No. 14790

# Supreme Court of Illinois

Doolittle

vs.

Handberry et al

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 129

W. Macfarlane & Co., Stationers, 196 Lake St.

# SUPREME COURT OF ILLINOIS,

## THIRD GRAND DIVISION,

### APRIL TERM, A. D. 1865.

MARY HANDBERRY *et als.*,
*vs.*
SAMUEL G. DOOLITTLE, BY NEXT FRIEND, ELLEN DOOLITTLE. } ERROR TO TAZEWELL COUNTY.

## BRIEF OF PLAINTIFFS IN ERROR.

### STATEMENT.

Samuel G. Doolittle filed his petition to the February term, 1865, of the Tazewell Circuit Court, against plaintiffs in error, for partition of the S W quarter and the S W quarter of the N W quarter of Sec 28, T 24, N R 5 W, in said Tazewell County, claiming one third part thereof, as one of the children of Rawley S. Doolittle, deceased, and devisee under the will of his uncle, William B. Doolittle, deceased.

The will was made April 15, 1851, and the testator died July 21, 1854. At the date of the will said Mary and Martha were the only children of said Rawley S. Doolittle by his first wife, (who was then dead) and aged respectively seven and five years. On February 22, 1856, and after testator's death, said Rawley married again, and petitioner is his only child by said second wife, Ellen Doolittle. Said will bequeaths and devises one fourth part of testator's estate to Mary M. and Irwin B. Doolittle, infant children of Irwin B. Doolittle, deceased, to Amaziah Doolittle one fourth part, to George W. Doolittle one fourth part, and to the children of said Rawley one fourth part. Said Irwin B. Doolittle, deceased, Amaziah, George and Rawley were brothers of the testator. The children, as well of Rawley as of Irwin B., take by survivorship from each other, if one of either set dies in infancy. And in case all of either class of devisees die in the lifetime of the testator, without lawful wife or child, the share of such class or party to go to the other devisees under said will. The will further provides that said Rawley is to manage the portion his children shall become entitled to at testator's death, in his discretion, and without account-

ng for its application to any person in any court, till the youngest of said children shall become of full age; and in case of his death before the testator, that the same be controlled by guardians duly appointed. and acting under the law. And lastly, that if said children die before the testator, said Rawley surviving, their share to vest in said Amaziah, but for the use of said Rawley. On the 14th of September, 1855, said Amaziah, George, Rawley, Mary and Martha Doolittle filed their petition in said Tazewell Circuit Court against said Mary M. and Irwin B. Doolittle, *et al.s*, for partition of the lands devised by said will, of which said two tracts above described formed part. At the October term, 1855, of said Court, a decree of partition was made in said cause, directing among other things one fourth part of all the lands devised to be set off to said Mary and Martha, children of said Rawley, to be held by them as tenants in common, appointing commissioners to make partition, &c. At the April term. 1856, said commissioners report that they have partitioned and set off to said Mary and Martha said S W qr and the S W qr of the N W qr of said Sec 28, as and for their one fourth of said devised lands, to be held by them as tenants in common, which report is duly approved and confirmed by said Court on the 2d of May, 1856. Petitioner was born Dec. 21, 1856. Said Rawley died May 4, 1864, and since his death said Mary and Martha, with their husbands, Handberry and Conklin, have sold and conveyed said two tracts to said Carey, claiming the whole to the exclusion of petitioner. The Circuit Court has decreed petitioner entitled to one third part of said two tracts, and ordered partition to be made accordingly, which has been done, and report of commissioners made and approved at said February term, 1865, of said Court. To reverse which this writ of error is brought.

I.

Is petitioner entitled to take under this will? He was not in life till more than two years after the testator died; and Rawley S. Doolittle had two children living when the will was made, and both survived the testator. Does the word "children," as used in the will, refer to them only, or does it also include petitioner? The rule of construction in cases of this kind, where the intention of the testator is not otherwise determinable, is understood to be this—that a devise or bequest to a *class* of persons, as "to the "children of A.," where no time is limited for it to take effect, in possession, embraces all answering to the description, *in being at the death of the testator*, and no others. Heath *vs.* Heath, 2 Atkins Rep. 121. Horsely *vs.* Chaloner, 2 Ves. Sen. 84. Jenkins *vs.* Frazer, 4 Paige 47. Jarman on Wills, 2, 74-5. Redfield on Wills. 386, and Brooks *passim*.

But it is said, that the devise is not to take effect, *in possession*, immediately on the death of the testator, that an estate of some sort, in the property devised, either for life, or until the youngest of his children becomes of age, is first carved out and vested in Rawley S. Doolittle; and it is ad-

mitted that, in the absence of anything showing a contrary intention, this would vary the rule. But is it so? It is a devise of lands to which the claim of petitioner is set up. And it is *in verba praesenti*, "to the children "of Rawley S, Doolittle," in the same clause, and in the same terms as the devises to Amaziah and George Doolittle, who confessedly took, *in possession*, at testator's death. There is no grant of *title* or *estate* to said Rawley, unless the right to *manage and dispose*, conferred subsequently, be so taken. And it will hardly be contended that this reached farther than the rents and profits. There was no interest in the land itself, or any term therein, vested in said Rawley, which he could sell or assign to any one. The title or interest then, in the lands devised to the children of Rawley S. Doolittle, vested *in possession* in his children, *in life*, at the death of the testator. It could not vest *in remainder*, for want of a particular estate to support it.

A particular estate is necessary to support a remainder, and if the remainder be a feeehold, it must take effect presently, either in possession or remainder.—Kent's Com. 4. 233—4.

The rule in regard to posponing payment, or distribution, till a future period, as "Until the youngest child becomes of age," is understood to relate to gifts of personal property, and not to devises of real estate.

II.

The *intention* of the testator governs—and "this is to be ascertained, "not from any particular word used, but is to be collected from all the "words, and all the provisions of the instrument." Smith *vs.* Taylor, 21 Ill., 296—see pp. 298-9, and cases cited. And "in looking into the in-"tention of a testator, Courts will regard the circumstances under which "he acts, as the state of his property, of his family and the like."—Ibid, 301.

At the date of this Will Rawley S. Doolittle had two children living and no more. Their mother was dead and the father unmarried. The devise, therefore, "to the children of Rawley S. Doolittle," is satisfied by making it relate to these two children alone, and it is certainly rather a forced inference to suppose, that under the circumstances, the testator had any others in his mind.

And now as to the will itself.

And first—after devising a fourth of the estate of testator to the two infant children of Irwin B. Doolittle deceased, the will provides that if both said children shall die before the testator, their one-fourth "shall be-"come the property of my brother, Amaziah D. Doolittle, George W.

"Doolittle, and of the children of my brother, Rawley S. Doolittle, un-
"der the same conditions," &c., as "the remaining three-fourths of my
"esstate, hereinafter devised to them, are attended with."

What children of said Rawley are here intended? Such we think as shouldbe living *at the death of the testator*, and no others. For the lapsed interest is then to vest at once, and *on ~~those~~ same terms*, *in ~~the same~~ these children*, as said Amaziah and George are to take what falls to them.

Could petitioner have shared in this one-fourth interest, had the contingency here contemplated occurred?

But further, after devising, "in the third place," to said Amaziah, George, and the chlldren of Rawley, each one-fourth, in precisely the same terms, the will says: "That inasmuch as it is my fixed will," &c., "that my estate shall go for the benefit of the *devisees aforesaid*." * * * * "And to no other persons whatsoever." Who are the "devisees aforesaid?" This is determined by what follows: "I request and "will that if either of said devisees shall depart this life before me," &c. —thus clearly pointing to parties *then in life*, who might die before the testator.

Again—in the very clause relied on to let petitioner in—"I do further "will," &c., "that Rawley S. Doolittle, my brother, shall have uncon-
"trolled and absolute management and disposal of all such part of my es-
"tate, his *said children*, *at my decease*, shall become entitled to, until "the youngest of said children shall become of full age," &c. Can words more clearly fix the persons intended by the term "children" in this clause? The estate said Rawley is to manage, is that which his said children, *at testator's decease*, shall become entitled to. And it matters not to which branch of the sentence, to-wit: "His said children," or "shall become entitled to." The words "at testator's decease," be attached. The sense is not vaired. In either case, it necessarilly relates to children *in life*, *at the decease of the testator*, who are *then to become entitled to take*, and can not include children to be aftewards born. This view is confirmed by the concluding part of this paragraph: "But if the said Rawley S. Doolittle "shall be in full life, and said children shall be deceased, then," &c.

What time is meant here, in which said Rawley is spoken of as in full life and said children supposed to be deceased? Undoubtedly the *time of testator's decease*. This is certain from what immediatly precedes: "But if the said Rawley * * * shall die *before my* decease, then I desire," &c. The *children* referred to here are, unavoidably, children who must be *in life*, *before the decease of the testator*, for they are assumed, in the contingency specified, to die before him. From this conclusion there

would seem to be no escape. And yet they are the same persons designated as the children of Rawley S. Doolittle, throughout the will.

III.

The decree in the partition suit, set out and made part of this record, is conclusive against the Petitioner.

Though not a party, personally, to that suit, and for the reason that he was not then born, Rawley S. Doolittle, by virtue of whose supposed intervening interest, his right to share in the devise, is assumed to accrue, was a party, and as such, bound by said decree. Petitioner moreover, adopts and ratifies the proceedings in that suit, and claims under them. He seeks partition, not of the *undivided fourth*, as originally devised, but of the *divided fourth* set off and allotted to said Mary and Martha Doolittle in said suit.

For the decree determining the rights of the parties, directing partition to be made, Report of Commissioners, and comfirmatory or final order in the case, the Court is referred to pages 22 to 32, inclusive, at the foot of the Record, from which it will be seen that the title to said lands so set off to said Mary and Martha Doolittle, is absolutely vested in them in fee and as tenants in common, regardless of and entirely discharged from, all right or claim on the part of said Rawley S. Doolittle therein. Thenceforth therefore, if not before, the estate devised "to the children of Rawley S. Doolittle" *took effect*, and vested *in possession* in said Mary and Martha Doolittle, in strict conformity to the rule, which excludes children born subsequently. Besides, this investiture of title, is itself absolute, so long as that judgment stands unreversed. The authorities on this head are numerous and uniform, and in *Doolittle* vs. *Maus*, decided at the last Spring term of this Court, and not yet reported, but for which see Opinion Record 12, page 334; these same partition proceedings passed under review in this Court; and the Court say, as to the only one of the parties whose title came in question, "The premises in "controversy were set off to Amaziah B. Doolittle, under whom the defend- "ant claimed title. The judgment in the suit for partition *vested the title to* "*the premises* in controversy in Amaziah B. Doolittle. The plaintiffs are "estopped from asserting to the contrary, as against him, and all persons "claiming under him." And this in a case where the plaintiffs claimed title, and with good reason paramount to the title of the testator himself in the premises. But this the Court decline to look into, for the reason in the opinion given.

IV.

On the hypothesis of Petitioner, his application is premature, and his Petition should be dismissed. He is now but about nine years old, and, assuming that he is included in the terms of said will, and that, under said will, the estate devised "to the children of Rawley S. Dooiittle," does not vest *in possession*, until the "youngest child" becomes of age, why is he now here seeking partition of these lands? If not entitled to their enjoyment, as of an estate *in possession*, can he be entitled to a division and to hold them, or his share of them in severalty? In the case of *Cale* vs. *Creyon*, 1 Hill Ch. Rep. 311, a similar question arose, and there the application for partition was held to be premature.

COOPER & MOSS,
*For Pltffs in Error.*

129-60

Handsberry

v.

Hazlettle

Bill for possession

Filed 28th Jul. 20. 1865

L. Delano

Clk.

# SUPREME COURT OF ILLINOIS,

## THIRD GRAND DIVISION.

APRIL TERM, 1865, AT OTTAWA.

