Kintner 4th Binney 97
Smith vs. Rice 11. Massa^ts R 507. ×
Proctor vs. Newell 17th Massa^s R 91
6 Wheaton. 119.
Jackson vs Esty 7 Wendal
× Atkins vs. Kinnan 20. Wendal 241
Jackson vs. Shepherd 7 Cowen 88
Williams vs Peyton 4 Cranch,
6 Smedes & Marshal 257
Knox vs. Jenks. 7 Massa^ts.

× Thatcher vs Powell 6. Wheaton 123

× Thomson vs. Brown 4. 16th Massa^ts R 174
× 5th. Pickering, Heath vs. Wells 140.
× Williams vs. Lawrence 15 Massa^ts, 312,

The cases of Jackson vs. Robinson 4th Wendal 436. & Jackson vs. Crawford 12th Wendal 533 of Perkins vs. Fairfield 11. Massa^ts. 227. and Leavitt vs. Harriss, 7 Massa^ts R. 144. may seem to militate against this doctrine, But upon close examination they do not, But are rather confirmatory of it,

2°. The doctrine of presumptions, that every think was done by the executors that the law required to be done, in order to give the County Court jurisdiction, cannot arise in this case, as the Appellants, themselves introduced the whole record of the County Court in evidence, to support their title, and it would be an absurdity to call on the Court to presume, all the prerequisites of the law complied with, when by their own showing it has not been done, See, Messenger vs. Kintner 4th Binney 105, 103,

3°. The proceedings in the County Court by the executors, to obtain an order for the sale of the sale of the land, was based on the 14 section of the 3° article, of the administration law. R. V. Statutes of Mo. 1835 which is as follows.

"If any Executor, or administrator, or other person
" interested in any estate, file a petition setting forth
" the facts, and describing the real and person-
" al estate, and praying that the personal Estate
" be reserved, and the real estate be sold, for the
" payment of debts, the same steps shall be taken
" and the same proceedings had as and publi-
" cation had as above desicted, upon a petition
" to sell real estate, for the payment of debts, and
" the Court may order, that the whole or any
" part of the personal property may be ~~sold~~
" reserved, and the real estate, or any part of it,
" may be sold, at public or private sale."

The 8th,
and 9th Sections of the same article contain
the proceedings necessary to be had in order to
obtain a sale of land for the payment of debts,
and read as follows. 8th Section, "If any
" person die, and not leave personal prop-
" erty sufficient to pay his debts, the executor
" or administrator shall file a petition to the
" County Court, stating the facts, and praying
" for the sale of such estate, or so much thereof, as
" will pay the debts."

By the 9 Section, "Such peti-
" tion shall be accompanied by a true account
" of his administration, a list of the debts due to,
" and by the deceased, and remaining unpaid,
" and an inventory of the real estate, and an
" ~~inventory~~ of the remaining personal estate, with
" its appraised value, and all other assets in his
" hands, the whole to be verified, by an affidavit
" of the executor or administrator."

None of the
Requirements of the 9th section were, such

Even substantially complied with by the executors, before the first order was made by the County Court, No account of the administration was filed, No list of debts, due to the testator was filed, No list of debts due by the testator and remaining unpaid was filed, No inventory of the remaining personal estate was filed with its appraised value, ~~was filed~~, and No list of the other assets in their hands, was filed, and no affidavit of a list of debts due to the testator, nor of debts due by him and unpaid, nor of the remaining personal estate with its appraised value was made, An affidavit that the petition and the facts therein ~~stated~~ was true, was all that was sworn to, And the County Court gained no jurisdiction over the subject matter, for the reasons aforesaid And their orders, so made without jurisdiction were and are nul and void, See as this point the authorities referred to on the first point, and also, the Cases of Knox vs Jenks 7 Mass R Sneeder & Marshal Mississippi R 259. Stiers vs Stiers 1 Spencer New Jersey R 52, State vs Conover 6. Halstead N.J. 343-4 Wellman vs. Lawrence 15 Mass R 311 Denning vs. Corwin 11 Wendals R, 657, 651

