

Cowan v. Stamps Teaching Resources

Excerpts from trial record of archival case file of *Cowan v. Stamps*, 46 Miss. 435 (1872). The full archival case file is located in the Mississippi Department of Archives & History, Jackson, Mississippi.

Be it remembered that on the 4th day of May 1868 ... J.B. Stamps Executor of the Estate of A.B. Cowan deceased filed by Attorney his Petition with the Clerk of the Probate Court of Said County to Sell Land belonging to Said Estate whereupon publication was issued to the Heirs of said Estate as the Law directs Which Petition is in the words and figures following to wit

Petition

To the Hon J.A. Hancock Judge of Probates of DeSoto County

The Petition of J.B. Stamps a citizen of your County respectfully sets forth that Abner Cowan late of your County died in 1864 leaving a last will by which among other things he directs that all his property Real and personal Shall by his Executors be converted into money for the purpose of carrying out certain bequests and making certain distribution of the proceeds therein provided for. A copy of Said Will made part of this petition is appended thereto marked exhibit A. Petitioner further now represents to your Honor that among the property left by Said Testator in your County is a very valuable section of land now in petitioners possession of wit Sec 26 in Town 1 and Range 6. West. That himself is the only one of the Said Testators Executors who has qualified, both the others named in the will having refused to qualify that believing in so important a matter as the Sale of Land he should as sole qualifying executor have the advice and directin of your Hon. Court. He now prays your Honor for an order or decree to Sell Said Section of Land to realize means to carry out the intentions of the Testator Substantially as expressed in his will. And desiring to give notice to all who are or may be interested in Said matter he sets forth that the following persons constitute the heirs at law of said Testator, to wit 1st the descendants of Susannah the Sister of Testator living W.F. Cowan Statesville N Ca Isaac F. Cown Texas F.O Waso believed to be And the unknown heirs of Levi Cowan office not known. Second William Cowan a brother of Testator dead leaving as representatives the unknown heirs of his Son William S. Cowan Post office not known nor their names...[there are a number of additional names listed]

Will

In the name of God Amen.

I A.B. Cowan of the County of DeSoto and State of Mississippi being of Sound mind and deposing memory do make and publish this my last Will and testament in manner and form following "to wit" In the first place I desire and direct that all just debts of mine which may be subsisting and unpaid at my death Shall be paid as Soon as may be after my decease, In the second place it is my will and desire, and I so direct that all and every of my Negroes slaves male and female with their increase shall be sent to Africa under the direction, and Superintendance of the American Colonization Society then to become and remain a free people, And for this purpose it shall be the duty of my Executors hereinafter named to take charge of all my Said Slaves, and if necessary hire them out from time to time until a sufficiency of assets may be collected to repay their expenses to Liberia in Africa as well as a sufficiency for their support for Six months after their arrival upon that Continent. My Slaves now amount to Sixteen in number. But it is my will and desire that all Slaves belonging to me at my death with their increase Shall be embraced within the provisions of this Second clause So as to be Sent to Africa.

In the third place I give and bequeath to my esteemed man Frank all my Books and Maps but to be held in the meantime by my Executors as trustees for his use until Such time as the Said Frank Shall be legally competent to take and hold Said Books and Maps as a free man.

In the fourth place it is my will and desire that my executors shall proceed immediately to collect (So far as they can all the debts due my estate and to Sell all my property (my said negro Slaves Books and Maps being always excepted) whether real or personal without giving more than Six months notice or twelve months credit and realize the proceeds as Soon as may be. And after paying all necessary expenses and Settling up the affairs of my Estate to convert all the surplus, and residue of My estate into Suitable funds to be remitted to Africa for the use and benefit of my Said Negroes on their arrival on that Continent. And I hereby give and bequeath such residuary part of my estate as may remain after the payment of my Just debts and necessary expenses to and for the use and benefit of my Said negroes after their removal out of this State and their manumission in foreign parts to be equally divided amongst them. Provided that my Executors if they prefer doing so may pay said surplus and residue of my estate over to the Said American Colonization Society to be by Said Society remitted to my Said Negroes and divided amongst them as aforesaid.

And lastly to carry the above provisions and bequests into full and entire effect. I do hereby nominate and appoint Barnett Graham and J.D. Williams of the City of Memphis and State of Tennessee and J.B. Stamps of the County of DeSoto and State of Mississippi Executors of this my last will and testament hereby revoking all and every will or wills by me made heretofore. And previous to the day and date of this present will.

In witness whereof I have set my hand and affixed my seal to this my said last will and testament drawn out in triplicate or three parts all of this tenor and date any one of which being probated carried into effect and accomplished the other two to be considered as thereby accomplished and to have no further or other effect this the 12th day of February in year of our Lord Eighteen Hundred and fifty.

