Valle, Charles G. et al. V. Fleming, Thomas et al 1859 Madison 440/3

607/1

59/059
29 Mo 152

Valle plaintiffs rep
Valle, Lewis B.
Allen, Vermonte
Allen, Emily
Leclere, Isidore S.
Laclere, Mary
Valle, Augustus E } minors
" Melanie M }
Valle, Melanie - guradian

Valle's Heirs
v
Fleming's Heirs

Fleming
. Robert F.
Thomas
Thomas

C. C. Valle dies
claim his land

Say Valle died indebted
Say his administrator ordered land to be sold
sold 1/2 of interest in land to Fleming & others

Ejectment

Napton: P & P — "we think that, upon well established principles of equity law, the owner of the land should, if he wishes to get it back, repay the purchase-money, when he has received, or at least he will receive it to get the land"

Scott - dissenting

State of Missouri, }
County of Madison, } ss.

Be it Remembered, that on the 10th. day of May, 1852, there was filed in the office of the Clerk of the Circuit Court of Madison County, aforesaid, a Petition, of which the following is a true and full copy:

Charles C. Valle,
Louis B. Valle,
Vermont R. Allen and
Emily his Wife, Isidore
S. Leclere and Mary his, Wife,
And Augustus E. Valle and
Melanie M. Valle, by their
legal Guardian, Melanie
Valle, Plaintiffs,
Against
Thomas Fleming,
Robert H Fleming &
Thomas Fleming
Defendants,

In the Circuit Court of Madison County, in the State of Missouri

September Term, 1852.

Plaintiffs State, that on the first day of March, in the year of our Lord, one thousand, eight hundred and forty-eight, they were entitled to the possession of the one third part, (less three fifty-sixths) of the following described tract or parcel of land, lying and being situate in the County of Madison, in the State of Missouri, to wit: that portion of a certain tract of land known as Mine a La Motte claim, which lies in Madison County, Missouri, containing about sixteen thousand ten acres; to wit, that portion of said Claim hereinafter more fully described, which lies south of a certain line beginning at the North-west corner of section number nineteen, in Township, numbered, thirty-four,

Original Petition of Plaintiffs

Range four, East, thence the said line runs east, dividing the counties of Madison & St. Francois, to the dividing ridge between the rivers Castor and White-water. The aforesaid tract of land known and called by the name of the Mine a la Motte, containing twenty-four thousand and ten acres, lying and being situate in the counties of Madison & St. Francis, in the State of Missouri, being the same tract of land that was confirmed by an act of the Congress of the United States, to Francis Valle, Jean Bte. Valle, Jean Bte. Pratte, and St. Gemme Beauvais, or in case of their, or either of their decease, to their heirs or legal representatives. And being so entitled to the possession of that portion of the aforesaid described tract which lies in the county of Madison containing about sixteen thousand and ten acres, or thereabouts, defendants, afterwards, to wit; on the day and year aforesaid, entered into said premises, and unlawfully withhold the possession thereof, from the plaintiffs; to their damage twenty thousand dollars. They ask judgment for the possession of said premises & for the damages aforesaid.

John D. Cook, J. W. Noell & Fox
Attys for Plaintiffs

Affidavit. Vermont R. Allen, one of the foregoing Plaintiffs, makes oath and says, he believes the above Petition and the matters therein, as stated, are true. He further states on oath, Thomas Fleming, one of the aforesaid defendants, is not a resident of, nor residing within the State of Missouri. Vermont R. Allen

Sworn to and subscribed before me,
this 10th. day of May, A.D. 1852,
Edward Evans Clerk of the
Circuit Court of Madison County, Missouri.

Plaintiffs rely upon the following title papers, to wit: 1st A deed from Lewis F. Linn and Evariste S. Pratte to Charles C. Valle, ancestor of Plaintiffs. 2d, on the original Patent to the Confirmees, or their legal representatives or heirs, which is in the hands of the Defendants: which Patent they, the said defendants are hereby notified to produce in Court.

Cook, Noell & Foy Attys for Plffs.

The Clerk of the Circuit Court of Madison County, Missouri, will please issue a Summons on the foregoing Petition, according to law, returnable to the Sept. Term, 1852, of said Circuit Court.

Cook, Noell & Foy Attys for Plffs

State of Missouri,
Madison County, ss.

Original

The State of Missouri, to the Sheriff of the County of Madison, in said State, Greeting; You are hereby commanded to Summon Thomas Fleming, Robert H. Fleming and Thomas F. Fleming, to be and appear before the Circuit Court within and for the County of Madison, on the first day of the next Term thereof, to be begun and held on the first Monday in September, next, at the Court-House, in Fredericktown, in said County

Summons

of Madison, to answer the within and foregoing complaint of Charles C. Valle, Louis B. Valle, Vermont R. Allen and Emily his wife, Isidore L. Leclere and Mary his wife, and Augustus C. Valle and Melanie Valle, by their legal guardian Melanie Valle; and that you certify to our said Court, how you execute this Writ.

Witness, Edward Evans, Clerk of the Circuit Court within and for the County of Madison, at office, in Fredericktown, this 10th. day of May, in the year of our Lord, eighteen hundred and fifty-two.

Seal

Edward Evans Clerk

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Sheriff's Return

Served the within Summons on the within named Robert F. Fleming and Thomas F. Fleming, as I am within commanded, by reading the Petition and Summons to them in their Presents and hearing; and by leaving a copy of the original Petition and Summons with each of them, and in Madison County, Missouri, on the 13th. day of May, A. D. 1852. May 13th. day of May, A.D. 1852.

David B. Brewer Sheriff, within and for Madison County, Missouri.

Filed, May 10th, 1852,

Test. Edwd. Evans Clerk

Madison County Circuit Court, in Vacation, May 10th 1852.

Clerk's Order

Charles C. Valle, Louis B. Valle, Vermont R. Allen and Emily his wife, Joseph S. Seclere and Mary his wife, And Augustus E Valle, and Melanie M. Valle, by their legal guardian, Melanie Valle, Plaintiffs,

Against

Thomas Fleming, Robert F. Fleming and Thomas F. Fleming, Defendants,

} In the Circuit Court of Madison County, in the State of Missouri, September Term, 1852.

And now at this time the Plaintiffs come and file their petition, accompanied with the proper affidavit, and it appearing to the satisfaction of the Clerk of the said Circuit Court, from the Petition and affidavit filed, that Thomas Fleming, one of the defendants is not a resident of this State: It is therefore, on Motion, ordered by the undersigned clerk of this Court, that said non-resident defendent be notified of the filing of said Petition, and that the same will be taken as true by the said Court, at the next term thereof, to be begun and held at the courthouse, in Fredericktown, in said County of Madison, in the State of Missouri, aforesaid, on the first Monday in September, next, to answer the said Petition,

or the same will be taken for confessed. And that the said Petition states in substance that the said Plaintiffs are the legal owners of one third part (undivided) Publication of that certain tract of land known as the Mine la Motte tract, which lies in said County of Madison, State aforesaid, containing about sixteen thousand, and ten acres, or To thereabouts. Said Petitioners pray for judgment of possession of said premises, and damages for detention, thereof,- And it is further ordered by said Clerk, that a Now copy of this order be published in the "Plaindealer", a paper printed in St. Genevieve City, in said State of Missouri, once a week, for eight weeks successively, before the said next Term of said Court, the last insertion to be at least four weeks before the said next Term of said Court, as aforesaid. Rendered Edward Evans Clerk of the Circuit Court of Madison County, Mo.

And afterwards, to wit, at the September Term, 1852 of said Circuit Court, and on the 2nd. day of said Term, the following proceedings was.

Charles C. Valle & others
vs. } Petition
Thomas Fleming & others

Bill of Particulars demanded by Defts The defendants by their attorney come and file their Motion for a Rule on the Plaintiffs, to file a bill of particulars in said cause: in the following words "Defendants demand a Bill of Particulars of Plaintiffs cause of action"

Filed, September 7th. 1852

Test. Edwd Evans clerk

And on the 3rd. day of said Term, the following proceeding was had.

Leave given Plaintiffs to

Charles C. Valle & others
vs. } Petition &c
Thomas Fleming & others

And now at this time the parties by their

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file amended Petition

Attorneys come and on Motion, leave is given to plaintiffs to file their amended Bill herein. And on Motion the Defendants, have leave to file their Answer thereto, on or before the 1st. day of the next Term of this court: and this cause is continued until the next Term of this court, without Prejudice to a trial thereof, at said next Term of said Court.

Defts have leave to file answer at next Term

And afterwards, at the March Term, 1853, of said Circuit Court, and on the first day of said Term, was the following, to wit:

Amended Pet filed

Charles C. Valle & others
vs.
Thomas Fleming & others

} Pet. for Judgment of Possession Real estate &c

The parties by their Attorneys come, and the Plaintiffs file their amended bill herein, and the Defendants file their motion to remove said Cause to the Circuit Court of the United States

Amended

Charles C. Valle, Louis B. Valle, Vermont R. Allen & Emily his Wife, Isidore S. Leclere & Mary his Wife, Augusto E. Valle & Melanie K. Valle by their legal Guardian Melanie Valle, Plaintiffs,
Against
Thomas Fleming, Robert F. Fleming, Thomas F. Fleming Defendants

} In the Circuit Court of Madison County, in the State of Missouri, September Term, 1852

Amended Petition.

Petition

Plaintiffs state that, on the first day of March, in the year of our Lord, one thousand, eight hundred and forty-eight, they were entitled to the possession of six sevenths, of the undivided third part (less the three fifty-sixths) of the following described tract, or parcel of land, lying and

being situate in the counties of Madison and St. Francis, in the State of Missouri, known as the Mine a la Motte do= main, containing twenty-eight thousand arpens, French measure; or about twenty-four thousand and ten acres; and is the same tract of land that was confirmed by an act of the Congress of the United States, to Francies Valle, Jean Bte. Valle, Jean Bte. Pratte and St. Gemone Beauvais, or in case of their or either of their decease, to their heirs or legal representatives. And being so entitled to the possesion of six sevenths of the undivided third part, (less three fifty-sixths, of the aforesaid described tract of land, containing about twenty-eight thousand arpens, or about twenty-four thousand and ten acres; Defendants afterwards, to wit, on the day and year aforesaid, entered into said premises, and unlawfully withhold the pos= sesion thereof, from the plaintiffs, to their damage twenty thousand dollars, — They ask judgment for the possesion of said premises, and for their damages aforesaid.

Noell & Fox for Plaintiffs.

Vermont R. Allen, one of the Plaintiffs, makes oath and says, he believes the above amended Petition, and the matters therein, as stated, are true.

R. R. Allen

Sworn to and subscribed before me, this 7th. day of March, A.D. 1853.

Edward Evans Clerk Circt Court
By S. C. Collier, D. Clerk

Filed, March 7th, 1853,

Test Edwd Evans clerk

Afterwards, on Thursday March, 10th. the following was Ordered.

C. C. Valle & others
vs.
Thomas Fleming & others } Pet. &c

Motion to remove cause to U.S. Court

And now, at this time, the parties by their

Attorneys come, and the court being now sufficiently
Overrules advised touching the Motions to remove the said cause
to the Circuit Court of the United States, in this District,
overrules said Motion.

C. C. Valle & others
vs. } Pet. for Possession &c
Defendants Thomas Fleming & others

And now at this time the parties by
their Attorneys come, and Defendants file their Answer
Answer to Plaintiffs bill filed herein, and by consent, the
parties have the privilege of using Copies of the
original deeds and papers in said cause for
the time being. And on Motion of Plaintiffs'
Attorney, it is ordered by the Court, that there be a
Rule upon the Defendants, to produce, on or before
the first day of the next Term of this Court, or show
cause why they do not produce them, the original
Deeds and papers in this cause, And it is further or-
dered, that said Defendants be served with a copy of this
Order, duly authenticated,

C. C. Valle's Heirs } In the Madison Circuit
Defendants Against } Court, Civil Action for
Flemings } Land. Defendants' Answer

Defendants deny, that on the first day
of March, eighteen hundred and forty-eight
Plaintiffs were entitled to the possession of said
Answer land, or any part thereof, as stated in said Petition,
or that on that, or any other day, they, the Defendants
unlawfully withheld the possession of the same.

Defendants deny that Plaintiffs are the owners
of said land, or any part thereof: or are entitled to the
possession of the same.

Defendants state that, one of them, the said Thomas Fleming is the owner in fee, of said real estate; that the other defendants, the said Robert F. Fleming and the said Thomas Flinn Fleming hold under, and by authority, and for the benefit of the said Thomas Fleming.

Defendants have no sufficient knowledge to form a belief, whether Charles C. Valle is the ancestor of Plaintiffs or not.

Defendants state that, one of them, the said Thomas Fleming purchased the said land in controversy from the personal representatives of the said Charles C. Valle, dec'd, and that he paid a full and valuable consideration therefor; which has been applied to the benefit of Plaintiffs, either in the payment of the debts of their ancestor or by distribution to them. That Plaintiffs have not returned said purchase money, nor offered to do so; and are thereby barred from any right to recover said land, even if their title otherwise was valid, as defendants are informed and believe.

Watkins Atty for Defendants.

Defendants Exhibits

The Defendants will offer in evidence, and rely upon the following original Deed, Copies of Deeds, Statutes, and Records here filed.

1 ....

2 An original Deed from Linnt Pratte and the personal representatives of Charles C. Valle, to Thomas Fleming

3 An original Deed from the personal representatives of Charles C. Valle, To Thomas Fleming.

4 Two Original Deeds from Mrs Melanie Valle to Thomas Fleming.

5 A Deed from the Sheriff of Madison County, on Partition of the Mine du Motte tract of land, to Thomas Fleming

6 Letters of Administration granted to Evariste F. Pratte & Barthelamie St. Gemme, on the estate of Charles C. Valle.

7 Letters of Administration granted to Evariste F. Pratte & Melanie Valle, on the Estate of Charles C. Valle.

8 Copies of Petitions of the Administrators of the Estate of Charles C. Valle, Praying for the sale of Real estate: copies of their Reports of said sales; and all the orders of the County Court in relation thereto

9 Original Deed from the Sheriff of Madison County to Thomas Fleming.

10 Deeds to Thomas Fleming from Charles K. Henderson, E. F. Pratte & Wife, E. A. R. Linn, Trustee for Mary Barr, Samuel Lamb

11 Deed from Linn & Pratte to Samuel Lamb. Also from M. Valle to Lane.

12 Deed from Linn & Pratte, and their wives to Elihu Chauncey. Also from Mrs. Valle.

13 A duly authenticated copy of an act of congress, approved, May, 24th, 1828, confirming to John B. Valle & others the Mine à Motte Tract of Land, in Madison County, Mo.

14 Deeds from I. A. Relfe to F. N. Buck & others: Also, a Deed from E. A. R. Linn to I. A. Relfe

15 Deed from Linn & Pratte to C. C. Valle.

16 Deeds from E. A. R. Linn and Wm. A. Linn to Buck & others.

17 Copy of Decrees in the case of Francis Valle vs. C. C. Valle's Heirs, in the Madison Circuit Court.

Thomas F. Fleming, one of the Defendants, makes oath that the foregoing Answer, and matters therein stated, he believes to be true.

Sworn to and subscribed before me this 11th. day of March, 1853
Test
E. Evans Clerk
} Thomas H Fleming

Filed, March, 11th. 1853,
Test Edwd. Evans Clerk

And afterwards at the September Term, 1853, of said
Trial Circuit Court, was the following, to wit, being the 3rd.
day of said Term.

C. C. Valle & others
Vs.
and Thos. Fleming & oth.
} Civil action. Pet. for Judgt of possession of Land &c.

And now at this time the parties by their Attorneys come, and the trial of this cause is taken up, and submitted to the Court. The Court having heard a part of the evidence in said cause, and for want of time to conclude the same, said trial is postponed until to-morrow Morning

And on the 4th. day of said September Term, 1853, the following Proceeding was had in said Cause.

Chas. C. Valle et al
Vs.
Thos. Fleming et al
} Civil Action. Pet. for possession of Land &c

And now at this time the parties by their Attorneys come, and the trial of said cause is resumed. And the parties having adduced further testimony in said cause, and for want of time to conclude the same, the said trial is postponed until to-morrow Morning.

And afterwards, at the said September Term, 1853, of the said Circuit Court, and on the 5th day of said Term, was the following, to wit:

Chas C. Valle & others
vs.
Thos. Fleming & others
} Pet for Judgment of Possession of Land &c

And now at this time the parties by their
Trial Attorneys come, and the trial of said cause is resumed: and the parties having concluded their testimony, and a part of the arguments of Counsel in said cause, for want of time to conclude the same, said trial is post-poned until to-morrow morning.

And afterwards, at the said September Term, 1853, of the said Circuit Court, and on the 6th day of said Term, was the following, to wit.

Charles C. Valle, Louis B. Valle,
Vermont R. Allen & Emily his wife,
Isidore S. Declert & Mary his wife,
Augustus E. Valle & Melanie M. Valle,
By their legal Guardian Melanie Valle,
Plaintiffs
} Petition for Possession Lands &c

Against
Thomas Fleming
Robert H. Fleming
Thomas F. Fleming. Defendants,

And now at this time the parties by their
Judgment Attorneys come, and the trial of this cause is resumed. And the Court having heard all the evidence adduced and the Arguments of Counsel in full, doth find that
for said plaintiffs are not entitled to recover possession of said real estate, in said petition specified, nor

the damages for the detention thereof, as in said petition alleged, which finding is in writing and herein filed.

Defts — Therefore it is considered and adjudged by the Court, that said Defendants have and recover of and from said Plaintiffs, their costs and charges in this suit expended, and may have execution thereof.

Charles C. Valle, Louis B. Valle,
Vermont R. Allen & Emily his wife,
Isidore S. Leclere & Mary his wife,
Augustus E. Valle & Melanie M. Valle
By their legal Guardian Melanie Valle
Plaintiffs,

Against.

Thomas Fleming, Robert F. Fleming
& Thomas F. Fleming, Defendants.

Petition for Inspection of Land.

Motion — And now at this time the parties by their Attorneys come again and the plaintiffs move the Court to review their finding and decision in

for — this case, for reasons filed; But the Court overrules

Review — said Motion to review its finding and decision: — To which opinion of the Court the Plffs except, and tender their Bill of exceptions, which is signed, sealed and made a part of the Record herein.

by — And the Plaintiffs then pray for an Appeal to the Supreme Court, and file their Bond, which is

Plffs — approved by the Court, and an appeal herein is

& — granted to the Supreme Court.

Appeal

Charles C. Valle, Louis B. Valle,
Vermont R. Allen & Emily his wife,
Isidore S. Leclere & Mary his wife
And Augusta E. Valle & Melanie M. Valle,

By their legal Guardian,
Melanie Valle,
Plaintiffs,
Against
Thomas Fleming,
Robert F. Fleming &
Thomas F. Fleming
Defendants,

In the Circuit Court
of Madison County,
Missouri.

Finding

From the evidence in this case the Court finds that a certain Charles C. Valle who departed this life in the year eighteen hundred and thirty-eight, at the time of his death, was the owner of one undivided third part of a certain tract of land lying in the counties of Madison and St. Francois, in the State of Missouri,— That the Plaintiffs are a part of the heirs, some of them being his Children; and that said Charles C. Valle at the time of his death, was considerably indebted, and that after his death, the Clerk of the County Court of Madison County, Missouri, granted Letters of Administration on the Estate of said Charles C. Valle, to Barthelomew St. Gemme and Evariste F. Pratte, dated 19th December, 1838— Said Administrators filed their Petition in the said County Court praying that the personal estate of the said Charles C. Valle, be reserved, and his real estate, or so much thereof as should be sufficient, should be sold to pay his debts; and thereupon the said County Court did make an order requiring said Administrators to sell the whole, or so much of the real estate of the said Charles C. Valle, as should be necessary to pay the debts of their said intestate, at public or private sale— That said Administrators, by virtue of these proceedings of said County Court, did sell one half of the interest the said Charles C. Valle had in the Mine La Motte

tract of land, at his death. Afterwards, Barthol=omew St. Gemme died, and, after his death, the Clerk of the County Court of Madison County, in vacation, granted letters of administration on the Estate of Charles C. Valle, to the said Evariste F. Pratte and Melanie Valle, which letters bear date 19th. Jan=uary, 1844. — In the year 1847, the said Evariste F. Pratte and Melanie Valle admr & administratrix as aforesaid, filed their petition in said County Court, praying the County Court to reserve from sale the slaves and personal estate of the said Charles C. Valle, and for an order to sell the real estate of the said Charles C. Valle, or so much thereof, as should be sufficient to pay the debts of the said Charles C. Valle; And said Court ordered that said Evariste F. Pratte and Melanie Valle should, at private or public sale, sell the real estate of Charles C. Valle, for the purpose of paying the debts of the said Charles C. Valle; and that the said Evariste F. Pratte and Melanie Valle, did sell to Thomas Fleming one of the defendants in this suit, the interest of their intestate, Charles C. Valle, to the Mine a la Motte tract of land; - The said Evariste F. Pratte and Melanie Valle, executed a deed to the said Thomas Fleming for the land purchased at the last mentioned sale; and that the said Thomas Fleming had, before the com=mencement of this suit, acquired, by purchase the interest of Charles C. Valle, disposed of by the first mentioned sale.

The Court further finds that, at the com=mencement of this suit Robert F. Fleming and Thomas F. Fleming were in the actual possession of the land mentioned in plaintiff's petition, and that they are yet in possession of the same; and claim to hold un=der their co-defendant, Thomas Fleming, who claims

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to be sole owner of the whole of the mine la Motte tract of land.

The Court further finds that the annual rents and profits of the interest the said plaintiffs claim in said Mine la Motte tract of land, is worth twenty-seven hundred and fifty dollars.

finding of the Court

The Court further finds that the purchase money for which said land sold as aforesaid has been paid and that a portion of it has been applied to the payment of the debts of the said Charles C. Valle; and the balance has been paid to the Malvina Valle administratrix, as aforesaid.

The Court further finds that the said County Court of Madison County, had jurisdiction over the subject matter about which the aforesaid proceedings were had; and that said Court did exercise jurisdiction as aforesaid; and that Vermont Allen and Charles C. Valle, two of the plaintiffs, took a lease, in 1851, of Thomas Fleming, one of the defendants, to work in Mine la Motte, for one year, and that lease had expired before the commencement of this (suit) And the court declares, as a conclusion of law, upon these facts, that the plaintiffs cannot recover in this suit.

Charles C. Valle, Louis B. Valle and others
vs.
Thomas Fleming Robert F. Fleming and Thos. F. Fleming

In the Circuit Court of Madison County, September Term, 1853.

Motion by Plffs to

The Plaintiffs in the above cause, come and move the Court to review its decision in the above cause, in finding of the facts and the conclusions of law, arising arising upon the facts, in the following particulars, to wit:—The finding of the facts and the conclusions of the law, as pronounced by the Court being in writing (See finding above)

and the plaintiffs here set out and state all the evidence material to the issue and the questions to be raised, to wit;

Review The plaintiffs concur with the Court in finding that C. Valle was the owner of one third part of the Mine La Motte Tract of land, at the time of his death, and that plaintiffs are part of his heirs.

Testimony The Plaintiffs introduced Charles Gregoire, who testified that he was acquainted with Charles C. Valle deceased, that plaintiffs are his children. That Charles C. Valle Jr, one of plaintiffs, is aged at this time, about 30 years; Louis B. Valle twenty-eight years; Mary, wife of Isidore Leclere, is twenty-six years old; Emily, wife of V. R. Allen, twenty-four; Augustus Valle nineteen; and Melanie Valle, was fifteen, and that Francis L. Valle, one of the heirs, (who is not a party to this suit) is thirty-two; and that these were all the children, and only heirs of Charles C. Valle deceased:- That he is well acquainted with the Mine La Motte Tract or Domain; that the annual value of the rents and profits, of the sixth sevenths of one third, (less three fifty-sixths) from the year eighteen hundred and forty-eight to this time is about,

Testimony from twenty-five hundred, to three thousand dollars, per annum, up to 1851, since that time about 600.

That the proceeds of the first sale of the Mine La Motte tract, was applied to the payment of the purchase money to the commissioners who sold Mine La Motte in a proceeding in partition, amongst the original proprietors.- That he does not know what was done with the proceeds of the second sale;—

The Defendants then read a Transcript from the Records of the County Court of Madison County, touching the Administration of the Estate of Charles C. Valle, deceased, including copies of the two sets of Letters of Administration, and all the orders and proceedings of said

Court, touching the sale of the real estate of said Charles C. Valle, deceased, of which transcript the following is a true copy in words and figures (See following)

Exception by Plffs

The Defendants then offered to read a deed, dated 24th. of April, 1839, from E. F. Sims & wife, E. F. Pratte and wife, and E. F. Pratte and B. St. Gemmes, Administrators of Chas. C. Valle, deceased, to Thomas Fleming; to the reading of which deed, the Plaintiffs objected, but the Court over-ruled the objection and permitted said deed to be read: To which decision plaintiffs excepted.

Excep by Plffs

The Defendants then offered to read a deed from the said Sims and wife, and Pratte and wife, and Pratte & St. Gemme, administrators as aforesaid to Samuel Lamb, (of which deed the following is a copy) to the reading of which deed, plaintiffs objected but the Court over-ruled the objection, and permitted the deed to be read, and the plaintiffs excepted.

Excep by Plffs

The Defendants then offered to read a deed from the said Sims & wife, Pratte & wife, and the said administrators, to Elihu Chauncey, of which deed the following is in words and figures a copy, to wit (see below) to the reading of which deed, plaintiffs objected, but the court overruled the objection, and permitted the deed to be read, and plaintiffs excepted.

Excep by Plffs

The Defendants then offered to read a deed from Melanie Valle and E. F. Pratte administrators of Chas C. Valle, deceased, to Thomas Fleming of which deed the following is a copy, to wit (See following) to the reading of which deed the plaintiffs objected, but the Court overruled the objection, and permitted the deed to be read, and plaintiffs excepted.

It was admitted on the trial that Thomas Fleming was the owner of all the title to the land in controversy, that passed by virtue of the administrators

deeds permitted to be read; and of all the title not vested in the heirs of Chs. C. Valle, deceased: as also, of all the title of Melanie Valle, as Widow of Chs C. Valle, deceased;—

The Defendants then read in evidence two deeds in chancery, in the Circuit Court of Madison County, of which two deeds, the following is in words and figures a copy, to wit (See following

Testimony Henry Davis, a witness for Defendant, testified that the proceeds of the first sale made by Administrators of C.C. Valle, deceased, was paid to the proprietors of Mine la Motte. That the Commissioners' sale in partition was for sixty-seven thousand, one hundred dollars: that the sale of one half of Mine La Motte was for fifty thousand dollars— His information is derived from E.F. Pratte's statements. That E.F. Pratte, who was co-administrator with Bartholomew St. Gemme, is the same E.F. Pratte who was co-administrator with Melanie Valle: That B. St. Gemme died some time in 1844; that E.F. Pratte survived him, and died in the year eighteen hundred and fifty. The last Administrators' sale of Valle's interest, brought more than the first— and does not know what was done with the proceeds. That Plaintiffs have been living in the counties of Madison and Ste Genevieve, for the last fifteen or twenty years, (St. Genevieve being about 36 miles from this place) That the Commissioners in Partition sold the land to E.F. Pratte and E.F. Linn. That he does not know from his own knowledge that any of the proceeds of the sale went to pay the debts of C.C. Valle. That E.F. Pratte was the same person who administered in connection with Mrs. Melanie Valle. That the first sale made by the Administrators, was effected in Philadelphia in 1839, or 1840: That the proceeds went to pay

Testimony

Testimony

the purchase money for said land.

Testimony preserved in Bill of Exceptions

Simon A. Guignon, a witness on the part of the defendants, testifies that Bartheleme St. Gemme & E. F. Pratte were Administrators of Chas. C. Valle, dec'd; that after the death of Bartholemew St. Gemme, Mrs Melanie Valle & E. F. Pratte administered jointly; that E. F. Pratte told him that he borrowed a part of the money arising from the 2nd. sale of Mine a Lamotte, from the Estate of Chs. C. Valle. That Mrs Valle received about six thousand dollars, the proceeds of the second sale: that Louis B. Valle, one of the Plaintiffs received one thousand dollars of said money, from to enable him to go to California; - and that he knows that C. C. Valle was one of the joint purchasers of Mine La Motte, with Linn & Pratte.

William M. Newberry, a witness on the part of the Defendants testifies, that he was one of the Commissioners who sold Mine a La Motte to Pratte & Linn: that as one of the Commissioners he received from E. F. Pratte & L. F. Linn the consideration money, and paid the same to the parties to the partition suit. - That Linn & Pratte were the purchasers at the Commissioner's Sale; and that Charles C. Valle was not a purchaser at the Commissioners' Sale -

The plaintiffs then read in evidence, a deed from William M. Newberry & others, Commissioners, to L. F. Linn & E. F. Pratte. The Plaintiffs read in evidence the whole of the Record of the Proceedings of the County Court, at the December Special Term, 1838, (here Copy: See following)

The Plaintiffs read in evidence the appraisement list of the negroes (See Copy following)

Defts testimony

The defendants then read in evidence an agreement, between Linn, Pratte & Chs. C. Valle, dated, July 1837, (See copy following)

The defendants then introduced Francis Valle

who testified, that in 1851, he and Vermont Allen, one of the Plaintiffs, and Charles E. Valle, another plaintiff, took a lease for one year, from the Agent of Mine La Motte, one of the Defendants, to mine, on the Mine La Motte Tract.

Evidence

The Defendants also gave in evidence, a notice of the Defendant Thomas Fleming (See Copy below)

in Bill of Exception

Defendant then read in evidence a book containing the rules and regulations of the mines (See copy below) with the names of Allen, Charles E. Valle and Francis Valle, signed thereto

Upon this evidence the plaintiffs pray the court to review its finding of the facts as aforesaid, and to find.

Reviewing finding of Court

1st. That the Special Term of the County Court held on the 21st. day of December, 1838, at which the first order of Sale was made, was held without any order of the Presiding Justice, of said Court, or of any two Justices of said Court, and without any notice thereof,

2nd. That the said order of Sale was made without any order of Publication, or notice thereof being given

3rd. That the Administrators E. F. Pratte and B. St. Gemme did not present a petition, accompanied by a true account of their administration, of the debts due to and by the deceased, and remaining unpaid; with an Inventory of the Real estate, and of the remaining personal estate- the whole verified by affidavit.

4th. That the sale made by said Administrators under said Order, was never reported to the County Court, and never approved by said Court, or any

other Court of Competent jurisdiction.

5th That the appointment of E. F. Pratt and Melanie Valle, as administrators of the Estate of Charles C. Valle deceased, was made while the said Charles F. Pratt remained surviving administrator under the first appointment, and without any resignation or revocation of the letters granted to said Pratt & St. Gemme

6th. That the proceeds of the sales made by the administrators was not applied to the payment of the debts of C. C. Valle, deceased, or to the benefit of Plaintiffs.

And the Plaintiffs ask the Court to review its conclusions of the law arising from the facts, and to decide

Conclusions of Law

1st. That the proceedings of the County Court, held on the 21st. day of December, 1838, were without jurisdiction and void.

2nd. That the several deeds read in evidence by Defendants from the administrators of C. C. Valle, deceased, were void, and passed no title to the Purchasers.

3rd. That upon the evidence and facts admitted by the pleadings, the Plaintiffs are entitled to recover.

4th. That the Record Books of the County Court read in evidence by the Plaintiffs, not showing on the face of the proceedings, by what authority the special Term of the Court convened, it must be presumed, that the term was held without any legal authority

And thereupon the application for review being submitted to the Court, the Court re-

Court

fuses to review its finding of facts and conclusions

overrule of law, as prayed for, and overrules the application, To which decision of the Court, in the several premises, above particularly set forth, the plaintiffs object and except, and tender here to the Court, this their Bill of Exceptions, which they pray may be signed, sealed, and made part of the record in this cause. Which is done H. Haugh Seal

And afterwards, to wit, on the 18th. day of May, 1854, filed there was filed in the office of the clerk of said Circuit Court, a certified Judgment in the Supreme Court of the State aforesaid, in words and figures, following, to wit;

of In the Supreme Court of Missouri, at St. Louis, March Term, 1854.

Charles C. Valle & others } Appeal from the Circuit
vs. } Court of Madison County.
Thomas Fleming & others }

Supreme Now come again the parties herein, by their respective Attorneys, and the Court here being now sufficiently advised of and concerning the premises do consider and adjudge, that the judgment aforesaid, in form aforesaid, by said Circuit Court rendered, be reversed, annulled and for nought held and esteemed; and that said appellants be restored to all things which they have lost by reason of said judgment.

And it is further considered by the Court— Court, that this cause be remanded to said Circuit Court for further proceedings, according to the opinion of this Court herein delivered:- and that said appellants recover against said respondents, their costs and charges herein expended, and have thereof execution.

The State of Missouri, ss.

I, William S. Glanville, Clerk of the Supreme Court of the State of Missouri, at St. Louis, certify the foregoing to be a perfect transcript of the judgment of said Court, in the above entitled cause, decided by said Court at the term first above stated, on appeal from said Circuit Court.

Witness my hand, and the seal of said Supreme Court, at office, in St. Louis, this tenth day of May, 1854.

(Seal)

W. S. Glanville Clerk

And afterwards, at the September Term, 1854 of said Circuit Court, and on the 2nd day of said Term, was the following:

It is ordered by the Court, that all the Cases on the Civil General Docket be, and they are hereby continued, owing to the ~~Court~~ ill healths of the Judge of this Court, until the next term of this Court; and such continuance is not to prejudice the rights of any party, to any suit pending in this Court, from filing any answer, or making any Motion that a party could have made at this term of Court, or of amending any process or pleading, that a party to any suit continued could have amended, at this term of Court: and all cases herein pending, are continued, as though this term of Court had not been commenced. — And, at the next term of this Court, any Party, to any suit, shall have the right to make any motion, file any answer, or do any other thing or act, that he would be entitled to do, or have done, at this term of Court.

And afterwards, at the March Term, 1855, of said Circuit Court, and on the 4th day of said Term, was the following,

C. C. Vallet et al
vs.

Thomas Fleming
& others

Cont'd at

And now at this time the parties by their Attorneys come, and this Cause is continued on affidavit of Defendant, and at their cost, for this term. It is therefore

Def. Costs

considered and adjudged by the court that the said Plaintiffs have and recover of and from the defendants their costs herein expended, for this term, and may have execution thereof.

And afterwards, at the September Term, 1855 of said Circuit Court, and on the 1st. day of said term, was the following, viz:

C. C. Valle & others
vs.
Thomas Fleming & others

Pet. for Restitution &c

Death

Now, at this time, the parties by their Attorneys come, and the Defendants suggest the death of

Suggests

Thomas Fleming, one of the defendants, which is admitted by the Plaintiffs.

And afterwards, on the 6th. day of said Term, was the following:

Charles C. Valle, Louis B. Valle, & others
vs
Thomas Fleming
Robert T. Fleming and
Thomas L. Fleming

Action of Ejectment, in the Circuit Court of Madison County, Missouri; Appeal to the Supreme Court, reversed & remanded.

Pet for

To the Honorable, the Circuit Court of Madison County, Missouri; The Plaintiffs in the above entitled cause, would respectfully represent, that Thomas Fleming, one

New

of the aforesaid Defendants, departed this life, some time in the Spring of 1855; that prior to his death he made a

Pl & Pr

Will, devising the land in controversy, in said suit, to the following persons, viz: Robert Adger and Jane

Eliza his wife; Robert F. Fleming; Thomas F. Fleming; Arthur A. Burt and Clarissa, his wife; Alfred W. Fleming; Thomas M. Fleming, and Margaretta A. Fleming; that the following named person (amongst others) was named and appointed as Executor of said last will and testament of the said Thomas Fleming, viz, Thomas F. Fleming, to whom letters testamentary were granted by the Judge of Probate of Madison County, Missouri, as the law directs.

Plaintiffs would further represent, that Robert Adger and Jane Eliza his wife, Arthur A. Burt & Clarissa his wife, Alfred W. Fleming Thomas M. Fleming & Margaretta A. Fleming are non-residents of the State of Missouri— That Thomas F. Fleming and Robert F. Fleming are the only devisees of the said Thomas Fleming deceased, who reside in the State of Missouri. Plaintiffs would therefore pray the court for an order of Publication against the non-resident devisees, of the said Thomas Fleming dec'd, and a Scire facias for the resident devisees, to show cause why judgment should not be entered up against them, in conformity to the opinion of the Supreme Court

D. M. Fox Atty for plffs, being sworn says, that the foregoing Petition, & the matters therein, as stated are true.

D. M. Fox

Sworn to and subscribed before me, This 3rd. day of October, A.D. 1855.

Test Edwd. Evans Clerk

Charles C. Valle, Louis B. Valle, Vermont R. Allen & Emily his wife, Isidore F. Soclare & Mary his wife And Augustus E. Valle & Melanie M. } Civil Action

Valle, by their legal Guardian
Melanie Valle, Pltffs.
Vs.
Thomas Fleming, Robert F. Fleming, and Thomas Fleming
Defendants

Ejectment for Lands &c.

And now at this time come the Plaintiffs by their Attorneys and present their Petition verified by affidavit, suggesting the death of Thomas Fleming, one of the Defendants in said suit, setting forth that the said defendant bequeathed the land in controversy to Robert Adger and Jane Eliza his wife, Robert F. Fleming, Thomas F. Fleming, Arthur A. Burt and Clarissa A. his wife, Alfred W. Fleming, Margaret A. Fleming and Thomas M. Fleming. That the said Robert Adger and Jane Eliza his wife, Arthur A. Burt and Clarissa A. his wife, Alfred W. Fleming, Margaret A. Fleming and Thomas M. Fleming are not residents of, nor do they reside in the State of Missouri; and that Thomas F. Fleming and Robert F. Fleming are the only residents of the State of Missouri, praying the Court for an Order of Publication, against the non-resident Defendants, and that a scire facias issue against the said devisees, to show cause, if any they have, why they should not be substituted, as defendants, instead of the said Thomas Fleming deceased.

Order of Publication and Scire facias

Whereupon, It is Ordered by the Court, that the said non-resident devisees of the said Thomas Fleming deceased, be notified to be and appear before the Circuit Court to be held within and for the County of Madison in the State of Missouri, at the Court House in Fredericktown, in said County, on the first Monday in March, next, then and there to answer the Petition of the said plaintiffs, on or before the third day of said term of said Court, or the same will be taken as confessed against

them. It is furthermore ordered, that a copy of the said
Order, be published in the Jackson Courier or Cape Girar-
for deau Eagle, a newspaper published in Cape Girardeau
City, in Cape Girardeau County, in the State of Missouri, for
eight consecutive weeks, the last insertion to be at least
four weeks, before the first day of the said Term of Court.
It is furthermore ordered, that a scire facias issue against the
New parties said devisees, compelling and requiring them to appear at the
next term of said Court, at the time and place above specified,
and on or before the 3rd. day of said term, and show cause,
if any they have, why the plaintiffs should not have judg-
ment for the recovery of the land in controversy, in conform-
ity to the opinion of the Supreme Court, filed in this Cause,
And this Cause is continued.

State of Missouri,
Madison County } ss.

The State of Missouri, of the County of Mad-
Writ ison, Greeting; Whereas, Vermont R. Allen, and Emily
his wife, Charles C. Valle, Louis B. Valle, Isidore S. Leclere
and Mary his wife, Augustus C. Valle, and Melanie
M. Valle by their legal Guardian, Melanie Valle, as
plaintiffs instituted a suit in ejectment, in the
Circuit Court of Madison County, State of Missouri, against
Thomas Fleming, Robert F. Fleming, and Thomas F. Flem-
ing, as defendants, returnable to the September Term,
A.D. 1852, of the Circuit Court of said County of Madison,
of (which said Circuit Court had jurisdiction of said
cause of action) for the recovery of the six seventhes of
a certain tract of land, lying and being situate in the
Counties of Madison and St. Francois, in the State of
Missouri, known as the Mine a La Motte Tract of Land,
containing twenty-eight thousand arpens; and is
the same that was confirmed by an act of Congress
of the United States, to Francis Valle, Jean Bte.

