No. 8547

# Supreme Court of Illinois

Joseph Bowles et al

vs.

Andrew McCullom et al

71641 7

State of Illinois Gallatin County.
Pleas Held upon the Honorable
the Judge of the circuit court of
said County of Gallatin, at
the Courthouse in Shawneetown
on the Twenty seventh day of
October A.D. One Thousand
Eight Hundred and fifty seven.

Andrew McCullen &
Mary Ann McCullen his wife,
and Josephine McCullen,
Mary McCullen, and
Andrew J McCullen Minors
Who sue by their Guardian
Andrew McCullen Plaintiffs

against

Margaret Rice,
John Rice
Stephen R Rowan &
Nancy Ann Rowan,
Joseph Bowles &
Rebecca Bowles Defendants.

on petition
for Assignment
of Dower, &
partition
of Real Estate,

Be it Remembered that on the
fifteenth day of May A.D.
Eighteen Hundred and fifty five,
the said plaintiffs filed their
petition in the clerks office
of said court in the words
following. —

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page 1.

State of Illinois } In the Gallatin Circuit Court
Gallatin County } 8 To the Term Term 1855
Petition for Partition

To the Hon Downing Baugh presiding Judge of the Gallatin Circuit Court

Your Petitioner Andrew McCallen Mary Ann McCallen wife of said Andrew McCallen and Josephine McCallen Andrew J McCallen and Mary McCallen minors who sue by their Guardian Andrew McCallen would respectfully represent unto Your Honor that John Reed Senior Decd late of the County and State aforesaid departed this life intestate seized in fee of the following tracts of land and town lots situate in the County of Gallatin and State aforesaid to wit. The NW qr SW¼ and N½ of the E qr & E½ SW¼ of Section No 12 T 8 R 9. E Also E½ SW¼ & N½ SE. qr & the NW. qr of Section 20 Town 9 S Range 9 E. Also the NW¼ of fractional Sect 7 T 9 S R 10 E & N½ SE qr of T 9 S R 10 E Also NE ¼ Sec 19 T 9 S R 10 E Also SE ½ & SW ¼ & the N½ of the NW ¼ & E½ of the NW ¼ & the N½ of the NE. qr of 18 T 9 South Range 10 East Also NE qr & SE qr & NW ¼ of Sec 12 T 9 S R 9 E Also E½ of SE ¼

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of Sec 1 T9 S R 9 E Also E½ N.E. & S½ N.E¼ of Sec 11 T9 S R 9 E Also W½ N.W¼ Sec 17 T9 R10 Also the following described Town lots lying being and Situate in the County and State aforesaid and known and described on the Town Plat of the Town of Shawnetown as In Lots No 1021 1022 1024 & 1047

Your Petitioner further represents that the said John Reed Sr left him surviving his wife Margaret Reed and the following Children and Grand Children to wit, his Son Jno. Reed Jr his daughter Nancy Ann Reed who intermarried with Stephen D. Rowan his grand Child Rebecca the only child and sole heir of James Reed deceased Son of the said John Reed Jr decd and his grand son James W Reed decd who was the son of ~~his~~ Alexander Reed decd who was the son of the said John Reed Jr decd,

Your Petitioner would further represent that the said John Reed decd. had another Son by the name of William Reed but as Your petitioner is informed believes and charges departed from the State More than Nine Years ~~ago~~ before the death of the said John Reed Jr

Your Petitioner states that the Current Market Value of the Lots & parts of Lots for the reason that they consist of houses which are in possession of the Defdt Jos Ch Brady

and that from the time of his departure
he has not been heard from
by any member of his family or
by any one else to the knowledge of your
petitioner wherefore your petitioner says
that the said William Rhea been
dead before the death of John Reed sr
dec^d, that he left no widow
child or children or decendants of
a child him surviving
your petitioner would further show
that since the death of the said
John Reed sr the said Rebecca has
intermarried with one Joseph Boyles
and that the said James A Rhea son
of the said Andrew Rhea dec^d, since
the death of the said John Reed sr,
dec^d has departed this life having
no widow or children him surviving
but left him surviving brothers &
sisters of the half blood as follows viz
Josephine McCallen Andrew J McCallen
and Mary McCallen and his mother
Mary Ann McCallen and your petitioner
Andrew McCallen in right as husband
of the said Mary Ann McCallen his wife
at law your petitioner further represents
that the said Mary Ann Rowan and
Stephen R Rowan in right of the said Nancy Ann

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his wife are entitled to one equal undivided one fourth part the said John Reed jr & one equal undivided one fourth part and that said Rebecca Bowles and the said Joseph Bowles in right of the said Rebecca & one equal undivided one fourth part and the said Mary Ann McCallen Josephine ~~McCallen~~ Andrew J and Mary McCallen and Your petitioner in right of his wife are entitled to the remaining equal undivided fourth part of of said lands above described the said Mary Ann McCallen taking two undivided fifths of the one undivided fourth part so part of all of said lands and lots as our ancestor his of the said James Reed decd, son of the said Andrew Reed decd and his said half brother and sisters taking the remaining three undivided fifths parts of the said undivided fourth part (which the said fourth ~~part~~ descended to the said half Brother James A Reed decd,) in three equal undivided parts between them, that is to say the said Josephine McCallen is entitled to one undivided one

twentieth part of all said lands the
said Andrew J. McCallen & Our said
Sister Our twentieth part thereof and
the said Mary McCallen Our said sister
Our twentieth part thereof

Your petitioners would further
show that the said Margaret Reed
Widow of the said John Reed Senior
dec'd is entitled & dower in the
aforesaid premises that there are no
other persons interested in the said
described premises that Your petitioners
and the said Nancy Ann Rowan and
Stephen A Rowan in right of his said
wife Nancy Ann Rowan the said
Rebecca Bowles and Joseph Bowles
in right of the s^d Rebecca the said
John Reed Sr as far as Your petitioners
know. Now Your petitioners
pray Your Honor to order a
decree for a division or partition
of the premises aforesaid according to the
respective rights of the parties interested
therein as herein set forth or for
a sale thereof if it shall appear that
partition cannot be made without
manifest prejudice to the owners of the
same. They pray that Your Honor
appoint three Commissioners herein
as required by the Statute in such

(8547-M)

(7)

Cases made and provided that the said Margaret Reed John Reed & Nancy Ann Rowan and Stephen Rowan Rebecca Bowles and Joseph Bowles be made defendants to this petition and be required to answer the same that the People most gracious writ of Summons be issued directed & Commanding & requiring & that Your Honor will grant such other general and special relief as may be required in the premises as and as in duty bound he will ever pray &c

Andrew McCallen
Mary Ann McCallen &
Josephine McCallen
Andrew S McCallen &
Mary McCallen by her
Andrew McCallen their
Guardian
Freeman Ally

State of Illinois Gallatin County set
Andrew McCallen states on oath
that the matter and things set
forth in the foregoing petition
so far as stated from his own
knowledge are true & as far as stated
from information of others he believes
the same

Sworn to before me
this 15th May 1855 } Andrew McCallen
J E Hall clk

Andrew McCallen
& others
vs
Joseph McCallen & wife
and others heirs
and widow of
John Reed

} Gallatin Circuit Court
Petition for Partition

I acknowledge myself bound
to pay all costs which may accrue
in this action and legally devolve
on said minors Joseph McCallen
Andrew J McCallen and Mary McCallen
15 May 1855

Andrew McCallen

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upon the filing of which petition a summons was issued as follows.
State of Illinois Gallatin County Set.
The People of the State of Illinois to the Sheriff of said County Greeting.
We command you to summon Margaret Rice, John Rice Jr Nancy Ann Rowan and Stephen R Rowan, Rebecca Bowles, and Joseph Bowles, if to be found in your county, to appear before the circuit court of said county on the first day of the next term thereof, to be holden at the courthouse in Shawneetown on the first Monday of June next to answer to a petition for partition of Real Estate filed in our said court against them by Andrew McCallen and Mary Ann McCallen, and Josephine McCallen, Andrew J McCallen, and Mary McCallen Minors by Andrew McCallen their Guardian, and hereon make and return as the Law directs
Witness J. E. Hale Clerk of our said court and the judicial Seal thereof at Shawneetown this 15th day of May 1855

Seal

J. E. Hale Clk

Sheriffs Return.

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Executed the within Summons by reading and delivering a true copy to the within named defendants, Margaret Rice John Rice, Stephen R Rowan, and Nancy Ann Rowan, Joseph Bowles and Rebecca Bowles. May 23rd 1855

James Davenport S.G.C.
by James Bradford
Dept Sheriff G.C.

And afterwards the following proceedings were had in said court in said cause, Viz:

June Term 1855. June 5th

On this day came the petitioners by Freeman their Solicitor, and on his motion, the defendants are ruled to answer by Thursday Morning next,

October Term 1855. 1 November.

In this cause the defendants withdraw their answers to the petition, And the parties agree that if the Judge shall be of opinion, that an injunction ought not to be granted upon a bill presented by defendant Rowan, and now below under consideration, that the order for partition shall be made by the Judge during the Sussexing Term of the Supreme court, and Entered on the Record as of this Term and that Joseph B Barger, Edmund I Nicholson, and John Edward Reardon be commissioners each party serving all rights in the premises as though the order was made in open court, at

the present Term, the parties hereto
waiving the right to object to such
orders being entered in Vacation
but waiving no other right in the
premises whatever. –

June Term 1856. – continued

October Term 1856. 1 November 1856.

In Gallatin Circuit Court

October Term 1886

Andrew McCallen & Mary Ann McCallen his wife and Josephine McCallen Andrew J. McCallen and Mary McCallen infants who sue by their Guardian Andrew McCallen

Against

Margaret ~~widow~~ widow of John Reid Senr. deceased, Nancy Ann Rowan and Stephen R. Rowan her husband, John Reid Jr, Rebecca Bowles and Joseph Bowles her husband

And now at this day comes again the said plaintiffs by Wamen their attorney, the said Margaret Reid by Posey her attorney the said Rebecca Bowles and Joseph Bowles by Thomas their attorney and the said Nancy Ann Rowan and Stephen R. Rowan by the said Rowan in person and the said John Reid Jr having been duly served with process and failing to appear herein, it is ordered that the ~~petitions~~ as against him him be taken as confessed and no order having been made by the Judge of the court under the order of October 1885 agreeing to ~~the~~

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a decision of the cause by the Judge in vacation, and the Judge being of the opinion that the said Rowan is not entitled to an injunction on the Bill filed on the Chancery side of the court referred to in the former order and the said Rebecca Bowles and Joseph Bowles and Nancy Ann Rowan and Stephen R Rowan having at the October Term 1855 withdrawn the several demurrers filed by them to the petition aforesaid, the cause is now heard upon the said petition and evidence produced by the parties aforesaid — whereupon the Court finds from the admissions of the parties and testimony produced the facts following — First that John Reid senior died intestate in the year 1849 seized in fee of the lands and tenements described in the petition — to wit — ~~[illegible]~~ ~~Second~~ ~~Second that the said John Reid senior left him surviving as his heir and representative in respect to the lands and tenements [illegible] the said John Reid senior, [illegible]~~

the NW qr of the SW qr and W½ of the SE qr and E½ of the SW qr of Section 12 T 8 S. R 9. E. also E½ of the SW qr - W½ of the NE qr and the NW qr of Section 20. Township 9. S. R 10. E. Also the NW. qr of fractional Section 7. T 9. S. R 10. E. and W½ of the SE qr of Section 7. T 9 S. R 10. E. Also the NE. qr Section 19 T. 9. S. R 10. E. Also the SE. qr - the SW. qr - the W½ of the NW. qr - the E½ of the NW. qr and the W½ of the NE. qr of Section 18. T 9. S. R 10. E. Also the NE qr - the SE qr. and the NW qr of Section 12 T 9. S. R 9. E. Also the E½ of the SE. qr of Section 1. T 9. S. R 9. E. Also E½ of the NE. qr and the SW qr of the NE. qr of Section 11. T. 9. S. R. 9. E. Also the W½ of the NW. qr of Section 17. T 9. S. R. 10. E. Also the following described Town lots lying, being and situate in the County and State aforesaid, and known and described on the Town plat of the town of Shawneetown as In Lots Nos 1021. 1022. 1024 and 847.

Second - That the said John Reid Sen^r left him surviving as his heirs and representatives in respect to the Lands and tenements aforesaid Margaret Reid his widow. John Reid Jr - a Son

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Nancy Ann Rowan a daughter,
Rebecca Bowles a grand daughter and
only child of James Reid a son
and James A. Reid a grand son,
and only child of Alexander Reid
deceased,

Third,- that the said James A. Reid
departed this life an infant leaving
no child or decendant, but leaving
him surviving his mother Mary Ann
McCallen who had intermarried with
said Andrew McCallen, and Josephine
McCallen, Andrew J. McCallen and
Mary McCallen half brother and sisters
as his heirs, upon which testimony,
the Court decrees orders, and adjudges,
as follows,

First that the said Margaret Reid
widow as aforesaid is entitled to
be endowed of one third of said
lands and tenements, as alleged in
the petition, but for as much as it is
now made to appear to the Court that
dower has been set off and assigned
to said widow under and in pur-
suance of an order of this Court
made on the petition of Joseph
and Rebecca Bowles his wife
Bowles filed previous to the

[05117-10]

commencement of this suit. ~~[illegible]~~ the prayer of the petition in this cause in respect to the dower of said ~~[illegible]~~ Margaret Reid is disallowed, Second— that subject to the said dower ~~of~~ Estate of Margaret Reid the said John Reid Jr. is entitled to one fourth of said lands and tenements, the said Nancy Ann Rowan and Stephen R Rowan in right of the said Nancy Ann, to one fourth, the said Rebecca Bowles and Joseph Bowles in right of the said Rebecca one fourth, and the said plaintiffs as the heirs of James A Reid, one fourth, that is, the said Mary Ann McCallen and Andrew McCallen in right of the said Mary Ann, are entitled to two fifths of said fourth and the said Josephine, Andrew J. and Mary, to one fifth each.— and the court does hereby order and decree, that partition be made of said lands and tenements between the said parties according to their respected rights as aforesaid, and it is further ordered by the

Court that the whole of the said lands and tenements including the one third assigned to said widow be divided into four equal parts, by metes and bounds, having regard to Quality and Quantity and that one of said parts be set off and assigned to each of the parties entitled as aforesaid, in making which division and partition, the Commissioners will take into consideration the value of the dower estate of said Margaret Reid, in and to those quarter section of said land assigned and set off to her as her dower estate, to wit, the South half of Section Eighteen, and the North East quarter of Section Seventeen in Township Nine South range ten East, and the court further orders in respect to the one fourth that may be set off and assigned to the said plaintiffs, that the same be again divided into five equal parts having regard to Quality and Quantity and two of said parts be set off and assigned to the said Andrew McCallum, and Mary

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Ann McCallen in right of the said Mary Ann, and one of said parts be set off and assigned ~~an~~ to each of said children of said Mary Ann, and the Court further ordered that Joseph B. Bayer, George Moore & A Pool be and they are hereby appointed commissioners to execute this order and they are ordered to go upon the premises and make the said partition if the same can be done consistently with the interests of the Estates, and report their action to this court, and the cause is continued.

May Term 1857. 26 May.

On this day came the Commissioners appointed at the last Term of this court to make partition and filed their Report, and moved the ~~Report~~ court to approve the same, —

The Report of the Commissioners is in the words following.

[8547-12]

State of Illinois Gallatin County, ss

In the Circuit Court of said County,

Mary Ann McCallen and
Andrew McCallen her husband,
and Josephine McCallen, Mary
McCallen, & Andrew J McCallen,
Infants, who sue by their
Guardian & Andrew McCallen,

against. Proceeding for Partition &c

Margaret Reid, John Reid Jr,
Nancy Ann Rowan and Stephen
R Rowan her husband and
Rebecca Bowles and Joseph
Bowles her husband.

