

Input in reference
to the children of
Hart - May - Maria - John

This Agreement made and entered into this June 18th, 1897, by and between Lilly D. Duncan, of the county of Fayette, in the State of Kentucky, party of the first part, and Mary D. Gibson and Hart Gibson, her husband, and Hart Gibson trustee of Mary D. Gibson; Mary D. Gibson and Richardson G. Gibson her husband; Hart Gibson, Junior, and Adelia T. Gibson, his wife, ^{and Duncan Gibson} all of Fayette county, in the State of Kentucky; Louisiana G. Maxfield and W. T. Maxfield her husband, of St. Paul, in the State of Minnesota; Elizabeth D. ~~S.~~ Foster and Harrison G. Foster her husband, ^a of the city of Tacoma, in the State of Washington, parties of the second part,

WITNESSETH: That Whereas the parties of the second part have each signed and delivered to the Fidelity Trust and Safety Vault Company of Louisville, Kentucky, ten several bonds each dated June 18th, 1897, each for the sum of \$1000.00, and each payable in gold to the Fidelity Trust and Safety Vault Company, Trustee or bearer, five years after date, with interest from date at the rate of six per centum per annum, payable semi-annually, and secured by mortgage upon a certain tract of land containing 195-712/1000 acres, situated near to the city of Lexington, in the county of Fayette, in the State of Kentucky, and on the west side of the Lexington & Harrodsburg turnpike road, which tract of land is fully described in a certain deed of mortgage which has, also, been made, acknowledged and delivered by the said first and second parties to the said Trust and Safety Vault Company;

And Whereas, the said ten several bonds, and the ten several interest coupons attached to each, have been signed and delivered, and the said mortgage has, also, been signed, acknowledged, and delivered, as aforesaid, by the respective parties of the second part wholly for the accomodation of the party of the first part, and solely to enable her to borrow the sum of ten thousand dollars \$10,000, from the said Fidelity Trust and Safety Vault Company, upon the terms and for the time set forth in the said deed of mortgage,

Now, therefore, in consideration of the premises, and of the

obligations assumed by the respective parties of the second part in and by the execution and delivery of the said bonds and interest coupons, and of the said deed of mortgage, the party of the first part does hereby undertake and agree to indemnify and hold harmless, and to bind her heirs and personal representatives to indemnify and hold harmless, the parties of the second part, and each of them, and their respective heirs and personal representatives, from any and all loss or damage that they or either of them may incur or suffer by reason of having signed and delivered the said bonds and coupons, or any of them, aforesaid, and by reason of having signed, delivered and acknowledged the said deed of mortgage, aforesaid; and that she, and her heirs and personal representatives, will make good to the parties of the second part, and to each of them, and to their respective representatives and assigns, any and all such loss or damage, if any, as they or any of them may incur or suffer.

IN TESTIMONY WHEREOF the party of the first part has hereunto set her hand this 18th, day of June, 1897.

Attest
J. Edolph
J. H. H. H.

Chas. W. Duncan

FAYETTE CIRCUIT COURT

Hart Gibson, &c.,

Plaintiffs

Vs:

J U D G M E N T

Duncan Gibson, &c.,

Defendants

Came the plaintiffs, Hart Gibson and Adelia Gibson and moved the court to file their second amended petition herein, and by consent of each and all the defendants it is ordered that said second amended petition be, and the same is hereby filed and noted, and made a part of the record.

Came the defendant, Fidelity & Columbia Trust Company, and tendered its answer, counter-claim and cross-petition herein, and upon motion of said defendant it is ordered that its said answer, counter-claim and cross-petition be, and the same, together with the eighteen exhibits therein referred to and made a part thereof, hereby are filed and noted, and made a part of the record.

Came the defendants, Duncan Gibson, Elizabeth D. G. Foster and Harrison G. Foster, her husband, Louisiana B. H. G. Von Engelken, and F. J. H. Von Engelken, her husband, Mary Gibson and Richard T. Gibson, her husband, and Lilly Duncan, and tendered their joint answer to plaintiffs' first and second amended petition, and also their joint answer to the cross-petition of the defendant, Fidelity & Columbia Trust Company, and upon their motion it is ordered that each of their said answers be, and the same hereby are filed and noted, and made a part of the record.

Came the plaintiffs, Hart Gibson and Adelia Gibson, and tendered their reply to the counter-claim of the defendant, Fidelity & Columbia Trust Company, and upon their motion, it is ordered that their said reply be, and the same hereby is

filed and noted, and made a part of the record.

