METCALF, HORACE AND SNYDER, NIMROD
FOLDER 1 OF 2

v

LARNED, CHARLES AND PHILOMENA
HIS WIFE et als.*

MARCH 1867

COUNTY OF ST. LOUIS
5831/5

OLD
659/1

AFFIRMED

INVOLVED:
- HEIRS - ASSETS
- ANCESTOR'S DEBTS
- ESTATE OF SMITH, THOMAS F, SEN.

*SMITH, THOMAS F
SMITH, LOUIS C
SHREVE, LUTHER M,
TRUSTEE OF THE UNKNOWN HEIRS OF
CAMMON, ANN F. C., DECEASED, LATE
WIFE OF CAMMON, JOHN M.

OPINION: REPORTS vol. 40 p 572 ff
UNDER METCALF V. SMITH'S HEIRS

1

State of Missouri } SS: Be it remembered that heretofore
County of St Louis } to wit on the twenty first day of
October A D eighteen hundred
and sixty four there was filed in the office of the
clerk of the St Louis Court of Common Pleas within
and for the County aforesaid a petition, which is in the
words and figures following to wit:

Petition

Horace Metcalf and Nimrod Snyder

vs

Charles T. Lamed and Philomena his wife,
Thomas F. Smith, Louis C Smith, Luther
M Shreve, trustee of the unknown heirs of
Ann F. C. Cannon, deceased, late wife of
John M. Cannon.

County of St Louis SS:

The plaintiffs state that heretofore to wit on the tenth day
of May in the year eighteen hundred and forty three,
Thomas F. Smith, senior, in his lifetime, in his own
right, and Louis C Smith, Thomas Floyd Smith
and Philomena Smith, minor children of the said
Thomas F Smith and his then late wife, Emilie
Chouteau Smith, by their curator Frederick W Beck-
with duly appointed such by the St Louis Probate
Court filed their petition in the St Louis Circuit
Court returnable to the April Term of said Court
for the year eighteen hundred and forty three, pray-
ing therein for a partition to be made between them

of a certain tract of land (among other tracts and lots therein mentioned) bounded and described as follows to wit: The southwest half of the United States Survey No 2040, (two thousand and forty) of St Louis lands upon a confirmation in the names of Auguste Chouteau and Jaques Clamorgan under Regis Loisel, containing seven hundred and forty arpens of land, bounded north by the Missouri River, south by vacant lands, west by Creve Coeur Lake and east by land of Gabriel Paul, and stating therein that the said Thomas F Smith senior was entitled to an interest of one equal undedhalf of the said tracts and lots of land therein described, and that the said Louis & Smith, Thomas Floyd Smith and Philomea Smith were entited each to an interest of one undivided third part of the other half of the same; and such proceedings were thereafterwards had upon said petition in said Court that on the nineteenth day of May in the year aforesaid upon a hearing of said cause the said Court found and determined the respective right, titles and interests of the parties aforesaid in the said lots of land to be as stated in said petition as aforesaid, and thereupon gave judgment for partition thereof to be made accordingly and appointed commissioners to make partition therein between them as aforesaid, and the said commissioners being duly qualified proceeded to make partition thereof as aforesaid and thereafterwards to wit: on the twenty ninth day of May in the year

aforesaid filed their report thereof in said Court duly acknowledged wherein the said tract of land first above herein mentioned and described was assigned and set a part to the said Thomas F Smith senior, among other tracts and lots therein mentioned for his share and portion of the whole lands and premises in said petition mentioned and thereafterwards to wit on the sixth day of June in the same year aforesaid the said report and partition was duly confirmed as firm and effectual forever; as by the record and proceedings thereon will more fully appear whereby the title to said tract of land became and was vested in fee simple estate and absolute property in the said Thomas F Smith senior.

And the plaintiffs further state that on the fifteenth day of December in the year eighteen hundred and forty three the said Thomas F. Smith senior, of the county of St Louis aforesaid, died intestate and seized in fee simple estate of in and to the said tract of land situated in the county aforesaid the same being described as the southwest half of United States Survey No 2040 in the names of Auguste Chenteau and Jacques Clamorgan under Regis Loisel, containing six hundred and forty acres of land and bounded north by land of Rene Paul, east by land of Marhay Merry, South by Creve Coeur Lake and west by the Missouri River, according to said survey, besides other property real and personal situate in said County

4 and leaving his said three minor children, Louis C. Smith, Thomas F Smith and Philomena Smith his sole heirs at law. That thereafterwards to wit: on the twenty third day of December in the year aforesaid, letters of administration upon the estate of said Thomas F Smith deceased, were duly granted by the St Louis Probate Court to Frederick H Beckwith and that said administrator on the twenty eighth day of December in the same year made due publication of notice to all persons having demands against said estate to exhibit them for allowance in said Court within three years from the date of said letters or they would forever be barred and thereafterwards to wit on twenty ninth day of January in the year eighteen hundred and forty four filed his inventory and appraisement showing personal estate in his hands to the amount of three thousand one hundred and forty nine and 57/100 dollars and that thereafterwards to wit on the twenty fourth day of March in the year eighteen hundred and fifty three by his annual settlement of the estate of that date there appeared a balance of the personalty in his hands amounting to two hundred and sixty four and 57/100 dollars, all debts at that date exhibited and allowed against said estate having been fully paid off and satisfied; and on the twenty fifth day of December thereafterwards the said Frederick H Beckwith departed this life. And that thereafterwards to wit on the fourth day of March in the year

5

eighteen hundred and fifty four letters of administration de bonis non upon said estate unadministered were duly granted to Charles G Whittelsey, and on the sixteenth day of March in the year eighteen hundred and fifty seven by an annual settlement of said administrator de bonis non of that date there appeared a balance of personalty in his hands amounting to eight hundred and seventeen and 52/100 dollars, no other debts having been exhibited or allowed against said estate; and thereafterwards at the March Term of said St Louis Probate Court in the year eighteen hundred and sixty four the said administrator after due notice given according to law made a final settlement of the estate according to law, showing all debts, costs and expenses fully paid and satisfied leaving no balance of the personalty remaining in his hands for distribution: as the same will more fully appear by the record and proceedings therein

And the plaintiffs state that heretofore to wit: on the nineteenth day of June in the year eighteen hundred and fifty two the said Louis G Smith, there became of age Thomas F Smith by his Guardian, Louis G Smith, duly appointed by the St Louis Probate Court and Philomena Smith by her Guardian Henry Chouteau duly appointed by said Probate Court, sole heirs at law of the said Thomas F Smith, deceased, filed their petition in the St Louis Circuit Court returnable to the

to the April Term thereof for the year eighteen hundred and fifty two, praying therein for a partition to be made between them of the tract of land above herein mentioned stating the interests of the parties aforesaid therein to be one undivided third part to each and such proceedings were thereafterwards had in said cause in said Cont that on the nineteenth day of June in the year last aforesaid, the several interests of the said parties therein were found and determined to be an undivided third part to each as aforesaid, and judgment was thereupon rendered by said Cont for partition to be made accordingly and thereafterwards upon a report of commissioners duly made and approved, an order of sale of said tract of land divided into lots according to a survey and subdivision thereof made and filed by said commissioners with their report thereof, was made by said Cont on the eleventh day of January in the year eighteen hundred and fifty four and thereafterwards upon due notice given according to law the said land was sold in lots as aforesaid by the sheriff of said county in partition, on the fourth day of March in the year last aforesaid. And upon such sale the plaintiff Horace Metcalf became and was the purchaser of lots Nos 2 (two) 3 (three) 5 (five) 6 (six) 7 (seven) 8 (eight) 10 (ten) 13 (thirteen) 14 (fourteen) 15 (fifteen) and 16 (sixteen) of said land containing together four hundred and forty four and ninety seven hundredths acres at the price and sum of five thousand nine hundred and seventy seven dollars which said sum was thereafterwards

7

fully paid to said sheriff and the said sheriff executed and delivered to him deeds therefor duly acknowledged and dated the one on the eighth day of March in the year eighteen hundred and fifty four and the other containing the said lot 15 (fifteen) on the first day of February in the year eighteen hundred and fifty six; and at said sale Alley Williams became and was the purchaser of lots Nos 11(eleven) and 12(twelve) of said land containing together ninety three and 44/100 acres at the price and sum of Sixteen hundred and forty and 64/100 dollars which said sum was thereafterwards fully paid to said sheriff and said sheriff executed and delivered to said Williams a deed therefor duly acknowledged dated the eighth day of March in the year eighteen hundred and fifty four; and Charles Gibson became and was the purchaser at said sale of lots Nos 1(one) 4(four) and 9(nine) of said land containing together one hundred and thirty two and 31/100 acres at the price and sum of twenty three hundred and twenty six and 65/100 dollars which said sum was thereafterwards duly paid to said sheriff and said Gibson ~~executed~~ received from said sheriff a deed thereof duly executed and acknowledged, dated the eighth day of March eighteen hundred and fifty four. And thereafterwards to wit on the sixth day of April in the year eighteen hundred and fifty four, the said

Charles Gibson and Virginia his wife by their deed of that date sold and conveyed the said lot No 9 (nine) of said land containing fifty one and 34/100 acres to the plaintiff Horace Metcalf. And the said Alley Williams and Mary his wife on the first day of March in the year eighteen hundred and sixty by their deed of that date sold and conveyed the said lots Nos Meleven) and 12 (twelve) of said land containing together ninety three and forty four hundredths acres to the plaintiff Nimrod Snyder. And the plaintiffs state that the said sales were duly reported to said Court and the Sheriff's report thereof was thereafterwards duly approved and confirmed by said Court and said sheriff was by said Court ordered to execute and deliver the deeds aforesaid to the purchasers as aforesaid and to pay over the balance of the proceeds of said sales after deducting the costs and expenses thereof, to the parties thereto entitled which was done. And the plaintiffs state that on the eighth day of May in the year eighteen hundred and fifty three the said Lewis C Smith and his wife by their deed of that date sold and conveyed all their right, title and interest in and to the said tract of land above described herein and pending said partition suit to said defendant Luther M Shreve trustee, to have and to hold the same in trust for the sole and separate use and benefit of the said defendant Ann F C Cannon, wife

9 of John M Cannon upon the express trusts and limitations therein mentioned of which said a duly certified copy is hereunto filed marked Ex G: and thereafterwards to wit at the April Term of the said Court in the year eighteen hundred and fifty four the said Luther M Shreve trustee of the said Ann F. C. Cannon filed his petition in said Court in said partition suit recognizing said partition and praying the Court to order the one third share of the proceeds of said sale of said land belonging to the said Louis C Smith to be paid over to him as the legal representative and assigned of said Louis C. Smith and as trustee for said Ann F C Cannon, which was done accordingly; as by the record and proceedings therein will more fully appear

And the plaintiffs further state that the total amount of the proceeds of said sale was nine thousand nine hundred and forty four and 24/100 Dollars, and that after paying all the costs and expenses of said sale and said suit in partition there was paid over to said Sheriff under the order of the Court aforesaid to said Henry Chouteau Guardian of said defendant Philomena Smith out of the proceeds of said sale her one third share thereof amounting to the sum of three thousand and twenty two and 90/100 dollars and to the said defendant Thomas F Smith, then became of age his one third share thereof amounting to the same sum and to the said defendant Luther M.

Shreve trustee as aforesaid and assignee of said Louis C Smith his one one third share thereof amounting to the like sums and the same was as paid over at different times between the date aforesaid of said sale and the first day of March in the year eighteen hundred and fifty six.

And the plaintiffs state that on the decease of said Henry Chonteau Guardian of said Philomena as aforesaid, Clemence G Chonteau was by the St Louis Probate Court thereafterwards and about the year eighteen hundred and fifty six duly appointed Guardian of the said Philomena Smith and thereupon received from the estate of said Henry Chonteau deceased the monies in his hands belonging to said Ward to the amount of eight thousand two hundred and fifty six and 81/100 dollars. And thereafterwards to wit at the June term of said Probate Court in the year eighteen hundred and fifty seven the account of said Guardian with her ~~Guardian~~ Ward was finally settled in said Court and the balance of moneys in her hands belonging to her said ward amounting to ten thousand four hundred and five dollars was by order of said Court duly paid over by her to the said defendant Charles F. Lamed, then having become and being the lawful husband of the said Philomena Smith his wife, as by the record and proceedings therein will more fully appear And the plaintiffs state that at the date of said partition sale all debts and demands which

had been exhibited and allowed in said Probate Court against said estate had been long since paid off and there remained the balance aforesaid of two hundred and sixty four and 53/100 Dollars of the personalty for administration or distribution and the plaintiffs had no knowledge of any other debt or demand existing unpaid against said estate but after so great a lapse of time supposed that none such could exist - and they state that the defendants as parties plaintiffs in said partition thereby represented themselves as having a complete and perfect title to said land and full right and power to make partition thereof among them and to settle same in partition for that purpose as their own property

And the plaintiffs state that thereafter towards one Thomas L. Sturgeon administrator of the estate of William Chambers deceased brought a suit in the St Louis land Court against Frederick W Beckwith administrator of said Thomas F. Smith deceased returnable to the October Term of said Court in the year eighteen hundred and fifty three upon a covenant of warranty in a certain deed of that land made by said Thomas F Smith in his life time wherein no cause of action had accrued until after the three years limitation of the administration act had expired and such proceedings were thereafterwards had therein in said Court and on appeal in the Supreme Court of Missouri that a final judgment

was on the twentieth day of June in the year eighteen hundred and fifty nine recovered in the said Supreme Court in said cause for the sum of twenty four hundred and forty four and 75/100 dollars in favor of said administrator plff and against the defendant administrator of said Smith, as by the records and proceedings thereon will more fully appear. And thereafterwards to wit: on the nineteenth day of September in the year eighteen hundred and sixty the said Thomas L. Sturgeon administrator of said William Chambers deceased, exhibited said judgment in the St Louis Probate Court as a debt and demand against the estate of said Thomas F Smith deceased, and the same was then and there duly allowed by said Court and placed in the seventh class as such And thereupon the said Charles G Whitelsy administrator of the estate of said Thomas F Smith deceased on the same day last aforesaid, filed his petition in said Court praying for an order of sale to be made of the tract of land above herein described, stating that said debt remained unpaid, that all other property of the deceased, real and personal had already been sold and applied for the payment of debts and that no funds remained in his hands sufficient for the payment thereof; and the plaintiffs state that no other property real or personal belonging to said estate remained liable or subject to be sold for the payment of said debt and no funds sufficient for the payment thereof

13 remained in the hands of said administrator, besides the tract of land aforesaid and upon said petition an order of sale of said tract of land was on the same day last aforesaid duly made and granted by said Court to raise money for the payment thereof: as by the record and proceedings therein will more fully appear.

And the plaintiffs state that previous to said order of sale and for a long time thereafter, they had no knowledge or information of the existence of said debt against said estate nor of the same being exhibited and allowed in said Court, nor until by means thereof they were threatened with an eviction from their titles and possession of their said lots; and by reason of the premises the plaintiffs together with Charles Gibson the other purchaser as aforesaid at said sale, were compelled to pay off and discharge the amount of said judgment debt, interest and costs thereon and all expenses occasioned thereby in order to save themselves from being finally evicted from their titles and possession of their said lots respectively. And the plaintiffs state that Mary L. Tyler had become and was the sole owner of all interest in said judgment debt as the sole heir and distributee and legal representative of the said William Chambers deceased and that they did thereafterwards pay to the said Mary

L Tyler the full amount of said judgment debt interest and costs to wit: the sum of three thousand and eleven and 63/100 dollars and the same was on the eighth day of May in the year eighteen hundred and sixty three fully acquitted and discharged the said plaintiff Metcalf contributing and paying his proportion thereof to wit: the sum of two thousand and twelve and 53/100 Dollars - and the said plaintiff Snyder contributing and paying his proportion thereof the sum of four hundred and sixty six and 50/100 dollars and the said Charles Gibson contributing and paying for his proportion thereof the sum of five hundred and two and 60/100 Dollars, being the full amount of the same and interest to that date and thereupon the said Mary L. Tyler quitclaimed to them respectively all her right, title and interest and claim in and against the said several lots of land aforesaid by deeds duly executed and acknowledged and dated that to said Metcalf on the thirtieth day of September eighteen hundred and sixty three and that to Snyder on the sixteenth day of March eighteen hundred and sixty

And so the plaintiffs state that they have become and are entitled in equity to be subrogated to the places and rights of the creditor aforesaid against the proceeds of the said partition sale as equitable assets in the hands of said defendants for the payment

15

of the debts of said estate.

And the plaintiffs state that thereafterwards to wit on or about the twentieth day of July in the year eighteen hundred and sixty four the said defendants by the said Charles F. Larned did refund, remburse and pay over to the said Charles Gibson the amount of this portion of said debt interest and costs so paid by him as aforesaid and did fully satisfy and discharge his said demand against them Whereby the said Gibson has ceased to have any interest in the subject matter of this suit And the plaintiffs are informed and believe and so state that the said defendant Lewis G. Smith is insolvent; and the plaintiffs state that the said defendant Thomas F Smith is a non-resident of this state being as they are informed and believe, a resident of the state of Indiana; and the said Ann F.G. Cannon lately of the State of Iowa, as they are informed and believe, is now deceased, leaving heirs whose names are unknown to the plaintiffs.

Therefore the plaintiffs pray for a summons to issue against said defendants Charles F Larned and Philomena his wife and said Lewis G Smith and said Luther W Shreve, and for an order of publication against said defendants Thomas F Smith and the unknown heirs of the said Ann F G Cannon.

And they pray that an account may be taken of the amount of the proceeds of said sale in partition as assets received by each one of said defendants

16 together with interest thereon and the amount paid by each of said plaintiffs towards the satisfaction and discharge of the said Judgment debt, interest and costs, together with interest thereon from the time the same was paid as aforesaid. And that the said defendants may be adjudged and decreed to contribute and refund out of the proceeds of said sale as equitable assets in their hands for the reimbursement and satisfaction of the plaintiffs for the amount paid by each as aforesaid until the same shall be paid in full, not exceeding for each one of said defendants the full extent and amount of such proceeds and assets so received by him as aforesaid with interest thereon. And that they may have judgment against said defendants for the amount found due to each as aforesaid And that they may have such other and further relief as the nature of the case may seem to require and that they may recover and have their costs and charges in this behalf expended.

N Holmes & R M Field
Attorneys for plaintiffs

State of Missouri
County of St Louis } Nimrod Snyder one of the above named plaintiffs maketh oath and saith that the matters and things contained and set forth in the foregoing petition he believes to be true as therein stated

Nimrod Snyder

17 Sworn to and subscribed before me this twentieth day of October eighteen hundred and sixty four

Leon J. Papin

Summons Thereupon the following Summons issued herein to wit:

County of St Louis, ss:

The State of Missouri,

To the Sheriff of St Louis County... Greeting

We command you to summon Charles F. Lamed, and Philomena his wife, Thomas F. Smith, Louis C. Smith, Luther M Shreve, trustee of of the unknown heirs of Ann F. C. Cannon deceased late wife of John W Cannon, to appear before the judge of our Court of Common Pleas on the first day of the next term thereof to be held in the city of St Louis, within and for the county of St Louis on the Third Monday of November next then and there to answer the complaint of Horace Metcalf and Nimrod Snyder as set forth in the annexed petition and have you then and there this writ.

Witness Leon J. Papin Clerk of our said Court with the seal thereof hereunto affixed at office in the City of St Louis this twenty first day of October in the year of our Lord eighteen hundred and sixty four

Leon J Papin, Clerk.

18

Sheriffs Return

Upon the back of the Summons the Sheriff made the following Return to wit:
Executed this writ in the County of St Louis on the twenty sixth day of October 1864 by leaving and delivering a copy of the writ and petition as furnished by the clerk to Luther M Shiver late trustee of Ann F & Cannon deceased and further executed this writ on the twenty seventh day of October eighteen hundred and sixty four by delivering a copy of the writ to Charles Lamed and by leaving a copy of this writ at the usual place of abode of Philomena Lamed with a white person of her family over the age of fifteen years. Thomas F Smith and Louis C Smith not found in my county.

John C. Vogel Sheriff
by J. S. Wilkins, Dep.