The subscribers
hereto having been appointed Commissioners to make Partition in this cause, do severally swear that we will fairly and impartially make Partition of the lands and tenements described in the order of Court for that purpose, in accordance with the Judgment of the Court, as to the rights and interests of the parties, if the same can be done, consistently with the interests of the Estate, according to the best

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of our Judgment, so help us God,
Sworn to and subscribed
before me on this 17th day of February AD 1857.
James Davenport Clerk Circuit Court

Geo Moore
O Pool
Jo B Barger
Commissioners

State of Illinois Gallatin County, ss
In the Circuit Court of said County

Mary Ann McCallen and
Andrew McCallen her husband
Josephine McCallen, Mary
McCallen and Andrew J
McCallen Infants, who are
by their Guardian ad Andrew McCallen
against, Proceeding for Partition.
Margarett Reid, John Reid jr,
Nancy Ann Rowan and
Stephen R Rowan her husband
and Rebecca Bowles and Joseph
Bowles her husband,

We George Moore
Orval Pool, and Joseph B Barger
Commissioners appointed in the
above entitled Cause to make
Partition between said parties of the
Real Estate whereof John Reid Sr

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did sized, having been sworn in due form of law, entered upon the duties assigned us, we first went upon the lands and tenements described in the order, and agreed upon the valuation of each parcel as follows, having regard to the value of the Dower estate of Margaret Reid in the three quarter sections of land assigned to her as stated in the order we then divided the same into four parcels of equal value, according to quantity and quality and set off, allotted and assigned the same as follows,
First, We set off, allot and assign to the said John Reid as his fourth part of the said lands and tenements the following, the West half of the North East quarter of section Twelve, the North West quarter of section Twelve (12) the South East quarter of section Twelve (12) East half of the North East quarter of section Eleven (11) and the South West qr. of the North East quarter section Eleven (11) all in Township Nine (9) South Range Nine (9) East,
Second, We set off allot and assign to the said Nancy A Rowan and

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Stephen B Rowan her husband, as her fourth part of said lands and tenements the following, to wit the West half of the North East of section Twenty (20) the North West quarter of section Twenty (20) the East half of the South West quarter of section Twenty (20) the West half of the North West quarter of section Seventeen (17) and the North East quarter of the South East quarter of section Eighteen (18) all in Township Nine (9) South Range ten (10) East, and Lot in Shawnetown Numb. Eight hundred and forty Seven (847).

Third, we set off, allot, and assign to the said Rebecca Bowles and Joseph Bowles her husband, as her fourth part of said lands and tenements the following. The South West quarter and West half of South East quarter and the South East quarter, of the South East in Section Eighteen (18) and the North East quarter of Section Nineteen (19) all in Township Nine (9) South Range ten (10) East, Lots in Shawnetown No. One thousand & twenty one (1021), one thousand and twenty two (1022), one thousand & twenty four (1024).

Fourth, we set off allot and assign

[8847-16]

to the said Mary Ann McCallen and Andrew McCallen her husband, Josephus McCallen, Andrew J McCallen, and Mary McCallen as the heirs of James A Reid as their fourth part of said lands and tenements the following,
the North West qr and West half of the South East quarter of Section Seven (7) and West half North East qr and North West qr of Section Eighteen (18) Township Nine (9) South Range ten (10) East, and East half South East qr of Section One (1) and East half North East quarter Section Twelve (12) Township Nine (9) South Range Nine (9) East, and the West half of the South East and East half of the South West and North West qr. of the South West of Section Twelve (12) Township Eight (8) South Range Nine (9) East,

After making the division and Partition aforesaid we proceeded to the Partition of the fourth, set off, alloted and assigned to Mary Ann McCallen, and Andrew McCallen her husband, Josephus McCallen Mary McCallen, and Andrew J McCallen and upon a full examination and consideration of the same, we do not

[#547-17]

consider the same susceptible of division without material injury to the value of the same,

Witness our hands and seals this 18th day of February 1857.

Geo Moore (Seal)
Jo B Barger (Seal)
O Pool
Commissioners

Commissioners fees

| | | |
|---|---|---|
| Geo Moore 2 days as Surveyor & 2 days as Commissioner | $4 — | $16.00 |
| O Pool, 3 days as Comsr | 4 | 12.00 |
| Jo B Barger 3 days as Comsr | 4 | 12.00 |

State of Illinois
Gallatin County } Set.

I James Davenport Clerk of the Circuit Court for said County do certify that the foregoing is a true and perfect copy of the Report of the Commissioners appointed to make Partition of the lands in the above cause, now on file in my office. Given under my hand & the seal of said Court this 19th February 1857

James Davenport Clerk

July Term 1857. continued

October Term 1857. no order below.

Costs $1.00

Andrew McCallen & Mary Ann McCallen
his wife, and Josephine McCallen,
Mary McCallen, & Andrew J McCallen
by Andrew McCallen their Guardian
against } proceeding for partition.
John Rice, Stephen R Bowles
and Nancy Ann Bowles his wife
and Joseph Bowles and Rebecca
Bowles his wife Defendants,
This day came again the parties
aforesaid by their Attorneys, and
the matter of the Report of the
commissioners making partition
herein, with the Exceptions thereto
being heard and argued, It is
ordered by the court that all of
said exceptions, be overruled, except the fourth thereof
disallowed; and
therefore that said Report be set
aside and for nothing held,
The defendants Joseph Bowles and
Rebecca Bowles present their Bill
of Exceptions, which is signed sealed
and made part of the Record,
And on the prayer of the said
Joseph Bowles, and Rebecca his wife an appeal is
allowed them in this cause to the
Supreme Court, upon his Executing
and filing an appeal bond with
the clerk of this court within ten days.

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payable to the plaintiffs herein, in the penalty of one Hundred Dollars with Joseph B Barger or Alfred B Safford as security conditioned for the due prosecution of the Appeal, and for the payment of the costs in case the judgment is affirmed.

Bill of Exceptions referred to in the foregoing order.

In Gallatin County Circuit Court
October Term 1857.

Andrew McCallen & others
heirs of Alexander Reice
against proceeding for partition.
Stephen R Rowan & others

Be it Remembered that on the 19th day of February 1857 the commissioners appointed to make partition herein filed their Report with the clerk of this court, which Report at the May Term 1857 of this court was presented to the court for approval and confirmation, when Exceptions were filed to said Report by Stephen R Rowan and Nancy Ann Rowan his wife, John Reice, Mary Ann McCallen and Andrew McCallen her husband, and Josephine McCallen Mary McCallen & Andrew J McCallen

Andrew McCallum their Guardian as follows. (here copy Exceptions marked A.) The Cause was subsequently continued from time to time, until the present Term, viz. October Term 1857. When the matter of said Exceptions was heard, upon which hearing the affidavits of Orville Sexton A. H. Cooke, C. Lafferty, Jesse Jenkins, R. J. Wickham and the Defendant Stephen R. Rowan were read in support of said Exceptions, also a Decree of this Court sitting in Chancery in the case of Stephen R. Rowan against Andrew McCallum, Joseph Bowles & others of the October Term 1856, which Affidavits are as follows. (here copy marked B & C.) said Decree is as follows (here copy marked D.) On the part of Defendant Bowles & wife the Affidavits of William Cooper, George W. Akers, John J. Walters and Joseph B. Barr and the Township plat attached thereto, were read as follows (here copy these affidavits and plat marked E.) upon the

[834728]

Hearing of said Exceptions and the Testimony aforesaid, which was all the Testimony in the cause, the Court overruled all of the Excepting to said Report except the fourth and sustained the fourth Exception to said Report, and set the Report aside to which decision of the Court in setting aside said Report the said Joseph Bowles and Rebecca Bowles except, and pray that this their bill of Exceptions may be signed and sealed and made part of the Record herein which is accordingly done

Wesley Sloan (Seal)

The papers referred to in the foregoing Bill of Exceptions are as follows.

State of Illinois } At the May term of the Circuit
Gallatin County } Court of said Gallatin County AD 1857

Stephen R Rowan and Mary Ann Rowan his wife John Reed and Mary Ann McCallen Andrew McCallen her husband and Josephine McCallen Mary McCallen and Andrew J McCallen by Andrew McCallen their guardian now come into Court and Except to the report of the Commissioners appointed by this Honorable Court to make partition of the lands of John Reed deceased on the petition of said Andrew McCallen and others because they say and on oath show upon made the direction of this Honorable Court,

1st that the partition made herein is unequal in value among those having Equal interests in the lands aforesaid

2d That the portion allotted by said Commissioners to Joseph Rowlands and his wife is worth Twenty four hundred or three thousand dollars more than the portion or share allotted by said Commissioners to Either of the other heirs Equal in interest with said Rowlands & wife

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3d That ~~the~~ said Commissioners have not apportioned the lands in said petition described among the several heirs according to their respective rights and interests and in pursuance with the order of this Honorable Court but have apportioned as to some and reported that as to others a division could not be made without manifest prejudice to them

4th That at the time said partition was made by said Commissioners they had no authority to act in the premises and that the order ~~of Court~~ authorising them to act was stayed at the last term of this Court under the further order of this Court herein as will appear by the record remaining now in this Court

5th That said Commissioners after they had divided said lands into four parts which were unequal, assigned to some of the parties in interest their parts and then as to two others threw up heads or tails as to choice of the two remaining portions or parts which was unfair and illegal

And the parties have waiving their objections to the allowance of said report of sd Commissioners herein, will peremptorily set up in the above exceptions under the Order and directions of this Court

Posey for Sd
Pending

[95447-23]

Affidavit (B)

Gallatin Circuit Court May Term 1857 Petition for Partition

Andrew McCallan Guardian &c

vs

Margaret Reid et al

Orval Sexton

Orval Sexton after being duly sworn according to law deposes & says, That he is well acquainted with all the lands mentioned in the said Petition for Partition and that he has carefully examined the report of the Commissioners appointed in the above cause to apportion and set off the said lands to the several parties entitled to the same that the partition made in the said report is not equitable That on the lands set apart to Rebecca Bowles there is a good brick house a fine tract of land in cultivation and all the running water on the tract formerly known as the homestead which in his opinion makes the tract set off to said Rebecca Bowles, (subject as it is said to be, to the widows dower) worth at least One Thousand dollars more than the tract set off and allotted to Nancy Ann Rowan and he believes the same worth

[85147-23]

45.

readily sell for that much more money if they were both put up for sale

Sworn & to subscribed before me this the 5th day of June 1857 } Orrill Sexton
James Davenport Clk

State of Illinois }
Gallatin County } I Allen H Cook do Certify that I was raised upon the adjoining tract of land next to and adjoining the tract land upon which the Rice farm is situated and have examined the report of the Commissioners who made the partition between the heirs of the late Dr John Rice decd and I fully concur with the within affidavit of Orrill Sexton that the division is unequal and unjust. in my opinion there is no doubt Given under my hand this 2d day of June AD 1857

A H Cook

We the undersigned fully concur in opinion with Orrill Sexton as expressed in the within

Affidavit given under our hands
day of June 1857

C Laffoy
Jesse Jenkins

Subscribed and Sworn to
before me this 29th day
of July 1857

James Davenport Clk

Richard Mishant after being duly sworn
says that he is well acquainted with lands
now owned by the heirs of the late John
Red the same that adjoins to the surveys
of said Red that he has examined the
report of the Commissioners & Mr Jenkins
Report & Plat dividing the lands
and that he is ~~clearly~~ of the opinion
that the lands set apart to Rebecca
Bowles & her husband Joseph Bowles
encumbered as it is, with the widows
dower is worth at least one thousand
dollars more than either the sums set
aside to John Red or the sum set
apart to Nancy A Rowan and her
husband Stephen R Rowan

R S Mishant

Subscribed and sworn to before me
this 22c day of Oct 1857

James Davenport
Clk

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Affidavit (C)

State of Illinois } Partition of Real estate
Gallatin County } between the heirs of Robert
Rose Decd

Stephen Rowan being sworn states that he was informed shortly after the report of the Commissioners that Z. of the Commissioners to wit O Pool & J B Baker struck heads and tails as to choice between Rebecca Rowan and Mary Ann Rowan and that Baker won first choice for Rowan as this affiant is informed and believes

S. R. Rowan

Sworn to and subscribed before me this 24th day of Oct 1857

James Davenport Clk

Order of Court (D)

Stephen R Rowan and Nancy Ann Rowan his wife
Against
Andrew McCallen
Joseph Bowles et al

} Ex Chancery

The Motion submitted at the October term 1855 of this Court for an injunction on behalf of the Complainants and not decided is now submitted to the Court for decision upon the bill, Answers of Defendants Joseph Bowles & Wife and Andrew McCallen & Wife with replications thereto the affidavits of Aaron R Stout Alexander Kirkpatrick and James Beasley taken by Defendants with notice to Complainant Rowan of the intention to take and use affidavits on the hearing of said Motion also the affidavits of Henry Hill W H Tomasson and Margaret Rice taken by Complainants and the Court being sufficiently advised of and considering the premises does hereby order that the Motion aforesaid be and the same is hereby overruled, And that the Court further ~~the~~ orders that the bill be dismissed at the Complainants cost

[3547-25]

29.

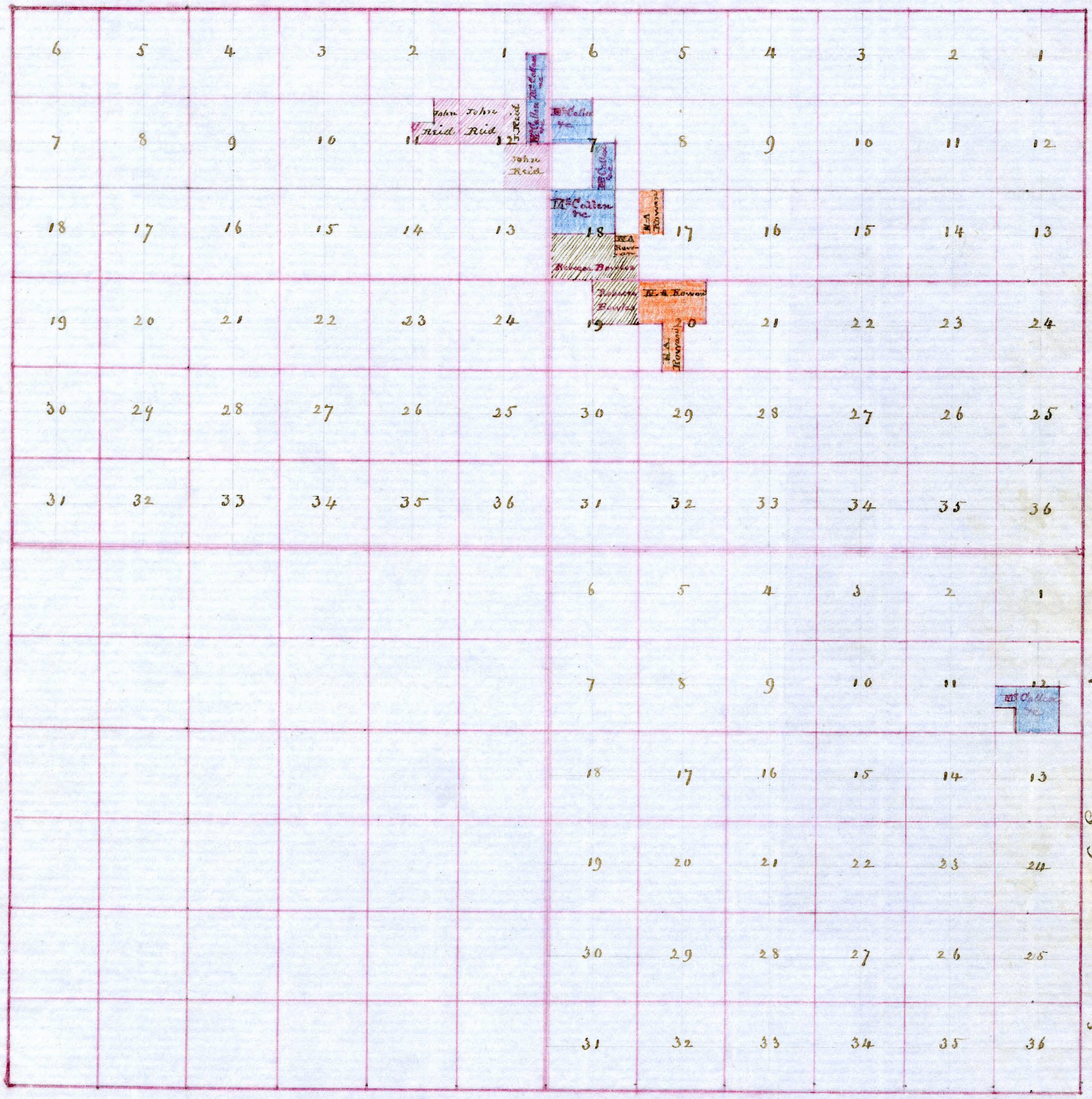
Whereupon on the prayer of the Complainants an appeal is allowed them from this decree to the Supreme Court which appeal the defendants Consent may be prosecuted without the execution of any appeal Bond And the defendants further Consent that the appeal and Cause shall stand for hearing at the ensuing November term of the Supreme Court at Mount Vernon as though thirty days had intervened between the time of filing the appeal and the sitting of said Court The affidavits and notice used on the Motion for injunction & the Constitution part of the record herein and be considered as depositions

The defendants further agree that the reversal of this decree shall operate as an injunction according to the prayer of the bill and the proceedings in the proceedings at law to be stayed until the further order of the Court herein

Plat, and affidavits. E.

