

8865

No. _____

Supreme Court of Illinois

Francis Shadrick

vs.

John Harness

71641  7

SUPREME COURT

Of the State of Illinois.

1st GRAND DIVISION.

June Term, 1868.

No. 7

Cliver, Page & Hoyna Stationers, Chicago.

LR

8865

1 To the Honorable the Circuit Court sitting
2 within and for the County of Crawford & State of Illinois
3 Your Orator John Harms of said County of
4 Crawford begs leave to represent unto your Hon-
5 orable Court that on or about the 5th day of January
6 A.D. 1853 one Isaac Lemuel Harms then living
7 but now deceased and your Orator was the
8 joint owners and tenants in common to the following
9 Real Estate Situate in the County of Crawford
10 and State of Illinois, and known and designated
11 as follows to wit: Lots No. 23) twenty three and
12 No. 24 twenty four in the Town of Hutchinson
13 and as recorded on the Original Plot of said Town
14 also all that certain piece or Parcel of Land
15 Situate in said County of Crawford aforesaid
16 and known as West fractional Section No. 3,
17 Three in Township No. 7 Seven North of Range
18 No. 11 Eleven West Containing 80 Eight acres of Land
19 Same and excepting therefrom that part of said
20 80 acres on which the Town of Boliver is
21 situated - also all that certain other tract
22 or Parcel of Land Situated in said County of
23 Crawford & State of Illinois and known and described
24 as the West fractional Section No. 34 thirty four
25 of Township No. 8 Eight North of Range Eleven
26 West Containing $346 \frac{25}{100}$ acres of Land more or less
27 Also all that certain other tract of Land Situated
28 in said Crawford County - and known as the
29 West $\frac{1}{2}$ of the North West $\frac{1}{4}$ Section Eleven
30 Township Seven North of Range Eleven West
31 80 acres of Land Also the South East $\frac{1}{4}$ of
32 the North East $\frac{1}{4}$ Section No. 10 Ten Town-
33 ship Seven North of Range Eleven West - Con-
34 taining 40 acres, Also all that certain other
35 piece or tract of Land Situated in said Crawford

36 County and being the same tract of Land deeded by John
37 Gilapp to John Harms & Isaac Lemuel Harms
38 on the first day of March A.D. 1839 and recorded
39 in the Records office of said Crawford County Illinois
40 in Book (C) pages 567 & 8 and being and known
41 as Lot No. 5 Sections No. 28 & 33 Township Eight
42 North of Range Elm West bounded on the East
43 West by Lands formerly owned by ^{William Gill} ~~John~~
44 ^{on the South by Lands formerly owned by Major} ~~and on the North by the Wabash River~~ - containing
45 about 65 acres of Land situate in said Crawford
46 County also all that certain other Tract of
47 Land situate in said Crawford County and known
48 and designated as north West 1/4 of South
49 West 1/4 Section No. twelve Township No.
50 Eight North of Range twelve West containing 40
51 acres the same being entered at Palestine Land
52 office in the name of Isaac Lemuel Harms
53 and which the said Isaac Lemuel Harms
54 received a certificate therefor and whom your
55 Orator prays may be made Defendant to
56 this Bill or Petition the said Eli C. Newlin
57 having now the legal title thereto, but has re-
58 ceived the consideration money in full, said
59 tract of Land is situate on the East side of
60 Lands owned by N. G. Morris and on the
61 South by Joel Barlow and being west of
62 Lands owned by John Barlow, being in
63 Township Eight North of Range Elm West
64 your Orator also states that all of said
65 Lands aforesaid are undivided and has
66 never been alloted as between the said Isaac
67 L. in his life time nor has the same been since
68 the decease of the said Isaac L. Harms
69 Your Orator also states that on or about

70 The 5th day of January A.D. 1853 said Isaac Sumner
 71 Harnuff departed this life intestate leaving a widow
 72 who survived him and whose name is Mary
 73 Jane Harnuff and whom your Orator prays may
 74 be made defendant hereto and whose place of
 75 residence is said Crawford County, also the following
 76 Children and Heirs at Law of the said Isaac L.
 77 Harnuff to wit: Francis Harnuff who is also
 78 a resident of said Crawford County, and an infant
 79 under the age of majority, also Isaac Harnuff,
 80 who is also an infant under the age of majority
 81 and whose place of residence is said Crawford County
 82 of Crawford. And your Orator prays that both
 83 the said Francis and the said Isaac may
 84 be made Defendants hereto and that a guardian
 85 ad litem may be appointed to defend their interests
 86 herein, and your Orator also states that said
 87 Mary Jane Widow of said Isaac L. would be
 88 entitled as her dower estate the one equal
 89 third of the one half of all of said real estate
 90 for and during her natural life, and the
 91 residue of said one half thereof would belong and
 92 in right of the said Francis and the said Isaac
 93 infants and Children and heirs at law of the
 94 said Isaac L. Harnuff deceased, and your Orator
 95 would be entitled to the equal one half of all
 96 the above described real estate according to
 97 quality and quantity, your Orator therefore
 98 prays the aid of the court - and that the said
 99 Lands and premises may be allotted and divided
 100 and for that purpose. Your Orator prays
 101 that Commissioners may be appointed by the Court
 102 and if the same cannot be divided and allotted
 103 as aforesaid that your honorable Court would
 104 Order the same sold, and with the proceeds

101 of said sale first pay the costs of this proceeding
 102 and the residue thereof may be divided allotted
 103 Equitably between the parties and that your
 104 Order may have such other and further and
 105 General Relief as is consistent with the
 106 Statute in such case made & provided
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Stetit sol
 for John Harnuff

113 State of Illinois

114 Crawford County

115 } Before the Clerk of the
 116 Crawford Circuit Court Illinois per=
 117 Sonally Came the above named John Harnuff
 118 who being duly qualified deposite and
 119 says that the matters & things set forth
 120 in the foregoing petition as for his own kno=
 121 wledge are true in substance and in fact
 122 and the several other matters & things
 123 as derived from the information of
 124 others he believes to be true and further
 125 he says not

