

No. 12715

Supreme Court of Illinois

Bennett, et al

vs.

Whitman et al

107

Samuel Beaman
vs
E. Holden Whelan
Deeds

108

109

12715

1869

State of Illinois

Boone County Circuit Court-

file 1

April Term A.D. 1854-

Pleas before the Hon Isaac G. Wilson
Judge of the Thirtieth Judicial Circuit
of said State of Illinois at a Term of the
Circuit Court begun and held at the Court
House in Belvidere in the County of Boone
and State aforesaid on the 17th day of April
A.D. 1854

Present-

Hon Isaac G. Wilson

Judge

Jayette B. Hamilton

Clk

Millard M. Boyce

State Attorney

George J. Woods

Shriffs

Be it Remembered that hereupon
to wit on the 12th day of September
A.D. 1853. came Mahlon Matheran
Executive & Samuel Bennett. & Herman
Matheran Executors - by Jason Mann
Esq their Solicitor filed their Bill of
Complaint in the above specified
following viz-

Wm Boone Co. Cir Court. To the Hon. J. G. Wilson
Judge of the Nineteenth Judicial Cir-
cuit of the State of Illinois and Pre-
siding in the Boone County Circuit
Court.

The Petition of Samuel Ben-
nett, Heniam Whitman & Matilda Whitman Executors
of the last Will & Testament of Seth S. Whitman late of said
County of Boone deceased respectfully shew, that on or
about the first of January in the year eighteen hundred
& fifty one Seth S. Whitman formerly of the said County of
Boone died at Amesville in the State of Wisconsin
Seized of real estate situated in the Counties of Boone
& Minnetago in said State of Illinois and more par-
ticularly being & described as follows viz Being the
South East corner of the South West quarter of Section
fourteen & the North East corner of the South West quar-
ter & the North West corner of the North East quarter
of Section twenty three in Township Forty Four,
Range one East of containing thirty eight acres
as conveyed to said Seth S. Whitman deceased by
Almer Haylor & George Westell except so much
thereof as had been conveyed by said Seth S. Whitman
in his life time to Secretia M. Stan, John S. Coleman,
Richard David, & John S. Coleman & E. P. Willis, & sup-
posed to leave unsold about ten acres in said County
of Minnetago, also other pieces or parcels of land
situate in said County of Boone described as fol-
lows viz - Part of the North E. N. 1/4 of Sec 25, T. 44, R. 13 E.
Commenced as follows Beginning at the corner of Mark-

15
No 6 of Whitman's first addition to Betwixt Thence
across Madison Street, And along Block 1st of said addition
N 36° W. 20 rods to the N. corner of Block 1. Thence along the
N.W. line Thence of S. 54° W. 110 rods to the W. line of said Sec.
Thence along the same N. 2 $\frac{3}{4}$ rods to the centre of Perry
Street. Thence along the centre of Perry Street & extended N.
54° E. 43 $\frac{3}{4}$ rods to the intersection of the centre of Perry
St. with the old claim line between Cephas Gardner
& S. S. Whitman. Thence along said line S. 19° E. 23 $\frac{3}{4}$
rods, to H. G. Leonard's corner, on the S.E. line of Mad-
ison Street & rounded - Thence along said line S 54°
W. 87 rods to the place of Beginning containing 40 $\frac{1}{2}$
also part of the N.E. q. of Sec. 35. T. 44. N. R. 3. E. of 8th P.M.
bounded N by the N. line of said Section: E by land sold to
S. M. Bristol: S. by the S line of said q. W. by land sold to
Jason Foote, containing 30 acres.

And Your Petitions further show that adminis-
trations of the estate of the said Seth S. Whitman deceased
has been granted in said County of Boone to your
petitioners as Executors named by & in the last will
of said Seth S. Whitman, which has been duly ad-
mitted to probate in the County Court of said
County of Boone; that your Petitioners have filed in
said Court an Inventory of the Personal Estate of said
Seth S. Whitman, And have proceeded to execute and
make administration of said estate as speedily & fully as
has been consistent with the condition & best interest of
said estate & have from time to time made Report of
their proceedings to said County Court.

And Your petitioners further show that the Amount of the inventory of said personal estate over and above the personal property set off to your petitioner, Matilda Whitman, as the widow of said Seth S. Whitman deceased, was Seven Thousand three hundred and eighty one Dollars & ninety two cents & consisted entirely of demands and choses in action of various Amounts, a very considerable ~~Amount~~ ^{part} of which amounting to about three thousand dollars is not yet due & considerable part thereof will not become due until the year eighteen hundred and fifty five; that your petitioners have paid debts due from said estate to the Amount of three thousand two hundred & forty dollars & nineteen cents including a part of the legacies specified in said will & your petitioner Matilda Whitman has expended for the necessary & proper support & maintenance of herself & the family of the said Seth S. Whitman, him surviving, the sum of one thousand four hundred & fifty two dollars making the whole sum paid out by your petitioners as Executors in the Administration of said estate about ~~the~~ Seven Thousand Dollars.

And Your petitioners further show that they have not been able to convert the said choses in action or other personal property of the said estate into Money as fast as it became necessary for the interest of said estate to pay the debts thereof, & therefore your Petitioners have from time to time borrowed Money to the Amount of fourteen

4.

6 Hundred Dollars which they have appropriated
in the payment of said debts, and for which
some they have pledged their personal responsibility;
And besides said some of fourteen hundred
dollars, there are debts ascertained to be existing
against & now due from said estate to the amount
of about seven hundred dollars besides the various
legacies specified in the said last Will of the said
Seth S. Whitman.

Your Petitioners further represent that
there are no means under their control belong-
ing to said estate out of which they can pay said
debts; that there will become due during the pres-
ent year, of said choses in action not more
than about eight hundred dollars, and during
the year eighteen hundred & fifty four, not more than
about one thousand dollars, a large part of which
will necessarily have to be expended in the support of
your Petitioner, Matilda Whitman & her said family;
And your Petitioners are of the opinion that it
will very much promote the interest of said estate
to have most or all of the above real estate sold un-
der the Order & direction of this Court in order to raise
a sufficient amount of money to pay off and discharge
said debts & the various legacies charged upon
said estate as soon as possible, and your Petitioners
are also of the opinion that inasmuch as the
whole said real estate will necessarily have to
be sold to satisfy the various charges upon said

~~No 6 of Whitman's first~~

Estate, it will avoid a large and ruinous sacrifice of the said choses in action, & make immediate sale of said real Estate.

And your petitioners further show that the said Seth S. Whitman deceased before his death made his last will which has been duly admitted to Probate as aforesaid and is in the words and figures following to wit

"I Seth S. Whitman of the Town of Madison County of said State of Wisconsin being of sound mind and memory, viewing the uncertainty of life, & being desirous of arranging my secular concerns preparatory to my coming dissolution do Ordain and declare this my last will and testament

1st That I will my soul to God who gave it, and that my body be decently interred after my decease.

2. That my debts be by my executors paid out of the avails of my personal property unless there can be some other arrangement made.

3. That after my just and legal debts are paid, that there be built on my real estate at Monterey Addition to Amesville, or land laying South of it, a residence and other suitable buildings convenient for a residence for my family.

4. That my beloved son Ogden N. Whitman be paid out of the avails of my property, five

8
Hundred dollars, when he shall arrive at
the lawful age of twenty one years, it being willed
to him by his Grand Mother Anna Nicholas &
now remaining in my possession

5th That my beloved Sons, C. Golden Whitman
and daughter Julia N. Whitman and Charles
N. Whitman be severally paid the sum of five
Hundred dollars each, when they shall severally
arrive at the age of twenty one years.

6th That my Executors shall as my children ar-
rive at lawful age dispose of if necessary any of my
real estate for the payment of the several sums
willed to them

7th That my beloved wife Matilda Whitman
shall have the control of all my property, until my
youngest surviving child shall become of lawful
age for their support, Education & Maintenance.

