

No. **11944**

Supreme Court of Illinois

Tyson

vs.

⁷³ Postlewaite, et al

71641  7

Boone
William Tyson et al.
vs
James Postlewaite et al.

83

11944

1852

file 1

Pleas before the Hon Hugh Henderson
Judge of the Thirteenth Judicial Circuit of the State of
Illinois and Judge of the Boone County Circuit Court
at a Circuit Court begun and held at the Court
House in Belvidere on the first day of April in
the year of our Lord one thousand eight hundred and
fifty

Present Hon Hugh Henderson, Judge

P. W. Platt

State Attorney

Attest A. S. Olney

Clerk

Be it remembered that here to wit, on the
fifteenth day of March A.D. 1848 came James Postle-
thwaite doth as by Allen C. Sullivan, Solicitor and
filed in the clerk's office of this Court the following
instrument of writing to wit:

"In Case to wit Court

In Chancery

For May Term 1848

To the Hon Jesse B. Thomas one of the Justices of the
Supreme Court of the State of Illinois and Judge of the
seventh Judicial Circuit in said State in Chancery
sitting:

Humblly complaining sheweth unto your Honor
your Oration and oratrices James Postlethwaite Mary
Postlethwaite wife of said James, George Vickers, Ellen
Vickers, wife of said George, Thomas Postlethwaite.

211944-1

3 Marquite Postlethwaite, Isabella Postlethwaite, Sarah
Postlethwaite & George Postlethwaite, of the County of
Pope and State of Illinois, the ^{said} Sarah & George app-
earing by their Guardian James Postlethwaite, they
being Minors under the age of Eighteen and twenty one
years, and John Postlethwaite and Mary Postlethwaite
wife of said John of the County of Lancashire in England,

That Isaac Tyson deceased late of said Pope County
Son in law of your orator James, was in his life time seiz-
ed in fee simple of the following described real estate
to wit: All that certain piece, parcel or lot of land
4 and premises situate lying and being in the County of
Pope and State of Illinois and known and described
as being the North East quarter of Section five (5) in
Township forty four ~~44~~ North and in Range three East of
the third principal meridian, containing one hundred
and fifty nine and thirty seven hundredths of an acre
more or less; Also the North West and South West
quarters of North West quarter of Section number four
(4) in Township No 44, of Range No 3 East of the
principal Meridian, containing Seventy nine acres
and sixty eight hundredths of an acre; Also the
5 following described lot of land situate lying and being
in Pope County aforesaid to wit: Beginning at a post at
the middle of the East line of the South West quarter of Section
five (5), thence along said line South twenty six perches and
seven tenths of a perch to a post, thence West forty six per-
ches to a stone heap in a ravine, thence along up
said ravine North Eleven and a half degrees East
twenty seven perches and two tenths of a perch to a
stone heap on the south line of R Gowiths forty acres
6 thence along said line East forty perches and
six tenths of a perch to the beginning containing

seven and one quarter acres of land: Also another
piece or parcel of land in Pam county aforesaid and
described as follows: Beginning at the south quarter
post of section five (5) aforesaid - thence along the sec-
tion line west eighty paces to a post at the middle of
the south line of said south west quarter of said section
five (5) thence north twenty six paces and seven tenths
of a pace to a post. thence along Thomas D. Walker
7 south line east eighty paces to a post on the east
line of the quarter - thence along said quarter line
south twenty six paces and seven tenths of a pace
to the beginning containing thirteen and one quarter
acres more or less, both last mentioned pieces descri-
bed in conformity with a survey made by one John
Browbridge on the twentieth day of February A.D. 1845
the whole of said lands amounting to about two hundred
and fifty nine acres and fifty five hundredths of an
acre

And your Oration and Oration further show
8 unto your Honor that the said Isaac Tyson being so
seized as aforesaid of the property above described de-
parted this life on or about the 14th day of September
anno Domini 1826 intestate leaving Mary Tyson his wid-
ow, and William Tyson and Tyson wife of said William
(his Christian name is unknown but which when discovered
they desire to have herein inserted) the said William &
wife their and now residing in Liverpool in England
his said Isaac's sole heirs at law him surviving

And your Oration & Oration further show unto
your Honor that at the time the said Isaac
9 departed this life as aforesaid the above described
property was free and clear of all

incumbrance what so ever. That the said Isaac left a few articles of personal property and some few debts of small amount undischarged. That said Mary Tyson his said widow on account of the small amount of personal property so left her as aforesaid as well as because the debts due from the estate of her deceased husband were so inconsiderable in amount, did not, nor did any other person, cause letters of administration to be issued for the settlement of said estate. That the said ~~Mary~~ Mary, did, however, pay the said debts out of the personal property aforesaid to which by law she was entitled

And your Orator & Oratrices further shew unto your Honor, that at the time the said Isaac died as aforesaid he left no child or children, and only one brother & his wife to wit: said William & his said wife, and that therefore as your Orator and Oratrices are advised and believe the said Mary Tyson inherited from her said husband and in law became entitled to one undivided half of the above described landed property and all of the personal estate of which her said husband died seized, the remaining one half of said real estate devolving to the said William and his said wife

And your Orator & Oratrices further shew unto your Honor, that the said Mary Tyson being seized of the one undivided half of said real estate as aforesaid departed this life on or about the sixteenth day of August Anno Domini 1847 intestate leaving your Oratrices & Orator her sole and only heirs at law her surviving, (without having elected to take her down in said premises or relinquishing her estate of inheritance therein, but having elected to take by

Between () amendments to the original Bill made in the order of court.

inheritance in said premises)

And your Orator & Oratrix further show unto your Honor that very soon after the decease of the said Mary as aforesaid your Orator James Postlethwaite was appointed administrator of the estate of the said Mary and as such administrator has regularly administered upon and settled said estate as by the records of the Probate Court of the said County of Poore reference being thereunto had and ready to be produced & as this Court shall direct. & will more fully and at large appear. They further state, that in the settlement of said estate, it did not become necessary to sell any of the above described real estate, and that the same at the exhibiting this Bill of Complaint is free and clear of all judgments mortgages, liens or incumbrances, whatever

And your Orator and Oratrix further show unto your Honor, that as they are advised and believe by the death of the said Mary Tysen as aforesaid your Orator James as the father, & his wife Mary as the mother the said George Victor in right of his wife Ellen, whose maiden name was Postlethwaite & sister of the said deceased Mary as the brother in law: the said Thomas, John & his wife as aforesaid of England, Marguerite Isabella, Sarah and George as the brothers & sisters of said Mary deceased, became seized in fee as tenants in common by descent from the said Mary Tysen deceased of one half of the said described real estate: that is to say, your orator & oratrix as before enumerated each became seized of the one eighth undivided with part of the and

half of said real estate, the remaining or undivided
half belonging to said William Tyson & wife who are
made defendants to this bill of Complaint

16 And your orators and oratrices further show
unto your Honor that said real estate consists of
four separate parcels of land according to the above
description, that some of said lands is most
suitable for pasturing, some part for cultivation and
other parts are well timbered, that upon the two
smallest lots to wit, that of $13\frac{1}{4}$ Acs and that of $6\frac{1}{2}$
Acs there are valuable stone quarries which are of
great value on account thereof. And your Orators
and Oratrices further state that on account of said
property being thus situated it will or at least may be
difficult to make an equal allotment or partition
of the same among the respective parties without making
or allowing some pecuniary settlement or compensation
to the party or parties taking that portion or portions
of least value, which pecuniary settlement or compen-
sation in such cases they are informed can only be
decreed to be made in a Court of Equity

17 And your orators and oratrices further
show unto your Honor that for reasons above stated
and that their interests in said property may not be
sacrificed by a sale thereof or by dividing the same into
nine or ten parts as would be necessary to have each of
the respective parties have a separate and independent
share or portion of the same, their interests would be
best promoted and protected by a division of said prop-
erty into two separate and distinct parts, the one part
for the use and benefit of said William Tyson & his

18 wife and the other part for the ^{and benefit} use of your Orator and
Oratrices, to be, after such division made ^{of} as this
Court shall direct, by them held jointly until
such time as a division or sale of the same can be
made Compatible with and in Conformity to their respec-
tive interests

19 Your Orator
and Oratrices therefore shew unto your Honor that
they are desirous of having such partition as aforesaid
made of the said several parcels of land among the
several parties seized of or entitled thereto according to
their respective rights, Estates, and interests therein,
or in case the said several parcels of land cannot
be divided among the owners thereof as aforesaid
without material injury to the parties interested therein,
then that the same may be sold and the proceeds thereof
of divided among such parties according to their respec-
tive rights and interests, but inasmuch as the said
Sarah & George two of the heirs of the said Mary Tyson, on acco-
unt of their respective Minorities, are severally incapab-
le to make a Voluntary partition of the said premises
which will be valid, or to consent to the sale thereof, so
far as they are severally interested therein and as your
Orator and Oratrices are advised that no valid
20 partition, division or sale thereof can be made
or effected without the aid and interposition of some
Court of competent jurisdiction, Wherefore your Orator
and Oratrices have been advised to apply to this Court
for aid and direction in the premises

In Consideration whereof and to the end that the
Said William Tyson and his wife aforesaid may
jointly full, true, direct and perfect answer make
without Oath which is lawfully waived to all and sing-
ular the persons to the best of their and each of their
Knowledge & information, together with all and singular
21 the circumstances relating thereto and that as fully
and particularly as if the same were here again repeated
and they thereto particularly interrogated, and that the
parts or shares of said property justly belonging to your
Orator, and Oratrices and all other owners herein
before named, of in and to the aforesaid farms, pieces or
parcels of land may be settled and ascertained by and
under the direction of this Court, And that a fair
partition and division as aforesaid may be made between
your Orator, and Oratrices and all other persons who
shall appear to be owners of or interested therein,
22 according to the respective rights and interests of each
therein, And that a Commission of Partition may
be issued out of and under the Seal of this Court,
and proper persons may be appointed for the purpose
of making partition of said premises, or in case a part-
ition thereof cannot be made, or of any part thereof
by metes and bounds, or a division cannot be made
without great prejudice to the owners, then that
the same, or such part thereof as cannot be
divided by metes and bounds, may be sold by and
under the direction of this Court, and that

23. the proceeds of the sale after paying the cost and charges of this suit may be divided among the owners ^{thereof} according to their several rights and interests therein, and that to that end the rights and interests of the parties interested in the said premises or in the proceeds or the sale thereof may be ascertained and declared by the order and decree of this Court.

And that your Orator and Oratrices may have such other or further relief in the premises as shall be agreeable to Equity and good conscience and the nature of this case may require

24

May it please your Honor to grant unto your Orator and Oratrices process of summons directed to the Sheriff of the proper County commanding him to summon the said William Dyson and his wife as aforesaid to be and appear before this Court on the Sunday next after the third Monday of May Anno Domini 1848. then and there answer to make to this Bill of Complaint and abide by and perform the order and decree of the Court in the premises and for process of Compulsion for partition as your Orator and Oratrices hath above prayed

25

And your Orator & Oratrices will ever pray &c

Allen C. Fuller	James Postlethwaite
Solr for Compl ^{ts}	Mary Postlethwaite
J of Council	George Vickers
	Ellen Vickers
	Thomas Postlethwaite
	Margate Postlethwaite
	Isabella Postlethwaite
	John Postlethwaite
	Mary Postlethwaite

Sarah Postlethwaite } My true Guardian
George Postlethwaite } James Postlethwaite

And afterwards to wit on the day and year
last aforesaid was filed in the office of the clerk
of the Circuit Court the following paper in words
and figures following to wit:

Boone Co. Court } In Chancery

James Postlethwaite et al } for May Term 1848
vs } Bill for Partition
26 William Tyson et ux }

The Clerk will please issue
summons in this cause directed to Sheriff of
Boone County on filing accompanying "Bill"
& notice of publication vs William Tyson & wife
on filing accompanying affidavit. Insert the
complainant's names in full in notice

March 15. 1848

To S. S. Whitman Esq
Clerk &c

A. C. Fuller
Solr

And afterwards to wit on the day and year
last above written, the following summons was
issued out of the clerk's office of the Circuit Court in
words and figures following to wit:

27 State of Illinois }
Boone County, } The People of the State of Illinois

To the Sheriff of said County Greeting
We command you to summon William Tyson and
— Tyson wife of said William (whose Christian
name is unknown) if to be found in your County per-
sonally to be and appear before the Circuit Court
of said County on the first day of the next term
thereof to be holden at the Court house in Belvidere
on the sixteenth day of May next to answer to
a certain Bill for Partition filed in our said Circ-
uit Court on the Chancery side there of by James
28 Postlethwaite, Mary Postlethwaite, George Vickers Ellen
Vickers, Thomas Postlethwaite Margaret Postlethwaite
Isabella Postlethwaite, John Postlethwaite, Mary
Postlethwaite and

Sarah Postlethwaite & by their Guardian
George Postlethwaite & James Postlethwaite
and have you then and there this writ with an
indorsement ~~thereon~~ &c

S. S.

Witness Seth S. Whitman Clerk of
our said Court and the Seal there
of Belvidere March 15. A.D. 1848

Seth S. Whitman
Clerk

And afterwards to wit on the first day of May in
the year of our Lord one thousand eight hundred &
forty eight the above summons was returned to the
29 Clerk's office of the Circuit Court with the fol-
lowing Endorsement to wit

I cannot find the within named
William Tyson George within my County this
21st day of April A.D. 1848
Jus Juris 00 June 25 1848 = 37 1/2 See Florida Stat

And afterwards to wit, on the seventeenth day
day of May one thousand Eight Hundred and
seventy Eight and during the May term of the
Boone County Circuit Court the following paper
was filed in the office of the Clerk of the Circuit Court
in words and figures following to wit

30 Boone Cir Court } In Chancery
James Postlethwaite }
et al } vs } Bill for Partition
William Tyson et al } of May Term 1848

To the Hon Jesse P. Thomas
one of the Justices of the Supreme Court & Judge of the
7th Judicial Circuit in Illinois in Chancery sitting

Your Orator Lawrence Fagan of
the County of Boone and state of Illinois show-
eth unto your Honor that on the day of
March last past at Belvidere in said County,
and since the commencement of this suit,
he intimated with Sarah Postlethwaite
one of the complainants in this cause

31 And your Orator
further showeth unto your Honor that the
said Sarah Postlethwaite or Fagan at Belvi-
ere aforesaid on the 10 day of May instant dep-
arted this life

Your Orator therefore prays that
such intemariage and death may be
suggested upon the records of this Court in

this cause and your Orator be made a party thereto

And your Orator will Em pny
Lawrence Fagan

A.C. Muller

Solr

32 And afterwards to wit on the day and year last aforesaid & during the May term of the Above Circuit Court the following paper was filed in the Office of the Clerk of the Circuit Court in words and figures following to wit

Prove Cir Court

} In Chancery

James Postlethwaite et al } of May Term 1848

vs }
William Tyson et ux } Sup Bill for Partition

To the Hon Jesse D. Thomas one of the Justices of the Sup. Court of Illinois & Judge of south judicial Circuit in said State in Chancery sitting

Your Orator William Frank of said County sheweth unto your Honor that on the 14th day of April last past at the County of Boone he intermarried with Isabella Postlethwaite one of the complainants in this cause

33
[117443] Your Orator therefore prays that such intermarriages may be

suggesting upon the records of this Court in this
cause and your Orator made a party to this
suit

And your Orator will ever pray
William Frank
of C. Fuller
Solv.

And after way to wit: on the day
and year last aforesaid and during the May
Term of the Boone Circuit Court AD 1848, the fol-
lowing paper was filed in the Office of the Clerk of
the Circuit Court in words and figures following to
wit

Boone County Circuit Court
In Chancery

The Demurrer of William
311 Tyson and Ann Tyson his wife Defendants to the
Bill of Complaint of James Postlethwaite and others
Complainants and to which Bill the said William
Tyson and Ann Tyson his wife are made parties
Defendants. The Defendants by protestation not
answering or acknowledging all or any of the
matters and things in the said Bill of Complaint
contained to be true in such manner and form
as the same are therein & thereby set forth & alleged
do demur in law to the said Bill and for cause
of demurrer show that the scope and end of
35 the said Complainants Bill is to be relieved touch-
ing the tenancy in common by the said bill
supposed to exist between the Defendants and

the complainants in said bill mentioned in Certain
real Estate in said bill described and which the
said Complainants would or seek by the said bill
to be partitioned and divided according to the rights
as set out in said bill and yet they have not
alleged or shown in or by their said Bill that
the said Mary Tyson widow of said Isaac Tyson
in her life time made any Election in lieu of her
dower in the Estate of which her husband died
seized of one half of all Real Estate which should
remain after the payment of all just debts and
claims against her deceased husband to be held abs-
-olutely and in her own right as if she were sole

Wherefore and for divers other good causes of
demerit appearing in the said bill these defendants
do demur thereto and they pray the judgment
of the honorable Court whether they shall be comp-
-elled to make any further or other answer to the
said bill and they humbly pray to be hence dismissed
with their reasonable costs in this behalf sus-
-tained

G. W. Kretzinger

Solicitor for Defendants

And afterwards to wit, on the 18th day of May A.D.
1848 and during the May term of this Court the following
order and proceeding was had and entered of record to wit:
James Poulter & Co. et al. }
William^d Tyson & Co. } Bill for Partition

And now come the parties by their solicitors
& the said Defendant files his demurrer to the Bill

of Complaint in this cause - which coming on to be heard is argued by the Counsel and the Court not now here being fully advised thereon take the same under advisement

And that afterwards on the twenty second day of May in the year of our Lord one thousand eight hundred and forty nine and during the May term of this Court the following order and proceeding was had

James Postlethwaite et al
vs
William Tysan et al
In Chancery
Bill for
Partition

And now comes the said Complainants by their solicitor and on their motion leave is granted to them to file a supplemental bill of Complaint showing the intermarriage of Danforth Nettleton with Margaret Postlethwaite one of the Complainants in this

James Postlethwaite et al
vs
William Tysan et al
In Chancery
Bill for
Partition

cause And on his motion it is ordered that the said Danforth Nettleton be made a party Complainant to this suit in right of his wife in the further prosecution of this suit

And afterwards to wit on the day and year last aforesaid and during the May term of this Court was filed in the Office of the Clerk of the Circuit Court the following paper in words & figures following to wit.