126 Sworn and subscribed } John Harnuff
 127 to Before me this 24 January }
 128 A. D. 1853

William Barber Clerk

Filed in my office this 23^d January 1854 Wm Barber Clerk

132 John Harnuff
 133 vs
 134 Mary Jane Harnuff
 135 Francis Harnuff
 136 Isaac Harnuff
 137 infants under the
 age of majority and

Crawford Circuit
 Court - Illinois
 March Term 1854

Petition for Partition

139 Eli Newlin } 5th

140 We do hereby acknowledge the notice
141 of sundry of a petition for Partition filed
142 in said Circuit Court - 24th Jan-
143 uary 1854 signed & sealed by us this 1854

145 Benjamin Hurry (Seal)
146 Mary J. Hurry (Seal)
147 Isaac L. Harms by
148 Mary J. Harms
149 Eli Newlin (Seal)
150 James J. Stark
151 For Francis Harms
152 infant - living with me

153 John Harms
154 vs

155 Mary J. Harms
156 Francis Harms
157 Isaac Harms
158 Eli Newlin

Petition for Partition

159 On Motion to the Court - by W. H.
160 Sherritt Sol for Demandant it is ordered
161 that C. Constable Esq be and is hereby appointed
162 guardian ad litem for the infant - defendants
163 to wit: Francis Harms & Isaac Harms and
164 the said C. Constable Esq appointed in open
165 Court - and accepted said appointment and
166 for answer says that he cannot - gainsay
167 anything in said petition alledged know-
168 ing nothing about - the matters and things
169 therein contained But prays the Court
170 to protect the interests of his said wards &c
171 C. H. Constable
172 Guardian ad litem

180 John Harness

181 vs

182 Mary Jane Harness

183 Francis Harness

184 Isaac Harness

vs Eli Newlin

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Petition for Partition
Ordered that C. A. Constable
be and he is hereby ap-
pointed Guardian ad litem
for the infant Defendants herein

On this cause it appearing to the satisfaction
of the Court that the answer of the Guardian
ad litem had been filed and that all of
the Defendants acknowledged service of the notice
of the pendency of this ~~suit~~ Petitioners pe-
tition for partition and being three times
solemnly called came not but made default,
and the Court from the petition of the
Petitioner, answer of the guardian ad litem,
Exhibits and proofs adduced to the Court
do find that said Lands and premises are
held in common between said defendants.
Do therefore Order adjudge and decree
that said Lands and ~~premises~~ premises
to wit; Lots no 23 & 24 in the Town of
Hulsonville, also west fractional section no
3 T no 7 or R no 11 W 80 acres excepting that
part on which the Town of Bell Air is
situated also West fractional section no.
34 Town 7 Range 11 - $364 \frac{25}{100}$ also West $\frac{1}{2}$
of N. W $\frac{1}{4}$ section 11 Town 7 R 11 - 80 acres
else South East $\frac{1}{4}$ of N E $\frac{1}{4}$ section 10 Town
7 R 11 - 40 acres also 65 acres in section 28
& 33 T 8 R 11 also N W $\frac{1}{4}$ of S W $\frac{1}{4}$ Sec 12
Town 6 Range 12 W 40 acres shall be allotted
and divided as follows to wit: To the De-
mandant John Harness the equal one half

214 according to quantity and quality and to
 215 Mary Jane Harms widow of Isaac Lemuel
 216 Harms the equal one third of the one
 217 half for her during her natural life (as the
 218 widow of Isaac Lemuel Harms died) and
 219 the residue of said interest in the one half of
 220 all said lands and premises shall be equally
 221 divided between the said Francis Harms
 222 & Isaac Harms infant dependants and
 223 children and heirs at Law of said Isaac
 224 Lemuel Harms late of said Crawford County
 225 Ind and it is further ordered and decreed
 226 that James B. Trimble John D. Shepherd
 227 & Alexander Southland ^{Esq} and they be
 228 are hereby appointed Commissioners for the
 229 purpose of dividing and allotting said lands
 230 and premises according to this Order of the
 231 Court if the same can be done without doing
 232 manifest injury to the parties hereto.
 233 And shall the same be so Circumstanced that
 234 a division cannot be made then and
 235 in that case said Commissioners will
 236 make their report to this ~~Court~~ or
 237 the next term of this Court until which
 238 time this cause stands continued &c

239 Do the Honorable Justice Harlin
 240 Sole Judge of the 4th Judicial Circuit sit-
 241 ting as a Court of Chancery in and for
 242 the County of Crawford & Illinois

243 Your Petitioner James Harms Beso
 244 leave to represent to the Court that on
 245 the 23rd day of January 1854 he filed his
 246 Petition for Partition in your Honorable
 247 Court and that afterwards Lo wit; at
 248 the March term of the Circuit Court of

248 Said Crawford County 1854 an order was made
 250 appointing James B. Trimble John D. Shuphard
 251 and Alex Sutherland as Commissioners to de-
 252 vide and allot the Lands as set forth
 253 and described in said petitioners petition
 254 that ~~afterwards~~ the filing of said Original
 255 petition Mary Jane Harms widow of Lemuel
 256 Harms intermarried with Benjamin Hurry
 257 who your Petitioner prays may be also
 258 made defendant to this and the original
 259 petition. Your Petitioner also states that
 260 Isaac Harms one of the Original Defendants
 261 has departed this life intestate leaving Mary
 262 Harms now Mary Jane Hurry the only
 263 Parent who is entitled to two Shares or
 264 $\frac{1}{3}$ of Isaac Harms estate & the ^{following} said ~~family~~
 265 Brothers & sisters Lowit; the said Francis
 266 Harms and Albert Harms Winters &
 267 Henry Winters being Brothers of the said
 268 Isaac by the half blood who would each
 269 be entitled to $\frac{1}{3}$ of said real Estate be-
 270 longing to said Isaac Harms died.

