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Garland

IN THE

Supreme Court of Appeals of Va.

HAWKINS vs. GARLAND'S ADM'R & ALS.

Note by Counsel for the Appellee on a petition for a re-hearing.

Before proceeding to give the reasons why I think this case should be reheard, I will notice briefly the personal invective in which the counsel for the appellant has thought proper to indulge, and which might, with more propriety, have found a place in an ad captandum appeal to an ignorant jury, or a popular assembly, than in an argument addressed to this court.

One of the counsel for the appellant has devoted more than six pages of his brief to a denunciation of Mr. John F. Slaughter, whom he charges with resorting to numerous unworthy expedients, for the purpose of securing to his son the sum of $1,000 in a railroad bond, and retaining it against law, equity and justice. In response to all this, it is only necessary to say that, as the two executors of Samuel Garland, Sr., who were also his residuary legatees, conceded that the bequest in question inured to the benefit of the son of John F. Slaughter, and the survivor of them paid it over to or for that son nearly twenty years ago, there is no mode by which it can now be recovered back; and if he is disposed to hold on to it, whether originally entitled to it or not, he can do so, whatever may be the decision as to the rights of the appellant.

As the legacies embraced in the 15th clause are in the nature of general pecuniary legacies, and are not specific legacies, and the testator had a large amount of S. S. railroad bonds, the question in this case is really between the appellant and the residuary lega-

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tees, and if the final decision is for the appellant, the legacy he claims will have to be paid out of the residuum of the estate, unless young Mr. Slaughter or his father shall think proper to voluntarily return to the estate what he has received.

The extreme sensibility of the same counsel is also inexpressibly shocked at what he deems the execrable taste exhibited by John F. Slaughter in intimating that, at a certain period of his married life, in the life-time of the testator, it was within the bounds of possibility, if not probability, that his wife might thereafter give birth to a son, who might become a namesake of the testator. Without any personal practical knowledge on the subject, I may say that I have always understood that one of the natural consequences of marriage between two healthy people, male and female, is issue in the shape of children, and I cannot perceive the indelicacy of referring to such a result as probable. In the wills of men of the highest sense of honor and propriety, are often found provisions for the future issue or children of their young unmarried daughters. Would counsel for the appellant regard it as very improper, and in most execrable taste, for a father to intimate in a deed of marriage settlement, or in his will, the possibility of his virtuous young daughter's giving birth to a child at some future period?

Without any knowledge from actual observation, I have yet had evidence that was conclusive to my mind, that very elegant and refined married ladies do sometimes give birth to children, and I cannot, for the life of me, understand the squeamishness that regards the reference to such an event, as within the bounds of possibility, as in execrable taste. It is but the result of the established law of nature for the perpetuation of the human race.

The appellant's counsel likewise thinks that in demurring to the bill in the court below, the defendant resorted to a subterfuge to escape the damaging effect of the evidence. Really, when a defendant by a demurrer says, "admitting all the plaintiff says to be true, yet he is not entitled to recover on the case as he has stated it," I cannot perceive where the subterfuge comes in. According to my view, it is the boldest and most open way of meeting the case, and antagonizing the plaintiff's claim. It is taking the bull by the horns at the outset.

I might retort and say, that it argues a want of confidence in

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the real merits of his case, when the counsel resorts to such mere declamation.

I will now proceed to state the reasons why I think this case should be reheard, and the decree of the court below affirmed.

I will not undertake to show that the words "Samuel G., son of Captain John F. Slaughter," in the 15th clause of the will of Samuel Garland, Sr., are applicable to the son of John F. Slaughter of that name, born after the date of the will, as it will be sufficient, if I can show that they cannot be applied to Samuel G. Hawkins, the son of Captain John F. Hawkins, under any well recognized and established rule of law or equity as to the construction of wills.

The appellant's counsel, to sustain the claim of their client, rely on the fact that there was no Captain John F. Slaughter known to the testator, but that there was a Captain John F. Hawkins, who was a friend and client of the testator, and who had a son who was a namesake of said testator. They further rely on the testimony of Judge James Garland, Mrs. Mary L. Garland, and the said Captain John F. Hawkins, to prove that the son of said Hawkins was the person intended to be described by the words "Samuel G., the son of Captain John F. Slaughter."

Judge Garland's testimony is to the effect that John F. Hawkins was known to the testator as "Captain" Hawkins; that the latter was a client, and friend of the testator; and that he had a son named Samuel G. after the testator. He further says: "I heard Mr. Garland say in his lifetime, 'I have selected (I think three or four) of my namesakes, and have given them each a thousand dollars.' as I understood in this will. I remember that Samuel Garland Hawkins was one of the namesakes mentioned by him. This conversation was brought by an inquiry by me about the disposition made by him in his will of the house and lot where I reside, and he was talking about his will. I did not see the will, and never saw it till it came before the court for probate"; pp. 66-7. This statement, Judge Garland says, was made to him in the spring of 1860 or 1861, he does not know which. The will is dated the 7th day of December, 1857.

Mrs. Mary L. Garland, the widow of the testator, in her testimony, states that the intimacy between Captain Hawkins and her husband grew out of the fact that the former employed the latter

as his lawyer, and she says: "The terms of friendship between them were just such as exist between lawyer and client;" pp. 56-7. She further says, that Hawkins named one of his sons after her husband, and that she and her husband were invited to attend on the occasion of his baptism. She also says that on one occasion her husband told her that he gave the boy some money to buy an instrument to get up a band, and told him to call again.

Captain John F. Hawkins also testified, and in his testimony he says that he and the testator were great friends, and he further says: "There was just as much friendship and intimacy between us as if we had been brothers." He also says the testator was very fond of his god-son and namesake, and on one occasion sent him a set of marbles and a little drum. It turns out, however, in his evidence on the cross-examination, that the testator was charging the witness all the time high fees for his services, and lending him money on compound interest; and when they came to a settlement finally, the witness thought that testator had charged him too high fees and had compounded interest on him. The witness was so much dissatisfied with the accounts rendered, that he consulted another lawyer about the matter, but had finally to settle according to the account rendered. Very much like brethren!

In addition to this testimony the appellant's counsel rely on a subpœna which was issued in the year 1862, in the name of Samuel Garland, Jr., as executor of the testator, and in which the appellant was named as a defendant, but they take care not to file a copy of the bill in the case as an exhibit, though they do file a copy of the bill of revivor. I have now supplied the omission, and append hereto an authenticated copy of the original bill filed by Judge Garland, as stated in his evidence; and it will be seen that not only is the appellant not named in the said bill as a defendant, but it is expressly alleged that Samuel G., the son of John F. Slaughter, is mentioned as one of the legatees under clause 15th of the will.

In his treatise on wills, Jarman, vol. 1, page 343, 2d American edition, by Perkins, and same vol., pages 409-10, 5th American edition, by Bigelow, thus lays down the rule in regard to the inadmissibility of parol evidence to "contradict, add to, or explain the contents of a written will":

"As the law requires wills, both of real and personal estate

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(with an inconsiderable exception) to be in writing, it cannot, consistently with this doctrine, permit parol evidence to be adduced, either to contradict, add to or explain the contents of such will; and the principle of this rule evidently demands an inflexible adherence to it, even when the consequence is the partial or total failure of the testator's intended disposition; for it would have been of little avail to require that a will ab origine should be in writing, or to fence a testator round with a guard of attesting witnesses, if, when the written instrument failed to make a full and explicit disclosure of his scheme of disposition, its deficiencies might be supplied or its inaccuracies corrected, from extrinsic sources. No principle connected with the law of wills is more firmly established or more familiar in its application than this; and it seems to have been acted upon by the judges, as well of early as of later times, with a cordiality and steadiness which show how entirely it coincided with their own views. Indeed, it is rather to have been expected that judicial experience should have the effect of impressing a strong conviction of the evil of offering temptation to perjury."

Sir James Wigram, in his "Treatise on Extrinsic Evidence, in aid of the Interpretation of Wills," after propounding the question: "Under what restrictions is the admission of extrinsic evidence, in aid of the interpretation of a will, consistent with the provisions of the Statute of Frauds?" (pl. 7),—says, (pl. 9): "The answer, therefore, to the question above proposed—enjoined as well as sanctioned by the general principle above mentioned—must be, that any evidence is admissible which, in its nature and effect, simply explains what the testator has written; but no evidence can be admissible which, in its nature or effect, is applicable to the purpose of showing merely what he intended to have written. In other words, the question in expounding a will is not—What the testator meant? as distinguished from—What his words express? but simply—What is the meaning of his words? And extrinsic evidence, in aid of the exposition of his will, must be admissible or inadmissible with reference to its bearing upon the issue which this question raises."

His 6th proposition is as follows:

"Where the words of a will, aided by evidence of the material facts of the case, are insufficient to determine the testator's meaning, no evidence will be admissible to prove what the testator in-

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tended, and the will (except in certain special cases—see proposition 7) will be void for uncertainty."

His 7th proposition is as follows:

"Notwithstanding the rule of law, which makes a will void for uncertainty, where the words aided by evidence of the material facts of the case, are insufficient to determine the testator's meaning—courts of law, in certain special cases, admit extrinsic evidence of intention to make certain the person or thing intended, where the description in the will is insufficient for the purpose.

These cases may be thus defined: where the object of a testator's bounty, or the subject of disposition (i. e. the person or thing intended), is described in terms which are applicable indifferently to more than one person or thing, evidence is admissible to prove which of the persons or things so described was intended by the testator."

In discussing the 6th Proposition, he says, pl. 120:

"The remaining cases applicable to the sixth Proposition are numerous and decisive, and appear to conclude the question now under consideration, and to decide in conformity with principle, that, if a testator's words, aided by the light derived from circumstances with reference to which they were used, do not express the intention ascribed to him, evidence to prove the sense in which he intended to use them, is, as a general proposition, inadmissible—in other words, that the judgment of a court in expounding a will must be simply declaratory of what is in the will."

And he proceeds in Pl. 121:

"Thus it has been laid down (either in dictum or decision) that evidence is inadmissible for the purpose—[mentioning several instances]—or 4, of proving that a thing in substance, different from that described in the will, was intended; or 5, of changing the person described, &c., &c."

According to the doctrines thus stated by Jarman and Wigram, on what ground is it that parol testimony, especially the declarations of the testator, can be introduced in this case to show that by the words, "Samuel G. the son of Captain John F. Slaughter," was intended Samuel G. the son of Captain John F. Hawkins? The appellant's counsel say that the Latin maxim, which translated reads, "Latent ambiguity may be supplied by evidence; for an

ambiguity which arises by proof of an extrinsic fact, may, in the same manner, be removed," is applicable to this case.

Now, a latent ambiguity is where the words of a will are clear and unambiguous themselves, but when they come to be applied to the subject or object of the testator's bounty, there are found to be two or more subjects or objects answering the description. In this case there is not even one person who answered the description, "Samuel G. the son of Captain John F. Slaughter," at the date of the will. But appellant's counsel say: "Falsa demonstratio non nocet." But this is not a case of a false demonstration. If John F. Slaughter had had a son named Samuel G. at the date of the will, then the title "Captain" prefixed to his name, would have been a case of falsa demonstratio, and might have been rejected as surplusage. If, perchance, the testator intended by the words "Samuel G. the son of Captain John F. Slaughter," Samuel G. the son of Captain John F. Hawkins, then there is neither a latent ambiguity, nor a false demonstration, but simply a case of misdescription, which cannot be helped or explained by parol testimony, without introducing into the will a word or name which the testator has not used, and thus violating the law requiring all wills to be in writing. But the appellant's counsel say that the court should place itself in the position of the testator, and then from a consideration of the surrounding circumstances, as shown by the testimony, construe the will so as to carry out the testator's intention. Suppose the court places itself in that position, and what is there in the surrounding circumstances, the condition of the testator's estate or his family, to indicate that he had Samuel G. Hawkins in his mind when he penned the 15th clause of his will? Appellant's counsel say that he had adopted the description of "namesake," by which the names of the legatees mentioned in said clause are preceded. That is true, but is a man under obligations to provide for all his namesakes? God forbid! They say also that besides being a namesake, his father bore the title of "Captain," but there were a great many men who bore the title of Captain before the war, and there have been a great many who since the war have born that title, and even higher ones, without even having risen to the dignity of privates. There is not much potency in such a title. It is also said that his father's christian name is John F.; but there are a good many people bearing that

name, and the description—"my namesake, Samuel G., the son of Captain John F."—would amount to nothing; and "my namesake, Samuel G., the son of Captain John F. Slaughter," cannot, from the light of surrounding circumstances, be construed to mean "my namesake, Samuel G., the son of Captain John F. Hawkins"—though the testator did give his said namesake a set of marbles, and a small drum on one occasion, and perhaps a tin horn on another.

Something more is necessary to enable the court to decide that the appellant is the person designated in the 15th clause of the will, and this brings up the question whether the declarations of the testator, made to Judge Garland in 1860 or 1861, are admissible in evidence to show that the appellant is the person entitled to the legacy.

The testimony of Mrs. Garland and Captain John F. Hawkins amounts to very little, and certainly can have no effect upon the construction of the will of Samuel Garland. Though Captain Hawkins claims to have been on the most intimate terms with the testator, stating that they were as intimate as brothers, yet it seems that the testator was charging him fees all the time, which Hawkins regarded as too high, and was, moreover, compounding interest on him on money advanced; and the testator never made a mistake in the name of Hawkins in rendering his accounts.

The testimony of Judge Garland is not as distinct and positive as it ought to have been to render the declarations of the testator admissible to contradict or change the language used in the 15th clause, if otherwise admissible. The Judge says the testator said to him that he had selected three or four of his namesakes, and given them each a thousand dollars, as he (the Judge) understood, in his will, and that Samuel G. Hawkins was one of the namesakes mentioned. He says the conversation was brought about by an enquiry from himself about the disposition made in the testator's will of the house and lot occupied by him. It is hard to conceive how such an enquiry should have led to the declaration in regard to the bequests contained in the 15th clause without any reference to any other provision in the will. If the said clause was so prominent in the mind of the testator, how did it happen that he, who was such a careful, painstaking lawyer, and had written his own will, never once referred to the will itself for the purpose of

ascertaining whether his intentions were carried out? It seems hardly credible that he should have been guilty of such negligence, and the evidence of the alleged declaration comes in such an equivocal shape, as to illustrate the propriety of the rule which forbids the admission of parol evidence to contradict, add to or explain the contents of a written will. This remark is made without any purpose of imputing to Judge Garland a wilful misstatement or perversion of the facts; but the memory of a gentleman of his age is not always entirely reliable when recalling facts, after the lapse of as much time as there was between the alleged declaration and the taking of his deposition. Certain it is, that the evidence of the said declaration is the sole evidence in the case which tends to show that "Slaughter" in the clause in question was intended to be "Hawkins."

To sustain the admissibility of Judge Garland's testimony the counsel for the appellant have cited a great number of cases, some of which have long since been repudiated or overruled, others are of doubtful authority, others again announce sound doctrines which are not in conflict with the rules cited from Jarman and Wigram, while there are some directly against the propositions advanced by the counsel. I shall notice but few of these cases, and I must say here that some of the progressive doctrines of Mr. O'Hara are not such as are likely to be received as sound law, as they would upset all the fundamental rules in regard to written wills.

The first case cited for the appellant which I will notice is that of Thomas v. Thomas, 6 Term. R., 671. This case is claimed by counsel to be strikingly in point, to show which a quotation is given from the case, as follows: "Lord Kenyon, C. J., and Lawrence, J., both expressly said 'that, for the purpose of showing whom the testator meant by the ambiguous description in the will, declarations by him at the time of making his will were clearly admissible in evidence.'"

Counsel had evidently not examined the case itself, but took the above quotation from Wigram on Wills. The case, on inspection, will be found to be not only not strikingly in point, but a strong authority against the appellant. In that case, Lord Kenyon said: "It must be admitted that the heirs at law are not to be disinherited by conjecture, but only by express words, or necessary im-

plication. When the rule for a new trial was moved for, I alluded to the maxim that falsa demonstratio non nocet, but in doing so I wished that the sense of that rule should be attended to; I have always understood that such falsa demonstratio should be superadded to that which was sufficiently certain before; there must constat de persona, and if to that inapt description be added, though false, it will not avoid the devise. And this gets rid of almost all the observations and arguments made by the defendant's counsel; for in the cases cited there was no other person in competition with the person claiming."

In that case, the devise was held to be void for uncertainty, and it was not decided that Eleanor Evans was entitled to the devise.

The case of Doe de Allen vs. Allen, was a case where there were two persons answering the description in the will, and evidence was admitted, not to contradict, add to, or explain the will, but to show which of the two was intended by the testator.

The case of Beaumont vs. Fell, which is also cited by Judge Christian, in his opinion, as one which has been often commented on by the English judges, and never departed from, has been overruled, and is no longer law. In the case of Mostyn vs. Mostyn, 5th House of Lords cases, 155, Lord Brougham said: "But I take Beaumont vs. Fell no longer to be law; I take it to have been overruled by Miller vs. Travers, a case which received the greatest possible consideration from those two distinguished judges, the then Lord Chief Baron Lyndhurst, and Lord Chief Justice Tindal, whose assistance I called in on account of the great importance of the question then before me. We had it argued most elaborately and after great consideration judgment was given by Lord Chief Justice Tindal, in which Lord Lyndhurst and myself entirely concurred. The judgment in Miller vs. Travers has been repeatedly referred to in various cases, and always with the greatest approbation. I take it that it may be said to lay down the law upon the subject as distinctly as it is possible for any important point of law to be laid down."

I would also refer to the opinion of Lord Chancellor Cranworth in the case of Mostyn v. Mostyn, to sustain my proposition that the testimony of Judge Garland as to the declarations of the testator in this case is inadmissible.

I may here remark that the case of Thomas v. Stevens, 4 John.

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Ch. R. 506, cited for the appellant, in which no reasons are given, goes by the board with Beaumont v. Fell.

The case of Careless v. Careless, 1 Mer. 383, I do not regard as applicable to this case. There the testator gave a legacy, in a certain event, to his nephew Robert Careless, the son of Joseph Careless. He mentions his nephew, Robert Careless, several times in his will, without any superadded description, and finally mentions him as his nephew, Robert Careless, "the son of John Careless." He had no brother Joseph, but he had a brother John and a brother Thomas, each of whom had a son named Robert. It appeared in evidence, that Robert, the son of Thomas, was scarcely known to the testator, while Robert, the son of John, was well known to him and was in habits of constant and unreserved intercourse with the testator, who treated him with great regard and affection.

There was no evidence introduced of any declaration by the testator, and how this case, or the opinion of Sir William Grant in it, can be construed as authorizing the admission of the declaration of Samuel Garland, Sr., to show that Samuel G. Hawkins was intended by the words used in the 15th clause of his will, I am at a loss to conceive.

In the case of Hiscocks v. Hiscocks, 5 Meeson & Welby 363, Simon Hiscock, Sr., devised estates to his "grandson, John Hiscocks, eldest son of the said John Hiscocks," the latter being a son of the testator. The said son, John Hiscocks, had been twice married, and by his first wife had a son Simon, who was in fact his eldest son, but his eldest son by his second wife was named John. Simon Hiscocks, the eldest son of John, brought ejectment to recover the estates devised, and at the trial evidence was admitted of the instructions of the testator for the will, and of his declarations after the will was made, to show that Simon Hiscocks, the eldest son of John, was the person intended by the testator, and there was a verdict for the lessor of the plaintiff.

There was a rule for a new trial in the Exchequer Chamber, on the ground that the parol evidence was improperly received, and the new trial was granted. Lord Abinger, C. B., delivered the opinion of the court, and, referring to the cases of Beaumont v. Fell and Thomas v. Thomas, said: "But these cases seem to us at variance with the decision in Miller v. Travers, which is a decision entitled to great weight. If evidence of intention could be allowed

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for the purpose of showing that by Catherine Earnly and Mary Thomas the respective testators meant Gertrude Gardley and Elinor Evans, it might surely equally be adduced to prove that by the county of Limerick the testator meant the county of Clare. Yet this was rejected, and we think rightly. We are prepared on this point (the point in judgment in the case of Miller. v. Travers) to adhere to the authority of that case."

Lord Abinger further said on page 372: "If, therefore, by looking at the surrounding facts to be found by the jury, the court can clearly see, with the knowledge which arises from those facts alone, that the testator meant either the lessor of the plaintiff or the defendant, it may so decide, and direct the jury accordingly; but we think that, for this purpose, they cannot receive declarations of the testator of what he intended to do in making his will. If the evidence does not enable the court to give such a direction to the jury, the defendant will indeed for the present succeed; but the claim of the heir-at-law will probably prevail ultimately, on the ground that the devise is void for uncertainty."

There could not be a case more directly in point to sustain my proposition, that the declarations of the testator, Samuel Garland, to Judge Garland are not admissible as evidence to prove the intention of said testator, than this case of Hiscocks vs. Hiscocks; and yet this case is cited in the petition for an appeal to sustain the opposite proposition, and Judge Christian, in his opinion, refers to it for the same purpose.

With this I will close my notice of the English cases referred to by counsel for the appellant, and will now refer to the Virginia cases which are cited. I pass over the other American cases cited as of very little consequence.

The first Virginia case cited by counsel for the appellant, is that of Woollen vs. Redd's ex'r, 12 Gratt. 197. There is nothing in that case which sustains the proposition of appellant's counsel. I was counsel in the case in the court below, and my law partner argued it twice in this court. If parol testimony had prevailed in the case we would have succeeded, but the majority of the court were against us.

In the case of Maund's adm'r vs. McPhail, 10 Leigh 199, the parol evidence was very properly received, and the rule of law forbiding the introduction of such evidence to "contradict, add to, or ex-

plain the contents of a will," was not violated. The bequest in that case was "to the agent of the New Colonization Society in Africa." There was but one society for that purpose in existence in America, and it had been but recently organized. That was the American Colonization Society, and McPhail was its agent. It violated no rule of law to admit evidence to show what was "the New Colonization Society in Africa," and who was its agent. The will was not contradicted, added to, or explained by such testimony. It was merely applied to the object contemplated by the testator, in accordance with the maxim: Certum quod certum reddi potest.

So in the case of Roy's ex'or v. Rouxie, where the bequest was to the "Baptist Theological Seminary in South Carolina," as there was but one "Baptist Theological Seminary in South Carolina," and it was called "The Southern Baptist Theological Seminary," it was perfectly proper to give the legacy to the said seminary, and no rule of law was violated in so doing. These cases are like bequests to "the eldest son of A," or the wife of B," without giving their names. Evidence would be necessary to show who was the eldest son of A, or who was the wife of B, and the reception of such evidence would violate no rule of law. Such a case would differ very widely from the case we now have, where it is proposed to prove that Samuel G. Slaughter meant Samuel G. Hawkins.

I may here say that it does not clearly appear that the description of one of the legatees (sec. 14) as Samuel M. Garland, the brother of Charles R. Slaughter, is a mistake. Mrs. Garland says he was named after Samuel and Morris Garland, his uncles, and he was probably christened Samuel Morris Garland Slaughter. It is not improbable, at least, that the testator may have so thought.

For the foregoing reasons it is asked that this case may be reheard, and that the decision of the court below may be affirmed.

J. A. EARLY,
For Appellee.

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[Handwritten note at top:]
I have not submitted a copy of the Bill with my idea that it undance & just that it any John F Slaughter & entitled to the legacy in controversy. But & show the abandoring the argument before in the first that the Claim of Zenvis Hawkins &c in his origin confirm. The memory as well as examination of Jesse Garland was him reiproduced of frauds in this mother.

ORIGINAL BILL.

To the Honorable Hunter H. Marshall,
Judge of the Circuit Court of the Corporation of Lynchburg:

The bill of complaint of Samuel Garland, Jr., surviving executor of Samuel Garland, deceased, late of the city of Lynchburg, respectfully represents: That on the —— day of November last the said Samuel Garland departed this life, having made and duly published his last will and testament, making various devises and bequests to various persons, and constituting the late Charles R. Slaughter and your orator the executors thereof, which said will was duly admitted to probat in the court of hustings of the city of Lynchburg, a copy whereof duly authenticated, together with the certificates of the probat thereof, and the qualification of the executors therein named is herewith filed, marked A, as a part of this bill.

He further represents, that at the time of his death, the said Samuel Garland was the owner of three several tracts of land in the State of Mississippi, two in the county of Hinds and one in the county of Coahomah, on each of which was a large number of slaves, stock, &c., the slaves being about two hundred, several tenements in the city of Lynchburg, and adjacent thereto, sundry slaves, much valuable furniture, and a valuable carriage and horses, inventories of all the slaves and perishable estate, both here and in Mississippi, will be hereafter taken and filed. He was also the owner of stocks in various corporate companies, State and corporate bonds, which, with the debts due him by individuals, amount to about the sum of $400,000, estimating the stocks, bonds, &c., at their par value, of which an accurate inventory will be filed.

He further represents, that by the second, third, fourth and fifth clauses of the testator's will, he makes various provisions for his wife, Mary L. Garland, who survives him, with limitations over and with the power of appointment, as to one of the children of Paulina B. Morris, wife of Charles Y. Morris, all of which provisions in her favor, the said Mary L. Garland, on the 5th day of March, 1862, by deed duly executed and acknowledged and filed in the clerk's office of the court of hustings for the city of Lynchburg, renounced all the provisions of said will in her favor, and claimed all the

rights which the laws of the land accorded to her—a copy of said deed of acknowledgment, with a certificate of its acknowledgment in said clerk's office, is herewith also filed, marked "B," as part of this bill.

He further represents, that by virtue of said renunciation, the said Samuel Garland, having died without ever having had issue, the said Mary L. Garland is entitled to receive one-third of the real estate in Virginia, and one-half of all the slaves of which the said Samuel Garland was possessed at the time of his death, whether in Virginia or Mississippi, Virginia being his domicil, for life, and to one-half of all his other personal estate, money, &c., absolutely, after the payment of all his debts and liabilities and expenses of administration, which your orator believes.

He further represents, that this renunciation and claim of her legal rights by the said Mary L. Garland, will materially disappoint some of the other legatees in said will, to whom stocks, bonds, slaves and money have been bequeathed, and real estate devised, to-wit: Burr Garland, for life, with remainder, over to Charles Y. Morris in trust for his wife and children by the ninth clause of the will; John F. Slaughter, by the tenth clause; Mary R. Slaughter, by the eleventh clause; Samuel G. White, by the twelfth clause; Mary J. Celeste and Austina Slaughter, by the thirteenth clause; Samuel G. Slaughter, by the fourteenth clause; Samuel G. White, son of Sam'l G. White; Sam'l G. Slaughter, son of C. R. Slaughter, deceased, Samuel G. Slaughter, son of John F. Slaughter, and Nicholas A. Garland, and each of his children, by the fifteenth clause of the will, unless your orator and the personal representative and heirs of the late Charles R. Slaughter, the devisees and legatees under the seventeenth clause of the will, shall be required to make good all the deficiencies produced by said renunciation—a proposition which your orator, on his own behalf, and on behalf of the estate of his colegatees, controverts, insisting that the devise and bequest to them is not of that residuary character, and not so intended by the testator, to subject them to the deficiencies in any of the other devises or legacies which has grown out of this renunciation, or may hereafter be found in winding—the affairs of the estate.

He further represents, that by this renunciation there is left in the hands of the executors the tenement in the city of Lynchburg, the slaves, the household and kitchen furniture, piano, silverware,

orator submits to the adjudication of the court whether the legacies to them respectively are not void. He submits the same question as to the legacy of $5,000 to Samuel G. Slaughter, a citizen of California at the time of the death of the testator.

He further represents, that since the death of the testator his late co-executor and himself have advanced to the said Mary L. Garland considerable sums of money, of which an account will be filed, which he claims shall be deducted from the stock which may fall to her in the distribution of the estate at their market, and not their par value, as the actual monied resources of the estate will not be sufficient to meet its peculiary liabilities and the expenses of administration.

Your orator therefore prays, as executor of Samuel Garland, deceased, and in his own right, that the said Mary L. Garland, Burr Garland, Mary R. Slaughter, John F. Slaughter, in his own right, as administrator of Charles R. Slaughter, deceased, and as trustee of Mary J. and Celeste P. Slaughter, and Austin W. Broddax, Samuel G. White and his infant son, Samuel G. White, Catherine M. Slaughter, widow, and Mary E., Samuel G., Charles and Catherine L. Slaughter, infant children of Charles R. Slaughter, deceased, Samuel G. Slaughter, infant son of Jonh F. Slaughter; Charles Y. Morris and Paulina B., his wife, Samuel G. Slaughter, brother of C. R. Slaughter, Nicholas A. Garland and Austin Garland, James M Garland, Lucy Garland, Elizabeth A. Garland, Ellen P. Garland, Mary Francis and two others, his children, all except the first three being infants under the age of twenty-one years, the names of two of whom are unknown to your orator, be made defendants to this bill and answer the same, that your honor decide the questions herein presented, cause a settlement of all proper accounts and decree a distribution of the estate, real and personal estate, of the testator to be made among the parties interested according to their respective rights, and that the court afford to your orator relief as may be just and equitable, &c.

The foregoing is a true copy of a bill in equity filed in the clerk's office of the Circuit Court for the city of Lynchburg, at the May Rules, 1862.

Teste:
SAMUEL D. PRESTON, Clerk.

Virginia Room
Jones Memorial Library
Lynchburg, Virginia

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Supreme Court of Appeals of Virginia,

No. 41, JANUARY TERM, 1890.

BURR GARLAND'S Adm'r &c., Appellant, | Appeal from
vs. | Decree of the
SAM'L GARLAND'S Adm'r &c., Appellee, | Circuit Court
| of Lynchburg.

BRIEF FOR APPELLANTS.

J. P. Bell Co., Prs., Lynchburg, Va.

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BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

Sam'l Garland was a practising Attorney in Lynchburg, Virginia. He and his wife were economical, energetic and thrifty. They were childless, but they had many relatives to whom they extended their bounty with a liberal hand. Sam'l Garland died in November, 1861. He had a large estate, real and personal, in Virginia, and three large cotton plantations in Mississippi, one in Cohoma and two in Hinds County. On each of which he had a large number of slaves, mules, horses and all personal estate, suitable for its cultivation. Burr Garland, his younger brother, was raised by him, and set up in business; but he failed, and became hopelessly embarrassed in debt; and was living in Mississippi on one of the Hinds County plantations. Burr Garland had married a sister of Mrs. Sam'l Garland. She gave birth to Paulina, an only child, and died a few days after. Sam'l Garland and Mrs. Garland adopted Paulina, and raised and educated her, as their own child. She married Charles Y. Morriss. Sam'l Garland had two nephews, Charles R. Slaughter and Sam'l Garland, Jr., whose fathers died when they were very young. He, for the most part, raised and educated them. They studied law in his office, and practised law with him. They were young men of promise. He confided in them, and they were worthy of his confidence. Sam'l Garland's will was proved and recorded in the Hustings Court of Lynchburg, the 2d of Dec., 1861. By it he appointed his nephews, Charles R. Slaughter and Sam'l Garland Jr., his Executors, and gave each of them a large portion of his estate. As soon as the will was admitted to probate Charles R. Slaughter qualified as Executor. Sam'l Garland, Jr., qualified as Executor the 3rd

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of Feb., 1862, and they each assumed the execution of all the trusts imposed on them by the will.

The 8th and 9th clauses are as follows:

"8th. I wish my Mississippi estate to be kept up a few years after my death and cultivated under the general superintendence of my brother, B. Garland (now residing at Barren's estate), and the annual profits vested in good six per cent. stocks to the use of my estate, if he, B. Garland, cannot attend to them, and they are to —— disposed of by sale or otherwise at the discretion of my executors."—1st Rec., 12.

"9th. My favorite brother, B. Garland, raised by me, and long a resident of Mississippi, is, and has for a long time past been, embarrassed in debt by losses of trade in 1837, and liabilities as surety for others. It might be unsafe to devise property to him absolutely. I therefore set apart in trust in the hands of my executors, for the benefit of my said brother, either of my plantations in Hinds county, called 'Barrens' or 'Tudor Hall,' whichever he may chose, and forty slaves in families—say, about twenty-five hands, balance heads of slaves in families and house-servants—to be selected by him, and, places: mules, horses, stock, &c., sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his (B. Garland's) use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts and liabilities, other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss, in trust to the separate use of his wife, Paulina B. Morriss, and her children."—2d Rec., 19-20.

Burr Garland proceeded at once to choose Tudor Hall, and to select the forty slaves and the mules, horses, stock, &c., as provided in the 9th clause of the will, and he cultivated on Tudor Hall cotton, corn, potatoes, and other crops, from the death of Sam'l Garland to the time of his own death—the 9th of December, 1869—eight years; and large profits were realized therefrom.

Charles R. Slaughter died in the spring of 1862, and John F. Slaughter qualified as his Administrator on the 3rd of March of that year. Sam'l Garland, Jr., was a General in the Confederate army, and was killed at Antietam the 17th of September, 1862, and John F. Slaughter qualified as his Executor the 6th of October, 1862, and on the same day he qualified as Administrator de bonis non with the will annexed of Sam'l Garland, Sr. Burr Garland qualified as Administrator of Sam'l Garland, Sr., with the will annexed, in Hinds County, Mississippi, the 9th November, 1862. William H. Garland qualified as Executor of Burr Garland, in Hinds County, Mississippi. Charles Y. Morriss qualified as Administrator of Burr Garland in Lynchburg, Virginia.

Proceedings were instituted in the Chancery Court of Hinds County, Mississippi, in which there was a settlement of the accounts of Burr Garland's administration, and a balance was found against him of $64,130.88, and said Court decreed, "that W. H. Garland, as such executor of the last will and testament

of said Burr Garland, dec'd, pay over said balance of money so reported as due by said Burr Garland on said restated final account to the legal representatives of said Samuel Garland, Sr., dec'd, in the State of Virginia, *to be by such legal representatives, or representatives, paid over*

to the person, or persons, entitled to receive the same, under said last will and testament of said Samuel Garland, Sr., dec'd."

This balance which was to be paid by the Administrator of Sam'l Garland, Sr., in Virginia, to those entitled to receive the same under his will, embraced the income from the eight years' cultivation of Tudor Hall—the profits mentioned in the 9th clause of the will. Since the death of Burr Garland, Tudor Hall has come to the possession of Paulina B. Morriss' Trustee, but none of the personal estate, nor any of the profits, mentioned in the 9th clause of the will, has been received by her, or her children, or their Trustee.—1st Rec. 50-1.

This case has heretofore been before the Court of Appeals. See *Garland v. Garland*, 84 Virginia, 181. The question then was: Whether the Virginia Administrator of Burr Garland can go behind this decree, and show that the amount decreed against his Mississippi Executor is not correct. The Court said: (p. 190)

"The decree of the Mississippi court must be accepted as final and conclusive evidence of the fact and amount of indebtedness by Burr Garland, the Mississippi administrator of Samuel Garland, to Samuel Garland's estate. It did not undertake to distribute it nor to determine who are entitled to receive it under Samuel Garland's will, but decreed to be by him distributed to those entitled according to the declared intention of the testator;" but (p. 191) that this decision is "without prejudice to any right of action which Paulina B. Morriss may have in this, or in an independent suit."

The case was remanded to the lower court, and Paulina B. Morriss and her children were made parties. John F. Slaughter, Administrator of Sam'l Garland, Sr., and Administrator of Charles R. Slaughter, and Executor of Sam'l Garland, Jr., contended that by the 9th clause of the will the Testator gave to Burr Garland the profits therein mentioned absolutely, and that the exemption of the profits from liability for Burr Garland's debts was void. For Paulina B. Morriss and her children it was claimed that by the 9th clause the Testator set apart in trust in the hands of Charles R. Slaughter and Sam'l Garland, Jr., as Executors, both the estate and the profits mentioned, during Burr Garland's life—the profits for his use to the extent of a decent and comfortable support, and at his death the estate, and the profits, except what was thus used, were to pass to Charles Y. Morriss as Trustee for Paulina B. Morriss and her children.

Before ordering accounts of the profits, it was thought

better first to decide the rights of the parties therein, and the construction of the 9th clause was submitted to the Court and the Court was of opinion, and decreed "that the estate of the said Burr Garland in the profits set apart by the said clause for the use of the said Burr Garland became and was, under the law and by virtue of the said will, his absolute estate, and as such liable not only for such debts as might be contracted for his decent and comfortable support, but for all his debts; and the said profits did not, nor did any part thereof, pass under the said will to the said Charles Y. Morriss, in trust for the separate use of the said Paulina B. Morriss and her children, nor did they, or any or either of them, acquire any estate or interest therein under the said will."—2d Rec. 16.

ASSIGNMENT OF ERRORS.

The lower court erred in holding:

1. That Burr Garland was entitled absolutely to all the profits mentioned in the 9th clause of the will.

2. That said profits were liable not only for his decent and comfortable support but for all his debts, alike.

ARGUMENT.

I. Burr Garland was not entitled absolutely to all the profits mentioned in the 9th clause of the will.

That the testator did not intend to give him any property absolutely, is apparent from his preliminary explanations. He says in plain language: "It might be unsafe to devise property to him *absolutely*;" and he gives the reason for it. He says, he "has for a long time past been embarrassed in debt by losses of trade in 1837, and liabilities as surety for others." In the same sentence, and to soothe his feelings, and enable him the better to understand and appreciate the legacy that follows, he calls him; "My *favorite* brother, B. Garland, raised by me." Then to show that his purpose not to give him any property absolutely goes into, and gave form and shape to the legacy, he says, *therefore*—"I, *therefore*, set apart in trust in the hands of my Executors, for the benefit of my said brother" the plantation, slaves, horses, stock, provisions, furniture, tools, oxen, hogs, &c., "to make a complete estate." Having enumerated the various things, which he defines as a complete estate, and having created a trusteeship in Charles R. Slaughter and Sam'l Garland, Jr., whom he appointed his Executors, and having indicated that while nothing is to be given to Burr Garland absolutely, yet that this trusteeship is for his benefit, we look out

to see what the Trustees are to do, and how long this trusteeship is to last, and what benefit Burr Garland is to get during its continuance. The Testator proceeds: "The profits of the estate is set apart for his (B. Garland's) use, under his superintendence." This short sentence establishes some important provisions. First, that not only the complete estate is set apart in trust, but that the profits of the estate are set apart in trust in the hands of the Executors; secondly, that Burr Garland is to have a use in the *profits*, not in the estate; thirdly, that while both the estate and the profits are to be in trust in the hands of the Executors, yet Burr Garland is to have a superintendence over the estate and the profits. So far, the extent of the use he is to have in the profits is undefined, and we must look for it in the remaining portion of the clause. The Testator proceeds: "But neither the estate or (nor) profits shall be bound for his past debts and liabilities, or for future debts and liabilities, other than decent and comfortable support." The extent of Burr Garland's claim is within the scope of these two sentences. First, he takes a use in the profits. Secondly, the profits shall not be bound, except for his decent and comfortable support. He can incur no debt or liability, he can make no contract which will take more of the profits than a decent and comfortable support. The duration of the trusteeship is fixed by the next and closing sentence—"At his death *all the property* in this clause is to pass to Charles Y. Morriss in trust to

the separate use of his wife, Paulina B. Morriss, and her children." So long as Burr Garland lives the complete estate and the profits therefrom are to be held in trust by Charles R. Slaughter and Sam'l Garland, Jr.,—the profits for his use, to the extent of a decent and comfortable support, but beyond that, *all the property* in the clause shall pass to the Trustee of Paulina B. Morriss and her children. *All the property* in the clause includes the profits of the estate as well as the estate itself. The profits are mentioned and disposed of in the clause as well as the estate. Burr Garland is to choose the plantation and the slaves, mules and horses, and cultivate cotton, corn and potatoes; but the cotton, corn and potatoes constitute *property* as well as the slaves, mules and horses. The phrase *all the property in this clause* embraces the cotton, corn and potatoes, as well as the slaves, mules and horses.

Again: the distinction which the Testator makes in his use of the words, between property, and estate, and profits, throws light on his intention. The word estate as he uses it, means the plantation, slaves, mules, horses, stock, provisions, furniture, tools, oxen, hogs, &c.,—the *corpus* of the legacy, and if he had intended to give this alone to Mrs. Morriss and her children,

he would have said: "At his death *all the estate* in this clause is to pass to Charles Y. Morriss, Trustee. If he had intended for Burr Garland to have the profits absolutely, he would have given the estate to Burr Garland, during his life, or he would have given the estate to Charles R. Slaughter and Sam'l Garland, Jr., in trust for the use of Burr Garland, during his life. He neither gives him the estate for life nor the use of the estate. He gives both the estate and the profits to Charles R. Slaughter and Sam'l Garland, Jr., and they are to apply so much of the profits as will discharge all debts and liabilities incurred for his decent and comfortable support. He uses estate and profits with a like distinction in the 8th clause. His Mississippi estate is to be kept up a few years after his death, under Burr Garland's superintendence, the annual profits invested in good 6 per cent. stocks to the use of his Estate, but if Burr Garland cannot superintend it, then the Executors may sell or otherwise dispose of it. Charles R. Slaughter and Sam'l Garland, Jr., his Executors, are to have charge of his Mississippi estate, and they are to invest the profits. The superintendence of Burr Garland under the 8th, and his superintendence under the 9th clause, are not intended to abridge the execution of the trusts confided in the Executors.

The word property in the 9th clause is used by the Testator in a broader sense. When he said "it might be unsafe to devise property to him absolutely," he not only meant that it would be unsafe to give him a tract of land and slaves and mules and horses, but that it would be unsafe to give him cotton and corn or any of the products of the plantation. The reason he assigned applied to the one as well as the other. The reason comprehends both, and the word he uses comprehends both. Now when we look, from the beginning of the clause to the end of it, we see the Testator dropping his more restrictive words, and picking up his more comprehensive one, and we cannot doubt that when he said at his death, *all the property in this clause*, he meant both the estate and the profits, except so much of the profits as he had just carved out for Burr Garland's decent and comfortable support.

The expression *set apart* is somewhat peculiar to this Testator. In the 5th clause (1st Rec. p. 11) he says: "I will and direct my Executors to set apart $50,000 worth at par value of my bank and other paying stocks and corporate bonds, paying at least six per cent. per annum, the interest or

dividends whereof must be paid to my wife half yearly during her natural life." Here, he does not say, that the interest or dividends are to be set apart. The Executors are to pay all the interest or dividends to his wife, during her natural life. In the 9th clause,

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the Testator sets apart in trust in the hands of the Executors both the estate and the profits. He does not say that they are to pay or deliver the profits or any part of them to Burr Garland. He is careful to keep the title to all the property in this clause in trust in the hands of his Executors, and to keep the title to every bit of it, out of the hands of Burr Garland. Nothing to him absolutely is the steady purpose of the Testator.

Again: If it be said on the other side, that our construction makes the Testator bear rather hard on his favorite brother, we say, no. Burr Garland was himself raised and supported by the Testator—getting his decent and comfortable support on the Mississippi plantations. His own daughter, and only child, was adopted and educated by the Testator, and she and her children were to get all the property in that clause except his decent and comfortable support. What more could he do for one, who for prior gifts owed him a heavy debt of gratitude, who for moneys had and received to the use of himself and his daughter owed him a heavy financial debt, who was so hopelessly embarrassed in debt, that he could own nothing absolutely—one, to whom the future gave no promise, beyond a decent and comfortable support.

Again: If it be said that our construction imposes on Charles R. Slaughter and Sam'l Garland, Jr., a difficult task in looking after crops to be raised in Mississippi, which the Testator could hardly have contemplated, we say: They, too, for the most part had been raised, and educated, and set up in business by the Testator. He had given them valuable specific legacies and the bulk of his estate in the residuary clause, including valuable plantations and slaves and personal property in Mississippi. They were already charged in the 8th clause with the duty of taking account of the profits on the other Mississippi lands, and investing those profits; and it would seem to fall naturally within the scope of their general duties to keep accounts of the profits made on the Tudor Hall tract. It would be easier to keep accounts of the proceeds of the sale of the cotton and the corn, than to look after the mules and the horses and the hogs. If it be a burden, it is a burden with a large *quid pro quo*.

Again: If it be said on the other side, that Charles R. Slaughter died about three months after his qualification as Executor of Sam'l Garland, Sr.; that Sam'l Garland, Jr., died in less than a year after he qualified as Executor of Sam'l Garland, Sr.; that afterwards Burr Garland qualified as Administrator of Sam'l Garland, Sr., in Mississippi, with his will annexed, and he assumed the execution of all the trusts incident

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to the Executorship, we reply first, that these changes did not change the will, nor the rights of any legatee thereunder; secondly, that on the death of Charles R. Slaughter, John F. Slaughter qualified as his Administrator on the 3d of March, 1862. John F. Slaughter qualified as Executor of Sam'l Garland, Jr., the surviving Executor of Sam'l Garland, Sr., on the 6th of October, 1862,

and on the same day he qualified as Administrator *de bonis non* of Sam'l Garland, Sr., with his will annexed in the Husting Court of Lynchburg, Virginia, where the Executors had qualified; and that he then and there assumed the execution of the will of Sam'l Garland, Sr., so far as it had not been executed by Charles R. Slaughter and Sam'l Garland, Jr., and on him, as their personal representative, the statute devolved the execution of those trusts assumed by the Executors outside their executorial duties. See sec. 6, chap. 178, Code 1849, p. 675, or sec. 9, chap. 174, Code 1873, p. 1125. These executorial duties and trusts embraced the Mississippi estate of Sam'l Garland, Sr., mentioned in the 8th clause, and the complete estate and profits mentioned in the 9th clause of his will, and these duties were assumed by John F. Slaughter more than a month before Burr Garland qualified in Mississippi. John F. Slaughter as the personal representative of these Executors, and as Administrator *de bonis non* of Sam'l Garland, Sr., with his will annexed, is seeking in this suit to get possession of the profits mentioned in the 9th clause of the will included in the balance of $64,130.88; and we contend that he is as much bound to administer them according to the true construction of said clause, as were Charles R. Slaughter and Sam'l Garland, Jr., during their lives. If these profits were not included in the balance of $64,130.88, the estate of Burr Garland, on his administration, is liable for them, and that liability must be ascertained. It is a fiduciary debt of the same dignity with the Mississippi decree; and must be settled in the administration of Burr Garland's estate.

2. The profits are not liable for the debts of Burr Garland, beyond his decent and comfortable support.

From the conclusion reached in our argument on the first proposition, that Burr Garland was not entitled to the profits beyond his decent and comfortable support, our second proposition follows as a necessary sequence. The creditors of Burr Garland can take nothing under the will for the payment of his debts, beyond what he himself was entitled to take. His limits prescribe the utmost verge to which they can go. When the general judgment creditor comes with his execution, he can no more levy on the cotton and the corn, than he can levy

on the mules and the horses, because the Testator has set apart in trust in the hands of his Executors the cotton and the corn as well as the mules and the horses. The title to the cotton and the corn has not passed to the debtor. If such a creditor should bring his bill in chancery, to subject Burr Garland's interest in the crops raised on the Tudor Hall tract, the Chancellor would say to him: "the Testator does not give your debtor a life estate in the plantation and in the slaves, mules and horses employed in its cultivation, under which he would be entitled to the crops, as the usufruct from his life estate. He directs his Executors to hold in their hands in trust the crops, just as they hold the plantation. The Testator provides for your debtor, use and benefit in the crops, but he limits that use and benefit to liability for his decent and comfortable support. The debt to you is not of that class, and the crops cannot be taken to pay the debt to you."

The Executors are constituted special Trustees, and the Testator has carefully set apart in trust in their hands the crops. They constitute in part the corpus of the trust subject. Now examine the 9th clause, from the beginning to the end, and put your finger on any provision which authorizes Burr Garland to withdraw from the hands of these Trustees, any part of the corpus of the trust subject, or authorizes them to deliver to him any part of it. You cannot put your finger on it,

because it is not there. How then can the creditors at large of Burr Garland take from the hands of these Trustees that which Burr Garland could not take, and which the Trustees were not authorized to deliver to him. The Testator did not intend to give him any thing that his creditors at large could take. The judges have well said that the intention of the Testator is the polar star by which our course must be steered in coming to the proper construction of his will. The Testator, first of all, gives us his intention, as a beacon light to guide us. He says, in substance, Burr Garland cannot own any thing, because he is so much embarrassed in debt. He is my favorite brother, raised by me, but it is not safe to give him any property, because his creditors will take it from him. A decent and comfortable support is all that can be provided for him. I will set apart a complete estate and the profits thereof, in the hands of my Executors in trust, and, I will make the profits liable for his decent and comfortable support—that is the benefit and the use he takes in the profits—no more. Steering our course by the light of the intention expressed by the Testator, as the mariner steers by the polar star, and we come naturally and logically to our conclusion.

The learned counsel for the appellees contend, as we under-

stand them, that it not possible for a Lawyer to write a will securing a trust fund for the benefit of a legatee who is *sui juris*, and exempt that fund or any part of it from liability for the legatee's debts. We contend that this is possible; and that Sam'l Garland, Sr. did it. To hold that it cannot be done, is a hard interpretation of the law. What claim has Burr Garland's creditors on Sam'l Garland, Sr.? Why should he be bound to pay Burr Garland's debts, before Burr Garland could in any respect be the recipient of the bounty? Neither reason, nor authority, so far shackles the bounty of a Testator in giving away his own property. There is no difficulty in finding cases which hold that when a testator has given property to a legatee in fee simple, or absolutely, or with the *jus disponendi*, he cannot tack a remainder thereon in favor of another legatee, nor prohibit its alienation, nor prevent the creditors of the legatee from subjecting the legacy to the payment of his debts. These cases turn on this principle, that it is incompatible with the fee simple, absolute title of the first legatee that another legatee should have a remainder in the same property, or that the legatee, who takes a fee simple, absolute title with power of disposing of the property, should be prohibited from selling and conveying it, or from applying it to the payment of his debts. See *Ireddieh* v. *Cohoon*, 4 Rand. 547; *Burwell* v. *Anderson*, 3 Leigh. 348; *May* v. *Joynes*, 20 Gratt. 692; *Missionary Society of M. E. Church* v. *Calvert*, 32 Gratt. 357; *Carr* v. *Effinger*, 78 Va. 197.

In *Nickell* v. *Handly*, 10 Gratt. 336, a farm, slaves and other property were devised and bequeathed to a trustee, during the life of Mrs. Handly, a widowed daughter of the Testatrix, and the trustee was directed to use and conduct the farm most advantageously to the interest and support of Mrs. Handly and her children. The creditors of Mrs. Handly sought in a Court of Equity to subject Mrs. Handly's interest to the payment of her debts. Judge Samuels delivered the opinion of the Court, and said: (p. 339) "There is nothing in the nature or law of property, which could prevent the Testatrix, about to die, from appropriating her property to the support of her poor and helpless relations, according to the different conditions and wants of such relations; nothing to prevent her from charging her property with the expense of food, raiment and shelter

for such relations. There is nothing in law or reason, I conceive, which should prevent her from appointing an agent or Trustee to administer her bounty."

Judge Moncure dissented from the other four Judges, and held, that the widow and each child was entitled to an aliquot part of the profits of the farm, without regard to the varying

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amounts required for the support of each; that the widow was entitled to her part absolutely, and that her part might be subjected by her creditors to the payment of her debts.

Here it is to be observed, that the profits went directly to the beneficiaries. They were not carried into the trust fund, swelling the corpus of the legacy; but four of the Judges held that the support of the different members of the family varied with their ages, health and other circumstances, and there could be no fixed amount to which the widow could be entitled absolutely, and therefore nothing could be decreed to her creditors.

If the dissenting opinion of Judge Moncure in this case were applied to ours, only so much of the profits as might be necessary for the decent and comfortable support of Burr Garland could be treated as his absolute estate, and that much is expressly subjected to liability for his debts contracted for his support. It is the excess of profits, over his support, remaining in trust in the hands of the Executors which is the subject of controversy in our case.

In *Nichols* v. *Eaton*, 91 U. S. 716, the Testatrix had devised and bequeathed to Trustees real and personal estate in trust to pay the profits, interest and dividends to her four children equally, during their lives, with remainder to their children; and if either of her sons should alienate his share of the profits, or become bankrupt, his right to his share should cease, and his share should go to his wife and children. There was a discretion given to the Trustees, if they should think fit, but not to be obligatory on them, to transfer absolutely to the children a portion of the trust fund, not exceeding one half. One of the sons who was unmarried and childless, became bankrupt. His assignee sued the Trustees in equity to recover his share for his creditors.

The Court was unanimously of opinion that his creditors could not reach his share. Judge Miller, in delivering the opinion, referred to the English chancery court having recently engrafted on the common law the principles, that the power of alienation is a necessary incident to a life estate in real property; and that liability for the debts of the legatee is a necessary incident to his enjoyment of the rents and profits of real estate, and the interest and dividends of personal property. He said: (p. 725) "But the doctrine that the owner of property, in the free exercise of his will, in disposing of it, can not dispose of it, but that the object of his bounty, who parts with nothing in return, must hold it subject to the debts of his creditors, though that may soon deprive him of all the benefits sought to be conferred by the Testator's affection or generosity, is one which we are not prepared to announce, as the doctrine of this

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court. If the doctrine is to be sustained at all, it must rest exclusively on the rights of creditors. Whatever may be the extent of these rights in England, the policy of the States of this Union, as expressed both by their statutes and the decisions of their courts, has not been carried so far in that direction."

In sustaining this view, he quoted from our Virginia case of *Nickell* v. *Handly*, and from cases in Pennsylvania, Connecticut, Kentucky, and New York.

In *Hyde* v. *Woods*, 94 U. S. 523, this question came again before the Supreme Court of the United States, and *Nichols* v. *Eaton* was reaffirmed. The court said that in that case they had made a full examination of the authorities in England and in this country.

In *Broadway National Bank* v. *Adams*, 133 Mass. 170, (43 Am. Reports, 504) the authorities were fully reviewed and the court said: "He (the Testator) has the entire *jus disponendi* which imports that he may give it absolutely or may impose any restrictions or fetters not repugnant to the nature of the estate which he gives. Under our system, creditors may reach all the property of the debtor not exempted by law, but they cannot enlarge the gift of the founder of the trust, and take more than he has given. The rule of public policy, which subjects a debtor's property to the payment of his debts, does not subject the property of a donor to the debts of his beneficiary, and does not give the creditor a right to complain, that in the exercise of his absolute right of disposition, the donor has not seen fit to give the property to the creditor, but has left it out of his reach."

Our exemption under the poor debtor's law, the homestead exemption, and the exemption of $50 a month to the laboring man, are all based on the policy that creditors shall not strip their debtors of everything. It is not to be said, that he who is so unfortunate as to be embarrassed in debt beyond what he can pay, shall not have even a support from the bounty and charity of the benevolent. It is possible for a Lawyer to frame a paper by which the poorest debtor can have a cup of cold water, or a morsel of bread, that his creditor cannot take away from him. All that is necessary, is that the almoner of his charity shall hold the title and ownership, and deal out his bounty to the beneficiary. That is accomplished in the will before us. The Executors of the Testator hold in their hands in trust the estate and the *profits* thereof, and they apply so much of the profits as may be necessary for the decent and comfortable support of his favorite brother.

The construction of the 9th clause of the will, is all that was submitted to, and all that was decided by, the lower court. This

alone, as we understand it, is embraced in this appeal. The amount of the profits, the investment of the profits in purchasing the legacies of Nicholas A. Garland's children, and what the Trustee of Paulina B. Morriss and her children may be entitled to out of any recovery made by the administrator of Sam'l Garland, Sr., are matters to be determined by accounts yet to be taken.

We respectfully submit that the lower court erred in its construction of the 9th clause of the will, and that the decision should be reversed.

WILLIAM J. ROBERTSON,
EDWARD S. BROWN,
For Appellants.

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COURT OF APPEALS,

AT RICHMOND.

Hawkins, Sam'l G., Appellant.

vs.

Garland's Adm'r, &c., Appellees.

Argument of J. B. Brockenbrough,

FOR THE APPELLANT.

Bedford Star Power Press Print, Liberty, Va.

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HAWKINS, SAMUEL G, Appellant,

vs.

Garland's Adm'r, Appellee.

ARGUMENT of J. B. BROCKENBROUGH, Counsel for the Appellant.

This case comes before this Court upon an appeal from the decision of the Circuit Court of Lynchburg, His Honor, Judge G. A. Wingfield, who decided the cause, not having indicated in writing or orally, the reasons upon which he based his decision, but having contented himself with simply dismissing the appellant's bill, the counsel for the appellant are left entirely to conjecture as to what his reasons were. Nevertheless, as the practical effect of his decision was to sustain the appellee's demurrer to the appellant's bill, we shall endeavor to demonstrate, upon reason and authority, that said decision was erroneous, and hence that it should be reversed.

The facts of the case will sufficiently appear from the following argument:

The appellee, in his answer, admits that the facts, as stated in the appellant's bill, are true, but he claims that they are not sufficient in law to entitle the appellant to have and maintain this suit against him and his sureties: 1st. "because the said bill seeks to vary, change and explain the written will of Samuel Garland, Sr. by extrinsic facts and evidence which it is not competent for a court of equity to look into for any such purpose."

It is obvious that if the legal proposition set forth in the language just quoted from the appellee's answer were true, a court of equity could, in no case, admit parol or extrinsic evidence in aid of the construction of written instruments to explain ambiguities—whether patent or latent—occurring in them; and yet the daily practice of the

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courts both in this country and in England is to admit extrinsic evidence for this very purpose, at least in all cases of *latent* ambiguities!

It is true, that evidence of this character is, as a general rule, excluded in the case of patent ambiguities, or those apparent upon the face of the writings; but even here the rule is often relaxed, and parol evidence is let in to explain them. To use the language of an eminent writer on this subject: "We find it repeated, a thousand times over, in all the cases, and all the books, that parol evidence cannot be received to explain a patent ambiguity. And still every lawyer and every judge understands, that there is scarcely a day passes in Court, where some such ambiguity, in regard to writings, is not removed by construction, and such construction aided. *either by the proof of extraneous circumstances*, or by the practical knowledge of the judge assuming such facts." 1 Redfield on Wills, 578-80. If such evidence is allowed to explain *patent* ambiguities, the argument is of course *a fortiori* in favor of admitting it to explain *latent* ambiguities, or such as arise from circumstances *de hors* the writing.

Again: "The universal rule of evidence, in regard to all written contracts, is that parol evidence may be received to show the application of the words to the subject matter." Brownfield *v* Brownfield, 20 Penn. St., 55.

And again: "And where there is a latent ambiguity in a will, which we have before defined, 840, pl. 3, direct evidence may always be received of the intention of the testator at the time of making the will." 1 Redfield, 580-581, bottom of page, and cases there cited on this point. In fact, the rule admitting parol evidence to explain latent ambiguities is so firmly established, and so universally acted upon by our courts, that there is, at this day, no room for doubt or argument as to what the law is upon that subject.

It follows from hence, that the appellee, in his demurrer to the appellant's bill, has very incorrectly stated the law upon this subject, and that so far from it being incompetent for courts of equity to look into extrinsic evidence to explain written instruments, it is entirely competent for them to do so, and also part of their daily practice.

The question, then, is not whether extrinsic evidence is admissible or competent to explain the latent ambiguity which arises in this case from the extrinsic circumstance that at the date of the will of Samuel Garland, Sr. there was no person in existence who answered the description of

Samuel G., the son of Capt. John F. Slaughter" in the 15th clause of said will; but, as to *how far* such evidence is admissible or

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competent for that purpose—that is, to explain *who* was in the testator's mind when he wrote those words in his will?

The same writer quoted above, Mr. Redfield, says: "The scientific evidence, which now occupies so much time in court, in trying cases of contract often, is all addressed to the point of removing ambiguities upon the face of writings. Thus, it is said, in construing a will, the Court may look to the state of the testator's property, and the number, necessities, and character of his family, *at the time when the will was written*. This must be shown by parol." Here Mr. Radfield cites a number of authorities, among them the case of Wotton *v* Redd's Exor's., 12 Gratt, 196. He adds, that "circumstances indicating the state of the testator's affections towards the subjects of his bounty, and the relative condition of those looking to him for aid or support; and even the *declarations* of the testator, by his acts, in regard to the thing given, the relative amount of advancements, and the comparative value of different portions of the estate, *are always admitted as proper evidence to remove latent ambiguities*." 1 Redfield, 578-580, and case of Brownfield *v* Brownfield, Supra.

The object of admitting this class of testimony is to enable the Court to place themselves in the situation of the testator at the time he executed his will, with a view to the removal of all ambiguities arising upon the face of the will. Or, as Mr. Perkins, in his note on p. 346, 1 Jarman On Wills, expresses it: "The object, in both wills and contracts, is the same, namely, to discover the intention. And to do this, the Court may, in either case, *put themselves in the place of the party*, and then see how the terms of the instrument affect the property or subject matter. With this view, evidence must be admissible *of all the circumstances surrounding the author of the instrument*. It is only in this mode that parol evidence is admissible to explain written instruments; namely, *by showing the situation of the party in all his relations to persons and things around him*. This subject, as to how far parol evidence is admissible to explain or remove latent ambiguities, is also very fully and ably discussed by Mr. Jarman, in his work on Wills, just referred to, and by Sir James Wigram in his admirable and exhaustive treatise on extrinsic evidence in aid of the interpretation of wills; both of whom lay down the rule substantially the same as Mr. Redfield.

The ambiguity in the present case arising, as we have seen, from the extrinsic circumstance that at the date of the will of Sam'l Garland, Sr., there was no such person in existence as "Sam'l G., the son of Captain John F. Slaughter," is of course a *latent* ambiguity, as it arises *de hors*

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the will, and hence, according to the rules of evidence, as stated above, it is entirely competent for this Court to admit extrinsic evidence to explain or remove that ambiguity, or that is to say, extrinsic evidence of the testator's estate, his family, the state of his affections towards the objects of his bounty, and also his *declarations* in regard to the legacy in controversy in this suit; in short, of all the circumstances which surrounded Mr. Garland at the time he wrote his will, so

as that the Court may place themselves in his situation at that time, in order, if practicable, to give effect to every clause of his will, and thus that they may avoid the necessity of having to pronounce any part of it void for uncertainty.

Accordingly the appellant in this cause has taken parol evidence on all these points, in order to explain or remove the ambiguity which arises in this case, as stated above, and to show that he is the person whom the testator had in view, and meant to provide for, when he wrote the words "Samuel G., the son of Captain John F. Slaughter" in the 15th clause of his will; and he respectfully submits, that the evidence which he has adduced in support of his pretensions in this behalf is sufficiently cogent and convincing to satisfy any candid and impartial mind that they are well founded. The appellee, in his answer to the appellant's bill, evidently feels the force of that evidence, but seeks to shield himself from its damaging effect, by denying its legal sufficiency, and taking refuge in a demurrer to the appellant's bill! We shall see whether or not such a convenient subterfuge can be successfully resorted to in a case like this.

We think that we have already sufficiently shown that the evidence in question is admissible for the purpose indicated above, and that it is entirely competent for the Court to look into and receive it in for that purpose; and hence we confidently insist that the appellee's demurrer, so far as the first ground upon which the Court is asked to sustain it is concerned, should be over-ruled. But in order to show still more clearly that the appellant's evidence is competent and legally sufficient to establish his claim in the premises, and the consequent propriety of the Court overruling the appellee's demurrer: we propose to consider, first, the several points which, we think, have been established by that evidence, and secondly, to show that the same character of evidence has been received and acted upon in a number of leading cases, like that now under consideration, by the Courts of England and America.

The first fact proved in this case is, that John F. Slaughter, the appel-

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5.

lee, was never known to or addressed by the testator as "*Captain*" John F. Slaughter. This is admitted by Mr. Slaughter, in his answer, and furthermore, that he never had any such title. It is also proved that the testator never knew *but one* John F. Slaughter, that is, the appellee, and as *his* name appears in a previous clause of the will as John F. Slaughter, *simpliciter*, it is clear that the testator did not have *him* in view when he wrote the words "Captain John F. Slaughter" in the said 15th clause, but some other friend by the name of "Captain John F. ……..," (if he had such a friend) who *then* had a son in being named after the testator, and for whom the testator intended to provide in said clause. Certainly this is the most natural and reasonable construction which can be placed upon the language used by the testator in said clause.

We shall see, presently, whether or not the testator, at the date of his will, *had* a friend who answered the above description, and further, if so, whether or not that friend *then* had a son named after the testator.

But Mr. Slaughter insists that the term "Captain," in the clause under consideration, *has no significance whatever*—that it is mere *surplusage*, and that this Court should so regard it. In other words, as the term "Captain" *is* in said clause, and Mr. Slaughter can lay no claim to it, he

modestly asks this Court to *ignore* it, and to construe said clause as if it did not contain it! Insignificant and meaningless as that term is, in Mr. Slaughter's view, he is evidently *very anxious to get rid of it*!—But there it is, and there it will remain—a stubborn fact in this record. And though Mr. Slaughter may affect to regard it *as surplusage*, he *well knows* that it has *a world of significance*, and *that not at all according to his liking*,—like some other stubborn facts in this record, yet to be considered. Full well he knows that that little word "Captain" proclaims, in trumpet tones, that the testator, who put it there, meant by it that the legacy in question should go into other hands than into those which have fastened their grip upon it! *Hinc illae lachrymae*! Hence Mr. Slaughter's anxiety to get rid of that word, and his modest request to the Court to ignore it. But we imagine that the Court will take quite a different view of this matter, and give full force and effect to that word, if practicable, in construing the clause under consideration, however distasteful the consequences of their doing so may prove to Mr. Slaughter, inasmuch as the Court must conclude, in the absence of proof to the contrary, that the testator had some *design* in using that word in the premises.

8.

It further appears from the evidence, that at the date of the will, the testator had an old and valued friend by the name of Captain John F. Hawkins, whom he generally spoke of and addressed as "Captain Hawkins," though he often addressed him by the more familiar appellation of "John," as he was then, and had been for many years before, on the most intimate terms with him; and further, that this Captain Hawkins then had a son (the appellant in this record) whom he called after the testator, in testimony of his regard for the latter; that this son was then about fifteen years of age, and well known to the testator; that the testator stood as god-father for him at his baptism,—ever afterwards manifested the liveliest interest in him,—and always recognised him as his namesake!

It is further proved by the evidence, that at the date of the will in question, John F. Slaughter had no such son as "Samuel G.," and that he did not have such a son for nearly four years after that date—that is, until about two months before the testator's death; which occurred in November, 1861, in the State of Mississippi, where the testator was then sojourning. This potential fact is also admitted by Mr. Slaughter, in his answer,and the only way in which he attempts to extricate himself from the awkward dilemma in which it places him, is by the extraordinary statement which he makes in his answer: "That while it is true that he had no son of the name of Sam'l G. at the date of the will, yet the testator expected him to name a son after him (.), and on several occasions mentioned the matter to the wife (!) of respondent, who named him that his time had not yet arrived" (!!).

Will not the Court agree with us, that the appellee here plainly acknowledges the utter groundlessness of his case, so far as the pretensions of his son are concerned, and also the taste which prompted him to spread such a statement on record, is as execrable, as the statement itself is palpably inadmissible as evidence in this cause? Is it possible to conceive that a man who believed that he was asserting a just and honest claim, would resort to such means as this to bolster up and establish it? And yet it is upon just such ground that the appellee has the temerity and cheek to contend that the legacy in question was properly turned over to him, as the natural guardian of his said infant son (of whose existence it does not appear that the testator was cognizant to the day of his death), by Gen. Sam'l Garland, as surviving executor of himself and Chas. R. Slaughter, his co-executor—to-wit, in February, 1862, just after the death of said Chas. R. Slaughter; and upon the further ground, that

both of said executors,—("who were accomplished lawyers,") had "mooted" the question as to whether this son of the appellee was entitled to said legacy, and both of them "had very promptly agreed that he was, because he answered the description at the death of the testator" (!).

We do not mean to question the legal attainments of these executors,—on the contrary, we know that they were bright and shining lights in their profession, and men learned in the law; but- since they seem to have formed and concurred in the opinion expressed above, so "very promptly", we may be pardoned for entertaining the suspicion that they did not consider the question submitted to them very naturally, and that they reached their conclusion without finding a solitary decision in the books to sustain them!

At any rate, we have not been able to find such a decision, notwithstanding we have searched long and patiently for such an one; and our belief is, that none such exists.

But if the opinion of the gentlemen, referred to above, was a correct opinion in the premises, it is morally certain that the testator never intended such a result; since it is clear that the person whom he intended to provide for in the clause of his will now under consideration, was a "namesake" of his then in being, to-wit, at the date of his will, and with whom he was personally acquainted; just as the other three namesakes of his, mentioned in said clause, were all then in being, and, it is fair to presume, personally well known to the testator.

We therefore conclude, that Sam'l G., the son of John F. Slaughter, was not the person to whom the testator meant to give the legacy in question.

Are we correct in this conclusion? That we are, beyond the shadow of a doubt, we think will be obvious, upon a moment's consideration of the nature of the defence last above mentioned, and of the practical consequences which would result from its being entertained and sanctioned by this Court.

The pretension of the appellee is, that although he did not have a son by the name of Sam'l G. at the date of the testator's will, yet that, as he did have such a son in being at the death of the testator, this son was the "namesake" whom the testator had in view when he wrote the words

"Sam'l G., the son of Captain John F. Slaughter," in the fifteenth clause of his will! and that having thus "filled the bill" at the latter date,—that is to say, having produced a son (how lucky, it didn't prove to be a daughter!) before the testator's death, and named him "Samuel

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8.

G.," (albeit expressly to make him fit the description in the will! and albeit the testator never heard of his existence!) and thus "Samuel G.," being in esse at the testator's death,—that was all the will or the law required to entitle the said Sam'l G., to the legacy in question; and therefore, that said legacy was very properly turned over to the appellee, as the natural guardian of said Sam'l G., by the surviving Executor, as aforesaid! In other words, this was the identical son that the testator "expected"—nay, foreknew! the appellee would have, and now that he has arrived,—a little late, it's true, but "better late than never,"—his case is made out and the legacy is his! But suppose the testator had been less prescient, and this boy had proved to be a "gal"; what would have become of the legacy, in that case made and provided? This is a conundrum which I leave to Mr. Slaughter to solve. Doubtless he will be equal to the occasion, as he is a gentleman of wonderful resources, and, as in the present instance, generally "on time"!

Such, may it please the Court, is the rationale, the plain english and true inwardness of the the appellee's absurd pretension in the premises "Only this and nothing more." Will not the Court agree with us that only a man of the most extraordinary and unlimited cheek could have the effrontery to assert such a pretension in a Court of justice? And yet the appellee, with apparent seriousness, contends, that he, or his son, is in the rightful possession of the legacy in controversy, and has the cheek to ask this Court to confirm him therein!

Consider, for a moment longer, what he asks this Court to do. Simply this: that the Court shall construe the language of the testator's will under consideration as if it read: "I give to my namesake, Samuel G., the son of John F. Slaughter, if he shall have such a son in being at my death, one thousand dollars"; that is, the Court is asked to construe said clause, as it stands, so far as it relates to the other "namesakes" mentioned therein, but, so far as it relates, or is supposed to relate, to the appellee's son, to change the testator's language entirely,—that is, make a new will for him, pro tanto, out and out—and to adopt a different rule of construction; in short, to do anything and everything in the premises that may be necessary to enable the appellee's son to secure the legacy in question, and to prevent the necessity of the appellee's having to turn it over to somebody else, albeit its rightful owner!

In other words, the appellee asks that this Court will, in construing the clause under consideration, ignore all the rules which ordinarily gov-

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9.

ern the Courts in the construction of written instruments, and adopt a brand-new rule for this particular case! For instance, he would probably like this Court in the present case to follow some such rule as this: "Hereafter when a testator bequeathes a legacy to a party by name, and that party doesn't happen to be in esse at the date of the will, but comes into being before the death of the testator, the will is to be construed as speaking with reference to the state of things existing at the death of the testator, and not to things existing at the date of the will!" No doubt such a rule as this would suit the appellee exactly, but we take it that this Court will, in the present case, prefer to follow the good old rule on this subject laid down by Mr. Jarman: "That whenever a testator refers to an actually existing state of things, his language is referential to the date of the will, and not to his death,- as this is then a prospective event. Such, it is clear, is the construction of the word 'now', or any other expression pointing at present time."—1 Jarman On Wills, p. 293.

Again: "On the same principle, verbs in the present tense have a similar effect in restricting a devise or bequest to the subjects or objects existing at the date of the will."—Id. p. 293.

As the testator, in the present case and in the clause now under consideration, uses the present tense—"I give to each of my namesakes, &c.," he clearly refers to the state of things actually existing at the date of his will, and not to any prospective state of things which might or might not exist at the date of his death.

The authorities just quoted are, therefore, precisely in point here, and absolutely conclusive against the pretensions of the appellee's son in the premises.

In other words, so far as the will gives him any right to the legacy in question, he has no more right to it than an infant yet to be born! But, says the appellee, Gen'l Sam. Garland, the surviving executor—an "accomplished lawyer"—was of a different opinion about this matter, and as he turned this legacy over to him (appellee), in trust for his (appellee's) son, long years ago, therefore the Court ought not to take it away from his son at this late day! Now, while it is wholly immaterial who turned this legacy over to the appellee, so far as the real issue in this case

is concerned, let us probe that transaction a little, and see if we cannot readily discover how it was really brought about, and also at whose instance.

If said legacy was turned over to the appellee by Gen'l Gar-

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land, the surviving executor, as the appellee alleges, we deny that Gen'l Garland had the right to turn it over, without first referring the clause of the testatator's will now under consideration to the Court, for a construction thereof, and a construction thereof by the Court favorable to the pretensions of the appellee's son; as it was peculiarly a case for construction by the Court, since it probably involved, according to the appellee's own showing, the rights of the appellant, as well as those of the appellee's son. Yet the said executor appears to have taken no steps whatever to invoke the aid of the Court for this purpose, and to have settled the whole matter ex curia and ex mero motu. We repeat, that if the allegation in the appellee's answer be true, and the said executor thus acted, he did what he had no right to do, and in doing so, he clearly invaded the province and usurped the powers of the chancellor.

In that event, the executor, and also the appellee, (who seems to have been present when this conclusion was reached by the executor, and warmly to have endorsed all that was done by him in reference to this matter), would appear to have acted in the premises upon a forgone conclusion, and to have been influenced more by a desire to keep this pittance of the testator's estate in the testator's family, than to carry out the latter's real intentions. We are not willing to impute such motives to Gen'l Garland, because they are too unilke the man, than whom no man stood higher, and whose character is doubtless worthy of all that is said of it in the appellee's answer. But at the time this legacy is alleged to have been turned over by him to the appellee, to wit, in Feb., 1862, our country was engaged in a terrible war, and Gen'l Garland's whole time, talents and energies were devoted to the defence of Virginia, whom he loved so well, and for whom he soon afterwards laid down his valuable life on the field of battle; so that he then had no time to give to his own private matters, nor to those of Mr. Garland's estate, of which he was the surviving executor, his co-executor, Mr. Chas. R. Slaughter, having just died, viz: on the 10th of February, 1862. Indeed, there is every reason to believe that Gen'l Garland would not have been in Lynchburg at all during the winter of 1862, had he not been called there by the death of his said co-executor; and it seems from the appellee's answer, that it was there and then, on that solemn occasion, and during that hurried visit, that he turned over the legacy in question to the appellee, and "made an entry thereof on his books in his own hand writing." If he did so, it is fair to presume that he did it merely to ac-

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commodate the appellee, and at the appellee's special instance and request; as the latter was to be really the chief beneficiary of the transaction,—Gen'l Garland having no interest in it whatever,—and as it is not likely that, under the circumstances in which he was then placed, the General would have thought of this particular legacy at all, unless his attention had been specially called to it by some one having an interested motive in view. We think that it was in this way that that legacy was turned over by Gen'l Garland, if at all, and that while the circumstances to which we have referred did not justify his turning it over, they clearly disclose the fact that he was not the moving spirit in that transaction, and that none other than John F. Slaughter himself was the man who "worked the case up," and engineered it through from beginning to end! It is also a fact, that altho' Gen'l Garland was then the nominal executor of the testator's estate, John F. Slaughter was the real executor, as Gen'l Garland continued in active service in the field until his death, and said Slaugter, who remained at home throughout the war, had the entire management and control of said estate. From all of which the Court will readily see what a rare opportunity the said Slaughter had to "feather his nest" in this matter,—what a good use he made of that opportunity—and what a miserably small chance the appellant in this cause (who also was then engaged in fighting the battles of his country) had of having his claims to the legacy in question recognized and respected by this disinterested and unselfish administrator de bonis non.

It is furthermore proved, that in 1860 or 1861 the testator met Major Garland on the streets of Lynchburg, and that after some conversation between them relative to the testator's will, the testator remarked to the Major that he "had given" to three or four of his namesakes one thousand dollars each, and that Sam'l G. Hawkins (the appellant) was one of that number. The Major says that he remembers, particularly, that the name of Sam'l G. Hawkins was one of the namesakes mentioned by the testator. This declaration was made by the testator about three years after the execution of his will, and as he was talking about his will, Major Garland says he inferred the testator meant that he had provided for his said namesake in his will. We regard this declaration of the testator as entitled to peculiar weight, since it was made, without solicitation, to a confidential friend, wholly disinterested in the matter to which it related, and is in perfect keeping with the testator's uniform feelings towards and interest in his namesake, young Hawkins, as man-

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ifested on a number of other occasions, as the evidence in this case abundantly shows. And that it is perfectly competent for the Court to admit said declaration, as one of the extrinsic facts of this case tending directly to explain who was in the testator's mind when he wrote those words in his will—"Sam'l G., the son of Capt. John F. Slaughter," we will be able to demonstrate, we trust to the satisfaction of the Court, by a number of English and American decisions, directly in point, before we conclude this argument.

Major Garland further proves that in the Spring of 1862, he, as counsel for Gen'l Garland, instituted the suit of "Garland's Ex'ors v. Garland and others," (the object of which was to settle up the estate of Samuel Garland, Sr.) and that Sam'l G. Hawkins (the appellant) was made one of the defendants therein; and that in the spring of 1863, acting as counsel for John F. Slaughter (who was then the Administrator de bonis non with the will annexed of the said testator's estate), he revived said suit in said Slaughter's name as such administrator, and with the latter's knowledge and approval, made all of the parties who were defendants in said original suit defendants in the suit thus revived. These facts are also proved, of course, by the records in those suits (which are still pending in the Circuit Court of Lynchburg), extracts from which, marked, "A", "B", and "C", respectively, are filed as exhibits with the bill in this cause.

Thus it appears that when those suits were instituted, the first by the executor, and the last by the appellee, as adm'r, &c., both of those gentlemen recognised the fact that the appellant was interested in the said testator's estate, as otherwise they would not have made him one of the defendants therein. This shows that they were both of the opinion, at that time, that Sam'l G. Hawkins was the person whom the testator intended to provide for in said 15th clause of his will. Major Garland says, moreover, that he is quite sure that he told Mr. Slaughter, when the latter was about to revive the suit above mentioned, what he—(Major G.)—heard the testator declare that he "had given" to Sam'l G. Hawkins, and that he expressed the opinion to Mr. Slaughter that it would be necessary to make said Hawkins a Defendant in that suit, as the "Sam'l G" mentioned in said 15th clause of the testator's will: which was accordingly done. And yet Mr. Slaughter now says, that he cannot account for said Hawkins having been made one of the defendants in that suit! He cannot conceive how it happened! Mr. Slaughter seems to be very oblivious, and hence we would advise

himto read Major Garland's deposition, if he has not already done so, in order that he may refresh his recollection touching these interesting points.

Before concluding our review and discussion of the evidence in this case, we ask leave to call the attention of the Court to the important fact, that the mistake or inadvertence, which we claim, and think that the evidences demonstrates, that the testator committed in writing the surname of Slaughter instead of the surname of Hawkins, in the said 15th clause of his will,—(as he really intended to do, and afterwards thought he had done),—is not the only mistake or inadvertence which he committed in writing his said will; for we find that, in the 14th clause, he says: "I give to Charles R. Slaughter, in trust for his brother, Samuel M. Garland, &c.," when of course he meant to say Sam'l M. Slaughter, as Chas. R. Slaughter could not have a brother by the name of Sam'l M. Garland; and yet the executors raised no question as to this mistake, but promptly corrected it, by substituting the surname of Slaughter for that of Garland; and paid over the legacy provided in that clause to Sam'l M. Slaughter, for whom the testator evidently intended it. In this we think that they did what the court would have done in the same case; and all that we complain of is, that they refused to do, or to give the court an opportunity of doing, the same thing in the case of the said 15th clause, by substituting the surname of Hawkins for the surname of Slaughter, as the inadvertence of the testator in the latter case was equally as obvious as it, to the former. But we suppose that, as Sam'l M. Slaughter was in the family, and as Sam'l G. Hawkins was not, we will have to make some allowance for their inconsistency—upon the principle that the case being altered alters the case! Is it not strange, then, that in the face of this glaring mistake in the 14th clause of the will, Mr. Slaughter should insist, as he does in his answer, that it is "unreasonable" to suppose that so methodical, systematic and business-like a man as the testator was, could have made such a mistake as the appellant alleges that he made in the 15th clause, or that if he made it he would not have discovered and corrected it long before he died? Here, then, is an inadvertence or mistake—and quite a remarkable one—in the 14th clause, which the appellee cannot deny. Why therefore may not the testator have committed a far less remarkable an inadvertence in the 15th clause? We think that the inadvertence which he did undoubtedly commit in the latter clause, was a most natural one for him to have committed, under the circumstances, as he had, just before, in

the same clause, written the name Slaughter twice, and as the appellee's initials, except the surname, are identically the same as those of the plaintiff's father; that is, John F. in both cases. We not only say that it was natural that the testator should have made such a mistake, but that, in view of all the evidence in this case, it is impossible to doubt that he made it. Supposing, then, the fact of this mistake to be established by the evidence, and that, according to the rule of construction laid down by Jarman (Supra), the language of the testator in the 15th clause of his

will, now under consideration, is to be construed by the court as referring to the state of things actually existing at the date of his will, and not to any prospective state of things which might or might not exist at the date of his death,—(and therefore that the testator, in that clause, did not intend to give a legacy to Sam'l G., the son of John F. Slaughter, who was not in existence at the former date, as we have seen); the next question to be considered and determined is, does or does not the evidence show, with reasonable and sufficient certainty to satisfy the mind of the court, that the intention of the testator was to give the legacy in question to his namesake, the appellant, Sam'l G., the son of Captain John F. Hawkins? We hold that it does, and that according to the authorities which we have already cited, and others to which we are about to advert, it is perfectly competent for the court to look into and receive said evidence, for the purpose of explaining the testator's language, and of showing that such was his intention; since it appears that in the cases now to be cited, evidence of precisely the same character, and for a similar purpose, was received and acted upon by the Judges who respectively decided them.

In the consideration of this subject, we will promise, that in all of the decisions—English and American—which we have examined, the principle is recognised that parol evidence is admissible to explain and render sensible the words used by the testator, where those words, as written, are insensible with reference to the extrinsic facts of the case; the only difference of opinion among the judges being as to the admissibility of the declarations of testators in such cases to prove their intentions in respect to the subjects of their bequests or the objects of their bounty. Here there is still considerable diversity of opinion, but the decided tendency, especially of the later decisions on this subject, is to admit such declarations for that purpose, and in order that such bequests may not fail or be pronounced void for uncertainty; as the citation which we have hereinbefore made from Redfield on this

subject clearly indicates. As to the tendency of modern decisions on the subject of gifts void for uncertainty, we will state, just here, in passing, that that tendency is overwhelmingly against construing such bequests void; as appears from the following quotation from Mr. O'Hara's work on the construction of Wills, page 47:—"Owing to the admissibility of parol evidence to identify a beneficiary in cases of ambiguous description, a gift so limited veritably fails." And again, Id., page 55: "Indeed, it would not be safe at the present day to rely upon any of the old cases with respect to the question what invalidates a gift for uncertainty"—referring to 1 Jarman, 322, 324. See also O'Hara, 4 on construction of Wills, p. 368. "A mere misdescription of the legatee does not render the legacy void unless the ambiguity is such as to render it impossible either from the will or the will to ascertain who was intended as the object of the testator's bounty."

We will therefore regard all of the plaintiff's evidence in this case, other than that of the testator's declaration to Major Garland, as admissible and competent to explain and "clear up" the ambiguity which arises in the said 15th clause of the testator's will, that is to say, to show that the appellant is the person whom the testator had in his mind's eye when he wrote the words "Sam'l G., the son of Captain John F. Slaughter, in said clause"; and address ourselves to the task of showing, more fully than we have already done, that the testator's said declaration is likewise admissible for the same purpose; and this we propose to do by a number of leading decisions the authority of which has long been recognised by the courts of England and of this country.

In the case of Gass v. Ross, 3 Sneed, 232, the testator made a bequest for the benefit of the "children of G. S. District;" there being no district of that name, evidence of the testator's own declarations was received to determine which of the several districts was intended by him 1 Redfield, 581-582. This, the Court will observe, is not a case of "equivocation," the description not being indifferently applicable to two or more of the several districts referred to, but applicable to neither of them, because there was no such district as the "G. S. District." This, therefore, is a strong case and precisely in point; as it shows conclusively that cases of "equivocation" are not the only ones in which the declarations of the testator are received.

In the case of Thomas v. Stevens, 4 John, ch. 506, the testator gave a legacy to Caroline Thompson. Parol evidence of the testator's declarations was received to show that Caroline Thomas was the person

intended by the testator, and she was held entitled to the legacy. Not a case of "equivocation."

In the case of Thomas v. Thomas, 6 Term R. 771, the devise was: "I devise to my grand daughter, Mary Thomas, of Llechlloyd, in Merthyr parish, the reversion, &c." The testator had a grand daughter of the name of Elinor Evans, who lived at Llechlloyd, in Merthyr parish, and a great-grand daughter, Mary Thomas, who lived at Green, in the parish of Langam, some miles from Merthyr parish. At the trial, the plaintiff's counsel proposed giving parol evidence to show a mistake in the name of the devisee, namely, that when the will was read over to the devisor, he said that there was a mistake in the name of the devisee, but that there was no reason to alter it, as the place of abode and the parish where the devisee lived were sufficient to ascertain the object of his bounty. The judge admitted the evidence, but the jury did not give credit to it. Upon a motion for a new trial, Lord Kenyon, C. J., and Lawrence, J., both expressly said, "that, for the purpose of showing whom the testator meant by the ambiguous description in the will,

declarations by him at the time of making his will were clearly admissible in evidence." Here again is no case of "equivocation," since the words used by the devisor are not applicable indifferently to one or other of the two devisees mentioned, but, strictly, applicable to neither of them; and yet the great Lord Kenyon said that the declarations of the testator were "clearly admissible" to show which of the two devisees the testator meant by the ambiguous description in the will.

This case, therefore, is also strikingly in point. Indeed, it goes farther than we ask the Court to go in the present case; inasmuch as there, upon proof of the testator's declarations, the Court, in effect, decided that Elinor Evans was entitled to the devise, notwithstanding her name, (both christian and surname), was different from the name which was written in the will, viz: Mary Thomas; whereas, in the present case, the name of the appellant, except his surname, is identically the same, the description in the will, and likewise the name of his father, with the same exception, answers the description of his name in the will. And therefore, in asking the Court to receive proof of the testator's declaration in this case, for the purpose of showing who was meant by the ambiguous description in the said 15th clause of his will, we do not ask the Court to go as far as Lord Kenyon went in the case of Thomas v. Thomas, just cited. The only other difference between that case and this, is, that there the declaration of the testator was made at the time of making the

will, whereas here the testator's declaration was made subsequently to the execution of the will; which is quite an immaterial difference, as Lord C. J. Denman, in Dold, Allen v. Allen, 12 Ad. & Ell. 455, shows: "Cases," says he, "are referred to in the books, to show that declarations contemporaneous with the will are alone to be received; but on examination, none of them establish such a distinction. Neither has any argument been adduced which convinces us that those subsequent to the will ought to be excluded, whereever any evidence of declarations can be received."

Id the case of Price v. Page, 4 Ves. jun. 680, Thomas Bell, by his will, after some legacies, gave to —— Price, the son of —— Price, the sum of £100. The plaintiff was the only person who claimed the legacy. Evidence of the relation in which the plaintiff stood to the testator was given; and it was also proved, that the testator said he had provided or would provide for the plaintiff, and that he had left him something by his will. The latter evidence was relied upon in the judgment. Here the declaration was admitted to identify the plaintiff as the legatee described in the will; the effect of which admission was to fill up two blanks in the will.

In Hodgson v. Hodgson, 2 Van 533, R. H. devised to the defendant, H., several closes, paying £100, he (the testator) owed to J. S., and £100 he owed by bond to one Shaw. It fell out, that the money due upon the bond was not due to Shaw, but was the money of Alice Beek, then the wife of one Fitch. The devisee of the land refused to pay the £100. The plaintiff examined Harvey, who drew the will, who deposed that the testator declared he meant the £100 due to the person who married Mrs. Beek of Lincoln; and another witness deposed, that he meant the debt for which C. was bound as surety. Decreed for the plaintiff, first at the Rolls, and afterwards by the Lord Chancellor, who declared he saw no hurt in admitting collateral proof to make certain the person or the thing described.

In the celebrated case of Beaumont v. Fell, 2 P. Wms. 140, the testator gave a legacy to "Catherine Earnly." No person of that name, but one Gertrude Yardly claimed the legacy. It was proved that the testator, in his lifetime, had declared that he would do well for her by his will. Upon this, and also other extrinsic evidence, the Court gave her the legacy. This case has frequently been referred to with approbation, 6 Term R. 675; 7 Term R. 143; 3 Taunt. 156; M. S. case, pl. 146, Wigram On Wills.

18.

In the M. S. case, just cited, a testator devised his estate in the county of A., to B. and her heirs. The testator had not, at the time of making his will, any estate in the county of A. He had estates in four other counties, C., D., E, and F. The estate intended for B. was in the county of E. The evidence by which it was proposed to prove the intention, consisted of the instructions given for preparing the will; the declarations of the testator made to his steward; and a letter he wrote to B. about the time of making his will. "The opinions of several gentlemen of the first professional eminence, two of whom now fill judicial stations in this country (England) were taken upon the case, and all agreed in thinking the evidence admissible."

In Bennett v. Marshall, 2 Kay & Joh. 740, the testator devised to "William Marshall, his second cousin." It appeared that he had no second cousin named William Marshall; but that he had two first cousins once removed, one named William Marshall, simpliciter, the other named William John Robert Blandford Marshall. Sir W. P. Wood, V. C., admitted parol evidence as to the intention of the testator, and decided, upon such evidence, that the cousin last named was the one whom he intended to benefit. Wigram On Wills, 228, Note 2, by O'Hara. Mr. O'Hara says that Vice-Chancellor Wood, after hearing the evidence and arguments in the above case, is reported to have remarked that, if the evidence had been properly balanced, he must have held William

Marshall entitled under the devise, in preference to W. J. R. B. Marshall. "Was not," says Mr. O'H., "this an admission, that the object of the testator's bounty was not described in terms which were applicable indifferently to more than one person?"

In Wood v. White, 32 Me. 340 in Eq., a testator bequeathed a legacy to J. Wood. Parol evidence was accepted to show that George Wood was the person intended. Here the will was insensible with reference to surrounding facts. But if there was a J. Wood known to the testator, parol evidence should be excluded. This decision implies that, if there was a J. Wood, he could not get the legacy, unless he was known to the testator.

We also refer to the following additional cases under this head: Selwood v. Mildmay, 3 Ves. jun. 306; Lindgren v. Lindgren, 9 Beav. 365; Hampshire v. Pierce, 3 Ves. Sen 216; Doe v. Hnthwaite, 3 B. & Ald [S. C. 8 Taunt. 306]; Baugh v. Read, 1 Ves. 257; Parsons v. Parsons, 1 Ves. 266; Miro v. Boston Asylum, 7 Metcalf, 416; Davis v. Rodgers, 1 Houston, 44; Trustees v. Peaslee, 15 N. H. 317; Tudor v. Tarell, 2 Dana, 47.

19.

All of these cases distinctly recognise the principle that intention, independently of the language of the will, may be the direct and immediate subject of proof; and, upon a critical examination of them, it will appear that not one of them is a case of "equivocation," strictly speaking.

It is true that Sir James Wigram, in his Prop. VII., attempts, upon the decisions in Miller vs. Travers, 8 Drury 244, and Hiscock's vs. Hiscock's 5 M. & W, 363, and some other cases which he refers to therein, to establish the theory that it is only in cases of "equivocation,"—in which the description is applicable indifferently to two or more persons or things,—that direct evidence of the intention can be received; but that learned author admits that that theory cannot be reconciled with the formidable array of decisions which we have adduced and considered above, in which, as we have seen, the description is not applicable indifferently to two or more persons or things. Moreover, Mr. Jarman thinks that the distinction thus sought to be established by Sir James Wigram between these two classes of cases, is a distinction without any real difference; for he says (I. Vol. Wills 378)" that there is no difference in principle between cases where part of the description suits one person, and part another, and those where the ambiguity is owing to the plurality of persons to whom the description is applicable." Hence, if direct evidence is receivable in the one class of cases, there is no good reason why it should not be received in the other class; in order that in both the real intention of the testator or author of the writing may be ascertained and effectuated.

Again; Mr. O'Hara (p. 50, Sup. to Sir James Wigram's work on wills) says—"Parol evidence is more freely admitted in America than in England, both under Prop's. III. and VII. (ante Part 1)."

VIRGINIA CASES.

In Wootton vs. Redd's Exo'r., 12 Gratt. 197. Our Court of Appeals says:—

"An investigation into the state of facts under which the will was made will often materially aid in elucidating the scheme which the testator had in mind for the disposition of his estate." * "And generally evidence may be received as to any facts known to the testator which may reasonably be supposed to have influenced him in the disposition of his property, and as to all the surrounding circumstances at the time of making the will.

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20.

The attention of the Court is particularly called to the following language:

"Where the subject is sufficiently and clearly ascertained, though there be added particulars of description which are found to be false or mistaken, effect will be given to the devise, notwithstanding; and these false or mistaken particulars of description will be rejected."

And now observe: The appellee relies upon this principle, and without its aid, cannot even pretend that "Mr. John F. Slaughter's unborn son was intended. He wants to reject the prefix "Captain" as surplusage. We insist that the suffix to "John F." should be rejected as a mistake for "Hawkins."

Again: Says our Court of Appeals in the case above cited, per Lee, Judge:

"Thus, where a testator devised: "all that his farm called Trogue's farm, in the parish of Darley, now in the occupation of A. Clay; but two certain closes which were part of Trogue's farm were

not in the occupation of the person named. Yet it was held that the devise embraced the whole of Trogue's farm and was not affected by the mistaken terms of description added; which might accordingly be rejected. Goodtitle v. Southern, 1 Maule & Sell. 299."

So say we here:—

1. The bequest is to "Samuel G."—that is enough if what Samuel G. can be ascertained.

2. He is the son of "Capt. John F."—there is an unmistakable earmark.

3. The misdescription of his father's name, may be rejected,—and the circumstances point to "Samuel G., the son of Captain John F. Hawkins" as the legatee.

In Maund's Adm'r v. McPhail, 10 Leigh, 199, (through inadvertence cited by our colleague, Mr. L. D. Haymond, in the Petition, as reported a 9th Leigh) parol evidence of the testator's declarations was admitted, tho' strenuously resisted, as it always is, by rival claimants, to ascertain the true legatee; and upon evidence of this character exclusively the case was decided. The attention of the Court is also specially called to this case. See authorities cited by Mr. Robinson, counsel for appellee, in his argument.

In Shelton v. Shelton's Exo'rs., 1 Wash. 55. President Pendleton delivering the unanimous opinion of the Court of Appeals held that—it was admissible to resort to parol proof: "to explain a person or thing

intended by doubtful words, or TO CORRECT MISTAKES IN EITHER DESCRIPTION."

And that under the latter allowance, still quoting the language of that eminent jurist: "parol evidence of the testator's circumstances, situation, connections with the legatees and his

transactions between the making of his will and death are to be admitted to discover his intentions. The chancery books ancient and modern abound with instances."

Did ever glove fit a hand more perfectly than this opinion fits our case? Verily we may say of it—"rem acu tetigisti!"

The points of description of our client as the true legatee are these:

1, He was "a namesake."

2. A "Samuel G.——."

3. "The son of a Captain."

4. Whose name was "John."

5. Whose middle initial was "F."

Here are five earmarks. The fifth "Slaughter" was a mistake, as clearly appears for these reasons:

1. There was no such Slaughter "namesake" in existence when the will was written.

2. There was no "Samuel G."—Slaughter in existence.

3. There was no Captain Slaughter who could have a son, then, or thereafter.

4. How Slaughter was accidently written is explained.

5. The circumstances, relations, and connections of the parties show that the Slaughters were otherwise provided for in the will,—and also

6. That to have left Hawkins the namesake out would have been a singular and unaccountable departure from the scheme of the will,—as curious as to have put in a totally conjectural being, who might or not be at all in the dim distance.

To what conclusion must this remarkable concatenation of circumstances drive every impartial and well balanced mind? Inevitably to this, in a nutshell—SAMUEL G. HAWKINS, THOU ART THE LEGATEE!

In conclusion—We respectfully submit that we have established the two following propositions:

1. That under the law as it exists both in England and in the several States of this Union, where a latent ambiguity occurs upon the face of a will, in respect either to the object or subject of the testator's bounty, parol evidence is admissible feasible to remove such ambiguity,—that is to say,

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22.

to identify, with reasonable certainty, the object or subject of the testator's bounty, and thus to render sensible the will which, without the aid of such evidence, is insensible with reference to the extrinsic facts of the case; and

2. That the parol evidence which the appellant has adduced in this cause identifies him, with reasonable and sufficient certainty, as the "namesake" whom the testator, Sam'l Garland, Sr. had in his mind's eye when he wrote the words "Samuel G., the son of Captain John F.—Slaughter" in the fifteenth clause of his will; and hence that the appellant is entitled to the legacy provided in said clause.

We, therefore, insist that the decree which was entered in this cause by the Circuit Court of Lynchburg dismissing the appellant's bill, was erroneous, and that the same should be reversed by this Court; and, further, that the legacy in controversy in this suit should be decreed to be paid to the appellant: all of which, accordingly, we ask may be dono.

Most Respectfully,

JOHN B. BROCKENBROUGH,

OF COUNSEL FOR THE APPELLANT.

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C. M. Sackett

1881

Part 2

Garland, Sr., Adm'r vs. Garland's Adm'r &c.

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FROM THE

CIRCUIT COURT OF LYNCHBURG.

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IN THE

SUPREME COURT OF APPEALS

OF VIRGINIA.

RICHMOND.

GARLAND, SR., ADM'R. vs. GARLAND'S ADM'R. &c.

To the Honorable the Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, John F. Slaughter, administrator de bonis non, with the bill annexed of Samuel Garland, Sr., dec'd. respectfully represents that he is aggrieved by a final decree pronounced by the Circuit Court of Lynchburg on the 5th day of December, 1881, in a suit in chancery then pending therein, in which your petitioner was plaintiff and Charles Y. Morris, administrator, with the will annexed of Burr Garland, deceased, and Mary L. Garland, his surety, were defendants; which decree your petitioner is advised is erroneous and ought to be reviewed and reversed.

A transcript of the record of the suit is herewith submitted, from which it will appear that the case is as follows:

Samuel Garland, Sr., having his domicil and residence in the city of Lynchburg, and State of Virginia, departed this life in the month of November, 1861, after having made and published his last will and testaments; and the said will having been admitted to pro bat in the Hustings Court of Lynchburg at the December term, 1861. Charles R. Slaughter, one of the executors named therein, qualified

as such. Subsequently the said Charles R. Slaughter died, and then Samuel Garland, Jr., the other executor named in the will, qualified. In September, 1862, the said Samuel Garland, Jr., was killed in battle, and your petitioner qualified as administrator de bonis non, with the will annexed of Samuel Garland, Sr., at the October term of the said Hustings Court for 1862. The said Samuel Garland, Sr., being possessed of considerable real and personal estate in Mississippi, at the time of his death. An authenticated copy of his will was admitted to pro bat in the probat court of Hinds county in that State on the 6th day of November, 1862, and Burr Galland was permitted to take out letters of administation with the will annexed of the said Samuel Garland, Sr., at the said pro bat court.

The said Burr Garland then took possession of the whole estate of the testator, real and personal, which was located in the said State of Mississippi. He made one or two partial settlements of his accounts as administrator, but until on December, 1869, in Lynchburg, while on a visit there, without having made any final settlement of his administration accounts. Before his death the said Burr Garland, whose domicil and residence was in Hinds county, Mississippi, made and published his will, by which he appointed a certain William H. Garland as his executor. After his death the said will was admitted to probat in the probat court of Hinds county, in the State last aforesaid, and the aforesaid William H. Garland qualified as executor, on the 3rd day of January, 1870. Subsequently the aforesaid Charles Y. Morris procured an authenticated copy of the said will to be admitted to probat in the corporation court of Lynchburg, on the 9th day of August, 1870, and qualified as administrator with the will annexed of said Burr Garland, with Msr. Mary L. Garland as his surety.

In the year 1872 William H. Garland, the executor of the said Burr Garland, filed his petition in the Chancery Court for the 2nd district of Hinds county for the final settlement of the account of his testator as administrator with the will annexed of Samuel Garland, Sr., the said Chancery Court having, by virtue of a statute of 1871, and page 507, section 1829, Code of 1880,) succeeded to all the jurisdiction and powers of the former Probat Court. All the legatees and beneficiares under the will of Samuel Garland, Sr., were made parties defendant or respondent to the said petition, including your petitioner, in his own right and as administrator de bonis non,

and Charles Y. Morris, as will as his surety Mrs. Mary L. Garland, and they were all notified by publication, as required by statute.

Such proceedings were had, in the said court, on the said petition, that, on the 26th day of February, 1874, by a final decree of the said court, there was a balance ascertained to be due from the estate of Burr Garland to the estate of Samuel Garland, Sr., on the final set-

tlement of the administration accounts of $64,130 88, and by the said decree, the said William H. Garland, as executor of Burr Garland, was directed to "pay over said balance of money, so reported as due by said Burr Garland on said re-stated final account, to the legal representative or representatives of said Samuel Garland, Senior, deceased, in the State of Virginia, to be, by such legal representative or representatives, paid over to the persons entitled to receive the same under the last will and testament of said Samuel Garland, Senior deceased; and that the estate both real and personal of said Burr Garland, deceased, stand and be chargeable with the payment of said balance of money, so due by said Burr Garland, &c."—See pages 63-4-5 of record.

This then was a decree, against the estate of Burr Garland in favor of your petitioner, who was then and is now the sole representative of Samuel Garland, Senior, in Virginia, pronounced by a court of competent jurisdiction in the State of Mississippi, which was the domicil of said Burr Garland at the time of his death.

Having been unable to obtain satisfaction of said decree in Mississippi, because the said Burr left little or no estate there, and Charles Y. Morris having some estate in his hands, consisting of money found on the person of Burr Garland at the time of his death, and moreover claiming some legacies left to the children of Nicholas A. Garland by the will of Samuel Garland, Senior, which had been purchased by said Burr Garland with money belonging to the estate of Samuel Garland, Senior, the transfers of said legacies being in the possession of said Charles Y. Morris your petitioner instituted a suit in the circuit court of Lynchburg against the said Charles Y. Morris as administrator with the will annexed of Burr Garland, deceased, and Mrs. Mary L. Garland his surety, for the purpose of compelling him to settle his account as such administrator, and paying over the money in his hands in part satisfaction of the decree aforesaid, and also for the purpose of securing to the estate of petitioner's, testator the legacies of the children of Nicholas A. Garland, which had been purchased with the money of the estate, or at least of subjecting them to the payment in part of the said decree.

The said Morris filed his answer to the said bill, to which your petitioner replied generally; and, his accounts having been referred to a commissioner, who reported the sum $2,200.15, principal and interest, as in the hands of said Morris as administrator as aforesaid, on the 1st day of May, 1881, (pages 86-7 of record), and some testimony having been taken, the case came on for hearing on the 5th day of December, 1881, when the court pronouncees a decree dismissing the bill of your petitioner, with costs to the defendant, Charles Y. Morris, as administrator as aforesaid, for the sole reason, as assigned in the decree, that the petitioner could not hold the said Charles Y. Morris responsible for the assets of his testator in his hands, by reason of any default of the said testator as adminis-

tor, in Mississippi, of Samuel Garland, Sr.—See decree. pages 84-5 of the record.

Your petitioner is advised that the said decree is erroneous for the following reasons:

1st. While in the settlement of the administration accounts of Burr Garland, whose administration was ancillary to that in Virginia, the law of Mississippi necessarily prevailed, yet when all claims against the estate in that State were settled, and the final balance due from the ancillary administraior adjusted, it was proper that said balance should be transmitted to the personal representative in Virginin, to be distributed among the legatees according to the will of Samuel Garland, Sr. The decree of the Chancery Court of Hinds county, was therefore correct on general principles. See Wharton on the Conflict of Laws, section 619.

2nd. By the Statute of Mississippi, page 236, section 1189, Code of 1871, executors and administrators, who have qualified in other States, are authorized to sue in the courts of Mississippi, and of course to recover judgments and decrees in their favor.—See also Code of 1880, page 572, section 2491.

This decree having been pronounced by a court of ample jurisdiction in Mississippi, and not having been reversed or appended from, is to be presumed to be in strict accordance with the law of Mississippi, and its validity cannot be questioned by the administrator of Burr Garland in Virginia, whose administration was ancillary to that in Mississippi. Under the constitution of the United States it is provided that, "Full faith and credit shall be given in each State to the public

acts, records, and judicial proceedings of every other State."—Art. 4, sec. 1. Yet when the court in Mississippi pronounces a decree in favor of the administrator in Virginia, and he seeks to enforce that decree in his own State, he is met with the objection that it is not competent for him to sue on that decree. That is that is of no force or effect.

3rd. It is held by the Circuit Court of Lynchburg, in the decree complained of, that only the legatees of Samuel Garland, Sr., can hold the administrator of Burr Garland in Virginia accountable for the divertment committed by his testator in Mississippi. If that be so, then there must be two separate and distinct administrations of Samuel Garland's estate in Virginia. How can that be? Suppose there were debts of the estate yet to be paid, could the administrator of Samuel Garland recover from the legatees after they had recovered from Burr Garland, administrator, and if so, on what principle? How could such legatees be required to give a refunding bond? If they gave it to Burr Garland's administrator, could he recover on it because there were claims against the administrator of Samuel Garland, and if he did recover on such bonds, how could

the administrator of Samuel Garland recover from him if he could not recover the assets in the first place?

4. Even if it be true that the administrator of Sam'l Garland could not recover against the administrator of Burr Garland on account of the default of the latter, yet, certainly, if Burr Garland used the assets of the estate to acquire a transfer of the legacies of other parties under the will of Samuel Garland, the administrator with the will annexed of said Samuel Garland, is the proper person to assert the right of the estate to said legacies, especially when they are sought to be recovered from him.

Your petitioner therefore says that the decree diamissing his bill was erroneous, and he prays that an appeal be granted to him from the said decree, and that the same be reviewed and reversed.

JOHN F. SLAUGHTER,

Administrator de bonis non, with the will annexed, of Samuel Garland, Sr., deceased.

J. A. EARLY,

By his Counsel.

I, Jubal A. Early, an attorney practising in the Supreme Court of Appeals of Virginia, do certify that in my opinion there is error in the decree complained of in the foregoing petition, for which it ought to be reviewed and reversed.

J. A. EARLY.

Appeal allowed and supersedeas awarded. The petitioner being a personal representative, no bond is required.

W. R. S.

To the clerk of the Supreme Court of Appeals at Richmond.

[Page 67 - Image 7]

VIRGINIA:

Pleas before the Circuit Court for the city of Lynchburg, held at the courthouse thereof on Monday the 5th day of December, A. D., 1881.

Be it remembered that on the 7th day of August, 1889, came John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland, Sr., deceased, and sued out of the clerk's office of the said circuit court a summons in chancery against Charles Y. Morris administrator with the will annexed of Burr Garland, deceased, and Mary L. Garland, returnable to the then next September rules, which said summons was returned duly executed.

[The summons aforesaid has been lost from the papers of the cause and is consequently not here copied.]

And at another day, to-wit: At rules holden for the said circuit court in the clerk's office thereof, on the first Monday in September, 1889, it being the 6th day of the month, came the said John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland, Sr., deceased, by counsel, and filed his bill in equity, which is in the words and figures following, to-wit:

To the Honorable Gustavus A. Wingfield,

Judge of the Circuit Court of Lynchburg,

Humbly complaining, showeth unto your honor, your orator, John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland, Sr., deceased. That the said Samuel Garland, Sr., who was a citizen of the State of Virginia and a resident of the town of Lynchburg, departed this life in the said town of Lynchburg in the month of November, 1861, after having duly page 2 { made and published his last will and testament, which was admitted to probat in the hustings court of Lynchburg, on the 2nd day of December, 1861. A copy of said will is herewith filed, from which it will appear that, after making a number of bequests and devises, and disposing of the residuum of his estate, the testator appointed Charles R. Slaughter and Samuel Garland, Jr., the executors of his said will. The said Samuel Garland, Sr., was seized and possessed of a large real and personal estate located principally in the States of Virginia and Mississippi, and at the time of the probat of his will the said Charles R Slaughter qualified as executor thereof in the hustings court of Lynchburg, and took upon himself the administration of the estate of his testator which was

located in Virginia; but before he had fully administered the same, the said Charles R. Slaughter departed this life in the month of February, 1862. Samuel Garland, Jr., the other executor named in the will, who was, at the time of the death of the testator, in the military service of the Confederate States, and remained therein until September, 1862, qualified as executor of the said will in the hustings court aforesaid, and took upon himself the administration of the estate in Virginia, which had not been administered by the said Charles R. Slaughter, but before the said estate was fully administered, the said Samuel Garland, Jr., was killed in battle at South

Mountain, Maryland, on the 14th of September, 1862; and your orator then qualified as administrator de bonis non with the will annexed of the estate of the said Samuel Garland, Sr., in the hustings court aforesaid on the 6th day of October, 1862.

Your orator further represents that the country was in page 3 { a state of war at the time of the death of the said Samuel Garland, Sr., and so remained for several years thereafter, and during the lives of the said Charles R Slaughter and Samuel Garland, Jr., the will aforesaid was not admitted to probat in the State of Mississippi, where a large part of the estate of the testator was located, comprising lands, slaves and other personal property, to a very large amount; and there was no administration granted in the said State of Mississippi upon the estate located there, until the 6th day of November, 1862, when a certified copy of the will aforesaid was admitted to probat in the probat court of of Hinds county, Mississippi, where a portion of the estate was located, and letters of administration with the will annexed, were granted to Burr Garland, a brother of Samuel Garland, Sr., who was named as a legatee in the said will, and was a resident of the said last named county and State, and he took upon himself the entire management and administration of the said estate in Mississippi. The said administration was of course ancillary to that in Virginia, and the personal estate which came to the hands of the said administrator in Mississippi, after the payment of all debts and expenses of administration, should have been delivered and paid over to the administrator in Virginia for final distribution under the will.

Your orator further represents that the said Burr Garland made some partial settlements of his accounts as administrator in the probat court in Mississippi, but before a final settlement was made he died in Lynchburg in December, 1869, he being at that time on a visit to Virginia. The said Burr Garland had taken possession of the whole estate of the testator in Mississippi, and used and appropriated its proceeds without accounting for any portion page 4 { thereof to your orator as the administrator in Virginia, or } to any of the legatees under the will, and at the time of his death he was indebted to the estate in a very large amount.

[Page 69 - Image 9]

Your orator further represents that the said Burr Garland made and published his will before his death, by which he appointed a certain Wm. H. Garland, the executor thereof, who caused the same to be admitted to probat in the probat court of Hinds county, Mississippi, on the 3d day of January, 1870, and then qualified as executor thereof. As the said Burr Garland had made no final settlement of the account of his administration on the estate of Samuel Garland, Sr., in his lifetime, your orator demanded that his executor should cause such final settlement to be made, and, on the 10th day of January, 1872, the said executor filed his petition, in the chancery court of Mississippi, for the 2d district of the county of Hinds, in the said State, for a final settlement

of the administration of his testator upon the estate of the said Samuel Garland, Sr. The petition was filed under and according to the statute law of Mississippi, and made all the parties interested in the estate of the said Samuel Garland, Sr., including your orator as administrator de bonis non with the will annexed of the said Samuel Garland, Sr., in Virginia, parties' defendant, or respondent thereto. Proceedings were taken on the said petition, according to the laws of Mississippi, and, after the whole accounts and transactions of the said Burr Garland as administrator with the will annexed of Sam'l Garland, Sr., were examined, investigated and stated, and upon full consideration thereof it was finally ascertained that the said Burr Garland was indebted to the estate of Samuel Garland, Sr., in the sum of $64,130.88, and on the 26th day of February, 1874, the said chancery court of the 2d district of Hinds page 5 { county, Mississippi, pronounced a final decree in the said } proceeding, by which the ordered that the said Wm. H. Garland as executor of Burr Garland, deceased, do pay over to the legal representative or representatives of Samuel Garland, Sr., deceased, in the estate of Virginia, the balance so found due from the said Burr Garland, to-wit, the said sum of $34,130.88, subject however to a deduction for such costs as had accrued in the said court in relation to the final settlement of the accounts. An authenticated copy of the record in the said proceeding, and of the final decree is herewith filed as a part of this bill, and reference is made thereto for a more detailed account of the proceedings and decision.

Your orator is advised that the said decree having been pronounced by a court of competent jurisdiction in Mississippi, the domicil of Burr Garland at his death, in a proceeding instituted by his executor, is binding and conclusive as to the estate of the said Burr Garland, not only in Mississippi, but elsewhere.

Your omior further represents that the executor of Burr Garland in Mississippi has not paid over to him who is the representative of Samuel Garland, Sr., deceased, in Virginia, the said sum of money so decreed to be paid or any part thereof, and he knows of no

estate in the hands of the said executor in Mississippi out of which payment can be enforced, and the said decree therefore remains unsatisfied and in full force.

Your orator further represents that Charles Y. Morris procured a copy of the will of the said Burr Garland to be admitted to probat in the corporation court of Lynchburg on the 9th day of August, 1870, and himself qualified as administrator, with page 6 { the will annexed, of the said Burr Garland, giving a bond in the penalty of $60,000.00, with Mrs. Mary L. Garland as his surety.

Your orator is informed and charges that assets of the said Burr Garland, in money and other things, to a considerable amount, have come to the hands of the said Charles Y. Morris, as such administrator, but he has not settled any of his administration as yet.

Your orator further represents that Samuel Garland, Jr., while acting as executor of Samuel Garland, Sr., filed a bill in chancery in this court, against all the legatees and devisees of the said Samuel Garland, Sr., for the purpose of having a construction of the will of his testator, and the estate administered under the direction of the court, which bill is still pending in this court under the style Garland's executor vs. Garland and others, various proceedings and decrees having been taken and pronounced therein.

Your orator further represents that in the 15th clause in the will of Samuel Garland, Sr., there is contained a bequest in the following words: "I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tennessee and Virginia railroad bonds or others of equal value," as will be seen by reference to the said will.

There were a number of the children of the said Nicholas A. Garland living at the time of the death of said Samuel Garland, Sr., who thus became entitled to the benefit of the said bequest. Your orator has been informed that the aforesaid Burr Garland in his lifetime, purchased of a number of the children of the said Nicholas A. Garland, their guardian or legal representatives, their interest and right in, and the bequests to them, under the page 7 { will of Samuel Garland, Sr., and your orator believes that } he used the funds of the estate of the said Samuel Garland, Sr., to make the said purchases.

Your orator further represents that the aforesaid Charles Y. Morris, as he is informed, is now claiming the legacies so purchased and acquired by his testator, Burr Garland, and for the purpose of realizing the same, has caused a petition to be filed in the case of Garland's executors vs. Garland and others, before named, in the name of the said children from whom the purchases or transfers were obtained. The said petition has in some way been mislaid, and is not now to be found in the papers, and therefore your orator cannot at this time, specify its purport and objects more definitely. He is

advised that if the legacies of any portion of the children of Nicholas A. Garland were really acquired and purchased by the aforesaid Burr Garland, it would not be equitable and just for the personal representative of the said Burr Garland to recover the same from the estate of the said Samuel Garland, Senior, in the face of the fact that the estate of said Burr Garland is indebted to the estate of the said Samuel Garland, Senior, in so large an amount as that ascertained by the decree above set forth.

To the end therefore that right and justice may be done in the premises, may the said Charles Y. Morris, administrator with the will annexed of Burr Garland, deceased, and Mrs. Mary L. Garland his surety be made parties defendant to this bill and true answers on oath compelled to make to its several and various allegations. May the said Charles Y. Morris answer and say what assets of the estate of Burr Garland, deceased, of any kind have come into his hands. May he be compelled to settle the account of his administration of the said estate before a commissioner of this page 8 { court. May he also answer and state which children of } Nicholas A. Garland, if they, from whom his testator purchased or acquired their rights to the legacies given them by the will of Samuel Garland, Senior, and also set forth and produce the evidence of the purchases or transfers to his testator of such right. May the said Charles Y. Morris be compelled to pay over to your orator in satisfaction in part of the decree aforesaid, all the assets of his testator, (Burr Garland, deceased,) which have come to his hands. May the legacies of the children of Nicholas A. Garland under the will of Samuel Garland, Senior, which were acquired by Burr Garland in his lifetime, or by his administrator since his death, be likewise appropriated in part satisfaction of the decree aforesaid, and if necessary for that purpose, may William H. Garland, the executor in Mississippi of Burr Garland, deceased, and the children of Nicholas A. Garland from whom their rights to the legacies aforesaid were acquired and who are residents of the State of Illinois be made defendants to this bill by process of publication; and may this branch of this case be heard along with that of Garland's executor vs. Garland and others, the papers and exhibits in which special reference is made. And if the said Charles Y. Morris has disposed of or used the assets of his testator so that they cannot be reached; may a personal decree be pronounced against him and his said surety for the same; and for such other and further relief be granted to your orator, as equity and the nature of the case require, and as in duty bound, &c.

J. A. EARLY, p. q.

The will of Samuel Garland, Sr., deceased, mentioned in page 9 { the foregoing bill, is in the following words and figures, to-wit:

[Page 72 - Image 12]

I, Samuel Garland, Sr., of Lynchburg, Virginia, do make and declare this to be my true last will and testament, wholly in my own handwriting. That is to say—

I. I direct all my just and lawful debts to be paid, if any, out of money on hand and debts due me. If need be, by sales of stocks, corporate bonds and outside lands, houses and lots not specifically devised.

2. I devise to my beloved wife, Mary L. Garland, my dwelling-house and lot, with all the appurtinances thereto belonging, for and during her natural life, and at her death to pass and belong to my nephew, Samuel Garland, son of my late brother, M. H. Garland, and his heirs forever. Hoping and desiring he may pass it to his son, S. Garland. (This is a mere request, wishing this property to be kept in my family.)

3. I give to my wife absolutely, all my plate, household and kitchen furniture, carriage and pair of horses, wood-wagon, provender and provisions for a year next after my death, also, two milch cows. No inventory shall be taken. This devise is intended to cover my miscellaneous library, piano, &c.

4. I likewise devise to my wife my favorite servant, Green, and all his children by his late wife Ellen, deceased, and grandchildren, old Charlotte and Tom Daniel, a carpenter and his tools, with power of disposing of them by last will to any child or children of our adopted daughter, P. B. Morriss, or in default of her making such will, after the termination of her life estate all these slaves with the page 10 { increase of the females to pass to all Paulina B. Morriss' } children.

5. I will and direct my executors to set apart fifty thousand dollars worth (at par value) of my bank and other paying stocks, and corporate bonds, paying at least six per cent. per annum the interest or dividends whereof must be paid to my wife half-yearly during her natural life, to be used as her own, without accountability on her part. At her death the stocks, bonds, &c., to pass to Charles Y. Morriss in trust for the use of his wife, our adopted daughter, P. B. Morriss, and her children as a separate estate. The slaves in the fourth clause to pass in the same way, as separate estate, and to the same trustee.

6. Like my late brother, M. H. Garland, I give to my brother, Nicholas A. Garland, his debt to S. and M. H. Garland, already sunk by profit and loss, as well as my private debt due to me. And in addition, one thousand dollars to be paid by my executors. This is all he is to have of my estate. I commend him to my brother James, who raised him.

7. I give to Charles R. Slaughter, S. Garland, Jr., and John F. Slaughter jointly my law library.

8. I wish my Mississippi estate to be kept up a few years after my death and cultivated under the general superintendence of my brother, B. Garland (now residing at Barren's estate), and the annual profits vested in good six per cent. stocks to the use of my estate, but if he, B. Garland, cannot attend to them, then they are to —— disposed of by sale or otherwise at the discretion of my executors.

9. My favorite brother, B. Garland, raised by me, and long a resident of Mississippi, is and has for a long time past been embarrassed in debt by losses of trade in 1837, and liability as surety for others; it might be unsafe to devise property to him absolutely. I therefore set apart in trust in the hands page 11 { of my executors, for the benefit of my said brother, either } of my plantations in Hinds county called 'Barrens' or 'Tudor Hall,' whichever he may chose, and forty slaves in families, say about twenty-five hands, balance head of families, children, and house-servants, to be selected by him out of the stock on both places, mules, horses, stock, &c., sufficient for the cultivation of the place so selected by him, with provider, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his, B. Garland's, use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morris in trust to the separate use of his wife, Paulina B. Morris, and her children.

10. After the fulfilment of all the above and foregoing devises; then I give to John F. Slaughter the houses and lots now occupied by him, S. W. Shelton, —— Burch, and garden on Seventh street, and the adjoining three tenements on Eighth street, all in the same square, and ten thousand dollars of my Southside Railroad bonds, and no more of my estate. The well, called Jacob's well, is to remain a common to my other property now owned or heretofore deeded to this and S. Garland, Jr., and my residence.

11. I give to my sister, Mary R. Slaughter, five thousand dollars in Virginia and Tennessee railroad bonds. This, with what I have heretofore given her, is all she is to have of my estate.

12. I give to my nephew, Samuel G. White, of Albemarle, any debt he may owe me, and twenty-five thousand of my Orange and Alexandria railroad and Southside railroad bonds. This is all I intend giving him, except so far as relates to Caroline and Bob, two

[Page 74 - Image 14]

of Green's children, now an incumbrance to me, and which page 12 { I wish him to take this fall, with the consent of my wife. } I design this as a change in disposing of Green's family. Should she not consent, then my executors will pay their value in an increase amount of S. S. railroad bonds—say two thousand dollars more.

13. I give to Charles R. Slaughter, in trust to the use of his three sisters, six thousand, five hundred dollars each, which with what I have heretofore given in houses and lots, City Savings Bank stock, &c., I estimate at ten thousand dollars each—as much as I design to give. I have confidence C. R. Slaughter, the trustee, will prevent waste, and will pay over the profits thereof to them and their descendants, and finally at his discretion change the trust property and settle it in such manner as he deems best, without responsibility upon him.

14. I likewise give to said Charles R Slaughter five thousand dollars of my Virginia and Tennessee or East Tennessee and Virginia bonds, in trust for the benefit of his brother, Samuel M. Garland, the interest to be paid him, and when he shall think it safe and prudent to do so, he may hand over the principal, without responsibility.

15. I give to each of my namesakes, Samuel G. Slaughter, son of Charles R. Slaughter; Samuel G. White, son of Samuel G. White; Samuel, son of S. Garland, Jr., and Samuel G., son of Captain John F. Slaughter, a bond of one thousand dollars of S. S. railroad. I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tennessee and Virginia railroad bonds, or others of equal value.

16. The house and lot now occupied by Major J. Garland and family, and the Phapp lot, I wish him to hold during their joint and page 13 { separate lives rent free, and should the wife survive her } husband, she may devise the same, but this must be held liable to Major Garland's debts to me secured by deeds of trust upon slaves and money advanced, &c.

17. I do not intend to die intestate as to any part of my estate now held or hereafter acquired, and hereby make and declare Charles R. Slaughter and Samuel Garland, Jr., jointly and equally residuary legatees entitled to all the estate or estates, real, personal or mixed, of which I may die seized and possessed, not herein disposed of by this my will (in items one to seventeen). And I constitute and appoint them my executors, with full and plenary powers to sell and convey real estate, and to do and perform all acts needful to carry out the true intent and meaning of this will. I de-

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sire no security shall be required by the court granting administration.

Witness my hand and seal—seventh day of December 1857 (fifty-seven.)

S. GARLAND, SR. [Seal.]

In the Court of Hustings for the City of }

Lynchburg, December Term, 1861. }

This paper writing purporting to be the last will and testament of Samuel Garland, Sr., deceased, was produced in court, and the same being proved by the oaths of Henry Dunnington and James Garland, to be wholly in the proper handwriting of said Samuel Garland, Sr., deceased, is ordered to be recorded.

Teste:

J. C. DIDLAKE, Clerk.

A copy—Teste:

SAM. D. PRESTON, Clerk.

A copy of the record referred to in the foregoing bill is in the words and figures, to-wit:

page 14 { Petition for Settlement.

State of Mississippi, }

Hinds County. }

Chancery Court for Second District,

December, 1872.

To the Honorable Edward W. Cabiness,

Chancellor of the Sixteenth District of said State,

and sole presiding in the Court Aforesaid.

The petition of William H. Garland, of the county of Pike in the. State of Mississippi, respectfully states as follows, to-wit:

1. That according to his information and belief, Samuel Garland, Sr., late of the city of Lynchburg, in the State of Virginia, departed this life during the month of November, 1861, possessed of a large estate, both real and personal, in the State of Virginia and Mississippi, leaving him surviving, his wife Mary L. Garland, then and now of said city of Lynchburg, and having made a last will and testament dated the 7th day of December, 1857, which was duly admitted to pro bate, &c., in the court of hustings of said city of Lynchburg, on the 2nd day of December, 1861.

[Page 76 - Image 16]

2. That of the said last will and testament of the said Samuel Garland, Sr., Charles R. Slaughter and Samuel Garland, Jr., were appointed executors, who qualified in the said hustings court, though at different times, and both of whom have long since departed this life.

3. That neither of said two executors ever qualified as such in the State of Mississippi, or ever came here for that purpose, or even indicated the least intention of doing so, and that on the petition of Burr Garland, late of said Hinds county, a brother of the said Samuel Garland, Sr., and a devisee and legatee under his said last will and testament, a duly authenticated copy thereof, procured from page 15 { the office of the clerk of the said court of hustings, was } admitted to record in the late probate court of said Hinds county, on the 6th day of November, 1862, and letters of administration with the said last will and testament, annexed, were granted and issued to the said Burr Garland, in and by the authority of the said probate court, in said Hinds county, he having complied with the terms and provisions of the laws of the State of Mississippi in that behalf.

4. That the said Burr Garland without delay proceeded to the performance of his duties as such administrator, taking charge of all the property in Mississippi, consisting of three large plantations, (two of them being in Hinds county, and one in Coahoma county,) a very large number of then slaves, and a very considerable amount of all such other property as in the days now gone forever was usually found on cotton plantations in this region of country, and managing it as well and as long as he could during and since the late sectional unpleasantness, till his own death, which occurred, as your petitioner is informed and believes, in the said city of Lynchburg, in the State of Virginia, the said Burr Garland having filed in said probate court three annual settlements as such administrator, as follows, to-wit: The first on the 9th day of March, 1866, showing a balance in his favor of $35.70, which was carried forward into the second settlement, filed on the 2nd day of April, 1867, showing a balance in his favor of $3.69, which was not carried into the last settlement, (but will be credited to him in the final settlement to be herewith submitted of the said Burr Garland's administration,) which was filed on the 9th day of December, 1868, showing a balance against said administrator and in favor of the estate page 16 { of the said Samuel Garland, Sr., of $6,545.09, that is carried into item 4 of debits in the final settlement just re- } ferred to.

5. That the said Burr Garland departed this life on the 9th day of December, 1869, having made a last will and testament dated the 1st day of June, 1869, whereby and whereof your petitioner was appointed sole executor, and that said last will and testament

was duly admitted to probate, and letters testamentary granted to your petitioner in and by the authority of the said probate court, of Hinds county on the 3rd day of January, 1869, he having complied with the provisions of the law of said last will and testament in that behalf, and that your petitioner is yet acting as executor of the said Burr Garland.

6. That your petitioner has long known that the law imposed upon him, as such executor, the duty of making a final settlement of Burr Garland's administration, with the last will and testament annexed of the said Samuel Garland, Sr., deceased, and that he has till now deferred the performance of this duty from no spirit of contempt towards this honorable court, but because he lived at a remote point in the State, and has been a part of the time absent from it; because his acquaintance with the matters of the estate of Samuel Garland, Sr., deceased, in the State of Mississippi, and the management of them by Burr Garland, and because none of the parties in interest under the last will and testament of Samuel Garland, Sr., have till recently pressed for the performance of this duty by him.

7. And that at any rate he has now at last, with such aid as he could procure, had prepared and made out a final statement of the said Burr Garland's administration in the State of Mississippi, with the last will and testament annexed of the page 17 { sissippi, with the last will and testament annexed of the } said Samuel Garland, Sr., as nearly complete as it can now be made by himself and his counsel.

Your petitioner further states that having no personal interest in the matters of said final settlement, he desires to perform the duty imposed upon him by law, and to perform it according to the law, and safely and satisfactorily for all the parties in any way interested, so that when once ended it may be so for all time.

In this connection your petitioner desires to state, that he deems it safest for all the persons interested, or the representatives of such as have died, under the said last will and testament of the said Samuel Garland, Sr., should be made appropriate means made parties to this proceeding, and that none reside in Mississippi, but all of these, so far as your petitioner known, or has been able to ascertain, in the States of Virginia, Illinois and California.

Your petitioner appends a list of the names of all such persons and of the representatives of such as have died, with the places of their residence or postoffice address, so far as known or ascertained.

Mary S. Garland, Lynchburg, Campbell county, Virginia; Burr Garland is dead. Your petitioner is his executor, and Paulina B. Morriss, the wife of Charles Y. Morriss, of Richmond, Virginia, is his only child, the said Charles Y. Morriss being trustee for his said wife, under the said last will and testament of the said Samuel

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Garland, Sr , Mary R. Slaughter, Lynchburg, Campbell county, Virginia; John F. Slaughter, Lynchburg, Campbell county. Virginia; Samuel G. Slaughter, administrator in Virginia of the page 18 { last will and testament annexed of the said Samuel Gar- } land, Sr.

John F. Slaughter, administrator of Charles R. Slaughter, John F. Slaughter one of the executors of the last will and testament of Samuel Garland, Jr.

R. G. H. Kean one of the executors of the last will and testament of Samuel Garland, Jr. and legatee under the same, Lynchburg, Campbell county, Virginia.

John F. Slaughter, trustee for Mary J. Slaughter, Celeste P., late Slaughter but now Cobbs, and Austina Broadnax, Catharine M. Slaughter, widow of Charles R. Slaughter, and their children, Mary E. Slaughter, Samuel G. Slaughter, Charles A. Slaughter and Catharine L. Slaughter; his children all living in Lynchburg, county of Campbell, Virginia, except Samuel G. Slaughter, who has died leaving one child, Berta or Roberta, who is in California, but whose postoffice address cannot be ascertained, and the said Charles A., Catharine L. and Berta or Roberta being minors without legal guardians in this State.

Samuel G. White, Sr., and Samuel G. White, Jr., a minor without legal guardian here, of Albermarle county, Virginia, and whose postoffice is not ascertained; Caroline M. Garland, Lynchburg, Campbell county, Virginia; Mary J. Slaughter, Lynchburg, Campbell county, Virginia; Celeste P., late Slaughter, Lynchburg, Campbell county, Virginia, and now the wife of Cobbs, Lynchburg, Campbell county, Virginia; Robert W. Broadnax and Austina his wife, of Campbell county, Virginia, and whose postoffice is Lynchburg, in said county and State.

Samuel G. Slaughter, son of John F. Slaughter, of Campbell county, Virginia, and whose office is said city of Lynchburg; Samuel G. Hawkins, son of John F. Hawkins, of Bedford page 19 { county, Virginia, a minor and whose postoffice is not as- } certained.

James M. Garland, Lucy Garland, Elizabeth A. Garland, Ellen P. Garland, Mary F. Garland, —— Garland, and —— Garland, children of Nicholas A. Garland, all of the city of Springfield in the county of Sangamon in the State of Illinois, the given names of the two last being unknown, and they and the said Mary F. being supposed to be minors and without legal guardian here, and said city of Springfield being the postoffice address of them all.

And now to the end that all of these may be due according to law, and in the first place stating that none of the before mentioned minors so far as he knows or believes have legal guardians in this State and that he has made all reasonable efforts to ascertain correctly the postoffice address of all the parties. Your petitioner prays

[Page 79 - Image 19]

that this petition and the accompanying final settlement may be received and filed, that the matters thereof may be set for hearing on the first day of the next ensuing February term of the honorable court; that an order of publication in the Hinds County Gazette may be made, thereby citing Mary S. Garland, Charles Y. Morris and Paulina B., his wife, and the said Charles Y. Morris as trustee for his said wife; Mary R. Slaughter, John F. Slaughter in his own right and as administrator, &c., of Samuel Garland, Senior, as administrator, &c., of Charles R. Slaughter, as one of the executors of Samuel Garland, Junior, and as trustee for Mary J. Slaughter, Celeste P. Slaughter and Austin Broadnax, R. G. H. Kean, one of the executor of Samuel Garland, Junior and legatee under the same; Catharine M. Slaughter, Mary E. Slaughter, Samuel G. Slaughter, Charles A. } Slaughter and Catharine S. Slaughter, Samuel G. White, page 20 { Senior, and S. G. White, Junior; Caroline M. Garland, } Mary J. Slaughter, Celeste P. Slaughter, Robert W. Broadnax and Austina, his wife, Samuel G. Slaughter, son of John F. Slaughter, Samuel G. Hawkins, all of the State of Virginia; and Austin Garland, James M. Garland, Lucy Garland, Elizabeth A. Garland, Ellen P. Garland, Mary F. Garland and —— Garland, all of the State of Illinois; to be and appear in this honorable court on the first day of the next ensuing February term thereof and show cause, if any they can, why the said final settlement should not be audited, examined and allowed, &c., and that the comptroller send to each one whose postoffice is stated, a copy of such order of publication, as may be made in this behalf; that in due course a guardian ad litem may be appointed for all of said parties who are minors, and that after the filing of the answer of said minors by such guardian ad litem as shall have been appointed, and on a full hearing to be had; your honor will audit, examine and allow the said final settlement, allowing

for the services of the said Burr Garland as such administrator, such commissions as may be adjudged reasonable and proper. And also that this final settlement may be ordered to be recorded, and your petitioner discharged from all further accounting in the premises, and that whatever other orders and decrees shall be adjudged necessary and proper may be made.

And as in duty bound your petitioner will ever pray, &c.

WM. H. GARLAND.

State of Mississippi, }

Pike county, } to-wit:

page 21 { This day personally appeared before me, any acting } justice of the peace in and for said county, who having been first duly sworn, stated that the matters alleged in the foregoing petition as of his own knowledge are true, and so far as derived from the information of others, he believe them to be so.

[Page 80 - Image 20]

Sworn and subscribed to before me this 31st day of December, 1872.

WILLIAM H. GARLAND.

CHARLES H. LYSTER, J. P.

Endorsed. Filed January 10, 1873.

MURRAY PEYTON, Clerk.

Final Settlement.

Final settlement of Burr Garland's administrator in Mississippi, with the last will and testament annexed of Samuel Garland, Sr., late of the State of Virginia, presented, &c., by William H. Garland, sole executor of the last will and testament of the said Burr Garland, heretofore deceased.

In the chancery court for the second district of Hinds county.

The said executor now charges the said Burr Garland, as administrator, with—

1. This sum being amount of appraisement made in

Hinds county and filed on 9th January, 1863, $178,332 25

2. This sum being amount of appraisement in Coahoma county, and filed on 9th January, 1863, 20,492 66

3. This sum' the price of a large quantity of corn sold

to Confederate States military officers during the

war, in addition to that charged in the annual

settlement of said administrator as shown by his

report filed 9th March, 1866, 14,026 80

[Page 22,]

4. This sum, the balance due by said administrator

Burr Garland, on his third annual settlement filed

in the late probate court of said Hinds county on

9th December, 1868, 6,545 66

And prays the allowance of the following in his favor:

1. This sum to balance so much of item "1" of debits,

as consisted of the then slaves on Tudor Hall Estate (see page 1, 2 and 3 of Hinds county appraisement) which became free as a result of the late war, and so passed from the hands and control of said administrator, 81,050 00

2. This sum to balance so much of item "1" of debits

as consisted of the cotton on the two plantations

in Hinds county, 400 bales (see page 4 of said appraisement) all of which was burnt and destroyed by Sherman's army in July, 1863, 16,000 00

3. This sum to balance so much of item "1" of debits as consisted of the then saves on the Barren's Estate (see pages 5, 6 and 7 of said appraisement) which became free as a result of the war and so passed from the hands and control of said administrator,
54,450 00

4. This sum to balance so much of item "1" of debits as consisted of the mules, cattle, hogs, farming implements of every kind, corn, fodder and potatoes on the Tudor Hall Estate (see appraisement page 4) that were consumed in the use on the place and carried off by the Federal army or by lapse of time and use, become worn out and of no value,
12,845 25

[Page 23.]

5. This sum to balance so much of item "1" as consisted of mules, hogs, cattle, wagons and horse-carts, on the Tudor Hall estate that were chosen and selected by the said Burr Garland, in part of the devise and legacy to him, contained in the last will and testament of the said Samuel Garland (see report of choice and selection, filed 5th October, 1864); the said property having been appraised at 2,100 00

6. This sum to balance so much of item "1" of debits as consisted of the mules, cattle, hogs, farming implements of every kind, corn, fodder and potatoes (see pages 7 and 8 of appraisement) on the Barrens estate that were consumed in the use, on the place, taken and carried off by the Federal army, or by lapse of time and use havt become worn out and of no value,
9,334 00

7. This sum to balance so much of item "1" of debits as consisted of mules, cattle, hogs, wagors, farming implements and furniture on the Barrens estate, &c., that were allotted and set apart to the said Samuel Garland's widow, as her share under the decree of the probate court of said Hinds county, made on the 20th June, 1864, (see report thereof on file); the said property having been valued at 3,050 00

8. This sum to balance so much of item "2" of debits as

consisted of the then slaves that became free as a result of the war and so passed from the hands and control of said administrator, 17,300 00

[Page 24.]

9 This sum to balance the remainder of item "2" of debits, consisting of mules, cattle, hogs, wagons, carts, farming implements, furniture, &c., &c., on the Coahoma estate, that were consumed in the use on the place, destroyed or taken and carried off by the Federal army or by lapse of time have become worn out and of no value, 3,192 00

10. This sum to balance item of debits "3," no part of said sum having ever been paid or ever collected, and the evidences thereof being now in the hands of this accountant and utterly worthless, 14,026 90

11. This sum paid taxes in Coahoma, 1867, as per voucher, 33 55

12. This sum paid taxes in Coahoma, 1868, as per voucher, 40 20

13. This sum being commissions at ——

per centum on the Hinds county appraisement, 178,832 25

On the Coahoma county appraisement, 20,492 00

On the hire of negroes and sales of corn, fodder, meal, &c, charged in the first annual settlement of said Burr Garland as adm'r, 14,798 14

On the hire of negroes and sales of corn, fodder, meal, &c, charged in his second annual settlement, 10,277 46

On sales of cotton, charged in his third annual settlement, 10,901 11 ✳

And on sales of corn, fodder, &c,sold to the Confederate military officers, and charged on debit side hereof, 14,026 90

Making in all, $249,327 86

14. This sum paid George W. Harper as per voucher, 300 00

15. This sum paid John Shelton, as per voucher,

16. This sum paid court fees, as per voucher,

[Page 25.]

17. This sum, the balance in favor of said Burr Gar-

land, on his second annual settlement filed 2nd April, 1867, 3 69

Endorsed.—Final settlement of Burr Garland's administration, filed by his executor, W H. Garland, this 10th day of January, 1873.

MURRAY PEYTON, Clerk,

By M. R. SMITH, D. C.

Order of Publication.

Chancery Notice.

State of Mississippi, } to-wit:

County of Hinds,}

Chancery Court for Second District, }

At Rules on 10th January, 1873. }

In the matter of the estate of◊Samuel Garland, Sr., on final settlement.

William H. Garland, executor of the last will and testament of Burr Garland, deceased, having appeared and presented the final settlement of the said Burr Garland's administration in this State, with the last will and testament annexed of Samuel Garland, Sr., deceased, late of the State of Virginia, and it appearing from the petition of the said William H. Garland, accompanying said final settlement, that all of the devisees, legatees, &c., under the said last will and testament of the said Samuel Garland, Senior, and the representatives of those of them who have died, &c., all of whom are hereinafter named, are non-residents of the State of Mississippi, being Mary L. Garland, widow of the said Samuel Garland, Sr.; Mary R. Slaughter; John F. Slaughter, in his own right, as administrator in the estate of Virginia, with the last will and testament page 26 { annexed of the said Samuel Garland, Sr., as administrator, &c., of Charles R. Slaughter, as one of the executors of } the last will and testament of Samuel Garland, Jr., and as trustee for Mary J. Slaughter, Celeste P. Cobbs, and Austina Broadnax; R. G. H. Kean, one of the executors of the last will and testament of Samuel Garland, Jr., and trustee under the same; Catharine M. Slaughter, Mary E. Slaughter; Charles A. Slaughter, Catharine L. Slaughter, Caroline M. Garland, Mary J. Slaughter, —— Cobbs and Celeste P. Cobbs, his wife, Robert W. Broadnax and Austina Broadnax, his wife, and Samuel G. Slaughter, the residence and postoffice address of all of whom is Lynchburg, Campbell county, in the State of Virginia; Charles Y. Morriss and Paulina B. Morriss, his wife, and the former as trustee for the latter, the

residence and postoffice address of both of whom is Richmond, Henrico county, in the State of Virginia; Samuel G. White, Sr., Samuel G. White, Jr., and Samuel G. Hawkins, who are believed to reside in the State of Virginia, but whose residences and postoffice addresses are not known; Berta or Roberta Slaughter, who is believed to be in the State of California, but whose residence and postoffice address is not known; and James M. Garland, Lucy Garland, Elizabeth A. Garland, Ellen P. Garland, Mary F. Garland, —— Garland, and —— Garland, all children of Nicholas A. Garland, deceased, who reside in the city of Springfield, in the county of Sangamon, in the State of Illinois, and whose postoffice address is said city of Springfield.

Now it is ordered that said final settlement and petition be received and filed and that all of said persons before named be and are by publication hereof once a week for one month in the Hinds County Gazettee, a newspaper printed and published in said second } district, hereby summoned and directed to be and perpage 27 { sonally appear in the court aforesaid in the courthouse in }

the town of Raymond in said second district on the 3rd Monday after the fourth Monday of January, 1873, being the 3rd Monday and 17th day of February next, and the first day of the regular term of said court, then and there to answer the petition hereinbefore referred to, and show cause if any they can, why the final settlement now on file, of the said Burr Garland's administration in this State, with the last will and testament annexed of the said Samuel Garland, Sr., should not be audited, examined and allowed, and all proper decrees made in accordance with the prayer of said petition. And also that a copy of this order be transmitted by mail, and according to law, to each one of the before named persons, whose residence and postoffice address is herein before given.

Ordered the day and date first aforesaid.

MURRAY PEYTON, Clerk.

January 15, 1873, 51, 17.

Report of .Clerk as to Forwarding Copies.

State of Mississippi, } to-wit:

Hinds county. }

Chancery Court for the Second District, }

14th January, 1873. }

To the Honorable Edwin W. Cabaness,

Chancellor of the Tenth District of said State and

sole presiding in the court aforesaid.

The undersigned, Murray Peyton, clerk of the chancery court of

said county, now respectfully reports that he has this day enclosed to each of the parties herein after named, printed copies of the } order made at rules on the 10th of January, 1873, in the page 28 { matter of the final settlement of Burr Garland's admin} istration in this estate, with the last will and testament annexed of Samuel Garland, Sr., deceased, late of the State of Virginia, in envelopes duly stamped, and that the same were at once deposited by him in the postoffice in the town of Raymond, in said second district, addressed as follows, to-wit:

To Mrs. Mary S. Garland, Lynchburg, Campbell county Virginia.

Mr. Charles Y. Morriss, Richmond, Henrico county Virginia.

Mrs. Pauline B. Morriss, do, do, do.

Mrs. Mary R. Slaughter, Lynchburg, Campbell county, Virginia.

Mr. John F. Slaughter, do, do, do.

Mr. R. G. H. Kean, do, do, do.

Miss Catharine M. Slaughter, do, do, do.

Miss Mary E. Slaughter, do, do, do.

Mr. Charles A. Slaughter, do, do, do.

Miss Catharine L. Slaughter, do, do, do.

Mrs. Caroline M. Garland, do, do, do.

Miss Mary J. Slaughter, do, do, do.

Mr. —— Cobbs, do, do, do.

Mrs. Celcete P. Cobbs, do, do, do.

Mr. Robert W. Broadnax, do, do, do.

Mrs. Austina Broadnax, do, do, do.

Mr. Samuel G. Slaughter, do, do, do.

Mr. James M. Garland, Springfield, Sangamon county, Illinois.

Miss Lucy Garland, do, do, do.

Miss Elizabeth A. Garland, do, do, do.

Miss Ellen P. Garland, do, do, do.

Miss Mary F. Garland, do, do, do.

—— Garland, do, do, do.

—— Garland, ' do, do, do.

do, do, do.

} And that the superscription of the two last were added page 29 { the words, "child of N. A. Garland."

} Respectfully reported this 14th day of January, 1873.

MURRAY PEYTON, Clerk.

by S. G. MARSHALL, D. C.

Endorsed.—Report of clerk as to forwarding copies of order of publication, filed in the papers this 14th day of January, 1873.

MURRAY PEYTON, Clerk,

by M. R. SMITH, D. C.

Exceptions to Accounts of Burr Garland, as adm'r, &c.

In the Chancery Court for the Second District

of Hinds county, Mississippi.

In the matter of the estate of Samuel Garland, Sr., deceased.

Exceptions taken on behalf of John F. Slaughter in his own right, also as administrator, in the State of Virginia, of said Samuel Garland, Sr., deceased, with his last will and testament annexed,} also as administrator, in the State of Virginia, of Chas. R. Slaughter, deceased, also as one of the executors, in the State of Virgnia, of the last will and testament of Samuel Garland, Jr., deceased, and also as trustee of Mary J. Slaughter, Celeste P. Cobbs, and Austina Broadnax; and also of R. G. H. Kean, in his own right, and as one of the executors, in the State of Virginia, of the last will and testament of said Samuel Garland, Jr., deceased, to the final account of Burr Garland, administrator in the State of Mississippi of Samuel Garland, Sr., deceased, with his last

will and testament annexed, which is filed in said chancery court for the second district of Hinds county, Mississippi, on the 10th day of January, 1873, by W. H. Garland, as the executor of the last will } and testament of said Burr Garland, deceased, and to the page 30 { annual accounts of said Burr Garland, as such administra} tor of said Samuel Garland, Sr., deceased, which were filed in the probate court of said Hinds county, as follows, to-wit :

1st. annual account filed March 9th, 1866.

2nd. annual account filed April 2nd, 1867, and

3rd. annual account filed December 9th, 1868.

First Exception.

The said exceptors object to the allowances to said Burr Garland of any credit on account of credit item "No. 2," in said final account for $16,000.00, as a value of 400 bales of cotton therein alleged to have been burnt and destroyed by Sherman's army in July 1863, because they say, 1st. That said cotton had been sold by said Burr Garland, and the purchase price thereof received by him. 2nd. Because if said cotton was so burned, such burning was after it had been so sold.

Second Exception.

Said exceptors object to any allowance of credit to said Burr Garland on item of credit, "No. 4," in said final account, for $12.-845.25, except upon full legal proof that the property therein referred to, was consumed in the use on the place, taken and carried off by the federal army, or by the lapse of time and use have be-

come worn out and of no value, because they say that said property had not been so consumed, taken and carried off, and become worn out ond of ne value, and because they say that much of said property had been sold by said Burr Garland or applied by him to his own used.

Third Exception.

Said exceptors object to any allowance of credit to said } page 31 { Burr Garland on item "No. 6," in said final account for } $9,334.00, except upon full and legal proof that the property therein referred to, was consumed in the use on the place, taken and carried off by the federal army, or by lapse of time and use, have become worn out and of no value, because they said that said property had not been taken and carried off, and consumed and become worn out, and of no value, and because they say that much of said property had been sold by said Burr Garland or applied by him to his own use.

Fourth Exception.

Said exceptors object to any allowance of credit to said Burr Garland on account of credit "No. 9" in said final account for $3,192. except upon full legal proof that the property therein referred to was consumed in the use on the place, destroyed or taken and carried of by the Federal army, or by lapse of time and use have become worn out and of no value; because they say that said property was not so consumed, taken and carried off, or because so worn out and become of no value, and because they say that much of said property had been sold by said Burr Garland, or applied by him to his own use.

Fifth Exception.

Said exceptors object to any allowance of credit to said Burr Garland on account of the credit of $14,026.90 claimed for him in the "10th" item of credit in said final account, because they say that said sum of money could have been collected by him from the sales of the property therein referred to by reasonable diligence and efforts; and because said property was sold by him without any authority therefcr, either from the probate court of said Hinds county, or from the will of said Samuel Garland, Sr., and because the property should have been distributed by said Burr Garland } erty should have been distributed by said Burr Garland page 32 { to the persons entitled to receive it under said will.

}

Sixth Exception.

Said exceptors object to any credit being allowed to said Burr

Garland on account of credit "No. 11" of said final account for $33.-55, as for taxes in Coahoma county for 1867, except to the extent of $16.77½, because the balance of said taxes was not chargeable against the estate of said Samuel Garland, Sr., but was in fact due by Mrs. Mary L. Garland, his widow.

Seventh Exception.

Said exceptors object to the allowance to said Burr Garland of the credit of $40.20 asked in credit item "No. 12" of said final account, for payment of taxes in Coahoma county for 1868, and say that only $20.10 of said amount is properly chargeable against the estate of said Samuel Garland, Sr., and that the remainder thereof was in fact due by Mrs. Mary L. Garland, his widow.
.

Eighth Exception.

Said exceptors object to allowance of consideration to said Burr Garland for his services as such administrator on the sum of $249,-327.80 as claimed in credit item "No. 13" on said final account for the following reasons :

1st. Because said basis for the allowance of commissions is excessive to the extent of $39,102.12, that being the difference between said basis of said commissions and the sum of $210,225.96, that being the aggregate of the two inventories charged against said administrator in his final account, to-wit: $178,832.25 and $20,492 and the sum of $10,900.11 charged against him in his third annual account, } proceeds of the sales in United States currency of one } bales page 33 { hundred bales of cotton, which is the only real income } Cat 10 } ever received by him as such administrator. Sold between

2nd. Said exceptors say, that because of his gross mismanagement and maladministration of the estate of said Samuel Garland, Senior; said Burr Garland ought not to be allowed commissions even on said basis of $210,225.96, exceeding the lowest rate authorized by the statutes of Mississippi, to-wit: One per centum, and that the amounts stated in said inventaries was the estimated value of said property in Confederate States money, and commissions should only be allowed on the value thereof in United States currency.

Ninth Exception.

Said Exceptors object to the allowance of any credits to said Burr Garland on account of the credit item No. 15 of said final account. as for $300.00, paid to John Shelton for the following reasons :

1st. Because the same is not supported by any legal voucher

against the estate of said Samuel Garland, Senior.

2nd. Because it was not for any debt or services legally chargeable against the estate of said Samuel Garland, Senior.

3rd. Because it is for legal services rendered by said John Shelton on the retainer of said W. H. Garland, as executor of said Burr Garland, and for legal services for preparing and conducting said final account in said chancery court for the second district of Hinds county, and for which the said W. H. Garland or the estate of Burr Garland is alone responsible.

Tenth Exception.

Said Exceptors object to each and every of the following items of credits, which were allowed to said Burr Garland by the probate court of Hinds county, Mississippi, on his first and second page 34 { annual accounts as administrator, &c., of said Samuel Garland, Senior deceased, to-wit: credit item "No. 44" on said first annual account of $3,000.00, and credit item "No. 45" on said first annual account for $3,000.00; also credit item "18" on said second annual account of $2,000.00; credit item "19" on said second annual account of $3,500.00; credit item "20" on said second annual account of $1,900 00; credit item "21" on said second annual account of $800.00; and credit stem "23" on said second annual account of $520.00; and credit stem ":23" on said second annual account of $1,200.00, for the following reasons, to-wit :

1st. Because each and every of said several items of credit were so alllowed without any legal or valid voucher to support or sustain them.

2nd. Because each and every of said several items of credit were so allowed on the mere ex parte affidavit of said Burr Garland, and he was incompetent as a witness to testify in relation to the several matters set forth in the said several entries of such credits.

3rd. Because said Confederate States treasury notes and bonds and said treasury notes and bonds of the State of Mississippi, so referred to in the said several entries of said credits so allowed as aforesaid, so far as any such were received by said Burr Garland, were received by him in his own wrong, and without any authority either from the last will and testament of said Samuel Garland, Senior deceased, or from said probate court of Hinds county.

4th. Because said Burr Garland, as such administrator, had no authority to make any investments of any profits arising from the property of the estate of said Samuel Garland, Senior deceased, in any manner whatever, and that any such investments which have been made by him, were done at his own risk and in his own wrong.

5th. Because said Burr Garland could as fast as received page 35 } by him have distributed the money or treasury notes and } bonds so referred to in said several entries of said credits to the persons entitled to the same under the will of said Samuel Garland, Sr., deceased; but instead of doing this, he permitted the same to remain in his possession until all of such treasury notes and bonds became and were entirely worthless and of no value whatever to anyone.

6th. Because no part or portion of said treasury notes and bonds referred to in said entries of said credits were received by said Burr Garland in due course of business as such administrator, nor in pursuance of the statutes of Mississippi at the time of receiving the same.

Wherefore said exceptors insist that on said final account said Burr Garland shall be charged with such an amount of money as shall be sufficient to cancel each and every of the credits in this exception specified, and to cover legal interest on each of said allowances of credits from the several dates of such allowance.

Eleventh Exception.

Said exceptors object to each and every of the following items of credit which were allowed by the probat court of Hinds county, Mississippi, to said Burr Garland on his third annual account as administrator, &c, of said Samuel Garland, Sr., deceased, to-wit: Item "1" for $56.46, item "2" for $12.50, item "3" for $60, item "4" for $100, item "5" for $17, item "6" for $34.60, item "8" for $48, and item "13" for $541.30, for the following reasons, to-wit :

1st. Because each and every of said several allowances of credit were made without any valid legal voucher to sustain them as against the estate of said Samuel Garland, Sr., deceased.

2nd. Because each and every of said allowances of page 36 } credits were made on the mere ex parte affidavit of said Burr } Garland, and he was incompetent as a witness to establish them as valid claims against the estate of said Samuel Garland, Sr., deceased.

3rd. Because neither of said allowances of credits were made for any debt or liability against the estate of said Samuel Garland, Sr., deceased, but that each of them was based upon demands for plantation supplies and expenses on the plantations in Hinds county, Mississippi, which were contracted after one of said plantations had been allotted to Mrs. Mary L. Garland as her dower as the widow of said Samuel Garland, Sr., deceased, and after the other of said plantations had been selected by and taken possession of — said Burr Garland under the demise of the same for his use under the will of said Samuel Garland, Sr., deceased.

Wherefore said exceptors insist that on said final account said Burr Garland shall be charged with such an amount of money as may be sufficient to cancel each and every of the credits specified in this exception, and to cover legal interest on each of said allowances of credits from the date of such allowances.

Twelfth Exception.

The exceptors object to the credits allowed by said probate court of Hinds county to said Burr Garland of $203,61, being credit item "9" on his third annual account as such administrator, and say that the same was erroneous and excessive as to the sum of $163,93 thereof, for the following reasons:

1st. Because no portion of the taxes for which said credit was allowed was due by the estate of said Samuel Garland, Sr., deceased, } except the sum of $40.00½, that being one-half of the taxes page 37 { due on lands in Coahoma county, because the other half } of the lands in Coahoma county had previously passed into the possession of Mrs. Mary L. Garland as her dower as widow of said Samuel Garland, Sr., deceased, and the taxes thereon were chargeable only against said Mrs. Mary L. Garland.

2nd. Because the remainder of said taxes were due upon lands in Hinds county, Mississippi, which had either been previously allotted to said Mary L. Garland as dower or been selected by said Burr Garland under the devise to him in the will of said Samuel Garland, Sr., deceased.

Thirteenth Exception.

The said exceptors object to the sum of $488.46 allowed as a credit to said Burr Garland in credit, item "10," on his third annual account by the probat court of said Hinds county, and say that said credit should not have been so allowed, because that the same was for the payment of a debt contracted by said Burr Garland in 1861 and 1862 and which, by reasonable deligence and care, he could have paid with Confederate treasury notes, which he a lowed to remain in his possession until they ceased to be of any value. And because said claim was never proved against the estate of said Samuel Garland, Sr., deceased; and had ceased to be a valid claim against the estate at the time it was paid by said Burr Garland.

Fourteenth Exception.

Said exceptors object to the allowance by the probat court of Hinds county of credit to said Burr Garland for $171.58 it being the 11th item of credits on his third annual account, and for the

payment of taxes on lands in Coahoma county, because they say the said allowance was erroneous and excessive to the extent of $58.81, page 38 } which was the portion of said taxes due by Mrs. Mary } L. Garland on said lands.

}

Fifteenth Exception.

Said exceptors object to the allowance by the probat court of Hinds county of the credit of $83.11 to said Burr Garland, the same being credit item "12" on his third annual account, because they say that the same was excessive and erroneous to the extent of $41.55½, as one-half of said taxes related to in the entry of credit item, was legally due and payable by Mrs. Mary L. Garland, the widow of said Samuel Garland, Sr., deceased.

Sixteenth Exception.

Said exceptors object to the credit of $1,116.40 allowed by the probat court of said Hinds county, to said Burr Garland in credit item "14" on his third annual account as erroneous, because they say—

1st. The same was not supported by any valid legal voucher against the estate of said Samuel Garland, Sr., deceased. And,

2nd. Because it was for property contracted by Burr Garland for other purposes and uses than for administering the estate of said Samuel Garland, Sr., deceased.

Seventeenth Exception.

Said exceptors object to said annual and final accounts of said Burr Garland, because said Burr Garland is not in any of said accounts charged with the sum of $3,000.00, which he received either in 1863 or 1864, from one David J. Brown in the legal currency of the United States, as part payment of cotton belonging to the estate of said Samuel Garland, Sr., deceased, and sold to said Burr Garland. Wherefore said exceptors say that said Burr Garland should be charged in said final account with said sum of $3,000.00 in United States currency, and with legal interest thereon from the time it was paid to him by said David J. Brown.

page 39 } Eighteenth Exception.

}

Said exceptors object to any allowance of credit to said Burr Garland on the credit of $3,050.00, claimed for him in the 7th item of credit, asked in said final account, because they say that the decree of the probate court of Hinds county specified in the entry of

See page 44

said item of credit, was afterwards on the appeal of said John F. Slaughter reversed and set aside by the high court of errors and appeals of the State of Mississippi, and consequently the property referred to in said entry for said credit, continued to be the property of the estate of said Samuel Garland, Sr., deceased; and because said Burr Garland has failed to show any legal disposition of said property.

Nineteenth Exception.

Said exceptors objects to said final account because said Burr Garlan d is not therein charged with any sums of money as interest on any money in his hands as such administrator ; and especially because he is not therein charged with any interest on the sum of $6,545.09, therein charged against him as the balance due by him on his third annual account which balance was filed on the 9th day of December, 1868, when, as said exceptors say, he is justly and legally chargeable with interest on all of such sums of money, and especially upon said balance of $6,545.09, because they say there was no sufficient reason to authorize him to retain such balance of money in his possession, and because they say that said Burr Garland used said balance of money for his individual purposes and uses.

In each and every of the particulars specified in the foregoing } exceptions, said exceptors say that the said several annual page 40 { and final accounts of said Burr Garland as administrator, } &c, of said Samuel Garland, Sr., deceased, are false and erroneous, and that each and every of the false credits in said several exceptions complained of ought to be corrected. Wherefore said exceptors pray that such and every of said errors may be corrected ; that the credits allowed to said Burr Garland, on each and every of his said annual accounts as such administrator, complained of in their said exceptions, be set aside and overruled, and said Burr Garland be charged with such an amount of money as may be sufficient to equal in amount the aggregate of said credits so erroneously allowed to him, and with legal interest on each of said allowances of erroneous credits, from the respective dates at which they were so allowed to him. That each and every of the credits claimed for said Burr Garland in the final account so presented by his said

executor which are referred to in their foregoing exceptions may be refused and disallowed, and that said annual and final accounts of said Burr Garland as such administrator may be re-stated by a commissioner to be appointed for such purpose in such manner as to shew the amounts which would be due to or from said Burr Garland annually, commencing one year after his appointment as such administrator, and legal interest thereon, &c.

HARRIS & GEORGE, and

T. J. & F. A. R. WHARTON,

Solicitors for Exceptors.

Endorsed :

Exceptions to accounts of Burr Garland as administrator, &c., filed February 15, 1873.

MURRAY PEYTON, Clerk.

By W. F. FONTAINE, D. C.

page 41 } Proof of Publication.

}

State of Mississippi, }

Hinds county. }

I, George W. Harper, publisher of the newspaper, entitled the Hinds County Gazette, printed at Raymond in the county and State aforesaid, being duly sworn, do depose and say that a notice of which the foregoing print is a copy was published in said newspaper for four weeks successively, as follows: commencing in No. 17 of Volume 29 of the date of January 15th, 1873, and ending in number 21 of volume 29 of the date of February 12th, 1873.

GEO. W. HARPER.

Sworn to and subscribed this 20th day of February, 1873, before me.

. [Seal.] MURRAY PEYTON,

Chancery Clerk.

By S. G. MARSHALL, D. C.

State of Mississippi, }

Hinds county. }

I, Murray Peyton, chancery clerk, before whom the above affidavit was made, do certify that the newspapers containing the public notice therein specified have been produced before me, and by me compared with the copy of said notice, and with the above affidavit of said George W. Harper, and that they are correct and duly made.

Subscribed 20th day of February, 1873.

MURRAY PEYTON,

Chancery Clerk.

By S. G. MARSHALL, D. C.

Order Filing Proof of Publication.

page 42 } In the matter of the final settlement of Burr Garland's

} administration in this State with the last will and

testament annexed of Samuel Garland.

Ordered that the proof of publication made against all the parties

in interest and who are non-residents of Mississippi and of the for, warding of copies of such order to each one of them whose residence and postoffice address was known or could be ascertained, be received, filed and approved.

Order Appointing Guardian ad litem.

In the matter of the final settlement of Burr Garland's administration in the State of Mississippi with the last will and testament annexed of Samuel Garland.

Ordered that Samuel G. Marshall be appointed guardian ad litem of Charles A. Slaughter, Catharine S. Slaughter, Bertha or Roberta Slaughter, Samuel G. White, Junior; Samuel G. Hawkins, Mary F. Garland, —— Garland, and —— Garland, the three last named being children of Nicholas A. Garland, deceased; and in their names, to answer the petition of William H. Garland, as executor of the last will and testament of Burr Garland, deceased, for leave to make a final settlement of the said Burr Garland's administration in Mississippi with the last will and testament annexed of Samuel Garland, deceased, and to final settlement as presented, and that the answer of all said minors by their said guardian ad litem be received and filed.

Answer by Guardian ad litem.

The joint answer of Charles A Slaughter, Catharine L. Slaughter, Berta or Roberta Slaughter, Samuel G. White, Jr., Samuel G. Hawkins, Mary F. Garland, —— Garland, and —— Garland, the three last being children of Nicholas A. Garland, de} ceased, and all of them minors and interested in the espage 43 { tate of Samuel Garland, deceased, by their guardian ad } litem Samuel G. Marshall, to the petition of William Garland, as executor of the last will and testament of Burr Garland, deceased, for leave to make a final settlement of the said Burr Garland's administration in Mississippi, with the last will and testament annexed of Samuel Garland, deceased, and to said settlement as presented.

These respondents, by their guardian ad litem, saying, &c., for answer to said petition, or to so much thereof as they are advised it is necessary and proper for them to answer, answering, say:

That by reason of their minority and inexperience they are incapable of being properly informed of matters and things in said petition contained, and can neither admit or deny the same.

Wherefore they submit their interests to the care and protection

of this court, and pray that the allegations of the petitioner may be required to be submitted by strict and legal proofs.

And having fully answered, &c.

CHARLES A. SLAUGHTER.

CATHARINE L. SLAUGHTER.

BERTA or ROBERTA SLAUGHTER.

SAMUEL G. WHITE, JR.

SAMUEL G. HAWKINS.

MARY F. GARLAND.

——— GARLAND.

——— GARLAND.

By their guardian ad litem,

S. G. MARSHALL.

Endorsed.—Answer by guardian ad litem on final settlement, filed 20th February, 1873.

} MURRAY PEYTON, Clerk,

page 44 } By S. G. MARSHALL, D. C.

}

Order of Continuance.

In the matter of the final settlement of Burr Garland's administration in this State, with the last will and testament annexed of Samuel Garland.

Ordered that the further hearing of this matter on the exceptions filed to said final settlement and all further proceedings be specially continued to the fourth day of the ensuing May term of this court.

Subpœna to Hinds County.

The State of Mississippi,

To the Sheriff of Hinds county,—Greeting:

We command you to summon Dr. William P. Garland and David J. Brown to be and personally appear before the chancery court of the second district of said county, at the courthouse thereof, in the town of Raymond, on the 22nd day of May, 1873, to give evidence before said court in a certain cause, wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland, as administrator, &c., of Samuel Garland, Sr., deceased, which was submitted to said court by William H. Garland, as executor, &c., of said Burr Garland, on the part of the said exceptors.

Herein they shall not fail under the penalty in such case made and provided.

36 Garland, Sr., Adm'r vs. Garland's Adm'r. &c.

Issued 10th March, 1873.

[Seal.] MURRAY PEYTON, Clerk,

By M. R. SMITH, D. C.

Sheriff's Return.

Received March 10, 1873.

J. M. COATS, Sheriff,

} Executed personally on W. P. Garland and David J. page 45 { Brown by reading to them the contents of this writ this } 22nd March, 1873.

J. M. COATS, Sheriff,

By P. B. LANCASTER, D. S.

Subpœna to Rankin County.

The State of Mississippi,

To the Sheriff of Rankin county,—Greeting :

We command you to summon Henry Shurlds to be and personally appear before the chancery court of the 2nd district of Hinds county, at the courthouse thereof, in the town of Raymond, on the 22nd day of May, 1873, to give evidence before said court in a certain cause wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland as administrator, &c., of Samuel Garland, Sr., deceased, which was submitted to said court by W. H. Garland, as executor, &c. Herein he shall not fail under the penalty in such case made and provided.

Issued 29th day of April, A. D., 1873.

[Seal.] MURRAY PEYTON, Clerk,

by M. R. SMITH, D. C.

Sheriff's Return.

The State of Mississippi, }

Rankin county. }

I, H. F. Shelton, sheriff of Rankin county, do hereby appoint and specially depute James M. Martin to execute and return this subpœna.

Given under my hand and seal this 2nd day of May, 1873.

H. F. SHELTON, Sheriff.

Executed the 2nd day of May 1873.

H. F. SHELTON, Sheriff,

by JAS. M. MARTIN, S. D. S.

page 46 } Subpœna to Hinds comnty.

}

State of Mississippi,

To the Sheriff of Hinds county,—Greeting :

We command you to summon Carter H. Moore, Thomas Gordon, and U. C. Cannada to be, and personally appear before the chancery court of the 2nd district of said county, at the courthouse thereof, in the town of Raymond, on the 22nd day of May, 1873, to give evidence before said court in a certain cause wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland as administrator, &c., of Samuel Garland, Sr., deceased, which is submitted to said court by W. H. Garland as executor, &c., of said Burr Garland, on the part of said Wm. H. Garland. Herein they shall not fail under the penalty in such cases made and provided.

Issued the 29th day of April, 1873.

MURRAY PEYTON, Clerk.

by M. R. SMITH, D. C.

Sheriff's Return.

Received, April 29th, 1873.

J. M. COATS, Sheriff.

Executed personally on Carter Moore, Thomas Gordon, and U. C. Cannada, by reading to each of them this summons, this 5th day of May, 1873.

J. M. COATS, Sheriff,

by P. B. LANCASTER, D. S.

Order of Continuance.

May Term, 1873, 9th day, }

28th day of May. }

In the matter of the estate of Samuel Garland, deceased.

It is ordered by the court that this cause be specially continued until the next November term of this court to the third of the second week.

page 47 } Subpœna to Lafayette County.

}

The State of Mississippi,

To the Sheriff of Lafayette county,—Greeting:

We command you that you summon Landon C. Garland, LL.D

to be and personally appear before the chancery court of the second district of said county at the court-house in the town of Raymond, on the 26th day of November, 1873, to give evidence before said court in a certain cause wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland as administrator, &c., of Samuel Garland, Sr., deceased, which was submitted to said court by W. H. Garland, as executor of said Burr Garland, — part of said exceptors.

Herein he shall not fail under the penalty in such case made and provided.

Issued 3d day of November, A. D., 1873.

MURRAY PEYTON, Clerk.

by MARSHALL SMITH, D. C.

Sheriff's Return.

Received and executed personally on the within named L. C. Garland, he waiving copy of the same, this November 15, 1873.

B. P. SCRUGGS, Sheriff,

by W. E. ANDREWS, D. S.

Subpœna to Hinds,

The State of Mississippi,

To the Sheriff of Hinds county,—Greeting:

We command you to summon Dr. William P. Garland and David . J. Brown to be and personally appear before the chancery court of the second district of said county, at the courthouse thereof, in the town of Raymond, on the 26th day of November, to give evidence before said court in a certain cause, wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland, } as administrator, &c., of Samuel Garland, Sr., deceased, page 48 { which was submitted to said court by William H. Gar} land, as executor, &c., of said Burr Garland, on the part of the said exceptors.

Herein they shall not fail under the penalty in such case made and provided.

Issued 3d day of November, A. D., 1873.

[Seal.] MURRAY PEYTON, Clerk,

by W. F. FONTAINE, D. C.

Sheriff's Return.

Received November 12, 1873, Wm. Jefferson, sheriff, by A. G.

Moore, D. S., executed personally on Wm. P. Garland, and D. J. Brown by exhibiting and reading contents or within to each and delivering unto each a true copy of same this November 17, 1873.

WILLIAM JEFFERSON, Sheriff,

by A. G. MOORE, D. S.

Order Continuing.

November Term, }

26th November, 1873. }

In the matter of the estate of Samuel Garland, deceased.

Ordered that this cause stand continued.

Subpœna to Rankin County.

The State of Mississippi,

To the Sheriff of Rankin county,—Greeting:

We command you again to summon Henry Shurlds to be and personally appear before the chancery court of the second district of said county at the courthouse thereof, in the town of Raymond, on the 15th day of December, 1873, to give evidence before said court in a certain cause, wherein J. F. Slaughter and others, have filed exceptions to the final account of Burr Garland as administrator, } &c., of Samuel Garland, Sr., deceased, which was submitpage 49 { ten to said court by W. H. Garland as executor, &c., of } said Burr Garland, on the part of W. H. Garland, executor, &c.

Herein he shall not fail under the penalty in such case made and provided.

Issued 1st day of December, A. D., 1873.

MURRAY PEYTON, Clerk.

[Seal.] by S. G. MARSHALL, D. C.

Sheriff's Return.

Received December 5, 1873.

H. F. SHELTON, Sheriff.

Executed December 9, 1873, personally on Henry Shurlds.

H. F. SHELTON, Sheriff,

By R. H. REEVES, D. S.

in Hinds county, 400 bales (see page 4 of said appraisement) all of which was burnt and destroyed by Sherman's army in July, 1863, 16,000 00

3. This sum to balance so much of item "1" of debits as consisted of the then saves on the Barren's Estate (see pages 5, 6 and 7 of said appraisement) which became free as a result of the war and so passed from the hands and control of said administrator,
54,450 00

4. This sum to balance so much of item "1" of debits as consisted of the mules, cattle, hogs, farming implements of every kind, corn, fodder and potatoes on the Tudor Hall Estate (see appraisement page 4) that were consumed in the use on the place and carried off by the Federal army or by lapse of time and use, become worn out and of no value,
12,845 25

[Page 23.]

5. This sum to balance so much of item "1" as consisted of mules, hogs, cattle, wagons and horse-carts, on the Tudor Hall estate that were chosen and selected by the said Burr Garland, in part of the devise and legacy to him, contained in the last will and testament of the said Samuel Garland (see report of choice and selection, filed 5th October, 1864); the said property having been appraised at 2,100 00

6. This sum to balance so much of item "1" of debits as consisted of the mules, cattle, hogs, farming implements of every kind, corn, fodder and potatoes (see pages 7 and 8 of appraisement) on the Barrens estate that were consumed in the use, on the place, taken and carried off by the Federal army, or by lapse of time and use havt become worn out and of no value,
9,334 00

7. This sum to balance so much of item "1" of debits as consisted of mules, cattle, hogs, wagors, farming implements and furniture on the Barrens estate, &c., that were allotted and set apart to the said Samuel Garland's widow, as her share under the decree of the probate court of said Hinds county, made on the 20th June, 1864, (see report thereof on file); the said property having been valued at 3,050 00

8. This sum to balance so much of item "2" of debits as

consisted of the then slaves that became free as a result of the war and so passed from the hands and control of said administrator, 17,300 00

[Page 24.]

9 This sum to balance the remainder of item "2" of debits, consisting of mules, cattle, hogs, wagons, carts, farming implements, furniture, &c., &c., on the Coahoma estate, that were consumed in the use on the place, destroyed or taken and carried off by the Federal army or by lapse of time have become worn out and of no value, 3,192 00

10. This sum to balance item of debits "3," no part of said sum having ever been paid or ever collected, and the evidences thereof being now in the hands of this accountant and utterly worthless, 14,026 90

11. This sum paid taxes in Coahoma, 1867, as per voucher, 33 55

12. This sum paid taxes in Coahoma, 1868, as per voucher, 40 20

13. This sum being commissions at ——

per centum on the Hinds county appraisement, 178,832 25

On the Coahoma county appraisement, 20,492 00

On the hire of negroes and sales of corn, fodder, meal, &c, charged in the first annual settlement of said Burr Garland as adm'r, 14,798 14

On the hire of negroes and sales of corn, fodder, meal, &c, charged in his second annual settlement, 10,277 46

On sales of cotton, charged in his third annual settlement, 10,901 11 ✳

And on sales of corn, fodder, &c,sold to the Confederate military officers, and charged on debit side hereof, 14,026 90

Making in all, $249,327 86

14. This sum paid George W. Harper as per voucher, 300 00

15. This sum paid John Shelton, as per voucher,

16. This sum paid court fees, as per voucher,

[Page 25.]

17. This sum, the balance in favor of said Burr Gar-

land, on his second annual settlement filed 2nd April, 1867, 3 69

Endorsed.—Final settlement of Burr Garland's administration, filed by his executor, W H. Garland, this 10th day of January, 1873.

MURRAY PEYTON, Clerk,

By M. R. SMITH, D. C.

Order of Publication.

Chancery Notice.

State of Mississippi, } to-wit:

County of Hinds,}

Chancery Court for Second District, }

At Rules on 10th January, 1873. }

In the matter of the estate of◊Samuel Garland, Sr., on final settlement.

William H. Garland, executor of the last will and testament of Burr Garland, deceased, having appeared and presented the final settlement of the said Burr Garland's administration in this State, with the last will and testament annexed of Samuel Garland, Sr., deceased, late of the State of Virginia, and it appearing from the petition of the said William H. Garland, accompanying said final settlement, that all of the devisees, legatees, &c., under the said last will and testament of the said Samuel Garland, Senior, and the representatives of those of them who have died, &c., all of whom are hereinafter named, are non-residents of the State of Mississippi, being Mary L. Garland, widow of the said Samuel Garland, Sr.; Mary R. Slaughter; John F. Slaughter, in his own right, as administrator in the estate of Virginia, with the last will and testament page 26 { annexed of the said Samuel Garland, Sr., as administrator, &c., of Charles R. Slaughter, as one of the executors of } the last will and testament of Samuel Garland, Jr., and as trustee for Mary J. Slaughter, Celeste P. Cobbs, and Austina Broadnax; R. G. H. Kean, one of the executors of the last will and testament of Samuel Garland, Jr., and trustee under the same; Catharine M. Slaughter, Mary E. Slaughter; Charles A. Slaughter, Catharine L. Slaughter, Caroline M. Garland, Mary J. Slaughter, —— Cobbs and Celeste P. Cobbs, his wife, Robert W. Broadnax and Austina Broadnax, his wife, and Samuel G. Slaughter, the residence and postoffice address of all of whom is Lynchburg, Campbell county, in the State of Virginia; Charles Y. Morriss and Paulina B. Morriss, his wife, and the former as trustee for the latter, the

residence and postoffice address of both of whom is Richmond, Henrico county, in the State of Virginia; Samuel G. White, Sr., Samuel G. White, Jr., and Samuel G. Hawkins, who are believed to reside in the State of Virginia, but whose residences and postoffice addresses are not known; Berta or Roberta Slaughter, who is believed to be in the State of California, but whose residence and postoffice address is not known; and James M. Garland, Lucy Garland, Elizabeth A. Garland, Ellen P. Garland, Mary F. Garland, —— Garland, and —— Garland, all children of Nicholas A. Garland, deceased, who reside in the city of Springfield, in the county of Sangamon, in the State of Illinois, and whose postoffice address is said city of Springfield.