Valle, Jean Bte Pratte and St. Gemme Beauvais, or their legal representatives, in case of their, or either of their decease: And whereas, at the septem= ber Term, 1853, of said Circuit Court, the issues being made up between the parties, a trial was had by the Court, which resulted in a judgment in favor of said defendants, from which Judgment the plaintiffs appealed to the Supreme Court of the State of Missouri, Sitting at St. Louis, Missouri: And whereas the said Supreme Court of the State of Missouri, at the March Term, A.D. 1854, reversed and remanded the judgment of the Circuit Court of Mad= ison County Missouri: And whereas, at the September Term, A.D. 1855, of the Madison Circuit Court, to which the case was remanded, by the Supreme Court as aforesaid, the Plaintiffs came and filed a Petition, verified by af= fidavit, suggesting the death of Thomas Fleming, one of the Defendants: Whereupon, the said Circuit Court made an order as follows, to wit; And now, at this time, the Plaintiffs by their Attorneys come, and present their Petition, verified by affidavit, suggest= ing the death of Thomas Fleming, one of the defendants in said suit, setting forth that the said defendant bequeathed the land in controversy to Robert Adger & Jane Eliza his wife, Robert H. Fleming, Thomas H. Flem= ing, Arthur A. Burt and Clarissa A. his wife, Alfred W. Fleming, Margaret A. Fleming and Thomas M. Fleming: that the said Robert Adger and Jane Eliza his wife, Arthur A. Burt and Clarissa A. his wife, Al= fred W. Fleming, Margaret A. Fleming and Thomas M. Fleming are not residents of, nor do they reside in the State of Missouri; and that Thomas H. Fleming and Robert H. Fleming, are the only residents of the State of Missouri: Praying the Court for an order of Public= ation against the non-resident defendants, and

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that a Scire facias against the said devisees, to show cause, if any they have, why they should not be substituted, as defendants, instead of the said Thomas Fleming deceased. Whereupon, it is ordered by the Court, that the said non-resident devisees of the said Thomas Fleming deceased, be notified, to be and appear before the Circuit Court of to be holden within and for the County of Madison, in the State of Missouri, at the Court-House in Fredericktown, in said County, on the first Monday in March next, Then and there to answer the petition of the said Plaintiffs, on or before the third day of the said term, of the said Court, or the same will be taken as confessed against them; It is furthermore Ordered, that a copy of said order be published in the Jackson Courier, or Cape Girardeau Eagle, a Newspaper published in Cape Girardeau County, in the State of Missouri, for eight consecutive weeks, the last insertion to be at least four weeks, before the first day of the Term of said Court. It is furthermore ordered, that a Scire facias issue against said devisees compelling and requiring them to appear at the next Term of said Court, at the time and place above mentioned, and, on or before the 3rd. day of said Term, and Show Cause, if any they have, why the plaintiffs should not have judgment for the recovery of the land in controversy, in conformity to the opinion of the Supreme Court, filed in said Cause.

Scire

Scire facias

You are therefore commanded to make known to, or notify the said Robert Adger and Jane Eliza his wife, Arthur A. Burt and Clarissa A. his wife, Alfred M. Fleming, Thomas M. Fleming, Robert F. Fleming, Thomas H. Fleming, and Margaret A. Fleming to be and appear before our said Circuit Court, to be begun and held at the Court-House in Fredericktown in the County of Madison, in the State of Missouri, on the first Monday in March next, A. D. 1856,

them and there, to show cause, if any you have why they should not be substituted as defendants, in stead of the said Thomas Fleming, deceased, and furthermore to show cause, if any they have, why the plaintiffs should not have judgment for the recovery of the land in controversy, in conformity with the opinion of the Supreme Court, filed in said cause; and have you then, there this writ.

Witness Edward Evans, clerk of the Circuit Court of Madison County, State of Missouri, at (Seal) office, in Fredericktown, this 16th day of January, A.D. 1856.

Edward Evans clerk

Sheriff's Return

I do hereby certify, that I have made known the within Sci. fa., as I am within commanded, to Robert F. Fleming, Thomas F. Fleming and Alfred W. Fleming by reading the same to them, or by their acknowledging the service of the within scire facias, on the fifth day of February A.D. 1856, at the County of Madison, in the State of Missouri. The within named Robert Adger and Jane Eliza his wife, Arthur A. Burt and Clarissa his wife, Margaret A. Fleming and Thomas M. Fleming, not found in Madison County, Missouri.

David N. Griffin
Sheriff of Madison County, Mo.

And afterwards, at the March Term, 1856, and on the 2nd day of said Term, was the following.

C. C. Valle et al
vs
Thomas Fleming dec'd } Civil Action in Ejectment.

And now, at this time the Plaintiffs, by their

Attorneys, come and prove publication of notice to non-residents &c

And afterwards, on the 3rd day of said March Term, 1856, was the following.

Charles C. Valle, Louis B. Valle, Vermont R. Allen & Emily his wife, Isidore L. Leclerc & Mary his wife, Augustus D. Valle & Melanie Valle By their Legal Guardian, Melanie Valle, Pltffs vs Thomas Fleming Robert F. Fleming and Thomas F. Fleming

Civil action, Ejectment for land

And now at this day the plaintiffs by their Attorneys come, and having proved the publication of notice as the law requires against Robert Edgar and Jane Eliza his wife, Arthur A. Burt and Clarissa A. his wife, Margaret A. Fleming and the resident heirs and devisees of Thomas Fleming dec'd, to wit, Robert F. Fleming, Thomas F. Fleming, and Alfred W. Fleming having been served with a Scire facias as the law requires; and the said Robert Edgar and Jane Eliza his wife, Robert F. Fleming, Thomas F. Fleming, Arthur A. Burt, and Clarissa his wife, Alfred W. Fleming, Margaret A. Fleming, not having shown any cause, why they should not be substituted as Defendants in this action, It is therefore ordered, by the Court, that they be substituted as defendants in said Case.

Order as to

New

Parties

Charles C. Valle, Louis B. Valle, Vermont R. Allen & Emily his wife, Isidore L. Leclerc & Mary his wife, And Augustus D. Valle & Melanie Valle By their legal Guardian, Melanie Valle, Plaintiffs, against

Civil action in Ejectment for lands &c.

Thomas Fleming, Robert F. Fleming
and Thomas F. Fleming, Defendants.

And now at this day come the said Plaintiffs and suggest that since the continuance of this cause, Thomas M. Fleming, one of the parties interested in the property involved in this cause, has departed this life, leaving a Will, by which he has devised and bequeathed to the Pennsylvania Company for insurances in lives, and granting Annuities &c as his Executors, in trust, for the use and benefit of Clarissa Fleming for life, and at her death, for the use and benefit of certain Brothers and Sisters of said Thomas M. Fleming, deceased, who have already been notified of the commencement of this suit; and also W. W. Fleming, who has not been notified or made a party:- Which not being denied, and it appearing to the Court, that said Clarissa Fleming, and the said Pennsylvania Company, and William W. Fleming are not residents of, nor residing within this State, It is therefore ordered by the Court, that said William W. Fleming, and Clarissa Fleming, and the said Pennsylvania Company, for insurances in lives and granting annuities &c, be and appear in this Court, on the first day of the next Term of said Court, to be begun and held on the first Monday in September next, at the Court-House in Fredericktown, and show cause, if any they have, why they should not be made parties defendants to this suit. It is further ordered by the Court, that a copy of this Order be published in the Eagle, published in Cape Girardeau, a Newspaper, published in this State, for eight consecutive weeks, the last publication to be at least four weeks, before the said 1st. day of the next Term of this Court, and this cause is continued, and it is further ordered, that the parties made party defendants herein, have until the next Term

Death of T. M. Fleming suggested and order of Publication

of this court to file their Answer herein.

And afterwards, at the September Term, 1856, and on the 4th day of said Term, was the following.

General continuance

It is ordered by the Court that all causes, both Civil and Criminal, not otherwise disposed of at this Term, are continued till the next Term of this Court, with the same right to parties to make up the pleadings, in any case, at the next Term of Court, that they had at this Term of Court.

And afterward, at the March Term, 1857, and on the 1st. day of said Term, was the following.

C. C. Valle et al. } Civil Action for Restitution
Vs. } of Land &c.
Thomas Fleming et al }

Marriage suggested

And now at this day the parties by their attorneys come, and plaintiffs suggest the Marriage of Melanie Valle, one of the female plaintiffs herein, with John Bogy, and on Motion, he is made a co-plaintiff. And the Defendants have leave to make up and file their issue herein on, or before the first day of August, next, and on Motion of defendants a general rule to take depositions of Witnesses in said case, is granted. And this cause is continued until the next Term of this Court, without prejudice to a trial at that time.

And afterwards, on the 1st. day of August, 1857, in Vacation, the Defendants filed in the Clerk's office of said Court, their amended Answer, in words and figures as follows:

Defendants Amended Answer

C. C. Valle's Heirs, } Madison Circuit Court, Civil Action.
Against }

J. F. Fleming & others

Defts

Defendants deny that the said plaintiffs, on March 1st. 1848, were entitled to the possession of said land, or any part thereof, or that, on that day, or any other, defendants unlawfully withhold the possession of the same.

amended

Defendant, state that the late Charles E. Valle, together with the late Lewis F. Linn and Evariste F. Pratte, purchased the said Mine La Motte land, in Petition Mentioned, at said Commissioners' Sale, and at said purchase became liable to pay the equal undivided third part of the purchase money, as by written agreement herewith filed, and made part of this Answer, and dated, July, 13. 1837.

answer

Defendants state that at the time of said sale by said commissioners, as in Plffs' Petition Mentioned, said C. E. Valle' dec'd, altho. not an actual bidder was, by the terms of said writing, recognised by said Linn & Pratte, as a joint purchaser with them, and the deed from said Linn & Pratte was made to carry out and perfect said agreement; the consideration expressed in said deed, being merely nominal, and was not paid by said Valle, as said deed purports.

find

Defendants state that said Linn & Pratte at said Commissioners' Sale, executed to said Commissioners, a mortgage deed, to secure the said purchase money, to wit, the sum of $67050.00, and by the terms of the said agreement, of said Linn, Pratte & Valle, dated, July 13th. 1837, said Valle was bound by its terms, and his said interest in said entire tract, subject to the lien of said Mortgage, which is herewith filed, and makes a part of this Answer.

in

variation

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Defendants further state, that said Pratte & Valle in their life-time, made the first payment of said purchase, some time after it became due, in August, 1838, and that, at the time of the death of said Valle, there were remaining unpaid, three instalments of said purchase money, each instalment amounting to $16,762.50 –

Def. Defendants further state, that in the month of — 1839, the Admrs of C. C. Valle, decd, together with Linn & Pratte sold and conveyed to Thomas Fleming, Amd Samuel Lamb and Elihu Chauncey, each, the one equal undivided sixth part, that is to say three-sixths, for the sum of $50.000.00, being for each sixth, $16,666.67; That the said purchase money consisted in Drafts upon time, and that said Linn & Pratte & the Admrs of said Valle, decd, made an agreement in Amm writing with the said Commissioners, by which said Linn & Pratte, & said Admrs would transfer to the Bank of the State of Missouri, the said Drafts, and the said Bank would pay said three instalments, as they might fall due; which arrangement, being perfected, that is to say, the Bank taking the said liabilities of said Fleming, Lamb & Chauncey, then paid to said Commissioners, one instalment then due, in ready money, and gave her certificates of Deposite for the two remaining instalments, as falling due, and which were paid, at maturity. Which ready money and certificates of deposite, being then paid to and delivered to said Commissioners, or one of them, at St. Louis, the said Commissioners, entered upon said Mortgage deed, full satisfaction for the purchase money.

Defendants say that the said Thomas Fleming Samuel Lamb and Elihu Chauncey, did, at their

maturity, pay to the said Bank of the State of Missouri, their said acceptances, for the said Sum of $50,000.00, according to their tenor and effect.

Defendants further say, that the said C. C. Valle, at the time of his death, did owe, jointly and severally, with the said Linn & Pratte, the sum of fifty thousand, two hundred and eighty-seven dollars, and fifty cents, the three remaining instalments falling due and payable to said Comrs. the said Valle being liable, not only as security, but being, bound to said Linn & Pratte by said written Agreement of July 13, 1837; the said deed from Linn & Pratte, to the contrary notwithstanding, — the same being made pursuant to said Agreement, of July, 1837, and not for the consideration therein specified.

Defendants say that the one third of the said Sum of 50.000 $ paid by said Fleming, Lamb & Chauncey, having inured to the benefit of the said (Plaintiffs) defendants, or their Ancestor (as alleged), having been paid to the said Commissioners, and such payment having been received in satisfaction of said Mortgage Deed, from said Linn & Pratte, actually, and said C. C. Valle, virtually, as a party Purchaser, and as their security, to the notes given in payment at said Comrs' Sale, insist and say, that they ought to be subrogated to all the rights and securities of the said Comrs, at, and prior to said payment, as secured by the said Mortgage deed; and ask the Court to so substitute them, with all the privileges and benefits resulting therefrom.

Watkins & Newberry Attys
for Defendants.

R. F. Fleming, one of Defts, makes oath and says,

that he believes the above answer, and the matters therein stated, are true. R. F. Fleming

Sworn to and subscribed before me, this 1st. August, 1857.

David Stengel Justice of the Peace

And afterwards, at the September Term, 1857, of said Circuit Court, and on the 1st. day of said Term, was the following

C. C. Valle et al.
vs.
Thomas Fleming et al. } Civil Action for restitution of land &c

Pltffs file reasons, on Motion, to strike out Defendts

And now at this time the plaintiffs by their Attorneys come, and file their Motion to strike out the Defendants' Answer filed in said cause. and file reasons therefor

Answer

C. C. Valles' heirs
vs.
T. F. Fleming & others } In the Madison Circuit Court, September Term, 1857.

The Plaintiffs come and move to strike out the Defendants' Answer herein because the same does not state facts sufficient to constitute a defense: and here state and show to the Court the following grounds of insufficiency, to wit:-

1. The facts therein stated upon which Defendants predicate their right in equity to be subrogated to the rights of the Mortgagees therein named, in the said Mortgage, do not show that Thomas Fleming, Samuel Lamb and Elihu Chauncey, were under any legal obligation, to pay the said Mortgage debt, or any part thereof.

Answer

2. The facts stated do not show what title in the premises, was, in fact acquired by said Fleming.

Chauncey and Lamb, by and under the conveyances mentioned to them.

3. The said facts do not show that said Fleming, Lamb and Chauncey acquired any legal or equitable title to any interest in the premises, by virtue of the alleged conveyance from the Administrators of C. C. Valle, and which title, so acquired, was covered by the said Mortgage.

4. The facts stated, do not show that said Fleming, Lamb and Chauncey failed to get the full interest for which their deeds called, from Linn Pratt & the Administrators of C. C. Valle; but, inas much as the Answer shows that Linn & Pratt, in their own right, owned two thirds of the premises, and the deeds mentioned, only called for one half part thereof, in the aggregate the calls of the joint deeds were fully satisfied, out of the interests of Linn & Pratt.

5. The said Answer shows approximately, that the said purchase money paid by Fleming, Lamb and Chauncey, was applied to the extinguishment of the Mortgage; and not that they were compelled to pay any thing on the Mortgage, over and above the purchase money they paid for the land.

6. The facts stated show, that C. C. Valle was not liable to the Commissioners, as a Mortgagee, but that his liability was to Pratt & Linn alone, which liability could only be settled by their presentation at the proper time of claims against his estate; when and where, any just setoffs, that he, or his estate might have had against them, might have been adjusted.

Reasons in support of Motion to Strike out Amended

7 The said Answer claiming a right to subrogation as to the Mortgage which has been satisfied, does not offer to account for rents and profits, from the date of the alleged purchase, in 1839.

Wherefore, for these and other insufficiencies plaintiffs pray that the same may be Stricken out &c.

Noell, Fripsell & Fox for Pltffs.

And afterwards, at the said September Term, 1857, and 2nd. day of said Term, was the following, to wit:

C. C. Valle et al. vs. Thos. Fleming et al. } Civil action for restoration of Lands &c.

And now at this time the plaintiffs, by their Attorneys come, and argue the said Motion &c., and the Court having heard the arguments of plaintiffs' Attorney, the further argument is postponed until to-morrow morning

And afterwards, on the 4th. day of said last mentioned Term, was the following.

C. C. Valle et al. vs. Thomas Fleming et al. } Civil action. Motion to Strike out Answer.

And now at this time the parties by their Attorneys come, and the Court having heard the arguments of Counsel in part, the further argument is postponed until to-morrow morning.

And afterwards, on the 5th. day of said September Term, 1857, was the following:

C. C. Valle & others } Civil action in Ejectment and

vs. Motion &c

Thomas Fleming & other

Motion to strike out Answer Sustained

And now at this time the parties by their Attorneys come, and the defendants suggest the Marriage of Margaret A. Fleming, one of the female defendants herein with Thomas Parker. And the Court being now sufficiently advised touching the said Motion to strike out the Answer of defendants herein filed, doth sustain the said motion, so far as the subrogation of the defendants, instead of the Commissioners in said Answer specified, and by the Court designated and included in brackets, is concerned; and doth overrule the said motion, so far as the residue of said Answer is concerned.

And afterwards, on the 6th. day of said September Term, 1857, was the following,

Continued at Defts Costs

C. C. Valle & others
vs
Thos. Fleming & al

Civil Action in Ejectment.

And now at this time the parties by their Attorneys come, and this cause is continued as on affidavit filed by Defendants, at the said Defendants' costs. It is therefore considered and adjudged by the Court, that the said Plaintiffs have and recover of and from the said Defendants, their costs of suit herein expended, for this Term, and may have Execution.

And afterwards, at the March Term, 1858, of said Circuit Court, and on the 8th. day of said Term, was the following.

C. C. Valle et al.
vs.
Thomas Fleming et al.

Civil Action for Restitution of Lands &c

And now at this time the parties by

their Attorneys come, and this cause is continued as of of=
fendant filed, by Defendant, at said Defendants' costs. It is
therefore considered and adjudged by the Court, that the said
Plaintiffs have and recover, of and from the said Defendant,
their costs of suit herein expended for this Term of Court, and
may have execution &c.,

And afterwards, to wit, on the 19th. day of July, 1858, was
filed in the Clerk's office of the said Circuit, an Amen=
ded Answer, by said Defendants, as follows, in words and
Defendants' figures, to wit.

Amended C. C. Valle's heirs Ptffs } Madison Circuit Court.
against } Additional & amended Answer
Answer Thomas F. Fleming & others } filed by Leave of Court.
Defendants }

Defendants come and say that the Plaintiffs were not,
at the time of the commencement of this suit, entitled to the
possession of the premises in the Petition of the Plaintiffs
described.

The Defendants further show here, the following
legal and equitable considerations and reasons why the
said Plaintiffs ought not to have and maintain
their said action, that is to say:- as to the one half
of the interest claimed in the said land, by said
Plaintiffs, which is one half of six-sevenths, of the
one third part of the whole, less three-fifty-sixths ($6/7 - 1/3 - 3/56$)
which one half of said interest is the portion
tion which is embraced in and covered by the Deed
executed by the Administrators of said Valle, executed
in the year, 1848, and refered to in said Petition, the same
was regularly conveyed by the Administrators of the
late Charles C. Valle, to the Purchaser in said Deed
named, by virtue of regular proceedings of the County
Court of Madison County, resulting in an Order of

sale, regularly and lawfully made, by the said County Court, on the 4th. day of November, 1847, requiring the said administrators of said C. C. Valle to sell the one sixth, (less three fifty-sixths) of said parcel of land, at public or private sale, to the highest bidder, and to make return and report of their proceedings, to the said County Court, at the February Term thereof, in the year, 1848.— And the said administrators in all things complied with the order of the said County Court, and caused the property mentioned therein to be appraised and advertised according to law; and afterwards sold the same to the highest bidder, at private sale, pursuant to said order, and at said sale, Thomas Fleming, ancestor of the Defendants Thomas F. Fleming, Robert F. Fleming & others, became, and was the highest bidder therefor, and the same was struck off to him, at and for the sum of Twenty Thousand three hundred dollars,— And the said administrators made report thereof to the said County Court, at the February Term, 1848, and said report was, by the said Court approved. And the said administrators did thereupon, by virtue of the premises, and in pursuance of their duty as such administrators make and execute to the said Thomas Fleming, ancestor of the said mentioned Defendants, a deed, conveying to him, the said one sixth, (less three fifty-sixths) of said real estate and premises. And Defendants herewith file the said Deed, so executed as aforesaid, bearing date the 10th. day of February, 1848, and show the same to the Court here, whereby it sufficiently appears that the heirs of said C. C. Valle, plaintiffs, are, by virtue of said sale and conveyance, divested of all the interest in said land so sold and conveyed as aforesaid, by the said County Court of Madison County aforesaid. And

Defendants file herewith and make an exhibit of the said proceedings of the said County Court of Madison County, in making said order of sale, and in approving the action of the said Administrators, under said Order; and pray that said proceedings may be taken as part of this Answer.

And as to the said three fifty-fourths of said land, the Defendants say that, plaintiffs are not entitled to the same, nor to have their said action in respect thereof, because they say that, by a Decree of the Madison Circuit Court, sitting as a Court of Equity, at the April Term thereof, in the year 1843, the said three fifty-fourths of said land were declared to be vested in Robert F. Brown and Francis Valle, and that the heirs of the said C.C. Valle, the plaintiffs, be divested thereof, by virtue of a contract made between the said Robert F. Brown and Francis Valle, and the said C.C. Valle in his life-time, of which contract, the said Circuit Court, at the term last aforesaid, decreed the specific execution and performance, by the heirs of the said C.C. Valle, in favour of the said Brown and Francis Valle; all of which will more fully and at large appear, by the record of said suit, in said Court remaining; - a transcript whereof, is herewith filed, and prayed to be taken as this Answer.

And as to the remaining half of the said interest claimed by the Plaintiffs in said land, (being the one sixth thereof) the Defendants say, that the plaintiffs ought not to have their said action, neither are they entitled to the relief prayed, in said Petition, because they say that, in the year 1838, Charles C. Valle, ancestor of the Plaintiffs, through whom they all claim title to the land in controversy, died greatly indebted: That he died seised of the undivided third part of the Mine la Motte

tract, (being the same land whereof the plaintiffs seek recovery in this suit) subject to an existing and unsatisfied Mortgage, executed thereupon, on the sixth day of November, 1837, of which he had notice, to secure the payment of sixty-seven thousand and fifty dollars; which mortgage was a subsisting and unsatisfied incumbrance on the interest and estate of the said C. C. Valle, in said tract of land, at the time of the death of him, the said C. C. Valle: and that after the death of the said C. C. Valle, the administrators of his estate, applied to the County Court of Madison County, for an Order, for the Sale of the interest of the said C. C. Valle, in said Tract, in order to pay off the debts and encumbrances due by, and upon the estate of the said C. C. Valle; and particularly the debt secured by the said Mortgage. All of which will appear by the Certified Copy of the said Mortgage deed, and the transcript of the proceedings of the said County Court, herewith filed, and prayed to be taken as part of this Answer. And the said County Court thereupon made an order directing the said Administrators to make sale of the one half of the interest of said Valle in said tract of land; and the same was, accordingly by them sold, to Samuel Lamb, Elihu Chauncey and Thomas Fleming; and the said Administrators thereupon made & executed to the said Lamb, Chauncey & Fleming deed, conveying to them the said one half, of the third, of the said tract of land, of which the said Valle died seised as aforesaid, for the sum, or price of fifty thousand dollars. And the said Lamb, Chauncey and Fleming paid therefor, to said administrators the said sum of fifty thousand dollars, in manner following, to wit: the sum of fifty thousand dollars was applied to, and was paid for the exoneration and

discharge of the estate of the said Valle from the lien of the said Mortgage; they, the said Lamb, Chauncey and Fleming, and also the administrators of the said C. C. Valle, believing that the said sale, by said admin's=trators to said persons, would vest in them, all the right, title, interest, claim and property, of the said Valle, at the time of his death, of, in and to the said one sixth, of said Mine La. Motte tract of land. And the said Lamb, Chaun=cey and Fleming confiding in the representations of the said Admrs, that said sale to them as aforesaid, then was, and would be in full and strict compliance with every legal formality and ceremony, purchased the said one sixth, in good faith, for full value, and the said sum of fifty thousand dollars, above specified, was paid in satisfaction of said Mortgage; and the residue of said sum of purchase money, so bid by said persons, for said land, at said sale, had and made thereof, by said Admr's of said Valle, was paid to and received by the said administrators. And if the said sale and conveyance to the said Lamb, Chauncey and Fleming, made by virtue of said Order of said County Court, be not sufficient in law, to vest in said purchasers the title to the said land so sold by said Admrs, and so purchased and paid for by said persons, by reason of any technical informality, or defect in the action of the said County Court, or otherwise, then the said defendants insist that the money, by them, the said Lamb, Chauncey & Fleming paid to the said Admrs of said Valle, and towards the satisfaction of the said Mortgage, was the money of the said Lamb, Chauncey & Fleming, advanced by them, at the instance ~~and request~~ of the admin's=trators of the said C. C. Valle, towards paying off the debts of the said Valle, and towards the extinguishment and satisfaction of liens on his estate; - The said Lamb, Chauncey and Fleming, and also the said admin's=

tration acting in perfect good faith, and all said parties supposing and intending that the said Lamb, Chauncey and Fleming, making said payment should and would acquire a perfect title to the said land so mortgaged as aforesaid. And the Defendants file herewith, and make exhibits in this cause of the said order of the said County Court, and the proceedings of the said Administration thereunder, together with the deed by them made and executed to the said Lamb, Chauncey & Fleming; and pray that they be taken as part of this Answer. (And the

Answer stricken out

said Defendants say that, notwithstanding the apparent and technical payment and extinguishment of said Mortgage, in manner and form aforesaid, equity will, under the circumstances above shown, treat the said Mortgage as still subsisting and unsatisfied, for the protection of the said Lamb, Chauncey & Fleming, and will subrogate them, the said Lamb, Chauncey and Fleming to all the rights of the Mortgagees therein, treating them, the said Lamb, Chauncey and Fleming, as assignees and Purchasers, of said Mortgage, for valuable consideration of them had and received.) (And

Stricken out

Defendants say that, the said Thomas Fleming in his life-time, purchased and acquired for valuable consideration, all the interest, estate & property of the said Lamb & Chauncey, in and to the said tract of land, supposed to be conveyed as aforesaid, by the said Admrs of said C. C. Valle to the said Lamb & Chauncey; and that he is the assignee, for value, of all the interest, claim & demand which the said Lamb & Chauncey had to the said sum of money paid and advanced as aforesaid, by said Lamb & Chauncey, towards the extinguishment of the said Mortgage; and these defendants

are the legal representatives of the said Thomas Fleming, who has died since the institution of this suit; and so these defendants are entitled to be substituted and subrogated to all the right, and privileges which the said mortgagees would enjoy, if said mortgage were unpaid; and the said mortgagees were in possession, under the same.

Stricken out

And defendants say that, they are in fact, and in equity in possession of said tract of land, as assignees of said mortgages, and entitled to set up the same against any person, and all persons impugning their title and possession thereto.

Stricken out

And Defendants are ready to account for the rents and profits of said land, so mortgaged to the said Commissioners, in Plaintiffs' petition mentioned; and to come to a reckoning with the said Plaintiffs, - charging them, said Plaintiffs with the interest of the said mortgage debt, so paid as aforesaid. But defendants charge that the said Plaintiffs have, at no time either before, or since the institution of this suit, offered to pay off and discharge whatever may be due to said defendants, on account of said mortgage.

Stricken out

And Defendants are ready to verify all the premises, as this court may direct and appoint: and they pray that, an account may be taken by, and under the direction of this court, of what is due to these defendants, for principal and interest on the said mortgage debt; and that Plaintiffs be decreed to pay the said defendants what shall so appear to be due, on the taking of said account, together with the costs of this suit, on or before a day to be, for that purpose, by the Court indicated and appointed. And in de-

stricken out

fault of such payment that, the plaintiffs be foreclosed, and for ever barred of, and from all right and equity of redemption of, in and to, the said Mortgaged premises, and every part of the same; and also be decreed to deliver and yield up to the defendants, all deeds and writings what=soever, in possession of said plaintiffs, relating to the said Mortgaged premises; and that the Court here will make such further order and decree in the premises, as the equity of the case may require.)

R. F. Fleming

I swore to and subscribed
in open Court, March, 22nd,
1858,
Test Edwd. Evans Clerk

All the Answer enclosed within brackets is stricken out.

H. Hough

Plffs Motion to strike out amended answer

And afterwards, at the September Term, 1858, of said Circuit Court, and on the 1st. day of said Term was the following;

C. C. Valley et al. vs. Thos. Fleming et al. } Civil Action for Restitution. Real Estate.

The parties by their Attorneys come, and the plaintiffs file their motion to strike out Defendants' answer filed in this cause;

C. C. Valle et al. vs. Thomas F. Fleming et al. } Madison Circuit Court, September Term, 1858.

Plaintiffs come and move the court to strike out defendants amended answer

filed on the 19th, day of July, 1858, for the following reasons.

1. Said answer was filed without any leave of Court, out of time, and without the authority of law, and against the rules of Court.
2. Said Answer sets up the same matter which was stricken out in a former amended answer filed in the cause.
3. Said answer sets new matter not responsive to the petition by way of defence, - which new matter constitutes no defence either in law or equity.
4. The facts set forth in the said Answer do not show that any part of the title of Fleming, Chauncey and Lamb, in the first deeds they received, failed, or that they did not get all the title said deeds called for
5. Said Answer is redundant, argumentative, and superfluous, and constitutes no defence.

Frisell, Fox & Noell for pltffs

And afterwards, to wit, on the 2nd day of said September Term, 1858, was the following,

C. C. Valle et al.
Vs.
Thos. Fleming et al. } Civil Action for restitution of lands.

And now on this day the parties by their Attorneys come, and on motion of defendants, they have leave to file their Amended Answer herein: which is done accordingly -

And afterwards, to wit, on the 4th. day of said last mentioned Term, was the following

C. C. Valle et al, vs. Thomas Fleming et al, } Civil Action for Restoration of Lands, on Motion to Strike out Answer.

The parties by their Attorneys come, and the Court having heard the arguments of Counsel touching said Motion, will advise thereon.

And afterwards, to wit, on the 5th. day of said Circuit Court, at said Term, was the following:

C. C. Valle et al, vs. Thos: Fleming et al, } Civil Action for Restoration of Lands &c.

Order to Strike out part of Defts amended answer

Now at this day came the parties by their Attorneys, and the plaintiffs' Motion to Strike out Defendants' last amended Answer, so far as the same seeks to revive, in favour of Defendants, a certain Mortgage in favor of Commissioners and to subrogate Defendants to the rights of the Mortgagees therein, is sustained, and that part of said Answer Stricken out, and marked and included in brackets:-- To which opinion and judgment of the Court, in sustaining said Motion, and striking out that portion of the answer before mentioned, the Defendants except, and tender their Bill of Exceptions, which is, signed, sealed, allowed and made part of the record herein.

Bill of Exceptions by Defendants

Valle's heirs v Fleming's heirs } Be it Remembered, that on the coming in of the Amended Answer in this Cause, filed July 19 and 21st. September, 1858, the Plaintiffs filed the following Motion to Strike out the same, which Motion the Court sustained,

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as to do much of the answer, as is in the words and figures, following: to which decision of the Court, in Striking out said portion of said Answer, the defendants, at the time excepted, and presented this bill of exceptions and prayed that it be signed and made part of the Record: which is done

H. Hough Clerk

And afterwards, at the said September Term of said Court, and on the 6th day thereof, was the following:

C. C. Valle et al
by
Thos. Fleming et al

Civil action for the Restoration of Land &c.

And now at this time the parties by their Attorneys come, and file their Agreement in writing as to the facts admitted by the parties in said Cause. Which is in words and figures as follows.

Agreement in writing as to facts admitted

Charles C. Valle's heirs Plaintiffs,
against
Thomas Fleming & heirs, defendants

September Term, 1858, In the Madison Circuit Court.

It is admitted by the parties to this Suit, that at the death of Charles C. Valle deceased, who died in December 1838, the land in the petition described, except the sixteenth sections included in the Survey of the Mine La Motte Tract, was held & owned in fee, by Charles C. Valle, aforesaid Lewis F. Linn, and Evariste B. Pratte in equal parts, each being seized of one third thereof, subject to a Mortgage for $76050, executed in November 1837, by Linn & Pratte, to secure the payment of that sum to Newberry & others, Commissioners: Which Mortgage was paid off before the commencement of this suit. That the said Linn & Pratte were patentees of said land

The Patent being dated March 25th. 1839, and being under a confirmation of the same land, by act of Congress, of 28th. May, 1828. That on the 7th of March 1837, Linn & Foote conveyed to said C.C. Valle, ancestor of the Plaintiffs, the one undivided third part of this land; and that there are seven surviving heirs of said Charles C. Valle, of whom six, to wit, Charles C. Valle Louis B. Valle Augustus E. Valle, Melanie M. Valle, (now married to John Bogy) Emily Allen, the wife of Vermont Allen, and Mary Leclere, Wife of Isadore Leclere, are plaintiffs in this suit, and the other Francis L. Valle is not a party to this action.

That the nett annual value of one sixth of the whole mineda Molle Tract of land, exclusive of Sec. 16. T. 34 N. R. 7. E, and fractional Sec. 16. T. 34 N. R. 6. E. is nine hundred dollars, and has been since 1847, and in that year.

That from the damages, if any, which may be found for the Plaintiffs, there shall be deducted, the one seventh of said annual value of one sixth, of said Tract, from 1st June, 1853, to date; which allowance shall be in full of all demands in favor of Defendants, against Vermont Allen, for rent of said tract, since June 1. 1853.

That Melanie Valle is the Widow of the said Charles C. Valle, and the mother of said Plaintiffs, his children, and is still alive.

That the Defendants have been throughout in possession of the said Tract, according to the Deeds under which they claim the same.

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This Agreement is for the purposes of the trial only.

For Pltffs, Foy & Noell for pltffs.
Watkins, Newberry & Gantt for Defendants.

And afterwards, at the said September Term of said Court, and on the 7th. day of said Term, was the following,

Final
Judgt
for

Charles C. Valle, Vermont K. Allen, and Emily his wife, Louis B. Valle, Isidore Leclerc and Marzhi wife, Augustus E. Valle and John Bogy and Melanie his wife.
against
Robert F. Fleming Executor of the last Will of Thomas Fleming deceased, Thomas F. Fleming, Robert F. Fleming, Robert Adger and Jane Eliza his wife, Arthur A. Burt and Clarissa A. his wife, and Thomas Parker and Margaret A. his wife.
Defts.
} Ejectment

Now, at this time come the parties by their Attorneys, and neither party requiring a Jury, proceed to trial before the Court: And the Court having heard the cause upon the agreed facts filed and the evidence given, finds that, Plaintiffs were, on the day mentioned in the petition, and are yet lawfully entitled to the possession of Six Sevenths, of one Sixth, Part, of the tract of land described in the petition, to wit, a tract known as the Mine La Motte domain, containing Twenty-eight thousand arpens, French measure, or about Twenty-four thousand and ten acres, and is the same tract of land that was confirmed by act of Congress of the United States, to Francis Valle, Jean B. Valle, Jean Ble. Pratte and St. Gemme Beauvais, or in case of their

or either of their deaths, to their heirs or legal representatives situated in the counties of Madison and St. Francois, except so much of said tract as is included in Sec. 16, T. 34. N. R. 7. E. and frac. Sec. 16. T. 34, N. R. 6. E, and that Thomas Fleming deceased, plaintiffs' ancestor, in his life-time entered the said premises, and unlawfully withheld the same to the time of his death, on the 16th day of March, 1855, since which time, the defendants, as his devisees and representatives have continued unlawfully, to withhold the possession thereof, from plaintiffs; that plaintiffs, by reason thereof have sustained four Thousand, nine hundred, and twenty-one dollars, seventy-two cents damages, being the aggregate rents of said six sevenths of one sixth, from the date of the commencement of this action: which damages is subject to a deduction by agreement filed, of six hundred and seventy-nine dollars, sixty cents, on account of the share of Vermont Allen, therein; leaving a balance of four thousand two hundred and forty-two dollars, twelve cents; that the amount of said damages which accrued prior to the 16th day of March, 1855, after deducting said Allen's share, and for which, said Executor, is liable, as such, is nineteen hundred and seventy-two dollars, forty-four cents; and the residue of said damages, which accrued since the 16th day of March, 1855, and for which the other defendant are liable, after deducting said Allen's share, is two thousand, two hundred and sixty-nine dollars, sixty-eight cents. Whereupon, it is considered and adjudged by the Court, now here, that the plaintiffs do have and recover of and from the defendant Thomas F. Fleming, Executor of the last Will of Thomas Fleming deceased, the said sum of nineteen hundred, and seventy-two dollars, forty-four cents, the damages, aforesaid, which

accrued to the plaintiffs, by reason of the premises prior to the death of the said Thomas Fleming, dec'd. being the balance, after making said deduction, together with all costs, up to the 16th. day of March, 1855, to be made of the goods and chattels, rights, credits and effects, which were of said Thomas Fleming deceased, in the hands of said Executor, to be administered. It is further considered and adjudged by the Court, that the Plaintiffs do have and recover of and from the other defendants, in the action, to wit, Thomas F. Fleming, Robert F. Fleming, Robert Adger and Jane Eliz'h his wife, Arthur A. Burt and Clarissa A. his wife, and Thomas Parker, and Margaret A. his wife, the possession of the Premises above described so by them, unlawfully, withheld from the Plaintiffs, with the sum of two thousand, two hundred and sixty-nine dollars, sixty-eight cents, the damages accrued since the 16th. day of March, 1855, exclusive, and over and above the share of D. R. Allen, which has been deducted, leaving that balance, together with all costs of suit, accrued since the 16th. day of March, 1855, and have their writ of execution, accordingly. . . . .

Application by Defts for Review

Defts make application for review

Whereupon come the Defendants and apply to the Court to review its finding of facts and conclusions of law; which application being seen and heard, is by the Court overruled; to which decision the Defendants except, and tender here to the Court, their bill of exceptions, which is signed, sealed and made part of the record herein. And at the same time the Plaintiffs present their application for a review of the finding of facts by the Court, and also its conclusions of law; which being seen and heard, is by the

Court overruled, and the plaintiffs object and except; and tender to the Court their bill of exceptions, which is signed, sealed and made part of the record herein: Wherefore, both the plaintiffs and defendants respectively, file their Bonds and pray an Appeal to the Supreme Court, which is granted to each party; and the bond of the defendants being conditioned as the law requires, it is Ordered that, execution against them be suspended and superseded, until the case is disposed of in the Supreme Court.

Parties both

Appeal

C. C. Valle's heirs

vs.

Thomas Fleming's heirs

Defendants'

Instructions

For Defendants, the Court is requested to declare the law to be as follows:

1st. There can be no recovery in this action by the plaintiffs; the Deeds offered and read in evidence by the Defendants being sufficient in law, to divest the plaintiffs of all title to the land in controversy, as heirs of C. C. Valle, dec'd.

Refused

2nd. There can be no recovery in this action either as to the land, or back rents, or future rents, as to the one third of the interest in said land, which Melanie Valle was entitled to as dowress, and which was conveyed to Thomas Fleming.

Refused

3rd. There can be no recovery in this action as to the three fifty-eighths of the interest whereof said Valle died seizie; said interest having passed to Brown & Valle, & from them to Defendants.

Refused

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Given

4th. There can be no recovery as to Sec. 16. T. 34. N. R. 7. E. or frac. Sec. 16. T. 34. N. R. 6. E.

Given

5th. There can be no recovery as to the one half, less three fifty-sixths of the interest of which the said Valle died seized, - that portion having vested in the Defendants' ancestor, by Deed dated, February, 10th. 1848.

Refused

6th. That in no event can there be a recovery as to any greater interest, in land or rents, than 6/7 of 1/18 of the whole tract, or 6/7 of 1/6 of the interest whereof said Valle died seised.

Given

There can be no recovery of damages by way of back rents, in this cause, for any time prior to the commencement of this action

Bill of

C. C. Valle's heirs
vs
Thos Fleming's heirs } Bill of Exceptions by Defts

Exception

Be it Remembered, that at the September Term, 1858, of the Madison Circuit Court, the Plaintiffs filed their motion to strike out the Amended Answer of the Defendants ~~Answer~~ which motion the court sustained, as to the following portion of said answer, to which action of the Court, the Defendants objected and excepted at the time.

on the

Afterwards, at the same time, the case came on to be tried by the Court, a jury being waived by both parties, upon the following admissions and evidence, and thereupon the defendants asked the court to declare the law to be as

follows, The court refused to declare the law to be as prayed by the Defendants, but declared the law to be as follows: To which refusal to declare the law to be as prayed by the Defendants, part and to which declarations of the law as given by the Court, defendants objected & excepted at the time. The court made the following finding, and the defendants immediately filed their written exceptions thereto, in the words and figures following.

The defendants offered to prove the matters and things of set up in that portion of their Amended Answer which had been stricken out by the Court on Motion of Plaintiffs. The Plaintiff objected, and the Court excluded the said evidence, and the defendants excepted to said exclusion at the time

And the defendants also at the same time made the following case, which embraces and contains all the evidence given and admissions made at the trial of the cause, and moved the Court to review its finding, as follows,— The court refused to Defendants review its finding, or to allow said exceptions, or to alter its declarations of law, or in any wise to modify its judgment; and defendants excepted at the time to such refusal.

At the trial when the court declared the inapplicability of the deeds conveying the dower of Melanie Valle, to the condition of the pleadings in this cause, the defendants moved the court to allow them to file an additional answer, so as to admit of a defence under said deeds, which the court refused to allow, and defendants excepted at the time.

And for as much as said matters and things do not appear of record, the defendants present this bill of exceptions & pray that it be signed and sealed, and made part

of the record, which is done,

A. Dough (Seal)

Bill of

C. C. Valle's heirs
against
Thomas Fleming's heirs

Bill of Exception and Motion to review

Exception

The Defendants come and file the following exceptions to the finding of the Court in this Cause, and to the declarations of law, by it made, and pray the Court to review the same, and grant a new trial to defendants, for the following reasons.

By Defendants

1.° Because the Court erroneously struck out the Amended answer of the defendants, on Plaintiffs' Motion.

and Motion

2.° Because the Court erroneously refused to allow the defendants to file an additional answer, so as to allow the admission or application of the evidence of the transfer to defendants of Melanie Valle's right of dower.

To

3.° Because the Court erroneously refused to declare the law to be as prayed by defendants.

4.° Because the Court erroneously declared the law to be as prayed by Plaintiffs.

5.° Because, upon the case made and the evidence at the Trial the Court should have declared the law to be that, the plaintiffs could not recover.

