Glascock, Jacob vs. McMurtry, Alexander M. 1855 Shelby Co. 342/8

574/32

partion
Sc of H
dismissed
no final judgement in circuit

1/ State of Missouri } On the Shelby Circuit Court.
County of Shelby ss }

Be it remembered that heretofore to Wit;

On the 19th day of October A.D. 1853. the Plaintiff in the hereinafter recited Cause, filed in the Office of the Clerk of the Circuit Court in and for the County of Shelby in the State of Missouri) his Petition for partition, which is in the Words & figures following to Wit:

Pbff's Petition Original

Alexander McMurtry Plaintiff

vs

1 Spencer Vaughn and Harriet R Vaughn his Wife, formerly Harriet R Glascock], [Joseph J Baker and

2 Adelaide Baker his Wife, formerly Adelaide Glascock] Jacob Glascock

4 Aaron B Glascock, Virginia Glascock

6 William H Glascock, and John McAfee Curator of the estate of the aforesaid Virginia and William H Glascock, Minor heirs of Aaron B Glascock deceased. Defendants.

} On the Circuit Court Shelby County.

Plaintiff States that Aaron B Glascock late of said County of Shelby, died some time in the Year 1838. being seized and possessed in fee simple at the time of his death of the following described Real estate situated in said County, and also the following described personal property to Wit:

2/ The N½ Sect 10. T 58. R 11. — E½ SWqr. S10. T58 R11
" SE qr. " 10 " 58 " 11 — NW. SWqr " 10 " 58 " 11
and the E½ NWqr. S. 15. T 58. R 11. and One Slave named
Alfred aged now about 25 Years.

Plaintiff further States
that defendant [Spencer Vaughn, 1 and Harriet R his Wife],
[Joseph J Baker 2 and Adelaide his Wife], 3 Jacob Glascock
4 Aaron B Glascock, 5 Virginia Glascock, and William H
Glascock are the heirs of said Aaron B Glascock deceased,
that of said heirs, Virginia and William H Glascock are
Minors under the age of twenty One Years, and that defen=
dant 7 John McAfee, is the Curator of the estate of each of said
Minors. — Plaintiff further States that defendant
Jacob Glascock by his deed dated February 20th 1850. Which
deed is herewith filed and made part of this petition) Sold and
conveyed to plaintiff One Sixth part of the above described
land and Negro and that plaintiff is now the Owner of, and
entitled to said One Sixth thereof. That defendants Spen
cer Vaughn, and Harriet R his Wife, are Jointly entitled
to One Sixth of the same. That defendant Joseph J Baker
and Adelaide his Wife are Jointly entitled to One Sixth, and
that defendants Aaron B Glascock, Virginia Glascock, and
William H Glascock, are each entitled to One Sixth of said
Land and Negro. That plaintiff is informed that defendant
Jacob Glascock Claims some further interest in the lands and
Negro aforesaid, the Nature and extent of which are unknown
to plaintiff.

3/

Plaintiff prays for partition of the above described real estate and Slave, according to the respective rights of the parties interested, therein Or for the sale thereof, or so much thereof as may be made appear to the Court, as not susceptible of partition without Great prejudice to the Owners,

Plaintiff further states that defendants Jacob Glascock, and Aaron B Glascock are not residents of the State of Missouri.

J F Benjamin
Atty for Plaintiff

Note + by the Clk. Writ issued on this Petition but not served.

Alexander McMurtry plaintiff, makes Oath and says that the above petition, and the matters as therein stated are true.

Alexander McMurtry

+ Sworn to & Subscribed before me the Undersigned Clerk this 19th day) of October AD 1853.

Wm H Vannort Clerk
by his Dpty Wm L Chipley

And afterwards. on the same day being the 19th day of October AD 1853. there was filed in the Office of the Clerk of the Circuit Court of Shelby County in the State of Missouri the hereinafter recited deed, which said deed is in the Words and figures following to Wit:

This Indenture

Made and entered into this 20th day of Febuary AD 1850 by +

Deed (4) Glascock to Mc Murtry

and between Jacob Glascock of the first part, and Alexander Mc Murtry of the second part, both of the County of Shelby in the State of Missouri Witnesseth: That the said Jacob Glascock of the first part for and in Consideration of the sum of Two hundred and —— dollars to him in hand paid by the said Mc Murtry the receipt and payment whereof is hereby acknowledged, do here by grant bargin and Sell and Convey to the said Mc Murtry his heirs and Asigns for ever the following described Real estate and personal property to Wit: The Undivided One Sixth part of a Negro Man Named Alfred and all the profits Arising from the hire of said boy or in any Wise. and Also the One Undivided One Sixth part of the following real estate to Wit: The North half of Section ten, Containing Three hundred and twenty Acres. One hundred and Sixty Acres, the South East Quarter of Section ten. and the East half of the South West Quarter of Section ten. and forty Acres The North half of the South West Quarter of Section ten. and Eighty Acres The East half of the North West Quarter of Section fifteen, All in township fifty Eight, Range Eleven West. Containing Six hundred and Eighty Acres, be the same More or less, to have and to hold the ~~same~~ in fee Simple the afore said lot, or parcels of land to gether with its improvements and Appurtenance to the said Mc Murtry his heirs and Asigns for ever to gether with all and Singular the reversions remainders, rents, Issues, profits, priviledges and Advantages thereof or in any Wise thereunto Appertaining, and the said party of the first part to the said Mc Murtry and to his heirs

s/ and Asigns, do by these presents Agree and Covinent to Warr-
ent and defend forever the hoal and ever part of the ground
hereby bargained and Soaled as Afoarsaid to the said Wm. Mu-
rry Against the Clame or Clames of all and every person or
persons whomsoever. in Wiheseth where of the said Jacob
Glaycock have hereunto set his hand and Seal the day and
Year here in first above Written.