Boone Cir Court } In Chancery
" " }
James Postlethwaite et al }
vs } of May Term 1849
William Tysan et al }

To the Hon Hugh Henderson
Judge of said Court in Chancery sitting

Your Orator Danforth Nettleton of
said County sheweth unto your Honor that on the
19th day of March last past and since the Commencement
of this suit your orator intromaining with
Margaret Postlethwaite one of the Complainants
in this cause

Your Orator therefore prays that such
intromaining may be suggested upon the records
of this Court in this cause and your Orator
made a party to this suit

And your Orator will ever pray

At Test
Jof Counsel

Danforth Nettleton

And afterward on the day and year
last aforesaid and during the May Term of this
Court A.D. 1849 was filed the following paper
in the Clerk's office of the Circuit Court in words
& figures following to wit:

In the Court of Chancery

James Postlethwaite et al

vs

William Tysen et al

In Chancery

Bill for Partition

The Answer of William
Tysen & Ann Tysen his wife to the Bill of Complaint
of said James Postlethwaite & Mary his wife

George Vickus and Ellen his wife
Thomas Postlethwaite Danforth Nettles
42 for Margaret Nettleton William Frank
& Isabella his wife, Lawrence Fagan &
George Postlethwaite who sees by his next
Friend as amended

These Defendants now and at all times
saving and reserving all and all manner of advantage
of Exception to the said bill of Complaint for the
many errors imperfections and inconsistencies there
-in contained for answer therunto or unto such
parts as they are advised, it is material for
them to make answer unto. they answering say

That true it is that as they
are informed and believe the said Isaac Tyson
late of said County of Boone did seized of the real
43 Estate set forth and described in said Bill of
Complaint leaving the said Mary Tyson his widow,
and this defendant William ^{Tyson} his Brother & Ann
Tyson the wife of the said William him surviving &
that at the time of his death he left no other rel-
atives entitled to inherit his property under the laws
of the State of Illinois - and that he died intestate -

That they have no knowledge except as
informed by said bill and other hearsay - of the death
of said Mary Tyson but believe the same to have taken
place as stated in said bill

44 That they have no knowledge
otherwise than as informed by said bill what if
any debts were due by the said Isaac Tyson at

the time of his death or how the same if any
have been paid. and therefore can neither admit
or deny the same as therein charged - but if ma-
terial to this cause leaving the said Complainant to
make such proof thereof as they are advised & this
Court shall hereafter shall require

That they have no
Knowledge otherwise than as informed by said bill
who were the heirs of said Mary Tyson & entitled to
claim as such. such real estate as she may be
entitled to - and therefore can neither admit or
deny the rights of the complainant as such heirs
at law to institute these proceedings and therefore
leave them to make such proof thereof as they
may deem advisable & this Court require

That they have no Knowledge
information or belief as to whether the said Mary
Tyson during her lifetime made any Election
to take by intestancy in the said premises -
or as to whether she died without having elected to
take her dower in said premises or without
having relinquished her estate of intestancy
therein

but these defendants deny that she ever
did make an Election to take one half of the
real estate wherof her husband the said Isaac
Tyson died seized after the payment of all his
just debts in lieu of her dower therein, and they
expressly deny that she ever gave notice or in
any way or manner notified these defendants of
any such Election

And these defendants

47) further answering expressly charge that unless the said Mary Tyson did during her life time make such election in due proper and legal manner that the said Complainants have no estate or interest whatsoever in the said lands and premises

And these Defendants further answering state that the said Ann Tyson is the wife of said William Tyson and is only entitled to Dower in said premises in case she survives her husband & is therefore necessarily made a party defendant to the bill of complaint in this cause

48) And these Defendants state that if the said Complainants are in the judgment & consideration of this Court entitled to partition of said premises, then they submit to such partition as the Court shall in Equity & good conscience deem just, otherwise they pray to be here dismissed with their reasonable costs & charges in this behalf most wrongfully sustained

Burgess & Kessinger
Solicitors for Plaintiff

William Tyson
Ann Tyson

And afterward to wit on the 25th day of May in the year of our Lord one thousand eight hundred and forty nine and during the may term of this Court the following paper was filed in the Clerk's office of the Circuit Court, which was in words & figures following to wit

Room in Court

In Chancery

James Postlethwaite & al

of May Term 1849

vs

William Tyson

The Replication of James Postlethwaite and all the Complainants mentioned in the Original Bill and Supplemental bill filed in this cause to the answer of William Tyson and wife Defendants.

These repliants, saving and reserving to themselves now and at all times hereafter, all and all manner of benefits and advantages of exception which may be had or taken to the manifold insufficiencies of the said answer for replication thereunto. say that he will aver, maintain, and ~~prove~~ prove, his Bill of complaint to be true certain, and sufficient in the law, to be answered unto, and that the said answer of the said Defendants is uncertain, untrue, and insufficient to be replied unto by these repliants without this, that any other matter or thing whatsoever in the said answer containing material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided traversed and denied is true; all which matters and things these repliants are and will be ready to aver maintain and prove, as this Honorable Court shall direct, and humbly prays as in and by the said Bill and Supplemental

Bills they had already prayed

A. C. Fuller

Sol^r of Compl^t

And afterwards to wit on the day and year last
aforesaid and during the present May term of the
Court the following ^{proceedings were had & returned & heard} ~~papers were filed~~ in the office
of the Clerk of the Circuit Court which is in the
words & figures following to wit:

Poore Cir Court

In Chancery

James Postlethwaite et al

Of May Term 1819

vs

William Pyswchar

And now at this day comes
the said complainants by their Solicitors Allen
C. Fuller and the defendants by their solicitors
Burgess & Kutsing and it appearing that this
cause is at issue upon Bill, Supplemental Bills
answer & Replication it is

on motion of Allen C. Fuller solici-
tor for complainants it is Ordered that it be referred
by Agreement to Stephen A. Hurlbut, a special
Master in Chancery for that purpose appointed
(the said Fuller the master in Chancery for said
County of Poore being solicitor for Compl^t in this
cause) to take proof of all material facts and
allegations in said Bill, Supplemental Bills,
Replication & answer necessary to be taken

and to report the same to this Court together
53 with his opinion thereon at the next term of
this Court. Dated May 25th 1849

Hugh Henderson

And afterwards to wit on the day and year last
aforesaid and during the May term of this Court
the following Order and proceeding was had and
entered of record to wit

James Postlethwaite et al^{vs} In Chancery
William Tyson et al^{vs} Partition

And now come the parties by their
solicitors and the issues being made up in this
Cause, It is ordered that it be set down for hear-
ing on the first day of the next term of the Court
54 upon proofs to be taken in vacation

And afterwards on the 31st day of August
in the year of our Lord one thousand eight hundred
and forty nine the following paper was filed in
the Office of the Clerk of the Boone County Circuit
Court which is in words & figures as follows to wit

In the Boone Circuit Court

In Chancery

James Postlethwaite et al

vs

William Tyson et al

} Bill for Partition

It is admitted for the
purpose of the hearing in this cause, that
the parties complainant are the relatives and
55 heirs of the said Mary Tyson wife of Isaac X

Tyson deceased as set forth and alleged in the bill
and that the title of the real estate set forth and
described in said bill was vested in said Isaac Tyson
at the time of his death as therein alleged - and
that those of the parties alleged to be Minors were
such as alleged in said bill - and that the mat-
erial facts alleged in said bill are true as therein
alleged except as to the fact of Election by the said
Mary Tyson during her lifetime to take by inher-
56- itance in the real estate of which her husband died
seized

Burgess & Kettinger
Sols for Deft

And afterwards to wit on the thirty first day of
August in year of our Lord one thousand eight hundred and
forty nine the following paper was filed in the Clerk's
office of the Boone County Circuit Court which was
in words & figures following to wit

In the Boone County Court
In Chancery
James Postlewaite et al }
vs } Bell for Partitions
William Tyson & co }

Deposition of witnesses on the part
of the complainants in this cause taken by agreement
57 of parties at the time and place on the 31st day of Aug-
ust A.D. 1849 at the Office of Burgess & Kettinger in

Belvidere in said County, before Noah W. Biggs clerk of the Circuit Court appearing by his Deputy Thomas Hamilton - to be read at the hearing

The Complainants represented by their Counsel Allen C. Fuller

And the Defendants by their Counsel - sel. Ketsinger & Burgess

as follows to wit:

William D. Purges a Witness produced on the part of the complainants being first duly sworn In answer to the first Interrogatory, do you know the parties to this cause. & what do you know of the facts in this cause, says,

I knew Isaac Tyson from some time in the summer of 1844 to about the time of his death - which as I am informed happened in 1846.

I was also acquainted with Mary Tyson his wife, I knew her from some time in the year 1843 to the time of her death -

On or about the second day of February 1847, Mrs. Mary Tyson called on me and consulted with me in regard to her rights in the real estate of her husband - then deceased and requested me to make out papers for the Defendant William Tyson to execute in reference to that estate - I then with produce a copy of the letter I then drew up to send to him William Tyson to execute them. Which copy I have made from a copy in my letter book which I made and entered at the time - This letter I gave to Mrs. Mary Tyson with a power of attorney for William Tyson to execute, but what became of the papers afterwards I have no opinion

60 Knowledge. The power of Attorney as near as
I can recollect was intended and so drawn to
authorize the agents that William Tyson might
select to take possession of the land - to sell & lease
& make the proper conveyances for such selling
and leasing - to collect rents - and (but I am
not so certain as to it) a power of ~~Attorney~~ making
partition was also included in it.

The Original letter being produced by the
Compl. Council and identified by me as Exhibit "D"
the copy is dispensed with - The papers alluded
to in the letter were at the same ^{time} with the letter given
to Mary Tyson

W. J. Burgess

61 Subscribed & sworn to this
24th day of August A.D. 1849.
by me N. W. Burgo Clerk
by Thos. Hamilton Depty

Ralph Gawith a Witness produced on the
part of the Complainant being first duly sworn
doth depose and say

That he is the Ralph Gawith
mentioned in Exhibits "A" & "B". that he received them
both by mail & each one in the ordinary course
of time after they purport to have been dated as he
supposes.

62 That he was acquainted with Mary
Tyson in his life time. that his Attorney
ship in fact for William Tyson's wife has

continued to the present time as he supposes
That he was present in the house of
James Postlethwaite during the last sickness of
Mary Tyson

That a short time before her death he
had a conversation with Mary Tyson which
was after he had received Exhibit "B"

That the subject of this agency was tal-
ked over between him and Mary Tyson after he
received Exhibit "A" from William Tyson, at
 sundry times

Ant I Did you have any conversation after the death
of Isaac Tyson with Mary Tyson about what
63 should be done with the land in controversy?

Answer He thinks it more likely that he has than not

Ant II. Do ^{you} recollect any thing in particular that was said at
any such conversation by you or by her?

Answer No.

Ant III Was there in such conversation any thing
said about the division of the land?

Answer He cannot say that he has or that he has not

Ant IV Was the matter of dividing the land ever talked of
in the family

He does not remember whether it was or not

Ant V Was any thing said on the subject during her
64 last sickness

Answer He does not recollect whether there was or not

Ant VI Where did Mary Tyson reside during the
three or four months prior to her death

Answer At her Father's James Postlethwaite's

Sub VII Did her father James Postlethwaite transact her
business with you concerning the land in controversy
Answer He did I understood from her that she approves
of what he did

Sub VIII. Were there any negotiations during the life of
Mary Tyson after Isaac's death between you & James
Postlethwaite about dividing the land & did he ^{or} not
request a division to be made.

Answer I do not recollect that during her life time he request-
ed a division to be made but it was talked between us that
the law requires a division

Sub IX Do you know whether Mary Tyson ever expressed
a wish to have that land divided after the death of
Isaac Tyson?

Answer Something of that kind but expressed in round un-
-less Settlements, was frequently talked of but nothing
concluded

Sub X. Have you ever learned by correspondence or other
wise that Mary Tyson wanted half that land af-
ter the death of Isaac

Answer At the time I received Exhibit "A" I understood
that Mary Tyson represents matter differently from
what Isaac Tyson had done.

I received ^{what I supposed to be} Exhibit "C" which is William Tyson's writing
at the time I received Exhibit "A" I gave the same to
Mary Tyson soon after I received it. It was sealed
up at the time I gave it & made no mark by which
I could identify it. This is the only letter from William
Tyson that I ever delivered to her
subscribed and sworn to thus

31st day of Aug. 1849 before me
A. M. Piigo Clerk by Thos Hamilton Deputy

Alexander Neely a witness produced on
the part of the Complainant being first duly
sworn doth depose & say

I was acquainted with Isaac &
Mary Tyson ever since they came into this County
I have seen the letter marked Exhibit "D"

Mary Tyson resided in my family considerably
both before & after she was married to Isaac Tyson

After his death she frequently talked with me
about her property & her interests in the lands in
controversy, she enquired of me several times what
course she must pursue in order to get her share of
real estate I advised her in the premises
I promised to do it, but put her off from time to time
not having time to attend to it I finally sent
her to Wm D. Purges Esq for a reference, she went
to Purges & got Mr Purges to write a letter for her
which is Exhibit "D". So she told me, this was about
the day on which said Exhibit "D" is dated

I recollect that it was in the fore part of February
1847. I understood that she came from Mr Purges's
Office she brought also at the same time that she
brought this letter directions or the papers referred to in
the letter, I wrote substantially what Mr Purges
wrote in Exhibit "D" & also I wrote the conditions
amounts of improvements on the land in controversy
from her statements of the matter. I wrote to her in
this same letter that she wanted her half of
the land in controversy which half she was
entitled to also in substance that she was

70 Entitled to half the land & he the other half & if he were disposed to give her the other half the paper shows how it was to be done & I directed it to William Byron Liverpool; I am not certain whether she signed her name to it herself or I signed for her by her direction but it was one or the other, about the day on which it was written I showed it to her, sealed it paid the postage, put it in the P.O. at Belvidere Ills. for a care.

Cross Examination

71 I state in the letter that he was entitled to one half of the land & she to the other, I further state that the land was not very valuable & regarding him I drew his interest in it to her. My last recollection is that I put it in the Post Office myself, I do not recollect any further direction than I have stated but I took the directions ^{from} Mrs. Byron's letter to Isaac Byron & the one marked Exhibit "D"

Direct Examination Resuming

72 I wrote directed paid the postage of, & mailed said letter by the direction of Mary Byron, I have no doubt whatever that I put that letter in the office myself. The papers accompanying Mrs. Byron's letter referred to above were enclosed in the letter sent

Alexander Purdy

Subscribed and sworn to this
31st day of August A.D. 1849
before me N. W. Buge, clk
by Thos. Hamilton Depy

Additional Evidence of Alexander Purly
taken Sept 22^d. 1849

Q¹ What did you state in the letter above
mentions if any thing concerning the spiritual
state of Isaac Tyson at the time of his death?

A¹ - I stated that he died in a happy state
of mind in reference to spiritual matters or
some thing to that effect

Note Counsel appears on the part Compt^y
defendants represented by Rutledge & Prigg
 sworn & subscribed for Alexander Purly
me this 22^d Sept. AD. 1849

A. M. Prigg

And after a writ on the day & year last
aforesaid the following power of Attorney was filed in
the Office of the Clerk of the Boone County Circuit
court in words & figures following to wit

Exhibit A. To all to whom these presents shall come
74 William Tyson of the Town of Liverpool in the County
of Lancashire Tailor and Draper within that part of the
United Kingdom of Great Britain and Ireland called England
Sendeth Greeting, Whereas Isaac Tyson late of Polkinton
Boone County in the State of Illinois deceased was
at the time of his decease seized of or well entitled to certain
Lands, hereditaments and premises situate lying and
being in the State of Illinois aforesaid and also to
other property estate and effects And Whereas

75. The said Isaac Tyson departed this life in or about the
Month of September one thousand eight hundred and
forty six intestate. And whereas the said William Tyson
is the only Brother of the said Isaac Tyson deceased,
And whereas the said William Tyson is desirous of ap-
pointing the parties hereinafter named to act for him
as his attorneys in the affairs of his deceased Brother
the said Isaac Tyson. NOW KNOW YE that
the said William Tyson for divers good causes, and
considerations herein therunto moving hath made order
and authorized Constituted and appointed, and by
these presents doth make ordain Constituted and app-
oint and in his like place and stead just and
76. depute Ralph Sawick of Stone Hill near Melviden
Boon County in the State of Illinois in the United States
of America Farmer and John Stephenson late of Alpha
in the County of Cumberland within part of the
United Kingdom of Great Britain and Ireland calling
England Quaryman but now about to proceed to the
State of Illinois aforesaid and the survivor of them
the true and lawful Attorney and Attorneys of him
the said William Tyson for him and in his name
or in the name of the said Ralph Sawick and
John Stephenson as his joint Attorney, or in
17 the name of the survivor of them as shall be
thought most proper and convenient but for his
use to make sale and absolutely dispose of the Land
Estate and Effects belonging to the said Isaac
Tyson deceased or such part or parts thereof as
the said William Tyson is entitled unto either
by public Auction or private Contracts or partly

by both ^{such} modes as to the said Ralph Garwith and John
Stephenson or the Survivor of them shall be thought
most advisable and to convey such Lands Estate
and Effects to the purchasers thereof or as they
78 shall direct or appoint and also to ask demand
and collect get in and receive of and from all
and every person or persons whomsoever all and
every debt and debts sum and sums of money
whatsoever estate and effects ~~with~~ due and
owing or belonging to the said Isaac Hyslop
demanded to which the said William Hyslop is
entitled and upon receipt of the said purchase
money of the said Land Estate and Effects as also
any such debt or debts sum or sums of
money to make sign give and execute all and
every such receipts acquittances or other goods and
79 sufficient discharges for the same as shall
be requisite and necessary in that behalf, and on
non payment of such purchase money debt or
debts sum or sums of money or any of them
or any part thereof to commence institute and
prosecute or to appear to answer and defend
any action and actions suit or suits attachment
or attachments or other proceedings at Law
or in Equity or otherwise against them the
said Ralph Garwith and John Stephenson or the
Survivor of them or either of them or such other
person or persons as aforesaid as shall or
may be deemed necessary or advisable by the said
80 Ralph Garwith and John Stephenson or the sur-
vivor of them for the recovery or defence of the
same Lands Estate and Effects debt or debts
sum or sums of money or any or either of

them or any part thereof and for that purpose to appear before any judge justice or magistrate or Register or any other proper officer or officer in the said County of Boone or State of Illinois as occasion shall require and thereupon to do execute and perform such acts deeds conveyances matters and things as shall be requisite or expedient according to the laws

81. Rules and Customs of the United States of America or of the said State of Illinois and also settle and adjust with the Widow of the said Isaac Tyson deceased and all any every other person or persons indebted as aforesaid or that ~~parties~~ may have any of the estate or effects of the said Isaac Tyson deceased all accounts and reckonings which now are or at any time hereafter may be open depending and unsettled between the said Widow and such other person or persons as aforesaid indebted to the said Isaac Tyson deceased
82. and the said William Shepard or the said Ralph Gaveth and John Stephenson and the Survivor of them and to submit to reference and arbitration any difference or dispute that shall or may arise touching or in any manner relating to any such Lands Estate or effects debt or debts sum or sums of money as aforesaid and for that purpose to make sign seal and deliver any agreement for or any Bond or Bonds of arbitration or Reference in any reasonable penalty to abide by enforce and perform the award order and determination which shall or may be

83. made by arbitrators or Referees therein and also to
compound for all and every or any such debt
or debt sum or sums of money due and owing
to the said Isaac Tyson deceased and in the name
of them the said Ralph Gawith and John Stephenson
or the survivor of them or otherwise as occasion
shall require to do execute and perform all
such other acts matters and things as shall be
to all intents and purposes as the said William
Tyson could do himself being personally present
and for the better and more effectually executing
the powers and authorities aforesaid he the
84 said William Tyson doth hereby authorize and
empower the said Ralph Gawith and John
Stephenson and the survivor of them to make
substitute and depute one or more attorney
or attorneys deputizing or deputizing substitute or
or substitutes under him or him and in
their or his place and stead with full power
and authority to execute and perform all
and every or any of the powers and authorities
hereby vested in and given to them and
him the said Ralph Gawith and John Stephenson
or and such attorney and attorney ^{deputizing} or deputizing
substitute or substitutes so to be nominated by
85 them or the survivor of them from time to
time to displace or remove and another and
others to appoint and depute in their or
his room or stead he the said William
Tyson hereby ratifying allowing and confirm-
ing and agreeing to allow ratify and
confirm all and whatsoever their said
attorney shall do in the premises and

that such attorney or his deputy or deputies
substitute or substitutes, executors or administrators
shall not be answerable for any loss which may
happen in or about the execution of the presents aforesaid
without their wilful neglect or default, and lastly, the said
86 William Tyson doth hereby authorize and empower his said attorney
to acknowledge these presents before the Registrar
or other proper officer or officers of the said state
of Illinois or other proper place and that the
name handwriting and seal set subscribed and
affixed to these presents is the proper name hand
writing and seal of the said William Tyson and
that the same was duly executed by him as and for his
proper act and deed and to do and perform all or any
other acts matters and things necessary or expedient for
87 the registering of these presents if such registry shall
be necessary as fully and effectually as the said William
Tyson could do himself if he was personally present
and also all other acts and things which may be
necessary to be done for rendering these presents valid
and effectual to all intents and purposes
according to the laws and customs of the said
state of Illinois or the local law of the country
where it shall be necessary to execute and obtain
the purposes of these presents. In witness where
of the said William Tyson hath hereunto set his
88 hands and seal the twentieth day of April in
the year of Lord one thousand eight hundred
and forty seven