271 Your Orator also states that said
 272 Albert Winters & Henry Winters are in-
 273 fants under the age of majority and
 274 that Benjamin Hurry is the guardian
 275 at law of said infants. Your Petitioner
 276 prays they all be made defts and
 277 that this be made supplemental to
 278 the original petition and in duty
 279 ever pray &c

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282 State of Illinois }
283 Crawford County }

284 } Before me the Clerk
285 of the said County Court Com John
286 Harniss and being sworn says that the
287 several matters stated in this his Supplemental
288 Bill from his own knowledge are true
289 and the several other things matters
290 as derived from the information of
291 others he believes true

292 Sworn & subscribed to } John Harniss
293 This 7th of August 1854 }
294 Sworn to and subscribed
295 Before me this 7th of August 1854
296 J. H. Still Clerk
297 Pro Tem County Court

298 John Harniss
299 as

300 Mary Jane Harniss now }
301 Mary Jane Henry }
302 Benjamin Henry }
303 Francis Harniss }
304 Albert Winters & }
305 Henry Winters }

Petition for Partition

306 In this cause it appearing from
307 the Petitioners original and supplemental
308 petition that since the filing of said
309 Original petition that said Mary Jane
310 Harniss widow of Lemuel Harniss deceased
311 has intermarried with one Benjamin
312 Henry who is also the guardian at Law
313 of Albert Winters and Henry Winters
314 who are infants under the age of majority
315 & the Court also finds that said Isaac
316 Harniss one of the Original Defendants since

317 the filing the original petition has departed
 318 this life leaving the said Albert Winters
 319 and Henry Winters his half Brothers also
 320 Francis Harniss his half sister who are
 321 each entitled to the one third of said
 322 Isaac Harniss's interest in said Lands
 323 and premises and the said Benjamin
 324 Henry and Mary Jane Henry his wife in
 325 right of his said wife in addition to
 326 the dower Estate is entitled to fifths
 327 of said Isaac Harniss deceased as the
 328 surviving parent of Isaac Harniss de-
 329 ceased & the said Francis Harniss
 330 half sister of said Isaac aforesaid
 331 to the one third of said Isaac deceased
 332 in addition to the one half, and that
 333 said demandant John Harniss is
 334 entitled to the equal one half of all said
 335 Lands & premises in his own right
 336 and the Court being fully satisfied
 337 by the acknowledgment of service of all the
 338 parties and being fully satisfied in the premises
 339 do therefore Order adjudge and decree that
 340 said James B Trimble John S. Shepherd &
 341 & Alexander Sutherland the same persons
 342 appointed at the last term of this Court
 343 act as the Commissioners & that they be
 344 governed in the division and allotment
 345 of said Lands & premises by this Order of
 346 the Court (hereby declaring void and
 347 setting aside so much of the former Order
 348 of this Court as comes in contact or disagrees
 349 with this Order of Court, and that said
 350 Commissioners shall allot and divide

351 Said Lands & premises according to the
 352 finding of the Court herein which said
 353 Land and premises are described as follows
 354 to wit: Lots no. Twenty three Twenty four
 355 in the City of Huntsville in said Grant-
 356 ford County also West fractional Section
 357 No. 3 Town No. 7 N of T 11 West 80 acres
 358 Excepting that part on which the Town
 359 of Bolivar is situated also West fractional
 360 No. 34 Town 7 Range 11 - 364 acres $\frac{25}{100}$ Also
 361 West half of North West four-th Section
 362 No 11 Town No 7 Range No. 11 - 80 acres
 363 also South West 1/4 of North East 1/4 Section
 364 No. 10 Town No. 7 Range No. 11 - 40 acres
 365 also 65 acres in Section No 28 & 35 - Town
 366 8 Range 11 also North West 1/4 of South
 367 West 1/4 Section 12 Town No. 8 North of
 368 Range 14 West - 40 acres Said Com missioners
 369 shall allot & divide the same agreeably
 370 to this Order of the Court - & if the same
 371 cannot be done consistently with the
 372 interests of those concerned then and in
 373 either case shall make report of their
 374 proceedings to this or next term of
 375 this court - &c

376 John Harness
 377 as
 378 Benjamin Henry
 379 Mary Jane Henry
 380 formerly Mary Jane Harness
 381 Albert Winters Henry
 382 Winters and Francis
 383 Harness

Petition for Partition

384 And now at this day comes the
 385 Commissionars who were appointed at

386 The last term of this Court to allot the dower
 387 Estate of Mary Jane Henry and to divide and
 388 partition the Lands & premises mentioned in
 389 the Order of the Court for that purpose, and
 390 make the following Report which is in
 391 the words and figures following to wit:

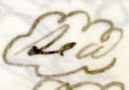


392 To the Hon Justice Harlan sole
 393 Judge of the Circuit Court of Crawford
 394 County and State of Illinois. The un-
 395 dersigned having been appointed Com-
 396 missioners in the cause of James Harp
 397 Plaintiff and Benjamin Henry and
 398 Mary Jane Henry his wife and others
 399 were defendants in petition for partition
 400 By leave to report that in accordance
 401 with the Judgment of the Court for that
 402 purpose we first were duly sworn and
 403 upon actual view of the premises, we
 404 first set apart to Benjamin Henry
 405 and Mary Jane his wife in right of
 406 said wife as her dower Estate and also
 407 in right of her as his at Law of Isaac
 408 Harp deceased the following Real Estate
 409 to wit, And being the north west qu-
 410 arter of the north west quarter of Section
 411 No. (11) Eleven Township No. 7, Range North
 412 of Range No. (11), Eleven West containing forty
 413 acres Also the east half of Lot No. 5 five
 414 in Section No. 28 & 33 in Township No. 8 eight
 415 North of Range No. 11 Eleven West containing 32 1/2
 416 thirty two and one half acres the above lands
 417 is set apart as the widows dower Estate
 418 and in fee simple therein forever as his
 419 at Law of Isaac Harp deceased.

