

8862

No.

Supreme Court of Illinois

Thomas W. Walker, et al

vs.

Mary Ann & George C. Walker

71641 7

SUPREME COURT

Of the State of Illinois.

1st GRAND DIVISION.

June Term, 1868.

No. 8

Culver, Page & Hoyne Stationers, Chicago.

R. E. R.

8862

In Supreme Court State of Illinois
First Grand division

Thomas W. Walker et al

vs

Mary Ann Walker +

George C. Walker

Error to Crawford

Assignment of Errors

1st The Court erred in rendering a decree against the defendants below without any service of process upon them.

Revised Statutes of 1845 Chapter 79 page 400
Section 6.

2nd The Court erred in decreeing a sale of said lands without any or sufficient evidence to support the bill the defendants all being minors

37th Illinois Reports page 128 & 9 *Jebb*
et al vs *Allen* and 33rd Illinois Reports
page 181 *Waugh et al vs Robins*

3 The decree of sale is erroneous because there is no prayer in the petition praying a sale of the land in case the same cannot be partitioned without great prejudice to the parties. Ills Statute of 1858 page 160 Sec 1

4th The Court erred in conforming the report of the commissioners to partition said land without requiring their oath for said purpose to be

reduced to writing to accompany this report
23rd Illinois reports page 119 Tibbs et al vs
Allen

5th The Court erred in decreeing a
sale of the Dower of the widow, after the
Commissioners appointed to partition said
real Estate reported that the same could
not be partitioned without doing the parties
great injury, without first empanelling a
Jury to assess the yearly value of said Estate
Illinois reports Vol 28th page 64 Francisco
Et al vs Hendricks

6th The court erred in accepting
and approving the report of Special Com-
-missioner to make sale of said land, because
he was ordered to sell the same upon a credit
of six, twelve, eighteen and twenty four months
But sold the same upon a credit of twelve
eighteen and twenty four months, and because
there is no proof of Publication of sale except
the statements of said Commissioner
Illinois reports 29th vol pages 535 and
549 Tibbs et al vs Allen

J. P. Barlow and
Jacob H. Albright
Attorneys for Plaintiffs in Error

At a regular ~~session~~ of the Crawford County Circuit Court and State of Illinois, begun and held at the court house in the town of Robinson, said County, on Monday the 25th day of October A.D. 1858; Present Hon. Justin Harlan, Judge; John Scholfield, Esq., State Attorney; John D. Newlin, Sheriff; and Hiram Johnson, Clerk.

Court was opened by Sheriff in due form. When, among other things, the following proceedings were had, in the cause wherein Mary Ann Walker and George C. Walker were petitioners, and Thomas W. Walker, John A. Walker, Charles S. Walker and John A. Walker were defendants, in a Petition for Partition.

The following is a true copy of the petition in said this cause, filed on the 28th day of September, A.D. 1858, by Hiram Johnson, Clerk:

State of Illinois, }
Crawford County }
Of the October Term, A.D. 1858, of
the Crawford Circuit Court.

To the Hon. Justin Harlan, sole Judge of said Court:

Your petitioners, Mary Ann Walker & George C. Walker, residents of said Crawford County, respectfully represent & shew unto your

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Honor, that one James C. Walker, then a
resident of said Crawford County on or about
the 21st day of March A.D. 1850, died intestate
in said County, leaving your petitioner, said
Mary Ann Walker, his widow, surviving him,
and leaving surviving him also the following
named persons who then were & yet are the
only children & heirs and heirs at law of said
intestate to-wit: Thomas W. Walker, Julian
Walker, Charles L. Walker, John A. Walker &
the said George C. Walker, all of whom re-
side in said Crawford County. Your pe-
titioners further shew unto your honor that said
James C. Walker died as aforesaid seized in
fee simple in his own right of the follow-
ing described tract of land lying in said
Crawford County, to-wit: One Hundred and
ten acres off the North end of the North east
quarter of Section No. Twenty-seven, in Town-
ship No. Seven North of Range Eleven West.
Your petitioners aver that by reason of the fore-
going premises that said Mary Ann Walker
is entitled to a dower estate as widow of said
intestate in and to said tract of land & that
said George C. Walker, Thomas W. Walker, Juli-
ann Walker, Charles L. Walker & John A. Walker
are each seized in fee as coparceners of an
undivided one-fifth part of said tract of land

58 subject only to the dower estate therein of said
 59 Mary Ann Walker. Your petitioners further shew
 60 that said Thomas W. Walker, Julian W. Walker,
 61 Charles L. Walker & John A. Walker, are each
 62 infants under the age of eighteen years & have
 63 no guardian at law.