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MARY ~~HANAHEY~~ Hanahey, *et. al.*, Plaintiffs in Error
vs.
SAM. G. DOOLITTLE, BY ELLEN DOOLITTLE, HIS NEXT FRIEND, Def't in Error. } *Error to Tazewell.*

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## BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

In this case the defendant in error filed his bill for partition against the plaintiff in error in the court below, averring that in 1851 William B. Doolittle, then owner in fee, devised the property in controversy, with other lands, ¼ to Mary M. Doolittle and Irwin B. Doolittle, children of his deceased brother, Irwin B. Doolittle; ¼ to each of his brothers, George W. Doolittle and Amaziah D. Doolittle; and the remaining ¼ to "the children" of his brother Rowley S. Doolittle, and that the children of Rowley S. Doolittle then living, were the plaintiffs in error, Mary and Martha, then aged respectively 5 and 7 years, and that by the provisions of the will Rowley S. Doolittle was to have the "uncontrolled and absolute management and disposal of such part of my estate as his said children at my decease shall become entitled to, until the youngest of said children shall become of full age, and use said means at his discretion." And in event of the death of said children before the death of the testator, then he devised the same property unto Amaziah Doolittle his brother, "for the use of said Rowley; the said Rowley, however, to have the use and control of the same."

That R. S. Doolittle was then a widower, and that William, the devisor, then knew it, and knew also the respective names of Mary and Martha, his then children, and their respective ages of 5 and 7 years. That William died in July 1854, and Rowley S. Doolittle immediately upon the death of William, by virtue of said will, took possession, and the use and control of all of said estate so devised to him and his children, and took an estate therein in possession for years to himself, and petitioned with

Mary and Martha, then minors, and others, to have the estate divided among the devisees, which was decreed to be done at the October term 1855, and commissioners were then appointed to make partition thereof, who reported the division by metes and bounds at the May term, 1856, which report was then approved by the court; and that Rowley then immediately took exclusive possession and an estate for years, and control and use, and the disposal of the part so set off to his children, and so kept and held and used and controlled it until his death, which happened in May 1864; and that in Feb. 1856, said Rowley S. Doolittle married lawfully said Ellen Doolittle; and in Dec. 1856, the defendant in error was born in lawful wedlock and is now in his 9th year of age; and that the youngest of the children of Rowley S. Doolittle living at the date of said will and at the death of said testator was not of age. At the death of Rowley S. Doolittle, (and I would here call the attention of the court to an error in the abstract as prepared page 1 line 10 from bottom of the page, which represents *them as of age* at that time, and a like error in same page at line 20 from bottom. Defendant in error claims $\frac{1}{4}$ of the estate, when in fact the claim is $\frac{1}{3}$ of the $\frac{1}{4}$ of the estate of Wm. B. Doolittle. See record, p. 37,) and that on the death of Rowley S. Doolittle, the said Mary and Martha took possession of the whole of said $\frac{1}{4}$ part of Wm. B. Doolittle's estate so set apart to the children of Rowley S. Doolittle, and claiming to be the owners of all of it, sold the same and delivered the possession thereof to Charles P. Corey, one of plaintiff's in error, denying all right of defendant in error as one of the children of Rowley S. Doolittle in the premises, and collected the rents and profits therefrom after the death of said Rowley S. Doolittle, to the amount of about $2,000, and prayed partition, and an account of the rents and profits so collected. Plaintiffs in error demurred, which the court overruling and refusing to answer further, a decree for partition was awarded, which was duly made and approved by the court, and possession given to the petitioner of the part allotted to him, and an account required of the rents. And this is assigned for error, and the real question in the case is the proper construction of the will of William B. Doolittle, and the right of defendant in error under it, the facts as alleged in bill being admitted to be true.

And in ascertaining the right of defendant in error, a principal question to be disposed of is, what estate, if any, did Rowley S. Doolittle take under that will?

By the provisions of the will the court will remember he was to have "the uncontrolled and absolute management and disposal and use of said estate devised to his children until the youngest of said children became of full age;" and to show more fully the intention of the testator as to Rowley and the right or interest he wished him to have in the premises devised to his children, and to give him in any event the absolute pos-

session, control and use of the same. He provides in the will (see record, page 49) that in event that said children died before the testator, then that Amaziah should take the same estate for the use of said Rowley, who was to have also then the use and control of the same.

Now what is the use of an estate for years or for life, or the right to the absolute control, disposal and use of the same? Is it not, for the time it is to run, the whole enjoyment of the property, and does the owner in fee have anything more or different except in duration? The party who has the use of property, or for whom it is held in trust, has an interest in it, which passes by descent and is liable to sale under execution, and in it a vested estate. See

Hempstead vs. Dickson, 20 Ill. 193.

And it cannot be pretended that it was not the *intention* of the testator by the will to give the use of the property to Rowley until his youngest child, then living, should be of full age. Nor can it be pretended that the will does not so do it. The careful provisions, in event of the children's death that Amaziah should take for the use of Rowley, and the express provisions of the will if they lived, are conclusive of the *intention* to give him the use.

And our statute provides that he who has the *use* of lands by will shall from thenceforth stand and be judged in lawful seizen, estate and possession of the same in law, in the same manner and extent to which he before had the use or trust.

Rev. Stat. 1845, p. 103, Sec. 3.

Rowley was entitled to take the rents and profits by the will, and to dispose of it for the time, and as to such an estate, see Cowell on Uses, pp. 55, 56, (not found in Library.)

And a devise of rents and profits will at law pass the lands.

1 Atkins R. 506, Green vs. Belcher.
2 Atkins R. 358, Hall vs. Carter.
1 Powell on Devises, p. 235.

Rowley S. Doolittle then had by virtue of said will an estate in possession for years in said premises, which could not be determined until the youngest of said children arrived at full age, and then his estate was to cease, and the property devised was *then* to be distributed to said children, *in fee*, in possession and enjoyment, who until that period arrived took only a vested remainder therein subject to the particular estate.

But it is insisted that Mary and Martha Doolittle, the children of Rowley S. Doolittle, at the time of the death of the testator, took not only a vested remainder, but as they were then the only children of Rowley S. Doolittle, they took an estate in fee, in *presenti*; that the death of the testator was the true period of distribution of his assets, and that after born children were not entitled to be included in the devise. Yet the language of the will and the knowledge of the testator rebuts all such intentions and conclusions.

The devise was to the children of R. S. Doolittle, and the word "children" is synonymous to the word "issue" in devises. See

2 Jarman on Wills, pp. 69, 73.
1 Roper on Legacies, p. 70.
2 Powell on Devises, p. 297.

Rowley S. Doolittle was then living and capable of having other children, and this fact was known to the testator, who also knew the ages and respective names of Mary and Martha, Rowley's children, at the time of the devise. Yet he speaks of and devises to the *children* of R. S. Doolittle, while at the same time his other brother Irwin B. Doolittle being dead and not capable of producing other children, which was also known to the testator at the time, and he therefore devised to Mary M. Doolittle and Irwin B. Doolittle by name, and describes them as the children of his deceased brother, Irwin B. Doolittle, and also speaks of and designates all his other devisees by name particularly, while to the *children* of Rowley S. Doolittle, he uses only general terms, and gives them in general terms as "children," their proportion in any future interest that might arise by or under any lapsed legacy; meaning evidently to include all of Rowley's children, while he carved out of the portion devised to them the particular estate for Rowley himself; the termination of which estate, so given to Rowley, was the period from which the children of Rowley were to take the possession and use and control of the estate in fee, the period of distribution.

And in all cases when a particular estate is carved out with a gift over to the children of the person taking that interest, such gift will embrace not only the children living at the death of the testator, but all who may subsequently come into existence before the period of distribution.

2 Jarman on Wills, pp. 75, 79.

All children born before the interest devised vests in possession, are entitled to share in it.

1 Powell on Devises, p. 405, note.
2 Powell on Devises, 303.

All who answer the description when the estate is delivered over, or legacy is paid over, take alike, the after born children included.

Ward on Legacies, p. 124.
1 Roper on Legacies, p. 47.
Anable vs. Patch et. al., 3d Pick. R. p. 360.
Dingley vs. Dingley, 5 Mass. p. 535.

But it is insisted that, as at the date of the will Rowley was a widower, and the defendant in error is a child by a subsequent marriage after the death of the testator, he is not therefore entitled to share; yet the court otherwise expressly determine in

6 Veasy, 345, Barrington vs. Trestom.
See also 1 Roper on Legacies, pp. 48, 49.

And when distribution is provided for when the youngest child becomes of age, the period is fixed by the coming of age of the youngest child then living, and all children born before that period so fixed, will take a share in the estate devised.

Roper on Legacies, pp. 47, 49.
14 Vesey, pp. 256, 259, Hughs vs. Hughs.

And when the whole property is devised, with a particular estate or interest given out of it, it operates by way of *exception* out of the absolute property.

1 Burrow R. 233, Goodlittle, ex dem. vs. Whitley.
25 Wendell R. 134, Moon vs. Lyons.

And all of the children in being when the testator dies take a vested remainder, which is subject to be opened to let in after born children, devisees.

5 Mass. 536.
2 Powell on Devises, 304.

They take a qualified fee and so limited as to admit the claims of after born children, or a vested remainder, which may be opened to let in after born children.

3 Pick. R. 364, Amaleh vs. Patch, et al.
2 Powell on Devises, 304.

The bill of complainant then setting forth all of those facts it is manifest that the law required the demurrer of plaintiffs in error should have been overruled.

And declining to further answer on being required to do so, they were properly defaulted, and partition of the premises was properly ordered.

The report of the commissioners is in accordance with the requirements of the statute of 1845, p. 400.

And the defendants below admit by their pleadings that they received the rents and profits as alleged, about $2,000, and the decree requiring them to discover and account, cannot be prejudicial to their rights, for if the land is not theirs, neither is the rents and profits. If defendant in error is entitled to $\frac{1}{3}$ of the land, he is also entitled to $\frac{1}{3}$ of the rent thereof, and should not be driven to a court of law to ascertain the amount thereof. So when equity obtains jurisdiction in a case, it continues to exercise the same until complete justice is done between the parties.

Aldrich vs. Sharp, 3 Scam. 264.

The action of the commissioners was regular, and the division fair, and the report of the division was properly approved.

And the court may by decree invest the title in fee in the parties, in partition cases, by virtue of the statute 1861, p. 181.

And that parties failing in their suit may properly be required to pay costs, cannot be questioned, and it is especially in the discretion of courts of chancery; and as to surrendering possession, see

3 Scam. p. 264.

The continuance of the cause on the docket of the circuit court for discovery and report of plaintiffs in error, is a matter of favor to them, and for it they have no complaint, and in it there is no error.

B. S. PRETTYMAN,
Att'y for Def't in Error.

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Hamburg et al
vs
Doolittle

Deft's Brief

Filed Apl 20. 1865
L Scandrett

# IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

## THIRD GRAND DIVISION.

## APRIL TERM, A. D. 1865.

SAM. G. DOOLITTLE, by ELLEN DOOLITTLE, his next friend, Defendants in error, ats=

MARY HANDBERRY, JOHN D. HANDBERRY, Martha ~~MARTIN~~ CONKLIN, KETCHUM S. CONKLIN, CHARLES P. CAREY, Plaintiffs in Error.

*ERROR TO TAZEWELL.*

Petition for partition brought by defendant in error against plaintiffs in error, to February Term of Tazewell County Circuit Court, 1865.

Record pages 34–36 Petition filed January 3d, 1865, claims that on the 21st day of July, 1854, William B. Doolittle died testate, having on the 15th day of April, 1851, made in due

Record pages 37–38 form his will, see exhibit "A," under which defendants in error became entitled to one-fourth of the real estate of which said William died seized, among which were the S. W. qr. and N. W. qr. of Sec. 28, T. 24, N. R. 5, W. of the 3d principal meridian, subject to certain conditions named in said will; that in 1851, when will was made, Rawley S. Doolittle resided in Dewitt county, Ill., said Mary and Martha, his children, were aged respectively 5 and 7 years; that their mother was dead, and Rawley unmarried; that said Wiiliam knew these facts. When said William died said Rawley was still unmarried. That afterwards, on February 22, '56, Rawley married said Ellen Doolittle, and petitioner was born

Record page 38 December 9, '56. Rawley removed to Tazewell county March 13, '56. Mary and Martha were of age when their father died. Petitioner is the only legitimate child of said Rawley and his said wife Ellen. That he and the said Mary and Martha are the only legitimate children of said Rawley. That in a suit for partition herein referred to decree was rendered before marriage of said Rawley and Ellen, but premises were not partitioned until May '56, after said marriage.