420 And to the Demandant John Harness the
 421 West ~~half~~ fractional Section No. 34 thirty four
 422 in Township No. 8 Eight North of Range 11
 423 Eleven West $346 \frac{25}{100}$ acres. Also Lot No. 1 one
 424 of the west fractional Section No. 3 three
 425 in Township No. 7 Seven North of Range
 426 Eleven West Containing 80 acres. Also Lot
 427 No. 24 twenty four in the City of Hutchinson
 428 in ~~Said County~~ Crawford County. And to
 429 Francis Harmp the South East quarter of the
 430 North East quarter of Section No. 10 Ten in
 431 Township No. 7 Seven North of Range Eleven
 432 West Containing 40 acres. Also the West
 433 half of Lot No. 5 in Section No. 28 + 33 Tow
 434 nship No. 8 Eight North of Range No. 11
 435 Eleven West Containing $32 \frac{1}{2}$ thirty two
 436 and one half acres also the North West
 437 quarter of the South West quarter in Sec
 438 tion No. 12 Twelve in Township No. 8
 439 Eight North of Range 14 fourteen West
 440 Containing 40 acres. Also 18 acres of Land
 441 in the North West quarter of Section
 442 No. 7 Seven Township 7 Seven North of
 443 Range Eleven Also Lot No. 23 twenty
 444 three in the City of Hutchinson in
 445 Said Crawford County. Also to ~~Henry~~
 446 ~~Winters~~ Also to Albert Winters the
 447 North half of the South West quarter
 448 of the North West quarter in Section
 449 No. 11 Eleven Township No. 7 Seven North
 450 of Range 11 Eleven West Containing twenty
 451 acres. Also to Henry Winters the

452 South half of the South west quarter
453 of the north west quarter of section
454 N^o 11 Eleven Township 7 Seven North of
455 Range 11 Eleven West Containing twenty acres

456 The undersigned would respectfully sub-
457 mit the above having endeavored to dis-
458 charge their duty to the utmost of their
459 ability, and would state they have
460 taken up ^{sums} time say about 3 days each

461 Respectfully submitted signed our hands
462 and seals this 4th day of September 1854
463 1854

464 (signed) James B. Trimble 
465 A. G. Sutherland 
466 J. D. Shephard 

467 Which report is accepted and ap-
468 proved by the Court therefore it is
469 ordered adjudged and decreed by the court that
470 said Benjamin Henry and Mary J. Henry his wife
471 in right of said wife be entitled to land
472 and premises as set forth and described in
473 said report and that John Harness the
474 demandant be entitled to the lands and
475 premises mentioned in said Benjamin's
476 report and that Francis Harrell be entitled
477 to the lands and premises mentioned and
478 set apart to her in said report and
479 that Albert Winters be entitled to the
480 lands and premises set apart to him
481 in said report, and that Henry Winters
482 be entitled to the lands and premises
483 set apart to him in said report

493 And it is further ordered that the title
 494 to said Lands and premises aforesaid be
 495 vested in said parties respectively, agree-
 496 ably to said Commissioners report and
 497 lastly it is ordered that said Commissioners
 498 be allowed three dollars each and the
 499 costs of this proceeding be divided pro-
 500 rata according to the respective shares

491 State of Illinois

492 Crawford County

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I William Johnson Clerk
 of the Circuit Court of Crawford
 County State of Illinois
 hereby certify that the foregoing
 is a true full and correct
 copy and Transcript of
 the record of the foregoing
 Cause now remaining in
 my office

Given under my
 hand and official
 Seal at Robinson
 this 16th day of
 May A. D. 1866
 William Johnson Clerk

7 26

Francis Shadrick
formerly Harness

by

John Harness



Filed May 22 - 1867
A. Johnston cl
" "
Paid by Barlow \$500

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Assignment of Errors

The Plaintiff in error herein says there are manifest errors and informalities in the record and proceedings in this cause, of which the record is filed herewith; in this viz

1st

The Petition of Belcher is wholly insufficient to entitle the said Complainant to relief because of the many errors and misdescription of the real estate sought to be partitioned *See Comp 1858 Page 160 Sec 2*

2nd

The Court erred in rendering a decree without sufficient service of process upon the defendants *See Stats 1858 Page 161 Sec 6* *See Reports Vol 12 Page 150* *See once et al vs Whitney Gell 2nd vol Page 47* *McCull et al vs Fisher et al*

3rd

The Court erred in approving the report of the Commissioners without first causing to be filed the proper oath of said Commissioners *See Stat 1858 Page 161 Sec 9* *See reports vol 23 Page 47* *Foyd et al vs Malone et al 2nd vol 27 Page 119* *Tobbs et al vs Allen*

4th

The court erred in giving to Mary of Henry two shares or one fifth of the estate of Isaac Henry decd and also in giving to Albert Winters and Henry Winters each one third of Isaac Harner's ~~estate~~ Alls Statute 1854 Page 160 Section 1

5th

The court erred in decreeing the said lands to any of the parties in consequence of the want of service upon Albert Winters and Henry Winters or Guardian, Benjamin Henry who were made parties defendants by Petitioners Supplemental petition Alls reports vol 27 Page 72 *Wentzel non et al vs Kriser use &c*

6th

The court erred in decreeing a partition of the land as prayed for in the petition of petitioners see *Pittman & Secore*

7th

The court erred in decreeing to the said Mary of Henry her dower interests in said lands in fee simple Alls reports vol 27 Page 726 *Libb et al vs Allen*

8th 11

The ~~Decree~~ of the court is erroneous because the record discloses no evidence against the minor defendants upon which to sustain a decree of partition 4th Sellman Page 385 Ills Reports Vol 18 Page 77 Cavertal vs Fielden Do, 23 Page 36 Chaffin vs Heirs of Kimball & Vol 33 Page 182 Waugh et al vs Robbins

For these and many other errors manifest in said record the Plaintiff in error asks that proper process may issue and the said John Thomas may be made defendant thereto and be required to defend in this action.

