Walker v. Walker A-11276

66 Ga, 253, 1880

(57)

State of Georgia } To the Honorable William
Burke County } Gibson Judge of the Superior
Court for the Augusta
Circuit exercising Chancery jurisdiction.
Humbly complaining unto your Honor
your orators and oratrices William Walker
Catherine Rocker alias Catherine Walker and
her husband John Rocker. Henry Walker
Celia Walker, Eugenia Walker & Mary Jane
Walker [illegible] children of Green Walker dead
and who appear by their next friend William
Walker aforesaid all of whom reside in
the County of Sinoe Republic of Liberia and
for cause of their complaint against Job
Gresham of said Burke County as Executor
of the last will and testament of Moses
Walker and of the last will and testament
of Edmund Gresham who were the Executors
of the last will and testament of Francis J.
Walker late of said Burke County (in which
county at the time of their death resided said
Moses Walker and Edmund B. Gresham)
deceased and against Betsy Walker. Morgan
Walker. Edward Walker. Sarah Walker alias
Sarah Gresham. Martha Walker. Amanda
Walker alias Singleton. Walton Walker
Walton Walker Guardian of Albert Walker
Georgia Walker and Green Walker. Grandison
Gresham. Guardian of Moses Walker Gresham
Molly Gresham and Georgia Ann Gresham
Henry Walker. Rodney Walker. Thomas Walker

Edward Young, Son & heir of Clarissa
Young, Louisa Glasscock, Betsy Wacker
and William Wacker, Darius Wacker
Martha Wacker, Lavinia Wacker
legatees and distributees under the last
will and testament of Moses Wacker
aforesaid, your Orators and Oratrices say

1 That on the day of 185 said
Francis J. Wacker departed this life leaving
a will, a Copy of which is hereunto
attached marked Exhibit "A" to which
the usual leave of reference is prayed

II That Complainants are legatees under item
four (4) of said will, which provides
as follows "I direct my Executors in their
administration to invest the entire proceeds
of my estate after the payment of my debts
and the expenses hereinbefore provided for
in such manner as they may deem most
advantageous and to transfer the whole of
it to the American Colonization Society
to be held by them in trust for the mainten
ance and support of the Children named
in the second clause above to wit Green
William, Elizabeth, Catherine, Augustus
Henry, Emily and their descendants." said
item second of said will provides as follows
"I direct my executors hereinafter named or
their successors in the administration of my
Estate to send to the Colony of Liberia in
Africa at the Expense of my estate the
following named slaves belonging to me,

namely Louisa mulatto and her children Green, William and Elizabeth. Louisa light mulatto and her children. Catherine Augustus. Sue and her son Henry and Celia and her daughter Emily.

III That said Green, Elizabeth, Augustus and Emily are now dead, leaving no descendants, and that said William, Elizabeth Catherine, and Henry Complainants are legatees under said will each being entitled as legatee to one seventh of the Estate devised and bequeathed under said fourth section of said will and that said Green being now dead leaving no widow or descendants, his sister Catherine is his sole heir at Law and as such is entitled to one seventh of said Estate so devised, that said Emily is now dead leaving no husband or descendants and her mother Celia is her sole heir at Law and as such is entitled to one seventh of said Estate thus devised, whereby as such legatees and heirs at Law said William is entitled to three fourteenths of said Estate said Elizabeth to three fourteenths of said Estate said Catherine to four fourteenths of said Estate and that said Celia as such heir at Law of her deceased daughter is entitled to two fourteenths of said Estate and that said Henry as legatee is entitled to two fourteenths of said Estate

IV That said William and Elizabeth with their deceased Brother Green were bastard children

of said Francis J. Thacker by Louisa a mulatto slave of said Thacker and that said Catherine with her deceased Brother Augustus were the bastard children of said Francis J. Thacker by Louisa a light colored mulatto another slave of said Thacker. that Henry is a bastard son of said Francis J. Thacker by Sue a slave of said Thacker and that said Emily now dead was a bastard daughter of said Francis J. Thacker by Celia one of the Complainants in their bill and that as such bastards Complainants inherit from their brothers and sisters and said Celia inherits from her bastard daughter Emily according to section 1800 of the Code of 1873 of Georgia and the laws of Georgia.