Record page 39 After death of said William said Rawley, Mary Doolittle, now Handberry, and Martha Doolittle, now Conklin, Mary and Martha being minors, without any next friend, by their Attorney, with George W. and Amaziah D. Doolittle, two other legatees, brought suit for partition against Irwin B. Doolittle and others, under which proceedings one-fourth of the lands of which said testator died seized

was set off to said Mary and Martha, subject to the rights of said Rawley under
Record page 40 said will; said lands so set off to said petitioners being the S. W. qr. and S. W. qr. of the N. W. qr. of said sec. 28. That at the death of said testator, Rawley took possession of the undivided fourth of his estate, and kept possession until said partition; after which he took and retained until his death, possession of the
Record page 41 portion so set off to said Mary and Martha. That on the day of said Rawley's death, said Martha was still a minor. That petitioner was born December 21, '56, is now in his 9th year, and one of the children of said Rawley, born in lawful wedlock, and by virtue of the said will and the law is entitled to one-third of said S. W. qr. and S. W. qr. of the N. W. qr. of Sec. 28 aforesaid. That he, said Mary and Martha, are only children of said Rawley. That said Rawley on death
Record page 42 of said William, took an estate in possession for years, and retained said possession until his death. That said Mary and Martha, before the death of said Rawley, never took nor were entitled to take possession of said premises.

That said children of said Rawley took as joint tenants, and that the same could
Record page 43 not be distributed until the youngest child of said Rawley became of age, until which time said Rawley had control thereof. That petitioner was born after death of said William, but before said legacy to said Rawley's children was reduced to possession, and before the contingency happened upon which distribution could be made. That the estate given by devise of said William to said Mary and Martha, was subject to the prior estate of said Rawley, and the contingent diminution by the birth, in lawful wedlock, to said Rawley, of other children, before the time for distribution arrived, and the reduction to possession of said Mary and Martha's estate.

Record page 44 That since the death of said Rawley the rents arising from said lands, and now in hands of defendants, amounts to $2,000, the one-third of which belongs to petitioner.

That since the death of Rawley, and since the coming of age of said Martha, said Mary and Martha have seized possession of and sold to Charles P. Carey said premises, regardless of petitioner's rights, and said possession is now held by
Record page 45 said Carey. Prayer that defendants be summoned to answer. That one-third of said premises be set off to petitioner, and two-thirds to said Mary and Martha, or said Carey. That commissioners be appointed to make partition. That defendants account for all rents and profits received according to law, &c.

Record page 46 Petition signed and sworn to by Ellen Doolittle.

Record page 47 Exhibit "A." Will of William B. Doolittle, deceased, provides: First, for the payment of debts. Second, divides his estate into four equal parts. Then provides as follows:

To Mary Marie Doolittle and Irwin B. Doolittle, infant children of my deceased brother, Irwin B. Doolittle, I devise and bequeath one fourth of my estate of every kind and description whatever, with the express condition and stipulation

Record page 48 that if either of them shall die before he or she shall have arrived at his or her majority, then and in that event, said one fourth part of my said estate shall go to survivor ot said two children, but if at the time of my decease, neither of said two children shall be living, then I devise and so will that said one fourth of said estate shall become the property of my brother Amaziah D. Doolittle, George W. Doolittle and of the children of my brother Rawley S. Doolitfle, under the same conditions, limitations and restrictions, as the remaining three fourths of my estate hereinafter devised to them are attended with.

In the third place, I do hereby devise and bequeath unto my brother Amaziah D. Doolittle the one fourth of my estate. And to my brother George W. Doolittle the one fourth of my estate. And to the children of my brother Rawley S. Doolittle the one fourth of my estate. And I do further declare, that inasmuch as it is my fixed will and determination that my estate shall go for the benefit of the devisees aforesaid, and to their lawful wives and legitimate children, and to no other persons whatsoever, I request and will that if either of said devisees shall depart this life before me, leaving neither lawful wife nor child, the portion of the decedent shall be divided among the remaining devisees, their widows and children, according to true intent and meaning of the will.

Record page 49 It being borne in mind however, and I here again explicitly say and declare, that the children of the said Irwin B. Doolittle, shall take by survivorship from each other, and that the children of the said Rawley S. Doolittle shall likewise take by survivorship from each other, this provision however not to deprive said children however either of the said Irwin B. Doolittle or Rawley, of their share of any lapsed legacy. And I do further will and declare that Rawley S. Doolittle, my brother, shall have uncontrolled and absolute management and disposal of all such part of my estate his said children at my decease shall become entitled to, until the youngest of said children shall become of full age, use said means at his discretion without having to account to any person or persons in court or courts whatsoever, as to his application thereof, but it the said Rawley S. Doolittle shall die before my decease, then I desire that such means or funds may be controlled by the legally appointed guardians of said infant children as is justified and required by law. But if the said Rawley S. Doolittle shall be in full life and said children shall be deceased, then I bequeath said property to my brother Amaziah, for the use of said Rawley, the said Rawley however, to have the use and control of the same.

Record page 50 And I do hereby for the purpose of having this, my last will, carried out according to its true intent and meaning, nominate Middleton Tackaberry, Esq. the sole executor thereof.

Record page 50 Proof of will.

Record page 51 Order appointing M. Tackaberry as Executor, July 27, '54.

Record page 52 Summons for defendants, dated January 3, '65.

Record page 53 January 4, '65, service and filing of summons.

Record pages 54, 55 Demurrer to petition filed February 6, '65. February 8, '65, demurrer overruled.

Record page 56 February 21, 65, defendants' default entered.

Record pages 57, 58 February 23, '65, decree pro. confesso, and for partition of S. W. qr. and S. W. qr. of the N. W. qr. of Sec. 28, 24 N. R., 5 W. 3d principal meridian, giving to petitioner one-third in value and to C. P. Carey two-thirds, and appointing com-
Record page 59 missioners to make partition and report to this term of Court.

Also that defendants report to this Court the amount of rents received by them from said premises to the next term.

Record page 60 Affidavit of commissioners.

Record pages 61, 62 Report of commissioners setting off to said Sam. G. Doolittle one-third in value of said lands, by metes and bounds, and to Charles P. Carey the residue.

Record pages 63, 64 Decree confirming report of commissioners, and ordering defendants to surrender possession of lands set off to Sam. G. Doolittle, and continuing cause to next term to receive report of rents.

Record page 1 Suit for partition brought by Amaziah D., George W., Rawley S. Doolittle, and Mary and Martha Doolittle, minor children of said Rawley, against Jesse A. Nason, guardian of Irwin B. and Mary M. Doolittle, minor heirs of Irwin B. Doolittle, deceased, said Mary M. and Irwin B., Anne M. Nason, formerly wife of
Record page 2 said Irwin B., deceased, Middleton Tackaberry, Executor of will of William B. Doolittle, deceased, and Joseph S. McIntyre, September 14, '55.

Record page 3 Petition shows that William B. Doolittle made his will November 15, '51, for
Record page 7 which see pages 3 and 4 of abstract. That said William died July 21, '54. That said Tackaberry was appointed Executor. That said William owned at time of his death the S. W. and N. W. qr. of Sec. 28, 24 N., 5 W., and other lands therein
Record pages 8, 9 described. That Amaziah D. Doolittle is entitled to one-fourth of said land, George W. to one-fourth, and Rawley S., Mary and Martha to one-fourth. That
Record pages 10, 11 Irwin B. and Mary M. Doolittle, minor heirs of Irwin B. Doolittle, deceased, are entitled to one-fourth. That said devisees are tenants in common of said estate, and that petitioners desire a division if it can be made, if not, a sale of said lands.

Prays proceedings and appointment of commissioners to partition under statute.

Record pages 14, 15 Summons issued September 14, '55. Served on all defendants, except Maria and Irwin B. Doolittle, September 6, '55. Also summons for Maria M. and Irwin B. Doolittle September 18, '55. Served September 19, '55.

Record pages 19, 20 Answer of M. Tackaberry admits he is Executor, Says he believes that the assets of said estate in his hands, and the rents for the year 1855, will pay all debts and demands against the estate.

Record page 21 Wm. B. Parker appointed Guardian *ad litem* for Irwin B. and Mary M.

Doolittle, and answers, saying he knows no reason why petition should not be granted.

Record page 23 Decree giving to Irwin B. and Mary M., children of Irwin B. Doolittle, one-fourth of said land, George W. one-fourth, the children of Rawley S., to wit, Martha and Mary, one-fourth. Finds that said Wm. B. died July 21, '54,

Record pages 24, 25 seized of said S. W. and N. W. Sec. 28, and other lands. That M. Tackaberry, Executor, has answered.

Record pages 26, 27 It is decreed that the commissioners set off to Irwin B. and Mary M. one-fourth of said estate, to Amaziah one-fourth, to George W. one-fourth, and to Mary and Martha, minor children of Rawley S., one-fourth, to be held as tenants in common, if the same can be divided, and report accordingly.

Record pages 28–31 Report of commissioners, filed May 2, '46, shows that they set off to Martha and Mary, minor children of Rawley S. Doolittle, the S. W. qr. and S. W. qr. of the N. W. qr. of Sec. 28, 24 N., R. 5 W. of the 3d principal meridian.

Record pages 32–33 On motion, no one appearing, said report and the partition therein reported is hereby approved and confirmed.

Assignment of errors:

Record page 34 1st. In overruling demurrer to petition.

2d. In defaulting defendants below, and directing partition of the lands in question to be made.

3d. In the appointment of commissioners and directions given them, and in requiring defendants to report the rents and profits of said premises received by them.

4th. In approving the report of said commissioners.

Record page 35 5th. In the rendition of said confirmatory decree, and in decreeing to petitioner, in severalty and in fee, the lands set off to him by said commissioners.

6th. In decreeing costs against defendants below, and directing the surrender of said sixty acres to petitioner, or his guardian.

7th. In continuing said cause on the docket of said Court.

COHRS & IRELAND,
COOPER & MOSS,
For Defendants in Error.

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Doolittle et als
vs
Hawlberry et als

Abstract

Filed April 5th 1865
L. Lehmann
Clk

1 State of Illinois
Tazewell County } ss.

Pleas in the circuit court of Tazewell County, State of Illinois Begun and held at the City of Pekin in said county before the Honorable David Davis, Judge of the Eighth Judicial District of the State of Illinois in Chancery Sitting, on the first Day of October, it being the October Term of said Court, in the year of our Lord one thousand eight Hundred and fifty five

Amaziah D Doolittle. George W Doolittle Rawley S Doolittle and Martha Doolittle. and Mary Doolittle. minor children of the said Rawley S Doolittle.

Vs.

Jesse A mason. Guardian of Erwin B Doolittle and Mary. M Doolittle, minor heirs of Erwin B Doolittle deceased. and the said Mary M. & Erwin B Doolittle so aforesaid. Anne M. Mason wife of the said Jesse A mason. formerly the wife of Erwin B Doolittle. deceased, Middleton Huckabey. Executor of the last will and

Petition for Partition

Testament of William B. Doolittle deceased, and Joseph. S. McBrayer

Be it remembered that heretofore to wit: on the Fourteenth day of September A D 1855., came the said, Amaziah D Doolittle George. W Doolittle, Rawley S Doolittle, and Mary and Martha Doolittle, minor heirs of the said Rawley S Doolittle, by their attorney J. S. McBrayer, and filed in the clerks office of said Court, their petition, for partition, against the said defendants, to wit: and which petition also prayed that a writ of summons might issue against the said Defendants, and the said petition is in the words and figures, following to wit:-

To the October Term of the Circuit Court of Tazewell County Illinois. A D 1855.

Amaziah D Doolittle.
George W. Doolittle
Rawley S. Doolittle
Martha Doolittle
Mary Doolittle
Minor children of the
said Rawley S Doolittle

vs.

Jesse A Mason.
Guardian &c.

In Chancery.

3 Irwin B Doolittle &c. Petition for partition
Mary M Doolittle.
minor heirs of Irwin
B. Doolittle deceased
Anne Maria Mason.
wife of said Jesse A Mason.
and widow of the said
Irwin B Doolittle. dec.
Middleton Jackaway &c.
Joseph S McIntyre.