8th That my Executors pay to the following named benevolent
Societies the following Sums (viz), Three Hundred dol-
lars to the American & Foreign Bible Society - Three
Hundred dollars to the Baptist Home Missionary
Society, and Three Hundred dollars to the Bap-
tist Missionary Union, to be paid as soon as
my debts are settled & a house and other con-
venient buildings are made for the accommo-
dation and convenience of my family.

9th I will and bequeath to my beloved niece Eliza
Brown one Village Lot in the addition of Monterey
& Sonesville to be selected by my Executors valued
at Seventy five dollars.

10th That after my youngest surviving child becomes of lawful age, the residue of all my property at the time be divided as follows (viz) to my beloved wife, Matilda Whitman I will and bequeath the one third part of my property for her support and maintenance during her natural life and at her decease to be divided between my surviving children, or given for necessary purposes at her discretion And the other two thirds of my property to be equally divided between my son Le. Holden Whitman, Julia H. Whitman and Charles N. Whitman, provided at the discretion of my Executors it shall be proper, it may ^{be} equally divided between Ogden H. Ogden Whitman, C. Holden Whitman, Julia H. Whitman, & Charles N. Whitman.

11th I do hereby constitute and appoint Samuel Bennett and Matilda Whitman Executors of this my last will and testament. In testimony whereof I have hereunto set my hand & seal at Madison this 19th day of December in the Year of our Lord 1851. Seth S. Whitman.

In presence of Charles Lord Joseph Gray —
"Hoc die" — I do hereby of my own free will and being of sound mind make this further addition to the above will; I give and bequeath that portion of my property ~~that~~ which would fall to my wife in the event of its division before her death to the above named Baptist Benevolent & Missionary Societies, in case of her death before such division, provided always that

if my Executors think the sum allowed in this Codicil should be ~~more~~ needed by the children then I give the same to them at their discretion And I also hereby appoint my brother Horiam Whitman Executor in addition to the Executors above named.

In testimony whereof I have hereunto set my hand and seal on this 29th day of Dec in the year of our Lord eighteen hundred and fifty one.

Seth S. Whitman

Subscribed in presence of What Lord & Ora Wilson.

Your petitioners further show that there are so many imperfections in the said will, particularly in respect to the powers intended or supposed to be conferred by its provisions upon your petitioners to carry out the purposes and intentions of the said Seth S. Whitman deceased, that it has become and is necessary in the opinion of your petitioners to submit said will to the consideration of this honorable Court on the Chancery side thereof, for its construction & determination of the character and extent of the powers and duties of your petitioners or either one of them in respect to the disposition and future management of the property both real and personal of the said Seth S. Whitman deceased, and for such order as it shall please this Court to make in the premises.

And your petitioners further represent that the said Seth S. Whitman died leaving your petitioners

Matilda Whitman his widow and the above named
Ogden H. Whitman, C. Colman Whitman, Julia H.
Whitman & Charles N. Whitman his children him
surviving; that said Ogden H. Whitman became of
the age of twenty one years in the month of
in the year eighteen hundred and
fifty two, that said C. Colman ^{Whitman} is nineteen years
old the present month of August; the said Julia
H. Whitman was ten years old in April last
past and the said Charles N. Whitman was
three years old in November last past.

That your petitioner, Matilda Whitman,
has been duly appointed by the said County Court
of Boone County General Guardian of all the
said Minor Children and has hitherto since
the death of the said Seth S. Whitman had the
care of them as her family and has paid and
expended the sum above stated out of the assets
of said estate, for the maintenance, support and
education of said Minor children, together for
her own support and maintenance.

Your Petitioners further show that
soon after the death of the said Seth S. Whitman
and as soon as your petitioners were able
to enter upon the administration of said
estate, your petitioners found that it was
necessary to raise immediately a large sum of
money to pay what was then due on contracts
for the purchase of certain real estate in Mis-
consin, to which the said Seth S. Whitman had

not perfected before his death & before his death, and in consequence of such necessity it became in the opinion of your petitioners impossible, or at least impracticable to proceed to erect a dwelling house suitable for the residence of your petitioner Matilda Whitman and her said family in accordance to the provisions of the third section of said above recited Mill, for the reason that your petitioners have been entirely unable to raise a sufficient amount of money out of the assets of said Estate to erect such buildings without doing irreparable injury to the best interest of said Estate and especially to ^{the} said Children & heirs of said Seth S. Whitman; And your petitioners aver that such buildings could not be erected at a less expense than Two Thousand dollars, and if your petitioners had undertaken to appropriate that sum or any other sufficient sum, to that purpose your petitioners would not have been able to make the necessary payments to perfect the title under said contracts for Land, And your petitioners further show that the said Land or real Estate mentioned in the said third section of said Mill is ~~in~~ ⁱⁿ ~~poor~~ ⁱⁿ ~~unimproved~~ ^{unimproved} and is in no condition to be occupied by your petitioner Matilda Whitman as a residence profitably, conveniently or comfortably, that it would require a very large expenditure in addition to the erection of such building as aforesaid, to put said land in a condition of cultivation as a farm, & even if the same were in good condition

as a farm, your said petitioner is apprehensive that she could not conduct or manage the affairs of a farm except at a great sacrifice or loss, that it is too far from the said village of Jonesville to enable your said petitioner to reside there comfortably & to furnish & provide proper support & maintenance & education to her ^{said} children except at great ruinous expense & sacrifice. And your petitioners further aver that even if they could realize sufficient means out of the assets of said estate to erect such buildings as might be necessary & suitable for such residence still the condition of your said petitioner Matilda Whitman & her said family is such as to render her residence on said land incompatible, uncomfortable and greatly detrimental to the happiness & well being both of herself & her said children. Your petitioners further show that unless they can under the direction of this Court, make sale of said real estate, they will not be able in the ordinary course of administration to pay off all the debts of said estate sooner than two years from this time; that there are not assets sufficient to pay said debt even if in the meantime no part of such assets should be used & appropriated for the maintenance & support of your petitioner Matilda Whitman & her said family & when said debts shall be paid, there will still be no means within the reach or control of your petitioners with which to erect such buildings either on said lands or elsewhere and in the meantime your said petitioner is & will remain without any residence or home for herself & family except as she provides

one otherwise than by means of said estate. Your petitioners
 further show that the said Seth S. Whitman deceased has resi-
 ded in the town of Belvidere in said County of Boone ever since
 the first settlement of this County, until a short time before
 his death, when he moved to Madison in the State of Wisconsin
 and a large portion of the relatives of your said petitioner
 Matilda Whitman reside in said town of Belvidere & your
 said petitioner much prefers to reside in said town of Belvi-
 dere, not only on account of her own comfort & happiness but
 because in the opinion of your petitioners she can maintain
 & support herself & her said family and especially can
 educate her said children much more economically
 & otherwise greatly to their advantage there than at the place
 designated for a residence in said will. Your petitioners
 therefore desire that some provision may be made by the order
 of this Court whereby they may proceed at once to erect or obtain
 a suitable residence for your said petitioner Matilda
 Whitman at Belvidere aforesaid for herself & her said children.
 Your petitioners further represent that they are advised
 & believe & they so aver that it was the purpose & wish of the
 said Seth S. Whitman in making his said will
 to give the entire use, control & management of all his
 estate both personal & real to your said petitioner Matilda
 Whitman for the purpose among others, of enabling her
 to have sufficient means out of the avails thereof to
 provide said residence & a comfortable & respectable support
 & maintenance during her life & also a proper support
 maintenance & education of the said children, that the
 provision of said will directing such residence on said

land near Janesville, was not intended as a restriction or limitation, but merely to indicate the purpose of said Testator to secure to your said petitioner a sure & sufficient support; & under the supposition that your petitioners could carry out that purpose to the best advantage for your said petitioner & her said children; but in as much as your petitioners have been unable to do so, for the reasons aforesaid, and also that it is necessary, to sell the whole or most of the above mentioned real estate for the purpose of paying said debts & also to provide suitable & sufficient means for the support of your said petitioner Matilda Whitman & her said family & in as much as your petitioners are advised & believe that if said Real estate were to be sold & the balance of the proceeds over & above what will be required to pay said debts invested in a proper manner under the directions of this Court, your said petitioner would be able to manage the same for the purposes mentioned in said will, to a much better advantage to all interested, than if the said real estate were to remain unsold. And for as much as your petitioners are not fully advised whether they have sufficient power under the provisions of said will to carry out the purposes & intentions of said testator as set forth in his said will, without the aid & order of this Court, & for as much as your petitioners are remediless in ~~the~~ the premises without the aid of this Court on the Chancery side thereof where matters of this kind are properly cognizable & relievable.

