

14343

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

Supreme Court of Illinois

Jennings

---

vs.

Smith.

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71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 274.

14343

*Pennington*  
*vs*  
*Smith*

1852

*Adversus*

[2]

II. That Levi Jennings died about December 28th, 1859, leaving a will, which was duly proved and admitted to Probate, a copy of which said will is attached to, and made part of the complainant's bill.

III. That the said Levi Jennings, by his said will, bequeathed all his real estate and personal property to Susan H. Jennings (married and now Susan H. Smith,) to be by her disposed of as in said will specified, and also before his death advanced divers large quantities of land to legatees in the will. But neither devised nor gave to the complainant any land or any estate therein.

The complainant admits that she is one of the legatees in the will, and that she has received about \$60 to apply on her legacy, part of which was derived from the sale of personal estate and on the will of said Levi Jennings.

IV. That during the coverture of the complainant, said Levi Jennings was seized in fee of the following lands:

[Here follows the description of about 1,000 acres of land.]

And also had an equitable estate of inheritance in about 2,000 acres of land.

Part of the land is in Henry County, Illinois, and a majority of them in Henry County.

Alleges that a mistake occurred in the description of the land in a certain deed.

That a majority of the land is in Henry County, and that they are all improved.

V. That the complainant, Mary Jennings, is the widow of the said Levi Jennings, and that she is entitled to a dower in the land.

April Term at Ottawa, 1862.

MARY JENNINGS,  
*Appellant.*

vs.

SUSAN H. SMITH, *et al*,  
*Appellee.*

*In Chancery for Dower.*

ABSTRACT OF THE RECORD.

Page of Record  
1

Pleas before the Hon. W. H. Heaton, Judge of the 22d Judicial Circuit Court of the State of Illinois, who exchanges with Ira O. Wilkinson, Judge of the 6th Judicial Circuit, at the October term of the Henry County Circuit Court, A. D. 1861.

August 13th, 1861, the complainant filed her amended petition for dower and relief.

The petition may be resolved as follows;

I. That the Complainant, Mary Jennings, the widow of Levi Jennings, deceased, was married to the said Levi Jennings the 27th day of July, A. D. 1816.

2 II. That Levi Jennings died about December 28th, 1859, leaving a will, which was duly proved and admitted to Probate, a copy of which said will is attached to, and made part of the complainants bill.

III. That the said Levi Jennings, by his said will, bequeathed all his real estate and personal property to Susan H. Jennings (married and now Susan H. Smith,) to be by her disposed of as in said will specified, and also before his death advanced divers large quantities of land to legatees in the will. But neither devised nor gave to the complainant any land or any estate therein.

The complainant admits that she is one of the legatees in the will, and that she has received about \$60 to apply on her legacy, part of which was derived from the sale of personal estate sold under the will of said Levi Jennings.

IV. That during the coverture of the complainant, said Levi Jennings was seized in fee of the following lands :

[Here follows the description of about 4,000 acres of land.]

And also had an equitable estate of inheritance in about 2,000 acres of land (also described.)

Part of said lands being in Peoria County, part in Vermillion County, and a majority of them in Henry County.

6 Alleges that a mistake occurs in the description of the land in a certain deed, and prays that the same may be corrected.

That a majority of the lands are in Henry County, and that they are all improved lands.

7 V. That Susan H. Smith, Nathaniel B. Gould and others, naming them, have some interest in the said land, though the nature of the interest is not known, and that the parties named are the only persons who have any claim or interest in the lands.

That said Levi Jennings also left, at the time of his death, a large amount of personal property—in value, exceeding his debts, of \$50,000.

8 Conclusion of the bill and prayer for dower.

Copy of the will referred to in the bill, marked, Exhibit "A."

The will consists of five "items," and is dated January 2d, 1848. Only the 2d, 3d and 4th are material to the matter in issue.

The *Second* item reads as follows :

"I desire that the sale of my personal estate take place in June next, or as soon thereafter as practicable, and the proceeds thereof, after paying all just demands upon me, to be divided equally between my former wife Mary, now in Ohio, my wife Susan H. and the children of both equally, to-wit, Simeon, Mary Ann, William, and Eliza Ann, by my wife Mary ; and Ann, Mary Jane and John Levi by my wife Susan H.

*Third.* I wish my son Simeon to remain in possession of and occupy the farm on which he lives, viz., S. W. of 32, 10 N. 5 E, free of charge, so long as it may be agreeable to my wife Susan H., such possession not to extend beyond the time when my youngest child, John Levi, shall become of age. If my wife Susan H. shall desire to sell said farm previously she is at liberty to do so, but when sold the proceeds thereof shall be divided equally among all my heirs above named, to-wit, my former wife Mary, my present wife Susan H. and the children of both.