Now it is ordered that said final settlement and petition be received and filed and that all of said persons before named be and are by publication hereof once a week for one month in the Hinds County Gazettee, a newspaper printed and published in said second } district, hereby summoned

and directed to be and perpage 27 { sonally appear in the court aforesaid in the courthouse in } the town of Raymond in said second district on the 3rd Monday after the fourth Monday of January, 1873, being the 3rd Monday and 17th day of February next, and the first day of the regular term of said court, then and there to answer the petition hereinbefore referred to, and show cause if any they can, why the final settlement now on file, of the said Burr Garland's administration in this State, with the last will and testament annexed of the said Samuel Garland, Sr., should not be audited, examined and allowed, and all proper decrees made in accordance with the prayer of said petition. And also that a copy of this order be transmitted by mail, and according to law, to each one of the before named persons, whose residence and postoffice address is herein before given.

Ordered the day and date first aforesaid.

MURRAY PEYTON, Clerk.

January 15, 1873, 51, 17.

Report of .Clerk as to Forwarding Copies.

State of Mississippi, } to-wit:

Hinds county. }

Chancery Court for the Second District, }

14th January, 1873. }

To the Honorable Edwin W. Cabaness,

Chancellor of the Tenth District of said State and

sole presiding in the court aforesaid.

The undersigned, Murray Peyton, clerk of the chancery court of

said county, now respectfully reports that he has this day enclosed to each of the parties herein after named, printed copies of the } order made at rules on the 10th of January, 1873, in the page 28 { matter of the final settlement of Burr Garland's admin} istration in this estate, with the last will and testament annexed of Samuel Garland, Sr., deceased, late of the State of Virginia, in envelopes duly stamped, and that the same were at once deposited by him in the postoffice in the town of Raymond, in said second district, addressed as follows, to-wit:

To Mrs. Mary S. Garland, Lynchburg, Campbell county Virginia.

Mr. Charles Y. Morriss, Richmond, Henrico county Virginia.

Mrs. Pauline B. Morriss, do, do, do.

Mrs. Mary R. Slaughter, Lynchburg, Campbell county, Virginia.

Mr. John F. Slaughter, do, do, do.

Mr. R. G. H. Kean, do, do, do.

Miss Catharine M. Slaughter, do, do, do.

Miss Mary E. Slaughter, do, do, do.

Mr. Charles A. Slaughter, do, do, do.

Miss Catharine L. Slaughter, do, do, do.

Mrs. Caroline M. Garland, do, do, do.

Miss Mary J. Slaughter, do, do, do.

Mr. —— Cobbs, do, do, do.

Mrs. Celcete P. Cobbs, do, do, do.

Mr. Robert W. Broadnax, do, do, do.

Mrs. Austina Broadnax, do, do, do.

Mr. Samuel G. Slaughter, do, do, do.

Mr. James M. Garland, Springfield, Sangamon county, Illinois.

Miss Lucy Garland, do, do, do.

Miss Elizabeth A. Garland, do, do, do.

Miss Ellen P. Garland, do, do, do.

Miss Mary F. Garland, do, do, do.

—— Garland, do, do, do.

—— Garland, ' do, do, do.

do, do, do.

} And that the superscription of the two last were added page 29 { the words, "child of N. A. Garland."

} Respectfully reported this 14th day of January, 1873.

MURRAY PEYTON, Clerk.

by S. G. MARSHALL, D. C.

Endorsed.—Report of clerk as to forwarding copies of order of publication, filed in the papers this 14th day of January, 1873.

MURRAY PEYTON, Clerk,

by M. R. SMITH, D. C.

Exceptions to Accounts of Burr Garland, as adm'r, &c.

In the Chancery Court for the Second District

of Hinds county, Mississippi.

In the matter of the estate of Samuel Garland, Sr., deceased.

Exceptions taken on behalf of John F. Slaughter in his own right, also as administrator, in the State of Virginia, of said Samuel Garland, Sr., deceased, with his last will and testament annexed,} also as administrator, in the State of Virginia, of Chas. R. Slaughter, deceased, also as one of the executors, in the State of Virgnia, of the last will and testament of Samuel Garland, Jr., deceased, and also as trustee of Mary J. Slaughter, Celeste P. Cobbs, and Austina Broadnax; and also of R. G. H. Kean, in his own right, and as one of the executors, in the State of Virginia, of the last will and testament of said Samuel Garland, Jr., deceased, to the final account of Burr Garland, administrator in the State of Mississippi of Samuel Garland, Sr., deceased, with his last

will and testament annexed, which is filed in said chancery court for the second district of Hinds county, Mississippi, on the 10th day of January, 1873, by W. H. Garland, as the executor of the last will } and testament of said Burr Garland, deceased, and to the page 30 { annual accounts of said Burr Garland, as such administra} tor of said Samuel Garland, Sr., deceased, which were filed in the probate court of said Hinds county, as follows, to-wit :

1st. annual account filed March 9th, 1866.

2nd. annual account filed April 2nd, 1867, and

3rd. annual account filed December 9th, 1868.

First Exception.

The said exceptors object to the allowances to said Burr Garland of any credit on account of credit item "No. 2," in said final account for $16,000.00, as a value of 400 bales of cotton therein alleged to have been burnt and destroyed by Sherman's army in July 1863, because they say, 1st. That said cotton had been sold by said Burr Garland, and the purchase price thereof received by him. 2nd. Because if said cotton was so burned, such burning was after it had been so sold.

Second Exception.

Said exceptors object to any allowance of credit to said Burr Garland on item of credit, "No. 4," in said final account, for $12.-845.25, except upon full legal proof that the property therein referred to, was consumed in the use on the place, taken and carried off by the federal army, or by the lapse of time and use have be-

come worn out and of no value, because they say that said property had not been so consumed, taken and carried off, and become worn out ond of ne value, and because they say that much of said property had been sold by said Burr Garland or applied by him to his own used.

Third Exception.

Said exceptors object to any allowance of credit to said } page 31 { Burr Garland on item "No. 6," in said final account for } $9,334.00, except upon full and legal proof that the property therein referred to, was consumed in the use on the place, taken and carried off by the federal army, or by lapse of time and use, have become worn out and of no value, because they said that said property had not been taken and carried off, and consumed and become worn out, and of no value, and because they say that much of said property had been sold by said Burr Garland or applied by him to his own use.

Fourth Exception.

Said exceptors object to any allowance of credit to said Burr Garland on account of credit "No. 9" in said final account for $3,192. except upon full legal proof that the property therein referred to was consumed in the use on the place, destroyed or taken and carried of by the Federal army, or by lapse of time and use have become worn out and of no value; because they say that said property was not so consumed, taken and carried off, or because so worn out and become of no value, and because they say that much of said property had been sold by said Burr Garland, or applied by him to his own use.

Fifth Exception.

Said exceptors object to any allowance of credit to said Burr Garland on account of the credit of $14,026.90 claimed for him in the "10th" item of credit in said final account, because they say that said sum of money could have been collected by him from the sales of the property therein referred to by reasonable diligence and efforts; and because said property was sold by him without any authority therefcr, either from the probate court of said Hinds county, or from the will of said Samuel Garland, Sr., and because the property should have been distributed by said Burr Garland } erty should have been distributed by said Burr Garland page 32 { to the persons entitled to receive it under said will.

}

Sixth Exception.

Said exceptors object to any credit being allowed to said Burr

Garland on account of credit "No. 11" of said final account for $33.-55, as for taxes in Coahoma county for 1867, except to the extent of $16.77½, because the balance of said taxes was not chargeable against the estate of said Samuel Garland, Sr., but was in fact due by Mrs. Mary L. Garland, his widow.

Seventh Exception.

Said exceptors object to the allowance to said Burr Garland of the credit of $40.20 asked in credit item "No. 12" of said final account, for payment of taxes in Coahoma county for 1868, and say that only $20.10 of said amount is properly chargeable against the estate of said Samuel Garland, Sr., and that the remainder thereof was in fact due by Mrs. Mary L. Garland, his widow.
.

Eighth Exception.

Said exceptors object to allowance of consideration to said Burr Garland for his services as such administrator on the sum of $249,-327.80 as claimed in credit item "No. 13" on said final account for the following reasons :

1st. Because said basis for the allowance of commissions is excessive to the extent of $39,102.12, that being the difference between said basis of said commissions and the sum of $210,225.96, that being the aggregate of the two inventories charged against said administrator in his final account, to-wit: $178,832.25 and $20,492 and the sum of $10,900.11 charged against him in his third annual account, } proceeds of the sales in United States currency of one } bales page 33 { hundred bales of cotton, which is the only real income } Cat 10 } ever received by him as such administrator. Sold between

2nd. Said exceptors say, that because of his gross mismanagement and maladministration of the estate of said Samuel Garland, Senior; said Burr Garland ought not to be allowed commissions even on said basis of $210,225.96, exceeding the lowest rate authorized by the statutes of Mississippi, to-wit: One per centum, and that the amounts stated in said inventaries was the estimated value of said property in Confederate States money, and commissions should only be allowed on the value thereof in United States currency.

Ninth Exception.

Said Exceptors object to the allowance of any credits to said Burr Garland on account of the credit item No. 15 of said final account. as for $300.00, paid to John Shelton for the following reasons :

1st. Because the same is not supported by any legal voucher

against the estate of said Samuel Garland, Senior.

2nd. Because it was not for any debt or services legally chargeable against the estate of said Samuel Garland, Senior.

3rd. Because it is for legal services rendered by said John Shelton on the retainer of said W. H. Garland, as executor of said Burr Garland, and for legal services for preparing and conducting said final account in said chancery court for the second district of Hinds county, and for which the said W. H. Garland or the estate of Burr Garland is alone responsible.

Tenth Exception.

Said Exceptors object to each and every of the following items of credits, which were allowed to said Burr Garland by the probate court of Hinds county, Mississippi, on his first and second page 34 { annual accounts as administrator, &c., of said Samuel Garland, Senior deceased, to-wit: credit item "No. 44" on said first annual account of $3,000.00, and credit item "No. 45" on said first annual account for $3,000.00; also credit item "18" on said second annual account of $2,000.00; credit item "19" on said second annual account of $3,500.00; credit item "20" on said second annual account of $1,900 00; credit item "21" on said second annual account of $800.00; and credit stem "23" on said second annual account of $520.00; and credit stem ":23" on said second annual account of $1,200.00, for the following reasons, to-wit :

1st. Because each and every of said several items of credit were so alllowed without any legal or valid voucher to support or sustain them.

2nd. Because each and every of said several items of credit were so allowed on the mere ex parte affidavit of said Burr Garland, and he was incompetent as a witness to testify in relation to the several matters set forth in the said several entries of such credits.

3rd. Because said Confederate States treasury notes and bonds and said treasury notes and bonds of the State of Mississippi, so referred to in the said several entries of said credits so allowed as aforesaid, so far as any such were received by said Burr Garland, were received by him in his own wrong, and without any authority either from the last will and testament of said Samuel Garland, Senior deceased, or from said probate court of Hinds county.

4th. Because said Burr Garland, as such administrator, had no authority to make any investments of any profits arising from the property of the estate of said Samuel Garland, Senior deceased, in any manner whatever, and that any such investments which have been made by him, were done at his own risk and in his own wrong.

5th. Because said Burr Garland could as fast as received page 35 } by him have distributed the money or treasury notes and } bonds so referred to in said several entries of said credits to the persons entitled to the same under the will of said Samuel Garland, Sr., deceased; but instead of doing this, he permitted the same to remain in his possession until all of such treasury notes and bonds became and were entirely worthless and of no value whatever to anyone.

6th. Because no part or portion of said treasury notes and bonds referred to in said entries of said credits were received by said Burr Garland in due course of business as such administrator, nor in pursuance of the statutes of Mississippi at the time of receiving the same.

Wherefore said exceptors insist that on said final account said Burr Garland shall be charged with such an amount of money as shall be sufficient to cancel each and every of the credits in this exception specified, and to cover legal interest on each of said allowances of credits from the several dates of such allowance.

Eleventh Exception.

Said exceptors object to each and every of the following items of credit which were allowed by the probat court of Hinds county, Mississippi, to said Burr Garland on his third annual account as administrator, &c, of said Samuel Garland, Sr., deceased, to-wit: Item "1" for $56.46, item "2" for $12.50, item "3" for $60, item "4" for $100, item "5" for $17, item "6" for $34.60, item "8" for $48, and item "13" for $541.30, for the following reasons, to-wit :

1st. Because each and every of said several allowances of credit were made without any valid legal voucher to sustain them as against the estate of said Samuel Garland, Sr., deceased.

2nd. Because each and every of said allowances of page 36 } credits were made on the mere ex parte affidavit of said Burr } Garland, and he was incompetent as a witness to establish them as valid claims against the estate of said Samuel Garland, Sr., deceased.

3rd. Because neither of said allowances of credits were made for any debt or liability against the estate of said Samuel Garland, Sr., deceased, but that each of them was based upon demands for plantation supplies and expenses on the plantations in Hinds county, Mississippi, which were contracted after one of said plantations had been allotted to Mrs. Mary L. Garland as her dower as the widow of said Samuel Garland, Sr., deceased, and after the other of said plantations had been selected by and taken possession of — said Burr Garland under the demise of the same for his use under the will of said Samuel Garland, Sr., deceased.

Wherefore said exceptors insist that on said final account said Burr Garland shall be charged with such an amount of money as may be sufficient to cancel each and every of the credits specified in this exception, and to cover legal interest on each of said allowances of credits from the date of such allowances.

Twelfth Exception.

The exceptors object to the credits allowed by said probate court of Hinds county to said Burr Garland of $203,61, being credit item "9" on his third annual account as such administrator, and say that the same was erroneous and excessive as to the sum of $163,93 thereof, for the following reasons:

1st. Because no portion of the taxes for which said credit was allowed was due by the estate of said Samuel Garland, Sr., deceased, } except the sum of $40.00½, that being one-half of the taxes page 37 { due on lands in Coahoma county, because the other half } of the lands in Coahoma county had previously passed into the possession of Mrs. Mary L. Garland as her dower as widow of said Samuel Garland, Sr., deceased, and the taxes thereon were chargeable only against said Mrs. Mary L. Garland.

2nd. Because the remainder of said taxes were due upon lands in Hinds county, Mississippi, which had either been previously allotted to said Mary L. Garland as dower or been selected by said Burr Garland under the devise to him in the will of said Samuel Garland, Sr., deceased.

Thirteenth Exception.

The said exceptors object to the sum of $488.46 allowed as a credit to said Burr Garland in credit, item "10," on his third annual account by the probat court of said Hinds county, and say that said credit should not have been so allowed, because that the same was for the payment of a debt contracted by said Burr Garland in 1861 and 1862 and which, by reasonable deligence and care, he could have paid with Confederate treasury notes, which he a lowed to remain in his possession until they ceased to be of any value. And because said claim was never proved against the estate of said Samuel Garland, Sr., deceased; and had ceased to be a valid claim against the estate at the time it was paid by said Burr Garland.

Fourteenth Exception.

Said exceptors object to the allowance by the probat court of Hinds county of credit to said Burr Garland for $171.58 it being the 11th item of credits on his third annual account, and for the

payment of taxes on lands in Coahoma county, because they say the said allowance was erroneous and excessive to the extent of $58.81, page 38 } which was the portion of said taxes due by Mrs. Mary } L. Garland on said lands.

}

Fifteenth Exception.

Said exceptors object to the allowance by the probat court of Hinds county of the credit of $83.11 to said Burr Garland, the same being credit item "12" on his third annual account, because they say that the same was excessive and erroneous to the extent of $41.55½, as one-half of said taxes related to in the entry of credit item, was legally due and payable by Mrs. Mary L. Garland, the widow of said Samuel Garland, Sr., deceased.

Sixteenth Exception.

Said exceptors object to the credit of $1,116.40 allowed by the probat court of said Hinds county, to said Burr Garland in credit item "14" on his third annual account as erroneous, because they say—

1st. The same was not supported by any valid legal voucher against the estate of said Samuel Garland, Sr., deceased. And,

2nd. Because it was for property contracted by Burr Garland for other purposes and uses than for administering the estate of said Samuel Garland, Sr., deceased.

Seventeenth Exception.

Said exceptors object to said annual and final accounts of said Burr Garland, because said Burr Garland is not in any of said accounts charged with the sum of $3,000.00, which he received either in 1863 or 1864, from one David J. Brown in the legal currency of the United States, as part payment of cotton belonging to the estate of said Samuel Garland, Sr., deceased, and sold to said Burr Garland. Wherefore said exceptors say that said Burr Garland should be charged in said final account with said sum of $3,000.00 in United States currency, and with legal interest thereon from the time it was paid to him by said David J. Brown.

page 39 } Eighteenth Exception.

}

Said exceptors object to any allowance of credit to said Burr Garland on the credit of $3,050.00, claimed for him in the 7th item of credit, asked in said final account, because they say that the decree of the probate court of Hinds county specified in the entry of

See page 44

said item of credit, was afterwards on the appeal of said John F. Slaughter reversed and set aside by the high court of errors and appeals of the State of Mississippi, and consequently the property referred to in said entry for said credit, continued to be the property of the estate of said Samuel Garland, Sr., deceased; and because said Burr Garland has failed to show any legal disposition of said property.

Nineteenth Exception.

Said exceptors objects to said final account because said Burr Garlan d is not therein charged with any sums of money as interest on any money in his hands as such administrator ; and especially because he is not therein charged with any interest on the sum of $6,545.09, therein charged against him as the balance due by him on his third annual account which balance was filed on the 9th day of December, 1868, when, as said exceptors say, he is justly and legally chargeable with interest on all of such sums of money, and especially upon said balance of $6,545.09, because they say there was no sufficient reason to authorize him to retain such balance of money in his possession, and because they say that said Burr Garland used said balance of money for his individual purposes and uses.

In each and every of the particulars specified in the foregoing } exceptions, said exceptors say that the said several annual page 40 { and final accounts of said Burr Garland as administrator, } &c, of said Samuel Garland, Sr., deceased, are false and erroneous, and that each and every of the false credits in said several exceptions complained of ought to be corrected. Wherefore said exceptors pray that such and every of said errors may be corrected ; that the credits allowed to said Burr Garland, on each and every of his said annual accounts as such administrator, complained of in their said exceptions, be set aside and overruled, and said Burr Garland be charged with such an amount of money as may be sufficient to equal in amount the aggregate of said credits so erroneously allowed to him, and with legal interest on each of said allowances of erroneous credits, from the respective dates at which they were so allowed to him. That each and every of the credits claimed for said Burr Garland in the final account so presented by his said

executor which are referred to in their foregoing exceptions may be refused and disallowed, and that said annual and final accounts of said Burr Garland as such administrator may be re-stated by a commissioner to be appointed for such purpose in such manner as to shew the amounts which would be due to or from said Burr Garland annually, commencing one year after his appointment as such administrator, and legal interest thereon, &c.

HARRIS & GEORGE, and

T. J. & F. A. R. WHARTON,

Solicitors for Exceptors.

Endorsed :

Exceptions to accounts of Burr Garland as administrator, &c., filed February 15, 1873.

MURRAY PEYTON, Clerk.

By W. F. FONTAINE, D. C.

page 41 } Proof of Publication.

}

State of Mississippi, }

Hinds county. }

I, George W. Harper, publisher of the newspaper, entitled the Hinds County Gazette, printed at Raymond in the county and State aforesaid, being duly sworn, do depose and say that a notice of which the foregoing print is a copy was published in said newspaper for four weeks successively, as follows: commencing in No. 17 of Volume 29 of the date of January 15th, 1873, and ending in number 21 of volume 29 of the date of February 12th, 1873.

GEO. W. HARPER.

Sworn to and subscribed this 20th day of February, 1873, before me.

. [Seal.] MURRAY PEYTON,

Chancery Clerk.

By S. G. MARSHALL, D. C.

State of Mississippi, }

Hinds county. }

I, Murray Peyton, chancery clerk, before whom the above affidavit was made, do certify that the newspapers containing the public notice therein specified have been produced before me, and by me compared with the copy of said notice, and with the above affidavit of said George W. Harper, and that they are correct and duly made.

Subscribed 20th day of February, 1873.

MURRAY PEYTON,

Chancery Clerk.

By S. G. MARSHALL, D. C.

Order Filing Proof of Publication.

page 42 } In the matter of the final settlement of Burr Garland's

} administration in this State with the last will and

testament annexed of Samuel Garland.

Ordered that the proof of publication made against all the parties

in interest and who are non-residents of Mississippi and of the for, warding of copies of such order to each one of them whose residence and postoffice address was known or could be ascertained, be received, filed and approved.

Order Appointing Guardian ad litem.

In the matter of the final settlement of Burr Garland's administration in the State of Mississippi with the last will and testament annexed of Samuel Garland.

Ordered that Samuel G. Marshall be appointed guardian ad litem of Charles A. Slaughter, Catharine S. Slaughter, Bertha or Roberta Slaughter, Samuel G. White, Junior; Samuel G. Hawkins, Mary F. Garland, —— Garland, and —— Garland, the three last named being children of Nicholas A. Garland, deceased; and in their names, to answer the petition of William H. Garland, as executor of the last will and testament of Burr Garland, deceased, for leave to make a final settlement of the said Burr Garland's administration in Mississippi with the last will and testament annexed of Samuel Garland, deceased, and to final settlement as presented, and that the answer of all said minors by their said guardian ad litem be received and filed.

Answer by Guardian ad litem.

The joint answer of Charles A Slaughter, Catharine L. Slaughter, Berta or Roberta Slaughter, Samuel G. White, Jr., Samuel G. Hawkins, Mary F. Garland, —— Garland, and —— Garland, the three last being children of Nicholas A. Garland, de} ceased, and all of them minors and interested in the espage 43 { tate of Samuel Garland, deceased, by their guardian ad } litem Samuel G. Marshall, to the petition of William Garland, as executor of the last will and testament of Burr Garland, deceased, for leave to make a final settlement of the said Burr Garland's administration in Mississippi, with the last will and testament annexed of Samuel Garland, deceased, and to said settlement as presented.

These respondents, by their guardian ad litem, saying, &c., for answer to said petition, or to so much thereof as they are advised it is necessary and proper for them to answer, answering, say:

That by reason of their minority and inexperience they are incapable of being properly informed of matters and things in said petition contained, and can neither admit or deny the same.

Wherefore they submit their interests to the care and protection

of this court, and pray that the allegations of the petitioner may be required to be submitted by strict and legal proofs.

And having fully answered, &c.

CHARLES A. SLAUGHTER.

CATHARINE L. SLAUGHTER.

BERTA or ROBERTA SLAUGHTER.

SAMUEL G. WHITE, JR.

SAMUEL G. HAWKINS.

MARY F. GARLAND.

——— GARLAND.

——— GARLAND.

By their guardian ad litem,

S. G. MARSHALL.

Endorsed.—Answer by guardian ad litem on final settlement, filed 20th February, 1873.

} MURRAY PEYTON, Clerk,

page 44 } By S. G. MARSHALL, D. C.

}

Order of Continuance.

In the matter of the final settlement of Burr Garland's administration in this State, with the last will and testament annexed of Samuel Garland.

Ordered that the further hearing of this matter on the exceptions filed to said final settlement and all further proceedings be specially continued to the fourth day of the ensuing May term of this court.

Subpœna to Hinds County.

The State of Mississippi,

To the Sheriff of Hinds county,—Greeting:

We command you to summon Dr. William P. Garland and David J. Brown to be and personally appear before the chancery court of the second district of said county, at the courthouse thereof, in the town of Raymond, on the 22nd day of May, 1873, to give evidence before said court in a certain cause, wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland, as administrator, &c., of Samuel Garland, Sr., deceased, which was submitted to said court by William H. Garland, as executor, &c., of said Burr Garland, on the part of the said exceptors.

Herein they shall not fail under the penalty in such case made and provided.

36 Garland, Sr., Adm'r vs. Garland's Adm'r. &c.

Issued 10th March, 1873.

[Seal.] MURRAY PEYTON, Clerk,

By M. R. SMITH, D. C.

Sheriff's Return.

Received March 10, 1873.

J. M. COATS, Sheriff,

} Executed personally on W. P. Garland and David J. page 45 { Brown by reading to them the contents of this writ this } 22nd March, 1873.

J. M. COATS, Sheriff,

By P. B. LANCASTER, D. S.

Subpœna to Rankin County.

The State of Mississippi,

To the Sheriff of Rankin county,—Greeting :

We command you to summon Henry Shurlds to be and personally appear before the chancery court of the 2nd district of Hinds county, at the courthouse thereof, in the town of Raymond, on the 22nd day of May, 1873, to give evidence before said court in a certain cause wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland as administrator, &c., of Samuel Garland, Sr., deceased, which was submitted to said court by W. H. Garland, as executor, &c. Herein he shall not fail under the penalty in such case made and provided.

Issued 29th day of April, A. D., 1873.

[Seal.] MURRAY PEYTON, Clerk,

by M. R. SMITH, D. C.

Sheriff's Return.

The State of Mississippi, }

Rankin county. }

I, H. F. Shelton, sheriff of Rankin county, do hereby appoint and specially depute James M. Martin to execute and return this subpœna.

Given under my hand and seal this 2nd day of May, 1873.

H. F. SHELTON, Sheriff.

Executed the 2nd day of May 1873.

H. F. SHELTON, Sheriff,

by JAS. M. MARTIN, S. D. S.

page 46 } Subpœna to Hinds comnty.

}

State of Mississippi,

To the Sheriff of Hinds county,—Greeting :

We command you to summon Carter H. Moore, Thomas Gordon, and U. C. Cannada to be, and personally appear before the chancery court of the 2nd district of said county, at the courthouse thereof, in the town of Raymond, on the 22nd day of May, 1873, to give evidence before said court in a certain cause wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland as administrator, &c., of Samuel Garland, Sr., deceased, which is submitted to said court by W. H. Garland as executor, &c., of said Burr Garland, on the part of said Wm. H. Garland. Herein they shall not fail under the penalty in such cases made and provided.

Issued the 29th day of April, 1873.

MURRAY PEYTON, Clerk.

by M. R. SMITH, D. C.

Sheriff's Return.

Received, April 29th, 1873.

J. M. COATS, Sheriff.

Executed personally on Carter Moore, Thomas Gordon, and U. C. Cannada, by reading to each of them this summons, this 5th day of May, 1873.

J. M. COATS, Sheriff,

by P. B. LANCASTER, D. S.

Order of Continuance.

May Term, 1873, 9th day, }

28th day of May. }

In the matter of the estate of Samuel Garland, deceased.

It is ordered by the court that this cause be specially continued until the next November term of this court to the third of the second week.

page 47 } Subpœna to Lafayette County.

}

The State of Mississippi,

To the Sheriff of Lafayette county,—Greeting:

We command you that you summon Landon C. Garland, LL.D

to be and personally appear before the chancery court of the second district of said county at the court-house in the town of Raymond, on the 26th day of November, 1873, to give evidence before said court in a certain cause wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland as administrator, &c., of Samuel Garland, Sr., deceased, which was submitted to said court by W. H. Garland, as executor of said Burr Garland, — part of said exceptors.

Herein he shall not fail under the penalty in such case made and provided.

Issued 3d day of November, A. D., 1873.

MURRAY PEYTON, Clerk.

by MARSHALL SMITH, D. C.

Sheriff's Return.

Received and executed personally on the within named L. C. Garland, he waiving copy of the same, this November 15, 1873.

B. P. SCRUGGS, Sheriff,

by W. E. ANDREWS, D. S.

Subpœna to Hinds,

The State of Mississippi,

To the Sheriff of Hinds county,—Greeting:

We command you to summon Dr. William P. Garland and David . J. Brown to be and personally appear before the chancery court of the second district of said county, at the courthouse thereof, in the town of Raymond, on the 26th day of November, to give evidence before said court in a certain cause, wherein J. F. Slaughter and others have filed exceptions to the final account of Burr Garland, } as administrator, &c., of Samuel Garland, Sr., deceased, page 48 { which was submitted to said court by William H. Gar} land, as executor, &c., of said Burr Garland, on the part of the said exceptors.

Herein they shall not fail under the penalty in such case made and provided.

Issued 3d day of November, A. D., 1873.

[Seal.] MURRAY PEYTON, Clerk,

by W. F. FONTAINE, D. C.

Sheriff's Return.

Received November 12, 1873, Wm. Jefferson, sheriff, by A. G.

Moore, D. S., executed personally on Wm. P. Garland, and D. J. Brown by exhibiting and reading contents or within to each and delivering unto each a true copy of same this November 17, 1873.

WILLIAM JEFFERSON, Sheriff,

by A. G. MOORE, D. S.

Order Continuing.

November Term, }

26th November, 1873. }

In the matter of the estate of Samuel Garland, deceased.

Ordered that this cause stand continued.

Subpœna to Rankin County.

The State of Mississippi,

To the Sheriff of Rankin county,—Greeting:

We command you again to summon Henry Shurlds to be and personally appear before the chancery court of the second district of said county at the courthouse thereof, in the town of Raymond, on the 15th day of December, 1873, to give evidence before said court in a certain cause, wherein J. F. Slaughter and others, have filed exceptions to the final account of Burr Garland as administrator, } &c., of Samuel Garland, Sr., deceased, which was submitpage 49 { ten to said court by W. H. Garland as executor, &c., of } said Burr Garland, on the part of W. H. Garland, executor, &c.

Herein he shall not fail under the penalty in such case made and provided.

Issued 1st day of December, A. D., 1873.

MURRAY PEYTON, Clerk.

[Seal.] by S. G. MARSHALL, D. C.

Sheriff's Return.

Received December 5, 1873.

H. F. SHELTON, Sheriff.

Executed December 9, 1873, personally on Henry Shurlds.

H. F. SHELTON, Sheriff,

By R. H. REEVES, D. S.

(non with the will annexed of my uncle, Samuel Garland, deceased, {and the said B. Garland is hereby authorized to use our names if need be in any legal proceedings that may become necessary for the collection of said legacy hereby sold and transferred to him.

In testimony whereof we have set our hands and affixed our seals this 23rd day of June, A. D., 1869.

CHARLES L. ROANE, [Seal.]

LUCY P. ROANE, [Seal.]

Signed, sealed and acknowledged in the presence of us,—witnesses :

BENJ. B. HAYDON.

E. A. GARLAND.

State of Illinois, }

Moultrie county. } ss:

On this day personally appeared before me, Joseph B. Titus, clerk

of the county court of said Moultrie county in the State aforesaid, Charles L. Roane and Lucy P. Roane, his wife, whose names

are signed to the foregoing deed and acknowledged that they signed

} and delivered the same as their free act and deed on the

page 79 { day and year therein mentioned and for the purposes and

} consideration therein set forth.

In witness whereof, I have hereunto set my hand and official seal

at my office in Sullivan this 23rd day of June, A. D., 1869.

[Seal.] J. B. TITUS, County Clerk,

Moultrie county, Illinois.

"G. 3."

Know all men by these presents that we, Thomas M. Bushfield and

2 3 June Ellen D. Bushfield, his wife, of the town of Sullivan, in the county

{ 9 of Moultrie and State of Illinois, she being the daughter of Nicholas

Austin Garland of the city of Springfield, in the State of Illinois,

for and in considention of the sum of $550 to us in hand

paid by Burr Garland of the State of Mississippi, the receipt whereof

8 is hereby acknowledged and confessed, do hereby sell, convey and

transfer to the said Burr Garland all our right title and interest in

and to a legacy left to Ellen D. Bushfield, wife of Thomas M. Bushfield, she being one of the children of N. A. Garland, by the last

will and testament of her uncle Samuel Garland, deceased, of the city of Lynchburg and State of Virginia, bequeathing to each of the children of the said N. A. Garland, of the State of Illinois, the sum of $1,000 to be paid to them in a bond of the East Tennessee and {Virginia Railroad Company, or in other bonds of equal value; and

the said B. Garland is hereby authorized to collect the same from} John F. Slaughter, Esq., the executor de bonis non with the will annexed of my uncle Samuel Garland, deceased, and the said B. Garland is hereby authorized to use our names if need be in any le-

} gal proceeding that may become necessary for the collec- •

page 80 { tion of said legacy, hereby sold and transferred to him.

} In witness whereof we have hereto set our hands and affixed our seals this 23d day of June, A. D., 1869.

THOMAS M. BUSHFIELD, [Seal.]

ELLEN D. BUSHFIELD, [Seal.]

Signed, sealed and acknowledged in presence of us—witnesses,

BENJAMIN B. HAYDON,

CHARLES L. ROANE.

State of Illinois, }

Moultrie county. } ss:

On this day personally appeared before me, J. B. Titus, county clerk within and for said county and State above named, Thomas M. Bushfield and Ellen D. Bushfield, his wife, whose names are signed to the foregoing deed and acknowledged, that they signed and delivered the same as their free act and deed on the day and year therein mentioned, and for the purpose and consideration therein set forth.

In witness whereof I have hereunto set my hand and official seal this 23d day of June, A. D., 1869.

J. B. TITUS, County Clerk,
Moultrie County, Ill.

"G. 4."

Know all men by these presents, that I, Elizabeth A. Garland of • 8 8
the town of Sullivan, county of Moultrie and State of Illinois,
daughter of Nicholas Austin Garland, of the city of Springfield, in 2 3 June
the State of Illinois, for and in consideration of the sum of $550 to
me in hand paid by Burr Garland of the State of Mississippi, the 6 9
receipt whereof is hereby acknowledged and confessed, do
} hereby sell, convey, and transfer to the said B. Garland 4 •
page 81 { all my right, title and interest in and to a legacy left to
} me as one of the children of N. A. Garland, by the last
will and testament of my uncle, Samuel Garland, deceased, of the
city of Lynchburg and State of Virginia, bequeathing " to each of
the children of N. A. Garland, of the State of Illinois, the sum of
$1,000, to be paid to them in a bond of the East Tennessee and Virginia Railroad Company, or in other bonds of equal value," and to

(said B. Garland is hereby authorized to collect the same from John

{F. Slaughter, Esq., the executor de bonis non with the will annexed

of my deceased uncle, Samuel Garland, and the said B. Garland is

hereby authorized to use my name, if need be, in any legal proceeding that may become necessary for the collection of said legacy hereby sold and transferred to him.

In witness whereof I have hereto set my hand and affixed my

seal this 23rd day of June, A. D. 1869.

ELIZABETH A. GARLAND, [Seal.]

Signed, sealed and acknowledged in the presence of us,—witnesses :

BENJ. B. HAYDON.

CHARLES L. ROANE.

State of Illinois, }

Moultrie county. } ss:

On this day personally appeared before me, Joseph B. Titus, clerk

of the county court within and for said county in the State aforesaid, Elizabeth A. Garland, whose name is signed to the foregoing

deed and acknowledged that she signed and delivered the same as her

free act and deed on the day and year therein mentioned and for

the purposes and consideration therein set forth.

In witness whereof, I have hereunto set my hand and official seal

} at my office in Sullivan this 23rd day of June, A. D. 1869.

page 82 {

} [Seal.] J. B. TITUS, County Clerk,

Moultrie county, Illinois.

" G. 5."

2 6 June Know all men by those present, that I, Austin M. Garland, of the

6 9 • county of Sangamon, and State of Illinois aforesaid, for and in consideration of the sum of five hundred and fifty dollars to me in hand

paid by Burr Garland, of the State of Mississippi, the receipt

5 • whereof is hereby acknowledged, do hereby sell and convey, trans•. fer and assign over to him, the said B. Garland, his heirs or as

signs, all my right and interest to a special legacy left to me, as one

of the children of Nicholas A. Garland, of the State of Illinois, by

the last will and testament of my uncle, Samuel Garland, deceased,

late of the city of Lynchburg, and State of Virginia, it being a

bond of the East Tennessee and Virginia Railroad Company for one

thousand dollars, payable in the bonds of the said company, or in

other bonds of equal value; and I hereby authorize and empower

the said B. Garland to make use of my name, if need be, in the collection of the said legacy, bequeathed to me as one of the children

of Nicholas A. Garland in the said will, from John F. Slaughter,

administrator, with the will annexed of the late Samuel Garland,

deceased, in the State of Virginia, and of record in the hustings

court of the city of Lynchburg in said State of Virginia, the whole

of said legacy being yet due and unpaid. And we hereby authorize

and direct the said administrator to pay over the same to the said B.

Garland, his heirs or assigns.

As witness my hand and seal this 26th day of June, 1869.

A. M. GARLAND, [Seal.]

Witness:

JAMES M. GARLAND.

} Subscribed in my presence this 28th of June, A. D. 1869.

page 83 { Given under my hand and official seal the day and date

} above written.

GEO. M. BRINKERHOFF,

Notary Public.

"G. 6."

Know all men by these presents, that I, Austin M. Garland, of the 2 8 June

county of Sangamon and State of Illinois, guardian for William (8 6 9

Garland, Albert E. Garland, and Carolina Paulina Garland, three infant children of Nicholas A. Garland, of the State of Illinois, for

and in consideration of the sum of five hundred and fifty dollars 6. 7. 8 •

to me in hand paid by Burr Garland, of the State of Mississippi, the

receipt whereof is hereby acknowledged, and for other considerations

thereunto moving, do hereby sell and convey, transfer and assign

over to him, the said B. Garland, his heirs or assigns, all the right,

title, and interest my wards above-named have in the estate of their

late uncle, Samuel Garland, deceased, of the city cf Lynchburg and

State of Virginia, consisting of one bond of the East Tennessee and

Virginia Railroad Company for $1,000, to be paid to such of the children of Nicholas A. Garland in a bond of the said company, or in

other bonds of equal value, by the last will and testament of Samuel Garland, deceased, now of record in the hustings court of the

city of Lynchburg and State of Virginia. And I hereby authorize

and empower the said Burr Garland to make use of my name as

guardian for the three children above-named, if need be, in the collection of the said legacy bequeathed to them as the children of

Nicholas A. Garland, of Illinois, in the said will, from John F.

Slaughter, Esq., the administrator with the will annexed of the late

} Samuel Garland, deceased, of the State of Virginia, the

page 84 { whole of the legacies above-named being yet due and un- •

} paid. And I hereby authorize and direct the said administrator to pay over the same to the said Burr Garland, his heirs

and assigns.

In witness whereof I have hereto set my hand and seal as guardian for the three minor children above-named this 28th day of

June, A. D. 1869.

A. M. GARLAND, [Seal.]

Guardian for Minor Heirs.

Witness:

JAMES M. GARLAND.

Subscribed in my presence this 28th of June, A. D. 1869.

Given under my hand and official seal.

GEO. M. BRINKERHOFF,

Notary Public.

And now at this day, to-wit: At a circuit court for the city of

Lynchburg, held on the day and year first herein mentioned, this

cause came on to be heard on the papers formerly read, and the depositions of witnesses, and exhibits filed since the former hearing,

and the report of Commissioner Bocock, filed the 9th of May, 1881,

with exceptions thereto by the defendant Charles Y. Morriss, and

was argued by counsel.

Upon consideration thereof, the court is of opinion that, while it

may be that the proceedings in the chancery court of the second

district of Hinds county in the State of Mississippi, on the petition

of William H. Garland, executor of Burr Garland, deceased, to settle up finally the transactions of the said Burr Garland, as administrator with the will annexed of Samuel Garland, Sr., deceased, in

the State of Mississippi, may be conclusive as in the nature of a

V proceeding in rem and binding on the estate of Burr Garland everywhere, as fixing its liability and indebtedness to the estate of the

said Samuel Garland, Sr., deceased, (a question not necessary now

} to decide) ; and while the estate of the said Burr Garpage 85 { land, deceased, may be liable to that of the said Samuel

Sci: } Garland, Sr., deceased, for the legal default of the

said Burr Garland, in applying the funds of his testator in his

hands as administrator, as aforesaid, in purchasing the legacies given

by his testator to the children of Nicholas A. Garland (in the bill

mentioned) Yet the plaintiff, as administrator de bonis non of

the said Samuel Garland, Sr., deceased, in Virginia, cannot hold the

said Burr Garland, or his personal representatives in Virginia to ac-

count to him for any default of the said Burr Garland, as administrator as aforesaid, in his administration of the said Samuel Garland, in Mississippi, but can only be held to account by the legatees

V of the said Samuel Garland, Sr., deceased, or the residuary legatees

Vic or their representatives, if the specific legacies are satisfied. The

court doth therefore adjudge, order and decree that the bill of the

plaintiff be dismissed, and that he do, out of the estate of his testator in his hands to be administered, pay to the defendant, Charles

Y. Morriss, administrator of Burr Garland, deceased, his costs by

him about his defence in this behalf expended.

The report of the commissioner referred to in the foregoing decree

is in the following words and figures, to-wit :

Commissioner's Office,

Circuit Court City of Lynchburg,

May 5th, 1881.

The undersigned commissioner, reports to the court, that after

due notice to all the parties, he has this day stated the annexed account of Charles Y. Morriss, administrator with the will annexed

of Burr Garland, deceased, showing a balance of $2,200.15, remaining in the hands of the said administrator, on the 1st day of May,

1881, of which $1,392.52, is principal, and $807.63 interest.

} The delay in taking this account has resulted from the

page 86 { fact that the said administrator has been out of the State

} for a good length of time, and since his return has been

sick, and the delay has been at his instance, no other person being

able to render his account.

The said commissioner claims credit on his account for expenses

incurred chiefly in the defence of this suit, but being without vouchers for the same, I have not passed upon them. He has filed much

testimony to show the profits of the legacy which came to the

hands of Burr Garland under the 9th clause of the will of Samuel Garland, but not considering this embraced in the enquiry directed by the November term, 1880, the undersigned has taken no statement from said testimony.

Respectfully submitted,

H. F. BOCOCK,

Commissioner.

Commissioners fee, $8.00.

Dr. The Estate of Burr Garland, deceased, Cr.

In Account with Charles Y. Morriss, his Adm'r,

1870.		
Aug. 9.	By cash collected of People's Savings Bank of Lynchburg certificate of deposit, made by John T. Murrell, on 27th December, 1869.—Certificatea foresaid,	$1,479 94

	Interest on said certificate to 15th February, ruary, 1870,	12 33
		$1,492 27

Cr. By amount part of
said deposit drawn out
by John T. Murrell, 15th
February, 1870, and paid
by him to Dr. Wm. O.
Owen, for medical bill
against the deceased, 111 00

$1,381 27

Interest on $1381.27
from 15th February,
1770, to 9th of August,
1870, 40 05

$1,421 32

[Page 87.]

Amount drawn out balance of certificate with
interest to this date as assets by administra-
tor, $1,421 32

1870.

Aug. —. To motion to qualify administrator, $ 10 00
To cash paid clerk's fee at qualifica-
tion, 7 80
To expeses of administrator coming
from Richmond to Lynchburg to
qualify, 11 00

1871.

Aug. 31. Balance in the hands of administra-
tor due estate, 1,392 52

$1,421 32	$1,421 32

1871.

Aug. 31. Balance due by adminis-
trator to estate bro't
down, $1,392 52
Int. on $1,392.52 from
31st August. 1871, to
1st May, 1881, 807 63

Garland, Adm'r Sr., vs. Garland's Adm'r. &c. 67

Balance prin. and int. 1st
May, 1881, $2,200 15

Exceptions to said Report.

The defendant excepts to this report because the funds embraced in the account are trust moneys, under the 9th clause of the will of Samuel Garland, deceased, for Paulina B. Morriss and her children.

W. J. ROBERTSON,

E. S. BROWN,

For Defendants.

The deposition of John Shelton, taken on behalf of the defendants on the 20th day of October, 1881.

Present.—Thomas L. McWillie, of counsel for plaintiff; but no counsel present for the defendants.

Upon questions propounded at the request of Edward S. Brown' counsel for defendant:

} Interrogatory 1. Please state your place of residence,

page 88 { and your occupation or profession ? You are shown na

} office copy of the answer of Charles Y. Morriss, administrator in the State of Virginia of Burr Garland, deceased, filed in this suit, and which will be attached to this deposition, and will please state whether the estate of Burr Garland, deceased, was represented by any counsel in the proceedings in Hinds county, Mississippi, when the final accounts were stated and the decree for $64,130.88 was rendered against W. H. Garland, executor of Burr Garland, deceased, in Mississippi, which are mentioned in said answer, or whether it was represented by said executor in person, or otherwise, and if not represented by counsel, why not, as far as you know; and say whether the items in said accounts, or any of them, were stated at values in Confederate currency, and if so, whether these items or the balance obtained were scaled to the value in legal currency; and say whether those items, or any of them, are productions raised on the Tudor Hall place after 1861, or after it was selected by Burr Garland, or raised on the Barrens tract after it was

assigned to Mrs. Mary L. Garland, the widow of Samuel Garland, deceased ?

Answer. The witness resides in Raymond, Hinds county, Miss., and has resided there for more than forty years, and during all that time has been engaged in the practice of law, which has been and is his occupation or profession. He has read carefully the copy of

the answer of Charles Y. Morriss, administrator, &c., which is referred to in the question, is fully aware of its contents, and appends the same hereto as Exhibit "1" to his answer to this question, and proceeds to state as follows, to-wit : William H. Garland qualified as executor of Burr Garland in Hinds county, Mississippi, in January, 1870, with my assistance as his solicitor, but he did nothing towards a final settlement of his testator's administration in Missis-

} sippi, of Samuel Garland's estate, which under our laws

page 89 { it was his duty to make, till late in 1872, and after he had

} been threatened with legal proceeding, by some of the devisees and legatees under the will of Samuel Garland. This witness wrote to Wm. H. Garland frequently on this subject, and at last he came to Raymond during the latter half of December, 1872, and engaged the services of this deponent, as his solicitor in the business.

The proposed final settlement or account was made out and filed and all other requisite legal steps were duly taken. While preparing the papers this deponent stated to William H. Garland that he should charge him $300 for his services in the chancery court, which he admitted was a reasonable fee.

In February, 1873, exceptions were filed to said final settlement. They were set for hearing at the 4th day of the May

term 1873 of the chancery court for the second district of Hinds county, Mississippi. William H. Garland was duly informed of all this, and his presence at May term insisted upon, and the payment of one-half my fee agreed. He, however, failed to appear or to pay any part of the fee, and the hearing of the exceptions was continued to the November term, 1873.

William H. Garland was promptly informed of these matters, and the immediate payment of one-half of deponent's fee insisted upon. He promised to pay so much of it in August, 1873, but wholly failed to do so, and was then notified that deponent would not appear for him on the hearing of the exceptions at the November term, 1873, or at any other term, unless his whole fee ($300) was previously paid.

Said Garland paid no attention to my letter, nor appeared at November term, 1873, and the hearing of the exceptions was again continued.

} When the exceptions were taken up at length for hearpage 90 { ing at February term, 1874, the chancellor sent for depo-

} nent, and enquired of him if he was ready to proceed with the exceptions: to which deponent replied that he was no longer the lawyer of said William H. Garland, who had paid no part of his fee, as he had promised to do, and at once retired from the court-room, and was not again in it during the hearing of the exceptions or settling the decrees thereupon.

William H. Garland was not then in the court-room or about the

town of Raymond. He was not present to represent himself. I did

not represent him, and I am quite sure no one else did, and I therefore answer that the estate of Burr Garland was wholly unrepresented on the hearing of said exceptions and the decree thereupon. Said William H. Garland has never yet paid any part of deponent's fee

Deponent further states that a good many of the items in the accounts or annual settlements of Burr Garland as administrator in

Mississippi of Samuel Garland were stated at values in Confederate

currency, and he has no knowledge that such items or the balances

thereby obtained were ever scaled to the proper value in legal currency.

Deponent is confident that some of said items were for productions raised on the Tudor Hall place after 1861, but he does not

know nor can he state that any of said items were for productions raised on the Tudor Hall place after it was selected by Burr

Garland, or on the Tudor Hall, after it was assigned to Mrs. Mary

L. Garland, the widow of Samuel Garland, deceased.

2nd interrogatory. If you know any other fact material to the

defence made by Charles Y. Morriss, administrator of Burr Garland

in Virginia in his said answer, please state it ?

Answer. Deponent knows nothing further and can make to other

answer to this question.

} And to the following questions propounded to him by

page 91 { Thomas S. McWillie, Esq., of counsel for plaintiff.

}

Interrogatory 1st. Does not your opinion that W. H. Garland

was not represented at the hearing of the exceptions arise mainly

from the knowledge that you did not yourself represent him, and

might he not have been represented by some other solicitor in your

absence, without your knowledge; can you state what inquiry was

made and proof required by the chancellor on the hearing of the exceptions while you were absent, and was it not customary on the

part of the court to require proof of all matters set up by way of exception to final accounts ?

Answer. It is certainly possible that William H. Garland and the

estate of Burr Garland were represented by some one after deponent

left the court-room as stated, on the hearing of the exceptions, &c.,

but it is not at all likely that such was the case. Deponent cannot

state what inquiry made, or proofs required by the chancellor in his

absence, but it was customary to require proof of all matters set up

by way of exceptions to final accounts.

Interrogatory 2nd. Is your opinion that some of the items in the

account referred to, were productions raised on the Tudor Hall place

after 1861, a matter of fact known to you, of your own knowledge,

or did you receive that opinion from the information of others ?

Answer. My opinion as to the matter inquired about in this question is not matter of fact known to me of my own knowledge, but

was founded upon information derived from the said Burr Garland

in his lifetime and the inspection of vouchers and papers exhibited

by him to me.

And further this deponent saith not.

JOHN SHELTON.

page 92 }

} Exhibit "1" Mentioned in the Foregoing Deposition is

Already a Part of this Transcript.

The deposition of A. M. Garland taken on the 3rd day of November, 1881, to be read on behalf of the defendants.

Edward S. Brown, counsel for defendants, being present, but no counsel appearing for the plaintiff.

1st question by defendants' counsel. State your name, age, and place of residence, and what relationship you sustain to Nicholas A. Garland, the brother of Samuel Garland, deceased ?

Answer. My name is Austin Marcellus Garland; forty-eight years of age; I reside in the city of Springfield, State of Illinois. I am a son of Nicholas A. Garland, who was the brother of Samuel Garland, deceased.

2nd question by same. Did you know Burr Garland another brother of Samuel Garland, deceased; and have you had business transactions with said Burr Garland and have you seen him write, or seen his writing and acquired such knowledge thereof as will enable you to recognize it ?

Answer. I knew Burr Garland another brother of Samuel Garland, deceased. I have had one business transaction with him. I have seen his writing and think I would recognize it.

3rd question. Please look at the paper now shown you, marked "B. G No. 1," and which will be attached to this deposition and say whether it is in the handwriting of Burr Garland deceased ?

Answer. I believe the paper shown me, marked "B. G. No. 1" to be in the handwriting of Burr Garland, deceased.

page 93 } 4th question. Does said paper give a correct list of the { children of your father living in November or December, } A. D., 1861, at the time of the death of Samuel Garland, deceased ?

Answer. It is a correct list of the children of my father living at the date mentioned, except that the name of my sister Fanny should be "Rawlings" instead of "Rollins."

5th question. You will now please look at paper marked "B. G. No. 2," written on each side and say whether the writing on each side is that of Burr Garland, deceased ?

Answer. I believe the writing on each side of paper shown me marked "B. G. No. 2" to be the writing of Burr Garland.

6th question. Were you at the date given in said paper guardian for your brothers, William B. and Albert E. Garland and for your sister Caroline Pauline Garland, and say whether you as such guardian sold their interest and whether you sold your own interest as children of Nicholas A. Garland in the legacy mentioned in the fifteenth clause of the will of Samuel Garland, deceased to "Nicholas A. Garland's children of Illinois," to Burr Garland, deceased, at the date mentioned in said paper ?

Answer. I was on the June 26th, 1869, guardian of my brother Wm. B. and Albert E. Garland, and of my sister Caroline Pauline Garland. And I did sell to Burr Garland, deceased, at the date mentioned, the interest of my wards and my own interest under the legacy in said clause of the will mentioned.

7th question. Please state how payment was made to you by Burr Garland for the interest of yourself and your wards ?

} Answer. Payment was made to me by daaft on New

} 8th question. Please state what was said to you at that time by Burr Garland, if anything, in regard to the source from which said payment was made ?

Answer. After we agreed upon the amount to be paid, Burr Garland stated to me that he would have to pay me by a draft against his cotton then stored in New Orleans, and I consented to take such draft, and took the draft accordingly.

And further this deponent saith say.

A. M. GARLAND.

Exhibit Marked "B. G. No. 1."

Children of Nicholas A. Garland of the State of Illinois :

1. Lucy Garland (now Lucy Roane) born 13rh December, 1831.
2. Austin M. Garland, born 19th October, 1833,
3. James M. Garland, born 26th September, 1835,
4. Elizabeth A. Garland, born 19th September, 1837,
5. Ellen D. Garland, (now Ellen D. Bushfield) born 18th September, 1839.
6. Mary Fanny Garland, (now Mary Fanny Rollins) born 7th November, 1841.
7. Wm. B. Garland, born 9th May, 1854.
8. Albert E. Garland, born 20th March, 1857.
9. Caroline Pauline Garland, born 7th October, 1858.
10. Elna C. A. Garland, born 3rd August, 1860.

Exhibit Marked "B. G. No. 2."

(On one side.)

Austin M. Garland, guardian,		$550 00
Wm. B. Garland,	550 00	
Albert E. G.,	550 00	
Caroline Pauline G.,	550 00	
	_____	1,650 00
		_____
		$2,200 00
		_____

June 26, 1869.

} P d. by sight draft on •

page 95 { Aiken & Watt, N. Orleans.

On the other side, the paper being mutillated and partially lost :

550 doll's

At sight

Pay to the order of Ja

Five hunered and

Messrs. Aiken & Watt

New Orleans

The deposition of John G. Glover, to be read on behalf of the defendants, taken on the 7th day of November, 1881.

Present.—Charles Carroll, Esq., attorney for detendants,

Plaintiff absent and not represented.

1st question by counsel for defendants. Please state your place of

residence ? Whether you are acquainted with the firm of Aiken &

Watt, of New Orleans ? What was the occupation of said firm ?

Whether you were employed by them and if so, in what capacity ?

Whether Burr Garland of Hinds county, Mississippi, made consignments of cotton to said Aiken & Watt and an account with them, if so,

please present a copy of said account to the notary to be attached to

this deposition ?

Answer. I reside in New Orleans, Louisiana. I am acquainted

with the members of the firm of Aiken & Watt. They are both living the firm was composed of J. J. Aiken and John W. Watt. I

was book-keeper and general clerk in their business from about September, 1870, to about some time during the year 1876 or 1877. Mr.

Burr Garland, of Hinds county, Mississippi, was a customer of the

house of Aiken & Watt before I went into their employ, and made

} consignments to the house. He had an account with the

page 96 { house. I herewith hand to the notary a copy of said ac-

} count. It was taken by me from the books of said late

firm, and is correct and true.

JOHN G. GLOVER.

\ \ 9;

======

I 7 : 2 2

Copy of Account.

Burr Garland, Esq.

In Account with Aiken & Watt.

1869.	Dr.	
Feb. 3.	To cash paid invoice of 36 bales cotton,	$4,405 59
Feb. 10.	To cash paid on press charges on 36 bales cotton,	3 60
Feb. 10.	To cash paid for mule,	180 00
Feb. 10.	To cash invoice per railroad,	66 28
Mar. 6.	To cash paid draft favor N. A. Garland,	500 00 }
		} See 8-D
July 1.	To cash paid draft favor J. A. Garland,	2,200 00 }
July 2.	To cash paid draft favor J. A. Garland,	550 00 }
July 26.	To cash paid draft favor Mrs. M. L. Garland,	1,000 00
Aug 18.	To cash remitted exchange in New York,	1,773 26
Aug 4.	To cash paid draft favor Wm. Yerger,	62 05

	Credits.	
1869.		
Feb. 3.	By cash rec'd of you, X	5,000 00
June 19.	By net proceed 48 bales cotton,	5,740 78
		$10,740 78 $10,740 78

_____ _____

New Orleans, August 13, 1869.

A true copy from the books of Aiken & Watt.

JOHN G. GLOVER.

The deposition of John T. Murrill, taken to be read on behalf of the defendants on the 9th day of November, 1881.

Present.—Edward S. Brown, counsel for defendants; and
Charles A. Slaughter, counsel for the plaintiff.

page 97 { } 1st question by defendants' counsel. In your account with Burr Garland, deceased, filed with Commissioner Bocock's report of the 9th May, 1881, is the item: August 18, 1869, by cash left with me to be returned when called for without interest, $1,773.26. Please state in what form that amount was out interest, $1,773.26. Please state in what form that amount was

[Handwritten notations]:

As 1 177 ct 9 (See! 44 05 (12 2-
36 24505
===
486 8

left in your hands, whether in money, check or draft, and if draft, whose draft, and on what person or firm it was drawn ?

Answer. I think it was a check on New York, but do not now recollect what bank or banker it was on. My recollection is that it was drawn by some firm in New Orleans, but do not recollect the name of the firm.

And further this deponent saith not.

JOHN T. MURRELL.

The account filed with Commissioner Bocock's report and referred to in the foregoing deposition, is as follows, to-wit:

Captain B. Garland's Estate,

In Account with John T. Murrell.

1869.

Aug. 18. To cash handed you to go to springs, of which
Dr. Jeter's bill was paid, $50 00
To cash paid Apperson for one hat, 75
Sep. 11. To cash paid barber's bill at springs, 50
To cash paid your expenses at the springs, 38 74
18. To cash paid shaving you, 50
22. To cash paid one-fourth gallon fine French brandy, 3 50
To cash paid one-fourth gallon fine French brandy, 15th. 3 50
24. To cash paid Latham Bros. bill, medicine, 1 25
25. To cash paid Almond Brothers, three yards

flannel, 1 95

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1879.

Sep. 25. To cash paid barber's bill shaving one week, 1 00

31. To cash paid one bottle bitters, 1 00

Octo. 2. To cash paid one-fourth bottle of fine French brandy, 3 50

3. To cash paid shaving one week, 1 00

To cash paid mutton-chops, 25

To cash paid Kiah Howard fronting boots, 8 00

16. To cash paid shaving two weeks, 2 00

To cash paid Shaner, bill meats since 5th instant during J. T. Murrell's absence north, 2 85

18. To cash paid oysters (twice), 50

20. To cash paid marketing, 15

21. To cash paid pickles, 60

To cash paid one bottle bitters, 1 00

23. To cash handed Pleasant for marketing, 50

To cash paid one bottle fine whiskey, 1 00

To cash paid for quail, 01

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To cash paid one bottle catsup, 35

To cash paid shaving, 50

26. To cash paid marketing, 15

27. To cash paid one flesh-brush, 15

29. To cash paid one small coffee-pot, 1 25

30. To cash paid shaving one week, 25

To cash paid one bottle fine whiskey, 1 00

To cash paid oysters, 1 00

Nov. 1. To cash paid sailed oil, 25

To cash paid oysters, 75

To cash paid lime-water and arnica, 25

To cash paid one pound white sugar, 75

3. To cash paid one bottle fine whiskey, 20

To cash paid one bucket, 1 00

To cash paid oysters, 20

4. To cash paid marketing, 13

1869. 10

Nov. 6. To cash paid shaving one week, 1 00

To cash paid chicken, 25

[Page 99.]

1869.

Nov. 6. To cash paid lime-water and "No. 6," 70

12. To cash handed Pleasant to pay marketing, &c., 1 00

12. To cash paid shaving, 1 week, 1 00

16. To cash paid marketing, 10

To cash paid ½ gallon old rye whiskey, 1 80

To cash paid 1 rabbit, 20

19. To cash paid marketing, 30

To cash to Miss Lizzy to buy cords, 50

20. To cash handed Pleasant for marketing, &c., 50

22. To cash paid Latham Bros. medical account, 2 00

24. To cash paid marketing, 25

25. To cash paid marketing, 10

To cash paid 1 three gallon jug, 1 05

To cash paid 1 milk pail for foot tub, 1 00

To cash paid 1 large funnel. 50

27. To cash paid shaving 2 weeks. 2 00

To cash paid Jones & Watts, 1 coal sieve, 1 00

To cash paid 1 sick chair, 5 00

Dec. 1. To cash paid honing, 25

5. To cash paid shaving 1 week, 1 00

13. To cash paid Dr. Strother's medicine account, 4 80

To cash paid Latham Bro's account, 75

14. To Arnold's bill gloves, &c., 2 50

To cash paid Hunter to bring Mrs. Floyd from the country to see you, 5 00

To cash paid same hack to funeral, 3 00

16. To cash paid Williams 2 hacks to do. $3, 6 00

17. To cash paid Dinguid burial account, 80 00

[Page 100.]

1869.

Dec. 17. To cash paid Elliott & Jones 4 hacks to funeral, 12 00

20. To cash paid J. M. Wood 2 do. 6 00

To cash paid Pleasant, extra allowance for waiting on you, 3 month during sickness, 10 00

To cash handed Rev. Mr. Williams for performing funeral services pr. Mr. Garland's request, 10 00

To cash sum deposited in People's Savings Bank

to the credit of J. T. Murrell against B. \

Garland's estate, / 1,479 94

_____

\ $1,773 26

_____

1869.

Aug. 18. By cash left with me to be retutned when

called for without interest, $1,773 26

JOHN T. MURRELL.

This statement is filed to show how the fund found in the hands of John T. Murrell after the death of Samuel—Garland, Sr., arose and the amount of the same at the qualification of C. Y. Morriss, as administrator.

H. F. B.

A copy.—Teste:

SAMUEL D. PRESTON, Clerk.

The fee of the clerk of the circuit court of the city of Lynchburg, for making out this transcript of the record, is $31.68.

A copy—Teste :

GEO. K. TAYLOR, C. C.

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347 3
Va.

347 3 [handwritten text: probably indistinct]

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3rd Appeal. March. 96

Supreme Court of Appeals of Va.

GARLAND'S ADM'R, &c., Appellants, Appeal from Decrees of
v. the Circuit Court for
GARLAND'S ADM'R, &c., Appellees. the City of Lynch-
burg.

MARCH TERM, 1896.

BRIEF FOR THE APPELLANTS.

LIDGAN & HOLT, PRINTERS, LYNCHBURG, VA.

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Supreme Court of Appeals of Va.

GARLAND'S ADM'R, &c., Appellants, Appeal from Decrees of
v. the Circuit Court for
GARLAND'S ADM'R, &c., Appellees. the City of Lynch-

burg.

MARCH TERM, 1896.

BRIEF FOR THE APPELLANTS.

In the petition for this appeal, we made a full statement of the case, and a full assignment of errors, referring to the record, and designating the several parts, as they were successively printed, when the case came successively before the Court of Appeals on other questions than those now presented—as Part 1 in Morriss, Trustee, v. Garland, 78 Va. 215, and Part 2 and Part 3 (part 3 coming up on certiorari) in Garland's Adm'r v. Garland's Adm'r, 84 Va. 181, and Part 4 in Garland v. Garland, 87 Va. 758, and Part 5 pp. 1-125, printed for the lower court, and now brought up in the present appeal with the petition and transcript, the latter being the printed pages 1-45, and an addendum, printed pages 1-8, which we have agreed shall be considered as if the Appellees had brought it up on certiorari.

In the statement now to be made, we shall endeavor to confine ourselves to the outlines of the case, to state concisely the facts material to the questions now to be decided, and to avoid troubling the Court with unnecessary repetition of the contents of the petition.

STATEMENT.

Samuel Garland, Sr., a resident of Lynchburg, died in November, 1861. He left a large estate, real and personal, in Virginia, and a large estate, real and personal, in Mississippi. His Virginia estate consisted in part of about $400,000 of stocks and corporate bonds, and, among these, not less than $23,000 of East Tenn. and Va. Railroad coupon bonds. His Mississippi estate consisted of

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two adjoining plantations—one called Tudor Hall and the other Barrens, in Hinds county, each containing about 1500 acres; and in Coahoma county, about 175 miles distant, another large plantation on the Mississippi river, a little below Memphis. On the Tudor Hall plantation he had 113 slaves, on the Barrens plantation, 85 slaves, and on the Coahoma plantation, 38 slaves. These were cotton plantations, but at the time of his death, there was no cotton on them. There were such other crops as are generally raised for consumption, teams and cattle, and plantation vehicles and tools.

His youngest brother, Burr Garland, who was raised by Samuel Garland, Sr., had been a merchant in Jackson, Hinds county, Mississippi. He had failed, was insolvent, and heavily in debt. He resided at Barrens. He and Samuel Garland, Sr., married sisters. Mrs. Burr Garland gave birth to a daughter, named Paulina, and died in childbed. Samuel Garland, Sr., and his wife, Mary L. Garland; were childless. They adopted the infant, Paulina, and raised her as their own child. Samuel Garland, Sr., had two nephews, Samuel Garland, Jr., and Charles R. Slaughter, who resided in Lynchburg.

The will of Samuel Garland, Sr., was recorded in Lynchburg, Virginia, in December, 1861. He made Samuel Garland, Jr., and Charles R. Slaughter his residuary legatees, and appointed them his Executors; and they both qualified in Virginia, and took possession of all the stocks and bonds and other estate in Virginia, but they never qualified in Mississippi.

The will was recorded in Hinds County, Mississippi, in November, 1862, and Burr Garland then qualified as Administrator, with the will annexed, in Hinds County, Mississippi, and took charge of the estate in Mississippi, but he never qualified in Virginia.

Mrs. Garland renounced the will in Virginia and in Mississippi, and thereby she became entitled in Virginia to one-third of the real estate for life, and one-half of the personal estate absolutely; and in Mississippi to one-half of the real and personal estate absolutely, and to the exemptions allowed by the laws of the respective States to widows of intestates.

The 9th, and the commencement of the 10th, and the 14th, the

15th, and the 17th clauses (Part 1, p. 10, or Part 2, p. 12) are as follows:

"9th. My favorite brother, B. Garland, raised by me, and long a resident of Mississippi, is, and has, for a long time past, been embarrassed in debt by loss of trade in 1857, and liabilities as surety for others, it might be unsafe to devise property to him absolutely. I therefore set apart in trust, in the hands of my Executors, for the benefit of my brother, either of my plantations in Hinds County, called "Barrens," or "Tudor Hall," whichever he may choose, and forty slaves in families, say about twenty-five hands, balance heads of families, children and house servants, to be selected by him out of the stocks on both places, mules, horses and stock sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., and oxen, hogs, &c., to make a complete estate. The profits of the estate set apart for his, B. Garland's use, under his superintendence, but neither the estate or profits shall be bound for his past debts or liabilities, or for future debts or liabilities, other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss, in trust, to the separate use of his wife, Paulina B. Morriss, and her children."

"10th. After the fulfillment of all the above and foregoing devises, then I give," &c. * * *

"14th. I likewise give to said Ch. R. Slaughter five thousand dollars of my Virginia and Tenn., or East Tenn. and Virginia bonds, in trust for the benefit of his brother, Samuel M. Garland, (intended for Slaughter) the interest to be paid him, and when he shall think it safe and prudent to do so, he may hand over the principal, without responsibility."

"15th. I give to each of my namesakes. * * * I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tenn. and Va. Railroad bonds, or others of equal value."

"17th. I * * * hereby make and declare Charles R. Slaughter and Samuel Garland, Jr., jointly and equally, my residuary legatees, entitled to all the estate or estates, real, personal or mixed, of which I may die seized and possessed, not herein disposed of by this will (in items one to seventeen) and I constitute and appoint them my Executors." * *

On the 5th of May, 1862, Samuel Garland, Jr., surviving Executor, filed the original Bill in this case against Mrs. Garland, the widow, and all the legatees. (Part 1, p. 5). He alleged that about $400,000 of stocks and bonds, estimating them at their par value, had come to the' hands of said Executors, of which an accurate inventory would be filed; but Mrs. Garland's renunciation would "materially disappoint some of the other

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legatees in said will, to whom stocks, bonds, slaves and money have been bequeathed, and real estate devised, to-wit: Burr Garland for life, with remainder over to Charles Y. Morriss in trust for his wife and children by the 9th clause of the will," and (p. 7) "He further represents that the said Burr Garland, the life beneficiary under the 9th clause of the will, not having made the selection either of the said estate or slaves permitted him to do by said clause, be required so to do, in the manner prescribed and intended by said will, so that your orator may be rid of all responsibility for the slaves, as Executor or Trustee, intending to decline said trusteeship, subject to the rights of the said Mary L. Garland"; and (same page) that Burr Garland, "without intending any impeachment of his integrity, is not peculiarily responsible, owning no estate, but that which is devised and bequeathed to him by this will"; and (p. 8) "He also represents that——, are the children of Nicholas A. Garland, all of whom, except——, are infants under the age of 21 years, and all of them, together with the said Nicholas A. Garland, were, at the death of the Testator, and now are, citizens of the State of Illinois, one of the United States of America. Your orator submits to the adjudication of the Court whether the legacies to them, respectively, are not void. He submits the same question, as to the legacy of $5,000 to Samuel G. Slaughter, a citizen of California at the time of the death of the Testator"; and he prayed (p. 9) the Court to decide all questions presented, and "cause a settlement of all proper accounts, and decree a distribution of the estate, real and personal estate, of the Testator to be made among the parties interested, according to their respective rights"

Mrs. Garland answered the Bill, (Part 1, p. 15-7) averring her renunciation of the will in Virginia and in Mississippi, and claiming her rights in Virginia and in Mississippi "in the same manner and to the same extent as if he (Samuel Garland, Sr.) had died intestate."

C. Y. Morriss, Trustee, and Mrs. Morriss and their infant children, by a Guardian ad litem, answered the Bill (Part 1, p. 18-9, and p. 15) and claimed all their rights under the will—both the 5th and the 9th clauses.

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Charles R. Slaughter had died in February, 1862. Samuel Garland, Jr., died the 14th of September, 1862, and John F. Slaughter qualified as Administrator de bonis non of Samuel Garland, Sr., and as Administrator of Charles R. Slaughter, and as Executor of Samuel Garland, Jr., and revived said suit in his name.

On the 18th of October, 1862, John F. Slaughter returned an inventory, (Part 5, p. 90) showing that $23,000 of the Testator's East Tenn. and Va. Railroad bonds had come to his hands.

Nicholas A. Garland had 10 children, (Part 2, p. 71) and it would require $10,000 of these bonds to satisfy the legacies to them.

On the 18th of November, 1863, the Court ordered accounts (Part 1, p. 25-7) of the administration of the estate of Samuel Garland, Sr., by Charles R. Slaughter and Samuel Garland, Jr., Executors, and John F. Slaughter, Administrator de bonis non.

On the 18th of January, 1864, Commissioner Gordon published in the Lynchburg Virginian (Rec. 36. Trans. 131) that he would proceed the 18th of February, 1864, to take the accounts required by the decree of the 18th of November, 1863, and he returned his report the 3rd of March, 1865, (Rec. 36, Trans. 130) showing that of the $23,000 of the Testator's East Tenn. and Va. Railroad bonds, which came to the hands of John F. Slaughter, Administrator, he had disposed of $20,000, as follows: he sold $4,500, he turned over to himself, as Administrator of Charles R. Slaughter, $2,000, and to himself, as Executor of Samuel Garland, Jr., $2,000, and to Mrs. Garland, the widow, $6,500, and he paid to S. M. Slaughter $5,000, the legacy under the 14th clause of the will.

There is no demonstrative specific bequest of the Tetator's East Tenn. and Va. Railroad bonds, except in the 14th and 15th clauses. Here we see that the legacy in the 14th clause is satisfied, that $4,500 of these bonds were sold, that $4,000 of them were in the hands of John F. Slaughter, as the personal representative of the residuary legatees, and $3,000 of them were unaccounted for.

On the 27th of January, 1866, the case was heard on Commis-

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sioner Gordon's Report of the 3rd of March, 1865, made under the decree of the 18th of November, 1863, (Part 1, p. 34-6) with some exceptions by Mrs. Garland; and the Court said (p. 35, near the bottom), "out of want of care or inadvertance, on the part of the Commissioner, in not discriminatingly accurately, as to the disbursement of stocks made by the personal representatives of S. Garland, deceased; and that whilst one or two mistakes of that sort have occurred, (for example, where it appears by said stock account that John F. Slaughter disbursed $20,000 of East Tennesse and Virginia Railroad bonds, when, in fact, he disbursed only $15,000 of said bonds, and S. Garland, Jr., disbursed $5,000.) Yet, in the account current of each of said persons, they are respectively credited, only by the amounts of said bonds which they actually disbursed, the Commissioner having fallen into the error, by the fact that the $5,000 disbursed by S. Garland, Jr., were transferred and delivered by said John F. Slaughter, in the lifetime of S. Garland, Jr., as his attorney in fact, the rights of none of the parties have been in any way affected thereby." The Court then (p. 36) recommitted the report to Commissioner Gordon, and ordered "that the said John F. Slaughter, Administrator, as aforesaid, do render before said Commissioner a further account of his administration of the estate of said Samuel Garland, Sr., dec'd."

On the 11th of June, 1872, Commissioner Gordon made another report, to which exceptions were filed, and the Court ordered (Part 1, p. 37) that said report and exceptions be recommitted "to Henry F. Bocock, one of the Commissioners of this Court, with instructions to examine and report upon said exceptions, and to reform the said reports in such respects, as they shall appear on their face to be erroneous, or as shall be rendered necessary in his opinion."

On the 31st of October, 1872, Commissioner Bocock made his report, (Part 1, p. 38) and he refers (p. 44) to the legacies to Nicholas A. Garland's children in the 15th clause of the will, as follows:

"It appears from an examination of the will of Samuel Garland, and the accounts of the Executor and Administrator hereto attached, that certain specific legacies have not as yet been paid—see 15th clause of the will, last paragraph, making a bequest to each of the children of Nicholas A. Garland, of Illinois."

His report showed (Part 1, p. 39) the delivery of $5,000 of the Testator's East Tenn. and Va. Railroad bonds to Samuel M. Slaughter under the 14th clause, paid by Samuel Garland, Jr., Executor, the 2nd of September, 1862 (Rec. 35, Trans. 129 and Part 5, p. 91).

It also showed (Part 1, p. 46 and 50) that John F. Slaughter, Administrator of Samuel Garland, Sr., distributed to Mrs. Garland $6,500 of the Testator's East Tenn. and Va. Railroad bonds, and on the 20th of January, 1864, transferred to himself, as the personal representative of the residuary legatees, $4,000 of these bonds, and that on the 31st of October, 1872, the date of the report, he had "remaining in his hands" (Part 1, p. 68) one of the Testator's East Tenn. and Va. Railroad bonds, then valued at $800; but it does not show that he had sold $4,500, (Rec. 36, Trans. 130) nor what became of the residue of said bonds to make up the $23,000 that came to his hands.

On the 6th of November, 1873, Exceptions were filed to Commissioner Bocock's report, (Rec. 37, Trans. 131-3) because the demonstrative specific legacies in the 15th clause to Nicholas A. Garland's children were not provided for, and John F. Slaughter, Administrator of Samuel Garland, Sr., was distributing large amounts to himself as the personal representative of the residuary legatees.

On the 17th of November, 1873, the case was heard, (Part 1, p. 75) and the Court said (p. 77): "It is not necessary to settle at this time the questions raised by Morriss and wife, and the children of Nicholas Garland, and therefore no opinion is expressed in relation thereto."

On the 6th of November, 1874, (Part 1, p. 77) the Court said, (p. 78), "The question raised in regard to the legacy to Mrs. Paulina Morriss and the legacies to the children of Nicholas A. Garland are reserved for future consideration, and nothing in this decree is to prejudice the rights of the said parties, or be considered as passing on the exceptions of the said parties heretofore, or now, filed."

The rights of Mrs. Morriss and her children, under the 5th clause of the will, were settled in Morriss, Trustee, v. Garland,

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78 Va. 215, and the construction of the 9th clause was settled in a subsequent case, to be hereinafter more particularly referred to; but their legacy under the 9th clause had not been defined, nor the legacies to Nicholas A. Garland's children under the 15th clause adjudicated, until the rendition of the decrees now appealed from; and the accounts of the administration of the estate of Samuel Garland, Sr., have remained open to the present time.

On Burr Garland's qualification, as Administrator with the will annexed of Samuel Garland, Sr., in Mississippi, in November, 1862, he proceeded immediately to have all the personal estate of the Testator in Mississippi inventoried. These inventories were returned to the Probate Court of Hinds county and confirmed and recorded the 9th of January, 1863. Part 5, p. 6-19.

The inventory of the slaves, teams, crops and other personal estate on Tudor Hall plantation amounted (p. 10) to $111 995.25; but this included a crop of cotton, made in 1862 on both the Hinds County plantations, (p. 10) estimated at 400 bales, and valued at $16,000.

The inventory of the slaves, teams, crops and other personal estate on the Barrens plantation amounted (p. 14) to $66,837; but this included 11 slaves, (p. 12) which Burr Garland said (p. 15) "had long been on the Barrens estate, and assessed as the property of the said decedent, Samuel Garland; but that he claimed them as his own separate property."

The inventory of the slaves, teams, crops and other personal estate on the Coahoma plantation amounted (p. 18) to $20,492. This did not embrace any cotton—none was made on the Coahoma plantation after the death of Samuel Garland, Sr.

The aggregate of all the Testator's personal estate in Mississippi, including the cotton made in 1862—adding together the inventory at Tudor Hall, $111,995.25, at Barrens $66,837, and at Coahoma $20,492—is $199,324.25.

There were 113 slaves at Tudor Hall, valued (Part 5, p. 10) at $81,050, and 85 at Barrens (p. 13) valued at $54,450, and 38 at Coahoma (p. 17) valued at $17,300, aggregating $152,800.

If we subtract the aggregate value of the slaves from the aggregate value of the personal estate, we have $46,524.25, the value of

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the Testator's personal estate in Mississippi other than slaves—including the cotton made on the Hinds County plantations in 1862.

Memphis was then pressed by the Federal forces. The slaves, that had not run away, and the other personal estate, that could be moved, were carried from Coahoma to the Hinds County plantations. (Part 5, p. 69-70) no cotton was made on the Coahoma plantation in 1862, (see inventory taken December, 1862, and recorded 9th of January, 1863, Part 5, p. 16-8) and it was not cultivated after 1862. (Part 5, p. 69-70). Memphis soon fell and the country around was occupied by the Federal forces.

The cotton on the Hinds County plantations—"crop cotton on both plantations, supposed to be 400 bales, $40 per bale, $16,000," (Part 5, p. 10)—was made in 1862. The Commissioner reports: (Part 5, p. 114) "There is considerable doubt from the testimony when it was raised, but the most reasonable solution of the matter is, that it was of the crop of 1862, and your Commissioner so reports, but which plantation it was made on cannot be stated." Part 3, p. 46-7.

In July, 1863, the Federal forces overran Hinds County. Several battles were fought in and around Jackson, Part 5, p. 70; and the cotton in the Hinds County inventory was burnt, (Part 5, p. 63) and the Commissioner so reports. Part 5, p. 114. See also Part 3, p. 46-7.

No cotton was made in 1863, but a small crop was made in 1864, which was carried into the inventory of September, 1864. Part 5, p. 30 and p. 33. Part 3, p. 2 and p. 29 and 46-7.

Many of the slaves ran away or were carried off. The 30 mules (Part 5, p. 10) on the Tudor Hall plantation, and 22 (p. 12) on the Barrens plantation were carried off, and many of the cattle and hogs, and much of the crops were carried off, or destroyed by the Federal forces; yet, under the adverse circumstances, the cultivation of the Hinds County plantations was continued chiefly in corn, peas, potatoes and garden vegetables, which were sold for Confederate currency.

On the 3rd of February, 1863, the Commissioners, appointed by the Probate Court of Hinds County to set apart one year's allowance of provisions, or money in lieu thereof, and one slave,

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and the specified articles exempted for the widows of deceased intestates, under the Mississippi statute, (Rev. Code of 1857, p. 469, Art. 172) reported to the Court (Part 5, p. 21) that they had allowed to Mrs. Garland $3,000 in money, a slave named Henry, and articles which they specified and valued at $250. This report was confirmed and recorded. Part 5, p. 22.

In September, 1864, the lands of Samuel Garland, Sr., in Mississippi, were divided. Of the Hinds County lands, the Barrens plantation, containing 1480 acres, was assigned to Mrs. Garland, and the report thereof was returned to and confirmed by the Probate Court. Part 5, p. 24-6. Half of the Coahoma plantation was also assigned to her.

In September, 1864, Commissioners, appointed by the Probate Court of Hinds County, took an inventory of the personal estate of Samuel Garland, Sr., in Mississippi, and appraised it, and divided it into two equal shares, and allotted one of said shares to Mrs. Garland, leaving the other half to the estate. Their inventory and appraisement and division and allotment of Share No. 1 to Mrs. Garland, (Part 5, p. 28-34) was reported to, and confirmed by, the Court. Each share (p. 33) amounted to $56,950, and both together to $113,900. If, from the aggregate appraisement of $199,324.25 of January, 1863, we subtract the aggregate appraisement of $113,900 of September, 1864, we find a falling off of $85,632.75. The number of slaves in the first inventory is 236; the number in the last is 162. Subtracting the last from the first, shows a loss of 74 slaves. Part 5, p. 69-70, Q and A 6, and p. 62, Q and A 3. The personal estate, other than slaves, in Mrs. Garland's share (Part 5, p. 31) amounts to $8,300, and in the remaining half (Part 5, p. 33) to $8,350—together $16,650. If, from the $46,524.25, the aggregate value of the personal estate, other than slaves in the first inventory, we subtract the $16,650, we have a falling off of $29,874.25. These differences show the loss from the Federal forces, in the carrying off, or running away, of slaves, and the burning of cotton, and the carrying off the teams, and the destruction of cattle and crops, between January, 1863, and September, 1864.

The crop of cotton of 1864 was included in the appraisement

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and division of September, 1864. It was estimated at 30,000 pounds in the seed, of which 15,000 pounds (Part 5, p. 30) was allotted to Mrs. Garland and 15,000 pounds (Part 5, p. 33) was left to the estate. The 15,000 pounds in the seed is equivalent (Part 5, p. 93) to 12 bales in the lint.

Tudor Hall plantation, which was left after half of the Hinds County lands had been allotted to Mrs. Garland, was taken by Burr Garland, Administrator, with the will annexed, as the tract set apart in his hands under the 9th clause to go to Mrs. Morriss and her children at his death, and to the personal estate of the Testator in Mississippi, left after Mrs. Garland got her half, he had to look for the personal estate specified in the legacy in the 9th clause.

The setting apart in Burr Garland's hands, as Administrator, with the will annexed, of the personal estate specified in the legacy in the 9th clause, was by regular proceedings in the Probate Court of Hinds County. Part 5, p. 35-9. This legacy took all the personal estate of the Testator in Mississippi which was left after Mrs. Garland got her half, except the 15,000 pounds of cotton in the seed raised that year, and some of the slaves then virtually free, and all the personal estate left, after Mrs. Garland's share was allotted to her, was insufficient to supply all the articles specified in the legacy in the 9th clause of the will. Comparing the list (p. 39) with the list (p. 33) it will be seen that this legacy left nothing else of the Testator's personal estate in Mississippi, except the cotton, and as the cotton was made in 1864—three years after the Testator's death—it might have been included in that legacy, with as much propriety as the ungathered corn, and peas, and potatoes of the crop of 1864, mentioned (p. 39) in that list—all of these products were in fact profits contemplated by the Testator in the 9th clause. All of this was reported to, and confirmed (Part 5, p. 39-41) and ordered to be recorded by, said Probate Court.

There was no personal estate of the Testator in Mississippi left for any other legatee. One half of the Coahoma plantation was all that was left for the residuary legatees.

Burr Garland continued to hold as Administrator, with the will

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annexed of Samuel Garland, Sr., Mrs. Garland's part. He did not turn it over to her, and made no settlement with her.

Tudor Hall plantation, and the personal estate listed above, (Part 5, p. 39) he held under the 9th clause of the will.

He made no cotton in 1865, but he made a large crop of cotton on Barrens and Tudor Hall plantations in 1866. Part 3, p. 5-6, 29.

The Mississippi statute—Rev. Code of Mississippi, 1857, p. 450-52—required annual accounts of receipts and disbursements by the Administrator to be returned to the Probate Court, and (Art. 106) the administration to be closed, with notice to distributees and legatees, by a final account, covering the whole time and a final decree (Art. 107) for "the Executor or Administrator to make immediate distribution of all property in his hands."

Burr Garland's first annual account was for 1863. Part 5, p. 43-6. His second annual account was for 1864 Part 5, p. 47-53.

The moneys he received were from sales of products of Barrens and Tudor Hall plantations, and the hire of slaves and the collection of one debt due to the Testator of $4,644, and for teams and wagons impressed by the Confederate Government, $2,700—all in Confederate money. Part 5, p. 43-4. Among his disbursements are taxes for 1862, (p. 45) $310.36 and $527.79, and taxes for 1863, (p. 45) $50 and $872.38, and taxes for 1864, (p. 46) $2,200—together $3,860.53; and he paid Mrs. Garland (p. 45) $1,000, and (p. 46) $1,000 on account of the one year's allowance made to her, and various current expenses, leaving in his hands Confederate currency, that he invested in Confederate Treasury bonds (p. 46) $6,000 and (p 53) $9,020, together $15,020, which were credited to him as worthless. Thus the accounts of 1863 and 1864 were closed, with a balance (p 51) of $3.69 due to the Administrator, which were confirmed by the Probate Court.

Burr Garland's third annual account (Part 5, p. 54-6) covered transactions after the war, and his receipts are from sales (p. 54) of 100 bales of cotton, of which 96 bales are from the Barrens plantation in 1866 and 1867, as follows: Four bales were sold in September, 1865, to Peter Casey in Vicksburg, for $639.72, and 11 bales from Barrens, sold to A. Verden in Jackson, in February, 1866, for $1,957.75, and 12 bales from Barrens, shipped

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through A. Verden in Jackson, to T. H. and J. M. Allen in New Orleans, and sold for $1,883.66, and 73 bales from Barrens, shipped to T. H. and J. M. Allen in New Orleans, and sold per account of sales 1867 for $6,419.98—altogether, $10,901.11.

Out of this he paid (p. 55) various expenses in 1866, attending the crop of cotton on the Barrens plantation, and he paid the remaining $1,000 on the year's allowance of $3,000 to Mrs. Garland, and (p. 55-6) large amounts in taxes; and he paid, at the request of John F. Slaughter, a debt of $488.46 to Farrington & Howell, in Memphis, for supplies to the Coahoma plantation in 1861 and 1862 (see 13th Exception, Part 2, p. 30, and Shelton's dep., Part 5, p. 79-80, question and answers 38) leaving a balance due from Burr Garland of $6,545.09.

These three accounts, as they were returned to the Probate Court, contained no item of commissions to Burr Garland, nor of some other expenses of administration. The commissions afterwards settled by the Court, (Part 2, p. 27, eighth Exception, and p. 44-5, pl. 3) were $5,882.52; and this alone subtracted from the $6,545.09 would leave only $662.57 balance against Burr Garland.

The 73 bales of cotton, in the third annual account shipped to T. H. and J. M. Allen (Part 5, p. 54) came from the Barrens plantation to Jackson, from the 12th of December, 1866 to the 22nd of December, 1866, inclusive, (Part 3, p. 58-9) and was a part of the crop of 1866, made five years after the death of Samuel Garland, Sr.

On the 18th of December, 1868, there was carried to Jackson from one of the Hinds County plantations—either Barrens or Tudor Hall—8 bales of cotton, (Part 3, p. 60) with directions to ship to Aiken & Watt, of New Orleans. The account of Burr Garland with Aiken & Watt (Part 2, p. 73) commences the 3rd of February, 1869, with a credit to him of $5,000, and charging him the same day with an invoice of 36 bales of cotton at $4,405.59, and closes the 13th of August, 1869, with remittance of exchange on New York of $1,773.26.

In June, 1869, Burr Garland was in Illinois. He had in the Spring of that year, purchased the legacy of one of Nichlas A.

Garland's children, and he then purchased the legacies of seven others, making eight in all; and took formal deeds of assignment, authorizing John F. Slaughter, Administrator of Samuel Garland, Sr., in Virginia, to deliver to him the East Tenn. and Va. Railroad bonds embraced in their legacies, and authorizing Burr Garland to use their names in the collection of said legacies. Part 2, p. 58-64. The form of the assignment (p. 62) is as follows:

"I do hereby sell and convey, transfer and assign over to him, the said B. Garland, his heirs and assigns, all my right and interest to a special legacy left to me, as one of the children of Nicholas A. Garland, of the State of Illinois, by the last will and testament of my uncle, Samuel Garland, deceased, late of the city of Lynchburg, and State of Virginia, it being a bond of the East Tennessee and Virginia Railroad Company for one thousand dollars, payable in the bonds of said Company, or in other bonds of equal value; and I hereby authorize and direct the said B. Garland to make use of my name, if need be, in the collection of the said legacy bequeathed to me, as one of the children of Nicholas A. Garland, in the said will from John F. Slaughter, Administrator, with the will annexed, of the late Samuel Garland, deceased, in the State of Virginia, and of record in the Hustings Court of the city of Lynchburg, in the State of Virginia, the whole of said legacy being yet due and unpaid. And we hereby authorize and direct the said Administrator to pay over the same to the said B. Garland, his heirs or assigns."

On the 6th of March, 1869, Aiken & Watt (Part 2, p. 73,) took up Burr Garland's draft for one of these legacies, and the 1st of July, 1869, they took up his draft for four of these legacies, and on the 2nd of July, 1869, they took up his draft for one of these legacies. The other two legacies were purchased (Part 2, p. 56) the 23rd of June, 1869, but the record does not show how he paid for them.

From Illinois, Burr Garland came to Virginia, was hurt on the railroad, lingered awhile, and died the 9th of December, 1869. The deeds of assignment of the legacies of eight of the children of Nicholas A. Garland, and the proceeds of the draft of Aiken & Watt for $1,773.26, less funeral expenses and some other charges, (Dep. of John T. Murrell, Part 2, p. 73-6,) came to the hands of Charles Y. Morriss, Administrator of Burr Garland, as assets of his estate in Virginia. Burr Garland left a will, bequeathing his estate to his daughter, Paulina; and he said he had made some money from the Tudor Hall plantation, and he bought

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some of the bonds given to Nicholas A. Garland's children, and it was a good investment for Paulina and her children. Part 2, p. 55. He appointed William H. Garland, of Mississippi, or Louisiana, his Executor, and he qualified in the Probate Court of Hinds County, Mississippi, and took charge of his estate in Mississippi.

Burr Garland took it for granted that the profits accruing on the legacy under the 9th clause during his life belonged to him. He kept no separate account of them prior to setting apart said legacy in September, 1864, and no account of them afterwards. He rented out Tudor Hall plantation for 1869, for between $2,100 and $2,200 in money, (Part 5, p. 57, question and answer 6) which was collected, and received by William H. Garland, his Executor. It was worth as much in 1866 and 1867 and 1868, as it was in 1869—$2,000 a year was a reasonable rent for each of those years. Part 5, p. 57-8, question and answer 7. There were in the Tudor Hall tract 350 to 400 acres of cultivated bottom land, which, during the years 1866-7-8-9, rented for $3.50 to $4.00 per acre, and between 600 and 700 acres of cultivated upland, which rented for $2.50 to $3.00 per acre. Part 5, p. 58 and 62. Taking the lowest figures: 350 acres bottom land at $3.50 would pay $1,225, and 600 acres upland at $2.50 would pay $1,500—together $2,725 annual rental.

William H. Garland, Executor of Burr Garland in Mississippi, got in the assets, and when pressed by John F. Slaughter for a final account of Burr Garland's administration on the estate of Samuel Garland, Sr., he employed counsel to take steps for a final settlement (Dep. of John Shelton, Part 2, p. 67-9), but he failed to make any provision for the fees of counsel, or of witnesses, or for the payment of any expenses, or the payment of anything to anybody. He produced no vouchers nor evidence of any kind. He left the country, and was reported to be wholly insolvent. His counsel retired from the case, and Burr Garland's estate was left wholly undefended and unrepresented.

Under these circumstances, Burr Garland was charged (Part 2, p. 46-9) with all the inventories of January, 1863, including the cotton and other crops of 1862, (Part 5, p. 10) aggregating

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$199,324.25, and he was charged in addition with $3,000 on that cotton, on the claim that he sold it before it was burned, (Part 2, p. 47-8 and Part 5, p. 63) and with $14,026.90, (Part 2, p. 46) amount of sales to, and impressments by, the Confederate forces, which he had never collected, and with the $15,020 (Part 2, p. 47) Confederate notes and bonds in his first and second annual accounts, and with $6,545.09, balance in his third ex parte account of cotton from Barrens in 1866-7, and with $2,045.33 interest thereon, and with $1,287.86 expenses in making and marketing the cotton from Barrens, and $488.46, the Memphis debt paid after the war, at the request of John F. Slaughter, (Part 5, p. 79-80) and with some taxes, making an aggregate of charges against him of $242,030.86 (Part 2, p. 48)—exceeding all the personal estate in Mississippi, left by Samuel Garland, Sr., including the crops of 1862, by $42,706.61.

From the $242,030.86 was deducted (Part 2, p. 48-9) the valuation of all the slaves in the inventories of January, 1863, and the $14,026.25, the sales to, or impressments by, the Confederate forces not collected, (Part 5, p. 41-2) and $3,050, (intended, we think, for $3,250) the one year's allowance to the widow and exempted articles, and $2,100 on account of articles in the legacy under the 9th clause of the will, (Part 5, p. 39, but why it should be this amount when the articles amounted to a great deal more, we do not know,) and $16.77 and $20.10 on taxes and $3.66 balance due on the second annual account and $5,882.52 commissions on the administration, striking a balance against Burr Garland of $64,130.88.

He was allowed nothing for the loss of $29,874.25 by the depredations of the war, and nothing for the $8,300 valuation of the articles in Mrs. Garland's half of the estate in September, 1864, and nothing for the excess of the values of articles received in the legacy under the 9th clause (Part 2, p. 3 and p. 39) over the $2,100—said excess being not less than $4,000.

This balance of $64,130.88 embraced in part, all the profits after the death of Samuel Garland, Sr., which appear on the face of the annual accounts, No. 1, No. 2 and No. 3—from 1863 to 1867—counting the Confederate money without scaling; but the

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Court did not determine who were entitled to these profits. It ordered the transmission of this balance to Virginia, to be distributed to those entitled to it. The decree of the Court (Part 2, p. 50-1) is as follows:

"That W. H. Garland, as such Executor of the last will and testament of said Burr Garland, deceased, pay over said balance of money, so reported as due by said Burr Garland, on said restated final account, to the legal representatives of said Samuel Garland, Sr., deceased, in the State of Virginia, to be by such legal representative, or representatives, paid over to the person or persons entitled to receive the same, under said last will and testament of said Samuel Garland, Sr., deceased; and that the estate, both real and personal, of said Burr Garland, deceased, stand and be chargeable with the payment of said balance of moneys so due by said Burr Garland; but subject to a deduction from said balance for the payment of all costs which have accrued in this cause, in relation to the final settlement of said accounts of said Burr Garland, as Administrator aforesaid, to be taxed by the Clerk of said Chancery Court.

On the 25th of February, 1874, (Part 2, p. 49 and 51) this restated account was reported to the Court, and the decree was then rendered. Charles Y. Morriss, Administrator of Burr Garland in Virginia, did not know of these proceedings nor of this decree. Part 2, p. 55. He saw no publication of them, and he received no notice, leading him to suspect proceedings of this character. He sought to obtain from John F. Slaughter, Administrator of Samuel Garland, Sr., in Virginia, the railroad bonds bequeathed to Nicholas A. Garland's children which Burr Garland had purchased, (Part 5, p. 96-7) but he did not get them.

In September, 1880, John F. Slaughter, Administrator of Samuel Garland, Sr., brought the second suit against Charles Y. Morriss, Administrator of Burr Garland in Virginia, and Mary Garland, his surety, reciting the bringing of the first suit in 1862 by Samuel Garland, Jr., surviving Executor, that both of the Executors had died, and John F. Slaughter was Administrator of Samuel Garland, Sr., in Virginia, and Burr Garland was Administrator of Samuel Garland, Sr., in Mississippi; and that Burr Garland had purchased the legacies of a number of the children of Nicholas A. Garland, under the 15th clause of the will of Samuel Garland, Sr., of $1,000 each, of his East Tenn. and Virginia R. R. bonds, or others of equal value; that Burr Garland had

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died, and Charles Y. Morriss was his Administrator in Virginia, and had in his hands the assignments of said legacies and some moneys; that William H. Garland was his Executor in Mississippi; that on final settlement of Burr Garland's administration, he was found indebted in the sum of $64,130.88, which his Mississippi Executor was ordered to pay to the Virginia legal

representative of Samuel Garland, Sr., and that the Plaintiff believed that said legacies had been purchased with the money of Samuel Garland, Sr., and he prayed that the money in the hands of Charles Y. Morriss, and the legacies purchased by Burr Garland, should be applied in part satisfaction of said decree; and that "this branch of this case be heard along with that of Garland's Executor v. Garland and others, to the papers and exhibits in which special reference is made." Part 2, p. 6-10.

Charles Y. Morriss, Administrator of Burr Garland, demurred to the Bill and answered it, and he filed the assignments of the legacies of Nicholas A. Garland's children, Part 2, p. 53-64. Among other things, he averred and insisted that the Mississippi decree was rendered without his knowledge, that he was not a party to the proceedings, and that the decree was conclusive only on the Mississippi Executor and the Mississippi assets—not on the Virginia Administrator and the Virginia assets. He denied that Burr Garland bought the legacies of Nicholas A. Garland's children with moneys of the estate of Samuel Garland, Sr., and he averred that he bought them with the profits in the legacy under the 9th clause of the will, and that Mrs. Morriss and her children were necessary parties. He sought thus to get a resettlement of Burr Garland's administration, and to correct the decree, and to trace the profits under the 9th clause of the will into the purchase of the legacies.

The lower court held with the Administrator of Burr Garland, and dismissed the Bill. The Administrator of Samuel Garland, Sr., took an appeal. This is the case of Garland's Administrator v. Garland's Administrator, 84 Va. 181. The Court of Appeals held (p. 190) that as evidence of the indebtedness of Burr Garland on his administration, the decree for $64,139.88 is final and conclusive everywhere.

But that "it did not undertake to distribute it, nor to determine who

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are entitled to receive it under Samuel Garland's will, but decreed it to be paid over to the Virginia domiciliary Executor, to be by him distributed to those who are entitled according to the declared intention of the Testator," * * * "but (p. 191) without prejudice to any right of action which Paulina B. Morriss may have in this or in any independent suit, and the cause will be remanded to Circuit Court, with leave to the Appellant to reinstate his Bill, and amend, and make all parties deemed requisite."

The Bill was then amended, and as Charles Y. Morriss had died, and administration of the estate of Burr Garland, and the trusteeship for Mrs. Morriss and her children had been committed to M. J. Day, Sergeant of Lynchburg, he and Mrs. Morriss and her children were made Defendants. All the Defendants answered, and all of them claimed all their rights. Part 4, p. 10-5.

Mrs. Garland averred (Part 4, p. 14) that on her renunciation of the will she became entitled to half of all the estate in Mississippi, and to the profits on one-half of it, from the death of Samuel Garland, Sr., to the death of Burr Garland, and that Burr Garland had never accounted to her for her part, but was indebted for the same, and she charged that a large part of the profits, to which she was entitled, was embraced in the balance of $64,130.88 which his Executor was ordered to transfer to the Virginia Administrator, to be by him distributed to those entitled to it.

Mrs. Morriss and her children averred (Part 4, p. 10-3) that they were entitled to the profits on the legacy in the 9th clause of the will from the death of Samuel Garland, Sr., to the death of Burr Garland, and that Burr Garland was indebted for the same, and they insisted that a large part of these profits had been carried into the balance of $64,130.88, decreed to be transferred to Virginia to be distributed here. They denied that the legacies had been bought with the funds of Samuel Garland, Sr., and they averred their belief that the legacies were bought with the profits on the legacy in the 9th clause of the will, and they prayed that an account be taken of said profits, and of the portion of profits that were carried into the balance of $64,130.88, and of the portion of said profits that entered into the purchase of said legacies, and that accounts be taken of the indebtedness of Burr Garland's estate, and of the priorities thereof.

M. J. Day, Administrator of Burr Garland, and Trustee for

Mrs. Morriss and her children, (Part 4. p. 10 and p. 17) relied on the former answer of Charles Y. Morriss, Administrator, and on the exceptions to the reports of Commissioners Gordon and Bocock, and he referred to the answers of Mrs. Garland and of Mrs. Morriss and her children, claiming heavy indebtedness from Burr Garland, and he prayed that accounts be taken of all the indebtedness of Burr Garland, and of the priorities thereof, and that the estate of Burr Garland be administered under the control and direction of the Court. See also M. J. Day's answer, Part 5, p. 4-6, and his Exceptions, Part 5, p. 84-96.

Thus the Circuit Court for Lynchburg had under its control and supervision the administration of the estate of Samuel Garland, Sr., and of the estate of Burr Garland. The Administrator of Samuel Garland, Sr., contended that under the 9th clause of the will, Burr Garland took a life estate in the legacy, and that the profits mentioned in the clause belonged to Burr Garland, absolutely, and were subject to the decree for $64,130.88; and the parties consented (Part 4, p. 15) to submit to the Court, specially, the construction of the 9th clause.

The lower Court held with the Administrator of Samuel Garland, Sr., (Part 4, p. 16) that Burr Garland took a life estate in the property (other than the profits) mentioned in the 9th clause, and that he took an absolute estate in the profits, set apart by said clause, which were liable not only for the debts contracted for his support, but for all his debts.

From this decree the Administrator of Burr Garland took an appeal. This is the case of Garland v. Garland, 87 Va. 758. The Court of Appeals referred (p. 760) to what the Court said in the former decision, (84 Va. 190) that the Mississippi Court did not undertake to distribute the $64,130.88, "nor to determine who are entitled to receive it under Samuel Garland's will; but decreed it to be paid over to the Virginia domiciliary Executor, to be by him distributed to those entitled, according to the declared intention of the Testator; but this is without prejudice to any right of action which Paulina B. Morriss may have in this or in an independent suit"; and the Court then decided (p. 762) that "Burr Garland did not take any absolute property in the profits of the estate which he might have assigned or aliened, but on the con-

trary, he acquired the mere, although exclusive, right to a perception of so much of said profits as would furnish a decent and comfortable support for himself, and this was so qualified and limited as to fence out all his creditors, except those who furnished him and supplied him in support. Had he undertaken to expend these profits in any other way, he would have been guilty of a breach of trust; for there was in the eye of a Court of Equity as complete a trust in him to apply these profits in this one direction, as there was in the Trustee to hold the legal title."

The decree was reversed, and the case remanded for further proceedings, and the lower Court ordered (Part 5, p. 119) accounts of the legacy under the 9th clause—the corpus of the legacy and the profits, and accounts of the administration of the estate of Burr Garland and all debts of his estate and of their priorities.

A petition was filed by the Administrator of a legatee of Samuel Garland, Jr., praying for the distribution of the assets of his estate. M. J. Day, Administrator of Burr Garland and Trustee for Mrs. Morriss and her children, answered (Part 5, p. 4-6) that the legacies of Nicholas A. Garland's children, bought by Burr Garland, had not been provided for, and he insisted that the East Tennessee and Virginia Railroad bonds embraced in those legacies be brought into Court.

On the 17th of June, 1892, the suits were heard on said petition and answer, and the reports of Commissioner Bocock of the accounts of John F. Slaughter, Administrator of Samuel Garland, Sr., and Administrator of Charles R. Slaughter, and Executor of Samuel Garland, Jr., and the account of Mrs. Garland with the estate of Samuel Garland, Sr., and exceptions thereto, and the Court ordered (Rec. 37-8, Trans. 133) as follows:

"The Court doth refer and recommit all the reports and accounts returned by said Commissioner to the same Commissioner to restate and supplement said accounts, so as to show with regard to the estate of Samuel Garland, Jr., the balance due by the Executor, after he is properly credited with all proper payments to the legatees, and to show the assets unadministered of each of said estates, and in taking and restating said accounts, any party in interest has leave to bring into said accounts any items of debits and credits which may appear to be proper, and liberty is reserved to any party to except hereafter to any matter embraced in the said reports and statements, as fully as if the cause had not been brought on upon the same."

On the 18th of May, 1893, Commissioner Bocock and John F. Slaughter having departed this life, and John F. Slaughter, Jr.,

being Executor of John F. Slaughter, the Court ordered (Rec. 38-9, Trans. 34-5) as follows:

"That John F. Slaughter, Executor of J. F. Slaughter, deceased, do render before Commissioner C. H. Sackett the accounts heretofore ordered in this cause, and for the purpose of enabling said Commissioner to state a final report of all the transactions of said J. F. Slaughter, as the personal representative of Samuel Garland, Sr., Samuel Garland, Jr., and Charles R. Slaughter, the said

John F. Slaughter, Jr., is directed to produce and lay before said Commissioner any and all books, papers and accounts relating to the administration of said estates."

On the 14th of November, 1893, Commissioner Sackett made his report, leaving the legacies of Nicholas A. Garland's children purchased by Burr Garland unprovided for, and to his report and Commissioner Bocock's former reports, M. J. Day, Administrator of Burr Garland, and Mrs. Morriss' Administrator, (she having departed this life) and Mrs. Morriss' children renewed their exceptions.

On the 20th of November, 1893, the case was heard on the reports and exceptions (Rec. 39-40, Trans. 135-7) and the Court, "not deciding any question arising on said reports or the exceptions thereto," ordered John F. Slaughter, Jr., Executor of John F. Slaughter, deceased, to pay to R. T. W. Duke, Jr., and J. Singleton Diggs, who were appointed Receivers, $7,178.27, a balance due to the estate of Charles R. Slaughter, as between his estate and John F. Slaughter, his Administrator, and $20,198.08, a balance due to the estate of Samuel Garland, Jr., as between his estate and John F. Slaughter, his Executor, with this provision:

"But as between these estates only, expressly reserving all rights of any claimant against the estate of said Samuel Garland, Sr., whose rights are paramount to the claims of the residuary legatees, the Court being of opinion, and deciding, that in case of a recovery by any such person or persons, the said estates of Charles R. Slaughter and S. Garland, Jr., shall be required to account to said J. F. Slaughter's estate to the amount of assets they may have received, or be entitled to, from the estate of Samuel Garland, Sr."

These undistributed assets, aggregating $27,376.35, with accruing interest thereon, were thus brought into the custody of the Court, to await the decision of the questions now before the Court in this appeal.

On the 9th of May, 1894, Commissioner Sackett made his report (Part 5, p. 99-116) of the legacy under the 9th clause of the will, and of Mrs. Garland's rights, and of the legacies of Nicholas A. Garland's children, and of Burr Garland's indebtedness. He held that Mrs. Morriss and her children were not entitled to recover any profits from Burr Garland's estate, or any profits in the $64,130.88, ordered to be transferred to the Virginia Administrator of Samuel Garland, Sr., and he held that there was no indebtedness on Burr Garland's administration to Mrs. Garland, but that she must account for the $3,000, the one year's allowance, and for the $250 exempted articles; and he held that the legacies to Nicholas A. Garland's children, now amounting to $37,506.67, bought by Burr Garland, were extinguished; and he held that the money paid by him to Nichlas

A. Garland's children, and interest on it, should be credited on the $64,130.88; and that the money received by Burr Garland's Virginia Administrator from Aiken & Watt's draft of the 3th of August, 1869, was assets and the only assets of his estate.

We make the following extracts from Commissioner Sackett's report:

Part 5, p. 101-2: "During this period of time, (1863 and 1864) Burr Garland, as Administrator c. t. a. of Samuel Garland, Sr.'s estate, settled ex parte accounts of his transactions, which appear to have been accurately kept, and which show upon their face that he undertook to account for all sales of products of the estate, no matter from what source derived, and without distinguishing between the sales from the different plantations. These ex parte accounts, Nos. 1 and 2, cover the entire period of the war, and hence the time after his qualification to the allotment to Mrs. Garland of her half of the estate, and the selection of the legacy by Burr Garland. So that any account of profits for the years prior to 1865 will have to be ascertained from these accounts, if it can be done."

Page 115: "Profits of estate, that is, products of the farms, without distinguishing between them and hires of negroes prior to September, 1864, when the allotment and selection were made, $9,020. Cotton sold to D. J. Brown, $3,000. Total, $12,020."

Page 114: "Amount received of D. J. Brown for cotton sold, $3,000. As to this item, (the cotton) it was embraced in the appraisement made January, 1863, for it was burned in July, 1863. There is considerable doubt from the testimony when it was raised, but the most reasonable solution of the matter is, that it was of the crop of 1862, and your Com-

missioner so reports, but which plantation it was made on cannot be stated."

Page 112, bottom of page: "Every item of credit to the estate in this account (second ex parte account) is either products of the farms, or hire of the slaves. So that the $9,020.99 with which the Administrator is charged by Commissioner Baldwin is profits, that is, products of the farm and hire of slaves, and said item, with the $3,000 above mentioned, makes up the above item of $15,020.

Same page: "(1) Confederate notes and bonds, for which the Administrator had received credit in his ex parte accounts; but with which he was charged by Commissioner Baldwin $15,020."

Page 103: "If paid (rents of 1869) to W. H. Garland, as Executor of Burr Garland in Mississippi, they were improperly so paid, in the light of the decision in Virginia, as to who were entitled to the same, and the remaindermen should have followed the amounts so paid into the hands of said Executor. Your Commissioner, therefore, reports that no liability rests upon the Virginia estate of Burr Garland for money collected by some one else on account of the rents of Tudor Hall for the year 1869, which money formed no part of his Virginia estate, and was collected after his death."

Page 111-2: "An analysis of the ex parte statements, and the final settlement of Commissioner Baldwin, upon which the decree (84,-120.88) is based, is not difficult, so far as dealing with the figures is concerned, but after doing so, various questions arise, as to how the component parts of said decree, when thus separated, should be dealt with. For instance, it will appear that much the largest portion of said decree is made up of the corpus of Samuel Garland's estate. Is Mrs. Garland, the widow, entitled to one-half of the amount realized from that portion? It is claimed by the residuary legatees that Mrs. Garland having made her selection of her half of the estate in Mississippi in due form of law, and the same having been ratified and confirmed by the Court, she is bound by it, and is thereby estopped from claiming anything further from the estate on that account. It is also claimed that under the Mississippi law, a widow is not entitled to any profits from the estate until the allotment of her share thereof, but that she is only entitled to the use of the mansion house and curtilage free of rent until that time. So that in dividing up the decree, whether the component parts thereof be corpus or profits, the question will have to be determined by the Court as to Mr. Garland's interest therein. Then, again, as to any profits, the further question arises, as to the right of Mrs. Morriss' children to any interest therein, which accrued before the selection of the legacy under the 9th clause of the will."

Page 116: "Mrs. Garland was improperly paid from the Mississippi estate a year's allowance of $3,000, and she also received certain articles of personal property to the value of $250, for which she should be held to account."

Page 104: Assets of Burr Garland's estate—money received by his

Virginia Administrator, "10th May, 1894. Balance due estate by Administrator, principal $1,332.52 interest $1,852.59."

Page 110: From the $64,130.88 subtract the amount paid by Burr Garland to Nicholas A. Garland's children and interest thereon to the 15th of February, 1874, $5,572.23, leaving a balance of $58,558.65. To this is added the interest thereon to 10th of May, 1894, $71,099.96, making a total of $129,658.61. The Commissioner then says: "The above is a fiduciary debt, and is the only debt against the estate of Burr Garland proved before your Commissioner."

Page 105: "The effort to trace the purchase of said legacies from funds arising solely from the profits of Tudor Hall has been abandoned. Now it appears that, as heretofore stated, at the close of the year 1868, the said Burr Garland determined to continue his farming operations. On the 9th of December, 1868, he settled his third, and last, ex parte account, as Administrator c. t. a. of Samuel Garland, Sr.'s estate, showing an indebtedness by him to said estate of $6,545.09. On the 3rd day of February, 1869, he deposited $5,000 to his credit with Aiken & Watt, of New Orleans, out of which he paid for six of said legacies by drafts on said firm. In addition to this $5,000, he had at least $1,100 elsewhere, for he paid $550 each for the remaining two of said legacies otherwise than through said firm. So that he had in hand substantially all of the $6,545.09 shown by his last settlement to be due by him."

"It is fair to presume, and your Commissioner reports, that said legacies were purchased, and paid for, by said Burr Garland, out of money belonging to the estate of his Testator, Samuel Garland, Sr., and being so purchased and paid for, the liability of Samuel Garland's estate therefor ceased, and said legacies were extinguished; and the said Burr Garland's estate is only entitled to credit on the Mississippi decree against it for the actual amount paid by him for said legacies, and the same will be so treated hereafter in this account, in stating the indebtedness of Burr Garland's estate. This is the manner in which the other two of said legacies which were purchased by J. F. Slaughter, the Virginia Administrator of Samuel Garland, in stating his account in the other branch of this case were dealt with."

The Exceptions to the Report (Part 5, p. 120-3) by the Administrator of Burr Garland, and Mrs. Garland, and the Trustee for Mrs. Morriss and her children, and the Administrator of Mrs. Morriss, and Mrs. Morriss' children, cover all the points raised by them.

On the 12th of February, 1895, the two causes were heard together (Rec. 41, Trans. 138) on the Report and Exceptions, and the Court overruled all the Exceptions, and confirmed the Report, decreeing (Rec. 41, Trans. 139)

"That, even if there had been such a primary liability on the Virginia Administrator, as would have made Burr Garland a purchaser,

because the bequest to Nicholas A. Garland's children was East Tennessee and Virginia Railroad bonds, and $23,000 of such bonds went into the hands of the Virginia personal representatives, no such condition existed when Burr Garland attempted to become the purchaser of said legacies of $1,000 each in 1869. It appears from page 35 of Record No. 1, a decree of January, 1866, that before 1866, certainly $20,000 of the $23,000 bonds had been distributed in the first of the above-named causes, to which Burr Garland and Charles Y. Morriss, Trustee, and his wife were parties, and only one of said bonds remained in 1872, as appears on page 68 of Record No. 1. And, therefore, at the time of the purchase by Burr Garland, the funds in his hands, as Administrator, were as much applicable to the satisfaction of these and all other legacies as the funds in the hands of any other Administrator of Samuel Garland, Sr., and as to any claim through Mrs. Mary L. Garland's assignments, even if there were any proceeding for a settlement of her matters with Burr Garland, as agent, either laches, or the statute of limitations, would bar any recovery." * * *

That the Administrator of Charles Y. Morriss, out of the assets of his intestate, "And Mary L. Garland, as surety for Charles Y. Morriss, out of her own estate, do pay to Samuel H. Johnson, Sergeant, and as such Administrator d. b. n. c. t. a. of Samuel Garland, Sr., the sum of $2,840.92 (twenty-eight hundred and forty dollars and ninety-two cents) with interest on $1,077.53, a part thereof, from May 1, 1894, until paid, that being the balance of said assets of Burr Garland's estate." * * *

Rec. 43, Trans. 141: "But no execution will issue on this decree against Mary L. Garland, until the further order of the Court, as the further interest of Mary L. Garland in the estate of Samuel Garland, Sr., is to be ascertained in the first-named cause."

The Court decreed that Mrs. Morriss' Trustee and her Administrator and the Administrator of her deceased children from the estates they represent and her surviving children, from their own estates, pay to the Plaintiff his cost in the second suit.

Commissioner Sackett had reported (Part 5, p. 111) that these children of Mrs. Morriss were entitled to the $71.14 cost decreed against the Administrator of Samuel Garland, Sr., by the Court of Appeals in Garland v. Garland, 87 Va. 758, which remained unpaid. Rec. 35, Trans. 129.

On the 16th of May, 1895, although notice had been given for an appeal from the decree of the 12th of February, 1895, (Addition to Record, p. 2) and we were proceeding to perfect it, yet the lower Court proceeded, (Rec. 43, Trans. 142) after first ordering "further accounts of the

administration of the estates of Samuel Garland, Sr., Samuel Garland, Jr., and Charles R. Slaughter" to decree as follows:

"And it appearing that the whole fund in the hands of the Receivers

belongs to the estates of Samuel Garland, Jr., and Charles R. Slaughter, the Court doth further adjudge, order and decree that Receivers R. T. W. Duke, Jr. and J. Singleton Diggs do pay and deliver to J. Singleton Diggs, Administrator of Samuel Garland, Jr., and the same as Administrator of Charles R. Slaughter, all the money, bonds and other estate in their hands, as such Receivers, and make full report thereof to the Court."

ASSIGNMENT OF ERRORS.

1. It was error to hold that the distribution by the Virginia Administrator before 1866, of $20,000 of the Testator's East Tennessee and Virginia Railroad bonds, out of $23,000 of such bonds that came to his hands, changed the legacies of Nicholas A. Garland's children from bonds of the Testator to pecuniary legacies of $1,000 each, and prevented Burr Garland from purchasing said legacies.

2. It was error to hold that the legacies of Nicholas A. Garland's children, purchased by Burr Garland, were "extinguished" and that the money he paid to Nicholas A. Garland's children should be credited by the Virginia Administrator of Samuel Garland, Sr., as a collection on the $64,130.88.

3. It was error to hold that there was no indebtedness to Mrs. Morriss and her children under the 9th clause of the will.

4. It was error to hold that there was no indebtedness to Mrs. Garland.

5. It was error to hold that Mrs Garland's rights were barred by limitations.

6. It was error to hold that Mrs. Garland should pay the Administrator of Samuel Garland, Sr., $2,840.92.

7. It was error to hold that Mrs. Garland should now account to the estate of Samuel Garland, Sr., for $3,000, the one year's allowance, and for $250, the valuation of exempted articles under the Mississippi statute.

8. It was error to decree that Mrs. Morriss' Administrator and her children should pay the costs of the Administrator of Samuel Garland, Sr.

9. It was error to decree that the Receivers should deliver all the money, bonds and other estate in their hands to the Administrator of the residuary legatees.

10. It was error not to hold that the legacies bought by Burr Garland, now worth $37,506.67, and the money in the hands of his Virginia Administrator, now amounting to $2,840.92—together $40,347.59—are assets of his estate; that the profits for which he was indebted to Mrs. Garland, and for which he was indebted to Mrs. Morriss and her children, which entered into the $64,130.88, ordered to Virginia for distribution, should be subtracted therefrom, and that the assets should be apportioned pro rata to the indebtedness to Mrs. Garland, and to the indebtedness to Mrs. Morriss and her children, and to the indebtedness on the balance of the $64,130.88; and that the pro rata on said balance, being additional assets of the estate of Samuel Garland, Sr., should be divided, half to Mrs. Garland and half to the residuary legatees.

ARGUMENT.

1. It was error to hold that the distribution by the Virginia Administrator before 1866 of $20,000 of the Testator's East Tennessee and Virginia Railroad bonds, out of $23,000 of such bonds that came to his hands, changed the legacies of Nicholas A. Garland's children from the bonds of the Testator to pecuniary legacies of $1,000 each, and prevented Burr Garland from purchasing said legacies.

Nicholas A. Garland's children were residents of Illinois. This is stated in the will, and is alleged in the Bill. When Samuel Garland, Sr., died, when his will was admitted to probate, when his Administrator disposed of $20,000 of his East Tennessee and Virginia Railroad bonds—selling

$4,500 of them, and taking $4,000 to himself as the personal representative of the residuary legatees, when the Bill was filed, when the accounts were ordered, when the Commissioner published his notice, when he took the accounts, and when he made his report to the Court, the country was flagrante bello. When those things were done, that the lower Court thought changed the rights of these legatees, it was not lawful for them to know what was going on. At no time was the maxim, leges silent inter arma, more applicable. From the 16th of August, 1861, to the 13th of June, 1865, by the statute of the United States and the proclamation of the President, all intercourse

between these legatees and the people of Lynchburg was prohibited. These legatees could not then be made parties to any suit in Lynchburg, nor bound by any proceedings therein. The Administrator had no power by any act of his—especially any wrongful act—to change the character of the legacies. The Court had no power to do it. In the Bill filed the 5th of May, 1862, all questions pertaining to the construction of the will, and the rights of these legatees—"citizens of the State of Illinois, one of the United States of America"—and the disposition of the assets of the estate of Samuel Garland, Sr., were submitted to the Court; but the Court had not decided any questions as to the rights of these legatees; the Court had not authorized the Administrator to dispose of the $20,000 out of the $23,000 of the Testator's East Tennessee and Virginia Railroad bonds. On the contrary, the Court reserved the questions pertaining to their rights.

The opinion of the lower court that the disposing of $20,000 out of $23,000 of the Testator's East Tennessee and Virginia Railroad bonds, the 20th of January, 1864, in a way unauthorized by the will, changed the legacies of Nicholas A. Garland's children to pecuniary legacies; and that "the funds in his (Burr Garland's) hands as Administrator were as much applicable to the satisfaction of these, and all other legacies, as the funds (Railroad bonds) in the hands of any other Administrator of Samuel Garland, Sr.," is, we think, wholly untenable.

Samuel Garland, Sr., speaks in his will, as of the day of his death. He says: "One thousand dollars of my East Tennessee and Virginia Railroad bonds, or others of equal value." He gave his bonds—not money—his were 6 per cent. coupon bonds—the coupons maturing semi-annually, the first coupon on the 1st of January, 1862, and fourteen coupons maturing by the 1st of January, 1869. He gave a commodity—fluctuating in the stock market—up one day and down the next. What he gave to Nicholas A. Garland's children, when he died, is what they were entitled to in 1864, and what they were entitled to in 1869, and what they sold to Burr Garland.

The argument adopted by the Court does not cover the case. It applies only to $20,000, when the Administrator had $23,000 of

the Testator's East Tennessee and Virginia Railroad bonds. What became of the other $3,000 of these bonds? As to this, the record is silent, and the voice of every man, dead or alive, is silent.

2. It was error to hold that the legacies of Nicholas A. Garland's children, purchased by Burr Garland, were "extinguished," and that the money he paid to Nicholas A. Garland's children should be credited by the Virginia Administrator of Samuel Garland, Sr., as a collection on the $64,130.88.

Commissioner Sackett reached the conclusion that the legacies to Nicholas A. Garland's children were "extinguished" by a course of reasoning very different from that adopted by the Court. The Commissioner argued that Burr Garland's third annual ex parte account showed a balance against him of $6,545.09 which he owed to the estate of Samuel Garland, Sr., and though this came from sales of cotton from Barrens in 1863 and 1867, yet that Burr Garland had this money in his hands in 1869, and paid it for these legacies and extinguished them.

1. Our first reply to the Commissioner's process of reasoning is, that in neither of the ex parte annual accounts were the commissions of the Administrator deducted. His commissions allowed by the Court on the final settlement were $5,882.52. Deducting this from the balance of $6,545.09, leaves a balance of only $662.57. Burr Garland paid in 1869 for the eight legacies he purchased $4,350. So that, with his commissions, Burr Garland could have paid for all the legacies he bought, and the remaining balance of $662.57 on his third ex parte account, and had in his pocket $869.95 left.

2. The balance of $6,545.09 on the third ex parte account was from sales of cotton in September, 1865 and in 1866, and early in 1867—none later. Between the time of receiving the last money on these sales, and the purchasing of the first legacy is a gap of two years. Where was this money during these two years? It was not earmarked. There is no evidence that the money from these sales was the money paid for these legacies.

3. The Commissioner states, correctly, that the payment for six

of the legacies was made with Burr Garland's drafts on Aiken & Watt. The face of the third ex parte account shows where every pound of the cotton went—the first to Peter Casey, in Vicksburg, the second to A. Verden, in Jackson, and all the rest to T. H. and J. M. Allen, in New Orleans—not one pound of it went to Aiken & Watt. Every cent in the balance of $6,545.09 came from the sales of this cotton, and not one pound of this cotton, nor one cent of this balance, can be traced to the hands of Aiken & Watt.

4. The face of the third ex parte account shows that all the money in that account came from the sales of 100 bales of cotton. Of these, four bales were sold to Peter Casey in September, 1865, for $639.72. The other 96 bales, all, came from the Barrens plantation in 1866, or early in 1867. Subtracting the $639.72 from the $10,901.11, total sales of the 100 bales, we have $10,-261.39, proceeds of the sales of the 96 bales from the Barrens plantation, two years after Barrens had been assigned to Mrs. Garland, and five years after the death of Samuel Garland, Sr. These 96 bales could not have been the cotton of the estate of Samuel Garland, Sr., and the proceeds of the sales could not have been the money of the estate of Samuel Garland, Sr.

If the Commissioner had succeeded in tracing the proceeds of the sale of this cotton into the purchase by Burr Garland, Administrator of Samuel Garland, Sr., of the Testator's East Tennessee and Virginia Railroad bonds, bequeathed to the children of Nicholas A. Garland, Mrs. Garland might well have claimed the legacies as investments of trust moneys to which she was entitled.

5. In September, 1864, the personal estate of Samuel Garland, Sr., in Mississippi, was inventoried and appraised, and one-half of all that was left allotted to Mrs. Garland. This included a crop of cotton made in 1864, estimated at 30,000 pounds in the seed. Of this cotton 15,000 pounds in the seed, equal to 12 bales in the lint, was allotted to Mrs. Garland. If, then, we were to concede for the sake of the argument, that the remaining 15,000 pounds in the seed, equal to 12 bales in the lint, though made in 1864—three years after the death of Samuel Garland, Sr., belonged to his

estate, and subtract these twelve bales from the 100 bales in the third ex parte account, there would remain 88 bales in that account, in which it is not possible that the estate of Samuel Garland, Sr., could have had the shadow of a title. How, then, could the Commissioner think that "it is fair to presume" that the cotton in the third ex parte account belonged to the estate of Samuel Garland, Sr.? On the contrary, we assert that stating the proposition in the strongest light for the estate, it amounts to a mathematical demonstration, that eighty-eight one hundredths of the cotton in the third ex parte account could not have belonged to the estate of Samuel Garland, Sr., but that it did belong to Mrs. Garland.

6. The Commissioner reported, correctly, that the cotton in the inventory, recorded the 8th of January, 1863, was raised in 1862, and the cotton in the inventory of September, 1864, was the crop of that year—raised, the first in one year, and the last in three years, after the death of Samuel Garland, Sr. So, not one pound of cotton, nor one cent of money from any sale of cotton, was any part of the estate of Samuel Garland, Sr.

Look at the Coahoma Inventory. Part 5, p. 16-9. There is no cotton there, and the Coahoma plantation was not cultivated after January, 1863. So all the cotton in every inventory and every account was raised on the Hinds County lands, half of which lands was allotted to Mrs. Garland, and the other half was embraced in the legacy under the 9th clause of the will, and every pound of cotton in every inventory and every account belonged to either Mrs. Garland, or to Mrs. Morriss and her children.

7. Now, look at the account with Aiken & Watt. Part 2, p. 73. While it shows that six of the legacies that Burr Garland purchased were paid for by his drafts on them, yet it by no means sustains the Commissioner's conclusion, that he paid for them with the proceeds of the cotton in the third ex parte account. On the contrary, it expressly disproves it. It is an individual account of Burr Garland. It begins the third of February, 1869, two years after the last sale of cotton in the third ex parte account, with the remittance to them of $5,000, and their payment that day of $4,405.59 for 36 bales of cotton. Then three items paid on the 10th of February, making $249.88. Taking these payments from

the $5,000 leaves $344.53. The draft for the first legacy purchased was for $500, and was taken up the 6th of March, 1869. So, if the $5,000 remitted the third of February had been money of the estate of Samuel Garland, Sr., as Commissioner "presumed," instead of paying for six legacies, it did not pay for one legacy.

8. On the 19th of June, 1869, Aiken & Watt sold for Burr Garland 48 bales of cotton for $5,740.78. Of these, the Court will see (Part 3, p. 60) that on the 18th of December, 1868, he ordered 8 bales of cotton that he had in store in Jackson, to be shipped to Aiken & Watt. It was after the sale of his 48 bales of cotton, the 19th of June, 1869, that Burr Garland purchased all the legacies except one, and the proceeds of the sale the 19th of June, 1869, went into the payment of the six legacies, that were paid for by his drafts on Aiken & Watt. It will not be claimed that the 36 bales of cotton bought the 3rd of February, 1869, nor the eight bales ordered to be shipped from Jackson on the 18th of December, 1868, seven years after the death of Samuel Garland, Sr.,

belonged to his estate, nor that the money from the sale of the 48 bales of cotton the 19th of June, 1869, that was applied in paying for the six legacies, was the money of Samuel Garland, Sr.

9. The account with Aiken & Watt was closed the 13th of August, 1869, by their draft on New York for $1,773.26, the balance on the sale of the 48 bales of cotton the 19th of June, 1869. The proceeds of this draft, less funeral expenses and some other charges, came to the hands of Charles Y. Morriss, the Virginia Administrator of Burr Garland. This money the Commissioner reports to be assets, and the only assets, of Burr Garland's estate. Now, we ask, if this money was Burr Garland's money, why was not the other money from the sale of the 48 bales of cotton, the 19th of June, 1869, his money, and, if he paid his money for the legacies, are not the legacies assets of his estate?

10. If the reasoning of the Commissioner were correct, it does not cover the case. It applies only to six of the legacies. The Commissioner says he paid "for the remaining two of said legacies otherwise than through said firm." Then "it is fair to presume" that he paid his own money "for the remaining two of said lega-

cies." While his reasoning applies only to six, yet he draws his conclusion that the eight "legacies were extinguished."

11. Burr Garland had not only no authority to invest the moneys of the estate of Samuel Garland, Sr., but he had no moneys of the estate of Samuel Garland, Sr., in his hands. He thought the profits from the Tudor Hall plantation belonged to himself. He intended to pay his own money for the legacies. He took absolute assignments of the legacies to himself individually, and he intended that these legacies should pass under his will to his daughter, Mrs. Morriss.

12. The Commissioner justifies his treating the eight legacies purchased by Burr Garland as "extinguished" because "this is the manner in which the other two of said legacies which were purchased by J. F. Slaughter, the Virginia Administrator of Samuel Garland, Sr., in stating his accounts, in the other branch of this case, were dealt with."

We were not counsel for John F. Slaughter, and do not know the special circumstances under which his purchase was made, but his relation to the Testator's East Tennessee and Virginia Railroad bonds, and to the children of Nicholas A. Garland, was wholly dissimilar from that of Burr Garland. All of the $400,000 of the Testator's stocks and bonds came to the hands of his

Virginia Executors and Administrator. John F. Slaughter returned his inventory, including $23,000 of the Testator's East Tennessee and Virginia Railroad bonds, before Burr Garland's qualification. Burr Garland qualified in Mississippi, and took charge of the Testator's Mississippi estate. Nicholas A. Garland's children were not the creditors nor pecuniary legatees of Samuel Garland, Sr. They had no interest in an atom of property or in a cent of money that ever came to the hands of Burr Garland, as Administrator of Samuel Garland, Sr., or for which he assumed any responsibility. He held no fiduciary relation to these legatees. His duties were circumscribed by the boundaries of Mississippi, and related alone to assets in Mississippi. He assumed no duties as to assets in the hands of John F. Slaughter, or any assets of the Testator in Virginia.

In Smith v. Guild, 34 Me. 413, a Massachusetts domiciliary

Administrator sought to possess himself of estate of the decedent in Maine. The Court said: "Letters of administration granted in another State give no power of administering the property of the deceased in this State."

In Banta v. Moore, 2 McCarter (15 N. J. Chy.) 97, a New Jersey domiciliary Administrator sought to possess himself of bonds of the decedent, in the hands of a New York ancillary Administrator, carried by him from New Jersey into New York, and on which he had obtained the New York administration. The Court said: (p. 102) "Neither has a claim against the funds in the hands of the other. Each Administrator is to account for the funds in his hands, in the jurisdiction where he is appointed."

In Vaughan v. Northup, 15 Peters 1, Judge Story said: (p. 5) "Every grant of administration is strictly confined, in its authority and operation, to the limits of the territory of the government which grants it."

Nicholas A. Garland's children understood well that John F. Slaughter was the fiduciary who held the East Tennessee and Virginia Railroad bonds bequeathed to them. The language of their assignment is as follows: It is of "all my right and interest to a special legacy left to me, as one of the children of Nicholas A. Garland, of the State of Illinois, by the last will and testament of my uncle, Samuel Garland, * * * it being a bond of the East Tennessee and Virginia Railroad Company, for one thousand dollars, payable in the bonds of the Company, or other bonds of equal value, * * * from John F. Slaughter, Administrator, with the will annexed, of the late Samuel Garland, Sr., deceased, in the State of Virginia."

Now we ask, with confidence, what rule of law inhibited Burr Garland from purchasing from Nicholas A. Garland's children their demonstrative specific legacies in the Testator's East Tennessee and Virginia Railroad bonds in the hands of John F. Slaughter, Administrator de bonis non with his will annexed, in Virginia.

13. The validity of the purchase of these legacies by Burr Garland is not put in issue in any pleading in either of these

causes. The pleadings proceed on the concessum that his purchase was valid, and the question is, who is to take the benefit of his purchase. The Bill filed by John F. Slaughter, Administrator, in September, 1880, assumes that Burr Garland had acquired these legacies, and that they were assets of his estate, as well as the money that Charles Y. Morriss, his Virginia Administrator, had received. The Bill prays that this money be applied in part satisfaction of the decree for $64,130.88, and that "the legacies of the children of Nicholas A. Garland, under the will of Samuel Garland, Sr., which were acquired by Burr Garland in his lifetime, or by his Administrator since his death, be likewise appropriated in part satisfaction of the decree aforesaid."

The finding by the Commissioner that these legacies were extinguished is outside of any issue between the parties. John F. Slaughter, Administrator with the will annexed, not only did not put the validity of Burr Garland's purchase of the legacies in issue, but he had no right to put it in issue. When Nicholas A. Garland's children said to him in their deeds of assignment: "we hereby authorize and direct the said Administrator to pay over the same to the said B. Garland, his heirs or assigns," he had nothing to do but to deliver to Burr Garland the Testator's East Tennessee and Virginia Railroad bonds and coupons embraced in these legacies.

14. Whether the legatees from whom John F. Slaughter made his purchase were satisfied with the sale, or objected to it, we have not heard, but we understand the rule to be, when a trustee wrongfully purchases the trust subject, the sale may be set aside at the option of the cestui que trust. It is his business. It concerns no one else.

In Campbell v. Walter, 5 Vesey 678, the Court said: (p. 680) "I will lay down the rule as broad as this, and I wish trustees to understand it, that any trustee purchasing the trust property is liable to have the purchase set aside, if, in any reasonable time, the cestui que trust chooses to say he is not satisfied with it."

In Ex parte Lacey, 6 Vesey 625, Lord Eldon said: (p. 627) "I say, whether he (the trustee) makes advantage or not, if the connection (between the trustee and cestui que trust) does not satisfac-

torily appear to have been dissolved, it is in the choice of the cestiuis que trust, whether they will take back the property, or not."

In Lister v. Lister, 6 Vesey 631, Sir William Grant said: "it had been established since Lord Thurlow's time, that "upon a purchase of trust property by the trustees, on their own account, that at the option of the cestui que trust it shall be resold."

Thus we see that any objection, to a wrongful purchase of the trust subject by the trustee, must be made by the cestui que trust, or on his behalf, if he be under disability. Burr Garland was not a Trustee for Nicholas A. Garland's children. He held no fiduciary relation to them, nor to their legacies. They have never been content with their sale to him. It is their request that their East Tennessee and Virginia Railroad bonds be delivered to him, or his heirs, or assigns.

3. It was error to hold that there was no indebtedness to Mrs. Morriss and her children under the 9th clause of the will.

The profits in the 9th clause of the will naturally divide themselves into two classes—(1.) Those that accrued in 1863 and 1864 in Confederate currency, and (2.) Those that accrued after the war. They were thus treated by Burr Garland, they were thus considered by the Commissioner, and they will be thus discussed by us.

1. Looking to the first and second ex parte accounts (Part 5, p. 42-53) and the Commissioner's report, (Part 5, p. 112-5) we see that the surplus products of the two plantations, Barrens and Tudor Hall, and hires of slaves, undiscriminated, amounted in Confederate notes and bonds to $15,020, which was carried into the final account, making the balance of $64,130.88.

As the hires of the slaves are distinctly stated in separate items in the ex parte accounts for 1863 and 1864, they can be easily discriminated; and as the 40 slaves of Mrs. Morriss and her children are to the 236 slaves of the estate, so is their part of the hires to the aggregate amount of the hires.

As Barrens and Tudor Hall plantations passed to Mrs. Garland and Mrs. Morriss and her children, and Tudor Hall was more productive than Barrens, the products might be apportioned, half to

Mrs. Morriss and her children and half to Mrs. Garland; but to relieve this apportionment from any embarrassment, Mrs. Garland assigned her portion to Mrs. Morriss' children, to whom Mrs. Morriss' portion had descended on her death.

Though these products were in Confederate money, which went into Confederate notes and bonds, and were credited as worthless by the Probate Court, yet they were carried, at their face value, into the final settlement, making $15,020 in the $64,130.88 ordered to be transferred to Virginia for distribution; and as Mrs. Garland's rights are paramount to those of all the legatees, and as the first phrase in the 10th clause of the will makes the rights of Mrs. Morriss and her children in the legacy under the 9th clause paramount to those of all subsequent legatees, it is the right of Mrs. Garland and Mrs. Morriss and her children, from what may be realized on the Mississippi decree for $64,130.88, to recoup the products to which they are entitled, before the residuary legatees can take anything.

2. Now, for the profits from the Tudor Hall plantation after the war.

The actual rent received for 1869 was from $2,100 to $2,200, and the rental value being as much in 1866, in 1867, and in 1868, we may safely say that $2,000 a year, or $8,000 for the four years, is a reasonable estimate.

The Commissioner says that Burr Garland regarded the profits as his own, and kept no accounts, and there are no means of ascertaining his disbursements, and that he, the Commissioner, (Part 5, p. 102) "finds it impossible to state any account at all, even approximating accuracy, as to the profits of the plantation after the war up to the year 1869"; and appalled at the difficulty of the task, he reported that there was no indebtedness to Mrs. Morriss and her children.

Charles Y. Morriss, the Virginia Administrator, and Mrs. Morriss and their counsel, tried in vain to find accounts of the profits and disbursements, and the vouchers for the ex parte accounts that Burr Garland settled, but they could not find them, and could get no information of them from his Mississippi Executor; but the want of this evidence is not a sufficient reason for the Com-

missioner not making an account. He must do the best he can with what evidence is before him. Since Mrs. Garland received half of the personal estate as her distributive share, and Tudor Hall is a part of the legacy under the 9th clause of the will, the rents of Tudor Hall are a part of the profits under the 9th clause, and the 10th clause of the will establishes, by the most positive provisions, that Burr Garland was a Trustee of these rents and profits.

From the Commissioner's report (Part 5, p. 103 and 104) we see this important fact, that the children of Mrs. Morriss were entitled to a portion of the rents of Tudor Hall for the four years, 1866, 1867, 1868, 1869, and the Commissioner reports that Burr Garland received these rents for these years. Now, though Burr Garland, as Trustee, did not give to the Court or to the beneficiaries, a detailed statement of his disbursements, he did settle by the ex parte accounts, an account showing the amount he received on account of the legacy under the 9th clause, and this account is a part of the record and evidence. The Commissioner does not pretend to say how much of the $2,000 a year Mrs. Morriss and her children were entitled to receive. The 10th clause of the will gave the right to "a decent maintenance" to Burr Garland for himself—nothing for his wife, and nothing for his children. In the Bill filed in 1880 (Part 4, p. 17) we made the estimate that one-half would be needed by Burr Garland for his maintenance, and that Mrs. Morriss and her children were entitled to the other half.

The Commissioner makes an estimate, or rather gives expression to his opinion. He says (p. 103) that "a reasonable estimate would be $1,000 a year for the maintenance of Burr Garland and his family, and this would leave $1,000 to be divided between the children of Mrs. Morriss."

But there is another mode by which the rights of Mrs. Morriss and her children under the 9th clause may be ascertained. By examining the inventory of the personal estate of Samuel Garland, Sr., filed in Mississippi (Part 5, p. 18-21) we see that he left 40 slaves allotted to Mrs. Morriss, which descended to her children, and 236 slaves altogether, and that there were in the Mississippi estate, besides what Burr Garland bought from Paulina B. Morriss,

lands and personal estate, valued at $43,700, all of which was allotted as follows: Mrs. Garland one-half and $21,850, and Burr Garland, under the 9th clause of the will, one-half or $21,850, subject to certain reservations in the said clause in favor of Mrs. Morriss and her children.

The profits of the estate of Samuel Garland, Sr., in Mississippi, as returned by his Mississippi Executor, Burr Garland, that went into the $64,130.88 decreed by the Mississippi Court, were $15,020, before stated. Now, the assets, $43,700, and the profits, $15,020, amounted altogether to $58,720; of which Mrs. Garland was entitled to $21,850, and Burr Garland, for himself, and for Mrs. Morriss and her children, to $21,850, and Mrs. Morriss and her children were entitled to $15,020. Burr Garland's part was made up of land, slaves, and the Tudor Hall rents. As Mrs. Morriss and her children had a right to share in these rents and profits, then they had a right to at least one-third of $15,020, or $5,006.67, and Burr Garland could only claim two-thirds, or $10,013.33, for his "decent maintenance." If entitled to one-third, then they ought to have one-third of the four years rents, or $2,666.66, with interest from 1869.

But the Court may hold that they are entitled to a larger share of the $15,020 of profits and rents than one-third. If the Court will examine the account in Part 5, p. 20, it will see that the value of Tudor Hall plantation, as returned in the inventory to the Probate Court, was $11,500; and that the value of the land allotted to Mrs. Garland, under the name of Lower Barrens, was $5,000; and if the rents of the plantations corresponded to the valuations, then, of the rents of $8,000, for the four years, the Tudor Hall rent would be $5,702.50, and the rent of Lower Barrens, $2,297.50. A large proportion of the 40 slaves of Mrs. Morriss and her children were hired out under the direction of Burr Garland. The proportion which the hires of these slaves bore to the hires of the whole 236 slaves can be readily ascertained. It is very easy to show that the interest of Mrs. Morriss and her children amounted to more than one-third of the profits in the 9th clause of the will. We do not deem it necessary, however, to pursue this inquiry further, and we submit that they are entitled to one-third of

$15,020—the profits under the 9th clause for the years 1863 and 1864—and to one-third of $8,000—the estimated amount of the rent of Tudor Hall for the four years, 1866, 1867, 1868, 1869.

4. It was error to hold that there was no indebtedness to Mrs. Garland.

In Hutchison v. Hill, 92 Va. 327, where the question involved the construction of the will of Henry Waugh, in relation to the rights of the widow of Henry Waugh under a clause of his will almost identical with the 9th clause of Samuel Garland's will, Judge Keith said: (p. 335) "By the words contained in this clause it was evidently the purpose of the testator that his widow should be supported in comfort out of the profits and income which could be realized from the plantation and its products, and that his executor was to exercise a sound discretion in managing

the estate and providing for her wants. Whatever was realized over and above what was required for the maintenance and support of his widow was to go to his residuary legatees."

Judge Harrison dissented from this opinion, but his dissent went only to the point that the widow had no vested interest, but (p. 337-8) "merely a right of user of a limited extent." He recognized the doctrine that after the executor had provided for her comfortable maintenance, the surplus belonged to the residuary legatees.

The 9th clause of Samuel Garland's will provided for the "decent maintenance" of Burr Garland out of the plantation Tudor Hall, etc., and the surplus profits belonged to the residuary legatees. By the 10th clause of his will, as his intent, he declared that the "first," and of course the paramount, interest in the surplus was the legacy to the children of Mrs. Morriss. Hence, if the construction put upon the clause by the Court of Appeals in Garland v. Garland is sound, she and her children are entitled to one-half of the surplus profits, and Mrs. Garland is entitled to one-half. Mrs. Garland's right vested in her as a distributee of her husband, Samuel Garland, Sr., and under the statute of Mississippi, became hers as soon as she elected to renounce the will, and was set off to her by the assignment and allotment. That was on the 8th day of September, 1864. (Part 5, p. 16-19.) By the statute of

Mississippi (Part 5, p. 107) she was entitled to "reside in the dwelling house of the deceased, and have the use of the furniture, and to receive provisions and other necessaries for herself and such of the family of the deceased as usually resided with him, all necessary servants, and also a reasonable allowance, not exceeding three thousand dollars for one year * * * to be provided by the executor or administrator, and charged on the estate," and this, it will be noted, is prior to the payment of debts. (Griffith's Mississippi Chancery, p. 469.) The inventory that was made did not include the dwelling house of the deceased, or an allotment of the mansion house and curtilage; for Mrs. Garland had previously taken possession of it, and it was her statutory right to hold it, freed from all the other interests of all the heirs and legatees.

Mrs. Garland had the right, under the statute, to this allowance of $3,000. Why she delayed demanding it, we do not know. We suppose she found herself unable to exercise this privilege, her husband's estate being widely separated into two parts, one in Virginia and the other in Mississippi, and as she had a right to reside in Mississippi for the year for which she was entitled to an allowance, and as it would be very inconvenient to remain in Mississippi for so long a time, she gave up the right and took, instead, $3,000, and no one questioned her right to take it.

After the allotment to Mrs. Garland, the Administrator deducted $3,000 from the balance due by him. (Part 5, p. 112.) But, if, for any reason, she should be required to account for $3,000, the account should also show a credit for the exempted articles of household furniture and kitchen utensils exempted to her by the statute to the amount of $250, (Part 5, p. 107, sec. 5) for they were a part of the personal estate, and were not inventoried.

(Part 5, p. 16-21)

The Commissioner says: (Part 5, p. 112) "After a careful examination of the question, your Commissioner is of the opinion that Mrs. Garland is liable to account for this item ($3,000) and the $250, the value of the household goods exempted to her, and it will be so treated in this account hereafter in ascertaining the respective rights of Mrs. Garland and Mrs. Morriss' children, as

against the balance of the $64,130.88." Mrs. Garland died on the 18th of August, 1893, leaving W. C. Carrington, Jr., Administrator of her estate (Rec. 51) the sole Defendant to answer for her in this suit.

Whether Mrs. Garland is debtor to the estate depends altogether upon whether she is entitled to any part of the balance of $64,130.88, for if she is not, then there is no account to be stated with her. She is not a legatee. The Circuit Court decided that she is not entitled to any part of said balance, that she has no interest in the estate and in the litigation over it, and the Court decreed that the Administrator of Charles Y. Morriss and Mrs. Morriss' children should pay Plaintiff's costs in the suit, but made no order for Mrs. Garland to pay any costs; and the Court also decreed that the residuary legatees (Part 5, p. 142) should receive the sum of $27,376.35, the whole fund that has come into the hands of the Receivers, without reserving any part for Mrs. Garland.

We contend, not only that she is entitled to her half of the profits that Burr Garland made, and which are embraced in the final settlement for $64,130.88, but that his purchase of the legacies to the children of Nicholas A. Garland, if valid, enures to her benefit. And, if these positions be tenable, and we insist that they are, then we pray the Court to decree that the $3,000 and the $250 be deducted from her share.

5. It was error to hold that Mrs. Garland's rights were barred by limitations.

The statute of limitations of Mississippi is ten years. (Part 5, p. 108.) Her right of action accrued in 1864. Burr Garland died the 4th of June, 1869. (Part 5, p. 48.) M. J. Day qualified as trustee for Mrs. Morriss and her children in March, 1876, (Part 5, p. 1) and he was not required, and did not qualify, as administrator of Burr Garland until 1892, after the decision of the Court of Appeals in Garland v. Garland; and he was not then appointed by any proceedings in Mississippi, but by the Circuit Court of Lynchburg. (Part 5, p. 119.) So that from the 4th of June, 1869, to the 17th of June, 1892, Burr Garland's estate was without an administrator, and there was no one on whom Mrs. Garland could serve process

missioner's failing to report the indebtedness, as best he could, under the circumstances. If a trustee mingles trust funds with his own, keeping no account of them, and produces no evidence of credits to which he is entitled, the cestui que trust takes the whole of the trust funds, free from any deduction—the loss falls on him whose fault causes the loss.

In Lupton v. White, 15 Vesey 432, Lord Eldon said: (p. 440) "The decision was made, not on the notion that strict justice was done, but upon this: that it was the only justice that could be done; that no more could be done was the default of Jackson (the Trustee) himself, who, if he did not enable those parties to know what demand they had upon him, could not be heard to say he had any demand on them."

In Hart v. Ten Eyck, 2 Johns. Chy. 62, Chancellor Kent said: (p. 108) "If a party having charge of the property of others so confound it with his own, that the line of distinction cannot be traced, all the inconvenience of the confusion is thrown upon the party who produces it, and it is for him to distinguish his own property, or lose it."

In the absence of all account of the profits from the Tudor Hall plantation after the war, what better can we do than to show its annual rental value? It was a very fine cotton plantation of 1,500 acres, with 113 slaves, (Part 5, p. 10) 30 head of mules, 4,000 bushels of corn, and a crop of cotton made in 1862, together with the Barrens, of 400 bales.

In Bolling v. Lersner, 26 Gratt. 36, where a vendor held over after he should have delivered possession, keeping no account of rents, issues and profits, our Court of Appeals held: (syl. pl. 7) "In estimating the rents and profits of the land thus held by the vendor, the annual value of the land in the hands of a prudent and discreet tenant, upon a judicious system of husbandry, is the proper rule in the case."

We proved the actual rent in 1869, collected and paid to Burr Garland's Mississippi Executor, and, leaving out 1865, we proved that for each of the years 1866, 1867 and 1868, the rental value was as much as it was in 1869, and that by the acreage in cultivation it was worth more than it rented for in 1869.

In White v. Stuart, Buchanan & Co., 76 Va. 546, the difficulty in estimating the rents was much greater than in our case, but in the fall of 1868 there was an actual renting for 1869. The Court held (syl. pl. 7) "that for 1867 and 1868 the fairest test of rental value is the sum for which the property was rented in the fall of 1868."

The Commissioner held (Part 5, p. 103) that though we proved the actual rent in 1869, and that it was paid to Burr Garland's Mississippi Executor, yet his estate was not indebted for it, and the Virginia assets could not be subjected to its payment.

Art. 20, p. 344, Rev. Code of Miss., 1857, provides that when a tenant for life dies after the rent is due, "his Executors or Administrators may recover from the under-tenant the whole rent due in an action of assumpsit, or other proper form of action. If he die before the day when any rent is to become due, they may recover in like manner the proportion of the rent which accrued before the time of his death."

By our Virginia statute, in case of the death of a person entitled to leased premises for an uncertain period, dying between the first of March and the last of December, as it formerly stood, or dying any time, as it stands now, the rent must be collected by the personal representative of the decedent ; but both in Virginia and in Mississippi, the rent should be apportioned between those entitled to the premises.

As Burr Garland regarded the profits as his own, he no doubt contracted for the rent to be paid to himself individually, and both by the common law and by the statute, it would be incumbent on his Executor to enforce his contracts. The profits by the 9th clause of the will were set apart in the hands of the Executors of Samuel Garland, Sr., but on Burr Garland's qualification, they were set apart in his hands, and he then undertook to deliver these profits at his death to Charles Y. Morriss, Trustee for Mrs. Morriss and her children. The performance of this duty devolved on his Executor, and required his Executor to collect the rent that accrued up to the day of Burr Garland's death, and deliver it to those who were entitled to it.

4. It was error to hold that there was no indebtedness to Mrs. Garland.

Mrs. Garland, on her renunciation of the will, became entitled, as of the day of the death of Samuel Garland, Sr., to half of his estate in Mississippi, real and personal, and being entitled to

half of the estate, she was entitled to half of the profits that accrued on the estate prior to September, 1864, when half of the real estate and half of so much of the personal estate as then remained were allotted to her, and from that time to the death of Burr Garland, who continued to hold what was allotted to her as Administrator of Samuel Garland, Sr., with his will annexed, she was entitled to such rents, issues and profits as accrued on the half of the real and personal estate then allotted to her.

We would think this too plain for argument or authority, if opposing counsel had not contended, and the Commissioner had not held, and the Court had not decided, to the contrary.

In Curtis v. Curtis, 2 Brown's Chy 620, Lord Chancellor Thurlow said: (p. 632) "The mesne profits are her subsistence from the time of her husband's death, and the course of this Court seems, therefore, to have been to assign her dower, and universally to give her an account from the death of her husband."

In Oliver v. Richardson, 9 Vesey 222, Sir William Grant said: (p. 223) "The widow is prima facie entitled from the time her title accrues, * * * and the decree directed the account from the death of her husband."

In Hazen v. Thurber, 4 Johns. Chy 604, Chancellor Kent said: "The widow is entitled to the value of the mesne profits arising from the use of the undivided third part of the premises whereof her husband died seized; and the account is to be taken from his death, exclusive of the improvements since made thereon."

In Swaine v. Perine, 5 Johns. Chy 482, Chancellor Kent said: (p. 488) "The course of the Court has been to assign her dower, and, universally, to give her an account of the mesne profits from the death of her husband."

In Macaulay v. Dismal Swamp Land Co, 2 Rob. 507, our Court of Appeals said: (p. 531) "In equity, the account of mesne profits is usually given from the time of the husband's death, the

widow being prima facie entitled from the time her right to endowment accrued."

We have not the Mississippi Reports at hand, but the Revised Code of Mississippi, 1857, is lying before us, and that says: (Art. 162, p. 467) "When any person shall die intestate, * * * the widow shall be entitled to dower, * * * but if there be no child or children of such testator, or intestate, nor descendants of them, then the widow shall have as her dower one-half of the real estate aforesaid in fee simple." Art. 163: "When a husband dies intestate" * * * his widow shall be entitled to share in the personal estate," &c.

As the shadow follows the substance, as the interest goes to him who is entitled to the principal, so the products of the estate goes to him who is entitled to the estate. What is settled as true in equity and justice in England and in New York and in Virginia is true in Mississippi, too. It is true everywhere, and in all time.

1. In the division in September, 1864, in Mrs. Garland's share of the crop of that year, was 15,000 pounds of seed cotton, equal to 12 bales in the lint. The average of the sales in the third ex parte account is $109.01 per bale. At that rate the 12 bales were worth $1,308.12, and in this sum Burr Garland, Administrator of Samuel Garland, Sr., was indebted to Mrs. Garland.

2. The division of the personal estate which was left in September, 1864, did not embrace anything in Burr Garland's administration accounts.

The Commissioner reported the profits in Accounts No. 1 and No. 2 to be $12,020, and this, with the collection of one debt to the Testator and for teams and wagons impressed by the Confederate government, made an aggregate surplus of $15,020 which went into the balance of $64,130.88 as good money, and for one-half of it, that is for $7,510, Burr Garland on his administration was indebted to Mrs. Garland.

3. The third ex parte account (Part 5, p. 54) is headed: "In United States currency." If the products contained therein had been estate of Samuel Garland, Sr., as the Commissioner reported, then for half of the balance of $6,545.09, and $2,045.33 interest

thereon, and $1,289.86 disbursements in said account disallowed, (Part 2, p. 47)—aggregating $9,880.28, that is for $4,940.14, carried into the $64,130.88, Burr Garland in his administration would be indebted to Mrs. Garland; but if we are right in our position that the cotton from the Barrens plantation in 1866 and 1867 belonged to Mrs. Garland, then for $9,880.28, less $639.72

proceeds of the sale of the four bales of cotton which do not appear on the face of the account to have come from Barrens, Burr Garland on his administration is indebted to Mrs. Garland.

4. The Commissioner reported (Part 5, p. 110) the money paid by Burr Garland to Nicholas A. Garland's children for their legacies in 1869, with interest to the 15th of February, 1874, amounting to $5,572.23, as if it were then paid to the Virginia Administrator of Samuel Garland, Sr., on the decree for $64,130.88. If that be so, Mrs. Garland is entitled to half of it, that is, $2,786.12.

5. The Commissioner reported, (Part 5, p. 104) and the Court decreed, (Rec. 42, Trans. 141) $2,840.92, assets of the estate of Burr Garland, on the draft of Aiken & Watt that came to the hands of his Virginia Administrator, to be applied in part satisfaction of the decree of $64,130.88. Mrs. Garland would then be entitled to half of that recovery, that is, $1,420.46.

6. If we be right in our position that Burr Garland acquired the legacies of Nicholas A. Garland's children, now worth (Part 5, p. 109) $37,506.67, and we add this to the $2,840.92, money on Aiken & Watt's draft, we have $40,347.59, assets of Burr Garland's estate. Now, if the Virginia Administrator of Samuel Garland, Sr., is entitled to recover these assets in part satisfaction of the decree for $64,130.88, as claimed in the Bill in the second suit, and there be no such indebtedness to Mrs. Garland, as we have contended for in the five next preceding points we have made in her behalf, yet, still, if this $40,347.59 were recovered, she would be entitled to half of it, that is, to $20,173.75.

5. It was error to hold that Mrs. Garland's rights were barred by limitations.

Samuel Garland, Jr., surviving Executor of Samuel Garland, Sr., filed his Bill in the first suit, within six months after the death

of Samuel Garland, Sr., making Mrs. Garland a Defendant. She answered, (Part 1, p. 15-7) averring her renunciation of the will in Virginia and in Mississippi, and claiming all that she was entitled to in Virginia and in Mississippi.

After the death of Burr Garland, the Administrator of Samuel Garland, Sr., filed his Bill in the second suit against Burr Garland's Virginia Administrator and Mrs. Garland, seeking to subject

the legacies of Nicholas A. Garland's children and the money on Aiken & Watt's draft, in part payment of the Mississippi decree for $64,130.88—virtually a creditor's Bill, and Mrs. Garland answered it, (Part 4, p. 13-5) claiming all her rights in the estate of Burr Garland, as well as in the estate of Samuel Garland, Sr.

These are the two suits now pending in the present appeal—the first to wind up the estate of Samuel Garland, Sr., the second a branch of the first, to wind up the estate of Burr Garland, and his administration on the estate of Samuel Garland, Sr. In neither of these suits has laches or limitations been put in issue by any pleading.

Surely we need not trouble the Court with authority or argument on this question.

6. It was error to decree that Mrs. Garland should pay to the Administrator of Samuel Garland, Sr., $2,840.92.

In the answer of Mrs. Garland, (Part 4, p. 15) it is expressly averred that all debts of Samuel Garland, Sr., have been paid; that Mrs. Garland's rights are paramount to that of every legatee, and she prayed that what she was entitled to should be decreed directly to her.

Whatever may be personal estate of Samuel Garland, Sr., no matter from what source it may come, Mrs. Garland is first entitled to take her half. His estate is, in contemplation of law, the estate of an intestate till her half is carved out. To the residue alone can his legatees look for the satisfaction of their legacies, according to the priorities prescribed in his will.

We think we have shown in the preceding discussion, under the fourth assignment of errors, that Mrs. Garland should receive very much more than the $2,840.92, being the principal and interest thereon of the moneys that came to the hands of Burr Gar-

land's Virginia Administrator. It was error to require her to pay this amount, when there should have been decreed to her very much more. It is the special province of Courts of Equity, in winding up the estates of decedents, to balance the accounts of distributees, and decree the balance to him whose claim is the larger.

On the recovery of $2,840 92 on the Mississippi decree for $64,130.88, if Mrs. Garland had no other claim, she would have been entitled to half of it, that is to $1,420.46.

7. It was error to hold that Mrs. Garland should now account to the estate of Samuel Garland, Sr., for the $3,000, the one year's allowance, and the $250, the valuation of exempted articles under the Mississippi statute.

The Commissioner reported (Part 5, p. 116) that Mrs. Garland should be held to account for the $3,000 and the $250 that she had improperly received.

Under the Mississippi statute (Rev. Code of Miss., 1857, p. 469, Art. 172), the widow is entitled to the personal estate of the husband, that is exempt from execution and distress, and one year's allowance of provisions, or money in lieu thereof, and (p. 452, Art. 110) that though the domicil be in another State, "the widow of such deceased person shall take her share in the personal estate according to the laws of this State."

There was allowed to Mrs. Garland $3,000 in lieu of the provisions, and exempted articles valued at $250, and the report thereof was confirmed by the Probate Court. Part 5, p. 22. John F. Slaughter took an appeal. The decision of the Appellate Court (40, Miss. 172) was, that on her renunciation, Mrs. Garland took only such portion of the personal estate in Mississippi as is allowed by the laws of the domicil of her husband.

In the final settlement of Burr Garland's administration account, there was an objection (Exception 18, Part 2, p. 31-2) to credit being given to him for this payment—the figures being given through mistake as $3,050 instead of $3,250—on the ground that the confirmation of this allowance had been reversed on appeal. This Exception was afterwards withdrawn, (see statement by the

Court, (p. 44) and this payment was credited to Burr Garland in the final settlement. p. 48.

The $250 is considerably less than the value of exempted articles under our Virginia statute; but all question as to the $250 and the $3,000 has been settled by the withdrawal of the exception and the decree of the Court in Mississippi the 25th of February, 1874. The report of

Commissioner Sackett and its confimation by the Court in its decree of the 12th of February, 1895, is an inadvertent error.

8. It was error to hold that Mrs. Morriss and her children should pay the costs of the Administrator of Samuel Garland, Sr.

Mrs. Morriss and her children were legatees of Samuel Garland, Sr., in the fifth and ninth clauses of his will. They were made Defendants in the first suit, and the Court was asked to construe the will, referring specially to these clauses. In the second suit the Court of Appeals required the Administrator to make these legatees parties, and reserved their rights from prejudice, as to anything done before they were made parties.

In the proceedings in Mississippi, while the costs were ordered to be paid by Burr Garland's Executor, they were ordered to be credited to Burr Garland out of the assets of the estate of Samuel Garland, Sr. In Morriss v. Garland's Administrator, 78 Va. 215, the costs were ordered to be paid out of the assets of the estate of Samuel Garland, Sr. In Garland's Administrator v. Garland's Administrator, 84, Va. 181, the costs were ordered to be paid out of the assets of the estate of Burr Garland. In Garland v. Garland, 87 Va. 758, the costs were ordered to be paid out of the estate of Samuel Garland, Sr. In no instance in all this litigation, prior to the decree of the 12th of February, 1895, now appealed from, has there ever been a personal decree against any party for costs.

When it becomes necessary for an Administrator to bring the distributees or legatees before the Court, to have their rights adjudicated, and to administer the estate under the supervision of the Court, the costs are charges of administration, and by our statute are to be paid the assets of the estate, not only in prefer-

ence to the claims of distributees and legatees, but in preference to the claims of creditors of the estate.

The rule in equity is, that whenever any fiduciary finds it necessary to bring the beneficiaries into Court to have their rights in the fund adjudicated, the fund pays the costs of the fiduciary.

In Jolliffe v. East, 3 Brown's Chy 25, Lord Chancellor Thurlow said: (p. 27) "As to the costs of the suit, wherever a testator has expressed himself so ambiguously as to make it necessary to come into this Court, his general assets must bear the costs."

In Rogers v. Ross, 4 Johnson's Chy 608, Chancellor Kent said: (p. 609) "It has been frequently held that costs ought to be charged on the general assets of a testator, or upon the fund created by his will, if the will be so drawn as to create difficulty, and render a resort to this Court advisable."

In Roy v. Roy, 16 Gratt. 418, the probate of a will was resisted, and the Court ordered (p. 423) "that the cost of both parties in said Circuit Court be a charge on, and to be paid out of, the estate of said decedent."

No claim was asserted against Mrs. Morriss and her children, and no default was alleged against them. The Administrator of Samuel Garland, Sr., sought to ascertain the legacies they were entitled to receive from him. They have incurred considerable expense in bringing before the Court evidence of their legacy under the 9th clause of the will. The decree says, in effect, they shall pay what it cost them to establish their legacy, and they shall pay what it has cost the Administrator of Samuel Garland, Sr., to ascertain their legacy, and in addition to that, they shall pay the cost of the Administrator of Samuel Garland, Sr., to recover the moneys that Burr Garland's Virginia Administrator received, and to recover the legacies of Nicholas A. Garland's children that Burr Garland purchased to be applied in part satisfaction of the Mississippi decree for $64,130.88, and pay the cost of the Administrator of Samuel Garland, Sr., to ascertain from the Court how to distribute such recovery among those entitled to receive it.

Now, we ask, is there any equity or justice in selecting Mrs. Morriss' Administrator and her children, among the legatees of

Samuel Garland, Sr., and putting on them the burden of the cost which the Administrator of Samuel Garland, Sr., has incurred in this suit?

His cost was taxed at $239.87, and though notice of this appeal (Addition to Record, p. 2) had been given to his counsel, yet execution was issued, and payment was enforced, (Rec. 44-5, Trans. 142-4) leaving $71.44 cost adjudged against the Administrator of Samuel Garland, Sr., in Garland v. Garland, 87 Va. 758, in favor of these legatees unpaid. Part 5, p. 111.

We insist that for this error, also, the decree should be reversed, and restitution made to Mrs. Morriss' Administrator and her children for the costs thus wrongfully enforced from them.

9. It was error to decree that the Receivers should deliver all the money, bonds and other estate in their hands to the Administrator of the residuary legatees.

On settlement of the accounts of John F. Slaughter, it was found that at his death, he had in his hands, as Executor of Samuel Garland, Jr., $20,198.08, and as Administrator of Charles R. Slaughter, $7,178.27, balances into which we have traced $4,000 of the Testator's East Tennessee and Virginia Railroad bonds, besides $4,500 of them that had been sold, and $3,000 of them that were unaccounted for. These balances were ordered to be paid to R. T. W. Duke, Jr., and J. Singleton Diggs, Receivers, who were authorized to lend them out on interest-bearing securities, and they now amount to about $30,000, and were thus taken into the custody of the Court, expressly to await the adjudication of the claims of Mrs. Garland and Mrs. Morriss and her children, whose claims were paramount to those of the residuary legatees.

The decree of the 16th of May, 1895, (Rec. 43-4, Trans. 142) directs these Receivers to deliver "to J. Singleton Diggs, Administrator of Samuel Garland, Jr., and the same as Administrator of Charles R. Slaughter, all the money, bonds and other estate in their hands, as such Receivers." The effect of this would be a distribution among the legatees and distributees of the deceased residuary legatees of Samel Garland, Sr., of these moneys, while the rights therein of Mrs. Garland and of Mrs. Morriss and her

children, paramount to those of the residuary legatees, are being adjudicated. Its effect is to empower the stakeholder to make away with the stakes before the contest is decided. Its effect is to defeat the purpose of the parties in putting the funds in the custody of the Court, and to prevent the Court from giving Mrs. Garland and Mrs. Morriss' Administrator and her children the benefit of a decision in their favor. The error in this decree combines in its scope the evil consequences of all previous errors, and we insist that the decree be reversed.

10. It was error not to hold that the legacies bought by Burr Garland, now worth $37,506.67, and the money in the hands of his Virginia Administrator, now amounting to $2 840.92—together, $40,-347.59—are assets of his estate; that the profits for which he was indebted to Mrs. Garland, and for which he was indebted to Mrs. Morriss and her children, which entered into the $64,130.88, ordered to Virginia for distribution, should be subtracted therefrom; and that the

assets should be apportioned pro rata to the indebtedness to Mrs. Garland, and to the indebtedness to Mrs. Morriss and her children, and to the indebtedness on the balance of the $64 130.88; and that the pro rata on said balance, being additional assets of the estate of Samuel Garland, Sr., should be divided, half to Mrs. Garland and half to the residuary legatees.

We have discussed the rights of Mrs. Garland, the rights of Mrs. Morriss and her children, and the rights of Nicholas A. Garland's children. We have seen that Mrs. Garland takes her half of the assets of the estate of Samuel Garland, Sr., irrespective of the legacies in his will, and that Mrs. Morriss and her children take their legacy under the 9th clause, in preference to all the legatees in the subsequent clauses, and that Nicholas A. Garland's children take their legacies before the residuary legatees can take anything. This is the order in which the parties take their rights in the estate of Samuel Garland, Sr.; but we must remember that in these suits the Court is also administering the estate of Burr Garland, and we must not lose sight of this discrimination in the complication resulting from his administration on the estate of Samuel Garland, Sr. In raveling this tangled hank, our first stage is to ascertain the assets of Burr Garland's estate.

1. The rights of Nicholas A. Garland's children to the East Tennessee and Virginia Railroad bonds bequeathed to them is paramount to, and exclusive of, the rights of the residuary legatees in said bonds; and as the rights of Nicholas A. Garland's children were transferred to Burr Garland, and at his death devolved on his Administrator, it is the right of Burr Garland's Administrator now to demand from the Administrator of the estate of Samuel Garland, Sr., these bonds as assets of the estate of Burr Garland. As John F. Slaughter, Administrator of Samuel Garland, Sr., had more of these bonds than was necessary to satisfy these legacies, and as he, without providing for these legacies, transferred a large amount of these bonds to himself, as the personal representative of the residuary legatees, and sold a large amount of them, and left a large amount of them unaccounted for, he committed a devastavit for which the estate of Burr Garland is entitled to compensation.

The Commissioner reported the present value of the legacies that Burr Garland purchased at $37,506.67. Let this, then, be taken as the compensation to which the estate of Burr Garland is entitled, and for which the estate of John F. Slaughter is liable. The raising of the amount necessary to meet this liability was adjusted, as between the estate of John F. Slaughter and the respective estates of the residuary legatees, in the decree of the 20th of November, 1893. Ante. p. 22, and Rec. 39-40, Trans. 136-7. Adding to this $37,506.67 the $2,840.92, the present amount of the money in the hands of Burr Garland's Administrator, we have $40,347.59, assets of Burr Garland's estate to be applied in due course of the administration of his estate.

2. Our next stage is to classify and settle the respective amounts of Burr Garland's indebtedness on his administration of the estate of Samuel Garland, Sr. (a) Mrs. Garland is entitled to her half of the estate and of the profits, (b) Mrs. Morriss and her children are entitled to the rents and profits in the legacy under the 9th clause of the will, and (c) the residuary legatees are entitled to what is left.

We will illustrate our views, as to the application of the principles for which we contend, by brief statements, without com-

putting interest, and without perfect accuracy in the figures for the principal sums—more accuracy may be attained in working out the details when the principles have been settled by the Court.

(σ) INDEBTEDNESS TO MRS. GARLAND:

Half of the surplus in the first and second ex parte accounts

(1863 and 1864)—half of $15,020—carried into the $64,130.88. $7,510 00

Ninty-six bales of cotton from Barrens in 1866 and 1867 in

the third ex parte account—take the balance of $6,545.09

and $2,045.33 interest thereon, and $1,289.86. disbursements,

carried into the $64,130.87, together, $9,880.28, and subtract

$639.72, sales of the 4 bales which do not appear from the

account to have come from Barrens—making..... $9.240 56

Due from Burr Garland, and carried into the $64,130.88..... $16,750 56

15,000 pounds seed cotton in the division in September, 1864,

equal to 12 bales, not carried into the $64,130.88, at $109.01

per bale, average sales in the third ex parte account..... $1,308 12

Debt to come into the pro rata of Burr Garland's assets... $18,058 68

(b) INDEBTEDNESS TO MRS. MORRISS AND HER CHILDREN:

Take $7,510, the other half of the surplus in the first and second ex parte accounts and subtract $1,779.80, half of all the hires, and $2,322, half of $4,644 collected on the debt to the Testator in the first account, and we have profits from Tudor Hall plantation carried into the $64,130.88..... $3,408 20

Rent of Tudor Hall plantation, 1866-'9 (four years) not carried into the $64,130.88..... ..... $8,000 00

Debt to come into the pro rata of Burr Garland's assets... $11,408 20

(c) REMAINING INDEBTEDNESS OF BURR GARLAND:

Balance decreed the 25th of February, 1874, to be transmitted to Virginia for distribution..... $64,130.88

Indebtedness to Mrs. Garland, included therein ..$16,750 56

Indebtedness to Mrs. Morriss and her children, included therein $3,408 20

$20,158 76

Subtract this sum.....

Balance of Burr Garland's indebtedness to come into the pro rata of his assets..... $43,972 12

3. If from the $40,347.59 assets of the estate of Burr Garland we deduct $18,058.68 for Mrs. Garland's profits, because she takes her profits irrespective of any legacies, and then deduct $11,408.20 for Mrs. Morriss and her children because they take the profits in the legacy under the 9th clause of the will in preference to all

subsequent legatees, there would remain $10,880.71 of assets of Burr Garland's estate for apportionment; but if the assets of the estate of Burr Garland in the administration of his estate

should go to his indebtedness (all being fiduciary) pari passu, then the assets should be apportioned thus:

Debt to Mrs. Garland..... $18,058 68, her pro rata..... $9,921 25

Debt to Mrs. Morriss and her

children..... $11,408 20, their pro rata... $6,267 74

Balance of debt to estate of

Samuel Garland, Sr..... $43,972 12, pro rata to estate

of S. Garland, Sr... $24,158 60

Total debt..... ..... $73,439 00 Total assets... $40,347 59

4. If the assets of the estate of Burr Garland be apportioned as above, it will give $24,158.60 additional assets to the estate of Samuel Garland, Sr. This results from charging against Burr Garland in the final settlement all the inventory recorded the 9th of January, 1863, including $16,000 for the crop of cotton of 1862 and $3,000 in addition, which it was charged he had received on the sale of it before it was burnt, and giving him no credit for $29,874.25 loss in personal estate by the war before the inventory in September, 1864, was taken. In the estate thus lost, and in the additional assets thus acquired, Mrs. Garland has never received her share, and she is now entitled to her half of the recovery of the $24,158.60, that is to $12,079.30, and the residuary legatees are entitled to the $12,079.30 that is left.

If the whole $40,347.07 assets of Burr Garland's estate had been recovered on the Mississippi decree without recouping any profits for Mrs. Garland and for Mrs. Morriss and her children, yet, in the additional assets thus recovered for the estate of Samuel Garland, Sr., Mrs. Garland would be entitled to her half, that is to $20,173.53.

CONCLUSION.

It was the Testator's scheme to give to the niece of himself and his wife, their adopted daughter, 40 slaves and a Mississippi plantation, well stocked with mules and cattle, and to give to his residuary legatees, his nephews, each, about 100 slaves and a Mississippi plantation, well stocked with mules and cattle, and to give them the residue of his corporate bonds and stocks in Virginia. The residuary legatees got a fortune in the bonds and stocks in Virginia; but the

Testator's scheme fell far short in Mississippi of what he contemplated, in consequence of the war and the renunciation of his will. The 236 slaves and $29,874.25 of other personal estate, were swept away by the war. The foresight, the prudence and the economy of Burr Garland could not prevent this loss. It fell on Mrs. Garland, it fell on Mrs. Morriss and her children, and it fell on the residuary legatees. In the division in September, 1864, Mrs. Garland got no part of the $29,874.25 worth of personal estate that was lost. After she took out her half of what remained, there was not enough left for Mrs. Morriss and her children to get all the articles specified in their legacy, and there was no personal estate left for the residuary legatees.

Charging against Burr Garland the amount of the first inventory, and the sales of the products after the Testator's death, and the expenses of making those products, with no credit to him for the immense and inevitable loss of personal estate, other than the slaves, that occurred, brings in lieu thereof additional assets of the estate of Samuel Garland, Sr. It is wonderful to see how these extraordinary proceedings have swallowed up the assets of the estate of Burr Garland, and brought new assets to the estate of Samuel Garland, Sr., in place of his estate that was destroyed during the war. Mrs. Garland is entitled to half of these new assets just as she was entitled to half of the estate that was destroyed.

For the manifold errors in the decrees complained of, we insist that said decrees be reversed.

EDWARD S. BROWN,

WM. J. ROBERTSON,

for the Appellants.

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GARLAND'S ADM'R VS. GARLAND'S ADM'R.

D. M.—58 Ba.

In the Circuit Court of the City of Lynchburg.

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IN THE

Supreme Court of Appeals

OF VIRGINIA.

RICHMOND.

GARLAND vs. GARLAND.

To the Honorable Judges of the

Supreme Court of Appeals of Virginia:

Your petitioners, M. J. Day late Sergeant of the city of Lynchburg, and as such adm'r of Burr Garland, and trustee for Mrs. Morriss and her children Mary L. Garland W. V. Wilson adm'r of Pauline B. Morriss Garland Morriss in his own right and as adm'r of Mrs Y Morriss; Walter R. Morriss, Lawrence B. Morriss, Elizabeth A. Courtney, Juliette Cornelia Smith, Jno. P. Cocke adm'r of Chas. Y. Morriss, Jr., and adm'r of Wm. M Morriss; D. S.Cates Sheriff of Richmond, and as such adm'r of Richard G. Morriss; S. H. Johnson, Sergeant of Lynchburg, and as such adm'r of Mary A. Payne, and Sam'l G. Payne, infant son of Mary A. Payne, by W. V. Wilson, his next friend, respectfully represent that they are aggrieved by two decrees of the Circuit Court for the city of Lynchburg, in which your petitioners were defendants, and Sam'l Johnson, Sergeant of the city of Lynchburg, and as such adm'r of Sam'l Garland, Sr., and J. Singleton Diggs, adm'r of Charles R. Slaughter, and adm'r of Sam'l Garland, Jr., and John F. Slaughter, Jr., adm'r of Jno. F. Slaughter, were plaintiffs—one decree rendered the 12th of February 1895 in the suits of Sam'l Garland's Adm'r v. Mary L. Garland, &c., and Sam'l Garland's Adm'r v. Burr Garland's Adm'r, united, and another decree rendered the 16th of May, 1895, in the suit first mentioned.

These suits have been before the Court of Appeals several times on other questions than those now presented. In addition to those parts of the record printed at different times, your petitioners now exhibit herewith a transcript of such other parts as will enable the Court properly to decide the questions now presented, and they will now refer to the rec-

ord as part 1st, part 2d, part 3d, part 4th, and part 5th, observing the order in which the several parts have heretofore been printed.

The case is as follows:

Samuel Garland, Sr., lived in Lynchburg, Virginia. He died in November, 1861, and he left a large estate in Virginia and a large estate in Mississippi. His will was promptly proved and recorded in Lynchburg, Virginia, and Charles R. Slaughter and Sam'l Garland, Jr., who were his residuary legatees, and who were appointed as his executors, qualified in the Hustings Court of Lynchburg, Virginia, but neither of them ever qualified elsewhere.

