Chouteau, Therese et al vs Paul, Rene et al 1831 3rd D/St Louis Co 129/2

Estate Settlement; Petition for Partition of lands

#1 Reversed, partion amongst heirs from "hotchpot" valid

#2 Marriage, Wills, Women, Land, Estates

STATE OF MISSOURI, } ss.
Third Judicial District,

The State of Missouri, to the Honorable the Circuit Court of St. Louis County,

GREETING:

FOR AS MUCH *as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of* St. Louis *before our Judge thereof, between* Therese Cerre Chouteau (widow of August Chouteau dec.d) Thomas F Smith and Emilie his wife Henry Chouteau and Edward Chouteau —

Plaintiffs, and Gabriel Paul and Louise his wife and Rene Paul and Eulalie his wife & Gabriel S Chouteau August A Chouteau — *Defendants,*

in a plea of partition of lands *as it is said, manifest error hath happened, to the great damage of the said* plaintiffs *as by* their *complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* Fourth monday *of* December *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

In Testimony Whereof, *I,* JOSEPH C. BROWN, *Clerk of our Supreme Court for the Third Judicial District, have hereunto set my hand and seal of Office, at Office, this* Fifth *day of* October *in the year of our Lord one thousand eight hundred and* thirty one *and of the Independence of the United States of America, the* fifty Sixth —

Jos. C Brown Clerk

In Supreme Court

Therese C Chouteau
& others
vs
Gabriel Paul &
others —

Writ 1.50
Tax .62½
$2.12½

Fees paid by Henry
Chouteau
Jos. C Brown clk

12th October 1831

In obedience to the commands of the within writ I return Herewith a certified transcript of the Record and proceedings in the within named case are therein commanded

St Louis Novr 1st — 1831

Archibald Gamble Clerk
St Louis Circuit Court

Theresa Chouteau
& others
v
Rene Paul

The defendants by their attorney move to dismiss the writ of error

1. because the writ is against Gabriel Choteau & A A Chouteau whereas there is no judgment for or against them

2. Louise & Eulalie Paul are made defendants in the writ, as also Gabriel & August A Chouteau ~~as~~ in whose favour of either of them there is not a judgment

Gratz

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Theresa Chouteau
& others
vs
Paul & others

Motion to dismiss
writ of error —

filed 27th Decr 1831
Jos. C Brown Clk

H.S. Geyer
H.S.G.

STATE OF MISSOURI, }
Third Judicial District, } ss.

The State of Missouri, to the Honorable the Circuit Court of St. Louis County, GREETING:

FOR AS MUCH *as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of St. Louis — before our Judge thereof, between* Therese Cerré Chouteau, Thomas F. Smith & Emilie his wife, Henry Chouteau & Edward Chouteau — — —

Plaintiffs, and Rene Paul & Eulalie his wife, Gabriel Paul & Louise his wife, Auguste Chouteau & Gabriel Chouteau —

Defendants,

in a plea of partition of lands *as it is said, manifest error hath happened, to the great damage of the said* plaintiffs *as by their complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* fourth Monday *of* April instant, *that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cause to be done therein, for correcting the said error, what to them of right, and according to law, shall seem meet to be done.*

In Testimony Whereof, *I,* JOSEPH C. BROWN, *Clerk of our Supreme Court for the Third Judicial District, have hereunto set my hand and seal of Office, at Office, this* seventh *day of* April — *in the year of our Lord one thousand eight hundred and* thirty two — *and of the Independence of the United States of America, the* fifty sixth. —

Jos. C Brown Clerk

State of Missouri County of St Louis

In obedience to the Commands of the within writ I return herewith a copy of the proceedings in the case of Therese Cerré Chouteau, Thomas F Smith & Emilie his wife Henry Chouteau and Edward Chouteau vs René Paul & Eulalie his wife Gabriel Paul and Louise his wife Auguste Chouteau & Gabriel Chouteau as In said writ Commanded — St Louis 10th april 1832

Archibald Gamble Clerk

Supreme Court
To Apl. Term 1832
Chouteau & others
Chouteau & others
Writ 1.50
Tax 62½
$2.12½

Fees pd. by Atty Allen

State of Missouri
County of Saint Louis } Be it Remembered that heretofore to wit; on the twenty eighth day of March in the Year of our Lord One thousand Eight Hundred and thirty one Therese Cerré Chouteau widow of Auguste Chouteau deceased, and Thomas F. Smith and Emilie his wife in her right, Henry Chouteau and Edward Chouteau which said Emilie Henry and Edward are children and heirs at law of the said Auguste Chouteau deceased by their attorneys filed in the ~~Office of the Clerk of the~~ Circuit Court for the County of Saint Louis their petition for partition of certain lands and tenements therein described belonging to the Estate of the said Auguste Chouteau deceased which said petition is in the words and figures following to wit; "To the Circuit
Petition } Court of the County of St. Louis in the State of Missouri — Respectfully shew, your petitioners Therese Cerre Chouteau widow of Auguste Chouteau deceased, Thomas F. Smith and Emilie his wife in her right, Henry Chouteau and Edward Chouteau, which said Emilie Henry & Edward are children and heirs at law of the said Auguste Chouteau deceased, that they are interested with René Paul and Eulalie his wife in her right, Gabriel Paul & Louise his wife in her right, Auguste Chouteau & Gabriel Chouteau, which said Eulalie, Louise, Auguste & Gabriel are children & heirs at law of the said Auguste Chouteau deceased, in the following tracts of land, to wit, a
discription of Property } 1 tract of land containing about thirty two acres & two hundredths situate in the Grand Prairie, in township forty five north range Seven East not yet surveyed claimed under François Dunegant —
2 A Tract of land containing about Sixty Eight acres and five hundredths situate in the Cul de sac fields in township forty five north range Seven East & bounded north by Susan Dubreuil's survey, East by Chouteau's mill tract, South unknown & west by Charles Tratiot's survey, not yet
3 surveyed, claimed under G. Hebert Secomte. — a tract of land containing about nineteen hundred acres & fifty one hundredths, being United States survey number two thousand & thirty eight situate in townships forty six & forty seven north ranges five & six east granted to Auguste Chouteau & Sixty three acres of United States survey number two thousand & thirty nine granted to Pierre Chouteau, bounded north west by the Missouri River north east by lands of Pierre Chouteau South east by the commons of Owens' Station & Ally Williams, South west by William Palmer's survey, James M'Coy's and Joseph M'Aspin's
4 location. — A tract of land containing about Six Hundred & Eighty acres & fifty six hundredths being United States survey number nineteen hundred & forty nine situate in Township forty three North range three east owned under Michael Forlin bounded north east & South east by publick lands South west & north west by lands of the late
5 Auguste Chouteau — A Tract of land containing about Six