Demurrer

On the twenty eighth day of November in the year 1864 there was filed the following demurrer herein to wit:

Horace Metcalf et al
vs
Charles T Lamed et al
} In the St Louis Court of Common Pleas

Charles T Lamed and Philomena his wife demur to the petition filed by plaintiffs in this cause for the following reasons
1. It appears on the face of the petition that Mrs Lamed was a minor at the time of the proceedings in partition and the sale to plaintiffs and others therein set forth

19

and it does not appear that she or her guardian did or had any legal capacity to make any representations or create or assume any obligation to any of the purchasers at said sale, other than such as were imposed on her by law.

2. The petition does not set forth the terms of the Sheriffs deed to either of the plaintiffs or the grantor of either of them, nor does it aver that such deeds purported or was intented to convey any other or greater estate in the premises than such right and title and such only as the parties to said partition then held and claimed nor does it appear that the sheriff had any right or power to convey any greater estate in said property than the parties to those proceedings then held nor does it appear that the sheriff either by such deeds or otherwise either for himself or said parties did make any representations or agreements with any of the purchasers at said sale nor was any such representation or agreement mentioned in any of the proceedings in partition and if so no such representation or agreement could be binding upon the said Philomena.

3. Assuming all the facts stated in the petition as true the plaintiffs are not entitled to be subrogated to the rights of the creditors of said Thomas F. Smith's estate so as to claim the proceeds of said sale nor and does they entitled to the relief against these defendants.

4. The facts stated in the petition are not sufficient

to constitute a cause of action against these defendants.

C Gibson for Lamed & wife

Order of Publication

And afterwards on the first day of February being Wednesday, in the year eighteen hundred and sixty five the following further proceedings were had in said cause to wit:

Horace Metcalf and Nimrod Snyder

vs

Charles F Lamed, & Thelemena his wife
Thomas F. Smith, Luther W Shreve, trustee
of the unknown heirs of Ann F C. Cannon,
deceased late wife of John M Cannon and
Louis C. Smith

It appearing from the petition herein that the defendants Louis C and Thomas F. Smith are not residents of the State of Missouri, on motion of plaintiffs by their attorneys it is ordered that said defendants be notified that a civil action has been commenced against them the object and general nature of which is, to obtain a decree reimbursing said plaintiffs the sum of about twenty five hundred dollars out of the proceeds of sale on partition among the heirs of Thomas D Smith deceased, said sum being the amount of a certain debt against the estate remaining unpaid and held by said plaintiffs and unless they appear at the next term of this court to be begun and held at the City of St Louis within and for the county of St Louis on the first Monday of April next and on or before the sixth day thereof

21

answer the plaintiffs petition the same will be taken against them confessed And it is further ordered that a copy hereof be published according to law in the Missouri Democrat, a newspaper printed and published in the City of St Louis.

Answer

And afterwards on the twentieth day of February eighteen hundred and sixty five the following answer was filed herein to wit

Horace Metcalf etal
vs
Charles T. Larned etal
} In the St Louis Court of Common Pleas New Term 1864

The separate answer of Larned and wife—

Charles T Larned and Philomena his wife for their separate answer to the petition filed in this case say:

1. That they reserve all and singular the questions of law arising upon the face of the petition and still insist that said petition is insufficient and that assuming all the facts therein stated as true they are still not liable or bound to pay or account to the plaintiffs for any thing

2. They deny that any portion of said premises ever belonged to Thomas F Smith senior, as alleged, or that there ever was any valid petition for partition of the same filed between said Thomas F Smith Sr and his said children or that there was any valid judgment on partition or any valid hearing of the matters in said petition men-

tined, or any lawful division of the premises therein described among said alleged parties thereto or any valid confirmation of the report of commissioners appointed to make division of the property in said petition for partition mentioned They ~~xxxx~~ admit that said Thomas F Smith and said Beckwith attempted to obtain a partition as alleged but they the same was entirely ~~pe~~ void They admit the death of said Thomas F. Smith but they deny that he died seized of any portion of the land in Survey 2040

3. That said Philomena was an infant of tender years at the time of the alleged partition between herself and her two brothers, that she never pretended to have any other or greater interest in said premises as heir of her father than such interest as the law vested in her — that is that her interest as such heir was held subject to the payment of all debts and liabilities and obligations of her father — that neither she nor her guardian nor the sheriff who sold said premises ever sold or pretended to sell any other or greater interest in said premises than such as remained in her after payment of all obligations of her father; nor did the Court in such proceedings of partition order any other or greater interest in said premises to be sold than such interest as she then held to same; that the title to and estate in said property which was sold was the right and title and only the right and title of said Philomena subject to the payment

of all claims that were or might ever be allowed against her father and that all the proceedings aforesaid purported to sell and convey only such title as said Philomena then held and had. That all said purchasers bought with a full knowledge and understanding that they were buying such interest and such only as was then vested in said heirs and that the title so sold was subject to the payment of the debts and liabilities of said Thomas F. Smith senior. That the deeds executed by the sheriff all purported to quit claim to the purchasers only such title as said heirs had to said premises

That neither said Philomena nor the Court ordering said said sale nor the sheriff making it nor her guardian or curator, or any other person by any said proceedings, nor by any deed or writing, or in any manner undertake or promised to pay any demands due or to become due against the estate of said Thomas F. Smith senior, out of the proceeds of said sale or otherwise but on the contrary the estate in said land which was sold was subject to the payment of all demands against her said father.

4. They have no knowledge or information sufficient to form a belief as to whether the plaintiffs were ignorant of the facts that there was any debt or demand against said estate of Thomas F. Smith Senior as alleged and they deny that the parties plaintiffs in said partition thereby represented themselves as

24 having a complete and perfect title to said land or full right and power to make partition thereof among them or sell the same in partition for that purpose as their own propeity

They aver that the said demand of William Chambers against said estate had been exhibited long before said sale to the plaintiffs, that the suit in which the same was allowed had been then long pending in Court and was well known to all said purchasers.

These defendants have no knowledge or information sufficient to form a belief as to whether there was no other property of said estate than said premises liable to pay said demand of William Chambers and therefore they deny the same.

5. They deny that the plaintiff had has knowledge or information previous to said order of sale or for a long time thereafter of the existence of said debt against said estate, or the contrary they were fully charged with notice of the same prior to the purchase by them at said sale in partition

6. These defendants deny that said Tyler ever transferred or conveyed to the plaintiffs or either of them any portion of the demand of said Chambers against said estate of Thomas F. Smith and they deny that the plaintiffs have become subrogated to the place and rights of said Chambers or Tyler as creditor of said estate or that the pro-

25 ceeds of said sale are equitable & ought to be liable to be appropriated on payment of said demand against said estate.

These defendants further aver that the order of the Court to pay over the proceeds of sale in partition to the parties to said partition is conclusive upon the plaintiffs and barred them forever. They further aver that more than ten years have elapsed since said order was made and that plaintiffs cause of action if any has became stale

They deny that plaintiffs are entitled to the relief prayed for or to any relief whatever

St Louis County, ss. C. Gibson for Lamed & wife

James G Edwards agent for Charles T Lamed being sworn says he believes the above answer and the matters as therein stated are true

Sworn to and subscribed Jas G Edwards

before me this third day of March 1865

Leon L. Papin, Clk

Trial progressed And afterwards at the April Term 1865 of said Court of Common Pleas, the following further proceedings were had herein, to wit:

Wednesday May 10th 1865

Horace Metcalf et al vs Charles T. Lamed et al } Now at this day came the plaintiffs by their attorneys the defendants Louis C and Thomas F Smith being duly notified by publication and the defendant

26 Luther M Shreve being duly summoned and said defendant being also solemnly called come not but make default, wherefore it is ordered that the petition herein be taken against them as confessed On motion of the plaintiffs it is ordered that this cause be continued

Trial ended & Judgt for Plaintiffs

And afterwards at the November Term 1865 the following further proceedings were had herein to wit:

Saturday December 16th 1865

Horace Metcalf and Nimrod Snyder

vs

Charles F Lamed and Philomena his wife
Thomas F Smith Louis C Smith,
Luther M Shreve, trustee of the unknown
heirs of Ann F C Cannon deceased, late
wife of John M Cannon

Now come the plaintiffs and the defendants Charles F Lamed and Philomena his wife by their respective attorneys but the other defendants although duly called come not and a jury being waived this cause is submitted to the Court and upon the hearing thereof it is shown to the Court that Philomena wife of Charles F. Lamed received out of the proceeds of the sale on partition in the suit of Louis C Smith, Thomas F Smith and said Philomena the sum of three thousand and twenty two dollars and ninety cents for her share of said proceeds and said Louis C Smith and Thomas F Smith other defendants in this suit

27

received the like sum of three thousand and twenty two dollars and ninety cents each out of the said proceeds for their shares respectively; and it is further shown that said plaintiff Metcalf has been obliged to pay and has in fact paid on the thirteenth day of November eighteen hundred and sixty three the sum of two thousand and twelve dollars and fifty three cents for and on account of the judgment in favor of the administrator of William Chambers against the administrator of Thomas F. Smith deceased which sum with interest to this date amounts to two thousand two hundred and sixty four dollars and eleven cents and in like manner said plaintiff Snyder has been obliged to pay and has paid on the seventeenth day of March eighteen hundred and sixty four, the sum of four hundred and ninety six 50/100 Dollars on account of the same judgment which sum with interest to this date amounts to five hundred and forty six dollars and ninety three cents It is considered by the Court that said Philomena, Louis C. and Thomas F defendants ought to refund to said Metcalf and Snyder the sums paid by the latter as aforesaid in equal portions, It is therefore considered and adjudged by the Court that said Charles C. Lamed and Philomena his wife do pay unto said Horace Metcalf Seven hundred and fifty four dollars and seventy cents; that said Louis C.

28 Smith do in like manner pay unto said Horace Metcalf a like sum of Seven hundred and fifty four dollars and seventy cents; and that said Thomas F. Smith do pay unto said Horace Metcalf the like sum of Seven hundred and fifty four dollars and seventy cents; that the said Charles F Lamed and Philomena his wife do also pay unto Nimrod Snyder one hundred and eighty two dollars and twenty one cents; that said Louis C. Smith do also pay unto Nimrod Snyder the like sum of one hundred and eighty two dollars and twenty one cents; and that said Thomas F. Smith do also pay unto said Nimrod Snyder the like sum of one hundred and eighty two dollars and twenty one cents; it is further adjudged that the said Charles F. Lamed and Philomena his wife Louis C Smith and Thomas F. Smith do pay the costs of this suit. The plaintiffs may have execution in conformity to this judgment.

M for new trial ovd

And on Monday December 18th 1865 the following further proceedings were had herein to wit:

Horace Metcalf et al
vs
Charles F. Lamed et al } The defendants Charles F Lamed and Philomena his wife file a motion for a new trial which being seen, heard and by the Court fully understood is overruled; and the plaintiffs file a motion for a new trial which being heard and fully considered by the Court is overruled. And the plaintiffs there-

29

Plaintiffs Bill of Ex

upon file a bill of exceptions
Which bill of exceptions is in the words and figures following to wit:
On the trial of this cause it was shown in evidence as recited in the judgment of the Court whereupon the plaintiffs moved the Court to decide that the defendants Lamed and wife Lenis C. Smith and Thomas F Smith were liable in solido to the for the sums by them paid on account of the judgment in favor of the administrator of William Chambers and to render judgment accordingly; but the Court refused so to decide and on the contrary decided that the defendants were liable for one third of said sums each and not further or otherwise and the Court gave judgment according to such decision To which action of the Court in refusing to decide as above requested and in giving its decision and judgment as aforesaid the plaintiffs duly excepted.
Within four days after the trial the plaintiffs filed their motion for a new trial as follows:-

Plaintiffs Mo for New trial

In the St Louis Court of Common Pleas Nov Term 1865
Metcalf and Snyder plaintiffs
vs
Lamed and others defendants
} The plaintiffs move for a new trial for the reason that the Court on the trial misdirected as to the judgment and erroneously held that the defendants Lamed and wife, Lenis C Smith and Thomas

30 T Smith were not liable in solido for the amount awarded to the plaintiffs

Field & Chapin for plffs

The Court overruled said motion and the plaintiffs duly excepted to the action of the Court in that behalf. Exceptions allowed and made part of the record.

Sam Reber Judge &c

Bill of Ex of Larned & wife

And afterwards on Saturday December the twenty third eighteen hundred and sixty five the following Bill of Exceptions of Larned & wife was filed herein to wit:

Horace Metcalf et al
vs
Charles T Larned and al } In the St Louis Court of Common Pleas

November T 1865

Be it remembered that on the trial of this cause the plaintiffs gave the following evidence:

Partition between T F Smith & his children

1. Proceedings in partition between Thomas F. Smith and his children as follows:

State of Missouri St Louis County ss.

To the Hon the Circuit Court of St Louis County—

The petition of Thomas F. Smith in his own right and Louis C Smith, Thomas Floyd Smith, Philomena Smith, children of the said Thomas F. Smith and heirs at law of Emelia Smith late wife of the said Thomas F Smith which children and heirs as aforesaid appear by Frederick K. Beckwith their

curator - represent to this court that they have become entitled in common to the following described property situate and being in the county of St Louis aforesaid, viz: A tract of land containing 740 arpens more or less - bounded on the south by the Missouri River, North by vacant lands west by lake Creve Coeur and east by land formerly of Gabriel Paul. 23 acres of land bounded North by Gabriel Paul, south by A Gamble, east by Chonteaus Pond and west by Gratte avenue. One lot fronting on 7th street 40 feet running back N 127 1/2 feet to an alley 15 feet wide - One lot of the same width west of said alley 127 1/2 feet more or less to Chonteaus Pond - situated in Block 17 and numbered six and nine. 64 16/100 acres of land set apart by Commissioners of A Chonteau deceased - described on the plat No 1 4th series - Lot No 10 - bounded east by seventh street, north by Cerre Street - South by Gratiot Street and west by Dillon - Lots of ground No 12 and 13 containing about 9 acres more or less bounded east by 7th Street South by Chonteau Avenue, West by Gabriel Paul and North by Gratiott Street - North half of Block No 42 bounded on the North by cedar Street, West by Second Street South by lands formerly of Chonteau and East by the Mississippi river. Lot number Four third Series containing 10 76/100 acres. Lot number Five first Series containing 6 acres. The unsold

portion of said last mentioned lot. Lot number Seven fifth Series containing Six acres and fourteen hundredths of an acre – North half of Block number one hundred and forty eight. Lot of one hundred and ten feet – bounded west by sixth street north by Gratiot Street – Lots number two and thirteen in Block No K – also lots numbered Six and Nine in Block No J. – and in Block No J lot numbered twelve – all in the city and County of St Louis.

To which said property above mentioned the said Thomas F Smith in right of marriage of contract with his said late wife is entitled to one equal part and the said three children are each entitled to one third part of the remaining half part. And being so entitled as aforesaid they your petitioners pray this Court that division and partition of said property may be made according to the respective of the parties interested therein. And for a sale thereof if it shall appear that partition cannot be made without great prejudice to the owners. And as in duty bound they will ever pray

T. F. Smith.

State of Missouri } Fred W Beckwith, Curator
County of St Louis } ss. Thomas F Smith and Frederick W Beckwith make oath and say that the facts set forth in the above petition for partition

are true to the best of their knowledge and belief
Sworn to and subscribed C. F. Smith-
before me this tenth day Fred W Beckwith-
of May 1843. James L Purdy a justice of the
peace county court St Louis County.
And afterwards to wit on Friday the 19th day of
May A D 1843 the following further proceedings
were had in said suit for partition

Decree of Partition

Thomas F Smith, Lewis C Smith Thomas Floyd
Smith and Philomena Smith- In partition
Now at this day came the petitioners by their attorney
whereupon all and singular the premises herein are
submitted to the Court which being seen, heard and
fully understood the Court doth find that the
said Thomas F Smith is entitled to the one undivided
half of the premises in the petition mentioned and
that the said Lewis C Smith, Thomas Floyd Smith
and Philomena Smith are each entitled to the one
undivided third part of the remainder of said
premises, which are described as follows:
A tract of land containing Seven hundred and
forty arpents more or less bounded on the south by the
Missouri river, North by vacant lands, west by Lake
Creve Coeur and east by land formerly of Gabriel
Paul- Twenty three acres of land bound. North
by Gabriel Paul, south by A Gamble, East by
Chenteau's land and west by Platte Avenue-
One lot fronting forty feet on Seventh Street running

back one hundred and twenty seven and a half feet to an alley fifteen feet wide- One lot of the same width west of said alley one hundred and twenty seven and a half feet more or less to Chouteaus Pond situate in Block W and numbered six and nine - Sixty four acres and sixteen one hundredths of an acre of land set apart by commissioners of A. Chouteau deceased, described on the plat number one fourth series - Lot number ten bounded east by seventh street, North by Cave Street, South by Gratiot street and west by Gillen - Lots of ground number Twelve and thirteen containing about nine acres more or less bounded east by Seventh Street, South by Chouteau avenue, West by Gabriel Paul and North by Gratiot Street - North half of Block N number forty two bounded on the North by Cedar street, West by Second street South by lands formerly of Chouteau and east by the Mississippi river - Lot number four - And series containing ten acres and seventy six one hundredths of an acre - Lot number five first series containing six acres - The unsold portion of said last mentioned lot - Lot number seven fifth series containing six acres and fourteen hundredths of an acre - North half of Block N number one hundred and forty eight - Lot of one hundred and ten feet bounded west by Sixth street - North by Gratiot Street - Lots number two and thirteen on Block number K - Also lots number Six and Nine on Block N number G And in Block number J lot

twelve – all in the City and County of St Louis
It is therefore ordered by the court that partition
of said premises be made amongst said parties
according to their respective rights and interests as
above ascertained and determined by the Court
quality and quantity relatively considered, and
Thornton Brumley, Benjamin H Ayres and Walter
H Dorsett respectable freeholders residents of
the county of St Louis where the land to be divided
is situated are hereby appointed commissioners to
make said partition according to this judgment
and they are hereby required to make report of
their proceedings to this Court without delay

Report of Commissioners

Thereupon on the 29th day of May 1843 there was
filed the following report of Commissioners
in said Partition suit to wit:

