

copy of the amended order of publication in this cause, be sent to the Sheriff of Ogle County, Illinois to be served on William H. Powell, residing in Polo, Ogle County, Illinois, giving notice to the said William H. Powell, a non-resident defendant, of the object and substance of this Bill, warning him to be and appear in this Court, in person or by Solicitor, on or before the 1st day of May, 1916, to answer said Bill, and to abide by and perform such decree as may be passed therein.

Filed March, 24th, 1916.

Glenn H. Worthington.
Judge Circuit Court for Frederick County.

O P I N I O N O F T H E C O U R T .

Jesse Dusing et al	"	No. 9323 Equity In the Circuit
vs.	"	Court for Frederick County,
Sophonra Stockett et al.	"	Sitting as a Court of Equity.
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This is a proceeding for the sale of the real estate of Malinda Dusing, late of Frederick County, deceased, for the purpose of partition. The lands of which it is alleged she died seized and possessed consisting of two parcels, to wit:—One of 5-3/16 acres, and one of 18-1/4 acres. There is no dispute about the decedent having title to the first mentioned parcel of 5-3/16 acres, but as to the 18-1/4 acre it is contended on the part of the defendant, and especially by Mrs. Sophronia Stockett, that the latter parcel belonged to Jacob Dusing, the husband of the said Malinda, and not to Malinda herself. The evidence in the case shows that the 18-1/4 acre tract was conveyed to Jacob Dusing, September 27, 1852, by deed recorded in Liber E. S. No. 4, folio 482, but that the same was seized and sold by the Sheriff in July, 1861, to Simon C. Simmons, under and by virtue of a judgement and execution against the said Jacob Dusing; the deed to Simmons being dated July 17, 1861. After the sale and conveyance by the Sheriff, no deed appears of record concerning this 18-1/4 acre tract until 1911, when Jacob Dusing undertook to convey the same to his daughter, Sophronia Stockett,

It is shown that the title passed out of said Jacob by virtue of the Sheriff's sale and conveyed in 1861, and vested in Simon C. Simmons. The testimony is to the effect that one, George Ambrose, bought of Simmons, the tract in question, but no deed is found or writing of any kind, concerning the transaction. Several of the witnesses speak of George Ambrose as the person through whom the property was obtained from Simmons for the use and benefit again of the Dusing family, but, as has been said, no writing of any kind is produced to show in whom the title vested, whether in the husband, Jacob Dusing, or in the wife, Malinda Dusing. One or two witnesses testify to a receipt held by Jacob Dusing showing the payment by him in installments of the sum due George Ambrose as agent or intermediary in obtaining the property from Simmons, but the receipt was not produced and was said to have been lost. Wm. H. Kuhn, a witness for plaintiffs, testified that he knew that "George Ambrose got it settled and fixed up, and turned it over to Malinda Dusing", that Malinda Dusing said the land was hers, but that he didn't know who paid Ambrose for it. George Dusing testified that both Malinda and Jacob Dusing said the property belonged to the wife. John W. Hoover testified that Jacob Dusing told him, after the death of Malinda, that the property belonged to his children, and it was generally known that the property in dispute belonged to Jacob's wife. Mrs. Catharine Fry (aged 75 years) testified that Malinda said the disputed property was hers. H. L. Gaver, Clerk, testified that the property was assessed to Malinda Dusing in 1867, and that he could find no assessment of this property to Jacob Dusing after that date. Finally in a suit in No. 8346 Equity, Jacob Dusing testified as follows:— (Referring to the disputed property in this case) "I set my support there but it belongs to my first wife's children, but I have a life estate in it." Objection was made to this testimony because the parties in No. 8346 Equity were not the same as in this case.

Marshall vs. Haney, 9 Gill, 251,
Walters vs. Riffin, 19 Md. 536,
Price vs. Lawson, 74 Md. 499.

But a declaration against one's own interest is admissible as evidence, and we can see no reason why the fact of the declaration being made under the sanction of an oath should render such a declaration inadmissible. In other words we are of opinion the rule referred to does not apply where