No. 8705

# Supreme Court of Illinois

Mary Ann McClellan, et al,

vs.

Alexander H.Rowan, et al

71641 7

Pleas in the Circuit Court of Gallatin County State of Illinois –

Be it remembered that on the 16th day of May 1844 Stephen R. Rowan filed in the Office of the Clerk of said Court his certain Bill in Chancery – in the words and figures following to wit:

State of Illinois, Gallatin County

To the Hon Walter B. Scates Judge of the circuit court in and for said County and presiding in Chancery therein

Your Orator, Stephen R. Rowan of Shawneetown, Gallatin County Illinois respectfully represents unto your honor that Doctor Alexander Reid, late of Shawneetown Gallatin County Illinois now deceased purchased jointly with your Orator from the U. States at the land Office in Shawneetown Illinois the following described tracts of land situate in Gallatin County, Illinois, to wit the North West quarter of Section twenty one in township nine Range Nine containing One hundred and sixty acres Also the East half of the North East quarter of Section Twenty Township Nine Range Nine ~~Containing~~ containing eighty acres, Also the North West quarter of the South West quarter of Section Twenty one Township Nine Range Nine Containing forty acres- Also the North East quarter of the South West quarter of Section twenty one Township Nine Range Nine Containing forty acres

Also the South East quarter of the North East quarter of Section twenty one Township nine Range Nine Containing forty acres Also the North West quarter of the North East of Section twenty in Township nine Range Nine Containing forty acres which said lands were entered and patented in the name of the said Reid only as will more fully and at large appear by reference to the said patents heretunto filed and marked A and prayed to be ~~taken~~ a part of this bill

Your Orator further represents unto your honor that the said Reid and your Orator were also the joint purchasers of the U States by entry at the land Office in Shawneetown in their proper names of the following described tracts of land situate in said County to wit The East half of the South East quarter of Section Twenty Township Nine Range Nine Containing eighty acres Also the North East quarter of the South West quarter of Section twenty nine ~~Township~~ Nine Range Nine Containing forty acres. Also the West half of the South West quarter of Section Twenty nine Township nine Range Nine Containing eighty acres,

Also the west half of the North West quarter of Section twenty nine Township nine Range nine Containing Eighty acres, and that the said Reid and your orator also purchased of Henry Eddy of Shawneetown, Illinois, by assignment of his certificate of purchase to them in their joint names the following described tracts of land to wit the South half of the North East quarter of Section Thirty in Township nine South of Range nine East containing eighty acres and Also the North East quarter of the North East quarter of Section Thirty. Township nine South of Range Nine East Containing forty Acres, All of which will now fully and at large appear by reference to the patents hereunto filed. Marked B & C. and prayed to be taken as a part of this bill. Your Orator further represents unto your honor that the said lands were subsequently divided between the said parties when the said Alexander Reid and Mary Ann his wife on the 9th day of February A. D. 1838 made and executed to your orator for a good and valuable Consideration to them in hand paid by your

5 orator, a quit-claim deed for the following portions of said land, to wit The South West fourth of the North East quarter of Section thirty; Also the East half of the North East quarter of Section thirty; Also the North West fourth of the North West quarter of Section Twenty nine Also the North Half of the South West fourth of the North West quarter of Section twenty nine; Also the North East quarter of Section Twenty, Also the East half of the South East quarter of section twenty Also the West three fourths of the West half of the North West quarter of Section twenty one, by north and south line; Also the West three fourths of the North West fourth of the South West quarter of Section twenty one by north and south line, all of which said lands are situate in Township Nine S. Range Nine East in the County of Gallatin and State of Illinois as by said Deed marked "D" and which is prayed to be taken as a part of this bill will more fully and at large appear Your orator further represents unto your honor that tho' the said deed be in the proper hand writing of the said

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Alexander Reid and signed and sealed by him and Mary Ann his wife, yet the same is neither witnessed by a subscribing witness, nor acknowledged by them before a Justice of the Peace or other proper officer to take such acknowledgments, and is otherwise informal whereby as your Orator is advised, that the same will only operate in law as a contract for such conveyance or as a memoranda of agreement to take the case out of the Statute of frauds and perjuries and as such enforceable in your honorable Court on the same ground that other simple agreements in writing in regard to land will be specifically decreed, to be performed or as a deed defectively executed, and therefore liable to be taken advantage of in law by the legal representatives of said Reid, but which defects will be supplied in your honorable Court