Jacob J Glaycock (Seal)

Clks certif. State of Missouri }
County of Shelby } Be it remembered that Jacob J Glay-
cock who is personally known to the Undersigned Clerk of the
County Court, within and for said County to be the person whose
name is subscribed to the foregoing deed as a party thereto,
this day Appeared before me, and Acknowledged that he ex-
ecuted and delivered the same as his Voluntary Act and deed
for the Uses and Purposes therein Contained. In testimony
Whereof, I have hereunto Signed my
name as Clerk, and Affixed the Seal of
Our said Court, done at Office in Shelby
Ville in said County this 20th day of Feb-
ruary A.D. 1850.

Wm J Holliday Clerk

Recorders certif. State of Missouri }
County of Shelby } I Wm N Vanmort Recorder within and
for the County of Shelby hereby Certify that the Within deed
together with the Certificate thereon was rec'd and filed for
record on the 22nd day of February 1850. and that they have

been duly recorded in my Office in book E. pages 391 & 2,
Witness My hand and my Seal of Office
annexed, done at Shelbyville this 27th day
of February 1850.

Seal

Wm H Vanmort Recorder.

Filed for record 22nd
Feby 1850. Wm H Vanmort Recr

And Afterwards to Wit: At the circuit Court begun and
held at the Court House in the Town of Shelbyville in
the County of Shelby in the State of Missouri before his
Honor A Reese Judge of the 4th Judicial District, and
during the November term of said Court and on the 3d
day of said term the following, amongst other proceedings was had to Wit:

Alexander M Murray Pltff
Against
Spencer Vaughn et al Defts

Petition for partition

And Now at this day
comes the plaintiff by his Attorney, Whereupon on motion
It is Ordered by the Court, That an Alias Writ issue Against the defendants Spencer Vaughn, and Harriet R Vaughn
his Wife, Joseph D Baker and Adelaide Baker his Wife
Virginia Glascock, William H Glascock and John
M Agee, curator of the estate of the said Virginia and
William H Glascock; and it appearing to the Court
from the petition and affidavit filed in this Cause, that

1/ the remaining defendants Jacob Glascock and Aaron B Glascock are not residents of this State. It is therefore Ordered by the Court, that said Non resident defendants be notified that said plaintiff has filed his petition (accompanied by his affidavit) in this Court against them praying for partition of the following Real and personal property Viz; The N½ of Section No ten — The N E quarter of Section No. ten, The E½ of W quarter of Section ten, the N W¼ of the S W quarter of Section ten, and the E½ of the N W Quarter of Section Sixteen All in Township Sixty Eight North of Range Eleven West lying and being in Shelby County in the State of Missouri. and also One Slave named Alfred. And It is Also Ordered that you the said Non resident defendants, be and appear in our Circuit Court, at the Court House in the town of Shelbyville in the County aforesaid, On the first day of the next term thereof, which said term will be begun and held on the first Monday in June 1854. And Answer said Plaintiffs petition or the same will be taken as confessed, and that this Order be published in the Shelbyville Spectator for Eight Weeks, and this Cause is Continued.

And afterwards to Wit: On the 19th day of November A.D. 1853. there was issued from the Office of the Clerk of the Circuit Court of Shelby County in the State of Missouri the following petition and Writ, which is in Words and Figures following to Wit:

8/ Alias Petition

Alexander McMurtry Plaintiff

vs

Spencer Vaughan and Harriet R Vaughan his Wife, formerly Harriet R Glascock, Joseph J Baker and Adelaide Baker his Wife, formerly Adelaide Glascock, Jacob Glascock, Aaron B Glascock Virginia Glascock, William H Glascock and John McAfee Curator of the estate of the aforesaid Virginia and William H Glascock Minor heirs of Aaron B Glascock deceased (defendants

In the Circuit Court Shelby County

Plaintiff states that Aaron B Glascock late of said County of Shelby died some time in the Year 1838, being seized and possessed in fee simple at the time of his death of the following described Real estate, situate in said County, and also the following described personal property to Wit;

The N½. Sec 10. T 58. R 11. The NE qr. Sec 10. T 58 R 11. The E½ NW qr. Sec 10. T 58. R 11. The NW qr Sec 10. T 58. R 11. The E½ NE qr. Sec 15. T 58. R 11. and One Slave named Alfred now about 25 years of age.

Plaintiff further states that Defendant Spencer Vaughan and Harriet R Vaughan his Wife, Joseph J Baker, and Adelaide his Wife, Jacob Glascock, Aaron B Glascock, Virginia Glascock, and William H Glascock, are the heirs of the said Aaron B Glascock deceased.