To the Honorable David Davis
Judge. of the circuit Court. of Tazewell County
In Chancery sitting:—

Your petitioner Amanda D Doolittle
of the County of Tazewell and State of Illinois
George D Doolittle. Rawley S Doolittle, and
Martha D Doolittle, and Mary Doolittle, minor
children of the said Rawley S Doolittle. of
the county of Logan. and State aforesaid
Respectfully showeth unto your honor
that. Irwin B. Doolittle deceased. late
of the county of Tazewell and State of Illinois
made and published. his last will and
testament. bearing date November 15th 1851
Devising and bequeathing his estate. both
personal and real as follows.
To wit:—

4 " In the first place I desire that my debts shall
" be paid according to the proper priority established
" by the Laws of the State of Illinois.
" In the second place I desire and so will
" that the residue of my estate, real and personal
" and mixed shall be divided into four equal
" parts or shares to wit:
" To Mary Minie Doolittle and Orrin B.
" Doolittle, infant children of my deceased brother
" Orrin B Doolittle. I devise and bequeath one fourth
" of my estate of every kind and description, what-
" -ever, with the express condition and stipulation
" that if either of them shall die, before he or she
" shall have arrived at his or her majority, then
" and in that event, said one fourth part of my
" said estate, shall go to the survivor of said
" two children, but if at the time of my decease
" neither of the said two children shall be living
" then I devise, and so will, that said one fourth
" of said estate, shall become the property of my
" Brothers, Amaziah D Doolittle, George W Doolittle
" and of the children of my brother Rowley S.
" Doolittle, under the same conditions limitations
" and restrictions, as the remaining three fourths
" of my estate, hereinafter devised to them, are
" attended with,
" In the third place, I do hereby
" devise and bequeath, unto my brothers, Amazias

5 " D. Doolittle. the one fourth of my estate, and
" to my brother George W. Doolittle, the one fourth
" of my estate: and to the children of my brother
" Rawley S Doolittle. the one fourth of my estate.
" And I do further declare. that in as much as it
" is my fixed will and determination, that my
" estate shall go for the benefit of the devisees
" aforesaid, and to their lawfull wives and
" Legitimate children, and to no other ~~persons~~ persons
" whatever. I bequeath and will that if either
" of said devisees, shall depart this life before
" me. leaving neither lawfull wife nor child,
" the portion of the decedent, shall be divided
" amongst the remaining devisees, or their widows
" and children, according to the true intent and
" meaning of this will. it being borne in mind
" however, and I here again explicitly say and
" declare. that the children of the said Irvin B.
" Doolittle deceased, shall take by survivorship
" from each other, the children of the said
" Rawley S Doolittle, shall likewise take by
" survivorship from each other, this provision
" however not to deprive. said children either
" of said Irvin B Doolittle or Rawley. of their
" share of any lapsed legacy.
" And I do further will and declare.
" that my brother Rawley S Doolittle, shall have
" the uncontrolled and absolute management.

6 " and dispose of all such part of my estate.
" as his said Children, at my decease be ever entitle
" to, until the youngest of said Children, shall
" become of full age., to use said means at his
" discretion, without having to account to any
" person or persons Court or Courts. Whatsoever
" as to his application thereof. but if the said
" Rawley S Doolittle, shall die. before my decease
" then I desire, that said means or funds. may
" be controlled by the legally appointed guardian
" of said infant Children. as is justified and
" required by law. but if the said Rawley S.
" Doolittle. shall be in full life. and said
" Children, shall be deceased. then I bequeath
" said property to my brother Amasiah for the
" use of said Rawley S Doolittle. the said Rawly
" however to have the use and control of the same.

" and I do hereby, for the purpose of having
" this my last will ~~and testament~~, carried out
" according to its true intent, nominate, Middleton
" Packabery. Esq. the sole executor thereof

" In testimony whereof. I have hereunto
" set my hand on this fifteenth day. of November
" in the year of our Lord. Eighteen Hundred. and
" fifty one. Wm B. Doolittle.

" The above was signed by the testator in our
" presence, and in the presence of each other at request of said testator Edward Jones. Saml. Gibson

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and that the said William B. Doolittle, departed this life. on or about the 21st day of July A D. 1854. and that Middleton Tackaberry, the Executor nominated and appointed, in the said last will and testament aforesaid, made probate of said will, at the august term of the County Court of Tazewell County Illinois. A D. 1854; and took out Letters testamentary thereon. and that there is in the hands of said Executor, a sufficient Amount of money. goods and chattels, to pay all the debts of the said Testator. and at the time of the decease of said Wm B. Doolittle. he held in severalty and was seized of. in fee simple the following described Real estate. Lying and being in the County of Tazewell, and State of Illinois to wit:—

The East half of the South East quarter of Section Twenty nine (29) Township Twenty four (24). north of the Base line. Range five (5) west. of the third principal meridian. Eighty acres.

The South west quarter of section Twenty Eight (28) Township Twenty four. north. north of the Base line. Range five (5) west of the third principal Meridian, One hundred and Sixty acres

The north west quarter of Section 28 Twenty Eight, Township Twenty four. north of the

Base line. Range five west of the third principal meridian. One hundred and sixty acres.

The south west quarter of Section 21 Twenty one. Township Twenty four. North of the Base line. Range five west of the third principal meridian, of Illinois, Containing One Hundred and Sixty acres.

The west half of the north East quarter of Section Twenty one. Township Twenty four. north of the Base. Range five west of the third principal meridian, Eighty acres.

The East half of the South East quarter of section Sixteen Township Twenty four. North of the Base Line Range five west of the third principal meridian. Eighty acres.

The South West quarter of the South East quarter of section Sixteen Township (24) Twenty four. north of the Base line. Range five West of the third principal Meridian. 40 acres.

The North west quarter of the South East quarter of Section Sixteen. Township 24. North of Base Line. Range five west of third principal meridian, Forty acres.

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And the west one third of Lot Twelve in Block. No. Thirty seven. of the original town now part of the city of Perkin,

Together with the undivided one half of the north East quartis of Section Twenty Eight Township Twenty four. north of the Base line, Range five west of the third principal meridian. One Hundred & Sixty acres which he held as tenant in common with the heirs of Irwin B Doolittle, Deceased. to wit. Irwin B Doolittle, and Martha M Doolittle

Said land was deeded to the said William B. Doolittle. Deceased and. the said Irwin B Doolittle Deceased. by moses B. Dees. the patentee May the 21st. A D. 1850

Your petitioners further represent that they the said Amaziah D. Doolittle, George M Doolittle. and Rawley S Doolittle, Martha Doolittle and Mary Doolittle, minor heirs of the said Rawley S Doolittle. are entitled by the terms and provisions of said will to the undivided three fourths. of said estate in severalty, as follows. Amaziah D Doolittle to one fourth. George M Doolittle to one fourth. And Rawley S Doolittle, Martha and Mary Doolittle. minor heirs of said Rawley S Doolittle to one fourth. — And that said defendants

Jesse A Nason. guardian of Bruin B Doolittle and. Mary M Doolittle, minor heirs of Bruin B Doolittle deceased. is entitled to one fourth

And that J S McBrtyre one of the defendants to said bill and petition, became the purchaser of the Interest of George W Doolittle. in and to the undivided one fourth of the South East quarter of Section Sixteen Township Twenty four North of Base Line, Range five west of the third principal meridian, and the west half of the North East quarter, of section Twenty one. Town Twenty four. North of the base line Range five west of the third principal meridian, at sheriffs Sale. under an execution in favor of J. Peter. Byerly. assignee of John H Scholtt. on the 18th day of January. A D 1855., for which the said McBrtire. paid the sum of Two Hundred and. Seventy Eight Dollars,

And the said Anne M. Nason. wife of the said Jesse A Nason. formerly wife of the said Bruin B Doolittle. deceased. has her rights of Dower. in the undivided one half. of the North East quarter. of Section. Twenty Eight Town 24 North range five west of the third principal Meridian, held as tenants in common by the said former husband. Bruin B Doolittle. deceased and. William B Doolittle in their lifetime.

And that Middleton Tuckaberry

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be made a party to this bill, as executor of the estate of the said William B Doolittle, deceased

and your petitioners represent that they are tenants in common with each other and with the said Jesse A Mason guardian of the minor heirs of Irwin B Doolittle deceased and are entitled to the parts of said estate as described in said last will and testament, of the said William B Doolittle, and are devisees of said Testator. They are desirous to hold their said several interests, in severalty. and pray that partition of said lands and tenements, may be made among the parties aforesaids. if the same are found, susceptible of division, without manifest injury to said estate, and parties. And if not, that the same may be sold.,

Your petitioners pray that process may be had against said defendants. and that upon the hearing of said cause, that an order and decree, be made by your honor. appointing three commissioners to make partition and perform such duties as under the statute is proper and provided for, and make such other order as is proper in the premises.

And as in duty bound will ever pray.

Amaziah D Doolittle, George B Doolittle.
Rawley S Doolittle, Mary & Martha Doolittle minor heirs of said Rawley S Doolittle by.

L. S. McBryde,
atty. for. Petitioners

State of Illinois }
Saywell County } S.

Amaziah D. Doolittle being duly sworn according to Law deposes and says, that he is acquainted with the matters and things stated and set forth in the petition of affiants, and others to which this is attached, and that he believes the matters and things therein stated and set forth, are substantially, and literally true.

And further this affiant sayeth not.

A. Doolittle.

Subscribed and sworn to before me this 3rd day of October 1855.

J A Jones Clerk.
By S D Peterbaugh D.C.

State of Illinois }
Saywell County } ss
Amaziah D Doolittle.
George W. Doolittle
Rowley S Doolittle.
Martha Doolittle and
Mary Doolittle,
minor heirs of
Rowley S Doolittle

October Term of the Circuit Court of Saywell County State of Ills. A D 1855.

13

vs.

Isaac A Mason, guardian of Erwin B Doolittle and Mary M. Doolittle, minor heirs of Erwin B Doolittle dec'd. Anna Maria Mason. Joseph S Mc Bitne. and. Middleton Lackaday — Exr. of last will & testament of. William B Doolittle deceased

The Clerk will issue to the Sheriff of Tazewell County, in the above. entitled cause.

Mc Bitne for
Petitioners

Petition endorsed on Back.
Amaziah D Doolittle &c &c
vs.
Isaac A Mason &c &c.

Filed Sept. 14th A D 1855
J A Jones clerk.

J S. Mc Bitne,

Whereupon, a writ of summons was issued against the said defendants. as prayed for. directed to the Sheriff of Tazewell county. to execute. and

returned by said Sheriff on the 22d day of September A D 1855, executed upon said defendants which writ, together with the return of the sheriff thereon, is in the words and figures following to wit

State of Illinois
Iroquois County } ss.

The People of the State of Illinois
To the Sheriff of said county greeting:-

We command you to summon Jesse A Mason, Guardian of Erwin B Doolittle and Martha M. Doolittle, minor heirs of Erwin B. Doolittle deceased, Anne Maria Mason, wife of the said Jesse A Mason, and widow of the said Erwin B Doolittle deceased, Joseph S. McEntire, and Middleton Suckaboy, executors of the last will and testament, of William B. Doolittle deceased, if they are to be found in your county, to be and appear before our Circuit Court, for said county, on the first day of the next term thereof, to be held in the Court House in the City of Watseka, on the first monday in the month of October next. then and there to answer unto the matters and things contained in a certain Bill in Chancery filed in our said Circuit Court, in the Chancery side thereof, by, Amazah D Doolittle, George A Doolittle, Rawley S Doolittle, and Martha and Mary Doolittle, minor heirs of Rawley

15 S^t Doolittle, and to do and perform, whatever our said circuit Court shall order and decree in the premises, and you hereof make due return, with an endorsement, of the manner in which you shall execute the same

Witness John A Jones, clerk, and the seal of said Court, at Perkins this 14^th day of September A D 1855

(Seal)

John A Jones clerk.

Sheriffs Return.

Served by delivering Lear a Mason, Anna Maria Mason, Joseph Mc Intyre and Middleton Lackaberry a true copy, of the same this 6^th day of September A D 1855.

Thomas C Reeves
Shff. J. C.