Township No. 9. S Range 9. E.
Gallatin County. Illinois.

Township No. 9. S. Range 10. E
Gallatin. County. Illinois.




A. McCallen 840 Acres

John Reid 520 "

R. A. Rowan 440 " & Sn Lot in Shawneetown No 847

Rebecca Bowles 440 " & " " " " Nos. 1021. 1022. 1024.

L 8547-267

(2)

State of Illinois Gallatin County s.s.

In the Circuit Court of said County.

Andrew McCallen & others

Against } Proceeding for Partition.

Stephen R. Rowan & others

William Loop being sworn states that he is well acquainted with lands of which the late Doct. John Reid died possessed near Shawneetown in said County of Gallatin, which lands are marked in the within Township plats,— he has examined the map of the partition of said Lands as made by the Commissioners appointed to divide the same as represented on the within Township plats.— his opinion is that the Eight hundred and forty acres set off to A. McCallen & others is worth more than either of the other shares; it is so situated, that three good farms can be made and occupied thereon.— There is no great difference in his opinion between the value of the shares of John Reid and Nancy Ann Rowan.— Some persons would possibly prefer one, and others the other. The part allotted to Rebecca Rowlds he considers the least valuable because of its being subject to the dower estate of Margaret Reid,— but for that incumbrance this part would be worth as much as the part of said

[8647.27]

Nancy Ann Rowan and possibly might sell for more on account of the houses on it.— The said Coop further states, that the whole of said Lands are valuable for purposes of agriculture, and that differences of opinion would almost necessarily exist among good judges of Land in regard to the value of the several parts.— He does not believe that any three men selected for that purpose, would be likely to make a more equitable division than has been made.—

Subscribed and sworn to before me this 28th day of July 1857.
A. W. Hamilton (J.P.)

William Coop

State of Illinois Gallatin County S.S.
In the Circuit Court of said County.
Andrew McCallen & others
against } Proceeding for Partition
Stephen R. Rowan & others.

George W. Akers being sworn, states that he has been well acquainted with the Lands of which the late Doct. John Reid died possessed in Gallatin County for many years.— that he has examined

the plat of division thereof, as marked on the within Township plats, – his opinion is, that the Eight hundred and forty acres assigned to A. McCallen & others is more valuable than either of the other parts, in respect to the other three parts, he thinks there is not much difference in the value, if all were alike free from incumbrance, and the parties had the right to immediate possession – but he regards the part assigned to Rebecca Rawlins as less valuable than either of the other parts because of the dower Estate of Margaret Reid, which he is informs includes the whole of said part. – The said Lands are all valuable for agricultural purposes, and men equally well acquainted with the parts would be likely to differ as to their value,

Upon looking at the plat of the division he is of opinion, that a more equitable division would not likely be made by any three men who could be selected for that purpose, – he was born and was raised near said Lands, and has known them well, more than thirty five years.

G. W. Akers.

Subscribed & sworn to before me this 28th day of July 1857

Geo. B. Rayer clerk County Court

State of Illinois Gallatin County s.s.

In the Circuit Court of said County.

Andrew McCallen & others

Against — Proceeding for Partition

Stephen D. Rowan & others.

John F. Walters being sworn states that several years since he acted as a commissioner under an order of the Gallatin County Circuit Court, to make partition of the Lands of the late Dr. John Reid in Gallatin County Illinois, The lands were divided into four parts of equal value in the opinion of the commissioners having regard to the then situation of improvements and condition of the country

He has examined the plat of said Lands and division thereof, as represented on the within township plats, the division differs from the one made when he acted as commissioner, which may be accounted for, in the difference in the situation of improvements, the difference in the orders of court, and the difference of opinion, which would be likely to exist in regard to the value of the different parts of said Lands.

He is of opinion that the part set off to Rebecca Reids if free from the Power

Estate would be more valuable than any other part — by one thousand Dollars, but as it is, he thinks the part assigned to A. McCallen is nearly of equal value, — the parts set off to John Reid and A. A. Rowan are of about equal value, neither of them in his opinion are equal in value to the other two parts, — the said Lands are all valuable, and it would be difficult in his opinion to get any three men to agree upon the precise value of each parcel, — He has not examined said lands or improvements for several years — and does not know the present condition of the same —

Subscribed and sworn to before me this 30th day of July A.D. 1857 —

B. B. Barger Clk

John T. Walters

Joseph B. Barger being sworn states that he was one of the commissioners who acted in dividing the lands referred to in the foregoing affidavits, — In making the division the Commissioners estimated the value

of each tract of land, and then divided the same into four parts of equal value according to their Estimates, he does not remember the aggregate value fixed upon the whole of said Lands, - but in his opinion the whole of said lands at the time of the division were reasonably worth Twenty two thousand dollars

Subscribed and sworn to before me this 22d October 1852

Joseph B Barger

Thos S Sivey (JP)

On the 28th day of October 1857 the said Joseph Bowles Executor and filed with the Clerk an appeal Bond, with Joseph B Barger as security, as follows.
"Know all men by these presents, that we Joseph Bowles and Joseph B Barger are held and firmly bound unto Andrew McCallen and Mary Ann McCallen his wife, and Josephine McCallen, Mary McCallen, and Andrew J McCallen in the penal sum of One Hundred Dollars for the true payment whereof we bind ourselves our heirs to jointly and severally, and firmly by these presents, sealed with our seals and dated this 28th day of October 1857.
The Condition of the above obligation is such, that whereas at the October Term 1857 of the Gallatin County Circuit Court, the said Court made and Entered an order in a Cause therein pending, between the above named obligees as plaintiffs and Joseph Bowles and Rebecca his wife, John Reid, and Stephen R Bowles and Nancy Ann Bowles his wife as defendants, on petition

[R549-90]

for partition of Real Estate, setting aside the Report of Commissioners making partition, under an order of said court, from which order of said court an appeal has been allowed to said Bowles to the Supreme court, — Now in case he shall prosecute said appeal with effect, and pay all costs which may be adjudged against him in case the judgment is affirmed then this bond to be void otherwise to remain in full force and effect.

Jos Bowles (Seal)
Jos. B. Barger (Seal)

State of Illinois Gallatin County, s.s.
I James Davenport Clerk of the circuit court of said County do certify that the foregoing thirty four pages contain a full and complete copy of the Record and proceedings of said court in the cause therein stated, Smith Andrews McCallum & others against John Reid and others heirs of John Reid, Given under my hand and the Seal of said court this 28th day of October 1857.

James Davenport Clk

Clerks fee for forwarding Record

10752 Words $10.75

Certificate & Seal 25

$11.00

James Davenport Clk

[D547-31]

State of Illinois S.S.

In Supreme Court of said State,
First Grand Division
November Term 1857.

Joseph Bowles and Rebecca
Bowles his wife, impleaded
with John Rice, and
Stephen R Rowan, and
Nancy Ann Rowan his wife
against } Writ of Error to
} judgment of
} Gallatin County
} circuit court.
Andrew McCallen & Mary Ann
McCallen his wife, and
Josephine McCallen, Mary
McCallen, and Andrew J McCallen
Minors who sue by their
Guardian Andrew McCallen,

The clerk of the Supreme court will
file the Record in this cause, issue
and file the Writ of Error, and
issue summons to Gallatin
County against the above named
Defendants, and also against John
Rice, Stephen R Rowan and
Nancy Ann Rowan, requiring
all of them to appear and answer
&c. returnable to November Term 1857.

Shawneetown
28 October 1857.

W W Thomas
Atty for plffs

Memo.

The foregoing cause stood in the circuit court. –

Andrew McCallen and Mary Ann McCallen his wife, and Josephine McCallen Mary McCallen and Andrew J McCallen Minors who sue by Andrew McCallen their Guardian Plffs

against

Joseph Bowles & Rebecca Bowles his wife, Stephen R Rowan and Nancy Ann Rowan his wife and John Reid Defts

The Writ of Error is prosecuted by Joseph Bowles and Rebecca Bowles his wife, from the judgment of ~~December~~ October Term 1857.

The Writ of Error ~~in~~ which is issued and filed, is made out in the usual form, in the Summons against the parties I want against all the plaintiffs in the circuit court, and after their names are written in the summons, or at the proper place, add a requisition in the summons, that the sheriff also summon Stephen R Rowan and Nancy Ann Rowan his wife, and John Reid to appear to, they are parties who do not join in the prosecution of the Writ of Error. and I want them notified

67. W M Thomas
Atty for.

State of Illinois S.S.
In the Supreme Court of said State
First Grand Division
November Term 1857.

Joseph Bowles and Rebecca Bowles his wife
impladed with John Rice and
Stephen R Rowan and Nancy Ann
Rowan his wife
against

Upon Writ of
Error from
Judgment of
Galatin circuit court

Andrew McCallen & Nancy Ann
McCallen his wife, and Josephine
McCallen, Mary McCallen, and
Andrew J McCallen Minors
who sue by their Guardian
Andrew McCallen,

And the said Plaintiffs in Error come
and file the Record of the proceedings
and Judgment of the circuit court
aforesaid, and say, that in the
said proceedings and Judgment
Errors have occurred to their
prejudice, for which they pray
that said Judgment may be set
aside &c, And they have set down
and assign for Errors — the following
First; The said circuit court
Erred in not making an
order approving and confirming
the Report of the Commissioners
making partition in said
cause,

69.

[4547-48]

(70)

Second, the said court erred in making an order setting aside the said Report of the commissioners making partition, wherefore they pray reversement of Decree &c

W M Thomas
Atty for Plff.

Shewsentown Pa
28 October 1857.

41

Joseph Bowles & Rebecca Bowles his wife — Impleaded with Stephen R Rowan and Mary Ann Rowan his wife, and John Reed — Plffs in error

vs

Andrew McCallen and Mary Ann McCallen his wife, and Josephine McCallen, Mary McCallen and Andrew J Allen Minors who sue by their Guardian Andrew McCallen — and also John Reed, Stephen R Rowan and Nancy Ann Rowan his wife Defts in error.

Filed 31. October 1857
Noah Johnston Clk
"

Repeal $5.00

[Reel 4558]

In Supreme Court.

November 1854

Joseph Bowles Appellant. Appeal from Gallatin
against
Andrew McCallan Guardian
for James A. Reid Mary Ann McCallan
Josephine McCallan Andrew J. McCallan and
Mary McCallan Appellees.

In March 1848 Andrew McCallan Guardian for James A. Reid filed a petition in the Circuit Court for the purpose of obtaining partition of the real estate whereof John Reid Senior Grand Father of the ward died seized. the petition is filed by and in the name of the Guardian and not in the name of the ward.

The petitioner states that John Reid Senior died intestate, seized in fee of various tracts of land and town lots which are described by their numbers. that said John left a widow Mary Reid, who is still living and entitled to dower, that he also left four heirs still living, John Reid Jr. a son, Nancy Ann Rowan wife of Stephen R. Rowan a daughter, Rebecca Reid, a Grand Daughter, the only Child and heir of James Reid, deceased a son. and James A Reid the ward, the only Child and heir of Alexander Reid a deceased son. with respect to William Reid another son of said John it is stated your petitioner is informed and believes that seven years before the death of said John, one William Reid, son of the said John left this State and that he has not been heard of by any

[05417-05]

member of the family or any one else since he left.
wherefore he supposes he is dead. and upon due enquiry cannot be found within this State, that from thence hitherto it is unknown whether he said William Reid continues in life, but it has been reported. and believed that he said William departed this life soon after he left this country aforesaid,

The petitioner further states that the lands &c. whereof the said John Died siezed, descended and came upon the said John Reid Jr. Nancy Ann Rowan Rebecca Reid. and James A Reid who are now siezed of the fee simple as in four equal parts. "that in the event of the said William Reid being in life at the time of said John Senior, which the petitioner insists the law upon the facts above stated not to be the fact. then the said William Reid is Coheir with the said John Reid Nancy Ann Rowan Rebecca Reid and James A. Reid siezed in fee simple as Copar-ceners in five equal parts. the heirs of said John Reid including said William are made defendants and the prayer is that partition be made of the real estate among the heirs and dower be set off and assigned to the widow Mary Reid.

Process was issued against all the defendants and ~~all were~~ served upon all except William Reid who was notified of the pendency of the suit by newspaper publication

In February 1850 the Cause was heard, petition taken as Confessed, and order for partition and assignment Entered.— under which order partition was made and Dower assigned.— but the report of the Commissioners was never approved or their action ratified by the Court.

In October 1851 (10 of the month) the Defendants Joseph Bowles and Rebecca Bowles filed their exceptions to the report of the Commissioners, making partition &c. and at the same time the Clerk was ordered to amend the order for partition so as to make the description of land Conform to the discription in the amended petition

In August 1852 on motion of Complainant it was ordered that the default heretofore taken in the Cause and all decrees heretofore rendered upon the petition filed herein, be Canceled and made void, and the Cause be reopened.

The Death of James A Reid the ward of petitioner was then suggested, and his heirs (to wit) Mary Ann McCollan his mother, Josephine McCollan, Andrew J. McCollan and Mary McCollan, his Brothers and Sisters, were made parties to this suit, and leave given to amend the petition.

In October 1853. (21st October 53) the plaintiff filed his amended petition and on his motion it was

[8547-36]

ordered and decreed that the order and decree of partition made at the December term 1850, be amended set aside and vacated. and the defendants were ordered to answer by wednesday morning.-

The amended petition filed on the 21st October 1853. States that since filing the original petition the ward James A. Reid has departed this life, an infant and intestate leaving him surviving, his Mother Mary Ann McCallan, and his Brothers and Sisters of the half bloods. Josephine Andrew and Mary McCallan Children of the said Mary Ann McCallan, and this petitioner Andrew McCallan, that said James left no Father surviving, nor any other Brothers and Sisters, that said Mother Brothers and sisters are the sole heirs of the said James A. ~~Reid~~, the petitioner asks that said heirs be allowed to join herein as Cocomplainants.

On the 26th October 1853. an amended petition is filed in the Cause, which is entitled and commences as follows
State of Illinois Gallatin County,
Of the October term of the Gallatin Circuit Court. AD1853. a petition for the partition of the lands of which John Reid Senior Died seized, the amended petition of Andrew McCallan et, al, filed by leave of the Court. first herein had and obtained,

Humbly Complaining &c. your petitioners Andrew McCallon Mary Ann McCallon and Josephine Andrew and Mary McCallon who sue by their Father and next friend. Andrew McCallon, would respectfully represent and shew &c.

The petitioners then proceed to State the Death of John Reid Senior. Seized of real estate as stated in the original petition — the names of representatives and heirs, the Death of James A. Reid. and their right as his heirs the facts in relation to William Reid, and his supposed Death. the intermarriage of Rebecca Reid with Joseph Bowles. and pray for partition and assignment of Dower.

This petition was sworn to on the 28th October though filed on the 26th

On the 26th October 1853. a demurrer was filed in the name of Rebecca Bowles to the amended bill, and sustained, and leave was given to amend.

On the 27th October 1853. the Complainants suggested on the record the intermarriage of Rebecca Reid with Joseph Bowles, and an Order was then made, making Bowles a party to the suit. and requiring defendants to answer by Monday following.

On the 31st October 1853. an answer was filed in the name of Rebecca Bowles to which on the 1st November exceptions were filed and sustained with leave to amend.

