

No. 12940

Supreme Court of Illinois

Walker

vs.

Frink et al

71641  7

IN THE SUPREME COURT.

APRIL TERM, 1858.

MARTIN O. WALKER,

vs.

JOHN FRINK and

WALTER LAFLIN.

*Appeal from the Cook County Court of
Common Pleas.*

ON January 6th, 1855, a bill in chancery was filed by John Frink against Martin O. Walker and Walter Laflin, in the Cook County Court of Common Pleas, for partition of certain premises therein described, alleged to be held by the complainant and the defendants as tenants in common. Walker filed his answer denying the title of the complainant and of his co-defendant, Laflin, to which a replication was filed. On the 25th day of January, A. D. 1856, a hearing was had, and a decree rendered, settling the rights of the parties, and appointing commissioners to make partition of the premises in accordance therewith. On the 7th day of March, A. D. 1856, the said commissioners made their report making partition of the premises by metes and bounds, which report was confirmed by the court, and a decree was rendered on that day, making partition of said premises agreeably to the report of the commissioners, and decreeing "that the title to that part of the premises set off to John Frink," describing it by metes and bounds, "be and the same is hereby vested in said John Frink, free and discharged of and from all claim and interest of the said Martin O. Walker and Walter Laflin, and of all persons claiming by, through or under them or either of them;" and "that the title to that part of the premises set off to Walter Laflin," describing it by metes and bounds, "be and the same is hereby vested in the said Walter Laflin, free and discharged of and from all claim and interest of the said John Frink and Martin O. Walker, and of all persons claiming by, through or under them or either of them;" and "that the title to that part of the premises set off to Martin O. Walker," describing it by

metes and bounds, "be and the same is hereby vested in the said Martin O. Walker, free and discharged of and from all claim and interest of the said John Frink and Walter Laffin, and of all persons claiming by, through or under them or either of them."

And it was further ordered by the court that each of the parties should pay one-third of the costs of that suit.

On the 24th day of April, 1856, and after the expiration of the term at which the above decree was rendered, Walker filed a motion to open the said decree, and to set aside the report of the commissioners, and that he might have leave to file a further or amended answer. This motion was supported by the affidavit of Walker filed at the time said motion was made.

The affidavit set forth that on November 20th, 1840, Williams Fowler filed a bill in chancery in the Circuit Court of Cook County against John Frink and Martin O. Walker, alleging that said Fowler had been a partner in the firms of Frink & Bingham and Frink & Trowbridge, and then was a partner in the firm of Frink & Walker, and that as such partner said Fowler was entitled to an undivided one-sixth part of all the partnership property and effects of said firms, in which was included one-sixth part of the premises described in the original bill for partition. That said Fowler's bill did not claim an interest in said premises by any particular description thereof, and only claimed the same under the general allegation that he was entitled to said one-sixth interest in all of said partnership property and effects. That said bill prayed for a decree declaring the rights of the parties and for an account relative to all partnership property and transactions. That said Frink & Walker, in 1841, filed their answers to said bill of Fowler, denying the allegations therein. That said cause was heard and a decree rendered therein to the effect that Fowler was and had been a partner as alleged in his bill, and appointing William H. Brown special master to take an account of all partnership property and transactions. That said Brown did take and state an account between said parties, wherein said Fowler was allowed the value of one sixth part of said premises, and of all other partnership property and effects, and whereby a sum was found

due to said Fowler, which, at the time of making said affidavit, would not, with interest on the same, amount to over four thousand dollars. That Brown filed his report in court, and that the same was withdrawn therefrom and could not be found.

That said suit was then depending and undetermined, and that Walker had paid or was liable to pay, over four thousand dollars as costs in said suit, and expected to have the title to said premises settled therein. That the legal title to said one-sixth part of said premises was, until June 2d, 1846, vested in said Bingham, when he conveyed the same to Fowler without consideration, who on the same day conveyed the same to Laffin without consideration, other than antecedent indebtedness, with full notice of the pendency of said chancery suit. Walker further sets forth in his affidavit, that he claimed to be the owner of the undivided one-third part of the premises claimed by Frink, by virtue of an arbitration between them, in which he alleged that said Frink's interest was awarded to him, said Walker. A hearing was had upon this motion, on the 18th day of January, 1858, when the same was overruled by the court.

On the 31st day of March, 1858, and after the term at which said motion was overruled, John Frink and Walter Laffin filed their petition, setting forth the filing of said bill of complaint, the report of the Commissioners, the decrees of the court rendered in said cause, and that the petitioners, John Frink and Walter Laffin, had executed deeds to each other of the respective portions of the premises assigned to each of them respectively by said decree, but that Walker had refused, and still did refuse, to execute a deed to the petitioners, or to either of them, of the portions of said premises awarded to them respectively by said decree, and held the same as against said decree, and in derogation of the rights of the petitioners under the same, and that said Walker, at the time of the rendition of said decree, had, and still had, the exclusive possession of said premises so allotted to the petitioners. The petitioners prayed that the court would pass an order in execution of said decree, directing said Walker to convey to the petitioners by deed in fee simple duly executed, the portions of said premises awarded

to the petitioners respectively by said decree, and directing further that should said Walker refuse to execute said deeds, or either of them, by a time to be specified in the order, that then the master in chancery execute and deliver said deeds to the petitioners respectively, the petitioners thereby submitting to execute to said Walker such deeds as should vest in him the legal title to the premises allotted to him by said decree, and further praying that the court would pass an order directing said Walker to deliver to the petitioners severally, the possession of the portions of the premises respectively allotted to them by said decree, on or before some short day to be fixed by the court, and that the petitioners might have such orders and process of the court as might be necessary to compel obedience to said order.

The facts set forth in the foregoing petition were verified by affidavit.

Walker appeared and filed an answer to the petition, in which he admits the rendition of the decrees of said court, the report of the commissioners, and the confirmation thereof as stated in the petition, and setting forth that he filed an answer to the original bill, denying all title in common with Frink and Laffin, and setting up title in himself to the whole premises.

The answer to said petition further sets forth, that Walker is sole owner of the premises, and that Frink and Laffin have no estate or interest therein, and refers to the affidavit herein before set forth, and the exhibits therewith filed for the nature of his, Walker's, title thereto.