Hundred & Eighty acres & fifty six hundredths being United States survey number nineteen hundred & forty six in township forty three north range three East owned under Francois Bourassa, bounded north East by publick lands & lands of the late Auguste Chouteau under Courtois, north west & south west by publick lands & South East by Auguste Gamache's survey. —— A Tract of land containing about four thousand seven hundred & seventy seven acres being part of the United States Survey number Eighteen hundred and ninety seven situate in township forty three north, range three East owned under Louis Courtois Senior bounded north east by Joseph Beylle & publick lands, South east by public lands & lands of the late Auguste Chouteau, South west by publick lands & Auguste Gamache's survey & lands of the late Auguste Chouteau under François Bourassa, north west by publick lands— A Tract of land containing about Six hundred & Eighty nine acres & fifty hundredths being part of an unconfirmed tract of land granted to Auguste Chouteau situate in township forty five north range six & seven East commonly called the Cote Brilliante tract about six miles from St Louis bounded north west by a New madrid location, by lands of Pierre Chouteau South East north east by lands of the late David Coalter, & south west by a New Madrid Location. ——

The said petitioners further shew that the tracts of land above described are situate in the County of St Louis except tracts fourthly fifthly & sixthly described which are situate part in the County of Jefferson & the residue in the County of St Louis in the State of Missouri — and they shew their title to the tracts of land herein before described to be that the said Auguste Chouteau deceased in his life time was seized & possessed of the said tracts in fee, that he acquired the same after his intermarriage with Therese Cerré now his widow & one of your petitioners which took place in the Year one thousand seven hundred and eighty six on the 26th day of September at the town of St Louis in the then province of Louisiana now State of Missouri — that previous to the said marriage with the said Therese Cerre there was executed by & between him & said Therese a marriage Contract by which it was stipulated that the estate real & personal (les biens meubles et immeubles) which they might acquire during their marriage should be in partnership (en communaute) & also the estates which thereafter & during their marriage might come to them by title of succession by the deaths of their fathers & mothers by donations legacies or otherwise from whatever side or line they might come or in whatever place or country situate should enter wholly in the same mass or partnership (mase et communaute) without any reservation & it was further stipulated by said Marriage Contract that all the estate proper that is the separate property of either (les biens propres) & acquisitions (acquets et conquets) real & personal which they might acquire during the said marriage and which the first dying might possess & leave at his or her death should

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be a donation to the survivor to be enjoyed by him or her as his or her property, provided nevertheless, that there be not any child living born or to be born of said marriage & in case of a child the said donation to be void — and your petitioners further shew, that the said Auguste Chouteau deceased departed this life on 24th day of February in the year 1829 leaving in full life his widow Therese Chouteau who is one of your petitioners & the following children being the same herein before named to wit; Louise wife of Gabriel Paul, Emilie wife of Thomas F Smith, Henry Chouteau, Edward Chouteau, Eulalie wife of Rene Paul, Auguste Chouteau & Gabriel Chouteau. And your petitioners further shew that the said Auguste Chouteau deceased before he departed this life to wit; on the 13th day of February in the year 1829 at the City of St Louis in the County of St Louis & State of Missouri duly made & published his last will & testament. Probate whereof was duly granted on the fourteenth day of March in the year 1829 by the Clerk of the County court of St Louis County & approved by the said County Court on the fourth day of May in the year 1829. That by said will the said Testator made specifick devises of certain real estate to his widow Therese Chouteau aforesaid in addition to her matrimonial rights under the contract of marriage aforesaid & devised the residue of his real estate to his said children to be equally divided between them — And your petitioners further shew that the property in this petition described forms no part of the Specifick devises aforesaid. — And your petitioners aver, that according to the title aforesaid of the widow & children to the property herein before described the widow of the late Auguste Chouteau has right to one half of said property & each of his children to one fourteenth of same property, there being seven children in number — And your petitioners being desirous that said property may be divided, pray that the same may be divided by Commissioners to be appointed by this court in pursuance of the act of the Leglislature in such case made & provided according to the respective rights therein of the parties aforesaid — The Petitioners by Edward Bates & Beverly Allen their attorneys — and at the same time the petitioners aforesaid by their said attorneys also filed the following notices and certificates to wit; "To Rene Paul & Eulalie his wife, Gabriel Paul and Louise his wife Auguste Chouteau & Gabriel Chouteau — Take Notice that the undersigned will apply to the Circuit Court of the County of St Louis in the State of Missouri on the first day of the next March Term thereof or as soon thereafter as counsel can be heard for the appointment of Commissioners to make partition of the lands described in the above petition among the parties interested according to their respective rights therein agreeably to the prayer of said petition St Louis 18th February 1831

Cerre Chouteau
T F Smith —
Emilie Smith wife of T F Smith

Henry Chouteau
E Chouteau

notices & certificates

It is hereby certified that I served the foregoing petition & notice on Rene Paul & Eulalie his wife, on Gabriel Paul & Louise his wife & on Gabriel Chouteau five of the persons to whom the above notice is adressed by delivering to each a Copy of said petition & notice on the 19th day of February in the Year 1831. at the City & County of St Louis Missouri - John K Walker Sheriff of the County of St Louis. Missouri +

affidavit of Chs Keemle } State of Missouri County of St Louis - Personally appeared Charles Keemle before the undersigned a Justice of the peace within & for the County aforesaid & madeoath & saith that he is printer of the Newspaper entitled "St Louis Beacon" published in the City of St Louis county aforesaid & that the advertisement copy of which is hereto annexed was published in Ten different numbers of said Newspaper & of the following dates to wit; January 20th and 27th February 3d 10th 17th 24th March 3d 10th 17th and 24th Chs Keemle - Sworn to & Subscribed this 26th day of March 1831 before J.V. Garnier. J.P. - and the notice and advertisement annexed to said affidavit and petition aforesaid is as follows to wit; To

notice to A Chouteau } Auguste A Chouteau - Take Notice that on the first day of the next term of the Circuit Court to be held at the City of St Louis within and for the County of Saint Louis on the fourth monday of March next, or as soon thereafter as counsel can be heard the undersigned widow heirs and legatees of the late Colonel Auguste Chouteau will apply to said Court for the appointment of Commissioners to make partition between you and ourselves of the following real estate according to our respective rights therein to wit; "One tract of land containing about 1100 acres being the whole of the United States surveys No 363 and 1265 out of the limits of the City of St Louis owned by the Estate of said deceased situate in township 45 North, range 7 East it being the same tract generally known by the name of the Mill tract, on which a Water grist mill is situate near the City of St Louis; bounded north by J.B.C. Lucas, George Collier and Peter Lindell west by the Cul de sac common field lots, south by Lewis Rutgers, F Dent, and others and East by the limits of the city of St Louis. Another tract of land containing about 32-02 acres, in the grand Prairie owned under Fs. Dumegant, situate in Township 45 north, range 7 East not yet surveyed - About 68.05 acres of land in the Cul de sac fields owned under G Hebert Lecompte not yet surveyed; situate in township 45 North, range 7 east, and bounded North by Susan Dubreuil's survey, east by Chouteau's mill tract, south unknown and west by Charles Gratiot's survey.