[8547-37]

On the 2nd Nov. 1853. the amended answer of Rebecca Bowles was filed to which exceptions were filed, and stained and the answer excluded, - the amended petition was then taken as confessed as against said Rebecca Bowles, and all the adult defts. being then called and failing to appear, the complainants amended petition was taken as confessed - upon which an order for partition and the assignment of dower was made the evidence upon which the court acted is not recited or copied.

An appeal was allowed, to the defendant Joseph Bowles, who brings the case here and assigns for error, -

1 The Court erred in making the order for partition, because because the original petition was not filed by any one having an interest in the estate, proposed to be divided.

2. The Court erred in making the order for partition because it appears that Andrew. McCallon is interested in the estate as tenant by the Courtesy, and is not made a party to the suit.

3 The Court erred in making the order for partition without deciding the question of fact as to the Death of William Reid, or making any order in respect to his rights.

4 The Court erred in making the order for partition, upon the allegations in

the petition and amended petition without evidence to sustain their truth.

5. The Court erred in making any order as against the appellant Joseph Bowen because he had not been served with process nor notified of the pendency of the suit.

Authorities relied on by Appellant
Revised Statutes pages 45. 93. 265. 267. 399 400.
Story's Equity pleading Ch. 57. 70.
1 Daniels Ch. 89.
Brady vs Anderson 10 Paige 239.
Hoar vs Harris 11 Ala 25.

[2547-38]

No. 26

Bowles & Abstract
vs
McBallas

In the Gallatin Circuit Court. pleas held before Hon T. S. Marshall Judge of the 12th Judicial Circuit

Andrew McCallen Gardian for James A Reid
v
Margaret Reid Widow
John Reid Jr Nancy Ann Rowan
Stephen R Rowan Rebecca Reid &
William Reid heirs at Law of
John Reid Decd

} Bill for partition & assignment of Dower

Bill

State of Illinois Gallatin County Set

To the Hon William A Dimmig associate Justice of the Supreme Court and assigned to preside in the Gallatin Circuit

In Chancery

The undersigned Andrew McCallen Guardian of James Alexander Reid your petition would respectifully represent unto your Honor

That John Reid Senior late of Gallatin County. deceased Was in his life time and at the time of his death. seized in fee simple by purchase of the General Government of the U.S. of the following tracts of Land and town Lots to wit The North West quarter of the South West quarter. and the West half of the South East quarter of Section No 12. in Township No 8 S. in Range 9 E. Also the East half of the South West quarter. and the West half of the North East Quarter. and the North West quarter of Section 20 Township 9 S. in Range 10 East. Also the North West Quarter of Fractional Section 7. in township 9. South in Range 10 East And the west half of the South East quart of Section 7 in township 9 S in Range 10 East. Also the North East Quarter of Section 19. in township 9 S. in Range 10 East. Also the South East quarter and the South West quarter and the West half of the North West quarter and the East half of the North West quarter and the West half of the North East quarter of Section 18 in Township 9 S. in Range 10 East Also the North East quarter and the South East quarter and the North West quarter of Section 12 in township 9 S. in Range 9 East Also the East half of the South East quarter

[8547-39]

of Section 1. in Township 9. S in Range 9. East. Also the East half of the North East quarter. and the South West quarter of the North East quarter of Section 11. in township 9 S in Range 9 East. Also Inn Lots in Shawneetown known on the plat of said town as Numbers 1021. 1022. 1024. 847. = Also E. H. S. W. Sec 12 T. 8 R. 9. = 80 acres Also the W. H. N W. Sec 17 T. 9. R. 10 = 80 acres. Allo of which lands and townlots are situate in said County of Gallatin And the said Complainant here exhibits & shows to the Court the patents from the General Government of the United States which are prayd to be taken as parts of this petition marked 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. And being so seized he the said John Reid. Senior. on or about the 8th day of February 1847 departed this Life intestate leaving him surviving, his wife Margaret Reid his children John Reid Junior. Nancy Ann Rowan. Wife of Stephen R Rowan - His grand children. Rebecca Reid daughter of James Reid decd. and James A Reid. (Ward as aforesaid) son of Alexander Reid deceased Your petition also alleges that as he is informed and believes seven years before the death of the said John Reid Senior one William Reid son of the said John Reid left this State and that he has not been heard of by any member of his family or any one else since he left wherefore he supposes he is dead and upon due enquiries cannot be found within this State. That from thence hitherto it is unknown whither the said William Reid continues in Life but it has been reported and believed that the said William departed this life soon after he left this County aforesaid. that the lands above described descended and came upon the said John Reid Jr. Nancy Ann Rowan. Rebecca Reid. and James A Reid who now are seized of the fee simple. as in four equal parts

That in the Event of the said William Reid being in life at the time of the decease of the said John Reid Jr which your petitioner insists the law upon the facts above stated not to be the fact then the said William Reid is co-heir with the said John Reid Jr. - Nancy Ann Rowan Rebecca Reid. James A Reid. seized in fee simple a ~~coparceners~~ coparceners in five Equal parts

The said Margaret Reid relict of the said John Reid Jr. is entitled to her dower as widow in said Lands.

That the above named parties with the exception of

James A Reid are of Lawfull age but that they and your petitioner are unable to make a just and Equitable partition of said Estate, without the aid of your Honorable Court Which partition your petitioner deems advisable in order that the rents of and of so much of said real estate as shall be allotted to the said James A Reid may be collected for him, and applied for his Education and maintenance

Wherefore your petitioner prays that the said Margaret Reid John Reid, Junior Nancy Ann Rowan, and Stephen R. Rowan, her husband, Rebecca Reid and William Reid be made parties defendant to this petition and that Summons issue and publication be made according to Law

That at the hearing of the matter in this behalf your petitioner prays that an examination be directed by your honorable Court to enquire whether the said William Reid was and still is in life and whether he was and is of sane mind, and upon such inquest being made and reported to make such order as your honorable Court may deem most advisable Your petitioner also prays, upon the Court being fully informed as to the right and interest of the parties, that your Honor may order a decree that a Commission for the assignment of Dower, and the partition of the said lands issue from the said Court, directed to Commissioners therein Named, to divide and allot the said lands in Equal shares and that one equal share be allotted to each of the said heirs, who may be found entitled to the same, that the heirs to whom the same shall be so allotted, shall hold their respective shares in severalty

That the dower of the said Margaret Reid, as widow, be set apart to her, by metes and bounds with such order for the reversion thereof as the Court may deem advisable

That in the event of it being impracticable to make such equal partition and such assignment of dower without injury to the rights and interest of said parties then that the court make such decree for the payment of money to make up any deficit, or in lieu of such Dower as it may deem proper

[5547-40]

That the court will grant such other and further order as may be necessary to effect an equitable partition of said lands and lots. and that all the title deeds relating to said Lands be brought into court and upon partition being made, placed in the hands of those to whom they should belong respectively

And the said Andrew McCallen, your petitioner Guardian of James A. Reid, herewith, exhibits to your honor his Letter of Guardianship issued from the Hardin probate Court. Illinois All of which is respectfully submitted

Andrew McCallen

Sworn to and subscribed before me John T Knox Clerk of the Hardin County circuit. on the 16th day of March A. D. 1848 In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Elizabethtown the day and date above written

John T Knox clk
N M Collins Deputy

Filed the 22nd March 1848
D P Wilbanks Clk

~~Summ~~ Test Summons

State of Illinois
Gallatin County } Sct

The people of the state of Illinois
To the Sheriff of said County — Greeting

We command you to summon Margaret Reid, John Reid Jr. Nancy Ann Rowan, Stephen R. Rowan, Rebecca Reed, and William Reid, if to be found in County, to appear before the Circuit of said County, on the first day of the next term thereof to be holden on the 4th Monday of the month of May next, to answer a petition filed in our said circuit Court against them by Andrew McCallen, Guardian of James Alexander Reid

And hereof make due return to our said Court, as the law directs

Witness D. P. Wilbanks, Clerk of our said court and the judicial seal thereof this 22nd day of March A.D. 1848 D P Wilbanks Clerk

Served this Writ by reading the same to Margret Reid John Reid Junior, Nancy Ann Rowan Stephen R. Rowan and Rebecca Reid on the 16 April 1848 William Reid Not found in my County

S. E. Hall Shff G. C.

Second Summons

State of Illinois } ss
Gallatin County }

The people of the State of Illinois
To the Sheriff of said county.--Greeting

We command you to summon Margaret Reid. John Reid Junior, Nancy Ann Rowan. Stephen R. Rowan. Rebecca Reid and William Reid if to be found in your County. to Appear before the circuit Court of said County. on the first day of the next term thereof, to be holden at the Court house on the fifth Monday in the month of October Instant to answer to a petition Complaint, filed in our said Circuit Court against them by Andrew McCallen Guardian of James Alexander Reid

And thereof make due return to our said Court. as the Law directs

Witness D. P. Wilbanks. Clerk of our said court and the judicial seal thereof at Equality this 6th day of October AD 1848

D. P. Wilbanks Clerk

L S

Executed on all the within named persons by Reading except William Reid this 12th of October 1848

S. T. Walters Sheriff

3rd Summons

State of Illinois } ss
Gallatin County }

The people of the State of Illinois,
To the sheriff of said County.--Greeting

We command you to summon Margret Reid. John Reid Jr. Nancy Ann Rowan. Stephen R. Rowan Rebecca Reid And William Reid if to be found in your County. to appear before the Circuit Court of said County. on the first day of the next Term thereof. to be holden

[8547-41]

at the Court House in Shawneetown on the third Monday in the month of June next to answer to a bill of Complaint. filed in our said Circuit Court. on the Chancery Side thereof against them by Andrew McCallen Guardian of James Alexander Reid.

And here of make due return to our said Court as the Law directs. Witness S. C. Hall Clerk of our said Court and the Judicial Seal thereof at Shawneetown this seventh day of April A D 1849

S. S.

S. C. Hall. Clk

Executed by leaving a true coppy with all the Defendants Except William Reid this 12 th day of April A D 1849

S. F. Walters Sheriff G. C.

~~order Court~~

Andrew McCallen Guardian &c
v
Margaret Reid et. al.

Pet for Part. & Dower

on this day came the plantiff's by their attorney and moved the Court for a rule against the defendants to plead answer or demur by nine O'Clock on Tuesday next which rule was by the Court allowed

Order of Court 4th Nov 1848

Andrew McCallen Guardian &c
v
Margaret Reid et. al.

Pet for Partition & Dower

Now on this day came the plantiff by Olney his atty and moved the Court to grant an order of publication herein which ~~both~~ motion is by the Court allowed and order for publication granted - it is further ordered that this cause by continued till next term of this Court

Printed Notice

State of Illinois } Set
Gallatin County }

of the June Term of the Gallatin Circuit Court 1849

Andrew McCallen Guardian of James Alexander Reid
v
Margaret Reid, Widow, John Reid, Jr. Stephen R Rowan and Nancy Ann Rowan his wife, Rebecca & William Reid heirs at Law of John Reid, Sr. Dec'd

Notice, is hereby given to the above named defendants, that Andrew McCallen, Guardian, of James Alexander Reid, has filed his petition against them in said Circuit Court, praying a partition of the real estate of which John Reid, Sr., late of Gallatin County, died seized, that Summons has been issued herein, returnable to the next term of said Court, to be holden at Shawneetown on the third Monday of June, 1849, and affidavid made, that upon due enquiries the said William Reid cannot be found within this state — that said cause is now pending and that unlys said defendants shall appear on the return day of said summons, and plead, Answer or demur to the said petition, the same will be taken for confessed, and decree entered accordingly

F. E. Hall, Clk C. C. G. C. Ills.

John Olney Solicitor
April 13 1849 28-4t

Printers Certificate

I, L. S. T. Turney, publisher of the "Southern Illinois advocate a weekly newspaper published in Shawneetown Gallatin County Illinois, do hereby certify that the attached advertisement was publi=shed in said newspaper four consecutive weeks; and that the date of the first paper containing the same was April 13th 1849, and the last May 11th 1849

L. Jas. S. Turney

[5547-42]

## Order of Court 22nd June 1849

Andrew McCallen Guardian &c
v
Margaret Reid et. al.
} Bill for Partn. & dower

On this day Came the Plantiff's by their attorney and moved the Court for a rule against the defendants to plead Answer or demur by Nine O Clock on tuesday next Which rule was by the Court allowed

## Order of Court 9th February 1850

Andew McCallen Guardian for James Alexander Reid
v
Margaret Reid Widow. Stephen R Rowan. Nancy Ann Rowan. Rebecca Reid & John Reid heirs at Law of John Reid Dec.
} Petition for Partition and assignment of Dower

On this day Came the Petitioner by Olney his atty and it appearing to the Court that Service has been had herein and the said Defendants being now three times solemnly Called Came not but made default It is therefore Considered by the Court that this bill be taken as confessed and upon proofs being heard it is ordered & adjudged by the court that John J Walters E. F. Nicholdson & Daniel P Wilbanks be and they are hereby appointed Commissioners who not being connected with any of the parties either by consanguinity or affinity and entirely disinterested fairly and impartially after being duly sworn to make partition of the lands and tenuments of which the said John Reid died seized to wit N W¼ N W. S W¼ & W½ S E. Sec 12 T 8 S. R 9 E. E½ S W¼ W½ N E¼ & N W qr Sec 20. T 9 S R 10 E. N W¼ Frac Sec 7. T 9 S. R 10 E W½ S E¼ Sec 7 T 9 S. R 10 E N E¼ Sec 19. T 9 S. R 10 E. S E¼ & S W¼ W½ N W¼ & E½ N W¼ & W½ N E¼ Sec 18 T 9 S. R 10 E. N E¼ & S E¼ & N W¼ Sec 12 T 9 S. R 9 E. E half S E¼ Sec 1 T 9 S. R 9 E. E½ N E¼ & S W¼ of N E¼ Sec 11. T 9 S. R 9 E. & E½ S W Sec 12. T 8. R 10. & W½ N W Sec 17 T 9 R 10. in Gallatin County Illinois

On this day Came the Commissioner appointed at a former term to make partition & assign Dower in the real estate of which John Reid died seized presented their report for approval.

## Report

State of Illinois } Of the November term of the Gallatin
Gallatin County } Circuit Court 1850

The undersigned commissioner appointed at the Special January term A.D. 1850 of this Court under a decree rendered in Cause, wherein Andrew McCallen Guardian for James Alexander Reid is plaintiff and Margaret Reid widow, Stephen R. Rowan and Nancy Rowan his wife Joseph Bowels and Rebecca Bowles (late Rebecca Reid) his wife, and John Reid, heirs at Law of John Reid lat of Gallatin County deceased, are defendants, to make partition of certain lands and town Lots in said decree mentioned amongst the said heirs at Law of said deceased according to their respective interests therein, as also to set apart to said Margaret Widow & Relict as aforesaid, her reasonable dower according to law in and to the said premises, respectively report: that after being first duly sworn, to make said partition, fairly and impartially, they proceeded upon said premises & allotted to each of said heirs, their shares therein, by metes & bounds, as follows to wit

Share No 1 John Reids Portion viz

Part of the NE qr of Sec 19 and part of the NW of sec 20 ~~beginning~~ beginning 36 poles East of the half Mile Corner on the Saline dividing Secs 19 & 20 thence running to a point 40 poles West of the Corner to Secs 17, 18, 19 & 20 thence west with the section line to the ½ Mile Corner between Secs 18 & 19 thence south to the Corner in middle of section 19 thence East to the place of beginning the west ½ SE qr sec 18 Also 23 acres off of the East side of the south West qr of Sec 18 all in Township 9 S. R. 10 East

Also In-lots No 1021. 1022. 1024. 847. in Shawneetown Illinois Containing in all Acres & two Town Lots among the Heirs at Law of the Said John Reid Deceased according to their respective interests therein, by meats and bounds if the Same Can be done Consistantly with the Interests of Said Estate, Setting apart to the Said Margaret Reid Widdow & Relict of the Said John Reid Decd her reasonable Dower according to Law of in and to the Said premises and it is further ordered that the Said Commissioners do report their proceedings had under this order to the next term of this Court ordered that Cause be Continued.