Item *Fourth* reads as follows :

All my other real estate I leave at the disposal of my wife Susan H. to be sold by her whenever she shall deem proper, not extending this discretion however beyond the time of my youngest child, John Levi, becoming of age, the proceed of such sale or sales to be divided equally between my heirs as specified in items 2d and 3d.

- 10 The writ.  
 11 The return.  
 12 Motion to grant writ, overruled.  
 13 The general demurrer of the defendants.  
 Proceedings at the March term, 1862, of said court.  
 14 Decree sustaining the demurrer and dismissing the bill, with leave to the complainant to file appeal bond within thirty days in \$100, with E. T. Wells as security.  
 Bond filed.  
 16 Certificate, signature and seal of the clerk.

#### THE ERRORS ASSIGNED.

1st. The court erred in sustaining the demurrer of the defendants to the bill of complainant, it should have been overruled.

2d. The court erred in dismissing the bill of complainant, the decree should have been for the complainant.

3d. The said bill of complaint is sufficient and the demurrer should have been overruled.

SUPREME COURT,  
OF THE  
STATE OF ILLINOIS,  
THIRD GRAND DIVISION,

April Term at Ottawa, 1862.

MARY JENNINGS,  
*Appellant.* }  
vs. } *Appeal from Henry.*  
SUSAN H. SMITH, *et al,* }  
*Appellee.* }

BRIEF OF H. W. WELLS, FOR APPELLANT.

I. STATEMENT OF THE CASE.

This is a petition for dower, in the lands of Levi Jennings, deceased.

The petitioner and the deceased were married in the year 1816. During the coverture of the petitioner, said Levi Jennings owned large quantities of lands. He died December, 1859, leaving the petitioner, his widow, and several children, and also leaving a will which was executed and dated in 1848.

The Will was made a part of the petition, and contains among others, the following clauses, which are all that effect the issues :

Petition demurred to—demurrer sustained, and the petition dismissed.

## II. OF THE ERRORS ASSIGNED.

The petitioner assigns for error, the sustaining the demurrer and dismissal of the bill.

It is contended that the Will of the deceased bars the widow of her dower. That the Will contains such a devise of land under the statute, as will in equity debar the widow, she not having recovered her claim under the Will.

## III. POINTS.

1st. A devise of personal estate, though never so large, will not, under the laws of Illinois, debar a widow of dower. It must be a devise of land or some estate therein.

*Purples Statutes*, page 497 § 10.

2nd. Under the law as it stood in 1839, any devise or provision for a widow made by Will, would debar her of her dower, but by

by changing the law in 1845, the Legislature have clearly manifested the intention that nothing less than a devise of land or some estate therein shall debar a widow of Dower.

*Gales Stat.* 696, § 39, 40.

*Rev. Stat.* 1845, 199, § 10.

*Purples Stat.* page 497, § 10.

3d. The devise in question is not a devise of land, but is a devise of the proceeds of the land sold; such a devise is a devise of money, and not land.

*Baker vs. Copenbarger*, XV Ill. 103.

*Story's Eq. Jurisp.*, § 64, a 790 and note.

4th. A devise of real estate which by the provisions of the Will is to be converted into money, and that money distributed, must be treated as a devise of money and not a devise of land.

Ibid.

*Stitch v. Ashburne. Leading Cases in Equity Vol 1. page 775-*

5th. Equity will treat subject matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed.

*Story's Eq. Jurisp.* § 64 g. § 790 and note.

§1212, 1213, 1214, 1214, 1215, 1216.

Money devised to be laid out in land is treated as real estate and descends to the heir; and land devised to be sold, is considered and treated as money.

Ibid.

*Leading Cases in Eq. Vol 1. - 775-*

The testator has in this case by his Will, unequivocally fixed the character of the property as money, and the Courts will not disregard the clear intention of the testator.

*Story's Eq. Jurisp.* § 1214, 1214 a and note.

Had the testator in this case bequeathed a sum of money, directing that it be laid out in land and that land given to the widow.

[4]

Such a devise would have been clearly a devise of land within the statute, and would have debarred the widow of dower, and it is equally true that a devise of money, the proceeds of the sale of land—cannot be treated as anything but money.

See cases above cited.

*Jar. on Will.* Vol. I, Page 373.

*Ed. in Sup. Ct. Lib. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25*

The Courts delight to hear and grant petitions of this kind. They are—says Lord Coke—favorites of the law, and all intendments are in favor of the petitioner.