In his Virginia estate there were about $400,000 of stocks and corporate bonds; many bonds of railroad companies, and a large amount of East Tenn. and Virginia railroad bonds. All of these stocks and bonds, including the East Tenn. and Virginia railroad bonds, came to the hands of his said executors.

Your petitioner, Mary L. Garland, is the widow of Sam'l Garland, Sr. She renounced the will, and having no children, she became entitled, on the renunciation, to her dower and to one-half of the surplus of the personal estate in Virginia, after the payment of funeral expenses, charges of administration, and debts, and to one-half of the estate in Mississippi, real and personal, in absolute right.

Charles R. Slaughter died early in 1862. At May rules, 1862, Sam'l Garland, Jr., the surviving executor, brought the first mentioned, exhibiting the will, and alleging the qualification of the executors, and that they had taken possession of the stocks and bonds aforesaid; that they were the residuary legatees; that the widow had renounced the will, which would "materially disappoint some of the other legatees to whom stocks and bonds had been bequeathed"; that the deficiency growing out of the renunciation should not fall alone on the residuary legatees, but should be borne ratably by all the legatees; and he made the widow and every other legatee than himself defendants, and prayed that the Court would decide all questions as to their rights, and order all proper accounts and decree the distribution of the estate of the testator among the parties according to their respective rights.

Your petitioners, or those whom they represent, answered the bill. The widow claimed all that she was entitled to on her renunciation. The others claimed all that was given to them, and denied that their specific legacies should be abated ratably with the residuary legacy, on account of any deficiency resulting from the renunciation.

This suit was before the Court of Appeals, first on the construction of the 5th clause of the will, and is reported under the style of Morriss' Trustee v Garland's Adm'r. The part of the record then printed will now be referred to as part 1st. The bill mentioned will be found at page 5, the will at page 9, Mrs. Garland's renunciation, page 13, her answer, page 15, Charles Y. Morriss and Paulina B. Morriss and other defendants' answers, page 17-24.

In the 15th clause of the will (Part 1st, p. 11) the bequest is as follows: "I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tenn. and Virginia railroad bonds, or others of equal value." The testator's East Tenn. and Virginia railroad bonds that came to the hands of his executors were much more than sufficient to satisfy the legacies to Nicholas A. Garland's children, and every other demonstrative specific bequest of his East Tenn. and Virginia bonds in his will.

Nicholas A. Garland had ten children. The bill alleged (Part 1st, p. 8) that as Nicholas A. Garland and his children were, at the time of the testator's death, and of the filing of said bill, "citizens of the State of Illinois, one of the United States of America," the bequest to them was void.

In the 9th clause of the will (Part 1st, p. 10) the testator "set apart in trust in the hands of his executors" one of his tracts of land in Mississippi, whichever his brother, Burr Garland, might choose, and 40 slaves, and mules, horses, oxen, hogs, plantation tools, provisions, and household and kitchen furniture, to be selected by Burr Garland, to make a complete estate. The profits of the estate to be set apart for Burr Garland's use, but neither the estate nor profits to be liable for his past debts or liabilities, or for future debts or liabilities, other than decent or comfortable support, and at his death all the property in this clause to pass to Charles Y. Morriss, in trust, for the separate use of his wife, Paulina B. Morriss and her children.

The 10th clause commences as follows: "After the fulfillment of all the above and foregoing devises, then I give," &c., and thus the testator made every legacy preceding the 10th clause a preferred legacy to be satisfied before any assets could be applied to any subsequent legacy.

In Morriss v. Garland (78 Va., 215), the Court of Appeals decided that on the renunciation of the will, the widow became entitled, not to one-half of each of the stocks and bonds, but to one-half of the surplus after the payment of funeral expenses, charges of administration and debts and the other half of said surplus must be applied in satisfying the legacies as provided in the will.

The result of this decision was, that any deficiency of assets caused by the renunciation in satisfying the legacies contemplated by the testator, must be borne first by the residuary legatees.

Sam'l Garland, Jr., in his bill (Part 1st, p. 7) alleged that it was his purpose to decline the trusteeship provided in the 9th clause of the will.

On the 14th of September, 1862, Sam'l Garland, Jr., died. On the 6th of October, 1862, John F. Slaughter qualified as adm'r d. b. n., with the will annexed, of Sam'l Garland, Sr., and as executor of Sam'l Garland, Jr., and he had qualified as adm'r of Charles R. Slaughter on the 3d of March, 1862. These qualifications were in the Hustings Court of Lynchburg, Virginia; but John F Slaughter never qualified on either of these estates anywhere else. It was thus that he became the personal representative of the estate of Sam'l Garland, Sr., and of the estates of each of his residuary legatees.

On the 18th of October, 1862, John F. Slaughter returned an inventory of stocks and corporate bonds of the estate of Sam'l Garland, Sr., that came to his hands, including 23 $1,000 bonds of the East Tenn and Virginia Railroad Co., and Sam'l Garland, Jr., had, on the 2d of September, 1862, distributed $5,000 of the testator's East Tenn and Virginia railroad bonds to Sam'l M. Slaughter, the legacy under the 14th clause of the will, which is the only demonstrative specific legacy of the testator's East Tenn. and Virginia railroad bonds bequeathed in his will, except the legacies to Nicholas A. Garland's children. (See extract from inventory, part 5, p. 90, and the decree 27th January, 1866, part 1st, p. 35, and extract from executorial account of Sam'l Garland, Jr., Trans. 129-30.

On the 6th of November, 1862, the will of Sam'l Garland, Sr., and the renunciation by his widow were recorded in Hinds county, Mississippi, and Burr Garland qualified as his adm'r in Hinds county, Mississippi, but he never qualified elsewhere, and no stocks or corporate bonds of the testator ever came to his hands.

On the 19th of April, 1869, John F. Slaughter purchased from two of Nicholas A. Garland's children their respective legacies of $1,000 each of the testator's East Tenn. and Virginia railroad bonds.

In the latter part of June, 1869, Burr Garland was in Illinois, and purchased the other legacies to Nicholas A. Garland's children of $1,000 each of the testator's East Tenn. and Virginia railroad bonds, which, with one of those legacies that he had purchased the 19th of February, 1869, made eight of the legacies of $1,000 each of the testator's East Tenn.

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and Virignia railroad bonds acquired by Burr Garland, and he took from them formal deeds, assigning the bonds to which they were entitled as follows:

"I do hereby sell and convey, transfer, and assign over to him, the said Burr Garland, his heirs or assigns, all my right and interest to a special legacy left to me as one of the children of Nicholas A. Garland, of the State of Illinois, by the last will and testament of my uncle Samuel Garland, deceased, late of the city of Lynchburg, and State of Virginia, it being a bond of the East Tenn. and Virginia Railroad Company, for one thousand dollars, part of the bonds of said company, or in other bonds of equal value; and I hereby authorize and empower the said Burr Garland to make use of my name, if need be, in the collection of said legacy bequeathed to me, as one of the children, of Nicholas A. Garland, in the said will, from John F. Slaughter, adm'r, with the will annexed, of the late Sam'l Garland, deceased, in the State of Virginia, and of record in the Hustings Court of the city of Lynchburg, in said State of Virginia, the whole of said legacy being yet due and unpaid. And we hereby authorize and direct the said administrator to pay over the same to the said B. Garland, his heirs or assigns." (Part 2d p. 62-3.)

From Illinois Burr Garland came to Virginia. He was hurt in some accident on the railroad, and died in Virginia in December, 1869. His will was recorded in Hinds county, Mississippi and

William H. Garland, who was appointed executor, qualified in Hinds county, Mississippi, where Burr Garland resided, but he never qualified elsewhere.

Charles Y. Morriss qualified in the Hustings Court of Lynchburg, Virginia, as the adm'r of Burr Garland, and executed bond with Mary L. Garland as his surety, but he never qualified elsewhere. Charles Y. Morris, adm'r of Burr Garland, received in Virginia, $1,479.94, from John T. Murrell, the balance, after paying funeral expenses and some small debts of Burr Garland, of proceeds of a draft for $1,773.26, drawn in New Orleans on New York, and deposited with said Murrell by Burr Garland, and said assignments of the eight legacies, each of a $1,000 bond of the East Tenn. and Virginia Railroad Company.

William H. Garland, executor of Burr Garland, received some assets in Mississippi, the amount of which is unknown. No information could be obtained from him. He abandoned the administration, and left the country, and he and his sureties are said to be insolvent.

On Burr Garland's qualification in Mississippi, as administrator of Samuel Garland, Sr., in November, 1862, he at once proceeded to have inventories taken of the personal estate in

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Mississippi. These inventories were taken in November 1862, and the 1st of January, 1863. The purpose which it distinguishes in the 9th clause. The papers from which the distinguishes which in the Hastings county (see records and so on through Memphis from Tennessee: and the returns to Memphis as of the above time, according to Memphis from Tennessee see as if it was records from there).

Those returns show persons all of them have to be examined of this extent to the purpose of this purpose and of said all in Hustings County are as follows Morriss. The Court adjourns to hearing them at Memphis: The Court next proceeds to Memphis to examine the lands of slaves after the death of Samuel Garland this property shall be recorded by 10th of Jan- uary 1863 and all the court slaves then appearing at Memphis. The Court adjourns from hearing and if there are slaves then appearing at Memphis County the next proceeds as appears and all of the said slaves are of another Memphis County.

Memphis. This action in the foregoing County them appearing at Memphis from lands in part (see part 2 p. 80-3). It was there examined at the property thereto under this act from Tennessee to appear that certain slaves (see in view). [Part 5 p. 80-1]. It also was to determine there a part of this act at Memphis County and slaves and determination was taken at Memphis records to Memphis and that all of these certain and therefore were among of the law land Memphis from lands and sales to Memphis and slaves. Part 5 p. 80-1.

Another example from Tennessee and Memphis the second part 5 p. 3 to determine if this was indeed said if this said that all lands that from their to determine certain or as in the records of the fact taken at the testimony of this certain or according of this certain or section in the certain of the distribution property of all the certain and the testament and the certain are according to the certain lands at of this certain land and if the certain or distribution to it as said a part 5 p. 31-1.

Again an September 1863 and inventory this taken of the personal estate of Sam'l Garland Sr in Mississippi-- all of them being in Hinds county-- for the purpose of measuring all of said to the same and a part of Hastings County and and persons all and then all that act to be determined and after therefore the Memphis determine of Memphis of the same certain and of this certain and certain was Memphis determine at the Federal Estate under then this certain. If this claim confirmed or according to the Property a Memphis all over this part of this determine at the Memphis and of then a part (see part. 2 p. 80-1) that this then a part 2 of that the certain as of the determine and the over or that the running of all at any certain lands of the purpose of distribution of this certain or of the distribution of of all certain as to the certain of to the certain to that then all of the certain and said part 5 p. 31-1.

Again in September 1863 and inventory this taken of the personal estate of Sam'l Garland Sr in Mississippi-- all of them being in Hinds county-- for the purpose of this testimony and certain of the Memphis there this certain or certain lands in the Memphis records and all of the purpose records all of said a determine or all this determine to be Memphis then all the Federal Estate under the Memphis. [Part 5 p. 101-2]

Taking the $100,820 from the $100,828 are this being the difference of $8-1-107 having the liens resulting from the occupancy of Memphis by the Federal forces, whatever any such or otherwise or not and Memphis of the form or all Memphis or any Memphis or of this Memphis County at this determine this Memphis all according to all that Memphis then all the Memphis and of this Memphis.

Dating the $100,820 from the $100,828 are having the difference of 88-1-107 having the liens resulting from the occupancy of Mississippi by the Federal forces whatever any such or otherwise or not.

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but one-half of the Coahoma tract; the widow getting the other half of that tract. See the inventory of September, 1864, and the allotment of the widow's half, part 5, p. 26-31; the half left to the estate, part 5, p. 31-4, and Burr Garland's selection under the 9th clause, part 5th, p. 34-41.

One half of the mesne profits—hires, rents, issues, and profits, between the death of Samuel Garland, Sr., and the allotment of one-half of his real and personal estate, belonged to the widow by virtue of her renunciation of his will.

Mrs. Morriss and her children were entitled to the profits on the demonstrative specific devise and bequest in the 9th clause of the will, accruing between the death of Samuel Garland, Sr., and the selection by Burr Garland, in September, 1864, subject to debts contracted by Burr Garland for his support.

Burr Garland returned three exparte administration accounts. One contained hires and proceeds of the sale of products from the lands and disbursements in 1863. One contained hires and proceeds of the sale of products from the lands and disbursements in 1864, and one contained proceeds of the sale of cotton from the Barrens tract, and disbursements after 1864.

After Burr Garland's death, proceedings were instituted in Mississippi against William H. Garland, his executor, for a final settlement of Burr Garland's administration on the estate of Samuel Garland, Sr., in Mississippi. The administrator of Burr Garland in Virginia had no knowledge of William H. Garland's abandoning his executorship, of his having left the country, and of his having made no provision to have the estate of Burr Garland represented in the final settlement. Under these circumstances there was charged against Burr Garland the aggregate amount of the inventories taken in November, 1862, which included the crops raised in 1862, and they added to this the balances on the ex parte accounts of products in 1863 and 1864, and of sales of cotton from Barrens after 1864, and $15,020 Confederate bonds in which Burr Garland had, during the war, invested Confederate currency; and thus they reached an aggregate amount of charges against him of $242,030.88, exceeding all the personal estate in Mississippi, left by the testator at his death, and the crops of 1862, by $42,706.68. They credited him with the appraised value of the slaves in the inventories of November, 1862, but they did not credit him with the appraised value in those inventories of cotton burned by the Federal forces, $16,000,

and mules, cows, hogs, and other property taken and destroyed, amounting to thousands of dollars, and thus a balance was obtained against Burr Garland, of $64,130.88, and on the 26th

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of December, 1874, a decree was rendered that William H. Garland, executor of Burr Garland, in Mississippi, should pay said balance of $64,130.88 to the legal representatives of said Samuel Garland, Sr., in the State of Virginia, to be by them paid to the persons entitled to receive the same under his will. See part 2d, p. 46-9, and 50-1, and John Shelton's dep., p. 67.

In September, 1880, John F. Slaughter, administrator of Samuel Garland, Sr., filed his bill in the Circuit Court for the city of Lynchburg, against Charles Y. Morriss, administrator of Burr Garland, in Virginia, and Mary L. Garland, his surety, alleging the death of Samuel Garland, Sr., the probate of his will, and its renunciation by his widow, the qualification of Charles R. Slaughter, who "took upon himself the administration of the estate of his testator, which was located in Virginia," but departed this life before it was fully administered; that Samuel Garland, Jr., qualified as executor, "and took upon himself the administration of the estate in Virginia, which had not been administered by the said Charles R. Slaughter, but before the estate was fully administered," he died; that on the 6th of November, 1862, the will was admitted to probate in Hinds county, Mississippi, and that letters of administration by the Probate Court of Hinds county, Mississippi, were granted to Burr Garland, "and he took upon himself the entire management and administration of the said estate in Mississippi; that Samuel Garland, Jr., filed his bill in the Circuit Court for the city of Lynchburg, "against all the legatees and devisees of Samuel Garland, Sr., for the purpose of having a construction of the will of the testator, and the estate administered under the direction of the Court, which suit is still pending, under the style of Garland's Ex'or vs. Garland & Others," and "that in the 15th clause of the will of Samuel Garland, Sr., there is contained a bequest in the following words:

"I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars, of my East Tenn. and Virginia railroad bonds, or others of equal value; and that Burr Garland "purchased of a number of the children of the said Nicholas A. Garland, their guardian or legal representatives, their interest and right in, and the bequests to them, under the will of Samuel Garland, Sr., and that "the plaintiff believed that he used the funds of the estate to make said purchases;" that Burr Garland died without making a final settlement of his administration accounts; that after his death, proceedings were taken in Mississippi for a final settlement, and that on the 26th of Feb., 1864, the Court rendered a decree "by which it directed that the said William H. Garland, as executor of

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Burr Garland, dec'd, do pay over to the legal representative or representatives of Samuel Garland, Sr., dec'd, in the State of Virginia, the balance so found due from the said Burr Garland to-wit: The said sum of $64,130.88, subject, however, to a deduction of such costs as had accrued in the said Court, in relation to the final settlement of the accounts."

The bill prayed that Charles Y. Morriss administrator of Burr Garland, produce the evidences of the transfers of the legacies of Nicholas A. Garland's children, and that he settle his accounts, and that he pay over to the plaintiff, "in satisfaction in part of the decree aforesaid, all the assets of his testator, Burr Garland, dec'd which have come to his hands" and that "the legacies of the children of Nicholas A. Garland, under the will of Samuel Garland, Sr., which were acquired by Burr Garland in his lifetime, or by his administrator since his death, be likewise appropriated in part satisfaction of the decree aforesaid;" that "the children of Nicholas A. Garland, from whom their rights to the legacies aforesaid were acquired and who are residents of the State of Illinois, be made defendants to this bill by process of publication, and may this branch of this case be heard along with that of Garland's Executor vs. Garland and Others, or the papers and exhibits in which special reference is made." (Part 2d, p. 6-10.)

Charles Y. Morriss demurred to the bill on these grounds: 1. That the decree in Mississippi against the Mississippi executor of Burr Garland, in proceedings on publication, without personal service on non-residents, bound only the Mississippi assets of Burr Garland, and did not conclude the Virginia administrator, as to Virginia assets. He sought by this course the opportunity of resettling Burr Garland's administration accounts, and correcting the injustice in the Mississippi decree.

2. That Burr Garland received a large amount of profits on the legacy under the 9th clause of the will, trust funds to which Mrs. Morriss and her children were entitled, with which Charles Y. Morriss believed he had purchased the legacies to Nicholas A. Garland's children; and that Mrs. Morriss and her children were necessary parties to the suit.

He also answered the bill denying that Burr Garland bought the legacies of Nicholas A. Garland's children with moneys of the estate of Samuel Garland, Sr. He averred that neither he, nor Mrs. Morris, nor any of their children were served with any process in the Mississippi proceedings, or appeared therein, and he denied that the Mississippi decree was conclusive as to

the Virginia administrator or the Virginia assets. He stated that there were large profits under the 9th clause of the will for which Burr Garland was in-

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debted to Mrs. Morriss and her children, that he believed that he had used these profits in the purchase of said legacies; that there were profits from the Barrens estate, for which Berr Garland was indebted, and that the profits under the 9th clause, and from Mrs. Garland's half of the estate had been carried into the $64,130.88, decreed to be transmitted from the Mississippi Ex'or of Burr Garland to Virginia, and he produced and filed with his answer the assignments from Nicholas A. Garland's children to Burr Garland. (See Chas. Y. Morriss ans., part 2, p. 52-7 and the assignments, p. 58-64.)

The lower court sustained the demurrer and dismissed the bill, and John F. Slaughter, administrator of Sam'l Garland, Sr., took an appeal. This is the case of Garland's Adm'r v. Garland's Adm'r, 84 Va., 181. In this appeal, part 2d and part 3d of the record were printed, part 3d having been omitted and carried up on certiorari. The Court of Appeals decided (p. 190) that as to the amount of indebtedness of Burr Garland to Samuel Garland's estate, the Mississippi decree is final and conclusive in any court of any State, but that "it did not undertake to distribute it, nor to determine who are entitled to receive it under Samuel Garland's will, but decreed it to be paid over to the domiciliary executor to be by him distributed to those entitled according to the declared intention of the testator." The decision of the lower Court was reversed and the cause remanded (p. 191), "but without prejudice to any right of action which Paulina B. Morriss may have in this or an independent suit, and the cause will be remanded to the Circuit Court with leave to the appellant to reinstate his bill and to amend and make all parties deemed requisite."

On the 1st of Feb., 1888, John F. Slaughter, adm'r of Sam'l Garland, Sr., amended his bill, and made M. J. Day, sergeant of Lynchburg, and as such adm'r d. b. n. of Burr Garland, to whom his estate was committed on the death of Charles Y. Morriss, and Paulina B. Morriss and her children, or the representatives of those who had departed this life, parties defendant. (Part 4th, p. 6.)

Mrs. Garland and Mrs. Morriss and her children, all, answered the original and amended bills averring and insisting for Mrs. Garland that the profits on one half of the Mississippi estate and for Mrs. Morriss and her children, that the profits under the 9th clause of the will had been carried without discrimination into Burr Garland's administration accounts, and into said balance of $64,130.88, that Burr Garland had rendered to these parties no account of said profits, and that

his estate is still indebted to them for these profits; that there is now no outstanding indebtedness of the estate of Samuel Gar-

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land, Sr., and they prayed that an account be taken of the profits that had been carried into said balance of $64,130.88, and an account of the indebtedness of Burr Garland's estate, and of the priorities thereof, and an account of any outstanding debts of the estate of Samuel Garland, Sr., and that there be decreed directly to these parties, what they are entitled to, and not to the administrator of Samuel Garland, Sr. (Part 4, p. 11-5.

M. J. Day, late sergeant of Lynchburg, to whom the trustee ship for Paulina B. Morriss and her children had also been committed, answered the bill as adm'r of Burr Garland, and as trustee for Mrs. Morriss and her children, relying and insisting on the averments and defences in the answers of Mrs. Garland, and of Mrs. Morriss and her children, and on former exceptions, which had been taken to the commissioner's reports, and he prayed for accounts to be taken of all the indebtedness of Burr Garland, and the priorities thereof, especially of the indebtedness to Paulina B. Morriss and her children, and to Mary L. Garland, and that the Court would determine the rights of all parties in and to the estate of Burr Garland. Part 4, p. 10 and p. 17-8.

Thus we had in the suit instituted by Samuel Garland, Jr., ex'or in May, 1862, and in the suit instituted by John F. Slaughter, adm'r in Sept., 1880, and in which he very properly called a branch of the former suit, and prayed that it be heard along with the former suit, the administration, under the control and supervision of the Court, of the estates of two dead men—of Samuel Garland, Sr., and of Burr Garland.

John F. Slaughter, adm'r, contended that under the 9th clause of the will, Burr Garland took a life estate in the corpus of the legacy and that he was entitled absolutely to the profits, and that the profits were liable to all his debts alike, whether contracted for his support, or not, and that the corpus of the legacy only passed in remainder to Mrs. Morriss and her children, and your petitioners appealed from that decision. Part 4, p. 16.

This is the case of Garland's Adm'r v. Garland's Adm'r, 87 Va., 758. In this appeal, part 4 of the record was printed. In this case the Court of Appeals decided (p. 762) that Burr Garland took

only an interest in "so much of said profits as would furnish a decent and comfortable support for himself and this was so qualified and limited, as to fence out all his

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creditors except those who furnished him supplies for his support. Had he undertaken to expend these profits in any other way, he would have been guilty of a breach of trust, for there was in the eye of a Court of Equity, as complete a trust in him to apply these profits in one direction there was in the trustee to hold their legal title." Referring to the former decision in 84 Va., 181, and to the decree of the Mississippi Court, that the ex'or of Burr Garland should transmit to Virginia $64,130.88, our Court of Appeals said: (p. 760) "That the decree of that court did not undertake to distribute it, nor to determine who are entitled to receive it, under Samuel Garland's will, but decreed it to be paid over to the Virginia domiciliary executor, to be by him distributed to those entitled according to the declared intention of the testator, 'but this decision is without prejudice to any right of action which Paulina B. Morriss may have in this, or in an independent suit.'"

The decision of the lower Court was reversed, and the cause remanded for further proceedings.

The inventories of the Mississippi estate, and the allotment to the widow, and the property in the legacy in the 9th clause of the will, and the administration accounts of Burr Garland called 1st, 2d, and 3d, Mississippi and Coahoma accounts, taken from the records in Mississippi and depositions of witnesses as to profits between the death of Samuel Garland, Sr., and the death of Burr Garland, have been brought into the record in these causes. These and other papers in the record were printed for the convenience of the lower Court, and are now designated and referred to as part 5th.

Interlocutory accounts have been taken, over and over again, of the distribution of the stocks and bonds in the Virginia estate, but no final account of their distribution has ever been settled. What stocks and bonds the widow got, and what stocks and bonds the residuary legatees got, have been open questions from the death of Samuel Garland, Sr. to the present time.

Samuel Garland, Jr., on the 2d Sept., 1862, distributed $5,000 of the East Tenn. and Virginia railroad bonds of the testator to Samuel M. Slaughter, bequeathed to him in the 14th clause of the will, and there was no other demonstrative specific legacy in the will of the testator's East Tenn.

and Virginia railroad bonds, except to Nicholas A. Garland's children, in the 15th clause. (See Trans. 129-130, and part 1st, p. 35 and p. 39.)

On the 18th of Nov., 1863, the first decree, ordering accounts was rendered. Com'r Gordon published in the Lynchburg Virginian, the 18th of Jan'y, 1864, that he would pro-

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ceed the 18th of Feb., 1864, to take the accounts ordered, and on the 3d of March, 1865, he made his report.

On the 20th of Jan'y, 1864, John F. Slaughter, adm'r of Samuel Garland, Sr., distributed to himself as administrator of Charles R. Slaughter, $2,000; and to himself as ex'or of Samuel Garland, Jr., $2,000, and he had previously distributed to the widow, $6,500, and he had previously sold $4,500 of the testator's East Tenn. and Virginia railroad bonds, together, $15,000 of those bonds. See extract from Com'r Gordon's report, part 1st, p. 46 and p. 39, and recital in decree 27th Jan'y 1866, part 1st, p. 35

The country was then flagrante bello, and there could be no lawful communication between the citizens of Illinois and the citizens of Virginia.

On the 27th January, 1866, the cause was heard on Com'r Gordon's report of the 3d of March, 1865, and his report was recommitted. Part 1st, p. 34-5.

On the 11th of June, 1872, Com'r Gordon's reports were referred to Com'r Bocock, with instructions "to reform the said reports in such respects as they shall appear on their face to be erroneous, or as shall be rendered necessary in his opinion." Part 1st, p. 37.

On the 31st of Oct., 1872, Com'r Bocock reported, showing the distributions of the testator's East Tenn. and Virginia railroad bonds as above, and the distribution by John F. Slaughter, to himself, as adm'r of Charles R. Slaughter, and ex'or of Samuel Garland, Jr., of stocks and bonds aggregating $98,160. Part 1st, p. 39. He also reported as follows: "It appears from the examination of the will of Samuel Garland and the accounts of the executor and administrator

hereto attached that certain specific legacies have not as yet been paid. See 15th clause of the will, last paragraph, making a bequest to each of the children of Nicholas A. Garland, of Illinois." Part 1st, p. 44.

Exceptions were taken to this report for Mrs. Morriss and her children because the demonstrative specific legacy of stocks and bonds in the 5th clause was not provided for, and for the children of Nicholas A. Garland, who sold their legacies to Burr Garland, because those legacies were not provided for. See Trans. 131-2.

On the 17th of Nov., 1873, the case was heard on Com'r Bocock's report and said exceptions (Part 1st p. 74-5), and in the decree the Court said (Part 1st, p. 77), "It is not necessary to settle at this time the questions raised by Morriss and wife, and the children of Nicholas A. Garland, and therefore no opinion is expressed in relation thereto."

On the 6th of Nov., 1874, in another decree, the Court said: "The question raised in regard to the legacy to Mrs. Paulina Morriss and the legacies to the children of Nicholas A. Garland are reserved for future consideration, and nothing in this decree is to prejudice the rights of the said parties, or be considered as passing on the exceptions of the said parties heretofore or now filed." Part 1st, p. 78.

In February, 1892, the two cases were formally united and a petition was filed therein by the adm'r of a legatee, under the will of Sam'l Garland, Jr., against John F. Slaughter, adm'r of Sam'l Garland Sr. and executor of Sam'l Garland Jr., and M. J. Day, adm'r of Burr Garland, in which it was alleged that John F. Slaughter distributed as adm'r of Sam'l Garland, Sr. had distributed the assets of that estate largely to himself, as the representative of the estates of Sam'l Garland, Jr., and Charles R. Slaughter, and these estates would have to refund if a recovery should be made on account of the legacies to Nicholas A. Garland's children, and that a large amount might be distributed among the legatees of Sam'l Garland, Jr., and leave enough for any recovery that might be made. Part 5, p. 1-4.

M. J. Day, adm'r of Burr Garland, answered that the legacies to Nicholas A. Garland's children must first be provided for; that it that it would be a devastavit for John F. Slaughter, adm'r of Sam'l Garland, Sr., to turn over the testator's East Tenn. and Virginia railroad bonds to himself,

as the representative of the residuary legatees, before providing for these legacies; and M. J. Day, adm'r of Burr Garland, insisted that John F. Slaughter be required to bring into Court the eight $1,000 bonds of the East Tenn. and Virginia Railroad Company bequeathed to the children of Nicholas A. Garland who sold to Burr Garland. Part 5, p. 4-6.

At February term, 1892, the Court ordered that Comm'r Bocock, or some other comm'r of the Court, take an account of the legacy under the 9th clause of the will—of the corpus of the legacy and of the profits from the death of the testator to the death of Burr Garland, and the production of such evidence before the comm'r as might be necessary to enable him to take said account, and an account of all debts of the estate of Burr Garland, dec'd, and their priorities, if any. Part 5, p. 119.

Comm'r Bocock filed his reports and accounts the 3d of May, 1892, and on the 17th of June, 1892, the Court recommitted all the reports and accounts of the administration of John F. Slaughter on the estates of Sam'l Garland, Sr., and Charles R. Slaughter and Sam'l Garland, Jr., with instructions to restate and supplement them so as to show the unadmin-

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istered assets of each estate, with liberty to all parties to except to them as fully as if they had not been stated before. Trans. 133

On the 18th of May, 1893, John F. Slaughter having died, these causes were revived in the name of John F. Slaughter, Jr., his executor, and Comm'r Bocock having died, the Court ordered all accounts to be referred to Comm'r Sackett, and to enable him to state a final account of all of Jno. F. Slaughter's transactions, as personal representative of Sam'l Garland, Sr., and of Sam'l Garland, Jr., and of Charles R. Slaughter, his executor was ordered to produce all books and papers relating to his administration on said estates. Trans. 134-5.

In November, 1893, Comm'r Sackett returned his report in Garland's Adm'r v Mary L. Garland, &c., with the disposition he had made of the exceptions to Comm'r Bocock's report. He made a special statement of the present value of the eight $1,000 legacies of the testator's East Tenn. and Virginia railroad bonds sold to Burr Garland, but neither Comm'r Bocock nor he had stated the accounts so as to provide for these legacies—carrying all the testator's stocks and bonds, not distributed to the widow and special legatees, from John F. Slaughter's account, as adm'r of Sam'l

Garland, Sr., to his accounts as adm'r and ex'or of the residuary legatees—thus subjecting him to a devastavit.

The adm'r of Burr Garland and the adm'r of Mrs. Morriss and Mrs. Morriss' children excepted to the accounts of Comm'r Bocock and of Comm'r Sackett. Part 5, p. 89.

In carrying all the assets from the account of John F. Slaughter, as adm'r of Sam'l Garland, Sr., to his accounts, as adm'r and ex'or of the residuary legatees, the comm'r found a balance due from him to the estate of Charles R. Slaughter of $7,178.27, and a balance due from him to the estate of Sam'l Garland, Jr., of $20,198.08.

In November, 1893, reserving all questions on the exceptions, and "all rights of any parties against the estate of Sam'l Garland, Sr., whose rights are paramount to the claims of the residuary legatees," the Court decreed that Jno. F. Slaughter's executor should pay these balances, amounting to $27,377.35, to Judge R. T. W. Duke and Judge J. Singleton Diggs, who were appointed receivers in these causes, and directed them to place these funds in safe and profitable investments, awaiting the determination of the rights of the parties to the same. These payments have been made to the receivers, and these funds are now held under the control of the Court. Trans. 135.

Mrs. Morriss was the daughter of Burr Garland, she was the adopted daughter of Mrs. Mary L. Garland, and her chil-

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dren are the chief objects of Mrs. Garland's bounty. Burr Garland carried all the profits accruing after the death of Sam'l Garland, Sr., into his administration accounts, without discrimination between the widow's half and the profits arising from the legacy in the 9th clause of the will. To avoid the difficulty in making a separation now between Mrs. Garland's part of the profits and the part arising from the legacy in the 9th clause, Mrs. Garland assigned her part of the profits to Mrs. Morriss' children, and the assignment was filed with the papers in these causes. Part 5, p. 6, p. 118.

On the 9th of May, 1894, Comm'r Sackett filed his report in Garland's Adm'r v. Garland's Adm'r. Part 5, p. 99-116.

He reported the corpus of the legacy in the 9th clause of the will. Part 5, p. 100.

The property in this clause, reported by Commissioner Sackett, is the same that Burr Garland reported in September, 1864, to the Court in Mississippi as the corpus of the legacy under the 9th clause, which the Court confirmed, and which was then recorded Part 5, p. 34—41.

By comparing the list of the property constituting the legacy in the 9th clause, with the list of property left in September, 1864, after the widow's half was allotted to her (Part 5, p. 31-4), we see, that of the testator's personal property in Mississippi there was not, after the widow's half was taken out, and the legacy under the 9th clause was taken out, anything left except a few slaves, then virtually free, and the 15,000 lbs. of seed cotton, equal to 12 bales in the lint, and that the cotton, like the corn, peas, and potatoes in the list, was the product of the lands many years after the testator's death.

The com'r reported in regard to the profits of the Mississippi estate after the testator's death. Part 5th, p. 101-3.

He said that the corpus of the legacy under the 9th clause was not separated from the residue of the estate 'till 1864, that Burr Garland's administration accounts showed on their face that he undertook therein to account for all sales and products of the estate, no matter from what source derived, without distinguishing between the sales of the different plantations, and that the profits during the war would have to be ascertained from the ex parte accounts, Nos. 1 and 2, if it can be done; and the com'r concluded that there could be no discrimination of the profits approximating accuracy; and there fore there was no indebtedness of Burr Garland on account of these profits.

The aggregate of profits shown in accounts Nos. 1 and 2, invested in Confederate bonds, are carried as the com'r reports, without scaling into the decree for $64,130.88. Part 5, p. 112. That decree made Burr Garland's indebtedness for

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these profits $15,020 absolute. The widow was entitled to one-half of the estate and to one-half of these profits, and Burr Garland was indebted to her for these profits for onehalf of $15,020.

The value of the whole Mississippi estate, and the value of that part of the estate in the legacy under the 9th clause, are, each, ascertained and determined by the inventories and appraisements filed in the record. (Part 5th.) The ratio that the value of the legacy bears to the value of the whole estate gives the ratio of the profits on the legacy to the profits on the whole estate, approximating accuracy. To this extent, then Burr Garland was indebted for the profits on the legacy in the 9th clause, as given in his administration accounts, Nos. 1 and 2. Equity does not tolerate a fiduciary's blending trust funds, and saying that you cannot discriminate them, approaching accuracy, and therefore I am not indebted for them.

The Com'r reported as to profits after the war. Part 5, p. 102.

He said that Burr Garland regarded the profits made on Tudor Hall—the tract of land embraced in the legacy under the 9th clause—as his own; that he kept no account of these profits, that it was conceded that there were no profits in 1865, that for 1866, 1867, and 1868, the testimony showed the rental value of the cultivated highland and lowland, but there was no evidence of the cost of stocking the farm; that at the end of 1868, Burr Garland stopped farming and rented out Tudor Hall for 1869, and that it died in Dec., 1869; that the rent of 1869 could not have been legally paid to Burr Garland's ex'or, and if it was paid to him, no liability rests on Burr Garland's Virginia estate for it. Part 5, p. 103.

Your petitioners are advised, and they insist that the testimony shows positively that B r Garland rented out Tudor Hall for 1869, for between $2,000 and $2,200, and that this rent was collected by William H. Garland, his ex'or, and that the rent of Tudor Hall for each of the years 1866, 1867, and 1868 was worth as much as it was in 1869; that it shows the number of acres of arable high land and arable low land, and the rental value of each, for the years 1866-9 inclusive, and the rent thus computed, makes more than $2,000 a year; that there is no conflict of testimony as to the rental value for these years, in each of these modes. Part 5, p. 57-8 and p. 62. Your petitioners are advised and insist that when the fiduciary keeps no account of the trust funds, the beneficiary is entitled to a fair and reasonable estimate. Burr Garland no doubt regarded himself as entitled to these rents, and thus contracted for

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them and for their payment to his ex'or, his estate is liable, whether in Mississippi or in Virginia.

The com'r reported that in the third ex parte account (Part 5, p. 113 and p. 54-6), every item of credit is from the sale of cotton; that Burr Garland had charged himself as adm'r with it, and therefore it could not have belonged to the widow, or any legatee, but to the estate of Samuel Garland, Sr.

Your petitioners represent that the third ex parte account (part 5, p. 54-6) shows the sale of 100 bales of cotton—41 in Sept, 1865 (from what tract of land does not appear) but the com'r states that the other 96 bales were from Barrens—41 bales in Feb., 1866, and 85 bales in 1867. As Barrens was allotted to Mrs. Garland in Sept., 1864, and her half of the personal estate embraced all the cotton of the estate except 15,000 lbs in the seed, equal to 12 or 12 bales in the lint, the estate could not have owned more than 12 of the 100 bales sold, and 88 of the 100 bales must have belongd to Mrs. Garland, from whose lands they were obtained. Again: The com'r reports that the cotton in the first inventory and appraisement return ed Jan., 1863, was raised in 1862. Part 5, p. 114 and p. 10. Then it follows that every pound of cotton in every inventory, and in every account, was raised after the death of Samuel Garland, Sr., and none of it belonged to his estate. Again: The cotton in the first inventory is stated expressly to be cotton on "both plantations" (Barrens and Tudor Hall), in Hinds county, and the inventory in Coahoma, taken at the same time (Part 5th, p. 17-8), shows that there was no cotton raised on the Coahoma tract; and thus we see that every pound of cotton, in every inventory and every account, was not only raised after the death of Samuel Garland, but it was the product either of Barrens, which was allotted to Mrs. Garland, in her half of the estate, or of Tudor Hall, which was embraced in the legacy under the 9th clause of the will.

Burr Garland never turned over to Mrs. Garland Barrens or the personal estate in her half of the personal estate allotted to her (See Mrs. Garland's Ans., part 4. p. 13-5), but he continued to hold the same as trustee, awaiting his final settlement, the practice in Mississippi being to decree distribution on the final settlement. (See Rev. Code of Mississippi, 1857, p. 451-2 sec. 13, Art. 107.)

The com'r reported that Burr Garland returned his 3d exparte account the 9th of Dec., 1869, which showed a balance of $6,545.09 against him as adm'r; that he opened an account with Aiken & Watt on the 3d of Feb., 1869, depositing with them that day $5,000, and that, of the 8 legacies he purchased from Nicholas A. Garland's children, he paid for 6 of them by drafts on Aiken & Watt, and the com'r then says: "It

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is fair to presume and your com'r reports that said legacies were purchased and paid for by Burr Garland, out of money belonging to the estate of his testator, Samuel Garland, Sr., and being so purchased and paid for, the liability of Samuel Garland's estate therefor ceased and said legacies were extinguished," and that he would credit on the Mississippi decree for $64,130.88, the actual amount paid by him for said legacies; that "this is the manner in which the other two of said legacies which were purchased by J. F. Slaughter, the Virginia administrator of Samuel Garland in stating his accounts" were dealt with. Part 5, p. 105; see Aiken & Watts' account, part 2, p. 73.

Your petitioners respectfully represent that Aiken & Watt's account (Part 2, p. 73), was with Burr Garland individually, and not as adm'r. It shows that on the 3d of Feb., 1869, the day the account commenced, they received $5,000, and paid out for 36 bales of cotton, $4,405.55, and on the 10th, three items, amounting to $249.88, together, $4,655.43, leaving only $344.57. They took up Burr Garland's draft for $500, the 6th of March, 1869, for the first legacy he purchased, so that instead of the $5,000, Aiken & Watt received from Burr Garland paying for the 8 legacies, or 6 legacies, it did not pay for the first legacy he purchased. On the 19th June, 1869, Aiken & Watt sold for Burr Garland 48 bales of cotton for $5,740.78. This supplied additional funds needed to pay for the first legacy purchased and funds to pay the 1st and 2d of July, 1869, Burr Garland's drafts for 5 other legacies. Can it be supposed that the cotton Aiken & Watt sold the 19th of June, 1869, more than 8 years after the death of Samuel Garland, Sr., belonged to his estate? Yet this must be presumed before the com'r's conclusion can be reached.

Again Burr Garland's 3d ex parte account (Part 5, p. 54), shows where every pound of cotton of the 100 bales went— 4 bales to Vicksburg, 11 bales to A. Virden, and the others to J. H. & J. M. Allen It does not appear that one pound of that cotton or $1, of the proceeds of the sale, went to Aiken & Watt.

Again: All the sales of cotton in the 3d ex parte account were as early as 1867. All the transactions in Aiken & Watt's account were in 1869, two years later. To trace trust moneys into new investments, the proof that it was the same money must be clear. Where was the money mentioned in the 3d ex parte account during these two years? Was it ear marked? What is the evidence of its identity with the money that Aiken & Watt used in taking up Burr Garland's drafts for these legacies?

The account of Aiken & Watt is balanced the 13th of August,

1869, by their remitting to him in exchange on New York, $1,773.26. Now if we look to the deposition of John T. Murrell and the report of Comm'r Bocock (Part 2, p. 73-4), we will see that the draft of Aiken & Watt for $1,773.26 was placed by Burr Garland in the hands of John T. Murrell, who paid some bills and the funeral expenses of Burr Garland, and delivered the balance of $1,479.94 to Charles Y. Morriss, his adm'r. This money and the assignments of 8 of the legacies to Nicholas A. Garland's children, are all the assets of Burr Garland that ever came to the hands of his Virginia adm'r.

Comm'r Sackett reported that the money from Aiken & Watt that came to the hands of Charles Y. Morriss, adm'r in Virginia, was assets of Burr Garland's estate, and that is conceded. If so, who then is not the money that Aiken & Watt paid on Burr Garland's drafts for the legacies Burr Garland's money?

That Comm'r Sackett dealt with two of the legacies of Nicholas A. Garland's children purchased by John F. Slaughter as "extinguished," is no sufficient reason for thus dealing with the 8 legacies of Nicholas A. Garland's children purchased by Burr Garland. John F. Slaughter, adm'r of Samuel Garland, Sr., in Virginia, held these demonstrative specific legacies for the legatees to whom they were bequeathed. He held a fiduciary relation to them which gave them the option to disavow the sale and claim the legacies; but Burr Garland, the adm'r of Samuel Garland, Sr. in Mississippi, did not hold a similar relation to the children of Nicholas A. Garland. He held no interest to which they were entitled. They were not creditors, nor pecuniary legatees, of Samuel Garland. He held no fiduciary relation to them, and they have not dissented from the sale to him.

Comm'r Sackett reported that the payments by Burr Garland for the 8 legacies and interest thereon to the 15th of Feb., 1874, amounting to $5,572.23, should be credited as of that date on the Mississippi decree for $64,130.88 (part 5, p. 110), and that the amount received by Charles Y. Morriss, adm'r, with interest thereon, to the 10th of May, 1894, the time of stating the account, should be credited as of that date on said decree (part 5, p. 104), and he reported in a special statement that the value of the 8 legacies purchased by Burr Garland, with interest thereon to the 10th of May, 1894, is $37,506.67. (Part 5, p. 103.)

The comm'r reported that the only debt of Burr Garland is the Mississippi decree for $64,130.88, and the only estate of Burr Garland is the money received by Charles Y. Morris, his adm'r, as aforesaid.

The comm'r reported further that the profits of the estate of

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Samuel Garland, Sr., prior to Sept., 1864, is $12,020.00, and if the Court shall determine that Mrs. Garland and Mrs. Morriss' children are entitled to any portion of them, a statement can be made of the same at the bar of the Court. (Part 5, p. 115.)

The comm'r reported further that Mrs. Garland should be required to account for $3,000, a year's allowance to her under the Mississippi statute, and $250, the value of certain articles exempted under said statute.

An exception in Mississippi to the year's allowance and to the $250 was made and withdrawn and the conclusiveness of the Mississippi decree applies to this as much as to anything else; and the $250 is much below the value of articles exempted under the Virginia laws. Part 2d, p. 31-2 and 44.

To the report of the comm'r, Mrs. Garland and Mrs. Morriss' children, and her adm'r and Burr Garland's adm'r, excepted on the grounds indicated above. Part 5, p. 120-3. They said that Burr Garland acquired a good title to the 8 legacies each of a bond of $1,000, of the testator's East Tenn. & Virginia railroad bonds; that the widow was entitled to the profits on her half of the estate that accrued before her half was allotted to her, and to the proceeds of the cotton from Barrens after Barrens was allotted her; that Burr Garland held her part of the estate as adm'r after the allotment as he did before; that Mrs. Morriss and her children were entitled to the profits on their legacy, before it was separated from the residue of the estate, and after it was separated; that they are entitled, as Burr Garland kept no accounts of the profits, to a reasonable estimate of them, and especially are they entitled to the rent of 1869—the testimony showing the amt. of rent that year which was paid to his ex'or; that the debt to the widow is not only a fiduciary debt, but it takes precedence over all legacies; that the debt of Burr Garland's estate for the profits under the 9th clause of the will is not only a fiduciary debt, but the will makes these profits a preferred legacy to be paid before the residuary legatees take anything, and that of any recovery for the estate of Samuel Garland, Sr., on the Mississippi decree for $64,130.88, of anything not heretofore embraced in the division between the widow and the estate, she is now entitled to have her half decreed directly to her, and not to have the whole decreed to the adm'r of Samuel Garland, Sr., and she left to get her half hereafter from him.

Your petitioners excepted for these and other rasons stated in their exceptions.

On the 12th of Feb., 1895, the causes were heard together on Com'r Sackett's report and the exceptions thereto, and the Court rendered its decree. (Trans., 137.)

****Pages 221-240****

The Court held that if there had been a primary liability on the Virginia administrator of Samuel Garland, Sr., to satisfy the bequests of his East Tenn. & Virginia railroad bonds to Nicholas A. Garland's children, and $23,000 of such bonds went into the hands of his Virginia adm'r, that condition did not exist in 1869, for it appears by the decree of Jan'y, 1866 (Part 1, p. 35), that before 1866, that $20,000 of those bonds had been distributed in the first of the above named causes, to which Burr Garland and Charles Y. Morriss, trustees, and his wife, were parties, and only one of said bonds remained in 1872 (part 1, p. 68), and therefore at the time of the purchase by Burr Garland, the funds in his hands were as much applicable to the satisfaction of these legacies as the funds in the hands of any other adm'r of Samuel Garland, Sr.

The Court held that nothing passed by Mrs. Garland's assignment to Mrs. Morriss' children, that her claims were barred by laches, or the statute of limitations.

The Court overruled all exceptions to Comm'r Sackett's report and all special statements in his report, and confirmed his report; and decreed that Garland Morriss, adm'r of Charles Y. Morriss, out of his intestate, assets, and Mary L. Garland, surety for Charles Y. Morriss, adm'r of Burr Garland, pay out of her own estate to Samuel H. Johnson, sergeant, and as such adm'r, d. b. n. c. t. a., of Samuel Garland, Sr., $2,840.92, with interest on $1,077.53, part thereof, from the 10th of May, 1894, until paid, that being the balance of the assets of Burr Garland's estate after deducting the cost decreed (84 Va., 181) to be paid by Charles Y. Morris, adm'r of Burr Garland, out of the assets of said estate, which costs were paid by Mrs. Garland, as his surety.

The Court decreed that the personal representatives of Mrs. Morriss, and of her deceased children, out of the assets of their respective estates, and her surviving children, out of their own estates, pay the costs in the second named cause, other than those adjudicated by the Court of Appeals; and the costs not thus adjudicated have been taxed at $239.87, and an execution has been issued for the same, and the money paid. Trans., 143-4.

But the decree provided that no execution be issued against Mrs. Garland, as her interest in the estate of Samuel Garland, Sr., is to be ascertained in the first-named cause.

On the 16th of May, 1895, the Court decreed that the whole fund in the hands of the receivers belongs to the estates of Sam'l Garland, Jr., and Charles R. Slaughter, and that the receivers, R. T. W. Duke, Jr., and J. Singleton Diggs, pay and deliver to J. Singleton Diggs, adm'r of Sam'l Garland, Jr., and

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adm'r of Charles R. Slaughter, all the money, bonds, and other estate in their hands as such receivers. Trans., 142-3.

Your petitioners are advised, and they insist, that in the decrees of the 12th of Feb., 1895, and of the 16th of May, 1895, the Court erred:

1. In deciding that the purchase by Burr Garland in 1869, of 8 of the legacies of Nicholas A. Garland's children, was void because the Virginia personal representative of Sam'l Garland, Sr., had before 1866 in distribution to others, or by sale disposed of $20,000 of the testator's East Tenn. & Virginia railroad bonds, as shown by Comm'r Gordon's report, the 3d of March, 1865, in Sam'l Garland's Adm'r vs. Mary L. Garland, &c., to which suit Burr Garland was a party.

The inhibition of intercourse between citizens of Illinois and citizens of Virginia was in force when this suit was brought, and continued in force 'till after the period mentioned. Any wrongful sale of or distribution of the testator's East Tenn. & Virginia railroad bonds, would not defeat—especially during the war—these demonstrative specific legacies, nor change them to pecuniary legacies. These were coupon bonds, fluctuating in value, low in 1866, but much higher afterwards.

2. In holding with the comm'r that the money paid for these legacies was the money of Sam'l Garland, Sr., trust money that Burr Garland invested in these legacies, and that these legacies reverted to, and thus became additional assets of the estate of Sam'l Garland, Sr.

The comm'r held and the Court decided that the money from Aiken & Watt that came to the hands of Burr Garland's Virginia adm'r was Burr Garland's estate. It follows, then, that the money paid by Aiken & Watt on their account with Burr Garland for 6 of the 8 legacies was also Burr Garland's money. The comm'r reported that there was nothing to show how the other two legacies were paid for. Then, prima facie, he paid for them with his own money, and the legacies belonged to him.

3. In holding that there is no indebtedness from Burr Garland to Mrs. Morriss and her children.

The comm'r reported that the profits, without discriminating between the parties entitled to them, prior to September, 1864, amounted to $12,020. Part 5, p. 115.

Mrs. Morriss and her children were entitled to the profits that accrued on the legacy under the 9th clause of the will from the testator's death. Their part of the profits might be apportioned. As the value of their legacy was to the whole estate, so would be their part of the profits to the whole amount of the profits. The rent of Tudor Hall, which was in

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their legacy, for 1869 actually paid to Burr Garland's ex'or is proved to be over $2,000, and that the rent for each of the years 1866 and 1867 and 1868 was worth as much as in 1869.

4. In holding that there was no indebtedness from Burr Garland to Mrs. Garland, the widow.

Mrs. Garland was entitled to half of the estate at the death of Sam'l Garland, Sr., and to half of the $12,020, the accrued profits prior to Sept. 1864. She was also entitled to 15,000 lbs. of seed cotton, or 12 bales in the lint, allotted to her in Sept., 1864.

She was entitled to the cotton from Barrens after it was allotted to her in Sept., 1864. The 3d ex parte account (Part 5, p. 54) shows that of 100 bales which sold for $10,901.11 eleven bales came from Barrens in 1866, and 85 bales came from Barrens in 1867; or, if the comm'r was right in holding that the $10,901.11 belonged to the estate of Sam'l Garland, Sr., Mrs. Garland would then be entitled to half of it.

She is entitled to half of the assets that the estate of Sam'l Garland, Sr., may realize on the Mississippi decree for $64,130.88. The money that came from Aiken & Watt to Burr Garland's Virginia adm'r amounted to $2,840.92, the 10th of May, 1894, which the comm'r and the Court applied as part payment of the Mississippi decree. Then Mrs. Garland is entitled to half of the $2,840.92. Again, as another payment on the Mississippi decree, the comm'r applied $5,572.23 (Part 5, p. 110), the money that Burr Garland paid for the 8 legacies, and interest to the 15th of Feb., 1874. If this is right, Mrs. Garland is entitled to half of the $5,572.23; but the comm'r and the Court say this money was paid to Nicholas A. Garland's children in exchange for their legacies, and their legacies have been thus acquired for the estate of Sam'l Garland, Sr.,—additional assets—now worth $37,506.67. Then Mrs. Garland is entitled to half of the $37,506.67. She is entitled to half of all assets that came to the hands of Burr Garland, as adm'r of Sam'l Garland, Sr., whether corpus, profits, or accretions of any kind.

5. In holding that Mrs. Garland's claims are barred by laches, or the statute of limitations.

Burr Garland's being adm'r and the proceedings against him during his life, and against his personal representatives since his death, keep alive her claims as well as those of the legatees.

6. In decreeing against Mrs. Garland that she pay to the adm'r of Sam'l Garland, Sr., $2,840.92.

While as surety for Charles Y. Morriss, adm'r of Burr Garland, she is liable for this money, she is herself entitled to

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half of it, and to many times more than the whole of it. It is the special province of equity to settle accounts, and find the balance, and decree the balance to the party entitled to it.

7. In sustaining the comm'r, who reported (Part 5, p. 116) that Mrs. Garland "should be held to account" for the year's allowance of $3,000, and the $250 worth of articles under the Mississippi statute.

The claim that she was not entitled to these allowances was abandoned and settled by decree of the Court in Mississippi on the 24th Feb., 1874. See 18 exception, part 2, p. 31-2, and decree, p. 44.

8. In decreeing against the adm'rs of Mrs. Morriss and of her deceased children out of the estates of their intestates, and against her surviving children out of their own estates, the cost of the second suit.

This cost has been taxed at $239.87, execution was issued for it, and Mrs. Morriss' children were compelled to pay it. See the execution returned satisfied, Trans. p. 143-4.)

Mrs. Morriss and her children are legatees of Sam'l Garland, Sr. They were necessary parties in both suits. The plaintiff made them parties in the first suit. The Court of Appeals required the plaintiff to make them parties in the second suit (84 Va. 181). They never unnecessarily increased the cost of the adm'r of Sam'l Garland, Sr. When a fiduciary brings the beneficiaries into court to have their rights in the fund determined by the Court, the rule is that the fund bears the cost. It was error in the Court in this instance to depart from the rule and saddle the cost on these beneficiaries.

9. It was error for the Court, on the 16th of May, 1895, to decree that the whole fund in the hands of the receivers belongs to the estates of Sam'l Garland, Jr., and Charles R. Slaughter, and that the receivers R. T. W. Duke, Jr., and J. Singleton Diggs do pay and deliver to J. Singleton Diggs, adm'r of Samuel Garland, Jr., and the same as administrator of Charles R. Slaughter, all the money, bonds, and other estate in their hands as such receivers. Trans. 142.

On the 20th of November, 1893, (Trans. 136) the Court, reserving all questions on exceptions, and with it the remaining fund from the accounts of John F. Slaughter, adm'r of Sam'l Garland, Sr., and adm'r of Charles R. Slaughter, and executor of Sam'l Garland, Jr., to the receivers, to be held in the custody of the Court, awaiting the final settlement of the relative rights of Mrs. Garland and Mrs. Morriss and her children, and the residuary legatees.

It left nothing in the hands of the present adm'r of Sam'l

Garland, Sr.,—nothing to pay the $71.14 cost decreed to your petitioners by the Court of Appeals (87 Va., 755) nor any other cost. (See decree of Court of Appeals, Trans. 129, and Comm'r Sackett's report, part 5, p. 111.)

The effect would be to take all the funds from the custody of the Court and scatter them among the legatees and distributees of the residuary legatees of Sam'l Garland, Sr., before the widow can get her part, or Mrs. Morriss and her children can get what they are entitled to; and that, too, when the widow's right is paramount to that of every legatee, and Mrs. Morriss and her children's legacy is preferred to that of every legatee after the 9th clause, and especially to that of the residuary legatees, and that, too, before their exceptions were passed on by the lower Court. Part 5, p. 89-90.

10. The Court erred in its decree of the 12th of February, 1895, in overruling all the exceptions of Mrs. Garland and Burr Garland's adm'r, Mrs. Morriss' adm'r, and her trustee, and her children to Comm'r Sackett's report of the 9th of May, 1894. Part 5, p. 120-3.

In these suits the Court is administering the estates of two dead men—Sam'l Garland, Sr., and Burr Garland. The creditors and nearly all the legatees of Sam'l Garland, Sr., are satisfied, and out of the way. The only remaining claimants to his estate are his widow, Mrs. Morriss' adm'r, and her children, and the residuary legatees. In the administration of Burr Garland's estate, the questions are, what are the assets of his estate and what are the debts of his estate:

First, the assets. Your petitioners are advised, and they insist, that the assets of Burr Garland's estate consist of both the $2,840.92 and the assignments by Nicholas A. Garland's children of eight $1,000 bonds of the East Tenn. and Virginia railroad bonds of Sam'l Garland, Sr., and the proceeds of the coupons and interest thereon from the death of Sam'l Garland, Sr., to the present time.

Your petitioners insisted (Part 5, p. 6) that John F. Slaughter be required to bring these bonds into Court. If it be conceded that this cannot now be done, then John F. Slaughter has committed a devastavit. It is true, that he had possession of these bonds; that he did not deliver to Nicholas A. Garland's children the bonds bequeathed to them, nor to their assignee; but that, without justification, he sold many of them and turned others over to himself as the personal representative of the residuary legatees. The comm'r reported the present value of the bonds assigned, and the coupons and interest thereon to be $37,506.67. If it be assumed that this

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is the measure of the damages for this devastavit, then the estates of Charles R. Slaughter and Sam'l Garland, Jr., can refund what they received from this devastavit, and the estate of John F. Slaughter make up the balance, if any. Aggregating these two amounts we have $40,347.59 of assets of Burr Garland's estate.

Second, the debts. Burr Garland's estate owes Mrs. Garland the half of the Mississippi estate and profits that went into his hands as adm'r that he did not deliver to her. Like estate owes Mrs. Morriss and her children the profits on the legacy under the 9th clause of the will. His estate owes the Mississippi decree of $64,130.88, but as that decree embraced largely his indebtedness to Mrs. Garland and his indebtedness to Mrs. Morriss and her children, and was intended as a transfer of funds, covering all his indebtedness on his administration, leaving the Virginia courts to determine who are to receive them, his indebtedness to Mrs. Garland and to Mrs. Morriss and her children embraced in the $64,130.88 should be subtracted from the $64,130.88. Then these three debts—1st, the debt to Mrs. Garland; 2d, the debt to Mrs. Morriss and her children, and 3d, the debt on the balance of the Mississippi decree will each take its pro rata of the $40,347.59 of assets of Burr Garland's estate.

The pro rata share of the balance of the $64,130.88 will be additional assets recovered for the estate of Sam'l Garland, Sr., which have not been subjected to any former division, of which Mrs. Garland will be entitled to one-half, and the residuary legatees to the other half.

If it were true that there was no indebtedness from Burr Garland to Mrs. Garland, nor to Mrs. Morriss and her children, and the Mississippi decree for $64,136.88 should take the whole $40,347.59 of assets of Burr Garland's estate, these would be additional assets recovered for the estate of Sam'l Garland, Sr., on account of Burr Garland's administration, which have not been subjected to any former division, of which Mrs. Garland would be entitled to $20,173.79, one-half of it, and the residuary legatees to $20,173.79, the other half of it.

In consideration whereof your petitioners pray that an appeal and supersedeas be allowed them; that S. H. Johnson, Sergeant of Lynchburg, and as such adm'r of Sam'l Garland, Sr., John F. Slaughter, Jr., ex'or of John F. Slaughter, dec'd, and J. Singleton Diggs, adm'r of Charles R. Slaughter, and

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adm'r of Sam'l Garland, Jr., be summoned as appellees and that said decrees be reviewed and reversed.

THE PETITIONERS

By Edward S. Brown and Wm. J. Robertson.

We are respectfully of opinion that the decrees complained of in the foregoing petition are erroneous and ought to be reviewed and reversed.

EDWARD S. BROWN,

WM. J. ROBERTSON.

Appeal and supersedeas awarded. No bond is required, as the appeal is necessary to protect the estates of decedents.

JAMES KEITH.

Wytheville, Va., July 16, 1895.

To Geo. K. Taylor, Clerk Supreme Court of Appeals, Richmond, Va.

VIRGINIA:

Please before the Honorable Taylor Berry, Judge of the Circuit Court for the city of Lynchburg, at the court-house thereof, on Thursday, the 16th day of May, 1895.

Samuel H. Johnson, Sergeant of the city of Lynchburg, and as such Administrator de bonis non cum testamento annexo of Samuel Garland, Sr., deceased, and J. Singleton Diggs, Administrator de bonis non cum testamento annexo of Sam'l Garland, Jr.,

Plaintiffs,

against

Mary L. Garland, John F. Slaughter, Jr., Executor of John F. Slaughter, dec'd; J. Singleton Diggs, Administrator de bonis non of Charles R. Slaughter, dec'd; the same J. Singleton Diggs, Administrator of C. M. Slaughter, dec'd; Lily Slaughter Diggs, C. A. Slaughter, Catherine L. Slaughter, Gilbert S. Meem, Administrator of Ann P. Garland, dec'd; Mrs. Sallie Graham Kean, A. W. Brodnax, John H. Cobbs, Exec-

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utor of Celeste P. Cobbs, dec'd; John W. Hughes, late Sergeant of Lynchburg, and as such Administrator of Dr. Sam'l M. Slaughter, dec'd; Chas. A Slaughter, Administrator of Mary J. Slaughter, dec'd; Mary L. Garland, M. J. Day, late Sergeant of the city of Lynchburg, and as such Administrator de bonis non of Burr Garland, dec'd, and Mrs. Paulina B. Morris, Trustee, and children, Defendants,

and

S. H. Johnson, Sergeant of the city of Lynchburg, and as such Administrator de bonis non cum testamento annexo of Sam'l Garland, Sr., dec'd; J. Singleton Diggs, Administrator de bonis non cum testamento annexo of Sam'l Garland, Jr., dec'd,

}and the same J. Singleton Diggs, Administrator de page 00}bonis non cum testamento annexo of Chas. R. Slaughter, dec'd, Plaintiffs,

against

M. J. Day, Sergeant of the city of Lynchburg, and as such Administrator de bonis non cum testamento annexo of Burr Garland, dec'd; Mary L. Garland, Wm. V. Wilson, Jr., Administrator of Paulina B. Morriss, dec'd; D. S. Cates, Sheriff of Richmond, and as such Administrator de bonis non of Richard G. Morris, dec'd; S. H. Johnson, Sergeant of Lynchburg, and as such Administrator of Mary A. Payne, dec'd; John Preston Cocke, Administrator of Chas. Y. Morris, Jr., and Administrator of William M. Morris, dec'd; Garland Morriss, in his own right, and as Administrator of Chas. G. Morris, and Trustee for Paulina B. Morris and her children; R. T. Lacy and Virginia Lee Lacy, his wife; Walter Smith and Cornelia, his wife; Mosby H. Payne, T. L. Courtney, Jr., and Elizabeth, his wife; Walter C. Morris and Lawrence B. Morris, Defendants.

The following are copies of such parts of the record in the above-named causes, as the clerk was specially directed in writing to copy, by Edward S. Brown, Esq., of counsel for parties taking appeal:

Part 5th.

Addition to Part 5th of Record.

In the Circuit Court for the City of Lynchburg.

SAMUEL GARLAND'S ADMINISTRATOR, &C.,

VS.

MARY L. GARLAND, ET AL.,

AND

SAMUEL GARLAND'S ADMINISTRATOR

VS.

BURR GARLAND'S ADMINISTRATOR.

Petition of Ann P. Garland's Administrator.

To the Hon. John D. Horsley, Judge of the Circuit Court of Lynchburg:

Your petitioner, Gilbert S. Meem, administrator of Ann P. Garland, deceased, respectfully represents that there is pending in your Honor's Court a chancery cause under the style of Samuel Garland's administrator vs. Mary L. Garland, et al., wherein the estate of Samuel Garland is being administered, in which the estate of Samuel Garland, Jr., is interested as residuary legatee of Samuel Garland, Sr. All the debts and legacies of Samuel Garland, Sr., have been paid except a certain claim asserted by M. J. Day as substituted trustee for Paulina B. Morris and her children, which claim is being resisted and wholly contested by the estate of Samuel Garland, Sr. This claim is litigated in the suit of S. Garland's administrator vs. Burr Garland, pending also in your Honor's Court. All the debts specifically against the estate of Samuel Garland, Jr., have likewise been paid and large amounts paid to his legatees, and but for the pendency of the undetermined and disputed claim of Day, trustee, which has been in litigation for some years, and will probably so continue for

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some years to come, the estate of both the Garlands aforesaid might be now fully distributed and administration.

Your petitioner here refers to, and adopts, as a part of this petition, the records in both of said suits, which may be read in connection herewith.

Petitioner represents that there are but little, if any, assets in the hands of Samuel Garland's administrator, except what may be recovered in the Burr Garland suit aforesaid, and some real estate now held by the widow as her dower, worth probably $3,000; but the last account stated by J. F. Slaughter, the administrator, shows a balance against of about that sum due him, and hence it may be taken that there are no assets of that estate; and, inasmuch as the said J. F.

Slaughter, who is also the executor of Samuel Garland, Jr., has, as such executor, received from the estate of Samuel Garland, Sr., a large amount under the residuary clause of the will of S. Garland, Sr., it follows that any recovery of any claim now against S. Garland, Sr.'s estate is virtually a recovery against his residuary legatees, to-wit: S. Garland, Jr., and Ch. R. Slaughter, each being bound for half thereof. And therefore the said Slaughter, executor, declines to make further payments to the legatees of Samuel Garland, Jr., whilst the claim of Day, trustee, is pending and undetermined.

Your petitioner therefore prays that an order be made in these causes for a partial distribution of the estate of Samuel Garland, Jr., of which his intestate is one of the preferred legatees who has not been paid in full. The distributees of Ann P. Garland's estate, entitled to the legacy, as well as some of the other legatees of Samuel Garland, Jr., are in very needy circumstances, and have been waiting many years to receive their portion. Some of them have received nothing from the estate for more than twenty-five years. The assets are being consumed in costs and expenses of litigation and delays, while the people who were made the objects and intended recipients of the testator's bounty about thirty years ago are fast perishing from the face of the earth.

Your petitioner represents that the condition of these estates is such that a sufficient amount might be retained to meet any residue of liability from the claim aforesaid, and yet a considerable fund be distributed to the legatees. Petitioner does not know the amount that is claimed by Day, trustee, but denies that the claim is a valid one in any respect. As to the assets of the two estates mentioned, petitioner is not accurately advised, but the said Slaughter has had his accounts, both as administrator of Samuel Garland, Sr., and as executor of Samuel Garland, Jr., stated by Mr. Commissioner Bocock, and while petitioner thinks there may be errors and omissions in said accounts, they are

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such that correction thereof will increase considerably the assets of both estates, and said accounts as stated may be safely used for the purposes of this petition.

As far as can now be ascertained, the standing of the estates is as follows:

As to Samuel Garland, Sr., no assets other than dower estate of widow—say, $2,500—and no liability other than claim asserted by Day, trustee. If the estate prevails in the Burr Garland suit, there will come in assets to about $3,000,

ESTATE OF SAMUEL GARLAND, JR.

Balance due by J. F. Slaughter, executor, per Bocock's		
report, January, 1887—principal,		$12,651
interest,	10,661	
		$23,312
To be credited by Meem legacy, paid		
August, 1885,	$11,500	
And interest—say, 18 months,	1,035	12,535
Net balance due January, 1887,		$10,777

This balance probably to be increased by corrections and additions to accounts.

In addition, there remains, or should remain, in executor's hands following bonds and stocks:

O. & A. R. R. bonds,	$2,000
S. S. R. R. bonds,	3,000
Memphis City bonds,	2,000
Lynchburg Gas-Light stock, 30 shares,	1,200
	$8,200

Interest from January, 1887.

The Arkansas lands of S. Garland, Jr., have been sold for about $10,000, of which $1,000 has been collected and distributed to the legatees, and a little less than $1,000 paid over to the executor. The balance of the sale is in bonds, perfectly solvent, of which about $2,300 is due and expected to be paid to the executor in a month, and the other bonds maturing next year. The estate also has an interest in some Mississippi lands—value unknown.

In consideration of the premises, petitioner prays that the said

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two causes be heard together for the purposes of this petition and the decree thereon. That if necessary a rule to answer the same be awarded against J. F. Slaughter as administrator of Samuel Garland, Sr., and as executor of Samuel Garland, Jr., and against M. J. Day, late sergeant and substituted trustee for Paulina B. Morris and her children. That a decree be entered directing Slaughter, executor of S. Garland, Jr., to distribute among the legatees of Samuel Garland, Jr., according to their respective rights, at least the sum of ten thousand dollars, or whatever the Court may think proper, and take such order as may preserve the estate to those entitled thereto, and for all other and further relief.

And as in duty bound, petitioner will ever pray, &c.

GILBERT S. MEEM,

Administrator.

K. & B., for petitioner.

Answer of M. J. Day, Sergeant of Lynchburg and trustee, to petition of Ann P. Garland's administrator. Filed March 2, 1892.

The answer of M. J. Day, late sergeant of Lynchburg, to whom, as such, after the death of Burr Garland and Charles Y. Morris, was committed the trusteeship for Paulina B. Morris and her children under the 9th clause of the will of Samuel Garland, Sr., to the petition of Gilbert S.

Meem, administrator of Ann P. Garland, deceased, filed in the suits of Samuel Garland's executor vs. Mary L. Garland, &c., and Samuel Garland's administrator vs. Burr Garland's administrator.

This respondent, obeying the rule of the Court, comes, and, answering said petition, disclaims, first of all, any purpose of giving any consent or making any admission that can be construed into any waiver of any right, legal or equitable, that he or any of his beneficiaries have in the subject of said petition. Under the 15th clause of his will Samuel Garland, Sr., gave to each of the ten children of his brother, Nicholas A. Garland, a $1000 bond of his East Tennessee and Virginia railroad bonds, or others of equal value. He died in November, 1861, and of such bonds he was then possessed of about $400,000. With the trust funds of said Paulina and her children under the 9th clause of the will, Burr Garland purchased the legacies of eight of Nicholas A. Garland's children. The principal aggregates $8,000. The interest is not less than 6 per cent., and now aggregates over $14,500, outside of accumulations which have, or should

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have, accrued thereon. Principal and interest together now exceed $22,500.

Charles R. Slaughter was the first executor of Samuel Garland, Sr. After the death of Charles R. Slaughter, Samuel Garland, Jr., became executor of Samuel Garland, Sr. After the death of Samuel Garland, Jr., John F. Slaughter became the personal representative of Charles R Slaughter and of Samuel Garland, Jr., and of Samuel Garland, Sr. Charles R. Slaughter and Samuel Garland, Jr., were only residuary legatees of Samuel Garland, Sr. They could not retain as residuary legatees any assets of the estate of Samuel Garland, Sr., until said legatees of the eight children of Nicholas A. Garland had been provided for. Neither could John F. Slaughter turn over to the estates of these residuary legatees any assets of the estate of Samuel Garland, Sr., until said legacies of the eight children of Nicholas A. Garland had been provided for. Each of the personal representatives of Samuel Garland, Sr., J. had abundant assets for the payment of the legacies of said eight children of Nicholas A. Garland. The petition alleges that there are now no assets of the estate of Samuel Garland, Sr. Then some, probably each, of the personal representatives of Samuel Garland, Sr., have committed a devastavit now amounting to $22,500.

Thirty years have passed since these legacies have been payable. For many years it has been sought to obtain payment of them for said Paulina and her children. The petition contemplates many more years before they will be paid. Then the devastavit will be much larger than it is now.

The petition alleges that the estate of Samuel Garland, Jr., and the estate of Charles R. Slaughter should each contribute one-half of the amount necessary to pay these legacies. This will depend on the equities between them, growing out of their respective administrations, and out of the respective assets turned over to them as residuary legatees. If in each of these respects they are equal, then each estate should contribute equally, and if each estate contributed its quota, it would make amends for the devastavit, but if the estate of Charles R. Slaughter failed to return its quota, the estate of Samuel Garland, Jr., might have to make up the deficiency, for there can be no residuary legacy till the other legacies are satisfied.

The account mentioned in the petition, as stated by Mr. Bocock, but not yet filed, shows that the larger part of the $12,651 principal was, at a comparatively recent date, transferred from the estate of Samuel Garland, Sr., to the estate of Samuel Garland, Jr.. As personal representative of each of the three estates, John F. Slaughter readily transfers assets from

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one estate to another. Thus it happens that there are now no assets of the estate of Samuel Garland, Sr. To grant the prayer of the petition would be for the Court to lend its aid to perfect the devastavit. The Court should bring back the assets to the estate of Samuel Garland, Sr.

This respondent is advised that it is the legal and equitable right of his beneficiaries, and he insists that the Court shall require the parties who are liable to bring into court the eight $1,000-bonds of the East Tennessee and Virginia Railroad Company, or others of equal value, mentioned in the 15th clause of Samuel Garland's will, with interest thereon from his death, and that such proceedings may be had as will render said interest productive, and that this be accomplished before any distribution be ordered to the residuary legatees.

And having answered as far as he is advised it is material for him to answer, he prays that his cost be adjudged to him, &c.

M. J. DAY,

late Sergeant and Trustee as aforesaid.

Inventory of Personal Estate in Hinds County 28th November, 1862.

Filed January 9, 1863.

STATE OF MISSISSIPPI,}

HINDS COUNTY: }

To Richard M. Hobson, Richard Fondren, Wm. O. Moseley, Daniel Mann and Henry O. Dixon—Greeting:

This is to authorize you, jointly, to appraise the goods, chattels and personal estate of Samuel Garland, Sr., late of Lynchburg, Va., Campbell county, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation hereto annexed, a certificate whereof you are to return annexed to an inventory of said goods, chattels and personal estate by you appraised, in dollars and cents, and in said inventory you are to set down in a column or columns opposite to each article the value thereof.

{L.S.} Witness, John W. Robb, Judge of Probate of the county of Hinds.

Issued the 6th day of November, 1862.

S. J. THIGPEN, Clerk.

Garland's Adm'or et als. v. Garland's Adm'or et als. 7

You do swear that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of Samuel Garland, deceased, so far as shall come to your sight and knowledge, and will in all respects perform your duty as appraisers to the best of your skill and judgment; so help you God.

Sworn to and subscribed before me,} DANIEL MANN.

this 27th day of November, 1862. } H. O. DIXON.

J. H. BOYD, J. P, } R. FONDREN.

Inventory and appraisement of the personal estate of Samuel Garland, deceased, in Hinds county, Mississippi.

Tudor Hall Estate.

1. Billy Roan,	$ 400.
2. Prudence, his wife,	200.
3. William,	1,300.
4. Burr,	1,400.
5. Virginia,	1,000.
6. Jesse Wren,	1,200.
1. Abram,	1,400.
2. Mary, his wife,	900.
3. Rose,	550.
4. Rice,	600.
5. Peyton,	450.
6. Edward,	200.
1. Alford,	1,500.
2. Sally, his wife,	1,000.
3. Ellick, child,	200.
1. Sam Roan,	1,400.
2. Mary, his wife,	1,000.
3. Pollard, child,	200.
1. Old Stephen,	300.
2. Betsy, his wife,	200.
3. Charles,	1,400.
4. Nicholas,	1,400.
5. Stephen,	1,400.

1. Ben, 1,400.

2. Matildy, his wife, 800.

3. James, 1,200.

4. Lucindy, 600.

5. Ursley, 500.

6. Elizabeth, 300.

7. Ben, 300.

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250.

8. Joseph, 150.

9. George, infant, 1,400.

1. Joe, 1,000.

2. Mariah, his wife, 200.

3. Mary, 100.

4. Margaret, 100.

5. Mariah, infant,

$27,900.

27,900.

800.

1. Ursley, 800.

2. Isabella, 900.

3. Sally, 700.

1. Robert, 700.

2. Emeline, his wife, 800.

3. Richard, 700.

4. Jane, 500.

5. Elijah, 500.

6. Sarah, 250.

7. Robert, 150.

8. Henry, 890.

1. Henry Booker, 600.

2. Lucy, his wife, 1,000.

3. Pleasant, 1,100.

4. Henry Clay, 800.

5. Anthony, 600.

6. Nathaniel, 400.

7. Ellen, 300.

8. Singleton, 1,000.

1. Peter, 700.

2. Eliza, his wife, 900.

3. Mary Francis, 750.

4. Rose, 300.

5. King, 150.

6. Cairy, 900.

1. Charles Kinney, 750.

2. Chenor, his wife, 1,100.

3. Giles, 700.

4. Malindy, 600.

5. Sylva, 500.

6. Abby, 200.

7. Charles. 100.

8. Spotwood, infant, 700.

1. Billy Slaughter,

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2. Nelly, his wife, 850.
3. Marthy Ann, 600.
4. Albert, 600.
5. Catharine, 400.
6. Garland, infant, 100.

$52,200.

52,200.

1. Milton, 1,400.
2. Martha Jane, his wife, 1,000.
3. Martha Ann, infant, 100.
1. Wm. Minor (Black Smith), 800.
2. Milly, his wife, 400.
3. Gracy Ann, 1,000.
4. Henrietta, 1,000.
5. Nelson (idiot and dead expense).
6. Billy, 800.
7. Hannah, 600.
8. George, 600.
9. Spencer, 500.
10. Sarah, 400.

11. Ely, 200.

1. Iverson, 600.

2. Milly, his wife, 200.

3. Annis, 1,000.

4. Betty, 1,000.

5. Aggy, 600.

6. Mansfield, 400.

7. Burr, 250.

8. William, 800.

9. Caroline, 400.

1. Frazier, carpenter, 500.

2. Lucy, his wife, 100.

1. Ellick, 1,500.

2. Martha, his wife, 1,000.

1. Claibourn, 1,350.

1. Charles (Short), 1,200.

1. Wm. Christian, 1,300.

1. Archy, 1,500.

1. Sam Dixon, 1,430.

1. Ned (Virginia), 1,350.

1. Ned Slaughter, 900.

1. Henry Ware, 1,100.

2. Jane, his wife, 800.

**Pages 241-260 **

800.

1. Nancy Bowyer, _____

$81,050,

81,050.

	$ 25 00 each	75.
3 blind mules,	150 00	4,500.
30 head mules,	40 00	320.
8 work oxen,	30 00	600.
20 cows and calves,	30 00	510.
17 head dry cattle,		50.
1 bull,	15 00	225.
16 breeding sows,		100.
31 shoats, for	25 00	925.
37 meat hogs,	1 50	24.
16 shoats,	1 00	25.
25 pigs,	60 00	120.
2 ox wagons,	60 00 and 75 00	135.
2 four-horse wagons,		30.
1 two-horse wagon,	35 00 and 20 00	55.
2 horse carts,	1 25	21.25
17 spades and shovels,	5 00	15.
3 double wingro scrapers,	2 00	8.
4 harrows,	3 00	36.
12 wrought ploughs,	2 00	30.
15 cast ploughs,	3 00	33.
11 double ploughs,	1 50	4.50
3 half shovels,	5 00	20.

4 sweeps, 1 00 11.

11 grubbing hoes, 50.

1 set blacksmith tools, 1 25 22.50

18 pole axes, 1 50 6,000.

4 cribs corn, 4,000 bushels, 1 00 24.

24 weeding hoes, 1½ 396.

1 lot fodder, 26,400 lbs., 200.

2 stacks top fodder, 61 375.

Crop potatoes, 500 bushels, 5.

1 wheelbarrow,

Crop cotton on both plantations,

supposed to be 400 bales, 40 00 per bale 16,000.

$111,995.25

Inventory and appraisement of the personal estate of Samuel Garland, deceased, in Hinds, county, Mississippi.

Barrens Estate.

1. Reuben,

$ 600.

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2. Mason, his wife, 500.

3. Davy Kinney, 1,400.

4. John, 1,300.

5. Beverly, 1,000.

6. Reuben, 600.

7. Taylor, 250.

8. Mally, 800.

9. Nelly, 400.

10. Celina, 300.

11. Celeste, infant, 100.

1. Chas. Coleman, 1,000.

2. Sidney, his wife, 1,000.

3. Laura, 300.

4. Any, infant, 100.

1. Tom Minor, 1,400.

2. Anna Burr, 1,000.

3. Rachael, child, 200.

1. James, 1,400.

2. Louisa, his wife, 1,000.

3. infant child, two months old, 100.

1. Pompy, 1,200.

2. Celia, 900.

3. Caroline, 550.

4. Morris, 450.

5. Ned, 250.

6. Rilla, 300.

7. Betty, child, 150.

1. Chaney and her children, 800.

2. Douglass, } 700.

3. Billy, } 450.

4. Montgomery, } 350.

5. Rosanna, } 100.

$20,950.

20,950.

1. Tieghman, 800.

2. Rhody, 800.

3. Albert, 1,100.

4. Seymore, 900.

5. Henry, 700.

6. Calvin, 600.

7. Martha, 450.

8. Mary, 300.

9. Susan, 200.

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100.

1. Betty (crazy), 800.

2. Lucindy, 200.

3. Joshua, 100.

4. Joshua, infant, ten days old, 1,000.

1. Paulina, 200.

2. Haywood, 100.

3. Wingfield, infant. 200.

1. Old Henry, 100.

2. Mary, his wife, 1,500.

1. Cairy, 900.

2. Nannie, his wife, 1,300.

1. Harrison, 800.

2. Sarah Anderson, 700.

1. Rainey and her children, 600.

2. Annie, } 400.

3. Ellen, } 300.

4. Celina, } 150.

5. Julia, child, } 700.

1. Sarah Jane (Dolly), 600.

2. Catharine, 500.

3. Joe, 500.

4. Wright,

_____

$38,550.

38,550.

1. Wm. Bolling, 500.

2. Rose, his wife,} Rose and her son, John Dick, 300.

3. John Dick, } belong to B. Garland, 1,100.

1. Washington (carpenter, 1,200.

2. Fanny, his wife, 800.

3. Washington, little boy, } Fanny and her three 500.

4. Matildy, } children belong to 250.

5. Burr, infant, } B. Garland. 150.

1. Henry Sea, 900.

2. Louisa, his wife,} Louisa and her four 750.

3. Elviry, } children—Elviry, Ma- 800.

4. Matilda, } tildy Betty and Ma- 600.

5. Betty, } lindy—belong to B. 200.

6. Malindy, } Garland. 150.

1. Esau, 1,500.

1. Davy, 1,350.

1. Bob, 1,350.

1. Jimmy, 600.

1. Old Charles, 200.

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1. Preston (or Purnen, bricklayer), 900.

1. Pleasants (carpenter), 1,800.

$54,450.

54,450.

22 head mules, $140 00 3,080.

3 mule colts, 75 00 225.

1 horse colt, 100.

1 bay mare, 200.

1 roan mare, 150.

1 blind mare (no value).

1 old roan horse, 15.

10 work oxen, 40 00 400.

17 cows and calves, 30 00 510.

20 head dry cattle, 10 00 200.

1 bull, 40.

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$59,370.

59,370.

1 ox wagon, 75.

1 mule wagon, 100.

2 two horse wagons, 40 00 80.

1 old horse cart, 5.

1 market wagon, 35.

3 Winger's double scrapers, 5 00 15.

2 Yoast's single scrapers with ploughs, 6 00 12.

4 double sweeps, 5 00 20.

2 double sweeps, 2 30 4.

29 single ploughs, }

5 double ploughs, }34 2 50 85.

12 cultivators, 1 00 12.

8 Harrows, 3 00 24.

3 Half shovels, 2 50 7.50

6 bull-tongue ploughs, 2 50 15.

10 spades and 12 shovels = 22, 1 25 27.50

20 axes, 1 25 25.

20 grubbing hoes and 2 picks, 1 00 22.

1 wheelbarrow, 5.

30 killing hogs, in pen, 30 00 900.

16 breeding sows, 15 00 240.

70 pigs, 70.

3 cribs corn, 3,000 bushels, 1 50 4,500.

1 lot fodder, 19,200 lbs., 1 50 288.

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50 00 150.

3 ricks top fodder, 75 300.

Crop potatoes, 400 bushels, 450.

Household and kitchen furniture, _____

$ 66,837.

Value of personalty on Barren's estate, 111,995.25

Value of personalty on Tudor Hall estate,

$178,832.25

Whole value,

STATE OF MISSISSIPPI,}

} To-wit:

HINDS COUNTY. }

In obedience to an order of the honorable Judge of the Probate Court of Hinds county, Miss., to as directed, dated on the 6th day of November, 1862, we, the undersigned appraisers mentioned therein, after being duly sworn, proceeded to the plantations of Samuel Garland, deceased, in Hinds county, known as the "Tudor Hall" and "Barrens" estates, and appraised all the property shown to us as belonging to the said estate of Samuel Garland, in Hinds county, and herewith make return of the same on two sheets paper, pages 1, 2, 3, 4 each. All of which is respectfully submitted to the Honorable Court.

Given under our hands this 28th day of November, 1862.

H. O. DIXON, }
R. FONDREN, } Appraisers.
D. MANN. }

STATE OF MISSISSIPPI,}
} To-wit:
HINDS COUNTY. }

This day personally appeared in the Probate Court of said
county, while open, Burr Garland, who being first duly sworn,
stated that he is administrator with the last will and testament
of Samuel Garland, deceased, late of the State of Virginia, in and
for the State of Mississippi; that the foregoing schedule and report of appraisement made in Hinds county and the schedule and
report of appraisement herewith filed, which was made in the
county of Coahoma, are correct as stated, to the best of his
knowledge and belief, and that the same include all the personal
property of said decedent that has come to his hands or knowledge as administrator as aforesaid, except such portions as have
been consumed in the use since his qualification. Wherefore af-

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fiant prays the Honorable Court that said schedules and reports
of appraisement, together with this affidavit, may be taken as

and for the inventories by law required to have been made by
him under the circumstances. For the sake of explanation, affiant
begs leave to add that the following named negroes—to-wit:
Rose and her son, John Dick; Fanny and her three children,
Washington, Matilda Burr, and Louisa and her four children, Elviry, Betty, Matilda and Malindy—which are included in
the foregoing appraisement, are his own separate property, and
he will at all times claim them so to be. They were included in
the foregoing because they had long been on the Barrens estate
and assessed as the property of the said decedent, Samuel Garland.

Sworn to and subscribed in open court, this}
9th day of January, 1863. } B. GARLAND.
R. N. HALL, Clerk.}

Filed 9th January, 1863.
R. N. HALL, Clerk.

January term, 1863, 1st day, 5th January, 1863.

At a regular term of the Probate Court of Hinds county, begun
and held at the court-house thereof, in the town of Raymond, on
the first Monday of January, 1863, the following pleas and proceedings were made, had and determined—to-wit:

Present: JOHN W. ROBB, Judge,
J. B. FAIRCHILD, Sheriff.
ROBERT N. HALL, Clerk.

Friday morning Court met pursuant to adjournment.

In the matter of the estate of Samuel}
Garland, Sr., deceased. }

Burr Garland, administrator with the will annexed of said deceased, this day returned into court the inventory of the appraisers appointed to value the personal estate of said deceased

in Hinds county, and the Court having examined the same, being

satisfied that said appraisers, in all their proceedings in this behalf, have conformed to the statute, and that said inventory and

appraisement is properly made out and certified, doth order that

the same be approved, affirmed and recorded.

Inventory of Personal Estate in Coahoma County, 26th December, 1862.

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Filed 9th January, 1863.

THE STATE OF MISSISSIPPI,}
HINDS COUNTY. }

To Prior M. Grant. George Robson, Temple Stewart, Thomas
McNeil and J. H. Bean, of Coahoma County—Greeting:

This is to authorize you jointly, to appraise the goods, chattels and personal estate of Samuel Garland, Sr., late of Lynchburg, Va., Campbell county, deceased, so far as they shall come

to your sight and knowledge, each of you having first taken the

oath or affirmation, hereto annexed a certificate whereof you

are to return annexed to an inventory of said goods, chattels and personal estate by you appraised to the court in this county, in dollars and cents, and in said inventory you are to set down in a column or columns opposite to each article the value thereof.

}L. S.} Witness, John W. Robb, Judge of probate of the county
}___} of Hinds.

Issued the 6th day of November, 1862.

SAMUEL J. THIGPEN, Clerk.

You do swear that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of Samuel Garland, deceased, so for as shall come to your sight and knowledge, and will in all respects perform your duty as appraisers to the best of your skill and judgment, so help you God.

T. F. STEWART.
G. W. ROBSON,
Jno. A. BEAN.

Sworn to and subscribed before me, this 26th day of December, A. D., 1862.

JAMES MIFFLETON, M. B. P.

Inventory and appraisement of the personal estate of Samuel Garland, deceased, in Coahoma county, Mississippi.

1. Henry (young man), $ 1,000.

2. Delila, his wife, 600.

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3. Martha, child, 250.

1. Sam, 800.

2. Caroline, his wife, 500.

3. Geor ge, 700.

4. Eliza Ann, 600.

5. Simeon, 400.

6. Silla, 300.

7. Maryland, 250.

8. Celia, 250.

9. Brown, 200.

1. Reuben, 600.

2. Dianah, his wife, 400.

3. Rilla, 500.

4. Nathan, 500.

5. Major, 500.

1. Old Gabriel, 500.

2. Polly, his wife, 400.

3. Anderson, 400.

1. George (run away to the Yankees).

2. Sue, his wife, 500.

3. Julia, 300.

4. Susan, 250.

5. Calvin, 100.

6. Cebelle, 150.

1. Moses, 550.

2. Nancy, his wife 500.

3. Anna, 600.

4. Ardell, 450.

5. William, 250.

6. Mary, 200.

7. Mildred, 450.

8. Eliza, 350.

_____

$14.300.

14,300.

1. Boyd (blacksmith), 1,500.

2. Sarah, his wife, 500.

1. Wm. Carter, 1,000.

1. Harvey (run away to the Yankees. .....

_____

Value of Negroes, $17,300.

4 mules. (and one mule blank, no value), 500.

8 work oxen, 300.

5 cows and calves, 100.

		180.
9 Dry Cattle,		40.
1 bull,		85.
3 breeding sows and 1 boar,		42.
14 stock hogs,		208.50
Plantation tools,		75.
Blacksmith tools,		85.
1 ox wagon,		30.
1 horse cart.		1,462.50
Crop corn, 2,925 bushels,		50.
Crop fodder,	$4 00 each,	44.
11 sweeps,	3 00	63.
21 turning ploughs,		20.
5 scrapers,		12.
4 iron-tooth harrows,		20.
4 Kane ploughs,		12.
12 Kane knives,		12.50
25 hoes,		12.
12 shovels,		13.
2 cross-cat saws,	208 50	
2 heads and steads,	10 00	20.
Cooking utensils,		14.
Forward,		$20,700.50

Amount brought forward,	20,700.50

Deduct plantation tools, twice entered, 208.50

$20,492.

STATE OF MISSISSIPPI,}
COAHOMA COUNTY. }

In obedience to an order from the Probate Court of Hinds county, to us directed, we, the undersigned appraisers, being first duly sworn, went to the plantation of Samuel Garland, deceased, in Coahoma county, and appraised all the property shown to us on the said estate, and herewith make return of the same.
Given under our hands this 26th day of December, 1862.

T. F. STEWART,
G. W. ROBSON,

Filed 9th January, 1863. JNO. H. BEAN.

R. N. HALL, Clerk.

Garland's Adm'or et als. v. Garland's Adm'or et als. 19

See affidavit of administrator, &c.,}
on Hinds county appraisement. }

Filed 9th January, 1863.

R. N. HALL, Clerk.

January term, 1863, 1st day, 5th January, 1863.

At a regular term of the Probate Court of Hinds county, begun

and held at the court-house thereof, in the town of Raymond, on

the first Monday of January, 1863, the following pleas and proceedings were made, had and determined—towit:

Present: JOHN W. ROBB, Judge.

J. B. FAIRCHILD, Sheriff.

ROBERT N. HALL, Clerk.

Friday morning court met pursuant to adjournment.

In the matter of the estate of Samuel}

Garland, Sr., deceased. }

Burr Garland, administrator with the will annexed of said deceased, this day returned into court the inventory of the appraisers appointed to value and appraise the personal estate of

said deceased in Coahoma county, and the Court having examined the same, being satisfied that said appraisers in all their

proceedings in this behalf have conformed to the statute, and

that said inventory and appraisement is properly made out and

certified, doth order that the same be approved, confirmed and

be recorded.

Assignment of One Year's Allowance to the Widow, 3d February, 1863.

At a regular term of the Probate Court of Hinds county, begun and held at the court-house thereof, in the town of Raymond, on the first Monday, the 5th day of January, 1863, and

on the 9th day of January, being the fifth of the term, the following order was made:

In the Matter of the Estate of Samuel Garland, Sr., Deceased.

On petition of Mary L. Garland, widow of said deceased.

It is ordered by the court that Richard M. Hobson, Richard

Fondren, William O. Moseley, Daniel Mann and Henry O. Dixon,

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of Hinds county, be appointed commissioners, and as such they

are hereby directed to set apart to the said widow out of the

stock of provisions of said deceased, or his effects, one year's provisions for said widow, or an allowance therefor in money; and,

also, all the personal estate that was and is by law exempt from

execution, and report accordingly on oath.

State of Mississippi,

Hinds County.

I, Robert N. Hall, clerk of the Probate Court in and for said

county, do hereby certify that the foregoing is a true copy from

the minutes as the same is of record in my office.

Witness my hand and the seal of said court, at office Raymond,

January 9, 1863.

R. N. HALL, Clerk.

[Seal.]

State of Mississippi,

Hinds County—to-wit:

This day personally appeared before the undersigned, an active justice of the peace in and for said county, H. O. Dixon, Daniel Mann, and Richard Fondren, three of the commissioners appointed by the Probate Court of Hinds county, to set apart to Mary L. Garland, the widow of Samuel Garland, deceased, out of the stock of provisions of said deceased, or his effects, one year's provisions for said widow, or an allowance therefor in money; and also all the personal estate that was and is exempt from execution, and severally made oath well and truly, without partiality or prejudice, to perform the duty imposed upon them, to the best of their skill and judgment.

H. O. DIXON,

R. FONDREN,

D. MANN.

Sworn to and subscribed before me this 23d day of January, 1863.

J. H. BOYD, J. P. [Seal.]

To the Honorable John W. Robb, Judge of the Probate Court of

Hinds County, in the State of Mississippi:

The undersigned respectfully report to the Honorable Court that the order hereto attached having been made known to them,

they assembled on the 23d day of January, 1863, and took and subscribed the foregoing oath, and then proceeded at the Barrens

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estate of the said decedent, Samuel Garland, on the 25th day of January, 1863, to the performance of the duties assigned them; that on due consideration they determined to make to said widow, Mary L. Garland, an allowance in money, instead of one year's provisions, out of the stock of provisions of said decedent or his effects, and fixed the amount of said allowance in money, including clothing, &c., at the sum of three thousand dollars, to be paid by said decedent's administrator, &c., in this State; and that they proceeded to set apart to the said widow the property exempt from execution, being the negro man Henry, selected for her by her agent, Burr Garland, of copper color and about thirty years of age—on the Coahoma estate; the agricultural implements of a farmer necessary for two male laborers, consisting of one double horse plough, one single horse ditto, two sets plough gear, two hoes, two axes, one spade, two grubbing hoes, one hand-saw, one crosscut-saw, one hammer, one square, one footadze, one chopping-ax, two augers and garden tools; one workhorse, of roan color, called Polly; four cows and calves, twenty head of stock hogs (say three brood sows and seventeen shoats), one hundred and fifty bushels of corn, eight hundred pounds of pork, one yoke of oxen (named Davy and Darby), one wagon (for oxen), and the following household furniture, to-wit: One large feather-bed and furniture, mattress, curtain-stead, &c., with

sheets, blankets, &c., $75; one mahogany bureau, with lookingglass, $35; one mahogany settee and one rocking-chair, $50; set

mahogany chairs, $30; one centre-table, $10; one mahogany

book-case, $50—$250; selected for the said widow, Mary L. Garland, by her agent, Burr Garland and which does not, in our

judgment, exceed two hundred and fifty dollars in value. And

your commissioners do finally report that in making the aforesaid allowance of $3,000 in money, full reference was had by them

to the personal estate exempt from execution, to which said

widow was entitled, and which has been set apart to her as

aforesaid.

All of which is respectfully submitted by us, under our hands

and seals, on the day and year hereinbefore last aforesaid.

H. O. DIXON, [Seal.]

R. FONDREN, [Seal.]

D. MANN, [Seal.]

Commissioners. &c.

Filed 3d February, 1863.

R. N. HALL. C'k.

February Term, 1863, 1st day, 2d February.

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22 Garland's Adm'or et als. v. Garland's Adm'or et als.

At a regular term of the Probate Court of Hinds county, begun and held in the court-house thereof, in the town of Raymond,

on the first Monday of February, 1863, the following pleas and

proceedings were made, had and determined, viz:

Present: John W. Robb, judge; J. B. Fairchild, sheriff; Robert N. Hall, clerk.

Tuesday morning, court met pursuant to adjournment.

In the Matter of the Estate of Samuel Garland, Sen'r, Deceased.

Burr Garland, administrator with the will annexed of Samuel Garland, Sr., deceased, this day returned into court the report of the commissioners appointed to set apart to the widow of said deceased one year's provisions and the personalty of deceased exempt from sale under execution, and the court, upon examination thereof being satisfied that said commissioners in all their proceedings in this behalf have conformed to the statute, doth order and decree that said report be in all things approved, confirmed and recorded.

Assignment of dower, 16th day of August, 1864.

The State of Mississippi,

To the Sheriff of Hinds County, greeting:

You are hereby commanded to summons three discreet freeholders connected with the parties neither by consanguinity or affinity, and entirely disinterested as commissioners, and them to qualify according to law, who, when so qualified, shall allot and set off by metes and bounds to Mary L. Garland, the widow and

relict of Samuel Garland, Sr., deceased, one-half of the following

described lands situated and being in said county of Hinds, towit: The southwest quarter of section eight (8); the north half

and the southeast quarter, both of section nine (9); the south

half and the west half of the northwest quarter, both of section

ten (10); the west half of the southwest quarter of section eleven

(11); all of the northwest quarter of section fourteen (14), that

lies west of the New Orleans, Jackson and Great Northern railroad, containing one hundred and twelve (112) acres, more or

less, and all of the southwest quarter of said section fourteen

(14), that lies west of said railroad, containing twenty-seven

(27) acres, more or less; The north half and the southeast quarter,

both of section, fifteen (15); the north half and the west half of the

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southwest quarter, both of section sixteen (16); the whole of section

seventeen (17); the east half of the southeast quarter of section

eighteen (18); the north half of the east half of the northeast

quarter of section twenty (20), and the west half of the northeast

quarter of section twenty-two (22); all of said lands begin in township six (6) of range one (1) east, containing two thousand nine

hundred and seventy nine (2,979) acres, more or less, and lying

in one adjoining and connected body on which there are two

large plantations, cultivated by the said Samuel Garland, Sr., in

his lifetime and till his death, for the production of cotton, corn,

&c., in fee simple and absolute right as the dower of the said

widow.

And you are hereby further commanded that when said lands shall be allotted as aforesaid by said commissioners, to put the said Mary L. Garland in possession of the share and portion of one-half thereof, set off to her to be held, possessed, and engaged by her in fee simple and absolute right, and that you return this writ, with the manner in which you shall execute the same, together with the report of said commissioners, duly certified and attested, at the next term of this court thereafter.

Witness John W. Robb, judge of the Probate Court, of said county, at the court-house thereof, the first Monday of Aug't, 1864, as witness, also my hand and private seal (having no seal of office) at office Raymond, 3d Aug't, 1864.

R. N. HALL, Clerk. [Seal.]

By virtue of the within and foregoing writ to me directed, I have this day, at the "Barrens" plantation, on the lands in said writ described, summoned as commissioners Benjamin Whitfield, Richard Fondren, and Alfred Johns, disinterested freeholders of my county, and connected to the parties to said writ neither by consanguinity or affinity, and have notified them to proceed forthwith on the lands described in the said writ to the execution of their commission.

This, the 15th day of August, 1864.

J. B. FAIRCHILD,

Sheriff of Hinds County.

Pursuant to the above summons and by virtue of the within

and foregoing writ, I this day assembled the above named commissioners at the "Barrens" plantation aforesaid, who, after

being qualified by me according to law, proceeded and allotted

and set off by metes and bounds the dower of the said Mary L.

Garland, widow and relict of said Samuel Garland, Sr., deceased,

in the lands described in the within and foregoing writ, accord-

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ing to the descriptions thereof, as will fully appear by reference

to the report of said commissioners herewith returned as exhibit

A; and I thereupon put her, the said Mary L. Garland, by her

agent and attorney in fact, Burr Garland, in possession of the lands

allotted and set off to her as her dower, being about one-half of

the whole, and the part so allotted and set off to be held, possessed and enjoyed by her in fee simple and absolute right.

This, the 15th day of August, 1864.

J. B. FAIRCHILD,

Sheriff of Hinds county.

Report of Commissioners.

Exhibit A.

To the Honorable John W. Robb, Judge of the Probate Court of
Hinds County, in the State of Mississippi:

The undersigned commissioners summoned by the sheriff of said county, under and by virtue of a certain writ of dower issued by said court, in which they were directed, among other things, to allot and set off by metes and bounds to Mary L. Garland, widow and relict of Samuel Garland, Sr., deceased, one-half of the lands described in said writ, as and for the dower therein of the said widow and relict, beg leave to report:

That after being assembled and sworn by the sheriff aforesaid at the "Barrens" plantation, on one of the two situated on the lands described in said writ, and all of which are in said county, they proceeded without any survey (as none was called for or demanded by any party interested, and as in fact the county surveyor could not be gotten), and allotted and set off by metes and bounds one-half part nearly of the said lands to the said Mary L. Garland, widow and relict as aforesaid, as and for her dower therein, the part so allotted and set off, to be held, possessed and enjoyed by her in fee simple and absolute right, and being described as follows, to-wit: The southwest quarter of section eight (8), the west half of the northwest quarter, south half of the east half of the northwest quarter, south half of the west half of the northeast quarter, and the west half of the southeast quarter, all in section nine (9); the west half of the northeast quarter, the northwest quarter, and the west half of the southwest quarter, all in section sixteen (16), the whole of section seventeen (17), the east half of the southeast quarter of section eighteen (18), and the north half of the east half of the northeast

quarter of section twenty (20). The whole being in township

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six (6) of range one (1) east, in said county and State, and containing one thousand four hundred and eighty (1,480) acres,

more or less.

It is true that the quantity of lands allotted and set off is less than one-half of the whole by nine and a half (9½) acres, but as the said Mary L. Garland, and by her agent and attorney in fact, Burr Garland, not only made no objection thereto, but actually assented to the same; it was not deemed by us to be material, though we have thought proper thus to allot it.

All of which is respectfully submitted and certified under our hands and seals this 15th day of August, 1864.

BENJ. WHITFIELD. [Seal.]

R. FONDREN. [Seal.]

ALFRED JOHNS. [Seal]

Filed 5th September, 1864.

R. N. HALL, Clerk.

September Term, 1864, 1st Day, 5th September.

At regular term of the Probate Court of Hinds county, begun

and held at the court-house thereof, in the town of Raymond, on the 1st Monday of September, A. D., 1864, being the 5th day of said month, the following pleas and proceedings were made, had and determined, viz:

Present: John W. Robb, judge; J. B. Fairchild, sheriff; R. N. Hall, clerk.

In the Matter of the Petition of Mary L. Garland, Widow of Samuel Garland, Sr., Deceased, for Dower in Lands in Hinds County.

The sheriff of this county, at this term returned the writ of dower issued in the cause in pursuance of a decree of this court, bearing date the 3d day of August, 1864, whereby it appears that he summoned and qualified three commissioners to allot and set off the dower of the said Mary L. out of the land described in said decree, and that the said commissioners have proceeded, and by metes and bounds allotted and set off said dower and made due report thereof, which is filed with the sheriff's return of said writ, and that the said sheriff has put the said widow in possession of the land so allotted and set off to her; and it further appearing to the satisfaction of the court that the said sheriff and commissioners have, in all things, proceeded in strict conformity to the statute in the execution of said writ, and the said Mary

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L. having appeared before this court this day and moved and

prayed that the said allotment and report be confirmed, and the

court being now fully advised in the premises and deeming it just,

right and proper that the same should be confirmed, doth thereupon order and decree that said allotment and report be, and the

same are hereby in all things ratified and confirmed, to be observed by all parties concerned therein, and that the said petition

and all proceedings had thereon be recorded.

It is further ordered that the estate of said Samuel Garland,

Sr., be taxed with the costs of this proceeding.

Appraisement of Personal Estate and Allotment of Half to the

Widow, 5th September, 1864.

State of Mississippi,

Hinds County, to-wit:

Personally this day appeared before me, Lemuel S. Evans, an

acting justice of the peace in and for said county, Benjamin Whitfield, Alfred Johns and Henry O. Dixon, and respectively made

oath that they would make and report an honest, faithful and

impartial division and allotment of the personal property of

Samuel Garland, Sr., deceased, in said county, between his widow

and relict, Mary L. Garland, and all others interested therein,

in conformity to the decree of the Probate Court of said county,

appointing them and others, which was made on the 20th day of

June, 1864, and in all respects will perform all the duties, trusts

and services required of them in this behalf, to the best of their

skill, knowledge and judgment.

BENJ. WHITFIELD,

ALFRED JOHNS,

H. O. DIXON.

Sworn to and subscribed before me this 2d day of September, 1864.

L. S. EVANS, J. P. [Seal.]

To the Honorable John W. Robb, Judge of the Probate Court of Hinds County, in the State of Mississippi:

The undersigned, three of the commissioners appointed by this honorable court at the last June term thereof, and ordered and directed, among other things, to ascertain the share of one-half of Mary L. Garland, the widow and relict of Samuel Garland, Sr., deceased, in absolute right, of so much of the personal property of her said deceased husband's estate as may be found by them in

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said county of Hinds, not including therein the eleven slaves claimed by Burr Garland, whose names appear in the papers and pleadings in this behalf, nor the slaves, Preston or Purnell and Pleasant, who are specially mentioned in the papers referred to, but including therein the slave Sam, who is in like manner referred to; and to allot and set apart to her, the said Mary L. Garland, widow and relict as aforesaid, the said share of one-half

as aforesaid, beg leave respectfully to report, that they gave no notice of the time and place of their assembling for the purpose aforesaid to any person, as they ascertained upon inquiry that none of the devisees or legatees of the estate of the said Samuel Garland, Sr., deceased, nor the guardians of any of them are, or reside within the State of Mississippi, except Burr Garland, who was present with them at and during the division, &c., hereinafter reported, and neither desired or was entitled to notice; but that in other respects, pursuing the instructions contained in the decree by which they were appointed and which was made by the honorable court on the 20th day of June, 1864, and the rule of the statute in this behalf, they assembled for the purpose aforesaid on the second day of September, 1864, at the residence on the "Barrens" place, one of the two adjoining plantations in said county that belonged to the said Samuel Garland, Sr., deceased, and proceeded to the performance of the duties assigned them. They divided all the personal property of the said Samuel Garland, Sr., deceased, found by them as aforesaid, or that came to their knowledge, not including therein the eleven slaves claimed by Burr Garland, nor the slaves, Preston or Purnell and Pleasant, but including the slave Sam; all is directed in the aforesaid decree by which they were appointed, into two equal shares, as near as could conveniently be without separating the families of the slaves, according to value; that they designated said shares as Nos. one (1) and two (2), and allotted and set off to the said Mary L. Garland, widow and relict as aforesaid, share No. one (1), as the same will fully appear to your Honor by reference to the annexed schedule, marked "A," signed and sealed by your commissioners, and prayed to be taken as part hereof, in which

said shares are severally detailed and marked as aforesaid, containing the names and value of the slaves, and designating,

with the value, the other personal property. And your undersigned commissioners further report that to equalize said shares

and to compensate the said Mary L. Garland for the deficit in

share one (1) allotted to her, as shown in said schedule "A,"

they did, and do hereby award that Burr Garland, administrator, in the State of Mississippi with the last will and testament

of the said Samuel Garland, Sr., deceased, annexed, pay to the

said Mary L. Garland the sum of $275, thereby setting the value

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of each of said shares at fifty-six thousand six hundred and

seventy-five dollars ($56,675.) And your commissioners having

now fully discharged the duties enjoined upon them and others

by the decree aforesaid, and having fully reported their proceedings under and by authority thereof, beg leave to be discharged.

Given under our hands and seals this 2d day of September, 1864.

BENJ. WHITFIELD. [Seal.]

ALFRED JOHNS. [Seal.]

H. O. DIXON. [Seal.]

Schedule "B," exhibiting the personal estate of Samuel Garland, Sr., deceased, found by them in Hinds county, Mississippi,

or that came to their knowledge, not including the eleven slaves

claimed by Burr Garland, nor the slaves, Preston or Purnell and

Pleasants, but including the slave Sam, divided into two shares,

of which share No. one (1) was allotted and set off to Mary L.

Garland, widow and relict of the said Samuel Garland, Sr., deceased, by the undersigned commissioners, as hereinafter and in

the annexed report expressed, to-wit:

Share and lot No. 1, allotted to Mrs. Mary L. Garland.

Reuben, a slave, valued at		$ 600
Mason,	do. do.	500
John,	do. do.	1,300
Part of Lot 1 carried to next page,		$2,400

Part of Lot 1 from last page,		2,400
Beverly,	a slave, valued at	1,090
Reuben,	do. do.	600
Taylor,	do. do.	250
Molly,	do. do.	800
Neely,	do. do.	400
Selina,	do. do.	300
Celeste,	do. do.	100
Chas. Coleman,	do. do.	1,000
Sidney,	do. do.	1,000
Laura,	do. do.	300
Amy,	do. do.	100
Old Betty,	do. do.	100
Lucinda,	do. do.	800
Joshua,	do. do.	200

John Wesley, do. do. 100

Chaney, do. do. 800

Douglass, do. do. 700

Billy, do. do. 450

Montgomery, do. do. 350

Roxanna, do. do. 100

Sarah Jane (Dolly), do. do. 700

Catharine, do. do. 600

Joe, do. do. 500

Wright, do. do. 500

Bob Slaughter, do. do. 1,350

Wm. Bolling, do. do. 500

Washington, do. do. 1,200

Sam Roan, do. do. 1,400

Mary, do. do. 1,000

Pollard, do. do. 200

Charles Bunks, do. do. 1,400

Lucy Booker, do. do. 600

Henry Clay, do. do. 1,100

Anthony, do. do. 800

Nathaniel, do. do. 600

Ellen, do. do. 400

Singleton, do. do. 300

Dinah, do. do. 100

Miley Iverson, do. do. 200

Annie, do. do. 1,000

Betty. do. do. 1,000

Aggy, do. do. 600

Mansfield, do. do. 400

Burr, do. do. 250

William, do. do. 800

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Part of Lot 1 carried to next page, $29,350

Part of Lot 1 from last page, $29,350

Caroline, a slave, valued at 400

Matilda, do. do. 800

James, do. do. 1,200

Lucinda, do. do. 600

Ursley, do. do. 500

Elizabeth, do. do. 300

Ben, do. do. 300

Joseph, do. do. 250

George, do. do. 150

Minerva, do. do. 100

Mary Roan, do. do. 900

Rose, do. do. 550

Rice, do. do. 600

Peyton, do. do. 450

Pages 261-280

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Transcription of Garland Estate Court Documents

[Page 30 - Image 1]

Edward,	do.	do.	200
Abram,	do.	do.	100
Nelly,	do:	do.	850
Martha Ann,	do.	do.	600
Alford,	do..	do.	600
Catharine,	do.	do.	400
Garland,	do.	do.	100
Sally Roan,	do.	do.	1,000
Ellick,	do.	do.	200
Miles,	do.	do.	100
Mariah,	do.	do.	1,000
Mary,	do.	do.	200
Margaret,	do.	do.	100
Mariah,	do.	do.	100
Milton,	do.	do.	1,400
Ned Slaughter,	do.	do.	900
Billy Roan,	do.	do.	400
Prudence,	do.	do.	200
Virginia,	do.	do.	1,000
Jessee,	do.	do.	1,200

Sam Green, do. do. 1,000

Mules at the Barrens.

Pol, valued at $200
Nel, do. 200
Monday, do. 200
Mary, do. 200
Pete, do. 200
Three old horses, do. 150
Five head of cattle, do. 500
Twenty-five head hogs, do. 625
One 4-horse wagon, do. 100

Part of Lot 1 carried to next page, $50,475
Part of Lot 1 from last page, $50,475
One 2-horse wagon, 100
One market wagon, 75
List of farming implements, including ploughs, harrows, gears, hoes, grubbing-hoes, chains of every kind, now on the "Barrens" plantation, all old, in bad order and worn out, &c., &c., 300
A small lot of household and kitchen furniture, left by the Yankees at the Barrens, 200
15,000 pounds of cotton in the seed, 2,250

1,000 bushels old corn at $3, 3,000

$56,400

Share and lot No. 1 allotted to Mrs. Mary L. Garland $56,400

Share and Lot No. 2, Left to the Estate of Samuel Garland, Sr

Tiegham, a slave, valued at $800
Rhody, do. do. 800
Seymore, do. do. 900

Part of Lot 2 carried to next page, $2,500

Part of Lot 2 from last page, $2,500
Henry, a slave, valued at 700
Calvin, do. do. 600
Martha, do. do. 450
Mary, do. do. 300
Susan, do. do. • 200
Doctor, do. do. 100
Stephen, do. do. 1,400
Peter, do. do. 1,000
Eliza, do. do. 700

Mary Francis, do. do. 900

Rose, do. do. 750

King, do. do. 300

Cairy, do. do. 150

Esau, do. do. 100

Charles Kinny, do. do. 900

Chener, do. do. 750

Giles, do. do. 1,100

Malinda, do. do. 700

Silva, do. do. 600

Abby, do. do. 500

Spotwood, do. do. 100

Pompey, do. do. 1,200

Celia, do. do. 900

Caroline, do. do. 550

Morriss, do. do. 450

Ned, do. do. 250

Rilla, do. do. 300

Betty, do. do. 150

Jerry, do. do. 100

Ann Burr, do. do. 1,000

Rachael, do. do. 200

[Page 32 - Image 3]

Sarah, do. do. 100

Paulina, do. do. 1,000

Haywood, do. do. 200

Wingfield, do. do. 100

Robert Lee, do. do. 900

Nannie, do. do. 100

Jacob, do. do. 1,400

Tom Minor, do. do. 600

Jimmy, do. do. 1,200

Charles Short, do. do. 1,400

James, do. do. 1,000

Louisa, do. do. 100

Austin, do. do. 700

Robert, do. do. _____

Part of Lot 2 carried to next page, $28,800

Part of Lot 2, from last page, $28,800

Emeline, a slave, valued at 700

Richard, do. do. 800

Jane, do. do. 700

Elijah, do. do. 500

Sarah, do. do. 500

Robert, do. do. 250

Henry, do. do. 150

Jeff Davis, do. do. 100

Wm. Minor, do. do. 800

Milly, do. do. 400

Grace Ann, do. do. 1,000

Henrietta, do. do. 1,000

Nelson (idiot), do. do. 000

Billy, do. do. 800

Hannah, do. do. 600

George, do. do. 600

Spencer, do. do. 500

Sarah, do. do. 400

Usley, do. do. 800

Sallie, do. do. 900

Claiborne, do. do. 1,350

Wm. Christian,do. do. 1,300

Burr, do. do. 1,400

Jane, do. do. 800

Old Henry, do. do. 200

Mary, do. do. 100

Martha, do. do. 1,000

Raney, do. do. 700

[Page 33 - Image 4]

Anna, do. do. 600

Ellen, do. do. 400

Selina, do. do. 300

Julia. do. do. 150

Mules at Tudor Hall.

Jim,	valued at	$200
Milly,	do.	25
Dolly,	do.	25
Sal,	do.	200
Beck,	do.	200
Waxy,	do.	200
John,	do.	200
Becky,	do.	200
Three old horses,	do.	150
Five head of cattle,	do.	500
Twenty-five head hogs,	do.	625
One 4-horse wagon,	do.	100

Part of Lot 2 carried to next page, $51,225

Part of Lot 2 from last page, $51,225

1 old show wagon, valued at 100

1 horse cart, " 75

Lot of farming implements, including ploughs, harrows, gears, hoes, grubbing hoes, chains of every kind, &c., &c., now on the "Tudor Hall" plantation, all old, in bad order and worn out 300

15,000 lbs. cotton in seed, 2,250

1,000 bushels corn, at $3, 3,000

$56,950

Share and Lot No. 2, left to the estate of Samuel Gar-
land, Sr., $56,950

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BENJ. WHITFIELD. [Seal.]
ALFRED JOHNS. [Seal.]
H. O. DIXON. [Seal.]

Filed 5th September, 1864.
R. N. HALL, Clerk.

September Term, 1864, 1st day, 5th September.

At a regular term of the Probate Court of Hinds county, begun and held at the court-house thereof, in the town of Raymond,

[Page 34 - Image 5]

on the 1st Monday of September, A. D., 1864, being the 5th day of September, the following pleas and proceedings were made, had and determined, viz:

Present: John W. Robb, judge; J. B. Fairchild, sheriff; R. N.

Hall, clerk.

In the Matter of the Allotment to Mary L. Garland, Widow and Relict of Samuel Garland, Sr., Deceased, of Her Share of the Personal Estate in Hinds County.

On filing the report of three of the five commissioners appointed by this court at its last June term, to allot and set apart to the said Mary L. her share of the personal estate of her said husband then in Hinds county. It appearing to the satisfaction of the court, upon hearing said report and the proofs and exhibits therewith filed that the said commissioners have divided said personal estate according to law, and in all their proceedings have strictly conformed to the requisitions of the statute in such behalf made and provided, and the said Mary L. having this day appeared and moved the court to confirm said allotment as reported, and the court being now fully advised in the premises, and deeming it just, right and proper that the same should be done, doth thereupon order and decree that the said allotment and report do, in all things, stand ratified and confirmed, and to be observed by all parties concerned therein, and that said report and all proceedings had in the matter of said allotment be recorded.

It is further ordered, that the estate of Samuel Garland, Sr., be taxed with the costs of this proceeding.

Burr Garland's Selection Under the 9th Clause of the Will, 30th September, 1864.

To the Honorable John W. Robb, Judge of the Probate Court of Hinds County, in the State of Mississippi:

The undersigned, Burr Garland, of said county, respectfully states that Samuel Garland, Sr., of the city of Lynchburg, in the State of Virginia, departed this life on the ——— day of November, 1861, having made a last will and testament, dated the 7th day of December, 1857, which was duly admitted to probate in the Court of Hustings of said city of Lynchburg on the 2d day of December, 1861, and whereof Charles R. Slaughter and Samuel Garland, Jr., were appointed executors, who successively qualified in said Court of Hustings, and have since died.

That on the 6th day of November, 1862, a duly certified copy

of said last will and testament was admitted to probate, according to law, in this honorable court on the application of the said Burr Garland, who was duly appointed and qualified as administrator, in the State of Mississippi, with the said last will and testament annexed, in which capacity he is still acting, both the executors nominated therein having previously died, and neither having ever qualified as such in this State.

That the 9th clause of the said last will and testament, so admitted to probate as aforesaid, is in the following words and

figures, to-wit: "My favorite brother, B. Garland, raised by me and long a resident of Mississippi, is, and has for a long time past, been embarrassed in debt by losses of trade in 1837, and liabilities as surety for others. It might be unsafe to devise property to him absolutely, I, therefore, set apart in trust in the hands of my executors, for the benefit of my said brother, either of my plantations in Hinds county, called "Barrens" or "Tudor Hall," whichever he may choose, and forty slaves in families, say about twenty-five hands, balance heads of families, children and and house servants, to be selected by him out of the stocks on both places; mules, horses and stock sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his, B. Garland's use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts and liabilities other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss, in trust, to the separate use of his wife, Pauline B. Morriss, and her children."

And that the widow and relict of the said Samuel Garland, Sr., Mary L. Garland, heretofore, in due form of law, renounced all the provisions in said last will and testament contained in her behalf, and according to the laws of the State of Mississippi, has had allotted and set apart to her the property exempt from execution, a year's support or allowance, one half of the lands contained in the two places known as the "Barrens", and "Tudor Hall," said half including all of the former place and a por-

tion of the latter, eighty out of the one hundred and sixty-three slaves found in said county of Hinds, &c., and one half of all the other personal property on the two places or plantations aforesaid. In support of all the allegations herein before made, the undersigned refers your Honor to the papers and records here to fore filed and made in the Honorable Court in the matter of the estate of said Samuel Garland senior, deceased, which are so far prayed to be taken and considered as parts hereof. The undersigned respectfully asks leave further to state that, since the be-

ginning of the last year, the property in his hands, as administrator as aforesaid, has suffered greatly from the inroads of the enemy, slaves having run or been carried off, and stock of every kind, provisions and crops, and household and kitchen furniture having, to a great extent been carried off or destroyed, as will be apparent from a comparison of the appraisements and inventories with the report of the allotment to the widow of her share of the personal estate, which has recently been made. From these causes, as will be perceived, the undersigned, instead of having the whole of the real and personal estate in Hinds county from which to choose and select the bequest and legacy provided for him in the said 9th clause of the last will and testament of Samuel Garland senior, deceased, which is hereinbefore copied,

he is confined to the balance of the "Tudor Hall" place, to less than one half of the slaves, and to what remains of the rest of the personalty, utterly deficient now in many of the items, in regards to which he was entitled to full provisions, according to to the said 9th clause of the said last will and testament. In order however, to obtain the bequest and legacy so provided as aforesaid, as far forth as he now may, and by virtue of the power vested in him, by said 9th clause, to choose and select the same, the undersigned has chosen the balance of the Tudor Hall place, and has selected forty slaves, all the stock of every kind, now on said place, and all the plantation tools, &c., &c., what remains of the crops of last year, that was not allotted to the widow, and the crops of the present year, being far less, in many respects than was intended for him, and as to some items totally deficient, none of such articles being now to be found on either of said places or plantations. As said testator's widow had renounced the provisions contained in said last will and testament in her behalf, the undersigned could not, though near two years have elapsed since his qualification as administrator as aforesaid. Previously to the allotment of the widow's share of the real and personal estate, with any safety have made the choice and selection of the bequest and legacy in his favor, and the papers and records of the honorable court show that her share of the real estate was allotted to her on the 15th day of August, 1864. And of the personal estate on the 2nd day of September, 1864, and that the reports of these proceedings were confirmed by the court on the 5th day of September, 1864. He now claims that he is making the choice and selection of the bequest and legacy in his

favor at as early a day as he safely might of the property so chosen and selected by him and of which he now considers himself to be in the separate and individual possession. Exhibit "A" hereto appended, and prayed to be taken as part hereof contains a full and accurate statement; and now in conclusion, and in or-

der that his choice and selection of the bequest and legacy, so made to him as aforesaid, may be placed upon the records of the honorable court, so as to make known and identify his title to all whom it may concern, he, the undersigned, respectfully prays that this report and Exhibit "A" may be received and filed, confirmed in all things and ordered to be recorded. All which is respectfully submitted.

B. GARLAND.

State of Mississippi,

Hinds County, to-wit:

This day personally appeared before me, D. N. Barrows, an acting justice of the peace in and for said county, Burr Garland, who made oath that the statements of fact made in the foregoing report and in the accompanying exhibit are, in substance, true to the best of his knowledge and belief.

B. GARLAND.

Sworn and subscribed before me this 30th day of September, 1864.

D. N. BARROWS,

Mayor and J. P. [Seal.]

Exhibit "A"

Being a statement of the real and personal estate chosen and selected by Burr Garland in full of the bequest and legacy in his favor, contained in the 9th clause of the last will and testament of Samuel Garland, Sr., deceased, late of the city of Lynchburg, in the State of Virginia.

Balance of "Tudor Hall" place or plantation, consisting of N. ½, E. ½, N. W. ¼, N. ½, W. ½, N. E. ¼, E. ½, N. E. ¼, and E. ½, S. E. ¼, all in section nine (9); W. ½, N. W. ¼ and S. ½, both in section ten (10); W. ½, S. W. ¼, of section eleven (11); all of the N. W. ¼ of section fourteen (14), lying west of the New Orleans, Jackson and Great Northern railroad, and containing one hundred and twelve (112) acres; and all of W. ½, S. W. ¼ of said section fourteen (14), lying west of said railroad, and containing twenty-seven (27) acres; N. ½ and S. E. ¼, both in section fifteen (15); E. ½, N. E. ¼, section sixteen (16), and W. ½, N. E. ¼, section twenty-two (22), all in township six (6) of range one (1), east, in the county of Hinds, and together containing fourteen hundred and ninety-nine (1,499) acres, more or less.

The following described slaves from those on the "Barrens" and "Tudor Hall" plantations:

		Field Hands.	Children
1. Robert,	aged 48 years,	1	
2. Emeline, his wife,	35	2	
3. Richard (son of 1 and 2),	16	3	
4. Jane (daughter of 1 and 2),	14	4	
5. Sarah (do. do.),	12	1	
6. Elijah (son of 1 and 2),	9	2	
7. Robert (do. do.),	4	3	
8. Henry (son of 1 and 2),	2	4	
9. Jeff Davis (son of 1 and 2),	½	5	
10. Tilghman,	47	5	
11. Rhody, his wife,	38	6	
12. Seymore (son of 10 and 11),	16	7	
13. Henry (do. do.),	14	8	
14. Calvin (do. do.),	11	6	
15. Martha (daughter of 10 and 11),	9	7	
16. Mary (do. do.),	7	8	
17. Susan (do. do.),	4	9	
18. Doctor (son of 10 and 11),	1½	10	

19. Raney, 42 cook and 9

20. Ann (daughter of 19), 14 house ser 10

21. Ellen (do. do.), 9 11

22. Selina (do. do.), 6 12

23. Julia (do. do.), 3 13

24. Claibourn, 48 11

25. Stephen, 24 12

26. William Minor, 53smith and13

27. Milly, his wife, 46 14

28. Tom Minor (son of 26 and 27), 26 15

29. Grace Ann (daughter of 26 and 27) 18 16

30. Henrietta (do. do.)15 17

31. Billy (son of 26 and 27), 13 18

32. Hannah (daughter of 26 and 27) 12 14

33. George (son of 26 and 27), 9 15

34. Spencer (do. do.), 7 16

35. Sarah (daughter of 26 and 27), 4 17

36. Martha, 20 19

37. Giles, 18 20

38. Burr, 18 21

39. Ursley, 43 22

40. Sally (daughter of 39), 14 23

Making all forty slaves, of whom twenty-three are field hands,

&c., and seventeen are children, and the other personal property described as follows, to-wit:

Nine (9) mules—Jim, Milly, Dolly, Sol, Beck, Waxy, John and Becky—now at "Tudor Hall"—three (3) old horses; five (5) head of cattle; twenty-five (25) head of hogs; one (1) four-horse wagon; one (1) old show wagon; one (1) horse cart; one (1) lot of farming implements, including plows, harrows, gears, hoes, grubbing hoes, chains of every kind, &c., &c., now on the "Tudor Hall" plantation, all old, in bad order worn out; one thousand (1,000) bushels of corn, the balance on hand at "Tudor Hall" of the crop of the year 1863; twenty-five hundred (2,500) bushels of corn, the crop of 1864 at "Tudor Hall" not yet gathered, as estimated; two hundred (200) bushels field peas, the estimated crop of 1864 at "Tudor Hall;" five hundred (500) bushels of potatoes, the estimated crop of 1864 at "Tudor Hall" yet ungathered; eight thousand (8,000) pounds of fodder, the crop of 1864 at "Tudor Hall."

B. GARLAND.

Filed October 5, 1864.

R. N. HALL, Clerk.

December Term, 1864, 1st day, 5th December.

At a regular term of the Probate Court of Hinds county, begun and held at the courthouse thereof on the first Monday of December 1864. The following proceedings were made had and

determined.

Present: J. W. Robb, judge; J. B. Fairchild, sheriff; R. N. Hall, clerk.

In the matter of the estate of Samuel Garland, deceased, Sr., on the report filed on the 2nd day of the October term, last by Burr Garland, of his choice and selection of the bequests and legacy in his favor provided for in the 9th clause of the last will and testament of said decedent, &c,

Ordered that the proof of publication of notice which by a decree of this court on the 2nd day of its last October term was directed &c., to be made as to certain persons therein named in a weekly newspaper, called the Brandon Republican, printed and published in the town of Brandon in the county of Rankin, and State of Mississippi, be received and filed, the same appearing to have been made and proven according law and said order.

Same Estate, }
Same Matter.}

It appearing to the satisfaction of the court, that Lilly Slaugh-

ter, Samuel G. Slaughter, Charles Slaughter and Cathrine L. Slaughter, who were named in the decree and notice referred to in the foregoing order are infants under the age of twenty-one years, by reason whereof they cannot answer to the matters contained in said report &c., without having a guardian assigned them for that purpose, it is ordered by the court, that Robert N. Hall be appointed guardian ad litem of the said infants by whom they may answer &c., and the said Hall in open court assented to said appointment and agreed to become such guardian.

Same Estate, }
Same Matter.}

Ordered that the answer of Lilly Slaughter, Samuel G. Slaughter, Charles Slaughter, and Catharine L. Slaughter, minors by their guardian ad litem, Robert N. Hall, as to the matters contained in the report &c. made by Burr Garland, of his choice and selection of the bequests and legacy in his favor, provided for in the 9th clause of the last will and testament of Samuel Garland senior be received and filed.

Same Estate, }
Same Matter.}

This cause, now coming on for hearing on the report filed on the 2d day of the October term last, by Burr Garland, of his choice and selection of the bequests and legacy in his favor, provided for in the 9th clause of the last will and testament of

Samuel Garland, Sr., and the accompanying exhibit, the said Burr being administrator in this State, with the said last will and testament annexed, on due proof, according to law, of the publication of notice then ordered to be made, citing the persons therein named, and all others interested, to appear at this day, show cause why said report and exhibit should not be approved and confirmed and ordered to be recorded, on the answer of Lilly Slaughter, Samuel G. Slaughter, Charles Slaughter and Catharine L. Slaughter, minors, by their guardian ad litem, Robert N. Hall, on the papers on file in this court, and the other proofs offered, and the court being satisfied that all proper parties are legally before it, and that the choice and selection by the said Burr Garland of the bequests and legacy in his favor, provided for in the 9th clause of the last will and testament of Samuel Garland, Sr., as specified in said report and the accompanying exhibit now on file are reasonable and fairly made, and conform in all things as far as they go, to the provisions of the said clause of the said last will and testament, doth order, adjudge and decree, and it is

accordingly ordered, adjudged and decreed that the said report and the accompanying exhibit be approved and confirmed and ordered to be recorded. And it is further ordered, adjudged and decreed that the said report and the accompanying exhibit be ap-

proved and confirmed and ordered to be recorded. And it is further ordered, adjudged and decreed that the estate of Samuel Garland, Sr., in the hands of Burr Garland to be administered, be taxed with the costs of this proceedings.

Report of Unpaid Debts for Corn Sold to Confederate States.

To the Honorable Robert N. Hall, Judge of the Probate Court,
of Hinds County in the State of Mississippi.

The petition of Burr Garland of said county respectfully states that in the year of 1862, he was duly appointed and qualified in this Honorable Court, administrator, in this State, with the last will and testament annexed, of Samuel Garland senior dec'd late of the city of Lynchburg, in the State of Virginia, and has ever since been, and still is acting as such—that during the recent war, he sold a very large amount of corn &c. to Confederate Quartermasters, because he thought it expedient to do so, because he believed if not sold, it would be impressed, and because if not so disposed of, it might have gone to waste, as there was no sufficient demand for the large quantity he had on hand—that receipts were given him, of which there are yet remaining unpaid enough to reach the amount of $14,024.94, as shown by the list of them, on the following pages, in his own right handwriting, all which are yet in his hands and worthless. For the sake of explanation, and that the record the court may show all his transactions, he now prays your Honor to receive this petition or report, and to order it and said list of quartermasters'

receipts to be filed and recorded. And as in duty bound he will pray, &c.

B. GARLAND.

Sworn to and subscribed in open court this 9th day of March, 1866.

W. T. RATLIFF, Clerk.

Confederate States of America, Quartermasters' Receipts.

1864.

January 25.	T. C. Robertson, captain and quarter-master,	$2,092 50
June 2.	James Nol,	1,698 00
June 5.	James Meltenberger,	180 00

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June 14.	T. C. McMackin,	3,675 00
May 26.	George C. Sebastain,	240 00
" 9.	George C. Sebastain,	126 00
June 18.	George C. Sebastain,	987 00
June 29.	George C. Sebastain,	60 00
July 12.	George C. Sebastain,	543 00
July 16.	George C. Sebastain,	90 00

October 29. George C. Sebastain, 51 00

Dec. 31. George C. Sebastain, 2,165 44

July 7th and 8th E. J. Wright, forage master General Golshon's brigade, 2 receipts, 1,497 00

1863.

Sept. 29th and Oct. 15. W. W. Vaught, Lieut. and A. Or. M., Col. Logan's brigade, 2 receipts, 620 00

$14,024 94

Filed 9th March, 1866.

W. T. RATLIFF, Clerk.

March Term, 1866, 1st Day, 5th March.

At a regular term of the Probate Court of Hinds county, begun and held at the court-house of said county, in the town of Raymond, on the 1st Monday of March, 1866, being the 5th day of the month, the following pleas and proceedings were made, had and determined, viz:

Present: R. N. Hall, judge; Samuel B. Thomas, sheriff; W. T. Ratliff, clerk.

Thursday Morning, 9 O'clock, Court Met Pursuant to Adjournment.

In the Matter of the Estate of Samuel Garland, Deceased.

On reading and filing the report of Burr Garland, administrator with the will annexed of said estate, wherein he reports certain transactions with the Confederate States in relation to the sale of corn, it is, therefore, ordered that said report and list of quartermasters' receipts be received, filed and be recorded.

First Annual Account of Burr Garland, March, 1866.

The first annual settlement of Burr Garland, administrator, &c., in this State, with the will annexed of Samuel Garland, deceased. At the March term, 1866, of Hinds county Probate Court.

[Page 43 - Image 14]

Said administrator charges himself with—

1. This sum received of E. & S. Virden for hire negro man, Pleasant, for one month, $ 25 00
2. This sum of John B. Lewis for 6 bus. salt, 100 00
3. do. Carter Moore, 6 bus. salt, 100 00
4. do. U. C. Canada, 3 do. do. 60 00
5. do. of quartermaster Confederate States

army at Jackson for hire negroes, 50 00

6. do. from agent telegraph office, Jackson, for hire negro man, Pleasant, one month, 25 00

7. This sum received of Mrs. Pierce for hire negro girl, 20 00

8. do. from agent telegraph office at Jackson for hire negro man, 25 00

9. This sum received of quartermaster C. S. army at Jackson for hire negroes, 106 60

9½. This sum for hire man, Ned, at purveyor's office, 20 00

10. do. of Mrs. French for hire negro girl, 10 00

11. do. for wood sold at Jackson, 996 00

12. This sum of quartermaster Confederate States army at Jackson for negro hire, 95 83

13. This sum received of same for ditto, 25 00

14. do. of H. Taylor for 20 bu. corn, 30 00

15. do. from commissary Confederate States army at Jackson for 2,000 pounds fodder, 30 00

16. do. of quartermaster commissary Confederate States army at Jackson for hire negroes, 75 70

17. do. same for same, 20 00

Debits carried over, $1,814 13

Debits brought from last page, $1,814 13

18, This sum received of Brown, Johnston & Co.,
New Orleans, being proceeds note of
S. W. & W. A. Percy, belonging to
testator, and interest, 4,644 00

19. This sum received of Mrs. Freeze for load fodder, 17 25

20. do. same same, 20 00

21. do. collected from C. S. quartermaster at
Jackson for hire negroes, 82 66

21½. do. collected from C. S. quartermaster at
Jackson for negro man, Pleasant, 25 00

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12 00

22. do. collected for girl, Nancy, 20 00

23. do. W. Langley for load fodder, 50 00

24. do. W. L. Williams for corn meal, 100 00

25. do. H. Shurlds for 50 bus. corn, 100 00

26. do. Mrs. E. Simpson 50 do. 60 00

27. do. of C. S. quartermaster for hire negroes, 25 00

28. do. for hire man, Pleasant, 12 00

29. do. for girl, Nancy.

30. do. of divers persons by market wagon for
butter, meal, vegetables, &c., sold
at Jackson, 739 00

31. This sum received for hire man, Ned, 30 00

32. do. do. for Pleasant, 25 00

33. do. divers persons by market wagon for butter, fruit, vegetables, &c., sold at Jackson, 322 00

34. do. for wood sold at Jackson, 320 00

35. do. for hire for negro man, Pleasant, 25 00

36. do. do. do. 30 00

37. do. Confederate States quartermaster for hire, Tom, 26 66

38. do. Confederate States quartermaster for hire, Henry, 28 00

Debits carried to next page, $8,527 70

Debits brought from last page, $8,527 70

39. This sum of C. S. quartermaster for team, &c., wagons impressed and not returned, but paid for, 2,700 00

40. do. of same for hire ox wagon, &c., 120 00

41. This sum for corn sold at lunatic asylum, 1,000 00

42. do. for hire negro man, Charles, 30 00

43. do. do. do. do. 30 00

44. do. do. Pleasant, 175 00

45. do. do. . Charles, 30 00

46. do. of L. E. Profelet for hire man, Ned, 272 94

47. do. of Mrs. Rogers for hire, Henry, 300 00

48. do. for hire Charles, 30 00

49. do. of Confederate States quartermaster
for 135 bu corn, 405 00

50. do. of Confederate States quartermaster
for 125 bu. corn, 375 00

51. do. Wm. Simmons for hire negroes, 250 00

52. do. for hire Charles and Jane, 60 00

53. do. of Mrs. Freeze hire for Henry, 25 00

54. do. for T. F. Wood hire Pleasant, 175 00

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55. do. C. H. Manship hire Henry, 25 00

56. do. P. Rivinick for corn meal, 62 50

57. do. for hire of Charles and Jane, 60 00

58. do. do. Henry, 25 00

59. do. do. Charles and Jane, 60 00

60. do. do. same, 60 00

$14,798 14

And prays allowance for the following:

1. This sum paid H. McFarland, as per voucher, $573 00

2. do. Robert J. Williams, as per do. 132 25

3. do. same, as per do. 10 00

4. do. E. Johnston, as per do. 10 00

5. do. W. J. Taylor, as per do. 16 50

6. do. Wm. Crutchen, as per do. 466 00

7. do. for brandy for sick negroes, 13 00

8. do. Jones for shuck collars, 6 00

9. do. G. W. Harper, as per voucher, 20 50

10. do. negro man, Ned, to get 1 pair shoes, 7 00

11. do. do. Billy, to get 1 pair do. 12 00

12. do. taxes for 1862, as per voucher, 310 36

13. do. do. as per do. 527 79

14. do. W. Z. Anderson, as per do. 64 00

15. do. Morgridge & Austin, as per voucher, 45 00

16. do. C. H. Shultz, as per do. 20 00

17. do. Miss. penitentiary for spun cotton, 30 00

18. do. Wm. Eavens, as per voucher, 20 00

19. do. T. N. Cannon & Co., as per voucher, 12 00

20. do. R. J. Williams, as per do. 320 00

22. This sum paid Hunter & Troy, as per voucher, 26 00

Credits carried to next page, $2,551 40

Credits brought from last page, $2,551 40

23. This sum paid Sadler & Carson, as per voucher, 12 50

24. do. do. Sadler & Co., as per do. 30 00

25. do. paid Mrs. Walter Calabor, Ala., 200 00

26. do. do. W. W. Lew, per receipt, 25 00

27. do. Mrs. Mary L. Garland, per receipt, 1,000 00

29. This sum paid taxes for 1863, as per do. 50 00

30. do. Ro. J. Williams, as per do. 872 38

32. This sum paid A. W. Hearicks, as per do. 25 00

33. do. T. N. Cannon, as per do. 47 00

34. do. A. J. Frantz, as per do. 21 00

36. This sum paid Drs. Buck and Bailey, do. 50 00

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40 00

37. do. L. S. Evans, J. P., as per do. 1,000 00

38. do. Mrs. Mary Garland, do. 37 00

39. do. A. J. Frantz, as per do. do. 50 00

40. do. J. L. Daniels, as per do. 500 00

41. do. paid Dr. Wm. P. Garland, do. 2,200 00

42. do. do. taxes for 1864, do.

43. do. lost on exchange Confederate States Treasury notes, old issue, for new issue, 111 66

Credits carried to next page, $8,822 94

Credits brought from last page, $8,822 94

44. This sum being amount of Confederate seven per cent. bonds, in which C. S. Treasury notes received by him in and about the business of said estate, were invested, and said bonds never having been used by him, and being

now in his hands worthless, 3,000 00

45. This sum being amount of Confederate interest-bearing Treasury notes, received by him in and about the business of said estate, which he never used and which are now in his hands worthless, 3,000 00

46. This sum paid court fees as per voucher, 10 90

$14,833 84

Less debits, 14,798 14

Balance due to said administrator, $35 70

B. GARLAND.

Sworn and subscribed 9th March, 1866.

W. T. RATLIFF, Clerk.

Filed 9th March, 1866.

W. T. RATLIFF, Clerk.

April Term, 1866, 4th Day, 5th April.

Decree on First Annual Account.

In the Matter of the Estate of Samuel Garland, Deceased.

The annual account of Burr Garland, administrator, &c., of said estate, coming on for examination, and the court having ex-

amined the same with the accompanying vouchers, being satisfied

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that said account is just and true, and that the items of disbursements with the amounts thereof, are distinctly stated and supported by proper and legal vouchers, doth order and decree that said account be approved and allowed as a correct annual settlement.

Second Annual Account of Burr Garland, April, 1867.

Second Annual Settlement of Burr Garland, Administrator, &c., in this State, with the Will Annexed, of Samuel Garland, Deceased.

At the April term, 1867, of Hinds county Probate Court.

Said administrator charges himself with—

1863.

December 12. To cash received for 20 bu. corn sold quartermaster Confederate States army at Jackson, $ 40 00

16. To cash for 10 bus. corn sold Mrs.

Pierce, 20 00

21. To cash for 64 bus. corn sold quarter-
master Confederate States army, 80 00

22. To cash for 600 pounds fodder sold to
quartermaster Confederate States
army, 12 00

23. To cash 20 bus. corn sold M. W. Boyd, 40 00

27. To cash received of negro man, Ned,
for hire at Jackson from 1st July to
31st Dec., 1863, 100 00

28. To cash for 20 bus. corn sold Mrs.
Smith, 40 00

29. To cash for 15 bus. corn sold Mrs.
Smith, 30 00

30. To cash for boy, Pleasant, for hire
from 1st August to 9th December, 75 00

1864.

January 1. To cash of T. C. McMacken, quarter-
master Confederate States army for
253 bus. corn and 4,640 pounds fod-
der, 598 80

7. To cash for 50 bus. corn sold Mrs. Casey, 100 00

8. To do. 20 do. sold at Jackson, 40 00

To do. 3½ bushels meal do. 15 00

9. To do. 15 bushels corn sold Mrs. Bank-
ston, 30 00

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28 00

To cash 7 bushels meal sold at Jackson, 27 00

12. To do. 6½ do. do. 20 00

15. To do. 8 do. corn sold Mr. Erving,

To do. 15 do. do. sold Geo. Laug-

ley, 37 50

To cash 5 bushels meal sold at Jackson, 20 00

To do. for vegetables and hamper

baskets, 14 03

16. To cash 16 bus. corn sold G. Langley, 30 00

18. To do. of man, Robert, hire for months

January and February, 50 00

19. To cash for 36 bus. corn sold quarter-

master Confederate States army, 90 00

To cash of boy, Pleasant, hire from De-

cember to 9th January, 25 00

20. To cash paid 13 bus. corn sold George

Langley, 32 50

To cash for hominy and peas sold at

Jackson, 24 00

21. To cash for 32 bus. corn sold Dr. Knapp, 80 00

$1,698 80

To amount brought forward, $1,698 80

1864.

January 22. To cash 24 bus. corn sold General Lee's quartermaster, 57 00

To cash hominy and peas sold at Jackson, 19 00

23. To cash 16 bus. corn sold Dr. Knapp, 40 00

24. To do. 48 do. do. sold General Lee's quartermaster, 114 24

25. To cash 16 bus. corn sold Dr. Knapp, 40 00

To do. 48 do. do. sold General Lee's quartermaster, 114 25

26. To cash 8 bus. corn and from market wagon, 30 00

27. To do. 48 do. do. sold General Lee's quartermaster, 114 25

29. To cash 18 bus. corn sold, 45 00

30. To do. 10 do. do. sold Mrs. Erving, 25 00

31. To do. from man, Ned, hire at Jackson for month January, 20 00

Feb'y 1. To cash for 21 bus. corn sold General Lee's quartermaster, 52 00

3. To cash for corn, fodder, hominy and

[Page 49 - Image 20]

meal, $17 and $22, 39 00

To cash 97 bus. corn sold General Lee's quartermaster, 242 50

4. To cash 40 bus. corn General Jackson's quartermaster 100 00

To cash 140 bus. corn sold A. J. Kansler, 350 00

20. To do. 22 do. do. and 6 bus. meal, 85 00

28. To cash 6 bus. corn sold Mrs. Pickett, 15 00

To cash 5 bus. corn meal sold at Jackson, 25 00

29. To cash 22 bus. corn sold Mrs. Peal, 55 00

March 1. To cash of man, Robert, for hire for March and April, 50 00

4. To cash for 24 bus. corn sold Mrs. Fletcher, 60 00

5. To cash 30 bus. corn sold Mr. Wood, 75 00

6. To do. 50 do. do. sold Dr. Kells, 125 00

8. To cash 6 bus. meal sold at Jackson, 30 00

To cash 19 bus. corn sold Cap. Martin, 38 00

12. To cash 2 bus. meal sent Gen. Wharton, 10 00

To cash 10 bus. meal sold at Jackson, 40 00

15. To cash 26 bus. corn sold, 78 00

21. To cash received from boy, Pleasant, for one month hire at Jackson, ending 9th February, 25 00

$3,812 14

To amount brought forward, $3,812 04

1864.

March 20. To cash for corn meal sold at Jackson, 34 00

To cash 12 bus. corn sold Mr. Wood, 60 00

22. To cash 205 bus. corn sold Mrs. General Griffith, , 512 00

24. To cash of man, Ned, for hire January and February, 40 00

To cash for corn meal, &c., sold General Wharton, 105 50

25. To cash meal and peas sold at Jackson, 15 00

30. To cash 12 bus. corn sold General Stark's calvary, 30 00

April 1. To cash 14 bus. corn sold Mrs. Smith. 70 00

3. To cash for meal and hominy sold Mrs. Freeze, 48 00

5. To cash 15 bus. corn sold J. Rich, 75 00

6. To cash 6 bus. corn sold Mrs. Smith, 30 00

[End of Transcription]

Pages 281-300

MS1939.1.7.281-300

Transcription of Garland Estate Court Documents (Continued)

[Page 50 - Image 1]

9. To cash for peas sold at Jackson, 17 50

11. To cash of boy, Tom Minor, here for month April, 25 00

To cash for 3 bus. meal sent Mrs. Yerger, 20 00

15. To cash 47 bus. corn sold Mr. Reese, 235 00

To cash 2 bus. meal sent General Wharton, 12 00

18. To cash 21¾ bus. corn sold Mrs. Craft, 133 00

20. To cash 400 bus. corn sold Dr. Kells at lunatic asylum, 2,000 00

To cash 5 bus. peas sold Dr. Kells at lunatic asylum, 35 00

To cash 4 bus. meal and 6 bus. corn sold General Wharton, 54 00

22. To cash 15 bus. corn sold Mrs. Freeze, 75 00

23. To cash from market cart, for meal, &c., sold at Jackson, 34 00

25. To cash for 20 bus. corn sold General Bell, 100 00

May 1. To cash of Robert and Tom for hire for May and June, 100 00

3. To cash for ½ bus. peas sold at asylum, 5 00

5. To cash 354 bus. corn sold Col. Sessions, 1,062 00

6. To cash on Robert for hire woman, Emeline, May and June, 30 00

9. To cash 12 bus. corn sold Wilburn Wag-

oners, 60 00

To cash of man, Ned, hire for month

April, 20 00

14. To cash 2 bus. meal sent Gen. Wharton, 12 00

18. To cash 12 bus. ground hominy do. 60 00

$8,921 04

To amount brought forward, $8,921 04

1864.

May 22. To cash of Wiley Williams hire Robert

to 17th May, 30 00

To cash 3 bus. meal sent T. J. Wharton, 18 00

30. To cash 9 bus. corn sold —— 45 00

To cash of man, Ned, hire for month

May, 20 00

June 1. To cash of market woman for fruit sold

at Jackson, 10 50

4. To cash received of Judge Sharkey for

hire Charles and Jane from 3d Feb-

[Page 51 - Image 2]

ruary to 4th June, 200 00

To cash of same for iron hoops and ties

for cotton bales, 15 00

8. To cash 10 bus. corn sold Dr. Cabaniss, 50 00

To cash of market woman for sale vege-
tables and fruits, 24 50

11. To cash of market for meal and fruit, 57 00

13. To cash 10 bus. corn sold Mr. Evans, 50 00

18. To cash of W. Williams hire boy, Bob,
to 17th June, 30 00

21. To cash part payment corn sold H. G.
Johnston, 166 67

23. To cash 3 bus. peas sold Judge Johnston, 20 00

25. To cash received from market woman, 16 00

27. To cash for peas sold C. Manship, 8 00

29. To cash from market woman for fruit
and vegetables, 13 00

July 8. To cash from Reuben for 1 bus. corn
sold, 5 00

11. To cash of Robert and Tom and Emeline
hire for month July, 65 00

To cash for 22 bus. corn sold Captain
R. H. Smith, 110 00

14. To cash received from market woman, 10 00

18. To cash 20 bus. corn sold Frank Owens, 100 00

To cash received of Mrs. Guyon for hire
women, Mary and Sally, 68 75

21. To cash of market woman for meal and
vegetables, $20 and $13, 33 00

August 7. To cash of W. Williams hire boy, Bob, to

17th July, 30 00

30. To cash of man, Ned, on account hire from 30th May to date, 40 00

To cash Mrs. Rivinack for meal, &c., per account, 50 00

To cash of W. Williams hire boy, Bob, to 17th August, 30 00

31. To cash of market woman 3 days at Jackson this month, 41 00

$10,277 46

To balance due administrator, 3 69

$10,281 15

[Page 52 - Image 3]

Credits.

1866.

March By balance due per first account . received in court, 1 $ 35 70

1863.

December By cash paid H. Shurlds per ser-

vices as overseer for the year
1862, 2 500 00

1864.

January 16. By cash paid negro man for 8
shuck collars for use plantation, 3 8 00

Feb'y 3. By cash paid negro man for 14
pounds tallow for use planta-
tion, 4 28 00
By cash paid expenses on mules
and horses over Pearl river, 5 10 00

March 5. By cash paid W. Simmons for
dressing mill, 6 15 00
By cash paid for raw hides to tan
for shoes, 7 30 00

April By cash for 1 pair cart wheels 8 12 00
By cash paid negro man for 7
shuck collars for use planta-
tion, 9 14 00

May 2. By cash paid negro man for 4
shuck collars for use planta-
tion, 10 8 00
By cash paid Mr. Laur for ½ bu.
rice, 11 2 00

9. By cash this sum paid Ervin
Lewis for bacon and lard for
plantation per recpt, 12 500 25

23. By cash paid negro man for 3

horse collars, 13 6 00

By cash paid for 2 wheels for

market wagon, 14 20 00

June By cash paid boy, Bob, to buy

clothing, 15 30 00

July 6. By cash expenses on mules and

horses to Rankin city, 16 18 00

August 18. By cash paid for 40 grains quin-

ine for sick servants, 20 00

$1,256 95

By this amount of Mississippi 8 per

cent. bonds, in which Mississippi

[Page 53 - Image 4]

treasury notes received by him in

and about the business of said es-

tate, was invested, and said bonds

never having been used by him and

being now in his hands: Worthless—

4 bonds, $500 each, 2,000 00

19. By do. 1 Confederate States 4

per cent. Confederate, deposited,

No. 154, 3,500 00

20. By do. 1 Confederate States 4 per cent. Confederate, No. 587, 1,000 00

21. By worthless, 8 Confederate States Treasury notes, interest $2 per day, 800 00

22. By worthless, Miss. States treasury notes, 520 00

23. By worthless Confederate States Treasury notes, 1,200 00

$10,276 95

1867.

April By amount paid court fees, 4 20

$10,281 15

B. GARLAND.

Sworn and subscribed before me in open court this 25th April, 1867.

W. T. RATLIFF, Clerk.

Filed 2d April, 1867.

W. T. RATLIFF, Clerk.

May Term, 1867, 2d Day, 7th May.

Decree on Second Annual Account.

In the Matter of the Estate of Samuel Garland, Deceased.

The annual account of Burr Garland, administrator, &c., of said estate, coming on for examination and allowance, and the court having examined the same, being now satisfied that said account is just and true, and that the items of disbursements thereof are distinctly stated and supported by proper and valid vouchers, doth order and decree that the same be allowed and recorded.

[Page 54 - Image 5]

Third Annual Account of Burr Garland, December, 1868.

Third annual settlement of Burr Garland, administrator, &c., in the State of Mississippi, with the will annexed of Samuel Garland, deceased, at the December term. 1868, of Hinds county Probate Court.

In United States Currency.

The administrator charges himself—

To 4 bales cotton sent to
Vicksburg in September,
e 1865, sold to Peter
Casey per account sales, $ 639 72

1866.

February To 11 bales cotton from
Barrens estate sold to
A. Verden Jackson, $1,982 75
Less weighing $3, State
tax $22, 25 00
1,957 75

To 12 bales cotton from
Barrens estate shipped
through A. Verden Jack-
son to T. H. & J. M.
Allen, New Orleans, nett. 1,883 66

To 73 bales cotton from
Barrens estate shipped
to T. H. & J. M. Allen,
New Orleans, on ac-
count per account sales
1867, 2,388 29
do. 2,118 92
do. 1,891 55
do. 21 22
6,419 98

$10,901 11

Sworn to and subscribed in open court 9th December, 1868.

W. T. RATLIFF, Clerk.

In United States Currency.

1865.

This administrator prays allowance for the following:

[Page 55 - Image 6]

1. By cash paid Peter Casey bill for 147 pounds rope and 100 yards bagging,		
2. By cash paid H. Shurlds expense to Vicksburg hauling cotton with wagon,	$ 56 46	
Sept. 3. By cash paid head man, Reuben, to buy bacon from the Yankee commissary at Jackson for the use of negroes on the Barrens estate,	12 50	60 00

4. By cash given head man, Robert, for the same to buy for negroes at Tudor Hall, 100 00

160 00

5. By cash paid for 5 head horses at first government sale at Vicksburg to use in ginning cotton left on Barrens estate, 417 00

6. By cash for 1 army wagon $42, and 6 sets gear $12.60, 54 60

October 7. By cash remitted Mrs. M. L. Garland balance due on an allowance of $3,000 made to her by order of court, 1,000 00

8. By cash paid freedman, Wm. Bolling, for ginning cotton at Barrens estate, 38 00

By cash to 2 little boys to drive gin, $5 each, 10 00

48 00

1866.

9. By cash paid United States government,

Febuary 28. Direct taxes on lands be-
longing to the estate in
counties of Hinds and
Coahoma, 203 61

[Page 56 - Image 7]

10. By cash paid Farrington
& Howell, merchants.
Memphis, Tenn., amount
their account for sup-
plies to the Coahoma
plantation, 488 46
11. By cash paid taxes on
land in Coahoma, 171 58
12. By cash paid Levee taxes
in Coahoma, 83 11
13. By cash paid A. Virden
account per receipt, 541 30
14. By cash paid A. Virden,
account paid by him
revenue tax on 73 bales
cotton shipped to New
Orleans, 948 40
15. State taxes, $146; weigh-

ing, &c., $22,	168 00
	1,116 40
Court fees,	3 00
	$4,356 02
Balance due estate,	6,545 09
	$10,901 11

B. GARLAND, Adm'r.

Filed 9th December, 1868.

W. T. RATLIFF, Clerk.

January Term, A. D., 1869, 5th Day, 8th January.

In the Matter of the Estate of Samuel Garland, Deceased.

The annual account of Burr Garland, administrator, &c., of said estate, coming on for audition and allowance, and the court having examined the same, doth order and decree that said account be allowed and recorded.

Deposition of James H. Tripp, 28th August, 1893.

The witness, James H. Tripp, being duly sworn, deposes as follows:

Q. 1 by E. S. Brown. Tell us your age and place of residence.

[Page 57 - Image 8]

and whether you are the same James H. Tripp whose deposition has been previously taken in one of these cases?

(Objection to taking deposition of James H. Tripp by representative for the plaintiffs entered here, for the reason that he was previously examined in the case).

A. 1. I am 54 years old; I live on the Garland place, usually known as the Tudor Hall place; I am the same James H. Tripp whose deposition has heretofore been taken.

Q. 2. How long have you resided on the Tudor Hall place?

A. 2. I have been living on the Tudor Hall place sixteen years. I cultivated some land on said place as far back as 1869, including that year.

Q. 3. Tell us where you resided prior to 1869, whether you knew the tract of land called Tudor Hall prior to that time. If so, how long before, and whether you knew Burr Garland prior to that time, and if so, how long prior to that time, and say whether your opportunities of knowing that tract of land and of knowing Burr Garland had been good or not?

A. 3. I lived one year in Rankin county—1867, and 1866 in

Copiah county. I have known said tract of land since 1854; I knew Burr Garland ever since 1854, but had very little dealings with him until 1869. My opportunities for knowing said tract of land and Burr Garland were good, having lived near said land since 1854.

Q. 4. Did your business transactions in 1869 with Burr Garland and with others on the Tudor Hall tract of land enable you to know the rent of the Tudor Hall tract in 1869, both what you paid and what others paid for that year?

A. 4. I think it did.

Q. 5. Tell us whether the rents of the Tudor Hall tract in 1869 were in money or in shares of the crops?

A. 5. I think it was all in so much money, except as to one tenant, and that was in so much cotton.

Q. 6. Tell us how much rent was paid for the year 1869 by all the tenants on the Tudor Hall place in money, and how much in cotton?

A. 6. I think there was about twenty-one or twenty-two hundred dollars in money, and none paid in cotton. Contract with Reuben Anderson was that he was to pay so much cotton or $250. Burr Garland died in October or November of that year, and I collected the rents for the administrator, or at least, a part of them.

Q. 7. From your knowledge of the Tudor Hall tract, and your knowledge of rents, what is a fair estimate in money for the rent

of Tudor Hall for each of the years after the war down to the year 1869?

A. 7. I don't think there was any, or very little, land rented in 1865. In 1866 very little was rented for money, but was rented for cotton and a part of the crop. I think two thousand dollars would have been a reasonable rent for each year, 1866, 1867 and 1868.

Q. 8. In your former deposition you said the number of acres of bottom land on the Tudor Hall tract was from 350 to 400 acres, and the number of acres of up land was between six hundred to seven hundred acres; what say you now, Mr. Tripp, of the correctness of your estimates of bottom land and up land on that place under fence?

A. 8. That is correct, sir.

Q. 9. In your former deposition you spoke of the value per acre of the bottom land from three and a half to four dollars rental, and of the up land that year from a two and a half to three dollars rental; what say you now of the correctness of that valuation for that year?

A. 9. That is about what it rented at.

Q. 10. If an estimate be made, by the rental value per acre of the bottom land and of the up land, as you have given it in 1868 for the rents of 1867 and 1866, would you estimate those years higher or lower than the rental value for 1868?

A. 10. I should estimate it at about the same. There was not

much demand for land in those years, the white people did not want to rent, and the negroes were not able.

Q. 11, Was the cultivation of the lands during those years on shares?

A. 11. That is my recollection, some for wages and some for a part of the crop; that is, in 1866 and 1867.

Q. 12. Looking to the prices of cotton and estimating for the cultivation on shares, what would you say is a fair estimate for these years, 1866 and 1867?

A. 12. In 1866 cotton was a fair price, but in 1867 it was a very poor price. I hardly know how to estimate it; a man that owned land could have made money in 1866, but I don't think he could in 1867.

Q. 13. In your former deposition you gave the price of cotton in 1866 between thirty and thirty-five cents per pound; is your recollection still that that price is correct?

A. 13. Yes, sir.

Q. 14. Now give us, Mr. Tripp, what you would consider a fair estimate for the Tudor Hall tract, if cultivated on shares, with cotton at that price. How much ought the tract to have yielded for that year, 1866?

A. 14. I cannot answer that question satisfactorily. I don't

think he could have cleared more money than if he had rented it for the sum of twenty-one or twenty-two hundred dollars.

Q. 15. You have spoken of the low price of cotton for the crop of 1867, if rented out at the season which is usual for renting for the year 1867; would Tudor Hall have rented at the usual season for renting, as high as the estimates which you have given as yearly rentals of twenty-one or twenty-two hundred dollars?

A. 15. Yes, sir; no one knew that cotton would be so low.

Q. 16. Tell us, Mr. Tripp, what you may know in regard to the loss of slaves and of teams, mules and horses, and cattle and other personal property, on the Garland estate, during the war?

A. 16. I knew nothing of what he lost during the war, except from hearsay. I was in the army in Virginia.

Cross-examined by Judge Diggs.

X-Q. 1. Did you live on or rent a part of the Tudor Hall place in 1868?

A. 1. No, sir. I went there in 1869, January.

X-Q. 2. Did not Burr Garland manage and treat the Tudor Hall place, stock and every thing on it as his own property?

A. 2. As far as I knew he did.

X-Q. 3 Was he not also managing the Barrens place as agent for Mrs. Mary L. Garland?

A. 3. That was my understanding.

X-Q. 4. Did he not ship and sell produce from the Barrens place, as he did that from Tudor Hall, in his own name?

A. 4. I don't know about that.

X-Q. 5. Could Burr Garland, in your opinion, have made any real net profit on the Tudor Hall place in 1867, in any way he might have worked it or managed it?

A. 5. I don't think he could, unless he had have rented it out for money.

X-Q. 6. The estimates that you have given as to the rental value of the place, are they not, in a large measure, mere guesses?

A. 6. No, sir; that is what it rented for in the years I speak of, 1869, 1870 and 1871.

X-Q. 7. I speak of the years from 1866 to 1869, inclusive?

A. 7. Yes; I reckon that is correct.

X-Q. 8. I would ask you now to consider the actual condition of affairs in 1865, and several years thereafter; that is to say, considering the condition of the country, the scarcity of money and everything else, the unreliable labor, do you think it is at all probable that Burr Garland could have rented the Tudor Hall place in any way so as to have netted him anything like two thousand dollars?

[Page 60 - Image 11]

A. 8. No, sir; the taxes on it would have been $500.

And further this deponent saith not.

his

JAMES ⚔ H. TRIPP.

mark.

Attest:

F. B. NEAL.

Clerk's fee for deposition. $2 10

Witness fee, James Tripp, 2 10

———

$4 20

Paid by E. S. Brown, attorney.

Deposition of Wm. Evans, 28th August, 1893.

The deposition of William Evans, taken at the same time and place:

Q. 1. Tell us your age, where you reside and what is your occupation?

A. 1. I was 74 years old last October; I reside in Hinds county, Mississippi, and I am a farmer.

Q. 2. How near do you reside to Barrens and Tudor Hall (the lands which formerly belonged to Samuel Garland), and how long have you resided at your present place of residence?

A. 2. I used to join the Tudor Hall place, but I do not now. I have sold off a part of my land. I have lived where I now live about forty-three years.

Q. 3. Tell us whether you were well acquainted with Burr Garland, and what were your opportunities of knowing the Tudor Hall and Barrens places, and Burr Garland's manner of life, especially during the war, and from the death of Sam Garland to his own death?

A. 3. Yes; I was well acquainted with him. I joined the Tudor Hall place at that time. I saw him frequently in town.

Q. 4. Tell us what you know in regard to the loss of slaves and of mules, horses and cattle and crops and other property on the Garland lands, and in that neighborhood during the war?

A. 4. I don't know, sir, exactly what he lost. We all lost pretty much all we had. He lost pretty much all he had, but I don't know how much it was.

Q. 5. At what time was it during the war that the loss occurred?

[Page 61 - Image 12]

A. 5. It was in July, 1863.

Q. 6. Was the crop of cotton on the Garland lands destroyed at that time?

A. 6. I think the most of it was.

Q. 7. If there was any of it that was not distroyed, tell us what?

A. 7. I think a part of the crop was saved, but how much I

don't know.

Q. 8. Were you frequently at Burr Garland's house, and did you see him at home?

A. 8. No, sir; I was not at his house but very seldom.

And further this deponent sayeth not.

WM. EVANS.

Attest:

F. B. NEAL.

Clerk's fee for deposition,	90
Witness fee, Wm. Evans,	$2 10
	$3 00

Paid by E. S. Brown, attorney.

Deposition of Washington Anderson, 28th August, 1893.

Deposition of Washington Anderson, taken at the same time and place as the foregoing. The witness being duly sworn, deposeth as follows:

Q. 1 by E. S. Brown. Tell us what is your age, where you live • and what is your occupation?

A. 1. About 86 years old; I live on Mrs. Garland's place, called Barrens; I am a farmer.

Q. 2. Who did you belong to before the surrender?

A. 2. I belonged to Captain Burr Garland.

Q. 3. In the division of the slaves, into which lot did you fall, that to Mrs. Garland or to that to the estate?

A. 3. I fell to Mrs. Garland, I suppose, sir.

Q. 4. Tell us whether or not you have been living on the Garland lands, either Barrens or Tudor Hall, since the surrender down to the death of Burr Garland?

A. 4. I lived on the Barrens place from the surrender up to his death.

Q. 5. Have you sometimes rented land from Burr Garland?

A. 5. Yes, sir.

Q. 6. Tell us whether Burr Garland collected rents closely or not; was he apt to save what he could, or was he careless about it?

[Page 62 - Image 13]

A. 6. He always tried to save what he could, and collected rent closely.

Q. 7. In Burr Garland's management, did he seem, as far as he could, to take care of the property and to make the most from it?

A. 7. Yes. sir.

And further this deponent sayeth not.

his

WASHINGTON ⚔ ANDERSON.

mark.

Attest:

F. B. NEAL.

Deposition of R. M. Davidson, 28th August, 1893.

Deposition of R. M. Davidson, taken at the same time and place as the foregoing:

Q. 1 by E. S. Brown. Tell us your age, place of residence and occupation?

A. 1. Sixty-three years; First district of Hinds county; occupation farmer.

Q. 2. How near do you reside to the Garland lands, called Barrens and Tudor Hall?

A. 2. Adjoining plantation to the Barrens place, and two miles from Tudor Hall plantation. I have resided there since 1847.

Q. 3. Please tell us anything you may know in regard to the destruction of crops and of personal property, stock and teams, carried off and killed, and the loss of slaves in 1863, on the Garland lands and in that neighborhood?

A. 3. The cotton on the Garland places was burned. I saw the cotton when it was burning. Captain Burr Garland ran off nothing from his plantations, and the Yankees took possession of all of his stock. They were lost to him entirely. They were never back on the plantations again.

Q. 4. From your knowledge of the value of rents after the close of the war down to the death of Burr Garland, about the end of

1869, what would you say would be a fair annual rent for the place called Tudor Hall from the end of the war down to, and inclusive of, the year 1869?

A. 4. I should have to answer it by the acre. I think our hill lands rented for about $2 to $2.50, and our bottom lands at from $3.50 to $4 per acre.

Q. 5. In the division in September, 1864, between the widow of Samuel Garland, who had renounced his will, one half of the personal property to his widow and the other half to the estate, there was then divided seed cotton; please tell us whether that

was cotton raised in 1864 or since the death of Samuel Garland?

A. 5. I can't say as to that. All I know about the cotton on that place was burned during the war, 1863.

Q. 6. In this case, some question has arisen in regard to a sale, said to have been made by Burr Garland to David J. Brown, and it is claimed by some of the parties that he paid to Burr Garland a large amount of money for said cotton before it was burned, tell us if you knew David J. Brown and what was considered to be his financial condition prior to that time?

A. 6. I knew Mr. Brown, and his financial condition was not considered to be very good.

Q. 7. Please tell us what you may know in regard to a claim

asserted by Brown to the cotton that was burned, whether in an official capacity or otherwise you had occasion to look to the evidence of any bona fide sale of said cotton, and of any bona fide payment by said Brown on the alleged purchase of said cotton?

A. 7. I never heard of any claim after Captain Burr Garland's death. I never had any occasion to look into any evidence about the sale of any cotton to Mr. Brown.

Q. 8. From the general financial reputation of Mr. Brown prior to the burning of said cotton, what would you say as to the probability of any bona fide purchase and payment of that magnitude being made by him?

A. 8. I should think it would be very improbable. I have no idea any such purchase and payment were made.

Q. 9. Please tell us what were your opportunities of seeing and knowing Burr Garland?

A. 9. My opportunities for knowing him were very good; saw him nearly every day from my acquaintance with him, from 1847 to 1861, and from 1861 to 1865 my opportunities for seeing him were not so good as prior to that time. After my return from the army, in 1865, I saw Captain Garland frequently, every week or two, up to the time of his death in 1869. On my arrival at home from Vicksburg in July, 1863, I passed through the Garland places to General Buell's headquarters for the purpose of trying to get a guard stationed at my mother-in-law's house. I passed by the gin house, on the Tudor Hall place, at the time the cotton was burning.

Q. 10. In your intercourse with Burr Garland did you hear him speak of the burning of that cotton; and if so, tell us what he

said, and, especially, whether he said anything of having sold it to David J. Brown?

A. 10. I visited Captain Garland, on one occasion when sick, in 1867. He stated to me at that time that the burning of that cotton had ruined him; that he would be all right, if he could put

upon foot some plan by which he could get pay for it. He never mentioned to me of having sold to Mr. Brown or any one else.

Q. 11. What were Burr Garland's habits as to his style of dress and manner of living? Was he plain and economical or was he extravigant?

A. 11. He was plain in his dress, but neat; nothing stylish; economical in his habits of living.

Q. 12. In this case, some question exists as to his expenditures in his support; please tell us what you consider a fair estimate per year of what he spent in purchases for his support, outside of his consumption of what was raised on the Garland lands?

A. 12. I think, sir. $100 per year would have been as much as Captain Garland would have expended on himself outside of what he raised at home.

Cross by Judge Diggs.

X-Q. 1. What was the condition of the Tudor Hall farm, the stock thereon, farming tools, fences, &c., at the close of the war in 1865?

A. 1. It was in a pretty dilapidated condition at the close of the war in 1865. The stables and farm implements had all been burned. There was no stock on the place, except what had been picked up, that had been turned loose by the Federal soldiers and not belonging to the place at all.

X-Q. 2. About how long did this situation continue, as to fences, stock and condition of farm?

A. 2. In 1867, the place, under Captain Garland's supervision, was somewhat repaired, and the place rented out for the year 1867. I don't know if it was for rent or for a part of the crop.

X-Q. 3. Was it about in the same condition in 1868?

A. 3. I think it was kept about in the same condition from 1867 to 1869, the year of Captain Garland's death. Since his death the place has been managed by agents, and I know but very little about its condition.

X-Q. 4. How were the taxes and the price of cotton in the years 1865, 1866, 1867 and 1868?

A. 4. Taxes were high. As to the price of cotton in the year of 1865, I sold cotton in Jackson for 40 cents per pound. In 1866 there was a little decline in cotton. It sold then for about 30 cents. In 1867 there was a decline of about ½, say, 15 cents per pound, and I don't think, if my memory serves me right, I don't think there was any advance after that time.

X-Q. 5. Did Burr Garland make any cotton in 1865?

A. 5. No, sir.

X-Q. 6. Did Burr Garland treat the Tudor Hall place and the property thereon as his own?

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A. 6. I never saw any difference in the management of those two places by him. He treated both as his own, as far as I could see.

X-Q. 7. Do you know whether he shipped the produce from the Barrens tract in his own name or not?

A. 7. I do not, sir.

X-Q. 8. Under the circumstances you have stated, as to the condition of the farm, stock, &c., and the markets, do you think that Burr Garland made in the years 1865, 1866, 1867 and 1868 any profit on the farm over and above the expenses, taxes, &c.

A. 8. I should think very little, if any, sir.

X-Q. 9. In your estimate of the rental value of the Tudor Hall place, do you mean to say that in the years from 1865 to 1869, inclusive, as things actually existed then, Burr Garland could have rented this farm at the prices stated in your 4th answer?

A. 9. In 1865 there was no land rented in this country, that being the year that the war ceased. In 1866 and 1867, $2½ per acre for hill land was the price paid. From $3½ to $4.00 per acre was what was paid for bottom lands, and about the same in the years of 1868 and 1869 and he could have rented his land

at those figures.

X-Q. 10. In the 12th question and answer, you say you think $100.00 per year is about as much as Capt. Garland would have expended on himself. In the first place, do you mean to include Confederate times?

A. 10. Yes, sir, about the same.

X-Q. 11. Do you think that would have been anything like sufficient to have given him, in all respects, a decent and comfortable support?

A. 11. Capt. Garland was very economical in his expenditures, so far as his personal was concerned. He raised everything that he consumed in the way of provisions at home, excepting his sugar, coffee and flour. His dress was plain, not expensive, but neat. From my knowledge of him, he would not hardly have expended on himself more than $100.00 per year.

X-Q. 12. Do you mean that for his clothes only, or to include everything?

A. 12. I mean for his clothes and his support, outside of what he raised at home.

X-Q. 12. Do you take into consideration the pay of cook, washing, traveling expenses, furniture, doctors' bills, lawyers' bills, &c. ?

A. 12, No, sir, I did not consider lawyers' fees in the estimates of his living, and I did not consider traveling expenses in his living, but for cooking and washing I made that calculation in my estimate.

X-Q. 13. Did you consider taxes in your estimate?

A. 13. No, Sir.

Q. 14. Do you know whether Capt. Garland made visits to Virginia and New Orleans, or other places?

A. 14. Capt. Garland was frequently from home. I never knew of any trips to New Orleans, but did of his trips to Virginia.

X-Q. 15. Do you know the cost of a short trip, say to Lynchburg, Virginia?

A. 15. I do not, sir.

Re-Direct by Mr. Brown.

Q. 1. In the cross examination, you were asked in regard to the profits which Burr Garland made. Please tell us if his profits, whatever they might be, were not made on Tudor Hall and Barrens (the Garland lands). Did he have any source of profits outside, as far as you know?

A. 1. If Captain Garland had any profits arising from his farming interest, they were made on the Tudor Hall and the Barrens places. If he had any profits from any other source I did not know of it.

Q. 2. In this suit, there is some question in regard to drafts on proceeds of sales of cotton in New Orleans, as to what cotton it was. Please tell us, from your knowledge of Burr Garland and

his business, whether such cotton was raised on Tudor Hall or Barrens, or cotton purchased by him outside of what was raised on said places.

Objected to by Judge Diggs. as being irrelevant and new matter, and the same objection to any further testimony on this re-examination.

A. 2. I never knew Captain Garland to purchase any cotton in my life. He was not in the habit of speculating in cotton since I knew him, and if he shipped any cotton to New Orleans it was raised on those two places.

By Judge Diggs.

Not waiving my objection, I will proceed to cross examine the witness.

Reply by E. S. Brown.

It is quite irregular and inconsistent, when it was my right to close the examination on the redirect examination of the witness,

that Judge Diggs should object to the continuation of my examination, and then ask to open for a cross examination.

X-Q. 1. Have you any personal knowledge at all of his having had any cotton, or any other property, in New Orleans?

A. 1. No, sir, I have not.

And further this deponent sayeth not.

R. M. DAVIDSON.

Attest:

F. B. NEAL, Clerk.

Deposition of John Shelton, 28 August, 1893.

The deposition of John Shelton, taken at the same time and place and before the same officer, to be read on behalf of the same parties, and in the same causes, mentioned in the caption to the deposition of James H. Tripp and others, and in the notice thereto attached.

Present: Edward S. Brown, attorney for the Defendant, J. Singleton Diggs, representing the Plaintiff.

The witness, John Shelton, being first duty sworn deposes as follows:

Q. 1. By E. S. Brown. Give us your age, place of residence, and occupation.

A. 1, I am 78 years old, I reside in Raymond, Hinds county,

Mississippi, and have resided there since April, 1839. I was licensed to practice law in the State of Mississippi in the month of January, 1838, and from that day until this time the law has been my profession, or occupation.

Q. 2. Please tell us whether you have been acquainted with Burr Garland. If so, when your acquaintance with him commenced, and whether you have been professionally employed by him, and what have been your opportunities of seeing him and knowing his habits of life and of business?

A. 2. I was thoroughly well acquainted with Burr Garland. Our acquantance first began on the 1st of December, in 1837, at Clinton, Hinds county, where he was then staying. The relation of client and attorney for the last twenty or twenty-five years of his life often existed between us, as is shown by the records of the Probate and Circuit Courts, Hinds county. A few months after I became acquainted with Burr Garland, he made his home on the Barrens plantation, where I frequently visited him. When called to Raymond on business, he was occasionally at my own house.

From the 1st day of June, 1864, until after the surrender of Lees' army, I was on duty at this place (Jackson), and spent about one-third of my nights at the house of Burr Garland, where he and I usually were entirely alone. Sometimes Henry Shurlds,

and now and then some other visitors were present. I think I became thoroughly acquainted with the personal and business habits of Burr Garland.

Q. 3. Were you counsel for Burr Garland in the probate of the will of his brother, Samuel Garland, deceased, in Hinds county, Mississippi?

A. 3. I was.

Q. 4. The ninth clause of the will refers to financial embarassments of Burr Garland and says that it would not be sale to devise property to him absolutely, and the original bill in this case alleges that he was insolvent. Please tell us whether prior to the death of Samuel Garland, how you regarded him, and how he was generally regarded, as far as you had opportunity of knowing, as to his solvency.