Note This order Corrected to Correspond with the amended Petition as to numbers of Land & Lots by order of Court at Sept. term 1851

Order of Court 27th June 1850

Andrew McCallen Guardian of James A Reid v Margaret et. al. } Bill & Petition for partition

On this day the complainant obtained leave to amend his petition and that this Cause be Continued

Order of Court 30th Novr. 1850

Andrew McCallen Guardian &c v Margaret Reid et. al. } Petition for partition & assignment of Dower

ordered that this Cause be continued till the next term of Court — — — — — — —

Order of Court 1st Oct 1851

Andrew McCallen Guardian v Margaret Reid et. al. — } Petition for Partition & Dower

Share No 2 Nancy A Rowan wife of Stephen R Rowan portion of the Land viz
Part N E qr of Section 19 and part of the N W qr of Section 20 Beginning 36 poles East of the 1/2 Mile corner between Sections 19 & 20 thence running to a point 40 poles West of the Corner to Sections 17. 18. 19. & 20 thence East with Section line to the 1/2 Mile Corner between Secs 19 & 20 thence to the center of Section 20 thence West to the beginning the E 1/2 of S.E qr. of Section 18 the E 1/2 S W qr of Section 20 the W 1/2 N E. qr of Section 20 and the W 1/2 N. W. qr of Section 17 all in Township 9 S R 10 East

Share No 3 Aliy Reid portion viz
W 1/2 S.E. qr Sec 12 the N. W S.W. 1/2 E 1/2 S.W. Sec 12. in Township 8. S. R. 9 East The S E qr of Section 12 township 9. S. R 9 East. N. W. qr section 18 The W 1/2. S. E. qr Section 7 the W 1/2 N. E. qr Section 18 all in Township 9. S. R. 10 E also in Lots in Shawneetown No 1021. 1022 & 1024

Share No 4 Rebecca Bowles portion viz
The whole of the South West qr of Section 18 except 23 acres on the East side allotted to John Reid The ~~W~~ N. W. qr of Section 7 township. 9. S. R. 10 East The N 1/2 of section 12 Town 9 S. R. East E 1/2. N. E. qr & S. W. qr of the N E qr Section 11 Township 9. S. R 9 East and The east 1/2 S. E. Section 1 Township. 9. S R 9. East also in Lot in Shawneetown No 847

You Commissioner further report that they then proceeded to assign to said Margaret Widow & Relict as aforesaid her dower in said premises as follows. to wit Part of the North East quarter of section 19 & part of North West quarter of section 20 beginning 36 poles East of the half Mile Corner on the section line dividing Sections 19 & 20. thence to a point 40 poles west of corner to Sec 17. 18. 19 & 20 thence W with with Section line to the 1/2 Mile Corner ~~in Middle of Sec 19~~ ~~thence~~ between Sections 18 & 19 thence south to the corner in middle of Sec 19 thence East to the place of beginning also the west 1/2 of South East ~~quarter~~ of Sec 18 also 23 acres off of the East side of the South West quarter of Section 18 all of said

[8547-44]

Lands being in Township 7 S. of Range 10 East as before set fourth in Share No 1 allotted to said John Reid.

Your Commissioners made said assignment in the manner set fourth for the reason widow desired the same to be set ~~fourth for the reason~~ out to her in home stead & such ~~[illegible]~~ portion of Land thereto adjoining as he might lawfully be entitled to and to Equalize Share No. 1 which has situated upon it the old homestead and out buildings together with the Brick house barn. stable &c which was built thereon by Stephen R. Rowan. One of the tenants in Common of said premises with Shares No 2. 3. & 4. Your comr are of opinion that said assignment of dower as aforesaid is under all the Circumstances the most Equal which could be made, for the further reason that the said widow desired the sd partition and assignment so to be made that her Son John might still continue to live with her. he needing his Care and attention by reason of being Blind and they therefore Charged Share No. 1 exclusively and solely with said widows dower the said John Reid & Margaret consenting thereto. all of which is submitted & asked to be allowed & entered of record given under our hands and seals

D. P. Wilbanks {Seal}
John T. Walters {Seal}
E. J. Nicholson {Seal}

Filed 2nd June 1851 J. E. Hall. clerk

Order of court 10th Oct 1851

Andrew McCallen Guardian &c
v
Margaret Reid et. al.
} Petition for Partition and assignment of dower

On this day came the defendants Joseph Bowles & Rebecca Bowles and filed their exceptions to the report herein and also came the complainant and moved the Court that the clerk of this court be ordered to amend the original order of partition as to conform in discription of land & lots as described in the amendedent petition which petition was amended by order of the Court at the June term of this Court 1850 which motion was by the Court sustained and Clerk ordered to amend said order of partition

# Exceptions to Report

September Term of the Fayette Circuit Court AD 1851

Andrew McCallen Guardian &c
v
The heirs of John Reid Deceased

To the Hon S. Scott Marshall Judge of the 12th Judicial Circuit Court in Chancery Siting

Your Petition Joseph Bowles and Rebecca Bowles his Wife (late Rebecca Reid) would respectfully represent, that they have a just and Lawfull Claim against the Estate of Alexander Reid deceased Administrator of James Reid dec'd for a Large sum of Money, for which they are now ~~proceeding~~ prosecuting a suit in this Honorable Court to which your Honor is Refered that the estate of said Alexander Reid deceased will be unsufficient to pay and satisfy said demand, as they are informed and believe that said John Reid deceased is the security for said Alexander Reid on His Administration bond, and your Petitioner expect to have to resort to the real estate of said John Reid deceased for payment and satisfaction of a large portion of said demand.

Your Petitioner also being intitled to one fourth part of the real estate of said John Reid deceased have been at some trouble in carefully examining into the proceedings herein, and from the paper herein filed they find that in the Petition for Partition, a part of the real estate prayed to be devided in lots No 847, 1021, 1022, 1024, 1027, and 1182 making in all six town Lots in Shawneetown

That on the Copy of the order made by this Honorable Court at the January term thereof 1850 for partition, and which your petition suppose should have been strictly persued by said Commissioner there is to be found only lots No 1027 and 1182, leaving out entirely the other four lots claimed in said petition for partition.

[8547-45]

That from the report of the commissioners herein filed, it appears that they partitioned and set off to the heirs lots No 847, 1021, 1022, and 1024 neither of which are to be found on the copy of the order of this Honorable Court herein filed as aforesaid

And the petition further represents that it appears from the said papers herein that Lots No 843 and 844 are wholy omited as a part of the estate of the said John Reid deceased, although your petition say that they are advised and believe that said last mentioned Lots were bought from the united states and patented by the said John Reid, and that it does not appear from any evidence in the recorders office in and for this county, or else when known to your petitioner that said lots were ever conveyed away by said John Reid deceased, although your petition allege that they have made search to find such conveyance if any such exist and they further allege that a valuable brick house is situated upon one or both of said Lots

Your petitioner would therefore for the many inconsistances, contradictions and manifest inaccuracies appearing of record herein, and otherwise thereby tendering your petitions right as one of the heirs of said estate uncertain and hazardous Except to the report of said Commissioner herein filed, and pray that the same may not be received by this Court and spread on the Records herein.

And that all further proceedings herein be suspended untill said suit now pending in this Honorable Court, for the recovery of petitioner claim against the estate of said Alexander Reid deceased is determined and satisfied; and thereby a number of suits and heavy costs expences will be avoided, and in the mean time that the said complainants in this cause proceed to have the manifest errors and inaccuracies herein corrected and amended if it is possible for him to do so, so that the order of partition when hereafter made may embrace all the real estate and no more

of the said John Reid deceased after all the debts and liabilities of said estate are fully paid and satisfied thereby securing the right and interests of each of the heirs. and rendering their estate herein secure from future and endless litigation. and that all such other and further relief be granted. your Petition as to equity and good conscience may appear.

And your petitioner will ever pray &c.

Joseph Bowles and Rebecca Bowles

Personally appeared Joseph Bowles and made oath that the matters and things herein stated from his own knowledge are true. and that so far as the ~~Stated~~ from the information of theirs he believes them to be true

Subscribed and sworn to before me this 9th day Oct 1851

J. E. Hall Clk

Order of Court 20th Oct 1851

Andrew McCallen Guardian for James A Reid
v
Margaret Reid Widow. Stephen R. Rowan Nancy Ann Rowan Joseph Bowles Rebecca Bowles & John Reid Jr.

Bill for Partition & assignment of Dower

On this day again came the Commissioners & present their report which together with the exceptions filed herein by the defendants Joseph Bowles & Rebecca Bowles. as also the Record of this Cause being now before the Court. and duly considered it is ordered that said report be disallowed.

[8547-46]

## Order of Court 5th Augt 1852

McAndrew McCallen Guardian &c
v
Margaret Reid et. al. } Bill for Partition
Assignment of Dower

On this day came the Complainant by Olney his solicitor and on his motion it is ordered that the defendt heretofore taken in this cause be set aside and all decree heretofore rendered upon the petition filed herein be cancelled and void and that this cause be reopened and the death of James Alexander Reid being suggested it is ordered that his heirs at Law to wit Mary Ann McCallen his mother, Josephine McCallen, Andrew J. McCallen and Mary McCallen his brother & sisters be made parties to this suit and leave is given to the complainants to amend their petition herein. And that this cause be continued.

## Order of Court 4th January 1853

Andrew McCallen Guardian &c
v
Margaret Reid et. al. } Bill for Partition

ordered that this cause be continued untill the next term of Court

## Order of Court 6th Augt 1853

Andrew McCallen Guardian &c
v
Heirs at Law of John Reid } Bill for Partition

Ordered that this cause be continued untill the next term of Court

## Order of Court 20 Oct 1853

Andrew McCallen Guardian &c
v
Heirs at Law of John Reid } Bill for Partition

On this day came the Complainant and suggest the death of James Alex

Reids one of the parties to this Cause & on his motion leave is given to Complainants to amend the bill herein

Order of Court 21st October 1853

Andrew McCallen Guardian &c
v
The widow and Heirs at Law of John Reid Decd. } Pet. for Part.

On this day came the Complainant and filed his amended Bill and on his motion It is ordered and decreed that the order and decree of partition made at the Dec. Term 1850 be amended set asside and Vacated and it is further ordered that the defendants to this Cause rule to answer by Wednesday morning next

Amended petition

State of Illinois
Gallatin County } Of the october term of the Gallatin Circuit Court AD 1853

A Petition for Partition of the Lands of which John Reid Sr. died seized

The amended petition of Andrew McCallen et al. filed by leave of the Court first herein had and obtained

Humbly Complaining unto your Hon S. S. Marshall presiding Judge of the Circuit Court in & for the said County of Gallatin and State aforesaid your Petitioners Andrew McCallen Mary ann McCallen and Josephine Andrew and Mary McCallen minors who sue by their father and next friend Andrew McCallen would respectfully represent and show = That John Reid Senior deceased late a resident of said County and State in his life time and at the time of his death, was seized and Lawfully possessed in fee simple, by purchase from the Government of the United States of the following tracts of Land and town Lots, to wit The N.W. qr. S.W. qr and the W½ S.E. & E½ S.W. qr. of Sec No 12 in Township No 6. S. R. 9 E also the E½ of the S.W qr. and the W½ of the N.E qr and the N.W. qr of sec 20. T. 7. S R. 10 E.

Affidavit of death of Wm Reid & post mark copied at end of this

[5547-47]

also the N. W. qr of Fractional Section 7 in T 9. S. R 10 E. and the West 1/2 S. E. qr Sec 7 T 9 S R 10 E. also the N E qr of Sec 18 T 9 S R 10 E also S E. qr and the S W. qr and the W 1/2 of the N W qr - and the E 1/2 of the N W qr and the W 1/2 of the ~~the~~ N. E. qr of sec 18 T 9 S R 10 E. also the N E qr and S E. qr - and the N. W. qr of Sec 12 T 9 R 9 E. also the E 1/2 of the S E qr of section 1 T 9 S R 9 E also the E 1/2 of the N E qr and the S W qr of the N E qr of Sec 11 T 9 S R 9 E also the E 1/2 S W Sec 12 T 8 R 9 also the W 1/2 N W Sec 17 T 9 R 10 - and also the following described Town Lots lying and being and situate in the said County and State, and known and described on the town plat of the town of Shawneetown. as in ~~Lots~~ Lots Numbers 1021. 1022. 1024 and 847 - All of which above described tracts of Land are lying being and Situate in the County of Gallatin and state of Illinois aforesaid all of which will more fully and at large appear by — reference to the title papers of said ~~[illegible]~~ John Reid Sr. dec'd. herewith Exhibited and prayed to be taken as parts of this petition Marked A. B. C. D. E. F. G. H. I. K. And being so seized he the said John Reid Sr. on or about the 8th day of February 1847 departed this Life intestate. leaving him surviving his Wife Margaret Reid - And the following Children and decendants of Children to wit his sons John Reid Jr his daughter Nancy Ann. intermarried with Stephen R Rowan His grand-daughter Rebecca. Who is the Child and sole heir of James Reid deceased. Son of the said John Reid Sr Dec'd and his grand son James A now deceased. Son of Alexander Reid deceased Who was the son of said John Reid Sr deceased - Your petitioner would further state that the said John Reid Sr deceased had an other son by the Name of William Reid. but Who as your petitioner is informed & believes and so charges. departed from this State more than Seven Years before the death of the said John Reid Sr and that from the time of his departure, hitherto he has not been heard of by any member of his family. or any one else to the knowledge of Your petitioner. Wherefore Your petitioners Charges the said William to have been dead before the death of the said John Reid Sr. and that he left no Widow, Child or Children or decendants of a Child ~~him~~ surviving. Your Petitioner would further show, that since the filing of the original bill herein. the said Rebecca has

intermarried with One Joseph Bowles - and also the Said James A Son and Heir of Said Alexander Reed deceased. Since the filing the Said Original Bill herein has departed this Life leaving No Widow. or issue heirs Surviving but leaving ~~heirs~~ Surviving Brothers & Sisters of the half Blood as follows Josephine Andrew and Mary McCallen and his mother Mary Ann McCallen and your petitioner in right - as husband of the Said Mary Ann McCallen his heirs at Law. Your petitioners further represent that the Said Nancy Ann Rowan & Stephen R Rowan. in right of the said Nancy Ann are entitled to One Equal individed fourth part the Said John Reid Jr to one Equal undivided fourth part. the Said Rebecca Bowles and the Said Joseph Bowles in right of the Said Rebecca to one Equal undivided fourth part. and the Said Mary ann McCallen Josephine Andrew & Mary McCallen & your petitioner in right of his wife are entitled to the remaining Equal undivided fourth part of Said lands above described. the Said Mary Ann McCallen taking two undivided Equal parts of the one undivided fourth part of Said land. Which ~~descended~~ descended to the Said James A Reid deceased Son of the Said Alexander Reid deceased. and his Said half Brothers and Sisters. taking the remaining two undivided fourth parts. of the Said undivided fourth part which decended to their Said half Brother James A Reid deceased in three Equal undivided parts between them - Your petitioner would further show that the Said Margaret Reid Widow of the Said John Reid Sr deceased is Entitled to dower in the Said Lands above described. that the Said Josephine Andrew and Mary McCallen are Minors under the age of 21 years. for ~~whom~~ Whom your petitioner sues as their next friend. Your petitioners would further show. that the Said parties interested in Said Lands are unable to make a Just and Equitable partition of Said Estate between them without the aid of this honorable Court which partition Your petitioners deems advisable in order that the rents of Said real estate may be more readily Collected by those Entitled thereto. Wherefore Your petitioner prays. that the ~~Sd~~ Said Margaret Reid Widow John Reid Jr Nancy Ann Rowan & Stephen R Rowan

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her husband. Rebecca Bowles & Joseph Bowles
her husband may be made defendants herein and
answer this petition without oath. their oaths being
Expressly waived And upon a Final hearing of this
Cause and the matters and things herein set forth
and alleged being sufficiently proved or taken for confessed
Your Honour may be pleased by decree of this Honorable
Court. to order adjudged and decree that a commission
for the assignment of the dower and the partition of
the said land issue from the said Court directed
to commissioners therein named. authorising and
impowering them to assign & set off the dower of the
said Margaret in said lands and make partition of
said lands above described. among those Entitled
there to as your Honor may assertain adjudge and
decree. according to quality quantity and value. thereof.
That the interests of the said persons in said lands
above described. may respectively be assertained and
declared by the order and decree of the Court herein.
That the dower of the said Margaret Reid as widow.
as aforesaid. be set apart to her. by meets and bounds.
with such order for the reversion thereof as the
Court may decree advisable. That in the Event of it
being impracticable to make such Equal partition and
such assignment of dower without manifest injury
to the rights and interests of said parties, then that
the Court make such decree for the payment of
money to make up any deficit. or in lieu of such
Dower as it may deem proper or that said Lands
may be sold & the proceeds of such Lands upon sale
thereof. may be divided between the said parties
according to their respective rights and interests therein
That the Court may grant such other and further
order as may be necessary to effect an Equal partition
of said lands and town Lots. and that the title papers
above Exhibited upon partition being made. may be
placed in the hands of those to whom they should
belong respectively and for such other and further
relief as to your Hon may seem meet in the premises
& the will ever pray as in duty bound &c.