That of said heirs Virginia and William H Glascock are Minors under the Age of twenty One Years; and that Def

9/

endant John McAfee is Curator of the estate of each of said Minors. Plaintiff further states that Defendant Jacob Glascock, by his deed dated February 20th 1850 (Which deed is herewith filed) and made part of this petition sold and conveyed to Plaintiff One sixth part of the above described land and Negro, and that Plaintiff is now the Owner of and entitled to said One sixth thereof. That defendants Spencer Vaughn, and Harriet R his Wife are jointly entitled, to One sixth of the same. That defendants Joseph G Baker and Adelaide his Wife, are jointly entitled to One sixth, and that defendants Aaron B Glascock Virginia Glascock, and William H Glascock are each entitled to One sixth of said land and Negro, that Plaintiff is informed that defendant Jacob Glascock claims some further interest in the land and Negro aforesaid, the nature and extent of which are unknown to Plaintiff

Plaintiff prays for partition of the above described Real Estate and Slave, according to the respective rights of the parties interested therein, ~~and~~ or for the sale thereof, or so much thereof, as may be made to appear to the Court as not susceptible of partition without great prejudice to the Owners. Plaintiff further states that defendants Jacob Glascock and Aaron B Glascock are not residents of the State of Missouri.

P. H. Benjamin Atty for
Plaintiff

Alexander McAnulty plaintiff Makes Oath and says that the above petition and the Matters as therein stated

10) are true.

Sworn to & Subscribed before the Undersigned Clerk this 19th day of October 1853.

Wm H Vanmort Clerk

Alexander McMurtry

And Afterwards on the same day there was issued from the Office of the Clerk of the Circuit Court in and for the County of Shelby in the State of Missouri, the following Writ, which Writ was Attached to the Above and foregoing petition and is in Words and figures following to Wit;

Alias Writ

State of Missouri
County of Shelby

The State of Missouri

To the Sheriff of the County of Shelby Greeting;

You are hereby Commanded to Summon Spencer Vaughan, and Harriet R Vaughn his Wife formerly Harriet R Glascock Joseph J Baker and Adelaide Baker his Wife, formerly Adelaide Glascock, Virginia Glascock, William H Glascock and John McAfee Curator of the estate of the Aforesaid Virginia and William H Glascock, Minor heirs of Aaron B Glascock dec. So that they be and Appear before the Judge of our Circuit Court, at the Court house in the town of Shelbyville in the County & State Aforesaid, On the 1st Monday in June Next 1854. then and there before our said Judge to Answer the petition of Alexander McMurtry, filed and exhibited against them (A Copy Whereof is hereto Annexed) and this

11/

You shall in no Wise Omit, and have you then there this Writ. Witness, Wm A Vaunort Clerk of said Court & the Seal thereof affixed, done at Office at Shelby Ville in the County aforesaid this 19th day of November A.D. 1853. Wm A Vaunort Clerk by Wm L Chipley D Clk

Seal

Upon which said Writ is the following Return to Wit:

Sheriffs Return

Executed this Writ by reading the Writ & Petition to the within named defendants to Wit Spencer Vaughn & Harriet R Vaughn his Wife, W. J. Baker & Adelaide Baker his Wife, Virginia Glascock, Wm Glascock & John McAfee all done in Shelby County Mo. on the 16th day of March 1854.

Sheriff fee $7.00 G A Edmunds Sheriff. D.C.

Filed March 20th A.D. 1854. Wm L Chipley Clk

And afterwards to Wit: On the 3d day of January A.D. 1854 there was issued from the Office of the Clerk of the Circuit Court in the County of Shelby and State of Mo. the hereinafter recited Order of Publication, which said Order is in the words and figures following.

State of Missouri
County of Shelby

Order of Publication

In the Shelby Circuit Court November term Nov 9th A.D. 1853

Alexander McMurtry Plaintiff

Against

Spencer Vaughn et al Defendants

Petition for Partition

And now at this day Comes the plaintiff by his Attorney, Whereupon on Motion, it is Ordered by the Court, that an Alias Writ issue Against the defendants Spencer Vaughn and Harriet R Vaughn his Wife, Joseph G Baker and Adelaide Baker his Wife, Virginia Glascock, Wm H Glascock, and John M°Afee Curator of the estate of the said Virginia and William H Glascock. And it appearing to the Court from the petition and Affidavit filed in this Cause that the remaining defendants Jacob G Glascock and Aaron B Glascock, are not residents of this State. It is therefore Ordered by the Court, that said Non Resident defendants be Notified that said plaintiff has filed his petition Accompanied by his Affidavit in this Court Against them praying for partition of the following Real and personal property Viz; The N half of Section No ten. The S E quarter of Section No ten. The E half S W quarter of Section ten. The N W quarter of the S W quarter of Section ten. And the E half N W quarter of Section Fifteen, all in township Fifty Eight, North of Range Eleven West. lying and being in Shelby County in the State of Missouri. And also one Slave named Alfred. And it is Also Ordered that you the said Non resident defendants be and Appear in our Circuit Court at the Court House in the town of Shelby Ville in the County Aforesaid on the first day of the next term thereof which said term will be begun and held on the first Monday in June 1854, And Answer said plaintiffs petition or the same will be taken as Confessed, And that this Order be pub

13/ lished in the Shelby Ville Spectator for Eight Weeks and this Cause is Continued.

A true Copy — O. F. Benjamin Atty.
Attest Wm. H. Vanmort Clerk — Shelby Ville Jany. 3d. 1854.
By W. L. Chipley Deputy Clk.

