Metz, Frederick vs Whittelsey, 1856 St. Louis Co. 384/8
" , Louisa (guardian of Beck, Frederick)

589/8

Ryland
Aff. b/c B/Named
Leo - absent

Jesser, Frederick died seized of certain real estate in St. Louis.

By last will & testament he bequeathed ~~land~~ property & estate to Catherine, wife, & to ~~her heirs~~ Beck as she saw fit.

M, L daughter of F & C B, F son of C from previous marriage

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State of Missouri }
County of St Louis } S.S.

Be it Remembered that at the March Term of the St Louis Land Court begun and held at the City of St Louis on the third Monday of April being the Twenty first day of said month in the year of our Lord One thousand eight hundred and fifty six. among other the following proceedings were had. to wit;

Submsn. of facts. &c filed.

Joseph F. Beck. By Guardian
vs
Frederick Metz & Louise Metz his wife } Submission of facts for judment of Court. filed

Which submission of facts is in the words and figures following. to wit;

Submsn. of facts

Frederick Joseph Beck
by Charles C. Whittelsey
his Guardian
vs
Frederick Metz & Louise
P. Metz, his wife

St Louis Land Court,
April Term. 1856

The parties submit the following state of facts for the decision of the Court.

Frederick L. Jesser died seized of the following real estate in the County of St Louis. to wit Lots Fifteen (15) sixteen (16) Seventeen (17) and Eighteen (18) in Block No Two (2) of Suburb St George A or City Block eleven hundred & fifty two having each a front of twenty four

4 C. A. Mantz Clk,

And afterwards the following further proceedings were had in this cause, to wit,

Tuesday May 6th 1856.

Decree Joseph F Beck by Guardian
vs
Frederick Metz & Louise P Metz his wife

Now at this day this cause coming up to be heard upon the submission of facts heretofore filed in this cause, and the Court having considered, and being fully advised of and concerning the premises doth ascertain and determine that the parties, plaintiff and defendants are the owners in fee and are seized of the real estate described as follows "to wit" Certain lots of ground in the City and County of St Louis and State of Missouri, being lots Fifteen (15) Sixteen (16) Seventeen (17) and Eighteen (18) in Block number two (2) of suburb St George, or City Block number seven hundred and fifty two, having each a front of twenty four feet by a depth of one hundred and fifteen feet, bounded north by an alley, East by Fourth Street, and South by Sidney Street; And the Court doth further ascertain and determine the respective rights and interests of said parties and their respective shares and proportions in said real estate to be as follows, "namely" That the said plaintiff Joseph F. Beck and the said defendant Louise P.

5 Metz wife of Frederick Metz are each entitled to one undived half of said real estate. And the Court doth further order and adjudge that partition of said real estate be made among said parties, according to their respective rights and interests as above ascertained and determined,

And afterwards the following further proceedings were had in this cause, to wit.

Wednesday May 7th 1856.

Comrs. Apnd. Joseph F Beck vs Frederick Metz and Louise Metz his wife } Now at this day come said parties by their attorneys and move the Court for the appointment of Commissioners to make partition of the real estate in this cause sought to be divided, and it appearing to the Court, that no Commissioners had heretofore been appointed, the Court doth therefore appoint J. Hellsdorf, John C. Degenhart, and Henry C. Lynch, three respectable free holders residents of St. Louis Co. to be commissioners, to make said partition, and it is further ordered by the Court that said Commissioners make report of their proceedings herein according to law.

And afterwards the following further proceedings were had in this cause, to wit;

Saturday June 28th 1856.

Rept of Com.rs filed

Joseph F Beck, by Guardian
vs
Frederick Metz, et al

Report of Commissioners filed

Which Report of Commissioners is in words and figures as follows, to wit;

Rept of Com.rs

Joseph F. Beck, by Guardian
vs
Frederick & Louise P. Metz

St Louis Land Court

Henry C. Lynch, John C. Degenhardt, & H. J. Hillsdorf, on their oaths say, that they will honestly and impartially execute the trust reposed in them as commissioners to make partition in the above entitled cause,

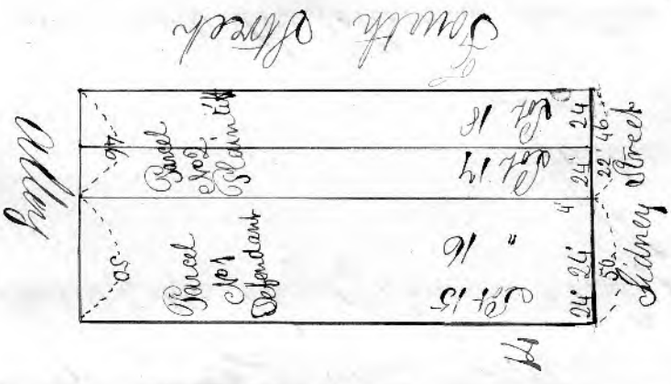
Sworn to and subscribed this 28th day of June 1856 before me
William Weber
Justice of the Peace

Henry C Lynch
John C. Degenhardt,
H. J. Hillsdorf.