A. 4. Before I made the acquaintance of Burr Garland, as he told me himself, and as I learned from many other sources, he had been a member of the mercantile firm of Garland & Faulkner, which firm had entirely failed, and gone out of business, before I reached Hinds county, Mississippi. From the failure of that firm and his securityships and endorsements for other persons, he had become greatly embarrassed, before I made his acquaintance, as I learned to a great extent from himself. While I have no doubt that I could have at any time made a small sum of money out of him, by legal proceedings, as he did some buying and selling in his own name and on his own credit, and his debtors could have been garnished. I am entirely sure that no considerable amount could have been made out of him by legal proceedings, at any time after I made his acquaintance. Practically, as to the mass of his debts

and liabilities, I considered him during our entire acquaintance insolvent, and I believe he was generally so regarded by others.

Q. 5. After the death of Samuel Garland, and the probate of his will, what was considered by him and you to be his interest in the profits mentioned in the ninth clause of the will of Samuel Garland?

A. 5. We agreed that he was entitled to the income as long as he lived. I mean all the income till his death.

Q. 6. You will please look at an office copy of the inventory of the slaves and personal property in Hinds county, made on the 6th of Nov., 1862, and filed Jan., 1863, which aggregates the value of $178,832.25, which will be filed with your deposition, marked "Inventory Jan. 1863, Hinds county," in which I see that the number of slaves exclusive of those in which Burr Garland

claimed title were 196, or 207 including those claimed by him, and in which I see that the personal property, including a large number of mules and cattle, and the exclusive of 400 bales of cotton, amounted to $27,332, or including the 400 bales of cotton, said to have been burnt, amounted to $43,332. You will also please look at the inventory of the slaves, and personal property, on the Coahoma estate of Samuel Garland, now marked "Inventory Jan. 1863, Coahoma Co.," in which I see that there are 37

slaves and other personal property, the other personal property amounting to $3192, making the whole number of slaves 233; and you will also please look at the inventory and appraisement of the slaves and personal estate, at the time of the division, when the share of the widow, Mrs. Mary L. Garland, was allotted to her, which is dated the 2nd of September, 1864, and filed the 5th of September, 1864, marked "Allott-ment, widow's share," and which will be filed with your deposition, and in which the whole personal property, out-side of the slaves and some seed cotton on both of the Hinds county estates, in the aggregate then amounted to only $12,150. Now please tell us how it occurred that between Nov., 1862, and Sept., 1864, so large a difference occurred between the number of slaves (about 70) and the other personal property, mules, cattle, crops, &c?

Objected by Judge Diggs, because it calls for evidence not relevant to any issue in this cause, all those matters having been adjudicated.

A. 6. As the laws of Mississippi stood at the time of the death of Sam. Garland, and for years afterward, the widow of a person dy-ing childless was entitled to the exempt property, and one year's allowance, even in cases where a will was made which she re-nounced. The widow of Samuel Garland renounced his will, and among the property allotted to her, as exempt, was a negro man named Henry, who had been included in Hinds Co. inventory and appraisement. As I always understood, the Coahoma Co. plan-

tation was on, or very near to, the Mississippi river, not very far below Memphis, Tenn.; and after the fall of that city, the region in which that plantation was, was exposed to the raids of the Federal army, both by water and land. The negroes on the place, as I learned from many sources, commenced disappearing, or going off to the Yankees. On hearing this, Burr Garland, as was his duty, in my opinion, took immediate steps for the removal of the slaves, and other personal property that could be moved, to Hinds county. The persons that he sent to Coahoma for this purpose were unable to find a good many of the slaves,

[End of Transcription]

Pages 301-320

MS1939.1.7.301-320

Transcription of Garland Estate Court Documents (Continued)

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and nearly the whole of the other personal property had disappeared. They, however, brought with them to Hinds county, and delivered to Burr Garland, all of the slaves that they had been able to find, and I myself saw some of those slaves at the Barrens. At this distance of time, I can't remember the difference between the number of slaves appraised in Coahoma, and of those

brought hence to Hinds county and turned over to Burr Garland.

There was no Federal army in Hinds county until May, 1863, during which month three or four battles were fought in the county, and almost every town and village in the county was occupied by the Federal army. The city of Jackson was taken, and so occupied. Again in July, 1863, the Federal army under Gen. Sherman advanced upon Jackson, which was then occupied by Gen. Johnston and his troops, and after a serious battle, in the very outskirts of the city, Johnston retreated and Sherman took the city, and remained in the city at least as long as a week. I think it was longer, but I wont state it that way. During thil occupation of Jackson, Sherman's troops and the stragglers os his army, raided the whole country around Jackson for several miles. The Barrens and the Tudor Hall plantations were in thil range, being within five to six miles from Jackson. Personal property, stock of every kind, and provisions were taken and carried-off, and some of it ruthlessly destroyed. Many of the slaves on those places, the precise number of which I am not able to state, went off with Sherman's army, or went within the Yankee lines at Vicksburg. Subsequently few, if any, ever returned to their old homes.

It is a part of the public history of this country that the Federal armies seized and carried off a large proportion of all the good mules that came within their reach. I was never on the Tudor Hall place but once, and then at night, but from what I saw on The Barrens place, after the period above spoken of, there were many fewer slaves and other personal property than I had usually seen on that plantation previous to the spring of 1863.

I give the foregoing, derived from personal knowledge, and from the information of others and the public history of this country. Of the discrepancy between the number of slaves, and the amount of other personal property included in the two inventories, and those included in the allotment of one-half to widow, in addition I state that the provisions, crops of 1862 which was included in the Hinds county inventory, were necessarily sold, or consumed by the negroes, and the stock on the two plantations, before September, 1864.

Q. 7. You have spoken of the Mississippi laws in regard to the rights of the widow of a person dying childless, in case of intestacy, or the renouncing of the will. Please tell us, fully, what-

are the widow's rights in such cases, as to the year's allowance, out of what property that allowance is made, and what is her share of the real estate, and her share of the personal estate, and whether such share is absolute?

Objected to by Judge Diggs.

That being irrelevant, the Court will be asked to strike out all irrelevant testimony at the cost of defendants.

A. 7. The widow of a person who died childless, intestate, or leaving a will which was renounced by her, as the laws of Mississippi stood in 1857, and till long after the war, was entitled to all the property exempt from execution, including therein one negro man slave, to be selected by her agent, to an allowance of one year's provisions in kind, if such was on hand, or in money, or partly in each, and then to one-half (½) of all the rest of the personal property and of all the real estate absolute and in fee simple.

Q. 8. Please look at the copy of assignment of one year's allowance to Mrs Garland, the widow, dated the 5th day of January, 1863, and filed the 3rd of February, 1863, marked "Assignment of year's allowance," in which I see that the man Henry was included, to whom you have alluded in your foregoing answer, and $3,000 in money, and personal property specified, to the amount of $250, and say if that is the allowance, and whether this accounts for the absence of this portion of personal property in the first inventory?

A. 8, The personal property and money specified in the year's allowance were substantially included in the first inventory of Hinds county, but having ceased to be the property of the estate of Sam. Garland on the allotment to his widow, formed no part of the property, one-half (½) of which was alloted to the widow, under the division in September in 1864.

Q. 9. Please look at the copy of the allotment of the tract called Barrens, dated the 16th day of August, 1864, and filed the 5th September, 1864, and which will be marked "Assignment of Dower," and filed with your deposition, and tell us if that is the

allotment of the Barrens tract, as Mrs. Garland's half of the Garland lands in Hinds county, as her share of said lands in absolute right?

A. 9. It is, certainly.

Q. 10. Now, please turn to the paper marked the allotment of the widow's share and tell us if the personal property specified in her share (lot No. 1) passed to her the personal property therein mentioned, by a right to which she was entitled as the widow

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of Samuel Garland, paramount to creditors and to legatees under his will?

A. 10. It certainly passed the right to the widow, as against all the heirs and legatees under her husband's will, but not as against bona fide creditors of her said husband, whose debts remained unpaid, if, indeed, there were any such.

Q. 11. In connection with that portion of personal estate which embraced the one-half (½) that was not at that time allotted to the widow, you will please look at the copy of the selection by Burr Garland, under the 9th clause of the will of Samuel Garland, deceased, filed the 5th day of October, 1864, and marked "Selected by Burr Garland," and filed with your deposition, and compare the personal property embraced in that selection with the personal property not allotted to the widow, and

tell us if his selection, under the 9th clause of the will, did not take all the personal property of the estate that had not been allotted to the widow, except some seed cotton, and, further than that, did it not leave some of the personal property specified in the 9th clause unsatisfied, because there did not remain sufficient property of the right description to satisfy said clause?

Objected to by Judge Diggs.

A. 11. Said selection did not take all of the remaining half of the slaves, but only 40 out of about 80, nor did it include any of the seed cotton, but it did take all of every other kind of personal property that remained. Of some kinds of which, there was not enough on hand to meet the provisions of the 9th clause of the will of Samuel Garland, Sr., deceased.

Q. 12. In a subsequent settlement of the administration accounts of Burr Garland, as Adm'r of Sam. Garland, dec'd, made some time after the death of Burr Garland, there was a decree against his estate in the Chancery Court for Hinds county, Mississippi, for $64,130.88, as indebtedness to the estate of Sam, Garland, to be remitted to John F. Slaughter, the adm'r, with the will annexed, in Virginia, "to be by such legal representative or representatives paid over to the person or persons entitled to receive the same under the last will and testament of said Samuel Garland, Sr., dec'd." I do not see that the allotment to the widow of share No. 1 embraces anything covered by said decree for $64,130 88. Please tell us, if there be such estate of Samuel Garland, if his widow, under the laws of Mississippi, is

not now entitled to receive the one-half (½) thereof, to wit: $32,065.44?

A. 12. In my opinion, if that decree, or any part of it, is ever collected, the widow of Sam. Garland would be entitled to one-

half of the amount, whether it be collected in whole or in part. The Chancery Court of Hinds county had no right to disregard the rights vested in the widow by the law, on her renunciation of her husband's will.

Q. 13. In my examination, I will turn back to the time of the division in September, 1864, and I inquire if you were present at that division?

A. 13. I was at the Barren's plantation on the. day referred to personally, knew each one of the commissioners, and saw them when they looked at, and placed the value upon, some of the slaves, but not of all, nor did I accompany them to Tudor Hall, if they went there to value the stock on that place. I am not certain whether they went to Tudor Hall, or whether the slaves were brought to Barrens. I did not see a great deal of the actions of the commissioners, as I was busy about the house, as I now recollect, preparing their report of the division and allotment, which was completed and signed by the commissioners on the same day.

Q. 14. In the former portion of your examination, you spoke of your intimacy with Burr Garland, and of your knowledge of his manner of life and business habits, and of the destruction, and of the loss of a large number of the slaves and of a great deal of the personal property. Now please tell us, with your knowledge of these things, whether, in your opinion, Burr Garland endeavored to do what he could, under the circumstances, to take care of the estate?

A. 14. I have no doubt that he did everything that could be reasonably expected of him to have done to save the property, and I have heard of his having more than once taken off mules and other stock to Pearl river swamp, when the Yankee army or any part of it was in the neighborhood.

Q. 15. Tell us, from your knowledge of the business habits of Burr Garland, whether he was careful and diligent in collecting dues to which he was entitled, as adm'r, or otherwise?

A. 15. I think he was a very prudent and careful man about such things. He looked closely after the debts due to him, or to any over which he had control.

Q. 16. Please tell us what were his habits as to his diet, clothes or other personal expenses. Was he plain and economical, or prodigal in these respects?

A. 16: I always regarded Burr Garland, from my earliest acquaintance with him, as a very economical man, and particularly so from the year 1864 until his death. Before the war, he dressed plainly for a man of his age, and he lived only moderately. From 1864 he dressed with exceeding plainness and cheapness, and the style of living at his house was poor indeed. Yet he was my

friend, and for many and many nights, in 1864 and 1865, gave me a home, and lodging, and food for myself and horse, when I had no money with which to pay tavern bills.

Q. 17. Did you know Samuel Garland?

A. 17. I did; he has been at my residence, once at least, and I saw him on the occasion of every visit that he ever made to Mississippi until his death, after 1840.

Q. 18. From your knowledge of Burr Garland and of Samuel Garland, and of the will of Samuel Garland, which provides, in the 9th clause, for the profits of the estate selected by him (Tudor Hall) not to be bound for his past debts or liabilities, or for future debts or liabilities, other than decent and comfortable support. Please tell us what amount in your opinion, in addition to what was raised at his home, would be a reasonable amount for his decent and comfortable support as intended in the will, and understood by him?

A. 18. Not exceeding $500 for each year. He made occasional visits to Virginia, which might have added to the expenses in the years in which he made them, from one to two hundred dollars. During the war he made no such visits, and his expenses were not so large as $500 a year in good money.

Q. 19. You will please look at the copy of the petition filed by

him on the 9th of March, 1866, in the Probate Court and the order of said court thereon, in regard to sales of corn and other supplies to the quartermasters of the Confederate States, and his inability to collect the same, amounting to $14,024.94, marked "Supplies sold to Quartermasters," and herewith filed, and tell us if that shows the list of losses which he claimed to have been unable to cllect.

A. 19. It certainly does show that, and it was impossible to have collected them, except in trash (Confederate money). If he had not sold the corn they would have taken it any way, as I believe.

Q. 20. Did Burr Garland, as far as you ever knew, confine his business operations to the Garland estate, or did he speculate in cotton, or other things, outside of the products of Tudor Hall and the Barrens lands?

A. 20. Not to any considerable extent, I don't think; he might have bought a bale or two of cotton, but I don't think he could have, to any great extent, without my knowing it.

Q. 21. In answer to a preceding question you specified the amount which you thought would be reasonable as to the portion of profits mentioned in the 9th clause of the will, which should not be bound for the past debts or liabilities, or future debts or liabilities, other than his decent and comfortable support. Now please tell us if you have any knowledge of any out-

standing indebtedness of Burr Garland, contracted for his support, after the death of Samuel Garland?

A. 21. I can only answer that I have no knowledge of any such claims, but, if there was any such, they have long since been barred by our statute of limitations, as none such are found on the register of claims in the clerk's office of the Chancery Court of the first district of Hinds county, Mississippi, which I have just examined.

Q. 22. Was not the support of Burr Garland chiefly from the products either from the land allotted to the widow, called Barrens, or from the lands called Tudor Hall, selected by him under the 9th clause of the will?

A. 22. From all that I know, that is clearly my opinion.

Q. 23. From what you know of his style of dress and habits, what would be your estimate as to the amount of money likely expended by him in his support, after the death of Samuel Garland, in addition to consumption of products raised either on Barrens or Tudor Hall?

A. 23. He had his clothing and groceries and bacon to buy, after the destruction of his hogs in 1863, and his expenditure each year for these articles did not probably exceed $125 or $150.

Q. 24. Was not such expenditure in money raised from sales of products, either of the Barrens or the Tudor Hall lands?

A. 24. Beyond a doubt the greater part of it was, if not all.

Q. 25. I failed to enquire when speaking of the land selected by Burr Garland, after the assignment of the dower to the widow, if

it embraced all of the balance of the lands in Hinds county. Please tell us if the Tudor Hall tract, as selected by him, embraced the balance of the Garland lands in Hinds county?

A. 25. Certainly it did.

Q. 26. Please tell us whether you have been requested to ascertain, if you could, where the papers and vouchers of Burr Garland, connected with his administration of Samuel Garland's estate, may be; and if so, what success you have had?

A. 26. I failed entirely to find any trace of them, though I have made numerous inquiries, at the instance of Edward S. Brown, Esq.

Explanation by Mr. Brown.

Mr. Brown says that he has made diligent inquiry through Charles Y. Morriss, his administrator, in Virginia, and through Mrs. Paulina B. Morriss, the daughter of Burr Garland, and other members of the Garland family, and have not been able to find any trace of them.

Q. 27. I find on the record of your courts three accounts re-

turned by Burr Garland of his administration of the estate of

Samuel Garland, marked "1, 2 and 3 annual ac'ts," and which will be filed with this deposition. Please look at these copies, and tell us as to these returns being made by Burr Garland himself, or by you as his counsel.

A. 27. I was Burr Garland's only counsel in the then Probate Court of Hinds county, in his said administration. The said annual accounts were made out by Burr Garland himself, but submitted to me, to look at and correct, and subtract or add to, as I thought proper, under the law. I suggested to him additions and alterations in them, some of which were made by me, in my handwriting, and some by him in his; they were then sworn to by him, and his vouchers were exhibited to the court, after which they were filed, and the proper orders entered on them.

Q. 28. In the copy marked "1st annual account" I see no dates to the items of receipts or credits to him, as to the time when he received amounts, or when he paid out expenditures, and it was chiefly on this account that I have been anxious to find his vouchers and books. In this account I find the 2nd and 3rd items of receipts are each $100 for 6 bushels of salt. The 4th, $60 for 3 bushels of salt, and various items of sales to the Confederate quartermasters and other persons, of corn and other products, such as vegetables, at extraordinary prices. Please examine the items in this account and tell us whether these receipts were in Confederate money or the sale of products and supplies from the Barrens and Tudor Hall places during the war and after the death of Samuel Garland?

A. 28. Neither the law of the State nor the practice in the late Probate Court of Hinds county required dates of receipts or pay-

ments to be stated on such accounts; and it was, therefore, rarely if ever done. Beyond all question the items referred to, and nearly or quite all of the items in said account, whether debit or credit, were, beyond all question, in Confederate money. I have no doubt but what they were the products of those farms.

Q. 29. I see in the credits or expenditures of the Administrator, items of taxes paid for 1862, one $310.36, and another $527.79, and taxes for 1863, $50.00, and taxes for 1864, $2200.00, but the second annual account starts with the date, the 12th of December, 1863, and goes down with items as late as the 31st of of August, 1864, with one or two items in the credits to the Administrator, with payments by him, as late as March, 1866, and April, 1867, the last item being only $4.20 for court fees, and the item of March, 1866, being balance in favor of the Administrator on the former account of $35.70. All the other items, I think, being not later than 1864. His second account, I see, puts prices at much higher figures than the first, some as high as five,

six and seven dollars for corn, and five or six dollars per bushel for peas. Please look over this account and tell us if these were net sales and payments in Confederate money, and are not these all products from the Tudor Hall and Barrens lands, and subsequent to the death of Samuel Garland.

A. 29. From the examination of a certified copy of the account referred to, I am sure that all of the items referred to, and in fact nearly all of the items on both sides of the account were the results of Confederate money transactions, many of the items of receipts show conclusively that they were so. I have no doubt that they were the products of the Tudor Hall and Barrens plantations, after the death of Samuel Garland.

Q. 30. Please look on the 1st annual account to items No. 44 and 45 of credits to the administrator, each $3,000.00, and on the 2nd annual account to credits to adm'r, item 18, $2,000; item 19, $3,500; item 20, $1,000; item 21, $800; item 22, $520; item 23, $1,200. These aggregate $15,020. The explanation in the accounts, is that these credits were claimed by the adm'r, on the ground that these were Confederate bonds, or Mississippi State Treasury notes, or Mississippi 8 per cent. bonds, in which he had invested the Confederate currency which came into his hands, and which investments had perished without his fault. Please tell us whether during the time covered by these transactions, whether these investments were made and lost without any proper blame to, or fault of, Burr Garland, as administrator?

A. 30. In the situation of this region, from an early period of the war to the end of it, a man holding Confederate notes, which were then bearing no interest, whether held by him in his own right, or as trustee for others, could do no better with them than to invest them in Confederate bonds, or State Treasury notes. It is certainly true that in many cases of the investments of Confederate notes in this region, in the purchase of cotton, that the cotton was destroyed by the armies of one side or the

other; and a total loss followed, of course. So far as I know, the general rule of the Probate courts, after the end of the war, was to allow to executors, administrators and guardians credit for the Confederate money or bonds, or State Treasury notes as in their hands, with the single exception that if they had failed to apply, during the war, the money, bonds, or treasury notes to the discharge of liabilities of the estates they represented, which could have been discharged in any such currency, to hold them liable that far, but no farther. There may have been some exceptions to such a course of decision, but if so, they were certainly rare, and involved no large amounts.

Q. 31. The $15,020 thus lost is carried into the statement, making the balance $64,130.88, which the court ordered to be

transmitted to J. F Slaughter, the Virginia administrator, to be paid to those entitled thereto, at its full face value. Is it not an error to have charged this against Burr Garland (1st) because it was not sealed, (2nd) because it was wholy lost without any fault on his part, and (3rd) because it was monies from the sale of products on the Barrens or Tudor Hall estates after the death of Samuel Garland—Barrens being assigned to the widow as her dower, and Tudor Hall being selected by Burr Garland under the 9th clause of the will?

Objected to by Judge Diggs on the further ground that the witness is not a high court of errors and appeals.

A. 31. In my best judgment the chancellor decided most incorrectly, under the laws and decisions in this State, in directing said sum to be charged to Burr Garland at its face value. No part of it should have been charged to him in my opinion in the restatement by E. E. Baldwin, Esq., of the final settlement of his administration submitted by his executor, Wm. H. Garland.

Q. 32. In the 1st annual account, item 18, is this entry: "This sum received of Brown, Johnson & Co , New Orleans, being proceeds note of J. W. & W. A. Percy, belonging to testator, and interest, $4,644." This is the only item that I see of money received by Burr Garland, in said account, which seems to be any part of the estate of Samuel Garland. Please look at this item and tell us, if you can, whether this was properly paid to him in Confederate currency?

A. 32. I know nothing about the debt referred to, cannot remember ever having heard Burr Garland speak of it, and am wholy unable to say whether it originated before the death of Samuel Garland or not.

Q. 33. In the condition of the country at the time of Burr Garland's qualification as administrator, or even after the death of Samuel Garland in December, 1861, would not any payment to Burr Garland, or to Brown, Johnson & Co., who seems to have been agents in the collection, have not been quite surely in Confederate currency?

A. 33. I think so, clearly.

Q. 34. If it were, or should have been, collected in good money, would not these payments, item 27 in said account, to Mrs. Mary L. Garland $1,000; item 38, Mrs. Mary L. Garland, $1,000; and item October 7th, 1865, in third account, "By cash remitted Mrs. M. L. Garland, balance due on an allowance of of $3,000 made to her by order of court, $1,000," have been a good disbursement pro tanto, of said collection.

A. 34. Unquestionably so.

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Q. 35. Now, Mr. Shelton, let me ask you to look to the 3rd annual account, to the item of February, 1866. To 11 bales of cotton from the Barrens estate, and To 12 bales of cotton from the Barrens estate, the first sold to A. Virden, at Jackson, and the last shipped through A. Virden to T. H. & J. M. Allen, New Orleans; and also to 73 bales of cotton from Barrens, shipped to T. H. & J. M. Allen, New Orleans,, on account, per account sales 1867, and please tell us if cotton raised on Barrens, especially after the assignment of the dower to the widow, does not properly belong to the account between Burr Garland and Mrs. Mary L. Garland, the widow, and not to an account between Burr Garland as administrator, and the estate of Samuel Garland, deceased?

A. 35. The effect of the allotment of dower and the widow's one-half of the personal estate was to put her into the possession of both, and she was unquestionably entitled to the products of the plantation thereafter, as against the administrator of the estate of her husband.

Q. 36. I see that in the statement, on which they reached the balance of $64,130.88, they carried in the balance on the 3rd annual account of $6,545.09, and interest on that balance of $2,045 33, as a debt due from the administrator to the estate of Samuel Garland. Please tell us if it was not erroneous to charge Burr Garland, as administrator, with this money, as a debt to the estate of Sam. Garland.

A. 36. It was erroneous if the proceeds of cotton raised on Barrens after its allotment to the widow for dower formed a part of said amount.

Q. 37. In said 3d account, among the credits which were charged for disbursements by Burr Garland, item 1, $56.46; item 2, $12.50; item 3, $60; item 4, $100; item 5, $417; item 6, $54.60; item 8, $48; item 13, $541.30, aggregate $1,289.86. The dates of these items are, eight of them in 1865, and the last item in February, 1866, and show on their face that these are for expenses on the Barrens estate in making said crops of cotton (in the aggregate, $1,289.86), and charged against Burr Garland, as administrator, in making said balance of $64,130.88, on the ground alleged in the seventh exception, because these were properly charges against Mrs. Mary L. Garland, in making crops on Barrens, after it had been alloted to her as dower. Now tell us if payments made by him for Mrs. Garland in the expenses

of making her crops, after the allotment to her, could be any part of the estate of Samuel Garland, for which he was indebted to said estate?

A. 37. Certainly not.

Q. 38. In said 3d annual account, item 10, there is credited to

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the administrator, as follows: "Cash paid Farrington & Howell, merchants, Memphis, Tenn., amount their acc't for supplies to the Coahoma plantation, $488.46, and this amount is charged against him in the statement to make up the $64,130.88, on the ground specified in the 13th exception, that by reasonable diligence he might have paid it in Confederate notes. Now please tell us, Mr. Shelton, if you know anything about that payment, and of any evidence that it could have been paid in Confederate notes, and, whether it could or not, can you see any reason why Burr Garland's payment of that debt in good money out of Mrs. Garland's cotton should be charged to Burr Garland as assets in his hands of Sam Garland's estate?

A. 38. Certainly there can be no good reason for it. After the fall of Memphis, Burr Garland had no access to them to make a tender of Confederate money, their place of business being within the Yankee lines from its capture until the end of the war.

Q. 39. In the statement to make up said balance of $64,130.88

they have carried in a charge against Burr Garland, Adm'r., of $3,000 on an alleged claim that he had received $3,000 from David J. Brown for 100 bales of cotton of the crop said to have been burned. Please tell us if you knew David J. Brown, and do you know from anything you have heard from Burr Garland or from David J. Brown of any such payment, or of any payment from him which belonged to the estate of Samuel Garland which should have been carried into the administration account as assets received by Burr Garland?

A. 39. I think I became slightly acquainted with Brown before the end of the war, and I knew him moderately well for several years afterwards, during his engagement in business in the city of Jackson, but I never heard Brown or Burr Garland speak of the transaction referred to, so far as I can now recollect.

Q. 40. In the statement to make up the $64,130.88 they have got Burr Garland charged with all of the cotton burned, appraised, in the inventory and appraisement filed January, 1863, at $16,000, and with all of the personal property in the inventory and appraisement af the Coahoma estate, except the slaves, and all the personal property in the inventory and appraisement in Hinds county, both Tudor Hall and Barrens, except the slaves, without making any allowance for the destruction of personal property at Coahoma and of the burning of the cotton, and the destruction of the personal property in Hinds county, between the appraisement of January, 1863, and the allotment of the widow's share and of the selection by Burr Garland under the 9th clause of the will. Now, Mr. Shelton, please tell us can you see any reason to justify the refusal to credit these losses on the

charges for assets received by Burr Garland as administrator of Sam Garland, deceased?

A. 40. There is no reason in the world why that should not have been done, if the executor, Wm. H. Garland, had had an attorney present on the hearing of the exceptions to have insisted that it should be done. On that occasion said executor was wholy absent, and not represented by any counsel.

Q. 41. In the division in September, 1864, between Mrs. Mary L. Garland, the widow and the estate of Samuel Garland, decesead of the personal estate, I see that one-half of seed cotton was in share the allotted to her, and another one-half of said seed cotton left to the estate, which is the only personal property remaining after the widow's one-half, and Burr Garland's selection under the 9th clause had been taken out. I see also in the annual accounts, that a great deal of personal property, arising from products on the Barrens estate and the Tudor Hall estate, after the death of Samuel Garland, and a great deal of it after the allotment of the widow's share, has been carried into the administration account of Burr Garland, just as if the same was assets of Samuel Garland's estate. Take this in connection with the fact that the cotton was burned in 1863, and that the testimony shows that a crop of cotton was made in 1864. Now tell us if the fair infer-

ence may not be drawn from these circumstances, that the seed cotton divided in September, 1864, was cotton made in 1864 either on the Tudor Hall or the Barrens estate, and that it was not, in fact, assets of the estate of Samuel Garland. deceased?

A. 41. Such is certainly the inference to be drawn from the facts so stated, especially when strengthened by the statement of Reuben Anderson, a witness heretofore examined in this cause, that before the burning of the cotton at Tudor Hall by the Yankees in July, 1863, all the cotton on the Barrens plantation had been carried to the Tudor Hall plantation.

Q. 42. In the 3d annual account I see that on the 28th of February, 1866 that Burr Garland paid direct taxes on lands in Hinds county and Coahoma county $203.61. Please tell us, Mr. Shelton, whether these taxes have been refunded, and if so, what amount of taxes on the Hinds county lands have been received on the refunding of the same, and what has been done with that portion of the $203.61?

A. 42. In the fall of 1892, J. & J. M. Shelton filed a claim in behalf of John F. Slaughter, as Administrator in the State of Virginia, with the will annexed of Samuel Garland, Sr., for the refunding of the direct tax, paid by Burr Garland, his Adm'r., in Miss., on all the lands of said estate in the last named state, Miss. A paper now in my hands and in my own hand writing, shows that the amount of taxes paid on the Barrens and Tudor

Hall places together was 123.60. This sum was refunded on the 16th of December, 1892, less 3 per cent. thereof retained by the direct tax commissioner, at the city of Jackson, to cover expenses by authority of an Act of the Legislature of the State of Mississippi. The amount actually refunded and paid to J. & J. M. Shelton, on account of the Tudor Hall and Barrens plantations, was $119.90, from which J. & J. M. Shelton deducted the 10 per cent. commissions, which they charged, amounting to $11.99, and the remainder, $107.91, they remitted to said Administrator, in Virginia, in postal money orders purchased at his expense, whose receipt for the same they now hold. The direct tax on the lands in Coahoma was $80.01. It was refunded at the same time with the other tax; and after similar deductions was sent to the same person, at the same time and in the same way. The entire sum sent being $177.75, and is included in the same receipt as the other tax.

Memo.—In addition to previous objection and exception to the foregoing, the counsel for Samuel Garland's estate objects to all the testimony commencing with question 27, referring to the three annual settlements of Burr Garland, as being an attempt by Morriss' trustee in this suit to surcharge and falsify accounts rendered in 1866, '67 and '68 by Burr Garland personally, and which have been finally passed upon by the Probate Court of Hinds county more than 19 years ago in a proper judicial pro-

ceeding, to which C. Y. Morriss, trustee, and wife, were parties.

In reply to the foregoing, E. S. Brown says that the decision of the Court of Appeals in Virginia in the case of Samuel Garland's Adm'r vs. Burr Garland's Adm'r, reported in 84 Va., 181, in express terms, was without prejudice to Mrs. Morriss and her children, and the court required John F. Slaughter, administrator of Samuel Garland, deceased, to amend his bill and make Mrs. Morriss and her children parties to it. This was done, and the case went up again to the Court of Appeals of Virginia, and is reported in 87 Va., 758, in which it was decided that Burr Garland took no more of the profits mentioned in the ninth clause of the will than was sufficient for his decent and comfortable support, and that this alone was liable to his past debts and his future debts, and the court has ordered the administrator of Burr Garland to render an account of the profits of said estate and of all debts of Burr Garland and the priority thereof.

And further, no exception was taken to the testimony opening up an inquiry as to these profits, and of the indebtedness of Burr

Garland, until the conclusion of the examination of Mr. Shelton in chief, and the objection now made is technical, and technically

too late.

Cross-Examination of John Shelton by J. Singleton Diggs.

X-Q. 1. Did you represent Burr Garland as his counsel and attorney from his qualification as administrator of Samuel Garland to his death, and then represent his executor and his estate up to the time of the decree on his final accounts in 1874, in all these proceedings, the records of which have been filed in this cause.

X-A. 1. I represented Capt. Garland, as adm'r until his death. I was employed by William H. Garland, his executor, as his attorney, and aided him in the probate of the will of Burr Garland, I also prepared other papers for him, but I entirely abandoned his employment before the Chancery Court of Hinds county, 2nd District, had entered upon the hearing of the exceptions to the final settlement of Burr Garland's said Administration, which had been submitted by him, and nothing farther to do with the matter. I represented Burr Garland in all of the papers filed, referred to in the question.

X-Q. 2. Did not Burr Garland, up to this death, act in all these proceedings as agent and as attorney-in-fact for Mrs. Mary L. Garland?

X-A. 2. He certainly did.

X-Q. 3. Then you also represented her interests in these proceedings as far as any attorney-at-law was needed, or did Burr Garland employ another attorney to represent her interests?

X-A. 3. I did.

X-Q. 4. Were all these various proceedings in the courts taken in accordance with the Statutes of Mississippi and the practice of the courts?

X-A. 4. I think precisely so.

X-Q. 5. I wish you would examine one or more of the copies of the record filed with your deposition, and state whether they contain all the processes used in the proceedings, or are the summons, citations, orders of publication, &c., omitted from these copies.

A. 5. The petitions, citations and orders of publication from which the papers referred to resulted are not included in the copies before me, to save bulk and expense, and as being wholly unnecessary. The originals of those papers are now in this presence and in my possession.

X-Q. 6. In the many answers given in your examination in chief you have attempted to show a great number of errors in

the ex parte annual accounts of Burr Garland, which errors you say, were carried into the final decree. Were you speaking in these matters from your present recollection of facts, or from your conclusions deducted from the face of the papers?

A. 6. From both.

X-Q. 7. Were you present in court on the hearing of the ex-

ceptions, or did you hear the evidence thereon?

A. 7. I was not present, and did not hear one word of the evidence, I left the court-room before the hearing began.

X-Q. 8. Do you know how the final account as presented by you and W. H. Garland, executor, of Burr Garland, stands, as to any balance due to or from the estate of Samuel Garland. It was not added up as presented, and no balance struck?

A. I do not know how the balance stood, nor would have stood, had a balance been struck, there were additions to be made, and blanks to be filled up on the hearing.

Q. 9. Do you think that the final account as presented for confirmation of court is in all respects correct?

A. 9. I thought so when I made it, and I think so now.

X-Q. 10. You are not aware then that that account as so presented, without correction of any errors in the annual accounts, but allowing on the sum claimed, the 2½ commission finally allowed Burr Garland, would not have left enough of Samuel Garland's estate to pay the commissions to the executor by over $5,000. In other words, would show a balance against the estate in favor of the administrator of over $6,000?

A. 10. No, sir; I can't say that I was.

X-Q. 11. Would not the errors which you have pointed out in the annual accounts, if they could have then been rectified agreeably to your testimony, have swelled that balance against Sam'l Garlands estate to an immense amount.

A. 11. It would have swelled it, but I can't say that it would have swelled it to an immense amount.

X-Q. 12. If any statutory limitation in this state to the right

of any person interested to come in and surcharge and falsify such annual accounts, state the law on that point?

A. 12. No statutory limitation as to ex parte annual accounts.

X-Q. 13. What is the limitation as to surcharging and falsifying settlements of final accounts had under such proceedings as you instituted for settlement of these accounts?

A. 13. Two years from final decree, which also concluded any attack on the final account.

X Q. 14. Was that the law also when these proceedings were had?

A. 14. Yes, the law was the same.

X-Q. 15. In your examination in chief you have given the law

of Mississippi in regard to the widow's share of personal estate, her year's allowance, &c., do you prove that as the law of this case, where the testator and widow both resided in another State, where the law was different?

A. 15. I certainly give that as my opinion.

X. 16. I will ask you to examine the case of Garland, Ex'or vs. Rowan, decided as long ago as 1844, reported in 2 Smede & Marshall, in which case the famous Sergeant S. Prentiss was counsel for the losing side, and say whether the highest court of this State did not decide exactly to the contrary of your opinion?

A. 16. We have not the book referred to. I will get it and examine the case and answer the question later. The court in the case did so decide, but it was under a different law.

X-Q. 17. I hand you 40 Mississippi Report, and ask you to examine the case of Slaughter vs. Garland, there reported, and say was not the decree of June, 1864, of the Probate Court in these proceedings, by which the widow of Samuel Garland was allowed the year's provision, under your law, appealed from and reversed by the appellate court, and expressly decided in this very case that she was only entitled in the personal estate to what the Virginia law gave her?

A. 17. Said decision is to the effect indicated, but it was a question much disputed by the bar of this State, and I then believed, now believe, and ever shall believe that the decision in the case referred to was utterly wrong and without authority of law.

X-Q. 18. You have given it as your opinion as I understand you, that Mrs. Garland, the widow, is entitled to one-half of whatever may be realized from the decree in favor of Samuel Garland's estate v. Burr Garland's estate. Please look at the final account and say whether Burr Garland is not therein credited by all the slaves on all the plantations, by all the personal property alloted to Mrs. Garland, and in his annual accounts, (which were not disturbed in this respect by the exceptions) credited by all the payments Burr Garland made her, on account of the year's allowance.

A. 18. Yes, sir; but I add that he is charged with the proceeds of the crops of the two plantations, after one had been alloted to the widow for dower and the 9th had been selected by himself

under the 9th clause of Samuel Garland's will.

X-Q. 19. There has been filed with your deposition, petition of Burr Garland asking to be credited by over $14,000 worth of corn taken by the army. Is he not credited by that identical item in the final account?

A. 19. He was.

X-Q. 20. In regard to the cotton with which Burr Garland was charged, I will ask you whether D, J. Brown did not, after the

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close of the war, make some claim on account of its burning, claiming that he had bought and paid Burr Garland for it.

A. 20. I have heard that D. J. Brown did make such a claim, after the death of Burr Garland, but I have no knowledge of the particulars of the claim, nor do I know before what tribunal it was presented.

X-Q. 21. Do you not know that a number of Sam'l Garland's legatees resided within the union lines, and many of them within the confederate lines during the war, representing quite a large sum of legacies in the aggregate.

A. 21. I do.

X-Q. 22. Do you know whether it is allowable, under your law, for a fiduciary to surcharge and falsify on final settlements, the annual accounts returned by him and confirmed by court.

A. 22. He has no right to surcharge and falsify, in his final settlement, any of the items of this annual accounts, but he has the right to correct errors, mistakes and omissions in them, on a proper showing, whether for or against himself.

X-Q. 23. What is the limitation here as to asserting claims against estate of decedents.

A. 23. They must be probated and registered in the Chancery clerk's office, within twelve months after the first publication of notice of his qualification by the executor or administrator. This applies alone to claims existing at the decedent's death.

X-Q. 24. Do you know whether Wm. H. Garland, as executor of Burr Garland, made the publication as required.

A. 24. I do not, sir. It was a publication in the news papers, I have no doubt that it was done.

X-Q. 25. Do you know who represented Chas. Y. Morriss, trustee of Mrs. Morriss, upon the death of Burr Garland, in getting or receiving as remaindermen under 9th clause of Samuel Garland's will?

A. 25. I do not know.

X-Q. 26. You have stated that Burr Garland was regarded as insolvent. Did he not claim a large number of slaves as belonging to him when they were inventoried as Samuel Garland's, and were they not allowed to him?

A. 26. He did claim them, but I don't recollect if the court ever took action in regard to the matter.

X-Q. 27. In your 12th answer on examination in chief you state that you think $500 per year a reasonable amount for his decent and comfortable support. Do you think that amount of

money would be sufficient to pay all his housekeeping, travelling expenses, doctor's bills, lawyer's bills, all of his taxes, etc?

A. 27. I do.

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X-Q 28. Is it the practice in your Probate courts to hear testimony orally?

A. 28. Unquestionably so.

X-Q. 29. You state as to habits, &c , of Burr Garland that he did not speculate to any great extent. Do you know what he did with his means and money?

A. 29. I do not, for it is a subject on which he never conversed with me that I recollect.

X-Q. 30. What date did Burr Garland go to Virginia on his last visit there, when he died there, and how many trips did he make to Virginia after the death of Samuel Garland, in November, 1861?

A. 30. In 1869 he left for Virginia before the 1st of September, I cannot fix the exact date. After the lapse of 25 or 30 years I am unable to remember whether he made any visit to Virginia between the death of Sam Garland and the year 1869.

X-Q. 31. Was not the Barrens place used by Burr Garland as a storing place for the products of Coahoma place and Tudor Hall, and shipped or hauled from there?

A. 31. To some extent I think that is so.

Re-Direct.

Q. 1. You have been asked by Judge Diggs in regard to the sum of $500, which you named in answer to my question in examination in chief as to the amount which, from your knowledge of Burr Garland and of Samuel Garland, was likely contemplated by Samuel Garland and understood by Burr Garland, as to the amount of the profits which might be applied in paying debts contracted for his decent and comfortable support, and I asked you afterwards in regard to the amount which you would estimate as the actual expense incurred by him in his support in addition to what was raised at his home, either on Barrens or Tudor Hall, and you gave the amount from $125 to $150. Now please tell me if I understand you correctly in meaning that the $500 was the amount which he might have expended within the limit of a proper construction of the will, and the smaller sum as your estimate of what he actually spent in his support?

A. 1. I think my estimate of $500 was a large and liberal one for his annual expenses of living and clothing, considering the way in which he lived and clothed himself, and I intended it to cover all of his expenses, whether derived from the two plantations or purchased elsewhere. In the estimate of $125 to $150 I did not include the taxes on the Tudor Hall plantation, which, from my familiarity with the subject of taxation for the last 40 or more years in Hinds Co. I estimate to have been about $100.00 per annum, for the years 1865, 1866, and 1867, 1868

and 1869, I certainly thought that $500 was entirely within the terms in the 9th clause of Samuel Garland's will, as the same was contemplated and understood by himself, (the testator), and by Burr Garland. In estimating the sums of $125 to $150 I only estimated for what he would have to buy in addition to such articles as he received from the Tudor Hall plantation. If I had thought of the taxes at the time, I should intended to include them I should have stated the sums from $225 to $250.

Q. 2. the case to which Judge Diggs referred of Slaughter v. Garland, 40th Mississippi, 172, is a decision of which I had not heard, and my examination was from impressective of it. As I now understand it, if it has the application which he claims, it only affects Mrs. Garland's rights as to the one year's allowance. I see that that decision was in 1866, directly after the war, and in the proceedings of the Chancery Court of Hinds county in the final settlement, the 25th of February, 1874, they seem to have wholly disregarded the decision in the case of Slaughter v. Garland referred to. As to the one-half of the personal estate of a married man who dies childless, intestate or where his widow renounces the will, I understand that she is entitled, both in Virginia and Mississippi, to one-half of the surplus of his personal estate, after his debts are paid. Now, then, as to any balance of

assets in the hands of Burr Garland, as administrator of Samuel Garland, whether the account had been balanced upon the statement for the final settlement as you made that statement, or as it was finally made, when the balance of $64,130.88 was reached, would not Mrs. Garland have been entitled to the one-half of such balance?

A. 2. I certainly answer, that, in my opinion, she was so entitled, and is now. In view of what I there stated in the cross-examination, as to the decision in the 40th Mississippi Report in the case of Slaughter v. Garland.

Q. 3. As I understand in Mississippi, as well as in Virginia, the widow's dower-right commences with the death of her husband, and she is entitled to the profits of her portion of the real estate from his death. Now, then, Mr. Shelton, tell us if, under the laws of Mississippi, Mrs. Garland was not entitled to one-half of the profits from all the lands of Samuel Garland from the time of his death to the allotment of one-half of said lands to her.

A. 3. I must answer the question that I never knew a case in the State of Mississippi in which the widow claimed or asked for the profits of the land allotted to her for dower, subsequent to the death of the husband and anterior to the allotment of dower, and I am not prepared to say that under the laws of the State of Mississippi she was so entitled. I never knew the question in

any form or shape to be raised in Mississippi. I however add that the Barrens was allotted to Mrs. Mary L. Garland for dower early in September in 1864 in absolute fee simple, and in my opinion she was clearly entitled to the crop or crops at that time growing on said plantation

And further this deponent sayeth nothing.

JOHN SHELTON.

Q. 4. John Shelton being recalled is further asked by Mr. Brown whether in the petition and proceedings in the Chancery Court of Hinds county, in which the decree was rendered the 25th of February, 1874, any issue was raised in the decree or otherwise, between the widow, Mrs. Garland, and other parties, as to her interest in the $64,130.88 mentioned in the decree?

A. So far as I know no such issue was raised in said proceedings by the petition or otherwise.

And further this deponent saith not.

JOHN SHELTON.

Samuel Garland's Adm'r

vs.

Mary L. Garland, &c.

Exception to Comm'rs Reports.

M. J. Day, administrator d. b. n of Burr Garland, dec'd, and the children of Paulina B. Morriss, deceased, and W. V. Wilson, her administrator, except to Commissioner Bocock's several accounts and reports, dated the 29th of April, 1892, and filed the 3d of May, 1892, and Commissioner Sackett's account and report, filed the 14th of November, 1893, because in stating each of said accounts it is assumed that John F. Slaughter, administrator of Samuel Garland, Sr., has transferred and distributed all the bonds and assets of the estate of Samuel Garland, Sr., chiefly to himself as administrator of Charles R. Slaughter and executor of Samuel Garland, Jr., said Charles R. Slaughter and Samuel Garland, Jr., being residuary legatees under the 17th clause of the will of Samuel Garland, Sr.

By the 15th clause of his will Samuel Garland, Sr., gave a special legacy to each of the children of his brother, Nicholas A. Garland, of one thousand dollars of his East Tennessee and Virginia railroad bonds, or others of equal value. A much larger number of such bonds than was needed to satisfy said special legacies came to the hands of Charles R. Slaughter and to the hands of Samuel Garland, Jr., who were executors of Samuel

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Garland, Sr., and to the hands of John F. Slaughter, administrator d. b. n. of Samuel Garland, Sr. To eight of the children of Nicholas A. Garland, whose names are given in the pleadings, and each of whom is entitled to the special legacy of one of said bonds, no transfer of said bond or payment of said legacy has been made.

It was error in said commissioners to transfer all of such bonds from the account of John F. Slaughter, as administrator of Samuel Garland, Sr., to the accounts of John F. Slaughter, as administrator of Charles R. Slaughter, and as executor of Samuel Garland, Jr. This mode of stating his accounts subjects him to a devastavit on the estate of Samuel Garland, Sr.

M. J. DAY,
Adm'r, &c., the Children of Paulina B. Morriss.
W. V. WILSON,
Adm'r of Paulina B. Morriss,
By E. S. BROWN,
Their Attorney.

Extract from Inventory of Personal Estate in Virginia, 18th October, 1862.

109 shares Commonwealth's Bank stock, $100, $10,900 00

133 shares Citizens Savings " 100, 13,000 00

225 shares Merchants " 150, 22,500 00

10 bonds city of Memphis, $1,000 each, 10,000 00

8 bonds city of Lynchburg, at gross amount, 4,800 00

43 bonds Orange and Alexandria 6 per cent. " 35,000 00

23 bonds East Tenn. and Va. railroad, " 15,000 00

54 bonds Va. and Tenn. railroad, " 45,000 00

44 bonds Southside railroad, " 40,000 00

200 shares Va. and Tenn. railroad stock, guaranteed, $100, 20,000 00

40 shares Orange and Alex. railroad stock, guaranteed, $50, 2,000 00

1 bond East Tenn. and Va. railroad stock, guaranteed, 80 00

500 shares Lynchburg Hose and Fire Ins. Co. stock, $20, 10,000 00

500 shares Lynchburg Hose and Fire Ins. Co., no certificate issued, $20, 10,000 00

Amount carried forward, $253,520 50

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Virginia:

In the clerk's office of the Corporation Court for the city of Lynchburg the 5th day of May, A. D., 1894.

The foregoing is an extract of inventory of personal estate of Samuel Garland, Sr., deceased, 18th October, 1862. Recorded Will Book "E," page 108.

Teste:

S. G. WINGFIELD, Clerk.

Extract from Account of Samuel Garland, Jr., Surviving Executor.

1862.

August. 4.	By cash received dividend Gas Co. stock,		$250 00
	By 4 months' rent of old factory,		50 00
11.	By coupons E. T. and Va. R. R. Co. bond,	600 00	
15.	By H. C. Falwell on land,		125 00
21.	By dividend on L. S. bank,		20 00
25.	By Thurman negro hire,		30 00
	By dividend L'b'g H. and F. Ins. Co.,		200 00
31.	By rent of sundry persons,		76 75
Sept. 2.	By dividend in telegraph stock,		12 00
	By 7 bonds of Va. and Tenn. R. R. Co. paid S. M. Slaughter,	5 000 00	
	By interest on same,		192 00

Balance due executor, $1,653 45

Virginia:

In the clerk's office of the Corporation Court for the city of Lynchburg, May 1, 1894.

I hereby certify that the foregoing is an extract from the account of Samuel Garland, Sr., deceased, with Samuel Garland, Jr., surviving executor, recorded in Will Book "E," page 145, in said Corporation Court.

Teste:

S. G. WINGFIELD, Clerk.

Deposition of A. E. Willis, 15th May, 1894.

The deposition of A. E. Willis, taken before Chas. H. Sackett, a Commissioner in Chancery of the Circuit Court of Lynchburg, at his office, No. 37, in the Law Building, in the city of Lynch-

burg, on the 1st day of May, 1894, in reference to a certain matter of enquiry now pending before said commissioner under a decree of said court, in the chancery suit of Garland's Adm'r. v.

Burr Garland's Adm'r., &c

Present:—E. S. Brown, counsel for Mrs. Morriss' children, Burr Garland's Adm'r., &c., J. S. Diggs, counsel for Sam Garland's Adm'r.

Judge Diggs, counsel for Samuel Garland's administrator, objects to the taking of the depositions, because the case has already been submitted on the testimony already taken.

Reply by Mr. Brown: There has been no submission which was intended to shut any testimony on either side, which might be produced before the commissioner at any time, either before the taking or the closing of his accounts, and we have agreed to waive the time within which the commissioner is required to file his report.

The witness, A. E. Willis, being first duly sworn, deposes as follows:

1st Ques. (by E. S. Brown). Please tell us what is your age, what is your place of residence now and where was it formerly, what is your occupation now and what was it formerly?

Ans. I am about 30 years of age; I now reside in Amherst county, Virginia; I formerly resided in Barnwell county, South Carolina; I have been planting all the time.

2d Ques. by same. When did you change your residence from South Carolina to Virginia, and say whether you have been in the habit of visiting South Carolina since you changed your residence to Virginia?

Ans. I came to Virginia in December, 1885. I go back to South Carolina on an average of more than once a year.

3d Ques by same. In answer to a preceding question you say your occupation has been that of a planter all of the time. Tell us what you were engaged in planting in South Carolina?

Ans. Cotton, principally, some corn.

4th Ques. by same. Tell us whether your operations and those of your father, with which you were familiar in your early life, were on a small or a large scale?

Ans. Ours were the largest in our section of the country.

5th ques. by same. Tell us whether cotton was the chief staple in that portion of South Carolina?

Ans. Yes, sir.

6th ques by same. Tell us what would be the proportion in the yield of ginned or baled cotton to cotton in the seed?

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Ans. In 1885, my last experience, from 1,200 to 1,250 pounds of seed cotton would make a 500-pound bale of cotton, provided it was small seed cotton. If it was large seed, it would take more. There is a difference, too, in the turn out of cotton, owing to the soil of the land, whether it is rich or poor. The best land requiring less seed cotton to make the 500 pound bale.

7th ques. by same. What would you say would be the propor-

tion to the large seed cotton?

Ans. Large seed, such as Jones' variety, from 1,400 to 1,500 pounds to the bale.

8th ques. by same. From your knowledge of cotton raised in the Southern States, about the time of the war, what would be your estimate of an average yield of ginned or baled cotton to seed cotton at that time?

Ans. I was not born until the last of the war. I commenced assisting in the management of cotton when I was twelve years old. My first recollections as to yield of lint from seed cotton was that it took from 1,500 to 1,600 pounds to make a 500 pound bale.

9th ques. by same. Tell us whether, since your first recollection, the character of cotton raised in the Southern States has been more towards the small seed kind or the large seed kind?

Ans. To the small seed kind. Up to a few years ago it was all cotton, but now as much attention is paid to the variety of cotton raised as most any other crop.

10th ques. by same, What is the average weight to the bale?

Ans. 450 pounds is considered the legal weight; sometimes it would go over 600 pounds, and sometimes not reach 400 pounds.

Cross-Examination.

1st X ques. Can you give an estimate of how many bales of cotton could be ginned out of, say 15,000 pounds of seed cotton, raised in Mississippi, before or in the early part of the war, without knowing anything of the land, the seasons, the kind of cot-

ton, the gin or the ginner?

Ans. I never was in the State of Mississippi; don't know what variety of cotton they planted; don't know what gins they used, and, therefore, I could not state accurately about that, but from what I have read about cotton raising in that State, I should say it was superior to our State (South Carolina), and that their gins would be as good as we used, and that they would get as much lint out of the seed cotton as we did.

2d X ques. by same. Is there not a vast difference in the yield between cotton grown on high land and low grounds, or bottom land. I mean yield of lint cotton from seed cotton?

Ans. I have no experience with low land cotton, but I should judge that the yield would be greater on low land cotton, as my experience from cultivating high land cotton is that the better the land the better the yield.

Re-Examined by Mr. Brown.

1st ques. You spoke in your cross-examination about the character of gins used. Tell us whether there has not been an improvement in gins since 1860, and didn't the gins in 1885, the time to which you more especially referred in your examination

in chief, enable you to get a better yield than was obtained from gins in your early recollection?

Ans. There has been a marked improvement in the yield of cotton. I am unable to say to what extent this is due to the improvements in gins, or to the improvement in seed and cultivation.

And further the deponent saith not.

A. E. WILLIS.

The deposition of E. S. Brown, taken before the same commissioner with reference to the same matter of enquiry on the 3d day of May, 1894.

Present:—J. S. Diggs, counsel for Samuel Garland's, Sr., Adm'r.

The witness, being first duly sworn, deposes as follows:

1st Ques. by Com'r. One of the subjects I am directed to enquire about in this investigation is the corpus of the legacy under the 9th clause of the will of Samuel Garland, Sr., and the disposition thereof. Please state anything you may know as to what the corpus of said legacy consisted of at the death of Burr Garland, and what disposition was made of the same?

Ans. My understanding from conversations with Chas. Y. Morris, during his life, and Mrs. Pauline B. Morris, his wife, during her life, for whom I was counsel, some years preceding the death of each of them, was that after the death of Burr Garland, the tract of land Called Tudor Hall came to their possession under the will of Samuel Garland, Sr., but that they had never received any personal property specified in the 9th clause of said

will, nor any money on account of said profits, either from Burr Garland or his executor, that they understood that Col. Wm. Garland, the executor in Mississippi, took charge of what he regarded the estate of Burr Garland. Whether any personal property specified in the 9th clause of the will went into the hands of Col. William Garland as executor of Burr Garland, they seemed not to know; they said that they had never received anything

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from him, and from their information he, W. H. Garland, was insolvent and nothing could be got out of him. The money that Chas. Y. Morris received from Mr. Murrell which was reported to the commissioner was regarded, as I understood, both by him and Mr. Murrill to have been received by Mr. Morris as administrator of Burr Garland. The assignments by the children of Nicholas A. Garland to Burr Garland which are filed with the papers, and referred to in the answer of Chas. Y. Morris, trustee, and Mrs. Morris and her children, I understood, came to the hands of Chas. Y. Morris about the time of the death of Burr Garland. I cannot now recall whether before or after Burr Garland's death, if I ever heard. I always understood from Chas. Morris and his wife that Burr Garland represented these legacies as having been purchased with moneys that he had made on Tudor Hall. I have no knowledge of what the corpus of the

legacy in the 9th clause of the will consisted other than what is contained in the will itself and the record in Mississippi of the selection by Burr Garland of Tudor Hall and the personal property mentioned in that record. Whatever of this personal property mentioned in the record, which has been filed with the papers in this cause, remained on the death of Burr Garland or had been previously disposed of, I do not know, I never had any reason to believe from anything I heard from anybody, that any of the personal property mentioned in the 9th clause ever came to the hands of Chas. Y. Morris, or of Mrs. Morris or of her children.

Judge Diggs objects to the foregoing as incompetent and irrelevant.

Cross-examined by Judge Diggs, counsel for Samuel Garland's administrator.

1st Q. on cross ex. Did Morris' trustee ever make any claim against Burr Garland's Mississippi executor, or any one else for the personal property which, on the death of Burr Garland, passed to him as remainderman?

Ans. He corresponded a short time after Burr Garland's death with Col. William Garland, and after I was employed by Chas. Y. Morris I sought, by correspondence, to get information about Col. Garland, the executor, and I could learn nothing directly from him in my correspondence. I never received any letter from him, but all that I could get from others was that nothing could be made out of him. His letters to Chas. Y. Morris, and I think possibly

some of them to Mrs. Morris, were chiefly in regard to the rental value of Tudor Hall. I cannot now remember that there was

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any allusion in any of these letters that I ever saw to any personal property in the 9th clause of the will of Samuel Garland.

2d Ques. by same. Do you know of any claim being made by Morris, trustee, during the life of Burr Garland, on account of the surplus profits, as claimed in this suit?

Ans. No, I do not.

3d Ques. by same After the death of Burr Garland did you hear from Morris, trustee, any statement of the amount of such claim?

Ans. After the death of Burr Garland, I cannot remember how long after, I was engaged by Chas. Y. Morris to look to the will of Samuel Garland, Sr., as to the 9th clause, and I did so, and I thought that I understood him to claim the profits under the 9th clause and the property given by that clause. I know nothing about any claim prior to that time, and at the same time I examined the 5th clause of Samuel Garland's, Sr., will in regard to the claim made by him for his wife and children under that clause. I knew nothing about any claim under that clause prior to that time. I have no recollection as to anything being said as to the figures to which the claim would amount to under the 9th clause,

and only as to 5th clause from the figures specified in that clause.

4th Ques by same. Was any claim made by Burr Garland, or any one else during his life, against the estate of Samuel Garland, Sr., by virtue of the assignments to him of the Nicholas Garland legacies?

Ans. Not that I know of, I had no connection with this matter until after Burr Garland's death.

5th Ques. by same. How, and by whom, were the claims on account of these assignments first asserted?

Ans. So far as I know, the first effort to collect the legacies embraced in these assignments was made by me to John F. Slaughter, administrator of Sam'l Garland. I applied to him and he promised to pay them, but deferred doing so, sometimes for one reason and sometimes for another. At one time he said he would then pay those legacies, and I think a receipt was prepared, but he again declined, and thus it was put off from time to time.

6th Ques. by same. In whose name was the claim made, and whose receipts were offered to Mr. Slaughter?

Ans. My understanding was that these assignments were for Mrs. Morris and her children. I have no recollection now as to the name presented to Mr. Slaughter in my conversations with him. I appeared in my interviews with Mr. Slaughter as counsel for Chas. Y. Morris, as trustee and as administrator, and I have no recollection now of any question at all between Mr.

Slaughter and myself as to whether it was in the character of trustee or administrator.

7th Ques. by same. Do you remember when this was?

Ans. I cannot recall the year in which I first made the application to Mr. Slaughter, but I may safely say it was several years before the suit of Sam Garland's administrator v. Burr Garland's administrator, brought by Gen. Early was instituted. When that suit was instituted it was a matter of surprise to me, for I had heard nothing about the proceedings in Mississippi on which the decree mentioned in that suit was founded.

8th Ques. by same In whose name was the petition filed asking for a decree for the payment of these legacies?

Ans. I do not know of any petition being filed for the payment of the legacies to which the question refers. I have not seen any such petition, and do not suppose one would have been filed by any attorney other than myself.

9th Ques. by same. I allude to the petition referred to in the original bill in this cause on page 9 in the printed record?

Ans. I have looked to the portion referred to in the question, and I answer that I think the statement about the petition is a misapprehension I do not think any such petition has ever been in the record. If there has been, I have no knowledge of it.

10th ques. by same. Do you mean to say then that the claim of Morris, trustee,, and of Burr Garland's estate on account of the

surplus profits and said legacies were not asserted in any court until this suit was brought, and only in this suit?

Ans. It was asserted, as I understand it, in a general claim to all that Mrs. Morris and her children were entitled to under the 9th clause of Samuel Garland's will in the answer of Charles Y. Morris and his wife, Paulina B Morris, in the original suit, soon after death of Samuel Garland, Sr., instituted by Samuel Garland, Jr., his executor, to construe the will of Samuel Garland, Sr. This claim, in this answer covers, as I understand it, all that Mrs. Morris and her children may be entitled to under the 9th clause of the will. After the institution of the suit of Samuel Garland's Administrator vs. Burr Garland's Administrator by General Early, Charles Y. Morris claimed, in answer to his bill, that the legacies of Nicholas Garland's children, or eight of said legacies, were purchased with the profits that had accrued under the 9th clause of Samuel Garland's will, and the said legacies should be treated as a part of the trust funds coming to him for Mrs. Morris and her children after the death of Burr Garland under the 9th clause of Samuel Garland's will; but not that the amount constituted all the profits to which he was entitled. The expression "surplus profits," used in the question might mean all the profits. The question as to these assignments of the legacies was

for the first time put in litigation by the bill filed by General Early, and the position of Morris, trustee, in regard to these assignments was distinctly made in answer to that bill, and this position is in accord with his position prior and subsequent to that time, and with that now held by these parties. I am not now pressing the proof of the sales of cotton from Tudor Hall, going into the purchase of these legacies, and of which I think there is proof in the record, because the profits from Tudor Hall and Barrens have been so blended that we cannot discriminate between the two and as Mrs. Garland has assigned the profits of Barrens to Mrs. Morris' children, I think it simplifies the matter to seek to recover whatever profits we can show Burr Garland owes from the two. The assertion that the profits went into the purchase of these legacies was first asserted in the suit in answer to General Early's bill, which was the first time that there was any litigation on this point, as far as I know, but that these legacies were bought with profits from Tudor Hall was always claimed by Charles Y. Morris from my connection with the matter.

11th ques. by same. In the foregoing answer I understand you to mean "Yes" to my question?

Ans. No, I did not mean to make my answer the monosyllable "Yes," but I meant to explain what I understood in regard to the time when, on behalf of Mrs. Morris and her children, the claim was first made to all the profits in the 9th clause of the will, and the time when I understand the litigation first commenced about the assignments to Burr Garland of the legacies of Nicholas Garland's children, and I desired to explain that the liti-

gation about these legacies being bought by Burr Garland commenced with the bill filed by General Early, and not on any petition filed by Charles Y. Morris or Mrs. Morris and her children, as alluded to in a former question.

12th ques. by same. Then the first litigation in respect to the profits and in respect to the legacies was in this suit?

Ans. The filing of the original bill to construe the will of Samuel Garland, Sr., is the beginning of the litigation, as to the rights of Mrs. Morris and her children in the whole of the legacy under the 9th clause of the will, both the corpus of the legacy and the profits and all subsequent suits are but branches of the original suit; and I do consider that the claim of Mrs. Morris and her children to the profits started with the first suit, brought within a year after the death of Samuel Garland, Sr.

13th ques. by same. Did any assets of Burr Garland's estate come to the hands of any of his personal, representatives in Virginia other than C. Y. Morris?

Ans. None that I ever heard of, and none came to the hands of

C. Y. Morris that I ever heard of, except what has been reported in the record.

14th Is the personal representative of Burr Garland controlling and directing the conduct of the defense of this suit?

Ans. My understanding is that Judge Wm. J. Robertson and I have been, and are now, employed for the administrator of Burr Garland and the trustee and the remaindermen under the 9th clause of the will, and that we direct and control the defense for the administrator (no matter who may have been the administrator successively and now) and the beneficiaries in the trust under the 9th clause of the will.

And further this deponent saith not.

EDWARD S. BROWN.

Office of Commissioner in Chancery.
No. 37, Law Building, Lynchburg, Va.
May 9th, 1894.

To the Hon. John D. Horsley, Judge of the Circuit Court for the City of Lynchburg:

Your commissioner respectfully reports that, in pursuance of the decree in the chancery suit of Samuel Garland's adm'r v. Burr Garland's adm'r. &c., rendered at the May term, 1893, of your Honor's said court, he find upon the 2nd day of October, 1893, and the term, and filed, his office, as the place, to adapt the several accounts mentioned in said decree, and filed written parties in interest, see exhibit filed with filed with service thereof by all parties defendant, and by counsel endorsed thereon.

After working over the case a good deal last fall, it was found that it would be impossible to get to the end of the bill work, and

by consent of all parties it was deferred over until this spring, and work thereon was resumed some weeks ago.

Your commissioner has found this to be one of the most difficult cases he has ever had to deal with, and he has devoted to it a large fact of time and labor. After added very mature of the discussions before him of the various points in the case by Judge Diggs, for Samuel Garland's estate, and Mr E. S. Brown, for Burr Garland's estate and the children of Mrs. Morriss, he wishes herewith to very proper of the testimony to be used in the several accounts ordered, and the result of his labors, all of which is

Respectfully submitted,

CHAS. H. SACKETT,
Commissioner.

Commi'ssioner's fee, $74.40.

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It was agreed between counsel that the case should be heard on this report without waiting ten days, that is, notwithstanding it had not been filed ten days before the term of court.

C. H. S.,

Com'r.

First.

An account of the legacy under the 9th clause of the will of Samuel Garland, Sr., both the corpus of the legacy and the profits thereof, from the death of the testator to the death of Burr Garland, other than his decent and comfortable support, and the disposition thereof.

First: Corpus of the Legacy and the Disposition Thereof.

This legacy was not separated from the residue of the Mississippi estate and selected and set apart to Burr Garland until September, 1864, for reasons set forth in his petition. It appears from the selection then made, a copy of which is filed as an exhibit with the deposition of John Shelton, that the corpus of said legacy then consisted of the following property:

All of Tudor Hall plantation, in Hinds county, Mississippi, (except a small portion thereof allotted to Mrs. Garland as a portion of her half), containing about 1638 acres.

40 slaves.

9 mules.

3 old horses.

5 head of cattle.

25 " " hogs.

1 four-horse wagon.

1 old show wagon.

1 horse cart.

1 lot of farming implements, all old, in bad order and worn out.

1,000 bu. corn, crop of 1863.

2,500 bu. of corn.

200 bu, of field peas. Estimated crop of 1864 at Tudor Hall.

500 bu. of potatoes.

8,000 lbs. of fodder.

The slaves were all liberated by the result of the war. The personal property, other than crops embraced in said section, was either worn out in use or carried off by the armies. The crops on the place were either also carried off by the armies or consumed thereon. The stock on the plantation was reduced to

Burr Garland's riding horse, (see answer of Henry Shurlds to 34th cross-question propounded to him), and the outfit on the place had to be renewed except plows, (see answer of same witness to 38th cross-question).

The gin house mill, other houses and part of the main building had been burned, so that at the close of the war the corpus of the legacy had been reduced practically to the portion of Tudor Hall plantation contained in Burr Garland's selection in this dilapi-

dated condition as to the buildings and fencing thereon.

At the death of Burr Garland the land itself passed into the possession of the remaindermen. What remained of the personal property that had been put upon the place after the war by Burr Garland was left there by him, (except to the extent that he may have disposed of the same), when he came to Virginia, where he died in December, 1869. As to what became of this personal property so left upon the place by Burr Garland, as aforesaid, there is no proof before your commissioner, except what is contained in the deposition of Mr. E. S. Brown, who merely gives the statements made to him by Chas. Y. Morris, trustee, and Paulina B. Morris, his wife, that they never received any portion of it.

Your commissioner does not understand that any claim is now asserted against the estate of Samuel Garland, Sr., for any portion of the corpus of said legacy.

If such claim was asserted, your commissioner reports that the remaindermen should have taken charge of such property through their trustee, or asserted their right to it against the party into whose hands it passed.

Second Profits of the Legacy and Disposition Thereof.

From what has hereinbefore been stated with reference to the corpus of the legacy, it appears that said legacy was not selected and separated from the residue of the estate until September, 1864, and yet the decree under which your commissioner is acting directs him to take an account of the profits of said legacy from

the death of Samuel Garland, Sr., to the death of Burr Garland. For a period, therefore, of about three years between the deaths of these respective parties, both of the years 1862–1863, and nearly all of 1864, what should constitute or compose the legacy had not been defined.

During this period of time, Burr Garland, as administrator c. t. a. of Samuel Garland, Sr's estate, settled ex parte accounts of his transactions, which appears to have been accurately kept and which show upon their face that he undertook therein to account for all sales of products of the estate, no matter from what source

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derived, and without distinguishing between the sales from the different plantations. These ex parte accounts, Nos. 1 and 2, cover the entire period of the war, and hence the time, after his qualification to the allotment to Mrs. Garland of her half of the estate and the selection of the legacy by Burr Garland. So that any account of profits for the years prior to 1865 will have to be ascertained from these accounts, if it can be done.

It is conceded that there were no profits made in 1865. Coming, then, to the question of profits for the years 1866, 1867 and 1868, Burr Garland regarded all of the profits of Tudor Hall, after his selection as his own without accountability therefor to any one. John Shelton, his Mississippi solicitor, concurred in this

view as to his rights. It never seems to have been contemplated by any one that Burr Garland, or his estate, could be held liable for the surplus profits of the estate selected by him over and above a decent and comfortable support, until about ten years after his death, when the question was raised first and adjudicated in Virginia. Hence no account was ever kept by Burr Garland or anyone else of the receipts and disbursements from the Tudor Hall plantation after his selection thereof as aforesaid. The mere statement of these facts shows the difficulties with which your commissioner is confronted in attempting to execute this branch of the enquiry. In order to show what profits were made, the depositions of Henry Shurlds, Reuben Anderson, Robert Parker, James H. Tripp, R. M. Anderson, and probably some others, but these were the main ones, were taken. Reuben Anderson and Robert Parker were former slaves of Garland's. These witnesses testify, some of them as to crops made, some give their estimates as to the rental value of the land, some value the rents at so much per acre for high land and so much per acre for low land; but there is practically no evidence as to what was required to re-stock the place with necessary stock of all kinds, and equip it with farming implements after the close of the war, and the current annual expenses of running the plantation, taxes, &c., &c. As hereinbefore stated in reference to the corpus of the estate, the plantation, at the end of the war, was barren of everything necessary to run it, and was in a dilapidated condition. The labor essential to operate it was in a disorganized condition. A condition of affairs existed entirely novel to that section, and which made it extremely difficult for planters to operate their planta-

tions successfully. So that your commissioner finds it impossible to state any account at all, even approximating accuracy as to the profits of the plantation after the war and up to the year 1869. Shurlds, the witness who was in a position to know most about the matter, and who had testified about the crops made in the various years in answer to the 45th cross-question pro-

pounded to him, said that he did not know of any farmers in that vicinity who made any money by their planting operations for the first four or five years after the war, and in his answer to 48th cross-question he says he hardly thinks Burr Garland did. R. M. Anderson, in answer to the 8th cross-question to him, says substantially the same thing.

At the close of the year 1868 it seems that Burr Garland stopped his farming operations, at least in large part, rented out the land, or the most of it, and in the summer of 1869 he came on to Virginia, where he died in December of that year. As to the rents of Tudor Hall for the year 1869, the proof is more definite as to the amount contracted to be paid therefor, but as Burr Garland died before receiving these rents, they could only have been legally collected by an administrator d. b. n., c. t. a. of Samuel Garland, Sr., in Mississippi, as such trustee under the 9th clause of the will, or by a new trustee specially appointed to

carry out the provisions of said clause. If paid to W. H. Garland as executor of Burr Garland in Mississippi, they were improperly so paid, in the light of the decision in Virginia as to who were entitled to the same, and the remaindermen should have followed the amounts so paid into the hands of said executor.

Your commissioner therefore, reports that no liability rests upon the Virginia estate of Burr Garland for money collected by some one else on account of the rents of Tudor Hall for the year 1869, which money formed no part of his Virginia estate, and was collected after his death.

This disposes of the question of profits, except such, if any, as are embraced in the Mississippi decree for $64,130.88, which determined that sum to be due from Burr Garland's estate to the estate of his testator, Samuel Garland, Sr.

It seems to your commissioner that the practical question is, if any profits were made, what became of them? All of the witnesses who testify on the subject state that Burr Garland was a careful, prudent, economical man. It appears that when he died he had only $1,392.52 in money, which passed into the hands of his Virginia administrator. (This is an error—$1,421.32 is the amount), which is directly traced as a part of the money in the hands of Aiken & Watt, of which more hereafter; and it also appears from the copy of his will, which was recorded in Mississippi, or rather from additions to said copy, that his estate in Mississippi was as follows:

Amount of inventories of personal property and debts:

In Rankin county,	$768 00

In Hinds " 601 80

Debts, 407 09

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The personal property in Hinds county was doubtless the property left upon the Tudor Hall plantation, and the debts were most probably uncollected rent debts due from tenants on said plantation. This showing of the estate left by Burr Garland would seem to disclose the full measure of profits from all sources he realized after a support such as he had. The question as to the Nicholas Garland's children's legacies purchased by him, forming any part of his estate, is dealt with elsewhere.

Your commissioner is informed that the tract of land devised by Burr Garland to Dr. Garland and his wife and children either turned out not to be his property or was in some way recovered from the devisees under said will.

Second.

The Estate of Burr Garland, Dec'd., In Account with Chas. Y. Morris, Dec'd., his Adm'r.

1881.

May 1. By bal. due estate by adm'r.

as per report of com'r. Babcock

on page 66 of printed record. Interest Principal.

$807 63 $1,392 52

Interest on principal one year 83 55

$891 18 $1,392 52

1881.

Oct. 31. To amt. paid E. S. Brown,

att'y. for expenses and notary

fee taking deposition of A. M.

Garland, 50 00

Dec. 22. To am't. paid Chas. Carroll,

att'y. & N. P. fee for deposi-

tion of Jno. Glover, 10 00

1882.

May 1. To bal. due estate by adm'r., 891 18 1,332 52

$891 18 $1,392 52

1882.

May 1. By bal. due estate per contra 891 18 1,332 52

1894.

May 1. By interest on principal to 10

May, 1894, 961 41

May 10. Bal. due estate by adm'r., $1,852 59 $1,332 52

Mrs. Mary L. Garland was security upon the bond of Chas. Y. Morris as administrator of Burr Garland, and in that capacity was made a party to this suit. By the decree of the court of appeals in this suit, rendered 2d Dec., 1887, Chas. Y. Morris, as adm'r. of Burr Garland, dec'd., out of the assets of his intestate's estate was ordered to pay the cost of said appeal. This cost was paid by Mrs. Mary L. Garland, on the 11th day of July, 1888. And she is entitled to receive the same out of above balance.

Am't. cost paid by her 11th July, 1888,	$254 99
Interest on same to 10th May, 1894,	89 20
	$344 19

It is claimed by counsel for the children of Mrs. Morris that the legacies of Nicholas A. Garland's children, which were purchased by and assigned to Burr Garland, now constitute assets of the said Burr Garland's estate.

The effort to trace the purchase of said legacies from funds arising solely from the profits of Tudor Hall has been abandoned. Now it appears that, as hereinbefore stated, at the close of the year 1868 the said Burr Garland determined to discontinue his farming operations. On the 9th day of December, 1868, he settled his third and last ex parte account as administrator c. t. a.

of Samuel Garland, Sr.'s, estate, showing an indebtedness by him to said estate of $6,545.09. On the 3d day of February, 1869, he deposited $5,000 to his credit with Aiken & Watts in New Orleans, out of which he paid for six of said legacies by drafts on said firm. In addition to this $5,000 he had at least $1,100 elsewhere, for he paid $550 each for the remaining two of said legacies otherwise than through said firm. So that he had in hand substantially all of the $6,545.09, shown by his last settlement to be due by him.

It is fair to presume, and your commissioner reports, that said legacies were purchased and paid for by Burr Garland out of money belonging to the estate of his testator, Samuel Garland, Sr., and being so purchased and paid for, the liability of Samuel Garland's estate therefor ceased, and said legacies were extinguished, and the said Burr Garland's estate is only entitled to credit on the Mississippi decree against it for the actual amount paid by him for said legacies, and the same will be so treated hereafter in this account, in stating the indebtedness of Burr Garland's estate. This is the manner in which the other two of said legacies which were purchased by J. F. Slaughter, the Vir-

ginia administrator of Samuel Garland, in stating his accounts in the other branch of this case were dealt with.

As my action on this branch of the case does not accord with the views of Mr. E. S. Brown, counsel for Mrs. Morris' children, the following special statement is made at his instance, showing the present value of said legacies:

Special statement showing the present value of the eight legacies to certain of the children of Nicholas A. Garland, made at the instance of Mr. E. S. Brown, counsel for the children of Mrs. Paulina B. Morris.

8 coupon, bonds of the East		
Tenn. & Va. Railroad Co. of		
$1,000 each,		$8,000 00
Interest coupon due 1 Jan., 1863,		240 00
Interest on same to 10th May, 1894,	$451 56	
Interest coupon due 1 July, 1863,		240 00
Interest on same to 10 of May, 1894,	444 36	
Interest coupon due 1 Jan., 1894,		240 00
Interest on same to 10 May, 1894,	437 16	
Interest coupon due 1 July, 1864		240 00
Interest on same to 10 of May, 1894,	429 96	
Interest coupon due 1 Jan., 1865,		240 00
Interest on same to 10 May, 1894,	422 76	
Interest coupon due 1 July, 1865,		240 00
Interest on same to 10 May, 1894,	415 56	
Interest coupon due 1 Jan., 1866,		240 00
Interest on same to 10 May, 1894,	408 36	
Interest coupon due 1 July, 1866,		240 00
Interest on same to 10 May, 1894,	401 16	

Interest coupon due 1 Jan., 1867,		240 00
Interest on same to 10 May, 1894,	393 96	
Interest coupon due 1 July, 1867,		240 00
Interest on same to 10 May, 1894,	386 76	
Interest coupon due 1 Jan., 1868,		240 00
Interest on same to 10 May, 1894,	379 56	
Amounts carried forward,	$4,571 16	$10,640 00

Special Statement.—Continued.

Amounts brought forward,	$4,571 16	$10,640 00
Interest coupon due 1 July, 1868,		240 00
Interest on same to 10 May, 1894,	372 36	
Interest coupon due 1 Jan., 1869,		240 00
Interest on same to 10 May, 1894,	365 16	

Interest coupon 1 July, 1869,		
Interest on same to 10 May, 1894,	357 96	240 00
Interest coupon due 1 Jan., 1870		
Interest on same to 10 May, 1894,	350 76	240 00
Interest coupon due 1 July, 1870,		
Interest on same to 10 May, 1894,	343 56	240 00

Interest coupon due 1 Jan., 1871,		
Interest on same to 10 May, 1894,	336 36	240 00
Interest coupon due 1 July, 1871,		
Interest on same to 10 May, 1894,	329 16	240 00
Interest coupon due 1 Jan., 1872,		
Interest on same to 10 May, 1894,	321 96	240 00
Interest coupon due 1 July, 1872,		
Interest on same to 10 May, 1894,	314 76	240 00
Interest coupon due 1 Jan,, 1873,		
Interest on same to 10 May, 1894,	307 56	240 00
Interest coupon due 1 July, 1873		
Interest on same to 10 May, 1894,	300 36	240 00
Interest coupon due 1 Jan., 1874,		
Interest on same to 10 May, 1894,	293 16	240 00
Interest coupon due 1 July, 1874,		
Interest on same to 10 May, 1894,	285 96	240 00
Amounts carried forward,	$8,850 24	$13,760 00

Special Statement.—Continued.

Amount brought forward,	$8,850 24	$13,760 00
Interest coupon due 1 Jan'y, 1875,		240 00
Interest on same to 10 May, 1894,	278 76	
Interest coupon due 1 July, 1875,		240 00
Interest on same 10 May, 1894,	271 56	
Interest coupon due 1 Jan'y, 1876,		240 00
Interest on same to 10 May, 1894,	264 36	

Interest coupon due 1 July, 1876,		240 00
Interest on same to 10 May, 1894,	257 16	
Interest coupon due 1 Jan'y, 1877,		240 00
Interest on same to 10 May, 1894,	249 96	
Interest coupon due 1 July, 1877,		240 00
Interest on same to 10 May, 1894,	242 76	
Interest coupon due 1 Jan'y, 1878,		240 00
Interest on same to 10 May, 1894,	235 56	
Interest coupon due 1 July, 1878,		240 00
Interest on same to 10 May, 1894,	228 36	
Interest coupon due 1 Jan'y, 1879,		240 00
Interest on same to 10 May, 1894,	221 16	

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	240 00	
Interest coupon due 1 July, 1879,	213 96	
Interest on same to 10 May, 1894,		240 00
Interest coupon due 1 Jan'y, 1880,	206 76	
Interest on same to 10 May, 1894,		240 00
Interest coupon due 1 July, 1880,	199 56	
Interest on same to 10 May, 1894,		240 00
Interest coupon due 1 Jan'y, 1881,	192 36	
Interest on same to 10 May, 1894,		

Amounts carried forward,	$11,912 52	$16,880 00

Special Statement.—Continued.

Amounts brought forward.	$11,912 52	$16,880 00
Interest coupons due 1 July, 1881,		240 00
Interest on same to 10 May, 1894,	185 16	
Interest coupons due 1 Jan'y, 1882,		240 00
Interest on same to 10 May, 1894,	177 96	
Interest coupons due 1 July, 1882,		240 00
Interest on same to 10 May, 1894,	170 76	
Interest coupons due 1 Jan'y, 1883,		240 00
Interest on same to 10 May, 1894,	163 56	
Interest coupons due 1 July, 1883,		240 00
Interest on same to 10 May, 1894,	156 36	
Interest coupons due 1 Jan'y, 1884,		240 00
Interest on same to 10 May, 1894,	149 16	
Interest coupons due 1 July, 1884,		240 00
Interest on same to 10 May, 1894,	141 96	
Interest coupons due 1 Jan'y, 1885,		240 00
Interest on same to 10 May, 1894,	134 76	
Interest coupons due 1 July, 1885,		240 00
Interest on same to 10 May, 1894,	127 56	
Interest coupons due 1 Jan'y, 1886,		240 00
Interest on same to 10 May, 1894,	120 36	
Interest coupons due 1 July, 1886,		240 00
Interest on same to 10 May, 1894,	113 16	
Interest coupons due 1 Jan'y, 1887,		240 00

Interest on same to 10 May, 1894,	105 96	
Interest coupons due 1 July, 1887,		240 00
Interest on same to 10 May, 1894,	98 76	
Amounts carried forward,	$13,758 00	$20,000 00

Special Statement.—Continued.

Amounts brought forward,	$13,758 00	$20,000 00
Interest coupons due 1 Jan., 1888,		240 00

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Interest on same to 10 May, 1894,	91 56	
Interest coupons due 1 July, 1888,		240 00
Interest on same to 10 May, 1894,	84 36	
Interest coupons due 1 Jan., 1889,		240 00
Interest on same to 10 May, 1894,	77 16	
Interest coupons due 1 July, 1889,		240 00
Interest on same to 10 May, 1894,	69 96	
Interest coupons due 1 Jan., 1890,		240 00
Interest on same to 10 May, 1894,	62 76	
Interest coupons due 1 July, 1890,		240 00
Interest on same to 10 May, 1894,	55 56	
Interest coupons due 1 Jan., 1891,		240 00

Interest on same to 10 May, 1894,	48 36	
Interest coupons due 1 July, 1891,		240 00
Interest on same to May 10, 1894,	41 16	
Interest coupons due 1 Jan., 1892,		240 00
Interest on same to 10 May, 1894,	33 96	
Interest coupons due 1 July, 1892,		240 00
Interest on same to 10 May, 1894,	26 76	
Interest coupons due 1 Jan.. 1893,		240 00
Interest on same to 10 May, 1894,	19 56	
Interest coupons due 1 July, 1893,		240 00
Interest on same to May 10, 1894,	12 36	
Interest coupons due 1 Jan , 1894,		240 00
Interest on same to 10 May, 1894;	5 16	
	$14,386 67	$23,120 00
	14,386 67	
Total,	$37,506 67	

The word "coupon", where used in the foregoing statement should be "coupons."

Third.

An account of the administration of the estate of Burr Garland, dec'd., by M. J. Day, late sergeant of Lynchburg, and as such administrator d. b. n. of said estate.

In respect to this account your commissioner reports that said

administrator received no assets of said estate and made no disbursements on account thereof, and therefore he has no account to render.

Fourth.

An Account of all Debts Against the Estate of Burr Garland, deceased, and their priorities, if any.

[End of Transcription]

Pages 341-360

MS1939 Garland Box 1 Folder 7 Pages 341-360

Transcription

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Garland's Adm'or et als. v. Garland's Adm'or et als.

S. H. Johnson, sergeant of the city of Lynchburg, and as such administrator d. b. n., c. t. a. of the estate of Samuel Garland, Sr., deceased.

Amount decree of the Chancery Court for the Second District of Hinds county, Mississippi, entered February term, 1874, in the matter of the estate of Samuel Garland, Sr., in

final settlement of the accounts of
Burr Garland as administrator,
&c. (No. 1873), which decree has
been decided by the Court of Appeals
of Virginia to be conclusive,

$64,130 88

Off.

The following sums paid by the said
Burr Garland to certain of the
children of Nicholas Garland for the
purchase of them of certain legacies
of bonds they were entitled to re-
ceive from the estate of Samuel
Garland, Sr., which legacies were
in the possession of the said Sam'l
Garland's Virginia administrator:

To N. A. Garland, 17 Feb'y, 1869,	$500 00
Interest to, say 15 Feb'y, 1874,	149 83
To Lucy P. Roane, 23 June, 1869,	550 00
To Ellen D. Bushfield, 23 June, 1869,	550 00
To Elizb. A. Garland, 23 " "	550 00
Interest on $1,650 to 15 Feb'y, 1874,	460 07

To A. M. Garland, in his own right and as
guardian for Wm. B., Albert, E. G.,

and Caroline P. Garland, 26 June,			
1869,	2,200 09		
Interest on $2,200 to 15 Feb'y, 1874,	612 33	5,572 23	
Balance due 15 Feb'y, 1874,		58,558 65	
Interest on same to 10 May, 1894,		71,099 96	
Total,			$129,658 61

The above is a fiduciary debt, and is the only debt against the estate of Burr Garland proved before your commissioner.

Garland's Adm'or et als. v. Garland's Adm'or als

In this connection the attention of your commissioner has been called to a decree of the Court of Appeals for costs in this suit entered 30th April, 1891, amounting to $71.14 against the personal representative of Samuel Garland.

As the question involved in said appeal related more to the rights of Mrs. Morris' children under the 9th clause of the will of Samuel Garland, Sr., than to any interest of Burr Garland's estate, it would seem that said children are entitled to said costs, and that the same should not be credited upon the decree last aforesaid, and your commissioner so reports.

For reasons hereinbefore given, your commissioner has credited the amounts paid by Burr Garland for the legacies of Nicholas Garland's children on the decree rendered by the Mississippi court. Whilst that decree was a finalty as to all matters involved in the accounts of Burr Garland as administrator, it is perfectly apparent from the record that the matter of these legacies was in no way involved in said settlement, nor was the attention of the court in any manner called to them. In fact, from the date of said decree and the time when the claim to said legacies was asserted in Virginia, and the manner in which they were asserted, it seems more than likely that the parties engaged in the controversy in Mississippi were not aware of the fact that Burr Garland had purchased them.

Your commissioner might well close this account just here. It is already responsive to the decree under which he is acting, but it is claimed by counsel for Mrs. Morris' children, that he should go farther and divide up the decree and say who is entitled to it, or any amount that may be realized from it, especially so, because the decision of the court of appeals was without prejudice to the rights of Mrs. Morris and her children. And it is claimed that some of the surplus profits of the legacy under the 9th clause of the will were carried into, and formed a part of, said decree for $64,130.88.

He will therefore attempt to do so. An analysis of the ex parte statements, and the final settlement of commissioner Baldwin, upon which the decree is based, is not difficult, so far as dealing

with the figures is concerned, but after doing so, various questions arise as to how the component parts of said decree when thus separated should be dealt with. For instance, it will appear that the largest portion of said decree is made up of the corpus of Samuel Garland, Sr's. estate.

Is Mrs. Garland, the widow, entitled to one-half of the amount realized from that portion? it is claimed by the residuary legatees that Mrs. Garland, having made her selection of her half of the estate in Mississippi in due form of law, and the same having been ratified and confirmed by the court, she is bound by it, and is

thereby estopped from claiming anything further from the estate on that account. It is also claimed that under the Mississippi law a widow is not entitled to any profits from the estate until the allotment to her of her share thereof, but that she is only entitled to the use of the mansion, house and curtelege free of rent until that time. So that in dividing up the decree, whether the component parts thereof be corpus or profits, the question will have to be determined by the court as to Mrs. Garland's interest therein. Then again as to any profits, the further question arises as to the right of Mrs. Morris' children to any interest therein which accrued before the selection of the legacy under the 9th clause of the will.

With this preliminary statement your commissioner will attempt to show how the Mississippi decree was made up, with respect to the corpus of the estate or the profits of the estate.

Items which Make Up the Mississippi Decree.

(1) Confederate notes and bonds for which the administrator had received credit in his ex parte, but with which he was charged by commissioner Baldwin, $15,020 00

First Ex Parte Account.

There are two items in this account which form a part of the corpus of the estate, to-wit:

(1). Note of J. W. & W. A. Percy, $4,644 00
(2) Teams and wagons impressed, 2,700 00

The confederate notes and bonds embraced in th's account only amounted to $6,000, so that all other items of credit to the estate and $1,344 of above two items were expended and paid out by the administrator. Therefore the $6,000 being unexpended balance of above two items is corpus of the estate.

Second Ex Parte Account.

Every item of credit to the estate in this account is either products of the farms or hire of the slaves. So that the $9,920 with which administrator is charged by commissioner Baldwin, is profits—that is products of the farm and hire of slaves—and said item with the $6,000 above mentioned make up the above item of $15,020.

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Third Ex Parte Account.

Every item of credit to the estate in this account is from the sales of cotton. It is simply impossible for any one to say with any degree of certainty, from the evidence in this case, where this cotton came from, either as to the time when it was made or the plantation upon which it was raised.

Amount forward, $15,020 00

Items Which Make Up the Mississippi Decree.—Continued.

Amount brought forward, $15,020 00

Some indications in the testimony seem to point to its having been made at least in part since the war, and others as being on hand at the close of the war, still others as being on hand at the death of Samuel Garland.

Burr Garland himself, by his settlement of his account in his lifetime, said that it belonged to the estate of Samuel Garland.

It seems incredible that he, a sensible business man, should have in December, 1868, settled his account as administrator of Samuel Garland's estate, and credited his testator's estate by cotton raised on either Tudor Hall, which he had selected 1864, or on Barrens, which had been Mrs. Garland's individual property ever since the same year. So that your commissioner reports that said cotton embraced in said third ex parte account belonged to the estate of Samuel Garland, Sr.

The following items embraced in said decree arose from the sales of said cotton:

Bal. due by administrator per 3d acc't.,	$6,545 09
Interest on same,	2,045 33
Items allowed in said account,	

but disallowed by commissioner,
and which would swell said bal-
ance 1,289 86
163 60
488 46

85 59
41 55
10,659 48

Amount received of D. J. Brown for cotton sold 3,000 00

As to this item, it was embraced in the ap-
praisement made in January, 1863, for it was
burned in July, 1863. There is considerable doubt
from the testimony as to when it was raised, but
the

Amount carried forward, $28,679 48

Items Which Make Up the Mississippi Decree.—
Continued.

Amount brought forward, $28,679 48

most reasonable solution of the matter is that it was of the crop of 1862, and your commissioner so reports, but which plantation it was made on cannot be stated.

The balance of the decree is made up of the corpus of the estate as appraised, 35,451 40

Amount of decree, $64,130 88

As to Last Item in Above

Administrator is charged by Commissioner Baldwin with appraisement in Hinds county, 178,832 25

" Coahoma " 20,492 00

$199,324 25

And he is only credited by slaves emancipated and personal property selected by himself and Mrs. Garland to the amount of 157,950 00

$41,374 25

This demonstrates that a large portion of said decree is made up of the corpus of the estate as appraised.

The difference between $41,374.25 and $35,451.40, the amount embraced in the decree, is made up of commissions allowed administrator and a few small items allowed by Commissioner

Baldwin.

Recapitulation of Mississippi Decree.

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(1) Profits of estate, that is, products of the farms, without distinguishing b e - tween them a n d hires of negroes prior to September, 1864, when the al- lotment and selec- tion were made.

(1) From ex parte ac- count, No. 2, $9,020 00

(2) Cotton sold D. J. Brown, 3,000 00

(2) Corpus of estate. total of profit $12,020 00

(1) From ex parte ac- count, No. 1, $6,000 00

(2) From ex parte ac-

count, No. 3, $10,659 48

Less.

Credit given administrator on page 14 of this report for am't and interest paid by him for legacies to the children of Nicholas Garland, 5,572 23 5,087 25

(3) From C o m m i s - sion Baldwin's acc't, 35,451 40 46,538 65 [handwritten mark]

Balance, principal, due by Burr Garland, administrator, page 14, $58,558 65 [handwritten mark]

Memo.—If the court will determine the right of Mrs. Garland to any portion of the decree, whether of corpus or profits, and also the right of Mrs. Morris' children to any portion of the profits embraced therein, all of which accrued before the selection of the legacy in 1864, a statement can be made at the bar of the court, dividing out the balance due from Morris, administrator, to Burr Garland's estate.

Garland's Adm'or et als. v. Garland's Adm'or et als.

Mrs. Garland was improperly paid from the Mississippi estate a year's allowance of $3,000, and she also received certain articles of personal property to the value of $250, for which she should be held to account.

The attention of the court is also called to the fact that Burr Garland paid Mrs. Mary L. Garland on the 13th day of ———, 1869, $1,000 by draft on Aiken & Watt, on account of some of his transactions with her.

Samuel Garland's Ex'or,

v.

Mary L. Garland.

and

Samuel Garland's Adm'r

v.

Burr Garland's Adm'r.

By consent of parties, it is ordered that these causes be submitted to the judge, to be heard in vacation, at such time as he may appoint, and for such decision and decree therein in vacation as might be made in term, and leave is reserved to the parties in the meantime to take such exceptions to the report of Commissioner Sackett filed the 9th of May, 1894, as they may deem

advisable; and the receivers, R. T. W. Duke and J. S. Diggs, are directed, from the funds in their hands, to pay such taxes as are, or may be, assessed on said funds respectively, exclusive of costs and penalties.

But this submission of the two causes entitled above is without prejudice to either party to move in vacation that they be separated, and for such decree in vacation in either or both of them as might be made in term.

We consent to this decree.

J. S. DIGGS,

For Plaintiffs in Both Cases.

E. S. BROWN,

Attorney for Burr Garland's Administrator, Mrs. Morris' Administrator and Her Children, and Mrs. Mary L. Garland.

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Garland's Adm'or et als. v. Garland's Adm'or et als.

Answer of Defendants' to Original and Amended Bills.

Filed August Rules 1893.

The answer of M. J. Day, late sergeant of Lynchburg, and as such adm'r of Burr Garland, deceased, and W. V. Wilson, adm'r of Paulina B. Morriss, dec'd, and John Preston Cocke, adm'r of

Charles Y. Morriss, Jr., dec'd, and adm'r of William M. Morriss, dec'd, and D. S. Cates, sheriff o f Richmond, and as such adm'r of Richard G. Morriss, dec'd, and S. H. Johnson, sergeant of Lynchburg, and as such adm'r of Mary A. Payne, dec'd, to the original bill filed in the Circuit Court for the city of Lynchburg, by Sam'l Garland, Jr., surviving exo'r of Sam'l Garland against Mary L. Garland and others, and the amended bills and bills of revivor, filed in said suit, and to the petition of Gilbert S. Meem, adm'r of Ann P. Garland, dec'd, filed in said suit and the suit of Sam'l Garland, Sr.'s administrator vs. Burr Garland's administrator which suits were united.

These defendants, responding to the scire facias issued against them come and answering said original and amended bills and bills of revivor and petition, say that they adopt and insist on the defence presented in the answer of Charles Y. Morriss, trustee and Paulina B. Morriss, and answer of Burr Garland to said original bill, and in the answer of Charles Y. Morriss, former, adm'r of Burr Garland, dec'd, and trustee for Paulina B. Morriss and her children filed in the suit of Sam'l Garland, Sr.'s administrator vs. Burr Garland's administrator, and in the answer of M. J. Day, late sergeant of Lynchburg, and as such administrator of Burr Garland, deceased, to said petitions heretofore filed in these causes.

These defendants say further that it was a misapprehension to suppose that the profits mentioned in the 9th clause of the will of Sam'l Garland, Sr., belonged absolutely to Burr Garland, but un-

der the recent decision of the Court of Appeals all the profits from the death of Sam'l Garland, Sr., to the death of Burr Garland, from Tudor Hall and the 40 slaves and the personal property in said clause mentioned passed in trust to said Paulina and her children at the death of Burr Garland except what was consumed in his "decent and comfortable support."

These defendants say further that all the profits that came to the hands of Burr Garland from the Barrens' estate and the 84 slaves and other personal property of every kind assigned under the Mississippi laws, on her renunciation of the will, to Mary L. Garland were by her assigned to the children of said Paulina B. Morriss. A copy of said assignment is herewith filed as a part of this answer, marked M. L. G.

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These defendants pray that whatever the children of Paulina B. Morriss are entitled to be decreed to them, or to the adm'rs of those who have departed this life.

THE DEFENDANTS NAMED ABOVE.

By EDWARD S. BROWN,

their Att'y.

Mrs. Garland's Assignment to Mrs. Morris' Children;

"Marked M. L. G."

I, Mary L. Garland, widow of Sam'l Garland, Sr., deceased, in consideration of love and affection, do hereby give, grant and assign to the children of my deceased niece, Paulina B. Morriss, in cluding her grand son, Sam'l G. Payne, in the place of Mary L. Payne, his deceased mother, the rents, issues and profits of the Barrens' estate in Hinds county, Mississippi, and of the teams and hands employed thereon, which went into the hands of Burr Garland as adm'r of Sam'l Garland, Sr., dec'd, or otherwise, to pass to them just as if the same had been profits as specified in the 9th clause of the will of Sam'l Garland, Sr., dec'd.

Given under my hand and seal this 19th day of April, 1892.

MARY L. GARLAND, [Seal.]

State of Virginia,

City of Lynchburg, to wit:

I, Wm. V. Wilson, Jr., a notary public in and for the City of Lynchburg, in the State of Virginia, do certify that Mary L. Garland, whose name is signed to the foregoing deed, dated the 19th day of April, 1892, personally appeared before me in my said city and acknowledged the same.

Given under my hand this 19th day of April, 1892.

WM. V. WILSON, JR.,
Notary Public.

Virginia:

In the Clerk's Office of the Corporation Court for the City of Lynchburg, the 14th day of July, A. D., 1893.

This deed was presented and upon the annexed certificate of acknowledgment, admitted to record.

Teste: S. G. WINGFIELD, Clerk.

A Copy.

Teste: S. G. WINGFIELD, Clerk.

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Deed Book "W. W.", pa. 396
Fee 25c. paid by E. S. Brown, Att'y.

S. G. W., Clk.

Order for Accounts Feb., 1892.

SAMUEL GARLAND, SR.'s Adm'r.) Order
vs. } Special Term

BURR GARLAND'S Adm'r.) Feb., 1892.

The death of the defendants, Paulina B. Morris and Mary A. Payne being suggested, it is on the motion of M. J. Day, late sergeant of Lynchburg, and as such adm'r d. b. n. of Burr Garland, dec'd, and by consent of said new parties it is ordered that this suit be revived in the names of W. Wilson, adm'r of Paulina B. Morriss, deceased, and D. S. Cates, sheriff of Richmond, and as such administrator d. b. n. of Richard G. Morriss, deceased, and S. H. Johnson, sergeant of Lynchburg and as such adm'r of Mary A. Payne, dec'd, and then this day this cause came on to be further heard by consent of said new parties on the papers formerly read and on the decree of the Court of Appeals entered of record in this court the 25th of May, 1891, and was argued by Counsel. On consideration whereof the Court doth order that Henry F. Bocock or some other commissioner of this court do take the following accounts:

1st. An account of the legacy under the 9th clause of the will of Sam'l Garland, Sr., dec'd, both the corpus of the legacy and the profits thereof from the death of the testator to the death of Burr Garland other than his decent and comfortable support and of the disposition thereof, and M. J. Day, late sergeant of Lynchburg, and adm'r d. b. n. of Burr Garland, deceased, is directed to take and produce before said comm'r such evidence in addition to what is now in the record as may be necessary to enable him to take said account.

2nd. An account of the administration of the estate of Burr Garland by Charles Y. Morriss, dec'd, and the defendant Garland Morriss, adm'r of Charles Y. Morriss, dec'd, is hereby directed to render said account before said commissioner.

3rd. An account of the administration of the estate of Burr Garland by M. J. Day, late sergeant of of Lynchburg, and as such adm'r d. b. n. of Burr Garland, dec'd.

4th. An account of all debts of the estate of Burr Garland, dec'd, and their priorities, if any.

And said commissioner will make report thereof.

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Garland's Adm'or et als. v. Garland's Adm'or et als.

Order of Reference to Commissioner Sackett.

Order of

SAMUEL GARLAND, SR., Adm'r, &c.) Revival,

} May Term, '93.

BURR GARLAND'S Adm'r, &c.)

It being suggested to the Court that Jno. F. Slaughter has departed this life since the last term, on the motion of S. H. Johnson sergeant, and as such administrator de bonis non, with the will

annexed of Samuel Garland, Sr., and on the motion of J. Singleton Diggs, administrator de bonis non, with the will annexed of Samuel Garland, Jr., and also administrator de bonis non of Chas. R. Slaughter, deceased, they have leave to enter themselves as parties plaintiff respectively, and thereupon it is ordered that this cause be proceeded in to a final decree in the names of said parties as plaintiffs.

And it being suggested that Commissioner H. F. Bocock has departed this life it is ordered that Commissioner Chas. H. Sackett do execute the orders of account heretofore entered in this cause.

Defendants' Exceptions to Commissioners' Report.

Exceptions to Commissioner Sackett's Report, filed 9th of May, 1894.

SAMUEL GARLAND Adm'r

vs.

MARY L. GARLAND, &c.

and

SAMUEL GARLAND'S Adm'r

vs.

BURR GARLAND'S Adm'r, &c.

Mary L. Garland and the trustee for Paulina B. Morriss and her children and the administrator of Burr Garland and the administrator of Paulina B. Morriss and the children of Paulina B.

Morriss except to Commissioner Sackett's report, filed the 9th of May, 1894, because:

1. The commissioner erred in reporting that the legacies in the 15th clause of the testator's will of "one thousand dollars of his East Tennessee and Virginia railroad bonds, or others of equal value, to each of his brother Nicholas A. Garland's children," which Burr Garland bought from them, should be treated as satisfied because Burr Garland was the Mississippi administrator of the testator. Rec., last printed, 105-6.

These bonds were not assets in Burr Garland's administration but they were assets in the hands of the Virginia pers nal representatives of Samuel Garland, Sr.—his domiciliary executors and administrators—they were not embraced in the Mississippi administration: and the children of Nicholas A. Garland, who sold said bonds to Burr Garland, have not objected to their being delivered to him, or his administrator, or the trustee for Mrs. Morriss and her children, but have desired that this be done.

2. Because the commissioner holds that the purchase by Burr Garland of eight of the coupon bonds, bequeathed to the children of Nicholas A. Garland, enured to the benefit of the estate of Samuel Garland, Sr., instead of holding, as he ought to have done,

that they were acquired and held by Burr Garland under the 9th clause of Samuel Garland's will, and not having been used for his support passed at his death to Paulina B. Morriss and her children—the record showing that profits under the 9th clause were applied in said purchase.

3. The commissioner holds correctly that the profits from the Hinds county lands for the years 1863 and 1864 will have to be ascertained from Burr Garland's ex parte administration accounts for those years. The balances of receipts over expenditures for those years aggregate $15,020. Rec., last printed, 101-2 and 112-3; but the commissioner erred in not reporting that this $15,020, which entered into the Mississippi decree for $64.130.88 belonged, except a small portion of the hires to Mrs. Garland, the widow, and Mrs. Morris and her children--between them there need be no separation of their respective shares, because Mrs. Garland has assigned all her interest in rents, issues and profits, accuring after the death of Samuel Garland, Sr., that went into Burr Garland's hands, to Mrs. Morriss' children—Mrs. Morriss then being dead.

4. The commissioner erred in reporting that the estate of Burr Garland is not liable for rents and profits from Tudor Hall after the war. Rec., last printed, 102-3.

The deposition of Tripp is positive, that between $2100 and $2200, in money, for the rent of 1869, on contracts with Burr Garland was paid to Burr Garland's executor, he, Burr Garland,

having died in December, 1869, and his deposition and other testimony show that for each of the years, 1866, 1867 and 1868, the rental value of Tudor Hall was as much as it was in 1869. Burr Garland's holding the fiduciary relation to Mrs. Morris and her children, that he did, under the 9th clause of the will, and his failing to keep any accounts of the rents and profits, justi-

fies them, in a court of equity, in taking a reasonable estimate of the rents and profits as the guage of his liability.

5. The commissioner erred in holding that the cotton accounted for in Burr Garland's 3rd ex parte annual account was the estate of Samuel Garland, Sr. This cotton came from Barrens, and Mrs. Garland, the widow was entitled to the proceeds of it. This 3rd account shows the sale of 100 bales of cotton, and shows on its face that all of it except 4 bales came in 1866 and 1867 from Barrens, the sales amounting to $10,901.11. Rec., last printed, 54-6. The testimony and appraisement and allotment in September, 1864, show that a crop of cotton was made on the Hinds county lands in 1864, three years after the death of Samuel Garland, Sr., and all the cotton from all sources, in the hands of Burr Garland, administrator, in September 1864, was 30,000 lbs. in the seed, of which 15,000 lbs. in the seed was allotted to Mrs. Garland, and 15,000 lbs. in the seed remained which could not have

exceeded 12 bales. It is not conceivable that the remaining 15,000 lbs. in the seed, or 12 bales, was the estate of Samuel Garland, Sr., yet if it were, and were taken from the 100 bales in the 3rd ex parte account, it would leave 88 bales, that could not belong to the estate of Samuel Garland, Sr., but did belong to Mrs. Garland.

The selection by Burr Garland, under the 9th clause of the will, in September, 1864, took all the personal estate of Samuel Garland, Sr., in Mississippi, not embraced in the one half allotted to Mrs. Garland, except some slaves then virtually free, and the 15,000 lbs. of cotton in the seed, 12 bales, raised in 1864, and not a part of his estate.

6. The commissioner erred in failing to report Burr Garland's indebtedness for the proceeds of the seed of the 15,000 lbs. of seed cotton allotted to Mrs. Garland in September, 1864, then valued at $2250, and the 1000 bushels of corn allotted to her, then valued at $3000. Rec., last printed, 30-1.

7. The commissioner erred in holding that Mrs. Garland should be required to account for $3000, the one year's allowance, and $250 the value of certain articles, exempted to the widow under the Mississippi statute. Rec., last printed, 116. The $3000 that she received (Rec., last printed, 45, 46 and 55) was out of profits to which she was entitled from the Barrens estate, and the $250 was much below the value of articles exempted under the Virginia laws.

8. The Mississippi decree simply ordered the transmission of the $64,130.88 to the personal representative of Samuel Garland,

Sr., in Virginia, leaving its distribution to be determined here. The commissioner should have reported the amount due from Burr Garland on hires, rents, issues and profits between the death of Samuel Garland, Sr., and the death of Burr Garland, to Mrs. Morriss and her children and Mrs. Garland, the widow, and how much thereof entered into the balance of $64,130.88, ordered to be transmitted to Virginia.

9. The commissioner should have reported that after deducting from the $64,130.88, the amount that entered therein from the hires, rents, issues and profits, to which Mrs. Garland and Mrs. Morriss and her children were entitled, in whatever recovery might be made on the residue thereof, from the estate of Burr Garland by the estate of Samuel Garland, Sr., that Mrs. Garland, his widow, in virtue of the renunciation of his will, is entitled to one half of it.

10. The commissioner erred in losing sight of these legal and equitable rights of the parties:

I. That the rights of Mrs. Garland, the widow, are para-

mount to those of every legatee.

II. That, by the 10th clause of the will, the legacy to Mrs. Morriss and her children under the 9th clause is preferred to all subsequent legacies.

III. That the residuary legatees are not entitled to any of the East Tennessee and Virginia railroad bonds until those bequeathed to Nicholas A. Garland's children have been first taken out from the bonds of the estate, and that they were entitled to no part of the testator's Mississippi estate except what might be left after the widow had gotten her one half and Burr Garland trustee had made his selection in September, 1864, under the 9th clause of the will.

EDWARD S BROWN.

WM. J. ROBERTSON,

Att'ys for Mrs. Garland and the Trustee for Mrs. Morriss and her Children and the Adm'r of Burr Garland and the Adm'r of Mrs. Morriss and Mrs. Morriss' children.

Plaintiff's Exceptions to Commissioner's Report.

Exceptions of Samuel Garland's Administrator to Commissioner Sackett's Report.

SAMUEL GARLAND'S Adm'r

vs.

BURR GARLAND'S Adm'r et Als.

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Garland's Adm'or et als. v. Garland's Adm'or et als.

The plaintiff, Samuel Garland's administrator, excepts to the report of Commissioner Sackett, filed May 9th, 1894, in the following respects and to the following extent only:

1st. To so much of the statement of the account of Chas. Y. Morriss as administrator of Burr Garland as credits the administrator with the items of $10. and $50.; because said items being expenditures made in the conduct of this suit were for the benefit of Morriss trustee for his wife and children, and in no sense a proper credit to the administrator.

2nd. To all the statements and accounts made by the commissioner which are not embraced in the order of accounts; the same being unnecessary, and in some respects incorrect, and without evidence to support them. Respectfully,

S. H. JOHNSON,

Adm'r d. b. n. c. t. a. of Samuel Garland.

By J. SINGLETON DIGGS.

Order Submitting for Vacation 30th of August, 1894.

SAMUEL GARLAND'S Adm'r

vs.

MARY L. GARLAND, &c.

and

SAMUEL GARLAND'S Adm'r

vs.

BURR GARLAND'S Adm'r.

By consent of parties, it is ordered that these causes be submitted to the judge to be heard in vacation, at such time as he may appoint, and for such decision and decree therein in vacation, as might be made in term. But this submission of the two causes entitled above is without prejudice to either party to move in vacation that they be separated and for such decree in vacation in either or both of them as might be made in term.

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Garland vs. Garland.

At another day—to-wit: At a Circuit Court for
page 126}the city of Lynchburg, continued and held at the
}court-house, on Tuesday, the 27th day of December, 1887.

In this case the following decree of the Supreme Court of Appeals of Virginia was received and entered of record—to-wit:

VIRGINIA:

In the Supreme Court of Appeals, held at the State Court House, in the city of Richmond, on Friday, the 2d day of December, 1887:

John F. Slaughter, administrator de bonis non, with the will annexed, of Samuel Garland, Senr., deceased, Appellant,
against
Charles Y. Morris administrator, with the will annexed of Burr Garland, dec'd, and Mary Garland, Appellees.

Upon an appeal from a decree pronounced by the Circuit Court of the city of Lynchburg on the 5th day of December, 1881.

This day came again the parties, by their counsel, and the Court having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, is of opinion for reasons stated in writing and filed with the record, that the said decree is erroneous. It is therefore decreed and ordered that the same be reversed and annulled, and that the appellees pay to the appellant his costs by him expended in the prosecution of his appeal and supersedeas aforesaid here; said costs herein decreed against the appellee, Charles Y. Morris, administrator of Burr Garland, deceased, to be paid out of the estate of his intestate. But this decree is without prejudice to any right of action which Paulina B. Morris

}may have in this or in an independent suit.

page 127} And this cause is remanded to the said Circuit

}Court for further proceedings to be had therein, with leave to the appellant to reinstate his bill in said Court, or to amend the same, and make all parties deemed requisite.

Which is ordered to be certified to the said Circuit Court of the city of Lynchburg.

Appellant's costs in the Supreme Court of Appeals, $254.99.

A copy—Teste:

GEO. K. TAYLOR, C. C.

Garland vs. Garland.

At another day—to-wit: In the clerk's office of the Circuit Court for the city of Lynchburg, in vacation of said Court, on Monday, the 25th day of May, 1891.

The following order was this day received, and is now entered in these words—to-wit:

Virginia:

In the Supreme Court of Appeals held at the State Courthouse in the city of Richmond, on Thursday, the 30th day of April, 1891.

M. J. Day, sergeant of the city of Lynchburg, and as such adm'r de bonis non, with the will annexed, of Burr Garland, dec'd, and as substituted trustee for Paulina B. Morris and her children in place of Charles Y. Morris, Sr., dec'd.; Paulina B. Morris, in her own right and as executrix of Richard G. Morris, dec'd, Garland Morris, Walter C. Morris, Mosby H. Payne, and Mary A. Payne, his wife; John Preston Cocke, adm'r of Charles Y. Morris, Jr., dec'd, and
page 128}adm'r of William M. Morris, dec'd, T. L. Courtney,
} Jr., and Elizabeth A. Courtney, his wife, Walter Smith, and Juliette Cornelia Smith, his wife, and Lawrence B. Morris, infant son of C'har es Y. Morris, Sr., dec'd, by Ed-

ward S. Brown, his guardian ad litem, Appellants,

against

John F. Slaughter, adm'r de bonis non, with the will annexed, of Sam'l Garland, Sr., and Mary L. Garland, Appellees.

Upon an appeal from a decree pronounced by the Circuit Court of the city of Lynchburg on the 15th day of November, 1888.

This day came again the parties, by their counsel, and the Court, having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, is of opinion for reasons stated in writing and filed with the record that the Circuit Court of the city of Lynchburg erred in decreeing that the estate of Burr Garland in the profits set apart by the 9th clause of the will of Samuel Garland, dec'd, for the use of the said Burr Garland, became and was under the law and by virtue of the said will, his absolute estate and as such liable, not only for such debts as might be contracted for his decent and comfortable support, but for all his debts, and that the said profits did not, nor did any part thereof pass under the said will to Charles Y. Morriss, Sr., in trust for the separate use of Paulina B. Morriss and her children, and that

neither they nor either of them acquire any estate or interest

therein, under the said will; and the Court is further of opinion that the said Burr Garland took under the said 9th clause of the will of said Samuel Garland, Sr., the mere right to use so much of the profits set apart under this clause of the will page 129}as should be necessary for the single purpose of giv-
}ing him a decent and comfortable support during his life, which was not liable for any debts of the said Burr Garland contracted on any other account or incurred for any other purpose, and that the surplus profits as they accrued from time to time vested in Charles Y. Morriss in trust for the separate use of the said Paulina B. Morriss and her children. It is therefore decreed and ordered that the said decree be reversed and annulled, and that the appellees pay to the appellants their costs by them expended in the prosecution of their appeal and supersedeas aforesaid here. And this cause is remanded to the Circuit Court for further proceedings to be had therein in accordance with the views herein expressed.

Which is ordered to be certified to the said Circuit Court of the city of Lynchburg.

Appellants' costs in the Supreme Court of Appeals, $71.14.

A copy—Teste:

GEO. K. TAYLOR, C. C.

Teste:

S. G. WINGFIELD, Clerk.

Extract from Account of Samuel Garland, Jr., Executor of
Samuel Garland, Sr., filed as Exhibit.

* * * * * * * * * *

7 bonds handed to S. M. Slaughter on E. T. & Va.
R. R., bequest of testator, $5,000 00
Cash paid Do. interest on same from 9th Nov., 1861, 192 50
* * * * * * * * * *

Virginia:

} In the clerk's office of the Corporation Court for
page 130}the city of Lynchburg, September 28, 1894:
}

I, Samuel G. Wingfield, clerk of said Court, do certify that the foregoing is an extract from the debit side of the account referred to in the certified extr act hereto attached—to-wit: The account of the estate of Samuel Garland, Sen'r, deceased,

[Page 129/36]

Garland vs. Garland.

with Samuel Garland, Jr., surviving executor, recorded in will book E, pages 144 to 146, in said clerk's office.

Teste:

S. G. WINGFIELD, Clerk.

Extracts from Report of Commissioner J. N. Gordon, dated March 3, 1865.

East Tenn. & Va. railroad bonds,		$20,000 00
M. L. Garland,	$6,500 00	
C. R. Slaughter, Est.,	2,000 00	
S. Garland, Jr., "	2,000 00	
S. M. Slaughter's legacy,	5,000 00	
Sold,	4,500 00	
		$20,000 00
	$20,000 00	

* * * * * * * * * *

Commissioner's Office,
Lynchburg, March 3, 1865.

To the Circuit Court for the city of Lynchburg:

} Your commissioner reports to the Court that in
page 131}pursuance to the annexed decree, pronounced in
} the suit of Jno. F. Slaughter, adm'r de bonis non, with the will annexed, of Samuel Garland, Sr., dec'd, and as executor of Samuel Garland, Jr., dec'd, plaintiffs, against Mary L. Garland and others, defendants, on the 18th day of Jan-

uary, 1864, published his notice in the Lynchburg Virginian, a newspaper published in the city of Lynchburg, for four successive weeks, that he would, on the 18th day of February next (1864) proceed to execute said decree. That on that day, and frequently since, the adm'r, J. F. Slaughter, appeared before your commissioner with his books, vouchers, &c., so as to enable him to settle the foregoing accounts, but owing to the magnitude, the condition of the country, and the time necessarily consumed in investigating the many subjects connected with these accounts, your commissioner has been unable until the present time to complete the accounts and return his report.

* * * * * * * * * *

Exceptions by children of Nicholas A. Garland to commissioners' reports, filed Nov. 6, 1873.

[End of Transcription]

Pages 361-380

MS1939 Garland Box 1 Folder 7 Pages 361-380

Transcription

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Garland vs. Garland.

"Exceptions by the children of Nicholas A. Garland, viz.: Lucy, now the wife of Charles L. Roane, Austin M. Garland, Elizabeth A. Garland, Ellen D., now the wife of Thomas M. Bushfield; Wm. B. Garland, Albert E. Garland, Caroline P.

}Garland and said Nicholas A. Garland, heir at law of

page 132}his deceased daughter who survived Sam'l Garland,

}Sr., to the reports of Commissioners Gordon and Bocock, heretofore filed in the case of Garland's Ex'or vs. Garland & others.

These defendants, with two other children of Nicholas A. Garland, viz.: James M. Garland and Mary Fanny Garland, now the wife of —— Rollins, are entitled to special legacies under the 15th clause of the will of Samuel Garland, Sr., dec'd, a portion of which reads as follows:

"I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tenn. and Virginia railroad bonds, or others of equal value." Having given preferred legacies terminating with the 9th clause, the testator, in the 10th, 11th, 12th, 13th, 14th, 15th, and 16th clauses, gave secondary special legacies, and in the 17th clause the residuum of his estate. The widow's portion on her renunciation of the will, should have been made up, first, from the residuum of the estate, and, second, the residuum being insufficient, by contribution from the special legacies in the clauses from 10th to 16th, inclusive.

The commissioners erred in disregarding these relative rights of the legatees. They have credited to the administrator, John F. Slaughter, $98,000 of stocks and bonds, disposed of to the residuary legatees—to Sam'l Garland, Jr., executor, &c., $11,244.50, and to C. R. Slaughter, executor, $36,217.23 to legatees other than the children of Nicholas A. Garland, in clauses from 10th to 16th inclusive, paying many of them in full, and exhausting the stocks and bonds and personal estate of the testator, without making any provision for the legacies to the children of Nicholas A. Garland.

} These defendants ask that the accounts of the
page 133}executors and the administrator be reformed, and
}that the legacies to them in the 15th clause of the
will be provided for.

MOSBY & BROWN,

Counsel for said defendants.

At another day—to-wit: At a Circuit Court for the city of Lynchburg, continued and held at the court-house thereof on Friday, the 17th day of June, 1892.

This cause came on this day to be further heard upon the

papers formerly read, the petition of Gilbert S. Meem, ad-

ministrator of Ann P. Garland, filed February term, 1892. the rule awarded thereon returned executed, and the various reports and statements of Comm'r Bocock, filed May 3d and 7th, 1892, which are as follows: An account of Jno. F. Slaughter, as administrator of Sam'l Garland, Sr.; the same as administrator of Chas. R. Slaughter; the same as executor of Sam'l Garland, Jr.; Nos. 1, 2, and 3, the legatee account of said estate, and the account of Mrs. Mary L. Garland with the estate of Sam'l Garland, Sr., and was argued by counsel.

On consideration whereof, it being suggested to the Court that all the payments made by the executor of Sam'l Garland, Jr., to the legatees have not been credited to him in the executorial accounts, the Court doth refer and recommit all of the reports and accounts returned by said commissioner to the same commissioner to restate or supplement said accounts, so as to show with regard to estate of Sam'l Garland, Jr., the balance due by the executor after he is properly credited with all proper payments to the legatees. And to show the assets unadministered of each of said estates. And in taking and restating said accounts any party in interest has leave to bring into said accounts any items of debit or

}credit which may appear to be proper, and liberty
page 134}is reserved to any party to except hereafter to any

}matter embraced in the said reports and statements as fully as if the cause had not been brought on upon the same at this time, and the commissioner will pass upon such exceptions.

At another day—to-wit: At A Circuit Court for the city of Lynchburg, continued and held at the court-house thereof, on Thursday, the 18th day of May, 1893.

It being suggested to the Court that J. F. Slaughter has departed this life since the last term, on the motion of S. H. Johnson, sergeant of Lynchburg, and as such adm'r, d. b. n. c. t. a., of Sam'l Garland, Sr., and of J. Singleton Diggs, adm'r, d. b. n. c. t. a., of Sam'l Garland, Jr., they have leave to come into this suit and enter themselves as parties plaintiffs, and it is ordered that this suit hereafter proceed in their names as such representatives. And on the motion of Jno. F. Slaughter, Jr., executor of Jno. F. Slaughter, deceased, he has leave to file his answer herein, and on motion of J. Singleton Diggs, adm'r, de bonis non, of Chas. R. Slaughter, deceased, he has leave to file his answer herein; whereupon the said answers were filed accordingly, and this suit is ordered to proceed against said parties respectively. Thereupon this

cause came on this day to be further heard upon the papers formerly read, the answers aforesaid, and was argued by coun-

}sel. On consideration whereof, the Court doth ad-

page 135}judge, order, and decree that Jno. F. Slaughter,

}ex'or of J. F. Slaughter, deceased, do render before Comm'r C. H. Sackett, the accounts heretofore ordered in this cause, and for the purpose of anything said comm'r to state a final report of all the transactions of said J. F. Slaughter, as the personal representative of Sam'l Garland, Sr., Sam'l Garland, Jr., and Chas. R. Slaughter, the said Jno. F. Slaughter, Jr., is directed to produce and lay before said comm'r any and all books, papers, and accounts relating to the administration of said estates.

At another day—to-wit: At a Circuit Court for the city of Lynchburg, continued and held at the court-house thereof, on Tuesday, the 20th day of November, 1893

This day this cause came on to be heard on the papers formerly read, and on the reports of Commissioner Bocock, dated the 9th day of April, 1892, and filed the 3d of May, 1892, and on the report of Commissioner Sackett, filed the 14th day of November, 1893, and on the exceptions of J. Day, late sergeant of Lynchburg, and administrator, d. b. n., of Burr Garland, dec'd, and the children of Paulina B. Morriss, dec'd, and W. V. Wilson, her administrator, and on the amended and supplemental bill, filed herein, the 14th inst., the answer of John F. Slaughter, Jr., executor of J. F. Slaughter, and of all the defendants to the said bill, and upon the exception to the said report of the personal representative of the residuary legatees, and of the adm'r of Sam'l Garland, Sr., and was argued by counsel. On consideration whereof, the

Court not now deciding any question arising on said reports, or
} the exceptions thereto, except as hereinafter pro-
page 136}vided, doth adjudge, order, and decree that R. T. W.
} Duke, Jr., and J. Singleton Diggs, be and they are
hereby appointed receivers in this cause, either or both of
whom may act, and the Court doth further adjudge, order,
and decree that John F. Slaughter, Jr., executor of John F.
Slaughter, deceased, do pay to the said receivers or the acting
one, the sum of seven thousand one hundred and sevent,-
eight dollars and twenty-seven cents with interest from No-
vember 10, 1893, till paid, being the balance which appears
from Commissioner Sackett's report to be due from John F.
Slaughter, administrator of Charles R. Slaughter, deceased, to
the estate of his said intestate, and that he do pay to said re-
ceivers the sum of twenty thousand one hundred and ninety-
eight dollars and eight cents, with like interest thereon, be-

ing the balance which appears from Commissioner Sackett's
report to be due from John F. Slaughter, executor of Samuel
Garland, Jr., to the estate of his said testator. And the
Court being of opinion that in case of no recovery against the
estate of Samuel Garland, Sr., the true balances due by said
Slaughter to the estate of Charles R. Slaughter, deceased,
would be the above amount of $7,178.27, with interest as

aforesaid, and to the estate of Samuel Garland, Jr., the said amount of $20,198.08, with like interest, doth confirm the said report of Commissioner Sackett as to those amounts as between said J. F. Slaughter's estate and the estate of Charles R. Slaughter and S. Garland, Jr., deceased, but as between those estates only, expressly reserving all rights of any claimant against the estate of said S. Garland, Sr., whose rights are paramount to the claims of the residuary legatees, the Court

}being of opinion, and deciding, that in case of a re-

page 137}covery by any such person or persons the said es-

} tates of Charles R. Slaughter and S. Garland, Jr., shall be required to account to said J. F. Slaughter's estate as to the amount of assets they may have received or be entitled to from the estate of Samuel Garland, Sr., and the said receivers heretofore appointed, will look out for judicious investments for said moneys so that they shall be productive, and from time to time, either in term time or vacation, report the same or any subsisting investments of said moneys for exception by any of the parties and for approval and confirmation by the Court, and whether investments be made or not, said receivers will report their proceedings to the Court; but neither of them shall act under this decree till he shall have executed bond with security approved by the clerk of this Court, in the penalty of $30,000, conditioned according to law. But the said Slaughter, Jr., executor of John F. Slaughter, deceased, shall not be required to pay the above amounts until three months after the rising of this Court, although he may do so if he so elect.

At another day—to-wit: At a special term of the Circuit Court for the city of Lynchburg, begun and held at the court-house thereof, on Tuesday, the 12th day of February, 1895.

Samuel H. Johnson, Sergeant of the city of Lynchburg, and as such administrator, de bonis non cum testamento annexo, of Samuel Garland, Sr., dec'd, and others, Plaintiffs,

against

Mary L. Garland and others, Defendants,

and

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Garland vs. Garland.

}Samuel H. Johnson, Sergeant of the city of Lynch-
page 138} burg, and as such administrator de bonis non cum
} testamento annexo, of Samuel Garland, Sr., dec'd,
and others, Plaintiffs,

against

M. J. Day, Sergeant of the city of Lynchburg, and as such administrator, de bonis non cum testamento annexo, of Burr Garland, deceased, and others, Defendants.

These causes came on this day to be heard on the papers formerly read in the same respectively, the second on the report of Comm'r Sackett, filed May 9, 1894, exhibits filed, depo-

sitions of witnesses, documentary evidence, exceptions to said report, on exceptions to the 1st answer in the deposition of E. S. Brown, and all the papers in the first-named cause which are proper to be considered in determining the second cause, as said first-named cause is not now for consideration except in so far as it affects the merits of the second cause; and were argued by counsel. On consideration whereof, the exception to the 1st answer in the deposition of E. S. Brown is sustained in so far as it is hearsay evidence. And all exceptions to the report of Comm'r Chas. H. Sackett are overruled, as well as all special statements in said report. And the Court is of opinion, for reasons so clearly stated by Com'r Sackett, that his report is correct in treating the purchase by Burr Garland of legacies under the will of Samuel Garland, or as credits on the indebtedness of said Burr Garland, as one of the administrators of Samuel Garland, Sr., and that even if there had been such a primary liability on the Vir-

}ginia administrator as would have made Burr Gar-

page 139}land a purchaser, because the bequest to Nicholas

} A. Garland's children was East Tenn. & Va. R. R. bonds, and $23,000 of such bonds went into the hands of the Virginia personal representatives. No such condition existed when Burr Garland attempted to become the purchaser of said legacies of $1,000 each, in 1869. It appears from page 35, of record No. 1, decree of July, 1866, that before 1866, certainly $20,000 of the $23,000 bonds had been distributed in the first of the above-named causes, to which Burr Garland and Chas. Y. Morris, trustee, and his wife, were par-

ties; and only one of said bonds remained in 1872, as appears on page 68 of record No. 1. And therefore, at the time of the purchase by Burr Garland the funds in his hands as administrator were as much applicable to the satisfaction of these and all other legacies as the funds in the hands of any other administrator of Samuel Garland, Sr. And as to any claim through Mrs. Mary L. Garland's assignments even if there

was any proceedings for a settlement of her matters with Burr Garland, as her agent, either laches or the statute of limitations would bar any recovery.

And the Court is further of opinion that the greater part of the evidence in the second-named cause and much of the controversy and confusion has arisen from an effort to attack the final settlement of Burr Garland's account as adm'r of Samuel Garland, Jr., made by the Chancery Court in Mississippi. But that settlement is final and not for the consideration of this Court, and even if it rendered his estate liable to double charges, the injustice is immaterial, as the 3d account of Burr Garland settled by himself shows an indebted-

}ness that will consume all of his estate, and the

page 140}character of the items compared with the evidence

}of his hiring hands and other expenses shows that

he could not have brought into the account either the expenses of running the Hinds county farms, nor the crops therefrom after a division. And his effort was to make the cotton credited pay certain charges claimed to be for marketing said cotton and not running the Hinds county farms. As to the source from which Burr Garland obtained the cotton or money in the hands of Aiken & Watt, through whom a part of the legacies were paid, does not appear. In the account of Burr Garland with Aiken & Watt, he is charged against the cotton nearly $4,500.00 "cash paid for nice." Whether it was a speculation, or the cotton was raised on the Coahoma farm, the Hinds county farms or the farm he devised to Dr. Garland, does not appear. And the uncertainty of relying after so long a time upon the evidence of witnesses is illustrated by the testimony of his having no property when the record shows that eleven slaves were claimed by him to be his property. See record No. 5, page 15

For these and other reasons it is adjudged, ordered, and decreed that the said report of Comm'r Sackett be confirmed; and it is further adjudged, ordered, and decreed that Garland Morriss, adm'r of Chas. Y. Morris, dec'd, out of the assets of his intestate in his hands to be administered, do pay to Mary L. Garland, $344.19-100 (three hundred and forty-four and 19-100 dollars), with interest on $254.99, a part thereof from May 10, 1894, until paid. And that said administrator, out of said assets, and Mary L. Garland as surety of Chas. Y. Morriss, out of her own estate, do pay to Sam'l H. Johnson, ser-

geant, and as such adm'r, d. b. n. c. t. a., of Samuel Garland,
}Sr., the sum of $2840.92-100 (twenty-eight hundred
page 141}and forty 92-100 dollars), with interest on $1,-
}077.53-100, a part thereof, from May 1, 1894, until
paid, that being the balance of said assets of Burr Garland's
estate.

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Garland vs. Garland.

And it is further adjudged, ordered, and decreed, that M. J. Day, late sergeant, and as such substituted trustee for Paulina B. Morriss and her children, Wm. V. Wilson, adm'r of Paulina B. Morriss, D. S. Cates, sheriff of Richmond city, and as such adm'r of Richard G. Morris, John Preston Cocke, administrator of Chas. Y. Morris, Jr., and the same as adm'r of Wm. M. Morriss, Samuel H. Johnson, sergeant, and as such adm'r of Mary A. Payne, out of the assets of the respective es tates in their hands, and the following parties, out of their own estates, viz.: Garland Morriss, Walter C. Morriss, lawrence B. Morriss, Virginia L. Lacy, Juliette C. Smith, and Elizabeth A. Courtney, do pay to the plaintiff his costs in the second-named cause other than those adjudicated by the Court of Appeals.

But no execution will issue on this decree against Mary L. Garland until the further order of the Court, as the fur-

ther interest of Mary L. Garland in the estate of Samuel Garland, Sr., is to be ascertained in the first-named cause.

And now, at this day—to-wit: At a Circuit Court for the city of Lynchburg, continued and held in the Court thereof, on Thursday, the 16th day of May, 1895, it being the day and }year first herein mentioned.

page 142} It being suggested that Landon C. Garland, one }of the plaintiffs in the amended and supplemental bill filed in this cause, has departed this life since the last term, on the motion of Maurice H. Garland, who has qualified as his executor, this cause is revived in the name of said Maurice H. Garland, as such executor; thereupon this cause came on this day to be further heard upon the papers formerly read, the reports of Receivers Duke and Digges, to which reports there are no exceptions, and was argued by counsel.

Upon consideration whereof, the Court doth adjudge, order and decree that this cause be referred to Comm'r Chas. H. Sackett, who is directed after due notice to the parties to take, state, and report further accounts relating to the admin istration of the estates of Samuel Garland, Sr., Samuel Garland, Jr., and Chas. R. Slaughter, and to pass upon the exception of Sam'l Garland's adm'r, filed in his former report herein, and to take any other accounts deemed pertinent by him, or required by any party, with leave to any party to introduce testimony.

And it appearing that the whole fund in the hands of the receivers belongs to the estates of Sam'l Garland, Jr., and Chas. R. Slaughter, the Court doth further adjudge, order, and decree, that Receivers R. T. W. Duke, Jr., and J. Singleton Digges do pay and deliver to J. Singleton Digges, adm'r of Samuel Garland, Jr., and the same as adm'r of Chas. R.

Slaughter all the money, bonds, and other estate in their hands as such receivers, and make full report thereof, to Court. And some of the defendants desiring to apply for an }appeal and supersedeas to this decree, it is ordered page 143}that upon the execution of a suspending bond, by }such of the defendants as desire so to apply in the penalty of $50.00, conditioned as the law directs, the execution of this decree is suspended for ninety days.

Copy of execution for costs, sued out on decree pronounced on the 12th day of February, 1895.

The Commonwealth of Virginia,

To the Sergeant of the city of Lynchburg—Greeting:

We command you that of the goods and chattels of Paulina B. Morris and her children, in the hands of M. J. Day, late

sergeant, and as such substituted trustee for said Morris and children; of the goods and chat which were Paulina B. Morriss, in the hands of Wm. V son, her administrator, to be administered, Richard S. Morriss, in the hands of D. S. Cates, sheriff of Richmond cit, and as such his administrator, to be administered, Chas. Y. Morris, Jr., in the hands of J. Preston Cocke, his adm'r, to be administered, Wm. M. Morriss, in the hands of J. Preston Cocke, his adm'r, to be administered, Mary A. Payne in the hands of Samuel H. Johnson, sergeant, and as such adm'r, to be administered; of the goods and chattels of Garland Morris, Walter C. Morris, Lawrence B. Morriss, Viginia L. Lacy, Juliette C. Smith, and Elizabeth A. Courtney, late in your bailiwick, you cause to be made the sum of two hundred and thirty-nine dollars and eighty-seven cents, which Samuel H. Johnson, sergeant of the city of Lynchburg, and as such administrator, de bonis non cum testamento annexo, of Samuel Garland, Jr., dec'd, J. Singleton Diggs, administrator, de bonis non cum testamento annero, of Samuel Garland, Jr., dec'd, and J. Singleton Diggs, adm'r, de bonis non cum testamento annero, of Chas. R. Slaughter, dec'd, late
page 144}ly in our Circuit Court for the city of Lynchburg,
}have recovered against the said Paulina B. Morriss, trustee, and al., for their costs by them about their suit in that behalf expended, whereof the said Paulina B. Morriss' trustee and al., convict, as appears to us of record. And that you have the same before the judge of our said Court, at the court-house in the said city, on the 1st Monday in July next, to render to the said Samuel Garland, Sr.'s adm'r, &c., of

the costs aforesaid. And have then, there this writ.

Witness, Samuel G. Wingfield, clerk of our said Court at

the court-house thereof, this 26th day of April, 1895, and the 119th year of the Commonwealth.

S. G. WINGFIELD.

Endorsement on Execution.

"Satisfied June 11, 1895.

{ S. H. JOHNSON, S. C. L."

} I, Samuel G. Wingfield, clerk of the Circuit Court
page 145}for the city of Lynchburg, do hereby certify that it
}appears by paper writings, filed with the records in the above named causes, purp orting to be duly acknowledged by counsel for plaintiffs and J. F. Saughter, ex'or, that notice as required by section 3457, Code of Va., Ed. 1887, has been duly given.

Teste:

S. G. WINGFIELD, Cl'k.

The fee of the clerk of the Circuit Court for the city of Lynchburg, for making out this transcript of the record is $83.66.

Teste:

S. G. WINGFIELD, Cl'k.

A Copy—Teste:

GEO. K. TAYLOR, C. C.

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[Image with library stamp showing "JONES MEMORIAL LIBRARY LYNCHBURG, VA"]

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[Cover page of green pamphlet showing:]

Sackett + Sackett
1895

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Supreme Court of Appeals of Virginia.

BURR GARLAND'S ADM'R ET ALS, APPELLANTS,

vs.

SAM'L GARLAND'S ADM'R, &c., APPELLEES.

ARGUMENT FOR APPELLEES.

J. P. BELL CO., LYNCHBURG, VA.

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Supreme Court of Appeals of Virginia.

BURR GARLAND'S ADM'R ET ALS, APPELLANTS,

vs.

SAM'L GARLAND'S ADM'R, &c., APPELLEES.

ARGUMENT FOR APPELLEES.

The appellants have brought up in one record and one appeal parts of the record in two distinct cases, and are appealing from two decrees—one entered in one suit in February, 1895, and the other entered in the other suit in May, 1895. If it had been of any consequence to the appellees to object to this mode of proceeding, and to object to the making up of the record in this manner, they had no opportunity; for, as is shown by the last part of the record printed by agreement, the notice required by section 3457 of Code, of an intended appeal from the decree of February, deciding the case of Sam'l Garland's adm'r v. Burr Garland's adm'r, &c., was given to appellees in March; and yet without giving any other notice the appellants also appeal from a decree entered two months thereafter, to-wit, 16th May, 1895, and which is entered solely in a separate suit; and this one record here is made up of such parts of these two cases as appellants directed to be copied. The appellees' counsel being ignorant of the fact that

any part of the record in the last mentioned suit would or could be blended with the appeal of which they had been notified in March.

This statement is not made for the purpose of objecting to the Court's considering any of the record, but for the purpose of explanation merely. It is wholly immaterial whether any or all of the record in the case of Sam'l Garland's adm'r v. Mary L. Garland et als, be considered. It simply serves to obscure the real issues and to impose unnecessary labor upon the Court. All the questions at issue between the parties to this appeal were decided

[Page 2]

by the decree of February 1895, deciding questions litigated solely in Sam'l Garland's adm'r v. Burr Garland's adm'r, Morris, et als, and with that case and the record in that case alone this argument will have to deal.

This case has twice before been appealed to this Court, and the decisions on the questions involved in those appeals will be found in 84 Va. p. 181, and 87 Va. p. 758. The opinions of the Court give a history of the litigation, but while invoking attention to those decisions it is deemed well to submit here in more narrative form a

STATEMENT OF FACTS.

Jno. F. Slaughter was administrator with the will annexed of Sam'l Garland in Virginia, the place of his domicile, and Burr Garland qualified as like administrator of the same Sam'l Garland in Hinds county, Mississippi, where the testator owned much real and personal property, and where his will was likewise probated. From 1863 to 1869 Burr Garland, as such administrator, returned to the proper court in Mississippi three ex parte settlements of his accounts, the last one being filed there in December 1868, and confirmed by the Court 8th January 1869. This account, which did not pretend to be a final settlement, showed a balance due by him to the estate of $6,545.09. The will of Sam'l Garland which Burr Garland was thus executing so far as affected his estate in Mississippi, devised in the 15th clause thereof as follows: "I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tennessee & Virginia Railroad bonds, or others of equal value."

These legatees lived in Illinois, where the testator left no property. Very soon after Burr Garland's settlement of his said third account showing the balance due the estate, he deposited to his own credit with Aiken & Watt, in New Orleans, $5,000 (part 2, p. 73); then he went to Illinois and settled with eight of said legatees by paying them from $500 to $550 each, making a total of $4,350. To six of them he gave drafts on Aiken & Watt, his commission merchants in New Orleans; the other two he paid in some unknown manner. Instead of taking plain receipts to himself as administrator of Sam'l Garland for the amounts he thus paid the legatees, he prepared, and the legatees executed, certain prolix

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Transcription

[Continuation of "Argument for Appellees" legal brief]

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the plaintiff's to share with it in such assets, or any of superior

dignity to supplant it.

As seen above, Morriss, who was impleaded solely as administrator of Burr Garland, asserted in his answer as such his claim

as trustee for his wife and children to all the assets of his testator;

and when the bill was amended after the first appeal simply to

implead his successor as trustee, and all the cestuis que trust, they

all adopted his original answer. So we will consider, first—

THE NATURE OF THE MORRISS CLAIM.

This entire claim is based on the contention that Morriss trustee, was entitled to so much of the profits on the legacy of a Mississippi plantation and stock thereon, given by the ninth clause of

Samuel Garland's will to Burr Garland for life, remainder to

Morriss trustee, as were not necessary or not used by Burr Garland for his "decent and comfortable support." And when the

Circuit Court held, by decree of November, 1888, that the devise

to Burr Garland of "the profits of the estate" vested in him an

"absolute estate of all the profits," the claim of Morriss trustee,

was cut up by the roots. Recognizing this, he appealed, and the judges of this Court held that the bequest of "the profits" to Burr Garland did not mean all the profits, but only so much "as would furnish a decent and comfortable support for himself, * * * and the remaindermen (Morriss, trustee, &c.,) took a vested remainder in all the surplus or unexpended profits." 87 Va. 762. But as that question was not before the Court, it did not pretend to hold that there were in fact any such "surplus or unexpended profits," or, if any, how much.

The case was again remanded, and the Circuit Court referred it to Commissioner Chas. H. Sackett, to take all proper accounts, opening the way for the defendants to prove their claim by evidence, that is, to prove the quantum of profits they were entitled to and the disposition thereof. This skilled and accurate commissioner, upon full hearing of proof and argument, reported adversely to their claim; and, crediting the plaintiff's Mississippi decree by the amount Burr Garland had paid to the Nicholas Garland children, he reported the balance (nearly $130,000) as "a fiduciary debt, and the only debt against the estate of Burr Gar-

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land proved before your commissioner." (Pt. 5, p. 110.) The defendants excepted; the Circuit Court overruled the exceptions, confirmed the report, and decreed all the assets of Burr Garland's estate to the plaintiff, Samuel Garland's administrator. And from that decree this appeal is taken.

NO PROFITS PROVEN.

It is plain to be seen that if no profits were made on the legacy to Burr Garland beyond a decent and comfortable support for himself—in other words, if there were no "surplus or unexpended profits," as characterized by Judge Hinton, it ends every question as to the claim of Morriss, trustee. For there is no other pretense of a claim asserted than that on account of such profits. His claim to all assets of Burr Garland's estate, and to the Nicholas Garland legacies, is based entirely on the theory, persistently asserted as a fact, that there were such profits, and that the money left by Burr Garland and that used by him in purchasing (as they call it) the legacies to Nicholas Garland's children, was altogether the proceeds of such profits. Whether, as matter of law, the establishment of these two alleged facts would entitle him to all the assets of Burr Garland's estate, and to recover of Samuel Garland's estate the full face value of the Nicholas Garland legacies, as he claims, by resulting trust, need not be now considered.

Although Burr Garland has been dead a quarter of a century, and this suit, wherein the claim against his estate was first set up, has been pending for fifteen years, yet to this very hour there has never been a whisper from any party or witness as to the amount of the claim. The closest scrutiny of the record fails to disclose in pleading or proof the slightest intimation of the amount claimed, and fails to furnish a single fact from which it may be inferred. It is only in the theories of counsel that figures flourish.

But, waiving this suspicious circumstance, did the appellants

prove by any witness or any evidence of any sort that any profits were made by Burr Garland to which they were entitled? If so, how much? What year?

Burr Garland received the legacy, Tudor Hall place, in fall of 1864, and died December 1869.

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To arrive at the profits to which Morriss, trustee, was entitled, namely, the "surplus or unexpended profits" in excess of Burr Garland's support, it would be necessary to know how much was the total net profits and how much was expended by or to be allowed to Burr Garland, the life tenant, for his decent and comfortable support; and to find out the net profits we would have to know the gross income and the gross expenditures. Not a single fact or figure is given by which to solve any one of these essential problems.

Neither the expenses, nor the products, nor the money proceeds of the products for any year, nor for all the years, for any crop nor for all the crops, is anywhere given by any party, any witness or any counsel. Not a single witness has ventured an opinion, hazarded an estimate or given a guess as to any one of these points, nor a scrap of documentary evidence produced that tends even approximately to prove one of them. So much as to the entire profits. Identically the same facts exist as to the "surplus or unexpended profits." No party in interest, or witness, or counsel has ever stated, estimated or guessed the amount of such surplus profits. Nor is there any legal proof as to how much of the entire profits Burr Garland actually expended in his support, nor

any adjudication of what amount he was entitled to expend, nor any evidence which could form a basis for such adjudication. The unquestioned fact is that he and his counsel (and every one for that matter) never dreamed but that he was entitled in fee to all the profits; hence, not supposing himself accountable therefor to any human being, he spent his profits, if any he made, as he pleased, and kept no account of anything of the sort. He died in 1869, and the first pretense of a claim by Morriss, trustee, to any part of the profits was made in 1880 to shield the estate from the plaintiff's debt. Under these circumstances how can any commissioner or court determine the amount of such a claim? Can they make brick without straw or mortar? Can they solve a mathematical proposition without knowing the terms thereof? No wonder then the Commissioner reported (p. 102) he "finds it impossible to state any account at all, even approximating accuracy as to the profits of the plantation after the war and up to the year 1869"—the year of Burr Garland's death. As to the preceding years he said, "Any account of profits for the years prior to 1865

will have to be ascertained from these accounts, (Burr Garland's ex parte accounts as adm'r of Sam'l Garland's estate) if it can be done." (Pt. 5, p. 102.) As it was not done, it is presumed the Commissioner found that impossible also.

The only attempt of defendants to prove anything along this line is the estimates given by some four or five witnesses of the amount of money that Burr Garland probably spent per annum in his personal wants, or what seemed to them necessary for him

to have so spent. If the amount of such expenditures was all we wanted to know, the evidence thereupon is so ludicrously unreliable, indefinite and conflicting as to amount to no proof at all.

Davidson says he supposed "$100 per year would have been as much as Captain Garland would have expended on himself outside of what he raised at home. (Pt. 5, p. 64, q. 12;) but he seems to have considered only his cooking and washing in the cost of this decent and comfortable support for a gentleman. (See xq. 12-14).

John Shelton thought $500 per year would be a reasonable amount. These discrepant statements, in the face of the fact that the tax on his farm (which the life tenant must pay) would be $500 per year (James Tripp's deposition, pt. 5, xq. 8), and the further fact that Captain Garland, supposing he could live like a gentleman, hired an overseer at $800 per year (Shurlds' depo. pt. 3, p. 11); and despite the further fact that the Commissioners and the Court allowed to Mrs. Garland as widow of Sam'l Garland, for one year's allowance, $3,000 (pt. 5, p. 19-22).

But the point of inquiry—the thing to be proven is, How much profits was left after such expenditure, be the expenses much or little? How much was the surplus or unexpended profits? And as there is no evidence as to the gross profits, what boots it to know how much Burr Garland took out and expended? We are still totally ignorant of what the residue is; and the question of the residue is the very thing in controversy. It is the one thing needful to the remaindermen. It is the sum total of their entire

claim. If no "surplus or unexpended profits," Morriss trustee had no interest whatever.

Seeing, then, there is no proof of the sort that courts are accustomed require in the establishment of pecuniary demands,

we turn to consider—

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THE OPINIONS OF APPELLANTS' WITNESSES AS TO PROFITS.

Henry Shurlds, whose deposition was taken March, 1886, was the overseer for Burr Garland, and was on the two Hinds county plantations from 1860 to 1870, the whole of B. Garland's occupancy, testifies that it was impracticable from January 1863 (two months after B. G.'s qualification), to the end of the war for a farmer in that locality to realize anything from his crops outside the support of the people on his place. (Part 3, p. 20, xq. 23, 30.)

And that for the first four or five years after the war the farmers there (and he names quite a number) did not make money by their farming operations; and when asked if he thought Burr Garland made any, replied, "I hardly think he did." (p. 24, xq. 45-48.)

Besides the personal knowledge and opinion of this witness, he says Capt. Garland complained of the unprofitableness of the place, and generally appeared to be short of money. (p. 22, xq. 49.) This evidence covers the whole time in controversy, and

comes from one who was doubtless regarded as appellants' best witness, and having the best means of information on this subject.

Reuben Anderson, colored, says Burr Garland had a right hard time to repair the place, and make both ends meet, or rather, "it looked like it should have been so." (pt. 3, p. 36, xq. 33, 34-45.)

R. M. Davidson (white) asked if under the circumstances he thought Burr Garland made in '65-6-7 and '68 any profit on the farm over and above the expenses, taxes, &c., answered, "I should think very little, if any, sir." (Pt. 3, p. 65, xq. 8.)

James Tripp (white) went on the place 1st January, 1869. Having given his views as to the rental value of the place during the years it was not rented, testifies on cross-examination that Burr Garland could not have rented the place in 1865 (the first year after his selection of his legacy), and several years thereafter in any way (either in crop rent or money rent), so as to have netted him anything like $2,000. Taxes would have been $500, and that in 1867 he could not have made any net profit on the place in any way he could have worked or managed it. (Pt. 5, p. 59-60, xq. 5-8.

These are all the witnesses who give their views as to profits. In 1869 the place was rented out mostly for money rent, but

Burr Garland left the state in August, and never returned, dying Lynchburg in December, and it does not appear that he collected one dollar of that year's rent. On the contrary, Mr. Tripp testified he collected it in part for Burr Garland's Mississippi executor (pt. 5, p. 57, q. 5-6; see, also, Tripp's first deposition, part 3, p. 53, xq. 1).

Counsel for appellants took a deal of testimony to show what the Tudor Hall place (B. G.'s place) ought to have produced in case it had been rented out. Ignoring the fact that it was not rented out, and the will expressly put the place "under B. Garland's superintendence," and not under the ex post facto superintendence of the appellants' counsel.

All the testimony they have disproves their claim at the threshold.

IF ANY PROFITS, THEY WENT INTO REPAIRS.

If, however, there may possibly have been some unknown, unascertainable amount of surplus profits, it is manifest that the remaindermen received the full benefit thereof. For the testimony is ample that the Tudor Hall farm, as well as the Barrens, was first invaded by the Federal army in July, 1863, and from that time to the close of the war was subject to depredation by the army, so that in the spring of 1865 everything was in a dilapidated condition, and the place had to be restocked with farm tools and live stock, etc. This was done by Burr Garland. He bought stock and farm tools, built houses and fences, and had ditching done (Shurlds' depo., pt. 3, p. 21. and Parker's depo., p.

44-5).

That disposition of so much of the profits was necessary and proper, and enured to the benefit of the remaindermen. And what was left on the place, and the rents for 1869, passed to them, and they should have gotten it. If they did not, no claim can be asserted herein (Commissioner's Report, p. 101 and 102).

So that appellants do not show that one dollar of their profits ever went into Burr Garland's hands—certainly none beyond what he spent in improvements, and in the purchase of property of which he died seized, of all which the remaindermen got the full benefit.

Their whole claim is mere theory founded on imagination. For

example, as to their supposed profits which might, could or would, or should have flowed from Tudor Hall (the Burr Garland legacy): the amount of gross receipts is mere conjecture; the amount of expense is mere conjecture; the amount expended by Burr Garland in his "decent and comfortable support" is mere conjecture; the amount he expended in repairs and improvements is mere conjecture; and, therefore, the theory of "unexpended or surplus profits" is as unsubstantial as the shadow of smoke.

It does not mend the matter for counsel to ignore all these elements of uncertainty, and jump to a conclusion of estimated

profits.

MRS. GARLAND'S CLAIM.

It seems that Mrs. Mary L. Garland, widow of Sam'l Garland,

who is a defendant to this suit solely in her capacity as surety for

Morriss, administrator of Burr Garland, did not deem it necessary to make any answer to the original bill; but when, in 1888,

eight years after she was first impleaded, she came to be represented in this suit by her present counsel, who represent also

Burr Garland's estate and Morriss, trustee, an answer for her was

filed, wherein for the first time it was alleged that large and incomputable amount of profits on her Mississippi plantation, called

Barrens, was due to her from Burr Garland's estate. See answer,

p. 14.

In the answer she seems to claim that profits flowing from

Barrens after her husband's death, and before it became her

dower, belonged of right to her and went into and formed a part

of the $64,000 decree, and that she is now entitled to get such

profits out of that decree.

In the argument of counsel, they claim that profits from the Barrens, accruing after its assignment to her as dower, were used by

Burr Garland, who was her agent. and that she is now entitled in

this suit to establish and recover that claim.

These claims are as promiscuous and ambiguous as the Morriss

claim, and possess some of the same novel features. No amount

is named, and no proof given from which the amount can be

figured or approximated.

There is absolutely no proof as to any profits on her place, for any year or for any crop, nor any item of expenditure thereon;

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we have not even the opinions of the illiterate field hands as a basis to make the first figure in the stating of such an account.

To contend now, in the light of this evidence, that the account of Burr Garland's transactions as agent for Mrs. Garland, in the management of her Barrens estate, should be settled in this suit is little less than absurd. There is not a scintilla of evidence of any transaction of his as to her farm, nor of any transaction with Mrs. Garland save and except it appears in Aiken & Watts' statement of Burr Garland's account with them, that they paid a draft of his in July, 1869, in favor of Mrs. Garland for $1,000.

And, as stated in the opinion of the Court below, if this were a proceeding to have such an account settled, either laches or limitations would bar any recovery. But it is not such a proceeding, and no allegation comes from any quarter that Burr Garland was ever agent for her, or that he ever had aught to do with her farm or her cotton or corn, save in the argument of appellant's counsel.

Appellants could not say how much Morriss, trustee, was entitled to, nor how much Mrs. Garland was entitled to; and so, to "avoid that difficulty," as their petition declares, an assignment of Mrs. Garland's interest was secured, in 1892, transferring her claim,

whatever it might be, to the Morriss claimants. The apparent

logic of this coup d'état being, on the principle that two negatives in the same sentence are equivalent to an affirmative, so the

combination of two unknown quantities result in a certainty.

ALL THE CLAIMS BARRED BY LIMITATIONS.

It is perfectly competent for the plaintiff to interpose the defenses of limitations and laches against the claims, 81 Va. 654;

83 Va. 889, especially, in view of the fact that the estate of

Burr Garland is represented by the same counsel who represent

these claims against it.

The claim of Morriss, trustee, for surplus profits, and of Mrs.

Garland for proceeds of crops, &c., sold by Burr Garland, or rents

collected by him and not accounted for to her, are, like the

plaintiff's claim, asserted wholly against Burr Garland's estate.

Morriss, trustee, and Mrs. Garland were both sui juris, and their

claims as to the first year's transactions arose in 1865, and the

transactions as to both closed in December, 1869, when Burr

Garland died. They were both personal legal demands; the

former by a quasi remainderman against a life-tenant, and the

other apparently by a principal against her agent. Neither claim

has ever been established in any court and never asserted in any

court until and except in this suit. Morriss, as trustee, was not a

party to the original bill, though Mrs. Garland was made a party

only in her capacity as surety for Morriss as administrator of Burr Garland. They and the cestui que trust were, out of abundant caution, made parties to the amended bill, and in answers thereto, filed in 1888, these claims were for the first time asserted in court, after a fashion, by the proper parties. This was eighteen years after the death of the debtor.

They had both been barred by limitations long ago by the Mississippi law, in which State they should have been asserted, as well as by the Virginia law. (Shelton's deposition, pt. 5, p. 75; q. 21, p. 86; xq. 22-24). "If a legal demand which is barred at law be asserted in equity, equity follows the law." Coles Adm'r v. Ballard, 78 Va. 130. In matters of concurrent jurisdiction equity follows the law. 13 Am. & Eng. Enc. p. 675; 1 Barton's Ch'y, p. 81.

There was nothing in the nature of either claim to prevent its being asserted at law. As was said by Judge Moncure, in Foster v. Rison, 17 Gratt. 345, "The statute applies as well to a suit in equity for an account of such money as to an action at law for its recovery."

Limitations run against both claims until the order for accounts as to the indebtedness of Burr Garland's estate was entered. Norwell v. Little, 79 Va. 141 and cases cited. The first decree for such account was entered November, 1888 (pt. 4, p. 18), nineteen years after the alleged claims matured; and the second order of accounts, under which the claims are sought to be established, was entered May, 1893, twenty-three years after the claims matured, and after the debtor's death.

THE CLAIMS ARE LOST BY LACHES.

Where by delay, loss of information, &c., no safe determination of the controversy can be made, or if the Court believes it is

too late to ascertain the merits, it will not entertain the suit. 7

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Gratt. 112 and idem 177. Upon the doctrine of laches the case

of Tazewell v. Whittle, 13 Gratt. 329, is very instructive and very

appropriate to this case. There the Court counted against the

claimant the time during which his suit was pending, for like the

claimants here he was exceedingly negligent and dilatory in bringing his cause to a hearing. The Court looks to the condition of

things existing at the time the claim is sought to be established,

enforced, and has to be adjudicated.

Here no claim was asserted by the proper parties until eighteen

years after the death of the alleged debtor, and the first report

made on them is by Commissioner Sackett rejecting them twentyfour years after the alleged debtor's death. The claimants do not

allege there were any impediments whatever to an earlier assertion of their demands, which it was their duty to do. (78 Va.

348.) Indeed, as now existing, the claims of Morriss, trustee, were

never asserted until unearthed by the plaintiff, and even then they

came in most questionable shape. And now the situation is this:

The plaintiff who instituted this suit is dead; the counsel who

brought the suit is dead; Morriss, adm'r, against whom the suit

was brought, and who attempted to set up a counter claim against

the estate he was administering, is dead; the chief cestui que trust

(Mrs. Morriss) is dead; the claims arose as to first year's transactions in 1865, thirty years ago, and the man against whom they

are asserted has been dead for twenty-five years. The Morriss claim

involves a settlement of accounts running through five years between Morriss and Burr Garland, both dead; and the other, according to the theory of counsel, involves transactions of nine

years, commencing thirty-one years ago, between Burr Garland,

deceased and Mrs. Garland, who is an incompetent witness, even

had she ever offered to testify; and to crown the folly of attempting to prove either claim, there was never any account kept at

the time of the transactions, and not a single book, account,

voucher or scrap of paper now produced to substantiate either,

or to establish any essential fact forming an ingredient of either.

As illustrating the circumstances under which relief is denied

because of laches, see Hatcher v. Hall, 77 Va. 573, and the following in 82 Va.: Perkins v. Lane, 59; Gibbony v. Kent, 383;

Turner v. Dillard, 536; Morgan v. Fisher, 417.

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THE CLAIMS ARE CONCEIVED IN ERROR.

It is respectfully but confidently submitted that the claims of

Mrs. Garland, and of Morriss, trustee, are founded upon a palpable mistake as to their rights under the law.

In the answer of Mrs. Garland, filed eight years after she was

impleaded here (though never in anywise as being interested in

Sam'l Garland's estate), it is firmly contended "that on her renunciation of the will she acquired in absolute right half of all of Sam'l Garland's estate in Mississippi, both real and personal, and the profits thereon from the time of the testator's death." (pt. 4, p. 14).

The radical error contained in the above runs all through the contentions of counsel, pervading their arguments, their depositions (Jno. Shelton's depo., q. 28, 29, 31, 41), and their exceptions to Commissioner Sackett's report (exceptions 3, 5, 8, 9), and is repeated no less than nine times in the petition for appeal. It is the prolific source of much irrelevant matter injected into the record.

There was but one estate, though it lay scattered in several States, and in separate judicial jurisdictions, and being a distributee she was entitled to her share in the entire estate, whether it was in Mississippi or Virginia.

As to the personalty, the settled law of Mississippi, as it is indeed of every State and country, is that personalty follows the person, and is distributed according to the law of the domicile. 1 Rob. Pr. (new) 181; 14 How. 424. And it was so held by the highest court in Mississippi in respect to this very estate, adjudicating the rights of this very claimant. Slaughter v. Garland, 40 Miss. 472.

The claim, therefore, that she is or was entitled to the profits of the Barrens estate from and after the death of her husband, and before it was assigned to her as dower, is utterly untenable.

No widow is or ever was entitled to any such profits, either by common law, the statutes of Mississippi, or of Virginia. Until dower is assigned, the widow has no estate in the lands, for the law casts the freehold on the heir immediately on the ancestor's death, and her right is simply a right of action to compel assignment of dower; and, in the meantime, certain rights of occu-

pancy merely are given her by express statutes, following Magna Charta, which gave her a forty days residence in the mansion house, anciently called her quarantine. And yet counsel gravely and persistently contend that Burr Garland, his legal adviser, Mr. Shelton, the Probate Court of Hinds county, and its Commissioner, reinforced now by the learned Commissioner, and Judge of the Circuit Court of Lynchburg (Horsley, J.), all blundered in crediting to the estate of Sam'l Garland the products of Barrens plantation before it became the widow's dower and while it belonged to the estate.

To whom are such products to be credited, or to whom paid, if not to the estate? Could this executor, or can any executor or heir in any case, know before there is any division, what field, or farm, or house, is hereafter to be assigned to the widow, or to any particular heir or legatee? Can he divide the products of the lands before the lands themselves are divided? By crediting the estate with the products and charging it with the expenses, as was done here, the rights of the widow and all distributees are preserved, and are arrived at on final settlement of the executor's accounts.

The same reasoning applies to and conclusively disposes of the claim made for Morriss, trustee, that Burr Garland (and, ergo, Morriss, trustee) was entitled to the products from Tudor Hall from testator's death to the time he, B. Garland, selected it as his legacy. (Ans. of Morriss, pt. 2, p. 56, and answers in pt. 4th, exceptions to Comrs. rep., and depositions.)

Moreover, Burr Garland, Mrs. Garland, Morriss, trustee, and his wife, were all parties to the judicial proceedings wherein the lands and personalty were divided, and on their petitions the allotment was made. They were also parties to the proceedings in the Probate Court of Hinds county, resulting in the decree in favor of Sam'l Garland's representative against Burr Garland's representative, and both are estopped from setting up any errors or mistakes in any of these proceedings. The Court had complete jurisdiction, and its judgment is a finality. 7 Rob. Pr. 142.

Any man in Mississippi coming here now to prove that some of the plunder credited to Sam'l Garland's estate in that settlement really belonged to him, and claiming that, therefore, he ought to get it out of this recovery, would have a much stronger

claim and far better standing in Court than the appellants whose counsel have covered pages of print in trying to show their right to it; for they were parties in propria persona to all the Mississippi proceedings, and as to them this whole matter is res adjudicata. (See B. Garland's selection, part 5, p. 34-9, and the order of Court confirming it, p. 40.)

And if errors were ever so apparent, and if they were not conclusively bound by the adjudications, their pretension of being

entitled to a part of the plaintiff's recovery in this suit, on the theory of their profits having been erroneously carried into the Mississippi decree, could not be entertained in this suit. This decree is a part of Sam'l Garland's estate, and no claim to any part of that estate can be asserted in this suit. The object of this suit is to collect the decree for Sam'l Garland's estate from Burr Garland's estate, not for the purpose of distributing the former estate or any part of it. While so far as any claim asserted against Burr Garland's estate, it may be proper under the accounts ordered in the suit, yet the assertion of any claim of any nature against Sam'l Garland's estate, whether by a party to the suit or an outsider, is wholly foreign to its object, and not to be herein adjudicated. Therefore, it is needless to consider in this suit, what part of Sam'l Garland's estate any person may be entitled to. That estate cannot be distributed in this suit.

So it is seen that neither Mrs. Garland nor Morriss, trustee, could possibly be entitled to any profits upon the plantations assigned them which accrued before the allotment in September, 1864, and that any profits which may have accrued after such allotment constituted personal demands against Burr Garland, and are long since barred. Moreover, there is absolutely no proof in fact of either claim. Nor is either claim a fiduciary debt, while the plaintiff's is such. Code 1860, p. 598.

This argument might well be concluded here; for if neither

Morriss, trustee, nor Mrs. Garland have proved any existing demand against Burr Garland's estate (as it is clearly shown they have not), there was nothing for the Court to do but to decree the assets of his estate to the plaintiff; and that is all that was done by the decree appealed from. If they have no such debt, neither of them have anything to do with the numerous points their counsel have discussed; for, of their ten assignments of error,

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only the third, fourth and fifth deal with questions that concern them, or which were passed upon in the Court below. The eighth relates to the costs. The rest neither concern them or have any place in this cause.

But to show the futility of their claims, we will still further follow the arguments of appellant's counsel.

BURR GARLAND'S SO-CALLED PURCHASE OF THE LEGACIES.

All the appellants except to the commissioner's crediting to Burr Garland on the decree against his estate, the amount $4,350 he paid to the children of Nicholas Garland in satisfaction of their legacies, their contention being he should not be credited by the legacies at all, because he used money rightly belonging to the Morriss trust fund; and they claim the legacies and full benefit of the assignments, as well as the balance due by Morriss as administrator of Burr Garland, by a sort of resulting trust, or, as classified by Mr. Minor, a constructive trust. (2 Min. 223, 4th ed.)

We have already shown that, so far from proving any of their profits were received by Burr Garland, their own testimony disproved the fact. To prove the resulting trust they must prove, by clear, full and convincing testimony, that their trust money was used. 51 Am. Dec. 751-9.

The doctrine is well stated in Phelps v. Seeley, 22 Gratt. 573. "A resulting trust may be set up by parol testimony against the letter of a deed. * * * But the testimony to produce these results must, in each case, be clear and unquestionable. Vague and indefinite declarations and admissions long after the fact have always been regarded, with good reason, as unsatisfactory and insufficient."

And if the proof were ever so clear of appellant's profits going into the purchase of the legacies, the resulting trust could not be maintained under the circumstances here. "After the death of the supposed nominal purchaser (Burr Garland) parol proof can in no instance be admitted against the express declaration of the deed"—the assignments—which are under seal. Dyer v. Dyer, Wh. & T. Lead. Cas. in Eq., vol. 1, pt. 1, side p. 213, &c.

But it is clearly proven that the money used in the satisfaction of the legacies and the amount left by Burr Garland at his death,

which went into the hands of Morriss, administrator, were both part and parcel of Samuel Garland's estate. He paid for six

of the legacies by drafts on Aiken & Watt, and two others in some unknown way. On 9th December, 1868, he settled his third and last annual account showing $6,545 due to Samuel Garland's estate, and on 3d of February, 1869, he deposited with Aiken & Watt $5,000 in cash; and upon this deposit, and the proceeds of twelve bales of cotton from some unknown source, the drafts were drawn, and went into Morriss' hands, and constitute the assets decreed by the Court below to the plaintiff. And so the commissioner reported. (Pt. 5, p. 105.)

THE SO-CALLED PURCHASE A PAYMENT.

No matter whether the identical dollars and cents so constituting the deposit with Aiken & Watt, were the identical dollars and cents of Samuel Garland's estate or not, the transaction of Burr Garland, his executor, so to speak, with the legatees constituted a payment thereof, as held by the commissioner and Court below. It was the prime duty and business of Burr Garland to settle with the legatees, and when he satisfied the legatees, no matter whether by delivery of the specified bonds bequeathed, or their equivalent, or substitute in money, it was a payment, and extinguished the liability of Samuel Garland's estate therefor. The circumlocutory form of assignments he procured amount to nothing more than plain receipts. Equity looks at the substance of the transaction and not the form.

"Payment is anything which the creditor accepts as a payment or for the purpose of extinguishing the debt due him." 18 Am. & Eng. Enc. p. 158.

Payment of a debt is not necessarily a payment of money; but that is payment which the parties contract shall be accepted as payment. Huffman v. Walker, 26 Gratt. 314. In this case money was paid, though the legatees had the right to demand bonds, but, as stated by the learned Judge, all the bonds had been distributed in a suit to which they were parties.

"An executor, paying debts out of his own funds, or advancing money for that purpose, acquires no right of subrogation to the original creditor, and must look for reimbursement to his accounts.

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This position is founded on the theory that a debt paid by an administrator is extinguished and not assigned. He may recover balance due him from the estate." 7 A. & E. E. p. 314, and note.

And our Court of Appeals has had occasion to decide what would seem to be a legal truism that "payment by one primarily liable, to one entitled to receive, is an extinguishment of the debt." Smith v. Waugh, 84 Va. 806.

The principle that a fiduciary cannot make a profit out of his transactions with the trust subject, is too well settled to be argued. Miller v. Holcombe, 9 Gratt. p. 676; 2 Wms. on Ex'ors, p. 1669; Baugh v. Walker, 77 Va. 104. And if he cannot do it for himself he cannot do it for another (his daughter) whom he is representing.

So, the commissioner was right in crediting the legacies on the Mississippi decree at the amount he paid for them. But the amount of the credit is immaterial here, as the debt is out of all proportion to the assets.

There was but one estate, no matter how many executors there may have been, either successively or conjointly, or in different jurisdictions, and when either one settled with any claimant or creditor of the estate, it was the end of the matter. Burr Garland could no more call on Slaughter to refund to him, with or without profit, than Slaughter could call on him. Each administrator was answerable, not to the other, but solely to those entitled beneficially to the estate. And when either satisfied a creditor or legatee, it was an extinguishment of the estate's liability, and the transaction is bound to come into his accounts, not as a set off, but as a payment on account of the estate.

There is but one estate, and it can act only through a personal representative, and when one personal representative satisfies any legatee or creditor, whether with the estate's money or his own money, or money which may equitably belong to another person, it is a satisfaction by the party indebted to the party entitled, and that constitutes a payment and extinguishment of the estate's liability. The question as to what money was used, or whether the executor owed the estate anything at that time, or what form of paper he took, has nothing to do with the case. The transaction must enter into his accounts, whether he will or not, and

whether the legatee will or not, and he must "stand the hazard of the die" on final settlement.

APPELLANTS' ASSIGNMENT OF ERRORS.

The easy application of elementary principles to the indisputable facts of the case solves every question that has been or can be raised in this controversy; but as the petition for appeal in assigning errors discloses some strange misconceptions concerning the decision of the Circuit Court, it will be briefly noticed.

The Court did not hold that Burr Garland's purchase of the Nicholas Garland legacies was void. It held the transaction to be a payment, and consequent extinguishment of that charge against Samuel Garland's estate, and credited Burr Garland, administrator, with the amount he paid the legatees. This was holding it to be tolerably valid.

It did not hold that the money paid for said legacies was the money of Sam'l Garland's estate. The Commissioner did so report, but the Court expressed no opinion on the point, it being wholly immaterial. This assignment of error alleges that the Court held "that these legacies reverted to and became assets of Sam'l Garland's estate." The Court did not so hold. Legacies are charges upon an estate, and how they can ever "revert to and become assets of the testator's estate," is something in the nature of a paradox.

The third, fourth and fifth points of alleged error consist in

holding that there was no indebtedness by Burr Garland to Morriss, trustee, and none to Mrs. Garland. We have already shown

how completely the evidence disproves these claims, which are

also barred by limitations and laches, and founded upon a misconception of their rights.

The sixth point complains of the decree being against Mrs. Garland for the whole $2,840, instead of allowing her the portion

thereof she might be entitled to as widow. The Court was dealing with her only as surety for Morriss, and her rights as widow

of Samuel Garland, and her accounts as distributee of his estate

were in no wise involved, and were not and could not have been

adjudicated in this suit. The decree was cautious in preventing

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any possible inconvenience even to her, by forbidding any execution against her.

The Court did not hold that Mrs. Garland should be held to

account for the Mississippi property she received in excess of her

proper share. As stated before, her rights as widow were not at

all affected or involved.

The eighth error alleged is to decreeing the costs of the suit

against the beneficiaries of the Morriss trust. This subject is dealt

with later.

The last error assigned, deserving notice, is in the decree of

May, 1895. This decree was not entered at all in the suit we are

considering; it was obviously a proper decree putting funds out

of the receiver's hands, when there was no longer any occasion for

holding them, into the hands of parties to whom they belonged.

ERRORS ASSIGNED BY APPELLEE.

The administrator, c. t. a., of Samuel Garland assigns the following errors committed to his prejudice in the proceedings, and

he prays this Court to correct them:

1. His exception to the allowance to Morriss, administrator of

Burr Garland, the counsel fees and expenses of taking depositions

of A. M. Garland and John Glover, should have been sustained.

(Part 5, p. 124.)

Both depositions (p. 70-72, pt. 2) were taken in behalf of Morriss, trustee, and the expenses thereof are not proper credits to him

in his administration accounts. Neither the estate of Burr Garland nor the estate of Samuel Garland ought to be made to pay

for the futile efforts of Morris, trustee, to establish his debt.

2. No interest should have been allowed on the amount paid

for costs on the first appeal (pt. 5, p. 105). The plaintiff prevailed

on that appeal and also on the final decree (now appealed from),

and yet he is made to pay the costs and interest thereon. This

error plainly appears on the face of the report, and may now be

availed of.

3. The Court should have decreed all the costs of this suit to

be paid by the Morris trust fund, instead of the costs "other than

those adjudicated by the Court of Appeals." These parties have been the real defendants throughout the litigation, as they were the claimants of the entire subject of controversy before this suit was begun. (See answer of Morriss, p. 53, and exception, p. 67, pt. 2.)

Every deposition taken and every document filed is solely for the substantiation of their claim.

"The party for whose benefit the suit is, if the fact appear of record, is bound for the costs." Hayes v. M. P. Association, 76 Va. 225.

In Middleton v. Johns, 4 Gratt. 129, the lower Court imposed upon a defeated defendant the costs which accrued in the case before he was admitted as a party, and the Court of Appeals affirmed it.

In Allen v. Shriner, 81 Va. 174, there had been, as here, a previous appeal; and the final appeal was from a decree giving costs; that decree was reversed. The Court said: "The question of costs is referable to the result of the litigation in this case; and the decree, giving costs, is reversed, the question of costs to depend in that Court upon the final determination between the parties; and the costs must follow the recovery according to law." Thus holding that costs follow the final result of the litigation regardless of who may have won or lost on intermediate appeals.

In Frazier v. Hendren, 80 Va. 276, this Court altered its own decree, entered on a former appeal, so as to put the burden of costs theretofore adjudicated solely on the party who contested the right of the prevailing party.

In Henderson v. Griffin, 5 Peters, 151, which was a case strikingly like this, the Supreme Court adjudged costs according to the principle here contended for. The plaintiffs in that case had brought a previous suit (which had been dismissed), not in their own, but in the names of other persons, for the same land claimed in the second suit; it was held that a rule against them in the second suit to compel them to pay the costs of the first suit was proper. That "it was perfectly consistent with the justice of the case, that when the plaintiffs sued the same defendant in their own name, for the same land, that they should reimburse him for the past costs to which they had subjected him" (p. 158).

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It is respectfully submitted that the decree of February, 1895, should be amended by correcting the errors assigned by appellee, and as amended, affirmed.

Disallowing to Morriss, administrator, the $60 paid as fees and expenses of depositions taken to sustain claim of Morriss, trustee, the balance due by him, per report, is, principal, $1,392 52

Interest to May 1, 1882, ... $ 891 18

Interest to May 10, 1894, ... 1,014 76

_____

for which see reports of commissioners. 1,905 94

_____

Bal. due to est. B. Garland May 10, 1894, . . . $3,298 46

Of which decree should be to pay Mrs. Garland, ac-

tual amount paid by her as costs in this suit. . . 254 99

_____

Decree for this sum, ... $3,043 47

to plaintiff (S. G.'s adm'r), with interest on $1,392.52 from 10th

May, 1894.

And all the costs of the suit, regardless of costs on appeals

from interlocutory decrees, should be decreed against the beneficiaries of the Morriss trust fund.

This simply recognizes the claim of Sam'l Garland's administrator already established by the adjudication in Mississippi, and

twice declared by this Court to be conclusive, and rejects the uncertain, ambiguous and obsolete claims of the other two claimants,

and places the costs where they properly belong.

Respectfully submitted,

J. SINGLETON DIGGS,

Counsel for Appellees.

Lynchburg, December, 1895.

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Mrs. - in correction

Submitted Mar 5th 81

to

Garland

Hawkins v. Garland's Adm'r & als.

D. M.-94 J.

From the Circuit Court of the City of Lynchburg.

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HAWKINS VS. GARLAND'S ADM'R.,

ET ALS.

BRIEF OF

L. D. HAYMOND,

OF COUNSEL FOR THE APPELLANT.

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BRIEF.

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The statement of the case is so full and the principles of law and citations of authorities relied on, are so elaborate in the petition that we do not deem it necessary to do much more now than merely refer to, and adopt the petition as, in the main, my opening argument in behalf of the Appellant. We think the record plainly shows that we have raised and established a latent ambiguity in the 15th clause of the will of Samuel Garland, deceased,

wherein he says, "I give to each of my name-sakes, Samuel G. Slaughter, son of Chas. R. Slaughter, Samuel G. White, son of Samuel G. White, Samuel, son of Samuel Garland, Jr., and Samuel G., son of Captain John F. Slaughter, a bond of $1,000 of S. S. railroad," by the proof that there was no person known to the testator as "John F. Slaughter; (2) the testator's nephew John F. Slaughter, the only man of that name known to him, (and he usually called "Jack," and never "Captain,") had no son named Samuel G., a fact known to the testator, and hence testator knew he had no name-sake who was a son of "Captain," or any other John F. Slaughter, (3) the testator did have an old friend known to him as, and called by him, "Captain" John F. Hawkins, and this old friend did have a son known to testator as his "name-sake." These leading facts we have established by clear and indisputable proof. We have thus, de hors the will, clearly shewn that the testator did not intend, in the 15th clause to bestow a legacy on a son of John F. Slaughter, for Slaughter had no son answering to the description of "my name-sake"—that no such "name-sake" was in existence, and therefore we claim most confidently, that the latent ambiguity does exist.

