

Jefferson County Circuit Court

Case Files - C 011

May 1857, No. 13

Box 8 Folder 65

Smith, John

Smith, Ibi

Ogle, Thomas

Ogle, John, et al

vs.

Ogle, Henry

Ogle, George W.

Ogle, William

Ogle, James

Title and partition

Heirs of Thomas Ogle, Sr.; 320 acres on Swashing
Creek in Survey 1778 T 40 R 5 E; depositions; other
plaintiffs Sarah, Charles T. Rooley, Harriet, Charles W.S.
Vinyard, Mary, Eli Sampson, Elizabeth, William McCreery,
Mary, William Kull, Elizabeth McCarley, Mary, James,
Thomas Smith, Malinda, Joshua, Elizabeth, John Goza,
William M., Francis Smith, Mary, Stephen Osburn, Ferdinand
Elbert Smith, Thomas, Elbert, Jordan, Margaret, William,
London, Ellen, James, Sarah, Malinda, Elizabeth, James
Ogle

John Smith, Ibi Smith, William Ogle,
 Thomas Ogle, John Ogle, Sarah Pooley,
 Charles J. Pooley, Harriet Vinyard, Charles
 W. Vinyard, William Ogle, James Ogle,
 Mary Sampson, Eli Sampson, Thomas
 Ogle, Albert Ogle, Jordan Ogle, Margaret
 Ogle, Elizabeth McCreary, William McCreary,
 and Nancy, Adeline & Amanda Ogle, by
 Charles J. Pooley, their next friend, William Ogle,
 Albert Ogle, Jordan Ogle, Mary Null, Wil-
 liam Null, John Ogle, Elizabeth M^{rs} Canby,
 M^{rs} Canby, and Ellen James,
 Sarah, and Malinda Ogle, by James Smith
 their Guardian, - Mary Smith, James Smith,
 Thomas Smith, Malinda Goza, Joshua Goza,
 Elizabeth Goza, John Goza, and Ferdinana
 Albert, William M., and Francis Smith, by
 James Smith their Guardian, - Elizabeth
 Ogle, James Ogle, Mary Osborn, and Ste-
 phen Osborn, — Plaintiffs,

Against
 Henry Ogle, ~~and~~ George M. Ogle, — Defendants,
 William Ogle, and } In the Circuit Court
 James Ogle } Jefferson County

Plaintiffs state that on the 28th day
 of March 1847, Thomas Ogle, sen, died possessed
 of the following described Land, situate in Jef-
 ferson County, Missouri, To wit, a certain tract
 of land, containing three hundred and twenty
 acres, on Swashing Creek, in Joachim Township
 in said County, being the West half of 640
 acres, bounded East and South by lands of W^{ms}
 Null, sen, & W^{ms} Null, Jun, West by land originally
 owned by Philip Roberts, and being in survey

No. 2978, in Township No. forty, North of Range
No. five East, - Plaintiffs state that said Thomas
Ogle, dec^d, was the legal and equitable owner
of said land, at the time of his death; but
that on the 29th day of March 1847, the De=
fendants, ^{Henry & George W. Ogle} who are two of the heirs of said De=
ceased, entered into the possession of said land,
and unlawfully withhold from the Plaintiffs
the possession of the same. These ^{two} Defendants set
up a claim of title to said Land, by virtue
of a Deed of gift, ^{alleged to have been} executed to them by said De=
ceased on the 30th of September 1843,

Plaintiffs allege that said Deed of gift, if ever
executed by said Thomas Ogle, dec^d, was ob=
tained from ^{him} by fraud and Circumvention,
that it was obtained at a time when said
Deceased was lying sick, at ^{the} point of death,
not in his right mind but partially insane,
and that Defendants, ^{Henry & George W. Ogle} by themselves and their
friends, taking advantage of this condition
of Deceased, by deception, misrepresentation,
and other false and fraudulent contrivances,
obtained possession of said deed. - Plaintiffs
therefore allege that said Deed of gift is a
fraud upon their just rights to said land
as heirs of said Deceased, and ask that the
same be set aside & cancelled, as null & void.

Plaintiffs state that said Thomas Ogle
dec^d, left at the time of his death, eleven chil=
dren surviving him, to wit, Elbert Ogle, since
deceased, leaving the following children as his
heirs, to wit, Harriet Vinyard, wife of Charles W.
S. Vinyard, William Ogle, James Ogle, Mary
Sampson, wife of Eli Sampson, Thomas Ogle,
Elbert Ogle, Jordan Ogle, Margaret Ogle, Eliz=

Abeth McCreary, wife of William McCreary, Nancy
Ogle, Adeline Ogle, and Amanda Ogle, who are
entitled collectively to the one ^{undivided} eleventh part of
said Land, and Sarah Pooley, wife of Charles
J. Pooley, and widow of Elbert Ogle, dec'd, is en-
titled to dower in his interest in said Land, -
- James Ogle, leaving ten children, viz, William
Ogle, Elbert Ogle, Landon Ogle, Mary Null, wife
of William Null, John Ogle, Elizabeth McBan-
ley, wife of McBanley, Ellen Ogle, James Ogle,
Sarah Ogle, & Malinda Ogle, who are entitled
to the one undivided eleventh part of said
Land, and Mary Smith, wife of James Smith,
and widow of said James Ogle, dec'd, is entitled
to dower in his interest to said Land, - Lydia
Smith, former wife of James Smith, but since
deceased, leaving the following children enti-
tled to her interest in said Land, viz, Thomas
Smith, Malinda Goza, wife of Joshua Goza,
Elizabeth Goza, wife of John Goza, Ferdinand
Smith, Elbert Smith, William M. Smith, and
Francis Smith, who as her heirs are entitled
to the eleventh part of said Land, and James
Smith is tenant by the Courtesy of said interest, -
- William Ogle, Thomas Ogle, John Ogle, Ibi
Smith, wife of John Smith, Elizabeth Ogle,
wife of James Ogle, and Mary Osborn, wife
of Stephen Osborn, are each entitled to the one
undivided eleventh part of said Land, as heirs
of said Thomas Ogle dec'd. And the Depend-
ants, ^{Therry, & George M. Ogle,} are each entitled to the one eleventh
part of the said Land, and no more.