William Tyson 

Signed sealed and delivered
by the said William Gysow
in the presence of
Ed. Duke
Clerk with John Robinson
Solicitor Liverpool
Peter Nelson
415th Burlington Street Liverpool

And which power of Attorney was enclosed in words and figures following to wit:

Filed for Record the sixth day of July A.D. 1847
at one O'clock P.M. Entered in Book C. of Mortgages on pages 113, 114, 115, 116. &

W. P. Burgess Recorder
Boone Co. Ills.

And afterwards to wit on the day and year aforesaid to wit the 31st day of August A.D. 1849 the following paper was filed in the clerk's office of the Boone County circuit court in words and figures following to wit

Exhibit "B"

Know all men by these presents: That
whereas Isaac Gysow late of the precinct of Belvidere
in the county of Boone and state of Illinois in the
United States of America deceased was at the time of
his decease seized and entitled to the possession of
certain real Estate situate lying and being in
the County of Boone and state of Illinois

aforsaid. And whereas the said Isaac Tyson departed this life in or about the month of September in the year of our Lord one thousand eight hundred and forty six intestate. And whereas William Tyson of the Town of Liverpool in the County of Lancashire Tailor and Draper within that part of the United Kingdom of Great Britain and Ireland called England is the only brother of the said Isaac Tyson deceased

91 And whereas Ann Tyson is the lawful wife of the said William Tyson. And whereas the said William Tyson and Ann Tyson his wife are desirous of selling and disposing of their right title and interests in and to all the real estate situated lying and being in the County of Boone and State of Illinois aforsaid of which the said Isaac Tyson deceased was seized or entitled to the possession of at the time of his death. Now therefore the said William Tyson and Ann Tyson his wife for certain good causes and considerations moving them to wit having full confidence in the ability and integrity of
92 Ralph Gawith and John Stephenson both of the County of Boone and State of Illinois aforsaid to hereby constitute and appoint the said Ralph Gawith and John Stephenson their true and lawful Agents and Attorneys to see and dispose of all their right title and interests in the Real Estate aforsaid to such purchase or purchases and upon such terms as say the said Gawith and Stephenson or the survivor of them may deem most conducive to the interest of the said William Tyson and Ann Tyson his wife, and the said

Ralph Gawith and John Stephenson or the
93. survivor of them are hereby fully authorized
and empowered in our names and as our
agents to agree and consent with the legal
heirs of the said Isaac Gypson deceased and all
others having a legal interest in the said real
Estate, that the said Real Estate shall be partitioned
and divided by arbitrators to be chosen in such
manner as to them the said Gawith and Stephenson
or the survivor of them may seem just and right
and upon such partition being effected the said
Gawith and Stephenson or the survivor of them are
also authorized in our names to sign seal
94. deliver and acknowledge all deeds in such manner
as to entitle said deeds to the proper Record as may
be necessary to secure all the rights of all the parties
in and about said partition. And the said Gawith
and Stephenson or the survivor of them, are also
authorized and empowered as our agents as
aforesaid to employ all such attorney or attorneys
to appear in all suits that they the said Gawith and
Stephenson or the survivor of them may think
proper to be instituted or which may be insti-
tuted by others in order to effect a partition of
95. the Real Estate aforesaid. And in case it shall be
determined in any suit that such partition of said
real Estate can not be effected with a dividing
and to the rights of all parties interested therein and
a sale of said real estate shall be decreed, then the
said Gawith and Stephenson or the survivor of them are
hereby authorized to receive the distributive share
of the proceeds of said sale which may belong

96. to us the said William Tyson and Ann Tyson his wife
and to give our receipts for the same, and in case
of a partition of said real Estate shall be effec-
ted the said Garwith and Stephenson or the survivor of
them are hereby authorized as our agents and in
our names to sell and dispose of that portion of
said real Estate which may be set off to the said
William Tyson and Ann Tyson his wife to such purchaser
or purchasers and upon such terms as they may deem
most conducive to the advantage of the said William
Tyson and Ann Tyson his wife and to sign seal deli-
ver and acknowledge all deeds in our names in
97. such manner as to entitle said deeds to the proper
Record which may be necessary to convey all the
right title and interests of us the said William
Tyson and Ann Tyson his wife to that portion of
said real Estate so set off as aforesaid to such pur-
chaser or purchasers. And the said Garwith and
Stephenson or the survivor of them are authorized
and empowered to pay all necessary taxes on the
said real estate and to collect from any and
all persons any and all sums of money which
may be at any time owing to us the said William
98. Tyson and Ann Tyson his wife or either of us on any
contract made or to be made in the said County
of Down. The said William Tyson and Ann Tyson
hereby ratifying and confirming all that may
be done by the said Ralph Garwith and John
Stephenson or the survivor of them as our agents
and in our names in and about the matters
and things mentioned in this instrument.

In Testimony whereof we the said
William Tysan and Ann Tysan his wife have hereunto
set our hands and seals this third day of March
99 in the year of our Lord one thousand eight hundred
and forty eight

Signed Sealed and delivered by the
within names William Tysan } William Tysan ^{Wm} ^{Edw} ^{Wm}
and Ann his wife in the }
presence of } Ann Tysan ^{Wm} ^{Edw} ^{Wm}
John Grace }
John Wilson } 3

I do hereby certify that before the said
Ann Tysan executed the above Instrument, I
duly examined her separate and apart from her
husband respecting her right and title to the said real
estate and property and that she did fully and volun-
tarily execute the same after such examination

Dated this third day of March 1848

Thomas P. Horsfall
Mayor of Liverpool

100 Borough of Liverpool in the }
County Palatine of Lancaster }
Wm

I John Wilson of Liverpool
aforesaid Provision dealer do solemnly and sincerely
declare that I and John Grace of Liverpool afo-
resaid Bookkeeper were present and did see
William Tysan of Liverpool in the County of

101
Lancaster Taylor and Draper and Ann his wife
severally duly sign and seal and as their act
and deeds deliver the Power of Attorney hereto
annexed and that the names "William Dysin" and
"Ann Dysin" thereto subscribed as the parties Execu-
ting the same the same are of the proper hands
writing of the said William Dysin and Ann his
wife, and that the names "John Wilson" and "John
Grae" thereto also subscribed as the witnesses attes-
ting the execution thereof by the said William
Dysin and Ann his wife are respectively of the pro-
per handwriting of this Declarant and of the said
John Grae

102
And I make this solemn declaration
Conscientiously believing the same to be true, and
by virtue of the provisions of an act made and
passed in the sixth year of the Reign of his late
Majesty, King William the Fourth, intituled "An act
to repeal an act of the present Session of Parliament
intituled an act for the more effectual abolition of
Oaths and Affirmations, taken and made in
various departments of the State, and to substitute
Declarations in lieu thereof, and for the more entire
suppression of Voluntary and Extra-judicial Oaths and
Affidavits, and to make other provisions for the
abolition of unnecessary Oaths"

The above Declaration was solemnly
made and subscribed by the said John
Wilson at Liverpool aforesaid this
third day of March one thousand Eight
Hundred and forty eight before me

John Wilson

Thomas B. Nowfall
Mayor

103 To all to whom these Presents shall come
I Thomas Perry Nowfall Esquire Mayor of the
Borough and town of Liverpool in the County
Palatine of Lancashire in that part of the United
Kingdom of Great Britain and Ireland, called
England, do hereby certify that on the day of the
date hereof, personally came and appeared
before me John Wilson the Declarant named
in the Declaration hereunto annexed, being a
person well known, and worthy of good credit, and
did solemnly and sincerely declare to be true,
the several matters and things mentioned and
contained in the said Declaration

In faith and testimony whereof I
104 the said Mayor, have caused ^{the Seal} of Mayoralty of the
said Borough and Town to be hereunto ^{put} affixed, and
the power of Attorney mentioned and referred to in
the said Declaration to be hereunto annexed, dated
at Liverpool the third day of March in the
Eleventh year of the Reign of our Sovereign Lady
Victoria, by the grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of the
faith, and in the year of our Lord, one thousand
eight hundred and forty eight

TB

Thomas B. Nowfall

And afterwards Dicit on the 31th day of August in
the year of our Lord one thousand eight hundred and
forty nine aforesaid, the following paper was filed
in the Clerk's Office of the Prerogative Court, Curia Cantuar.
in words and figures following to wit,

May 11th

Exhibit "C"

Liverpool

Dear Sister

We duly received your letter and I can
assure you I feel some difficulty in answering it,
I was pleas'd to find my Brother's mind had been engaged
about eternal things & that you have a hope it is well
with him — Yet I must say I was a little griev'd
you were not more content with his affairs, and I must
say there appears a disposition to misrepresent matters

Your letter says my Brother was going to make
improvements now in his own letter of the 23 of
June he says that he had then gone to make impro-
vements he says "I work on my own place, I have got 9 or
10 acres grubbed I am now at work plowing, I have got
4 acres ploughed &c" — these are his own words, but I have
without delay given it into hands who will I am persuaded
do what is right. I wish to say although my Brother has not
left any child in America he has I believe left one in
England although not born in a way right or justifiable
being not born in wedlock he is a real child, and
if special marks of resemblance be any criterion he
is undoubtedly to my mind my Brother's own child
& therefore ought not to be overlooked. I hope
the matter will be settling in the best possible

manner. I wish to be remembered to your
Parents & Grandfather

Yours respectfully
William Tyson

108 And afterwards took on the 31st day of
August in this year of our Lord one thousand eight
hundred and forty nine aforesaid - in words & figures
the following paper was filed in the clerk's office of the
Boone County Circuit Court in words & figures
following to wit:

Providno Ills. Feb 2. 1847

Mr William Tyson

Liverpool Sir

Exhibit "D"

At the request and as the
legal adviser of Mrs Mary Tyson relict of Isaac
Tyson late of this county deceased I make this
communication to you

109 Mr A. T. died seized in fee simple of certain
real estate situate in Boone County Ills. of which
I send you a description, from his title deeds

Aliens are capable under the laws of this state
of taking and holding real estate and can transmit
the same to their heirs whether they (the heirs) are
residents or citizens or not. A Tyson an alien
born, died leaving no child or children, his wife
him surviving and yourself as I am informing
his sole surviving Brother, no parents living & no
descendants of Brother, or sisters - & intestate.

Here when a man dies intestate leaving

110 a widow & no child. the widow take all the personal property and one half of the real ~~is divided~~ ~~between~~ as her own absolutely, the other half of the real is divided between the Brothers & Sisters or their descendants - and the part in equal parts among them, so that you succeed to one half of the real Estate of your late Mother Isaac Ojoro.

111 As it is very probable you may wish to dispose of this right in some way, I will point out the steps necessary to be taken to make a valid transfer - The same instrument is required here as in England for the conveyance of land in fee simple a deed under the hand and seal of the Party - and if you see fit to act by agent his authority should also be signed & sealed.

The Deed a Power of Attorney should also be acknowledged before the Mayor of your City and attested by his certificate under the common seal of the City, the form of which I send you - should you not desire to see it would be advisable to make partition of the land, as it is useless as it now lies, and tenants in common will not usually without directions from his co-tenants make improvements - This also can be effected by authorizing an agent by deed executed & acknowledged as I have mentioned above.

112 If you are not personally known to the Mayor you must take some one with you whom the Mayor knows to be a Credible witness to testify as to your identity - as this may be necessary I have so drawn the Certificate as to must it

It would also be well enough to execute the papers in presence of a witness who is coming out to this Country as the execution could then be proved here by him, as subscribing witness to the execution thereof

113

As your wife is entitled to dower in these premises it will be necessary for her to execute the papers with you. The certificate will show what kind of an acknowledgment of the execution she must make

Yours &c
Wm. S. Burgess

And afterwards to wit on the Eleventh day of December in the year of our Lord one thousand eight hundred and forty nine and during the December term of the Stone County Circuit Court the following order and proceeding was had and entered of record to wit

James Postlethwaite & others }
vs }
William Tyson & wife } Chancery

114

This day came the parties to this suit by their solicitors & Counsel & the said cause being heard upon bill, answer & proofs, & the arguments of Counsel, thereupon being heard, the said cause is taken under advisement by the Court

And afterwards to wit on the fourth day of April in the year of our Lord one

thousand Eight hundred and fifty and during the
April Term of this court the following proceedings
was had and entered of record to wit

Boone Circuit Court

James Postlethwaite Thomas Postlethwaite

Mary Postlethwaite Danforth Nettleton

George Vickers Marquise Nettleton

115 - Ellen Vickers (formerly Marquise Postlethwaite)

William Frank Isabella Frank (formerly

Isabella Postlethwaite)

John Postlethwaite Mary Postlethwaite

Sawance Fagan husband & heir of Sarah Postlethwaite

dearly deceased) George Postlethwaite who

appears by his guardian James Postlethwaite

M.S.

William Tyson & Ann Tyson wife of

said William Tyson

} of April
term 1850

Before the Hon Hugh Hendon
Judge of the Boone County Circuit Court in
Chancery sitting;

This cause having been brought on
to be heard upon Bill and supplemental Bill
and answer and replication and proofs taken
herein and filed in this cause

116 And it app-
earing to the court that Isaac Tyson deceased

late of said County of Down was in his life
time seized of in fee simple of certain lands
and premises situate and being in the County
of Down aforesaid and hereafter described, and
being so seized departed this life intestate, on
about the 17th day of September A.D. 1826,
leaving Mary Tison his widow, and William
Tison and Ann Tison wife of said William his said
Isaac's sole heirs at law him surviving

And that
soon after the death of the said Isaac, the said Mary
Tison widow as aforesaid, without any regular
settlement of the estate of her said husband by due
course of administration paid and settled all
the debts and liabilities of her said husband out of
her own personal estate, and without having at
any time elected to take down in the lands and
premises of which her husband died seized or
relinquishing her estate of inheritance therein
did during her life time signify to the above
named Defendants at Liverpool in England and
doth as her desire to have and enjoy the one half
of said real estate and did actually elect to
take by inheritance in said premises, with said
one half

And that having so elected as aforesaid
the said Mary Tison became and was during
her life time entitled to and seized of the one
undivided half part of said real estate,
the said Isaac Tison having left as appears
by the proofs and arguments on file in this
cause, at the time of his decease no

child or children, no decendants of adults or children and only one brother and wife who are the defendants herein namely her surviving

119 And that the said Mary Tyson being so entitled and seized of the said one undivided half part of said real estate as aforesaid departed this life ^{or} about the 16th day of August A.D. 1847 intestate leaving the above named Complainant James Postlethwaite and Mary Postlethwaite her father and mother George Vetter, and Ellen Vetter her brother in law and sister, Thomas Postlethwaite, Marguerite Postlethwaite Isabella Postlethwaite, Sarah Postlethwaite George Postlethwaite, her brothers & sisters, the said George Postlethwaite & Sarah Postlethwaite being at the time of the filing the Bill herein minors and appearing by their guardian

120 James Postlethwaite her only heir at law her surviving

And that since the commencement of these proceedings the said Marguerite Postlethwaite has intermarried with the above named Nettie Low, and the said Isabella Postlethwaite has intermarried with the above named William Frank and the said Sarah Postlethwaite has intermarried with the above named Lawrence Fagan and lately departed this life intestate, all of which last named marriages & death are duly suggested upon the record by supplemental Bills and the said Nettie, Frank and Fagan made parties hereto

And on motion of Allen C. Fuller solicitor for Complainant it is

121 Ordered adjudged and Decreed that the rights and interests of the several parties to this suit of in and to the several lots, pieces and parcels of land described in the bill of Complaint filed in this Cause and as stated and set forth in said Bill and supplemental bills filed herein to all of which decision of the Court the Counsel for the Defendants except

And it is further Ordered, adjudged and decreed that partition be made of the lands and premises mentioned and set forth in the Bill of Complaint in this Cause, which premises are described as follows viz:

122 All that certain piece parcel or lot of land and premises situate lying and being in the County of Boone and state of Illinois and known and described as being the North East quarter of section five (5) in Township forty four (44) North and in range three East of the third principal meridian, containing one hundred and fifty nine and thirty seven hundredths of an acre more or less: Also the North west ~~xxx~~ and south West quarter of North west quarter of section number four (4) in Township No 44, of range No 3. East of this principal meridian containing

123 twenty nine acres and sixty eight hundredths of an acre: Also the following described lot of land situate lying and being in the County of Boone aforesaid to wit: Beginning at a post at the middle of the East line of the southwest quarter of section five (5) thence along said line south twenty six perches and seven tenths of a perch to a

post, thence West forty six perches to a stone heap
in a ravine, thence along said ravine north eleven
and a half degrees East twenty seven perches and two
124 tenths of a perch to a stone heap on the south line of
R. Sawth's forty acres - thence along said line East
forty perches and six tenths of a perch to the beginning
containing seven and one quarter acres of land: also
another piece or parcel of land in Boone County aforesaid
and described as follows: Beginning at the south
quarter post of section five (5) aforesaid, thence along
the section line west eighty perches to a post at the
middle of the south line of said south-west quarter
of said section five (5), thence north twenty six
perches seven tenths of a perch to a post, thence
125 along Thomas, D. Walker's south line east eighty per-
ches to a post on the east line of the quarter,
thence along said quarter line south twenty
six perches and seven tenths of a perch to the
beginning containing thirteen and one quarter
acres more or less, both last mentioned pieces desc-
ribed in conformity with a survey made by one
John Browbridge on the 17th day of February
A.D. 1845, the whole of said lands amounting
to about two hundred and fifty nine acres and fifth
126 to this suit according to their respective rights
and interests therein as the same are set
forth in the said Bill & Supplemental Bills &
have been ascertained by this Court and
established by this decree

And it is further

ordered, adjudged and decreed that William H. Gilman, Daniel Brownbridge and John H. Towner three reputable freeholders of the County of Boone be and they are hereby appointed Commissioners for the purpose of making such partition. That the said Commissioners before proceeding to the Execution of their trust as such, shall be sworn ¹²⁷ or affirmed before this Court or some justice of the peace within & for said County of Boone fairly and impartially to make partition of said lands in accordance with the judgment of this Court, as to the rights and interests of the parties. And that such Oaths or affirmations be filed with the Clerk of this Court, also before the coming in of said reports of the said Commissioners herein after directed to be made. And that the said Commissioners shall divide the said lands and premises into two equal parts, quantity and quality relatively considered, and that they allot to the Complainants in this cause one of the said half parts and to the Defendants herein the other half part to be held and enjoyed by the said parties according to their rights and interests therein so ascertained and determined as aforesaid. And that the said Commissioners shall designate the parts or portions so allotted to the said Complainants and Defendants, and the boundaries thereof, by sufficient descriptions and ~~xxxxxxxxxxxx~~ monuments. And it is further ordered that the said Commissioners make a full and ample report to this Court of their proceedings in this behalf and on their hands, or under the hands of any two of them, specifying therein the manner

in which they shall have executed this decree, and describing the lands divided and the parts or shares allotted to each party, with the quantity, courses, and distances of each share and a description of the posts, stones, or other monuments thereof and the items of their charges in the premises

That the said Commissioners, or such two of them as shall sign the said Report, do acknowledge the same, or cause it to be proven in the same manner that Deeds are required to be acknowledged or proven to entitle them to be recorded, before some officer authorizing to take the proof or acknowledgments of Deeds, and that said Report be filed in the office of the Clerk of this Court,

That all the said Commissioners do meet together in the performance of any of their duties under this decree, but that the acts and decisions of a majority of such Commissioners, ^{when} so met shall be valid

And it is further ordered, that the said Commissioners be authorized to employ a surveyor and to cause all necessary maps and surveys to be made - And all the parties in this cause shall produce to and bear with, the said Commissioners, for such time as the Commissioners shall deem reasonable, all deeds, writings, surveys, or maps relating to the said premises or any part thereof

And it is further ordered, adjudged, and decreed that in case partition ~~partition~~ of such premises cannot be made with

perfect Equality between the said parties according to their respective rights and interests therein, unless some Compensation be made by one of the said parties to the other for Equality of partition, that then and in that case the said Commissioners or such two of them as ^{may} make said partition, ascertain and report the proper Compensation which ought to be made for Equality of partition, and by which of the parties the same should be paid, and to which the same ought to be allowed. But the said Commissioners shall not report Compensation to be paid by an infant, for Equality of partition unless it satisfactorily appears to them that he or they have sufficient personal Estate to pay the same and his or their share of the costs and expenses of this suit, and all other liens on his or their share of the premises: Except in cases, when from the situation of the property and of the interests of the parties, it cannot be charged upon the share of an adult.

