No. 14781 A

Supreme Court of Illinois

Dunning et al

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vs.

Dunning et al

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STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 45

J. W. Middleton & Co., Stationers, 196 Lake St.

14781

SUPREME COURT,

STATE OF ILLINOIS.

42.32

Third Grand Division.

APRIL TERM, A. D. 1865.

ACHSA DUNNING, et al.
vs.
WILLIAM H. DUNNING, et al.
} ERROR TO IROQUOIS.

GEORGE B. JOINER & JAMES FLETCHER,
ATTORNEYS FOR DEFENDANT IN ERROR.

ROFF & DOYLE, AND JOHN CLARK,
ATTORNEYS FOR PLAINTIFF IN ERROR.

Points and Brief of Authorities of Defendants

MIDDLEPORT, ILLS.
IROQUOIS PRESS PRINT.

STATE OF ILLINOIS, IROQUOIS COUNTY.

SUPREME COURT, STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

ACHSA DUNNING, et al.
vs.
WILLIAM H. DUNNING, et al.
} ERROR TO IROQUOIS.

Points and Brief on the part of the said Defendants in Error.

This suit was commenced by defendants in error against plaintiffs in error for the partition of the lands of the late Eber Dunning, deceased, in which, after filing the petition, the plaintiffs in error appeared and filed their respective answers thereto, and such other statutory proceedings were afterwards had in the case that there was a decree of said court for a sale of the

premises, and afterwards a sale thereof by the Master in Chancery, who also reported the sale thereof in pursuance of said decree which was approved by said court, all of which proceedings were fully in conformity to the statute, except some preliminary step in the inception of the case, which we think the defendants below waived objection thereto by their answering to merits.

The case comes before this court on motion of defendants below to set aside the proceedings, sale, decree, and dismiss the case.

The first point made is that the petition was not sworn to before filing, which objection undoubtedly would have been good had it been made before answer, but we think it is an objection not tenable when made for the first time after appearance, answer, decree for partition, report of commissioners, decree for sale, sale and report thereof, that it is in the nature of a dilatory plea—a dilatory motion—and must be made before answer to the petition.

The record shows that the defendants below appeared by their attorneys, Kinney & Roff, and waived service of process and filed their answers, which we contend is a sufficient appearance. As to 1st and 5th points see 12 *Ill.* 154,

2d and 3d, see 6*th Johnson* 302,

9th, 10th and 12th points, see 7 *Clark* (*Iowa*) 320, and 30 *Ver't R.* 285.

So far as the record is concerned we think there is not sufficient irregularity in the case to set aside the whole proceedings. The only thing, as we conceive,

wanting to make the case conform to the requirements of the statute, is the affidavit to the petition.

But the parties have filed many affidavits, the main part of which, except of the parties themselves, relate to the eleventh point made by defendants below, because the lands sold for one-half of their real value.

It will be noticed that nearly all the affidavits filed by defendants below predicate their belief as to the value of said lands upon the fact of a neighbor of theirs having, soon after this sale, sold a farm at twenty-eight dollars per acre, and think the Dunning farm worth as much, or nearly so, as the Ketchum farm; while all the affidavits filed by the petitioners state their opinion from the circumstances surrounding the case, that there was a dower interest of two hundred and twenty-five dollars per year allowed the widow, and that she was a remarkably healthy woman and with a strong constitution, and all believe the land sold for all it was worth under the circumstances, while the defendant's affidavits seem to set the price for a clear title and predicated on the Ketchum sale. None of the affidavits show, or attempt to show, any unfairness at the sale, but all admit that the sale was perfectly regular, and made to, in the presence of two of the defendants and their attorneys, and with no objections from any one until after the sale of the Ketchum farm for twenty-eight dollars per acre.

Achsa Dunning also states in her affidavit that she never employed said Kinney & Roff, or either of them, to act for her unless she was served with process, but the affidavits of Roff, Geo. B. Joiner, and Isabella Crozzer show that she was well aware of what had

been done in the matter, and that she was well satisfied that the land was not divided but was to be sold altogether. The commissioners, Carr and Pineo, also testify that they informed her of what was being done in the case, and she seemed to fully understand it and well satisfied to have the farm sold.

She does not show wherein she was injured by her said attorneys filing the answer before the service of process. If there had been any special injury, she might have shown it. True she says the land sold for $15 per acre when it was well worth $25 per acre, but is she thereby injured when she is well satisfied with her yearly allowance, which was for all the interest she claimed in the farm?

The other defendants also state that they never employed Kinney & Roff as attorneys to waive service of process. It appears by the affidavits of said Kinney & Roff, and others, that George R. Dunning and Oren King were in open court during the whole time that proceedings were had in the case, both to represent their own interests and as agents of said Achsa Dunning and Margaret King, and were also present at time of sale, and there is no objection made by either of them, at any time, until after the sale of the Ketchum farm at $28 per acre. And when the motion was made in open court to set aside the proceedings, the said George S. Wright had purchased said premises in good faith, believing from the acts of the parties present that all matters were well understood among both petitioners and defendants, had paid the amount of cash down which was required to be paid at time of said said sale, and secured the balance in accordance with the decree of sale, and inasmuch as the decree did not

specify the time at which the said annuity should be paid to said Achsa Dunning, the said Geo. S. Wright, at the hearing of said motion,at the Feb. term, 1864, filed his petition in said cause,setting forth the facts of his having purchased said premises,&c.,and asking that said court wo'd so amend said decree as to specify the day on which said annuity should be paid, avowing his readiness to perform that part of said decree and pay over said annuity to said Achsa Dunning, at the time to be specified by said court.

It would certainly be a great hardship to Wright, after he has performed his part of the sale in perfect good faith with no objections on the part of any one as to the previous proceedings in the case, to set aside the sale at this late day, after many of the heirs have received their proportion of the first payment and some of whom are non-residents.

Wright states, in his affidavit, that he saw George R. Dunning and King, after the sale, and tried to negotiate with them to pay the whole purchase money down, by their making a proper discount, but both refused to make any discount, choosing rather to let the deferred payments stand as a lien on the land, and at which time both expressed their entire satisfaction as to the legality of the sale and the price, and the said Achsa Dunning, at the same time, also expressed her entire satisfaction with the whole proceedings, and that she was satisfied with her annuity of $225 per year.— These statements were calculated to lull the suspicions of Wright, as had the least expression of dissatisfaction been made to him, even at that time, it is reasonable to suppose that he would have taken immediate steps to have saved himself by investigation, and if

ought had appeared against the validity of said proceedings, to have refused to comply with the terms of sale.

The affidavit of William H. Dunning, one of the petitioners and heirs, shows conclusively that there was an amicable arrangement made before the commencement of the proceedings; that in pursuance thereof the parties came to Middleport and employed counsel to attend to the matter for the defendants; that after the sale, also, he had conversation with George Dunning, King, and wife, and all appeared satisfied with the proceedings.

The affidavit of Julia Boutwell also states that said George R. Dunning and Margaret King stated to her that they became willing parties to said petition.

We can see no valid grounds for setting aside the proceedings in this case, and think therefore the motion should be dismissed.

GEORGE B. JOINER,
JAMES FLETCHER,
Atty's for Defendants in Error.

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SUPREME COURT

OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

Argument, Points, and Brief in the Case of

ACHSAH DUNNING *et al.*
vs.
WILLIAM H. DUNNING *et al.*
} ERROR FROM IROQUOIS.

THE history of this case is as follows: That at the June Term, A. D. 1863, the defendants in error filed their bill for partition of the land of Eber Dunning, deceased. The petition was filed in open Court June, A. D. 1863. Bill or petition was not sworn to, and no summons was issued for the persons named as the defendants in said cause; and there is no prayer for a summons in said cause. On the same day that said petition was filed there appears to have been an answer filed for the defendants to said petition, and that said answer waived the issue and service of process in said cause. And at the same term the Court made an order, but did not sign the same, appointing two Commissioners to set off the dower of the widow, and to make partition of the lands amongst the heirs. And at the same term the Commissioners made a report to the Court that they could not divide the said lands without great damage to the parties at interest.

And the Record further shows that at the same term of said Court the Court empannelled a jury to inquire into the yearly value of the land, and to set off to the widow the yearly amount that she should receive in lieu of dower in said land.

And the Record further shows that the jury found a verdict for the widow of two hundred and twenty-five dollars.

The Record further shows that the Court at the same term entered a judgment in favor of the widow against the land.

And the Record further shows that at the same term the Court made a final decree to sell the said land subject to the yearly dower of $225, and fixed the terms of sale and named the Master in Chancery of said county to sell said land; but the Record shows that the Court did not sign said paper purporting to be a final decree.

The Record further shows that at the November Term of said Court, A. D. 1863, being the next term held in said county, the plaintiffs in error, George R. Dunning, Margaret King and Orren King, by their attorney, John Clark, came into said Court and filed their motion in writing to set aside all the orders made at the June Term, 1863, of said Court in said cause, and to set aside the sale that had been made of said lands, for the following reasons:

1st. Because the petition was not sworn to before the same was filed.

2d. Because there never was any process issued or served on the defendants.

3d. Because their appearance was never entered in said cause by their attorney.

4th. Because the decree of the Court that purported to have been made by said Court never was signed by any one purporting to be acting as the Judge of said Court.

5th. Because the complainants in said petition are non-residents of the State of Illinois, and that no bond was filed for costs as required by law.

6th. Because the petitioners have not all sued in the proper title or style.

7th. Because the Commissioners appointed to set off dower were not sworn as the law directs.

8th. Because the report of the Commissioners is not in conformity to law.

9th. Because the Court had no jurisdiction over the persons of these defendants.

10th. Because the whole proceedings are null and void for want of jurisdiction of said Court in the matter.

11th. Because the lands were sold for one-half of their real value.

12th. Because the attorneys who entered the appearance of the said defendants had no right or authority to do so.

13th. Because motioners or defendants moved the Court to dismiss the cause and to set aside every order in the said cause, by the said Court made.

The Record further shows that the defendants (now plaintiffs in error) filed in the office of the said Clerk the affidavits of George R. Dunning, Margaret King, Orren King, A. G. Willard and Samuel Warrick, November 25, 1863, in support of their motion, and that the motion was continued to the next term of said Court.

The Record further shows that George R. Dunning says in his affidavit that he is

one of the sons and heirs at law of deceased; that William H. Dunning and others filed their petition for partition for the division of the lands described in petition, and that this affiant was made one of the defendants in said cause. He says that A. B. Roff and Kinney filed answer for defendants and waived service of process, and says that the said Kinney and Roff had no right or authority to enter the appearance or waive service of process for this affiant, or any of the defendants in said cause; that they never employed him (Roff,) or either of them; and that the lands are worth $25.00 per acre.

The Record further shows that Margaret King swore that she is a daughter of deceased, and one of the defendants in said cause; that Kinney and Roff, attorneys, did file an answer for her to said petition for defendants at the June Term, A. D. 1863, of said Court; but she denies that this affiant, or any of the defendants, to her knowledge, ever employed or authorized the said Roff or Kinney to enter her appearance and to waive service of process for this affiant, or either of said defendants

The Record further shows that Orren King swore that he is the husband of the said Margaret King, late Margaret Dunning, and that he is one of the defendants; that the lands are worth $25 per acre, and that the said Kinney and Roff had no authority to enter his appearance or either of the defendants; and that he, (the said Roff) or either of them, was never employed in said cause. This affiant says, that in conversation with Roff, he (Roff) stated that he entered the appearance of this affiant through a mistake.

The Record further shows that A. G. Willard says that he is well acquainted with said land, and believes the same to be worth $25 per acre, and that there are about four hundred and sixty acres of said land.

The Record further shows that Samuel Warrick says that he is well acquainted with the said farm; that he believes said land to be worth $25 per acre; that there are about four hundred and sixty acres of land.

The Record further shows that at the February Term of said Court, A. D. 1864, the defendant, Achsah Dunning, filed her affidavit in said cause to set aside all the orders made in said cause at the June Term, A. D. 1863, for the reasons set out in the motion of the last named defendant; and in her affidavit she denies of ever employing Roff or Kinney to enter her or any of the defendants' appearance in said cause and waive service of process.

The Record further shows that on the 17th day of February, 1864, the defendants below let plaintiffs in error file, in support of their several motions, the affidavit of Asa B. Roff, attorney, who admits no authority in him to enter the appearance of the said defendants and to waive service of process in said cause.

The Record further shows that on the 19th day of February, 1864, the plaintiffs in error filed, in support of their motion, the affidavits of Walter Noble, Amos O. Whiteman, John C. Noble and George P. Ketchum, who testify that the lands named in said petition are worth $25 per acre, and that the same could have been divided without any damage to said farm, or to the injury of said heirs.

The plaintiff in error read the affidavits of Charles Hoagland and William Fauber, who say land is worth $25 per acre.

The foregoing is all the evidence offered by the plaintiffs in error.

The defendants in error read in evidence the petition filed June 16th, 1863, in said Court. They read the order of the appointing of two Commissioners. They read in evidence the oath of the Commissioners and their report in said cause.

The plaintiffs in error objected to the reading of each by the defendants in error as they were offered, but the Court overruled each objection and allowed each to be read; and plaintiffs in error excepted.

The defendants in error read in evidence final decree in said cause rendered at the June Term, 1863, of said Court.

Plaintiffs in error, by their counsel, objected, for the reason that it was never signed by any person as Judge of said Court, and for other reasons.

Court overruled said objection, and plaintiffs in error excepted.

They also read in evidence decree giving Achsah Dunning, widow, $225.00 per year, found by jury of twelve men.

Admitted by the Court, that the jury that found the yearly annuity was sent into a jury-room, to hear the evidence, under the charge of C. F. McNeal, and that presiding Judge was holding Court in Court-room.

Further admitted that the said McNeal is the same person who was appointed to make sale of said land.

They further read in evidence the affidavits of W. H. Dunning, Asa B. Roff, (taken by them) Julia M. Boutwell, Robert Carr, George Pinio, C. F. McNeal, Geo. S. Wright, George B. Joiner, Chester Kinney, Charles Sherman. Isabel Crozier, Philander Morgan, M. Hogal, W. Patterson and Abram Caughnough.

To all of the above affidavits the plaintiffs in error, by their attorney, objected.

Court overruled said objection, and plaintiffs in error excepted.

Admitted by the Court that he did not sign the Record of the June Term of said Court, 1863, until after plaintiffs in error filed their motion to set sale aside. And further admitted, that while the plaintiffs in error were reading their affidavits, the said McNeal asked leave to file his report of sale.

To which plaintiffs in error, by their counsel, objected.

Court overruled said objections. Plaintiffs in error excepted.

The Court overruled motion to set aside sale, to which plaintiffs in error excepted.

The Court approved the report of the sale, and plaintiffs in error excepted.

The report of sale was filed February 20th, 1864.

The errors assigned are as follows:

1. The Court erred in taking jurisdiction of the petition for partition of the plaintiffs at the June Term, 1863, because the said petition was not verified by affidavit.

2. The Court erred in entering an interlocutory decree in said cause and appointing Commissioners to make partition of the land without proof of title to the land.

3. The Court erred in not signing the orders and decrees in said cause at said June Term, 1863.

4. The Court erred in calling a jury to find the alimony for widow, and sending the jury into a room, under charge of a person who was not a Circuit Judge, to hear the evidence on that question.

5. The Court erred in not granting the motion of the plaintiffs in error and setting aside the former decrees and orders in said cause made at the June Term, 1863.

6. The Court erred in overruling the motion to set aside the orders and decrees in said cause at the June Term, 1863.

7. The Court erred in overruling the motion of the plaintiffs in error to the filing of the Commissioners' report of sale.

8. The Court erred in approving the report of the sale made by the Commissioners.

9. The Court otherwise erred in said cause.

10. The Court erred in not entering a decree in favor of said plaintiffs in error.

I will dispose of the several errors in the order in which they are assigned. The first error assigned questions the right of the Circuit Court to take jurisdiction of the said cause, because the said petition for partition was not verified by affidavit. Now, I insist that in this State the right to act is given by Statute, and that being so, the petitioners must comply with all the requirements of the Statute before the Court can act in the premises. Now, let us see. I call the attention of the Court to the 2d Section of the Act of Partition, to be found in the second volumn of Purple's Statutes, p. 793, which is as follows: "The petition shall particularly describe the premises sought to be divided or sold, and shall set forth and make exhibits of the rights and titles of all parties interested therein, so far as the same are known to the petitioners, including tenants for years, for life, by the courtesy or in claim, of persons entitled to the reversion, remainder or inheritance, and of every person who, upon any contingency, may be or become entitled to any beneficial interest in the premises, so far as the same are known to the petitioners; and such petition shall be verified by affidavit." Now, the Court must see that the Court had no jurisdiction, because there had been no summons issued or served in the case. But it may, and doubtless will be answered, that there was no necessity for process when the appearance of the defendants was entered, and the issue and service of process waived. Now, that may be so in some sort of cases, but we insist this is not one of the cases. For here the Court will see by the Record that the petition was filed on the 16th of June, 1863, and the answer was filed on the same or next day, and that the answer is the only evidence of the waiver. And the Court will further see by reference to the evidence set out in the Record, that the attorneys who entered the appearance of the defendants don't pretend to show any fact by which the Court can see that they or either of them were employed in the case for either of the defendants; and I insist that if they had been they would have set the contract of employment out in their affidavits.