Plaintiffs therefore state that the said
eleven children and their descendants as
above stated, are each entitled to the one

undivided eleventh part of said Land, as
the heirs of said Thomas Ogle, deceased.
They further state that William Ogle, and
James Ogle, sons of Elbert Ogle deceased, are
made defendants in this suit, (although bro-
ght for their benefit,) because they refuse to
join as plaintiffs.

Plaintiffs therefore in consideration of the
premises, pray the Court to order and decree
that said deed of gift, be set aside, annulled,
and rendered of no effect, and that the de-
fendants, Henry Ogle, and George W. Ogle, may
be divested of any title they may have acquired
to said Land by virtue of said deed, and that
the title to the same be vested in the plain-
tiffs and other heirs of said Thomas Ogle
deceased, according to their respective rights
as herein stated, and that the Court declare
the rights of the parties, and give judgment
of partition for a division of said premises
according to the respective rights of the par-
ties interested therein, and for a sale thereof
if it shall appear that partition cannot
be made without great prejudice to the
owners thereof, and to grant such other
and further relief as may be consistent
with equity.

} Abner Green
} Attorney for plaintiffs

John Smith, one of the plaintiffs, makes
oath and says that the above Petition, and
the matter therein, as stated, he believes to
be true.

Sworn to and Subscribed
before me March 21st 1857

his
Jno. Smith
mark

Thos C. Blecher clerk By C. J. Honey sept

1853

In Circuit Court
of Jefferson County

John Smith & others
vs.

Mary A. Goe & others
Petitioners for title
to lands etc. —
Set Annulment & award.

M. Green
for Pet

Filed March 21st 1854
Thos. L. Aldrich
Clerk

Expenses 26c
2 sub. fees, 1.00
Fees 1.25
copy 25
order 25
Total 1.75

John Smith, Ibi Smith
Thomas Ogle, John Ogle, Sarah
Pooley, Charles J. Pooley, Harriet
Vinyard, Charles W. S. Vinyard
Mary Sampson, Eli Sampson
Thomas Ogle, Elbert, Jordan Ogle
Margaret Ogle, Elizabeth McCreery
William McCreery and Nancy
Adeline & Amanda Ogle by
Charles J. Pooley, their next
friend, William Ogle, Elbert
Ogle, Landon Ogle, Mary Kull
William Kull, Elizabeth McCanley
McCanley, and Ellen, James
Sarah and Malinda Ogle by
James Smith, their Guardian
Mary Smith, James Smith,
Thomas Smith, Malinda Goza
Joshua Goza, Elizabeth Goza
John Goza, and Ferdinand
Elbert, William M. and Francis
Smith by James Smith their Guard-
ian Elizabeth Ogle, James Ogle
Mary Osborn and Stephen Os-
born.

Plaintiffs

Against

Henry Ogle, George W. Ogle
William Ogle and James Ogle.

Defendants

In the Circuit Court - Jefferson County

Plaintiffs state, that on the 28th day of
March 1847, Thomas Ogle, Sen. died pos-
sessed of the following, described Land,

situate in Jefferson County Missouri, to wit:
a certain tract of land containing three hun-
-dred and twenty acres, on Drashing creek in
Joachim Township in said county, being the
West half of 640 acres, bounded East and South
by lands of Mr Hull Sen & Mr Hull Jun, West
by land originally owned by Philip Roberts, and
being in Survey N^o 2978, in Township No forty
North of Range No. five East; Plaintiffs state
that said Thomas Ogle dec^d, was the legal and
equitable owner of said land, at the time of
his death; but that on the 29th day of March
1847, the defendants, Henry & George W Ogle
who are two of the heirs of said deceased enter-
-ed into the possession of said land and un-
-lawfully withheld from the plaintiffs the
possession of the same; These two defendants
set up a claim of title to said land by virtue
of a deed of gift alleged to have been executed
to them by said deceased on the 30th day of
September 1843. - Plaintiffs, allege that said
deed of gift if ever executed by said Thomas Ogle
dec^d, was obtained from him by fraud and
circumvention, that it was obtained at a time
when said deceased was lying sick at the point
of death, not in his right mind but partially
insane, and that defendants Henry & George
W Ogle, by themselves and their friends, taking
advantage of the condition of deceased by de-
-ception, mis-representations, and other false
and fraudulent, contrivances obtained pos-
-session of said deed; Plaintiffs therefore al-
-lege, that said deed of gift is a fraud upon
their just rights to said land as heirs of
said deceased, and ask that the same