64 Your petitioners pray that the said
 65 Thomas W. Walker, Julian W. Walker, Charles
 66 L. Walker & John A. Walker may each be
 67 made parties defendant hereto, that a guar-
 68 dian ad litem may be appointed by your
 69 Honor for them, to appear for them & defend
 70 their interests herein, and that on final
 71 hearing of this petition your Honor will order
 72 and adjudge that the above described tract of
 73 land, be partitioned and divided amongst
 74 and between the parties petitioners & defend-
 75 ants, to this proceeding according to their
 76 respective rights and interests therein as above
 77 set forth, and that your Honor will make
 78 such other and further order in the premises
 79 as to your Honor shall seem meet, & your pe-
 80 titioners will ever pray, &c.

82 Mary Ann Walker,
 83 George L. Walker,
 84 By James H. Steel,
 85 their Attorney at law.

86 State of Illinois }
 87 Crawford County }

On this 28 day of September

98 A. D. 1858, personally appeared before me the
 99 undersigned Justice of the Circuit Court of said
 100 Crawford County George C. Walker, who being
 101 first duly sworn according to law, deposes
 102 & says that the matters & things alleged & set
 103 forth in the foregoing petition are true, &
 104 further deponent saith not,

105 George C. Walker,

106 Sworn to & subscribed before me the day
 107 and date aforesaid.

108 William Johnson, clk.

109
 110 Upon which said petition there appears
 111 the following endorsements, to-wit:

112 "Mary Ann Walker & George C. Walker vs.
 113 Thomas W. Walker, Julian Walker, Charles
 114 G. Walker & John A. Walker, = Petition for
 115 Partition = October Term A. D. 1858. = W. 14. =
 116 Filed 28th Sept. A. D. 1858; William Johnson, clk. =
 117 J. H. Steel, pet. atty. = Record order, 30 = con-
 118 tinued. = cost \$ 9.65."

109
 110 (No summons appears among the papers
 111 in this cause, or to be found on file in
 112 the clerk's office.) although from fee bill
 113 attached there seems to have been one
 114 issued, & \$1.00 fees paid for serving it.
 115 And afterwards, to-wit, on the 26th day of
 116 October, 1858, came George W. Peck, Guardian

116 ad litem in this cause, and files his an-
117 swer as Guardian ad litem herein, which is
118 in the words and figures following, to-wit:

119
120 Mary Ann Walker &
121 George L. Walker

vs.

Petition for
Partition

122
123 Thomas W. Walker
124 Julian Walker
125 Charles L. Walker
126 John A. Walker

127 In the Crawford Circuit Court
128 State of Illinois, at the October Term thereof,
129 A. D. 1858.

130 Said defendants by George W Peck their
131 Guardian ad litem, &c., for answer unto said
132 petitioners petition, saith: That they cannot gain
133 say the matters & things alledged in said petition, &
134 ^{that the said petition} the allegations thereof may all be true, and are
135 for ought that these respondents or their said
136 Guardian knows; they pray however that the
137 Court will rigidly protect their interests herein.

Thomas W. Walker
Julian Walker
Charles L. Walker
John A. Walker

By Geo. W. Peck, their
Guardian ad litem.

144 With the following endorsement thereon, to-wit:

145 " Mary A. Walker & George L. Walker vs. Thos.
 146 W. Walker, et al. = Infants Answer. = Filed
 147 in office clerk of Crawford Circuit Court
 148 State of Illinois, October 26th, 1858. = Hiram
 149 Johnson, clk. "

150 And afterwards, to-wit, at the October
 151 term, A.D. 1858, of the Crawford Circuit Court,
 152 the following decree was entered of record in
 153 said cause:

154 Mary Ann Walker & }
 155 George L. Walker }
 156 as }
 157 Thomas W. Walker Julian } Petition for Par-
 158 Walker, Charles L. Walker } tition
 159 & John A. Walker }
 160 }

161 comes now the said petitioners by
 162 James H. Steel, their attorney, and it is or-
 163 dered by the Court that ~~James H. Steel~~ George
 164 W. Peck be and he is hereby appointed Guar-
 165 dian ad litem for all of said defendants
 166 (who are all infants) and this cause being
 167 heard upon petitioners petition, answer of said
 168 defendants by their Guardian ad litem afore-
 169 said, exhibits and proofs adduced, It is con-
 170 sidered and adjudged by the Court that par-
 171 tition and division of the following described
 172 tract of land lying in Crawford County, State