To the end therefore that the said Ogden

Ogden H. Whitman, C. Golden Whitman Julia H. Whitman & Charles N. Whitman, may be made parties defendants hereto, & may true, full & perfect answers make to all & singular the matters herein before stated.

And that this Court may determine the powers, rights & obligations of your petitioners & especially of your petitioner Matilda Whitman under & by the provisions of said will & that this Court may make such order or decree, for the sale, or other future dispositions of said Estate real & personal, and that your petitioners may have such further, or such other relief as the nature of the case may require & shall be agreeable to law & equity. And that your petitioners may have a process of summons, directed to the said Ogden H. Whitman, C. Golden Whitman Julia H. Whitman & Charles N. Whitman, requiring them to appear at the next Term of this Court & then there to answer the premises, and your petitioners shall ever be

Jason Marsh
Sole

Samuel Bennet
Hiram Whitman
Matilda Whitman
Executors of the last will &
testament of Seth S.
Whitman deceased

Madrasa "Hiloe Sept. 12 1853 J. B. Hamlin Clerk"

And thereupon on filing said Bill a
 Summons was issued in the words and figures fol-
 lowing, to wit =

"State of Illinois } ss. The People of the State of Illinois, to the
 Boone County } Sheriff of said County - Greeting: We Command you,
 that you Summon Ogden H. Whitman, Julia H. Whit-
 man and Charles H. Whitman, if they shall be found
 personally to be and appear before the Circuit Court of said County, on
 the first day of the month of October next, to wit: on the 1st day of October next,
 in your County, on the third day of October next,
 to answer unto the matters & things contained in
 a certain Bill filed against them on the Chan-
 cery Side thereof by Samuel Bennett Hiram Whitman
 and Matilda Whitman Executors of Seth S. Whitman
 deceased, and stand to abide by and perform the
 Order of the Court in the premises.

And have you then and there this writ, with
 an endorsement thereon, in what manner you
 execute the same.

ccccc
 S.
 mmm

Witness, Ch. B. Hamlin Clerk of our
 said Court, and the Seal thereof, at
 Belvidere this 12th day of September
 A.D. 1853.

J. B. Hamlin Clerk."

On which said Summons are the following
 endorsements With said Summons afterwards
 on the 27th day of October 1853 was returned to and
 filed in the office of the said Clerk with the fol-
 lowing endorsements thereon made, to wit:
 "Executed by leaving a copy with Ogden H. Whitman,
 Julia H. Whitman, and Charles H. Whitman

Madrasa "Hiloe Sept. 12 1853 J.B. Hamlin Clerk"

And thereupon on filing said Bill a
 Summons was issued in the words and figures fol-
 lowing, to wit =

"State of Illinois } ss. The People of the State of Illinois, to the
 Boone County } Sheriff of said County - Greeting: We Command you,
 that you Summon Ogden H. Whitman, Julia H. Whit-
 man and Charles H. Whitman, if they shall be found
 personally to be and appear before the Circuit Court of said County, on
 the first day of the month of October next, to wit: on the 1st day of October next,
 in your County, on the third day of October next,
 to answer unto the matters & things contained in
 a certain Bill filed against them on the Chan-
 cery Side thereof by Samuel Bennett Hiram Whitman
 and Matilda Whitman Executors of Seth S. Whitman
 deceased, and stand to abide by and perform the
 Order of the Court in the premises.

And have you then and there this writ, write
 an endorsement thereon, in what manner you
 execute the same.

ccccc
 S.
 mmm

Witness, Ch. B. Hamlin Clerk of our
 said Court, and the Seal thereof, at
 Belvidere this 12th day of September
 A.D. 1853.

J.B. Hamlin Clerk."

On which said Summons are the following
 endorsements With said Summons afterwards
 on the 27th day of October 1853 was returned to and
 filed in the office of the said Clerk with the fol-
 lowing endorsements thereon made, to wit:
 "Executed by leaving a copy with Ogden H. Whitman,
 Julia H. Whitman, and Charles H. Whitman

"This 14th day of Sept^r 1853
 "Fees Sum 1.50. copy 1.50. July 10. net 10.50 = Geo. J. Woods Sheriff".

And "Filed this 27th day of Oct 1853

H. B. Hamlin b. b. l. k.

And that on the twelfth day of September 1853, one
 other summons was issued out of the Office of the
 said Circuit Clerk, and is in words and
 figures following, to wit =

"State of Illinois {

Boone County {

The People of the State of Illinois
 to the Sheriff of Vermillion County - Greeting

We Command you, That you Summon
 O. Golden Whitman if he shall be found in
 your County, personally to be and appear before
 the Circuit Court of Boone County, if he
 shall be found in your County, personally to
 be and appear before the Court. on the
 first day of the next Term thereof, to be hol-
 den at the Court House in Pekin in said
 County, on the third day of October next, to
 answer unto the matters and things contained
 in a certain bill filed against them on the
 Chancery side thereof by Samuel Bennett, Wi-
 ram Whitman and Matilda Whitman &c-
 utors of Seth S. Whitman Deceased and stand to
 abide by and perform the order of the Court in
 the premises - And have you then and
 there this writ, with an endorsement thereon
 in what manner you execute the same.
 Witness H. B. Hamlin Clerk of our

Seal

Said Court, And the Seal Thereof, at
Belvidere this Twelfth day of September
A. D. 1853.

H. B. Franklin Clerk

Which afterwards on the 4th of Oct. 1853, was re-
turned & filed in the office of the said Cir-
cle, with the following endorsement thereon
made, to wit: "Sept 30, 1853, Executed by de-
livering a true copy of the within to the within
named C. Collier Whitman & also by reading to
Same.

J. M. Partlow Sheriff
Permit to Go Mo."

"Fees

Serving & Ret 60
1 Copy 50
\$ 1.10

Rec'd my fees of C. Collier Whitman

J. M. Partlow Shff
V. C. Mo."

(Comp)

United States of America.

State of Illinois }
Boone County }

I, Daniel B. Whitney, Clerk of the Circuit Court in and for Boone County, do hereby Certify,

And That at a Term of the Circuit Court begun and held at the Court House in Belvidere, on Monday the twelfth day of December, A.D. 1853, being a special Term thereof held in pursuance of order made at a call by the Hon. Isaac G. Wilson Judge of the Judicial Circuit and Presiding Judge of the said Boone County Circuit Court, at which were present,

The Hon. John M. Wilson, Judge of the Cook County Court of Common Pleas

And holding the said Court in exchange with Hon. Isaac G. Wilson, Judge as aforesaid,

Millard M. Boyce State Attorney,
George J. Woods Sheriff &
Hayette B. Hamlin Clerk,

The following, Among other, Proceedings were had,

" And returned to wit - On Tuesday the 13th day of December A.D. 1853.

Amuel Birnatt, William Whitman
& Matilda Whitman Exs of J. S. Whitman
vs.

Colleen Whitman Julia Whitman &
Charles N. Whitman
& Ogden H. Whitman

On motion of the complainant herein it is ordered by the Court that J. M. Pray Esq. be appointed Guardian

Ad Litem for C. Colleen Whitman Julia Whitman & Charles N. Whitman Minors - & that a rule be entered requiring said Guardian to answer herein by Monday morning next.

And Ogden H. Whitman being three times solemnly
called comes not nor any one for him which is cal-
led to be entered of Record?

