

8471

No. \_\_\_\_\_

# Supreme Court of Illinois

Forque et al

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vs.

Forque et al

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71641  7

State of Illinois. Pleas & proceedings had in the  
St Clair County Circuit Court in & for said County  
of St Clair

Be it remembered that at the September term  
A D 1857 of said Court the following proceedings  
were entered of record to wit:

George Forquer dal }  
vs } Bill for Partition & for  
Susannah Forquer dal } Correction of Mistake

And now on the first Friday  
of the term comes the said George Forquer and  
Susannah Forquer by N Niles their Solicitor  
who enters the appearance of Joseph Pringle wife  
and Susannah Forquer and thereupon enters his  
motion to amend the Decree made in this case  
at the March Term A D 1856 of this Court so  
as to reserve therein to the Defendant Susannah  
Forquer all her rights under and by virtue of the  
lease in the Bill of said Complainants mentioned  
according to the prayer of said Bill which motion  
was resisted by <sup>Charles Casselberry</sup> the purchaser under said decree  
And the said motion was then and there allowed  
by the Court and said decree amended accordingly  
From which decision of the Court the said  
Charles Casselberry prayed for an appeal to  
the Supreme Court which was allowed by the  
Court upon his entering into an appeal bond  
with good security within thirty days from  
this date

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The said Casselberry thereupon then and there filed his appeal bond which is approved &c

And On the same day the following Bill of exceptions is filed to wit:

George Forquer et al	} Motion to amend decree
vs	
Susannah Forquer et al.	

Be it remembered that N Niles

Solicitor entered the following motion to wit:

George Forquer Joseph Cagan & Minerva his wife Lucinda Forquer Charles Casselberry Edward A Shook Aaron W Shook John Forquer Mary Forquer Lany Forquer a minor & Thomas Forquer a minor by George Forquer their next friend	} Motion to amend Record
vs	
Susannah Forquer & Stephen Pringle & Elizabeth his wife	

The said Complainants come by N Niles their solicitor and move the Court to amend the record of the decree entered at the March Term of this Court A D 1856. in this Cause (Book D page 257 (Chancery Records) so as so as to save and reserve to said Defendant Susannah Forquer all her right under and by virtue of the lease in the Bill of the said Complainants mentioned according to the

prayer of said <sup>3</sup> Bell

N Niles Solicitor

which said decree is in words & figures following to wit:

George Forquer Joseph Eagan and Minerva his wife Lucinda Forquer Charles Casselberry. Edward A Shook Aaron W Shook John Forquer Mary Forquer Lany Forquer a minor Thomas Forquer a minor by George Forquer their next friend	} Bill for Partition (and for Correction of mistake
vs Susannah Forquer Stephen Pringle and Elizabeth his wife	

On the first Wednesday of the term Come the said Complainants by N Niles their Solicitor and E A & A W Shook by J B Hay Solr and make due proof of notice of the pending of this suit to said Defendants Stephen Pringle and Elizabeth his wife non residents of this State by publication in the Belleville Advocate a weekly Newspaper of this County for four successive weeks the first publication being made more than sixty days before the first day of the present term of this Court a certified Copy of which publication signed by James S Coulter publisher of said Newspaper is filed in this Cause and the Sheriff's return showing that the said Defendant Susannah Forquer has been duly served with the summons issued herein more than ten days

before the first day of this Term And Complainants ask leave to amend their Bill which leave is granted And it is ordered that said Defendants answer plead or demur to the said Bill of Complaint by the first Friday of the present term or that the same will be taken as confessed

And now on the first Saturday Come said Complainants by their said Solicitors and the said Defendants having failed to answer &c as ruled to do said Bill is taken as confessed. And the Court having heard the evidence and inspected the exhibits herein and after due consideration and deliberation orders adjudges and decrees that the mistake set out in the said Bill as having been made in the Deed from Susannah Forquer to her children the heirs of William Forquer deceased her late husband be and the same is hereby corrected so that the said Deed which is dated on the 31<sup>st</sup> day of October A.D. 1855. and is recorded in Book N 2. page 605 of the Records of Deeds in this County shall so read and be construed as to reserve to and continue in the said Susannah widow of said William Forquer die for her life time forty six and one third ( $46\frac{1}{3}$ ) acres in the South East quarter of section five T. 1. N. R. 8. W. of 3<sup>d</sup> pr. M. being part of one hundred and thirty nine acres in said quarter Section devised to said widow by her said husband and lying just twenty seven rods (acres) South of George Forquer's tract of 21 acres in said quarter and not  $7\frac{1}{3}$  rods South of said tract of George Forquer as erroneously stated in said Deed and so

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to convey to and vest in the said Children and heirs the rest of the said 139 acres in possession being in two tracts one of 27 acres North of said reserved tract of  $46\frac{2}{3}$  acres and the other of  $65\frac{2}{3}$  acres South thereof and being ninetytwo and two thirds ( $92\frac{2}{3}$ ) acres in all and so as to convey to and vest in said Children and heirs the remainder in the said reserved tract of  $46\frac{2}{3}$  acres after the death of the said widow And further the Court orders adjudges and decrees that the said land conveyed by said widow to her said Children by her said husband William Forquer deceased said  $92\frac{2}{3}$  acres be subject to and chargeable with the payment of the legacies in the Will of William Forquer dec made and given namely of the legacy to Lucinda Forquer of two hundred dollars and of the legacy to Minerva wife of Joseph Eagan of one hundred dollars And the Court further orders adjudges and decrees that partition be made of the said two tracts of 27 and  $65\frac{2}{3}$  acres ( $92\frac{2}{3}$ ) among the parties in interest in proportion to their respective shares namely: to George Forquer the Court allots and assigns one twelfth of the said last mentioned two tracts; to Edward A Shook the Court allots and assigns one fourth thereof, one half of one twelfth in the right of Minerva Eagan one half of one twelfth thereof in the right of John Forquer, one twelfth thereof in the right of Charles Casselberry who purchased the same from