About 1900.51 acres of land, being United States survey No 2038 situate in township 46 and 47 north, range 5 and 6 East granted to Auguste Chouteau including 63 acres of United States' survey, No 2039 granted to Pierre Chouteau. bounded North west by the Missouri River, north east by Pierre Chouteau, South east by Owen's Station commons and Olly Williams South-west by William Palmer's survey. James McCoy and Joseph McAlpin's

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location. — About 680. 56 acres of land being United States survey No 1949. in township 43 north, range 3 east owned under Michel Fortin. bounded north east and south east by public lands. south west and north west by Auguste Chouteau's estate. — about 680. 56 acres of land. being United States survey. No 1946 in township 43 north, range 3 east owned under F Bourassa. bounded north east by public lands and Chouteau under Courtois, north west and South west by public lands and south east by Tamache's survey. — about 4777 acres of land, being part of the United States survey. No 1897 in township 43 north range 3 east owned under Louis Courtois senior. bounded north East by Joseph Beylle and public lands south east by public lands and Auguste Chouteau's estate, south west by public lands Tamache's survey and Chouteau under Bourassa, north west by public lands. —

About 689. 50 acres of land being part of an unconfirmed tract of land granted to auguste Chouteau situate in Township 45 north range 6 and 7 East, commonly called the Cole Brilliante tract at about six miles from St. Louis. bounded northwest by a New madrid location north east by Pierre chouteau, South east by Coulter's Estate and South-west by a New madrid location. Also the following lots of ground situate in the City of St. Louis: — One lot 128 feet by 127 feet South east corner of block. No 135 bounded north by Francois Picard, east by 6th Street, South by Spruce Street and west by an alley — Block No 146 being 400 feet on 6th Street by 270 feet deep being the whole of that block except the north west corner thereof owned by John Bent and Robert Orme being 100 feet on 7th Street by 127 feet to an alley. The block bounded north by Spruce Street, east by 6th Street, south by Poplar Street and west by 7th Street. — Block No 147 bounded north by Poplar Street South by Cerre Street, east by 6th Street and west by 7th Street being 400 feet front by 270 feet deep — Block No 148 being 400 feet by 270. bounded north by Cerre Street, east by 6th Street, south by Gratiot Street and west by 7th Street. — Block No 149 being 400 feet on 7th Street by 270. bounded north by Gratiot Street, east by 6th Street, south by Papin Street and west by 7th Street — That part of block No 150 belonging to said Estate bounded north by Papin Street, east by Sixth Street and convent ground, south by convent ground and Labbadie Street and east by 7th Street. quantity of feet not known. — The west part of block No 151 being about 500 feet front by 150 deep. bounded north by Labbadie Street east by convent ground south by Soulard Street and west by 7th Streets. — The northern part of Block No 156 bounded north by Papin Street east by 5th Street. South by convent and west by 6th Street quantity of feet not known. — Block No 159 being 400 feet on 5th Street by 270 (except 50 feet on 5th Street by 127 deep owned by A. L. Hoffman) bounded north by Gratiot Street east by 5th Street South by Papin Street — west

by 6th Street. - One lot 150 feet on 5th Street by 127 feet deep, south east corner of block No 161. and the west half of said block. bounded North by Cerre Street, east by an alley, south by Gratiot Street, and west by 6th Street. — one lot 100 feet on 5th Street by 127 feet deep in block No 162. bounded north by Lucinda Richey south by Bridget Rooney east by 5th Street and west by an alley. and the west half of said block being 400 feet on 6th Street and bounded north by Poplar Street east by an alley, south by Cerre Street and west by 6th Street. — One lot 200 feet front on 5th Street by 127 feet deep in block No 163 bounded north by John Finney. east by 5th Street, South by Poplar Street and west by an alley. — one lot 300 feet front on 6th Street by 127 feet deep in block No 163. bounded north by John A Baldwin, east by an alley South by Poplar Street and west by 6th Street. — The South part of block No 158 bounded north by balance of Square, east by 4th Street South by Lombard Street, and west by 5th Street; quantity of feet not known. — Block No 157 bounded north by Lombard Street east by 4th Street, south by Hazel Street, and west by 5th Street, and the small triangular piece of land south of said block. — The South west corner of Block No 74 bounded north east by Henry Von Phul, south by Hazel Street, west by 4th Street; quantity of feet not known. — That part of block No 73 belonging to said estate bounded north by Hazel Street east by 3d Street, south by convent street and west by 4th Street; quantity of feet not known. — The north east corner of block No 154 being a triangular piece of ground, quantity of feet not known. — That part of block No 47 belonging to said estate bounded north by convent, South by City limits, east by 2d Street and west by 3d Street. — That part of block No 48, belonging to said estate being about the south west half thereof bounded South by Convent street, north and east by 2d Street, Guitard and others and west by 3d Street. —

Therese Cerre Chouteau - Widow of
Auguste Chouteau dec. -
Gabriel Paul and Louisa his wife
Thomas F Smith and Emilie his wife
Henry Chouteau — Edward Chouteau

St Louis Jan. 20. 1831

And afterwards to wit; at the March Term of the said Circuit Court in the Year of our Lord one thousand Eight hundred and thirty one on the first day of said term being the twenty Eighth day of said month the following proceedings were had to wit;

Therese Cerré Chouteau widow of Auguste Chouteau deceased
Thomas F Smith & Emilie his wife Henry Chouteau & Edward Chouteau
vs
Gabriel Paul & Louise his wife - Rene Paul & Eulalie his wife - Gabriel Chouteau and Auguste Chouteau —
} Petition for Partition

Now at this day come Therese Cerré Chouteau widow of Auguste Chouteau deceased, Thomas F Smith and Emilie his wife, Henry Chouteau and Edward Chouteau by Mr Allen their attorney and file their petition Stating that the said Therese Cerré Chouteau widow of Auguste Chouteau deceased

by virtue of a Marriage Contract executed between the said Auguste Chouteau in his lifetime and the said Therese C Chouteau is entitled to the one half of certain tracts of land in said petition described lying and being in the county of Saint Louis except certain of the said tracts therein mentioned which are partly in the County of Jefferson and partly in the said County of Saint Louis and stating also that the said Emilie wife of Thomas F Smith, Henry Chouteau Edward Chouteau, Louise, wife of Gabriel Paul, Eulalie wife of René Paul, Auguste Chouteau and Gabriel Chouteau children of the said Auguste Chouteau deceased are equally interested as heirs of said deceased in the other half of the said tracts of land in said petition mentioned and praying for partition thereof to be made according to their respective rights therein, and it appearing by the return of the Sheriff that the said petition and a notice of the intention of said petitioners to apply for partition as aforesaid has been served on Gabriel Chouteau, René Paul and Eulalie his wife, Gabriel Paul and Louise his wife and it being also proved to the satisfaction of this Court that Auguste Chouteau is not a resident of this State and that a notice subscribed by said petitioners describing said tracts of land and that application would be made to this Court for the appointment of Commissioners for partition thereof had been duly published in the "St Louis Beacon" a Newspaper published in the City of St Louis and State of Missouri for at least two months in all respects according to Law. it is Ordered that time be given to the said René Paul and Eulalie his wife, Gabriel Paul and Louise his wife, Gabriel Chouteau and Auguste Chouteau to appear, and answer the said petition as by the Statute in that case made and provided and afterwards to wit at the same term of the said Circuit Court on the Sixth day of April in the year aforesaid the said Gabriel and René Paul by their attorney filed their answer to said petition which is in the words and figures following to wit; "René Paul & Gabriel Paul impleded &c adds Thérese Cerré Chouteau and others- Petition for partition- And the said René & Gabriel come and defend the said petition and say that the prayer of the said petition in manner and form above set forth ought not to be granted; because they say that the prayer of said petition is at variance with the last will and testament of the said Auguste Chouteau and the agreements of the devisees, as well the petitioners as these respondents, which these respondents have full confidence will be executed and carried into full effect by the said Thérese executrix charged with the Execution of said will and that a partition of said estate according to the prayer of the petition would defeat the intention of the testator and the agreement aforesaid, as well as deprive the said Thérese of the power to execute said last will and testament, which among other things provides as follows— 3°- I declare to be legitimately married with Thérese Chouteau born Cerré, my beloved wife, from which marriage there exist on this day seven Children viz: Auguste Aristides Chouteau. Gabriel Silvester Chouteau, Henry Pierre Chouteau- Edward René Chouteau, Eulalie M.T. Chouteau