To the Honorable the Circuit Court of the Eighth
Judicial Circuit of the State of Missouri –
The report of the undersigned commissioners ap-
pointed to divide certain property jointly belong-
ing to Thomas F Smith, Louis Chouteau Smith
Thomas Floyd Smith junior and Philomena
Smith, pursuant to an order of Court hereto attached
and which makes a part and parcel of this
report being first duly sworn do set apart and
divide the lands in said petition mentioned
as follows That is to say – Out of number one
in series numbered four as established by the

commissioners who made partition of the estate of Auguste Chonteau deceased - To Louis Chonteau Smith, twenty three acres and sixteen hundredths of an acre being the north west corner of a tract bounded on the north by Laclede avenue, East by lots of Thomas F Smith Junior, and others, on the south by a lot of Philomena Smith and on the west by Gabriel S. Chonteau. Also in number two second series as laid off as above mentioned Nine and one half acres to be taken in the middle of said tract bounded on the north by lands of Gabriel Paul, East by the same, South by lands of Mr Gamble and west by Platte Avenue. Also in number five series numbered One a lot of forty feet fronting on Market Street being the north east corner of said street and bounded on the north by Market Street on the east by Sarpy Avenue on the South by lot of Targey and on the west by Philomen Smith. Also in number Seven of Series numbered Five of the report above described Two acres and five hundredths of an acre being a middle portion bounded on the North by Street eighty feet wide, on the south by Soulard Street extended, East by Philomena Smith and on the west by Thomas F. Smith Junior — Also a portion of the Lot numbered Twelve containing one hundred and five feet to be taken from the middle portion of said series fronting on Seventh Street

and running back one hundred and twenty seven feet six inches to an alley, bounded on the north by Thomas F. Smith Jr., on the East by Seventh Street, on the south by balance of said lot and on the west by said alley. Also a fronting lot numbered ten being the North East corner measuring one hundred and twenty feet fronting on Seventh Street and running back to the depth of Three hundred and twenty feet (320) bounded on the north by Gene street, on the east by Seventh Street, on the south by lot of Thomas F. Smith Junior and on the west by land of Mayor Smith—
Also a portion of Block being the north west quarter of number one hundred and forty eight on the map of the City of St Louis containing Seventy two feet to be taken from the middle, running back the depth of one hundred and twenty feet to an alley - bounded on the North by Gene Street, on the east by said alley on the South by lot of Philemen Smith and on the west by Seventh street Also the North east corner of Sixth and Gene Street containing fifty six feet on Sixth Street and running back one hundred and twenty feet to an alley bounded on the North by Gene Street, on the east by Sixth Street on the south by lot of Philemen Smith and west by an alley thirty feet wide— Also in Block number one hundred and sixty one on the map of the City of St Louis, a lot running forty feet front

on South Street by one hundred and twenty seven feet six inches in depth to an alley - bounded on the north by owners unknown, on the east by said alley fifteen feet wide on the South by Philomen Smith's lot and on the west by Sixth Street - Also (in plat established by the commissioners who made partition of the estate of Auguste Chanteau deceased) in Block K a lot numbered two containing sixty three feet nine inches fronting on Tenth Street by a depth of one hundred and twenty seven feet six inches bounded on the North by Henry Chanteau, on the east by an alley on the south by and on the west by Tenth Street Also a lot in the said Block and numbered thirteen, containing sixty three feet nine inches fronting on Ninth street by one hundred and twenty seven feet six inches bounded on the north by H Chanteau, on the East by Ninth Street on the south by and on the west by an alley Also in Block G as laid down by the last mentioned commissioners, a lot numbered Six containing sixty three feet nine inches front on Ninth Street by one hundred and twenty seven feet six inches in depth bounded on the North by on the East by an alley, on the south by and on the west by Ninth Street - Also another lot numbered Nine containing sixty three feet nine inches fronting on Eighth Street by one hundred and twenty seven feet six inches in depth to an alley

bounded on the North by
on the East by Eighth Street, on the South by
and on the west by said alley
And to Thomas F Floyd Smith Junior, the
North East portion of tract numbered One in
Series numbered four (as laid down by the Commission-
ers who made partition of the estate of Auguste
Chouteau deceased) containing twenty acres
bounded on the North by Laclede Avenue, on the East
by lots of Robert Rankin and others, South by
lots of Philomen Smith and on the West by Lenis
Chouteau Smith. Also in number two second series
the East portion of a lot containing six acres - bounded
on the North and East by Gabriel Paul and on
the south by lands of Gamble and on the west by
Lenis C. Smith — Also a tract in Number Five
in Series Number One fronting on Market street
containing forty five feet front being the corner
next an alley thirty feet wide running back to land
of Targey bounded on North by Market street,
on the East by Philomen Smiths lot, on the South
by lot belonging to Targey and on the west by said alley
Also in number Seven of series number
five as laid down by the Commissioners afore-
said the North west portion of tract containing
two acres and five hundredths of an acre -
bounded on the North by Chouteau Avenue on
the east by Gabriel Paul, on the South by Garland

Street and on the west by J. W. Dillon-
Also in the lot numbered twelve a lot of Ninety feet
on the North East corner of Seventh and Gratiot
Street running back to an alley the depth of one
hundred and twenty seven feet six inches - bounded on the
North by Gratiot Street, on the East by Seventh Street, on the
South by Louis Chouteau Smith and on the west
by said alley - Also a portion of lot numbered
Ten taken from the middle measuring One hundred
and sixty feet on Seventh Street and running back
to a depth of three hundred and twenty (320) feet
bounded on the North by Louis Chouteau Smith, on
the east by Seventh Street on the South by Philo=
mem Smith and on the west by land of Mayor
Smith - Also in Block numbered One hundred
and forty eight on the map of the City of St Louis
a lot on the North West corner of said Block N, con=
taining fifty six feet front on Seventh Street by
one hundred and seventy feet deep running back
to an alley bounded on the North by Erie Street on
west by Seventh street, on the South by lot of Louis
Chouteau Smith and on the east by an alley thirty
feet wide. And also in said Block N another lot being
the South portion of the North East quarter of
containing Seventy two feet front on Sixth Street
running back one hundred and twenty feet to
an alley bounded on the North by lot of Philo=
mem Smith, on the East by Sixth Street, on the

41 South by and on the west by said alley — Also on Block number One hundred and sixty one of the map of the City of St Louis, a lot being the south west corner of containing thirty feet front on Sixth Street, running back one hundred and twenty feet to an alley fifteen feet wide and bounded on the north by Philomen Smith's lot on the East by said alley on the south by Gratiot Street and on the West by Sixth Street, Also on Block W drawn and established by the commissioners who made partition of the estate of Auguste Chouteau deceased, a lot numbered Nine on Seventh Street containing forty — feet front by One hundred and twenty seven feet six inches deep bounded on the North by William Shields on the east by Seventh street on the South by George Morton's lot and on the west by an alley Also on the same block a lot number six on Eighth Street containing One hundred and twenty seven feet six inches in depth to an alley by forty feet front bounded on the North by lot number five and on the East by an alley fifteen weeds and on the south by Genie's lot and on the west by Eighth street — Out of number one in series number Four as established by the commissioners who made partition of the estate of Auguste Chouteau deceased) To Philomen Smith a tract of land containing twenty one acres bounded on the North by Louis

Chanteau Smith and Thomas F Smith on the east by Montague and others and on the South by Chanteau Avenue and on the west by Gabriel S Chanteau — Also in number Two of said Second Series of the commissioners aforesaid, the west part of a tract containing Seven acres and one half an acre on Pratts Avenue bounded on the North by land by of Gabriel Paul and on the East by Louis Chanteau Smiths lot on the South by Mr Gambles and on the west by Pratts Avenue. Also in Number Five of Series Number One of the partition aforesaid, a tract of land taken from the Middle of the North East corner, fronting on Market Street containing sixty five feet running back to land of Targey and bounded North by Market Street on the east by Louis Chanteau Smith lot on the south by Targey and on the west by Thomas F Smiths lot — Also in number seven of Series Number Five a certain tract being the East portion of a tract containing two acres and four hundredths of an acre bounded on the North by Chanteau Avenue, on the East by Gabriel Paul on the South by Sanland Street extended — and on the West by Louis Chanteau Smith — Also in lot Number Twelve of the Report aforesaid the south east portion of a lot containing One hundred and five feet front on Seventh Street by a depth of One hundred and twenty seven feet six inches

to an alley bounded on the North by Louis C. Smith, on the east by Seventh street on the South by Mayor Smith and on the west by said alley Also on lot numbered Ten of (on the series of the Commissioners before mentioned) the front of one hundred and twenty feet (120) on Seventh Street by a depth of three hundred and twenty feet (320) being the south East East corner of said lot bounded on the North by Thomas F. Smiths lot, on the East by Seventh Street, on the South by Gratiot Street and on the West by Mayor Smith— Also in Block number One hundred and forty eight on the map of the City of St Louis, a lot containing Seventy two feet front on Seventh Street to a depth of one hundred and twenty feet to an alley bounded on the North by Louis Chonteau Smith, on the east by said alley, on the South by persons unknown and on the west by Seventh Street— Also in said Block a lot being the middle portion thereof, containing seventy two feet front on Sixth street by a depth of One hundred and twenty feet to an alley and bounded on the North by a lot of Louis Chonteau Smith, on the east by Sixth Street on the South by Thomas F Smiths lot, and on the West by an alley. Also in Block number One hundred and sixty one on the map of the City of St Louis the middle portion containing forty feet front on Sixth Street by one hundred and twenty seven

feet six inches in depth bounded on the south by Thomas F. Smiths Junior on the west by Sixth Street on the North by Louis Chinteau Smiths lot and on the East by an alley fifteen feet wide And also in Block J. of the Series established by the commissioners who made partition of the estate of Auguste Chinteau deceased) the lot numbered twelve on the Seventh Street containing fifty feet front by one hundred and twenty seven feet six inches deep more or less to an alley - bounded on the north by Mr Conway on the east by Seventh street, on the South by and on the west by an alley fifteen feet wide And out of number five in Series number One of the partition made by the commissioners of the estate of Auguste Chinteau deceased, To Thomas F. Smith, one hundred feet more or less bounded on the North by one Wilmington on the east by a street Thirty feet wide, on the south by Soreta Street and on the West by Fifteenth Street - Also in same series and same lot, four hundred and ninety two feet more or less being the south east portion running back to an alley thirty feet wide - bounded on the North by Targey, on the East by Sarpy Avenue, on the south by Clark Avenue and on the West by said alley Also in number four of the third Series of the partition established by the commissioners before mentioned, a lot of ten acres and seventy six hundredths of an acre bounded on the North by lots of

Edward Chonteau, on the East by Platte avenue, on the South by Gabriel Chonteau and on the West by ground of Emile Smith on said plat—
Also six hundred and forty acres of land on Creve Coeur Lake being the south half of survey numbered Two thousand and forty, originally granted to Regis Loisel— bounded on the North by A. Paul on the East by M. Henry deceased, on the south by the lake and on the West by the Missouri River also in lot numbered ten of the Series as made by the commissioners aforesaid, a lot containing eighty feet front by a depth of Four hundred and feet— bounded on the South by Gratiot Street on the West by J. M. Dillon, on the east by part of the same lot and on the North by Cerre Street— Also in block number Twelve containing three hundred feet on Seventh Street being the South East corner, running back one hundred and twenty seven feet six inches to an alley bounded on the North by Philomen Smith on the East by Seventh street, on the south by Chonteau avenue and on the west by an alley also the balance of said lot with all the buildings thereon, the quantity unknown, bounded on the North by Gratiot Street on the east by an alley, on the south by Chonteau avenue and on the West by lot number Thirteen— Also all that lot numbered thirteen on the Series established by the Commissioners aforesaid being the whole of said lot containing

feet bounded on the North by Gratiot Street, on the East by lot numbered twelve, on the South by Chouteau Avenue and on the West by Gabriel Paul— also all the north half of Block Numbered forty two on the map of the City of St Louis (except a lot twenty feet by one hundred and five feet deep sold to the engine company) bounded on the North by Cedar Street on the East by the — Mississippi river on the south by balance of said lot and engine house and on the west by Second Street— Also in Number Five of series Numbered One a lot containing seventy five feet on Market Street extended by a depth of One hundred and fifty feet— bounded on the North by Market street on the East by an alley, thirty feet wide, on the South by one Wilmington and on the West by property of G W Moore. The foregoing division being made with due regard to the quality, quantity and value of the property and according to the directions of said order. All which is respectfully submitted for the information of your Honorable Court therein

Thornton Gremsley
Benjamin W Ayres
Walter H Dorsett

Acknowledged in open Court May 29th 1843

Jas Ruland Clk by W H Pritchard D.C.

47 In the St Louis Circuit Court April term 1843
Thursday July 6th 1843

County of St Louis, ss: Be it remembered that on the twenty ninth day of May one thousand eight hundred and forty three, in open Court appeared Thornton Grimsley, Benjamin W Ayres and Walter H Dorsett who are personally known to the judge of the Court to be the same persons whose names are subscribed to the foregoing report as commissioners, and acknowledged the same to be their act and deed as such commissioners In testimony whereof I John Ruland Clerk of said Court hereto set my hand and affix the seal of said Court at office in the City of St Louis this sixth day of July one thousand eight hundred and forty three in pursuance of an order of Court of this date

(L.S.) In Ruland, Clerk

State of Missouri } SS: Before me Frederick
County of St Louis } Kretschmar a justice of the peace within

and for said County came Thornton Grimsley, Benjamin W Ayres, and Walter H Dorsett and made oath that as commissioners appointed by the Circuit Court as aforesaid they will honestly and impartially execute the trust in them and make partition as directed by the Court

Thornton Grimsley, Benjamin W Ayres and

48 Walter H Dorsett

Sworn to and subscribed before me this twenty fourth day of May A D 1843

Fredk S Ketchmark

Justice of the peace.

Ackt of Commissioners And afterwards at the same term and on the day of July (being Thursday) 1843 the following further proceedings were had to wit:

Thomas F Smith, Louis C Smith, Thomas Floyd Smith v Philomena Smith } In partition

It appearing to the satisfaction of the Court that the acknowledgment of the commissioners was omitted to be entered upon the report herein on the twenty ninth day of May last, when said report was filed on motion of petitioners by their attorney it is ordered that said acknowledgment of the commissioners be entered nunc pro tunc.

Report Confirmed On the Sixth day of June A D 1843 the following further proceedings were had to wit:

Thomas F Smith, Louis C. Smith, Thomas Floyd Smith v Philomena Smith }

Now at this day came the parties by their attorney and the commissioners herein having heretofore filed their report specifying the manner of executing their trust and describing the lands divided and the shares allotted

49 to each party with the quantity of each share, the boundaries, courses and distances it is ordered that said report and the matters and things therein contained be and the same is hereby confirmed as firm and effectual forever-

The defendants Charles F Lamed and wife objected to the admission of these documents in evidence because the same were incompetent and the said proceedings were void - which objection the Court overruled and admitted the said proceedings in evidence to all which the said Lamed and wife excepted at the time

Partition between Louis C, Thomas F & Phil[a] Smith

2. Proceedings in partition among Louis C Smith, Thomas F Smith and Philomena Smith, which are as follows:

Louis Chonteau Smith, Thomas F. Smith by Louis C Smith his Guardian, Philomena Smith by Henry Chonteau her Guardian }

St Louis Circuit Court April Term 1852

In partition

Petitioners state that they are the owners in fee of a tract of land in the County of St Louis described as follows to wit: Six hundred and forty acres in Creve Coeur lake being the south half of United States Survey numbered two thousand and forty confirmed to Auguste Chonteau

50

and Jacques Clamorgan under Regis Loisel, bounded north by Rene Jault, deceased, East by Mackay Wherry, South by Creve Coeur lake and west by the Missouri River

Petitioners state that Louis C Smith is entitled to one undivided third part thereof - Thomas F Smith to one third and Philomena Smith to one third

Your petitioners further state that they are also entitled each to one undivided third part in fee of the following described lot of ground to wit: a lot of ground in Block number one hundred and sixty one of the city of St Louis containing seventy five feet front on fifth street by one hundred and twenty seven and one half feet deep to an alley bounded north by Archer, east by Fifth street, South by R. R. Clinch and West by an alley.

Your petitioners therefore pray that partition be made of the property above described according to the respective rights of the parties thereto and that a sale may be had of the same if they cannot be divided in kind without prejudice to your petitioners.

Philomena Smith by her
Guardian Henry Chouteau
Louis C Smith
Thomas F Smith by Louis
C Smith Guardian
Whittelsey atty for petts

County of St Louis ss. Louis C Smith being sworn

51

upon his oath states that he believes the above petition and the matters and things therein as stated to be true

Louis C. Smith

Sworn to and subscribed before me this nineteenth day of June 1852

M. S. Cerré, Clk

Decree in Partition

And afterwards on Saturday June 19th 1852 the following further proceedings were had herein to wit:

Louis Chenteau Smith, Thomas F. Smith by his guardian Louis C Smith and Philomena Smith by Henry Chenteau her Guardian

In partition

Now at this day came said parties by their respective attorneys and said infant defendants by their Guardians and thereupon this cause together with the proofs are submitted to the Court and the Court being fully advised of and concerning the premises it doth ascertain and determine that the said Louis C Smith, Thomas F. Smith and Philomena Smith are each entitled to one undivided third part of the premises in the petition described as follows to wit: "A tract of land in the County of St Louis described as follows to wit:" Six hundred and forty acres on Creve Coeur lake being the South half of United States Survey numbered Two

thousand and forty conformed to Auguste Chouteau and Jacques Clamorgan under Regis Loiselle, bounded North by Rene Paul, deceased, East by MacKay Wherry, South by Creve Coeur Lake, and West by the Missouri river. And the Court doth further ascertain and determine that the said Louis C Smith, Thomas F Smith and Philomena Smith are each entitled to one undivided third part of the premises secondly in said petition described as follows to wit: "A lot of ground in Block N number One hundred and sixty one of the City of St Louis containing seventy five feet front on Fifth Street by one hundred and twenty seven and one half feet deep to an alley bounded North by Fletcher, East by Fifth street, South by H. Illinois and West by an alley It is therefore considered by the Court that partition of said real estate be made among said parties according to their respective rights and interests as above ascertained and determined and that William H Rogers, Philip Lanham and Walter H Dorsett be and they are hereby appointed commissioners to make such partition of the premises herein described Thereupon the commissioners file the following affidavit to wit:

County of St Louis SS: Walter H Dorsett and Philip Lanham being sworn say that they will honestly and impartially execute the trust reposed

53 in them as commissioners to make partition in the above entitled cause of Louis C Smith vs Ben partition W H Dorsett

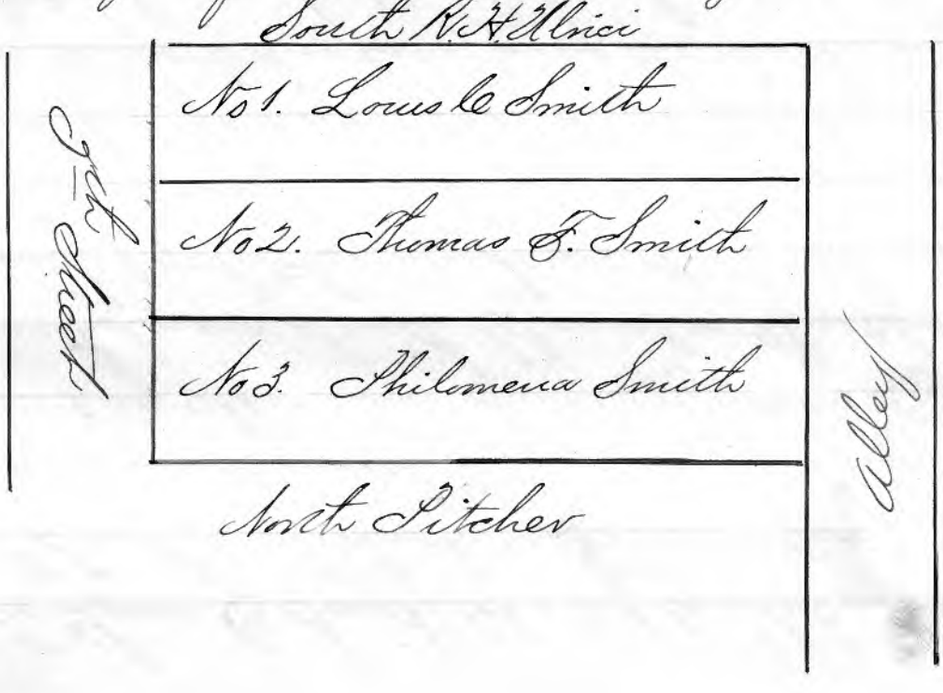
Philip S. Lanham

Sworn to and subscribed this 4th day of October 1853 before me. Henry W Williams Notary Public Saint Louis County Missouri.

On the 3d day of January A D 1854 the following further proceedings were had herein to wit:

Louis C Smith, Thomas F. Smith by his Guardian L C Smith and Philomena Smith by her Guardian Henry Chouteau } Circuit Court in partition

Philip S Lanham and Walter H Dorsett two of the Commissioners appointed by the Saint Louis Circuit Court to make partition in the above entitled cause report that they have divided the lot of ground secondly in the judgment described as follows to wit:



To Louis C Smith lot No 1 bounded north by Thomas F Smith and South by N 21 Block
To Thomas F Smith lot number Two bounded
north by Philomena Smith, South by Louis C Smith
To Philomena Smith lot number Three bounded
north by Pitcher and south by Thomas F Smith
That the lot of land fully in said judgment des=
cribed as follows to wit: Six hundred and forty acres
on Creve Coeur lake, being the South half of United
States Survey No Two thousand and forty in the name
of Auguste Chenleau and Jacques Clamorgan under
Negis Loisel bounded north by Rene Laub, East by
Mackay Thierry, South by Creve Coeur lake
and west by Missouri River, is incapable of division
and that partition of the same cannot be made
without great prejudice to the owners and they
therefore recommend that said premises be sold
in the subdivisions presented by the plat of Survey filed
herewith and made part of this report the said survey
being made under the order of these commissioners
And the said commissioners submit herewith their
report of the cost of said Survey and of their fees
herein. All which is respectfully submitted

Walter H. Dorsett
Philip S. Lanham

State of Missouri }
County of St Louis } Set:

This third day of January
eighteen hundred and fifty four appeared in
open court Philip S. Lanham and Walter H. Dorsett

and acknowledged the foregoing report as their act and doings as commissioners in partition in the suit of Louis C Smith and als.

