#1459

George Gear et al)
vs)Certified copy of abstract
Charles L. Gear)

(Filed for Record Feb.27°A.D 1904 at 3:25 o'cl
(P. M. W. H. Vance,
(Recorder.
3571

[illegible] County Surveyor ✓ :
George Gear, Wesley Gear, :
Elizabeth Gear and Emma Linn, :
vs. :
Charles L. Gear, Josephine M. Gear,)
Lucy Ann Gear, Arthur D. Gear, :
Elizabeth Gear, Ida May Evans, John E.:
Lindsay, Mortimer E. Lindsay, Calvin :
Lindsay, Wesley Lindsay, Frank Lind- :
Lindsay, Oscar Rodgers, Elizabeth Rod-:
gers, Miranda Reed, Milton Gear, John :
E. Gear, Willard Gear, Ellen Vanplew :
Leora E. Gear, widow of Richard Gear, :
deceased, and Martha Simpson. :

Action in partition in the District Court, Adair County, Iowa. Cause #2780. Proceedings show:-- Petition, filed Mar.2, 1892, and amendment thereto filed July 22. 1892. allege:-That Luther Gear died intestate seized of an absolute and unqualfied estate in fee simple, of the W. 9 acres of the S.15 acres of W½ SE¼, NW¼? 6,76. 29,west of the 5th.principal meridian, (and other lands in Adair County Iowa), and that the estate of said decedent has been, fully settled and debts paid. That said decedent, Luther Gear, left surviving him, his widow, Elizabeth Gear, one of the plaintiffs, who is the owner of an undivided 1/3 of all of said premises, and George Gear, Wesley Gear and Emma Linn, plaintiffs, also Miranda Reed, Milton Gear, John E. Gear, Ellen Vanplew, Willard Gear, and Martha Simpson, sons and daughters o f said deceased, and each the owners of undivided 1/18 of said land.

That Richard Gear was a son of said Luther Gear, deceased, and died prior to the death of said decedent, and left surviving him, Josephine M. Gear, Charles L. Gear, Lucy Ann Gear (who is called Annie L. Gear in probate records of Richards Gear's estate and called Laura A. Gear in probate records of Luther Gear's estate), Arthur D. Gear and Elizabeth Gear, his

children, who are each entitled to an undivided 1/90 of said lands. That Beulah Rodgers, a daughter of said dececent, died prior to the decease of said Luther Gear leaving surviving her, her children, Oscar Rodgers and Elizabeth Rodgers who are each entitled to ann undivided 1/36 of said lands.

That Adelia Lindsay, a daughter of said dececent died prior to hhs decease leaving surviving her, her children, Ida May Evans, John E. Lindsay, Mortimer E. Lindsay, Calvin Lindsay, Wesley Lindsay and Frank Lindsay who are each entitled to an undivided 1/108 of said lands.

That said lands cannot be equitably divided among the plaintiffs and defendants and that it will be necessary to sell the same.

That plaintiff, Elizabeth Gear, is entitled to her one third of said premises to be set offso as to include the homestead.

Asks that the several shares and interests of the parties be ascertained, established and confirmed, and that said premises be sold and the proceeds divided. petition is verified but the amendment is not verified.

Affidavit of non-residence of defendants, Ida May Evans, Miranda Reed, Martha Simpson, Ellen Vanplew, Milton Gear and John E. Gear, filed Feb. 25, 1892, and of Ida May Evans, John E. Lindsay, Mortimer E. Lindsay, Calvin Lindsay, Wesley Lindsay, Frank Lindsay, Oscar Rodgers, Miranda Reed, Milton Gear, John E. Gear, Ellen Vanplew, Willard Gear and Martha Simpson, filed Jul. 22, 1892.

Original Notice, to appear on the second day of the Term commencing Mar. 29, 1892 served on all the defendants, (except the five Lindsays), by publication in the Greenfield Transcript four consecutive weeks, the last publication being Mar. 17, 1892, as shown by the affidavit of a proprietor of said newspaper, filed Mar. 18, 1892, also served personally on Leora Gear, Elizabeth Gear, Arthur D. Gear, Anna L. Gear, Charles L. Gear and Elizabeth Rodgers, Mar. 3, 1892 in Adair County, Iowa.