Review

6.° Because, upon the case made and the evidence at the trial, the Court should have declared, that the plaintiffs could not recover as to one

third of the interest of which Charles C. Valle had died seized, that interest being conveyed to (defendants) them by the widow of said C. C. Valle.

the

7°. Because, upon the case made, and the evidence at the trial, the Court should have declared the law to be that the plaintiffs could only recover six sevenths of two thirds, of one sixth of the said Mine La Motte tract.

8°. Because upon the case made and the evidence at the trial, the court should have found the fact, and so declared the law to be, that the plaintiffs were only entitled to recover the six-sevenths, of one third of

Same

one sixth of the Mine La Motte tract

9°. That the Court should have declared the law to be, that the deeds of the administrators of C. C. Valle, dated, 24th, April, 1839, were effectual & valid in law, to vest in Fleming, Lamb & Chauncey the one half of the interest in said tract of land, of which said C. C. Valle died seized.

Gantt, with Watkins & Newberry for Defendants

C. C. Valle's heirs
by
Thomas Fleming's heirs } In the Madison Circuit Court, September Term, 1858.

Case made for review of findings and judgment of the court by

The Defendants come and make the following case, containing all the evidence given at the trial of the cause, and all the admissions made thereat, by either party, to wit.

Defendants

1°. The agreement of the parties filed in this cause, and marked A.

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2°. The admissions by the plaintiffs that the title

to three fifty sixths of the interest in the mine & Mote tract, whereof Charles C. Valle, ancestor of plaintiffs died seized, was divested out of his heirs prior to 1848, and vested in R. F. Brown & Frances Valle, by whom the same had been duly conveyed to defendants, prior to the commencement of this suit.

3°. Four deeds from Melanie Valle - Three, dated 18th, May, 1839 to Elihu Chauncey, Lemuel Lamb & Thomas Fleming, respectively, and one from Melanie Valle to Thomas Fleming, dated 20th September, 1847 in the words & figures following

4°. The transcript of the record of the proceedings of the County Court of Madison County, on the application of the Administrators of C. C. Valle, for an order for the sale of his real estate, beginning in 1838, and ending in 1848.

5°. Three deeds executed by the Administrators of C. C. Valle, to Lemuel Lamb, Elihu Chauncey and Thomas Fleming, respectively, dated, 24th April, 1839.

6°. The deed of the administrators of C. C. Valle to Thomas Fleming, dated 10th February, 1848. It was admitted that Thomas Fleming, died on 16th March, 1855.

7°. The admission that all the title of Elihu Chauncey, & Lemuel Lamb, in said tract of land, had, before the commencement of this suit vested in the defendants' ancestor.

8°. The defendants offered to prove the matters and things set up in that portion of their amended

answer, included between brackets and which had been stricken out by the court, on motion of the plaintiffs; the plaintiffs objected to any such evidence, the court excluded the same, and defendants excepted to such exclusion, at the time. And this was all the testimony given, or offered at the Trial

Gantt, with Watkins & Newberry for defendants.

And thereupon the defendants prayed the Court to declare the law to be as follows:— But the Court refused all of said declarations of law, except the fourth and fifth, to which refusal the defendants excepted at the time

The plaintiffs asked the Court to declare the law to be as follows; to the giving of which instructions, or declarations of law, the defendants objected & excepted at the time.

Gantt, with Watkins & Newberry for defendants.

C. C. Valle et al
vs.
Thos. F. Fleming et al

Instructions asked by Plaintiffs

The Plaintiffs ask the Court to declare the law to be,

1. That the Petition of the Administrator of C. C. Valle, deceased, presented to the County Court of Madison County, on the 21st. day of December, A.D. 1838, and the Order of the County Court made thereon, on the same day, being without notice or publication, are insufficient in law, to authorize the execution, by said administrator, as such, the several deeds offered in evidence by the defendants, to Chauncey, Lamb & Fleming, of the 24th of April, 1839; and that said deeds are ineffectual

to convey any interest in the land of which said C. C. Valle died seized.

Pltffs Instruction — 2. That the two deeds read in evidence from Melanie Valle to Thomas Fleming, afford no bar to the plaintiffs' right of recovery, in this action.

3. That the only operative effects which said two deeds can have, is to extinguish the right of action of said Melanie Valle, to have her dower assigned her. — And said extinguishment enures to those who own the fee simple title to the land, upon which ~~said~~ dower right attaches.

Pltffs Instruction — 4. That the deed from the Administrators of C. C. Valle, to Thos Fleming, dated 10th. February 1848, operates to convey to said Thomas Fleming, one undivided sixth of the Mine La Motte tract, less three fifty-sixths only.

Pltffs Instruction — 5. That from the facts agreed to, in connection with the Deeds to Fleming, Chauncey and Lamb, of the 24th. of April 1839, as offered in evidence by the defendants, the Court is asked to declare as a conclusion of law, that said deeds vested in said Lamb, Chauncey & Fleming, each, one sixth part of the Mine La Motte tract, out of the interests of Linn & E. F. Pratte, who united in said deeds.

Refused

7. The Defendants in this action, claiming title to the land in controversy, under an administrators' sale of the land, as the land of which the plaintiffs' ancestor died seized, are presumed in law to know that said land descended to plaintiffs, as heirs; and

Re

unless the administrators' deed papers title, they are affected with notice, of plaintiffs title from the date of the deeds under which they claim.

Finding

C. C. Valle's heirs against Thomas Fleming's heirs } Finding of facts & conclusions of law filed by Plaintiffs

of

The Court find the facts as agreed to in writing, and filed in the cause.

facts and

The Court further find from the evidence in the cause, that the administrators of C. C. Valle, by the deed of February 10th. 1848, conveyed to Thomas Fleming one half of the interest of which C. C. Valle died seized, less three fifty-sixth parts of the entire tract.

conclusion

That the deed of Melanie Valle of the 18th of May, 1839, is a release of her dower interest in one sixth of the Mine La Motte tract, it being one half of the interest of which her husband died seized, and enures to the benefit of her children, who, at the time of its execution held the legal title.

of

law

The Court further find that prior to the commencement of this suit, the defendant Thomas Fleming had no notice of the Plaintiffs' claim of title.

The Court further find, that Sec. 16. T. 34, R. 7. E. and fractional Section 16. T. 34. R. 6. E. have been recovered of Thomas Fleming in his life time, by Paramount title.

by

The Court further find that six seventh of the one sixth of the annual rents and profits of the said land exclusive of the Sixteenth Section included in the survey, from the 10th. May, 1852, the time of the commencement of the suit, up to the 16th. March, 1855, the date of the death of Thomas Fleming, as admitted by the parties in Court, is two thousand,

the

65

one hundred and ninety-eight, 13/100 Dollars; and that the aggregate value of the rents of said six sevenths, of one sixth, from the 16th. day of March, 1855, to the present date, to wit, September 27th. 1858, to be twenty-seven hundred, twenty-three, 59/100 Dollars

That the share of Vermont Allen, in right of his wife, in the rents from the first of June, 1853, to the 16th. of March, 1855, the time of Thomas Fleming's death is two hundred and twenty-five 69/100 dollars; and from the time of said Thomas Fleming's death to the present time, Sept. 27th. 1858, is four hundred, and fifty-three 91/100 dollars.

Plaintiffs

The court further finds the monthly value of six-sevenths, of one sixth of the Mine La Motte tract of land, exclusive of the 16th. Sections, as above stated, to be sixty-four dollars, twenty-eight cents, per month, subject to a deduction of Vermont R. Allen's share, as by the agreement.

H. Hough

Plaintiffs application for Review and

C. C. Valle's heirs
against
Thomas F. Fleming's
Heirs & representatives of
Thomas Fleming, deceased

Application for review & exceptions, by Plaintiffs

Bills of

Plaintiffs move the court to review its finding of the fact "that prior to the commencement of this suit the defendant Thomas Fleming had no notice of the plaintiffs' claim of title, and to find the fact to be, that said Fleming had notice of the title of plaintiffs, from the time of the execution of the deed of the administrators, of the 24th. April, 1839, to Fleming, Chauncey & Lamb.

And also to review its conclusions of law, and its refusal to give the 7th. instruction asked

by Plaintiffs in this case, and to declare the law to be, that the plaintiffs are entitled to recover the rents and profits of the 1/4 sevenths, of said sixths part, for five years before the commencement of this suit, to wit: from the 10th. day of March, 1847.

Exceptions

For evidence to sustain the finding of facts above prayed for, the Plaintiffs refer to the facts saved in the defendants bill of exceptions, and the case by him made.

And the Court refused to review its finding of the facts, as prayed, or to review its conclusions of law, as prayed: to which opinion of the Court, the Plaintiffs except, and pray that this their bill of exceptions be signed, sealed and made a part of the record, which is done accordingly.

A. Hough Seal

Certificate of Confirmations

United States of America, Department of State.

To all to whom these presents shall come, Greeting, I certify that the papers hereunto annexed is a true copy of the Act of Congress, approved 24th. May 1828, confirming to Francis Valle, Jean Bte Valle, Jean Bte. Pratte and St James Beauvais, or to their heirs or legal representatives of the County of Madeira, in the State of Missouri, certain lands, taken from the Original Roll, on file in this Department.

In Testimony whereof, I, A. Vail, acting Secretary of State of the United States, have hereunto subscribed my name, and caused the Seal of the Department of State to be affixed, Done at the City of Washington, this 20th. day of June, A. D. 1839, and of the Independence of the United States of America the Sixty-third.

A. Vail, acting Secretary of State.

Twenty-Fifth Congress of the United States, at the first Session begun and held at the City of Washington, in the District of Columbia on Monday The 3rd. day of December, one thousand, eight hundred and twenty-seven, an Act confirming to Francis Valle, Jean

Certificate of Confirmation.

Baptiste Valle, Jean Baptiste Pratte and St. James Beauvais, or to their heirs or legal representatives, of the County of Madison, in the State of Missouri, Certain lands

Be it enacted by the Senate and House of Representatives, of the United States of America in Congress assembled, That there be, and hereby is confirmed to Francis Valle, Jean Baptiste Valle, Jean Baptiste Pratte and St. James Beauvais, or in case of their, or either of their decease, to their heirs, or either of their heirs or legal representatives, a Tract of Land, not exceeding two leagues square, situate in the County of Madison and State of Missouri, commonly known by the name of the Mine La Motte, according to a duly plot and survey made by Nathaniel Cook, Deputy Surveyor of St. Genevieve, made on the 22nd day of February, 1806, provided said location shall be made as nearly as may be, conformable to the contiguous Public Surveys, and provided further that this confirmation shall extend only to a relinquishment of title, on the part of the United States, nor prejudice the rights of third persons, nor any title heretofore derived from the United States, either by Purchase or donation.

Sec. 2nd And be it further enacted, that the Secretary of the Treasury shall cause Patents to issue to the before named Francis Valle, Jean Baptiste Valle, Jean Baptiste Pratte and St. James Beauvais, or to their heirs or legal representatives, upon the exhibition to him, in case of the decease of the aforesaid persons, that those who may claim Patents under this act are the legal heirs or representatives of the person or persons deceased.

Andrew Stevenson Speaker of the House of Representatives
S. Smith President of the Senate pro tempore.

Approved, 24th May, 1828.

John Quincy Adams

State of Missouri }
Madison County } ss. I, Edward Evans clerk of the Circuit Court within and for the County of Madison, hereby certify, that the within and foregoing contains a full, true and perfect copy of the Original Certified Copy of the act of Congress, recorded in my Office.

In Testimony whereof I have hereunto subscribed my name, and affixed the seal of said Court at office, in Fredericktown, this 22nd, day of April A. D. 1853

Edward Evans Clerk

Commissioners of Madison Co. Missouri
To
Lewis F. Linn & Evariste F. Pratte
Deed, dated November 6th 1837.

This Indenture made executed and delivered this sixth day of November in the year of Our Lord Eighteen hundred and thirty seven, by and between William M Newberry, Silas Bergman, Theodore F Long, Caleb Cox and Henry Davis (Commissioners appointed by the Circuit Court of Madison County) of the said County of Madison in the State of Missouri of the first part, and Lewis F Linn of the County of Ste Genevieve and Evariste F Pratte of the said County of Madison and State aforesaid of the second part, Witnesseth that whereas the said party of the first part (Commissioners as aforesaid) in virtue of and pursuant to an order of the said Circuit Court of Madison County in the said State of Missouri, at the May term thereof, in the year of our Lord One Thousand Eight hundred and thirty seven, did at the Court House door in Fredericktown in the said County of Madison, expose to Sale, at public sale or auction to the best and highest bidder on the Sixth day of November in the year of our Lord one thousand Eight hundred and thirty seven, that certain tract or parcel of land situate in the said County of Madison and County of St Francois, and known and commonly called the Mine la Motte tract of land, containing twenty four thousand and ten acres, confirmed by act of Congress to Francis Valle, Jean Ste Valle, Jean Ste Pratte, and St James Beauvais, or in case of their or either of their decease, to their heirs or legal representatives. And the said Lewis F Linn and Evariste F Pratte being the best and highest bidders, became the purchasers of said tract of land, for the sum of Sixty Seven thousand and fifty dollars, at which price said property was struck off to the said Lewis F Linn and Evariste F Pratte at the day aforesaid. And the said Lewis F Linn and Evariste F Pratte having executed and delivered to the said party of the first part (Commissioners as aforesaid) their joint and several bond obligatory for the said purchase

money, agreably to the terms prescribed by said Circuit Court, with approved personal Security and also a mortgage upon the said premises sold:- Now therefore, we the undersigned (Commissioners as aforesaid) in consideration of the premises, have granted bargained sold and conveyed, and by these presents do grant bargain sell and convey unto the said Lewis F Linn and Evariste F Pratte: the said tract or parcel of land known as and commonly called the mine la Motte tract of land containing Twenty four thousand ten acres and situate in the said County of Madison and County of St François, State aforesaid To have and to hold said bargained and assigned premises together with all and singular the rights privileges and appurtenances thereunto belonging or in any wise appertaining unto them the said Lewis F Linn and Evariste F Pratte their heirs and assigns for ever. In testimony whereof we the undersigned (Commissioners as aforesaid) have hereunto subscribed our names and affixed our seals this day and year first aforesaid

Same

Commissioners.
William M Newberry
Josias Berryman
Theodore F Tong
Caleb Cox
Henry Davis

State of Missouri
Madison County } ss. Be it remembered that on this 7th day of November, in the year of our Lord Eighteen Hundred and thirty Seven, before me the undersigned Clerk of the Circuit Court within and for the County aforesaid came William M Newberry, Josias Berryman, Theodore F Tong, Caleb Cox & Henry Davis who are all personally known to me to be the real persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and severally acknowledged the same instrument to be

their act and deed for the purposes therein mentioned.

In testimony whereof I William M Newberry Clerk of the Circuit Court for the County of Madison have hereunto Subscribed my name and affixed the Seal of said Court at office in Fredericktown, the day and year aforesaid

William M Newberry Clerk

The foregoing Deed was filed in my office for record on the 7th day of November A D 1837 and was recorded on the 20th day of November 1837

Test Wm M Newberry Clerk.

State of Missouri
Madison County } I Edward Evans Clerk of the Circuit Court & Ex officio recorder within and for the County of Madison Missouri hereby certify that the within and foregoing contains a full true and perfect Copy or transcript of the original Deed certificate of acknowledgement & certificate of Record thereof as the same now remains of Record in my office

Witness my hand and the seal of said Court at office in Fredericktown this 22nd day of April A D 1853

Edward Evans Clerk

This Indenture made executed and delivered this Sixth day of November in the year of our Lord Eighteen hundred and thirty Seven, by and between Lewis F Linn of the County of Ste Genevieve and Evariste F Pratte of the County of Madison

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in the State of Missouri of the first part, and William M Newberry Josias Berryman Theodore F Tong, Caleb Cox and Henry Danis (Commissioners appointed by the Circuit Court of Madison County, to make partition of the Mine la Motte tract of land) of the second part, Witnesseth; that the said Lewis F Linn and Evariste F Pratte for and in consideration of the sum of Sixty seven thousand and fifty dollars to them in hand paid or secured to be paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant bargain sell and convey unto the said William M Newberry, Josias Berryman, Theodore F Tong, Caleb Cox and Henry Danis (Commissioners aforesaid) that certain tract or parcel of land, situate, lying, and being in the said County of Madison and County of St François, and known as and commonly called the Mine la Motte tract of land, containing twenty four thousand and ten acres, and confirmed by Act of Congress to Francis Vallé Jean Bte Vallé, Jean Bte Pratte, and St James Beaurais or in case of their or either of their decease, to their heirs or legal representatives. To Have and To Hold the said mentioned and described tract or parcel of land, situate as aforesaid with all and singular the rights, privileges and advantages thereunto belonging or in any wise appertaining unto the said William M Newberry, Josias Berryman, Theodore F Tong, Caleb Cox and Henry Danis (Commissioners as aforesaid) their successors and assigns forever. Upon condition nevertheless, that whereas the said Lewis F Linn and Evariste F Pratte have on this sixth day of November in the year of our Lord Eighteen hundred and thirty seven, executed and delivered to the said William M Newberry, Josias Berryman Theodore F Tong, Caleb Cox and Henry Danis (Commissioners as aforesaid)

Linn & Pratte To Commissioners Mortgage, Dated, Novr 6th 1837.

their bonds obligatory for the sum total of Sixty Seven thousand and fifty dollars payable as in said several bonds obligatory specified. Now if the said Lewis F Linn and Evaniste F Platte shall on or upon the days on which said several bonds obligatory became due and payable, satisfy and discharge the said bonds obligatory according to the tenor thereof, then this Indenture of Mortgage to be void, and of no effect, otherwise to remain in full force and virtue in law. In testimony whereof we the said Lewis F Linn and Evaniste F Platte have hereunto subscribed our names and affixed our seals the day and year first above written

Lewis F Linn [L.S.]
E F Platte [L.S.]

State of Missouri
Madison County } ss. Be it remembered that on this 7th day of November in the year of our Lord Eighteen hundred and thirty Seven before me the undersigned Clerk of the Circuit Court within and for the County aforesaid came Lewis F Linn and Evaniste F Platte who are personally known to me to be the real persons whose names are subscribed to the foregoing instrument of writing, as having executed the same and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned. In testimony whereof I William M Newberry Clerk of the Circuit Court for the County of Madison, have hereunto subscribed my name and affixed the seal of said Court at Office in Fredericktown the day and year aforesaid

[L.S.]

William M Newberry Clerk

Same

The foregoing Mortgage was filed in my Office

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for Record on the 7th day of November 1837 and was recorded on the 20th day of November 1837.

Test Wm M Newberry Clerk.

On the Margin of which said record is the following to wit. — We hereby acknowledge to have received in full satisfaction of the foregoing Mortgage Deed of Lewis F Linn and Evariste F Pratte, according to the stipulations therein, Given under our hands and seals this 9th day of May AD 1839

William M Newberry Sc
Caleb Cox Sc
Theodore F Tong Sc
Tobias Berryman Sc

State of Missouri
Madison County } ss. I Edward Evans Clerk of the Circuit Court of Madison County Missouri hereby certify that the above and foregoing contains a full true and perfect copy of the Original Mortgage-deed, Certificate of acknowledgement, the Recorders certificate of Record and the acknowledgement of satisfaction of said Mortgage as the same now remains of Record in my office.

Same

Witness my hand and the Seal of said Court at Office in Fredericktown this 4th day of August 1857

Edward Evans Clerk

This Indenture made and concluded this fifteenth day of November in the year of our Lord One thousand Eight Hundred and thirty Seven by and between Lewis F Linn and Elizabeth E A R Linn his wife of the County of Ste Genevieve & State of Missouri and Evariste F Pratte and Rose Pratte his wife of the County of Madison and State aforesaid of the first part, and Charles C Valle of the

said County of Ste Genevieve and State aforesaid of the Second part, Witnesseth, That the said party of the first part for and in consideration of the sum of twenty two thousand three hundred and fifty dollars lawful money of the United States to them in hand paid the receipt whereof is hereby acknowledged, hath granted bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the Second part, his heirs, and assigns forever the undivided one third of a certain tract or parcel of land situate, lying and being in the Counties of Madison and St François, and said State of Missouri, known and commonly called the Mine la Motte tract of land, containing twenty four thousand and ten acres - It being the same tract of land that was confirmed by act of Congress to Francis Valle, Jean Bte Valle, Jean Bte Pratte and St James Blanvais or to their heirs and legal representatives, and conveyed to the said party of the first part by William M Newberry, Josias Berryman Theodore F Tong, Caleb Cox and Henry Davis Commissioners appointed by the circuit court within and for the said County of Madison, to make distribution of said tract of land, by deed bearing date the Sixth day of November in the present year. To have and to Hold the undivided third of the above described tract of land, with all and singular the benefits, privileges and appurtenances thereunto belonging, or in any way appertaining unto him the said party of the Second part, his heirs and assigns forever - The said party of the first part hereby granting, bargaining, and selling, unto the said party of the Second part all the right title and interest of the undivided one third of said tract of land, that they have acquired by the purchase above referd to, and no more, hereby warranting and defending against all and every person claiming under

Linn & Pratte & Wives
To 3
Charles C. Valle
Deed, dated, Nov. 15th, 1837.

them, but no further.

In Testimony, whereof we the said party of the first part have hereunto set our hands and affixed our Seals, this day and date above written

L F Linn (S)
Elizabeth A R Linn (S)
E F Pratte (S)
Rose Pratte (S)

The State of Missouri
County of Madison } ss. Be it remembered that on this fifteenth day of November, in the year of our Lord One thousand Eight Hundred and thirty Seven, before me Caleb Cox a Justice of the Peace within & for the County aforesaid, personally came Evariste F. Pratte, and Rose Pratte his wife, both personally known to me, to be the person whose names are subscribed to the foregoing instrument of writing, as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She the said Rose Pratte being by me first made acquainted with the contents thereof, and examined separate, and apart from her husband, whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion, or undue influence of her said husband, acknowledged and declared that she executed the said deed, and relinquished her dower in the said lands and tenements therein mentioned, voluntarily, freely, and without compulsion or undue influence of her said husband

Taken and certified the day and year aforesaid.

Caleb Cox J Peace

State of Missouri
County of Ste Genevieve } ss. Be it remembered that on

this twentieth day of November in the year of our Lord One Thousand Eight Hundred and Thirty Seven before me Joseph D Grafton Clerk of the Circuit Court within and for said County, personally appeared Lewis F Linn and Elizabeth A R Linn his wife, who are personally known to me to be the person who signed and sealed the foregoing instrument of writing, as having executed the same and acknowledged the same to be their act and deed for the purposes therein mentioned - She the said Elizabeth being by me made acquainted with the contents thereof, acknowledged on an examination apart from her husband, that she executed the same and relinquished dower in the real estate therein mentioned, freely and without compulsion or undue influence of her husband.

L S

In testimony whereof I have hereunto affixed my official seal at Ste Genevieve the day, month and year hereinbefore written

Jos D Grafton Clerk

The foregoing deed was filed in my office for Record on the 26th day of November A D 1837 and Recorded on the 14th day of December 1837.

Test. Wm M Newberry Clerk.

State of Missouri
Madison County } ss. I Edward Evans Clerk of the Circuit Court of Madison County hereby certify that the within & foregoing contains a full true and perfect copy of the Original deed, the Certificate of Acknowledgment, and the Clerks certificate of Record thereof, as the same now remains of Record in my office.

L S

In testimony, whereof I have hereunto subscribed my name, and affixed the Seal of said Court at office in Fredericktown this 22 day of April A D 1853

Edward Evans Clerk.

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This Indenture made and entered into this twenty fourth day of April in the Year of our Lord One thousand Eight hundred and thirty nine by and between Evariste D. Piatte and Rose A Piatte his wife of the County of Madison, Lewis F Linn & Elizabeth A Linn his wife of the County of Ste Genevieve and Barthelmy St Gemme and Evariste F Piatte Administrators of all and singular the goods and chattels, lands and tenements, rights and credits which were of Charles Valle late of the said County of Madison deceased, and all of the State of Missouri of the first part, and Thomas Fleming of the City of Philadelphia and State of Pennsylvania of the second part, Witnesseth: That the said party of the first part for and in consideration of the sum of Sixteen thousand Six hundred and Sixty Six dollars and two thirds of a dollar, to them in hand paid by the said party of the Second part, the receipt whereof is hereby acknowledged, and the said party of the second thereof released and discharged, - hath granted, bargained, and sold, released, aliened, enfeoffed and confirmed, and by these presents doth grant, bargain, and sell, release, alien, and enfeoff and Confirm unto him the said Thomas Fleming the said party of the second part, his heirs and assigns, the following described premises, land, and tenements, to wit: The one undivided Sixth part of, in, and to that certain tract or parcel of land situate, being, and lying in the County of Madison and County of St Francois in the State of Missouri, known and commonly called the Mine la Motte tract of land, containing twenty four thousand and ten acres be the same more or less, being the same tract of land which was confirmed to Francis Valle, Jean Bte Valle, Jean Bte Piatte and St James Beauvais or to their heirs and legal representatives, by an act of Congress approved the twenty fourth day of May

April 1839. for undivided 6th. Mine La Motte.

One thousand eight hundred and twenty eight, and patented to Lewis F Linn and Evariste F Pratte by the President of the United States by letters patent, dated the twenty fifth day of March, One thousand Eight hundred and thirty nine, they having become the legal representatives of the said original grantees or Confirmees, in and by virtue of a Deed of Conveyance made and executed to them for the said tract of land by Wm M Newberry, Josias Berryman, Theodore F Tong, Caleb Cox and Henry Janis Commissioners appointed by the Circuit Court within and for the County of Madison aforesaid, under proceedings in partition, which said deed is dated the Sixth day of November, One thousand Eight hundred and thirty seven, and recorded in the office of the Court aforesaid in Book C pages 443 and 444. The one undivided third part of which said tract of land was conveyed by said Evariste F Pratte and wife, and the said Lewis F Linn and wife to the said Charles C Valle now deceased, by deed dated the fifteenth day of November One thousand eight hundred and thirty seven, recorded in the office of the Circuit Court of Madison County aforesaid, in Book C pages 449. 450. & 451. And the said Bartholemy H Gemme and Evariste F Pratte administrators of the estate of the said Charles C Valle deceased as aforesaid, having been duly authorized, and empowered to sell the real estate of the said decedent, by an order of the County Court of Madison County aforesaid, which said order was made on the twenty first of December One thousand Eight hundred and thirty eight, as by reference to said Act of Congress. Patent. deeds. Records and orders of said Courts will fully and at large appear. To Have and to Hold the said premises, lands and tenements, hevein above described and conveyed, together with all and singular the rights, privileges,

Linn & Pratte and Wife & Admrs of C. C. Valle.
To
Thomas Fleming
Deed, dated 24th

and appurtenances thereunto belonging, or in any wise appertaining unto him the said Thomas Fleming, the said party of the second part, his heirs and assigns forever. And the said party of the first part for themselves, their heirs, executors and administrators / and the said Bartholomew St Gemme and Evariste F Ratte also for the heirs executors and administrators of the said Charles C Valle deceased / do hereby covenant and agree with the said Thomas Fleming the said party of the second part, his heirs, executors, administrators and assigns, that we will warrant and for-ever defend, the right, and title in fee simple, of in and to the above described tenements, lands and premises to him the said Thomas Fleming, the said party of the second part, his heirs and assigns forever, against all claims whatsoever. In testimony whereof the said party of the first part have hereunto set their hands and affixed their seals, the day, month, and year herein first written.

Signed sealed and deliv in presence of
Felix Valle
William Gibson

E F Ratte
Rose A Ratte
Lewis F Linn
Elizabeth A R Linn
Beauvais St Gemme
one of the administrators of Charles C Valle dec'd
E F Ratte
one of the administrators of Charles C Valle dec'd

State of Missouri } ss
County of Ste Genevieve }

Be it remembered that on this twenty fourth day of April in the year of Our Lord One thousand Eight hundred and thirty nine, before the undersigned Clerk of the County Court / the same being a Court of Record, and having a clerk and seal / for Ste Genevieve County aforesaid, personally appeared Evariste F Ratte & Rose A Ratte

his wife, Lewis F Linn and Elizabeth A R Linn his wife, and also Bartholemy St Gemme, and the said Evariste F Ratte, who are the administrators of the estate of Charles Valle deceased, and who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the same to be their act, and deed, hand and seals for the purposes therein mentioned. And the said Rose A Ratte and Elizabeth A R Linn being by me first made acquainted with the contents thereof, each acknowledged on examination apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely and without compulsion, or undue influence of her said husband. In testimony whereof I have hereunto affixed the seal of said Court at the town of Ste Genevieve in said County, the day, month, and year hereinbefore written

Jos D Grafton-Clerk

State of Missouri
County of Ste Genevieve } ss. I Eloy Lecompte President of the County Court of Ste Genevieve County aforesaid, do hereby Certify that Joseph D Grafton by whom the foregoing Certificate, under the Seal of the said Court is given, is Clerk of the said Court, duly commissioned and qualified, and that the said Certificate is in due form of law and by the proper officer. Given under my hand at Ste Genevieve in the said County this 21st day of April A D 1839.

Eloy Lecompte President of the
Ste Genevieve County Court

This deed was filed for Record on the 20th May 1839 and was recorded the 31st May 1839.

Test Wm M Newberry Clerk

Same.

State of Missouri }
Madison County } ss. I Edward Evans Clerk of the Circuit Court of Madison County, State aforesaid, hereby certify that the within and foregoing contain a full true and perfect Copy of the Original deed, Certificate of acknowledgement, and the Clerks Certificate of Record thereof, as the same now remains of Record in my office

Witness my hand and the Seal of said Court at office in Fredericktown this 8th day of February 1853

Edward Evans Clerk

J. S.

This Indenture made and entered into this twenty fourth day of April in the year of our Lord One thousand Eight Hundred and thirty nine, by and between Evariste F Pratte and Rosine A Pratte his wife, of the County of Madison Lewis F Linn and Elizabeth A R Linn his wife of the County of Ste Genevieve, and Bartholemy St Gemme and Evariste F Pratte administrators of all and singular the goods and chattles, lands and tenements, rights and credits, which were of Charles C Valle, late of the County of Madison deceased - and all of the State of Missouri of the first part, and Lemuel Lamb of the City of Philadelphia and State of Pennsylvania of the second part. Witnesseth, That the said party of the first part for and in consideration of the sum of Sixteen thousand, Six hundred and Sixty six dollars and two thirds of a dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part thereof released and discharged, hath granted, bargained and Sold released, aliend enfeoffed and Confirmed; and by these presents doth grant, bargain and sell,

Le Motte Tract.

L. F. Linn & E. F. Pratte & Wife, and Adams of C. C. Valle, dec.
To
Samuel Lamb.
Deed, dated, 24th April, 1839, for 1/6 U. Mine

release, alien enfeoff and confirm unto the said Samuel Lamb the said party of the second part, his heirs and assigns ~~for ever~~ the following described premises, lands and tenements to wit, the one full equal and undivided sixth part, of in and to that certain tract or parcel of land, situate, lying, and being in the County of Madison, and County of St Francois, in the State of Missouri, known and commonly called the Mine la motte tract of land, containing twenty four thousand and ten acres, be the same more or less, being the same tract of land which was confirmed to Francis Valle, Jean Bte Valle, Jean Bte Pratte and St James Beauvais or to them him and legal representatives, by an act of Congress, approved the twenty fourth day of May, one thousand Eight hundred and twenty eight, and patented to Lewis F Linn and Evariste F Pratte, by the President of the United States, by letters patent dated the twenty fifth day of March One thousand Eight hundred and thirty nine - they having become the legal representatives of the said original grantees, or confirmees, in and by virtue of a deed of conveyance made and executed to them, for the said tract of land, by William M Newberry, Dozier Berryman, Theodore F Long, Caleb Cox and Henry Davis Commissioners appointed by the Circuit Court within and for the County of Madison aforesaid, under proceedings in partition, which said deed is dated the Sixth day of November One thousand Eight hundred and thirty Seven, and recorded in the office of the Court aforesaid in Book C pages 443 and 444 - The one undivided third part of which said tract of land was conveyed by the said Evariste F Pratte and wife, and the said Lewis F Linn and wife to the said Charles C Valle / now deceased / by

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deed dated the fifteenth day of November One thousand Eight hundred and thirty Seven, recorded in the Office of Circuit Court of Madison County aforesaid in Book C pages 449, 450, & 451 and the said Bartholemy St Gemme, and Evariste F. Ratte administrators of the Estate of the said Charles C Valle deceased aforesaid, having been duly authorized and empowered to sell the real estate of the said decedent, by an order of the County Court of Madison County aforesaid, which said order was made on the Twenty first day of December, One thousand eight hundred and thirty eight, as by reference to said Act of Congress, Patent, Deed, Records and Orders of said Courts will fully and at large appear - To have and to hold the said premises, lands, and tenements herein above described and conveyed, together with all and singular the rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining unto him the said Lemuel Lamb the said party of the second part his heirs, and assigns for ever - and the said party of the first part for themselves, their heirs Executors and administrators / and the said Bartholemy St Gemme and Evariste F. Ratte also for the heirs executors and administrators of the said Charles C Valle deceased / do hereby covenant and agree with the said Lemuel Lamb the said party of the second part, his heirs, executors administrators and assigns, that we will warrant and forever defend the right and title in fee simple of in and to the above described tenements, lands, and premises to him the said Lemuel Lamb the said party of the second part, his heirs, and assigns forever against all claims whatsoever -

In testimony whereof the said party of the first part have hereunto set their hands and

affixed their seals, the day month and year herein first written

E F Ratte (S)
Rose A Ratte (S)
Lewis F Linn (S)
Elizabeth A R Linn (S)
Blannis St Gemme (S)
One of the administrators of Charles Valle dec'd
E F Ratte (S)
One of the administrators of Charles Valle dec'd

Signed Sealed and delivered
Felix Valle
William Gibson

State of Missouri
County of Ste Genevieve } ss. Be it remembered that on this twenty fourth day of April in the Year of our Lord One Thousand Eight hundred and thirty nine, before the undersigned Clerk of the County Court / the same being a Court of Record and having a Clerk and Seal / for Ste Genevieve County aforesaid, personally appeared Evariste F Ratte and Rose A Ratte his wife, Lewis F Linn and Elizabeth A R Linn his wife, and also Barthelemy St Gemme and the said Evariste F Ratte, who are the Administrators of the Estate of Charles C Valle deceased, and who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the same, to be their act and deed, hand, and seals, for the purposes therein mentioned. And the said Rose A Ratte and Elizabeth A R Linn being by me first made acquainted with the contents thereof, each acknowledged on an examination apart from her husband, that she executed the same and relinquished her dower in the real estate therein mentioned, freely voluntarily, and without compulsion or undue influence of her husband. In testimony whereof I have hereunto affixed the seal of said Court at the

Seal

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Town of Ste Genevieve, in Said County, the day month and year herein before written.

L S

Jos D Grafton Clerk.

State of Missouri } ss. I Eloy Lecompte Presidt
County of Ste Genevieve } of the County Court for
Ste Genevieve County aforesaid, do hereby certify
that Joseph D Grafton by whom the foregoing
Certificate under the Seal of said Court is given, is
the Clerk of the said Court duly commissioned and
qualified, that the said Certificate is in due form
of law, and by the proper officer. Given under
my hand at the said County the 24th day of April
AD 1839.

Eloy Lecompte Presidt of
Ste Genevieve County Court.

This deed was filed for record on the 30th day of
May 1839 and was recorded 30th May 1839.

Test Wm M Newberry Clerk.

State of Missouri }
Madison County } ss. I Edward Evans Clerk
of the Circuit Court of Madison County State aforesaid,
hereby certify that the within and foregoing contain
a full, true, and perfect Copy of the Original deed,
Certificate of Acknowledgement, and Certificate of
Record thereof, as the Same now remains of record
in my office.

Witness my hand and the Seal of said
Court at office in Fredericktown this
8th day of February 1848.

Edward Evans Clerk

This Indenture made and entered into this twenty fourth
day of April, in the year of our Lord One thousand
Eight hundred and thirty nine, by and between Francis

F. Ratte and Rose A. Ratte his wife; of the County of Madison, Lewis F. Linn and Elizabeth A. R. Linn his wife, of the County of ~~Madison~~ Ste Genevieve, and Bartholemy St Gemme and Evariste F. Ratte administrators of all and singular the goods and chattles, lands and tenements, rights and credits which are of Charles C. Valle late of the said County of Madison deceased, and all of the State of Missouri, of the first part, and Elihu Chauncey of the City of Philadelphia and State of Pennsylvania of the Second part, Witnesseth; That the said party of the first part, for and in consideration of the sum of Sixteen thousand Six hundred and Sixty dollars and two thirds of a dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part thereof released and discharged, - hath granted, bargained & sold, released, aliened and confirmed, and by these presents doth grant bargain and sell release, alien enfeoff and confirm unto the said Elihu Chauncey the said party of the second part his heirs and assigns, the following described premises, lands and tenements, to wit, the One undivided Sixth part of, in, and to that certain tract or parcel of land, situate, lying and being in the County of Madison and the County of St François in the State of Missouri, known and commonly called the Mine la Motte tract of land, containing twenty four thousand and ten acres, be the same more or less, being the same tract of land which was confirmed to Francis Valle, Jean Bte Valle, Jean Bte Ratte, and St James Beauvais or to his heirs ~~and~~ or legal representatives by an act of Congress, approved the twenty fourth day of May, One thousand Eight hundred and twenty eight, and patented

S. F. Linn & E. F. Ratte & Wives and Admrs. C. C. Valle, decd.
To &
Elihu Chauncey
Decd, dated, April 24th. 1839. for 1/6th. Mine La Motte Tract.

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to Lewis F Linn & Evaniste F Pratte by the President of the United States, by letters patent dated the twenty fifth day of March One thousand Eight hundred and thirty nine, they having become the legal representatives of the said original grantees, or Confirmees, in and by virtue of a deed of conveyance, made and executed to them for the said tract of land by William M Newberry, Darius Bergman, Theodore F Tony, Caleb Cox and Henry Davis. Commissioners appointed by the Circuit Court within and for the County of Madison aforesaid under proceedings in partition, which said deed is dated the sixth day of November, One Thousand Eight Hundred and Thirty seven, and recorded in the Office of the Court aforesaid in Book C pages 443 and 444. the undivided third part of which said tract of land was conveyed by said Evaniste F Pratte and wife and the said Lewis F Linn and wife to the said Charles C Valle deceased by deed dated the fifteenth day of November One thousand eight hundred and thirty seven, recorded in the office of the Circuit Court of Madison County aforesaid in Book C pages 449. 450. and 451 - And the said Barthelemy St Gemme and Evaniste F Pratte administrators of the Estate of the said Charles C Valle deceased as aforesaid, having been duly authorized and empowered to sell the real estate of the decedent by an order of the County Court of Madison County aforesaid, which said order was made on the twenty first day of December One thousand Eight hundred and thirty eight, as by reference to said Act of Congress, Patents, Deeds, Records and Orders of said Courts will fully and at large appear, To have and to Hold the said premises lands and tenements herein above described and conveyed, together with all and singular the rights, privileges and appurtenances thereunto belonging or in any wise appertaining

Same.

unto him the said Elihu Chauncey, the said party of the second part, his heirs and assigns for ever. And the said part of the first part for themselves, their heirs, executors, and administrators / and the said Barthelemy St Gemme and Evariste F Ratte also for the heirs executors and administrators of the said Charles Valle deceased / do hereby covenant and agree with the said Elihu Chauncey the said part of the second part, his heirs Executors, administrators and assigns, that he will warrant and forever defend the right and title in fee simple of, in, and to the above mentioned tenements, lands and premises to him the said Elihu Chauncey his heirs and assigns for ever, against all claims whatsoever. In testimony whereof the said party of the first part have hereunto set their hands and affixed their seals the day month and year herein first written.

Same.

Signed sealed and delivered in presence of
Felix Valle
William Gibson

E F Ratte (S)
Rose A Ratte (S)
Lewis F Lunn (S)
Elizabeth A R Lunn (S)
Bau St Gemme (S)
one of the administrators of Charles Valle dec'd
E F Ratte (S)
one of the administrators of Charles Valle dec'd

State of Missouri
County of Ste Genevieve } ss

Be it remembered that on this twenty fourth day of April in the Year of our Lord One thousand Eight hundred and thirty nine, before the undersigned Clerk of the County Court / the same being a Court of Record and having a Clerk and Seal / for Ste Genevieve County aforesaid, personally appeared Evariste F. Ratte and Rose A Ratte his wife, Lewis F Lunn & E A R Lunn

his wife, and also Barthelemy St Gemme and the said Evariste F Batte who are the administrators of the Estate of Charles C Valle deceased, and who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same and acknowledged the same to be their act and deed, hand and seal, for the purposes therein mentioned, and the said Rose A Batte and Elizabeth A R Linn being by me first made acquainted with the contents thereof, each acknowledged on an examination apart from her husband, that she executed the same, and relinquished her dower in the real estate therein mentioned, freely and without compulsion, or undue influence of her husband.

In testimony whereof I have hereunto affixed the seal of the said Court, at the Town of Ste Genevieve, in said County, the day month and year herein-before written

Jos D Graston Clerk.

[L S]

State of Missouri } ss
County of Ste Genevieve }

I Eloy Lecompte President of the County Court of Ste Genevieve County aforesaid, do hereby certify that Joseph D Graston by whom the foregoing certificate under the seal of the said Court is given, is the Clerk of the said Court, duly commissioned and qualified, and that the said certificate is in due form of law, and by the proper officer - Given under my hand at Ste Genevieve, in the said County, this twenty fourth day of April AD 1839. Eloy Lecompte

President of Ste Genevieve County Court.