8th Ed. *Kent*, Vol. 4, Marg. page 61.

*Story's Eq. Jurisp.* § 629, 630.

The Legislature of Illinois have *extended* the right of dower beyond the common law right, and have also given the widow access to the Court of Chancery in the first instance, instead of forcing her to the old common law remedy of "Writ of Dower," and have thus manifested an intention to favor the granting of dower.

The Courts have also always inclined to favor such petitions, and have liberally construed the law in their favor.

8th Ed. *Kent*, Vol. 4, Marg. page 61.

*Story's Eq. Jurisp.* § 629, 630.

*Sisk vs Smith*, 1 Gil. 506.

*Purp. Stat.* 498, § 10. *10-14*

No act of the husband can debar a widow of dower without her consent, (unless it be a devise of land), and a devise of personal property, or money, would not bar her, even if the Will should so provide in express terms.

This is not a case where the widow is compelled to elect. There is no intent manifested on the part of the testator, that the pecuniary provision should be in lieu of dower, and the fair inference and legal presumption is, that it was intended to be a gift, in addition to the right of the widow to her dower.

*Purple's Stat.* 497, § 10.

*new Edition Leading Cases in Equity vol. 1, page 389*  
*4th John Chy Rep page 9*  
*2 " " " " " 485*

By the law of *England* prior to January 1st, 1834, a widow might take a provision under the Will of her deceased husband, and also her dower in lands owned by him during the coverture. She was not compelled to elect unless the devise was expressly stated to be in lieu of, or in compensation for dower, and by the laws of Illinois in 1859, a widow might take a devise of personalty from her deceased husband, and also her dower in lands, and no devise of personalty could debar her of dower.

*Purple's Stat. Chap. Dower, Page 496, § 1, 10, 14.*

*Kelley vs Stinson, 8 Blackf. 391.*

*Leading Cases in Eq. Vol. 1, page 387*

The parties have made the following

STATEMENT AND STIPULATION.

I. STATEMENT. This is a petition for dower in the lands of Levi Jennings, deceased.

The petition was filed August, 1861. The defendant files general demurrer to the petition. The Circuit Court sustained the demurrer and dismissed the petition.

II. STIPULATION. The petition of Mary Jennings, stipulates, that her husband, Levi Jennings died December, 1859, leaving a Will, which was admitted to probate in February, 1860. That she is a legatee in said Will. That she has not renounced her claim under the said Will, but claims both her legacy under the said Will and her dower at law. The defendants, Susan H. Smith, et al., stipulate that they contend that the devise to the widow in the Will of Levi Jennings, is such a devise as debars the widow of dower. The parties agree and stipulate that the *second, third and fourth* items in the Will, are all that affect the issues.

That if the judgment and decision of the Supreme Court be that the said Will contains such a devise, as will under the law, debar the widow of dower, the judgment of the Court below shall be affirmed. And if the judgment and decision of the Supreme Court, be that the Will does not contain such a devise to the widow, as will, under the law, bar her of dower, the judgment of the Court below shall be reversed, and the cause remanded with leave to the defendant's to answer.

H. W. WELLS, *Atty. for Mary Jennings.*

HINMAN & PAGE, *Attys. for Susan H. Smith, et al.*

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Mary Jennings

Susan W Smith <sup>7</sup> do

Philoff

Filed Apr. 24, 1862

G Seland

Clerk

Page 1

State of Illinois }  
Henry County }

Henry County Circuit Court  
October Term AD 1861

Before the Honorable William W Heaston Judge of the 22<sup>d</sup> Judicial Circuit of the State of Illinois who exchanges with Ira O Wilkinson Judge of the 6<sup>th</sup> Judicial Circuit in said State. At a Regular Term of the Circuit Court begun and holden at the Court House in Cambridge in said county and state on the second Monday in the Month of October in the year of our Lord One thousand eight hundred and sixty one, it being the fourteenth day of said month, In Chancery sitting

Present the Honorable William W Heaston Judge  
Amos Gould Clerk  
Adam W Heaney Sheriff

Know Ye that on the 13<sup>th</sup> day of August AD 1861 a Bill was filed in said court on the Chancery side thereof in the words and figures following to wit:

State of Illinois }  
Henry County }

Circuit Court of said County  
October Term AD 1861

To the Honorable Ira O Wilkinson sole Judge of the sixth judicial circuit in the state of Illinois in Chancery sitting. The amended bill of complaint of Mary Jennings of Warren county Ohio filed herein by leave of the court for that purpose first had and obtained respectfully sheweth unto your Honor

