

JUNE 1861

Johnston, Jas. L.
Johnston, Stephen F.
Johnston, Eliza Jane

VS

Keekuff, Casper H.
Spaulding, Vincent J.

Ejectment

204¹⁶/₁₀₀ acres on Survey No. 437;
51 acres on Survey No. 1940
on Sandy Creek, #25 damages;
bill of exceptions; Supreme Court

James S. Johnston, Stephen
S. Johnston, & Eliza Jane
Johnston, Plaintiffs

Against
Casper H. Reckruff, Deft. } In the Jefferson
& Vincent J. Shaulding } Circuit Court,
December 1866.

Plaintiffs state that they were on the 3rd day of January 1835 entitled to the possession of one ninth part as tenants in common of the following described real estate situated in Jefferson County Missouri viz. A tract of land containing 204¹⁶/₁₀₀ acres of land situated on the waters of Sandy Creek in said County confirmed to Benjamin Johnston Sr. in United States Survey No 437. & also a piece or parcel of land situated on said Creek & in Survey No. 440 confirmed to Benjamin Johnston Sr. containing 31. acres & a fraction over - being so entitled to the possession thereof that defendants afterwards went on the 6th day of January 1866 entered into said one ninth of said premises & unlawfully withheld the possession thereof from Plaintiffs

to their damage in the sum of Twenty five dollars.

Plaintiffs further aver that the rent & profits of said one month of said premises is fifteen dollars per month.

Wherefore they ask judgment for the possession of said one month of said premises & for Twenty five for their damages for the unlawfully withholding the possession of the same from Plaintiffs & for rents & profits.

Thomas Hagon
Atty for Plaintiffs

James L. Johnston make oath & says that he believes the above petition & the matters therein stated are true. Sworn to & subscribed J. L. Johnston before me this 7th day of Jan. 1866.

Elias J. Hooney Clerk

Genl. McIntosh et al
vs

Co. A. 1st Regt.

Expenditure

Adm. Jan'y 7th 1861

Edw. J. Honey
cash

The State of Missouri, } ss.
COUNTY OF JEFFERSON.

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

We command you, that you summon *Caspar H. Reckhoff*
and Vincent J. Spaulding

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 second
Monday after the fourth Monday of *May*
next, then and there to answer unto *James L. Johnston*
Stephen J. Johnston & Eliza Jane Johnston

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

Witness, **ELIAS F. HONEY**, Clerk of our said Circuit
Court, with the seal thereof hereto affixed, at office
in Hillsboro, this *Twenty 7th*
day of *January* A. D. 1861

Elias F. Honey

Clerk Circuit Court.

Judgment for Plff Dilly 11th 1864 Book No
5 page 56.

No 241

To Jefferson Circuit Court

Term Term 1861

Jas L. Johnston et al

vs J. Summons

Caspar W. Neekuff

Vincent J. Spaulding

Sheriff fees \$2.00

I Executed the within writ in the County of Jefferson
State of Missouri on the 29th day of January 1861
by Reading the same in the presence and hearing
of C. H. Kerkeuff and W. J. Spaulding and Delivered
C. H. Kerkeuff a copy of the within and an
next Partition as furnished to me by the
Clerk

Ascor Damer Sheriff
by J. C. Power Deputy

James L. Johnson, Stephen F.
Johnson, & Eliza Jane Johnson, - Plaintiffs
Against

Casper B. Kerckhuff, +
Vincent Spruelling - Defendants,

In the Circuit Court of
Jefferson County Mo.