Now, it is said in the case of *Gardner* vs. *Hall*, 29 Ill., p. 277, that where there are several defendants, one of whom is not served, it will be held that an appearance by solicitor for the defendants will be limited to those only who have been served. See also the case of *Alexander Frazier* vs. *William Resor*, 23 Ill., p. 88. The Court, in

the opinion in that case say, had this been done by the attorney by mistake and without authority, it should have been shown on the motion to set aside the default.

Now, I bring this case within the rule there laid down, for I show by the affidavits of four persons that they did not employ the attorneys, or either of them, and that they did not authorize them, or either of them, to enter their, or either of their appearance in the said cause. And I make the further point that the Statute allowing of this proceeding is in derogation of the common law; that its provisions must be followed strictly, and that a departure in any one of its requirements would fail to carry title to the purchaser. Further I say, that the attorneys must, when their authority was questioned, show that they had the authority by some other means than they have in this case, (say by showing some contract of employment having some form and substance by which the Court could have seen that the parties who they pretended to represent would be bound to pay some certain sum or what the services were reasonably worth.) Now, I say that nothing of the sort appears in the Record in this cause. See 26 Ill., p. 218. An attorney cannot recover for services rendered as such unless he can show an employment or retainer.

But as to the other points in this case. Now let us see how about the appointment of the Commissioners. The Court will see by looking into the Record in this cause that the Court made that order without any evidence, so far as the Record shows, except the recitals, and I call the attention of the Court to the 8th Section of the Partition Act, to be found in 2d Purp. Stat. p. 794, as follows: "The Court shall ascertain from the evidence in case of default or from the confession by plea of the parties, if they appear, or from the verdict by which any issue of fact shall be determined and shall declare the rights, titles and interest of all the parties to such proceeding, petitioners as well as defendants, and give such judgment as may be required by the rights of the parties." Now the Court will see that the Court must require them to show title in some way.

Now, how about the oath of the Commissioners. I call the attention of the Court to the 9th Section of the last above recited Act on the 794th page of 2d Purp. Stat., which has the following language: "Each of whom shall take an oath before the Court or some Justice of the Peace fairly and impartially to make partition of said land in accordance with the judgment of the Court, as to the rights and interests of parties, if the same can be done consistently with the interests of the estate."

Now, I submit to the Court that upon the inspection of the Record in this cause, they will see that the oath was administered to the Commissioners by one Thomas Venum, the Clerk of said Court, who for all ordinary matters would be good, and would be in this case if it was not for the Statute above cited.

Now, it will be replied that what the Clerk did the Court did, because he was part of the Court. Now, that won't do, for if that was true the Clerk could hold Court in the absence of the Judge and try the causes. So I need not spend time on that.

Now, how about the manner of making the report. I call the attention of the Court to another portion of the last recited section of the Statute, which is as follows: "And the said Commissioners shall go upon the premises and make partition of said lands, tenaments and hereditaments, assigning to each party his or her share by meets and bounds, and make report, which shall be under their hands and seals, to the Court during the same or next succeeding term Now, if they could disregard the requirement as to the oath, they might make their report to the Clerk just as well.

Now, how about the return of the oath and report. I insist that they should be attached together, but the Court will see that they are in this case on different pieces of paper and detached, as the Court will see by reference to the bill of exceptions in this cause. I call the attention of the Court to the case of *Romulus Riggs* vs. *Edward Dickinson et. al.* in 2d Scam., p. 437. There can be no doubt of the power of the Circuit Court to disapprove of and set aside the report of Commissioners of partition, inequality of value as well as quantity, is good cause for setting aside a report of Commissioners of partition, and such inequality may be shown by affidavit. I call the attention of the Court to the right of the parties to show that they did not knowingly have a day in Court, and to show that the attorney who entered their appearance in this cause had no right to do so. And for that purpose I call the attention of the Court to the following cases:

Lyon *vs.* Boilvin, 2 Gil. p. 629.
15 Ill., p. 415.
1 Scam., p. 123.

I now come to the report and order of sale. I want to call the attention of the Court to the case of *Tibbs* vs. *Allen*, 27 Ill., p. 119. I ask the Court to look at the Record in this cause and compare the same with the case above cited, and I think the Court must come to the conclusion that the order of appointment, the oath of Commissioners, and their report, are all defective, and that they did not warrant the Court in making the order of approval and in passing the final decree in the case ordering the sale. The report don't show that they could not have divided the land into nine equal parts, and have set off to the widow her statutory dower; for the Court will see that the land is all in one body, except one twenty acre piece of good timber land. And the evidence of Walter Noble, Amos O. Whiteman, John C. Noble and George P. Ketchum, on pages 29 to 31 of the Record, shows that the land could have been divided without any damage to said farm or to the injury of said heirs. And I insist that the preponderance of the evidence is in favor the division of the land; and I insist further, it is clear from the evidence that only two of the Commissioners went on the land to inspect it, and that it don't sufficiently appear from the report that the other was well enough acquainted with it to join in the report. As to the report of the Commissioners making the sale, I insist that it don't come up to the requirements of the Statute, and don't furnish on its face, or attached to it, any evidence of the truth of the facts that it purports to detail. The Court will see that there is no evidence that the notice of sale was ever given; there is no affidavit attached to it of any person showing that the notice was ever posted; and there is no certificate of the publisher of a newspaper showing that he published the same in a paper. I call the attention of the Court to the case of *Tibbs* vs. *Allen*, 29 Ill., p. 535, and authority there cited as being in point in this case for the plaintiffs in error on the objection to the report.

I now come to the question of signing the orders and decrees. If I understand aright, the order of the Court appointing the Commissioners is a final order for that purpose, and that it should have the signature of the Judge to it to give it force. Suppose the Commissioners had refused to have acted in the premises, and the Court had made an order declaring their arrest for contempt of Court, and they had been arrested and brought before the Judge, and they had replied that they did not know that the Court had made any order appointing them, and the Court should say to them, "Why there is the order of this Court." "Why," they say, "your Honor has not signed it, and therefore we did not know that it was your order." Could the Court legally fine them for contempt, or could they legally defend under that order

an action of tresspass that might be brought against them for going upon the land? We say not. But the defendants in error say in reply, that the Court signed the Record of the June Term, 1863, after the making of the said order. If so, how did the Commissioners know that in June, 1863, they did not; and then how could it help them out of the scrape. It could not. It is also true of what purports to be the final decree, that it is not signed by the Judge. I understand that a decree has no force until it is signed by the Judge and filed by the Clerk. Now, the old practice was that it was not a decree of the Court until the Chancellor had signed it and it had gone to the master of the rolls and had been by him enrolled, and then it was in force. Now, the Court will see that the practice in the Court from which this cause comes is to make a minute on his docket that he finds so and so; and after the adjournment of the Court, the attorney moving the case writes up such decree as he wants, and hands the same to the Clerk of said Court, and the Clerk records the same as a decree of the Court in the case, and the Judge of the Court comes along at the next term, signs the Record and thereby Record is said to be signed by the Court. This Court will see that the Records of the June Term, 1863, was not signed until after the plaintiffs in error had entered their motion to set the proceeding aside, and before the said motion was determined this was error. I call the attention of the Court to the case of *Klemm* vs. *Deakes*, 28 Ill., pp. 318 and 319. Therefore I insist that at the time the plaintiffs entered their motion, if their theory is true that there was no final order or decree, and that the Master in Chancery had no warrant to sell, and the Court should have set the sale aside. For that reason this cause should be reversed with an order to the Circuit Court to dismiss the proceedings.

Now, it will be replied that the Master in Chancery who made the sale made and filed his affidavit in this cause for the defendants in error, and that he filed with or attached to said affidavit a copy of said notice of said sale. That is true, but it is no part of the report, and if it was it would not bring it within the case of *Tibbs* vs. *Allen* in 29 Ill., p. 535, as the Court will see by reference to the opinion in that case on page 549, the Court uses this language: "It may further be remarked that no proof whatever was furnished the Court by the Commissioner making the sale that he had given any public notice of the sale." His mere statement sufficed. This was erroneous. Some proof other than his assertion should have been required, at least a copy of the notice with the affidavit of some credible person that he saw it posted in some public place, or if printed in a newspaper, the usual certificate of the printer should have been required.

I want to call the attention of the Court to the fact in the Record that shows that the Court made a Deputy Judge to preside over a jury to hear the evidence in this cause, and sent him and the jury into a room other than the Court-room to hear the evidence and determine the amount that the widow should have yearly from the land. Now, I think the Court will look in vain for any provision in the Statute to give the Judge the authority to do that. If he could call a jury and send them into one room under McNeal, he could call another and send into some other room under the charge of some one else, and so continue till he had a jury out in in every case on his docket, and he might set in the Court-room and dispose of the Chancery docket that did not want a jury. Now, I don't want to find fault with the Court, but what I want is to know what the law is on that point, for in these times when Judges have to work for very small pay, a Judge might relieve himself of a great deal of his labor and all the responsibility, and still retain all the honor by adopting the course adopted by the Court in this case. Now, I don't doubt that the Judge could call an attorney to the bench and let him run the Court in the Court-room for a short time, and not in any way commit an error, but the Court himself could not go out of the

Court-room into some other room and empannel a jury and try a cause; and if not it couldn't be claimed that he has power to do what he did in this case. I leave this point with the Court.

I call the attention of the Court to the fact that it is the duty of the County Commissioner's Court of each county to provide a room to hold the Circuit Court in for said county; and the same duty is placed on the Supervisors in counties that have adopted the township organization, and their can't be a Circuit Court held in any county legally until that is done, and when it is done the Court can't be held anywhere else only by virtue of some law authorizing the people of a county to change the county seat, and then the same duty is to be performed as before; and therefore I insist that the Court erred in this case, and that the Court should have granted the motion of the plaintiffs in error.

I call the attention of the Court to another fact, as appears from the evidence in this case, and that is this: That there is not one word in the evidence that shows that at the time the answer was filed and appearance entered, Roff or Kinney had any sort of employment from any of the defendants whom they attempt to represent. The defendants in error attempt in their affidavits that they read on the motion to prove the fact by proving some statements of some of the defendants. Now, if they had carried those statements far enough and shown that this was the only suit that was in the Circuit Court of said county at that time, in which the same persons we e parties, then they might with some show ask the Court to presume that the defendants when they used the language sworn to by W. H. Dunning, Juliet Boutwell, Robert Carr, George Penio, C. F. McNeal, A. B. Roff, C. Kinney, G. S. Wright, G. B. Joiner, Isabel Crozier, and Philander Margain. Now, the Court will see that not one of them pretends to state one fact by which the Court can see as to the extent of the employment. if the Court can say that there is any evidence tending to prove it at all. Now, Roff and Kinney could have stated the circumstances and conversation that induced him to have thought he was employed. It is a rule of evidence that where one witness swears positively to a fact, and six or other number swear that they did not see or hear the thing sworn to, the weight of evidence is in favor of the one who swears positively. I suppose that it is not necessary to call the attention of the Court to authorities on that point. See the case of *Gorham* vs. *Payton*, 2 Scam., p. 365. So I say on the authority of that case that the positive testimony of G. R. Dunning, Margaret King, Orren King and Achsah Dunning that they did not employ Roff or Kinney to enter their appearance, must stand and outweigh the evidence of the others on that point.

I now submit to the Court this case on the part of the plaintiffs in error, and ask of the Court to carefully examine the whole Record and the evidence, and to give an opinion on all the points made, so that hereafter attorneys and clients can tell what the law is on all the points made in this case.

JOHN CLARK,
Sol'r for Plaintiffs in Error.

45 – 32

Denning
vs
Denning et als

Pltff's Bill

Filed Apl 13. 1865 –
L Leland Clk

Page Rec. Report filed February 20th, A. D. 1864.

92 Final decree.

On motion of complainant's solicitor, it is ordered that the exception by the defendants to the master's report of sale filed in this cause at this Term be, and the same are overruled. And it is further ordered that the said report of the said master in chancery be approved and affirmed by this Court; to which the defendants excepted.

100 Defendants present their bill of exceptions, which was signed and sealed by the Judge.

Errors Assigned.

1. The Court erred in taking jurisdiction of the petition for partition of the plaintiff at the June Term, 1863, because the said petition was not verified by affidavit.

2. The Court erred in entering an interlocutory decree in said cause, and appointing commissioners to make partition of the lands without proof of title to the lands.

3. The Court erred in not signing the orders and decrees in said cause at said June Term, 1863.

4. The Court erred in calling a jury to find the alimony for widow, and sending the jury into a room under charge of a person who was not a Circuit Judge, to hear the evidence on that question.

5. The Court erred in not granting the motion of the plaintiffs in error, and setting aside the former decrees and orders in said cause made at the June Term, 1863.

6. The Court erred in overruling the motion to set aside the orders and decrees in said cause at the June Term, 1863.

7. The Court erred in overruling the motion of the plaintiffs in error to the filing of the commissioner's report of sale.

8. The Court erred in approving the report of the sale made by the commissioners.

9. The Court otherwise erred in said cause.

10. The Court erred in not entering a decree in favor of said plaintiffs in error.

CLARK & KELLER,
Solicitors for Plaintiffs in Error.

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Achsah Dunning
Dd

William H. Dunning
Dd

Abstract

Gilead April 20. 1864
L Leland Atty

1st

To all to whom these presents shall come,
Know Ye,
that we having caused to be inspected the records and proceedings remaining in the office of the Clerk of our Circuit Court in and for the County of Iroquois and State of Illinois do find therein certain Records & proceedings in the words and figures following, to wit:

United States of America,
State of Illinois, ss,
Iroquois County,

Pleas before the Honorable Charles R. Starr Judge of the Twentieth Judicial Circuit and Presiding Judge of the Iroquois County Circuit Court in the State of Illinois, at a Term of the said Iroquois County Circuit Court begun and held at the Court House in the Town of Middleport in said Iroquois County, on the second Tuesday the same being the Ninth day in the month of June in the year of our Lord one thousand Eight hundred & sixty three

Present Hon Charles R. Starr Presiding Judge Twentieth Judicial Circuit
Charles H. Wood, States attorney Twentieth Judicial Circuit
Harison O. Hemy, Sheriff of Iroquois County
Thomas Brennan Clerk of the Iroquis County Circuit Court.

2d

Be it remembered that on the Twenty sixth day of February A.D. one thousand Eight hundred and Sixty four there was filed in said Iroquois County Circuit Court a Bill of Exceptions that reads in the words and figures following, to wit;

State of Illinois }
Iroquois County } In the Iroquois County Circuit Court
February Term 1864.

William H. Dunning, Orsa Dunning, James A. Dunning
Mary A. Rogers formerly Mary A. Dunning
Daughter of Eber Dunning Deceased and James
Rogers her husband Louisa E. Crain formerly
Louisa E. Dunning daughter of Eber Dunning
deceased and Juliaetta Bantwell and John
Bantwell her husband and James Perry Dunning
Adults and Reuben L. Dunning Amelia Dun-
ning Nathaniel G. Dunning and Franklin
Dunning, (Minors) by Julia Bantwell their
Guardian and Sarah L. Pulver formly Sarah A. Dunn-
ing and David B. Pulver her husband, Adults. } Petition for Partition

vs

Ashsah Dunning widow of Eber Dunning
Deceased and George R. Dunning and Margaret
King formerly Margaret Dunning and Orsa King
her husband — — — — —

And be it known that on the 25 day of the month of November A.D. 1863.

3d

it being one of the Regular days of the November term of the Circuit Court of the County of Iroquois and State of Illinois that the Defendants George R Dunning Margaret King and Oren King Came into open Court on the day of the said term by their Attorney John Clark and filed their Motion in writing together with the Reasons for said Motion to set aside all the prosedings had in said Cause at the said June term of said Circuit Court in said Cause

Which reads as follows —

State of Illinois } In the Iroquois Circuit Court to
Iroquois County } the November Term 1863.