And that afterwards, to wit, ^{said Regular} Term of the
said Circuit Court held in and for the said
County of Boone and State of Illinois, and
begun and held at the Court House in Belvidere
in said County, on the 17th day of April, A.D.
1854, at which were present the,

Hon. Isaac G. Wilson, Judge, Presiding,

Gayle B. Hamlin, Clerk

Millard M. Boyce, State Attorney

On the 22nd day of April 1854, ^{George Woods Sheriff} ^{one of the days of said term}
the following, among other, proceedings were had, to wit:-
"Matilda Whitman Samuel Bennett vs. On Chancery.
Wiram Whitman Executors of the last
Will & Testament of Peter Whitman deceased
vs.

Ogden Whitman & Golden Whitman

Juliaⁿ Whitman & Charles N. Whitman

And now at this

day that is to say of the Special December Term Term of
of this Court come the said complainants by Marsh their
Solicitor and it appearing to the Court that process has
been duly served on the above named defendants &
publication has been duly made for the purpose of enabling
the said complainants to present a petition for the sale of
real Estate according to the provisions of the Statute &
it further appearing to the Court that the said def-
endants are the only heirs at law of the said Peter
Whitman deceased, and the said Ogden & Whitman
having failed to appear & answer & the said Bill hav-
ing been taken as confessed as to him & the said

C. Golden Whitman Julia H. Whitman & Charles
 H. Whitman having appeared and filed their an-
 swer herein by S. W. May a Solicitor of this Court their
 Guardian Ad Litem heretofore appointed by an
 order of this Court. And this cause having been
 brought on for final hearing on the pleadings proofs
 & exhibits herein & counsel having been heard & the
 same being submitted to the Court and it appearing
 to the Court from the proofs herein made that the
 said Complainants are Executors of the last will
 & Testament of the said Bethe J. Whitman deceased
 and have been and are engaged in the service
 and discharge of their trust as such Executors and
 have exhausted all the available personal estate of
 said Bethe J. Whitman deceased in the payment of the
 debts of said estate leaving about the sum of
 three thousand dollars of debts and ~~bequeathed~~ liabil-
 ities unpaid and due from said estate and
 chargeable thereupon and it further appearing
 to the Court that the said Bethe J. Whitman died
 seized of the following real estate situate in the
 Counties of Boone and Winnebago in said State of
 Illinois to wit Part of the North West Quarter of sec-
 tion Twenty five (25) in Township No Forty four (44)
 North of Range Three East of the 3rd principal
 Meridian bounded as follows viz Beginning
 at the North corner of Block No Six (6) of Whitmans
 first addition to Belvidere, thence across Main
 Street and along Block No One (1) of said

Addition North 36° West Twenty (20) rods to the North corner of Block No one (1) thence along the same North two and three fourths ($2\frac{3}{4}$) rods to the centre of Perry Street thence along the centre of Perry Street Extended North 54° East Forty three and three tenths ($43\frac{3}{10}$) rods to the intersection of the centre of Perry Street with the old claim line between Cephas Gardner & S. S. Whitman, thence along said line South 19° East Twenty three & six tenths ($23\frac{6}{10}$) rods to M. G. Leonard's corner on the South East line of Madison Street Extended; thence along said line South 54° West Thirty seven (37) rods to the place of beginning containing Eight Acres, also part of the North East Quarter of Section thirty five (35) in said Township bounded North by North line of said Section East by lands sold to S. H. Bristol South by South line of said Quarter and West by land sold to Anson Moore containing thirty & six (36) Acres said two parcels of land being in the ^{State} County of Moore, also a certain other five parcel or lot of land situate in the County of Winnebago described and bounded as follows viz Being the South East corner of the South West Quarter of Section fourteen (14) and the North East corner of the North West Quarter to the North West corner of the North East Quarter of Section thirty three (23) in Township forty four (44) Range one (1) East containing thirty eight Acres (38) Acres as conveyed by said S. S. Whitman deceased to James Taylor & George Washell & apt so much thereof as

had been sold by said Settle S. Whitman in his lifetime
 to Lucretia M. Stan Richard David Wm S. Coleman &
 John S. Coleman & C. S. Miller supposed to leave unsold
 about ten acres, and it further appearing to the Court
 that the further object of the said complainants Bill is
 to ascertain and have defined the power of the said com-
 plainants to sell said real estate under the provisions and
 for the purpose of carrying out the intention and objects of
 the said last will of said Settle S. Whitman deceased
 And it further appearing to the Court that it is imprac-
 ticable and inconsistent with the true intent & interest of
 said Estate and that the terms of the said will do not
 require the said complainants to appropriate any por-
 tion of said estate for the purpose of erecting
 a residence for said Matilda Whitman at or near
 Janesville in Wisconsin that under the terms of
 said will the said complainants are entitled to and
 properly may exercise the necessary and sufficient power
 to sell and convey so much of said real estate as may
 be necessary & sufficient power to sell & convey so much
 of said real estate as may be necessary to carry
 out the purposes and objects of said will that it has
 become necessary and proper and is for the inter-
 est of said estate that said executors should
 sell the said real estate ^{or} as so much thereof as
 may be necessary for the purposes of paying the re-
 maining debts of said estate and also to provide
 for the support and maintenance of said Ma-
 tilda Whitman and the Court having duly

Children of said Seth S. Whitman according to the provisions of said Will. And the Court having duly considered said matters and things being fully advised herein It is Ordered Adjudget and decreed that the said Samuel Bennett, Matilda Whitman and Hiram Whitman Executors of the last Will and Testament of Seth S. Whitman late of the County of Boone deceased be allowed, authorized and empowered to continue and proceed in the exercise and discharge of their trust as such Executors, And that they be released and exonerated from building or erecting a residence at or near Leesville in Wisconsin to which reference is had in the third clause of said Will and it is hereby declared Ordered and decreed that said clause of said Will does not contain and express a trust peremptorily to be executed by said Executors; And it is further declared Judicial Adjudget and decreed that the said Executors have and rightfully And lawfully may exercise the power to sell And convey the above described Real Estate of which the said Seth S. Whitman died seized, either at private or public sale for the purposes And objects specified in said Will. And it is further Ordered Adjudget and decreed that the said Samuel Bennett Matilda Whitman And Hiram Whitman Executors as aforesaid do And may from time to time sell at Public or private sale as they shall deem it best for the interest of said Estate such parts or portions of said real Estate as may be necessary for the payment of the debts of said Estate and for the necessary and

Sufficient Support And Maintenance of the said
 Matilda Whitman And the necessary and sufficient
 Support And Maintenance And Education of the
 said Children of the said Seth S. Whitman deceased
 And that the said Executors make & execute and
 deliver to the purchaser a Deed or Deeds And
 it further appearing to the Court that the said
 Seth S. Whitman had during his life time
 sold diverse tracts or parcels of land And had
 executed his Bonds to convey the same on
 payment of the purchase price thereof And that
 said Bonds were outstanding at the time of
 his death but in full force It is therefore
 further Ordered adjudged and decreed that
 said Executors be hereby authorized And directed
 to make & execute and deliver to the owner or
 owners of such Bonds all proper And necessary
 Deed or Deeds in pursuance or fulfillment of
 the Terms or conditions of such Bonds in case
 the Amounts due or to become due by the terms
 of such Bonds shall have been or may be paid to
 said Seth S. Whitman deceased or to the said
 Executors And it is further ordered and
 decreed that said Executors do And shall make re-
 port of all sales they may make or Deeds they may
 execute under this Decree to this Court at the
 next Term thereof after such Sale or Sales And
 such Sale or ~~conveyance~~ sales, And such Sale And
 conveyances to be And remain subject to the approval
 of said Court And it is further ordered adjudged
 And decreed that the costs of this proceeding be paid
 by the said complainants in the ordinary course
 of Administration

Isaac G. Wilson Judge

Rec. 3. 648

Comptroller

United States of America:

State of Illinois }
Boone County }

And that afterwards and
Re it remembered that heretofore, to wit,
on the fourteenth day of October A.D. 1854, being one
one of the days of the October Term of the Circuit Court
figure & held at the Court House in Bellevue in and
for the said County of Boone on the ninth day of
October A.D. 1854, and being a regular Term
Thereof; the following, ^{Report was filed and} ~~announcing certain proceedings~~
~~was made, and~~ entered of Record, to wit =