J. P. Barton &
J. K. Wright
attys for Plff in error

Plaintiffs amended Brief
This being a Petition for assign-
ment of Dower and for partition
the Court should have set apart
to the widow as dower a life
estate in ~~said lands~~ in one
third of said land of which her
husband died seized; but the
Court decreed to her certain
lands in fee simple as her dower
in doing which there is manifest
error. 1111 Rept Vol 27 Page 126
Fibbs et al vs Allen

J. B. Barlow &
J. S. Slough
attys for Plff in
error

Francis Shadruck &c

vs

John Harrett

Abstract &
assignment of
Errors

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IN THE SUPREME COURT.

First Grand Division, State of Illinois.

JUNE TERM, A. D. 1867.

FRANCES SHADRICK, }
formerly HARNESSE, } ERROR TO CRAWFORD.
vs.
JOHN HARNESSE. }

ABSTRACT.

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

This petition shows that John Harness filed his petition for partition to divide certain real estate jointly owned by him and Isaac Lemuel Harness, deceased, which land is in the original petition described. (See Record, pages 1 and 2, lines 1 to 68 inclusive.)

And that Isaac Lemuel Harness died intestate, leaving Mary J. Harness, his widow, Frances Harness and Isaac Harness, his children, and heirs-at-law, who were infants. (See Record, page 3, lines 70 to 81 inclusive.)

And that Mary Jane Harness, as widow, is entitled to a dower interest in one third of one half of said real estate; and the residue of said one half would belong in right to Frances Harness and Isaac Harness, children and heirs-at-law of said Isaac L. Harness, deceased, and that John Harness was entitled to one half of all of said real estate. (See Record, page 3, lines 86 to 97 inclusive.)

And, also, a prayer for partition, or sale of said real estate; and general prayer for relief. (See Record, pages 3 and 4, line 97 to 112 inclusive.)

It further appears from the record that service was had upon the defendants, by a written instrument signed by Benjamin Henry, Mary J. Henry, Isaac L. Harness, by Mary J. Harness, Eli Newlin and James T. Stark, for Frances Harness, infant, living with me. (See record, pages 4 and 5, lines 132 to 152 inclusive.)

C. H. Constable was appointed Guardian, *ad litem*, for Isaac L. Harness and Frances Harness, minors, and filed his answer as guardian *ad litem*, praying the Court to protect the interests of said minors. (See Record, page 5, lines 153 to 179 inclusive.)

And it further appears from said record that after the answer of said guardian *ad litem* was filed, that, by order of the court, a default was taken against all of the defendants to said petition; and the Court finds that all of the lands are held in common between said defendants. (See record, page 6, lines 180 to 199 inclusive.)

The Court decreed that certain lands in said decree, described, should be divided according to the interests of the parties. (See record, pages 6 and 7, line 200 to 225 inclusive.)

By an order, or decree of the Court, commissioners were appointed to partition the lands in the order or decree, described, and make report to said court. (See record, page 7 line 225 to 238 inclusive.)

After which order a supplemental bill or petition was filed, suggesting the marriage of Mary J. Harness with Benjamin Henry, and, also, the death of Isaac Harness, a minor, and one of the defendants to the original petition, leaving Mary J. Harness, now Henry, his only parent, who is entitled to two shares of one fifth of Isaac Harness' estate, and the following brothers and sister, to wit: Frances Harness, Albert Winters and Henry Winters, brothers of said Isaac Harness, deceased, by the half blood, who would each be entitled to one third of said real estate, belonging to said Isaac Harness, de-

ceased, and that said Albert Winters and Henry Winters are infants, and that Benjamin Henry is their Guardian-at-Law. Petition prays that they all may be made parties. (See record, pages 7 and 8, lines 239 to 281 inclusive.)

The Court then finds that Mary J. Harness, widow of Lemuel Harness, deceased, has intermarried with one Benjamin Henry, who is guardian of Henry Winters and Albert Winters, and that they are minors, and that Isaac Harness, one of the original defendants, has departed this life, since the filing of the original petition, and that Albert Winters and Henry Winters are his half brothers, and Frances Harness, now Shadrick, is his half sister, who are each entitled to one-third of said Isaac Harness' interest in the said lands and premises, and the said Benjamin Henry and Mary J. Henry, his wife, in right of his said wife, in addition to her dower estate, is entitled to fifths of the estate of said Isaac Harness, deceased, as his surviving parent, and the said Frances Harness, half sister of said Isaac, to the one-third in addition to one-half, and that John Harness is entitled to one-half of all of the said lands and premises in his own right. (See record 9 and 10, line 298 to 335 inclusive.)

The Court empowers and instructs the commissioners appointed to partition the said lands according to the foregoing decree, in which decree is contained a description of lands to be partitioned. (See record, pages 10 and 11, line 336 to 375 inclusive.)

The commissioners appointed to partition said lands file their report. (See record, pages 11, 12, 13 and 14, lines 376 to 466 inclusive.)

The Court thereupon made a decree confirming the report of the commissioners and a division of said lands in said report described as per report of commissioners. (See record, pages 14 and 15, lines 466 to 507 inclusive.)

J. P. BARLOW, and
J. K. ALBRIGHT,
Attorneys for Plaintiff in Error.

ASSIGNMENT OF ERRORS.

The plaintiff in error herein says: There are manifest errors and informalities in the record and proceedings in this cause, of which the record is filed herewith; in this, viz:

1st. The petition of petitioner is wholly insufficient to entitle the said complainant to relief, because of the many errors and misdescriptions of the real estate sought to be partitioned.

2d. The Court erred in rendering a decree without sufficient service upon the defendants.

3d. The Court erred in approving the report of the commissioners, without first causing to be filed the proper oath of said commissioners.

4th. The Court erred in giving Mary J. Henry two shares, or one fifth of the estate of Isaac Harness, deceased, and also in giving to Albert Winters and Henry Winters each one third of Isaac Harness' estate.