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6 Eli Forquer and Jane Badgley wife of Abijah Badgley, and one twelfth thereof in the right of William Forquer and Hannah Moore wife of James C Moore from whom said Shook purchased And to Aaron W Shook the Court allots (and assigns one fourth of the said last mentioned tracts of land of  $92\frac{1}{2}$  acres one half of one twelfth thereof in the right of Merivew Eagan wife of Joseph Eagan, one half of one twelfth thereof in the right of John Forquer, one twelfth thereof in the right of Charles Casselberry who purchased the same from Eli Forquer and Jane Badgley wife of Abijah Badgley and sold to said Shook and one twelfth (making in all three twelfths) thereof in the right of W<sup>m</sup> Forquer and Hannah Moore wife of James C Moore from whom said A W Shook purchased And to Lucinda Forquer the Court allots and assigns one twelfth of the said last mentioned tracts To Elizabeth Pringle wife of Stephen Pringle the Court allots and assigns one twelfth thereof To Mary Forquer the Court allots and assigns one twelfth thereof To Lany Forquer the Court allots and assigns one twelfth thereof And to Thomas Forquer the Court allots and assigns one twelfth thereof And the Court appoints John Thomas Jackson Brake and Elijah Badgley three disinterested men of no kin to any of the parties in this suit Commissioners to make such partition in

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accordance herewith Ordered that the said  
Commissioners report their proceedings on the  
premises to the Court for Confirmation  
And the said Commissioners on the second Monday of  
the term report under their hands and seals that  
Partition cannot be made of the said lands last  
above mentioned without manifest prejudice to  
the proprietors thereof And the report is approved  
by the Court and ordered to be filed

It is thereupon ordered adjudged and decreed by the  
Court that the said lands namely ninety two and  
two thirds acres in the South part of the South East  
quarter of Section five in Town 1. N. R. S. W. of 3<sup>rd</sup> pr. M.  
and lying in two tracts; one of 27 acres and one of 65 <sup>2</sup>/<sub>3</sub>  
acres as above described be sold at public Auction  
to the highest bidder such sale to be on the premises  
on a credit of six and twelve months and Nathaniel  
Niles and John Thomas are by the Court appointed  
Commissioners to sell the same as aforesaid after  
having first given six weeks notice of the time place  
and terms of sale together with a description of the  
premises to be sold by publication in some newspaper  
printed in the County of St Clair and upon such sale  
to secure the payment of the purchase money by  
taking from the purchaser or purchasers at the sale  
notes with good security and a Mortgage on the premises  
to him or them sold and thereupon to make execute and  
deliver to such purchaser or purchasers a good and  
sufficient deed for the lands and tenements by him



or them bought thereby granting and Conveying to such purchaser or purchasers all the right title interest and estate of the parties in and to the said lands and tenements

And it is further ordered and decreed by the Court that the said Commissioners upon the receipt of the purchase money pay the Costs and Charges attending said Sale and those of this suit and then pay out of the same the said legacies under the Will and then distribute and pay over the balance to the parties to this suit in proportion to their respective interests in the premises sold as fixed by this decree Ordered that the said Commissioners report to the Court at a future term their proceedings in selling the said lands and tenements and that for that purpose this Cause be Continued

To Sustain said motion said Miles read in evidence the bill of complaint preceding the decree and also the following affidavits which said bill is as follows to wit:  
To the Hon Sidney Brewster circuit Judge of St. Clair County and of the Second judicial District of Illinois

Respectfully show your petitioners George Forquer Joseph Fagan and Minerva his wife Charles Casulberry Lucinda Forquer Edward A Shook Aaron W Shook John Forquer Mary Forquer Lucy Forquer a minor and Thomas Forquer a minor

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by George Forquer their next friend that William Forquer late of the County of St Clair State of Illinois died on the 8<sup>th</sup> day of October AD 1835 seized in fee simple absolute of the following tract of land namely One Hundred and thirty nine (139) acres in the South part of the South east quarter of Section 5 in Township One North Range 8 West of the third principal Meridian in St Clair County State of Illinois having previous to his death conveyed to his son George Forquer twenty one acres from the North side of said quarter section.

And further your petitioners show that the said William Forquer died left as his sole children and devisees Susanah Forquer his widow and George Forquer (2) Minerva intermarried with Joseph Cagan 3<sup>d</sup> Eli Forquer 4 Luemda Forquer (5) Elizabeth intermarried with Stephen Pringle (6) Jane who is intermarried with Abijah Badgley (7) William Forquer John Forquer 9 Mary Forquer (10) Hannah who is intermarried with James Mc Moon (11) Lory Forquer and (12) Thomas Forquer. the two last being minors And your petitioners show that the said William Forquer made his last will and testament which has been duly proved and recorded in the probate

Court of St. Clair County, in said State whereby he gave and bequeathed to his wife said Susannah all his estate real and personal for her life time charged with the payment of certain specified legacies therein made and given namely Of a legacy to Lucinda Forquer of Two Hundred Dollars of a legacy to Thomas Forquer of two Hundred Dollars and a legacy to Manerva wife of Joseph Egan of One Hundred Dollars. and the said estate after the death of said Susannah is by the said will given and bequeathed to said children of said testator J<sup>m</sup> Forquer dec<sup>d</sup> to be equally divided between them and among them as will appear on reference to the said will a copy of which certified by the clerk of said Probate Court is herewith filed and made a part of this petition