be set aside & cancelled as null & void.
Plaintiffs state that said Thomas Ogle dec^d left at the time of his death eleven children surviving him, to wit- Elbert Ogle, since deceased leaving the following children as his heirs to wit- Harriet Vinyard wife of Charles N. S. Vinyard, William Ogle, James Ogle. Mary Sampson wife of Eli Sampson, Thomas Ogle Elbert Ogle, Jordan Ogle, Margaret Ogle Elizabeth McCreery, wife of William McCreery Nancy Ogle, Adeline Ogle, and Annanda Ogle who are entitled collectively to the one undivided eleventh part of said land, and Sarah Pooley wife of Charles S. Pooley and widow of Elbert Ogle dec^d, is entitled to dower in his interest in said lands- James Ogle, leaving ten children viz William Ogle Elbert Ogle Landon Ogle, Mary Null, wife of William Null John Ogle, Elizabeth McCanley wife of McCanley, Ellen Ogle, James Ogle, Sarah Ogle & Malinda Ogle, who are entitled to the one undivided eleventh part of said land, and Mary Smith wife of James Smith and widow of said James Ogle dec^d, is entitled to dower in his interest to said land; Lydia Smith, former wife of James Smith, but since deceased, leaving the following children entitled to her interest in said land, viz: Thomas Smith, Malinda Goza wife of Joshua Goza, Elizabeth Goza, wife of John Goza, Ferdinand Smith, Elbert Smith William M. Smith, and Francis Smith, who as her heirs are entitled to the eleventh part of said land, and James Smith, is tenant by the courtesy of said interest, Ibi. Smith wife of John Smith, Elizabeth Ogle wife of James

Ogle, and Mary Osborn wife of Stephen Osborn, are each entitled to the one undivided eleventh part of said land, as heirs of said Thomas Ogle, dec. And the defendants, Henry & George W. Ogle are each entitled to the one eleventh part of said land, and no more. Plaintiffs, therefore state, that the said eleven children and their descendants as above stated are each entitled to the one undivided eleventh part of said land, as the heirs of said Thomas Ogle deceased, they further state, that William Ogle and James Ogle sons of Elbert Ogle deceased are made defendants in this suit (although brought for their benefit) because they refuse to join as plaintiffs: Plaintiffs therefore in consideration of the premises, pray the court to order and decree that said deed of gift be set aside annulled and rendered of no effect, and that the defendants, Henry Ogle and George W. Ogle, may be divested of any title they may have acquired to said land by virtue of said deed, and that the title to the same be vested in the plaintiffs and the other heirs of said Thomas Ogle deceased, according to their respective rights as herein stated, and that the court declare the rights of the parties, and give judgment of partition, for a division of said premises according to the respective rights of the parties interested therein and for a sale thereof if it shall appear that partition cannot be made without great prejudice to the owners thereof, and to

grant such other and further relief as
may be consistent with equity

Abner. Green
Attorney for Plaintiffs

John Smith, one of the plaintiffs makes
oath and says that the above petition and
the matters therein as stated he believes
to be true,

Sworn to and Subscribed
before me March 21st 1854 } John ^{his} Smith
Tho C Fletcher Clerk } mark

By E. J. Honey dept

Endorsed "Filed March 21st 1854

Tho C Fletcher Clk

A true Copy of the original petition
and affidavit on file in my office

In Testimony whereof I here to
set my hand and affix the seal
of said Court at office this
23^d. day of March A D 1854
Tho C Fletcher. Clerk
By Elias J. Honey dept.

COUNTY OF JEFFERSON, SS.

The State of Missouri.

To the Sheriff of the County of Jefferson--Greeting:

We command you, that you summon Henry Ogle George
W. Ogle, William Ogle and James Ogle
if they be
found in your County, that they be and appear before the Hon.
Judge of our Circuit Court, on the first day of the next term thereof,
to be begun and held at the town of Hillsboro, within and for the
County of Jefferson, on the fourth Monday of May
next, then and there to answer unto John Smith James
Smith and others

upon their original petition, a copy whereof is herunto annexed and
accompanies this writ—and have you then there this writ.

Witness, THO. C. FLETCHER, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at
office, in Hillsboro, this 23d day
day of March A. D. 1854

Thos C Fletcher Clerk
By E. J. Honeyser CLERK CIRCUIT COURT.

I executed the within writ at the county of Jefferson on
 the ~~25th~~^{Twenty-fifth} day of March 1857 by Delivering to Henry W. Gles a true
 copy of the within writ and the correct petition (as furnished
 by the clerk) and also by reading the within writ in the
 presence and hearing of ~~George W. Gles~~ on the
 25th day of March AD 1857 James W. Gles and William W. Gles
 is not found ~~Augustine Wiley Sheriff~~
 and also on William W. Gles on the 30th day of March 1857
 and on James W. Gles on the 11th day of April 1857 by reading
 the within writ in their presence and hearing
 Augustine Wiley Sheriff

No 13.

