

13686

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

# Supreme Court of Illinois

Francisco et al

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vs.

Hendricks

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71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 56.

Francis  
vs.  
Hendrick

1368p

1862

Prepared

State of Illinois }  
Mercer County } Mercer Circuit Court  
March Term A.D. 1856

Passed before the Honorable John S. Thompson  
Judge of the Tenth Judicial Circuit of the State  
of Illinois. At a Circuit Court  
begun and held at the Court House in  
the Town of Keokuk County of Mercer and  
State of Illinois on the last Monday in  
the Month of March in the year of our  
Lord one thousand eight hundred and fifty  
Six it being the 31<sup>st</sup> day of said Month.  
In Chancery sitting.

Present the Honorable John S. Thompson Judge  
James H. Linn Sheriff  
Thomas B. Caber Clerk.

Be it known that heretofore to wit on the 6<sup>th</sup>  
day of February A.D. 1856 came Samuel Hendricks  
and Adelia Ann Hendricks by John C. Pepper their  
Solicitor and filed in the Clerk's office of the Circuit Court  
of Mercer County Illinois their Petition for Partition  
in the words and figures following to wit:

State of Illinois }  
Mercer County } In the Mercer County Circuit Court  
March Term A.D. 1856

To the Honorable John S. Thompson  
Judge of the Tenth Judicial Circuit of the State of Illinois  
sitting as a Court of Chancery.

The Petition of Samuel Hendricks & Adelia Ann  
Hendricks his wife of the County of Mercer State of Illinois  
respectfully represents that your Petitioners  
together with Jane Francisco, Louisa Francisco, Peter E.

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Deborah and Hannah Suspending & Stephen Prasen  
are the owners in fee simple as tenants in common  
of three acres off the South side of the North West  
quarter of Section Fourteen (14) in Township Thirteen  
(13) North of Range Four (4) West of the fourth Principal  
Meridian, also the North East quarter of the South  
East quarter of Section Ten (10) in Township Thirteen  
(13) North of Range four (4) West of the fourth Principal  
Meridian, also the North half of the South West quarter  
of Section Fourteen in Township Thirteen North of Range  
Four West of the fourth Principal Meridian.

That they derive their title to said lands by descent  
from William Francisco and Solomon B. Francisco  
and Harriet Prasen deceased whose heirs they are.

That the said William B. Francisco acquired title  
to the tract first of above described by Deed from John  
S. Thompson Commissioner duly appointed to sell  
it in behalf of the heirs of Thomas Willett deceased, that  
the said Thomas Willett acquired title in said tract from  
Robert A. Bain, that said Bain acquired his title from  
William J. Turner. William Stansberry conveyed  
to Lewis Barney, John Myrskifer conveyed to William  
Stansberry and the United States conveyed to John  
Myrskifer. That the said William Francisco acquired  
his title to the second tract above described by Deed from  
John S. Thompson Commissioner appointed duly to sell the  
interest of the heirs of Thomas Willett. That Thomas Willett  
derived his title by Deed from Lemuel Lamb & Thomas  
Dunlap, that Lemuel Lamb & Thomas Dunlap  
derived their title by Deed from Charles F. Moulton &  
others. That Charles F. Moulton & others derived their title

by deed from John A. Gossler & Walter Parson.  
 That John A. Gossler & Walter Parson derived their title  
 by deed from James B. Bunnell. That James B.  
 Bunnell derived his title by Deed from John Lamb  
 derived his title from Thomas W. Hathaway. That  
 Thomas W. Hathaway acquired his title by Patent from the  
 United States.

That the said William Francisco acquired title to the  
 tract third above described by deed from John S. Thompson  
 Commissioner duly appointed to sell the interest of the  
 heirs of Thomas Willett. That the said Thomas Willett  
 derived his title by deed from Robert A. Barn. That Robert  
 A. Barn derived his title by deed from Joseph Duncanson.

That Joseph Duncanson derived his title by deed from Mary  
 Prout. That Mary Prout derived her title by deed from William  
 Prout, Robert Prout & George B. McKnight & Wife heirs of  
 Jonathan Prout. That Jonathan Prout derived his title  
 by deed from John Folio. That John Folio derived his  
 title by Patent from the United States.

Which said titles are herewith filed & made part of  
 this Petition. Your Petitioner further states  
 that Harriet Pesson acquired title to the undivided  
 one fourth of said premises as Daughter & heir of said  
 William D. Francisco and died leaving no children  
 and that Stephen Pesson was her husband, &  
 that Stephen Pesson acquired title to the undivided  
 one eighth of said land as the husband of said Harriet  
 Pesson which said undivided one eighth the said Stephen  
 Pesson has since sold to Louisa Francisco wife of Solomon  
 B. Francisco deceased, who was the son of William D. Fran-  
 co deceased. That the said Louisa Francisco acquired

title to the rest of her <sup>4</sup> shares by being the Wife of said  
Solomon Francisco deceased. That the said  
Solomon B. Francisco dec<sup>d</sup> acquired title to the undivided  
one fourth of said lands by being the son & heir of  
William D. Francisco deceased, and to the undivided  
two fourths by purchase from Peter Purpuring and  
Hannah Purpuring and Samuel Wendricks and Adelia  
Ann Wendricks. Said Hannah Purpuring & Adelia  
Ann Wendricks being the Daughters of William B. Fran-  
cisco deceased also to the undivided one fortieth as  
being the brother and one of the heirs of Harnett Pesson  
deceased. That the said Jane Francisco acquired title  
to her shares of said land by being the Mother of Harnett  
Pesson and Solomon B. Francisco both of whom are dead

That Peter E. Purpuring & Hannah Purpuring  
acquired title to their shares of said lands by Hannah  
Purpuring being the sister of Harnett Pesson & Solomon  
B. Francisco dec<sup>d</sup> & that your Petitioner and his said  
wife acquired title to their shares by Adelia Ann Wendricks  
being the sister of Harnett Pesson and Solomon B. Francisco  
dec<sup>d</sup>.

Your Petitioner Samuel Wendricks &  
Adelia Ann Wendricks would further represent that your  
Petitioners are entitled and own thirty three (33) three  
hundred and twentieths (320<sup>ths</sup>). That Peter E. Purpuring  
& Hannah Purpuring own the undivided thirty three  
(33) three hundred & twentieths (320<sup>ths</sup>). That Jane Francisco  
owns the undivided Eighty two (82) three hundred and twentieths  
(320<sup>ths</sup>) and that Louisa Francisco owns the undivided one  
hundred and Seventy two (172) three hundred & twentieths  
(320<sup>ths</sup>). And your Petitioner further states that  
to the best of their knowledge & belief no persons persons

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other than those herein set forth have any interest in or title to the said lands or any part thereof in possession remainder, reversion or otherwise & your Petitioners therefore ask that process of Summons issue against the above named James Francisco, Louisa Francisco, Peter C. Purpuring and Hannah Purpuring & Stephen Pearson & that a Division & Partition of said lands be made according to the respective rights of the parties interested therein & that a sale of the said lands be made if it shall appear that a partition cannot be made without great prejudice to the owners.

Samuel <sup>his</sup> ~~mark~~ Hendricks "

State of Illinois  
 Mercer County & Personally appeared before me the undersigned Clerk of the Circuit Court in & for said County Samuel Hendricks one of the above named Petitioners who after being duly sworn on his oath declares that the statements set forth in the foregoing Petition are true to the best of his knowledge information & belief & further says not.

Thomas B. Cabeen Clerk

John C. Pepper Solicitor for Petitioners

Upon the filing of the foregoing Petition, Summons issued herein directed to the Sheriff of Warren County to serve which Summons is in the word and figures following to wit:

State of Illinois, The People of the State of Illinois  
 Mercer County & Do the Sheriff of Warren County Greeting  
 We command you to Summon

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County of Hancock, State of New Jersey and Hannah  
A. Surprenant if to be found in your County, personally  
ally 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 Kirtsburg on the  
last Monday in the month of March next to answer  
a certain Bill of Complaint filed in our said Circuit  
Court on the Chancery side thereof, against them by  
Thomas Hendricks & Adelia Ann Hendricks  
And have you then these this writ, and make return  
thereon in what manner you see fit the same.