And it is further ordered that a commission issue out of and under the seal of this Court directed to the said William H Gilman, Daniel Snowbridge, & John R. Downes authorizing them and directing them, or any two of them, to make partition of the said premises in the manner above directed in case partition can be made as aforesaid and report their doings in the premises at the next term of this Court.

Dated April 4th 1850

And that afterwards to wit on the Eleventh day of June in the year of our Lord one thousand Eight hundred and fifty the following Commission was issued out of the Clerk's office of the Boone County Circuit Court which was in words and figures following, to wit:

The People of the state of Illinois

To William N. Gilman

Daniel Snowbird and John N. Townes all of the County of Boone and state of Illinois. Greeting:

Whereas, at a

term of the Circuit Court within and for the said County of Boone held at the Court house in Belvidere on the fourth day of April Anno Domini 1850 on the Chancery side thereof, before How Hugh Anderson Presiding Judge thereof a certain decretal order was made by said Court in a certain cause depending in said Court wherein James Postlethwaite, Mary Postlethwaite, George Vickers, Ellen Vickers, Thomas Postlethwaite Daughters Nettleton, Margaret Nettleton, William Frank, Isabella Frank, John Postlethwaite, Mary Postlethwaite Laromer Fagan and George Postlethwaite who appeared by his guardian James Postlethwaite were complainants and William Tyson and Ann Tyson his wife were defendants by which it was among other things ordered that a partition of the premises mentioned and described in the bill in this cause, should be made between the said complainants and defendants in equal portions, quality and quantity relatively

considered. And whereas by said decretal order
it was further ordered that in case the said
partition could not be made equal between
the said parties without some compensation be
made by one of the said parties to the other, that
then and in that case, you the said Commissioners
ascertain and report the proper compensation which
ought to be made for equality of partition, and by
137 which of the parties the same should be made, and
to which the same ought to be allowed. ^{whenever} And it was
in and by said decretal order further ordered, that
a Commission issue out of and under the seal
of this Court to you to be directed, authorizing and
directing you to act in the premises for the pur-
pose of carrying said decretal order into effect.

Now therefore know you
that Confiding in your prudence and discret-
ion, we have assigned and appointed you the said
William H Gilman, Daniel Snowbridge and John
H Towner Commissioners for the purpose therein
138 mentioned; and do give you or any two of you full
power and authority to make partition of the
premises above mentioned and hereinafter set
forth and described, between the said Complainants
and defendants according to their respective
rights and interests therein, as the same has
been ascertained, declared, determined and
adjudged, in and by the said, decretal order
aforesaid, and that you the said Commissioners,
or such two of you as may make partition
as aforesaid, make a Report under your hands
and seals to our said Court of your proceedings

139

well and by virtue of herof, without unnecessary
delay. And we do by ~~virtue of~~ these present letters
authorize, direct and require you, or such two of
you as may make said partition, that in case
the same cannot be made equal between the said
parties, without prejudice to the rights and interests
of one of them unless compensation be made by one of
them to the other for equality of partition in the
said ~~partition~~ premises, that then and in such case,
you or such two of you as ^{may} make such partition,
ascertain what compensation ought to be made by
such one of the ^{said} parties respectively who ought to make
the same, to such one of the parties respectively, and
to whom the same ought to be made for equality of
partition according to the equity of the case and
report the same to our said Court,

140

141

And we do hereby further
order and direct that you or such two of you as
shall act in the premises, by virtue of said decretal
order and of this Commission, do for the better under-
standing and more clear elucidation of the shape
and situation of the said premises, and of the
manner in which said partition shall be made, make
or cause to be made, and annexed, and return
with this Commission, a map of the whole of
the said premises, showing clearly and distinctly
the division which you shall make of the prem-
ises. And the better to enable you to make the
said partition and perform the duties above
directed, you and each of you are and is hereby
authorized and empowered to enter into and

upon and end the said premises, and every and
any part thereof, and to survey the same or
cause the same to be surveyed, for the purposes
aforesaid, which said premises are described
142 as follows viz: x All that certain piece parcel
or lot of land and premises situate lying & being
in the County of Boone and State of Illinois and
Known & described as being. The North east quarter of
Section five (5) in Township forty four (44) North and
in Range three east of the third principal meridian
containing one hundred and fifty nine and thirty seven
hundredths of an acre more or less, also the north
west and south west quarters of North West quarter
of section number four (4) in Township four No 44 of
143 Range No. 3 East of third principal meridian con-
taining twenty nine acres & sixty eight hundredths of
an acre: Also the following described lot of land
situate lying and being in the County of Boone a-
foresaid to wit, Beginning at a post at the middle
of the east line of the south west quarter of Section
five (5) thence along said line south twenty
six perches and seven tenths of a perch to a post
thence west forty six perches to a stone heap in
a ravine, thence along up said ravine north eleven
& a half degrees east twenty seven perches & two tenths
144 of a perch to a stone heap on the south line of R.
Sawth's forty acres, thence along said line east
forty perches and six tenths of a perch to the
beginning containing seven and one quarter Acres of
land. Also another piece or parcel of land
in Boone County, aforesaid and described
as follows - Beginning at the south quarter

145 part of Section five (5) of said Thence along the section line west eighty perches to a post at the middle of the South line of said South west quarter of said section five (5). Thence north twenty six perches seven tenths of a perch to a post. Thence along Thomas D. Walker's south line east eighty perches to a post on the east line of the quarter, thence along said quarter line south twenty six perches and seven tenths of a perch to the beginning containing thirteen and one quarter acres more or less in all amounting to about two hundred & fifty nine acres $\frac{5}{100}$ of an acre

Witness my hand and the seal of said Court at Belvidere in said County this Eleventh day of June A.D. 1850