And Afterwards to Wit: On the 18th day of March AD 1854. there was filed in the Office of the Clerk of the Circuit Court of the County of Shelby in the State of Missouri an Affidavit (annexed to the above order of Publication) which Affidavit is in the words & figures following to Wit:

Affidavit of Printer — State of Missouri } County of Shelby } On the 18th day of March 1854. before me the Clerk of the Circuit Court in and for the County of Shelby personally appeared Francis M. Laulton who being by me duly sworn says that he is the publisher of the Shelby Ville Spectator, a Weekly newspaper printed in the town of Shelby Ville in said County and State, and that the Advertisement, a Copy of which is herewith annexed being an Order of the Shelby Circuit Court, made at its November term 1853. has been published in said paper for Eight Weeks in Succession in the Numbers and dates of said paper as follows. In No. 14. Vol 1. Jan. 3. 1854
In No 15. — 1 — 10 —
In No 16 — 1 — 17
— — 17 — 1 — 24

14)

Jn No 18. Vol. 1 — Jan. 31. 1854
— — 19 — 1 Feby. 7 —
— — 20 — 1 — 14
— — 21 — 1 — 21.

Printers fee $18.00 T. M. Saulton

State of Missouri
County of Shelby

T. M. Saulton being sworn by the Undersigned Clerk of the Circuit Court in and for the County Ass.d personally appeared before me this day & on his Oath says that the above is correct.

Filed March 18th 1854
Wm L Chipley Clk

Wm L Chipley Clk

And afterwards to Wit: On the 6th day of June AD 1854 at a Circuit Court begun and held at the Court house in the town of Shelby Ville in the County of Shelby in the State of Mo. it being at the June term 1854. of the Circuit Court for the County and State aforesaid, before the Hon. A Reese Judge of the said Court, the following among other proceedings Were had to Wit:

Alexander McMurtry Plff
against
Spencer Vaughn et al Deft.

Petition for Partition.

Now at this day comes the said parties by their respective attornies, and it appearing

15) to the Court, that the defendants Virginia Glascock and William H Glascock are Minors under the age of Twenty One Years, the Court on Motion of said Minors doth appoint Edwin G Pratt Esqr. Guardian A L Litem herein and on Motion of said plaintiff, leave is given him to amend his petition in this Cause and thereupon said plaintiff by his Attorney Makes such amendment.

And afterwards to Wit: On the same day there was filed in the Office of the Clerk of the Circuit Court in and for the County of Shelby in the State of Mo, the plaintiffs amendment to his petition which is in the Words and figures following.

Amendmt of Petition

A McMurtry
v/
S Vaughn

Plaintiff in this Cause, asks leave of the Court to amend his petition in this. Strike out the letter "N" in "the N Eqr. Sect 10. T58. R11. and insert the letter "S" in its place, that it may read S Eqr. Sect. 10 T58. R11.

Benjamin Atty
for Plff

Filed June 6th 1854.
Wm L Chipley Clk
by his Deputy, Thos. O Eskridge

And afterwards to Wit, on the 8th day of June AD 1854, the plaintiff in this Cause by his Counsel filed in the Office of the Clerk of the Circuit Court in and for the County of Shelby in the State of Mo, the hereinafter recited bond, which Bond is in the words

16/ and figures following.

Pltffs. Bond

Know all Men by These presents that Alexander McMurtry of the County of Shelby in the State of Missouri are held and firmly bound unto Jacob Glascock in the penal sum of Four hundred dollars for the payment of which well and truly to be made, we do hereby bind Ourselves Our heirs, executors, and Administrators firmly by These presents. Given under Our hands and Seals This 21st day of February, 1850. The condition of the above Obligation is such, that Where as the said Alexander McMurtry have purchased of the said Jacob Glascock the following described Real estate and personal property being the One sixth part of a Negro boy named Alfred, now hired to Benjamin Vanvacter, and The One Sixth part of the following land. The N½ of Sect. 10. Containing 320 Acres — 160 Acres SE¼ of Sect. 10. and E½ of the SW Qr. of Sect 10. and 40 Acres N½ of the SW Qr. of Sect 10. and 80 Acres the E½ of NW Qr. of Sect 15. All in township 58. Range (11) West Containing 680 Acres be the same more or less. to and Whereas it is expressly understood between the said Alexander McMurtry and Jacob Glascock or his legal representatives may at any time within Two Years from the date of These presents, that the said Alexander McMurtry will sell the real & personal estate above mentioned to the said Jacob Glascock or his Administrator or legal representatives for the sum of Four hundred dollars. Now if the said McMurtry his heirs or Executors or Administrators shall upon the full payment of Four hundred dollars as aforesaid

Exhibit Marked A

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within two years from the date of these presents or aforesaid Make, execute and deliver to the said Glascock or his legal representatives, or Cause to be made executed and delivered to the said Glascock or his legal representatives a good and sufficient Special Deed to the Real & personal estate aforesaid then shall the foregoing Obligation be Null & Void, Otherwise to remain in full force and Virtue for the term of two years from the date of this instrument of Writing.

Test
J M Ennis
Joseph Hitch

Alexr. McMurtry

Filed June 8th A.D. 1854.
Wm L Chipley Clk

And afterwards to Wit: On the same day being the 8th day of June A.D. 1854. there was filed in this Cause with the Clerk of the Circuit Court of Shelby County Mo. the defendants Answer to the plaintiffs petition by his agent Jno. McAfee which said Answer is in the Words & figures following:

Defdts Answer

Alexander McMurtry
Against
Jacob Glascock and others
defendants.

In the Shelby Circ. Ct. June term 1854.