Witness Thomas Cabeen Clerk of our said Court  
at Kirtsburg this 6<sup>th</sup> day of February 1856  
Thomas B. Cabeen Clerk

On the back of which summons is the  
following return made by the Sheriff of Hancock  
County viz:

"I have served the within summons by delivering  
a copy to each of the within named persons.

March 8<sup>th</sup> 1856

Jas. M. Gray Sheriff H. Co.  
By D. K. Eilenberger Deput.

And also at the time aforesaid summons  
issued herein directed to the Sheriff of Mercer to  
serve and made returnable at the March Term  
1856 of said Court, which summons is in  
these words to wit:

"State of Illinois } The People of the State of Illinois  
Mercer County } To the Sheriff of said County  
Greeting.

We command you to summon

Jane Francisco if to be found in your County personally 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 Keithsburg on the last Monday in the month of March next to answer a certain Bill of Complaint, filed in our said Circuit Court on the Chancery side thereof, against her by Samuel Hendricks and Adelia Ann Hendricks.

And have you then shew this writ, and make return thereon in what manner you see fit the same.

Witness Thomas B. Caber Clerk of our said Court at Keithsburg this 6<sup>th</sup> day of February 1856  
Thomas B. Caber Clerk

On the back of which Summons is the following endorsement made by the Sheriff of Mercer County to wit:

"I have served the within Summons by delivering a copy of the same to the within named Jane Francisco on the 14<sup>th</sup> day of March A.D. 1856.

James H. Lewis Sheriff"

And afterwards to wit at the March term of said Court and on the fourth day of said term being the third day of April A.D. 1856, the following proceedings were had in said case to wit:

Samuel Hendricks et al vs Jane Francisco et al  
Petition for Partition

And now came the Complainants by their Solicitor and moved the Court for leave to amend their Petition filed herein. It is thereupon ordered

by the Court that complainants have leave to amend  
their Petition herein and that this cause stand contin-  
ued to the next term of this Court.

And afterwards to wit on the third day of  
September A.D. 1856 came Samuel Hendricks and  
Adelia Ann Hendricks by John C. Pepper their solicitor  
and filed their amended Petition for Partition in  
the form following to wit:

"State of Illinois } Mercer Circuit Court  
Mercer County } } March Term A.D. 1856  
To the Honorable John S. Thompson  
Judge of the tenth judicial circuit Court in the County  
of Mercer and State of Illinois.

Humly complaining unto your Honor Samuel  
A. Hendricks and Adelia Ann Hendricks wife of Samuel  
A. Hendricks of the County of Mercer and State of Illi-  
nois, respectfully represent in this their amended  
Bill by leave of Court. That your Petitioners together  
with Jane Francisco, Louisa Francisco, Peter C. Purpuring  
and Hannah A. Purpuring are the owners in fee simple  
absolute of the following described tracts of land viz:  
Three acres off the South Side of the North West quarter of  
Section Fourteen; Forty acres the North West quarter of  
the South East quarter of Section ten; and Eighty  
acres the North half of the South West quarter of  
Section Fourteen all of said lands situated in Township  
Thirteen North of Range Four West in Mercer County  
in the State of Illinois.

That all of said persons interested in said  
land derived their title thereto through William

Francisco late of the County of Mercer & State of Illinois, now deceased who at the time of his death resided upon and occupied said land as his farm.

That William Francisco aforesaid died about three years ago leaving a Widow named Jane Francisco one of said Defendants, and four children who were his only children and heirs, three of whom were girls and one of whom was a boy, and whose names were Solomon B. Francisco Hannah S. Furpuring who was intermarried with Peter E. Furpuring, Harriet Prisson who was intermarried with Stephen Prisson, Adelia Ann Kendrick who was intermarried with Samuel S. Kendrick; that the above named Widow & children were & are the only heirs at law of said William Francisco.

That Harriet Prisson died about two years ago leaving a widow her husband Stephen Prisson, childless & intestate, that during her lifetime by her said husband Stephen Prisson the said Harriet Prisson had a child born of her body, alive and capable of inheriting her estate which afterwards died before her death.

That Solomon B. Francisco died about one year ago childless & intestate leaving a widow Louisa Francisco. That by purchase the said Solomon B. Francisco became the owner in fee of the interests of in said estate of William Francisco which the said Peter E. Furpuring and Hannah S. Furpuring and your Petitioners had in said above described tracts of land by descent through the said Hannah S. Furpuring and Adelia Ann Kendrick, and died seized in fee of said interests in said tracts of land.

That after the death of the said Solomon B. Francisco said Louisa Francisco became & now is the owner in

fee by purchase from Stephen Ineson of the interest & claim in & to said tract of land of the said Stephen Ineson.

That the following seven deeds constitute the evidences of the title of the said William Francisco to the first above named tract of land viz;

No. 1. John S. Thompson Commissioner of the Estate of Thomas Millett appointed to sell the ~~same~~ <sup>same</sup> to William Francisco.

No. 2. Robert A. Bane to Thomas Millett

No. 3. William S. Sumner to Robert A. Bane

No. 4. Lewis Barney to William S. Sumner

No. 5. William Stansbury to Lewis Barney

No. 6. John Myerkeifer to William Stansbury

No. 7. United States to John Myerkeifer

That the following eight Deeds constitute the evidences of the title of the said William Francisco to the second above described tract of land.

No. 1. John S. Thompson Comr. Estate of Thomas Millett deceased appointed to sell the same, to William Francisco

No. 2. Lamb Dunlap to Thomas Millett.

No. 3. C. P. Moulton & Co. to Lamb & Dunlap,

No. 4. Crosslet & Dutton to C. P. Moulton & Co.

No. 5. James P. Bunnell to Crosslet & Dutton

No. 6. John Lamb to James P. Bunnell.

No. 7. J. H. Hathaway to John Lamb.

No. 8. United States to J. H. Hathaway.

That the following described Deeds constitute the evidences of title of William Francisco deceased to the third & last above described tract of land:

No. 1. John S. Thompson Comr to sell Real Estate of Thomas Millett deceased to William Francisco.

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- No. 2. Robert A. Daine to Thomas Nissett.  
 No. 3. Joseph Dumeau to Robert A. Daine.  
 No. 4. Mary Prout to Joseph Dumeau.  
 No. 5. William<sup>son</sup> Robert Prout, George B. McKnight & wife  
 heirs of Jonathan Prout to Mary Prout.  
 No. 6. John Folio to Jonathan Prout.  
 No. 7. United States to John Folio.

That the dates of said deeds are unknown to your Petitioners, that they do not know whether or not the said deeds are recorded in this State, that at the time of filing the original bill in this case they did not know in whose possession said deeds were, nor where they could obtain copies of the same: and that so it was they did not file said deeds as exhibits in this case.

That on the 2<sup>nd</sup> of April 1856 your Petitioners were informed for the first time that the said deeds - that part of them which were in possession of William Francis deceased was in the possession of said Jane Francis; that your Complainants notified said Jane that they wished said deeds to be used as exhibits in this case & that they would obtain an order of Court upon her for said deeds; but she declined to produce said deeds in Court or to deliver the said deeds to your Petitioners for the purpose of enabling your petitioners to use them as exhibits & evidence in this case. Your Petitioners further state that they do not now know nor have they at any time known where said deeds are to be found as it is above set forth.