34 The order of the Jackson County Court, ~~for the~~ directing testators, Executors to sell the land was in itself nul and void, ~~No~~ The amount of debts due by the testator, and for ~~which~~ the payment of which the land was to be sold,

was not ascertained by the order, It had not been ascertained by any list or Schedule filed by the Executors. On their application for an order sale, Only that the estate of testator owed something, and the Executors had heard that there were a good many more debts against testator, unproved and they did not, know whether they ever would be ~~sold~~ proved, , And on these assertions and none others, land to an unlimited extent almost, is ordered to be sold, Such proceedings, cannot be upheld, by enlightened courts of justice.

See, as to this point, ~~Stiles vs~~ Stiers vs. Stiers. 1 Spencer N. J. R, 52 1844.
State vs. Conover 4th Halstead N. J. 343-4
Wellman vs. Lawrence 15th Massa's R 311, 20 Wendal 249.

5th, The County Court of Jackson County had no jurisdiction to order a sale of the land at the February term 1844 no continuance, had been made of the of the proceedings, to that term, The order for the sale of the land in controversy, had ceased, And was no longer in force, The County Court of their own motion, nor at the instance of the executors, Could not

Revive it. Another petition and order and notice to show cause, why my land should not be sold, was at least necessary to the validity of the sale, And then for the sale was void.

6th. The County Court of Jackson County obtained no jurisdiction, in this case over the persons of the Respondents The 12th Section of the 3d article above referred to, Enacts, "When such petition, "accounts, lists and inventories shall be "filed, the court shall order, that all "persons interested in the estate, be notified "thereof, and that unless the contrary "be shown on the first day of the next "term of the court, an order will be "made, for the sale of the whole or so "much of the real estate, as will pay the "debts of the deceased."

No such notice was given, and respondents, were not in Court either actually, or constructively. The notice of publication will be seen in the Bill of exceptions, at pages 25 & 26 of the record. And after stating that a petition, so hereinbefore filed reads as follows,

"Whereupon "it is ordered by the Court, that all "persons interested in the said estate "be notified, that unless the contrary "be shown, on the first Monday in "June next, an order for the sale of

"The whole, or so much of said real estate
" will be made, for the reservation of said
" Slaves, and for the sale of the whole,
" or so much of said real estate, in said
" petition mentioned, as will pay the
" debts of said deceased, And it is
" further ordered, that notice thereof
" be published, in some newspaper
" printed in this State, six successive
" weeks."

Now the notice is not to ap=
=pear on the first day of the next term of the Jac
=kson County Court, But to appear
on the first Monday in June next,
When, Before whom, What Court,
What term, Echo answers where,
Would such an order a notice be good
on any person for any purpose, Would
a summons be good, commanding a
man to appear, on the first Monday in
June next, and show cause, without
saying before whom, what Court, what
term, and when to be holden, I think
most assuredly not. And great as the
abilities of the gentlemen on the other side
are, they can hardly maintain it, And
are infants and their rights to be excluded
to be concluded, by such a notice "when it is to be intended
that construction notice is all they are
entitled to,

Now suppose the no=
=tice had been, to appear before the
Jackson County Court at the Court
house, on the first Monday in June
it would still have been bad

The law (See R.C.S. 1835. page 164) appoints four terms a year of the County Courts to be holden on the first Mondays in February, May, August, & November, But the County Courts, may alter their Statut terms, by giving such notice thereof as to them may seem expedient. Now it does not appear that the County Court of Jackson County ever altered, the Statut terms of holding their Courts, But the contrary does appear from the record in this case, The petition was filed the 4th day of April, and the notice was to appear on the first Monday in June thereafter, and the cause was continued until the first Monday in June, (See the record pages 25 & 26.) Now both April and June were not, and could not be Statut terms of the Court, The fact is, that neither were Statut terms of the Court, The record shows it, and the respondents could not be noticed, to any But the next Statut term of the Court, The County Court had no jurisdiction, to originate such a proceeding as the present one, at an adjourned, or special term or when originated, to cause the respondents to be cited to appear at an adjourned term, and for the double reasons, in this point contained the sale is void. It will be borne in mind and for these double reasons in this point contained the sale was void,