Sheriffs fee.

| | | |
|---|---|---|
| Service | 4 | $2.00 |
| Copy | 4 | 2.00 |
| Mileage | | 20 |
| Return writ | | 10 |
| | | $4.30 |

Endorsed

Filed Sept^r 24^th 1855. J A Jones clk.
By S D Peterbaugh DC

And afterwards, to wit before the return of the above writ, by the Sheriff, the petitioner, sued out of the clerks office of said Bazwell County a writ of summons against Irwin B Doolittle and Maria M Doolittle, defendants in said cause whose names do not for some reason appear.

in the foregoing writ" And said writ is in the words and figures following to wit:

State of Illinois
Tazewell County } ss. The People of the State of Illinois, To the Sheriff of said county, greeting

We command you to summon Maria M. Doolittle and Irwin B Doolittle, minor heirs of Irwin B Doolittle Deceased. if they are to be found in your county, to be and appear before our Circuit Court for said County on the first day of the next term thereof to be held at the Court House in the City of Perkin on the first Monday in the month of October next. then and there to answer unto Jesse A Mason and others, unto the matters and things contained in a certain Bill in Chancery filed in our said Circuit Court in the Chancery side thereof, by Amaziah D Doolittle, George W. Doolittle Rawley S Doolittle, and Martha and Mary Doolittle, minor heirs of Rawley S. Doolittle, and to do and perform what our said Circuit Court shall order and decree in the premises, And you make due return. with an endorsment of the manner in which you shall execute the same.

Witness John A Jones. Clerk. and the Seal. of said Court at Perkin this 18th day of September A D. 1855

John A Jones clerk.

17 Sheriffs Return.

Served by delivering to each within defendants a true copy of the same. this 19th day of September A D 1855.

Fees. Service 1.00
Copy. 1.00
Mileage 10
Return 10
$2.20

Thomas C. Reeves.
Shff D. C.

Endorsed.

Filed Sept 24th 1855 J A Jones clk.
By S D Puterbaugh D. C.

And now afterwards to wit. on the first day of October in the year of our Lord one thousand Eight Hundred and fifty five; it being the first day of the October Term of said Court. the following proceedings were had to wit:—

Amaziah D Doolittle
George W Doolittle.
Rawley S Doolittle
and
Martha Doolittle
Mary Doolittle.
Minor children of the
Said Rawley S Doolittle

vs.

Jesse C Mason. guardian of.
Irwin B Doolittle and Mary M
Doolittle. minor heirs of Irwin
B Doolittle deceased. and the

In Chancery.

Petition for Partition

said Mary M. and Irwin B. Doolittle, minor heirs as aforesaid. Cinne M Mason wife of the said Jesse A Mason. formerly the wife of Irwin B Doolittle. deceased., Middleton Tuckaberry. executor of the last will and testament of William B Doolittle Deceased and Joseph S. McIntire

This day came the Complainants by their Solicitor, and on his motion, William B. Parker, is appointed "guardian ad Litem" to the infant defendants. Irwin B. Doolittle and Mary M. Doolittle, and all the defendants are ordered to answer by Wednesday morning next, at the opening of this Court.

And afterwards to wit, on the the third day of October in the year of our Lord one thousand Eight Hundred and fifty five, it being the third day of the October Term of said Court, the following proceedings were had to wit And now comes the defendant Middleton Tuckaberry one of the defendants in the above named cause. And files his answer to the said bill of complaint, which answer is in the words and figures following

to wit:

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State of Illinois } ss. of the October Term of the
Tazewell County } Circuit Court of Tazewell
County. A D 1855.

Middleton Tackaberry,
ads.
Amazich D. Doolittle
George W. Doolittle
Rawley S Doolittle
Martha & Mary Doolittle
minor heirs of
Rawley S. Doolittle

To the Honorable David Davis.
Judge of the Circuit Court of Tazewell County.
In Chancery Sitting: -

Middleton Tackaberry one of the Defendants to the petition of the above named petitioners, makes answer to so much of said petition as he is advised is necessary for him to make answer unto, and says, that he was nominated executor by William B Doolittle. deceased. in his last will and testament, and that he made probate of it. and had the same upon record. and took out Letters Testamentary thereon, in the probate Court of Tazewell County.

And he further states and says, that he declines, that after applying the assets, that come into his hands. as Executor as aforesaid, together

with the rents and profits from the real estate of the said William B Doolittle deceased for the year 1855. there will be sufficient to pay all debts and demands which have been allowed against said estate, and that he is of opinion that most if not all the claims against said estate have been made known to him. and that on the payment of the rents which will become due in March 1856. and those already due. there will be sufficient to pay all demands against said estate.

And that he is of opinion that it will not be necessary to make sale of any portion of the real estate to satisfy the claims against said estate. and that Defendant knows of no reason why partition of said real estate may not be made as prayed for in the petition of said petitioners &c.

M. Yackabeny.

Subscribed and sworn to
before me this 3rd Oct. 1855
John A Jones. Clk. Cir Ct.
By C G. McLean Dept

Endorsed.
Filed Oct 3rd 1855. John A Jones Clk.
By S D Puterbaugh
Deputy.

And afterwards to wit on the 4th day of October in the year of our Lord One thousand Eight Hundred and fifty five, comes Wm B. Parker. Who had been appointed by the court "guardian ad litem" for Irwin B Doolittle and Mary M Doolittle, infant defendants in this cause, and files his answer. Which answer is in the words and figures following to wit:—

Wm B Parker, guardian
ad litem of Irwin B Doolittle
and Mary M Doolittle
Minor defendants
ads.
Amasiah D Doolittle
George W Doolittle
Rawley S Doolittle
Martha and Mary Doolittle
Minor Children of said
Rawley S Doolittle

Of the October Term
of the Luzerne
Circuit Court
1855.

The said "guardian ad litem" of the minor defendants in this cause, that he has examined the petition of said petitioners, and other papers filed in said cause, and matters pertaining thereto, and is advised thereof, and says that he knows of no reason why the prayer of said petitioners should not be granted.

Wm B Parker, "guardian ad litem"

Endorsed. Filed Oct 4th 1855. J. A. Jones clk.
by S D Pittsburgh D C.

and afterwards to wit on the 9th day of October in the year of our Lord one thousand eight hundred and fifty five, the following proceedings were had, and the following decree rendered by the court, and ordered to be recorded, said decree is in the words and figures following to wit

State of Illinois
Tazewell County

Of the October Term of the Tazewell Circuit Court, in the year of our Lord one thousand eight hundred and fifty five —

Amaziah Doolittle
George W Doolittle
Rawley S Doolittle and
Martha & Mary Doolittle
minor children of the said
Rawley S Doolittle.

vs.

Jesse a mason, guardian of.
Irvin B & Mary M Doolittle
minor heirs of Irvin B Doolittle. dec.
The said Mary M & Irvin B Doolittle
minor heirs aforesaid, Anne M Mason.
wife of the said Jesse A mason.
formerly wife of Irvin B Doolittle dec.
Mudleta Lackabeny exr, last will of
Wm B Doolittle, dec and Joseph S McClure

Decree for Partition

This day. came the petitioners by their Solicitor Mc Bryce, and it appearing to the Court that all the defendants. have been duly served with process. and it further appearing that Mary M Doolittle and Irwin B Doolittle are. Minors. and the Court having appointed Wm B. Parker. "guardian ad Litem". for said Minors and he having filed his answer. saying that he knows of no reason. why the prayer of the petitioners should not be granted. and it further appearing to the Court. Wm B Doolittle deceased in his lifetime made his last will and testament bearing date Nov 15th 1851. willing and bequeathing all his estate both personal and real. and mixed after the payment of his debts as follows to wit

1/2 Irwin B Doolittle and Mary M. Doolittle. Children of Irwin B Doolittle deceased one fourth part — and to.

Amanda D Doolittle. one fourth part and to.

George W Doolittle one fourth part. and to the Children of Rawley S Doolittle. to wit. Martha Doolittle and Mary Doolittle, one fourth part. to be held by them. to be used and controlled by the said Rawley S Doolittle. until the youngest of said Children shall arrive at the age of Majority. and that Middleton Tuckahoe was nominated and appointed. executor of said

Last will and testament, and that the said William B Doolittle departed this life on or about the 21st day of July. A D 1854, and that the said Middleton Jackaboy made probate of said will at the august Term of the Lazewell County Court 1854 and took out letters testamentary thereon.

And that the said William B Doolittle died seized in fee simple of the following described real estate, situated in Lazewell County Illinois to wit;—

The East half of the south East quarter of section Twenty nine, Town Twenty four, north of the Base Line. Range Five west of the third principal Meridian.

The South West quarter of Section Twenty Eight, Town 24, north of Base line Range five West of third P. M.

The south west quarter of Section Twenty one (21) Town Twenty four North of Base Line, Range Four West 3rd P.M.

The west half of the north East quarter of Section Twenty one, Town Twenty four, north of Base line, Range Five west of the 3rd P.M.

The north west quarter of Section

25 Twenty Eight. Township Twenty four. North of the Base line. Range five West of the third P.M.

The South East quarter of Section Section Township Twenty four North of the Base line. Range five West of the third P.M

The West one third of lot Twelve. in Block. No. thirty seven. of the original Town of Pekin. Now part of the City of Pekin.

And the undivided One half of the north East quarter of Section Twenty Eight. Town. Twenty four North of the Base line. Range five West of the third principal Meridian. which he held as tenants in common. with the heirs of Orrin B Doolittle deceased.

And Middleton Jackaberry having filed his answer to said petition. and admitted the fact. that there is sufficient amount of personal property. in his hands to pay off all debts again said Estate.

and it further appearing to the court that Orrin B Doolittle and Mary M Doolittle are entitled under said will. as legatees of the said Testator. to one undivided one fourth part of said real estate, Amaziah D. Doolittle

is entitled to one fourth part. That George W Doolittle is entitled to one fourth part. and that Mary and Martha Doolittle children of Rowley S Doolittle is entitled to one fourth part. and that Anne M Mason wife of Asa A Mason is formerly widow of Irwin B Doolittle deceased is entitled to dower as the widow of said Irwin B Doolittle. deceased, in the undivided one half of the North East quarter of Section Twenty Eight Township Twenty four north of the Base line. Range five west of the third principal Meridian

The premises being considered, it is ordered adjudged and decreed by the Court. that David Mark. James R Babcock. and William Stanberry. be appointed Commissioners to make partition of the real estate. above described and set off. one fourth part of. the East half of the south East quarter of Section Twenty nine.

The south west quarter. and the north west quarter of Section Twenty Eight.

The south West quarter. and the West half of the North East quarter of Section Twenty one.

The south East quarter of Section Sixteen all in Township twenty four. North of the Base line. Range five west of the third principal Meridian

and the west one third of Lot number Twelve. in Block. No. Thirty seven. in the original

Town of Perrin, and the,

Undivided one half of the North East quarter of Section Twenty Eight, Township Twenty four, Range Five west of the third principle Meridian, Subject to the claim of Dower of Anne M Mason in said undivided part.—

To Mary M Doolittle and Irwin B Doolittle minor heirs of Irwin B Doolittle deceased, to be held as tenants in common, One fourth part.

To Amaziah D. Doolittle, one fourth part of said real estate, in severalty by him

To George M. Doolittle, One fourth part to be held in severalty, by him.

To Martha Doolittle, and Mary Doolittle minor children of Rawley S Doolittle, to be held as tenants in common One fourth part.

That said Commissioners make partition of said Real estate, if partition can be made without material injury to the Estate and Interests of said Legatees. and if not susceptible of division to make report of the same to the next term of this court. And if Division is made to make report of their proceedings, to the next terme of this court. And that the costs and expences be paid by the Estate of William B Doolittle.

D. Davis

"Endorsed"

Filed Oct 9th 1855. Jno A Jones, Clk.

And now afterwards to wit at the
Circuit Court. begun and held at Perkin.
on the fourth Monday of the month of April in
the year of our Lord One thousand Eight Hundred
and fifty Six, this cause came on to be heard upon
the motion. to approve the Report of the Commissioners
herein filed to wit. on the Second day of May of
said year. being the fifth day of said Term.
which said Report. is in the words and figures
following to wit :—

Amaziah D Doolittle.
George W Doolittle.
Rawley S Doolittle
and Martha Doolittle
and Mary Doolittle
minor Children on said
Rawley S Doolittle

vs.

Irwin B Doolittle and
Mary M Doolittle. minor
children of Irwin B Doolittle
dec'd. and Jesse A Nason
Guardian of said minors.
Anne M. Nason Wife of the said
Jesse A Nason. formerly widow
of said Irwin B Doolittle dec'd.
Middleton Tackaberry Exr
last will of W B Doolittle dec'd

} In the April Term of the Circuit
Court. of Iroquois County, State
of Illinois, A D. 1856.

Commissioners Report.