Your Petitioners further show unto your Honor that they are the owners in fee simple of a large part of said lands which situate is now undivided. That said tract of land being supposed to be divided into

four hundred equal parts or shares for the purpose of exhibiting the rights of the different persons interested in the said tracts. Your Petitioners are the owners in fee of forty one of said parts, Peter E. Ruspering & Karmahel. Ruspering are the owners in fee of forty one of said parts, Jane Francisco is the owner in fee of Eighty two of said parts and Louisa Francisco is the owner in fee of two hundred and thirty six of said parts. Your Petitioners further show that their own interest in said lands & the interests of all of said parties is subject to the right of dower of the said Jane Francisco widow of the said William Francisco. And that subject to the dower therein of the said Jane <sup>Louisa</sup> Francisco is entitled to be succeeded as widow of Solomon B. Francisco in all of said lands of which the said Solomon was seized as of an estate of inheritance in his lifetime viz: ( $\frac{3}{40}$ ) thirty one fortieths of said land; and by lease purchase & release from Stephen Pesson to an Estate for life in an Equal undivided one third part of ( $\frac{1}{40}$ ) ten fortieths of said lands and also to an estate for life in an Equal undivided third part of thirty one four hundredths ( $\frac{31}{400}$ ) of said land to which two last named Estates the said Stephen Pesson was entitled as tenant by the curtesy as the husband of Keamin Pesson deceased. Your Petitioners further show that the said defendants and especially the said Jane have no other valid claim or title to said land than as set out in this bill: that the said Jane resided with her husband upon and now remains as his widow & has so resided ever since his death upon said land

It is now living in the farm house upon them: that as your Petitioners are informed she has received the rents & profits of said lands ever since the death of William Francisco her husband: that those rents & profits have been large, but their amount your Petitioners do not know & cannot set forth: that said farm was in favor of partition two months ago. that she now opposes partition as your petitioners are informed only that she may continue to receive all the rents & profits of the premises which she now thinks she can still receive & retain. Your Petitioners show that the premises in question to wit the said farm consisting of the said tracts of land above described is rapidly deteriorating in value so far as the improvements are concerned, that by the neglect carelessness & waste of the said widow, the house & outbuildings & fences are out of repair & rapidly becoming ruinous & valueless to the great injury of the interests of your Petitioners & the other owners of said lands. Your Petitioners further state that to the best of their knowledge & belief no person or persons other than those herein set forth have any interest in or title to said lands or any part thereof.

Your Petitioners further show that to the second tract of land above described the said widow fraudulently sets up a title purchased while she occupied the farm as the widow of her husband to which the said tract constituted the under land: that this is not the title to said land, but that William Francisco died seized of the premises genuine title: that she is not entitled to set up said title in case it was the genuine title to said land against her tenants in common.

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Your Petitioners have not in their possession & are unable to set out the Deeds which constitute this fraudulent title: said Deeds being in the possession of said Jane. Your Petitioners further show that they cannot set out & make exhibit of any of the other contracts & conveyances not in the chain of title to William Francisco set out in this bill as the originals or copies of them are not in their custody, possession or power.

Your Petitioners therefore pray that process of Summons issue against the above named Stephen Mason, Peter E. Purpuring, Hannah A. Purpuring Jane Francisco and Louis Francisco commanding them to answer this bill. That upon a hearing of the case a division & partition of said lands be made according to the respective rights of the parties therein interested, that the Estate for life of the different parties entitled thereto be set off to them in the premises, and that in case a partition cannot be made without great prejudice to the respective owners a sale of the said lands be ordered by the Court and that your Petitioners Honor may Deem such other & further or different relief be granted & decreed by the Court if the same shall appear to your honor meet & proper. Your Petitioners file herewith as exhibits the Originals of Deeds No. 2, 3, & 7 of the 1<sup>st</sup> tract above described and also the Originals of Deeds No. 2, 7 & 8 of the 2<sup>d</sup> tract above described and also the originals of Deeds No. 2, 3, 6 & 7 of the last tract above described, and also copies of all the other Deeds, an abstract of which is above set forth in the chain of the title of William Francisco deceased to the said lands save deed No. 4, of the 1<sup>st</sup> tract above described, which they pray may be used

& taken as a part of this bill.

Samuel H. Hendricks

State of Illinois

Mercer County } Personally appeared before me the  
 undersigned Clerk of the Circuit  
 Court of Mercer County Samuel Hendricks one of  
 the above named Petitioners who after being duly sworn  
 on his oath declares that all the statements & allegations  
 in the above bill are true to the best of his knowledge  
 and as he verily believes and further he saith not,  
 Dated this 3<sup>rd</sup> day of April A.D. 1856.

Thomas B. Caber

Clerk,

And afterwards to wit at the September Term A.D. 1856  
 of the said Circuit Court of Mercer County and on the fifth  
 day of said term it being the fifth day of September 1856  
 the following proceedings were had in said cause  
 to wit:

"Samuel Hendricks }  
 vs } Petition for Partition  
 Jane Frances et al }

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And now this cause being called  
 and it appearing that Jane Frances, Louisa Frances,  
 Peter E. Furpuring & Hannah A. Furpuring and Stephen  
 Prosser adversely Defendants herein have been duly  
 served with process of summons or otherwise duly  
 notified of the pendency hereof, an order to be called  
 and having been solemnly called came not but made  
 default. It is therefore considered that the allegations  
 in Complainant's Bill be taken as confessed by  
 them. This cause is therefore referred to the

Master in Chancery to take the proofs & report them to this  
Term of Court. <sup>16</sup>

And afterwards to wit: on the  
same day and year, <sup>and at the time aforesaid</sup> the following proceedings  
were had in said cause to wit:

And now comes J. A. Bassett Master in Chancery  
for said \_\_\_\_\_ to whom the foregoing cause was referred  
to take the proofs, and made his report in the words  
and figures following to wit:

No. 1

"State of Illinois }  
Mercer County }  
Samuel Hendricks }  
Adeliah Hendricks }  
vs }  
Jane Francisco, Louisa }  
Francisco, Peter Sursening }  
Hannah Sursening, Stephen Sursening }

Mercer Circuit Court  
September Term A.D. 1856

In Chancery

I Isaac A. Bassett Master  
in Chancery in & for said Court do hereby report  
in the above entitled case the evidence hereto annexed  
marked Exhibit A. & refers to the documents & papers  
on file in this case.

And as the conclusions derived by him from the  
above evidence the said Master begs leave to report that  
the different allegations in the Bill of Complaint in this  
case are fully proved by said evidence.

That William Francisco died on the 4<sup>th</sup> November  
A.D. 1852, seized in fee of the land described in said  
Complainant's Bill leaving Solomon B. Francisco  
Hannah Sursening, Adeliah Hendricks & Hannah Sursening

his only children theirs at law, and a widow Jane Francisco  
one of the Defendants in this case, that Harriet Pesson  
was intermarried with Stephen Pesson, had one child  
born alive by her said husband & she Harriet  
Pesson died on or about the \_\_\_\_\_ day of

A.D. 1854, childless, leaving her said husband, Stephen Pesson  
surviving her, that Solomon B. Francisco, intermarried with  
Louisa Francisco and died on or about the \_\_\_\_\_ day of

A.D. 1854 leaving no children, his said wife  
Louisa surviving him. His death occurring after that of  
Harriet Pesson. That said Hannah Tursperning was inter-  
married with Peter E. Tursperning, Defendants, that Adelia A.  
Hendricks was intermarried with Samuel Hendricks Complain-  
ants.

That Louisa Francisco is seized in fee & entitled  
to have set off to her two hundred & thirty six four hundredths  
 $(\frac{236}{400})$  of said lands, that Peter E. Tursperning & Hannah A.  
Tursperning are seized in fee & entitled to have set off to them  
forty one four hundredths  $(\frac{41}{400})$  of said lands.

That Samuel A. Hendricks & Adelia A. Hendricks are seized  
in fee and entitled to have set off to them forty one  
four hundredths  $(\frac{41}{400})$  of said lands, that said Jane Francisco  
is entitled to have set off to her as her Dower a life estate  
in one third of said lands. That Louisa Francisco  
is entitled to have set off to her as her Dower a life estate  
in one third part of thirty one fortieths  $(\frac{31}{40})$  of said land and  
that Louisa Francisco is entitled to have set off to her a  
life estate during the life of S. Pesson obtained by her  
from Stephen Pesson as tenant by Courtesy in one hundred  
and thirty one four hundredths  $(\frac{131}{400})$  of said land.

All of which is respectfully submitted to your Honor

Isaac H. Bassett  
Master in Chancery

#17  
"Exhibit A."

"Orla C. Richardson being sworn says,

I knew Mr Francisco the father of Solomon B. Francisco, Adelia A. Kendrick, Harriet Mason & Hannah A. Furbering, the husband of Jane Francisco he died in the year 1852 about the 5<sup>th</sup> of Nov. leaving the said Solomon B. Francisco, Adelia A. Kendrick, Harriet Mason & Hannah A. Furbering his only children and him at law, and Jane Francisco his widow.