Service accepted Mar. 5, 1892 by Josephine M. Gear at Vinton, Iowa, waiving time and all irregularities.

Original notice, to appear on the second day of the term commencing Aug. 30, 1892, served on the five Lindsays, Oscar Rodgers and Willard Gear by publication in the Greenfield Transcript four consecutive weeks, the last publication being on Aug. 18, 1892, as shown by affidavit of a proprietor of said newspaper, filed Aug. 30, 1892.

Answer of guardian ad litem for Elizabeth Gear, Arthur D. Gear, Lucy Ann Gear, John E. Lindsay, Mortimer E. Lindsay, Calvin Lindsay, Wesley Lindsay, Oscar Rodgers and Elizabeth Rodgers, minor defendants, filed Sep. 6, 1892, is a general denial.

Decree, dated Sep. 6, 1892, entered in jounal 6 page 216. The Court finds that all the defendants have been legally served and a default is entered against Charles L. Gear Josephine M. Gear, Liranda Reed, Milton Gear, John E. Gear, Ellen Vanplew, otherwise called Nellie, Willard Gear, Martha Simpson, and Ida May Evans, and it appearing to the court that Oscar Rodgers, Elizabeth Rodgers, otherwise called Lizzie, Arthur D. Gear, Elizabeth Gear, Lucy Ann Gear, Mortimer E. lindsay, Calvin Lindsay, John E. lindsay, Wesley Lindsay, Frank Lindsay, and Oscar Rodgers, are minors and the court appoints a guardian ad litem for them, and on the same day the cause coming on for hearing, the said guardian ad litem appears and files his answer, and the court finds that the allegations of plaintiff's petition as amended are fully sustained.

That plaintiffs and defendants are the absolute and unqualified owners in fee simple as tenants in common of the west 9 acres of the south 15 acres of the W½, SE¼, NW¼, 6, 76, 29, and other lands, and that plaintiffs and defendants are entitled to shaes as alleged in plaintiff's petition, and that the land cannot be equitably divided and should be sold and the proceeds divided. Court orders that the several shares and interests of the parties are hereby established and confirmed; that said lands be sold at public or private sale and for that purpose J. M. Mccaulley, George Robertson and J. G. Wetrich are appointed referees with powers and duties intrusted by law to such officers and who are to give bonds in the sum of $20,000.

Bond of said referees in the sum of $20,000. is filed and approved Oct. 22, 1892. Report of said referees, filed Nov. 11, 1892, entered in journal 6 page 243, shows that on Oct. 22, 1892, they sold the west 9 acres of the south 15 acres of W½ SE¼, NW¼, 6, 76, 29, at public sale to J. C. Allen for $90., (and other lands to other parties).

Decree, dated Nov. 11, 1892, entered in journal 6 page 245. The said report of said referees is approved and confirmed and each of the sales so reported are approved, ratified and confirmed, and the said referees are ordered to convey to the several purchaser thereof, and on the same day the several deeds were presented in open court and were by said court approved and the clerk ordered to endorse upon each of said deeds a proper certificate of approval thereof.

Further proceedings show that on Mar. 27, 1895 said referees filed their final report, and that on the same day a decree was entered in journal 7 page 107 in which the court finally discharges said referees, cancels their bonds and releases the sureties thereon.

Decree, dated Nov. 8 1902, entered in journal 9 page 221, the matter being called up for further hearing the court finds that at the Nov. 1892 term it made an order approving the sale of the west 9 acres of the south 15 acres of W½, SE¼, NW¼, 6, 76, 29, as reported by said referees on said date, and the deed of said referees to J. C. Allen being now produced in open court is hereby approved. Costs paid.

State of Iowa, Adair County,)SS.

I, J. C. Hoyt, Clerk of the District Court of the State of Iowa, in and for adair County, do hereby certify that the foregoing two typewritten pages contain an accurate abstract of the proceedings had in said court in the case of George Gear, et al vs. Charles L. Gear, et al, No. 2780, so far as they concern the W. 9 acres of the South 15 acres of W½, SE¼, NW¼, 6, 76, 29, as shown by the records and files of my said office.

Witness my hand and the seal of said court this 2nd day of January, A.D 1904.

District Court
Seal
Adair County, Iowa.

J. C. Hoyt
Clerk.