Taken and certified the day and year aforesaid

Wm J. Hammond

Report of Commrs confirmed

And afterwards at the November term 1853 the following further proceedings were had in said suit of Louis C Smith et al in partition as follows to wit:

Louis C. Smith Thomas F. Smith by L C Smith his Guardian, Philomena Smith by her Guardian Henry Chouteau }

Now at this day came the parties aforesaid by their attorney and upon their motion it is ordered by the Court the report of the commissioners heretofore filed be in all things confirmed and thereupon the Court doth order that the said tract of land in said report described as "Six hundred and forty acres on Creve Coeur lake being the south half of United States States Survey No two thousand and forty in the name of Auguste Chouteau and Jacques Clamorgan under Regis Loisel bounded North by Rene Paul, East by MacKay Thierry, South by Creve Coeur lake and west by Missouri river" be sold by the Sheriff of St Louis County in the subdivision represented by the plat filed by the Commissioners herein on the following terms to wit: one half payable in cash

and the balance upon a credit of twelve months the deferred payment to bear interest and to be secured by deeds of trust upon the premises sold And it is further ordered that the proceeds of the sale the accounts of the commissioners for this service and of A J Keyser County surveyor amounting in the whole to the sum of one hundred and eighty dollars and eighty seven cents, be allowed

Sheriff's Report of sale

And afterwards on the sixth day of March 1854 the following report of sale was filed in said partition suit of Lewis C. Smith et al to wit:

In the St Louis Circuit Court November term 1853

Monday March 6th 1854 John M Kinney

Lewis C Smith et al in partition } sheriff of the county of St Louis state of Missouri comes here into Court and makes report of all his acts and proceedings under the order of sale made in the above entitled cause on the eleventh day of January eighteen hundred and fifty four, as follows: to wit: Pursuant to said order I did on the eleventh day of February eighteen hundred and fifty four, cause the said real estate mentioned in said order to be advertised for sale in the manner prescribed by law by advertisement in the Missouri Democrat a newspaper published in the City of St Louis being at least twenty days prior to the day of sale hereinafter mentioned a copy of which advertisement is hereunto annexed and makes part of this report And agreeably to said advertisement

57 I did on the fourth day of March eighteen hundred and fifty four between the hours of nine in the forenoon and five in the afternoon of that day at the north front door of the Court House, in the City and County of Said Lonis, State of Missouri during the November Term eighteen hundred and fifty three of the St Lonis Circuit Court, expose to sale at public auction to the highest bidder on the terms in said order mentioned, all the right, title interest, claim, estate and property of them the said parties above named of, in and to the real estate mentioned in said order, which said real estate was subdivided into sixteen lots prior to the day of sale according to the plat filed by the commissioners in said cause with the papers in said cause. At which said time and place Charles Gibon became and was the highest and best bidder for lot number 1 containing 40 78/100 acres, at the price and sum of 16 ℔ per acre, amounting to the sum of ℔ 653 48/100; and for lot No 4 containing 40 27/100 acres at the price and sum of 25 ℔ per acre amounting to the sum of ℔ 1006. 75/100; and for lot No 9 containing 5 34/100 acres at the price and sum of ℔ 13. per acre, - amounting to the sum of ℔ 66 74 2/100. Total amount of said Gibons purchase being ℔ 2326 65/100 -

And Horace Metcalf became and was the highest and best bidder for lots numbered as follows: to wit; Lot number 2 containing 40 78/100 acres at ℔ 15. per acre, amounting to the sum of ℔ 611. 70/100

58 Lot number 3 containing 40 68/100 acres at the price and sum of $15 50/100 per acre amounting to the sum of $630 54/100 - Lot number 5 containing 34 acres at the price and sum of $15 50/100 per acre amounting to the sum of $527 - Lot number 6 containing 41 52/100 acres at the price and sum of $15 per acre amounting to the sum of 615 30/100 Lot number 7 containing 41 20/100 acres at the price and sum of $14 per acre amounting to the sum of $576 80/100 - Lot number 8 containing 35 76/100 acres at the price and sum of 14 $ per acre amounting to the sum of $500 64 Lot No 10 containing 41 40/100 acres at the price and sum of $14. per acre amounting to the sum of $579 60/100 - Lot number 13 containing 52.71 acres at the price and sum of 12 $ per acre, amounting to the sum of 632 52/100 $ Lot Number fourteen containing forty one acres, at the price and sum of $15. per acre amounting to the sum of Six hundred and fifteen dollars - Lot number 15 containing thirty five 60/100 acres at the price and sum of Fourteen dollars per acre amounting to the sum of Four hundred and ninety eight dollars and forty cents - Lot number 16 containing thirty seven 90/100 acres at the price and sum of five dollars per acre amounting to the sum of one hundred and eighty nine and fifty cents

Total amount of said Metcalfs purchase five thousand nine hundred and seventy seven dollars And Alley Williams became and was the

highest and best bedder for lot number 11. containing 41 28/100 acres at the price and sum of seventeen per acre amounting to the sum of $701 76/100 and for lot 12 containing 53 16/100 acres at the price and sum of 18¢ per acre, amounting to the sum of $938 88/100. total amount of said Williams purchase $1640 64/100 The aggregate amount of said sale being $9944 24/100
The said several lots were therefore then and stricken off and sold to the said several purchases for the said respective sums
all of which is respectfully submitted for the approval of the Court.

Jno M. Shiner, Sheriff

The Sheriffs notice of sale in partition above referred to herein is as follows to wit:

Sheriffs' Sale in partition

Lewis C Smith, Thomas F Smith by his guardian L C Smith, Philomena Smith by her Guardian Henry Chouteau } Order of Sale in partition

By authority of an order of sale made by the St Louis Circuit on the eleventh day of January eighteen hundred and fifty four, in the above entitled suit, the undersigned sheriff of the County of St Louis State of Missouri will on Saturday the fourth day of March next eighteen hundred and fifty four

between the hours of nine in the forenoon and five in the afternoon of that day at the north front door of the court House in the County and State aforesaid sell at public vendue to the higest bidder, all the right, title, interest, claim, estate and property of the parties in the above entitled suit, of, in and to the following described real estate to wit: Six hundred and forty acres on Creve Coeur lake, in the County of St Louis being the south half of United States Survey number two thousand and forty (2040) in the name of Auguste Chouteau and Jacques Clamorgan under Regis Loisel bounded north by Rene Paul, east by Mackay Wherry, South by Creve Coeur lake, and west by Missouri river. Terms of sale - One half of the purchase money payable in cash and the balance in twelve months the deferred payment to bear interest at the rate of six per cent per annum to be secured by notes and deeds of trust on the property sold John M Wimer, Sheriff February eleventh 1854. The above tract is sub-divided into sixteen lots of about forty acres each and will be sold accordingly

Petition for order on the Shff to pay proceeds of sale in partn to L. C. Smiths assignee

On the 21st day April 1854 the following further proceedings were had to wit; Louis C. Smith, ~~William~~ Thomas F Smith by Louis C Smith his guardian Philomena Smith by Henry Chouteau her Guardian.

61 April term 1852 File No 336 In partition

Petition of Luther W Shreve trustee of Ann F.C. Cannon assignee of Louis C Smith and wife for order upon the sheriff to pay proceeds of sale to said trustee trust of said Ann F.C. Cannon in which said Ann F.C. Cannon and her husband John W Cannon join

Petitioners state that on the eighteenth day of May eighteen hundred and fifty three Louis C Smith and Mary A his wife made and executed their certain deed by which they conveyed to said L W Shreve as trustee of Mrs Ann F.C. Cannon wife of John W Cannon for her sole and separate use and benefit the undivided third part of a tract of land in the County of Saint Louis containing six hundred and forty acres being the south half a survey numbered two thousand and forty originally granted to Regis Loiselle bounded on the north by Rene Paul's estate, on the east by W Wherry deceased, on the south by Creve Coeur Lake and on the west by the Missouri river being the same tract assigned in the partition between Thomas F Smith and his children to the said Thomas F Smith by commissioners report filed in the Circuit Court the ninth day of May eighteen hundred and forty three, that said deed was made, executed and acknowledged and delivered to said trustee on the eighteenth day of May eighteen

hundred and fifty three and was filed for re-
cord in the recorders office of Saint Louis County
on the first day of June eighteen hundred and
fifty three and is duly recorded in said Recorders
office in book A No 6 page 342 the original
of which deed is herewith submitted marked
A That certain proceedings in partition were
commenced in said circuit Court on the nineteenth
June 1852 between said Louis C Smith, Thomas
F Smith and Philomena Smith in which
on said nineteenth day of June eighteen hundred
and fifty two the Court did ascertain and
determine that the said Louis C. Smith, Thomas
F Smith and Philomena Smith were each
entitled to one undivided third part of the prem-
ises above described, which will more fully
appear by the record of the judgment of said
Court. That commissioners were appointed by the
Court to make partition of the premises, who on the
third day of January eighteen hundred and fifty
four reported that the same was not susceptible
of partition without great prejudice to the owners
and recommended that the premises be sold
according to the subdivisions presented by the
plat of survey filed with said report and
made a part thereof, which report was confirmed
And thereupon the Court ordered a sale of said
premises by the sheriff of St Louis County in the

subdivisions represented on the plat filed by the commissioners on the following terms to wit: one half payable in cash and the balance upon a credit of twelve months, the deferred payments to bear interest and to be secured by deeds of trust upon the premises sold. That in pursuance of said order the said sheriff did on the eleventh day of February eighteen hundred and fifty four cause said real estate to be advertised for sale pursuant to law and did on the fourth day of March eighteen hundred and fifty four, sell said real estate pursuant to said order for the aggregate sum of ($9944 24/100) nine thousand nine hundred and forty four dollars and twenty four cents, as will more fully appear by the report of said sheriff filed in said Court on the sixth day of March eighteen hundred and fifty four.

That said L W Shreve as trustee of said Ann E. C. Cannon was at the date of said sale and on the first day of June eighteen hundred and fifty three, the lawful assignee of said Louis C. Smith and wife; that he has not assigned or transferred the title or interest so vested in him as aforesaid and that he now holds the interest or title so conveyed to him by said deed (herewith submitted marked "A") in trust for the sole and separate use and benefit of said Ann E. C. Cannon that at the time when said deed was filed for

record there were no prior conveyances or incum-
brances of record in said recorders office upon said
land made by said Lewis & Smith and that
under and in virtue of said Ann F. C.
Cannons deed the said L M Shreve as trustee
of said Ann F. C. Cannon was and is entitled
as assignee of said Lewis & Smith and wife
to the share or proportion of the proceeds of said
sale by said sheriff to which by the judgment of
said Court the said Lewis & Smith was entitled
prior to the execution and delivery of said deed
The petitioners therefore pray the Court to make an
order upon the sheriff of said County to pay to
said L M Shreve trustee for the use and benefit
of said Ann F. C. Cannon upon the receipt or
order of said Ann F. C. Cannon and her trustee
said L M Shreve, the one third of the proceeds
of sale by said sheriff to which the said
Ann F C Cannon is entitled as the assignee of
Lewis & Smith and wife as aforesaid.
L M Shreve by his attys Leslie Williams and
Barnett. Ann F. C. Cannon by her attys Leslie Wil-
liams and Barnett, John M Cannon by his attys
Leslie Williams and Barnett-
State of Missouri County of St Louis; John M.
Cannon being sworn upon his oath states that
he believes the above petition and the matters
and things therein stated to be true

65 Sworn to and subscribed J. M. Cannon
before me this 21st April eighteen hundred and fifty four
William J Hammond, Clk
I hereby acknowledge service of the foregoing petition
and the matter submit to the judgment of the Court
St Louis April 21. 1854 Jno W. Wimer,
Sheriff
I acknowledge service of this petition and have no de=
fence to make believing the facts to be as stated
Whittelsey atty for L C Smith et al.
And on the same day April 21st 1854 the following
further proceedings were had to wit:
Louis C Smith, Thomas J Smith & Philomena Smith
In partition In partition
L W Shreve trustee of Ann J C Cannon comes into
Court and moves the Court to make an order upon the
Sheriff to pay said trustee for use of said Ann J C Cannon
the share of the proceeds of the sale of the south half of
Survey No 240 originally granted to Regis Loiselle
to which the said L W Shreve trustee is entitled as
assignee of said Louis C Smith and wife dated
2 May 18th eighteen hundred and fifty three in book
A No 6 page 342. Leslie Williams & Barnes
I hereby acknowledge service of copy of above motion
and submit the matter to the judgment of the Court
St Louis April 21st 1854 Jno W Wimer, Sheriff
I acknowledge service of notice of this motion and
have no defence to make. Whittelsey of counsel for

66 petitioners in original suit.

Deed "A" The deed above referred to and marked "A" is as follows to wit:

This deed made and entered into this eighteenth day of May A D Eighteen hundred and fifty three between Louis G Smith and Mary A. Smith his wife parties of the first part, L W Shreve trustee of Ann F E Cannon party of the second part Witnesseth that for and in consideration of the sum of twenty one hundred and thirty three dollars to the party of the first part paid by Ann F. E Cannon the receipt whereof is hereby duly acknowledged do grant, bargain, sell, convey and confirm unto the said L W Shreve, trustee of said Ann F E. Cannon for her sole use and benefit, separate and apart from any contract whatsoever by her said husband and to her heirs and assigns forever, the undivided third part of a tract of land in the County of St Louis containing six hundred and forty acres more or less being the south half of Survey numbered two thousand and forty originally granted to Regis Loisells bounded on the north by Pierre Pauls estate, on the east by M Wherry deceased, on the east by Grand Coeur lake and west by the Missouri River; being the same tract assigned in the partition between Thomas F Smith and his children, to the said Thomas F Smith by the commissioners report filed in the Circuit Court the

ninth day of May eighteen hundred and forty three
To have and to hold the above described real
estate to the said trustee for the use and benefit
of said Cannon and her heirs and
assigns. In testimony whereof we have hereunto set
our hands and seals this day of May
eighteen hundred and fifty three

Louis C. Smith (seal)
Mary A. Smith (seal)

State of Missouri County of St Louis ss. Be it
remembered that on this eighteenth day of May eighteen
hundred and fifty three before me the undersigned
a justice of the peace in and for said county came
Louis C Smith and Mary A. Smith his wife
who are personally known to me to be the same
persons whose names are ~~subscribed~~ 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 And she the
said Mary A Smith being by me made acquainted
with the contents of said conveyance acknowledged on
an examination separate and apart from her husband
that she executed the same and relinquishes her
dower in the real estate therein mentioned
freely and without compulsion or undue influence
of her said husband Taken and certified
the day and year above written

Peter H Johnstone, Justice

68 State of Missouri } SS: I the undersigned certify
County of St Louis } recorder for said county, that
the foregoing instrument of writing was filed
for record in my office June first eighteen hund-
red and fifty three and is truly recorded in
Book Q- 3342. Witness my hand and
official seal the date aforesaid
L. S. S. D. Barlow, Recorder.

Sheriff to Metcalf 3. Sheriffs two deeds under said partition
to Metcalf one of the plaintiffs as follows
to wit;

To all to whom these presents shall come I John
M Kimer Sheriff of the County of St Louis, State
of Missouri send Greeting— Whereas on the
eleventh day of January in the year of our Lord
one thousand eight hundred and fifty four an order
of sale was made by the St Louis Circuit Court in
a certain cause then pending in said Court of peti-
tion for partition wherein Louis C Smith, Thomas
F Smith, by his guardian L C Smith, Philomena
Smith by her guardian Henry Chouteau, were parties
a copy of which said order of sale is hereto attached
and makes a part of this deed. And whereas I,
the said John M Kimer Sheriff as aforesaid, did in
obedience to said order on the eleventh day of February
eighteen hundred and fifty four cause the said
real estate mentioned and described in the

said order and petition on said, caused to be adver=
tised for sale in the manner prescribed by law by
advertisement to published in the Missouri Democrat
a newspaper printed in the City of St Louis and
County of St Louis being at least twenty days prior
to the day of sale hereinafter mentioned a copy of
which said advertisement is hereto annexed
and makes part of this deed; and by virtue
of said order of sale and agreeably to said adver=
tisement I the said Sheriff did on the fourth day
of March in the year eighteen hundred and
fifty four between the hours of nine o'clock in
the forenoon and five o'clock in the afternoon
of that day at the North front door of the Court House
in the City and County of St Louis, State of Mis=
souri and during the sitting of the St Louis Circuit
Court, being the November Term ~~and~~ eighteen
hundred and fifty three of said Court, expose to sale
at public auction to the highest bidder on the terms in
said order mentioned all the right, title, interest, claim
estate and property of them the said parties herein be=
fore mentioned of, in and to the said real estate men=
tioned in said order and described in said adver=
tisement - at which said time and place Horace
Metcalf became and was the highest and best
bidder for the following described real estate sit=
uated in the County of St Louis, State of Missouri
according to the plat hereto annexed, viz: Lot number

ed two (2) containing 40 78/100 acres; Lot numbered three (3) containing forty 68/100 acres; Lot numbered five (5) containing thirty four acres; Lot numbered Six (6) containing forty one 02/100 acres; Lot numbered seven (7) containing forty and 20/100 acres; Lot numbered Eight (8) containing containing thirty five 76/100 acres; Lot numbered Ten (10) containing forty one 40/100 acres; Lot numbered thirteen (13) containing fifty two 71/100 acres Lot numbered fourteen (14) containing forty one acres Lot numbered Sixteen (16) containing thirty seven 90/100 acres; at the price and sum of five thousand nine hundred and seventy seven dollars The said real estate was therefore then and there stricken off and sold to the said Isaac McCall for said sum.

And whereas I the said Sheriff did afterwards to wit on the sixth day of March in the year eighteen hundred and fifty four make report to said St Louis Circuit Court of all my acts and proceedings under said order of sale which said report was on the said day approved and confirmed by said Court and an order was thereupon made by said Court, ordering and directing me the said Sheriff to make and execute to the purchaser of said sale good and sufficient deed for the said real estate so sold as aforesaid Now therefore Know Ye that I John M. Wimer Sheriff as aforesaid in consideration of the premises and of the said sum of Five thousand nine hundred and seventy seven dollars

to me in hand paid (according to the terms in said order mentioned) by the said Horace Metcalf, the receipt of which I do hereby acknowledge and by virtue of the power and authority by me vested by law I do hereby bargain, sell, transfer and convey to him the said Horace Metcalf and to his heirs and assigns forever all the right, title, interest, claim, estate and property of them the said parties hereinbefore named, of in and to the said real estate hereinbefore described together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining. In witness whereof I Jno M. Kimer sheriff of the County of St Louis have hereunto set my hand and seal this eighth day of March in the year of our Lord one thousand eight hundred and fifty four.

Jno M. Kimer (L S)
Sheriff

State of Missouri } ss: In the St Louis Circuit Court
County of St Louis } November Term 1853 Wednesday
March 8th 1854.

Be it remembered that on this eighth day of March eighteen hundred and fifty four in open Court came John M Kimer Sheriff of the County aforesaid and he acknowledges the execution of the foregoing deed by him as sheriff as aforesaid to Horace Metcalf which said acknowledgment is entered on the record of the Court of that day. 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

Jno J. Hammond, Atty

Order of Sale &c

In the St Louis Circuit Court November Term
Eighteen hundred and fifty three

Wednesday January 11th 1854

Louis C Smith, Thomas F. Smith by
his guardian L C Smith, Philomena
Smith by her guardian Henry Chouteau

Now at this day come the parties aforesaid by their attorney and upon their motion it is ordered by the Court that the report of commissioners heretofore filed be in all things confirmed; and thereupon the Court doth order that the said tract of land in said Report described as "Six hundred and forty acres on Creve Coeur Lake, being the South Half of United States Survey No Two thousand and forty in the name of August Chouteau and Jacques Clamorgan under Regis Loisselle - bounded north by Rene Paul, East by Mackey Henry, South by Creve Coeur Lake and West by Missouri River" - be sold by the Sheriff of St Louis County in the subdivision represented on the plat filed by the commissioners herein on the following terms to wit: one half payable in cash and the balance upon a credit of twelve months - the deferred payments to bear interest and to be secured by deeds of trust upon

the premises sold. And it is further ordered that the accounts of the Commissioners for their service and of N P Heyer, county Surveyor, amounting in the whole to the sum of one hundred and eighty dollars and eighty seven cents be allowed

State of Missouri } ss. I William J. Hammond
County of St Louis } clerk of the Circuit Court in and for the County aforesaid

certify the foregoing to be a true copy of an order of sale made by the Circuit Court in the above entitled cause

In testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of St Louis this 12th day of January 1854.