He occupied the land described in Complainant's bill as his farm and actually resided thereon from the Spring of 1850. To his death, he bought the land in fall of 1850 of Daniel Hamrock, Daniel Hamrock occupied the said land as his farm from the first of March 1844 to the year 1851, when he gave up possession to Mr Francisco. Daniel Hamrock resided on the land during the whole of that period. Daniel Hamrock bought the same land described in said bill, of Thomas Willitt, Thomas Willitt occupied the land as his farm by actual residence thereon from the fall of 1841, till he gave up possession to Hamrock. The said Hamrock Willitt and Francisco claimed to be the owners of said land ~~wholly~~<sup>wholly</sup> respectively in possession thereof.

Hamrock bought the land of Willitt and took a Bond therefor in 1844. This bond Hamrock assigned to William Francisco in 1850, and Francisco took possession of the land in the following spring claiming and holding under the bond as did Hamrock before him. On this bond Francisco obtained a Decree by suit in Chancery and the said bond is among the papers in said suit files in this Court. Louis Francisco

is the Widow of Solomon B. Francis es. Solomon B. Francis  
died on or about the day of Ad. 1854  
leaving no children, and the said Francis his widow & intestate.

Harriet Pesson intermarried with Stephen Pesson  
and had one child by him born alive, and died leaving  
no children other said husband still living, Harriet H.

Purpuring intermarried with Peter E. Purpuring, and  
Adelia A. Hendricks, intermarried with Samuel A.  
Hendricks. O. C. Richardson"

"Sworn to and subscribed before me  
this fifth day of September A.D. 1856  
Isaac N. Bassett  
Master in Chancery"

And afterwards to wit: On the same day and  
year and at the term last aforesaid, of said Circuit  
Court the following proceedings were had in said  
case to wit:

"State of Illinois }  
Mercer County }  
Samuel A. Hendricks  
Adelia A. Hendricks

Mercer Circuit Court  
September Term A.D. 1856

v

Petition

Jane Francis es, Louisa Francis es,  
Harriet H. Purpuring, Peter E.  
Purpuring, Stephen Pesson

And now at this term of  
said Court, this case coming on to be heard and the said  
Jane Francis es, Peter E. Purpuring, Harriet H. Purpuring  
being three times severally called, made default & came  
not & Stephen Pesson and Louisa Francis es appearing

be made of the lands described in said Complainant's  
 Bill in this case to wit: Three acres off the South side  
 of the North West quarter of Section Fourteen (14) and Forty (40)  
 acres the North West quarter of the South East quarter of  
 Section Ten (10) and Eighty (80) acres the North half of  
 the South West quarter of Section Fourteen (14) all of said  
 land situated in Township Thirteen ~~th~~ (13) North in Range  
 Four (4) West in Mercer County in accordance with  
 the prayer of said bill, that Oda C. Richardson, Samuel  
 Miller and Harvey S. Senter be appointed Commissioners  
 fairly and impartially to make partition of said lands  
 in accordance with the Judgment of this Court, if the  
 same can be done consistently with the interest of  
 the estate aforesaid, and report their proceedings to  
 this Court setting forth the division made by them if  
 made and if not to report to the Court that division can  
 not be made consistently with the interest of the said  
 Estate owing this or the next heading term of  
 this Court. The Court further hereby declares, that  
 Adelia A. Hendricks & her husband Samuel A. Hendricks  
 in her right are the owners in fee of forty one four  
 hundredths of said land, Peter E. Suspening in right  
 of his wife Hannah A. Suspening and Hannah A.  
 Suspening his wife are the owners in fee of forty <sup>(40)</sup>  
 four hundredths of said land. That Jane Francisco  
 is the owner in fee of Eighty two four hundredths  
 (82 <sup>1/4</sup> / 100) of said land, and Louisa Francisco is the owner  
 in fee of Two hundred and thirty six four hundredths  
 (236 <sup>1/4</sup> / 100) of said land that the interest of all of said parties  
 said above to be owned by them in fee is subject  
 to the right of Dower of the said Jane Francisco and

22

that said Jane is entitled to have set off to her a life estate in one third of said land, and that Louisa is entitled to a life estate in one fourth of said land during the            of Stephen Pesson, and also to a life estate in an equal undivided third part of thirty one four hundredths ( $\frac{31}{400}$ ) of said land during the life of Stephen Pesson, and also to a life estate in one third of thirty one  $\frac{31}{400}$  fortieths of said land during her life.

John S. Thompson

And afterwards to wit: at the said September Term A.D. 1856 of said Court and on the sixth day of said term it being the sixth day of September 1856, came Orla C. Richardson, Samuel Miller and Harvey S. Senter Commissioners appointed in the above mentioned case, to make division of the lands therein mentioned and described, and filed their Report in the words and figures following to wit:

"State of Illinois	}	Mercer Circuit Court
Mercer County	}	September Term, A.D. 1856,
Samuel A. Kendrick	}	
Adelia A. Kendrick	}	
vs	}	Partition
Jane Francisco, Louisa Francisco,	}	
Peter E. Purpering, Hannah	}	
Purpering & Stephen Pesson	}	

Orla C. Richardson, Harvey S. Senter & Samuel Miller Commissioners appointed under the Order of the Court this day made to make partition of the lands described in the Bill in this case, report to the Court that after having taken an oath before the Court fairly & impartially to make partition

of the said lands in accordance with judgment of the Court, as to the rights and interests of parties, if the same can be done consistently with the interests of the estate of the proprietors of the land, and that they then went upon the said lands described in said bill and fully & carefully examined the same, and the said Commissioners do now report to the Court that the said lands described in said bill in this case are so circumstanced that a division thereof cannot be made without manifest prejudice to the proprietors of the same, and your Commissioners pray to be hence discharged with their reasonable fees.

O. C. Richardson  
 Samuel Miller } Commissioners  
 H. S. Suter }

And afterwards to wit: at the day and year last aforesaid and at the term of the Circuit Court aforesaid the following proceedings were had in said case to wit:

"State of Illinois	vs	Merces Circuit Court
Merces Circuit	vs	September Term AD, 1856
Samuel A. Hendricks		
Adelia A. Hendricks		
vs		Partition
James Francisco, Louisa		
Francisco, Peter E. Purpuring,		
Hannah A. Purpuring & Stephen Purson		

And now at this September Term AD, 1856 of the Circuit Court of Merces County this case again coming on to be heard and the Commissioners appointed in this case, O. C. Richard

24

son, Samuel Miller, and the my & Suter to make partition  
of the lands described in Complainant's Bill of  
Partition could be made consistently with the interests  
of the estate, having reported to this Court that a division  
of the lands described in the bill in this case cannot  
consistently be made with the interests of the said estate  
and that the said estate to wit: the said lands described  
in said bill are so circumstanced that a division  
cannot be made of them without manifest prejudice  
to the proprietors of the said lands. It is therefore by this  
Court Ordered that the said above named Ordo C.  
Richardson is hereby directed to sell the said lands  
described in said bill & in the Decree appointing  
such commissioners aforesaid to wit: Three acres of the  
South side of the North West quarter of Section Fourteen (14);  
Forty acres the North West quarter of the South East quarter  
of Section Ten (10) & Eighty acres the North half of the South  
West quarter of Section Fourteen (14) all in Township Thirteen  
(13) North in Range Four West in Mercer County  
in the State of Illinois. That said Richardson shall  
sell the ~~land~~ <sup>same</sup> on the terms following, namely, One half  
the purchase money shall be paid in hand, and  
the residue in one year with interest, the sale shall be  
at Public Auction Vendue at the door of the Court House  
in Keokuk. The Commissioners said Richardson  
before making such sale shall publish a notice  
of the time & place & terms of sale in the nearest  
weekly newspaper to said land, for four weeks  
successively the last of which shall be at least  
four weeks before the day of said sale.