The Defendants, for Answer to the Plaintiffs
Petition, deny that Plaintiffs were on the 5th day
of January 1855, entitled to the possession of the one
ninth part of the two tracts of Land described
in said petition, or any part of either, as Tenants
in Common or in any other manner, - They defend-
ants deny that they or either of them on the 6th day
of January 1855, unlawfully entered into the said
one ninth of said premises, and deny that they or
either of them, unlawfully withhold from the
possession of Plaintiffs the one ninth of said pre-
mises. Defendants deny that Plaintiffs have any
right whatever to the one ninth of said premises,
or to any part whatever, and deny that they are
damaged twenty five dollars by the action of these
Defendants, or any sum whatever, and deny that
they are entitled to fifteen dollars or any other
sum for rents & profits of said premises, -

Defendants further answering say, that the Land
described in plaintiff's petition, belonged to Benja-
mina Johnson, Jr, at the time of his death, and that af-
terwards, to wit, at the August Term 1840, of the
Circuit ^{Court} of Jefferson County Missouri, Benjamin John-
son, Jr, filed his petition for partition of said Land
among the Heirs of said Decedent, nine in number,
all of whom were regularly notified of said suit, as

will fully appear by the record of said proceedings, and in which suit, Benjamin Johnson Jun, represented the interests of the Plaintiffs in this suit, he being their Guardian at the time, - at the December Term 1840, of said Court, a decree was made, establishing the rights of the parties therein, and giving to the above plaintiffs one ninth of the aforesaid premises, ^{as the heirs of John B. Johnson} & appointing Commissioners to divide the same, & at the March Term 1841, the said Court ordered a sale of said Lands, which was made & confirmed at the July Term 1841, - At said partition sale, Henry Snowden became the purchaser of the Lands described in Plaintiffs petition, & afterwards received a Deed for the same. He afterwards conveyed one hundred acres of the 302 ¹⁶/₁₀₀ acre tract to Vincent Spaulding one of ^{the} above defendants, and the residue of said Lands were conveyed by said Snowden to C. W. Kerckhuff, defendant herein. - Defendants therefore say they are the legal owners of the Lands described in Plaintiffs petition, that is, - that said Spaulding owns in fee one hundred acres thereof, which is properly described in his Deed for the same, and has been divided from the other tracts, and he is now rightly in possession of the same, - and that said C. W. Kerckhuff is the legal owner in fee of the residue of said Lands, & rightly in possession of the same. They therefore deny Plaintiffs right to the possession of one ninth of said premises, or to maintain any action against these Defendants, or either of them for the recovery of said premises, As Defendants aver that all the right, title and interest which plaintiffs ever had to the Lands aforesaid

as the heirs of John W. Johnson, deceased, who was
one of the heirs of the said Benjamin Johnson
Sr, has been legally sold by order of a Court
of competent Jurisdiction, and purchased by the
said Henry Snowden, and by him conveyed
to the Defendants, as will fully appear by the
Proceedings of said Circuit Court, in said par-
tion suit, and the Deeds of ^{said} Snowden & the
Defendants, all of which are herewith exhibited
as part of this answer.

A. Green, & J. J. Williams
Attorneys for Defendants

Abner Green, Attorney for the Defendants,
makes oath and says the above Answer and the
matters therein as stated he believes to be true,

Abner Green
Atty.

Sworn to before me
this 7th day of April 1863
Elias F. Honey Clerk

In Circuit Court
Jefferson County

Jos. D. Johnson
and others

vs,

E. W. Hartsuff
J. B. Spaulding

Defendants
(Plaintiff)

Filed April 4th 1863
Wm F. Hoover
Clerk

James L. Johnston, Stephen F.
and Eliza J. Johnston, Plaintiffs
Against

Kasper H. Kerkuff, and
Vincent J. Spalding, Depts

Now at this day
Come the Plaintiffs, and for replication
to answer of Defendants heretofore
filed in this behalf state that it is true
as is in said answer alleged that Ben-
jamin Johnston Sr. owned the land in
controversy at the time of his death
that about the year 1840 Benjamin
Johnston Jr. filed his petition in the
Jefferson Circuit Court praying
partition of said land among the heirs
of said Benjamin Johnston Sr., nine in
number, but these Plaintiffs deny that
they were regularly notified of the filing or
the objects of said petition. They allege
that at the time of the filing of said petition
by said Benjamin Johnston Jr. they were
mere children, under the age of twenty
one years: that they were made defend-
ants in said petition: that said Benjamin
Johnston Jr. was Plaintiff & the only party
Plaintiff to the petition & that although said
Benjamin Johnston Jr. was Plaintiff & these
Plaintiffs were Defendants, still he

the said Benjamin Jr. pretending to be guardian of these Plaintiffs, waived notices for them as Defendants in said position, which action of said Benjamin Johnston Jr. in filing a petition as Plaintiffs & then waiving notices for minor Defendants as their guardian is fraudulent & void and does not bind these Plaintiffs who are now of age & now distinctly repudiate the action of Benjamin Johnston Jr. in their behalf in said suit. They further allege that they never received one Cent from the sale of said land & that their interests were not looked to in said position suit as they should have been.