Wm J. Hammond, Clk

Sheriffs' Sale in partition

Louis C Smith, Thomas F Smith by his Guardian L. C. Smith, Philomena Smith by her Guardian Henry Chouteau } Order of Sale in Partition

By authority of an order of sale made by the St Louis Circuit Court on the eleventh day of January eighteen hundred and fifty four, in the above entitled suit, the undersigned Sheriff of the County of St Louis, State of Missouri, will on Saturday the fourth day of March next (eighteen hundred and fifty four) between the hours of nine in the

forenoon and five in the afternoon of that day at the north front door of the Court House in the County and State aforesaid, sell at public vendue to the higest bidder, all the right, title, interest, claim, estate and property of the parties in the above entitled suit of, in and to the following described real estate, to wit: Six hundred and forty acres on Creve Coeur lake in the County of St Louis being the south half of United States Survey number Two thousand and forty (2040 in the name of August Chouteau and Jacques Clamorgan under Regis Loiselle - bounded north by Neve Paul, East by Mackay Wherry, South by Creve Coeur lake and West by Missouri River

Terms of sale - One half of the purchase money payable in cash and the balance in twelve months; the deferred payment to bear interest at the rate of six per cent per annum to be secured by notes and deeds of trust on the property sold.

John M. Wimer, Sheriff

February 11th 1854.

The above tract is subdivided into sixteen lots of about forty acres each and will be sold accordingly

State of Missouri } ss: I the undersigned recorder
County of St Louis } in and for the said County,

certify that the foregoing instrument of writing was filed for record in my office March 9th 1854. and is truly recorded in book H6 p 320. Witness my hand and official seal this, the date aforesaid

(L.S.) C. Neemle, Recorder

75
2d Deed
H Metcalf

To all to whom these presents shall Come I John M Viner Sheriff of the County of St Louis, State of Missouri Send. Greeting Whereas on the eleventh day of January in the year of our Lord one thousand eight hundred and fifty four an order of sale was made by the St Louis Circuit Court in a certain cause then pending in said Court of petition for partition wherein Louis C Smith, Thomas F Smith by his Guardian L C Smith, Philomena Smith by her Guardian Henry Chouteau, were parties, a copy of which said order of sale is hereto attached and makes a part of this deed and whereas I the said John M Viner Sheriff as aforesaid did in obedience to said order on the eleventh day of February eighteen hundred and fifty four cause the said real estate mentioned and described in the said order and petition in said cause to be advertised for sale in the manner prescribed by law by advertisement published in the Missouri Democrat, a newspaper printed in the City and County of St Louis being at least twenty days prior to the day of sale hereinafter mentioned, a copy of which said advertisement is hereto annexed and makes part of this deed. And by virtue of said order of sale and agreeably to said advertisement I the said Sheriff did, on the fourth day of March in the year eighteen hundred and fifty four between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day at the North front door of the Court House in the City and County of St Louis State of

Missouri and during the sitting of the St Louis Circuit Court, being the November term eighteen hundred and fifty three of said Court, expose to sale at public auction to the highest bidder on the terms in said order mentioned, all the right, title, interest, claim, estate and property, of them the said parties hereinbefore mentioned of, in and to the said real estate mentioned in said order and described in said advertisement — at which said time and place Horace Metcalf became and was the highest bidder for the following real estate situated in the County of St Louis State of Missouri according to a plat of subdivision of lands No 2040 belonging to the heirs of Emilie Smith, annexed to my former deed to said Metcalf dated the eighth day of March eighteen hundred and fifty four (recorded in book K No 6 pp 320) to wit: Lot number fifteen of said plat of subdivision containing thirty five acres and sixty hundredths of an acre at the price and sum of ~~twenty~~ five thousand nine hundred and seventy seven dollars together with the lots in said former deed mentioned The above described was ~~intended~~ omitted by mistake to be included in my former deed above mentioned — the said real estate was therefore then and there stricken off and sold to the said Horace Metcalf for said sum. And whereas I the said Sheriff did afterwards to wit on the sixth day of March in the year eighteen hundred and fifty four make report to said Circuit Court of all my acts and proceedings under said order of sale which said report was on the same day

approved and confirmed by said Court and an order was thereupon made by said Court ordering and directing me the said Sheriff, to make and execute to the purchaser of said sale, good and sufficient deed for the said real estate so sold as aforesaid
Now Therefore Know Ye that I John W Wimer Sheriff as aforesaid in consideration of the premises and of the said sum of Five thousand nine hundred and seventy seven dollars and —— cents— to me in hand paid according to the terms in said order mentioned) by the said Horace Metcalf the receipt whereof I do hereby acknowledge and by virtue of the power and authority in me vested by law, I do hereby bargain, sell, transfer and convey to him the said Horace Metcalf and to his heirs and assigns forever all the right, title, claim, interest, estate and property of them the said parties hereinbefore named, of in and to the said real estate hereinbefore described together with all the rights privileges and appurtenances thereunto belonging or in anywise appertaining In witness whereof I John W Wimer Sheriff of the county of St Louis have hereunto set my hand and seal this first day of February in the year of our Lord one thousand eight hundred and fifty six

Jno W Wimer, Sheriff, (Seal)

State of Missouri } ss:
County of St Louis } In the St Louis Circuit Court

October Term 1855 February 4, 1856

Be it remembered that on this fourth day of February eighteen hundred and fifty six in open court came John W Viner late sheriff of said County who is personally known to the Court to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto and he acknowledged the same to be his act and deed for the purposes therein mentioned. Which said acknowledgment is entered on the record of the Court of that day

In witness 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

Wm J Hammond, Clerk

Order of Sale &c

In the St Louis Circuit Court November Term 1853 Wednesday January 11th 1854.

Louis C Smith, Thomas F Smith by L C Smith his Guardian, Philomena Smith by her Guardian Henry Chouteau

Now at this day came the parties aforesaid by their attorney and upon their motion it is ordered by the Court that the report of the commissioners heretofore filed be in all things confirmed And thereupon the Court doth order that the said tract of land in said report described as "Six hundred and forty acres on Creve Coeur lake being the South half of United States Survey No two

79

thousand and forty on the name of August Chonteau and Jacques Clamorgan under Regis Loisells bounded North by Vene Paul, East by Mackey Wherry, South by Creve Coeur Lake and West by Missouri River" be sold by the Sheriff of St Louis County in the subdivision represented on the plat filed by the commissioners herein on the following terms to wit: one half payable in cash and the balance upon a credit of twelve months the deferred payments to bear interest and to be secured by deeds of trust upon the premises sold And it is further ordered that the ~~premises and~~ accounts of the commissioners for this service and of A F Heyer, county surveyor, amounting on the whole to the sum of $180 87/100 Dollars, be allowed

State of Missouri } ss I Wm J Hammond
County of St Louis } clerk of the Circuit Court within and for the county aforesaid certify the foregoing to be a true copy of an order of sale made on the above entitled cause In testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of St Louis this twelfth day of January 1854. (L.S.) Wm J Hammond, Clerk

Sheriffs Sale in partition—

Louis C Smith, Thomas F. Smith by his guardian L. C. Smith, Philomena Smith by her Guardian Henry Chonteau

By authority of an order of sale made by the St Louis Circuit Court on the 11th day of January 1854, in the above entitled suit the undersigned Sheriff of the County of St Louis

State of Missouri will on Saturday the fourth day of March next (1854) between the hours of nine in the forenoon and five in the afternoon of that day at the North front door of the Court House in the county and State aforesaid sell at public vendue to the highest bidder, all the right, title, interest, claim, estate and property of the parties in the above entitled suit of, in and to the following described real estate to wit: Six hundred and forty acres on Creve Coeur Lake in the County of St Louis, being the South half of United States Survey number two thousand and forty (2040) in the name of Auguste Chouteau and Jacques Clamorgan under Regis Loisells, bounded north by Rene Paul, East by Mackay Henry, South by Creve Coeur Lake and West by Missouri River.

Terms of sale- One half of the purchase money payable in cash and the balance in twelve months- the deferred payments to bear interest at the rate of six per cent per annum to be secured by notes and deeds of trust on the property sold.

February 11th 1854. John M Wimer, Sheriff

The above tract is subdivided into sixteen lots of about forty acres each and will be sold accordingly

State of Missouri } ss: I the undersigned recorder in
County of St Louis } and for said County certify
that the foregoing deed was
filed for record in my office February 6th eighteen hundred
and fifty six and is truly recorded in book A 172
page 117 Witness my hand and official seal
the date aforesaid.

L S

C. Keemle, Recorder.

81
Sheriff to
O. Williams

4, Sheriffs deed to Olly Williams under
sane as follows:

To all to whom these presents shall
come I, John M. Viner Sheriff of the county of St Louis
State of Missouri send greeting Whereas on the elev=
enth day of January in the year of our Lord one thous=
and eight hundred and fifty four an order of sale was
made by the St Louis Circuit Court in a certain cause
then pending in said Court of petition for partition wherein
Louis C Smith, Thomas F Smith by his Guardian L.
C Smith, Philomena Smith by her Guardian Henry
Chouteau were parties: a copy of which said order of sale
is hereto attached and makes and makes a part of this deed
And whereas I the said Jno M Viner Sheriff as aforesaid
did in obedience to said order on the eleventh day of Feb=
ruary eighteen hundred and fifty four cause the said real
estate mentioned and described in the said order and
petition in said cause to be advertised for sale in the
manner prescribed by law by advertisement published
in the Missouri Democrat, a newspaper printed and
published in the City and county of St Louis being the
at least twenty days prior to the day of sale hereinafter
mentioned, a copy of which said advertisement is
hereto annexed and makes part of this deed and
by vertue of said order of sale and agreeably to said
advertisement, I the said Sheriff did on the fourth
day of March in the year Eighteen hundred and fifty
four between the hours of nine o'clock in the forenoon

and five o'clock P.M. the afternoon of that day at the north front door of the Court House in the city and county of St Louis State of Missouri and during the Sitting of the St Louis Circuit Court being the November Term eight= een hundred and fifty three of said Court expose to sale at public auction to the highest bidder on the terms in said order mentioned, all the right, title, interest, claim, estate and property of them the said parties hereinbefore men= tioned, of in and to the said real estate mentioned in said order and described in said advertisement at which said time and place Ally Williams became and was the highest and best bidder for the following described real estate situated in the County of St Louis according to a plat returned by the commissioners in said cause which plat is on record in the recorder's office of St Louis County viz: Lot numbered Eleven (11) containing forty one 28/100 acres and lot numbered Twelve (12) con= taining fifty two 6/100 acres at the price and sum of Sixteen hundred and forty 64/100 Dollars. The said real estate was therefore then and there stricken off and sold to the said Ally Williams for said sum.

And whereas I the said Sheriff did afterwards to wit on the Sixth day of March in the year eighteen hundred and fifty four make report to the said St Louis Circuit Court of all my acts and proceedings under said order of sale which said Report was on the same day approved and confirmed by said Court and an order was thereupon made by said Court ordering

and directing me the said Sheriff to make and execute to the purchaser of said sale a good and sufficient deed for the said real estate so sold as aforesaid Now therefore Know ye that I John W Wimer Sheriff as aforesaid in consideration of the premises and of the said sum of Sixteen hundred and forty dollars and sixty four cents to me in hand paid (according to the terms in said indenture mentioned) by the said Olly Williams, the receipt whereof I do hereby acknowledge and by virtue of the power and authority in me vested by law, I do hereby bargain, sell and transfer and convey to him the said Olly Williams, and to his heirs and assigns forever, all the right, title, interest claim, estate and property of them the said parties hereinbefore named, of in and to the said real estate hereinbefore described, together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining In witness whereof I John W Wimer Sheriff of the County of St Louis, have hereunto set my hand and seal this eighth day of March in the year of our Lord one thousand eight hundred and fifty four

Jno W Wimer Seal Sheriff.

In the St Louis Circuit Court November Term 1853.

Wednesday 8 March 1854

Be it remembered that on this eighth day of March eighteen hundred and fifty four in open Court came John W Wimer Esqr Sheriff of the County aforesaid and he acknowledges the same as sheriff as aforesaid, to Olly Williams which said acknowledgment is entered on the record

of the Court of that day (seal) In testimony whereof I hereto set my hand and affix the seal of said Circuit office in the city of St Louis the day and year last aforesaid

Wm J. Hammond, Clerk

In the St Louis Circuit Court November Term 1853

Wednesday January 11th 1854

Louis C. Smith Thomas F. Smith by L C Smith his guardian, Philomena Smith by her guardian Henry Chonteau - Now at this day came the parties aforesaid by their attorney and upon their motion it is ordered by the Court that the report of the report of the commissioners heretofore filed be in all things confirmed And thereupon the Court doth order that the said tract of land in said report described as "Six hundred and forty acres in Creve Coeur Lake, being the south half of United States Survey No Two thousand and forty in the name of August Chonteau and Jacques Clamorgan under Regis Loziello bounded North by Creve Coeur, east by Mackay Wherry, South by Creve Coeur Lake, and west by Missouri River," be sold by the Sheriff of St Louis County in the subdivision represented on the plat filed by the commissioners herein on the following Terms: to wit: One half payable in cash and the balance upon a credit of twelve months - the deferred payments to be secured by deeds of trust upon the premises sold And it is further ordered that the accounts of the Commissioners for this service and of A T Meyer, County Surveyor, amounting in the whole to the sum of one

hundred and eighty 87/100 Dollars, be allowed.
State of Missouri } ss: I William J. Hammond clerk
County of St Louis } of the Circuit Court within and for
the county aforesaid certify the foregoing to be a true
copy of an order of sale made in the above entitled cause
Seal. In testimony whereof I hereto set my hand and
affix the seal of said Court at office in the City of
St Louis this twelfth day of January eighteen hundred
and fifty four Wm J Hammond, Clerk
Sheriff's Sale in partition Louis C Smith, Thomas
F Smith by his guardian L.C. Smith, Philomena Smith
by her guardian Henry Chouteau — Order of Sale
in partition — By authority of an order of sale made by
the St Louis Circuit Court on the eleventh day of January
eighteen hundred and fifty four in the above entitled suit the
undersigned Sheriff of the county of St Louis State of
Missouri will on Saturday the fourth day of March
next (1854) between the hours of nine in the forenoon and
five in the afternoon of that day at the north front door of the
court House in the County and State aforesaid, sell at public
vendue to the highest bidder, all the right, title, interest
claim, estate and property of the parties in the above entitled
suit of, in and to the following described real estate to
wit: Six hundred and forty acres on Creve Coeur
Lake in the County of St Louis — being the South half
of United States Survey number Two thousand
forty (2040) in the name of Auguste Chouteau and
Jacques Clamorgan under Regis Loiselle bounded

north by Steve Saul, East by Mackay Henry, South by Creve Coeur Lake, and West by Missouri River
Terms of sale- one half of the purchase money payable in cash and the balance in twelve months, the deferred payment to bear interest at the rate of six per cent per annum to be secured by notes and deeds of trust on the property sold- John M. Wimer, Shff
February 11th 1857
The above tracts is subdivided into sixteen lots of about forty acres each and will be sold accordingly
Filed & Recorded March 31st 1865 A C Bernondy,
Recorder.
State of Missouri } ss:
County of St Louis } I the undersigned Recorder and County certify that the foregoing is a true copy of an instrument executed by Jno M Wimer Sheriff in partition suit between Louis C Smith et al together with the advertisement of sale, acknowledgment, endorsement, date of filing and recording thereof as the same remain of record in my office in Book No 298 p 359 & fol.

Witness my hand & and official seal at office this 5th day of December A D Eighteen hundred and sixty five
L S
Julius Conrad,
Recorder

87 Williams to Snyder

5. A Williams to Snyder one of the plaintiffs as follows:

This deed made and entered into this first day of March eighteen hundred and sixty by and between Ally Williams and Mary his wife of the county of St Louis State of Missouri parties of the first part and Nimrod Snyder of the same County and State party of the second part Witnesseth; That said parties of the first part in consideration of the sum of eight thousand four hundred and sixty one dollars to them paid by the said party of the second part the receipt of which is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said party of the second part the following described real estate situate in the said County of St Louis and State of Missouri to wit; Fractional section number seventeen in township number forty six north of Range five east containing thirty four acres and thirteen hundredths of an acre. Also a certain tract, piece or parcel of land containing two hundred and eighty eight acres and forty five hundredths of an acre being part of a larger tract of eighteen hundred arpens of land situate in late Creve Coeur in township forty six north range four and five east of the fifth principal meridian granted by concession from the Spanish Government to Antoine Reynal on the eighteenth day of May Seventeen hundred and ninety six and surveyed in the

eighteenth day of January eighteen hundred and six recorded in the office of the Recorder of Land Titles in book C page 448 and following.
Also all that parcel of land situate in Creve Coeur Outlet in the County of St Louis and being a part of lot number Thirteen on the plat of subdivision of land in United States Survey number 2040 belonging to the heirs of Emilie Smith made by H J Meyer county Surveyor and dated December eighteen hundred and fifty three which plat is annexed to a sheriffs deed of said in partition dated the eighth day of March eighteen hundred and fifty four and recorded in the recorders office of St Louis County in Book K number 6 page 320 bounded and described as follows, to wit: beginning at the south west corner of said lot number 13 & thence running eastwardly on the dividing line between lots numbered 13 and 12 of said plat of subdivision sixteen rods to a point, thence northwardly and parallel with the western line of said lot number 13 fifty six rods and ten links to the middle of the creek called Creve Coeur Outlet, thence following up in a southwesterly direction the middle of the main channel of the said Creve Coeur Outlet to the western line of said lot number 13 and thence southwardly with the Western line of said lot number 13 fifty two rods and three links to the place of beginning containing five and forty two hundredths of an acre

89

Also fractional section eighteen, township forty six Range Five East containing twenty three acres and seventy five hundredths of an acre. Also lot number Eleven containing forty one acres and twenty eight hundredths of an acre and lot number twelve containing fifty acres and sixteen hundredths of an acre on partition plat of record in the recorder's office of St Louis County in partition case of Louis C Smith et al; said lots Eleven and Twelve being same acquired by Olly Williams by sheriff's deed dated January eleventh eighteen hundred and forty four. Also a tract of land adjoining the above and situated in United States Survey 3094 in township forty six (46) Range five (5) East containing five hundred and ten acres more or less and bounded on the West by the lake, North by Mullanphy, East by land hereby conveyed and South by Creve Coeur lake - and being the same tract of land acquired by Sheriff's deed recorded in the recorder's office in Book 214 page 123, together with all improvements, mill, machinery, apparatus &c To Have and To Hold the same together with all the appurtenances to the said party of the second part his heirs and assigns forever. It being expressly understood that this conveyance is only of such title as they the said parties of the first part may have and that they in no wise warrant said title In witness whereof we have hereunto set our hands and

affix our seals the day and year first above written

Olly Williams (seal)

Mary Williams (seal)

State of Missouri }
County of St Louis } Be it remembered that on this seventeenth day of March eighteen hundred and six before me the undersigned a justice of the peace in and for the County aforesaid personally appeared Olly Williams and Mary his wife who are known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto and severally acknowledged the same to be their act and deed for the purposes therein mentioned the said Mary Williams being made fully acquainted with the matters of said instrument of writing upon an examination separate and a part from her husband acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and voluntarily and without compulsion or any undue influence of her said husband Given under my hand the day and year first above written.