By consent of all the parties, plaintiffs and defendants in this action, it is ordered that this cause be, and the same hereby is submitted upon the pleadings and exhibits.

This cause having been heard and submitted on the pleadings and exhibits filed, and all the defendants having answered herein, and the court being advised, it is ordered and adjudged that the defendant, Fidelity & Columbia Trust Company recover of the plaintiff, Hart Gibson and the defendants, Duncan Gibson, Elizabeth D. G. Foster, Louisiana H. H. G. VonEngelken, Mary Gibson and Lilly Duncan, the sum of \$16,500 with interest at the rate of 6 per cent per annum from the 29th day of November, 1915 until paid, and its costs herein expended; and it is further considered and adjudged by the court that to secure its said debt, interest and costs, said defendant, Fidelity & Columbia Trust Company has a lien on the tract of land hereinafter described, which lien is prior and superior to all other liens, except the liens thereon in favor of the State of Kentucky, County of Fayette and City of Lexington for taxes and assessments as hereinafter stated, and it will be necessary to sell the land hereinafter described to satisfy said judgment.

It is further adjudged by the court that as between the plaintiff, Hart Gibson, and the defendants, Lilly Duncan, Duncan Gibson, Elizabeth D. G. Foster, Louisiana B. H.G. Von Engelken, and Mary Gibson, that the plaintiff Hart Gibson owes and is to be first charged with \$5000 of said mortgage indebtedness of plaintiffs and defendants to said above named Trust Company, with interest thereon at the rate of six per cent per annum from the 29th day of November, 1916, until paid; and that, as to the remainder of said mortgage indebtedness, to-wit, \$11,500, the defendant, Lilly Duncan is to be charged with one-half thereof, and the said Hart Gibson and the said defendants above named, excepting Lilly Duncan, are each to be charged with one tenth thereof, with interest on their proportionate amounts

thereof at the rate of six per cent per annum from the 29th day of November, 1915 until paid, in any division of the proceeds of the sale of said property hereinafter directed to be made.

It is further adjudged by the court, that under and by virtue of the agreement and mortgage entered into between plaintiff, Hart Gibson, and the defendants, Lilly Duncan, Duncan Gibson, Elizabeth D. G. Foster, Louisiana B. H. G. Von Engelken and Mary Duncan Gibson, as set out in the respective answers and counter-claims of said defendants, that each of said defendants have a lien on the interest of said Hart Gibson in the property hereinafter described, to indemnify them respectively against any and all liability or loss which any of them might incur or sustain on account of the failure of said Hart Gibson to meet and pay all or any part of said sum of \$5000.00, which the said Hart Gibson is adjudged to be owing and to be first charged with, and to meet and pay the interest, charges and expenses aforesaid, of said part of said indebtedness of \$16,500.00. All other questions as to the rights of said respective parties, growing out of said agreement and mortgage, are reserved for future adjudication of the court.

It is further considered and adjudged by the court that the plaintiff, Hart Gibson, whose wife is the plaintiff, Adelia Gibson, and the defendants, Duncan Gibson, who is a single man, Elizabeth D. G. Foster, whose husband is the defendant, Harrison G. Foster, Louisiana B. H. G. Von Engelken, whose husband is the defendant F. J. H. Von Engelken, Mary Gibson, whose husband is the defendant, Richard T. Gibson, and Lilly Duncan, who is a single woman, are the owners in fee simple in the proportions hereinafter stated and in possession of the real estate described in the original petition, which real estate has been resurveyed since the institution of this action, and is more correctly described in plaintiffs' second amended petition and in the survey and plat thereof filed with said second

amended petition as follows, to-wit: all that certain tract or parcel of land situated in Fayette County, Kentucky, on the Harrodsburg Pike and adjoining the City of Lexington, and more accurately described as follows, to-wit:

Beginning at a point in the center of the Harrodsburg Pike corner to Sayre; thence with the center of said Pike N 51-15 E 827 feet to a point in the center of said Pike opposite the end of a stone wall corner to Anderson and the corporate limits of the City of Lexington; thence with Anderson and the line of the City limit E 41-20 W 543 feet to an angle in a stone fence; thence still with the City limit line and the rear lot lines of Anderson, Wilkerson, Price, Watts and Sayre, N 48-20 E 602 feet to a stake corner to Sayre; thence with Sayre's line S 43-20 E 590 feet to the center of the Harrodsburg Pike (Broadway); thence with the center of Broadway N 51-15 E 60 feet to a point corner to Sayre; thence with Sayre's line N 43-20 W 590 feet to a point corner with Sayre's line and the Kentucky Trotting Horse Breeders Association, and the City Limit line; thence with the line of the Kentucky Trotting Horse Breeders Association and continuing the same course N 43-20 W 593 feet to a stone corner to said Association; thence still with said Association N 50-15 E 177 feet to a stone corner to said Association; thence with the lines of said Association and Dickerman N 40-15 W 1775 feet to an Iron Pin corner to Dickerman; thence still with Dickerman's line N 4-15 W 471 feet to a stone in Dickerman's line corner to Harp; thence with the lines of Harp, Mantle and Wilson, N 88-45 W 1893 feet to a stone in Peck's line corner to Wilson; thence with the lines of Peck, and Reed, S 6-45 W 1537 feet to a stone corner to Jocham; thence with Jocham's line S 41-15 W 547 feet to a stone in Jocham's line corner to Sayre; thence with Sayre's line S 59-25 E 3605 feet to the place of beginning and containing One Hundred and Ninety-six and Seven-Tenths (196-7/10) acres: being a part of the same land which was conveyed in two tracts, one to Lilly Duncan and Frank Waters, Trustee of Mary D. Gibson and her children by Latinus T. Moore and wife, by deed dated March 19, 1879, and recorded in Deed Book 59, page 325, in the Fayette County Clerk's office; and the other by the Kentucky Trotting Horse Breeders Association to Hart Gibson, Trustee, et al., by deed dated March 27, 1893, and recorded in the Fayette County Clerk's office in Deed Book 114, page 630.

It is further adjudged by the court that the plaintiff, Hart Gibson, and each of the defendants, Duncan Gibson, Elizabeth B. G. Foster, Louisiana B.H.G. Von Engelken, and Mary Gibson, own an undivided one tenth (1/10) interest in said property, and the defendant, Lilly Duncan, owns an undivided one half (1/2) interest therein; subject, however, to the foregoing lien adjudged in favor of the defendant, Fidelity & Columbia Trust Company; and subject to a lien in favor of the City of Lexington under a special assessment of taxes for local improvements for the cost and expense of the construction or reconstruction of that portion of South Broadway upon

which a part of said real estate fronts or abuts, in the sum of \$245.24, payable in ten (10) equal annual installments, payable respectively in the month of June of each year, beginning with the year 1916, until paid, and bearing interest at the rate of 6 per cent per annum from the 30th day of November, 1915, payable semi-annually during the months of June and December of each year beginning with the year 1916, until the whole of said sum is paid; and subject to a lien in favor of the State of Kentucky and County of Fayette for State and County taxes assessed against the above named owners of said real estate for and payable during the year 1916, and subject to a lien in favor of the City of Lexington on that part of said real estate lying within the City limits of the City of Lexington for city taxes assessed against the above named owners of said real estate for and payable during the year 1916; and subject also to leases of certain parts of said real estate to C. L. Stofer, J. D. Reed and R. B. McKee and Blue Grass Fair Association, respectively, as hereinafter stated.

It is further considered and adjudged by the court that the said above described real estate can not be divided without materially impairing its value or the value of plaintiffs' interest therein, and will have to be sold as a whole, for division among the joint owners, and that the same be sold on the terms hereinafter stated, and a sufficiency of the proceeds realized therefrom be applied to the satisfaction of the said judgment herein given in favor of the defendant, Fidelity & Columbia Trust Company, and the costs of this action, and that the balance thereof be held for distribution among the above named owners of said real estate under the further order of this court.

The Master Commissioner of the Fayette Circuit Court will make said sale at the Courthouse door in the City of Lexington in Fayette County, Kentucky, on Wednesday the 17th day of May, 1916, at about the hour of 12 o'clock noon at public outcry to the highest and best bidder on a credit of six, twelve, eighteen and twenty four months for equal installments of the purchase price for which the purchaser shall be required

to execute his bonds for equal amounts payable six, twelve, eighteen and twenty four months respectively after the date of sale, to the Master Commissioner with good security approved by the Commissioner, and bearing interest at the rate of 6 per cent from the date of sale until paid, payable semi-annually. Said bonds shall have the force and effect of a judgment, and shall be and remain a lien on the land sold, until paid, as additional security for the payment of the purchase money. The purchaser at said sale shall be required to make a deposit with the Master Commissioner One Hundred (\$100) Dollars either in cash or by certified check, immediately after the sale, and in default of such deposit the said Commissioner shall immediately resell said land in the same way and upon the same terms and conditions. The purchaser may pay all or any part of said purchase price in cash, and execute bonds for the balance, or any or all of said bonds before maturity by paying the principal of said bond or bonds and the interest thereon to the date of payment.