146 *S.D.* x

Stephen C. Gooding Clerk

Boonlevin Court }
 James Postlethwaite et al }
 vs }
 William Tyson & }
 Ann Tyson }
 ~~~~~

State of Illinois  
 Boonlevin Jts Wm William Gilman  
 Daniel Howbridge & John H. Townes Commiss

ioners above named, do solemnly swear fairly  
and impartially to make partition of the above  
described lands in accordance with the judgment  
of said Court as to the rights and interest of the  
said parties

Subscribed & sworn to before  
me this 23<sup>d</sup> day of  
Oct A.D. 1857

John K. Downer  
Daniel Snowbridge  
Wm. H. Gilman

S. C. Goding  
147 Clerk of the Circuit Court  
for Tennessee Depty }

And that afterward to wit on the second  
day of April in the year of our Lord one thousand  
eight hundred and fifty one and during the April  
term of said Boone County Circuit Court the forego-  
ing Commission was returned to the office of the  
Clerk of the Circuit Court with the following Report  
attached thereto and which is in words & figures follow-  
ing to wit:

In the Boone Circuit Court.

In Chancery

James Postlethwaite, Mary  
Postlethwaite, Jeng Vickus,  
Ellen Vickus, Thomas Postle-  
thwaite, Danforth Nettleton  
Margaret Nettleton, William  
Frank, Isabella Frank

Partition

148 John Postlethwaite, & Mary  
Postlethwaite, Lawrence Fagan &  
George Postlethwaite, who appears  
by his guardian James Postlethwaite  
vs  
William Tyeon & Ann Tyeon his wife } Partition

To the Hon Hugh Henderson Judge  
of said Court in Chancery sitting  
In pursuance of, and in obedience to  
a Commission in the above entitled cause issued  
out of and under the seal of this Court and deliv-  
ed and delivered to the undersigned Commissioners  
therein named tested the eleventh day of June  
A.D. 1860 - which said Commission is hereto annexed - we the said Commissioners do respectfully  
hereby report and return

149 That having been first duly  
sworn and having severally taken the Oath here  
to annexed, we have carefully examined the  
premises described in said Commission, and  
causes them to be surveyed in our presence  
and have made partition thereof between said  
parties complainants and said parties Defendants  
according to their respective rights and interests therein  
as the same have been ascertained declared and  
determined by the said Court quantity & quality  
relatively considered - as we were by the said Com-  
mission Commanded in manner following

We divided the whole of said premises into two allotments, which are designated  
150 on the Map hereto annexed by the figures 1 & 2.  
Each of which allotments is in our opinion  
of equal value, and that being in our  
judgment the most beneficial division  
all circumstances considered that could be made  
of said premises - And that we have set  
off to the parties Defendants, all that certain  
parcel of said premises designated on the said  
map by the figures 1. and which are bounded as  
follows to wit: Beginning at the south west corner  
of the North east quarter of section five in Township  
forty four North range three East, thence east  
151 on the quarter line two hundred & forty <sup>one</sup>/<sub>100</sub> rods & five tenths  
to a stake standing at the south east corner of the  
west half of the north west quarter of section four in  
the same Township & range, thence North eighty  
rods, thence west parallel with section lines one  
hundred and sixty rods, & eight tenths of a rod to a stake  
thence south forty rods, and thence west eighty rods  
& seven tenths to a stake on the west line of the said  
North east quarter of said section five and thence  
152 south forty rods to the place of beginning - and being  
otherwise described as the south forty & five one hun-  
dred acres of the west half of the north west quarter  
of said section four & the south forty & thirty five one  
hundredth acres of the east half of the North east  
quarter of said section five, & the south twenty & eleven  
one hundredth acres of the west half of said North  
East quarter section

And that certain other piece  
bounded as follows to wit, Beginning at the



103 south quarter part of section five (5) aforesaid thence along  
the section line west Eighty perches to a post, at the mid-  
dle of the south line of said south west quarter, of said  
section five, Thence North twenty six perches seven  
tenths of a perch to a post, Thence along Thomas D.  
Walkers south line east eighty perches to a post on  
the East line of the quarter, Thence along said quarter  
line south twenty six perches & seven tenths of a  
perch to the beginning containing thirteen acres &  
one quarter of an acre by admeasurement, as  
will more fully appear by reference to the said Map  
And we have also set off to the said  
154 parties Complainants x

All those certain pieces or parcels of the said  
premises designated on the said Map by the figures  
2, 2, 2, 2, which are bounded as follows to wit,  
Commencing at the North west corner of the  
North East quarter of section five in Township  
forty four North of Range three east of the third  
principal Meridian, Thence East on the  
Town line two hundred and forty one rods and  
five tenths of a rod to the north east corner of the  
west half of the North west quarter of section four  
155 (4) in the Township & range aforesaid - Thence south  
twenty eight rods & eight tenths of a rod to a stake  
Thence West one hundred and sixty rods and  
eight tenths of a rod - Thence south forty  
rods, Thence west Eighty rods & seven tenths of a  
rod to the west line of said North East quarter  
section - and thence North one hundred and

seventeen rods & three tenths of a rod to the place of  
beginning - and being otherwise described as the  
North fifty nine acres and thirty seven one hundredths  
of an acre of the west half of the said North East  
156 quarter section, And the North thirty Nine acres  
& forty three one hundredths acre of the east half  
of said North East quarter of section five aforesaid  
& the North thirty nine & thirty five one hundredth acres  
of the west half of the said North West quarter of said  
section, (4) - And also that certain other piece  
beginning at a post at the middle of the east  
line of the south West quarter of said section five (5)  
thence along said line south twenty six perches &  
seven tenths of a perch to a post, thence west forty six  
157 perches to a stone heap in a ravine, thence along  
up said ravine north Eleven & one half degrees East (at  
11 1/2° E) twenty seven perches & two tenths of a perch  
to a stone heap on the south line of R. Gardish's forty  
acres, thence along said line east forty perches  
and six tenths of a perch to the place of beginning contain-  
ing seven and one quarter acres of land - by adme-  
asement, as will more fully appear by reference  
to said map

And we further Certify and report that  
the items of the various Expenses attending the  
158 Execution of the said Commission, including  
our fees as commissioners are contained in a  
Schedule here to annexed marked A, and form-  
ing a part of this our report. And that for the  
better understanding, and more clear elucidation  
of the shape & situation of the said premises, and  
of the manner in which such partition has  
been made by us, we have caused to be made

a map thin of showing what parts of the said premises have been allotted to the respective parties which map forms a part of this own report and is hereto annexed marked B

159

In Witness whereof we the said Commissioners have set our hands and seals to this own report this twenty third day of October in the year of our Lord one thousand eight hundred & fifty

John H. Towne }  
Daniel Snowbridge } Commissioners  
Wm H. Gilman }  
seal seal seal

Schedule Marked A referred to in annexed Report

|                   |                |         |
|-------------------|----------------|---------|
| William H. Gilman | one days       | \$ 1.00 |
| Daniel Snowbridge | one days       | \$ 1.00 |
| John H. Towne     | one days       | \$ 1.00 |
| Daniel Snowbridge | Surveyor       | \$ 1.00 |
| William H. Gilman | drawing Report | 5.00    |
|                   |                | <hr/>   |
|                   |                | \$ 9.00 |

160. Oct 23<sup>d</sup> 1850

John H. Towne  
Daniel Snowbridge  
Wm H. Gilman

State of Illinois

Boone County J<sup>os</sup> S. Stephen C. Goding Clerk of the Circuit Court in and for the said County State of Illinois Do hereby certify that John H. Towne

Daniel Townbridge & William W. Gilman who are personally known to me, as the real persons whose names are subscribed to the foregoing Report appeared before me this day in person & acknowledged that they signed seals and delivered the same freely & voluntarily for the uses & purposes therein set forth

161

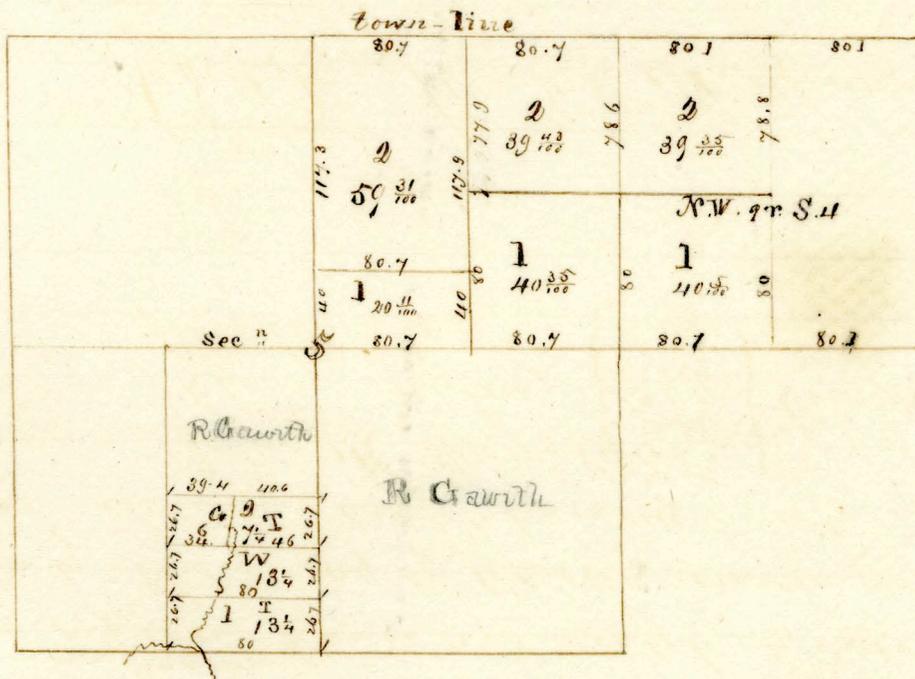
*SP*

Witness Stephen C. Gooding, Clerk of the said Court and the seal thereof at Belvidere this 21<sup>st</sup> day of Oct. A. D. 1850

*S. C. Gooding Clerk*

Schedule marked P, referred to in the annexed Report

57



162

163

And that afterwards to wit on the  
day of December in the year of our Lord one thousand  
eight hundred and fifty, and during the  
December Special Term of the same Circuit Court  
the following order providing was had, & entered of  
record in words and figures following to wit:

In Boone Circuit Court In Chancery

James Postlethwaite, Mary Postlethwaite his wife  
George Vickery, Ellena Vickery, Thomas Postlethwaite  
Danforth Nettleton Marquette Nettleton, William  
Grant Isabella Grant, John Postlethwaite, Mary  
Postlethwaite, Lawrence Fagan and George Postleth-  
waite who sues by his Guardian James Postlethwaite  
Complainants

vs

164. William Tyson and Ann Tyson his wife Defts

Final Decree for Partition  
Of December Special Term AD 1850

This cause having been brought  
out to be heard upon the Report of John H.  
Fowler, Daniel Snowbridge and William H. Gilman  
Commissioners appointed therein under and by  
virtue of a commission issued out of and under  
the seal of this court, and on reading and  
filing said Report which bears date the twenty

165 third day of October A.D. 1880 by which it appears  
that the said Commissioners have made partition  
of the premises described in the Bill of Complaints  
in this cause, between the said Complainants  
and defendants according to their respective rights  
and intents, as the same has been ascertained  
declared, and determined by this Court and by which  
said partition the said Commissioners have divided  
the whole of the said premises into two allotments  
and did allot, assign and set apart to the said  
Complainants all those certain pieces or parcels of  
land the said premises designated on the map at-  
taching to their ~~said~~ said report by the figures 2, 2, 2, 2,  
which are bounded as follows to wit:

166 Commencing at the North West  
Corner of the North East quarter of section Five  
in Township Forty four North of range three East  
of the Third Principal Meridian - thence east on  
the town line two hundred and forty one rods and  
five tenths of a rod to the North East Corner of  
the west half of the Northwest quarter of section  
Four in the township and range aforesaid  
thence south twenty eight rods and eight tenths  
of a rod to a stake - thence west one hundred and  
sixty rods and eight tenths of a rod, thence south  
167 forty rods, thence west eighty rods and seven tenths  
of a rod to the west line of said North East quarter  
section - and thence north one hundred and  
seventeen rods and three tenths of a rod to the place  
of beginning

Also being otherwise described

as the north fifty nine acres and thirty seven  
or a hundredths of an acre of the west half of the  
said North East quarter section. And the North  
thirty nine acres and forty three hundredths of an  
acre of the east half of said North East quarter  
of section five aforesaid, and the North thirty  
168 Nine and thirty five one hundredths acres of the west  
half of the said North west quarter of said section  
Four.

And also that Other piece Beginning at a Post  
at the Middle of the East line of the South West quarter  
of said section Five (5) thence along said line  
South twenty six feet and seven tenths of a foot  
to a post, thence West forty six feet to a  
stone heap in a ravine, thence along up said  
ravine North eleven and one half degrees East  
(N 11½° E) twenty seven feet and two tenths of  
169 a foot to a stone heap on the south line of B.  
Garwick's Forty acres - thence along said line  
East Forty feet and six tenths of a foot (the  
place of beginning, containing seven and one  
quarter acres of land by admeasurement, as  
will more fully appear by reference to said map  
That they did also  
set apart, allot and assign unto the said Defend-  
ants all those certain lots, pieces or parcels  
of land designated on the said map by the figure  
1. and which are bounded as follows to wit, Begin-  
ning at the south west corner of the Southeast  
170 quarter of section five in Township Forty Four  
North Range three east, thence East on the

171  
172  
quarter line two hundred and forty one rods and five tenths  
of a rod to a stake standing at the south East corner  
of the west half of the North West quarter of section  
four in the same Township & Range, thence north  
Eighty rods, thence West parallel with section  
line one hundred and sixty rods and eight tenths of  
a rod to a stake - thence south forty rods and thence  
West Eighty rods and seven tenths to a stake on the west  
line of the said North East quarter of said section five  
and thence ~~west~~ south forty rods to the place of beginning  
and being otherwise described as the south forty  
and one rod one hundredths acres of the West half  
of the North West quarter of said section four, and the  
south forty and one thirty five one hundredths acres of  
the East half of the North East quarter of said section  
five, and the south twenty and eleven one hundredths  
acres of the West half of said North East quarter  
section: And also that other piece or parcel  
bounded as follows to wit: Beginning at the south  
quarter post of section five (5) of said, thence  
along the section line West Eighty perches to  
a post at the middle of the South line  
of said southwest quarter of said section five,  
thence North twenty six perches and seven tenths  
of a perch to a post, thence along Thomas D  
Walker south line East Eighty perches to a post  
on the East line of the quarter, thence along said  
quarter line south twenty six perches, and  
eleven tenths of a perch to the beginning  
containing thirteen acres and one quarter



of an acre by admeasurement as well  
more fully appear by reference to said Map

And it also appearing to  
the Court that the said Commissioners  
did before proceeding to the execution of their  
trust severally take upon themselves the corpo-  
ral Oath fairly and impartially to make par-  
tition of the above described lands in accordance  
with the judgment of the Court as to the rights  
and interests of said parties, and that they caused  
to be surveyed said premises and a map thereof  
describing said premises to be made which at-  
tached to their said report. And that in said dis-  
-cision and allotment quantity and quality of said  
lands have been relatively considered by said Comm-  
-issioners; and that said Commissioners have signed  
said report and acknowledged the same before the  
clerk of this Court as in and by said Decretal  
order heretofore made by this Court & by said  
Commission were commanded. From which it  
satisfactorily appears to this Court that the Report  
of the said Commissioners and the partition so made  
by them is just and in all respects equitable

On motion of A. C. Fuller of Counsel for Com-  
plainants it is ordered adjudged and decreed,  
and this Court by virtue of the power and auth-  
-ority in it vested and in pursuance of the Statute  
in such case made and provided and the practice  
of this Court doth hereby Order Adjudge and  
decree that the said Report be confirmed and

that the said partition made by the said Commissioners of Partition in this cause, be in all respects ratified and confirmed: And the same is hereby approved and ratified, and it is further ordered and decreed that the said partition be firm and effectual forever

176 And it is further ordered adjudged & decreed that the Costs of this suit be paid by the said defendants and that the Court have Execution therefor

State of Illinois  
County of Boone  
I, Daniel T. Olney Clerk of the Circuit Court in and for said County do hereby certify the within Transcript to be a full perfect & complete copy of the records & proceedings in a cause lately pending in the said Court wherein James Postlethwaite Mary Postlethwaite, George Victor Ellener Victor Thomas Postlethwaite, Danforth Nettleton Marguerite Nettleton William Frank Isabella Frank John Postlethwaite Mary Postlethwaite Lawrence Fagan & George Postlethwaite who appears by his guardian James Postlethwaite, were Complainants and William Tyson and Ann Tyson his wife defendants and of the whole thereof as appears from the Books files of papers and Records now remaining in my office

In Testimony Whereof I have here-  
unto affixed the seal of said Court  
and subscribed my name this  
seventh day of April in the  
Year of our Lord one thousand  
eight hundred and fifty two

Laure T. Olney  
Clerk

And now, to wit on the second day Monday  
of June, in the year of our Lord one thousand  
eight hundred and fifty two, before  
the justices of the Supreme Court of the  
State of Illinois, at the Court house at  
Ottawa, in the county of La Salle, come the said  
William Lyson and Ann Lyson his wife, plaintiffs  
in error as aforesaid, by George W. Streetsinger  
their solicitor, and say that in the record and  
proceedings aforesaid, and in making the decree  
aforesaid, there is manifest error in this, that the  
bill of complaint aforesaid, and the matters therein  
in contained, do not shew or allege any suffi-  
cient equity whereon to found the said dec-  
ree or any decree or other decree granting relief to  
the complainants therein, defendants in  
error as aforesaid, or any of them. And also  
there is error in this, that the said decree de-  
clares that without relinquishing her estate  
of inheritance in <sup>the</sup> lands of which her husband  
did seise, the said the said Mary Lyson  
did during her lifetime signify to the said  
defendants below, plaintiffs in error, at  
Scarpool in England, and to others, her  
desire to have and enjoy the one half part of said  
real estate, and did actually elect to take by her  
inheritance in said premises, to wit said one half,  
whereas it appears by the pleadings and proofs in

The said cause that the said Mary Yson had no  
estate of inheritance in the said lands to relinquish  
; nor does it appear nor is it alleged or proved that  
she signified to the said defendants below her  
desire to have and enjoy the one half of said  
real estate; nor would such signifying of true  
amount to an election, as is supposed by the  
said decree; nor would her signifying the  
same to others amount to an election, nor did  
she actually elect to take one half of said lands  
in <sup>any</sup> legal manner; nor could she take by election  
and inheritance both; as by the said decree is  
supposed. And there is also error in this,  
that the said Mary Yson was not intitled to  
or seized of one undivided half part of  
said real estate, as in and by the said  
decree is established. And there is also error  
in this, that the said decree orders a partition  
to be made of the said lands, whereas the whole thereof  
of belongs to the said William Yson. And also  
there is error in this, that the said decree author-  
izes any two of the commissioners therein na-  
med to make the said partition; whereas the  
statute in such case made and provided  
requires all three act in the premises; And  
also there is error in this, that the said decree  
orders a commission to issue to the Comm-  
issioners appointed to make <sup>saide</sup> partition; whereas  
such commission is unnecessary and un-  
usual, and tends only to create expence.  
And also there is error in this, that the said  
decree ought not to have been made against the

said Ann Tyson. she being an unnecessary  
party to the said bill and decree. And  
also there is error in this, that the said  
decree ought according to the rules of law  
and equity, to have been made in favor  
of the said William Tyson and Ann  
Tyson, defendants below, against the said  
complainants below, and not for the said  
complainants, against the said William  
Tyson and Ann Tyson.

And the said William Tyson and Ann  
Tyson further say that in the record and  
proceedings ofore said and in the final decree  
ofore said there is manifest error in this, the  
whole of the costs of the suit in this behalf  
are awarded against the said William Tyson  
and Ann Tyson, whereas they ought to have  
been apportioned, between the complainants  
and the said William Tyson, it being  
impossible for him to make partition in the prem-  
ises without a proceeding in court. By reason  
of that part of the said complainants are inf-  
ants. And also there is error in this, that  
costs were wrongfully decreed against the  
said Ann Tyson, she being a feme covert  
and having committed no default, and  
not being liable to costs. And the said William  
Tyson prays that the decree ofore said, for  
the errors ofore said, and for other errors in  
the said record and proceedings being, may  
be reversed annulled and altogether holden  
for naught, and that they may be restored

to all things which they have lost by occasion of the said decree.

F. Burnap & W. J. Burges,  
George W. Ketsinger  
Attorney and Counsel for Plffs.  
In error

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Assignment of Errors -

Filed June 16<sup>th</sup> 1852.

J. Leland Clerk  
By J. W. Leland Depy.

By consent of Parties the Pffs in error for  
further assignment of error say that the  
Bill does not set forth & show how in  
what manner & at what time the said Mary  
Fyson made her election to take by inheri-  
tance, and not her dower in the lands  
whereof her husband died seized

nor how or in what manner and at  
what time she became seized in fee of an  
undivided half of said lands.

And the said George Postlethwaite by James Marsh  
his guardian ad Litem. The other Deft in error by  
J. Marsh their Attorney come & join in error &c.

James Marsh



Boone Co.

William Tyson et al.

vs.  
James Postlethwaite et al.

Record.

Filed June 16<sup>th</sup> 1852

L. Seland Clk.

By F. W. Deland Esq.

Boons in Court

In Chancery

James Postlethwaite  
et al

Bill for Partition

vs  
William Tyson et al

Facts & Argument,

The Bill and Supplemental Bills filed in this cause are admitted, by the stipulation filed herein, to contain a correct statement of all the material facts in this controversy with one exception viz: "except as to the fact of election by the said Mary Tyson during her life time to take by inheritance in the real estate of which her husband died seized"

It will be observed by examining the 4<sup>th</sup> page of the Bill that there is an interlined amendment to the Bill, in these words "without having elected to take her dower in said premises or relinquishing her estate of inheritance therein; but having elected to take by inheritance in said premises."

Before passing to the argument of the case I wish to make a "personal explanation" by calling the attention of the Court to a single fact which will not be denied by Counsel, & explain why the latter part of the amendment was inserted.

When the demurrer filed, the whole doctrine of "Election" (and which from the stipulation the Court will observe the whole case has been narrowed down to) was brought in review

2  
by or his bona the late Judge Thomas  
and upon the argument the Court sug-  
gested it might obviate any objection to  
the proceeding if the fact be added that  
Mary Tyson died without having elected  
to take by Dower, or relinquishing her  
estate of inheritance in the lands in ques-  
tion; in other words, that she would be deemed  
to take the major estate unless she had relin-  
quished <sup>it</sup> by electing to take by Dower. I  
therefore took until the next term to make  
such amendments & the demurrer was  
sustained.

Before making the amendment however  
I learned from Mr. Bucy who was next  
term Counsel for Defts & believe, that such  
proposed amendments was not only true  
but that she ~~had~~ said Mary Tyson did  
actually elect to take by inheritance, and  
that he prepared the papers for her for  
that purpose (purpose). Supposing that  
this would end the matter I accordingly  
added also the last line of the amendment,  
not believing, though, then or now that such  
amendment was necessary any more  
than did the Court. I claim nothing  
however on this account, but am perfectly wil-  
ling to meet the doctrine contended for  
anew. When we come to the proof about  
the sending of papers to England we shall  
understand how & why this single fact of  
election has continued to be contested,  
— But enough of preliminaries.

On the 17<sup>th</sup> day of September 1846 Isaac  
Pyson ~~dece~~ seized in fee of a large tract of  
land in Boone County & described in the Bill, &  
being so seized departed this life intestate  
leaving Mary Pyson his widow, <sup>of Boone Co.</sup> and William  
Pyson & wife of Squire England his only heirs  
at law, him surviving

After his decease the widow, Mary Py-  
son, without administering upon his estate,  
went on and paid up the debts, of her  
deceased husband out of the personal effects  
of the estate.

On the 16<sup>th</sup> day of August 1847 -  
(seven months thereafter) Mary Pyson died  
intestate, leaving the Complainants in this  
Cause her only heirs at law, her surviving

There are but two propositions now in-  
volved in the Cause and as they shall be  
determined so will this Cause be decided

The first is

"Is it necessary that Mary Pyson  
should have elect, during her lifetime  
and after the decease of her husband Isaac  
Pyson to take by inheritance in the land  
in controversy, in order to rest <sup>in</sup> the Complainants  
(his heirs at law) ~~that~~ one undivided half  
part of the land of which her husband  
did seize," or in other words "Whether  
Mary Pyson in her lifetime and after the  
decease of her husband had seized of said  
one half, and being so seized departed this  
life intestate"

The second is "If such election was made any, does the evidence show the election & have been so made"

I maintain the negative of the first and the affirmative of the last proposition - that is that no such election was made any, but if it was that it is abundantly proven.

It is not intended that the right of election survives,

This proceeding is peculiarly a statutory remedy and is to be governed of course by the statute under which it is had,