William H. Dunning and others
vs
Ashsah Dunning and others } Petition for Partition —

And now comes the said Defendants George R. Dunning, Margaret King and Oren King by their attorney John Clark and moves the Court to set a side the proceeding had in the above Cause at the June term A.D. 1863 of said Court and the sail of the Lands named in the petition of the petitioners in said Cause for the following reasons, to wit,

1, because the petition is not sworn to and was not sworn to before the same was filed —

4th

2. because there never was any process issued or served on this Defendants ——
3. because their appearance was never Entered in the said Cause by their authority
4. because the Decree of the Court that purports to have been made was never signed by any one purporting to be acting as the Judge of the said Court —
5. because the Complainants in said petition are non residents of the State of Illinois and that no bond for Costs was filed in said Cause as is required by the Statute in such cases made and provided
6. because the Petitioners have not all sued in the proper titles or styles —
7. because the Commissioners that was appointed was not sworn as the Law directs in such Case
8. because the report of the said Commissioners is not in conformity to Law in such cases
9. because the Court had no jurisdiction over the persons of this defendants —
10. because the whole proceedings are null and void for the want of Jurisdiction of the said Court in the matter
11. because the Lands was sold for one half of its real value —
12 because the attorneys that pretended to Enter the appearance of this defendants had no right to do so —

13. the Motioners or defendants move Court to dismiss
5 the full Case and to Set aside every order
entered in the said Cause by the said Court—

George R. Dunning
Margaret King and
Oren King By
John Clark
their attorny

And be it further known that the aforesaid
defendands did on the 25 day of November 1863. to
support their motion that they filed in the office
of the Clerk of the Circuit Court the afidavits of
George R Dunning Margaret King. Oren King —
A. G. Willard Samuel Warrick

And the affidavit of George R. Dunning reads as —
follows, to wit;

State of Illinois, } In the Iroquois County Circuit Court
Iroquois County. } Petition for Partition to the
November term 1863.

William H. Dunning and others }
vs }
Ashsah Dunning and others }

George R. Dunning being
duly sworn deposes and says, that he is one of the
natural sons of Eber Dunning late deceased
of the County of Iroquois and that he is one of
the Legal heirs of the said Dunning deceased

and that is one of the defendants in the above
entitled cause and that he is informed and
6th believes the information to be true that one
William H. Dunning who as, he is informed is one
of the heirs at Law of Eber Dunning deceased of said
County did at the June term of the Iroquois
Circuit Court in and for said County 1863,
file in said Court his petition with others for
the partition of the Lands and real estate of the said
Eber Dunning deceased described is his said
petition correctly as this affiant is advised and
believes and that said petition made this affiant
as he is informed and believes a defendant
with others therein named and that he is further
informed and believes the same to be true
that one Chester Kinney and one Asa B. Roff two
of the attorneys of said Court did file and answer
to said petition for the said defendants and
amongst the rest this affiant and waived the
issuing and service of process in said Cause
and admitted all the allegations of the said
petition and that the Court did make and order
and decree of partition and assignment of dower
of the lands named in said petition and that
in said order that the said Court appointed
as commissions for that purpose George Pines
Robert Carr and Micajah Stanley as such
Commissioners and that he is informed that

only two of the said Commissioners went on to
any part of the said Lands named, to wit George
Pines and Robert Carr and that Stanley did
not accompany them or go by himself to look at
the said Lands and that he believes the same
to be true and further he is informed that the
said Commissioners returned into Court a report
that the lands named in the said petition
could not be partitioned amongst the said
heirs at law without great damage to their interest
and that he is further informed that the Court
did order a sale of the said lands and that
he is informed that the Commissioners appointed
to make the sale has sold the said lands
a short time since for the sum of fifteen
dollars per acre when in fact and in truth as
this affiant is informed and believes that the
said lands is worth twenty five dollars per
acre each and every acre of them, and this
affiant says that a farm was sold about one mile
distant from the farm known as the Denning
farm not any better lands nor any better located
or improved about the same time at private
Sale for twenty eight dollars per acre one third
Cash and the rest in one and two years time
with interest - and this affiant says that the
said Kincy and Roff had no writen or verbal
authority to appear in Court in said Cause
and enter his said appearance or to do

any thing in said Cause for this affiant that he had not employed them or either of them or authorized any one to employ them or either of them for him in said Cause - And further says that

8a

he was not at any time served with any process of said of said Court in said Cause and has ~~known~~ knowledge that any such process was ever issued in said Cause and that he did not in person or by direction of him authorize the use of his name as a party in said Cause and that he disclaims the use of his name in the ~~matters~~ and and that he is advised that nether the said Margaret King nor Oren King did order or direct them or either of them to use his name or to enter his appearance in said Cause and he says that if they had that they had no authority from him to do so he says that on Consulting with the said A. B. Roff Esq in person that he informed him that he entered his said appearance through a mistake and that he had no authority to do so, and that he further informed him that (de Roff) procured the said Kinney to do whatever he did and (he King was acting in good faith in the matter) but without authority from this affiant, he further Swears that he is informed that the Defendant Ashsah Dunning did employ the said Roff to look after her interests in the matter but that he is informed that she did not understand

that she had imployed him to enter her appearance
in the said cause he says that he introduced
to the said Asahel Dunning and the said Roff
the said Roff just supposed that they all
intended to employ him without making any
contract with him on their behalf or ass: behalf
of this affiant - and he says that they had no
authority from him to do so and that this affidavit
is made for the purpose of baseing a
motion upon to set aside the whole proceedings
of the said Court in the said Cause and further
says not

Signed and sworn to before me this the 24th day of November 1863. George W. Mayo J.P.

W. R. Dunning

5 ¢ U.S. Revenue Stamp

and the affidavit of Margaret King reads in words as follows, to wit,

State of Illinois } ss
Iroquois County }

In the Iroquois County Circuit Court Petition for Partition In the November term A.D. 1863.

William H. Dunning and others
vs
Asheal Dunning and others

Margaret King being duly sworn deposes and says that she is the natural daughter of Eber Dunning late deceased of said County and one of the legal heirs at law of the said Dunning deceased and that she is

informed and believes the information to be true
that one William H. Dunning who is also one
10th " of the natural sons of the said Eber Dunning
deceased and the heirs at law of the said
Dunning deceased did at the June Term of
the Iroquois Circuit Court in and for said County
A.D. 1863. file in said Court their petition for partition
of the lands and Real estate of the said Eber
Dunning deceased describing in his petition
the said lands correctly as this affiant is
advised and believes and that said petition
made this affiant as she is informed and
believes a defendant with others therein named
and that she is further informed and believes the
same to be true that on the 18 day of the month
of June 1863. that one Chester Kinney and one Asa B.
Roff two of the attorneys of said Court did file
and answer to said petition for the said Defendants
and a minute, the rest this affiant and waved
the issuing and service of process in said cause
and admitted all the allegtions of the said
petition and that thereupon the Court did
make and order and decree of partitions
and assignment of dower of the lands named
in said petition and that in said order that
the said Court appointed as commissioners for
that purpose George Pines Robert Carr and
Micajah Stanley as such Commissioners and
that she is further informed that only two

of the said Commissioners went on to any part of the said lands named to wit: George Pines and barr and that Stanley did not accompany them or go by himself to look at the said lands and that she believes the same to be true - and further she is informed that the said Commissioners reported to the said Court that the lands named in the said petition could not be partitioned amongst the said heirs at law without great damage to their interests and that she is further informed that the Court did order a Sale of the said lands and that she is informed that the Commissioners appointed to make the said sale had sold the same a short time ago for the sum of fifteen dollars per acre when in fact and in truth as this informed and believes that the said lands is worth twenty five dollars for each and every acre of them and this affiant says that the said Kiney & Roff had no written or verbal authority to appear in Court in said Cause and enter her said appearance or to do any thing in the said Cause for this affiant that she had not employed them or either of them or authorized any one to employ them or either of them for her in said Cause and further says that She was not at any time served with any process of said Court in said Cause has Knowe Knowledge that any such process was ever

11th "

issued in said Cause and that she did not
in person or by direction of her authorize the
use of her name as a party in said Cause
12th and that she disowns the use of name
in the matter and that she is advised that
her husband Oren King another of the Defendants
did not order or direct them or either of them
to use her name or to enter her said appearance
in said Cause - She says that on Calling
on the said Asa B. Roff Esqr by her atty that he
informed her said attorny that did do so, that
he entered her said appearance through a
mistake and that he had no authority to do
so and that he further informed her said attorny
and her said husband as she is informed and
believes that he (Roff) procured the said Kinney
to do whatever he did, and that (he Kinney was
acting in good faith in the matter) She further
swears that she is informed that the Defendant
Ashsah Dunning did employ the said Roff
to look after her interest in the matter but
that she is informed that she did not understand
that she had employed him to enter her appearance
in the said Cause, She says that she is informed
that the said Roff says that he was introduced
to the said Ashsah Dunning by the husband
of this affiant and George R. Dunning and he just
supposed that tha all intended to employ

him withat making any bargain with him on their behalf or on behalf of this affiant and she says that ~~the~~ had no authority from her to do so and that this affidavit is maid for the purpose of Basing a motion upon to set aside the whole proceeding of the said Court in the said cause and further says not,

13th

Signed and sworn to before me
this 24 day of November 1863.
George E. Mayo J.P.

Margaret King

5 ¢ Revenue Stamp.

And the affidavit of Oren King, reads in words following, to wit;

State of Illinois } In the Iroquis County Circuit
Iroquis County } Court Petition for Partition to
The November Term 1863.

William H. Dunning and others
vs
Ashoah Dunning and others

Oren King being duly sworn deposes and says that he is the husband of Margaret King late Margaret Dunning and that he is also one of the above defendants with his said wife the said Margaret and that he is informed and believes the information to be true that one William H. Dunning who as he is informed is one of the heirs at law of Eber Dunning deceased of said County died at

the June term of the Iroquois Circuit Court in
and for said County. 1863 filed in said Court
his petition with others for the partition of the
Lands and Real estate of the said Eber —
14th Dunning deceased described in his said
petition Correctly as this affiant is advised and
believes and that said petition made this
affiant as he is informed and believes a
defendant with others therein named and
that he is further informed and believes the same
to be true that on the 18 day of the month of June
1863. that one Chester King and one Asa B. Roff
two of the attorneys of said Court did file and
answer to said petition for the said defendants
and amongst the rest this affiant and waived
the issuing and service of process in said
Cause and admitted all the allegations of the
said petition and that the Court did make
and order and decree of partition and assignment
of dower of the Lands named in said petition
and that in said order that the said Court —
appointed as Commissioners for that purpose Geo.
Pines Robert Carr and Micajah Stanley as
such Commissioners and that he is informed that
only two of the said Commissioners went on
to any part of the said Lands named, to wit,
George Pines and Robert Carr and that Stanly
did not accompany them or go by himself to look

at the said lands and that he believes the same to be true and further he is informed that the said Commissioners Reported to the Court that the lands named in the said petition could not be partitioned amongst the said heirs at Law without great damage to their interest and that he is further informed that the Court did order a Sale of the said lands and that he is informed that the Commissioners appointed to make the Sale has sold the said lands a short time since for the Sum of fifteen dollars per acre when in fact and truth as this affiant is informed and believes that the Lands is worth twenty five dollars per each and every acre of them and this affiant says that a farm was sold about one mile distant from the farm known as the Downing farm not any better lands nor not any better located or improved about the same time at private sale for twenty Eight dollars per acre one third cash and the rest on one and two years time with interest and this affiant says that the said Kinney and Roff had no written or verbal authority to appear in Court in said Cause and enter his said appearance or to do any thing in said Cause for this affiant that he had not employed them or either of them or authorized any one to employ them or Either of them for him in said Cause and further says that he was not at any time served with any process of said Court in said Cause

15th

and has Knowe knowledge that any such process
was ever issued in said Cause and that he
did not in person or by direction of him
authorize the use of his name as a party in said
16th Cause and that he disowns the use of his name
in the matter and that he is advised that his wife
Margaret King did not order or direct them
or either of them to use his name or to enter
his appearance in said Cause, he says that
on consulting with the said Asa B. Roff Esqr in
person that he informed him that he entered his
said appearance through a mistake and that
he had no authority to do so and that he further
informed him that (he Roff procured the said Kinny
to do whatever he did and he Kinny was acting
in good faith in the matter) but without authority
from this affiant he further swears that — is
informed that the defendant Ashsah Dunning
did employ the said Roff to Look after her interest
in the matter but that he is informed that She
did not understand that she had employed him
to enter her appearance in the said Cause
he sees that he introduced the said Roff to the
said Ashsah Dunning and the said Roff just
supposed that tha all intended to employ him
without making any contract with him on thar
behalf or on behalf of this affiant and he sees
that tha had no authority from him to do so

And that this affidavit is made for the purpose of Basing a motion upon to set aside the whole proceedings of the said Court in the said Cause and further ses not—

17 Ths Signed and Sworn before me this the 24 day of November 1863.
George E. Mayo, J.P.

Orem King

35 ct Revenue Stamp

And the affidavit of A. G. Williard reads in words and figures following, to wit,

State of Illinois } In the Iroquois County Circuit
Iroquois County. } Court to the November Term 1863.

William H. Dunning and others
vs
Ashsah Dunning and others } Petition for Partition —

A. G. Williard being duly sworn deposes and says that he is well acquainted and has bin for several years with the farm that is known as the Eber Dunning farm in the County and State aforesaid and knows the improvements the quality of the Land the kind and quality of the timber that belong to and form part of the tract and that he believes the tract of Land is worth twenty five dollars per acre to avarage the Entire tract being sum four hundred and sixty acres of land belonging to the said farm he ses that he heard of the sale of the

said farm by the Commissioners and Knows about the time, and ses- that Major Ketchum sold his farm that is situated in the same neighborhood that is about the same Class of Land and worth about the same price, for the sum of Twenty Eight Dollars per acre and thinks that the Dunning farm would be counted by most men worth as much as the Ketchum farm and further ses not

18 Dec

Signed and Sworn to
before me this the 25 day
of November 1863,
Geo A. Woodford
Co. Clk, Iroquis Co Illinois

A. G. Willard

Recorded
Stamp

and the affidavit of Samuel Warrick read as follows —

State of Illinois,
Iroquis County, ss.

In the Iroquis County Circuit Court to the November Term 1863. Petition for Partition

William H. Dunning and others
vs
Ashsah Dunning and others

Samuel Warrick being duly sworn deposes and ses that he is well aquainted and has bin for a number of years with the farm that is Knowen as the Eber Dunning farm and

that farm in the County and State aforesaid and Knows the Kind of improvements the quality of the Land the Kind and quality of the timber that belongs to and forms part of the tract and that he believes the tract of Land is worth twenty five dollars per acre to average the Entire tract being seven four hundred and sixty acres of the said Lands belonging to the said farm say that he heard of the sale of the Ketchum farm in the same neighborhood for twenty eight dollars per acre and thinks that the Dunning farm is as well worth twenty five dollars as the Ketchum farm is worth twenty Eight dollars one third ~~[illegible]~~ down and the rest one third in one and two years or one third in three years with interest and further says not—

18th
19th

Signed and sworn to before me
this the 25 day of November 1863.
Geo A. Woodford Clerk
County Court Iroquois Co.
Illinois

Samuel Warrick

Rev Stamp

Be it further known that the Court at said November term of said Court 1863, Continued the said motion to the next term of the said Court—

Said order reads in words as follows, to wit and was on the 25th day of November A.D. 1863.

William H. Dunning Etal
vs
Achsah Dunning Etal
} Petition for Partition

688

20th
~~19th~~

This day came into Court the defendants George R. Dunning, Margaret King and Arrin King by John Clark their Solicitor and enter their motion to the Court to set aside all the proceedings had in the above entitled cause, and also enter their motion to dismiss the Petition in this cause —

And be it further known that the defendants Achsah Dunning came into Court on the —— day of the February term of said Circuit Court of said Iroquois County A.D. 1864. by her said Attorney John Clark and filed her affidavit and moved the said Court to set aside all the orders made in said Cause at the June term 1863 for the reasons set out in the motion of the last named defendants and in her affidavit —

"said affidavit reads as follows."

State of Illinois, } In the Iroquois County Circuit
Iroquois County. } Court Petition for Partition

William H. Dunning and others
vs
Achsah Dunning and others
} To the February Term A.D. 1864.