Plaintiffs further aver that the judgment in said position is void as against them because judgment was rendered against them at the return term of the notice.

Thomas

Attys for Plffs

J. L. Thomas makes oath & says that he believes the above replication & the matters therein stated are true.
Sworn to & sub. sworn before }
on May 7th 1863. } John L. Thomas
Elias J. Hooney clerk

J. A. Johnston et al

vs

H. W. Keokuck et al

Replection -

Filed May 7th 1863

Oliver J. Hoovey

Debit

THE STATE OF MISSOURI,

To

County of JEFFERSON.
Henry Brown Clerk

GREETING :

You are, hereby, Commanded, That setting aside all manner of excuse and delay, you appear before our Circuit Court for the County aforesaid, on the ~~24th~~ 18th day of June 1863 at Hillsboro, then and there to testify, and the truth to say in a certain matter of controversy, now pending in our said Court, wherein Joel Robinson et al Plaintiff and Le H. Worth et al Defendant on the part of ~~Left~~ and herein you are in no wise to fail.

WITNESS, ELIAS F. HONEY, Clerk of our said Court,

with the Seal thereof hereto affixed, at office, this

13th day of June A. D. 1863

Elias Honey
Clerk.

TO JEFFERSON CIRCUIT COURT.

Jan, 186

J. L. Johnston

C. R. Merchhopper

Shruff fees 50

I solemnly swear that within the present
by reading the same in the present
and hearing of Henry Brander
the 17th day of June 1863

Lib. James Deputy
Shruff

James L. Johnson,
and Others,

vs.
C. H. Kerckhoff &
V. Spalving.

In the Circuit
Court of Jefferson
County Missouri

The Defendants by their Attorneys
move the Court to set aside the verdict
of the Court, sitting as a Jury, and the
Judgment rendered in the above Cause,
for the following reasons;

- 1- Because the Court erred in refusing
the declarations of law, asked by the
Defendants,
- 2- Because the finding of the Court is
against the evidence in said Cause,
- 3- The finding of the Court is contrary
to the law of the case,
- 4- The Court erred in setting aside the de-
cree of the Circuit Court of Jefferson
County, so far as Plaintiffs interests
in the lands sold was affected,
- 5- The Court erred in finding the issue
for plaintiffs, and in rendering
Judgment in their favor,

}
A. Green, &
J. J. Williams
Attorneys for Defendants,

1

Genl. Johnson
and others

¹⁸
E. W. Henschhoff
J. V. Whelaning

Brothers
Johns that

Filed July 11th 1864
Geo. J. Henshaw
Clerk

Overruled

Jas. L. Johnston et al
vs
 C. A. Herkoff et al

But it remembered that on the 18th day of May 1865, it being the 9th judicial day of the May Term of the Jefferson Court for 1865, all & singular the matters & things in controversy in the above entitled Cause were by mutual Consent of the parties submitted to the Court. And the Plaintiffs to sustain the issue on their part read their petition relying on the admissions of Defendants' answer, closed their Case. Defendants to sustain the issue on their part offered to read in evidence the petition records & proceedings of a case determined in the Jefferson Circuit in 1841, wherein B. Johnston was Plaintiff and L. N. Hays et al were Defendants, also a and of the Sheriff of said County under said proceedings to Henry Snowdon, which proceedings, records, petition & deed are in words & figures as follows to wit (here copy) to the introduction of which Plaintiff objected & ~~excepted~~, but the Court permitted Defendants to read the same, to which ruling of the Court Plaintiffs at the duly ~~excepted~~. It was here admitted by Plaintiffs that Henry Snowdon had conveyed to both Defendants all the right & title to the land sued for, which he acquired by said

It was admitted by Plaintiffs that B. Johnson Jr. was the proper guardian of the Plaintiffs in this suit when the said partition suit of B. Johnson Jr. against Louisa Bolton & others was brought and determined. The jury did, Defendants here closed their case.