173 of Illinois, to-wit: One hundred and ten acres
174 off the North end of the North East quarter of
175 Section W. Twenty-seven in Township W. Seven,
176 North of Range Eleven West, be made amongst
177 and between the parties to this proceeding in the
178 following proportions, to-wit: Unto the said
179 Mary Ann Walker the equal one-third
180 thereof according to quality and quantity to
181 have and to hold for and during her
182 natural life as and for her dower estate
183 in and to said tract of land, and unto
184 the said George L. Walker, Thomas W. Walker,
185 Julian Walker, Charles L. Walker &
186 John A. Walker each, the one-fifth part
187 of said tract of land according to quality
188 and quantity remaining after assigning
189 unto the said Mary Ann Walker her
190 dower estate in said tract of land as afove
191 said; and it is ordered that Alexander
192 G. Sutherland, Andrew Mulvcan and John
193 W. Hackett be and they are hereby appointed
194 Commissioners to make such partition and
195 division, and that they report to this Court
196 at its present or next regular term.

197
198 And afterwards, to-wit, on the 28th day of
199 October, A.D. 1838, the Commissioners herein make
200 their report, which is in the words and figures
201 following, to-wit:

202 Mary Ann Walker & George L. Walker }
203 vs } Petition for
204 Thomas W. Walker, Julian W. Walker } Partition.
205 Charles L. Walker & John A. Walker }

206 To the Hon. Justin Horlan,
207 sole Judge of the Crawford Circuit Court, in the
208 State of Illinois, sitting at the October term
209 of said Court, A.D. 1858.

210 The undersigned, Commissioners appointed
211 by said Court to make partition of the lands
212 & premises mentioned & described in the judgment
213 & order of partition made in said Court at the
214 above term thereof, respectfully report unto
215 your honor that after first being duly sworn
216 according to law before George W. Peck one of the
217 Justices of the Peace of said County to fairly &
218 impartially make partition of said lands in
219 said judgment described in accordance with
220 said judgment as to the rights & interests of
221 parties, if the same could be done consistently
222 with the interests of the estate. We went
223 upon said lands and premises & found them
224 so circumstanced that a division thereof
225 could not be made without manifest prej-
226 dice to the proprietors of the same. We were each
227 employed one day in the discharge of our
228 duties herein.

229 Given under our hands and seals

7
 230 this 28th day of October A.D. 1858.
 231 A. G. Sutherland *Geo*
 232 Andrew Mulvaney *Geo*
 233 John W. Hadditt *Geo*

234 With the following endorsements thereon to-wit:
 235 "Walker et al vs. Walker et al. = Partition. =
 236 Report of Commissioners to divide. = Oct. Term
 237 1858. = Filed in office of Clerk of Circuit Court
 238 of Crawford County, Illinois, October 28th 1858. =
 239 Hiram Johnson, clk. = "Ent on page 399 & 400. =
 240 Ent Refor. 55."

241
 242 And afterwards, to-wit, at said October term
 243 A.D. 1858, of said Court, the following Order
 244 was made and entered of record in the Cause
 245 herein:

246
 247 Mary Ann Walker et al }
 248 vs } Petition for Partition.
 249 Thomas W. Walker et al }

250 Comes now the said petitioners by
 251 James H. Stebb their attorney & submits to the Court
 252 the report of the Commissioners appointed by this
 253 Court to make partition in this Cause, which report
 254 is in the words and figures follows, to-wit:

255 "Mary Ann Walker & George C. Walker }
 256 vs. } Petition for
 257 Thomas W. Walker, Julian Walker } Partition.
 258 Charles E. Walker & John A. Walker }

259 To the Hon. Justice Horlan sole Judge of the
 260 Crawford Circuit Court, in the State of Illi-
 261 nois, sitting at the October Term, of said Court,
 262 A.D. 1858. The undersigned, Commissioners, ap-
 263 pointed by said Court, to make partition of the
 264 lands and premises mentioned & described in the
 265 judgment & order of partition, made in said
 266 Cause, at the above term thereof, respectfully report
 267 ~~now~~ unto your honor, that after being first
 268 duly sworn, according to law, before George W.
 269 Peck one of the Justices of the Peace, of said
 270 County, to fairly and impartially make partition
 271 of said lands in said judgment decided in
 272 accordance with said judgment as to the rights
 273 and interests of parties, if the same could be
 274 done, consistently with the interests of the estate,
 275 we went upon said lands and premises and
 276 found them so circumstanced that a division
 277 could not be made without manifest preju-
 278 dice to the proprietors of the same. We were
 279 each employed one day in discharge of our
 280 duties herein. Given under our hands and
 281 seals this 28th day of October A.D. 1858.