3

Achsah Dunning being duly
sworn deposes and says that she is widow of
Eber Dunning late deceased of the County of Iroquois
and State of Illinois and one of the legal heirs at
Law of the said Dunning deceased and that
she is informed and believes the information to
be true that one William H. Dunning and others who is
also one of the heirs at Law of the said Dunning
deceased did at the June term of the Iroquois
Circuit Court in and for said County A.D. 1863
filed in said Court their petition for partition
of the Lands and Real Estate of the said
Eber Dunning deceased described in his petition
said Lands correctly as this affiant is advised and
believes and that said petition made this affiant
as she is informed and believes a defendant
with others therein named and that she is further
informed and believes the same to be true
that on the 18 day of the month of June 1863,
that one Asa R. Roff and Chester Kenny two
attorneys of said Court did file and answer
to said petition for the said Defendants and
amongst the rest this affiant and waived the
issuing and service of process in said Cause
and admitted all the allegations of the said
petition and that thereupon the Court did make
an order or decree of partition and assignment
of dower of the Lands named in said
petition and that in said order that the said

Court appointed as Commissioners for that purpose George Pines Robert Carr and Micajah Stanley as such Commissioners and that she is further informed that only two of the said Commissioners
22 ct. went on To any part of the said Lands named to wit George Pines and Carr and that Stanley did not accompany them or go by himself to look at the said Lands and that she believes the same to be true and further she is informed that the said Commissioners reported to the said Court that the Lands named in the said petition Could not be partitioned amongst the said heirs at Law without great damage to their interest and that she is further informed that the Court did order a sale of the said Lands and that she is informed that the Commissioner appointed to make the said sale has sold the same a short time before the Sitting of the Novembr term of this Court A.D. 1863. and that at the time she heard of the sale that she was not able to come to the Town of Middleport until said term of said Court had adjourned to make inquiry in to the said Cause and see what had been done or to find out upon what sort of a proceeding it had bin sold on. for the sum of fifteen dollars per acre when in fact and in truth as this affiant is informed and

believes that the said Lands is worth twenty
five Dollars per each and every acre of them
and this affiant sez that the said Roff or
Kinney had no written or verbal authority to
22 appear in Court in said cause and enter
her said appearance or to do any thing in the
said Cause for this affiant that she had not
Employed them or either of them or authorized any
one to employ them or either of them her said
Cause (that is to say that she did not employ
the said Kinney at all in that or in other Case)
She sez that she did consult — A. B. Roff Esquire
about the said Suit and that she made this agreement
with him that if the said suit was Commenced
against her and she was served with process
that she wanted him to appear and defend the
suit for her and to get her dower out of the
Lands of one third of the value of said Lands
for life and to preserve her homestead in the said
Land in addition and that he was not
appear untill she was Compelled to appear
by Law and this affiant sez that he the
said A. B. Roff did not do as he was directed
but he went and entered her appearance and
that he got a dower of one third of the Land
but that he did not ask for or demand for her
the homestead right in the Lands at all and that
he and the said Kinney has greatley damaged
this affiant by their Course in the matter

and that without any authority at all, and further ses that she was not at any time served with any process of said Court in in said Cause has no Knowledge that any such process was ever issued in said Cause and that
24 She did not in person or by direction of her authorize the use of her name as a party in said Cause in any way except as above Stated and that she is advised that none of the other Defendants gave the said Roff or the said Kinney any orders or direction to them or either of them to use her name or to enter her said appearance in said Cause and she ses that on ~~Consultation~~ Consulting on the ~~xxx~~ mater with the said Roff Esqiun through her attorney John Clark that the said Roff informed her said attorney that he did what he did through a mistake and that he had no authority to do what he did as to the entering her appearance before the issuing and service of process and that he sed he had no authority to do any thing in the mater until this affiant was brought into Court and that this affidavit is made for the purpose of Basing a motion upon to set aside the holl proceedings of the said Court in said Cause and further ses not—

Sworn to and Signed before me this
The 8 day of February A.D. 1864
5c Revenue Stamp
Robert Caldwell J.P.

Achsah Dunning

And be it further known that on the 16th day of February A.D. that all the defendants filed in support of their several motions the affidavit of Asa B. Roff

25th — Said Roff's affidavit reads as follows, to wit

State of Illinois
Iroquois County, } ss. Asa B. Roff being by law me first duly sworn according to law deposes and says that at the request of one Orrin King he called on Mrs Dunning widow of the late Eber Dunning at the residence of Wm Fowler to Consult with her in relation to the subject of Dower in said Eber Dunning Estate Mrs Dunning there informed me that she wished to employ me in said matter of dower and stated in substance, "That application was made or about to be made as she understood to take advantage of her interests, That she desired not to have her dower in said Estate in lands set off to her but wanted a yearly allowance of money in Lieu thereof if that could be obtained or she would be willing to take perhaps $2,000 and sell her dower interest if that could be effected, she further stated that she understood or was apprehensive that the Party or Parties Plaintiff to the proceedings about to Commenced or commenced were seeking to get her a yearly allowance much less than she was really entitled to in case a yearly allowance should be given her in lieu of Dower, and she requested

me take up the case and do all I could as her Attorney to obtain such an allowance as by right She would be entitled to She also stated that She understood the Plaintiffs intended and expected to get her allowance at $100 per annum and She thought it ought to be much larger and stated
26 IX 11 that there was near 400 acres of land & worth some $25 00 per acre. I then told her I thought She would be entitled to $200 or $250 a year that amount in my opinion could be obtained for her if an allowance was given her in Lieu of her dower I told her, that I would take her case in hand and do the best I could for her, we then parted and She returned to her home as I understood and we had no further or other interviews on the Subject

Subscribed and sworn to before me this 6 day of February AD 1864
Geo E. Mayo P.M.

Asa B. Roff

5 ct Revenue Stamp

Be it further known that the defendants did on the 17 day of February 1864. filed the affidavit of Charles Hoyland and William Fowler in support of their said motion —

and the affidavit of Charles Hoyland reads in words and figures following, to wit;

State of Illinois } In the Iroquois County
Iroquois County } Circuit Court—
W. H. Dunning & others Petition
vs
Achsah Dunning & other

27th

he being duly sworn deposes and says that he is well acquainted and has been for a number of years with the farm that is known as the Eber Dunning farm and that he owns a farm in the same part of the County and not a great way off from said farm known as the Dunning farm in the said County and State aforesaid and knows the kind of improvements the quality of the Lands the kind and quality of the timber that belongs to and forms part of the tracts and that he believes the tract of land is worth twenty five dollars per acre to average the entire tract being some Four hundred and Sixty acres of the said land belonging to the said farm. he heard of the sale of the Ketchum farm for for the price of twenty eight dollars per acre and think that Dunning farm is as well worth twenty five dollars as the Ketchum farm is worth twenty eight dollars one third down and the balance in one and two years and further says not—

Sworn to before me this
the 17 day of February A.D. 1864
Thomas Denning
Clerk

his
Charles X Hoglund
mark

and the affidavit of Wm. Fowler reads in words and figures follows to wit —

State of Illinois } In the Iroquois County Circuit
Iroquois County } Court to the November
Term 1863.

28th

William H. Dunning and others
vs
Achsah Dunning and others } Petition for Partition

William Fowler being duly sworn deposes and says that he is well acquainted and has been for a number of years with the farm that is known as the Eber Dunning farm and that he owns a farm adjoining the said Dunning farm in the County and State aforesaid and knows the kind of improvements the quality of the land the kind and quality of the timber that belongs to and forms part of the tract and that he believes the tract of land is worth twenty five dollars per acre to average the entire tract being some Four hundred and Sixty acres of the said land belonging to the said farm. he heard of the sale of the Ketchum farm for the price of twenty eight dollars per acre and think that the Dunning farm is as well worth twenty five dollars as the Ketchum farm is worth twenty Eight dollars one third

Dowe and the one two yeas with interest or in one and two yeas with interest and further Ses not

Signed and Sworn to before me this the 17th day of February 1864.
Thomas Denmmm Clk

Wm Fowler

29th

Be it further Knowm that the Defendants to support their said Motion filed in said Court on the 19 day of February 1864, the affidavits Walter Noble Amos O. Whiteman John C. Noble and George P. Ketchum

And Walter Nobles affidavit read as follows,

State of Illinois
Iroquois County } In the Iroquois County Circuit Court

W. H. Dunning & others
vs
Achsah Dunning & others } Petition

Walter Noble being duly sworn Ses that he is well aquainted and has bin for a number of years with the farm that is known as the Eber Dunning farm and that he owns a farm in the same part of this County and not a great way off from the said Dunning farm in the County and State aforesaid and knows the Kind of improvements the quality of the land the Kind and quality of the timber that belonged to and formed a part of the tract and that he believes

the tract of land is worth twenty five Dollars per acre to average the entire tract being some four hundred and sixty acres of the said Land belonging to the said farm he heard of the sail of the Ketchum farm for the sum of twenty eight Dollars per acre said last farm is about one and one half miles from said Dunning farm and thinks that the Dunning farm is as well worth twenty five dollars as the Ketchum farm is worth twenty eight Dollars one third down and the rest in one and two years, and further says that he believes that the tracts of land named as the Dunning farm could have bin divided between the heirs at Law without damage to the Estate or to any heirs of said Estate and further says not —

Sworn to before me this the 18 Day of February ad 1864 Robert Caldwell J.P.

Walter Noble

5 ¢ Revenue Stamp

And the affidavit of Amos O. Whiteman reads in words as follows, to wit:

State of Illinois } In the Iroquois County
Iroquois County } Circuit Court —

W. H. Dunning & others
vs
Achsah Dunning & others } Petition

Amos O. Whiteman being duly sworn
Ses that he is well aquainted and has bin
for a number of years with the farm that is
31st Known as the Elees Dunning farm and that
he owns a farm in the same part of this
County and not a great way off from the
said Dunning farm in the County State
aforesaid and knows the kind of improvements
the quality of the Land the kind and quality
of the timber that belonged to and formed a
part of the tract and that he believes the tract
of Land is worth twenty dollars per acre to average
the entire tract being some four hundred and
sixty acres of the said Land belonging to the
said farm he heard of the said of the
Ketchum farm for the sum of twenty Eight
dollars per acre said last farm is is about
one and a half miles from said Dunning
farm and thinks that the Dunning farm is
as well worth twenty five dollars as the Ketchum
farm is worth twenty Eight dollars one third
down and the rest in one and two years
and further Ses that he believes that the
tracts of Land named as the Dunning farm
could have bin divided between the heirs
at Law without damage to the estate or
to any heirs of said estate and further Ses not

Sworn to before me this
the 18 day of Feb 1864
Robert Caldwell JP

Amos O. Whiteman

5¢ Revenue Stamp

And the affidavit of John C. Noble reads in words as follows, to wit;

State of Illinois }
Iroquois County } In the Iroquois County Circuit Court

32 pt

W.H. Dunning & others
vs
Achsah Dunning & others } Petition

John C. Noble being duly sworn says that he is well aquainted and has bin for a number of years with the farm that is known as the Eben Dunning farm and that he owns a farm in the same part of this County and not a great way off from the said Dunning farm in the County and State aforesaid and knows the kind of improvements the quality of the Land the kind and quality of the timber that belongs to and forms part of the tract and that he believes the tract of land is worth twenty five dollars per acre to average the entire tract being some four hundred and sixty acres of the said Land belonging to the said farm - he heard of the sail of the Ketchum farm for the sum of twenty eight dollars per acre and think that the Dunning farm is as well worth twenty five dollars as the Ketchum farm is worth twenty eight dollars one third down and the rest in one and two years, and he further Ses

that he believes that the tracts of land named as the Dunning farm Could have bin divided between the heirs at law without damage to the Estate or to any heir of said Estate and further ses not—

22

Sworn to before me this.
The day of February A.D. 1860
Robt Caldwell J.P.

J. C. Stobles

5 ¢ Revenue Stamp

And the affidavit of Geo P Ketchum reads as follows. to wit

State of Illinois
Iroquois County } In the Iroquois Circuit Court—

W. H. Dunning & others
vs
Ashbel Dunning & Others } Petition

Geo P. Ketchum being duly Sworn ses that he is well aquainted and has bin for a number of years with the farm that is known as the Ebes Dunning farm and that he owns a farm in the same part of this County and not a great way off from the said Dunning farm in the County and State aforesaid and knows the Kind of improvement the quality of the land the Kind and quality of the timber that belonged to and formed part of the tract and that he believes the tract of land is worth twenty five dollars per acre to average the entire tract being some four hundred and sixty acres of the said land belonging to the said

farm he heard of the sale of the Ketchum farm for the sum of twenty Eight Dollars per acre said last farm is about one and half miles from said Dunning farm and thinks that the Dunning farm is as well worth twenty five dollars as the Ketchum farm is worth twenty eight dollars one third down and the rest in one and two years and further Ses that he believes that the tracts of land named as the Dunning farm could have bin divided between the heirs at Law without damage to the Estate or to any heirs of said Estate and further Ses not.

5 c/ Revenue Stamp

Sworn to before me this the 18 day of February AD 1864
Robert Caldwell jr.

George P. Ketchum

And be it further known that on the 20 day of the month of February 1864 and being the 5 day of the February Term of said Iroquois County Circuit Court 1864 this cause Come on to be heard on the Motion and objections filed to the proceedings, and the Defendants to maintain the issues on their part introduced and read to the Court as evidence all the affidavits refered to above and made part of this Bill of Exceptions without objections on the part of the petitioners and that was all the Evidence offered on the part of the Defendants.

And be it further known that the Petitioners to maintain the issue on their part introduced and offered to read the Petition for partition filed in said

~~3~~ 4th
~~3~~ 5th
35th

Cause in said Court on the 16 day of June 1863 to which the Defendants by their Counsel objected because the said Petition was not verified by affidavit and because their was no Exhibits accompanying the same as refered to in said petition and for other reasons on the face of said petition
But the Court overruled the said objection and allowed the same to be read as Evidence and the Defendants Excepted

Said Petition for Partition and assignment of Dower reads in words and figures as follows, to wit:

State of Illinois,
Iroquois County, } ss

Iroquois County Circuit Court
of the June Term A.D. 1863.

36 7/11

Petition for Partition, and to set off the Dower of the widow of Eber Dunning Dec'd

William H. Dunning, Orson Dunning John G. Dunning James A. Dunning, Mary A. Rogers formerly Mary A. Dunning daughter of Eber Dunning Deceased and James Rogers her husband. Louisa E Crain formerly Louisa E. Dunning daughter of Eber Dunning Deceased and Juliella Bowtwell, and John Bowtwell her husband - and James Perry Dunning adult, and Reuben L. Dunning, Amelia Dunning, Nathaniel G. Dunning and Franklin Dunning minors who sue by Julia Bowtwell their Guardian and Sarah L. Pulver formerly Sarah A. Dunning and Daird B. Pulver her husband adults —

vs

Achsah Dunning widow of Eber Dunning deceased and George R Dunning, and Margaret King formerly Margaret Dunning and Oren King her husband —

To the Honorable Charles R. Starr Judge of the Twentieth Judicial circuit of the State of Illinois, sitting at the June Term A.D. 1863. Your petitioners the plaintiffs in the above entitled cause respectfully represents unto Your Honor, that Eber Dunning Late of said County of Iroquois on or about the day of A.D. died leaving the following named persons

37th

and your petitioner further shows unto your Honor that all the said defendants

To the above entitled suit in case of full age and are not minors, and have a right to appear in this suit and defend the same in such manner as they may think best —

the said plaintiffs and Defendants his widow Children and heirs at Law, that is to say" he left the said Achsah Dunning his widow and who is still living, and William H. Dunning, Orson B. Dunning, John G. Dunning, James A Dunning, and Mary A Rogers his daughter and wife of James Rogers aforesaid, who is also made party plaintiff to this suit as the husband of the said Mary A. Rogers, and Louisa E. Crane the widow of William D. Crane and who is also a daughter of said Eber Dunning deceased, all adults.