Your Oratrix Mary Jennings of the county of Warren in the state of Ohio the widow of Levi Jennings late of Henry county Illinois now deceased, That your Oratrix and the said Levi Jennings were married about the 27<sup>th</sup> day of July AD 1816 at the county of Columbiana in the state of Ohio

Page 2  
That the said Levi Jennings the husband of your Oratrix departed this life about the 28<sup>th</sup> day of December AD 1839 leaving a will which said will was duly produced and proven before the County Court of Henry county and was admitted to probate a copy of which said will is herewith attached & marked "exhibit A" and made a part of this bill, and your Oratrix may leave to introduce a certified copy of the original, Will together with record of the proceedings had thereon in said County Court as evidence at the final hearing of this cause

Your Oratrix further sheweth that the said Levi Jennings by his said last will bequeathed divers large quantities of Real Estate and all the real estate and personal property of which he died seized to Susan Mc Jennings to be by her disposed of as in said will specified Your Oratrix further sheweth that the said Levi Jennings also before his death gave devised and advanced divers large quantities of Real Estate to legates mentioned and named in said will to wit to John Le Jennings Mary Jane Jennings now intermarried with Nathaniel B. Gould and named Mary Jane Gould, to Ann V Jennings now intermarried with James Bush and named Ann V Bush but the said Levi Jennings neither devised nor gave any land or any estate therein to your Oratrix by his said last will or otherwise. Though your Oratrix admits that she has received a small amount of money as part of her legacy under said will of said Levi Jennings to wit about sixty dollars a part of which sum was the avails of the sale of personal property under the will of Levi Jennings sold under the provision of the will of said Levi Jennings as your petitioner is informed, Your Oratrix further sheweth that the said Levi Jennings was during the coverture of your Oratrix as his wife seized in fee simple of the following lands to wit

12 1/2 acres in the North East corner of the South West

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quarter of section nine

640 acres the whole of section one 160 acres the southeast of section eight, 40 acres the North East  $\frac{1}{4}$  of the south West quarter of section thirteen

80 acres the West half of the South East quarter of Section Seventeen, All the above lands being in Township fifteen north range three east of the fourth P.M.

Also 80 acres the North half of the South East quarter of Section Eighteen Township fifteen North Range four east of the fourth P.M.

120 acres the South half and the North West quarter of the North East quarter of section Eighteen (18)

80 acres the South half of the North West quarter of Section seven

160 acres the South East quarter Section seven

80 acres the East half of the North West quarter of Section seven, 160 acres the South West quarter of Section seven

160 acres the North East quarter of section seven

160 acres the North West quarter of section six all the above lands being in Township fifteen North and range four east of the fourth P.M., Also the West half of the South West quarter of section sixteen in Township fifteen north Range one east of the fourth P.M.,

Your Grantee also sheweth that the said Levi Jennings was also seized of an equitable estate of inheritance in the following lands to wit

80 acres the east half of the North West quarter of Section thirteen, The North East quarter section twelve, The South East quarter of section twelve, The South West quarter of Section twelve, All said last named lands being in Township fifteen north range three east of the fourth P.M.,

And your Grantee sheweth that the legal estate and title to said last named lands vested in one Isaac H. Jennings

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who hath intermarried with one John Smith and is now Susan  
The Smith in trust nevertheless for said Levi Jennings his heirs  
executors devisees and assigns, And your orator that said  
Levi Jennings purchased said lands and paid the purchase money  
out of his own money for all said lands and procured the legal title  
of said lands to be conveyed to said Susan & Smith that Susan &  
Jennings in trust for his own sole use benefit and advantage  
and that said Susan & Smith then Susan & Jennings did  
receive and continue to hold the legal estate and title to said  
lands in trust for said Levi Jennings sole use benefit and advan-  
tage and that said Levi Jennings did continue to occupy said  
land and to farm and till the same and to receive <sup>all</sup> the ~~same~~  
all the issues and profits of the same as his own by and with the  
consent of the said Susan Your orator further sheweth that  
the said Levi Jennings was also seized in fee of the following  
lands situate in Pleoria County in the State of Illinois to wit  
as follows

40 acres the N E qtr of the N E quarter of Section (32) thirty two  
80 acres the West half of the South East quarter of Section (32) thirty  
two. The West half of the North east quarter of Section thirty three  
The South East quarter of the North East quarter of Section thirty three  
all the above lands lying and being in township ten north of  
Range five east of the fourth P.M.

Also the South East quarter of Section (2) Two The East  
half of the South East quarter of Section ten The West  
half of the South East quarter of Section (10) ten The South  
West quarter of Section eleven, The East half of Section  
number fifteen All the above lands being in township  
number eleven north range five east of the fourth P.M.