And the said Richardson is hereby ordered



lands, a notice of the <sup>7th 24</sup> time, place, and terms  
of sale, a copy of which is hereto attached and follows  
" Commissioner's Sale

By Virtue of a decree of the Circuit Court, made  
at the September term 1856, then of, in the case of Samuel  
A. Wendricks and Adelia S. Wendricks, vs. Jane Francis  
co, Louisa Francisco, Peter E. Purpuring, Heirs and A.  
Purpuring and Stephen Purson, I will sell, as Commissioner  
at public vendue at the Court house, in Keithsburg  
County of Mercer and State of Illinois, on Saturday the  
first day of November, next all the interest in the  
parties above named to the following described  
Real Estate viz:

Three acres off the South Side of the North West quarter  
of Section Fourteen (14): forty acres, the North West quarter  
of the South East quarter of Section Ten (10) and Eighty  
acres, the North half of the South West quarter of  
Section Fourteen (14) all in Township Thirteen (13)  
North, in Range four West, in Mercer County in the  
State of Illinois. Terms of sale. One half of the  
purchase money shall be paid in hand, and the residue  
in one year with interest.

Ora C. Richardson Coroner

September 13<sup>th</sup> 1856. -41.

As your Master further reports that he  
caused said notice to be published in said newspaper  
for four weeks successively the last publication  
being more than four weeks before the day of said sale.

And your Master doth further report that  
on the first day of November A.D. 1856, at the Door of  
the Court House in said County of Mercer, between

25 99

the hours of 10 o'clock A.M. and four o'clock P.M. of said day he did expose to sale at public vendue the after described lands in pursuance of said decree, and that at said time and place Seth Gates bid the sum of Two hundred and fifty Dollars (\$2050.) for three acres off of the South side of the North West quarter of Section Fourteen, and Eighty acres the North half of the South West quarter of Section Fourteen all in Township Thirteen North in Range four West in Mercer County Illinois (which tracts were then by me put up together for sale as the most advantageous course for the interests of the owners of said lands lying as said tracts do together and naturally belonging and being used together for convenient use) which bid was the highest bid made for said lands and the two said tracts of land above described were then by me struck off to the said Seth Gates; and that at said time and place, Forty acres the North West quarter of the South East quarter of Section Ten & in said above described township was offered for sale by me under and in pursuance of said Decree, and Seth Gates bid therefor the sum of Nine hundred Dollars which sum was the highest bid made therefor, and said last named land was thereupon struck off by me to said Gates:

And your Master doth further report that the said Seth Gates thereupon paid me the sum of Fourteen hundred and seventy five dollars, the amount of the purchase money payable in hand, and gave to me his promissory note

for the residue of the same amount due in one year after date with interest: And your Commissioner & Master doth further Report that he hath by Deed here shown to the Court for its approval duly conveyed said land above described to said Seth Gates taking back a Mortgage and note for the residue of the purchase money all of which, Deed, Note & Mortgage & Money the said Master brings here into Court subject to the Order of the Court, save & except said Deed which is presented for approval and which has been duly delivered to said Seth Gates.

Ora C. Richardson "

And afterwards to wit: at the August Term 1857 of said Circuit Court and on the twelfth day of said term being the 12<sup>th</sup> day of September 1857, the following proceedings were had in said cause to wit:

18 Samuel Hendricks vs For Partition  
 Jane Francis et al

It is Ordered by the Court that this cause stand continued.

And afterwards to wit: on the same day and year last aforesaid, and at the term aforesaid, the following proceeds were had in said cause to wit:

17 Samuel Hendricks & Adeline Hendricks vs For Partition  
 Jane Francis, Louisa Francis, Hannah B. Surpenny, Peter C. Surpenny & Stephen Pearson

And now this cause

coming on to be heard and the Court having examined and approved the report made herein, at the March Term A.D. 1857, made by Orlo C. Richardson the Special Master in Chancery appointed in this cause, and being now duly advised and satisfied in the premises, does order and decree in the words and figures following to wit:

"State of Illinois  
 Mercer County

Mercer Circuit Court

March Term A.D. 1857.

Samuel A. Hendricks & Eliza Hendricks

vs

Partitions

Jane Francisco, Louisa Francisco, Hannah H. Purpuring, Peter E. Purpuring & Stephen Plesson

And now at this term this cause again coming on to be heard, and it appearing unto the Court by the Report of sale of Orlo C. Richardson appointed a Commissioner to sell, that the lands described in the petition in this case have been sold in accordance with the Order of Court and that a Deed has been made by him to the said purchaser and that a Mortgage and note have been given to secure a part of the purchase money by said Gates and the sum of fourteen hundred and seventy five Dollars is now in his hands, the proceeds of said sale, ready for distribution. It is therefore ordered and decreed by this Court that the said sale be and is hereby approved, and the said deed now shown to the Court is approved, and the title in fee to said lands possessed thereby is hereby confirmed in the said Seth Gates. And the Court doth further

P. 8

Order and Decree that it being shown to the satisfaction of the Court that the age of said Jane Francisco is 60 years & of Louisa 34 years the sum of Eight hundred Dollars be paid by the said Otho C. Richardson to the said Jane Francisco in full satisfaction of all her interest legal and equitable in and to the said lands of which partition has been made in this suit.

And that one hundred Dollars be paid to the said Samuel A. Hendricks and Leticia Ann Hendricks, and that one hundred Dollars be paid to the said Peter E. Purpuring and Harriet A. Purpuring, and that seventeen hundred and fifty Dollars be paid to the said Louisa Francisco: and that said payments be made by the said Otho C. Richardson out of the money now in and hereafter to be received in his hands: one half at this term of Court and one half within thirty days after the receipt by him of the proceeds of the purchase money from the said Seth Bates:

And that said payments be held and regarded as full satisfaction to the said parties respectively of all their rights and interests both legal and equitable as well those in hand and possession & evidence as those inchoate and in expectancy: and that all of said parties so to receive said sums of money are and shall ever hereafter be, barred and estopped from setting up any claim to said lands by through or under any right or title owned or had by them at the date of this decree - And the Court doth further order that this suit be continued until the next term of this Court,

And the Court doth further order that the title papers of the said lands shall be delivered by the said



said cause Comit: 30

11 " Samuel Kendrick et al vs Jane Francisco et al Petition for Partition

On Motion of Complainants Solicitor, It is ordered by the Court that an Attachment issue herein for Orla C. Richardson for a Contempt of this Court, in refusing to comply with an Order herein made at the March Term 1868 of this Court, directed to the Sheriff of Mercer County to execute, and it is further ordered that the Sheriff hold the said Orla C. Richardson to bail in the sum of Three thousand Dollars, and that the said writ of Attachment be made returnable to the next term of this Court.

State of Illinois  
Mercer County J. Harvey S. Senter Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the foregoing transcript of the Proceedings in the case of Samuel A. Kendrick, Adeline Kendrick against Jane Francisco, Louisa Francisco, Peter E. Purpuring, Hannah A. Purpuring and Stephen Pusean in our Circuit Court is truly copied from the Records and files of my office in testimony of which I hereunto set my hand and affix the seal of the said Circuit Court as my office in W. Va. this 21<sup>st</sup> day of April A.D. 1868  
Harvey S. Senter  
Clerk



Plaintiffs in Error Assign as Errors in this Case

- 1<sup>st</sup> Court Erred in making a decree for partition of said lands without first providing that Jane Francis's dower should be set off to her by metes & bounds, if practicable,
- 2<sup>d</sup> Court Erred in approving the report of the Commissioners
- 3<sup>d</sup> Court Erred in decreeing a sale of said lands, without first having Jane Francis's dower set off to her, or providing that the purchasers title should be subject to her dower
- 4<sup>th</sup> Court Erred in approving & confirming the Masters report, of the sale of said lands
- 5<sup>th</sup> Court Erred in approving the deed, to Seth Gates and confirming in him the title in fee to said lands
- 6<sup>th</sup> Court Erred in decreeing that Jane Francis should give up to said Gates all title papers to said estate in her possession, and to deliver up possession of the premises she then occupied, to him (when there had been no legal assignment of dower to her)
- 7<sup>th</sup> Court Erred in decreeing that said Jane Francis should be paid \$800, which should be in full satisfaction of all her legal & equitable interest in & to said estate

In nulla est erratum

Geo. N. Standing  
for H. N. Hendricks & Seth Gates Dfts in Error

151. 56

San Francisco Cal  
r

~~Samuel~~ Hendricks.  
Act.

Record

Filed March 28. 1881.  
L. Leland  
Clerk

Book for Making Records 1880

1880

# SUPREME COURT OF ILLINOIS,

**THIRD GRAND DIVISION,** }  
APRIL TERM, A. D. 1862. }

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JANE FRANCISCO, LOUISA FRAN-  
CISCO, HANNAH A. TURPENING,  
PETER E. TURPENING, AND  
STEPHEN PRESSON,

vs.