And further setting forth, that Frink had commenced an action of ejectment against Walker, for the recovery of that portion of the premises set off to Frink by said decree, which suit was then depending and undetermined, and that Laffin had commenced an action of ejectment against Walker, for the recovery of that portion of the premises set off to Laffin by said decree, which suit was also depending and undetermined. And further setting forth, that said court had no power to make any order in favor of Laffin, as he was not a complainant in the original suit for partition, and that the court had no jurisdiction or power in the matter, and prayed that the petition should be dismissed.

No evidence appears in the record in support of Walker's answer, and the same is not verified by affidavit.

On the 31st day of March, 1858, the following order was made and entered of record :

John Frink and Walter Laffin, two of the parties to the above entitled cause, having filed their petition in this court, praying that Martin O. Walker may be ordered to execute deeds to them of certain premises, in execution of a decree heretofore passed in said cause, and for an order for the delivery of the possession of said premises to the petitioners, and said petition and the answer thereto having been duly heard and duly considered, and it appearing to the court that the facts set forth in said petition are true, it is, therefore, this 31st day of March, ordered and adjudged that said Martin O. Walker make, execute and deliver to said John Frink a deed, in fee simple, of the premises adjudged to be the premises of said Frink, and to him allotted in and by said decree rendered by this court in said cause ; and that said Martin O. Walker make, execute and deliver to said Walter Laffin, a deed, in fee simple, of the premises adjudged to said Walter Laffin, and to him allotted in and by said decree rendered by this court.

And it is further ordered, that should the said Martin O. Walker not execute said deeds, or either of them, by or before the 15th day of April, 1858, that then L. C. P. Freer, the Master in Chancery, execute and deliver the same according to the tenor and effect of this order. It is further ordered that the said Walter Laffin and John Frink, execute and deliver to the said Martin O. Walker, on or before the 15th day of April next, a deed, in fee simple, of the premises adjudged to be the premises of the said Walker, and to him allotted in and by said decree. And it is further ordered, adjudged and decreed that said Martin O. Walker do deliver to the said John Frink and Walter Laffin, respectively, the possession of said premises respectively allotted to them in severalty, in and by the said decree so made as aforesaid, on or before the 15th day of April, 1858, and, in default thereof, that the said petitioners be at liberty to apply to this court for the further process thereof, to compel obedience to the same.

From this order Walker prayed an appeal, which was allowed, he having filed a bond as required by statute. The petitioners now move that the appeal may be dismissed.

POINTS OF THE APPELLEES.

I. An appeal improperly allowed may be dismissed at the next term of the court, upon reasonable notice being given, in a case where the appellant is not obliged to file the record until the succeeding term.

Reynolds v. Perry, 11 Ill. 534.

II. To determine whether the appeal in the present case was properly allowed, it becomes necessary to examine into the nature of the order appealed from, and to determine its true character. If the order is only a species of process which may be appropriately used by courts of chancery to enforce their decrees, and was appropriately used in the present case, then it is submitted that the appeal was improperly allowed. It is not contended that if the order was one which the court had no power to make, that an appeal would not lie, but it is submitted that if the court had power to make the order, that such order was a mere process from which an appeal could not be taken.

The power of the court to make the order in the present case, it is believed, can be established upon principle and by authority. The parties to the suit were bound by the final decree of March 7, 1856; their rights and interests were finally concluded by it, and all that remained for the court to do, was to enforce its decree by appropriate process. A decree for a partition includes all such acts and things as are necessary to make a complete partition. It is in this respect like a decree of sale or of specific performance, which include, as necessary parts of such decrees, all acts necessary to a complete and perfect sale or specific performance, such as the execution of deeds and the delivery of possession to the purchaser. A decree for partition, as a necessary part of it, includes the making of mutual conveyances by the parties so as to vest in each party the legal title to the premises

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allotted to him by the decree, and which the decree, by its own operation, would not do.

2 Daniell's Ch. Pr. 1236, 1339.

Proctor v. Fereber, 1 Ired. Eq. 146.

Shepard v. Ross County, 7 Ohio, 271.

Such decree also includes, as a necessary part of it, appropriate process to put each party into possession of the premises allotted to him. The court has, undoubtedly, full power to order such process.

2 Daniell's Ch. Pr. 1339.

Kershaw v. Thompson, 4 Johns. Ch. 609.

Adams' Equity, p. [232.]

There could be no doubt of the regularity of the order in the present case had it been made a part of the original decree, and an examination of the authorities will show that such orders are mere process, and may be made at any time.

In the case of *Dove v. Dove*, Dickens, 617, the decree directed the estates of a testator to be sold, but contained no direction relative to the delivery of the possession to the purchaser. Afterwards, the court, upon application of the purchaser, made an order requiring the defendant to surrender the possession to him.

In the case of *Kershaw v. Thompson*, 4 Johns. Ch. R. 609, the late chancellor Kent examined the subject with his usual ability, and unhesitatingly came to the conclusion upon principle as well as upon authority that such orders might be made at any time. In that case a decree of foreclosure had been made, directing the mortgaged property to be sold, but the decree contained no direction relative to the delivery of the possession. After the sale, the court, upon application by petition, required the defendants to surrender the possession of the premises to the purchaser. The power of the court to make the order in that case was put upon the ground that a decree of sale included as a necessary part of it all acts necessary to complete and perfect the sale, of which the surrender of the possession of the premises to the purchaser was one.

In the case of *Garretson v. Cole*, 1 Harr. & Johns. 370, the decree was in effect one for specific performance, but contained no direction relative to the delivery of the possession. Long

after the rendition of the decree, an application was made by petition for process to compel the surrender of the possession of the premises, and the same was granted. The reasoning of the court upon the subject sets forth not only the power but the duty of the court to issue its process in a very clear and forcible manner. It is only necessary to refer to some other authorities upon this point.

1 Edwards Ch. R. 272.

1 Hopkins Ch. R. 231.

Ibid. 422.