Also the North half of the North West quarter of Section (20)  
twenty in township eleven north of range seven east of  
the fourth P.M.

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And the East half of the North West quarter of Section Number Six in Township Ten North Range Six East of the fourth P.M.  
Your Oratrix also sheweth that the said Levi Jennings did have an equitable estate of inheritance in the following lands to wit, The South East q<sup>r</sup> of the South West of Section No. 12 The South West quarter of the North West quarter of Section fourteen. The East half of the North West quarter of Section thirteen The North East quarter of the South West quarter of Section thirteen all in Township eleven North of range five East of the fourth P.M.  
And your Oratrix sheweth that the said last named tracts of land were vested the legal title thereof in said Susan Mc Jennings in trust for said Levi Jennings that the said land were bought by the said Levi Jennings and paid for out of the money of the said Levi Jennings procured the legal title to said land to said Susan Mc Jennings since married to John Smith as aforesaid and your Oratrix is informed and believes that said lands were sold and disposed of by the said Susan Mc Jennings while she was said Susan Mc Jennings as aforesaid that the proceeds of said sale were received and applied to his own use by said Levi Jennings and the said Susan never had any title or interest in said lands other than as trustee for said Levi Jennings And your Oratrix avers that said sale of the said lands was made without her knowledge or consent in any manner and that she never signed or joined in any conveyance of the same  
All of said last named lands lying and being in Peoria County Illinois,  
Your Oratrix further sheweth that the said Jennings was also seized in fee simple of the following lands in the county of Vermillion in the state of Ills. The North East quarter of Section twenty one. The East half of the North East quarter of Section thirty two The North half of the South East quarter of Section

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Thirty two The North east quarter of section thirty three  
The East half of the North West quarter of section thirty three  
The South West quarter of section thirty three all in Township  
Nineteen north range thirteen west of the 2<sup>d</sup> P.M. in Ver-  
million county Illinois

Your orator further sheweth that the said North half of the South East  
quarter of section thirty two was conveyed among other convey-  
ances by Elijah Coker with to John Clark by deed Feb'y 22, 1842  
and Recorded in Book 4, Page 25 of the Records of Vermillion  
County Illinois but your orator sheweth that through mistake  
in writing said deed the section then was written 38 in  
place of 32 as was intended and your orator avers that  
the land intended to be conveyed among others correctly de-  
scribed was the North half of the South East quarter of section  
thirty two in place and stead of the North half of the Southeast  
quarter of section thirty three as was written through mistake

Your orator further sheweth that a majority of said lands are in  
Henry county Ills and that all said lands are and were  
unimproved lands Your orator further sheweth that Susan H  
Dunning lately married to John Smith and now named  
Susan H Smith John Smith Ann V Dunning who hath  
intermarried with James Bush and is now named  
Ann V Bush Mary Jane Dunning lately intermarried  
with Nathaniel B Gould and is now Mary Jane Gould  
Nathaniel B Gould John L Dunning William Dunning  
Mary Ann Dunning and the minor children and heirs of  
Simon Dunning deceased to wit: William L Dunning  
Abigail D Dunning Joseph B Dunning Hannah Dunning  
Mary E Dunning Elias B Stiles William C Prokergill  
Gardner W Stone Curtis Wood Jacob Bishell Adam  
Kessler Johnson A Robinson James J Pope Thomas Cook  
Charley Young Lewis L Booth Robert A Smith the

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unknown heirs of George W Bisdell deceased Powell Hooff  
Robert Garrison James C Runyon Robert Marshall Samuel  
Briggs D Camp Isaac Heall William Colburn Henry  
Heahm Joseph Paul R Purce Samuel Marshall Hevan  
He Calett Hevald Calette George Cornelius John Cornelius  
The unknown heirs of Jesse Smith deceased Lincoln Mead  
Nathaniel Mead James East John Price William Fellows  
Zachariah Hugler who your orator prays may be made  
parties defendant to this bill have or claim some interest  
or title or right in the aforesaid lands though your orator  
is not advised of what is the nature or extent of the said  
claim though your orator believes that some of the parties above  
named claim separate distinct interests from other parties  
to separate tracts of land but your orator avers that  
they the parties above named as defendants are the only  
parties except your orator who claim or have any right  
title or interest in or to the said lands or any of them Your  
orator therefore prays that a writ of summons may issue  
against the said defendants and that they and each of them  
may be compelled to attend at the next term of the circuit  
court and full true and perfect answers make to all the  
allegations in this bill of complaint as fully and as per-  
fectly as though particularly and separately interrogated  
Your orator is further informed and believes that the said Levi  
Jennings left large quantities of personal estate at the time of  
his death out of which your orator as his widow is entitled to  
dower and your orator is informed that said personal estate  
exceed the debts of the said Levi by at least fifty thousand dol-  
lars and consists in part of sheep hogs cattle horses hay  
corn oats wheat carriage wagons sleds money notes con-  
tracts for the payment of money chattel mortgage trust deeds  
and other evidences of debts due said Levi Jennings house