Also leaving his grand Children the said James Perry Dunning who is adult, and Reuben L. Dunning, Amelia Dunning, Nathaniel G. Dunning and Franklin Dunning minors who sue by Juliastta Bostwell their guardian and also leaving the said Sarah L. Pulver as one of said grand children, and which said grand Children are the Children of Dennison T. Dunning who is now deceased and who died before the said Eber Dunning was the son of said Eber Dunning deceased, and who are all the heirs of the said Eber Dunning and are entitled to the share of the property hereinafter described, belonging to the estate of the said Eber Dunning deceased which the said Dennison T. Dunning would be entitled to were he now living also leaving the said George R. Dunning his son, and Margaret King his daughter and who are both adults and that the said Margaret King is the wife of the said Oren King, and they are both made parties defendant to this bill of Complaint #

38 ft

And your Petitioners would further show unto your Honor that the said Eber Dunning died seized possessed and well Entitled to the following described Lands and Tenements situated in the County of Iroquois and State of Illinois as of his own property in fee simple, To wit; —

The South West quarter of the North East quarter of Section ten (10) in Township twenty seven (27) North of Range Eleven (11) West, in the district of Lands subject to sale at Danville Illinois Containing forty acres as is shown by the Patent from the the United States to the said Eber Dunning bearing date the 20th day of March A.D. 1837. as will appear by refference to Exhibit "A." to which your Honor is referred for greater certainty - also the South East quarter of the North East quarter of Section ten (10) in Township twenty seven (27) North of Range Eleven (11) West in the District of Land subject to Sale at Danville Illinois containing forty acres — which will more fully appear refference being had to Exhibit "B" the same being a Patent from the General Government to the said Eber Dunning bearing date the 20th day of March A.D. 1837 - also the North East quarter of the South West quarter of Section ten (10) in Township twenty seven (27) North of Range Eleven (11) West in the district of Lands subject to sale at Danville Illinois. Containing forty acres - which is more fully shown by the Patent from the United States to the said Eber Dunning bearing date the first day of

November A.D 1839. Which is made an Exhibit and herewith
39th presented marked "C". To which your Honor is Refered
Also the East half of the North East quarter of the South West
quarter of Section fourteen (14) in Township twenty seven
(27) North of Range Eleven (11) West containing twenty (20) acres
as will more fully appear by Exhibit "D". herewith presented,
to which your Honor is refferred for greater certainty -
also the South East quarter of Section ten (10) in Township no
twenty seven (27) North of Range Eleven (11) West containing one
hundred and Sixty acres - also the North East quarter
of Section fifteen (15) in Township Twenty seven (27) North of
Range Eleven (11) West, Containing one hundred and Sixty
acres which will fully appear refference being had to
Exhibit "E". to which your Honor is referred for greater
certainty -

Your petitioners further Shows unto your Honor,
that the said Achsah Dunning is entitled to the
third part of the said discribed Lands as her dower
during her natural Life according to the Statutes in
such case made and provided which should be
assigned and set apart to her in due form of Law,
and which your petitioners pray may be ordered to be
done in due form of Law, And your petitioners further
state that they together with the said Geo R. Dunning
and Margaret King as the Children and grand Children
of the said Eben Dunning are entitled to the remain
ing portion of all the balance of said described Lands
after the said Dower in said Lands shall be assigned
to said Widow as aforesaid, and that they

40 ½

are and will be entitled to the remainder of the Estate in said Lands which shall be set apart as dower as aforesaid after the death of said Achsah Dunning according the principles of the Law of the State of Illinois That is to say Your Petitioners the said William H Dunning, Orson B. Dunning, John G. Dunning James A. Dunning, and Mary A Rogers and Louisa E. Crane will each be entitled to one Equal one ninth part of all that portion of said described Lands after the said Dower shall be set apart to said Widow as aforesaid and the said Defendants the said George R Dunning and Margaret King are each also entitled to one ninth of the remaining portion of said Lands after said Dower shall be set apart to said Widow as aforesaid - and that the said James Perry Dunning, Reuben L. Dunning, Amelia Dunning, Nathan G. Dunning, Franklin Dunning and Sarah L. Pulver are each entitled to one sixth of one ninth of said Lands after the said Dower shall be assigned to said widow as aforesaid - And further They will also be entitled to the said remainder in the said Lands which shall be to set apart to said widow after her death in the same proportions as shown above, which these said plaintiffs aver and will prove to your Honor — Your Petitioners further show unto Your Honor that they are not advised whether said described Lands can be divided among the said several parties

41 1st

according to their said several and respective rights or not without manifest prejudice to the proprietors thereof but if the same can be done they Charge the same ought to be speedily done, and if the same cannot be so done they Charge that said premises and every part thereof should be by and under an order of your Honorable Court be sold in pursuance of the Statute in such case made and provided and according to the interest of your petitioners and the said Defendants and the money arriving from such sale should be divided among the said defendants and your petitioners according to Law#

Your petitioners therefore pray that Your Honor will order that said Lands and premises be divided and partition of them made, according to the respective right of the said plaintiffs and defendants including the widows dower aforesaid if the same can be done without great prejudice to the said owners thereof but if such division and partition cannot be made without such prejudice, then they pray that your Honor will order the same to be sold including said widows Dower and the residuary interest of said heirs aforesaid, and the proceeds thereof divided according to Law among the said parties in interest. May it please your Honor to appoint three Commissioners to make such division and partition - and to grant the writ of Summons against the said defendants according to Law

Chamberlain & Fletcher
Attys for Petitioners

#and your petitioners further state that the Estate of Chas Downing has been administered upon and the debts against said estate have been fully paid and provided for and no portion of said lands are required to pay any debts against said Estate, and that said lands are free & clear from incumbrance

42

the petitioners to further maintain the issue on their part introduced to the Court and offered to read the order of the appointing Commissioners to make partition to which the defendants objected but the Court overruled the objections and allowed the same to be read as evidence and the Defendants excepted.

688. William H. Dunning and others
vs
Ashrah Dunning and others
} Petition for Partition

And now come the said Plaintiffs by Chamberlain and Fletcher their attorneys and file their Petition for Partition of the lands described in the Petition of the said Plaintiffs and hereinafter in this order fully described, and also come the said Defendants by Chester Kinney and Asa B. Roff their attorneys and enter their full appearance in this cause and waive service of process, and file their answer to the Petition of the said Petitioners which said answer fully confesses the allegations in said Petition contained which said answer reads in the words and figures following to-wit:

43°

State of Illinois
Iroquois County } ss Circuit Court of the
June Term AD 1863,

William H. Dunning
Oren Dunning et al

vs

Achsah Dunning Widow
of Eber Dunning deceased et al

Answer

Answer of the Defendants in the above entitled cause, who appear in Court by Roff & Kinney their attorneys & wave service of process & answer jointly and severally to the Petition of the above named Petitioners for Partition

These Defendants now and at all times hereafter saving to themselves all, and all manner of benefit or advantage of exception or otherwise, that can or may be had to the many errors uncertainties and imperfections in the said Petition contained for answer thereto or to so much thereof as these defendants are advised it is necessary or material for them to make answer to, severally answering say,

That, they admit all and every material allegation made and charged in the said Petition not hereinafter specially denied,

And these defendants further answering say that the said premises described and mentioned in the said petition are not susceptible of an advantageous division, and that the same could not & should not be divided or Partitioned

44th

And that to divide the same would be of great damage and injury to the estate and to the interests of all parties in interest and especially to all these Defendants jointly & severally and nearly destroy said premises in value But said Defendants are willing the same should be sold, and the proceeds thereof, ~~Equitably~~ Equitably divided among the parties in interest therein according to the just and legal rights of all the parties.

And these Defendants are willing that three commissioners should be appointed according to the prayer of the Petitioners in their said Petition according to law, All of which things and matters these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct &c

Roff & Kinney
Attys for Defts

And it appearing to the satisfaction of the Court that all the said Defendants are adults and that the said Kinney & Roff were their legal attorneys, and had a right to appear in said Cause and waive service of process and confess said Petition to be true, And thereupon this cause coming on to be heard this day to wit the 16th day of June AD 1863. upon the Petition and the answer of the said Defendants, all of said Defendants admitting the rights, titles and interests in the premises as stated in said Petition, and upon

45th

the title papers produced to the Court as shown by the several Exhibits referred to in said Petition, it is ordered and adjudged that the said lands referred to and described in said Petition, to wit: — The South West quarter of the North East quarter of Section ten (10) in Township Twenty seven (27) North of Range Eleven (11) West in the district of lands subject to sale at Danville Illinois containing forty acres, also the South East quarter of the North East quarter of Section ten (10) in Township Twenty seven (27) North of Range Eleven (11) West in the district of lands subject to sale at Danville Illinois containing forty acres, also the North East quarter of the South West quarter of Section ten (10) in Township Twenty seven (27) North of Range Eleven (11) West in the district of lands subject to sale at Danville Illinois containing forty acres. also the East half of the North East quarter of the South West quarter of Section fourteen (14) in Township Twenty seven (27) North of Range Eleven (11) West containing Twenty (20) acres. also the South East quarter of Section ten (10) in Township Twenty seven (27) North of Range Eleven (11) West containing one hundred and sixty acres. Also the North East quarter quarter of Section fifteen (15) in Township Twenty seven (27) North of Range Eleven (11) West containing One hundred and sixty acres, all of said Lands are situate lying and being in the County of Iroquois and State of Illinois, were the lands of the said Eber Dunning at the time of his death, and the same and every part thereof now belong to the said Plaintiffs and Defendants as the widow and heirs of the said

46th

Eber Dunning deceased. That is to say the said Achsah Dunning widow of the said Eber Dunning be and she is entitled to one Equal one third part of said described lands during her natural life as her dower in and to said lands, and that the same be set apart, and assigned to her by proper metes and bounds, and that the said William H. Dunning, Orsen Dunning, John G. Dunning, James A. Dunning, Mary A. Rogers and Louisa E. Crane are each and every of them entitled to one Equal one ninth part of all that portion of said described lands after the said Dower of said Achsah Dunning shall be set apart and assigned to her, and that the said Defendants The said George R. Dunning and Margaret King are each entitled to one ninth part of said described lands after the said dower of said Widow Achsah shall be set apart and assigned to her as aforesaid. And that said James Perry Dunning, Reuben L. Dunning Amelia Dunning, Nathaniel G. Dunning, Franklin Dunning and Sarah L. Pulver are each and every of them entitled to one Equal one sixth part of one ninth of said described lands after said dower shall be assigned to said Achsah as aforesaid.

And further said Children and Grand Children of the said Eber Dunning will also be entitled to the remainder in the said lands which shall be set apart to said Achsah after her death, in the same proportion as is shown above as the children and

47 M.

Grand Children of the said Eber Dunning deceased and it is further ordered and adjudged that after the said Dower right of the said Achsah shall be assigned and set apart to her as aforesaid, then the balance of said lands whatever the same may be divided and partition thereof made among the said Children and Grand Children of the said Eber Dunning in proportion to their respective interests as is shown and declared above in this order. and that Micajah Stanley, George Pines and Robert Karr be and they are hereby appointed Commissioners to make such assignment of Dower to said widows, and partition of said lands as aforesaid among said heirs of said Eber Dunning deceased And to report at the present term of this Court—

the petitioners to further maintain the issue on their part introduced to the Court and offered to read as evidence the oath of the Commissioners and their Report in said Cause and the Defendants then and there objected to the Reading of each for the Reason that they were not attached together and for the Reason that the oath was not taken by said Commissioners before the Court or some Justice of the peace but the Court overruled the objections and allowed the same to be read in evidence and the Defendants excepted—

48th

And the Oath of said Commissioners Reads as follows to wit: the same being on a Separate piece of paper and detached from the Report of said Commissioners ——

State of Illinois.
Iroquois County, ss,

Personally appeared before me the undersigned Clerk of the Circuit Court in and for said County Micajah Stanley, George Pinnes and Robert Carr Commissioners appointed by the Circuit Court of said County at the June Term A.D. 1863, to divide and make partition of the Lands and premises Embraced and described in the petition of —— William H. Dunning & others vs Achsah Dunning & others praying for a partition and division of the Lands in said petition described belonging to the widow & heirs of Eben Dunning Decd including the Dower right of the said Achsah Dunning widow of said Eben Dunning decd that we as such Commissioners do Solemnly Swear that we are not connected with any of the parties aforesaid Either by consanguinity or affinity and are Entirely disinterested and that we as such Commissioners will fairely and impartially make partition of said Lands in said petition described in accordance with the Judgment of said Court as to the interest and rights and interest of the said parties, if the same can be done consistantly with the interest of the Estate,

Subscribed and sworn to before me
This 18 day of June AD 1863
Thos. Brennan Clk

George Pinnes
Robert Karr
Micajah Stanley

49th And the Report of said Commissioners read in words and figures following, to wit: ——

State of Illinois }
Iroquois County. } ss. Iroquois County Circuit Court
of the June Term A.D. 1863.

To the Honorable Charles R. Starr Judge of the 20th Judicial Circuit of the State of Illinois. The undersigned George Pines, Micajah Stanley and Robert Carr Commissioners appointed by your Honor at the present term of this Honorable Court to make partition and division and assignment of Dower of the premises described in the petition of William H. Dunning & others vs Achsah Dunning and others, Do report that we have Examined the said premises and after having been duly sworn according to law which oath which we took is hereto attached do upon careful examination and being well acquainted with the whole of said premises do find that said premises cannot be divided and partition thereof made according to the said oath which we have taken without manifest injury to the propriators to wit The said plaintiffs and Defendants, and therefore we do so report, and say that such division and partition cannot be made without injury to said Estate

50th

all of which is respectfully submitted —
June 18th 1863.

George Pinnes (Seal)
Robert Karr (Seal)
Micajah Stanley (Seal)

Commissioners Fees

George Pinnes	2 days	$2.00
Robert Karr	2 "	2.00
M. Stanley	2 "	2.00
	Total	$6.00

the petitioners then introduced and offered to read as evidence to the Court what purported to be a final decree in said Cause rendered at the June Term of said Court 1863 but the Defendants by their Counsel objected to the reading of the same for the reason that it was not signed by any person as Judge of said Court and for other reason but the Court overruled the said objections and allowed the same to be read and the Defendants then and there excepted

and said Decree reads as follows to wit:

William H. Dunning.
Orson Dunning & others
vs
Achsah Dunning widow of
Eber Dunning dec'd et al

} Petition for Partition and assignment of Dower —

and, now at this time, to wit on the 19th day of June A.D. 1863. a jury of twelve good and

51 Or

lawful men of said County were called and sworn to enquire into and of the yearly value of the said dower of the said Achsah Dunning widow of the late Eben Dunning deceased of in and to the said described lands, and the said jury under the instructions of the Court after having heard all the evidence touching the said matter of the value of her dower for each and every year during her natural life, retired and considered of their verdict and returned into open court and delivered to the Court their verdict, and say that they find the yearly value of the dower interest of the said Achsah Dunning widow as aforesaid to be the sum of Two Hundred and twenty five dollars, for each and every year during the natural life of the said widow for her yearly dower in said lands.
Whereupon the Court now here does order and adjudge that she the said Achsah Dunning do have and recover from the said Plaintiffs and Defendants the heirs of the said Eben Dunning the said sum of Two hundred and twenty five dollars for each and every year during her natural life, and that the said sum shall be a lien upon The said described premises for — and during the whole of the natural life of the said Achsah Dunning for the payment of said sum of Two hundred and twenty five Dollars for each and every year during the whole of the natural life of her the said widow of the said Eben Dunning deceased. And it is further ordered and adjudged that the whole of said described lands and premises

be sold by C. F. McNeill who is hereby appointed a Special Commissioner for that purpose, subject to the said lien of Two Hundred and twenty five Dollars for each and every year during the natural life of the said Achsah Dunning at such time as shall be in his discretion best upon giving notice four weeks by publication upon the following terms to wit,

One third of the purchase money shall be paid down. and one third shall be paid in one year from the day of sale, and one third of the purchase money shall be paid in two years from the day of said sale, and the purchaser to give notes with good security and a mortgage upon the premises purchased to secure the purchase money with interest at the rate of six per centum per annum, Or the said Commissioner may in his discretion sell said premises for all cash down as he may determine to be best - said sale shall be at the door of the County Clerks office in the Town of Middleport in said County at such time as shall be declared in the notice of such sale by said Commissioner,

And the said Commissioner shall make execute, acknowledge and deliver to the purchaser or purchasers a good and sufficient deed to said premises. subject to said lien of Two hundred and twenty five dollars during the natural life of said Achsah Dunning, and the said Commissioner shall make report to this Court at the next term of this Court of his actings and doings in the premises and this Cause is Continued

53

Be it also remembered that the Court admitted that the Jury that found the yearly annuity was sent into a Jury Room to hear the Evidence in said Case under the Charge of one C. F. McNeal an at the same time the presiding Judge of said Court was holding Court in the Court Room and trying other Causes and it was further admitted that the said C. F. McNeill was the same that was appointed to make the Sale of the said Lands was the same C. F. McNeal that had Charge of the Jury, and be it further known that the petitioners to maintain the issue on their part offered to read as evidence on said motion the affidavits of William H. Dunning, Asa B. Roff, (Taken by the Judge) Juliet Rowlwell (objected to because there was no evidence that the Notary that perported to swear him was a notary Publick) Robert Carr George Pines, C. F. McNeill, George S. Wright, George B. Joiner, Chester Kinney, Charles Sherman, Isabel Crosier, Philander Morgan, M. Hogal, W. Patterson and Abram Coughenough to the offering of each of the above affidavits the Defendants objected and the Court overruled the objections and allowed them to be read as evidence and the Defendants excepted

And the affidavit of Wm H. Dunning reads of follows to wit:—

54th

State of Illinois
Iroquois County. ss.