1 Barb. Ch. Pr. 532.

2 Md. Ch. Dec. 297.

It is not perceived of what substantial benefit a mere naked legal title could be to a party, after a final decree against him adjudging that he had no right to it. A party having such a title vested in him, under such circumstances, would be forever precluded from setting up any claim adverse to such decree, and an order of court that he convey the legal title could do him no possible injury. Such order is not an adjudication upon any of the parties' rights, but is a direction that the rights of the parties under a previous adjudication shall be enforced.

If then the order in the present case was regularly made, and was mere process to enforce the rights of the parties under the final decree of March 7, 1856, can an appeal be taken from such order? The law authorizes an appeal from *the final decree* in the cause, and from that decree only. There can only be *one final decree* in a cause. All orders or decrees before the *final one* are interlocutory, and all orders after the final decree are in the nature of process to enforce such decree. As there can be only *one final decree* in a cause, and as an appeal is allowed only from such decree, it is submitted that only one appeal can be taken. If only one appeal in a cause can be allowed, and such appeal must be taken from the final decree, it is very clear that an appeal in the present case could only be taken from the decree of March 7, 1856, and that the present appeal should be dismissed.

BECKWITH, MERRICK & CASSIN,
Of Counsel for Appellees.

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H. californica

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G. californica

Martin O Walker

vs

John Frick &

Walter Laflin

Appeal from Cook Co Ct of Comm Pleas.

And now the said now the said appellants John Frick and Walter Laflin by their attorneys Breckinridge & Merrick come and move this Hon Court that the appeal heretofore taken by said Martin O Walker, and all and none in the above entitled cause by the Cook County Court of Common Pleas be dismissed for the reason that the order from which such appeal was taken is not such an order as the said Martin O Walker was entitled by the laws of the land to appeal from, as appears from the record in this case herewith filed

By their Attorneys
Breckinridge & Merrick

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Motion & answer appeal

Martin O Walker

vs

John Frink &
Walter Laflin

Filed May 18, 1858
Leland

John Frick

"

Martin O'Walker

Walter Laflin

In Cook County Court of Com

Pleas

In Chancery.

Take notice that the undersigned
will at the present term of the Supreme Court
now in session at Ottawa ~~in said State~~ ^{hereby} move
to dismiss the appeal, ^{hereby} allowed the said Martin
O'Walker in the above entitled cause ^{begs}
the Cook County Court of Common Pleas.

May 10. 1858.

to Walter B. Scates

Att'y atty of M O Walker

John Frick &

Walter Laflin

By their attys

C. McKimble

May 10. 1858. Rec a copy of the above
notice

Walter B. Scates

Atty for M O Walker

United States of America }
State of Illinois }
County of Cook } SS

Pleas before the Honorable John
Mc Wilson Judge of the Cook County Court of
Common Pleas, within and for the County of Cook
and State of Illinois, at a regular term of
said Cook County Court of Common Pleas
begun and holden at the Court House in the
City of Chicago in said County, on the
first Monday, being the first day of February
in the year of our Lord one thousand eight
hundred and fifty eight and of the Inde-
pendence of the United States the eighty
second

Present the Honorable John Mc Wilson Judge

Carlos Haven Prosecuting Attorney

John T Wilson Sheriff

Attest

Walter Kimball Clerk

Be it remembered that heretofore to wit
on the thirty first day of March in the year
of our Lord one thousand eight hundred
and fifty eight, said day being one of the
days of the February Term of the Cook County
Court of Common Pleas, John Frink and
Walter Laflin filed in the office of the
Clerk of said Court, their petition in the
words and figures as follows to wit,

United States of America }
State of Illinois }
County of Cook } SS

Pleas before the Honorable John
Mc Wilson Judge of the Cook County Court of
Common Pleas, within and for the County of Cook
and State of Illinois, at a regular term of
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pendence of the United States the eighty
second

Present the Honorable John Mc Wilson Judge

Carlos Haven Prosecuting Attorney

John T Wilson Sheriff

Attest

Walter Kimball Clerk

Be it remembered that heretofore to wit
on the thirty first day of March in the year
of our Lord one thousand eight hundred
and fifty eight, said day being one of the
days of the February Term of the Cook County
Court of Common Pleas, John Frink and
Walter Laflin filed in the office of the
Clerk of said Court, their petition in the
words and figures as follows to wit,

John Frink
vs
Mc O Walker
& Walter Laflin

To the Honorable John M
Wilson, Judge of the Cook County Court
of Common Pleas. in Chancery sitting

The petition of John Frink and Walter
Laflin, two of the parties in the above entitled
cause, respectfully represents, that heretofore to-
wit on the sixth day of January AD 1835
the said John Frink filed his bill of complaint
in this Court praying for a partition of certain
premises in said bill particularly set forth,
between your petitioners and the said Martin
O Walker who then held the same, as tenant
in common

And your petitioners further represent
that such proceedings were had upon said
bill and the answers thereto filed, that on the
7th day of March AD 1836, this Honorable Court
passed a decree whereby a certain report ~~of~~
~~certain~~ of certain commissioners, before that
time appointed by the order of this Honorable
Court, was in all things ratified confirmed
and established, as will more clearly appear
by reference to said decree duly enrolled among
the decrees of this Honorable Court and where-
by it was further ordered, adjudged and

decreed by this Honorable Court, that the title to that part of said lots sixteen, seventeen and eighteen, in said report, mentioned and described, as follows, to wit "That part of said lots bounded as follows, Beginning at a point on the south line of said lots on Randolph Street, forty two feet from the South west corner of said lot eighteen (18) running thence north on a line parallel with the west line of said lot Eighteen (18), one hundred feet thence East on a line parallel with the north line of said lots, twenty seven feet and four inches, to the east line of said lot sixteen (16) on Wabash Avenue thence south on said East line of said lot sixteen (16) one hundred feet, to the north east corner of said lot sixteen (16) at the intersection of Wabash Avenue and Randolph Street, thence west on the South line of said lots, twenty seven feet and four inches to the place of beginning" should be and the same was thereby vested in the said John Frink, free and discharged of and from all claim and interest of the said Walter — Laflin and Martin O Walter and of all persons claiming by, through or under, them or either of them