283 A. G. Sutherland *Seal*

284 Andrew Wilson *Seal*

285 John W. Hackett *Seal*

286 which report is accepted and approved by the
 287 Court, and it is ordered and adjudged by the

288 Court, that the tract of land referred to in said
 289 report, to-wit: One Hundred and ten acres off
 290 the North end of the North East quarter of section
 300 No. Twenty-seven in Township Seven North of
 301 Range Eleven West, in the County of Crawford
 302 and State of Illinois, be sold at public
 303 vendue on the premises, on a credit of 4,
 304 twelve, eighteen and twenty-four months in
 305 equal payments, the purchaser giving his
 306 notes with good personal security and a
 307 mortgage on the premises to secure the
 308 payment of the purchase money, and that
 309 George W. Peck, who is hereby constituted a Spe-
 310 cial Commissioner for that purpose make
 311 said sale and carry into full effect this
 312 order of Court, and that said Special Com-
 313 missioner give notice of said sale by posting
 314 up written notices thereof in four of the most
 315 public places in said Crawford County at
 316 least four weeks prior thereto, and it is further
 317 ordered that said Commissioners to divide be
 318 allowed the sum of one dollar each for their
 319 services herein, and that said George W. Peck
 320 report his proceedings herein to this Court at
 321 its next term to which continue this cause
 322 is continued.

323
 324 And afterwards, to-wit, on the 5th day of
 325 May A. D. 1839, George W. Peck, Special Com-

354 ship W. (7) been north of range W. (12) west.
 355 and William H. Sutherlands bidding therefor
 356 the sum of twenty-four hundred dollars,
 357 and that being the highest and best bid,
 358 the same was sold to the said William H.
 359 Sutherland, and the said William H.
 360 Sutherland complying with the terms and
 361 conditions of said sale, I executed a deed of
 362 conveyance to him, the said William H. Suth-
 363 erland.

364 Geo. W. Peck,
 365 Special Commissioner

366 With the following endorsements thereon, to-wit:
 367 "Leranford Circuit Court, May Term 1859. = Mary
 368 Ann Walker, et als, vs. Thomas W. Walker, et als. =
 369 Report of Geo. W. Peck, Special Commissioner. =
 370 Filed in my office this 3rd day of May A.D.
 371 1859. = Truman Johnson, clk."

372
 373 And afterwards, to-wit, at the May Term
 374 A.D. 1859, of the Circuit Court of Leranford County,
 375 State of Illinois, Hon. Alfred Kitchell Judge
 376 presiding, the following order was made and
 377 entered of record herein:

378 Mary Ann Walke + George C Walker }
 379 vs. } Petition for Partition
 380 Thomas W Walker, Julia Ann Walker }
 381 Charles S Walker + John A Walker }

382 Now at this day comes George W. Peck, Special
 383 Commissioner in Chancery appointed in this
 384 Cause & submits to the Court the following report
 385 which is the words & figures as follows (to-wit):
 386

387 Mary Ann Walker et al }
 388 vs } Petition for Partition
 389 Thomas W. Walker et al }

390 To the Hon^{ble} Judge of the 25th
 391 Judicial Circuit: The undersigned Special
 392 Commissioner appointed in the above entitled
 393 cause at the October term A.D. 1858, of your
 394 Honorable Court, to make sale of certain lands
 395 and premises described in the decree of your
 396 Honorable Court, in the above entitled cause,
 397 at the aforesaid October term 1858, respectfully
 398 report, that in accordance with said decree,
 399 he cause the lands and premises, to be sold,
 400 and hereinafter described, to be advertised for
 401 sale as directed in said decree, and did on
 402 the 5th day of January 1859, and on the prem-
 403 ises to be sold, agreeable to said notices, offer
 404 for sale, on a credit of twelve, eighteen & twenty-
 405 four months, that is $\frac{1}{3}$ in 12, $\frac{1}{3}$ in 18, & $\frac{1}{3}$ in
 406 24 months as directed by said decree, the lands
 407 and premises described in said decree, (viz) One
 408 Hundred and ten acres off the North end of
 409 the North West quarter of Section No. (27) twenty-