This deed was filed for record on the 20th day of May 1839 and was recorded 31st May 1839.

Test Wm M Newberry Clerk.

Deeds

State of Missouri } ss I Edward Evans Clerk
Madison County } of the Circuit Court of Madison
County, State aforesaid, hereby Certify that the within
and foregoing Contains a full true and perfect copy
of the Original deed, certificate of acknowledgement,
and the Clerk's certificate of Record, as the same now
remains of Record in my office

Witness my hand and the seal of said Court
at office in Fredericktown this 8th day of
February AD 1853.

Edward Evans Clerk.

This Indenture made and concluded this 18th day of
May in the year of our Lord, One thousand eight hundred
and thirty nine, by and between Melanie Valle widow of
Charles C Valle dec'd late of the County of Ste Genevieve in
the State of Missouri of the first part, and Thomas Flem-
-ing of the City of Philadelphia in the State of Penn-
-sylvania of the second part. Witnesseth: That whereas
Barthelemy St Gemme and Dainte F Batte administrators of all
and singular the goods and chattles, lands and tenements,
rights, credits and effects which were of the said Charles
C Valle dec'd for and in consideration of the sum of
Sixteen thousand Six hundred and ~~Eighty~~ Sixty Six dollars and
two thirds of a dollar, to them paid by the said Thomas
Fleming, did on the Twenty fourth day of April in
the year of our Lord Eighteen hundred and thirty
nine, by their certain deed in writing (together with other
persons) sell, transfer and convey unto the said Thomas
Fleming all the right, title, interest, claim and property
of the said Charles C Valle dec'd, in and to the one
undivided seventh part of that certain tract or parcel
of land known as, and commonly called the Mine la
Motte tract of land, situate in the Counties of Madison
and St François, and containing Twenty four thousand

Melanie Valle, widow
to
Thomas Fleming

Relinquishment Dow. May 18th, 1839.

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and ten acres, as by reference to said deed will fully appear. Now in consideration of the premises and for the further consideration of one dollar to me fully paid by the said Thomas Fleming, the receipt of which is hereby acknowledged, I the said Melanie Valle widow of the said Charles C Valle dec'd have granted, released, and relenquished, and by these presents do grant, release, and relenquish unto the said Thomas Fleming all my right of dower of, in, and to the said one undivided sixth part of the said tract of land in the said deed mentioned and described, and I do hereby fully assent to, confirm, ratify and approve the said transfer of the said Bartholemy St Gemmo and Evariste F Valle as administrators as aforesaid, to the said Thomas Fleming, hereby vesting in the said Thomas Fleming my said right of dower of, in, and to said land, as fully and effectually to all intents and purposes as if I were a party to the said deed for conveyance mentioned.

Same

In testimony whereof, I have hereunto Subscribed my name and affixed my seal, the day and year first aforesaid

Melanie Valle Ls

Signed sealed and
delivd in presence of
Jos D Glaston

State of Missouri
County of Ste Genevieve } ss. Be it remembered that on this 18th day of May AD 1839, before the undersigned Clerk of the Circuit Court for said County, personally appeared Melanie Valle who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the same to be her act and for the purposes therein mentioned

In testimony whereof I have hereunto affixed my official seal at Ste Genevieve, the day month and year herein before written

Jos D Grafton

The foregoing deed was filed for Record on the 20th day of May 1839, and was recorded on the 31st day of May AD 1839

Test Wm M Newberry Clerk

State of Missouri
Madison County } I Edward Evans Clerk of the Circuit Court within and for the County of Madison, State aforesaid, hereby certify that the within and foregoing contain a full, true, and perfect copy of the Original Deed, Certificate of Acknowledgement and the Clerks Certificate of Record thereof, as the same now remains of Record in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in Fredericktown this 11th day of February AD 1853

Edward Evans Clerk.

Same

This Indenture made and concluded this 18th day of May in the year of Our Lord One thousand Eight hundred and thirty nine, by and between Melanie Valle widow of Charles C Vallé deceased late of the County of Ste Genevieve in the State of Missouri, of the first part and Lemuel Lamb of the City of Philadelphia and State of Pennsylvania of the second part, Witnesseth; that Whereas Bartholemy St Gemme and Evariste F Pratte administrators of all and singular, the goods and chattles, lands and tenements, rights, credits, and effects which were of the said Charles C Valle decd, for and in consideration of the sum of Sixteen thousand Six hundred and Sixty six dollars and two thirds of a dollar, to them fully paid by the said Lemuel Lamb, did on the twenty fourth

Melanie Valle, widow
To
Lemuel Lamb
Relinquishment Dower,
May, 18th, 1839.

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day of April in the year of Our Lord Eighteen hundred and thirty nine, by their certain deed in writing / together with other persons / Sell, Transfer, and Convey unto the said Lemuel Lamb, all the right, title, interest, Claim and property of the said Charles D Valle dec.d of, in and to the one undivided Sixth part of that certain tract or parcel of land, situate in the counties of Madison and St Francois, and containing Twenty four thousand and ten acres, as by reference to said deed will fully appear. Now in Consideration of the premises, and for the further consideration of One dollar to me fully paid by the said Lemuel Lamb, the receipt of which is hereby acknowledged, I the said Melanie Valle widow of the said Charles D Valle dec.d have granted, released, and relenquished and by these presents do grant, release, and relenquish unto the said Lemuel Lamb, all my right of dower of and to the said One undivided Sixth part of the said tract of land in the said deed mentioned and described, and I do hereby fully assent to, confirm, ratify and approve the said Transfer of the said Bartholemy St Gemme and Evariste F Rate as administrators as aforesaid, to the said Lemuel Lamb, vesting in the said Lemuel Lamb, my said right of dower, of, in, and to said land, as fully and effectually, to all intents and purposes, as if I were a party to the said deed of Conveyance mentioned. In testimony whereof, I have hereunto subscribed my name and affixed my seal the day and year first aforesaid

Melanie Valle L.S.

Signed Sealed and delivd in presence of Jos D Grafton.

State of Missouri } ss. Be it remembered that on this
County of Ste Genevieve } 18th day of May AD 1839. before

the undersigned Clerk of the Circuit Court for said County, personally appeared Melanie Valle, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the same to be her act and deed for the purposes therein mentioned

In testimony whereof I have hereunto affixed my official seal at Ste Genevieve, the day, month and year herein before written

L S Dos D Grafton Clerk

The foregoing deed was filed for Record on the 20th day of May AD 1839. and was recorded on the 31st day of May AD 1839

Test Wm M Newberry Clerk

same

State of Missouri
Madison County } ss I Edward Evans Clerk of the Circuit Court of Madison County, State aforesaid, hereby certify that the above and foregoing contains a full, true, and perfect Copy of the Original Deed, Certificate of acknowledgement, and the Clerk's Certificate of Record thereof, as the same now appears of Record in my office.

In testimony, whereof I have hereunto set my hand and affixed the seal of said Court at office in Fredericktown, this 9th day of February AD. 1853

L S Edward Evans Clerk

This Indenture made and concluded this 18th day of May, in the year of our Lord, one thousand eight hundred and thirty nine, by and between Melanie Valle widow of Charles D Valle dec'd late of the County of Ste Genevieve in the State of Missouri, of the first part, and Elihu Chauncey of the City of Philadelphia and State of

Pennsylvania, of the second part, Witnesseth; - That whereas Bartholemy St Gemme and Evariste F Ratte administrators of all and singular the goods and chattels, lands and tenements, rights, credits and effects which were of the said Charles C Valle decd, for, and in consideration of the sum of Sixteen thousand, six hundred and sixty six dollars and two thirds of a dollar, to them paid by the said Elihu Chauncey, did, on the twenty fourth day of April, in the year of our Lord eighteen hundred and thirty nine, by their certain deed in writing (together with other persons) sell, transfer and convey unto the said Elihu Chauncey, all the right, title interest, claim and property of the said Charles C Valle decd of, in, and to the one undivided sixth part of that certain tract or parcel of land known as and commonly called the Mine la Motte tract of land, situate in the Counties of Madison and St François, and containing twenty four thousand and ten acres, as by reference to said Deed will fully appear: Now, in consideration of the premises, and for the further consideration of one dollar to me fully paid by the said Elihu Chauncey, the receipt of which is ~~fully~~ hereby acknowledged - I the said Melanie Valle, widow of the said Charles C Valle decd, have granted, released, and relinquished, and by these presents do grant, release, and relinquish unto the said Elihu Chauncey all my right of dower of, in and to the said one undivided sixth part of the said tract of land in said deed mentioned, and described: And I do hereby fully assent to, confirm, ratify and approve the said transfer of the said Bartholemy St Gemme and Evariste F Ratte as administrators as aforesaid, to the said Elihu Chauncey, hereby vesting in the said Elihu Chauncey my said right of dower of, in, and to said land as fully and effectually to all intents and purposes, as if I were a party to the said Deed of conveyance

Melanie Valle, Widow
To 3
Elihu Chauncey
Relinquishment Dower, May, 18th, 1839.

mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my seal the day and year first aforesaid

Signed, sealed, and deliv^d. in presence of Jos D Grafton

Melanie Valle

State of Missouri
County of Ste Genevieve

Be it remembered that on this 18th day of May AD 1839, before the undersigned, Clerk of the Circuit Court for said County, personally appeared Melanie Valle, who is personally known to me to be the person whose name is subscribed to the foregoing Instrument of writing as having executed the same, and acknowledged the same to be her act and deed, for the purposes therein mentioned.

In testimony whereof I have hereunto affixed my official seal at Ste Geneviève, the day, month and year hereinbefore written

Jos D Grafton Clerk

The foregoing deed was filed for record on the 20th day of May AD 1839, and was recorded on the 31st day of May AD 1839.

Test Wm M Newberry Clerk.

State of Missouri
Madison County

I Edward Evans Clerk of the Circuit Court of Madison County, State aforesaid hereby certify that the above and foregoing contains a full, true, and perfect copy of the Original Deed, Certificate of Acknowledgment, and the Clerks Certificate of Record thereof, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in Fredericktown this 9th day of February AD 1853.

Edward Evans Clerk

Same

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Madison Circuit Court in Chancery, at April Term 1843

Robert T Brown

vs

Melanie Valle widow, Francis Valle
Charles Valle, Bartholemy Valle, Marie
Valle, Emilie Valle, Auguste Valle, Melanie Marie
Valle, Heirs and legal representatives of Charles Valle dec.
and Evariste F Ratte, and Bartholemew St Gemme adminis
-trators of all and singular the goods, chattels, rights,
Credits and effects which were of Charles Valle dec.

Bill Original filed in Chancery.

Proceedings & Decree, Madison Cir. Court.

Robert T. Brown
vs.
Heirs & Repr. C. C. Valle dec.

And now at this time the said Melanie Valle widow of said deceased, having failed to appear and file her answer herein, the said bill as to her is taken for confessed and the said infant heir defendants, of said deceased, by Bartholemew St Gemme their Guardian file their answer herein as also the said administrators defendants, and thereupon by consent of the parties, this cause is taken up for hearing, upon the Bill, answers, exhibits and evidence - The Bill states that Certain tract of Twenty eight thousand Arpents of land being in the Counties of Madison and St Francois was originally Confirmed to Francis Valle, St Gemme Beauvais, John Bte Valle, and John Bte Ratte, that Francis Valle is the ancestor of the wife of Complainant and departed this life, and that his undivided fourth part of said land descended to and became the property of this Complainants wife Catharine, and six other heirs, by which his wife and this Complainant in her right became the owners of one undivided Seventh part of said One fourth part of said 28000 arpents of land, and that Julia Fenwick Sister of said Complainants wife, having died without issue, bequeathed to his said wife her equal undivided Seventh part of and to said tract of land aforesaid by virtue of which the Complainant in right of his wife, became the owner of two sevenths of one fourth of said tract of land, and so owning the same, a proceeding on petition for

the partition thereof was had in this Court, in which by an order of Court the whole of said land was sold for a distribution thereof, or the proceeds thereof among the several claimants, that on the sale thereof Lewis F Linn, Evariste F. Piatte, and the said Charles C Valle became the purchasers thereof for the sum of $ 67050. that at the time of the purchase thereof, it was agreed between the said Charles C Valle and Complainant, that he the said C C Valle should apply the avails of said complainants interest in said land towards said purchase by him made, and thereby the said Complainant should have the same interest in the said purchase made by C C Valle as said Complainant held originally in said tract, that being the two sevenths of One fourth of the whole tract, the same being about two. thousand arpents, that in accordance with said agreement, the said C C Valle purchased and acquired a title to himself and heirs of the one third part of said whole tract of land of 28000 arpents, and in payment of part thereof, applied the avails of the said interest of this Complainant, by which the said C C Valle in life became liable and bound to execute a deed, transferring to this Complainant his said proportion of two sevenths of one fourth part of said tract of land, amounting to about two thousand arpents having fully paid for the same, that afterwards the said Charles C Valle having been in the use and enjoyment of this property to the exclusion of said Complainant, departed this life without ever having made or executed to Complainant any deed for said land, and letters of administration on his estate were granted by the County Court of this County to said Evariste F Piatte and Bartholomew F Gemme defendants, who in the discharge of their duties under the order of said County Court. Jointly with all other proprietors sold the one half of said tract of 28000 arpents of land known as the mine la Motte tract for the sum

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of Fifty thousand dollars, in which sale is an included the one half of the said third part of the said interest of the said C Charles C Valle and which likewise included the said one half of the said interest of said complainant in said land by his agent, amounting to about One thousand arpents being one equal and undivided twenty eighth part of the whole tract, that the said avails of said sale by the permission of the said complainant was by the said administrators and proprietors applied by them towards the payment of the purchase money remaining due for said land on said purchase made by said Lewis Pratte & Valle mentioned - that the said C C Valle in his life time, and the said administrators since have been in receipt of the rents and profits of said land from the time of said purchase and have not accounted for any part thereof to this complainant, and prays for a decree of his remaining proportion of said land the same being about One thousand arpents - Or one equal undivided twenty eighth part of the whole tract, and also his proportion of the consideration money of $30.000 for which his aforesaid other equal undivided twenty eight part, being about One thousand arpents of said land sold for, with interest, and that the defendants account for rents, profits &c - and to be relieved is the scope of complainants bill. The infant heirs of the said C C Valle in answer by their guardian, state their entire ignorance of the matters and things stated in said bill and submit to the Court, and the answer of the said E G Pratte & B Sarpy administrators of said deceased admits the facts in said Bill stated and in relation to the agreement and purchase of said land by said C C Valle as set out in said bill, and of the rights of said complainant under said purchase, and of the sale of the one

undivided half part of the whole tract for the sum of $60.000, together with the application of the proceeds thereof as stated in said Bill, and that the said C C Valle in his life time and his administrators since have been in the occupation and use of said lands, and of the rents and profits, but allege that they were put to great expense and trouble and loss of time in effecting said sale, and in carrying on the business of said land, for all of which they ought to have allowance, and they cannot say whether anything has accrued from the rents and profits of said land after deducting expenses for care and labor, and expenses in managing said lands, until the accounts are all settled — The Court having further heard evidence in the cause, are of the opinion that the said Complainant is entitled to a decree for and to one equal undivided twenty eight part of the whole tract being about 1000 arpents out of the part thereof owned by the heirs and representatives of said Charles C Valle deceased, and from the administration of said C C Valle for the amount for which the balance of the said Complainants interest in said land was sold for, such balance being about 1000 arpents, or one equal undivided twenty eighth part of the whole tract, and that they ought further to account to the Complainant for the interest of the same, and the rents and profits of his interest in said lands —

It is therefore considered, ordered and decreed that all the right title claim interest and property of the Melanie Valle, Francis L Valle, Charles C Valle, Bartholomew Valle, Marie Valle, Amelia Valle, Auguste Valle, and Melanie Marie Valle widow and heirs and representatives of the said Charles C Valle deceased of in and to one equal undivided twenty eighth part of the whole Mine la Motte tract of land mentioned in said bill as aforesaid being about 1000 arpents and purchased as aforesaid by C C Valle, hap from the said widow, heirs and representatives

102 as aforesaid, and their heirs 34 to the said Complainant and his heirs and assigns, To have and to hold the same as absolutely as the said De Valle in his life time, and his and their heirs at any time, have or may have had right to hold or occupy, and further that said administrator account to the said Complainant, for his proportion of, and for which the one half of his original interest in said land sold for, with interest thereon, together with the rents and profits of the interest of said Complainant in said land remaining to him after the sale, deducting therefrom his share of all reasonable costs, charges and expenses, and that Henry Davis be appointed Commissioner to take, State and marshal the said accounts between the parties according to this decree, and make report thereof to this Court at the next term thereof.

Decree

State of Missouri }
Madison County } ss I Edward Evans Clerk of the Circuit Court of Madison County State of Missouri aforesaid hereby Certify that the foregoing contains a full, true, and perfect Copy of the foregoing Decree made herein as the same remains of record in my office. In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at Office in Fredericktown this 10th day of July A D 1843

Edward Evans Clerk.

The foregoing decree was filed in my office for record April 10 and was duly recorded April A D 1844

Test Edward Evans Clerk.

State of Missouri }
Madison County } ss I Edward Evans Clerk of the Circuit Court of Madison County, hereby Certify that the within and foregoing contains a true, and perfect Copy of the Original Decree of said Court, and Certificate annexed thereto as the same now remain of record in my office

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In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at office in Fredericktown this 2d day of March AD 1847

Edward Evans Clerk.

Madison Circuit Court in Chancery at April term AD 1843.

Francis Valle
Versus
Melanie Valle, widow, Francis L Valle
Charles C Valle, Bartholomew L Valle
Marie Valle, Emilie Valle, Auguste Valle
Melanie Marie Valle, Heirs and legal representatives of Charles C Valle decd.
and Evariste F Ratto and Bartholomew St Gemme administrators of all and singular the goods, chattels, rights and credits which were of Charles C Valle decd.

On Original bill

And now at this time the said Melanie Valle widow of said deceased, having failed to appear and file her answer herein, the said bill as to her is taken for confessed and the said Infant heirs defendants of said deceased, by B St Gemme their Guardian file their answer herein, as also the said administrators, and thereupon by consent of the parties, this cause is taken up for hearing upon the bill, answers and evidence - the evidence states that a certain tract of 28000 arpents of land being in the Counties of Madison and St François was originally confirmed to Francis Valle, St Gemme Beauvais, John Bte Ratto, and John Bte Valle, that Francis Valle is the ancestor of Complainant and departed this life, and that his undivided fourth part of said land descended to and became the property of this Complainant and six other heirs, by which he was the owner of the one undivided seventh

Francis Valle vs. Heirs & Rep. C. C. Valle, decd

Proceeding & Decree in Madison Circuit Court.

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part of the said One fourth part of said 28000 arpents of land, and so owning the same a proceeding on petition for the partition thereof was had in this Court, in which by an order of Court the whole of said was sold for a distribution thereof, or the proceeds thereof amongst the Several Claimants. That on the sale thereof, Lewis F. Linn, Evariste F. Pratte and the said Charles C Valle became the purchasers thereof for $67050 - That at the time of the purchase thereof it was agreed between the said Charles C Valle and Complainant that the said C C Valle should apply the avails of Complainants interest in said land, towards said purchase by him made, and that said Complainant should thereby have the same interest in the said purchase made by C C Valle as Complainant held originally in said tract, the proportion of one seventh of one fourth of the whole tract, the same being about One thousand arpents, that in accordance with said agreement the said C C Valle purchased and acquired a title to himself and heirs of the one third part of said whole tract of land and in payment thereof applied the said avails of the said interest of this Complainant by which the said C C Valle in life became liable and bound to execute a deed transferring to this Complainant of his said proportion of the one seventh part of the one fourth part of said tract amounting to about One thousand arpents, the said Charles C Valle having been in the use and enjoyment of said property to the exclusion of Complainant, departed this life, without ever having executed to Complainant any deed for said land, and letters of administration on his estate were granted by the County Court of this County to said Evariste F. Pratte and Bartholomew F. Gemme defendants who in the discharge of their duties under the order of said County Court, jointly with all the other proprietors sold one half, of the said tract of 28000 arpents for the sum of $50.000, in which sale was included

Same

the one half of the one third part of the said interest of said Charles C Valle, and which likewise included the said one half of the said interest of said Complainant in said land by his assent, amounting to about 500 arpents, that the avails of said sale by the permission of said Complainant were by said administrators and proprietors applied by them towards the payment of the purchase money remaining due for said land in said purchase by said Linn Pratte & Valle mentioned — That the said C C Valle in his life time, and said administrators have been in the receipt of the rents and profits of said land from the time of said purchase, and have not accounted for any thereof to Complainant - and prays a decree of his remaining proportion of said land, the same being the one equal undivided fifty sixth part of the whole tract or about five hundred arpents, and his proportion of the Consideration money of Fifty thousand dollars, for which his aforesaid other fifty sixth part or 500 arpents of land sold for, with interest, and that defendants account for rents profits &c - and to be relieved is the scope of Complainant's bill. The Infant heirs of said C C Valle in answer by their Guardian, state their entire ignorance of the matter and things in said Bill and submit to the Court, the answer of the said E F Pratte & B S Gemme administrators of said deceased, admit the facts in said bill stated in relation to the agreement and purchase of said land by said Charles C Valle as set out in said bill and of the rights of said Complainant under said purchase; and of the said sale of the one undivided half part of the whole tract for the sum of $50.000 - together with the application of the proceeds thereof as stated in said Bill, and that the said Charles C Valle in his life time, and his said administrators since, have been in the occupation and use of said lands, and of the rents and

Same

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profits, but allege that they were put to great expense and trouble and loss of time in effecting said sale and in carrying on the business of said land, for all which they ought to have allowance and that they cannot say whether anything has accrued from the rents and profits of said land after deducting the expenses and allowances for care and labor and expenses in managing said land until the accounts are all settled. The Court having further heard evidence in the case, are of the opinion, that the said complainant is entitled to a decree for one equal undivided 56th part of the whole tract, or about 500 arpents of land of said tract out of the said interest of the part thereof owned by the heirs and representatives of said Charles C Valle deceased, and from the said administrators the amount of and for which the balance of said complainants interest in said land sold for. Such balance being the one equal undivided fifty sixth part or about five hundred ~~acres~~ arpents, and they ought further to account to complainant for the interest of the same, and the rents and profits of his interest in said land. It is therefore considered, ordered and decreed, that all the right, title, claim and interest and property of said Melanie Valle, Francis L Valle, Charles C Valle, Bartholomew L Valle, Marie Valle, Emilie Valle, Auguste Valle, Melanie Marie Valle, widow heirs and representatives of said Charles C Valle dec. of, in and to the one equal undivided sixth part of the whole tract, about five hundred arpents of the said Mine la Motte tract of land mentioned as aforesaid, purchased as aforesaid, pass from them the said heirs and representatives aforesaid, and their heirs to the said complainant, his heirs and assigns, To have and to Hold the same as absolutely as the said Charles C Valle in life, and his and their

same

herein at any time have or may have had right to hold or occupy, and further that said Administrator account to Complainant for his proportion of and for which one half of his said Interest in said land sold for, with interest, together with the rents and profits of the interest of said Complainant in said land remaining to him after said Sale - deducting therefrom all reasonable costs, charges and expenses, and that Henry Davis be appointed Commissioner to take, State and manhau the said accounts between the parties according to this decree, and make report thereof to this Court at the next Term thereof.

State of Missouri
Madison County } ss. I Edward Evans Clerk of the Circuit Court of Madison County, State of Missouri aforesaid, hereby certify that the foregoing contains a full, true, and perfect copy of the foregoing decree made herein, as the same now remains of record in my office.

In testimony whereof I have hereunto subscribed my name, and affixed the Seal of said Court at Office in Fredericktown this 17th day of July AD 1843

Edward Evans Clerk.

The foregoing decree was filed in my office for record April 10 1844, and was duly recorded April 11 AD 1844.

Test. Edward Evans Clerk.

State of Missouri
Madison County } ss. I Edward Evans Clerk of the Circuit Court of Madison County, hereby certify that the foregoing contains a full true and perfect copy of the Original decree made herein and the Certificate thereto annexed as the same now remains of record in my office - Witness my hand and

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the Seal of said Court, at office in Fredericktown this 2d day of March AD 1847

Edward Evans Clerk

To all persons to whom these presents shall come, Know ye, that Whereas heretofore, to wit, on the fifth day of September in the year of our Lord One thousand eight hundred and forty four, two several Executions issued from the Clerks office of the Circuit Court of Madison County directed to the Sheriff of said County in the State of Missouri, which said Executions are as follows

State of Missouri
Madison County } ss The State of Missouri To the Sheriff of the County of Madison Greeting, Whereas Larken Deaver on the 17th day of October in the year of our Lord One thousand Eight Hundred and forty three, at our Madison Circuit Court has recovered against Evariste F Pratte the sum of three hundred and eighteen dollars and twenty eight cents for damages, and also for his costs of suit expended, which said Costs amount to the sum of four dollars and fifty three cents. These are therefore to command you, as you have been heretofore commanded that of the goods and Chattels and real estate of the said Evariste F Pratte, you cause to be made the damages and costs aforesaid - and that you have the said amount of damages and costs before said Circuit Court at the Court House in Fredericktown on the third Monday in October next to render to the said Larken Deaver, and that you certify to our said Court, how you execute this writ.

Witness Edward Evans Clerk of the

A. K. Henderson, Sheriff.
To
Thomas Fleming -

Deed, dated 2nd October 1844.

Js

Circuit Court of Madison County at office in Fredericktown this 5th day of September AD 1844

Edward Evans Clerk

State of Missouri
Madison County } ss The State of Missouri to the Sheriff of Madison County Greeting: Whereas Edward Leclere on the 16th day of April in the year of our Lord Eighteen Hundred and forty four at our Madison Circuit Court hath recovered against Evariste F Pratte the sum of One hundred & sixty eight dollars and seventy nine cents for damages, and also his costs of suit, which said Costs amount to the sum of One dollar and eighty three cents, said Judgement to bear interest at the rate of ten per cent. These are therefore to command you, that of the goods and chattels and real Estate of the said Evariste F Pratte, You cause to be made the damages and costs aforesaid, and that you have the said amount of damages and costs before our said Circuit Court at the Court house in Fredericktown on the third Monday in October next to render to the said Edward Leclere, and that you certify to our said Court, how you execute this writ - Witness Edward Evans Clerk of the Circuit Court of Madison County at office in Fredericktown this 5th day of September AD 1844

Edward Evans Clerk

Js

Which Executions so issued and directed as aforesaid, came into the hands of Charles F Henderson, Sheriff of said County of Madison on the ninth day of September AD 1844, and by virtue of said execution I Charles F Henderson

Sheriff of said County of Madison, did on the twenty-sixth day of September in the year Eighteen hundred and forty four, levy the said Executions on the following described Real Estate in the County of Madison, to wit, One equal undivided Sixth part of, in and to twenty four thousand and ten acres of land lying and being in the County of Madison State of Missouri, and commonly called the Mine La Motte tract of land, and after having levied on said tract or parcel of land as aforesaid, I the said Charles K Henderson Sheriff as aforesaid, did on the 30th day of September AD 1844 give notice by six advertisements put up at six of the most public places in said County at least twenty days before the day of sale, that by virtue of said Execution and said levy, I would sell at the Court House door in Fredericktown on the 21st day of October 1844, to the highest and best bidder the above described Real Estate - and after having levied on the said Real Estate as aforesaid and given due and timely notice of the time and place aforesaid by six advertisements put up as aforesaid. I the said Charles K Henderson on the 21st day of October Eighteen hundred and forty four between the hours of nine o'clock A M and five o'clock P M. of said day and being October term of the Circuit Court of Madison County, did at the Court House door in Fredericktown in the County of Madison aforesaid, expose the said Real Estate for sale to the highest and best bidder, and on that day there being bidders, Thomas Fleming bid for the said Real Estate the sum of Five hundred dollars, and he being the highest, best and last bidder for the same, the same was struck off to him and he became the purchaser thereof. Now Know Ye, that I Charles K Henderson Sheriff of Madison County, for and in consideration of the premises, and for and in consideration of the sum of Five Hundred Dollars to me as said Sheriff in hand paid, the receipt

of which is hereby acknowledged, have given, granted bargained and sold, and by these presents do give grant bargain and sell unto the said Thomas Fleming his heirs and assigns for ever, all the right, title, claim, and interest of the said Evariste F Batte in and to the foregoing and above described Real Estate, lying and being in the said County of Madison aforesaid. To have and to Hold the same, unto the said Thomas Fleming his heirs and assigns forever in as full and ample a manner as the said Evariste F Batte had and held the same at the time the said execution aforesaid came to my hands as Sheriff as aforesaid

In testimony whereof I Charles K Henderson Sheriff of the County of Madison in the State of Missouri, have hereunto subscribed my name and affixed my seal this 21st day of October AD 1844

Charles K Henderson Ls

Test, John Scott. Sheriff.

Madison Circuit Court April Term AD 1846 - 5th day of the Term and 17th day of March - present the Hon John D Cook. Judge of said Court, and among other the following proceedings were had, to wit,

Sheriffs Deed. And now at this time comes Charles K Henderson Sheriff of this County, and acknowledges a Deed to Thomas Fleming for certain real estate in said deed specified, levied on and sold by two writs of Execution issued from the Clerks office of the Circuit Court of Madison County against the goods and chattels and Real Estate of the said Evariste F Batte and one in favor of Larkin Dea-ver, and the other in favor of Edward Leclere. Whereupon it is ordered by the Court that said acknowledgement be certified upon said deed in due form of law.

State of Missouri } ss. I Edward Evans Clerk of the
Madison County }

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Circuit Court of Madison, hereby certify that the above contains a full true and perfect transcript of the Sheriffs acknowledgement, and the order of said Court as the same now remains of record in my office. In testimony whereof I have hereunto subscribed my name, and affixed the seal of said Court at office in Fredericktown, this 24th day of April AD 1846

Seal Edward Evans Clerk

The foregoing deed was filed in my office for record on the 24th day of April 1846, and was duly recorded on the 1st day of June AD 1846

Test Edward Evans Clerk

State of Missouri
Madison County } ss. I Edward Evans Clerk of the Circuit Court of Madison County, hereby certify that the above & foregoing contains a full true and perfect Copy of the Original Deed, Certificate of acknowledgement and the Clerks Certificate of record thereof, as the same now remains of record in my office. In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in Fredericktown this 14th day of February AD 1853.

Seal Edward Evans Clerk

This Indenture made and executed this twenty second day of October in the year of our Lord, One thousand Eight hundred and forty four, between Evariste F Ratte and Rose A Ratte his wife of the County of Madison and State of Missouri of the first part, and Thomas Fleming of the City of Philadelphia in the State of Pennsylvania of the other part, Witnesseth, That the said party of the first part

E. F. Pratte & Wife
To
Thomas Filmore
Deed, dated, 22nd. October, 1844, for Mortgaged Slaves

have for and in consideration of the sum of Twenty five thousand dollars in hand paid, and secured to be paid by the said party of the second part to the said party of the first part, as follows, to wit: the sum of eleven hundred and forty two dollars and ninety-seven cents the amount due on a certain Judgement, in the Circuit Court of Madison County aforesaid in favor of Caleb Cox against the said Evariste F. Pratte, also the sum of Five hundred and four dollars and eighty cents, the amount due on a certain Judgement in the same Circuit Court in favor of John Sides against the said Evariste F. Pratte, also the sum of three hundred and thirty seven dollars and fifty one cents, the amount due on a certain Judgement in the same Court in favor of Larkin Deaver against the said Evariste F. Pratte, also the sum of One Hundred and seventy four dollars, the amount due on a certain Judgement in the same Circuit Court in favor of Edmond Leclere against the said Evariste F. Pratte, also the sum of One hundred and thirty three dollars and forty one cents, the amount due on a certain Judgement in the County Court of Madison County in favor of Edwin K. Porter against said Evariste F. Pratte, also the sum of One hundred and Eighteen dollars and eighty seven cents, the amount of a certain Judgement in favor of Powell Callaway in the County Court aforesaid against said Evariste F. Pratte, also the sum of Six hundred and twenty five dollars and thirty nine cents the amount due on a Judgement in the County Court in favor of Elijah O'Bannon against said Evariste F. Pratte, also the sum of eight thousand one hundred and ninety three dollars and eighty five cents the amount due the Bank of the State of Missouri by the said Pratte, and secured by

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deed of Trust on the property hereinafter mentioned and Conveyed, also the Sum of Two Thousand two hundred and forty dollars, the amount due to Menard & Valle by the said Pratte, also secured by deed of Trust on the property herein Conveyed – all of which sums of money being incumberances upon the premises herein conveyed, are paid by the said party of the second part, and the Judgements and trusts liens aforesaid satisfied, and also for the further Consideration of Five hundred and thirty dollars in hand paid to said Pratte by the said Thomas Fleming, and also the sum of eleven thousand dollars to be paid to the said Pratte by the said Thomas Fleming for which he has delivered to the said Pratte eleven bills of exchange for the Sum of One thousand dollars each, drawn by William Fleming in favor of said Evariste F Pratte on Thomas Fleming and Sons and accepted by them – all of which said several sums of money amount to the Sum of Twenty five Thousand Dollars the condition aforesaid, for which the said party of the first part have and by these presents do grant bargain & sell & convey to the said Thomas Fleming all the right title, claim, and interest in law or equity of the said party of the first part, however acquired, and particularly all the right, title, and interest which the said Rose A Pratte wife of the said Evariste F Pratte may have in the premises hereafter mentioned in virtue of any marriage contract with her said husband before or after marriage, or in any other manner whatsoever, In and to the following described Real Estate, to wit, the one equal undivided one tenth part of that certain tract of land, commonly called and known

by the name of Mine la Motte, containing twenty four thousand and ten acres more or less, situate in the Counties of Madison and St Francois in the State of Missouri, and is the same tract of land confirmed to Francis Valle, Jean Bte Valle, Jean Baptiste Ratte and St James Beauvais or their legal representatives by act of Congress, approved 24th May AD 1828, and patented to Lewis F Linn and Evariste F Ratte by the President of the United States, by letters patent bearing date the 25th day of March AD 1839. To have and to hold the said undivided Sixth part of the said Mine la Motte Estate together with all and singular the rights, privileges, and appurtenances thereunto belonging or in any wise appertaining unto him the said Thomas Fleming his heirs and assigns forever, and the said grantors do further covenant and agree with the said grantee, That the title hereby conveyed, together with that acquired by the said Thomas Fleming by virtue of a Sheriffs deed, made by the Sheriff of Madison County on the 21st day of October AD 1844, whereby the interest and claim of the said Evariste F Ratte was sold, and purchased by said Thomas Fleming his heirs, and assigns, a full complete and perfect title in fee simple to the said undivided sixth part of the said premises hereinbefore described, and that they the said grantors, party of the first part, and their heirs executors and administrators will forever Warrant and defend the title to the same against all claims whatever. In testimony whereof the said Evariste F Ratte and Rose A Ratte his wife, have hereunto set their hands and seals the day and date first above written

E F Ratte [seal]

Rose A Ratte [seal]

State of Missouri } Be it remembered that this 22d day
Madison County } of October, in the year of Our Lord

Same

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One thousand eight hundred and forty four, before me the undersigned Clerk of the Circuit Court within and for the County aforesaid, personally came Evariste T. Pratte and Rose A. Pratte his wife, both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned - She the said Rose A. Pratte being by me first made acquainted with the contents thereof, and examined ~~privately~~ separate and apart from her husband, whether she executed the said deed and relinquished all her right title property and estate whatsoever by reason of any marriage contract or other agreement between her and her said husband, accrued or to accrue to her, and also her dower to the lands & tenements therein mentioned, freely voluntarily and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed, and relinquished all her right, title, property, & Estate whatsoever by reason of any marriage contract or other agreement between her the said Rose A. Pratte and her said husband, accrued or to accrue to her, and also her dower in the said lands and tenements therein mentioned, freely, voluntarily, and without compulsion or undue influence of her said husband and does not wish to retract —— In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at office in Fredericktown this 22d day of October AD 1844

L S

Edward Evans Clerk

The foregoing deed was filed in my office for record on the 22d of October 1844, and was duly recorded on the 11th day of November AD 1844.

Test Edward Evans Clerk.

State of Missouri
Madison County } ss I Edward Evans Clerk of the Circuit Court of Madison County hereby Certify that the within and foregoing contains a full, true, & perfect Copy of the Original deed, Certificate of Acknowledgement, and the Clerks certificate of Record thereof as the same now remains of Record in my office. Witness my hand and the seal of said Court at office in Fredericktown this 14th day of February 1853

L S

Edward Evans Clerk.

Melanie Valle
To
Relinquishment Dower. Sept 20th. 1847
Thomas Fleming

This Indenture, made and entered into this this twentieth day of September in the year of our Lord, one thousand eight hundred and forty-seven, by and between Melanie Valle, Widow of the late Charles C. Valle deceased, late of the County of Madison in the State of Missouri, of the first part, and Thomas Fleming of the City of Philadelphia, in the State of Pennsylvania, of the second part, Witnesseth; That the said Melanie Valle, widow as aforesaid, for and in consideration of the benefit to accrue to her children from removing any encumbrance on the Mine La. Motte Tract of land, ~~owned~~ in part by her late husband, the said Charles C. Valle, deceased, and this day sold by the Administrators of said Charles C. Valle, dec'd, to said Thomas Fleming in fee, and for the further Sum of one dollar, to me paid by the said Thomas Fleming, (the receipt of which is hereby acknowledged) hath hereby, and doth hereby remise, release, and quit claim, all my jointure and interest, or right of dower of, in and to the said Mine La. Motte tract of land, situate in the said County of Madison and County of St. Francois, accruing to me, as the widow of the said Charles C. Valle dec'd, and late my husband.

To Have and To Hold my said jointure and interest in dower of, in and to the said Mine La. Motte tract of land, unto the said Thomas Fleming, his heirs and assigns, for and during my natural life.

In Testimony whereof, I, the said Melanie Valle, Widow of the late Charles C. Valle dec'd, have hereunto subscribed my name, and affixed my seal, the day and year first aforesaid.

Melanie Valle Seal

State of Missouri }
Madison County } ss. Be it Remembered, that on this

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twentieth day of September, in the year of our Lord, eighteen hundred and forty-seven, before me, the undersigned, Clerk of the Circuit Court within and for the County of Madison, in the State of Missouri, aforesaid, came Melanie Valle, who is personally known to me to be the real person whose name is subscribed to the within and foregoing instrument of writing, as having executed the same, and acknowledged the same to be her act and deed for the purposes therein mentioned.

In Testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at office, in Fredericktown, this 20th day of September, A. D. 1847. (Seal)

Edward Evans Clerk

The foregoing Deed was filed, and duly recorded in my office, on the 8th day of January, 1849.

Test: Edward Evans Clerk

State of Missouri, }
Madison County } ss I, Edward Evans, Clerk of the Circuit Court of Madison County, hereby Certify, that the within and foregoing contains a full and true copy of the Original Deed, Certificate of Acknowledgment, and the Clerk's Certificate of the filing of Record thereof, as the same now remains of Record in my office.

In Testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at office, in Fredericktown, this 22nd day of April, A. D. 1853. (Seal)

Edward Evans Clerk

This Indenture, made and concluded this 10th day of February, in the year of our Lord, one thousand, eight hundred, and forty-eight, by and between

Name

Melanie Valle & E. F. Pratte, Admrs C. C. Valle
to
Thomas Fleming
Deed, date, February, 10th, 1848.

No 119

Melanie Valle, Administratrix and Evariste F. Pratte Administrator of the estate of Charles C. Valle, deceased, late of the County of Madison, in the State of Missouri, of the first part, and Thomas Fleming, of the City of Philadelphia in the State of Pennsylvania, of the second part, Witnesseth: Whereas, at the November Term, eighteen hundred and forty-seven, of the Honorable, the County Court within and for the County of Madison aforesaid, an order was passed, as follows, to wit: Estate of Charles C. Valle, deceased. "And now at this time come Melanie Valle, Administratrix, and Evariste F. Pratte, Administrator of said Estate and on Motion, and it appearing to the satisfaction of the Court, that the Order of Publication made herein, has been duly advertised, as the law requires, and there being no objection made to the sale of the Real Estate, belonging to the said deceased; — It is thereupon Ordered by the Court that the said Administratrix and Administrator, Proceed to sell the said Real estate, belonging to said deceased, for the payment of the debts of the said deceased, either at private or Public sale, provided the same be not sold for less than three-fourths of its appraised value, upon a credit, not exceeding twelve months, from the date of sale, giving due and timely notice, of the time & place of sale, by Publication in some newspaper, Published in this State as the law provides; said sale to be made on Monday, on the first day of the County Court of Madison County, to be begun and held at the Court-House in Fredericktown, on the first Monday in February, next; and having had said real estate duly appraised, as appears by the following certificate, to wit: We, Henry Lamb, Simon A. Luignow and William M. Ellis, having been appointed by the Honorable, the County Court of

Madison County, Commissioners, to view and appraise the undivided interest of Charles C. Valle, dec'd. of, in and to the Marie La Motte Tract of Land, situate in part in the County of Madison, containing twenty-four thousand, and ten acres, said Valle's interest therein being the one equal undivided sixth part, (less three fifty-sixths of the whole tract, and having qualified as the law directs, hereby certify, that we have viewed the said Premises, and do appraise the said interest, of the said C. C. Valle, dec'd. of, in and to said tract of land, at the sum, or value of twenty-three thousand, three hundred and fifty-seven dollars, and sixteen cents, which is duly signed by said persons. And having published in the Espial a notice of said sale, in the words following, to wit, "Administrators' Sale of Real estate- Pursuant to an order of sale, made by the County Court of Madison County, at the November Term thereof, the undersigned, Administratrix and Administrator of the Estate of Charles C. Valle, deceased, will, on the first Monday in February, 1848, at the Court-House door in Fredericktown, in said County, and during the sitting of the County Court of said County, between the hours of ten o'clock, in the forenoon, and five o'clock in the afternoon of said day, expose to sale, and will sell, at private vendue, or out-cry, to the highest bidder, on a credit, not exceeding twelve months from the said day of sale, the following described real estate, to wit The one equal undivided sixth part (less three fifty-sixths) of the Marie La Motte Tract of land, situate in the said County of Madison and County of St. Francois;- said entire Tract containing twenty thousand and ten acres, as the law directs: And having, on the seventh day of February, eighteen hundred and

forty-eight, at Fredericktown, sold at private sale, as in said Order provided, the said undivided interest of the said Charles C. Valle, accord to said Tract of land mentioned, to Thomas Fleming, the said party of the second part, for, and in consideration of the sum of Twenty thousand, three hundred and fifty-seven dollars, and sixteen cents, the full appraised value of said interest, paid and payable as follows, to wit, one thousand dollars, ready money, (and which has been paid) six thousand, four hundred and fifty-two dollars, payable on the 20th. day of March, next; six thousand, four hundred and fifty-two dollars, payable the 20th. day of June, next; and six thousand, four hundred and fifty-three dollars, and sixteen cents payable on the 20th. day of September, next, with interest, respectively, from date, till paid; all of which is secured by Drafts, drawn on the said Thomas Fleming & Sons, by William W. Fleming:- Which sale, the undersigned have duly Reported to the said County Court of Madison County, at the February Term, A.D. 1848, and which has been duly approved by the said County Court, and declared valid:- Now, Therefore, in consideration of the premises, We, the said Melanie Valle and Evariste F. Pratte, Administratrix and Administrator as aforesaid, do hereby convey to the said Thomas Fleming, all the right, title and interest which the said Charles C. Valle had in and to the above mentioned premises, at the time of his death, except three fifty-sixths, of the whole Tract.

