

No. 13768

Supreme Court of Illinois

Decker et al.

vs.

Babb et al.

71641  7

Proceedings of the Circuit Court of Cass
County sitting as a Court of Chancery of the
September Term A.D. 1857 begun and held
at the Court House in Beardstown on Monday
the 8th day of September A.D. 1857 in the case
wherein Nancy Babb is Complainant and
John Decker & others Defendants - present the
Hon. W. A. Marshall presiding

Nancy Babb
vs
John Decker & others
Petition for Dower

To the Honorable the Circuit Court in and for
the County of Cass and State of Illinois, sitting as a Court
of Chancery -

Your Complainant Nancy Babb represents
that she was the wife and is now the Widow of William
W Babb deceased, said William W Babb departed this
life some time about the seventeenth day of October
1849, intestate, - During his life time he was the owner in
fee simple of the following described town lots and real
estate situated in said County in which she the said Nancy
is now entitled to Dower - to wit,

- 1 The West half South West quarter Section fifteen, Township
Eighteen North Range Eleven West (N $\frac{1}{2}$ S W $\frac{1}{4}$ Sec 15 T. 18. R. 11. W) and
also thirty six acres and one hundred and fifty rods off of the north
end of the east half South East quarter of Section Sixteen in Town-
ship Eighteen North of Range Twelve West, being described as lot
one in the 16th Section (36 acres & 150 poles N. 1. in Sec 16. T. 18. 12) (John M
McConnell, David Clendenin & Mary Clendenin his wife David a Full
Mary Frances Full and others whose names are unknown -

- 2nd Also, The west half of the North East quarter of Section twenty one ($W\frac{1}{2}$ N $E\frac{1}{4}$ Sec 21, T. 18 N. R. 11 W) In Township Eighteen North of Range Eleven West —
- 3rd Also - the west half of the South West quarter of Section twenty one Township Eighteen North Range Eleven West - ($W\frac{1}{2}$ S $W\frac{1}{4}$ Sec 21, T. 18 N. R. 11 W)
- 4th Also - the South East quarter of Section twenty in Township Eighteen North of Range Eleven West ($S\frac{1}{4}$ S 20 T 18 N. R. 11, W) Edward P Miller and the unknown heirs of Thomas Welborn deceased
- 5th Also - the west half of Section twenty eight in Township Eighteen North of Range Eleven West ($W\frac{1}{2}$ Sec 28 N. R. 11, W. 20 6000) — John Decker, Nicholas Summers, Michael Neam and the County of Cass
- 6th Also the west half of the North East quarter of Section Twenty eight in Township Eighteen North of Range Eleven West ($W\frac{1}{2}$ N $E\frac{1}{4}$ S 28 T. 18 N. R. 11 W) — John Decker and Michael Neam
- 7th Also - the west half of the South East quarter of Section Twenty eight in Township Eighteen North of Range Eleven West ($W\frac{1}{2}$ S $E\frac{1}{4}$ Sec 28 T 18 N. R. 11 W) — Nicholas Summers and John Decker -

- 8th Also - the East half of the North East quarter of Section twenty nine in Township Eighteen North of Range Eleven West (E $\frac{1}{2}$ N E $\frac{1}{4}$ S. 29, T. 18, N. 12, 11 W.) - John Dicker and Cass County aforesaid
- 9th Also - the East half of the South East quarter of Section twenty nine in Township Eighteen North in Range Eleven West (E $\frac{1}{2}$ S. E $\frac{1}{4}$ Sec 29, T. 18 N. 12, 11 W.) Nicholas Summers and John Dicker
- 10 Also - the North West quarter of the North East quarter of Section thirty three in Township Eighteen north of Range Eleven West - (N W $\frac{1}{4}$ of N E $\frac{1}{4}$ Sec 33, T. 18, N. 12, 11 W.) John Dicker -
- 11 Also Lot Number four in Block Number twenty two in the Town of Beardstown (L. 4, B. 22) George Moore
- 12 Also - Lot Number five in Block Number Seven in the Town of Beardstown (L. 5, B. 7.) Elizabeth Wells
- 13 Also - Lot number four in Block Number twenty three in the Town of Beardstown (L. 4, B. 23.) Fred^d Ross
- 14 Also - Lot Number one in Block Number Eleven in the Town of Beardstown (L. 1, B. 11) George Kuhl
- 15 Also - Lot Number three in Block Number Twelve in the Town of Beardstown (Lot 3, B. 12) John W. Seaman