Before making said sale, said Commissioner will advertise the time, terms and place thereof, together with a description of the property to be sold, by an insertion in the Lexington Leader, a newspaper of general circulation published in the City of Lexington, for ten days including Sundays, next preceding the date of sale.

The purchaser will be required to assume and pay all state, county and city taxes and assessments assessed against said land for, and payable during the year 1916, and payable thereafter, including the above mentioned street improvement taxes assessed in favor of the City of Lexington in the sum of \$245.24, but any and all taxes and assessments, if any, exclusive of said street improvement taxes due and unpaid, for any year or years prior to 1916, may be paid out of the purchase money.

It is further adjudged by the court that parts of said land hereinafter stated, have been leased to the persons and for the purposes, and on the terms stated as follows, to-wit: about twenty (20) acres of said land to C. L. Stofer, and about forty (40) acres of said land to J. D. Reed to raise and cultivate crops of corn thereon during the year 1916, upon the following terms to-wit: said corn to be raised by said Stofer and Reed, respectively, on the shares, they to do all the work necessary to the cultivation of the same, and are to cut said corn and put the same in the shock, and said corn and fodder to be divided one-half to the owners of said land and one-half to said Stofer and said Reed, respectively, and each party to shuck his own part of said corn; about thirteen (13) acres of said land to said C. L. Stofer to raise and cultivate a crop of tobacco thereon during the year 1916, for the rent of \$40.00 per acre, to be paid by said Stofer when the tobacco raised thereon is sold; about ten (10) acres of said land to said J. D. Reed to raise potatoes thereon during the year 1916, on the following terms to-wit: the owners of said land to furnish one-half of the seed potatoes and the said Reed the other one-half thereof, said Reed to cultivate and market said potatoes and divide the proceeds equally with the owners of said land: said Reed to have the right to put in a second crop of potatoes on the same terms as first crop, or to put in a crop of garden truck after the first crop of potatoes has been removed, said Reed to cultivate and market said garden truck and divide said proceeds equally with the owners of said land; about ten (10) acres of said land to R. E. McKee for the purpose of raising garden truck thereon during the year 1916, on the following terms to-wit: the owners of said land to furnish one-half of the seed, said McKee to furnish the other one-half of said seed and to cultivate and market said truck and divide the proceeds equally with the owners of said land; and each and all of the above named tenants have the right

to retain possession of the above named parts of said land respectively leased to them until said crops are raised, harvested and removed therefrom during the year 1916, with the right of ingress and egress to each and all of said tenants to and from the parts of said land respectively leased to them for the purposes above stated; and about seven (7) acres of said land which adjoins the property of the Kentucky Trotting Horse Breeders Association and lies back of the grand-stand of said Association, to the Blue Grass Fair Association for the year 1916, for a rent of \$500.00, with the right to said Blue Grass Fair Association to remove the stables and buildings therefrom at any time during the year 1916; the said owners of said land have the right to graze the whole of the same at all times except during the year 1916, and said Blue Grass Fair Association has the right to use the stables on said seven acres during the whole of the year 1916.

It is further ordered and adjudged by the court that said land be sold subject to the above named leases, and that the purchaser shall succeed to all the rights of the present owners of said land under said leases, and shall be entitled to receive and collect the rents and considerations for said leases the same as the present owners of said land would be entitled to do.

By and with the consent of each and all the parties hereto, it is adjudged that said land be sold free from all dower and curtesy rights of the plaintiff, delia Gibson, and the defendants, Harrison G. Foster, F. J. H. Von Engelken and Richard T. Gibson, and each of them; the court expressly reserving the right to hereafter provide a reasonable compensation out of the proceeds of the sale of said property to the plaintiff Adella Gibson, wife of the plaintiff, Hart Gibson, for her dower in the interest of her husband, Hart Gibson in said property.

The court expressly reserves for future consideration and decision all other questions as to the rights and interests of the parties to this action growing out of the ownership of said land, so far as the same are shown by the pleadings or may be hereafter set up in this action.