answer of } G & R Paul }

wife of René Paul, Louise Chouteau wife of Gabriel Paul and Emilie Chouteau wife of Thomas F Smith. — 4th I declare that my properties consist in divers lands, town lots, Houses, Slaves, cattles linens furnitures, effects, ready money, Silver ware, bills, notes, obligations, accounts & titles — 5th I give and bequeath to my aforesaid beloved wife the aforesaid Therese, the house and lot where I now reside, with all its furniture, liniens, beddings, as also Silver ware, The said House and lot situate on the first main Street opposite and to the west of the Market; bequeathing equally to her the house and the lot depending thereto. situate on the principal Street to the south of the market, bound east by the Mississippi River and south by a cross street giving and bequeathing in like manner to her twelve slaves at her choice, and that aside of her matrimonial rights, in virtue of her marriage contract with me, in order that she may dispose of the whole according to her will and pleasure as of things to her proper and belonging without difficulty or recddition of accounts — 6th As to the surplus of my said properties I give and bequeath them to my children by equal shares and portions that they may enjoy the same with the benediction of god and mine — 7th I will and order that there shall be made an inventory with appraisement of all my properties, lands, town lots houses, slaves, cattles, house furniture, ready money, silver ware, bonds bills & notes, obligations, accounts, account books, and titles whatsoever, to be distributed and divided as aforesaid and mentioned. —

And these respondents say that the said Therese executrix as aforesaid has not caused the lands, tenements, lots &c in the petition mentioned to be appraised as in and by said last will and testament she was bound and required to do. Nor has she given bond and security for the due performance and faithful administration of said Estate. according to the form of the Statute in such case made and provided. — and these respondents further say that after the death of the said Auguste Chouteau the said respondents together with the said Therese and Bernard Pratte agent for Auguste P Chouteau assignee of Auguste A Chouteau, Thomas F Smith, Gabriel S Chouteau, Henry Chouteau and Edward Chouteau, made and entered into the following resolutions stipulations and agreements for the adjustment settlement and division of said Estate that is to say: " the Undersigned being desirous to proceed to a division of the estate bequeathed to them by their deceased father, on principles of Equity based upon the 6th article of his last will and testament, and in order to equalize the share of each of them, Unanimously agreed: that the maximum sum to be received by each coparcener previously to divide the Estate by equal shares and portions shall be seven thousand dollars, said sum being considered equivalant to the amount given to or paid for A. A. Chouteau that in addition to the values already received by each coparcener

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from their said decd father whether the same be specified in their respective marriage contracts, book accounts or otherwise; each of the said Coparceners shall respectively receive the following sums viz;—

Aug. A Chouteau.... nothing - - - - -	$ —	Thos F Smith.. four thousand dollars	4000.—
Gab. S Chouteau... Five thousand dollars	5000	Henry P. Chouteau.. four thousand dollars	4000.—
René Paul ..... Four thousand dollars	4000	Edwd R Chouteau.. Five thousand dollars	5000.—
Gabr. Paul ..... Fifteen Hundred dollars	1500		

that the respective sums above mentioned amounting together to twenty three thousand five hundred dollars shall be received by each coparcener respectively in property belonging to the Estate at a fair Valuation to be fixed upon by the undersigned or three disinterested persons — That the Estate or each of the Coparceners for one seventh shall warrant without restriction the title to such property as any of them may have formerly received and pay such sums of money as may be necessary in order to validate those titles — That each and every one of us do hereby bind ourselves to each other to comply strictly with the foregoing resolutions or agreements signed at St Louis, November 6th 1830 — by Therese Cerré Chouteau — Bernard Pratte agnt — Gabriel S Chouteau — René Paul — Gabriel Paul — Thos F Smith — Henry Chouteau — Edward Chouteau. — and these respondents insist that the property in the declaration mentioned ought to be divided according to said agreements after appraisement in pursuance of said will and testament and not otherwise — wherefore they say that the prayer of the petitioners ought not to be granted in manner and form as they have in the prayer of their petition demanded — Gabriel Paul and René Paul by Geyer atty — and afterwards to wit at the same term of the said Circuit Court on the ninth day of April in the Year aforesaid the said petitioners by their attorneys filed their demurrer to said answer which is in the words and figures following to wit; In the Circuit Court St Louis County March Term A.D. 1831. — Therese Cerré Chouteau & al vs René Paul & Gabriel Paul & al — and the said petitioners as to the said plea of the said René and Gabriel by them above pleaded say that the same & the matters therein contained in manner & form as the same are above pleaded & set forth are not sufficient in law to bar or preclude them the said petitioners from having or maintaining the prayer of their said petition & that they are not bound by law to answer the same & this they are ready to verify. wherefore for want of a sufficient plea in this behalf they pray Judgt &c Bates & Allen for petitioners — and afterwards to wit at the same term of the said Circuit Court on the twenty sixth day of April in the year aforesaid come the parties aforesaid by their respective attorneys aforesaid and thereupon all and singular the matters aforesaid whereof the parties aforesaid have put themselves upon the Judgment of the Court are by them submitted to the Court which being seen and heard and by the Court here fully understood and mature deliberation being thereupon had for that it appears to the court that the said plea of the said René and Gabriel by them above pleaded and the matters therein contained in manner and form as the same are above pleaded and set forth are sufficient in

Demurrer to answer

Judgment

law to bar and preclude them the said petitioners from having and maintaining the prayer of their said petition therefore it is considered that the said petitioners take nothing by their said petition and that the said defendants go thereof without day and it is further considered that the said defendants recover against the said Therese C Chouteau. Thomas F. Smith and Emilie his wife. Henry Chouteau and Edward Chouteau their costs and charges by them about their defence in this behalf expended and that they have thereof execution.— and afterwards to wit, at the march term of the said Circuit court in the Year Eighteen Hundred and Thirty two on the seventh day of April in the Year aforesaid the following proceedings were had to wit;

Therese Cerré Chouteau Widow of Auguste Chouteau deceased-Thomas F Smith & Emilie his wife. Henry Chouteau & Edward Chouteau

vs

Gabriel Paul & Louise his wife - René Paul & Eulalie his wife-Gabriel Chouteau and Auguste Chouteau

Now at this day come the said petitioners by their attorney and move the court to render final Judgment in this cause and the court upon the Inspection of the Record and proceedings herein doth consider and adjudge that they the said petitioners take nothing by their said petition and that the defendants Louise Paul and Eulalie Paul. Gabriel Chouteau and Auguste Chouteau go thereof without day and it is further considered that the said defendants recover against the said petitioners their costs and charges by them about their defence in this behalf expended and that they have thereof execution