5th. The Court erred in decreeing the said lands to any of the parties in consequence of the want of service upon Albert Winters and Henry Winters, or guardian, Benjamin Henry, who were made parties defendants by petitioner's supplemental petition.

6th. The Court erred in not decreeing a partition of the lands as prayed for in the petitions of the petitioner.

7th. The Court erred in decreeing to the said Mary J. Henry her dower interest in said lands in fee simple.

8th. The decree of the Court is erroneous because the record discloses no evidence against the minor defendants upon which to sustain a decree of partition.

For these and many other errors manifest in said record the Plaintiff in error asks that proper process may issue, and the said John Harness may be made defendant thereto, and be required to defend in this action.

J. P. BARLOW and
J. K. ALBRIGHT,
Attorneys for Plaintiff in Error.

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

FRANCES SHADRICK, }
formerly HARNESSE, } ERROR TO CRAWFORD.
vs }
JOHN HARNESSE. }

PLAINTIFF'S BRIEF.

1st error. Illinois Statute of 1858, page 160, section 2.

2d error. Illinois Statute of 1858, page 161, section 6. Illinois Reports, vol. 12, page 150. Sconce *et al.*, vs Whitney. Gilman, 2d vol., page 47. McCall *et al.*, vs Leshner *et al.*

3d error. Illinois Statute of 1858, page 161, section 9. Illinois Reports, vol. 23, page 47. Loyd *et al.*, vs Malone *et al.* And vol. 27, page 119. Tibbs *et al.*, vs Allen.

4th error. Illinois Statute of 1858, page 160, sec. 1.

5th error. Illinois Reports, vol. 27, page 22. Winkelman *et al.*, vs Kiser, use, &c.

6th error. See Petition and decree.

7th error. Illinois Reports, vol. 27, page 126. Tibbs *et al.*, vs Allen.

8th error. 4th Gilman, page 385. Illinois Reports, vol. 18, page 77; Car *et al.*, vs Fielden. Do 23, page 36. Chaffin vs Heirs of Kimball. And vol. 33, page 182. Waugh *et al.*, vs Robbins.

J. P. BARLOW and

J. K. ALBRIGHT,

Attorneys for Plaintiffs in Error.

In Supreme Court, State of Illinois,

FIRST GRAND DIVISION,

JUNE TERM, A. D, 1868.

FRANCES SHADRICK,
formerly HARNISS,
vs.

JOHN HARNISS.

} Error to Crawford.

PLAINTIFF'S AMENDED BRIEF.

This being a petition for assignment of dower, and for partition, the Court should have set apart to the widow, as dower, a life estate in one-third of the lands of which her husband died seized; but the Court decreed to her certain lands in fee simple, as her dower, in doing which there is manifest error. Ill. Rep., Vol. 27, Page 126, Tibbs *et al.*, vs. Allen.

J. P. BARLOW and

J. K. ALBRIGHT,

Att'ys for Pl'ffs in Error.

Shadrick

vs
Harris

Plffs Amended Brief

Filed 12th June 1868
Wm. Williams
Clerk

4 20/14 30 words)

STATE OF ILLINOIS
SUPREME COURT,

WRIT OF ERROR.

{ SS. THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of *Crawford* 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 *Crawford* county, before the Judge thereof, between

John Harness

plaintiff, and *Mary Jane Henry, Benjamin Henry, Francis Harness, Albert Winters and Henry Winters*

defendants it is said manifest error hath intervened, to the injury of ~~the aforesaid~~ *Francis Harness Shadrick - formerly Harness*

as we are informed by *her*

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 *first Tuesday in June*

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:

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

22^d day of *May*
in the year of Our Lord One Thousand Eight Hundred
and ~~Forty~~ *Sixty Six*.

Noah Johnston
Clerk Supreme Court.

267

Supreme Court,
1st Grand Division

Francis Chadwick -
formerly Harness -

Plaintiff in error
vs

John Harness -

Defendant in error

Mist of error

Served and filed
May 22. 1867
St Johnston City



In the Supreme Court of the
State of Illinois

First Grand Division

June term 1867

Frances Deady

formerly Harries

vs
John Harries

Plaintiff vs Defendant

Know all men by these presents
that I John Harries the defend-
ant in the above entitled
cause do hereby authorize and
empower J. S. Barlow Esq
to enter my appearance in the
said cause and do hereby waive
any and all service of process
upon me as such defendant
Witness my hand and
seal this 13th day of May
A. D. 1867

John Harries

~~7~~ 7

Francis Shaduck -
formerly Harness
re

John Harness

Filed ~~May~~ June 15
1867

N. Johnston Clk

State of Illinois
Circuit Court

Francis Shadrick
family Harms
vs
John Harms

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

Error to Circuit Court

Be it remembered that I
John Harms Defendant in the
above entitled cause do by these
present words authorize and empower
J. R. Albright to appear in said
Court at its June Term A.D. 1868
and confess Error in the record
in this cause and authorize the
reversal of the Decree in said
Cause so far as the same decrees
the Dower of Mary J. Harg to her
in fee simple

Witness my hand & seal this
the 27th day of May A.D. 1868

Attest
J. P. Baslow,

John Harms

(Seal)

Francis Shadwell
John Harms
Power of Attorney
to Convey

John Harms
R. A. D. Melbanks Ch

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Harris vs Harris

The Supreme Court requires
that an order be drawn & submitted
to them as to how much of the
decree below shall be revised.