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We the undersigned Commissioners appointed by the Circuit Court of Tazewell County Illinois, at the October Term of said Court. in the year of our Lord One thousand Eight Hundred and fifty five, to make partition of the following described real estate. To wit.

The East half of the South East quarter of Section Twenty nine. (29)

The South West quarter and the North West quarter of Section Twenty Eight (28)

The South West quarter, and the West half of the North East quarter of Section Twenty One (21)

The South East quarter of Section Sixteen.

All in Township Twenty four, North of Base Line, Range five west of the third principal Meridian,

And the West one third part of Lot No. Twelve, in Block No. Thirty seven. of the original Town of Pekin, now part of the City of Pekin, which owned and held by Wm B Doolittle in severalty and in fee Simple.

Also the undivided half of the North East quarter of Section Twenty Eight (28) Township Twenty four. North of the Base Line. Range five west of the third principal Meridian, which he held as tenant in common with the Heirs of Benin B Doolittle deceased.

And it being ordered and decreed

by the Said Court. that Amaziah D Doolittle is entitled to one fourth of the estate of the Said Wm B. Doolittle, deceased to be held in severalty by him

To George N Doolittle one fourth part to be held by him in Severalty.

To Martha Doolittle and Mary Doolittle minor children of Rawley S Doolittle, One fourth part to be held as tenants in common. by them

To Irwin B Doolittle and Mary M Doolittle minor heirs of Irwin B Doolittle deceased., One fourth part. to be held as tenants in common by them

And the Said Commissioners appointed as aforesaid to wit. David Mark. James R Babcock and Wm Stanbery. having been duly sworn, according to Law. and having made examination of the Said premises. find that the Said premises can not be made partition of without injury to said estate or Legatees., make and report the following division of Said Real estate to wit.

Of the North East quarter of Section Twenty Eight. Township Twenty four North Range four west of the third principal Meridian, the portion of Said real estate held in common by Said testator. and the heirs of Irwin B Doolittle deceased. they apportion to the Said heirs of Said Irwin B Doolittle. and set apart. the East half of the North East quarter. of Said Section Twenty Eight to the Said heirs to be held as tenants in common

by them. Subject to the right of Dower. held by Anna M Mason formerly wife of Irvin B Doolittle deceased., also the said Mary M. and Irvin B. Doolittle, Heirs of the said Irvin B Doolittle, deceased. from the estate of Wm B Doolittle, Deceased.,

The west half of the North East quarter of Section Twenty Eight Eighty acres.

The East half of the north west quarter of Section Twenty Eight. Eighty acres.

And the East half of the North west one fourth, of the north west one fourth of Section Twenty Eight, Twenty acres, all in Town Twenty four North range five west of the third principal Meridian

To Martha and Mary Doolittle minor children of Rawley S Doolittle

The South West quarter of Section Twenty Eight One Hundred and Sixty acres. and

The South west one fourth of the North West quarter of Section Twenty Eight. Forty acres)

all in Township Twenty four North Range five west of the third principal Meridian, to be held by them as tenants in common,

To Amasiah D. Doolittle.

The South East quarter of Section (16) Sixteen. One Hundred and Sixty acres.

The west half of the North East quarter of Section Twenty One. Eighty acres.

all in Township Twenty four North Range five west of the third principal Meridian

also the West one third of Lot No Twelve in Block No Thirty seven in the original Town of Perkins, to be held by him in severalty.

So. George W. Doolittle.

The south West quarter of section Twenty one; one Hundred and sixty acres.

The East half of the South East quarter of section Twenty nine. Eighty acres

And the West one half of the north west One fourth of the North west quarter of section Twenty Eight, Twenty acres, all in Township Twenty four North range five west of the third principal Meridian, To be held by him in severalty.

Given under our hands and seals this 25th day of October, in the year of our Lord. One thousand Eight Hundred and fifty five.

Wm Stanberry (Seal)

James R Babcock (Seal)

David Monks (Seal)

Wm Stanberry #4
D. Monk #4 } comps. change
J R Babcock #4

"Endorsed"

"Filed May 2nd 1856. J A Jones Clk"

And the said motion having been heard by the Court, and no one opposing it, the said report, and the partition thereon, reported, is hereby approved & Confirmed

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State of Illinois }
Tazewell County } ss

I, Henry D Yinigan, Clerk of the Circuit Court in and for said County. do hereby certify the above and foregoing to be a full true and complete transcript of proceedings had in a certain suit, named therein. as the same appears on file and of Record in my office.

In Testimony Whereof. I have hereunto set my my hand and affixed the seal of said Court. at Pekin This Tenth Day of March. A D 1865.

H. D. Yinigan
Clerk.

Mary Handbury et als.
Plffs in Error
vs.
Samuel G. Doolittle by next friend
Dft in Error

} Supreme Court 3d Grand division April Term 1865.

Error to Lazewell.

And now come the said plaintiffs in Error, and say that Manifest Error in the Record, proceedings & judgment of said Circuit Court, in this cause, hath intervened to their prejudice, in this, to wit:=

1st = Said Court Erred in overruling the demurrer of said defendants below to the petition of said Petitioner, Samuel G. Doolittle, filed against them herein:=

2nd = Said Court Error in rendering said decree departing said defendants below, and decreeing & directing partition of the lands in said petition and interlocutory decree named, to be made, as in said petition prayed:=

3d = Said Court Erred in the appointment of said Commissioners, & in the directions in said decree, given to the same, and in ordering & requiring said defendants below, to make report to said Court of the rents & profits of said premises, which have come to their hands:=

4th = Said Court Erred in approving said Report

of said commissioners filed herein =

5th = Said Court erred in rendering said decree filed March 3d, 1865, confirming said Report, and decreeing said sixty acres, awarded to said Petitioner by said commissioners, in fee, and to be held by him in severalty, as in said decree specified =

6th = Said Court erred in adjudging costs against said defendants below, and in directing the surrender of the possession of said sixty acres to the said Petitioner or his guardian =

7th = Said Court erred in continuing said cause upon the docket of said court =

Wherefore & for other good & sufficient reasons appearing in said Record, said plaintiffs in error pray that said several orders, judgments & decree of said Court, be set aside, reversed, annulled, and wholly for naught esteemed =

Coles & Leland
Cooper & Hoge
for Pffs in
Error =

And the said Defendants in Error by their said attorneys, come, and enter their appearance in said Court, and say that there is in said Record no such Error as is above alleged by said Plaintiffs in Error, and that said Error ought not to annul said Decree, and the same for

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Samuel G. Doolittle et als

vs.

~~Isaac A Hasbrouck~~
Mary Handbury & others

Partition.

Complete Record & Evns

Filed April 3d 1865
L. Leland
Clerk

Deed Book (illegible) Page
of the County Clerk's Office
Evns

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State of Illinois }
Tazewell County } ss

Pleas in the Circuit Court of Tazewell County, Illinois. Begun and held at the City of Pekin. in said County. before the Honorable James Hamett, Judge of the Twenty first Judicial District. consisting of the Counties of Tazewell Mason &c. in Chancery Setting on the 3rd day of February, it being the February Term. of said Court. in the year of our Lord. One thousand Eight Hundred and Sixty five :-

Sam ly. Doolittle.
by Allen Doolittle.
his next friend.
vs.
Henry Handberry.
John D Handberry.
Martha Conklin
Ketchum S Conklin
Charles P. Carey

County of Tazewell. of the February Term. of the Tazewell County Circuit Court. A D 1865.
In Chancery -
For Partition.

Be it remembered, that heretofore to wit. on the third day of January A D 1865 Came the said. Sam ly Doolittle. by Allen Doolittle. his next friend & by his Solicitor B S Prettyman. and filed in the clerks office of said court. his petition for Partition, against the said defendants. which petition also prayed that a writ of summons might issue against

the said defendants, and said petition is in the words and figures following to wit.

State of Illinois County of Tazewell.
Of the February Term. of the Tazewell
County Circuit Court. A D 1845.

Sam. G. Doolittle.
by Ellen Doolittle.
his next friend
vs.
Mary Handberry.
John D Handberry.
Martha Conklin
Ketchum S. Conklin.
Charles P. Carey

In Chancery.
Petition for Partition.

To the Honorable James Hamett.
Judge of the 21st Judicial Circuit of the State of Illinois. Composed of Tazewell &c.

In Chancery Sitting.

Your petitioner Sam G Doolittle, one of the Children of Rawley S Doolittle deceased by Ellen Doolittle, his mother and next friend Humbly complaining, Sheweth unto your honor.

That about the year 1836. one John Whipple purchased of the United States, the North west quarter, and one. John C Brown about the same time purchased of the United States. the South west quarter of Section 28

in Township 24. North of Range 5 West of the 3rd principal Meridian, in the State of Illinois. whereby they respectively became the owners in fee thereof. and that said John Whipple on the 13th day of November. 1850. Sold and conveyed the North West quarter aforesaid unto David Monk. who on the 17th day of December 1850. Sold and conveyed the same unto William B Doolittle. who became thereby entitled to the same in fee simple and your orator avers that said John Brown. On the 21st day of March. 1851, Sold and conveyed Said South West quarter aforesaid unto Richard Y. Gill. who on the 4th day of April 1851, Sold and conveyed the same unto Said William B. Doolittle. who also thereby became entitled thereto in fee simple, And your orator shows that on the 21st day of July 1854. the said William B Doolittle departed this life, having previously thereto made and executed in due form. his last will and Testament, dated April 10th. 1851. and which will was duly proven and entered of Record. in the Probate court of said County. on the 27th day of July. 1854. and which said will of said Wm B Doolittle, is in the words and figures following viz: as appears in Exhibit hereunto filed Marked (A) and for greater certainty your Orator prays it may be taken as part and parcel of this your orators bill of Complaint., By which said

will of William B Doolittle, your orator became entitled in fee to his distributive share of the undivided one fourth part of all of the real estate of which the said William B Doolittle died seized in fee subject to the provisions and uses in said Will named. Amongst which were the Lands aforesaid, and your petitioner further shows that in the year 1851, when the will in question was made, the said Rawley S Doolittle resided in De Witt County Illinois and the said Defendants Mary Handberry and Martha Conklin were then respectively 5 and 7 years of age. their mother, the first wife of said Rawley S Doolittle, was then dead, having died in June 1847. and Rawley S Doolittle then unmarried. And that said William B Doolittle then knew all those facts, and also then knew the names of said Mary and Martha, the children of said Rawley S Doolittle and that they were then his only children

And petitioner avers that at the time of the Death of said William B Doolittle, in July 1854, the said Rawley S Doolittle was then unmarried, and so continued until February 2d A.D. 1856. when he was married to said Ellen Doolittle. and the petitioner Sam'l Doolittle was born. Dec'r 2d 1856.

That Rawley S Doolittle died now

58 remove his family, to Tazewell County Ills. until March 13th 1856. That said Mary attained her majority before the death of her father, and said Martha her majority on the day of the death of her father, and that your petitioner is the only legitimate child of said Rawley S Doolittle, by the said Ellen Doolittle, and he and said Mary and Martha are the only legitimate children of said Rawley S Doolittle, and that all of the facts aforesaid, which transpired before the date of the Will, and the date of the death of said William B Doolittle, respectively, were well known, to him, And your petitioner shews that said partition suit referred to in said Bill, was commenced and the decree for partition therein was rendered therein, before said Second marriage or marriage of said Rawley S Doolittle with said Ellen Doolittle aforesaid. but said premises mentioned in said suit of partition were not divided and set off, and confirmed and approved by the court until the day of May 1856. Which was after the marriage of of said Rawley S Doolittle with said Ellen Doolittle, the mother of said Petitioner.