State of Missouri
County of Saint Louis } ss I. Archibald Gamble Clerk of the Circuit Court for the County of Saint Louis do Certify that the foregoing is a true transcript of the Record and proceedings in the case of Therese Cerré Chouteau widow of Auguste Chouteau deceased. Thomas F Smith and Emilie his wife Henry Chouteau and Edward Chouteau against Gabriel Paul and Louise his wife René Paul and Eulalie his wife and Gabriel S Chouteau and Auguste Chouteau on petition for partition as the same now Remains of Record in my office Given under my Hand and the Seal of the said Circuit Court at Office this tenth day of April in the Year of Our Lord One thousand Eight Hundred and thirty two

Archibald Gamble Clerk

75

377

377

Therese Cerré Chouteau
Thos F Smith & ~~Eulalie~~ Emilie his wife
Henry Chouteau &
Edward Chouteau
vs } Petition for Partition
Gabriel Paul & Louise his wife
René Paul & Eulalie his wife
Gabriel Chouteau & Auguste Chouteau

Transcript	$ 5 " 23
Certificate & Seal	0 " 50
Tax	0 " 62½
	$ 6 " 35½

filed 11th Apl 1832
Jos C Brown clk

1-3 pcts

Indgt reversed & remanded book D page 4 –

Feebill 37

In the Supreme Court
3d. Judicial District
April Term AD 1832.

Therese C. Chonteau widow of A. Chonteau dec.
Thomas J. Smith & Emilie his wife
Henry Chonteau & Edward Chonteau. Plaintiffs in error.

vs. } In Error.

Rene Paul & Eulalie his wife
Gabriel Paul & Louise his wife
Auguste Chonteau & Gabriel Chonteau Defts in error

And the said Pltffs: by their attorney come & say that in the record & proceedings aforesaid & in the rendition of the judgt against the said Pltffs: in said record set forth there is manifest error in this, to wit, that the judgt aforesaid were rendered against the said Pltffs: whereas by the Law they should have been in their favour, & this they the said Pltffs: are ready to verify; wherefore for the errors aforesaid they pray judgt &c.

Bates & Allen p.q.

7.

Chouteau Lal:
"
Paul Lal:

Assignment of error.
B. La. Sq.

filed 25th Apl 1832
Jos. C. Brown Clk

State of Missouri ss: Supreme Court, Third Judicial District of the State of Missouri

The State of Missouri

To the Sheriff of the County of Saint Louis Greeting:

Whereas Therese Cerré Chouteau, Thomas F Smith and Emilie his wife, Henry Chouteau and Edward Chouteau did on the Seventh day of April in the Year of our Lord one thousand Eight Hundred and thirty two prosecute out of our Supreme court for the third Judicial District their writ of Error directed to our Circuit court for the County of Saint Louis, Commanding that a transcript of the Record of the Judgment with all things touching the same on a certain plaint which was in our said Circuit Court between Therese Cerré Chouteau, Thomas F. Smith and Emilie his wife, Henry Chouteau and Edward Chouteau plaintiffs and René Paul and Eulalie his wife, Fabriel Paul and Louise his wife, Auguste Chouteau and Gabriel Chouteau defend-ants, in a plea of partition of Lands, should for certain causes of Error be certified and sent to our Supreme Court.- And whereas it has been suggested to our said Supreme court that since the prosecuting out of said writ of Error, Louise Paul wife of Fabriel Paul and one of the said defendants in said suit hath died which suggestion appears to us of Record in our said Supreme court, And the said plaintiffs having besought our said court to provide them a suitable remedy to revive the said suit against the children and Heirs at Law of the said Louise Paul deceased and we being willing that what is right in this behalf should be done, Command You that by good and lawful men of your bailiwick you make known unto Estelle Félicie,- Adolphe,- Aglaé Scholastique,- and Thérèse-Children and Heirs at Law of the said Louise Paul deceased, that they be and appear before the Judges of our said Supreme court at the next term thereof to be held at the City of St. Louis within and for the third Judicial District of the State of Missouri on the first Monday of October next then and there to shew cause if any they have, or knows of any thing to say why the said cause should not be revived and stand against them as Children and Heirs at Law of the said Louise Paul deceased one of the defendants aforesaid, and that you certify to our said Court the names of the persons by whom you make known to them this writ, and have you then there this writ.

Witness Joseph C. Brown Clerk of our said Supreme Court for the third Judicial District of the State of Missouri at Office in the City of St. Louis this Twenty Seventh day of June in the Year of our Lord One thousand Eight Hundred and thirty three, and of the Independence of the United States of America the Fifty Seventh

Joseph C. Brown - Clerk

Served this Writ on Therese Paul on the 13th Sept 1833 by reading it to her in the city of St Louis in the presence of Henry Chouteau & Gabl. L. Chouteau Lawfull men of my County. and on Adolphe and Estelle Federic on the ~~[illegible]~~ 16th day of the same month by reading it to them, [illegible] present of John Doe & Richard Roe, Agle Scholastique is Dead.

Mo. K. Walker
Sheriff

Service $3.00

No 7 –
April Term 1832

Therese C. Chouteau – Thos F. Smith & Emilie his wife – Henry & Edward Chouteau
vs } Scire Facias
Gab: Paul & Louise his wife – René Paul & Eulalie his wife – Gabl Chouteau & Auguste Chouteau

Returnable to October Term 1833 –

In the Supreme Court
3d. Judicial District
Dec.r term A.D. 1837.

Therese C. Chonteau
Thomas J. Smith & Emilie his wife
Henry Chonteau & Edward Chonteau
Rene Paul & Eulalie his wife
Gabriel Paul & Louise his wife
Auguste Chonteau & Gabriel Chonteau

In Error.

And now come the said Therese, Thomas, Emilie Henry & Edward plaintiffs & say that in the record & proceedings aforesaid as also in the giving the judgt. aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgt. aforesaid is form aforesaid given & rendered for the said defts. against the said pltffs: whereas by the law of the land it should have been given for the said pltffs: against the said defts:

Whereupon the said pltffs: pray that the judgt. aforesaid for the error aforesaid & other error in the record & proceedings aforesaid may be reversed annulled & altogether held for nothing & that they may be restored to all things which they have lost by reason of the said judgt. &c.

Bates & Allen Pltffs Atty.

No. 9

Chouteau Ld

v

Chouteau Ld

assignment of error.

filed 25th Decr. 1831

Jos. C Brown clk

Therese C. Chouteau widow of A. Chouteau decd.
Thomas J. Smith & Emilie his wife
Henry Chouteau & Edward Chouteau
vs
Rene Paul & Eulalie his wife
Gabriel Paul & Louise his wife
Auguste Chouteau & Gabriel Chouteau.