Jacob L. Brown
Justice of the Peace

91

Defendants admission

& The defendants admitted that the sheriff had conveyed the lots mentioned in the petition in this cause to Charles Gibson by a deed similar to the one made to Metcalf and that said Gibson had conveyed the same to the plaintiff Metcalf as stated in the petition

Proceedings in Probate Court

& The following proceedings in the Probate Court of St Louis allowing Judgment in favor of Chambers administrator, as follows:

State of Missouri } SS: At a term of the Probate
County of St Louis } Court began and held at the City of St Louis within and for the County of St Louis in the State of Missouri on the first Monday being the third day of September in the year of our Lord one thousand eight hundred and sixty are present William F. Ferguson Judge of said Court. The Court adjourned from day to day until Wednesday the nineteenth day of September A D eighteen hundred and sixty when the following proceedings were had

Thomas L Sturgeon, administrator of William Chambers vs: Charles G Whittelsey, administrator of Thomas F Smith

Judgment $2444.75 + $29.20 } clafs:

Charles G Whittelsey administrator de bonis non of Thomas F Smith appears and waives this service of notice required by law on the demand of Thomas L Sturgeon as administrator of William Chambers deceased, on a judgment obtained in the Supreme Court of the

92 State of Missouri on the twentieth day of June eighteen hundred and fifty nine for two thousand four hundred and forty four dollars and seventy five cents debt and twenty nine dollars twenty cents cents a duly certified transcript of which is exhibited to the Court and neither party requiring a jury the Court examined and allow said judgment and order the same to be placed in the seventh class.

State of Missouri } ss: I A. S. Lindsey clerk of the
County of St Louis } Probate Court of the County of St Louis State of Missouri do hereby certify that the foregoing is a correct transcript from the records in my office of the allowance of a judgment against the estate of Thomas F. Smith as the same appears of record in Book H of records, page 115. In witness whereof I hereto set my hand and affix the seal of said Court at office this fifth day of December 1865

(L.S.) A. S. Lindsey, Clerk

93

Proceedings in Probate Court for sale of real estate to satisfy Judgment & adm's deed to M. L. Tyler

And proceedings in same court for sale of real estate to satisfy said judgment and administrators deed to Mary L. Tyler

In the St Louis Probate Court In ree Estate of Thomas F Smith deceased. Charles G Whittelsey administrator de bonis non of the estate of said Thomas F Smith comes and prays the St Louis Probate Court to order a sale of the real estate of the said Thomas F Smith, deceased or so much thereof as may be sufficient to pay the debts of said deceased and he states that by his last settlement made before this Court there is a balance in his hands belonging to the estate of eight hundred and seventeen 52/100 Dollars That there is no personal property in his hands That there are no debts due to deceased - that of the real estate inventoried there remains unsold the following A lot of ground in Block 46 One hundred and sixty one of the City of St Louis fronting eastwardly seventy five feet (75) on Fifth street, and running back westwardly one hundred and fifty feet bounded north by lot now or formerly of Pitcher, East by fifth street, South by lot of N. W. Nicci and West by an alley. Also a peace of ground in the county of St Louis being the south half of United States Survey 46 two thousand and forty (2040) bounded north by land of Gabriel and Rene Jaulo heirs, South by Creve Coeur Lake and west by the Missouri River, being the same land conveyed by Auguste Chonteau to Emilie Smith

94 and assigned in partition by the Circuit Court to said Thomas F. Smith deceased

The Supreme Court of this estate upon an appeal taken from the judgment of the St Louis Land Court against the estate on the twentieth June eighteen hundred and fifty nine entered up judgment against the Estate of said Smith for the sum of two thousand four hundred and forty four 75/100 Dollars, which said judgment has been presented this Court and allowed

Nothaving funds on hand to pay said judgment this administrator prays the court to order a sale of so much of real estate as may be sufficient to pay the debts of the deceased, Charles C Whittelsey administrator de bonis non.

County of St Louis } Charles C Whittelsey being sworn says that the above petition contains a true account of his administration of the estate of Thomas F Smith, deceased the list of debts due to and by the deceased running unpaid a true ~~xxxy~~ inventory of the real estate and of the remaining personal estate and all their assets in his hands

Charles C Whittelsey

Sworn and subscribed before me this 19th September 1860 } William Ferguson Judge of Probate

To the St Louis Probate Court

Charles C Whittelsey administrator of Thomas F. Smith comes and prays the Court to make an order for the sale of so much of the real estate of said intestate as will pay the debts allowed against

the estate and states that Mary L Tyler who was the pur-
chaser at the last sale ordered by the Court for November
twenty four A Eighteen hundred and sixty two, declined
completing the purchase for the reason that at his death
said Thomas F Smith had no title to said lots in block
One hundred and sixty one of St Louis and the said Mary
owning the judgment allowed against the estate made
the the bids to pay the debt due her, and on the ground
of there being no title whatever passed by said sale, declines
to comply with the terms of sale. the administrator prays
therefore for a sale of the real estate of the intestate being
the South West half of United States Survey 26 two thou-
and and forty in the name of Auguste Chouteau and al
made Regis Loiselle bounded north by Rene Paul, East
by N Henry chal South west by Lake Creve Coeur and
north west by the Missouri River containing Six hundred
and forty acres more or less being the same tract assigned
and said Thomas F Smith on the partition with his
children recorded Book N No 4 p 273 and following
The said tract being all the land owned by said Smith
remaining unsold Charles C Whittelsey administrator
de bonis non of Thomas F. Smith

State of Missouri } SS. At a term of the Probate Court began
County of St Louis } and held at the City of St Louis
within and for the County of St Louis in the State of Missouri
on the first Monday being the first day of December
in the year of our Lord One thousand eight hundred
and sixty two are present William F. Ferguson

Judge of said Cont, Peter A Feldman, clerk and Peter Wegman Esq, Marshall of the County of St Louis Court adjourned from day to day until Wednesday the seventeenth day of December Eighteen hundred and sixty two.

Wednesday December seventeenth Eighteen hundred and sixty two Cont met pursuant to adjournment present same judge— Charles G Whittelsey administrator of Thomas F Smith deceased Order of sale renewed— On motion of Charles G Whittelsey administrator of Thomas F Smith deceased, and it appearing that the order of sale made at the last September Term of this Cont has not been complied with it is ordered that the same renewed and that the said Charles G Whittelsey do on the Fourth Monday of February next at the eastern front door of the Cont House of the county of St Louis and during the Session of the Circuit or Land Cont or Cont of Common Pleas, of said County between the hours of ten o clock in the forenoon and five o clock in the afternoon of that day expose to sale at public vendue or outcry the following real estate on the petition of said administrator described to wit: The south West half of United States Survey No Two thousand and forty on the name of Auguste Chonteau and Alexander Regis Loiselle bounded north by the land of Rene Paul, East by M. Mercy and als, South west by Lake Creve Coeur and west by the Missouri River containing Six

hundred and forty acres more or less being the same tract assigned to said Thomas F Smith in the partition with his children recorded in Book 264 pp 273 and following and sell the same for the purpose in the said petition mentioned on the following terms to wit: one third cash and the balance in two equal payments of six and twelve months, the purchaser to give notes and a deed of trust to secure the deferred payments first having had the same appraised and notice of time, terms and place of sale published for four weeks prior thereto in some newspaper in this State and also by ten copies of such notice put up in public places in said county twenty days before the day of sale as directed by law and that he make return of his proceedings at the next term of this Court

State of Missouri } ss: I A S Lindsey clerk of the
County of St Louis } Probate Court of the County of St-
Louis hereby certify that the foregoing is a correct transcript of the record of an order of sale made by the Probate Court of the County of St Louis in the matter of the estate of Thomas F. Smith deceased, as the same appears of record in my office in Book "Y" of Records on page 84

In witness whereof I hereto set my hand and affix the seal of said Court at office this second day of December A D Eighteen hundred and sixty five

(L S) A. S. Lindsey, Clerk

To the St Louis Probate Court- Charles G Whittelsey

administrator de bonis non of Thomas J. Smith deceased comes and makes report of his proceedings under the order of sale made by this Court at the December Term 1862 He reports that in obedience to said order he did on Monday the twenty third day of February Eighteen hundred and sixty three at the eastern front door of the Court House in the City of St Louis between the hours of ten o'clock A M & five o'clock P. M. of that day expose to sale the real estate in said order of sale described in said order as the southwest half of United States Survey No Two thousand and forty in the name of Auguste Chouteau and others under Regis Loiselle bounded North by Rene Saul, East by W Wherry and others, South by Lake Creve Coeur, and North West by the Missouri River and containing six hundred and forty acres more or less being the same tract assigned to said Thomas J Smith in partition recorded in Book No 4 p 273 &c having first given notice of the time, terms and place of sale by advertisement in the St Louis county Legal Record, and advertised for four weeks previous to said sale as appears by the affidavit of Moritz Neidner the publisher of said paper hereto attached marked exhibit "A" and having also put up ten copies of such notice in public places in the County of St Louis twenty days before the day sale as appears by the affidavit of Theodore McBride hereto attached marked exhibit "B" and having had said real estate appraised as appears by the appraisement of Philip S Lanham, Edward L Lanham and Walter

99 H Dorsett, three disinterested householders of the County of St Louis, they having been duly sworn as appears by their affidavit and certificate of appraisement herewith filed and maked exhibit "C".

And at said sale so had Mary L Tyler was the highest and best bidder upon the terms mentioned in said order at the price and sum of Twenty nine hundred dollars and the said real estate was accordingly struck off to the said Mary L Tyler as the purchaser of said real estate. All of which is respectfully submitted. Charles C Whittelsey

adms d. b. n. of

County of St Louis Thomas E. Smith, deceased

Charles C Whittelsey being sworn says that he did not directly nor indirectly purchase said real estate or any part thereof or any interest therein and that he is not interested in the property sold except as stated in said report, Charles C Whittelsey

Sworn to and subscribed before me this eleventh March eighteen hundred and sixty three, William F. Ferguson Judge of Probate.

State of Missouri } SS: Personally appeared before me
County of St Louis } the undersigned a notary public within and for the County of St Louis Moritz Kreckner who being duly sworn says that the annexed advertisement was published in the St Louis County Legal Record and Advertiser "printed within the said County and State the newspaper of which he is printer) for twenty four th day of January Eighteen hundred and sixty three

and the last insertion on the twenty first day of Feb=
ruary eighteen hundred and sixty three as follow:
1st insertion in vol 8 26 41 dated January 24th 1863
2nd " " " " 42 " " 26th "
3d " " " " 43 " " 27th "
4th " " " " 44 " " 28th "
5th " " " " 45 " " 29th "
6th " " " " 46 " " 30th "
7th " " " " 47 " " 31st "
8th " " " " 48 " February 2d "
9th " " " " 49 " " 3d "
10th " " " " 50 " " 4th "
11th " " " " 51 " " 5. "
12th " " " " 52 " " 6 "
13 " " " " 53 " " 7 "
14 " " " " 54 " " 8 "
15 " " " " 55 " " 9 "
16 " " " " 56 " " 10 "
17 " " " " 57 " " 11. "
18 " " " " 58 " " 12 "
19 " " " " 59 " " 13 "
20 " " " " 60 " " 16 "
21 " " " " 61 " " 17 "
22 " " " " 62 " " 18 "
23 " " " " 63 " " 19 "
24 " " " " 64 " " 20 "
25 " " " " 65 " " 21 "
26 " " " " 66 " " 23 "

101 (Seal) Sworn to and subscribed before me this twenty first day of February 1863 H Herckenrath

Notary Public

Administrator's sale - In virtue of an order of sale made by the St Louis Probate Court at its December term eighteen hundred and sixty two I will on Monday the twenty third day of February eighteen hundred and sixty three at the Eastern door of the Court House in the City of St Louis, sell to the highest bidder the real estate of Thomas F Smith deceased, described in said order of sale as follows: to wit: The South West half of United States Survey Number two thousand and forty (2040) in the name of Auguste Chonteau and others under Regis Loisel bounded North by Rene Paul, East by W Henry, and others, South West by Lake Creve Coeur, and North West by the Missouri River and containing six hundred and forty acres more or less: being the same tract assigned to said Thomas F Smith partition recorded in book H No 4 page two hundred and seventy three &c. Terms of sale - One third cash and the balance in equal payments of six and twelve months the purchaser to give notes and a deed of trust to secure the deferred payments

St Louis } Charles E Whittelsey, administrator d b. n.
January } of Thomas F Smith, deceased.
23d 1863 }

County of St Louis } Theodore W Pride being sworn says that he did post on the eleventh of February

eighteen hundred and sixty three post copies of the notice a copy of which is hereto attached in ten public places in St Louis County Theodore McBride

Sworn to and subscribed this nineteenth February eighteen hundred and sixty three before me John M Young Justice of the Peace.

State of Missouri } Philip S Lanham, Walter H. Dorsett
County of St Louis } Edward L. Lanham on their oaths say that they are householders of said County - not interested in the estate of Thomas F. Smith deceased, and that they will to the best of their abilities view and appraise the real estate to them shown by Charles C. Whittelsey administrator of said Thomas F Smith

Sworn to and subscribed before me this twentieth day of February 1863 } Philip S. Lanham, Edw L. Lanham, Walter H Dorsett

John N. Hempstead, Justice of the Peace

We the undersigned appraisers appointed to review and appraise the real estate shown us by Charles C. Whittelsey, administrator of Thomas F Smith do certify that we have viewed a piece of land described in the order of sale made by the St Louis Probate Court as follows: to wit:

The South West half of United States Survey number two thousand and forty (2040) in the name of Auguste Chouteau and others under Negro Loiselle bounded north by Rene Paul, East by M Wherry, and others, South West by Lake Creve Coeur. and North West by the

Missouri River and containing Six hundred and forty acres more or less – being the same tract assigned to said Thomas F Smith in partition, recorded in Book H 4 H page 273 &c and we do appraise the same at the price of thirty dollars per acre.

Given under our hands this twentieth day of February Eighteen hundred and sixty three

Philip S Lanham, Edw L Lanham & Walter H Dorsett

State of Missouri } At a term of the Probate Court
County of St Louis } began and held at the City of St Louis within and for the County of St Louis in the State of Missouri on the first Monday being the second day of March in the year of our Lord One thousand eight hundred and sixty three are present William B Ferguson Judge of said Court, Peter A Feldman clerk and James Goff Esquire Marshall of the County of St Louis Court adjourned from day to day until Tuesday March seventeenth eighteen hundred and sixty three when the following proceedings were had Charles L Whittelsey admr debonis non of Thomas F Smith deceased, Report of sale approved –

Charles L Whittelsey administrator of Thomas F Smith deceased, appears and exhibits his report of his proceedings in making sale of certain real estate belonging to the estate of Thomas F Smith under the order of the Court made on the seventeenth of December last from which it appears that Mary L Tyler became the purchaser thereof at the price and sum of twenty nine hundred

dollars which being seen, read and heard the Court approved said sale as set forth in said report and order the same to be filed which is done.

State of Missouri } I, A. S. Lindsey Clerk of the
County of St Louis } Probate Court of the County of St Louis do hereby certify that the foregoing are true copies of the original papers and true and correct copies of the records of all the proceedings pertaining to the sale of the real estate of Thomas F. Smith deceased, as the same remain on file and appear of record in my office. In witness whereof I hereto set my hand and affix the seal of said Court at office this second day of December A. D. eighteen hundred and sixty five. A. S. Lindsay, Clerk

L. S.

Deed of Thomas F. Smith adm'r to M. L. Tyler

Thomas F. Smith adm'r to Mary L. Tyler

Whereas the St Louis Probate Court by its renewed order of sale at the December term A D eighteen hundred and sixty two, directed the undersigned administrator de bonis non of the estate Thomas F. Smith deceased, to sell the real estate in said order and this deed described upon the terms prescribed by said order, and whereas I did in obedience to said order of sale on the fourth Monday of February eighteen hundred and sixty three being the twenty third day of said month, at the eastern front door of the Court House in the City of St Louis between the hours of ten o'clock A M and five o'clock

in the afternoon of that day and during the session of the Circuit Court of St Louis, expose to sale at public vendue to the highest bidder upon the terms prescribed by said order, the real estate hereinafter described, first having had the same appraised by W H Dorsett, J S Lanham, and Edward Sukhum three disinterested householders of Saint Louis County as appears by their certificate of appraisement returned with my report of proceedings at the March Term of said Probate Court And having also given four weeks notice of the time terms and place of sale and of the property to be sold by advertisement published in the St Louis County Legal Record and Advertiser and having also put up ten copies of said notice in public places of the County of St Louis which said appraisement, publication and putting up of notice will more fully appear in my report of proceedings made to said St Louis Probate Court at the March Term thereof for the year A D eighteen hundred and sixty three, And whereas at said sale Mary L Tyler was the highest and best bidder for said real estate upon the terms mentioned in said order at the price and sum of twenty nine hundred dollars And whereas I did at the March term A D Eighteen hundred and sixty three make full report of my proceedings under said order of sale to the said St Louis Probate Court which court duly confirmed my report and approved of my proceedings as by the records of said Court will more

106 fully appear Now therefore in consideration of the premises and of the payment to me of the said sum of twenty nine hundred dollars by the said Mary L Tyler, I Charles C Whittelsey administrator of said Thomas F Smith deceased, by virtue of the power in me vested do bargain, sell and convey unto the said Mary L Tyler the real estate described in said order of sale as the South West half of United States Survey No two thousand and forty (2040) in the name of Auguste Chouteau and al under Regis Loiselle bounded north by Nene Paul, East by M Wherry etal, South West by Lake Creve Coeur and North West by the Missouri River containing Six hundred and forty acres more or less being the same tract assigned to said Thomas F Smith in the partition with his children recorded in book N No 4 p 273 & foll. To Have and to hold unto the said Mary L Tyler and her heirs forever. In witness whereof I have hereunto set my hand and seal this fifteenth day of April A Deighteen hundred and sixty three. Chas C Whittelsey (Seal)

State of Missouri } p: Be it remembered that on
County of St Louis } this fourth day of May in the year of our Lord one thousand eight hundred and sixty three before me William F Ferguson Judge of Probate of the County of St Louis came Charles C. Whittelsey who is personally known to me to be the person whose name is subscribed to the foregoing instrument in writing as a party thereto and

107 acknowledged the same to be this act and deed as administrator of Thomas F. Smith deceased for the purposes therein mentioned In testimony whereof I hereto set my hand and affix the seal of the Probate Court of the County of St Louis at office in said county the day and year herein above written (L.S.) William F. Ferguson
Judge of Probate — Filed and recorded May 9th 1863
State of Missouri } A C Bernoudy. Recorder
County of St Louis } ss: I the undersigned recorder in and for said County of St Louis do hereby certify that the foregoing is a true copy of an instrument of writing executed by Charles C Whittelsey administrator of Thomas F. Smith deceased, to Mary L Tyler and of the certificate of acknowledgment as also of the date of filing and recording thereof as fully as the same remains of record in my office in Book 272 page 522.
Witness my hand and official seal at office this 27th day of November eighteen hundred and sixty five
(L.S.) Julius Conrad, Recorder

109

From Land Ct. Petition

8 Transcript of proceedings in St Louis Land Court concerning the same judgment as follows:

Thomas L. Sturgeon, administrator of
William Chambers, deceased, plaintiff

vs

Frederick W Beckwith, administrator of Thomas F. Smith, deceased
defendant

In the St Louis Land Court
October Term 1853. County of St Louis, ss:

Plaintiff states that Thomas F Smith in his life time on the twenty first [illegible] day of November eighteen hundred and forty three by his deed duly sealed, delivered, executed acknowledged and recorded in the recorders office of St Louis County in book E No 3 pages two hundred and forty eight and two hundred and forty nine, for the consideration of fifteen hundred dollars thereby acknowledged to have been paid to said Smith in hand, did grant, bargain and sell unto one Elias B Smith and his heirs and assigns forever a certain parcel of land described as follows to wit: all that tract and parcel of ground situate in the City of St Louis being seventy five feet on Market street running southwardly from said Market street 150 feet bounded north by Market street, West by lands formerly owned by Moore, East by an alley and south by lands of

Willmington To have and to hold the same unto said Elias B Smith and to his heirs and assigns forever together with all the rights, immunities privileges and appurtenances to the same belonging the said Thomas J Smith for himself and for his heirs thereby covenanting that he and his heirs executors & administrators shall and will warrant and defend the title to the said premises to the said Elias B Smith and his heirs and assigns forever against the lawful claims of all persons. And afterwards on the eleventh day of March eighteen hundred and forty four the said Elias B. Smith and Susan his wife by their deed duly sealed delivered and executed, acknowledged and recorded in the recorders office of said St Louis County in book I No 3 pages three hundred and sixty six and three hundred and sixty seven for the consideration of fifteen hundred dollars to said Elias B Smith, thereby acknowledged to have been duly paid to him did grant, sell and convey and confirm unto William Chambers and his heirs and assigns the same tract or parcel of ground above described To have and to hold the same unto the said William Chambers and his heirs and assigns with all the rights privileges and appurtenances thereunto belonging or in anywise appertaining - the said Elias B Smith party of the first part thereby covenanting that his

heirs, executors and administrators will warrant and defend the title to the said premises and every part thereof to him the said William Chambers and his heirs and assigns against the lawful claim or claims of all and every person or persons whatsoever claiming or to claim the same or any part thereof