In the Iroquois County
Circuit Court

William H. Dunning Etal
vs.
Achsah Dunning Etal

William H. Dunning being duly sworn deposes and says that a few days previous to the Iroquois County Circuit Court held in and for said County at the June Term 1863 he came from the State of Wisconsin where he resides, to Middleport Iroquois County Illinois to take some proceedings for himself and the complainants in this cause for whom he was acting in the premises for the partition and assignment of Dower for the widow Achsah Dunning in what is known in said County as the Dunning farm, That a few days before the sitting of said Court at the June Term this affiant called on Achsah Dunning and Margaret King two of the Defendants in this ~~County~~ Cause to make some arrangements about getting a Divisim and assignment of Dower for the said Achsah in the Dunning farm, the ~~Had~~ said Achsah being the widow of Ebenezer Dunning late of said County deceased That this affiant told the said Achsah and Margaret that he wished to make some arrangments to get such divisim and assignment of Dower at the coming June Term of said Court. That the said Achsah and Margaret —

55 ½

both objected to taking any steps to have the Widows Dower set off to her the said Achsah, as it would greatly damage the sale of the farm. That the said Achsah also said she had got to be an old woman and did not wish to live on the farm and could not nor would not do so, if we would give her the whole farm, But the said Achsah and Margaret both stated they were willing and anxious to have the whole farm sold together provided she the said Achsah owed have in money the portion she was entitled to in lieu of Dower, This affiant then proposed to them to make a mutual arrangement to that effect that is to get a sale of said farm and if it could be effected the said Achsah to have an annuity or money in lieu of her Dower and to expedite the business and save Costs this affiant proposed to proceed at once and get a decree, at that, the ensuing June Term of said Court This they all to wit the said Achsah, Margaret and this affiant agreed to, and agreed also to employ Attorneys and waive all processes and come into Court the next June Term of Court and obtain a decree as proposed, provided however that Geo R. Dunning a son of the said Achsah & Brother to the said Margaret and one of the Defendants in this Cause was willing and would assent to the proposed proceeding. And this affiant further says that the next day, or the next day but one, he went to see Geo R. Dunning, and Oren King the husband of the said Margaret, also one of the Defendants in this Cause whom he did see

56th

and each expressed himself willing and were desirous that — matters should be mutually arranged and proceedings had as the said Achsah Dunning, Margaret King & this affiant had before agreed. In pursuance of such arrangement, George R. Dunning proceeded at once with this affiant to take counsel, and the said Geo did counsel with Asa B. Roff and George B. Jones and did as he the said Geo said Employ the said Asa B. Roff to appear for himself the said Achsah Dunning and Margaret King, and further said they would go on at that the June Term of Court as proposed and agreed upon. This affiant further says that a few days after he called on the said Achsah Dunning, Geo R. Dunning, and Margaret King and told each of them it would be necessary for them all to go Middleport and appear or give their consent to the arrangement which they had all made to which the said Achsah and Geo — did agree and they both did go to Middleport with this affiant but the said Margaret said she could not well go but would agree to any thing the said Achsah & Geo R Dunning should do in the business. That the said Geo R Dunning also at that time when at Middleport informed this affiant that he had employed Asa B. Roff Attorney for himself the said Achsah and Margaret, and the said Geo further said the suit could now be got up and the Parties could go ahead with it whereupon this affiant called Mr

the said Asa B. Roff who also said he was Employed as attorney in the cause; and this affiant further says that the said Roff did appear in the cause as did also
57 Chester Kinney. on the part of the defendants with the said Roff. and this affiant further says that the said Geo R. Dunning and Oren King both appeared before the Jury in the Cause of which C. F. McNeill master in Chancery had Charge by order of the Court: when evidence was brought and witnesses sworn as to the amount of an nuity which the said Achsah Dunning should receive in lieu of her Dower at which time also the said Roff & Kinney were present, and that the said Geo and Oren King took an active part to have the amount of the annuity settled to correspond with their wishes and feelings. This affiant also says that the said Geo R Dunning and Oren King were both present in Court when the decree in the case was being settled and that the said Geo particularly interested himself in the decree which was finally settled to suit him and this affiant further says that the said Geo R Dunning and Oren King were both present at the public sale of said farm which was sold under the decree of said Court. that they both interested themselves at said sale to get bidders and to have the farm sold at a good price and that neither of them made objections to said sale. This affiant also says further that he had a conversation with the said Margaret King the day before the said farm was sold at said sale by C. F. McNeill Esq

Commissions who made no objections to said sale
but the said Margaret stated that she had understood
58 Doct Fowler and Charles Sherman as she had been
informed had intended to bid on said farm that
they owned land on Each side of it, and if they bought
it they would divide it to suit their convenience
This affiant further says he was at the House of the said
Orrin King the day after the sale of said farm and
heard the said Orrin remark to his wife the said
Margaret King that Mr Wright the purchaser of the farm
wished to negociate and buy up the back payments at 10 per
cent discount and the said Margaret said she would
not negotate but that she preferred that the payments
should be secured by a Mortgage on the farm & to
have her interest, and this affiant says that Doct
Fowler and Charles Sherman both bid on said farm
at said public sale, and also that at least one
other person bid on said farm at said sale
to affiants knowledge and also that others bid as
he is informed and believes

Subscribed and Sworn to
before me this 19 day of Febuary A.D. 1864
Thos Brennan Clerk

Wm H. Dunning

and A.B. Roffs affidavit reads as follows to wit.

State of Illinois
Iroquois County } ss. Iroquois County Circuit
Court of the February Term A.D. 1864.

William H. Dunning Etal
vs
Achsah Dunning Etal
} Pet for Partition

59

Personally appeared before me the undersigned Clerk of the Circuit Court in and for said County Aza B. Roff who after being first duly sworn deposeth and saith, that he together with Chester Kinney Esq acted as the Attorneys for the said defendants, and all of the defendants in the above entitled suit at the June Term of the said Court for AD 1863, when the above entitled suit was commenced heard and determined by said Court - That Oren King, George R. Dunning and Achsah Dunning spoke to and counselled this affiant for the purpose of procuring this affiant to attend to the said suit - and from all the Conversation which this affiant had with said George R Dunning Oren King and Achsah Dunning this affiant then understood and believed that he was Employed as an attorney in said Cause for all of said defendants - That he acted in said Cause in good faith, and together with Chester Kinney Entered the appearance of all the defendants in the above entitled suit, as he then thought and as he now thinks he had a right to do from the conversation and actions of said Achsah Dunning, Orin King and George R Dunning and that he never heard any thing to the Contrary until after the sale of the Lands

belonging to the Estate of Ebn Dunning deceased
which were sold by C. F. McNeill as Commissioner
appointed by said Court for that purpose and whatever
60 this affiant did in said Cause he did in good faith
believing that he had a right to appear for all of
said defendants in said Cause, which belief he
still entertains, and further that he Employed Chester
Kinney for said defendants and believed then and
believe now he had a right to do so, and that
he believes that said Kinney also acted in good
faith - That this affiant then understood from said
defendands which he conversed with, and who
~~conversed~~ counseled with this affiant as aforesaid
that said suit was an amicable matter between
said plaintiffs and said Defendants and that
they all desired said premises sold, but at the
same time to get the Dower right of said Ashsah
Dunning as high as possible, That after the sum
of two hundred & twenty five Dollars per year
was made a lien upon said Lands belonging
to said Estate of Ebn Dunning, the said Geo.
R Dunning, and Oren King appeared to be well
satisfied to have said lands sold under the
order of said Court to sell the same which was
made at at the June Term of said Court for
A. D. 1863.

Asa B. Roff

Subscribed and sworn to before
me this 16th day of February 1864

Thos Dunnnn Clerk

And Juliette Bontwells affidavit reads as follows, to wit:

61

Wm H. Dunning & others
vs
Achsah Dunning & others

Suit for partition in Circuit Court Iroquois County Ill

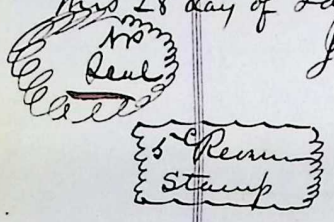
State of Wisconsin
Columbia County } ss. Juliette Bontwell being duly sworn deposes and says - that she is personally acquainted with George R Dunning and Margarett King parties to the above entitled cause and that she was visiting at their residence at the town of Sheldon in the County of Iroquois State of Illinois in November last - and during her visit at the time aforesaid she heard them and each of them say & declare that they became willing parties to the said suit for partition for the sole purpose and object of having the Estate of Eben Dunning deceased set forth and described in the bill of complaint in said suit for partition, sold together and by so doing would prevent the above named Wm H. Dunning from getting the shares in the Estate into his own name or in words and meaning to that effect - She further deposes and says that at the place aforesaid and a few days previous to the sale of the estate of the Late Eben Dunning deceased aforesaid in speaking of the same, say, that he (George R. Dunning) intended to bid Eighteen dollars per acre at the

Sale of the aforesaid estate. further this deponent

62 Says not—

Subscribed & Sworn to before me
This 28 day of January ad 1864.
John R. Wheeler
Notary Public

Juliett Bontwell



and Robert Karr Sr affidavit Reads as follows, to wit;

State of Illinois
Iroquis County. ss. In the Iroquis County
Circuit Court

William H. Dunning etal
vs. Petition for Partition
Achsah Dunning etal

Robert Karr being duly sworn deposes and says he lives within one mile from what is known as the Dunning farm in Concord Township in said County and has lived within that distance of said farm for more than twenty years - that he during that time has known Ascha Dunning the widow of Ebenezer Dunning deceased that she is a healthy active woman and this affiant should think from what he knows of the said Achsah Dunning and the said farm, that fifteen Dollars per acre for said farm subject to an annuity of Two hundred and Twenty five Dollars to be paid each and every year to her the said Achsah —

During her life time would be a fair price for said farm and as much as it is worth. —
This affiant further says he was one of the commissioners
63 appointed by the Iroquois County Circuit Court at the
June Term of said Court 1863 to examine the said farm
with a view of setting off the dower of the said Achsah
Dunning widow of Ebenezer Dunning deceased and of
dividing said farm among the heirs of the said
Ebenezer Dunning if the said farm would bear a division
and was susceptible of it. That he did Examine said
farm for the above purpose during the Term of the said
June Court 1863. That he with Geo Prince also commissioner
then saw the said Achsah Dunning at her house on
said farm, and conversed with her about the division
of said farm about her dower in the same also. —
That from the said Achsah Dunnings conversation at
that time this affiant is fully satisfied that the
said Achsah knew the object of the commissioners
coming upon said farm and that proceedings
had been taken in Court in order to obtain a division
or sale of said farm, The said Achsah told this
said affiant and George Rines who was also a
commissioner with this affiant at that time. That
she did not desire to have the farm divided
nor her Dower set off as it would injure the sale
of it besides she said she did not wish to live
on said farm, and would leave it the next
morning if she could get money or an annuity
in lieu of her Dower — The said Achsah seemed

pleased in fact with the idea of leaving said farm and seemed anxious a sale of it should be effected as soon as the law would permit —

64

Subscribed and Sworn to before me this 18 day of Febuary ad 1864
Thos Demmon clerk

Robert Karr

And Georg Pinnes affidavit read in words following To wit —

State of Illinois
Iroquois County ss. In the Iroquois County Circuit Court —

William H. Dunning Etal
vs
Achsah Dunning Etal
} Petition for Partition

Geo Pinnes being first duly sworn deposes and says that he is a Farmer and lives in Concord Township Iroquois County and State of Illinois That he is acquainted with what is known as the Dunning farm in said Township That at the June Term of the Iroquois County Circuit Court held in and for said County in 1863 he with Robert Carr and Micajah Stanley were appointed commissioners by the said Court to examine said Farm and set off the dower of the said Achsah Dunning widow of Eber Dunning dec'd and divide said farm among the heirs at Law of the said Eber Dunning if said farm would bear a division & report

to an order and decree of said Iroquois County Circuit Court made at the June Term thereof in June 1863. subject to an annuity of Two
67 hundred and Twenty five dolars a year payable annually in money to the said Achsah Dunning is as much as he should suppose said farm was worth and a fair price for it.

Subscribed and Sworn to before me this 18th Day of February A.D. 1864
Thos Denman Clk.

Geo. Pinneo

and C. F. McNeill's affidavit reads as follows, to wit:

State of Illinois,
Iroquois County, } ss In the Iroquois County Circuit Court

William H. Dunning Etal
vs
Achsah Dunning Etal } Petition for Partition

I. C. F. McNeill being first duly sworn, deposes and says that I am Master in Chancery in and for said County. that I was present at the final hearing of the above entitled cause, and the making the order for the sale of the lands mentioned in the complainants petition by said Court. that I was present and had charge of the Jury as said Master when the Evidence was heared, and the annuity in lieu of the Dower of the said Achsah Dunning was fixed and determined and brought into Court by said Jury: That —

George R Dunning and Oren King two of the defendants in the above suit, were present during the time the evidence was heard by said
68 Jury and consulting with Roff and Kinney attorneys for Defendants, and also present in open Court when the verdict of said Jury was brought in, and the order of sale of said Lands made by said Court; that I was appointed by said Court Commissioner to sell said Lands; that immediately upon being appointed such Commissioner I consulted with George R. Dunning and Oren King who were still in the Court room, as to the time of selling said Lands, and they appeared to be well satisfied as to the proceedings in the Case, and made suggestions as to the time they desired said Lands to be sold; that I as such Commissioner as aforesaid caused to be published in the — Middleport Weekly Press a newspaper published in said County a notice of the time of the sale of said lands for four successive weeks from the 3rd day of October A.D. 1863

(Said Copy of Notice of Sale reads as follows, to wit:)

"Commissioner's Sale.

" In the Circuit Court of Iroquois County, and State of
" Illinois, of the June term, A.D. 1863, William H. Dunning
" Oren Dunning, John G. Dunning, James A. Dunning
" Mary A. Rogers, formerly Mary A. Dunning, daughter of

" Eber Dunning, deceased, and James Rogers, her husband,
" Louisa E. Crane, formerly Louisa E. Dunning, daughter
" of Eber Dunning, deceased, and Julia Bowtell, and
69 " John Bowtell her husband, and James Perry Dunning
" adults, and Reuben L. Dunning, Amelia Dunning,
" Nathaniel G. Dunning, and Franklin Dunning, minors,
" who sue by Julia Bowtell, their Guardian, and Sarah
" L Pulver formerly Sarah A. Dunning, and David B.
" Pulver, her husband, adults, vs Achsah Dunning
" widow of Eber Dunning, deceased, and Margaret King
" formerly Margaret Dunning, and Orin King, her
" husband, and George R. Dunning —

"Notice is hereby given that the undersigned
" as Special Commissioner, will, on

"Tuesday, Nov. 10. A.D. 1863,

" at the door of the County Clerks office of said County, in the
" Town of Middleport, in the County of Iroquois and State of
" Illinois aforesaid, at the hour of two o'clock, P.M., of said day
" by virtue of a decretal order by said Court, rendered
" at the said June term of said Court, in said
" cause, sell at public sale to the highest bidder, the
" following described real estate, the same being
" known as the Eber Dunning farm, North of Rogers
" Concord, in said County, to wit;

" The South west quarter of the north east quarter of
" Section No 10, and the South east quarter of the north-
" east quarter of Section No 10, and the northeast
" quarter of the South west quarter of Section No 10:
" and the South east quarter of Section No 10, and the

" East half of the north east quarter of the South west
" quarter of section No 14. and the north east quarter of Section
" No 15. all in Township No 27 north of range No 11. west. in the
70 " County of Iroquois and State of Illinois —
" The sale of said lands will be made upon the following terms
" to. wit: One third of the purchase money will be required
" to be paid down, and one-third of the purchase
" money will be required to be paid in one year from
" the day of sale, and one third of the purchase money
" will be required to be paid in two years from the
" said day of sale. and said purchase money
" which shall not be paid down as aforesaid will
" draw interest at the rate of six per centum per
" annum. The purchaser or purchasers of said premises
" will be required to secure the said purchase money
" which shall not be paid down, by notes and a mortgage
" upon the premises sold to secure the balance of the
" purchase money aforesaid. Said premises will be
" sold subject to the Judgment of said Court of two
" hundred and twenty five Dollars as the widow's yearly
" dower, which said dower is a lien upon said lands
" for each and every year during the natural life of
" the said Achsah Dunning. the widow of Eber Dunning
" deceased, as her dower, according to the decree and
" Judgment of said Court, made in said Cause.
" A deed will be made for said lands on day of sale
" the purchaser first complying with terms of sale.