And whereby it was further ordered adjudged and decreed by this Court that the title to that part of said lots bounded

and described, as follows: to wit: Beginning on the South line of said lots on Randolph Street at a point twenty feet East of the south west corner of said lot eighteen (18), running thence north on a line parallel with the west line of said lot eighteen (18) one hundred (100) feet, thence east on a line parallel with the north line of said lots, twenty two feet thence south on a line parallel with said west line of said lot eighteen (18), one hundred feet to Randolph Street, thence west on the South line of said lots on Randolph Street, thence west on the South line of said lots on Randolph Street twenty two feet to the place of beginning" should be and the same was thereby vested in the said Walter Laflin, free and discharged of all claim and interest of the said John Frink and Martin O Walker and of all persons claiming by, through or under them or either of them

And whereby it was further ordered adjudged and decreed by this Court that the title to that part of said lots bounded and described, as follows to wit: - Beginning at the north east corner of said lot sixteen (16) at the intersection of Wabash avenue and the alley, in the rear of said lots, running thence west on the north line of said lots to the north west corner of said lot eighteen (18) thence south on the West line of said lot eighteen (18)

one hundred and sixty nine feet, to
Randolph Street, thence east on the south
line of said lot eighteen (18) twenty feet, thence
north in a line parallel with said west line
of said lot eighteen (18) one hundred feet
thence east in a line parallel with the north
lines of said lots, to the east line of said lot
sixteen (16) on Wabash avenue thence north
on the east line of said lot sixteen (16) sixty
nine feet to the place of beginning" should be
and the same was vested in the said Martin
O Walker, free and discharged of and from
all claim and interest of the said John Trink
and Walter Taflin and of all persons claiming
by through or under them or either of them

And your Petitioners respectfully
represent that your petitioners the said John
Trink and the said Walter Taflin, have
executed deeds to each other of the respective
portions of said premises assigned to each
of them respectively, in accordance with
said above recited decree - but that
said Martin O Walker has refused and
still refuses to execute a deed to your
petitioners or to either of them, of the portion
of said premises awarded to them respectively
by said decree and holds the same as
against said decree and in derogation
of the rights of your petitioners under the

same and that said Walker at the time of the rendition of said decree had and still has the exclusive possession of said premises so allotted to your petitioners

Your petitioners therefore pray that your Honor will pass an order, in execution of said decree, directing said Martin O Walker to convey to your petitioners by deed in fee simple duly executed, the portions of said premises awarded to your petitioners respectively, by said decree and directing further that should Martin O Walker refuse to execute said deeds or either of them or fail to execute said deeds or either of them by a time to be specified in said order that then the master in Chancery execute and deliver said deeds to your petitioner respectively, your petitioners hereby submitting to execute to said Walker such deeds as shall vest in him the legal title to the premises allotted to him by said decree - and your petitioners further pray that your Honor will pass an order directing said Walker to deliver to your petitioners severally the portions of said premises respectively allotted to them by said decree, on or before some short day to be fixed by your Honor, and that your petitioners may have such orders and process of said court as may

be necessary to compel obedience to
said order

Beckwith & Merrick
Sols for Petn

State of Illinois }
Cook County ss } I Matthew Taflin of
Chicago being duly sworn testify and say
that the facts set forth in the foregoing
petition are true of my knowledge

Sworn to before me
this 31st day of March Matthew Taflin
1858 W Kimball clerk

And afterwards to wit on the same day
and year aforesaid Martin O Walker filed
in the office of the Clerk of said Court his
answer in the words and figures as follows
to wit

State of Illinois }
Cook County } set

Martin O Walker }
ads }
John Frink and } Petition for conveyance
Walter Taflin } under decree of partition

The Answer of Martin O Walker to the
Petition of John Frink and Walter Taflin

for conveyances under the decree of partition
entered herein

This repliant saving and
reserving unto himself all and all manner
of exceptions to the many errors, misstatements
& uncertainties in the said petition contained
for answer thereto, or to so much thereof as
he is advised it is material for him to
answer unto, answering says, True it is
that this court by decree of the date set forth
on a bill filed by said Frink against re-
pliant and said Walter Laflin confirm
the report of commissioners appointed to make
partition - and did on the day in said -
petition mentioned decree partition in severally
as stated in said petition

Repliant further answering
would state that he filed answer to said
bill for partition denying all title in com-
mon with said Frink & Laflin or either
of them in and to said Lots and setting
up & claiming all the right & title in fee
in & to the same in himself - and repliant
now here again would set up claim and
insist that the entire estate in fee in and
to said lots is now in repliant and said
Frink and Laflin have no estate or interest
in & to the same. Repliant would refer
to the several affidavits filed in this cause

on a motion to set aside the decree in this behalf, and the exhibits therewith filed for the purpose of informing this Court of the nature of his title as set forth & claimed by him - and prays to make said affidavits and exhibits part of his answer hereto

Repliant further answering would state that the parties petitioners in this petition are not the same as the complainants in ^{the} said bill for partition - and repliant submits to this Hon. Court whether in law the said petitioners have any right to join in a petition ~~supplementary~~ to the former bill and for an additional or further decree and he prays leave to insist by way of demurrer that said Walter Duffin a defendant in said bill for partition, cannot join in this petition for a further decree in the premises, and he prays that said petition be dismissed

Repliant further answering would pray that in case this honorable court will entertain said petition - repliant would state that said John Frink has instituted suit in ejectment in the Cook County Court of Common Pleas against repliant & Samuel B Walker to try title to said premises, and for the recovery

thereof - and which said action is still pending in said Court, and in which said suit, repliant expects to set up and insist upon his title to said premises in fee the said S. B. Walker being in possession in repliant's title. In like manner said Walter Taftlin instituted suit against repliant in the Circuit Court of the United States for the Northern District of Illinois in expectation for the trial of his title to & the recovery of the possession of ^{the} said premises and which is in like manner still pending in said last mentioned Court, and in which repliant can, and intends to set up and insist upon his title in fee to the whole of said premises, and he believes he will be able to settle the title in said two actions.

Repliant therefore prays this Hon Court to suspend all further action upon this petition untill the final trial and determination of said actions at law, [#] and your repliant is advised by counsel and would so aver that this Hon Court has no right power or jurisdiction to try the question of contested & adverse and conflicting titles - and he humbly submits & prays that the further order of this Hon Court upon said petition be suspended

law: and your repliant is advised.