R. S. p. 546, sec 46 provides among other things that "When" (as in this case) there shall be a widow and no child or children, or descendants of child or children of the intestate, then the one half of the real estate, and the whole of the personal (property) estate shall go to such widow as her exclusive estate forever; subject to her absolute disposition and control, to be governed in all cases by the same rules and regulations as are or may be provided in cases of femes sole"

It would seem indeed that language could not be plainer than this to establish the right of a party in courts of Justice,

Counsel say that this word "Go" does not mean descend If it does not mean descend what in common sense does it mean? The best authorities on this point to which

I have acquiesced in Webster's Dictionary. Fitts  
"Go" & "Descend" &c where among other defini-  
tions, go is said to mean pass, and  
this must ~~be~~ its meaning in the statute  
— that on the death of the husband & the  
one half of the real estate &c passes or  
descends to the widow &c.

This 46 sec it may be remarked is quite  
strong, absolute and unqualified in  
its terms, and the only possible qualifi-  
cation, when taken in connection with  
the Statute of Dower, is, that the widow or  
in case of her death her heirs take or  
inherit subject to the payment of the hus-  
band's debts, the one half of the real estate,  
subject however to be defeated by her electing  
to take by Dower. And this brings us to  
this notable doctrine of election or the prede-  
termined right of the husband's heirs to take,  
upon his decease, the effects of the decedent  
and turns his surviving widow into the  
street, perhaps, if per chance she omits  
to commence early law suits against  
his husband's heirs!

The 15. & 25 sections of Dower are relied  
upon to defeat the complainants. I agree  
with the Counsel on the other side that  
these apparently conflicting Statutes do not,  
when properly understood, really conflict.  
And I think it is clear that the election is  
on the other side, that is that the election to  
take by Dower is necessary to exist to defeat the  
force of the inheritance of the one half under

61  
the 46 section of Mills above cited  
But if the sections do conflict, the rule  
of construction is defined on page 472  
R. S., sec 23. This is a question of  
Descent and inheritance and is more  
strictly the subject matter of the Statute  
of Mills than that in the Statute of Dover,  
If this be so then the Statute of Mills  
should prevail.

In reference to the 18<sup>th</sup> Sec of Dover  
I undertake to say that it is in itself  
either doubtful and unmeaning or the  
election there spoken of is a different  
one than that which they contend it is,  
for it contemplates an assignment  
of Dover to the widow by the heirs — the  
payment by Administrators or Executors of the  
debts against the estate — the service of  
a notice thereof upon the widow, and af-  
ter all this, the right of the widow, then  
if she elects <sup>within 2 months after</sup> to have one half of the real  
estate left.

Now if this section has any intelligible  
meaning or is susceptible of any legal  
construction, it is that the Legislature con-  
templated, or rather assumed that the widow  
would claim or elect to take her Dover of  
the one third — that Dover would be as-  
signed — that the debts against the estate  
would be paid — a notice of the fact ser-  
ved upon the widow by the heirs, and  
then — then — then and under these cir-  
cumstances, the widow if she elect — if

She chooses she may have the one half  
of the real estate remaining. This is the  
election and under these circumstances  
I apprehend is the one meant in this  
section. What was intended by it was to  
give the widow full and ample time  
in such a case as is then mentioned to  
choose. In this case if an election be  
ever necessary, Mary Tyson had her life  
time within which to make it, or in other  
words if she did make it in her lifetime  
then the Complainants are entitled to the  
land; whereas in the case contemplated  
by this 15 section of Dower, the widow has  
2 months after the acts therein men-  
tioned have been performed to make her  
election. Another thing which the Court  
will notice is that in this 15 section of Dower  
not a word is found about the widow  
being entitled to "the whole of the personal  
estate" which is found in the 46 sec.  
of the Statute of Wills.

If this then is the true construction of  
the said 15 sec of Dower, certain is that  
the widow in this case inherited the estate  
in fee & the one half of the land and was seized  
of it at her death, unless she had "relinquished  
such estate of inheritance" <sup>as selected to take by Dower neither of</sup> which is ~~not~~ <sup>not</sup> in-  
tended she did. If she did not then  
Complainants are entitled to it. And  
yet the Court is asked to set aside the  
plain and intelligible language of the  
46 sec of Wills, and adopt the 15 sec of



Doner which is doubtful - uncertain  
 & unmeaning unless it does mean  
 what I have contended it does.

But if the argument on the part of  
 the defense shall create serious doubts on  
 the subject of election of the widow there  
 is a familiar principle of law which  
 I think settles the question. Now the defense  
 contends that unless the widow elects  
 & takes by inheritance she took by dower  
 and that being a life estate only, the  
 Complainants "take nothing by their motion"  
 while I contend she took by inheritance  
 which is the major right, and that unless  
 she elects & takes by dower & relinquishes  
 her estate of inheritance, her heirs (the Comps)  
 are entitled to half the land. The rule of  
 law is this that "where a claim rests upon  
two distinct rights and it does not ap-  
pear whether an <sup>actual</sup> election was made, the  
claimant shall be deemed to have elected  
to take that which is most for his interest  
& take - his major right". The other  
 side say in such a case he shall be  
 deemed to take "the ancient and most  
sure right" (here is the error) and that  
 in this case this "was the dower."

True dower is the most "ancient" right  
 but it is not the more "sure", for according  
 to my learned friends our argument  
 she was as much entitled to the estate  
 in fee as for a life if she elects & takes "it",  
 and the proceedings to obtain a secure

are no more complicated or dangerous  
in the one than the other, In fact it  
may well be questioned whether she was  
not entitled to both - whether the estate  
in fee is not a cumulative right. vide  
Sick v Smith 1. Gil Rep p 503.

Apply this just and equitable rule to  
this case and where stands this defense!

That the estate in fee was more valuable  
~~than~~ that of a life ~~estate~~ is not denied. And  
there was reason for ~~the~~ widow to prefer the  
estate in fee, and for the Court to hold  
and deem her to have preferred - elected  
if there be doubt as to which she did ac-  
tually elect, if she was not entitled to both.

The widow and her husband resided<sup>d</sup> in  
this County - the husband died leaving  
her a large amount of land with no  
incumbrances upon it. - No heirs in  
this County, ~~except~~ the widow and but few debts  
to exhaust it and those few debts it is  
admitted the widow paid out of her own  
property. (the bearing which this payment of debts  
has in the case I shall refer to hereafter)

Because if she took the estate in fee it would  
not only be more valuable to her during her  
life, but would descend to her heirs upon her  
decease, whereas if she foolishly preferred some  
no estate whatever would descend to her heirs  
her Father, Mother, Sisters & Brothers, but the  
whole would pass or "go" to her husband's brother  
in England who now friendishly insults  
her by pretending that her husband left

16  
a Bastard Child in England (vide Exhibit C) And yet Counsel kindly tell us that to cut off these heirs and permit the brother to pocket the whole "is consonant to the general feelings of mankind" and that "the Common Law does not favor the passing of land from one family to another" I confess on this last point the Counsel is right. True it is that under the Common Law (an abomination in the sight of God & man) & which he refers, the "passing of land from one family to another" <sup>was not permitted willingly</sup> But to the credit of Americans this obnoxious policy is not only, as Judge Brown says "obsolete," but is repudiated by every state in this Union, so that instead of encouraging the accumulation of vast landed estates and preserving it in one family from generation to generation, the laws of descent and sales upon Executions, in the different States, encourage the division of family estates upon the death of the husband or ancestor, and in no state more than our own.

But to the 2<sup>d</sup> Proposition  
"If an election be taken by inheritance  
"was necessary is it proven!"

To determine this we must first ascertain what an "Election" as here used is. The literal meaning of election or elect is to choose, or prefer, and this is obviously the meaning of the term in the statute referred to. Neither under the statute of Doner or at Common Law is there

any other kind of election specified than such an one. It is the operation of the mind — the animus elegendi which determining the matter so that upon the death of the husband, if she prefer the estate in fee to that for life she is entitled to it as a matter of right, and under such a case as this I apprehend a court will hesitate long before they judiciously determine she shall be deemed to have taken the lesser estate, unless there is clear law or an anseverable reason for it. This term election occurs frequently in our statutes and is used to either denote a political act or event or an operation of the mind — a choice. — Nowhere does the statute provide the manner that this election is to be made — the time when or the place where. Surely if the Legislature contemplated the existence of any other agency such as judicial proceedings, such as is hinted at on the other side, they certainly would have provided for by some express enactment and not left so important a subject, one which reaches the fireside of every family in the state, to doubtful ~~inference~~ inference. True the animus elegendi may exist and not be known — not brined, but when manifested in such a tangible shape as to show that, <sup>it</sup> in fact existed then it constitutes the election and is sufficient, — sufficient for the widow — sufficient for others.

124  
But I do not understand the  
other side to insist that the Statute  
prescribes or requires the filing of any  
papers in Court or commencement of ju-  
dicial proceedings to manifest this elec-  
tion, and yet covertly they do this very  
thing. And here I must cheerfully  
admit they exhibit ingenuity, by taking  
the 25<sup>th</sup> section of the Statute of Dower and  
calling in to their aid the rule of the  
Common Law already noticed to patch  
up their rickety case,

They first insist that that under the  
25<sup>th</sup> sec of Dower there is no estate in  
the heir until the Commissioners report  
and their report is approved by the Court.  
True the Statute says after the report  
of the Commissioners is approved by the  
Court the estate shall be vested in the  
widow &c. The word vest here must  
mean territorially - that the territorial lim-  
its are judicially established only,  
and not that by virtue of the Decree  
or an order of the Court the rights of  
the parties are changed in any other  
sense, otherwise the Court creates the  
right or estate. Courts I understand  
can neither create nor abolish any  
such legal rights - they ascertain  
and determine preexisting rights, and  
their judgments and Decrees are  
only evidence of the fact.

The next proposition of the defense

loses its ingenuity in the boldness  
and effrontery of its assumptions, &  
in the manifest inapplicability of  
the authorities there cited to the case  
in hand

Counsel just assume that the  
law in this state is the same as in  
England on this subject and then  
very coolly cite authorities to prove what  
no lawyer denies, the different ways  
or manners that real estate can be  
conveyed, ~~etc~~; They assume that here as  
in England the <sup>estate in fee</sup> ~~inheritance~~ is cast upon the  
heir, that is upon somebody else than the  
widow, and that the estate cannot be  
directed at common law but by deed  
devises or judicial proceeding or patent,  
and that too while the single point con-  
tested in this case is one of heirship,  
that is who are the heirs of the husband!  
The whole question in the case is one of heir-  
ship and that question must be deter-  
mined by our own statute, for that ~~is~~  
widely different <sup>from</sup> the common law  
on this subject, as has already been shown

The widow's interest be it the life estate  
or estate ~~or estate~~ <sup>in</sup> ~~for~~ ~~life~~ accrued in-  
stantaneously upon the death of the hus-  
band, but the interest in the land is not  
territorially defined, but requiring the aid  
of a court to effect a division and  
this is the object of this proceeding, it being  
for Partition. Counsel say "the discon-

(14)  
"dible quality of the estate is evidently  
"incidental to the benefit intended for  
"the widow — the benefit of her heirs is  
"not in contemplation" Suppose the heirs  
of the widow were not directly in contem-  
plation, which by the way appears to me  
to be a great mistake, the widow and  
her heirs interest are identical for the  
estate which was test for her was test  
for them, and whether this be or be  
not so, it cannot certainly do away  
with the force of the statute itself.

The principle involved in this <sup>case</sup> ~~case~~ has few  
superiors in importance. It is to mon-  
strous to suppose that such interests would  
be left as they are, entirely unprovided  
for, if the Legislature ever intended  
that this election, if necessary to be made, could  
only be done by instituting judicial proce-  
dures.

What are the proofs establishing an  
election?

The first anxiety of the widow's mind  
after the decease of her husband in point  
of time is shown by the testimony of Alexander  
Healy and Ralph Gorith. Healy swears  
that after her husband's death she fre-  
quently talked with him about her property  
and her interests in the land in con-  
tinuance and several times applied to him  
to assist her in the premises, that he  
promised to do it, but put her off from  
time to time not having time to attend to it

And finally sent her to Mr. P. Burgess;  
for professional assistance. From dates  
established in the testimony here an important  
bearing in this branch of the case as will ap-  
pear by close examination. Truly swear  
that these different conversations occurred  
before he sent her to Burgess and truly  
and Burgess both swear that the date of  
Exhibit "D" is not the 2<sup>d</sup> day of February  
1847 is the time when she applied to him  
for such assistance, and even this  
was only 4 months and 15 days after  
the death of her husband, and during  
all that time her mind seemed to have  
dwelt with the greatest anxiety upon  
the disposition of the property.

On the 2<sup>d</sup> day of February 1847, then,  
she succeeds in obtaining some assistance,  
Mr Burgess swears that she then "consulted  
with him in regard to her rights in the  
real estate of her husband then deceased"  
He advises her of her rights and prepared  
her proper papers &c, among which is a  
Draft of a Power of Attorney for Defendants  
both to execute, including a power in agent  
to divide - partition the lands in controversy  
and advise William Tyson that as his  
widow is entitled to dower in the premises  
she also must execute the papers. Every  
good advise indeed and entertaining  
the same opinions, I filed this Bill and  
made the wife of William Tyson a party  
to this suit.



Mr Bueger further swears that "this letter he gave Mrs Mary Tyson with a Power of Attorney for William Tyson to execute, but what became of the papers afterwards he has no personal knowledge &c" And "that the papers alluded to in the letter were at the same time with the letter given to Mary Tyson".

This Bill was filed March 15, 1848 and these proofs taken Aug 1849, and until within a week before they were taken the Complainants did not know that their papers were ever sent to William Tyson or up sent by Mr Bueger. And I think I venture nothing in suggesting that this explains the delay in closing this case. But fortunately for us (if the Court hold an election next year) we found the proof on this point, And here let me again refer to Stuby's testimony.

Stuby swears in his deposition taken Aug 31, 1849 "that she (Mrs Tyson) <sup>came</sup> as he understood, from Bueger's office, and brought with her Exhibit "D" and the papers referred to in Exhibit "D" that he copied substantially Exhibit "D" and also "note the condition and amount of improvement on the land in controversy from the statement of the matter - "that she wanted her half of the land, which half she was entitled to, and if he was disposed to give her the other half, the paper showed how it was to be done". In his deposition

taken on the 23<sup>d</sup> of September he says  
he also stated in this same letter that  
he (her husband) "died in a happy state  
of mind in reference to spiritual matters  
or something to that effect". (The pertinency  
of this testimony I will refer to hereafter)  
Sheely further ~~says~~ that this letter signed  
by her or for her by him and by her direction  
and enclosing the papers referred to in  
Burgis letter Ex "D" he sealed, showed it to  
her and directed William Tyson, Liverpool,  
and which direction he took from  
letters from him (William Tyson) to her,  
paid the postage and put it into  
the Post office at Belvidere for mail on  
or about the same day

Now in point of fact it makes no  
difference so far as this case is concerned  
whether she ~~deft~~ ever received <sup>this letter</sup> it or not.  
Mary Tyson done all she need to do to make  
her claim to the one half of the lands and  
this was enough. But that William Tyson  
did receive this letter and that Exhibit  
"C" is in answer to it, there is not the  
shadow of doubt. These are unmistake-  
able facts in proof when carefully exam-  
ined which show this.

(1<sup>st</sup>) The dates go to show it. This letter  
written by Sheely was deposited in the P. O.,  
on or about the 2<sup>d</sup> day of February 1847  
and the date of Exhibit "C" which is a  
letter from ~~deft~~ as ~~more~~, is dated the 4<sup>th</sup>  
day of May but the year not named.

Between these dates sufficient time had elapsed for its transmission to Liverpool by due course of mail

Again Ralph Smith sneaks that "he is the Ralph Smith mentioned in Exhibits "A + B" — that he received them both by mail and each one in the ordinary course of time after they purport to have been dated as he supposes" The date of Exhibit "A" is April 26 1847 but is not signed by the wife which is the reason of Exhibit "B" being sent the year afterwards

In answer to Interrogatory 11. Smith further states that Exhibit "C" is William Tyson's writing and that he received it at the time he received Exhibit A and gave the same to Mary Tyson — that he made no mark upon it to identify it, but that it is <sup>the</sup> only letter he ever received from William Tyson and gave to Mary Tyson.

(2) The phraseology of the papers shows that the subject matter of Exhibit "C" is upon the same subject as Exhibit "D" The marks are upon it as plain as upon Old Cain,

Mrs Mary Tyson being a pious lady had the consolation to believe that her husband died in the hopes of a glorious hereafter and wished to communicate this fact to her surviving brother in law in England. He says sneaks that in this letter of July 2. 1847 he stated that "he (Isaac) died in a happy state of mind with reference to spiritual matters or some thing to that effect" That this letter

is the one which first communicated the death of Isaac Tyson is evident from the fact that such topics would not be alluded to if she had written before this,

On the 4<sup>th</sup> of May following the Dept answers in Exhibit "C" and the first thing he alludes to after acknowledging its receipt is this ex. spiritual Condition of Isaac Tyson. He says "we duly received your letter and I can assure you I feel some difficulty in answering it. I was pleased to find my brother's mind had been employed about eternal things, and you have a hope it will be well with him". Clearly responsive to that pinus part of Baby's letter,

Again Baby says that "I note the condition and amount of improvements on the land in controversy". The previous account which he says Isaac Tyson before his death not precisely agreeing in specific number of feet of land broken with what Baby wrote, sets complaints of by saying in substance there is a disagreement on that subject.

Again Baby means that he wrote "that she was entitled to one half and he (Mr P) the other half, and that if he (Mr P) was disposed to give her the other half the papers showed how it could be done". Dept answers "Yet I must say I was a little grieved that you were not more content with his affairs", evidently referring to her anxiety

a impertinence in asking him  
 to heed to her the other half; and then  
 at the conclusion, by way of excusing  
 himself, from not complying with  
 this request, and with an air of ap-  
 parent sincerity, valiantly talks about  
 her husband having left a Bastard  
 in England, as though he were intending  
 this interest in the land was to be used  
 for the benefit of ~~the~~ supposed child.

If any thing further were necessary to  
 satisfy any one that that Exhibit "C" is in  
 answer to this letter of July 2, 1847 it is  
 found in the fact, that these depositions  
 were taken on the 31<sup>st</sup> day of August  
 1849 and the full bearing and object of  
 this branch of the proof was known to the  
 other side, and although the case was not  
 called up at the last September Term  
 for the very purpose of allowing the de-  
 fense to send for this Speely letter and  
 show if they could that it is not such  
 an one as Speely sneaks he wrote, or of  
obtaining the letter to which Exhibit "C"  
is an answer, for certain it is that it  
is an answer to some one, and yet not  
until the second week of last December  
Term was this cause submitted and  
no letter produced!

I have produced one witness, Ralph  
 Gonith, whose interests and prejudices  
 this Court will see from Exhibit "A+B"  
 are on the other side, and who, I regret

I could not have examined in open Court, for he is the man who is contesting this matter. If the Court will examine his deposition he will see that in spite of him I have extorted from him something on the subject of Election

After dodging about in answering 1, 2, 3, 4 & 5 Interrogatories I get from him that James Pastlethart one of the complainants & the agent of Mary Tyson, and with him as her agent talked between them "that the law required a division". In answer to Int'ry 9 he says that "something of the kind (a division) but in round numbers" &c I try the forcing pump in Int'ry 10 & behold how responsive his answer is! The fact is established however from his own testimony that the matter of "division" was talked about.

Now Mary Tyson died on the 16<sup>th</sup> day of August 1847, less than a year after her husband, and these conversations — her anxiety that this land should be divided continued to the day of her death. And there was reason for it — the land lay as alluded to in Exhibit 'D' — no one improving it. She had been advised by counsel as early as Feb 2. 47 that he inherited one undivided half part of it and she was anxious that the land should be divided — the territorial limits defined in order that her aged Mother & Mother, Sisters & Brothers with whom lived the principal part of the time and in whose house she died, might im-

More, cultivate and make resolve her part to her during her life, and for themselves in case of her death, for she having no child or children or descendant of a child or children, the part which belonged to her would "go" to them, on her death,

And yet we are told by Counsel that this letter written by Ruby was a "vaguely expressed wish" and that it rather appears she supposed she was "claiming dower" and "regarded it with more and more indifference as she perceived her end approaching"! And that the Ruby letter "was a statement of her legal rights and a request to have the whole rather than a demand for partition". This "statement" of Counsel of her legal right is another voliant attempt to split hairs, does it not establish a claim for the one half? For what purpose was it made? She claimed that on the death of her husband she inherited one half of the real estate, and requested the mother to give her the other half. Not a word about dower or one third part. On the contrary, the claim in the language of the witness is this "I wrote to him in this same letter that she wanted her half of the land in controversy which half she was entitled to" and "if he was disposed to give her the other half, the papers showed how it was to be done". Can any thing be plainer than this? And

even if it was doubtful (which it certainly cannot be) whether there was an actual election, the claim resting upon two distinct rights, apply the rule I have before cited in such cases, and it settles the matter, especially so, when it is considered that this 46 section of the statute of wills was intended for the benefit of widows, And why did the widow go on after the death of her husband and pay the debts out of her own property if she elects to take her dower, for this she was certainly not obliged to do if she claimed the minor estate,

But I must close this argument, <sup>though</sup> not without an apology for asking the careful attention of the Court at such length. I close it with both confidence & anxiety, for the questions involved are vastly important & as all none more so that have come under my observation since I have been in practice in this State, and in closing it I leave it as I commenced in the belief of the correctness of the following propositions: 13

1 That no election on the part of the widow to take by inheritance in fee in this case was necessary & entitled the complainants to their prayer

2 That if such an election were necessary, it has been, not "loosely" - "vaguely", but clearly firmly proven



That the equities of the case are in fa-  
vor of the Complainants cannot be denied  
and that the law is in their favor I can-  
not doubt. The rule contended for by  
the defense is arbitrary - immoral and  
wicked even if it exist. By its adoption  
you disregard the natural claims of the  
widow and her heirs or fritter them away  
at pleasure with no reason founded in  
natural justice or sound policy & justi-  
fy it and at the same time in my hum-  