Plaintiffs asked the Court to declare the law as follows (here copy) which declarations of law the Court refused to give to which Plaintiff at the time duly objected & excepted. ~~It was admitted that B. Johnson Jr. was the proper guardian of these Plaintiffs in 1844~~ 1841 & 1842

The Court then gave at the instance of Defendants the following declarations of law (here copy) to which Plaintiffs at the time duly excepted. Whereupon the Court gave judgment for Defendants as follows (here copy)

Plaintiffs on the 19th day of May 1865 filed their motion for a new trial as follows (here copy) which was by the Court overruled to which ruling of the Court Plaintiffs at the time duly objected & excepted. There in open Court tenders this their bill exceptions & pray that it may signed sealed & made a part of the record in this cause which is accordingly done.

Let it now be

Read

Johnson et al

vs

Bankrupt et al

Bill of Exemption.

Filed May 19, 1865
Samuel H. Johnson
clerk

John L. Johnson, Stephen J. }
 Johnson, & Eliza Jane Johnson, — Plaintiffs }
 Against }
 Casper W. Keokuff, & }
 Vincent J. Spaulding, — Defendants, }
 In the Circuit Court of }
 Jefferson County, Missouri, }

Be it remembered, that at the ad-
 journed December Term 1863, of the Circuit
 Court of Jefferson County aforesaid, to wit,
 on the 11 day of February 1864, the above
 Cause coming on for trial, and being sub-
 mitted to the Court, the Plaintiffs to
 sustain their Cause of action, read their
 Petition, ^{replication} and offered the following evidence
 as to the rents & profits of the Land described
 in their petition, to wit, the rents & profits
 of the premises were worth \$3.50 or \$4.00 per month.
 And thereupon the Plaintiffs, relying upon
 the admissions of ^{Answer} Defendants, closed their
 case without further evidence,
 The Defendants then to sustain their
 defence, read in evidence the record and
 proceedings of the case of Benjamin John-
 son Jr, plaintiff, against Thomas Bolton
 & Louisa his wife, and others, defendants,
 in the Circuit Court of said County, in
 partition, returnable to the August Term
 1860 of said Court, to wit, the Petition of
 plaintiff, Notice to Defendants, Affidavit,
 order of publication, ~~default~~, decree, and
 order of sale, and Report of the Sheriff, in

words and figures as follows, (here copy the whole of said record & proceedings,) The Defendants then read in evidence the record of the County Court of said Jefferson County, at the Term 1840, appointing Benjamin Johnson Jr, Guardian for James, Stephen F. and Eliza Jane Johnson, in words and figures as follows, (here copy same from the record) also, the Bonds of said Benjamin Johnson Jr, as Guardian of said minors, in words & figures as follows, (here copy the same). The Defendants then read in evidence the Deed of the Sheriff of said County to Henry Snowden as the purchaser of said Lands in partition, being the same described in these Plaintiffs, petition, dated 29 November 1844, in words & figures following (here copy same from the record) The Defendants then read in evidence the Deeds of Henry Snowden to Vincent J. Spaulding, for a part of said Lands, dated respectively, January 6th 1848, and June 18th 1863, as follows, (here copy from the record both of said Deeds,) Defendants then read in evidence a deed from said Henry Snowden to Casper Keokuff, or Kerchhoff, to a part of the Lands aforesaid, dated February 25th 1833, in words & figures as follows, (here copy said deed from the record) The Defendants here closed their evidence, and the foregoing being all the evidence introduced upon the trial of said Cause, The Plaintiffs thereupon asked