Your Orator further represents unto your honor that the said Alexander Reid departed this life on the day of A D 1841 intestate, leaving Mary Ann Reid, widow and James

7 Alexander Reid only son and heir at-
law and minor under the age of twenty
one. whom your orator prays may be
made defendants to this bill with —
to charge them and answer the same
and show cause if any they have why
the said Contract or agreement in writing
if so regarded should not be specifically
performed to your orator by the execution
of a good and sufficient deed for the
sd premises or if said agreement or contract
in writing should be regarded by your
honor as a deed defectively executed then
that the said defect may be supplied
by a decree of your honorable Court. Your
Orator being remediless in the premises
at common law and only relievable in
a Court of Equity where matters of trust
and account and specific performance
are properly cognizable and relievable
May it please your honor to award
process of subp against the above named
defendants and on final hearing to grant
such relief to your orator in the premises
as in justice and equity he shall be
entitled to & as in duty bound he will &c

L. T. Posey Sol for plff

[9705-7]

And thereupon the said Clerk issued the following summons in Chancery to wit

State of Illinois }
Gallatin County } set. The people of the State of Illinois to the Sheriff of said County greeting, we command you that you summons Mary Ann Reid Widow of and James Alexander Reid heir at law of Alexander Reid dec'd if found in your County to personally be and appear before our Circuit Court on the 1st day of the next Term thereof to be commenced at the Court house in Equality in said County on the 4th Monday of May instant then and there to answer a bill in Chancery filed by Stephen R. Rowan and hereof make due return to our said court as the law directs — Witness Leonard White clerk of our said Court and the judicial seal thereof
Seal } at Office in Equality this 16th day of May A D 1844
Leo'd White clk

And afterwards the said summons was returned into the Office of the Clerk of said Court with the following endorsements thereon, to wit
"Executed by delivering a true Copy of this

[8105-B]

9 Sp^ne in Chancery to Mary Ann Reed and James Alexander Reid on the 17^th day of May 1844

J. R. Smoot sheriff -"

And afterwards, to wit on the - day of June (Friday) 1844, at the June Term 1844 of said Court, the following order was made and entered in said Cause.

Stephen R. Rowan - v. Mary Ann Reid, James Alexander Reid heir at law of Alexander Reid dec^d. Came the parties by their Council and Leonard White was appointed Guardian ad litem for the minor & the defendants filed their demurrer to Complainants bill herein, which demurrer is as follows.

Mary A Reid & Jas R Reid adts - Stephen R. Rowan

And the said deft M A Reid hereby protesting &c reserving &c says that she ought not to be Compelled to answer the said Bill because the same and allegations therein are not sufficient in law and this she is ready to verify &c Caldwell for deft

Which demurrer is by the court overruled

And on Motion of Defendant time until the first day of October next is given him to answer Compl^ts Bill filed herein

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And afterwards - to wit on the day of June 1846 at the June Term 1846 of said Court, the following order was made and entered in said Cause June Term 1846

Stephen R. Rowan vs Mary Ann Reid widow, James A Reid heir of Alexander Reid - dec -

On this day came the parties by their Attorney and on motion of Complainants Attorney it is considered ~~and~~ ordered and adjudged by the Court that John R. Snoot, John T. Jones and William A Docker be and they are hereby appointed Commissioners not being connected with any of the parties either by consanguinity or affinity and entirely disinterested fairly and impartially after being duly sworn to make partition of the lands and tenements to wit, NW¼ of S 21. T9 S R9 E. E½ NE ¼ S 20 - T9 R9 E. NW. SW. ¼ Sect 21. T9 S R9 E. NE ¼ of SW ¼ S 21 T9 R9 - SE ¼ NE Sect 21 T9 R9, NW ¼ NE ¼ T9 R9, E½ SE ¼ Sec 20 T9 R9; NE ¼ SW ¼ S 29 - T9 R9, W½ SW ¼ Sec 20 T9 R9 - W½ NW ¼ Sect 29 T9 R9 - S½ NE ¼ Sect 30 T9 R9; NE ¼ NE ¼ S. 30 9. 9. amounting in all to eight hundred acres - more or less - between the said Complainant and the said defendant by metes and bounds if the same can be done consistently with the

[8705-10]

interest of said estate and that the said Commissioners do make report of these proceedings herein to the next term of this Court and for its approval and that the cause be continued

And afterwards, to wit, on the day of June 1851 at the October Term 1851 of said Court the following order was made and entered in said Cause -