8th But if even every thing, notice, &c. &c. had been strictly conformable to the statute, ~~that~~ up to the time of ordering the sale, the County Court had no jurisdiction to order the sale,

Two of the respondents were minors, at the time of ordering the sale, And it will be borne in mind that a sale of land was not necessary to the payment of debts, no rights of creditors were concerned, The motion then was purely voluntary on the part of the Heirs, and the statute never intended, that such sales should be made, without the infants being brought into Court, and their rights fully represented, Respondents had no Guardian when the application for sale was made, They never were when the land was ~~mad~~ sold, They are treated like strangers throughout, without interest in the land, Both by the Heirs and the Court,

Their rights are disregarded, What kind of notice to an infant, a mere ~~baby~~ child, is a notice of publication, none in fact,

The only effect of the notice, in this case, (supposing it to be a notice, which it was not) was to bring the infant Respondents into Court, like service of notice on infant by a Sheriff, when the order of publication was proved, Guardians should have been appointed by the Court,

For the infant heirs, before the Court, could proceed to an order of Sale, and for lack of this the Court no jurisdiction to order a Sale

See Messinger vs. Kintner

4 Binney 103.105.109

The people vs Utica insurance Co 15th J R 379

9th. If such notices are conclusive on infants, without Guardians being appointed, if their rights and property are to be thus bound and concluded, then is the act of the General assembly of the State of Missouri which authorises it, unconstitutional and void, by the 7th. Section of the Declaration of rights,

10. The will of the testator Overton, directed his debts to be paid out of his personal property, — and there was enough to do it,

This disposition belonged to him as of right,

The testators will, was the law to the executors,

They were not warranted by law in departing from it, unless the rights of creditors interfered and in this case they did not,

To assume such a power, was unjustifiable,

And to Sanction it, would be, to set the will aside, and do what they themselves think proper and expedient,

The law gives not the executors any such power;

They ought not to have,

Neither they, nor the court can destroy the will,

Therefore by reason of the will the sale is void,

See Covenhaven vs. Covenhaven 1 Cox N.J.R 210, Voorhees vs. Soorthoff, C. Halstead N.J.R. ~~XXX~~ 145; 7 Smith vs Rice 11 Mapa^ts R 507

15th Peters R. 111 Brush vs Wase et al

10th. The action of the County Court in ordering the sale, was in direct opposition to the laws of this State, which direct, that all Courts and others concerned, in the execution of last wills, shall have due regard to the direction of the will, and therefore the sale is void.

See the 35th Section of the 2^d article of the Adv. Law. R.V.S. 1835. page 49, ~~Title~~ Title wills, same book, page 621. ~~article~~ Section 34,

The executor of appellants, Johnson, is chargeable with notice of the will, He ~~is~~ is chargeable with notice of all the proceedings, had

The proceedings had in the Jackson County, Court,

He is chargeable with want of Notice to ~~those~~ the heirs of Overton,

He bought at his peril,

He bought for a trifle, & 2,50 Cents per acre,

There is no hardship upon him,

In the face of the will he bought,

against the express provisions of the law, he bought.

And if his Speculation turns out, adverse, he has no right to complain, nor any One for him,

See Willis vs. Butcher 2 Binney Pa, R. 405.

Brush vs, Ware 15th Peters R. 112,

Neely vs. Livingston 10. J. R 374,

But 11 It is said that as the law allows an appeal in such Cases, and as none was taken, the orders should stand, That respondents were never in Court, and had no opportunity to appeal, is the thing of which we complain,

This objection is well answered, and better than I can do, by Jackson, Judge, in the case

In the case of Smith vs. Rice 11th Massachusetts R, 507. when he says.