We the undersigned Commissioners Report that having visited and examined the premises in the petition mentioned, we have divided the same into two equal parcels as follows. by adding two feet to the

7 two inside lots Fifteen and Sixteen making the front of the same fifty feet, bounded as follows, North by an alley, East by parcel assigned to Joseph F. Beck, South by Sydney Street and West by lot Fourteen and we assign the same to Louise P. Metz, being Parcel No. One,

The other parcel having the corner lot Eighteen upon Fourth Street, we make Forty six feet front deducting two feet thereof from the West side of said lot seventeen, making said lot seventeen only twenty two feet wide, and giving a front on Sidney Street of Thirty six feet to said parcel No Two, bounded North by an alley, East by Fourth Street South by Sidney Street and West by parcel No One assigned to Louise P. Metz,
and this parcel we assign to the plaintiff Joseph Frederick Beck,



The plat above show the said division

All which is respectfully submitted,

Henry C. Lynch
John C. Degenhart
H. J. Hilsdorff

8 County of St Louis

Before me the undersigned a Justice of the Peace within and for said County, came Henry C. Lynch, John C. Degenhart, & Henry J. Hillsdorff, Commissioners and acknowledged the foregoing to be their report in partition above mentioned.

In Testimony whereof I have hereunto set my hand this 28th day of June A.D. 1856.

Wm Weber,
Justice of the Peace

And afterwards the following further proceedings were had in this cause, to wit:

Monday July 7th 1856.

Rept of Comrs. Confirmd by Cons't. John F Beck by Guardian vs Frederick Metz et al } Report of Commissioners Confirmed; By consent of parties herein filed, it is ordered by the Court that the report of the commissioners herein be and the same is hereby Confirmed and that the partition thereby made be held firm and effectual for ever.

9 State of Missouri }
County of St Louis } ss.

I, Charles A. Mantz, Clerk of the St Louis Land Court within and for said County certify the foregoing Transcript to be a true and faithful copy of the Record and proceedings had in the case of Joseph F. Beck by Guardian plaintiff and Frederick Metz and Louise P. Metz his wife defendants. as fully as the same remains of Record in my Office.

In Testimony Whereof I hereto set my hand and affix the seal of our said Court at Office in the City of St Louis this Fourteenth day of August A. D. 1856.

Charles A. Mantz Clerk

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" " " ,	" 6, 7 & 8.
" " " Confirm'd by Consent	" 8.
Clerks Certificate.	" 9.

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St. Louis Land Court *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Land Court held in and for the County of St. Louis in said State,

wherein Frederick Joseph Beck, by his guardian Charles C. Whittelsey, was plaintiff, and Frederick Metz and Louise Metz his wife were defendants

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

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

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the twenty eighth day of August in the year of our Lord one thousand eight hundred and fifty six.

Wm. S. Glanville
CLERK.

$1.50 paid by C. Kribben atty.

State of Missouri
County of St. Louis } S.S.

In obedience to the command of the Within Writ, I, Charles A. Mautz, Clerk of the St. Louis Land Court, within and for the County of St. Louis, hereby certify the foregoing to be a true and faithful copy of the Record and proceedings had in the case of Joseph F. Beck, by guardian plaintiff, against against Frederick and Louisa P. Metz his wife, defendants as fully as the same remains of Record in my office.

In Testimony Whereof, I hereto set my hand and affix the seal of the St. Louis Land Court at office in the City of St. Louis, This Twenty-ninth day of August, A.D. 1856.

Charles A. Mautz, Clerk,

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(8)

March Term 1857

Frederick J. Beck
by C. C. Whittelsey,
Guardian

Vs.

Frederick Metz and
Louisa P. Metz

Land Court,

C. C. Whittelsey for Pfff-
Kribben for deft

Filed 5th Septr. 1856.
Wm. S. Glanville
Clk.

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This Transcript $3.60 Pd by C. Kribben atty

Resp. mot. to submit 25

Fred. J. Beck by C. C. Whittelsey his Guardian Respondent
vs
Frederick Metz & Louise P. Metz his wife Appellants

Supreme Court. Oct. 5. 1856

Appeal from St Louis Land Court

The question in this case turns entirely upon the construction of two clauses in the will of Fred. L. Josse, the former owner of the real estate sought to be divided in this suit.

The second clause, gives and bequeaths to his wife the mother of plaintiff and Louise Metz, "all and singular my property and estate, real, personal and mixed &c. to hold to her, her heirs and assigns forever to the exclusion of all persons whomsoever.