This was a suit for the partition of lands under the act of the Legislature of 24. Decr. 1824. The petition was filed by Therese C. Chouteau widow Thomas J. Smith & Emilie his wife in her right Henry & Edward Chouteau the said Emilie Henry & Edward being children & heirs at Law of Auguste Chouteau decd. & states that they are interested with Rene Paul & Eulalie his wife in her right Gabriel Paul & Louise his wife in her right Auguste Chouteau & Gabriel Chouteau, the said Eulalie, Louise Auguste & Gabriel being children & heirs at Law of said A. Chouteau decd. in certain lands therein mentioned, describing them, It sets forth the rights of the respective parties & prays partition according to such rights. Two of the defts. Rene & Gabriel Paul object by plea to the prayer of the petitioners, & insist in bar that the same should not be granted, because it is at variance with the last will & testament of their ancestor the said A. Chouteau decd. & the agreements of the parties to this suit who are devisees by said will of the property sought to be divided. The plea sets forth parts of the will which so far as material to the defence shew that he bequeathed the residue of his property after satisfying his wifes matrimonial rights & his specifick devises; to his

children by equal shares & portions & willed & ordered that there shall be made an inventory with appraisement of all his property, lands, town-lots &c. to be distributed & divided as aforesaid & mentioned, that is, among his children by equal shares & portions; the testator having by a previous clause bequeathed the property to his children by equal shares & portions & avers that the exx. has not caused the lands town-lots &c. to be appraised as in & by the last will of her testator she was bound & required to do & has not given bond & security for the due & faithful administration of the estate according to the form of the statute in such case made & provided.

The plea further states that after the death of the said testator the said Rene & Gabriel (the respondents) together with the widow & Bernard Pratte agent for Auguste P. Chouteau ass.ee of Auguste P. Chouteau, Thomas J. Smith, Gabriel Chouteau Henry Chouteau & Edward Chouteau made certain resolutions stipulations & agreements for the adjustment settlement & division of the estate (copy whereof is given in the plea) by which the estates derived to them from their ancestor & testator are changed & from being equal are made unequal & insist that the property in petition mentioned ought to be divided according to said agreements & after appraisement & not otherwise nor until then. To this plea a dem.r was filed & judgt thereon rendered against the petitioners & afterwards judgt was rendered in favour of the other defts. the petitioners for error in which judgt. this writ is prosecuted.

There are two grounds of defence set up by

the plea.

1st That a division could not be made till after an appraisement which not being done the prayer of the petition should be refused.

2. That the division prayed for different from what the parties interested had bound themselves to by their agreement & that no division can be made different therefrom.

=

as to the first ground of defence.

This must be determined by the answer to the question, is the appraisement material to the title of the parties hereto? - does their title depend on the appraisement? If not the want of an appraisement can be no bar to the prayer of the petitioners.

What interest do they take - the widow one half the children ½ of each of the tracts not excepted in the petition - How do they claim either as devisees under the will or as heirs by virtue of the laws; they taking the same interest by the will as they would have taken had there been no will so are held to take as heirs being the more worthy title. Is their interest or their title dependent on the appraisement - if so it must be considered a condition precedent - if a condition precedent where is the title till it's performance, is it elsewhere than in these very same persons as heirs & the same estate they would be after the appraisement if so, the appraisement is idle & no more effectual their title than if the testator had directed the lands should be advertised. They certainly have a title without appraisement hearing such they are entitled to a division.

It may be said that the Exx. is directed by the will to make the division - I can find no such provision in the will. If there were the title of these parties does not depend on the execution of the power - they already have title & having it are entitled to a division & the aid of the law to make it - The Exx. has not yet made it & should the law make it as now prayed it would only be doing what the Exx should do. & supersede her doing it - Besides the division is to be made between her & the children. ~~The~~ It is not a power even were she directed to make the division, because no estate is charged or created or enlarged or defected by its execution. or

as to the 2d. ground of defence.

The agreement conformably to which the respondents contend the division should be made. is invalid.

1. Auguste Chouteau one of the devisees is no party
2. Eulalie Chouteau wife of R. Paul, Louise Chouteau wife of G. Paul, & Emilie wife of Thos. J. Smith are not parties. Their husbands cannot dispose of the land their wives hold in their own right. This is the effect of the agreement set up - It is not signed by the femmes covert nor acknowledged as the law requires. See act of legislature p Rev. Code.

B. Allen for pltffs:
in error

7

Chouteau Sal
" E Brief.
Paul Sal

for comt.

Therese Chouteau
T. J. Smith & wife
H. Chouteau & E. Chouteau
vs
Gabriel Paul et al

Error to St Louis circuit court—

Therese Chouteau the widow of Col. [redacted]
Auguste Chouteau Th. J. Smith and his wife the daughter of
Auguste Chouteau Henry & Edward [redacted] sons of said Chouteau
commenced a proceeding in the Circuit Court for a partition of certain lands mentioned in the petition against Gabriel Paul Rene Paul & their wives the daughters of said A. Chouteau. and also against Auguste & Cleondeau & Gabriel Chouteau sons of the deceased—

The deceased made a will by which he recognized a marriage contract between him & his wife whereby the widow is entitled to one half of the real estate sought to be divided by the partition By the 6th article of the will the testator devised all the residue of his real estate to [redacted] his seven children to be equally divided between them The will also directs that there shall be an inventory and appraisement of all the effects of the testator

The defendants appeared and filed an answer [redacted] which alleges that after the demise of the testator the widow Gabriel Paul & Rene Paul for themselves & their wives Th. J. Smith for himself & wife and Auguste A Chouteau by his agent and all the others for themselves entered into an agreement to bring all they had respectively received by way of advancement in the lifetime of the testator into hotch pot the answer sets out the respective sums each had received as stated by the agreement the agreement fixes the proportion of each devisee at $7,000 and then contains a farther agreement that each will abide by a final division and distribution on the basis of this agreement This agreement is set up as a bar to the partition which seeks to give the widow one half of the real estate

and also to give each of the other children one 7th of the remain-
der without any regard to the several sums advanced to each
on the lifetime of the testator There sums were unequal some having re-
ceived between $4 and $5,000 and some not more than half that
amount. Auguste A Chouteau ~~xxxx~~ received the whole $7,000
by the agreement he was to have nothing till each of the others
should have received an Amount equal to his

The answer ~~plea~~ further avers that the partition sought is con-
trary to the will which directs an Appraisment and division
accordingly- This answer ~~plea~~ was demurred to the demurrer was
sustained and Judgment for the defendants-

The first question presented by the answer ~~plea~~ is whether the agreement
to bring things into hotch pot is a bar to the claim set up by the
petitioners. It is argued by Mr Geyer for the defendants that this agreement
is an estoppel to the claim set up

It is answered by Mr Allen for the petitioners that this agree-
ment cannot operate as an estoppel first because it is not under
seal and secondly there appears to be no consideration for the
agreement third that J & M Paul & F. G Smith could not dis-pose
of the enheritance of their wives by this instrument so as to make
their estates or shares more or less the wives not having joined in the agree-
ment we are of opinion that these objections are all and each of them good
in law The wife of J Paul is already dead as appears by the record the estate
which the wife had has descended to her heirs. they are made parties and now
claim their mothers share whatever it may be this agreement on the part of
the husband without the wife did not divest her of her estate in the land
nor then can the court decree a partition according to that agreement
The same reasons are applicable to the rights of the two other married women