To Jefferson Circuit Court
 May Term 1857

John James Smith et al
 vs
 Henry & Geo. W. Gles et al

Sherriff's fees
 Serving 2 Summons \$2.00
 upon each party \$3.00
 Sherriff's fees \$4.00
 Allen May 4. 1857
 Geo W. Mearns CR

John Smith & others } In the Circuit
 vs. } Court of Jefferson
 Henry Ogle, & others }

Nancy, Adaline, and Amanda
 Ogle, minors, heirs of Elbert Ogle,
 deceased by Thomas Ogle their Brother,
 hereby petition the Clerk to ap-
 point Charles F. Pooley, their next
 Friend, to institute & conduct
 their interest in the above suit,
 attat March 21st 1837.
 E. F. Honey Thomas ^{his} Ogle
 I hereby consent to act as next
 Friend for Nancy, Adaline and
 Amanda Ogle in conducting
 the above suit, C. F. Pooley

State of Missouri } In the Circuit Court
 County of Jefferson } In Vacation March 21st 1837
 I Tho. C. Fletcher Clerk of the
 Circuit Court within and for said County do hereby
 appoint Charles F. Pooley to appear as next friend
 for Nancy, Adaline and Amanda Ogle mi-
 -nor. heirs of Elbert Ogle deceased in a. Suit about
 to be commenced in said court as stated in
 the above petition

In Testimony whereof I hereto
 set my hand and affix the seal
 of said Court at office March
 21st 1837

Tho. C. Fletcher Clerk
 By Elias F. Honey sept



John W. Smith et al
vs { Applicants of over 1
} Respond for minors
Geo. H. & Henry Ogden

Michael W. Carr 21st 1857
No. 6, Alekcharoff

County of Jefferson, ct.

THE STATE OF MISSOURI,

To any Judge or Justice of the Peace or other Judicial Officer

of the State of Illinois, Greeting:

We, reposing special trust and confidence in your integrity and circumspection, do authorize and require you, that you cause to come before you, such person or persons as shall be named to you by John Smith and others
their

Attorney or Agent, and him or them examine upon his, her or their corporal oath, (to be by you administered,) touching their knowledge of any thing that may relate to a certain matter of controversy, now pending in our Circuit Court, for the County of Jefferson, wherein John Smith and others are

and Henry + George W. Ogle and others plaintiffs

on the part of the Plaintiffs defendant & ; and having so reduced the said depositions so taken by you, as aforesaid, in writing, you are required to send the same, together with this commission, enclosed under your seal, to our said Circuit Court, with all convenient speed.

Elias J. Honey
Witness, ~~JOHN S. MATHEWS~~, Clerk of our said Circuit Court, at Hellboro — this Sixth day of May in the year of our Lord one thousand eight hundred and fifty Seven

Elias J. Honey Clerk C. C.

John Smith & others, plaintiffs }

Against }

Henry Ogle, & others, defendants, }

} In the Circuit Court for the
} County of Jefferson, State of Missouri,

To Henry Ogle, George W. Ogle, William
Ogle, and James Ogle, defendants in the
above entitled cause,

You are hereby notified, that Depo-
sitions of witnesses, to be read in evidence
in the above cause, on the part of the
Plaintiffs, will be taken at the Court House
in the Town of Murphysborough in the
County of Jackson, and State of Illinois,
on the thirteenth day of May 1857, between
the hours of eight o'clock, in the forenoon
and six o'clock, in the afternoon; and that
the taking of said Depositions, if not com-
pleted on that day, will be continued
from day to day, at the same place and
between the same hours, until completed,
- when & where you can attend, if you
see proper.

May 1st 1857.

Abner Green

} Attorney for Plaintiffs

This is to certify that I did at the County of Jefferson on the
2nd of May 1857 leave a true copy of the within notice at
the residence of James Ogle with a free white person of the family
over the age of fifteen years Augustus Wiley Sheriff
& executed the within notice By delivering a
true copy of the within to Geo W Ogle Henry
Ogle & Wm Ogle May the 2^d 1857
Augustus Wiley Sheriff
By J. O. Gith Deft

In Circuit Court
Jefferson County

John Smith & others

vs.
Henry Ogle, & others

Notice to take
Depositions

Sheriffs fees \$2.00

The Deposition of James P. Watson
 of the County of Jackson and State of Illinois, a witness
 produced sworn and examined before George Kennedy
 a Justice of the Peace in and for the said county
 and State, on the 13th day of May, A. D., 1857, in the
 Court House in the Town of Murphysboro in said County
 and State, in pursuance to notice to that ^{effect} and Decrees
 issued from the Clerk's office of the Circuit Court of the County
 of Jefferson, State of Missouri. To be read in evidence or
 testimony in a certain suit now pending and ~~unsettled~~
 undetermined in the Circuit Court of said Jefferson
 County, State of Missouri. wherein John Smith and others
 are Plaintiffs, and Henry and George W. Ogle and others
 are Defendants, on the part and in behalf of the
 Plaintiffs.

The said James P. Watson being first duly sworn
 according to law, deposed and saith, in answer to
 the several interrogatories propounded to him on the
 part of the said Plaintiffs, as follows, to wit:

Question 1st Do you know the Plaintiffs and Defendants
 in the suit named or either of them, if so which of them
 and how long have you known them, and where did
 you become acquainted with them.

Answer, 1st I am acquainted with John Smith, James Smith
~~Plaintiff~~ and Thomas Ogle, Plaintiff, and Henry Ogle &
 George W. Ogle, Defendants. And I became acquainted with
 them, sometime previous to A. D. 1844, and I became
 acquainted with them in Jefferson County, Missouri.

Question 2nd, State if you were acquainted with the father
 of Henry Ogle and G. W. Ogle, Defendants to this suit -
 if so, where and how long.

Answer, 2nd, Yes I was acquainted with him, in Jefferson
 County Missouri, ^{from} sometime previous to A. D. 1844, until
 his death

Question 3rd State what was the name of the Father of the said Henry Ogle and G. W. Ogle.