- 16 Also - Lot number four in Block number twelve in the Town of Beardstown (L. 4 B. 12.) - Henry Boemler
- 17 Also - Lot number four in Block number fifteen in the Town of Beardstown, fronting 62 1/2 feet on Main Street and 50 feet on Jefferson Street (Lot. 4. B. 15.) Henry Boemler
- 18 Also - Lot number one in Block number twelve in the Town of Beardstown (Lot 1, B. 12.) George B. Thompson
- 19 Also - Lots numbered one, two, seven & eight in Block numbered thirty five in the Town of Beardstown (Lots 1, 2, 7, 8, B. 35) George L. Huntington of Sangamon County
- 20 Also - Lot number Eight in Block number thirty two in the Town of Beardstown (L. 8, B. 32.) Eliza A. Douglas
- 21 Also - Lot number seven in Block number Eighteen in the Town of Beardstown (L. 7, B. 18.) John A. Rheinberger
- 22 Also - Lots Number one, two, seven & eight, in Block thirty seven in the town of Beardstown (Lot 1, 2, 7, 8 B. 47) George L. Huntington of Sangamon County -
- 23 Also - Lot number Eight in Block number Seventy five in the Town of Beardstown (Lot 8, B. 75) Henry Coffenberger
- 24 Also Lot number six in Block number thirty one in the Town of Beardstown (L. 6, B. 31.) Thomas Elam

State of Illinois }
Cass County } Circuit Court for Cass County vs The Chancery

Nancy Babb vs Petition for Dower
Nicholas Summers

Your Respondent Nicholas Summers reserving all right of exception &c in answer says, that at the date of filing the above petition, and now, your Respondent was and is the owner and in possession of the following described lands, situated in the County of Cass, to wit,

S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	Section 29.	Town 18 North of Range 11	West 3 ^d P. M.
S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$	" 28	" 18	" " 3 ^d "
S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$	" 28	" 18	" " 11 3 ^d "
S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$	" 28	" 18	" " 11 3 ^d "

Up five acres off of the south side of said last described first acre tract, and that your Respondent acquired title to said premises by deed of the November 20th 1844 from George W Budd, Alonzo Childs & Simon Ryan and the respective wives -

Your Respondent further answers that William W Babb (the husband of Complainant) and the Complainant his wife, being the owners in fee simple of the above described premises by deed of the 5th May 1838, conveyed in fee simple the above described premises to one Isham Butterworth, which deed of the 5th May 1838 was duly executed & acknowledged and delivered by the said William W Babb and the Complainant (his wife) the said Complainant relinquishing thereby all claim to right of Dower therein & recorded

Your Respondent further answering says, that the said Isham Butterworth and Patsy his wife by deed of the 2^d October 1843 reconveyed the above described prem-

is in full sample to the said William W Babb which deed of the 2^d October 1843 was duly executed, acknowledged delivered and recorded

Your Respondent further answering, states that previous to the conveyance from said Butlerworth & wife to said William W. Babb, of the above described premises by deed of the 2^d October 1843, to wit, on the 28th January AD 1840 a suit was instituted in the Circuit Court of Cass County Illinois, on the Chancery side thereof, by one George L Huntington & others vs William W. Babb, Shann Butlerworth and others, to sell and subject to the payment of the judgement debts of said Complainants as creditors of the said William W. Babb, the above described premises, on the ground that the conveyance aforesaid from said Babb and wife (the Complainant) of the 5th May 1838, was fraudulent as against them the said Huntington & others as judgement creditors of the said Babb which suit was transferred by change of venue to Sangamon County Illinois, and such proceedings were afterwards had in said cause, that at the July term 1841, of the said Sangamon Circuit Court it was amongst other things Ordained and decreed, that the conveyance of the 5th May 1838 aforesaid from William W. Babb & wife (the Complainant) to Shann Butlerworth be held and esteemed by the Court as fraudulent so far as concerned the rights of the said Huntington & others judgement creditors of William W. Babb as aforesaid, and that such conveyance of the 5th May 1838 being in fraud of the rights of the said Huntington & others, so far as they were concerned be vacated, set aside & for nothing held & the above described premises (among others) be sold and the proceeds of sale applied so far as necessary, to the payment of said judgement debts of the said

