No. 8865

# 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

Culver, Page & Hoyne, Stationers, Chicago.

8865

1 To the Honorable the Circuit Court sitting
2 within and for the County of Crawford State of Illinois
3 Your Orator John Harris 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 Harris 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 Hutsonville
13 and as recorded on the Orignal 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 Save and excepting therefrom that part of said
20 80 acres on which the Town of Bolivar 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 discribed
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 Situate
28 in said Crawford County and known as the
29 West 1/2 of the North West 1/4 Section Eleven
30 Township Seven North of Range Eleven West
31 80 acres of Land Also the South East 1/4 of
32 the North East 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 situate in said Crawford

County and being the same tract of Land deeded by John
Silapp to John Harnsp & Isaac Lemuel Harnsp
on the first day of March A.D. 1839 and recorded
in the Recorders office of said Crawford County Illinois
in Book (C) pages 5 6 7 & 8 and being and known
as Lot No. 5 Sections No. 28 & 33 Township Eight
North of Range Eleven West Bounded on the East
& West by Lands formly owned by ~~[illegible]~~ William Gill
on the South by Lands formly owned by Mr. [illegible]
and on the North by the Wabash River - containing
about 65 acres of Land ~~situate in said Crawford~~
~~County~~ Also all that certain other Tract of
Land situate in said Crawford County and known
and designated as North West 1/4 of South
West 1/4 Section No. twelve Township No.
Eight North of Range twelve West Containing 40
acres the same being entered at Palestine Land
Office in the name of Isaac Lemuel Harnsp
and which the said Isaac Lemuel Harnsp
received a certificate therefor And whom Your
Orator prays may be made Defendant to
this Bill or Petition the said Eli Newlin
having now the legal title thereto, but has re=
ceived the consideration money in full, said
tract of land is situate on the East side of
Lands owned by R. G. Morris and on the
South by Joel Barlow and being west of
Lands owned by John Barlow, being in
Township Eight North of Range Eleven West
Your Orator also states that all of said
Lands aforesaid are undivided and has
never been allotted as between the said Isaac
L. in his life time nor has the same been since
the decease of the said Isaac L. Harnsp
Your Orator also states that on or about

the 5th day of January A.D. 1853 said Isaac Lemuel
Harris departed this life intestate leaving a widow
who survived him and whose name is Mary
Jane Harris and whom your Orator prays may
be made defendant hereto and whose place of
residence is said Crawford County. Also the following
Children and Heirs at Law of the said Isaac L.
Harris to wit: Francis Harris who is also
a resident of said Crawford County and an infant
under the age of Majority also Isaac Harris
who is also an infant under the age of Majority
and whose place of residence is said ~~Crawford~~ County
of Crawford. And your Orator prays that both
the said Francis and the said Isaac may
be made Defendants hereto and that a guardian
ad litem may be appointed to defend their interests
herein. And your Orator also states that said
Mary Jane Widow of said Isaac L. would be
entitled as her dower estate the one equal
third of the one half of all of said Real Estate
for and during her natural life. And the
residue of said one half thereof would belong and
in right of the said Francis and the said Isaac
infants and Children and heirs at law of the
said Isaac L Harris deceased. And your Orator
would be entitled to the equal one half of all
the above described Real Estate according to
quality and quantity. Your Orator therefore
prays the aid of the court - And that the said
Lands and premises may be allotted and divided
And for that purpose Your Orator prays
that Commissioners may be appointed by the Court
And if the same cannot be divided and allotted
as aforesaid that your honorable court would
Order the same sold. And with the proceeds

of said sale first pay the costs of this proceeding and the residue thereof may be divided allotted & equitably between the parties and that your Order may have such other and further and general relief as is consistant with the Statute in such case made & provided

Stecle Sol
for John Harness

State of Illinois
Crawford County } ss

Before the Clerk of the Crawford circuit Court Illinois personaly came the above named John Harness who being duly qualified deposeth and saith that the Matters & things set forth in the forgoing petition as for his own knowledge are true in substance and in fact and the several other Matters & things as derived from the information of others he believes to be true and further he says not