Plaintiff avers that the said Thomas F. Smith in his life time for himself and his heirs, executors and administrators did covenant in and by said deed to said Elias B Smith that the said land was the time of the execution of said deed to Elias B Smith free from incumbrances done or suffered by the said Thomas F Smith or any person claiming under him And the said Elias B Smith by his said deed with his wife, to said William Chambers did assign and transfer his said covenant by Thomas F Smith his heirs and assigns unto the said William Chambers

Plaintiff further avers that at the time of the execution of said deed by said Thomas F. Smith to said Elias B. Smith the said land conveyed by said deed was not free from incumbrances done or suffered by the said Thomas F Smith but on the contrary thereof plaintiff avers that prior to the making of said deed by Thomas F. Smith to Elias B. Smith the said Thomas F. Smith had duly made executed and acknowledged under his hand and seal on the

twenty fifth day of July eighteen hundred and forty three a certain agreement to make execute and deliver to Sarah Douglass Todd, a good deed in fee simple for the same lot of ground above described and conveyed by said deeds; upon the said Todd paying unto the said Thomas F. Smith the sum of one hundred and five dollars each year for the term of five years and the further sum of fifteen hundred dollars at the end of five years from said date of said agreement which agreement was duly recorded on the fifteenth day of September eighteen hundred and forty three in book D No 3 page 53 of the records of St Louis County; and the said Sarah Douglas Todd having performed the conditions of said agreement by the payment of the said sums of money therein specified, such proceedings were thereupon had in the St Louis Circuit Court in chancery in a certain cause in said Court wherein the said Robert P. Todd and Sarah Douglass Todd his wife were complainants and Frederick W. Beckwith administrator of the estate of Thomas F. Smith deceased was defendant that a decree was rendered in said Court in chancery sitting on the twenty first day of December eighteen hundred and forty eight to the effect that said Frederick W. Beckwith as administrator of the estate of Thomas F. Smith, then deceased, should make a deed and convey a good title in fee simple

free from all claims of all persons of the said lot of ground above described and in pursuance of said decree the said Frederick W Beckwith then being administrator of the said estate of Thomas F. Smith did, as such administrator on the twenty eighth day of December eighteen hundred and forty eight make, execute and deliver unto said Sarah Douglass Todd a deed of conveyance in fee simple, for the said lot of ground above described by means whereof the title to said lot of ground vested in the said Sarah Douglass Todd and relates back to the day of the date of the said agreement by said Thomas F Smith to convey the same made as aforesaid on the twenty fifth day of July eighteen hundred and forty three and recorded the fifteenth day of September eighteen hundred and forty three And the said deed from Frederick W Beckwith, administrator of the estate of Thomas F Smith deceased is duly recorded in book A No 5 page seventy four. All of which deeds and agreement are not within the custody of or within the control of the plaintiff and he files herewith certified copies thereof annexed to which he refers- Plaintiff also files herewith a certified copy of the said decree in the said St Louis Circuit Court in Chancery in the said cause to which he also refers

Plaintiff avers that said William Chambers departed this life on the ninth day of May 1848

and that he the said Thomas L Sturgeon was duly appointed the administrator of his estate the letters whereof are herewith filed And the said Thomas F Smith departed this life on the fifth day of December eighteen hundred and forty three and the said Frederick W Beckwith was duly appointed administrator of his estate, the letters whereof are herewith filed - And so the plaintiff avers that at the time of the making of the said deed by the said Thomas F Smith to the said Elias B. Smith, the said Sarah Douglass Todd had the payment and lawful right and title to the said lot of ground being the same lot of ground aforesaid conveyed by the said Thomas F. Smith to said Elias B. Smith whereby the said Elias B Smith became and was entitled to have and demand of and from the said Thomas F. Smith in his life time and of and from the defendant his administrator since his death the said sum of fifteen hundred dollars consideration money with interest thereon from the date of said deed from Thomas F. Smith to Elias B Smith, and by virtue of the said deed from Elias B Smith and wife to the said William Chambers, the said covenants in said deed were assigned unto the said William Chambers Wherefore the plaintiff ask judgment for the said sum of one thousand five hundred &

dollars with interest thereon from the twenty first day of November eighteen hundred and forty three. Plaintiff further states that the said Thomas F Smith in his lifetime to wit on the twenty first day of November eighteen hundred and forty three by his said deed to Elias B Smith as aforesaid for said lot of ground did then and there, in and by said deed covenant among other things with the said Elias B. Smith and his heirs and assigns that he the said Thomas F. Smith was seized at the time of the execution of said deed of an indefeasible estate in fee simple in the real estate granted to the said Elias B. Smith and his wife described as aforesaid; and the said Elias B Smith and his wife conveyed the said lot of ground to the said William Chambers and thereby assigned the said covenants in said deed from Thomas F. Smith to Elias B Smith unto the said William Chambers - in manner and form as above stated And plaintiff avers that at the time of the execution of said deed by said Thomas F. Smith to Elias B Smith he the said Thomas F Smith was not seized of an indefeasible estate in fee simple in the said lot of land thereby conveyed but on the contrary thereof the said agreement of the twenty fifth day of July eighteen hundred and forty three between the said Thomas F Smith and said Sarah Douglass Todd was then ~~xxx~~ made and recorded as aforesaid

and the said agreement having been complied on the part of said Todd the said decree in chancery as aforesaid was duly entered and the said deed from the said administrator of the estate of Thomas F Smith was made and the said deed last mentioned related back to the date of said agreement; and to plaintiff avers that at the time of the making of said deed by said Thomas F Smith to the said Elias B. Smith the said Sarah L Douglass Todd he the said Thomas F Smith had not an indefeasible estate in fee simple in said land and the said Todd had an elder and better title paramount; and the S L D Todd did enter into possession of said lot of land by virtue thereof and still holds the same wherefore plaintiff as administrator of said William Chambers is entitled to demand of and from the defendant the said sum of fifteen hundred dollars consideration money in said deed with interest thereon from the twenty first day of November eighteen hundred and forty three and for said sum plaintiff asks judgment against defendant.

B A & D W Hall

County of St Louis: Attys for plff.

Britain A Hill attorney for the plaintiff being sworn says that he believes the foregoing petition and the matters therein as stated are true

117 Sworn to and subscribed before me this thirteenth day of September 1853 } D A Hill

Witness my hand and notarial seal the day and year above written

L S A. T. Drysdale Notary Public

Summons Thereupon the following summons issued to suit:

The State of Missouri To the sheriff of St Louis County ... Greeting We command you to summon Frederick W Beckwith administrator of Thomas J. Smith deceased, to appear before the judge of our St Louis Land Court on the first day of the next term thereof to be held at the City of St Louis on the first Monday of October next then and there to answer the complaint of Thomas L. Sturgeon administrator of William Chambers deceased as set forth in the annexed petition and have you then and there this writ Witness Charles A Mantz clerk of our said Court with the seal thereof hereto affixed at office in the City of St Louis this fourteenth day of September in the year of our Lord one thousand eight hundred and fifty three

L. S. Charles A Mantz, Clerk

Thereupon the Sheriff made the following return The within named defendant not found in my county September 29th 1853, John M Homer, Sheriff by Thos Chadborne, Dep

118 And on Tuesday March 4th 1854 the following further proceedings were had to wit:

Death suggested

Thomas L Sturgeon administrator of William Chambers

vs

Frederick W Beckwith administrator of Thomas F. Smith

Charles G Whittelsey administrator de bonis non of Thomas F. Smith enters

and enters his appearance in this cause and suggests the death since the commencement of this suit of Frederick W. Beckwith former administrator

And afterwards on the twenty third day of March 1854 the following further proceedings were had to wit:

Isaac H. Sturgeon admr of William Chambers, deceased

vs

Charles G Whittelsey admr de bonis non of Thomas F. Smith, deceased

St Louis County St Louis Land Court March Term 1854.

Defendant Whittelsey administrator &c answering says that he has no knowledge upon which to base a belief as to the facts stated in the petition in relation to said deeds and he does not know whether said Thomas F. Smith did make to said E B Smith the deed in the petition described, neither does he know the consideration of said deed, nor the covenants in said

deed entained and he therefore requires strict proof of said deed and of the covenants therein contained

Neither does he know any thing of the said deed from Elias B. Smith to William Chambers nor of the consideration or covenants in said deed contained and requires strict proof of the same.

He denies that said Elias B Smith ever paid said Thomas F any consideration for said deed but says that the same was made as he has been informed for the purpose that the said Elias B Smith should make a deed to the said Sarah Todd and thus save the said Thomas F. Smith trouble

He admits the bond to the said Sarah Todd and the proceedings of the St Louis Circuit Court and the judgment of said Court against F. H Beckwith the former administrator and the deed of said Beckwith as administrator to the said Sarah Todd

He admits that before the twenty first day of November eighteen hundred and forty three the date of the deed from Thomas F. Smith to Elias B. Smith that said Smith had made said bond and that said Beckwith made a deed as stated in the petition but the conclusions of law arising on on said facts he submits to the Court.

He denies that at the date of said deed the said Sarah Todd had the paramount and lawful title to

said land

He denies that the said Elias B Smith assigned said covenants to said William Chambers and denies that any of said covenants passed to said William Chambers

He denies that the plaintiff has any right of action against the defendant or

He avers that the said Thomas F Smith died on the fifteenth day of December eighteen hundred and forty three and that on the twenty third day of December A D eighteen hundred and forty three letters of administration were duly granted by the St Louis Probate Court to said Frederick W Beckwith and that the said Beckwith within thirty days after the grant of said letters to wit on the twenty eighth day of December eighteen hundred and forty three did publish in the Evening Gazette, a newspaper published in the City of St Louis within this State, a notice that letters of administration had been granted to him, stating the date thereof and requiring all persons having claims against said estate to exhibit them for allowance to the said administrator within three years from the date of said letters or that they should forever be barred.

And the defendant avers that neither the said Chambers nor the said Elias B Smith presented their said claim for allowance within three years from the date of said letters but that the twenty

121 third day of December eighteen hundred and forty three wherefore by reason of the premises and of the statute in such case made and provided the plaintiff is barred of his action

This defendant avers that since the date of the said bond of the said Smith to said Sarah Todd to wit the twenty fifth July 1843 the said Sarah Todd Sarah Todd has been in possession of said land in the petition described

He denies that the plaintiff or his intestate have been damnified by any pretended breaches of said pretended covenants in said deed of said Thomas F Smith to said Elias P Smith

And having thus answered he prays that he may be discharged hence with his costs

Sworn to and subscribed before Whittelsey p.p.
me this 23d day of March 1854. C.A. Hartz, Clerk

And afterwards on Tuesday the fifth day of October 1854 the following further proceedings were had in said cause to wit:

Thomas L Sturgeon, administrator of William Chambers

vs

Charles C Whittelsey, administrator de bonis non of Thomas F. Smith, deceased—

Now at this day came the said parties by their attorneys and thereupon came also a jury to wit: Enoch Price, Jesse Little, Joseph Foster, James H Douglass Emanuel Block, Peter Cruess, William Clemenson

George Shields, Enoch Tackett, Hugh Pellas Oliver Smith and William Huckstep, twelve good and lawful men, who being duly elected, tried and sworn well and truly to try the issues joined between the parties therefor the trial progressed and being fully terminated the plaintiff says he will not further prosecute his suit in this behalf but voluntarily takes a nonsuit It is therefore considered and adjudged by the Court that the said plaintiff take nothing by his said suit but that the defendant go hence without day and that he recover of the plaintiff his costs and charges in this behalf expended and have execution therefor leave is granted plaintiff to file a motion to set aside said nonsuit which motion is accordingly filed

On Saturday October 4th 1856 the following further proceedings were had to wit;

Now at this day comes the said plaintiff by his attorney and submits his motion heretofore filed herein to set aside judgment of nonsuit to the court, which being fully understood the Court doth order and adjudge be overruled.

And afterwards at the October Term 1856 the following further proceedings were had in this cause to wit; Thursday November 27th 1856

Thomas L. Sturgeon administrator of William Chambers

vs

Charles C Whitelsey administrator of Thomas F. Smith

Now at this day come said parties by attorneys and

no jury being required submit this cause to the Court upon the pleadings, evidence and arguments of counsel and the Court not being fully advised of and concerning the premises takes time to consider thereon.

And afterwards the following further proceedings were had in this cause to wit: Friday November 28th 1856

Thomas L. Sturgeon administrator of William Chambers deceased vs

Charles G Whittelsey administrator of Thomas F. Smith, deceased —

Judgment Now at this day comes said plaintiff Thomas L Sturgeon administrator of William Chambers deceased by his attorney and said Charles G Whittelsey administrator of Thomas F. Smith deceased and this cause having been heretofore submitted to the Court upon the pleadings, proofs and evidence and the Court being now fully advised of and concerning the premises doth from such proofs find the issues herein joined in favor of the plaintiff and that the damages sustained by the plaintiff be assessed at the sum of fifteen hundred dollars and interest from the twenty first day of November 1843 amounting in all to the sum of two thousand six hundred and seventy one dollars and twenty two cents ($2671 22/100) It is therefore considered and adjudged by the Court that the plaintiff recover of said defendant the damages aforesaid in form aforesaid as assessed

together with his costs and charges in this behalf ex-
pended and have execution therefor.
Finding of the Court filed.
Which finding of the Court is in the words and
figures as follows to wit:

William Chambers admr.
vs
Thomas F. Smith's admrs

} The Court finds the following facts in this case - that on the twenty fifth day of July eighteen hundred and forty three Thomas F. Smith in consideration of one hundred and five dollars payable every year for five years and the sum of fifteen hundred dollars to be paid at the end of five years from said twenty fifth day of July eighteen hundred and forty three agreed to convey to Sarah Douglass Todd in fee simple the lot of land described in plaintiff's petition. That said Thomas F Smith died in December eighteen hundred and forty three - That Sarah D Todd having complied with the conditions of said agreement brought suit for the specific performance of said contract in the St Louis Circuit Court against said Frederick H Beckwith, who was the administrator of the estate of said Smith and such proceedings were thereupon had in said Court that on the twenty first day of December eighteen hundred and forty eight said Beckwith as administrator of the estate of said Thomas F Smith, was ordered

125 to convey a good title in fee simple to said Sarah D Todd and on the twenty eighth day of December said Beckwith as administrator of said Smith did make and deliver to said Sarah D Todd a deed in pursuance of said order and decree of said Circuit Court. The Court further finds that on the twenty first day of November eighteen hundred and forty three said Thomas F. Smith conveyed the same lot of land to one Elias B Smith with the statutory covenants of seizin and against incumbrances and that said Elias B Smith on the eleventh day of March 1844 conveyed the same lot to said William Chambers with covenants of title The Court further finds that said William Chambers died on the ninth day of May eighteen hundred and forty eight and that Sturgeon was duly appointed administrator his estate that Elias B. Smith died in June eighteen hundred and fifty; that letters of administration were taken out by said Beckwith on the estate of said Thomas F. Smith on the twenty third day of December eighteen hundred and forty three that on the twenty eighth of December eighteen hundred and forty three said Beckwith gave and published in due form of law, a notice to the creditors of the estate of said Thomas F. Smith to exhibit their claims to the said Beckwith as administrator within twelve months from the date of said letters or they might be precluded from having any benefit from said estate and if said claims should not be so exhibited within

three years from the date of said letters they would be forever barred

The Court decrees that the plaintiff is entitled to recover against the defendant the sum of fifteen hundred dollars and interest from the twenty first November eighteen hundred and forty three. being the amount of the consideration money expended in said deed from said Thomas F Smith to said Elias B. Smith amounting in all to the sum of two thousand six hundred and seventy one dollars and twenty two cents. C. B. Lord

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

Friday November 28th 1856

Thomas L Sturgeon admr
vs
Charles C Whittelsey admr

Motion for review filed
Motion for arrest of Judgment filed

For which motions for review and arrest see bill of exceptions

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

Saturday November 29th 1856

Thomas L. Sturgeon admr
vs
Charles C Whittelsey, admr

Now at this day came said parties by their respective attorneys and submit to the Court the motions of the defendant heretofore filed in this cause for review and arrest of judgment. and the

Court being fully advised of and concerning the premises doth order and adjudge that said motion be overruled - And afterwards the following further proceedings were had in this cause to wit:

Wednesday December 17th 1856

Thomas L. Sturgeon admr of William Chambers

vs

Charles G Whittelsey admr of Thomas F. Smith

Bill of exceptions filed

Which bill of exceptions is in the words and figures following to wit:

Sturgeon admr of Chambers
vs
Whittelsey admr of Smith

Be it remembered that this cause came on to be tried before the St Louis Land Court on the twenty sixth day of November eighteen hundred and fifty six and thereupon the plaintiff offered

1. The agreement of F. F Smith with Sarah D. Todd dated July 25 1843

"In consideration of one hundred and five dollars payable every year from and during the full term of five years and the further sum of fifteen hundred dollars payable in five years from this date, I agree to make, execute and deliver to Sarah Douglass Todd a good deed in fee simple for a lot of ground in the City and county of St Louis in the State of Missouri bounded as follows on the North by Market Street, on the east

bgan alley thirty feet wide on the south by other lands belonging to said Smith and on the west by lands of Moore being Seventy five feet on Market Street and one hundred and fifty feet deep south.

In witness whereof I have hereunto set my hand and seal this twenty fifth day of July eighteen hundred and forty three

T. F. Smith (seal)

2. Next deed from T F Smith to Elias B Smith dated November twenty first eighteen hundred and forty three by which said Thomas did grant, bargain and sell to said Elias and his heirs the lot in the petition mentioned for the sum of fifteen hundred dollars

3 Deed of grant bargain and sale from Elias B. Smith to William C. Chambers and heirs dated March 11. 1844.

It was admitted that in an action brought upon said contract made by said Smith to Sarah D Todd in the St. Louis Circuit Court it was decreed by said Court that said contract should be specifically performed

5 Deed from said Administrator to said Sarah as follows:

Know all men that I Frederick W. Beckwith, administrator of the estate of Thomas F. Smith, deceased, in consideration of the sum of two thousand and twenty five dollars to me paid by Sarah Douglass Todd the receipt whereof is hereby acknowledged and in ~~consideration~~ conformity and obedience to a decree rendered by the Circuit Court of St Louis county

in the State of Missouri in chancery on the twenty first day of December in the year eighteen hundred and forty eight in a certain cause in said Court in which Robert S Todd and Sarah Douglass Todd his wife were complainants and Frederick W Beckwith administrator as aforesaid, was defendant, do hereby grant, bargain and sell to said Sarah Douglass Todd her heirs and assigns the following described real estate: A lot of ground in the City and County of St Louis in the State of Missouri being Seventy five feet front on Market Street by one hundred and fifty feet deep- bounded on the North by Market street, on the East by an alley thirty feet wide, on the south which formerly belonged to said Thomas F. Smith and on the west by lot which formerly belonged to me Moore- it being the lot which was sold to said Sarah Douglass Todd by said Thomas F. Smith by a title bond which was executed on the day of July eighteen hundred and forty three and which was duly recorded in the recorders office in book D No 3 page 53 the following amount of the purchase money of said lot of ground having been fully satisfied by said Sarah Douglass Todd. To Have and To Hold said lot of ground to her said Sarah Douglass Todd and to her heirs and assigns forever by a good title in fee simple free from all claims of all persons whatsoever as fully and effectually as I the said administrator can lawfully sell, convey and confirm said lot of ground to her by virtue of said

130 executed by said Smith and of said decree of said Circuit Court In testimony whereof I Frederick W Beckwith administrator as aforesaid have hereunto set my hand and affixed my seal this twenty eighth day of December in the year eighteen hundred and forty eight

Fred W Beckwith Seal

admr of Thomas F. Smith decd

Admitted that William Chambers died May 9. eighteen hundred and forty eight That Thomas F. Smith died Dec fifth eighteen hundred and forty three. - that letters of administration upon his estate were granted December twenty third eighteen hundred and forty three and that within thirty days (or December twenty eighth eighteen hundred and forty three) said administrator gave notice of his grant of letters as required by statute

Facts admitted } The following facts were admitted:

It was admitted by the parties ~~by the~~ that William Chambers died the ninth day of May eighteen hundred and forty eight and that Elias B Smith died in June eighteen hundred and fifty that Frederick W Beckwith went to Alambama in the Fall, some time in November eighteen hundred and fifty one with his family and left the family there and returned himself - that in the Fall of eighteen hundred and fifty two Beckwith went there again himself and returned again in the fall of eighteen hundred and fifty three Some time in November eighteen hundred and fifty three and died at St Louis the twenty third

day of December eighteen hundred and fifty three his family then being in Alabama and that and Beckwith spent most of his time in the Spring and Summer of eighteen hundred and fifty two in Jersey Illinois and that Thomas L Sturgeon was the administrator of William Chambers

The Court made its finding and gave judgment for plaintiff Defendant filed his motion for review

Thomas L Sturgeon admr of William Chambers }
vs
C C Whittelsey admr of T F Smith }

Defendant comes and moves the Court to review his decision upon the law and decide the same ~~xxxx~~ in favor of the defendant for the following reasons

1st The law is with the defendant

2, The damages are excessive, the interest should have been calculated only from December the twenty eighth eighteen hundred and forty eight the date of the deed from Beckwith to Sarah Todd.