Answer 3rd - his name was Thomas Ogle.

Question 4th. State whether Thomas Ogle whom you have said was the Father of said defendants, owned any Land in Jefferson County Missouri, if so what land was it, and what did he do with it.

Answer 4th. The said Thomas Ogle told me that he owned the land that I knew him to be in possession of in Jefferson County Missouri. It was situated on the Joachim (or Swashin) Creek, near Rudolph Haversticks Mill. I know nothing further of what he did with said Land, than that I wrote a Deed, for the said Thomas Ogle, conveying the Land to Henry Ogle, and George W. Ogle.

Question 5th - State if you know what was the condition of Thomas Ogles health at that time.

Answer 5th Hee was not in very good health at the time the Deed was wrote, he was not confined to his bed but was able to go about.

Question 6th State the circumstances attending the drawing of the Deed, in whose presence it was written, whether it was done through the persuasion of any one and if so who it was, and what influence was used to get it done.

Answer 6th. ~~Answer~~ Either a Mr Osborn or Henry Ogle or George W. Ogle told me that, the said Thomas Ogle wanted me to draw a Deed for him. I am certain it was one of the three but am not positive which, when I went, Mr Thomas Ogle told me that he wanted me to write a Deed, conveying the said Land to Henry Ogle and George W. Ogle, and that whilst I was writing the Deed there was no person present, but myself, and Mr Tho^s Ogle who came into the Room occasionally, and that before I finished writing said Deed; one Elbert Ogle

Son of said Thomas Ogle, came into the ~~house~~ ^{house}, and the said Thomas Ogle told me to put the Deed I was writing into the drawer of the Table on which I was writing, untill the said Elbert Ogle should leave, as he did not wish ~~him~~ (the said Elbert Ogle) the Boys to know any thing of the drawing of the Deed untill it was finished, I put the paper on which I was writing the deed into the drawer, and it remained in the drawer untill after Elbert Ogle left, next Morning, then I took the paper out of the drawer and finished writing the Deed.

Question 7th State who you understood Thomas Ogle to mean, when he said "the boys" in the answer you have just given.

Answer 7th I understood him to mean those Sons who were not living in his family at that time.

Question 8th State who were the Sons living in his family at that time.

Answer 8th Henry Ogle and George W. Ogle.

Question 9th State what Thomas Ogle you have referred to in all your answers, whether the Father of Henry Ogle and George W. Ogle or their Brother.

Answer 9th It was Thomas Ogle Sr., the Father of Henry Ogle and George W. Ogle.

Cross Examinations by Defendants Attorney

Question 1st State whether you wrote this Deed in the house of Thomas Ogle Sr.

Answer 1st Yes Sir I wrote it in his house.

Question 2nd Was that in Jefferson County Missouri

Answer 2nd In Jefferson County Missouri, yes Sir.

Question 3rd Did Thomas Ogle Sr. ask you to write the Deed when you came there.

Answer 3rd Yes Sir

Question 4th Was Elizabeth Ogle living with her father at that time at the same house,

Answer, Objected to by Plaintiffs Council, and objection sustained by the Court,

Question 5th Did Mr. Tho^s Ogle say that he wanted you to write the Deed, to Henry and G. W. Ogle as they were good Boys and had taken care of him.

Objected to By Plaintiffs attorney, because bringing out new matter. — Objection overruled by the Court

Answer 5th Thomas Ogle Sr I cannot answer that question as it is asked. — Thomas Ogle Sr said he thought wished Henry Ogle and George W. Ogle ought to have the land. —

Question 6th What was the general condition of Mr. Ogle's health after the Deed was made,

Answer 6th for a while after the Deed was drawn, he was about in the same state of health as when it was drawn, that is he was puffy.

Question 7th Did you not see him at different houses after you wrote the deed.

Answer 7th No I cant say that I did.

Question 8th How long did Mr. Ogle live after the Deed was written. — Question objected to on the

ground of new matter, By Plaintiffs attorney, objection overruled by the Court,

Answer, 8th I cannot state the time

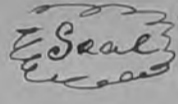
Witness again examined by Plaintiffs attorney

Question 1st What was the substance of that Deed and the consideration mentioned. Was Tho^s Ogle, Henry Ogle and George W. Ogle, the only parties to the Deed. —

Answer 1st The Deed was drawn by Tho^s Ogle Sr conveying the Land to Henry Ogle and George W. Ogle, they being the only parties to that Deed, the consideration for said Deed was a

stipulated sum, I cannot recollect the amt, and for the love and affection which he bore them.

James P. Watson.

State of Illinois }
 Jackson County } So I George Kennedy an acting Justice of the Peace in and for said County and State, do hereby certify that the foregoing deposition of James P. Watson was sworn to and subscribed by the Depoent, before me and in my presence, and that the said Deposition was taken by me on the 13th day of May A.D. 1857, in the Court House in the Town of Murphysboro in said County and State, between the hours of Eight O'clock in the morning and Six O'clock in the afternoon of said day, and that Erasures and interlining was done before signing } Given under my hand and Seal this 13th day of May A.D. 1857, George Kennedy J.P. 