The above named defendant, Jacob Glascock by his Attorney States, that at before and about the date of the deed executed by himself to plaintiff bearing date the twentieth February 1850. and by plain-

tiff filed with his petition in this Cause he was desirous to Obtain the loan of Two hundred dollars, and that he Applied to the plaintiff to Obtain said loan — The Plff, being in the habit at that time of loaning Money, and Obtained from the Plaintiff the loan of said Sum of two hundred dollars for the term of two Years upon an Agreement between the plaintiff and this defendant, that this defendant was to pay to plaintiff the sum of Two hundred dollars for the use of said Sum of Two hundred dollars, so borrowed for said term of two Years. Making the sum of Four hundred dollars to be repaid by this defendant to plaintiff for the use of said two hundred dollars so borrowed as aforesaid.

This defendant further states that as a Means of Securing plaintiff in the ~~Re payment~~ of said sum of two hundred dollars so borrowed as aforesaid and said sum of two hundred dollars Charged by plaintiff for the use of said sum borrowed and Agreed to be paid by this defendant & to avoid and get around the Statutes of this State regulating the interest on Money loaned and for'om to be paid; it was agreed between plaintiff and this defendant, that this defendant should Execute and deliver & the plaintiff receive a deed absolute in form for the lands and Slave Mentioned in plaintiffs petition. And accordingly the deed filed by plaintiff as aforesaid with his said petition was executed & delivered ~~by defendant~~ by defendant and received by plaintiff Conveying the One Undivided Sixth of said land and Slave to plaintiff, On the consideration and Understanding above Charged and set Out, and on

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None Other — And to further avoid, cover up, and get around said Statute regulating the interest on Money, and to disguise the Real intent and Character of said transaction, the plaintiff executed and delivered to this defendant the instrument herewith filed bearing date on the 21st February 1850. Which is marked A. and made a part of this Answer. Which instrument of Writing, although professing to be a Contract for a resale of said lands and Slave, by plaintiff to this deft, at any time Within two Years for the Consideration of Four hundred dollars to be paid by this defendant in Case of said Repurchase; Was really and in fact only a condition to said deed so executed by this defendant to plaintiff as aforesaid, and was so understood and intended by and between the parties to said instrument.

This defendant Charges that said deed & instrument of Writing were only intended by the plaintiff and this defendant as a security for the payment by this deft. to plaintiff of said sum of Four hundred dollars as aforesaid, and to avoid the Statute regulating interest on Money, and only Amount in truth and fact to a Mortgage on said Undivided interest of this deft ~~to~~ in said lands and Slave, and that said Undivided Sixth of said lands and Slave were reasonably Worth, at the date of said deed & other instrument of Writing the sum of Five hundred and fifty dollars or more, and are now Worth greatly over that Amount of Money. This defendant through his Agent, has offered to repay to plaintiff said sum of Money so borrowed as aforesaid, together with the interest Owing and accruing thereon, and here offers so to do, and asks that

20/ plaintiff may be adjudged to receive his said Money so Owe-
=ing him with the interest thereon and to recovey said Undiv-
=ided Sixth of said Land & Slave to this defendant.

And this defendant denying the right of plaintiff to a divi-
sion and partition or Sale of said Lands and Slaves asks for
such general relief as he's entitled to in the premises.

W J Howell Atty
for this deft.

John McAfee Agent for Above named defendant, Makes Oath
and Says he beleives the foregoing Answer and the Matters as
therein stated are true.

Sworn to & Subscribed before
me this 8th day of June AD 1854
Wm Chipley Clk

John McAfee

Filed June 8th AD 1854.
Wm Chipley clk

And afterwards to Wit: On the 8th day of June AD 1854. At
a Circuit Court Continued and held at the Court House in the
town of Shelbyville in the County of Shelby in the State of
Mo. it being at the June term of said Court and on the 4th
day of said term, before his honor A Reese Judge of said Circuit
Court, the following Among other proceedings were had, and
are in words and figures following:

Alexander McMurtry Plff
against
Spencer Vaughn et al defts.

Petition for Partition

And now at this day Comes

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the parties by their respective Attornies, Whereupon on Motion the defendant Jacob Glascock files his Answer herein.

State of Missouri
County of Shelby } Be it Remembered that on the 8th day of November A.D. 1854. at a circuit court, begun and held at the Court house in the town of Shelby Ville in the County of Shelby in the State of Mo, it being the November term of said Court and the third day of said term, before his honor A. Reese Judge of said Circuit Court the following among other proceedings were had, and are in the words and figures following.

Trial of the Case

Alexander M Murtry Plff
Against
Spencer Vaughn et al defts } Petition for partition

And now at this day Comes the parties by their Attornies, and thereupon Comes the following Jury to Wit: Samuel Cochran, Lewis A Holliday, Algernon Vansiver, Isaac Malcuh, John J Taylor, Thomas Jackson, John R Gatewood, Samuel B Hardy, Edwin Joiner, James Graham Jr. and Henry T Steels Eleven good and lawful men who by Consent of the parties, were duly elected, tried and Sworn to try the issue herein between the parties, And after hearing the evidence of Witnesses, the Arguments of Counsel, and the instructions of the Court, the Jury retire to their room to Consider of their Verdict, and after a short interval, return here into Court

the following Verdict "We the Jury find for the Plaintiff"
Henry P. Sheets. Foreman

And afterwards to Wit: On the 9th day of November A.D. 1854. a circuit court continued and held at the court house in the town of Shelbyville in the county of Shelby in the State of Mo being during the November term of said court it being the 4th day of said term and before the Honorable A Reese Judge of said court, the following bill of Exceptions in the above and foregoing entitled Cause was filed are is in the words and figures following to Wit:

Bill of Exceptions

Mc Murtry
vs
Glascocks heirs

Shelby Court 1854
Nov. term.