#

Repliant would state and shew unto
your honor that a decree for and convey-
ances made and executed under it
would destroy your repliants title and
brevent his trial of his rights in said action
at law

& delayed until said trial & determination of said suits at law

And having fully answered respondent's prayers to be dismissed hence with his reasonable costs & expenses

Scates McAllister Jewett & Peabody
Solicitors for Repliant

And afterwards to wit on the day and year aforesaid the following among other proceedings were had in said Court and entered of record to wit

John Frink
vs
Martin O. Walker
& Walter Laflin

John Frink and Walter Laflin two of the parties to the above entitled cause having filed their petition in this Court praying, that Martin O. Walker may be ordered to execute deeds to them of certain premises in execution of a decree heretofore passed in said cause and for an order for the delivery of the possession of said premises to the petrs and said petition and the answer thereto having been duly heard and duly considered and it appearing to the court that the facts set forth in said petition are true

it is therefore this thirty first day of March
ordered and adjudged that said Martin
O Walker make execute and deliver to said
John Trunk a deed in fee simple of the prem-
ises adjudged to be the premises of said Trunk
and to him allotted in and by said decree
rendered by this Court in said cause on
the second day of March AD 1838, and
that said Martin O. Walker make execute
and deliver to said Walter Saflin, a deed
in fee simple of the premises adjudged to
said Walter Saflin and to him allotted
in and by said decree rendered by this
Court in said cause, on the 2nd day of
March AD 1836

And it is further ordered that should
the said Martin O Walker not execute
said deeds or either of them, by or before
the 15th day of April AD 1838, that then
S. C. P. Freer the master in Chancery, Execute
and deliver the same according to the tenor
and effect of this order. It is further ordered
that the said Walter Saflin & John Trunk
execute and deliver to the said Martin
O Walker on or before the 15th day of April
next a deed in fee simple of the premises
adjudged to be the premises of the said
Walker and to him allotted in and by
said decree. — of the said second day

of March aforesaid And it is further ordered, adjudged and decreed, that said Martin O Walker do deliver to the said John Frink and Walter Lufkin respectively the possession of said premises respectively allotted to them in severalty in and by the said decree so made as aforesaid, on or before the 15th day of April A.D. 1835, and in default thereof that the ~~said that the~~ said petitioners be at liberty to apply to this court for the further process thereof to compel obedience to the same

John M Wilson Judge
of the Cook Co. Ct of C Pleas

And afterwards to wit on fifth day of April in the year aforesaid said day being one of the days of the February Term of said Court, the following among other proceedings were had in said court and entered of record to wit

John Frink

vs

Chancery

Martin O Walker
& Walter Lufkin

And now at this day comes the said Martin O Walker by his solicitors & prays an appeal to the Supreme Court of the State of Illinois on the decree of said

order entered in this case, which appeal is allowed by the Court on his filing his appeal bond herein in the sum of one thousand dollars with Samuel B Walker as security, said bond to be filed within ten days from this day

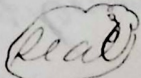
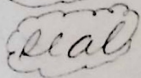
And afterwards to wit on the same day and year last aforesaid, the said Martin O Walker filed in the office of the Clerk of said Court his Appeal Bond in the words and figures as follows to wit,

Know all men by these presents, That we Martin O Walker and Samuel B Walker of the City of Chicago County of Cook and State of Illinois are held and firmly bound unto John Frink in the penal sum of one thousand dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs executors and Administrators jointly severally and firmly by the presents

Witness our hands and seals this 2^d day of April AD 1858

The condition of the ~~this~~ obligation is such that whereas the said John Frink did on the 30th day of March AD 1838 in the Cook County Court of Common Pleas, and of the February Term thereof AD 1838 obtain a decree and final order against the said Martin O Walker in a certain cause in Chancery in said Court wherein said John Frink was Complainant and the said Martin O Walker and Walter Gaffin were defendants from which said decree and final order of said Court the said Martin O Walker has prayed for and obtained an appeal to the Supreme Court of the State of Illinois

Now therefore if the said Martin O Walker shall duly prosecute his said appeal with effect, and moreover execute and perform the same in all respects, and well and faithfully pay all costs which may be adjudged against him in case the said decree and final order shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

Martin O Walker 
Samuel B Walker 

The following are copies of motion and
affidavits filed in support thereof and referred
to in foregoing answer

"Motion filed April 24th 1856"

The State of Illinois } Cook County Court of Common
Cook County ss } Pleas

John Frink }
vs }
Martin O. Walker & } Chancery
Walter Laflin }

And now comes Martin
O Walker one of the defendants in the above
entitled cause and moves the Court upon
the facts set forth and stated in his —
affidavit filed in said cause that the decree
heretofore entered by this Honorable Court
in said cause be opened and that the
report of the commissioners made in pur-
suance of said and the confirmation
thereof be also opened and that the said
Defendant Martin O Walker have leave
to file a further or amended answer

Henry Frink
Counsel for
M O Walker

Affidavit of M. O. Walker filed April 24th
1856

John Frink	}	Cook County Court of
¹⁵ Martin O Walker		Common Pleas, Illinois
& Walter Saflin		February term AD 1836

In Chancery Bill for partition
 Martin O Walker one of the defendants
 in the above entitled cause being duly
 sworn states upon oath that upon the
 twenty first day of November AD 1840
 William Fowler filed his bill in chancery
 in the circuit court of Cook County, State
 of Illinois against John Frink the com-
 plainant in the above entitled cause
 and this affiant as defendant, said
 Fowler alleging in said ^{Bill} that he was
 then entitled as partner with John Frink
 and this affiant to a joint interest with
 said Frink and this affiant in certain
 property real & personal acquired by the
 firms of Frink & Bingham & Frink &
 Trowbridge and Frink & Walker and
 at the time of the filing of said bill claim-
 ed by said Frink and this affiant and
 said Fowler claimed to be then entitled
 to the undivided one sixth part not only
 of a large amount of profits & partnership
 property then claimed and owned by
 said Frink and Walker but also said
 Fowler claimed to be equitably entitled to