State of Illinois }
 Jackson County } I Thomas L. Hall Clerk of the County Court in and for said County and State do hereby Certify that George Kennedy whose genuin signature appears to the above and foregoing Certificate is and was at the time of signing the Same an acting Justice of the Peace in and for said County duly Commissioned and Qualified authorized by Law to administer Oaths and take depositions. And that said County Court is a Court of Record In testimony whereof I hereunto affix my hand and Seal of Office at Murphysboro this 13th day May A.D. 1857
 Thos. L. Hall, Clerk C.C.
 By James P. Watson Deputy

John Smith et al
vs. Depositions
Henry H. Hooper et al

15-83

Opened and filed by me
May 19th 1854
Oliver Hooper clerk

Overseer by Plaintiff's
April 1858
C. Hooper clerk

cho

Justice Fees
Taking Deposition 1170 words
at 12 1/2 cents per 72 words — 2.02
Administering two oaths — 12 1/2
Certificate and Seal — 25
2.39 1/2

Rec^d my Fees in the cause of James Smith
George Kennedy J. P.

John Smith and others }
Att }
Henry and George W. Dyer }
and others }
Deposition in behalf }
of the Plaintiffs }

To the Clerk of the Circuit Court
of Jefferson County State of Missouri
Recd by hand of ad. Green Esqr.
& opened by me May 19th 1857
Chas J. Henry clk

John Smith & others }
vs } In the circuit court of
Henry Ogle & others } Jefferson County, Mo

The defendants demur to the petition for the following grounds of objection

1st That several causes of action have been improperly united

2^d That the petition does not state facts sufficient to constitute a cause of action

3^d That the petition is an action to set aside a deed and also an action of partition that these remedies do not belong to the same class of cases that in an suit of partition plaintiffs can not try the validity of the conveyance to defendants

4 That the suit is improperly brought that such proceedings contain no provision of subject matter Recd per defendants

5 Partition suit cannot be brought only on a legal title & plaintiffs cannot maintain a suit for equitable interference & a legal remedy.

6 There is no equity in the plaintiffs statement of cause of action Recd per defendants

John Smith et al

vs

Stor age et al

Devenance

Filed May 26 1857

Class 1st to 2nd

Am. M. C.

Am. M. C.

[Faint, mostly illegible handwritten text, likely bleed-through from the reverse side of the page.]

John Smith Hi Smith Thomas Ogle John Ogle Sarah
Pooley Charles T Pooley Harriet Vineyard Charles W S Vineyard
Mary Sampson, Eli Sampson Thomas Ogle Elbert Ogle
Jordan Ogle Margaret Ogle Elizabeth McCreery William
McCreery and Nancy, Adaline & Amanda Ogle by
Charles T Pooley their next friend William Ogle Elbert
Ogle Sander Ogle Mary Bull William Bull Eliza
beth McCurdy, Warren & McCurdy and Ellen, James,
Sarah, & Malvinda Ogle by James Smith their
Guardian Curator, Mary Smith, James Smith
Thomas Smith Malvinda Goza Joshua Goza Elizabeth
Goza John Goza, and Ferdinand, ~~Goza~~ Elbert, William
Mc & Francis Smith by James Smith their guardian
and Curator, Elizabeth Ogle James Ogle Mary Osborn
and Stephen Osborn Plaintiffs

Against

Henry Ogle George W Ogle
William Ogle and James Ogle

In the Circuit Court of Jefferson
County Missouri May term 1857

Amended petition filed by leave of
Court

Plaintiffs State that their Ancestor Thomas
Ogle Sen deceased on the 30th day of September A D 1843
being the legal Owner in fee of the following described tract of
land to wit "A certain tract of land Containing three
hundred and twenty acres On Washing Creek in Joachim
Township said County of Jefferson being the West half of
640 acres bounded East and South by lands of William
Bull Sen & William Bull Jr West by land originally
Owned by Philip Roberts and being in Survey No 2978
Township No 40 North of Range No 5 East and the
said Thomas Ogle on the day and year last aforesaid

being in a feeble state of health and of unsound mind
not capable of acting with ordinary judgment and
discretion in consequence of his imbecility and weakness
of mind. The said Defendants Henry Ogle & George W Ogle
~~William Ogle and James Ogle~~ taking advantage of the
weakness and mental imbecility of the said ~~Henry~~ Thomas
Ogle Senr. procured from him a conveyance for said tract
of land without paying him therefor any valuable or ade-
quate consideration. That said conveyance was obtained
from the said Thomas Ogle Senr. by said Defendants when
said Thomas Ogle was not expected to survive the illness
under which he was then laboring. and was an attempt
on the part of said Defendants to make a will for
said Thomas Ogle Senr. in the shape and disguise of
a deed of conveyance. Contrary to and in evasion of
the Statute of wills. Plaintiff further states that not
withstanding the severe illness of the said Thomas Ogle Senr
he recovered from the severe attacks under which he was
laboring at the time said pretended conveyance was
procured from ^{him} by Defendants as aforesaid. And continued
to live and reside on the said tract of land as if no
^{such} deed had ever been executed ^{until} about the
28th day of March A. D. 1847 ^{when he departed}
this life. That afterward to wit on the 29th day
of March A. D. 1847 the said Defendants pretending
to claim and own the said tract of land by virtue
of the said pretended conveyance to them; entered
into and upon said premises and have held
possession thereof and appropriated the rents and
profits of the same to their own use ever since
Plaintiff alleges that the said Defendants by fraud and
misrepresentation and by taking advantage of the im-
becility of mind of the said Thomas Ogle procured the
execution of said deed and obtained possession thereof
and fraudulently caused the same to be placed on record