410 Seven Township No (7) seven North of
411 Range No (12) twelve West and William
412 St Sutherland bidding therefor the sum
413 of twenty four hundred dollars and
414 that being the highest and best bid the
415 same was sold to the said William St
416 Sutherland complying with the terms and
417 conditions of said sale I executed a
418 deed of conveyance to him the said William
419 St Sutherland

420 Geo W Peck

421 Special Commissioner,

422 Which report is accepted and approved
423 by the Court and it is ordered that the
424 title to the lands and premises purchased
425 by said purchaser as set forth in said
426 report vest in the said purchaser his
427 heirs and assigns forever, And it is
428 further ordered that James H Stab be
429 allowed the sum of twenty five dollars
430 as an Attorney for his services
431 herein and George W, Peck the sum
432 of thirty two dollars as his services
433 as Commissioner to be taxed and paid
434 as costs in this cause &

435
436 The following Cost Bill appears
437 on Fee Book "A" Page 250

438

October Term Ad 1858

Mary W Walker et al

Petition for Partition

439 vs

Thomson H. Walker et al

440

441

File Bill & 2 papers

15

442

File Petition & 2 papers
Shffs fees on same Petition

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443

Do not suit for trial

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444

Ent app Pff Atty

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445

" Order Guardian ad litem

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446

" Order of Decree

20

447

" Order of Continuance

20

448

" Decree & Report of Com on record

85

449

Commissioners Ad Southland 1 day 100 Andrew Mulvaney day

450

100 of A Hackett 1 day 100

300

451

Making Bill of Costs

30

452

taking back money ment of Deeds
1859, made suit for trial

25

453

Ent order of Report

10

454

" Report on record

20

455

" Order of Allowance

30

456

Making Bill of Costs
Fee of H Peck Special Commissioner

3200

457

A H Steel Atty fee

25700

454

Recd of E Callahan Master in Chancery fifty eight

455

Dollars in full and ten cents in full of the above fee
bill

456

Recd of H Johnson Twenty five dollars in full of
my fees in above as attorney at law as above taxed

457

October 9th 1862

458

Recd of Hiram Johnson Clerk thirty two dollars
and 30 cts in full of my fees in the above was

459

Bill December 19th Ad 1862

460

Geo W Peck

461

Recd of Wm S Kenstice admsr of of Hiram

462

Johnson deceased the sum of four dollars & 00

463

cents my fees in the above cost bill

464

A Lillie

Recd of Hiram Johnson Clerk one
Dollar my fees in full in the
Sept 27th Ad 1862

Recd of Hiram Johnson Clerk one
Dollar my fees in full in the
Sept 27th Ad 1862

465- State of Illinois }
 466 Crawford County }
 467 J. Singleton B Allen

468 Clerk of the Circuit Court in and for
 469 said County in the state aforesaid do
 470 hereby certify that the foregoing is a true
 471 full and complete transcript of all
 472 the papers, ^{that I can find after examination} and orders of Court made
 473 and rendered in said cause now on
 474 file in my office,

In testimony whereof I have
 hereunto set my hand and
 caused the seal of said
 Court to be affixed at Robinson
 in Crawford County State of
 Illinois this 21st day of May
 A.D. 1867,
 J. B. Allen clk

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Thos. W. Walker et al

vs

Mary A. Walker et al

Filed June 1. 1867

N. Johnston City

Paid by Barlow \$500

600
Paid 200
Bal 400

In The Supreme Court
First Grand Division
June Term A D 1868

Thomas W Walker,
Julia A Walker and
John A Walker plffs
in error

Error to Crawford

vs
Mary Ann Walker and
George C Walker

And the said
defendants in error by J B Allen
and E Cullahan their attorneys come
and defend the wrong and injury
whom ye and for plea us in the
behalf say that the said plaintiffs in
error Julia Ann Walker and Thomas
W Walker ought not to have and
maintain their said writ of error
because they say that after the rendition
of said decree of partition by the Circuit
Court of Crawford County, to wit on
the 23^d day of March A D 1865 at to
wit the County of Crawford and State
of Illinois the said plaintiffs in error
Julia Ann Walker and Thomas W Walker
being of the age of legal majority, accep-
ted and received from the master
in chancery of said Crawford County