That this character of ambiguity can only be raised by parol proof, is a self-evident proposition, and that it can only be dissolved by proof of a like character, is not only equally evident, but is the law as shown by almost innumerable authorities cited in the petition, to which we will now add a reference to the case of Roy's Ex'rs vs. Rowzie, &c., 25 Gratt. 599, decided by this Court in 1874. We would call especial attention to the language used by the President of the Court in that case, p. p. 604, 605 Exactly similar to this case, are the cases of Beadsley, Adm'r., vs. The American Home Missionary Society, 45, Conn. and Dunham vs. Averill ib. 61, and we might cite many other cases decided by Courts of other States, but deem it unnecessary.

We submit that we have already shewn that the Court may not only look to the circumstances which surrounded and were known to the testator when he wrote his will, but may also hear proof of his declarations, to enable it to acquire a correct knowledge of his meaning and intention.

We would have it distinctly borne in mind that we do not claim that proof of a testator's declarations can be heard to establish a latent ambiguity; we

think they are not admissable for that purpose, but what we do claim, and insist on, is, that the declarations may be proven to aid the Court in removing such ambiguity. And especially may this be done, when declarations are sustained by other facts, facts which are consistent with such declarations and not capable of an interpretation inconsistent therewith. "The declaration is in itself a fact." Redfield on Wills, 3rd edition, p. 562.

The facts related in the record, and repeated in the petition, after shewing that the testator could not, by any possibility, have meant any legacy bestowed by the 15th clause of his will, for any son of any John F. Slaughter, shew, beyond cavil, that he did mean to give to "my name-sake, Samuel G., son of Captain John F. Hawkins," one of the $1000 legacies provided for in that clause; and in support of, and in perfect consistency with those facts, the testator declared to Major Garland, (see deposition, record, p. 66,) that he had "selected my name-sake," the son of Capt. Hawkins, as one of the objects of his bounty.

It being thus clearly shown that the son of John F. Slaughter cannot take this legacy, the Court will not permit it to lapse, if by any reasonable construction of the will, in connection with the surrounding facts and the declarations of the testator, it can ascertain to whom he intended to give it. The Court will always give effect to every provision of a will, when it can possibly do so. We have shown, we think, to an almost positive certainty, that the testator meant the legacy for the Appellant. We cannot conceive of any character or amount of proof which could have made our position stronger than it is.

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IN THE

SUPREME COURT OF APPEALS

OF VIRGINIA.

RICHMOND.

HAWKINS v. GARLAND'S ADM'R & ALS.

To the honorable the judges of the supreme court of appeals of Virginia:

Your petitioner, Samuel Garland Hawkins, respectfully represents that he is aggrieved by a decree entered against him by the

circuit court of the city of Lynchburg on the 9th day of August,

1873, in a suit in chancery then therein depending in the name of

your petitioner against John F. Slaughter, administrator de bonis

non with the will annexed of Samuel Garland, Sr., deceased.

A transcript of the record of said suit is herewith submitted, an

inspection of which exhibits the following

Facts:

On the 7th day of December, 1857, Samuel Garland, Sr., executed

his last will and testament, wholly written and signed by himself,

and departed this life in the month of November, 1861, without issue, but surviving him his widow and next of kin, consisting of a

number of nephews and neices, to all of whom he made quite liberal bequests out of his estate, valued at some $800,000.

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The contention in this cause arose from a disagreement as to the construction of the

Fifteenth clause

Of said will, which reads as follows:

"I give to each of my namesakes, Samuel G. Slaughter, son of Ch. R. Slaughter, Samuel G. White, son of Samuel G. White, Samuel, son of Samuel Garland, Jr., and Samuel G., son of Captain John F. Slaughter, a bond of one thousand dollars of S. S. railroad." (Record, page 16.)

A very short time after the will was admitted to record, to-wit, February 13, 1862, a S. S. railroad bond for $1,000 was turned over by one of the executors to "Samuel G. Slaughter, son of John F.," said son being then less than seven months of age (record, pages 36 and 68), said son having been born almost four year after the testator wrote his will, and only a short time before his death, and of whose existence the testator probably had no knowledge.

The complainant in this suit, Samuel Garland Hawkins, namesake of the testator, and son of "Captain" John F. Hawkins, who was born in 1841, and was well known to the testator, claims that he, and not the unborn son of John F. Slaughter, was in the mind's eye of the testator when he penned his will, and that he was the intended object of the testator's bounty, as the fourth namesake mentioned in said fifteenth clause; and to make good that claim this suit was brought by him.

Your petitioner claims that by the words and description used the

testator had in mind and meant himself and no one else. He asks

the court to read extrinsic evidence to aid it in ascertaining the testator's meaning, and, if need be, to hear the testator's declarations

made after the execution of the will, as to that meaning.

The defendant, John F. Slaughter, filed his demurrer and answer,

sundry witnesses have testified, and your petitioner confidently

claims that he has succeeded in showing that the said clause, in so

far as the fourth object of testator's bounty is concerned, is

subject to a grave

Latent ambiguity,

And in pointing out the proper solution of the same.

Knowing that "the courts always look upon the intention of the

testator" as the Polar star to direct them in the construction of wills

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(VI. Peters, 68); that an "investigation into the state of facts under

which the will was written will often materially aid in elucidating

the scheme which the testator had in mind" by enabling the court

to place its self in "the situation of the penman whose language it

is called upon to interpret" (XII. Grattan, 205); and that this "can

only be done by aid of extrinsic evidence * * * shewing the situation of the testator and the state of his family * * * at the time of

making his will," as well as all facts known to the testator "which

may reasonably be supposed to have influenced him in the disposition of his property" (ibidem); your petitioner has placed in the record the circumstances which surrounded Samuel Garland, Sr., deceased, at the time of the making of his will, in order that the

court may "put itself in his place," and thus, very readily, acquire

a full knowledge of his meaning, so that his intention may be effectuated.

"Put yourself in his place."

Samuel Garland, Sr., in December, 1857, lived in the city of

Lynchburg; was about seventy years of age; had accumulated by

industry, frugality, and fair dealing quite a large estate, consisting

of stocks, lands, money, negroes, lands, etc. He lived in affluence,

enjoyed life, and delighted in imparting happiness to others; was

free and liberal with his means, and was a "twice born" friend, was a warm

friend, and was not a vindictive enemy." (Judge Garland, record,

page 85.) He had no children, his nearest of kin being nephews

and neices, some of whom had children, and several of these had

sons named after uncle Sam. One of them—"Jack"—had one or

two sons, but no namesake of the testator.

With these facts testator was familiar.

He had an old and valued friend, with whom he had long been

on most intimate terms of friendship, who was near neighbor, between whom and the testator "there was just as much friendship

and intimacy as if they had been brothers." (Record, page 74.)

As far back as 1841, this friend had born to him a son, for whom the testator and his wife were called to vouch at his baptism, on whom the testator heard his own name conferred in that solemn rite, and who was thenceforward known to the testator as his namesake, too. He enquired after him often as his namesake, manifested much interest in him on many occasions, and spoke of him in his family as "my namesake."

The father of this youth continues the fast friend of the testator, who knew him as "Captain" John F. Hawkins, sometimes

familiarly calling him "John," but generally "Captain." That title had become associated with its bearer, in the mind of the testator, as part of the man—"one and inseparable."

The namesake becomes a young man of about sixteen, the testator meets, knows, and admires him; contributes money to some youthful enterprise of his, and tells him to call for more if needed. (See Mrs. Garland's deposition.) Thus we find this "Captain" Hawkins and his son, "my namesake," occupying fast and prominent places in the testator's mind.

Among his nephews is found one "John F. Slaughter," and he knows him by that name, but generally calls him "Jack," but never as "Captain" John F. Slaughter. This same nephew had sons, but no namesake of the testator in his family, and he tells us in his answer that the testator knew this fact, and mentioned it to Slaughter's wife.

Now, on the 7th day of December, 1857, Samuel Garland, Sr., with these surroundings, with full knowledge of these facts, and under the control of these feelings, writes his own will. He makes liberal bequests to his wife and to his nephews and neices. To some he gives $10,000—to none less. To the nephew, "John F. Slaughter," he gives very liberally (see 10th clause, record, page 15), and mentions him thrice by that name in the will, and after specifying the bequests to this nephew, he is particular to add that he is to have what is so specified "and no more of my estate."

He had, at that time, four namesakes, the sons of friends. Having, in fourteen clauses of his will, provided most amply for his nearest of kin, he comes to pen the fifteenth clause, and for objects of his bounty, he tells us through an old friend, Major Garland, that he "selected four of his namesakes," one of whom he said was your petitioner.

Let us follow the testator's mind as he puts it down in this clause, remembering that we are still "in his place." I have now provided for all who have immediate demand upon my bounty; have discharged my duty to my nearest relations; and now I want to remember other ties. I have four namesakes—four of my friends

have named their children after me, namely, Ch. R. Slaughter,

Sam. White, Sam. Garland, Jr., and my old friend, Captain Hawkins. To each of these I must give a legacy. "Jack" Slaughter

has not given me a namesake. I only have four, and to each of

these I will give a thousand-dollar railroad bond.

With full knowledge of the children of the parties in his mind

who were namesakes and who were not, he proceeds to speak in

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present tense: "I give to each of my namesakes," &c., and when

he comes to put down the description of the fourth namesake, whose

existence certainly occupied a place and was then present in his

mind, he writes: "Son of Captain John F.—Slaughter," could he

have had in his mind a person of that description when he knew

no such person had an existence? He knew no "Captain John F.

Slaughter," nor any son of John F. Slaughter, named Samuel

G. He did know "Jack" or John F. Slaughter, but he also knew

he had no son named Samuel G. Then whose son—what child—

boy—or young man—did he mean, or was in his mind? Samuel

G., son of Captain John F.—whom? Slaughter? No; there was

no such person in existence, and Slaughter himself tells us that the

testator knew the fact. No such "captain"—no such "son."

Then was the testator thinking of, and did he mean, a captain and a son not in being? Did he mean to say, "I now give to my namesake, Samuel G., son of Captain John F. Slaughter, a thousand dollars, though I well know that Jack has no such son—know of no such person as either; but, on the contrary, I know that my nephew, Jack, or John F. Slaughter, has no son who is my namesake"?

He has just connected John F. Slaughter with his estate in two clauses of his will, written his name twice, and no doubt had him much in mind, and there is nothing remarkable in the fact that when he again writes his christian name he should add his surname, albeit he has no such thought or intention. Nothing more natural. But if he meant to speak of Slaughter, why did he write his name so differently in this clause from the manner in which he had written it before? Why now dub him "captain" for the first time in his life? If he means Slaughter, why does he mention a son who he knew has no existence? Or if he meant the bequest to apply to a future son, the promised namesake, why did he not say so?

Clearly, therefore, in viewing this clause by the light of the circumstances surrounding the testator when he wrote it, and continuing "in his place," it seems impossible to beleive that he meant to write the surname "Slaughter"; nor can we fail in following that Polar star, the testator's evident intention, to arrive at the conclusion that he meant to write the surname "Hawkins." So that to make "sense" out of this clause, with all the lights before us, it must be interpreted as if it read: "I give to each of my namesakes * * * * and Samuel G., son of Captain John F. Hawkins,'" &c. The word "Slaughter" must be rejected as surplusage, or treated as a false demonstration—a merely erroneos description of the person intended.

In addition to these conclusions, forced on the mind from the

circumstances which surrounded, and must have influenced the testator in making his will, we hear him say afterwards, when discussing the provisions of his will with his friend and relative, Major

Garland (and who was also a beneficiary), that he had "selected

three or four of his namesakes" as objects of his bounty and named

your petitioner as one of the number. (Record, pages 90-91.)

The widow of the testator testifies, and the record shews, that

the personal representatives of the testator knew, or had reason to

believe, that your petitioner, instead of Slaughter's son, was the intended object of the testator's bounty.

Yet, with all these lights, the circuit court dismissed the bill of

your petitioner, and it is of the decree directing such dismissal

that he now complains.

The learned judge failed to favor us with his reasons for making

the decree aforesaid, and it is left to inference either that he thought

that no latent ambiguity was raised, or, if raised, that the evidence

adduced could not be admitted to remove that ambiguity, or was

insufficient for that purpose.

Upon the questions which your petitioner conceives to be raised on the record, he now begs leave to offer some suggestions, and refer to some authorities.

The defendant demurred to the bill "because the said bill seeks to vary, change, and explain the written will of Samuel Garland, Sr., by extrinsic facts and evidence, which is not competent for a court of equity to look into for any such purpose."

Now it is respectfully submitted that the bill does not "seek" to "vary or change the will," but only that the will be applied, interpreted, or explained by the light of extraneous evidence.

The bill merely asks that the court shall view the circumstances which surrounded the testator at the time he executed his will, were likely to influence him in the dispositions of his property. The demurrer, in effect, denies the admissibility of extrinsic evidence in any case to aid in the interpretation of wills. If that demurrer states the law correctly, the courts are inhibited from hearing any evidence in any case to remove a latent ambiguity, no matter how plainly it may be made to appear.

But this is not law.

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What is a latent ambiguity?

"Ambiguitas latens is that which seemeth certain and without ambiguity, for anything that appeareth on the deed or instrument;

but there is some collateral matter out of the deed that breedeth

the ambiguity."

Bacon's Max., 23;

Green. Ev., § 297;

Brown's Leg. Max., 5, Amer. ed., p. 441.

"And without the aid of all the light afforded by the collateral

facts and circumstances, proven by parol, a judge would not be at

liberty to pronounce an instrument ambiguous or uncertain."

Green., § 298.

A latent ambiguity, therefore, exists in a sentence, or expression, only when the real meaning or intention of the writer is hidden or concealed. It does not appear on the face of the words used, nor is its existence known until those words are brought into contact with collateral facts. It is only when you come to apply the words, bringing them along side the facts which existed when used, and to read them in the exact light in which they were written, that you make up the latent ambiguity, if one exists.

Having found that a latent ambiguity exists; that the words of the writer are "insensible" with reference to "circumstances" de hors the writing, to facts under which they were written, the

duty is at once imposed to make those words produce "sense," if it can be done, with reference to those facts or circumstances.

"Inasmuch as the ambiguity is raised by extrinsic evidence, so it may be removed in the same manner."

Broom's Leg. Max., 411;

Greenl. § 297;

Baugh vs. Reed, II Ves. Jr., 257;

Delmare vs. Robello, ib. 412, et seq.

In what cases will evidence aliunde be received?

Evidence de hors the writing is always read to see if a latent ambiguity exists; and as soon as it is seen by the court that such ambiguity is well defined and established, the doors are thrown wide open to the admission of evidence to solve the doubt. This matter has been discussed in a very long line of cases, of which there are two classes—one in which the evidence was admitted because the ambiguity was well defined, and in the other class it was excluded because no such ambiguity was found to exist. To

the first class of cases belongs the Virginia case of Maund's administrator vs. McPhail (X Leigh, 199), and to the last class the

case of Woodton vs. Redd (12 Gratt. 196). The distinction of these two classes is very sharply defined by a comparison of these two cases.

In no case, English or American, has the evidence been rejected where the ambiguity was established. Nor has it been received in any case where there was a subject or object to which the words of the writing could be applied, there being no latent ambiguity in such cases.

"If a person grant his manor of S. to A., and the truth is he hath the manors of South S. and North S., this ambiguity may be helped by averment of the grantor's intention."

Broom, 412;

Miller vs. Travers, 8 Bing. 251, et seq.

"Where a testator uses certain words which prima facie give a clear account, the same fact that enables you to prove that there is a latent ambiguity, enables you to prove what was his real intention."

Ld. Chancellor Thurlow in Baugh vs. Read, II Ves. Jr., 259,

ib. 412.

The old case of Beaumont vs. Fell (2 P. Wms., 141), is one of the first cases in which parol evidence was admitted in aid of construction. In that case proof of declarations of the testator was admitted. This case was decided in 1729, and has been followed as a precedence, and been much discussed by judges and writers; but the principles of the case have never been departed from. In that case. as in all others which have since been reported, whenever the

testimony raised an ambiguity, evidence de hors the will was received to shew what the words used really and in fact meant. And

in every case in which parol evidence was rejected, it was because

no latent ambiguity had been raised, or where the words and

descriptions used were "sensible" when applied to the facts.

Such evidence cannot be admitted to supply any word, description, expression or date, for that would be to make, alter or vary

the instrument.

But where the evidence shews that the words, names or description

used cannot possibly mean what on their face they appear to mean,

because they do not describe or apply to the facts which the court

has found to have existed, and which must of necessity have been

before, and influenced the testator's mind when he dictated or wrote

his will, no court has yet failed to let in still more evidence to ascertain, if possible, what the testator did actually mean by the words used;

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this is not in any sense making, altering or varying a will, but is

merely applying what is therein said—not seeking to ascertain his

intention aliunde his actual words, but only ascertaining the meaning

of the words he has used.

In Wootton vs. Redd the evidence did not raise a latent ambiguity, it being possible to make "sense" of the words used by the

testator; and hence the rule ambiguitas verborum latens did not apply.

Especial attention is asked to the language used by Judge Lee in

giving the opinion of the court in that case, on page 205, (12 Gratt.,)

and to the cases he there cites, especially his reference to Wigram,

(pp. 11, 51-57, &c., and Smith vs. Bell, 6 Peters, 68.)

Again, on page 205, Judge Lee says: "But where the subject is

sufficiently and clearly ascertained, though there be added particulars of description which are found to be false and mistaken, effect

will be given to the devise notwithstanding, and these false or mistaken particulars of description will be rejected."

See Wigram, 152-166-197, etc.

In the case of Allen vs. Allen, 12 Adolph & Ellis, 450, (40 Eng.

C. L. Rep., 227,) decided by Lord C. J. Denman in 1840, we find

that the testatrix devised land to her "brother, Thomas Allen,

for life, remainder to John Allen, grandson of the said brother

Thomas, but charged with a bequest of £100 to each and every of

the brother sand sisters of the said John A."

At the time of making the will there were two grandsons of

Thomas named John A., but only one of them had brothers and sisters. In the argument, Beammont vs. Fell, Miller vs. Travis and

other cases was referred to, and the following is the text of the

judgment:

"It was argued for the plaintiff that the words 'each and every

of the brothers and sisters of the aforesaid John A.' were to be

taken as part of the description of the devisee, and that as John Allen only had more than one brother and sister he was the person described conclusively."

We think, however, that those words are not part of the description of the devisee, and that they do not conclusively apply the words of the devise to the plaintiff, but furnish an argument only, in the same manner as other evidence of extrinsic facts. This, then, is a case directly within the authority of Cheney's case, 5 Rep. 68, (Wig., 177-194, 229, 212, 222, and 225,) and of the recent case of Gord vs. Needs, (2 M. & W., 189.) It is also within the very

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terms of the only case in which, according to Hiscocks vs. Hiscocks, declarations of the testator can be received as evidence of his intention. (Wig. 22.) In the whole list of cases on this subject, no one can be found in which such evidence, under such circumstances, has been excluded.

"The only remaining point is, whether the time when those declarations were made, viz.—some six months after the will was written—makes any difference. Cases are referred to to shew that declarations contemporaneous with the will are alone to be received.

Neither has any argument been adduced which convinces us that those subsequent to the will ought to be excluded whenever any declaration ought to be received; they may have more or less

weight, according to the time at which they were made, but their

admissibility depends entirely upon other considerations."

Now, in connection with the above quoted judgment, especial attention is asked to the following authorities:

Lord Cheney's case, 5 Rep., 68; (Wig., 194);

Gord vs. Needs, M. & W., 139;

Hiscocks vs. Hiscocks, 5 M. & W., 863;

Careless v. Careless, 1 Mer., 384;

Smith vs. Smith, 4 Paige (N. Y.), 271, and

Wigram, 252, and cases there cited.

In Careless vs. Careless, Wigram truly says that "identification

of the devisee is virtually left wholly to parol."

The rule ambiguitas, verborum latens, is not restricted in its application merely to cases where the language of the will is applicable

to two or more persons or species of property.

Quotations will now be offered, and references made to Jarman

on Wills. Chapter 14, (3d Amer. ed., p. 361.)

"Of course parol evidence is admissible in order to ascertain

what is comprehended in the terms of a given description, referring

to an extrinsic fact."

Again, page 363 (side page 370), "It is not essential to the validity of a gift that a person who is the intended object of the testator's bounty should be actually pointed out on the face of the will;

it is enough that the testator has provided the means of ascertaining it according to the maxim, certum est quod, certum reddi potest." (See

Broom, Max., 418.)

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Again, "Every description must, more or less, involve inquiry

into extrinsic facts." (Page 364.)

Mr. Jarman very fully discusses this whole subject in the same

chapter, and considers carefully the cases of Beumont vs. Fell,

Cheney's Case, Careless vs. Careless, Morgan vs. Morgan, Westlake vs. Westlake, and many others which sustain the positions I

have taken, and are approved by him.

We read in Redfield's 3d edition on the subject of Wills, chapter

10, section 39, page 562, "The declaration is in itself a fact from

which the mind draws the inference of intention in the use of language in the will with reference to the same subject."

Again, "The earliest cases in regard to latent ambiguities go

upon the ground that declarations of the testator, shewing how he

intended the terms he used in his will to be understood, and how he

was accustomed to use such terms, are receivable as the only clear and

satisfactory mode of solving the question." (Ib., p. 563; also, p.

573, ch. 39, § 40, et seq., and Wig. Prop. III and VII, with what is said by Mr. O'Hara in same volume.)

The words of the 15th clause under consideration could have had no application to Slaughter's son, for he had no son to whom any part of the description applied.

In Careless vs. Careless the court said: "In the cases cited the name belonged to one, and the superadded description to the other. In this case the name belongs to both, and the superadded description is equally inapplicable to either." And yet, the court in that case received proof of declarations. In this case the name belonged to only one, your petitioner, when the words were written, while the superadded description was not entirely applicable, but it was nearly so. The testator clearly provided the means of ascertaining the object of his bounty, and this is enough—certum est quod, reddi potest.

"A mere misdescription of the legatee does not render a legacy void, unless the ambiguity is such that it is impossible to ascertain, either from the will itself or from proofs de hors the will, who was intended as the object of the testator's bounty." (Smith vs. Smith, 4 Page, 271.)

See Wigram, pp. 21, 22, 23-177, 178, 195;

Reno vs. Dain, 4 Hen. & Munf, 338;

1 Ves. Jr., 257;

Parsons vs. Parsons, ib. 266;

Nomse vs. Finch, ib. 344 (and notes) ib. 412;

Mann vs. Mann, 14 Johnson Rep., p. 1;

Still vs. Host, 6 Madd., 192;

Hampshire vs. Pierce, 2 Ves. Jr., 218;

Doe vs. Huthwaite, 3 Barn. & Ald., 682;

Thomas vs. Thomas, 6 Conn. Rep., and Wig. 230 and 231.

(See Crawford vs. Junett, 2 Leigh, 630.)

A striking characteristic of the cases cited, and similarity between many of them and the one under consideration, is that the description, so far as it is false, applies to no one subject or object, and so far as it is true, to but one subject or object.

See Harris vs. Bishop of Lincoln, 2 P. Williams, 187;

Starkie on Evidence (Sharswood's ed.), side pages, 679 to 700, and notes; the opinion of Tucker, P., in Miars vs. Bedgood, 9 Leigh, 374, and in exact accordance therewith, and finally, and conclusively, Maund's adm'r vs. McPhail, 10th Leigh, 199.

Your petitioner might safely rest his case alone on this one decision; for, it is one in which five of the most distinguished of Virginia's long line of able judges sustained, as with one voice, the principles herein contended for. In the will in that case there was, as shewn by the extrinsic evidence adduced, almost a total misdescription of

the object of the testator's bounty; there was, in fact, no such society in existence as the one described in his will, and yet the court

unanimously admitted extrinsic parol evidence in aid of the application of the devise, and this evidence consisted almost exclusively of

the testator's declarations made after the execution of his will. Exclude the testimony of Richard Kain, consisting almost entirely of

a detail of declarations made by the testator, and McPhails case is

denuded of even a pretence—for that testimony made his whole

case. Is not the case of your petitioner much stronger for the admission of the evidence than that case was?

In that case the "identification of the devisee was certainly left

to parol," while in this case the description of your petitioner is

very clearly accurate—entirely so at a certain point—that is, (1) as a

"namesake," (2) as "Samuel G." (3) as "the son of Captain John F"—

and here is the only deviation. The testator had just written

"Slaughter" in a few lines above, and to repeat it here in connection with the same initials, was a very natural inadvertence. The

only reply to this is that the testator was remarkable for his accuracy. In answer to this, read the 14th clause, where he entirely

misnames another legatee, and look at a dozen other verbal errors

in the will.

The fact of the military prefix in the 15th clause is overwhelming

proof that the testator wrote the word "Slaughter" inadvertently.

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He had never in all his life known or called Mr. Slaughter "Captain"; had not so called him in his will, and he did know he had no son named Samuel G. He did, on the contrary, know, and had for many years known, intimately, "Captain" John F. Hawkins—had known and designated him as Captain; knew he had a son named Samuel G., so named in honor of himself; had looked upon and loved him, more than once shewing his appreciation of his having a namesake in the family of his old friend Captain Hawkins.

The testator's friend, Major Garland, says he told him he had "selected" your petitioner as an object of his bounty. His widow tells us she so understood it; it was doubtless so understood in the entire family. His nephews, the executors so understood it, for they made him a party defendant to the suit brought by them to settle up and divide the estate (but of this he had no knowledge at the time.)

A hundred reasons may readily be assigned why testator might reasonably have given your petitioner a legacy; that it would have been exceedingly unreasonable in him to have given it to "Samuel G., son of John F. Slaughter," is conclusively shewn by the one simple, plain and undisputed fact that there was not, in all the earth, any such being, and that the testator knew there was none such.

The hot haste with which that bond was paid over to that little

baby about eight months before any other legatee got anything, is but little less remarkable than that it should be claimed that that same baby occupied a place in the mind and affections of the testator nearly four years before it birth!

For the reasons herein given and others, which an inspection of the said record will suggest, your petitioner prays that an appeal be allowed him, to operate as a supersedeas, from the decree aforesaid of the circuit court of Lynchburg; that said decree be reviewed and reversed, and such other decree entered as the said circuit court should have entered. And as in duty bound, your petitioner will ever pray, &c.

SAMUEL GARLAND HAWKINS.

By L. D. HAYMOND, of his counsel.

I, Luther D. Haymond, an attorney practising in the supreme court of appeals of Virginia, am of the opinion that the decree of the circuit court of the city of Lynchburg, complained of in the

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foregoing petition, ought to be reviewed and reversed by the said supreme court. L. D. HAYMOND.

January 1, 1879.

HAYMOND & BROCKENBOUGH,

Counsel for petitioner.

Appeal allowed and supersedeas awarded. Bond in the penalty
of two hundred dollars to be given.

WALLER R. STAPLES.

January 11th, 1879.

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VIRGINIA:

Pleas before the Honorable Gustavus A. Wingfield,
judge of the circuit court for the city of Lynchburg,
in the vacation of said court, on Friday, the 9th
day of August, A. D. 1878, in the 103d year of the
commonwealth:

Be it remembered that heretofore, to-wit:

On the 26th day of December, 1877, came Samuel Garland Hawkins, by John B. Brockenbrough and Luther D. Haymond, gents,

his counsel, and sued out the clerk's office of said court his writs

of summons in chancery against John F. Slaughter, administrator

de bonis non, with the will annexed of Samuel Garland, Sr., deceased, — Featherston, administrator de bonis non of Henry D.

Flood, deceased, Mary R. Slaughter, J. M. Cobbs and Celeste P.

Cobbs, his wife, who was Celeste P. Slaughter, Chatharine M.

Slaughter, and Caroline M. Garland.

Which said writs with the returns thereon endorsed, are in the

words and figures following, to-wit:

The commonwealth of Virginia,

To the sergeant of the city of Lynchburg—Greeting:

We command you that you summon John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland,

Sr., deceased, — Featherstone, administrator de bonis non

page 2 } of Henry D. Flood, deceased, Mary R. Slaughter, J. M.

Cobbs and Celeste P. Cobbs, his wife, who was Celeste P.

Slaughter, Catharine M. Slaughter, and Caroline M. Garland, to

appear before the judge of the circuit court for the city of Lynchburg, at the clerk's office of the said court, at rules to be holden

for the said court, on the first Monday in January next, to answer

a bill in chancery exhibited against them in said court by Sam'l

Garland Hawkins. And have then there this writ.

Witness, Samuel D. Preston, clerk of said court, at the courthouse of said city, this 26th day of December, 1877, and in the

102nd year of the commonwealth.

SAMUEL D. PRESTON, Clerk.

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Return.

Executed December 27th, 1877, on J. M. Cobbs, and December

29th, 1877, on John F. Slaughter, Mary R. Slaughter, Celeste P.

Cobbs, and Catharine M. Slaughter, by delivering to each of them

true copies of the within summons in chancery—Caroline M. Garland not found.

JOHN W. HUGHES, D. S.,

For H. HUGHES, S. C. L.

page 3 } The commonwealth of Viginia,

To the sheriff of Appomattox county—Greeting:

We command you that you summon John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland,

Sr., deceased, — Featherstone, administrator de bonis non of Henry

D. Flood, deceased, Mary R. Slaughter, J. M. Cobbs and Celeste

P. Cobbs, his wife, who was Celeste P. Slaughter, Catharine M. Slaughter, and —— M. Garland to appear before the judge of the circuit court for the city of Lynchburg, at the clerk's office of the said court, at rules to be holden for the said court, on the first Monday in January next, to answer a bill in chancery exhibited against them in said court by Sam'l Garland Hawkins. And have then there this writ.

Witness, Samuel D. Preston, clerk of our said court, at the courthouse of said city, this 26th day of December, 1877, and in the 102nd year of the commonwealth.

SAM'L D. PRESTON, Clerk.

Return.

Executed Dec. 29, 1877, by delivering a true copy of this summons to James H. Featherstone, adm'r d. b. n. of Henry D. Flood,

dec'd.

A. PLUNKETT, D. Sh'ff,

For W. A. PLUNKETT, Sh'ff, A. C.

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PAGE 00425 (Image 5)

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page 4 } The commonwealth of Virginia,

To the sheriff of Shenandoah county—Greeting:

We command you that you summon John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland,

Sr., deceased, — Featherstone, admistrator de bonis non of Henry

D. Flood, deceased, Mary R. Slaughter, J. M. Cobbs and Celeste

P. Cobbs, his wife, who was Celeste P. Slaughter, Catharine M.

Slaughter, and Caroline M. Garland, to appear before the judge of

the circuit court for the city of Lynchburg, at the clerk's office of

the said court, at rules to be holden for the said court, on the first

Monday in January next, to answer a bill in chancery exhibited

against them in said court by Sam'l Garland Hawkins. And have

then there this writ.

Witness, Samuel D. Preston, clerk of our said court, at the courthouse of said city, this 26th day of December, 1877, and in the

102nd year of the commonwealth.

SAM'L D. PRESTON, Clerk.

Return.

I acknowledge legal service of the within writ.

CAROLINE M. GARLAND.

At another day, to-wit:

At rules held in the clerk's office of said court on the first Monday in January, 1878, came the plaintiff by his counsel, and filed

his bill against the defendants.

page 5 } Which said bill is in the words and figures following,
to-wit:

To the Honorable Gustavus A. Wingfield, judge of the circuit
court of the city of Lynchburg:

Humbly complaining, sheweth unto your honor your orator,
Samuel Garland Hawkins, that he is a son of "Captain" John F.
Hawkins, of the county of Bedford, Virginia.

That on the 7th day of December, 1857, one Samuel Garland,
Sr., of the city of Lynchburg, executed his last will and testament,
which was wholly written by himself; that said Garland continued
to live after the date of his said will, until the month of November or December, 1861, when he died in the state of Mississippi,
where he had been residing for some time prior to his death, that
the said will was duly admitted to probate in the hustings court of
the city of Lynchburg, Va., on the —— day of December, 1861, when
Ch. R. Slaughter and Samuel Garland, Jr., qualified as executors of

said will; that the said Slaughter died in February, 1862, and the

said Sam'l Garland, Jr., died in September, 1862, after having but

partially administered the estate of their testator; that on the 6th

day of October, 1862, one John F. Slaughter qualified in said hustings court as administrator de bonis non, with the will annexed of

the said testator, and as such, executed bond in the penalty of $3,000,000, with H. D. Flood (since dead), Mary R. Slaughter Celeste

P. Slaughter, (since intermarried with one James M. Cobbs), Cathpage 6 } arine M Slaughter, and Caroline M. Garland, as his sureties.

A copy of said will, maked "A," is herewith filed as a part

hereof.

That your orator's father, Capt. John F. Hawkins, had been, for

very many years, an intimate friend and acquaintance of the said

testator, and as a testimony of his high esteem for the testator, he

gave to your orator the name of Samuel Garland, and caused him

to be baptised by that name; that other friends of the testator, viz,

S. G. White, C. R. Slaughter, and S. Garland, Jr., also named

their sons after said testator.

That the fifteenth clause of said will contains the following provision:

"I give to each of my namesakes, Samuel G. Slaughter, son of

Ch. R. Slaughter; Samuel G. White, son of Samuel G. White;

Samuel, son of Samuel Garland, Jr.; and Samuel G., son of "Captain" John F. Slaughter, a bond of one thousand dollars, of S. S.

railroad."

Now your orator alleges that the intention of the said testator

was, to give one of said bonds to him, as the son of Capt. John F.

Hawkins, and that the name "Slaughter" was inadvertently written by him in the will, and this allegation is based on several facts.

First. There was then "in existence" but one "John F. Slaughter," and the fact that he is mentioned in preceding clauses (the

7th and 10th) of the will, simply by his name, and without any prefix, shews that he could not have been meant in the connexion in

which the name is written in the fifteenth clause.

page 7 } Second. The said John F. Slaughter has not now and never has had the title of "Captain," which your orator's father has not only held the rank, but borne the title of "Captain" for very many years, was known and addressed by that title by the testator during their long acquaintance.

Third. Still more potential is the fact, that at the date of said will, John F. Slaughter had no son named "Samuel Garland," while Capt. John F. Hawkins did have a son of that name, to-wit: your orator. While it is admitted that said John F. Slaughter now has a son bearing the name of "Samuel Garland," it is stated as a fact the said son was not only "not in existence" at the time said

will was written, but was actually not born and named until nearly four years thereafter, to-wit: in the year 1861, and a very short time before the death of the testator. —— John F. Slaughter may have had such a son in contemplation after he saw his uncle's will, but it is hardly to be presumed that the testator had him in mind when he wrote his will. Clearly, therefore, "Samuel G.," the son of John F. Slaughter, was not the person to whom the testator gave the $1,000 railroad bond in question.

Fourth. The testator was heard to remark on several occasions after his will was executed, that he had given your orator a legacy.

Fifth. The rights of your orator as a legatee under said will were recognized, first by Samuel Garland, Jr., one of the ex'ors aforesaid, when in April, 1862, he made your orator a party defendant to a chancery suit brought in this court for the ascertainment

page 8 } and distribution of the estate of his testator, for it will be seen by a copy of the writ issued in the cause "Garland's ex'or vs. Garland, &c.," herewith filed as a part hereof and marked "B," a copy of an order of publication awarded in said cause, herewith filed as a part hereof and marked "C," and by an abstract from the rule book in the office of this court, copy of which, marked "D," is herewith filed as a part of this bill, that your orator was named and attempted to be proceeded against as defendant to said suit; and secondly, by the same John F. Slaughter, adm'r as aforesaid, who in April, 1863, filed his bill of revivor in said cause, copy whereof, marked "G," is herewith filed as a part hereof, and therein prayed that all of the parties to the former suit be made defendants to said bill. Of the existence of these suits, and of the fact that he

was mentioned as a party thereto, your orator but recently became informed. When the process in both causes is met, he was in the

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army and absent from his home, and hence the same was never served on him; moreover, at the date of the first process he was an infant.

Your orator further shews that in the causes above named, which are still depending in this court, sundry accounts of the various administrations of the estate of said testator have been taken, and from these, but especially from the report made by Com'r page 9 } Bocock, and filed November 5, 1872, an abstract from which, marked "S," is herewith filed as a part hereof, it appears that Sam'l Garland's ex'or as credited by one Southside railroad bond of $1,000, turned over to Sam'l G. Slaughter, son of John F. Slaughter, and this, although it was so well known both to the said ex'or and Mr. Slaughter, that said son was not entitled to receive said bond or any bond under the will. This transaction took place in February, 1862, when Sam'l G. Slaughter could not have been two years old, and hence at a time when he could not have been a party to the transaction even had he possessed all of the precosity of his father. It is therefore charged that Mr. John

F. Slaughter, with every reason to believe that your orator was entitled to this legacy, and with the fullest possible knowledge that his son was not entitled to any legacy under said will, so managed as to have this bond turned over to his own son. Thus it is that the personal representatives of the testator have all of them, hitherto wholly failed and refused to pay to your orator his legacy under said will, or any part of it, and that they have, in fact, with the fullest knowledge of your orator's rights in the premises, paid and turned said legacy over to a party not in any manner entitled to receive it.

And your orator is advised that he now has the right to come into your honor's court, and upon proving, as he is amply able to do, that the testator's true meaning and intent was to
page 10 } give to him the aforesaid legacy, to have a decree for the value of the same against said adm'r and his sureties.

Your orator further shews that the said testator died seized and possessed of a very large estate, worth probably $800,000, or more; that he held a very large number of first mortgage bonds of the Southside railroad—namely, forty-four, which were appraised at the value of $40,000, as shown by the report of the appraisement herewith filed as part hereof, marked "H"; that the bond—one of this class—to which your orator was entitled was worth at the date of said will $1,000, and your orator is advised that he is now entitled to recover from said adm'r the full value of said bond at the date of said will, with interest till payment, for the specific article bequeathed to your orator as aforesaid, has already been disposed of

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as above stated, and therefore the value thereof must be paid your

orator.

Wherefore, your orator prays that John F. Slaughter, administrator de bonis non with the will annexed of Samuel Garland, Sr.,

deceased, — Featherstone, administrator de bonis non of Henry

D. Flood, deceased, Mary R. Slaughter, James M. Cobbs, and Celeste P. Cobbs (nee Celeste P. Slaughter), Catharine M. Slaughter,

and Caroline M. Garland, be made parties defendant to this suit,

and be required, on their several corporeal oaths, full, true, perfect,

and complete answer to make to all and singular the alpage 11 } legations and charges of this bill; may this honorable

court construe the will of Samuel Garland, Sr., deceased,

aforesaid, and declare the true intent and meaning of the testator,

as to the gift contained in the fifteenth clause thereof aforesaid,

herein claimed to have been intended for your orator.

To the end that ample, full, and correct justice may be done,

may this cause, so far as may be necessary, be considered in connexion with the aforesaid cause of Garland's ex'or vs. Garland, &c.,

and Garland's adm'r d. b. n. vs. Garland, &c., and thereupon may

a decree be made against said adm'r and his said sureties, in behalf

of your orator for the value of the legacy aforesaid, to-wit: for

$1,000, with interest from the death of the testator till payment,

together with any interest that may then have been due on said

bond; or, if the court shall so order and decide, may the said administrator be required to turn over to your orator a first mortgage

bond of the S. S. railroad for $1,000, and pay to him interest on

said sum from the date aforesaid, and the difference in value, if any

there be, of said bond, between the time it should have been so

turned over and the present time, as, also, any interest due and uncollected on said bond at the time of the testator's death.

May all necessary accounts be ordered and taken; grant the

commonwealth's writ of subpœna, cammanding, &c., and such

other, further, and general relief in the premises, as the

page 12 } case may require, and equity and good conscious may

dictate, and to your honor may seem meet.

And as in duty bound, will ever pray, &c.

SAMUEL GARLAND HAWKINS,

By Counsel.

J. B. BROCKENBOUGH and

L. D. HAYMOND,

Counsel for Compl't.

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Exhibit "A."

I, Samuel Garland, Senior, of Lynchburg, Virginia, do make and declare this this to be my last will and testament, wholly in my handwriting—that is to say:

1. I direct all my just and lawful debts to be paid, if any, out of money on hand and debts due me; if needs be, by sales of stocks, corporate bonds, and outside lands, houses, and lots, not specifically devised.

2. I devise to my beloved wife, Mary L. Garland, my dwellinghouse and lot/, with all the appurtenances thereto belonging, for and during her natural life, and at her death to pass and belong to my nephew, Sam'l Garland, Jr., son of my late brother, M. H. Garland, dec'd, and his heirs forever, hoping and desiring he may pass it to his son, S. Garland—this is a mere request, wishing the property to be kept in my family.

page 13 } 3d. I give to my wife absolutely all my plate, household, and kitchen furniture, carriage and pair of horses,

wood wagon, provnder, and provisions for a year next after my death, also two milch cows—no inventory need be taken.'

This devise is intended to cover my missellaneous library, piano, &c.

4th. I likewise devise to my wife my favorite servant, Green, and all his children by his last wife, Ellen, dec'd, and grand-children, old Chorlotte and Tom Daniel, a carpenter, and his tools, with power of disposing of them by her last will to any child or children of our adopted daughter P. B. Morriss. In default of her

making such will, after the termination of her life estate, all these slaves, with the increase of the females to pass to all Paulina B. Moriss' children.

5th. I will and direct my executors to set apart fifty thousand dollars worth (at par value) of my bank and other paying stocks and corporate bonds, paying at least six per cent. per annum, the interest or dividends whereof must be paid to my wife half yearly, during her natural life, to be used as her own, without accountability on her part; at her death, the stocks, bonds, &c., to pass to Charles Y. Morriss in trust, for the use of his wife, our adopted daughter P. B. Morriss, and her children, as a separate

page 14 } estate. The slaves in the fourth clause to pass in the same way as a separate estate, and to the same trustee.

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6th. Like my late brother M. H. Garland, I give to my brother Nicholas A. Garland the balance of his debt to S. and M. H. Garland, already sunk by profit and loss, as well as any private debt due to me, and in addition one thousand dollars, to be paid by my executors, This is all he is to have from my estate. I commend him to my brother James, who raised him.

7th. I give to Charles R. Slaughter, S. Garland, Jr., and John F.

Slaughter, jointly, my law library.

8th. I wish my Missi. estates to be kept up a few years after my death, and cultivated under the general superintendance of my brother B. Garland (now residing at Barran's estate), and the annual profits vested in good six per cent. stocks, to the use of my estate, but if he, P. Garland, cannot attend to them, then they are left to — disposed of by sale or otherwise, at the discretion of my executors.

9th. My favorite brother B. Garland, raised by me, and long a resident of Mississippi, is, and has for a long time past been embarrassed in debt by losses of trade in 1837, and liabilities as surety for others. It might be unsafe to devise property to him page 15 } absolutely. I therefore set apart in trust, in the hands of my executors, for the balance of my said brother, either of my plantations in Hinds county, called "Barrens" or "Tudor Hall," whichever he may chose, and forty slaves in families, say about twenty-five hands and heads of families, children and house servants; to be selected out of the stocks on both places, mules, horses, stock, &c., sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his B. Garlands use, under his superintendance. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts and liabilities, other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss in trust, to the separate use of his wife Paulina B. Morriss and her children.

10th. After the fulfilment of all the above and foregoing devises,

then I give to John F. Slaughter the houses and lots now occupied

by him, S. W. Shelton, —— Burch, and garden on Seventh street

and the adjoining three tenements on 8th street, all in the same

square, and ten thousand dollars of my Southside railpage 16 } road bonds and no more of my estate; the well called

Jacob's well, is to remain a common to my other prop-

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erty now owned, or heretofore deeded to the use of his sisters and

S. Garland, Jr., and my residence.

11. I give to my sister May R. Slaughter, five thousand dollars

in Va. & Tenn. railroad bonds, this with what I have heretofore

given her, is all she is to have of my estate.

12th. I give to my nepher, Samuel G. White, of Albemarle, any

debt he may owe me, and twenty-five thousand dollars of my Orange & Alexandria railroad and Southside railroad bonds. This is

all I intend giving him, except so far as relates to Caroline and

Bob, two of Green's children, now an incumbrance to me, and

which I wish him to take this fall, with the consent of my wife. I

design this as a change in disposing of Green's family; should she

not consent, then my executors will pay their value in an increaseamount of S. S. railroad bond, say two thousand dollars more.

13th. I give to Charles R. Slaughter in trust, to the use of his three sisters, six thousand five hundred dollars each, which, with what I have heretofore given in houses and lots, Citizens' savings bank stock, &c., I estimate at ten thousand dollars each, as much as I design to give. I have confidence C. R. Slaughter,

page 17 } the trustee, will prevent waste, and will pay over the profits thereof to them and their descendants, and finally and at his discretion change the trust property, and settle it in such manner as he may deem best, without responsibility upon him.

14th. I likewise give to said Ch. R. Slaughter, five thousand dollars of my Va. & Tenn. or East Tenn. & Virginia bonds in trust, for the benefit of his brother Sam'l M. Garland, the interest to be paid him; and when he shall think it safe and prudent to do so, he may hand over the principle without responsibility.

15th. I give to each of my namesakes, Samuel G. Slaughter, son of Ch. R. Slaughter; Samuel G. White, son of Samuel G. White; Samuel, son of S. Garland, Jr.; and Samuel G., son of Captain John F. Slaughter, a bond of one thousand dollars of S. S. railroad. I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars or my East Tenn. & Va. railroad bonds or others of equal value.

16th. The house and lot now occupied by Maj. James Garland

and family and the Phant lot, I wish them to hold during their
joint and separate lives, rent free, and should the wife survive her
husband, she may devise the same, but this must be held liable to

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Maj'r Garland's debts to me, secured by deeds of trust upon slaves,
&c., money advanced, &c.

17th. I do not intend to die intestate as to any part of my estate
now held or hereafter acquired, and hereby make and declare
Charles R. Slaughter and Samuel Garland, Jr., jointly and equally
my residuary legatees, entitled to all the estate or estates,
page 18 } real, personal, or mixed, of which I may die seized and possessed, not hereby disposed — by this, my will, (in items
one to seventeen). I constitute and appoint them my executors,
with full and plenary powers to sell and convey real estate, and to do
and perform all acts needful to carry out the true intent and meaning of this will. I desire no security shall be required by court
granting administration.

Witness my hand and seal, seventh day of December, 1857, (fiftyseven.

S. GARLAND, Sr., [Seal.]

In the court of hustings for the city of Lynchburg, December

term, 1861.

This paper writing, purporting to be the last will and testament of Samuel Garland, Sen'r, dec'd, was produced in court, and the same being proved by the oath of Henry Dunnington and James Garland to be wholly in the proper handwriting of said Samuel Garland, Senior, dec'd, is ordered to be recorded.

Teste:

J. C. DIDLAKE, C'k.

page 19 } A copy—Teste:

SAM'L D. PRESTON, Clerk.

Exhibit "D."

The commonwealth of Virginia,

To the sheriff of the county — Bedford—Greeting:

We command you that you summon Mary L. Garland, widow and relict of Samuel Garland, dec'd, Burr Garland, Charles Y. Morriss, and Paulina B., his wife, Mary R. Slaughter, John F. Slaughter, as adm'r of Charles R. Slaughter, dec'd, in his own right and

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as trustee for Mary J. Slaughter, Celeste Slaughter, and Austina

Broadnax, the said Mary J. Slaughter, Celeste Slaughter, and Robert W. Broadnax, and Austina, his wife, Catharine M. Slaughter,

widow, and Mary E., Sam'l G., Charles A., and Catherine L.

Slaughter, children of said Charles R. Slaughter, dec'd, Samuel G.

White and Samuel G. White, his infant son, Samuel G. Slaughter,

Samuel G. Hawkins, infant son of John F. Hawkins, Austin Garland, James M. Garland, Lucy Garland, Elizabeth C. Garland,

Ellen P. Garland, Mary Francis Garland, and two others (names unknown), children of Nicholas A. Garland, dec'd (all expage 20 } cept the first three being infants under the age of twentyone years), to appear before the judge of the circuit court

of the corporation of Lynchburg, in the clerk's office of the said

court on the first Monday in May next, to answer a bill in chancery

exhibited against them in the said court by Samuel Garland, Jr.,

surviving executor of Samuel Garland, dec'd, and in his own right.

And have then there this writ.

Witness, James W. Dunnington, clerk of our said court, at the

courthouse in said corporation, this 21st day of April, 1862, and in

the 86th year of the commonwealth.

J. W. DUNNINGTON.

A copy—Teste:

SAM'L D. PRESTON, Clerk.

Return.

May 3d, 1862.

Executed on Samuel G. Hawkins by delivering to his father, John

F. Hawkins, at the place of residence of the said Sam'l G. Hawkins, a true copy of the within summons in chancery, and explaining the purport thereof to him, the said Sam'l G. Hawkins not bepage 21 } ing found at his usual place of abode.

T. E. SANDERSON, D. S.,

For WM. H. PATE, S. B. C.

A copy—Teste:

SAM'L D. PRESTON, Cl'k.

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Hawkins v. Garland's adm'r & als. 27

The foregoing summons in chancery is endorsed as follows, towit:

G. & CH., p. q.

Garland, Sen'r, ex'or, v. Garland.

Spa. in ch'y.

Execute on Sam'l G. Hawkins only.

Teste:

J. W. D., C'k.

If he is not in the county, execute by leaving a copy at his place

of residence—Bedford.

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28 Hawkins v. Garland's adm'r & als.

Exhibit "C."

Virginia:

page 22 } At rules held in the clerk's office of the circuit court

for the corporation of Lynchburg, on Monday, the 5th

day of May, 1862:

Samuel Gardner, Jr., surviving executor of Samuel } Plaintiff,

Garland, deceased, and in his own right,

against

Mary L. Garland, widow and relict of Samuel Garland, deceased, Burr Garland, Charles Y. Morriss and Paulina B., his wife, Mary R. Slaughter,

John F. Slaughter as administrator of Charles R.

Slaughter, deceased, in his own right and as trustee for Mary J. Slaughter, Celeste Slaughter and

Austina Broadnax, the said Mary J. Slaughter,

Celeste Slaughter, and Robert W. Broadnax and
Austina, his wife, Catherine M. Slaughter, widow,
and Mary E., Sam'l G., Chas. A., and Catherine
L. Slaughter, children of said Charles R. Slaughter, deceased, Samuel G. White and Samuel G. White, his infant son, Samuel G. Slaughter, Samuel G. Hawkins, infant son of John F. Hawkins, Nicholas A. Garland, and Austin Garland, James
M. Garland, Lucy Garland, Elizabeth A. Garland, Ellen P. Garland, Mary Frances Garland,
and two other (names unknown) children of said
Nicholas A. Garland (all except the first three
page 23 } being infants under the age of twentyone years), } Defendants.

In chancery.

The object of this suit is to construe the will of Samuel Garland, deceased, and to distribute the same between the widow (who has renounced the same) and the residuary legatees.

And it appearing by proper affidavit filed that the defendants, Samuel G. Slaughter and Nicholas A. Garland and his children, are non-residents of the state of Virginia, it is ordered that they do appear here within one month after due publication of this order and do what is necessary to protect their interests; and that

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PAGE 00437 (Image 17)

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a copy of this order be published once a week for four successive

weeks in the "Lynchburg Republican," a newspaper published in

the city of Lynchburg, and posted at the front door of the courthouse on the first day of the next term of the court of hustings.

A copy—Teste:

J. W. DUNNINGTON, Cl'k.

May 6—w. 4 w. GARLAND & CHRISTIAN, p. q.

page 24 } I hereby certify that the annexed order of the circuit

court for the corporation of Lynchburg, case Samuel

Garland, Jr., surv'g ex'or Samuel Garland, dec'd, and in

his own right, vs. Mary L. Garland et als, was published in the

Lynchburg Republican for four successive weeks, as per order of

the court.

Given under my hand, this 30th day of October, 1862.

GEO. W. HARDWICKE,

Prop'r of Republican.

Printer's fee, $12 50.

City of Lynchburg, to-wit:

This day J. W. Dunnington, clerk, &c., made oath before me, a

justice of the peace in and for said city, that the within order of publication was posted according to law.

Given under my hand, this 30th day of October, 1862.

JOHN H. FLOOD, J. P.

The foregoing is a copy of the order of publication filed in the chancery cause of Samuel Garland's administrator vs. Mary L. Garland et als, pending in the circuit court for the city of Lynchburg.

Teste:

SAM'L D. PRESTON, Clerk.

Jan'y 7, '78.

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PAGE 00438 (Image 18)

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[THIS IS A TABLE: The page shows "Exhibit D." which appears to be a legal document table with columns for "Page 25", "1862", "Record.", "P'lf.", "G. Ch.", "D'f't.", "Parties names.", "Return.", "January.", "February.", "March.", "April.", "May.", and "July 26." The table contains legal proceedings information including names like "Samuel Garland, Jno. surviving ex'or of Samuel Garland." and various other parties. There are notations about returns and dates throughout.]

The foregoing is a transcript from the rule book (chancery) of the circuit court for the city of Lynchburg. SAM'L D. PRESTON, Cl'k.

Teste:

Jan'y 8, 1878.

page 26 } Exhibit "G."

To the Honorable Hunter H. Marshall,

Judge of the circuit court of the corporation of Lynchburg:

The bill of revivor of John F. Slaughter, administrator with the

will annexed of Samuel Garland, Jr., deceased, and the acting executor of Samuel Garland, Jr., deceased, respectfully represents—

That the said Samuel Garland, Jr., in his lifetime, as surviving

executor of Samuel Garland, Jr., deceased, exhibited in this court

as executor aforesaid, and in his own right, against Mary L. Garland, his widow, your orator and others, the legatees of said Samuel Garland, Sr. For the construction of the will and the distribution of the devises and bequests thereof, to the said original bill

your orator refers for certainty.

Your orator further represents that the said Mary L. Garland

having renounced the provisions of said will in her favor, and resorted to her statutory rights in such case provided, a question

arose between your orator in his own right, and as trustee for

Mary J. Slaughter, Celeste Slaughter, and Austina Broadnax, and

the said Samuel Garland, Jr., and the widow, heirs of Charles R.

Slaughter, dec'd, the principal devisees and legatees of said will,

whether they should rateably bear the disappointments produced by the renunciation of the said Mary L. Garland, or

page 27 } whether it should fall entirely on the portion of Samuel Garland, Jr., and Charles R. Slaughter, which issues are still depending and undetermined.

Your orator further represents that sometime in the month of August last, the said Samuel Garland, Jr., died, having previously made his last will, constituting Richard G. H. Kean and himself executors thereof, which said will was duly admitted to probat in the court of hustings of the city of Lynchburg, at the —— term, 1862, thereof, when your —— qualified as the executor thereof, the said Kean having for the present declined doing so. An authenticated copy of said will, together with a certificate of its probat, and the certificate of your orator's qualification as the executor thereof, is herewith filed, marked A, as parts of this bill.

Your orator further represents that at the —— term, 1862, court of hustings of said city, he qualified as administrator de bonis non with the will annexed of the said Samuel Garland, Sen'r,

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PAGE 00440 (Image 20)

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page 28 } deceased, as will appear by the annexed certificate, marked B, since which no proceedings have been had for

the want of a revivor.

Your orator, reserving to himself the full benefit of the issues made by him, for himself and his said three sisters, as fully and effectually as if the said Samual Garland, Jr., had not died, but were still living and prosecuting said suit for himself, therefore prays that all the party defendants to the said original bill be made defendants to this amended bill and answer the same, and show cause, if any they can, why the said suit should not stand revived in the name of your orator, as administrator de bonis non with the will annexed of Samuel Garland, Sr., dec'd, and as executor of Samuel Garland, Jr., dec'd, and that the same be ordered, &c.

Exhibit A.

I, Samuel Garland, Jr., of Lynchburg, Va., do make this my last will and testament, hereby cancelling and revoking all previous wills, or parts of wills, or codicils heretofore made by me.

Item 1st.

page 29 } I give half of my estate to my mother, to be estimated as nearly as may be without involving delay or trouble, by my executors. The house and lot in which she resides, the family servants, household and kitchen furniture, library, and family plate, (which may not be specially given away,) to be included in her half, upon a rough estimate of their value, but

without an inventory on the premises.

Item 2d.

Having already conveyed to my Aunt Mary my remainder interest in the house and lot on which she resides, I leave her as a memento the plated silver water-cooler, which was presented to my late wife by C. H. Lynch, which she will prize as once belonging to one whom she loved.

Pages 441-460

TRANSCRIPTION OF JML_MS1939_GARLAND_B1_F7_00441-00460

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PAGE 00441 (Image 1)

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Item 3d.

I give to Major James Garland's daughters any interest I may have in the house and lots occupied by him—placing the matter in this form to insure the use and benefit of the property to them in all contingencies. I further surrender all claim and demand I may have against Major Garland, and in addition give him the sum of one thousand dollars.

Item 4th.

I give to J. F. Slaughter the sum of five thousand dollars in good

railroad bonds at par valuation—thus acknowledging my appreciapage 30 } tion of his zealous friendship, especially during the war.

Item 5th.

I give to his three sisters two thousand dollars each in good railroad bonds at par value; but if any of them die unmarried or without issue before my death, then the legacy to such to lapse into the

residuum of my estate.

Item 6th.

I give to Dr. Samuel M. Slaughter twenty-five hundred dollars

in good stocks at par value.

Item 7th.

I give to Dr. Wm. P. Garland five thousand dollars in good

stock at par value.

Item 8th.

I give to my venerable uncle, Hudson M. Garland, Sr., the sum

of five hundred dollars, to be paid him at once, in case he survives

me, out of which to provide himself with such luxuries as he may

choose, any unexpended balance to be taken by Mrs. Henrietta

Boyd without account. If I survive my uncle, this legacy to lapse.

Item 9th.

I give to my Uncle Landon C. Garland twenty thousand dollars in property or stocks, as may be agreed upon with my executors; in property or stocks, as may be agreed upon with my executors; and further leave him my sword, sword-belt, and sash, as the most suitable custodian since the death of my son.

Item 10th.

page 31 }

I give to my aunt, Mrs. Anne P. Garland, for her own use and that of her children, fifteen thousand dollars (the number of her children being less than uncle Landon's), to be paid over in stocks or good securities to her, to make such apportionment as she thinks proper.

Item 11th.

To prevent my wishes as to my dear cousin, Nannie R. Garland, from being defeated by any overestimate into which I may have

fallen, I give her ten thousand dollars in good securities, to be accounted for by her as a residuary legatee in the event that the respective shares of the residuary legatees exceed ten thousand dollars each. I mean to say that Nannie is to have at least ten thousand dollars in good securities, even if my mother is to be called

upon to contribute to make it up.

Item 12th.

I give to my friend, Sallie Grattan, ten thousand dollars of my

best stocks.

Item 13th.

To such of the following persons as may be living at my death,

I give one thousand dollars each in good railroad bonds at par

value, my executors to select, and their selection not to be questioned by the beneficiaries, to wit: The sons and daughters of John

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PAGE 00443 (Image 3)

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page 32 } G. Meem, cousin Betsy, Ann and Eliza Garland, and

Rev'd W. H. Kinckle. In the event of the death of any

one of them before me, except Rev'd W. H. Kinckle,

such legacy to lapse into my residuary estate.

Item 14th.

Whatever may be left of my estate, after deducting my mother's

half and these legacies, I give to Hugh A. Garland, Nannie R. Garland, and L. Rose Lewis (daughter of L. C. Garland).

Item 15th.

I invest full discretionary powers in my acting executor or executors to sell my real estate in Virginia, Arkansas, Mississippi and

Missouri, or the negroes on the plantations in which I am interested.

Item 16th.

I have not given property to my honored relative, Charles R.

Slaughter, because he has no need of it. Let my mother present

him with some suitable memento on my behalf.

Item 17th.

I hereby appoint Charles R. Slaughter & John F. Slaughter my

executors, who shall not be required to give security. In the event

of the death of both, I request my friend, R. G. H. Kean, to qualify.

Item 18th.

I hereby give to C. H. Lynch, as an evidence of my appreciation

of his great regard for my late wife, my horse Bayard—let my

mother keep Raymond.

page 33 } Item 19th.

I give my pistol to R. G. H. Kean as a token of my regard.

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PAGE 00444 (Image 4)

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36 Hawkins v. Garland's adm'r & als.

Item 20th.

I request my mother, without troubling my executors about it, to give to my family servants, and especially my faithful body servant, Henry, and nurse Julia, such moderate sums of money as she may think proper, as an evidence of my regard. They have sense enough to know that their present position is best for their comfort and happiness. I desire that Henry & Julia may have all practicable indulgencies consistent with law.

Witness my hand and seal, this 7th day of February, 1862.

SAM'L GARLAND, JR. [Seal.]

1st codicil.

I give to my friend, John T. Murrill, five hundred dollars.

I give to W. H. Kinckle, or his successor, as the rector of St.

Paul's church, Lynchburg, one thousand dollars, to be expended at

his discretion, for the charity school attached to the church.

Witness my hand and seal, 7th Feb'ry, 1862.

SAM'L GARLAND, JR. [Seal.]

2nd codicil.

The lamented death of C. R. Slaughter, which has just transpired, induces me to request that my friend Kean should

page 34 } qualify along with my cousin and J. F. Slaughter, without giving security.

2nd. The mutation of affairs induces me, upon reflection, to direct an order of payment for the within legacies, as follows:

1st. Those to the families of my mother's brothers, including L.

C. Garland's, and that to Sallie Grattan & Mary Garland's daughters.

2nd. Those to aunt Slaughter's family.

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PAGE 00445 (Image 5)

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3rd. The other legacies remaining.

Witness my hand and seal, this 14th day of February, 1862.

SAM'L GARLAND, JR. [Seal.]

At a court of hustings for the city of Lynchburg, begun and held at the courthouse thereof, on Monday, October 6th, 1862:

This paper writing, bearing date the 7th day of February, 1862, and purporting to be the last will and testament of Samuel Garland, Jr., deceased, and a codicil annexed bearing date the 7th day of February, 1862, and another codicil annexed, bearing date the 14th day of February, 1862, was produced in court by John F. Slaughter, one of the executors therein named; and said will and codicil being proved by the oath of Chiswell Dabney, John O. L.

page 35 } Goggin and Austin M. Trible to be wholly in the proper handwriting of said Samuel Garland Jr., deceased, the said paper writing, including will and two codicils, was ordered to be recorded as and for the last will and testament of said Samuel Garland, Jr., deceased.

And on motion of John F. Slaughter, one of the executors named in the said will, who made oath thereto, and entered into and acknowledged a bond in the penalty of four hundred thousand dollars, conditioned as the law requires, certificate is granted him for obtaining a probate of the said will in due form, liberty being reserved to the other executor named in said will to join in said probat when he shall think fit.

Teste:

J. C. DIDLAKE, C'k.

A copy—Teste:

J. C. DIDLAKE, C'k.

The foregoing is a copy of the bill of revivor filed in the chancery cause of Samuel Garland's administrator vs. Mary L. Garland, et

page 36 } als., pending in the circuit court for the city of Lynchburg.

Teste:

SAM'L D. PRESTON, Clerk.

Jrnuary 7th, 1878.

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PAGE 00446 (Image 6)

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Exhibit S.

2.

Dr. The estate of Samuel Garland, Sr., dec'd,

In account with Sam. Garland, Jr., executor. Cr.

1862.

Sept. 6. By this amount collected by

this executor from his

qualifica—— to this date,

per report Com'r Gordon, not including bonds
paid special legacies, 12,466 89

" this amount bonds—V. &
T. R. R. Co.—paid legafees, 5,000 00
" this amount bonds
E. T. & V. R. R.
Co.—paid legafees, 5,000 00
" this amount bonds
S. S. R. R. Co.,
paid legatees, 1,000 00
11,000 00

" To this amount disbursed by
this executor in payment
of debts and charges, per
report Com'r Gordon, 12,402 50

To special legacies paid by this
executor, as follows:

To Mrs. Mary R. Slaughter,
Feb. 13, 1862, bonds V. & T.
R. R. Co., 5,000 00
Interest p'd
h e r o n
same, 43 33
5,043 33

To Sam. G. Slaughter, son of Jno. F
bonds of S. S. R.
Co., Feb. 13, 1862,
1,000 00
Interest p'd
on same, 8 67
1,008 67

To Sam. M. Slaughter, Sept. 2, 1862,
bonds E. T. & V.
R. R. Co., 5,000 00
Interest p'd
him, 192 50
5,192 50
11,244 50

[Page 37.]

Sundry advancements to Mrs.
Mary L. Garland—see her
acco. of advancements, 2,286 96

To commis. allowed on $12,466-
89, actual receipts, at 5 p. ct., 623 34
To commis. allowed on $11,000
of bonds paid legatees, at 1
p. ct., 110 00

Sept. 6. Balance due this executor, 3,200 41

$26,667 30 $26,667 30

Advancements and special legacies paid this year.

Va. and Ten. R. R. bonds, 5,000 00
E. T. and V. R. R. bonds, 5,000 00
S. S. R. R. bonds, 1,000 00
Interest paid, 244 50
Advancements to Mrs. M. L. Garland, 2,286 96
13,531 46

The balance above, $3,200, Confederate money, scaled at its
value, Sept. 6, 1872, at 2½ for one, is worth $1,280 in currency representing gold.

A copy—Teste:

SAM'L D. PRESTON, Clerk.

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[Page 38.]

Exhibit H.

In the hustings court for the city of Lynchburg.

October term, 1862:

Ordered, That John Wm. Murrell, David W. Burton, Henry Dunnington, Henry H. Lewis, and Samuel W. Shelton, or any three of them, after being first duly sworn for that purpose, do inventory and appraise the personal estate of Samuel Garland, Senior, and make report thereof to this court.

A copy—Teste:

J. C. DIDLAKE.

City of Lynchburg, to-wit:

Henry Dunnington, H. H. Lewis, and Sam'l W. Shelton, who have been nominated and appointed by the hustings court of the city of Lynchburg appraisers of the estate of Samuel Garland, Sen'r, this day personally appeared before me, Henry O. Schoolfield, a justice of the peace for the said city, and were duly sworn by me truly and justly, to the best of their judgment, to view and appraise all the goods and chattels of the said Samuel Garland, Sr., which shall be produced and shewn to them for appraisement.

Given under my hand, this 16th day of October, 1862.

HENRY SCHOOLFIELD, J. P.

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PAGE 00449 (Image 9)

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Hawkins v. Garland's adm'r & als. 41

[Page 39.]

Inventory and appraisement of the personal estate—Samuel Garland, Sen'r, deceased—18th day of October, 1862.

1 washstand and furniture, 12

1 wardrobe, 15

1 carpet and rug, 10

1 pine table, 1 50

1 arm-chair, 2

1 bedstead, 2 feather beds and furniture, 60

1 mahogany beauro, 15

1 washstand and pine table and furniture, 5

1 carpet and matting, 25

1 stair carpet and rods, 20

1 lounge, 5

8 cane-bottom chairs, $2 50, 20

1 hat rack, 20

1 marble slab and brackets,	15
	225 50
1 lot silver plate,	1,550 00
1 " plated ware,	100
1 carpet and rug,	25
1 arm-chair,	5
1 dining extension-table,	50
1 pair mirrors,	40
1 couch and bedding,	25
1 E "tage",	10
1 side-board and press,	60
1 lot table-ware and china,	175
1 lot kitchen utensils,	50
	440 00
1 rosewood bed and furniture,	200
1 " bureau,	150

1 rosewood wardrobe,	125
2 chairs, $15 00,	30
1 rocker,	20
1 arm-chair,	15
1 carpet and rug,	30
Amount carried forward,	2,885 50

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Amount of inventory brought forward, 2,885 50

4 rosewood brocatel chairs, $20 00, 80 00
2 " " arm-chairs, $50 00, 100 00
1 " reception chair, 20 00
2 " brocatel tete-a-tates, $100 00, 200 00
1 " lounge, 75 00
1 marble-top centre-table, 125 00
1 p'r gilt oval mirrors, 200 00
800 00

1 marble-top candle-stand, 25
1 rosewood etage, 25
1 Brussels carpet and rug, 100
1 parlor clock (out of order), 10
Furniture for 4 windows, $35 00, 140
1 rosewood piano (7 octaves), 500
12 mahogany hair-bottom chairs, $2 00, 24
1 arm-chair, 15
2 tete-a-tetes, $15 00, 30
1 velvet carpet and rug, 50
919 00

1 divan, 7 50

1 small marble-top centre-table, 10 00

1 nest of tables, 8

1 library case, 15

[Page 41.]

1 lot books—94 vols., 50

2 bronze chandeliers, $40, 80

1 mahogany bedstead and furniture, 100

1 " wardrobe, 35

305 50

1 " table and furniture, 20

1 " bureau, 45

1 rosewood shaving stand, 25

1 washstand and furniture, 50

13 windsor chairs, $1, 13

1 rocking-chair, 10

1 carpet and rug, 15

1 lot carpet and crumb cloth, 25

1 lot matting, 5

208

Am't carried forward, 5,118

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PAGE 00451 (Image 11)

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(3rd page.)

Am't inventory bro't forward, 5,118

1 mahogany work-stand, 7
1 " bedstead, bed and furniture, 100
1 children bed, bedstead, &c., do. 20
1 washstand and furniture, 12
1 table, 1 50
1 bureau and glass. 15
1 carpet and rug, 7
1 bedstead and furniture, 50
1 mahogany bureau, 20
2 milch cows and 1 calf, 80
1 wagon and harness, 60
372 50
1 match black carriage horses, 600
1 carriage and harness, 400

[Page 42.]

1 negro man—Tom Daniel—a carpenter, 2,000
1 " boy—Lawrence—ruptured badly, 800
1 " girl—Emma, 600
1 " " Betsy, 1,000

1 " " Lucy, 1,350

1 " woman—Mary Ann—and 3 children, 3,000

1 " woman—Charlotte—old; expense to estate, 0,000

109 shares Commonwealths bank stock, $100 10,900

130 " Citizens savings " 100 13,000

225 " Merchants " 100 22,500

10 bonds city of Memphis, $1,000, 10,000

8 " city of Lynchburg, at gross am't, 4,800

43 " Orange & Alex'a railroad, 6 p. ct., at gross am't, 35,000

23 " East Tenn. & Va. railroad, 6 p. ct., at gross am't, 15,000

54 " Va. & Ten. railroad, 6 p. ct., at gross am't, 45,000

44 " Southside railroad, 6 p. ct., at gross am't, 40,000

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PAGE 00452 (Image 12)

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44 Hawkins v. Garland's adm'r & als.

200 shares Va. & Tennessee railroad, stock guar'd, $100, 20,000

40 " Orange & Alex'a railroad, stock guar'd, $50, 2,000

1 bond East Tenn. & Va. railroad, 80

500 shares Lynchb'g Hose and Fire Ins. Co.
stock, $20, 10,000

500 shares Lynchb'g Hose and Fire Ins. Co.
(no certificate issued) $20, 10,000

Amount carried forward, 253,520 50

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PAGE 00453 (Image 13)

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Hawkins v. Garland's adm'r & als. 45

(4th page.)

Am't of inventory bro't forward, 253,520 50

4 shares American telegraph co.'s stock,
$100, 400

2 " Lynchburg and Concord turnpike stock, $100 200

2 " Campbell C. H. turnpike stock,
$100, 200

2 " Pittsylvania, $100, 200

1 " Toll-bridge, 200

[Page 43.]

10 " Lynchburg savings bank, $50, 500

6 " James River and Kanawha co.,
$100, 600

Bonds Desha county level (Arkansas), 18,616 96

Orange and Alex'a railroad bonds, 6 p.
ct., in the hands of Chas. Scott,
per rec't, 4,000 00

320 vols.—law library—average, $2 each, 640 00

Bond Elizabeth and Debora Morris, 2,500 00

Hezekiah Falwell, balance due on contract for purchase of land, 605 85

1 note Alfred and Mary Johns, 1,000 00

Charles H. Massie, amount for purchase
of house and lot, 5,000

Thomas S. Thurman, balance on contract for negroes, 1,144 44

2 notes William L. Bell, gross am't, 528 23

F. W. Isbell, bal. due on deed of trust.
unsettled, 568 85

George M. Tinsley, bal. due on bond, 54 20

1 bond Dennis Sullivan, 55 72

Mary Rosser's trustee's bal. due, 231 80

Paulina B. Garland—advancements ch'd
on books, 20,571 50

1 due bill—Thomas Gordon, 10 00

Samuel Garland, Jr., bal. due per acco., 67 75

Dabney Martin, unsettled bal. on deed
of trust, 258 00

Maurice—a negro boy, 1,800

½ interest in 1 iron safe, valued at $100, 50

$818,023 82

H. H. LEWIS,

SAM'L W. SHELTON,

H. DUNNINGTON.

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PAGE 00454 (Image 14)

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page 44 } In the court of hustings for the city of Lynchburg.

November term, 1862:

This inventory and appraisement of the personal estate of Samuel Garland, Sen'r, dec'd, was returned into court and ordered to

be recorded.

Teste:

J. C. DIDLAKE, C'k.

A copy—Teste:

SAM'L D. PRESTON, Clerk.

page 45 } And the defendants not appearing, on motion of the

plaintiff, by counsel, it was—

Ordered, That said bill be taken for confessed, unless the said

defendants should appear and answer the same at the then next rules.

At which day, to-wit:

At rules held in the clerk's office of the circuit court for the city of Lynchburg, on the first Monday in February, 1878:

Came the defendant, John F. Slaughter, administrator de bonis non, with the will annexed, of Samuel Garland, S'r, deceased, by counsel, and filed his answer to the plaintiff's bill—which said answer is in the words and figures following, to-wit:

The separate answer of John F. Slaughter, administrator de bonis non, with the will annexed, of Samuel Garland, Sr., dec'd, to the bill of complaint exhibited in the circuit court of Lynchburg against him and others by Samuel G. Hawkins.

This respondent doth demur to the said bill for want of equity, and says that, according to the showing of the bill itself, the plaintiff is not entitled to have and maintain this suit against him and his sureties—

1st. Because the said bill seeks to vary, change, and explain the written will of Samuel Garland, Sr., by extrinsic facts

page 46 } and evidence, which it is not competent for a court of equity to look into for any such purpose.

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2nd. Because if all the facts, inferences, and deductions of law

set forth in said bill were true, then, upon the case therein stated,

the plaintiff has no cause of complaint or suit against this respondent and the sureties on his official bond, as it appears from the bill

itself that the legacy sought to be recovered was paid over and delivered to another party by one of the executors of the said Samuel

Garland, Sr., long before this respondent became the administrator

de bonis non or had any control over the estate; and further, because there are divers other errors and insufficiences in the said

bill.

And reserving to himself all proper exceptions to the said bill

for the errors and insufficiences aforesaid, as well as for all other

errors, insufficiences, inaccuracies, and mispleadings in the said bill

contained, and not waiving the same, respondent, for answer to

so much of the said bill as he is advised it is material for him to

answer unto, answers and says:

page 47 } It is true that Samuel Garland, Sr., executed his will

on the 7th day of December, 1857, which will was written by himself, and is entirely in his own handwriting.

It is also true the said Samuel Garland lived nearly, if not quite,

four years after said will was executed and published, and died

about the close of November, or beginning of December, 1861.

It is also true that Charles R. Slaughter and Samuel Garland,

Jr., the executors named in said will, qualified as such.

It is also true that Charles R. Slaughter died in the month of

February, 1862, and that Samuel Garland, Jr., was killed in battle

on the 14th of September, 1862, after which this respondent qualified as administrator de bonis non, with the will annexed, of the

estate.

The said executors administered the estate partially in their lives,

and paid and delivered over a number of the legacies specified in

the will.

This respondent admits that the 15th clause of the said will is

correctly set forth in the bill, but he does not admit that it is susceptible of the construction which the plaintiff seeks to give it;

and respondent is advised that the plaintiff will not be permitted

to show by parol evidence that the testator intended by

page 48 } the words used to give him one of the legacies specified

in the said clause, for that would be seeking to make a

new will for the testator.

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PAGE 00456 (Image 16)

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Further answering, respondent admits that he never held any commission in the militia, or in any other military organization, and that he is not entitled to the designation of "Captain", though he has higher titles given him to which he is as little entitled, as was the case with many even before the late war, and is so now with a greater number.

He also admits that he did not have a son of the name of Samuel G. or Samuel Garland at the date of the will, but he did have a son of that name born sometime before the death of the testator, who was living at his death and is still living.

The executors of the will, Samuel Garland, Jr., and Charles R. Slaughter, were also the residuary legatees under the will, and as such entitled to all the estate not devised or bequeathed to others, and which the widow could not take in the event of her renunciapage 49 } tion of the provision made for her, and as part of which residuum they were entitled to all void or lapsed legacies.

Both of said executors well knew the condition of respondent's family and the names of his children, for one of them was his brother and the other his first cousin, and he was on most intimate and confidential terms with them as well in business as social relations. They both knew that respondent had no son of the name of Samuel G. at the date of the will of the testator, and they both knew very well that he did have a son of that name born after the date of the will and living at the death of the testator. They were both lawyers, and lawyers of high standing in their profession, having been for some years engaged in the practise of the law—the active participation in the practise by Samuel Garland, Jr., being

suspended only by his entry into the Confederate service at the beginning of the late war.

When the contents of the will were made known, and the 15th clause examined, the question was mooted whether the respondent's son was entitled to the legacy under that clause, or page 50 } whether that legacy was void because there was no person answering to the description "Samuel G., son of John F. Slaughter," at the date of the will.

Both of the said executors very promptly agreed that respondent's son was entitled to the legacy, because he answered the description at the death of the testator, and Samuel Garland, Jr., as executor, handed over the legacy to respondent for his son, who was too young to receive it himself; that is, in February, 1862, he handed to respondent, as natural guardian of his son, Samuel G., a bond of one thousand dollars, executed by the Southside railroad company,

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which the testator owned at his death, and that bond this respondent has held ever since in trust for his said son.

Of the delivery of the said legacy the said Samuel Garland, Jr., made an entry on his books in his own handwriting, which will be produced if necessary.

Respondent is advised that it is an immaterial fact that he is styled "Captain John F. Slaughter" in the 15th clause. The title page 51 } is mere surplusage, and does not affect the validity of the legacy.

Further answering, respondent says, that while it is true that he had no son of the name of Samuel G. at the date of the will, yet, the testator expected him to name a son after him, and on several occasions mentioned the matter to the wife of respondent, who informed him that his time had not yet arrived. It is a fact to be noted that all the persons named in the said 15th clause to whose sons legacies are given were nephews of the testator, and there is no person named in the said will as a legatee who was not a near relative of the testator.

The said testator was a lawyer who had long been engaged in an extensive practise. He was a very accurate and circumspect business man, who always kept books showing the condition of his estate, and of what it consisted, and was very particular with his papers.

It is hardly to be presumed that after writing his will he did not read it over to see whether there were any errors or ommissions in it, and it is incredible that he should have kept the said will from the date it was written for four years without once recurpage 52 } ring to it to see whether it would carry out his wishes and purposes. Had he, in writing the will, made a mistake in the name of any of the intended beneficiaries, a very cursory perusal would have made the mistake apparent, and have resulted in a correction of the error.

The insinuation in the bill that respondent "may have had such

son in contemplation after he saw his uncle's will" is entirely gratuitous, and not at all creditable to the legal acumen of the counsel

who penned it.

If the testator exhibited his will to others, or left it where others

might see it, how is it that he did not examine the will himself and

correct the alleged mistake, if one was in fact made? It is a little

singular that, if he exhibited his will to others, and if he "was

heard to remark on several occasions after his will was executed

that he had given given your orator (the plaintiff) a legacy," he never

looked at the will himself.

page 53 } The fact is that respondent never saw the will or had

any knowledge of its contents, until after the testator's

death.

Respondent admits that there was and is still is a "Captain John

F. Hawkins," who was a client of the testator, and on friendly relations with him, as is pretty generally the case between counsel

and client.

It is also true that said Hawkins has a son named Samuel G.

Hawkins, who is now the plaintiff in this suit, and who the respondent has no doubt, was named after testator, but respondent does

not admit that that fact entitles him to a legacy under the will of

the said testator.

Respondent does not admit that Samuel Garland, Jr., as executor or in any other capacity, ever admitted that the plaintiff was

entitled to a legacy under the will of the testator.

It is true that it appears that the original subpœna in the case of

Garland's ex'r vs. Garland and others, embraced the name of Samuel G. Hawkins, but it will be seen by an inspection of the bill

filed in the case in the name of said Samuel Garland, Jr., as ex'r,

page 54 } &c., which is entirely in the handwriting of Major James

Garland, the counsel employed by him—the name of

said Samuel G. Hawkins is never once mentioned; but on the contrary, it is stated more than once in the said bill, that Samuel G.,

the son of this respondent is entitled to a legacy under the 15th

clause of the will.

So when respondent, after the death of Samuel Garland, Jr.,

filed his bill of revivor he made in recognition of any claim of

said Samuel G. Hawkins, though it is true that he asks that all of

the parties to the original suit be made parties to the bill of revivor, so that the suit might be revived against them.

He would have had to have done that, even if the said Hawkins

had been a defendant to the original suit, and had answered claiming the legacy in question, and such a prayer would have implied

no assent to his claim, even in that case.

The fact is that respondent was not aware that the name of the

said Hawkins was mentioned in the subpœna, and he cannot con-

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PAGE 00459 (Image 19)

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ceive for what purpose it was inserted therein and omited in the

bill, unless the insertion in the subpœna was a mistake of the counsel or of the clerk.

page 55 } This respondent says that he never heard in any way of the claim of said Hawkins to the legacy which he

now claims, until the subpœna in this case was served on him in

the month of December last.

No demand was ever made on him for said legacy, and he believes

none was ever made on either of the executors.

It is a little singular that the plaintiff should have slept on his

supposed rights so long, and that his first demand for the legacy

alleged to be his, should be made in suit in chancery.

Respondent admits that his testator died possessed of a large estate, all of the particulars of which fully appear by the accounts

stated in the case of Garland's ex'r vs. Garland and others.

Whatever may be the decision of the court in this case, no accounts in regard to the estate will be necessary, and it was entirely

unnecessary to make the sureties of respondent parties to this suit.

In conclusion respondent will say, that the charge made against

himself and Samuel Garland, Jr., that, with a full knowledge of

the plaintiff's rights, they managed and contrived to have

page 56 } the legacy to which the plaintiff was entitled turned over

to the son of respondent, is not only utterly false, but it

is a very unworthy imputation upon the character of as pure and

stainless a soldier as any that drew his sword in defence of his

country in the late struggle.

There is nothing in all the history of that gallant follower of the

immortal Lee, either public or private, which furnishes the faintest

pretext for the unwarranted liberty taken with his name and character.

And now having fully answered, and insisting that the plaintiff

has no right to implead him in this court in this matter, this respondent asks to be hence dismissed with his costs, &c.

JOHN F. SLAUGHTER.

J. A. EARLY,

Counsel for def't.

City of Lynchburg, to-wit:

This day John F. Slaughter personally came before me and made oath that the statements in the foregoing answer are true to the best of his knowledge and belief.

Given under my hand, this 4th day of Feb., 1878.

H. F. BOCOCK, Com'r, &c.

page 57 } To which said answer the plaintiff replied generally,

and said cause was set for hearing as to said defendant;

and the other defendants still failing to appear, on motion of the plaintiff, it was ordered that the bill be taken for confessed as to them, and said cause set for hearing.

At another day, to-wit:

At a circuit court for the city of Lynchburg, held at the courthouse thereof, on Saturday, the 11th day of May, 1878:

On the motion of J. H. Featherston, administrator de bonis non of Henry D. Flood, deceased, and upon condition that the trial of this cause is not to be thereby delayed, leave is granted him to file

his answer to the plaintiff's bill.

Whereupon he filed the same, and the plaintiff replies generally thereto.

Which said answer is in the words and figures following, to-wit:

The answer of J. H. Featherston, adm'r de bonis non of Henry D. Flood, dec'd, to the bill of Sam'l G. Hawkins against John F. Slaughter, adm'r de bonis non of Sam'l Garland, Sr., dec'd, this respondent, and others, in the circuit court for the city of Lynchburg.

page 58 } This respondent, in answer to said bill, says that his intestate was appointed John F. Slaughter in the bond he gave at the time of his qualification as adm'r de bonis non of Sam'l Garland, Sr., dec'd, but some years thereafter, to-wit, in Jan'y, 1868, on the motion of his said intestate, as in the statute provided, the hustings court for the city of Lynchburg required

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END OF TRANSCRIPTION

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Pages 461-480

TRANSCRIPTION OF JML_MS1939_GARLAND_B1_F7_00461-00480

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PAGE 00461 (Image 1)

said Slaughter, adm'r as aforesaid, to give a new bond, and he thereupon gave a new bond in in the penalty of $35,000 00, with John H. Flood and Charles H. Massie as his sureties, who were adjudged to be sufficient, and said bond was accepted and approved by the court.

This respondent is advised that on the execution of the new bond and its approval by the court, by operation of law, the new bond was substituted for the old; that the sureties in the new bond assumed the obligations of the sureties of the old, and if the plaintiff be entitled under the will of Sam'l Garland, Sr., dec'd, as he alleges, he must pursue his remedies against the sureties of the new

page 59 } bond, and not against the sureties in old bond.

And having answered as far as he is advised it is material for him to answer, this respondent prays that the bill be dismissed as to him and as to the estate of his intestate, and that he be decreed the costs by him expended in this behalf.

J. H. FEATHERSTON
Adm'r of H. D. Flood, dec'd,
By his counsel.

Affidavit of adm'r of H. D. Flood to this answer waived.

JOHN B. BROCKENBROUGH,
Of counsel for the plaintiff.

At another day, to-wit:

At a circuit court for the city of Lynchburg held at the courthouse thereof, on Friday, the 17th day of May, 1878:

It being suggested that the defendants, Mary R. Slaughter, Celeste P. Cobbs, Catherine M. Slaughter, and Caroline M. Garland,

are not the sureties of John F. Slaughter on his present bond as

administrator of Samuel Garland, Senior, deceased, on the motion

of the plaintiff, it is ordered that the bill as to the said

page 60 } defendants above named, and also as to the defendants,

James M. Cobbs and J. H. Featherston, administrator of

H. D. Flood, deceased, be dismissed.

And it being further suggested that the personal representatives

of Charles R. Slaughter and Samuel Garland, Junior, deceased, and

Samuel G. Slaughter, son of John F. Slaughter, are proper and

necessary parties to this suit, by consent of John F. Slaughter, ad-

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ministrator of Charles R. Slaughter, deceased, and also as executor

of Samuel Garland, Junior, deceased, and of the parties, the said

John F. Slaughter, in his several capacities of administrator and

executor as aforesaid, is made a party defendant to this suit.

And on his motion, by counsel, leave is granted him to file his answer, and he filed the same, to which the plaintiff replies generally.

And it being further suggested that the said Samuel Garland Slaughter, son of John F. Slaughter, is an infant under the age of twenty-one years, the court doth appoint John F. Slaughter guardian ad litem of his said infant son, and by consent of the said guardian ad litem, by counsel, and the parties, the said page 61 } Samuel Garland Slaughter is made a party defendant to this suit, with permission to file his answer by his said guardian ad litem.

And by the further and like consent of all the parties, given in open court by counsel, the court doth order and decree that this cause be submitted to the judge of this court for decision, and decree to be made and entered in vacation.

The answer referred to in the foregoing order, is in the words and figures following, to-wit:

The answer of John F. Slaughter as administrator of Charles R. Slaughter, deceased, and as executor of Samuel Garland, Jr., dec'd, and as guardian ad litem for his infant son, Samuel G. Slaughter, to a bill of complaint filed in the circuit court of Lynchburg, by Samuel G. Hawkins against him as adm'r de bonis non of Samuel Garland, Sr., and others.

This respondent for answer to said bill in his said several capacities, relies upon his answer as adm'r de bonis non of Samuel Garpage 62 } land, Sr., filed in the said case, and all the facts, statements, and objections therein contained, &c.

JOHN F. SLAUGHTER,

By J. A. EARLY,

His Counsel.

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Hawkins v. Garland's adm'r & als. 55

And now at this day, to-wit:

In the clerk's office of the circuit court for the city of Lynchburg, in vacation, after its May term, 1878, to-wit, on Friday, the

9th day of August, 1878, being the same day and year first herein

mentioned, the following decree was received and entered of record,

to-wit:

In vacation of the circuit court of the city of Lynchburg, August 5th, 1878:

Samuel Garland Hawkins, } Plaintiff,

against

John F. Slaughter, administrator de bonis non,

with the will annexed of Samuel Garland, Sr.,

deceased, the same John F. Slaughter, admistra-

tor of Charles R. Slaughter, deceased, and executor of Samuel Garland, Jr., deceased, and Samuel

G. Slaughter, an infant, by the said John F.

Slaughter, his guardian ad litem., } Defendants.

In chancery suit depending in said court.

This cause (which was submitted pursuant to the act of assembly in such case for decision and decree in vacation), came

page 63 } on this day to be heard in vacation, on the bill of the plaintiff, answers of the defendants, replication to said

answers, exhibits and examination of witnesses, and was argued by counsel.

Upon consideration whereof, the court doth adjudge, order, and decree that the bill of the plaintiff be dismissed, and that he do pay to the defendants their costs by them about their defence in this behalf expended.

G. A. WINGFIELD.

To the clerk of circuit court of the city of Lynchburg.

Teste:

SAM'L D. PRESTON, Clerk.

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The following is a copy of the depositions referred to in foregoing decree:

The deposition of Mrs. M. L. Garland, taken January 26th, 1878, to be read as evidence on behalf of the plaintiff.

Present—J. B. Brockenbrough, counsel for the plaintiff; and J. A. Early, counsel for John F. Slaughter, adm'r.

The witness being first duly sworn, deposeth and saith in answer to questions propounded to her:

Mary L. Garland.

page 64 } 1st question by counsel for the complainant. Please to state your name, age, residence, and occupation, and whether or not you are the widow of the late Samuel Garland, Senior?

Answer. My name is Mary L. Garland. My age is seventy-seven. Garland Hill, Lynchburg. I — the head of my family. I am the widow of the late Samuel Garland, Sen.

2nd question by same. State when and where your husband died, whether or not he had any children, and what was the probable value of his estate in 1857, the date of his will?

Answer. My husband died in Coahoma county, Mississippi, in the month of November, 1861. I have not the most distant idea of the value of his estate in 1857, the date of his will. He never

had any children.

3rd question by same. At what amount was Mr. Garland's estate appraised after his death?

Answer. I never heard so as to remember it. I don't know what his estate was appraised at.

4th question by same. State whether or not your husband in his

page 65 } lifetime was acquainted with Captain John F. Hawkins, of Bedford co., Va.; if so, how long had he known him, and whether or not he and the captain were on terms of warm personal friendship during that time?

Answer. He was acquainted with Captain John F. Hawkins, of Bedford county. I do not know how long he had known him, but I know he had known him for some years. The intimacy grew out of the fact that Captain Hawkins employed him as his lawyer. The terms of riendship between them were just such as exist between

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PAGE 00465 (Image 5)

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lawyer and client. When Capt. Hawkins came to town on business my husband frequently brought home with him to dinner

Capt. Hawkins for a while lived in this town, and I know my husband transacted business for him.

5th question by same. When speaking to Capt. Jno. F. Hawkins, did or did not your husband address him as Captain Hawkins?

Answer. My husband called him either John or Capt. Hawkins.

He was always known to me as Capt. Hawkins. I always heard

him called so. He was universally known as Capt. Hawpage 66 } kins.

6th question by same. State whether not it comes within your knowledge that Capt. John F. Hawkins named one of his

sons after your husband; whether or not your husband and yourself

were invited to attend on the occasion of the baptism of said son;

whether or not your husband personally knew said son, and

whether he ever recognized him in any manner or on any occasion

as his namesake, and spoke to you of him?

Answer. He did name one of his sons after my husband. We

were invited to attend on the occasion of his baptism. My husband personally knew said son. On one occasion my husband recognized him as his namesake, and spoke to me of him. My husband one day came in and said to me that he had had a visit from

a youth—young Hawkins; that he wanted aid in money or some

instrument to get up a band. I think he gave him the money asked

for, and that he told him to come again on any similar occasion

and he would help him; that he was his namesake. I suppose his

page 67 } object was to make the young man feel that he had a

right to call again.

7th question by same. Was or was not your husband a gentleman

of strong attachment to his intimate personal friends?

Answer. He was a gentleman of very strong attachment to his

personal friends.

8th question by same. State whether or not, after your husband's

death, the name of Sam'l Garland Hawkins, the son of Captain

John F. Hawkins, above described, was ever mentioned in your

presence in connection with one of the legacies in your husband's

will?

[This question and any answer to the same was objected to by

Gen'l Early, counsel.]

Answer. I don't remember whether it was ever mentioned to me or not.

9th question by same. Please state whether or not your husband, at the date of his will or before, knew Mr. John F. Slaughter by any military title, such as captain, or simply as Mr. John F. Slaugh-

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PAGE 00466 (Image 6)

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ter; and also whether or not Mr. John F. Slaughter at that time,

to-wit, in Dec., 1857, nearly four years before your huspage 68 } band's death, had a son by the name of "Sam'l Garland Slaughter"; if not, whether or not he afterwards had a son whom he called by that name; and if so, about what time such a son was born?

Answer. I don't suppose my husband ever knew Mr. John F. Slaughter by any military title at all. I never knew him called by any military title. I think he was generally called Jack Slaughter. Mr. Slaughter did not have a son named Sam'l Garland Slaughter in December, 1857. John F. Slaughter did have a son born in July or August, 1861, named Sam. Garland Slaughter. He was born about the time Sam. Garland, Jr.'s son—little Sam.—a little boy about five years old, died.

10th question by same. Between Dec., 1857, the date of your

husband's will, and the birth of this Sam'l G. Slaughter, did or did not Mr. John F. Slaughter have other children born to him; and if so, how many?

Answer. John F. Slaughter had one son, probably two, between the Dec., 1857, and the birth of Sam. G. Slaughter. He page 69 } had three sons—Charles, Robert—and then Sam., about 2 years between them.

11th question by same. Did you or not ever hear Mr. Garland speak of this child Sam'l G. Slaughter, son of John F. Slaughter, as his namesake, or otherwise allude to him?

Answer. I don't know that I ever heard my husband speak of this son of John F. Slaughter, the child was so very young. I most think my husband left for Coahoma in September, 1861, and he was very much interested in that time about other matters, his own affairs, especially the managements of his plantations in Mississippi.

12th question by same. Did or not Mr. Garland know by name the other children of Mr. John F. Slaughter born prior to this Samuel G. Slaughter?

Answer. Mr. Garland did know the other children by name; Mrs. Slaughter was here most every day.

13th question by same. State whether or not this Sam'l G., son of John F. Slaughter, received a legacy under your husband's will; and if so, whether or not, when it was known that he had page 70 } so received it, any question was raised or remark made by you or in your presence as to the propriety of said legacy being so turned over to him?

Answer. I remember that I had a conversation with Charles R. Slaughter. I told him they certainly would not pay the legacy over

to John Slaughter's son Sam, because he was not born at the time the will was written. Charles said to me, the law would give the legacy to Sam. G. Slaughter if he came up to the description men-

tioned in the will at the time it went to probat. I replied that might be law, but not justice.

14th question by same. Does it come within your knowledge when and by whom said legacy was paid to John F. Slaughter; was it paid before or after the death of Chas. R. Slaughter?

Answer. It don't come within my knowledge when or by whom said legacy was paid; I don't know whether it was after the death of Ch. R. Slaughter or not.

15th question by same. In the 14th clause of your husband's will he says: "I give to Charles R. Slaughter $5,000, "in, &c., page 71 } & in trust for his brother Samuel M. Garland." Did or did not Mr. Charles R. Slaughter have a brother by the name of Samuel M. Garland; if not, what was the name of his brother to whom that description in the will was supposed to refer?

Answer. I know that Charles R. Slaughter had no brother named Samuel M. Garland; he did have a brother named Samuel Slaughter. I do not know whether I remember his double name; I think it was Morris, after brother of my husband, Morris Garland. I do

not know whether it was Samuel Morris Slaughter or Samuel Morris Garland Slaughter. I never heard of Garland as part of his name. He was called Samuel Morris when he was small; I never heard him called Samuel M. Garland Slaughter. I think I would have heard of it if Garland had been part of his name; he may have been baptized under that name, Sam. M. Garland Slaughter, but if he was I never heard of it.

16th question. What was the duration of your acquaintance with said Sam'l M. Slaughter, brother of Charles R. Slaughter; did or did you not know him for many years?

page 72 } Answer. I knew him at the time; he left here the year after the surrender and, I think, died the next year.

17th question by same. Did or did not this brother of Chas. R. Slaughter, described in the will of your husband as Sam'l M. Garland, as aforesaid, receive the legacy provided by the said 14th clause of said will?

Answer. I understood so without knowing it.

Question by counsel for the adm'r de bonis non of Sam'l Garland, Sr. Do you know where the will of your husband was found after his death; if so, where it was?

Answer. It was not in the house; I don't know where it was found.

By same. Were not Mr. Charles R. Slaughter, Samuel G. White, the elder, Sam'l Garland, Jr., and John F. Slaughter all nephews of your husband?

Answer. They were all nephews of my husband.

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page 73 } Did not your husband educate and provide for the raising of his nephews, the Slaughters, including Mr. John

F. Slaughter?

Answer. I know my husband took Charles to his house and sent him to school, and I always heard he provided for the education of the others.

By same. Was he not very much attached to his said nephews, the Slaughters?

Answer. I could say, I know he did for them in the bulk—that is, he spent his money freely for the family, including the girls.

MARY L. GARLAND.

The deposition of Captain John F. Hawkins, taken January 26th, 1878, to be read as evidence on behalf of the plaintiff.

The witness, being first duly sworn, deposeth and saith in answer to questions:

Present—J. B. Brockenbrough, counsel for plt.; and

J. A. Early, counsel for deft. J. F. Slaughter.

page 74 } First question by counsel for complain't. What is your age? Where do you reside, and how long have you so resided? What is your occupation?

Answer. Fifty years and upwards. I reside in Bedford. I was

born within two miles of where I now live, and have lived there

all my life. I am a farmer.

2nd by same. State whether or not you were acquainted with the

late Samuel Garland, Sr.; if so, at what time — such acquaintance commence, and when did it terminate?

Answer. I have been acquainted with Sam. Garland, Sen'r, ever

since I was twenty years old. My business acquaintance commenced some time in twenty-seven or eight, it terminated when he

died.

3rd by same. What was the character of your acquaintance with

Mr. Garland as to friendship and intimacy?

Answer. There was just as much friendship and intimacy between

us as if we had been brothers.

page 75 } 4th by same. State whether or not during said acquaintance Mr. Garland and yourself frequently exchanged friendly visits at your respective residences?

Answer. He frequently came to my house, and I frequently went

with him from his office to his house to dine with him.

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5th by same. In speaking to you, did Mr. Garland usually address you by any title; if so, what? Have you or not for many

years borne the title of "Captain"; if so, how long and why?

Answer. He frequently called me Captain, and sometimes John.

I was a militia captain in 1822 or 23, and have borne the title ever

since.

6th by same. Do you or not know of any other person than yourself named John F. Hawkins, who was known to Mr. Garland as

Capt. Hawkins?

Answer. No, sir.

7th by same. What relation, if any, are you to the plaintiff in

this cause?

Answer. He is my son.

8th by same. When was your son, Sam'l G. Hawkins

page 76 } (the pl'ff), born, and was he or not named after Mr. Garland, the testator? And who stood as godfather and godmother for your said son on the occasion of his baptism?

Answer. He was born in '41, I think. He was named after Mr.

Garland. Mr. Samuel Garland stood as godfather and Mrs. Maurice

Garland as godmother at his baptism. I mean Sam'l Garland, the

testator.

9th by same. State whether or not Mr. Garland knew that your

said son was his namesake? State anything you may remember indicating that he knew your son was his namesake, and when he

knew it?

Answer. He knew it. He knew it from the time he stood godfather, and he frequently inquired of me after him at times when

he would see me. After he got big enough to play marbles, he

sent him a set of marbles and a little drum.

page 77 } 10th by same. State whether or not Mr. Garland was

personally acquainted with your son; if so, state anything

you may know of such acquaintance?

Answer. He was personally acquainted with him. I have seen

Mr. Garland frequently meet with him and seem very fond of him,

and Mr. Garland frequently enquired of me about him, calling him

his namesake. When he was going to school, Mr. Garland enquired

of me how he was getting on at school.

11th by same. Where was your said son in April and May, 1862, and in the same months in 1863?

Answer. He was in the army—the Confederate army.

12th by same. Does it come within your knowledge that Chas. R. Slaughter, Sam'l Garland, Jr., and John F. Slaughter knew your said son, the pl'ff; and if so, how do you know it?

Answer. Yes, they knew him; I have heard them call his name.

13th by same. State whether or not you ever heard either of the three parties just named speak of your said son in connection with

page 78 } any provision of the will of Sam'l Garland, Sr.; if so, what did he or they say, and when was this?

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[Question last above objected to and answer objected to by Gen. Early.]

Answer. Shortly after Mr. Garland's death Mr. Charles Slaughter told me his uncle had left his namesake a thousand dollars.

14th. Are you acquainted with all the brothers of Chas. R. and John F. Slaughter; if so, state whether or not they have or ever had a brother by the name of Samuel M. Garland?

Answer. I was acquainted with Chas. R. Slaughter and John F.

Slaughter. I do not know whether they had any brother; if they had, I was never acquainted with him.

Question by counsel for the adm'r de bonis non of Sam'l Garland, Sr. Were you not a client of Mr. Samuel Garland, Sr., and did he not transact a good deal of law business for you?

Answer. I was a client of his, and he transacted a great deal of law business for me.

page 79 } By same. Did he keep accounts against you and charge fees to you?

Answer. He did keep accounts and charge me with fees.

By same. Was he not a very accurate and cautious business man, and very particular about his papers?

Answer. Our business transactions run for many years, involving from thirty to forty thousand dollars; he kept all the accounts; we had no settlement till about two years before his death. I had as much confidence in him as I ever had in any man in my life. I always regarded him as an accurate business man. I reckon he was particular with his papers.

By same. Did you ever know him to make a mistake in your name in rendering any account against you, or charging any fee to you?

Answer. I never knew him to make a mistake in my name; he always knew me too well.

By same. Did not you and he have a difficulty or misunderstandpage 80 } ing about the settlement of some accounts before his death which resulted in a coolness between you?

[Pl'ff, by counsel, objects to the last question in so far as it tends

to effect the credit of the witness, or contradict him, as the question relates to a collateral matter.]

Answer. We had no difficulty or misunderstanding about the settlement of his account against me. I thought he charged me too

high fees and compounded on me, and I being no accountant gave

the account to John Thompson to examine for me; but he returned

it without examination, and I settled with Mr. Garland according

to his account. This did not cause me to leave Garland & Slaughter as my counsel; we had no words or misunderstanding. Mr.

Garland promised me, in the presence of Jno. G. Meem, if there

was anything wrong in his account he would correct it.

By same. Did you ever, on part of your son, apply to Charles R.

Slaughter, as executor, Sam'l Garland, Sr., or, after his death, to

Sam'l Garland, the other executor, or to John F. Slaughpage 81 } ter, after he became adm'r de bonis non, for the legacy

now alleged to be due your son, the plaintiff?

Answer. I never did; I would not have done it if everything

had been perfectly straight.

By same. Do you know whether your son ever made application

to the either of said parties for the said legacy, or have you ever

heard him say whether he had made such application?

Answer. I do not know that he ever did make application for

said legacy, and I never heard him say that he had made application for it.

Direct examinations resumed.

1st question by counsel for complainant. In saying that Mr. Garland never made a mistake, as far as you know, in writing your

name in his correspondence or acceounts with you, and that he knew

you too well for that, do you mean to say that he may not inadvertently have made such a mistake when writing your name in connection with those of a number of other persons?

Answer. I cannot say that he was perfect in all things.

page 82 } I remember now that Charles R. Slaughter and John F.

Slaughter had a brother named Samuel Slaughter—he

was about the office of Samuel Garland, Sen., before the war, and

I knew him then.

And further saith not.

JOHN F. HAWKINS.

The deposition of James Garland, taken January 4th, 1878, to be

read as evidence on behalf of the plaintiff.

Present—R. G. H. Kean, atto. Jno. F. Slaughter; E. S. Brownatto. for Flood's adm'r; and Brockenbrough and Hay,

mond, counsel for pl't.

1st question by counsel for plaintiff. Please state your age, where

you reside, how long you have so resided, and what is and has been

your occupation during such residence?

[Note. J. F. Slaughter by counsel, appears at the taking of this deposition as a courtesy to the counsel and the witness, and for that cause waives the irregularity of taking testimony before the bill is filed, or any rules taken—reserving all other grounds of exceptions should there be any.]

page 83 } Answer. I was eighty-five years old the 6th day of last June, according to the family record and the information of my parents. I reside in the city of Lynchburg, and have done so since 14th Octo., 1841. I was a practising lawyer till 14 Ap'l, 1870, at which time I was appointed judge of the corporation court of said city and have continued to hold that office up to the present time.

2nd question by same. State whether or not you were acquainted with the late Sam'l Garland, Sr., if so, were you a relative of his; and if so, in what degree?

Answer. I was acquainted with Samuel Garland from about the year 1819 or '20. I was frequently his counsel from that time till his death. Our relations were friendly and intimate. Mr. Samuel Garland and my father were own cousins, although he was about four years older than myself.

page 84 } 3rd by same. Please state when and where Mr. Garland died and about what age?

Answer. I understood that Mr. Garland died in Mississippi in November, 1861. His remains were brought from Mississippi to

Lynchburg where they were buried. His age was about seventyfour years.

4th by same. Where did Mr. Garland reside during the greater part of your acquaintance with him; what was his occupation; what family did he have at the date of his will, December, 1857, and at the date of his death; what was the character and value of his estate?

Answer. He resided in Lynchburg all the time. When I first knew him he was a merchant's clerk—from merchant's clerk he became a practising lawyer about 1821, and continued in that business till his death. He never had any children that I knew of.

He was a married man before he commenced to practise law, and his widow is now living in Lynchburg. His family consisted of

page 85 } himself and wife, December, 1857. I saw an inventory of his estate of all kinds, real and personal, negroes, bonds, and all here and out west, amounting, I think, to about seven hundred and fifty thousand dollars. I remember that this inventory was in the handwriting of Mr. Garland, but I saw it after the death of Mr. Garland.

5th by same. Please state, if you know, who were the nearest kin of Mr. Garland, and in what degree they were related to him?

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Answer. He had brothers and sisters and a good many nephews and neices living at the time of his death.

6th by same. Please state, if you know, the character of Mr. Garland as to attachment to his friends?

Answer. Mr. Garland, when he was a friend, was a very warm friend, and he was not a vindictive enemy.

7th by same. State whether or not you know John F. Slaughter, adm'r of S. Garland, dec'd; if so, how long have you known him, where does he reside, and what is and has been his occupage 86 } pation?

Answer. I have known Mr. John F. Slaughter ever since he came to Lynchburg to live, which, I think, was about 1844 or 1845. He resides in the city of Lynchburg. He qualified to practise law. He then quit law and commenced to operate a cotton factory near Lynchburg. He quit that business and commenced law again, and was afterwards elected the president of the First national bank at Lynchburg, and has discontinued the practice of law for some four or five years.

8 by same. Was he or not a relation of Mr. Garland; if so, in what degree? What were the relations between Mr. Slaughter and Mr. Garland as to friendship?

Answer. He was a nephew of Mr. Garland. I —— knew any breach of relations which ought to exist between uncle and nephew. They seemed to be very cordial in their relations.

9 by same. State whether or not it was the habit of Mr. Garland page 87 } to prefix to the name of Mr. Slaughter, any military title; if so, what; if not, in what name or manner did he usually address or speak of him?

Answer. I never knew that Mr. Slaughter ever had any military title, and I never heard Mr. Garland speak of him under any military title. All Mr. Slaughter's friends and relations, so far as I know, spoke of him as Jack Slaughter.

10 by same. Have you any knowledge of any person named John

F. Slaughter who was known by Mr. Garland as "Captain" John F. Slaughter?

Answer. I have none, unless he called Jack Capt. John F. Slaughter as a nick-name, but I never heard him call him anything else but Jack.

11 by same. Please state, if you know, the names of the sons of John F. Slaughter?

Answer. I think his sons are Charles H., John F., Robert, and Samuel G.

page 88 } 12 by same. About what time was the son Samuel G. born? Did or not Mr. Slaughter have a son of that name in December, 1857? Do you know of any John F. Slaughter who had a son of that name in Dec., 1857, or at any time before the birth of the one you have named?

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Answer. I cannot say with certainty; my impression is that he was born in 1860 or 1861; it was not a great while before Mr. Garland died, but I cannot say with certainty. He is the youngest son, so far as I know. If Mr. Slaughter had a son of that name—Samuel G.—in 1857—I never heard of it. I do not know of but one John F. Slaughter besides his son of same name mentioned above.

13 by same. State whether or not you know John F. Hawkins, of the county of Bedford; if so, how long have you known him,

and about what is his age? Was Mr. Garland acquainted with Mr. Hawkins, and if so, how long had he been so acquainted? Please state what you may know as to the relations which existed between Mr. Garland and Hawkins as to friendship?

Answer. I have known him for a long time. I cannot page 89 } tell when I first became acquainted, but I think he is not behind my own age. Mr. Garland married not far from where Mr. Hawkins lived. The first time I ever saw Mr. Hawkins was in Mr. Garland's office. Judging from their conversation, they were very warm friends till a short time before Mr. Garland's death. In settling up some matters, in the spring or summer before Mr. Garland's death, they disagreed, and became a little alienated.

14th by same. Does it come within your knowledge that John F. Hawkins bears any military title—if so, what; did Mr. Garland or not usually address or speak of Hawkins by that title?.

Answer. I have heard him called captain ever since I knew him, but I do not know whether he was ever a captain. I have always known him as captain. I have frequently heard Mr. Garland call him captain, but I do not know that he always called him so. I page 90 } think I have heard him sometimes call him John.

15th by same. State whether or not you know, or have known, any other John F. Hawkins who has borne the title of "captain"?

Answer. I never did.

16th by same. Please state, if you know, the names of any sons of Capt. Hawkins?

Answer. I have heard the names of all the sons of Capt. John F. Hawk—s I think, but I could not give the christian names of

any of them. I know the names of two of them—Samuel Garland Hawkins and Robert. I was told by Capt. Hawkins and also by Mr. Garland that this son was named after Mr. Garland.

17th by same. Please state whether or not you ever heard Mr. Garland make any special remark about Sam'l Garland Hawkins; if so, what was the same, when made, and what led to the remark?

Answer. I heard Mr. Garland say in his lifetime, "I have selected selected (I think three or four) of my namesakes, and have

page 91 } given them each a thousand dollars, as I understood in this will. I remember that Samuel Garland Hawkins

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was one of the namesakes mentioned by him. This conversation was brought by an enquiry by me about the disposition made by him in his will of the house and lot where I reside. We was talking about his will. I did not see the will, and never saw it till it came before the court for probat.

[Exception.—The defendant excepts to the foregoing answer (and the question in so far as it was designed to call out) as parol evidence of the testator's declarations as to the contents of his will, or his testamentary intentions, and as an attempt to alter the effect and meaning of the will by oral evidence.]

18th by same. Please state whether or not the remark of Mr. Garland, which you have repeated, was made before or after the birth of Mr. Slaughter's son Sam'l Garland?

Answer. I cannot say decisively, but I think it was in

page 92 } 1860 or the spring of 1861. He went out to the south in both of those years. I do not know whether Samuel G. Slaughter, the son of John F., was born at that time or not.

19th by same. State whether or not you ever communicated to either of the executors or the administrators of Mr. Garland the above statements of Mr. Garland in reference to the p'ff.; if so, what did they or he say in regard thereto?

[19th question objected to by Jno. F. Slaughter, by counsel, as irrelevant.]

Answer. Ch. Slaughter died in Feb., 1862, a short time after his uncle, and I never had any conversation with him about it at all. I am not distinct in my recollection, but I think after John F. Slaughter qualified as adm'r I did make a statement to him of this conversation, but the answer made by him at this time I am not willing to disclose, as it was made to me as counsel for the estate and for John F. Slaughter.

page 93 } 20th by same. It appears from the record in the suit of Garland's ex'ors vs. Garland, &c., now depending in Lynchburg circuit court, that the plaintiff in this suit was party defendant; please state who the counsel who managed that suit, and why the said pl't was made such party; who directed it to be done, and what reason was assigned therefor?

Answer. The firm of Garland & Christian, of which I was partner, brought the original suit in counsel in the case of Garland vs.

Garland, I think. I drew the bill. I suggested the propriety of

making Sam'l Garland Hawkins a party on account of the conversation between Sam Garland and myself, spoken of by me, so

that the question might be settled. I expressed a doubt as to the

admissibility of parol testimony to vary the will, but I thought it

best to settle that question in the suit, and to advise to make him a

party.

X-examinations.

Without waiving the exceptions heretofore taken, the following

questions are asked:

1. What was the relationship of Charles R. Slaughter, Sam'l G.
White, and Sam'l Garland, Jr. (your former partner), to

page 94 } Mr. S. Garland, the testator? Were they not all his
nephews, and favorite ones?

Answer. Chas. R. Slaughter, Sam. Garland, Jr., Sam. G. White,

and John F. Slaughter were all nephews of Sam. Garland. I think

he was kindly disposed towards to all of them, especially so towards

Chas. R. Slaughter and Sam. Garland, Jr.

2 by same. Was not Mr. Garland's will an autograph?

Answer. I never saw the will till it was offered for probat; it was

in the handwriting of Mr. Garland entirely.

3rd by same. Was not Mr. Garland, the testator, a very particular and careful man about the transaction of all important business?

Answer. He was.

4 by same. Did you ever mention the conversation you have referred to as held with Mr. Garland, in respect to bequests to his

namesakes, to Sam'l Garland, Jr.?

Answer. I have no recollection now that I ever did.

page 95 } 5 by same. Was not the original bill filed for him as

executor? I mean the original bill in the adm'rs suit of

Garland's ex'r vs. Garland?

Answer. It was.

6 by same. Did it come within your knowledge that S. Garland,

Jr., while acting as sole executor, paid and delivered the legacy referred to in the plaintiff's bill in this case to the son of John F.

Slaughter as the proper legatee of his uncle?

Answer. It does not; I never heard of it.

7 by same. Was not S. Garland, Jr., a brigalier-general in the

Confederate army—first a colo., and from the spring of 1862 to his

death a brig.-general?

Answer. Sam. Garland, Jr., left here as capt. of the Home Guard;

he was then col. of the 11 regiment, and then he was made brigadier-general.

page 96 } 8 by same. Was not Gen'l (then col.) S. Garland, Jr.,

in Lynchburg on furlough in Dec'r, 1861? Did he not

present Mrs. Mary L. Garland a X-mas gift of a deed in

fee to the remainder in the lot and residence of his deceased uncle?

Answer. I do not remember whether Sam. Garland, Jr., was here in December, 1861, or January, 1862. I know he made a deed to Mrs. Garland of the house and lot, the late residence of his deceased uncle, and he made that when he was at home in December, '61, or Jan., '62.

9 by same. Was he not here again in March and April, 1862, after C. R. Slaughter's death?

Answer. I do not remember the time, but I most think he was; he was here after Chas. R. Slaughter's death; he died about middle of Sep., 1862.

And further saith not.

J. GARLAND.

A copy—Teste:

SAM. D. PRESTON, Cl'k.

The fee of the clerk of the circuit court for the city of Lynchburg for making out this copy of the record is $28 80.

Teste:

S. D. PRESTON, Cl'k.

A copy—Teste:

GEO. K. TAYLOR, C. C.

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said Slaughter, adm'r as aforesaid, to give a new bond, and he thereupon gave a new bond in in the penalty of $35,000 00, with John H. Flood and Charles H. Massie as his sureties, who were adjudged to be sufficient, and said bond was accepted and approved by the court.

This respondent is advised that on the execution of the new bond and its approval by the court, by operation of law, the new bond was substituted for the old; that the sureties in the new bond assumed the obligations of the sureties of the old, and if the plaintiff be entitled under the will of Sam'l Garland, Sr., dec'd, as he alleges, he must pursue his remedies against the sureties of the new

 bond, and not against the sureties in old bond.

And having answered as far as he is advised it is material for him to answer, this respondent prays that the bill be dismissed as to him and as to the estate of his intestate, and that he

be decreed the costs by him expended in this behalf.

J. H. FEATHERSTON

Adm'r of H. D. Flood, dec'd,

By his counsel.

Affidavit of adm'r of H. D. Flood to this answer waived.

JOHN B. BROCKENBROUGH,

Of counsel for the plaintiff.

At another day, to-wit:

At a circuit court for the city of Lynchburg held at the courthouse thereof, on Friday, the 17th day of May, 1878:

It being suggested that the defendants, Mary R. Slaughter, Celeste P. Cobbs, Catherine M. Slaughter, and Caroline M. Garland,

are not the sureties of John F. Slaughter on his present bond as

administrator of Samuel Garland, Senior, deceased, on the motion

of the plaintiff, it is ordered that the bill as to the said

page 60 } defendants above named, and also as to the defendants,

James M. Cobbs and J. H. Featherston, administrator of

H. D. Flood, deceased, be dismissed.

And it being further suggested that the personal representatives

of Charles R. Slaughter and Samuel Garland, Junior, deceased, and

Samuel G. Slaughter, son of John F. Slaughter, are proper and

necessary parties to this suit, by consent of John F. Slaughter, ad-

ministrator of Charles R. Slaughter, deceased, and also as executor of Samuel Garland, Junior, deceased, and of the parties, the said John F. Slaughter, in his several capacities of administrator and executor as aforesaid, is made a party defendant to this suit.

And on his motion, by counsel, leave is granted him to file his answer, and he filed the same, to which the plaintiff replies generally.

And it being further suggested that the said Samuel Garland Slaughter, son of John F. Slaughter, is an infant under the age of twenty-one years, the court doth appoint John F. Slaughter guardian ad litem of his said infant son, and by consent of the said

guardian ad litem, by counsel, and the parties, the said

page 61 } Samuel Garland Slaughter is made a party defendant to

this suit, with permission to file his answer by his said guardian ad litem.

And by the further and like consent of all the parties, given in open court by counsel, the court doth order and decree that this cause be submitted to the judge of this court for decision, and decree to be made and entered in vacation.

The answer referred to in the foregoing order, is in the words and figures following, to-wit:

The answer of John F. Slaughter as administrator of Charles R. Slaughter, deceased, and as executor of Samuel Garland, Jr., dec'd, and as guardian ad litem for his infant son, Samuel G. Slaughter, to a bill of complaint filed in the circuit court of Lynchburg, by Samuel G. Hawkins against him as adm'r de bonis non of Samuel Garland, Sr., and others.

This respondent for answer to said bill in his said several capacities, relies upon his answer as adm'r de bonis non of Samuel Garpage 62 } land, Sr., filed in the said case, and all the facts, statements, and objections therein contained, &c.

JOHN F. SLAUGHTER,

By J. A. EARLY,

His Counsel.

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And now at this day, to-wit:

In the clerk's office of the circuit court for the city of Lynchburg, in vacation, after its May term, 1878, to-wit, on Friday, the

9th day of August, 1878, being the same day and year first herein mentioned, the following decree was received and entered of record, to-wit:

In vacation of the circuit court of the city of Lynchburg, August 5th, 1878:

Samuel Garland Hawkins, } Plaintiff,

against

John F. Slaughter, administrator de bonis non, with the will annexed of Samuel Garland, Sr., deceased, the same John F. Slaughter, admistrator of Charles R. Slaughter, deceased, and executor of Samuel Garland, Jr., deceased, and Samuel G. Slaughter, an infant, by the said John F. Slaughter, his guardian ad litem., } Defendants.

In chancery suit depending in said court.

This cause (which was submitted pursuant to the act of assembly in such case for decision and decree in vacation), came page 63 } on this day to be heard in vacation, on the bill of the plaintiff, answers of the defendants, replication to said answers, exhibits and examination of witnesses, and was argued by counsel.

Upon consideration whereof, the court doth adjudge, order, and decree that the bill of the plaintiff be dismissed, and that he do pay to the defendants their costs by them about their defence in

this behalf expended.

G. A. WINGFIELD.

To the clerk of circuit court of the city of Lynchburg.

Teste:

SAM'L D. PRESTON, Clerk.

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The following is a copy of the depositions referred to in foregoing decree:

The deposition of Mrs. M. L. Garland, taken January 26th, 1878, to be read as evidence on behalf of the plaintiff.

Present—J. B. Brockenbrough, counsel for the plaintiff; and J. A. Early, counsel for John F. Slaughter, adm'r.

The witness being first duly sworn, deposeth and saith in answer to questions propounded to her:

Mary L. Garland.

page 64 } 1st question by counsel for the complainant. Please to

state your name, age, residence, and occupation, and whether or not you are the widow of the late Samuel Garland, Senior?

Answer. My name is Mary L. Garland. My age is seventy-seven. Garland Hill, Lynchburg. I — the head of my family. I am the widow of the late Samuel Garland, Sen.

2nd question by same. State when and where your husband died, whether or not he had any children, and what was the probable value of his estate in 1857, the date of his will?

Answer. My husband died in Coahoma county, Mississippi, in the month of November, 1861. I have not the most distant idea of the value of his estate in 1857, the date of his will. He never had any children.

3rd question by same. At what amount was Mr. Garland's estate appraised after his death?

Answer. I never heard so as to remember it. I don't know what his estate was appraised at.

4th question by same. State whether or not your husband in his

page 65 } lifetime was acquainted with Captain John F. Hawkins, of Bedford co., Va.; if so, how long had he known him, and whether or not he and the captain were on terms of warm personal friendship during that time?

Answer. He was acquainted with Captain John F. Hawkins, of Bedford county. I do not know how long he had known him, but I know he had known him for some years. The intimacy grew out of the fact that Captain Hawkins employed him as his lawyer. The terms of riendship between them were just such as exist between

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lawyer and client. When Capt. Hawkins came to town on business my husband frequently brought home with him to dinner

Capt. Hawkins for a while lived in this town, and I know my husband transacted business for him.

5th question by same. When speaking to Capt. Jno. F. Hawkins, did or did not your husband address him as Captain Hawkins?

Answer. My husband called him either John or Capt. Hawkins.

He was always known to me as Capt. Hawkins. I always heard

him called so. He was universally known as Capt. Hawpage 66 } kins.

6th question by same. State whether not it comes within your knowledge that Capt. John F. Hawkins named one of his

sons after your husband; whether or not your husband and yourself

were invited to attend on the occasion of the baptism of said son;

whether or not your husband personally knew said son, and

whether he ever recognized him in any manner or on any occasion

as his namesake, and spoke to you of him?

Answer. He did name one of his sons after my husband. We

were invited to attend on the occasion of his baptism. My husband personally knew said son. On one occasion my husband recognized him as his namesake, and spoke to me of him. My husband one day came in and said to me that he had had a visit from

a youth—young Hawkins; that he wanted aid in money or some

instrument to get up a band. I think he gave him the money asked

for, and that he told him to come again on any similar occasion

and he would help him; that he was his namesake. I suppose his

page 67 } object was to make the young man feel that he had a

right to call again.

7th question by same. Was or was not your husband a gentleman of strong attachment to his intimate personal friends?

Answer. He was a gentleman of very strong attachment to his personal friends.

8th question by same. State whether or not, after your husband's death, the name of Sam'l Garland Hawkins, the son of Captain John F. Hawkins, above described, was ever mentioned in your presence in connection with one of the legacies in your husband's will?

[This question and any answer to the same was objected to by Gen'l Early, counsel.]

Answer. I don't remember whether it was ever mentioned to me or not.

9th question by same. Please state whether or not your husband, at the date of his will or before, knew Mr. John F. Slaughter by any military title, such as captain, or simply as Mr. John F. Slaugh-

ter; and also whether or not Mr. John F. Slaughter at that time,

to-wit, in Dec., 1857, nearly four years before your huspage 68 } band's death, had a son by the name of "Sam'l Garland

Slaughter"; if not, whether or not he afterwards had a

son whom he called by that name; and if so, about what time such a son was born?

Answer. I don't suppose my husband ever knew Mr. John F. Slaughter by any military title at all. I never knew him called by any military title. I think he was generally called Jack Slaughter. Mr. Slaughter did not have a son named Sam'l Garland Slaughter in December, 1857. John F. Slaughter did have a son born in July or August, 1861, named Sam. Garland Slaughter. He was born about the time Sam. Garland, Jr.'s son—little Sam.—a little boy about five years old, died.

10th question by same. Between Dec., 1857, the date of your husband's will, and the birth of this Sam'l G. Slaughter, did or did not Mr. John F. Slaughter have other children born to him; and if so, how many?

Answer. John F. Slaughter had one son, probably two, between the Dec., 1857, and the birth of Sam. G. Slaughter. He page 69 } had three sons—Charles, Robert—and then Sam., about 2 years between them.

11th question by same. Did you or not ever hear Mr. Garland speak of this child Sam'l G. Slaughter, son of John F. Slaughter, as his namesake, or otherwise allude to him?

Answer. I don't know that I ever heard my husband speak of this son of John F. Slaughter, the child was so very young. I most think my husband left for Coahoma in September, 1861, and he was very much interested in that time about other matters, his own affairs, especially the managements of his plantations in Mississippi.

12th question by same. Did or not Mr. Garland know by name the other children of Mr. John F. Slaughter born prior to this

Samuel G. Slaughter?

Answer. Mr. Garland did know the other children by name; Mrs. Slaughter was here most every day.

13th question by same. State whether or not this Sam'l G., son of John F. Slaughter, received a legacy under your husband's will; and if so, whether or not, when it was known that he had page 70 } so received it, any question was raised or remark made by you or in your presence as to the propriety of said legacy being so turned over to him?

Answer. I remember that I had a conversation with Charles R. Slaughter. I told him they certainly would not pay the legacy over to John Slaughter's son Sam, because he was not born at the time the will was written. Charles said to me, the law would give the legacy to Sam. G. Slaughter if he came up to the description men-

tioned in the will at the time it went to probat. I replied that might be law, but not justice.

14th question by same. Does it come within your knowledge when and by whom said legacy was paid to John F. Slaughter; was it paid before or after the death of Chas. R. Slaughter?

Answer. It don't come within my knowledge when or by whom said legacy was paid; I don't know whether it was after the death

of Ch. R. Slaughter or not.

15th question by same. In the 14th clause of your husband's will he says: "I give to Charles R. Slaughter $5,000, "in, &c.,

page 71 } & in trust for his brother Samuel M. Garland." Did or did not Mr. Charles R. Slaughter have a brother by the name of Samuel M. Garland; if not, what was the name of his brother to whom that description in the will was supposed to refer?

Answer. I know that Charles R. Slaughter had no brother named Samuel M. Garland; he did have a brother named Samuel Slaughter. I do not know whether I remember his double name; I think it was Morris, after brother of my husband, Morris Garland. I do not know whether it was Samuel Morris Slaughter or Samuel Morris Garland Slaughter. I never heard of Garland as part of his name. He was called Samuel Morris when he was small; I never heard him called Samuel M. Garland Slaughter. I think I would have heard of it if Garland had been part of his name; he may have been baptized under that name, Sam. M. Garland Slaughter, but if he was I never heard of it.

16th question. What was the duration of your acquaintance with said Sam'l M. Slaughter, brother of Charles R. Slaughter; did or did you not know him for many years?

page 72 } Answer. I knew him at the time; he left here the year after the surrender and, I think, died the next year.

17th question by same. Did or did not this brother of Chas. R. Slaughter, described in the will of your husband as Sam'l M. Garland, as aforesaid, receive the legacy provided by the said 14th clause of said will?

Answer. I understood so without knowing it.

Question by counsel for the adm'r de bonis non of Sam'l Garland, Sr. Do you know where the will of your husband was found

after his death; if so, where it was?

Answer. It was not in the house; I don't know where it was

found.

By same. Were not Mr. Charles R. Slaughter, Samuel G. White,

the elder, Sam'l Garland, Jr., and John F. Slaughter all nephews

of your husband?

Answer. They were all nephews of my husband.

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page 73 } Did not your husband educate and provide for the raising of his nephews, the Slaughters, including Mr. John

F. Slaughter?

Answer. I know my husband took Charles to his house and sent

him to school, and I always heard he provided for the education of

the others.

By same. Was he not very much attached to his said nephews,

the Slaughters?

Answer. I could say, I know he did for them in the bulk—that

is, he spent his money freely for the family, including the girls.

MARY L. GARLAND.

The deposition of Captain John F. Hawkins, taken January 26th,

1878, to be read as evidence on behalf of the plaintiff.

The witness, being first duly sworn, deposeth and saith in answer to questions:

Present—J. B. Brockenbrough, counsel for plt.; and

J. A. Early, counsel for deft. J. F. Slaughter.

page 74 } First question by counsel for complain't. What is your

age? Where do you reside, and how long have you so

resided? What is your occupation?

Answer. Fifty years and upwards. I reside in Bedford. I was

born within two miles of where I now live, and have lived there

all my life. I am a farmer.

2nd by same. State whether or not you were acquainted with the

late Samuel Garland, Sr.; if so, at what time — such acquaintance commence, and when did it terminate?

Answer. I have been acquainted with Sam. Garland, Sen'r, ever

since I was twenty years old. My business acquaintance commenced some time in twenty-seven or eight, it terminated when he

died.

3rd by same. What was the character of your acquaintance with

Mr. Garland as to friendship and intimacy?

Answer. There was just as much friendship and intimacy between

us as if we had been brothers.

page 75 } 4th by same. State whether or not during said acquaintance Mr. Garland and yourself frequently exchanged friendly visits at your respective residences?

Answer. He frequently came to my house, and I frequently went

with him from his office to his house to dine with him.

5th by same. In speaking to you, did Mr. Garland usually address you by any title; if so, what? Have you or not for many

years borne the title of "Captain"; if so, how long and why?

Answer. He frequently called me Captain, and sometimes John.

I was a militia captain in 1822 or 23, and have borne the title ever

since.

6th by same. Do you or not know of any other person than yourself named John F. Hawkins, who was known to Mr. Garland as

Capt. Hawkins?

Answer. No, sir.

7th by same. What relation, if any, are you to the plaintiff in

this cause?

Answer. He is my son.

8th by same. When was your son, Sam'l G. Hawkins

page 76 } (the pl'ff), born, and was he or not named after Mr. Garland, the testator? And who stood as godfather and godmother for your said son on the occasion of his baptism?

Answer. He was born in '41, I think. He was named after Mr.

Garland. Mr. Samuel Garland stood as godfather and Mrs. Maurice

Garland as godmother at his baptism. I mean Sam'l Garland, the

testator.

9th by same. State whether or not Mr. Garland knew that your

said son was his namesake? State anything you may remember indicating that he knew your son was his namesake, and when he

knew it?

Answer. He knew it. He knew it from the time he stood godfather, and he frequently inquired of me after him at times when

he would see me. After he got big enough to play marbles, he

sent him a set of marbles and a little drum.

page 77 } 10th by same. State whether or not Mr. Garland was

personally acquainted with your son; if so, state anything

you may know of such acquaintance?

Answer. He was personally acquainted with him. I have seen

Mr. Garland frequently meet with him and seem very fond of him,

and Mr. Garland frequently enquired of me about him, calling him

his namesake. When he was going to school, Mr. Garland enquired

of me how he was getting on at school.

11th by same. Where was your said son in April and May, 1862,

and in the same months in 1863?

Answer. He was in the army—the Confederate army.

12th by same. Does it come within your knowledge that Chas.

R. Slaughter, Sam'l Garland, Jr., and John F. Slaughter knew your

said son, the pl'ff; and if so, how do you know it?

Answer. Yes, they knew him; I have heard them call his name.

13th by same. State whether or not you ever heard either of the

three parties just named speak of your said son in connection with

page 78 } any provision of the will of Sam'l Garland, Sr.; if so,

what did he or they say, and when was this?

[Question last above objected to and answer objected to by Gen. Early.]

Answer. Shortly after Mr. Garland's death Mr. Charles Slaughter told me his uncle had left his namesake a thousand dollars.

14th. Are you acquainted with all the brothers of Chas. R. and John F. Slaughter; if so, state whether or not they have or ever had a brother by the name of Samuel M. Garland?

Answer. I was acquainted with Chas. R. Slaughter and John F. Slaughter. I do not know whether they had any brother; if they had, I was never acquainted with him.

Question by counsel for the adm'r de bonis non of Sam'l Garland, Sr. Were you not a client of Mr. Samuel Garland, Sr., and did he not transact a good deal of law business for you?

Answer. I was a client of his, and he transacted a great deal of law business for me.

page 79 } By same. Did he keep accounts against you and charge fees to you?

Answer. He did keep accounts and charge me with fees.

By same. Was he not a very accurate and cautious business man, and very particular about his papers?

Answer. Our business transactions run for many years, involving from thirty to forty thousand dollars; he kept all the accounts; we had no settlement till about two years before his death. I had as much confidence in him as I ever had in any man in my life. I

always regarded him as an accurate business man. I reckon he

was particular with his papers.

By same. Did you ever know him to make a mistake in your

name in rendering any account against you, or charging any fee to

you?

Answer. I never knew him to make a mistake in my name; he

always knew me too well.

By same. Did not you and he have a difficulty or misunderstandpage 80 } ing about the settlement of some accounts before his

death which resulted in a coolness between you?

[Pl'ff, by counsel, objects to the last question in so far as it tends

to effect the credit of the witness, or contradict him, as the question relates to a collateral matter.]

Answer. We had no difficulty or misunderstanding about the settlement of his account against me. I thought he charged me too

high fees and compounded on me, and I being no accountant gave

the account to John Thompson to examine for me; but he returned

it without examination, and I settled with Mr. Garland according

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to his account. This did not cause me to leave Garland & Slaughter as my counsel; we had no words or misunderstanding. Mr.

Garland promised me, in the presence of Jno. G. Meem, if there

was anything wrong in his account he would correct it.

By same. Did you ever, on part of your son, apply to Charles R. Slaughter, as executor, Sam'l Garland, Sr., or, after his death, to Sam'l Garland, the other executor, or to John F. Slaughpage 81 } ter, after he became adm'r de bonis non, for the legacy now alleged to be due your son, the plaintiff?

Answer. I never did; I would not have done it if everything had been perfectly straight.

By same. Do you know whether your son ever made application to the either of said parties for the said legacy, or have you ever heard him say whether he had made such application?

Answer. I do not know that he ever did make application for said legacy, and I never heard him say that he had made application for it.

Direct examinations resumed.

1st question by counsel for complainant. In saying that Mr. Garland never made a mistake, as far as you know, in writing your name in his correspondence or acceounts with you, and that he knew you too well for that, do you mean to say that he may not inadvertently have made such a mistake when writing your name in connection with those of a number of other persons?

Answer. I cannot say that he was perfect in all things.

page 82 } I remember now that Charles R. Slaughter and John F. Slaughter had a brother named Samuel Slaughter—he was about the office of Samuel Garland, Sen., before the war, and I knew him then.

And further saith not.

JOHN F. HAWKINS.

The deposition of James Garland, taken January 4th, 1878, to be

read as evidence on behalf of the plaintiff.

Present—R. G. H. Kean, atto. Jno. F. Slaughter; E. S. Brownatto. for Flood's adm'r; and Brockenbrough and Hay,

mond, counsel for pl't.

1st question by counsel for plaintiff. Please state your age, where

you reside, how long you have so resided, and what is and has been

your occupation during such residence?

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64 Hawkins v. Garland's adm'r & als.

[Note. J. F. Slaughter by counsel, appears at the taking of this

deposition as a courtesy to the counsel and the witness, and for that

cause waives the irregularity of taking testimony before the bill

is filed, or any rules taken—reserving all other grounds of exceptions should there be any.]

page 83 } Answer. I was eighty-five years old the 6th day of

last June, according to the family record and the information of my parents. I reside in the city of Lynchburg, and have done so since 14th Octo., 1841. I was a practising

lawyer till 14 Ap'l, 1870, at which time I was appointed judge of

the corporation court of said city and have continued to hold that

office up to the present time.

2nd question by same. State whether or not you were acquainted

with the late Sam'l Garland, Sr., if so, were you a relative of his; and if so, in what degree?

Answer. I was acquainted with Samuel Garland from about the year 1819 or '20. I was frequently his counsel from that time till his death. Our relations were friendly and intimate. Mr. Samuel Garland and my father were own cousins, although he was about four years older than myself.

page 84 } 3rd by same. Please state when and where Mr. Garland died and about what age?

Answer. I understood that Mr. Garland died in Mississippi in November, 1861. His remains were brought from Mississippi to Lynchburg where they were buried. His age was about seventyfour years.

4th by same. Where did Mr. Garland reside during the greater part of your acquaintance with him; what was his occupation; what family did he have at the date of his will, December, 1857, and at the date of his death; what was the character and value of his estate?

Answer. He resided in Lynchburg all the time. When I first knew him he was a merchant's clerk—from merchant's clerk he became a practising lawyer about 1821, and continued in that business till his death. He never had any children that I knew of.

He was a married man before he commenced to practise law, and his widow is now living in Lynchburg. His family consisted of

page 85 } himself and wife, December, 1857. I saw an inventory of his estate of all kinds, real and personal, negroes, bonds, and all here and out west, amounting, I think, to about seven hundred and fifty thousand dollars. I remember that this inventory was in the handwriting of Mr. Garland, but I saw it after the death of Mr. Garland.

5th by same. Please state, if you know, who were the nearest kin of Mr. Garland, and in what degree they were related to him?

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Answer. He had brothers and sisters and a good many nephews and neices living at the time of his death.

6th by same. Please state, if you know, the character of Mr. Garland as to attachment to his friends?

Answer. Mr. Garland, when he was a friend, was a very warm friend, and he was not a vindictive enemy.

7th by same. State whether or not you know John F. Slaughter, adm'r of S. Garland, dec'd; if so, how long have you known him, where does he reside, and what is and has been his occupage 86 } pation?

Answer. I have known Mr. John F. Slaughter ever since he came to Lynchburg to live, which, I think, was about 1844 or 1845. He resides in the city of Lynchburg. He qualified to practise law. He then quit law and commenced to operate a cotton factory near Lynchburg. He quit that business and commenced law again, and was afterwards elected the president of the First national bank at Lynchburg, and has discontinued the practice of law for some four or five years.

8 by same. Was he or not a relation of Mr. Garland; if so, in what degree? What were the relations between Mr. Slaughter and Mr. Garland as to friendship?

Answer. He was a nephew of Mr. Garland. I —— knew any breach of relations which ought to exist between uncle and nephew. They seemed to be very cordial in their relations.

9 by same. State whether or not it was the habit of Mr. Garland

page 87 } to prefix to the name of Mr. Slaughter, any military title; if so, what; if not, in what name or manner did he usually address or speak of him?

Answer. I never knew that Mr. Slaughter ever had any military title, and I never heard Mr. Garland speak of him under any military title. All Mr. Slaughter's friends and relations, so far as I know, spoke of him as Jack Slaughter.

10 by same. Have you any knowledge of any person named John F. Slaughter who was known by Mr. Garland as "Captain" John F. Slaughter?

Answer. I have none, unless he called Jack Capt. John F. Slaughter as a nick-name, but I never heard him call him anything else but Jack.

11 by same. Please state, if you know, the names of the sons of John F. Slaughter?

Answer. I think his sons are Charles H., John F., Robert, and Samuel G.

page 88 } 12 by same. About what time was the son Samuel G. born? Did or not Mr. Slaughter have a son of that name in December, 1857? Do you know of any John F. Slaughter who had a son of that name in Dec., 1857, or at any time before the birth of the one you have named?

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Answer. I cannot say with certainty; my impression is that he was born in 1860 or 1861; it was not a great while before Mr. Garland died, but I cannot say with certainty. He is the youngest son, so far as I know. If Mr. Slaughter had a son of that name—Samuel G.—in 1857—I never heard of it. I do not know of but one John F. Slaughter besides his son of same name mentioned above.

13 by same. State whether or not you know John F. Hawkins, of the county of Bedford; if so, how long have you known him, and about what is his age? Was Mr. Garland acquainted with Mr. Hawkins, and if so, how long had he been so acquainted? Please state what you may know as to the relations which existed between Mr. Garland and Hawkins as to friendship?

Answer. I have known him for a long time. I cannot page 89 } tell when I first became acquainted, but I think he is not behind my own age. Mr. Garland married not far from where Mr. Hawkins lived. The first time I ever saw Mr. Hawkins was in Mr. Garland's office. Judging from their conversation, they were very warm friends till a short time before Mr. Garland's death. In settling up some matters, in the spring or summer before Mr. Garland's death, they disagreed, and became a little alienated.

14th by same. Does it come within your knowledge that John F. Hawkins bears any military title—if so, what; did Mr. Garland or not usually address or speak of Hawkins by that title?.

Answer. I have heard him called captain ever since I knew him, but I do not know whether he was ever a captain. I have always known him as captain. I have frequently heard Mr. Garland call

him captain, but I do not know that he always called him so. I

page 90 } think I have heard him sometimes call him John.

15th by same. State whether or not you know, or have

known, any other John F. Hawkins who has borne the

title of "captain"?

Answer. I never did.

16th by same. Please state, if you know, the names of any sons

of Capt. Hawkins?

Answer. I have heard the names of all the sons of Capt. John

F. Hawk—s I think, but I could not give the christian names of

any of them. I know the names of two of them—Samuel Garland

Hawkins and Robert. I was told by Capt. Hawkins and also by

Mr. Garland that this son was named after Mr. Garland.

17th by same. Please state whether or not you ever heard

Mr. Garland make any special remark about Sam'l Garland Hawkins; if so, what was the same, when made, and what led to the

remark?

Answer. I heard Mr. Garland say in his lifetime, "I have selected

selected (I think three or four) of my namesakes, and have

page 91 } given them each a thousand dollars, as I understood in

this will. I remember that Samuel Garland Hawkins

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was one of the namesakes mentioned by him. This conversation

was brought by an enquiry by me about the disposition made by him in his will of the house and lot where I reside. We was talking about his will. I did not see the will, and never saw it till it came before the court for probat.

[Exception.—The defendant excepts to the foregoing answer (and the question in so far as it was designed to call out) as parol evidence of the testator's declarations as to the contents of his will, or his testamentary intentions, and as an attempt to alter the effect and meaning of the will by oral evidence.]

18th by same. Please state whether or not the remark of Mr. Garland, which you have repeated, was made before or after the birth of Mr. Slaughter's son Sam'l Garland?

Answer. I cannot say decisively, but I think it was in page 92 } 1860 or the spring of 1861. He went out to the south in both of those years. I do not know whether Samuel G. Slaughter, the son of John F., was born at that time or not.

19th by same. State whether or not you ever communicated to either of the executors or the administrators of Mr. Garland the above statements of Mr. Garland in reference to the p'ff.; if so, what did they or he say in regard thereto?

[19th question objected to by Jno. F. Slaughter, by counsel, as irrelevant.]

Answer. Ch. Slaughter died in Feb., 1862, a short time after his uncle, and I never had any conversation with him about it at all.

I am not distinct in my recollection, but I think after John F. Slaughter qualified as adm'r I did make a statement to him of this conversation, but the answer made by him at this time I am not willing to disclose, as it was made to me as counsel for the estate and for John F. Slaughter.

page 93 } 20th by same. It appears from the record in the suit of Garland's ex'ors vs. Garland, &c., now depending in Lynchburg circuit court, that the plaintiff in this suit was party defendant; please state who the counsel who managed that suit, and why the said pl't was made such party; who directed it to be done, and what reason was assigned therefor?

Answer. The firm of Garland & Christian, of which I was partner, brought the original suit in counsel in the case of Garland vs. Garland, I think. I drew the bill. I suggested the propriety of making Sam'l Garland Hawkins a party on account of the conversation between Sam Garland and myself, spoken of by me, so that the question might be settled. I expressed a doubt as to the admissibility of parol testimony to vary the will, but I thought it

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best to settle that question in the suit, and to advise to make him a party.

X-examinations.

Without waiving the exceptions heretofore taken, the following questions are asked:

1. What was the relationship of Charles R. Slaughter, Sam'l G. White, and Sam'l Garland, Jr. (your former partner), to

page 94 } Mr. S. Garland, the testator? Were they not all his nephews, and favorite ones?

Answer. Chas. R. Slaughter, Sam. Garland, Jr., Sam. G. White, and John F. Slaughter were all nephews of Sam. Garland. I think he was kindly disposed towards to all of them, especially so towards Chas. R. Slaughter and Sam. Garland, Jr.

2 by same. Was not Mr. Garland's will an autograph?

Answer. I never saw the will till it was offered for probat; it was in the handwriting of Mr. Garland entirely.

3rd by same. Was not Mr. Garland, the testator, a very particular and careful man about the transaction of all important business?

Answer. He was.

4 by same. Did you ever mention the conversation you have referred to as held with Mr. Garland, in respect to bequests to his namesakes, to Sam'l Garland, Jr.?

Answer. I have no recollection now that I ever did.

page 95 } 5 by same. Was not the original bill filed for him as executor? I mean the original bill in the adm'rs suit of Garland's ex'r vs. Garland?

Answer. It was.

6 by same. Did it come within your knowledge that S. Garland, Jr., while acting as sole executor, paid and delivered the legacy referred to in the plaintiff's bill in this case to the son of John F. Slaughter as the proper legatee of his uncle?

Answer. It does not; I never heard of it.

7 by same. Was not S. Garland, Jr., a brigalier-general in the Confederate army—first a colo., and from the spring of 1862 to his death a brig.-general?

Answer. Sam. Garland, Jr., left here as capt. of the Home Guard; he was then col. of the 11 regiment, and then he was made brigadier-general.

page 96 } 8 by same. Was not Gen'l (then col.) S. Garland, Jr., in Lynchburg on furlough in Dec'r, 1861? Did he not present Mrs. Mary L. Garland a X-mas gift of a deed in fee to the remainder in the lot and residence of his deceased uncle?

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Answer. I do not remember whether Sam. Garland, Jr., was here in December, 1861, or January, 1862. I know he made a deed to Mrs. Garland of the house and lot, the late residence of his deceased uncle, and he made that when he was at home in December, '61, or Jan., '62.

9 by same. Was he not here again in March and April, 1862, after C. R. Slaughter's death?

Answer. I do not remember the time, but I most think he was; he was here after Chas. R. Slaughter's death; he died about middle of Sep., 1862.

And further saith not.

J. GARLAND.

A copy—Teste:

SAM. D. PRESTON, Cl'k.

The fee of the clerk of the circuit court for the city of Lynchburg for making out this copy of the record is $28 80.

Teste:

S. D. PRESTON, Cl'k.

A copy—Teste:

GEO. K. TAYLOR, C. C.

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Cost of printing, &c., $33 65.

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19

Who under the will is entitled to receive the same? From what source has this money come?

By the renunciation, the widow acquired one-half of all the

Testator's estate in Mississippi. Under the will, Mrs. Morriss and her children acquired Tudor Hall—the first choice of the Testator's Mississippi lands, and 40 slaves and all the other outfit thereon, and all the profits thereof, except so much as might be necessary for her father's support, in preference to every other legatee. The $64,130.88 is made up of the Confederate valuation of the widow's half of the estate, and of the legacy to Mrs. Morriss and her children, and of the profits thereof, with little or nothing in addition to these sources. If John F. Slaughter, Administrator, de bonis non, had gotten this money, must not he pay to the widow her half, and to Mrs. Morriss and her children their part?

They have not asked that he collect their money. The law does not make it his duty to collect it. The decree does not give him any authority to collect it.

The eight $1000 bonds of the Testator's East Tennessee and Virginia Railroad bonds, or others of equal value, to Nicholas A. Garland's children, purchased with the trust moneys of Mrs. Morriss and her children, came as a part of the Virginia estate to the hands of John F. Slaughter, Administrator de bonis non. These, with the interest thereon, have been withheld more than 22 years. There is no complaint about the other two $1000 bonds to the other children of Nicholas A. Garland. The Administrator de bonis non purchased them; but the eight $1000 bonds and the interest collected thereon, are withheld in violation of the duty of the Administrator de bonis non. He and other legatees of stocks and bonds of the same character had their legacies soon after the

death of the Testator. No reason was assigned for this discrimination, 'till the Mississippi decree was gotten up; and we respectfully submit to the Court, that this decree is no justification for the Administrator, de bonis non, withholding these legacies, and the interest collected thereon; but that he should be required to turn over the bonds and pay the moneys he has collected on them.

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Looking at our case in the light of the authorities quoted, and of the reasons on which the decisions rest, we say confidently, that the Circuit Court of Lynchburg did not err, when it decided that John F. Slaughter, Administrator, de bonis non, of Samuel Garland, Sr., dec'd, could not call the personal representative of Burr Garland, dec'd, to account for any devastavit charged against him; and that he could not enforce in Virginia the decree against William H. Garland, Executor of Burr Garland, dec'd, in Mississippi; and that the Court did not err in dismissing his Bill.

EDWARD S. BROWN,
of Counsel for the Appellees.

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Garland
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1st Appeal
Nov. 1886

Garland

Supreme Court of Appeals
OF VIRGINIA.

SAM'L GARLAND'S ADM'R, APPELLANT,
vs.
BURR GARLAND'S ADM'R, &c., APPELLEES.

Appeal from Decree of Circuit Court of Lynchburg.

BRIEF FOR APPELLANT,

BY

DIGGS & MANSON.

1. If complainant in equity be entitled to any distinctive part of the relief sought, it is error to dismiss the bill.

2. If any one of the several objects of a bill in equity are proper, it is error to summarily dismiss the bill.

3. Demurrer to bill for nonjoinder of parties defendant, must disclose the names and rights of the lacking parties.

4. A fiduciary cannot purchase at a discount any charge against his trust estate, and charge the trust estate the full amount thereof.

5. A fiduciary who is in default in settling his accounts can maintain no action against the trust estate for any claim whatever alleged to be due him.

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Supreme Court of Appeals of Virginia
AT RICHMOND.

SAM'L GARLAND'S ADM'R } Appeal from Decree of
vs. } Circuit Court of Lynch-
BURR GARLAND'S ADM'R. } burg.

BRIEF FOR APPELLANT.

Coming into this cause at a late day, it is not proposed in this brief to argue all of the points raised and questions involved. In the petition for supersedeas, reasons are assigned exposing error in the decree appealed from, which, laconically and pertinently put, are not even attempted to be answered in the brief of appellee's counsel. Instead of responding to the points raised in said petition, Mr. Brown, ignoring them entirely, lays down certain propositions of his own and marshals his array of authorities to support them. It is respectfully submitted that where his propositions of law apply to the case, his authorities do not support his propositions,—and where his authorities support his propositions, his propositions do not apply to the case. We conceive, however, that the brief of Messrs. Burks & Burks is a conclusive reply to appellee's counsel, and we will seek to avoid traveling over ground already so amply covered.

Our desire and intention herein is to present to the Court a view of this cause entirely distinct from that in which it has

been argued in the notes already filed, and to assign grounds of error in the decree appealed from not hitherto insisted upon.

STATEMENT OF THE CASE.

For the purpose of clearly exposing the error now insisted on, we will state the case which the record discloses.

Sam'l Garland, Sr., died in 1861, leaving a large estate in

Virginia, the place of his domicile, and Mississippi, which he disposed of by will to sundry specific legatees, and left the residuum to certain residuary legatees. J. F. Slaughter qualified as administrator with the will annexed in Virginia, and Burr Garland qualified as administrator with the will annexed in Mississippi. And each proceeded to administer the estate within his respective jurisdiction. J. F. Slaughter settled his accounts from time to time in the suit of Garland v. Garland's Administrator, pending in the Circuit Court of Lynchburg, and Burr Garland settled his in the Probate Court of Hinds county, Miss., up to a short time before his death, in 1869. At the time of his death he had not fully administered the estate in Mississippi, but the last account settled by him in his life-time, and only a short while before his death, showed him then

indebted to the estate of Sam'l Garland, as of 9th December, 1868, in the sum of $6,545. (See Record, pages, 15, 19, &c.)

After his death his executor instituted proceedings in the Probate Court of Hinds county, Miss., according to the statute of Mississippi, to have a final settlement, in solemn form, of the accounts of Burr Garland as such administrator of Samuel Garland; to which proceedings all the legatees of Samuel Garland and his Virginia administrator (Slaughter) were made parties defendant (p. 14). In that proceeding, so instituted and prosecuted by Burr Garland's ex'or, he (Burr Garland) was found indebted to the estate of Samuel Garland in the sum of $64,130.88, and decree rendered that his executor should pay that sum "to the legal representatives of Samuel Garland, Sr., deceased, in Virginia" (p. 50). Subsequently, Ch. Y. Morris, who had qualified in Virginia as administrator, with the will annexed of said Burr Garland, filed a petition, or caused one to be filed, in the name of other parties, but secretly for his benefit as such administrator in the suit of Garland v. Garland, pending in Lynchburg, claiming that Burr Garland had acquired by purchase and assignment the legacies left by Samuel Garland's will to the children of Nicholas Garland. The sole object of that petition was to obtain a decree directing J. F. Slaughter, administrator of Samuel Garland, to pay petitioner,

as administrator of Burr Garland,* the full amount of said legacies. The petition is said to be lost from the record, but that is not material.

At this juncture, Slaughter, adm'r, &c., in order to protect the estate of his testator from the claim so asserted, and it being utterly impossible for him to protect it adequately by a simple answer to the said petition, filed his bill in chancery against said Morris, adm'r in Virginia of Burr Garland and his surety, setting up, among other things, the Mississippi decree against the Mississippi ex'or of Burr Garland, which still remained unpaid, as an offset to the claim asserted in the petition, and exhibited as apart of his bill, the entire record in said suit. The bill also sought a discovery from him (the before-mentioned petition being then lost) as to which of the legacies he had bought, and to compel him to file the evidence of the transfer of such legacies to Burr Garland (see p. 10). To this bill said Morris, adm'r, filed his demurrer and answer. The burden of his answer is an attempt to impeach the validity of the Mississippi decree, though no step had ever been taken there to have it corrected, amended, or reversed. The demurrer is based upon two grounds. First, the want of jurisdiction in the Court to enforce against the defendant, as administrator c. t. a. of Burr Garland, the Mississippi decree against Burr Garland's Mississippi executor; and, second, "the want of necessary parties before the Court, whose rights are involved with the rights of persons represented by this defendant in questions

raised by the bill" (p. 52). This seems to mean that persons whose rights were involved with defendants ought to have been made defendants to the bill, but were not. Who those persons were, and what the nature of their rights, was not disclosed by the demurrer, and still remain unknown.

Upon the hearing, the Circuit Court, without, in so many words, sustaining the demurrer, did dismiss the plaintiff's bill with costs, alleging as the ground of its decision that the plaintiff, as administrator of Samuel Garland in Virginia, could not

* The petition being missing from the papers, this is stated from the statements of the bill which are not disputed (p. 9).

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hold the Virginia administrator of Burr Garland to account to him for any default of said Burr Garland as administrator of Samuel Garland in Mississippi; placing the dismissal of the bill upon a ground not assigned in demurrer.

It is contended that the Court erred in not overruling the demurrer to the bill.

THE FIRST GROUND OF DEMURRER—

to-wit: the lack of jurisdiction to enforce the Mississippi decree—was bad, because the enforcement of the Mississippi decree was not the sole object of the bill That was, in some sort, one of its objects, but there were other objects sought by the bill, which could not be attained otherwise than by a bill in chancery, and nowhere else than in the forum the plaintiff sought, and the plaintiff was the sole person whose duty it was to seek to accomplish those objects.

Let the Court turn to the bill, and especially to the prayer thereof (p. 10) and the objects of the suit will be seen to be as follows:

1. To discover what assets of Burr Garland came to hands of defendant Morris as his administrator.

2. To have defendant's accounts as administrator of Burr Garland settled.

3. To discover from which of the children of Nicholas Garland did Burr Garland purchase legacies, and to compel him to produce evidence of his right to claim those legacies.

4. To compel defendant to pay plaintiff all the assets of Burr Garland (which the bill alleged to be less than amount of the Mississippi decree).

5. To appropriate the legacies acquired (so-called) by Burr

Garland in satisfaction pro tanto of the Mississippi decree.

Where the plaintiff has a right to any part of the relief sought by his bill; where any one of the several objects of his bill is proper, though he may not be entitled to all the relief he seeks, it is error to dismiss the bill. The Court will entertain his suit and grant him so much of the relief sought

as is proper, and deny the rest. This principle is so firmly established, and the practice in this regard so universal in all the courts of equity, that we are sure the proposition will not be controverted.

Now when Burr Garland's administrator was asserting his claim by petition against Slaughter, administrator, which petition had been lost, it was the duty of Slaughter to protect the estate by seeking a discovery as to which legacies the petitioner was entitled to, and compel him to file the evidence thereof. He could not do this in any other way than by his bill for a discovery, and offering, as he did offer in his bill, to bring the assignors of the legacies before the Court. He would make them parties so as to fully protect the estate, after the defendant had disclosed who his assignors were. See the prayer of the bill, p. 10.

This relief, to which he was clearly entitled, and which it was his duty to seek, was entirely distinct from his right to enforce the Mississippi decree, and therefore the Circuit Court erred in summarily dismissing his bill. Thus it appears that plaintiff's first ground of demurrer does not apply to the entire bill, but only to a part of it; and that the reason assigned by the Court in its decree for dismissing the bill is no reason at all, except for denying part of the relief sought.

THE SECOND GROUND OF DEMURRER

is for lack of necessary parties whose rights are involved with defendants. Whilst the Court below did not base its erroneous decree upon this ground, still it may as well be disposed of. In Milligan's Administrator v. Milledge, 3 Cranch 220, Ch. J. Marshall for the Court held, "that the want of proper parties is not sufficient ground for dismissing the bill."

Furthermore, the demurrer did not disclose the names or rights of the lacking parties. "A demurrer for want of necessary parties must show who are the proper parties." Sands Suit in Equity, p. 139. "The plea or answer must disclose facts showing that additional parties are necessary, and must show who the necessary parties are, and then the plaintiffs can

have leave to amend their bill and make the proper parties." Id. citing Cook v. Mancius, 3 John, ch. 427, and Milligan's Adm'r v. Milledge, 3 Cranch, 320. It must also be remembered that the plaintiff offered in his bill to make other parties defendants if it should become necessary.

We think it is clearly shown that the Court should have overruled the demurrer, and should have entertained the suit. That being so, we now come to consider

THE CASE AS DISCLOSED BY BILL, ANSWER AND PROOFS.

It is our aim not to consider herein the force and effect of the Mississippi decree. That branch of the case is fully covered by Messrs. Burks & Burks, and Mr. Brown seems to see nothing else involved in the cause. It may be remarked, however, en passant, that the Supreme Court of the United States and our Court of Appeals do not agree with Mr. Brown in holding that the judgment of one State court is a foreign judgment as to the other States. We think the contrary is expressly held in Hampton v. McConnell, 3 Wheat. 234, affirming and following Mills v. Duryee, 7 Cranch 481. Also, 1 Lomax on Ex'ors, 620; Clarke v. Day, 2 Leigh, 172.

We are endeavoring to consider the case independent of that decree, and to show error in the Court below, no matter what

view the Court may take of the proceedings in the Probate Court in Mississippi.

The burden of defendant's answer is, 1st, that the 9th clause of Sam'l Garland's will simply gave to Burr Garland so much of the profits of the farm as he might choose to expend for a support, and as to the surplus of such profits, they belonged to some vague, undefined trust fund of Mrs. Morris, and held by Burr Garland as her trustee. There is no such trust raised by the will, and it seems never to have been so supposed until and except by way of answer to this bill.

It appears that neither Burr Garland, Chas. Y. Morriss, nor Mrs. Morriss ever thought of such a trust until it was used as a defence in this suit. Burr Garland never kept any account of such trust fund, never was required to keep such account, or to settle any such by the alleged cestuis que trust. And Morris,

who for the first time seeks to create such a trust, is not making the claim as trustee, or in behalf of the alleged cestuis que trust. He filed his petition, claiming the legacies as the administrator of Burr Garland.

For a complete refutation, however, of this pretended trust,

the Court is referred to the brief of Messrs. Burks & Burks. In our view of the case, as will presently appear, it makes no difference what money he used in purchasing (as it is called) the legacies.

The second chief ground of defendant's answer is in seeking in this collateral way to impeach the validity of the Mississippi decree. As before stated, we are considering the case independent of that decree, and of the settlement of Burr Garland's account by his Mississippi executor, which settlement the defendant alleges is erroneous.

It is abundantly shown by the bill and exhibits, and not denied by the answer, that the last account settled by Burr Garland, not by his negligent executor, of his administration of S. Garland's estate, showed him indebted to that estate in the sum of $6,545, as of the 9th December, 1868. See pp. record, pages 15, 19, 47. This was the state of his accounts as he left them; and though Slaughter, administrator, filed exceptions to that account—see pp. 29-31—(which were partly allowed, and the true balance against him thereby considerably increased), neither Burr Garland's personal representative in Mississippi or Virginia can impeach or object to that account. The balance against him of $6,545 is an admission of his indebtedness, which binds his personal representatives and his heirs everywhere. And they have not sought in any way to object to it.

Soon after the above balance appears conclusively against

him—to-wit, in February, and June, 1869—he expends $4,350 in the so-called purchase (?)—p. 56—of certain legacies that it was his duty to pay. Let us inquire into the real nature of

THE PURCHASE BY AND TRANSFER TO BURR GARLAND OF THE NICHOLAS GARLAND LEGACIES.

The record discloses that the real nature of this transaction,

the true inwardness of it, has been strangely misapprehended, and this misconception has led the Court below to make the decree complained of, which we will show is on its face a contradiction of terms.

Of course, it was as much the business of Burr Garland, administrator, with the will annexed of Samuel Garland in Mississippi, to pay off the legatees under the will of his testator, as it was for the Virginia administrator to do it.* After the payment of debts there, that was the thing above all others for him to do. When he satisfied the legatees named in the several so-called assignments to him, it was incumbent on the legacies by one whose duty it was to pay them—for which he would be credited in his accounts at the sums he so paid.

The circumlocutory form of assignments he adopted (see pp. 58 to 64) are nothing more nor less than plain receipts whereby the signers acknowledged payment of their legacies; and those legacies can never more be held as a charge against the estate of Samuel Garland, no matter in what questionable shape they may come. Equity looks at the substance, not the form. All there is of it is that the administrator so satisfying them is entitled to a credit for the amount he paid, and no more.

Any other view of these so-called assignments is simply preposterous, and leads to confusion. No authority is needed for a proposition so plain; for Morriss in his answer admits it was the duty of Burr Garland to settle with the legatees. He says: "Each of these personal representatives (viz: Slaughter in Virginia and Burr Garland in Mississippi) is severally liable, after paying funeral expenses, charges of administration and debts, for the assets of them respectively received, to the widow and legatees" (p. 54).

The failure of the Court below to look quite through this shallow device of purchase and assignment, led it into the use of language that is, legally speaking, utterly without meaning. The decree of May, 1881, p. 64, says:

* An administrator c. t. a. has the same powers and is under the same duties and obligations as an executor. Lomax on Ex'ors, 283, 558; McCall v. Peachy, 3 Munf. 288.

"And while the estate of the said Burr Garland, deceased, may be liable to that of Sam'l Garland, Sr., deceased, for the alleged devastavit of said Burr Garland in applying the funds of his testator in his own use, in purchasing the legacies given by
hands as administrator as aforesaid, in purchasing the legacies given by his testator to the children of Nicholas A. Garland," &c., &c.

It has generally been considered by the entire bench and bar of the country that an administrator's "applying the funds of his testator in his hands as administrator to the legacies given by his testator," was about as remote from a devastavit as he could well get. The administrator may take any form of paper, whether a refunding bond, receipt, assignment or what not, he cannot thereby alter to his own advantage the true inwardness of the transaction. He may call it the purchase of a legacy, but the eye of a court of equity will see it as it is, and so treat it. It is a payment and extinguishment of that charge against the estate.

If this view be correct, as it must needs be, then the contention of appellee that the money paid to the legatees properly belonged to the trust fund of Mrs. Morriss, is of no consequence. Granting that Burr Garland did owe, on the very day of the so-called purchase, the trust fund of Mrs.

Morriss, he also owed, so to speak, the legatees whom he paid. He paid one debt and did not pay the other. He may have owed numerous other creditors. Can they claim any right to the debts he did pay, simply because he used the money they should have had? The legatees who were paid did not know of or participate with him in any diversion of any trust fund. In short, the whole attempt to identify this money used in the payment of legacies as trust fund, and to claim the legacies that were settled and extinguished, is undoubtedly a vain thing.

HOW THEN SHOULD THE PRETENDED ASSIGNMENTS BE TREATED?

By the admission of the answer, p. 56, it appears that for the eight legacies of the total face value say of $8,000, Burr Garland paid $4,350. He is entitled to a credit on his administration account for that sum, and no more. He claimed by his petition the full face value. But it is an elementary principle of equity that a fiduciary compounding a debt, legacy,

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or any charge against the estate, is to charge the estate only the amount he paid. Authority is hardly needed, but we cite from Pomeroy's Eq. Juris., p. 653 note: "If a fiduciary bring up a debt or incumbrance against the estate at less than its full amount, he cannot retain the benefit of the discount, but can only credit himself with the sum actually paid. See also 1 Lomax on Ex'ors, side p. 350; Adams' Eq., p. 59. In 2 Williams on Executors, p. 1669, the doctrine is more comprehensively stated, and the note thereto states this case almost exactly, thus: "Where an executor contracted with legatees for the purchase of their legacies, which were assigned to a trustee for him, in consideration of sums less than the legacies, it was admitted that the transaction could not be sustained for the benefit of the executors."

The decree of the Probate Court of Hinds County, Miss., is either binding on Morriss, administrator, at least so far as to offset any claim he asserts, or it is not binding. If binding, the Court should enter a credit thereon for the legacies paid by Burr Garland, and a decree against Morriss, administrator de bonis [non crossed out] testamento for the balance. If it is not binding, and the Virginia administrator of Burr Garland is to be allowed to assail and invalidate that final settlement, and treat it as of no force (for so it is contended by counsel), then it follows that there has been no final settlement at all of Burr Garland's accounts as administrator of Samuel Garland. Certain it is then that his administrator, who claims that something is due

him from the estate, must settle his accounts. Coming into equity, he must do equity.

He must do one of three things, before he can have any status in a court of equity: He must abide by the last settlement made by Burr Garland himself; or he must abide by the settlement made by his Mississippi executor; or he must make a full settlement now himself for his testator. If he stands by the Burr Garland settlement of 9th December, 1868—charging Burr Garland with the balance then ascertained of $6,545, and crediting him by the $4,350 disbursed to legatees—he will still be considerably indebted to Samuel Garland's estate. If,

on the other hand, he stands by the Mississippi settlement and decree, his testator will be heavily indebted to the estate. If neither of these courses be adopted, he must, before he can recover anything, submit to a full and final settlement of Burr Garland's accounts as administrator c. t. a. of Samuel Garland, and thereby "stand the hazard of the die."

We submit, therefore, with confidence that there is flagrant error in the decree and proceedings of the Circuit Court; that this Court, having the whole case now before it, will reverse said decree, and, in the light of the foregoing well settled

principles of equity, do substantial justice between the parties.

Respectfully submitted,

DIGGS & MANSON,

November, 1886. Of Counsel for Appellant.

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1st appeal

Vn Zn.

Garland

Supreme Court of Appeals

OF VIRGINIA.

SAM'L GARLAND'S ADM'R, Appellant,

} Appeal from decree

vs. } of the Circuit Court

} of Lynchburg.

BURR GARLAND'S ADM'R, Appellee. }

REPLY TO THE BRIEFS OF COUNSEL FOR APPELLANT

BY

COUNSEL FOR APPELLEES.

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Supreme Court of Appeals

OF VIRGINIA.

SAM'L GARLAND'S ADM'R, Appellant,

} Appeal from decree

vs. } of the Circuit Court

} of Lynchburg.

BURR GARLAND'S ADM'R, Appellee. }

REPLY TO THE BRIEFS OF COUNSEL FOR APPELLANT.

The counsel for the appellant contend that the bill sought for relief, other than the enforcement of the Mississippi decree, and if the Circuit Court of Lynchburg had no jurisdiction to enforce that decree, it should not have dismissed the bill on the demurrer, but should have entertained it for other relief sought by the plaintiff. Let us examine:

THE BILL AND THE DEMURRER.

The bill alleges the qualification of the executors in Virginia and the partial administration by them, the qualification of the plaintiff as administrator de bonis non in Virginia, the qualification of Burr Garland as administrator with the will annexed in Mississippi; that he had taken possession of the whole estate of the testator in Mississippi, and had used and appropriated its proceeds; that he had failed to make a final settlement of his accounts, and to deliver the estate which came to his hands to the administrator de bonis non in Virginia, and that at the time of his death he was indebted to the estate in a very large amount; that said administrator de bonis non demanded that William H. Garland, the executor of Burr Garland, should cause a final settlement to be made of Burr Garland's administration on the estate of Samuel Garland in Mississippi; that the final settlement was made, and that the Chancery Court of Hinds County, Mississippi, decreed that William H. Garland, executor of Burr Garland, pay to the legal representatives of

Samuel Garland, in the State of Virginia, the sum of $94,-120.88, subject, however, to a deduction of such costs as had accrued in said court in relation to the final settlement of the accounts; that the plaintiff was advised that said decree was binding and conclusive as to the estate of Burr Garland, not only in Mississippi but elsewhere. He alleged the qualification of Charles Y. Morriss as administrator, with the will annexed, of Burr Garland, in Virginia; that assets had come into his hands; that Burr Garland during his life had purchased the legacies of a number of the children of Nicholas A. Garland, and that said Charles Y. Morriss was then claiming the legacies so purchased and acquired by his testator, Burr Garland, and, for the purpose of realizing the same, had caused a petition to be filed in the case of Garland's Executor v. Garland and others in the name of the said children from whom the transfers were obtained. That the petition had been mislaid and could not be found in the papers, so that the plaintiff could not specify its object and purposes more definitely, and he prayed that Charles Y. Morriss, administrator of Burr Garland, and his surety be made defendants, and that said administrator should answer and say what assets had come to his hands, and that he "be compelled to pay over to your orator in satisfaction, in. part of the decree aforesaid, all the assets of his testator."

To the bill the defendants filed a demurrer, and, though not required under our practice to specify the grounds of the demurrer, they specified the following:

First. The want of jurisdiction in the Circuit Court of Lynchburg to enforce against the Virginia administrator of Burr Garland the decree in Mississippi against his Mississippi executor.

Second. The want of necessary parties before the court whose interest in the subject was involved with those of the defendants.

The lower court (Record, p. 64) decreed that "the plaintiff as administrator de bonis non of the said Samuel Garland, Sr., deceased, in Virginia, cannot hold the said Burr Garland or his

personal representative in Virginia to account to him for any default of the said Burr Garland, as administrator aforesaid, in his administration of the estate of the said Samuel Garland in Mississippi; but he can only be held to account by the legatees of the said Samuel Garland, Sr., deceased."

The court then decreed that the bill be dismissed.

The decision is based upon the first point in the demurrer, and it ended the case.

Our brief, filed two years ago, when we expected the case to be heard, was almost exclusively confined to the questions raised by the demurrer.

The third proposition in our brief (p. 13) is this: An administrator de bonis non cannot call a prior administrator to account for a devastavit.

In support of this proposition we cited Wernick v. McMurdo, 5 Rand. 51. In Judge Burks' brief for the appellant (p. 4) he says: "Since the decision in Wernick v. McMurdo, 5 Rand. 51, it has never been doubted, in Virginia at least, that an administrator de bonis non cannot call a prior administrator to account for a devastavit."

This concession renders it unnecessary to refer to Tyler v. Nelson, 14 Gratt. 214, and other Virginia cases, reaffirming the doctrine of Wernick v. McMurdo, and we merely add that it is not in Virginia alone that this rule prevails, as will appear from the case of The United States v. Walker, 109 U. S. 258, in which it was not only held that an administrator de bonis non cannot call the former administrator to account for a devastavit committed by him, but that a decree (which was relied on by the administrator de bonis non as conclusive to show the liability of the former administrator to him) rendered by the court, in which the accounts of the former administrator had been stated and settled, ordering him to pay over the balance found to be due from him on such settlement, was void—such court having, in making such order, exceeded its jurisdiction; the law giving it authority to require unadministered assets to be delivered by the former administrator to the administrator de bonis non, not authorizing it to order that

the proceeds of a debt that had been collected by the former administrator should be paid over by him to the administrator de bonis non.

The bill in this case charges Burr Garland with taking possession of the whole estate in Mississippi, and using and appropriating its proceeds. It looks alone to the devastavit committed by him, and to the decree as fixing the amount due on his devastavit. The administrator de bonis non seeks to recover from Burr Garland's Virginia administrator for his devastavit, and to hold him concluded by the Mississippi decree against the Mississippi executor.

Under the decisions cited above, and by the admission of Judge Burks, the administrator de bonis non could not maintain this suit, even if the prior administration had been in Virginia. How much more is he unable to do it, when he seeks to recover for a devastavit, by a prior administrator on a Mississippi administration, and on a Mississippi decree, against a Mississippi executor in a proceeding to which the Virginia administrator of Burr Garland was not a party.

In the brief of Messrs. Diggs & Manson (p. 4) and in the brief of Mr. James Alfred Jones (p. 4), Counsel for the Appellant, these gentlemen contend that, besides the enforcement of the Mississippi decree, the administrator de bonis non sought other objects of relief in his bill—to discover the assets of Burr Garland in the hands of Charles Y. Morris, his administrator, to settle the accounts of said administrator, and to compel said administrator to pay all the assets in his hands to the credit of his intestate on the Mississippi decree.

All this was simply the modus operandi of enforcing the Mississippi decree. Why should the administrator de bonis non wish to discover the assets of Burr Garland? What concern had he with these assets? None, except to apply them to the extinguishment pro tanto of the alleged devastavit of Burr Garland, as ascertained by the Mississippi decree.

Messrs. Diggs & Manson further argue that the Court erred in dismissing the bill, without giving the plaintiff leave to amend it, by making new parties. We reply, that when the

Court decided that the plaintiff himself had no standing in Court, there was nothing left by which his bill could be amended.

And even if the case had been one in which relief might have been granted on making new parties, the plaintiff did not ask for leave to amend by making them, although the answer, plainly showed who, if the suit could be maintained at all, were the necessary parties.

AS TO PRIVITY BETWEEN AN EX'OR. AND AN ADM'OR. C. T. A.

Judge Burks concedes in his brief that the law is settled by the cases of Stacy v. Thrasher, 6 How. 44; and Hill v. Meek, 18 How. 16, that a decree against an administrator of a decedent in one State cannot be enforced against an administrator of the decedent in another State; but contends that the rule does not apply to this case, inasmuch as the decree sought to be enforced was rendered against Burr Garland's executor in Mississippi, and is sought to be enforced against his administrator with the will annexed in Virginia.

In the first place, we deny the correctness of his assumption that an administrator with the will annexed is substantially the same with an executor named in the will; or that if it could (as we insist that it cannot) be shown that the executors named in a will are in such privity with each other that a judgment obtained against an executor who has qualified in one State is enforceable against an executor who has qualified in another State, that it would follow that a judgment obtained against an executor in one State is enforceable against an administrator, with the will annexed, in the other State.

All who are named as executors derive their original authority from the will of their testator; such is not the case with administrators with the will annexed. They derive their authority solely from the court by which they are appointed. And there is no greater degree of privity between an administrator with the will annexed and an executor qualifying as such in a different State than would exist between him and an administrator qualifying there.

But it is unnecessary to insist upon this distinction between an executor and an administrator with the will annexed. For the purposes of this case, we could safely concede that an administrator with the will annexed is "substantially the same as the executor named in the will."

In Aspden v. Nixon, 4 Howard, 467, Henry Nixon had been appointed executor in the will of Mathias Aspden, and he had qualified as his executor in England and as his executor in Pennsylvania; and in that case it was sought to establish a privity with himself in the double character of executor in the two jurisdictions; but the Court held otherwise, and said (p. 497): "The representative character of Nixon in England was altogether distinct from his character as executor in Pennsylvania; and so, also, the English administrators of John Aspden's estate are equally distinct from Brown, who is the administrator of his estate in Pennsylvania."

In Low v. Bartlett, 8 Allen 259, it was held that there was no privity between an executor in one State and an ancillary administrator in another State, and that a judgment against the latter could not be used in a suit against the former.

Chapman J., delivering the opinion of the Court says: (p. 263) "It is true that the executor is in privity with the testator in respect to the estate which he takes; which is merely the estate in Massachusetts, and within the jurisdiction of its courts; and the administrator is in privity with him in reference to the estate in Vermont, which he can administer upon. But as the privity relates to different property and different matters, and is limited to different jurisdictions, it does not aid the plaintiff. There is no privity between the estate in the hands of the executor and that in the hands of the administrator. Each must be administered separately and independently."

And on page 264 it is said: "Another and a decisive objection to the plaintiff's position is, that if it were held to be valid, it would enable the foreign administrator to bind the estate in Massachusetts, by suffering the recovery of a judgment against him."

In Ela v. Edwards, 13 Allen 48, cited by us in our former brief, the same person who was appointed executor under the will, qualified as executor in Massachusetts and as administrator with the will annexed in New Hampshire; and in that case there was an effort to sustain the privity because the same person administered in each jurisdiction. The Court held otherwise, and said: "The distinction is sought to be made in this case that the executor and administrator is the same person: but he obtained the decree by proof of claim in New Hampshire. That does not bind the creditors and legatees in Massachusetts."

Thus we see that when the same person is executor in one jurisdiction and administrator with the will annexed in another jurisdiction there is no privity between the two characters, and that when the same person is executor in one jurisdiction and executor in another jurisdiction there is no privity between his two characters; and we see, further, that there is no difference in the rule that between representatives of a decedent in different jurisdictions, there is no privity, whether such representatives be executors or administrators with the will annexed of a testator, or administrators of an intestate. Between Charles R. Slaughter and Samuel Garland, Jr., who were appointed executors of Samuel Garland, Sr., and who qualified in Virginia, on one side, and Burr Garland, who qualified as his administrator with the will annexed in Mississippi, on the other side, there was no privity; and between William H. Garland, who was appointed executor of Burr Garland, deceased, and who qualified in Mississippi, and Charles Y. Morriss, who qualified as administrator with the will annexed of Burr Garland in Virginia, there was no privity.