State of Illinois } ss.
Gallatin County }

This affiant Andrew McCallen after being first duly sworn deposeth & saith that the matters & things as set forth in the foregoing petition so far as stated from his own knowledge are true & so far as stated from information of others he believes to be true, to the best of his knowledge and and belief

Andrew McCallen

Subscribed and sworn to before this 28th day October 1853
S. E. Hall clk

Filed 26th Oct 1853
S. E. Hall clk

Demurer

October Term of the Gallatin Circuit Court 1853

Andrew McCallen Guardian &c
v
Margaret Reid et. al.

Rebecca Bowles formerly Rebecca Reid, one of the Defendants to this petition saving and reserving to her self all benefits arising from the many Misstatements and Errors in the petition contained as amended and not admitting the same &c doth Demur thereto. and for cause of demurer sais 1st The Petition does not set forth and make Exhibits of the right and titles of the parties in interest

2nd Joseph Bowles has since the commencement of this suit intermarried with this Deft., and therefore has an interest in the premises in question and is not made a party to the petition

3rd The petition does not allege that the parties Compl and Defts have the right to Enter into the possession of the Lands in question. and untill the have such right partition Cannot be Decreed and because the Petition otherwise unsufficient.

Rebecca Bowles formerly Rebecca Reid & Deft to this petition

Filed 26th October 1853
S. E. Hall clk
[85447-42]

Order of Court 26th October 1853

Andrew McCallen Guardian
of the heirs at Law of
Alex Reid decd
v
Margaret Reid, Widow John Reid Jr
Stephen R. Rowan et. al. heirs at
Law of John Reid, Deceased

Bill for Partition

On this day came one of the defendants, Rebecca Bowles, ~~[illegible]~~ by her Solicitors, and demurs to the amended bill herein and the questions of law arising thereon being argued, the demurrer is sustained, and leave given to Complainants to amend their bill whereupon came the complainants and file their amended bill herein

Order of Court 27th October 1853

Andrew McCallen Guardian
or the Heirs at Law of Alexander
Reid, Deceased
v
Margaret Reid, Widow John Reid Jr.
Stephen R. Rowan et. al. heirs at
Law of John Reid Deceased

Bill for partition

On this day came the complainant, by his solicitors, and suggests to the Court the intermarriage of Rebecca Reid with Joseph Bowles, the said Rebecca being heir at Law of James Reid, Deceased, and on this motion of said Complainant the said Joseph Bowles is made a party defendant to this cause, and on the further motion of the said Complainants, the defendant to this bill are called to answer by Monday morning next

Answer &c.

of the October Special Term
of the Gallatin Circuit Court 1853

This respondent saving & reserving the benefits of all Exceptions to the Errors and mistatements in the said Petition contained, for answer thereto or as much thereof as is necessary to be answered unto for answer says That Whither John Reid Senr died seized of the lands & Lots in the petition described or not she neither admits nor denies but calls for the proofs. She denies that the complainants have a right as tenants in common with Respondent to an undivided one fourth of the said lands or to any portion thereof whatever.

She denies that Stephen Rowan in virtue of his Marrage with Nancy Ann Rowan formerly Nancy Ann Reid is Entitled to an undivided one fourth of the Lands and lots described or any other portion and as to Whither the said Margaret Reid is Entitled to dower in the premises or not she does not know nor admits and as to the said William Reid leaving the State and that he has not been heard of since by the family and is dead as charged in the petition she positively Denies it requires full proof of this fact. This respondant further answering submit that if this Honorable Court shall be satisfied that the said John Reid Senr died seized of the lands and Lots described in the said bill and that the said parties are entitled to the respective shares therein alledged. Yet the Court aught not to decree a partition of the same, because this respondent charges that the said John Reid Sen died seized of other real Estate to the value of $5000, to wit Lots No 843 and 844 in the town of Shawneetown Gallatin County Illinois with the appertainances. Which are wholly omitted in the s.d petition. This respondants further answering charges that she has a just demand, now subsisting & in full force to a large amount to wit $10,000 against Alexander Reid now deceased who was the administrator of James Reid deceased, that she is now prosecuting a suit for the same. That the Estate of the s.d Alexander Reid is insufficient to pay the same. That the said John Reid Senr was the security of the said Alexander on his bond as administrator of the said James Reid, and this respondent charges that she will be compelled to resort to the real estate of the said John to pay and satisfy her demand

[8547-50]

She charges further that Joseph Bowles with Respondent at the July Term of the Said Court 1853 filed their amended bill against S. Rowan as administrator of the Said John Reid Senr to account for his actings and doings as such administrator That the Said Rowan, Margaret Reid & Nancy Ann Rowan were made Defts to said bill That said Estate of the Said John Reid has never been settled by the Said Rowan and there are out standing debts against said estate which are due and in full force, and unsatisfied to the amount of between five and ten thousand dollars and of which all the parties to this petition have had due notice and this Respondent charges that the Land should not be sold or devided until the said Estate is finally settled

This Respondent further ~~further~~ charges that the said Defendants to their said bill for an account have filed their Cross bill and among other things have prayed for a partition of the same Lands in the said petition mentioned reference being thereto had will more fully appear

This Respondent further charges that the title to a portion of the real Estate of which the said John Reid died seized to wit Lots aforesaid 843 & 844 is now in Litigation in this Court between Stephen Rowan and Nancy Ann Rowan his wife, and the heirs of said John Reid and that the same is undetermined that the said Lots and dwelling and appurtenances thereon is worth something like $5000, and this Respondent submit that an equitable division cannot be made of the lands of the said John untill said suit is determined

And this Respondent having answered &c

Filed 31st October 1853

J E Hall Clk } Rebecca Bowles

Order of Court 7th Nov 1853

Andrew McCallen Guardian &c
v
Margaret Reid, Widow, John Reid & Stephen R. Rowan & al. Heirs at Law of John Reid, Decd. } Bill for partition

On this day came the Complainant, by his Solicitor and files his ——

Exceptions to the Answer of Rebecca Bowles, defendant herein. Which exceptions are by the Court sustained, with leave to the said defendants to amend.

## Exceptions to Answer

Andrew McCallen & others
vs
Heirs &c of John Reid dec'd.

} On Petition for Partition in Gallatin Cir Court Oct Special Term 1853

The said complts Except to the Answer of Rebecca Bowles herein for the following reasons

1st Because she neither admits nor denies that John Reid died seized of the Lands & Lots in sd petition mentioned, & does not state whether she knows the fact or not.

2nd Because the Answer denies that Stephen R Rowan by virtue of his marriage with Nancy Ann Reid, is entitled one fourth of John Reid's Estate - When the said petition claims no such thing, but claims that Nancy Ann Rowan and Stephen R. Rowan her husband, in right of his wife are Entitled to 1/4

3rd Because it asks for partition not to be made for the reason that said respondent - claims that John Reid died seized of other Lot than those embraced in said petition without saying whether they have since been sold to pay Debts

and whither they were or not does not matter, for a part may be divided if required -

4th The same answer shows that there is now a suit pending in this court in which the title of the Lots so omitted to wit 843 & 844 is in litigation, and in this proceeding the court cannot decide upon a litigated title. & the Cotenants are not bound to wait the result of a protracted litigation about a part of the realty, before the can get the remainder Divided.

[8547-5]

5th Because the Answer asks the Court to stay this proceeding because sd deft has an unliquidated Claim against the Estate of Alix Reid dec.d as admr of Jas. Reid. & that the Estate of said Alix is not sufficient to pay such Claim. & that John Reid having been security on said Alix s.d admrs bond. she will have to resort to the realty of John Reid. which is in the nature of a plea in abatement. & no plea in abatement is allowed in this proceeding

6th Said Answer does not show that there not ~~that the~~ a sufficiency of personalty of the Estate of s.d John Reid to pay any claim she may Ever have upon it-

7th Because the answer sets up that there is a Cross bill of sd Rowan in the suit of Bowles & wife vs Rowan admr John Reid. asking also for a partition of these same Lands. & therefore asks these proceedings to be stayed which is only matter in abatement.

8th Because the answer asks this suit to be stayed for the reason that the Estate of sd John Reid owes debt. without saying whether there is not personalty enough to pay them.

9th Because it sets up that Rowan as admr of John Reid has not settled sd Estate. as a reason why this proceeding should be stayed.

Filed 1st November 1857 J E Hall Clk

Wingate & Freeman for Complts —

## Amended Answer

The amended answer of Rebecca Bowles to the amended bill of Mary McCallen in Andrew McCallen & Mary McCallen ~~and~~ Josephine Andrew & ~~an~~ =fants. by their next friend Andrew McCallen

This defendant not confessing &c but protesting &c and requiring full proof of each and every allegation in the petition herein to so much thereof as she is advised it is material for her to answer unto demurs that the real estate of

said John Reid dec'd is correctly set forth in said petition and Charges also that the said John died seized of In Lots in Shawneetown No 843 & 844 which she requires also to be inserted in said petition for partition Respondent also denies the right of said petition to a partition of the real estate of John Reid dec'd in this present proceeding because the defendants are summoned to answer Andrew McCallen as Guardian of Alix Reid Jr. dec'd and not as next friend of Josephine Andrew and Mary McCallen and also that by the amended petition therein the said Andrew McCallen prays a partition as next friend of his wife Mary ann & Children when she avers that the said Mary ann wife of the said Andrew McCallen is and was not a minor at the time of filing the said petition and finally respondent denies the right of Comitt to a partition as next friend of his children and now having answered &c prays to be dismissed &c

Filed 2d Nov 1853
J. E. Hall Clk.

Rebecca Bowles by
Marshall & al. Sol.s

## Exceptions to Amended Answer

Andrew McCallen & others —
v
Heirs &c of John Reid Dec'd

The said petitioners
Except to the amended Answers of Rebecca Bowles herein for the following reasons —

1st because sd respondent objects to this proceeding for for the reason that the defendants are summoned to Answer Andrew McCallen as Guardian of Alix Reid, and not as Nept friend of Josephine, Andrew & Mary McCallen — which does not matter as the record shows that said alix has died & said Josephine. Andrew & Mary and Mary Ann McCallen are his heirs, and as such have a right to join in this as Co complainants.

2nd Because it is objected in Sd amended answer that Sd McCallen prays partition as the next friend of his wife. When she was not a minor

3rd Because answer denies the right of Sd McCallen to pray partition as next friend of his Children.

4th Because the answer says the Land of John Reid are not correctly set fourth in said petition without showing wherein they are incorrectly set forth

Wingate & Freeman
for Complts.

Filed 2d November 1853.
P. C. Hall Clk.

Decree

Andrew McCallen Guardian of James Alexander Reid
vs
Margaret Reid, widow, John Reid Nancy Ann Rowan, Stephen R Rowan, Rebecca Bowles and Joseph Bowles heirs at Law of John Reid Decd

} Petition for Partition

On this day comes the petitioner, Andrew McCallen, as the husband ~~and~~ of Mary Ann McCallen and as the father and next friend of Josephine McCallen Andrew McCallen Jr. and Mary McCallen, minors who together with said Said Mary Ann McCallen, their mother, are sole heirs at Law of said James Alexander Reid, deceased, by his Solicitors, and files his exceptions to the amended ~~bill~~ Answer of the said Rebecca Bowles. Which exceptions are by the Court sustained, and it further ordered by the Court, that the Answer of the said Rebecca be and the same is hereby excluded, and that the Complainants amended petition herein be taken for confessed by the said Rebecca Bowles and on motion of Complainants the Adult defendants Stephen R. Rowan Nancy Ann Rowan, Joseph Bowles, Rebecca Bowles, John Reid & Margaret Reid, are now three times solemnly

Called and Came not but makes default. It is therefore Considered by the Court that the Complainants amended petition herein be taken for Confessed and this Cause comming on now for hearing upon the petitions, exhibits, and the affidavid of said Complainant, and the records of this Cause and the Court being now sufficiently advised in the premises, doth find, order, adjudge and decree—

First. That the following real estate described in the complainants petition herein, which belonged in fee to the said John Reid, deceased, in his life time and which descended to and vested in his heirs at law as set forth in the said Complainants petition, to wit

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| the N W 1/4 of S W 1/4 | Section | 12 | Town | 8 | Range | 9 | East |
| E 1/2, S W 1/4 | " | 12 | " | 8 | " | 9 | " |
| W 1/2, S E 1/4 | " | 12 | " | 8 | " | 9 | " |
| E 1/2, S E 1/4 | " | 1 | " | 9 | " | 9 | " |
| E 1/2, N E 1/4 | " | 11 | " | 9 | " | 9 | " |
| S W 1/4, N E 1/4 | " | 11 | " | 9 | " | 9 | " |
| N E 1/4, " | " | 12 | " | 9 | " | 9 | " |
| N W 1/4, " " | " | 12 | " | 9 | " | 9 | " |
| S E 1/4, " " | " | 12 | " | 9 | " | 9 | " |
| N W 1/4 Fractional | " | 7 | " | 9 | " | 10 | " |
| W 1/2, S E 1/4 | " | 7 | " | 9 | " | 10 | " |
| W 1/2, N W 1/4 | " | 17 | " | 9 | " | 10 | " |
| W 1/2, N E 1/4 | " | 18 | " | 9 | " | 10 | " |
| E 1/2, N W 1/4 | " | 18 | " | 9 | " | 10 | " |
| W 1/2, N W 1/4 | " | 18 | " | 9 | " | 10 | " |
| S W 1/4, | " | 18 | " | 9 | " | 10 | " |
| S E 1/4, | " | 18 | " | 9 | " | 10 | " |
| N E 1/4, | " | 17 | " | 9 | " | 10 | " |
| W 1/2 N E 1/4 | " | 20 | " | 9 | " | 10 | " |
| N W 1/4, | " | 20 | " | 9 | " | 10 | " |
| E 1/2, S W 1/4 | " | 20 | " | 9 | " | 10 | " |

Also the following In Lots in the Town of Shawnetown, to wit No 1021 No 1022 No 1024 and No 847 all lying and being in the County of Gallatin and State of Illinois, be divided partitioned & set off by Metes and bound Agreeably to Quality

[6547-53]

and quality (Observing strictly as nearly as possible the legal subdivisions of said estate) among the respective heirs and according to their respective interests therein, as hereinafter set forth, if the same can be done consistantly with the interests of said estate, and without manifest injury to the value thereof, reserving to and setting apart to Margaret Reid, widow and relict, of the said John Reid, deceased, her reasonable dower in the said real Estate, according to the statute in such case made and provided;

Second, that the commissioners hereinafter appointed to execute this decree be first duly sworn as required ~~as legus~~ by the statute, that they proceed to go upon, survey and value said premises, and that they set off and assign to the said Margaret Reid, widow as aforesaid, one third part of said premises, including the homestead, for and during her life time;

Third That they divide, set off and allot to Stephen R Rowan and Nancy Ann Rowan, in the right of the said Nancy as daughter and one of heirs at law of the said John Reid deceased, one fourth part of the said premises; to John Reid, Jr, as son and one of the heirs at law of said John Reid, deceased, one fourth part of the said premises; to Joseph Bowles and Rebecca Bowles, in the right of the said Rebecca as sole heir and daughter of James Reid, deceased; who was the son and one of the heirs at law of the said John Reid, deceased, one fourth part of the said premises; to Mary Ann McCallen, formerly widow of Alexander Reid dec^d and mother and one of the heirs of James Alexander Reid dec^d, who was the son and sole heir of the said Alexander Reid, deceased, who was the son and one of the heirs of said John Reid, deceased and to Andrew McCallen Jr — Josephine McCallen and Mary McCallen three of the heirs and brother and sisters of the half blood of the said James Alexander Reid, dec^d sole heir &c as aforesaid one fourth part of the said premises;

Fourth, That the said commissioners subdivide and allot and set off the last recited fourth part of said premises as follows to wit ——

To Andrew McCallen and Mary Ann McCallen, his wife, in the right of the said Mary ann, two fourths of said fourth part; to Andrew McCallen Jr. one third of two fourths of said fourth part; to Josephine McCallen one third of two fourths of said fourth part; & to Mary McCallen one third of two fourths of said fourth part.