The widow had a small fee
simple interest by death of child and
the remainder should have been given
or decreed to her as her dower in
her husband's land

Revised
as

White v

Wm. C. White
Anna White
& Lula White
by Brainerd
not paid
as

By Brainerd

In the Supreme Court
First Grand Division, State of Illinois
June Term 1867

Francis Shadricks
formerly Harness
vs
John Harness
Error to Crawford

The Clerk of said Court will please
issue the proper ~~scire facias~~ writ
in error in the above styled case
J. S. Barlow and
J. A. Long et al vs
for plea in error

In the court below the case stood
as follows
John Harness
vs
Mary J. Newry
Benjamin Newry
Francis Harness
Albert Winters
Henry Winters

7²⁶ -
Shadrach
vs

Garnes

Principo

[Faint, illegible handwriting]

[Faint, illegible handwriting]

[Faint, illegible handwriting]

Filed - May 22, 1867
A. Johnston Clk

IN THE SUPREME COURT.

First Grand Division, State of Illinois.

JUNE TERM, A. D. 1867.

FRANCES SHADRICK, }
formerly HARNESS, } ERROR TO CRAWFORD.
vs.
JOHN HARNESS. }

ABSTRACT.

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

This petition shows that John Harness filed his petition for partition to divide certain real estate jointly owned by him and Isaac Lemuel Harness, deceased, which land is in the original petition described. (See Record, pages 1 and 2, lines 1 to 68 inclusive.)

And that Isaac Lemuel Harness died intestate, leaving Mary J. Harness, his widow, Frances Harness and Isaac Harness, his children, and heirs-at-law, who were infants. (See Record, page 3, lines 70 to 81 inclusive.)

And that Mary Jane Harness, as widow, is entitled to a dower interest in one third of one half of said real estate; and the residue of said one half would belong in right to Frances Harness and Isaac Harness, children and heirs-at-law of said Isaac L. Harness, deceased, and that John Harness was entitled to one half of all of said real estate. (See Record, page 3, lines 86 to 97 inclusive.)

And, also, a prayer for partition, or sale of said real estate; and general prayer for relief. (See Record, pages 3 and 4, line 97 to 112 inclusive.)

It further appears from the record that service was had upon the defendants, by a written instrument signed by Benjamin Henry, Mary J. Henry, Isaac L. Harness, by Mary J. Harness, Eli Newlin and James T. Stark, for Frances Harness, infant, living with me. (See record, pages 4 and 5, lines 132 to 152 inclusive.)

C. H. Constable was appointed Guardian, *ad litem*, for Isaac L. Harness and Frances Harness, minors, and filed his answer as guardian *ad litem*, praying the Court to protect the interests of said minors. (See Record, page 5, lines 153 to 179 inclusive.)

And it further appears from said record that after the answer of said guardian *ad litem* was filed, that, by order of the court, a default was taken against all of the defendants to said petition; and the Court finds that all of the lands are held in common between said defendants. (See record, page 6, lines 180 to 199 inclusive.)

The Court decreed that certain lands in said decree, described, should be divided according to the interests of the parties. (See record, pages 6 and 7, line 200 to 225 inclusive.)

By an order, or decree of the Court, commissioners were appointed to partition the lands in the order or decree, described, and make report to said court. (See record, page 7 line 225 to 238 inclusive.)

After which order a supplemental bill or petition was filed, suggesting the marriage of Mary J. Harness with Benjamin Henry, and, also, the death of Isaac Harness, a minor, and one of the defendants to the original petition, leaving Mary J. Harness, now Henry, his only parent, who is entitled to two shares of one fifth of Isaac Harness' estate, and the following brothers and sister, to wit: Frances Harness, Albert Winters and Henry Winters, brothers of said Isaac Harness, deceased, by the half blood, who would each be entitled to one third of said real estate, belonging to said Isaac Harness, de-

ceased, and that said Albert Winters and Henry Winters are infants, and that Benjamin Henry is their Guardian-at-Law. Petition prays that they all may be made parties, (See record, pages 7 and 8, lines 239 to 281 inclusive.)

The Court then finds that Mary J. Harness, widow of Lemuel Harness, deceased, has intermarried with one Benjamin Henry, who is guardian of Henry Winters and Albert Winters, and that they are minors, and that Isaac Harness, one of the original defendants, has departed this life, since the filing of the original petition, and that Albert Winters and Henry Winters are his half brothers, and Frances Harness, now Shadrick, is his half sister, who are each entitled to one-third of said Isaac Harness' interest in the said lands and premises, and the said Benjamin Henry and Mary J. Henry, his wife, in right of his said wife, in addition to her dower estate, is entitled to fifths of the estate of said Isaac Harness, deceased, as his surviving parent, and the said Frances Harness, half sister of said Isaac, to the one-third in addition to one-half, and that John Harness is entitled to one-half of all of the said lands and premises in his own right. (See record 9 and 10, line 298 to 335 inclusive.)

The Court empowers and instructs the commissioners appointed to partition the said lands according to the foregoing decree, in which decree is contained a description of lands to be partitioned. (See record, pages 10 and 11, line 336 to 375 inclusive.)

The commissioners appointed to partition said lands file their report. (See record, pages 11, 12, 13 and 14, lines 376 to 466 inclusive.)

The Court thereupon made a decree confirming the report of the commissioners and a division of said lands in said report described as per report of commissioners. (See record, pages 14 and 15, lines 466 to 507 inclusive.)

J. P. BARLOW, and

J. K. ALBRIGHT,

Attorneys for Plaintiff in Error.

ASSIGNMENT OF ERRORS.

The plaintiff in error herein says: There are manifest errors and informalities in the record and proceedings in this cause, of which the record is filed herewith; in this, viz:

1st. The petition of petitioner is wholly insufficient to entitle the said complainant to relief, because of the many errors and misdescriptions of the real estate sought to be partitioned.

2d. The Court erred in rendering a decree without sufficient service upon the defendants.

3d. The Court erred in approving the report of the commissioners, without first causing to be filed the proper oath of said commissioners.

4th. The Court erred in giving Mary J. Henry two shares, or one fifth of the estate of Isaac Harness, deceased, and also in giving to Albert Winters and Henry Winters each one third of Isaac Harness' estate.

5th. The Court erred in decreeing the said lands to any of the parties in consequence of the want of service upon Albert Winters and Henry Winters, or guardian, Benjamin Henry, who were made parties defendants by petitioner's supplemental petition.