Sworn and Subscribed to Before me this 24 January A.D. 1853 } John Harness

William Barber Clerk

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

John Harness
vs
Mary Jane Harness
Francis Harness
& Isaac Harness
infants under the age of Majority and

Crawford Circuit Court Illinois
March Term 1854

Petition for Partition

3

Eli Newlin } 5-1-1

We do hereby acknowledge the notice & pendency of a petition for Partition filed in said Crawford circuit court 24th January 1854 Signed & sealed by us this 1854

Benjiman Henry (Seal)
Mary J. Henry (Seal)
Isaac L Harness by
Mary J. Harness
Eli Newlin (Seal)
James T. Stark
For Francis Harness
infant living with me

John Harness
vs
Mary J. Harness
Francis Harness
Isaac Harness
Eli Newlin } Petition for Partition

On Motion to the Court by W. H. Storrie Sol for Demandant it is Ordered that C. Constable Esq be and is hereby appointed guardian ad litem for the infant defendants to wit: Francis Harness & Isaac Harness and the said C. Constable Esq appointed in open Court and accepted said appointment and for answer says that he cannot gainsay anything in said petition alledged tending nothing about the matters and things therein contained But prays the Court to protect the interests of his said wards &c

C. H. Constable
Guardian ad litem

John Harness
vs
Mary Jane Harness
Francis Harness
Isaac Harness
& Eli Newlin

Petition for Partition
Orderd that C. A. Constable be and he is hereby appointed 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 pendancy of this ~~Suit~~ Petitioners petition for partition and being three times solemly called came not but made default, and the court from the petition of the Petitioner, answer of the guardian ad litem Exibits 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 ~~tenements~~ premises to wit; Lots No 23 & 24 in the Town of Aulsonville, also west Fractional Section No 3 T No 7 N 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 1/2 of N. W 1/4 Section 11 Town 7 R 11 - 80 acres also South East 1/4 of N E 1/4 Section 10 Town 7 R 11 - 40 acres also 65 acres in Section 28 & 33 T 8 R 11 also N W 1/4 of S W 1/4 Sec 12 Town 8 Range 12 W 40 acres shall be allotted and divided as follows to wit; To the Demandant John Harness the equal one half

according to quantity and quality and to
Mary Jane Harris widow of Isaac Lemuel
Harris the equal one third of the one
half for her during her natural life (as the
widow of Isaac Lemuel Harriss Decd) and
the residue of said interest in the one half of
all said Lands and premises shall be equally
divided between the said Francis Harriss
& Isaac Harriss infant defendants and
Children and heirs at Law of said Isaac
Lemuel Harriss late of said Crawford County
Decd And it is further Ordered and Decreed
that James B. Trimble John D. Shepherd
& Alexander Sonthorland be and they ~~be~~
are hereby appointed Commissioners for the
purpose of dividing and alloting said Lands
and premises according to this Order of the
Court if the same can be done without doing
manifest injury to the parties hereto.
And shall the same be so circumstanced that
a division cannot be made then and
in that case said Commissioners will
make their report to this ~~Court~~ or
the next term of this court until which
time this cause stands continued &c

To the Honorable Justin Harlan
Sole Judge of the 4th Judicial Circuit Sit-
ting as a court of Chancery in and for
the County of Crawford & Illinois

Your Petitioner John Harris Begs
leave to represent to the court that on
the 23rd day of January 1854 he filed his
Petition for Partition in Your Honorable
Court and that afterwards Lowit; at
the March term of the circuit court of

said Crawford County 1854 an order was made appointing James B. Trimble John D Shipherd and Alex Sutherland as Commissioners to divide and allot the Lands as set forth and described in said petitioners petition that afterwards the filing of said Original petition Mary Jane Harness widow of Samuel Harness intermarried with Benjiman Henry who your Petitioner prays may be also made defendant to this and the original petition. Your Petitioner also states that Isaac Harness one of the Original Defendants has departed this life intestate leaving Mary Harness now Mary Jane Henry the only Parent who is entitled to two Shares or 1/3 of Isaac Harnkes Estate & the said following Brothers & sisters Lo wit: the said Francis Harness and Albert ~~Harness~~ Winters & Henry Winters being Brothers of the said Isaac by the half Blood who would each be entitled to 1/3 of said real Estate Belonging to said Isaac Harness died.