SAMUEL A. HENDRICKS, AND  
ADELIA A. HENDRICKS. ✓

*Seth Gates*

} PETITION FOR PARTITION

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## ERROR FROM MERCER.

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Proceedings had before the Honorable JOHN S. THOMPSON, Judge of the Tenth Judicial Circuit, in chancery sitting.

### ABSTRACT.

Complainants filed their petition with Clerk of Circuit Court of Mercer County, February 6th, 1856, for the March Term of said Court. Summons was issued against all the above name defendants, but Stephen Presson, and returned served (March Term).

At the March Term of said Court, leave was granted by the Court to amend the petition, and cause continued to the next term.

September 3d, 1856, amended petition was filed, which is, in substance, as follows :

**Abstract of the Amended Petition.**

2 Petitioners, Samuel A. Hendricks and Adelia A. Hendricks his wife, of Mercer county, Illinois, represent, in their Amended Bill: That your petitioners, together with Jane Francisco, Louisa Francisco, Peter E. Turpening and Hannah A. Turpening, are the owners in fee simple of the following described lands, viz: Three acres off the south side of the N. W. qr. of section 14, forty acres the N. W. qr. of the S. E. qr. section 10, and eighty acres the N. hf. of S. W. qr. of section 14, all in township 13 north, range 4 west, in said Mercer county. That all of said persons interested in said lands, derived their title through William Francisco, late of said county, now deceased, who at the time of his death occupied and used said land as his farm; that he died about three years ago, leaving a widow name Jane Francisco, one of the defendants, and four children, who were his only children and heirs—three girls and one boy—names, Solomon B. Francisco, Hannah A. Turpening married to Peter E. Turpening, Harriet Presson married to Stephen Presson, and Adelia Ann Hendricks married to Samuel A. Hendricks; that the above named widow and children were, and are, the only heirs at law of said William Francisco.

That Harriet Presson died about two years ago, childless and intestate; that during her lifetime she had one child by her husband, Stephen Presson, alive, and capable of inheriting her estate, which afterwards died before her death.

3 That Solomon B. Francisco died about one year ago childless and intestate, leaving a widow, said Louisa Francisco.

That by purchase, the said Solomon B. Francisco became the owner in fee of the interests in said estate of William Francisco, which the said Peter E. Turpening and Hannah A. Turpening, and your petitioners, had in said land, described by descent through the said Hannah A. Turpening and Adelia A. Hendricks, and died seized in fee of said interests.

That after the death of said Solomon B. Francisco, said Louisa Francisco became, and now is, the owner in fee by purchase from Stephen

Presson, of the interest and claim in and to said land of the said Stephen Presson.

That the following seven deeds, constitute the evidences of the title of the said William Francisco to the first above named tract of land, viz :

- 10
- No. 1. John S. Thompson, Commissioner of the estate of Thomas Willett, appointed to sell the same, to William Francisco.
  - " 2. Robert A. Bane to Thomas Willett.
  - " 3. William J. Turner to Robert A. Bane.
  - " 4. Lewis Barney to William J. Turner.
  - " 5. William Stansbury to Lewis Barney.
  - " 6. John Myenheifer to William Stansbury.
  - " 7. United States to John Myenheifer.

That the following eight deeds, constitute the evidences of the title of the said William Francisco to the second above described tract of land :

- No. 1. John S. Thompson ( commissioner as aforesaid ) to William Francisco.
- " 2. Lamb & Dunlap to Thomas Willett.
- " 3. C. F. Moulton and others to Lamb & Dunlap.
- " 4. Gossler & Parton to C. F. Moulton and others.
- " 5. James F. Bunnell to Gossler & Parton.
- " 6. John Lamb to James F. Bunnell.
- " 7. T. H. Hathaway to John Lamb.
- " 8. United States to T. H. Hathaway.

That the following described deeds constitute the evidences of title of William Francisco deceased, to the third and last above described tracts of land :

- 11
- No. 1. John S. Thompson ( commissioner as aforesaid ) to William Francisco.
  - " 2. Robert A. Bane to Thomas Willett.
  - " 3. Joseph Duncan to Robert A. Bane.
  - " 4. Mary Prout to Joseph Duncan.
  - " 5. William Prout and others, heirs of Jonathan Prout, to Mary Prout.
  - " 6. John Folio to Jonathan Prout.
  - " 7. United States to John Folio.

That the dates of said deeds are unknown to petitioners ; do not know that said deeds are recorded in this State ; that at the time of filing the original bill in this case, did not know in whose possession said deeds were, nor where they could obtain copies of the same, therefore did not file said deeds as exhibits in this case.

11 That on the 2d of April, 1856, petitioners were informed, for the first time, that the said deeds, or part of them, which were in possession of William Francisco, were in possession of said Jane Francisco ; the petitioners notified her that they wished said deeds to be used as exhibits in this case, but she declined to produce said deeds in court, or to deliver them to your petitioners for exhibits and evidence. Petitioners do not know where said deeds are to be found, &c.

Petitioners further show, that they are the owners in fee simple of a large part of said lands, which interest is now undivided ; that said tracts of land being supposed to be divided into 400 equal parts or shares, for the purpose of showing the rights of the different persons interested.

Petitioners are the owners in fee of forty-one of said parts ; Peter E. Turpening and Hannah A. Turpening owners of forty-one of said parts ; Jane Francisco is the owner in fee of eighty-two of said parts, and Louisa Francisco is the owner in fee of two hundred and thirty-six of said parts.

12 Further show, that the interest of all of said parties is subject to the right of dower of the said Jane Francisco, widow of William Francisco. And that subject to the dower therein of the said Jane, Louisa Francisco is entitled to be endowed, as widow of Solomon B. Francisco, in all of said lands of which the said Solomon was seized, as of an estate of inheritance in his lifetime, viz : 31-400ths of said land, and by lease, purchase and release from Stephen Presson, to an estate for life in an equal undivided one-third of 10-400ths of said lands, and also to an estate for life in an equal undivided one-third of 31-400ths of said land, to which two last named estates the said Stephen Presson was entitled, as tenant by courtesy, as the husband of Harriet Presson deceased.

Further show, that the said defendants, and especially the said Jane, have no other valid claim or title to said land than is set forth in this bill ; that she resided with her husband upon, and now remains as his widow

and has so resided ever since his death upon said lands, and now living in farm house upon them.

That as petitioners are informed, she has received the rents and profits of said lands ever since the death of William Francisco her husband ; that those rents and profits have been large, but can't state the amount.

That said Jane was in favor of partition two months ago, but now opposes partition, as we are informed, only for the purpose of receiving the rents and profits of the premises, &c.

13 Petitioners show, that said premises are rapidly deteriorating in value as to improvements ; that by neglect, carelessness and waste of said widow, the house and out buildings, and fence, are out of repair and rapidly becoming valueless, to the great injury of the interests of petitioners and other owners of said lands.

That no other person, or persons, other than those herein mentioned, have any interest in, or title to, any part of said lands.

That the second tract above mentioned, said widow fraudulently sets up a title, purchased while she occupied the farm as the widow of her husband, to which the said tract constituted the timber land ; that this is not the title to said land, but that William Francisco died seized of the genuine title ; that she is not entitled to set up said title, in case it was the genuine title to said land, against her tenants in common.

Petitioners have not in their possession, and are unable to set out the deeds which constitute this fraudulent title, they being in possession of said Jane.

14 That they cannot set out and make exhibit of any of the other contracts and conveyances, not in the chain of title to William Francisco set out in this bill, as the originals, or copies of them, are not in their custody, possession or power.

Petitioners therefore pray, that summons issue against Stephen Preson, Peter E. Turpening, Hannah A. Turpening, Jane Francisco, and Louisa Francisco, commanding them to answer this bill ; that a division and partition of said lands be made according to the respective rights of

parties interested ; that the estate for life of the different parties entitled thereto, be set off to them in the premises, and that in case a partition cannot be made without prejudice to the respective owners, a sale of said lands be ordered by the Court, and such other relief as to Court shall seem proper.