Now
William Whitman Samuel
Bennett & Matilda Whitman
Executors of J.S. Whitman Decedent

Report
Petition to Sell real
Real Estate.

vs.
Ogden H. Whitman & Golden
Whitman Julia Whitman &
Charles N. Whitman Heirs of
J.S. Whitman Decedent

Now this day comes
the Complainants by
Pray their Solicitor
And file their Reports
of the Sales of lands,

And on his motion it is ordered by the
Court that the same be spread upon the
Records of this Court, which said Reports are
in words & figures following to wit

" To the Honorable Isaac C. Wilson Judge of
the 13 Judicial Circuit In pursuance of an
Order of this Court made in the above entitled
Cause made at the special term of said Court
at Bellevue in and for said County of Boone
in December A.D. 1853, empowering us as ex-
utors of the last will and testament of said

United States of America:

State of Illinois }
Boone County }

And that afterwards and
Re it remembered that heretofore, to wit,
on the fourteenth day of October A.D. 1854, being one
one of the days of the October Term of the Circuit Court
figure & held at the Court House in Bellevue in and
for the said County of Boone on the ninth day of
October A.D. 1854, and being a regular Term
Thereof; the following, ^{Report was filed and} ~~announcing certain proceedings~~
~~was made, and~~ entered of Record, to wit =

Now
William Whitman Samuel
Bennett & Matilda Whitman
Executors of J.S. Whitman Decedent

Report
Petition to Sell real
Real Estate.

vs.
Ogden H. Whitman & Golden
Whitman Julia Whitman &
Charles N. Whitman Heirs of
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Now this day comes
the Complainants by
Pray their Solicitor
And file their Reports
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And on his motion it is ordered by the
Court that the same be spread upon the
Records of this Court, which said Reports are
in words & figures following to wit

" To the Honorable Isaac C. Wilson Judge of
the 13 Judicial Circuit In pursuance of an
Order of this Court made in the above entitled
Cause made at the special term of said Court
at Bellevue in and for said County of Boone
in December A.D. 1853, empowering us as ex-
utors of the last will and testament of said

J. Whitman Occasional to sell at public auction or private sale certain real estate therein mentioned and embracing among other lands the premises hereinafter described for the payment of ^{the} debts of said estate and for other purposes therein set forth and to report all sales by us made under and by virtue of said Order to this Court

We the said Executors do report that acting under and by virtue of said Order we have entered into an agreement in writing with Joseph ~~Johnson~~ C. Oaks to sell unto him said Oaks and his heirs & assigns forever all that certain tract of land situate in the village of Belvidere in the County of Boone and State of Illinois and being lots two three and four in Block One in the Whitmans proposed addition to Belvidere and bounded northerly by Perry Street Easterly by a cross street running from Madison Street to Perry Street southerly by Madison Street and westerly by J. Stones lot containing four fifths of an acre be the same more or less for the sum of two hundred and forty five dollars to be paid as follows viz \$17.50, on the third day of August 1854 \$17.50, on the 3rd day of February 1855 \$17.50 on the 3rd day of August 1855 One hundred sixty seven dollars and fifty cents February 3 1856 Ten dollars August 3rd 1856 One hundred and sixty dollars February 3rd 1857 and fifty five dollars February 3rd 1858 said Oaks to improve

said Lots and to build a house thereon within
one year of the value of Six hundred dollars at
least and said building and all building building
materials drawn on to the lot to be and remain thereon
as security for the payment of said sum of money as
above mentioned and in case of failure on the
part of said Oaks to fulfil the said payments said
monies paid and materials on said lot to be forfeited
and be retained as property of the said party of the
first part in liquidation of damages That said price
and terms were the best terms on which said lots
could be sold and that the price above mentioned
was the full value of said lots and we do further
Report the first two payments have been made and
that said building is nearly complete, and that said
Agreement bears date February 3, 1854.

And we do further report that acting
under and by virtue of said Order we did on the
23rd day of April A. D. 1854 enter into an agree-
ment in writing ^{to sell only} with John Andrews and his heirs and
assigns forever the following tract of land situate in
the village of Beardre in the County of Boone and
State of Illinois and being lots one two three and
four in Block Number Two in Mrs Whitman's pro-
posed addition to Beardre containing four fifths
of an acre for the sum of Two hundred and thirty
dollars in manner following viz One hundred
and forty dollars in one year one hundred
and thirty dollars in two years and the
further sum of Two hundred and twenty ^{three} dollars

in three years from the date of said agreement
 And the said Andrews is to erect on said
 Lots a comfortable dwelling House within six
 months, And the said building and all the
 improvement put thereon to remain as security
 for the payment of said monies that said price
 was the value of said lots And that said
 lots could not have been sold on better terms,
 And we do further report that there has been paid
 on said contract the sum of eighty six dollars And
 that the said dwelling house has been erected thereon
 And a number of fruit trees been planted And a
 substantial fence erected around the Lots,

And we further Report that acting un-
 der and by virtue of the order aforesaid we did
 on the 3 day of May A.D. 1854. enter into an
 agreement in writing with Alonzo Gamham to
 sell unto said Gamham his heirs and assigns
 forever all that tract or parcel of Land ^{or parcel of land} situate in said
 County and State being a part of Section thirty five in
 said town of Belvidere And bounded as follows viz-
 commencing at a point in the North East corner
 of a piece of land now occupied by S. S. Kelly thence
 Easterly along the highway to the westerly line of land now
 owned by Mr Bristol thence southerly along said Bristol's
 west line to said Kellys land ten rods thence westerly to
 the South East corner of land owned by said Kelly thence
 Northerly Ten rods along said Kellys East line to
 the place of beginning be the same more or less the

Sum of one hundred and thirty five dollars payable
as follows viz The Sum of Sixty Seven dollars and fifty
cents on the 15th day of October 1854 And Sixty Seven
Dollars and fifty cents on the 15th day of June 1855 with
interest at ten per cent per annum and payable
as the said payments become due and payable, And
the said Barnham was to proceed and erect
thereon a dwelling house by the first day of October
1854. That said building and all improve-
ments thereon should remain as security for
the money above mentioned

And we do further report that Acting Mayor
and by virtue of the Order aforesaid we have entered
into an agreement in writing with James Barr of
said County to sell unto said Barr his heirs &
assigns forever the following described parcel
of land situate in the County of Boone and
State of Illinois and being a part of Section
thirty five in the town of Berwind and bounded
as follows viz on the North East of lands of Mrs. Mar-
tin - on the South by the line of the Galena &
Chicago Union Rail Road and on the West
by the land of the said Barr to the same more
orders for the sum of one hundred dollars payable
as follows viz Fifty dollars at time of making said con-
tract and fifty dollars and interest on the first
day of January next And that the first
payment of fifty dollars has been paid &
that the above price was the fair value of
said land and the best terms on which

we could sell the same

And we do further Report that Acting under and by virtue of said the Order aforesaid we have entered into an Agreement in writing with Lewis C. Seely of said County to sell unto said Seely his heirs and assigns forever all that parcel of land situate in said County of Boone and State of Illinois and being a part of Section thirty five in Township forty four North of Range three East and bounded as follows to wit North by the Highway West by a Street running South from said Highway to the South line of said Section Seventeen rods thence East fourteen rods to Mr Bristol's lands, thence North along said Bristol's land to W Hammons lots about seven rods thence West along said Hammons line to the South west corner of said Hammons lot about ten rods thence West to the place of Beginning be the same more or less for two hundred and twelve dollars payable as follows forty dollars at the time of Sale, Sixty dollars July 1. 1854 and One hundred and twelve 50/100 Dollars and all the interest on the first day of November next and that said two first payments have been made said Contract bears date March 1. 1854

Samuel Bennett

Matilda Whitman

Boone County, p Noah C. Amosden and Samuel Powell of said County being duly sworn depose and say each for himself says that he is well acquainted with the several parcels

of land described in the above report and
that the value of said parcels at the time of said sales
was no more than they brought on said sales as above re-
ported and that in their opinion the same could not
have been sold for a greater price or on better terms than
as above stated

Samuel Powell

Noah L. Thinsden "

"Subscribed And Sworn

This 14th day of October 1852

before me Eclumie Hawley

Justice of the Peace "

Report filed Oct. 14th 1854

J. B. Hamlin Clerk -

Boone County Circuit

And that afterwards, on the same day of the said
Term of said Circuit Court, last aforesaid the
following, ^{was filed in said cause to wit}
~~among other proceedings~~ ^{was made, to wit}

"Boone County Circuit Court

Matilda Whitman Samuel Bennett

And Ariam Whitman Executors &c &c

of Seth S. Whitman Decedent

vs.