Stephen R. Rowan vs Widow and heirs of Alexander Reid deceased - On this day comes the Complainant by Posey his solicitor and suggests the death of James Alexander Reid and on motion of said Complainant Josephine McCollen, Mary Ann McCollen, and Andrew J. McCollen minor heirs are made defendants to the bill as also Andrew McCollen sen^r - who comes and waives process and enters his appearance in this cause, whereupon came the defendants by Olney their solicitor and by agreement Joseph B. Barger Esq is appointed Commissioner to act with W. A Docker and John T. Jones, former Commissioner heretofore appointed to make partition herein and that this cause be continued for report -

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And afterwards to wit, on the day of July 1852. at the July Term 1852 of the said Court the following order was made and entered in said Cause Stephen R. Rowan vs. Widow and heirs of Alexander Reid dec. On this day comes the Complainant and on his motion John J. Kanada is appointed Commissioner to make partition instedd of Joseph B. Barger who was appointed at a former Term of this Court

And afterwards, to wit on the day of July 1854 at the July Term 1854 of said Court, the following order was made and entered in said Cause. Stephen R. Rowan vs Mary Ann McCollen Josephine McCollen, Mary McCollen Andrew McCollen jun heirs at law of Alexander Reid - On this day came the parties by their solicitor and the report of W. A Decker, John T. Jones and John J. Kanada, the commissioners appointed at a former term herein to make partition between said Complainant on the one part and the said defendant on the other part of the lands hereinafter

mentioned was presented in open Court by L. T. Posey attorney for the said Complainant and ordered to be allowed and spread of record, which is in the word and figures following -

The undersigned Commissioners appointed by the Gallatin Circuit Court at the October Term 1857 to make partition of the real estate mentioned in the Bill of Complaint of Stephen R. Rowan against the heirs and widow of Alexander Reid deceased and hereinafter particularly described having been duly sworn fairly

and impartially to execute according to law the order of the Court herein, respectfully report unto this honorable Court that they went upon and examined said land hereinafter mentioned and made a plat or maps thereof and assorted the same as follows, to wit - To Stephen R. Rowan said Complainant the West 3/4 of the W½ of N.W. 1/4 of Section 21. T. 9 R 9. containing sixty acres by North and South line, the West 3/4 of the N.W qr of the SW qr Sect 21 T 9 R 9 - Containing 30 acres - by north and south line, E½ of the SE qr of Sect 20 T 9 R 9 - containing 80 acres, the NE qr of Sect 20. T 9 R 9 Containing 160 acres, the NW qr NW qr Sect 29 T. 9 R. 9 Containing 40 acres. the N½ of SW qr of NW qr Sect 29 T. 9 R 9 Containing 20 acres by east and west line, the S½ of the NE qr Sect 30. T 9. R 9 Containing 80 acres and the NE of NE of Sect 30 T. 9 R 9 containing 40 acres, except a certain portion of the East ½ of the South East quarter of Section 20 and a certain portion of the North East qr of Section 20 both in Township 9 S Range 9 East, being a fraction out of each tract conveyed by said Reid and Rowan to John Crenshaw under a bond executed by them to Anthony Gibbon and assigned to said John Crenshaw -

And to the heirs of said Doctor Alexander

[8-705-18]

15

Reid deceased and James Reid dec^d, to wit
Mary Ann M^cCallen, Josephine M^cCallen
Mary M^cCallen and Andrew M^cCallen jr
heirs of said James Alexander Reid dec^d, your
Commissioners set apart the following lands,
to wit the South East 1/4 of the North East quarter
in Section 21 in Township 9 S in Range 9 East
containing 40 acres, the East 1/2 of the North West
quarter of Section 21 in Township 9 S in Range
9 E. containing 80 acres, the East fourth of the
West half of the North West quarter of Section 21
in Township 9 S in Range 9 East containing 20
acres by north and South line, the North East
quarter of the South West quarter of Section 21
Township 9 S in Range 9 East containing 40 acres
the East fourth of the North West fourth of the
South West quarter of Section 21 in Township
9 South in Range 9 East containing 10 acres
by north and South lines, the South half
of the South West fourth of the North West
quarter in Section 29 in Township 9 South
in Range 9 East containing 20 acres by East
and West lines, the West half of the South
West quarter in Section 29 in Township 9 South
in Range 9 East, Containing 80 acres, and
the North East fourth of the South West quarter
in Section 29 in Township 9 South in Range

[8705-15]