that after said Thomas Ogle recovered from his said illness and was restored to his ordinary condition of mind he tried to induce said Defendants to restore the title to said land back to him but they refused so to do. That the said Thomas Ogle died at the time of his death left as his lawful heirs ^{eleven} ~~children~~ children to wit: 1. Elbert Ogle since deceased leaving issue as follows Harriet Vineyard wife of Charles W. Vineyard, William Ogle James Ogle Mary Sampson wife of Eli Sampson Thomas Ogle Elbert Ogle Jordan Ogle, Mary Ann Ogle Elizabeth de Greeny wife of William de Greeny Nancy Ogle Adalain Ogle and Amanda Ogle who are each entitled to one twelfth of ~~eleventh~~ ^{eleventh} part of said land subject to the dower right of Sarah Pooley wife of Charles J. Pooley who was the widow of said Elbert Ogle deceased and entitled to dower in said interest. 2. James Ogle since deceased leaving ten children to wit Wm Ogle Elbert Ogle Landen Ogle Mary Ann wife of Wm. Hall John Ogle Elizabeth de Canby wife of Warren, de Canby, Ellen Ogle, James Ogle, Sarah Ogle & Malinda Ogle who are entitled, ^{each} ~~each~~ each entitled to one ~~eleventh~~ ^{eleventh} ~~part~~ ^{part} thereof subject to the dower right of Mary Smith wife of James Smith who was the widow of said James Ogle deceased. 3. Lydia Smith wife of James Smith since deceased leaving the following children to wit Thomas Smith Malinda Goza wife of Antua Goza Elizabeth Goza wife of John Goza Ferdinand Smith Elbert Smith William de Smith and Francis Smith who are each entitled to one seventh of one ~~eleventh~~ ^{eleventh} ~~part~~ ^{part} thereof subject to the life estate of their father in said interest. as tenant by the curtesy. as surviving husband of their said mother. 4. Ibi Smith wife of John Smith, ^{John Ogle} & Elizabeth Ogle wife of James Ogle & Mary Osborn wife of Stephen & William Ogle ^{John Ogle} ~~Osborn~~ each entitled to one ~~eleventh~~ ^{eleventh} ~~part~~ ^{part} thereof and each of the Defendants who are each entitled to one ~~eleventh~~ ^{eleventh} ~~part~~ ^{part} thereof. all and no more.

Plaintiffs further state said Defendants William Ogle & ^{James} ~~Thomas~~
 Ogle sons of Elbert Ogle deceased refuse to join as plaintiffs
 as their suit and are therefore made Defendants. Plaintiffs
 pray that said deed so obtained by the said Henry Ogle
 and George W Ogle may by the decree of this Court be de-
 clared null and void that the same may be set
 aside that all the right and title which passed by
 said deed if any be acquired in the heirs and legal
 representatives of the said Thomas Ogle ^{as expressed} in the same
 manner & with like effect as if such deed had never
 been executed. that the plaintiffs may have judgment
 of possession for their respective interests in said lands
 and for the reasonable rents and profits thereof. And
 that they may also have judgment of partition
 of said land to be made according to the respective
 rights of the parties therein and for such other
 relief as in equity they may be entitled to.
 Green & Steel for plffs

Thomas Ogle, James Smith & John Smith
 three of the plaintiffs make oath and say they
 believe the above petition & the matters therein
 as stated are true

Sworn to and subscribed
 before me June 1st 1857
 Elias J. Hooley Clerk

Tho. Ogle
 James Smith
 John Smith

Attest June 1st 1857
 Elias J. Hooley Clerk

Amended Petition

John Smith & others
 vs
 Tho. Ogle & others

John Smith & others }
vs } In the circuit court of
Geo W Ogle & others } Jefferson County Mo

Defendants per answer to so much of the amended petition as they are advised is material state that Thomas Ogle was in good health at the date of the execution of the deed to the defendants Geo W & Henry Ogle, they deny that said Thomas was of unsound mind at the time of executing said deed and state that he was capable of acting with his ordinary judgment and discretion and Defendants deny all the allegations of the weakness and imbecility of mind of Thomas Ogle as charged. They deny that they took advantage of the weakness and mental imbecility of said Ogle, as he was in proper mind. Defendants therefore state that the conveyance referred to was freely and voluntarily executed by said Thomas for good and valuable consideration and deny that it was an attempt to make a will in disguise. Defendants state that Thomas lived several years after the execution of said deed and lived with Geo W Ogle & Henry Ogle from the date of the deed to his death. His wife had died before the execution of said deed & he had no family of his own, he was provided for by the defendants his sons, during this time he was perfectly content with the execution of said deed, Defendants always treated said Thomas kindly and did not leave the house of Defendants only visiting his children, & they deny

that said Thomas left them house from ~~instituted~~
cut. It is true Geo W & Henry Ogle claim
the land but they say that they were put
in possession of the land in controversy in
the life time of said Thomas and remained
in possession from then to date and state
that they have been in peaceful poss-
ession under said and from 1843 to the
institution of this suit and hold adversely
to plaintiffs. Defendants therefore deny
of the charges of fraud, undue advantage
false, and fraudulent ^{misrepresentation} pretenses, charged ag-
ainst them in the petition. They deny
that they came to the said and fraudulently
but state that it was delivered by said Thomas
to defendants as his act & deed while in proper
mind. They deny that Thomas Ogle ever
tried to get said land back from defendants
or any of them.