25 Also, Lot Number Seven in Block number thirty three
in the Town of Beardstown (Lot, B. 33.) J. W. McClure

Your Complainant represents that most
of those lands and town lots were taken from said Babb
and sold on executions or by decrees and orders of the Courts
of Chancery for mere nominal sums to pay debts claimed
and recovered against said Babb to the end that to none
of said lands has she ever relinquished her right of Dower,
and as the said Babb died leaving heirs, she the said Nancy
Babb claims Dower of one third of the value of the rents and
profits of all and each of said tracts and lots of Land or the
possession of one third of said property during her natural
life, or an equivalent therefor to be decreed to her as
hereinafter prayed

With a view to a final and speedy set-
tlement of this her claim, and to save the cost and delay in-
cident to setting off her Dower and the risks of the necessity
of selling many of those pieces of property by reason of the
impossibility of dividing said property, she the said Nancy
Babb proposes (and asks the assistance of this Court for that
purpose) that the total and present value of her said
Dower may be ascertained in all and each of said tracts
of Land, and that an order be made appointing the Commis-
sioners or officers of this Court to examine and report to
this Court the proper description and present the present value of
each tract, and the yearly value of each part of all and
each of said several tracts and lots of Land reporting sep-
arately upon each part claimed or owned by each individual

town as said owners may appear from the answers here-
inafter prayed to be filed, and when said yearly value shall
be so ascertained, that this Court will decree that the said
Nancy Babb be paid by the said several owners one third
of said yearly value during her natural life; or that
said present owners shall pay to her such aggregate sum
as this Court may determine said yearly value of said one
third of the said rents and profits may be worth, to be all
presently and promptly paid or secured upon said land to
be paid at such time as this Court may order or the said
parties agree —

With a view to enable this Court to determine the
aggregate and present value of said Dower after the yearly
value of said rents and profits and the present value of the prem-
ises are ascertained and reported as aforesaid — Your com-
plainant states that she is now fifty years of age and
in more than ordinary good health, and possessing more than
an ordinary good and strong constitution for a woman of
her age, and therefore she is advised to insist to this Court
that the time to be assumed as a basis that she will in all
human probability live to receive said Dower is thirty years.
And she here offers to prove to this Court such a state of circum-
stances as to satisfy the mind of the Chancellor that thirty years
is not an overestimate of said time, if any of the Defendants
hereinafter to be named shall dispute this same

She further prays that the time from which she
shall be decreed to receive dower shall be from the seventeenth
day of October 1849, that being the date of the death of said
Mrs M. Babb

She further prays that the time from which
she shall John Decker, Nicholas Summers, Michael Neam
Edward S Miller, The County of Cass, John M McConnell, David

Clendenin, Mary Clendenin his wife, David A Tull, Mary
F^r Tull, George Moore, Elizabeth Wells, Frederick Ross
George Kuhl, Henry Bournier, Charles Thompson, George
L Huntington, Eliza A Douglas, John A Rheinberger, Henry
Coffenburg, Thomas Elam, James McLean, John McLean
William Seeger, Joshua Alexander, Isaac Overall the
Unknown heirs of Thomas Wilbourn. John M. Seaman

Be made parties to this suit, and she is informed that they
are all and each of them interested in these lands, but what
particular part or portion of said lands each of said her
sons are interested in she cannot certainly say and is
not informed, or is she informed what interest or title
is claimed or owned by each

She therefore prays that they may be compelled
separately to answer this said bill, and that each for himself
shall answer specifically what part and parts of each or
any of said tracts of land each claims and owns, and that
in each of said answers they and each of them describe the
titles and show who the same has passed through from the
General Government to themselves, and whether the said title
has not passed through the hands of the said Babb as owner,
she demands this discovery from each of said defendants for
the reason that the title papers of said land are not within
power or control, and are within the power and control or
are presumed to be further the power and control of said
Defendants, they claiming to own the fee simple title
is said lands