Your Orator also states that said Albert Winters & Henry Winters are infants under the age of majority and that Benjiman Henry is the guardian at law of said infants. Your Petitioner prays they all be made Defts and that this be made supplemental to the Original petition and in duty ever pray &c

Merritt Atty for
John Harness

State of Illinois
Crawford County } Before me the Clerk
of the said County Court Come John
Harness and being sworn says that the
several Matters stated in this his Supplemen-
tal Bill from his own knowledge are true
and the several other ~~things~~ Matters
as derived from the information of
others he believes true } John Harness
Sworn subscribed to
this 7th August 1854
Sworn to and subscribed
Before me this 7th August 1854
J. H. Stail Clk
Pro tem County Court

John Harness
vs
Mary Jane Harnes now
Mary Jane Henry
Benjiman Henry
Francis Harness
Albert Winters &
Henry Winters } Petition for Partition

In this cause it appearing from
the Petitioners original and supplemental
petition that since the filing of said
original petition that said Mary Jane
Harnes widow of Lemuel Harnes deceased
has intermarried with one Benjiman
Henry who is also the guardian at Law
of Albert Winters and Henry Winters
who are infants under the age of majority
& the Court also finds that said Isaac
Harnes 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 Harness his half sister who are
321 each entitled to the one third of said
322 Isaac Harnesses interest in said Lands
323 and premises and the said Benjiman
324 Henry and Mary Jane Henry his wife in
325 right of his said wife in addition to
326 her dower Estate is entitled to fifths
327 of said Isaac Harness deceased as the
328 surviving parent of Isaac Harness de=
329 ceased & the said Francis Harness
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 Harness 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 asside 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

Said Lands & premises according to the finding of the Court herein which said Land and premises are described as follows to wit: Lots No. Twenty three Twenty four in the city of Hutsonville in said Crawford County also West fractional Section No. 3 Town No. 7 N of R 11 West 80 acres Excepting that part on which the Town of Bolivar is situated also West fractional No. 34 Town 7 Range 11 - 364 acres $\frac{25}{100}$ also West half of North West four-th Section No 11 Town No 7 Range No. 11 - 80 acres also south West 1/4 of North East 1/4 Section No. 10 Town No. 7 Range No. 11 - 40 acres also 65 acres in Section No 28 & 35 Town 8 Range 11 also North West 1/4 of South West 1/4 Section 12 Town No. 8 North of Range 14 West - 40 acres said Commissioners shall allot & divide the same agreeably to this Order of the court - & if the same cannot be done consistently with the interests of those concerned then and in either case shall make report of their proceedings to this or next term of this court - &c

John Harness
vs
Benjamin Henry
Mary Jane Henry
formerly Mary Jane Harness
Albert Winters Henry
Winters and Francis
Harness

Petition for Partition

And now at this day comes the Commissioners who were appointed at

the last term of this Court to allot the Dower Estate of Mary Jane Henry and to divide and partition the Lands & premises mentioned in the Order of the court for that purpose, and make the following Report which is in the words and figures following to wit,

To the Hon Justin Harlan Sole Judge of the Circuit Court of Crawford County and State of Illinois. The undersigned having been appointed Commissioners in the cause of Jane Harris Complainant and Benjiman Henry and Mary Jane ~~Henry~~ his wife and others were defendants in petition for partition Beg leave to report that in accordance with the Judgment of the Court for that purpose we first were duly sworn and upon actual view of the premises, we first set apart to Benjiman Henry and Mary Jane his wife in right of said wife as her dower Estate and also in right of her as heir at Law of Isaac Harris deceased The following Real Estate to wit, And being the north west quater of the north west quater of Section No. (11) Eleven Township No (7) Seven North of Range No. (11) Eleven West containing forty acers Also the east half of Lot No. 5 five in Section No. 28 & 33 in Township No. 8 eight North of Range No 11 Eleven West containing 32½ thirty two and one half acers the above Lands is set apart as the widows Dower Estate And in fee simple thirin former as heir at Law of Isaac Harris deceased.