And the said Susannah widow of the said Testator after his death namely on the 31<sup>st</sup> day of October AD 1833: by her deed did give grant and convey to the said children of said testator who are also her own children all her right title claim and interest being a life estate in and to the said tract except 4 6/3 acres thereof to be taken out of that part of said tract of land on which the house garden and

orchard are situated which she reserved to herself for her life time under said will and leaving a fee simple estate in the said children in the rest of said tract of land namely in ninety two and two third acres being in two tracts one of twenty seven (27) acres lying north of said reserved tract of  $46\frac{2}{3}$  acres. and one tract of sixty five and two thirds ( $65\frac{2}{3}$ ) acres lying south of the same all in said south east quarter of section five in T. 1. N. R. 8. W. and running the length of said quarter section or one hundred and sixty (60) rods east and west. And also leaving a vested remainder in the said children and devised of said William Torquer died in and to the said reserved tract of forty six and one third ( $46\frac{1}{3}$ ) acres after the termination of the life estate therein of the said Hannah widow of said deceased.

And your petitioners further shew and represent to your honor that the said Eli Torquer and Jane his wife of Abijah Badgley have sold and conveyed their interest in the said land and real estate of the said testator William Torquer died to Charles Casseberry a party herein and the said William Torquer (jr) and the said Hannah wife of James C Moore have sold and conveyed their interests in said real estate to Edward A Shook and

Aaron & Shook the said Jane and Hannah  
 joining with their respective husbands in the  
 conveyance aforesaid the said conveyances to  
 the said Cassberry & Shook having been  
 made since the death of said testator namely  
 on the 5<sup>th</sup> day of November AD 1833 and  
 on the        day of November AD 1833: and  
 being herewith filed is a part of this  
 bill and petition. Therefore the said  
 Eli. Jane, William, and Hannah, have  
 no interest in the said real estate they  
 having conveyed and parted with their  
 interests as aforesaid as well in remainder  
 as in possession.

And your petitioners shew that  
 in the deed of conveyance first above  
 mentioned made by the said Susannah  
 widow as aforesaid to her and the said  
 testator children she made a mistake  
 owing to incorrect information in stating  
 the locality of the said tract of  $4\frac{1}{3}$  acres  
 reserved by herself as being at the distance  
 of  $\frac{1}{2}$  acres (<sup>seven one third</sup>  $7\frac{1}{3}$  rods) south of George Jorgues  
 land conveyed to him by his father the  
 said testator when in fact the distance  
 of the north line of said reserved tract  
 of  $4\frac{1}{3}$  acres from the south line of the  
 land of George Jorgues is and ought to  
 have been stated in said deed and was

intended to have been stated by said widow at Twelve seven rods or acres and the quantity of land in said George's tract is erroneously stated in said deed at 20 acres leaving 140 acres as now belonging to the estate of said testator when in fact the land received by George Forquer from his father said testator out of said quarter section amounts to 21 acres thus leaving 139 acres more or less to be divided among the heirs and devisees of said William Forquer and then assigns your petitioners therefore pray that the said mistakes in said deed from said Susannah may be corrected by the order and decrees of the Hon. Court (said Cassbury has a lease on a field in the east part of said tract and of part of the orchard from said testator for 3 years from March 1<sup>st</sup> 1833.

Furthermore your petitioners show that no other persons than those above mentioned have any interest in the said land whosoever the said William Forquer died seized either in possession, expectancy, reversion, or remainder and that your petitioners and the said Elizabeth Pringle are seized of an estate in fee simple in  $92\frac{2}{3}$  (namely five and two thirds) acres of the said tract of 139 acres in said Section 5 (2 E  $\frac{1}{4}$ ) in T. 1 N. R. 8 N. 3<sup>d</sup> p. M. being

27 acres north of said tract of  $46\frac{2}{3}$  acres and  $65\frac{2}{3}$  acres south of the same, and are also entitled to a remainder in the said tract of forty Six and one third ( $46\frac{2}{3}$ ) acres after the termination of the life estate of the said Susannah therein in the proportions following that is to say

1 The said George Torquer is seized of and entitled to the one undivided twelfth  $\frac{1}{12}$  of the said land in possession and in remainder

2 Annerva Pagan is seized of and entitled to one twelfth thereof

3 Charles Cassiberry is seized of and entitled to two twelfths (one sixth) thereof in right of Eli Torquer and of Lane Badgley wife of Abijah Badgley

4 Lucinda Torquer is seized of and entitled to one twelfth ( $\frac{1}{12}$ ) thereof

5 Elizabeth Pough<sup>wife of Stephen Pough</sup> is seized of and entitled to one twelfth ( $\frac{1}{12}$ ) thereof

7 Edward A Shook and Aaron N Shook are jointly seized of and entitled to two twelfths or one sixth (each one twelfth) thereof in right of William Torquer & Hannah Moore wife of James C Moore

8 John Torquer is seized of and entitled to one twelfth ( $\frac{1}{12}$ ) thereof

9 Mary Torquer is seized of and entitled to one twelfth ( $\frac{1}{12}$ ) thereof

15 11 Jesse Forquer is <sup>seized of</sup> entitled to one twelfth  $\frac{1}{12}$  thereof

12 Thomas Forquer is seized of and entitled to one twelfth  <sup>$\frac{1}{12}$</sup>  thereof

And your petitioners pray that partition of the said premises may be made of the said  $92\frac{1}{2}$  acres in the said South part of the S.E.  $\frac{1}{4}$  of S. 5. in T. 10 N. 8 W. of 3<sup>rd</sup> P. M. among the parties in interest in proportion to their respective interests therein and not to their said interests in remainder or if partition thereof cannot be made without prejudice to the proprietors that the same may be sold subject to said lease for their benefit under the authority and direction of this Hon Court.