9 East containing 40 acres. Your Commissioners further report that said division made as above has been made in conformity to a division by metes and bounds contained in a certain deed never acknowledged or signed by the parties thereto, but understood to have been agreed to between said Complainant and said Alexander Reid dec^d then in life and which said deed Recorded in Book "M" page 522 523 524 525 & 526 is more particularly refered to in order to establish the division by metes and bounds intended to be made herein by your Commissioners. Your Commissioners further state that they are in no wise related to any of the parties in this partition and now having made the said division submit the same to your honorable court and beg to be discharged with the legal costs herein

W. A Dicker (Seal)
John J. Kanady (Seal)
John T. Jones (Seal)

~~Which said report was signed by whereupon duly sworn to do their duty~~

And it is further ordered that N. L. Freeman be appointed Commissioner to make deeds to said Complainants and said defendants in Accordance with said partition at this term and report.

And Afterward to wit at the Same June Term 1854 of said Court the following order was made and entered in Same Cause Stephen R. Rowan vs Mary Ann McCallen Josephine McCallen, Mary McCallen and Andrew McCallen jr - } Bill for Partition - heirs at law of James Alexander Reid dec -

On this day came the Commissioner appointed at this term to make deed to the parties in interest herein and submitted his report which is by the court approved - and is in words following, to wit - To the Hon S. S. Marshall judge of said Court your Commissioner appointed by an order of court in this cause at the present July term 1854 thereof would beg leave to report that he has executed deeds to said Complainants and the said defendants in obedience to said order and herewith submits them to your honor and asks an allowance of Ten Dollars for the same -

And there is also among the papers in this cause - without date - and not marked filed - the following -

James A. Reid and Mary Ann Reid ads S. R. Rowan In Chancery - This respondant - Henry W Moore Guardian ad litem of the said James A. Reid, minor, hereby

reserving and protesting for answer to the said Complainants bill, answers and says that he is informed and believes that there was an agreement of partition by and between the said Complainant and the said Alexander Reid in his life time of all the lands held and owned by them in joint interest or otherwise as well as a full settlement, all of which came into the hands of the said Complainant as administrator of said Reid and which is prayed to be taken as a part of this answer, And this respondent by way of Cross bill calls upon the Complainant to produce in this cause the said deed or writing and to answer make to the charges herein made. And this respondent prays upon the answer of the said Complt. that the Court decree a partition of the lands in said last deed mentioned in Conformaly with the terms boundaries &c as therein set forth. As in duty &c. W. N. Moore.

[8705-18]

State of Illinois, Gallatin County

I, James R. Loomis, Clerk of the Gallatin County Circuit Court, hereby certify that the foregoing and annexed Eighteen pages contain a correct Transcript of the Record and proceedings had in the case of Stephen R. Rowan vs. Mary Ann M'Callen - Josephine M'Callen Mary M'Callen and Andrew M'Callen in this Court - In testimony whereof I have hereunto set my hand and the impress of the seal of said Court this 24th day of January A D 1866 -

James R. Loomis Clerk

[8705-19]

The said Mary Ann McCallen, Josephine McCallen, Mary McCallen and Andrew J. McCallen the two last of whom are minors who sue by Joseph J. Castles their next friend say that in the foregoing record and proceedings there is manifest error in this, to wit:

1st The court ~~erred~~ had no authority under the Bill of complaint to make partition

2 Partition was made without an order to that effect - and without any proof

3d The Court did not ~~order partition~~ ascertain and declare the rights of the parties -

4 The Court erred in receiving and approving the report of the Commissioners

5 The Commissioners did not make partition between the parties according to their respective rights, but according to a paper ~~exhibited to them~~ called by them a deed.

By reason whereof the plaintiffs in error pray that said judgment and proceedings may be Reversed

Olney & Lansden
Atty's for Plffs in error

State of Illinois Alexander County

John Olney being first duly sworn states on oath that Andrew McCallen one of the defendants named in the foregoing Record died intestate sometime in the year 1861 leaving him surviving as his only heirs at law his three children Josephine McCallen Mary McCallen and Andrew J. McCallen, and leaving his widow Mary Ann McCallen That said Josephine, Mary, Andrew J. and Mary Ann, are the same persons named as defendants in the said Record.