Fifth. That Joseph B. Barger, James C. Sloo and Davis N Hamilton, be and they are hereby appointed Commissioners to Execute this decree, and it is further ordered that they report their proceedings herein to this Court. Whereupon Came the defendant Joseph Bowles, and prays an appeal to the Supreme Court, which is granted, upon his entering into and filing bond within twenty days as required by Law, with William Coop and William Edwards as Securities.

## Appeal Bond

Know all men by these presents that we Joseph Bowles principal and William Edwards & William Coop security are held and firmly bound unto Andrew McCallen Mary ann McCallen, Josephine, Andrew and Mary McCallen in the penal sum of two hundred Dollars, for the payment whereof we bind ourselves our heirs &c jointly and severally firmly by these presents, sealed with our seals and dated this third day of November A.D. 1853

The consideration of the above bond is such, that whereas in a suit pending in the Circuit Court of Gallatin County Illinois, between Andrew McCallen, Mary ann McCallen, Josephine, Andrew and Mary McCallen as plaintiffs and Stephen R. Rowan, Margaret Reid Nancy Ann ~~Reid~~ Rowan John Reid Rebecca Bowles and Joseph Bowles as defendants, — being a proceeding for the partition of the real estate whereof John Reid Sen. died seized, the said Court at the special term thereof held in October 1853 made and entered a Decree requiring and appointing commissioners to speak the said partition to be made in said suit, according to the prayer of said plaintiffs —

[9647-54]

From which decree an appeal has been allowed to the Said Joseph Bowles one of the defendants aforesaid, to the Supreme Court, — upon his executing an appeal bond, with Said William Edwards and William Coops — as security, within 20 days conditioned according to Law. — Now if the Said Joseph Bowles shall duly prosecute said appeal and in case the decree aforesaid is affirmed shall pay all cost, interest and damages, which has been or may be adjudged against him said cause then this bond to be void, otherwise Remain in full force and effect.

Approved by me this
4th day of November 1853
R. R. Hall Clk

Joseph Bowles (Seal)
Wm Edwards (Seal)
William Coops (Seal)

Note the following affadavit of death of ~~[illegible]~~ James Alexander Reid and cost Bond were omitted by the Copyist at the proper place in this record and are herewith truly copied.
R. R. Hall Clerk

Affadavit,

Andrew McCallum Guardian of Jas. Alex Reid, vs Ruins &c of John Reid Senr. decd. } Gallatin Cir Court In Petition for Partition

Andrew McCallum by leave of the Court first had and obtained amends his said original petition herein and says that since the filing the same his said ward James Alexander Reid, has died an infant and intestate and that said James Alexander left him surviving his mother, Mary Ann McCallum, and his brother & sisters of the half blood, Josephine, Andrew, & Mary McCallum, children of the said Mary Ann

McCallen and this petitioner Andrew McCallen — your petitioner states that said James Alexander died left no further surviving nor any other brothers and sisters except those above named. He states that the said mother brother & sisters of the said James Alexr. are the sole heirs at law of him the said, James Alexander — and now your petitioner asks that the said Mary Ann McCallen and her said three children Josephine, Andrew, & Mary McCallen (who are infants) be allowed by their next friend & natural Guardian this petitioner, to join herein as co complainants with your petitioner, and they pray as in said original petition &c

Andrew McCallen

Subscribed & sworn
to before me this 21st
day of October 1853.
J Wall Clerk,

Filed 21 Oct 1853.
J Wall Clk,

Cert Bond,

Andrew McCallen & others
vs
Margaret Reid Widow &
Heirs of John Reid dec'd,

in the circuit
Court Oct 1853.

[p547-55]

I hereby enter myself security for cost in this cause and acknowledge myself bound to pay or cause to be paid all cost which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of this state dated this 16th Oct 1853.

Andrew McCallum

Filed 21 Oct 1853
V E Hall Clk

State of Illinois
Gallatin County }
I John V E Hall Clerk of the Circuit Court of said County do certify that the foregoing thirty four pages contain a full true and perfect record of the before styled cause and that the same is truly copied from the original record & files of my office

In testimony whereof I have hereto set my hand and affixed the seal of said Cir Court at Shawneetown this 25th day of August 1854.

V E Hall Clerk

Clerks & Shffs fees on 1st decree $19.80
Commissioners who made partition 29.00
Clerk Cir Court fees on 2d decree 12.00
Clk fee for Record fees S. Court 13.00

State of Illinois S.S.
In Supreme court
First Grand Division
November 1854.

Joseph Bowles Appellant
against
Andrew McCallen Guardian
for James & Rice
Mary Ann McCallen,
Josephine McCallen,
Andrew J. McCallen &
Mary McCallen Appellees

Appeal from
Macoupin Partition
in Sullivan
Circuit court.

And the said Joseph Bowles by his Attorney
comes and says, that in the proceedings
of the cause aforesaid, and in making

the order for partition, Manifest Errors have intervene to his prejudice, and he has set down the following causes or grounds of Error, Viz.

1. The court Erred in making the order for partition, because the original petition was not filed by any one having an interest in the estate proposed to be divided

Second; The court Erred in making the order for partition, because it appears that Andrew McCallen is interested in the estate as tenant by the Courtesy and is not made a party to the suit,

Third; The court Erred in making the order for partition, without deciding the question of fact as to the death of William Rice, or making any order in respect to his rights,—

Fourth; The court Erred in making the order for partition, upon the ~~facts stated~~ Allegations in the petition and amended petition, without evidence to sustain the facts, X

Wherefore the said Brooks prays that the order aforesaid, may be Reversed, set aside, and for nothing below.

Joseph Bowles
by W. W. Thomas
Atty.

7. The court erred in making any order as against the ~~Defendant~~ Appellant Joseph Bowles, because he had not been served with process nor notified of the pendency of the suit.

Joinder in Error
N. L. Freeman
Atty, for ~~Deft~~ Appellee

[8547-57]

28

Jos Bowles
vs
Record
from Collection

A McAllister &c

Appeal from
Collection

Filed 14 Nov 1854

F. D. Preston Clk

By N. Johnston D.C.

Prepaid $5.00

Bowles & ux

v

Rowen & al.

Per Curiam This was a proceeding at law for partition, in which a judgment of partition was rendered & commissioners appointed to make partition according to the judgment. The commissioners made the partition which they reported to the court which was set aside by the court. Whereupon the writ of Error was prosecuted, and the Error assigned is the order setting aside the report of the Commissioners, and the question is whether that was a final judgment to release which a writ of Error may be brought. We think it is not. Something more still remained to be done to complete the purposes for which the proceeding was instituted and which it was the duty of that Court to do. It was for that Court either to order those Commissioners to make another partition and report or to appoint other Commissioners until a report was obtained which the court could approve. ~~nor such an order~~ When an order approving the report is made then & not till then is the ~~cause~~ proceeding ~~of the~~ for partition determined. It may be that the judgment in partition which ~~first~~ determined the rights of the parties ~~might~~ was such a final order as might have been appealed from as were the cases in Kentucky reported

[3547-58]

to, but this court is not brought to review that order nor is it complained of the only complaint is of subsequent proceedings.

It is said that the only reason why the report of the Commissioners was set aside was because an injunction existed restraining the plaintiffs from proceeding in the Court of law. If such injunction existed it did not restrain the court but only the party who might by the permission of the court proceed at his peril although the Court of law may & usually well take notice of such injunctions & refuse to proceed in violation of them. So that if there ~~were~~ was such injunction the court might well refuse to act and if no such injunction existed or if it did exist & has been since dissolved by the judgment of this court the circuit Court will proceed to complete the partition by requiring a new report from the same Commissioners or by appointing others, who will be required to proceed. If the circuit court should set aside a report which was unexceptionable, & require a new partition & report, we do not see how the party can get any remedy in this court any more, than in the case where the circuit Court should improperly set aside a verdict and grant a new trial. The order requiring the defendant to join in Error must be set aside

[8547-57]

Joseph Bowles Ejectment
vs
Error
Thomas Galloway

McCallum,
Rowan &c

opinion by
Ch Jus Caton.

Filed Dec. 2. 1857.
N. Johnston Clk

STATE OF ILLINOIS, } ss. 1st Grand Division.
SUPREME COURT.

# THE PEOPLE OF THE STATE OF ILLINOIS,

**To the Sheriff of** Gallatin **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Gallatin County, before the judge thereof, between Andrew McCallen and Mary Ann McCallen his wife, and Josephine McCallen Mary McCallen and Andrew J McCallen Minors who sue by Andrew McCallen their Guardian, Plaintiffs; and Joseph Bowles & Rebecca Bowles his wife, Stephen R Rowan and Nancy Ann Rowan his wife, and John Reid

defendant; it is said that manifest error hath intervened to the injury of said Joseph Bowles and Rebecca Bowles his wife - Plaintiffs with John Reid and Stephen R Rowan and Nancy Ann Rowan his wife as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Andrew McCallen & Mary Ann McCallen his wife, and Josephine McCallen, Mary McCallen, and Andrew J McCallen Minors, who sue by their Guardian Andrew McCallen; and also that you give notice to the said John Reid, and Stephen R Rowan and Nancy Ann Rowan his wife

that they be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said ~~Defendants~~ in Error notice, together with this writ.

John D Caton

**Witness**, the Hon. ~~Samuel H. Treat~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this 30th day of October in the year of our Lord, one thousand eight hundred and fifty-seven.

Noah Davis

*Clerk of Supreme Court.*

[8547-48]

I John K McMurtry Deputy Sheriff of Gallatin County regularly appointed by James H. McMurtry late Sheriff of said County, who recently departed this life, do certify that I have executed this summons by reading the same to the several parties on this 4th day of ~~November~~ A.D. 1857.

Given under my hand this 4th day of November 1857

John K McMurtry dpt Shff

I John K McMurtry Deputy Sheriff of Gallatin County, regularly appointed by James H. McMurtry late Sheriff of said County, who recently departed this life, do certify that I have executed this summons by reading the same to the within named Andrew McCallen & Mary Ann McCallen his wife & Josephine McCallen, Mary McCallen & Andrew J. McCallen John Reid – Stephen R. Rowan and Nancy Ann Rowan his wife on this 4th day of November A.D. 1857 – Given under my hand November 4th 1857

John K McMurtry dept Sheriff J.K.

Joseph Bowles and Rebecca Bowles his wife – Complainants Attys
Stephen R Rowan and Nancy Ann Rowan his wife, Andrew John Reid
Defts
Sub Poe
Andrew McCallen and Mary Ann McCallen his wife, Anna Josephine McCallen, Mary McCallen Andrew Andrew J. McCallen
Minors who sue by their Guardian Andrew McCallen, Anna Ella Sophia Reid, Stephen R Rowan Nancy Ann Rowan his wife.

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Sheriff fees – $2.50

STATE OF ILLINOIS } ss. 1st Grand Division WRIT OF ERROR.
SUPREME COURT, } THE PEOPLE OF THE STATE OF ILLINOIS;

*To the Clerk of the Circuit Court for the county of* Gallatin GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Gallatin county, before the Judge thereof, between Andrew McCallen and Mary Ann McCallen his wife, and Josephine McCallen Mary McCallen and Andrew J McCallen Minors who sue by Andrew McCallen their Guardian plaintiffs, and Joseph Bowles & Rebecca Bowles his wife, Stephen R. Rowan and Nancy Ann Rowan his wife and John Reed

defendants it is said manifest error hath intervened, to the injury of the aforesaid ~~Defendants~~ Joseph Bowles and Rebecca Bowles his wife impladed with John Reed and Stephen R Rowan, and Nancy Ann Rowan his wife as we are informed by their complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Mount Vernon, in the county of jefferson, on the 1st Sunday after the 2d Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

John D Caton

Witness, the Hon. ~~WALTER B SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this

~~thirty~~ first day of October

in the year of Our Lord One Thousand Eight Hundred and Fifty- Seven.

Clerk Supreme Court.

[0547-1]

41

Joseph Bowles & Rebecca
Bowles his wife, Implds
and with John Rick,
and Stephen R Rowan,
and Nancy Ann Rowan
his wife

by } Writ of error

Andrew McCallen and
Mary Ann McCallen his
wife, and Josephine
McCallen, Mary McCallen,
and Andrew J McCallen
Minors who sue by their
Guardian Andrew
McCallen - and also
John Rick, Stephen R
Rowan and Nancy
Ann Rowan his wife

Issued & filed 3rd October
1857 N. J. Newton Clk

Joseph Bowles
vs
Andrew McCallen et al.

} Brief of Appellees.

1st Assignment of Error says the original petition was not filed by any one having an interest in the subject matter of the suit — it is filed by Andrew McCallen as Guardian for James A. Reid a minor — and the Statute (Rev. Stat. 399) provides that if a part of the claimants of the land sought to be divided, be minors, they may by their Guardians petition for partition, and it is mere matter of form whether it is in the name of McCallen as guardian, or in the name of the ward by his Guardian —

But even if that were improper, the amended petition is in the name of McCallen in his own right & his wife in her right, and of his children, infant heirs of Jas. A. Reid, dec'd, by their next friend, who was the ward represented in the original, and this would obviate the objection.

And the fact that Andrew McCallen is a party plaintiff in the amended petition, answers the 2nd assignment of Error, which is that he is tenant by the Courtesy and is not made a party to the suit.

But he would not have such an existing interest as would make him a necessary party, as tenant by the Courtesy, because that was a mere possibility, as the wife was still living.

[DS47-62]

3rd assignment of error is that the Court erred in making order for partition without deciding the question as to the death of Wm Read

— this is not error, as it is not necessary for the order to state each particular fact which was proven; but here the Court virtually decided the question by disregarding him in finding the right and respective interests of the parties in the land.

4th Assignment of error is that it was error to order a partition upon the allegations in the petition, & amended petition without proof

in the first place the order for partition was made upon the amended petition alone —

And in the second place, this is a common law proceeding, (Sowell vs. Menard, 1 Gil 43.) and being so, if the appellant wished to question the correctness of the finding of the Court upon the evidence, he should have preserved the evidence himself, in a bill of exceptions — It is not the duty of the appellees to preserve the testimony, as it would have been in a suit in chancery.

[8547-63]

5th Assignment of Error is that the Court erred in making an order against Joseph Bowles because he has not been served with summons, nor notified of the pendency of the suit.

It is true there was no service of process but by the petition & exceptions filed & sworn to by Joseph Bowles (on p. 13 of the record) he enters his appearance ~~to~~ in the proceedings.

Then it is a question whether the order appealed from was such a final order as would be the subject of appeal — or whether it is only an interlocutory order.

N. L. Freeman Atty
for Appellees.

[9547-44]

No. 28.

Joseph Bowles

vs. } Brief of Appellee

Andrew McCallen et al

Jacksonville 4 March 1857.

Noah Johnson Esq.

Dear Sir In making up the orders in the case of Bowles ship agt Rowan & Error from Gallatin (No 41.) the first order appoints Nelson Guardian Ad litem for infants - ~~the 2nd~~ and orders parties to join in Error.

The 2nd Nelsons motion to set aside the above order requiring him to join in Error. - The third, the judgment that the order be set aside,

4th The presenting the petition & moc for Reconsideration, and then comes the opinion of the court, - after copying that, there say. - Whereupon on motion of the plaintiff this cause is dismissed. which concludes the whole of the Record, - no judgment for costs is given, because the court decides agt jurisdiction, - Bowles pays the costs on his bill, - I suppose the $5 will about pay

I want all the above proceedings, opinion and orders copied for use in circuit court, - send the copy to Mr Bowles at Shawnestown and inform him

What is due for costs, so that he may pay it.