one sixth of the value of Lots sixteen. —
seventeen & eighteen in Black Pine in
Fort Dearborn addition to Chicago which
said claim was by said bill made in
general terms under a general claim to
partnership property without designating
said lots by their numbers or otherwise
by particular description and said
Fowler claimed to be recognized as having
been a partner with said John Frink said
Bingham and this affiant and claimed
that an account be taken between himself,
said Frink and this affiant not only
as to partnership transactions generally but
also as to all joint interests in real estate
including his said claim of one sixth
in and to the lots above described, and
afterwards said Frink filed his answer
to said bill in July in the year AD 1841
and upon the twenty first day of November
AD 1841, this affiant filed his answer to
said bill of said Fowler both of said
answers substantially denying the claim
of said Fowler to one sixth or any other —
interest in the partnership transactions
effects or real estate and afterwards a
large amount of testimony was taken
in said cause both by said complainant
and by said defendants in said cause

and said cause was brought on to be heard before said Circuit Court where a decree was entered by said ^{Court} decreeing substantially that said Fowler had been and was a partner in the firm of Frink & Groubridge and also in the firm of Frink & Bingham and Frink & Walker for a certain length of time in said decree specified and that said Fowler was jointly interested to the extent of one sixth interest with said Frink and this affiant in the partnership profits and property real and personal acquired by said firms of Frink & Groubridge, Frink & Bingham and also Frink & Walker and that through all the changes and mutations of said firms said Fowler from the time he first became a partner had remained a partner down to the time of filing said bill, and that said Fowler was entitled to an account of all the actings, dealings and transactions of said partnership in whatever name from the first day of January A.D. 1838, down to the time of the filing of said bill, and William H. Brown as master in chancery was directed by said decree among other things to take an account of all such transactions

and also to report what property real as well as personal was owned by such partnership and how much had been sold and generally to take & State an account of all the transactions of said partnership under the different names and style by which the same had been known from the first day of January A.D. 1838 down to the time of filing said Bill, a copy of which said decree is hereto attached marked A. to which reference is hereby made for a more full and accurate knowledge of the same

And said William H Brown did take an account of said transactions and real and personal estate and did make his report thereof to said Circuit Court charging this affiant and said Frink with the value of said lots and allowing to said Fowler a certain sum in money in said report specified - and upon the hearing of said cause in said Circuit Court also before said master it was claimed by said Fowler that he was equitably entitled to the value of one sixth of the lots herein above described and in entering said decree and making said report in conformity thereto said Fowler was allowed the value of said

one sixth of said lots, which said sixth was during the pendency of said suit held in the name of said Bingham, untill the second day of June AD 1846, whereby Quit claim deed said Bingham released & quit claimed to said Fowler, said one sixth interest in said Lots - which said deed purports to have been made in consideration of one dollar but in reality was made without any consideration other than the claim of said Fowler to said sixth as Partner in said firms hereinbefore mentioned. And upon said second day of June AD 1846, said Fowler made a deed of said one sixth interest in said lots to said Walter Laflin, without any consideration passing from said Laflin to said Fowler other than antecedent ^{indebtedness} as this affiant is informed & believes - and this affiant is informed & believes that said Laflin had full notice of the pendency of said suit in chancery, between this affiant and said Trunk and said Fowler & had full notice of the claim of said Fowler to said one sixth of the value of said Lots, and had full notice of the proceedings had in said Chancery ^{suit} in relation

to said one sixth of said lots, at the time when said deed was made to wit upon said second day of June AD 1846

And this affiant further says that as he now recollects and believes the whole amount ascertained and reported by said William H Brown to the Circuit Court of Cook County as legally and equitably due to said Fowler as a partner in said firm does not exceed the sum of Four thousand dollars including principal and interest to this date, and that in stating and taking said account and making said report, the said Brown credited and allowed to said Fowler the full and fair value at the time of all the real estate owned by said firm including said lots and that the costs to which this affiant has been subjected in said chancery suit and which he has paid and is now liable to pay largely exceeds the amount so reported as due to said Fowler. That this affiant paid said Brown over one thousand dollars for his services as master in said suit in taking and stating said

accounts and making his report under said decree

And this affiant further states that said Masters report was filed of ^{Record} in the circuit court of said County and has been withdrawn from the files of said Court by the counsel of said Fowler and cannot now be found as this affiant is informed and believes. Also this affiant states that said Walter Gaylin has commenced in the circuit court of the United States for the Northern District of Illinois an action of ejectment to recover the one undivided sixth part of said Lots and that said cause has been tried and a verdict found in favor of said Gaylin and against this affiant, and this affiant is advised by his counsel and believes that he is entitled to a new trial in said action of ejectment & this affiant intends to have a new trial in said action and hopes and expects to settle and adjudicate the title as to the said one sixth of said lots claimed by said Gaylin in said action of ejectment by final decree in said suit in Chancery

And this affiant further states that he claims to be the owner of the one undivided third part of said lots claimed by said John Frink in this proceeding for partition by virtue of a submission to arbitration by said Frink and this affiant of all their disputes controversies and partnership transactions including their joint interests in these lots

And this affiant ~~further~~ claims that by the award of said arbitrators the one third of said lots claimed by said Frink as well as the sixth interest claimed by said Laflin were awarded to this affiant subject only to such decision and adjudication as might be finally had in said chancery suit between said Fowler said Frink and this affiant, which award is in full force at the present time

And this affiant further states that said suit in Chancery has been pending between said Fowler and said Frink and this affiant for more than ten years - a large amount of money amounting to several thousand dollars has been expended by this affiant in preparing said cause for trial in -

lating testimony therein and in an effort to adjudicate the rights of the parties in said suit, and said cause is still pending and undetermined in as much as no final decree has been entered therein and this affiant could not at any time litigate in this proceeding for partition his right to said sixth of said lots claimed by said Laflin without being compelled to encounter large expences in investigating the whole subject matter of the suit between Fowler and this affiant and said Frink which has already been settled except by the entry of a final decree in said cause. And this affiant being advised by his counsel that this proceeding for partition would not be heard and finally decided until the title to said one sixth of said lots could be settled in said ejectment suit, and by a final decree in said chancery suit now pending between said Fowler and this affiant and said Frink. And this affiant did not expect that said order appointing said commissioners would be made until this affiant could have an opportunity to obtain

a final decree in said Chancery suit pending between said Fowler and this affiant and said Trunk

This affiant further states that at the time when the answer was filed in this proceeding for partition his counsel were not informed of the proceedings had in said cause between said Fowler and this affiant and said Trunk sufficiently to enable them to ascertain fully what had been done in said cause. The Bill, answers and masters report were not then to be found upon the files of the Court, and this affiant was not then advised of the fact that while Fowler was recovering the value of said sixth of said lots in said chancery suit his said Grantee was likely to recover said sixth of said lots by this proceeding for partition

Subscribed & sworn to
before me this 20th day Martin O Walker
of Dubuq 1836
Walter Kimball clerk

Affidavit of F. H. Winston, filed
January 12th A.D. 1858.