In Testimony Whereof, we have hereunto subscribed our names, and affixed our seals, the day and year first aforesaid.

Melanie Valle [Seal]

Thomas

E. F. Pratte (Seal)

State of Missouri, } Admr. C. C. Valle, decd.
Madison County } Ss.

Be it Remembered, that on this tenth day of February, in the year of our Lord, eighteen hundred and forty-eight, before me, the undersigned, Clerk of the County Court, within and for the County of Madison, came Melanie Valle, administratrix, and Evariste F. Pratte, administrator of the Estate of Charles C. Valle, deceased, both personally known to me to be the persons whose names are subscribed to the within and foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned.

(Seal) In Testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at office in Fredericktown, the day and date above written.

Edward Evans Clerk

The foregoing Deed was filed in my office for Record, May, 15th, 1848, and was duly recorded on the 20th. day of May, A.D. 1848.

Test, Edward Evans Clerk

State of Missouri, }
Madison County } Ss.

I, Edward Evans, Clerk of the Circuit Court of Madison County, hereby certify, that the within & foregoing contains a full, true & perfect Copy of the original deed, Certificate of acknowledgment, and the Clerk's certificate of Record thereof, as the same now remains of Record in my office.

(Seal) In Testimony whereof, I have hereunto subscribed my name, & affixed the seal of said Court, at office, in Fredericktown, this 17th. day of February A.D. 1853.

Same

Edward Evans Clerk

Lemuel Lamb and Wife
To
Thomas Fleming
Deed dated, November 8th, 1849-

This Indenture, made this eighth day of November, in the year of our Lord, one thousand, eight hundred and forty-nine, (1849) between Lemuel Lamb, of the City of Philadelphia, in the State of Pennsylvania Gentleman, and Margaretta, his wife, of the one part, and Thomas Fleming of the said City, Gentleman of the other part, Witnesseth: That the said Lemuel Lamb and Margaretta his wife for and in consideration of seventeen thousand dollars, lawful silver money of the United States of America, unto them well and truly paid, by the said Thomas Fleming, at and before the sealing and delivering hereof, (the receipt whereof is hereby acknowledged,) have granted, bargained, sold, released, confirmed, and by these presents do grant, bargain, sell, release, and confirm unto the said Thomas Fleming, his heirs and assigns, the following described premises, lands and tenements, to wit:, the one, full equal and undivided sixth part of, in and to that certain Tract or Parcel of land, situate, lying and being in the County of Madison and County of St. Francois, in the State of Missouri, known and commonly called The Mine La, Motte Tract of Land, containing twenty-four thousand and ten acres, be the same more or less. (being the same premises which Evariste F. Pratte and wife, and Lewis F. Linn and wife, and Berthelmy St. Gemme and Evariste F. Pratte, Administrators of Charles C. Valle, deceased, by a certain Indenture, bearing date, the twenty-fourth day of April, Anno Domini, 1839, and Recorded in the Proper office for Recording Deeds &c. in and for said Madison County, in Book D. page 17 &c. granted, & conveyed unto the said Lemuel Lamb, in fee;- And Melanie Valle, Widow of the said Charles C. Valle, deceased, by a certain Indenture, bearing

date the eighteenth day of May, Anno Domini 1839, and recorded in said Madison County, in Book 6 page 26 &c; said grant, release and relinquish, all her right of dower, of, and in the said Premises, unto the said Samuel Lamb, in fee. Together with all and singular the buildings and improvements, ways, woods, Roads, Lanes, passages, Waters, Water-courses, Rights, Liberties, Privileges, Hereditaments and Appurtenances, whatsoever, thereunto belonging, or in any wise appertaining; and the reversions and remainders, Rents, Issues, and profits thereof, and all the estate, right, title, interest, property, claim and demand, whatsoever, of them, the said Samuel Lamb and Margarella, his wife, either at law, or in equity, of, in and to the same, and every part and parcel thereof; To have and To hold, all and singular, the hereditaments and premises hereby granted or mentioned, and intended to be, with the appurtenances, unto the said Thomas Fleming, his heirs and assigns; to and for the only proper use, and behoof of the said Thomas Fleming, his heirs and assigns, for ever. And the said Samuel Lamb for himself, his heirs, Executors and Administrators, doth by these Presents, covenant and agree with the said Thomas Fleming, his heirs, Executors, Administrators and assigns, that he, the said Samuel Lamb and his heirs, Executors and Administrators shall and will warrant, and for ever defend all the aforesaid one, half equal, and undivided sixth part in fee simple, of, and in the above described Tenements, Lands and premises, unto the said Thomas Fleming, his heirs and assigns, against all and every person and persons whomsoever, claiming or to claim the same, or any part thereof; and against all and every claim and claims whatsoever.

In witness whereof, the said parties to these presents

have hereunto, interchangably, set their hands and seals, the day and year first above written.
Sealed and delivered in presence of us. John Broadhead
D. C. Vanbiel

Lemuel Lamb [Seal]
Margaretta Lamb [Seal]

State of Pennsylvania }
City of Philadelphia } Sct.

Be it Remembered, and it is hereby certified, that on this, the 8th day of November Anno Domini 1839, before me, the subscriber John Broadhead, Commissioner for the State of Missouri, Commissioned by the Governor thereof, to reside and officiate in the State of Pennsylvania to administer oaths, to take depositions and affidavits to be read in the State of Missouri, and also to take acknowledgments of deeds and other instruments to be recorded in that State, personally appeared Lemuel Lamb and Margaretta his wife, they being known to me to be the persons named and described in the above Indenture or instrument of writing, and severally acknowledged the same to be their act and deed. The said Margaretta Lamb, being by me examined separate and apart from her said husband, said she freely released her dower, and executed the said instrument, without any compulsion, or being influenced by her said husband, she knowing the contents thereof.

Witness my hand and seal of said office.
[Seal]
John Broadhead, Commissioner
for Missouri, 155, Walnut Street

Lemuel

Received, the day of the date of the above written Indenture, of the above named Thomas Fleming

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the sum of Seventeen thousand dollars, being the full consideration Money above Specified.

Witness at Signing Samuel Lamb.

John Broadhead. J. C. Vanbibber.

The foregoing Deed was filed for Record in my office, Nov. 21st. 1849, and duly recorded, January 3rd. 1850. Test Edward Evans Clerk by

S. C. Collier, D. Clerk

State of Missouri, }
Madison County } ss. I, Edward Evans Clerk of the Circuit Court of Madison County, hereby Certify, that the within and foregoing contains a full, true and perfect Copy of the Original Deed, Certificate of acknowledgment, and the Clerks Certificate of Record thereof, as the same now remains of record in my office.

In Testimony whereof, I have hereunto Seal subscribed my name, and affixed the seal of said Court, at office, in Fredericktown, This 12th. day of February, A. D. 1853.

Edward Evans Clerk

To all to Whom these Presents shall come, I, David B. Brewer, Sheriff of the County of Madison, in the State of Missouri, send Greeting: Whereas, Elizabeth A. R. Linn, John Barr and Mary Barr his wife formerly Mary Linn, William A. Linn and James H. Relfe &c. filed their Petition in the Circuit Court of Madison County, Missouri, on the 9th. day of September, A. D. 1848, against Thomas Fleming, Samuel Lamb, and others praying said Circuit Court to make Partition of that certain Tract of Land, or parcel of land, with the appurtenances thereunto belonging, lying and being situate in the Counties of Madison and St. Francois, in the State of Missouri,—

commonly known and called as the Mine La Motte tract of Land, containing twenty-four thousand and ten acres, or thereabouts: being the same tract of land that was confirmed by an act of Congress, of the United States to Francis Valle Jean Bte. Valle Jean Bte. Pratte and St. James Beauvais, or in case of their or either of their decease, to their heirs or legal representatives; which said tract of land, as above described, was held in common or in co-parcenary by the Petitioners and the Defendants in said Partition suit. And whereas, on the 4th. day of September A. D. 1850, it being during the regular Term of the Circuit Court, within and for said County of Madison, State aforesaid an Order of Sale, in the said entitled cause, between the parties as above set forth, (a Copy of which said Order of Sale, is hereunto annexed, and made a part of this Deed) And whereas, at the said September Term, of said Circuit Court of Madison County, State of Missouri, A. D. 1850, and during the said September Term of the Circuit Court of Madison County, the Petitioners and Plaintiffs in said Partition suit prayed and obtained an appeal from the Judgment or Order of Sale of the said Circuit Court of Madison County, in said suit for Partition of said Tract of land, to the Supreme Court of the State of Missouri— And whereas, the Supreme Court of the State of Missouri, did, at the March Term, thereof, A. D. 1851, affirm, in all things and all respects the aforesaid judgment, Decree, or Order of Sale made by the Circuit Court of Madison County, aforesaid, in the aforesaid entitled cause, a copy of which said Judgment of the Supreme Court of the State of Missouri, in said cause, is hereto annexed and made part of

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this Deed. And whereas, the Clerk of the Circuit Court of Madison County, Missouri, on the filing of said Judgment of the Supreme Court of the State of Missouri in the office of the said Clerk of Madison County, Missouri issued, under his hand and the Seal of said Circuit Court, a copy of said Order of Sale in the said Cause, directing me, as Sheriff of Madison County, to sell the property or land mentioned in the said Petition of the Petitioners to said proceeding a copy of which said order of said Clerk of Madison County, to me directed, is hereunto annexed, and made a part of this deed: By virtue of said Order, so to me directed, and having previously to the day of Sale, herein after mentioned, given notice of the time and place of Sale, at least twenty days before the day of Sale, by Putting up, at least six advertisements, in six of the most public places in the County of Madison in the State of Missouri, which said advertisements were signed by myself, as Sheriff of Madison County, Missouri: - a copy of which said advertisement is hereto annexed, and made a part of this Deed, which said advertisement specified the time and place of said sale, and contained a description of the Real Estate to be sold, and where it was situate. I did, on the third day of September A.D. 1851, between the hours of nine o'clock in the forenoon, and five o'clock in the afternoon of the said 3rd. day of September, 1851, at the Court-House door, in Fredericktown, in the County of Madison in the State of Missouri and during the September Term, of the Circuit Court within and for the County of Madison, it being the third day of said month of September, A.D. 1851, and the third day of the Term, of said Circuit Court, expose to sale at Public auction, on a credit of twelve and

eighteen months, by equal instalments, as set forth in the order of Sale, in said cause, all the right title, claim and property, of all the parties to the proceedings of, in and to the real estate, described and set forth in the Petition of the petitioners, thereto belonging, or in any wise appertaining: And Thomas Fleming being the last, highest and best bidder, for the whole of said Tract of land, as described in the petition of the said Petitioners for, and at the price or sum of One hundred and sixty thousand, one hundred ~~and~~ Dollars, and the same was struck off and sold to the said Thomas Fleming, for the price or sum aforesaid.

Now, therfore, Know ye, that in Consideration of the premises, and for and in consideration of the said Sum of One hundred and sixty thousand, and one hundred dollars, to me in hand paid by the aforesaid Thomas Fleming, (the receipt whereof is hereby acknowledged) the last instalment due and payable in six months hence, being paid by agreement of Parties to said suit, under an order of the Circuit Court, within and for the County of Madison, at the September Term, A.D. 1852, directing me, if the whole consideration money were paid me by the said Thomas Fleming, to execute and acknowledge unto him, a Deed for the said property, as above described: And the said Thomas Fleming having, under the Order of said Court, paid me the amount of the said last instalment, (the receipt of which is hereby acknowledged) I do, by virtue of the authority by law, in me vested, assign, transfer, convey, alien and vest in the said Thomas Fleming, all the right, title, claim, property and estate of the Petitioners and the defendant, in said Proceedings of, in and to the real estate, mentioned in said petition, that I might sell, as the Sheriff as aforesaid, by virtue of the aforesaid order of Sale. To Have

and Do Hold the aforesaid Real estate, to the said Thomas Fleming, his heirs and assigns, for ever, together with all the rights, privileges, appurtenances and immunities thereunto belonging, or appertaining.
In Testimony whereof, I, David B. Brewer, Sheriff of the County of Madison, in the State of Missouri, have hereunto set my hand and Seal, this 7th. day of September, A. D. 1852.

David B. Brewer Sheriff Seal

Madison County, Missouri,

Madison Circuit Court, September Term, A. D. 1852. 4th. day of the Term, and 9th. day of the Month of September, A. D. 1852, among others, the following proceeding was had, to wit:

And now, at this time, David B. Brewer Esq., Sheriff of this County, comes into Court and acknowledges a Deed to Thomas Fleming for the following described Real Estate situate, lying and being in the counties of Madison and St. Francois, in this State, commonly known and called the Marie La. Motte Tract of Land, containing twenty-four thousand and ten acres, being the same Tract of land that was confirmed by an act of Congress of the United States, to Francis Valle, Jean Bte. Pratte, Jean Bte. Valle, and St. James Beauvais, or in case of their or either of their decease, to their heirs or legal representatives; Whereupon, It is Ordered by this Court, that said acknowledgment be certified upon said Deed, in due form of law.

State of Missouri }
Madison County } Ss. I, Edward Evans, Clerk of the Circuit Court within and for the County of Madison, in the State of Missouri do hereby Certify, that the above and foregoing contains a full, true and perfect copy of the order of said Court, as the same now re-

mains of Record in my office.

Witness my hand and the seal of said Court, at office, in Fredericktown, this 27th. day of September, A.D. 1852,

(Seal)

Edward Evans Clerk

E. A. R. Linn & others, Plaintiffs } Petition for Partition
against } Copy
Thomas Fleming & others } Sheriff's Advertisement

Whereas, on the 4th. day of September, A.D. 1850, an order of sale was made in the above entitled Cause, by the Madison County Circuit Court, Ordering and directing the undersigned, Sheriff within and for Madison County, in the State of Missouri to sell the following discribed Real Estate, mentioned in the Petition of the above named Petitioners, to wit: That Tract of land known as the Mine La. Motte Domain, Situate in the Counties of St. Francois and Madison containing twenty-four thousand and ten acres, more or less, the principal part of which is situate in Madison County, for the manufacture of Lead, Copper &c., which said furnaces are situate in said County of Madison, and about four miles North of Fredericktown, the County Seat of said County of Madison, And whereas, the Plaintiffs, Petitioners in the aforesaid petition did, on the 4th. day of September, A.D. 1850, Take an appeal from the Order of Sale, made by the Circuit Court of Madison County, aforesaid, to the Supreme Court of the State of Missouri; and whereas, at the March Term, A.D. 1857, of the said Circuit Court of Madison aforesaid, was affirmed in all things: Therefore, the undersigned, Sheriff within and for Madison County, aforesaid, Will, on Wednesday, the third day of September, A.D. 1857, at the Court-House door in Fredericktown, it being the third day of the September Term, of the Circuit Court for said County of

Madison, between the hours of nine of the clock of the forenoon, and whilst the Madison County Circuit Court is in Sesion, sell all the right, title, claim, interest and property of the said parties mentioned in said petition of, in and to the above described real estate, on the Terms mentioned in said order of Sale, as follows:- on a credit of twelve and eighteen months, one half in twelve and the other half in eighteen months. the purchaser or purchasers will be required to give bonds with approved security, for the purchase money.

June, 20th. A.D. 1851. David B. Brewen Sheriff
within and for Madison County, Missouri

Copy of Order of Sale.

Madison Circuit Court, September Term, A.D. 1850
4th. day of the Term, and 5th. day of the Month,

E. A. R. Linn & others
Vs.
Thomas Fleming & others } Petition for Partition &

And now at this time the parties by their Attorneys come, and the Court having advised touching said motion, overrules the same, and thereupon said plaintiffs file their motion for leave to take a Non-suit, and dismiss the cause; which said motion is overruled by the Court. And the Court affirm the Report of the Commissioners filed herein: And thereupon the plaintiffs move the court to Order the Sheriff to sell the premises in separate Tracts, consisting of distinct buildings, furnaces, &c. which motion is overruled, and plaintiffs except, and file a bill of exceptions, and the Court orders that the real estate in said petition mentioned, be sold by the Sheriff of this County, acording to the provisions of the law, on a credit of twelve and eighteen months, one half to be paid in twelve months, and the remainder, in eighteen months, the purchaser

giving bond with approved security for the purchase money. And thereupon come the said plaintiffs and file their bill of exceptions to the opinion of the Court in overruling the motion to recommit the Report of Commissioners, and the Motion to reject the Report of the Commissioners; and also the Motion for leave to take a non-suit, and dismiss the cause, which being signed & sealed by the Court and made a part of the record herein. And plaintiffs file a bill of exceptions to the opinion of the Court in overruling the motion to order the Sheriff, in the order of Sale, to sell the premises of, consisting of distinct buildings, farms, tracts & lots, which is signed, sealed and made a part of the Record. And thereupon come the plaintiffs and file their affidavit and petition for an appeal to the Supreme Court, which is granted, and plaintiffs enter into bond with approved security in the sum of five hundred dollars, — Whereupon it is ordered by the Court, that no further proceedings be had in the order of Sale, until the determination and return of said cause from the said Supreme Court.

Supreme Court of Missouri, at St. Louis, November Term, 1857.

E. A. R. Lucas & others } Appeal from Madison
vs. } Circuit Court.
Thomas F. Fleming & others }

Now at this day come again the parties aforesaid, by their respective Attorneys, and by Consent of Parties, the judgment of the Circuit Court is affirmed. It is therefore Considered by the Court that the judgment, aforesaid, in form aforesaid, by the said Circuit Court rendered be in all things affirmed, and stand in full force and effect; And it is further considered

by the Court, that said appellees recover, against said appellant their costs and charges herein expended, and have thereof execution.

State of Missouri. ss.

I, William B. Stark clerk of the Supreme Court of the State of Missouri, at St. Louis certify that, the foregoing is a full, true and perfect transcript of the said Judgment of the said Supreme Court, in the case of E. A. R. Scott & others against Thomas Fleming & others.

Witness my hand and private seal, there being no seal of Court yet provided, at office, in the City of St. Louis, this 7th day of April, A. D. 1857. (Seal) W. B. Stark clerk

State of Missouri, }
Madison County, } ss. I, Edward Evans, clerk of the Circuit Court of Madison County, State aforesaid, hereby certify, that the within and foregoing contains a full, true and perfect transcript of the Order & Judgment of said Circuit Court, & of the transcript of the Judgment of the Supreme Court of said State of Missouri, and the clerks certificate thereto, as the same now remains of record and on file in my office.

Witness my hand and the seal of the said Circuit Court, at office, in Fredericktown, this 21st. day of June, A. D. 1857. (Seal)

Edward Evans clerk

Supreme Court of Missouri, at St. Louis, March Term, 1851.

E. A. R. Scott & others } Appeal from Madison
vs.
Thomas Fleming & others } Circuit Court.

Now at this day come again the parties aforesaid, by their respective attorneys, and by consent of parties, the Judgment of the Circuit

Court, is affirmed,— It is therefore considered by the Court, that the judgment aforesaid, in form aforesaid, by the said Circuit Court rendered, be in all things affirmed and stand in full force and effect: and it is further considered by the Court, that said appellees recover against said appellant, their costs and charges herein expended, and have thereof execution.

State of Missouri ss. I, William B. Clark Clerk of the Supreme Court of the State of Missouri, at St. Louis, certify that the foregoing is a full, true and perfect Transcript of the Judgment of said Supreme Court, in the case of E. A. R. Linn & others against Thomas Fleming & others.

Witness my hand and private seal, (There being no seal of Court yet provided) at office, in the City of St. Louis, This 7th. day of April, A. D. 1851.

The foregoing deed, copy of Judgment &c was filed in my office for Record, September, 29th. 1852, and was duly Recorded, October, 19th. 1852.

Test. Edward Evans Clerk.

State of Missouri,
Madison County, ss.

I, Edward Evans, Clerk of the Circuit Court of Madison County, State aforesaid, hereby certify, the foregoing contains a full, true and perfect copy of the Original deed, Certificate of Acknowledgment, Copy of the Orders, Judgments, &c., as therein designated, as the same now remains of record in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in Fredericktown, this 15th. day of February, A. D. 1853.

Edward Evans Clerk

This Indenture, made and entered into, this 12th. day of December, in the year of our Lord, 1851, between Elizabeth A.R. Linn, as Trustee of John Barr and Mary Ann Barr his wife, John Barr, by Elizabeth A.R. Linn, his Attorney, in fact, and Mary his wife, parties of the first part, and Thomas Fleming, party of the other part, Witnesseth: That for and in consideration of the sum of ten thousand dollars, paid by said Thomas Fleming at & before the ensealing & delivering of these presents, the receipt whereof is hereby acknowledged, the said parties of the first part have this day bargained, granted, and sold, and by these present, do grant, bargain & sell unto the said Thomas Fleming, the one third part, of one sixth, of the real estate, situate in the County of Madison and State of Missouri, known as Mine La. Motte, it being the interest decreed to the said Mary Barr, by proceedings & Judgment, in a suit for partition in the Madison Circuit aforesaid, wherein the said Thomas Fleming and Mary Barr, with others, tenants in common, were parties, as will more fully and at large appear, by reference to the said Judgment and proceedings, preserved on file with the records of said Court, and wherein a more accurate and particular description of the extent, area and boundary of the said real estate will appear, and which is hereby made for the purpose of description, a part of this deed. To have and to hold the said one third part, of one sixth, of said real estate, together with all the Tenements, hereditaments, rights, and privileges thereunto belonging, unto the said Thomas Fleming, his heirs and assigns, for ever. And the said parties of the first part, for themselves, respectively, their heirs, do hereby covenant to, and with the said Thomas Fleming, his heirs and assigns, to warrant and defend the title of said property, from the claims of all persons, claiming through them respectively, and not

otherwise. And whereas the said Tract of land above described, and known as Mine La Motte, was sold by the Sheriff of Madison County aforesaid, at the last Term of the Madison Circuit Court, by an Order of Sale made under the judgment and proceedings in partition before refered to, and the said Thomas Fleming became the purchaser thereof, at the price of one hundred and sixty thousand (), one hundred dollars, and has executed his bonds to the Sheriff aforesaid, for the payment of the same in conformity with the terms of said Sale, and whereas, the said Mary Barr is entitled to receive, of said sum of money, an amount in proportionment to the interest of one third part of one sixth, of the estate sold, Now, in consideration of the premises, the said parties of the first part, hereby respectively sign and transfer to the said Thomas Fleming, all their right, title, interest and claim to said sum; the object and intent of this deed being, to vest completely, in said Thomas Fleming the entire interests of the said Mary Barr in the Tract of Land aforesaid. In Testimony whereof the said parties, of the first part have hereunto set their hands, and affixed their Seals respectively, the day and date first above written.

Elizabeth A. R. Linn (Seal)
Trustee for John Barr & Mary Barr

John Barr, by E. A. R. Linn his Attorney in fact (Seal)

Mary Linn Barr (Seal)

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

Be it Remembered, that on this twelfth day of December eighteen hundred and fifty-one, before the undersigned, Clerk of the Circuit Court, within and for the County aforesaid, came Elizabeth A. R. Linn Trustee for John Barr, and Mary Barr, John Barr, by E. A. R. Linn, Attorney in fact; and Mary Linn Barr, who are personally known to me to be the same persons, whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed, for the purposes therein Mentioned;

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She, the said Mary Barr being by me first made acquainted with the contents of said instrument of writing, acknowledged and declared, on an examination, separate and apart from her husband, that she executed the same freely, and voluntarily, without compulsion or undue influence of her said husband,

In Testimony whereof, I hereto set my hand, and affix the seal of said Court, at office, in the city of St. Louis, the day and year last aforesaid.

(Seal)

M. L. Berne Clerk

The foregoing Deed was filed and duly recorded in my office, on the 19th. day of December, A.D. 1851.

Test. Edward Evans Clerk

State of Missouri, }
Madison County } ss. I, Edward Evans Clerk of the Circuit Court of Madison County, hereby Certify that the within and foregoing contains a full, true and perfect copy of the Original Deed, Certificate of acknowledgment, and the Clerk's Certificate of record, as the same now remains of record in my office.

In Testimony whereof, I have hereunto subscribed My name and affixed the seal of said Court, at office, in Fredericktown, this 14th. day of February, 1853.

(Seal)

Edward Evans Clerk

Know all men by these Presents, that I, Elizabeth A.R. Linn of the City of St. Louis & State of Missouri, for and in consideration of the affection which I have for my brother James H. Relfe, of The County of Washington, in said State, and in consideration of the many valuable services rendered to me by my said Brother, as well as the sum of five dollars, to me in hand paid, by said Brother, the receipt of which I do hereby acknowledge, have granted, bargained & sold, & by these Presents do grant, bargain, sell and convey, unto the said James H. Relfe, one third part of my undivided interest of one eighteenth part of a tract of land

situate and being in the county of Madison, in the State of Missouri, aforesaid, and containing about twenty-four thousand acres, more or less, and well known and designated by the name of the Mine La Motte; together with one third part of my interest in any, and all improvements, on said Tract of Land. To have and to hold the said land and premises, unto him the said James H. Relfe, and to his heirs and assigns, for ever. In Testimony whereof, I have hereunto set my hand and seal, this twenty-second day of May, in the year of our Lord, one thousand, eight hundred and forty-seven.

Signed & Sealed in presence of Elizabeth A. R. Linn (Seal)

Test. Stephen M. Tibbits

Josiah Dent.

State of Missouri, }
County of St. Louis } SS.

Be it Remembered, that on this thirteenth day of November, eighteen hundred and forty-seven, before me, the undersigned Clerk of the St. Louis County Court, came Josias Dent, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a subscribing witness thereto, and after being by me duly sworn, on his oath says, he is personally acquainted with Elizabeth A. R. Linn, and knows that she is the real person who executed the said instrument in writing; that in his presence she acknowledged that she had executed the same for the purposes therein expressed; and thereupon at her request, he signed his name thereto, as a witness thereof.

In witness whereof, I hereunto set my hand and affix the seal of said Court, at office, in St. Louis County, the date above written.

(Seal)

S. D. Barlow Clerk

The foregoing Deed was filed in my office for Record

January, 17th, 1848, and was duly recorded, January, 19th, 1848.

State of Mississippi
Madison County, } Ss. I, Edward Evans Clerk of the Circuit Court of Madison County, State aforesaid, hereby certify that the within and foregoing, contains a full, true and perfect copy of the original Deed, and the proof of the subscribing witness thereto, and the Clerk's Certificate of Record, thereof, as the same now remains of Record in my office.

In Testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at office, in Fredericktown, this 16th, day of February, A. D. 1853.

Seal

Edward Evans Clerk

This Indenture made and entered into this twenty-seventh day of November, in the year of our Lord, eighteen hundred and fifty, by and between James H. Relfe and Mildred his wife, of the first part, and F. N. Buck, William Coffin, Henry Davis and Charles Lorgoire, of the second part, Witnesseth; That the said party of the first part, for and in consideration of the sum of two thousand dollars, paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, their heirs and assigns, forever, one undivided fifty-fourth part, (viz: 1/54 part) of all that tract or parcel of land, situate, lying and being in the Counties of Madison and St. Francois, in the State of Mississippi known and commonly called the Mine La. Motte Tract of Land, containing twenty-four thousand and ten acres, (viz; 24010 acres) be the same more or less; and which tract of land was confirmed to Francis Valle, Jean Baptiste Valle, Jean Baptiste Pratte and St. Gemme Beauvais, or their legal

representatives, by an Act of Congress, approved, the twenty-fourth day of May, in the year A.D., one thousand, eight hundred and twenty-eight, and Patented to Lewis F. Linn & Evariste F. Pratte, by the President of the United States, by letters Patent, dated the twenty-fifth day of March, A.D. 1839; they the said Linn and Pratte having become the legal representatives of the original Confirmees, in and by virtue of a conveyance made and executed to them for the said lands, by William M. Newberry, Josias Berryman, Theodore F. Fong, Caleb Cox and Henry Janis, Commissioners appointed by the Circuit Court of Madison County, in the State of Missouri. To Have and to hold the said undivided interest, with all the rights, privileges, buildings & improvements whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits, and all of the estate, interest, property, claim and demand whatsoever, of them, the said party of the first part, either at law, or in equity, unto the said party of the second part, their heirs and assigns for ever. The said party of the first part, hereby covenanting, that they, their heirs, executors and administrators will, warrant and defend the title to the said premises, and every part thereof, to the said party of the second part, their heirs and assigns, against the claim or claims of all and every person or persons, whatsoever. It is hereby expressly understood, and agreed by and between the said parties of the first and second part, that the rents, issues and profits above mentioned, shall extend and include all ores and minerals which are not, or have not been smelted, or which may be, at this time on the tract of land above mentioned, but in no way to extend to any rents now due, or claimed by the party of the first part, from the Co-proprietors or present occupants of said tract of land. In witness whereof, the said party of the first part have hereunto set their hands and seals, the day and year

first above written. James B. Relfe Seal
Mildred Relfe Seal

State of Missouri, }
County of Washington } ss.

Be it Remembered, that on the thirtieth day of November, A.D. eighteen hundred and fifty, before me, a Justice of the County Court, within and for the County aforesaid, personally came James B. Relfe and Mildred his wife, both personally known to me to be the persons whose names are subscribed to the foregoing Deed of Conveyance, as having executed the same, and severally acknowledged the same, to be their act and deed for the purposes therein mentioned; she, the said Mildred, being by me, first made acquainted with the contents thereof, and examined separate and apart from her husband, whether she executed said deed, and relinquished her dower, in the lands and tenements therein mentioned, voluntarily, freely and without compulsion, or undue influence of her said husband, acknowledged and declared, that she executed said deed, and relinquished her dower in the said Lands and Tenements, therein mentioned, voluntarily, freely and without compulsion or undue influence of her said husband. Taken and certified the day and year aforesaid, before me,

David Haugen.

One of the Justices of the County Court of Washington County and State of Missouri.

The foregoing Deed was filed for Record in my office, January 4th. 1851, and duly recorded, January 10th, 1851. Edward Evans Clerk by J. C. Collier D. Clerk

State of Missouri, }
Madison County } ss. I, Edward Evans Clerk of the County court within and for the County of Madison, State aforesaid, hereby certify, that the within and foregoing, contains a full, true and perfect copy of the Original Deed, certificate of acknowledgment, and the Clerk's Certificate of Record April 22nd, 1853. Test Edward Evans Clerk

Transcript of Proceedings had in relation to the Sale of the Real Estate belonging to the Estate of Charles C Valle dec'd late of the County of Madison in the State of Missouri.

State of Missouri }
Madison County } Ss. I William M Newberry, Clerk of the County Court, Madison County, to all who shall see these presents greeting: Whereas Charles C Valle lately died intestate in said County, and whereas Berthelemo St Gemme, and Evariste F Pratte have given bond with approved security and taken the oaths prescribed by law. Therefore full power and authority are granted to the said Berthelemo St Gemme, and Evariste F Pratte to administer all and singular the goods and chattels, rights, credits & Effects of the said deceased and to pay his debts, as far as his assets will extend and the law direct, and to coerce the payment of debts due the deceased according to law. And the said Berthelemo St Gemme and Evariste F Pratte are hereby required to make a true and perfect inventory of all the said goods & chattels rights credits and effects of the said deceased, and to file the same in the Clerks office of the County Court of Madison County, within Sixty days from the date hereof, and to make settlement of their said administration, with the said County Court at least once in each successive year, until they shall have fully administered said estate, and shall be discharged therefrom by due course of law. Witness William M Newberry Clerk of the County Court of Madison County, at office in Fredericktown this 19th day of December in the Year of our Lord Eighteen hundred & Thirty Eight

(Seal)

143 William M Newberry Clerk. Recorded December 19th 1838
Test Wm M Newberry. Clerk.

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State of Missouri }
Madison County } ss. In the County Court

To the Honorable the County Court of Madison County in the State of Missouri; The petition of Bertheleme St Gemme and Evariste F Ratte, administrators of all and singular the lands and tenements goods and chattles money credits and effects of Charles C Valle dec^d late of said County of Madison. Respectfully Showeth; that the said Charles C Valle lately deceased intestate in said County, seized of certain real estate and possess^d of personal property, a full statement and description whereof is herewith filed and makes a part and parcel of this petition. Your petitioners further state that the said Charles C Valle dec^d, died largely indebted, a full statement of his indebtedness being herewith filed, and prayed to be made a part of this petition, from which it appears to the satisfaction of your body that the personal estate of the said Charles C Valle is altogether insufficient to pay his debts. Further your petitioners state that the interest of the said Charles C Valle in and to the Mine La Motte tract of land is subject to a mortgage to secure the purchase money remaining unpaid and as set forth in the herewith filed. That the said interest of the said Charles C Valle dec^d in and to the said Mine La Motte tract of land is the one equal undivided third part thereof owned as tenants in common by the representatives of the said Charles C Valle dec^d. Evariste F Ratte and Lewis F Linn. That the said C C Valle in his life time, together with the said E F Ratte and Lewis F Linn, had come to an understanding and agreement to make an immediate disposition of such part of said tract of land as should be productive of

funds amply sufficient to meet all the Bank liabilities herein set forth, as well as the second instalment of the Mine La motte purchase money which falls due in February next and for the Security of which payment, the said tract of land is secured by Mortgage, and agreably to such understanding and arrangement of the said owners, the said Evariste F Ratto was making preparations to go East with authority in writing from the said C C Valle, to sell and convey as above stated when the said C C Valle was taken sick, and unfortunately died, whereby their views were frustrated and inevitable delay occasioned.

Your petitioners further state that the personal property being wholly insufficient to pay the debts of the deceased, and the deceased having in his life time intended that the said interest in the said Mine La motte tract of land or so much thereof as shall be necessary to liquidate his debts including his said Bank liabilities should be immediately sold, they would respectfully ask an order of this Honble Court, authorizing the said petitioners administrators as aforesaid to sell the whole or so much of said real estate as will pay the debts of the deceased, and that the same be sold at private or public sale, provided the said real estate be not sold for less than three fourths of its appraised value, and that the said administrators be authorized to Execute acknowledge and deliver to the purchaser a deed &c. Your petitioners deem it necessary to remark in consequence of the early application of this petition for the said order of sale, and apparently before the contemplated period designated by law, that they have consulted the immediate heirs and representatives of the deceased, and also the remote relatives and friends

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of the deceased and that all with whom they have thus spoken concur in the belief and have invariably advised your petitioners to make this application for the purpose herein set forth, and they respectfully suggest to your Honorable body to make such enquiry of the relatives and friends of the decd touching the grant of the prayer hereof, as shall tend to confirm the Court in the full conviction and assurance that much good may result from the grant of the order of Court, respectfully sought hereby. And your petitioners as in duty bound will ever pray.

Bme St Gemme
E F Pratte } admtrs C.C. Valle decd

State Missouri }
Madison County } ss.

Berthelemie St Gemme & Evariste F Pratte being sworn say that the facts stated in the above petition from their own knowledge and belief are true, & that so far as stated upon the information of others they believe to be true, and that the exhibits accompanying this petition contain a full, just, and true account of the situation and condition of the estate of the said Charles C Valle, so far as they have been able to ascertain the same.

Bme St Gemme
E F Pratte.

Sworn to and subscribed before me this 21st day of December 1838.

William M Newberry Clerk Mad County Court, endorsed filed Dec 21. 1838. Test W. M Newberry Clerk Cty Court.

List of Notes — 19 Decbr 1838, due the Estate C C Valle 1 note on Abel Logan dated 31 Jany. 1825 for $4,81 1/4 cts payable to bearer.

1 do do May 17th 1825 for $17,93 3/4 payable to bearer.

1 do on R T Brown dated 1820 Sept 20th for $756.80 cts payable to C C Valle.
an order favor of C C Valle drawn by Lewis Robert on Julian Lebenque dated 10 October 1838 for $17.50.

List of liabilities of C C Valle in the Bank of Missouri

For self one note due	Jany 1839	for	$800.00
" do	April	"	2250.00
" do	17th	"	2000.00
			$5050.00
due Menard & Valle	$3000.00		
J M B St Gemme	500.00		3500.00
			$8550.00
Balance of La Motte debt exclusive of interest			50287.50
			$58.837.50

Liabilities as endorser in Bank

One note with	E F Pratte	due Feby amt	$900.00	
do	F P Degiuro	March	900.00	
do	E F Pratte	April	2250.00	
do	Francis Valle	Jany	2000.00	
do	F P Degiuro		2000.00	
do	L F Linn		4000.00	$12050.00

Endorsd filed Dec 21st 1838.

Test Wm M Newberry Clerk.

Madison County Court, 21st December 1838 the following proceeding was had.
Estate Charles C Valle decd.

This day came Barthelemy St Gemme and Evariste F Pratte administrators of the estate of the said Charles C Valle decd, and file their petition prayg that the personal estate be reserved and real estate be sold or so much thereof as will pay the debts of the deceased accompanied by a true account of their administration, of the debts
147) due to and by the said deceased, and remaining

unpaid, and an Inventory of the real estate and of the personal estate with its appraised value and all other apets in their hands, the whole verified by an affidavit of the said administrators. Whereupon the Court do order, that the said Administrators sell the whole or so much of the real estate as shall be necessary to pay the debt of the said deceased, at private sale, provided the same be not sold for less than three fourths of its appraised value. And the said Administrators are hereby authorized and empowered upon the full payment of the purchase money, to Execute acknowledge and deliver to the purchaser, a deed as the law provides.

Madison County Court Dec 21. 1838 the following proceeding was had, to wit,

Estate Charles C Valle dec.

Ordered by the Court that Thomas Craddock, Henry Eidson, and John M Gholson view and appraise the real estate of Charles C Valle dec, situate in the County of Madison, as the law provides.

State of Missouri
Madison County } ss We do Solemnly swear that we will according to the best of our abilities view and appraise the real estate of Charles C Valle dec to us shown.

Sworn & Subscribed before me this 22 day of Dec AD. 1838
Wm Newberry Clerk

Thomas Craddock
Henry Eidson
John M Gholson.

We the undersigned appointed by the County Court of Madison County to view and appraise certain real estate belonging to the estate of C C Valle dec hereby certify that in pursuance of said appointment we have this day viewed the land (tract) situate in Madison, known and commonly

Call^d the Mine La Motte tract of land and appraise the same at the sum of One hundred thousand dollars for the entire tract of land.
Given under our hands in Madison County this 22^d day of December AD 1838.

Thos Craddock
Henry Eidson
John M Gholson

endorsed filed Dec 22^d. 1838. Test
Wm M Newberry Clerk.
Madison County Court.

State of Missouri } In the County Court
Madison County } &c To May term 1843.