" Dated at Middleport, Iroquois County, Illinois, this 3rd Day
" of October A.D. 1863

" C. F. McNeill "
" Special Commissioner "

71 " N.B. — The above described tracts of land constitute
" what is known as the "Dunning Farm," and a large
" portion of said farm is well improved, and extra
" well timbered — timber convenient to the prairie and
" improved land, and in fact the same is one of the
" best farms in Iroquois County.

that in accordance with said notice of sale I offered for sale said Lands on the 10th day of November A.D. 1863 & after then & there reading the terms of said sale & giving public notice of the terms of the same and after then & there publicly reading aloud & in the presence of said Geo Denning & Orin King — said advertisement and the whole of said Lands were bid off by one George S. Wright subject to the widows annuity at the sum of fifteen Dollars per acre; that said George R Dunning and Orin King had personal notice from me of the time of the sale of said Lands and they were both present at said sale and interested themselves in procuring bidders for said lands at said sale, and said King bid upon said Lands and neither of them in any manner objected to said sale; that there were a number of persons present who manifested a desire to purchase said lands

and every person present had a full and fair opportunity to bid upon said Lands, the said sale being by me kept open for that purpose for
72 some three hours, that I have reason to believe from all the circumstances connected with said sale, the incumbrance of the widows annuity in lieu of Dower and the condition of the improvements on said Lands. that said Lands were bid off for all they were reasonably worth —

C. F. McNeill

Subscribed and sworn to before me this 9 day of Feb a.d. 1864.
M. Hogle J.P.

5¢ Revenue Stamp

The above affidavit was resworn to before me this 16th day of February A.D. 1864.
Thos. Denning clk

And said McNeill's second affidavit reads as follows

State of Illinois }
Iroquois County } ss. In the Iroquois County Circuit Court

William K. Dunning Etal
vs
Achsah Dunning Etal } Petition for Partition

I C. F. McNeill being first duly sworn deposes and says, in addition to a former affidavit which I have made in the

above cause. that I wrote directed and sent, to King and Dunning one or both of them. that is to say Oren King and Georg R Dunning two of the
73 above defendants in the above suit. for the benefit of all of said defendants a letter consulting them the said King & Dunning. as to the time they desired that I should as Commissioner appointed by the Court in the above cause, sell the Lands named and described in the said Plaintiffs petition, and in answer to my said Letter to them I received the Letter which is hereto attached dated Sept 5th/63 Concord Ills, and marked Exhibit "A."

(Exhibit A. reads as follows, to wit,)

"Sept 5th 63 Concord Ills"

"C.F. McNeal

"Sir. I drop you a line in answer to yours "we want you to advertise and sell as soon as "you can conviently those heirs in Wis. Court "buy it if they were ready there is several "ready & waiting to Bid on it. yours Truly

"King & Dunning"

Given under my hand this 15th day of February AD 1864

C.F. McNeill

Subscribed & Sworn to before me this 15th day of Feb 1864.

Chester Kinney N.P.

Seal

Revenue Stamp

And the affidavit of Geo S. Wright reads in words & figures following, towit;

74 In the Matter of
William H. Dunning
vs
Achsah Dunning Etal

Petition for Partition, in Circuit Court in for the County of Iroquois State of Illinois State of Wisconsin,
Racine County. ss

George S. Wright being first duly sworn on his oath deposes and says, that on the 11th day of November last past or there about, at the Town of Middleport - in the County of Iroquois in the State of Illinois he purchased the lands and tenements of the late Eben Dunning, deceased, sold by order of said Court by L. F. McNeill a commissioner appointed by said Court - to sell the same for the sum of Fifteen dollars per acre - subject to the life annuity of Two hundred and twenty five dollars to be paid to the Widow Achsah Dunning according to the order of the Court and this Defendant further says that George R. Dunning and Oren King Defendants in said Cause, were present at the time and place of said sale and took a part therein by counceling and advising with parties

present, to bid on said land as against this
Defendant and this defendant further says
that on the next day after said day of sale
75 this defendant went to see the said George R
Dunning and Orrin King for the purpose of
Negotiating with them, to pay them in money
their portion of the purchase money - Meeting the
said King at Sheldon he took me in his
Buggy to the farm and then we met the said
George and his Mother, and in the presence of the
three, I told them my business, that having
bought the property I would like to pay off
all the parties and save the necessity of making
a mortgage and proposed to the said George
R Dunning and Orrin King to pay them their
proportion if they would make a proper discount
after talking the matter over between themselves
they said they preferd to let the balance of the
purchase, after the first payment remain as a
lean on the land according to the terms of Sale
to making any discount - I also ~~heard~~ had
Conversation with them as to the managment of the
farm, that I wished to get some responcible person
on the place - and they recommended diferent
persons as proper persons - to take charge of the
property - and at no time did Either of them
intimate that there was anything wrong about
the Sale or the proceedings therein - but on
the Contrary expressed themselves satisfied

with the sale as being legal and right, and the said King on the part of himself and the said George proposed to buy a wood lot belonging
76 to said Estate and apply the amount on their share of the proceeds of the sale of said Estate.

And this deponant further says that in Conversation with the said Achsah Dunning the widow of the said Eben Dunning - She Expressed and said she was well satisfied with said sale, and was satisfied with the life annuity of Two hundred and Twenty five Dollars - that she thought it was Even more than she was entitled to as she understood the Law of the State in such cases made and provided - she said she was only entitled to the use of One third of the real property during her life time. and that the Two hundred and Twenty five Dollars - was more than one third of what the property would rent for - and as William H. Dunning had not got the property she was Entirely Satisfied, That she promised this ~~Defendant~~ deponant to leave the possession of the premises, as soon as she could sell off what stuff she had and that would be in a few weeks after the Sale that she had no desire to stay on the place, and would not stay there if I would give her the place - Wherefor this deponant petitions the said Court to Confirm the said sale as it is

but honorable and just to said defendant, as this deponent believes

Subscribed and Sworn to before me this 12th day of Feby 1864
D. McDonald
Justice of the Peace

Geo. S. Wright

5¢ Revenue Stamp

77 State of Wisconsin, Racine County. } ss. I, La Fayette Parker Clerk of the Circuit Court for the County of Racine in the State aforesaid, do hereby certify that D. McDonald whose name is subscribed to the Jurat of the annexed affidavit was at the time of subscribing the same an acting Justice of the Peace in and for said County, duly Elected, qualified and sworn, and authorized to take the same, that his signature thereto is genuine, and that full faith and credit are due and of right should be given to all his official acts as such —

In Testimony Whereof, I have hereunto set my hand and seal of office this 13th day of February A.D. 1864.

Court Seal

La Fayette Parker
Clerk

5¢ Revenue Stamp

And Geo B. Joiners affidavit reads as follows, to wit,

State of Illinois, Iroquois County } ss. Iroquois Circuit Court

William H. Dunning etal
vs
Ashael Dunning etal

Personally appeared in

Open Court Henry B. Joiner and after being duly
sworn deposeth and saith that some time after the
June Term AD 1863 of said Court and before the
78 Sale of the real estate of the late Eben Dunning
Dec'd by C.F. McNeill Comr this Deponent was at the
house of said Rebeah Dunning on said premises
and while there the subject of the petition in this case
came up and in speaking of the said Wm H. Dunning
the said Rebeah remarked with much earnestness
that she had beat him on the trial in Court that
she had employed a lawyer in the case and had
a regular trial and she had beat him on the trial
and at the same time she talked with this Deponent
about the sale of said farm by said McNeill and
asked this Deponent as to what of the crops or rents
she could retain after the sale whether if she should
have some wheat sowed on the farm she would
be allowed to cut it after the sale. she seemed
to be perfectly satisfied to have the farm sold but
the impression I received from my conversation with
her was that she did not wish to have the farm
divided among the heirs but was willing to have
it sold without division. that this Deponent is
well acquainted with the farm belonging to the
estate of the late Eben Dunning Dec'd and sold
by C F McNeill Comr and believes that fifteen
Dollars per acre was all it was worth at the time
of said sale with the incumbrance of the

annuity $225. thereon payable to Achsah Dunning during her natural life. that this Deponent attended at the Sale of said farm made by said
79 McNeill and that said farm sold for more than this Deponent believed it would with the Encumbrance of the right of said Achsah Dunning thereon that Achsah Dunning is the mother only George R. Dunning and Margaret King the other heirs of said Eben Dunning being his children by a former wife & further saith not

Subscribed and sworn to before me
this 19 day of February 1864
Thos Brennan Clk

Geo R Joiner

And Chester Kinney affidavit reads as follows, to wit;

State of Illinois
Iroquois County } ss Iroquois County Circuit Court
of the November Term A.D. 1864.

William H Dunning
Orson Dunning
John G. Dunning Etal } Petition for Partition
vs
Achsah Dunning widow
of Eben Dunning deceased Etal

Personally appeard before the undersigned a Justice of the peace in and for said County Chester Kinney, and after being duly sworn, he deposes and says. that he was one of the attorneys for the defendants in the above

Entitled Cause at the June term of the Iroquois County Circuit Court A.D. 1863 and was employed by one Asa B. Roff Esq who was associated with
80 him this affiant in said Cause - That this deponant by direction of said Asa B. Roff Esqr drew up and filed the answer therein on or about the 16th day of June 1863. That before this affiant did so he was informed by said Roff that he was Employed by the defendants therein, and was authorized to Employ such aid as he deemed proper and desired this deponant to assist in the matter that in pursuance of such authority, he this deponant prepared and caused to be filed such answer waiving service of process, and before the filing of said answer this deponant submitted the same to James Fletcher attorney for said petitioners and Asa B. Roff one of the attorneys for the defendants; and it was then agreed that the same was correct and satisfactory and the said answer was then filed - That this affiant met Oren King and George R. Dunning at the Court Room in the town of Middleport at the said June Term of said Court 1863 and then informed them of the nature of the Answer filed by this affiant as aforesaid - And this deponant verily believes that he read to one or both of them the said answer - and explained to them the meaning thereof -

That they then urged this deponent and the said Roff
to hurray ~~up~~ the matter up as fast as possible —
That a Jury was called to try the issues involved
81 and L. F. McNeill as master in Chancery appointed
by the Court to take charge of the said Jury
That the Jury were sworn and retired with the
said L. F. McNeill and James Fletcher Attorney
for the Petitioners, and Asa B. Roff and this affiant
attorneys for the defendants. That the evidence
was taken before said Jury, at which time by
direction of the said Oren King and George R Dunning
several witnesses were called for the defendants
and were duly sworn and examined. That
during all the time of the taking of said Evidence
before said Jury, the said Oren King and George
R Dunning were present and sat by the side
of this affiant and instructed this affiant and the
said Roff as their attorneys, whom to to call as
Witnesses and what questions to ask such Witnesses
and both said Roff and this deponent asked such
questions - and called such Witnesses as they were
instructed to call by Oren King and George R
Dunning; and this Deponent did and he verily
believes that said Roff followed the directions
of said Oren King and ~~George~~ said George R Dunning in
selecting and empaneling the said Jury - and
they told this affiant that they were satisfied
with the Jury when this deponent asked them
the question if the Jury suited them —

That this deponant advised with said Oren King and George R Dunning during all the time of said proceeding, and called upon them frequently
82 for instructions - That after the Jury had returned their verdict this Deponant had a talk with Oren King and George R Dunning as to the result and how they were satisfied, they then informed this Deponant that they were suited, that they had done better than to have taken the amount that William H. Dunning offerd, and then asked this Deponant how soon the sale could come off and how soon the matter could be closed up - That this Deponant understood that Mr Roff and this affiant were employed by all the defendants as attorneys for all the defendants in the said suit and entered their appearance for them all and filed a general answer for them all, and tried the matter as if they all appeared, and no question was made in that respect. and whatever this deponant did in the matter and whatever was done by the said Roff and this Deponant Jointly was done in good faith and with full understanding that the whole matter was mutual and well understood by all the parties

Subscribed and sworn to
before me this 11 day of
Feb'ry A.D. 1864 M. Boyle J.P.

Chester Kinney

5 ¢ Revenue Stamp

And Charles Sherman's affidavit reads as follows, to wit;

83 State of Illinois } In the Circuit Court of
Iroquois County } ss. Iroquois County

Personally appeard before me the undersigned a Justice of the Peace in and for said County, Charles Sherman who after being by me first duly sworn deposes and says that he is well acquainted with the farm known as the Eben Dunning farm which was sold last November by L.F. McNeill as Commissioner under and by virtue of an order rendered by the Circuit Court of said County at the June Term of said County for A.D. 1863 in a proceeding had before said Court, Wherein William H. Dunning and others were plaintiffs and Achsah Dunning and others were defendants, and this affiant further says that he lived and did business as a Merchant in the Town of Concord within about one half mile of said farm in said County for more than fifteen years previous to his removing to near the Town of South Middlefort in said County where he now resides That he left the said Town of Concord and removed to near South Middlefort about three years since, and during all the time he lived in said Town of Concord and since he removed to near South Middlefort ~~about~~ as aforesaid he has been well acquainted with said Eben Dunning farm, and he is now well acquainted with it, and that he

well acquainted with the said Achsah Dunning
widow of said Ebenezer Dunning deceased
and that he has for many years been engaged to
84 some Extent in buying and selling lands in said
County, and that from the Knowledge which this
affiant has of said farm he believes and it is
the opinion of this affiant that fifteen Dollars per
acre, with the annuity or Judgment in favor of
the said Achsah Dunning of two hundred &
twenty five dollars yearly resting upon said farm
during the life of said Achsah Dunning was all
that said farm was worth at the time of said sale

Subscribed & sworn to before
me this 9 day of February A.D. 1864
Geo. G. Mayo P.M.
U.S. Rev. Stamp

Chas. Sherman

and Isabella Crozier's affidavit reads as follows. to wit:

State of Illinois }
Iroquois County } Iroquois Circuit Court
February Term 1864.