And that the said legacies may be paid out of the said land by order of this Court, there being no personally belonging to said estate of said W<sup>m</sup> Forquer deceased, and no other land than that herein mentioned. And that a summons may issue for the said Susannah Forquer and Stephen Pringle and Elizabeth his wife as Defendants to this petition; and for such other and further relief as to your Honor may seem meet.

George Forquer, Joseph Egan & Minerva his wife Lucinda Forquer for themselves and the other Petitioners.

N Niles Sol<sup>r</sup> for Complainers



State of Illinois }  
 County of St Clair } George Forquer being duly sworn  
 says that the foregoing petition is true in substance  
 and fact so far as the same rests in his own knowledge  
 and so far as the same rests in his information he believes  
 it to be true.

Sworn to and subscribed } George Forquer  
 before me this 29<sup>th</sup> day of }  
 November A.D. 1855 }

Nath<sup>l</sup> Niles C. Judge

And which said Affidavits are as follows to wit:  
 Geo. Forquer & al

vs } In Chancery for  
 Susannah Forquer and } Partition  
 Stephen Kingle & Elizabeth his wife }

State of Illinois }  
 County of St Clair }

Joseph Voellinger being duly  
 sworn says that he was a purchaser of part of the  
 land sold by the Commissioners in the above entitled cause  
 and leased by William Forquer to C Caspellberry, and  
 that he has since sold his said purchase to said Caspel-  
 berry. Deponent claims no interest in the said lease

Sworn to and subscribed }  
 before me this 21<sup>st</sup> day of Sept } Joseph Voellinger  
 1857. N. Niles C.J. }

George Forquer says }  
 vs }  
 S. Forquer & al }

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State of Illinois }  
County of St. Clair } Set.

Nathaniel Niles Solicitor for  
the Complainants in the above entitled cause being  
duly sworn says that he drew the decree in ~~the~~ <sup>the</sup> cause  
the bill having been taken as confessed therein, and  
that by inadvertence and mistake in drawing up  
the said decree the lease mentioned in the Bill of  
Complaint was not noticed nor for the same cause was  
the interest of the devisee of the lessor Susannah  
Forquer, saved to her as was prayed for by all  
the Complainants in said Bill of Complaint in-  
cluding the lessee Charles Corsetberry and by Aaron  
W. & Edward A. Shoath. That as Solicitor for  
said lessee, this Deponent assured him and all the  
other complainants, his clients with whom he  
conversed about said lease during the pendency of  
said suit and before the sale of the said land that the  
rent under said lease would be saved and reserved  
to the said Susannah Forquer in the decree therein,  
that with the consent of all of said Claimants this  
Deponent inserted a prayer in said bill that the  
land leased should be sold subject to said lease,  
thereby saving the rights of said Susannah who never  
relinquished her interest as devisee of her said husband  
under said lease. She expressly reserved the rent in  
her deeds to her children and never consented to relin-  
quish the said rent. Deponent does not believe that  
she would have consented to any partition or sale of  
the land by which her said interest in the lease would be

divested. This Deponent says from his own know-  
ledge that the omission of a clause in said decree  
for selling said land subject to the said lease and  
saving the rent to the said widow and devisee  
was a clerical error and omission, in drafting the  
said decree. And further saith not.

Sworn to and subscribed Nathl Niles

before me this 24 day of  
Sept 1857. Wm Thomas Ck

George Forquer & al

vs

Susannah Forquer & al

State of Illinois, & al.

St Clair County, John Thomas of said County, Com-  
missioner to sell the land which was of the  
late Wm Forquer dec says that he sold by public  
auction, and outcry, the said land according to the  
order and decree of said Court and as reported to the  
Court at the last term thereof, that the Shoates  
& C Casselberry petitioners herein with the purchaser  
of a part of said land Voellinger, with many other  
persons, were present at said sale; that before  
said sale commenced, and which all the bidders  
were present on the ground the fact of the existence  
of a lease from said Forquer dec to said Casselberry  
on a part of said land was talked of and discussed  
by and between said bidders and this Deponent, that  
notice was distinctly given at said sale to all

the bidders, and persons on the ground, and before the sale commenced, that the widow of said W<sup>m</sup> Forquer Dec<sup>d</sup> held the said lease and claimed the rent under the said lease. This Deponent expressed the opinion, to said bidders and persons that said widow was entitled to said rent and would collect the same under the said lease, and such was the universal understanding at said sale so far as opinions were expressed: no other opinion was expressed at the sale either before or after it, commenced or ended. This Deponent is of opinion that owing to such understanding the land leased brought less than it would have done had it been understood by the bidders that the rent of said leased part would go to the purchasers thereof and not be payable to the widow of the lessor, W<sup>m</sup> Forquer Dec<sup>d</sup> as it was declared by Deponent & others that said rent would be payable as aforesaid, and further saith not.