the Court for the following declarations
of Law, To wit, (here copy the several
declarations ^{of law} asked by plaintiffs) which
said declarations ^{of law} as prayed by plaintiffs
were given by the Court, to which de-
cision of the Court in declaring the law
of the case, as asked by the Plaintiffs,
the Defendants at the time objected
and excepted. The Defendants then
asked the Court to declare the law as
follows, (here copy the several declara-
tions of law asked by Defendants,) but
the Court refused to declare the law
as prayed by defendants, to which de-
cision of the Court in refusing to declare
the law as prayed by defendants, the
Defendants then ^{there} ~~and~~ accepted. The
Court then found the issue for plaintiffs
and rendered the following judgment
for the plaintiffs
To wit, (here copy the same) The De-
fendants then filed their motion to
set aside the finding & judgment of
the Court, and grant them a new trial,
which motion is in words & figures
as follows, (here copy motion for new
trial) which said motion was by
the Court overruled, to which decision
of the Court, in overruling Defendants
motion for a new trial, the Defendants
then & there accepted, and here pre-
sents their Bill of exceptions to the
several rulings & decisions of the Court
as aforesaid, and prays that the same

may be signed, sealed, and made a
part of the record in said Cause, which
is accordingly done, *J. L. Thomas Seal*

It was further agreed between the parties that
no objection should be made against the Verdict
of Plaintiffs, on account of a misjoinder of the
Defendants by reason of their occupying
different & separate portions of the land
sued for

We, John L. Thomas, & James A. Beal, Att-
orneys for the Plaintiffs in the above Cause, and
Abner Green, Attorney for the Defendants do
hereby agree and consent that this Bill of exception,
in said Cause be signed, sealed, and made a part
of the Record in said Cause, by the Judge at
this June Term 1864 of said Court

J. A. Beal & J. L. Thomas,
Attys for Plaintiffs,
Abner Green, Attorney
for the Defendants,

In Circuit Court
Jefferson County

James L. Johnson
vs.

Carpenter Woodruff &
W. J. Sparland

Bill of Exception

Filed June 10 1864
E. H. Honeywell

James L Johnston
and others

C. M. Kerckhoff &
V J Spaulding

In the Circuit
Court of Jefferson
County Missouri

Be it Remembered

that on the Trial of the above

caused to cause the plaintiffs to

sustain their action ^{Read in evidence}

the petition ^{order of Publication, & Defunct and Decree of} Notice ^{Dec Term} and order of sale in

a certain suit for partition between

Johnston Jr plaintiff and Thomas

Bolton & Louisa his wife & others

Defendants commenced in the Circuit

Court of Jefferson County Missouri

About the August Term of said

^{also evidence} Court 1840, ^{and also as to the value of the rents and profits of the land in} which petition Notice

^{their said petition mentioned} and order of sale are in words as

follows To wit, (here copy same)

and thereupon closed their evidence

Defendants then to sustain their

Defence read in evidence the petition

Notice and order of sale so as aforesaid

Read by plaintiffs and the proceedings

in the said Court in said Cause in

words & figures as follows (here refer

to copy of said papers) Defendants

then read in evidence the report of the

Sheriff of the sale of the Real estate in
said order of sale mentioned as follows
(here copy) Defendants then read in
evidence a deed from the Sheriff to
Henry Snowden as the purchaser of
the Lands in said Partition suit, in
words & figures as follows (here copy deed)
Defendants then read in evidence Deed
from Henry Snowden to ^{Beating date November 29th 1844} These Defend-
ants of said Lands in words & figures as
follows (here copy deed) Defendants <sup>Beating date as follows January 6th 1848 and
June 18th 1863 To Defendant Herckhoff February 25th 1853</sup> Defendants XXX
then asked the Court to give certain
instructions which were as follows (here
copy them) but the Court refused to
give said instructions, to which action
of the Court in refusing to give said
instructions so asked by Defendants
Defendants then & then objected and
excepted the Court then sitting as
a jury found in favor of plaintiffs
and against Defendants & rendered
judgment in favor of said plaintiffs
and against Defendants which finding
and judgment of the Court is in
words & figures as follows (here copy)
Defendants then filed a motion to set
aside the finding of the Court and grant
Defendants a new Trial which motion

was in words & figures as follows (here copy
motion) which being seen by the Court
is by the Court overruled to which
action of the Court in overruling said
motion Defendants then ~~and~~ and their
Accepted and here present their Bill
of Exception which they pray may be
signed sealed and made a part
of the record which is accordingly done