6th. The Court erred in not decreeing a partition of the lands as prayed for in the petitions of the petitioner.

7th. The Court erred in decreeing to the said Mary J. Henry her dower interest in said lands in fee simple.

8th. The decree of the Court is erroneous because the record discloses no evidence against the minor defendants upon which to sustain a decree of partition.

For these and many other errors manifest in said record the Plaintiff in error asks that proper process may issue, and the said John Harness may be made defendant thereto, and be required to defend in this action.

J. P. BARLOW and

J. K. ALBRIGHT,

Attorneys for Plaintiff in Error.

Frances Shadrich &c
vs;

John Harness

Error to Crawford

Abstract &
Assignment of errors

be made defendant (heir) and be required to defend in this action.

For these and many other errors manifest in said record the Plaintiff

no evidence against the minor defendants upon which to sustain a decree

3rd. The decree of the Court is erroneous because the record discloses
down interest in said lands in fee simple.

4th. The Court erred in decreeing to the said Mary J. Henry per
ed for in the petitions of the petitioners.

5th. The Court erred in not decreeing a partition of the lands as pro-
by petitioners' supplemental petition.

Winters, or Guardian, Benjamin Henry, who were made parties defendants
in consequence of the want of writs upon Albert Winton and Henry

6th. The Court erred in decreeing the said lands to any of the parties
Winters and Henry Winters each one third of Isaac Harness, estate.

7th. The Court erred in giving Mary J. Henry two shares or one
without first causing to be filed the proper oath of said commissioners.

8th. The Court erred in approving the report of the commissioners,
upon the defendants.

9th. The Court erred in rendering a decree without sufficient service
and estate sought to be partitioned.

10th. The petition of petitioners is wholly insufficient to entitle the said
to filed hereunder in this case, of which the record
contains in the record and proceedings in this case, of which the record

ASSIGNMENT OF ERRORS.

J. K. ALBRIGHT,

J. L. BARKLOW, and

inclusive.

port of commissioners; (see record, pages 14 and 15, lines 400 to 501
inclusive and a division of said lands in said report described as per re-

The Court thereupon made a decree containing the report of the com-
(see record, pages 11, 12, 13 and 14, lines 370 to 400 inclusive.)

The commissioners appointed to partition said lands file their report
and 1st line 300 to 325 inclusive)

contained a description of lands to be partitioned. (see record, pages 10
action the said lands according to the foregoing decree, in which decree is
The Court afterwards had instructed the commissioners appointed to par-
(see record 9 and 10, lines 320 to 330 inclusive.)

entitled to one-half of all of the said lands and premises in his own right,
land, to the one-third in addition to one-half and that John Harness is
his surviving part and the said Frances Harness, half sister of said
is entitled to title of the estate of said Isaac Harness, deceased, as
Henry, the wife, in right of his said wife in addition to her dower estate,
the said lands and premises, and the said Benjamin Henry and Mary J.
and the said Frances Harness, now Shadrich, in his full
the filing of the original petition, and that Albert Winters and Henry Win-

ter, one of the original defendants, has deceased, the 16th since
Henry Winters and Albert Winters, and that they are minors, and that
deceased, has intermarried with one Benjamin Henry, who is Guardian of
The Court then finds that Mary J. Harness, widow of Isaac Harness,
dower.)

all may be made parties. (see record, pages 7 and 8, lines 230 to 251 in-
the Benjamin Henry is their Guardian-at-Law. Petition here is that they
executed, and that said Albert Winters and Henry Winters are parties, and

IN THE SUPREME COURT.

State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

FRANCES SHADRICK, }
formerly HARNESSE, } ERROR TO CRAWFORD.
vs
JOHN HARNESSE. }

PLAINTIFF'S BRIEF.

1st error. Illinois Statute of 1858, page 160, section 2.

2d error. Illinois Statute of 1858, page 161, section 6. Illinois Reports, vol. 12, page 150. *Sconce et al.*, vs Whitney. Gilman, 2d vol., page 47. *McCall et al.*, vs Leshier *et al.*

3d error. Illinois Statute of 1858, page 161, section 9. Illinois Reports, vol. 23, page 47. *Loyd et al.*, vs Malone *et al.* And vol. 27, page 119. *Tibbs et al.*, vs Allen.

4th error. Illinois Statute of 1858, page 160, sec. 1.

5th error. Illinois Reports, vol. 27, page 22. *Winkelman et al.*, vs Kiser, use, &c.

6th error. See Petition and decree.

7th error. Illinois Reports, vol. 27, page 126. *Tibbs et al.*, vs Allen.

8th error. 4th Gilman, page 385. Illinois Reports, vol. 18, page 77; *Car et al.*, vs Fielden. Do 23, page 36. *Chaffin vs Heirs of Kimball.* And vol. 33, page 182. *Waugh et al.*, vs Robbins.

J. P. BARLOW and

J. K. ALBRIGHT,

Attorneys for Plaintiffs in Error.

Francis Thadrick &
as
John Harnes
Error to Crawford

Abstract Assignment
of Errors and Brief

8865

State of Illinois, West Grand Division.

JUNE TERM A. D. 1867.

Filed June 12th 1867
Book Johnson Clk

Francis Harnes

Accounts for Expenses in Error
J. R. ALDRIDGE
J. P. BARKOW and
107 32^d page 122. Wicks & eq^s vs Hopkins
Can eq^s vs Hopkins. Do 22^d page 20. Crafts vs Heber of Kershaw. And
21st error. 41st Gilman, page 20. Illinois, Heber vs vol. 12, page 11;
11th error. Illinois Heber vs vol. 11, page 120. Allen & eq^s vs Allen
41st error. 200 Petition and answer
21st error & eq^s
20th error. Illinois Heber vs vol. 27, page 22. Alderman & eq^s vs
41st error. Illinois garnish of 1826, page 100, sec. 1
Illinois & eq^s vs 21st