Nor is there much reason to suppose, or fear, that titles, to any great extent, derived from Executors and administrators, of lands by them sold for the payment of debts, will be unhinged, or shaken by an affirmance of this judgement, For perhaps in no other case have executors and county courts, so flagrantly violated the law, and the will of the testator as in this, And if some few titles should be shaken by the affirmance of this judgement, Yet infant respondents are not for that reason to lose their rights and property,

Hicks for ~~appellant~~ Respondents

Overton A. Respondents
vs. } Additional Brief of Res.
Johnsons Executors appellants

No order of publication was made and published, notifying all persons interested in the estate, to appear at any term of the Jackson County C. Respondents had no notice by publication to appear at any term of the Jackson County Court, and show cause &c.

The law provided that four terms of the County Court should be held in each year, at ~~the~~ on the first mondays of February, May, August and November, See Statute of Mo. 1835, page 164 25 Section, by the 26 Section of same act, County Courts, were authorized to alter their stated terms, giving ~~such~~ notice thereof in such manner as to them shall seem expedient, It does not appear that the stated terms of the Jackson County had ever been altered, Had they been altered they would still have been stated terms, The petition was filed at the April term, and the notice was to appear "on the first Monday in June", April and June could not both have been stated terms, If the April term was an adjourned term, ~~as the law then~~ or a special term as the law then stood, no new business could be originated thereat, If April was the the stated term, then June was no regular term, And by 12 Section of the act,

The order and notice of publication in this case, after stating that a petition had been filed, reads as follows.

Whereupon it is ~~considered~~ ordered by the Court, that all persons interested in ~~the~~ said estate, be notified that unless the contrary be shown, on the first Monday in June next an order will be made for the reservation of said slaves and for the sale of the whole, or so much of ~~the~~ said real estate in said petition mentioned as will pay the debts of said deceased, And it is further ordered that notice thereof be published in some newspaper printed in this State, six successive weeks, And this cause is continued until the first Monday in June next.

Now the 19th Section of the above recited act page 52, Requires, that when

"The notice is not to appear at the next term of the Jackson County Court, But to appear on the first Monday in June, ~~when~~, where, before whom what court, what term

Would such a notice, be good on a person for any purpose a summons commanding a man to appear on the 1st Monday in June, ~~or in default~~ and show cause, without saying before what court, what term, and when the term is to be holden, Most assuredly not, And are infants to be bound by such a notice when construction notice when it is contended construction notice is all they are entitle to, I say no.

~~Overton vs. Hall~~

Overton & Co

vs. } Brief of Respondents

Johnson Executors

(Hicks)

[24]

In the Supreme Court.
Jany. Term 1853

William P. Overton & others } Plaintiffs
against } Respondents
George W. Buchanan &
G. P. Johnson Exrs. of } Defts.
Jacob Johnson dec'd, } Appellants

This case was brought up by appeal from the Jackson Circuit Court.

It was a suit by Petition, in form of ejectment, to recover a certain tract of land, in possession of decedent Jacob Johnson in his life time, and since his death in the possession of Defendants, & Defendants below are appellants.

On the trial Plaintiffs read in Evidence, the following certificate

"Receiver's Office, Lexington May 11th 1834
Received from Jesse Overton of Jackson County the sum of Fifty Dollars in full for South west quarter of the South East quarter of section No. Five of Township No. Forty nine in Range No. twenty two Containing forty acres at $1 25/100 per acre
Duplicate
~~$50~~ E. W. Ryland Receiver"

Plaintiff then proved that Jesse Overton died in the fall of the year 1841, leaving as his widow the plaintiff Deborah Marlow who has since intermarried with plaintiff Richard W. Marlow, and that said Overton left as his children and heirs, the plaintiffs William P. Overton and James F. Overton and also Jesse Overton and Elizabeth Overton all then minors, and that the two last named children have since and before the commencement of this suit died and without issue and without having been married, and that said Overton had no,

other children 2 or heirs, and it was admitted that the land in dispute lies in Jackson County, and possession of Defendants as executors, was also admitted and this was all the evidence given by plaintiff.