John Frink } Of the Nov. Term of Circuit
 } County Court of Common
Martin O. Walker } Term 1857,
Halter Laflin } Motion to set aside
 Decree in Peltton for Partition

F. H. Winston, being duly sworn deposes and says that at the time the decree was entered, in the above entitled cause, this deponent was partner in business, of the late Henry Frink Esq. That said Frink had the sole and Exclusive Charge at that time and for some time previous thereto, and before this deponent was connected with him in business, of all the law business of the said Martin O. Walker, including the above entitled cause, as well as all others. That this deponent was never employed, or retained, by said Walker in any case whatever, and that the only connection which this deponent ever had with any of the law business of said Walker grew out of the relations of this deponent, to said Frink, and in the necessary absence of said Frink, and not from any retention or employment by said Walker. And that this deponent never appeared in said cause, except at the request of said Frink, and for the purpose of delaying the same until said Frink, could be personally

present, and that this defendant never at any time
took any part personally in the proceedings, before
said Court, except as before stated, and that this defen-
dant was not present, when said decree was entered,
and that he had no notice of the same, till long after-
wards. That the answer in said case was signed
by this defendant in the name of Judd & Winston solely
for the accommodation of said Frink, who was alone
advised of the facts, of the defence, and expected to be
a witness in the case, F. H. Winston

Subscribed & sworn to before
me this 12th day of Jan'y 1858
W. H. Campbell, C. K.

Order January 16th 1858.

Jahs Frink	}	In Chancery Petition for Partition
as		
Martin O. Walker & Walter Laflin		

And now at this day comes
the Complainant by Goodrich & Farwell his Solicitors
and the defendant Martin O. Walker by Scates, Mc
Allister, Jewett & Peabody his Solicitors also comes,
And the Court now after hearing the argument of
Counsel on said defendant Walker's motion, to
open the decree of partition, and Ammissioners
Report, and for leave to file further or amended

answer herein, being now fully advised
in the premises, denies and overrules said
motion

And heretofore to wit on the seventh day
of March in the year of our Lord one thousand
eight hundred and fifty six, said day
being one of the days of the February Term
of the Cook County Court of Common Pleas
a decree was had and entered of record
in said Court in the words and figures as
follows to wit.

John Trink

In Chancery
Petition for Partition

vs
Martin O Walker &
Halter Laflin

And now at this day comes
the commissioners heretofore appointed
by the Court in this cause, to make Partition
of the real estate described in the petition filed
herein, to wit James H. Rees, David Mosely
and Paul Cornell, and file their report
herein and the said parties by their solicitors
also come and it appearing to the Court that
the said commissioners were first severally duly
sworn to fairly and impartially make partition
of the lands mentioned and described in
the order of the Court heretofore entered in

this cause to wit, Lots Sixteen, Seventeen and Eighteen in Block number Nine in Fort Dearborn Addition to the City of Chicago in accordance with the judgment of the Court as to the rights and interest of the parties, if the same could be done consistently with the interests of the estate, according to the statute in such case made and provided. And which said report of said commissioners is in the words and figures following to wit

Cook County Court of Common Pleas
John Frink
vs
Martin O Walker
Walter Saplin } Petition for Partition

To the Honorable John M
Wilson Judge of the Cook County Court of
Common Pleas

The undersigned commissioners appointed by the court in the above entitled cause to make partition of the lands and premises in question in said cause respectfully report

That having been first duly qualified by taking the oath according to the statute in such case made and provided, we went upon the said premises, to wit, Lots sixteen Seventeen & Eighteen in Block Nine in Fort Dearborn addition to Chicago, and viewed the same with reference to making partition

thereof under the order of the Court in this cause, and that after making an examination of said premises, we are of opinion that the same can be divided between the respective owners thereof to wit John Frink, Martin O Walker & Walter Tafflin so as to give^{to} each their just share therein according to said order of the Court to wit, to said Frink one third in value thereof, to said Walker one half, and to said Tafflin one sixth, and we the said commissioners have made — partition of said premises and assigned to each of said parties his share, by metes and bounds according to their respective interests as aforesaid, which partition and assignment is as follows to wit,

To said Martin O Walker we have — assigned & set off that part of said lots bounded as follows, Beginning at the north east corner of said lot Sixteen at the intersection of Wabash Avenue, and the alley in the rear of said lots, running thence West on the north line of said lots to the North west corner of said lot eighteen (18) thence south on the west line of said lot eighteen, one hundred & sixty nine feet (169) to Randolph Street, thence east on the South line of said lot Eighteen (18) twenty (20) feet, thence North in a line — parallel with said West line of said

lot eighteen (18) one hundred feet thence East in a line parallel with the North lines of said lots, to the east line of said lot Sixteen (16) on Wabash Avenue thence North on the East line of said lot Sixteen (16) sixty nine feet to the place of beginning.