William H. Dunning Complt
vs
Achsah Dunning Defdt

Personally appeared before
me Geo A. Woodford Clerk of the Iroquois County
Court at the State of Illinois Isabell Crozier
and after being duly sworn deposeth and saith

that she is well acquainted George R Dunning
Achsah Dunning Oren King and Margaret King
and has been acquainted with them since
85 about the last days of August last past at which
time she went to reside in the family of said
Oren King and resided there for the space of nine
weeks then next following that while there She
saw the said Achsa at the said residence of
said King occasionally and has often heard said
Achsa Dunning & Margaret King talk over the
matter of the petition for partition filed by said
William H. Dunning the other Complainants in this
case, and has often heard said Margaret King
say that it was her wish to have the farm all sold
together that William H. Dunning wanted the land
divided according to his petition filed herein but that
she and her mother Achsa Dunning & George
Dunning & Oren King opposed it & wanted the
farm all sold together that they had beat him
on his application to have said farm divided
and that it was to be sold that she did not
want a little piece of land up there and seemed
to be very glad that said land or farm was to
be sold that she wanted her money for her share
of the farm that this deponent has often and
repetedly heard said Margaret King talk the
same matter over & never in the first instance
did she ever hear her say one word against
having said farm sold but on the contrary

she was much rejoiced that it was to be sold, that she had heard Margaret say that William wanted the land divided & then he could buy
86 the shares of the heirs who did not live here cheap & then get possession of most of the farm but if the farm was all sold together William Dunning did not have money enough to buy the whole farm which idea seemed to please the said Margaret King - that while this Deponent resided at Kings as aforesaid the neighbor women would call in at Kings occasionally and the said Margaret King would talk the matter over to them as above stated which is the way it happened that this Deponent heard said Margaret talk so much about the matter and so often that while she resided at Kings as above stated she has also heard said Ackia talk about the matter of the application of said William H. Dunning to have said farm divided - that this Deponent has often heard said Ackia say that William H wanted the farm divided but she did not and she had beat him and that the farm was to be sold that fall and she was glad of it - that her interest for the place allowed her was two hundred dollars & she had rather have that than live on the place and she was glad her third was not set off in the land as she could not live there alone & she would not stay on the

farm - that this Defendant was at the residence of said Achsa Dunning during the time she resided at said Kings and while at the
87 house of said Achsa she told this Defendant that the said farm was to be sold some time that fall by order of Court & she was going to leave the place as soon as she could arrange things to leave the farm that she never heard said Achsa say one word against having said farm sold by order of Court & further deponent not-

Subscribed & Sworn to before me this 18 day Feby AD 1864
Geo A Woodford Co Clerk
Per I.E. Woodford Dep'ty

Isabella Crozier

5-c Revenue stamp

And Philander Morgan, aff't. read as follows, to wit:

State of Illinois,
Iroquois county } ss Iroquois County Circuit
Court of the February Term AD 1864

Personally appeared before me the undersigned Notary Public in and for said County Philander Morgan. who after being my me first duly sworn deposes and says. that he is well acequainted with the farm known as the Eben Dunning farm situated lying and being near the town of Concord in said County. and that he has been acquainted with said farm Ever since August 1859 or AD 1860 that he lived in said

Town of Concord from August AD 1859 or 1860 until
March 1862 and owned while he lived in said
Town of Concord and does now own town lots
88 close to said Dunning farm. and that this
affiant is also well acquainted with the improv-
ements on said farm and has been so acquainted
with said farm and the improvements thereon
Ever since he first went to said town of Concord
up to the present time. That he removed from
said town of Concord to Middleport in said
County in March 1862 where he has resided
the most of the time Ever since, with his family
a short time he was in the Army of the United
States since 1862 but his family the most of the
time was in the town of Middleport aforesaid
To wit he was in the army about one year of the time
since 1862 That this affiant has been over the
different parts of said farm, and knows all the
fences houses, and buildings of different kinds on
said farm and he believes he is thoroughly
acquainted with the whole farm and all the
improvements thereon. And this affiant further
says that he is informed and believes that said
farm was in the month of last November sold
by C. F. McNeill Commissioner appointed by the
Circuit Court of said County, at the
June term thereof 1863 in a proceeding had before
said Court wherein William K. Dunning
& others were plaintiffs and Achsah Dunning & others

were defendants - And this affiant further says - that he is also informed and believes that at the June term of said Circuit Court said Court
89 rendered a Judgment in favor of said Achsah Dunning of two hundred and twenty five Dollars for each and every year during the natural life of the said Achsah Dunning widow of Eber Dunning dec'd which was made a line upon said farm during the natural life of the said Achsah Dunning - That this affiant says that he is further informed and believes that said farm was sold by said L. F. McNeill as such Commissioner for the sum of fifteen Dollars per acre subject to the said Judgment of two hundred and twenty five Dollars to be paid yearly during the natural life of said Achsah Dunning as aforesaid And this affiant further says that from the Knowledge which this affiant has of said farm and the improvements thereon, that fifteen Dollars per acre for the said farm was all the said farm was worth at the time the same was sold subject to the said Judgment of two hundred and twenty five Dollars each year during the life of the said Achsah Dunning, and said farm sold for all it was worth at that time or all that is worth now subject to said Judgment as aforesaid - And this affiant further says that sometime during the latter part of the Month of October or the forepart of November

A.D. 1863 this affiant had a conversation with George R Dunning who this affiant is informed was one of the defendants to the above entitled suit
90 and in said Conversation said George R Dunning said that Asa B. Roff and ~~Chas~~ Chester Kinney Appeared for them the said defendants at the time said suit was tried and disposed of, and he said that the said Kinney & Roff done well for said defendants & that they the said defendants were well satisfied with what said Kinney & Roff did in said suit for said defendants That said George R. Dunning in said Conversation particularly spoke of the said Chester Kinney as being a good Lawyer - and that they the said defendants were well satisfied with what the said Kinney had done in said suit —

Subscribed & Sworn to before me this 10th day February A.D. 1864
Chester Kinney
N.P.
N.P. Seal
5c Revenue stamp

Philander Morgan

And Michael Hogle's affdt reads as follows, to wit:

State of Illinois
Stephenson County. ss.

William H. Dunning Etal
vs
Ascal Dunning Etal

Personally appeared before

91

me the undersigned a Notary Public Michael Hoagle who after being duly sworn deposes and says — that he has resided in the County of Wayne about Twenty seven years. That he knows very well what what is called the Eben Dunning farm situate near the Village of Concord in said County. that he once owned a farm within two miles of the said Eben Dunning farm that he once assessed said farm with other lands in said County. This affiant also says that he knows Mrs Ascah Dunning the widow of Eben Dunning very well. That as he is informed the said Eben Dunning farm was sold by L. F. McNeill Commissioner in the month of November last past on a Petition for Partition on the Part of William Dunning & others Plaintiffs in their suit on a decree rendered by the Circuit Court in the last June Term of said Court held at Middlepost & that the sale thereof was a public sale and that said farm sold for fifteen dollars per acre subject to a lien or annuity of $225 Two hundred & Twenty five dollars a year for and in behalf of the said Widow Ascah Dunning to be paid yearly during her natural life. This affiant further says he thinks said farm sold for as much as it was worth — That fifteen dollars an acre subject to said annuity of Two hundred & twenty five Dollars is as much as said farm should or would sell for at any public or private sale

during the Present Prices of Land as he verily believes

Subscribed & Sworn to before me this 11th day of Feby A.D. 1864
Chester Kinney
J.P.

M. Keogle
5¢ Revenue Stamp

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W. Pattersons affidavit reads as follows. Court

State of Illinois
Iroquois County. ss. In the Circuit Court of Iroquois County ——

William H. Dunning Etal
vs
Achsah Dunning Etal
} Petition for Partition

Personally appeared before me the undersigned a Justice of the Peace in and for said County. Winthrop Patterson who after being by me first duly sworn doth depose and say that he is well acquainted with the farm known as the Eben Dunning farm in said County which was as this affiant is informed believes sold by Lev H. McNeill as Commissioner in the month of November last by virtue of an order of said court made at the June Term thereof A.D. 1863 in the above entitled cause to sell said Farm. And further this affiant has been acquainted with said farm for more than twenty years last past, and also he is well acquainted with the improvements thereon —

And further that said farm was not worth more than fifteen dollars per acre at the time the same was sold as aforesaid by said C. F. McNeill and
93 with the Annuity of Judgment of two hundred and twenty five dollars resting on said farm to be paid yearly during the live of said Achsah Dunning as this affiant verily believes - That this affiant believes that said farm was sold for all its worth at the time it was so sold - and all that it is worth at this time, with said Judgment being a lien upon the same during the natural life of the said Achsah Dunning widow of said Eben Dunning dec'd and further saith not -

Subscribed & Sworn to before me
This 9th day of February A.D. 1864
Geo. G. Mayo P.M.

5c Revenue Stamp

Winthrop Patterson

And Abram Conghenour's affidavit reads as follows, to wit.

State of Illinois
Iroquois County } ss. Iroquois County Circuit Court
of the February Term A.D. 1864.

Personally appeared in open Court Abram Conghenaugh who after being first duly sworn deposeth and saith - that he is well acquainted with what is known as the Eben Dunning farm in Iroquois County Illinois which belongs to the Estate of Eben Dunning deceased that this affiant is the administrator of said estate. that

this affiant is also acquainted with Achsah Dunning the widow of Eben Dunning dec'd That this affiant has been informed and believes
94 that said farm was sold by C. F. McNeill as Commissioner appointed by the said Court for that purpose who sold said lands & farm in the month of November last. That from the Knowledge which this affiant has of said farm and of the said Achsah Dunning this affiant believes that fifteen Dollars per acre subject to a Judgment of two hundred and twenty five Dollars per year during the life of the said Achsah Dunning. which was a lien upon said lands during the life of the said Achsah Dunning was all that said farm was worth at the time of said sale - and this affiant further saith that he now lives about three miles from said farm. and has lived there about Eighteen years that this affiant is a farmer and believes he knows what lands are worth in that part of the County where said farm is located - and this affiant believes that he knew what said farm is worth and what it was was worth at the time of said sale. that he believes that said farm was not worth at the time of said sale nor is the same now worth more than fifteen Dollars per acre subject to said Judgment or lien of two hundred and twenty five Dollars per acre during the life of said Achsah Dunning as this affiant verily believes

Subscribed & sworn to before me this 18 day of February 1864 Thos Dunnuck Clk

Abram Coughenour

And be it further known that the Judge of said Court the Honorable L. R. Starr admitted that
95 he did not sign the Records of the June term of said Court 1863 until after the Defendants had Entered their motion in this Cause and while said Motion was pending and and undetermined in said Court) and be it further known that while the petitioners was reading their affidavits the Commissioner C. F. McNeill Came into Court as asked leave to file his Report in said Cause and the Defendants objected to the filing the said Report, but the Court overruled our objections and allowed the said Report to be filed (and the Defendants then and there Excepted) the Court overruled the Motion of the Defendants they then Excepted —

William H. Dunning Etal;
688. vs
Achsah Dunning etal

This day Came the Complainants into Court by Geo. B. Joiner and James Fletcher their Solicitors and the Defendants by John Clark their Solicitor and thereupon this Cause came on to be heard upon the motion of Defendants heretofore Entered in this Cause to set aside the proceedings had herein - and the Court having heard the evidence adduced together with the arguments of the Counsel

for the respective parties upon mature deliberation ordered that the motions to set aside the proceedings and to dismiss the Petition be and the
96 same are hereby ~~dismissed~~ denied, to the overruling of which said motions the defendants by their Counsel aforesaid enter their exceptions.

And the Defendants also Excepted to the said Report of the Master and to the approval of the same by the Court, but the Court overruled their objections to said Report and the approval of the same and the Defendants Excepted —

Said Masters Report Read as follows, to wit;

State of Illinois }
Iroquois County } ss.

In the Iroquois County Circuit Court—

William H. Dunning et al }
vs } Petition for Partition
Achsah Dunning et al }

To Hon Charles R. Starr,
Judge of the Circuit Court of said County:

The undersigned Commissioner appointed by said Court in the above cause, to sell the lands mentioned in plaintiffs petition hereby Reports, that in pursuance of an order of said Court, made and rendered at the June

Term thereof A.D. 1863. in the above cause, after having duly advertised said lands, according to Law and the order of said Court. I did, on the tenth day
97 of November A.D. 1863, at two oclock P.M. of said day at the door of County Clerk's office, in Middleport Iroquois County, Illinois strike off and sell at public sale, all of said lands, to wit; The South West quarter of the North East quarter of Section ten; and the South East quarter of the North East quarter of Section ten; and the North East quarter of the South West quarter of Section ten; and the South East quarter of Section ten; and the East half of the North East quarter of the South West quarter of Section fifteen; all in Township twenty seven (27) North of Range ten East, in Iroquois County, and State of Illinois — to George D. Wright, of the State of Wisconsin for the sum of six thousand and nine hundred Dollars upon the following terms, to wit; one third of the purchase money to be paid down, one third in one year and the balance in two years: the deferred payments to be secured by mortgage on the premises and notes draing six per cent interest; and said lands sold subject to the judgment of this Court of two hundred and twenty five Dollars as the widows yearly annuity in lieu of dower during her natural life, which said annuity is a lien upon said lands for each and every year during the natural life of said widow

Achsah Dunning. the said Georg S. Wright being the highest and best bidder for said Lands

And I hereby further report that said
98 Georg S. Wright cmplied with the said terms of said sale of said Lands: and I have made a deed to him for said Lands; and afterwards placed in my hands the receipts of William H. Dunning. Mary Ann Rogers and her husband James Rogers. James A. Dunning. Orsm B. Dunning. John G. Dunning. Louisa E. Crane. and Laliatte Bontwell guardian of James Perry Dunning. Sarah L. Pulver Reuben L. Dunning. Amelia Dunning. Nathaniel G. Dunning. and Franklin Dunning. heirs of Dennison T. Dunning for their full shares each, of the whole amount of the sale of said Lands. including the Cash payment on the said sale and the back payments to be secured by notes and mortgage as aforesaid. as the heirs at law of Eben Dunning deceased; which said receipts are herewith filed and to which the Court is refered. and Georg S. Wright files the receipt of William H. Dunning. attorny in fact for the shares of James Perry Dunning and Sarah L Pulver & David B. Pulver her husband. in full. also. for the whole amount of the sale of said Lands: and I have given him full credit for the same.

And I hereby further report. that Georg S. Wright the purchaser of said Lands gave his two promissory notes for the sum each of $511.11/9 at six per

Cent. interest one due in one year and the other due in two years from day of sale for the balance of the purchase money not paid down.

99 And not receipted for as above stated: which notes are secured by mortgage on the above described lands, And the undersigned respectfully pray that the Court confirm his said proceedings in the above cause, as Commissioner, and allow as a release to him the above named receipts for the several amounts of advance payments made to said heirs by said purchaser of said lands

All of which is respectfully submitted.

Feb. 20. 1864. C. F. McNeill
Commissioner

the same was filed with the Clerk of said Court Febrnary. 20 AD 1864.

And the final order of said Court reas as follows, to wit:

688. William H. Dunning et al vs Ackrah Dunning et al } Petition for Partition

On motion of Complainants Solicitors it is ordered that the exceptions by the Defendants to the Masters Report of sale filed in this cause at this term be and the same are overruled and it is further ordered that the said Report of the said Master in Chancery be approved and affirmed by this Court, to which the Defendants Except.

And the Defendants here present
this their Bill of Exceptions and ask that
100 same be signed and sealed which is done.

C. R. Starr (Seal)
Judge of the 20th Circuit

State of Illinois
Iroquois County ss

I Thomas Brennan clerk of the Circuit Court in and for the said County in the State aforesaid do hereby
101 certify that the above and foregoing transcript contains a true and literal copy of the proceedings had by the Iroquois County Circuit Court in the case of William H Dunning etal vs Achsah Dunning etal, and that the same also contains a true copy of all the papers filed in said cause forming any part of the Record of said Court therein.

Witness Thomas Brennan clerk and the seal of said Court hereunto affixed at office in Middleport this 23d day of March AD 1864.

Thomas Brennan
Clerk

State of Illinois
Iroquois County ss I Thomas Brennan clerk of said Circuit Court do hereby certify that the affidavit of C. F. McNeill commencing on Page 72 and ending on Page 73 of the foregoing Record and the affidavit of George S Wright commencing on Page 74 and ending on Page 77 are not now nor have they or either of them at any time been marked or endorsed "filed" by the clerk of this Court.

Attest seal of said Court.

March 25th 1864

Thomas Brennan
Clerk

Errors Assigned

(1) The Court Erred in taking Jurisdiction of the petition for partition of the plaintiffs at the June Term 1863 because the said petition was not verified by affidavit

(2) The Court Erred in Entering an interlocutory Decree in said Cause and appointing Commissioners to make partition of the Lands without proof of title to the Lands

(3) The Court Erred in not ~~taking~~ seeing the orders once Decrees in said Cause at said June Term 1863

(4) The Court Erred in handing a paper to Jones the attorney for Williams ascertaining the fact into whose hands he was charge of a person who was not a Commissioner to hear the Evidence on that question

(5) The Court Erred in not granting the motion of the plaintiffs in Error and setting aside the former Decree and orders in said cause made at the June Term 1863

(6) The Court Erred in not granting the motion to set aside the orders and Decree in said cause at the June Term 1863

(7) The Court Erred in overruling the motion of the plaintiffs in Error to filing of the Commissioners Report of Sale

(8) The Court Erred in approving the Report of the Sale made by the Commissioners

(9) The Court at this Course Erred in said Cause

(10) The Error in not Entering a Decree in favor of said Plaintiffs in Error

Clark & Keller
Solicitors for Plaintiffs in Error

State of Illinois
3rd Grand Division } April Term 1865

William K Dunning et al
vs
Ackson Dunning et al } Error to Logan

And the said defendants in Error now Comes and say that in the record & proceedings aforesaid & in giving judgment aforesaid in manner & form as above assigned & therefor they pray that the said judgment & Decree may be affirmed and that their Costs may be adjudged to them &c

George B Gorin &
James Fletcher
Attys for Defts
in Error

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Wm H. Dunningstad

vs

Achwah Dunningstad

Filed April 20. 1864
L. Leland
Clerk

Transcript fee $25.00