V Further Complainants shew that said Louisa the mother of Green, William and Elizabeth is dead having died before the death of said Green Reed that said Louisa the mother of said Catherine and Augustus is dead, having died before the death of said Augustus

VI That said Moses Thacker and Edmund B. Gresham were appointed Executors of said will and duly qualified as such and entered upon the discharge of their duties as such Executors copies of their letters testamentary are hereunto annexed marked Exhibit "B" to which the usual leave of reference is prayed

VII That said Executors received as the property of said Estate, such personalty and slaves to a large amount to wit to the amount of thirty thousand, ($30,000) dollars a list and description of which is contained in the annexed copy of the inventory marked Exhibit "C" to which the usual leave of reference is prayed

VIII That on certain proceedings had in the Superior Court of said Burke County as will appear by Exhibit "D" a decree was rendered on the 25th day of October 1865 by Hon. W. M. Hall Judge of said Court wherein which said Moses Wacker was appointed Trustee in lieu of the American Colonization Society to carry out the uses and trusts of said will which is as follows. We find and decree for the defendants that the second, fourth and fifth of said the last will and testament of Frances J. Wacker are legal and valid that the American Colonization Society is incapable of taking as Trustee the bequest made in by the fifth clause of said last will and testament and the said Trust being vacant we find and decree that Moses Wacker one of the Executors and defendants be appointed Trustee in lieu of the said American Colonization Society and invested with all the powers and privileges and liable to all the duties and responsibilities that would have attached to the trust had the Society

named in said fifth clause been constituted to take and had already taken said trust, and his coexecutor and codefendant having declined to accept the same

The further find and decree that said Trustee and his successors invest the trust fund which have come to his hands or be in his hands to be invested in bonds of the State of Georgia or in bonds of any municipal corporations within said State that he apply the interest arising annually or so much as may be necessary to the support of the following legatees named in said fifth clause viz. Elizabeth, Catherine Augusta, [illegible] Henry and Emily in [illegible] and he invest annually if any surplus thereof in like manner to become a part of the corpus of said trust Estate

The further find and decree that as each male cestui que trust above named shall arrive at the age of twenty one years when his distributive share of the portion of such deceased minors shall be given off and delivered to him in like manner and upon the arrival at age of 21 years or marriage of any one of said female cestui que trust above named her portion of said trust Estate shall be given off and delivered to her also from time to time her distributive share of the portion of any of said cestui que trust who may die in their minority. The further find

and decree that the Costs of this Bill be paid by the defendant out of the fund of said Estate. We further find and decree that said Trustee make annual returns to this Court of his actings and doings as such Trustee.

That said Moses Walker duly accepted said Trust and entered upon the discharge of the duties incumbent on him as such Trustee receiving said property or part thereof and with said Edmund B. Gresham using the same in violation of his duty as such trustee and also with his Coexecutor appropriating the same in total disregard of his and their duties as executors as aforesaid.

For that your Oratrix and Oratrices show and expressly charge that neither said Moses Walker as Trustee as aforesaid nor said Moses Walker and Edmund B. Gresham as executors as aforesaid used or appropriated said property for the benefit of Complainants or paid or turned over to Complainants the same or any part thereof in pursuance to the decree of the Court aforesaid or in terms of said will but to the contrary the said Moses Walker as Trustee and the said Moses Walker and Edmund B. Gresham as executors as aforesaid wasted and mismanaged said Estate & appropriated a greater portion thereof to their own

to wit Twenty five (& 2500.) Thousand dollars in value whereby the same was lost to your Orators and Oratrices by said illegal, unjust and fraudulent acts of said Trustee and said executors

That on the day of 18 the said Moses Wacker Trustee and co-executor died testate and that on the day of 18 the said Joh. A. Gresham of said Burke County duly qualified as the executor of said Moses Wacker deceased that on the day of 18 the said Edmund B. Gresham co-executor as aforesaid died testate and that said Joh. A. Gresham also qualified as executor of said Edmund B. as will more fully appear by copies of his letters testamentary hereto annexed marked Exhibit E and Exhibit F to which the usual leave of reference is prayed

That as Executor of said Moses Wacker and Edmund B. Gresham the said Joh. A. Gresham received property of said Estates of great value to wit of the Estate of Moses Wacker of the value of Thousand dollars — and of the estate of said Edmund B. Gresham of the value of Thousand dollars as will fully appear by copies of inventories and appraisements of said Estates hereto annexed marked Exhibit G. and Exhibit H. to which the usual leave of reference is prayed