14 Petitioners file herewith, as exhibits, the originals of deeds numbers 2, 3 and 7 of the first tract above described ; also numbers 2, 7 and 8 of the second tract above described ; also, numbers 2, 3, 6 and 7 of the last tract described, and also copies of all the other deeds above mentioned, except deed number four of the first tract above described.

**Bill sworn to by Samuel Hendricks.**

15 At September term of said Court, on September 5th, 1856, defendants not appearing, bill taken as confessed, and cause referred to Master to take proof, and to report to this term of court. Same day, Isaac N. Bennett, Master in Chancery, made report, in substance, as follows, viz:

15 I hereby report, in the above entitled case, the evidence hereto annexed, marked " Exhibit A," and refer to the documents and papers on file in this case.

And as the conclusions derived by him, from the above evidence, the Master begs leave to report that the different allegations in the bill of complaint, are fully proved by said evidence.

17 That William Francisco died on the 4th November, 1852, seized in fee of before described land, leaving persons ( before named ) his children and heirs at law and widow ( before named ). That Harriet Presson married Stephen Presson, had one child born alive, and she, Harriet Presson, died on or about . . . . day of . . . . 1854, childless, leaving her husband surviving her. That S. B. Francisco married with Louisa Francisco, and died on or about the . . . . day of . . . . 1854, leaving no children, his said wife surviving him—his death occurring after that of Harriet Presson. That said Hannah Turpening married with P. E. Turpening. That Adelia A. Hendricks married with S. Hendricks ( complainants ).

That Louisa Francisco is seized in fee and entitled to have set off to

17 her, 236-400ths of said lands ; that P. E. Turpening and his wife are seized in fee and entitled to have set off to them, 41-400ths of said lands ; that S. A. Hendricks and his wife are seized in fee and entitled to have set off to them 41-400ths of said lands. That said Jane Francisco is entitled to have set off to her, as her dower, a life estate in one-third of said lands ; that Louisa Francisco is entitled to have set off to her, as her dower, a life estate in one-third part of 31-400ths of said lands, and that Louisa Francisco is entitled to have set off to her, a life estate during the life of S. Presson, obtained by her from Stephen Presson, as tenant by courtesy, in 131-400ths of said lands.

All of which is respectfully submitted, &c.

( Signed by the Master ).

“ EXHIBIT A. ” --- Abstract.

18 **O. C. Richardson,**

19 Sworn and says : He knew William Francisco, the father of S. B. Francisco, A. A. Hendricks, Harriet Presson and H. A. Turpening, and the husband of Jane Francisco ; he died about November 5th, 1852, leaving said children, his only heirs at law, and his widow, Jane Francisco. He occupied said lands ( described in bill ) as his farm from Spring of 1851 to his death ; he bought said land in Fall of 1850, of Daniel Hammock, who occupied it from March, 1844 to 1851, when he gave up possession to William Francisco. Hammock bought the land of Thomas Willet, and took a bond for it in 1844 ; this bond he assigned to William Francisco in 1850. On this bond he obtained a deed by suit in chancery ( which bond is in papers in that case in this court ). Louisa Francisco is the widow of S. B. Francisco ; he died in 1854, intestate, leaving no children. Harriet Presson married with Stephen Presson, and had one child by him born alive, and died leaving no children, husband still surviving. H. A. Turpening married with P. E. Turpening, and Adelia Hendricks married with S. A. Hendricks.

( Subscribed and sworn to before the Master ).

September Term, 1856, the following

**Decree was made :** ( Decree copied in full )

*September Term, A. D. 1856.*

20  
 And now, at this term of said Court, this case coming on to be heard, and the said Jane Francisco, Peter E. Turpening, Hannah A. Turpening, being three times severally called, made default and came not, and Stephen Presson and Louisa Francisco appearing by their attorney, George F. Harding, and none of said defendants making answer to said bill but making default, and the said case having been referred to the Master in Chancery, and the said Master having reported the evidence and his conclusions therefrom to this Court, from which it appears that he holds the allegations in the said complainant's bill to be fully proved. It is, therefore, by this Court, ordered, adjudged and decreed, that partition shall be made of of the lands described in said bill, to-wit, ( same as before described ). That Orla C. Richardson, Samuel Miller and Harvey S. Suiter, be appointed commissioners, fairly and impartially to make partition of said lands in accordance with the judgment of this Court, if the same can be done consistently with the interest of the estate aforesaid, and report their proceedings to this Court, setting forth the division made by them, if made, and if not, to report to the Court that division cannot be made consistently with the interest of the said estate, during this or the next leading term of this Court.

21  
 The Court further hereby declares, that Adelia A. Hendricks, and her husband Samuel A. Hendricks, in her right, are the owners in fee of 41-400ths of said lands ; Peter E. Turpening in right of his wife, Hannah A. Turpening, are the owners in fee of 41-400ths of said lands ; that Jane Francisco is the owner in fee of 82-400ths of said lands, and Louisa Francisco is the owner in fee of 236-400ths of said lands. That the interest of all of said parties said above, to be owned by them in fee, is subject to the right of dower of the said Jane Francisco, and that said Jane is entitled to have set off to her life estate in one-third of said land, and that Louisa is entitled to a life estate in one-quarter of said land during the life of Stephen Presson, and also to a life estate in an equal undivided third part of 31-400ths of said land during the life of Stephen Presson, and also to a less estate in one-third of 31-40ths of said land during her life.

( Signed by ) JOHN S. THOMPSON.

22 On the 6th day of September, of said term 1856, the commissioners appointed by the Court to make partition of said lands, reported that said lands were so situated, that no division could be made without prejudice to the proprietors. And asked to be discharged, &c.

25+ And on the same day, the Court appointed O. C. Richardson Special Master to sell said lands on the following terms, to-wit: one half of the purchase money to be paid in hand, and the residue in one year with interest. To be sold at public vendue, at the door of the court house in said county. Commissioner to publish notice of sale, (terms, &c.) four weeks successively, in nearest paper; last publication to be four weeks before sale, and to report his proceedings at next term of said Court, &c.

( Decree signed by the Judge ).

26 At the March term of said Court, 1857, fourth day of the term, the commissioner reported as follows, to-wit;

( Copy of the published notice of sale, in accordance with decree ).

28 That he made sale of the three acre tract and said eighty acre tract to Seth Gates, (highest bidder) for \$2050; and the forty acre tract to said Seth Gates for \$900 (the highest bid). That said Gates paid down the sum of \$1475, the amount to be paid down by the terms of the sale, and gave his promissory note for the residue, one year after date, with interest.

That he duly conveyed said land to Gates by deed, (shown to the court) taking back a mortgage and note, all of which he brings into Court (subject to the order of the court).

At the August term of said Court, 1857, the Court decreed as follows, to-wit: Confirming the proceedings of the Special Master as to said sale, (deed, &c.) title in fee confirmed in Seth Gates.

That the age of said Jane (widow) is 60 years, and of Louisa is 34 years; the sum of \$800 be paid by said Richardson (special master) to said Jane Francisco in full of her interest to said lands.

29  
30  
That \$100 be paid to S. A. Hendricks and his wife ; that \$100 be paid to Peter E. Turpening and his wife, and that \$1950 be paid to said Louisa Francisco. Payments to be made by said Richardson out of money now received, and to be hereafter received, one half at this term of Court, and one half within thirty days after receipt by him of the residue of the purchase money. That 600 of the 800 dollars be paid to said Jane Francisco within thirty days from this decree. Which payments, to said persons, shall be in full satisfaction of all their interest, &c., &c.

That the costs of this suit shall be paid by said Richardson out of said money, &c.

H. M. WEAD,  
*For Plaintiffs in Error.*

56  
Jame. Francisco et al  
vs

D. A. Hendricks et al

Abstract

Filed April 25<sup>th</sup> 1862  
L. L. Loomis  
clerk.

H. M. WEND.

(10)



That the whole of said lands are subject to the dower of Jane Francisco, in one third part thereof, during her life; that she has occupied and possessed said premises ever since the decease of her said husband; that a portion of said land is claimed by Jane Francisco, in her own right, by virtue of a title fraudulently obtained. (Record page 13.)