To the Honorable the County Court of Madison County, the petition of Barthelemy St Gemme and Evariste F Pratte, Administrators of all and singular the lands and tenements goods & chattles, rights, credits, and effects which were of Charles C Valle dec^d late of the County of Madison. Representing respectfully Shewette

That pursuant to an order of this Honble Court at a Special term in the month of Decem^br 1838 authorizing the sale of the Real estate of the said Charles C Valle dec^d. Your petitioners sold at private sale the one equal half of the interest of the said Charles C Valle (his interest being the one equal third) of, in and to the Mine La Motte tract of land situate in said County for the sum of Sixteen thousand Six hundred and Sixty Six dollars and Sixty Six cents, upon a credit of months, that said sale was effected in the City of Philadelphia to Gentlemen of that City, and the payment was secured by their checks or drafts respectively falling due
149 upon a credit as above stated — that to meet

the second instalment due by the said Valle, Evariste F Pratte and Lewis F Linn owners of the said Mine La motte tract of land were obliged to negotiate a sale of said Checks with the Bank of the State of Missouri to acquire ready Cash funds to pay said instalment, in which negotiation the said Bank required a premium for said ready Cash, whereby the full amount of said purchase Money was subjected to a certain diminution in the amount, and which diminution will be fully and particularly stated in the accounts to be exhibited in this Court upon the annual settlement of said estate. That the said amount of purchase money remaining after the said rebate upon said negotiation was paid to the said Commissioners who sold the said Mine La motte tract of land in part satisfaction of the purchase money due by said Charles B Valle dec^{d} for his interest in said tract of land and for and in account of incidental Expenses attendant and consequent upon the Sale of his said interest by the said petitioners; a full Statement of which Sale and incidental Expenses will be exhibited at the next term of the Court so far as practicable. But so it is may it please this honorable Court that the said Charles B Valle died largely indebted to many persons and particularly to Robert J Brown and Francis Valle, and with whom he had an understanding and agreement that each one should have a certain interest in the fee simple estate of in and to the said tract of land commensurate with the interest which they respectively had and held

prior to the proceedings in the Circuit Court of said county of Madison for partition of said land, that under his said purchase said Brown and Valle retain the same interest they had therein prior to his said purchase and upon any transfer of his said interest they should receive respectively a due proportion of the purchase money. And to enforce which agreement the said Brown & Valle respectively filed their original bill in the Chancery side of the Circuit Court of Madison County; a Subpoena in Chancery was issued from said Court & your petitioners as administrators of the said Charles C Valle dec^d required to answer the allegations in said bill, and such proceedings have been had therein, that the said Court has decreed that the title pass from the heirs and legal representatives of the said Charles C Valle dec^d to the said Brown & Valle respectively for about one thousand arpens of land, part of the said Mine la Motte tract, And that Henry Janis, whom the Court appointed Commissioner for that purpose marshall the account between the said parties and report his proceedings to the October term next of said Circuit Court, upon which marshalling of accounts your petitioners will be able to exhibit to this Court a full and final statement of their administration.

Your petitioners in fact say that to enable them to meet the liabilities of the said Charles C Valle it will require the farther sale of property personal or real & personaled as they are that the remaining interest of the said C C Valle of, in and to the said Mine La Motte tract of
151 land, would be the most available at the

present time, respectfully ask this Honble Court to make an order or to renew the order heretofore made authorizing and directing said Petitioners to sell at private sale the said interest of the said Charles C Valle dec^d for ready money or upon time as said Court shall deem proper & expedient. And that Commissioners be appointed by the Court to value and appraise the said interest of the said Charles C Valle in said land as a proper Criterion for the government of Petitioners and to do such things in this behalf as this Hon Court shall direct. And Your Petitioners as in duty bound will ever pray

Bme St Gemme
E F Pratte } admin^ts
C C Valle dec^d

endorsed filed May 3rd 1843. Test Edward Evans Clerk.

The administrators of Charles C Valle dec^d herewith file the annex^d statement of moneys received and disbursed on account of the purchase and sale of the Mine La Motte property to wit.

Paid out for and on account of the interest purchased by said Valle of & in the Mine La Motte property bring the one third - say $22.350.00

Now due sundry persons for allowances by the County Court as per list certified by E Evans clerk } $ 7.426.89

$ 2977689

The administrators have received for sale of half of Valle's 1/3 in said tract land say $16.666.67

From the Mine la Motte Comm^ns the 1/4 of 1/7 of sale 2394.64 — 1906181

Balance Estate in debt. $ 10775.58

Remarks. The above amounts have been given in gross but are severally subject to corrections as it respects interest accruing, costs and charges in the Course of administration which will vary the amount of each respectively – but will show that the administrators have not moneys to pay such claims as have been allowed. and the administrator know of outstanding claims amounting to several thousand dollars which have not been presented to this court for allowance.

State of Missouri } Filed & approved May 5th 1842
Madison County } ss In vacation Jan. 19th 1844 Lyt. Edwd Evans Clerk

The Clerk of the County Court of Madison County
To all who shall these presents greeting.
Whereas Charles L Valle died intestate in said County and whereas Melanie Valle & Evariste F Ratte have given bond with approved security and taken the oaths prescribed by law.
Therefore the said Melanie Valle and Evariste F Ratte are hereby authorized and empowered to administer all and singular the goods and chattles rights credits and effects unadministered of the said deceased, and to pay his debts as far as his apets will extend and the law direct, and to Coerce the payment of the debts due the said deceased according to law. – And the said Melanie Valle and Evariste F Ratte are hereby required to make a true and perfect Inventory of all the said goods & chattles rights credits and effects of the said deceased, and to file the same in the Clerks office of the County Court of Madison County within sixty days of the date hereof, and to make settlement of their said administration at least once in every year until they shall have fully administered said estate and shall be discharged therefrom by due Course of law.

Seal Witness Edward Evans Clerk of the County Court of Madison County at office in Fredricktown this 19th day of Jan'y AD. 1844.

Edward Evans Clerk.

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State of Missouri }
Madison County } ss. I Edward Evans Clerk of the County Court of Madison County in the State of Missouri, hereby certify that the foregoing letters of administration were filed and recorded in my office January 19th 1844 in Book A. page 140 & 141 (Seal) In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in Fredericktown this 19th day of Jan'y AD. 1844
Edward Evans Clerk.

Transcript of proceedings had in the County Court of Madison County Missouri in relation to the sale of the Real Estate belonging to the estate of Charles B Valle dec'd. to wit.
To the Hon'ble the County Court of Madison County in the State of Missouri, the Petition of Melanie Valle and Evariste F Pratte admin'rs of the estate of Charles B Valle dec'd respectfully Showeth.
That your petitioners have hitherto deem'd it advisable to retain the Slaves and personal property of said intestate and still are of that opinion, and have formerly disposed of the one equal undivided sixth part of the intestate in the Mine la motte tract of land situated partly in this County, by virtue of an order of this Court, to that effect, which sale and the results have been reported to this Court.
That notwithstanding said sale, said Estate is largely indebted to sundry persons, as will appear fully from the proper exhibits herewith filed said demands being generally liquidated and subject to accruing interest, which is a very important consideration, it being desirable to discharge said liabilities with a view of stopping

said interest. That the only practicable Source from which to acquire the funds adequate to meet the outstanding Claims against said Estate, which may be roundly estimated at fifteen thousand dollars at least, is the undivided interest of the intestate in the said Mine La Motte tract of land, said interest being a fraction less than the one equal undivided Sixth part thereof — That Petitioners have had such assurances verbally that said interest of said Valle can be sold at the rate of thirty thousand dollars that they have been induced to make this application to this Honble Court for that purpose, well convinced that a sale of said interest for that amount of money would be signally beneficial to the legal representatives of the said Charles C Valle dec'd, some of whom are now of full age, and to whom it is of importance a sale may be effected, the proceeds whereof remaining after the payments of the liabilities of the Estate may be distributed among them in equal proportions. That the said rate of thirty thousand dollars for which said interest may be sold is the highest price that has been realized for any one entire interest, and it must be obvious to the Court without any argument in illustration, that a sale of said interest of said Valle being less than one Sixth for said sum of thirty thousand dollars, is to be sought for and not avoided, especially as the rules and regulations governing the Mining operations on said tract of land expire in August next, and it is entirely unknown, and even beyond Conjecture what benefit may accrue from said interest to the said representatives of

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of the deceased, besides the said interest will be subject to the action of a majority of the owners, and thereby be virtually under the control of others, and not of the legal representatives of the deceased. In Consideration of the premises your petitioners pray the Court to make an order authorizing the said petitioners to sell said interest of said Charles C Valle dec^{d} at private sale upon such time as said Court shall think most conducive to the interest of the parties Concerned. And that Commissioners be appointed to value and appraise the said interest as the law provides.— And petitioners will ever pray

Wm M Newberry for Petitioners

We, Melanie Valle admin^{tx} and Evariste F Pratte Adm^{r} as stated, do swear that the facts stated in the foregoing petition are true to the best of our knowledge and belief

Melanie Valle

E F Pratte.

Sworn and subscribed before me Clerk of the County Court, of Madison County this 18th day of September 1847

Edward Evans Clerk.

Endorsed filed & approved Sept 18. A D 1847. Test Edward Evans Clerk.

Demands due from C C Valle's Administrators as follow. To Francis Valle, by decree of

Madison Cir^{t} Court Oct 18. 1845 in Chancery	$	2401 32
" Robt J Brown Same Court & Same term		4808 60
" Luke E Lawless. County Court, May 7th 1845		333 33
	$	7546,25

This exhibit is endorsed filed Sept 18th 1847. Test E Evans Clerk.

Statement of demands allow^{d} against Estate C C Valle dec^{d}

When allow^{d}.	To whom allow^{d}.	Amount.	Notes & Accounts.

August 6th 1839	Menard & Valle			
" " "	" "	3726	96	Note 7 pr Ct
" " "	" "	447	91	" "
		300	83	account
November 4 "	Jones & Booth	35	00	"
"	Nathan B Harris	59	00	"
" 5 "	Sargent & Shaw	247	56	"
" " "	Ichabod Sargent	130	96	Note
" " "	Benjamin Shaw	17	00	a/c
" " "	Joseph D Villars	16	50	"
" " "	John Scott	175	00	"
" " "	Willm M Newberry	50	00	"
" 6 "	Scott & Ziegler	172	00	"
" " "	Willm Noell	50	00	"
Feby 3rd 1840	Walter B Wilkinson	188	91	Note
" " "	Emily Wilkinson	175	00	a/c
" 4 "	Ellis & Noell	10	00	"
" "	William M Ellis	27	50	"
May 5 "	Benj C Amoreaux Admtr de bonis non A Carre decd	301	32	transcript from Ste Genevieve Circt
Aug 5 "	Jos M B Ste Genme	286	92	Note
Nov 4th "	Berryman & Stevens	3	50	a/c
" " "	John Bollier	82	60	Note
Feby 3rd 1841	J Platte & Sons	194	25	a/c
" " "	John B Bossier	4	75	"
" " "	" "	19	00	Note
" " "	Lewis F Linn	358	07	"
May 5th "	John Casey	11	70	a/c
" "	Alexander Morro	17	50	"
August 4 "	Robert Trotter	85	25	"
Nov 3rd "	Aug St Genme	39	16	"
Feby 8 1842	Corbin Alexander	5	00	"
10 "	Wm M Newberry	5	66	"
		$ 7426	89	

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A true statement of allowances against the Estate of CC Valle decd

So far as I can ascertain from the record in my office, this 11th day of April 1843. Test Edward Evans Clerk.

June 3rd 1843 E F Pratte 280583
" " " J Pratte & Son 18499
E F Pratte & Co 5910
$1037681

Which said Exhibit is Endorsed filed & Approved 18th September 1847 Test Edward Evans Clerk.

At a County Court begun and held at the Court house in Fredericktown on Saturday the 18th day of September 1847. Present the Honble Richard Britton and Jonas Berryman Esqrs a quorum of the Justices of said Court the following proceeding was had, to wit.

Estate of Charles C Valle dec'd.

This day came Melanie Valle and Evariste F Pratte administrator and administratrix of the estate of Charles C Valle deceased and file their petition praying that the personal estate be reserved and the real estate be sold or so much thereof as will pay the debts of the deceased, accompanied by a true account of their administration, of the debts due to and by the dec'd and remaining unpaid, and an inventory of the real estate and of the personal estate with its appraised value and all other assets in their hands the whole verified by affidavit of the said administratrix and administrator — Whereupon the Court do order that the said administratrix and administrator of said estate sell the whole or so much of said real estate as shall be necessary to pay the debts of the said deceased at private or public sale upon a credit not exceeding twelve months from the date of said sale, provided the same be not sold for less than three fourths of its appraised value, and

the said administratrix and Administrator are hereby authorized & Empowered upon the Sale of said real estate to execute acknowledge and deliver to the purchaser a deed as the law provides. And it is further ordered by the Court that Henry Janis, William M Ellis, and Simon A Guignon be and they are hereby appointed Commissioners to value and appraise the Real estate belonging to said Charles C Valle deceased, and Certify the same to this Court by the next term of this Court, and that they be furnish^d with a copy of this order duly authenticated under the Seal of this Court.

At a special term of the County Court of Madison County began and held at the Court House in Fredericktown on Saturday the 9th day of October AD 1847 Present the Honble Richard Britton and ~~Robert~~ M Shannon Esq^rs Justices ~~of the~~ Peace of said Court, the following proceedings were had to wit

Estate Charles C Valle dec^d

This day came Melanie Valle administrat^rx and Evariste F Pratte administrator of said estate by their attorney William M Newberry and file their petition praying the Court to order the sale of the real estate belonging to said deceased for the payment of the debts due by said Estate, and praying that the personal ~~property~~ estate may be reserved, which said petition is accompanied by a list of the debts owing to and by the Estate and remaining unpaid and an Inventory of the real estate and other exhibits of said Estate as required by law.

It is therefore orderd by the Court that all persons interested in said estate be notified that application as aforesaid has been made, that

159 unless the Contrary be shown on or before the first day

of the next term of this Court to be begun and held on the first Monday in November next, at the Court House in Fredericktown in said County of Madison an order will be made for the Sale of the real estate of the said decd for the payment of the debts of said Estate as aforesaid, and it is further ordered by the Court that notice thereof be given by ten hand bills put up in ten of the most public places in said County twenty days before the said next term as the law requires ——

At the November Term of said Court AD 1847 the following Proceeding was had to wit.

Estate Charles C Vallé decd

And now at this time come Melanie Vallé administratrix and Evariste St Gemme administrator of said Estate by their attorney William M Newberry, and on his motion it appearing to the Satisfaction of the Court, that the order of publication made herein has been duly advertised as the law requires, and there being no objection made to the sale of the real estate belonging to said deceased, It is therefore ordered by the Court that the said administratrix & administrator proceed to Sell the real estate belonging to said deceased for the payment of the debts of said deceased either at private or public sale, provided the same be not sold for less than three fourths of its appraised value, upon a credit not exceeding twelve months from the date of said Sale, giving due and timely notice of the time and place of Sale by publication in some newspaper publish^{d} in this State as the Law provides, this Sale to be made at the Court House door on Monday the first day of the County Court of Madison County to be begun and held at the Court house in Fredericktown on the first Monday in February next. And it is

further ordered by the Court, that upon the full payment of the purchase money, the said Administratrix and administrator execute and deliver to the purchaser a good and sufficient deed in fee simple for said real estate, and that they be furnished with a copy of this order.

At the February term 1848 of said Court the following proceeding was had. to wit

Estate of Charles Valle dec'd.

Melanie Valle administratrix & Evariste F Patte administrator of said Estate, come and file their Report in writing of the sale of the interest of the late Charles Valle dec'd. in the Mine La Motte tract of land, verified by affidavit together with the certificate of appraisement and a copy of the advertisement from which it appears that the said administrators on the 9th day of February instant sold to Thomas Fleming at private sale the said interest for the sum of Twenty thousand three hundred and fifty seven dollars and sixteen cents payable as follows, To wit, Six thousand four hundred & fifty two dollars payable on the 20th March next. One thousand dollars cash money. Six thousand four hundred and fifty two dollars payable on the 20th June next, and six thousand four hundred & forty three dollars and sixteen cents payable on the 20th day of September next with interest from date respectively, all of which is secured by bills drawn on the said Thomas Fleming & Son by William N Fleming. And the Court having seen and maturely considered the same, do approve the said sale, and declare the said sale to be made valid

162 in all respects, and it is further ordered that

the said Melanie Valle administratrix and de Evariste F Pratte administrator do execute a deed conveying to said purchaser all the right title and interest which the said Charles L Valle had in the same at the time of said sale.

Administrators sale of Real Estate. Pursuant to an order of sale made by the County court at the November term thereof, the undersigned administratrix and administrator of the estate of Charles L Valle deceased, will on the first Monday in February 1848 at the Court House door in Fredericktown in said County and during the sitting of the County Court of said County between the hours of ten O'Clock in the forenoon and five O'Clock in the afternoon of said day, expose to sale, and will sell at public vendue or outcry to the highest bidder on a credit not exceeding twelve months from the said day of sale, the following described Real estate to wit: The undivided undivided Sixth part (or three fifty sixths) of the Mine la Motte tract of land, situate in the said County of Madison and County of said St Francois, said entire tract containing twenty four thousand and ten acres.

Melanie Valle admtx
Evariste F Pratte admr
of the estate of Charles L Valle dec'd
Wm M Newberry atty Dec 11.

I hereby certify that the annexed advertisement, notice for the sale of Land. has been published four consecutive weeks in the Espial.

Feb'y 7 1848.

James Lindsay

Endorsed filed & approved 9 Feb'y 1848.

Test Edward Evans Clerk

We Henry Janis, Simon A Guignon and William M Ellis do solemnly swear that we will according to the best of our abilities view and appraise the real estate of C C Valle decd embracing his undivided interest in the Mine La Motte tract of land situate in part in the County of Madison

Sworn & subscribed to before me clerk of Madison County Court at office, this 18th day of September 1847
Edward Evans Clerk

Henry Janis
W. M Ellis
S A Guignon

Endorsed filed & approved Feby 9. 1848.
Test Edwd Evans Clerk.

The following is a Copy of the Exhibits, Inventory, Report of Sale &c.

Inventory of Money paid to Melanie Valle & Evariste F Ratte admtrx & administrr of C C Valle decd.

1845				
Dec	15	To Cash received of W Fleming for rents of mines by M Valle	$ 90 00	
1846 Jany	5	" " " " "	18 34	
April	20	" " " " "	167 70	
Dec	18	" " " " "	287 00	
1847 Feby	19	" " " " "	20 00	
May	17	" " " " "	143 24	
1845 July	1	Cash received for sale of Negro Girl Louise "	350 00	
1846 October	"	" " Sophy & Nelly "	550 00	
1847 October	25	" of W W Fleming on a/c sale of Mine La Motte "	1000 00	$2626 28
		Cash paid for rent lead of T Fleming by Felix Valle	273 85	
		do " " " "	219 31	
		do " " " "	554 24	1047 40
1842 Augst	20	Cash received of Thomas Fleming for rents of Mine La Motte by E F Pratte	339 53	
	25	do do do	583 26	
	"	do " "	252 51	1175 30
				$4848 98

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Amount brot over. $ 4848.98

Cr.

By amount paid Scott & Ziegler for their fees in the Renault ~~Claim~~ Suit being Valle's 1/3 of whole fee (Exhibit Mark^d A. said Exhibit is endorsed filed & approved 9 Feby 1848.

Test E Evans Clk 356 33 356 33.

$ 4497 65

Inventory of Money received and to be received by The Administraton of C C Valle dec^d.

1842					
Aug	20	This amt of T Fleming rents acc^d from Mine La Motte p^d E F Pratte	$ 339 53		
	25	Do do	583.26		
		do do	252 51	1175	30
		do do F Valle	273 85		
		do do "	219 31		
		do do "	554 24	1047	40
1845 July	1	Cash by Sale of Louise by M Valle	350 00		
Dec	15	" rent of T Fleming for Lead	90 00		
1846 Jany	5	do do "	18 34		
April	20	do do	167 70		
1846 Dec	18	do Sale of Sophy & Nelly by M Valle	550 00		
1847 Feby	19	do Rent of Mine La Motte	20 00		
May	17	do " "	143 24	1626	28
Oct	25	Cash from T Fleming & Sons in part payment C C Valle's interest in Mine La Motte	$ 1000.00		
1848 Feby	7	Draft on T Fleming & Sons due 20 March 1848 for	$ 6452.00		
		Dft due 20 June 1848	6452 00		
		Do " 20 Septem^r 1848	6453 16	20357	16
		Total amount.		$ 24206	14

Remarks. Of the above sum total there is in Cash $ 4848.98

there will fall due 20 March next 6452 00

$ 11300 98

making upwards of Eleven Thousand Cash funds which will enable the Administrators to pay the amount of allowances or nearly so, as some of them have already been paid, but the proper vouchers have not been taken so as to present them to the Court for allowance. The Court will perceive that from the foregoing Statement the Admin^rs will be enabled to make a settlement at the May Court, when they will have procured vouchers for what they pay out of the first that falls due in March next.

E F Pratte
M Valle } Adm^t.

Endorsed filed and approved 11 Feby 1848.

Test Edward Evans Clerk.

List of the Liabilities of the Estate of C C Valle dec^d.

1839.				
Aug 6	Menard & Valle on note bearing 7 pr ct			3726 96
	do " do "			447 91
	" " a/c			300 83
Nov 4	Jones & Boosh " "		$ 35 00	
"	Nathan B Harris "		59 00	
5	Sargent & Shaw		247 56	
	Ichabod Sargent		130.90	
	Benjamin Shaw		17.00	
	Joseph D Villars		16.50	
	John Scott		175.00	680 96
	William M Newberry		50.00	
	Scott & Ziegler		172 00	
1840	William Noell		50.00	
Feby 3	Walter B Wilkinson	note	188 91	
	Emily Wilkinson	a/c	175 00	
4	Ellis & Noell		10 00	
165	William M Ellis		27 50	673 41
May 5	Benj C Amoreaux adm^r Tra^s Judgm^t		301 32	

Aug 5	Jos M B St Gemme	note	286.92	6	92
Nov 4	John B Shaw	"	78.64		
5	Berryman & Stevens	a/c	3.50		
1841	John Ballier	note	82.60		
Feby 3	J Pratte & Son	a/c	194.25		
	John B Bossier	"	4.75		
	do	note	19.00	970	98
	Lewis F Linn	"	358.07		
May 5	John Casey	a/c	11.70		
	Alexander Moore	"	17.50		
Aug 4	Robert Trotter		85.25		
Nov 3	Auguste St Gemme		39.16		
1842 Feby 8	Corbin Alexander		5.00		
10	Wm M Newberry		5.66	522	34
1843 June 3	Allowance to E F Pratte			2805	89
	do J Pratte & Son			284	88
1845	do E F Pratte & Co			59	10
Oct 18	Decree of Madison Cir Court favr Robt T Brown			4808	60
	" " " Frs Valle			2404	32
May 7	Allowance County Court Luke E Lawless			333	33
				$18022	95

List of Money received by the Administrs Ct Valle dec
This Amt Cash of Sundry pers as pr Vouchers Markd A
herewith. $ 4492,65
Difference between liabilities & receipts
exclusive of any interest is 13.530.30 $18022 95

This exhibit is endorsed filed & approved Feby 9th 1848,
Test Edward Evans Clerk.

Copy of Report of Sale by Administrs.
To the Honble the County Court of Madison County now in session. The undersigned Melanie Valle Administrx and Evariste F Pratte Administr of the estate of the late

Charles C Valle Decd. beg leave to report to said Court, that pursuant to an order of this Court at the November term last, authorizing the undersigned as said administrators to sell the interest of the deceased in the mine La Motte tract of land, they have had said lands duly appraised and have given due and timely notice of said sale by publishing said sale in the Espial a Newspaper printed in this County, as directed by the said Court, and that pursuant to the terms of the said sale prescribed by the said Court, whereby they were authorized to sell said interest at private sale. they have bargained and sold all the right title and interest of the said Charles C Valle decd in said mine la Motte tract to Thomas Fleming for the sum of Twenty thousand three hundred and fifty seven dollars and Sixteen Cents payable as follows, to wit. One thousand dollars ready money, Six thousand four hundred and fifty two dollars, payable on the 20" day of March next. Six thousand four hundred & fifty two dollars payable on the 20" day of June next, and Six thousd four hundred & fifty three dollars and Sixteen cents payable on the 20 September next with interest respectively from date until paid all of which is secured by Dfts drawn on said Thomas Fleming & Sons by his son William W Fleming

The said sale to said Thomas Fleming having been effected at private sale on the seventh day of February 1848. as in the order of said County Court made and provided; the said sale having been effected for the entire amount of the appraised value of the interest of the deceased in said premises sold. which valuation and notice of said sale will fully appear by reference to the said advertisement of sale and the said appraisement herewith filed, and prayed to be made part and parcel of this report.

In Valle admtrx
E F Prater Admr for C C Valle decd

167.

State of Missouri }
Madison County } ss. Before me the undersigned Clerk of the County Court within & for the County aforesaid on this 9th day of Feby 1848 came Melanie Valle & Evariste F. Pratte Administrt and Administr as aforesaid and upon their oath say they did not directly or indirectly purchase the real estate above mentiond or any part thereof or any interest therein, and that they are not interested in the property sold, the said Melanie Valle having relinquishd her dower to said purchaser voluntarily and without any pecuniary charge whatever, believing it would conduce to the interest of her children

Sworn & subscribed before me the day and year aforesaid } Melanie Valle
E F Pratte
Edward Evans Clerk }

Endorsed filed and approved Feby 9th AD. 1848.
Test Edwd Evans Clerk.

State of Missouri }
Madison County } ss.

I Edward Evans Probate Judge within and for the county of Madison State aforesaid hereby certify that the foregoing 27 pages contain a full true and perfect transcript of the Original Petitions Letters of Administration, exhibits, appraisement lists, Orders of Court, and reports made thereon &c &c as therein set forth as the same now remain of record and on file in my office

In testimony whereof I have hereunto subscribed my name and affixd the Seal of said Court at office in Fredericktown this 28th day of February AD 1853

Edward Evans
Judge Madison County Missd

State of Missouri }
Madison County } ss.

I, Edward Evans, Clerk of the Circuit Court within and for the County and State aforesaid, hereby Certify, that the forgoing and annexed writing containing one hundred and sixty-eight pages, contains a full true and perfect Transcript and copy of the Record Pleas and Proceedings had, in said cause, in the said Circuit Court, within and for the said County of Madison, in the said State of Missouri; as fully as the same now remain of Record and on file in my said office

In Witness whereof, I have hereunto subscribed my name, & affixed the seal of said Court, at office, in Fredericktown, this 9th day of November A.D. 1858.

Edward Evans Clerk

1858, Fee Bill Clerk Circuit Court

Sept Term,	Entg ap. Defts	$. 15	
	Motion	25	
	Taking Bond	50	
	Entg Appeal	50	$1.40
	Same for Plffs		1.40
	Copying 58,800 words & "a" at 15 cents per hundred		88.20
	Certificate & Seal hereto		50 $ 91 50

A True fee Bill

Test. Edward Evans Clerk

54
~~242~~

(1)

October 2. 1859

Bx 604 #1

Charles C. Valle &c.
respondents

U.S. B/4/6

&

Thomas Fleming &c.
appellants

Appeal – Madison
Circuit Court,

Filed 5 February 1859
Wm S Glanville
Ck.

~~Filed February 5th~~
~~1859~~
~~Wm S. Glanville Ck.~~

Upright of agreement to have costs of printed record taxed filed 29 Oct. 1859/
agreed stat. filed, printed / printed bf. by Mr. Gantt / Supplementary bf. by Mr. Gantt
bf. by Mr. Noell
Revised & Remanded Cp. 19/ 14 Dec. 1859/

54

C. C. Vallé's Heirs, respondents
against
Thomas Flemings Heirs appellants } In the Supreme Comt. on appeal from the Madison Circuit Comt

The said appellants come and say that in the record of the proceedings of the said Circuit Comt in this cause there is manifest error in the following particulars.

1st Because the Comt erroneously struck out the amended answer of defendants on the motion of plaintiffs.

2d Because the Comt erroneously refused to allow defendants to file an additional answer so as to allow the admission or application of the evidence of the transfer to defendants of Melanie Vallé's right of dower

3d Because the Comt refused to declare the law as prayed for by defendants

4th Because the Comt declared the law as prayed by plaintiffs

5th Because upon the case made and the evidence at the trial the Comt should have declared that plaintiffs could not recover as to the one third of the interest of which C. C. Vallé died seized that interest being conveyed to defendants by his widow who is still alive.

6th Because upon the case made & the evidence at the trial the Comt should have declared that plaintiffs were limited to six sevenths of two thirds of one sixth of the mine la Motte tract.

7th Because the Comt should have declared the law to be that the deeds of the Administrators of C. C. Vallé. dated 24 April 1859 were effectual & valid in law to vest in Fleming, Lamb & Chauncey the one half of the interest in said tract of land of which C. C. Vallé died seized

Wherefore appellants pray that the judgment of said Circuit Comt be reversed

Thos T. Gantt for
Appellants.

The Respondent says there is no Error. Noell for Respt

C. C. Valle's Heirs
— respondents —
v
Thomas Flemings Heirs
— appellants —

assignment of Errors.

Gantt for
appellants

Filed 17 Oct. 1859.
W. L. Gwinn
Clk

Valles Heirs Respt } Appeal from Madison
" } Circuit Court
Flemings heirs } appelt }

Jno W Noell for Respondents makes the following points

1. The sale made to Chaney Lamb & Fleming in 1839. ~~was~~ so far as C.C Valles interest was concerned was void.

1. Because the petition was filed and the order made only two days after the date of Letters of Administration and the Record of County Court introduced shows affirmatively that it was impossible that these essential requisites (of publication and notice) could be ~~were~~ complied with

2. It was no sale under that section of the Code of 1835 which provides for the sale of land which had been previously mortgaged for several reasons

1. Neither the petition or order has any reference to the sale of the interest of deceased subject to the mortgage but it was a sale of the land to pay the mortgage & other debts

2 The proceeds did not and could not go into the Estate as apetts over and above the mortgage debt but one great point relied on by Defendants is that they went to extinguish the mortgage

3. The mortgage was not a mortgage executed by the deceased but a mortgage by Linn & Pratt and therefore it was

such a Case as would authorize a Sale under that section The Language of the section is "If any person die having mortgaged any "Real Estate &c" See Code 1835 page 51

3d The Sale was void because of the fact that no report was ever made of it and no approval ever had of any report

all of these questions more fully argued when this Case was in this Court before and fully decided by this Court I shall therefore not again press them to any length. The Report of the Case will be found at page 454 of 19th Mo Reports to which and the authorities there cited the respondents here refer. 19th Mo Rep 454

Wohlen vs Speck 22nd Mo Rep 310

Bank vs White 25th Mo Rep 342

2nd The Main Ground upon which I suppose the Case is brought here is upon the question as to the Defendants right to be substituted or subrogated to the rights of Certain Mortgagees who held a Mortgage on the Land at the time of this sale of 1839

In order to a Clear understanding of this point it is necessary to bear in mind that at the date of these deeds to Chancy Lamb & Flenniken the Whole Mine La Motte Claim was owned in Common by Pratte, Lucas, & the representatives of Valle. that is: Pratte one third, Lucas

one third and the representatives of Valle one third
There were three deeds executed one to Chaney
one to Lamb, one to Fleming. Each deed called
for one sixth that is the three deeds called
for one half of Nine Leagues by aggregate
them together. I here call the particular
attention of the Court to the form and phraseology
of these deeds as it is shown on page 86 et Seqr
of the Record.
Thus much being premised I lay down
two propositions on the point
First that the deeds of 1839 to Chaney Lamb
and Fleming did in fact convey to them all
the land they bargained and paid for, not in-
deed out of the shares of Col Valle but out
of the shares of Linn & Pratts who between
them owned two thirds which was more
than sufficient to satisfy and did in fact
satisfy the Calls of these deeds; these Calls
only demanding in the aggregate one half

My second proposition on the point is that
if the title had failed to any part of the
land bargained for; then the Defendants
in their amended answer stricken out
by the Court make no such Case as
entitles them to relief

To sustain my first
proposition it will only be necessary to examine the
deeds as preserved in the record. In Connection with
the fact shown by the written agreement that at the
date of these deeds Pratts & Linn each owned one
third of Nine Leagues. Now it may be said
that it was the intention of the parties to Convey

one half of each of the three interests of Pratt Sims & Valle. That may have been the intention yet it does not follow that such was the effect of the deeds because so intended. The amendment to the answer stricken out does not ask for the correction of any mistake in the deeds and in fact the Flennigs are not the parties to ask such correction if it could be made, but that amendment is predicated on the single idea that the Grantees in such deeds did not get as much land as was paid for. To illustrate this point: A. Owns a tract of land, has a complete title to it. B Has no title whatever. A & B. join a deed to C. conveying directly to C the tract. Now C takes nothing from B. but he gets a good title from A. So in this case the administrators of C C Valle could convey nothing but Sims & Pratts the other grantors could convey all that the deeds called for. and their deed did have that effect. It is true the Defendants lose one sixth of the land in the Nine La motte tract; but how do they lose it? Surely not through the deeds of 1839, but afterwards when they came to purchase the remainder of Pratt & Sims interest instead of getting one sixth each from each of them they only get one twelfth each. they having only that interest remaining after satisfying the calls of the deed of 1839. On this hypothesis the Covenants of ~~the deed of~~ Pratt & Sims last set of deeds were broken to the extent of one sixth each and to them Covenants the Defendants must resort for relief. If Pratt & Sims

have lost any thing in this transaction it is time enough to settle that question if they or their representatives Complain

On the second proposition we say that the doctrine of Subrogation & Substitution Can only apply to Cases where the party is bound by law to pay a debt for another which debt is secured to the principal by some lien other than that of the person so bound. If in the Case at bar Fleming Chancy & Lamb had been bound as securities for the debt secured also by mortgage and had been Compelled to pay the debt then they Could have been subrogated

The Case of Potts v Clark 5th Peters 481 has no application. That was a Case where there was a valid sale and payment of the purchase money, which the Court say gave the defendant a title in equity No deed had been executed and therefore he had no legal title. The purchase money of this valid sale had been applied to extinguish a mortgage and when the heir brought suit equity technically revived the paid mortgage so as to protect the equitable title against the heir thus suing. In this Case the sale is void from the beginning. There is no equity to protect. In this Case the Claim is not raised to hold the land but it is raised to get back money

upon a sale wholly void

The Doctrine of Subrogation and Substitution can only arise where one man is compelled to pay the debt of another, secured aliunde. The other security held by the principal will be held in equity for the benefit of the surety - and the surety subrogated to the rights of the principal. No party can voluntarily trade himself into an existing contract with his eyes open and then be subrogated. Here was a purchase of mortgage property which the parties knew was mortgaged. They had a right to let it alone and it was their own fault they purchased & applied the money to the payment of the mortgage

Bank of U.S. vs Winstons Executrs 2 Brockenborough 254
~~6th Sergeant & Watts at page 356 in Armstrongs appeal~~
Gadsden vs Brown Spears Ch. Rep. 37 - 3rd Alabama 302
5th Watts & Sergeant Armstrongs appeal 356

3 The last adverse deed executed in 1848. Conveys only one sixth less three fifty sixths see the Deed on the record and see the Case 19th Mo Rep 454

4 The Court did not err in deciding that Defendants could claim nothing for the dower of Mrs Valle

1st because her relinquishment enured to the benefit of the owner of the fee

2 Because Dower is no title under which ejectment can be maintained or defended Before assignment it is not a possessory right in law or equity It is but

a right of action and cuts no figure as a suit like this
McClanahan vs Porter
10th Mo Rep 753
17th Johns R 167
See also the peculiar form of the Decree of Relinquishment

5. The Case will not be reversed if looking into the whole Record there is no substantial error.

addenda

6. Volunteers not subrogated
Sandford vs McLean 3rd Paige 117-22
Banta vs Gazzam et al 1 Sandfords 384
Douglas vs Fagg 8 Leigh 588-602

7. Intent to Extinguish avoids & defeats Subrogation
Rubenstein et al
10 Sergeant & Rawle 399

8. If the deeds of 1839 Conveyed the full interest paid for out of Public Lands interest the pleadings are not sufficient to entitle the defendants to any relief Considering both sets of deeds together The amended answer does not offer to account for rents

9. The party has a remedy at Law and equity will not relieve

over

54

Valles heirs

v

Flemings heirs

Brief of

J. W. Noell

for Respts

Filed 29 Oct. 1859.
Wm. S. Glanville
Ck.

Valle's Heirs. Respondents
against
Fleming's Heirs. appellants } Appeal from Madison Circuit Court.
One of the points taken by Mr Noell in support of the action of the Court below in striking out the answer of the defendants was that the defendant's ancestor in paying off the mortgage upon C. C. Valle's Estate was a mere volunteer: on which I propose saying nothing more.

The second point taken by him is that it appears from the deeds made in 1839. that the parties grantors to them were Lewis F. Linn, Evariste J. Ratte, (each of whom had one third of Mine la Motte) and the Administrators of C. C. Valle - who had died seized of the remaining third. And that as the deeds professed to convey to the purchasers (in the aggregate) one half of the tract; and as Linn & Ratte who were parties to all the deeds had more than one half of it; therefore one half passed to the purchasers, out of the interest which Linn & Ratte had, although the deeds were void as to the Administrators of Valle.

The first answer to be given to this last point is, that in order to make it the plaintiffs, go out of the answer, into evidence: which is never admissible when discussing the legal sufficiency of an answer. If any fact not shown in the answer is necessary to avoid it, let such fact be shown either by pleading or evidence. But to strike out an answer because the facts stated in it constitute no defence to the action, and then to sustain the action of the Court on the ground that further facts exist which destroy the legal effect of the facts stated in the answer, is rather an inconsistent proceeding.

The second answer to this point is that there is nothing in it when we look into all the facts admitted by Mr Noell. He admits that after 1839. Fleming purchased of Messrs Linn & Ratte the remaining interest they had in Mine La Motte. both parties supposing that they had

each one Sixth — and that these Conveyances were with Covenants for title, (or warranty as it is incorrectly Called). And to these Mr Noell would have us resort.

Now if we did this, Linn & Ratte would be entitled to go upon the heirs of Vallé, to be reimbursed for so much of the debts of their ancestor as was paid by the sale of the land of Linn & Ratte in 1839. And so, by the proceeding he suggests the same result would be reached that Mr Noell deprecates in the case at bar.

The case of Garrison & al vs The Memphis Insurance Company, 19 Howard Rep. 312. is an authority to show that the party injured may at once proceed in Equity against the party ultimately liable. The heirs of Mr Fleming are entitled, (as was the Insurance Company in that case) by reason of having paid the money, by the payment of which the Estate of Vallé has profitted, to be substituted to all the rights of action which any one, whose interest they have purchased could have had against that Estate, connected with this payment.

In 1839 Linn & Ratte join with Vallé's administrators in a deed of land of which Linn, Ratte, & Valle in his life time, were equal tenants in common. the intention being to convey, in equal portions, the one half of the whole land.* The deed is void as to the admrs of Vallé. It is assumed that by virtue of this fact, it becomes doubly operative as to Linn & Ratte, contrary to the intention of all the parties, as shown by the deed. In the mean time the money paid by the purchaser goes equally to Linn, Ratte, & Vallé's administrators — and the last portion pays off Vallé's debts. Afterwards, Linn and Ratte sell to the same purchaser their remaining interest: which is estimated and paid for on the hypothesis that the deed of Vallé's administrators is valid — Afterwards, also there is a sale of the remaining interest of Vallé's representatives in this land as it was supposed to be, on the hypothesis that the first deed was valid. but in reality of only one Sixth, less three fifty Sixths — and now the heirs of Vallé assert against the purchaser of

* by conveying the one half of the interest of each grantor

1839. the invalidity of the deed then made to this purchaser by his administrators. When this purchaser desires them to allow him for the money he paid in 1839. they tell him that he is not damnified - that he has all the land called for by his first deed - and that as to the second, he has to resort to Linn & Ratte whose warranty or Covenants for title, as to the second deed from them in which the difficulty occurs, he holds, and which become broken by this claim of the heirs. He replies, that this title only give Linn and Ratte a similar right of action against Valle's heirs, because if their land (the land of Linn & Ratte) passed to the purchaser in 1839 instead of the land of Valle, Linn & Ratte are entitled to charge Valle's estate for the sum received on that occasion by his administrators - and that to avoid this circuity of action the law gives to him (the purchaser of all the interest of Linn & Ratte, and also of all such interest as the administrators Cont. Convey by the deed of 1839) the right to proceed, in preference, directly against them, the representatives of Valle.

Besides will a court of equity give to the deed of 1839 an interpretation so foreign to the declared intention of all the parties to it, in order to exempt the heirs of Valle from the equitable consequences of the payment of their ancestors debts? The only effect of requiring us to wait until we obtain the legal assignment of the claim of Linn & Ratte against Valle's Heirs, would be delay. But we have already an equitable assignment of this claim. and that is sufficient in a court of Equity.

Thos T. Gantt. of Counsel for appellants.

Valle's Heirs
v
Flemings Heirs

Supplemental argu
ment on the part of ap=
pellants - by
Th. T. Gantt

Filed 29 Oct. 1859
Wm S. Glanville Clk.

N.B. This Statement was made by Gantt
there being some errors & omissions I have
Corrected them in this Copy J. W. Todd

AGREED STATEMENT

IN THE CASE OF

VALLE'S HEIRS, VS. FLEMING'S HEIRS,

ON APPEAL

FROM THE

MADISON CIRCUIT COURT.

Filed 29 Oct. 1859.
W. L. Clarke Clk.

ST. LOUIS:
PRINTED AT "EVENING NEWS" OFFICE.
1859.

STATEMENT.

VALLE'S HEIRS,
VERSUS
FLEMING'S HEIRS.

APPEAL FROM
Madison Circuit Court.

THIS was an action of ejectment. The petition stated that the plaintiffs (who were six of the seven heirs of C. C Valle), were entitled to six-sevenths of one-third of the Mine La Motte tract, less three fifty-sixths.

The defendants answered that the plaintiffs we not so entitled: and that their ancestor had duly purchased and was seized in his life time of all the interest in said land of which said C. C. Valle had been at any time seized. This was the answer on which the cause was tried originally. A report of the case on appeal from the judgment rendered then, is to be found in 19 Mo. 454.

After the cause was remanded, the defendants asked for and obtained leave to file an amended answer, which was done. The Court, on motion of plaintiffs, struck out this answer. The defendants then filed, on the 19th of July, 1858, in vacation, the following answer.