James W. Adams Seal

J. L. Johnston, M.A.,
to Mr. A. Cockfield
M.A.

Bill of Reception

Recd July 12 1864
Elias J. Hooley
Clerk

In the Supreme Court held at St. Louis, of the State of Missouri,

October Term 1864
Monday December 19th 1864

James L. Johnston
Defendant in Error

vs
Casper H. Kerkhoff and
Vincent J. Spalding
Plaintiffs in Error

Error

To

Jefferson Circuit Court

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Circuit Court within and for Jefferson County be reversed, annulled, and for naught held and esteemed: That the said Plaintiffs in Error be restored to all things which they have lost by reason of the said judgment: That the said cause be remanded to the aforesaid Circuit Court for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered and filed, and that the said Plaintiffs in Error recover of the said Defendant in Error their costs and charges herein expended, and have execution therefor.

STATE OF MISSOURI, SS.

I, ANDREW W. MEAD, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this Nineteenth day of December A. D. eighteen hundred and Sixty four

Andrew W. Mead Clerk.

Supreme Court of Missouri.

James L. Johnston

vs

W. H. Korschhoff & Co

MANDATE.

Judgment of the Supreme Court
Reversed and Remanded,

Filed Dec 23 1864

Chas. F. Honey Clerk

In the Supreme Court of the State of Missouri
held at St. Louis
James. L. Johnston et al. Defts in Error } Thomas V
vs } Hagan Atty for D.E.
C. H. Kerkhoff et al Plffs in Error. } A. Green Atty
for P.E.

Error to Jefferson Circuit Court.

This is an action of ejectment for one ninth of a tract of land in Jefferson County. The plaintiffs claim title as heirs of Benjamin Johnston senior deceased. The defendants claim under a Sheriff's sale made under an order of sale on a judgment in partition to which the plaintiffs were parties. The plaintiffs reply that the judgment in partition is void as to them because they allege that they were not properly made parties to the proceeding. It appears that Benjamin Johnston Junior was one of the heirs of Benjamin Johnston Senior as were also the plaintiffs who were minors and wards of B. Johnston Junior that B. Johnston Junior filed a petition for partition (under the act of 1833) and with it a notice of his intention to do so, upon which was written a waiver of notice, signed by several of the defendants and by himself as guardian of the plaintiffs herein who were defendants in that proceeding and an order of publication against some absent defendants was made. At the next

term of the Court a judgment was rendered, ascertaining the rights of the parties and appointing Commissioners to make partition, and again at the next term thereafter, the Commissioners reported that the land could not be divided, and the final judgment was rendered that the land should be sold.

The judgment rendered at the second term, ascertaining the rights of the parties recites that "the order of publication made at the last term of this Court having been complied with and the parties interested as far as are known who are residents of this State having been individually served with process according to law" &c. At the trial of this case the Court at the instance of the plaintiff gave to the jury the following instructions —

1. The Sheriff's deed read by defendant in partition suit, conveys no title to the one ninth of the lands sued for in this suit, and the same is excluded from the consideration of the Court.
2. B. Johnston Jr. being plaintiff in the partition proceeding and others (plaintiffs) being made defendants therein, the said B. Johnston had no power to waive notice for them and his action in the premises is irregular and void as to said plaintiffs.

they being minors at the time.

3 A final judgment cannot be rendered at the return term of the writ.

Judgment was given for the plaintiffs and the defendants have brought up the case by writ of error.

The Court erred in the instructions given.

However defective B. Johnston's waiver of notice for his wards the plaintiffs may have been, the record also shows that they were "individually served with process according to law" and this record is undeniable, and being so in Court they were bound by the judgment and the sale under it.

The third instruction is a general declaration of law not applied and not applicable to the facts of this case, for the judgment was not rendered at the return term.