That as such executor of Moses Thacker
the said Job Gresham has as Complain-
ants believe distributed all the estate both
realty and personalty to the legatees and
distributees of said Estate to wit Betsey
Thacker Morgan Thacker Edward Thacker
Sarah Thacker and Susan Gresham,
Martha Thacker Amanda Thacker
all of whom are made parties
defendants herein and also distributed
all the estate of Edmund B. Gresham
both realty and personalty to the
legatees and distributees of said last
named estate to wit to

all of whom are made parties
defendant herein all of which will more
fully appear by reference to copies of returns
distribution &c hereto annexed "J" and Exhibit
"K" to which the usual leave of reference
is prayed. And further Complainants
aver and charge that by said illegal acts
frauds conversions waste and by a total
disregard and violation of the provisions
of said will and the aforesaid decree of
the Superior Court and their duties thereunto
towards Complainants as will appear by
copies of their returns and actings and
doings taken from the records of the Court

of Ordinary of said County of [illegible] int
[illegible] annual [illegible] to
which the usual [illegible] of [illegible] is
prayed. The said Moses Walker as
trustee and the said Moses Walker and
Edmund R. Gresham as executors as
aforesaid each became liable to the
Complainants in the loss and damage
which they have sustained to a large
amount to wit to the amount of twenty
five thousand dollars and in
their fraudulent [illegible] which became
charged therewith whether in the hands
of their said executor Edmund R. Gresham or
in the hands or possession of said legatee
and [illegible]. And in as much as said
Moses Walker and Edmund R. Gresham
as executors as aforesaid and said Moses
Walker as trustee as aforesaid have by
their waste mismanagement and failure
[illegible] your Orators and
Oratrixes violated their duties to Complain
ants [illegible] to right justice
and the principles of Equity and good
conscience [illegible] they and their estates
are liable to Complainants and inasmuch
as Complainants are without adequate
remedy at law and can only obtain
relief in a Court of Equity where alone
such cases are properly cognizable and
relievable. Your Orators and Oratrixes
charging and alleging as aforesaid

pray that the said John H. Gresham as
executor of the estate of the said Moses
Thacker and as executor of the Estate
of his father the said Edmund B. Gresham
shall answer and account to Complainants
and render for purposes of discovery Comp-
lainants expressly waiving discovery as to
[illegible] and set [illegible] separately what estate
of Moses Thacker and said Edmund B.
[illegible] he has in his possession
or control and which of said Estates
he has distributed and to whom
distributed and he as such executor
shall be held liable to Complainants
and that a decree may be rendered
against him as such executor for the
amount due Complainants by his
testators as aforesaid and the assets
15 and property of said estates in the
hands of his co-defendants shall be
made liable therefor wherever the same
may be found and that the said
co-defendants namely Betsy Thacker
Morgan Thacker Edward Thacker
Sarah Thacker alias Sarah Gresham
Martha Thacker Amanda Thacker
shall answer and account to Comp-
lainants for the assets and property
of said estates which have come into
their hands and possession or either
and that it may please your Honor to
grant proper Orders and Orderes such

then and further [illegible] as [illegible] be just and right in the [illegible] Further Your Orators and Oratrices pray for the States writ of subpoena directed to said Jeb A. Gresham executor as aforesaid and to [illegible] said co-defendants directing and commanding them to be and appear at the next Term of the Superior Court to be holden in and for said County of Burke then and there to stand to and abide by such order judgement and decree of the Court as may be rendered in [illegible] case &c. And Your Orators and Oratrices will ever pray &c.

M. J. Carroll
Hook & Webb
Sols for Complainants

No 3

Burke Superior Court
November Term 1877

William Parker et al } In Equity
vs } Bill for Relief
Jeb A. Gresham Exr } account &c
Betsy Parker et al }

Original

Filed in Office this 26th day of May 1877
S. J. Bell Clerk

"Sworn" Says

Resides

in Liberia, went in 59 was 17 years old. Then went under direction of F. J. Walker's will. I am his son "was a legatee under his will" Other of the legatees are alive. Catherine. Henry. William. (Green is dead leaving two heirs) He was married. None others are alive. "Elizabeth is dead." "Green dead" Augustas dead. Sue dead. her son is alive. "Celia alive" "Emily dead" Green's children are Ann Elizabeth & Mary Jane.

Catherine Born 17th Nov 1840. + Celia dont know her ~~age~~. Harriet was born 10 March 1847. Ann was born in 1864. Mary in 1866. Green was born in 1838 in May. Catherin Born in 1840. I was born in 1842 20th Jany. Celias age she dont know. She was mother of Emily when she left was 23 or 24 when she left. Emily is dead left no children. Elizabeth dead left no child. Henry born in 1847. 10 Jan. all living are in Liberia. None ever received any interest money from Francis Walker's Estate, they all are living on settlement in Liberia. Nothing was ever paid me when I got of age. If any of them had received any money, I should have known it, we associate together

a great deal and are close neighbors. I recollect the plantation of Francis Walker, it is on the old Quaker Road. It is occupied by my cousins. Number of acres, dont know. My fathers track 2000 or 3000 acres. Bounded on north by Brier Creek; South said Road; South is old waterloo Dowse place. West by Judge Hughes. The Moses Walker land touches it. The defendants, my cousins, (names Walton and Morgan). Dfts told me they got the lands under will of Moses Walker. Job Greshham put them in possession, they said, as Ex'r of Moses Walker. I know pretty well all of Dfts. They are in possession of Moses Walker land, say 2000 acres, bounded on by Quaker Road; West by Judge Hughes and South by a road, Louisville Road. I think, East by lands of some one, dont know whose. That land is worth between $4.00 and $5.00 pr. acre. I went there 8th of August, 1878. They carried (my cousins) carried me from Augusta. They hand they said about $40.00 a piece, 12 of them. Also got personal property, but had to pay for it.