Defendants further state that one of the
objects of Thomas Ogle in making the conveyance
to Geo W & Henry Ogle was for the defendants
to take charge of & support him during
his life time and defendants did accordingly
by provide for him until his death.

Defendants further state that
Thomas Ogle being indebted to Elbert
Ogle and said Elbert wishing to have
the debt settled - the said Thomas requested
defendants to convey to him a portion
of said land in payment of said
debt. Defendants made the conveyance
as requested in discharge of said debt
and after the death of their father

Thomas they purchased said land of
said Elbert. This was before referred
to one half of the three hundred
and twenty acres.

These defendants now becoming
fully answered the allegations and
said petition pray to be heard discharging
with their costs.

Beal & Foxwell
attys for Dfs

Geo W Ogle makes oath and says
that the foregoing answer and the
contents therein as stated he believes
to be true

Sworn to and Subscribed, George W. Ogle
before me June 1st 1854 } Henry
Elias & Henry Clark }
his
mark
his
mark

John Smith & others

vs

Scott & Co

Answer of reply

Filed June 20 1854
Oliver & Honey Clerk

COUNTY OF JEFFERSON.

The State of Missouri,

To J. H. Burson, pro Heiskell, Chas. Vinyard

Greeting:

You are hereby commanded, that, selling under all manner of
excuse and delay, you appear before our Barred Court for the
County aforesaid, on the 26th day of November next
at Heiskell's; then and there to testify, and the truth to say in a
certain matter of controversy, now pending in our said Court, between
John Smith et al Plaintiff and

Henry the W. Cole et al Defendants on the part
of Defendants and herein you are in no wise to fail.

Witness, THOMAS G. FLETCHER, Clerk of our said Court

with the seal thereof hereto affixed, and office this

31st day of October A. D. 1854

Chas. J. Honey Clerk.

I Executed the within writ on C. W. Binegard
on the 9th and on John W. Hull on the 11th day
of November 1857 by reading in their presence
and hearing and also on J. H. Buren on the
25th day of Nov 1857 by him said Buren refuse
ing to hear it read Augustus Wiley Sheriff

do Circuit Court
Nov. term 1857

John Smith oral

do
Geo. M. Johnson Oral

for doct.

J. H. Buren

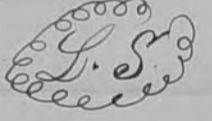
Geo. M. Hull

C. W. Binegard

Worship's fees \$1.50

John Smith and others } In the Circuit Court
 } of Jefferson County
 } Missouri
 } against
Henry & Geo W. Ogle

I hereby remise release and
quit claim all interest whatever it may be in
the subject matter of the said suit to Henry and
George W. Ogle, or whoever may claim to own
the land which is the subject matter of this suit
in consideration of One dollar by me received.
I also request that my name be withdrawn
as a party plaintiff in said suit.

Witness my hand and Seal
this 2nd day of November A.D. 1857.
Thomas ^{his} Ogle _{party} 

Attest.

Augustine Wiley
Elias J. Honey

John Southwell

no

Henry the 11. Oyle

Release of the 6 Oyle
to Henry the 11. Oyle

COUNTY OF JEFFERSON.

The State of Missouri

To Mrs. Juxton A. Johnston Mrs. Peggy. Albeck
Greeting:

You are hereby commanded, that selling and all manner of
concealment and delay, you appear before our Court for the
County aforesaid, on the 28th day of April next
at Wellbake; then and there to testify and the truth to say in a
certain matter of controversy, now pending in our said Court, wherein

John Smith et al are Plaintiffs and

Henry George W. Gyle are Defendants on the part

of defendants and bearing ye the true and just

Witness, ~~THOMAS S. HENDER~~ Clerk of our said Court

with the Seal thereof hereto affixed, at office this

11th day of March A. D. 1858

Oliver J. Honey Clerk.

I Executed the within writ on Wm Frost & G. Johnston
on the 18th day of March 1858 by reading in their presence
and hearing and also on Mrs Peggy Albert on the 9th
day of April 1858 by reading in her presence and
hearing

Augustine Wiley Sheriff

Robert Court

April Term 1858

John Smith et al

vs J. Spurr
H. v G. W. Ogbe

for debt

Wm Frost

G. Johnston

Mrs Peggy Albert

Sheriff fees \$1.50

COUNTY OF JEFFERSON.

The State of Missouri,

To J. H. Duvern, in & Hall. Et H. Singard

Greeting:

You are hereby commanded, that sitting aside all manner of
excuse and delay, you appear before our Sheriff David Fox the
County aforesaid, on the 28th day of April next,
at Hillsdale; then and there to testify, and the truth to say in a
certain matter of controversy, now pending in our said Court, between
John Smith et al. and Sheriff and
Henry George W. Dale are Defendants in the said
of defendants and herein you are in no wise to fail.

Witness,

Geo. S. Howrey
~~THOMAS G. HOWREY~~

Sherk of our said Court

with the said Sheriff hereto affixed, at office this

4th day of March A. D. 1858

Geo. Howrey

Clerk.

Returned Not served by order of Plaintiff's
Augustine Wiley Sheriff

Colinist Court

April Term 1858

John Smith et al

vs
John

vs
H. H. H. H.

for debts

J. H. Brown

vs
H. H. H.

vs
H. H. H.