Sworn to and subscribed before  
me this 25<sup>th</sup> of August. } John Thomas  
AD 1857. N Niles C J }

Geo. Forquer ex<sup>t</sup> } In Chancery  
vs } of For Partition & correction  
Susannah Forquer ex<sup>t</sup> } of error & C<sup>t</sup>  
State of Illinois, }  
County of St Clair } W<sup>m</sup> B Oglesby of said County being  
Duly sworn says that he attended the sale of land in the

above case by John Thomas the Com<sup>r</sup>. That the subject of the widow's claim for rent under a lease to C. Capelberry was discussed and talked over by the bidders and Com<sup>r</sup> before the sale, and it was understood by all the persons so far as opinions were expressed at said sale that the rent aforesaid would not pass to the purchaser of said land, but was reserved and would be claimed by the widow. Deponent was acting as friend and agent of the family, of the widow as well as the children, and gave notice when it was publicly announced that there was a lease upon a part of the land to be sold and before the sale, that the rent was coming to the widow and was reserved by her under said lease and such this Deponent believes was the universal understanding at and before and immediately after said sale. Inquiries were made as to the right and claims of the widow under said lease to which only one answer was given by the Com<sup>r</sup> by Deponent, and by other persons who talked on the matter. No other opinion was expressed but that said rent under said lease was reserved and payable to the widow.

Susannah of W<sup>m</sup> Forquer dec<sup>d</sup> to the best of this Deponent's knowledge, recollection and belief  
 I sworn to and subscribed  
 before me N. Miles } W<sup>m</sup> B. Cylesby

St. Clair Circuit Court }  
 George Forquer & al }  
 Susannah Forquer & al }

State of Illinois }  
 St Clair County } George Forquer being sworn says  
 that he was present at the Commissioners sale of the  
 land which was of the late W<sup>m</sup> Forquer dec<sup>d</sup> his father  
 in Partition, and that the fact was mentioned and  
 discussed at said sale, among the bidders, that his  
 Mother Susannah Forquer held a lease, as devisee  
 of said W<sup>m</sup> Forquer on a part of said land sold, which  
 lease was given to Charles Caspberry for the term  
 of three years and is not yet expired; that said lease  
 was read to all the bidders on the ground by John  
 Thomas the Commissioner before the sale; that it  
 was generally known and understood by said bidders  
 and by all upon the ground that the said land was sold  
 subject to said lease, and that the rent due and to  
 become due under said lease was reserved by his  
 Mother, said Susannah, and would be claimed by her  
 from the party liable therefor; said that in the  
 opinion of this deponent, the land covered by said  
 lease was sold by said Commissioner for less by  
 several Dollars per acre than it would have brought  
 had the said lease not been set up as binding upon  
 said land and notice thereof given as aforesaid;  
 that both the Shooks who are parties Petitioners  
 and said Caspberry with the purchaser Voellinger  
 were present on the ground and had notice before  
 the said sale of said lease and made no claim on  
 the ground against the said claim and reservation by  
 said widow of the rent under said lease, to the best of

deponants knowledge recollection, and belief.

Sworn to & subscribed

before me. N. Niles C. J. } Geo. Torquer

Said motion was resisted by Charles Capelberry a party to said decree & a purchaser of a part of said land from Joseph Voellinger a purchaser at said sale who read the following affidavits to wit:

State of Illinois }  
 St. Clair County } Elizabeth Badgley upon oath  
 saith that he was present at the public sale on the 31<sup>st</sup> day of May 1856 of the real estate of which William Torquer died seized in said County by John Thomas Commissioner appointed by the St. Clair County Circuit Court at its March Term 1856. That at the time of said sale this affiant was a bidder on part of said premises, and that after said sale had commenced this affiant asked said Thomas (who was selling the premises) if there was not a lease on said premises to Capelberry and if the same should not be reserved in the sale, to which the said Thomas publicly replied, in the presence and hearing of all the bidders "That it was his opinion as a farmer (not as a lawyer) that the rent would go with the title. The said Thomas then continued to sell the premises without reserve. That Henry Louis bid off part of the premises about (65 acres). That N. W. Shook purchased a part, and that one Joseph Voellinger

This affiant afterwards understood became interested  
in part of said premises.

Subscribed and sworn to before  
me this 22<sup>d</sup> day of Sept. 1857

Shelah Badgley

Theod. J. Krappf,

State of Illinois

St Clair County } O Casselberry upon oath swears that  
he was present at the public sale on the 31<sup>st</sup> day of  
May 1856 of the real estate of which William  
Foyner died seized in said County, by Thomas  
one of the Commissioners appointed by the St Clair  
Circuit Court at its March Term 1856, that at the  
time of said sale this affiant presented a written  
lease on part of said premises to said Thomas who  
was selling the premises, who replied or said, that  
his opinion was that the lease would hold good  
and that the profits of the same would go with  
the title of the land. This affiant further swears  
that a part of said premises was bid in for Joseph  
Voellinger who has since sold the same and given  
a warrantee deed.

Subscribed & sworn to before me  
this 23<sup>d</sup> day of September 1857

O Casselberry

Theod. J. Krappf, J.P.

State of Illinois

St Clair County } Aaron W. Shoats upon oath says that  
he was at the sale of the real estate of William Foyner



deceased on the 31<sup>st</sup> day of May 1856 by John Thomas and N. Niles commissioners appointed by the St Clair County Circuit Court at its March Term 1856. That it is affirmably purchased a part of said land without any reservation whatsoever.

A. W. Shook

Subscribed and sworn to before me  
this 23<sup>d</sup> day of September 1857  
Wm. S. Thomas Clerk

State of Illinois  
St Clair County } Dominique Charles Kind upon oath  
says that he was at the sale of the real estate of William Forquer dec'd on the 31<sup>st</sup> day of May 1856 by John Thomas and N. Niles Commissioners appointed by the St Clair County Circuit Court at its March Term 1856. That the affiant had a person present bidding on a part of said premises for him. That said Thomas during said sale stated that he thought the purchaser would be entitled to the rent arising thereafter under a lease to Casselberry. That said Thomas sold said premises without condition or reservation, that this affiant was also interpreter for parties interested in said sale, who did not understand the English language; which afforded him a good opportunity of knowing what took place at said sale.