Be it remembered that on the trial of this Cause for partition between the Plff. & the heirs of A B Glascock, a Jury came to try the same. That the dft Jacob Glascock prayed that issues might be framed to be tried by the Jury, and claimed the right of Opening and Conclusion which were refused by the court. The plaintiff then read the deed of Glascock (Which deed is in words and figures following to Wit:)

J. Glascocks deed

This Indenture Made and entered into this 20th day of Febuary A.D. 1850. by and between Jacob Glascock of the first part and Alexander Mc Murtry of the second part, both of the County of Shelby in the State

23 of Missouri Witnesseth: That the said Jacob Glascock of the first part, for and in Consideration of the sum of Two hund-red and — dollars to him in hand paid by the said Mr Mur-try the recept and payment where of is here by acknowle-dged do here by grant bargain and sell and Convey to the said Mr Murtry his heirs and assigns for ever the following described Real estate and personal property to Wit: The Und-ivided One Sixth part of a Negro Man named Alfred and all the profits arising from the hire of said boy or in any wise And also the one Undivided one Sixth part of the folowing real estate to Wit: The North half of Section ten Containing Three hundred and twenty acres. One hundred and sixty acres, the South East quarter of Section ten, and the East half of the South West quarter of Section ten, and forty acres the North half of the South West Quarter of Section ten, and Eighty acres the East half of the North West Quarter of Section fif-teen all in township fifty Eight, Range Eleven West. Containing six hundred and Eighty acres, be the same more or less. To have and to hvald in fee simple the afoar said lots or parcels of land, together with its improvements and appurtenance to the said Mr Murtry his heirs and assigns forever, together with all and singular, the reversions remain-ders, rents, issues, profits, priviliges and advantages there-of or in anywise there unto appertaining. And the said party of the first part, to the said Mr Murtry and to his heirs and assigns do by these preasants agree and Covinant to Warrant and defend forever the hval and ever part of

the ground hereby bargained and Sold as aforesaid to the said Mr Murphy against the Claim or Claims of all and every Person or persons whomsoever In Witness Whereof, the said Jacob Glascock have here unto set his hand and Seal the day and Year here in first above Written,

Jacob. J Glascock (Seal)

State of Missouri
County of Shelby } Be it Remembered that Jacob J Glascock who is personally known to the undersigned Clerk of the County Court within and for said County to be the person whose Name is Subscribed to the foregoing deed as a party thereto, this day appeared before me and Acknowledged that he executed and delivered the same as his Voluntary act and deed for the uses and purposes therein Contained.

Seal

In testimony Whereof, I have hereunto signed my Name as Clerk, and affixed the Seal of our said Court, done at Office in Shelbyville in said County this 20th day of February A.D 1850

Wm J Holliday Clerk

State of Missouri
County of Shelby } I Wm N Vannort Recorder Within and for the County of Shelby, hereby Certify that the Within deed together with the Certificate thereon was rec. and filed for record on the 22nd day of February 1850. and that they have been duly recorded in my Office in book E. pages 391 & 2. Witness my hand and my Seal of Office Annexed

Seal

done at Shelbyville this 27th day of February 1850. Wm N Vannort Recorder

25/ Filed 19th Oct. 1853. and rested his Cause.
Wm H Varnett clk

The Defendant Jacob Glascock then read his Agreement signed by Plaintiff (Which Agreement, is in Words and figures following to Wit;)

Agreement between Mc Murtry & Glascock

Know all Men by these presents that Alexander Mc Murtry of the County of Shelby in the State of Missouri are held and firmly bound unto Jacob Glascock in the penal sum of Four hundred dollars, for the payment of which well and truly to be made, we do hereby bind Ourselves our heirs, executors and administrators, firmly by these presents, given under our hands and seals this 21st day of Febuary 1850. The condition of the above Obligation is such that Whereas the said Alexander Mc Murtry have purchased of the said Jacob Glascock the following described Real estate and personal property being the One sixth part of a Negro boy named Alfred, now hired to Benjamin Vanvacter, and the One sixth part of the following land. The N½ of Sect 10 Containing 320 Acres. 160 Acres S E¼ of Sect 10. and E½ of the S W qr. of Sect. (10) and 240 Acres N½ of the S W qr. of Secct (10) and 80 Acres the E½ of N W qr. of Sect. (15) all in township 58. Range (11) West. Containing (680) Acres be the same more or less — to and Whereas it is expressly understood between the said Alexander Mc Murtry and Jacob Glascock or his legal representatives may at any time within two Years from the date of these presents, that the said Alexan

der McMurtry will Sell the real & person estate Above Men
tioned to the said Jacob Glascock or his Administrator or
legal representative for the sum of Four hundred dollars.
Now if the said McMurtry his heirs or Executors or Admin
istrators shall upon the full payment of Four hundred dollars
as aforesaid within two Years from the date of these presents
as aforesaid, Make, execute and deliver to the said Glasco
ck or his legal representatives, or Cause to be made, executed
and delivered to the said Glascock or his legal representatives
a good and Sufficient Special deed to the Real & personal es
tate aforesaid, then shall the foregoing Obligation be Null
& Void, Otherwise to remain in full force and Virtue for the
term of two Years from the date of this instrument of Wr
iting. Alexander McMurtry
Seal