The only instance in which this rule appears to have been in the slightest degree modified or relaxed is to be found in the case of Hill v. Tucker, 13 How. 458, in which, where two of four executors named in a will had qualified in Virginia, and one of them in Louisiana, in a suit brought in Louisiana against the executor who had qualified in that State, it was held that the fact that a judgment had been rendered in Virginia against

the Virginia executors for the same debt was admissible in evidence to show that the claim was not barred by the statute of limitations. In coming to this conclusion, however, the Court refer with approval to the decisions in Aspden v. Nixon, 4 How. 44, and Stacy v. Thrasher, 6 How. 44, and, after quoting from Stacy v. Thrasher, say: (p. 467.) "For the same reasons, notwithstanding the privity that there is between executors a testator, we do not think that a judgment obtained against one of several executors would be conclusive of the demand against another executor qualified in a different State from that in which the first judgment was rendered. But such a judgment may be admissible in evidence in a suit against an executor in another jurisdiction, for the purpose of showing that the demand had been carried into judgment in another jurisdiction against one of the testator's executors, and that the others were precluded by it from pleading prescription or the statute of limitations upon the original cause of action. Such is the case pertinent to Louisiana, as may be seen from the case of Aspden v. Freeman, in 13 La. Rep. 293. The Supreme Court of that State, speaking by Judge Martin, says that the plea of prescription cannot prevail in behalf of one joint debtor if a suit has been brought against another in the Circuit Court of the United States for the District of Maryland, meaning thereby, we presume, if it had been commenced in any other Court of the United States."

This case, therefore, which is the only one relied on by Judge Burks in support of his position, is a mere affirmation of the rule laid down in Aspden v. Nixon, and Stacy v. Thrasher, and in the cases in Pennsylvania, Massachusetts and other States, referred to in the section already quoted from Perry on Trusts.

But it is not necessary to decide the question in this case. The provision cannot be held void except in favor of creditors of the legatee who claim the right to subject the property to their demands against him. The only claimant here is the personal representative of the testator himself; and it can hardly be pretended that the testator himself did not have power to exempt this property from liability to his own estate, for debts then due or which might thereafter become due from his brother, nor that this power was not effectually exercised by the 9th clause of his will, even though the provision therein made might be held to be invalid as to the creditors of his brother, other than the testator, and those claiming under him.

LEGACIES OF NICHOLAS A. GARLAND'S CHILDREN.

In the 15th clause, the testator says: "I also give to each of my brother Nicholas A. Garland's children, of Illinois, $1,000 of my East Tennessee and Virginia R. R. bonds, or others of equal value."

All the testator's East Tennessee and Virginia R. R. bonds, and his other bonds, came to the hands of his executors and his administrator de bonis non in Virginia. None of them ever came to the hands of Burr Garland. Eight of the chil-

his representative capacity. It is a decree in effect against the estate of Burr Garland. And that estate is represented alike by his Mississippi and Virginia administrators."

The following extract from Stacy v. Thrasher, 6 Howard, 44, is a conclusive answer to this position. Mr. Justice Grier, delivering the opinion of the Court, says: (p. 60) "It is for those who assert this privity to show wherein it lies, and the argument for it seems to be this: that the judgment against the administrator is against the estate of the intestate, and that his estate, wheresoever situate, is liable to pay his debts; therefore the plaintiff, having once established his

claim against the estate by the judgment of a court, should not be called on to make proof of it again. This argument assumes that the judgment is in rem, and not in personam, or that the estate has a sort of corporate entity and unity. But this is not true, either in fact or in legal construction. The judgment is against the person of the administrator, that he shall pay the debt out of the funds committed to his care. If there be another administrator in another State liable to pay the same debt, he may be subjected to a like judgment upon the same demand, but the assets in his hands cannot be affected by a judgment to which he is personally a stranger. A judgment may have the "effect" of a lien upon all the defendant's lands in the State where it is rendered, yet it cannot have that effect on lands in another State by virtue of the faith and credit given to it by the Constitution and act of Congress. The laws and courts of a State can only affect persons and things within their jurisdiction. Consequently, both as to the administrator and the property confided to him, a judgment in another State is res inter alias acti. It cannot be even prima facie evidence of a debt; for if it has any effect at all it must be as a judgment and operate by way of estoppel."

THE NINTH CLAUSE OF THE WILL.

Judge Burks (pp. 7-8 of his brief) argues that the ninth clause of the will gives to Burr Garland during his life, in absolute right, all the profits from "Tudor Hall," and the forty slaves and other outfit mentioned.

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In the copy of the record first sent up the phrase in this clause "or for future debts or liabilities" is omitted, A correct copy of this clause will be found at the end of the additional record recently sent up under the certiorari.

The Court will observe that the testator commences this clause with a reference to Burr Garland's being embarrassed in debt, and that it might be unsafe to devise property to him absolutely. He then proceeds: "I therefore set apart in trust in the hands of my executors, for the benefit of my said brother, either of my plantations in Hinds County, called Barrens or Tudor Hall, whichever he may choose," and forty slaves, and live stock and plantation tools, &c., to make a complete estate. "The profits of the estate is set apart for his B. Garland's use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts or liabilities, other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss, in trust to the separate use of his wife Paulina B. Morriss and her children."

The Court will observe that no title passes to Burr Garland; that during his life the estate and the profits are set apart in the hands of the executors, Charles R. Slaughter and Samuel Garland, Jr., and that at the death of Burr Garland all the property in this clause is to pass from them to Charles Y. Morriss in trust for Mrs. Morriss and her children. All the property in this clause includes the profits previously mentioned, as well as the estate specified, with the provision that neither the estate nor the profits should be subject to any debts or liabilities of Burr Garland, other than his decent and comfortable support. The profits of the estate are for his use to this extent, and to this extent only.

Judge Burks argues to show that it was not competent for the testator to exempt the property thus set apart for the use of Burr Garland during his life from the debts of Burr Garland; and to arrive at this conclusion he is compelled to assume that by the will "the full, absolute and unlimited use and enjoyment of the property was given to him during his life"—

an assumption shown to be unwarranted by the provision of the will which sets it "apart in trust in the hands of the executors," with the direction that neither the estate nor profits should be bound for his past debts or liabilities, or for future debts or liabilities "other than decent and comfortable support"—and giving it over at his death in remainder to others—thus making it the duty of the executors to see to it, that those entitled in remainder should receive all the estate and the profits that had not been expended in furnishing "a decent and comfortable support to Burr Garland during his life."

Even if this were otherwise, it would not, according to recent well considered decisions of courts of the highest authority, follow, that the provision would be void.

In the third edition of Perry on Trusts, section 380 a, it is said: "There is eminent authority in the Federal and the State Courts for the proposition that the power of alienation is not a necessary incident to an equitable estate for life; and that the owner of property may, in the free exercise of his bounty, so dispose of it as to secure its enjoyment to the objects of his bounty, without making it alienable by them, or liable for their debts; and that this intention, clearly expressed by the founder of a trust, must be carried out by the courts."

The author refers to numerous authorities—among others to the case of Nichols v. Eaton, 91 U. S. 716—the opinion in which, so far as it relates to this point, Judge Burks says "is a mere obiter dictum." If it were so, the cogent reasoning of Mr. Justice Miller, who delivered the opinion, could hardly fail to carry conviction, to the mind of any one reading it attentively, that the law ought to be as laid down by him. But it was not regarded by him, or by the Court, as being "a mere obiter dictum," as is shown by the opinion itself (from which there was no dissent), in which it is said (p. 729): "We have indicated our views in this matter rather to forestall the inference that we recognize the doctrine relied on by appellants, and not much controverted by opposing counsel, than because we have felt it necessary to decide it; though the judgment of

the Court may rest equally well on either of the propositions which we have discussed. We think the decree of the Court below may be satisfactorily affirmed on both of them."

And it will be found that the doctrine thus laid down was unanimously reaffirmed by the Supreme Court of the United States, in the case of Hyde v. Woods, 94 U. S. 523.

It is true, as we believe, that the question has not yet been directly decided in Virginia. We feel quite confident, not only from the reason of the thing, but from indications afforded by the decisions in Nicholl v. Handley, 10 Grattan 336, and other cases that might be cited, that, whenever it does become necessary to decide it, our Court will adopt the rule as laid down in Nichols v. Eaton and Hyde v. Woods, and in the cases in Pennsylvania, Massachusetts and other States, referred to in the section already quoted from Perry on Trusts.

But it is not necessary to decide the question in this case. The provision cannot be held void except in favor of creditors of the legatee who claim the right to subject the property to their demands against him. The only claimant here is the personal representative of the testator himself; and it can hardly be pretended that the testator himself did not have power to exempt this property from liability to his own estate, for debts then due or which might thereafter become due from his brother, nor that this power was not effectually exercised by the 9th clause of his will, even though the provision therein made might be held to be invalid as to the creditors of his brother, other than the testator, and those claiming under him.

LEGACIES OF NICHOLAS A. GARLAND'S CHILDREN.

In the 15th clause, the testator says: "I also give to each of my brother Nicholas A. Garland's children, of Illinois, $1,000 of my East Tennessee and Virginia R. R. bonds, or others of equal value."

All the testator's East Tennessee and Virginia R. R. bonds, and his other bonds, came to the hands of his executors and his administrator de bonis non in Virginia. None of them ever came to the hands of Burr Garland. Eight of the chil-

dren of Nicholas A. Garland sold their legacies to Burr Garland, and two of them sold their legacies to John F. Slaughter, the administrator de bonis non in Virginia, who held in his hands the testator's East Tennessee and Virginia R. R. bonds, and who is the plaintiff in this suit.

Under Burr Garland's qualification as administrator with the will annexed in Mississippi, he had charge of all the property in the 9th clause of the will, which was set apart in the hands of the executors. He held it for himself as far as his interest extended, and for Mrs. Morriss and her children in remainder at his death. The will and the depositions taken in Mississippi show that he was penniless when Sam'l Garland died, and had no resources afterwards outside the 9th clause of the will, and from the proceeds of cotton raised on the Tudor Hill tract he purchased the eight legacies mentioned. The children of Nicholas A. Garland looked to John F. Slaughter, and not to Burr Garland, for the payment of their legacies. Their fiduciary relation was with him, and not with Burr Garland; but if it should be held that Burr Garland sustained any fiduciary relation to them, and this relation interfered with his purchase from them, they, alone, can complain of it.

The children of Nicholas A. Garland, who sold their legacies to Burr Garland, do not object to the sale. On the contrary, they acquiesce in and ratify it. See deposition of A. M. Garland, Rec. p. 70.

Were they so disposed, they could make no valid objection to it. Nor does any one object. On the contrary, Messrs. Diggs & Manson, in the note of argument recently filed by them, claim for the estate of the testator the benefit of the purchase of these legacies; and they quote authorities to show that when a fiduciary buys up a debt or incumbrance against the estate represented by him,

at less than its full amount, he cannot retain the benefit of the discount, but can only credit himself with the sum actually paid.

If it were conceded (as it is not) that legacies come within the class of claims to which this rule is applicable, it is very clear that it can apply only where the purchase is made by the

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fiduciary for his own benefit, or for the benefit of a party claiming under him as a volunteer.

Conscious of this difficulty in the way of the successful assertion of the pretension set up by them, Messrs. Diggs & Manson assert that the claim that the legacies were purchased with the trust funds was never thought of until it was used as a defence in this suit; that the mislaid petition in the case of Garland v. Garland was filed by Morriss as the administrator of Burr Garland and for the benefit of his estate.

There is nothing whatever in the Record to sustain this assertion.

The bill alleges the belief of the plaintiff that Burr Garland used the funds of the estate of Samuel Garland in purchasing the legacies; that Morriss was claiming the legacies so purchased by Burr Garland, his testator, and had caused a petition to be filed in the name of the legatees from whom the purchases were made.

Morriss, in his answer, denies that the purchases were made with the funds of Samuel Garland's estate, or that they were made by Burr Garland for his own benefit; averring that they were made with money belonging to the trust fund of Paulina B. Morriss and her children, and he claims for them, and not for the estate of Burr Garland, the benefit of the purchases.

Nothing is said in either bill or answer as to the party for whose benefit the lost petition appeared on its face to be filed. It is stated, however, in the bill, and not denied in the answer, that it was filed in the names of the legatees whose legacies had been purchased. It does not appear that the petition showed on its face that it was filed for the benefit of any one other than the petitioners themselves, who had in their assignments authorized their names to be used. It is quite certain

that it did not show that it was filed for the benefit of Burr Garland's estate; for, as stated in the answer, Burr Garland had, in his lifetime, told Morriss "that it was a good investment for Paulina and the children," and Morriss was seeking to recover the legacies for them, and not for Burr Garland's estate. If, therefore, the petition showed on its face that it was filed for

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the benefit of any one, other than the petitioners whose names were used, there is every reason to believe that it appeared to be filed for the benefit of Paulina B. Morris and her children.

Messrs. Diggs & Manson argue, however, to show that the purchases were in fact payments of the legacies, and must be so considered by the Court—it being, as they say, "so much the business of Burr Garland, administrator with the will annexed of Samuel Garland in Mississippi, to pay off the legatees under the will of his testator, as it was for the Virginia administrator to do it"—this position being taken in face of the fact that the legacies were of the testator's "East Tennessee & Virginia railroad bonds, or others of equal value"; and that not one of the bonds thus bequeathed were under the control of the Mississippi administrator, but were each and all of them in the possession and under the control of the Virginia administrator.

Messrs. Diggs & Manson take further the most remarkable position, that it is of no consequence whether the money used in acquiring these legacies did, or did not, belong to the trust fund of Mrs. Morriss and her children, as if a personal representative, having in his hands a trust fund belonging to third parties, could, by applying it to the purchase of claims against, or to the payment of debts due from, the estate represented by him, deprive his cestui que trusts of their right to the fund, or to what was acquired with it.

If it were made to appear that Morriss, in the petition filed by him in the case of Garland v. Garland, claimed the legacies for Burr Garland's estate, the most that could be said would be that he acted inconsistently in subsequently claiming them for his wife and children. He would not be legally or morally estopped from so doing if they were, in fact, entitled to them; and they certainly would not be precluded from showing that the purchases were made with trust funds to which they were entitled, and that the legacies therefore belonged to them, and not to the estate of Burr Garland.

Even if it appeared that the purchases of the legacies were made by Burr Garland for his individual benefit, it would not

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affect the result in this suit. The only possible mode in which his estate could be deprived of the benefit of the purchases would be by requiring his personal representative to settle his accounts as administrator with the will annexed of Samuel Garland. This, as has been already shown, he cannot be required to do by the administrator de bonis non with the will annexed of Samuel Garland, and it is only as such administrator that the plaintiff is a party to this suit.

WITH WHAT FUNDS WERE THE LEGACIES PURCHASED?

Burr Garland was insolvent. See deposition of A. Virden, Additional Rec., p. 56. He made large crops on the Tudor Hall tract—one crop of cotton, but mostly corn and potatoes, during the war; and after the war, cotton, corn and potatoes. See additional Rec., pp. 6, 7, 8, 10, 58 and 60. He shipped the cotton to Aiken & Watt, New Orleans. See Additional Rec., pp. 18 and 60. He paid for the legacies with the proceeds of the cotton. See deposition of A. M. Garland, Record pp. 71-2, and exhibits with his deposition, Rec. p. 72, and the deposition of John G. Glover, Rec. pp. 72-3. The money which came to the hands of Charles Y. Morriss, administrator, was proceeds of Aiken & Watt's draft on New York, from the proceeds of said cotton. See deposition of John T. Murrell, Rec. pp. 73, 76, and the account of Aiken & Watt, Rec. p. 73. Burr Garland was very economical. He incurred very little indebtedness in decent and comfortable support. See Additional Rec., pp. 15, 36 and 53. He purchased the legacies for the benefit of Mrs. Morriss and her children. See answer of Charles Y. Morriss, Rec. pp. 54 and 55, and the deposition of Henry Shurlds, Additional Rec. pp. 16-17, questions and answers 223, 224, 227, 228, and p. 22, question and answer 55.

All the property in the 9th clause—the estate specified and the profits, were in the hands of Burr Garland, administrator with the will annexed, set apart for the benefit of Mrs. Morriss and her children, in remainder. His fiduciary relation to them is clear. When he purchased the legacies with the trust funds, the trust attached to the legacies, notwithstanding deeds

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of conveyance, with warranty of title, were made to Burr Garland in his individual name, with the express privilege of using the names of the original legatees in recovering these legacies. The right of Mrs. Morriss and her children to follow the legacies in which the trust moneys were invested cannot be doubted.

Adams' Equity, (7 Am. Ed.) 143, states the rule thus: "If a trustee or executor purchase an estate with his trust money, or assets, and the fact of his having done so be admitted, or distinctly proved, the parties interested in the money may claim the estate."

In Forrest v. Elwees, 4 Ves., 492, the trustee, without authority, sold stock which he held in trust. The Court said, (p. 496): "The cestui que trust has an option to have either the stock or the money produced by it, with interest."

In Brown v. Lambert, 33 Gratt., 256, Judge Burks (p. 262) expressed the rule thus: "Where a trustee commits a breach of trust, by a sale of the trust subject, the cestui que trust (beneficiary) may at his option disaffirm the sale, and pursue the property in the hands of a volunteer, or a purchaser for value, with notice of the trust, or he may affirm the sale and resort to the proceeds in the hands of the trustee."

This would be the case, if the trustee made the purchase for his own benefit—a fortiori are the cestui que trusts entitled, where, as is shown by the evidence in this case, the purchases, though made by Burr Garland in his own name, were really made by him for the benefit of Mrs. Morriss and her children.

THE MISSISSIPPI DECREE IS GROSSLY ERRONEOUS.

Among other errors apparent on the record, this stands out prominently, that the heavy balance found against Burr Garland in his administration is based on Confederate values in the inventories taken in January, 1863, which have never been scaled. He is charged in his inventory with the value of Tudor Hall and all the property in the 9th clause of the will, and the lands in Hinds county allotted as dower to the widow, in the sum of $178,832 25. With the Coahoma lands at $20,492.

00, with proceeds of the sale of corn raised after the death of Samuel Garland, Sr., on the Tudor Hall tract, and sold to the Confederate forces at $14,026.90, aggregating $213,331.15. See Rec., p. 19, and 8th exception, Rec., p. 27, and the deposition of John Shelton, Rec., p. 69.

To these grossly erroneous proceedings Charles Y. Morriss, as administrator with the will annexed of Burr Garland, was no party—not having been made so either by service of process, or by publication, and by them he is in no manner bound.

We submit that the decree of the lower Court ought to be affirmed.

WILLIAM J. ROBERTSON,

EDWARD S. BROWN,

Counsel for Appellees.

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Garland

IN THE

Supreme Court of Appeals

OF VIRGINIA.

RICHMOND.

Addition to Record.

To the Honorable Judges of the

Supreme Court of Appeals of Virginia:

It is agreed at the request of J. Singleton Diggs, counsel for the appellees in Garland's Adm'r, vs. Garland's Adm'r, that the following, being statements of the clerk of the lower Court and a portion of the record, be printed and attached to the printed record in the appeal, as if he had brought up the same in certiorari.

EDWARD S. BROWN,

Att'y for Appellants.

J. SINGLETON DIGGS,

For Appellees.

10th Dec., 1895.

I, Samuel G. Wingfield, clerk of Circuit Court for the city of Lynchburg, do hereby certify, in respect to the transcript of the record from this office, given at the request of Mr. Brown for appeal in the causes of Samuel Garland's adm's vs. Mary L. Garland and others, and of Same vs. Burr Garland's Adm'r and Others, as follows—to-wit:

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The notice given by counsel of application for appeal is in these words and figures—to-wit:

"To the Hon. J. Singleton Diggs and Hon. R. T. W. Duke, counsel for the plaintiff in Sam'l Garland's Adm'r v. Mary L. Garland and Sam'l Garland's Adm'r vs. Burr Garland's Adm'r.

Take notice that we intend in pursuance of sec. 3457 of the Code of Virginia, to apply for an appeal from the decree rendered in the causes entitled above at the special term of the Circuit Court for the city of Lynchburg, in Feb., 1895, and will apply to the clerk of said Court for a transcript of so much of the record in said causes in addition to the portions heretofore before the Court on former appeals, as may enable the Court of Appeals properly to decide the questions involved in said decree.

MARY L. GARLAND,

GARLAND MORRISS,

And OTHER DEFENDANTS,

By Wm. J. Robertson and Edward S. Brown, their Counsel.

Service of the above notice acknowledged.

J. SINGLETON DIGGS, for pl't'ffs.

Mch 23, '95."

The decrees of December, 1887, and of 30th April, 1891, from the Court of Appeals, in Circuit Court, were entered solely in the case of Sam'l Garland's Adm'r vs. Burr Garland's Adm'r and Others.

The extract from account of Sam'l Garland, Jr., executor of Sam'l Garland, and the decrees of 17th June, 1892, of 18th May, 1893, of 20th Nov, 1893, and of 16th May, 1895, were filed and entered solely in the case of Sam'l Garland's Adm'r vs. Mary L. Garland, and Others.

Teste:

S. G. WINGFIELD, Clerk.

To Charles Y. Morris, Adm'r of Burr Garland, dec'd:

Sir,—Take notice that I shall proceed at the time page 2}and place stated below to take the depositions of Mrs. }Charles L. Roane, Mrs. Kemper Campbell, and Mrs. Thomas D. Bushfield, at the residence of Mrs. Charles L. Roane, in Sullivan M. county, Illinois; on Tuesday the

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25th October, 1879, and that of Austin M. Garland, at his office in the freight depot of the Ohio and Mississippi Railroad Company in Springfield, Illinois, on Saturday, the 25th day of October, 1879, to be read as evidence on behalf of the estate of Samuel Garland, Sr., in the chancery suit of Garland, &c. vs. Garland, &c., depending in the Circuit Court for the city of Lynchburg, in respect to the claim made therein, the names of the children of Nicholas A. Garland, as legatees, under the will of Samuel Garland, Sr. If for any cause said depositions are not begun or being begun are not completed on the days above named, they will be continued from day to day until completed.

JOHN F. SLAUGHTER,

Adm'r, &c., of S. Gar and, Sr.

Oct. 8, 1879.

Executed October 10, 1879, by calling at Charles Y. Morris' usual place of abode, and not finding him there, by delivering to a member of his family, above the age of sixteen years a copy of the within, and explaining the purport of the same.

L. P. WINSTON, D. S.,

For Jno. W. Wright, S. C. R.

Sheriff's fee, 50c., paid J. W. Wright, S. C. R.

The Commonwealth of Virginia:

To any commissioner appointed by the Governor of the State of Virginia, for the State of Illinois, or to any justice or notary public of said State of Illinois—Greeting:

Know ye, that we, trusting to your fidelity and circumspection in diligently examining Lucy Roane, wife page 3}of Chas. L. Roane, Elizabeth Campbell, wife of Kemper Campbell; Ellen P. Bushfield, wife of Thos. D. Bushfield, witness on behalf of the defendant in a certain petition in suit of Garland vs. Garland, &c., now depending in our Circuit Court for the city of Lynchburg, wherein the children of Nicholas A. Garland are petitioners, and Jno. F. Slaughter, adm'r, d. b. n., with will annexed, of Sam'l Garland, Sr., is respondent, command you, that at such certain day and place as you shall appoint, the witnesses aforesaid before you, you call and cause to come and them diligently examine on the Holy Evangelist of Almighty God, and their examination into our Circuit Court, distinctly and plainly, without delay, you shall send and certify enclosed, also returning this writ.

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Witness Samuel D. Preston, clerk of our said Circuit Court, at Lynchburg, this 13th day of October, 1879, and in the 104th year of the Commonwealth.

SAM'L D. PRESTON, Clerk.

Garland vs. Garland:

Interrogatories to Mrs. Roane on behalf of the adm'r of S. Garland, Sr.

1. By J. F. Slaughter, adm'r, &c.:

Please state whether you are a daughter of Nicholas A. Garland, who was a brother of the late Samuel Garland, Sr., of Lynchburg, Va., and your present place of residence?

2. By same:

} Please give the names of all your father's children page 4}who were living in November, 1861, and state if any }of those then living have died, and at what age?

3. By same:

Please state whether any settlement or satisfaction was ever made to you for your legacy of $1,000 in East Tennessee and Virginia R. R. bonds, or other bonds of equal value, under Mr. S. Garland's will, if so, by whom it was made and what disposition was made of your claim to such legacy—by assignment or otherwise, and by whom was the acquittance signed?

4. By same:

Please state whether or not you have ever authorized any one (or your husband so far as you have reason to know, has authorized any one), to claim payment of said legacy on your behalf since the transaction above referred to with Capt. Burr Garland?

Same questions except (2), to Mrs. Campbell and Mrs. Bushfield.

The deposition of Mrs. Lucy Roane, wife of Charles L. Roane, taken at her residence in Sullivan Moultrie county, Illinois, to be read as evidence on behalf of the estate of Samuel Garland, Sr., in the suit of Garland, &c., vs. Garland, &c., in the Circuit Court of the city of Lynchburg, the same taken on the 21st day of October, 1879, in pursuance of the annexed commission, and in answer to the interrogatories hereto annexed, before the undersigned notary public duly qualified.

The witness being first duly sworn, deposes as follows:

1. Answer to 1st interrogatory:

I am. My present place of residence is Sullivan, Illinois.

2. Answer to 2d interrogatory.

} I cannot answer, lived in different part of the State page 5}and do not remember.

} 3. Answer to 3d interrogatory.

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Garland vs. Garland. 5

There was by Uncle Bur Garland; do not remember what kind of an instrument of writing it was, but I signed some kind of a paper, and think my husband also signed the same. And further sayeth not.

LUCY P. ROANE.

Also Mrs. Ellen D. Bushfield, wife of Thomas M. Bushfield, another witness, who, being duly sworn, deposes as follows:

1. Answer to 1st interrogatory.

A. I am. Reside at Sullivan, Illinois.

2. Answer to 2d interrogatory.

I cannot tell; do not remember.

3. Answer to 3d interrogatory.

I disposed of it to Uncle Burr Garland; I and my husband signed some instrument, but do not remember its nature.

4. Answer to 4th interrogatory.

No; we never have, neither of us.

And further sayeth not.

ELLEN D. BUSHFIELD.

Also Mrs. Elizabeth A. Campbell, wife of Kemper Campbell, another witness, who being duly sworn, deposes as follows:

1. Answer to 1st interrogatory.

I am, Sullivan, Illinois.

2. Answer to 2d interrogatory.

I cannot answer, do not know.

3. Answer to 3d interrogatory.

There was, by Uncle Burr Garland; I signed a paper of some kind, but do not remember its contents.

4. Answer to 4th interrogatory.

I have not, nor my husband.

And further sayeth not.

ELIZABETH A. CAMPBELL.

The foregoing depositions of Mrs. Lucy P. Roane, page 6}Mrs. Ellen D. Bushfield, and Mrs. Elizabeth A. Camp-}bell, were duly taken, sworn to, and subscribed at the time and place mentioned above, before me, a notary public. Given under my hand at Sullivan, Ill., this 21st day of October, A. D. 1879.

[Seal.] WM. W. PECKHAM,

Notary Public.

Fee for taking foregoing

Depositions, $1.20

Postage, 09

Total, $1.29

The Commonwealth of Virginia:

To any commissioner appointed by the Governor of the State of Virginia for the State of Illinois or to any justice or notary public of said State of Illinois—Greeting:

Know ye, That we, trusting to your fidelity and circumspection in diligently examining Austin M. Garland, witness on behalf of the defendant, in a certain petition in suit of Garland vs. Garland & others, now depending in our Circuit Court for the city of Lynchburg, wherein the children of Nicholas A. Garland are petitioners and Jno. F. Slaughter, adm'r d. b. n., with will annexed, of Sam'l Garland, Sr., is respondent, command you, that at such certain day and place as you shall appoint, the witness aforesaid before you, you call and cause to come and him diligently examine on the Holy Evangelist of Almighty God, and his examination into our Circuit Court, distinctly and plainly, without delay, you shall send and certify enclosed, also returning this writ.

Witness—Samuel D. Preston, clerk of our said Circuit Court at Lynchburg this 13th day of October, page 7}1879, and in the 104th year of the Commonwealth.

SAM'L. D. PRESTON, Clerk.

Garland, &c. }

vs } Interrogatories to Austin M. Garland, Esq

Garland, &c. }

1st Int'y by J. F. Slaughter, adm'r of S. Garland, dec'd:

Please state your name, age, and residence, and say whether you are a son of Nicholas A. Garland, a brother of the late Samuel Garland, Sr., of Lynchburg, Va.

2. By same:

Please give the names of all your father's children in the order of age—who were living in November, 1861, or born since that date—and if any then living or since born, have died, and if so, at what age?

3. Please state whether you were or are guardian of any of said N. A. Garland's children, and if so, give their names?

4. Please state whether, as such guardian, you made any settlement of the legacy to your said wards, given by the will of said Samuel Garland, Sr., of $1,000 in East Tenn. and Va. R. R. bonds, or other bonds of equal value, to each of N. A. Garland's children, and of your own legacy; if so, with whom and in what form? By assignment or otherwise, and when?

[Page 549]

5. By same:

Please state whether or not you have ever authorized any }one to claim payment for the estate of S. Garland, page 8}Sr., in Virginia of said legacies to your wards, since }the transaction with Capt. Burr. Garland above referred to?

The deposition of Austin M. Garland, taken on the twenty-fifth day of October, 1879, at the office of Henry C. Latham, in the city of Springfield and State of Illinois, to be read as evidence in behalf of the estate of Samuel Garland, Sr., in the suit of Garland, &c., vs. Garland, &c., depending in the Circuit Court for the city of Lynchburg, in pursuance of the annexed commission, and in answer to the annexed interrogatories before the undersigned, a notary public for the county of Sangamon and State of Illinois, duly qualified.

The witness, Austin M. Garland, being first duly sworn, deposes as follows:

1st answer to 1st interrogatory:

My name is Austin M. Garland; my age, forty-five years; residence, city of Springfield, Ill. I am a son of Nicholas A. Garland, a brother of the late Samuel Garland, Sr., of Lynchburg, Virginia.

2d answer to second interrogatory:

The names of my father's children living, in Nov., 1861, or born since that date, are as follows:

Lucy Phillips Roane, born Dec. 13, 1831.

Austin Marcellus Garland, born Oct. 29, 1833.

James Maurice Garland, born Sept. 26, 1835.

Elizabeth Ann Campbell, born Sept. 19, 1837.

Ellen Davis Bushfield, born Sept. 16, 1839.

Mary Fanny Rawlings, born Nov. 11, 1841.

} Wm. Burr. Garland, born May 9, 1854.

page 9} Albert Edward Garland, born March 20, 1857.

}Caroline Pina Garland, born Oct. 7, 1858.

Elma Celeste Austin Garland, born Aug. 3, 1860.

Agnes Maria Garland, born Aug. 22, 1862.

Laura Bob Garland, born Feb'y 9, 1865.

Of the foregoing, all are now living except Elma Celeste Austin Garland, who died Feb'y 3, 1862, at the age of eighteen months.

Third answer to 3d interrogatory:

I am guardian of Wm. B. Albert E., and Caroline P. Garland.

4th answer to 4th interrogatory:

As guardian, I did sell and assign the interest of my wards in the legacy of one thousand dollars in East Tennessee and Virginia railroad bonds, or bonds of equal value, to each of

them, made by the will of Samuel Garland, Sr.

I also sold and assigned the legacy to myself, made by the same will.

The sale of said legacies was made to Capt. Burr. Garland in June, 1869.

The assignments were in writing of said Burr. Garland—there were two instruments of writing—the one transferring the interest of my wards was signed by me as guardian; I signed the one transferring the legacy made to myself. I have no copy of said writings and cannot give the form.

5th answer to 5th interrogatory:

I have never authorized any one to claim the payment of said legacies to my wards since the transfer to Burr. Garland.

My wards have had no interest in said legacies since the date of said transfer in June, 1869.

And further saith not.

AUSTIN M. GARLAND.

} Subscribed and sworn to before me this twenty-fifth page 10}day of October A. D. 1879, at my office in the city of }Springfield, Illinois.

[Seal.] HENRY C. LATHAM,

Notary Public.

The foregoing depositions of Austin M. Garland was duly taken, subscribed, and sworn to before the undersigned at the time and place mentioned above.

Given under my hand and notarial seal this twenty-fifth day of October, A. D. 1889.

[Seal.] HENRY C. LATHAM,

Notary Public.

Notary's fee, $2.

Postage,

Total, $2.00

Virginia:

In the clerk's office of the Circuit Court for the city of Lynchburg.

The foregoing are copies of such portions of the record of the chancery cause pending in said Court, between Samuel Garland, Sr.'s adm'r, &c., plaintiffs, and Mary L. Garland and others, defendants, as was directed to be copied by J. Singleton Diggs, Esq., counsel for Samuel Garland, Sr.'s administrator.

Teste: S. G. WINGFIELD, Clerk.

The fee of the clerk of Lynchburg Circuit Court for this transcript is $3.35.

Test Virginia $3.35\WINGFIELD, Clerk.

A copy—Teste: GEO. K. TAYLOR, C. C.

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[Page 552]

Garland

BURR GARLAND'S ADM'R AND OTHERS, APPELLANTS,

vs.

SAM'L GARLAND'S ADM'R, &c., APPELLEES;

AND

MARY L. GARLAND, &c., APPELLANTS,

vs.

SAM'L GARLAND'S ADM'R, &c., APPELLEES.

Motions to Require Bond of Appellants, and to Place on Privileged Docket.

To the Supreme Court of Appeals of Virginia:

The appellees in the above-mentioned causes hereby move the Court—first, to require bond and security of the appellants; and secondly, to place the cause on the privileged docket.

In discussing these motions, only the first-mentioned case will be referred to, as all the questions involved in the appeal arise in that case, the question involved in the other case being merely consequential, and wholly dependent upon the decision of the first, in which alone we think the appeal should have been taken. Indeed, it is only by the diplomacy of persistence that appellants' counsel bring up the two decrees in one appeal, for the decrees are in separate suits, and there has been no order uniting them.

MOTION FOR BOND AND SECURITY.

Bond should be required because the appellants are not within the letter nor spirit of the statute which in specified cases dispenses with bonds on appeals.

This is a suit brought in 1880 by Sam'l Garland's Virginia administrator against C. Y. Morriss, administrator of Burr Garland, and Mary L. Garland, his surety as such adm'r, for the purpose of collecting from Burr Garland's said administrator the

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amount of a decree rendered in favor of the plaintiff against said estate by a court of competent jurisdiction in Mississippi. Burr Garland had been administrator with will annexed of Sam'l Garland in Mississippi, and this decree was for the balance found due by him to Sam'l Garland's estate on a judicial settlement of his accounts. Another object of the suit was by means of a discovery and set-off to protect the plaintiff against a claim asserted in the name of Nicholas Garland's children, legatees of Sam'l Garland; but it was alleged in the bill that Burr Garland himself was the real owner and assignee of said legacies, covertly claimed in the names of the legatees; that he being Sam'l Garland's Mississippi administrator, had paid these legacies and taken assignments thereof to himself, and that Sam'l Garland's estate, having this Mississippi decree against him unsatisfied, and the assets of his estate being wholly insufficient to satisfy it, was entitled to set-off said decree against the claim asserted in the name of the legatees, but really asserted by and owned by the estate of his debtor, Burr Garland.

Morriss, administrator of Burr Garland, answered the bill, making defense upon two grounds: first, disputing the validity of the Mississippi decree, and denying that anything was due to Sam'l Garland's estate by Burr Garland on a proper settlement of his accounts; and secondly, asserting that the alleged assets of Burr Garland's estate which said defendant had received as his administrator c. t. a. (and which plaintiff was seeking to subject to satisfy protanto his Mississippi decree) did not really belong to Burr Garland's estate, but "belonged to the trust fund of Paulina B. Morriss and her children," and that besides this, there was a "large indebtedness" due by Burr Garland to said Paulina B. and children—being the wife and children of the said defendant, Chas. Y. Morriss. And that the money used by Burr Garland in satisfying, or, as they say, purchasing, the legacies of Nicholas Garland's children, was really money belonging to the "trust fund of Paulina B. Morriss and her children."

See answer of C. Y. M., concluding with the prayer "that all the rights and interests of Paulina B. Morriss and her children be protected," &c.

The first part of this defense, to-wit: the invalidity of the

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Mississippi decree, has already been adjudicated by this Court, and cannot in any respect be further enquired into.

This case has been twice appealed, and both times this Court held that "the decree of the Mississippi Court must be accepted as final and conclusive evidence of the fact and amount of indebtedness by Burr Garland to Sam'l Garland's estate." 84 Va. p. 190; 87 Va., p. 759.

This judgment of Samuel Garland's estate against Burr Garland's estate being thus established, when the case came again before the Circuit Court the point of enquiry was whether said Burr Garland's estate owed any other debts, with their priorities, if any—specifically, whether his estate owed any debt to Morriss, trustee, claimed in his answer as above stated. Morriss, trustee, sought by evidence to establish such claim, and further to show that his claim is large enough to take all of Burr Garland's assets, and that it is entitled to priority. The plaintiff resisted each of these contentions, and the Circuit Court decreed in his favor throughout, sustaining a commissioner's report; that is to say, decreed all the assets of Burr Garland's estate to the plaintiff (they being enormously insufficient to satisfy the Mississippi decree), and decreed that the trustee for Paulina B. Morriss and her children and the said cestuis que trust should pay the costs. See decree of February, 1893. From that decree this appeal is taken by the said trustee, and some of the cestuis que trust in their own right, and the personal representatives of such as have died. One of the cestuis que trust declined to join in the appeal.

From this statement, which is strictly accurate (although omitting needless details) it is plainly perceived that this appeal is not for the purpose of "protecting the estate of a decedent, infant, convict or insane person" (the only exceptions to requirement of bond specified in section 3470 of Code.) True it is, that Day, late sergeant and present administrator of Burr Garland, is one of the appellants, but his counsel is the same as that of the Morriss trust fund, and being without independent counsel, without assets, and without interest in the result of the appeal, he is but a nominal party. The real, controlling, interested parties are the beneficiaries of the Morriss trust fund. They, and they only, are claiming against the appellees, and under the decision in

Sadler v. Green, 1 H. & M. 26, as well as under the principle of the exemption, they should give bond.

As was said in Porter v. Arnold, 3 Rand. 480, the estate of Burr Garland is not at all affected by the decree. That estate exhausted its right of contesting plaintiff's demand on the first appeal, and since then the real parties litigating have been Sam'l Garland's estate on the one hand and the trustee of Paulina B. Morriss and her children, and said children in their own right, on the other hand. They are, or were, in possession of all the assets of Burr Garland's estate; Morriss, trustee, claimed and appropriated them. "The statute only applies to those cases where the estate of a dead man is injuriously affected by a decree, and the appeal is taken by the personal representative to protect his estate." Pack, Assignee, v. Ficklin, 76 Va. 295. That is certainly not the case here.

Furthermore, Morriss, trustee, &c., is asserting a large claim (the amount of which is not disclosed in the record) against Sam'l Garland's estate, or against Burr Garland's estate, it is difficult to tell which. No suit or cross-bill was ever filed against either; but so it is, in some way or other, a large demand is being asserted here which prevents the distribution and final settlement of the estate of Sam'l Garland. In the thirty years in which these suits have dragged their slow length along, most of those entitled to the estate have gone to the grave, and the pendency of this claim is now, as it has been for many years past, the only hindrance to a final settlement and distribution. And the effect of this suit is to tie up and prevent parties from the use and enjoyment of nearly $30,000. Surely under these circumstances bond should be required of appellants, in a penalty not "less than the amount of money the payment of which is stayed."

MOTION TO PLACE ON THE PRIVILEGED DOCKET.

This motion is based on the ground that this cause of Sam'l Garland's administrator against Burr Garland's administrator, &c., has been pending since 1880, and has been twice before this Court on appeal. See 84 Va. 181; 87 Va. 758. That, as before stated, it ties up about $30,000, to which somebody is entitled,

and some of the parties largely interested are old and in needy circumstances.

It is therefore hoped that upon such investigation as the Court may, upon these motions, give to the consideration of the cause, it will see the propriety of using its discretion in advancing it to the Privileged Docket.

Respectfully submitted,

S. H. JOHNSON, Sergt.,
And Admr. S. Garland and other appellees,
By J. SINGLETON DIGGS,
Their Counsel.

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Garland

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NOVEMBER-TERM, 1895.

BURR GARLAND'S ADM'R, &c., APPELLANTS, || On motion to
SAM'L GARLAND'S ADM'R, &c., APPELLEES, || require appeal

AND || bond, and mo-

MARY L. GARLAND, &c., APPELLANTS, || tion to advance

v. || causes to privi-

SAM'L GARLAND'S ADM'R, &c., APPELLEES. || ledged docket.

REPLY OF COUNSEL FOR APPELLANTS.

1. We do not object to the motion of the appellees to advance these causes to the privileged docket, if they be heard the latter part of January, or the early part of March next. We can be ready at either of the times specified.

2. The motion of the appellees to require an appeal bond should be overruled for the following reasons:

1. All the money, other than transferring assets from one administrator to another, that the appellees can require the appellants to pay, under the decrees appealed from, was paid to them before the application for this appeal was made.

Under the decree of the 12th of January, 1895, the administrators of Paulina B. Morriss, C. Y. Morriss, Jr., Wm. M. Morriss, Mary A. Payne and Richard G. Morriss, out of the estates of their respective intestates, and Garland Morriss, Walter C. Morriss, Laurence B. Morriss, Juliette Cornelia Smith, and E. M. Courtney, out of their individual estates, were required to pay the administrator of Samuel Garland, Sr., his costs; which were taxed at $239.87; and before we could apply for the appeal, he issued an execution and compelled the payment. The execution was endorsed "satisfied," and returned. A copy of it is in the record. Trans. 129. All this was done, too, while the decree for costs, in favor of the appellants against the administrator of Samuel Garland, Sr, for $71.14, (87 Va. 758) remained wholly unpaid. Rec., part 5, p. 111.

Do the appellees now want a bond, in which the appellants will be bound to pay this money again, if the decree of the lower court be affirmed?

In Erskine v. Henry, 6 Leigh 378, the court said (p. 384): "In such a case, it is either unjust, or a solecism to require bond and security for payment of the debt, in case the judgment be affirmed. For if the debt has been already paid, it would be unjust to make the party pay it a second time; and if he is not bound to pay it, it is a solecism to require a bond to compel him to do so. So here, if the party has already performed the decree, cui bono require him to give bond to perform it?"

2. Under the decree of the 12th of February, 1895, Garland Morriss, administrator of Charles Y. Morriss, who was administrator of Burr Garland, out of his intestate's estate, was required to pay to Mary L. Garland $344.14, refunding costs to her, which she had paid for Burr Garland's estate. Rec., part 5, p. 105.

This is a payment by one appellant to another appellant. There is no appeal from it, and the appellees have nothing to do with it.

3. Under the decree of the 12th of February, 1895, Garland Morriss, administrator of Charles Y. Morriss, who was administrator of Burr Garland, out of his intestate's estate, and Mary L. Garland, surety for the administrator of Burr Garland, out of her own estate, were required to pay to the administrator of Samuel Garland, Sr., $2,840.92, "being the balance of the assets of Burr Garland's estate"; but this decree expressly provided that no execution should issue against Mary L. Garland, as her interest in the estate of Samuel Garland, Sr., is to be ascertained. There are no other payments provided for in the decree of the 12th of February, 1895.

4. Under the decree of the 16th of May, 1895, R. T. W. Duke, Jr., and J. Singleton Diggs, receivers of the court, were directed to pay and deliver to J. Singleton Diggs, administrator of Samuel Garland, Jr., and administrator of Charles R. Slaughter, all the money, bonds and other estate in their hands as such receivers.

They have already in their hands "all the money, bonds and

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other estate," and at most it is but transferring from appellees to appellees.

These receivers hold $27,376.35 and interest thereon, paid to them under the decree of the 21st of November, 1893, on John F. Slaughter's administration of the estate of Samuel Garland, Sr., assets to meet the eight $1,000 legacies of the testator's East Tennessee and Virginia Railroad bonds, under the fifteenth clause of his will. The counsel for the appellees complains of the long time that these funds have been withheld from those entitled to them. It is true that they have been held a long time; but who held them? They have been held since the death of Samuel Garland, Sr., in 1861, to the present time—34 years—by the appellees, or those whose estates the appellees represent.

There is not a personal claim against any party litigated in these suits. Every claim asserted by any party is to assets of the estate of Samuel Garland, Sr., or to assets of the estate of Burr Garland, on his administration of the estate of Samuel Garland, Sr.

It will be conceded that every dollar of assets of Burr Garland's estate that ever came to any appellant, or any person whose estate is represented by any appellant, is amply secured by the official bond of such appellant, or such person.

We have not questioned the sufficiency of the bonds of Charles R. Slaughter, executor, or of Samuel Garland, Jr., executor, or of John F. Slaughter, administrator of Samuel Garland, Sr., or of John F. Slaughter, Jr., executor of John F. Slaughter, deceased, or of J. Singleton Diggs, administrator of Charles R. Slaughter, and administrator of Samuel Garland, Jr., or of the receivers of the court. These bonds constitute the security for the $27,376.35, and interest thereon, called $30,000 in the argument of the counsel for the appellees on their motion, but in fact $37,506.67, the present value of the eight $1,000 East Tennessee and Virginia Railroad bonds and their coupons, bequeathed in the fifteenth clause of the will of Samuel Garland, Sr. See Rec., part 5. p. 109. These are the funds that the appellees, and those whose estates they represent, have withheld for 34 years, and for which we have no security but the official bonds of these persons. Not one dollar of these moneys—undistributed assets of the estate of

turned over by them, under the decree of the court, to the receivers, awaiting the adjudication of the rights of the legatees and distributees therein—assets of the estate of Sam'l Garland, Sr., and

of Burr Garland—assets in the custody of the court, being administered under the control and supervision of the court, under the submission and prayer in the bills filed by the respective administrators—assets secured by the bonds of the administrators and receivers. The only questions are, what are the rights of the widow and legatees in these assets.

These causes come peculiarly within the rule prescribed by the statute, and by the decisions of the court, that executors and administrators may have the rights of legatees and distributees in the assets decided by the Court of Appeals, without giving new bonds.

We submit that the motion for the new bond ought to be overruled.

EDWARD S. BROWN,

WM. J. ROBERTSON,

Counsel for Appellants.

November 4th, 1895.

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Supreme Court of Appeals of Virginia.

GARLAND'S ADM'R v. GARLAND ET ALS.

Petition for Rehearing and Reforming the Decree of

April 2, 1896.

To the Supreme Court of Appeals:

The appellees in this cause petition the court for a rehearing, in order that the decision and decree of April 2d, 1896, may be corrected in at least one respect.

The court reversed the decree of May 16, 1895, in so far as it transferred the funds from the receivers to the estates of the residuary legatees of Samuel Garland, Sr., and presumably by reason of this reversal decreed the costs of this appeal against the appellees. The reason for this reversal is clearly given in the opinion, as follows:

"The next and last assignment of error is well taken. It is to that part of the decree of May 16, 1895, which directs the receivers of the court in whose hands the assets of Samuel Garland, Senior's, estate were, to deliver all the money, bonds and other estate in their hands to the administrator of the residuary legatees. This was erroneous. While there are no debts outstanding against the testator's estate, as is conceded, the assets of the estate should not have been decreed to the residuary legatees until the rights of the widow, if any, in those assets were determined."

The mistake of fact is in supposing the funds in the receiver's hands were assets of Samuel Garland, Sr.'s, estate. Not one dime of this fund was any part of that estate. Samuel Garland, Jr., and Chas. R. Slaughter each left a considerable estate independent of their interest in the estate of Samuel Garland, Sr., and the accounts of the administration of their estates were being settled in that suit, and the entire fund belonged to those estates respectively, and much of it had never at any time belonged to estate of Samuel Garland, Sr. And in all the divisions of funds

from estate of Samuel Garland, Sr., whenever any money or property of any sort was paid to his legatees an equal amount was paid to his widow. So that whatever part of this fund may have originally come from that estate, his widow had received her share at the same time the residuary legatees got theirs. So it is impossible for her to have any interest or rights in these assets of the estates of Samuel Garland, Jr., and Charles R. Slaughter.

None of the commissioner's reports showing the settlement of the accounts of Samuel Garland, Sr.'s, estate are in the record before this court, but there is ample in the record to show that this fund was not in any sense assets of estate of Samuel Garland, Sr., but that it belonged wholly to the estates of Samuel Garland, Jr., and Charles R. Slaughter. Though it is not surprising that the court fell into this error, being misled by counsel for appellant.

The decree of 20th November, 1893, which appointed the receivers and placed the funds in their hands, shows plainly that $7,178.27 belonged wholly to Chas. R. Slaughter's estate, and $20,198.08 belonged wholly to Samuel Garland, Jr.'s, estate. The widow of Samuel Garland, Sr., had not then any interest whatever in it, and claimed none, for it appears by the decree that she did not object to the commissioner's reports which showed the accounts and on which the decree was based. These funds, which Slaughter held as representative of these two estates, might as well then have been decreed to his successor as such representative, but by consent they were decreed to receivers instead, Mr. Brown contending that he expected to establish a debt against the estate of Samuel Garland, Sr., in which case, of course, Samuel Garland's legatees would be liable to the extent of assets received from that estate—and so would his widow have been equally liable—and in order to allow him more time to establish his alleged debt these funds were held in the hands of the court.

Then, three months after the said claim had been adjudicated, and there was no known liability against any one of these three estates, and Mrs. Garland not even claiming any rights or interest in this fund as widow of Samuel Garland, there was not the slightest reason why it should not be decreed to the parties entitled. This decree of May 16, 1895, reciting "that the whole fund in the hands of the receivers belongs to the estates of Samuel Garland, Jr., and Chas. R. Slaughter," was simply reciting what abun-

dantly appeared in the record, and what it was supposed nobody disputed. At any rate this court ought to assume that these recitals were true and the decrees right until the record shows the contrary. I mean the record proper, as distinguished from the petition, statements and arguments of counsel. So the only mention of this fund anywhere in the record is in the said two decrees—one decree putting the fund in the hands of the receivers, and the other taking it out, and both decrees identify the fund as belonging to two estates in which Mrs. Garland has no interest, and does not claim any; for there is not a line in the proceedings in the lower court showing any such claim. The first shadow of such claim is in the petition for appeal, which states (pp. 15, 25) that the court in its decree of November 29, 1893, transferred funds from estate of Samuel Garland, Sr., to the receivers, whereas the decree itself shows the contrary.

We therefore petition this court to rehear the matter and reform its decree and affirm the decree of 16th May, 1895, with costs against the appellants other than Burr Garland's administrator. But a small part of the record printed is relevant to the issues in either case, and very little of it comes from the case of Samuel Garland's Adm'r v. Mary L. Garland, and appellees should not be taxed with the costs of an appeal in which they prevail. We respectfully submit that the decree of February 12, 1895, should be amended in the respect already determined by this court, and as amended, affirmed; and decree of May 16, 1895, should be affirmed in toto, with damages and costs against the losing party. Respectfully,

J. SINGLETON DIGGS,

For Appellees.

April, 1896.

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[Rest of page contains detailed instructions about advance sheets and subscription information, followed by a header for "ROOD ON GARNISHMENT" and contents information]

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conflict, and involved the admission of testimony which was competent as against one of the defendants and against the other, yet his honor, with entire certainty and clearness, carefully

instructed the jury in the application of the evidence, explaining to them, by proper analysis of the same, what part of it was competent against both, and what part competent against one and not against the other, and warning them against being influenced against either of the defendants by such evidence as he had instructed them was only competent against the other one. We therefore refuse to interfere with the ruling of the court below. The matter was in the sound discretion of his honor, and from what appears it is certain that there was no abuse of that discretion. State v. Deanhardt, 107 N. C. 784, 12 S. E. 573; State v. Gooch, 94 N. C. 1006.

The second exception was to the ruling of his honor admitting, against the objection of the defendant Finley, the deposition of the deceased, offered in evidence by the other defendant, Jimmerson, for himself, and not against Finley. Due notice had been given to the solicitor of the district of the time and place for taking the deposition, and all of the other requirements of the law in regard thereto had been complied with. No notice, however, was given to the defendant Finley. Chapter 522 of the acts of 1893 authorizes the defendant in criminal actions pending in the superior court, upon giving the notices and observing the other requirements named therein, to take the depositions of such persons and infirm or otherwise physically incapacitated that their attendance at court cannot be had, to be read on the trial. Because, also, of the failure to give the defendant Finley notice of taking the deposition, the objection was made. It was not necessary that Finley should have had any notice of the taking of the deposition, and his honor committed no error in admitting it as testimony for Jimmerson. State v. Kilgore, 93 N. C. 535. When his honor came to instruct the jury as to this evidence, he told them that the deposition was not evidence against Finley, and that they should consider only such parts of it as related to Jimmerson, and to consider no part of it which in any manner related to Finley, or might in any way tend to prejudice their minds against him,—"that the deposition was taken under the statute, without notice to Finley, and, although the evidence contained in it charges Finley with the commission of the offense, you must not consider the same against him, and treat it as though his name had not been mentioned therein, and not allow it in any way to influence your verdict against Finley."

Particular exception was made by Finley to the admission of the testimony of James Smith, a witness for the state. This evidence is a part of the case on appeal, and appears in full in the original transcript. The witness did not say that Finley was absent, or not near enough to hear what the deceased said,

in the drug store, when he called on Dr. Morphew for protection. He said that, upon his coming up, he found both of the defendants and the deceased just outside of the door of the drug store; that Finley walked around, and "kinder pushed his foot, like he was going to kick the deceased"; that then the deceased went into the drug store, Jimmerson going in afterwards, and laughing. The witness said nothing further about the position of Finley, except that, when he left, he was sitting on the steps. Dr. White had already testified that Finley, at the time the deceased called on Dr. Morphew for protection, "was at the door, making a noise, kinder noise like mocking him"; that Finley was near enough to hear him (deceased) if he had not been making a noise. He then testified, further, that the deceased stayed in the store five or ten minutes, and, when he closed it

for the night, they went out together, finding Finley and Jimmerson there. Finley had on the deceased's cap, and in his raised hands "had a board sign, like he was going to strike the deceased"; that he told him not to have any row, and to get away. Thomas Finley, a witness for the state, had testified that the defendant Finley was at the door, outside two or three feet, and, he thought, was near enough to hear a conversation inside. The testimony of the witness Smith was competent against both defendants, and it was for the jury to determine whether the declaration of the deceased was made in the hearing of defendant Finley, whether he heard and understood the statement, and, if he did, what his conduct was. It was for them alone to say what value was to be attached to the surrounding circumstances, as tending to prove the defendant's guilt. State v. Bowman, 80 N. C. 437. Besides, enough testimony had already been given to be submitted to the jury on the question whether there was an agreement and conspiracy between the defendants to do an unlawful act.

The whole of the evidence, having been made a part of the case on appeal, and not having been contained in the case, closes, upon an examination of it, numerous other exceptions made by defendant Finley. The objections, all of them, are without force; and his honor was right in overruling them, and in receiving the testimony objected to. There was, however, dwelt on with so much earnestness, hope that it may be understood particularly. The defendant Jimmerson had introduced for himself the deposition of the deceased; and it had been admitted by the court for Jimmerson, but not against the defendant Finley. The state offered to prove, by its witness B. C. Hudgins, who was present at the taking of the deposition, the statements of the deceased made at that time as dying declarations. The witness stated that he was present at the whole time, and that the deceased said the wound would be the cause of his death in a very short time. The undisputed testimony was that the skull had been crush-

ed and broken, that both the doctors who had seen him had testified that the wound must be fatal, and that Dr. White had told him (deceased), about the time of taking the deposition, that he thought the wound would be fatal. There can be no doubt that the deceased knew that death was impending, and that he knew the nature of the wound. He was near death, and all die from the effects of the wound. The statements, beyond question, were admissible as the dying declarations of the deceased. State v. Mills, 81 N. C. 581. His honor allowed, against the objection of defendant Finley, the witness to read over the deposition of the deceased taken in the witness' presence, that he might refresh his memory in reference to the matter. The objection was properly overruled. It was not necessary, under the circumstances, that the witness should have written the paper himself in order that he might read it to refresh his memory. Greenl. Ev. § 436; State v. Staton, 101 N. C. 843, 8 S. E. 26.

In considering the exceptions made by defendant Finley to the rulings of his honor refusing to give his special prayers for instruction, and the exceptions to the charge as given, we find that much repetition of parts of the testimony will be saved by a succinct and connected recital of such parts of it as appear on the exceptions and charge; and for convenience and orderliness we will make such synopsis from the testimony of the witnesses. The deceased was a stranger in Marion (he was from Rodgersville, N. Y.), 42 years old, lame, and with only one arm. He arrived in the town from Old Fort at 11 in the morning, and received the injury from which he died between 10 and 11 o'clock of the night of the same day. He met some of the defendants, who were drinking freely, at a bar-room. He took a drink with them. Presently the defendant Finley began to mock him, to box and scuffle with him, slap him over the head, and to take his cap from him. This treatment proceeded to such violence as to cause the deceased to go to Turnbill to interpose, and to stop it, and to apologize for the rude behavior of Finley, stating to them (meaning Finley) was a good boy, and did not mean any harm." Very soon the bar was closed, the deceased and Finley going out at the door, and the barkeeper and Jimmerson at the other. The barkeeper went on, and the deceased and Finley, standing talking together, and Jimmerson at a distance of ten feet off. There was testimony going to show that, after then, the defendants, under a pretended power of arrest, took hold of the deceased, and by force carried him to the calaboose (town lockup), but, after getting him there, Finley pulled out his knife, instead of a key, and threatened to cut his throat. The deceased then broke away, and went to the drug store of White & Morphew, near by; the defendants following him and overtaking him at the door. Jimmerson pulled out a box from the store, and sat down on it, within two or three feet of the deceased; that Finley walked around, and "kinder brushed his foot, like he was going to kick the deceased"; the latter instantly going into the drug store, and Jimmerson following him, laughing at him. The deceased at once called for Dr. Morphew, and, upon his appearing, said, "Doctor, I want protection from these fellows." Jimmerson was then inside, and Finley outside, leaning against the door; one side of the door being open, according to Dr. Morphew's testimony. Dr. White said that Finley was near enough to hear if he had not been making a noise, mocking the deceased. Thomas Finley testified that the defendant Finley was near enough to hear a conversation inside. Deceased was bareheaded, and said they had his cap. Dr. Morphew said the deceased had the Irish brogue, a peculiar walk, and that Jimmerson was laughing, and Finley was mocking him in talk and action. Upon closing the drug store for the night, Dr. White and the deceased went out together, when they found at the door both the defendants. The deceased said, "Give me my cap." Finley had on the cap of the deceased, and also, at this time, had a board sign, several feet long, "raised like he was going to strike the deceased," but desisted on being told by Dr. White not to have any row, and to get away. Finley walked up a few feet from the drug store with the board sign in his hand. Dr. White went on his way up the street, and the deceased came in the same direction. White met Thomas Finley (not the defendant), and, while they were talking, missiles like bottles were thrown from the direction in which the defendants had been left; and then the deceased came running, trying to get behind them; and then the defendants came up, Finley in front, and Jimmerson six or eight feet behind. Thomas Finley remonstrated. A few moments later, the deceased received a blow on the forehead, inflicted with some hard substance, which crushed the skull, including the inner table. There was expert testimony going to show that both defendants were present at the time the blow was struck. They both admitted that they heard the blow and saw the man fall. The defendant Finley said that he saw Jimmerson reach down and get a "jower" with the deceased, heard a lick, and saw the man fall. Jimmerson, on the other hand, said Finley hit the deceased with a rock. At the court house, next day, about the time of the

justice's examination, the deceased recognized Finley as the one who had struck him, and so stated, near enough to be heard by Finley,—one witness testifying that he must have heard the charges. No denial of it was made by Finley. In his dying declarations the deceased stated that the blow was given by Finley.

Eight special instructions were asked by defendant Finley, three of which were given, and the second, third, fourth, sixth, and

seventh refused. The second is as follows: "If the jury are in doubt as to which one of the defendants struck the blow, and have a reasonable doubt as to whether Finley inflicted the injury, or as to whether Jimmerson inflicted it, then their verdict should be not guilty as to both." The prayer, in law, but contravenes a sound doctrine of law; but where a conspiracy or an agreement between two or more to do an unlawful act has been proved, and as a result and consequent therefrom a crime is committed, the rule is different, and it is altogether an immaterial matter which one of the actors actually commits the deed. They are all principals, and all equally of the offense. State v. Hill, 72 N. C. 350. There was plenary proof going to show a combination and conspiracy between the defendants to commit an unlawful act, and in the doing of it the deceased received a wound by one of the other of the defendants, from which he died. His honor properly refused the instruction.

We can consider together the third, fourth, and sixth exceptions, which are as follows: (3) "That if the jury believe, from the evidence, that Jimmerson inflicted the injury, the defendant Finley would not be guilty, unless they find there was a conspiracy on the part of both to commit the crime, or unless they find that Finley was present, aiding and abetting Jimmerson in its commission." (4) "That there is not sufficient evidence to go to the jury of any conspiracy on the part of Finley with Jimmerson to commit the offense charged." (6) "They must find, beyond a reasonable doubt, if they should find a conspiracy existed at all, that such conspiracy must be to commit the offense charged in the indictment, to wit, the murder of the deceased; and that no evidence of a common design or purpose to tease, worry, and have fun out of the deceased would be such a common design and purpose as would warrant the jury in finding a verdict against Finley, in case they find that he did not strike the blow." The above exceptions cannot be sustained. It was not necessary to the conviction of Finley that the jury should believe that the conspiracy between the defendants, if proved, extended to and included the commission of the crime charged in the indictment,—murder. It is sufficient, if the defendants were engaged in any unlawful object, leading up to the killing of the deceased, to make them both guilty as principals. The evidence tended strongly to show an agreement between the defendants to engage in the pursuit of an unlawful object,—that is to worry and annoy, and to oppress and to assault, the deceased, by taking his cap from him, by boxing and slapping him violently, by threatening to

put him in the lockup, by threatening to kick him, and driving him by their annoyances and persecutions to seek protection from them, by cursing him and chasing him up and down the street. In Rex v. Cox, 4 Car. & P. 538, the rule is thus laid

down: "If two persons are engaged in pursuit of an unlawful object, the two having the same object in view, and in pursuit of that common object one of them does an act which is the cause of death under such circumstances that it amounts to murder in him, it amounts to murder in the other also." The same doctrine is held in State v. Simmons, 74 Jones (N. C.) 21, and in State v. Gooch, 94 N. C. 1014.

We do not understand the theory upon which the defendant's counsel base their exceptions to those parts of his honor's charge which they allege to be objectionable. There can be no valid objection to the court's definition of malice. It is elementary learning. And, on the question of murder in the first and murder in the second degree, the language of the court was the identical language which the same judge used in the first trial of the case of State v. Fuller, 114 N. C. 807, 19 S. E. 797, except the last sentence, and which was approved by this court. He said, in the trial of that case, that, "the killing with a deadly weapon being admitted or proved, and nothing else appearing, the court charges you that no presumption is raised that it is murder in the first decree, and, unless the facts and circumstances show, beyond a reasonable doubt, that there was a deliberate, premeditated, preconceived design to take life, it is murder in the second degree." This has been affirmed by this court in State v. Gadberry, 117 N. C. 812, 23 S. E. 34; and in Starkey v. Locklear, 24 S. E. 410, and State v. Thomas, 24 S. E. 431, at this term. Now, before the statute of 1893, dividing murder into two degrees, the killing being proved or admitted, malice is presumed, and the defendant, if he seeks to reduce the crime to manslaughter, must prove such facts and circumstances, so the satisfaction of the jury, as will rebut the presumption of malice. The defendant must show and prove all matters of excuse or mitigation upon which he relies to reduce the crime from murder to manslaughter. There are dozens of cases to this effect in our decisions, made before the statute of 1893, and numbers of them will be found cited in the case of State v. Rollins, 113 N. C. 754, 18 S. E. 391. Since the statute, the same principle has been declared in State v. Fuller and State v. Gadberry, supra.

The defendant cannot complain because his honor did not submit the theory of manslaughter to the jury. There was not one particle of evidence offered to show provocation,—not a scintilla of proof, even, offered with a view to reduce the crime charged in the indictment, to manslaughter. From the light in which we view the testimony, from the charge was, if liable to exception, too favorable to the defendants, and the judgment extremely lenient. The case was tried with scrupulous impartiality. There is no error, and the judgment is affirmed.

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CARPENTER et al. v. AMERICAN ACC. CO.

(Supreme Court of South Carolina. April 16, 1896.)

ACCIDENT INSURANCE—ACTION—JURISDICTION—NONSUIT—FORFEITURE—INSTRUCTIONS—SPECIFICATION—ESTOPPEL—EXCEPTIONS—SUFFICIENCY.

1. Failure to pay a loss under a contract of a foreign insurance company with a nonresident, where the loss is payable in the state, creates a cause of action "within the state," under Code, § 423, giving circuit courts jurisdiction of actions by nonresidents against foreign corporations.

2. In an action to recover on a policy, to which the defense of a forfeiture is made, it is for the jury, on conflicting evidence, whether he knew of the forfeiture-creating qualifies of the insured that is shown to exist, if he can.

3. In an action on an accident policy, for death from home-kicking a mile, where the policy made "voluntary exposure to unnecessary danger" an instruction that deceased himself was not guilty of such exposure, and the jury was instructed that voluntary exposure cannot exist unless there is reasonable cause to apprehend danger; and that recovery by him would be contributions to the accident.

4. An insurance company is estopped from pleading wrong classification through misrepresentation of the insured, when through the application and noting the classification had full knowledge of the occupation of the insured, and its rating.

5. An exception that the court, by charging on matters of fact, encroached to the verdict, is thought plaintiffs were entitled to a verdict, is too general, and will not be considered.

Appeal from common pleas circuit court of Chester county; W. C. Benet, Judge.

Action by Simon P. Carpenter and others against the American Accident Company on an accident policy. From a judgment for plaintiffs, defendant appeals. Affirmed.

Geo. W. Gage, for appellant. Glenn & Mc-Fadden, for respondents.

JONES, J. This is a suit upon an accident policy or insurance for $2,500, issued by the defendant company to Charles W. Carpenter, late of Chester, S. C. The defendant is a foreign corporation, incorporated under the laws of Kentucky; did business in accident insurance in this state, and had local agents at Chester, S. C. The policy insured "C. W. Carpenter, of Chester, S. C., for three calendar months, beginning at noon on the 1st day of February, 1894, * * * against bodily injuries sustained through external, violent, and accidental means," and promised, "upon satisfactory proof of same, to pay sum to the legal representatives of Charles W. Carpenter for the death of said insured upon this occupation." Charles W. Carpenter died at Chester, S. C., on the morning of 19th of February, 1894. On the evening of that day, after dusk or dark, the insured was kicked on the head by a mule, from which injury he died. Police and Cunningham testified that the insured not death by the reckless and unnecessary handling of a mule, in the nighttime, known to him to be ill-tempered and dangerous??" (3) that the policy was for-

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feited by failure to furnish positive, sworn

ing from or caused by * * * voluntary exposure to unnecessary danger," etc. The policy was dated, "Louisville, Ky., 12th day of February, 1894." The insured was classified in "division D, $2,500." It seems that in the table of indemnity adopted by this company the divisions are A, B, C, D, E, and so on, and the corresponding scale of insurance is $5,000, $4,000, $3,000, $2,500, $2,000, and so on down. The classification for persons connected with livery stables seems to be as follows: Livery stable clerk, D; bookkeeper, office duties only, A; proprietor, office duties only, A; keeper, superintendent, foreman, working, E. The insured, in his application, stated his kind of business as livery stable keeper, superintendent; occupation, proprietor of a livery stable, whereas he also occupied himself in selling stock and buying live stock, and handling the same in person, thus subjecting himself to extraordinary risks,—and that said Carpenter met the alleged accident by engaging in the occupation of a hostler, whereas (as shown by his application was in division E, $2,000; (2) "that the said Charles W. Carpenter met his death by voluntarily exposing himself to unnecessary danger, and by gross contributory negligence, out of the line of his occupation, to wit, by the reckless and unnecessary handling of a mule, in the nighttime, known to him to be ill-tempered and dangerous??" (3) that the policy was for-

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proof of accidental death to the company within 30 days from date of death. The case was tried before Judge Benet and a jury. On the close of plaintiffs' testimony, defendant's counsel moved for a nonsuit on three grounds, as follows: (1) That plaintiffs are nonresidents; (2) that the cause of action did not arise in this state; (3) that no proof of death was furnished within 30 days. His honor, the circuit judge, overruled the motion for a nonsuit, but declined to pass on the question of residence, on the ground that it was a question of fact, for the jury. The trial resulted in a verdict for the plaintiffs of $2,500. From the judgment, defendant appeals.

The first exception is: "(1) Because his honor, the circuit judge, erred in not holding that the court of common pleas for said county and state has jurisdiction to try this cause; it appearing from the testimony that the plaintiffs were not residents of the said state, and that the cause of action did not arise in said state, and that the subject of the action was not situated in the said state, and that defendant was a corporation created under and by the laws of another state, to wit, the state of Kentucky." We think it could not that the circuit court had jurisdiction on the ground that the cause of action arose in this state. Section 423 of the Code of Procedure provides as follows: "An action against a corporation created by or under the laws of any other state, government, or country may be brought in the circuit court (1) by any resident of this state, for any cause of action; (2) by a plaintiff not a resident of this state, when the cause of action shall have arisen, or the subject of the action shall be situated, within this state." As stated above, by the heading, it appeared that the policy sued on was payable at Chester, in this state. A cause of action on a contract arises where the contract is to be performed. It is appearing, therefore, in this case, as a matter of fact, that the contract was made or to be performed, for there the place of performance; for there the debtor is wrong, which is the refusal to perform, takes place. Accordingly, in Rogers v. Association, 17 S. C. 406, this court dismissed an action against a foreign corporation on the ground that the policy or indemnity was payable in another state, on the ground that the cause of action arose in the state where the alleged contract was to be performed. Said the court, "the delict which created the cause of action was in refusing to pay the mortuary benefit according to the tables of the association, all which, by the contract, was to be done in the office in Baltimore." The same principle controlled the court in Curnow v. Insurance Co., 27 S. C. 411, 16 S. E. 132, and it was held that, although the time which had elapsed, or of itself, constitute a statutory bar, to the claim against the parties for 14 years to prosecute their suit, when considered with other circumstances in the case, justified the dismissal of the plaintiff's bill. Hatcher v.

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its performance. So that the final test as to where an action or a contract arises is to ascertain the place where it is to be performed. It appearing, therefore, in this case, as a matter of fact, that Chester, S. C., is the place where the policy sued on is payable, the question of jurisdiction is conclusively settled, by that fact alone, against the appellant. This being so, it is wholly

immaterial where the plaintiffs reside, or where the contract was made, or where the subject of the action is situated. Exception 1 is overruled.

The second exception is: (2) "Because his honor, the circuit judge erred in not granting the defendant a nonsuit; it having appeared from the plaintiffs' direct testimony that no sworn proof of the death of Charles W. Carpenter was made to the defendant company within thirty days thereafter, although the necessity for such proof was, by their testimony, known to the plaintiffs." The forfeiture claimed by reason of the alleged failure to file with proofs of death having a matter of defense; and, even though the fact alleged may have been brought out during the examination of plaintiffs' witness, yet a nonsuit could not properly be obtained on a showing of an affirmative defense on the part of defendant. See Sample v. Insurance Co., 42 S. C. 19, 19 S. E. 754. This exception must therefore be overruled.

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NOT FOR BINDING

FOR TEMPORARY USE.

the complaint, and if you find that said accident resulted in, or was caused by, his voluntary exposure to unnecessary danger, then the plaintiffs cannot recover in this action." The judge so charged. Then he went on to explain, and concluded: "If the deceased knew that this mule was a dangerous and ill-tempered mule, addicted to kicking, and yet he stood near her hind feet, and slapped her on the mouth or hip, in a way calculated to provoke her to kick, it is for you to say then whether or not he exposed himself untarily to unnecessary danger. But the question is not whether Jude, the mule, was a kicking mule, but whether the defendant must be considered in the light of the issue before the jury, which his honor doubtless had in mind. The answer of the defendant in its second affirmative defense above stated, alleged that Carpenter met his death by the reckless and unnecessary handling of a mule in the nighttime, known to him to be ill-tempered and dangerous. Construed in connection with the issue before the jury, we cannot say that the charge was erroneous. We do not mean to say, nor did the circuit judge charge, that actual knowledge of the danger is always essential to constitute a voluntary exposure to

unnecessary danger. Reckless, wanton conduct, short of actual knowledge of danger, might, under certain circumstances, be characterized as a voluntary exposure to unnecessary danger. If the unnecessary danger be such as a reasonably prudent man ought to have known, and he voluntarily goes into it, it would be a voluntary exposure to unnecessary danger. The unnecessary danger must be known, or obvious, such as a prudent man should be led to in a way so clear to be proved to a jury what he could have known. If it would be very hard to prove to a jury what a dead man knew actually knew, but it would not be so difficult prove circumstances from which a jury might infer that he knew, or ought to have known, But there was no request that the circuit judge should make his charge more full and explicit than the issue presented required. Furthermore, he said to the jury that, "to be voluntary exposure to unnecessary danger, there must be some reasonable cause to apprehend danger"; and in another part of his charge, in response to a request from defendant's counsel, he said to the jury, "If you find that Carpenter, by a failure to exercise ordinary care, contributed to said accident, then plaintiffs cannot cover." This was modified so as to require that the contributory negligence must be the proximate cause of the accident. This made the instruction's negligence, provided it was the plaintiff's act as that it was error, in the decree of May 16, 1895, which directs the receivers

tions, and so the orderly and systematic administration of the law will be promoted by the observance of this rule. It is the judgment of this court that the judgment of the circuit court be affirmed.

FARMERS' MUT. FIRE INS. ASS'N OF FLORENCE COUNTY v. BURCH.

(Supreme Court of South Carolina. April 16, 1896.)

MUTUAL FIRE INSURANCE COMPANY—EXPENSES—LIEN ON PROPERTY OF MEMBER.

A mutual fire insurance company acquired no lien on the property of a member for his pro rata share of losses and expenses, under its charter and the contract of insurance with such member, when, as a mutual life incorporating the company was not approved till after the contract of insurance was made.

Appeal from common pleas circuit court of Florence county; O. W. Buchanan, Judge.

Action by the Farmers' Mutual Fire Insurance Association of Florence county against Thomas S. Burch. From a judgment for plaintiff, defendant appeals. Reversed.

W. A. & H. A. Brunson, for appellant. Thompson & Keymish, for respondent.

JONES, J. This is an action, commenced January 1, 1896, by the plaintiff corporation, to enforce an alleged lien for $3.50 against the real and personal property of the defendant, to pay his pro rata portion of the losses and expenses of the plaintiff corporation. The rights of the parties are based upon the act incorporating plaintiff and a contract of insurance between them, under which plaintiff claims the lien aforesaid. The defendant, while admitting the facts stated in the complaint, resisted upon the ground that he was the head of a family residing in this state, that the property described in the complaint was of such kind as he owned, and was worth less than the homestead exemption allowed under the law, and was exempt from sale as against the claim of plaintiff. By written consent of the parties, the case was heard by his honor, Judge Buchanan, at chambers, on the facts stated in the complaint and answer. His honor made decree adjudging that plaintiff had the lien claimed, and ordered sale of the defendant's property, or so much thereof as may be necessary, to satisfy the claim and costs. The defendant appeals, alleging several exceptions, making substantially the question that plaintiff has no lien on the property superior to his right of homestead therein, and that it was error to order the same sold. It appears, from the record, that defendant became a member of the plaintiff corporation, and made with it the contract of insurance relied on by plaintiff, on the 1st day of January, 1894; whereas, the act incorporating the plaintiff corporation was approved December 18, 1894. This being so, it is manifest that the decree below must be reversed. It is the judgment of this

court that the judgment of the circuit court be reversed, with leave to amend its complaint as it may be advised.

CHARPIOT v. FINDLAY.

(Supreme Court of Georgia. March 30, 1896.)

APPEAL—REVIEW—AGENCY.

The case depending entirely upon disputed issues of fact arising upon decidedly conflicting evidence that all matters was improperly appropriate and not adjusted to the evidence, and the

charges were not long in the main correct and pertinent, there was no error in denying a new trial.

(Syllabus by the Court.)

Error from city court of Macon; John P. Ross, Judge.

Action by C. D. Findlay against S. A. Charpiot. Judgment for plaintiff. Defendant brings error. Affirmed.

The following is the official report:

Findlay sued Charpiot upon an account for $183.14. Defendant pleaded, denying the allegation of the petition, and, further: He was employed by W. N. Camp as manager of the Albion Mining & Manufacturing Company, to furnish detailed drawings, and supervise the work of building and constructing a certain excavator and conveyor for phosphate rock. Camp purchased from plaintiff the articles mentioned in the account, and fully explained defendant's relation to the work, and made the purchases, and plaintiff well knew that defendant's only relation to said purchase was to select the articles needed by Camp which were to be furnished to Camp on his own credit and responsibility for plaintiff. There was a verdict for the amount sued for, and, defendant's motion for new trial being overruled, he excepted.

The motion was upon the general grounds that the verdict was contrary to law, evidence, etc.

Also, because the court erred in refusing to charge the following written requests of defendant: "An agent sets, within the general scope of his duties, bind his principal. The agent's authority will be construed to include all necessary and usual means of efficiently executing it. Private instructions or limitations not known to persons dealing with a general agent cannot affect them." "A bookkeeper, intrusted by his employer with authority to extend credit to persons that he is acquainted with, and desiring credit in it general business, is a general agent in the matter of extending credit in said business; and private instructions or limitations not known to persons dealing with such agent cannot affect them." "If you find, from the evidence, that defendant originally approached plaintiff in company with one Camp, spoke to plaintiff about purchasing certain goods, and proposed to afterwards call and get plaintiff's prices, and nothing

was said at the time about a sale to defendant or on defendant's credit, and afterwards Camp did not come back, and defendant, under the impression that plaintiff was satisfied to sell the goods to Camp, and back it furnished plaintiff's servants the plans for the construction of such goods, and the goods were subsequently furnished by plaintiff, as ordered by defendant acting for Camp, and without any undertaking on defendant's part to pay for said goods, plaintiff cannot recover in this case." "Under the pleadings in this case, the burden is upon the plaintiff to show either that the goods were sold and delivered to defendant on his own account, and that the credit was extended originally to defendant, and so understood by him, or else that the goods were sold under a contract, express or implied, between plaintiff and defendant, and that the minds of both parties met or came together as to the terms of the contract and the person to be bound thereby." "In order for plaintiff to recover on contract, a valid contract must be found to exist; and in order that such contract may exist, so as to bind defendant to pay for said articles, it is essential that the minds of both parties should agree or come together. Mutual assent is necessary to a binding contract."

Error in charging: "There is no contention here but that the plaintiff furnished the goods and work he is suing for upon the order of defendant, but defendant says that his order was given on behalf of somebody else, that he didn't buy the goods or have the work done for himself, and that Mr. Findlay knew that to be the case, and that he is not bound for the bill on that contract."

Error in charging: "Any testimony touching any subsequent promise to pay is only testimony tending to establish an admission on the part of Charpiot that he had already contracted the debt and intended to pay it." Alleged to be error as giving an improper effect to the alleged subsequent promise to pay the debt of defendant; such subsequent promise, if any existed, being void under the statute of frauds, and not valid as an admission, or for any other purpose.

Error in charging: "Now, as I said, it is conceded by both parties that somebody contracted his debt through the name of Camp that contracted the debt through the name of Charpiot."

Error in charging: "Of course, Mr. Charpiot may have been acting for some one else, and Findlay may have known that he was; but it was nevertheless legal for Charpiot to contract the debt in this particular instance, and for Mr. Charpiot to be personally bound to Mr. Findlay for the work." Alleged to be error in law; further, that it was inapplicable to the facts and to the evidence.

Error in charging: "If Mr. Findlay knew that Mr. Charpiot was the agent, and was acting solely as the agent, of these Florida people, in making this order for this work, and with such knowledge Mr. Findlay went ahead and did the work or furnished the

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entirely leaving out of view defendant's contention that the goods were sold to Camp in person, and that defendant was nothing more than a draftsman or mechanical engineer, who furnished the designs.

Error in charging: "The question is, first, was Mr. Charpiot in fact, the agent of other persons for whom this work was ordered? If he was not, of course, he is liable." The error alleged is that the court charged that, if Charpiot was not the agent of other persons to whom this work was done, he was liable. Defendant contends that, under the evidence, Charpiot was either liable, or not liable, independently of any question of agency; defendant contending that the goods were ordered by one Camp, direct and in person.

Error in charging: "If he was the agent of these other people, then he would not be personally liable to Mr. Findlay if Mr. Findlay knew he was acting agent, and was acting for such person, unless he expressly stipulated with Mr. Findlay that he (Charpiot) was to be personally liable, and that the credit was to be extended to him." Defendant specifies as error, in this portion of the charge, the addition of the qualification, "unless he expressly stipulated with Mr. Findlay that he (Charpiot) was to be personally liable, and that the credit was to be extended to him." This portion of the charge is contrary to the statute of frauds, and was inapplicable to any evidence or pleading in the case.

Steed & Wimberly and John R. Cooper, for plaintiff in error. Grace & Jones and Senior & Jones, for defendant in error.

PER CURIAM. Judgment affirmed.

GARLAND'S ADM'R et al. v. GARLAND'S ADM'R et al. (two cases).

(Supreme Court of Appeals of Virginia. April 2, 1896.)

ADMINISTRATORS—CLAIMS AGAINST ESTATES—ATTORNEYS' FEES—PAYMENT BY SURETY ON BOND—INTEREST.

1. Where, in a suit for the settlement of an estate, it appeared that the original plaintiff administrator against whom the suit was brought, and the chief cestui que trust were dead; that the claims as to the first year's transactions arose over 30 years ago; that another claim involves the settlement of accounts, running through 21 years, between parties who have since died; that another involves transactions covering a period of 9 years, commencing more than 30 years ago; that accounts and other proper vouchers can be produced to substantiate them, the claims will be rejected, as indefinite, and the limitations act relied on.

2. Counsel fees and expenses incurred in taking depositions in support of a claim are not proper charges against decedent's estate.

3. Where a surety on an administrator's bond pays costs decreed against her principal, such payment cannot be a debt due her from the administrator, and bears interest as any other debt against him.

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tator's will, it being averred that these profits and the proceeds from the sale of the cotton, etc., had been carried, without discrimination, into Burr Garland's administration accounts; and formed a part of the balance of $64,130.88 found against him in the final settlement, and that Burr Garland had rendered to these claimants no account of such profits, or of the sales made by him, and that his estate was therefore still indebted to them on account of the sales and the proceeds from the sale of Mrs. Garland's property, alleged to have been made by him, and that there was no outstanding indebtedness of the estate of Samuel Garland, Sr.,—and they prayed that an account be taken of the profits and assets of the estate of Samuel Garland, Sr., estate in the hands of Burr Garland's administrator in Virginia; that an account of the indebtedness of Burr Garland's estate, and of the priorities thereof, be taken and reported, as well as an account of any

outstanding debts of the estate of Samuel Garland, Sr.; and that what these respondents are entitled to should be decreed directly to them, and not to the administrator of Samuel Garland, Sr. M. J. Day, late sergeant of Lynchburg, to whom the trusteeship of Paulina B. Morriss and her children had also been committed, answered the bill, as administrator of Burr Garland, and as trustee for Mrs. Morriss and her children, relying and insisting on the averments and defenses in the answers of Mrs. Garland and of Mrs. Morriss and her children, and on former exceptions which had been taken to the commissioner's report; and, praying also for an account of the indebtedness of Burr Garland, and the priorities thereof, especially the indebtedness to Mrs. Morriss and her children and to Mrs. Mary L. Garland, and that the court would determine the rights of all parties in and to the estate of Burr Garland. These respondents also prayed that the cause instituted by Samuel Garland, Sr.'s, executor against Mary L. Garland and others in May, 1862, and this cause, instituted by John F. Slaughter, administrator of Samuel Garland, Sr., in September, 1880, be heard together, and that the estates of Samuel Garland, Sr., and of Burr Garland, both deceased, be administered under the control and supervision of the court.

On these pleadings, the ninth clause of the will of Samuel Garland, Sr., was to be construed, and it was agreed between the parties before proceeding to take accounts, to submit to the court for the construction of the ninth clause; John F. Slaughter, administrator, contending that, under this ninth clause, Burr Garland took a life estate in the corpus of the legacy, and that he was entitled absolutely to the profits, and that the profits should be subjected to the payment, in part, of the decree for $64,130.88 against Burr Garland, rendered in the Mississippi court. The lower

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court decided that Burr Garland took the profits absolutely, and that the profits were liable to all his debts alike, whether contracted for his support or not, and that the corpus of this legacy passed in remainder to Mrs. Morriss and her children. It was from the decree of the lower court deciding this question that the second named cause came again to this court on appeal. 87 Va. 758, 13 S. E. 478. On this appeal this court reversed the lower court, and held that, under the ninth clause of Samuel Garland, Sr.'s, will, Burr Garland took an absolute estate, but only a qualified right to a support from the profits, subject to no liabilities except for supplies for support, and that the unexpended profits at his death passed to the remainder-men. By reference to the former decision of 1881 Va. 181, 4 S. E. 393a, and to the decree of the Mississippi court, that the executor of Burr Garland in Mississippi should transmit to Virginia $64,130.88, this court further said "that it appears of that court did not undertake to distribute it, nor to determine who are entitled to receive it under Samuel Garland's will, but decreed it to be paid over to the Virginia domiciliary executor, to be by him distributed to those entitled, according to the declared intention of the testator." The decision of the lower court was reversed, and the cause remanded for further proceedings; and the circuit court, by its decree at the May term, 1893, referred the cause to Commissioner Charles H. Sackett,—Commissioner of Pocock having died,—to execute the orders of court theretofore entered in the cause, among which accounts it was stated was an account of all debts of the estate of Burr Garland, due, and their priorities, if any. The claims of Mrs. Garland and Mrs. Morriss and her children were asserted before

Commissioner Sackett only on behalf of Mrs. Morriss and her children, as Mrs. Garland had assigned to them her claim, so to be treated as if for profits, as specified in the ninth clause of the will of the testator, Samuel Garland, Sr."

These claimants contended that, as the whole of the profits arising from the Mississippi estate, from the death of the testator in 1861 to the assignment of Mrs. Garland of her portion of the estate in 1864, and the proceeds from the sales of certain cotton, corn, and other personal property, and of Tudor Hall plantation, with the personal property thereon, from the death of the testator 1861 to his assignment to Mrs. Garland under the ninth clause of the will of the testator, Samuel Garland, Sr., in 1864, and to the proceeds from the sales of certain cotton, corn, and other personal property that had been allotted to her in the division, and sold by Burr Garland, administrator c. t. a. of Samuel Garland, Sr., in Mississippi; and claiming for Mrs. Morriss and her children the surplus profits from the Tudor Hall estate

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Garland, and of Mrs. Morriss and her children, were asserted against the estate of Burr Garland. Burr Garland qualified as administrator of Samuel Garland, Sr., in Mississippi, as early as 1862, and had charge of the whole estate of the testator in that state until September, 1864, when Mrs. Garland was assigned her half interest in the estate in Mississippi, both real and personal, to which she was entitled under the laws of that state, there being no children by her marriage with the testator; and at the same time that this division of the Mississippi property was made Burr Garland selected, under the ninth clause of the will, the Tudor Hall plantation, with the personal property thereon, which he cultivated and managed till 1868, when he retired for the year 1869. In 1869 he came to Virginia and died. It does not appear that Mrs. Garland, or Mrs. Morriss, trustee, ever made any demand upon Burr Garland, in his lifetime, for the payment of the claims they have been asserted against his estate in the suit in which the decree of February, 1893, appealed from, was entered. Nor were these claims ever asserted in court, after his death, until 1888, when the answers of Mrs. Garland and Mrs. Morriss and her children were filed to the amended bill exhibited by Samuel Garland, Sr.'s, administrator, in his suit against Burr Garland's administrator and Mrs. Garland, surety on the latter's administration bond. These claims were but personal, legal demands, and should have been asserted within the period prescribed by the statute. There were no circumstances surrounding the claims of the parties that prevented the application of the statute.

The position taken by counsel, that the pendency of the suit of Samuel Garland, Sr.'s, Adm'r v. Mary L. Garland, instituted in 1862, suspended the operation of the statute, is wholly untenable. That was a suit for the settlement of Samuel Garland, Sr.'s, estate, and for the distribution thereof, and in which there was not, nor could have been, a decree for an account of debts against Burr Garland's estate until after the finding of the amended bill therein and the answers of Mrs. Garland and of Mrs. Morriss and children, in 1888, as above seen. So it appears that it was nearly

18 years after the death of Burr Garland before these personal, legal demands were asserted against his estate, and, when asserted, they are set forth in the most vague and indefinite manner. Moreover, the proof adduced before Commissioner Sackett in support of the claims is equally vague and indefinite. The proof does not even show that there were any profits arising from the estate of the testator in Mississippi before the division, or that there were any surplus profits from the Tudor Hall estate

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the liability of Burr Garland's estate to the estate of Samuel Garland, Sr., under the Mississippi decree, or that they should at least be considered as entitled to a ratable share of such assets. Among the demonstrative evidence bequeathed by Samuel Garland, Sr., there appeared, in the fifteenth clause of his will, the following: "I give to each of my brother Nicholas A. Garland's children, or if it appears that there are more than ten of the Garland children, then, or if there are less, one thousand dollars of my East Tennessee & Virginia Railroad bonds, or others of equal value." It appears that there were ten of the Nicholas Garland children, and that John F. Slaughter, while administrator c. t. a. of Samuel Garland, Sr., acquired title to their legacies; and that Burr Garland, while administrator c. t. a. of Samuel Garland, Sr., in Mississippi, in 1869, acquired title from the remaining eight children, on an assignment in writing, together with authority to John F. Slaughter, administrator c. t. a. of Samuel Garland, Sr., in the state of Virginia, to pay the whole of each legacy to Burr Garland, etc. Therefore, it was further contended, by Mrs. Morriss and her children, in their own right and as assignees of Mrs. Mary L. Garland, the widow, that the claim of these legacies constitutes assets in the hands of Burr Garland's administrator in Virginia; and that the legacies should be collected by him from the estate of Samuel Garland, Sr., and applied, along with other assets in his hands, to the payment of the claim asserted by Mrs. Morriss and her children against Burr Garland's estate.

The issue between Mrs. Morriss and her children, and the administrator of Burr Garland, deceased, to be determined by Commissioner Sackett, and reported to the circuit court of Lynchburg, was whether Mrs. Morriss and her children, in their own right and as assignees of Mrs. Mary L. Garland, had a good and valid claim against Burr Garland's estate (or $29,130.88 minus received by him from the Mississippi estate between the date of his qualification as administrator in Mississippi and the date on which Mrs. Garland's portion of the estate in Mississippi was allotted to her, or for cotton or other property of Mrs. Garland sold by him, or for any surplus profits arising from the Tudor Hall estate after the same was selected by Burr Garland under the ninth clause of the will, and, if so, the amount of such claim or claims. Commissioner Sackett, in response to the decree referring the cause to him, reported against the claims asserted by Mrs. Morriss and her children, and credited the Mississippi decree. "By consent of parties, it is ordered that these causes be submitted to the judge, to be heard in

vacation at such time as he may appoint, and for such decision and decree therein as might be made in vacation, and to take such exceptions to the report of Commissioner Sackett, filed the 9th of May, 1894, as they may deem advisable. But this submission of the two causes * * * is without prejudice to either party to move in vacation and for such decree in vacation in either or both of them, as might be made in term."

On February 12, 1895, the two causes were brought on to be heard by the circuit court, before Judge Harrison, sitting as a judge, on the papers formerly read in them, respectively,—the second (Samuel Garland, Sr.'s, Adm'r v. Burr Garland's Adm'r et al.) on the report of Commissioner Sackett, filed the 9th of May, 1894, exhibits therewith, depositions, documentary evidence, exceptions to said report, etc.,—and all the papers in the first-

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land, deceased, in Virginia, showing a balance due from the administrator to Burr Garland's estate of $3,185.11, with interest on $1,332.53, the principal sum, from May 10, 1894; but in this connection, he says: "Mrs. Mary L. Garland was security upon the bond of Charles Y. Morriss as administrator of Burr Garland, and in that capacity she was made a party to this suit. By the decree of the court of appeals in this suit, rendered December 2, 1887, Charles Y. Morriss, as administrator of Burr Garland, deceased, out of the assets of his intestate's estate, was ordered to pay the cost of said appeal. This cost was paid by Mrs. Mary L. Garland, on the 11th day of July, 1888. And she is entitled to receive the same out of above balance.

Am't cost paid by her 11th July,

1888 ..... $254 69

Interest on same to 16th May, 1894 89 20

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The commissioner also included in his report two special statements, one of which showed the then present value of the eight legacies purchased by Burr Garland of the children of Nicholas Garland in 1869, and the other showed the amount of cost in the items which make up the Mississippi decree against Burr Garland's estate. He suggests that, in determining the right of Mrs. Garland to any portion of the Mississippi decree, whether the corpus of profits, she should be charged with $5,000, a year's allowance paid to her from the Mississippi estate, and certain articles of personal property to the value of $250, and also $1,000 paid to her in 1869 by Burr Garland, by draft on Aiken & Watts, on account of some of his transactions with her. The

Mississippi decree favored Samuel Garland, Sr.'s, estate against Burr Garland's estate is reported as a judicial debt, and as the only debt outstanding against the latter's estate. Upon the filing of this report, the circuit court of Lynchburg made the following decree: "By consent of parties, it is ordered that these causes be submitted to the judge, to be heard in vacation, at such time as he may appoint, and for such decision and decree therein as might be made in vacation, and to take such exceptions to the report in the meantime to take such exceptions to the report of Commissioner Sackett, filed the 9th of May, 1894, as they may deem advisable.

* * * But this submission of the two causes * * * is without prejudice to either party to move in vacation and for such decree in vacation in either or both of them, as might be made in term."

On February 12, 1895, the two causes were brought on to be heard by the circuit court, before Judge Harrison, sitting as a judge, on the papers formerly read in them, respectively,—the second (Samuel Garland, Sr.'s, Adm'r v. Burr Garland's Adm'r et al.) on the report of Commissioner Sackett, filed the 9th of May, 1894, exhibits therewith, depositions, documentary evidence, exceptions to said report, etc.,—and all the papers in the first-

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named cause which were proper to be considered in determining the second cause; it was ordered that the first-named cause was not then for consideration, except in so far as it affected the merits of the second cause, and overruled all exceptions to the report of Commissioner Sackett, as well as all special statements in the report, and confirmed the same. The court then proceeded to decree that Garland Morriss, administrator of Charles Y. Morriss, deceased, out of the assets of his intestate, and Mary L. Garland, as surety for Charles Y. Morriss, pay to Mary L. Garland the sum of $254.69, with interest on $244.69 from May 10, 1894, and that Morriss, administrator out of the assets of his intestate, and Mary L. Garland, as surety in Charles Y. Morriss' bond, pay to Samuel H. Johnson, sergeant, and, as such, administrator d. b. n. c. t. a. of Samuel Garland, Sr., the sum of $2,840.92, with interest on $1,077.58 part thereof from May 10, 1894, till paid, that being the balance of the assets of Burr Garland's estate. It was also decreed that the substituted trustee for Mrs. Morriss and her children, and other parties interested in the trust fund, pay to the plaintiff his costs in the case of Samuel Garland, Sr.'s, Adm'r v. Burr Garland's Adm'r, other than those adjudicated by this court (court of appeals); but the decree directed that no execution should issue against Mary L. Garland until the further order of the court, as her further interest in the estate of Samuel Garland, Sr., was yet to be ascertained in the first-named cause,—Samuel Garland, Sr.'s, Adm'r v. Mary L. Garland. On May 16, 1895, the circuit court, sitting in vacation, ordered and referred to it, the cause Samuel Garland's Adm'r v. Mary L. Garland, referred that cause again to Commissioner Sackett to state and report new accounts relating to the

administration of the estates of Samuel Garland, Sr., Samuel Garland, Jr., and Charles R. Slaughter, and to pass upon the exceptions of Samuel Garland's administrator filed to his former report, and this decree proceeded as follows: "And it appearing that the whole fund in the hands of the receivers belongs to the estates of Samuel Garland, Jr., and Charles R. Slaughter, the court doth further adjudge, order, and decree, that Receivers R. T. W. Duke, Jr., and J. Singleton Diggs do pay and deliver to J. Singleton Diggs, administrator of Samuel Garland, Jr., and the same time same administrator of Charles R. Slaughter, all the money, bonds, and other estate in their hands as such receivers, and make a full report thereof to the court." From these two decrees an appeal was allowed to this court, on the petition of Mrs. Mary L. Garland, the administrator of Burr Garland, and trustee for Mrs. Morriss and children, and other parties interested in the trust fund.

We consider it unnecessary to review the assignments of error in the petition for this appeal seriatim. The first question presented is whether there is error in the decree of the lower court rejecting the claims of Mrs.

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Garland, and of Mrs. Morriss and her children, asserted against the estate of Burr Garland. Burr Garland qualified as administrator c. t. a. of Samuel Garland, Sr., in Mississippi, as early as 1862, and had charge of the whole estate of the testator in that state until September, 1864, when Mrs. Garland was assigned her half interest in the estate in Mississippi, both real and personal, to which she was entitled under the laws of that state, there being no children by her marriage with the testator; and at the same time that this division of the Mississippi property was made Burr Garland selected, under the ninth clause of the will, the Tudor Hall plantation, with the personal property thereon, which he cultivated and managed till 1868, when he retired for the year 1869. In 1869 he came to Virginia and died. It does not appear that Mrs. Garland, or Mrs. Morriss, trustee, ever made any demand upon Burr Garland, in his lifetime, for the payment of the claims that have been asserted against his estate in the suit in which the decree of February, 1895, appealed from, was entered. Nor were these claims ever asserted in court, after his death, until 1888, when the answers of Mrs. Garland and Mrs. Morriss and her children were filed to the amended bill exhibited by Samuel Garland, Sr.'s, administrator, in his suit against Burr Garland's administrator and Mrs. Garland, surety on the latter's administration bond. These claims were but personal, legal demands, and should have been asserted within the period prescribed by the statute. There were no circumstances surrounding the claims of the parties that prevented the application of the statute.

The position taken by counsel, that the pendency of the suit of Samuel Garland, Sr.'s, Adm'r v. Mary L. Garland, instituted in 1862, suspended the operation of the statute, is wholly untenable. That was a suit for the settlement of Samuel Garland, Sr.'s, estate, and for the distribution thereof, and in which there was not, nor could have been, a decree for an account of debts against Burr Garland's estate until after the filing of the amended bill therein and the answers of Mrs.

Garland and of Mrs. Morriss and children, in 1888, as above seen. So it appears that it was nearly 18 years after the death of Burr Garland before these personal, legal demands were asserted against his estate, and, when asserted, they are set forth in the most vague and indefinite manner. Moreover, the proof adduced before Commissioner Sackett in support of the claims is equally vague and indefinite. The proof does not even show that there were any profits arising from the estate of the testator in Mississippi before the division, or that there were any surplus profits from the Tudor Hall estate

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after it was selected by Burr Garland in 1864. The tendency of the proof is decidedly to the contrary. It appears clearly, by the testimony, that in 1865, after the devastations of the war had been visited upon the whole of the section in which the Tudor Hall estate was situated, this estate was in a greatly dilapidated condition. Buildings had been destroyed, fences removed or destroyed, and other great injuries sustained, making it necessary to repair damage to restore it to rentable condition. It is said that rents were to be received from the property for the year 1869, but it seems that it could not have exceeded $20,000 or any money from which Burr Garland was to have his support, specified in the ninth clause of the testator's will, and the taxes were to be paid, and repairs to be made. The condition of Burr Garland's estate would clearly indicate that no profits had been realized from his operations in Mississippi. By the settlement of his account as administrator of Samuel Garland, Sr., made in the latter part of 1868, he was indebted to the estate for $5,545.09, and on the 3d of February, 1869, he deposited $3,000 to the credit with his commission merchants, out of which he paid for six of the legacies under the will of Nicholas Garland's children by drafts on this firm, the two other legacies being paid for in some other way; and when he died he had only $1,421.32, at the hands of a friend in the city of Lynchburg, with whom he had deposited a sum of money subject to his call, and which is directly traced as a part of the money deposited with his commission merchants, as before stated. This balance of $1,421.32 constituted the whole estate left by Burr Garland, treating the amounts paid by him to the Nicholas Garland children as payments instead of purchases, of their legacies, and the balance due from him to the estate of Samuel Garland, Sr., upon a final settlement of his accounts in Mississippi, was, as we have seen, $64,130.88.

It was said by Lord Camden, in Smith v. Clay, 3 Brown, Ch., 639: "If, from the delay which has taken place, it is manifest that no correct account can be rendered, that any conclusion to which the court can come must be conjectural, and that the opinion has become so obscure by time, and the loss of evidence, and the death of parties, as to render it difficult to do justice, the court will not relieve the plaintiff. If, under the circumstances of the case, it is too late to ascertain the truth of the claim," Accordingly, in it was held that, although the time which had elapsed, or itself, constitute a statutory bar to the claim against the parties for 14 years to prosecute their suit, when

considered with other circumstances in the case, justified the dismissal of the plaintiff's bill. Hatcher v.

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Hall, 77 Va. 579, and cases cited. See, also, Smith v. Thompson, 7 Grat. 112; West v. Thornton, Id. 177; Tazewell v. Whittle, 13 Grat. 329; Gilhoney v. Kent, 82 Va. 383, 4 S. E. 610; Morgan v. Fisher, 82 Va. 417; Rowe v. Bentley, 29 Grat. 756, 760. The reasoning of the authority quoted above applies peculiarly to this case. As was well said by the commissioner, in his report on this branch of the case: "It never seems to have been contemplated by any one that Burr Garland, or his estate, could be held liable for the surplus profits of the estate selected by him, over and above a decent and comfortable support, until about 10 years after his death, when the question was raised first and adjudicated in Virginia. Hence no account was ever kept by Burr Garland, or any one else, of the receipts and disbursements from that portion of Tudor Hall plantation after his selection thereof." It may be added, that, by the plaintiff who instituted this suit for the settlement of Burr Garland's estate is dead; Morris, his administrator, against whom the suit was brought, and who attempted to set up a counterclaim against the estate, was administratrix, is dead; the chief cestui que trust, Mrs. Morriss, is dead; the claims arose, as to the first year's transactions, in 1865, 30 years ago; and the man against whom they are asserted has been dead for 25 years. The Morriss claim involves the settlement of accounts, running through 5 years, between Morriss, trustee, and Burr Garland, both dead; and the other, according to the contention of counsel, involves transactions covering a period of 9 years, commencing about 1862, between Burr Garland, deceased, and Mrs. Garland; and there was never any account kept at the time of the transactions, and not a single book, account, voucher, or other paper is now produced to substantiate either claim. The decree rejecting these claims, as barred by the statute of limitations and laches, is plainly right.

The assignment of error to the decree of February 12, 1895, that the circuit court held Burr Garland's purchase of the Nicholas Garland children's legacies void, is founded upon misapprehension. The court did not so hold, but held the transactions to be a payment and consequent extinguishment of that charge against Samuel Garland, Sr.'s, estate, and credited Burr Garland, as administrator, with the amount he paid the legatees, upon the ground that, at the time of the alleged purchase by Burr Garland, the funds in his hands as administrator were as much applicable to the satisfaction of these legacies, and all other legacies as the funds in the hand of the Virginia personal representative of Samuel Garland, Sr.'s, estate: But if this view could be considered as incorrect, no injury is done to appellants; for, if it were held that Burr Garland's estate owned these legacies, and was entitled to have them paid out of the assets of Samuel Garland, Sr.'s, estate.

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they would have to be treated merely as a setoff against the Mississippi decree, and, when so applied, would still leave a very large sum due on this decree. Whether Burr Garland paid for these legacies with his own money, or money belonging to his testator's estate, the result, under the circumstances, is practically the same.

The next assignment of error is equally as untenable, and is also founded on misapprehension. The circuit court did not decide that Mrs. Garland, the widow, was not entitled to half of the assets that the estate of Samuel Garland, Sr., might realize on the Mississippi decree, nor did the court hold that Mrs. Garland would not be entitled to her share of any assets belonging to Samuel Garland, Sr.'s, estate that have not heretofore been subjected to a division. On the contrary, the decree says "that the further interest of Mrs. Garland, in the estate of Samuel Garland, Sr., is to be ascertained in the first-named cause,"—that is, in the cause of Samuel Garland's Adm'r v. Mary L. Garland, in which the estate can only be distributed. Hence it follows that the next assignment of error, complaining of the decree being against Mrs. Garland for the whole sum of $2,840, instead of allowing her the portion thereof she might be entitled to as widow, is also misconceived by the circuit court. The court was dealing with the only as surety for Morriss, administrator of Burr Garland, and her rights as widow and her accounts as distributee of her husband's estate were left to be invested in the other suit. She is unquestionably entitled to one-half of the assets belonging to the estate of her late husband that have not heretofore been subjected to division, but this thereto cannot be passed upon, and her share of such assets decreed to her, until recovered by the administrator, i. e. a, of Samuel Garland, Sr.

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the performance of a legal duty. But in Baker v. Railroad Co. (decided at this term) 24 S. E. 415, it was held, not only that the court might submit such an issue under pleadings like those in the case at bar, but that, if the plaintiff could not show that by the refusal of the court to submit to the court he prived him of the opportunity to present some view of the law arising out of the evidence to the jury, then it would be no longer discretionary with the judge whether he would permit it to be passed upon, but would become the right of the plaintiff to demand that he should be accorded such opportunity. In Bullard v. Railroad Co. (decided at this term) 24 S. E. 141, it was held to be within the sound discretion of the court to submit or refuse a specific issue involving the question whether the plaintiff was a passenger, because "the plaintiff's right to board the train must be necessarily shown in order to make out a prima facie case of negligence." Prior to that time the power of the court, as a general rule, to determine whether one, two, or

three issues should be submitted, in cases like that, has, had, been repeatedly recognized in the following cases: Pickett v. Railroad Co., 117 N. C. 628, 23 S. E. 264; McAdoo v. Railroad Co., 105 N. C. 140, 11 S. E. 316; Tay v. Railroad Co., 106 N. C. 410, 11 S. E. 412; Denmark v. Railroad Co., 107 N. C. 185, 12 S. E. 43; Scott v. Railroad Co., 96 N. C. 428, 2 S. E. 151. There was no error, therefore, in refusing to strike out that issue.

The defendant "restricts his motion" for a new trial "to the third issue, and to the judgment which should be rendered upon the verdict, and does not except to the findings of the judge upon the first, second and fourth issues." While there is abundant testimony by the warrant to submission of that issue by the court, and, if believed, the finding of the jury in response to it, it is needless, in view of the peculiar nature of the motion, to collate or discuss it. In Tillett v. Railroad Co., supra, the ruling in the Stowe case (115 N. C. 642, 20 S. E. 280) was reaffirmed, and it held, as in many cases previously decided, to be within the sound discretion of the appellate court to determine whether a new trial should be restricted to one or more or all of the issues passed upon by the jury. Holmes v. Godwin, 69 N. C. 467, 71 N. C. 309; Burton v. Railroad Co., 94 N. C. 619; Bland v. Railroad Co., 91 N. C. 200; Lindsay v. Railroad Co., 88 N. C. 547. In the same way it has been held that the granting or refusal of a new trial by the appellate court for newly-discovered evidence is an exercise of discretion for which the court will give no reason. Clark v. Riddle, 117 N. C. 257, 23 S. E. 492; Sledge v. Elliott, 116 N. C. 717, 21 S. E. 797; State v. Mitchell, 102 N. C. 317, 9 S. E. 702; In re Money v. McIntyre, 82 N. C. 405, it was held to be error for the nisi prius judge to grant a partial new trial upon a suggestion that by improper influence the jury had been induced

ing, or more than one inference can be drawn from it; whether, in any given phase of the evidence, either party is guilty of negligence, yet he is not called upon, in the absence of special request, to instruct upon every possible aspect of the evidence.

Appeal from superior court, Union county; Timberlake, Judge.

Action by Cynthia Russell against the Carolina Central Railroad Company to recover damages for personal injuries received at a highway crossing. There was judgment for plaintiff, and defendant appeals. Affirmed.

MacRae & Day, for appellant. Frank L. Osborne, for appellee.

AVERY, J. It is the duty of an engineer in charge of a moving train to give some signal of its approach to the crossing of a public highway over a railway track, or to a crossing where the public have been habitually permitted to use, and where he fails to do so the railway company is deemed negligent, and answerable for any injury due to such omission of duty. Hinkle v.

Railroad Co., 100 N. C. 384; Russell v. Railroad Co., 112 N. C. 104 N. C. 445, 10 S. E. 694; Gilmore v. Railroad Co., 115 N. C. 657, 20 S. E. 574. On the other hand, it is ordinarily the duty of a person who is approaching a crossing of a railway track, though not at the time fixed by the schedule for the passing of any train, to make diligent use of his senses, in order to discover whether there is reason to apprehend the danger of a collision, and the failure to do this usually constitutes contributory negligence; and where the injury might have been averted by taking such precautions the plaintiff avert it. But where a plaintiff does listen and look, and is induced to go upon the track because of the failure of the railroad company to give a signal at the usual place in approaching a crossing, the ensuing injury in case of a collision is attributed to the omission of the company to warn such person of danger. The court correctly instructed the jury, in substance, that, if the defendant, by voluntarily omitting to give a signal for the purpose of surprising the plaintiff, thereby caused her to go upon the track, when she would have avoided it if a signal had been given, she had not been guilty of contributory negligence, and the defendant would be liable. If it slacked up, I could not tell it. It frightened me pretty badly when I saw train coming. I was hurt pretty badly. Could walk. Had pain in head twelve months continuously,occasionally. It gave me headache every time I rode horseback, or did any jarring work. I couldn't hear as well as I did before. Could not hear well then." Cross-examined: "I got on track between rails at Monroe. When I got to the trestle I looked back. I can read. Saw printed notice on board, notifying persons not to go on trestle. I was scared bad. The place I got on was about one and a half feet from end of crossing. I had just time to get on. I think it was front part of train that struck me. It was a short train,—a passenger train. If I had thrown my head back, I would not have been hit. Not certain about the distance the train was from me when I first saw it. I was facing track. Might have been looking towards Monroe. I couldn't work for about two months. I had headache before. Dr. Ashcraft treated me. He said I could get a doctor, if necessary. I had Drs. Green and Dees. Have paid Dr. Dees two dollars, nothing to Dr. Green." Redirect: "I don't know how much I owe Dr. Green, or Dr. Ashcraft and nothing to do after I squatted. I went to Green and Dees. After I squatted, it was about one-quarter minute before train struck me. If the train had blown when I could have first seen it, I could have got off." E. M. Melton, for plaintiff, testified: "Live one-half mile from trestle. It is not under one hundred yards long. Between fifty and sixty feet high. I passed it every month. Sometimes walked over. At that time no other crossing. Many people passed there. Foot log washed away. Cap sill stuck out nearly two feet from track. A man could swing down. Cross-ties six or eight inches apart. A woman can put on one trestle. It is mostly trestle. Two signboards,—one at each end of trestle. I recollect the trestle. There are one hundred and fifteen rails, thirty feet each." Crossexamined: "The signboards are twelve or fifteen feet from end of trestle. One could tell that a person was between the signboards. Have seen train pass when hands at work on trestle. Don't know that I ever saw the engineer get up on cap sill to go off of rail about two feet. From end of crossing to cap sill eighteen inches or two feet. A man, by squatting down on cap sill, looks like he might be safe; but I don't know." Redirect: "At one thousand one hundred yards I can tell that a boy was on trestle, coming towards me." C. W. Melton recalled: "I was in between the signboards when I saw the train." J. C. Neimeyer, in behalf of defendant, testified: "I recollect the occurrence. I was the engineer. Three-quarters mile from curve to trestle. I saw somebody on the track. Could not tell which part,—whether on trestle or not. Between one-quarter and one-half mile,

to change their verdict upon one of the issues. The court there said that while, as a general rule, the court might grant a partial new trial upon the inquiry of damages, or upon a single issue where the evidence bearing upon it is separable from and does not hinge upon that bearing upon the other issues, it was nevertheless always within the sound discretion of the court, where a new trial was granted, to make it general, instead of partial. When, therefore, the defendant's counsel restricted their request to a single issue, they appealed to the discretion of the court to open the verdict only in part. Fairly interpreted, the motion meant that if the judge concluded that the ends of justice would be best subserved by granting a new trial upon all of the issues, they did not wish him to interpose. Non constat but that the judge would, upon an appeal to his discretion, without attempting to impose a limit to its exercise, have set aside all of the findings. In this view of the matter, his ruling must be treated as a refusal to disturb the whole, unless left at liberty to set aside the whole of it. While the trial judge may work out, of his own accord, even on suggestion of one of the parties, the same result, the appellate court will never recognize the right of a party to demand, without regard to the views of the court, that such findings of the jury as are favorable to him shall remain undisturbed, while only another or others which are prejudicial to him shall be reviewed on appeal from the refusal of a motion for a new trial. The rule, while he may suggest or ask that it be partial, he cannot demand it as a right, and by his motion attempt to restrict the action of the court to one or more issues, without forfeiting his right to have the refusal of the motion reviewed. There was no error.

RUSSELL v. CAROLINA CENT. R. CO.

(Supreme Court of North Carolina. April 21, 1896.)

RAILROADS—INJURY TO PASSENGER AT CROSSING—CONTRIBUTORY NEGLIGENCE—NEW TRIAL ON SPECIAL ISSUES—DISCRETION OF COURT.

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customed to keep a sentinel on post to give warning of danger, and a person is induced to drive upon the track because the watchman is not on duty. The plaintiff had a right to expect that the company would not omit to give the usual alarm, and was not culpable for acting upon that supposition. Hinkle v. Railroad Co., supra.

The three issues are not in the form suggested and declared in Nathan v. Railroad Co. (decided at this term) 24 S. E. 511, to be ordinarily best. But this is not the ordinary case of negligence on the part of a defendant intervening as an operative cause of injury after the carelessness of a plaintiff.

The question whether the plaintiff had been thrown off her guard by the omission to give the signal was preliminary to, and very distinct from, the inquiry whether the engineer might, by reasonable care, have discovered that she was in danger in time to have averted the accident, notwithstanding her previous carelessness. Here, if the jury believed that the plaintiff was induced to expose herself by the failure to give the alarm, it was their duty to find, in answer to the first issue, that the injury was due to the defendant's negligence, and, in response to the second issue, that she was not culpable in exposing herself to danger. The question whether, under any given circumstance, it would have been a prudent precaution to stop as well as listen and look in order to acquire accurate information as to the peril of going upon the track, is a mixed one, and it is the peculiar province of the jury to pass upon it. In re Emry's Case this court substitutes necessarily the rule prevailing in England and adopted by the supreme court of the United States and the courts of almost all of the states for that therein laid down. In overruling Emry's Case this court held clearly by a state of facts yet to be found, that when it falls within reach of one of the parties, the same result, the appellate court will never recognize the right of a party to demand, without regard to the views of the court, that a verdict might be based, there must be left some hypothetical phrase in which it might be; and that the judge of his own notion or with the aid of counsel can anticipate every conceivable aspect of the testimony upon which a verdict might be based, there must be left to the jury, after hearing such instruction as may be submitted by the court for their guidance, to determine whether either of the parties was properly charged with negligence; and to tell the jury beforehand whether, in any aspect presented by a possible finding of fact, the conclusion of a party charged with negligence would come up to or fall short of the ideal standard of the ideal prudent man. In every instance where the trial judge fails to work out and present all possible combinations of fact, or all inferences fairly deducible from the testimony or any aspect of it should be drawn by them, either of the parties would have to rely on the court, in the matter of extending credit to said business; and private instructions or limitations not known to persons dealing with such agent cannot affect them." "If you find, from the evidence, that defendant originally approached plaintiff in company with one Camp, spoke to plaintiff about purchasing certain goods, and proposed to afterwards call and get plaintiff's prices, and nothing

v. Lewis, 95 N. C. 293; Brown v. Calloway, 90 N. C. 119. While we see no error in the instruction given in relation to the third issue, it is not material to discuss it. The jury, under the instruction given, must have concluded that the defendant negligently omitted to give the signal, and that the plaintiff was not culpable, and hence have deemed it unnecessary to respond to the third issue. The judgment is affirmed.

LITTLE v. CAROLINA CENT. R. CO.

(Supreme Court of North Carolina. April 21, 1896.)

RAILWAY COMPANIES—LIABILITY FOR NEGLIGENCE—CONTRIBUTORY NEGLIGENCE.

Plaintiff was injured when crossing a railroad trestle which the public was warned not to walk upon. He saw the train coming, and got out on the cap sill. The engineer had applied brakes when he first saw plaintiff, but defendant believing the train would stop in time to prevent danger, did not stop it. The court held that workmen often got on the cap sill to avoid trains, released the brakes, believing the plaintiff safely safe, though, having the train under control, it could have stopped, had he not believed he was safe, that Held, that the jury should have been instructed that if they found the reasonable belief that plaintiff was safe, released the brakes, when, but for such belief, he would have stopped the train, the plaintiff could not recover.

Appeal from superior court, Union county; Bryan, Judge.

Action by J. F. Little, by his next friend, against the Carolina Central Railroad Company, to recover damages for personal injuries. There was judgment for plaintiff, and defendant appeals. Reversed.

The court submitted the following issues: "(1) Was the plaintiff injured by the negligence of the defendant? (2) Did the plaintiff contribute to his injury by his own negligence? (3) Notwithstanding the negligence of the plaintiff, could the defendant have avoided the injury by the exercise of ordinary care?"

The plaintiff testified in his own behalf as follows: "On January 19, 1894, came to Monroe, and walked home on railroad track, one and a half miles this side Beaver Dam. I was going down track to cross trestle. Looked back, and saw no train. I could not see through the cut. As I got near middle of trestle, I heard steam crack. I was very near midway. I made for the side, took seat on cap sill, and squatted down. Cross-examined: "I got on track between rails at Monroe. When I got to the trestle I looked back. I can read. Saw printed notice on board, notifying persons not to go on trestle. I was scared bad. The place I got on was about one and a half feet from end of crossing. I had just time to get on. I think it was front part of train that struck me. It was a short train,—a passenger train. If I had thrown my head back, I would not have been hit. Not certain about the distance the train was from me when I first saw it. I was facing track. Might have

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It didn't stop. If it slacked up, I could not tell it. It frightened me pretty badly when I saw train coming. I was hurt pretty badly. Could walk. Had pain in head twelve months continuously,occasionally. It gave me headache every time I rode horseback, or did any jarring work. I couldn't hear as well as I did before. Could not hear well then." Cross-examined: "I got on track between rails at Monroe. When I got to the trestle I looked back. I can read. Saw printed notice on board, notifying persons not to go on trestle. I was scared bad. The place I got on was about one and a half feet from end of crossing. I had just time to get on. I think it was front part of train that struck me. It was a short train,—a passenger train. If I had thrown my head back, I would not have been hit. Not certain about the distance the train was from me when I first saw it. I was facing track. Might have been looking towards Monroe. I couldn't work for about two months. I had headache before. Dr. Ashcraft treated me. He said I could get a doctor, if necessary. I had Drs. Green and Dees. Have paid Dr. Dees two dollars, nothing to Dr. Green." Redirect: "I don't know how much I owe Dr. Green, or Dr. Ashcraft and nothing to do after I squatted. I went to Green and Dees. After I squatted, it was about one-quarter minute before train struck me. If the train had blown when I could have first seen it, I could have got off." E. M. Melton, for plaintiff, testified: "Live one-half mile from trestle. It is not under one hundred yards long. Between fifty and sixty feet high. I passed it every month. Sometimes walked over. At that time no other crossing. Many people passed there. Foot log washed away. Cap sill stuck out nearly two feet from track. A man could swing down. Cross-ties six or eight inches apart. A woman can put on one trestle. It is mostly trestle. Two signboards,—one at each end of trestle. I recollect the trestle. There are one hundred and fifteen rails, thirty feet each." Cross-examined: "The signboards are twelve or fifteen feet from end of trestle. One could tell that a person was between the signboards. Have seen train pass when hands at work on trestle. Don't know that I ever saw the engineer get up on cap sill to go off of rail about two feet. From end of crossing to cap sill eighteen inches or two feet. A man, by squatting down on cap sill, looks like he might be safe; but I don't know." Redirect: "At one thousand one hundred yards I can tell that a boy was on trestle, coming towards me." C. W. Melton recalled: "I was in between the signboards when I saw the train." J. C. Neimeyer, in behalf of defendant, testified: "I recollect the occurrence. I was the engineer. Three-quarters mile from curve to trestle. I saw somebody on the track. Could not tell which part,—whether on trestle or not. Between one-quarter and one-half mile,

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saw man on trestle. He walked from middle of track on trestle, and stepped off onto cap sill. I applied brakes to reduce speed for trestle, when was twenty miles an hour. I saw then that he was out of my way. If I had retained my brake, I would have stopped, if he had been in my way. I relieved the brake, seeing he was out of my way, which brought me to fifteen or twenty miles per hour. I knew the bridgemen were working on trestle. I passed them almost daily on cap sill. I looked out. Had my head out of cab window. Engine did not strike him. I went on. I thought he was one of the men working on the trestle. Men at work on trestle generally get out on cap sill when train passes. They are perfectly safe. I do not know plaintiff. He was looking towards me when I passed. He was between onequarter and one-half mile from me when I saw him going to cap sill. I was not required to blow on that trestle. I did not blow." Cross-examined: "I gave no notice of approaching trestle. I did not think it was necessary to blow. I did not know who the man was. He did not act to me like he was scared. I would have stopped, if he had not been out of my way. I was about one hundred yards from trestle when I saw he was on cap sill, out of my way. He was on right hand from me when he got off. If I had known it hit him, I would have stopped. I don't know whether it was Little or not." Redirect: "I told him I Moncure that the man was not struck by engine."

MacRae & Day, for appellant. F. I. Osborne, for appellee.

AVERY, J. It was conceded and settled in Clark v. Railroad Co., 109 N. C. 436, 14 S. E. 43, that one who attempts to walk across an elevated trestle so high that it is dangerous to jump from it to the ground is negligent, and that, where he is injured by a train which is crossing, it is the duty of a jury to find, in response to an issue involving the question that the contributory negligence of the plaintiff was the cause of the injury. Pickett v. Railroad Co., 117 N. C. 628, 23 S. E. 264; Baker v. Railroad Co. (decided at this term) 24 S. E. 415. In the case at bar, as in Clark v. Railroad Co., supra, the only question presented is whether there was any intervening negligence on the part of the defendant, or, in other words, whether, notwithstanding the admitted carelessness of the plaintiff, the defendant negligently omitted to avail itself of the accident by the exercise of ordinary care. The engineer saw the plaintiff on the trestle in time to have stopped

the train, without peril to those on board, and to have avoided the accident. For this reason, the court instructed the jury to respond in the affirmative to the third issue when he looked back and saw the train ap-

proaching, he, in obedience to a signal from a railroad hand, moved to one side, sat down upon a cap sill, and put his arms around a guard rail. The plaintiff further testified that the passing train struck him in the forehead, and inflicted a painful injury, but admitted that, if he had held back his head, he would have escaped uninjured. The engineer testified that he saw that the plaintiff was on the trestle when his train was between a quarter and a half mile from him, and, on perceiving his situation, immediately applied the brakes, and slowed and would have stopped the train before reaching the point where plaintiff then was, if he had not seen the plaintiff step upon the cap sill. The engineer says that he was running at the rate of 20 miles an hour, and, by applying the brakes, reduced the speed, on seeing that Little was out on the trestle, where the latter took refuge upon the cap sill, he relieved the brakes, and made no further effort to stop. The engine passed Little, according to the engineer's account, without injuring him. He was seen by, and was looking at, the engineer as the engine passed him. As a reason for relieving brakes when the plaintiff was seen to stop on the cap sill, the engineer testified that the train hands were at the time working on the trestle, and were in the habit of moving out on the cap sill when a train approached, as they could thereby easily avoid collision. The cap sills projected a foot and a half. The defendant asked the court to instruct the jury, in substance, that if the engineer had seen that others who had taken refuge from passing trains on the cap sills had escaped unhurt, and if, acting upon the reasonable belief that the plaintiff was in a place of safety, he relieved the brakes, when he would, but for such belief, have stopped the train before reaching the point on the trestle when the plaintiff was struck, they should answer the third issue in the negative. There was error in refusing to submit this proposition to the jury. It was the duty of the engineer to stop the train, if it appeared to him that the natural and probable consequence of relieving the brakes and allowing the train to continue its course would be injurious to the plaintiff. While an engineer is required, when placed in such a situation as was Neimeyer, according to his testimony and that of other witnesses, to recognize all reasonable doubts as to whether, in any given phase of the evidence, either party might, under certain circumstances, be characterized as a prudent man, whether, or as to every conceivable deduction of fact which may be drawn from it. Morgan

Thompson v. Winston (decided at this term) 24 S. E. 421. The court ought to have called the attention of the jury to the question whether the cap sill had proven a safe place of refuge for others, and whether the engineer desisted from the effort to stop the train in time to prevent a collision because he entertained the reasonable belief that the plaintiff was no longer in danger. In refusing the instruction that would have presented this view of the evidence, there was error upon the part of the defendant to a new trial. New trial.

CLINE v. BAKER et al.

(Supreme Court of North Carolina. April 21, 1896.)

OBSTRUCTION OF STREAM — ACTION FOR DAMAGES — INSTRUCTION— EVIDENCE.

1. A landowner may recover for injury to his land, resulting proximately from the maintenance of a dam on his neighbor's premises which causes an overflow by obstructing a channel through which water passes, though such overflow be caused by dams or causes not within defendant's control.

2. When the sole issue was whether defendant's dam injured plaintiff's land, over which a creek passed below emptying into defendant's mill pond above the dam, an instruction that, if the injury resulted from the filling up of the creek with sand between plaintiff's land and the pond, or the washing of the land or of the dam or pond, plaintiff could not recover, provided these obstructions did not result from the maintenance of the dam or pond, was correct.

3. On an issue as to whether plaintiff's land was injured by defendant's mill dam, or by accumulations of sand in a creek passing over plaintiff's land, it was not error to exclude testimony as to the tendency of the stream in the county within the past few years, in reference to filling up with sand.

Appeal from superior court, Cleveland county; Timberlake, Judge.

Action by H. C. Cline against M. J. Baker and others to recover damages for injury to land alleged to have been caused by defendants' milldam. Judgment for plaintiff, and defendants appeal. Affirmed.

Jones & Tillett, for appellants.

FAIRCLOTH, C. J. The following issue was submitted: "Does the defendants' mill dam damage the land of the plaintiff, as alleged in complaint?" Ans. "Yes." A creek passing through plaintiff's

land, empties into defendants' mill pond a mile or more above the dam, and plaintiff alleges that the sand, washing into the creek, is prevented from flowing out by the mill-pond water, and that the shoals of sand are produced in the creek, which throws back the creek water to his lands to his damage. The defendants aver that the overflow of the creek is caused by rafts and obstructions in the creek and the want of proper ditching. Numerous witnesses were examined as to the dam, the pond, and the condition of the creek, now

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and at former periods. His honor instructed the jury as follows: "The question, and the sole question, for your determination is, is the plaintiff's land injured by defendants' dam? If it is, then he is entitled to recover. If the damage results from any other cause whatsoever, and not from the dam, he is not entitled to recover. So that, if the jury believe that the injury to the plaintiff's land was caused by the filling up of the creek with sand between his line and the mill pond, and that this accumulation of sand in the creek was caused by the washing of the hillsides, the lodging of trees and brush, and the failure of the landowners properly to clean out the channel of the creek, and not by the dam or pond, you should answer the first issue 'No,' provided you further find that these obstructions in the way of accumulations of sand and other things do not result from the maintenance of the dam or pond. If the jury believe the damage to the land of plaintiff complained of was caused by obstructions in the creek, above the head of the mill pond, on the land of defendant Baker or other landowners on the creek, or on the land of all of them, and not by the dam, then they should find the first issue 'No,' provided these obstructions do not result from the dam or pond, and that the sand so along out if the dam was removed. But, if they would not go along out if the dam was removed from mill, still they should answer first issue 'No.'" The instruction fully covered the contentions of the parties in plain language, and was in no way prejudicial to the defendants, and answered the merits of the defendants' prayers for instructions. Certainly, if the damage resulted from causes over which the defendants had no control, they could not be held liable. However, the dam and pond were the direct cause of the damage, although aggravated by other causes over which the defendants had no control, they would still be liable. State v. Holman, 104 N. C. 861, 10 S. E. 758.

The only material exception of the defendants as to the evidence was the exclusion of this question: "What has been the tendency of the streams in Cleveland county in reference to filling up with sand in the last few years?" We think this question was too broad and general, and was calculated to mislead or prejudice the minds of the jury. The question presented by the issue pointed to the facts and actual condition of this creek and pond. It was therefore irrelevant, and the court have been error, to submit it to the jury for that reason. The question, under cross-examination and redirect, concerning the different streams in the county, in different localities and in different soils, and other natural conditions, would have led to an endless inquiry, and almost necessarily confused the minds of the jury. The question was properly excluded. No error.

KEYSTONE DRILLER CO. v. WORTH et al.

(Supreme Court of North Carolina. April 21, 1896.)

RIGHT TO JURY TRIAL—EXCEPTIONS TO REFEREE'S REPORT.

An exception to a referee's report, reserving the right to a jury trial, must contain specific demand for the trial of the issue of fact raised by the pleadings and passed upon by the referee in the finding excepted to, and point out the precise issue on which testimony would be offered.

Appeal from superior court, Mecklenburg county; Bryan, Judge.

Action by the Keystone Driller Company against W. E. Worth and another for goods sold under a contract. From a judgment for plaintiff, defendants appeal. Affirmed.

Clarkson & Duls and Jones & Tillett, for appellants. Burwell, Walker & Cansler and H. W. Harris, for appellee.

AVERY, J. When this case was heard on appeal at the last term the court held (117 N. C. 520, 521, 23 S. E. 427) that, though a party to an action in which a compulsory order of reference has been made may take the precaution to reserve in apt time his right of trial by a jury upon every pertinent issue of the proceeding, yet he may still waive it by omitting, when he files his exceptions to the referee's report, to set forth specifically "the points upon which he elects to demand a trial by jury." The exception, it was declared, must contain a definite and specific demand for the trial of an issue of fact raised by the pleadings and passed upon by the referee in the finding excepted to. The ruling of the court rested upon the principle that even this constitutional privilege must be asserted in such a manner as to show due regard for the rights of others. The constitution provides (article 1, § 35) that: "All courts shall be open; and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. An adversary party ought not to be delayed in the prosecution of the controversy by the fact that the exceptions are so drawn as to take two chances, first of a favorable decision by the court and then of a

finding in his favor by the jury. Nor ought he to be delayed because the demand for a jury trial fails to point out the precise issue as to which testimony must be offered. The exception ought either to embody the demand and cover the adverse finding, or it ought plainly and unmistakably to point out the terms of the inquiry that it is proposed to submit to the jury. With such specific knowledge of the nature of the demand the adversary party, if he see that the issue is one raised by the pleadings, can prepare to meet the question by proper proof. Had the

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defendant here, when he filed his exceptions to the report, indicated the specific points upon which he demanded that the jury should pass, the plaintiff would doubtless have been ready to meet him, and the trial would have been had at the time when the report of the referee first came up for consideration. This is not the first time that counsel, apparently at least, have sought the benefit of a rehearing under the guise of asking the court to explain its ruling. If defendant's counsel had embodied the issue tendered, when the case was called for a hearing, in the exceptions to the report, in order to show the precise nature of his demand, he would have been entitled to claim a trial upon such of them as were raised by the pleadings, and adversely found by the referee, while he seems to have asserted his right up to that time. The judgment is affirmed.

CHITTY v. CHITTY.

(Supreme Court of North Carolina. April 21, 1896.)

HOMESTEAD — WHO MAY CLAIM — FUGITIVE FROM JUSTICE.

A husband who has left the state to escape a prosecution, with the intention of returning as soon as he can do so without having the prosecution dismissed, his wife and children remaining in the state and occupying his home place, is a "resident" (Const. art. 10, § 1 et seq.), so as to entitle him to a homestead.—Clark, J., dissenting.

Appeal from superior court, Forsyth county; Norwood, Judge.

Action by Solomon Chitty against J. M. Chitty. From a judgment for defendant, plaintiff appeals. Reversed.

J. S. Currin, for appellant. Watson & Buxton, for appellee.

FAIRCLOTH, C. J. The facts found by the referee and sustained by the court are as follows: (1) That the plaintiff, in November, 1887, owned and occupied, as his home place, the land now in controversy, and left the state in that month to avoid a warrant out against him for false pretense, with the intention of returning as soon as the case against him should be thrown out of court, and that his wife and children remained on the place until plaintiff returned, about Christmas, 1888; that got plaintiff spent his time in visiting relatives in various states, intending to return to this state when he believed the charge against him to be buried. (2) That during his absence an attachment issued, and the land was sold, and the defendant purchased it; no homestead having been assigned to the plaintiff. The honor held that the plaintiff, during his absence, was not a resident of this state, and therefore not entitled to a homestead. This is the only question presented.

The constitution guaranties the right to a

homestead to every resident on the land occupied by him, and whoever denies the right must show that the case falls within the constitutional exceptions, which is not the case in this instance, or that the owner has lost it by nonresidence. Residence and domicile are so nearly allied to each other in meaning that it is difficult sometimes to trace the shades of difference, although in some respects they are distinct, and the definitions of residence are sometimes apparently conflicting, owing mainly to the nature of the subject with which the word is used, the purpose being always to give to it such meaning and force as will effectuate the intention of that particular statute. The great bulk of cases in the books are cases of statutory residence, as applied to the subjects of voting, eligibility to office, taxation, jurisdiction in divorce proceedings, probate and administrations, limitations, attachments, and the like cases. The word is frequently used in the sense of being present in a place, sometimes a mere temporary presence, and sometimes the most settled and permanent abode in a place, with all the shades of meaning between these extremes, and also with reference to the distinction between the actual and legal residence. So it seems entirely proper to consider its meaning in connection with the subject-matter and the purpose of the statute in which it is found, as well as the relation of the citizen to the subject-matter. The leading purpose of the constitutional (article 10, §§ 1-3, 8) is to secure the homestead to the debtor and his family, and the term "resident" therein should be so construed as to accomplish that purpose, unless there should be found some positive or necessary reason to rule to the contrary. Absence from the state does not necessarily mean a change of residence. If the legal sense, as that question depends upon the intention and other facts. A

protracted residence in another state, engaged in a permanent business, with no home in this state, would be at least inconsistent with a residence here. "Residence," strictly construed, does not defeat the object of the constitution (article 10) in relation to homesteads. If a citizen of Raleigh should go to Baltimore on business, he could not be said to literally reside in Raleigh during his absence, but by allowing the doctrine of animo revertendi its reasonable force, the business is attended to, and the purpose of the law is secured. The question of domicile and residence has been so fully and frequently discussed by this court that it would be superfluous to attempt to restate what has been decided. We will only refer to Finley v. Saunders, 98 N. C. 462, 4 S. E. 516; Fulton v. Roberts, 113 N. C. 421, 18 S. E. 10; State v. Davis, 92 Id. 510; State v. Bell, 90 N. C. 115; and the several cases therein referred to, and to State v. Johnston (at the present term) 23 S. E. 621. The general rule from the cases is that when one leaves the state with the intention of returning he does

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not lose his residence here. This will do for the present case; but, to avoid any extreme conclusions from the above statement, we will say that circumstances may easily lead to a different result; for instance, if the lapse of time should be long enough to rebut such intention, or if a residence should be acquired in another state, or by engaging in permanent business elsewhere, without the animo revertendi, or by assuming the duties and privileges of a citizen in such other state. The question is one of law, and not of Morris, and we could not inquire into the latter. Our opinion is that the court below committed error, and that the plaintiff is entitled to recover on the facts now in the record before us. Reversed.

CLARK, J. (dissenting). The sole question in this case is whether a fugitive from justice, wandering about in other states, without intention of returning until a criminal indictment against him in this state can be procured to be dropped, and upon whom, therefore, personal service of summons cannot be made, is to be brought into court in a civil action by attachment of his property and publication, and if he can set aside the sale under such attachment proceedings on the ground that the homestead was not set apart. The question is in reality a single one, because unless such fugitive is a nonresident, the attachment will not lie, and, if he is a nonresident, he is not entitled to the homestead. The constitution (article 10, § 1 et seq.) provides for "those residing in this state," and clause 2 in like manner, makes provisions for "those who have removed from the state with intent to return at some future day," and makes no provision for "those temporarily absent for business or pleasure." No court would hold that a person residing in another state could claim a North Carolina homestead, though he may occasionally visit the state, and may have the intent to return at some future day, as in this case, when he would not be required to run the risk of a criminal arrest. It is certain that no person in the habit of living here, but temporarily absent for business or pleasure, the status of a citizen in another state, or by engaging in permanent business elsewhere, without the animo revertendi, or by assuming the duties and privileges of a citizen in such other state. The question is one of law, and not of Morris, and we could not inquire into the latter. Our opinion is that the court below committed

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some indefinite time and making his home here," would not exempt his property from attachment. The court further held: "Nonresident, within the meaning of the attachment law, means an actual cessation to dwell within a state for an uncertain period, without definite intention as to a time for returning, although a general intention to return may exist." For these propositions the opinion cites, besides Wheeler v. Warden, Wap. Attachm. 35; Weithman v. Loehr, 53 N. Y. Supp. CE p. 16. If former deliverances of our own court are to guide us, this would settle the present case, for this fugitive from justice not only did not "visit the state for a year," but, so far from having an intention to return at a definite time, he had a most indefinite and uncertain time at a very good and sufficient reason,—the terror of the indictment which had been returned against him,—not to return until "this charge against him was buried." There being no statute of limitation in the way of criminal prosecutions, and he did not return till it was safe to do so after indictment found, it was uncertain as to time and manner when the fugitive could

secure the "burial" of the proceedings, and he did not return till it was safe to do so. It was not necessary, as we have seen, that a residence should be acquired in another state. It is sufficient if the party has ceased to reside in this state. In Mayor, etc., v. Genet, 4 Hun, 487, it is held that a fugitive from justice who leaves the state is a nonresident, and his property is liable to attachment. Brady, J., says: "The effect of such an act must be to deprive the person committing it of his character as a resident. He places himself designedly beyond the reach of the power of the state by leaving its territory, and in terror of its laws. He abandons deliberately his residence. When a man thus conducts himself, he waives rights which depend upon his presence within the state, or circumstances which warrant its presumption, and is to be treated as if he were not present here, and no rights founded upon that legal attribute. He became, in other words, to all intents and purposes, for the enforcement of rights, privileges, actions, remedies, a nonresident of this state." On appeal this opinion was affirmed by the New York court of appeals by a unanimous bench. 63 N. Y. 176. The same ruling was made in another fugitive from justice in insurance Co. v. Dimmick (Sup.) 22 N. Y. Supp. 1096. See, also, Knapp v. Maetin, 18 Wend. 183; Nolen cited; and 21 Am. & Eng. Enc. Law, 125, note 3.

If the attachment was valid, as under the above decision in our own court and elsewhere it must be, the purchaser acquired a good title; for the plaintiff, if a nonresident, was not entitled to claim a homestead, which is given by our constitution only if the be or claim his owned and occupied by a resident of this state." This point has been uniformly so held; indeed, the language of the constitution could bear no other construction. In Baker v. Legget, 98 N. C. 394, 4 S.

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did not so intend." In the present case, was the fugitive from justice, moving round from state to state for more than two years, daring to return here, and only expressing the conditional intention to return at some indefinite time, an actual or a constructive resident of this state? If the latter, upon the above unbroken line of authorities, he was not such a "resident" as could claim a homestead, or an exemption from attachment of his property, at the hands of the law, which he was defying. Fulton v. Roberts, 113 N. C. 421, 18 S. E. 510, cites as authority the above cases of Munds v. Cassidey, Baker v. Legget, and Lee v. Moseley. As bearing upon the present case, it is authority that the burden of showing the nonresidence of a party who has at one time been a resident of the state is upon him who claims that the homesteader has become a nonresident. That has no application here, as the facts are found by the referee, and above stated; and the

intent of the party to return is some indefinite time, upon a contingency, as Smith, C. J., says above, was immaterial. Our decisions have been uniformly, and have become "a rule of property," and at a sale ordered by a court of competent jurisdiction, which order was based upon these rulings, the defendant has laid out his money. If he should ever lose it under such circumstances, so long a line of decisions should not be reversed for the benefit and in the instance of an admitted fugitive from justice, who even now has only ventured to return to the state because, by some means undisclosed to us, the criminal indictment against him has been "buried."

It is not necessary, to obtain the benefit of a homestead exemption, that the debtor should be a citizen. It is sufficient if he be a resident of the state. But he must be a resident, whether a citizen or not. Homestead and attachment affect property rights, and are governed solely by residence; not by citizenship. Citizenship once acquired can be retained by constructive residence plus the proper intent. Not so with homestead and attachment, which depend upon actual residence, which is a question of fact, as the circumstances of each case. As citizenship with the right of suffrage and eligibility to office cannot be acquired or be mere residence without an animus manendi, it is right that it cannot be lost by mere nonresidence if there is the animus revertendi. But exemption from attachment, which is seizure before judgment, and homestead, which is exemption from seizure after judgment, are conferred by residence alone, and must, therefore, be lost by nonresidence. It is not always easy to draw the line between residence and nonresidence, but we know that more doubtful absence, as on a visit or a journey, is not nonresidence; and, on the other hand, we know it would do violence to both the legal and the ordinary use of the word to say that a man who flees

the state to avoid being found by its officers, and who is skulking through other states to avoid extradition, for more than two years, with no intention of returning till the criminal proceedings has been dropped, is during all those years been a resident of this state, or to say further that, because he was residing here all that time, the law will protect him from service of civil process by attachment of his property, and prescribe for him the homestead, which the constitution confers upon no other unless he is a resident.

STATE v. FRAZIER.

(Supreme Court of North Carolina. April 21, 1896.)

LARCENY—EVIDENCE—OTHER CRIMES.

In a prosecution for larceny of money given defendant under a marriage contract, evidence that defendant had seduced prosecutrix under a promise of marriage, or that he had married her, was

admissible, as bearing upon his account of the seduction and his inability to marry her, being already a married man, or that he took it to buy grudgingly.

Appeal from criminal court, Mecklenburg county; Meares, Judge.

J. J. Frazier was convicted of larceny of $125, which the prosecutrix showed he had previously given the prosecuting witness, and he appeals. Reversed.

Jones & Tillett and Clarkson & Duls, for appellant. The Attorney General, for the State.

MONTGOMERY, J. This court, in State v. Jeffries, 117 N. C. 727, 23 S. E. 163, said: "There are some few exceptions to the almost universal rule of law that evidence of a distinct substantive offense cannot be admitted in support of another offense." The exceptions to the rule are to be found in those cases in which testimony concerning independent offenses has been admitted because of the necessity of proving the quo animo or the guilty knowledge of the defendant, and also for purposes of identification of the defendant. We do not see how this case can be taken out of the general rule above stated or brought in under any one of the exceptions. If the testimony had shown that the defendant had been, by compulsion, made to pay the $125 which he gave or paid to the prosecutrix, and that he had been compelled to pay it because he had seduced her under a promise of marriage, the testimony might have been admissible both to prove the defendant's knowledge of his possession of the money, and the guilty intent, in taking it from her, to get back that which he had been compelled to pay for the injury he had done her. It is not necessary, to constitute the crime of larceny, that the intent should be the causa-

ty, the taker having a felonious intent to convert it to his own use, whatever application he may afterwards make of it. But the testimony in the case shows no such condition of things. It does not show either that the $125 was paid to the prosecutrix by reason of the defendant's seduction of her, or that he paid it to her grudgingly, or unwillingly, or by compulsion. Under no condition of this case ought the testimony as to the liability of the defendant to make good his promise of marriage to the prosecutrix on account of his being a married man be admitted. That could only prejudice the defendant, and throw no light on the transaction. There was error in the ruling of the court below, for which there must be a new trial.

TOWN OF SHELBY v. TIDDY.

(Supreme Court of North Carolina. April 21, 1896.)

TAXATION—PERSONAL PROPERTY—LIEN—GARNISHMENT.

1. A tax on personal property, assessed and placed in the hands of the collector for collection, but without actual levy, creates no lien on the property as against bona fide purchasers from the owner's assignee for the benefit of creditors.

2. Where an assignee for the benefit of creditors sells personal property of his assignor, on which a tax had been assessed previous to the assignment, but never levied, the proceeds in the assignee's hands are not subject to garnishment for the payment of the tax, such proceeds belonging to the assignee's creditors.

Appeal from superior court, Cleveland county; Timberlake, Judge.

Garnishment proceedings by the town of Shelby against J. F. Tiddy, assignee of J. M. Flack & Sons, to enforce payment of a tax on personal property. Judgment for defendant, and plaintiff appeals. Affirmed.

M. H. Justice, for appellant. R. L. Ryburn, for appellee.

FURCHES, J. The judgment of the court below must be affirmed. A tax is said to be an enforced liability or indebtedness for the support of government. But this is a personal liability, and of itself creates no lien on the property of the taxpayer. A lien may be created by law for the payment of this liability, as well as of other indebtedness. When taxes are assessed, and placed in the hands of the tax collector for collection, this is equivalent to a docketed judgment and execution thereon placed in the hands of the sheriff. A docketed judgment creates a lien on the real estate of the defendant. Code, § 435. But it creates no lien on personal property, until levied, as against a bona fide purchaser. Code, § 443 (1). It cannot be contended that tax lists in the hands of the tax collector have a greater force than an execution in the hands of the sheriff. And as it is admitted that there was no levy made on the goods of Flack & Co. assigned to defendant for the benefit of creditors, and that defendant had sold them and collected

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the purchase money before the commencement of this action, it is clear that plaintiff had no lien on these goods for the payment of this tax. And if it had no lien, it had no claim of any kind against them, as there is nothing in the case to create an equity.

This being so, plaintiff, not being able to levy on the goods, proceeded by attachment against the defendant, who still had a part of the proceeds of the sale of this property in his hands, and which plaintiff alleges is liable for this tax. In this proceeding, the plaintiff must fail, for two reasons: First. For the reason that the money still in the hands of defendant arising from the sale of the goods assigned to him does not belong to Flack & Co., the tax debtors, but to their creditors, under the terms of the deed of assignment. Therefore the defendant owes Flack & Co. nothing. And, secondly, for the reason that it is admitted in the case agreed that the tax debtors, Flack & Co., asked, in addition to the homestead reserved, and took, the personal property exemption of $500 allowed them by law out of the partnership effects assigned to defendants. And they still had this on hand at the commencement of this proceeding.

This property was not exempt from the payment of this tax; and neither the plaintiff nor the tax collector could proceed by attachment and garnishment until this property was exhausted, had defendant been indebted to Flack & Co. Act 1895, c. 119, § 1; Act 1893, c. 296, § 1. There is no error, and the judgment is affirmed.

BURRIS et al. v. BROOKS.

(Supreme Court of North Carolina. April 21, 1896.)

LIABILITY OF TRUSTEE.

Plaintiffs' father delivered to defendant a note for collection; the proceeds to be paid over to plaintiffs when they arrived at 21 years of age. On the father's death the commissioners allotted such note to the widow, as part of her year's support. A justice who acted with the commissioners, in writing, ordered defendant to turn over the note to M. for the widow. Defendant complied with such order, and the widow afterwards collected the money due on the note. Held, that, the order of the justice being an absolute nullity, defendant was liable to plaintiffs for the amount of the note and interest.

Appeal from superior court, Stanly county; Bryan, Judge.

Action by Martha Burris and Nancy Jane Morton and others against John Brooks. From a judgment for plaintiffs, defendant appeals. Affirmed.

The action is for the recovery of the value of two certain notes—one for $65, and another for $142.50—executed by one J. S. Hinson to H. H. Hinson, and alleged to have been deposited with the defendant by the said H. H. Hinson to collect and pay over the proceeds thereof to the plaintiffs Martha Burris and Nancy Jane Morton, children, by a former

wife, of the said H. H. Hinson. The plaintiffs claim and allege that the defendant, in disregard of his trust, and without authority of law, turned over said notes to one A. A. Morrow, and that the said notes were collected by the said Morrow, and that the said Martha Burris and Nancy Jane Morton never received said notes, nor the proceeds thereof, nor any part thereof, as originally intended, in violation of the trust reposed in defendant, and that, therefore, plaintiffs seek to hold defendant liable for the same. The defendant, in his answer, admits the deposit of one note with him by the said Hinson, and denies the receipt of the other. He admits that he promised to pay said note, after collecting it, to Martha Burris and Nancy Jane Morton, and pleads, as his reasons for this omission, the defenses set forth in his answer, some of which are: That said notes were allotted to the widow of the said Hinson by the jury or commissioners lawfully selected for that purpose, and that he surrendered said notes, in good faith, in obedience to a written command and request from said commissioners, as he honestly thought he was in duty bound so to do; that he took said notes simply as an accommodation, and without any compensation, or promise of any. The defendant also pleads that the personal representative of H. H. Hinson was the proper and necessary party plaintiff, the said H. H. Hinson having died shortly after the transaction with the defendant, Brooks, leaving, him surviving, the widow, whose year's allowance is mentioned, and in which was included the notes aforesaid, and that the estate of said defendant has never been settled.

The defendant testified as follows: "Hinson requested me to take the notes, and, at proper time, to collect and keep the money until the two girls came of age, and pay over to them. I told him I would take the notes, and do the best I could with them. He died in a short while. Shortly after his death, A. A. Morton came to get the notes; said they were laid off to the widow in her year's allowance. I told him I wouldn't give up the notes without a written notice from the justice of the peace that laid off the allowance. He came back, and brought a written notice that I must give them up. I did so."

J. Milton Brown, for appellant. Austin & Price, for appellees.

MONTGOMERY, J. It would be an idle discussion to go into the question as to whether the defendant was a trustee, or whether he was a bailee. His counsel in reference to the trust committed to him was so imprudent that no excuse or palliation can be made for it. There was placed in his hands, by the father of the plaintiffs, who was the holder and owner thereof, a collectible note against J. S. Hinson, to be collected by the defendant, and the proceeds paid over

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to the plaintiffs when they should arrive at the age of 21 years. Upon the death of the father his widow had her year's provisions laid off to her, according to the forms of law, and the commissioners allotted this note, then in defendant's hands, to her, as part of her year's support. The justice of the peace who acted with the commissioners, in writing, ordered the defendant to turn over the note to one Morton for the widow, and he complied with the order. The widow collected the money due on the note. The order of the justice was an absolute nullity. He had no jurisdiction over the defendant's person, for he was not a party to the proceeding to allot the year's provisions; and, if he had been a party, the order of the justice would still have been void. A justice of the peace could exercise no jurisdiction over such a subject-matter as was involved in the order to the defendant. The note, or the proceeds of it when collected, was the subject-matter of a trust,—the defendant being trustee, and the plaintiffs cestuis que trust,—and the justice could have no jurisdiction over such a matter. There was no error in any of the rulings of his honor, and the judgment is affirmed.

WOOD et al. v. MORGAN.

(Supreme Court of North Carolina. April 21, 1896.)

VENUE IN CIVIL CASES — CHANGE OF PLACE OF TRIAL.

In an action by the widow and heirs of a decedent against J. L., administrator of deceased's estate, the complaint alleged that he had neglected to collect the assets of the estate, and to account as required by law. Plaintiffs resided, and the action was brought, in R. county. Defendant resided, and the administration was, in M. county. Held, that an order removing the action from R. county for trial was proper, under Code Civ. Proc. § 192, providing that an action shall be tried in the county, as part of the "official capacity" of the defendant, or any of the defendants, or a majority of them, reside at the commencement of the action; and section 193,

providing that all actions "against executors and administrators in their official capacity" shall be instituted in the county where the bonds were given, if the principal or any of the sureties on the bond is in the county.

Appeal from superior court, Rutherford county; D. W. Timberlake, Judge.

Action by Anna C. Wood and another against J. L. Morgan, brought in Rutherford county. From an order removing the action from Rutherford to McDowell county for trial, plaintiffs appeal. Affirmed.

As appears from the complaint filed in this cause, the plaintiffs are the widow and one of the heirs at law of P. B. Morgan, deceased, and the defendant is the administrator of the said P. B. Morgan, deceased, having administered on the estate of P. B. Morgan in the county of McDowell in 1889. It further appears from the complaint in this action that the plaintiffs claim the sum of _____ dollars to be due them from the de-

fendant by reason of his wrongful conversion of funds coming into his hands as administrator or successor, and also by reason of his negligence in failing to collect certain evidences of debt due the estate of the said P. B. Morgan, deceased. It is admitted by the parties that the plaintiffs reside in Rutherford county, and the defendant, J. L. Morgan, administrator of the said P. B. Morgan, deceased, and his bondsmen upon the administration bond, do now reside, and have since prior to 1889 resided, in McDowell, in which said county the letters of administration of the said P. B. Morgan were issued. The defendant in apt time made his motion for the removal of this cause to the county of McDowell for trial. The motion was allowed, and his honor, E. W. Timberlake, judge presiding, signed the following order: "This cause coming on to be heard against the defendant, who is a resident of McDowell county, and upon a motion of defendant to remove the cause to McDowell county for trial, and it appearing to the court from the complaint that the proper venue in this action is in McDowell county: It is considered that the cause be removed to McDowell county for trial, and the clerk of this court will make a transcript of the papers in the case, and transmit them to the clerk of the superior court of McDowell county, who shall place this cause upon the civil issue docket for trial." It appears from the same mons that the action was brought against the defendant, J. L. Morgan, in his individual capacity, and his bondsmen on his administrative bond are not parties to the action. To the foregoing order of Judge Timberlake the plaintiffs objected.

McBrayer & Eaves, for appellants.

FURCHES, J. The judgment ordering the removal of this action from Rutherford to McDowell county for trial must be sustained. We see no reason for distinguishing it from Stanly v. Mason, 69 N. C. 1; Foy v. Morehead, Id. 512; Bidwell v. King, 71 N. C. 287. But it is contended that the cases cited do not apply to this case under section 193,* which is claimed to be an amendment of section 192, of the Code of Civil Procedure.*

*Code, § 193, provides as follows: "All actions upon official bonds or against executors and administrators in their official capacity, shall be instituted in the county where the bonds were given, if the principal or any of the sureties on the bond is in the county; but, if not, then the plaintiff's county."

*Code Civ. Proc. § 192, provides as follows: "In all other cases the action shall be tried in the county in which the plaintiffs or the defendants, or any of them, shall reside at the commencement of the action; or if none of the defendants shall reside in the state, then in the county in which the plaintiffs, or any of them, shall reside; and if none of the parties shall reside in the state, the action may be tried in any county, which the plaintiff shall designate in his summons and complaint, subject, however, to the power of the court to change the place of trial, in the case provided by statute."

And Clark v. Peebles, 100 N. C. 348, 6 S. E. 798, is cited as authority for this contention. It is true that Clark v. Peebles discusses the change of the word "fiduciary" into the word "official." But it quotes Stanly v. Mason, Foy v. Morehead, and Bidwell v. King, supra,—approving them. And there is no intimation in the opinion that this slight verbal alteration has changed the law as announced in these opinions. If we understand the ground upon which the judgment of the court is based in Clark v. Peebles, supra, it is that none of the defendants in that case lived in Northampton county. So, if that case announces a doctrine differing from the former decisions of this court (and we do not understand it does), it does not sustain plaintiffs' contention in this case. Here the administrator was in McDowell county, where the defendant then and now resides. The case states that "it appears from the summons that the action was brought against the defendant, J. L. Morgan, in his individual capacity." This must mean that the defendant alone was sued; that he is the only individual sued, as the only ground of complaint—cause of action—alleged against him are that, as administrator, he neglected to collect in the assets of the estate, and to account and pay them over as the law required. This is certainly an action against him in his "official" capacity; for not discharging the duties of his office as administrator according to law. No error. Affirmed.

STATE v. McMINN.

(Supreme Court of North Carolina. April 21, 1896.)

INTOXICATING LIQUORS—ILLEGAL SALE ON SUNDAY.

A dentist is not a physician, within Code, § 1117, prohibiting the sale of liquor on Sunday, unless prescribed by a "physician."

Appeal from criminal court, Henderson county; Bryan, Judge.

Robert McMinn was convicted of selling liquor on Sunday illegally, and appeals. Affirmed.

Judgment for selling liquor on Sunday: "The jurors," etc., "present that the defendant, on the 14th day of October, 1895, the same being Sunday, did unlawfully and willfully sell intoxicating liquors to one Stagg without the prescription of a physician and not for medical purposes, contrary," etc. By consent the case was tried by the facts as found and adjudged that the defendant was guilty, and gave judgment that he pay a fine of $5 and forfeit appearance bond. The facts are as follows: Crow Stagg, being sworn, said that he lived in Hendersonville. On Sunday, in 1895, he had an aching tooth, and went to Dr. Smathers, a dental surgeon, and asked him for a prescription for whisky. The doctor offered to give him a prescription for a half pint, but witness insisted on getting a half pint and the doctor gave it

to him. Witness took it to defendant, who gave him a pint of whisky, and witness paid for it. It was on Sunday. Witness had often bought liquor of defendant. Dr. Smathers testified that he is a dental surgeon, licensed by the State Dental Association, and resides in Hendersonville; that on the Sunday referred to Stagg came to him, and said he had a severe toothache, and asked for a prescription for whisky. Witness examined the tooth of Stagg, and told him he would give him a prescription for half a pint; but, on the insistence of Stagg, he finally gave him a prescription for a pint. Witness is not a practicing physician, but a dental surgeon, and often uses liquor in his practice. Defendant testified in his own behalf, that he is a barkeeper in Hendersonville, and that, on the Sunday referred to, Stagg came to him with a prescription from Dr. Smathers, and, supposing that it was all right, he delivered to Stagg one pint of whisky, for which Stagg paid him, and told him at the time that he was suffering from toothache. Witness knew Stagg well,

and had often sold him whisky, but never on Sunday before. The court charged the jury that, if they believed the evidence of the witnesses for the state, the defendant would be guilty; that the prescription of Dr. Smathers, a dental surgeon, was not a prescription from a practicing physician, and was no protection to the barkeeper who sold liquor on Sunday; that prescriptions could only be given by practicing physicians, and could not be filled by barkeepers unless upon such prescriptions, and then only for medical purposes. Defendant excepted, and appealed from the judgment rendered.

The Attorney General, for the State.

CLARK, J. The court instructed the jury that a prescription from a dental surgeon was not "a prescription from a physician," which would protect one who sold intoxicating liquor on Sunday. Code, § 1117. This physician is one authorized to prescribe remedies for and treat diseases; a doctor of medicine. Webst. Dict. To the same purport are the Century and the Standard Dictionaries. A dentist or dental surgeon is not a physician or a dentist. He performs manual or mechanical operations to preserve teeth, to cleanse, extract, insert, or repair them. The statutes of this state recognize that dentists are included in the term "physician," the latter being regulated by Code, §§ 3121-3131, with the amendatory acts of 1885 (chapter 117 and 201) and 1889 (chapter 181), while dentists are governed by Code, §§ 3148-3156, and by amendatory acts of 1887 (chapter 178) and 1891 (chapter 251). If dentists came within the term "physician," as used in Code, § 1117, "toothache" would become more alarmingly prevalent than "snake bite"; and that it would, with usage, become more dangerous, is evident from the fact that the very first

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dental surgeon's prescription for toothache, counts before us, is for "one pint of whisky." The size of the tooth is not given, nor whether it was a molar, incisor, or eye, or wisdom tooth; and yet there are 32 teeth in a full set, each of which might ache on Sunday. The duties of a dentist are limited to the "manual or mechanical operations" on the teeth. Whenever the use of liquor is necessary, it, being a remedy to act on the body, and not directly in any case for the teeth, within the purview of the statute, it must be prescribed by a "physician," to authorize a sale on Sunday. No error.

COMMERCIAL NAT. BANK OF CHARLOTTE v. FIRST NAT. BANK OF GASTONIA et al.

(Supreme Court of North Carolina. April 21, 1896.)

NEGOTIABLE INSTRUMENTS—PRESENTMENT—ACTIONS ON PREREQUISITES—STIPULATION RESTRICTING LIABILITY—BURDEN OF PROOF.

1. The holder of a check cannot sue the bank on which it is drawn until such check is accepted by the bank.

2. A stipulation, stamped on the face of a check, that it will not be paid to a certain company or its agents, is valid.

3. The holder of a check cannot sue the drawer thereof till it has been presented to the drawer, and payment refused.

Appeal from superior court, Gaston county; Starbuck, Judge.

Action by the Commercial National Bank of Charlotte against the First National Bank of Gastonia and another on a check. Judgment for plaintiff, and defendants appeal. Reversed.

Jones & Tillett, for appellants. Burwell, Walker & Cansler, for appellee.

CLARK, J. The holder of a check cannot maintain an action against the bank upon which the check is drawn until after the acceptance of the check by the bank. Bank v. Millard, 10 Wall. 153; Hawes v. Blackwell, 107 N. C. 196, 12 S. E. 21; Maritime v. Lumber Co., 113 N. C. 53, 18 S. E. 24. This is the uniform line of decisions in the federal courts, and our own, and it is sustained by the overwhelming weight of authority in other courts, though there are a few decisions in other states to the contrary. The bank is the agent of the drawer. Till acceptance of the check, it has assumed no liability to the payee. Its liability, if any, is to the drawer whose check it has in hand, and, if it could pay that contract is liable to the drawer, not to the payee. "To its own master, it must stand or fall." A check is simply an order given by the principal upon his agent, and it is always open to the principal to countermand an order after it is given before it is executed; and there are occasions, when it is important to prevent imposition, that the drawer should

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have power to stop the payment of his check without casting any liability upon the drawee. If the principal, the drawer, die before the check is presented, it becomes invalid, which could not be the case if the mere drawing of the check created any liability in the drawee. But the more important point—since it is now presented to us for the first time—is the validity of the stipulation stamped on the face of the check. "This check will positively not be paid to the Gastonia Banking Company or its agents." It appears that the check has never been presented to the drawee, the defendant bank, except by an agent of the Gastonia Banking Company. Consequently, if this restriction was valid, the holder cannot maintain this action against the drawer till the check has been presented to the drawee by some other agency, and payment refused. In England the system of "crossed checks" has long been recognized as valid. 2 Daniel, Neg. Inst. § 1585a; Smith Bank, L. R. 10 Q. B. 295, which was affirmed on appeal, and is reported in L. Q. B. Div. 31. By that system, there is stamped across the face of the check the name of a certain banker through whom it must be presented for payment, and if presented by any one else it will not be honored. This does not destroy its negotiability in any wise. The present case does not go that far, but merely stipulates that the check will not be honored if presented through one agency named. This cannot be deemed an unreasonable restriction of trade. Nor is it a boycott. There is no evidence of a conspiracy to injure the agency named, but it is agreed as a fact that it was an effort on the part of the drawer (a firm in a neighboring town) to prevent its transactions and the nature and extent of its business becoming known to a rival house by its checks passing through that channel. Besides, it was e boycott, the parties to it are the drawer and the payee, who executed the check with that restriction stamped on it. And, if it was an illegal transaction, the check itself, and no merely the stipulation which is part of it, would be void. "Ex mala causa non oritur actio." The restriction is a part of the check. (Tied. Com. Paper §§ 41, 42; Benedict v. Cowden, 49 N. Y. 396; and, if it is invalid, the court could not separate the good from the bad. (Bank v. King, 44 N. Y. 87), but it would all be held void, and the holder could not recover. In analogy, a conveyance of property, real or personal, with a condition in relation to its disposition to a certain class of persons, or for a certain time, is valid. Cowell v. Springs Co., 100 U. S. 57; Gray v. Blanchard, 8 Pick. 288; Supe v. Timolat, 22 N. Y. 131; Co. v. Litt. 223. In Smith v. Lawrence, 2 N. C. 200, this court held that a note could be limited so as to be payable to the payee only. But it is unnecessary to consider here the principle maintained in that case,—that the drawer can, by stipulation therein, make the check not assignable; for this is not attempted here, but there is simply a stipulation that it shall not be paid if presented through the agency named. Wil-

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coxon v. Logan, 91 N. C. 452, holds merely that where a note is made payable to A. B., without the addition of the words "or order" or "bearer," the holder thereof can maintain an action thereon, being the party in interest. There was no question raised as to the validity of an express stipulation that the note could not be assigned at all, or should not be honored if presented by a particular party, as in this case; nor by any party except one named, as in the case of the English

"cross checks." These questions could not arise, for there was in that case no stipulation to either effect. On the facts agreed, judgment should have been entered for the defendants. Reversed.

PIEDMONT WAGON CO. v. BOSTIC et al.

(Supreme Court of North Carolina. April 21, 1896.)

CONTINUANCE—DISCRETION OF TRIAL COURT.

The discretion of the trial court in the matter of granting or refusing a continuance is not reviewable on appeal in the absence of gross abuse.

Appeal from superior court, Rutherford county; Timberlake, Judge.

Action by the Piedmont Wagon Company against John Bostic and others to recover on notes. Judgment for plaintiff, and defendants appeal. Affirmed.

McBrayer & Eaves, for appellants.

CLARK, J. Continuances are not favored by the law. One of the immortal provisions of Magna Charta is that justice shall neither be delayed nor denied; and these are coupled together, for a delay of justice is often a denial of justice. Still there are cases in which a continuance should be granted in the interest of justice. Code, § 401, prescribes that the application, if possible, shall always be made 30 days before the trial term, and that "the applicant shall in all cases pay the costs of the application." The next section (402) permitting a continuance to be granted at term, prescribes, among other requisites, that, "unless the affidavit shall set out that the grounds for a continuance arose or came to the knowledge of the applicant too late to apply before the term, the application in section 401, "and that the application was made as soon as it reasonably could be after knowledge of such facts," the continuance "shall be granted except on the terms of the payment of the costs in the action for the term." These provisions, in the judgment of the legislature, not being sufficient to protect litigants against the "law's delay," which the dramatist enumerates as one of the great ills which "flesh is heir to," the act of 1885 (chapter 394) was passed permitting counter affidavits to be offered, and prohibiting the judge to allow any continuance "unless he shall be satisfied, after thorough examination of the evidence

as aforesaid, that the ends of justice demand it." Even in doubt, he must refuse the continuance. It has often been held that the matter of granting or refusing a continuance was not appealable. See cases cited in Clark's Code (2d Ed.) p. 268. Certainly it must be a very gross abuse which would authorize an appeal in such cases. Here not only was there no abuse of power, but, in the light of the above statutes, his honor ought not to have granted the continuance. No error.

STATE v. TAYLOR.

Appeal of STEPP.

(Supreme Court of North Carolina. April 21, 1896.)

CRIMINAL COMPLAINT — WARRANT—AMENDMENT—JUDGMENT FOR COSTS—REVIEW.

1. The discretionary power to amend a complaint conferred on a justice by Code, § 908, is not subject to review.

2. A warrant cannot be amended so as to charge a different offense.

3. The findings of the superior court on matters of costs, on appeal by a prosecutor from a justice charging him with costs, are conclusive.

4. The finding of the superior court, on such appeal, is conclusive; and, where the judgment is in accordance with the facts found, it must be affirmed.

Appeal from superior court, Henderson county; Coble, Judge.

Prosecution, on complaint of J. H. Stepp, against J. A. Taylor. From a judgment denying the motion to remand the case to the justice court for an amendment of the warrant and retrial, the prosecutor appeals. Judgment affirmed.

A warrant was issued, upon the complaint of J. H. Stepp, against J. A. Taylor, charging "did unlawfully, maliciously, willfully, commit damage, injure, and spoil upon fence, the property of J. H. Stepp, in violation of section 1081 of the Code," etc. Upon trial before the justice of the peace the prosecutor moved to amend the warrant so as to charge that the defendant "did unlawfully and willfully pull down the fence surrounding a cultivated field, the property and in possession of J. H. Stepp. Code, § 1042." And the motion was denied by the justice upon the ground that he had no power to make the amendment; and the prosecutor appealed to the superior court. It was also adjudged by the justice of the peace that prosecution was frivolous, and that prosecutor pay the costs. Upon the bequest to determine whether it should not be remanded the case to the justice of the peace to the end that the warrant might be amended, and the case tried. The motion was denied, and the prosecutor appealed to the supreme court.

The Attorney General, for appellant. Ewart & Toms, for appellee.

FURCHES, J. The appeal is without merit, and cannot be sustained. If the justice of peace had authority to amend the war-

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rant, under section 908 of the code, he did not. And we know of no power we have, or the superior court had, to compel him to exercise a discretionary power. But this being a proposition or motion to strike out the offense charged in the warrant, and insert another offense, it seems that such a motion was not authorized. State v. Vaughan, 91 N. C. 535; State v. Crook, Id. 536. But the prosecutor had no right to appeal, if any, as to costs. State v. Powell, 86 N. C. 640. And while the superior court may review the findings of trial judgments of justices of the peace on matters of cost, in cases like this, the findings of the judge are conclusive upon this court. And, if the judgment of the superior court is in accordance with the facts found, that is also conclusive upon this court. State v. Humiston, 106 N. C. 669, 10 S. E. 854. And, as the judge below did not set out the facts upon which he founded his judgment, we must take them as being sufficient to justify his judgment. Affirmed.

SCHAUL et al. v. CITY OF CHARLOTTE

(Supreme Court of North Carolina. April 21, 1896.)

STATUTES—REPEAL—TAXATION—LICENSES—PAWNBROKERS.

1. Private Acts 1881, c. 40, § 37, providing, in regard to the city of Charlotte, that taxes for city purposes shall be levied on real and personal property, trades, etc., as defined in other subjects, as amended by Const. art. 5, § 3; and section 57, repealing all inconsistent acts,—repeal Private Laws 1869, c. 10, subd. 18, fixing a limit as to the amount of licenses to be demanded of brokers.

2. Private Laws 1869, c. 7, § 19, subd. 13, restricting the amount to be paid for licenses by "brokers," does not affect "pawnbrokers."

Appeal from superior court, Mecklenburg county; Bryan, Judge.

Action by L. J. Schaul & Co. against the city of Charlotte. From a judgment for defendant, plaintiffs appeal. No error.

Clarkson & Duls, for appellants. Burwell, Walker & Cansler, for appellee.

CLARK, J. The city of Charlotte, having laid a license tax of $250 on the business of pawnbroking, in which the plaintiffs were engaged, they followed the proper course to test the validity of such tax by paying it and bringing this action to recover it back. The plaintiffs contend that the tax is invalid because the charter of the city, ratified March 10, 1896 (Private Laws 1896, c. 7, § 19, subd. 15), authorizes "on every broker or exchange office a tax not exceeding one hundred dollars." This point, however, will not avail the plaintiffs, for two reasons: First. The charter granted the city of Charlotte (Private Acts 1881, c. 40, § 37) ex-

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pressly provides: "Taxes for city purposes shall be levied on real and personal property, trades, licenses, and other subjects of taxation as provided in section 3, article 5 of the state constitution." Section 57 of this act repeals all laws in conflict therewith. This act of 1881 confers upon the town broadly, without restriction, the right to decide what taxes and license taxes it shall levy, and necessarily repeals, as to "brokers," the limitation of $100 existing under the charter of 1869. There is no contention here that $250 is a license tax so unreasonable in amount as to call for the pervision and protection of the courts. Secondly. Even if the charter of 1881 had not repealed the above limitation upon the tax to be levied upon "brokers," the plaintiffs could not have claimed protection under the clause that they are a pawnbroker under

the clause, "Pawnbroker" is an entirely separate and distinct business, and does not come under the generic title "broker." The word "broker," derived from an Anglo-Saxon word signifying "to search," primarily means "agent." It means, in law, a middleman, or negotiator, between other persons for a compensation, called "brokerage," who takes no possession of the subject-matter of the negotiation, and usually contracts in the name of those employing him, and not in his own name; and sometimes it means, in ordinary speech, a dealer in money, notes, bills of exchange, etc. A pawnbroker has none of the characteristics of either kind of brokers. Indeed, he is not a broker at all. He contracts in his own name, has no employer, charges no brokerage, and always takes possession of his property. Neither does he deal in money, notes, and bills of exchange, etc. A pawnbroker is, in short, a moneylender or usurer, lender or pawned or left with him. The business of a pawnbroker is not in the same class with, and has no resemblance to, that of a broker, in either sense of the latter word. The verbal coincidence of the last two syllables of the longer word being "broker" is purely fortuitous, for a pawnbroker is not a broker at all. The two businesses constitute separate and distinct classes, it would be competent for the city authorities to lay an entirely different license tax upon "pawnbrokers" and "brokers." Rosenburg v. City of Newburn (at this term) 24 S. E. 1. No error.

BERNHARDT et al. v. BROWN et al.

(Supreme Court of North Carolina. April 21, 1896.)

SERVICE OF PROCESS—PUBLICATION PROCEEDINGS IN REM — JUDGMENT — COLLATERAL ATTACK — PRESUMPTION — NEW TRIAL — HEARING OF MOTION — SETTING OUT EXCEPTIONS TO CHARGE — EXECUTION — JUNIOR JUDGMENTS.

1. Code, § 218, subsec. 4, providing for service by publication when defendant cannot, after

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[Page 628]

Brown & McDowell; all against the North Carolina Estate Company, Limited. The A. H. Wilson judgment was rendered in the superior court of Burke county on the 4th day of March, 1889, in an action brought by him for the enforcement of two mechanics' liens, filed July 16, 1888, against certain town lots in Glen Alpine, for work and labor and thereon. This judgment was for $7,329.60 and costs, and the same was declared a lien on said lots from July 16, 1888, the date of

filing said liens. The execution which issued on this judgment, March 30, 1889, declared the same a lien from July 16, 1888, on said lots, and ordered the sheriff to sell and levy on the same. The other three judgments were justices' judgments in attachments, and were declared to be liens upon the land in controversy, and upon the Glen Alpine lots. The judgment in favor of Dunovant & McConnaughey, judgment in favor of Brown & McDowell was rendered April 6, 1889. The warrant in attachment had been issued, and the same was declared a lien on certain land in controversy, in each of these actions a warrant of attachment was issued, sued and docketed the same day. In each of these cases a warrant of attachment was sued, a lien judgment, March 30, 1889, declared the same day. January 24, 1889, upon the land in controversy, and upon the Glen Alpine lots. Judgments were issued in these three actions on February 22, 1889, and the scriptions docketed in the superior court of Burke county, February 25, 1889. The judgment in each of these actions was declared a lien upon the land in controversy, and upon the Glen Alpine lots. Executions issued on these lots on various dates from the superior court of Burke county,—on the Bluford judgment, April 1, 1889, and on the Dunovant & McConnaughey judgment, May 1, 1889. The judgment in favor of Brown & McDowell was rendered April 6, 1889. The warrant in attachment had been issued, and the same was declared a lien upon the land in controversy, on March 8, 1889, and the judgment was declared an attachment lien on the said land and lots, and a transcript of said judgment was docketed in the superior court May 1, 1889, and execution issued May 1, 1889, under executions issued on these four judgments the land in controversy was sold May 6, 1889. The defendants purchaser. There was no personal service of summons upon the North Carolina Estate Company, Limited, in any of these cases, but in all of them there was constructive service by publication. In three of them an attachment levied upon the land in controversy and publication thereof; in the other, a statutory lien upon the Glen Alpine lots and publication. At the sale May 6, 1889, when the defendants purchased, under these four executions, the Glen Alpine lots were first sold, and realized $200, which was not sufficient to discharge the A. H. Wilson execution, which was the first lien thereon. At the second sale, made July 8, 1890, when the plaintiffs purchased, the sheriff sold only under one execution, issued from the superior court of Catawba county March 8, 1890, on

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THE NATIONAL LAW LIST.

The names contained in this List have been selected after careful investigation into the personal character, financial responsibility and professional standing of each name represented. The List will be extended from time to time, and names of deserving attorneys in each place of any importance in the United States and Canada. Should any cause of complaint occur at any time against any firm represented, we desire to be at once notified, that we may promptly protect our subscribers. In the compiling, we claim every care, the object being to make it, by frequent and careful revision, to render it the most complete and reliable Law List published.

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[THIS IS TABLE: A three-column table listing legal professionals organized by state/location. The columns are labeled "Alabama", "Colorado-Cont'd", and "Georgia-Cont'd", containing names and addresses of legal professionals in each region.]

(Continued on next page.)

NATIONAL LAW LIST—Cont'd.

[THIS IS TABLE: A directory listing of lawyers organized by state/region in three columns: Indiana-Cont'd, Iowa-Cont'd, and Michigan-Cont'd. The table contains names and addresses of legal practitioners organized alphabetically under each state.]

Indiana-Cont'd

[Column 1 content listing lawyers and addresses in Indiana]

Iowa-Cont'd

[Column 2 content listing lawyers and addresses in Iowa, primarily in Rock Rapids and nearby areas]

Michigan-Cont'd

[Column 3 content listing lawyers and addresses in Michigan, including cities like Saginaw, Detroit, and St. Joseph]

Minnesota

[Beginning of Minnesota section with initial entries]

NATIONAL LAW LIST—Cont'd.

[THIS IS TABLE: A directory organized in three columns showing law firms and attorneys across different states/regions]

Nebraska:

BEATRICE:

BROKEN BOW. ALPHA MORGAN.

BURWELL. THOMAS J. HALL.

COZAD. E. D. OWENS.

FAIRBURY.

CLINES F. HASKEEW.