Subscribed and sworn to } Dominique Charles Kind  
before me this 23<sup>d</sup> day of Sept. 1857 }  
Theod. J. Krafft, J.P. }

Upon which said affidavits and said motion which was all the evidence the Court allowed the same and ordered said decree to be amended accordingly to which decision, of the Court, the said Capelberry then & there excepted & prays that his bill of exceptions may be signed, sealed & made a part of the record, which is done.

W<sup>m</sup> H. Snyder, *Great*

And afterwards on the same day to-wit: on the 25 day of September A. D. 1857, the following Appeal Bond was filed:

Know all men by these presents that we Charles Capelberry and Aaron W. Shook of St. Clair County Illinois are held and firmly bound unto George Forquer, Joseph Egan & Minerva his wife, Lucinda Forquer, Edward S. Shook John Forquer, Aaron W. Shook Mary Forquer, Harry Forquer a minor and Thomas Forquer a minor by George Forquer his next friend, Susannah Forquer, Stephen Pringle and Elizabeth his wife and all parties interested in the case herein after mentioned in the penal sum of three hundred Dollars for the payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly severally and firmly by these presents Witness our hands and seals this 25<sup>th</sup> day of September 1857. The condition of this obligation is such that whereas a certain motion was made to amend

a Decree heretofore rendered in the St Clair County Circuit Court at the March Term thereof AD 1856 in a certain case in Chancery, directing the sale of certain real estate mentioned in said Decree, in which Decree the said George Borguer and others were complainants and the said Susannah and others were Defendants, which said motion to amend said Decree was on the 25<sup>th</sup> Day of September 1857 allowed by said Court and from which said order of allowance Charles Capelberry a party to said Decree said motion prayed for and obtained an appeal to the Supreme Court of the State of Illinois. Now if the said Capelberry shall duly prosecute his said appeal with effect and shall moreover pay the amount of the Judgment, costs, interests and Damages rendered and to be rendered against him in case said Judgment shall be affirmed in the Supreme Court, then the foregoing obligation to be void otherwise in full force.

Approved by me } C Capelberry (Seal)  
 Sep. 25. 1857. W. S. Thomas } A. W. Booth (Seal)

State of Illinois }  
 St Clair County } I the undersigned Clerk of the  
 Circuit Court of said County hereby Certify that the  
 foregoing is a true and complete Copy of the proceedings

and order of the Court at the September Term  
thereof AD 1857 and also of the Bill of Exceptions  
and appeal Bond in the said entitled case as they appear  
on file and of record in my office

In Witness of which I hereto sign my  
name and affix the seal of said Court  
at office this 2<sup>d</sup> day of November 1857  
Wm S Thomas Clerk

George Horquer et al. } November Term  
vs } 1857 of Supreme  
Susannah Horquer et al } Courts 1st Grand  
Division  
Appeal from St Clair

And now comes Charles Caspberry one of the complainants & purchaser at the sale under the decree in this case and says that in the order allowing an amendment to said decree after said sale there is manifest error in this to wit:

1st- In making said amendment by order of the court below after said sale.

2d- In allowing said amendment without notice to Henry Louis & all the other purchasers at said sale, wherefore he prays that the said order allowing said amendment to said decree may be reversed &

Undersigned

Atty for Caspberry

Joinder in Error

V. Viles  
for applee.

George Fonguer et al

v.

Suzanne de Fonguer  
et al.

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Appeal from St. Louis

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The Clerk of the  
Supreme Court will  
please file this record  
& docket the cause.

Underwood  
Atty for plffs

Filed Nov. 10. 1857  
N. Johnston clk  
Prepared

George  
Susannah Forquer et al.

vs. Appellants.

Susannah George Forquer

Appellees.

Appeal from Sh  
Clair.

page 3.

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16 to 22.

[8471-17]

This case was commenced by bill in Chancery by appellants, for correcting mistake and partition of lands. Decree of partition, report and order of sale made at the March Term 1856 of said Court. Order of sale in usual form authorizing John Thomas and N. Niles to sell all the interest of the parties in the premises. The bill sets out among other things that Forquer died, through whose death all parties claim, devised all his estate real and personal, to Susannah Forquer for life, that one Casselberry has a lease on part of the premises for 3 years from the first of March 1855 and prays, that in case partition cannot be made, the same may be sold, subject to said lease. Bill taken for confessed and decree entered as aforesaid without ordering sale, subject to said lease.

At the September Term 1857 Appellees move the Court to amend the record of the decree aforesaid, so as to save and reserve to said Susannah all her right under and by virtue of said lease, according to the prayers of said bill and introduce affidavits of:

Joseph Dollinger, who swears, in substance, that he was a purchaser at the sale under the decree and has since sold to Casselberry.

N. Niles, swears that as Solicitor for complainant, he drew the decree and by inadvertence and mistake in drawing up the decree, the lease to Casselberry was not mentioned, nor the interest of Susannah Forquer saved to her, as prayed for in the bill. That during the pending of said suit and before the sale under the decree, the said Niles advised his clients

that the rents would be reserved to her in the decree, and inserted a prayer in the bill to that effect with their consent. That she never released the same & or would have assented to the decree as made.

John Thomas, Commissioner to sell, swears that he sold at auction at outcry said land according to the order of the court as reported to the Court at the last term thereof. That the Shooks and Casselbery and Tollinger purchased in separate parts of said land. That they and many others were present at the sale. That before the sale commenced when all the bidders were on the ground, the fact of the existence of the lease to Casselbery on a part of said land, was talked of and discussed & and that notice was distinctly given, at said sale, to all the bidders & that the widow held said lease and claimed the rent.