The bill prays for a *partition* of the lands, and "that the estate for "life of the different parties thereto be set off to them in the "premises," and if the lands cannot be divided, that they be sold.

No answer was filed to the bill, but on the 5th Sept., 1857, a default was entered, and the bill was taken for confessed as to all the adult defendants, and it was referred to the Master in Chancery "to take the proofs and report them to the Court."

The Master reported the same day, that William B. Francisco died on the 4th day of Nov., 1852, seised in fee of the land, and (Record page 16) left four children and a widow, viz., Jane Francisco; and the report further found the title in the respective persons as described in the bill.

The Court on the same day decreed that a partition should be had; that the title to said land was, as set forth in the bill, "and that the *whole of said land was subject to the dower of Jane Francisco.*"

The Court appointed Orla C. Richardson, Samuel Miller, and Harvey S. Senter commissioners to make partition of said lands.

On the 6th Sept., 1856, the commissioners filed their report, in which they say they took an oath before the Court—(but the oath is not set out)—that they went on the lands and found "them so circumstanced "that a division thereof cannot be made without manifest prejudice to "the proprietors of the same," and pray to be discharged.

Thereupon the Court ordered said lands to be sold, by Orla C. Richardson, at public vendue, one-half to be paid down and the balance in one year, with six per cent. interest.

Richardson sold two tracts of the land together, for \$2,050.00, and one tract separately for \$900, making \$2,950.00, to Seth Yates, who is made a defendant in this case, and reported to the Court the time, place, and manner of such sale.

At the March Term, A. D. 1857, the Court entered a decree confirming such sale, a portion of which is as follows:

"And the deed now shown to the Court is approved, and the title in "fee to said lands, passed thereby, is hereby confirmed in Seth Yates.

"And the Court doth further order and decree, that it being shown to "the satisfaction of the Court that the age of said Jane Francisco is 60 "years, and of Louisa 34 years, the sum of \$800 be paid by the said Orla "C. Richardson to the said Jane Francisco, in full satisfaction of all her

“interest, legal and equitable, in and to said lands.” The decree then provides for paying the other parties, and concluded thus: “And that “said payments be held and regarded as full satisfaction to the said “parties respectively, of all their rights and interests, both legal and “equitable, as well those in hand and possession and existence, as those “inchoate and in expectancy; and that all of said parties, so to receive “said sums of money, are and shall ever hereafter be barred and “estopped from setting up any claim to said lands by, through, or under “any right or title owned or had by them at the date of this decree.

“And the Court doth further order, that the title papers of said lands “shall by the said Jane Francisco, which were in her possession, to the “said Seth Gates, and that she deliver up possession of the said lands “described in the amended petition in this case, which are occupied by “her, to the said purchaser.”

1st. The proceedings in this case are equally erroneous whether viewed as an application for partition, or to deprive Jane Francisco of her dower. On its face, the bill asks for a partition of the legal estate, but the decree robs the widow of her dower, without any notice that her dower was demanded. It pointedly and emphatically deprives her of legal and equitable claim, and prohibits her from ever asserting either; it requires her to deliver up her title deeds and the possession of the land.

“The statute in relation to dower, page 500, sec. 27, provides “that “in all cases the widow may retain full possession of the dwelling “house in which her husband most usually dwelt next before his death, “together with the outhouses and plantation thereto belonging, *free* “*from molestation or rent*, until her dower be assigned.”

In this case, no *dower* ever was assigned to the widow. She is ordered to part with it, without any demand, upon a bill filed to *partition* certain real estate *subject to her dower*. The bill called for a partition; the decree not only allowed the partition, but robbed the widow of her dower.

The statute, sec. 24, provides that the Court which shall adjudge dower to the widow, shall appoint three commissioners to set off her dower.

By sec. 38 it is provided that, if the commissioners shall report the lands not susceptible of division, *a jury shall be empannelled* to enquire of the yearly value of the widow's dower in the premises and assess the same, and the Court shall render judgment that there be paid to the widow *a yearly allowance* in lieu of dower, to be paid on a certain day in each year during her natural life.

No Court has power to affix the yearly value of dower without a jury; nor can they assess an aggregate amount and arbitrarily say, that sum shall be in full for her claim of dower.

Courts cannot repeal the statutes, nor can they act in violation of

them; they cannot deprive a widow of her dower in her husband's property against her consent; they cannot deprive her of the possession of the property and of the yearly allowance also; she must have one or both.

*Bradshaw vs. Callaghan*, 5 Johnson Rep. 80.  
*Coles vs. Coles*, 15 Johnson Rep. 319.  
*Fowler vs. Griffin*, 3 Sanford Rep. 385.

2d. This proceeding is equally erroneous if viewed as an attempt at partition alone.

There are no proofs or exhibits to show any title whatever in any of the parties.

There is no call for an answer to the bill, *under oath*.

Commissioners were appointed, who were required to take a certain oath, and they report that they did take it; but I contend the oath itself should be returned and made a part of the record, that the Court can see and determine whether it is correct or not. All these principles are settled in the case of *Lloyd et al. vs. Malone et al.*, 23d Ill. 43.

H. M. WEAD,  
*For Plaintiff in Error.*

56

San Francisco Cal

13

S. A. Hendrickson

Cliff Point

Filed April 25<sup>th</sup> 1862

L. L. Linn

clerk



56.  
San Francisco Cal

v2

Hendricks Cal

Objections to defendants  
motion for abstracts  
by

H. M. Mead



Supreme Court of Illinois 56

~~157~~

Jane Francisco et al  
vs  
S Hendricks et al

Receipt

Filed March 28, 1861

L. LeGrand

Clerk



That the whole of said lands are subject to the dower of Jane Francisco, in one third part thereof, during her life; that she has occupied and possessed said premises ever since the decease of her said husband; that a portion of said land is claimed by Jane Francisco, in her own right, by virtue of a title fraudulently obtained. (Record page 13.)

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“interest, legal and equitable, in and to said lands.” The decree then provides for paying the other parties, and concluded thus: “And that “said payments be held and regarded as full satisfaction to the said “parties respectively, of all their rights and interests, both legal and “equitable, as well those in hand and possession and existence, as those “inchoate and in expectancy; and that all of said parties, so to receive “said sums of money, are and shall ever hereafter be barred and “estopped from setting up any claim to said lands by, through, or under “any right or title owned or had by them at the date of this decree.

“And the Court doth further order, that the title papers of said lands “shall by the said Jane Francisco, which were in her possession, to the “said Seth Gates, and that she deliver up possession of the said lands “described in the amended petition in this case, which are occupied by “her, to the said purchaser.”

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H. M. WEAD,  
*For Plaintiff in Error.*

56  
James Francisco tal  
vs  
S A Henderson  
tal —  
Peff's Points

Filed April 29<sup>th</sup> 1862  
L. Leland  
Clerk

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Mercer Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Courts of Mercer County, before the Judge thereof, between Samuel Hendricks & Adelia Ann Hendricks and Seth Gates

plaintiffs and Jane Francisco, Louisa Francisco, Peter E. Turpening, Hannah A. Turpening and Stephen Prisson

defendants, it is said that manifest error hath intervened, to the injury of the said Jane Francisco, Louisa Francisco, Peter E. Turpening and Hannah A. Turpening

as we are informed by their complaints the record and proceedings of which said judgments 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 Samuel Hendricks, Adelia Ann Hendricks and Seth Gates

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 first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Samuel Hendricks & Adelia Ann Hendricks and Seth Gates

notice, together with this writ.

Witness, The Hon. John W. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 28<sup>th</sup> day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one.

L. Leland

Clerk of the Supreme Court.  
By J. B. Rice Deputy

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Samuel Francisco & Mrs

No. vs.  
Samuel Hendricks

SCIRE FACIAS.

Sheriff has 125-  
collected 190  
200

S H Rodgers Sheriff \$ 2.35  
by R. Brislin Deputy

FILED April 17 A. D. 1861

A. Belmont  
C. Belmont Deputy  
Clerk.

Last day of Service  
April 6. 1861

I Do hereby certify that I have served this writ by reading the within to Adelia Ann Hendricks and Seth Bates the within named Daniel Hendricks not found in my county this sixth day of April 1861  
April 6<sup>th</sup> 1861  
S H Rodgers Sheriff  
by R. Brislin Deputy