She prays further that they and each of them
may fully answer whether it is not true that she was the
wife and is now the widow of said William W Babb
deceased

She further prays that if it shall be discovered that other persons who are not now here made parties to this suit shall be found to be interested in any part of said land that then the said interested persons be made parties to this suit and that they in all respects be placed upon the same footing and be made to occupy the same relative position as though the interest were now discovered and they were now made parties to said suit —

Your complainant further prays that if this Court in the event of this Court should deem the foregoing prayer to ascertain and decree to her the present value of her said Dower in all and each of said several pieces and tracts of land to be within the power of this Court, then that this Court will cause her dower in said land to be set off and allotted to her as required by the Statute in such cases made and provided, and that three Commissioners be appointed and sworn as provided by law and that they set off and allot to her her dower out of all and each tract of land herein before described, making the allotment and division out of and from the several tracts of land as the same were connected and owned by the said Babb and not divided and subdivided by these Defendants and other owners since the said Babb parted with the fee simple title in the same

Said Complainant further prays that process issue to the County of Cass when said lands are situated and when most of said Defendants reside, and that process issue to the County of Sangamon and such other Counties when it may be ascertained that any

Said Defendants not residents of Cass County may reside

Said Complainant prays all relief that to Justice and equity may belong and the law authorize in this her case as fully and perfectly when heard as tho specially asked in separate and special prayers and as in duty bound she will ever pray &c

Nancy Babb
By M^r McConnell Sol for Complainant

Process

Nancy Babb Complainant in Chancery

vs

Nicholas Summers

Michael Neam

Edward P Miller

The County of Cass

John M. McConnell

David Clendenin

Mary Clendenin

Dasha A Tull

Mary F Tull

Geo Morris

Elizabeth Wells

Frederick Ross

Geo Kuhl

Henry Boemler

Chas Thompson

Geo L Huntington

Elyse A Doyl

John A Chamberlaine

Henry Roffenburger

Thomas Glau

Joshua Alexander

Isaac Overall

John Wilborn (a minor)

John M Seaman

Defendants

The Clerk of the Cass County Circuit Court with
issuance a summons in Chancery in the foregoing case to the
County of Cass for all and each of said defendants and
also to the County of Sangamon against George L. Hunt
in due commanding each of said towns to be and
appear at the next term of said Court to answer the bill
filed in said cause - Process in all cases to be served
by copy as required by law

The County of Cass is to be served with process
in said cause by the Sheriff bearing a copy of said pro-
cess with the Clerk of the County Court in or before the next
term of said County Court

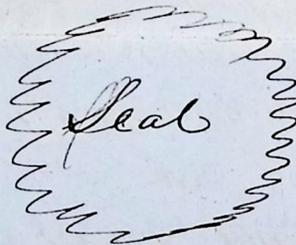
M. McConnell
Sol for Complainant

" Filed Feb 10th 1857 "
J. H. Saunders
clerk

State of Illinois }
Cass County } } The People of the State of Illinois
 } } To the Sheriff of said County Greeting

We Command you to summon John Decker
Nicholas Summers Michael Reaw and Edward
P Miller unpleaded with others, if to be found in your
County, personally to be and appear before the Circuit
Court of said County on the first day of of the next Term
thereof, to be holden at the Court House, in Beardstown on
the 4th Monday in the Month of March 1851 to answer
a certain bill of Complaint, filed in our said Court on
the Chancery side thereof, against them by Nancy Pabb
for allotment of Dower in certain Real Estate therein de-
scribed

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



Witness Thomas R Saunders Clerk
of our said Court at Beardstown this
tenth day of February 1851 the seal of
the said Court being hereunto annexed.

Thos R Saunders Clerk

Return

Served by delivering a literal copy of the within
to each of the said Defendants named therein

Feb 20 - 1851

S. B. Fulk's Sheriff
Cass County

Huntington and others, and one William Thomas Esq was appointed Commissioners to execute said decree -

Your Respondent further answering avers that afterwards, to wit, on the 12th October Ato 1841 the premises above described, among others, were sold by said Thomas Commissioner by virtue of the decree aforesaid, the report of which sale was approved of & the said sale ratified at the March Term 1842 of the said Superior Circuit Court -

Your Respondent further answering says that at the sale aforesaid, one John P. Wilkinson and Samuel Titcomb became the purchasers of the said premises and on the 19th November 1841, the said William Thomas Commissioner as aforesaid conveyed said premises among others, to the said Wilkinson & Titcomb in trust for said judgment creditors of said Babb which deed was duly acknowledged and recorded.