ble opinion depart from the spirit - the  
intention and letter of the law in such  
"Case made and provided".

Allen C. Fuller  
of Counsel for Complainants

P.S. This argument was prepared  
for the Cir. Judge at Chambers about  
2 years since & I have not time  
to revise, as I expected until this  
morning to be present at the Supreme  
Court. July 5. 1852

A. C. Fuller

Bone in Court

83  
In Chancery

Particulars of

is

Tyson et al

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Facts & Argument

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Fuller

State of }  
Missouri. }

In the Supreme Court for the Third Grand Division.

A writ of error for William Dyson and Ann Dyson his wife, to remove into the Supreme Court the record, decree and proceedings in a certain cause lately depending in the Circuit Court for the county of Boone, on the equity side thereof, wherein James Postlethwaite and Mary Postlethwaite his wife, George Vickers ~~and~~ Elliner Vickers ~~his~~ wife, Thomas Postlethwaite, Danforth Nettleton, Marguerite Nettleton, William Frank, Isabella Frank, John Postlethwaite, Mary Postlethwaite, Lawrence Fagan and George Postlethwaite were complainants, and the said William Dyson and Ann Dyson were defendants, returnable the first day of the next term of this court.

Francis Burnap,

Solicitor for the said William Dyson and Ann Dyson.

A writ of scire facias directed to the sheriff of Boone County, commanding him to warn James Postlethwaite and Mary Postlethwaite his wife, George Vickers and Elliner Vickers his wife, Thomas Postlethwaite, Danforth Nettleton and Marguerite Nettleton his wife, William Frank and Isabella Frank his wife, John Postlethwaite, Mary Postlethwaite, Lawrence Fagan and George Postlethwaite, to hear errors in the cause mentioned in the foregoing precept for a writ of error.

Francis Burnap,

Solicitor for Plffs in error.

Boone

Supreme Court

William Tyson and  
Ann Tyson his wife

vs.

James Postlethwaite,  
Mary Postlethwaite (his wife)

George Vickers,

Elinor Vickers,

Thomas Postlethwaite

Danforth Nettleton,

Margurite Nettleton,

William Frank,

Isabella Frank,

John Postlethwaite,

Mary Postlethwaite,

Suzanne Fagan and

George Postlethwaite.

Præcipe for writ of error and  
scire facias.

Filed Dec. 8, 1854

L. Leland Clk.

Burnap.

In the Supreme Court.

William Tyson and  
Ann Tyson his wife  
vs.  
James Postlethwaite,  
Mary Postlethwaite his wife,  
George Vickers,  
Elmer Vickers his wife,  
Thomas Postlethwaite,  
Danforth Nettleton,  
Margurite Nettleton his wife,  
William Frank,  
Isabella Frank his wife,  
John Postlethwaite,  
Mary Postlethwaite, Jagan  
~~Sawlene Postlethwaite~~ and  
George Postlethwaite.

Error to Boone.

I Allen C. Fuller, solicitor and  
counsel for the above named defendants in the above  
intitled cause, do hereby enter the appearance of all and  
singular the above or said defendants, excepting George  
Postlethwaite who is a minor under the age of twenty-  
one years, in order that the said cause may proceed in  
the Supreme Court in as full and ample manner as if  
such defendants had been served with the writ of *scire  
facias* in the same cause. Dated 12 December 1851.

Allen C. Fuller

Supreme Court

William Gynson and wife  
vs.  
James Postlethwaite and  
others.

Appearance of part of De-  
fendants

Filed June 16<sup>th</sup> 1852.  
L. Seland Clerk  
By P. M. Seland Deputy.

Supreme Court.

June Term, 1852.

Williams Tyson and wife  
vs.  
James Postlethwaite and others.

Brief of Plaintiffs in error.

1. The bill in this case claims that Mary Tyson under whom the defendants in error, complainants below, claimed as heirs, took one half of the land of her deceased husband, by reason that instead of her dower, she "elected to take the half by inheritance" that half, and it goes for a partition with the heir of the husband. It does not however show an election by her.

The land descended to the heir of the husband subject to be devested <sup>at her</sup> ~~by the election of the widow~~ to take ~~one half of the~~ <sup>as to her</sup> ~~as to a specific half,~~ not as to a moiety, <sup>upon</sup> ~~by the election of the widow~~ to take <sup>by a judicial proceeding</sup> such specific half as should be assigned to her by the court, <sup>by a judicial proceeding</sup> ~~U.S. 200 & 15. 202 & 25.~~ <sup>948 & 46.</sup> When the judicial proceeding is concluded, and the report of the commissioners assigning to her ~~one half of the land,~~ setting off and allotting to her one half of the land, <sup>is approved by the court,</sup> then and not until then, the estate in fee simple therein is vested in the widow, and

not until that time is the title to that half of  
the land divested out of the heirs. R. S. 202 § 15,  
~~Hilliard v. Walker 644.~~ Young v. Keogh, 11 Ill-  
nois 642.

\* There is no inconsistency between the above  
position and Section 46 of the statute of wills, and  
this section and sections 15 and 25 of the statute of  
Dover are to be construed together. Section 46 of the  
statute of Wills says the real estate shall descend  
to the heirs. But when there is no child or chil-  
dren of descendants of child or children, saving in all  
cases, her right of dower. By the next section (47) the  
one half of the real estate of a wife dying intestate,  
shall descend and go to the husband, shewing clear-  
ly that the wife by legislature did not intend any  
descent to the wife. The idea of a descent to the  
widow is wholly contradicted by section 103 and  
the following sections of the statute of Wills, which  
authorises the real estate of the deceased husband to  
be sold to pay his debts, R. S. 558, 559.

Admitting that the election ~~was~~ entitled the  
widow to one half of the land, and still by the rules  
of law the widow took nothing; for an election by  
which the title to lands is to be divested or charg-  
ed, cannot be made in heirs by orally or by parol,  
Butler v. Baker, 260 Mass 690.



It must be by some act which will operate as a conveyance at law. The only methods of conveyance known to the law are,

1. By deed.
2. By ~~record~~ matter of record; that is by a judicial proceeding; and or patent; and
3. By devise. 2 Blackstone 294.

An 'election' to affect ~~real estate~~ ~~a~~ a conveyance of real estate, must be by at the common law, be by a judicial proceeding advancing as far as a declaration. And it must be such as to bind both parties. 2 Coke R. 70, 71. 1 Thomas' Coke, 353 to the pageing. Gilbert on Feudals 129.

There is no proof that the widow elected in any way. 1 Swost. 381.

x The chapter on Dower, R.S. 200 §16, providing that the widow ~~may elect to~~ must elect within one year by proceedings to recover her dower, in case of the exchange of lands by the husband, whether she will have dower in the lands given or <sup>in those</sup> received in exchange, tends to show that the legislature had in mind an election by judicial proceedings in all cases mentioned in that chapter.

Election must be made by the persons to whom given, and does not descend to heirs. 1 Thomas' Case, 354. "Burt." vs. Vandenburg vs. Van Bergen, 13 Johnson 212. Valkenburg vs. Van Buren, same 525

See D.

The bill prays a "partition"; and this presupposes an estate of the widow in the land. R. S. 399. But she had no such thing. She was neither joint tenant, coparcener nor tenant in common of any part or portion of the land. Her right was only to acquire an absolute estate in such portion of the land as should be decreed to her. R. S. 202 § 25.

The common law favors the descent <sup>to</sup> heirs, and in a will requires clear expressions to deprive him of the inheritance. There is the same reason that it should require clear expressions in a statute. The common law does not favor the passing of land from one family to another. 4 Kent 405, 406. 3 Bacon's Ab. 147 (C)

The enactments giving the widow the dower to take half the real estate of the husband in case he left no children, is intended to favor the widow personally, and not her kindred. The phraseology of these enactments shows this. "One

half of the real estate" "shall go to the widow as her exclusive estate forever, subject to her absolute disposition and control; that is, exclusive of her husband's heirs. R.S. "Wills" §46. And, by the same section, if the wife be dead, and the husband have no parents, brothers or sisters, or dependants of brothers and sisters, the estate shall descend to the ~~next~~ <sup>next</sup> of kin nearest of kin of the husband, however remote, but not in any part even to the nearest of kin to a deceased wife. By R.S. "Dower" §. 200 §15, the widow may have "absolutely in her own right, as if she were sole, one half of all the real estate which shall remain after the payment of all just debts." By same chapter §25, "such estate shall be vested in her absolutely, in fee simple, and of inheritance forever, subject to her absolute use, control and disposition." In all these enactments, the heirs of the widow are not mentioned or alluded to; and the descendible quality of the estate is not directly referred to, which shews that such quality was regarded only as incidental to the benefit intended for the widow; and not only to enable her to use, but to dispose of the property.

This view of the case is consonant to the general feelings of mankind. The wife is regarded by the husband as a nearer connexion than his collateral relations; but her relatives are not so. By the death of the wife all affinity and connexion between the husband and her relations is regarded as dissolved; and so completely is this the case,

that the wife may marry the deceased wife's sister.

Mary Tyson the deceased widow is said by the will to have died "seised" of one undivided half. But there is no proof of possession even, but the proof is the other way. If she had taken possession, it would not amount to seisin confer seisin, for if she were in possession, the legal presumption would be that she was waiting to have her dower assigned to her. R. S. "Dower," h. 202 § 27. To give seisin by possession, there must be possession and claim of title commensurate with the possession.

Dower, as well as descent to heirs, is a favorite of the common law, and the intention of the statute is, to keep that election open until the final decree assigning her one half of the real estate, in case she shall have commenced proceedings for half. United States vs. Duncan, 4 McLean 99. It is commonly said, that three things be favored in law: life, liberty and ~~for~~ dower. 1 Thomas's Coke, 14. 4 Kent 54.

If the widow took by election, she took by purchase, and not by descent.

+ It is contended that by R. S. "Dower" p. 425, the word "vest" means ~~that the~~ territorially; that is that the ~~part assigned~~ portion of the land vests; but the meaning plainly is that the estate vests. ~~In dower~~ ~~when~~ The right of dower is not a vested estate; it is a mere chose in action. No estate vests in the ~~heir~~ <sup>claimant</sup> until she enters upon the land voluntarily assigned to her in dower; or assigned to her by decree under the section in question. And the same word is applied to both cases of dower and the half by election.

There is no sufficient proof that the widow made any election, in any way whatsoever. 1 Swenston 386

The bill is bad because it demands partition when the parties were not joint tenants, coparceners or tenants in common. 5 Johnson 83.

Dower is a mere right, until assigned, entry and acceptance and entry, the widow has no estate. 2 W. R. 50. 3 Dyer 278. 4. 1 Cruise 179. § 6. 7. 8.

Supreme Court.

~~People of the State of~~ <sup>Tyson</sup> Dixon

~~Shaw and others~~ <sup>vs.</sup> Postlethwaite

Brief.

Burnap.

184

184

In the Supreme Court of Illinois.

Of June Term, 1852, at Ottawa.

William Dyson and  
Ann Dyson his wife  
<sup>vs.</sup>  
James Pastlethwaite,  
Mary Pastlethwaite his wife,  
George Vickers,  
Elliner Vickers his wife,  
Thomas Pastlethwaite,  
Danforth Nettleton,  
Margaret Nettleton his wife,  
William Frank,  
Isabella Frank his wife,  
John Pastlethwaite,  
Mary Pastlethwaite,  
Lawrence Pagan and  
George Pastlethwaite.

Error to Boone.

### Abstract.

Bill in chancery filed 13 March, 1848 by several complainants, defendants in error, some of them minors; others have been added.

Several complainants were blood relations of Mary Dyson, widow of Isaac Dyson, late of Boone, deceased; son in law of <sup>complainant</sup> James Pastlethwaite. He died 17 Sept. 1846, seised of several tracts of land in Boone county, in the whole about 259 1/4 acres, leaving William Dyson and his wife, residing in Liverpool, his heirs.

The property was free of incumbrances; and decedent left a few articles of personal property, and some debts which the widow paid without administration. He left no child or descendant, and only one brother and wife, the defendants below: whereby the widow inherited from her said husband, and became intitled to one undivided half of the lands, and all the personally, the remaining half of the real descending to the defendants.

The widow, seised of one undivided <sup>of said real estate,</sup> half, died 16 August, 1847, intestate, leaving complainants her heirs, without having elected to take her dower, or relinquishing her estate of inheritance therein, but having elected to take by inheritance. Her estate is administered and settled up. Complainants, father, mother, brothers and sisters of the widow thereby became intitled to one ninth part of half each, and the defendants to the other half of the lands.

The lands are in four separate parcels; some most suitable for pasturing, some for cultivation, and other parts are well timbered. On two lots are stone quarries, making them of great value. A division into two parts, one for complainants and the other for defendants, would be best. Complainants are desirous of a partition among themselves, or a sale; and two of them being minors, ask aid of the court.

Defendants to answer without oath. Prayer for par-



tition, and that such as cannot be parted be sold; and for general relief.

Answer of William Tyson and wife,  
filed 22 May, 1849.

Defendants believe Isaac Tyson died intestate seised of the lands, leaving Mary Tyson his widow, and defendant William Tyson his brother and defendant Ann, wife of said William, him surviving, and no other relatives intitled to inherit; they have no knowledge about his debts or widow's heirs.

Defendants have no knowledge or belief whether the widow made any election to take by inheritance; or whether she died without having elected to take her dower or without having relinquished her estate of inheritance; but they deny that she ever did make an election to take one half of the real estate in lieu of her dower; and she never gave notice, or in any way or manner notified defendants of any such election. Charge, that unless the widow made such election in due, proper and legal manner, complainants have no interest.

Ann Tyson is only intitled to dower in case she survives her husband, and is therefore unnecessarily a party.

If complainants are intitled, defendants submit.

## Evidence of complainants.

A stipulation admits complainants are relatives and heirs of the widow, as stated; the title in Isaac Tyson at his death; that the alleged minors are such; and that the material facts alleged in the bill are true, except as to the fact of the election by the widow to take by inheritance.

Deposition of William J. Burgess, taken  
31 Aug. 1849.

About 2 Feb. 1847, Mrs. Mary Tyson called and consulted with witness in regard to her rights in the real estate of her husband, and requested him to make out papers for defendant William Tyson to execute in reference to it. Witness ~~the~~ produces a copy of the letter he then drew up to send to William Tyson, copied from a copy in his letter-book. He gave her the letter, with a power of attorney for William Tyson to execute; but what became of them, he has no personal knowledge. The power as near as witness can recollect, was intended and so drawn as to authorise the agent William Tyson might select, to take possession of the land; to sell and lease, and make the proper conveyances for such selling and leasing; to collect rents, and (but witness is not certain as to it) a power of making partition is also included in it. The original letter is pro-

duced and made exhibit D. The papers alluded to in the letter were at the same time delivered to Mary Tyson.

The Letter.

"Belvidere, Ms. Feb. 2, 1847.

Mr. William Tyson,

Liverpool Sir

At the request and as the legal adviser of Mrs. Mary Tyson relict of Isaac Tyson late of this county, deceased, I make this communication to you.

Mr. I. T. died seized in fee simple of certain real estate situate in Boone county Ms. of which I send you a copy from his title deeds.

Aliens are capable under the laws of this state of taking and holding real estate, and can transmit the same to their heirs whether they (the heirs) are residents or citizens or not. I. Tyson an alien born died leaving no child or children, his wife him surviving, and yourself as I am informed, his sole surviving brother, no parents living and no descendants of brothers or sisters— and intestate.

Here when a man dies intestate leaving a widow and no child, the widow takes all the personal property and one half the real, as her own absolutely—the other half of the real is divided between the brothers and sisters and their descendants—and the parents in equal parts among them. So that you succeed to one

half of the real estate of your late brother Isaac Dyson.

As it is very probable you may wish to dispose of this right in some way, I will point out the steps necessary to be taken to make a valid transfer. The same instrument is required here as in England for the conveyance of land in fee simple, a deed under the hand and seal of the party. And if you see fit to act by an agent, his authority should also be signed and sealed. The deed or power of attorney should also be acknowledged before the mayor of your city and attested by his certificate under the common seal of the city, the form of which I send you.

Should you not desire to sell, it would be advisable to make partition of the land as it is useless as it now lies, and a tenant in common will not usually without directions from his co-tenant make improvements. This also can be effected by authorising an agent by deed executed and acknowledged as I have mentioned above.

If you are not personally known to the mayor, you must take with you some one whom the mayor knows to be a credible witness, to testify as to your identity. As this may be necessary, I have so drawn the certificate as to meet it.

It would also be well enough to execute the papers in presence of a witness who is coming out to this country as the execution could then be proved here by him as subscribing witness to the execution thereof.

As your wife is intitled to dower in the premises it will be necessary for her to execute the papers with

you. The certificate will shew what kind of an acknowledgment of the execution she must make. Yours, &c.

Wm. J. Burgess."

Deposition of Ralph Gawith taken 31  
Aug. 1849.

Witness is the Ralph Gawith mentioned in Exhibits A and B. He received them both by mail, and each in the ordinary course after their date as he supposes.

He was acquainted with Mary Dyson. His attorneyship in fact for defendants has continued to the present time; as he supposes. He was present at the house of James Pottlethwaite during the last sickness of Mary Dyson. A short time before her death, he had a conversation with her, after he had received exhibit B. The subject of his agency was talked over between him and Mary Dyson after he received exhibit A from William Dyson. Did witness have any conversation after death of Isaac Dyson, with her about what should be done with the land? He thinks it more likely he had than not. Does he recollect any thing in particular what was said? No. Any thing said about the division of the land? He cannot say that had or that he had not. Was it ever talked of in the family? He does not remember whether it was or not. Does not recollect whether there was any thing said on the subject during her last sickness or not.

Three or four months next prior to her death, she

resided at her father's, James Pastlethwaites. He transacted her business with witness concerning the land, and witness understood from her that she approved of what he did. Does not recollect that during her life he requested a division, but it was talked over between us that the law required a division.

Does witness know whether Mary Tyson ever expressed a wish to have that land divided? Something of that kind, but expressed in round numbers. A settlement was frequently talked of, but nothing concluded. Has witness ever learned by correspondence that she wanted half that land? At the time I received exhibit A, I understood she represented matters differently from what Isaac Tyson had done.

Received what he supposes to be exhibit C, at the same time with A, and gave it to Mary Tyson soon after. It was sealed, and was the only letter from William Tyson he ever delivered to her.

Exhibit C.

May 4<sup>th</sup>  
Liverpool.

Dear Sister,

We received your letter and I can assure you I feel some difficulty in answering it. I was pleased to find my brother's mind had been engaged about eternal things & that you have a hope it is well with him.

Yet I must say I was a little grieved you were not more content with his affairs and I must say there appeared to be a disposition to misrepresent matters. Your letter says my brother was going to make improvements. Now in his own letter of the 23 of June he says that he had then gone to make improvement he says "I work on my own place. I have got 9 or 10 acres grubbed I am now at work plowing. I have got 4 acres ploughed," &c. These are his own words. But I have without delay given it into hands who will I am persuaded do what is right. I wish to say although my Brother has not left any child in America he has I believe left one in England, although not born in a way right or justifiable, being not born in wedlock he is a real child, and if special marks of resemblance be any criterion he is undoubtedly to my mind my Brother's own child and therefore ought not to be overlooked. I hope the matters will be settled in the best possible manner.

I wish to be remembered to your parents and grandfather.

Yours respectfully,

William Tyson."

### Exhibit A.

This is a power of attorney of William Tyson, dated 20 April 1847, and proved by a witness before the mayor of Liverpool; and the official character of the mayor certified by the American consul.

It recites that Isaac Tyson died intestate, seised of lands in Illinois, and that William Tyson is his only brother. It constitutes Ralph Gawith of Boone county and John Stephenson late of Wplea, county of Cumberland, England, then about to proceed to Illinois, his attornies, to make sale and absolutely to dispose of the lands, estate and effects of decedent, or such part thereof as William Tyson is intitled to, by auction or private contract, and to convey to the purchasers, and to collect debts, monies, estate and effects of decedent to which William Tyson is intitled; to execute receipts, acquittances and other discharges; to prosecute for purchase money; to defend suits for the recovery or defense of the lands, estate and effects; to settle and adjust with the widow, and every other person indebted, all accounts between the said widow and such other person indebted; to submit to arbitration any dispute relating to the lands, estate, effects, &c. and execute bonds for the purchase. It contains the usual general power; authorises the attornies to appoint others; contains the usual ratification clause, and authorises the attornies to acknowledge the power.

### Exhibit B.

This is a power of attorney dated 3 March 1848, executed by William Tyson and Ann Tyson, acknowledged by her before the mayor of Liverpool, and also proved before him by a witness. It recites that Isaac Tyson died intestate, seised and



intitled to the possession of real estate in Boone county; that William is the only brother of Isaac Dyson; that Ann is lawful wife of William Dyson; and that they are desirous of selling and disposing of their right, title and interest in all the real estate in said county, of which deceased was seized or intitled to. It constitutes Gawith and Stephenson of said county, their attornies to sell and dispose of their right, title and interest in the real estate aforesaid; it authorises them to agree and consent with the legal heirs of Isaac Dyson deceased, and all others having a legal interest in the real estate, that it shall be partitioned and divided by arbitration, and upon partition to execute deeds to secure the rights of the parties to the partition; to employ attornies to appear in all suits instituted by them or others to effect a partition of the real estate aforesaid; and in case it shall be determined in court that a partition cannot be made, and a sale shall be decreed, to receive their distributive share; and in case the partition shall be effected, to sell the portion set off to them, and to execute deeds; to pay taxes; and to collect all monies owing to them in said county; with the usual ratification clause.

Deposition of Alexander Veeley, taken  
31 Aug. 1849.

Mary Dyson resided in witness' family considerably, both before and after her marriage with Isaac Dyson. After his death, she frequently talked with witness about her pro-

property and her interest in the lands; inquired several times the course she must pursue in order to get her share of the real estate, and asked him to assist her. He promised to do it, but put her off, not having time, and finally sent her to Mr. Burgess. She got him to write a letter for her, which is exhibit D; so she told witness about the day of its date. It was in the fore part of February 1847. She brought with the letter, directions or the letters referred to in it.

I wrote substantially what Mr. Burgess wrote in exhibit D; and also I wrote the condition and amount of improvements on the land, from her statement. I wrote to him in this same letter, that she wanted her half of the land, which half she was intitled to; also in substance that she was intitled to half the land, and he the other half, and if he was disposed to give her the other half, the paper showed how it was to be done; and I directed it to William Tyson, Liverpool. I am not certain whether she signed her name to it herself, or I signed it by her direction; but it was one or the other. About the day on which it was written, I showed it to her, sealed it, paid the postage, put it in the post office at Belvidere, Ills. for mail.

Cross stated in the letter that he was intitled to one half of the land, and she to the other. I farther stated that the land was not very valuable, and requested him to deed his interest in it to her. My best recollection is that I put it in the post office myself. I do not recollect any further direction than I have stated, but I took the directions from Wm. Tyson's letters to Isaac Tyson, and the one marked exhibit D.