That witness expressed the opinion to the bidders, that she was entitled to and would collect the same and such was the universal understanding at said sale, so far as opinions were expressed. That in the opinion of witness, owing to such understanding, the land brought less than it otherwise would have done.

And J. Olesby, swears that he attended the sale in question, that the subject of the widow's claim for rent was discussed by the bidders and commissioners before the sale and it was understood by all persons so far as opinions were expressed, that the rent would not pass to the purchaser, but was reserved to the widow. Dependent was acting as friend and agent of the family and gave notice publicly of the lease before the sale that the rent was coming to the widow. Such was the universal understanding.



George Forquer swears that the lease for three years not yet expired was read by Thomas the Commissioner at and before the sale. That it was understood by all that the land was sold subject to the lease and the rent due and to become due, was reserved to his mother, and in the opinion of witnesses the land covered by the lease was sold for less by several dollars per acre on that account. That both the Shooks and Casselberg and Vollinger were present on the ground and had notice before the sale of the lease and made no claim against the reservation to the best of his belief.

926 24 - Casselberg a purchaser at said sale & also a purchaser from Vollinger at the sale, resisted the motion and presented affidavits to the effect following:

Elijah Badgley, swore that he was present at the sale and was a bidder and after the sale commenced witness asked Thomas, Commissioner, if there was not a lease to Casselberg and if the same should not be reserved in the sale, to which Thomas publicly replied in the presence and hearing of all the bidders, that it was his opinion as a farmer (not as a lawyer) that the rent would go with the title. He then proceeded to sell the premises without reserve. Henry Louis bid off part of the premises (65 acres) A. H. Shook purchased a part and Joseph Vollinger became interested in part of said premises.

Charles Casselberg, swore that at the time of the sale he presented a written lease to Thomas the Commissioner who said that his opinion was that the lease would hold good and that the profits of the same would go with the title to the land. That part of said premises were bid in for Joseph Vollinger who has since sold the same and given a warranty deed.

A. W. Shook swore that he was at the sale and purchased a part of the land without any reservation whatever. Dominique Karlstind, swore that he had a person present bidding on part of the land for him. That during the sale Thomas the Commissioner said he thought the purchaser would be entitled to the rent under the lease. That Thomas sold the land without condition or reservation. That affiant acted as interpreter for parties at the sale who did not understand the English language which afforded him a good opportunity of knowing what took place at the sale.

This was all the evidence, upon which the court allowed the decree of sale to be amended so as to reserve the rent of said lease to Susannah Forquer to which decision of the Court Cassel-  
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Henry excepted and brings the case by appeal to this Court and assigns for error that the court below erred in allowing said amendment.  
2 - Without notice to Henry Louis one of the purchasers

Wm. Woods  
Solicitor for Casselberg.

18-12-55

No 244

George Forquer et al

vs.

Susannah Forquer et al

Abstract

Filed 10. Nov. 1857

A. Johnston CM

Belleville, Nov. 7, 1857

Dear Sir: -

I have no funds  
but specie except bank  
paper that may not be  
current with you.

Please docket this case  
and have the abstract  
printed & I will pay  
you when I come out.

Wm Underwood

W. Johnson

Proper et al

41

Proper et al

Filed Nov. 10. 1857

M. Johnson Clerk

# SUPREME COURT OF ILLINOIS.

## FIRST GRAND DIVISION.

NOVEMBER TERM, A. D. 1857.

### ABSTRACT.

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George Forquer et al. Appellants }  
vs. } Appeal from St. Clair.  
Susannah Forquer, Appellee. }

This case was commenced by bill in Chancery by appellants, for correcting mistake and partition of lands. Decree of partition, report and order of sale made at the March term 1856, of said Court. Order of sale in usual form, authorizing John Thomas and N. Niles to sell all the interest of the parties in the premises. The bill sets out, among other things, that Forquer, deceased, through whose death all parties claim, devised all his estate, real and personal, to Susannah Forquer for life, that one Casselbery has a lease on part of the premises for three years, from the first of March, 1855, and prays that in case partition cannot be made, the same may be sold subject to said lease. Bill taken for confessed and decree entered as aforesaid, without ordering sale, subject to said lease.

At the September Term, 1857, Appellees move the Court to amend the record of the decree aforesaid, so as to save and reserve to said Susannah all her rights under and by virtue of said lease, according to the prayers of said bill, and introduce affidavits of:

Joseph Vollinger, who swears, in substance, that he was a purchaser at the sale under the decree and has since sold to Casselbery.

N. Niles swears that, as solicitor for complainants, he drew the decree, and by inadvertance, and mistake in drawing up the decree, the lease to Casselbery was not mentioned nor the interest to Susannah Forquer saved to her, as prayed for in the bill, that during the pending of said suit, and before the sale under the decree, the said Niles assured his clients that the rents would be reserved to her in the decree, and inserted a prayer in the bill to that effect, with their consent. That she never released the same, &c., or would have assented to the decree as made.

John Thomas, Commissioner to sell, swears that he sold at auction, at outcry, said land according to the order of the Court, as reported to the Court at the last term thereof.— That the Shooks, and Casselbery, and Vollinger purchased, in separate parts, said land. That they, and many others, were present at the sale. That before the sale commenced, when all the bidders were on the ground, the fact of the existence of the lease to Casselbery on a part of said land, was talked of and discussed, &c., and that notice was distinctly given at said sale, to all the bidders, &c.; that the widow held said lease and claimed the rent. That witness expressed the opinion to the bidders, that she was entitled to, and would collect the same, and such was the universal understanding at said sale, so far as opinions were expressed. That in the opinion of witness, owing to such understanding, the land brought less than it otherwise would have done.