Ogden R. Whitman & Golden Whitman

Julius R. Whitman & Charles M. Whitman

vs &c

To the Honorable Isaac

Wilson Judge of the

13th Judicial Circuit

In pursuance of

An order of the Court made in the above entitled
cause at a post special Term of said Court held at
Belvidere in and for said County of Boone in Dec-
ember 1853, Empowering us as Executors of the last will
and Testament of Seth S. Whitman decedent to sell
at Public or private Sale certain real estate therein

mentioned and embracing among other lands the premises herein after described for the payment of the debts of said Estate and for other purposes therein set forth and to report all sales by us made under and by virtue of said Order to this Court. We the said Executors do report that Acting under and by virtue of said Order we did about the first day of April last sell and convey unto John Fisher of Rockford in the State of Illinois his heirs and assigns forever all that tract or parcel of land situate in the County of Winnebago and State of Illinois to him and assigns forever all that tract or parcels of land situate in the County of Winnebago and State of Illinois and bounded as follows viz being a part of Sections fourteen and Twenty three in Town forty four Range one East & containing 2500 acres of land be the same more or less and bounded North by lands of Mr. Taylor East by the highway South by lands of Mr. Knapp and Dr. Haskell and West by land of Dr. Haskell for the sum of Two Thousand Dollars paid at the time of said Sale and have conveyed the same to said Fisher by deed and that the above price is the full value of said land and the best terms on which the same could be sold.

Matilda Whitman Samuel Bennett

"Boone County ss

Samuel Bennett and Matilda Whitman being duly sworn depose and say that they both herein stated have heard read the above report by them made and know the contents thereof and that the facts therein

Stated are true
Subscribed and sworn to this 10th day of October 1854
before me J. B. Hamlin Clerk

Samuel Bennett
Matilda Whitman

Filed Oct. 14 1854

J. B. Hamlin Clerk

And that afterwards, on the same day of the said term of the said Circuit Court, the following, among the proceedings were had, to wit -

"Boone County ss. Jason Marsh and Lewis H. May, ^{being} duly sworn depore and say ^{that} the price of the said lands as set forth in the above Report was at the time of said sale the fair value thereof and that we are acquainted with the value of property in the vicinity thereof and know the lands above mentioned I. H. May."

"Subscribed and sworn to this 13th day of October 1854 before me S. B. Holman Clerk"

And afterwards to wit on the same day of the same term of the said Circuit Court (for October 1854.) the following, among other proceedings were had, to wit -

"Boone County Circuit Court
Samuel Bennett Matilda Whitman
J. Haran Whitman Executors of
the last will and testament of Seth
J. Whitman Deceased

vs.

Ogden H. Whitman A. Golden Whitman,
John H. Whitman and
Chas. H. Whitman - Heirs
Indicant Circuit.

To the Hon Isaac
G. Wilson Judge 13th

In pursuance of an Order of this Court made in the above entitled cause at the Special Term of this ^{Court} held at Belvidere in said County of Boone in December 1853 and

powering us as Executors of the last will and testament of said Seth S. Whitman deceased to sell at public or private sale certain real estate therein described And embracing among other lands the premises hereinafter described for the payment of the debts of said estate And for other purposes therein set forth And to report all sales by us made under And by virtue of said Order to this Court at the next term thereof.

We the said Executors do report that we have sold and conveyed to Solomon M. Bristol the following described parcels of land situate in the town of Providence County of Boone And State of Illinois And being a part of the North East Quarter of Section Number thirty five (35) in Township number forty four (44) north of Range three (3) East of the third principal meridian And bounded as follows, viz: Beginning on the South line of said quarter Section at a point in the South East corner of a piece of land heretofore conveyed to Jason Goot - Thence North forty four rods - Thence East thirty rods - Thence South forty four rods to said quarter Section South line, thence west along said South line to the place of beginning ^{containing} eight and one fourth acres of land be the same more or less at the rate of thirty dollars per acre - payment in cash on delivery of said, And that the above are the best terms on which we could sell the same - And that we believe that to be the fair cash value of said Land at the

present time. All of which is respectfully sub-
scribed & Remembrance Mitchell, Matilda Whitman
Samuel Bennett
Dated May 1st 1854.

"Broome County p

Samuel Bennett being duly sworn depose
And says that they have heard read the above
report by their Subscribers And that the facts therein
set forth are true Samuel Bennett"

"Subscribed And Sworn to this 13th day of October
1854. J. B. Hamlin Clerk"

State of Illinois } George Williams And Nijah Hotchkiss
County of Broome } Being both residents of the town of
Belvidere in said County, being duly sworn de-
pose And say And each for himself says that he
is well acquainted with the premises described
in the annexed report And have resided in the
immediate vicinity of the same for several years last past
that the fair cash value of the same at this time
is thirty dollars per acre And no more And that
in their opinion that is the highest price for which
the same can now be sold Nijah Hotchkiss
Geo Williams"

"Subscribed And Sworn to before me this 4th day
of May, A.D. 1854. J. B. Hamlin Clerk"

And that afterwards on the same day of the same
Term of the said Circuit Court, the following,
Among other, proceedings were had, to wit:-
"Broome County Circuit Court } Report of
Samuel Bennett, James } Sale
Whitman and Matilda Whit

man ~~Exorator~~ ~~He~~ ~~Sett~~ ~~S~~ Whitman
deceased

vs.

Ogden H. Whitman C. Golden
Whitman Julia A. Whitman
And Abas H. Whitman Executors
Circuit.

To his Hon Isaac
G Wilson Judge of
the 18th Judicial

In pursuance of an order of this Court made
in the above entitled cause at the Special Term of
said Court held at Beardoe in and for said County
of Boone in December 1853 empowering us as ex-
ecutors of the last will and testament of Sett Whit-
man deceased to sell at public or private sale
certain lands real estate therein mentioned and
embracing among other lands the premises herein
after described for the payment of the debts of said
estate and for other purposes therein set forth and
to report all sales by us made under and by
virtue of said Order to this Court. We the said
Executors do report that acting under and by virtue of
said order we have entered into an agreement in writing with Joseph
C Oaks to sell unto said Oaks and his heirs and assigns forever
all that certain tract of land situate in the village of Beardoe in
the County of Boone and State of Illinois and being lots one
two three and four of Block one in Mrs Whitman's proposed
addition to Beardoe and bounded northerly by Perry Street eas-
terly by a cross street running from Madison Street to Perry Street
southerly by Madison Street and westerly by stones lot con-
taining from fifty to an acre be the same more or less for the
sum of four hundred dollars and forty five dollars to be paid as follows to-wit
On the 3rd day of August A. D. 1854 \$17.50 on the 3rd day of February 1855 \$17.50 on the
3rd day of August 1855 one hundred sixty seven dollars fifty cents to-wit \$17.50 on the
August 3rd 1856, one hundred and sixty dollars to-wit \$17.50 and fifty five dollars Feb. 3rd
1858, said Oaks to improve said lot and to build a house thereon in one year of the date of
said hundred dollars at least, and said building and all building materials thereon on the
lot to be and remain thereon as security for the payment of the said sum of money as above men-
tioned, and in case of default on the part of said Oaks to fulfil the said agreement said
monies paid and there this record ends, it is the loss of the dol. & of said note, &
that appears to be a continuation, if there should be any, of the above last re-
corded in the Court.

"Matilda Whitman &
Samuel Bennett &
Executors of S.S. Whitman
deceased

vs.