old furniture books farming implements and tools out of which your orator is indebted to one third after the payment of all the debts due and owing by said Levi Jennings. Your orator therefore prays that quantum ad litem may be appointed for the minors under age herein named and that this honorable court will on the final hearing of this cause enter a decree amending said mistake in said deed hereunderfore specified and granting your orator her dower in all the afore mentioned and described lands as well the lands in which the said Levi Jennings had an absolute estate in fee simple as the lands in which he was seized of an executory estate of inheritance and in which the legal title vested in said Susan W Jennings as trustee for said Levi Jennings and for such other and further relief as to equity and good conscience shall appertain as

Mary Jennings

H W Wells

Sol for Petitioner

"Exhibit A"

I Levi Jennings being suddenly stricken down by a dispensation of Providence whereby serious apprehensions are entertained that I must soon bid fare well to earthly things, yet being in the full possession of all my mental faculties do make this my last will and Testament

First I give and bequeath to my beloved wife Susan W all the money I now have in my possession amounting to about \$698.57 also all the money she now has in her possession second. I desire that the sale of my personal estate shall take place in the beginning of June next or as soon thereafter as practicable and the proceeds thereof after paying all just demands upon me to be divided equally between

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my former wife Mary now in Ohio my wife Susan He and the children of both equally to wit to Simeon Mary Ann William and Eliza Ann by my wife Mary and to Ann Mary Jane and John Levi by my wife Susan He, Third I wish my son Simeon to remain in possession of and occupy the farm on which he lives viz. the Tr of 82 10 N 5 E free of charge so long as it may be agreeable to my wife Susan He such possession not to extend beyond the time when my youngest child John Levi shall become of age If my wife Susan He shall desire to sell said farm previously she is at liberty to do so but when sold the proceeds thereof are to be divided equally among all my heirs above named to wit my former wife Mary my present wife Susan He. and the children of both

Fourth all my other real estate I leave at the disposal of my wife Susan He. to be sold by her whenever she shall deem proper not extending this descension however beyond the time of my youngest child John Levi becoming of age the proceeds of such sale or sales to be divided equally between my heirs as specified in items 2<sup>d</sup> and 3<sup>d</sup>

Fifth I hereby appoint my wife Susan He and my friend and neighbor William J Phelps my executors leaving to their judgment in the fear of God the carrying out of these my wishes and leaving to their wisdom also the control and disposal of all matters pertaining to my estate not herein specifically mentioned

Given under my hand at Leona this second day of January 1841

In presence of

Sam He Davis

Smith Frye

James C Armstrong

} Levi Jennings

State of Illinois }  
 Mercury County } } D Bonar Clerk of the county court of  
 Mercury county certify the foregoing to be a true and correct copy  
 of the Last Will and testament of Levi Jennings deceased  
 as filed in my office for record June 17<sup>th</sup> 1860  
 Witness my hand and official seal at Cambridge this  
 7<sup>th</sup> day of August - AD 1860  
 Daniel Bonar Co Clerk

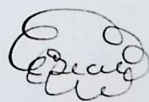
And afterwards to wit on the 13<sup>th</sup> day of August AD 1861  
 a summons issued out of said court in said cause in  
 words and figures following to wit

State of Illinois }  
 Mercury County } The People of the state of Illinois to the  
 Sheriff of Mercury county Greeting "  
 We <sup>hereby</sup> command you  
 to summon, Susan Mc Smith John Smith Ann V Bush  
 James Bush William C Pickensgill Elias B Stiles Gardners  
 Stone Cortis Wood Jacob Reshie Adam Vester Johnson a  
 Robinson James T Pope Charley Young The unknown heirs  
 of Geo W Birdsell dec<sup>d</sup> Powell Coff Samuel Briggs  
 Isaac Hall Mercury Heabu R Pierce Heiran Mc Callitt  
 George Cornelius, The unknown heirs of Jesse Smith dec<sup>d</sup>  
 James East William Hellows William Jennings Mary  
 Sam Gould Nathaniel B Gould John L Jennings Mary  
 Ann Jennings, minor children & heirs of Simeon Jennings  
 dec<sup>d</sup> William L Jennings Abigail D Jennings Joseph  
 B Jennings Hannah Jennings Mary E Jennings  
 Thomas Cook Lewis Le Booth Robert A Smith Robert Garrison  
 James C Runyan Robert Marshall D Camp William  
 Coakburn Joseph Paul Samuel Marshall Herald Catlett