Defendants also claimed under the title of decedent Jesse Overton, and proved that Jesse Overton having died leaving his will, letters testamentary were by the County Court of Jackson County granted to Aaron Overton and John R. Swearingen, on the 20th day of December 1841, who gave bond for the performance of the trust according to law. That on the 4th of April 1843, said Executors presented to the County Court their petition, stating that they had sold all the personal property they were authorized by the will to sell, and the proceeds with all other available assets were insufficient to pay decedents debts, and that a sale of the land and a reservation of the slaves would be greatly to the interest of the estate, and praying that the slaves might be reserved from sale, and for an order for the sale of so much of the land as should be necessary to pay debts.

This petition was accompanied by an account of the administration and of the assets, a statement of amount of debts due to and from the estate and an inventory of the real estate as required by law. The inventory included the land in dispute.

On this petition, at April Term 1843 an order for publication of notice as required by law was made. And notice given accordingly.

June term 1843 continued to July term 1843

July 1843 continued to August 1843

August 1843 order was made, which recites that "It appearing to the satisfaction of the Court that the personal property of the deceased is

insufficient to pay his debts and no objection having been filed, to reserving from sale the slaves belonging to said estate" and therefore orders the slaves to be reserved, and so much of the land to be sold as is necessary to pay debts, and specifies a portion of the land for sale not including the tract in controversy.

Nov. Term 1843, time of sale postponed by order

Jany. Term 1844, time of sale of part of the land by an postponed until May.

Feby. Term 1844. Order recites, as follows, "Now at this day come the Executors aforesaid and represent to the Court that the real estate ordered to be sold by an order made at the August term 1843 of this Court, is insufficient to pay the debts of the deceased, and pray the Court for an order of the sale of four other tracts of land in said petition mentioned", and an order was accordingly made for the sale of said tracts including the land in dispute.

At May term 1844, the executors made report of sales, with affidavits and certificates of appraisement as required by law.

July term 1844, the report was approved and the sale confirmed, and among the sales made reported and approved, was the sale of the land in controversy, to decedent Jacob Johnson.

And at the August term 1844, the deed ~~made by the dect~~ made by the executors, and which was also given in evidence on the trial, was presented to the Court and duly acknowledged, ~~The~~

All these facts appeared and were proved by a transcript of the records and proceedings of the County Court. The said transcript also includes a copy of the will of Jesse Overton, which was also in evidence on the trial. The provision

of which are in substance as follows. [A]

1. "I will that all my just debts be paid out of my personal effects."

2. By the second section the Testator wills and bequeaths to his wife during her natural life 80 acres of land including his dwelling house and orchard, and also during her natural life, his negro man Ralph and woman Juda, and the ballance of his personal estate except some Spanish mares, it was his wish should remain upon the farm, as joint property of his wife and children, except three wagons, with equipage and twelve or fourteen yoke of oxen, which he directed to be sold; also bequeathed a horse saddle and bridle to several of his children, directed the completion and running of a mill, directed a woman Dinah to be hired out privately in the neighborhood, and provided that no division of his real or personal estate should take place until his eldest son should become of age, and when most his children, William, James H. Jesse & Elizabeth Jane were each to receive an equal share thereof.

To this will there was a codicil, which directed his Executors to use and the contract he had made for building a mill, and if that could not be effected, directed the sale of the mill and mill tract of land.

There was no evidence that this will was ever recorded in the office of the Recorder.

The whole case turned on the validity of the proceedings of the County Court.

By consent of the parties the case was submitted to the Court without a jury and by like consent & by agreement of the parties, the Court in writing found the facts and declared the law & among the right of exception

to the parties respectively.

The Court found the facts substantially as above with this exception that the Court without and contrary to the evidence, found that the will "had been duly recorded" and thereupon the Court decided, and declared the law as follows, "That the said County Court of Jackson County had no power under the will of Jesse Overton to order the slaves, belonging to said estate, to be released from sale and the real estate to be sold for the payment of the debts and that said sale by said executor, under said order does not pass the title of said land, out of the heirs of said Jesse Overton" To which opinion and decision of the Court in finding the facts and declaring the law Defendants excepted.

Defendants also made their motion for a new trial and in arrest of Judgement, which were overruled by the Court and exception saved by Defendants

Defendants Counsel will insist on

1 That the Testator Jesse Overton evidently assumed and supposed when the will was made that the personal property he directed to be sold would realize enough to pay all debts. For all his estate both real and personal he disposed of for other purposes.