"Defendants come and say that the plaintiffs were not at the time of the commencement of this suit entitled to the possession of the premises in the petition of plaintiff's described.

"The defendants further show the following legal and equitable considerations and reasons why the said plaintiffs ought not to have and maintain their said action, that is to say, as to the one-half of the interest claimed in the land by the said plaintiffs, which is one-half of six-sevenths of one-third part of the whole, less three fifty-sixths (6-7 of ⅓—3-56), which one-half of said interest is the portion which is embraced in and covered by the deed executed by the administrators of said Valle, executed in the year 1848, and referred to in said petition; the same was regularly conveyed by the administrators of the late Charles C. Valle to the purchasers in said deed named, by virtue of regular proceedings of the County Court of Madison County, resulting in an order of sale regularly and lawfully made by the said County Court, on the 4th Monday of November, 1847, requiring said administrators of said C. C. Valle to sell the one-sixth less three fifty-sixths of said parcel of land, at public or private sale, to the highest bidder, and to make return and report of their proceedings to the said County Court at the February term thereof in 1848. And the said administrators in all things complied with the order of the said County Court, and caused the property therein mentioned to be appraised and advertised according to law, and afterwards sold the same to the highest bidder, at private sale, pursuant to said order; and at said sale Thomas Fleming, ancestor of the defendants—(Thomas F. Fleming, Robert F. Fleming, and others)—become and was the highest bidder therefor, and the same was struck off to him at and for the sum of twenty-thousand three hundred dollars. And the said administrators made report thereof to the said County Court at the February term, 1848, and said report was by the said Court approved, and the said administrators did thereupon, by virtue of the premises, and in pursuance of their duty as such

administrators, make and execute to the said Thomas Fleming, ancestor of the said mentioned defendants, a deed conveying to him the said one-sixth less three fifty-sixths of said real estate and premises. And the defendants herewith file the said deed, so executed as aforesaid, bearing date the 10th day of February, 1848, and show the same to the Court here, whereby it sufficiently appears that the heirs of said C. C. Valle (plaintiffs) are by virtue of said sale and conveyance divested of all the interest in said land so sold and conveyed, as aforesaid, by the said County Court of Madison County aforesaid. And defendants file herewith and make an exhibit of the said proceedings of the said County Court of Madison County, in making said order of sale, and in approving the action of the said administrators, under said order, and pray that said proceedings may be taken as part of this answer.

And as to the said three fifty-sixths of said land, the defendant's say that plaintiff's are not entitled to the same, nor to have their said action in respect thereof, because they say that by a decree of the Madison Circuit Court, setting as a Court of Equity, at the April term thereof in the year 1843, the said three-fifty-sixth of said land were declared to be vested in Robert T. Brown and Francis Valle, and that the heirs of the said C. C. Valle (the plaintiffs) be divested thereof by virtue of a contract made between the said Robert T. Brown and Francis Valle and the said C. C. Valle in his lifetime, of which contract the said Circuit Court, at the time last above said, decreed the specific execution and performance, by the heirs of the said C. C. Valle, in favor of the said Brown and Francis Valle; all of which will more fully and at large appear by the record of said suit in said Court remaining, a transcript wheteof is hereby filed and prayed to be taken as a part of this answer.

"And as to the remaining half of the said interest claimed by the plaintiffs in said land (being the one sixth thereof), the defendants say that the plaintiffs ought not to have their said

action, neither are they entitled to the relief prayed in said petition, because they say, that in the year 1838 Charles C. Valle, ancestor of the plaintiffs, through whom they all claim title to the land in controversy, died greatly indebted: that he died seized of the undivided third part of the Mine La Motte tract (being the same land whereof the plaintiffs seek recovery in this suit), subject to an existing and unsatisfied mortgage, execu ed thereupon on the sixth day of November, 1837, of which he had notice, to secure the payment of sixty-seven thousand and fifty dollars, which mortgage was a subsisting and unsatisfied encumbrance on the interest and estate of the said C. C. Valle in the said tract of land, at the time of the death of him, the said C. C. Valle; and that after the death of the said C. C. Valle, the administrators of his estate applied to the County Court of Madison County for an order for the sale of the interest of the said C. C. Valle in said tract, in order to pay off the debts and encumbrances due by and upon the estate of the said C. C. Valle, and particularly the debt secured by the said mortgage, all of which will appear by the certified copy of the said mortgage deed, and the transcript of the proceedings of the said County Court, herewith filed, and prayed to be taken as part of this answer. And the said County Court thereupon made an order, directing the said administrators to make sale of the one-half of the interest of said C. C. Valle in said tract of land; and the same was accordingly by them sold to Lemuel Lamb, Elihu Chauncey, and Thomas Fleming; and the said administrators thereupon made and executed to the said Lamb, Chauncey and Fleming, deeds conveying to them the said one-half of the third of the said tract of land, of which the said Valle died seized as aforesaid, for the sum or price of fifty thousand dollars; and the said Lamb, Chauncey and Fleming paid therefor, to the said administrators, the said sum of fifty thousand dollars in manner following, to-wit: the sum of fifty thousand dollars was applied to and was paid for the exoneration and discharge of the estate of the said Valle from

the lien of the said mortgage; they, the said Lamb, Chauncey and Fleming, and also the administrators of the said C. C. Valle, believing that the said sale by said administrators to said persons would vest in them all the right, title, interest, claim and property of the said Valle, at the time of his death, of, in and to the said one-sixth of the Mine La Motte tract of land. And the said Lamb, Chauncey and Fleming, confiding in the representations of the said administrators, that sale to them as aforesaid then was and would be in full and strict compliance with every legal formality and ceremony, purchased the said one-sixth, in good faith for full value, and the said sum of fifty thousand dollars, above specified, was paid in satisfaction of said mortgage, and the residue of said sum of purchase money, so bid by said persons, for said land, at said sale, had and made thereof by said administrators of said Valle, was paid to and received by the said administrators. And if the said sale and conveyance to the said Lamb, Chauncey and Fleming, made by virtue of said order of said County Court, be not sufficient in law to vest in said purchasers the title to the said land, so sold by said administrators, and so purchased and paid for by said persons, by reason of any technical informality or defect in the action of the said County Court, or otherwise, then the defendants insist that the money by them, the said Lamb, Chauncey and Fleming, paid to administrators of said Valle, and towards the satisfaction of the said mortgage, was the money of the said Lamb, Chauncey and Fleming, advanced by them at the instance of the administrators of of the said C. C. Valle, towards paying off the debts of said Valle, and towards the extinguishment and satisfaction of liens on his estate; the said Lamb, Chauncey and Fleming, and also the said administrators, acting in perfect good faith, and all said parties supposing and intending that the said Lamb, Chauncey and Fleming, making said payment, should and would acquire a perfect title to the said land, so mortgaged as aforesaid. And the defendants file herewith, and make exhibits

in this cause of the said order of the said County Court, and the proceedings of the said administrators thereunder, together with the deed by them made and executed to the said Lamb, Chauncey and Fleming, and pray that they be taken as part of this answer. [And the said defendants say that, notwithstanding the apparent and technical payment and extinguishment of said mortgage, in manner and form aforesaid, equity will, under the circumstances above shown, treat the said mortgage as still subsisting and unsatisfied, for the protection of the said Lamb, Chauncey and Fleming, and will subrogate them, the said Lamb, Chauncey and Fleming, to all the rights of the mortgagees therein; treating them, the said Lamb, Chauncey and Fleming, as assignees, and purchasers of said mortage for valuable consideration of them had and received. And defendants say that the said Thomas Fleming in his lifetime purchased and acquired for valuable consideration, all the interest, estate and property of the said Lamb and Chauncey in and to the said tract of land, supposed to be conveyed as aforesaid, by the said administrators of said C. C. Valle, to the said Lamb and Chauncey; and that he is the assignee, for value, of all the interest, claim and demand which the said Lamb and Chauncey had to the said sum of money, paid and advanced as aforesaid by said Lamb and Chauncey towards the extinguishment of said mortgage; and these defendants are the legal representatives of the said Thomas Fleming, who has died since the institution of this suit: and so these defendants are entitled to be substituted and subrogated to all the rights and privileges which the said mortgagees would enjoy, if the said mortgage were unpaid, and the said mortgagees were in possession under the same. And defendants say that they are in fact and in equity in possession of said tract of land, as assignees of said mortgagees, and entitled to set up the same against any person and all persons impugning their title thereto. And defendants are ready to account for the rents and profits of said land, so mortgaged to the said Commissioners, in plain-

× There had been a prior answer to the same effect stricken out and no leave was given to file this answer.

tiffs' petition mentioned; and to come to a reckoning with the said plaintiffs—charging them, said plaintiffs, with the interest of the said mortgage debt, so paid as aforesaid. But defendants charge that the said plaintiffs have at no time, either before or since the institution of this suit, offered to pay off and discharge whatever may be due to said defendants, on account of said mortgage; and defendants are ready to verify all the premises, as the Court may direct and appoint: and they pray that an account may be taken, by and under the direction of this Court, of what is due to these defendants for principal and interest on the said mortgage debt; and that plaintiffs be decreed to pay the said defendants what shall so appear to be due on the taking of said account, together with the costs of this suit, on or before a day to be for that purpose by the Court indicated and appointed. And in default of such payment, that the plaintiffs be foreclosed and forever barred off and from all rights of equity of redemption of, in and to the said mortgaged premises, and every part of the same: and also be decreed to deliver and yield up to the defendants all deeds and writings whatsoever in possession of said plaintiffs, relating to the said mortgaged premises; and that the Court here, will make such further order and decree in the premises as the equity of the case may require."] ×

× And at the September term of the said Madison Circuit Court, the plaintiffs filed the following motion:

"Plaintiff's come and move the Court to strike out defendant's amended answer, filed on the 19th day of July, 1858, for the following reasons:

1. Said answer was filed without any leave of Court, out of time and without authority of law, and against the rules of Court.

2. Said answer sets up the same matter which was stricken out in a former amended answer filed in the cause.

3. Said answer sets up new matter not responsive to the petition by way of defence, which new matter constitutes no defence, either in law or equity.

4. The facts set forth in the said answer do not show that any part of the title of Fleming, Chauncey and Lamb in the first deeds they received failed, or that they did not get all the title said deeds called for.

5. Said answer is redundant, argumentative and superfluous, and constitutes no defence."

Whereupon the defendants, on the 2d day of the said September term, 1858, asked for and obtained formal leave of Court for the filing of their answer, and it was filed accordingly. The plaintiff's motion being then considered, the Court sustained it as to the following portions of said answer, viz: as to all of said answer which is included with brackets, thus [ ]. Defendants duly excepted at the time.

The case then coming on for trial, the Court (each party waiving a jury) gave the following judgment:

Now at this time, come the parties by their attorneys, and neither party requiring a jury, proceed to trial before the Court. And the Court having had hearing of the cause, upon the agreed facts filed and the evidence given, finds that plaintiffs were, on the day mentioned in the petition, and are yet, lawfully entitled to the possession of six-sevenths of one-sixth part of the tract of land described in the petition, to-wit: a tract known as the Mine La Motte domain, containing twenty-eight thousand arpens, French measure, or about twenty-four thousand and ten acres, and is the same tract of land that was confirmed by act of Congress of the United States to Francis Valle, Jean B. Valle, Jean Bte. Pratte, and St. Gemme Beauvais, or in case of their or either of their deaths, to their legal representatives, situated in the Counties of Madison and St. Franscois, except so much of such tract as is included

in Sec. 16, T. 34 N., R. 7 E., and frac. Sec. 16, T. 34 N., R. 6 E.; and that Thomas Fleming, deceased, plaintiffs' ancestor, in his lifetime entered the said premises and unlawfully withheld the same to the time of his death, on the 16th day of March, 1855, since which time the defendants, as his his devisees and representatives, have continued unlawfully to withhold the possession thereof from plaintiffs; that plaintiffs by reason thereof have sustained four thousand, nine hundred and twenty-one dollars, seventy-two cents damages, being the aggregate rents of said six-sevenths of one-sixth, from the commencement of this action: which damages is subject to a deduction, by agreement filed, of six hundred and seventy-nine dollars, sixty cents, on account of the share of Vermont Allen therein; leaving a balance of four thousand, two hundred and forty-two dollass, twelve cents. That the amount of said damages which accrued prior to the 16th day of March, 1855, after deducting said Allen's share, and for which said executor is liable, as such, is nineteen hundred and seventy-two dollars, forty-four cents, and the residue of said damages, which accrued since the 15th day of March, 1855, and for which the other defendants are liable, after deducting said Allen's share, is two thousand, two hundred and sixty-nine dollars, sixty-eight cents. Whereupon it is considered and adjudged by the Court, now here, that the plaintiffs do have and recover of and from the defendant, Thomas F. Fleming, executor of the last will of Thomas Fleming, deceased, the said sum of nineteen hundred and seventy-two dollars, forty four cents, the damages aforesaid, which accrued to the plaintiffs by reason of the premises, prior to the death of the said Thomas Fleming, deceased, being the balance after making said deduction, together with all costs, up to the 16th day of March, 1855, to be made of the goods and chattels, rights, credits and effects, which were of said Thomas Fleming, deceased, in the hands of said executor to be administered. It is further considered and adjudged by the Court, that the plaintiffs do have and

recover of and from the other defendants in the action, to-wit: Thomas F. Fleming, Robert F. Fleming, Robert Adger and Jane Eliza, his wife, Arthur A. Burt and Clarissa A., his wife, and Thomas Parker and Margaret A., his wife, the possession of the premises above described, so by them unlawfully withheld from the plaintiffs, with the sum of two thousand, two hundred and sixty-nine dollars, sixty-eight cents, the damages accrued since the 16th day of March, 1855, exclusive and over and above the share of V. R. Allen, which has been deducted, leaving that balance, together with all costs of suit accrued since the 16th day of March, 1855, and have their writ of execution accordingly. Thereupon come the defendants, and applyto the Court to review its finding of facts and conclusions of law; which application being seen and heard, is by the Court overruled—to which decision the defendants except, and tender here to the Court their bill of exceptions, which is signed, sealed, and made part of the record herein. And at the same time the plaintiffs present their application for a review of the finding of facts by the Court, and also its conclusions of law, which being seen and heard is by the Court overruled, and the plaintiffs object and except, and tended to the Court their bill of exceptions, which is signed, sealed, and made part of the record herein. Therefore, both the plaintiffs and defendants respectively file their bonds and pray an appeal to the Supreme Court, which is granted to each party; and the bonds of the defendants being conditioned as the law requires, it is ordered that execution against them be suspended and superseded, until the case is disposed of in the Supreme Court.

By the bill of exceptions, it appears that the parties made and submitted to the Court the following agreement, that is to say—

"It is admitted by the parties to this suit, that at the death

of Charles C. Valle, deceased, who died in December, 1838, the land in the petition described, except the sixteenth section included in the survey of the Mine La Motte tract, was held and owned in fee by Chas. C. Valle aforesaid, Lewis F. Linn, and Evariste F. Pratte, in equal parts, each being seized of one-third thereof, subject to a mortgage for $67,050, executed in November, 1837, by Linn and Pratte, to secure the payment of that sum to Newberry and others, Commissioners; and continued to be so held at the date of the deeds to Chauncey, Lamb and Fleming, in 1839, which mortgage was paid off before the commencement of this suit. That the said Linn and Pratte were patentees of said land, the patent being dated March 25th, 1839, and being under a confirmation of same land by act of Congress of 25th of May, 1828. That on the 7th of November, 1837, Linn and Pratte conveyed to said C. C. Valle, ancestor of the plaintiffs, the one undivided third part of this land; and that there are seven surviving heirs of said Chas. C. Valle, of whom six, to-wit—Charles C. Valle, Louis B. Falle, Augustus E. Valle, Melanie M. Valle (now married to John Bogy), Emily Allen (the wife of Vermont Allen), and Mary LeClerc, (wife of Isadore LeClerc), are plaintiffs in this suit, and the other Francis L. Valle, is not a party to this action.

That the nett annual value of one-sixth of the whole Mine La Motte tract of land, exclusive of Sec. 16, T. 34 N., R. 7 E., and Frac. Sec. 16, T. 34 N., R. 6 E. is $900, and has been since 1847 and in that year.

That from the damages, if any, which may be found for plaintiffs, there shall be deducted the one-seventh of said annual value of one-sixth of said tract, from 1st June, 1853, to date, which allowance shall be in full of all demands in favor of defendants against Vermont Allen for rent of said tract since 1st June, 1853.

That Melanie Valle is the widow of Charles C. Valle, and the mother of the plaintiffs, her children, and is still alive.

That the defendants have been throughout in possession

of said tract, according to the deeds under which they claim the same. This agreement is for the purposes of this trial only.

Also that the parties admitted that the title to three fifty-sixths of the interest in the Mine La Motte tract, whereof Charles C. Valle, ancestor of plaintiffs, died seized, was divested out of his heirs prior to 1848, and vested in R. T. Brown and Francis Valle, by whom the same had been duly conveyed to defendants prior to commencement of this suit."

That Melanie Valle on 18th May, 1839, made three deeds, one to Thomas Fleming, one to Lemuel Lamb, and one to Elihu Chauncey. The deed to Thomas Fleming recited that the administrators of Charles C. Valle, deceased, had for $16,666 66⅔, by deed dated 24th April, 1839, conveyed to Thomas Fleming all the right, title, interest, claim and property of said Charles C. Valle, deceased, in and to the undivided sixth part of the Mine La Motte tract, &c.; and proceeded thus—"Now, in consideration of the premises, and for the further consideration of one dollar to me fully paid by the said Thomas Fleming, the receipt of which is hereby acknowledged, I, said Melanie Valle, widow of the said Chas. C. Valle, deceased, have granted, released and relinquished, and by these presents do grant, release and relinquish, unto the said Thomas Fleming, all my right of dower of, in and to the said one undivided sixth part of the said tract of land in the said deed mentioned and described. And I do hereby fully assent to, confirm, ratify and approve the said transfer of land, &c. by administrators as aforesaid, to the said Thomas Fleming, hereby vesting in the said Thomas Fleming my said right of dower of, in and to said land as fully and effectually, to all intents and purposes, as if I were a party to said deed for conveyance [above] mentioned."

The deeds to Lamb and Chauncey were of the same tenor, *mutatis mutandis*.

That on the 20th September, 1847, Melanie Valle made another deed to Thomas Fleming, by which it was witnessed,

there is a mortgage on said land: but Valle died before this arrangement could be could be concluded, and they ask for an order of Court for the sale of said Valle's interest in said Mine La Motte tract, or so much thereof as will be sufficient to liquidate his debts.

Thereupon the County Court of Madison County made an order on the same day, authorising and empowering the administrators to sell the whole or so much of said estate as should be sufficient to pay the debts of the deceased, at private sale, provided it be sold for not less than three-fourths of appraised value.

Under this order the administrators sold at private sale to Lemuel Lamb, Elihu Chauncey and Thomas Fleming one-half of the interest of Valle in said land, for $16,666⅔. At the same time Pratte and Linn sold each one-half of their respective thirds to the same parties for the same price. The deeds in this case were executed by Evariste F. Pratte, Lewis F. Linn, and the administrators of Valle, jointly. There were separate deeds to Lamb, Chauncey and Fleming, and they severally and respectively set forth that the said Linn, Pratt and administrators, for $16,666⅔, conveyed to Thomas Fleming, Lemuel Lamb and Elihu Chauncey, one-sixth of the said tract (making altogether one-half of the tract), for $50,000. Each deed recited the order by virtue of which the administrators of Valle assumed to act. No report was made to the Court of the sale thus made, except that in application made to the County Court in 1847, the administrators set forth that they have already by order of the Court made sale of one equal undivided sixth part of the Mine La Motte tract, which sale (as they say) has already been reported to the Court. This petition goes on then to state that there is still a large indebtedness, and they ask for an order of the sale of the remaining interest of Valle, which is a fraction less than one-sixth of the whole tract. This petition and the accompanying accounts were in all respects regular, and the Court at the

× The deeds made to Chauncey Lamb & Fleming and the defects of which forms the subject of this Controversy were the joint Deeds of Linn & wife Pratte and wife and the administrators of C C Valle and were straight forward warrantee deeds making no distinction in reference to the interests of the Grantors but the Grantors in Gross Convey so much of Mine La Motte to each of the grantees without any specification as to which share of the Grantors and to what extent in each it is to Come or be taken

November term, 1847, after due publication of the notice required by law, made an order of sale, according to which the administrators sold to Thos. Fleming. This sale was reported to the County Court, approved, and the administrators made a deed to said Fleming, by which, reciting the order of sale and the proceedings thereunder, they conveyed to him "all the interest which C. C. Valle had in the Mine La Motte tract, less three fifty-sixths." The deed previously recited that Valle's interest was one-sixth, less three fifty-sixths.

It was admitted that all the title of Elihu Chauncey and Lemuel Lamb in said tract of land, had before the commencement of this suit vested in defendants' ancestor, and that said ancestor died on 16th March, 1855.

The defendants offered to prove the matters and things set up in that portion of their amended answer included between brackets, and which had been stricken out by the Court, on motion of the plaintiffs. The plaintiffs objected to any such evidence. The Court excluded the same, and defendants excepted at the same. And this was all the testimony given or offered at the trial.

Upon this evidence the defendants prayed the Court to declare the law to be as follows:

1. There can be no recovery in this action by the plaintiffs: the deeds offered and read in evidence by the defendants being sufficient in law to divest the plaintiffs of all title to the land in controversy, as heirs of C. C. Valle.

2. There can be no recovery in this action, either as to the land, or back rents, or future rents, as to the one-third of the interest in said land which Melanie Valle was entitled to as dowress, and which was conveyed to Thomas Fleming.

3. There can be no recovery in this action as to the three fifty-sixths of the interest whereof said C. C. Valle died seized: said interest having passed to Brown and Valle, and from them to defendants.

4. There can be no recovery as to Sec. 16, T. 34 N., R. 7 E., or frac. Sec. 16, T. 34 N., R. 6 E.

5. There can be no recovery as to the one-half, less three fifty-sixths, of the interest of which said C. C. Valle died seized, that portion having vested in defendants' ancestor by deed dated February 10, 1848.

6. That in no event can there be a recovery as to any greater interest in land or rents than six-sevenths of one-eighteenth of the whole tract, or six-sevenths of one-sixth of the interest whereof said Valle died seized.

7. There can be no recovery of damages by way of back rents in this case, for any time prior to the commencement of this action.

The Court refused the first, second, third, sixth and seventh instructions, and gave the fourth and fifth. The defendants excepted to the refusal.

The plaintiffs asked the Court to declare the law to be as follows. and the Court so declared it, the defendants objecting and excepting at the time.

1. That the petition of the administrators of C. C. Valle, deceased, presented to the County Court of Madison County on 21st December, 1838, and the order of the County Court made thereon on the same day, being without notice or publication, are inefficient in law to authorize the execution by said administrators, as such, of the several deeds offered in evidence by the defendants of Chauncey, Lamb and Fleming of the 24th of April, 1839, and said deeds are ineffectual to convey any interest in the land of which C. C. Valle died seized.

2. That the two deeds read in evidence from Melanie Valle to Thomas Fleming afford no bar to the plaintiffs' right of recovery in this action.

3. That the only operative effect which said two deeds can have is to extinguish the right of action of said Melanie Valle to have her dower assigned to her, and said extinguish-

ment enures to those who own the fee simple title to the land upon which such right attaches.

4. That the deed from the Administrators of C. C. Valle to Thomas Fleming, dated 10th February, 1848, operates to convey to said Thomrs Fleming one undivided sixth of the Mine La Motte tract, less three fifty-sixths only.

5. That from the facts agreed to in connection with the deeds to Fleming, Chauncey and Lamb, of the 24th of April, 1839, as offered in evidence by the defendants, the Court is asked to declare, as a conclusion of law, that said deeds vested in said Lamb, Chauncey and Fleming each, one sixth part of the Mine La Motte tract and of the interest of Linn and E. T. Pratte who united in said deeds.

All of which the Court declared to be Law and announced the same as the principles of his decision; to which declaration and announcement defendants objected and excepted at the time.

The Court found the following facts, viz:

The Court finds the facts as agreed to in writing and filed in the cause.

The Court further finds from the evidence in the cause that the administrators of C. C. Valle, by the deed of February 10th, 1848, conveyed to Thomas Fleming one-half of the interest of which C. C. Valle died seized, less three fifty-sixth parts of the entire tract.

That the deed of Melanie Valle of 18th May, 1839, is a release of dower interest in one sixth of the Mine La Motte tract, it being one half the interest of which her husband died seized, and enures to the benefit of her children, who at the time of its excecution held the legal title.

The Court further finds that prior to the commencement of this suit the defendant, Thomas Fleming, had no notice of the plaintiffs' claim of title.

The Court further finds that Sec. 16 T. 34 N., R. 7 E. and Frac. Sec. 16, T. 34 N , R. 6 E., have been recovered of Thomas Fleming in his life time by paramount title.

The Court further finds that six-sevenths of the one sixth of the anual rents and profits of said land exclusive of the sixteenth section included in the survey, from the 10th May, 1852, the timeof the commencement of the suit, up to the 16th March, 1855, the date of the death of Thomas Fleming, as admitted by the parties in Court, is two thousand one hundred and ninety eight twelve one-hundredth dollars, and that the aggregate value of the rent of said six-sevenths of one-sixth from the 16th day of March, 1855, to date, the 27th September, 1858, is twenty-seven hundred and twenty three fifty-nine hundredth dollars.

That the share of Vermont Allen, in right of his wife in the rents from the 1st of June, 1853, to the 16th March, 1855, the time of the death of Thomas Fleming, is two hundred and twenty five sixty nine one-hundredth dollars and from the time of said death to date, September 27 1858, is four hundred and fifty-three ninety-one one-hundredth dollars.

The court further finds the monthly value of six sevenths of one sixth of the Mine La Motte tract of land, exclusive of the sixteenth section, as above stated, to be sixty four dollars and twenty-eight cents ($64 28-100) per month, subject to a deduction of Vermont Allen's share, as by the agreement.

Signed, H. HOUGH, Judge.

Upon the announcement of the aforegoing finding, defendants made a case containing all the evidence contained in the bill of exceptions, reference to which has heretofore been made, and prayed the Court to review its findings and its conclusions and declarations of law, for the following reasons:

1. Because the Court erroneously struck out the amended answer of defendants on plaintiffs motion.

2. Because the Court erroneously refused to allow defendants to file an additional answer so as to allow the admission or application of the evidence of the transfer to defendants of Melanie Valle's right of dower.

3. Because the Court erroneously refused to declare the law to be as prayed by the defendants.

4. Because the Court erroneously declared the law to be as prayed by the plaintiffs.

5. Because upon the case made and the evidence at the trial, the Court should have declared the law to be that the plaintiffs could not recover.

6. Because upon the case made and the evidence at the trial, the Court should have declared that the plaintiffs could not recover as to one third of the interest of which Charles C. Valle died seized, that interest being conveyed to them (defendants) by the widow of said C. C. Valle.

7. Because upon the case made and the evidence at the trial, the Court should have declared the law to be that the plaintiffs could only recover six-sevenths of two-thirds of one-sixth of the said Mine La Motte tract.

8. Because upon the case made and the evidence at the trial, the Court should have found the facts, and so declared the law to be, that the plaintiffs were only entitled to recover six-sevenths of one-third of one-sixth of the Mine La Motte tract.

9. That the Court should have declared the law to be that the deeds of the Administrators of C. C. Valle, dated 24th of April, 1839, were effectual and valid in law to vest in Fleming, Lamb and Chauncy the one-half of the interest in said tract of land, of which C. C. Valle died seized.

All of which motions the Court overruled, the defendants excepting at the time.

All the aforegoing matters appear by the bill of exception. The defendants appealed to this Court.

Valle's Heirs
vs
Fleming's Heirs
} In the Supreme Court.

In this Cause it is admitted and agreed that the cost of printing the Statement ~~in this~~ may be taxed as Costs in the Cause in this Court —

Jno W Stockle for Respts
Thos T. Gantt. for appellants.

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Valle's Heirs
vs
Fleming's Heirs

Agreement of parties
to tax the cost of printing
the record –

Filed 29 Oct. 1859.
Wm. S. Glanville
Cl.

OWENSBURGH SUTTER MASS

No Walle & others vs Fleming & others - Oct T. 1859

Additional Brief - by A Leonard

In this proceeding the question is not merely, whether the plaintiffs have a legal right to recover the land; but also whether the defendants have any equitable defence against the recovery

If the administrators sale is valid, that transaction defeats the plaintiffs supposed legal title; but if it is void for want of the notice required by law, yet having been made in fact, and the purchase money having been applied to pay off a mortgage upon the property, as well as other debts of the ancestor, equity will not permit the heir to recover the land without first refunding the purchaser ~~the~~ what he paid for it.

The court is referred to four cases, where this equity is expressly recognized and practically ~~enforced~~ applied, and ~~[illegible]~~ which are similar to the present case - one from Louisiana, where the Roman law is the ~~Dufour vs Camfranc~~ foundation of their jurisprudence - and three from States (Virginia - Kentucky & Texas) where the common law of England prevails

Dufour vs Camfranc 11 Mart (Louisiana) Rep. 610
Howard vs North 5 Texas Rep 302
McLaughlin's adm. vs Daniel 8 Dana (Kentucky) Rep. 182
Hudgin vs Hudgins adm. 6 Grattan (Virginia) Rep 320

All these sales were forced alienations of a partys property, in which the transactions were adjudged void either on account of ~~some~~ non conformity with the

with the law, or because there was no title in the party, whose supposed property was sold, yet as the purchase money was ~~[illegible]~~ applied to the satisfaction of debts that were a charge against the party's property, Equity ~~[illegible]~~ ~~[illegible]~~, in two of the cases where the proceedings were by petition & answer, moved with the law and the equity of the case, refused to allow the plaintiffs to recover without first refunding the purchase money; and in the other two cases, where legal and equitable relief was administered by separate systems of procedure, Equity gave the same relief substantially by ordering ~~[illegible]~~, the money to be repaid to the party out of the proceeds of a sale of the property which it decreed for that purpose

These cases are sufficient for our present purpose but if it be desirable to do so, it is an easy matter to go back and point out the principle of natural ~~[illegible]~~ justice, upon which the rule of equity law applied in all these cases rests, and to trace its practical application in the various cases to which the rule has been applied by the courts

There are some duties of benevolence that are recognized and enforced by the law in all civilized nations; and the famous maxim of the Roman law, that no man shall enrich himself at the expence of another, "Jure naturae aequum Est, neminem cum alterius detrimento et injuria "fieri locupletiorem" (Dig. Book 50 Tit 17- 206) embraces duties of this class

In the exposition of this rule it has been said that where there is no personal connection between the loser and

the gainer, the only connection that binds the ~~former~~ latter ~~to the latter~~ to the former is that the money lost by the one is converted to the use of the other, and that every one is conscious of wrong when an accident or error in this land hold of to make gain out of it and that this ~~feeling~~ consciousness of injustice, although different in degree is of the same kind with the injustice of robbing a man of his goods - (1 Kames Principles of Equity 140 - 146). It is to be remarked however that the civil law can only enforce this rule in the cases where the gain out of which the loss is to be made up, is certain in amount, and not a mere indefinite advantage (1 Kames Equity 153 - 154)

In the present ~~case~~ case all these circumstances co-exist - the money paid by the purchaser is lost to him through the error that has intervened and goes into the pockets of the heirs, if they are allowed to recover the land without refunding it, and the amount of the gain thus made by the heirs is the precise amount of the debts paid out of the proceeds of the sale, which otherwise would have exhausted their property to that extent

The substitution as it is called, which our law allows in the present and all similar cases is but the mode by which it enforces the rule of Equity to which we have referred - The right to be substituted in the place of the paid off creditor does not arise from contract, but springs up in all cases where the maxim to which we have referred is applicable; in other words, it is allowed in all cases where a party ought not to make a profit out of another's loss, and the proposed substitution will prevent it, without doing wrong to others - Kyner vs Kyner - 6 Watts (Penn) Rep. 223 - 225 - 1 Johns Chan. Rep 412 - 413 -

And it is no objection to this relief by substitution that the legal remedy is extinguished - Equity, after allowing the substitution, does not send the party to a court of law for relief, but grants it at once only confining itself to the same measure of justice that would have been meeted out to the original party by law -

Buchanan vs Clark. 10 Grattan (Vir.) R. 178 & cases there cited
Cottrells Appeals in Bowers Estate - 22 Penn. State Rep. 295

The following cases illustrate the extent to which American Equity law has already gone in the practical application of this rule of natural Equity, through the instrumentality of the doctrine of substitution

In Henshaw vs Frier 1 Bailey (S. C.) R. 311, a person, who had rendered services for the estate, under a contract with the executor, who had failed to pay and was insolvent, was substituted to the rights of the executor against the estate and allowed payment out of the assets

In Bentley vs Long 1 Strobh. (S. C) Rep. 50-51 one who had purchased at a Sheriffs sale & acquired nothing, because the subject matter sold, was not subject to sale, was substituted in the place of the execution creditor, whose debt was thereby paid

In Gaw vs Huffman 12 Grattan (Virginia) Rep. 629, an executor who had exhausted the personal estate in the payment of the debts, and then applied his own funds to that purpose was substituted in the place of the creditors

whose debts he had paid, and was allowed to charge in Equity, the real estate of the intestate in the hands of the heirs — these debts being a charge upon the real estate

In Gibson vs McCormick 10 Gill & Johns (Maryland) Rep. 66, where a person had purchased from a devisee, and afterwards the estate of the testator was sold for the payment of the debts, although the land was subject to sale for the payment of the debts of the testator yet the purchaser from the ~~[illegible]~~ devisee was entitled to the rights of the creditors, ~~[illegible]~~ whose debts had been paid by the money he had paid for the land

In Relchner vs Forney 29. Penn State Rep 47 a ward's interest in the proceeds of the sale of some land, was ~~[illegible]~~ secured by a recognizance — the guardian advanced the amount ~~of the~~ to his ward & was afterwards ~~[illegible]~~ subrogated to the lien of his ward under the recognizance

In Guasquet vs Robins 2 Louisiana An Rep. 408, a Sheriff condemned to pay the ~~amount~~ amount of an execution that he had neglected to execute, was substituted to all the rights of the execution creditor —

See also Braxton's Extors vs Harrison Extors 11 Grattan (Virginia) Rep. 48 & 49

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Sup. Ct. Oct. /59

No 54

Valle & others
Respondents
ap^t

Fleming & others
appellants

Additional Brief
by A Leonard
for Appellant

Filed 31 Oct. 1859.
Wm. S. Glanville
Cl.

[illegible]

CHARLES G. RAMSEY. A. S. MITCHELL.

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1859

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Nov 7. 1859

Valle's heirs v. Fleming's heirs

Assuming the deed from Vallette administrator in 1838 to be void, by reason of the failure of the administrator to comply with the requirement of the statute, as was held by this Court when the case was here before, the only question for our determination now, is whether the defence set up in the answer is a valid one in Equity.

The maxim of the common law "nemo debet locupletari ex alterius incommodo" is one of those general principles of natural equity which receive at once, without examination or discussion, the approbation of every cultivated & well regulated mind. The same maxim, expressed more fully, is found in the civil law: "Jure naturae aequum est, neminem cum alterius detrimento et injuria fieri locupletiorem." The exact application of this principle, the same essentially in each system, has however been more extensively & more definitely illustrated & enforced in the Roman law than it has been under the common law & Chancery system of English jurisprudence. The limits, within which it will be held applicable, under our system of equity jurisprudence, are not so well settled as they

seems to be under the Roman law, & Spanish law
& under that modification of ~~these systems~~ the civil law which
prevails in Scotland.

To what extent this maxim has been practically adopted in the English & American equity law, is a question which was very carefully & elaborately considered & discussed by Judge Story in a case very analogous to the present. In the case of Bright v. Boyd, (1 Story R. 478) the real estate of a testator was sold ~~to pay the debts~~ by the administrator with the will annexed to pay the debts of the deceased. The purchaser brought its full value & the purchaser supposed himself to have obtained a good title, & accordingly made large & expensive improvements on the lots. It turned out that the administrator had not complied with the statute, & the sale was held bad & no title passed. The devisee sued in ejectment & recovered upon his legal title, which had ~~not been~~ become had not been divested by

this invalid sale, & the purchaser ~~brought~~ & occupant brought his bill to compel the devisee before he ~~was~~ should be permitted to take possession under his judgment in ejectment, to pay for the improvements & for money advanced in buying up outstanding claims.

Judge Story hesitated. The case was ~~tried~~ heard in 1841. In 1835 when his Treatise on Equity Jurisprudence was first published, Judge Story had intimated that such cases were beyond the reach of our Equity Courts, except ~~in cases~~ where the party seeking to recover the estate required & called for aid from a Court of Equity, or unless there was some fraud; but that, where the party could recover the estate at law, a Court of equity could not, ~~without~~ unless there was some fraud, relieve the purchaser. 2 Story Eq: S. 1238. Chancellor Walworth in Putnam v. Ritchie (6 Paige 390) had expressed the same opinion, although he admitted that after a careful examination of English & American authorities, he had found no case where the point had been decided either way. Judge Story, strongly impressed as he was with the natural equity of the plaintiff's claim, declared himself unwilling to lead the way in making such

a precedent as Chancellor Walworth had been unable to find. He examined the Roman law, the Spanish law & the Scotch law, & in all these systems he found the question left beyond dispute, after a postponement of the case & a mature deliberation he came to the conclusion that the plaintiff was entitled to the full value of his improvement. His language in his final opinion is emphatic: "I wish, in coming to this conclusion, to be distinctly understood as affirming & maintaining the broad doctrine, as a doctrine of equity, that so far as an innocent purchaser for a valuable consideration without notice of any infirmity in his title, has by his improvements & meliorations, added to the permanent value of the estate, he is entitled to a full remuneration, & that such increase of value is a lien & charge on the estate, which the absolute owner is bound to discharge, before he is to be restored to his original right in the land. This is the clear

result of the Roman law; & it has the most persuasive equity, & I may add, common sense & common justice, for its foundation." 2 Story R. 607.

This case of Bright v. Boyd, is not, it is true ~~the case~~ in all respects the same with the one now under consideration. There is a difference between the two cases & perhaps an essential one - but the only point of difference, ~~there is~~, serves to place the case we have under consideration on less debatable ground. In that case, as in this, the sale & purchase was in good faith on both sides, but turned out to be void by reason of a non compliance with provision of the statute law; but in that case, the ~~the~~ occupant was plaintiff in equity & desired ~~payment~~ compensation for improvements which he had in good faith made; in this case, the defendant asks for the purchase money, which has become, as it were incorporated in the land, by paying off a lien on it, which the true owner was bound to pay. The owner insists on having the land & the money both. Now by the common law, the maxim was, "cujus est solum, ejus est usque ad coelum"; & there was at least some plausibility, though no substantial equity, in the claim of the owner to the improvements as well as the land. It might have been urged,

that the true owner, if ignorant of his title & not aware of the improvements which the actual occupant was putting on the land, ought not to pay for improvements which he had not directly or indirectly authorized, & which might not at all suit his wants or his fancy. But such an argument could not be used in the case now before us. The purchase money has gone to extinguish a mortgage which the owner was bound to extinguish, before he could get the land. It was not a matter of taste or fancy. The debt was a lien on the land & that lien could only be removed by paying off the debt. There is no escape from the equity here, unless the plea should avail that the defendant was a stranger, a volunteer, one who paid a debt, without being asked, & who therefore upon legal principles should not by such an act of folly be allowed to make himself a creditor of another person's debts. We will examine this plea presently - In the case of Bright v. Boyd, Judge Story said:

"There is still another broad principle of the Roman law which is applicable to the present

case. It is, that where a bona fide purchaser a purchaser of real estate pays money to discharge any existing encumbrance or charge upon the estate, having no notice of any infirmity in his title, he is entitled to be repaid the amount of such payment by the true owner seeking to recover the estate from him. Now in the present case it cannot be overlooked, that the lands of the testator, now in controversy, were sold for the payment of his just debts, under the authority of law, although the authority was not regularly executed by the administrator in his mode of sale, by a non compliance with one of the prerequisites. It was not therefore in a just sense a tortious sale; & the proceeds thereof, paid by the purchaser, have gone to discharge the debts of the testator, & so far, the lands in the hands of the Defendant have been relieved from a charge to which they were liable by law. So that, he is now enjoying the lands, free from a charge which in conscience & equity, he & he only & not the purchaser, ought to bear. To the extent of the charge, from which he has been thus relieved by the purchaser, it seems to me, that the Plaintiff

claiming under the purchaser, is entitled to reimbursement, in order to avoid a circuity of action, to get back the money from the administrator, & thus subject the lands to a new sale, or at least, in equity, to the old charge. I confess myself to be unwilling to resort to such a circuity, in order to do justice, where upon the principles of equity the merits of the case can be reached by affecting the lands directly with a charge, to which they are ex aequo et bono in the hands of the present defendant, clearly liable."

I have transcribed this strong & decided view of Judge Story in the case of Bright v Boyd, because, ~~coming from so distinguished a jurist,~~ & meeting in every respect the question we have to decide here & applying mutatis mutandis to the present facts of this case, we shall, at least, be relieved from any imputation of rashness or innovation, if we follow in the ~~footsteps of~~ precedent made by so distinguished a jurist. And now Judge Story's ~~decision~~ doctrine in Bright

v. Boyd has been made statute law in Missouri, whatever doubts may have existed hitherto of its right to a place among the ~~upon its existence as a general~~ principles of equity law. ~~have been settled here~~ Rev. Co. 1855 - p. 694.