Your Respondent further answering says, that at the May Term 1843 of the said Superior Circuit Court in a suit then pending in said Court on the Chancery side thereof, in which George S. Huntington & others were Plaintiffs and Mary Titcomb & others were Defendants it was ordered and decreed that partition be made of certain premises (the above described among others) and that James Berry, John Savage & Isaac Plaster as Commissioners to execute said decree, should convey to the respective tenants in common, their proper shares; in the execution of which decree the said Commissioners set off & conveyed to George H. Budd, Abner Childs & Simon Ryder, the above described premises, which premises were as heretofore stated sold and conveyed by said Budd, Childs & Ryder to your Respondent by deed of November Ato 1844.

Your Respondent avers, that said William W Babb
never has been in possession of the above described premises
since the conveyance by said Babb & wife (the Complainant)
to Isham Butterworth of the 5th May A.D. 1838

Your Respondent further avers that since the title and
possession of said premises came to your Respondent under
the conveyance hereinbefore recited, your Respondent, with-
out any notice of the claim of the said Complainant has made
the following valuable ^{and permanent} improvements on so much of said premises
as lie in Sections 28, and 29, at an expense of some Eighteen
hundred Dollars

1. A Churning House, outhouses &c. on S. E. $\frac{1}{4}$
S. W. $\frac{1}{4}$ Section 28,
2. Grubbing & Breaking some 10 acres on same tract.
3. An Orchard of 200 fruit Trees.
4. 446 Rods of Fence in Section 28.

Whereas Your Respondent insists that any
right of Dower, the Complainant may have had
in the said premises, is barred by her deed of the
5th May 1838; or if her claim be made by vir-
tue of the re-conveyance to said Babb by
Isham Butterworth of the 2^d of October 1843,
Your Respondent insists that as grantee of said
Butterworth and wife she is concluded by the
decrea against said Butterworth of the Sanga-
mon Circuit Court, hereinbefore recited.

Your Respondent for the purpose of this suit,
having no personal knowledge thereof, admits the
marriage of Complainant and the said Babb and
the death of the said William W Babb, as alleged
in the Complainant's Bill.

And now having fully answered, Your Respondent

prays that he may be hence dismissed, with his costs
herin most wrongfully sustained &c

By E Summers
Sol pka

Nicholas Summers

This answer to be taken as sworn to by consent
E Summers Sol pka
M M Connell Sol for Compl

At a Circuit Court sitting as a Court of Chancery
begun and held on the 8th day of September 1857 at the
Court House in Beardstown within and for the County of
Jass and State of Illinois, the Hon Wth A Minshall
presiding as judge, the following proceedings were had

Nancy Babb

vs

Nicholas Summers, John Decker
Geo L Huntington and others

Petition for dower

And now on this day came the Complainant
by her Solicitor, M M Connell and on motion, this petition
is dismissed as to George L Huntington, Henry Coffinberger
Thomas Elam Joseph M. McClure, John A Rheinberger
and George Kuhl, involving the claim of Complainant
to the following described property to wit

Lots 1, 2, 7 & 8	Block 35	in Beardstown	Cass County	Ills
Lots 1, 2, 7 & 8	Block 47	"	do	do
Lot 8	in Block 75	"	do	do
Lot 7	in Block 18	"	do	do
Lot 6	in Block 31	"	do	do

Nancy Babb

vs
John Dicker et al

In the Case Circuit Court
of the September Term 1857

Decree

This Cause was submitted on bill and answer by counsel and by consent to be examined and decided by the Judge in vacation, and the decree when made to be as of the September Term of the Circuit Court for the year A.D. 1857 - And having examined the same, it is the opinion of the Court that the deed of the 5th of May A.D. 1838 from Babb's wife to Butterworth having been declared void and inoperative as to Babb, passed no title, and it being admitted that Babb was then seized of the premises, and marriage and coverture being also admitted, Mrs Babb's rights are not in any wise affected, and remain as though no conveyance had ever been made - If this position is correct, then it is unnecessary to look after the subsequent conveyance, and Mrs Babb's right to Dower is without any question maintained to the premises described in the Bill -