Very Respectfully
Yours &c
W M Thomas

Judge Thomas
Attendance to Decr.
14, 1857

No 28

Joseph Bowles
vs
Andrew M'Callum
8547

Appeal from Gallatin

Opinion by
Scott J.

Decree reversed and the petition dismissed without prejudice.

Copied & sent off

Boccles
v
McCallen } Appeal. – Partition case.

1. The statute regulating proceedings in Chancery (Revised Statute page 93) provides that Suits in Chancery may be commenced & prosecuted by infants either by Guardians or next friends

2 The statutes in relations to "Guardians & Wards", (Revised Statutes 265. Sec 4.) provides, that "Guardians by virtue of their office as such, shall be allowed in all cases to prosecute and defend for their Wards"
Sec 13 of the same act provides that "Minors may bring Suits in all cases whatever by any persons that they may select as their next friend"
Sec 8 of same act vests power in the Guardians to demand, sue for, and receive, all monies belonging to their Wards, from Execs & Admors, or any other persons &c

3. The statute on the subject of Partition Revised Statutes page 399. – Sec
It shall be lawful for any one or more of the persons interested, by themselves, if of full age, or by their Guardians if Minors, to present their petition &c
2 & 3 Sections require all persons interested to be made parties &c

[8647-47]

The statute on the subject of Abatement
Rev. Statute 45. Sec 12 provides that
proceedings for the partition of lands
shall not abate &c
If the interest passes to others, they may
by order of court be made parties &c
Sec 15 provides for making Codefendants,

Story.
Infants sue by next friend. Story 57.
Adults exempted as to suing by Guardian
Sec 58.
Sec 70 states the difference between infant
& married Women, — the latter must
consent, — the former cannot. —

1 Daniel 99.
Shows that infants sue by their next
friend, not by Guardian &c

The Record does not show that McCallen
was ever made party to the Suit, ~~or~~
~~any thing~~ — but his Wife and Children
were made parties, —

No process was ever issued against or
served upon Rowles. — The Record
shows that he, and his Wife appeared
and entered a motion to set aside
the Report of the commissioners
making partition, subsequent

to which, the order for partition and all proceedings had under it were set aside on motion of Pltff and subsequent to this, an order was made on motion of Pltff making Bowles a party, - but he never appeared after this, - nor had notice to appear,

Upon the facts stated in the petition the court would probably presume the death of Williams Price, - but the Pltff has made him a party to the suit, issued subpoena upon him, and published notice of the suit, -
It was the duty of the court therefore to have made some order in relation to him, so as to have perpetuated the evidence of his death, if such has been the proof, or to have ordered the property to be divided into five parts instead of four, -

Bowles
v.
McCallum

Argument.

Doctrine of Equitable
Recoupment,

Application impertinent.

Original petitioner,
Husband had an
Interest,

McCallum had an
Interest, — but he
asks no decree
except for Damages
& the bond, —

John Read ~~sues~~ dies
Jamie & the Grand
Children become entitled
but the mother not,

When original petition
was filed, McCallum
had no interest, — nor
had he any interest
Neither from by Guardian
Persons the Interests
at common law, —
not so in Chancery —

The proceeding practice
of the Chancellor of
City & common Law,

Suppose you sue three
Joint Judgment against
them, — no distress thus
of the case as to the
Third, — if the order
~~Should~~ Should Nicholas
Records death, it would
suffice, —

# In Supreme Court of Illinois.

## NOVEMBER TERM, 1857.

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*Joseph Bowles and Rebecca Bowles, impleaded with John Reid and Stephen R. Rowan and Nancy Rowan,*

AGAINST

*Andrew McCallan and Mary Ann McCallan his wife, and Josephine McCallan, Mary McCallan, and Andrew J. McCallan.*

ERROR FROM GALLATIN.

THE facts of this case are as follows: John Reid, Sen. died in 1847, seized in fee of a number of tracts of land and town lots situated in Gallatin county, leaving him surviving as his heirs and representatives:

Margaret Reid, widow.

John Reid, a son.

Nancy Ann Rowan, wife of Stephen R. Rowan, a daughter.

Rebecca Bowles, wife of Joseph Bowles, a grand-daughter.

Alexander Reid, a grandson, and son of Mary Ann McCallan, by her former husband, Alexander Reid.

The lands &c. therefore passed to four heirs, charged with the dower estate. Alexander Reid died an infant, and his mother and half-brother and sisters became entitled to his fourth of said lands, as his heirs.

The heirs of said Alexander Reid filed their petition for partition, and for the assignment of dower to the widow.

At the October term, 1855, Rowan and wife exhibited their bill in Chancery, stating that Rowan had made valuable improvements on part of the lands in controversy, and claiming compensation therefor, or that the lands improved by him should be set off to him in right of his wife, without valuing his improvements, and praying for an injunction.

The parties then agreed that the Judge should decide the application for injunction at the ensuing term of the Supreme Court, at Mt. Vernon, and that if he decided against that application, he should then make an order for partition, to be recorded as of the said October term of the Court. The Judge made no decision at Mt. Vernon, and both causes stood continued, until October, 1856, when the application for injunction was refused, and the bill was dismissed. Rowan appealed, to the Supreme Court, and by consent of the other parties the appeal was to be heard at November term, 1856, of said Court. The parties also agreed, that in case the decree in this chancery cause was reversed, such reversal should operate as an injunction against further proceeding in the matter of the partition.— This agreement was made in the chancery cause and entered on the record of the Court sitting in chancery.

Upon the dismissal of the bill in chancery, the Court in which the petition for partition was pending made an order for partition, and because it appeared that dower had already been assigned to Margaret Reid, the widow, that part of the prayer of the petition for the assignment of Dower was disallowed.

The order for partition required the whole of the lands &c. to be divided into four equal parts, having regard to quality and quantity, if the same could be done, and one-fourth thereof set off and assigned to each of the parties, viz: To John Reid one-fourth; Nancy Ann Rowan one-fourth; Rebecca Bowles one-fourth; and to A. McCallan and others, heirs of Alexander Reid, one-fourth. It then required the one-fourth set off to A. McCallan *et. al.* to be subdivided into five shares, two-fifths of which to be assigned to the said Andrew McCallan and Mary Ann

McCallan, in right of said Mary, and one-fifth to each of the other heirs of said Alexander.

The Court further ordered, that in estimating the value of those quarter sections of said land set off to Margaret Reid, for her dower, that the value of said dower estate should be taken into consideration.

The suit in chancery in favor of said Rowan was not heard by the Supreme Court in November, 1856, nor was the record of the case filed during that term of the Court.

In February, 1857, the Commissioners appointed to make partition proceeded to the execution of the order of Court, without objection from any of the parties, agreed upon a partition of the lands into four parts, as required by the order of Court, and decided that the fourth set off to McCallan and others could not be subdivided as required by said order, without prejudice or injury to the estate. Their report was made out and filed with the Clerk in February, 1857. At the May Term, 1857, of the Court, the Report was presented, and an order of approval and confirmation asked for, which was not granted, because of exceptions on the part of all the parties except Joseph Bowles and Rebecca Bowles—the cause was continued until November, 1857, when the Court, on hearing the exceptions and evidence overruled all the exceptions except the fourth, which was sustained, and the report was set aside; to this decision and judgment of the Court Bowles and wife excepted and have brought the case before this Court.

The exceptions to the report are:

*First:* That the partition made herein, is unequal in value among those having equal interests in the lands aparted.

*Second:* That the portion allotted by said commissioners, to Joseph Bowles and wife, is worth twenty-five hundred or three thousand dollars, more than the portion or share allotted by said commissioners to either of the other heirs, equal in interest with said Bowles and wife.

*Third:* That said commissioners have not aparted the said lands in said petition described, among the several heirs, according to their respective rights and interests, and in pursuance of the order of this honorable court, but have aparted as to some, and reported, that as to others a division could not be made without manifest prejudice to them.

*Fourth:* That at the time said partition was made by said commissioners, they had no authority to act in the premises, and that the order authorizing them to act, was stayed at the last term of this court herein, as will appear by the record remaining now in this court.

*Fifth:* That said commissioners, after they had divided said lands into four parts, which were unequal, assigned to some of the parties in interest their parts, and then as to two others, threw up heads and tails as to choice of the two remaining portions or parts, which was unfair and illegal.

In support of these exceptions, the parties read the following affidavits:

1st. O. Sexton, who states that he is well acquainted with the lands,—that the partition is not equitable; that on the lands set apart to Rebecca Bowles, there is a good brick house, a fine tract of land in cultivation, and all the running water on the tract, formerly known as the homestead, which, in his opinion, makes the

part set off to said Rebecca, (subject as it is said to be, to the widow's dower,) worth at least $1,000 more than the part set off to Nancy Ann Rowan, and he believes the same would sell for that much more money, if they were both put up for sale.

2d. The certificate of Allen H. Cook, not sworn to, who states that he was raised on the adjoining tract of land, upon which the Reid farm is situated,—he has examined the report of the commissioners, and fully concurs with the within affidavit of O. Sexton, that the division is unequal and unjust, in his opinion, there is no doubt.

3d The sworn statement of C. Lafferty and J. Jenkins, that they fully concur in opinion with O. Sexton.

4th. The affidavit of Richard Wiseheart, stating that he is well acquainted with the lands; has examined the report of the commissioners, and is clearly of opinion that the land set apart to Rebecca Bowles, (encumbered as it is with the widow's dower,) is worth at least $1,000 more than the parts of John Reid or Nancy A. Rowan.

5th. The affidavit of said S. R. Rowan, stating that he was informed, shortly after the report of the commissioners, that two of them, O. Pool and G. B. Barger, threw up heads and tails as to choice between Rebecca Bowles and Nancy Ann Rowan, and that Barger won first choice for Bowles.

The following affidavits were read to sustain the report of the commissioners.

William Coop, George W. Akers, John T. Walters and Joseph B. Barger. William Coop states that he is well acquainted with the lands; his opinion is that the 840 acres set off to A. McCallan, *et. al.* is worth more than either of the other shares; it is so situated that three good farms can be made and occupied thereon. There is no great difference in his opinion, between the value of the shares of John Reid and Nancy Ann Rowan; some persons would probably prefer one, and others the other. The part allotted to Rebecca Bowles, he considers of the least value, because of its being subject to the dower estate of Margaret Reid; but for that incumbrance, this part would be worth as much as the part of said Nancy Ann Rowan, and possibly might sell for more on account of the houses on it. He states that the whole of said lands are valuable for purposes of agriculture, and that differences of opinion would almost neccessarily exist among good judges of land, in regard to the value of the several parts. He does not believe that any three men selected for that purpose would be likely to make a more equitable division than has been made.

George W. Akers, states "that he has been acquainted with the lands for more than thirty-five years. His opinion is that the 840 acres, assigned to A. McCallan and others, is more valuable than either of the other parts. In respect to the other three parts, he thinks there is not much difference in the value, if all were alike free from incumbrance, and the parties had the right to immediate possession; but he regards the part assigned to Rebecca Bowles, as less valuable than either of the other parts, because of the dower estate of Margaret Reid, which, he is informed, includes the whole of said part. The said lands are all valuable for agricultural purposes, and men equally well acquainted with the parts, would be liable to disagree as to their value. He is of opinion, that a more equitable division would not likely be made by any three men who could be selected for that purpose; he was born and was raised near said lands.

John T. Walters states, that several years since, he acted as a commissioner, under an order of the Circuit Court of Gallatin County, to make partition of the lands in controversy. The lands were divided into four parts of equal value, in the opinion of the commissioners, having regard to the then situation of the improvements and condition of the country. He has examined the plat of said lands and division thereof, as represented on the township plats; the division differs from the one made, when he acted as commissioner, which may be accounted for, in the difference of the situation of the improvements; the difference in the orders of court, and the difference of opinion, which would likely exist, in regard to the value of the different parts of said lands. He is of opinion that the fourth set off to Rebecca Bowles, if free from the dower estate, would be more valuable than any other part, by $1,000: but as it is, he thinks the part assigned to A. McCallan, *et. al.* is nearly of equal value. The parts set off to John Reid and N. A. Rowan, are of about equal value, neither of them, in his opinion, are equal in value to the other two parts. The said lands are all valuable, and it would be difficult in his opinion, to get any three men to agree upon the precise value of each parcel,—has not examined said lands or improvements for several years, and does not know the present condition of the same.

Joseph B. Barger, one of the commissioners states: in making the division, the commissioners estimated the value of each tract of land, and then divided the same into four parts of equal value, according to their estimates. He does not remember the aggregate value, *fixed* upon the whole of said lands; but in his opinion, the whole of said lands at the time of the division, were reasonably worth *twenty-two thousand dollars.*

The errors assigned are:

*First:* The court erred in not making an order approving the report and confirming the partition.

*Second:* The court erred in setting aside the said report.

W. THOMAS.
J. OLNEY. } *For Plaintiffs.*

*Shawneetown, October* 29, 1857.

J. Bowles et al

v

A McAllen et al

Abstract

Mr. Thomas &
J Olney for Appellants

R S Nelson

M L Freeman

8547

Shawneetown Feby 14th 1855.

To the clerk of
Supreme Court at Mt. Vernon Ills.

Dear Sir,

You will much oblige me by forwarding to our Sheriff, an execution for cost, and including $8.00 for the record paid by me for same, in case "A. McCall, Guard v.s. Hon. Jno. Reid" in which I took an appeal — which resulted in the dismissal of the bill.

Yours Very Respectfully,

R. Boles.

[8547-74]

Attendants

Joseph Bowles et al v Andrew McCallen et al

James A. Reid an infant and ward of Andrew McAllen, being entitled to a part of the lands of his grand father John Reid - Andrew McCallen filed the petition in this case for a partition, in which he described himself "guardian of James Alexander Reid" Such steps were taken, as obtained a report of partition from commissioners, but before confirmation the ward died. Thereupon his death was suggested, and amended petition filed in which his heirs were plaintiffs. Another suggestion of the intermarriage of Rebecca Reid, one of the defendants, with Joseph Bowles was made and an order to made him a party. The former decree and report of Commissioners was set aside. No service was had upon Bowles. Upon this state of case a default was entered against all the defendants, and a decree entered that partition be made of the real estate.
Joseph Bowles brings the cause to this court and assigns errors

The errors are well assigned

Andrew McCallen had no interest in these lands, and could not sustain a petition for partition by virtue of a guardianship of an infant owner. It may be that he intended to file a petition for Jas A. Reid the ward - but if so he has mistaken the effect of the terms used. The same question upon the same description of the plaintiff was presented in Moore v Harris, 11 Ohio R 25 - where it was held to be mere description of the person, and did not present the ward as the party. In the same case the court say the statute has not authorised the guardian to sue in his own name. See Bradley v Amidon 10 Paige R 235

[8547-25]

This was not a suit by James A. Reid — but by A. McCallen himself. The death of the infant therefore did not authorise the substitution of his heirs as parties. McCallen had no rights in the lands as shown by the petition, and cannot sustain a suit for the petition

Neither is it competent to change the parties plaintiff, entirely by substituting in his place others who have rights

The proceeding was wrong in its commencement for want of a proper plaintiff, and we see no mode of correcting that error, but by dismissing the petition without prejudice as their names have been used, and so let a new suit be instituted. It is to be remarked that the decree was erroneous as to Jos Bowles for want of service The exceptions filed to former decree would not dispense with service in a new suit

He and Andrew McCallen are both proper parties now in respect that their wives have interests in the lands to be divided, and their husbands should be joined

Let the decree be reversed & petition dismissed without prejudice

[8647-26]

Jos Bowles v A. McCallen

Opinion by
Yeates J.

Issued

Copied

# In Supreme Court of Illinois.

## NOVEMBER TERM, 1857.

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W. THOMAS.
J. OLNEY. } *For Plaintiffs.*

*Shawneetown, October* 29, 1857.

[8547-8]

Bowles & wife
v
Brown
McAllen et al
Abstract
of pleff

41

Joseph
Bowles et al

vs

Andrew
McCullom et al

8547

Dismissed
Order made up - Copy
sent down - fee bill
made up. Letter sent with
these and this case
is Dismissed may be put
away in the files.

No 28

November 1854

Joseph Bowles
v
Andrew McCallum

Appeal from Baltimore

Opinion by
Scales J.

8547

Decree reversed and
petition dismissed
without prejudice