J. M Ennis
Joseph Hitch

Filed June 8th 1852.
Wm L Chipley Clk

J.M Ennis Witness

Defendant then introduced Joshua M Ennis who stated he was the Subscribing Witness to said instrument. That he was not present at the time Contract was made. Plaintiff paid Jacob Glascock One hundred & fifty dollars in Cash, & fifty dollars in Store goods at retail prices. That a few days previous, Glascock Applied to plaintiff for the loan of $200 dollars, who refused to loan. I was present at the time the Writings were drawn, but am not Certain whether the deed was then or not. Thinks the Negro Man was with now & or

27) 900 dollars — was not worth that much in 1850. That the land is worth from $4 to 6 dollars per Acre Now, but not worth as much in 1850 — Not much demand for land then. That plaintiff had receiv.d some rent, that is three hogs from Vaughn. Plaintiff Claimed from 10 to $16 dollars of Vaughn for rent. That Glascock wanted to get the Money to fit him out for California, that he went to California & is there still.

B. Vanvacter Witness — Benjamin Vanvacter said he was Acquainted with the Value of land — that it was worth 3 dollars an Acre in 1850. at the lowest. — Worth 5 or 6 Now — Negro Worth 800. Not much demand for land in 1850. Not worth so much in an undivided State by 50 cents per Acre.

G. H. Edmonds Witness — Gilbert H Edmonds late Sheriff said the land was worth 3 dollars an Acre any time since 1846 — Now worth from 8 to 10 dollars an Acre. Negro worth from 800 to 1000 dollars. — house upon it, & about 80 Acres in Cultivation. This was all the testimony in the Cause Offered by either party. The Cause was then Submitted to the Jury. — After they had retired some time they returned into Court — Which then gave on the part of the plaintiff.

Pff.s Instructions to Jury — The Court instructs the Jury that the only issue submitted to them is Whether the Conveyance read in evidence by the plaintiff was intended by the parties thereto as a Sale or

28/

Returned by Jury & filed Nov. 8. 1854 Wm S Chisely Clk

as a Mortgage of the property therein Conveyed.

That altho' they may beleive the Conveyance was intended by the parties to be Conditional Yet unless they further believe that Glascock was bound by some promise or Obligation to pay to Mr Murtry the Money paid by Mr Murtry to Glascock — they Cannot find that such Condition Constituted the transaction a Mortgage. And that the instrument read in evidence by the defendant does not impose upon Glascock any Obligation to pay to Mr M. any such sum of Money

The ~~Only Obligation~~ of said instrument is on Mr M. and not on Glascock — And if the Jury find the Sale was a Conditional Sale, then it was not a Mortgage.

Note — By the Clerk — The defendants Instructions were lost or destroyed unintentionally by the Jury in their Room (Supposed to have been used to light a Cigar) as the late Sheriff & myself, looked for it immediately after they were discharged & it could not be found.)

The above instructions were Objected to by defendant, and the Jury then brought into Court their Verdict for the plaintiff, which Verdict is in Words & figures as follows "We the Jurys find for the plaintiff"

Verdict of the Jury

Henry T Sheets Foreman

Whereupon the defendant Moved the Court to set aside the Verdict & grant a New trial, which was by the Court Overruled. To Which Opinion of the Court in Overruling his Motion, defendant excepted & prays that his bill of Exceptions be signed & Sealed & Made a part of the record.

A Reese (Seale)

Then Afterwards to Wit; On the 9th day of November A.D 1854 and during the November term of the circuit Court in and for the County and State of Mo. the defendant in this Cause filed his Motion for a new trial, which motion is in the figures and Words following,

Motion for new trial

Alex^r McMurtry
vs
Jacob Glascock et al

Defendant Jacob Glascock moves the Court to set aside the Verdict, & Grant a new trial herein, & he says.

1st The Verdict is not According to the testimony. 2nd The Court erred in the Instructions granted to plaintiff. 3rd The two instruments together, formed but a Security for Money, & defendant has a right to redeem.

McAfee & Pratt & Redd
Atty^s for Glascock.

And Afterwards to Wit: On the same day being the 9th day of November A.D 1854. And during the sitting of the November term of the Circuit Court in and for the County of Shelby in the State of Mo. it being the 4th day of said term the defendant in this Cause filed his Bond for an appeal to the Supreme Court of the State of Missouri, which bond is in the Words & figures following to Wit;

Know all Men by these presents that we John McAfee

30)

are held & firmly bound to Alexander McMurtry in the sum of four hundred dollars, for the payment of which Well & truly to be made, we bind ourselves firmly by these presents. Witness our hands & seals this 9th day of November A.D. 1854.

Bond for an appeal

The condition of the above Obligation is such, that Whereas Jacob Glascock has appealed from the Judgment of the Shelby circuit court at its Nov. term rendered, in which Alexander McMurtry was plaintiff & Jacob Glascock et al were defts in a partition of lands & negro. Now, if the said Jacob Glascock shall pay all costs & damages which may be awarded against him occasioned by such appeal; And that the appellant shall prosecute his Appeal & shall perform such Judgment as shall be given by the Supreme Court, & such as the supreme court shall direct the circuit court to give, & if the Judgment or any part thereof be affirmed that he will comply with & perform the same, & for as it may be affirmed, & will pay all damages, which may be awarded against the appellant by the Supreme Court, then the above Obligation to be null & Void.