Whittelsey, atty ~~xxx~~

And also in arrest:

T L Sturgeon administrator of Chambers
vs
C C Whittelsey admr of T. F. Smith

Defendant comes and moves the court to arrest the judgment in this cause

Because the Court has no jurisdiction of the subject matter of of the action as set forth in the petition

And because upon the face of the petition the plaintiff has no right of action the right being in the heir of William Chambers and not in the administrator

Whittelsey p/p.

Both of which motions the Court the twenty ninth day of November eighteen hundred and fifty six overruled to which judgment and overruling defendant excepted and prays this bill of exceptions be signed and made part of the record which is done

C. P. Lord L S

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

Thomas L. Stungeon administrator of William Chambers, deceased
vs
Charles C Whittelsey, administrator of Thomas F. Smith, deceased

Monday December 22nd 1856

Now at this day comes said defendant by his attorney and on his motion an appeal to the Supreme Court is granted him from the decision herein rendered

Deed M L Tyler to Metcalf

This deed made and entered into this thirtieth day of September eighteen hundred and sixty three by and between Mary L. Tyler of the City of Louisville and State of Kentucky party of the first part and Horace Metcalf of North Charleston in the State of New Hampshire party of the second part witnesseth: That the

said party of the first part in consideration of twenty one hundred dollars to her paid by the said party of the second part the receipt of which is hereby acknowledged does by these presents grant, quitclaim, release and convey unto the said party of the second part the following described real estate situated in the County of St Louis and State of Missouri according to the plat returned by the commissioners to make partition in a certain cause in the St Louis Circuit Court in partition between Louis & Smith, Thomas F. Smith and Philomena Smith, heirs of Thomas F Smith deceased, which plat is recorded in the recorders office of St Louis County aforesaid to wit; Lot number (9) nine as laid down on said plat containing fifty one and thirty four hundredths acres being same conveyed to Charles Gibson by Sheriffs deed in partition sale dated eighth March Eighteen hundred and fifty four and by said Gibson to said Metcalf by deed dated sixth day of April Eighteen hundred and fifty four, and also lot No (2) two of said plat containing forty and Seventy five hundredths acres, and lot No (3) three containing forty and sixty eight hundredths acres and lot No (5) five containing thirty four acres and lot No (6) Six containing forty one and two hundredths acres and lot No (7) Seven containing forty one and twenty hundredths and lot No (8) eight containing thirty five and forty six hundredths acres, and lot No (10) ten containing forty one and forty hundredths acres - The above lots being

134 a part of the south west half of U. S. Survey No 2040
which was conveyed to said Mary L. Tyler by deed
of the administrator of Thomas F Smith deceased
dated fifteenth April eighteen hundred and sixty
three and recorded book 272 p 522 in the Recorder's
office of St Louis County. To Have and to Hold the
same together with all the rights, immunities, privil=
eges and appertenances to the same belonging unto
the said party of the second part and to his heirs and assigns
forever; the said Mary L. Tyler hereby covenanting
that she, her heirs, executors and administrators shall
and will warrant and defend the title to the premises
to the said party of the second part and to his heirs
and assigns forever against the lawful claims
of all persons claiming the same by, through or under
her and against the claims of none others whomso=
ever In witness whereof the said party of the
first part has hereunto set her hand and seal the day
and year first above written. Mary L. Tyler (seal)
Executed in presence of
State of Kentucky } ss: Be it remembered that on
County of Jefferson } this fourteenth day of October
A D eighteen hundred and sixty three before me the
undersigned Clerk of the Jefferson County Court
came Mary L Tyler who being personally known
to me to be the person whose name is subscribed to
the foregoing instrument of writing as part thereto
and she acknowledged the same to be her act and

deed for the purposes therein mentioned In testimony whereof I T Jack Comr clerk aforesaid, do hereby set my hand and affix the seal of said Court at office in Louisville this fourteenth day of October eighteen hundred and sixty three.

L S

T. Jack Comr, Clerk

State of Missouri } ss:
County of St Louis }

I the undersigned Recorder in and for said County do hereby certify that the foregoing instrument of writing was filed for record in my office November thirteenth eighteen hundred and sixty three and is truly recorded in Book 283 page 27 Witness my hand and official seal the day and year aforesaid

L S

A G Bernoudy, Recorder

137
Deed
M. L. Tyler
to
Snyder

A Deed of Mary L Tyler to plaintiff Snyder as follows:

This deed made on the tenth day of March in the year eighteen hundred and sixty four by and between Mary L. Tyler of the city of Louisville and State of Kentucky party of the first part and Normod Snyder of the County of St Louis and State of Missouri party of the second part Witnesseth: that the said party of the first part in consideration of Six hundred dollars to her paid by the said party of the second part the receipt of which is hereby acknowledged doth by these presents grant, sell, convey and confirm remise, release and Quitclaim unto the said party of the second part the following described real estate situated in the County of St Louis and State of Missouri, according to the plat returned by the Commissioners to make partition in a certain cause in the St Louis Circuit Court on partition between Louis G. Smith, Thomas F Smith and Philomena Smith heirs of Thomas F. Smith deceased, which plat is recorded in the recorder's office of the County of St Louis and to which reference is made, to wit: Lot number (11) eleven of said plat containing forty one and twenty eight hundredths acres of land; as the same is laid down on said plat - And lot number twelve (12) containing fifty two and sixteen hundredths acres of land as the same is laid down on said plat: the same being a part of the South West

half of United States Survey No 2040, and part of same conveyed to Mary L Tyler by deed of the administrater of Thomas F Smith deceased, dated the fifteenth of April Eighteen hundred and sixty three and recorded in book 272 p 532 in the Recorders office of said county To Have and to Hold the same with all the rights, immunities, privileges and appurtenances hereunto belonging unto the said party of the second part and his heirs and assigns forever; the said Mary L Tyler hereby covenanting that she her heirs, executors and administrators shall and will warrant and defend the title to the said premises unto the said party of the second part his heirs and assigns forever against the lawful claims and demands of all persons, claiming or to claim the same by through or under her the said Mary L Tyler and against the claims of none other whomsoever. In witness whereof the said party of the first has hereunto set her hand and seal the day and year first above written

Signed, sealed and acknowledged in presence of the undersigned. } Mary L. Tyler (Seal)

T Jack Comm. T J Overall }

State of Kentucky } SS: Be it remembered that on this
County of Jefferson } fifteenth day of March eighteen hundred and sixty four before me the undersigned clerk of the County Court of the county aforesaid being a court of record having a seal came Mary L Tyler who is to me well known to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto and she thereup-

on acknowledged the same to be her act and deed for the uses and purposes therein mentioned Which is duly stamped as required by act of Congress all of which is hereby certified for record. In testimony whereof I have hereunto set my hand and affixed the seal of said Court this fifteenth day of March Eighteen hundred and sixty four

L S

T. Jack Conv, Clk

State of Missouri } ss: I the undersigned recorder
County of St Louis } for said County certify that the foregoing instrument was filed for record in my office May sixteenth eighteen hundred and sixty four and is truly recorded in Book 282 p 342 Witness my hand and official seal the date aforesaid

L S

A. C. Bernoudy, Recorder

141

Receipt of Mrs Tyler to Metcalf

11 Receipt of Mrs Tyler to plaintiff Metcalf

Received of Horace Metcalf two thousand and eighty dollars for amount of her debt by judgment against the estate of Thomas J Smith decd. portion thereof paid by said Metcalf to redeem his land, and two hundred and seventy two dollars for costs and expenses being the portion thereof paid by said Metcalf, this thirteenth day of November 1863

Mary L Tyler by Silas Bent, agent

Receipt of Mrs Tyler to Snyder

12. Receipt of Mrs Tyler to plaintiff Snyder

Received of Nimrod Snyder by the hand of Alley Williams five hundred and eighteen dollars and twenty seven cents for amount of his portion of the debt and judgment of Mary L Tyler against the estate of Thomas J Smith deceased together with interest thereon to this date paid by him to redeem his land, and one hundred and thirteen 39/100 Dollars for his portion of the costs and expenses attending the same this 17th day of March 1864

Mary L Tyler by Silas Bent her atty in fact

Documents 13. offered in evidence by Mr Field

(No such papers on file)

143 Testimony of Judge Holmes

Nathaniel Holmes for the plaintiff testified that he was counsel for the plaintiff Metcalf at the time of the purchases by him and for a long time before and after said purchases were made The he said Holmes examined the title to said premises before said purchases That he found no debts unpaid in the Probate Court and fully believed there were no debts or demands against the estate of Thomas F. Smith deceased. That he never knew or heard of the demand allowed against said estate in favor of William Chambers until long after the purchases by said Metcalf, That said Metcalf was a citizen of and residing in the State of New Hampshire and never resided in Missouri and that the expenses mentioned in the receipts of Wm Tyler related to matters outside of the judgment in her favor

Instructions by Lamed & wife Refused

The defendants Lamed and wife, by counsel then asked the Court to declare the following as the propositions of law governing this case as to them all of which propositions the Court overruled and refused to grant, to which refusal the said defendants at the time excepted - which said propositions are as follows:

The defendants Charles F Lamed and his wife request that the Court declare the following as the law governing this case as to them:

1. The claim in favor of Chambers against the

estate of Thomas F Smith was an action pending in Court at and long before the partition and the sale under which plaintiff and his grantor purchased the land described in the petition in this cause And therefore all the purchasers at said partition sale had notice at the same

2. The documents given in evidence by the plaintiff prove that the sale in partition among the heirs of said Thomas F Smith was a quit claim sale of such title and such title only as they had in the premises therein described

3. These defendants were not bound to remove any encumbrance or lien on the premises, so sold to the plaintiff; nor to perfect his title to the same or any part thereof

4. The plaintiff having purchased only such title as the defendants had to said premises at the time of said partition sale and having acquiesced in the order to pay over the proceeds pro rata to the defendants, he can not now claim any portion of such proceeds from these defendants

5. The premises having been sold under the judgment in favor of Mrs Tyler and having been bought by her the judgment was thereby satisfied and annulled and her conveyance of the title to the premises so bought by her did not vest in the plaintiff any pecuniary claim against these defendants

145 6. The defendants are not bound to account for interest upon the judgment in favor of Mrs Tyler during the time the land sold to plaintiffs was occupied by them

7 The plaintiffs having failed to pay off the claim of Chambers for more than ten years and having acquiesced in the payment of the proceeds of said sale in partition for more than ten years their claim, if any, has become stale and they cannot recover.

8. These defendants Lamed and wife are not bound to refund more than one third of the judgment in favor of Mrs Tyler, with interest from the time of its allowance in the Probate Court

9. These defendants are entitled to a credit for the amount paid by Gibson to Mrs Tyler on account of the judgment rendered in her favor.

And the Court thereupon gave judgment in favor of the plaintiffs; and the said defendants Lamed and wife excepted at the time to the judgment rendered against them

And this was all the evidence in the case

Motion for New trial The said defendants Lamed and wife, then made the following motion;

The defendants Lamed and wife move the Court to set aside the judgment rendered against them in this case and to grant a new trial for the following reasons

1. The Court erred in admitting evidence offered by

146 the plaintiffs
2. The judgment is against law
3. It is against equity
4. It is against the evidence
5. The comterred in refusing to declare the law as prayed by these defendants

C. Gibson
for Larned and wife

which the Court overruled - to which the said defendants at the time excepted and pray the Court to sign and seal this their bill of exceptions - which is done Sam Reber Judge + (seal)

State of Missouri } SS: I F A H Schneider Clerk
County of St Louis } of the Circuit Court within and for the County aforesaid certify the above and foregoing to be a full, true and complete transcript of the Records and proceedings in the above entitled cause as fully as the remain in my office

In testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of St Louis this thirty first day of July A. D. eighteen hundred and sixty six

F. A. H. Schneider
Clerk

Index

Petition
Summons
Sheriffs Return
Demurrer
Order of Publication
Answer 21
Trial 25
Judgment 26
Mo for New Trial w/d 28
Plaintiffs Bill of Exceptions 29
" Mo for New trial 29
Bill of Exceptions of Lamed & wife 30
1. Partition between T F Smith & his children 30
2. " " L. C. Smith et al 49
3. Sheriffs deed to Metcalf (1st) 68
" " " " (2d) 75
4. " " " O Williams 81
5. Ally Williams to Snyder 87
6. Admission of Defendant 91
7 Proceedings in Probate Court allowing judgment for Chambers admr. 91.
And proceedings in same Court for sale of real estate to satisfy said Judgment 93
8. Transcript of proceedings in St Louis Land Court concerning same Judgment 109
9. Deed from Mary L Tyler to Metcalf 132
10 " " " " " Snyder 137

148 11. Receipts of M L Tyler to Metcalf 141
12. " " " Snyder 141
13. Documents offered in evidence by Field 141
Testimony of Judge Holmes 143
Instructions by Lamed and Wife 143
Motion for New trial 145
Clerks Certificate 146

Horace Metcalf and Nimrod Snyder
Defts in Error

Vs.

Transcript

Charles T. Lamed & Philomena, his wife, Thomas F. Smith, Luther M. Shreve, trustee of the unknown heirs of Ann T. C. Cannon, deceased, late wife of John M. Cannon
Plffs in Error

Error from St Louis Court of Common Pleas

N. Holmes & R. M. Field for Defts in Error

C. Gibson for Plffs in Error
$87.80 paid by Col. T. Lamed

1867 May 3. Arg & Sub. His Honor Judge [illegible] sitting. Brief of Ap. & Sm[illegible] of Pls filed

" " 23 Affirmed

In the Sup Ct Mo
March T. 1867,

Metcalf & Snyder Res,
v
Larned et als Ap.

Appeal from St Louis Cir Court.

Opinion of the Court.

In the year 1843, Thomas F. Smith died seized of a tract of land containing 640 acres lying and being situate in the County of St Louis, His estate was duly administered on, and the settlement of the administrator in March 1857, showed a balance in his hands of personal effects amounting to $817,52. In the year 1852 the defendants in this suit who are heirs at law of Thomas F. Smith united in a petition for partition of the land, and Commissioners were appointed by the Court, who reported that the land was not susceptible of division without prejudice, whereupon the Court ordered the same to be sold by the sheriff. The tract

for the purposes of sale was divi
ded in several parcels, a portio
on of which the plaintiffs pur
chased when sold in partition,
Previous to the sale Metcalf
who was a non-resident, employ
ed an attorney to examine
the records to see whether there
were any incumbrances, or
debts owing by the deceased
which would affect the title
to the land, After diligent sear
ch in the Probate Court, the
attorney found none, and so
represented, and upon the faith
of that representation Metc
alf made the purchase.
In September 1853, Stimpson
administrator of Chambers,
commenced an action for
breach of covenant against
Beckwith the first administra
tor of Smith, upon the coven
ants of a deed executed by
Smith in 1843, laying the breach
as occurring in 1848, five years
after Smiths death. The writ
was returnable to the October term

1853, of the St Louis Land Court. There was no service on Beckwith and the case was continued until the March term 1854, Beckwith died in December 1853, and C. C. Whittlesey succeeds him in the administration, At the March term of the Court 1854, and after the sale in question, Whittlesey enters his appearance voluntarily,

Judgment was obtained in the suit of Chambers' adm'r vs Smith's adm'r and there being a deficiency of assets, the land sold in question, was on the petition of Whittlesey the administrator sold to satisfy the judgment; In the sale under execution Mrs Tyler the owner of the judgment bought the property, and subsequently the plaintiffs paid her the amount of the judgment debt and receives from her quit claim deeds for the premises,

This suit was instituted against the defendants, as the heirs of Smith, who has received

distribution shares from the estate arising from the sale in partition, to reclaim the amount paid by plaintiffs in protecting and completing their title,

The first point raised that the institution of the suit of Chambers vs Smith, was sufficient to constitute notice of subsisting incumbrances, to purchasers or bidders at the sale in partition, we think is not maintainable, The papers were previously filed, but there ~~was~~ was no service of the writ or appearance by the party until after the sale had taken place, and the established rule seems to be, that a lis pendens, is not notice to a purchaser so as to affect and bind his interest by the judgment, till the service of the writ after the petition is filed, (Murray vs Ballou 1 Johns Ch, 566; Fenwick vs Gill 38 Mo 525),

The Court refused on the application of the plaintiffs to declare

that the defendants were liable in solido, and in this we think it was correct, for where heirs are proceeded against on account of assets which they have received from their ancestor, they are chargeable only distributively and pro rata (2 Tuck Com, 111)

An estate by descent renders the heir liable for the debts of his ancestor, to the value of the property descended, and he holds the lands subject to the payment of the ancestors debts, (4 Kent's Com 419, 6th ed; Watkins v Holman 16 Peters 25) The heirs cannot alien the land to the prejudice of creditors, and they have no right to the real estate of their ancestors, except that of possession, until the creditors are paid, But it is insisted for the defendants, that the plaintiffs bought the property in a partition sale, and that in a statutory proceeding for partition there is no warranty, (Owsley v Smith 14 Mo 153; Schwartz v Snyder 25 Mo 572) Admit this principle

and the only question to be deter-
mined is whether it applies to this
case,

In Langham vs Darby (13 Mo 553)
the heirs of Langham joined others
in a suit for partition of cer-
tain lands; an order of sale
was made; after sale but before
the sheriff made his report,
the administrator applies to
the court for an order that the
proceeds of the sale going to the
heirs should be kept over to
him for the benefit of Langha-
ms creditors, the court being
satisfied that the estate was insol-
vent made the order. This
court approves the proceeding
and says that justice was accom-
plished by it. The case of Van
Hezel vs Hyckoff (3 Sand Ch, 428),
decides that a creditor of the
ancestor, who is entitled to main-
tain a suit against heirs in
respect of the real estate descended
~~against~~ to them, may have a decree
against the proceeds of such
real estate where the same have

been paid into court upon a sale of the property under an order or decree of the court.

Under the law the heirs of Smith must give way to creditors. The debts must first be satisfied before they can claim or receive any benefit from the estate of their ancestor. The money that they got arising out of the sale ~~of~~ partition, was the money of the creditors so long as any debts or liabilities remained unpaid. The plaintiffs who after diligent search and without notice purchased in good faith, were compelled to pay their money to satisfy an incumbrance for which the heirs were liable and they ought not to be turned away remediless. The heirs had received and obtained possession of the plaintiffs money which should have been appropriated to the payment of the judgment debt, and we are unable to distinguish any difference in principle where the

money is thus paid over and sought to be recovered back and where a specific decree is rendered against it, where it has been paid into court.

Judgment affirmed

Judge Fagg concurs, Judge Holmes having been of counsel not sitting.

David Wagner

Metcalf & Snyder
vs
Larned et al.

Opinion of the
Court Wagner

Filed May 20th 1863
O. J. Fishback Clk
per R. M. Yaft Deputy

Affirmed