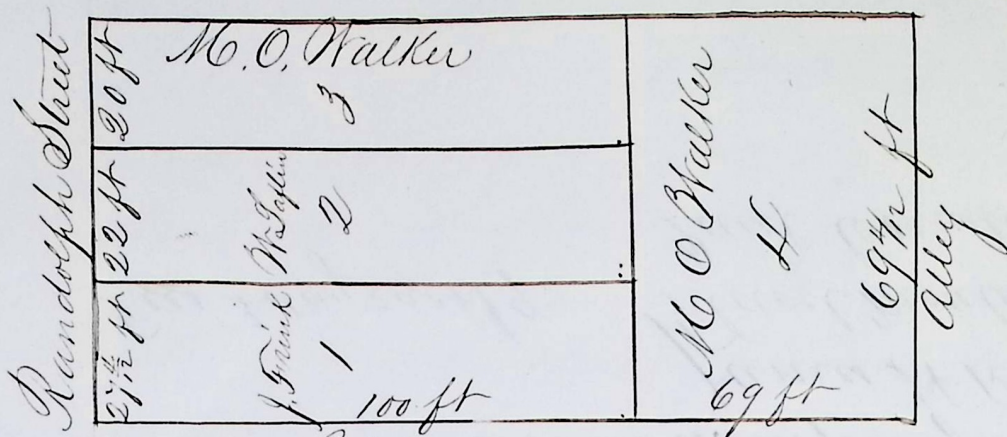
To said Walter Tafflin we have assigned and set off that part of said lots bounded as follows. Beginning on the South line of said lots on Randolph Street at a point twenty feet (20ft) East of the South west corner of said lot Eighteen, running thence North on a line parallel with the West line of said lot Eighteen (18) one hundred (100) feet; thence East on a line parallel with the North line of said lots, twenty two (22) feet, thence South on a line parallel with said West line of said lot Eighteen (18) one hundred (100) feet to Randolph Street, thence west on the South line of said lots, on Randolph Street twenty two (22) feet to the place of beginning.

To said John Trunk we have assigned and set off that part of said lots bounded as follows. Beginning at a point on the South line of said lots on Randolph Street forty two (42) feet from the South west corner of said

lot Eighteen (18) running thence North
 on a line parallel with the west line
 of said lot Eighteen, one hundred feet
 thence East on a line parallel with the
 North line of said lots twenty seven feet
 & four inches to the East line of said lot
 Sixteen on Wabash Avenue, thence South
 on said East line of said lot sixteen (16)
 One hundred (100) feet to the South East
 corner of said lot sixteen (16) at the
 intersection of Wabash Avenue and
 Randolph Street - thence west on the
 South line of said lots twenty seven
 feet & four inches to the place of begin-
 ning. all which shares are marked
 & described on the plat annexed here-
 to and made a part of this report.
 said share of said John Trink being
 numbered one on said plat, the share
 of said Walter Saxlin being numbered
 Two, and said Walkus share being
 numbered three and four

all which is respectfully submitted

	James H Rees	Seal
Fees 3 day each \$9	Flavel Moxley	Seal
	Paul Cornell	Seal



Wabash Ave

And now on motion of Goodrich & Scoville Complainants Solicitors, it is ordered and decreed by the Court that said report be and the same is hereby in all things ratified, confirmed and established.

It is therefore further Ordered adjudged and decreed by the Court, that the title to that part of said lots Sixteen, Seventeen and Eighteen in said report mentioned & described, bounded and described as follows, to wit, Beginning at a point on the South line of said lots on Randolph Street forty two (42) feet from the South west corner of said lot Eighteen, running thence North on a line parallel with the west line of said lot Eighteen, one hundred feet thence, East on a line parallel with the North line of said lots twenty seven feet & four inches, to the east line of said lot sixteen, on Wabash Avenue, thence South on said East line of said lot

sixteen. One hundred (100) feet to the South east corner of said lot sixteen at the intersection of Wabash Avenue and Randolph Street thence west on the South line of said lots twenty seven feet & four inches to the place of beginning - be and the same is hereby vested in the said John Frink free and discharged of and from all claim and interest of the said Walter Taftlin and Martin O Walker, and of all persons claiming by through or under them or either of them

And it is further ordered adjudged and decreed by the Court that the title to that part of said Lots bounded & described as follows, to wit. Beginning on the South line of said lots on Randolph Street at a point twenty feet (20) East of the South west corner of said lot eighteen running thence North on a line parallel with the west line of said lot eighteen one hundred (100) feet. Thence East on a line parallel with the North line of said lots twenty two (22) feet. thence South on a line parallel with said west line of said lot Eighteen, one hundred (100) feet to Randolph Street thence West on the South line of said lots on Randolph

Street twenty two (22) feet to the place of beginning, be and the same is hereby vested in the said Walter Laflin, free and discharged of and from all claim and interest of the said John Trunk and Martin O Walker and of all persons claiming by through or under them or either of them.

And it is further ordered, adjudged and decreed by the court that the title to that part of said lots bounded and described as follows to wit, Beginning at the North East corner of said Lot sixteen, at the intersection of Wabash Avenue and the alley in the rear of said Lots running thence West on the North line of said lots to the North West corner of said lot Eighteen (18) thence South on the West line of said lot Eighteen one hundred & sixty nine feet (169) to Randolph Street thence East on the South line of said lot Eighteen (18) Twenty (20) feet thence North in a line parallel with said West line of said lot Eighteen (18), one hundred feet, thence East in a line parallel with the North lines of said lots to the east line of said lot sixteen (16) on Wabash Avenue, thence North on the East line of said lot sixteen (16) sixty nine feet to the place of beginning

be and the same is hereby vested in the said
Martin O Walker free and discharged of
and from all claim and interest of the
said John Trink and Walter Tafflin
and - if - all persons claiming by through
or ^{under} them or either of them

And it is further ordered by the Court
that the said parties hereto each pay one
third of the Costs of this Suit

State of Illinois)

Cook County } ss

I Walter Kimball Clerk of the
Cook County Court of Common Pleas
within and for said County and State
do hereby certify that the above and foregoing
is a true copy of the Petition, answer, appeal
bond and affidavits of M O Walker and
J H Winston filed in my office, and of
the decree entered of record in said Court
~~also order entered of record in said Court~~
on the sixteenth day of January A D
1838 and the fifth day of April A D 1838
also the decree of partition in the case
wherein John Trink and Walter Tafflin
are petitioners and Martin O Walker is defend-
ant .

In testimony whereof I hereunto set
my hand and affix the seal of said
Court at Chicago in said County
this 17 day of May A D 1838

Walter Kimball Clerk

350 80
bookkeeper & Const of
Common Pleas

John Drick

or

Walter Laflin
Martin O. Walker

Transcript of Record

Filed May 19. 1838
L. Leland
Clerk