But the principle, ~~as a general principle of equity law~~, apart from its ~~adoption~~ undoubted & undeniable prevalence in the Civil law & the codes which have grown out of this system of jurisprudence throughout Continental Europe, does not as an established principle of American Equity law rest upon the single authority of Judge Story. In Hudgins v. Hudgins' ex^r. (6 Grattan 320,) the Court of Appeals of Virginia applied the same principle to a case essentially like the present. In that case, there had been a proceeding against an executor to subject the land of his testator to the payment of a debt, & a decree was made for a sale of the land, & commissioners were appointed to make the sale & convey the land. The title ~~under~~ acquired under the sale of the commissioners was held to be void, against the devisees under the will, but, as the ~~mon~~ purchase money had been applied to the payment of the testator's debts which by the will were a lien on the land, the Court would not permit the devisees to disaffirm the sale without paying back the purchase money. The

equity in this case was administered by substituting the purchaser to the right of the creditor.

It is immaterial under what form the equity in such cases is administered; whether under the name of compensation, as it was done in the case of Bright v. Boyd, or under the name of substitution, as in the case of Hughes v. Hudgens, or as it is sometimes more conveniently effected, by reviving the incumbrance which the purchase money has extinguished & permitting it to be used as a shield against a recovery at law. Pelts v. Clarke 5 Peters 482.

In the case of Howard v. North (5 Texas 315) the principle was applied to sheriff's sales, there, the sale & deed were held totally void, but the Court would not allow the debtor or defendant in the execution to get back the land from the purchaser at the void sale, without reimbursing him for the amount paid as purchase money, & which went to discharge the judgment which was a lien on the land. The doctrine of substitution was resorted to by the Court to effect the object in view here, but the amount of it was that the purchaser was not compelled to restore to

property until equity was done to him. This principle, thus applied to sheriffs sales is recognized & acted on in Kentucky in numerous cases, & is there applied, not only to cases where the conveyance is ineffective, but to cases where the title of the defendant in the execution fails. The case of McLoughlin's ~~heirs~~ adm'r. v. Daniel (8 Dana 182) is a case of this kind. The courts of Kentucky & South Carolina (Bentley v. Long 1 Strobh. Eq: R. 43) will give a purchaser at sheriffs sale who loses his property by paramount title, a redress against the defendant in the execution for the amount paid on his purchase, which has gone to discharge the defendants debts, by substituting him in the place of the creditor. ~~In~~ In our State, where the doctrine of caveat emptor has been maintained with ~~applies in all its~~ strictness in its application to judicial sales, it may be that the courts would not be at liberty to go to the extent of the Kentucky & South Carolina cases; — though recent legislation here, as well as recent decisions of this Court ~~tend to~~ show the tendency ~~of the~~ to the same equitable doctrines. Rev. Co. '55 p. 967. Maguire v. Marks 28 M. R. 196. Heath v. Daggett 21 M. R. 69. In these cases of failure of title in the defendant in the execution & consequent failure of title in the purchaser at the sheriff's sale,

the Kentucky Court base the equitable right of the purchaser, not upon his knowledge or ignorance of the condition of the title, but upon the ground that the purchaser has discharged a judgment against the estate a debtor for which the one or the other stood chargeable, by a purchase of property made under the process of the law, & therefore has the equitable right to be reimbursed out of the estate or property of the debtor. The purchaser, in such cases, might be called a volunteer or a stranger, with as much propriety as the purchaser here could be, for he got no title either because the executor debtor has none, or because the process used to convey transfer it was illegal & void. The case of Pelter & others v. Clark (5 Peters) although unlike the present in the essential particular that the sale in that case was a valid one, shows that a purchaser, under the circumstances of this case could hardly be regarded as a volunteer, so as to exclude him from the right of substitution or the right to use a mortgage which his money had satisfied as a protection pro tanto against the ejectment.

In Louisiana, the Courts have not hesitated, but disposed of this question as one too plain for argument under the laws of that State. In Dufour v. Lampure (11 Martin 615) there was an irregular sale, just as there was in this case, & the title of the purchaser failed, not by reason of any want of title in the person from whom he supposed himself to be buying, but because of some informality in the conveyance or the proceedings which led to it. The Court say in a few words: "Nothing could be more unjust than to permit a debtor to recover back his property, because the sale was irregular, & yet allow him to profit by that irregular sale, to discharge his debts."

This is all indeed which could be or need be said upon the subject. "Nothing could be more unjust" — we may repeat — "than to permit a person to sell a tract of land, & take the purchase money & then, because the sale happens to be informally void, to allow him, a which is the same thing, his heir, to recover back the land & keep the money." Any code of law, which would tolerate this, would seem to be liable to the reproach of being a very imperfect one or a very inequitable one. We think,

that upon well established principles of equity law, the owner of the land should, if he wishes to get it back, repay the purchase money which he has received or which he will receive, if he gets the land. This may be done upon the compensation doctrine of Courts of equity, with which, as it is settled on all hands it is not inconsistent, if we regard the ~~conduct~~ claim of this owner under such circumstances, as the Roman law treated it, as a case of fraud or ill faith. But whether this equity be administered under the name of compensation, or by substituting the purchaser in the place of the creditors whose debts he has paid, or by giving him the benefit of the mortgage which his money has paid off, is not material. The answer put in by the defendant should not have been stricken out, & in order that the answer may be reinstated & the case may be tried upon these equitable principles, ~~[illegible]~~ the judgment is reversed & the case will be remanded.

W. B. Napton

Judge Ewing
concurs.

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Valle's Lessee

v.

Flemings' Lessee

Opinion of

the Court

Reversed & Remanded.

Napton

Filed 14 Decr. 1859
Bpmd Glanville
ck.

X X

Ballis Heirs
vs
Fleming &al

Opinion of Scott Judge

This was an action of ejectment brought by the heirs of C.C. Valle against the defendants to recover the possession of land of which their ancestor died seized: The land in controversy was sold by the Administration of Ballis estate, under a proceeding for the sale of real estate for the payment of debts: The land was mortgaged for the security of the debt for the payment of which it was sold: The defendants became the purchasers of the land for a large sum but on account of the irregularity of the proceeding had for the sale of it, no title passed to them by the deed of the administration: In this suit against the defendants to recover possession of the land they set up these facts in an answer and pray that they may be subrogated to the rights of the creditor for whose benefit the proceedings were taken to have the land sold, & whose debt was satisfied by both the money paid by them:

I am not aware of any principle on which the defence set up by the defendants can be sustained. Cases similar to that under consideration have frequently occurred: If policy such as is sought here had been warranted by law instances of it would have been numerous, as we must be satisfied from our observation that like cases are of frequent occurrence: The magnitude of the sum involved, may startle, but it cannot affect the law: The distinction between powers and trusts or estates is a broad one. The administrator by our law is vested with no title to the land of his intestate. On his death it descends to his heirs. The administrator has nothing but a power: and

~~and~~ if he would affect the land that power must be executed in pursuance to the terms of the statute by which it is conferred: There is no difference between this case and that of a sale by a sheriff. If a sheriffs deed proves invalid or ineffectual to convey a title I know no instance in which a purchaser under it has been relieved. But how far is this new equity to be carried? The cases cited would lead us to grant it on a failure of title to property purchased at a sheriffs sale. Is it to be granted, when there is no title by reason of irregularities in the proceedings to condemn the land or to a defect in the instrument of conveyance and to a failure of title to property purchased at a sheriffs ~~sale~~ or administrators sale. The sanctioning of this defense may work changes in our system which no one can foresee. Certainly it will be the means of giving relief in a great many cases in which it has been the sense of the profession, that no relief was afforded by the law. Not that they were insensible to the hardship of particular cases, but because they knew that the hardship of particular cases was compensated by the advantages resulting from fixed ~~rules~~ general principles. No man is wiser than the law. And miserable is that system of jurisprudence under which the rights of litigants depend on the notions of right or wrong entertained by any man or set of men. In the old books there is a great deal of learning and many cases in which the question was involved whether a devise to an executor for the payment of debts was an estate in the land ~~to him~~ or a mere power to sell. If this doctrine of subrogation

had any application in cases of a mere power to sell how useless would have been much of that learning: If the purchaser under the power was subrogated to the rights of the creditors the motive to litigation in many cases would have been taken away, and the distinction between powers & trusts would ~~in many cases~~ have been measurably broken down.

The defendants are volunteers and strangers in relation to the plaintiffs: No man can make another his debtor without his consent. Nor can a man pay a debt of another without his authority and claim it of him: This is an important principle ~~[illegible]~~ we ought to be ~~[illegible]~~ preserved & it is one which has had its influence in all cases in which it has been involved: In my opinion the judgment ought to be affirmed

J. W. Scott

Vallis Haen

vs

Fleming Hal

Opinion of
Scott J.

Filed 14 Decr. 1859.
Wm. S. Glanville Clk.

Charles C. Valle & others, appellants } Appeal from Madison Circuit Comt.
against
Thomas Fleming & others respondents } The petition in this Cause set forth that

the plaintiffs below, now appellants, were entitled to Six Sevenths of one third of the La Motte tract of land less 3/56 - That Defendants were in possession &c and concluded with prayer for judgment.

The answer sets up title in Thomas Fleming, alleging that he purchased said real Estate from the proprietors and that the purchase money has been fully paid for the portion purchased from administrators of C. C. Vallé, and part applied to the payment of his debts, and the balance ~~remained in the~~ distributed among his heirs.

At the trial plaintiffs showed that six of their number were of the children of C. C. Valle deceased and showed title in said C. C. Valle by deed from Linn & Pratte to C. C. Valle

Defendants showed that after the purchase by said C. C. Vallé of said land, and before Completing the payment therefor, C. C. Vallé died intestate not leaving sufficient personal assets to complete the payment for said land. That Pratte & St. Gemme were appointed his admrs. That they presented to the County Comt of Madison County at the December Term 1838 a petition setting forth the above stated facts, accompanied by a list of the debts due by their intestate and an inventory of his personal property, verified by affidavit. They further stated that the whole tract was subject to a mortgage, which was liable to foreclosure in February 1839. That all of the next of kin of the decedent had been consulted & concurred in the prayer of the admrs that the interest of the said C. C. Valle in said tract or part thereof should be sold at private sale. The administrators requested the Comt to ascertain before making the order, the sentiments of the representatives of Vallé touching said order of private sale.

The Comt upon this petition ordered the administra

to sell at private sale for not less than 3/4 of its appraised value the

The Court at the same term (Dec. 1838) appointed appraisers, who made the customary affidavit & appraised the whole tract at $100,000.

The administrators sold the half of Valle's interest (viz 1/6 of the whole tract) for $16,666.66⅔, being exactly the appraised value. L. F. Linn, and Pratt, adm^rs of Valle who had each one third of said tract, at the same sold to the same purchasers, a similar interest for the same price.

Mrs Melanie Valle widow of C. C. Valle & mother & natural guardian of all the plaintiffs who are heirs of C. C. Valle at the same time relinquished her dower in the premises sold.

The deeds for the interest so sold were executed in 1839. When the report of the administrators was first made to the County Court, does not appear. When the subsequent administration was appointed, and another application was made for an order to sell the remaining land of the deceased the proceedings of the former administrators under the above mentioned order ~~were recited~~ and the report of those proceedings were referred to as having been made and the Court so treated them. At the May term 1843 there is a report of the proceedings under the order of December 1838.

Sometime ~~in 1843~~ after December 1838. Valle and Robert T. Brown filed a bill in Chancery setting out that they were entitled to 3/56 of the Mine La Motte tract as against C. C. Valle. That they were to trace the land or the money for which it sold. That one half of C. C. Valle's interest was sold, but no part of the money paid to them - and claiming to trace 3/56 set off to them ~~under~~ out of the remaining interest which was in Valle's heirs. They recited the proceedings under the order of sale of Dec. 1838 above mentioned; and the widow, heirs & administrators of Valle were made

parties to the pnt.

These Chancery suits appear to have been regularly conducted to a conclusion and resulted in a decree in each case in favor of complainant.

R. T. Brown was adjudged to have 1/28 of the whole tract, or about 1000 arpens to be taken from the part of the heirs of C. C. Vallé. a satisfaction in money out of the proceeds of the first sale.

Francis Valle had a decree in like manner for 1/56 of said tract.

Afterwards St Gemme died, and letters were granted to E Piatt, surviving adm^r. of & to Melanie Vallé, widow of the deceased C. C. Vallé & mother of the heirs of C. C. Vallé.

In 1847 a petition was filed by E Piatt & Melanie Vallé, adm^rs., alleging deficiency of assets, reciting former order of sale & proceedings thereunder, and asking for an order for the sale of the remaining interest of C. C. Vallé in the tract.

The Court ordered publication to be made - & upon proof of this being made, granted an order of public or private sale - if sold at private sale then for not less than 3/4 of appraised value &c.

The land was appraised, and was sold to Thomas Fleming for precisely it appraised value. Report was made and approved & the adm^rs were ordered to make a deed conveying to the purchaser all the right title & interest which the said C. C Vallé had in the land. A deed was made in conformity with this order.

(See page 60 of the record) On the trial it was admitted that Thomas Fleming was the owner of all the title to the land in controversy that passed by virtue of the administrators deed, permitted to be read in evidence, and of all the title * which was not vested in the heirs of C. C. Vallé deceased.

* Corrected according to information received from Mr Fleming April 7th 1854 J. T. Gantt

There was some evidence showing acquiescence &c of the heirs in the sale by the administrator in 1839 under the order of 1838 - and evidence that the money paid by Fleming

went to discharge the encumbrances and debts of C. C. Valle.

The Court upon the evidence made the following finding. "The Court finds from the evidence that a certain C. C. Valle who departed this life in the year 1838, was at the time of his death the owner of the undivided third part of the Mine La Motte tract. That plaintiffs are a part of his heirs. That said C. C. Valle was considerably indebted. That a petition was filed by his administrator E. F. Pratte & B. St. Gemme, praying for the sale of part of his lands for the payment of his debts. Order was made. That by virtue of said proceedings, said administrator did sell one half of the interest of said Charles C. Valle in the Mine La Motte tract, at his death. Afterwards St. Gemme died & after his death the clerk of the Court, Court in vacation granted letters to E. F. Pratte and Melanie Valle dated 19th January, 1844. In the year 1847 said E. F. Pratte & Melanie Valle filed their petition praying the Court to decree from sale the slaves & personal property of decedent & for an order to sell the land. Whereupon the Court ordered the sale of the real Estate of said Valle for the purpose of paying his debts: and that said administrator did sell to Thomas Fleming one of the defendants, in this suit, the interest of their intestate in the mine La Motte tract of land and executed to him a deed therefor: & that the said Fleming had before the commencement of this suit acquired by purchase the interest of Charles C. Valle disposed of at the first mentioned sale. That R. F. Fleming & Thos. F. Fleming were at the commencement of the suit in possession of the tract holding & claiming under Thos. Fleming.

That the annual value of the tract was $2750 That the money for which the land was sold at the sale aforesaid had been paid. That part of it was applied to the payment of the debts of Valle, and the remainder came to the hands of M. Valle, admx. That the said

non County Court had jurisdiction of the subject matter about which said proceedings were had and did exercise jurisdiction as aforesaid. That Vermont Allen & Charles C. Valle two of the plaintiffs took a lease in 1857. of Thos Fleming one of the defendants to work in Mine La Motte for the year, which lease expired before the commencement of this suit. And thereupon the Court declared the law to be that the plaintiffs could not recover.

The plaintiffs made a case embracing the evidence above set forth and asked the Court to make a different finding, which the Court refused & plaintiffs excepted. Plaintiffs also asked the Court to declare the law to be as follows:

1°. That the proceedings of the County Court of Madison County of Dec. Term 1838 were without jurisdiction & void.

2°. That the several deeds read in evidence by the defendants from the administrators of C. C. Valle were void & passed no title to the purchasers.

3°. That upon the evidence & facts admitted by the pleadings the plaintiffs are entitled to recover

4°. That the record books of the County Court read in evidence by the plaintiffs not showing on the face of the proceedings by what authority the special term of the Court convened, it must be presumed that the term was held without any legal authority.

Which were refused and plaintiffs duly excepted.

C.C. Valle & others
v
Thos Fleming & others
Statement of Case.
Made by J.J. Gantt
for respondents.

Judge Baxter

Th. T. Gantt esq:

Th. T. Gantt
Th. Tarlton Gantt

T. T. Gantt Esq:

Brief for Appellants -

Oct. Term 1859.

T. T. Gantt

1859.

IN THE SUPREME COURT

OF THE STATE OF MISSOURI.

OCTOBER TERM, 1859.

VALLES HEIRS
v.
FLEMING'S HEIRS,

From the statement of the case, it will be seen that there are three grounds of defence insisted upon by the appellants, one of which, if tenable, disposes of the whole claim of the plaintiffs, viz., the assertion of the validity of the deed made by the administrators of Vallé in 1839; another of which, viz., the claim to subrogate the defendants as purchasers for value in the place of the mortgagees of the Mine la Motte tract; which may be a partial or complete defence according to circumstances; and the third of which, viz., the claim to have the benefit of the purchase of the interest of the dowress by Thos. Fleming, is at best only partial.

These grounds of defence will be considered in the order in which they have been named.

It appears that, at the time of C. C. Vallé's death, he was the owner of one-third of the Mine la Motte tract of land, subject to a mortgage. He was the owner of an equity of redemption. He was also in the position of a person who has purchased real estate, but dies before completing the payment of it. He did

not devise this estate, nor provide by will for the completion of the payment, nor for the redemption of the land. His administrators, by petition, showed to the court the embarrassed, involved condition of his estate, the deficiency of the assets, and the benefit which would accrue to the estate from selling the equity of redemption, or the right and interest of the decedent in the mortgaged premises. All these things appear from the petition of the administrators. Thereupon the County Court made an order for the sale of the interest of decedent in this tract. This order was not made under § 8 and following of the 3d article of the act concerning administration, (Rev. Co. 1835, p. 52,) but under sections 3 and 7 of the same article (p. 51).

It so happened that the same person who purchased the interest of decedent in this land, bought also from the other owners at the same time a corresponding interest, on the same terms and at the same price. This fact is not otherwise of moment than as demonstrating the good faith, full value and fairness of intention which accompanied this transaction throughout. The administrators made a deed to the purchasers and received the money.

There is no pretence that this money was applied to any other than legitimate purposes by the administrators. There is no suggestion that it was used for any other end than the exoneration of the estate of Vallé from obligations, of all which his heirs have had the full benefit. But at the end of fourteen years it is suggested by these heirs that some of the formalities required by law in such cases were disregarded by the administrators, and on this ground alone they claim (without any compensation or allowance of any kind) to have the land for which the purchasers paid their money.

The necessity of a substantial compliance with the requirements of the law is not denied. Unless the defendant's ancestor has a title under the law, this court cannot give him the benefit of his purchase and payment, however strongly his case may appeal to its sense of justice. But if the law, construed not captiously or casuistically, but liberally and fairly, is seen

to embrace the present case, it is conceived that every court will with pleasure so administer it as to prevent the perpetration of such monstrous injustice under legal forms.

When this case was before this court on a former occasion, (19 Mo. 454,) it was determined almost without reference to sections 3 and 7 of art. 3 of the act concerning administration. (Rev. Co. 1835, p. 51.) It is true that these sections were alluded to in the argument, and also in the decision; but the main reliance of the defendants on that occasion being reposed on another portion of the statute, and the attention of the court being mainly directed to that other portion, the present point may be regarded as not having yet received full consideration from this court. In any event it would not be indecorous to call the attention of the court to this matter anew, for the case has not yet passed into *rem judicatam*, there being no final judgment in the court of last resort. This being premised, let us examine whether there was enough before the County Court of Madison County to warrant that inferior tribunal in making the order dated 21st December, 1838, which was the basis of the action of the administrators of Vallé in 1839. If that order was warranted by law, then the deed made in April, 1839, cannot be impeached, and the title of defendants is valid.

The provisions of the second, third, sixth and seventh sections of article 3d (Rev. Co. 1835, p. 51) are in the following words:

"§ 2. If any person die, having purchased real estate, and shall not have completed the payment, nor devised such estate, nor provided for the payment by will, and the completion of such payment would be beneficial to the estate and not injurious to creditors, the executor or administrator may, by order of the county court, complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

"§ 3. If the court believe that after the payment of the debts there will not be sufficient assets to pay for such real estate, the court may order the executor or administrator to sell all the right, title and interest of the deceased therein.

* * * * * * *

"§ 6. If any person die having mortgaged any real estate, or pledged any personal property, or owning any equity of redemption, and shall not have devised the same, or provided for the redemption of the same, by will, the county court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal estate, if it would be beneficial to the estate and not injurious to the creditors.

"§ 7. If such redemption would injure the estate or creditors, or there would not be assets to redeem such estate after paying the debts, the court shall order all the right, title and interest of the estate to such property to be sold at public sale."

It is conceived that *all* the circumstances necessary for authorizing the court to make *either* order, existed in the case presented by Vallé's administrators. These circumstances mostly appear expressly, but the rest of them are necessary implications from what does so appear. For it appears distinctly, that Vallé was dead having purchased real estate the payment for which was not completed (§ 2). He was dead intestate owning an equity of redemption in real estate (§ 6). It was made to appear to the court that the estate was greatly indebted and embarrassed, and that to complete the payment or pay off the mortgage would injure the estate. It is necessarily inferable that the court was of this opinion; and also, that after the payment of the debts there would not be assets sufficient to complete the payment for the real estate. That such *was* the fact we afterwards see in 1848, when it was necessary, notwithstanding what had been done in 1838–9, to resort to the remaining real estate of Vallé to pay his remaining debts. It is every way proper and admissible, when we see that the court had before it the means of coming to the conclusion indicated by its order, and without coming to which its order would be erroneous, to infer that the court *did* in fact come to the conclusion to which the evidence before it pointed, and which its own action has indicated.

The case, then, stands thus:—Upon Vallé's death, his administrators laid before the county court a statement of his affairs and asked for an order of sale of his real estate. The facts disclosed by the statement warranted an order of sale under the 3d or 7th section of article 3d (p. 51). The court made an order which is valid according to those sections, and invalid if respect be had merely to section 8 and following. Under this order the administrators proceeded to act; and it is not pretended, that, if we start with the admission that the order is good, any thing occurred in executing it which is deserving of animadversion.

Let it be conceded for the sake of the argument, that in making the order the judges of the county court supposed that they were acting under sections 8 and following of the 3d art. (p. 52.) Let it be conceded in like manner that this was the view of the law taken by the administrators. It is submitted that any thing more foreign to the merits of the action of the court can scarcely be imagined. It would be intolerable if any one were at liberty to look into the motives of the judges composing a court, or even into the logical or illogical process by which a correct conclusion was recommended to their minds. The only proper inquiry respecting the court's action is whether it conforms to, and is warranted by, *the law*. The *recital* of an illogical or even a corrupt motive would not impair a record as to innocent parties if there was enough relevant matter on the record to justify the action of the court. And if upon the whole of the record enough to justify this action *does* appear; and if we can see that an honest and learned man would, upon the presentment of the same facts, have been at liberty to come, for good reasons, to the conclusions for which bad reasons are given,—the record must stand.

The case at bar is much stronger than this. We are not obliged to negative any statement which the proceedings contain in order to vindicate the conclusion at which the court arrived. We only require to lay aside an assumption that both the administrators and the court *contemplated* and *supposed* that they were acting under sections 8 and following, instead of the earlier sections of the same article; and this assumption

is wholly untenable. In the first place, there is no averment in the proceedings of such being the impression of the judges; and in the second, the case was not one in which any proceedings under § 8 and following *could* have been applicable.

For by section 23 it will be seen, that, by the sale contemplated by sections 8 and following, the purchaser obtains all the right, title and interest of the deceased "discharged from all liability of his debts." It follows that land subject to a mortgage could not be sold under these provisions: for the only way of getting rid of mortgage liens must be found either in paying them in full, or foreclosing the mortgage. But this land was subject to a mortgage; therefore it could not be sold under sections 8 and following. Neither could land purchased by the decedent, but not paid for, be sold under these sections: for it might very well be that the portion unpaid far exceeded the portion paid, of the purchase money. Even if the purchaser had received a deed for the land purchased, there being no mortgage, but a recital of the fact that the purchase was not completed (which is tantamount to a lien, sometimes called an equitable mortgage); or, if this fact be in any other way notorious, the vendor has a lien on the property in the hands of the vendee, or a purchaser with notice, for the unpaid portion of its value. It follows, then, that in neither of the cases provided for in sections 3 and 7 of article 3 could a sale be had under sections 8 and following; and that the present case comes necessarily within those referred to in sections 3 and 7.

2. So far, the case has been argued on the assumption that the deeds of 1839 made by the administrators of Vallé can be upheld. If they can be supported, there is an end of the case of the plaintiffs below, now respondents. The second ground of defence takes for its foundation the entire invalidity of those deeds. This defence is disclosed in the supplemental answer of defendants, which was, on motion of the plaintiffs, struck out by the court. In this answer the defendants ask to be subrogated as mortgagees under the mortgage which was paid off with their money, when they supposed themselves to have purchased the mortgagor's interest in the land, if the court should be of

opinion that the deeds they took are inoperative to convey the decedent's interest. They set up that the money paid for the interest sold and conveyed by the administrators of Vallé in 1839 was applied *by the purchasers* towards the satisfaction of a mortagage upon the interest of said Vallé. That if the interest of Vallé passed by the administrators' deeds, then the money paid belonged to Vallé's estate and the mortgage was extinguished; but if nothing passed by those deeds, the money so paid remained theirs, the purchasers' (Chauncey, Lamb and Fleming), and they must be treated as assignees of the mortgage; Fleming, to whom Lamb and Chauncey assigned their interests, being the ultimate party interested as assignee. The answer shows that the administrators came before the County Court alleging the debts of the decedent and the mortgaged condition of his property, the purpose of the decedent, interrupted by death, to sell this property to relieve himself from embarrassment—the order of the Court for the sale of part of decedent's interest in the land—the sale of that interest accordingly to defendant's ancestor and vendors—the anxiety of the purchasers to have the money thus raised applied to the exoneration of the land from this mortgage and its actual application accordingly—the making of the deeds by the administrators of Vallé to Fleming, Chauncey and Lamb—the aquisition by Fleming of all the interest thus passed to Chauncey and Lamb;—and defendants claim that unless their ancestors and his vendors have the land by derivation of title from the administrators of Vallé, they are by every title the purchasers for value of the mortgage which was paid off to the mortgagee with their money.

In opposition to this view, the heirs of Vallé, who claim that the defendants failed to get the land by reason of the omission of certain formalities, the neglect of which is in no way attributable to the defendants, refuse to give them any credit for having paid off an encumbrance on land of which they say they are the proprietors. The purchasers claim that they, being in possession by reason of having paid off a mortgage on the land, shall be treated as mortgagees at least in equity, and allowed to charge the heirs of Vallé with the mortgage debt, allowing them

for the rents and profits of the property. The heirs of Vallé claim that the purchasers shall give up the land with its back rents, and have no credit for the sums they paid to redeem it from the mortgage. Of this money, the heirs, if the equity of redemption has not been sold, have received full benefit; but their claim is that the land exonerated from the mortgage by means of defendants' money shall be delivered up to them, the heirs, with damages. It is not easy to imagine a case more devoid, on the part of the plaintiffs, of all trace of natural equity and fair dealing. But the question for us to consider is whether the principles of law and equity, as administered by courts of justice, will sanction this monstrous proceeding.

It is believed that the answer to this enquiry may be safely declared to be in the negative, both reason and authority concurring in this conclusion.

The following legal and equitable principles are maintainable by the highest authority to which we can refer:

"1. Not even a reconveyance will extinguish a mortgage where the debt is not actually paid by the mortgagor, but an unproductive security taken therefor." (Teed v. Carruthers, 2 Younge & Collyer's Ch. Rep. 31, 39, 40.)

"2. Equity will revive a mortgage the discharge of which has been purchased by fraud, accident or mistake." (Barnes v. Camack, 1 Barbour's S. C. Rep. 392.)

"3. The cancellation or discharge of record of a mortgage (such as was made in the present case) will be avoided where it is made in violation of the rights of third persons." (3 Sandf. Ch. R. p. 192, King v. McVickers; McLean v. Lafayette, 3 McLean, 587.)

"4. Where the release of a mortgage is effected by a compromise or for a consideration which subsequently fails or is avoided, the release of the mortgage will be avoided also and the mortgage revived in full force." (Heighway v. Pendleton, 15 Ohio Rep. 735.)

"5. Equity will sometimes keep alive for the purposes of justice a mortgage which has been substantially satisfied—never,

however, when a fraud or a hardship was to be effected thereby." (7 Barbour, p. 29.)

"6. In order to effect a merger *at law*, the right previously existing in an individual and the right acquired, in order to coalesce and merge, must be precisely coextensive, must be acquired and held in the same right, and there must be no right outstanding in a third person to intervene between the right held and the right acquired. When, therefore, the equity of redemption by purchase and the mortgage by assignment vest in the same individual, they do not coalesce or merge if there be in a third person a right of dower, a right acquired by purchase, or a real lien by attachment intervening between the mortgage and the equity. (Warren Hunt v. Oliver Hunt et al., 14 Pick. 374, 384.)

"7. Where the legal rights of the parties have been changed by mistake, equity restores them to their former condition when it can be done without interfering with any new rights acquired on the faith and strength of the altered condition of the legal rights and without doing injustice to other persons."

1. Barb. S. C. Rep. 398: "It is a familiar doctrine that a court of equity will keep an incumbrance alive, or consider it extinguished, as will best serve the purposes of justice." (Id. 396.)

8. Although a stranger will not be permitted to defeat the title of the mortgagor by setting up a satisfied mortgage, *which has been paid off by the mortgagor* himself, yet in case the stranger has himself paid it off, he will be considered as an assignee, and may certainly use it for his protection. (Peltz. v. Clark, 5 Peters, 481.)

Let us by the light of these principles examine the case at bar. The following proposition is admitted by a demurrer to the answer, viz:—

That by making in good faith an attempt to purchase the interest of Vallé in the land from his administrators, defendant's ancestor was led to pay off a mortgage existing on the land. That by reason of mistake on the part of the administrators of

Vallé, the measures taken to transfer to defendant's ancestor the legal title to the land were ineffectual: and that, as another consequence, the satisfaction of the mortgage, entered on the record, resulted in no advantage to those whose money had paid for it—the consideration for satisfying it having entirely failed. That defendants are in possession by virtue of the transaction with the administrators, of which the payment of the mortgage was a part, and that the heirs of Vallé now seek to evict them.

Except in one particular the case at bar is exactly that of Peltz et al. v. Clark, 5 Peters, S. C. R., 481. In that case the defendant purchased land belonging to the estate of a decedent under an order of court, the land being subject to a mortgage; which is our case. No deed had in that case been made to the defendant, while we have a deed which is worth nothing, as the deed of the administrators; which is in law just equal to having no deed at all. The defendant in that case paid off the mortgage, it being agreed that part of the purchase money should be so applied; which is our case again. It appears that in that case "the defendant paid to the mortgagee, with the consent and approbation and in the presence of Mr. Glover, one of the trustees, the whole amount due upon the mortgage; the sum paid being considered as part of the purchase money due under the purchase;" and so far the cases are exactly similar. But when the money was paid by us, the mortgage was, by a memorandum made on the record according to the statute, declared to be satisfied; while in the case of Peltz et al. v. Clark, "the mortgagor gave to the defendant a receipt for the amount of the mortgage" (to foreclose which a suit was pending) "and an order to enter the suit on the mortgage 'settled.'" On the docket of the court an entry was made in the mortgage suit, "Settled, says complainant. See order."

The question therefore is, can an entry of *satisfaction* of a mortgage, under the circumstances shown in our answer, create such a radical difference between the two cases and be made use of, in equity, to deprive us of the benefit of so much money paid in good faith, without overruling the reason and principle of the decision of the Supreme Court of the U. States

in the case of Peltz et al. v. Clark? and it is confidently submitted that it can not.

It was for a long time the received doctrine, that while payment of the mortgage debt without default prevented the necessity of a deed of release from the mortgagee, yet if default was made, a subsequent payment would not revert the estate, but a deed of release or reconveyance was necessary. A simple receipt of the money was not sufficient. But our statute, simplifying the matter, makes payment sufficient, and gives to the acknowledgment of this payment, authenticated in a certain way, all the *legal* effect of a reconveyance, *when the payment has been made by the mortgagor*. But it never was the intention of our statute to give to this entry an iniquitous effect and to convert it into an engine of fraud and oppression. We have seen that even a reconveyance with all the forms and solemnities known to the law would be disregarded if it worked an injustice (2 Younge & Collyer, 31, 40); and that when the release of a mortgage is effected for a consideration which fails or is avoided, the release of the mortgage will be avoided also (15 Ohio, 735), and that equity will revive a mortgage the discharge of which has been procured by fraud, accident or mistake—(1 Barbour, S. C. R., p. 392, 396, 398).

Now it is submitted that a case resting more solidly than the case at bar on the principles of natural equity, is not easily conceivable. Not only *bona fides*, but *uberrima fides*, is predicable of the defendants' ancestor throughout. No new parties intervene. There is an impossibility of suggesting any hardship to any one by the revival of this mortgage. No person has become a purchaser from the heirs of Vallé of this claim against those who, supposing themselves to be the purchasers by all the forms of law, have been in possession for twenty years. Of course, when considering the action of the court in striking out the answer, we can look at nothing but the facts which it discloses; but the defendants do not shun any scrutiny of the record, or any reference to facts outside of the record. No such scrutiny can unearth a single equitable consideration militating against the setting up in our favor of the mortgage which was purchased with our money.

We see further, that courts of the highest authority, in this very matter of the payment of mortgages by persons purchasing and actually obtaining the equity of redemption, have kept the mortgages on foot, or revived them after they were, under a misapprehension, declared to be satisfied, when it was necessary to do this in order to prevent an injustice; or sometimes (as in the case of 14 Pick. 374), where such a construction would merely tend to the benefit of the purchaser. If we were in a court of law, it might be said that the legal title was transferred by the acknowledgment of the satisfaction of the mortgage. But we are in a court both of law and equity, and here we claim that an entry of satisfaction made upon a consideration that has been avoided, shall be avoided also; and for this we cite the authorities to which reference has already been made. We are, then, in a court of equity, in a position analogous to that which the defendant in the case of Peltz et al. v. Clark occupied in a court of law. By reference to the answer which the court struck out, it will be seen that only the *equitable*, not the *legal*, consequences of our being mortgagee in possession were invoked. We did not ask that the action should be defeated peremptorily upon the establishment of our position as mortgagees in possession. This would have been the consequence of an outstanding mortgage in a court of law. But we set up the mortgage as equitably subsisting—ask the court so to decree, upon the strength of the facts we narrate—and then seek for the taking of an account between mortgagor and mortgagee, and the payment of the balance due to the latter, in default of which payment we pray that the equity of redemption may stand foreclosed.

We submit that this remedy is what we are justly entitled to have upon the facts disclosed in our supplemental answer: and for the refusal of the court to entertain this application, the judgment of the Circuit Court should be reversed.

3d. The record presents another point which is: that the defendants being the purchasers for value of the claim of the widow of C. C. Vallé to the land in controversy, are entitled to the benefit of this purchase in an account with his heirs.

The court below seemed to be of opinion that they would have been thus entitled had this defence been properly presented by answer. Wherefore the defendants asked to be allowed to file an answer setting up this matter specially. It was not until at the trial that this permission was asked; but obviously, to have granted it could not have operated as a surprise, or an injustice, to any one. It would not have rendered necessary any countervailing evidence. And there was no pretence that by allowing this answer to be filed then, the plaintiffs would have been a whit worse off than if it had been filed originally. If, then, the filing of such an answer was necessary to enable the defendants to present this defence, it was not a sound exercise of discretion to refuse them permission to file it at the trial.

But the court really put the matter on a different and bolder ground, in granting the third declaration of law asked by the plaintiff. It there declares its rule of action to be "that the "only operative effect which these deeds [from Melanie Vallé "to Thomas Fleming] can have, is to extinguish the right of "action of said Melanie Vallé to have her dower assigned to "her, and said extinguishment enures to those who own the "fee simple title in the land upon which such right attaches."

Yet by examining these deeds we see that they contain express words of grant and transfer to Fleming, Lamb and Chauncey. [See p. 12 of the printed statement.] Mrs. Vallé says, after reciting the payment of the full price of the land by the purchasers, that "in consideration of the premises and for the further consideration of one dollar to me fully paid by Thomas Fleming," &c., "I, said Melanie Vallé, widow of the said Charles C. Vallé, deceased, have granted, released and relinquished, and do by these presents grant, release and relinquish unto the said Thomas Fleming, all my right of dower in and to the one undivided sixth part of the said tract of land," &c.

The law vested in Melanie Vallé an estate for life in one-third of her husband's real property. This interest, for a valuable consideration, she transferred to defendant's ancestor, who imagined (and surely not without some reason) that he had already become the proprietor of the land itself subject to her

dower. The heirs of Vallé who come forward to claim land, the mortgage on which we have paid off and to which we have purchased the widow's right of dower, insist that we shall not have the benefit of either encumbrance, but that they will wrest the property from our hands, leaving us to accuse our own folly in having saved it from sale by discharging the encumbrances against it. We, on the other hand, think that we are entitled to the aid of the interest which Mrs. Vallé had up to the time of her transfer to us; and we do not clearly see on what ground this was refused us.

The case of McClenahan v. Porter, 10 Mo. 746, was cited by the learned counsel for plaintiffs below, and apparently influenced the decision of the court. But it is submitted that this case has nothing to do with the questions now discussed. There is a wide and marked distinction between the case of a dowress asserting her rights as plaintiff in an action of ejectment, overlooking the mode provided by law, and such a case as the present. Here would be a condition of things calculated to test the solidity of the judgment pronounced below. Suppose a man seized of a large tract of land, having a wife and children, to devise the undivided two-thirds of his real estate to A; the remaining third to his wife for life, (which would be, it is true, merely declaratory of the law,) with remainder to his heirs—which would, in fact, be no more than the reversion by descent. A. desires to have, at least during the life of the widow, an undivided property, and purchases her dower, taking such a deed as Mr. Fleming took in 1839 from Mrs. Vallé. The heirs, immediately upon this purchase, and in the lifetime of their mother claim, that portion of the property to which her dower lately attached. Although no one who will uphold the decision of the court below has any right to be shocked at such a claim on the part of the imaginary heirs, it is conceived that it is unnecessary to illustrate more pointedly than is done by the mere statement of so monstrous a pretension, the affront which it involves no less to law than to the common sense of mankind.

In the case at bar, so far as respects the mesne profits, it is emphatically easy in this action to recoup the claim of the plaintiffs by virtue of being clothed with the widow's right to receive the one-third of them during her life. Mrs. Vallé is still alive. As respects the land itself, it is at best only an undivided interest that the plaintiffs can recover. The judgment of the court below was for six-sevenths of one-sixth of the tract. Mr. Fleming having taken to himself a grant and transfer of an existing life-estate in one-third of this sixth, the case is exactly similar to any other outstanding legal estate as to this one-third. The recovery, then, must be limited, even if there were no other error in the record, to six-sevenths of two-thirds of one-sixth of the land, and a like proportion of the rents and profits.

Dower is one of the "estates for life" mentioned by the various writers on the law of real property; and the three things said to be necessary to create a title to dower are stated to be marriage, seizin, and death of the husband; and when these happen, the title of the wife to dower is complete. It has been said by most English and some American writers, that the widow has no title to any *particular piece of land* until dower is assigned, because, says Cruise, (1 vol. p. 178,) "the law casts the freehold on the heir immediately on the death of the ancestor." Whether this feudal reason is to be much regarded in the face of our statute which makes the land descend "subject to the widow's dower," it is not perhaps necessary for us to inquire, because none of the mischiefs against which the adoption of the rule was intended to guard will be incurred by giving to the defendant, in a case like the present, the benefit of the estate in dower which he has purchased. But it may be remarked that in the case of McClenahan v. Porter it was not necessary to decide this point, and so what then fell from the court was *obiter dictum:* and the law has been otherwise laid down in Connecticut, where the statute is as similar as possible to our own. The words of our statute of 1835 are—"Every widow shall be endowed of the third part of all the lands whereof her husband, or any other person to his use, was seized of an estate of inheritance at any time during the marriage * * * to hold and enjoy during her natural life." The words of the statute of Connecticut are—"Every married woman * * *

shall have right of dower in one-third part of the real estate of which her husband died possessed in his own right, to be to her during her natural life." There is certainly not any appreciable difference between the two statutes; our own is fully as broad and as strong as that of Connecticut. Yet the Supreme Court of that State (Stedman & Gordon v. Fortune, 5 Conn. 464) held "that immediately upon the death of her husband the widow has right to the possession of one-third of the real estate whereof he died possessed, in her own right, in common with his heirs, to whom she is in no sense a tenant as at common law; and that her right of entry does not depend upon the assignment of dower, which is a mere severance of the common estate."

This case is referred to at length, although what has been quoted is all that it is deemed necessary to extract.

In addition, we may remark that our statute on the subject of partition treats a "person entitled to dower" in any premises the division of which is sought as a proper party to a proceeding in which a plea that "*the said parties do not hold the said premises together*" would be a legal bar to the maintenance of the suit. (See § 9, p. 423 of Rev. Co. 1835.) And it is familiar practice that a widow is made a party defendant to a suit in partition; and sometimes (as in the case of Watson v. Watson et al., decided at the March Term, 1859) she is the *sole* plaintiff.

But it is sufficient for the appellants if in *any manner* they can have the benefit of this purchase; and the particular manner in which this benefit can be enjoyed is of minor importance.

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