2 It is apparent the testator never entertained the question, whether land or slaves should be sold, if necessary to pay debts, for it is clear he never anticipated such necessity would arise, at least not until the making of the codicil, and then he directs the sale of land.

3 The sale of neither land nor slaves

was intended by the testator, and the sale of either was contrary to the provision of the will, and when the necessity of a sale arose in order to pay debts, the County Court had jurisdiction and power to determine and direct on a proper case presented, which should be sold and which reserved.

4 Whatever may be the true construction of the will, under our Statute, the County Court had authority and power, to reserve the slaves and order the sale of the land.

5. The petition of the Executors, presented to the County Court on its face, shows a case of which the County Court had jurisdiction, and altho' this Court may be of opinion the County Court erred, in reserving the slaves, and ordering a sale of the land, it was but error that might have been reversed on appeal, and cannot be reached or remedied in a collateral proceeding. The will and its provisions, before the County Court, on the hearing of the petition of the Executors, were evidence only, and there can be no judicial enquiry into the evidence, and behind the order and judgement except by appellate power.

6 Assuming the ~~the~~ will was before the County Court, on the hearing of the petition of the Executors, the inspection and construction of the will was an exercise of judicial powers, demanded by the facts of the case, and to order or refuse to order a sale as prayed for by the petitioners could not have been evaded or avoided by the ~~County~~ Court.

7 Our law confides to the County Court full jurisdiction over the estates of deceased persons, and a sale of lands ordered by that Court in the course of administration is a judicial sale, and the

purchaser is protected by the jurisdiction of the Court, and is not bound to look farther back than the order for the sale, and the mistakes of the Court as to the facts of debts or children, or the construction or provisions of a will can never affect his rights acquired by the purchase.

8 Where there is difficulty in determining whether the proceedings of a Court are void or only erroneous, every intendment should be favourable to a purchaser at a judicial sale.

9 These principles are applicable to all instances of adjudication and govern all judicial sales as well those made under proceedings in rem, as in personam.

10. Should objections be taken to the record & proceedings of the County Court preliminary to the final order of sale and approval Defts. will insist that where jurisdiction attaches and the proceeding progresses to final order or decree the law presumes the existence of all the facts necessary to justify the action of the Court. It is enough that there be something of record which shows the subject matters before the Court, and their action upon it, that their judicial power arose and was exercised, by a definitive order or decree.

Appellants authorities,

Revised Statutes Mo. 1835, p 156 - Sec 15. Adm'r Ch law 3 articles 8, 13, 14 - 33 - Art. 8. Sec 1. p. 63. 2 Art. Sec. 31. 32 & 35 ~~3 Peters 346~~ 3 Peters 346 - 2 Peters, 165. 10 Peters 473. 11. Mas. Rep. 227. 2 Howard 319, 7 Howard 180. 2 Serg. P.R. 7. 11 S & R 429 8. Watts 416. 1 Hill 496. notice 5 Mo. Rep. 300. notice 8 Mo Rep. 459. ~~[illegible]~~

As to notice [illegible]

Wm. P. Overton & others

v

Buchanan & Johnson

Exors of Jacob Johnson

Brief of

Wm. J. Wood Jr.

Defts

Overton Respdts

vs

Buchanan & Johnson, - Appellants

In this case in addition to the authorities cited, for Appellants, appellants cite the case of Reed vs Vaughn 15 Mo rep. 142. as overruling the principle on which the N. York cases are founded.

Overton
vs.
Buchanan

In the Supreme Court

William P. Overton &c. Respondents.

vs.