Illinois the sum of two hundred and
sixty seven dollars and forty two cents
each in full of their distributable shares
of the bonds money arising from
the sale of the lands sold under
said decree of the Circuit Court
to wit one hundred and ten acres of
the north end of the north east quarter
of Section twenty seven in Town seven
North, Range eleven west in the County
of Crawford and State of Illinois
and ~~that~~ the said depts in error
are ready to verify wherefore they
pray judgement &c
J. C. Allen & Callahan

E Callahan being duly sworn on
his oath says that the several matters
and things stated in the foregoing
plea are true in substance and
in fact
E Callahan

Subscribed and sworn to before
me this 6th day of June A D 1868
R. D. Williams
Clerk

⁸
Supreme Court
June Term 1868

Thomas W. Walker, Julia
A. Walker, and John A.
Walker

vs
Mary Ann Walker and
George C. Walker

Plea of release of errors

filed 3rd June 1868
P. H. Williams
clerk

H. Allen & C. Callahan atty

1868-13

In the Supreme Court of the State of
Illinois; First Grand Division
June Term A.D. 1867

Thomas W. Walker
Julia M. Walker
John A. Walker

Error to Crawford

vs

Mary Ann Walker
and George C. Walker

Shew all Men by these presents
That we Mary Ann Walker and George
C. Walker the defendants in the above
entitled cause do hereby waive the service
of Process in the foregoing cause and authorize
J. P. Barlow or any other Attorney of said
Court to enter our appearance to said
action as fully and completely as we could
if we personally present in open Court
or if Process was served upon us
Witness our hands & seals this
the 20th day of May A.D. 1867

Mary Ann Walker *Cal*
Geo. C. Walker *Cal*

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8
Thomas W. Walker et al
Mary A. Walker et al

Handwritten notes on the left side of the page, including the name "Mary A. Walker et al" and other illegible cursive text.

Filed - June 1, 1867
A. Johnston Clk

Handwritten notes on the right side of the page, including the name "Mary A. Walker et al" and other illegible cursive text.

IN THE SUPREME COURT,

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

THOMAS W. WALKER, JULIA A. WALKER and JOHN A. WALKER. }
vs. } Error to Crawford.
MARY ANN WALKER & GEORGE C. WALKER. }

The following is an abstract of the facts contained in the record in this cause, to-wit:

This petition, filed by Mary Ann Walker and George C. Walker, shows that one James C. Walker, late a resident of Crawford county, Illinois, died intestate on the 21st day of March, 1856, leaving him surviving Mary Ann Walker, his widow, Thomas W. Walker, Julia Ann Walker, Charles L. Walker, John A. Walker and George C. Walker, his heirs at law, and that he died seized in fee simple of the following described tract of land, to-wit: one hundred and ten acres off of the north end of the north-east quarter of section number twenty-seven in township number seven north of range eleven west, lying and being in the county of Crawford aforesaid. (See record, pages 1 and 2, line 1 to 49 inclusive.)

The petition further alleges that the widow aforesaid has a dower estate in said real estate, and that said George C. Walker, Thomas W. Walker, Julia Ann Walker, Charles L. Walker and John A. Walker are each entitled to one-fifth of said land, as heirs of James C. Walker, dec'd, subject to the dower estate of said widow. (See record, pages 2 and 3, lines 50 to 59 inclusive.) And also that Thomas W. Walker, Julia Ann Walker, Charles L. Walker and John A. Walker are each infants under the age of eighteen years and have no guardians at law. (See record page 3, line 59 to 63 inclusive.)

The petition contains a prayer making the above named minors defendants, and that a guardian *ad litem* be appointed for said minor defendants, and usual prayer for partition of said real estate, and general prayer for relief. (See record, page 3, line 64 to 85 inclusive.)

Then follows affidavit of George C. Walker to the truth of the petition and jurat of the officer and endorsements on the petition. (See record, page 4, line 96 to 109 inclusive.) Also an entry made in the record by the Clerk of the Crawford County Circuit Court stating that there is no summons to be found in his office. (See record, page 4, line 110 to 114 inclusive.)

Then follows the answer of a guardian *ad litem*, asking that the court protect the interests of the minor defendants of said petition and the file marks thereon. (See record, pages 4, 5 and 6, line 114 to 149 inclusive.)