John McAfee (Seal)

Filed Nov 9th A.D. 1854. (Seal)

Wm L Chipley Clk

State of Missouri } In the Shelby circuit court
County of Shelby } Be it remembered that on the 9th day of November A.D. 1854. At a circuit court held

inued and held at the Court House in the town of Shelby Ville in the County of Shelby and in the State aforesaid being during the November term of said Court, and on the 4th day of said term, his Honor Adelison Reese presiding, the following among other proceedings were had to Wit:

Alexander McMurtry Pltff
Against
Spencer Vaughn et al Defts
} Petition for Partition

And now at this day Comes Again the parties by their Attornies, whereupon the Court proceeds to give Judgment in Accordance with the Verdict of the Jury on Yesterday. Orders and Adjudges and decrees that partition be and the same is hereby made of the lands mentioned in said plaintiffs petition to Wit: The North half of Section ten, The South East Quarter of Section ten. The East half of the South West Quarter of Section ten, and the East half of the North West Quarter of Section Sixteen, All in Township Sixty Eight, Range Eleven West lying and being in Shelby County Missouri, as follows Giving to the said Spencer Vaughn and Harriet R Vaughn his Wife One Sixth. To the said Joseph J Baker, and Adelaide Baker his Wife One Sixth. To the said Aaron B Glascock One Sixth. To the said Virginia Glascock One Sixth. To said

William A Glarcock one Sixth. And to the said Alex
ander McMurtry one Sixth part of said lands. And
that Joseph A Foreman, Joseph Griffith, and John
Hagar be and they are hereby Appointed Commissioners
to Make partition of said lands, according to the respect
ive rights of the parties as Above declared by the Court
And it is farther Ordered Adjudged and decreed by the
Court, that the Slave mentioned in said Plaintiffs Petit
tion be sold by the Sheriff to the highest and best bidder
for Cash in hand at the Court house door in the town
of Shelby Ville in the County of Shelby in the State of
Missouri, during the Sitting of the next term hereof
and the proceeds Arising from said Sale, shall be appor
tioned according to the rights of the parties as before decl
ared. And thereupon the said defendant Jacob
Glarcock files Motion for a new trial in this Cause which
is Overruled by the Court. Whereupon on Motion
the said defendant files his bill of Exceptions herein
which is received Signed, Sealed by the Court, and Made
a part of the Record herein, And thereupon on Motion
said defendant Prays an Appeal to the Supreme Court
of the State of Missouri. And that the Clerk of this
Court, make out a full and Complete transcript of the
record and proceedings had herein in this Court in this
Cause, together with all the papers filed in this Cause
and properly forming a part of the record. And that he
certify said transcript, under the Seal of this Court

33/ and transmit the same to the clerk of the said Supreme Court, to the end that said Cause may be therein fully determined.

Costs

Wm L Chipley Clerk costs in Suit	32	15
G M Edmunds Shff (late)	7	80
Jacob Vanliver "	2	35
Wm L Chipley Clk (transcript)	8	90

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State of Missouri
County of Shelby

I William S Chipley Clerk of the Circuit Court, in and for said County of Shelby here by Certify that the foregoing Thirty three pages, contain a full and true transcript of the Record and proceedings in our said Court in relation to the Cause therein mention ed, together with all the papers filed in said Cause, & properly forming a part of the Record thereof. And that the Costs as herein taxed, is the true Amount of Costs which have accrued in this Cause.

Witness my hand as Clerk and the Seal of our said Court affix ed. done at Office in Shelby Ville in the County aforesaid on this 14th day of February 1855.

Wm S Chipley Clerk

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March Term 1855.

Alexander McMurtry
respondent
(3).

~~Spencer Vaughn & al~~
Jacob Glascock.
appellant

Appeal. Munroe. C. C.

Benjamin - p
Mr. Afee, Pratt & Redd - d.

Filed 26th February 1855
Wm L Glanville
Clk

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Jacob Glascock } In the Sup Court of

v

Alexander McMurtry } Mo.
respondent }

The respondent moves the Court to dismiss this Cause because it does not appear by the record that any final judgment has been rendered in the Cause by the Circuit Court of Shelby County

Glover & Richardson
for the
Respondent

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Jacob Gloscock

v

Alexander McMurtry appellant

motion to dismiss this Cause -

Filed 21 March 1855
W. L. Glanville Cs

Alexander McMurtry Res
vs
Jacob Glasscock appl^t. } Appeal from the Monroe Circuit Court

This was a proceeding in partition and after a judgment that partition be made was entered, an appeal was taken to this Court: There is now a motion to dismiss the appeal because there is no final judgment in the cause. The motion must be sustained: In partition suits there are two judgments, the first, is that partition be made, which is interlocutory: the other, which is entered upon the coming in of the report of the commissioners appointed to make partition ~~which~~ is that the partition be firm and effectual for ever:: As the judgment entered here was merely interlocutory and not a final one, the appellant was not entitled to an appeal from it: ~~The other judges concurring the judgment appeal will~~: Gudgell & Austin vs Mead & others 8. Mo Rep. 53. The other judges concurring the ~~judg no~~ appeal will be dismissed.

Wm Scott

Mc Murtry
vs.
Glasscock

Opinion

Filed 22d March 1855
Wm. S. Glanville
Ch