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John Cornelius Sumner Mead Nathaniel Mead John  
Price Zachariah Hlaugher 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 Cambridge on the second  
Monday in the month of October next to answer a Bill of  
complaint filed in our said circuit court on the Chan-  
cery thereof against them by Mary Dunning and have  
you then and there this writ and make return thereof in  
what manner you see cause the same

Witness Amos Gould clerk of our said circuit court and  
the seal thereof at Cambridge this 18<sup>th</sup> day of August A.D. 1861



Amos Gould Clerk

By E. S. Bond Deputy

Which said summons was returned by the Sheriff of Newbury  
county on the 11<sup>th</sup> day of October A.D. 1861 endorsed in  
words and figures following to wit

Served the within Summons on Adam Fester by reading the same  
to him & also at the same time delivering to him the said Adam  
Fester a copy of the within September 14/61. Served the within  
summons by reading the same to Susan Smith & by leaving a  
copy of the same with the said Susan Smith this 23<sup>rd</sup> day of  
September 1861, Mary Jane Gould John L Jennings & Mary Ann  
Dunning this 24<sup>th</sup> day of Sept 1861 By reading the within to said  
defendants & by leaving a copy of the same with each of said defendants  
Served on Nathaniel B Gould by reading the within Summons  
to him the said Gould & by delivering a copy of the same to  
him this 19<sup>th</sup> day of Sept 1861 Served the within Summons on  
Gardner W Stone by reading the same to him & by delivering  
a copy of the same to the within named Gardner W Stone this  
20<sup>th</sup> day of Sept 1861

Adam H Newbury Sheriff  
Newbury County

Served the within summons by delivering a copy of the same to the within named Charles Young this 25th day of September AD 1861 also Abigail D Jennings Joseph B Jennings Mary E Jennings also upon Hannah Jennings by leaving a copy of the same at her residence with Abigail D Jennings she being a member of the family a white person & over the age of ten years & informing her of the contents of the same this 30th day of September AD 1861

Adam K Kennedy Sheriff

By A C Howard Deputy

The defendants who are not served cannot be found in my county

Adam K Kennedy Sheriff

Kennedy Co, W Va

And afterwards to wit at the term aforesaid and on the second day of said term it being the 15th day of Oct 1861 the following proceedings were had in said cause to wit

Mary Jennings

vs

Susan Jennings et al

} For Dower

At this day came the Complainant by Wells her solicitor and the defendants by Keimman & Peep their Solicitors and the cause being called for the hearing of motions &c, And now comes the defendants by their Solicitors and enter their motion to quash the summons issued herein, and affidavit of complainant of non-residence of defendants, motion to quash summons overruled by the court and the defendants ruled to answer complainant's bill by tomorrow morning

And afterwards to wit at the term aforesaid and on the 3rd day of the term it being the 16th day of Oct

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A<sup>d</sup> 1861 The said defendants by their Solicitors filed their demurrer to the said complainants Bill in words and figures following to wit

Mary Jennings  
vs  
Susan Mc Smith et al

} For Dower

These defendants by protestation not confessing all or any of the matters and things in the said complainants Bill contained to be true in such manner and form as the same are therein set forth and alledged do demur to the said Bill and for cause of demur shows that the said complainant has not by her said Bill made such a case as entitles her in a court of equity to any discovery from these defendants respectively or any of them touching the matters complained of in the said Bill or any of them cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against the defendants by the said Bill nor entitle said complainant to any relief in this court touching any of the matters therein complained of. Therefore and for divers other good causes of demurrer appearing in said Bill these defendants do demur thereto and they pray judgment of this court whether they shall be compelled to make any further and other answer to said Bill and they humbly pray to be dismissed from hence with their reasonable cost in this behalf sustained

Her Honor J. Page  
Sol for Defs

And afterwards to wit at the March Term 1862 of the said circuit court before the Hon Jno O Wilkinson Sole Judge of the said circuit court in the 6th Judicial District in the State of Illinois and on the 15<sup>th</sup> day of said Term it being the 22<sup>d</sup> day of March 1862 the following proceedings were had in said cause