And your orator shews, that after the death of said William B Doolittle, the said Rawley S Doolittle, and Mary Doolittle, now

Mary Handberry. and Martha Doolittle now Martha Conklin. although said Martha and Mary were then minors without any next friend and by their attorney only. To gether with George N. Doolittle and Amasiah D. Doolittle. two others of the Legatees in said will. filed their petition for partition. in this Court. against Jesse A Mason guardian of Irvin B and Mary M Doolittle. minor heirs of. Irvin B Doolittle decased. and said Mary M. and Irvin B. being two other legatees in said will. and Anne Maria Mason. late widow of said Irvin B Doolittle. deceased. and Josepa. S Mc Bitton. who was alleged to have some interest in the premises of which said William B Doolittle died seized in fee. and Middleton Huckaberry the executor of said will. upon which petition such proceedings were had. that the full one fourth part of all the real estate in value. of which said William B Doolittle. died seized was by decree of said Court. set off and apart. unto Mary and Martha Doolittle minor Children of Ransley S Doolittle. subject to the use of said Ransley S Doolittle. as in said will provided. which said proceedings in said Cause of partition. being now a matter of record of this Court. your orator begs leave to refer the Court for greater certainty herein. and asks that the same may be taken and made

40 a part of the your orators bill of complaint herein, And your orator shows that by said proceedings and as the one fourth part of the estate of William B Doolittle deceased, the said Commissioners appointed by said Court and named in said cause set off and apart to the said Children of Rawley S Doolittle named Mary and Martha, and who are named as parts of the defendants herein subject to the rights and interest of Rawley S Doolittle therein.

The South west quarter, and the South west quarter of the North west quarter of Section 28 aforesaid.

And your orator avers that from the date of the death of William B Doolittle. Said Rawley S Doolittle took immediate possession of, and the use of, and control of the whole undivided fourth part of all of the estate of William B Doolittle deceased. and that he so continued to possess and use and control the same, under the will aforesaid, until the selling off and dividing of the said real estate in and by virtue of the proceedings aforesaid, and that he the said Rawley S Doolittle, immediately after the same was so set off and ~~divided~~ apart as aforesaid, took entire absolute, and unrestrained possession, and control of all of said South West quarter, and South West quarter

of the North west quarter of. of said section Twenty Eight. aforesaid, and so Kept. and held and possessed. and used and enjoyed. and controlled and disposed of. the Same in and under. and by vertue of said will as by Law. and the provisions thereof he was entitled to do. until the day of his death which happened. on the 4th day of may A D 1864 at the County aforesaid, and your orator shews that on the day. of the death of the said Rawley S Doolittle. the said Martha Conklin. was not then of Lawfull age but was still a minor, and your Shews. that he. was born in said County. on the 21st day of December 1856. and is now in the 9th year of his age. and your orator shews that he is one of the children of said Rawley S Doolittle deceased. and was born in lawfull wedlock. and by vertue of the provisions of said will of. William B Doolittle, and the Law of the Land, is entitled to the one third part of the said South west quarter. and South West quarter of the North west quarter of said Section 28. aforesaid, and avers that he. your orator and Mary Hundhenny and Martha Conklin, are. the only children of said Rawley S Doolittle aforesaid.

and your orator Shews. that said Rawley S Doolittle. by vertue of said will immediately on the death of William B Doolittle

42 took ~~said~~ an estate in possession. And the rents and profits and use, and absolute control thereof contingent for years to end for himself by said will and the law of the Lands, and so by virtue thereof continued said estate and possession and use and control and disposal thereof until the day of his death. And the said Mary Handbery, and Martha Conklin never at any time, until the day of the death of said Rawley S Doolittle, took, had, received meddled with, or in any manner touched, the possession profits proffits disposition or control of said land, from the day of the death of said Wm B Doolittle, and were not, at any time during the said time, from the death of said William to the death of said Rawley S Doolittle, entitled by law, to take or receive the possession - distribution or control thereof

And your orator avers that by virtue of said will, said Children of Rawley S Doolittle, did not take as tenants in common but took what interest they took, as joint tenants and in case of the death of either, before the arrival at Lawfull age, of the youngest of said children the other child or children of Rawley S Doolittle took the interest of the deceased child by survivorship

And your orator avers that said property could not be lawfully distributed in severalty to said children of Rawley S Doolittle, prior to the

time, that the then youngest of said Children should arrive at Lawfull age. Which time the said Rawley S Doolittle, held and had the absolute possession, Management, estate and disposal thereof.

And your orator avers that altho he was born after the death of the said William B. Doolittle, yet he avers that he was born before said legacy was reduced to the possession of the said Children of Rawley S Doolittle, who were in being at the date of the death of the said William and before the period of time, that a distribution of said Legacy was had, and before the contingency happened upon which, it could have been had. between the said Children of Rawley S Doolittle. living at the death of the said William.

And your orator avers that the Interest and estate which the said Mary and Martha Doolittle took at the decease of Wm B. Doolittles was an estate subject to the prior absolute disposal, possession and term and estate of Rawley S Doolittle; thereto, and to the contingent dimunition thereof arising from the birth of other Children of Rawley S Doolittle, in lawfull wedlock. which might accrue before the Interest devised, vested in their possession and before the period of Distribution, between them arrived, and your orator avers

that there has arisen, since the death of Rawley S Doolittle, a large amount of rents and profits, in and from the said land viz: to the amount of about $2.000, all of which is in the hands of and controlled by said defendants herein, and the one third part of which belongs to your orator, according to law, as he avers, yet notwithstanding the said defendants hereinafter named all severally well knew at the time the truth of all of the foregoing facts, they have since the death of said Rawley S Doolittle, and since the said Martha arrived at Lawfull age, assumed to be the owners of the whole of said Legacy, so devised to the Children of said Rawley S Doolittle and so assuming have seized the possession thereof since the death of said Rawley S Doolittle, and have sold and otherwise conveyed all of said tracts of Land aforesaid to said Charles P. Carey, regardless of the rights of your orator therein, and he Chas. P. Carey, now holds the same in defiance of the rights and interests of your orator, and as your orator is remediless except in a court of Equity, to the end therefore prays that the said Mary Handberry and John Handberry, Martha Conklin and Ketchum S. Conklin, and Charles P Carey may be made defendants herein, and that one third part of

Said property aforesaid. may be divided and
set off to him in his own right. and that the
other two thirds. may be set off to the said
Mary and Martha. or to the said Charles P Carey.
as the rights and titles thereunto. between them
may determine. and that they the said defendants
may be duly sommoned. to attend in this cause
at the next term of this Court. and then and
there true and perfect answers make herein to
all and singular. the charges and allegations
of this your orators bill of complaint. and
that on a hearing thereof your honor will
decree that the premises aforesaid. be divided
so that your orator, may have and hold in
severalty. the one third thereof in fee. and
that said defendants may stand to and abide
by. the order judgment, and decree of this
Court. in the premises. and that your honor may
appoint Commissioners to make. said division
under the Statutes provided the same can be done
without great prejudice to the parties, and in the
event. that the same cannot be so divided. that
the same may be sold as required by law. and
the proceeds thereof. distributed between your orator
and said defendants, and that said defendants
may account for all rents. by them collected or
received. according to Law. and for such. other
and further. Order Judgment and decree in

46 the the premises, as to your honor may seem meet and proper. and as in duty bound your orator will ever pray &c.

Samuel Doolittle by
Allen Doolittle,
his next friend

B S Prettyman
Solr. for Petitioner

The clerk of said court will please issue process in the foregoing cause. returnable as required by law. and oblige

B S Prettyman
Solr. for Compltt & Petitioner

I hereby enter myself security for cost in the above cause. and acknowledge myself bound to pay all costs that may accrue to the opposite party. or to any of the officers of this court, according to Law.

Allen Doolittle.

State of Illinois
County of Tazewell } Allen Doolittle, being duly sworn according to Law, deposeth and sayeth that the foregoing petition for Partition, is true in substance and in fact.

Allen Doolittle.

Sworn and subscribed to before me this third day of January 1865, H P Brigan Circuit. Clerk

"Endorsed"
Filed 3d Jany 1865
H P Brigan
Clerk.

# Last Will and Testament of
# William B Doolittle.
## Exhibit "A"

In the name of God, amen! I William B Doolittle, of sound mind memory and understanding, and still in apparent good health, yet conscious of the uncertainty of life, in order that at my decease, my worldly goods, may be distributed amongst my relations in such manner as I myself now think would most conduce, in promoting the interests of my Legatees, do hereby make and declare ~~myself~~ this my last ~~will~~, and only will and testament

In the first place I desire that my debts should be paid according to the proper priority established by the laws of the State of Illinois,

In the second place I desire and so will, that the residue of my estate, Real and personal and mixed shall be divided into four equal parts or shares to wit.

To Mary Maria Doolittle and Irwin B Doolittle, infant children of my deceased brother, Irwin B Doolittle, I devise and bequeath one fourth of my estate of every kind and description whatever, with the express condition and stipulation that if either of them shall die before he or she

shall have arrived at his or her majority. then and in that event, said one fourth part of my said estate shall go to survivor of said two children but if at the time of my decease neither of said two children shall be living, then I devise and so will that said one fourth of said estate, shall become the property of my brothers Amaziah D Doolittle, George W Doolittle and of the children of my Brother Rawley S. Doolittle, under the same conditions, limitations and restrictions, as the remaining three fourths of my estate, hereinafter devised to them as attended with

In the third place, I do hereby devise and bequeath unto my Brother Amaziah, D. Doolittle the one fourth of my estate, And to my Brother George W Doolittle the one fourth of my estate and to the children of my Brother Rawley S. Doolittle the one fourth of my estate, And I do further declare, that in as much as it is my fixed will and determination, that my estate shall go for the benefit of the devisees aforesaid, and to their lawful heirs and Legitimate Children, and to no other persons whatsoever. I request and will that if either of said devisees, shall depart this life before me, leaving neither lawful wife nor child the portion of the decedent shall be divided among the remaining devisees, their widows and children according to true intent and meaning of this will.

It being borne in mind however, and I here

again explicitly say and declare, that the children of the said Bowin B Doolittle, shall take by survivorship from each other, and that the children of the said Rawley S Doolittle, shall likewise take by survivorship from each other, this provision however not to deprive said children however, either of the said Bowin B. Doolittle, or Rawley, of their share of any lapsed legacy. and I do further will and declare that Rawley S Doolittle, my Brother, shall have the uncontrolled, and absolute management and disposal of all such part of my estate, his said children at my decease, shall become entitled to, until the youngest of said children, shall become of full age, to use said means at his discretion without having to account to any person or persons in Court or Courts whatsoever, as to his application thereof, but if the said Rawley S Doolittle shall die before my decease, then I desire that such means or funds, may be controlled by the legally appointed guardians, of said infant children as is justified and required by law. but if the said Rawley S Doolittle shall be in full life and said children shall be deceased, then I bequeath said property to My brother Amaziah, for the use of said Rawley, the said Rawley however to have the use and control of the same.

And I do hereby for the purpose of having this my last will, carried out according

50 to its true intent and meaning. Nominate Middleton Tackaberry Esqr. the sole executor thereof.)

In Testimony whereof, I have hereunto set my hand. on this Fifteenth day of November. in the year of our Lord. One thousand Eight Hundred and fifty one.

W. B. Doolittle.

The above will was signed by the testator, in our presence and in the presence of each other, at the request of said Testator.

Edward Jones.
Saml. Gybson

State of Illinois
Tazewell County } ss. Edward Jones and Samuel Gibson. being duly sworn according to law. depose and say. that William B Doolittle, deceased. executed the within will and testament. in their presence. and that in their opinion at the time he was of sound mind memory and understanding. that at his request they subscribed their names as witnesses to his signature in his presence. and in the presence of each other

Saml Gybson.
Edward Jones

Subscribed and sworn to
before me this 27th July 1854

Dan Gordley Clerk.

I. Middleton Tuckaberry. do solemnly swear. that this writing Contains the true last will and testament of the within named William B Doolittle. so far as I know or believe and that I will well and truly. execute the same by paying first the Debts. and then the legacies mentioned therein. as far as his goods and chattels will thereunto extend. and the Law charge. and that I will make a true and perfect inventory. of all such goods and chattels. rights and credits; as may come to my hands or knowledge belonging to the estate of the said deceased. and render a fair and just account of my executorship when thereunto required by Law. to the best of my knowledge and ability. so help me God.

M. Tuckaberry —

Subscribed and sworn to
before me this 17th day of August.
A D 1854.

Jno. Gridley clerk

Endorsed —

Examined and Appd for Record
B.

Filed July 27th 1854

Jno. Gridley clerk.