HASTINGS. MICHEL A. HALLIGAN.

LINCOLN.

HOWARD A. STRYCKER, 1127 O St.

BURKETT & TINGLEY, 1020 O St.

NEBRASKA CITY. JOHN C. WATSON.

NORFOLK. MAPES & HAZEN.

OMAHA.

HAMILTON & MAXWELL.

305 L. & C. Bldum Bank Bldg.

ORD. THOMAS L. HALL.

PLATTESMOUTH. H. D. TRAVIS.

TRENTON. F. M. STANSBURY.

Nevada:

VIRGINIA CITY. W. E. F. DEAL.

New Hampshire:

NASHUA. WASON & JACKSON.

New Jersey:

ASBURY PARK.

DAVID HARVEY, JR., Monmouth

Block.

BURLINGTON. HOWCROFT FLANDERS.

CAMDEN. THOMAS P. FRENCH.

CAPE MAY COURT HOUSE.

LUDLOW & LUDLOW.

FREEHOLD. FREDERICK PARKER.

JERSEY CITY.

DOYLE & McDERMOTT, 20 Washington St.

JOSEPH P. DONAT, 210 Hudson

St.

MORRISTOWN.

CHARLES EWAN MERRITT, 21 High

St.

NEWARK.

CONOVER & RICHARDS, 763

Broad St.

NEW BRUNSWICK.

JAMES H. VAN CLEEF, 14 Paterson

St.

RUTHERFORD. ADDISON C. RAY.

WYNIS RIVER. GEORGE C. LOW.

WESTERLY. ALVORD & BARTLETT.

TRENTON.

JOSEPH J. STEMPHILL.

New Mexico:

ALBUQUERQUE.

KNAEBEL & KNABEL.

E. LAS VEGAS.

GEORGE MCDONG.

SANTA FE. CIRO. W. KNARBEL.

New York:

ALBANY.

GEORGE LAWYER, 54-56 Tweddle

Bldg.

ALFRED G. STEPHENS, 42 Broadway.

BINGHAMTON.

DELOS EASTMB & HANLIN, 83

Exchange St. Ref.: Chennal Nat.

Binghamton Sav. Bk., A. S. Hartridge & Co., and Binghamton Lumber Co.

BROOKLYN.

GRIFFIN & CLARK, 24 W. Seneca

St.

CORNING.

WILLIAM H. REED, 5 Drake Bldg.

ELMIRA.

THOMPSON & MANDEVILLE, Attorney for State Bank of Elmira.

Ref.: W. Wood, city teller.

NEWBURGH.

W. H. HORNBECK.

NEW YORK CITY.

CHARLES HUGHES & DWIGHT, 63

Cedar St.

POUGHKEEPSIE.

MARVIN TEMPLE CHADWICK, 54-56 Market St.

ROME.

JAMES C. J. EVANS, 112 West Dominick St.

A. DELOS KNEBLAND, 125 W. Dominick St.

TROY.

B. B. PURTELL.

T. EDWARDS W. DOUGLAS, 26 4th St.

UTICA.

J. G. WELLS, BALI., 129 Genesee St.

W. & N. E. KEENAN.

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North Carolina, South Carolina-Cont'd, Oklahoma, Oklahoma, Oregon, Pennsylvania, and Tennessee listings with similar formatting

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Texas-Cont'd. | Virginia-Cont'd. | Wisconsin-Cont'd.

CAMERON. T. S. HENDERSON.

COLEMAN. W. M. HARRIS.

CORSICANA. W. E. JACKSON.

COLORADO.

J. M. CLEAVEY, 1-2 P. O. Bldg.

CROWELL. MAIDEN & LIPSCOMB.

DALLAS.

W. M. McCORMICK, No. Tex. Nat.

Bank Bldg.

C. W. SPALDING, Nat. Exchange

Bank Bldg.

EASTLAND. HORGER & HARRIS.

EL PASO.

W. H. BRACE.

FORT HAYES.

FORT WORTH.

NAY, GARLAND, Sanatorium Bldg.

GALVESTON.

W. E. DOWE.

LABATT & LABATT, 212 22nd St.

KAHN & BAKER.

GOODNIGHT.

JAMES D. HAMLIN.

GREENVILLE. JOSEPH F. NICHOLS.

HILLSBORO. T. P. WOLF.

HOUSTON.

R. STOKES.

STONEWARE & MOODY, 1002½

Congress Ave.

JEFFERSON.

A. J. W. ARMISTEAD.

TEXAS, C. P. PLOCK.

LA PORTE.

A. D. LOVELADY.

SAN ANTONIO.

P. B. COOK. Post Bank Bldg.

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SHERMAN. LESLIE & McKEYSOLDS.

TEXARKANA.

W. E. LIVELY, MAHAFFEY.

WAXAHACHIE.

LANGSTER & BEALL.

Utah.

OGDEN.

WARREN L. BOHEMAN, 412-414

15th Logan Trust. Bldg.

SALT LAKE CITY.

RICHARD H. SHEPARD, 37-19 Commercial Blk.

Vermont.

RUTLAND. JOEL C. BAKER, 21-23

Clement Bank Bldg.

Virginia.

ALEXANDRIA.

CAMPBELL & COCKRELL.

BIG STONE GAP. IVINS & CO.

BUCHANAN.

MATTHEWS & MAYNOR.

R. J. MCCRUM. Ref.: Judge

Thornton.

CHARLOTTESVILLE.

GIBSON GILMER, 40 Ct. House Sq.

CULPEPER. COLTON BARBOUR.

DANVILLE. WITHERS & WITHERS.

GATE CITY.

C. W. G. BEELER, R'y & N. Bank.

CONRAD & CONRAD.

[Continued in next sections...]

[The content continues with more cities and law firms in multiple columns. At the bottom of the image is a library stamp for Virginia Room, Jones Memorial Library, Lynchburg, Virginia]

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Safe-Deposit Companies.
Pledges and Collateral Security.
Pledgee as Bona Fide Holder—Antecedent Indebtedness.
Rights of Pledgee Before and After Default.
Hire of Things for Use—Liability for Misuses

CARRIERS.

Private and Common Carriers.
Who are Common Carriers—Essential Characteristics.
Commencement of Liability.
Discrimination.
Lien.
Liability as Insurers and as Ordinary Bailees—Burden of Proof—Excepted Perils.
Liability for Baggage—What is Baggage.
Liability for Live Stock.
Contracts and Notices Limiting Liability.
When Liability Terminates.
Delivery to Consignee.

When Unauthorized Use Makes Bailee an In-surer.

Hire of Labor and Services.

Lien—Existence, Priorities, Scope, Waiver, En-forcement.

Innkeepers.

Who are Guests.

Liability for Guests' Goods—Accidental Fires.

Lien on Goods not Owned by Guest.

Innkeeper as Ordinary Bailee.

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Lynchburg Va

Garland

Garland's Adm'r

vs.

Garland's Adm'r.

In the Circuit Court of the City of Lynchburg.

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In the Circuit Court for the City of Lynchburg.

SAMUEL GARLAND'S ADMINISTRATOR, &C.,

VS.

MARY L. GARLAND, ET AL.,

AND

SAMUEL GARLAND'S ADMINISTRATOR

VS.

BURR GARLAND'S ADMINISTRATOR.

Petition of Ann P. Garland's Administrator.

To the Hon. John D. Horsley, Judge of the Circuit Court of Lynchburg:

Your petitioner, Gilbert S. Meem, administrator of Ann P. Garland, deceased, respectfully represents that there is pending in your Honor's Court a chancery cause under the style of Samuel Garland's administrator vs. Mary L. Garland, et al., wherein the estate of Samuel Garland is being administered, in which the estate of Samuel Garland, Jr., is interested as residuary legatee of Samuel Garland, Sr. All the debts and legacies of Samuel Garland, Sr., have been paid except a certain claim asserted by M. J. Day as substituted trustee for Paulina B. Morris and her children, which claim is being resisted and wholly contested by the estate of Samuel Garland, Sr. This claim is litigated in the suit of S. Garland's administrator vs. Burr Garland, pending also in your Honor's Court. All the debts specifically against the estate of Samuel Garland, Jr., have likewise been paid and large amounts paid to his legatees, and but for the pendency of the

undetermined and disputed claim of Day, trustee, which has been in litigation for some years, and will probably so continue for

some years to come, the estate of both the Garlands aforesaid might be now fully distributed and administered.

Your petitioner here refers to, and adopts, as a part of this petition, the records in both said suits, which may be read in connection herewith.

Petitioner represents that there are but little, if any, assets in the hands of Samuel Garland's administrator, except what may be recovered in the Burr Garland suit aforesaid, and some real estate now held by the widow as her dower, worth probably $3,000; but the last account stated by J. F. Slaughter, the administrator, shows a balance of about that sum due him, and hence it may be taken that there are no assets of that estate; and, inasmuch as the said J. F. Slaughter, who is also the executor of Samuel Garland, Jr., has, as such executor, received from the estate of Samuel Garland Sr., a large amount under the residuary clause of the will of S. Garland, Sr., it follows that any recovery of any claim now against S. Garland, Sr.'s estate is

virtually a recovery against his residuary legatees, to-wit: S. Garland, Jr., and Ch. R. Slaughter, each being bound for half thereof. And therefore the said Slaughter, executor, declines to make further payments to the legatees of Samuel Garland, Jr., whilst the claim of Day, trustee, is pending and undetermined.

Your petitioner therefore prays that an order be made in these causes for a partial distribution of the estate of Samuel Garland, Jr., of which his intestate is one of the preferred legatees who has not been paid in full. The distributees of Ann P. Garland's estate, entitled to their legacy, as well as some of the other legatees of Samuel Garland, Jr., are in very needy circumstances, and have been waiting many years to receive their portion. Some of them have received nothing from the estate for more than twenty-five years. The assets are being consumed in costs and expenses of litigation and delays, while the people who were made the objects and intended recipients of the testator's bounty about thirty years ago are fast perishing from the face of the earth.

Your petitioner represents that the condition of these estates is such that a sufficient amount might be retained to meet any probable liability from the claim aforesaid, and yet a considerable fund be distributed to the legatees. Petitioner does not know the amount that is claimed by Day, trustee, but denies that the claim is a valid one in any respect. As to the assets of the two estates mentioned, petitioner is not accurately advised, but the said Slaughter has had his accounts, both as administrator of Samuel Garland, Sr., and as executor of Samuel Garland, Jr., stated by Mr. Commissioner Bocock, and while petitioner thinks there may be errors and omissions in said accounts, they are

such that correction thereof will increase considerably the assets of both estates, and said accounts as stated may be safely used for the purposes of this petition.

As far as can now be ascertained, the standing of the estates is as follows:

As to Samuel Garland, Sr., no assets other than dower estate of widow—say, $2,500—and no liability other than claim asserted by Day, trustee. If the estate prevails in the Burr Garland suit, there will come in assets to about $8,000,

ESTATE OF SAMUEL GARLAND, JR.

Balance due by J. F. Slaughter, executor, per Bocock's report, January, 1887—principal,	$12,651	
interest,	10,661	
	$23,312	
To be credited by Meem legacy, paid August, 1885,	$11,500	
And interest—say, 18 months,	1,035	12,535

Net balance due January, 1887, $10,777

This balance probably to be increased by corrections and additions to accounts.

In addition, there remains, or should remain, in executor's

hands following bonds and stocks:

O. & A. R. R. bonds,	$2,000
S. S. R. R. bonds,	3,000
Memphis City bonds,	2,000
Lynchburg Gas-Light stock, 30 shares,	1,200
	$8,200

Interest from January, 1887.

The Arkansas lands of S. Garland, Jr., have been sold for about

$10,000, of which $1,000 has been collected and distributed to

the legatees, and a little less than $1,000 paid over to the executor. The balance of the sale is in bonds, perfectly solvent, of

which about $2,300 is due and expected to be paid to the executor in a month, and the other bonds maturing next year. The

estate also has an interest in some Mississippi lands—value unknown.

In consideration of the premises, petitioner prays that the said

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two causes be heard together for the purposes of this petition and the decree thereon. That if necessary a rule to answer the same be awarded against J. F. Slaughter as administrator of Samuel Garland, Sr., and as executor of Samuel Garland, Jr., and against M J. Day, late sergeant and substituted trustee for Paulina B. Morris and her children. That a decree be entered directing Slaughter, executor of S. Garland, Jr., to distribute among the legatees of Samuel Garland, Jr., according to their respective rights, at least the sum of ten thousand dollars, or whatever the Court may think proper, and take such order as may preserve the estate to those entitled thereto, and for all other and further relief.

And as in duty bound, petitioner will ever pray, &c.

GILBERT S. MEEM,

Administrator.

K. & B., for petitioner.

Answer of M. J. Day, Sergeant of Lynchburg and trustee, to petition of Ann P. Garland's administrator. Filed March 2, 1892.

The answer of M. J. Day, late sergeant of Lynchburg, to whom, as such, after the death of Burr Garland and Charles Y. Morris, was committed the trusteeship for Paulina B. Morris and her

children under the 9th clause of the will of Samuel Garland, Sr.,

to the petition of Gilbert S. Meem, administrator of Ann P. Garland, deceased, filed in the suits-of Samuel Garland's executor

vs. Mary L. Garland, &c., and Samuel Garland's administrator vs. Burr Garland's administrator.

This respondent, obeying the rule of the Court, comes, and,

answering said petition, disclaims, first of all, any purpose of

giving any consent or making any admission that can be construed into waiver of any right, legal or equitable, that he

or any of his beneficiaries have in the subject of said petition.

Under the 15th clause of his will Samuel Garland, Sr., gave to

each of the ten children of his brother, Nicholas A. Garland, a

$1000 bond of his East Tennessee and Virginia railroad bonds,

or others of equal value. He died in November, 1861, and of

such bonds he was then possessed of about $400,000. With the

trust funds of said Paulina and her children under the 9th

clause of the will, Burr Garland purchased the legacies of eight of

Nicholas A. Garland's children. The principal aggregates $8,000.

The interest is not less than 6 per cent., and now aggregates

over $14,500, outside of accumulations which have, or should

have, accrued thereon. Principal and interest together now exceed $22,500.

Charles R. Slaughter was the first executor of Samuel Garland, Sr. After the death of Charles R. Slaughter, Samuel Garland, Jr., became executor of Samuel Garland, Sr. After the death of Samuel Garland, Jr., John F. Slaughter became the personal representative of Charles R. Slaughter and of Samuel Garland, Jr., and of Samuel Garland, Sr. Charles R. Slaughter and Samuel Garland, Jr., were only residuary legatees of Samuel Garland, Sr. They could not retain as residuary legatees any assets of the estate of Samuel Garland, Sr., until said legatees of the eight children of Nicholas A. Garland had been provided for. Neither could John F. Slaughter turn over to the estates of these residuary legatees any assets of the estate of Samuel Garland, Sr., until said legacies of the eight children of Nicholas A. Garland had been provided for. Each of the personal representatives of Samuel Garland, Sr., had abundant assets for the payment of the legacies of said eight children of Nicholas A. Garland. The petition alleges that there are now no assets of the estate of Samuel Garland, Sr. Then some, probably each, of the personal representatives of Samuel Garland, Sr., have committed a devastavit now amounting to $22,500.

Thirty years have passed since these legacies have been payable. For many years it has been sought to obtain payment of them for said Paulina and her children. The petition contemplates many more years before they will be paid. Then the devastavit will be much larger than it is now.

The petition alleges that the estate of Samuel Garland, Jr.,

and the estate of Charles R. Slaughter should each contribute one-half of the amount necessary to pay these legacies. This will depend on the equities between them, growing out of their respective administrations, and of the respective assets turned over to them as residuary legatees. If in each of these respects they are equal, then each estate should contribute equally, and if each estate contributed its quota, it would make amends for the devastavit, but if the estate of Charles R. Slaughter failed to return its quota, the estate of Samuel Garland, Jr., might have to make up the deficiency, for there can be no residuary legacy till the other legacies are satisfied.

The account mentioned in the petition, as stated by Mr. Bocock, but not yet filed, shows that the larger part of the $12,651 principal was, at a comparatively recent date, transferred from the estate of Samuel Garland, Sr., to the estate of Samuel Garland, Jr.. As personal representative of each of the three estates, John F. Slaughter readily transfers assets from

one estate to another. Thus it happens that there are now no assets of the estate of Samuel Garland, Sr. To grant the prayer of the petition would be for the Court to lend its aid

to perfect the devastavit. The Court should bring back the

assets to the estate of Samuel Garland, Sr..

This respondent is advised that it is the legal and equitable

right of his beneficiaries, and he insists that the Court shall require the parties who are liable to bring into court the eight

$1,000-bonds of the East Tennessee and Virginia Railroad Company, or others of equal value, mentioned in the 15th clause of

Samuel Garland's will, with interest thereon from his death, and

that such proceedings may be had as will render said interest

productive, and that this be accomplished before any distribution

be ordered to the residuary legatees.

And having answered as far as he is advised it is material for

him to answer, he prays that his cost be adjudged to him, &c.

M. J. DAY,

late Sergeant and Trustee as aforesaid.

Inventory of Personal Estate in Hinds County 28th November,

1862.

Filed January 9, 1863.

STATE OF MISSISSIPPI, }

HINDS COUNTY: }

To Richard M. Hobson, Richard Fondren, Wm. O. Moseley,

Daniel Mann and Henry O. Dixon—Greeting:

This is to authorize you, jointly, to appraise the goods, chattels and personal estate of Samuel Garland, Sr., late of Lynchburg, Va., Campbell county, deceased, so far as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation hereto annexed, a certificate whereof you are to return annexed to an inventory of said goods, chattels and personal estate by you appraised, in dollars and cents, and in said inventory you are to set down in a column or columns opposite to each article the value thereof.

[L.S.] Witness, John W. Robb, Judge of Probate of the county of Hinds.

Issued the 6th day of November, 1862.

S. J. THIGPEN, Clerk.

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Garland's Adm'or et als. v. Garland's Adm'or et als. 7

You do swear that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of Samuel Garland, deceased, so far as shall come to your sight and knowledge, and will in all respects perform your duty as appraisers to the best of your skill and judgment; so help you God.

Sworn to and subscribed before me, } DANIEL MANN.
this 27th day of November, 1862. } H. O. DIXON.
J. H. BOYD, J. P. } R. FONDREN.

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Inventory and appraisement of the personal estate of Samuel Garland, deceased, in Hinds county, Mississippi.

Tudor Hall Estate. 15 -- 2 1795

1. Billy Roan,	$ 400.
2. Prudence, his wife,	200.
3. William,	1,300.
4. Burr,	1,400.
5. Virginia,	1,000.
6. Jesse Wren,	1,200.
1. Abram,	1,400.
2. Mary, his wife,	900.
3. Rose,	550.
4. Rice,	600.
5. Peyton,	450.
6. Edward,	200.
1. Alford,	1,500.
2. Sally, his wife,	1,000.
3. Ellick, child,	200.
1. Sam Roan,	1,400.
2. Mary, his wife,	1,000.
3. Pollard, child,	200.

1. Old Stephen, 300.

2. Betsy, his wife, 200.

3. Charles, 1,400.

4. Nicholas, 1,400.

5. Stephen, 1,400.

1. Ben, 1,400.

2. Matildy, his wife, 890.

3. James, 1,200.

4. Lucindy, 600.

5. Ursley, 500.

6. Elizabeth, 300.

7. Ben, 300.

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8 Garland's Adm'or et als. v. Garland's Adm'or et als.

250.

8. Joseph, 150.

9. George, infant, 1,400.

1. Joe, 1,000.

2. Mariah, his wife, 200.

3. Mary, 100.

4. Margaret, 100.

5. Mariah, infant,

_____

$27,900.

27,900.

1. Ursley,	800.
2. Isabella,	800.
3. Sally,	900.
1. Robert,	700.
2. Emeline, his wife,	700.
3. Richard,	800.
4. Jane,	700.
5. Elijah,	500.
6. Sarah,	500.
7. Robert,	250.
8. Henry,	150.
1. Henry Booker,	800.
2. Lucy, his wife,	600.
3. Pleasant,	1,000.
4. Henry Clay,	1,100.
5. Anthony,	800.
6. Nathaniel,	600.
7. Ellen,	400.
8. Singleton,	300.
1. Peter,	1,000.
2. Eliza, his wife,	700.
3. Mary Francis,	900.
4. Rose,	750.
5. King,	300.

6. Cairy, 150.

1. Charles Kinney, 900.

2. Chenor, his wife, 750.

3. Giles, 1,100.

4. Malindy, 700.

5. Sylva, 600.

6. Abby, 500.

7. Charles. 200.

8. Spotwood, infant, 100.

1. Billy Slaughter, 700.

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Garland's Adm'or et als. v. Garland's Adm'or et als. 9

2. Nelly, his wife, 850.

3. Marthy Ann, 600.

4. Albert, 600.

5. Catharine, 400.

6. Garland, infant, 100.

$52,200.

52,200.

1. Milton, 1,400.

2. Martha Jane, his wife, 1,000.

3. Martha Ann, infant, 100.

1. Wm. Minor (Black Smith), 800.

2. Milly, his wife, 400.

3. Gracy Ann, 1,000.

4. Henrietta, 1,000.

5. Nelson (idiot and dead expense).

6. Billy, 800.

7. Hannah, 600.

8. George, 600.

9. Spencer, 500.

10. Sarah, 400.

11. Ely, 200.

1. Iverson, 600.

2. Milly, his wife, 200.

3. Annis, 1,000.

4. Betty, 1,000.

5. Aggy, 600.

6. Mansfield, 400.

7. Burr, 250.

8. William, 800.

9. Caroline, 400.

1. Frazier, carpenter, 500.

2. Lucy, his wife, 100.

1. Ellick, 1,500.

2. Martha, his wife, 1,000.

1. Claibourn, 1,350.

1. Charles (Short), 1,200.

1. Wm. Christian,		1,300.
1. Archy,		1,500.
1. Sam Dixon,		1,490.
1. Ned (Virginia),		1,350.
1. Ned Slaughter,		900.
1. Henry Ware,		1,100.
2. Jane, his wife,		800.

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10 Garland's Adm'or et als. v. Garland's Adm'or et als.

800.

1. Nancy Bowyer,

———

$81,050,

81,050.

	$ 25 00 each	75.
3 blind mules,	150 00	4,500.
30 head mules,	40 00	320.
8 work oxen,	30 00	600.
20 cows and calves,	30 00	510.
17 head dry cattle,		
1 bull,		50.
16 breeding sows,	15 00	225.

31 shoats, for day 3 -- [?]		100.
37 meat hogs,	25 00	925.
16 shoats,	1 50	24.
25 pigs,	1 00	25.
2 ox wagons,	60 00	120.
2 four-horse wagons,	60 00 and 75 00	135.
1 two-horse wagon,		30.
2 horse carts,	35 00 and 20 00	55.
17 spades and shovels,	1 25	21.25
3 double wingro scrapers,	5 00	15.
4 harrows,	2 00	8.
12 wrought ploughs,	3 00	36.
15 cast ploughs,	2 00	30.
11 double ploughs,	3 00	33.
3 half shovels,	1 50	4.50
4 sweeps,	5 00	20.
11 grubbing hoes,	1 00	11.
1 set blacksmith tools,		50.
18 pole axes,	1 25	22.50
4 cribs corn, 4,000 bushels,	1 50	6,000.
24 weeding hoes,	1 00	24.
1 lot fodder, 26,400 lbs.,	1½	396.
2 stacks top fodder,		200.
Crop potatoes, 500 bushels,	61	375.
1 wheelbarrow,		5.
Crop cotton on both plantations,		
supposed to be 400 bales,	40 00 per bale	16,000.

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$111,995.25

Inventory and appraisement of the personal estate of Samuel Garland, deceased, in Hinds, county, Mississippi.

Barrens Estate.

1. Reuben, $ 600.

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2. Mason, his wife, 500.
3. Davy Kinney, 1,400.
4. John, 1,300.
5. Beverly, 1,000.
6. Reuben, 600.
7. Taylor, 250.
8. Mally, 800.
9. Nelly, 400.
10. Celina, 300.
11. Celeste, infant, 100.
1. Chas. Coleman, 1,000.
2. Sidney, his wife, 1,000.
3. Laura, 300.

4. Any, infant,	100.
1. Tom Minor,	1,400.
2. Anna Burr,	1,000.
3. Rachael, child,	200.
1. james,	1,400.
2. Louisa, his wife,	1,000.
3. infant child, two months old,	100.
1. Pompy,	1,200.
2. Celia,	900.
3. Caroline,	550.
4. Morris,	450.
5. Ned,	250.
6. Rilla,	300.
7. Betty, child,	150.
1. Chancy and her children,	800.
2. Douglass,	700.
3. Billy, }	450.
4. Montgomery, }	350.
5. Rosanna, }	100.
	_____
	$20,950.

20,950.

1. Tiegliman,	800.
2. Rhody,	800.
3. Albert,	1,100.
4. Seymore,	900.
5. Henry,	700.

6. Calvin, 600.

7. Martha, 450.

8. Mary, 300.

9. Susan, 200.

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12 Garland's Adm'or et als. v. Garland's Adm'or et als.

100.

1. Betty (crazy), 800.

2. Lucindy, 200.

3. Joshua, 100.

4. Joshua, infant, ten days old, 1,000.

1. Paulina, 200.

2. Haywood, 100.

3. Wingfield, infant. 200.

1. Old Henry, 100.

2. Mary, his wife, 1,500.

1. Cairy, 900.

2. Nannie, his wife, 1,300.

1. Harrison, 800.

2. Sarah Anderson, 700.

1. Rainey and her children, 600.

2. Annie, | 400.

3. Ellen, | 300.

4. Celina, | 150.

5. Julia, child, |

1. Sarah Jane (Dolly), 700.

2. Catharine, 600.

3. Joe, 500.

4. Wright, 500.

$38,550.

38,550.

1. Wm. Bolling, 500.

2. Rose, his wife, \ Rose and her son, John Dick, 300.

3. John Dick, / belong to B. Garland, 1,100.

1. Washington (carpenter, 1,200.

2. Fanny, his wife, 800.

3. Washington, little boy, \ Fanny and her three 500.

4. Matildy, / children belong to 250.

5. Burr, infant, \ B. Garland. 150.

1. Henry Sea, 900.

2. Louisa, his wife, \ Louisa and her four 750.

3. Elviry, / children—Elviry, Ma- 800.

4. Matilda, \ tilda, Betty and Ma- 600.

5. Betty, / lindy—belong to B. 200.

6. Malindy, / Garland.

1. Esau, 150.

1. Davy, 1,500.

1. Bob, 1,350.

1. Jimmy, 1,350.

1. Old Charles, [handwritten calculations] 600.

200.

[handwritten: $1600-]

[handwritten: μ 15]

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Garland's Adm'or et als. v. Garland's Adm'or et als. 13

1. Preston (or Purnen, bricklayer), 900.

1. Pleasants (carpenter), 1,800.

$54,450.

54,450.

22 head mules,	$140 00	3,080.
3 mule colts,	75 00	225.
1 horse colt,		100.
1 bay mare,		200.
1 roan mare,		150.
1 blind mare (no value).		
1 old roan horse,		15.
10 work oxen,	40 00	400.
17 cows and calves,	30 00	510.

20 head dry cattle,	10 00	200.
1 bull,		40.
		$59,370.

59,370.

1 ox wagon,		75.
1 mule wagon,		100.
2 two horse wagons,	40 00	80.
1 old horse cart,		5.
1 market wagon,		35.
3 Würger's double scrapers,	5 00	15.
2 Yoast's single scrapers with ploughs,	6 00	12.
4 double sweeps,	5 00	20.
2 double sweeps,	2 30	4.
29 single ploughs, \	2 50	85.
5 double ploughs, }34	1 00	12.
12 cultivators,	3 00	24.
8 Harrows,	2 50	7.50
3 Hall shovels,	2 50	15.
6 bull-tongue ploughs,	1 25	27.50
10 spades and 12 shovels = 22,	1 25	25.
20 axes,	1 00	22.
20 grubbing hoes and 2 picks,		
1 wheelbarrow,		5.
30 killing hogs, in pen,	30 00	900.
16 breeding sows,	15 00	240.
70 pigs,		70.

3 cribs corn, 3,000 bushels, 1 50 4,500.

1 lot fodder, 19,200 lbs., 1 50 288.

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14 Garland's Adm'or et als. v. Garland's Adm'or et als.

50 00 150.

3 ricks top fodder, 75 300.

Crop potatoes, 400 bushels, 450.

Household and kitchen furniture,

_____

Value of personalty on Barren's estate, $ 66,837.

Value of personalty on Tudor Hall estate, 111,995.25

_____

$178,832.25

Whole value,

STATE OF MISSISSIPPI, }

} To-wit:

HINDS COUNTY. }

In obedience to an order of the honorable Judge of the Probate

Court of Hinds county, Miss., to us directed, dated on the 6th

day of November, 1862, we, the undersigned appraisers mentioned therein, after being duly sworn, proceeded to the plantations of Samuel Garland, deceased, in Hinds county, known as

the "Tudor Hall" and "Barrens" estates, and appraised all the property shown to us as belonging to the said estate of Samuel Garland, in Hinds county, and herewith make return of the same on two sheets paper, pages 1, 2, 3, 4 each. All of which is respectfully submitted to the Honorable Court.

Given under our hands this 28th day of November, 1862.

H. O. DIXON, }
R. FONDREN, } Appraisers.
D. MANN, }

STATE OF MISSISSIPPI, }
} To-wit:
HINDS COUNTY. }

This day personally appeared in the Probate Court of said county, while open, Burr Garland, who being first duly sworn, stated that he is administrator with the last will and testament of Samuel Garland, deceased, late of the State of Virginia, in and for the State of Mississippi; that the foregoing schedule and report of appraisement made in Hinds county and the schedule and report of appraisement herewith filed, which was made in the county of Coahoma, are correct as stated, to the best of his knowledge and belief, and that the same include all the personal property of said decedent that has come to his hands or knowledge as administrator as aforesaid, except such portions as have been consumed in the use since his qualification. Wherefore af-

fiant prays the Honorable Court that said schedules and reports of appraisement, together with this affidavit, may be taken as and for the inventories by law required to have been made by him under the circumstances. For the sake of explanation, affiant begs leave to add that the following named negroes—to-wit: [handwritten: 2] Rose and her Man, John Dick; Fanny and her three children, [handwritten: 7] Washington, Matilda and Burr, and Louisa and her four chil- [handwritten: 8] dren, Elviry, Betty, Matilda and Malindy—which are included in [handwritten: 4] the foregoing appraisement, are his own separate property, and [handwritten: μ 1600-] he will at all times claim them so to be. They were included in the foregoing because they had long been on the Barrens estate and assessed as the property of the said decedent, Samuel Garland.

Sworn to and subscribe in open court, this }
9th day of January, 1863. } B. GARLAND.
R. N. HALL, Clerk. }

Filed 9th January, 1863.
R. N. HALL, Clerk.

January term, 1863, 1st day, 5th January, 1863.

At a regular term of the Probate Court of Hinds county, begun

and held at the court-house thereof, in the town of Raymond, on

the first Monday of January, 1863, the following pleas and proceedings were made, had and determined—to-wit:

Present: JOHN W. ROBB, Judge.

J. B. FAIRCHILD, Sheriff.

ROBERT N. HALL, Clerk.

Friday morning Court met pursuant to adjournment,

In the matter of the estate of Samuel }

Garland, Sr., deceased. }

Burr Garland, administrator with the will annexed of said deceased, this day returned into court the inventory of the appraisers appointed to value the personal estate of said deceased

in Hinds county, and the Court having examined the same, being

satisfied that said appraisers, in all their proceedings in this behalf, have conformed to the statute, and that said inventory and

appraisement is properly made out and certified, doth order that

the same be approved, affirmed and recorded.

Inventory of Personal Estate in Coahoma County, 26th December, 1862.

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Filed 9th January, 1863.

THE STATE OF MISSISSIPPI, }
HINDS COUNTY. }

To Prior M. Grant. George Robson, Temple Stewart, Thomas McNeil and J. H. Bean, of Coahoma County—Greeting:

This is to authorize you jointly, to appraise the goods, chattels and personal estate of Samuel Garland, Sr., late of Lynchburg, Va., Campbell county, deceased, so for as they shall come to your sight and knowledge, each of you having first taken the oath or affirmation, hereto annexed a certificate whereof you are to return annexed to an inventory of said goods, chattels and personal estate by you appraised in the court in this county, in dollars and cents, and in said inventory you are to set down in a column or columns opposite to each article the value thereof.

[L.S.] Witness, John W. Robb, Judge of probate of the county of Hinds.
Issued the 6th day of November, 1862.

SAMUEL J. THIGPEN, Clerk.

You do swear that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of Samuel Garland, deceased, so for as shall come to your

sight and knowledge, and will in all respects perform your duty as appraisers to the best of your skill and judgment, so help you God.

T. F. STEWART.

G. W. ROBSON,

Jno. A. BEAN,

Sworn to and subscribed before me, this 26th day of December, A. D., 1862.

JAMES MIFFLETON, M. B. P.

Inventory and appraisement of the personal estate of Samuel Garland, deceased, in Coahoma county, Mississippi.

1. Henry (young man),	$ 1,000.
2. Delila, his wife,	600.

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END OF TRANSCRIPTION

Pages 641-660

TRANSCRIPTION OF JML_MS1939_GARLAND_B1_F7_00641-00660

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3. Martha, child, 250.
1. Sam, 800.
2. Caroline, his wife, 500.
3. Geor ge, 700.
4. Eliza Ann, 600.
5. Simeon, 400.
6. Silla, 300.
7. Maryland, 250.
8. Celia, 250.
9. Brown, 200.
1. Reuben, 600.
2. Dianah, his wife, 400.
3. Rilla, 500.
4. Nathan, 500.
5. Major, 500.
1. Old Gabriel, 500.
2. Polly, his wife, 400.
3. Anderson, 400.
1. George (run away to the Yankees).
2. Sue, his wife, 500.
3. Julia, 300.
4. Susan, 250.
5. Calvin, 100.

6. Cebelle, 150.

1. Moses, 550.

2. Nancy, his wife 500.

3. Amna, 600.

4. Ardell, 450.

5. William, 250.

6. Mary, 200.

7. Mildred, 450.

8. Eliza, 350.

_____

$14.300.

14,300.

1. Boyd (blacksmith), 1,500.

2. Sarah, his wife, 500.

1. Wm. Carter, 1,000.

1. Harvey (run away to the Yankees. .....

_____

Value of Negroes, $17,300.

4 mules. (and one mule blank, no value), 500.

8 work oxen, 300.

5 cows and calves, 100.

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		180.
9 Dry Cattle,		40.
1 bull,		85.
3 breeding sows and 1 boar,		42.
14 stock hogs,		208.50
Plantation tools,		75.
Blacksmith tools,		85.
1 ox wagon,		30.
1 horse cart.		1,462.50
Crop corn. 2,925 bushels,		50.
Crop fodder,	$4 00 each,	44.
11 sweeps,	3 00	63.
21 turning ploughs,		20.
5 scrapers,		12.
4 iron-tooth harrows,		20.
4 Kane ploughs,		12.
12 Kane knives,		12.50
25 hoes,		12.
12 shovels,		13.
2 cross-cut saws,		
	208 50	
2 beads and steads,	10 00	20.
Cooking utensils,		14.
Forward,		$20,700.50

Amount brought forward, 20,700.50

Deduct plantation tools, twice entered, 208.50

$20,492.

STATE OF MISSISSIPPI, }

COAHOMA COUNTY. }

In obedience to an order from the Probate Court of Hinds county, to us directed, we, the undersigned appraisers, being first duly sworn, went to the plantation of Samuel Garland, deceased, in Coahoma county, and appraised all the property shown to us on the said estate, and herewith make return of the same.
Given under our hands this 26th day of December, 1862.

T. F. STEWART,

G. W. ROBSON,

Filed 9th January, 1863. JNO. H. BEAN.

R. N. HALL, Clerk.

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See affidavit of administrator, &c., }

on Hinds county appraisement. }

Filed 9th January, 1863.

R. N. HALL, Clerk.

January term, 1863, 1st day, 5th January, 1863.

At a regular term of the Probate Court of Hinds county, begun

and held at the court-house thereof, in the town of Raymond, on

the first Monday of January, 1863, the following pleas and proceedings were made, had and determined—towit:

Present: JOHN W. ROBB, Judge.

J. B. FAIRCHILD, Sheriff.

ROBERT N. HALL, Clerk.

Friday morning court met pursuant to adjournment.

In the matter of the estate of Samuel }

Garland, Sr., deceased. }

Burr Garland, administrator with the will annexed of said deceased, this day returned into court the inventory of the appraisers appointed to value and appraise the personal estate of

said deceased in Coahoma county, and the Court having examined the same, being satisfied that said appraisers in all their

proceedings in this behalf have conformed to the statute, and

that said inventory and appraisement is properly made out and

certified, doth order that the same be approved, confirmed and

be recorded.

Assignment of One Year's Allowance to the Widow, 3d February, 1863.

At a regular term of the Probate Court of Hinds county, begun and held at the court-house thereof, in the town of Raymond, on the first Monday, the 5th day of January, 1863, and

on the 9th day of January, being the fifth of the term, the following order was made:

In the Matter of the Estate of Samuel Garland, Sr., Deceased.

On petition of Mary L. Garland, widow of said deceased.

It is ordered by the court that Richard M. Hobson, Richard

Fondren, William O. Moseley, Daniel Mann and Henry O. Dixon,

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[Handwritten notes at top: "Yr written expired for years pension + in benefit prof was set apart by incoming three benefit - Comissioner 25-May 65- confirmed for later on Adm'or et - 65"]

of Hinds county, be appointed commissioners, and as such they

are hereby directed to set apart to the said widow out of the

stock of provisions of said deceased, or his effects, one year's provisions for said widow, or an allowance therefor in money; and,

also, all the personal estate that was and is by law exempt from

execution, and report accordingly on oath.

State of Mississippi,

Hinds County.

I, Robert N. Hall, clerk of the Probate Court in and for said county, do hereby certify that the foregoing is a true copy from the minutes as the same is of record in my office.

Witness my hand and the seal of said court, at office Raymond, January 9, 1863.

[Seal.} R. N. HALL, Clerk.

State of Mississippi,

Hinds County—to-wit:

This day personally appeared before the undersigned, an active justice of the peace in and for said county, H. O. Dixon, Daniel Mann, and Richard Fondren, three of the commissioners appointed by the Probate Court of Hinds county, to set apart to Mary L. Garland, the widow of Samuel Garland, deceased, out of the stock of provisions of said deceased, or his effects, one year's provisions for said widow, or an allowance therefor in money; and also all the personal estate that was and is exempt from execution, and severally made oath well and truly, without partiality or prejudice, to perform the duty imposed upon them, to the best of their skill and judgment.

H. O. DIXON,

R. FONDREN,

D. MANN.

Sworn to and subscribed before me this 23d day of January,
1863.

J. H. BOYD, J. P. [Seal.]

To the Honorable John W. Robb, Judge of the Probate Court of
Hinds County, in the State of Mississippi:

The undersigned respectfully report to the Honorable Court
that the order hereto attached having been made known to them,
they assembled on the 23d day of January, 1863, and took and
subscribed the foregoing oath, and then proceeded at the Barrens

[Handwritten notes at top: "B's entries 2 Feby, to 2 filed 9 Feby 6 3 2nd left by Commrs decided one yr allowance to widow $3000."]

estate of the said decedent, Samuel Garland, on the 25th day of
January, 1863, to the performance of the duties assigned them;
that on due consideration they determined to make to said
widow, Mary L. Garland, an allowance in money, instead of one

year's provisions, out of the stock of provisions of said decedent or his effects, and fixed the amount of said allowance in money, including clothing, &c., at the sum of three thousand dollars, to be paid by said decedent's administrator, &c., in this State; and that they proceeded to set apart to the said widow the property exempt from execution, being the negro man Henry, selected for her by her agent, Burr Garland, of copper color and about thirty years of age—on the Coahoma estate; the agricultural implements of a farmer necessary for two male laborers, consisting of one double horse plough, one single horse ditto, two sets plough gear, two hoes, two axes, one spade, two grubbing hoes, one hand-saw, one crosscut-saw, one hammer, one square, one footadze, one chopping-ax, two augers and garden tools; one workhorse, of roan color, called Polly; four cows and calves, twenty head of stock hogs (say three brood sows and seventeen shoats), one hundred and fifty bushels of corn, eight hundred pounds of pork, one yoke of oxen (named Davy and Darby), one wagon (for oxen), and the following household furniture, to-wit: One large feather-bed and furniture, mattress, curtain-stead, &c., with sheets, blankets, &c., $75; one mahogany bureau, with lookingglass, $35; one mahogany settee and one rocking-chair, $50; set mahogany chairs, $30; one centre-table, $10; one mahogany book-case, $50—$250, selected for the said widow, Mary L. Garland, by her agent, Burr Garland, and which does not, in our judgment, exceed two hundred and fifty dollars in value. And your commissioners do finally report that in making the aforesaid allowance of $3,000 in money, full reference was had by them to the personal estate exempt from execution, to which said widow was entitled, and which has been set apart to her as aforesaid.

All of which is respectfully submitted by us, under our hands

and seals, on the day and year hereinbefore last aforesaid.

H. O. DIXON, [Seal.]

R. FONDREN, [Seal.]

D. MANN. [Seal.]

Commissioners. &c.

Filed 3d February, 1863.

R. N. HALL, C'k.

February Term, 1863, 1st day, 2d February.

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22 Garland's Adm'or et als. v. Garland's Adm'or et als.

At a regular term of the Probate Court of Hinds county, begun and held in the court-house thereof, in the town of Raymond,

on the first Monday of February, 1863, the following pleas and

proceedings were made, had and determined, viz:

Present: John W. Robb, judge; J. B. Fairchild, sheriff; Robert

N. Hall, clerk.

Tuesday morning, court met pursuant to adjournment.

In the Matter of the Estate of Samuel Garland, Sen'r, Deceased.

Burr Garland, administrator with the will annexed of Samuel Garland, Sr., deceased, this day returned into court the report of the commissioners appointed to set apart to the widow of said deceased one year's provisions and the personalty of deceased exempt from sale under execution, and the court, upon examination thereof being satisfied that said commissioners in all their proceedings in this behalf have conformed to the statute, doth order and decree that said report be in all things approved, confirmed and recorded.

Assignment of dower, 16th day of August, 1864.

The State of Mississippi,

To the Sheriff of Hinds County, greeting:

You are hereby commanded to summons three discreet freeholders connected with the parties neither by consanguinity or affinity, and entirely disinterested as commissioners, and them to qualify according to law, who, when so qualified, shall allot and set off by metes and bounds to Mary L. Garland, the widow and relict of Samuel Garland, Sr., deceased, one-half of the following described lands situated and being in said county of Hinds, towit: The southwest quarter of section eight (8); the north half and the southeast quarter, both of section nine (9); the south half and the west half of the northwest quarter, both of section ten (10); the west half of the southwest quarter of section eleven (11); all of the northwest quarter of section fourteen (14), that lies west of the New Orleans, Jackson and Great Northern railroad, containing one hundred and twelve (112) acres, more or

less, and all of the southwest quarter of said section fourteen (14), that lies west of said railroad, containing twenty-seven (27) acres, more or less; The north half and the southeast quarter, both of section, fifteen (15); the north half and the most half of the

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Dower assignment

Garland's Adm'or et als. v. Garland's Adm'or et als. 23

southwest quarter, both of section sixteen (16); the whole of section seventeen (17); the east half of the southeast quarter of section eighteen (18); the north half of the east half of the northeast quarter of section twenty (20), and the west half of the northeast quarter of section twenty-two (22); all of said lands being in township six (6) of range one (1) east, containing two thousand nine hundred and seventy.nine (2,979) acres, more or less, and lying in one adjoining and connected body on which there are two large plantations, cultivated by the said Samuel Garland, Sr., in his lifetime and till his death, for the production of cotton, corn, &c., in fee simple and absolute right as the dower of the said widow.

And you are hereby further commanded that when said lands shall be allotted as aforesaid by said commissioners, to put the

said Mary L. Garland in possession of the share and portion of one-half thereof, set off to her to be held, possessed, and engaged by her in fee simple and absolute right, and that you return this writ, with the manner in which you shall execute the same, together with the report of said commissioners, duly certified and attested, at the next term of this court thereafter.

Witness John W. Robb, judge of the Probate Court, of said county, at the court-house thereof, the first Monday of Aug't, 1864, as witness, also my hand and private seal (having no seal of office) at office Raymond, 3d Aug't, 1864.

R. N. HALL, Clerk. [Seal.]

By virtue of the within and foregoing writ to me directed, I have this day, at the "Barrens" plantation, on the lands in said writ described, summoned as commissioners Benjamin Whitfield, Richard Fondren, and Alfred Johns, disinterested freeholders of my county, and connected to the parties to said writ neither by consanguinity or affinity, and have notified them to proceed forthwith on the lands described in the said writ to the execution of their commission.

This, the 15th day of August, 1864.

J. B. FAIRCHILD,

Sheriff of Hinds County.

Pursuant to the above summons and by virtue of the within and foregoing writ, I this day assembled the above named commissioners at the "Barrens" plantation aforesaid, who, after

being qualified by me according to law, proceeded and allotted and set off by metes and bounds the dower of the said Mary L. Garland, widow and relict of said Samuel Garland, Sr., deceased, in the lands described in the within and foregoing writ, accord-

ing to the descriptions thereof, as will fully appear by reference to the report of said commissioners herewith returned as exhibit A; and I thereupon put her, the said Mary L. Garland, by her agent and attorney in fact, Burr Garland, in possession of the lands allotted and set off to her as her dower, being about one-half of the whole, and the part so allotted and set off to be held, possessed and enjoyed by her in fee simple and absolute right.

This, the 15th day of August, 1864.

J. B. FAIRCHILD,

Sheriff of Hinds county.

Report of Commissioners.

Exhibit A.

To the Honorable John W. Robb, Judge of the Probate Court of

Hinds County, in the State of Mississippi:

The undersigned commissioners summoned by the sheriff of said county, under and by virtue of a certain writ of dower issued by said court, in which they were directed, among other things, to allot and set off by metes and bounds to Mary L. Garland, widow and relict of Samuel Garland, Sr., deceased, one-half of the lands described in said writ, as and for the dower therein of the said widow and relict, beg leave to report:

That after being assembled and sworn by the sheriff aforesaid at the "Barrens" plantation, on one of the two situated on the lands described in said writ, and all of which are in said county, they proceeded without any survey (as none was called for or demanded by any party interested, and as in fact the county surveyor could not be gotten), and allotted and set off by metes and bounds one-half part nearly of the said lands to the said Mary L. Garland, widow and relict as aforesaid, as and for her dower therein, and then allotted and set off, to be held, possessed and enjoyed by her in fee simple and absolute right, and being described as follows, to-wit: The southwest quarter of section eight (8), the west half of the northwest quarter, south half of the east half of the northwest quarter, south half of the west half of the northeast quarter, and the west half of the southeast quarter, all in section nine (9); the west half of the northeast quarter, the northwest quarter, and the west half of the southwest quarter, all in section sixteen (16), the whole of section seventeen (17), the east half of the southeast quarter of section eighteen (18), and the north half of the east half of the northeast quarter of section twenty (20). The whole being in township

six (6) of range one (1) east, in said county and State, and containing one thousand four hundred and eighty (1,480) acres,

more or less.

It is true that the quantity of lands allotted and set off is less than one-half of the whole by nine and a half (9½) acres, but as the said Mary L. Garland, and by her agent and attorney in fact, Burr Garland, not only made no objection thereto, but actually assented to the same; it was not deemed by us to be material, though we have thought proper thus to allot it.

All of which is respectfully submitted and certified under our hands and seals this 15th day of August, 1864.

BENJ. WHITFIELD. [Seal.]

R. FONDREN. [Seal.]

ALFRED JOHNS. [Seal]

Filed 5th September, 1864.

R. N. HALL, Clerk.

September Term, 1864, 1st Day, 5th September.

At regular term of the Probate Court of Hinds county, begun and held at the court-house thereof, in the town of Raymond,

on the 1st Monday of September, A. D., 1864, being the 5th day of said month, the following pleas and proceedings were made, had and determined, viz:

Present: John W. Robb, judge; J. B. Fairchild, sheriff; R. N. Hall, clerk.

In the Matter of the Petition of Mary L. Garland, Widow of Samuel Garland, Sr., Deceased, for Dower in Lands in Hinds County.

The sheriff of this county, at this term returned the writ of dower issued in the cause in pursuance of a decree of this court, bearing date the 3d day of August, 1864, whereby it appears that he summoned and qualified three commissioners to allot and set off the dower of the said Mary L. out of the land described in said decree, and that the said commissioners have proceeded, and by metes and bounds allotted and set off said dower and made due report thereof, which is filed with the sheriff's return of said writ, and that the said sheriff has put the said widow in possession of the land so allotted and set off to her; and it further appearing to the satisfaction of the court that the said sheriff and commissioners have, in all things, proceeded in strict conformity to the statute in the execution of said writ, and the said Mary

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L. having appeared before this court this day and moved and prayed that the said allotment and report be confirmed, and the court being now fully advised in the premises and deeming it just, right and proper that the same should be confirmed, doth therefore, by this order and decree that said allotment and report be, and the same are hereby in all things ratified and confirmed, to be observed by all parties concerned therein, and that the said petition and all proceedings had thereon be recorded.

It is further ordered that the estate of said Samuel Garland, Sr., be taxed with the costs of this proceeding.

Appraisement of Personal Estate and Allotment of Half to the Widow, 5th September, 1864.

State of Mississippi,

Hinds County, to-wit:

Personally this day appeared before me, Lemuel S. Evans, an acting justice of the peace in and for said county, Benjamin Whitfield, Alfred Johns and Henry O. Dixon, and respectively made oath that they would make and report an honest, faithful and impartial division and allotment of the personal property of Samuel Garland, Sr., deceased, in said county, between his widow and relict, Mary L. Garland, and all others interested therein, in conformity to the decree of the Probate Court of said county, appointing them and others, which was made on the 20th day of June, 1864, and in all respects will perform all the duties, trusts and services required of them in this behalf, to the best of their

skill, knowledge and judgment.

BENJ. WHITFIELD,

ALFRED JOHNS,

H. O. DIXON.

Sworn to and subscribed before me this 2d day of September, 1864.

L. S. EVANS, J. P. [Seal.]

To the Honorable John W. Robb, Judge of the Probate Court of Hinds County, in the State of Mississippi:

The undersigned, three of the commissioners appointed by this honorable court at the last June term thereof, and ordered a nd directed, among other things, to ascertain the share of one-half of Mary L. Garland, the widow and relict of Samuel Garland, Sr., deceased, in absolute right, of so much of the personal property of her said deceased husband, in the estate as may be found by them in

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[Handwritten at top: "widow's assignment - 11 slaveth /36 / -"]

said county of Hinds, not including therein the eleven slaves

claimed by Burr Garland, whose names appear in the papers and

pleadings in this behalf, nor the slaves, Preston or Purnell and

Pleasant, who are specially mentioned in the papers referred to,

but including therein the slave Sam, who is in like manner referred to; and to allot and set apart to her, the said Mary L.

Garland, widow and relict as aforesaid, the said share of one-half

as aforesaid, beg leave respectfully to report, that they gave no

notice of the time and place of their assembling for the purpose

aforesaid to any person, as they ascertained upon inquiry that

none of the devisees or legatees of the estate of the said Samuel

Garland, Sr., deceased, nor the guardians of any of them are, or

reside within the State of Mississippi, except Burr Garland, who

was present with them at and during the division, &c., hereinafter reported, and neither desired or was entitled to notice; but

that in other respects, pursuing the instructions contained in the

decree by which they were appointed and which was made by

the honorable court on the 20th day of June, 1864, and the rule

of the statute in this behalf, they assembled for the purpose aforesaid on the second day of September, 1864, at the residence on

the "Barrens" place, one of the two adjoining plantations in

said county that belonged to the said Samuel Garland, Sr., deceased, and proceeded to the performance of the duties assigned

them. They divided all the personal property of the said Samuel

Garland, Sr., deceased, found by them as aforesaid, or that came

to their knowledge, not including therein the eleven slaves claimed

by Burr Garland, nor the slaves, Preston or Purnell and Pleasant, but including the slave Sam; it is directed in the aforesaid

decree by which they were appointed, into two equal shares, as

near as could conveniently be without separating the families of

the slaves, according to value; that they designated said shares

as Nos. one (1) and two (2), and allotted and set off to the said

Mary L. Garland, widow and relict as aforesaid, share No. one

(1), as the same will fully appear to your Honor by reference to

the annexed schedule, marked "A," signed and sealed by your

commissioners, and prayed to be taken as part hereof, in which

said shares are severally detailed and marked as aforesaid, containing the names and value of the said slaves, and designating,

with the value, the other personal property. And your undersigned commissioners further report that to equalize said shares

and to compensate the said Mary L. Garland for the deficit in

share No. one (1) allotted to her, as shown in said schedule "A,"

they did, and do hereby award that Burr Garland, administrator, in the State of Mississippi with the last will and testament

of the said Samuel Garland, Sr., deceased, annexed, pay to the

said Mary L. Garland the sum of $275, thereby settling the value

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of each of said shares at fifty-six thousand six hundred and

seventy-five dollars ($56,675.) And your commissioners having

now fully discharged the duties enjoined upon them and others

by the decree aforesaid, and having fully reported their proceedings under and by authority thereof, beg leave to be discharged

Given under our hands and seals this 2d day of September, 1864,

BENJ. WHITFIELD. [Seal.]

ALFRED JOHNS. [Seal.]

H. O. DIXON. [Seal.]

Schedule "B," exhibiting the personal estate of Samuel Garland, Sr., deceased, found by them in Hinds county, Mississippi,

or that came to their knowledge, not including the eleven slaves

claimed by Burr Garland, nor the slaves, Preston or Purnell and

Pleasants, but including the slave Sam, divided into two shares,

of which share No. one (1) was allotted and set off to Mary L.

Garland, widow and relict of the said Samuel Garland, Sr., deceased, by the undersigned commissioners, as hereinafter and in

the annexed report expressed, to-wit:

Share and lot No. 1, allotted to Mrs. Mary L. Garland.

Reuben, a slave, valued at	$ 600
Mason, do. do.	500
John, do. do.	1,300
Part of Lot 1 carried to next page,	$2,400

Part of Lot 1 from last page,	2,400
Beverly, a slave, valued at	1,000
Reuben, do. do.	600
Taylor, do. do.	250
Molly, do. do.	800
Neely, do. do.	400

Selina, do. do. 300

Celeste, do. do. 100

Chas. Coleman, do. do. 1,000

Sidney, do. do. 1,000

Laura, do. do. 300

Amy, do. do. 100

Old Betty, do. do. 100

Lucinda, do. do. 800

Joshua, do. do. 200

John Wesley, do. do. 100

Chaney, do. do. 800

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Douglass, do. do. 700

Billy, do. do. 450

Montgomery, do. do. 350

Rosanna, do. do. 100

Sarah Jane (Dolly), do. do. 700

Catharine, do. do. 600

Joe, do. do. 500

Wright, do. do. 500

Bob Slaughter, do. do. 1,350

Wm. Bolling, do. do. 500

Washington, do. do. 1,200

Sam Roan, do. do. 1,400

Mary, do. do. 1,000

Pollard, do. do. 200

Charles Bunks, do. do. 1,400

Lucy Booker, do. do. 600

Henry Clay, do. do. 1,100

Anthony, do. do. 800

Nathaniel, do. do. 600

Ellen, do. do. 400

Singleton, do. do. 300

Dinah, do. do. 100

Miley Iverson, do. do. 200

Annie, do. do. 1,000

Betty. do. do. 1,000

Aggy, do. do. 600

Mansfield, do. do. 400

Burr, do. do. 250

William, do. do. 800

Part of Lot 1 carried to next page, $29,350

Part of Lot 1 from last page, $29,350

Caroline, a slave, valued at 400

Matilda, do. do. 800

James, do. do. 1,200

Lucinda, do. do. 600

Betsey, do. do. 500

Elizabeth, do. do. 300

Ben, do. do. 300

Joseph, do. do. 250

George, do. do. 150

Minerva, do. do. 100

Mary Roan, do. do. 900

Rose, do. do. 550

Rice, do. do. 600

Peyton, do. do. 450

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[Handwritten at top: "/30"]

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Edward, do. do. 200

Abram, do. do. 100

Nelly, do. do. 850

Martha Ann, do. do. 600

Alford, do. do. 600

Catharine, do. do. 400

Garland, do. do. 100

Sally Roan, do. do. 1,000

Ellick,	do.	do.	200
Miles,	do.	do.	100
Mariah,	do.	do.	1,000
Mary,	do.	do.	200
Margaret,	do.	do.	100
Mariah,	do.	do.	100
Milton,	do.	do.	1,400
Ned Slaughter,	do.	do.	900
Billy Roan,	do.	do.	400
Prudence,	do.	do.	200
Virginia,	do.	do.	1,000
Jessee,	do.	do.	1,200
Sam Green,	do.	do.	1,000

Mules at the Barrens.

Pol,	valued at	$200
Nel,	do.	200
Monday,	do.	200
Mary,	do.	200
Pete,	do.	200
Three old horses,	do.	150
Five head of cattle,	do.	500
Twenty-five head hogs,	do.	625
One 4-horse wagon,	do.	100

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Part of Lot 1 carried to next page,	$50.475
Part of Lot 1 from last page,	$50,475

One 2-horse wagon, 100

One market wagon, 75

List of farming implements, including ploughs, harrows, gears, hoes, grubbing-hoes, chains of every

kind, now on the "Barrens" plantation, all old,

in bad order and worn out, &c., &c 300

A small lot of household and kitchen furniture, left

by the Yankees at the Barrens, 200

15,000 pounds of cotton in the seed, 2,250

[Handwritten at bottom: "Plus by qty Cotton 4 2.50"]

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[Handwritten at top: "Division of Personal, Sm. M&II"]

Garland's Adm'or et als. v. Garland's Adm'or et als. 31

1,000 bushels old corn at $3, 3,000

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$56,400

Share and lot No. 1 allotted to Mrs. Mary L. Garland, $56,400

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Share and Lot No. 2, Left to the Estate of Samuel Garland, Sr

Tiegham, a slave, valued at $800

Rhody, do. do. 800

Seymore, do. do. 900

Part of Lot 2 carried to next page, $2,500

Part of Lot 2 from last page, $2,500

Henry, a slave, valued at 700

Calvin, do. do. 600

Martha, do. do. 450

Mary, do. do. 300

Susan, do. do. 200

Doctor, do. do. 100

Stephen, do. do. 1,400

Peter, do. do. 1,000

Eliza, do. do. 700

Mary Francis, do. do. 900

Rose, do. do. 750

King, do. do. 300

Cairy, do. do. 150

Esau, do. do. 100

Charles Kinny, do. do. 900

Chener, do. do. 750

Giles, do. do. 1,100

Malinda, do. do. 700

Silva, do. do. 600

Abby, do. do. 500

Spotwood, do. do. 100

Pompey, do. do. 1,200

Celia, do. do. 900

Caroline, do. do. 550

Morriss, do. do. 450

Ned, do. do. 250

Rilla, do. do. 300

Betty, do. do. 150

Jerry, do. do. 100

Ann Burr, do. do. 1,000

Rachael, do. do. 200

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Sarah, do. do. 100

Paulina, do. do. 1,000

Haywood, do. do. 200

Wingfield, do. do. 100

Robert Lee, do. do. 100

Nannie, do. do. 900

Jacob, do. do. 100

Tom Minor, do. do. 1,400

Jimmy, do. do. 600

Charles Short, do. do. 1,200

James, do. do. 1,400

Louisa, do. do. 1,000

Austin, do. do. 100

Robert, do. do. 700

Part of Lot 2 carried to next page, $28,800

Part of Lot 2, from last page, $28,800

Emeline, a slave, valued at 700

Richard, do. do. 800

Jane, do. do. 700

Elijah, do. do. 500

Sarah, do. do. 500

Robert, do. do. 250

Henry, do. do. 150

Jeff Davis, do. do. 100

Wm. Minor, do. do. 800

Milly, do. do. 400

Grace Ann, do. do. 1,000

Henrietta, do. do. 1,000

Nelson (idiot), do. do. 000

Billy, do. do. 800

Hannah, do. do. 600

George, do. do. 600

Spencer, do. do. 500

Sarah, do. do. 400

Usley, do. do. 800

Sallie, do. do. 900

Claiborne, do. do. 1,350

Wm. Christian, do. do. 1,300

Burr, do. do. 1,400

Jane, do. do. 800

Old Henry, do. do. 200

Mary, do. do. 100

Martha, do. do. 1,000

Raney, do. do. 700

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[Handwritten at top: "Division of Personalty"]

Garland's Adm'or et als. v. Garland's Adm'or et als. 33

Anna, do. do. 600

Ellen, do. do. 400

Selina, do. do. 300

Julia, do. do. 150

Mules at Tudor Hall.

Jim, valued at $200

Milly, do. 25

Dolly, do. 25

Sal, do. 200

Beck, do. 200

Waxy, do. 200

John, do. 200

Becky, do. 200

Three old horses, do. 150

Five head of cattle, do. 500

Twenty-five head hogs, do. 625

One 4-horse wagon, do. 100

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Part of Lot 2 carried to next page, $51,225

Part of Lot 2 from last page, $51,225

1 old show wagon, valued at 100

1 horse cart, 75

Lot of farming implements, including ploughs, harrows, gears, hoes, grubbing hoes, chains cf every

kind, &c., &c., now on the "Tudor Hall" plantation, all old, in bad order and worn out 300

15,000 lbs. cotton in seed, 2,250 [Cotton-]

1,000 bushels corn, at $3, 3,000

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$56,950

Share and Lot No. 2, left to the estate of Samuel Garland, Sr.,
$56,950

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BENJ. WHITFIELD. [Seal.]

ALFRED JOHNS. [Seal.]

H. O. DIXON. [Seal.]

Filed 5th September, 1864.

R. N. HALL, Clerk.

September Term, 1864, 1st day, 5th September.

At a regular term of the Probate Court of Hinds county, begun and held at the court-house thereof, in the town of Raymond,

on the 1st Monday of September, A. D., 1864, being the 5th day of September, the following pleas and proceedings were made, had and determined, viz:

Present: John W. Robb, judge; J. B. Fairchild, sheriff; R. N. Hall, clerk.

In the Matter of the Allotment to Mary L. Garland, Widow and Relict of Samuel Garland, Sr., Deceased, of Her Share of the Personal Estate in Hinds County.

On filing the report of three of the five commissioners appointed by this court at its last June term, to allot and set apart to the said Mary L. her share of the personal estate of her said husband then in Hinds county. It appearing to the satisfaction of the court, upon hearing said report and the proofs and exhibits therewith filed that the said commissioners have divided said personal estate according to law, and in all their proceedings have strictly conformed to the requisitions of the statute in such behalf made and provided, and the said Mary L. having this day appeared and moved the court to confirm said allotment as reported, and the court being now fully advised in the premises, and deeming it just, right and proper that the same should be done, doth thereupon order and decree that the said allotment and report do, in all things, stand ratified and confirmed, to be observed by all parties concerned therein, and that said report and all proceedings had in the matter of said allotment be recorded.

It is further ordered, that the estate of Samuel Garland, Sr., be taxed with the costs of this proceeding.

Burr Garland's Selection Under the 9th Clause of the Will, 30th September, 1864.

To the Honorable John W. Robb, Judge of the Probate Court of Hinds County, in the State of Mississippi:

The undersigned, Burr Garland, of said county, respectfully states that Samuel Garland, Sr., of the city of Lynchburg, in the State of Virginia, departed this life on the ——— day of November, 1861, having made a last will and testament, dated the 7th day

of December, 1857, which was duly admitted to probate in the

Court of Hustings of said city of Lynchburg on the 2d day of

December, 1861, and whereof Charles R. Slaughter and Samuel

Garland, Jr., were appointed executors, who successively qualified in said Court of Hustings, and have since died.

That on the 6th day of November, 1862, a duly certified copy

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[Handwritten at top: "B. G's Selection -"]

of said last will and testament was admitted to probate, according to law, in this honorable court on the application of the said

Burr Garland, who was duly appointed and qualified as administrator, in the State of Mississippi, with the said last will and

testament annexed, in which capacity he is still acting, both the

executors nominated therein having previously died, and neither

having ever qualified as such in this State.

That the 9th clause of the said last will and testament, so admitted to probate as aforesaid, is in the following words and

figures, to-wit: "My favorite brother, B. Garland, raised by

me and long a resident of Mississippi, is, and has for a long time

past, been embarrassed in debt by losses of trade in 1837, and

liabilities as surety for others. It might be unsafe to devise property to him absolutely, I, therefore, set apart in trust in the

hands of my executors, for the benefit of my said brother, either of my plantations in Hinds county, called "Barrens" or "Tudor Hall," whichever he may choose, and forty slaves in families, say about twenty-five hands, balance heads of families, children and and house servants, to be selected by him out of the stocks on both places; mules, horses and stock sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his, B. Garland's use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts and liabilities other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss, in trust, to the separate use of his wife, Pauline B. Morriss, and her children."

And that the widow and relict of the said Samuel Garland, Sr., Mary L. Garland, heretofore, in due form of law, renounced all the provisions in said last will and testament contained in her behalf, and according to the laws of the State of Mississippi, has had allotted and set apart to her the property exempt from execution, a year's support or allowance, one half of the lands contained in the two places known as the "Barrens" and "Tudor Hall," said half including all of the former place and a portion of the latter, eighty out of the one hundred and sixty-three slaves found in said county of Hinds, &c. and one half of all the other personal property on the two places or plantations aforesaid. In support of all the allegations herein before made, the undersigned refers your Honor to the papers and records here to fore filed and made in the Honorable Court in the matter of the estate of said Samuel Garland senior, deceased, which are so far

prayed to be taken and considered as parts hereof. The undersigned respectfully asks leave further to state that, since the be-

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ginning of the last year, the property in his hands, as administrator as aforesaid, has suffered greatly from the inroads of the

enemy, slaves having run or been carried off, and stock of every

kind, provisions and crops, and household and kitchen furniture

having, to a great extent been carried off or destroyed, as will

be apparent from a comparison of the appraisements and inventories with the report of the allotment to the widow of her share

of the personal estate, which has recently been made. From

these causes, as will be perceived, the undersigned, instead of

having the whole of the real and personal estate in Hinds county

from which to choose and select the bequest and legacy provided

for him in the said 9th clause of the last will and testament of

Samuel Garland senior, deceased, which is hereinbefore copied,

he is confined to the balance of the "Tudor Hall" place, to less

than one half of the slaves, and to what remains of the rest of

the personalty, utterly deficient now in many of the items, in regards to which he was entitled to full provisions, according to

to the said 9th clause of the said last will and testament. In order however, to obtain the bequest and legacy so provided as

aforesaid, as far forth as he now may, and by virtue of the power vested in him, by said 9th clause, to choose and select the

same, the undersigned has chosen the balance of the Tudor Hall

place, and has selected forty slaves, all the stock of every kind, now

on said place, and all the plantation tools, &c., &c., what remains of the crops of last year, that was not allotted to the

widow, and the crops of the present year, being far less, in many

respects than was intended for him, and as to some items totally

deficient, none of such articles being now to be found on either of

said places or plantations. As said testator's widow had renounced the provisions contained in said last will and testament

in her behalf, the undersigned could not, though near two years

have elapsed since his qualification as administrator as aforesaid.

Previously to allotment of the widow's share of the real and

personal estate, with any safety have made the choice and selection of the bequest and legacy in his favor, and the papers and

records of the honorable court show that her share of the real

estate was allotted on the 15th day of August, 1864. And

of the personal estate on the 2nd day of September, 1864, and

that the reports of these proceedings were confirmed by the court

on the 5th day of September, 1864. He now claims that he is

making the choice and selection of the bequest and legacy in his

favor at as early a day as he safely might of the property so

chosen and selected by him and of which he now considers himself to be in the separate and individual possession. Exhibit "A"

hereto appended, and prayed to be taken as part hereof contains

a full and accurate statement; and now in conclusion, and in or-

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END OF TRANSCRIPTION

Pages 661-680

TRANSCRIPTION OF JML_MS1939_GARLAND_B1_F7_00661-00680

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der that his choice and selection of the bequest and legacy, so

made to him as aforesaid, may be placed upon the records of the

honorable court, so as to make known and identify his title to

all whom it may concern, he, the undersigned, respectfully prays

that this report and Exhibit "A" may be received and filed, confirmed in all things and ordered to be recorded. All which is respectfully submitted.

B. GARLAND.

State of Mississippi,

Hinds County, to-wit:

This day personally appeared before me, D. N. Barrows, an

acting justice of the peace in and for said county, Burr Garland,

who made oath that the statements of fact made in the foregoing report and in the accompanying exhibit are, in substance,

true to the best of his knowledge and belief.

B. GARLAND.

Sworn and subscribed before me this 30th day of September,

1864.

D. N. BARROWS,

Mayor and J. P. [Seal.]

Exhibit "A"

Being a statement of the real and personal estate chosen and

selected by Burr Garland in full of the bequest and legacy in his

favor, contained in the 9th clause of the last will and testament of Samuel Garland, Sr., deceased, late of the city of Lynchburg, in the State of Virginia.

Balance of "Tudor Hall" place or plantation, consisting of N.

½, E. ½, N. W. ¼, N. E. ¼, N. W. ¼, N. E. ¼, and E. ½,

S. E. ¼, all in section nine (9); W. ½, N. W. ¼ and S. ½, both in

section ten (10); W. ½, S. W. ¼, of section eleven (11); all of the

N. W. ¼ of section fourteen (14), lying west of the New Orleans,

Jackson and Great Northern railroad, and containing one hundred and twelve (112) acres; and all of W. ½, S. W. ¼ of said

section fourteen (14), lying west of said railroad, and containing

twenty-seven (27) acres; N. ½ and S. E. ¼, both in section

fifteen (15); E. ½, N. E. ¼, section sixteen (16), and W. ½, N. E.

¼, section twenty-two (22), all in township six (6) of range one

(1), east, in the county of Hinds, and together containing fourteen hundred and ninety-nine (1,499) acres, more or less.

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The following described slaves from those on the "Barrens" and "Tudor Hall" plantations:

	Field Children. Hands.
aged 48 years,	1
1. Robert, 35	2
2. Emeline, his wife, 16	3
3. Richard (son of 1 and 2), 14	4
4. Jane (daughter of 1 and 2), 12	1
5. Sarah (do. do.), 9	2
6. Elijah (son of 1 and 2), 4	3
7. Robert (do. do.), 2	4
8. Henry (son of 1 and 2), ½	5
9. Jeff Davis (son of 1 and 2), 47	5
10. Tilghman, 38	6
11. Rhody, his wife, 16	7
12. Seymore (son of 10 and 11), 14	8
13. Henry (do. do.), 11	6
14. Calvin (do. do.), 9	7
15. Martha (daughter of 10 and 11), 7	8
16. Mary (do. do.), 4	9
17. Susan (do. do.), 1½	10
18. Doctor (son of 10 and 11), 42	cook and 9
19. Raney, 14	house ser 10

20. Ann (daughter of 19), 9 11

21. Ellen (do. do.), 6 12

22. Selina (do. do.), 3 13

23. Julia (do. do.), 48 11

24. Claibourn, 24 12

25. Stephen, 53smith and13

26. William Minor, 46 14

27. Milly, his wife. 26 15

28. Tom Minor (son of 26 and 27),

29. Grace Ann (daughter of 26 and 27) 18 16

30. Henrietta (do. do.) 15 17

31. Billy (son of 26 and 27), 13 18

32. Hannah (daughter of 26 and 27) 12 14

33. George (son of 26 and 27), 9 15

34. Spencer (do. do.), 7 16

35. Sarah (daughter of 26 and 27), 4 17

36. Martha, 20 19

37. Giles, 18 20

38. Burr, 18 21

39. Ursley, 43 22

40. Sally (daughter of 39), 14 23

Making all forty slaves, of whom twenty-three are field hands,

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&c., and seventeen are children, and the other personal property described as follows, to-wit:

Nine (9) mules—Jim, Milly, Dolly, Sol, Beck, Waxy, John and Becky—now at "Tudor Hall;" three (3) old horses; five (5) head of cattle; twenty-five (25) head of hogs; one (1) four-horse wagon; one (1) old show wagon; one (1) horse cart; one (1) lot of farming implements, including plows, harrows, gears, hoes, grubbing hoes, chains of every kind, &c., &c., now on the "Tudor Hall" plantation, all old, in bad order and worn out; one thousand (1,000) bushels of corn, the balance on hand at "Tudor Hall" of the crop of the year 1863; twenty-five hundred (2,500) bushels of corn, the crop of 1864 at "Tudor Hall" not yet gathered, as estimated; two hundred (200) bushels field peas, the estimated crop of 1864 at "Tudor Hall," five hundred (500) bushels of potatoes, the estimated crop of 1864 at "Tudor Hall" yet ungathered; eight thousand (8,000) pounds of fodder, the crop of 1864 at "Tudor Hall."

B. GARLAND.

Filed October 5, 1864.

R. N. HALL, Clerk.

December Term, 1864, 1st day, 5th December.

At a regular term of the Probate Court of Hinds county, begun and held at the courthouse thereof on the first Monday of December 1864. The following proceedings were made had and determined.

Present: J. W. Robb, judge; J. B. Fairchild, sheriff; R. N. Hall,

clerk.

In the matter of the estate of Samuel Garland, deceased, Sr., on

the report filed on the 2nd day of the October term, last by Burr Garland, of his choice and selection of the bequests and legacy in his

favor provided for in the 9th clause of the last will and testament

of said decedent, &c,

Ordered that the proof of publication of notice which by a decree of this court on the 2nd day of the last October term was directed &c., to be made as to certain persons therein named in a

weekly newspaper, called the Brandon Republican, printed and

published in the town of Brandon in the county of Rankin, and State

of Mississippi, be received and filed, the same appearing to have

been made and proven according law and said order.

Same Estate, }

Same Matter. }

It appearing to the satisfaction of the court, that Lilly Slaugh-

ter, Samuel G. Slaughter, Charles Slaughter and Cathrine L.

Slaughter, who were named in the decree and notice referred to in

the foregoing order are infants under the age of twenty-one years,
by reason whereof they cannot answer to the matters contained
in said report &c., without having a guardian assigned them,
for that purpose, it ordered by the court, that Robert N. Hall
be appointed guardian ad litem of the said infants by whom they
may answer &c., and the said Hall in open court assented to
said appointment and agreed to become such guardian.

Same Estate, }
Same Matter. }

Ordered that the answer of Lilly Slaughter, Samuel G. Slaughter, Charles Slaughter, and Catharine L. Slaughter, minors by
their guardian ad litem, Robert N. Hall, as to the matters contained in the report &c. made by Burr Garland, of his choice and
selection of the bequests and legacy in his favor, provided for in
the 9th clause of the last will and testament of Samuel Garland
senior be received and filed.

Same Estate, }
Same Matter. }

This cause, now coming on for hearing on the report filed on
the 2d day of the October term last, by Burr Garland, of his
choice and selection of the bequests and legacy in his favor, provided for in the 9th clause of the last will and testament of
Samuel Garland, Sr., and the accompanying exhibit, the said
Burr being administrator in this State, with the said last will
and testament annexed, on due proof, according to law, of the
publication of notice therein ordered to be made, citing the persons

therein named, and all others interested, to appear at this day,
show cause why said report and exhibit should not be approved
and confirmed and ordered to be recorded, on the answer of Lilly
Slaughter, Samuel G. Slaughter, Charles Slaughter and Catharine
L. Slaughter, minors, by their guardian ad litem, Robert N. Hall,
on the papers on file in this court, and the other proofs offered,
and the court being satisfied that all proper parties are legally
before it, and that the choice and selection by the said Burr Garland of the bequests and legacy in his favor, provided for in the
9th clause of the last will and testament of Samuel Garland, Sr.,
as specified in said report and the accompanying exhibit now on
file are reasonable and fairly made, and conform in all things as
far as they go, to the provisions of the said clause of the said last
will and testament, doth order, adjudge and decree, and it is

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accordingly ordered, adjudged and decreed that the said report
and the accompanying exhibit be approved and confirmed and
ordered to be recorded. And it is further ordered, adjudged and
decreed that the said report and the accompanying exhibit be approved and confirmed and ordered to be recorded. And it is
further ordered, adjudged and decreed that the estate of Samuel
Garland, Sr., in the hands of Burr Garland to be administered, be

taxed with the costs of this proceedings.

Report of Unpaid Debts for Corn Sold to Confederate States.

To the Honorable Robert N. Hall, Judge of the Probate Court,

of Hinds County in the State of Mississippi.

The petition of Burr Garland of said county respectfully states

that in the year of 1862, he was duly appointed and qualified

in this Honorable Court, administrator, in this State, with the

last will and testament annexed, of Samuel Garland senior dec'd

late of the city of Lynchburg, in the State of Virginia, and has

ever since been, and still is acting as such—that during the recent war, he sold a very large amount of corn &c. to Confederate Quartermasters, because he thought it expedient to do so,

because he believed if not sold, it would be impressed, and because if not so disposed of, it might have gone to waste, as there

was no sufficient demand for the large quantity he had on hand—

that receipts were given him, of which there are yet remaining

unpaid enough to reach the amount of $14,024.94, as shown by

the list of them, on the following pages, in his own right handwriting, all which are yet in his hands and worthless. For the

sake of explanation, and that the records of the court may show all

his transactions, he now prays your Honor to receive this petition or report, and to order it and said list of quartermasters'

receipts to be filed and recorded. And as in duty bound he will

pray, &c.

B. GARLAND.

Sworn to and subscribed in open court this 9th day of March,

1866.

W. T. RATLIFF, Clerk.

Confederate States of America, Quartermasters' Receipts.

1864.

January 25. T. C. Robertson, captain and quartermaster, $2,092 50

June 2. James Nol, 1,698 00

June 5. James Meltenberger, 180 00

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June 14. T. C. McMackin, 3,675 00

May 26. George C. Sebastain, 240 00

" 9. George C. Sebastain, 126 00

June 18. George C. Sebastain, 987 00

June 29. George C. Sebastain, 65 00

July 12. George C. Sebastain, 543 00

July 16. George C. Sebastain, 90 00

October 29. George C. Sebastain, 51 00

Dec. 31. George C. Sebastain, 2,165 44

July 7th and 8th. E. J. Wright, forage master General Golshon's brigade, 2 receipts, 1,497 00

1853.

Sept. 29th and Oct. 15. W. W. Vaught, Lieut. and

A. Or. M., Col. Logan's brigade, 2 receipts, 620 00

$14,024 94

Filed 9th March, 1866.

W. T. RATLIFF, Clerk.

March Term, 1866, 1st Day, 5th March.

At a regular term of the Probate Court of Hinds county, begun and held at the court-house of said county, in the town of Raymond, on the 1st Monday of March, 1866, being the 5th day of the month, the following pleas and proceedings were made, had and determined, viz:

Present: R N. Hall, judge; Samuel B. Thomas, sheriff; W. T. Ratliff, clerk.

Thursday Morning, 9 O'clock, Court Met Pursuant to Adjournment.

In the Matter of the Estate of Samuel Garland, Deceased.

On reading and filing the report of Burr Garland, administrator with the will annexed of said estate, wherein he reports certain transactions with the Confederate States in relation to the sale of corn, it is, therefore, ordered that said report and list of quartermasters' receipts be received, filed and be recorded.

First Annual Account of Burr Garland, March, 1866.

The first annual settlement of Burr Garland, administrator, &c.,
in this State, with the will annexed of Samuel Garland, deceased.
At the March term, 1866, of Hinds county Probate Court.

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[Handwritten at top: "15000 / 16,000"]

Said administrator charges himself with—

1. This sum received of E. & S. Virden for hire negro Pleasant, for one month, $ 25 00
2. This sum of John B. Levis for 6 bus. salt, 100 00
3. do. Carter Moore, 6 bus. salt, 100 00
4. do. U. C. Canada, 3 do. do. 60 00
5. do. of quartermaster Confederate States army at Jackson for hire negroes, 50 00
6. do. from agent telegraph office, Jackson, for hire negro man, Pleasant, one month, 25 00
7. This sum received of Mrs. Pierce for hire negro girl, 20 00
8. do. from agent telegraph office at Jackson

for hire negro man, 25 00

9. This sum received of quartermaster C. S. army at Jackson for hire negroes, 106 60

9½. This sum for hire man, Ned, at purveyor's office, 20 00

10. do. of Mrs. French for hire negro girl, 10 00

11. do. for wood sold at Jackson, 996 00

12. This sum of quartermaster Confederate States army at Jackson for negro hire, 95 83

13. This sum received of same for ditto,. 25 00

14. do. of H. Taylor for 20 bu. corn, 30 00

15. do. from commissary Confederate States army at Jackson for 2,000 pounds fodder, 30 00

16. do. of quartermaster commissary Confederate States army at Jackson for hire negroes, 75 70

17. do. same for same, 20 00

Debits carried over, $1,814 13

Debits brought from last page, $1,814 13

18. This sum received of Brown, Johnston & Co., New Orleans, being proceeds note of S. W. & W. A. Percy, belonging to testator, and interest, 4,644 00

19. This sum received of Mrs. Freeze for load fodder, 17 25

20. do. same same, 20 00

21. do. collected from C. S. quartermaster at

Jackson for hire negroes, 82 66

21½. do. collected from C. S. quartermaster at
Jackson for negro man, Pleasant, 25 00

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22. do. collected for girl, Nancy, 12 00
23. do. W. Langley for load fodder, 20 00
24. do. W. L. Williams for corn meal, 50 00
25. do. H. Shurlds for 50 bus. corn, 100 00
26. do. Mrs. E. Simpson 50 + do. 100 00
27. do. of C. S. quartermaster for hire negroes, 60 00
28. do. for hire man, Pleasant, 25 00
29. do. for girl, Nancy. 12 00
30. do. of divers persons by market wagon for
butter, meal, vegetables, &c., sold
at Jackson, 739 00
31. This sum received for hire man, Ned, 30 00
32. do. do. for Pleasant, 25 00
33. do. divers persons by market wagon for
butter, fruit, vegetables, &c., sold
at Jackson, 322 00
34. do. for wood sold at Jackson, 320 00

35. do. for hire for negro man, Pleasant, 25 00

36. do. do. do. 30 00

37. do. Confederate States quartermaster for hire, Tom, 26 66

38. do. Confederate States quartermaster for hire, Henry, 28 00

Debits carried to next page, $8,527 70

Debits brought from last page, $8,527 70

39. This sum of C. S. quartermaster for team, &c., wagons impressed and not returned, but paid for, 2,700 00

40. do. of same fer hire ox wagon, &c., 120 00

41. This sum for corn sold at lunatic asylum, 1,000 00

42. do. for hire negro man, Charles, 30 00

43. do. do. do. 30 00

44. do. do. Pleasant, 175 00

45. do. do. Charles, 30 00

46. do. of L. E. Profelet for hire man, Ned, 272 94

47. do. of Mrs. Rogers for hire, Henry, 300 00

48. do. for hire Charles, 30 00

49. do. of Confederate States quartermaster for 135 bu corn, 405 00

50. do. of Confederate States quartermaster for 125 bu. corn, 375 00

51. do. Wm. Simmons for hire negroes, 250 00

52. do. for hire Charles and Jane, 60 00

53. do. of Mrs. Freeze hire for Henry, 25 00

54. do. for T. F. Wood hire Pleasant, 175 00

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[Handwritten at top: "1st acct"]

Garland's Adm'or et als. v. Garland's Adm'or et als. 45

55. do. C. H. Manship hire Henry, 25 00

56. do. P. Rivinick for corn meal, 62 50

57. do. for hire of Charles and Jane, 60 00

58. do. do. Henry, 25 00

59. do. do. Charles and Jane, 60 00

60. do. do. same, 60 00

$14,798 14

And prays allowance for the following:

1. This sum paid H. McFarland, as per voucher, $573 00

2. do. Robert J. Williams, as per do. 132 25

3. do. same, as per do. 10 00

4. do. E. Johnston, as per do. 10 00

5. do. W. J. Taylor, as per do. 16 50

6. do. Wm. Crutchen, as per do. 466 00

7. do. for brandy for sick negroes, 13 00

8. do. Jones for shuck collars, 6 00

9. do. G. W. Harper, as per voucher, 20 50

10. do. negro man, Ned, to get 1 pair shoes, 7 00

11. do. do. Billy, to get 1 pair do. 12 00

12. do. taxes for 1862, as per voucher, 310 36

13. do. do. as per do. 527 79

14. do. W. Z. Anderson, as per do. 64 00

15. do. Morgridge & Austin, as per voucher, 45 00

16. do. C. H. Shultz, as per do. 20 00

17. do. Miss. penitentiary for spun cotton, 30 00

18. do. Wm. Eavens, as per voucher, 20 00

19. do. T. N. Cannon & Co., as per voucher, 12 00

20. do. R. J. Williams, as per do. 320 00

22. This sum paid Hunter & Troy, as per voucher, 26 00

Credits carried to next page, $2,551 40

Credits brought from last page, $2,551 40

23. This sum paid Sadler & Carson, as per voucher, 12 50

24. do. do. Sadler & Co., as per do. 30 00

25. do. paid Mrs. Walter Cahabor, Ala., 200 00

26. do. do. W. W. Lew, as per receipt, 25 00

27. do. Mrs. Mary L. Garland, per receipt, 1,000 00

29. This sum paid taxes for 1863, as per do. 50 00

30. do. Ro. J. Williams, as per do. 872 38

32. This sum paid A. W. Heariicks, as per do. 25 00

33. do. T. N. Cannon, as per do. 47 00

34. do. A. J. Frantz, as per do. 21 00

36. This sum paid Drs. Buck and Bailey, do. 50 00

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37. do. L. S. Evans, J. P., as per do. 40 00

38. do. Mrs. Mary Garland, do. 1,000 00

39. do. A. j. Frantz, as per do. do. 37 00

40. do. J. L. Daniels, as per do. 50 00

41. do. paid Dr. Wm. P. Garland, do, 500 00

42. do. do. taxes for 1864, do. 2,200 00

43. do. lost on exchange Confederate States
Treasury notes, old issue, for new
issue, 111 66

Credits carried to next page, $8,822 94

Credits brought from last page, $8,822 94

44. This sum being amount of Confederate seven per cent. bonds, in which C. S. Treasury notes received by him in and about the business of said estate, were invested, and said bonds

never having been used by him, and being now in his hands worthless, 3,000 00

45. This sum being amount of Confederate interest-bearing Treasury notes, received by him in and about the business of said estate, which he never used and which are now in his hands worthless, 3,000 00

46. This sum paid court fees as per voucher, 10 90

$14,833 84

Less debits, 14,798 14

Balance due to said administrator, $35 70

B. GARLAND.

Sworn and subscribed 9th March, 1866.

W. T. RATLIFF, Clerk.

Filed 9th March, 1866.

W. T. RATLIFF, Clerk.

April Term, 1866, 4th Day, 5th April.

Decree on First Annual Account.

In the Matter of the Estate of Samuel Garland, Deceased.

The annual account of Burr Garland, administrator, &c., of

said estate, coming on for examination, and the court having examined the same with the accompanying vouchers, being satisfied

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[Handwritten at top: "2nd acct"]

that said account is just and true, and that the items of disbursements with the amounts thereof, are distinctly stated and supported by proper and legal vouchers, doth order and decree that said account be approved and allowed as a correct annual settlement.

Second Annual Account of Burr Garland, April, 1867.

Second Annual Settlement of Burr Garland, Administrator, &c.,
in this State, with the Will Annexed, of Samuel Garland, Deceased.

At the April term, 1867, of Hinds county Probate Court.

Said administrator charges himself with—

1863.

December 12. To cash received for 20 bu. corn sold
quartermaster Confederate States
army at Jackson, $ 40 00

16. To cash for 10 bus. corn sold Mrs.
Pierce, 20 00

21. To cash for 64 bus. corn sold quartermaster Confederate States army, 80 00

22. To cash for 600 pounds fodder sold to
quartermaster Confederate States
army, 12 00

23. To cash 20 bus. corn sold M. W. Boyd, 40 00

27. To cash received of negro man, Ned,
for hire at Jackson from 1st July to
31st Dec., 1863, 100 00

28. To cash for 20 bus. corn sold Mrs.
Smith, 40 00

29. To cash for 15 bus. corn sold Mrs.
Smith, 30 00

30. To cash for boy, Pleasant, for hire
from 1st August to 9th December, 75 00

1864.

January 1. To cash of T. C. McMacken, quartermaster Confederate States army for
253 bus. corn and 4,640 pounds fodder, 598 80

7. To cash for 50 bus. corn sold Mrs. Casey, 100 00

8. To do. 20 do. sold at Jackson, 40 00
To do. 3½ bushels meal do. 15 00

9. To do. 15 bushels corn sold Mrs. Bankston, 30 00

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To cash 7 bushels meal sold at Jackson, 28 00

12. To do. 6½ do. do. 27 00

15. To do. 8 do. corn sold Mr. Erving, 20 00

To do. 15 do. do. sold Geo. Langley, 37 50

To cash 5 bushels meal sold at Jackson, 20 00

To do. for vegetables and hamper baskets, 14 03

16. To cash 16 bus. corn sold G. Langley, 30 00

18. To do. of man, Robert, hire for months January and February, 50 00

19. To cash for 36 bus. corn sold quartermaster Confederate States army, 90 00

To cash of boy, Pleasant, hire from December to 9th January, 25 00

20. To cash paid 13 bus. corn sold George Langley, 32 50

To cash for hominy and peas sold at Jackson, 24 00

21. To cash for 32 bus. corn sold Dr. Knapp, 80 00

$1,698 80

To amount brought forward, $1,698 80

1864.

January 22. To cash 24 bus. corn sold General Lee's quartermaster, 57 00

To cash hominy and peas sold at Jackson, 19 00

23. To cash 16 bus. corn sold Dr. Knapp, 40 00

24. To do. 48 do. do. sold General Lee's quartermaster 114 24

25. To cash 16 bus. corn sold Dr. Knapp, 40 00

To do. 48 do. do. sold General Lee's quartermaster, 114 25

26. To cash 8 bus. corn and from market wagon, 30 00

27. To do. 48 do. do. sold General Lee's quartermaster, 114 25

29. To cash 18 bus. corn sold, 45 00

30. To do. 10 do. do. sold Mrs. Erving, 25 00

31. To do. from man, Ned, hire at Jackson for month January, 20 00

Feb'y 1. To cash for 21 bus. corn sold General Lee's quartermaster, 52 00

3. To cash for corn, fodder, hominy and

[Handwritten at top: "2nd acct"]

meal, $17 and $22, 39 00

To cash 97 bus. corn sold General Lee's quartermaster, 242 50

4. To cash 40 bus. corn General Jackson's quartermaster 100 00

To cash 140 bus. corn sold A. J. Kansler, 350 00

20. To do. 22 do. do. and 6 bus. meal, 85 00

28. To cash 6 bus. meal corn sold Mrs. Pickett, 15 00

To cash 5 bus. corn meal sold at Jackson, 25 00

29. To cash 22 bus. corn sold Mrs. Peal, 55 00

March 1. To cash of man, Robert, for hire for March and April, 50 00

4. To cash for 24 bus. corn sold Mrs. Fletcher. 60 00

5. To cash 30 bus. corn sold Mr. Wood, 75 00

6. To do. 50 do. do. sold Dr. Kells, 125 00

8. To cash 6 bus. meal sold at Jackson, 30 00

To cash 19 bus. corn sold Cap. Martin, 38 00

12. To cash 2 bus. meal sent Gen. Wharton, 10 00

To cash 10 bus. meal sold at Jackson, 40 00

15. To cash 26 bus. corn sold, 78 00

21. To cash received from boy, Pleasant, for one month hire at Jackson, ending 9th February, 25 00

$3,812 14

To amount brought forward, $3,812 04

1864.

March 20. To cash for corn meal sold at Jackson, 34 00

To cash 12 bus. corn sold Mr. Wood, 60 00

22. To cash 205 bus. corn sold Mrs. General Griffith, 512 00

24. To cash of man, Ned, for hire January and February, 40 00

To cash for corn meal, &c., sold General Wharton, 105 50

25. To cash meal and peas sold at Jackson, 15·00

30. To cash 12 bus. corn sold General Stark's calvary, 30 00

April 1. To cash 14 bus. corn sold Mrs. Smith. 70 00

3. To cash for meal and hominy sold Mrs. Freeze, 48 00

5. To cash 15 bus. corn sold J. Rich, 75 00

6. To cash 6 bus. corn sold Mrs. Smith, 30 00

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9. To cash for peas sold at Jackson, 17 50

11. To cash of boy, Tom Minor, here for month April, 25 00

To cash for 3 bus. meal sent Mrs. Yerger, 20 00

15. To cash 47 bus. corn sold Mr. Reese, 235 00

To cash 2 bus. meal sent General Wharton, 12 00

18. To cash 21¾ bus. corn sold Mrs. Craft, 133 00

20. To cash 400 bus. corn sold Dr. Kells at lunatic asylum, 2,000 00

To cash 5 bus. peas sold Dr. Kells at lunatic asylum, 35 00

To cash 4 bus. meal and 6 bus. corn sold General Wharton, 54 00

22. To cash 15 bus. corn sold Mrs. Freeze, 75 00

23. To cash from market cart, for meal, &c., sold at Jackson, 34 00

25. To cash for 20 bus. corn sold General Bell, 100 00

May 1. To cash of Robert and Tom for hire for May and June, 100 00

3. To cash for ½ bus. peas sold at asylum, 5 00

5. To cash 354 bus. corn sold Col. Sessions, 1,062 00

6. To cash on Robert for hire woman, Emeline, May and June, 30 00

9. To cash 12 bus. corn sold Wilburn Wagoners, 60 00

To cash of man, Ned, hire for month April, 20 00

14. To cash 2 bus. meal sent Gen. Wharton, 12 00

18. To cash 12 bus. ground hominy do. 60 00

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$8,921 04

To amount brought forward, $8,921 04

1864.

May 22. To cash of Wiley Williams hire Robert
to 17th May, 30 00

To cash 3 bus. meal sent T. J. Wharton, 18 00

30. To cash 9 bus. corn sold— 45 00

To cash of man, Ned, hire for month
May, 20 00

June 1. To cash of market woman for fruit sold
at Jackson, 10 50

4. To cash received of Judge Sharkey for
hire Charles and Jane from 3d Feb-

ruary to 4th June, 200 00

To cash of same for iron hoops and ties
for cotton bales, 15 00

8. To cash 10 bus. corn sold Dr. Cabaniss, 50 00

To cash of market woman for sale vegetables and fruits, 24 50

11. To cash market for meal and fruit, 57 00

13. To cash 10 bus. corn sold Mr. Evans, 50 00

18. To cash of W. Williams hire boy, Bob,
to 17th June, 30 00

21. To cash part payment corn sold H. G.
Johnston, 166 67

23. To cash 3 bus. peas sold Judge Johnston, 20 00

25. To cash received from market woman, 16 00

27. To cash for peas sold C. Manship, 8 00

29. To cash from market woman for fruit
and vegetables, 13 00

July 8. To cash from Reuben for 1 bus. corn
sold, 5 00

11. To cash of Robert and Tom and Emeline
hire for month July, 65 00

To cash for 22 bus. corn sold Captain
R. H. Smith, 110 00

14. To cash received from market woman, 10 00

18. To cash 20 bus. corn sold Frank Owens, 100 00

To cash received of Mrs. Guyon for hire
women, Mary and Sally, 68 75

21. To cash of market woman for meal and
vegetables, $20 and $13, 33 00

August 7. To cash of W. Williams hire boy, Bob, to
17th July, 30 00

30. To cash of man, Ned, on account hire
from 30th May to date, 40 00

To cash Mrs. Rivinack for meal, &c.,
per account, 50 00

To cash of W. Williams hire boy, Bob, to

17th August, 30 00

31. To cash of market woman 3 days at

Jackson this month, 41 00

$10,277 46

To balance due administrator, 3 69

$10,281 15

[Handwritten at bottom: "Nothing after division After Aug-1864 - Division Sept 6/4"]

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Credits.

1866.

March By balance due per first account

received in court, 1 $ 35 70

1863.

December By cash paid H. Shurlds per services as overseer for the year

1862, 2 500 00

1864.

January 16. By cash paid negro man for 8
shuck collars for use plantation, 3 8 00
Feb'y 3. By cash paid negro man for 14
pounds tallow for use plantation, 4 28 00
By cash paid expenses on mules
and horses over Pearl river, 5 10 00
March 5. By cash paid W. Simmons for
dressing mill, 6 15 00
By cash paid for raw hides to tan
for shoes, 7 30 00
April By cash for 1 pair cart wheels 8 12 00
By cash paid negro man for 7
shuck collars for use plantation, 9 14 00
May 2. By cash paid negro man for 4
shuck collars for use plantation, 10 8 00
By cash paid Mr. Laur for ½ bu.
rice, 11 2 00
9. By cash this sum paid Ervin
Lewis for bacon and lard for
plantation per receipt, 12 500 25
23. By cash paid negro man for 3
horse collars, 13 6 00
By cash paid for 2 wheels for
market wagon, 14 20 00
June By cash paid boy, Bob, to buy
clothing, 15 30 00
July 6. By cash expenses on mules and
horses to Rankin city, 16 18 00

August 18. By cash paid for 40 grains quinine for sick servants, 20 00

$1,256 95

By this amount of Mississippi 8 percent. bonds, in which Mississippi

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[Handwritten at top: "2nd acct" and "2nd a/c"]

treasury notes received by him in
and about the business of said estate, was invested, and said bonds
never having been used by him and
being now in his hands: Worthless—
4 bonds, $500 each, 2,000 00

19. By do. 1 Confederate States 4
per cent. Confederate, deposited,
No. 154: 3,500 00

20. By do. 1 Confederate States 4 per
cent. Confederate, No. 587, 1,000 00

21. By worthless, 8 Confederate States
Treasury notes, interest $2 per
day, 800 00

22. By worthless, Miss. States treasury

notes, 520 00

23. By worthless Confederate States

Treasury notes, 1,200 00

$10,276 95

1867.

April By amount paid court fees, 4 20

$10,281 15 .

B. GARLAND.

Sworn and subscribed before me in open court this 25th April, 1867.

W. T. RATLIFF, Clerk.

Filed 2d April, 1867.

W. T. RATLIFF, Clerk.

May Term, 1867, 2d Day, 7th May.

Decree on Second Annual Account.

In the Matter of the Estate of Samuel Garland, Deceased.

The annual account of Burr Garland, administrator, &c., of said estate, coming on for examination and allowance, and the court having examined the same, being now satisfied that said

account is just and true, and that the items of disbursements thereof are distinctly stated and supported by proper and valid vouchers, doth order and decree that the same be allowed and recorded.

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Third Annual Account of Burr Garland, December, 1868.

Third annual settlement of Burr Garland, administrator, &c., in the State of Mississippi, with the will annexed of Samuel Garland, deceased, at the December term, 1868, of Hinds county Probate Court.

In United States Currency.

The administrator charges himself—

To 4 bales cotton sent to Vicksburg in September, 1865, sold to Peter Casey per account sales,	$ 639 72

1866.

February To 11 bales cotton from

Barrens estate sold to

A. Verden Jackson, $1,982 75

Less weighing $3, State

tax $22, 25 00

1,957 75

To 12 bales cotton from

Barrens estate shipped

through A. Verden Jackson to T. H. & J. M.

Allen, New Orleans, nett. 1,883 66

To 73 bales cotton from

Barrens estate shipped

to T. H. & J. M. Allen,

New Orleans, on account per account sales

1867, 2,388 29

do. 2,118 92

do. 1,891 55

do. 21 22

6,419 98

$10,901 11

Sworn to and subscribed in open court 9th December, 1868.

W. T. RATLIFF, Clerk.

In United States Currency.

1865.

This administrator prays allowance for the following:

[Handwritten: "50000 lrg gytted, 150000 - etc-br. for gripp - p-8"]

[Additional handwritten calculations appear at bottom]

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[Handwritten at top: "3rd acct Shipping mc deb is origin 116476"]

1. By cash paid Peter Casey
   bill for 147 pounds rope
   and 100 yards bagging, $ 56 46
2. By cash paid H. Shurlds
   expense to Vicksburg
   hauling cotton with
   wagon, 12 50

Sept. 3. By cash paid head man,
Reuben, to buy bacon
from the Yankee commissary at Jackson for
the use of negroes on the
Barrens estate, 60 00

4. By cash given head man,
   Robert, for the same to
   buy for negroes at Tudor

Hall, 100 00

160 00

5. By cash paid for 5 head horses at first government sale at Vicksburg to use in ginning cotton left on Barrens estate, 417 00

6. By cash for 1 army wagon $42, and 6 sets gear $12.60, 54 60

October 7. By cash remitted Mrs. M. L. Garland balance due on an allowance of $3,000 made to her by order of court, 1,000 00

8. By cash paid freedman, Wm. Bolling, for ginning cotton at Barrens estate, 38 00

By cash to 2 little boys to drive gin, $5 each, 10 00

48 00

1866.

9. By cash paid United States government,

Febuary 28. Direct taxes on lands belonging to the estate in counties of Hinds and Coahoma, 203 61

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10. By cash paid Farrington & Howell, merchants, Memphis, Tenn., amount their account for supplies to the Coahoma plantation, 488 46

11. By cash paid taxes on land in Coahoma, 171 58

12. .By cash paid Levee taxes in Coahoma, 83 11

13. By cash paid A. Virden account per receipt, 541 30

14. By cash paid A. Virden, account paid by him revenue tax on 73 bales cotton shipped to New Orleans, 948 40

15. State taxes, $146, weighing, &c., $22, 168 00

1,116 40

Court fees, 3 00

$4,356 02

Balance due estate, 6,545 09

$10,901 11

Filed 9th December, 1868.

B. GARLAND, Adm'r.

W. T. RATLIFF, Clerk.

January Term, A. D., 1869, 5th Day, 8th January.

In the Matter of the Estate of Samuel Garland, Deceased.

The annual account of Burr Garland, administrator, &c., of said estate, coming on for audition and allowance, and the court having examined the same, order and decree that said account be allowed and recorded.

Deposition of James H. Tripp, 28th August, 1893.

The witness, James H. Tripp, being duly sworn, deposes as follows:

Q. 1 by E. S. Brown. Tell us your age and place of residence,

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END OF TRANSCRIPTION

Pages 681-700

TRANSCRIPTION OF JML_MS1939_GARLAND_B1_F7_00681-00700

and whether you are the same James H. Tripp whose deposition has been previously taken in one of these cases?

at:

(Objection to taking deposition of James H. Tripp by representative for the plaintiffs entered here, for the reason that he was previously examined in the case).

A. 1. I am 54 years old; I live on the Garland place, usually known as the Tudor Hall place; I am the same James H. Tripp whose deposition has heretofore been taken.

Q. 2. How long have you resided on the Tudor Hall place?

A. 2. I have been living on the Tudor Hall place sixteen years. I cultivated some land on said place as far back as 1869, including that year.

Q. 3. Tell us where you resided prior to 1869, whether you knew the tract called Tudor Hall prior to that time. If so, how long before, and whether you knew Burr Garland prior to that time, and if so, how long prior to that time, and say whether your opportunities of knowing that tract of land and of knowing Burr Garland had been good or not?

A. 3. I lived one year in Rankin county—1867, and 1866 in Copiah county. I have known said tract of land since 1854; I knew Burr Garland ever since 1854, but had very little dealings

with him until 1869. My opportunities for knowing said tract

of land and Burr Garland were good, having lived near said land

since 1854.

Q. 4. Did your business transactions in 1869 with Burr Garland and with others on the Tudor Hall tract of land enable you

to know the rent of the Tudor Hall tract in 1869, both what you

paid and what others paid for that year?

A. 4. I think it did.

Q. 5. Tell us whether the rents of the Tudor Hall tract in 1869

were paid in money or in shares of the crops?

A. 5. I think it was all in so much money, except as to one

tenant, and that was in so much cotton.

Q. 6. Tell us how much rent was paid for the year 1869 by all

the tenants on the Tudor Hall place in money, and how much in

cotton?

A. 6. I think there was about twenty-one or twenty-two hundred dollars in money, and none paid in cotton. Contract with

Reuben Anderson was that he was to pay so much cotton or

$250. Burr Garland died in October or November of that year,

and I collected the rents for the administrator, or at least, a part

of them.

Q. 7. From your knowledge of the Tudor Hall tract, and your

knowledge of rents, what is a fair estimate in money for the rent

of Tudor Hall for each of the years after the war down to the year 1869?

A. 7. I don't think there was any, or very little, land rented in 1865. In 1866 very little rented for money, but was rented for cotton and a part of the crop. I think two thousand dollars would have been a reasonable rent for each year, 1866, 1867 and 1868.

Q. 8. In your former deposition you said the number of acres of bottom land on the Tudor Hall tract was from 350 to 400 acres, and the number of acres of up land was between six hundred to seven hundred acres; what say you now, Mr. Tripp, of the correctness of your estimates of bottom land and up land on that place under fence?

A. 8. That is correct, sir.

Q. 9. In your former deposition you spoke of the value per acre of the bottom land from three and a half to four dollars rental, and of the up land about year from two and a half to three dollars rental; what say you now of the correctness of that valuation for that year?

A. 9. That is about what it rented at.

Q. 10. If you estimate, by the rental value per acre of the bottom land and of the up land, as you have given it in 1868 for the rents of 1867 and 1866, would you estimate those years higher or lower than the rental value for 1868?

A. 10. I should estimate it at about the same. There was not much demand for land those years, the white people did not want to rent, and the negroes were not able.

Q. 11. Was the cultivation of the lands during those years on shares?

A. 11. That is my recollection, some for wages and some for a part of the crop; that is, in 1866 and 1867.

Q. 12. Looking to the prices of cotton and estimating for the cultivation on shares, what would you say is a fair estimate for these years, 1866 and 1867?

A. 12. In 1866 cotton was a fair price, but in 1867 it was a very poor price. I hardly know how to estimate it; a man that owned land could have made money in 1866, but I don't think he could in 1867.

Q. 13. In your former deposition you gave the price of cotton in 1866 between thirty and thirty-five cents per pound; is your recollection still that that price is correct?

A. 13. Yes, sir.

Q. 14. Now give us, Mr. Tripp, what you would consider a fair estimate for the Tudor Hall tract, if cultivated on shares, with cotton at that price. How much ought the tract to have yielded for that year, 1866?

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Tripp.

A. 14. I cannot answer that question satisfactorily. I don't think he could have cleared more money than if he had rented it for the sum of twenty-one or twenty-two hundred dollars.

Q. 15. You have spoken of the low price of cotton for the crop of 1867, if rented out at the season which is usual for renting for the year 1867; would Tudor Hall have rented at the usual season for renting, as high as the estimates which you have given as yearly rentals of twenty-one or twenty-two hundred dollars?

A. 15. Yes, sir; no one knew that cotton would be so low.

Q. 16. Tell us, Mr. Tripp, what you may know in regard to the loss of slaves and of teams, mules and horses, cattle and other personal property, on the Garland estate, during the war?

A. 16. I knew nothing of what he lost during the war, except from hearsay. I was in the army in Virginia.

Cross-examined by Judge Diggs.

X-Q. 1. Did you live on or rent a part of the Tudor Hall place in 1868?

A. 1. No, sir. I went there in 1869, January.

X-Q. 2. Did not Burr Garland manage and treat the Tudor Hall place, stock and every thing on it as his own property?

A. 2. As far as I knew he did.

X-Q. 3 Was he not also managing the Barrens place as agent for Mrs. Mary L. Garland?

A. 3. That was my understanding.

X-Q. 4. Did he not ship and sell produce from the Barrens

place, as he did that from Tudor Hall, in his own name?

A. 4. I don't know about that.

X-Q. 5. Could Burr Garland, in your opinion, have made any real net profit on the Tudor Hall place in 1867, in any way he might have worked it or managed it?

A. 5. I don't think he could, unless he had have rented it out for money.

X-Q. 6. The estimates that you have given as to the rental value of the place, are they not, in a large measure, mere guesses?

A. 6. No, sir; that is what it rented for in the years I speak of, 1869, 1870 and 1871.

X-Q. 7. I speak of the years from 1866 to 1869, inclusive?

A. 7. Yes; I reckon that is correct.

X-Q. 8. I would ask you now to consider the actual condition of affairs in 1865, and several years thereafter; that is to say, considering the condition of the country, the scarcity of money and everything else, the unreliable labor, do you think it is at all probable that Burr Garland could have rented the Tudor Hall place in any way so as to have netted him anything like two thousand dollars?

Evans-

A. 8. No, sir; the taxes on it would have been $500.

And further this deponent saith not.

his

JAMES X H. TRIPP,

mark.

Attest:

F. B. NEAL.

Clerk's fee for deposition, $2 10

Witness fee, James Tripp, 2 10

———

$4 20

Paid by E. S. Brown, attorney.

Deposition of Wm. Evans, 28th August, 1893.

The deposition of William Evans, taken at the same time and place:

Q. 1. Tell us your age, where you reside and what is your occupation?

A. 1. I was 74 years old last October; I reside in Hinds county, Mississippi, and I am a farmer.

Q. 2. How near do you reside to Barrens and Tudor Hall (the lands which formerly belonged to Samuel Garland), and how

long have you resided at your present place of residence?

A. 2. I used to join the Tudor Hall place, but I do not now. I have sold off a part of my land. I have lived where I now live about forty-three years.

Q. 3. Tell us whether you were well acquainted with Burr Garland, and what were your opportunities of knowing the Tudor Hall and Barrens places, and Burr Garland's manner of life, especially during the war, and from the death of Sam Garland to his own death?

A. 3. Yes; I was well acquainted with him. I joined the Tudor Hall place at that time. I saw him frequently in town.

Q. 4. Tell us what you know in regard to the loss of slaves and of mules, horses and cattle and crops and other property on the Garland lands, and in that neighborhood during the war?

A. 4. I don't know, sir, exactly what he lost. We all lost pretty much all we had. He lost pretty much all he had, but I don't know how much it was.

Q. 5. At what time was it during the war that the loss occurred?

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A. 5. It was in July, 1863.

Q. 6. Was the crop of cotton on the Garland lands destroyed at that time?

A. 6. I think the most of it was.

Q. 7. If there was any of it that was not distroyed, tell us what?

A. 7. I think a part of the crop was saved, but how much I don't know.

Q. 8. Were you frequently at Burr Garland's house, and did you see him at home?

A. 8. No, sir; I was not at his house but very seldom.

And further this deponent sayeth not.

WM. EVANS.

Attest:

F. B. NEAL.

Clerk's fee for deposition, 90

Witness fee, Wm. Evans, $2 10

$3 00

Paid by E. S. Brown, attorney.

Deposition of Washington Anderson, 28th August, 1893.

Deposition of Washington Anderson, taken at the same time and place as the foregoing. The witness being duly sworn, deposeth as follows:

Q. 1 by E. S. Brown. Tell us what is your age, where you live and what is your occupation?

A. 1. About 86 years old; I live on Mrs. Garland's place, called Barrens; I am a farmer.

Q. 2. Who did you belong to before the surrender?

A. 2. I belonged to Captain Burr Garland.

Q. 3. In the division of the slaves, into which lot did you fall, that to Mrs. Garland or to that to the estate?

A. 3. I fell to Mrs. Garland, I suppose, sir.

Q. 4. Tell us whether or not you have been living on the Garland lands, either Barrens or Tudor Hall, since the surrender down to the death of the widow of Samuel Garland?

A. 4. I lived on the Barrens place from the surrender up to his death.

Q. 5. Have you sometimes rented land from Burr Garland?

A. 5. Yes, sir.

Q. 6. Tell us whether Burr Garland collected rents closely or not; was he apt to save what he could, or was he careless about it?

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A. 6. He always tried to save what he could, and collected rent closely.

Q. 7. In Burr Garland's management, did he seem, as far as he could, to take care of the property and to make the most from

it?

A. 7. Yes, sir.

And further this deponent sayeth not.

his

WASHINGTON X ANDERSON.

mark.

Attest:

F. B. NEAL.

Deposition of R. M. Davidson, 28th August, 1893.

Deposition of R. M. Davidson, taken at the same time and place as the foregoing:

Q. 1 by E. S. Brown. Tell us your age, place of residence and occupation?

A. 1. Sixty-three years; First district of Hinds county; occupation farmer.

Q. 2. How near do you reside to the Garland lands, called Barrens and Tudor Hall?

A. 2. Adjoining plantation to the Barrens place, and two miles from Tudor Hall plantation. I have resided there since 1847.

Q. 3. Please tell us anything you may know in regard to the destruction of cotton, personal property, stock and teams, carried off and killed, and the loss of slaves in 1863, on the Garland lands and in that neighborhood?

A. 3. The cotton on the Garland places was burned. I saw the cotton when it was burning. Captain Burr Garland ran off nothing from his plantations, and the Yankees took possession of all of his stock. They were lost to him entirely. They were never back on the plantations again.

Q. 4. From your knowledge of the value of rents after the close

of the war down to the death of Burr Garland, about the end of 1869, what would you say would be a fair annual rent for the place called Tudor Hall from the end of the war down to, and inclusive of, the year 1869?

A. 4. I should have to answer it by the acre. I think our hill lands rented for about $2 to $2.50, and our bottom lands at from $3.50 to $4 per acre.

Q. 5. In the division in September, 1864, between the widow of Samuel Garland, who had renounced his will, one half of the personal property to his widow and the other half to the estate, there was then divided seed cotton; please tell us whether that

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was cotton raised in 1864 or since the death of Samuel Garland?

A. 5. I can't say as to that. All I know about the cotton on that place was burned during the war, 1863.

Q. 6. In this case, some question has arisen in regard to a sale, said to have been made by Burr Garland to David J. Brown, and it is claimed by some of the parties that he paid to Burr Garland a large amount of money for said cotton before it was burned, tell us if you knew David J. Brown and what was considered to be his financial condition prior to that time?

A. 6. I knew Mr. Brown, and his financial condition was not considered to be very good.

Q. 7. Please tell us what you may know in regard to a claim asserted by Brown to the cotton that was burned, whether in an official capacity or otherwise you had occasion to look to the evidence of any bona fide sale of said cotton, and of any bona fide payment by said Brown of the alleged purchase of said cotton?

A. 7. I never heard of any claim until after Captain Burr Garland's death. I never had any occasion to look into any evidence about the sale of any cotton to Mr. Brown.

Q. 8. From the general financial reputation of Mr. Brown prior to the burning of said cotton, what would you say as to the probability of any bona fide purchase and payment of that magnitude being made by him?

A 8. I should think it would be very improbable. I have no idea any such purchase and payment were made.

Q. 9. Please tell us what were your opportunities of seeing and knowing Burr Garland?

A. 9. My opportunities for knowing him were very good; saw him nearly every day from my acquaintance with him, from 1847 to 1861, and from 1861 to 1865 my opportunities for seeing him were not so good as prior to that time. After my return from the army, in 1865, I saw Captain Garland frequently, every week or two, up to the time of his death in 1869. On my arrival at home from Vicksburg in July, 1863, I passed through the Garland places to General Buell's headquarters for the purpose of trying to get a guard stationed at my mother-in-law's house. I passed by the gin house, on the Tudor Hall place, at the time the cotton was burning.

Q. 10. In your intercourse with Burr Garland did you hear him

speak of the burning of that cotton; and if so, tell us what he said, and, especially, whether he said anything of having sold it to David J. Brown?

A. 10. I visited Captain Garland, on one occasion when sick, in 1867. He stated to me at that time that the burning of that cotton had ruined him; death would be all right, if he could put

[Handwritten at bottom: "It is not pretend, that this was his Cotton - How and I having it help him? D. bason 965 + he had none."]

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Davidson-

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upon foot some plan by which he could get pay for it. He never mentioned to me of having sold to Mr. Brown or any one else.

Q. 11. What were Burr Garland's habits as to his style of dress and manner of living? Was he plain and economical or was he extravigant?

A. 11. He was plain in his dress, but neat; nothing stylish; economical in his habits of living.

Q. 12. In this case, some question exists as to his expenditures in his support; please tell us what you consider a fair estimate per year of what he spent in purchases for his support, outside of his consumption of what was raised on the Garland lands?

A. 12. I think, sir, $100 per year would have been as much as Captain Garland would have expended on himself outside of what he raised at home.

[Handwritten: "Salaries $100 old pension"]

Cross by Judge Diggs.

X-Q. 1. What was the condition of the Tudor Hall farm, the stock thereon, farming tools, fences, &c., at the close of the war in 1865?

A. 1. It was in a pretty dilapidated condition at the close of the war in 1865. The stables and farm implements had all been burned. There was no stock on the place, except what had been picked up, that had been turned loose by the Federal soldiers and not belonging to the place at all.

X-Q. 2. About how long did this situation continue, as to fences, stock and condition of farm?

A. 2. In 1867, the place, under Captain Garland's supervision, was somewhat repaired, and the place rented out for the year 1867. I don't know if it was for money or for a part of the crop.

X-Q. 3. Was it about in the same condition in 1868?

A. 3. I think it was kept about in the same condition from 1867 to 1869, the year of Captain Garland's death. Since his death the place has been managed by agents, and I know but very little about its condition.

X-Q. 4. How were the taxes and the price of cotton in the years 1865, 1866, 1867 and 1868?

A. 4. Taxes were high. As to the price of cotton in the year of 1865, I sold cotton in Jackson for 40 cents per pound. In 1866 there was a little decline in cotton. It sold then for about 30 cents. In 1867 there was a decline of about ½, say, 15 cents per pound, and I don't think, if my memory serves me right, I don't think there was any advance after that time.

X-Q. 5. Did Burr Garland make any cotton in 1865?

A. 5. No, sir.

X-Q. 6. Did Burr Garland treat the Tudor Hall place and the property thereon as his own?

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A. 6. I never saw any difference in the management of those two places by him. He used both as his own, as far as I could see.

X-Q. 7. Do you know whether he shipped the produce from the Barrens tract in his own name or not?

A. 7. I do not, sir.

X-Q. 8. Under the circumstances you have stated, as to the condition of the farm, stock, &c., and the markets, do you think that Burr Garland made in the years 1865, 1866, 1867 and 1868 any profit on the farm, and paid expenses, taxes, &c.

A. 8. I should think very little, if any, sir.

X-Q. 9. In your estimate of the rental value of the Tudor Hall place, do you mean to say that in the years from 1865 to 1869, inclusive, as things actually existed then, Burr Garland could have rented this farm at the prices stated in your 4th answer?

A. 9. In 1865 there was no land rented in this country, that being the year that the war closed. In 1866 and 1867, $2½ per acre for hill land was the price paid. From $3½ to $4.00 per acre was what was paid for bottom lands, and about the same in the years of 1868 and 1869 and he could have rented his land at those figures.

X-Q. 10. In the 12th question and answer, you say you think $100.00 per year is about as much as Capt. Garland would have expended on himself. In the first place, do you mean to include Confederate times?

A: 10. Yes, sir, about the same.

X-Q. 11. Do you think that would have been anything like sufficient to have given him, in all respects, a decent and comfortable support?

A. 11. Capt. Garland was very economical in his expenditures, so far as his personal was concerned. He raised everything that he consumed in the way of provisions at home, excepting his sugar, coffee and flour. His dress was plain, not expensive, but neat. From my knowledge of him, he would not hardly have expended on himself more than $100.00 per year.

X-Q. 12. Do you mean that for his clothes only, or to include everything?

A. 12. I mean for his clothes and his support, outside of what he raised at home.

X-Q. 12. Do you take into consideration the pay of cook,

washing, traveling expenses, furniture, doctors' bills, lawyers'

bills, &c. ?

A. 12. No, sir, I did not consider lawyers' fees in the estimates

of his living, and I did not consider traveling expenses in his living, but for cooking and washing I made that calculation in my

estimate.

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[Handwritten: "Davidson"]

X-Q 13. Did you consider taxes in your estimate?

A. 13. No, Sir.

Q. 14. Do you know whether Capt. Garland made visits to

Virginia and New Orleans, or other places?

A. 14. Capt. Garland was frequently from home. I never knew

of any trips to New Orleans, but did of his trips to Virginia.

X-Q. 15. Do you know the cost of a short trip, say to Lynchburg, Virginia?

A. 15. I do not, sir.

Re-Direct by Mr. Brown.

Q. 1. In the cross examination, you were asked in regard to the

profits which Burr Garland made. Please tell us if his profits,

whatever they might be, were not made on Tudor Hall and Barrens (the Garland lands). Did he have any source of profits outside, as far as you know?

A. 1. If Captain Garland had any profits arising from his farming interest, they were made on the Tudor Hall and the Barrens

places. If he had any profits from any other source I did not

know of it.

Q. 2. In this suit, there is some question in regard to drafts on

proceeds of sales of cotton in New Orleans, as to what cotton it

was. Please tell us, from your knowledge of Burr Garland and

his business, whether such cotton was raised on Tudor Hall or

Barrens, or cotton purchased by him outside of what was raised

on said places.

Objected to by Judge Diggs, as being irrelevant and new matter, and the same objection to any further testimony on this

re examination.

A. 2. I never knew Captain Garland to purchase any cotton in

my life. He was not in the habit of speculating in cotton since I

knew him, and if he shipped any cotton to New Orleans it was

raised on those two places.

By Judge Diggs.

Not waiving my objection, I will proceed to cross examine the

witness.

Reply by E. S. Brown.

It is quite irregular and inconsistent, when it was my right to close the examination on the redirect examinaton of the witness,

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that Judge Diggs should object to the continuation of my examination, and then ask to open afresh a cross examination.

X-Q. 1. Have you any personal knowledge at all of his having had any cotton, or any other property, in New Orleans?

A. 1. No, sir, I have not.

And further this deponent sayeth not.

R. M. DAVIDSON.

Attest:

F. B. NEAL, Clerk.

Deposition of John Shelton, 28 August, 1893.

The deposition of John Shelton, taken at the same time and place and before the same officer, to be read on behalf of the same parties, and in the same causes, mentioned in the caption to the deposition of James H. Tripp and others, and in the notice thereto attached.

Present: Edward S. Brown, attorney for the Defendant, J. Singleton Diggs, representing the Plaintiff.

The witness, John Shelton, being first duty sworn deposes as follows:

Q. 1. By E. S. Brown. Give us your age, place of residence, and occupation.

A. 1. I am 78 years old, I reside in Raymond, Hinds county, Mississippi, and have resided there since April, 1839. I was licensed to practice law in the State of Mississippi in the month of January, 1838, and from that day until this time the law has been my profession, or occupation.

Q. 2. Please tell us whether you have been acquainted with Burr Garland. If so, when your acquaintance with him commenced, and whether you have been professionally employed by him, and what have been your opportunities of seeing him and knowing his habits of life and of business?

A. 2. I was thoroughly well acquainted with Burr Garland. Our acquantance first began on the 1st of December, in 1837, at Clinton, Hinds county, where he was then staying. The relation of client and attorney, for the last twenty or twenty-five years of his life often existed between us, as is shown by the records of the Probate and Circuit Courts, Hinds county. A few months after I became acquainted with Burr Garland, he made his home on the Barrens plantation, where I frequently visited him. When called to Raymond on business, he was occasionally at my own house.

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Shelton-

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From the 1st day of June, 1864, until after the surrender of Lees' army, I was on duty at this place (Jackson), and spent about one-third of my nights at the house of Burr Garland, where he and I usually were entirely alone. Sometimes Henry Shurlds, and now and then some other visitors were present. I think I became thoroughly acquainted with the personal and business habits of Burr Garland.

Q. 3. Were you counsel for Burr Garland in the probate of the will of his brother, Samuel Garland, deceased, in Hinds county, Mississippi?

A. 3. I was.

Q. 4. The ninth clause of the will refers to financial embarrassments of Burr Garland and says that it would not be safe to devise property to him absolutely, and the original bill in this case alleges that he was insolvent. Please tell us whether prior to the death of Samuel Garland, how you regarded him, and how he was generally regarded, as far as you had opportunity of knowing, as to his solvency.

A. 4. Before I made the acquaintance of Burr Garland, as he told me himself, and as I learned from many other sources, he had been a member of the mercantile firm of Garland & Faulkner,

which firm had entirely failed, and gone out of business, before I reached Hinds county, Mississippi. From the failure of that firm and his securityships and endorsements for other persons, he had become greatly embarrassed, before I made his acquaintance, as I learned to a great extent from himself. While I have no doubt that I could have at any time made a small sum of money out of him, by legal proceedings, as he did some buying and selling in his own name and on credit, and his debtors could have been garnisheed. I am entirely sure that no considerable amount could have been made out of him by legal proceedings, at any time after I made his acquaintance. Practically, as to the mass of his debts and liabilities, I considered him during our entire acquaintance insolvent. and I believe he was generally so regarded by others.

Q. 5. After the death of Samuel Garland, and the probate of his will, what was considered by him and you to be his interest in the profits mentioned in the ninth clause of the will of Samuel Garland?

A. 5. We agreed that he was entitled to the income as long as he lived. I mean all the income till his death.

Q. 6. You will please look at an office copy of the inventory of the slaves and personal property in Hinds county, made on the 6th of Nov., 1862, and filed Jan., 1863, which aggregates the value of $178,832.25, which will be filed with your deposition, marked "Inventory Jan. 1863, Hinds county," in which I see that the number of slaves exclusive of those in which Burr Garland

claimed title were 196, or 207 including those claimed by him

and in which I see that the personal property, including a large

number of mules and cattle, and exclusive of 400 bales of cotton,

amounted to $27,332, or including the 400 bales of cotton,

said to have been burnt, amounted to $43,332. You will also

please look at the inventory of the slaves, and personal property,

on the Coahoma estate of Samuel Garland, now marked "Inventory Jan. 1863, Coahoma Co.," in which I see that there are 37

slaves and other personal property, the other personal property

amounting to $3192, making the whole number of slaves 233;

and you will also please look at the inventory and appraisement

of the slaves and personal estate, at the time of the division,

when the share of the widow, Mrs. Mary L. Garland, was

allotted to her, which is dated the 2nd of September, 1864,

and filed the 5th of September, 1864, marked "Allottment, widow's share," and which will be filed with your

deposition, and in which the whole personal property, outside of the slaves and some seed cotton on both of the Hinds

county estates, in the aggregate then amounted to only $12,150.

Now please tell us how it occurred that between Nov., 1862, and

Sept., 1864, so large a difference occurred between the number of

slaves (about 70) and the other personal property, mules, cattle,

crops, &c?

Objected by Judge Diggs, because it calls for evidence not

relevant to any issue in this cause, all those matters having been

adjudicated.

A. 6. As the laws of Mississippi stood at the time of the death of

Sam. Garland, and for years afterward, the widow of a person dying childless was entitled to the exempt property, and one year's

allowance, even in cases where a will was made which she renounced. The widow of Samuel Garland renounced his will, and

among the property allotted to her, as exempt, was a negro man

named Henry, who had been included in Hinds Co. inventory and

appraisement. As I always understood, the Coahoma Co. plantation was on, or very near to, the Mississippi river, not very far

below Memphis, Tenn; and after the fall of that city, the region

in which that plantation was, was exposed to the raids of the

Federal army, both by water and land. The negroes on the

place, as I learned from many sources, commenced disappearing,

or going off to the Yankees. On learning this, Burr Garland, as

was his duty, in my opinion, took immediate steps for the removal of the slaves, and other personal property that could be

moved, to Hinds county. The persons that he sent to Coahoma

for this purpose were unable to find a good many of the slaves,

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[Handwritten at top: "Army came to Hinds on May 1863 + in July 1865"]

and nearly the whole of the other personal property had disappeared They, however, brought with them to Hinds county,

and delivered to Burr Garland, all of the slaves that they had

been able to find, and I myself saw some of those slaves at the

Barrens. At this distance of time, I can't remember the difference

between the number of slaves appraised in Coahoma, and of those

brought hence to Hinds county and turned over to Burr Garland.

There was no Federal army in Hinds county until May, 1863,

during which month three or four battles were fought in the county, and almost every town and village in the county was occupied

by the Federal army. The city of Jackson was taken, and so

occupied. Again in July, 1863, the Federal army under Gen.

Sherman advanced upon Jackson, which was then occupied by

Gen. Johnston and his troops, and after a serious battle, in the

very outskirts of the city, Johnston retreated and Sherman took

the city, and remained in the city at least as long as a week.

I think it was longer, but I wont state it that way. During thid

occupation of Jackson, Sherman's troops and the stragglers os

his army, raided the whole country around Jackson for several

miles. The Barrens and the Tudor Hall plantations were in thil

range, being within five or six miles from Jackson. Personal props

erty, stock of every kind, and provisions were taken and carriedoff, and some of it ruthlessly destroyed. Many of the slaves on

those places, the precise number of which I am not able to state,

went off with Sherman's army, or went within the Yankee lines

at Vicksburg. Subsequently few, if any, ever returned to their

old homes.

It is a part of the public history of this country that the Federal armies seized and carried off a large proportion of all the good mules that came within their reach. I was never on the Tudor Hall place but once, and then at night, but from what I saw on The Barrens place, after the period above spoken of, there were many fewer slaves and other personal property than I had usually seen on that plantation previous to the spring of 1863.

I give the foregoing, derived from personal knowledge, and from the information of others and the public history of this country. Of the discrepancy between the number of slaves, and the amount of other personal property included in the two inventories, and those included in the allotment of one-half to widow, in addition I state that the provisions, crops of 1862 which was included in the Hinds county inventory, were necessarily sold, or consumed by the negroes, and the stock on the two plantations, before September, 1864.

Q. 7. You have spoken of the Mississippi laws in regard to the rights of the widow of a person dying childless, in case of intestacy, or the renouncing of the will. Please tell us, fully, what-

are the widow's rights in such cases, as to the year's allowance, out of what property that allowance is made, and what is her share of the real estate, and her share of the personal estate, and whether such share is absolute?

Objected to by Judge Diggs.

That being irrelevant, the Court will be asked to strike out all irrelevant testimony at the cost of defendants.

A. 7. The widow of a person who died childless, intestate, or leaving a will which was renounced by her, as the laws of Mississippi stood in 1857, and till long after the war, was entitled to all the property exempt from execution, including therein one negro man slave, to be selected by her or her agent, to an allowance of one year's provisions in kind, if such was on hand, or in money, or partly in each, and then to one-half (½) of all the rest of the personal property and of all the real estate absolute and in fee simple.

Q. 8. Please look at the copy of assignment of one year's allowance to Mrs Garland, the widow, dated the 5th day of January, 1863, and filed the 3rd of February, 1863, marked "Assignment of year's allowance," in which I see that the man Henry was included, to whom you have alluded in your foregoing answer, and $3,000 in money, and personal property specified, to the amount of $250, and say if that is the allowance, and whether this accounts for the absence of this portion of personal property in the first inventory?

A. 8. The personal property and money specified in the year's allowance were substantially included in the first inventory of

Hinds county, but having ceased to be the property of the estate of Sam. Garland on the allotment to his widow, formed no

part of the property, one-half (½) of which was alloted to the

widow, under the division in September in 1864.

Q. 9. Please look at the copy of the allotment of the tract

called Barrens, dated the 16th day of August, 1864, and filed the

5th September, 1864, marked and which will be marked "Assignment of

Dower," and filed with your deposition, and tell us if that is the

allotment of the Barrens tract, as Mrs. Garland's half of the

Garland lands in Hinds county, as her share of said lands in absolute right?

A. 9. It is, certainly.

Q. 10. Now, please turn to the paper marked the allotment of

the widow's share and tell us if the personal property specified in

her share (lot No. 1) passed to her the personal property therein

mentioned, by a right to which she was entitled as the widow

of Samuel Garland, paramount to creditors and to legatees

under his will?

A. 10. It certainly passed the right to the widow, as against

all the heirs and legatees under her husband's will, but not as

against bona fide creditors of her said husband, whose debts remained unpaid, if, indeed, there were any such.

Q. 11. In connection with that portion of personal estate

which embraced the one-half (½) that was not at that time allotted to the widow, you will please look at the copy of the selection by Burr Garland under the 9th clause of the will of Samuel Garland, deceased, filed the 5th day of October, 1864, and

marked "Selected by Burr Garland." and filed with your deposition, and compare the personal property embraced in that selection with the personal property not allotted to the widow, and

tell us if his selection, under the 9th clause of the will, did not

take all the personal property of the estate that had not been

allotted to the widow, except some seed cotton, and, further than

that, did it not leave some of the personal property specified in

the 9th clause unsatisfied, because there did not remain sufficient

property of the right description to satisfy said clause?

Objected to by Judge Diggs.

[Handwritten: "Aug. 5, 64"]

A. 11. Said selection did not take all of the remaining half of

the slaves, but only 40 out of about 80, nor did it include any of

the seed cotton, but it did take all of every other kind of personal

property that had remained. Of some kinds of which, there was not

enough on hand to meet the provisions of the 9th clause of the will

of Samuel Garland, Sr., deceased.

Q. 12. In a subsequent settlement of the administration accounts of Burr Garland, Adm'r of Sam. Garland, dec'd, made

some time after the death of Burr Garland, there was a decree

against his estate in the Chancery Court for Hinds county, Mississippi, for $64,130.88, as indebtedness to the estate of Sam,

Garland, to be paid to John P. Slaughter, the adm'r, with

the will annexed, in Virginia, "to be by such legal representative or representatives paid over to the person or persons entitled to receive the same under said last will and testament of said Samuel Garland, Sr., dec'd. I do not see that the allotment to the widow of share No. 1 embraces anything covered by said decree for $64,130.88. Please tell us, if there be such estate of Samuel Garland, if his widow, under the laws of Mississippi, is not now entitled to receive the one-half (½) thereof, to wit: $32,065.44?

A. 12. In my opinion, if that decree, or any part of it, is ever collected, the widow of Sam. Garland would be entitled to one-

[Handwritten at top right: "24"]

half of the amount, whether it be collected in whole or in part. The Chancery Court of Hinds county had no right to disregard the rights vested in the widow by the law, on her renunciation of her husband's will. [Handwritten: "Hore it is required"]

Q. 13. In my examination, I will turn back to the time of the division in September, 1864, and I inquire if you were present at that division?

A. 13. I was at the Barren's plantation on the day referred to personally, knew each one of the commissioners, and saw them when they looked at, and placed the value upon, some of the slaves, but not of all, nor did I accompany them to Tudor Hall, if they went there to value the slaves on that place. I am not certain whether they went to Tudor Hall or whether the slaves were brought to Barrens. I did not see a great deal of the actions of the commissioners, as I was busy about the house, as I now recollect, preparing their report of the division and allotment, which was completed and signed by the commissioners on the same day.

Q. 14. In the former portion of your examination, you spoke of your intimacy with Burr Garland, and of your knowledge of his manner of life and business habits, and of the destruction, and of the loss of a large number of the slaves and of a great deal of the personal property. Now please tell us, with your knowledge of these things, whether, in your opinion, Burr Garland endeavored to do what he could, under the circumstances, to take care of the estate?

A. 14. I have no doubt that he did everything that could be reasonably expected of him to have done to save the property, and I have heard of his having more than once taken off mules and other stock to Pearl river in the swamp, when the Yankee army or any part of it was in the neighborhood.

Q. 15. Tell us, from your knowledge of the business habits of Burr Garland, whether he was careful and diligent in collecting dues to which he was entitled, as admr., or otherwise?

A. 15. I think he was a very prudent and careful man about such things. He looked closely after the debts due to him, or to

any over which he had control.

Q. 16. Please tell us what were his habits as to his diet, clothes or other personal expenses. Was he plain and economical, or prodigal in these respects?

A. 16. I always regarded Burr Garland, from my earliest acquaintance with him, as a very economical man, and particularly so from the year 1864 until his death. Before the war, he dressed plainly for a man of his age, and he lived only moderately. From 1864 he dressed with exceeding plainness and cheapness, and the style of living at his house was poor indeed. Yet he was my

friend, and for many and many nights. in 1864 and 1865, gave me a home, and lodging, and food for myself and horse, when I had no money with which to pay my tavern bills.

Q. 17. Did you know Samuel Garland?

A. 17. I did; he has been at my residence, once at least, and I saw him on the occasion of every visit that he ever made to Mississippi until his death, after 1840.

Q. 18. From your knowledge of Burr Garland and of Samuel Garland, and of the will of Samuel Garland, which provides, in the 9th clause, for the profits of the estate selected by him (Tudor Hall) not to be bound for his past debts or liabilities, or for

future debts or liabilities, other than decent and comfortable support. Please tell us what amount in your opinion, in addition to what was raised at his home, would be a reasonable amount for his decent and comfortable support as intended in the will, and understood by him?

A. 18. Not exceeding $500 for each year. He made occasional visits to Virginia, which might have added to the expenses in the years in which he made them, from one to two hundred dollars. During the war he made them, and his visits and his expenses were not so large as $500 a year in good money.

Q. 19. You will please look at the copy of the petition filed by him on the 9th of March, 1866, in the Probate Court and the order of said court thereon, in regard to sales of corn and other supplies to the quartermasters of the Confederate States, and his inability to collect the same, amounting to $14,024.94, marked "Supplies sold to Quartermasters," and herewith filed, and tell us if that shows the list of losses which he claimed to have been unable to collect.

A. 19. It certainly does show that, and it was impossible to have collected them, except in trash (Confederate money). If he had not sold the corn they would have taken it any way, as I believe.

Q. 20. Did Burr Garland, as far as you ever knew, confine his business operations to the Garland estate, or did he speculate in cotton, or other things, outside of the products of Tudor Hall and the Barrens lands?

A. 20. Not to any considerable extent, I don't think; he might have bought a bale or two of cotton, but I don't think he could have to any great extent, without my knowing it.

Q. 21. In answer to a preceding question you specified the

amount which you thought would be reasonable as to the portion of profits mentioned in the 9th clause of the will, which

should not be bound for the past debts or liabilities, or future

debts or liabilities, other than his decent and comfortable support. Now please tell us if you have any knowledge of any out-

standing indebtedness of Burr Garland, contracted for his support, after the death of Samuel Garland?

A. 21. I can only answer that I have no knowledge of any such

claims, but, if there was any such, they have long since been

barred by our statute of limitations, as none such are found on

the registers of claims in the office of the Chancery Court of

the first district of Hinds county, Mississippi, which I have just

examined.

Q. 22. Was not the support of Burr Garland chiefly from the

products either from the land allotted to the widow, called Barrens, or from the lands called Tudor Hall, selected by him under

the 9th clause of the will?

A. 22. From all that I know, that is clearly my opinion.

Q. 23. From what you know of his style of dress and habits,

what would be your estimate as to the amount of money likely

expended by him in his support, after the death of Samuel Garland, in addition to consumption of products raised either on

Barrens or Tudor Hall?

A. 23. He had had his clothing and groceries and bacon to buy,

after the destruction of his hogs in 1863, and his expenditure each

year for these articles did not probably exceed $125 or $150.

Q. 24. Was not such expenditure in money raised from sales of

products, either of the Barrens or the Tudor Hall lands?

A. 24. Beyond a doubt the greater part of it was, if not all.

Q. 25. I failed to enquire when speaking of the land selected by

Burr Garland, after the assignment of the dower to the widow, if

it embraced all of the balance of the lands in Hinds county.

Please tell us if the Tudor Hall tract, as selected by him, embraced the balance of the Garland lands in Hinds county?

A. 25. Certainly it did.

Q. 26. Please tell us whether you have been requested to ascertain, if you could, where the papers and vouchers of Burr Garland, connected with his administration of Samuel Garland's

estate, may be; and if so, what success you have had?

A. 26. I failed entirely to find any trace of them, though I have

made numerous inquiries, at the instance of Edward S. Brown,

Esq.

Explanation by Mr. Brown.

Mr. Brown says that he has made diligent inquiry through

Charles Y. Morriss, his administrator, in Virginia, and through

Mrs. Paulina B. Morriss, the daughter of Burr Garland, and other

members of the Garland family, and have not been able to find

any trace of them.

Q. 27. I find on the record of your courts three accounts re-

Shelton-

turned by Burr Garland of his administration of the estate of Samuel Garland, marked "1, 2 and 3 annual ac'ts," and which will be filed with this deposition. Please look at these copies, and tell us as to these returns being made by Burr Garland himself, or by you as his counsel.

A. 27. I was Burr Garland's only counsel in the then Probate Court of Hinds county, in his said administration. The said annual accounts were made out by Burr Garland himself, but submitted to me, to look at and correct, and subtract or add to, as I thought proper, under the law. I suggested to him additions and alterations in them, some of which were made by me, in my handwriting, and some by him in his; they were then sworn to by him, and his vouchers were exhibited to the court, after which they were filed, and the proper orders entered on them.

Q. 28. In the copy marked "1st annual account" I see no dates to the items of receipts or credits to him, as to the time when he received amounts, or when he paid out expenditures, and it was chiefly on this account that I have been anxious to find his vouchers and books. In this account the 2nd and 3rd items of

receipts are each $100 for 6 bushels of salt. The 4th, $60 for 3 bushels of salt, and various items of sales to the Confederate quartermasters and other persons, of corn and other products, such as vegetables, at extraordinary prices. Please examine the items in this account and tell us whether these receipts were in Confederate money on the sale of products and supplies from the Barrens and Tudor Hall places during the war and after the death of Samuel Garland?

A. 28. Neither the law of the State nor the practice in the late Probate Court of Hinds county required dates of receipts or payments to be stated on such accounts; and it was, therefore, rarely if ever done. Beyond all question the items referred to, and nearly or quite all of the items in said account, whether debit or credit, were, beyond all question, in Confederate money. I have no doubt but what they were the products of those farms.

Q. 29. I see that the credits or expenditures of the Administrator, items of taxes paid for 1862, one $310.36, and another $527.79, and taxes for 1863, $50.00, and taxes for 1864, $2200.00, but the second annual account starts with the date, the 12th of December, 1863, and runs down with items as late as the 31st of of August, 1864, with one or two items as to the credits to the Administrator, with payments by him, as late as March, 1866, and April, 1867, the last item being only $4.20 for court fees, and the item of March, 1866, being balance in favor of the Administrator on the former account of $35.70. All the other items, I think, being not later than 1864. His second account, I see, puts prices at much higher figures than the first, some as high as five,

[Handwritten at bottom: "In 2nd a/c, no items later than 1864"]

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END OF TRANSCRIPTION

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six and seven dollars for corn, and five or six dollars per bushel for peas. Please look over this and tell us if these were net sales and payments in Confederate money, and are not these all products from the Tudor Hall and Barrens lands, and subsequent to the death of Samuel Garland.

A. 29. From the examination of a certified copy of the account referred to, I am sure that all of the items referred to, and in fact nearly all of the items on both sides of the account were the results of Confederate money transactions, many of the items of receipts show conclusively that they were so. I have no doubt that they were the products of the Tudor Hall and Barrens plantations, after the death of Samuel Garland.

Q. 30. Please look on the 1st annual account to items No. 44 and 45 of credits to the administrator, each $3,000.00, and on the 2nd annual account of credits to the adm'r, item 18, $2,000; item 19, $3,500; item 20, $1,000; item 21, $800; item 22, $520; item 23, $1,200. These aggregate $15,020. The explanation in the accounts, is that these credits were claimed by the adm'r, on the ground that these were Confederate bonds, or Mississippi State Treasury notes, or Mississippi 8 per cent. bonds, in which he had invested the Confederate currency which came into his hands, and which investments had perished without his fault. Please tell us whether during the time covered by these transactions, whether these investments were made and lost without any proper blame to, or fault of, Burr Garland, as administrator?

A. 30. In the situation of this region, from an early period of the war to the end of it, a man holding Confederate notes, which were then bearing no interest, whether held by him in his own right, or as trustee for others, could do no better with them than to invest them in Confederate bonds, or State Treasury notes. It is certainly true that in many cases of the investments of Confederate notes in this region, in the purchase of cotton, that the cotton was destroyed by the armies on one side or the other; and a total loss followed, of course. So far as I know, the general rule of the Probate courts, after the end of the war, was to allow to executors, administrators and guardians credit for the Confederate money or bonds, or State Treasury notes so in their hands,

with the single exception that if they had failed to apply, during the war, the money, bonds, or treasury notes to the discharge of liabilities of the estates they represented, which would have been discharged in any such currency, to hold them liable that far, but no further. There may have been some exceptions to such a course of decision, but if so, they were certainly rare, and involved no large amounts.

Q. 31. The $15,020 thus lost is carried into the statement, making the balance $64,130.88, which the court ordered to be

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transmitted to J. F. Slaughter, the Virginia administrator, to be paid to those entitled thereto, at its full face value. Is it not an error to have charged this against Burr Garland (1st) because it was not sealed, (2nd) because it was wholy lost without any fault on his part, and (3rd) because it was monies from the sale of products on the Barrens or Tudor Hall estates after the death of Samuel Garland—Barrens being assigned to the widow as her dower, and Tudor Hall being selected by Burr Garland under the 9th clause of the will?

Objected to by Judge Diggs on the further ground that the witness is not a high court of errors and appeals.

A. 31. In my best judgment the chancellor decided most incorrectly, under the laws and decisions in this State, in directing said sum to be charged to Burr Garland at its face value. No part of it should have been charged to him in my opinion in the restatement by E. E. Baldwin, Esq., of the final settlement of his administration submitted to the executor, Wm. H. Garland.

Q. 32. In the 1st annual account, item 18, is this entry: "This sum received of Brown, Johnson & Co, New Orleans, being proceeds note of J. W. & W. A. Percy, belonging to testator, and interest, $4,644." This is the only item that I see of money received by Burr Garland, in said account, which seems to be any part of the estate of Samuel Garland. Please look at this item and tell us, if you can, whether this was properly paid to him in Confederate currency?

A. 32. I know nothing about the debt referred to, cannot remember ever having heard Burr Garland speak of it, and am wholy unable to say whether it originated before the death of Samuel Garland or not.

Q. 33. In the condition of the country at the time of Burr Garland's qualification as administrator, or even after the death of Samuel Garland in December, 1861, would not any payment to Burr Garland, or to Brown, Johnson & co., who seems to have been agents in the collection, have not been quite surely in Confederate currency?

A. 33. I think so, clearly.

Q. 34. If it were, and should have been collected in good money, would not these payments, item 27 in said account, to Mrs. Mary L. Garland $1,000; item 38, Mrs. Mary L. Garland, $1,000; and item October 7th, 1865, in third account, "By cash of $3,000 made to her by order of court, $1,000," have been a good disbursement pro tanto, of said collection.

A. 34. Unquestionably so.

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Q. 35. Now, Mr. Shelton, let me ask you to look to the 3rd annual account, to items February 11, 1866. To 11 bales of cotton from the Barrens estate, and To 12 bales of cotton from the Barrens estate, the first sold to A. Virden, at Jackson, and the last shipped through A. Virden to T. H. & J. M. Allen, New Orleans: and also to 73 bales of cotton from Barrens, shipped to T. & J. M. Allen, New Orleans, on account, per account sales 1867, and please tell us if cotton raised on Barrens, especially after the assignment of the dower to the widow, does not properly belong to the account between Burr Garland and Mrs. Mary L. Garland, the widow, and not to an account between Burr Garland as administrator, and the estate of Samuel Garland, deceased?

A. 35. The effect of the allotment of dower and the widow's one-half of the personal estate was to put her into the possession of both, and she was unquestionably entitled to the products of the plantation thereafter, as against the administrator of the estate of her husband.

Q. 36. I see that in the statement, on which they reached the balance of $64,130.88, they inserted in the balance on the 3rd annual account of $6,545.09, and interest on that balance of $2,045.33, as a debt due from the administrator to the estate of Samuel Garland. Please tell us if it was not erroneous to charge Burr Garland, as administrator, with this money, as a debt to the estate of Sam. Garland.

A. 36. It was erroneous if the proceeds of cotton raised on Barrens after its allotment to the widow for dower formed a part of said amount.

Q. 37. In said 3rd account, among the credits which were charged for disbursements by Burr Garland, item 1, $56.46; item 2, $12.50; item 3, $60; item 4, $100; item 5, $417; item 6, $54.60; item 8, $48; item 13, $541.30, aggregate $1,289.86. The dates of these items are, eight of them in 1865, and the last item in February, 1866, and show on their face that these are for expenses on the Barrens estate in making said crops of cotton (in 1865), the aggregate, $1,289.86), and charge against Burr Garland, as administrator, in making said balance of $64,130.88, on the ground alleged in the eleventh exception, because these were properly charges against Mrs. Mary L. Garland, in making her own crops on Barrens, after it had been alloted to her as dower. Now tell us if payments made by or for Mrs. Garland in the expenses of making her crops, after the allotment to her, could be any part of the estate of Samuel Garland, for which he was indebted to said estate?

A. 37. Certainly not.

Q. 38. In said 3d annual account, item 10, there is credited to

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the administrator, as follows: "Cash paid Farrington & Howell, merchants, Memphis, Tenn., amount their acc't for supplies to the Coahoma plantation, $488.46, and this amount is charged against him in the statement to make up the $64,130.88, on the ground specified in the 13th exception, that by reasonable diligence he might have paid it in Confederate notes. Now please tell us, Mr. Shelton, if you know anything about that payment, and of any evidence that it could have been paid in Confederate notes, and, whether it could or not, can you see any reason why Burr Garland's payment of that debt in good money out of Mrs. Garland's cotton should be charged to Burr Garland as assets in his hands of Sam Garland's estate?

A. 38. Certainly there can be no good reason for it. After the fall of Memphis, Burr Garland had no access to them to make a tender of Confederate money, their place of business being within the Yankee lines from its capture until the end of the war.

Q. 39. In the statement to make up said balance of $64,130.88 they have carried in a charge against Burr Garland, Adm'r., of $3,000 on an alleged claim that he had received $3,000 from David J. Brown for 100 bags of cotton of the crop said to have been burned. Please tell us if you

knew David J. Brown, and do you know from anything you have heard from Burr Garland or from David J. Brown of any such payment, or of any payment from him which belonged to the estate of Samuel Garland which should have been carried into the administration account as assets received by Burr Garland?

A. 39. I think I became slightly acquainted with Brown before the end of the war, and I knew him moderately well for several years afterwards, during his engagement in business in the city of Jackson, but I never heard Brown or Burr Garland speak of the transaction referred to, so far as I can now recollect.

Q. 40. In the statement to make up the $64,130.88 they have got Burr Garland charged with all of the cotton burned, appraised, in the inventory and appraisment filed January, 1863, at $16,000, and with all of the personal property in the inventory and appraisement of the Coahoma estate, except the slaves, and all the personal property in the inventory and appraisement in Hinds county, both Tudor Hall and Barrens, except the slaves, without making any allowance for the destruction of personal property at Coahoma and the burning of the cotton, and the destruction of the personal property in Hinds county, between the appraisement of January, 1863, and the allotment of the widow's share and of the selection by Burr Garland under the 9th clause of the will. Now, Mr. Shelton, please tell us can you see any reason to justify the refusal to credit these losses on the

charges for assets received by Burr Garland as administrator of Sam Garland, deceased?

A. 40. There is no reason in the world why that should not have been done, if the executor, Wm. H. Garland, had had an attorney present on the hearing of the exceptions to have insisted that it should be done. On that occasion said executor was wholy absent, and not represented by any counsel.

Q. 41. In the division in September, 1864, between Mrs. Mary L. Garland, the widow and the estate of Samuel Garland, deceased of the personal estate, one-half of some seed cotton was in share the allotted to her, and another one-half of said seed cotton left to the estate, which is the only personal property remaining after the widow's one-half, and Burr Garland's selection under the 9th clause had been taken out, I see also in the annual accounts, that a great deal of personal property, arising from products on the Barrens estate and the Tudor Hall estate, after the death of Samuel Garland, and a great deal of it after the allotment of the widow's share, has been carried into the administration account of Burr Garland, just as if the same was assets of Samuel Garland's estate. Take this in connection with the fact that the cotton was burned in 1863, and

that the testimony shows that a crop of cotton was made in 1864. Now tell us if it be the fair inference may not be drawn from these circumstances: that the seed cotton divided in September, 1864, was cotton made in 1864 either on the Tudor Hall or the Barrens estate, and that it was not, in fact, assets of the estate of Samuel Garland, deceased?

A. 41. Such is certainly the inference to be drawn from the facts so stated, especially when strengthened by the statement of Reuben Anderson, a witness heretofore examined in this cause, that before the burning of the cotton at Tudor Hall by the Yankees in July, 1863, all the cotton on the Barrens plantation had been carried to the Tudor Hall plantation.

Q. 42. In the 3d annual account I see that on the 28th of February, 1866 that Burr Garland paid direct taxes on lands in Hinds county and Coahoma county amounting $203.61. Please tell us, Mr. Shelton, whether these taxes have been refunded, and if so, what amount of taxes on the Hinds county lands have been received on the refunding of the same, and what has been done with that portion of the $203.61?

A. 42. In the fall of 1892 or 1893 I & J. M. Shelton filed a claim in behalf of John F. Slaughter, as Administrator in the State of Virginia, with the will annexed of Samuel Garland, Sr., for the refunding of the direct tax, paid by Burr Garland, his Adm'r., in Miss., on all the lands of said estate in the last named state, Miss. A paper now in my hands and in my own hand writing, shows that the amount of taxes paid on the Barrens and Tudor

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Hall places together was 123.60. This sum was refunded on the 16th of December, 1892, less 3 per cent. thereof retained by the direct tax commissioner, at the city of Jackson, to cover expenses by authority of an Act of the Legislature of the State of Mississippi. The amount actually refunded and paid to J. & J. M. Shelton, on account of the Tudor Hall and Barrens plantations, was $119.90, from which J. & J. M. Shelton deducted the 10 per cent. commissions, which they charged, amounting to $11.99, and the remainder, $107.91, they remitted to said Administrator, in Virginia, in postal money orders purchased at his expense, whose receipt for the same they now hold. The direct tax on the lands in Coahoma was $80.01. It was refunded at the same time with the other tax; and after similar deductions was sent to the same person, at the same time and in the same way. The entire sum sent being $177.76, and is included in the same receipt as the other tax.

Memo.—In addition to previous objection and exception to the foregoing, the counsel for Samuel Garland's estate objects to all the testimony commencing with question 27, referring to the three annual settlements of Burr Garland, as being an attempt by Moses's trustee in this suit

to surcharge and falsify accounts rendered in 1866, '67 and '68 by Burr Garland personally, and which have been finally passed upon by the Probate Court of Hinds county more than 19 years ago in a proper judicial proceeding, to which C. Y. Morriss, trustee, and wife, were parties.

In reply to the foregoing, E. S. Brown says that the decision of the Court of Appeals in Virginia in the case of Samuel Garland's Adm'r vs. Burr Garland's Adm'r, reported in 84 Va., 181, in express terms, was without prejudice to Mrs. Morriss and her children, and the court required John F. Slaughter, administrator of Samuel Garland, deceased, to amend his bill and make Mrs. Morriss and her children parties to it. This Samuel done, and the case went up again to the Court of Appeals of Virginia, and is reported in 87 Va., 758, in which it was decided that Burr Garland took no more of the profits mentioned in the ninth clause of the will than was sufficient for his decent and comfortable support, and that this alone was liable to his past debts and his future debts, and the court has ordered the administrator of Burr Garland to render an account of the profits of said estate and of all debts of Burr Garland and the priority thereof.

And further, no exception was taken to the testimony opening up an inquiry as to these profits, and of the indebtedness of Burr

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Garland, until the conclusion of the examination of Mr. Shelton in chief, and the objection now made is technical, and technically too late.

Cross-Examination of John Shelton by J. Singleton Diggs.

X-Q. 1. Did you represent Burr Garland as his counsel and attorney from his qualification as administrator of Samuel Garland to his death, and then represent his executor and his estate up to the time of the decree on his final accounts in 1874, in all these proceedings, the records of which have been filed in this cause.

X-A. 1. I represented Capt. Garland, as adm'r until his death. I was employed by William H. Garland, his executor, as his attorney, and aided him in the probate of the will of Burr Garland. I also prepared other papers for him, but I entirely abandoned his employment before the Chancery Court of Hinds county, 2nd District, had entered upon the hearing of the exceptions to the final settlement of Burr Garland's said Administration, which had been submitted by me, and had nothing farther to do with the matter. I represented Burr Garland in all of the papers filed, referred to in the question.

X-Q. 2. Did not Burr Garland, up to this death, act in all these proceedings as agent and as attorney-in-fact for Mrs. Mary L. Garland?

X-A. 2. He certainly did.

X-Q. 3. Then you also represented her interests in these proceedings as far as any attorney-at-law was needed, or did Burr Garland employ another attorney to represent her interests?

X-A. 3. I did.

X-Q. 4. Were all these various proceedings in the courts taken in accordance with the Statutes of Mississippi and the practice of the courts?

X-A. 4. I think precisely so.

X-Q. 5. I wish you would examine one or more of the copies of the record filed with your deposition, and state whether they contain all the processes used in the proceedings, or are the summons, citations, orders of publication, &c., omitted from these copies.

A. 5. The petitions, citations and orders of publication from which the papers referred to resulted are not included in the copies before me, to save bulk and expense, and as being wholly unnecessary. The originals of those papers are now in this presence and in my possession.

X-Q. 6. In the many answers given in your examination in chief you have attempted to show a great number of errors in

the ex parte annual accounts of Burr Garland, which errors you say, were carried into the final decree. Were you speaking in these matters from your present recollection of facts, or from your conclusions deducted from the face of the papers?

A. 6. From both.

X-Q. 7. Were you present in court on the hearing of the exceptions, or did you hear the evidence thereon?

A. 7. I was not present, and did not hear one word of the evidence, I left the court-room before the hearing began.

X-Q. 8. Do you know how the final account as presented by you and W. H. Garland, executor, of Burr Garland, stands, as to any balance due to or from the estate of Samuel Garland. It was not added up as presented, and no balance struck?

A. . I do not know how the balance stood, nor would have stood, had a balance been struck, there were additions to be made, and blanks to be filled up on the hearing.

Q. 9. Do you think that the final account as presented for confirmation of court is in all respects correct?

A. 9. I thought so when I made it, and I think so now.

X-Q. 10. You are not aware then that account as so presented, without correction of any errors in the annual accounts, but allowing on the sum claimed, the 2½ commission finally allowed Burr Garland, would not have left enough of Samuel Garland's estate to pay the commissions to the executor by over $5,000. In other words, would show a balance against the estate in favor of the administrator of over $6,000?

A. 10. No, sir; I can't say that I was.

X-Q. 11. Would not the errors which you have pointed out in the annual accounts, if they could have then been rectified agreeably to your testimony, have swelled that balance against Sam'l Garlands estate to an immense amount.

A. 11. It would have swelled it, but I can't say that it would have swelled it to an immense amount.

X-Q. 12. If any statutory limitation in this state to the right of any person interested to come in and surcharge and falsify such annual accounts, state the law on that point?

A. 12. No statutory limitation as to ex parte annual accounts.

X-Q. 13. What is the limitation as to surcharging and falsifying settlements of final accounts had under such proceedings as you instituted for settlement of these accounts?

A. 13. Two years from final decree, which also concluded any attack on the final account.

X-Q. 14. Was that the law also when these proceedings were had?

A. 14. Yes, the law was the same.

X-Q. 15. In your examination in chief you have given the law

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of Mississippi in regard to the widow's share of personal estate, her year's allowance, &c., do you give that as the law of this case, where the testator and widow both resided in another State, where the law was different?

A. 15. I certainly give that as my opinion.

X. 16. I will ask you to examine the case of Garland, Ex'or vs. Rowan, decided as long ago as 1844, reported in 2 Smede & Marshall, in which case the famous Sargent S. Prentiss was counsel for the losing side, and say whether the highest court of this State did not decide exactly to the contrary of your opinion?

A. 16. We have not the book referred to. I will get it and examine the case and answer the question later. The court in the case did so decide, but it was under a different law.

X-Q. 17. I hand you 40 Mississippi Report, and ask you to examine the case of Slaughter vs. Garland, there reported, and say was not the decree of June, 1856, of the Probate Court in these proceedings, by which the widow of Samuel Garland was allowed the year's provision, under your law, appealed from and reversed by the appellate court, and expressly decided in this very case that she was only entitled in the personal estate to what the Virginia law gave her?

A. 17. Said decision is to the effect indicated, but it was a question much disputed by the bar of this State, and I then believed, now believe, and ever shall believe that the decision in the case referred to was utterly wrong and without authority of law.

X-Q. 18. You have given it as your opinion as I understand you, that Mrs. Garland, the widow, is entitled to one-half of whatever may be realized from the decree in favor of Samuel Garland's estate vs. Burr Garland's estate. Please look at the final account and say whether Burr Garland is not therein credited by all the slaves on all the plantations, by all the personal property alloted to Mrs. Garland, and in his annual accounts, (which were not disturbed in this respect by the exceptions) credited by all the payments Burr Garland made her, on account of the year's allowance.

A. 18. Yes, sir; but I add that he is charged with the proceeds of the crops of the two plantations, after one had been alloted to the widow for dower and the other had been selected by himself under the 9th clause of Samuel Garland's will.

X-Q. 19. There has been filed with your deposition, petition of Burr Garland asking to be credited by over $14,000 worth of corn taken by the army. Is he not credited by that identical item in the final account?

A. 19. He was.

X-Q. 20. In regard to the cotton with which Burr Garland was charged, I will ask you whether D. J. Brown did not, after the

close of the war, make some claim on account of its burning, claiming that he had bought and paid Burr Garland for it.

A. 20. I have heard that D. J. Brown did make such a claim, after the death of Burr Garland, but I have no knowledge of the particulars of the claim, nor do I know before what tribunal it was presented.

X-Q. 21. Do you not know that a number of Sam'l Garland's legatees resided within the union lines, and many of them within the confederate lines during the war, representing quite a large sum of legacies in the aggregate.

A. 21. I do.

X-Q. 22. Do you know whether it is allowable, under your law, for a fiduciary to surcharge and falsify on final settlements, the annual accounts returned by him and confirmed by court.

A. 22. He has no right to surcharge and falsify, in his final settlement, any of the items of this annual accounts, but he has the right to correct errors, mistakes and omissions in them, on a proper showing, whether for or against himself.

X-Q. 23. What is the limitation here as to asserting claims against estate of decedents.

A. 23. They must be probated and registered in the Chancery clerk's office, within twelve months after the first publication of notice of his qualification by the executor or administrator. This applies alone to claims existing at the decedent's death.

X-Q. 24. Do you know whether Wm. H. Garland, as executor of Burr Garland, made the publication as required.

A. 24. I do not, sir. If publication in the news papers, I have no doubt that it was done.

X-Q. 25. Do you know who represented Chas. Y. Morriss, trustee of Mrs. Morriss, upon the death of Burr Garland, in getting or receiving as remaindermen under 9th clause of Samuel Garland's will?

A. 25. I do not know.

X-Q. 26. You have stated that Burr Garland was regarded as insolvent. Did he not claim a large number of slaves as belonging to him when they were inventoried as Samuel Garland's, and were they not allowed to him?

A. 26. He did claim them, but I don't recollect if the court ever took action in regard to the matter.

X-Q. 27. In your 12th answer on examination in chief you state that you think $500 per year a reasonable amount for his decent and comfortable support. Do you think that amount of money would be sufficient to pay all his housekeeping, travelling expenses, doctor's bills, lawyer's bills, all of his taxes, etc?

A. 27. I do.

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X-Q. 28. Is it the practice in your Probate courts to hear testimony orally?

A. 28. Unquestionably so.

X-Q. 29. You state as to habits, &c, of Burr Garland that he did not speculate to any great extent. Do you know what he did with his means and money?

A. 29. I do not, for it is a subject on which he never conversed with me that I recollect.

X-Q. 30. What date did Burr Garland go to Virginia on his last visit there, when he died there, and how many trips did he make to Virginia after the death of Samuel Garland, in November, 1861?

A. 30. In 1869 he left for Virginia before the 1st of September, I cannot fix the exact date. After the lapse of 25 or 30 years I am unable to remember whether he made any visit to Virginia between the death of Sam Garland and the year 1869.

X-Q. 31. Was not the Barrens place used by Burr Garland as a storing place for the products of Coahoma place and Tudor Hall, and shipped or hauled from there?

A. 31. To some extent I think that is so.

Re-Direct.

Q. 1. You have been asked by Judge Diggs in regard to the sum of $500, which you named in answer to my question in examination in chief as to the amount which, from your knowledge of Burr Garland and of Samuel Garland, was likely contemplated by Samuel Garland and understood by Burr Garland, as to the amount of the profits which might be applied in paying debts contracted for his decent and comfortable support, and I asked you afterwards in regard to the amount which you would estimate as the actual expense incurred by him in his support in addition to what was raised at his home, either on Barrens or Tudor Hall, and you gave the amount from $125 to $150. Now please tell me if I understand you correctly in meaning that the $500 was the amount which he might have expended within the limit of a proper construction of the will, and the smaller sum as your estimate of what he actually spent in his support?

A. 1. I think my estimate of $500 was a large and liberal one for his annual expenses of living and clothing, considering the way in which he lived and clothed himself, and I intended it to cover all of his expenses, whether derived from the two plantations or purchased elsewhere. In the estimate of $125 to $150 I did not include the taxes on the Tudor Hall plantation, which, from my familiarity with the subject of taxation for the last 40 or more years in Hinds Co. I estimate to have been about $100.00 per annum, for the years 1865, 1866, and 1867, 1868

and 1869, I certainly thought that $500 was entirely within the terms in the 9th clause of Samuel Garland's will, as the same was contemplated and understood by himself, (the testator), and by Burr Garland. In stating the sums of $125 to $150 I only estimated for what he would be likely to have in addition to such articles as he received from the Tudor Hall plantation. If I had thought of the taxes at the time, and intended to include them I should have stated the sums $225 to $250.

Q. 2. the case to which Judge Diggs referred of Slaughter v. Garland, 40th Mississippi 172, is a decision of which I had not heard, and my examination was irrespective of it. As I now understand it, if it has the application which he claims, it only affects Mrs. Garland's rights as to the one year's allowance. I see that that decision in 1866, directly after the war, and in the proceedings of the Chancery Court of Hinds county in the final settlement, the 25th of February, 1874, they seem to have wholly disregarded the decision in the case of Slaughter v. Garland referred to. As to the one-half of the personal estate of a married man who dies childless, intestate or where his widow renounces the will, I understand that she is entitled, both in Virginia and Mississippi, to one-half of the surplus of his personal estate, after his debts are paid. Now, then, as to any balance of assets in the hands of Burr Garland, as administrator of Samuel Garland, whether the account had been balanced upon the statement for the final settlement as you made that statement, or as it was finally made, when the balance of $64,130.88 was reached, would not Mrs. Garland have been entitled to the one-half of such balance?

A. 2. I certainly answer, that, in my opinion, she was so entitled, and is now. In view of what I there stated in the cross-examination, as to the decision in the 40th Mississippi Report in the case of Slaughter v. Garland.

Q. 3. As I understand in Mississippi, as well as in Virginia, the widow is dower-right commences with the death of her husband, and she is entitled to the profits of her portion of the real estate from his death. Now, then, Mr. Shelton, tell us if, under the laws of Mississippi, Mrs. Garland was not entitled to one-half of the profits from the land allotted to her for dower, subsequent to the death of the husband and anterior to the allotment of dower, and I am not prepared to say that under the laws of the State of Mississippi she was so entitled. I never knew the question in

any form or shape to be raised in Mississippi. I however add that the Barrens was allotted to Mrs. Mary L. Garland for dower early in September in 1864 in absolute fee simple, and in my opinion she was clearly entitled to the crop or crops at that time growing on said plantation

And further this deponent sayeth nothing.

JOHN SHELTON.

Q. 4. John Shelton being recalled is further asked by Mr. Brown whether in the petition and proceedings in the Chancery Court of Hinds county, in which the decree was rendered the 25th of February, 1874, any issue was raised in the petition or otherwise, between the widow, Mrs. Garland, and other parties, as to her interest in the $64,130.88 mentioned in the decree?

A. So far as I know no such issue was raised in said proceedings by the petition or otherwise.

And further this deponent saith not.

JOHN SHELTON.

Samuel Garland's Adm'r

vs.

Mary L. Garland, &c.

Exception to Comm'rs Reports.

M. J. Day, administrator d. b. n. of Burr Garland, dec'd, and the children of Paulina B. Morriss, deceased, and W. V. Wilson, her administrator, except to Commissioner Bocock's several accounts and reports, dated the 29th of April, 1892, and filed the 3d of May, 1892, and Commissioner Sackett's account and report, filed the 14th of November, 1893, because in stating each of said accounts it is assumed that John F. Slaughter, administrator of Samuel Garland, Sr., has transferred and distributed all the bonds and assets of the estate of Samuel Garland, Sr., chiefly to himself as administrator of Charles R. Slaughter and executor of Samuel Garland, Jr., said Charles R. Slaughter and Samuel Garland, Jr., being residuary legatees under the 17th clause of the will of Samuel Garland, Sr.

By the 15th clause of his will Samuel Garland, Sr., gave a special legacy to each of the children of his brother, Nicholas A. Garland, of one thousand dollars of his East Tennessee and Virginia railroad bonds, or others of equal value. A much larger number of such bonds than was needed to

satisfy said special legacies came to the hands of Charles R. Slaughter and to the hands of Samuel Garland, Jr., who were executors of Samuel

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Garland, Sr., and to the hands of John F. Slaughter, administrator d. b. n. of Samuel Garland, Sr. To eight of the children of Nicholas A. Garland, whose names are given in the pleadings, and each of whom is entitled to the special legacy of one of said bonds, no transfer of said bond or payment of said legacy has been made.

It was error in said commissioners to transfer all of such bonds from the account of John F. Slaughter, as administrator of Samuel Garland, Sr., to the accounts of John F. Slaughter, as administrator of Charles R. Slaughter, and executor of Samuel Garland, Jr. This mode of stating his accounts subjects him to a devastavit on the estate of Samuel Garland, Sr.

M. J. DAY,

Adm'r, &c., the Children of Paulina B. Morriss.

W. V. WILSON,

Adm'r of Paulina B. Morriss,

By E. S. BROWN,

Their Attorney.

Extract from Inventory of Personal Estate in Virginia, 18th October, 1862.

109 shares Commonwealth's Bank stock, $100, $10,900 00

130 shares Citizens Savings " " 100, 13,000 00

225 shares Merchants " " 100, 22,500 00

10 bonds city of Memphis, $1,000 each, 10,000 00

8 bonds city of Lynchburg, at gross amount, 4,800 00

43 bonds Orange and Alexandria 6 per cent. " 35,000 00

23 bonds East Tenn. and Va. railroad " 15,000 00

54 bonds Va. and Tenn. railroad, " " 45,000 00

44 bonds Southside railroad, " " 40,000 00

200 shares Va. and Tenn. railroad stock, guaranteed, $100, 20,000 00

40 shares Orange and Alex. railroad stock, guaranteed, $50, 2,000 00

1 bond East Tenn. and Va. railroad stock, guaranteed, 80 00

500 shares Lynchburg Hose and Fire Ins. Co. stock, $20, 10,000 00

500 shares Lynchburg Hose and Fire Ins. Co., no certificate issued, $20, 10,000 00

Amount carried forward, $253,520 50

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Virginia:

In the clerk's office of the Corporation Court for the city of Lynchburg the 5th day of May, A. D., 1894.

The foregoing is an extract of inventory of personal estate of Samuel Garland, Sr., deceased, 18th October, 1862. Recorded Will Book "E," page 108.

Teste:

S. G. WINGFIELD, Clerk.

Extract from Account of Samuel Garland, Jr., Surviving Executor.

1862.

August. 4. By cash received dividend Gas Co. stock, $250 00

By 4 months' rent of old factory, 50 00

11. By coupons E. T. and Va. R. R. Co. bond, 600 00

15. By H. C. Falwell on land, 125 00

21. By dividend on L. S. bank, 20 00

25. By Thurman negro hire, 30 00

By dividend L'h'g H. and F. Ins. Co., 200 00

31. By rent of sundry persons, 76 75

Sept. 2. By dividend in telegraph stock, 12 00

By 7 bonds of Va. and Tenn. R. R. Co. paid S. M. Slaughter, 5,000 00

By interest on same, 192 00

Balance due executor, $1,653 45

Virginia:

In the clerk's office of the Corporation Court for the city of Lynchburg, May 1, 1894.

I hereby certify that the foregoing is an extract from the account of Samuel Garland, Sr., deceased, with Samuel Garland, Jr., surviving executor, recorded in Will Book "E," page 145, in said Corporation Court.

Teste:

S. G. WINGFIELD, Clerk.

Deposition of A. E. Willis, 15th May, 1894.

The deposition of A. E. Willis, taken before Chas. H. Sackett, a Commissioner in Chancery of the Circuit Court of Lynchburg, at his office, No. 37, in the Law Building, in the city of Lynch-

burg, on the 1st day of May, 1894, in reference to a certain matter of enquiry now pending before said commissioner under a decree of said court, in the chancery suit of Garland's Adm'r. v. Burr Garland's Adm'r., &c

Present:—E. S. Brown, counsel for Mrs. Morriss' children, Burr Garland's Adm'r., &c., J. S. Diggs, counsel for Sam Garland's Adm'r.

Judge Diggs, counsel for Samuel Garland's administrator, objects to the taking of the depositions, because the case has already been submitted on the testimony already taken.

Reply by Mr. Brown: There has been no submission which was intended to shut any testimony on either side, which might be produced before the commissioner at any time, either before the taking or the closing of his accounts, and we have agreed to waive the time within which the commissioner is required to file his report.

The witness, A. E. Willis, being first duly sworn, deposes as follows:

1st Ques. (by E. S. Brown). Please tell us what is your age, what is your place of residence now, and where was it formerly, what is your occupation now and what was it formerly?

Ans. I am about 30 years of age; I now reside in Amherst county, Virginia; I formerly resided in Barnwell county, South Carolina; I have been planting all the time.

2d Ques. by same. When did you change your residence from South Carolina to Virginia, and say whether you have been in the habit of visiting South Carolina since you changed your residence to Virginia?

Ans. I came to Virginia in December, 1885. I go back to South Carolina on an average of more than once a year.

3d Ques by same. In answer to a preceding question you say your occupation has been that of a planter all of the time. Tell us what you were engaged in planting in South Carolina?

Ans. Cotton, principally, some corn.

4th Ques. by same. Tell us whether your operations and those of your father, with which you were familiar in your early life, were on a small or a large scale?

Ans. Ours were the largest in our section of the country.

5th ques. by same. Tell us whether cotton was the chief staple in that portion of South Carolina?

Ans. Yes, sir.

6th ques by same. Tell us what would be the proportion in the yield of ginned or baled cotton to cotton in the seed?

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Ans. In 1885, my last experience, from 1,200 to 1,250 pounds of seed cotton would make a 500-pound bale of cotton, provided it was small seed cotton. If it was large seed, it would take more. There is a difference. I turn out of cotton, owing to the soil of the land, whether it is rich or poor. The best land requiring less seed cotton to make the 500 pound bale.

7th ques. by same. What would you say would be the proportion to the large seed cotton?

Ans. Large seed, such as Jones' variety, from 1,400 to 1,500 pounds to the bale.

8th ques. by same. From your knowledge of cotton raised in the Southern States, about the time of the war, what would be your estimate of an average yield of ginned or baled cotton to seed cotton at that time?

Ans. I was not born until the last of the war. I commenced assisting in the management of cotton when I was twelve years old. My first recollections as to yield of lint from seed cotton was that it took from 1,500 to 1,600 pounds to make a 500 pound bale.

9th ques. by same. Tell us whether, since your first recollection, the character of cotton raised in the Southern States has been more towards the small seed kind or the large seed kind?

Ans. To the small seed kind. Up to a few years ago it was all cotton, but now as much attention is paid to the variety of cotton raised as most any other crop.

10th ques. by same. What is the average weight to the bale?

Ans. 450 pounds is considered the legal weight; sometimes it would go over 600 pounds, and sometimes not reach 400 pounds.

Cross-Examination.

1st X ques. Can you give an estimate of how many bales of cotton could be ginned out of, say 15,000 pounds of seed cotton, raised in Mississippi, before or in the early part of the war, without knowing anything of the land, the seasons, the kind of cotton, the gin or the ginner?

Ans. I never was in the State of Mississippi; don't know what variety of cotton they planted; don't know what gins they used, and, therefore, I could not state accurately about that, but from what I have read about cotton raising in that State, I should say it was superior to our State (South Carolina), and that their gins would be as good as we used, and that they would get as much lint out of the seed cotton as we did.

2d X ques. by same. Is there not a vast difference in the yield between cotton grown on high land and low grounds, or bottom land. I mean yield of lint cotton from seed cotton?

Ans. I have no experience with low land cotton, but I should judge that the yield would be greater on low land cotton, as my experience from cultivating high land cotton is that the better the land the better the yield.

Re-Examined by Mr. Brown.

1st ques. You spoke in your cross-examination about the character of gins used. Tell us whether there has not been an improvement in gins since 1860, and didn't the gins in 1885, the time to which you more especially referred in your examination in chief, enable you to get a better yield than was obtained from gins in your early recollection?

Ans. There has been a marked improvement in the yield of cotton. I am unable to say to what extent this is due to the improvements in gins, or to the improvement in seed and cultivation.

And further the deponent saith not.

A. E. WILLIS.

The deposition of E. S. Brown, taken before the same commissioner with reference to the same matter of enquiry on the 3d day of May, 1894.

Present:—J. S. Diggs, counsel for Samuel Garland's, Sr., Adm'r.

The witness, being first duly sworn, deposes as follows:

1st Ques. by Com'r. One of the subjects I am directed to enquire about in this investigation is the corpus of the legacy under the 9th clause of the will of Samuel Garland, Sr., and the disposition thereof. Please state anything you may know as to what the corpus of said legacy consisted of at the death of Burr Garland, and what disposition was made of the same?