Judgment reversed and cause remanded
Barton, Bates

Judges Bay and Dryden concur.

State of Missouri S.S.

I, Andrew W. Mead Clerk of the Supreme Court, held at St Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the

Opinion delivered by the Court in the above entitled
cause as fully as the same remains on file in
my Office.

In Testimony Whereof I have
hereunto set my hand and affixed
the seal of said Court at office
in the City of St. Louis this 27th
day of December A.D. eighteen
hundred and sixty four.

A. A. Mead

Clerk

Supreme Court—

Johnson et al vs Smith et al

~ ~ ~ ~ ~
Certified Copy Opinion
~ ~ ~ ~ ~

Ed
Ad

Filed Nov 26th 1864

Chas T Healey
Clerk

J. S. Johnston et al
v.
C. H. Kerkhoff et al }

Now at this day Come the Plaintiffs move the Court to set aside the judgment in this cause & to grant them a new trial for the following reasons:

1. Because the Court erred in admitting the evidence offered by Defendants.

2. Because the Court refused proper instructions, & gave improper instructions.

Thomas
for Plaintiffs.

Phinton et al
vs
Berkhoff et al

Motion for New Trial.

Filed May 19 1865 -
Samuel H. Pope
Clerk

James L. Johnson
and others
vs.
S. H. Kerckhoff, &
Vincent Spaulding

The Defendants ask the Court
to declare the Law of the case as
follows:

- 1- If the Court believes from the evi-
dence that Benjamin Johnson was
the lawful guardian of James,
Stephen, & Eliza Johnson (the plain-
tiffs) at the time the Partition suit
of said Ben. Johnson against G. J.
Johnson & others was brought in
the Circuit Court of Jefferson
County Missouri, and that said
Ben. Johnson as such Guardian
did waive notice in writing for
them by signing their names to the
notice and his own as their Guardian,
then such Notice to them was suf-
ficient.
- 2- If then the Plaintiffs in ^{this} suit, was rep-
resented in said Partition suit, by Benjamin
Johnson as their Guardians, then the
decree of the Circuit Court in said partition

suit is conclusive and binding on Plaintiffs
and they cannot recover.

3 - As Benjamin Johnson as Guardian of
Plaintiffs had the right to make them
Plaintiffs in said Partition suit with
himself, it is immaterial whether he
made them plaintiffs or defendants,
if he represented them in such
suit as their Guardian.

Benjamin Johnson

and others

vs,

C. M. Kerckhoff

W. Shalving

Declaratory

of Law, asked by

Defendants

Reynolds

J. L. Johnston et al
vs
Westcott & Spaulding

XXX
The court gives the following
instruction on behalf of the Def, the State for the

The Plaintiff, ask the Court to declare
the law in the case as follows

1. The Plaintiff's deed read & dependent
in position and converge no title to the one
with of the lands and for is the said
the same is excluded from the consideration
of the Court

2. D. Johnston Jr being Plaintiff in the position
and proceeding with these Plaintiff's being much
dependent thereon, the said D. Johnston shall
be power to receive notice for ~~under~~ ^{there} ~~of~~ ^{the} ~~defendants~~
this action in the premises is irregular
knowing as to said ~~premises~~ ^{Plaintiff's} the being known at the time

3. A final judgment cannot be rendered at
the return term of the Court and

J. L. Johnston et al

vs

C. H. Kerkhoff et al

The Plaintiffs ask the Court to declare the law of this case as follows.

1. The record stating that Defendants were served with process is no evidence of the fact that they had been so served.

2. B. Johnston's waiver of notice for his three minor wards, they being Defendants the being Plaintiff was void & they having no notice of the proceedings for the partition of the lands in controversy, the judgment is absolutely null & void & Plaintiffs are entitled to recover.

3. In the partition proceeding introduced in evidence by Defendants, there being no guardian ad litem appointed for the minor defendants in said partition proceedings, no judgment could be rendered against them which was binding.

4. A final judgment in partition proceedings cannot be rendered at the return term.

St. Paul et al

3

Wm. H. H. H. H. H.

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