The record further shows that afterwards, but at the same term of the said court, on the motion of the attorney for the petitioners, George W. Peck was appointed guardian *ad litem* for the said minor defendants. (See record, page 6, line 150 to 166 inclusive.) And that the court decreed upon the petition answer of guardian *ad litem*, exhibits and proofs that partition be made as prayed in the petition, and that commissioners were appointed to partition said real estate and make report. (See record, pages 6 and 7, line 166 to 198 inclusive.)

And that afterwards at said term of the said court said commissioners made report that division could not be made without manifest prejudice to the proprietors of the same. (See record, pages 7, 8 and 9, line 198 to 241 inclusive.)

And that afterwards, to-wit: at said October term, 1858, said report

of commissioners was submitted to the court and approved. (See record, pages 9 and 10, line 242 to 287 inclusive.)

And that afterwards, at the said October term, 1858, of the Crawford Circuit Court, the court ordered and decreed a sale of said real estate on a credit of six, twelve, eighteen and twenty-four months, and appoints a commissioner to make said sale; the said commissioner is ordered to give notice of said sale by posting up written notices in four public places four weeks prior to said sale, and also decreed and ordered that said commissioner take of the purchaser his notes, with approved personal security and a mortgage on the premises, to secure the purchase money, and make report to the next term of court. (See record, page 11, line 288 to 323 inclusive.)

And that afterwards, at the May term of said court, 1859, the said commissioner made his report of sale and reported that said real estate was sold on a credit of twelve, eighteen and twenty-four months, after having advertised the same as per said decree. (See record, pages 11, 12 and 13, line 324 to 372 inclusive.)

The report of the commissioner appointed to make sale and conveyance is accepted and approved by the Court. (See record pages 13, 14 and 15, line 373 to 435 inclusive.)

Then follows cost bill and certificate of the Clerk. (See record, pages 15, 16 and 17, line 436 to 482 inclusive.)

ASSIGNMENT OF ERRORS.

1st. The court erred in rendering a decree against the defendants below without any service of process upon them. Revised Statutes of 1845, chapter 79, page 400, section 6.

2d. The court erred in decreeing a sale of said lands without any or sufficient evidence to support the bill, the defendants all being minors. 27 Illinois Reports, page 128 and 9. *Tebbs, et al. vs. Allen.* 33 Illinois page 181. *Waugh, et al. vs. Robbins.*

3d. The decree of sale is erroneous because there is no prayer in the petition praying a sale of the land in case the same cannot be partitioned without great prejudice to the parties. Ill. Stat. of 1858, page 160, sec. 1.

4th. The court erred in confirming the report of commissioners to partition said land without requiring their oath for said purpose to be reduced to writing to accompany their report. 23 Illinois Reports page 47. *Loyd, et al. vs. Malone, et al.* Illinois Reports, vol. 27, page 119. *Tibbs et al. vs. Allen.*

5th. The court erred in decreeing a sale of the dower of the widow after the commissioners appointed to partition said real estate reported that the same could not be partitioned without doing the parties great injury, without first empanneling a jury to assess the yearly value of said estate. Illinois Reports, vol. 28, page 64. *Francisco et al. vs. Hendricks.*

6th. The court erred in accepting and approving the report of special commissioner to make sale of said land; because he was ordered to sell the same upon a credit of six, twelve, eighteen and twenty-four months, but sold the same upon a credit of twelve, eighteen and twenty-four months, and because there is no proof of publication of sale except the statements of said commissioner. Ill. Rep., 29 vol., pages 535 and 549. *Tibbs, et al. vs. Allen.*

J. P. BARLOW and

J. K. ALBRIGHT,

Attorneys for Plaintiffs in Error.

State of Illinois
 Crawford County
 Thomas W. Walker
 Julia A. Walker
 & John A. Walker
 vs
 Mary Ann Walker
 & George C. Walker

In the Superior Court
 First Grand Division
 of the State of Illinois
 June Term A.D. 1868

Error to Crawford

Be it known that we George C.
 Walker and Mary Ann Walker the
 Defendants in the foregoing cause
 do by these presents empower
 and authorize J. K. Albright
 or any other ^{party} of said court
 to appear at the next term
 thereof and confess the
 errors assigned in this cause
 by said plaintiffs

Witness our hands & seals
 This 27th day of May 1868
 George C. Walker
 Mary Ann Walker

Attest
 J. P. Barlow

8
Thomas W. Walker et al
vs

Mary Ann Walker
& George C. Walker

Plaintiff vs Defendant
Errors assigned

Walter
T. Walker

Filed, June 3-1869
R. A. B. Matthews Clk

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IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