Whereupon a writ of Summons as prayed for was issued, against said defendants, which writ is in the words and figures following to wit:-

State of Illinois
Tazewell County } ss

The People of the State of Illinois -

To the Sheriff of said County greeting:-
We command you that you summon Mary Handberry, John D Handberry, Martha Conklin Ketchum & Conklin, and Charles P Casey, if in your County, personally to appear before the Circuit Court of Tazewell County on the first day of the next Term thereof, to be holden at the Court House in the City of Pekin, on the first monday in the month of February next, to answer to a certain Bill of Complaint filed in our said Circuit Court on the Chancery Side thereof against them by Sam'l Doolittle, by his next friend Ellen Doolittle

And to do and receive, whatever our said Court may order and decree in the premises

And have you then and there this writ, and make due return thereof in what manner you execute the same

Witness H. P. Brigan Clerk of said Circuit Court, and the Seal thereof affixed at Pekin this third day of January A D 1865

(Seal) (50c gold Stamp) H P Brigan Clerk

Sheriff's return on said writ.

"I have duly served the within named Defendants by reading and leaving a true copy with Mary Handberry: John D Handberry, Martha Conkling: Ketchum S Conkling and Charles P. Carey. as I am commanded.

January fourth A.D. 1865

James Hamson Shff
by J. C? —

Service $2.50
Copy 2.00
Mileage 25
Return 10
$5.85

And endorsed on back.

Filed this fourth day of January 1865
H D Bingay
Clerk.

And now afterwards to wit on the 6th day of February A D 1865, comes the Defendants by their attorneys, and filed their Demmer. to the said bill of Complaint, which Demmer is in the words and figures following to wit: —

Samuel G Doolittle
by Allen Doolittle next friend
vs.
Mary Handberry et als.

In Circuit Court.
Fayette Co. Ills.
Feby Term 1865

In Chancery for Partition.

These Defendants not confessing, any thing in Said Complainants Bill to be true, as therein alleged. demur thereto. and for cause show

54. That said complainant has not by his said Bill made any such case as entitles him to the relief sought for, or to any relief as against these defendants; Wherefore and for other good causes appearing in said Bill these defendants demur to the same, and pray the judgment of this Court, whether they ought further to be required to answer said bill and they ask to be dismissed with their Costs &c.

Cobbs & Boland
Cooper & Mofs.
for Defendants

Endorsed on Demurrer
Filed Feby 6th 1845
H D Duncan Clerk
W W Clemens Depy.

And now afterwards to wit, on the 8th day of February A D 1845, in said February Term of said Court, the following proceedings were had in said Cause to wit.

Sum[mons] & Doolittle by next friend
Ellen Doolittle
vs.
Mary Standberry et al } Partition

The Court having heard the arguments of Counsel on the Demurrer

55 of the defendants, to the complainants Bill of Complaint, and being fully advised in the premises, over Rules said Demurrer.

And now afterwards to wit, on the 9th day of February A D 1865, in the said February Term of said Court, the following proceedings were had in this cause to wit.

Sam'l Doolittle by next friend
Ellen Doolittle,
vs
Mary Handberry et als
} Partition.

On motion of the said Defendants by their Solicitor, that the time in which said defendants are required to plead herein, is extended until Tuesday Morning next.

And afterwards to wit on the 21st day of February A D 1865, in said February Term of said Court, the following proceedings were had to wit -

Sam'l Doolittle by next friend
Ellen Doolittle
vs.
Mary Handberry, John D Handberry, Martha Conkling Ketchum & Conkling and Charles P Carey
} In Chancery. For Partition.

The said Defendants having failed to answer herein, in accordance with the rule hereto fore entered in this Cause. And said defendants being now each three times Solemnly called, came not, but made default.

It is therefore considered by the court on motion of the plaintiff by his Solicitor, that the defaults of the said defendants, be and the same are accordingly hereby entered, and said Complainants bill of Complaint, is taken as confessed as against them

And now afterwards to wit, on Thursday the 23rd day of February A.D. 1865, in the said February Term of the said Court, the following Decree, was made by said Court, and entered for Record, which decree is in the words and figures following to wit:—

State of Illinois } ss. Of the Feby Term of the Tazewell
Tazewell County } County Circuit Court A.D. 1865

Sam'y Doolittle by
Ellen Doolittle his next friend
vs.
Mary Handberry,
John D Handberry,
Martha Conklin
Ketchum S. Conklin &
Charles P. Carey

Petition for Partition.

6-7-&-7

And this day again comes the said petitioner by Ellen Doolittle his next friend and the said defendants all having been duly served, with process in this cause more than Ten days before the first day of the present term of this Court, and they the said defendants appearing in this cause filed their demurrer to the said Bill & petition of said complainants herein filed and alleging, that the matter and things alleged in said Bill and petition altho true was not sufficient in Law, to enable said complainants to recover & obtain the relief sought.

And the Court on hearing reasons authority, and arguments of Counsell as well for the defendants as the complainants doth order and adjudge, that the said demurrer of the said defendants so filed in said cause be over ruled and that the said defendants do further answer in said cause, and the said defendants having been so ruled to answer neglected and refused so to do, and being called, came not but made default therein and this cause coming on again to be heard upon the Bill and exhibits, filed by complainant herein and said defendants having refused to further answer herein, the Court doth order and decree that the said bill of complaint and petition be held and taken against the said defendants

58 and each of them as confessed., and the said complainant calling said cause to a hearing in said court. offered to the court the testimony of Wm B Parker., who on being sworn. testified that the matters and things in said petition and bill contained. severally in manner and form as therein set out. were and are true, and this court being now fully advised in the premises, it is considered that the prayer of said petitioner be granted by the Court., and the Court doth order adjudge and decree. that the said premises in said Bill and petition mentioned. and described viz:

The South west quarter and the South West quarter of the north west quarter of Section Twenty Eight in Township Twenty four. north of range five west of the 3rd Principal Meridian, be set off and divided between the said complainant and the said defendants. so that the said petitioner have and hold. the one third part in value of the said premises to himself in severalty. and that the other 2/3rd part. be set apart and held by the defendant C P Carey in severalty. And the Court doth further order that William S Rankin, Gideon H Rupert and Lemuel Allen be and they are hereby appointed as commissioners to make partition thereof as aforesaid, provided the said partition and division thereof as aforesaid, can be made without material injury. or great prejudice to the

owners thereof. and that after having personally examined said premises. if the same in their judgment cannot be so divided. without great prejudice to said owners thereof. then that they make report of that fact to this Court. And that if they can so make partition thereof as aforesaid without such prejudice to the interest of the parties then that they make said division as above ordered and make their report thereof to this Court. And this Court doth order the said Defendants Mary and John Handberry. and Martha and Nicholas S Conkling. and Charles P Carey. to report to this Court. the amount of the rents and profits received by them or either of them. from the premises aforesaid by next term of this Court. Subject to the further order of the Court. in the premises

James Hamett.

Endorsed

Filed Feby 23rd 1865

H P Morgan Clerk

And afterwards to wit on Friday the 3d day of March A D 1865. the following proceedings were had. before said Court in the cause to wit:- And now comes the Commissioners heretofore appointed to make partition in this cause and present their report. which is examined by the Court. approved. and ordered to be filed. and

60 Recorded. And said Report is in the words and figures following to wit:

State of Illinois } In Tazewell County Circuit Court
Tazewell County } } February Term A D 1865

Sam. G Doolittle
by his next friend
Ellen Doolittle
vs
Mary Handbery John D Handbery,
Martha Conklin Nicholas S Conklin
and Chas. P. Carey

} In Chancery
For partition

We the undersigned Lyndon H Rupert William S Rankin and Lemuel Allen Commissioners appointed by said Court in the above described Cause, named in order according to the decree and order of the Court in the premises on being first duly sworn depose and say. That we will personally go upon said land named in said Cause, and allot and set off to the said Sam G Doolittle the one third thereof in value if the same can be done in our Judgment without great prejudice to the interests of the owners thereof. and we do further swear that we will make said partition fairly and impartially between the parties as ordered by the Court if the same can be so done without such prejudice and if

Not. that we will so Report the facts to the
Said Court.

Commissioners, Wm S. Rankin.
Lemuel Allen.
Gid H Rupert

Subscribed to and sworn to
before me this 27th day Feby.
1865. H P Bingam Clerk.

Report!

To the Honorable James Hamett,
of 21st Judicial Circuit of the State of Illinois
In Chancery Sitting,

Your Commissioners the undersigned William S. Rankin, Gideon H Rupert, and Lemuel Allen. appointed as Commissioners in the above cause to make partition of the premises therein named. would most respectfully report that after having been first duly sworn according to Law, to make partition as required in said decree. they went upon the ground named, and after having examined the premises, are of opinion that the same can be divided as required by the decree in this cause. without great prejudice to the owners thereof, and the undersigned therefore after having examined said premises, have allotted and set apart unto the said Sam'l Doolittle. Sixty acres of said Land off of the East side of the South West quarter of Section Twenty Eight, in Township 24, North Range four West of the third principal Meridian aforesaid

62 The same being in opinion of your Commissioners the one third thereof in value. and described and bounded as follows. viz:—

Beginning at the South East corner of the said South west quarter of said Section 28 aforesaid thence West Sixty rods. thence North one Hundred and Sixty Rods, thence East to the north East corner of said South West quarter Sixty Rods. thence South one Hundred and Sixty rods to the place of beginning containing Sixty acres. to be held by the said Samuel Doolittle in severalty.

And your Commissioners do further allot and set off. unto the said Chas P Casey the residue of the said Lands to be held by him in Severalty. all of which is most respectfully submitted to the Court.

Samuel Allen (Seal)
W S Rankin (Seal)
G W Rupert (Seal)

Sworn and Subscribed to.
before me this 28th day of
February 1865.
W P Morgan
Clerk.

Commissioners fees.
S Allen 2 days $5.00
W S Rankin 2 " 5.00
G W Rupert 2 " 5.00

Endorsed
Approved
James Harriott

Filed March 3d 1865
W P Morgan Clerk.
M. M. Clemens Dep.

and afterwards to wit on the 3rd day of March A D 1865. the following proceedings were had in this cause.

State of Illinois } In Circuit Court.
Tazewell County } ss February Term A D 1865

Sam. G Doolittle
by his next friend
Ellen Doolittle
vs.
Mary Standberry et als } In Chancery.
for Partition.

And now, on this day. again come the said complainant in this cause. and the commissioners heretofore appointed to make partition herein of the lands in this suit named. having been duly sworn as required by Law. and after having fully examined the premises sought to be divided, and made division and partition thereof and reported their proceedings to this court. which report after being duly examined. and after hearing counsel and reasons for and against said the approval of said report. and the court being now fully advised in the premises. It is ordered by the court that the report of said commissioners in this cause aforesaid, be. and the same is hereby approved and confirmed by the court.

And the court doth further order

64 thus from and after this date, the said Sam ly Doolittle have and hold, and be invested ~~with~~ of his title in and to said Sixty acres of Land as described in said report in severalty and in fee, and free from all connection and right in common with said Chas P Carey, defendant and of all said defendants, and the Court doth order that the residue of said Lands in said Bill described except and besides the said Sixty acres so set off to said Sam ly Doolittle, be taken and held by said C P Carey in severalty, and that said C P Carey have and hold the same in severalty and in fee, and he be so invested therewith free from all connections or right in common thereto of the said Sam ly Doolittle, and that the costs of this proceeding be divided between said complainant and said defendants, pro Rata, in proportion to their respective interests in said land, and said defendants be and they are hereby ordered to surrender the possession of said Sixty acres named in said report as set off to said complainant into the said Sam ly Doolittle or to his guardian.

and that for the Purpose of enabling said defendants to report the amounts of rents and profits accrued by them respectively, for the further order of the Court in relation thereto, this cause is continued.

James Hamett.

Endorsed. Filed March 5th 1865. H P Morgan Clerk
for N M Clemens dep.

State of Illinois
Tazwell County ss

I, Henry P Finigan
clerk of the Circuit Court in and for
said County do hereby certify that the
foregoing 32 pages, contain a full true
and complete transcript of all proceedings
had in a suit in said Court, wherein,
Sam'l G Doolittle by his next friend is plaintiff
and Mary Handbenny, Wm D Handbenny,
Martha Conklin, Ketchum S. Conklin and
Charles P Carey are defendants, as
the same appears on file and of record
in my office

In testimony whereof I have hereunto
set my hand, and affixed the seal
of said Court at Peki this 11th day
of March A D 1865

H. P. Finigan
Clerk.

Clerk's Record fee $20.00

Sam'l G Doolittle
vs
Mary Handbenny
Wm D Handbenny
Martha Conklin
Ketchum S Conklin
Chas. P. Carey

By Chancery

Petition —