George W. Buchanan &

Gordon P. Johnson Executors &c. Appellants

To the

Hon^r the Supreme Court,

The undersigned, would Respectfully State, that he is the only Counsel in the above entitled Cause for the respondents, That the determination of this Suit, will Settle two others now pending in the Jackson Circuit Court, That although the amount involved in this Suit, is not large, Yet growing out of the same transactions, from which this arose, there is property involved to the amount of fifteen or twenty thousand dollars, This case grows out of an Executors Sale of land, And is, the undersigned believes, a Case of the first impression of the Kind in this Court, He thinks there are several important points in the Cause, the Settlement of which will be a guide to future sales of the Kind, He has made Several points in his Brief, and has cited a good many authorities, One or two of which he would like to read, on each material point, And he honestly Conceives that an hour is too Short a time, for him Either to do, justice to the Case, or himself, He therefore asks the Court, to extend the rule, and give him further time, And if the indulgence be granted, he thinks he will not abuse it,

Respectfully Submitted

Jany. 17th 1853, Russell Hicks

A 23

William P. Overton & Repp^t.
v. } Petition for time
to argue &
Johnsons Executors

(Hick)

Overton's exr. v. Johnson's Exr.

Napton for appellant rubricks:

1. It is well settled in this Court, as well as elsewhere, that a sale under a judgment of a Court having jurisdiction of the subject matter & persons in controversy, carries the title, however erroneous & irregular its proceedings may be.

McNair v. Biddle 8 Mo. R. 264
Jones v. Talbot & Fox 9 M. R. 124
& cases therein cited.

II. Orphan's Courts or Courts having ~~jurisdiction over~~ testamentary or intestate jurisdiction, by whatever name called, where they are courts of record & their proceedings are revisable by the highest appellate tribunals, are fully within the protection of this principle – and where in such Courts their proceeding relates to the sale of lands of a testator or intestate in states where such sales are permitted by law, such proceeding is regarded as in rem & likened to Admiralty proceedings & a sale under their judgments carries the title if the Court has jurisdiction of the subject matter adjudicated on.

Grignon's Lessee v. Astor
2 Harr. R. 335
McPherson v. Cunliffe & others
11 S. & R. 460
Snyder v. Markel 8 Watts 417

See
McNair v. Hunt
5 M. R. 309
Day v. Kerr 7 M. R.

III. But in this case, the finding of the Court, as well as the record of the proceedings of the County Court, show that a publication of notice was made according to Law. Art. III. S. 24

IV ~~XX~~. The power of the Probate Courts in this State to order a sale of real estate of a testator or intestate either where there is a deficiency of personal assets or where it is deemed prudent to reserve slaves, either upon the suggestion of the administrator or any person interested, or on the Court's own motion is clearly given by our law. Tit. administration. Art. 111. s. 9. 26. 45 The various steps to be taken in order to effect this, such as filing inventories - list of debts - true accounts of the condition of the administration - appraisements - publication of notices - proof of publication &c. &c. are minutely pointed out in the act, but the omission of any one or all of them does not affect the question of jurisdiction & consequently cannot shake the title of the purchaser. The final judgment of the Court, ordering the sale, raises the presumption, so far as the subject arises collaterally, that all these preliminaries have been complied with.

V. A cause is coram judice, whenever the petitioner presents such a case as authorizes the Court to ~~act~~ deliberate and act - the subsequent movements of the Court are the exercise of jurisdiction. Whether the provisions of Overton's will prevented any

obstacles to the exercise of its jurisdiction, in this case, was a question of fact & law upon which the court in the exercise of its jurisdiction had to pass, & whether decided rightly or otherwise does not concern the purchaser at the sale. But

VI The probate court construed the will correctly the necessity of selling land or slaves was not within the contemplation of the testator & he indicates no choice between them.

Erwin v. Henry's adm. M. R.
Renfro v. Chloe M. R.

The case of Fry & wife v. Ebner, not published, but decided by this court about two years ago is understood to sustain all the general principles above stated.

VII. The second order of sale at the Feb. Term 1844, under which the land in controversy was sold, was not a new proceeding, requiring a second petition, order of publication, appearement &c. but a continuation of the previous proceeding & a necessary action resulting from the first order of sale.

Huckleberry v. Phillips. 2 S. & R. 7
11 S & R. 429

McPherson v. Lindsey —

Overton's ex^r.

v.

Johnson's ex^r.

Points & authorities

by Naylor

for appellant