The rule of the Common Law as laid down in case not only maintains this, but the 14th Section of Revised Laws 1845, Entitled Dower, Providing that no Coverture of the Husband shall prejudice the right of the wife in dower would also seem to strengthen the same position

On the second question as to the assignment and whether the widow is entitled to the benefit of all improvements made on the premises by the purchaser since the alienation of the husband

On this proposition the true and just rule is, not that the widow should be entitled to the

benefit of the increased value of the premises by the labor and expenditures of the purchaser of the premises, but that she is entitled to the increased value of premises occasioned by extrinsic causes, such for instance as advantage of locality - Take as an illustration a farm of the number of acres at the time of the husband's conveyance in the neighborhood of a thriving town which may have grown up since that time, and the assignment of dower which then might rent for only one dollar an acre, that at the time of the assignment from no other cause than near locality to such town or being on or near a navigable River or any of the other great highways of trade occasioned by the general advancement of the property of the country, would now rent for two or three dollars per acre - The widow would certainly be entitled to this kind of increased value - In regard to other property, buildings in a city or town - In assigning dower then, the Court should be governed by this rule allowing to the widow the benefit of such advancement in the value of the same property which she would be doubtless of at the time of the alienation of the husband or the sale under the execution; thus in this case which is an indirect alienation by the husband, estimating the value occasioned by local or extrinsic causes, excluding the value put on the premises by the purchaser, by his own labor or expenditure -

Decease accordingly

This cause coming on to be heard for hearing on Bill and answer by consent is taken under allowance by the Court to be decided in vacation and

1
Whatever decree is made herein to lie as of the September Term of the Cass Circuit Court— And now having fully examined and considered the same, It is ordered, adjudged and decreed that the Complainant have and recover her dower in the premises, to wit—

S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ of Sec 29 Town 18 North of Range 11 West of 3^d principal Meridian— S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ Sec 28 same Town and Range; S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Sec 28 same Town and Range; S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ Section 28 same Town and Range; excepting five acres off of the South side of the last mentioned tract— And that Richard S. Thomas David Opler & C. P. Dunbaugh Esqrs be appointed commissioners to set off and assign to the Complainant her dower herein, and that they report the proceedings herein to the next term of this Court, to which Term this cause stands continued

Wm A. Minshall

State of Illinois $\frac{3}{3}$
Cass County $\frac{3}{3}$ ss

J. S. Simmons Clerk of the Circuit Court within and for said County do hereby certify that the foregoing contains a full, true and correct copy of the Bill, answer and decree in the case wherein Nancy Babb is Complainant and Nicholas Summers & others Defendants as fully as the same appears of record in my said office and as is required by an agreement of the parties in the case herein

In Testimony whereof I have hereunto set my hand and affixed the official seal of said Court this 10th day of December
A. D. 1857
J. S. Simmons
Clerk

731

Nicholas Summers appt

Nancy Babb appt

13748

Filed Dec 16 1851
Wm W. Mason

Summers
Babb

and the p[ar]t in Error comes and says that in the record and proceedings of the Cas Circuit Court manifest error hath intervened to his prejudice and for cause of error sets down & assigns the following to wit

- 1st The Court erred in decreeing that the Complainant below as entitled to dower in the premises
- 2nd the Court erred in decreeing an assignment of Dower in the lands generally without providing that such dower be assigned of the lands not improved by p[ar]t in error and without providing that Compt in the Court below should not in said assignment be entitled to the benefit of improvements made by p[ar]t in error

Wherefore p[ar]t pray that said decree be reversed.

SToyer p[ar]t

Transcript Fee
6080 words - \$ 6.08
Certificate Fee 35
\$ 6.43

Nancy Babb
Dickinson and others } =
and the said Nancy Babb saith
in Error comes and says that there is
no error in the record and proceedings in
the foregoing case as in the said assignment

in Errors the said Plaintiff in Error hath alleged wherefore & for all common & legal reasons