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Mary Jennings

vs

Susan Mc Smith et al

For Dower

March 22<sup>d</sup>

And now at this day came the complaint  
 by F W Wells her solicitor and the defendants by Hummell & Page  
 and Beardsley her solicitors and by their agreement submit  
 the decurrer of debts to complainants petition with leave for  
 the court to decide the same per forma at this time with the right  
 for either party to except to said decision and remove the said  
 cause to the Supreme Court for its adjudication and decision, and  
 the court having heard the matters arising upon the said de-  
 currer, doth and adjudge that the same be sustained and that  
 complainants petition be dismissed at her costs to which order  
 complainant at the time thereof excepted, and on motion of  
 complainant she is allowed thirty days from this date in  
 which to file a bond on appeal to the Supreme Court in the  
 sum of \$100<sup>00</sup> with E J Wells as security

Jno O Wilkinson

Judge &c

And afterwards to wit on the day and year last aforesaid came  
 the said complainant by her solicitor and filed her appeal  
 Bond in said cause in words and figures following to wit:

State of Illinois }  
 County of Henry }

Henry County Circuit Court

Know all men by these presents that we Mary Jennings  
 as principal and E J Wells as security are held and  
 firmly bound unto Susan Mc Smith John Smith Ann V Bush  
 James Bush Mary Jane Gould Nathaniel B Gould John L  
 Jennings William Jennings Mary Ann Jennings

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William Demming Abigail D Demming Joseph B Demming  
Hannah Demming Mary E Demming William C Pickergill  
Elias B Bates Gardner W Stone Curtis Wood Jacob Keshill Adam  
Fester Johnson A Robinson James J Pope Thomas Cook Charley  
Young Lewis L Booth Robert A Smith The unknown heirs  
of George W Birdsell deceased Powell Keuff Robert Garrison  
James E Runyon Robert Marshall Samuel Briggs DeCamp  
Isaac Hall William Coburn Henry Hahn Joseph Paul Pierce  
Samuel Marshall Hiram H Collett Herald Collett George  
Cornelius John Cornelius The unknown heirs of Jesse Smith  
deceased Simon Mead Nathaniel Mead James East

John Price William Fellows Zachariah Flaughter in the  
penal sum of one hundred dollars for the payment of which  
well and truly to be made we and ourselves our heirs executors  
and administrators jointly and severally and firmly by  
these presents The condition of the obligation is such that  
whereas at the March term A D 1862 of the Henry County circuit court  
is a cause then pending wherein the said Mary Demming was  
complainant and the said Susan W Smith and others were  
defendants The court did order and decree that the demand  
of the said defendants to the said complainant Bill of  
complaint be sustained, from which order and decree  
the said complainant Mary Demming prayed and obtained  
an appeal to the Supreme Court, Now if the said Mary  
Demming shall duly prosecute her said appeal and in case  
the decree of the said circuit court be affirmed shall pay the  
judgments costs interest and damages adjudged against her  
by said Supreme court then the obligation shall be void  
otherwise to remain in full force and effect

Mary Demming  
By H W Wells her atty in fact  
E S Wells

EB  
EE

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State of Illinois }  
Henry County } P. J. Amos Clerk of the Circuit Court  
in and for said county, do hereby certify that the foregoing is  
a true full and complete copy of the record in the above entitled  
cause, as therein specified to wit. Complainants Bill, Summons  
Demurrer of depts, Decree, and Bond, as appears from  
the files and Records of my office

Witness Amos Clerk of the said circuit court and  
the seal thereof at Cambridge in said County this 28th day  
of March AD 1862

Amos Gould clerk  
By W. Le Dalrymple depts

Mary Jennings  
vs  
Susan H. Smith et al

Transcript of Record  
from  
Henry County Court

State of Illinois 25

Now comes the said Mary Jennings the Complainant in the said bill of Complaint by her attorney and says that in the said Record and in the rendition of Judgment there is manifest error. And for special Cause sheweth

1<sup>st</sup> The Court erred in sustaining the demurrer of the said defendants to the said bill of Complaint. The demurrer should have been overruled -

2<sup>d</sup> The Court erred in dismissing the complainant's bill of Complaint. The judgment and decree should have been for the complainant

3<sup>d</sup> The said bill of Complaint is sufficient in law; and the demurrer should have been overruled,

Wherefore and for many other errors in the said Record and in the rendition of Judgment, the said Mary Jennings the complainant in said bill prays that the judgment may be reversed, and wholly for nothing returned

W. H. Wells

State of Illinois &c.

And the said defendants by  
Hirman & Page their attorneys say  
that there is no such error in the  
record and judgment but the same  
is in all respects regular and valid  
wherefore they pray judgment &c  
Hirman & Page  
Attys for Defs

34 274  
Mary Jennings  
complainant & Appellant

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Susan H. Smith et al  
defendants appellees

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Filed Apr. 24. 1862  
L. Keland  
Clk.