And to the Demandent John Harness the West ~~half~~ fractional Section No. 34 thirty four in Township No. 8 Eight North of Range 11 Eleven West 346 $\frac{25}{100}$ acers. Also Lot No 1 one of the west fractional Section No. 3 three in Township No. 7 Seven North of Range Eleven West Containing 80 acers. also Lot No. 24 twenty four in the city of Aulsonville in Said ~~County~~ Crawford County. And to Francis Harnup the South East quater of the North East quater of Section No. 10 Ten in Township No. 7 Seven North of Range Eleven West Containing 40 acers. Also the West half of Lot No. 5 in Section No. 28 + 33 Township No. 8 Eight North of Range No. 11 Eleven West Containing 32½ Thirty two and one half acers also the North west quater of the South west quater in Section No. 12 Twelve in Township No. 8 Eight North of Range 14 fourteen west Containing 40 acers. Also 18 acers of Land in the North west quater of Section No. 7 Seven Township 7 Seven North of Range Eleven Also Lot No 23 twenty three in the city of Aulsonville in Said Crawford County. ~~Also to Henry Winters~~ Also to Albert Winters the North half of the South west quater of the North west quater in Section No 11 Eleven Township No. 7 Seven North of Range 11 Eleven West Containing twenty acers. Also to Henry Winters the

South half of the South west quater
of the north west quater of section
No. 11 Eleven Township 7 Seven North of
Range 11 Eleven West containing twenty acers
The undersigned would respectfully Sub-
mit the above having endeavered to dis-
charge their duty to the utmost of their
ability and would state they have
taken up much time say about 3 days each
Respectfully submitted Signed Our hand
and Seals this 4th day of September AD
1854

(Signed) James B. Trimble (Seal)
A. G. Sutherland (Seal)
J. D. Shepherd (Seal)

Which report is accepted and ap=
proved by the Court Therefore it is
Ordered adjudged and decreed by the court that
Said Benjamen Henry and Mary J. Henry his wife
in right of said wife be entitled to land
and premises as set forth and described in
said report and that John Harness the
demandant be entitled to the Lands and
premises mentioned in said Commissions
report and that Francis Harness be entitled
to the Lands and premises mentioned and
set apart to her in said report And
that Albert Winters be entitled to the
Lands and premises set apart to him
in said report. And that Henry Winters
be entitled to the Lands and premises
set apart to him in said report

And it is further ordered that the title to said Lands and premises aforesaid be vested in said parties respectively agreeably to said commissioners report and lastly it is ordered that said Commissioners be allowed Three dollars each and the costs of this proceeding be divided pro-rata according to the respective shares

State of Illinois
Crawford County } ss

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

Given under my hand and official seal at Robinson this the 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 $5.00

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 misdescription of the real estate sought to be partitioned Scates comp 1858 Page 160 Sec

2nd " The Court erred in rendering a decree without sufficient service of process upon the defendants Ills Stat 1858 Page 161 sec 6 Ills Reports Vol 12 Page 150 Seonce et al vs Whitney Gell 2nd Vol Page 47 McCall 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 Ills Stat 1858 Page 161 Sec 9 Ills reports vol 23 Page 47 Boyd et al vs Malone et al & vol 27 Page 119 Tibbits et al vs Allen

4th " The court erred in giving to Mary J Henry two shares or one fifth of the estate of Isaac Henry dec'd and also in giving to Albert Winters and Henry Winters each one third of Isaac Harris ~~estate~~ Ills 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 Ills Reports vol 27 Page 22 Winters ~~man~~ et al vs Kiser use &c

6th The court erred in decreeing a partition of the land as prayed for in the Petition of petitioner See Petition & Decree

7th " The Court erred in decreeing to the said Mary J Henry her dower interests in said lands in fee simple Ills reports vol 27 Page 125 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 Gillman Page 385 Ills Reports Vol 18 Page 77 Cavetal 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 Homes may be made defendant thereto and be required to depend in this action

J O Barton &
J Kolbright
attys for Pltff in error

[8865-12]

Plaintiffs 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 ~~said land~~ in one third of said land of which her husband died seized; but the court decreed to her certain land in fee simple as her dower in doing which there is manifest error. Ills Rept Vol 27 Page 126 Tibbs et al vs Allen

J B Barlow &
J E Albright
Attys for Plff in error

Francis Shadrick &c

vs

John Harness

Abstract &
assignment of
Errors

# IN THE SUPREME COURT.

## First Grand Division, State of Illinois.

JUNE TERM, A. D. 1867.