Furthermore this agreement is totally void as it now stands be-
fore this court as to Auguste A Chouteau the agreement purports
to be made by Bernard Pratte who styles himself the agent of
Chouteau and is signed by B. Pratte this is therefore the agreement of
B. Pratte and not of A Chouteau

With regard to the widow she has not by the agreement brought
any thing into hotch pot her interest or share is nowhere referred

to by the agreement she signed the agreement with the others but no-
part of the agreement can be referred to her except that part which says
the advancements to the children in the lifetime of the testator shall be
brought into division this is an agreement on her part that each of
the children shall receive shares according to the basis of the hotch pot.
principle if this agreement is binding on her at all she will be
answerable to the others for a breach of the covenant or agreement
if any of the parties who can break the agreement should do so

The next objection raised by the answer is that the will requires
an appraisement of the land and directs that a partition shall be
made among the children according to the appraisement with-
out going into a court of law at all It is alleged that this appais-
ment never has been made and until it is made no partition
can take place The language of the will is that as to the residue
of the estate after providing for the widow I give it to my children
to be equally divided among them. Then the will proceeds immediately and
says. I will and order that there shall be made an inventory with
appraisement of all my properties lands &c to be distributed and
divided as aforesaid mentioned The appraisement and inventory are
things which the law requires in all cases and if the executor should
fail to cause them to be made the cannot conceive how that
could prevent the devisees from obtaining a partition among
themselves of the real estate devised them title to the legacy is as good
in law without the appraisement as it would be without the appais
ment would give no additional light as to the share each would be en-
titled to when the partition is made each will take his share subject
to the payment of debts properly presented within the lawful time
allowed by law

But it is argued that the words in the will to wit, to be distributed
and divided as before mentioned Mean that the executor
and not the court shall make the partition and that accord
-ing to the appraisement The am of opinion these words refer
to the quantity each shall receive without any regard to the

to the means to be used to ascertain that quantity The will fixes the relative portions of each legatee as well as the right of the widow and leaves the means to be employed to the law of the land

The next Objection to the petition is that the widow who claims half the land mentioned in it cannot join with A portion of the legatees against others to have her dower allowed Whether the widow can be so joined with the others will depend on the Statute of this State relating to this matter

By the 1st Section of the act to provide for the partition of Lands (See Or. code 609) It is provided "That where any Lands tenements or hereditaments shall be held in Joint tenancy tenancy in Common or coparcenary it shall be Lawful for any one or more of the parties interested therein to present a petition to the Court describing the Lands &c and setting forth the rights and titles of the parties thereto and praying the same may be divided by commissioners The court shall proceed to cause a partition to be made &c

The second section provides that after all the issues are determined the court shall ascertain & determine the respective rights of the said parties in such Lands &c & and give judgment that partition thereof be made between them according thereto or between such of them as have any right therein"

It may be true that with regard to the parties petitioning and the parties defendants they may not be all in relation to each other either as coparceners tenants in common or joint tenants yet that in our Opinion makes no difference the Statute makes the law intended to embrace every possible case Other than that of severalty The law directs the court to ascertain the respective rights of each clearly contemplating that there might be a difference with regard to the quantity or duration of interests

But we are of Opinion that the case is within the words of the law The widow in this case is entitled to half the land mentioned in the petition and all the children are entitled to the other half Now with regard to the widows they are to be

considered as one tenant only and they as regards her relation to them are tenants in common with her but as regards the relation they bear to each other under the will they are joint tenants and if they take as heirs they are coparcenors —

Upon the whole matter we are unable to see any good reason why the partition cannot as well be made and as complete justice done under this petition as could be under any other that could be framed

The Judgment of the circuit Court is reversed the cause is remanded for further proceeding —

M M Gish
George Tompkins
R Wash

J. C. Chouteau et al
vs Opinion
G & R Paul et al

to be printed

(1567 words counted)

Copied for Public Printed
21st Novr 1833

McGirk

To be printed

(Copied for printer)

Therese Cené Chouteau
Thomas F. Smith & Emilie his wife
Henry Chouteau & Edward Chouteau
petitioners.
Rene Paul & Eulalie his wife
Gabriel Paul & Louise his wife
Auguste Chouteau & Gabriel Chouteau
defendants.

On petition for partition of land lately determined in the circuit court of the county of St Louis Mi

The above named defendants will take notice that we have sued out of the Supreme court of the State of Missouri for the third judicial district a writ of error on the judgt rendered in the above cause returnable to the said court to be held at St. Louis in the said district on the fourth monday of this month.

St. Louis
9. April 1832.

Therese C. Chouteau
Thomas F. Smith & Emilie his wife
Henry Chouteau & Edward Chouteau petitioners by
Bates & Allen their attys.

2 Served the above notice on Gabriel Chouteau by giving him a true copy of the same on the 10th day of April 1832 in the city of St Louis, on Rene Paul and Eulalie his wife by leaving a copy for each one of them at their place of residence in the city of St Lo on the same day with a free white member of their family, over the age of of fifteen years, to whom I made known the contents, and on Gabriel Paul by giving him a copy and on Louise his wife by leaving at her residence in the city of St Lou

a true copy of the same with her husband who is a free member of her family to whom I made known the contents on the same day, (viz 10th April 1834

Auguste A. Chouteau not found in my County & is not I believe a resident of the State of Missouri

Service $2.50 Jno K. Walker Sh

Chouteau Sal:
" Chouteau Sal
notice of writ of error.

Theresa Chouteau & Others
vs
Gabriel & Rene Paul

In Error -

The plaintiffs in error filed their petition for a partition of lands, in the county of Illinois. The material facts alleged by petitioners are that Auguste Chouteau died seized of the lands prayed to be divided that Petitioner Theresa is the widow - the petitioners Emilie Henry Edward are children of said August deceased: and the defendants are also children & heirs at law of said August - that the land described in the petition is situate partly in Jefferson & partly in Illinois county, and was acquired by August Chouteau deceased after his intermarriage with said petitioner Theresa - The marriage contract established a community in all property acquired during the marriage - August Chouteau died 26th July 1829. and by will devised certain real estate to his widow in addition to her rights under the marriage contract. The petitioners allege that the widow is entitled to one half of the land described in the petitioners and the said Emilie. Henry Edward petitioners, and the said Adelie Louise, August & Gabriel are each entitled to one fourteenth - the petition prays a partition accordingly - Notice was published according to law.