Ogden Whitman et al.
Heirs of S.S. Whitman deceased

Report of the Sale of certain Lands belonging to
said estate which said report is ordered by the
Court to stand approved and confirmed which
said report is in words and figures following, to-wit:

"Boone Circuit Court

Matilda Whitman & Samuel Bennett

Surviving Executors of S.S. Whitman deceased
vs.

Ogden H. Whitman C. Golden Whitman &
others heirs &c.

The Hon Isaac C. Wilson Judge
of the 13th judicial Circuit in pursuance of an
Order of this Court made in the above entitled cause
at the Special Term of the said Court held in Ad-
vices in & for said the County of Boone in December
1853, Empowering the Executors of the last will &
Testament of Seth S. Whitman deceased to sell
at Public or private Sale certain real estate
therein mentioned and including among other
Lands the Premises herein after described
for the payment of the debts of the said estate
and for other purposes therein set forth and
to Report all Sales, as made by virtue of the

Said Order to this Court We the undersigned do Report that Acting Under and by virtue of Said Order we have entered into ^{an agreement} ~~an agreement~~ in writing with Aaron J. Mimer to sell unto Said Mimer and his heirs and assigns forever all that certain tract of land situate in the village of Behidue in the Said County & State to wit Lot No Four & Eight in Block No Three in Matilda Whitmans third addition to the Town of Behidue for the sum of Two Hundred & Twenty-five dollars. The sum of Twenty-five dollars Cash Twenty-five dollars on the third day September 1856 One hundred dollars by the first day of May 1857 & one hundred dollars by the first of November A.D. 1857 And that the Said price and Terms were the best Terms that Said lot could be sold for & that Said prices above mentioned were the full value of Said lot And ^{that} the first payment above mentioned has been made

And we do further Report that Acting Under and by virtue of Said Order we did on the 6th day of October inst enter into an agreement Aaron H. Randall Jr & John H. Randall to sell unto Said A. H. & J. H. Randall their heirs and assigns forever the following tracts of land to wit Lots Five, Six, Seven, Eight, nine and ten in Block No Five in Matilda Whitmans 3^d addition to Behidue for the sum of Six hundred dollars payable as follows, to wit One hundred and fifty dol.

lars on or before the first day of June A.D. 1857, &
the balance in three equal payments payable
on or before the first day of October in each year
thereafter with use at ten per cent per annum
The first of said annual payments to be made
October 1st 1857. Said Lots to be improved by
by said Randall immediately by building or
otherwise & that said price and terms were
the best that could be obtained for said
lots. The deed of said lots to be made on the
payment of one hundred and fifty dollars
and notes secured by mortgage upon said lots
to be given by said Randall.

And we do further Report that acting
under and by virtue of said Order of said Court
we have entered into an agreement with John
Pileher to sell & sell said said Pileher the
following piece of Land to wit Beginning at
the South west corner of land heretofore conveyed to
Richard Pile on the east line of Wm Wimmers land
thence South along said Wimmers land twelve rods,
thence East parallel with South line of said Piles
land to the west line of a Street running South
from Pleasant Street between lots of D.C. Seely & Wm.
Wimmer thence North on the line of said Street twelve
rods to the place of South East corner of said
Piles ^{land} thence West to the place of beginning for the sum
of Two hundred & twenty five dollars in cash down one
hundred and twenty dollars in one year from date of said
agreement & one hundred and ten dollars in two years from the
date aforesaid the first of said payments having been made & the

Terms & price were the best that could be obtained for same

Vol 2

State of Illinois ss, William Weston & David Jackson, both residents of the town of Pekin, in said
 County, having first been duly sworn depose & say, each for himself, separately
 to be well acquainted with the parties described in the annexed Plaintiff's Petition, exhibited in this
 Court, to wit: the County of the same for several years past, past & that the said & forms for the same
 as mentioned in the annexed Plaintiff's Report of the full value of said land, that in their opinion
 the highest price for it might be obtained for the same, in the best manner.
 In witness whereof, we have hereunto set our hands & seals, at Pekin, this 10th day of October, 1856.
 Wm. Weston & David Jackson
 Subscribed and sworn to before me, this 10th day of October, 1856, at Pekin, Ill.
 J. M. Bennett, Clerk of the Court.

[illegible]

In witness whereof I have hereunto
this 7 day Oct. 2^d 1856. J. B. Hamilton
J. Brown W. L. Court =

In witness whereof I have hereunto
this 7 day Oct. 2^d 1856. J. B. Hamilton
J. Brown W. L. Court =

In witness whereof I have hereunto
this 7 day Oct. 2^d 1856. J. B. Hamilton Clerk
of the Probate Court =

In witness whereof I have hereunto
this 7 day Oct. 2^d 1856. J. B. Hamilton
J. Brown W. L. Court =

In witness whereof I have hereunto
this 7 day Oct. 2^d 1856. J. B. Hamilton
J. Brown W. L. Court =

In witness whereof I have hereunto
this 7 day Oct. 2^d 1856. J. B. Hamilton
J. Brown W. L. Court =

And that afterwards at a^d Term of this Court began and held at the Court House in Bebridge on the 20th day of April A. D. 1857, on the 25th day of April A. D. 1857, ~~and~~ during the said Term of said Court the following proceedings & Order were had and entered of Record therein, to-wit:

"*Nectilula Matman &
Samuel Bennett Exe-
cutors &c. of A. Matman &c.*
vs

75

Ogden A. Whitman & others

Report: In Chanery, Sale of Lands.

To the Hon. Isaac L. Wilson Judge
of the 13th Judicial Circuit,

sen H. Whitman & others (In pursuance of an order made
 in the above entitled cause at a Special Term of said Court
 held at Behiden in and for said County in December
 A.D. 1853, empowering us as Executors of the last will
 and Testament of J^r the S. Whitman deceased to
 sell at public auction or private sale certain real
 Estate therein mentioned and Enjoining among others
 the parcels of land herein after particularly described, for the
 payment of debts of said Estate and for other purposes therein
 set forth and to Report such sales by us made under and
 by virtue of said order to this Court, We do Report that an-
 der and by virtue of said Order we have entered into
 a Contract in writing with Daniel H. Palmer to sell unto
 said Palmer his heirs and assigns forever all that
 certain piece or parcel of land Situate in the Town
 of Behiden in the County of Boone and State of Illinois

And known as Lots three (3) and four (4) in Block number Two (2) in Matilda Whitman's third addition to Bethune for the sum of Two hundred and ninety eight dollars payable as follows: Ten Dollars to be paid on closing of the contract - One hundred and four dollars in one year from date of said contract, Ninety six dollars in two years from the date thereof and Eighty Eight dollars in three years from the date thereof with interest at Ten per cent per Annum after the same becomes due and payable.

And we do further Report that said sum of ten dollars has been paid - And that the said sums of money for which the same have been sold are the full value thereof and the greatest sum for which the said Lots could be sold and they therefore ask that the said Sales be confirmed by this court and an order be entered authorizing the undersigned to convey the same upon payment of the said sums of money therein specified according to the conditions of said agreement - And we do further Report that acting under and by virtue of said Order and under and by virtue of a certain other Order made therein at the October Term of said Court held at Bethune in and for said County in October A.D. 1855, we have conveyed by Deed to Milward Pierce his heirs and assigns forever, the following described lots of Land situate in the Town of Bethune in said County of Monroe and State of Illinois and known as lots one (1) and two (2) in Block three (3) in Matilda Whitman's third addition to Bethune, the purchase money thereof having all been paid as mentioned by the terms of said

agreement for the sale thereof. And we do further
 report that acting under and by virtue of said order
 first above mentioned we have entered into a written
 agreement to sell unto Joseph Johnson his heirs and
 assigns forever the following lots of land situate in
 the town of Belvidere in the County of Boone and
 State of Illinois and known as lots numbers nine (9)
 and ten (10) in Block Three in Matilda Whitmans
 third addition to Belvidere for the sum of two hund-
 red and twenty five dollars - payable as follows - Twenty
 five dollars in cash on delivery of said contract and
 the balance in one and two years in equal annual
 instalments with annual interest at ten per cent
 per annum - And we do further report that said sum
 and terms upon which the same were sold was
 the full value thereof and the best terms and the
 best terms upon which the same could be sold
 that the first payment thereon has been made
 and we therefore ask that said sale be confir-
 med and an order entered authorizing a con-
 veyance thereof on payment of the balance of the
 purchase money according to said agreement -
 And we do further report that acting under
 by virtue of an order made by this Court at the Octob-
 Term thereof in A.D. 1856, held at Belvidere aforesaid
 we have conveyed to A.D. & J. M. Randall the following lots of
 land situate in said County and State and known as
 lots five (5) six (6) seven (7) eight (8) nine (9) and
 ten (10) in Block Two (2) in Matilda Whitmans

third addition to Behidoe and have received the
notes of said W. F. Randall & said H. Randall for the
balance of the purchase money secured by a Mortgage
of the premises according to the terms of the agreement
between said parties for the sale thereof - And also
that an Order be made confirming said ~~sale~~ con-
veyance - April 24th 1857. Matilda Whitman

Matilda Whitman &
Samuel Bennett Exe-
utors of S. S. Whitman deceased
vs.