The 4th clause is leaves to his wife's judgment, "how and in what manner she thinks proper to dispose of the estate as well with reference to our child or children, as with reference to said Joseph F. Beck"

The Land Court, upon the agreed case held, that this will gave to the wife the absolute fee in the lands of the testator, and that plaintiff as heir of his mother took one half. The defendants appealed.

The plaintiff and respondent makes the following points

1.° The second clause of the will gave to the wife the absolute estate "to her and her heirs and assigns forever." Upon this no authorities are needed.

2.° The 4th clause gave the same estate, for it gave her the absolute power over the estate.

A devise with power to pass a fee, passes a fee Doe ex. d
8 Cow R. 277 De Peyster v Howland 8 Cow. R. 277 "my estate to be
12 J.R. 389 at her absolute disposal passes a fee Jackson v Babcock

12 J. R. 389.

3. The power of appointment did not limit the fee
Cockerson v Jacques 3 Ed. Ch. R. 207.

Without the 4th clause naming his daughter, the will would have been inofficious, under the statute, but as he has named her and still give his wife the estate the will is valid, & the wife to have all the estate.

Gustas v Gordon 17 Mo R. 408 & cases there cited Tucker v Boston 18 Pick. R 167. Perry v Foster 1 Mass R 166. Wilder v Goff. 14 Mass. 357. Wilson v Tasket 6 Met. R. 600 Block v Block 3 Mo R. 594. These authorities show that the statute applies only to unintentional omissions of the testator to provide for his children.

The judgment was correct and should be affirmed

Whittelsey
p. q & p Resp.

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Fred. Jos. Beck
By Guardian
Respondent
vs

Frederick Metz &
Louise P. Metz
appellants

Whittelsey
p. q & p resp.

Filed 13 Nov. 1856
Wm. F. Glavinier Cl.

Beck, by Whittlesey his guardian vs Metz & wife

Frederick L. Isper died seized of certain real estate in St. Louis City – By his last Will and testament he devised to his wife Catharine his estate using the following language – "Second. I hereby grant give and "bequeath to my wife Catharina all and singu-lar my property and estate, real personal "and mixed, including all I possess at pres-ent and whatsoever I may become possess-of or acquire hereafter – To have and to hold "the same unto her my said wife Catherina "and to her heirs, administrators and assigns for-ever, free from all claims and to the exclusion "of all persons whomsoever" – The fourth "clause of said Will is as follows – "In every "other respect I leave it entirely to the will "and judgment of my said wife Catherina, how-and in what manner she thinks proper "to dispose of the estate, as well with refer-ence to our own child, or children, as with "reference to the said Joseph Frederick Beck" –

His wife Catharina was left sole execu-trix of the will – Louisa P. Metz the wife of Frederick Metz was the sole child of Isper by his wife Catharine – Catharine Isper died intestate leaving as her heirs, the plaintiff Frederick Joseph Beck

his son by a former husband and the said Louisa P. Metz his daughter by said Jesper.

The question here arises alone upon the construction of these two clauses in the Will. There can be no doubt that without the fourth clause, Jesper would be considered as having died intestate as to his daughter. But the effect of this fourth clause, is the point before us.

In Bradley et al. vs Bradley et al., decided at Jefferson City at last January Term, not yet printed, the doctrine about the failure to mention or provide for children in the testators Will, was before this Court. There the testator said nothing by his Will from which this Court could infer that he had a child.

We think here the fourth clause ~~[illegible]~~ mentions his child, in sufficient manner to take this Will without the 11th Sect. of our Statutes of Wills, 1845. The testator expressly mentions his child "as well with reference to our child". They had but one, the daughter. The wife had one by a former husband, even his name. Now this mentioning his child, and giving the power to his wife to provide for this

child, by disposing of the estate, according to her own judgment; must be considered within the spirit of our Statute, as a naming or providing for his child—

He can not be said to have omitted to mention his child;— true he did not name her, by her name,— but she is sufficiently designated— they having but a daughter; he says our child:— Here she was before him— fully in his mind— called "our child"— He knew the mother would do her part by her— and so the judgment of the mother, he willingly ~~to~~ trusted— We refer to the opinion in Bradley vs Bradley just cited— and consider it not necessary to again cite the authorities therein commented on— Here we see the testator had a child— the Will shews this— and whenever the child is designated, or so pointed out by the will, that the Court can see, the Testator had the matter fully before his mind; we are inclined to think it will answer—

This being the only point; and the Court below, having considered properly that the Will passed the property in fee to the Wife, we must affirm the judgment—

Judge Scott concurring—
Judge Leonard absent

John F. Ryland

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Beck, by Guardian

v

Metz et ux -

Opinion

Reversed

Filed 26 May 1857.
Wm S Glanville
Cl.