Affiant further states that said Josephine is now about twenty years of age, and that said Mary McCallen and Andrew J. are minors under the age of ~~twenty one~~ eighteen years

Affiant also testifies that Stephen R. Rowan, the complainant named in the foregoing Record died intestate in the month of December 1865 or in the month of January 1866 affiant does not know positively the precise date of his death, That said Stephen R. Rowan left surviving him as his only heirs at law his two children Alex-

LB705-2D

ander Hamilton Rowan and Loyd Rowan, and his victoria Ann Rowan,

John Olney,

Subscribed & sworn to before me this 9th day of February AD. 1866.

John L Harman
Clerk Circuit Court Alexander County Illinois
and the seal of said Court

No 14

Mary Ann McCallum et al
Plaintiffs in Error
vs
H. H. Rowan et al
Defendants in Error

Filed Feb 10, 1866
R. Johnston Clk
By
Paid $11.50

State of Illinois
Supreme Court First
Grand Division
November Term 1866

Mary Ann McCallen (widow)
Josephine McCallen ~~(widow)~~
Mary "McCallen
Andrew J McCallen } minors
By Joseph J Castles their
next friend
against
Alexander H Rowan
Lloyd Rowan and
Ann Rowan

Error to Gallatin

The Clerk of said Court
will please issue writ of
Error as above

Olney McKinney & Lansden
attys for appellants

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No 14

Mary Ann McCallen
Josephine McCallen
Mary McCallen
Andrew J McCallen
By Joseph J Castles
their next friend

vs

Alexander H Rowan
Lloyd Rowan
Ann Rowan

Praecipe

Filed July 10. 1866.
A. Johnston Cl

**State of Illinois,**
SUPREME COURT,
**First Grand Division.** } ss

**The People of the State of Illinois,**

*To the Clerk of the Circuit Court for the County of* Gallatin Greeting:

**Because,** *In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of* Gallatin *county, before the Judge thereof between*

Stephen R. Rowan *plaintiff and* Mary Ann McCallen Josephine McCallen, Mary McCallen Andrew J. McCallen Jr., heirs at law of Alexander Reid, *defendants it is said manifest error hath intervened to the injury of the aforesaid* Defendants *as we are informed by* their *complaint, and we being willing that error, if any there be, should be corrected 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 our 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 November *next, that the record and proceedings, being inspected, we may cause to be done therein; to correct the error, what of right ought to be done according to law.*

WITNESS, *the Hon.* P. H. Walker *Chief Justice of the Supreme Court and the seal thereof, at* MOUNT VERNON, *this* tenth *day of* February *in the year of our Lord one thousand eight hundred and* Sixty six.

Noah Johnston
*Clerk of the Supreme Court.*

[8105-23]

No 14

SUPREME COURT.

**First Grand Division.**

Mary Ann McCallen et al
By L. P. Cutley their next friend

*Plaintiffs in Error,*

VS.

H. H. Rowan et al.

*Defendants in Error.*

WRIT OF ERROR.

Dismissed FILED - Feb 19 1866
N. Johnston Clk
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# IN THE SUPREME COURT,

## First Grand Division, State of Illinois,

NOVEMBER TERM, A. D., 1866.

MARY ANN McCLELLEN, JOSEPHINE McCLELLEN and MARY McCLELLEN and ANDREW J. McCLELLEN, the two last of whom are minors, who sue by JOSEPH J. CASTLES, their next friend, against ALEXANDER H. ROWAN, LOYD ROWAN, ANN ROWAN. } Error to Gallatin.

2 Stephen R. Rowan filed his bill in chancery in the Gallatin Circuit
3 Court, setting forth that himself and Alexander Reid were *jointly* owners
4 in fee of certain lands in Gallatin county. That said lands were subsequently divided between the said parties, when the said Reid and wife
5 made out and signed but did not acknowledge a deed to Rowan for certain
6 of the lands, (describing them). Said deed is Alex. Reid's writing, and signed and sealed by him and his wife. Yet the same is neither witnessed by a subscribing witness nor acknowledged, and is otherwise informal,
7 Prays that defendants answer why they should not execute a good and sufficient deed or the defect be supplied by order of the Court, and prays for such relief as in justice and equity he is entitled to.

The bill states death of Alex. Reid, makes his heirs parties, &c.

10 Commissioners were appointed to make partition of the lands between Rowan and the heirs.

12 The Commissioners subsequently reported that they had divided the
13 lands by setting off to Rowan certain of them, and to the heirs of Dr. Alexander Reid and James Reid, to-wit: (Naming the Plaintiffs in Error)
16 the other lands, (describing them,) "said division is made in conformity to a division contained in a certain deed never acknowledged or signed by the respective parties thereto, but understood to have been agreed to between
16 said complainant and said Alexander Reid, deceased, then in life." Report read, allowed and spread of record, and N. S. Freeman appointed to make deeds to the respective parties for the lands as set apart to them by said Commissioners.