Wm. B. Oglesby swears that he attended the sale in question, and that the subject of the widow's claim for rent was discussed by the bidders and Commissioners before the sale, and it was understood by all persons, so far as opinions were expressed, that the rent would not pass to the purchaser, but was reserved to the widow. Deponent was acting as friend and agent of the family, and gave notice publicly of the lease before the sale, that the rent was coming to the widow. Such was the universal understanding.

George Forquer swears that the lease for three years, not yet expired, was read by Thomas, the Commissioner, at and before the sale. That it was understood by all that the land was sold subject to the lease; and that the rent due, and to become due, was reserved to his mother; and, in the opinion of witness, the land covered by the lease was sold for less, by several dollars per acre, on that account. That both the Shooks, and Casselbery, and Vollinger were present on the ground and had notice, before the sale, of the lease, and made no claim against the reservation, to the best of his belief. Casselbery, a purchaser at said sale, and also a purchaser from Vollinger at the sale, resisted the motion and presented affidavits to the effect following:

Elijah Badgley swore that he was present at the sale, and was a bidder; and after the sale commenced, witness asked Thomas, Commissioner, if there was not a lease to Casselbery, and if the same should not be reserved in the sale, to which Thomas publicly replied, in the presence and hearing of all the bidders, that it was his opinion as a farmer (not as a lawyer,) that the rent would go with the title. He then continued to sell the premises without reserve. Henry Louis bid off part of the premises—65 acres. A. W. Shook purchased a part; and Joseph Vollinger became interested in part of said premises.

Charles Casselbery swore, that at the time of the sale he presented a written lease to Thomas, the Commissioner, who said that his opinion was, that the lease would hold good,

and that the profits of the same would go with the title to the land. That part of said premises was bid in for Joseph Vollinger, who has since sold the same and given a warranty deed.

A. W. Shook swore that he was at the sale and purchased a part of the land without any reservation whatever. Dominique Karlskind swore that he had a person present bidding on part of the land for him. That during the sale Thomas, the Commissioner, said he thought the purchaser would be entitled to the rent under the lease. That Thomas sold the land without condition or reservation. That affiant acted as interpreter for parties at the sale who did not understand the English language, which afforded him a good opportunity of knowing what took place at the sale.

This was all the evidence upon which the Court allowed the decree of sale to be amended so as to reserve the rent of said lease to Susannah Forquer, to which decision of the Court Casselbery excepted, and brings the case, by appeal, to this Court, and assigns, for error, that the Court below erred in allowing said amendment. 2d. Without notice to Henry Louis, one of the purchasers.

UNDERWOODS,  
Solicitors for Casselbery.

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No 44

George Horner et al

vs

Susannah Horner et al

Appeal from St Clair

Abstract

Filed 16. Nov. 1857.

A. Johnston Clerk



# SUPREME COURT OF ILLINOIS.

## FIRST GRAND DIVISION.

NOVEMBER TERM, A. D. 1857.

### ABSTRACT.

George Forquer et al. Appellants

vs.

Susannah Forquer, Appellee.

} Appeal from St. Clair.

Record Page

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This case was commenced by bill in Chancery by appellants, for correcting mistake and partition of lands. Decree of partition, report and order of sale made at the March term 1856, of said Court. Order of sale in usual form, authorizing John Thomas and N. Niles to sell all the interest of the parties in the premises. The bill sets out, among other things, that Forquer, deceased, through whose death all parties claim, devised all his estate, real and personal, to Susannah Forquer for life, that one Casselbery has a lease on part of the premises for three years, from the first of March, 1855, and prays that in case partition cannot be made, the same may be sold subject to said lease. Bill taken for confessed and decree entered as aforesaid, without ordering sale, subject to said lease.

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Charles Casselbery swore, that at the time of the sale he presented a written lease to Thomas, the Commissioner, who said that his opinion was, that the lease would hold good.

Underwood for Piff

- 2 John C 206
- 17 Ill 471
- 2 Bonnel 1235
- 2 Smith Ch Prae 14
- 1 Bacon 263
- 2 H Y 476
- 2 Edwards 133

Decree cannot be altered but by  
bill of review

Notes for dist.

- 12 Mes & Mes 685 - will not review discretionary decision
- 2 Much Va 169 - Mistake of Error Coram Vobis as to what
- 1 Randolph 25 - was a clerical error

- 4 Conn 277
- 2 Say & Hoar 21

and that the profits of the same would go with the title to the land. That part of said premises was bid in for Joseph Vollinger, who has since sold the same and given a warranty deed.

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UNDERWOODS,  
Solicitors for Casselbery.

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No 44

George F. Orquer et al

vs

Succumah Jurgens et al

Appl. from St Clair

Abstract

Filed 16. Nov. 1859

N. Johnston Clk

Forquer et al

(15)

Forquer et al

- 1- It was too late to amend  
decree after a sale. ~~2 Daul C.~~  
~~1 Sub p 694.~~ Bennett vs. Winter  
2 J. C. R. 206, 17 Ill R. 471,  
2 Daul C. Prac 1232 to 1235  
2 Edw C. R. 133, 2 Smith's C. R. 14;  
1 Bawis Ab. 263, 2 Ren R. 476

2<sup>d</sup> - If decree could be amended  
it was only by bill in chan-  
cery. 1 Gilb. R. 451.

Wm Woodward  
Atty for appellant

No 111

Nov 1 1857

Geo. Ferguson et al  
vs

Susannah Ferguson et al

8471

Appl. from St Clair

Reverend and  
Honorable