Ans. My understanding from conversations with Chas. Y. Morriss, during his life, and with Mrs. Pauline B. Morriss, his wife, during her life, for whom I was counsel, some years preceding the death of each of them, was that after the death of Burr Garland the tract of land Called Tudor Hall came to their possession under the will of Samuel Garland, Sr., but that they had never received any personal property, as provided in the 9th clause of said will, nor any money on account of said profits, either from Burr Garland or his executor, that they had understood that Col. Wm. Garland, the executor in Mississippi, took charge of what he regarded the estate of Burr Garland. Whether any personal property specified in the 9th clause of the will went into the hands of Col. William Garland as executor of Burr Garland, they seemed not to know; they said that they had never received anything

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from him, and from their information he, W. H. Garland, was insolvent and that nothing could be made out of him. The money that Chas. Y. Morris received from Col. Murrill which was reported to the commissioner was regarded, as I understood, both by him and Mr. Murrill to have been received by Mr. Morris as administrator of Burr Garland. The assignments by the children of Nicholas A. Garland to Burr Garland which are filed with the papers, and referred to in the answer of Chas. Y. Morris, trustee, and Mrs. Morris and her children, I understood, came to the hands of Chas. Y. Morris about the time of the death of Burr Garland. I cannot recall whether before or after Burr Garland's death, if I ever heard. I always understood from Chas. Morris and his wife that Burr Garland represented these legacies as having been purchased with moneys that he had made on Tudor Hall. I have no knowledge of what the corpus of the legacy in the 9th clause of the will consisted other than what is contained in the will itself and the record in Mississippi of the selection by Burr Garland of Tudor Hall and the personal property mentioned in that record. Whether any of this personal property mentioned in the record, which has been filed with the papers in this cause, remained on the death of Burr Garland or had been previously disposed of, I do not know, I never had any reason to believe from anything I heard from anybody, that any of the personal property mentioned in the 9th clause ever came to the hands of Chas. Y. Morris, or of Mrs. Morris or of her children.

Judge Diggs objects to the foregoing as incompetent and irrelevant.

Cross-examined by Judge Diggs, counsel for Samuel Garland's administrator.

1st Q. on cross ex. Did Morris' trustee ever make any claim against Burr Garland's Mississippi executor, or any one else for the personal property which, on the death of Burr Garland, passed to him as remainderman?

Ans. He corresponded a short time after Burr Garland's death with Col. William Garland, and after I was employed by Chas. Y. Morris I sought, by correspondence, to get information about Col. Garland, the executor, and I could learn nothing directly from him in my correspondence. I never received any letter from him, but all that I could get from others was that nothing could be made out of him. His letters to Chas. Y. Morris, and I think possibly some of them to Mrs. Morris, we were chiefly in regard to the rental value of Tudor Hall. I cannot now remember that there was

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any allusion in any of these letters that I ever saw to any personal property in the 9th clause of the will of Samuel Garland.

2d Ques. by same. Do you know of any claim being made by Morris, trustee, during the life of Burr Garland, on account of the surplus profits, as claimed as stated in this suit?

Ans. No, I do not.

3d Ques. by same After the death of Burr Garland did you hear from Morris, trustee, any statement of the amount of such claim?

Ans. After the death of Burr Garland, I cannot remember how long after, I was engaged by Chas. Y. Morris to look to the will of Samuel Garland, Sr., as to the 9th clause, and I did so, and I thought that I understood him to claim the profits under the 9th clause and the property given by that clause. I know nothing about any claim prior to that time, and at the same time I examined the 5th clause of Samuel Garland's, Sr., will in regard to the claim made by him for his wife and children under that clause. I knew nothing about any claim under that clause prior to that time. I have no recollection as to anything being said as to the figures to which the claim would amount to under the 9th clause, and only as to 5th clause from the figures specified in that clause.

4th Qnes by same. Was any claim made by Burr Garland, or any one else during his life, against the estate of Samuel Garland, Sr., by virtue of the assignments to him of the Nicholas Garland legacies?

Ans. Not that I know of. I had no connection with this matter until after Burr Garland's death.

5th Ques. by same. How, and by whom, were the claims on account of these assignments first asserted?

Ans. So far as I know, the first effort to collect the legacies embraced in these assignments was made by me to John F. Slaughter, administrator of Sam'l Garland. I applied to him and he promised to pay them, but deferred doing so, sometimes for one reason and sometimes for another. At one time he said he would then pay those legacies, and I think a receipt was prepared, but he again declined, and thus it was put off from time to time.

6th Ques. by same. In whose name was the claim made, and whose receipts were offered to Mr. Slaughter?

Ans. My understanding was that these assignments were for Mrs. Morris and her children. I have no recollection now as to the name presented to Mr. Slaughter in my conversations with him. I appeared in my interviews with Mr. Slaughter as counsel for Chas. Y. Morris, as trustee and as administrator, and I have no recollection now of any question at all between Mr.

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Morris, and as trustee, or Mrs. Morris, or her children, and the personal representatives of Samuel Garland, Sr., or the estate of Samuel Garland, Sr. in regard to these accounts. I state what I suppose was the attitude of both parties in regard to these.

7th Ques. by same. Do you know anything of the origin of these bonds, or of the condition of same, at the time they were assigned?

Ans. I know nothing except what I saw on the face of the bonds themselves. I think possibly that I examined them some years ago, whether at the time I was first employed by Chas. Y. Morris or at some intermediate time, I don't know. I have a rather hazy impression now, that there was interest paid on several of them about the commencement of the war.

8th Ques. by same. Could there have been any interest due on said bonds at the time they were assigned to Burr Garland; and if so, who would be entitled to such interest?

Ans. Presumably the bonds carried interest up to the time the assignments were made, and the question who would be entitled to the interest would depend upon the terms of the purchase; if the bonds were purchased and interest not included, then the purchaser would only be entitled to the principal, if bought at their face, the purchaser would be entitled to the interest. I suppose these assignments must be construed in connection with the recitals on the bonds, if there were any recitals; if there are not, and none were intended to be made, why I can give no opinion.

9th Ques. by same. The commis'r exhibits to you Garland bonds (which are filed with his report) numbers 15, 33, 34, 45, 57, 60, 68, 74, 98, and says, state all you know about any payment or offer of payment that has been made of the principal or interest on the same, or any of them.

Ans. I do not know anything except I saw some mark on one or more of the bonds as to interest having been paid to a certain date. I think they were on some from three to five, perhaps more, of the bonds, possibly every one of them, but I think not. I am not confident.

10th Ques. by same. The Commissioner, exhibiting to you the assignments on these bonds, asks you to state all you know about the consideration paid for them, or anything connected with their purchase or acquisition.

Ans. I don't know anything except what appears on the face of the papers themselves; I know nothing further at all about them.

11th Ques. by same. Do you know anything about the manner in which these legacies have been treated by Samuel Garland's administrator in his accounts; or know whether he has included them as assets due the estate, or not?

Ans. I do not.

12th Ques. by same. If no consideration was paid for these assignments, and they are mere vouchers and the legacies not paid, who, in your opinion, would be entitled to the bonds.

Ans. If the facts are so, I should say the parties who have title to the bonds now, if the legacies are not paid would be the legatees, who could come in and demand them as their property at any time and get them.

And further this deponent saith not.

E. S. BROWN.

Slaughter and myself as to whether it was in the character of trustee or administrator.

7th Ques. by same. Do you remember when this was?

Ans. I cannot recall the year in which I first made the application to Mr. Slaughter, but I may safely say it was several years before the suit of Sam Garland's administrator v. Burr Garland's administrator, brought by Gen. Early, was instituted. When that suit was instituted it was a matter of surprise to me, for I had heard nothing about the proceedings in Mississippi on which the decree mentioned in that suit was founded.

8th Ques. by same. In what name was the petition filed asking for a decree for the payment of these legacies?

Ans. I do not know of any petition being filed for the payment of the legacies to which the question refers. I have not seen any such petition, and do not suppose one would have been filed by any attorney other than myself.

9th Ques. by same. I allude to the petition referred to in the original bill in this cause on page 9 in the printed record?

Ans. I have looked to the portion referred to in the question, and I answer that I think the statement about the petition is a misapprehension. I do not think any such petition has ever been in the record. If there has been, I have no knowledge of it.

10th ques. by same. Do you mean to say then that the claim of Morris, trustee., and of Burr Garland's estate on account of the surplus profits and said legacies were not asserted in any court until this suit was brought, and only in this suit?

Ans. It was asserted, as I understand it, in a general claim to all that Mrs. Morris and her children were entitled to under the 9th clause of Samuel Garland's will in the answer of Charles Y. Morris and his wife, Paulina B. Morris, in the original suit, soon after the death of Samuel Garland, Sr., instituted by Samuel Garland, Jr., his executor, to construe the will of Samuel Garland, Sr. This claim, in this answer covers, as I understand it, all that Mrs. Morris and her children may be

entitled to under the 9th clause of the will. After the institution of the suit of Samuel Garland's Administrator vs. Burr Garland's Administrator by General Early, Charles Y. Morris claimed, in answer to his bill, that the legacies of Nicholas Garland's children, or eight of said legacies, were purchased with the profits that had accrued under the 9th clause of Samuel Garland's will, and the said legacies should be treated as a part of the trust funds coming to him for Mrs. Morris and her children after the death of Burr Garland under the 9th clause of Samuel Garland's will; but not that the amount constituted all the profits to which he was entitled. The expression "surplus profits," used in the question might mean all the profits. The question as to these assignments of the legacies was

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for the first time put in litigation by the bill filed by General Early, and the position of Morris, trustee, in regard to these assignments was distinctly made in answer to that bill, and this position is in accord with his position prior and subsequent to that time, and with that now held by these parties. I am not now pressing the proof of the sales of cotton from Tudor Hall, going into the purchase of these legacies, and of which I think there is proof in the record, because the profits from Tudor Hall and Barrens have been so blended that we cannot discriminate between the two, and as Mrs. Garland has assigned the profits of Barrens to Mrs. Morris' children, I think it simplifies the matter to seek to recover whatever profits we can show Burr Garland owed from the two. The contention that the profits went into the purchase of these legacies was first asserted in the suit in answer to General Early's bill, which was the first time that there was any litigation on this point, as far as I know, but that these legacies were bought with profits from Tudor Hall was always claimed by Charles Y. Morris from my connection with the matter.

11th ques. by same. In the foregoing answer I understand you to mean "Yes" to my question?

Ans. No, I did not mean to make my answer the monosyllable "Yes," but I meant to explain what I understood in regard to the time when, on behalf of Mrs. Morris and her children, the claim was first made to profits in the 9th clause of the will, and the time when I understand the litigation first commenced about the assignments to Burr Garland of the legacies of Nicholas Garland's children, and I desired to explain that the litigation about these legacies being bought by Burr Garland commenced with the bill filed by General Early, and not on any petition filed by Charles Y. Morris or Mrs. Morris and her children, as alluded to in a former question.

12th ques. by same. Then the first litigation in respect to the profits and in respect to the legacies was in this suit?

Ans. The filing of the original bill to construe the will of Samuel Garland, Sr., is the beginning of the litigation, as to the rights of Mrs. Morris and her children in the whole of the legacy under the 9th clause of the will, the corpus of the legacy and the profits and all subsequent suits are but branches of the original suit, and I consider that the claim of Mrs. Morris and her children to the profits started with the first suit, brought within a year after the death of Samuel Garland, Sr.

13th ques. by same. Did any assets of Burr Garland's estate come to the hands of any of his personal representatives in Virginia other than C. Y. Morris?

Ans. None that I ever heard of, and none came to the hands of

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C. Y. Morris that I ever heard of, except what has been reported in the record.

14th. Is the personal representative of Burr Garland controlling and directing the conduct and defense of this suit?

Ans. My understanding is that Judge Wm. J. Robertson and I have been, and are now, counsel for the administrator of Burr Garland and the trustee and the beneficiaries under the 9th clause of the will, and that we direct and control the defense for the administrator (no matter who may have been the administrator successively and now) and the beneficiaries in the trust under the 9th clause of the will.

And further this deponent saith not.

EDWARD S. BROWN.

Office of Commissioner in Chancery,

No. 37, Law Building, Lynchburg, Va.

May 9th, 1894.

To the Hon. John D. Horsley, Judge of the Circuit Court for the City of Lynchburg:

Your commissioner respectfully reports that in pursuance of the decree in the chancery suit of Samuel Garland's adm'r. vs. Burr Garland's adm'r., &c., rendered at the May term, 1893, of your Honor's said court, he fixed upon the 23d day of October, 1893, as the time, and this, his office, as the place, to take the several accounts required by said decree, and duly notified all parties interested, see notice herewith filed with service thereof by all parties acknowledged by counsel endorsed thereon.

After working over the case a good deal last fall it was found that it would be impossible to get it ready for the fall term, and by consent of all parties it was adjourned over until this spring, and work thereon was resumed some weeks ago.

Your commissioner has found this to be one of the most difficult cases he has ever had to deal with, and he has devoted to it a great deal of time and labor, and has been aided very much in the discussions before him of the various points in the case by Judge Diggs, for Samuel Garland's estate, and Mr. E. S. Brown, for Burr Garland's estate and the children of Mrs. Morris. On the following twenty pages of this account will be found the several accounts ordered, and the result of his labors, all of which is

Respectfully submitted,

CHAS. H. SACKETT,

Commissioner.

Commissioner's fee, $140,

[paid by Revr. Buscho]

[for B. by & evt.]

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It was agreed between counsel that the case should be heard on this report without waiting ten days, that is, notwithstanding it had not been filed ten days before the term of court.

C. H. S.,

Com'r.

First.

An account of the legacy under the 9th clause of the will of Samuel Garland, Sr., both the corpus of the legacy and the profits thereof, from the death of the testator to the death of Burr Garland, other than his decent and comfortable support, and the disposition thereof.

First: Corpus of the Legacy and the Disposition Thereof.

This legacy was not separated from the residue of the Mississippi estate and selected and set apart to Burr Garland until September, 1864, for reasons set forth in his petition. It appears from the selection then made, a copy of which is filed as an exhibit with the deposition of John Shelton, that the corpus of said legacy then consisted of the following property:

All of Tudor Hall plantation, in Hinds county, Mississippi, (except a small portion thereof allotted to Mrs. Garland as a portion of her half), containing about 1638 acres.

40 slaves.

9 mules.

3 old horses.

5 head of cattle.

25 " " hogs.

1 four-horse wagon.

1 old show wagon.

1 horse cart.

1 lot of farming implements, all old, in bad order and worn out.

1,000 bu. corn, crop of 1863.

2,500 bu. of corn.

200 bu. of field peas.

500 bu. of potatoes. } Estimated crop of 1864 at Tudor Hall.

8,000 lbs. of fodder.

The slaves were all liberated by the result of the war. The personal property, other than crops embraced in said section, was either worn out in use or carried off by the armies. The crops on the place were either also carried off by the armies or consumed thereon. The stock on the plantation was reduced to

Burr Garland's riding horse, (see answer of Henry Shurlds to 34th cross-question propounded to him), and the outfit on the place had to be renewed except plows, (see answer of same witness to 38th question).

The gin house mill, other houses and part of the main building had been burned, so that at the close of the war the corpus of the legacy had been reduced practically to the portion of Tudor Hall plantation contained in Burr Garland's selection in this dilapidated condition as to the buildings and fences thereon.

At the death of Burr Garland the land itself passed into the possession of the remaindermen. What remained of the personal property that had been put upon the place after the war by Burr Garland was left there by him, (to the extent that he may have disposed of the same), when he came to Virginia, where he died in December, 1869. As to what became of this personal property so left upon the place by Burr Garland, as aforesaid, there is no proof before your commissioner, except what is contained in the deposition of Mr. E. S. Brown, who merely gives the statements made to him by Chas. Y. Morris, trustee, and Paulina B. Morris, his wife, that they never received any portion of it.

Your commissioner does not understand that any claim is now asserted against the estate of Samuel Garland, Sr., for any portion of the corpus of said legacy.

If such claim was asserted, your commissioner reports that the remaindermen should have taken charge of such property through their trustee, or asserted their right to it against the party into whose hands it passed.

Second Profits of the Legacy and Disposition Thereof.

From what has hereinbefore been stated with reference to the corpus of the legacy, it appears that said legacy was not selected and separated from the residue of the estate until September, 1864, and yet the decree under which your commissioner is acting directs him to take an account of the profits of said legacy from the death of Samuel Garland, Sr., to the death of Burr Garland. For a period, therefore, of about three years between the deaths of these respective parties, both for the years 1862-1863, and nearly all of 1864, what should constitute or compose the legacy had not been defined.

During this period of time, Burr Garland, as administrator c. t. a. of Samuel Garland, Sr's estate, settled ex parte accounts of his transactions, which appears to have been accurately kept and which show upon their face that he undertook therein to account for all sales of products of the estate, no matter from what source

derived, and without distinguishing between the sales from the different plantations. These ex parte accounts, Nos. 1 and 2, cover the entire period of the war, and hence the time, after his qualification to the allotment to Mrs. Garland of her half of the estate and the selection of the legacy by Burr Garland. So that any account of profits for the years prior to 1865 will have to be ascertained from these accounts, if it can be done.

It is conceded that there were no profits made in 1865. Coming, then, to the question of profits for the years 1866, 1867 and 1868, Burr Garland regarded all of the profits of Tudor Hall, after his selection as given without accountability therefor to any one. John Shelton, his Mississippi solicitor, concurred in this view as to his rights. It never seems to have been contemplated by any one that Burr Garland, or his estate, could be held liable for the surplus profits of the estate selected by him over and above a decent and comfortable support, until about ten years after his death, when the question was raised first and adjudicated in Virginia. Hence no account was ever kept by Burr Garland or anyone else of the receipts and disbursements from the Tudor Hall plantation after his selection thereof as aforesaid. The mere statement of these facts shows the difficulties with which your commissioner is confronted in attempting to execute this branch of the enquiry. In order to show what profits were made, the depositions of Henry Shurlds, Reuben Anderson, Robert Parker, James H. Tripp, R. M. Anderson, and probably some others, but these were the main ones, were taken. Reuben Anderson and Robert Parker were former slaves of Burr Garland's. These witnesses testify, some of them as to crops made, some give their estimates as to the rental value of the land, some value the rents at so much per acre for high land and so much per acre for low land; but there is practically no evidence as to what was required to restock the place with necessary stock of all kinds, and equip it with farming implements after

the close of the war, and the current annual expenses of running the plantation, taxes, &c., &c. As hereinbefore stated, in reference to the corpus of the estate, the plantation, at the end of the war, was in a dilapidated condition. The labor essential to operate it was in a disorganized condition. A condition of affairs existed peculiar to that section, and which made it extremely difficult for planters to operate their plantations successfully. So that your commissioner finds it impossible to state any account at all, even approximating accuracy as to the profits of the plantation after the war and up to the year 1869. Shurlds, the witness who was in a position to know most about the matter, and who had testified about the crops made in the various years in answer to the 45th cross-question pro-

pounded to him, said that he did not know of any farmers in that vicinity who made any money by their planting operations for the first four or five years after the war, and in his answer to 48th cross-question he says he hardly thinks Burr Garland did. R. M. Anderson, in answer to the 8th cross-question to him, says substantially the same thing.

At the close of the year 1868 it seems that Burr Garland stopped his farming operations, at least in large part, rented out the land, or the most of it, and in the summer of 1869 he came on to Virginia, where he died in December of that year. As to the rents of Tudor Hall for the year 1869, the proof is more definite as to the amount contracted to be paid therefor, but as Burr Garland died before receiving these rents, they could only have been legally collected by an administrator d. b. n., c. t. a. of Samuel Garland, Sr., in Mississippi, as such trustee under the 9th clause of the will, or by a new trustee specially appointed to carry out the provisions of said clause. If paid to W. H. Garland as executor of Burr Garland in Mississippi, they were improperly so paid, in the light of the decision in Virginia as to who were entitled to the same, and the remaindermen should have followed the amounts so paid into the hands of said executor.

Your commissioner therefore, reports that no liability rests upon the Virginia estate of Burr Garland for money collected by some one else on account of the rents of Tudor Hall for the year 1869, which money formed no part of his Virginia estate, and was collected after his death.

This disposes of the question of profits, except such, if any, as are embraced in the Mississippi decree for $64,130.88, which determined that sum to be due from Burr Garland's estate to the estate of his testator, Samuel Garland, Sr.

It seems to your commissioner that the practical question is, if any profits were made, what became of them? All of the witnesses who testify on the subject state that Burr Garland was a careful, prudent, economical man. It appears that when he died he had only $1,392.52 in money,

which passed into the hands of his Virginia administrator. (This is an error—$1,421.32 is the amount), which is directly traced as a part of the money in the hands of Aiken & Watt, of which more hereafter; and it also appears from the copy of his will, which was recorded in Mississippi, or rather from additions to said copy, that his estate in Mississippi was as follows:

Amount of inventories of personal property and debts:

In Rankin county, $768 00

In Hinds " 601 80

Debts, 407 09

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The personal property in Hinds county was doubtless the property left upon the Tudor Hall plantation, and the debts were most probably uncollected rent debts due from tenants on said plantation. This showing of the estate left by Burr Garland would seem to disclose the full measure of profits from all sources he realized after his report such as he had. The question as to the Nicholas Garland's children's legacies purchased by him, forming any part of his estate, is dealt with elsewhere.

Your commissioner is informed that the tract of land devised by Burr Garland to Dr. Garland and his wife and children either turned out not to be his property or was in some way recovered from the devisees under said will.

Second.

The Estate of Burr Garland, Dec'd., In Account with Chas. Y. Morris, Dec'd., his Adm'r.

1881.

May 1. By bal. due estate by adm'r.

as per report of com'r. Babcock

on page 66 of printed record. Interest Principal.

$807 63 $1,392 52

Interest on principal one year 83 55

$891 18 $1,392 52

1881.
Oct. 31. To amt. paid E. S. Brown,
att'y. for expenses and notary
fee taking deposition of A. M.
Garland, 50 00
Dec. 22. To am't. paid Chas. Carroll,
att'y. & N. P. fee for deposition of Jno. Glover, 10 00

1882.
May 1. To bal. due estate by adm'r., 891 18 1,332 52

$891 18 $1,392 52

1882.
May 1. By bal. due estate per contra 891 18 1,332 52
1894.
May 1. By interest on principal to 10
May, 1894, 961 41

May 10. Bal. due estate by adm'r., $1,852,59 $1,332 52
[1077-1/8 per. after Mary Garland] 7677.68
[1880 ? 29801.5] 1882.67
[29801.5 1882. S-2] for to judge.
[S-1 Sea.1?]

Mrs. Mary L. Garland was security upon the bond of Chas. Y. Morris as administrator of Burr Garland, and in that capacity was made a party to this suit. By the decree of the court of appeals in this suit, rendered 2d Dec., 1887, Chas. Y. Morris, as adm'r. of Burr Garland, dec'd., out of the assets of his intestate's estate was ordered to pay the cost of said appeal. This cost was paid by Mrs. Mary L. Garland, on the 11th day of July, 1888. And she is entitled to receive the same out of above balance.

Am't. cost paid by her 11th July, 1888, $254 99

Interest on same to 10th May, 1894, 89 20

$344 19

It is claimed by counsel for the children of Mrs. Morris that the legacies of Nicholas A. Garland's children, which were purchased by and assigned to Burr Garland, now constitute assets of the said Burr Garland's estate.

The effort to trace the purchase of said legacies from funds arising solely from the corpus of Tudor Hall has been abandoned. Now it appears that, as hereinbefore stated, at the close of the year 1868 the said Burr Garland determined to discontinue his farming operations. On the 9th day of December, 1868, he settled his third and last ex parte account as administrator c. t. a. of Samuel Garland, Sr.'s, estate, showing an indebtedness by him to said estate of $6,545.09. On the 3d day of February, 1869, he deposited $5,000 to his credit with Aiken & Watts in New Orleans, out of which he paid for six of said legacies by drafts on said firm. In addition to this $5,000 he had at least $1,100 elsewhere, for he paid $550 each for the remaining two of said legacies otherwise than through said firm. So that he had in hand substantially all of the $6,545.09, shown by his last settlement to be due by him.

It is fair to presume, and your commissioner reports, that said legacies were purchased and paid for by Burr Garland out of money belonging to the estate of his testator, Samuel Garland, Sr., and being so purchased and paid for, the liability of Samuel Garland's estate thereon ceased, and said legacies were extinguished, and the said Burr Garland's estate is only entitled to credit on the Mississippi decree against it for the actual amount paid by him for said legacies, and the same will be so treated hereafter in this account, in stating the indebtedness of Burr Garland's

estate. This is the manner in which the other two of said legacies which were purchased by J. F. Slaughter, the Vir-

[Second is M.L.Q. shows 19 int an avg. 99 note]

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ginia administrator of Samuel Garland, in stating his accounts in the other branch of this case were dealt with.

As my action on this branch of the case does not accord with the views of Mr. E. S. Brown, counsel for Mrs. Morris' children, the following special statement is made at his instance, showing the present value of said legacies:

Special statement showing the present value of the eight legacies to certain of the children of Nicholas A. Garland, made at the instance of Mr. E. S. Brown, counsel for the children of Mrs. Paulina B. Morris.

8 coupon, bonds of the East	
Tenn. & Va. Railroad Co. of	
$1,000 each,	$8,000 00
Interest coupon due 1 Jan., 1863,	240 00
Interest on same to 10th May, 1894,	$451 56
Interest coupon due 1 July, 1863,	240 00
Interest on same to 10 of May, 1894,	444 36
Interest coupon due 1 Jan., 1894,	240 00
Interest on same to 10 May, 1894,	437 16
Interest coupon due 1 July, 1864,	240 00
Interest on same to 10 of May, 1894,	429 96
Interest coupon due 1 Jan., 1865,	240 00
Interest on same to 10 May, 1894.	422 76

Interest coupon due 1 July, 1865, 240 00

Interest on same to 10 May, 1894, 415 56

Interest coupon due 1 Jan., 1866, 240 00

Interest on same to 10 May, 1894, 408 36

Interest coupon due 1 July, 1866, 240 00

Interest on same to 10 May, 1894, 401 16

Interest coupon due 1 Jan., 1867, 240 00

Interest on same to 10 May, 1894, 393 96

Interest coupon due 1 July, 1867 240 00

Interest on same to 10 May, 1894, 386 76

Interest coupon due 1 Jan., 1868, 240 00

Interest on same to 10 May, 1894, 379 56

Amounts carried forward, $4,571 16 $10,640 00

Special Statement.—Continued.

Amounts brought forward, $4,571 16 $10,640 00

Interest coupon due 1 July, 1868, 240 00

Interest on same to 10 May, 1894, 372 36

Interest coupon due 1 Jan., 1869, 240 00

Interest on same to 10 May, 1894, 365 16

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Interest coupon 1 July, 1869, 240 00

Interest on same to 10 May, 1894. 357 96

Interest coupon due 1 Jan., 1870, 240 00

Interest on same to 10 May, 1894,	350 76	
Interest coupon due 1 July, 1870,	240 00	
Interest on same to 10 May, 1894,	343 56	
Interest coupon due 1 Jan., 1871,	240 00	
Interest on same to 10 May, 1894,	336 36	
Interest coupon due 1 July, 1871,	240 00	
Interest on same to 10 May, 1894,	329 16	
Interest coupon due 1 Jan., 1872,	240 00	
Interest on same to 10 May, 1894,	321 96	
Interest coupon due 1 July, 1872,	240 00	
Interest on same to 10 May, 1894,	314 76	
Interest coupon due 1 Jan., 1873,	240 00	
Interest on same to 10 May, 1894,	307 56	
Interest coupon due 1 July, 1873,	240 00	
Interest on same to 10 May, 1894,	300 36	
Interest coupon due 1 Jan., 1874,	240 00	
Interest on same to 10 May, 1894,	293 16	
Interest coupon due 1 July, 1874,	240 00	
Interest on same to 10 May, 1894,	285 96	
Amounts carried forward,	$8,850 24	$13,760 00

Special Statement.—Continued.

Amount brought forward,	$8,850 24	$13,760 00
Interest coupon due 1 Jan'y, 1875,	240 00	
Interest on same to 10 May, 1894,	278 76	
Interest coupon due 1 July, 1875,	240 00	

Interest on same 10 May, 1894,	271 56	
Interest coupon due 1 Jan'y, 1876,	240 00	
Interest on same to 10 May, 1894,	264 36	
Interest coupon due 1 July, 1876,	240 00	
Interest on same to 10 May, 1894,	257 16	
Interest coupon due 1 Jan'y, 1877,	240 00	
Interest on same to 10 May, 1894,	249 96	
Interest coupon due 1 July, 1877,	240 00	
Interest on same to 10 May, 1894,	242 76	
Interest coupon due 1 Jan'y, 1878,	240 00	
Interest on same to 10 May, 1894,	235 56	
Interest coupon due 1 July, 1878,	240 00	
Interest on same to 10 May, 1894,	228 36	
Interest coupon due 1 Jan'y, 1879,	240 00	
Interest on same to 10 May, 1894,	221 16	

Interest coupon due 1 July, 1879,	240 00	
Interest on same to 10 May, 1894,	213 96	
Interest coupon due 1 Jan'y, 1880,	240 00	
Interest on same to 10 May, 1894,	206 76	
Interest coupon due 1 July, 1880,	240 00	
Interest on same to 10 May, 1894,	199 56	
Interest coupon due 1 Jan'y, 1881,	240 00	
Interest on same to 10 May, 1894,	192 36	
Amounts carried forward,	$11,912 52	$16,880 00

Special Statement.—Continued.

Amounts brought forward.	$11,912 52	$16,880 00
Interest coupons due 1 July, 1881,	240 00	
Interest on same to 10 May, 1894,	185 16	
Interest coupons due 1 Jan'y, 1882,	240 00	
Interest on same to 10 May, 1894,	177 96	
Interest coupons due 1 July, 1882,	240 00	
Interest on same to 10 May, 1894,	170 76	
Interest coupons due 1 Jan'y, 1883,	240 00	
Interest on same to 10 May, 1894,	163 56	
Interest coupons due 1 July, 1883,	240 00	
Interest on same to 10 May, 1894,	156 36	
Interest coupons due 1 Jan'y, 1884,	240 00	
Interest on same to 10 May, 1894,	149 16	
Interest coupons due 1 July, 1884,	240 00	
Interest on same to 10 May, 1894,	141 96	
Interest coupons due 1 Jan'y, 1885,	240 00	
Interest on same to 10 May, 1894,	134 76	
Interest coupons due 1 July, 1885,	240 00	
Interest on same to 10 May, 1894,	127 56	
Interest coupons due 1 Jan'y, 1886,	240 00	
Interest on same to 10 May, 1894,	120 36	
Interest coupons due 1 July, 1886,	240 00	
Interest on same to 10 May, 1894,	113 16	
Interest coupons due 1 Jan'y, 1887,	240 00	
Interest on same to 10 May, 1894.,	105 96	

Interest coupons due 1 July, 1887, 240 00

Interest on same to 10 May, 1894, 98 76

Amounts carried forward, $13,758 00 $20,000 00

Special Statement.—Continued.

Amounts brought forward, $13,758 00 $20,000 00

Interest coupons due 1 Jan., 1888, 240 00

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Interest on same to 10 May, 1894, 91 56

Interest coupons due 1 July, 1888, 240 00

Interest on same to 10 May, 1894, 84 36

Interest coupons due 1 Jan., 1889, 240 00

Interest on same to 10 May, 1894, 77 16

Interest coupons due 1 July, 1889, 240 00

Interest on same to 10 May, 1894, 69 96

Interest coupons due 1 Jan., 1890, 240 00

Interest on same to 10 May, 1894, 62 76

Interest coupon due 1 July, 1890, 240 00

Interest on same to 10 May, 1894, 55 56

Interest coupons due 1 Jan., 1891, 240 00

Interest on same to 10 May, 1894, 48 36

Interest coupons due 1 July, 1891, 240 00

Interest on same to May 10, 1894, 41 16

Interest coupons due 1 Jan., 1892, 240 00

Interest on same to 10 May, 1894, 33 96

Interest coupons due 1 July, 1892, 240 00

Interest on same to 10 May, 1894, 26 76

Interest coupons due 1 Jan.. 1893, 240 00

Interest on same to 10 May, 1894, 19 56

Interest coupons due 1 July, 1893, 240 00

Interest on same to May 10, 1894, 12 36

Interest coupons due 1 Jan , 1894, 240 00

Interest on same to 10 May, 1894; 5 16

$14,386 67 $23,120 00

14,386 67

Total, $37,506 67

The word "coupon", where used in the foregoing statement should be "coupons."

Third.

An account of the administration of the estate of Burr Garland, dec'd., by M. J. Day, the sergeant of Lynchburg, and as such administrator d. b. n. of said estate.

In respect to this account your commissioner reports that said administrator received no assets of said estate and made no disbursements on account thereof, and therefore he has no account to render.

Fourth.

An Account of all Debts Against the Estate of Burr Garland, deceased, and their priorities, if any.

S. H. Johnson, sergeant of the city of Lynchburg, and as such administrator d. b.n., c. t. a. of the estate of Samuel Garland, Sr., deceased.

Amount decree of the Chancery Court
for the Second District of Hinds
county, Mississippi, entered February term, 1874, in the matter of the
estate of Samuel Garland, Sr., in
final settlement of the accounts of
Burr Garland as administrator,
&c. (No. 1873), which decree has
been decided by the Court of Appeals
of Virginia to be conclusive, $64,130 88

Off.

The following sums paid by the said
Burr Garland to certain of the
children of Nicholas Garland for the
purchase of them of certain legacies
of bonds they were entitled to receive from the estate of Samuel
Garland, Sr., which legacies were
in the possession of the said Sam'l
Garland's Virginia administrator:

To N. A. Garland, 17 Feb'y, 1869, $500 00
Interest to, say 15 Feb'y, 1874, 149 83
To Lucy P. Roane, 23 June, 1869, 550 00

To Ellen D. Bushfield, 23 June, 1869, 550 00

To Elizb. A. Garland, 23 " " 550 00

Interest on $1,650 to 15 Feb'y, 1874, 460 07

To A. M. Garland, in his own right and as

guardian for Wm. B., Albert, E. G.,

and Caroline P. Garland, 26 June,

1869, 2,200 00

Interest on $2,200 to 15 Feb'y, 1874, 612 33 5,572 23

Balance due 15 Feb'y, 1874, 58,558 65

Interest on same to 10 May, 1894, 71,099 96

Total, $129,658 61

The above is a fiduciary debt, and is the only debt against the estate of Burr Garland proved before your commissioner.

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In this connection the attention of your commissioner has been called to a decree of the Court of Appeals for costs in this suit entered 30th April, 1891, amounting to $71.14 against the personal representative of Samuel Garland, Sr.

As the question involved in said appeal related more to the rights of Mrs. Morris' children under the 9th clause of the will of Samuel Garland, Sr., than to any interest of Burr Garland's estate, it would seem that said children are entitled to said costs, and that the same should not be credited upon the decree last aforesaid, and your commissioner so reports.

For reasons hereinbefore given, your commissioner has credited the amounts paid by Burr Garland for the legacies of Nicholas Garland's children on the decree rendered by the Mississippi court. Whilst that decree was a finalty as to all matters involved in the accounts of Burr Garland as administrator, it is perfectly apparent from the record that the matter of these legacies was in

no way involved in said settlement, nor was the attention of the court in any manner called to them. In fact, from the date of said decree and the time when the claim to said legacies was asserted in Virginia, and the manner in which they were asserted, it seems more than likely that the parties engaged in the controversy in Mississippi were not aware of the fact that Burr Garland had purchased them.

Your commissioner might well close this account just here. It is already responsive to the decree under which he is acting, but it is claimed by counsel for Mrs. Morris' children, that he should go farther and divide up the decree and see who is entitled to it, or any amount that may be realized from it, especially so, because the decision in the court of appeals was without prejudice to the rights of Mrs. Morris and her children. And it is claimed that some of the surplus profits of the legacy under the 9th clause of the will were carried into, and formed a part of, said decree for $64,130.88.

He will therefore attempt to do so. An analysis of the ex parte statements, and the final settlement of commissioner Baldwin, upon which the decree is based, is not difficult, so far as dealing with the figures is concerned, but after doing so, various questions arise as to how the component parts of said decree when thus separated should he dealt with. For instance, it will appear that much the largest portion of said decree is made up of the corpus of Samuel Garland, Sr's., estate.

Is Mrs. Garland, the widow, entitled to one-half of the amount realized from that portion? It is claimed by the residuary legatees that Mrs. Garland, having made her selection of her half of the estate in Mississippi in due form of law, and the same having been ratified and confirmed by the court, she is bound by it, and is

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thereby estopped from claiming anything further from the estate on that account. It is also claimed that under the Mississippi law a widow is not entitled to any profits from the state until the allotment to her of her share thereof, but that she is only entitled to the use of the mansion, house and curtelege free of rent until that time. So that in dividing up the decree, whether the component parts thereof be corpus or profits, the question will have to be determined by the court as to Mrs. Garland's interest therein. Then again as to any profits, the further question arises as to the right of Mrs. Morris' children to any interest therein which accrued before the selection of the legacy under the 9th clause of the will.

With this preliminary statement your commissioner will attempt to show how the Mississippi decree was made up, with respect to the corpus of the estate or the profits of the estate.

Items which Make Up the Mississippi Decree.

(1) Confederate notes and bonds for which the administrator had received credit in his ex parte, but with which he was charged by commissioner Baldwin, $15,020 00

First Ex Parte Account.

There are two items in this account which form a part of the corpus of the estate, to-wit:

(1). Note of J. W. & W. A. Percy, $4,644 00

(2) Teams and wagons impressed, 2,700 00

The confederate notes and bonds embraced in this account only amounted to $6,000, so that all other items of credit to the estate and $1,344 of above two items were expended and paid out by the administrator. Therefore the $6,000 being unexpended balance of above two items is corpus of the estate.

Second Ex Parte Account.

Every item of credit to the estate in this account is either products of the farms or hire of the slaves. So that the $9,020 with which administrator is charged by commissioner Baldwin, is profits— that is products of the farm and hire of slaves— and said item with the $6,000 above mentioned make up the above item of $15,020.

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Third Ex Parte Account.

Every item of credit to the estate in this account is from the sales of cotton. It is simply impossible for any one to say with any degree of certainty, from the evidence in this case, where this cotton came from, either as to the time when it was made or the plantation upon which it was raised.

Amount forward, $15,020 00

Items Which Make Up the Mississippi Decree.— Continued.

Amount brought forward, $15,020 00

Some indications in the testimony seem to point to its having been made at least in part since the war, and others as being on hand at the close of the war, still others as being on hand at the death of Samuel Garland.

Burr Garland himself, by his settlement of his account in his lifetime, said that it belonged to the estate of Samuel Garland.

It seems incredible that he, a sensible business man, should have in December, 1868, settled his account as administrator of Samuel Garland's estate, and credited his testator's estate by cotton raised on either Tudor Hall, which he had selected 1864, or on Barrens, which had been Mrs. Garland's individual property ever since the same year. So that your commissioner reports that said cotton embraced in said third ex parte account belonged to the estate of Samuel Garland, Sr.

The following items embraced in said decree arose from the sales of said cotton:

Bal. due by administrator per 3d acc't., $6,545 09

Interest on same, 2,045 33

Items allowed in said account, but disallowed by commissioner, and which would swell said balance 1,289 86

163 60

488 46

85 59

41 55

10,659 48

Amount received of D. J. Brown for cotton sold 3,000 00

As to this item, it was embraced in the appraisement made in January, 1863, for it was burned in July, 1863. There is considerable doubt from the testimony as to when it was raised, but the

Amount carried forward, $28,679 48

Items Which Make Up the Mississippi Decree.— Continued.

Amount brought forward, $28,679 48

most reasonable solution of the matter is that it was of the crop of 1862, and your commissioner so reports, but which plantation it was made on cannot be stated.

The balance of the decree is made up of the corpus of the estate as appraised, 35,451 40

Amount of decree, $64,130 88

As to Last Item in Above

Administrator is charged by Commissioner Baldwin with appraisement in Hinds county, 178,832 25

" Coahoma " 20,492 00

$199,324 25

And he is only credited by slaves emancipated and personal property selected by himself and Mrs. Garland to the amount of 157,950 00

$41,374 25

This demonstrates that a large portion of said decree is made up of the corpus of the estate as appraised.

The difference between $41,374.25 and $35,451.40, the amount embraced in the decree, is made up of commissions allowed administrator and a few small items allowed by Commissioner Baldwin.

Recapitulation of Mississippi Decree.

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(1) Profits of estate,
that is, products of
the farms, without
distinguishing be-
tween them and
hires of negroes
prior to September,
1864, when the allotment and selection were made.

(1) From ex parte account, No. 2, $9,020 00

(2) Cotton sold D. J. Brown, 3,000 00

$12,020 00

(2) Corpus of estate.

(1) From ex parte account, No. 1, $6,000 00

(2) From ex parte account, No. 3, $15,659 48

Less.

Credit given administrator on page 14 of this report for am't and interest paid by him for legacies to the children of Nicholas Garland, 5,572 23 5,087 25

(3) From Commission Baldwin's acc't, 35,451 40 46,538 65

Balance, principal, due by Burr Garland, administrator, page 14, $58,558 65

Memo.—If the court will determine the right of Mrs. Garland to any portion of the decree, whether of corpus or profits, and also the right of Mrs. Morris' children to any portion of the profits embraced therein, all of which accrued before the selection of the legacy in 1864, a statement can be made at the bar of the court, dividing out the balance due from Morris, administrator, to Burr Garland's estate.

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Mrs. Garland was improperly paid from the Mississippi estate a year's allowance of $3,000, and she also received certain articles of personal property to the value of $250, for which she should be held to account.

The attention of the court is also called to the fact that Burr Garland paid Mrs. Mary L. Garland on the 13th day of ———, 1869, $1,000 by draft on Aiken & Watt, on account of some of his transactions with her.

Samuel Garland's Ex'or

v.

Mary L. Garland.

and

Samuel Garland's Adm'r

v.

Burr Garland's Adm'r.

By consent of parties, it is ordered that these causes be submitted to the judge, to be heard in vacation, at such time as he may appoint, and for such decision and decree therein in vacation as might be made in term, and leave is reserved to the parties in the meantime to take such exceptions to the report of Commissioner Sackett filed the 9th of May, 1894, as they may deem advisable; and the receivers, R. T. W. Duke and J. S. Diggs, are directed, from the funds in their hands, to pay such taxes as are, or may be, assessed on said funds respectively, exclusive of costs and penalties.

But this submission of the two causes entitled above is without prejudice to either party to move in vacation that they be separated, and for such decree in vacation in either or both of them as might be made in term.

We consent to this decree.

J. S. DIGGS,

For Plaintiffs in Both Cases.

E. S. BROWN,

Attorney for Burr Garland's Administrator, Mrs. Morris' Administrator and Her Children, and Mrs. Mary L. Garland.

Pages 741-760

Garland's Adm'or et als. v. Garland's Adm'or et als. 117

Answer of Defendants' to Original and Amended Bills.

Filed August Rules 1893.

The answer of M. J. Day, late sergeant of Lynchburg, and as such adm'r of Burr Garland, deceased, and W. V. Wilson, adm'r of Paulina B. Morriss, dec'd, and John Preston Cocke, adm'r of Charles Y. Morriss, Jr., dec'd, and adm'r of William M. Morriss, dec'd, and D. S. Cates, sheriff o f Richmond, and as such adm'r of Richard G. Morriss, dec'd, and S. H. Johnson, sergeant of Lynchburg, and as such adm'r of Mary A. Payne, dec'd, to the original bill filed in the Circuit Court of the city of Lynchburg, by Sam'l Garland, Jr., surviving exo'r of Sam'l Garland against Mary L. Garland and others, and the amended bills and bills of revivor, filed in said suit, and to the petition of Gilbert S. Meem, adm'r of Ann P. Garland, dec'd, filed in said suit and the suit of Sam'l Garland, Sr.'s administrator vs. Burr Garland's administrator which suits were united.

These defendants, responding to the scire facias issued against them come and answering said original and amended bills and bills of revivor and petition, say that they adopt and insist on the defences presented in the answer of Charles Y. Morriss, trustee and Paulina B. Morriss, and the answer of Burr Garland to said original bill, and in the answer of Charles Y. Morriss, former, adm'r of Burr Garland, dec'd, and trustee for Paulina B. Morriss and her children filed in the suit of Sam'l Garland, Sr.'s administrator vs. Burr Garland's administrator, and in the answer of M. J. Day, late sergeant of Lynchburg, and as such administrator of Burr Garland, deceased, to said petitions heretofore filed in these causes.

These defendants say further that it was a misapprehension to suppose that the profits mentioned in the 9th clause of the will of Sam'l Garland, Sr., belonged absolutely to Burr Garland, but under the recent decision of the Court of Appeals all the profits from the death of Sam'l Garland, Sr., to the death of Burr Garland, from Tudor Hall and the 40 slaves and the personal property in said clause mentioned passed in trust to said Paulina and her children at the death of Burr Garland except what was consumed in his "decent and comfortable support."

These defendants say further that all the profits that came to the hands of Burr Garland from the Barrens' estate and the 84 slaves and other personal property of every kind assigned under the Mississippi laws, on her renunciation of the will, to Mary L. Garland were by her assigned to the children of said Paulina B. Morriss. A copy of said assignment is herewith filed as a part of this answer, marked M. L. G.

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These defendants pray that whatever the children of Paulina B. Morriss are entitled to be decreed to them, or to the adm'rs of those who have departed this life.

THE DEFENDANTS NAMED ABOVE.

By EDWARD S. BROWN,

their Att'y.

Mrs. Garland's Assignment to Mrs. Morris' Children;

"Marked M. L. G."

I, Mary L. Garland, widow of Sam'l Garland, Sr., deceased, in consideration of love and affection, do hereby give, grant and assign to the children of my deceased niece, Paulina B. Morriss, including her grand son, Sam'l G. Payne, in the place of Mary L. Payne, his deceased mother, the rents, issues and profits of the Barrens' estate in Hinds county, Mississippi, and of the teams and hands employed thereon, that went into the hands of Burr Garland as adm'r of Sam'l Garland, Sr., dec'd, or otherwise, to pass to them just as if the same had been profits as specified in the 9th clause of the will of Sam'l Garland, Sr., dec'd.

Given under my hand this 19th day of April, 1892.

MARY L. GARLAND, [Seal.]

State of Virginia,

City of Lynchburg, to wit:

I, Wm. V. Wilson, Jr., a notary public in and for the City of Lynchburg, in the State of Virginia, do certify that Mary L. Garland, whose name is signed to the foregoing deed, dated the 19th day of April, 1892, personally appeared before me in my said city and acknowledged the same.

Given under my hand this 19th day of April, 1892.

WM. V. WILSON, JR.,

Notary Public.

Virginia:

In the Clerk's Office of the Corporation Court for the City of Lynchburg, the 14th day of July, A. D., 1893.

This deed was presented and upon the annexed certificate of acknowledgment, admitted to record.

Teste: S. G. WINGFIELD, Clerk.

A Copy.

Teste: S. G. WINGFIELD, Clerk.

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Deed Book "W. W.", pa. 396.

Fee 25c. paid by E. S. Brown, Att'y.

S. G. W., Clk.

Order for Accounts Feb., 1892.

SAMUEL GARLAND, SR.'s Adm'r, } Order

vs. } Special Term,

BURR GARLAND'S Adm'r. } Feb., 1892.

The death of the defendants, Paulina B. Morris and Mary A. Payne being suggested, it is on the motion of M. J. Day, late sergeant of Lynchburg, and as such adm'r d. b. n. of Burr Garland, dec'd, and by consent of said new parties it is ordered that this suit be revived in the names of W. V. Wilson, adm'r of Paulina B. Morriss, deceased, and D. S. Cates, sheriff of Richmond, and as such administrator d. b. n. of Richard G. Morriss, deceased, and S. H. Johnson, sergeant of Lynchburg and as such adm'r of Mary A. Payne, dec'd, and then this day this cause came on to

be further heard by consent of said new parties on the papers formerly read and on the decree of the Court of Appeals entered of record in this court the 25th of May, 1891, and was argued by Counsel. On consideration whereof the Court doth order that Henry F. Bocock or some other commisoner of this court do take the following accounts:

1st. An account of the legacy under the 9th clause of the will of Sam'l Garland, Sr., dec'd, both the corpus of the legacy and the profits thereof from the death of the testator to the death of Burr Garland other than his decent and comfortable support and of the disposition thereof, and M. J. Day, late sergeant of Lynchburg, and adm'r d. b. n. of Burr Garland, deceased, is directed to take and produce before said comm'r such evidence in addition to what is now in the record as may be necessary to enable him to take said account.

2nd. An account of the administration of the estate of Burr Garland by Charles Y. Morriss, dec'd, and the defendant Garland Morriss, adm'r of Charles Y. Morriss, dec'd, is hereby directed to render said account before said commissioner.

3rd. An account of the administration of the estate of Burr Garland by M. J. Day, late sergeant of of Lynchburg, and as such adm'r d. b. n. of Burr Garland, dec'd.

4th. An account of all debts of the estate of Burr Garland, dec'd, and their priorities, if any.

And said commissioner will make report thereof

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Order of Reference to Commisioner Sackett.

SAMUEL GARLAND, SR., Adm'r, &c. } Order of

vs. } Revival,

BURR GARLAND'S Adm'r, &c. } May Term, '93.

It being suggested to the Court that Jno. F. Slaughter has departed this life since the last term, on the motion of S. H. Johnson sergeant, and as such administrator de bonis non, with the will annexed of Samuel Garland, Sr., and on the motion of J. Singleton Diggs, administrator de bonis non, with the will annexed of Samuel Garland, Jr., and also administrator de bonis non of Chas.

R. Slaughter, deceased, they have leave to enter themselves as parties plaintiff respectively, and thereupon it is ordered that this cause be proceeded in to a final decree in the names of said parties as plaintiffs.

And it being suggested that Commissioner H. F. Bocock has departed this life it is ordered that Commissioner Chas. H. Sackett do execute the orders of account heretofore entered in this cause.

Defendants' Exceptions to Commissioners' Report.

Exceptions to Commissioner Sackett's Report, filed 9th of May, 1894.

SAMUEL GARLAND Adm'r

vs.

MARY L. GARLAND, &c.

and

SAMUEL GARLAND'S Adm'r

vs.

BURR GARLAND'S Adm'r, &c.

Mary L. Garland and the trustee for Paulina B. Morriss and her children and the administrator of Burr Garland and the administrator of Paulina B. Morriss and the children of Paulina B. Morriss except to Commissioner Sackett's report, filed the 9th of May, 1894, because:

1. The commissioner erred in reporting that the legacies in the 15th clause of the testator's will of "one thousand dollars of his East Tennessee and Virginia railroad bonds, or others of equal value, to each of his brother Nicholas A. Garland's children," which Burr Garland bought from them, should be treated as satisfied because Burr Garland was the Mississippi administrator of the testator. Rec., last printed, 105-6.

Only one estate whatever was done by any or either per. re p. was done by the estate -

These bonds were not assets in Burr Garland's administration but they were asssets in the hands of the Virginia pers. nal representatives of Samuel Garland, Sr.—his domiciliary executors and administrators—they were not embraced in the Mississippi administration; and the children of Nicholas A. Garland, who sold money livered to him, or his administrator, or the trustee for Mrs. Morriss and her children, desired that this be done.

2. Because the commissioner holds that the purchase by Burr Garland of eight of the coupon bonds, bequeathed to the children of Nicholas A. Garland to the benefit of the estate of Samuel Garland, Sr., instead of holding, as it ought to have done, that they were acquired and held by Burr Garland under the 9th clause of Samuel Garland's will, and not having been used for his support passed at his death to Paulina B. Morriss and her children—the record showing that the profits under the 9th clause were applied in said purchase. – where in the record.

3. The commissioner holds correctly that the profits from the Hinds county lands for the years 1863 and 1864 will have to be ascertained from Burr Garland's ex parte administration accounts for those years. The balances of receipts over expenditures for those years aggregate $15,020. Rec., last printed, 101-2 and 112-3; but the commissioner erred in reporting that this $15,020, which entered into the Mississippi decree for $64,130.88 belonged, except a small portion of the hires to Mrs. Garland, the widow, and Mrs. Morris and her children—between them there need be no separation of their respective shares, because Mrs. Garland has assigned all her interest in rents, issues and profits, accuring after the death of Samuel Garland, Sr., that went into Burr Garland's hands, to Mrs. Morriss' children—Mrs. Morriss then being dead.

4. The commissioner erred in reporting that the estate of Burr Garland is not liable for rents and profits from Tudor Hall after the war. Rec., last printed, 102-3.

The deposition of Tripp is positive, that between $2100 and $2200, in money, for the rent of 1869, on contracts with Burr Garland was paid to Burr Garland's executor, he, Burr Garland, having died in December, 1869, and the deposition and other testimony show that for each of the years, 1866, 1867 and 1868, the rental value of Tudor Hall was as much as it was in 1869. Burr Garland's holding the fiduciary relation to Mrs. Morriss and her children, that he did, under the 9th clause of the will, and his failing to keep any accounts of the rents and profits, justi-

The 2nd is that Comr. did not report what interest earnest for profits of sale on hall after mar.

fies them, in a court of equity, in taking a reasonable estimate of the rents and profits as the guage of his liability.

5. The commissioner erred in holding that the cotton accounted for in Burr Garland's 3rd ex parte annual account was the estate of Samuel Garland, Sr. This cotton came from Barrens, and Mrs. Garland, the widow was entitled to the proceeds of it. This 3rd account shows the sale of 100 bales of cotton, and shows on its face that it came from Barrens, and that it exceeded 1867 from Barrens, the sales amounting to $10,901.11. Rec., last printed, 54-6. The testimony and appraisement and allotment in September, 1864, show that a crop of cotton was made on the Hinds county lands in 1864 and three years after the death of Samuel Garland, Sr., and all the cotton from all sources, in the hands of Burr Garland, administrator, in September 1864, was 30,000 lbs. in the seed, of which 15,000 lbs. in the seed was allotted to Mrs. Garland, and 15,000 lbs. in the seed remained which could not have exceeded 12 bales. It is not conceded that the remaining 15,000 lbs. in the seed, or 12 bales, was the estate of Samuel Garland, Sr., yet if it were, and were taken from the 100 bales in the 3rd ex parte account, it would leave 88 bales, that could not belong to the estate of Samuel Garland, Sr., but did belong to Mrs. Garland.

The selection by Burr Garland, under the 9th clause of the will, in September, 1864, took all the personal estate of Samuel Garland, Sr., in Mississippi, not embraced in the one half allotted to Mrs. Garland, except some slaves then virtually free, and the 15,000 lbs. of cotton in the seed, 12 bales, raised in 1864, and not a part of his estate. Cotton becomes of the crushed house Correct-text to seed become in August &c.

6. The commissioner erred in failing to report Burr Garland's indebtedness for the proceeds of the sale of the 15,000 lbs. of seed cotton allotted to Mrs. Garland in September, 1864, then valued at $2250, and the 1000 bushels of corn allotted to her, then valued at $3000. Rec., last printed, 30-1.

Where is any proof of lbs. liability for either?

7. The commissioner erred in holding that Mrs. Garland should be required to account for $3000, the one year's allowance, and $250 the value of certain articles, exempted to the widow under the Mississippi statutes. Rec., last printed, 116. The $3000 that she received (Rec., last printed, 45, 46 and 55) was out of profits to which she was entitled from the Barrens estate, and the $250 was below the value of articles exempted under the Virginia laws.

8. The Mississippi decree simply ordered the transmission of the $64,130.88 to the personal representative of Samuel Garland,

Shelton report that Mrs. C. liable for mo & reo-

f - Sh than said how much of that profits is the decree

[Page 123]

Sr., in Virginia, leaving its distribution to be determined here. The commissioner should have reported the amount due from Burr Garland on hires, rents, issues and profits between the death of Samuel Garland, Sr., and the death of Burr Garland, to Mrs. Morriss and her children and Mrs. Garland, the widow, and how much thereof entered into the balance of $64,130.88, ordered to be transmitted to Virginia.

9. The commissioner should have reported that after deducting from the $64,130.88, the amount that entered therein from the hires, rents, issues and profits. to which Mrs. Garland and Mrs. Morriss and her children were entitled, in whatever recovery might be made on the residue thereof, from the estate of Burr Garland by the estate of Samuel Garland, Sr., that Mrs. Garland, his widow, in virtue of the renunciation of his will, is entitled to one half of it.

10. The commissioner erred in losing sight of these legal and equitable rights of the parties:

I. That the rights of Mrs. Garland, the widow, are paramount to those of every legatee.

II. That, by the 10th clause of the will, the legacy to Mrs. Morriss and her children under the 9th clause is preferred to all subsequent legacies.

III. That the residuary legatees are not entitled to any of the East Tennessee and Virginia railroad bonds until those bequeathed to Nicholas A. Garland's children have been first taken out from the bonds of the estate, and that they were entitled to no part of the testator's Mississippi estate except what might be left after the widow had got one-half, even one-half of what Burr Garland trustee had made his selection in September, 1864, under the 9th clause of the will.

EDWARD S. BROWN.

WM. J. ROBERTSON,

Att'ys for Mrs. Garland and the Trustee for Mrs. Morriss and her Children and the Adm'r of Burr Garland and the Adm'r of Mrs. Morriss and Mrs. Morriss' children.

Plaintiff's Exceptions to Commissioner's Report.

Exceptions of Samuel Garland's Administrator to Commissioner Sackett's Report.

SAMUEL GARLAND'S Adm'r

vs.

BURR GARLAND'S Adm'r et Als.

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The plaintiff, Samuel Garland's administrator, excepts to the report of Commissioner Sackett, filed May 9th, 1894, in the following respects and to the following extent only:

1st. To so much of the statement of the account of Chas. Y. Morriss as administrator of Burr Garland as credits the administrator with the items of $10 and $50.; because said items being expenditures made in the conduct of this suit were for the benefit of Morriss trustee for his wife and children, and in no sense a proper credit to the administrator.

2nd. To all the statements and accounts made by the commissioner which are not embraced in the order of accounts; the same being unnecessary, and in some respects incorrect, and without evidence to support them. Respectfully,

S. H. JOHNSON,

Adm'r d. b. n. c. t. a. of Samuel Garland.

By J. SINGLETON DIGGS.

Order Submitting for Vacation 30th of August, 1894.

SAMUEL GARLAND'S Adm'r

vs.

MARY L. GARLAND, &c.

and

SAMUEL GARLAND'S Adm'r

vs.

BURR GARLAND'S Adm'r.

By consent of parties, it is ordered that these causes be submitted to the judge to be heard in vacation, at such time as he may appoint, and for such decision and decree therein in vacation, as might be made in term. But this submission of the two causes entitled above is without prejudice to either party to move in vacation that they be separated and for such decree in vacation in either or both of them as might be made in term.

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Part 4th.

Garland

Garland's Adm'r, &c., vs. Garland's Adm'r, &c.

D. M.--96 U.

From the Circuit Court of the City of Lynchburg.

WARE, DUKE & TAYLOR, PRINTERS, 1208 MAIN STREET, RICHMOND.

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IN THE

SUPREME COURT OF APPEALS

OF VIRGINIA.

RICHMOND.

GARLAND'S ADMR, &c., vs. GARLAND'S ADMR, &c.

To the Honorable Judges of the

Supreme Court of Appeals of Virginia:

Your petitioners, M. J. Day, sergeant of Lynchburg, and as such adm'r de bonis non of Burr Garland, dec'd, and as such substituted trustee for Paulina B. Morriss and her children, in place

of Charles Y. Morriss, Sr., dec'd; Paulina B. Morriss, in her own right, and as executrix of Richard G. Morriss, dec'd; Garland Morriss, Walter C. Morriss; Mosby H. Payne, and Mary A. Payne, his wife; John Preston Cocke, adm'r of Charles Y. Morriss, Jr., dec'd, and adm'r of William M. Morriss, dec'd; T. L. Courtney, Jr., and Rebecka T. Courtney, his wife; Walter Smith and Juliette Cornelia Smith, his wife; and Lawrence B. Morriss, infant son of Charles Y. Morriss, Sr., dec'd, and Paulina B. Morriss, his wife, by Edward S. Brown, his guardian ad litem, respectfully represent that they are aggrieved by a decree of the Circuit Court of Lynchburg, rendered at November term, 1888, at the suit of John F. Slaughter, adm'r de bonis non of Sam'l Garland, Sr., with his will annexed, against your petitioners and Mary L. Garland. This case has heretofore been before the Court of Appeals, and said court rendered a decree therein on the 2d of Dec., 1887.

[Page 2]

A transcript of the record subsequent to the former appeal is herewith exhibited. It shows that after said decree was recorded in the lower court the plaintiff amended his bill and made your petitioners defendants.

The contest between the plaintiff and the defendants hings on the construction of the 9th clause of the will of Sam'l Garland, Sr., dec'd, and it raises a question as to the funds with which Burr Garland purchased the legacies of eight of the children of Nicholas A. Garland under the 15th clause of said will.

The 9th clause of the will is as follows: "My favorite brother, B. Garland, raised by me, and long a resident of Mississippi, is, and has for a long time past been, embarrassed in debt by losses of trade in 1857 and liabilities as surety for others. It might be unsafe to devise property to him absolutely. I therefore set apart in trust in the hands of my executors, for the benefit of my said brother, either of my plantations in Hinds county, Barrens or Tudor Hill, whichever he may choose, and forty slaves in families—say, about twenty-five hands, balance heads of families, children, and house-servants—to be selected out of the stocks on both places; mules, horses, stock, &c., sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his (B. Garland's) use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts or liabilities, other than decent and comfortable support. At his death all the property in this clause is to pass to Charles Y. Morriss, in trust to the separate use of his wife, Paulina B. Morriss, and her children."

This clause was incorrectly copied in the first transcript. A true copy of it will be found on page 36 of the present transcript.

The matter submitted to the lower court, and what was intended to be determined by its decree, was the construction of the 9th clause. (See p. 26.)

Your petitioners contended that the testator did not give the estate or the profits under the 9th clause to Burr Garland absolutely; but that he set apart both the estate and the profits in the hands of his executors, to be held by them in trust during Burr Garland's life—the profits for the use of Burr Garland, so far as and no farther than might be necessary for his decent and comfortable support. At Burr Garland's death the executors were to turn over to Charles Y. Morriss, trustee, not only the estate, but the profits also which had not been consumed by Burr Garland as specified; that when the testator said in the

first part of the clause "it might be unsafe to devise property to him absolutely," and in the latter part "all the property in this clause is to pass to Charles Y. Morriss in trust," he referred not only to the estate, but to the profits not consumed in Burr Garland's decent and comfortable support.

The lower court was of opinion and decreed that in the property, except the profits, Burr Garland took a life estate, with remainder to Charles Y. Morriss, trustee, but that he took the profits absolutely, and that they were liable to all his debts alike, whether contracted for his decent and comfortable support or otherwise. (Transcript p. 29.)

Your petitioners are advised that, in so holding as to the profits referred to in said clause, the court erred to the prejudice of your petitioners.

In consideration whereof they pray that an appeal be allowed them; that the other parties be summoned as appellees, and that said decree be reviewed and reversed, and a decree rendered recognizing and confirming the right of your petitioners to all of said profits which were not consumed in the "decent and comfortable support" of said Burr Garland.

THE PETITIONERS,

By Their Counsel.

We are respectfully of opinion that the decree complained of is erroneous and should be reviewed and reversed.

WM. J. ROBERTSON,

EDWARD S. BROWN.

February 22d, 1889.

Appeal allowed and supersedeas awarded. Bond required in the penalty of $100, conditioned as the law directs.

T. T. FAUNTLEROY.

To the clerk of the Supreme Court of Appeals at Richmond.

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VIRGINIA:

Pleas before the Honorable John D. Horsley, judge of the Circuit Court of the city of Lynchburg, at the court-house thereof, on Thursday, the 15th day of November, 1888.

Be it remembered that heretofore—to-wit, at a Circuit Court for the city of Lynchburg, continued and held at the court-house thereof, on Tuesday, the 27th day of December, 1887—

John F. Slaughter, administrator de

bonis non with the will annexed

of Samuel Garland, Sr., deceased, Plaintiff,

against

Charles Y. Morriss, administrator with

the will annexed of Burr Garland, deceased, and Mary L. Garland, Defendants, } In Chancery.

In this case the following decree of the Supreme Court of Appeals of Virginia was received and entered of record—to-wit:

Virginia:

In the Supreme Court of Appeals, held at the State

page 2 court-house, in the city of Richmond, on Friday, the 2d

day of December, 1887.

John F. Slaughter, administrator de bonis

non with the will annexed of Samuel

Garland, Sr., deceased, Appellant,

against

Charles Y. Morriss, administrator with the

will annexed of Burr Garland, deceased,

and L. Garland, Appellees.

Upon an appeal from a decree pronounced by the Circuit Court of the city of Lynchburg, on the 5th day of December, 1881.

This day came again the parties by their counsel, and the court, having maturely considered the transcript of the record of

[Page 5]

the decree aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing, and filed with the record, that the said decree is erroneous. It is therefore decreed and ordered that the same be reversed and annulled, and that the appellees pay to the appellant his costs by

him expended in the prosecution of this appeal and supersedeas here; said costs herein decreed against the appellee, Charles Y. Morriss, administrator of Burr Garland, deceased, to be paid out of the estate of his intestate. But this decree is without prejudice to page 3 any right of action which Paulina B. Morriss may have in this or in an independent suit.

And this cause is remanded to the said Circuit Court for further proceedings to be had therein, with leave to the appellant to reinstate his bill in said court, or to amend the same, and make all parties deemed requisite.

Which is ordered to be certified to the said Circuit Court of the city of Lynchburg.

Appellant's costs in the Supreme Court of Appeals, $254.99.

A copy—Teste:

GEORGE K. TAYLOR, C. C.

At another day—to-wit, on the 1st day of February, 1888— came John F. Slaughter, administrator de bonis non with the will annexed of Samuel Garland, Sr., deceased, in the suit of J. F. Slaughter, adm'r &c. t. a. of S. Garland, Sr., vs. Burr Garland's adm'r, &c., into the clerk's office of said Circuit Court, and sued out his writ of summons in chancery against M. J. Day, sergeant of the city of Lynchburg, and as such administrator de bonis non with the will annexed of Burr Garland, deceased; Garland Morriss, in his own right and as adm'r of page 4 Charles Y. Morriss, Sr., deceased, and as trustee for Paulina B. Morriss and her children; Paulina B. Morriss, in her own right and as devisee and executrix of Richard G. Morriss, dec'd; Mosby H. Payne and Mary A., his wife; Richard T. Lacy and Virginia Lee, his wife; Rebecka Smith and Juliette Cornelia, his wife; Alex. C. Courtney and Elizabeth A., his wife; Walter C. Morriss; Lawrence Morriss, an infant under twenty-one years of age; John Preston Cocke, adm'r of Charles Y. Morriss, Jr., dec'd, and as adm'r of Wm. M. Morriss, dec'd; Mary L. Garland; Ed. A. Brown, guardian for Juliette Cornelia Smith and Lawrence Morriss, infants, returnable to the then first Monday in February next, to answer an original and amended bill in chancery exhibited against them, which said writ was returned duly executed upon all of said defendants except the defendant Walter C. Morriss.

[Page 6]

At another day—to-wit, at rules held in the clerk's office of said Circuit Court on the first Monday in February, 1888—came the plaintiff by his counsel, and filed his bill, which said bill is in the words and figures following—to-wit:

page 5 } Amended Bill.

To the Hon. John D. Horsley, Judge of the Circuit Court for the City of Lynchburg:

The amended bill of your orator, John F. Slaughter, administrator d. b. n. c. t. a. of Samuel Garland, Sr., deceased, and said J. F. Slaughter, administrator c. t. a. of Charles R. Slaughter, deceased, and said J. F. Slaughter, executor of Samuel Garland, deceased, respectfully represents that your orator, as administrator d. b. n. c. t. a. of Samuel Garland, Sr., heretofore filed his original bill in your Honor's said court against Charles Y. Morriss, administrator with the will annexed of Burr Garland, deceased, and Mary L. Garland, the surety of said Morriss, administrator, for the purposes set forth in said original bill, to which, as well as to the proceedings and decrees in said suit, which is now pending in your Honor's said court, reference is hereby made, and the same are adopted as part of this bill as fully as if here copied and repeated.

From these it will be seen that final decree made in said cause by this court, on appeal, reversed, "with leave to page 6 your orator to reinstate his bill or to amend and make all parties deemed requisite."

Your orator represents that by the will of S. Garland, Sr., the said Charles R. Slaughter and Samuel Garland, Jr., were made jointly and equally residuary legatees, entitled to all the estate or estates, real, personal, or mixed, of which said testator made no other disposition by the will, and that Charles R. Slaughter died in 1862, and your orator, J. F. Slaughter, was duly appointed and qualified as administrator of said Charles R. Slaughter, deceased. Said S. Garland, Jr., was killed in battle in September, 1863, having first probated his last will, which was duly proved and admitted to record, whereupon your orator qualified as executor of said S. Garland, Jr. Your orator further represents that since this suit was instituted Charles Y. Morriss, who was sued as administrator c. t. a. of Burr Garland, deceased, has departed this life, and that M. J. Day, sergeant of the city of Lynchburg, has been appointed administrator d. b. n. c. t. a. of said Burr Garland, deceased.

That Garland Morriss has qualified as administrator of said

Charles Y. Morriss, deceased, and as such is now

page 7 trustee for Paulina B. Morriss and her children under

the provisions of clause IX. of the will of S. Garland, Sr.

The children of Paulina B. Morriss are as follows: Garland Morriss, Richard G. Morriss, Mary A. Payne, wife of Mosby H. Payne; Virginia Lee, wife of Richard T. Lacy; Juliette Cornelia, wife of Walter Smith; Elizabeth A. Courtney, wife of T. L. Courtney, Jr.; Walter C. Morriss, Lawrence Morriss, Charles Y. Morriss, Jr., and Wm. M. Morriss, of whom Richard G. has died intestate and Paulina B. Morriss has qualified as his executor and is his devisee, &c. Charles Y. Morriss, Jr., and Wm. M. Morriss have also died intestate, and Jno. Preston Cocke has been appointed and has qualified administrator of each. The said Juliette Cornelia Smith and Lawrence Morriss are infants, and Edward S. Brown has been appointed their guardian ad litem in this cause.

Your orator here repeats, as if fully and particularly set forth here, all the statements and charges made and contained in his said original bill. He charges especially that Burr Garland, while acting as administrator of S. Garland, deceased, c. t. a., and at a time when he had in his hands a large amount

page 8 of funds which came to his hands as such personal representative, purchased from certain children of Nicholas Garland the legacies made to them by said S. Garland, Sr., in the 15th clause of his will; took from said legatees assignments to himself of the legacies, eight in number, all of which are filed as exhibits with the answer of said Charles Y. Morriss to the original bill. Your orator believes and charges that said legacies were purchased with funds in the hands of said Burr Garland and belonging to the estate of S. Garland, Sr., deceased, and that, whether purchased with such funds or not, the purchases enured to the benefit of said S. Garland's estate and operated to extinguish all liability on the part of his personal representatives to pay said legacies to any person whatsoever, and all that the representatives of Burr Garland can here claim, is that the amounts paid by him for said legacies shall be credited on the debt due by said B. Garland as administrator of S. Garland, Sr., deceased. Said debt has been fully ascertained and finally adjudicated in the courts of Mississippi and

page 9 Virginia, and the amounts paid for said legacies also appear in the records of this suit.

The only other estate of Burr Garland, dec'd, in this State, known to your orator, is the balance found to be in the hands of C. Y. Morriss, his adm'r, by report of Com'r Bocock, made under decree in this cause.

And now, being without remedy except in this court of equity your orator prays that M. J. Day, sergeant of the city of Lynch-

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burg, and as such adm'r de bonis non with the will annexed of Burr Garland, dec'd; Garland Morriss, in his own right and as adm'r of Charles Y. Morriss, dec'd, and trustee for Paulina B. Morriss and her children under the will of S. Garland, Sr., dec'd; the ——— Paulina B. Morriss, in her own right and as executrix of Richard G. Morriss, dec'd; Mosby H. Payne and Mary A., his wife; Richard T. Lacy and Virginia Lee, his wife; Walter Smith and Juliette Cornelia, his wife; Lawrence Morriss (the last two being infants, represented by Ed. S. Brown, guardian ad litem, in this cause); T. L. Courtney, Jr., and Elizabeth A., his wife; Wal.

page 10 C. Morriss; Jno. Preston Cocke, adm'r of C. Y. Morriss, Jr., dec'd, and of Wm. M. Morriss, dec'd; Ed. S. Brown, guardian ad litem for the infants as above stated, and Mary L. Garland, be made parties defendant to this and said original bills, and required to answer allegations of thereof, but an answer thereto on oath is hereby expressly waived; that, the premises considered, your Honor will require the debt due by Burr Garland, adm'r of S. Garland, Sr., dec'd, to be paid by his present and former personal representatives; that the amounts paid by Burr Garland for the legacies of eight of the children of Nicholas Garland shall be treated and accounted as paid on the said debt due by him as the adm'r c. t. a. of S. Garland, Sr., deceased, and so discharging and extinguishing said legacies, and that your Honor will grant all such other and further general aid and relief as this case may require and as in equity may seem meet, &c.

And, as in duty bound, he will ever pray, &c.

JNO. F. SLAUGHTER,

Adm'r d. b. n. c. t. a. of S. Garland, Sr., dec'd; as adm'r c. t. a. of C. R. Slaughter, dec'd, and as ex'or of S. Garland, Jr., dec'd.

KIRKPATRICK & BLACKFORD, } p. q.

DIGGS & MANSON,

And at another day—to-wit, at a Circuit Court for the

page 11 city of Lynchburg, continued and held at the courthouse thereof on Thursday, the 17th day of May,

1888.

On the motion of Edward S. Brown, the court doth assign him guardian ad litem for the infant defendants, Juliette Cornelia Smith and Lawrence B. Morriss, and leave is granted him to file the answer of said infants to the plaintiff's original and amended bills. And on the motion of M. J. Day, sergeant of the city of Lynchburg, and as such administrator de bonis non with the

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will annexed of Burr Garland, deceased; Garland Morriss, in his own right and as administrator of Chas. Y. Morriss, deceased, and as trustee for Paulina B. Morriss and her children; Paulina B. Morriss, in her own right and as devisee and executrix of Richard G. Morriss, deceased; Mosby H. Payne and Mary A., his wife; Richard T. Lacy and Virginia Lee, his wife; Walter

page 12 Smith; Alexander C. Courtney and Elizabeth A., his wife; Walter C. Morriss; John Preston Cocke, administrator of Chas. Y. Morriss, Jr., deceased, and as administrator of Wm. M. Morriss, deceased, and Mary L. Garland, they have leave to file their answers to the said bills, and the same are filed accordingly. To all which said answers the plaintiff replies generally.

The answer referred to in the foregoing decree are in the words and figures following—to-wit:

Answer of Infants by Guardian ad Litem.

The joint answer of Juliette Cornelia Smith and Lawrence B. Morriss, infant children of Charles Y. Morriss, Sr., dec'd, and Paulina B. Morriss, his wife, by Edward S. Brown, their guardian ad litem, to the original and amended bills exhibited in the Circuit Court for the city of Lynchburg by John F. Slaughter, adm'r de bonis non of Samuel Garland, Sr., deceased, against these defendants and others.

These respondents, in answer to said bill, by their

page 13 said guardian ad litem, say that they are infants and have no personal knowledge of the facts alleged. They refer to the answers of Paulina B. Morriss, their mother, and Mary L. Garland, and other adult defendants, and ask that the count will give them the benefit of all defences therein made; that the plaintiff shall be held to strict proof of all material allegations in his bill, none of which are admitted by these respondents, and that the court will protect their interests, and, having answered as far as they are advised it is material for them to answer, they pray that the court will decree to them their costs in this behalf.

JULIETTE CORNELIA SMITH,

LAWRENCE B. MORRISS,

By EDWARD S. BROWN,

Their Guardian ad Litem.

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Answer of Burr Garland's Administrator.

The answer of M. J. Day, sergeant of the city of Lynchburg, and as such administrator de bonis non of Burr Garland, deceased, to the original and amended bills exhibited by John F. Slaughter, administrator de bonis non with the will annexed of Samuel Garland, Sr., deceased, against the defendant and others in the Circuit Court for the city of Lynchburg.

This defendant, in answer to the original

page 14 and amended bills, says he has no personal knowledge of the matters therein alleged, but in defence of the estate of Burr Garland he refers to the answer of Charles Y. Morriss to the original bill and the answers of Paulina B. Morriss and Mary L. Garland and others to the original and amended bills, and he asks that all the averments therein contained be considered as parts of this answer, as fully and effectually as if each and every one of them were herein repeated. He also refers to the exceptions to the report of Com'r Bocock, and he asks that accounts be taken of all the indebtedness of Burr Garland and the priorities thereof, especially of the indebtedness to Paulina B. Morriss and her children and to Mary L. Garland, as set out in their answers, and that your Honor will determine the rights of all parties in and to the

page 15 estate of Burr Garland, and that the same may be administered under the control and direction of the court, and that your Honor will decree to this defendant the costs which he may expend in this behalf.

M. J. DAY,

Sergeant City of Lynchburg, and as such Adm'r of Burr Garland, dec'd.

Answer of Paulina Morriss and Others.

The answer of Paulina B. Morriss, in her own right and as executrix of Richard G. Morriss, deceased; Garland Morriss, in his own right and as administrator of Charles Y. Morriss, Sr., deceased, and as trustee for Paulina B. Morriss and her children under the 9th clause of the will of Samuel Garland, Sr., deceased; Mosby H. Payne, and Mary A., his wife; Richard T. Lacy and Virginia Lee, his wife; Walter Smith, husband of Juliette Cornelia (formerly Juliette Cornelia Morriss), infant daughter of Charles Y. and Paulina B. Morriss; T. L. Courtney and Elizabeth A., his wife; Jno. Preston Cocke, administrator of Charles Y. Morriss, Jr., deceased, and of Wm. Morriss, deceased, and Walter C.

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Morriss, to the original and amended bills exhibited against these defendants and others by Jno. F. Slaughter, administrator d. b. n. c. t. a. of Samuel Garland, Sr., deceased, and as adm'r c. t. a. of Charles R. Slaughter, deceased, and executor of Samuel Garland, Jr., deceased, in the Circuit Court for the city of Lynchburg.

These defendants, in answer to the original and

page 16 amended bills, rely on the averments made in the answer of Charles Y. Morriss to the original bill, and ask that they be considered as fully and effectually as if they were herein repeated. They ask it to be true as therein stated that the legacies to the children of Nicholas A. Garland, which were purchased by Burr Garland, were bought with profits which had accumulated in the hands of said Burr Garland in the legacy under the 9th clause of the will of Samuel Garland, Sr., deceased, to which profits the defendants, Paulina B. Morriss and her children, were and are entitled under the trust thereby created in their favor. They accordingly deny the allegation made in the amended bill "that said legacies were purchased with funds in the hands of said Burr Garland and belonging to the estate of Samuel Garland, Sr., deceased, and, whether purchased with

page 17 such funds or not, the purchases enured to the benefit of said S. Garland's estate and operated to extinguish all liabilities on the part of his personal representatives to pay said legacies to any person whatsoever."

On the contrary, these defendants aver and insist that said legacies are not, and never were, the property of said Burr Garland, nor of his estate, and that the purchases thereof by Burr Garland did not in any manner enure to the benefit of the estate of Sam'l Garland, Sr., but were and are the property of the defendants, Paulina B. Morriss and her children, and ought to be paid over to them or to the defendant, Garland Morriss, as trustee, for their use and benefit; and these defendants ask that a decree be rendered in their favor requiring the plaintiff, as personal representative of Sam'l Garland, Sr., dec'd, to pay the same accordingly.

These defendants further say that by said ninth clause the testator set apart, in the hands of his executors, all the estate and all the profits therein mentioned, to be held by them during the life of Burr Garland, except what was necessary for his

page 18 decent and comfortable support, and at his death to be delivered over and paid to the defendants, Paulina B. Morriss and her children. After Burr Garland qualified in Mississippi as the adm'r with the will annexed of Sam'l Garland, Sr., he carried, to a considerable extent, the estate and profits mentioned in the 9th clause into his general adminis-

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tration accounts, and these make up very largely the balance of $64,130.88, for which the decree against his personal representative in Mississippi was rendered. These profits, from the death of Sam'l Garland, in November, 1861, to the death of Burr Garland, in December, 1869, were very large. Of this legacy to the defendants, Paulina B. Morriss and her children, no account has ever been rendered. They cannot tell what portion of this legacy is included in said balance of $64,130.88, nor what portion is outside of it. They know they have never received any part of this legacy except the Tudor Hall tract of land; the land alone came to the possession of the defendant, Paulina B. Morriss, some time after the death of Burr Garland. All the other

page 19 estate and profits embraced in this ninth clause which were not consumed in the decent and comfortable support of Burr Garland, in whosesoever hands they may be, belong to and should be delivered and paid to the defendants, Paulina B. Morriss and her children, or to Garland Morriss, trustee for them. Said ninth clause of the will provides that neither the estate thereby devised or bequeathed, nor the profits thereof, should be bound for the past debts or liabilities of Burr Garland, nor for his future debts or liabilities, other than decent and comfortable support, and that at the death of Burr Garland all the property disposed of by said clause should pass to Charles Y. Morriss, as trustee, to the separate use of his wife, Paulina B. Morriss, and her children; and these defendants ask, in said clause the testator charged his executors with the duty of seeing to it that the trusts therein created were duly executed during the life of Burr Garland.

These defendants are advised and they insist that into whatsoever funds and into whosesoever hands, except purchasers for value without notice, the estate and the profits in said clause

page 20 may have gone, except what was sufficient for the decent and comfortable support of Burr Garland during his life, the same should be delivered over and paid to the defendants, Paulina B. Morriss and her children, or to Garland Morriss, their trustee, as the legacy under the 9th clause of the will, the same being in said clause, and in the beginning of the 10th clause, made a preferred legacy, to be paid in preference, not only to the residuary legacies, but in preference to every other legacy thereafter mentioned.

These defendants are further advised, and they insist, that so far as Burr Garland may have applied the estate and profits embraced in the 9th clause to his own use, or have disposed of them otherwise than to the use of the defendants, Paulina B. Morriss and her children, except what was reasonably sufficient for his decent and comfortable support, his estate is liable for the same as a fiduciary debt, entitled to priority in the administration of

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its assets, and they ask that their rights as such creditors shall be recognized and enforced by the court.

These defendants further say that there are no

page 21 unpaid debts due from the estate of Samuel Garland, Sr., to which the plaintiff, Jno. F. Slaughter, administrator d. b. n. c. t. a., can apply any assets that may be recovered by him, and they further say that his official bond, by reason of the death and insolvency of the sureties therein mentioned, is insufficient, and these defendants are advised that anything to which they are entitled should be decreed directly to them, and not to the administrator d. b. n. c. t. a.

These respondents are advised that for a proper decision of this cause it is necessary that the following accounts shall be taken, and they ask that the same may be ordered accordingly:

1. An account of the legacy to the defendants, Paulina B. Morriss and her children, under the 9th clause of the will of Samuel Garland, Sr., deceased, showing how much thereof is included in the balance of $64,130.88 decreed against the estate of Burr Garland, dec'd, in favor of the estate of Samuel Garland, Sr., deceased, in whose hands the residue thereof may be, and who is liable to them for it.

2. An account of the purchases by Burr Garland of the legacies to the children of Nicholas A. Garland, under the 15th

page 22 clause of the will, showing how much of the trust moneys, under the 9th clause of the will, was invested therein.

3. An account of the indebtedness of Burr Garland's estate, and of the priorities thereof.

4. An account of any outstanding debts of Samuel Garland's estate, and of the sufficiency of the official bond of his adm'r d. b. n. c. t. a.

And, having answered as far as they are advised it is material for them to answer, they pray that the court will grant to them all other just and proper relief, and will decree to them the cost by them expended in this behalf.

PAULINA B. MORRISS,

and the Other Defendants Herein Named,

By WM. J. ROBERTSON, and

EDWARD S. BROWN,

Their Counsel.

The Answer of Mary L. Garland.

The separate answer of Mary L. Garland to the original and amended bills exhibited by John F. Slaughter, adm'r de bonis non with the will annexed of Samuel Garland, Sr., in the Circuit Court for the city of Lynchburg.

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This respondent, in answer to the original and

page 23 amended bills, admits that she is surety in the bond of Charles Y. Morriss as adm'r of Burr Garland, dec'd; that she is the widow of Samuel Garland, dec'd; that she brought to her husband on their marriage very considerable resources, and by their united efforts they accumulated a large estate in Virginia and Mississippi; that Samuel Garland died in November, 1861; that this respondent renounced the provisions of his will in Virginia and in Mississippi, and took the portion of his estate that the law allowed her. She admits that Burr Garland qualified as adm'r of Samuel Garland, Sr., dec'd, with his will annexed, in Mississippi, and took charge of all the testator's estate in Mississippi, and held the same to the time of his death in December, 1869.

This respondent further says that on her renunciation of the will she acquired, in absolute right, half of all the estate in Mississippi, both real and personal, and the profits thereon from the time

of the testator's death. At the time of the death of Samuel Garland, and at the time of Burr Garland's

page 24 qualification as his adm'r, and for some time thereafter, the late war was in progress, and there was great confusion in all business matters not only till the cessation of active hostilities, but till long after the death of Burr Garland.

This respondent is informed, and believes it to be true, that her half of the Mississippi estate and the profits thereon were embraced in the general administration accounts of Burr Garland, and enter into the aggregate balance of $64,130.88, found against him after his death, on which the decree was rendered in Mississippi against his personal representative in favor of Samuel Garland's estate. Her share and portion of the Mississippi estate and profits was very large—much more than the respondent has ever received. No account of her portion of said estate and the profits has ever been rendered to her, and she asks that your Honor will order an account to be taken of the indebtedness of Burr Garland as adm'r of Samuel Garland, dec'd, with his will

page 25 annexed, for the half of the estate and profits thereon that went into his hands, to which she is entitled, showing how much thereof is embraced in said balance of $64,130.88, and how much is not embraced therein.

This respondent is advised that the indebtedness of Burr Garland, adm'r of Sam'l Garland, on account of this respondent's portion of his estate and the profits therein, is a fiduciary debt, entitled to priority over other debts in the distribution of the assets of Burr Garland's estate.

This respondent further says that by her renunciation of the will in Virginia she became entitled to half of the personal estate of the testator; and if the plaintiff, Jno. F. Slaughter,

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adm'r de bonis non, shall in this suit recover additional assets for his estate, this respondent will be entitled to one half thereof.

This respondent is informed, and believes it to be true, that there are no unpaid debts of Sam'l Garland, dec'd, to which the plaintiff can apply any assets which may come to his hands in this suit; and she further says that, whatever she may be entitled to in this suit, she is entitled to it by a right para-

page 26 mount to that of any legatee under the will of the testator; and she prays that what she may be entitled to receive shall be decreed directly to her, and that your Honor will decree to her whatever costs may be by her expended in this behalf.

MARY L. GARLAND,

By EDWARD S. BROWN, Att'y.

At another day—to-wit, at a Circuit Court for the city of Lynchburg, continued and held at the court-house thereof on Tuesday, the 26th day of June, 1888.

By consent of parties, it is ordered that this cause be submitted for construction of the 9th clause of Samuel Garland's will, and for decree therein in vacation as might be made in term.

At another day—to-wit, at a Circuit Court for the city of Lynchburg, continued and held at the court-house thereof on Thursday, the 15th day of November, 1888, being the same day and year first herein mentioned.

On the motion of M. J. Day, sergeant of the city of

page 27 Lynchburg, and as such duly appointed trustee in the stead of Charles Y. Morriss, dec'd, under the 9th clause of the will of Sam'l Garland, Sr., deceased, and by consent of parties, he is made a party defendant in this cause, and on his motion leave is granted him to file his answer to the original and amended bills of the complainant, and he filed the same; and the complainant replies generally thereto.

And thereupon this cause came on this day to be heard upon the papers formerly read, the decree of the Supreme Court of Appeals rendered in this cause on the 2d day of December, 1887, a duly-certified copy whereof was received by the clerk of this court and entered on its order-book 27th December, 1887; the amended bill of the complainant; the following answers of the defendants to the said original and amended bills—to-wit, the joint answer of Paulina B. Morriss, in her own right and as administratrix of Richard G. Morriss, dec'd; of Garland Morriss, in his own right

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and as administrator of Chas. Y. Morriss, Sr., deceased, and as

page 28 former trustee of Paulina B. Morriss and her children, under the 9th clause of the will of Samuel Garland, Sr., dec'd; of Mosby H. Payne and Mary A., his wife; Richard T. Lacy and Virginia Lee, his wife; of T. L. Courtney and Elizabeth A., his wife; of Walter Smith, Waller C.

Morriss; of Jno. Preston Cocke, administrator of Chas. Y. Morriss, Jr., deceased, and as administrator of Wm. M. Morriss, dec'd; the joint answer of the infant defendants, Juliette Cornelia Smith and Lawrence B. Morriss, by Edward S. Brown, their guardian ad litem, filed by leave of court; the separate answers respectively of Mary L. Garland, M. J. Day, sergeant of the city of Lynchburg, and as such administrator of Burr Garland, dec'd, and of M. J. Day, sergeant of the city of Lynchburg, and as such the present trustee in the stead of Charles Y. Morriss, Sr., deceased, under the 9th clause of the will of Sam'l Garland, Sr., dec'd, and the answer of Walter Smith and Juliette Cornelia, his wife, this day filed by leave of court, it appearing that said Juliette Cornelia Smith has attained the age of twenty-one years since the last order herein, with general replication of the com-

page 29 plainant to each of said answers, and was argued by counsel.

On consideration whereof the court is of opinion, and doth decide, that the estate of the said Burr Garland in the property (other than the profits thereof) set apart in trust by the 9th clause of the will of said Samuel Garland, Sr., deceased, was an estate for the life of the said Burr Garland, with remainder at his death to the said Charles Y. Morriss, in trust for his wife, Paulina B. Morriss, and her children; and/that the estate of the said Burr Garland in the profits set apart by the said clause for the use of the said Burr Garland became and was, under the law and by virtue of the same, his absolute estate, and as such liable not only for such debts as might be contracted for his decent and comfortable support, but for all his debts; and the said profits did not, nor did any part thereof, pass under the said will to the said Charles Y. Morriss, in trust for the separate use of the said Paulina B. Morriss and her children, nor did they, or any or either of them, acquire any estate or interest therein under the said will; And the court doth adjudge, order, and

page 30 decree that one of the commissioners of this court do take the following accounts:

I. An account of the estate of said Burr Garland, deceased, which went into the hands of or passed to the said Charles Y. Morriss, Sr., as administrator of said Burr Garland, and of the transactions of said Charles Y. Morriss, Sr., as such adm'r; and the defendant, M. J. Day, sergeant of the city of Lynchburg, and

as such adm'r of Burr Garland, dec'd, and the defendant, Garland Morriss, adm'r of Charles Y. Morriss, dec'd, are ordered to render the said account before the commissioner.

II. An account of all debts, claims, and demands outstanding and unpaid against the estate of the said Burr Garland, dec'd, and the priorities, if any, among them.

III. An account of the transactions of M. J. Day, sergeant, and as such adm'r d. b. n. of Burr Garland, dec'd, and of any assets that came to the hands of or remain in the hands of said Day as such adm'r.

And the court doth order that the said commissioner, before

page 31 taking said accounts, give notice thereof, and of the time and place for taking the same, by publication once a week for four successive weeks in some newspaper published in the city of Lynchburg, and in such notice shall warn all persons having debts, claims, or demands against the estate of said Burr Garland to appear before said commissioner at said time and place and exhibit and prove their respective debts, claims, or demands, and such publication shall be equivalent to personal service of such notice on the several parties to this cause. And the court doth further order that said commissioner examine, state, and settle said accounts and make report thereof to the court, with any matter specially stated deemed pertinent by himself, or required by any of the parties to be so stated, such special accounts or statements to be made at the cost of the parties asking for them.

The answer of M. J. Day, sergeant of the city of Lynchburg, and as such duly appointed trustee in the stead of Charles Y. Morriss, deceased, under the 9th clause of the will of Samuel

page 32 Garland, Sr., deceased, referred to in the foregoing decree, is in the words and figures following—to-wit:

Answer of M. J. Day, Sergeant and Trustee.

The answer of M. J. Day, sergeant of the city of Lynchburg, and as such trustee instead of Charles Y. Morriss, Sr., under the 9th clause of the will of Samuel Garland, Sr., deceased, to the original and amended bills exhibited in the Circuit Court for the city of Lynchburg by Jno. F. Slaughter, adm'r de bonis non of Samuel Garland, Sr., dec'd, against the adm'r of Burr Garland, dec'd, and others.

This respondent, in answer to said original and amended bills, admits the death of Charles Y. Morriss, Sr., and the qualification

of Garland Morriss as his adm'r, and he says that under recent proceedings in the Corporation Court for the city of Lynchburg the powers and duties of Charles Y. Morriss, Sr., under the 9th clause of the will of Samuel Garland, Sr., were committed to the hands of this respondent.

Of the allegations in said original and amended bills this respondent has no personal knowledge, but he refers to the state-

page 33 ments and averments in the answers of Paulina B. Morriss and her children, and of Garland Morriss, adm'r of Charles Y. Morriss, Sr., and as such trustee instead of Charles Y. Morriss, Sr., dec'd, under said ninth clause of said will, in virtue of statute of the State in force before the adoption of the present Code of Virginia, and the answer of this respondent as adm'r of Burr Garland, dec'd, and this respondent relies on said statements and averments as fully as if they were herein repeated, and he prays that all the rights and interests of Paulina B. Morriss and her children be protected and enforced by the decrees of the court, and that the costs expended by this respondent in this behalf be decreed to him.

M. J. DAY,

Sergeant City of Lynchburg, and as such Trustee of Sam'l Garland, Sr.

The answer of Walter Smith and Juliette Cornelia Smith, referred to in the foregoing decree, is in the words and figures following—to-wit:

page 34 Answer of Walter Smith and Juliette Cornelia Smith.

The answer of Walter Smith and Juliette Cornelia Smith, his wife, formerly Juliette Cornelia Morriss, to the original and amended bills exhibited by Jno. F. Slaughter, adm'r de bonis non of Samuel Garland, Sr., dec'd, in the Circuit Court for the city of Lynchburg against Charles Y. Morriss, adm'r of Burr Garland, dec'd, and others.

These respondents, in answer to said original and amended bills, say that since they were filed the respondent, Juliette Cornelia Smith, has attained her majority, and now answers in proper person. Of the allegations in said bills these respondents have no personal knowledge, but they refer to and rely on each and every defence made in the answer of Paulina B. Morriss and others, and on the answer of Mary L. Garland, heretofore filed in this cause, as fully as if the same were herein repeated, and they insist on all the legal and equitable rights to which they and each of them are entitled.

And, having answered as fully as they are advised it is material for them to answer, they pray that the cost expended by them in this behalf be decreed to them.

WALTER SMITH,

JULIETTE CORNELIA SMITH,

By E. S. BROWN,

Their Attorney.

page 35 The foregoing is a copy of the proceedings in said cause subsequent to the former appeal and supersedeas had therein.

Teste:

S. G. WINGFIELD, Clerk.

I certify that it appears by a paper writing filed with the papers of said cause that notice, as required by § 3457 (Code of Va., 1887), has been duly given.

Teste:

S. G. WINGFIELD, Clerk.

The fee of the clerk of the Circuit Court for the city of Lynchburg for making out this transcript of the record in this cause is $10.65.

Teste:

S. G. WINGFIELD, Clerk.

page 36 Ninth Clause of the Will of Samuel Garland, Sr.

"9th. My favorite brother, B. Garland, raised by me, and long a resident of Mississippi, is, and has for a long time past been, embarrassed in debt by losses of trade in 1837, and liabilities as surety for others. It might be unsafe to devise property to him absolutely. I therefore set apart in trust in the hands of my executors, for the benefit of my said brother, either of my plantations in Hinds county, called 'Barrens' or 'Tudor Hall,' whichever he may chose, and forty slaves in families—say, about twenty-five hands, balance heads of families, children, and house-servants—to be selected out of the stocks on both places; mules, horses, stock, &c., sufficient for the cultivation of the place so selected by him, with provisions, house and kitchen furniture, plantation tools, &c., oxen, hogs, &c., to make a complete estate. The profits of the estate is set apart for his (B. Garland's) use, under his superintendence. But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts and liabilities,

[Page 20]

other than decent and comfortable support. At his

page 37 death all the property in this clause is to pass to Charles Y. Morriss in trust to the separate use of his wife, Paulina B. Morriss, and her children."

The foregoing is a copy of the 9th clause of the will of Samuel Garland, Sr., deceased, referred to in the annexed transcript of the record in the chancery cause of "Samuel Garland, Sr.'s, Adm'r vs. Burr Garland's Adm'r, &c.," which is copied and here appended to said transcript at the instance of the counsel for the defendants, the same having been inaccurately copied in the transcript of the record in said cause, upon which the first appeal was allowed.

Teste:

S. G. WINGFIELD, Clerk.

A copy—Teste:

GEO. K. TAYLOR, C. C.

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[Back cover:]

Virginia Room

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Virginia Room

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Lybg. Sacks

[Separate document cover:]

Supreme Court of Appeals of Virginia.

SAM'L GARLAND'S ADM'R, } Appeal from Decree

vs. } of the Circuit Court of

BURR GARLAND'S ADM'R. } Lynchburg.

CONCLUDING REPLY OF COUNSEL FOR APPELLANT.

BELL & KELLY PRINT., LYNCHBURG, VA.

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Kirkpatrick & Blackford

and

Diggs & Manson

SAM'L GARLAND'S ADM'R, } Appeal from Decree

vs. } of the Circuit Court of

BURR GARLAND'S ADM'R. } Lynchburg.

CONCLUDING REPLY OF APPELLANT'S COUNSEL.

This suit was instituted in 1880. It was caused mainly by the fact that Chas. Y. Morriss had then recently caused a petition to be filed in the suit of Garland's Ex'or v. Garland, &c, in the names of Nicholas Garland's children, seeking to recover their legacies under the 15th clause of S. Garland's will. Slaughter, adm'r d. b. n. of S. Garland, dec'd, who had been substituted as plaintiff in said cause, found out in some way that the legacies which Morriss was seeking in this disguise to collect, had been purchased by Burr Garland in his life-time, either with funds belonging to S. Garland's estate or while said Burr Garland had funds of said estate in his hands, largely in excess of the price paid for said legacies, and that said legatees had executed some papers prepared by Burr Garland, then held, it was supposed, by Morriss, his adm'r, though Morriss had failed to produce said papers. The bill makes the following charges, followed by the prayers quoted:

"Your orator further represents that Samuel Garland, Jr., while acting as executor of Samuel Garland, Sr., filed a bill in chancery in this court, against all the legatees and devisees of the said Samuel Garland, Sr., for the purpose of having a construction of the will of his testator, and the estate administered under the direction of the court, which bill is still pending in this court under the style Garland's executor vs. Garland and others; various proceedings and decrees having been taken and pronounced therein.

"Your orator further represents that in the 15th clause in the will of Sam'l Garland, Sr., there is contained a bequest in the following words: 'I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand dollars of my East Tennessee and Virginia railroad bonds or others of equal value,' as will be seen by reference to the said will.

"There were a number of the children of the said Nicholas A. Garland living at the time of the death of said Samuel Garland, Sr., who thus became

TRANSCRIPTION OF JML_MS1939_GARLAND_B1_F700781-800

[Cover Page]

Circuit Court - Sept. 1894

Before Harley Judge

Garland

Circuit Court: City of Lynchburg.

SAM'L GARLAND'S Adm'r v. MARY L. GARLAND, &c.

AND

SAM'L GARLAND'S Adm'r v. BURR GARLAND'S Adm'r, &c.

BRIEF FOR THE DEFENDANTS, SEPT., 1894.

Liggan & Holt, Printers, Lynchburg, Va.

[Page 2]

enriched at the benefit of the said bequest. Your orator has been informed that the aforesaid Burr Garland, in his lifetime, purchased a number of the children of the said Nicholas A. Garland, their guardian or legal representatives, since interests and rights in, and the bequests to them, under the will of Samuel Garland, Sr., and your orator believes that he used the funds of the estate of the said Samuel Garland, Sr., to make the said purchases.

"Your orator further represents that the aforesaid Charles Y. Moriss, as to be informed, is now summoning the legacies so purchased and acquired by the testator. Burr Garland, and, for the purpose of realizing the same, has caused a petition to be filed in the one of Garland's executors &c. Garland and others, being named, in the name of the said children in whose names, as aforesaid, the bequests were delivered. The said petition has in some very here mistaken, and is we now to be found in the papers, and therefore your orator cannot at this time, specify its

purport and object more definitely. He is advised that the prayer of any portion of the children of Nicholas A. Garland were really acquired and purchased by the aforesaid Burr Garland, it would not be equitable and just for the personal representatives of the said Burr Garland to recover the same from the estate of the said Samuel Garland, Senior, to the face of the fact that estate of said Burr Garland is indebted to the estate of the said Samuel Garland, Senior, to large an amount as that ascertained by the decree above set forth.

"By the will aforesaid thus right and justice may be done in the premises, may the said Charles Y. Moriss be enjoined or restrained with the will annexed of Burr Garland, deceased, and Mrs. Mary L. Garland his surety be made parties defendants to this bill and true answers on oath compelled to make as be several and various allegations. May be be compelled to settle the accounts of his administration of the said estate of Burr Garland, deceased, of any kind have come into his hands. May be be compelled to settle the accounts of his administration of the said estate of these bequests. May be also answer and state which children of Nicholas A. Garland are they from whom his testator purchased or acquired their rights to the legacies given them by the will of Samuel Garland, Senior, and also set forth and produce the evidence of the premises or transfers by which their right. May the said Charles Y. Moriss be compelled to pay over to your orator in satisfaction in part of the decree aforesaid, all the assets of his testator, Burr Garland, deceased, which have come to his hands. May be be compelled to settle the accounts of his administration of this court. May he also be compelled to answer or state which children of Nicholas A. Garland were acquired and purchased by Burr Garland either in his lifetime, or by his administrator since his death, be likewise appropriated in part satisfaction of the decree aforesaid, and if necessary for that purpose, may William H. Garland, the executor in Burr Garland, and the children of Nicholas A. Garland from whom their rights to the legacies aforesaid were acquired and who are residents of the State of Illinois, be made defendants to this bill by process of publication; and may this branch of this case be heard along with that of Garland's executor vs. Garland and others, to the purpose and exhibit in which special reference is made. And if the said Charles Y. Moriss has disposed of or used the legacies so that they cannot be

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[Page 3]

reached, may a personal decree be pronounced against him and his said surety for the same; and finally, let such other and further relief be granted to your orator, as equity and the nature of the case require, and as in duty bound, &c."

Record p. 9-10.

It is seen that the brief of Messrs. Robertson and Brown, (p. 2), gives but a small extract from the prayer of the bill. They persist in shutting their eyes to all else but our attempt to enforce the Mississippi decree—p. 4.

The decree complained of dismissed the bill, giving the following reason therefor:

"The court is of opinion that, while it may be that the proceedings in the chancery court of the second district of Hinds county in the State of Mississippi, on the petition of William H. Garland, executor of Burr Garland, deceased, to settle up finally the transactions of the said Burr Garland, as administrator with the will annexed of Samuel Garland, Sr., deceased, in the State of Mississippi, may be conclusive as in the nature of a proceeding in rem and binding on the estate of Burr Garland everywhere, as fixing its liability and indebtedness to the estate of the said Samuel Garland, Sr., deceased, (a question not necessary now to decide,) yet while the estate of the said Burr Garland, deceased, may be liable to that of the said Samuel Garland, Sr., deceased, for the alleged devastavit of the said Burr Garland, in applying the funds of his testator in his hands as administrator, as aforesaid, in purchasing the legacies given by his testator to the children of Nicholas A. Garland, (in the bill mentioned). Yet the plaintiff, as administrator de bonis non of the said Samuel Garland, Sr., deceased, in Virginia, cannot hold the said Burr Garland, or his personal representatives in Virginia, to account to him for any default of the said Burr Garland, as administrator as aforesaid, in his administration of the said Samuel Garland, in Mississippi, but can only be held to account by the legatees of the said Samuel Garland, Sr., deceased, or the residuary legatees or their representatives, if the specific legacies are satisfied." Rec. p. 64.

The statement in counsels brief, p. 3, that the decision of the court is based upon the first point in their demurrer, is erroneous. The decree itself corrects it. The demurrer is that there was no jurisdiction in the court, &c. The objection was to the forum, not to the party plaintiff. The decree ignores the demurrer, and, assuming that the court, as a forum, has jurisdiction, yet holds that the plaintiff is not the proper person to maintain the suit.

The court, it will be seen, wholly overlooked the fact that the bill, so far as it related to the legacies of N. Garland's

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children, was simply and purely defensive in its character; that it was in fact a bill of discovery, instituted to bring to light concealed facts which made it inequitable for S. Garland's Virginia Adm'r to pay these legacies to an assignee who, at the time he purchased them, stood in a fiduciary relation to said estate, and in that relation was, at the time of purchase, indebted to said estate in an amount much larger than that which he paid for said legacies. The court, in the very decree which dismissed the suit, makes use of the facts which had been discovered and brought to light by the suit. The importance of them is apparent.

It may be true, as the decree states, that the plaintiff—the Virginia Adm'r—cannot hold the said Burr Garland or his administrator to account to him for any default of said Burr Garland as such Administrator in Mississippi, but it cannot be true that said B. Garland, or his administrator, can come to the Virginia Adm'r of S. Garland, in a suit pending in a Virginia court, and demand of him the payment of legacies which said Burr Garland had purchased when he was in debt to the said S. Garland's estate. Such a purchase, under the circumstances set forth in said bill, was an extinguishment and satisfaction of said legacies. They thereby ceased to exist as a demand against the Virginia Adm'r. If so, who had the right to say so? Who but the party who was charged with their payment? He had the right to make this defence. It was his bounden duty to make it. The object of the bill was to show that "if the legacies of any portion of the children of Nicholas Garland were really acquired and purchased by Burr Garland, it would not be equitable and just for the personal representative of said B. Garland to recover the same from S. Garland's estate, in face of the fact that said B. Garland is indebted to the estate in so large an amount." The demand for the payment of these legacies was made on this same complainant. He was charged with the duty of protecting S. Garland's estate against every unjust or inequitable demand, and though he might not have the right to do all that he in the said bill did, or claimed, about this one matter—the defence of the suit in which he was

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the responsible plaintiff—the sole protector and guardian of the interests in his hands, there can be no question that it was his right and duty to do what he did. The exhibits filed with the bill, which showed Burr Garland's indebtedness to Samuel Garland's estate, independent of and outside of the decree, were as much a part of the bill itself as if set out in haec verba. 76 Va., 766.

2. But Judge Robertson and Mr. Brown contend that the legacies were purchased of B. Garland with funds which he held in trust for Mrs. Moriss and her children.

They support this position on two grounds: 1. That as Burr Garland had nothing except what he received under the 9th clause of S. Garland's will, it necessarily follows that what he paid for the legacies came from that source.

2. That the accounts filed show these legacies were paid out of proceeds of cotton raised on the Tudor Hall estate—referring to account of Aiken & Watt found on page 73 of the original record, and to Person's cotton shipping books, as found on pp. 58, 59 and 60 of the amended record.

We reply to these separately:

1. It is not true that B. Garland had nothing except what he received under the 9th clause of S. Garland's will. He as Adm'r c. t. a. of S. Garland had a large Mississippi plantation of S. Garland's under his management, to-wit: the Coahoma county plantation. This, besides Tudor Hall and The Barrens. From this plantation it appears that he sold large quantities of cotton between his settlements in April, 1867, and that of 9th December, 1868. In exception No. 8, taken by S. Garland's Va. Adm'r to B. Garland's 3d settlement, on p. 27 of the old record, we find this charge: "And the sum of $10,000.11, charged against him in his 3d annual account, as the proceeds of the sales in U. S. currency of one hundred bales of cotton, which is the only real income ever received by him as such administrator." Also rec. p. 47, item 12.

This exception was sustained by the court upon the proofs before it. It and said 3d settlement show that B. Garland

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had, several years after the end of the war, sold 100 bales of cotton belonging to S. Garland's estate. It was this sale which brought him in debt, on his own showing and settlement, to the amount of $6,545, as of Dec. 9th, 1868, to S. Garland's estate. By the exceptions to this exparte account, filed after the parties interested were impleaded by petition, and which exceptions were sustained, this balance of $6,545 was increased to over $28,000, and into which no Confederate values enter. See Record, p. 47, items 4, 5, 6, 7, 8, 9, 10, 11, 12. It is therefore clear that when he bought these legacies, he had other funds than the proceeds of the crops raised on his own Tudor Hall plantation. If he did not use this in this so-called purchase, what did he do with it? This will appear still more significantly when we consider the 2nd proposition.

2. What does the testimony, adduced to show how the legacies were paid for, prove? The defendant went industriously to work to produce this evidence and confidently supposed that it sustained his claim. We think that it failed to do so, and, indeed proved, beyond question, that B. Garland purchased these legacies with funds belonging to S. Garland's estate. The account of Aiken & Watt, who were Burr Garland's commission merchants in New Orleans, will be found on p. 73 of old record, and is as follows:

"Burr Garland, Esq., COPY OF ACCOUNT.

1869. In Account with Aiken & Watt.

Feb. 3. To cash paid invoice of 36 bales cotton .. $4,405 59 Dr.

Feb. 10. To cash paid on press charges on 36 bales

cotton..... 3 60

Feb. 10. To cash paid for mule..... 180 00

Feb. 10. To cash invoice per railroad..... 66 28

Mar. 6. To cash paid draft favor N. Garland.... 400 00

July 2. To cash paid draft favor J. A Garland.. 2,200 00

July 26. To cash paid draft favor J. A. Garland.. 550 00

To cash paid draft favor Mrs. M. L. Gar-

land .....

Aug. 13. To cash remitted exchange..... 1,000 00

Aug 4 To paid draft favor 1,773 26

in favor Wm. Yerger.... 62 05

1869. Credits.

Feb. 3. By cash received of you.....

June 19. By net proceeds 48 bales cotton..... 5,000 00

5,740 79

_____ _____

$10,740 78 $10,740 78"

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Now, it is evident that this account commenced with the deposit of $5,000, made by B. Garland with Aiken & Watt, on the 3d day of Feb., 1869, and that on the same day they used $4,405 59 of this deposit to purchase 36 bales of cotton, which were held for account of B. Garland, which, with 12 other bales, making 48 in all, were closed out for B. Garland on the 19th day of June, 1869, the whole 48 bales yielding $5,740 78. It is claimed, and we believe truly, that the legacies were purchased out of these funds. If so, it is clear that they were paid for out of a cotton speculation, not out of the proceeds of the cotton raised by B. Garland on his Tudor Hall plantation. If the 12 bales above referred to came from that plantation, then their proceeds are more than accounted for by the cash left behind, after the legacies were all paid for. The 48 bales sold for $5,740 78 or about $119 per bale—so that the 12 bales would yield only $1458, while B. Garland, after he had paid for the legacies, actually drew in cash from Aiken & Watt $1,773 26.

But it may be contended that B. Garland realized that $5000 from sales of cotton sold elsewhere than by Aiken & Watt. Well, let us turn to the amended record in which our adversaries have produced extracts from the cotton shipping books, showing what cotton was raised and shipped by B. Garland, in 1866, 1867 and 1868. These extracts are on pages 58, 59 and 60, of new record. There, we find the cotton raised in 1865, and shipped 3d and 10th Feb., 1866, listed last, that is, on p. 60. It consists of two shipments: one on 3d Feb. of 12 bales, the other on 10th Feb. of 10 bales, making 22 bales in all for 1865.

There was a larger crop raised in 1866. This was shipped in Dec., 1866, and Jan., 1867. They are listed on pages 58 and 59, and we here find 74 bales and 21 bales in all, making 93 bales for the year 1866. Much of this was, doubtless, the cotton of his tenants, as it appears he shipped their cotton with his own and in his name.

In the year 1867, page 60, it appears he raised and shipped only 13 bales. See list on left-hand side top of page 60.

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In the year 1868, the year in question, B. Garland appears to have shipped only 8 bales of cotton. See list on right-hand side of top of page 60. It must be that in some way he shipped 4 bales besides these 8, as Aiken & Watt accounts for 12 over and above the 36 bought for him on speculation.

But it thus abundantly appears that B. Garland neither raised, nor shipped, nor sold the cotton from which the $5,000 in cash sent to Aiken & Watt, on 3d Feb. 1869, arose. He had, not very long before, sold 100 bales of cotton belonging to S. Garland's estate, for which he had received $10,500. He had this money in hand on the 9th Dec., 1868, and when, on the 3d Feb. following—within 60 days—he remits $5,000 in money to Aiken & Watt, in advance of the sale of his own cotton crop—can it be doubted for a moment that this money was part and parcel of the money which he had received for the cotton of S. Garland's estate?

But how stands it for our adversaries, who had undertaken the burden of ear-marking this money which was invested in the legacies? How utter has been their failure—how complete their discomfiture! They attempted to prove that the legacies were purchased with what they fondly call trust funds, and end by showing that not a dollar of such funds was ever thus invested!

And now again, we ask, if B. Garland purchased these legacies with funds in his hands as Adm'r c. t. a. of S. Garland, deceased, could he, Burr Garland, have come into the Virginia suit of Garland's Ex'or v. Garland, &c., and ask the Virginia Adm'r to pay the legacies over to him? The proposition seems monstrous. But, when it is contended that, if he should thus come and make such demand, the Virginia Adm'r could not resist and defend his testator's estate against the monstrous demand—that he must be the dumb victim of such an outrage—we find that such a proposition is unsupported by any decision ever rendered in a court of equity.

We will now briefly examine the

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Now, we come to a very remarkable dictum of appellee's counsel. They say, p. 12:

"The only claimant here (as creditor of Burr Garland) is the personal representative of the testator himself; and it can hardly be pretended that the testator did not have power to exempt this property from liability to his own estate, for debts then due, or which might thereafter become due from his brother," &c.

And this proposition is announced and invoked for what? Why, to show that Sam'l Garland had the power, and intended to say, that in case Burr Garland should become his adm'r, c. t. a., he should not be liable to testator's legatees for wasting his estate! The bare statement is sufficient refutation. No testator has any such power; and neither the records of judicial history, nor the imagination of novelists, afford an instance of one so void of understanding as to attempt it.

THE MISSISSIPPI DECREE

is fiercely assailed on various grounds. We will show that it is valid. But, independent of this decree, all we claim can be clearly maintained; for before Burr Garland's death he made three settlements of his transactions as administrator: by the settlement of March 9th, 1866, he showed a balance due him of $35.70; by his settlement of 2d April, 1867, the balance due him was $3.69; and by his last settlement, rendered 9th December, 1868, he showed that he owed the estate $6,549.00. See old record, p. 15, &c.

B. Garland having died in 1869, W. H. Garland, his executor, in December, 1872, instituted proceedings, under the laws of Mississippi, in the Chancery Court for Hinds county, for the final settlement of Burr Garland's transactions as such administrator. This proceeding was as formal and regular as possible. It was to every intent a plenary suit in equity. Every person interested under the will of S. Garland, Sr., was made a party defendant to the suit. They were made parties not only by order of publication, but a copy of the chancellor's order of 10th January, 1873, (Rec., p. 22) was sent by mail to the true address of each of said parties.

No one thus summoned except J. F. Slaughter, adm'r of S.

Garland, Sr., said Slaughter in his own right and as one of the executors of S. Garland, Jr., also as adm'r of C. R. Slaughter, dec'd, and as trustee for M. J., C. P. and A. Slaughter, R. G. H. Kean, as other executor of S. Garland, Jr., appeared. See Rec., p. 25.

The proceedings were matured and set for hearing on the 17th day of February, 1873. On that day the defendants above named appeared and filed exceptions to Burr Garland's three settled accounts, and to said final settlement propounded by his executor. Thereupon the hearing of said suit was postponed to the 22d day of May following. At that term the hearing was again continued till the 26th November, 1873, when said cause was again continued till the 15th of December, when the said defendants moved the Court to set said cause for final hearing on the 17th December. This motion (bottom of p. 42) was "resisted by the solicitors for W. H. Garland, Ex'or," and overruled; and after agreement between the solicitors of the respective parties, said hearing was set for the February term of the Court.

During all this time—for one whole year—W. H. Garland had, in this suit, been here represented by regular counsel.

The charge that the decision and decree of the Mississippi chancellor was grossly inequitable is not sustained. There is no evidence to that effect. The Court, as the law there is, heard oral testimony, and what it was does not appear. We are compelled to give full faith and credit to this decree till shown to be false and fraudulent. Our adversaries seek to impeach it as rendered without jurisdiction. They cite the Mississippi statute, which provides that "Executors and administrators who have qualified in other States, may sue as such in the Courts of this State, if they sue under their letters and bond, or duly certified copies, in the Chancery Court of the proper county, &c., &c." But evidently this statute does not apply to this case. It refers to a case where a personal representative, a qualified in another State, comes to Mississippi to recover a debt due by his decedent, by suit in a Mississippi court. Here such was not the case. S. Garland's Virginia representa-

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tive brought no suit. He did not ask a decree in his favor. The Mississippi representative of B. Garland was charged with the duty of making a final settlement of B. Garland's administration. He took the only course open to him. He made all the parties interested defendants; brought them before the Court, and thus called on them to show cause against the settlement which he propounded.

J. F. Slaughter, Adm'r of S. Garland, and in the various capacities in which he was impleaded, and R. G. H. Kean, Ex'or of S. Garland, Jr., appeared and contested the several settlements.

The Court carefully considered the case, and, finding that B. Garland, as Adm'r c. t. a. of S. Garland, Sr., deceased, was indebted to the estate of his testator to the amount of $64,130, decreed "that W. H. Garland, Ex'or of the last will and testament of said Burr Garland, pay over said balance of money so reported to be due by said B. Garland on said restated final account, to the legal representatives of said Samuel Garland, Sr., deceased, in the State of Virginia, to be by such legal representative or representatives paid over to the person or persons entitled to receive the same under the last will and testament of said S. Garland, Sr., deceased, and that the estate both real and personal of said B. Garland, deceased, stand and be chargeable with the payment of said balance of money so due by said B. Garland."

The only possible ground on which this decree can be assailed is that the Court exceeded its jurisdiction. It is on this ground only that our adversaries rest, and the single point made by them is that it does not appear that J. F. Slaughter, the Virginia Adm'r, had complied with the law regulating suits by foreign administrators, in the courts of Mississippi. What the statute law of Mississippi is in regard to the transfer of assets in the hands of an ancillary adm'r to domicilliary representative, we do not know. We take it for granted that this matter is regulated by common law, and that it is largely in the discretion of the court having control of the ancillary administration, to determine what, under all the circumstances

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of the case, is just and right. This Court so held, after full examinations of all the authorities in the case of Moses vs. Hart's Adm'r, 25 Grat, 795. The Court there says, on page 811, "there is no general inflexible rule upon this subject; that whether the assets will be retained or remitted for payment of legacies and distribution, will depend upon the circumstances of each case. The question is one not of jurisdiction, but simply of judicial discretion. Every State determines for itself the manner in which property within its limits shall be disposed of. * * If the Court of the ancillary adm'r consents to a transmission of the assets abroad, it is a mere matter of courtesy, and not because there is any obligation to do so. That courtesy ought never to be exercised to the injury or inconvenience of domestic claimants, whether they be creditors, legatees or distributees."

Such being the law, the Mississippi Court being satisfied that no harm could result and that it was manifestly proper and best for all concerned that this Mississippi asset should be transferred to Virginia, ordered it to be done. And having done so, the decree cannot be impeached in a Virginia court. We are surprised to see that our friends on the other side should think this decree void. It strikes us as eminently just and proper. No one, to this day, has ever sought to disturb it, except those who do so in the interest, not of S. Garland's estate, but of those who are doing all they can to protect the waste and misappropriation of the Mississippi adm'r.

It is contended that as Slaughter, the Virginia adm'r, could not sue B. Garland's estate in Mississippi, therefore B. Garland's Ex'or could not make Slaughter, the Virginia adm'r, a party non sequitur. A foreign executor may be sued in a forum in which he could not himself sue. This is clearly shown and settled by the noted case, Tunstall vs. Pollard's Adm'r, 11 Leigh, 1. In that case, to which we again ask attention, it was decided that an executor who qualified in England, received assets there and brought them to Virginia, could be

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here sued, not as executor de son tort, but as executor, and held accountable.

In Andrews vs. Avery, 14 Grat, 299, this Court held that "if an administrator appointed in Virginia, whose intestate lived and died in N. Carolina and left no estate in Virginia, goes to N. Carolina and, without qualifying there, takes possession of the assets and brings them to Virginia, his sureties in Virginia are liable for his faithful administration of those assets."

Now if Slaughter, the Virginia adm'r, has been brought into the Mississippi Court as party defendant, and has there received a decree directing and empowering him to collect a debt due by B. Garland's estate, can he not in the Virginia suit defend himself and his testator's estate against the recovery here of legacies which had been purchased by and assigned to B. Garland in his life-time? We think it is clear and unquestionable that he can.

THE NICHOLAS GARLAND LEGACIES.

To meet the point relied on by appellants, that Burr Garland being adm'r, could not acquire by purchase or otherwise, for his own profit, the legacies to Nicholas Garland's children, the

appellees are driven to stand on very narrow ground. Appellees' counsel, p. 12, contend that no fiduciary relation existed between Burr Garland and the legatees, viz: the children of Nicholas Garland, because the Virginia adm'r had all the East Tennessee & Va. R. R. bonds. In the first place, there is not a scintilla of proof to sustain this statement in this record, nor in the record of Garland vs. Garland. We are willing to concede, what does appear in Garland vs. Garland, to-wit: that some E. T. & V. R. R. bonds went into the hands of the Va. adm'r, and that is all that does appear—non constat, but that Burr Garland had the bulk of them—non constat, but that he had "others of equal value." But let that be as it may; what does it amount to? The devise was of the aforesaid bonds or "others of equal value." If the legatees chose to accept any other bonds of equal value, or so much money, it does not alter

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the transaction—does not change the relationship between the parties.

If the legacy had been $1,000 in gold, and the legatees, being sui juris, had chosen to accept satisfaction from him in the shape of $600 in greenbacks, could he, in order to pocket the $400 profit and to escape the prohibition upon a fiduciary's speculating in his trust estate, excuse himself by saying he did not have the gold dollars? Would any court of equity permit the violation of a rule settled by authority and founded in common justice and honesty, upon such a pretext as that? We trow not.

Again, counsel say, p. 13: These legatees "looked to John F. Slaughter and not to Burr Garland, for the payment of their legacies." Where gentlemen find a basis for this statement it is impossible to conceive. Did they ever at any time look to or demand of Slaughter payment of their legacies? The record says, no. Slaughter was in Virginia. These legatees were in the West; so was Burr Garland. He had large assets in hand. They received payment from him. As a matter of fact, they certainly did "look to" the man from whom they received payment.

A curious and amusing illustration of the desperation to which appellee's counsel are driven, is afforded by a comparison of their position taken in the answer, and that now taken in argument.

In the answer of Morriss they say:

"This defendant is advised that the administration of Burr Garland in Mississippi and the administration of J. F. Slaughter in Virginia were independent of and foreign to the other; and that each of these personal representatives is severally liable, after paying funeral expenses, charges of administration and debts, for the assets of them, respectively received, to the widow and the legatees, according to their several rights." See record, p. 54.

Each personal representative—Burr Garland in Mississippi and Slaughter in Virginia—were liable to the widow and legatees. Undoubtedly true, and liable to all the legatees of course. This admission is made to show that Burr Garland's estate is not accountable to Slaughter, the plaintiff, but only to the legat-

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tees. Now, when seeking to escape the necessary consequence of Burr Garland's dealings with the legatees, behold! they change front and gravely contend that "the children of Nicholas Garland looked to John F. Slaughter, and not to Burr Garland, for the payment of their legacies. Their fiduciary relation was with him, and not with Burr Garland." See brief, p. 13. If both the statements are true, will the gentlemen be so kind as to tell us, in the name of justice, to whom is he liable? Burr Garland, Adm'r, held a fiduciary relation to somebody, and he was liable and accountable to somebody. With whom, if not the legatees? Of all the exemptions from liability that ever were pleaded, this case, in the view of appellees' counsel, affords a unique example the most absolute and universal! Burr Garland, Adm'r, not liable to the Virginia Adm'r of his testator. Record, p. 54. The same Burr Garland, not liable to the legatees of his testator. Brief, p. 13. This same Burr Garland not liable to any body for wasting and squandering his testator's estate. Id., p. 12. And the same Burr Garland, not liable "for his past debts or liabilities, or for future debts or liabilities other than decent and comfortable support."

And still the gentlemen, not satisfied with the high prerogative of the said Burr Garland, who hath departed this life, are clamoring that certain immunities he enjoyed in life should descend to his Adm'r, in this, to-wit: that whereas, Burr Garland, in his life-time, not foreseeing all the legal bearings thereof, traded and speculated in his testator's estate, and took certain transfers and assignments, written by his own hand, conveying certain rights and claims to him, Burr Garland, by name: his Adm'r had the right to sue thereon in the name of the original owners of said claims without disclosing who was the moving spirit, and did so sue, and when compelled to make profert of said transfers and assignments, he had the right then, for the laudable purpose of exempting the said claims from his (B. G.'s) "past debts and liabilities," to claim them as belonging to the wife and children of him, the said Adm'r, "notwithstanding deeds of conveyance with warranty of title were made

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to Burr Garland, in his individual name." Brief, bottom of p. 16. And to cap the climax, they are now asking this Court to prohibit a defendant, (he the said Adm'r has sued), from making an equitable defence.

In order further to escape the consequences of Burr Garland's purchasing, as they call it, the legacies, the counsel contend that legacies "do not come within the class of claims to which the rule" forbidding a fiduciary to make profit out of his trust estate is applicable. Had not counsel insisted on this nice distinction, both in oral argument and in print, (see brief, p. 13) we should not have thought them serious. For this departure from the general rule, not a single authority is cited, and not a single reason is advanced. Every authority we quoted in our former brief, and every reason upon which the salutary rule is founded, applies as well and with equal force to legacies as to any other claims. The quotation from 2 Williams on Executors, in our former brief, (p. 10) and which is found in the text of 2 Lomax on Executors, side p., 321, so completely covers the case in hand we reproduce it. "Where an executor contracted with legatees for the purchase of their legacies, which was accordingly assigned to a trustee for him, in consideration of sums of money less in amount than the legacies, it was admitted the transaction could not be sustained for the benefit of the executor." See also the reasoning and authorities of Judge Lacy in delivering opinion of this court, in Baugh vs. Walker, 77 Va., p. 103, et seq. The syllabus of that case is "under no circumstances will a fiduciary be allowed to derive any personal benefit from his transaction of the trust business or management of the trust assets, and if a trustee purchase claims or incurances against the trust estate at a discount, the purchase shall enure to the benefit of the interest it is his duty to protect." We are satisfied that the nice trimming that appellees' counsel find necessary for their cause, will not induce this court to open the door to such peculation as would follow the adoption of their doctrine.

In conclusion, we confidently submit that this court must reverse the decree complained of; must hold that the ninth

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clause of the will conveyed all the profits to Burr Garland, and that if the intention were otherwise, the absolute right of disposal of all the said profits being in him, the supposed limitation over to Mrs. Morriss is void. That, therefore, Mrs. M. and children are not necessary or proper parties to this suit; that Burr Garland's Adm'r is entitled to a credit on his account as Adm'r of Samuel Garland, for $4,350, paid by him to the Nicholas Garland legatees; that said legacies are paid and extinguished, and cannot be held by said Adm'r as a charge against the estate of Samuel Garland, dec'd.

And, inasmuch as it appears that the balance in the hands of Morriss, Adm'r of Burr Garland, as per Bocock's report, is not sufficient to discharge the balance due by said Burr Garland to S. Garland's estate, after allowing him credit for the $4,350, that he, the said Burr Garland's Adm'r, pay over said balance in his hands to the estate of Samuel Garland, dec'd.

Respectfully submitted,

KIRKPATRICK & BLACKFORD,

DIGGS & MANSON,

Of Counsel for Appellant.

JANUARY, 1887.

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[Title Page]

Circuit Court: City of Lynchburg.

SAM'L GARLAND'S Adm'r v. MARY L. GARLAND, &c.

AND

SAM'L GARLAND'S Adm'r v. BURR GARLAND'S Adm'r, &c.

BRIEF FOR THE DEFENDANTS, SEPT., 1894.

1. The purchase by Burr Garland of 8 of the coupon bonds of the East Tennessee & Virginia R. R. Co., bequeathed to the children of Nicholas A. Garland, was valid.

The reason assigned by Commissioner Sackett, for holding that Burr Garland's purchase of 8 of these bonds was void, and that he acquired no title to the bonds, was that on a former occasion he had decided that John F. Slaughter's purchase of other coupon bonds of the East Tennessee & Virginia R. R. Company bequeathed to other children of Nicholas A. Garland was void. To make the Commissioner's decision in John F. Slaughter's case a sufficient reason for an identical decision in Burr Garland's case, two propositions should be established: 1st, that the Commissioner decided correctly in John F. Slaughter's case; and 2nd, that Burr Garland's relation to the 8 coupon bonds of the East Tennessee & Virginia R. R. Co. he purchased, and to the eight children of Nicholas A. Garland from whom he made his purchase, was identical with that of John F. Slaughter to the coupon bonds of the East Tennessee & Virginia R. R. Co. he purchased from the children of Nicholas A. Garland from whom he made his purchase. As we did not represent John F. Slaughter when the Commissioner decided his case, and do not now represent his Estate, we need not discuss the correctness of the Commissioner's decision in his case. It will be sufficient for our purpose to show that Burr Garland's relation to the coupon bonds he purchased, and to the parties from whom he made his purchase, was wholly dissimilar from that of John F. Slaughter to the coupon bonds he purchased and to the parties from whom he made his purchase.

Sam'l Garland, Sr., died in Nov., 1861. His will was recorded in Lynchburg the 2nd of Dec., 1861. Charles R. Slaughter and Sam'l Garland, Jr., qualified in Virginia, the State of the Testator's domicil, as his Ex'ors; but they never qualified elsewhere. Charles R. Slaughter died in Feb., 1862, and John F. Slaughter qualified as his Administrator.

Sam'l Garland, Jr., as surviving Ex'or of Sam'l Garland, Sr., the 5th of May, 1862, in the Circuit Court for the City of Lynchburg, filed his Bill, exhibiting the Testator's will, and making all the legatees parties, including Nicholas A. Garland's children, and praying that all questions between the parties be decided by the Court, and that the Testator's estate be distributed among the parties, according to their respective rights.

The Bill alleged that the Testator had about $400,000 of stocks, State and corporate bonds, with debts due him by individuals, of which the Ex'or would file an accurate inventory.

Sam'l Garland, Jr., died the 14th of Sept., 1862, and John F. Slaughter qualified as his Ex'or, and qualified as Adm'r de bonis non with the will annexed of Sam'l Garland, Sr., in Virginia; but he never qualified as personal representative of Sam'l Garland, Sr., elsewhere. The suit in the Circuit Court of Lynchburg was styled Garland's Ex'or. v. Garland, &c., and John F. Slaughter revived it in his name, as Adm'r of Samuel Garland, Sr. Rec. Part 1st, p. 5-9 and p. 13-4. *

The legacies to Nicholas A. Garland's children are in the 15th clause of the will. This is as follows: "I also give to each of my brother Nicholas A. Garland's children, of Illinois, one thousand

* NOTE: This case has been before the Court of Appeals three times, and portions of the record have been printed five times. The first printed portion is styled Garland, Sr., Adm'r v. Garland's Adm'r. The second portion is styled Garland, Sr., Adm'r v. Garland's Adm'r. The third portion is headed "In addition to record," being omitted in the Second Appeal. The fifth portion is styled Garland's Adm'r v. Garland's Adm'r and is the printed record on the 3rd Appeal. The fifth portion is styled Garland's Adm'r v. Garland's Adm'r. This last portion contains evidence taken since the last appeal and Commissioner Sackett's Report. These printed portions of the record will be referred to, in this Brief, as Part 1st, Part 2nd, Part 3rd, &c., observing the order in which they were printed.

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dollars of my East Tenn. and Va. Railroad bonds, or others of equal value." Rec. Part 1st or Part 2nd, p. 13.

On the 16th of October, 1862, John F. Slaughter, Adm'r of Sam'l Garland, Sr., returned an inventory, showing that there came to his hands 23 of the Testator's East Tenn. & Va. Railroad bonds, 6 per cent., then valued at $15,000. Rec. Part 5th, p. 90.

On the 20th March, 1863, John F. Slaughter, Adm'r of Charles R. Slaughter, settled the account of his Intestate's administration on the estate of Sam'l Garland, Sr., which shows that Charles R. Slaughter, on the 28th of Jan'y, 1862, collected $600, interest on $20,000 of the Testator's East Tenn. & Va. Railroad bonds.

On the 8th of July, 1863, John F. Slaughter, Ex'or of Sam'l Garland, Jr., settled the account of his Testator's administration on the estate of Sam'l Garland, Sr., which shows that on the 11th of August, 1862, Sam'l Garland, Jr., collected $600, coupons on the Testator's East Tenn. & Va. Railroad bonds, and that on the 2nd of Sept. 1862, he took back 7 of the Testator's Va. & Tenn. Railroad bonds, which had been delivered to S. M. Slaughter at the valuation of $5,000, and then he delivered to him 7 of the Testator's East Tenn. & Va. Railroad bonds, at the valuation of $5,000, as the Testator's bequest to him. Rec. Part 5th, p. 91, and certified copies filed with the papers.

This $5,000 bequest to Sam'l M. Slaughter, is in the 14th clause of the will, written Sam'l M. Garland, by mistake, and is in the alternative, as follows: "my Virginia and Tenn., or East Tenn. and Virginia bonds."

Nicholas A. Garland had ten children (Rec. Part 2nd p. 71) and there is no demonstrative specific legacy of any of the Testator's East Tenn. & Va. Railroad bonds to any legatee, other than to Nicholas A. Garland's children and Sam'l M. Slaughter. As Sam'l Garland, Jr., had delivered to Sam'l M. Slaughter the East Tenn. and Va. Railroad bonds, bequeathed to him, it was left for John F. Slaughter, Adm'r de bonis non, with the will annexed, from the Testator's East Tenn. and Va. Railroad bonds, that were assets in his hands, to deliver to Nicholas A. Garland's children as many as the Testator had specifically bequeathed to them.

Thus, we see that the Testator's East Tenn. and Va. Railroad

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bonds were assets in the hands of Charles R. Slaughter, Ex'or, were assets in the hands of Sam'l Garland, Jr., Ex'or, and were assets in the hands of John F. Slaughter, Adm'r, de bonis non, with the will annexed—assets in the hands of each of these fiduciaries—much more than sufficient to satisfy these specific bequests.

We see, too, that in Dec. 1863, and Jan'y, 1864, John F Slaughter, Adm'r de bonis non, with the will annexed, divided among other parties $10,500 of the Testator's East Tenn. & Va. Railroad bonds, taking to himself several thousand, as Adm'r of Charles R. Slaughter and Ex'or of Samuel Garland, Jr. Rec. Part 1st, p. 46 and p. 50. John F. Slaughter purchased two of the Testator's $1,000 East Tennessee & Virginia Railroad bonds, bequeathed to Nicholas A. Garland's children, but the $10,500 of these bonds that he divided and the $2,000 that he purchased did not exhaust the Testator's East Tenn. & Va. Railroad bonds in his hands, by many thousands. What has become of the residue of these bonds? As to this, the record is silent! As to this, the voice of every man—dead, or alive—is silent!! The Testator intrusted these bonds to his executors for Nicholas A. Garland's children. The Court intrusted these bonds to the Adm'r de bonis non with the will annexed, for Nicholas A. Garland's children. It was a sacred trust. They held a fiduciary relation to the bonds and they held a fiduciary relation to Nicholas A. Garland's children.

Burr Garland qualified in Mississippi, in Nov. 1862, as Admr', with the will annexed of Sam'l Garland, Sr. His was an ancillary administration. His inventories of all the Testator's personal estate in Mississippi that came to his hands were returned, and recorded in January, 1863, and certified copies of these inventories are in the record. Rec. Part 5th, p. 6-19. Scrutinize them—item by item—you will not find in them a single one of the Testator's $400,000 of Stocks and Corporate bonds. Before Burr Garland's qualification, in Mississippi, the Testator's East Tenn. & Va. Railroad bonds were assets in the hands of John F. Slaughter, Adm'r de bonis non in Virginia, inventoried and returned by him, and his inventory recorded. Rec. Part 5th, p. 90-1.

The duties assumed by Burr Garland, on his qualification, were circumscribed by the boundaries of Mississippi, and related alone to assets that came to his hands. He assumed no duties as to assets

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in the hands of John F. Slaughter, and no duties as to any estate of the Testator in Virginia. Mississippi and Virginia, as to these respective administrations, are independent of, and foreign to, each other. So the authorities read.

In Smith v. Guild, 34 Me. 443, a Massachusetts domiciliary Adm'r sought to possess himself of estate of the decedent in Maine. The court said: "Letters of administration granted in another State give no power of administering the property of the deceased in this State."

In Banta v. Moore, 2 McCarter (15 N. J. Ch.) 97, a New Jersey domiciliary Adm'r sought to possess himself of bonds of the decedent, in the hands of a New York ancillary Adm'r, carried by him from New Jersey into New York, and on which he had obtained the New York administration. The court said: (p. 102) "Neither has a claim against the funds in the hands of the other. Each Adm'r is to be called to account for the funds in his hands in the jurisdiction where he is appointed."

In Vaughan v. Northup, 15 Peters 1, Judge Story said: (p. 5) "Every grant of administration is strictly confined, in its authority and operation, to the limits of the Territory of the Government which grants it."

As in Burr Garland's qualification in Mississippi, he assumed no duties as to the Testator's East Tenn. & Virginia bonds, in the hands of John F. Slaughter, Adm'r in Virginia, Burr Garland held no fiduciary relation to these bonds.

The only interest that Nicholas A. Garland's children had in the estate of Sam'l Garland, Sr., was in the demonstrative specific legacies in his East Tenn. & Virginia Railroad bonds in the hands of John F. Slaughter, Adm'r in Virginia. They were not creditors of Sam'l Garland, Sr. They were not pecuniary legatees of Sam'l Garland, Sr. They did not have any interest in one atom of property, or one cent of money, that came to the hands of Burr Garland, Adm'r, with the will annexed, of Sam'l Garland, Sr., in Mississippi. Burr Garland held no fiduciary relation to Nicholas A. Garland's children.

Now we ask, with confidence, what rule of law inhibited Burr Garland from purchasing Nicholas A. Garland's children's demon-

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strative specific legacies in the Testator's East Tenn. & Virginia Railroad bonds in the hands of John F. Slaughter, Adm'r de bonis non with the will annexed in Virginia?

Burr Garland purchased eight of these legacies and took formal deeds conveying the same to him. Look at the language adopted in these deeds: "do hereby sell and convey, transfer and assign over to him, the said B. Garland, his heirs or assigns, all my right and interest to a special legacy left to me, as one of the children of Nicholas A. Garland, of the State of Illinois, by the last will and testament of my uncle, Sam'l Garland, deceased, late of the city of Lynchburg, and State of Virginia, it being a bond of the East Tenn. & Virginia Railroad Company for one thousand dollars, payable in the bonds of said Company, or in other bonds of equal value, and I hereby authorize and empower the said B. Garland to make use of my name, if need be, in the collection of said legacy bequeathed to me as one of the children of Nicholas A. Garland in the said will from John F. Slaughter, Adm'r, with the will annexed of the late Sam'l Garland, deceased, in the State of Virginia, and of record in the Hustings Courts of the city of Lynchburg, in the State of Virginia, the whole of said legacy being yet due and unpaid; and we hereby authorize and direct the said Adm'r to pay over the same to the said B. Garland, his heirs, or assigns." Rec. Part 2nd, p. 62.

Can any man read this assignment and fail to see that it is John F. Slaughter who holds a fiduciary relation to these bonds and these legatees, and not Burr Garland? Can any man fail to see that instead of Burr Garland's relation to these bonds and these legatees being identical with John F. Slaughter's relation to them, it is wholly dissimilar?

Surely, then, the Commissioner erred, when he held that Burr Garland's purchase of eight of the legacies to Nicholas A. Garland's children was void, because he had so treated John F. Slaughter's purchase of two of the legacies to Nicholas A. Garland's children.

Again: Whether the legatees, from whom John F. Slaughter made his purchases, were satisfied with the sale, or objected to it, we have not heard, but we understand the rule to be, that when a trustee wrongfully purchases the trust subject, the sale may be set aside at the option of the cestui que trust.

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In Campbell v. Walker, 5 Ves. 678. The Court said: (p. 680) "I will lay down the rule as broad as this, and I wish Trustees to understand it, that any Trustee, purchasing the trust property, is liable to have the purchase set aside, if, in any reasonable time, the cestui que trust chooses to say, he is not satisfied with it."

In Ex parte Lacey, 6 Ves. 625, Lord Eldon said: (p. 627) "I say, whether he is (the Trustee) will make it or not, if the connection (between the Trustee and cestui qui que trust) does not satisfactorily appear to have been dissolved it is in the choice of the cestuys que trust, whether they will take back the property or not."

In Lister v. Lister, 6 Ves. 631, Sir William Grant said, it had been established since Lord Thurlow's time, that "Upon a purchase of trust property by the Trustees, on their own account, that at the option of the cestui que trust it shall be resold."

Thus we see, that the objection to a wrongful purchase of the trust subject made by the cestui que trust, made by the cestui que trust, or on his behalf, if he be under disability. Burr Garland not only held no fiduciary relation to Nicholas A. Garland's children, but those, whose legacies he purchased, have ever been content with the sale, and they request that he, or his heirs, shall take the East Tenn. and Va. Railroad bonds, that the Testator bequeathed to them.

2. The Commissioner erred in his conclusion that the 8 legacies, which Burr Garland purchased from Nicholas A. Garland's children, "were extinguished."

It is a little surprising to see how our friends on the other side brought the Commissioner to the conclusion that Burr Garland "extinguished" the 8 legacies he purchased from Nicholas A. Garland's children, by unwittingly paying for them moneys of the estate of Sam'l Garland, Sr.; that he accidentally tripped, and fell into an ademption of these legacies, and thus John F. Slaughter, Adm'r with the will annexed in Virginia, acquired these 8 of the Testator's East Tenn. & Va. Railroad bonds, not perhaps for himself individually, but for the estate of Charles R. Slaughter and Sam'l Garland, Jr., the residuary legatees. This would indeed be a curious result!

Let us examine, a little, the data, on which they would work out this problem.

Under probate proceedings in Mississippi (Rev. Code, 1857, p. 450) the Adm'r is required to return accounts once a year of his administration, showing his receipts and disbursements, and (p. 451) "when the estate has been fully administered by payment of all the debts, and collection of all the money due, it shall be the duty of the Executor or Administrator to make a final settlement of his administration."

On this final settlement, notice is given to the distributees, and publication is made as to non-residents; and on confirmation of the final account, the probate court "shall at the same time order the Executor or Administrator to make immediate distribution of all property in his hands."

Here it is to be observed, that under probate proceedings, in Mississippi, distribution awaits the final settlement, and is then ordered.

Burr Garland returned three ex parte annual accounts.

The first covered the year 1863, and was returned the 9th of March, 1866. Rec. Part 5th, p. 42-7. The second covered the year 1864, and was returned the 2nd of April, 1867. Rec. Part 5th, p. 47-53. The third embraced transactions in 1865, 1866 and 1867, and was returned the 9th of December, 1868. Rec. Part 5th, p. 54-6. Burr Garland died the 9th of December, 1869, not having made any final account.

In September, 1864, a crop of cotton being made on the Hinds County lands that year, there was a new inventory and appraisement of the personal estate of Sam'l Garland, Sr.,—enormous loss having occurred after the inventory returned in January, 1863, in devastation and destruction by the military forces. Rec. Part 5th, p. 26-34.

In Sept. 1864, the Barren's tract, being ½ of the Hinds County lands, was assigned as dower to Mrs. Garland, in absolute right, she having renounced the will; and there was alloted to her ½ of all the Testator's personal property in Mississippi. There was then in hand 30,000 lbs. of cotton in the seed, which was divided —15,000 lbs. in the seed to Mrs. Garland, and 15,000 lbs. in the

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seed left, as if that belonged to the estate. Rec. Part 5th, p. 31 and 34. In the Inventory of Jan'y, 1863, there were 400 bales of cotton—all the cotton of the estate—making at $40 a bale, $16,000. Rec. Part 5th, p. 10. All the cotton in the Inventory of Jan'y, 1863, was burned by the Federal forces in July, 1863. Rec. Part 5th, p. 62-3. The 15,000 lbs. in the seed could not have yielded when ginned over 12 bales. Rec. Part 5th, p. 93.

Burr Garland's selection, under the 9th clause of the will, took the Tudor Hall tract, which, with Barren's, embraced all the Hinds County lands, and it took every article of personal property of the Testator's estate in Mississippi that was left after the losses by the Federal forces and Mrs. Garland's ½ had been deducted, except some slaves, then virtually free, and said 15,000 lbs. of cotton in the seed, raised in 1864—three years after the Testator's death, and not really a part of his estate.

The 3rd ex parte account, returned by Burr Garland (Rec. Part 5th, p. 54-6) shows sales of 100 bales of cotton, and no receipts from any other source. These sales consist of four items, as follows: 1st, four bales sent to Vicksburg in Sept. 1865, and sold to Peter Casey for $639.72; 2nd, February 1866, 11 bales from Barrens estate sold to A.Virden at Jackson, net $1,957.75; 3rd, (same date,) 12 bales from Barrens estate, shipped through A. Virden, Jackson, to T. H. and J. M. Allen, New Orleans, net $1,883.66; 4th: 73 bales from Barrens estate shipped to T. H. and J. M. Allen, New Orleans, per account of sales 1867, $6,419.98, altogether $10,901.11.

The record shows the account of Burr Garland with Aiken & Watt, of New Orleans, on whom drafts were drawn to pay for six of the legacies purchased from Nicholas A. Garland's children. Rec. Part 2nd, p. 73 and p. 70-2. This account begins the 3rd of Feb., 1869, and closes the 13th Aug., 1869. The first legacy purchased, is conveyed by a deed dated 17th of Feb., 1869, and acknowledged at Springfield, Illinois, the 19th of Feb., 1869. Rec. Part 2nd, p. 58-9 and the draft in payment for that legacy is taken up by Aiken & Watt, the 6th of March, 1869. The first shipment of cotton to Aiken & Watt was ordered from Jackson, the 18th Dec., 1868. Rec. Part 3, p. 60; and this was raised on the Hinds County lands (Rec. Part 5, p. 86, Ans. 2)—four years after Barrens had been assigned as dower to Mrs. Garland, and

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Tudor Hall taken under the 9th clause of the will for Mrs, Morriss and her children.

These are the data from which the Commissioner worked out his problem; and he states his process as follows:

"On the 9th day of Dec., 1868, he settled his 3rd and last ex parte account, as Adm'r, c. t. a., of Sam'l Garland, Sr.'s estate, showing an indebtedness by him to said estate of $6,545.09. On the 3rd day of Feb., 1869, he deposited $5,000 to his credit with Aiken & Watt, in New Orleans, out of which he paid for 6 of said legacies, by drafts on said firm. In addition to this $5,000, he had at least $1,100 elsewhere, for he paid $550, each, for the remaining two of said legacies, otherwise than through said firm, so that he had in hand substantially all of the $6,545.09 shown by his last settlement to be due by him. It is fair to presume, and your Commissioner reports, that said legacies were purchased, and paid for, by Burr Garland, out of money belonging to the estate of his Testator, Sam'l Garland, Sr., and being so purchased and paid for, the liability of Sam'l Garland's estate thereof ceased, and said legacies were extinguished." Rec. Part 5th, p. 105.

The error in the Commissioner's process of reasoning, and in the conclusion which he thinks "it is fair to presume," will be apparent when we consider the following facts that present themselves on the record: The account with Aiken & Watt (Rec. Part 2nd, p. 73) shows on its face, that on the 3rd of Feb., 1869, when they received the $5,000, they paid out for 36 bales of cotton $4,405.55, and on the 10th of Feb. three other items, including a mule, aggregating $249.88, making together $4,655.43. Thus Aiken & Watt, paid out all of the $5,000 they received except $344.57, before Burr Garland had purchased any of the legacies of Nicholas A. Garland's children. The first legacy Burr Garland purchased cost $500. Rec. Part 2nd, p. 58. So then, instead of the $5,000, which Aiken & Watt received the 3rd of Feb., 1869, paying for the eight legacies, or for the six legacies, it did not pay for the first legacy that Burr Garland purchased; and it was not fair for the Commissioner to presume as much as he did.

Again: Aiken & Watt on the 19th of June, 1869, received net proceeds of the sale of 48 bales of cotton $5,740.78, and every

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legacy that Burr Garland purchased, except one, was purchased after this date. Rec. Part 2nd, p. 59-64. From the proceeds of the sale of this cotton, on the 19th of June, 1869, Aiken & Watt refunded what they had advanced in taking up Burr Garland's draft for the first legacy he purchased, and from the proceeds of this sale, they took up every other draft that Burr Garland ever drew on them for purchases of legacies from Nicholas A. Garland's children. Is it fair to presume that this cotton that Aiken & Watt sold the 19th of June, 1869, about eight years after the death of Sam'l Garland, Sr., belonged to his estate?

Is it fair to presume that the money received by Aiken & Watt from the purchaser of this cotton, the 19th of June, 1869, was the money of the estate of Sam'l Garland, Sr.? And yet this presumption, as violent as it may be, must be made, before the Commissioner's conclusion can be reached.

Again: The balance of $6,545.09, in the 3rd ex parte account, was from sales of cotton in Sept. 1865, Feb. 1866 and 1867—none later, though the account was returned to the Probate Court, as late as the 9th of Dec. 1868. Between the time of receiving the last money and the purchasing of the first legacy is a gap of two years. Where was the money during these two years? Of this, there is not a particle of evidence. It is not pretended that it was ear-marked any way. If this money in the 3rd ex parte account had been the money of the estate of Sam'l Garland, Sr., (and we will show that it was not) still there is nothing in this record from which the Commissioner could presume that this identical money was in Burr Garland's hands in 1869, and by him paid to Nicholas A. Garland's children to him for their legacies. Burr Garland took deeds conveying their legacies from Nicholas A. Garland's children to himself, individually. If he had paid the money of Sam'l Garland's estate, and had been charged with the duty of investing said money, and had applied it in purchasing the legacies of Nicholas A. Garland's children, the taking of the deeds of conveyance to himself individually, would have been a fraud on the estate of Sam'l Garland, Sr. The law never presumes a fraud, and the Commissioner ought not to do it.

Again: The face of the 3rd ex parte account shows where every pound of cotton in that account went—the first to Peter Casey, in

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Vicksburg, the second to A. Virden, in Jackson, and all the rest to T. H. and J. M. Allen, in New Orleans—not one pound of it went to Aiken & Watt. The Commissioner traces, and correctly,

too, the payment for six of the legacies, purchased from Nicholas A. Garland's children, to Aiken & Watt—payment by them with moneys in their hands; but the Commissioner does not trace a single cent that ever went from Peter Casey or from A. Virden or from T. H. and J. M. Allen to Aiken & Watt, nor into the purchase of any of these legacies. How then could the Commissioner conclude that the proceeds of one pound of cotton in the 3rd ex parte account, from which this balance of $6,545.09 comes, ever went into the purchase of said legacies, or any of them? Such a conclusion cannot come from any fair presumption.

Again: The face of the 3rd ex parte account shows where all of the 100 bales of cotton in that account came from, except four bales. The face of it shows, that 94⁄ bales of that cotton, producing $10,261.39 came from "Barrens estate," from one to three years after Barrens had been assigned as dower to Mrs. Garland, and from four to seven years after the death of Sam'l Garland, Sr. How then could this be cotton of estate of Sam'l Garland, Sr., and how could the proceeds of the sale of this cotton be the money of the estate of Sam'l Garland, Sr.? This cannot be fairly presumed.

If the Commissioner had indeed traced the proceeds of the sale of this cotton into the purchases of the East Tenn. & Va. Railroad bonds bequeathed to Nicholas A. Garland's children, instead of the legacies being extinguished, they might well have been claimed by Mrs. Garland.

Again: In September, 1864, all the visible personal estate of Sam'l Garland, Sr., in Mississippi, was inventoried and appraised, including the crop of cotton made in 1864, then in the seed, and one-half thereof allotted to Mrs. Garland. This left of all the cotton, not allotted to Mrs. Garland, 15,000 lbs. in the seed, which could not have yielded over 12 bales of ginned cotton. Leaving out of view, for the present, the fact that Mrs. Garland then had an equal quantity—12 bales—severed and freed from any claim of the estate, and conceding, for the sake of the argument, that the 12 bales left, though made in 1864—three years after the death of Sam'l Garland, Sr.—belonged to his estate, if we subtract these

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12 bales from the 100 bales in the 3rd ex parte account, there will remain 88 bales in that account, in which it is not possible that the estate of Sam'l Garland could have had the shadow of a title. How then can it be fair to presume that the cotton in the 3rd ex parte account was the estate of Sam'l Garland, Sr.? On the contrary, we assert confidently, that stating the proposition in the strongest possible light for the estate, it amounts to a mathematical demonstration, that 88-

100ths of the cotton in the 3rd ex parte account could not have belonged to the estate of Sam'l Garland, Sr., but did belong to Mrs. Garland.

Take the facts which are prominent on the face of this record. Study them analytically or synthetically, by comparison or by contrast, up one side and down the other, and no ingenuity can logically deduce from them the conclusion that Burr Garland purchased the legacies to Nicholas A. Garland's children with moneys of the estate of Sam'l Garland, Sr. Burr Garland was not charged with the duty of investing moneys of the estate of Sam'l Garland, Sr. When Burr Garland purchased the legacies to Nicholas A. Garland's children, he had no moneys of Sam'l Garland, Sr., in his hands, and his purchase of said legacies did not "extinguish" them.

3. How do we explain Burr Garland's including in his administration accounts crops raised, after the death of Sam'l Garland, Sr., and from Barrens, after it was assigned as dower to Mrs. Garland?

Of course, crops raised after 1861, Sam'l Garland, Sr., having died in Nov. of that year, do not constitute a part of his estate. The renunciation of the will utterly defeated the Testator's scheme as to his Mississippi estate. That scheme was to give, after providing for the legacy in the 9th clause, all the Mississippi estate, real and personal, to the residuary legatees By the renunciation Mrs. Garland became entitled to one-half of all the Mississippi estate, real and personal, absolutely, and to one-half of all rents, issues and profits after the death of Sam'l Garland, Sr. The inventory taken immediately after Burr Garland's qualification, and returned Jan'y 1863, embraced the crops made in 1862. Rec. Part 5th, p. 13-4. A crop of corn was made on the Coahoma tract in 1862, but nothing else. Coahoma lies on the Mississippi river a little below Memphis,

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and when Memphis fell, about the end of the year 1862, Coahoma was abandoned to the Federal forces. Rec. Part 5th, p. 18 and p. 69-70. The crops made in 1863 on the Hinds County lands which embrace Barrens and Tudor Hall, were carried into Burr Garland's 1st ex parte account. The crops made in 1864 on the Hinds County lands were carried into his 2nd ex parte account, so far as sales had been made of said crops before Sept. of that year. In Sept. 1864 Barrens was assigned as dower to Mrs. Garland, and one-half of all the personal estate of Sam'l Garland, Sr., and one-half of the crops not sold—30,000 lbs. of cotton being in the seed, the crop of 1864—was allotted to her. Rec. Part 5th, p. 30-1 and p. 33. Then Burr Garland took Tudor Hall, under the 9th clause of the will, being all the balance of the Hinds County lands, and selected all the

residue of the Testator's personal estate in Mississippi—the destruction by the Federal forces not leaving enough to satisfy the legacy under the 9th clause. Rec. Part 5th, p. 39 and p. 36.

As Burr Garland had not settled his final account, and had not turned over Mrs. Garland's part to her (see her answer Rec. Part 4th, p. 13-15), distributing everything including the final account, he carried cotton raised on Barrens after it was assigned as dower into his 3rd ex parte account.

Under the misapprehension that he took a life estate in the legacy in the 9th clause of the will, and that the profits belonged to him, he rendered no account of the profits from Tudor Hall after 1864. Rec. Part 5th, p. 68, Ans. 5.

It was thus, we think, that the crops made after the death of Sam'l Garland, Sr., and those after the assignment of Barrens as dower, got into the administration accounts.

It is said on the other side that it was Burr Garland's duty to have settled his final account and to have turned over to Mrs. Garland what Mrs. was entitled to. That is true, but his delay in settling his final account and his erroneous statement of his ex parte accounts do not deprive Mrs. Garland, nor any party of his or her rights.

4. In the final account, there was no inquiry in Mississippi as to the rights of distributees, but the funds were ordered to be transmitted to Virginia, and their rights to be ascertained here.

After Burr Garland's death, proceedings in Mississippi for a final

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account were instituted by Col. W. H. Garland, the Ex'or of Burr Garland, but he immediately abandoned them, (Rec. Part 2nd, p. 67-70), and thence forward Burr Garland's estate was wholly unrepresented. Mrs. Garland and Mrs. Morriss were residents of Virginia. There was publication as to them in Mississippi, but there was no personal service on them, by Attorney or otherwise. The children of Mrs. Morriss, equal legatees with her in Tudor Hall and all the legacy under the 9th clause of the will of Sam'l Garland, Sr., had by Amended Bill in the original suit, been made parties, (Rec. Part 1st, p. 15), but no notice was given to them of the proceedings in Mississippi

in the final account, by publication and otherwise, and there was no appearance for them. Under these circumstances, and with active efforts to magnify every conceivable liability of Burr Garland in his administration, it is not surprising, that our friends on the other side succeeded in piling up a large amount In this final account, they charged against Burr Garland's estate the aggregate amount of the inventories and appraisements returned in Jan'y 1863, which included all the personal estate of Sam'l Garland, Sr., in Mississippi, at the time of his death, and the crops raised in 1862. These amounted to $199,321.25. To this sum they added the crops raised subsequently, not only before, but after the assignment of dower, and the selection by Burr Garland, in Sept. 1864, embracing the crops and profits in the 1st, and 2nd, and 3rd ex parte accounts, and $14,026.90, crops sold to the Confederate Military authorities, and never paid for, though this $14,026.90 was afterwards deducted. Thus they reached an aggregate amount of charges against him of $242,030.88—exceeding the whole personal estate of Sam'l Garland, Sr., at the time of his death, including the crops of 1862, by $42,706.63.

Again: From the burning of the cotton, and the destruction of cattle and crops, and the carrying off mules and teams by the Federal forces, and the running away of slaves, the Testator's estate had been reduced by September, 1864, when the second inventory and appraisement were taken, to $113,350. Rec. Part 5th, p. 31-3. This loss amounted to $85,974.25. It did not leave enough, after Mrs. Garland's half was taken out, to satisfy the legacy in the

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9th clause of the will. It left nothing of the personal estate of the Testator in Mississippi for the residuary legatees.

From the $242,030.88 they deducted the appraised value of the slaves, but they did not deduct the appraised value of the 400 bales of cotton that were burned—all the cotton of the Testator's estate, (see inventory returned January, 1863. Rec. Part 5th, p. 10), nor the cattle and crops and mules and teams lost by the Federal forces. Thus they reached a balance of $64,130.88, which was ordered to be sent to Virginia that distribution thereof might be made to the person or persons entitled to it.

5. In the $64,130.88 ordered to be transmitted to Virginia, what moneys were included, to which Mrs. Garland and Mrs. Morriss and her children were entitled, and what moneys were included to which the Residuary Legatees were entitled?

On her renunciation both in Virginia and Mississippi, Mrs. Garland became entitled, at the death of Sam'l Garland, Sr., to half of his real and personal estate in Mississippi, and being entitled to half of his real and personal estate she was entitled to half of the rents, issues and profits that accrued therefrom between the time of his death and the assignment of her dower and the allotment of her half of his personal estate in Sept. 1864.

In the 1st ex parte annual account (Rec. Parr 5th, p. 42) is an item of $4,644, received from Brown, Johnson & Co., of New Orleans, a collection by them of a note of S. W. and W. A. Percy, belonging to the Testator, and interest. This was received sometime in 1863, and in Confederate currency. Rec. Part 5th, p. 78, Ques. and Ans. 32 and 33. Every other item in this 1st ex parte annual account is for rents, issues and profits in 1863.

The 2nd ex parte annual account includes rents, issues and profits in 1864.

These are from the Hinds County lands. Rec. Part 5th, p. 77. Barren's, one-half of the Hinds County lands, was assigned as dower to Mrs. Garland. Tudor Hall, the other half of the Hinds County lands, passed under the 9th clause of the will to Mrs. Morriss and her children. They were entitled to the possession of the legacy under the 9th clause of the will, if not at the death of

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Sam'l Garland, Sr., yet quite certainly in one year from his death, and before the 1st of Jan'y, 1863. So that Mrs. Garland and Mrs. Morriss and her children together entitled to the rents, issues and profits that went into the 1st and 2nd ex parte annual accounts in excess of the expenditures.

If we examine the 1st and 2nd ex parte annual accounts—Rec. Part 5th, p. 46 and p. 52-3, we will find that the surplus over the expenditures were put into Confederate securities, viz: $3,000, $3,000, $2,000, $3,500, $1,000, $800, $520 and $1,200 aggregating $15,020. Now if we turn to Rec. Part 2nd, p. 47, we will find that this $15,020 is carried into the final account, as good money, and enters into the balance of $64,130.88.

Mrs. Garland was entitled to the rents, issues and profits of Barrens, after it was assigned to her as her dower, and these we have already shown were carried in the 3rd ex parte annual account.

Now turn to Rec. Part 2nd, p. 47, and we will see that the balance of $6,545.09 and $2,045.33 interest thereon and $1,289.86 expenditures and $163.60 taxes and $488.46 debt due by the Testator to Farrington & Howell, merchants, in Memphis, (Rec. Part 5th, p. 56) and paid by him, that at the request of John F. Slaughter, (as stated on oral argument) being the sum up to $10,532.34, which is carried into the balance of $64,130.88.

This $488.46 debt of the Testator, paid by Burr Garland in 1866, was again recovered from him, (see Jno. F. Slaughter's 13th Exception, Rec. Part 2nd, p. 30) on the ground that he ought to have paid it in "Confederate Treasury notes which he allowed to remain in his possession until they ceased to be of any value." On the fall of Memphis it was embraced in the Federal lines, and this debt could not be paid in Confederate notes. Rec. Part 5th, p. 80, Ans. 38. The Confederate notes were charged against him as good money, and enter into the $64,130.88. See Jno. F. Slaughter's 10th Exception, Rec. Part 2nd, p. 28. The Testator's debt of $488.46 was paid by him in good money, but again charged against him, on the ground that he ought to have paid it in Confederate notes, and it was carried into the $64,130.88.

The surplus over expenditures in 1863 and 1864, in the 1st and 2nd ex parte annual accounts of $15,020, and the amount charged

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in the 3rd ex parte annual account of $10,532.34, making together $25,552.34, carried into the $64,130.88, belongs to Mrs. Garland and Mrs. Morriss and her children. Mrs. Garland's part of this fund has been assigned to Mrs. Morriss' children, Mrs. Morriss being now dead. Rec. Part 5th, p. 118. So, there will be no need of separating her share.

Now let us enquire, what moneys are included in the $64,130.88 to which the Residuary Legatees are entitled?

We have shown that the losses from the war and the allotment of half the personal estate to Mrs. Garland, and the selection by Burr Garland, under the 9th clause of the will, took all the Testator's personal estate in Mississippi, so, there can be nothing in Burr Garland's administration to which the Residuary Legatees are entitled.

6. What is the indebtedness of Burr Garland to Mrs. Garland and to Mrs. Morriss and her children that did not enter into the balance of $64,130.88?

The record shows that in September, 1864, Burr Garland had 15,000 lbs. of cotton in the seed, the crop of that year, which in the division was allotted to Mrs. Garland—Rec. Part 5th, p. 30, and John Shelton's deposition—Rec. Part 5th, p. 81. This 15,000 lbs. in the seed would yield 12 bales. The average price per bale of the 100 bales sold 1865, 1866 and 1867, as appears from the 3rd ex parte account, was $109.00, and the 12 bales would be $1,308. This indebtedness of Burr, Garland to Mrs. Garland is not carried into the $64,130.88.

The remaining 15,000 lbs. of cotton in the seed, in the division in September, 1864, being made on the Hinds County lands in 1864, could not have belonged to the estate of Sam'l Garland, Sr., who died three years before, and one-half of the Hinds County lands going to Mrs. Morriss and her children under the 9th clause of the will, this half of the cotton belongs to them, which, as we see above, was worth $1,308, and is indebtedness to Mrs. Morriss and her children, that is not carried into the $64,130.88.

Burr Garland was indebted to Mrs. Morriss and her children for the rents, issues and profits of Tudor Hall from 1864 to the time of

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his death, the 9th of Dec., 1869. The record contains evidence which furnishes two methods, by each of which this rent can be estimated with approximate certainty. The testimony of J. H. Tripp is positive that he collected, on contracts made by Burr Garland, for rent of Tudor Hall in 1869, between $2,100 and $2,200, and paid this money to Burr Garland's executor, and his deposition, and other depositions, prove that the rent of Tudor Hall for each of the years 1866, 1867 and 1868, was worth as much as it was in 1869. Rec. Part 5th, p. 57-8. Here we have four years in which the rental value of Tudor Hall exceeded $2,100 a year. If we say $2,000 a year, the four years will make $8,000. The taxes is proved by John Shelton's deposition to be about $100 a year— and five years taxes comes to $500. Rec. Part 5th, p. 87-8. These rents would have been liable to debts of Burr Garland for his support, but as no such claims have been preferred, it may be inferred that none such exist.

The other method is this: The testimony shows that at Tudor Hall there are of enclosed bottom lands from 350 to 400 acres, which would rent at $3.50 to $4.00 per acre, taking the lowest quantity and the lowest price, it would make for the bottom land $1,225. And of enclosed high land from 600 to 700 acres which would rent from $2.50 to $3.00 per acre. Again taking the lowest quantity and the lowest price, we have for the high land $1,500. For both bottom land and high, this makes $2,725 per year, and for four years $10,900. Rec. Part 5th, p. 58 and p. 65.

This rent is not included in the $64,130.88.

The Commissioner allowed nothing for the rent of Tudor Hall, saying there was no evidence of what Burr Garland may have expended in making fences, building cabins, &c. Repairs of this kind were incurred in 1865, and we have not estimated any rents for that year. The rents which we have estimated are net rents to the landlord, the tenant defraying the expenses of cultivation. Burr Garland kept no accounts of rents or expenses, as far as we can learn; and when Trustees keep no accounts of the trust subject, the cestui que trust is entitled to take a reasonable estimate, and to draw inferences most favorable to the cestui que trust.

2 Pom. Eq. Jurisprudence, p. 638, § 1063, note 1, states the

END OF TRANSCRIPTION

Pages 820-829

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rule, citing many authorities, as follows: "A failure to keep full and accurate accounts raises all presumptions against the Trustee."

In White v. Stuart, Buchanan & Co., 76 Va. 547, 565, the Court held: "That for 1867 and 1868, the interest test of rental value is the sum for which the property was rented in the fall of 1868."

In Cross v. Cross, 4 Gratt. 258, the Court not only held that hires might be estimated, but further, that "An Administratrix, or other fiduciary, whose duty it is to hire out slaves for the benefit of the cestui que trust, will be held to account for interest on their estimated hires."

7. The transmission of the funds to Virginia is without prejudice to any persons interested therein.

There was no purpose in the proceedings in Mississippi to ascertain who were entitled to the funds ordered to be transmitted to Virginia; and the children of Mrs. Morriss, although they had been made parties to the suit in Virginia were not notified of the proceedings in Mississippi by publication, or otherwise, and they are not bound by it.

In Crawford v. Redus, 54 Mississippi 700, it was held: "As to heirs and legatees not notified, an Executor's final settlement has only the effect of an annual account."

The form of the order for transmission is as follows: "That W. H. Garland, as such Executor of the last will and testament of said Burr Garland, deceased, pay over said balance of money so reported as due by said Burr Garland, on said restated final account to the legal representatives of said Sam'l Garland, Sr., deceased, in the State of Virginia, to be by such legal representative or representatives paid over to the person or persons entitled to receive the same under said last will and testament of said Sam'l Garland, Sr., deceased."

In reference to this order our Court of Appeals in Garland's Adm'r v. Garland's Adm'r, 84 Va., 181 said: (p. 190) "It (the Mississippi Court) did not undertake to distribute it, nor to determine who are entitled to receive it under Sam'l Garland's will, but decreed it to be paid over to the Virginia domiciliary Executor to be by him distributed to those entitled according to the declared

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intention of the Testator"; and our Court said: (p. 191) that their decision is "without prejudice to any right of action which Paulina B. Morriss may have in this or in an independent suit."

Garland's Adm'r v. Garland's Adm'r, 87 Va., 158, was again before our Court of Appeals, referring to the Mississippi order for the transmission of the funds to Virginia, our Court said: (p. 760) "That Court did not undertake to distribute it, nor to determine who are entitled to receive it," and referring to its former decision, quoted as follows: "But this decision is without prejudice to any right of action which Paulina B. Morriss may have in this or in an independent suit." And the Court again said: (p. 762) "Had he (Burr Garland) undertaken to expend these profits in any other way he would have been guilty of a breach of trust, for there was in the eye of a court of equity as complete a trust in him to apply these profits in this one direction as there was in the trustee to hold the legal title.

Though Burr Garland may have thought that he took a life estate in the legacy under the 9th clause of the will, and that the profits were his, and that he could use them in purchasing any thing he chose, yet still these profits were trust funds, and Mrs. Morriss and her children could follow them and recover any property in which they were invested.

8. Now let us enquire, with what moneys did Burr Garland purchase the eight legacies of Nicholas A. Garland's children?

In the 9th clause of the will, the Testator refers to Burr Garland's pecuniary embarrassment, and that it would "be unsafe to devise property to him absolutely." Rec. Part 1st, p. 10. In the original Bill it is alleged that he "is not pecuniarily responsible, owning no estate, but that which is devised and bequeathed to him by this will." Rec. Part 1st, p. 7. The deposition of A. Virden, who was his merchant in Jackson, Mississippi, and who knew him from 1841 or 1842, says: "he was considered insolvent." Rec. Part 3rd, p. 56. John Shelton, his Attorney, knew him from 1837 as a member of a mercantile firm that failed, and that he was insolvent. Rec. Part 5th, p. 67-8. He had no money at the death of Sam'l Garland, Sr. The money that came to his hands were hires, rents,

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issues, and profits from Tudor Hall and Barrens after the death of Sam'l Garland, Sr. Rec. Part 5th, p. 77, Ans. 29, and p. 66, Ans. 2. Those from Tudor Hall he thought were his own, and those from Barrens he held as Adm'r, having never turned them over to Mrs. Garland. These are the sources—immediate or mediate—whence the moneys came with which he purchased the eight legacies from Nicholas A. Garland's children. These are trust moneys—and with these trust moneys Burr Garland was trading. True, he thought much of these moneys was his own, and he contemplated no wrong, when he took the deeds conveying these legacies to himself,

individually; but his mistake does not change the character of these moneys, nor impair the rights of Mrs. Morriss and her children in these moneys, nor their right to take the legacies themselves instead of the moneys with which he purchased them.

In Oliver v. Piatt, 3 Howard 333, Judge Story said: (p. 401) "The option in such cases, to take the new or the original fund, is therefore (as has been already suggested) exclusively given to the cestui qui trust, and is given to him for the wisest purposes, and upon the soundest public policy."

9. Of what does the estate of Burr Garland consist; and how is it to be distributed?

This contest is between Mrs. Garland, the widow, and Mrs. Morriss and her children, Legatees under the 9th clause of the will, on one side, and the Residuary Legatees, on the other. Their relative position as to the estate of Sam'l Garland, Sr., is as follows: Mrs. Garland, in virtue of her renunciation of the will, takes one-half of all the estate of the Testator, irrespective of the will and of the rights of the legatees. From the other half of the estate, the legatees get their legacies, as best they can. See Mitchell v. Johnson, 6 Leigh 461; McReynolds v. Counts, 9 Gratt. 242; Morriss v. Garland 78 Va. 215.

From this remaining half of the estate, Mrs. Morriss and her children first take their legacy—the first sentence in the 10th clause giving them preference over all subsequent legatees.

The Residuary Legatees come afterwards.

This is the relative position in which the parties, now contesting

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their claims, are entitled to share in the estate of Sam'l Garland, Sr.

Under the decision in Garland's Adm'r v. Garland's Adm'r, 84 Va. 181, 190, the amount of $64,130.88, ordered by the Mississippi court to be transmitted to Virginia is conclusive on Burr Garland's Adm'r, as to the liability of his estate.

Now we have traced into the hands of Burr Garland, Adm'r, and into the said $64,130.88 trust moneys of Mrs. Garland—profits on her half of the estate of Sam'l Garland, Sr.—and trust moneys of Mrs. Morriss and her children—profits on the legacy under the 9th clause of the will—together $25,552.34. Then we must take the $25,552.34 from the $64,130.88, which leaves $38,578.54 a liability of Burr Garland's estate, conclusive on his Adm'r. Whatever may be realized on this $38,578 54 will be supplementary to the estate of Sam'l Garland, Sr., which has not heretofore been brought into the division, and in which Mrs. Garland will be entitled to her half.

The present value of the eight Tenn. & Va. Railroad bonds and coupons and interest thereon, as calculated by Commissioner Sackett, is $37,506.67. Rec. Part 5th, p. 109.

In ascertaining Burr Garland's estate, the first question to be decided is, whose money paid for these eight East Tenn. & Va. Railroad bonds? If they were paid for with money from the profits on the legacy under the 9th clause of the will, and from the profits on Mrs. Garland's half of the estate, as we think we have shown that they were, then this investment of these trust moneys in these eight East Tenn. & Va. Railroad bonds entitles these beneficiaries to take them, at their present value, instead of the trust moneys that Burr Garland paid for them.

If the court so decides, then these bonds will not constitute any part of the estate of Burr Garland, and his indebtedness to Mrs. Morriss and her children and Mrs. Garland, will be lessened by $4,350, the amount of their trust moneys that he paid for said bonds. In that event Burr Garland's estate will consist of the balance due on Charles Y. Morriss' administration. This balance, principal and interest, is $3,185.11, less costs paid by his surety, $344.19, which leaves $2,840.82.

All the assets that came into the hands of Charles Y. Morriss,

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was from the check of Aiken & Watt, the 13th of Aug. 1869 $1,773.26. Rec. Part 2nd, p. 73, 76, 65 and 66.

We trace the shipment of cotton from the Hinds County lands 18th Dec. 1868, directly to Aiken & Watt, (Rec. Part 3rd, p. 60) which no doubt went into the $1,773.26. The balance of $2,840 82 above, which results from the check of Aiken & Watt for the $1,773.26, is much less than the excess of profits from the legacy under the 9th clause of the will, after deducting the $4,350 paid for the eight East Tenn. & Va. Railroad bonds. Now, as the Testator has made the legacy under the 9th clause of the will a preferred legacy, Mrs. Morriss and her children have the right to take this $2,840.82 in preference to the residuary legatees.

More than this: Mrs. Morriss and her children can hold the estate of Burr Garland, free from all the profits from the legacy in the 9th clause of the will, free from any claim by the residuary legatees, and from any claim by the Adm'r of Sam'l Garland, Sr., for the $38,578.54, or for any part of the $64,130.88, under the express provision inserted by the Testator in the 9th clause of his will, as follows: (Rec. Part 1st, p. 10, or Part 3rd, p. 61.) "But neither the estate or profits shall be bound for his past debts or liabilities, or for future debts or liabilities, other than decent and comfortable support." Here we see that the Testator not only made the legacy under the 9th clause a preferred legacy over all subsequent legacies, but he put this legacy, and all profits accruing thereon, beyond the reach of any and every creditor of Burr Garland, "for his past debts or liabilities, or for future debts or liabilities," save only the debts incurred for his support. Our Court of Appeals in Garland v. Garland, 87 Va., 758, commenting on this exemption of the estate and profits said: (p. 762) "This was so qualified and limited as to fence out all of his creditors, except those who furnished him supplies for his support."

In conclusion we recapitulate these points: That our friends on the other side have not shown, and cannot show, that Burr Garland expended one cent of the estate of Sam'l Garland, Sr., in purchasing the eight East Tenn. & Va. Railroad bonds bequeathed to Nicholas A. Garland's children; but, per contra, we show that when he purchased these bonds he had no money of the estate of Sam'l Garland, Sr., we show by the Inventory in September,

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1864, and the depositions, that in consequence of the emancipation of the slaves and loss by the war, there was not enough personal property of Sam'l Garland, Sr., in Mississippi, to give to the widow her half of what was left, and to satisfy the legacy under the 9th clause of the will—there was nothing for the residuary legatees—we show that at the death of Sam'l Garland, Sr., Burr

Garland was insolvent, that his only means for acquiring money were the legacy under the 9th clause of the will and Mrs. Garland's half of the estate which he never turned over to her, that from these sources, and none other, came the money with which he purchased the eight East Tenn. & Va. Railroad bonds, that the profits from the legacy under the 9th clause of the will largely exceeded the amount paid for the bonds, that the Testator made these profits a preferred legacy to Morriss and her children, that against every creditor of Burr Garland, except those who furnished supplies for his support—even against the Adm'r of the Testator, himself—he absolutely closed the door against any body's taking these profits but Mrs. Morriss and her children.

And here we submit the case.

EDWARD S. BROWN,

WM. J. ROBERTSON,

For Mrs. Garland and Mrs. Morriss' Adm'r,

and Mrs. Morriss' children, &c.

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929.2

Garland

Fb

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END OF TRANSCRIPTION