Ogden H. Whitman & others

Boone County S. S.

J. B. Jones & Peter J. Garcelon of said
County being duly sworn depone
say that they are well acquainted
with the premises known as lots

number one and two Block two in Matilda Whitman's third
addition to Behidoe and lots nine & ten in Block three
in said addition - And they further state that two
hundred and fifty dollars is the full value of said
lots one and two aforesaid, and that the sum of
Two Hundred and Twenty five Dollars is the full value
of said lots nine and ten in Block three aforesaid -
and that they believe said lots could not be sold for a
greater sum than above stated

J. B. Jones

P. J. Garcelon "

Subscribed and sworn this 25th day
of April 1857 before me

J. W. Gray N. P. "

Ordered that the same be read of Record

And that afterwards, on the same day
of the same term of said Court, the following
proceedings & Order were heard and entered of Record
therein, to wit -

Matilda Whitman & co
vs. S. S. Whitman deceased
vs. Ogden H. Whitman & others

April Term 1857.

Ordered that the following

Entered of Record:

On filing and reading Report of Executors of bearing date April 24. 1857 of an agreement made by the Executors of said estate of S. S. Whitman with Daniel M. Palmer to sell unto him said Palmer his heirs and assigns Lots three & four in Block Two in Matilda Whitmans 3rd addition to Betvidee, also of an agreement by said Executors with Joseph Johnson to sell unto said Joseph Johnson Lots nine and ten in Block three in said Matilda Whitmans addition - and on reading and filing proof of the value of said lots, and it appearing that the same were sold for the full value thereof Therefore it is Ordered that said sales be and they are hereby confirmed and said said Executors are authorized to convey said lots upon payment of the purchase money thereof according to said agreements respectively - also upon filing and reading report by said Executors of the conveyance of certain premises therein particularly described to William Pierce being Lots one and two in said Block three of Matilda Whitmans 3rd addition to Betvidee - and also of a Conveyance by said Executors to A. H. Randall to, J. H. Randall of Lots 5, 6, 7, 8, 9 & 10, in Block Two of said addition to Betvidee It is Ordered that the said conveyances be and the same are hereby confirmed - (approved) Isaac G. Wilson "

And afterwards, on the same day of the same Term of the said Court, the following Order & proceedings were made and Ordered to be entered of Record, to wit:

"Matilda Whitman &
Samuel Bennett &
Hiram Whitman & v
E. of S. Whitman decd.
vs.

October Term 1855.

On reading and filing
report of said Matilda
Whitman as executrix of
said decd., bearing date Oct.

October 3, 1855 setting forth
the sale of certain premises therein particularly described
to William Pierce for the sum of three hundred dollars
upon the terms therein mentioned and also the
sale of certain other premises therein set forth and
particularly described to Richard Piel which premises
formed a part of the real estate belonging to the estate
of Seth S. Whitman deceased - and upon reading
and filing proof of the value of said several parcels
of land, and it appearing that the same was
sold for the full value thereof - Therefore Ordered
that the said Report be confirmed and the ex-
ecutors be and they are hereby authorized to make
conveyances thereof to the said parties respectively up-
on payment of the purchase money according
to the terms of said contracts.

Approved

Isaac G. Milson."

Sept. 20 - Dec. 3 112,97- compound

State of Illinois
County of Boone Sp:

I Daniel H. Whitney
Clerk of the circuit court in and
for said county do hereby certify
that the above and foregoing manuscript
is a full true & perfect copy of the
Records proceedings & decree of the
said court in a certain cause lately
pending in said court wherein
Matilda Whitman executrix of William
Whitman & Samuel Burr ~~executors~~
of Seth L. Whitman deceased are
parties complainant. & Ogdun H. Whit-
man Julia H. Whitman C. Colburn
Whitman. & Charles A. Whitman
defendants - & of the whole thereof
as the same now appears of record
in my office -

Witness my hand and the
seal of said court this 15th
day of May A.D. 1858 - at
Bellevue in said County -

Daniel H. Whitney Clerk.

In the Supreme Court.

Samuel Bennett & Matilda
Whitman Surviving Executors of
~~the~~ ^{Sette S.} Whitman deceased

vs

C Colden Whitman, Ogden
H Whitman, ~~Julia~~ Julia H.
Whitman & Charles A. Whitman

Error to
Brown Circ
Court

And now at this day comes
W. J. Burges Atty for the said
Plaintiffs and suggests to the Court
now here that since the rendition
of the decree of the court below
the said William Whitman hath
departed this life before the setting
out of the writ of error in this case.

And the said Plaintiffs in
error survivors as aforesaid come
and say that in the decree
proceedings & record aforesaid
there is manifest & material error
appearing of record in this—

1 That the case made by the bill
is not such an one as to give a
Court of chancery any jurisdiction
of it to grant any relief whatever.

2 That no notice of the application

tion to all real estate under the will
for the payment of debts - was given to
persons interested -

3. That the evidence & proofs upon
which the court acted if any do
not appear of record -

4. That the court acted in its
construction of the will -

5. That the court by its con-
struction of the will vested the
executors with power to dispose
of the estate of the testator -

6. That the court admitted the
said Matilda Whitman of the exec-
utive control & disposition of said estate
& vested it in the other two executors
with her -

7. That the court below should have
held that the property both real
& personal of said testator was ab-
solutely vested in said Matilda
Whitman subject to payment of debts
& such legacies as by the will are
specifically charged upon it in the
absence of personal property -

8. That all persons interested under said will were
not made parties -

And for other errors manifest
& material appearing of Record
Wherefore they pray that the

D. H. Montgomery

Dec 15, 1858

409
Sup. Court

Bennett et al

Whitman et al

Transcript of

and was

Filed Dec. 24, 1858

Leland
clerk

judgment & decree aforesaid for
the errors aforesaid may be reversed
annulled & altogether held for nothing
& they restored &c

W. J. Burry
for Opponent

And now comes again ~~A~~ Whitman & Leslie K.
Whitman & Charles N. Whitman by B. C. Cook
their Counselors at Law and say that in the
record proceedings aforesaid there is no error
B. C. Cook

Counselors at Law

STATE OF ILLINOIS,
SUPREME COURT,

ss. 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 of a plea which was in the Circuit Court of Boone County, before the Judge thereof, between Samuel Bennett, Hiram Whitman executors and Matilda Whitman executrix of the last Will & Testament of Seth S. Whitman deceased — plaintiffs and C. Golden Whitman, Ogden H. Whitman, Julia H. Whitman & Charles N. Whitman, —

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Samuel Bennett and Matilda surviving executors of Seth S. Whitman deceased — as we are informed by their complaint — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the 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 first Tuesday after the third Monday in April 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. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 20th day of December in the Year of Our Lord one thousand eight hundred and fifty-eight.

C. Seland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Samuel Bennett & others
vs

T. Golden Whitman & others

Writ of Error

Filed December 20, 1838

Leland
Clark

12715