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

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 Shadrick &c

vs

John Harness

Error to Crawford

Abstract &
Assignment of errors

Filed 1st June 1858
R H Wilcox
Clk

# IN THE SUPREME COURT.

## State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

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

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 Lesher *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 Shadrick &c

vs

John Harness

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~~Abstract, Assignment~~

~~of Errors and~~ Brief

No 26

Filed 18th June 1868

W. H. Wisnauskas

Clk

# 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

Pltffs Amended Brief

Filed 18th June 1868

R H Williams Clk

$20.(14 30 words)

WRIT OF ERROR.

STATE OF ILLINOIS. } SS. THE PEOPLE OF THE STATE OF ILLINOIS;
SUPREME COURT,

*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 Hames

plaintiff, and Mary Jane Hany, Benjamin Hany, Francis Hames, Albert Winters and Henry Winters

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

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 Count, 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:

**Witness**, the Hon. P. H. Walker ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this 22d day of May in the year of Our Lord One Thousand Eight Hundred and ~~Fifty~~ Sixty Seven.

Noah Johnston
Clerk Supreme Court.

26 7

Supreme Court,
1st Grand Division

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Francis Shadick -
formerly Harness -
Plaintiff in error
vs
John Harness -
Defendant in error

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Writ of error

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Issued and filed
May 22. 1867
N. Johnston Clk

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

Frances Scadron
formerly Harnes
vs
John Harnes

Error to Crawford

Know all men by these presents
that I John Harnes the defendant
in the above entitled
cause do hereby authorize and
empower J. P. 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 Harnes (Seal)

~~56~~ 7 — 7

Francis Shadrick —
formerly Haines
or
John Harris

Filed ~~May~~ June 1st
1867
N. Johnston Clk

State of Illinois
Crawford County } ss

Frances Shadrick
formerly Harris
vs
John Harris

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

Error to Crawford

Be it remembered that John Harris Defendant in the above entitled cause do by these presents authorise 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 authorise the reversal of the Decree in said Cause so far as the same decrees the Dower of Mary J Henry to her in fee simple

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

Attest
J. J. Baslow, } John Harris (Seal)

7 Francis Shadrick
vs
John Harris
Power of Attorney
to Confess Error

Filed June 3 - 1868
R. A. D. Albaugh Clk

Harrup vs Harrup

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 husbands land

Reaves
vs
Wilkite &

Wm C Wilkite
Anna Wilkite
& Lula Wilkite
by Bradley
next friend
vs
B Braver &

[9915-19]

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

Frances Shadrick
formerly Harness
vs
John Harness

} Error to Crawford

The Clerk of said court will please issue the proper ~~scirefacias and~~ writ in error in the above styled cause

J. P. Barlow and
J. K. Slaught attys
for plff in error

In the court below the case stood as follows

John Harness
vs
Mary J. Henry
Benjamin Henry
Francis Harness
Albert Winters
Henry Winters

(POLS-25)

7 ~~26~~ —

Shadrach
vs
Garneau

Pricipe

Filed - May 22. 1867.
A. Johnston Cl

# IN THE SUPREME COURT.

## First Grand Division, State of Illinois.

JUNE TERM, A. D. 1867.

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

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 iuclusive.)

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 Shadrick &c

vs

John Harness

Error to Crawford

Abstract &

Assignment of errors

# IN THE SUPREME COURT.

## State of Illinois, First Grand Division.

JUNE TERM, A. D., 1867.

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

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 Lesher *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.

26

Frances Shadrick
vs
John Harness
Error to Crawford

Abstract Assignment
of Errors and Brief

8865

Filed June 4th 1867
Noah Johnston Clk