X

I reside in Africa. Came August 78 Came in on Steamer, landed at Philadelphia and came by Rail. I am a farmer, see of us are not farmers thus. Cash

$40.00 by Rent to come on the. The Col so gave us our land." Then named over the dead ones, then the live ones, as before named. Louisa, my mother went with us. She is mother of Henry, my brother went over. Celia is mother of Emily. Elizabeth died in '62. She was born in 1849. Green died in 1866. Born in '38. Augustus died in 59 or '60 Augustus died in '40.

Redinck

I borrowed the money to come over from a gentleman in Liberia, not one of the Legatees

Noah Tarver, sworn for Complainants, said: I know the lands formerly owned by Francis J. Walker, deceased. They lie on Brion Creek - think they were worth $10.00 dollars pr. acre before the War. Think lands on Briar Creek were considered more valuable than other Burke County lands I live in the direction of the Walker place. Born and raised near there. They are now worth $5.00 pr. acre. I know the character of these lands.

Cross Examination.

I know the Wm Byrne place on Brion Creek, immediately opposite Francis J. Walker place to sell at public sale, (Sheriff Sale) since the War at about $1.00 pr. acre - ~~[illegible]~~ the lands were equally as good as the Walker lands.

Job A. Gresham, sworn for Complainants, said: As Executor of Moses Walker, I [illegible] to Walker Walker, one of the

of old papers – knew nothing of what the papers were – never Examined them myself. They were Examined and arranged (I think) by Mr. Skinner – I also recollect in the trunks there was a package marked "Land Papers" Do not know whether this package contained any deeds or not. Know nothing of its contents. Turned over a trunk of papers just as I found them.

A Subpoena duces tecum has been served upon me, produced on this trial certain papers, named thereon. None of the papers belonging to Moses Walker Estate are now in my possession and were at time of serving said subpoena. I have had none of them since turning over the trunk, named above, to Walton Walker. This turning over of trunk of papers occurred long before subpoena was served upon me. I can say none these papers are in my custody or control.

I have made diligent search among papers of my father's estate and my own papers – can find no deeds from Executors of Francis J. Walker to Robert Walls – or from Walls to Walker – or from Walker to Walls – or from Walls to my father's Estate and my own papers – can find no deeds from Executors of Francis J. Walker to Robert Walls – or from Walls to

my father - E. B. Gresham or any other deeds connected with Estate Francis J. Walker or the Estate of Moses Walker I can say that none of the papers called for in the subpoena are in my possession, power or control.

The Estate of Moses Walker, or rather the Legatees under his will - the defendants to this Bill - are now in possession of a part of land formerly owned by Francis J. Walker in his life. I, as Executor of Moses Walker, turned it over to them with other lands of Moses Walker in the division of his Real Estate. Do not know the exact number of acres of this Francis Walker land now in possession of defendants - Suppose it is about Nine hundred acres. I have never seen any of the deeds of this part of the land.

I am now, in my own right, in possession of a part of the lands formerly owned by Francis J. Walker in his life time - got these lands from the Estate of my father - E. B. Gresham in the division of his Estate. Do not know who my father purchased from - whether from Roberts Walls, or from any one else - I have never seen or been able to find any deed to my father for these lands - I mean the land now in my possession, [illegible] belonged to Francis J. Walker

I am not able to say what was the value of the lands of Francis J. Walker before the war - too young then to form a correct idea of them - indeed I had no knowledge of them at that time. The number of acres of the Francis Walker land now owned by me is about. I think 871 acres Cannot say what is its present value. dont know its value before the war. At present I would take five dollars per acre for mine. but would not like to take four dollars per acre - I do not care to sell

I was executor of Moses Walker have turned over all the property to the defendants in this suit.

Cross Examination

I know that 600 acres of the Waterloo tract of land lying adjoining and broadside of the Francis J. Walker land sold at public out cry at Sheriff sale in Waynesboro for $200.- about 33⅓ cents per acre. My father bid it off at this price and got Sheriff's deed for it - this sale has been since war