17 Freeman reports that he has done so. Report approved.

The Errors assigned are

1st. The Court had no authority to order partition of the lands.

2d. Partition was made without an order to that effect, and without any proof.

3d. The Court did not ascertain the respective rights of the parties.

4th. The Court erred in receiving and approving the report of the Commissioners.

5th. The Commissioners did not make partition between the parties according to their respective rights, but according to a paper called by them a deed.

## BRIEF.

The Court had no jurisdiction or authority to order partition.

The decree must correspond with the pleadings,

A party can only recover on the case made out by his pleading.

No proof heard. This is error as to the minors.

The court should have ascertained and declared the rights of the parties.

OLNEY & LANSDEN,
Att'ys for Plaintiff in Error,

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P McCallen et al
vs
Rowan et al.

Filed Nov 10 64
A Johnston Clk

**State of Illinois,**
SUPREME COURT,
**First Grand Division.** } ss

**The People of the State of Illinois,**

To the Sheriff of Gallatin County.

**Because,** In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Gallatin county, before the Judge thereof between

Stephen R. Rowan plaintiff and Mary Ann McCallen, Josphine McCallen, Mary McCallen and Andrew J. McCallen, heirs at law of Alexander Rea defendants it is said that manifest error hath intervened to the injury of said Defendants as we are informed by this complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof; to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to ~~the said~~ Alexander H. Rowan, Sloyd Rowan and Ann Rowan

that they be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday ~~after the second Monday~~ in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said A. H. Sloyd & Ann Rowan notice together with this writ.

WITNESS, the Hon. R. K. Walker Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this tenth day of February in the year of our Lord one thousand eight hundred and Sixty Six.

Noah Johnston
Clerk of the Supreme Court.

[8705-24]

14

SUPREME COURT.

**First Grand Division.**

M. A. McCallen et al
By J. J. Castles, their
next friend
*Plaintiffs in Error,*

VS.

Alexander H. Rowan,
Lloyd Rowan and
Ann Rowan
*Defendants in Error.*

SCIRE FACIAS.

Sh'ff's Fees $2.45

FILED.

Served the within Summons on writ by reading the same to the within named Alexander H. Rowan, Lloyd Rowan and Ann Rowan, on this 13th day of Oct. 1866.

Geo. B. McNeil,
Sh'ff Cass County,
per Sam Scales, Sh'ff.

# IN THE SUPREME COURT,

## First Grand Division, State of Illinois,

NOVEMBER TERM, A. D., 1866.

| | |
|---|---|
| MARY ANN McCLELLEN, JOSEPHINE McCLELLEN and MARY McCLELLEN and ANDREW J. McCLELLEN, the two last of whom are minors, who sue by JOSEPH J. CASTLES, their next friend, against ALEXANDER H. ROWAN, LOYD ROWAN, ANN ROWAN. | Error to Gallatin. |

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13 lands by setting off to Rowan certain of them, and to the heirs of Dr. Alexander Reid and James Reid, to-wit: (Naming the Plaintiffs in Error)
16 the other lands, (describing them,) "said division is made in conformity to a division contained in a certain deed never acknowledged or signed by the respective parties thereto, but understood to have been agreed to between
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2d. Partition was made without an order to that effect, and without any proof.

3d. The Court did not ascertain the respective rights of the parties.

4th. The Court erred in receiving and approving the report of the Commissioners.

5th. The Commissioners did not make partition between the parties according to their respective rights, but according to a paper called by them a deed.

## BRIEF.

The Court had no jurisdiction or authority to order partition.

The decree must correspond with the pleadings,

A party can only recover on the case made out by his pleading.

No proof heard. This is error as to the minors.

The court should have ascertained and declared the rights of the parties.

OLNEY & LANSDEN,
Att'ys for Plaintiff in Error.

[8705-05]

14

McCallen et al
vs,
Rowan et al

Filed Nov 10 1866
A Johnston Clk

14

McCallen et al
Pltffs in Eqn
vs
Rowan et al
Defts in Eqn

Eqn to Galleton

Decree Reversed
for Nonjoinder
at Costs of Defts
Eqn.

Cost Bill on Page 3
of Fol book "B"

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