The defendants Gabriel & Rene Paul appeared and filed their answer, in substance that the partition prayed for would defeat the will of A Chouteau and the agreements made by all the heirs and devisees - the 3d art and the 3d. 4. 5. 6th & 7th clauses of the will - The 3d declares

the legitimacy of his marriage, and that the said August A. Gabriel. Henry. Edward Ulalie Louise & Emelie are his children - 4th describes his property generally - 5th Devises to the Widow, the house & lot whereon testator resided at the time of his death, with all its furniture &c also some houses & lots in St Louis - and that aside of her matrimonial rights in virtue of her marriage contract - 6th As to the surplus of my said properties I give and bequeath them to my children in equal shares &c - 7th I will and order that there shall be made an inventory with appraisement of all my properties lands, town lots houses slaves cattle, house furniture ready money silver ware bonds accounts, account books & titles whatsoever to be distributed & ~~[illegible]~~

Theresa was appointed and qualified as executrix & the respondents allege that she has not caused the property to be appraised. The respondents then state that with a view to an amicable division all the parties to these proceedings met, August A Chouteau by agent & the others in proper person and made sundry articles of agreement signed by all of them, in which they declare in order to equalize & settle advancements, that the amount received by Each shall be made to equal $7000 being the amount advanced to A A Chouteau - therefore said August should receive nothing further until there was paid to Gabriel S. Chouteau $5000 Rene Paul $5000. Gabl Paul $1500. T. F. Lynett $4000. - Henry P Chouteau 4000 & Edw R Chouteau $5000. said amounts to be paid in property at appraisement - that each of the children of A. Chouteau shall be secured in one reverth to be warranted by the estate & the other parties -

The respondents insist that the partition ought to be made according to the will and agreement of the parties and not otherwise - To this answer the petitioners demur generally, which demurrer was over ruled -

The defendant in error insists - First - That no partition can be made therein than according to the rights of the parties - Second The parties, children of the testator are entitled each to one seventh - Third That the executrix is bound to execute the will, and consequently to have the estate appraised in order that a division may be made according to the will of the testator - Fourth. That the widow and other parties, having by agreement in writing adjusted and agreed upon a settlement and a division, neither party can now resort to a court and have a division at variance with their express stipulations. - 5th. A partition cannot be made until after a final settlement - 6. That it appears that all the devisees have had advancements from the testator in unequal amounts, which must be adjusted before a partition can be made and the court in the proceeding now instituted is incompetent to make such adjustment.

Grigsby for defts in error

"Defendants Brief"

Theresa Chouteau
& Others
vs
G & R Paul
} In Error

Statement & Points for
defendants in error -

Geyer

Chouteau del

vs

Paul del

Motion to quash writ of error for the reason that the cause is not disposed as to some of the defts in the court below by any judgt for or against them.

This was a suit for partition of land brought by the widow some of the devisees of the ancestor A. Chouteau against the other devisees. The petition shews that the widow is entitled to one half & each of the devisees seven in number to one fourteenth part of the lands described in the petition - a division is prayed pursuant to those rights. Two of the defts Rene Sybille Paul interested in the land by virtue of intermarriage with two of the devisees Louise & Eulalie Chouteau plead in bar of the partition not that they are not interested as stated in the petition but that the execution of said testator's will the widow has not made an inventory & appraisement of the lands in petition mentioned, nor given bond & security - according to law, & that a certain agreement has been made between some of the parties interested by which the quantity of their estates as devised under the will in the lands sought to be divided have been changed. The petitioner demurred to the pleas & judgt was rendered on the dem. that the petitioner take nothing by their petition & that the defts recover of the petitioner their costs - & this judgt on the dem. is final between the petitioner & two of the defts Rose. Paul. No formal judgt is entered in the court below for or against the other defts. To reverse the judgt on the dem. a writ of error is

prosecuted.

The petitioners insist 1. That it is such a judgt on which a writ of error lies. 2. That the writ of a judgt as to the other defts does not suspend the immediate prosecution of the writ of error on the judgt rendred.

As to the first point.

This judgt is an end to all proceedings in the court below against the defts in whose favour it is rendred. On what judgts a writ of error lies see 2. Bac: Abrid: p 452. 454. 455. 461. 5 Bac: Abridgt 460. 461. 2 Sellons practice 362.

As to the

as to the 2d. point.

no judgt could have been had against the other defts. 1. Sellon's practice 502.

a judgt in their favour was unnecessary, it could be only for costs & they had sustained none.

the judgt was a final one & such on which a writ of error lies as shewn above - no reason exists against prosecuting a writ of error thereon, why wait till a judgt was rendered as to the other defts. if for them the writ of error now prosecuted is to reverse a judgt to which they are no party - if against them the court would in that very act ew. 1. Sellons practice 502 - 9 Petersdorff p 7. fig 3. 4. - id p 29.

9.

Therese C Chouteau

Gab.^{ne} Paul et al

Therese C. Chonteau widow of A. Chonteau dec'd
Thomas F. Smith & Emilie his wife
Henry Chonteau & Edward Chonteau

vs

Rene Paul & Eulalie his wife
Gabriel Paul & Louise his wife
Auguste Chonteau & Gabriel Chonteau.

This was a petition for partition of land
The petition was filed by Therese C. Chonteau
widow Thomas F. Smith & Emilie his wife
& his right Henry & Edward Chonteau the
said Emilie Henry & Edward being children
heirs at law of A. Chonteau dec'd & state that
they are interested with Rene Paul & Eulalie
his wife & his right, Gabriel Paul &
Louise his wife & his right & Auguste
Chonteau & Gabriel Chonteau, the said Eu-
lalie Louise Auguste & Gabriel being
children heirs at law of said A. Chon-
teau & certain lands therein mentioned.
describing them - & sets forth the rights
of the respective parties & prays partition
according to said rights.
Two of the defts Rene & Gabriel Paul object by
plea to the prayer of the petitioners & insist by
their plea in bar that the same should not
be granted, because it is at variance with
the Last will & Testament of their ancestor &
the agreements of the devisees - The plea sets
forth parts of the will which so far as material

bequeath the residue of his property — after satisfying his wife's matrimonial rights — & his specific devises, to his children by equal shares & portions & with sordus that there shall be made

in this defence ~~provide~~ that an inventory

with appraisement of all his property lands town lots &c. ~~shall be made~~ to be distributed & divided as aforesaid & mentioned that is among his children by equal shares & portions the testator having by a previous clause bequeathed the property to his children by equal shares & portions. Lavers that the executrix has not caused the lands town lots &c. to be appraised as in & by the last will she was bound & required to do, & has not given bond & security for the due performance & faithful administration of the estate according to the form of the statute in such case made & provided.

The plea from the states

2. ~~because~~ that after the death of the said testator the said Rene & Gabriel the respondents together with the widow & Bernard Pratte agent for Auguste P. Chouteau assignee of Auguste A. Chouteau, Thomas F. Smith, Gabriel S. Chouteau Henry Chouteau & Edward Chouteau made certain resolutions & agreements for the adjustment settlement & division of said estate why & what is given to the plea by which the estate derived to them from their ancestor & testator were changed & from being equal was made unequal & ~~therefore~~ insist that the property in petition mentioned ought to be divided according to said agreements & after appraisement & not otherwise nor until then.

To this plea a dmr. was filed & judgt thereon against the petitioners, for error in which judgt this writ is prosecuted.

There are two grounds of defence set up by the plea

1. That a division could not be made till after an appraisement. which not being done the prayer of the petition should be refused.

2. That the division prayed was different from what the parties interested had bound themselves to by their agreement.

As to the first point.

The children of the Ancestor were his devisees or heirs at Law & immediately on his death the title to the property vested in them unconditionally. The direction in the will for the appraisement of the property does not affect their right - They became if devisees joint tenants, if heirs at Law coparceners in the property & being such they were entitled to the partition of the same under the Law.

as to the 2d. point.

The agreement is not valid & will not be regarded by the court.

1. Augste A. Chouteau is not a party.
2. No question is to dispose of the right of married women to real property without their ~~being~~ being parties thereto.

Chouteau & al
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Chouteau & al