Direct. I wrote, directed, paid the postage of and mailed said letter by the direction of Mary Dyson. I have no doubt I put that letter in the ~~post~~ office myself. The papers accompanying Mr. Burgess' letter were inclosed.

This witness being examined again 22 Sept. 1849, said the letter to William Dyson stated that Isaac Dyson died in a happy state of mind in reference to spiritual things, or something to that effect.

### The Decree.

Several of the parties were introduced by supplemental bills, having intermarried with complainants. The cause was submitted in December term 1849, before Hon. Hugh Henderson, upon bill, answer and proofs, and the decisive decree was made in April term 1850.

The decree declares among other things, that Mary Dyson paid all the debts of her late husband out of her own personal estate; and without having at any time elected to take dower in the lands of which her husband died seised, or relinquishing her estate of inheritance therein, did during her life time signify to the defendants at Liverpool, England, and to others, her desire to have and enjoy the one half of the real estate, and did actually elect to take by inheritance said one half. And that having so elected, she became intitled to and seised of one undivided

half part of said real estate. The decree then orders a partition, and appoints three commissioners to divide the land into two equal parts, quantity and quality relatively considered, one part to be allotted to complainants, and the other to defendants; it orders them to make report, and authorises any two of them to act.

The record then sets out a commission issued to the commissioners, containing ten or twelve folios.

The commissioners at their term 1851, reported that they had made partition of the lands into two equal parts, according to the decree. No exceptions were taken, and a final decree was entered confirming the report, and ratifying, approving and confirming the partition.

The costs were decreed against William Dyson and Ann Dyson, and execution awarded therefor.

### Errors assigned.

1. The bill does not shew any sufficient equity on which to found the decree, or any other decree for the complainants.

2. The decree declares that without relinquishing her estate of inheritance in the lands of which her husband died seised, Mary Dyson did during her life time signify to the defendants below, plaintiffs in error at Liverpool in England, and to others, her desire to have and enjoy the one half of said real estate, and did actually elect to take by inheritance said one half; whereas it appears by the pleadings and proofs that she had no

such estate to relinquish; nor is it alleged or proved that she signified to the defendants below her desire to have and enjoy one half of the real estate; nor would such signifying amount to an election; nor would her signifying it to others; nor did she actually elect in any legal manner.

3. She was not intitled to or seised of one undivided half of the said real estate, as declared.

4. A partition is ordered; whereas the whole belongs to William Dyson.

5. The decree authorises any two of the commissioners named, to make the partition; whereas the statute requires all three to act.

6. The decree orders a commission to issue to the commissioners to make the partition; it being unnecessary and unusual, and tending only to create expense.

7. The decree ought not to have been made against Ann Dyson, she being an unnecessary party.

8. The decree should have been for William Dyson and Ann Dyson, and against the complainants below.

9. The whole costs are awarded against William Dyson and Ann Dyson, whereas they should have been apportioned, it being impossible for William Dyson to make partition without a proceeding in court, by reason that part of the complainants were infants.

10. Costs were wrongfully decreed against Ann Dyson, she being a feme covert, and having committed no default.

Supreme Court.  
William Tyson and another  
vs.  
James Postlethwaite and  
others.

Abstract.

Burnap.

## The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Boone* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the ~~judgment~~ <sup>decrees</sup> of a plea which was in the Circuit Court of *Boone* — county, before the Judge thereof, between *James Postlethwaite, Mary Postlethwaite his wife, George Viekers, Elliner Viekers, Thomas Postlethwaite, Daniel H. Kettleton, Marquite Kettleton, William Frank, Isabella Frank, John Postlethwaite, Mary Postlethwaite, Lawrence Fagan, & George Postlethwaite, Complainants, plaintiff* and *William Tyson and Ann Tyson his wife* —

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 the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2<sup>nd</sup> Monday 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *eighth* — day of *December* in the year of our Lord one thousand eight hundred and fifty *one* —

*R. Ireland* Clerk of the Supreme Court.

Boone  
William Tyson et al,  
vs  
James Postlewaite et al.

Writ of Error  
To June Term 1852.

Filed June 16<sup>th</sup> 1852.  
J. Seland Clerk  
by J. H. Seland Depy.

My return to this writ appears  
by this manuscript herewith annexed  
D. J. Seland Clerk  
Boone Co. Va. Term



State of Illinois, }  
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *Boone* County—

Greeting:

Because in the record and proceedings, and also in the rendition of the ~~judgment~~ <sup>*decree*</sup>, of a plea which was in the circuit court of *Boone* county, before the Judge thereof, between *James Postlethwaite & Mary Postlethwaite, his wife, George Vickus, Ellenier Vickus,*

*Thomas Postlethwaite, daughter Nettleton, Elarguete Nettleton, William Frank, Isabella Frank, John Postlethwaite, Mary Postlethwaite, Lawrence Fagan, & George Postlethwaite, Complainants— and William Tyson & Ann Tyson his wife*—  
 defendants, it is said that manifest error hath intervened to the injury of the said *dependants*

as we are informed by *their* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, 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 *Complainants—James Postlethwaite & others*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *22* Monday in *June* 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 *James Postlethwaite & others*—notice, together with this writ.

WITNESS, the Hon. *Samuel A. Treat*  
 Chief Justice of our said Court, and the seal thereof,  
 at Ottawa, this *8th* day of *December*  
 in the year of our Lord, one thousand eight hundred  
 and *fourty-one*.

*L. Iceland*

Clerk of the Supreme Court.

Supreme Court <sup>Room</sup>  
William Tyson et al.  
vs  
James Postlethwaite et als.

Sci. Fa.

June Term 1852 -

Filed June 16<sup>th</sup> 1852.  
L. Deland Clk.  
By P. W. Deland Depy.

Sent on the within named George Postlethwaite  
by mailing to him a copy thereof of  
the writ of error in this within named cause  
this third day of April A.D. 1852  
This service by  
1<sup>st</sup> Mile  
Return  $\frac{10}{60} = 13. E. A. W. Downoff, Deputy$   
C. J. Fosdick opp. of Room

In the Supreme Court of Illinois.

Of June Term, 1852 at Ottawa.

William Tyson and  
Ann Tyson his wife  
vs.  
James Postlethwaite,  
Mary Postlethwaite his wife,  
George Vickers,  
Elmer Vickers his wife  
Thomas Postlethwaite  
Danforth Nettleton  
Margaret Nettleton his wife  
William Frank,  
Isabella Frank his wife,  
John Postlethwaite  
Mary Postlethwaite  
Lawrence Pagan and  
George Postlethwaite.

Error to Boone.

### Abstract.

Bill in chancery filed 13 March, 1848, by several com-  
plainants, <sup>dependents on him,</sup> some of them miners; others have been added.

Several complainants were blood relations of Mary Ty-  
son, widow of Isaac Tyson, late of Boone, deceased; son-in-  
law of complainant James Postlethwaite. He died 17 Sept.  
1846, seized of several tracts of land in Boone county, in  
the whole about 259 $\frac{1}{4}$  acres, leaving ~~sons~~ William Tyson  
and his wife, residing in Swerpost, his heirs.

The property was free of incumbrances; and decedent left a few articles of personal property, and some debts, which the widow paid without administration. He left no child or descendant, and only one brother and wife, the defendants below, whereby the widow inherited ~~and became int~~ from her said husband, and became intitled to one undivided half of the lands, and all the personally, the remaining half of the real descending to the defendants.

The widow, seized of one undivided half <sup>of said real estate</sup>, died 16 August, 1847, intestate, leaving complainants her heirs, without having elected to take her dower, or relinquishing her estate of inheritance therein, but having elected to take by inheritance. Her estate is administered and settled up. Complainants, ~~relatives of the widow~~ father, mother, brothers and sisters of the widow, thereby became intitled to one ninth part of half each, and defendants to the other half of the lands.

The lands are in four separate parcels; some most suitable for pasturing; some for cultivation, and other parts are well timbered. On two small lots are stone quarries, making them of great value. A division into two parts, one for complainants and the other for defendants, would be best. Complainants are desirous of a partition among themselves, or a sale; and two of them being minors, ask aid of the court.

Defendants to answer without oath. Prayer for par-

tion, and that such as cannot be parted be sold, and for general relief.

Answer of William Dyson and wife  
filed 27 May, 1849.

Defendants believe Isaac Dyson died intestate, seized of the lands, leaving Mary Dyson his widow, and defendant William Dyson his brother <sup>wife of said William in running</sup> and defendant Ann, and no other relatives intitled to inherit; they have no knowledge about his debts or widow's heirs.

Defendants have no knowledge or belief whether the widow made any election to take by inheritance; or whether she died without having elected to take her dower, or without having relinquished her estate of inheritance; but they deny that she ever did make an election to take one half of the real estate in lieu of her dower; and she never gave notice, or in any way or manner notified defendants of any such election. Charge that unless the widow made such election in due, proper and legal manner, complainants have no interest.

Ann Dyson is only intitled to dower in case she survives her husband, and is therefore unnecessarily a party.

If complainants are intitled, defendants submit.

## Evidence of complainants.

A stipulation admits complainants are relatives and heirs of the widow, as stated; the title in Isaac Dyson at his death; that the alleged minors are such; and that the material facts alleged in bill are true, except as to the fact of the election by the widow to take by inheritance.

Deposition of William P. Burgess, taken on ~~2 Feb. 1847~~ 31 Aug. 1849.

~~See also~~ About 2 Feb. 1847, Mrs. Mary Dyson called and consulted with witness in regard to her rights in the real estate of her husband, and requested him to make out papers for defendant William Dyson to execute in reference to it. Witness produces a copy of the letter he then drew up to send to William Dyson, copied from a copy in his letter book. He gave her the letter, with a power of attorney for William Dyson to execute; but what became of them, he has no personal knowledge. The power as near as witness can recollect, was intended and so drawn as to authorise the agent William Dyson might select, to take possession of the land; to sell and lease, and make the proper conveyances for such selling and leasing; to collect rents; and (but witness is not certain as to it) a power of making partition is also included in it. The origin-

al letter is produced and made exhibit D. The papers alluded to in the letter were at the same time delivered to Mary Dyson.

The Letter.

"Belvidere, Ms. Feb. 2, 1847.

Mr. William Dyson,  
Liverpool Sir

At the request and as the legal adviser of Mrs. Mary Dyson relict of Isaac Dyson late of this county, deceased, I make this communication to you.

Mr. J. P. died seized in fee simple of certain real estate situate in Boone county Ms. of which I send you a copy from his title deeds.

Aliens are capable under the laws of this state of taking and holding real estate, and can transmit the same to their heirs whether they (the heirs) are residents or citizens or not. J. Dyson an alien born died leaving no child or children, his wife him surviving, and yourself as I am informed, his sole surviving brother, no parents living and no descendants of brothers or sisters — and intestate.

Here when a man dies intestate leaving a widow and no child, the widow takes all the personal property and one half of the real, as her own, absolutely — the other half of the real is divided between the brothers and sisters and their descendants and the parents in equal parts among them. So that you

succeed to one half of the real estate of your late brother Isaac Dyson.

As it is very probable you may wish to dispose of this right in some way, I will point out the steps necessary to be taken to make a valid transfer. The same instrument is required here as in England for the conveyance of land in fee simple, a deed under the hand and seal of the party. And if you see fit to act by agent his authority should also be signed and sealed. The deed or power of attorney should also be acknowledged before the mayor of your city and attested by his certificate under the common seal of the city, the form of which I send you.

Should you not desire to sell, it would be advisable to make partition of the land as it is useless as it now ~~stands~~ lies, and a tenant in common will not usually without directions from his co-tenant make improvements. This also can be effected by authorising an agent by deed executed and acknowledged as I have mentioned above.

If you are not personally known to the mayor, you must take with you some one whom the mayor knows to be a credible witness, to testify as to your identity. As this may be necessary, I have so drawn the certificate as to meet it.

It would also be well enough to execute the papers in presence of a witness who is coming out to this country as the execution could then be proved here by him as subscribing witness to the execution thereof.

As your wife is intitled to dower in these premises it will be necessary for her to execute the papers with



you. The certificate will shew what kind of an acknowledgment of the execution she must make. Yours, &c.  
Wm. J. Burgess."

Deposition of Ralph Gavitt, taken 31  
Aug. 1849.

Witness is the Ralph Gavitt mentioned in exhibits A and B. He received them both by mail, and each in the ordinary course after their date as he supposes.

He was acquainted with Mary Dyson. His attorneyship in fact for defendants has continued to the present time, as he supposes. He was present at the house of James Pottlethwaite during the last sickness of Mary Dyson. A short time before her death, he had a conversation with her, after he had received exhibit B. The subject of his agency was talked over between him and Mary Dyson after he received exhibit A from William Dyson. Did witness have any conversation after death of Isaac Dyson, with her about what should be done with the land? He thinks it more likely he had than not. Does he recollect any thing in particular what was said? No. Any thing said about the division of the land? He cannot say that he had or that he had not. Was it ever talked of in the family? He does not remember whether it was or not. Does not recollect whether there was any thing said on the subject during her last sickness or not.

Three or four months next prior to her death, she

resided at her father's, James Postlethwaite's. He transacted her business with witness concerning the land, and witness understood from her that she approved of what he did. Does not recollect that during her life he requested a division, but it was talked between us that the law required a division.

Does <sup>witness</sup> you know whether Mary Dyson ever expressed a wish to have that land divided? Something of that kind, but expressed in round numbers. A settlement was frequently talked of, but nothing concluded. Has witness ever learned by correspondence that ~~Mary Dyson~~ she wanted half that land? At the time I received exhibit A, I understood she represented matters differently from what Isaac Dyson had done.

Received what he supposes to be exhibit C, at the same time with A, and gave it to Mary Dyson soon after. It was sealed, and was the only letter from William Dyson he ever delivered to her.

Exhibit C.

"May 1<sup>th</sup>  
Liverpool.

Dear Sister,

We received your letter and I can assure you I feel some difficulty in answering it. I was pleased to find my brother's mind had been engaged about eternal things & that you have a hope it is well with him.

Yet I must say I was a little grieved you were not more content with his affairs and I must say there appeared to be a disposition to misrepresent matters. Your letter says my brother was going to make improvements. Now in his own letter of the 23 of June he says that he had then gone to make improvements he says "I work on my own place. I have got 9 or 10 acres grubbed I am now at work plowing. I have got 4 acres ploughed," &c. These are his own words. But I have without delay given it into hands who with I am persuaded do what is right. I wish to say although my Brother has not left any child in America he has I believe left one in England, although not born in a way right or justifiable, being not born in wedlock he is a real child, and if special marks of resemblance be any criterion he is undoubtedly to my mind my Brother's own child & therefore ought not to be overlooked. I hope the matters will be settled in the best possible manner.

I wish to be remembered to your parents and grand-father.

Yours respectfully,

William Tyson."

### Exhibit A.

This is a power of attorney of William Tyson, dated 20 April 1847, and proved by a witness before the mayor of Liverpool; and the official character of the mayor certified by the American consul.

It recites that Isaac Dyson died intestate, seized ~~and~~  
~~intitled to possession of certain of real estate in Boone~~  
~~county, Illinois~~ of lands in Illinois; and that William  
Dyson is his only brother. It constitutes Ralph Gawith  
of Boone county and John Stephenson late of Wplea coun-  
ty of Cumberland, England, then about to proceed to  
Illinois, his attornies, to make sale and absolutely to dis-  
pose of the lands, estate and effects of decedent, or such  
part thereof as William Dyson is intitled to, by auction  
or private contract, and to convey to the purchasers,  
and to collect debts, monies, estate and effects of dec-  
dent to which William Dyson is intitled; to execute  
receipts, acquittances and other discharges; to prosecute  
for purchase money; to defend suits for recovery or de-  
fense of the lands, estate and effects; to settle and ad-  
just with the widow, and every other person indebted,  
all accounts between the said widow and such other per-  
son indebted; to submit to arbitration any dispute  
relating to the lands, estate, effects, &c. and execute bonds  
for the purpose; It contains the usual general pow-  
er, authorises the attornies to appoint others; contains  
the usual ratification clause, and authorises the attor-  
neys to acknowledge the power.

### Exhibit B.

This is a power of attorney dated 3 March 1848, grant-  
ed by William Dyson and Ann Dyson, acknowledged by her  
before the mayor of Liverpool and also proved before him by  
a witness.

It recites that Isaac Dyson died intestate, seised and intitled to the possession of real estate in Boone county; that William is the only brother of Isaac Dyson; that Ann is lawful wife of William Dyson; and that they are desirous of selling and disposing of their right, title and interest in all the real estate in said county, of which deceased was seised or intitled to. It constitutes Lawitt and Stephenson of said county, their attornies to sell and dispose of their right, title and interest in the real estate aforesaid; it authorises them to agree and consent with the legal heirs of Isaac Dyson deceased, and all others having a legal interest in the real estate, that it shall be partitioned and divided by arbitration; and upon partition to execute deeds to secure the rights of the parties to the partition; to employ attornies to appear in all suits instituted by them or others to effect a partition of the real estate aforesaid; and in case it shall be determined in court that a partition cannot be made, and a sale shall be decreed, to receive their distributive share; and in case the partition shall be effected, to sell the portion set off to them, and to execute deeds; to pay taxes; and to collect all monies owing to them in said county; with the usual ratification clause.

Deposition of Alexander Neely, taken  
31 August 1849.

Mary Dyson resided in witness' family considerably.

both before and after her marriage with Isaac Dyson. After his death she frequently talked with witness about her property and her interest in the lands; inquired several times the course she must pursue in order to get her share of the real estate, and asked him to assist her. He promised to do it, but put her off, not having time, and finally sent her to Mr. Burgess. She got him to write a letter for her, which is exhibit D; so she told witness about ~~the~~ the day of its date. It was in the fore part of February 1847. She brought with the letter, directions or the letters referred to in it.

I wrote substantially what Mr. Burgess wrote in exhibit D; and also I wrote the condition and amount of improvements on the land, from her statements. I wrote to him in this same letter, that she wanted her half of the land, which half she was intitled to; also in substance that she was intitled to half the land, and he the other half, and if he was disposed to give her the other half, the paper showed how it was to be done; and I directed it to William Dyson, Liverpool. I am not certain whether she signed her name to it herself, or I signed it for her by her direction; but it was one or the other. About the day on which it was written, I showed it to her, sealed it, paid the postage, put it in the post-office at Belvidere, Ills for mail.

Cross. I stated in the letter that he was intitled to one half of the land, and she to the other. I further stated that the land was not very valuable, and requested him to deed his interest in it to her. My best

recollection is that I put it in the post-office myself. I do not recollect any further direction than I have stated, but I took the directions from Wm. Dyson's letters to Isaac Dyson, and the one marked exhibit D.

Direct. I wrote, directed, paid the postage of and mailed said letter by the direction of Mary Dyson. I have no doubt I put that letter in the office myself. The papers accompanying Mr. Burgess's letter were inclosed.

This witness being examined again 22 Sept. 1849, says the letter to William Dyson stated that Isaac Dyson died in a happy state of mind in reference to spiritual things or something to that effect.

### The Decree.

Several of the parties were introduced by supplemental bills, having ~~become necessary parties by~~ intermarriage with complainants. ~~And~~ The cause was submitted in December term 1849, before Hon. Hugh Henderson, upon bill, answer and proofs. And the decisive decree was made in April term 1850.

The decree declares among other things, ~~paid all the~~ that Merry Dyson paid all the debts of her late husband out of her own personal estate; and without having at any time elected to take dower in the lands of which her husband died seised, or relinquishing her estate of inheritance therein, did during her life time signify to the de-

pendants at Liverpool England and to others her desire to have and enjoy the one half the real estate, and did actually elect to take by inheritance said one half. And that having so elected, she became intitled to and seised of one undivided half part of said real estate. The decree ~~at~~ then orders a partition, and appoints three commissioners to divide the land into two equal parts, quantity and quality relatively considered, one part to be allotted to complainants and the other to defendants; it orders them to make report, and authorises any two of them to act.

The record then sets out a <sup>issued to the commissioners,</sup> commission, containing ten or twelve folios. The commissioners ~~reported~~ at the April term, 1851, ~~the commissioners~~ reported that they had made partition of the lands into two equal parts, according to the decree. No exceptions were taken, and a final decree was entered according to ~~the report~~, confirming the report, and ratifying, approving and confirming the ~~reports~~, partition.

The costs were decreed against the ~~defendant~~ William Dyson and Ann Dyson, and execution awarded therefor.

~~The following~~ Errors ~~are~~ assigned:

1. The bill does not shew any sufficient equity <sup>on which</sup> to found the decree, ~~or~~, or any other decree for the complainants.

2. The decree declares that without relinquishing her estate of inheritance in the lands of which her husband died seised, Mary Dyson did during her life time



signify to the defendants below, Plaintiffs in error, at Liverpool in England, and to others, her desire to have and enjoy the one half of said real estate, and did actually elect to take by inheritance said one half; whereas it appears by the pleadings and proofs that she had no such estate to relinquish; nor is it alleged or proved that she signified to the defendants below her desire to have and enjoy one half of the real estate; nor would such signifying amount to an election; nor would her signifying it to others; nor did she actually elect in any legal manner.

3. She was not intitled to or seized of one undivided half of the said real estate, as declared.

4. A partition is ordered; whereas the whole belongs to William Dyson.

5. The decree authorises any two of the commissioners named, to make the partition; whereas the statute requires all three to act.

6. The decree orders a commission to issue to the commissioners to make the partition; it being unnecessary and unusual, and tending only to create expense.

7. The decree ought not to have been made against Ann Dyson, she being an unnecessary party.

8. The decree should have been for William Dyson and Ann Dyson, and against complainants below.

9. The whole costs are awarded against William Dyson and Ann Dyson, whereas they should have been apportioned, it being impossible for William Dyson to make partition without a proceeding in court, by reason that part of the complainants were infants.

10. 18. 18. costs were wrongfully decreed against Ann  
Tyson, she being a feme covert, and having committed  
no default.

Supreme Court.  
William Tyson and another  
vs.  
James Postlewaite and  
others.

Abstract.