THOMAS W. WALKER, JULIA A. WALKER and JOHN A. WALKER. }
vs. } Error to Crawford.
MARY ANN WALKER & GEORGE C. WALKER. }

The following is an abstract of the facts contained in the record in this cause, to-wit:

This petition, filed by Mary Ann Walker and George C. Walker, shows that one James C. Walker, late a resident of Crawford county, Illinois, died intestate on the 21st day of March, 1856, leaving him surviving Mary Ann Walker, his widow, Thomas W. Walker, Julia Ann Walker, Charles L. Walker, John A. Walker and George C. Walker, his heirs at law, and that he died seized in fee simple of the following described tract of land, to-wit: one hundred and ten acres off of the north end of the north-east quarter of section number twenty-seven in township number seven north of range eleven west, lying and being in the county of Crawford aforesaid. (See record, pages 1 and 2, line 1 to 49 inclusive.)

The petition further alleges that the widow aforesaid has a dower estate in said real estate, and that said George C. Walker, Thomas W. Walker, Julia Ann Walker, Charles L. Walker and John A. Walker are each entitled to one-fifth of said land, as heirs of James C. Walker, dec'd, subject to the dower estate of said widow. (See record, pages 2 and 3, lines 50 to 59 inclusive.) And also that Thomas W. Walker, Julia Ann Walker Charles L. Walker and John A. Walker are each infants under the age of eighteen years and have no guardians at law. (See record page 3, line 59 to 63 inclusive.)

The petition contains a prayer making the above named minors defendants, and that a guardian *ad litem* be appointed for said minor defendants, and usual prayer for partition of said real estate, and general prayer for relief. (See record, page 3, line 64 to 85 inclusive.)

Then follows affidavit of George C. Walker to the truth of the petition and jurat of the officer and endorsements on the petition. (See record, page 4, line 96 to 109 inclusive.) Also an entry made in the record by the Clerk of the Crawford County Circuit Court stating that there is no summons to be found in his office. (See record, page 4, line 110 to 114 inclusive.)

Then follows the answer of a guardian *ad litem*, asking that the court protect the interests of the minor defendants of said petition and the file marks thereon. (See record, pages 4, 5 and 6, line 114 to 149 inclusive.)

The record further shows that afterwards, but at the same term of the said court, on the motion of the attorney for the petitioners, George W. Peck was appointed guardian *ad litem* for the said minor defendants. (See record, page 6, line 150 to 166 inclusive.) And that the court decreed upon the petition answer of guardian *ad litem*, exhibits and proofs that partition be made as prayed in the petition, and that commissioners were appointed to partition said real estate and make report. (See record, pages 6 and 7, line 166 to 198 inclusive.)

And that afterwards at said term of the said court said commissioners made report that division could not be made without manifest prejudice to the proprietors of the same. (See record, pages 7, 8 and 9, line 198 to 241 inclusive.)

And that afterwards, to-wit: at said October term, 1858, said report

of commissioners was submitted to the court and approved. (See record, pages 9 and 10, line 242 to 287 inclusive.)

And that afterwards, at the said October term, 1858, of the Crawford Circuit Court, the court ordered and decreed a sale of said real estate on a credit of six, twelve, eighteen and twenty-four months, and appoints a commissioner to make said sale; the said commissioner is ordered to give notice of said sale by posting up written notices in four public places four weeks prior to said sale, and also decreed and ordered that said commissioner take of the purchaser his notes, with approved personal security and a mortgage on the premises, to secure the purchase money, and make report to the next term of court. (See record, page 11, line 288 to 323 inclusive.)

And that afterwards, at the May term of said court, 1859, the said commissioner made his report of sale and reported that said real estate was sold on a credit of twelve, eighteen and twenty-four months, after having advertised the same as per said decree. (See record, pages 11, 12 and 13, line 324 to 372 inclusive.)

The report of the commissioner appointed to make sale and conveyance is accepted and approved by the Court. (See record pages 13, 14 and 15, line 373 to 435 inclusive.)

Then follows cost bill and certificate of the Clerk. (See record, pages 15, 16 and 17, line 436 to 482 inclusive.)

ASSIGNMENT OF ERRORS.

1st. The court erred in rendering a decree against the defendants below without any service of process upon them. Revised Statutes of 1845, chapter 79, page 400, section 6.

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