A.B. Cowan

Petition of Frank Cowan et al

In Probate Court DeSoto County at June Term 1868

In the matter of the Estate of A.B. Cowan

The Petition of Frank Cowan and his wife Sarah + of their children Martha Ann Robert Aron Simeon Amanda Cornelia Silar Joshua + Frankland – Andy Cowan and his wife Eliza and their children Zachariah Hannah James Martha Ann Jerry and William – Eliza Cowan and her children Richard + Mariah – Mary Cowan and her children Henry George Augustus + Sarah Jane Close Cowan John Cowan Charles Cowan Charlotte Cowan and Resin Cowan respectfully represents unto your honor that they are the persons designated in the last will of Abner B. Cowan deceased as his sole devisees and legatees and an necessary parties to any step towards the administration of the said estate, and therefore they pray that they may be the order of this Hon Court be made parties defendant to the petition of J.B. Stamps Executor of said estate now on file and defending in Said Court praying for a construction of said will and for orders to sell the real estate of said estate and they they have leave to file their answers then to until the next term of this Hon Court to which term said cause be continued and that they will ever pray + c.

L.V. Dixon

Sol for Petitioners

To the Honorable Judge of the Probate Court of DeSoto County of State of Mississippi:

The joint and several answer of Frank Cowan and Sarah Cowan his wife Mathew Cowan Cloe Cowan John Cowan Andy Cowan and Eliza Cown his wife Charlotte Cowan Eliza Cowan Resin Cowan Mary Cowan who are all adults and of Robert Cowan Aron Cowan Simeon Cowan Amanda Cowan Cornelia Cowan Silas Cowan Joshua Cowan and Franklin Cowan children of Frank and Sarah Cowan Zachariah Cowan Hannah Cowan James Cowan Martha Ann Cowan Jerry Cowan and William Cowan children of Andry + Eliza Cowan and Richard Cowan and Mariah Cowan children of Eliza Cowan Henry Cowan George Cowan Augustus Cowan and Sarah Jane Cowan children of Mary Cowan all of which children being minors under the age of twenty one years of age and who herein answer by their next friend Frank Cowan to the Petition of J.B. Stamps Executor of the Last Will and testament of Abner B. Cowan decd filed in this Hon Court on the day of 1868.

And the said defendants by leave of Court for answer to said petition say that they admit the death of the said Abner B. Cowan and that he departed this life about the day of April 1864 at or near Olive Branch in the Eastern part of the County of DeSoto in the State of Mississippi, that prior to his death he the said Abner made and duly published his last will and testament a correct copy of which respondents believe is made exhibit to the said petition, they further show that the said last will and testament was on or about the 19th day of October 1866 duly probated and admitted to record in this Hon Court that in and by said Will the said testator appointed Barnard Graham and J.D. Williams of Memphis Tenn and the said J.B. Stamps his executors of his said Will. That subsequently and after the death of the said Cowan the said Stamps propounded the said Will to this Hon Court about the day of 18 for probate + record which was then for some reason unknown to your respondents refused and thereupon the said Stamps applied for letters of administration upon the estate of the said Cowan decd as an intestacy which was granted to him and thereafter the said Stamps took charge of said estate and proceeded to administer the same until the said 19 October 1844 when your Respondents again by their attorney propounded the said last will + testament for the probate and record at which time the same was duly probated and admitted to record in this Hon Court and it then being made to appear by proofs that the said Barnett Graham had departed this life and that the said JD Williams had in writing renounced his right and privilege to qualify as executor and therefore he the said J.B. Stamps alone qualified as the Executor of said Will in which said office and trust he has ever since remained, and Respondents would here beg leave to have reference to the said

Will and the proceedings of this Hon Court thereabout as if the same were made an exhibit thereto, and respondents further show that in and by the said last will which is dated 12th February 1850 the said testator declared that it was his will and desire that every of his negro Slaves male and female with their increase Should be sent to Africa there to become and remain a free people, that at that date the said slaves numbered Sixteen but in the Same clause the testator declared that it was his intention to embrace all such negro slaves as he might own at the time of his death, and your respondents show that they together with Charles Cowan and Ann Cowan a child of respondent Frank both of whom have died Since the death of the said testator are and were the several persons named designated and appointed in and by the Said will as the negro Slaves male + female of him the Said testator and who by a subsequent clause in Said will hereafter to be mentioned were to become his sole and only legatees and distributes...
...and your respondents now show that in and by said will it was the manifest intention and prevailing desire of the testator that your respondents who had faithfully served him during his life term as his slave, and who had contributed to his comfort ease and happiness should at his death become free from further bondage and be the recipients of his bounty and favour and that they should enjoy after his death the bounty thus bestowed upon them by his said will as soon as they were able so to do as free persons capable of inheriting the same – And your respondents further show that in and by the proclamation of the President of the United States duly made on the 1st January 1863 all persons held as slaves within certain designated States then in rebellion should thereceforward be and become free persons – and that in said proclamation the State of Mississippi was designated as one of such States then in rebellion that not withstanding the said proclamation and their right thereby to be free, and the further fact that they were then within the lives of the United States army who were ordered to support and maintain the freedom of all Slaves And your respondents adhearing to their ancient duty and love for the said testator who had ever been kind and considerate toward them they remained with him – laboring for him and sustaining him in all his orders and directions as dutifully as at any time during their bondage and so continued until the period of the death of their said master in April 1864 and they have remained upon the homestead plantation of said testator doing the best they could under the direction the said Stamps and other friends of the said Cowan decd to the present time. That on or about the day of 18 The Congres of the Unietd States passed an act commonly known as the Civil Rights bill, when it was declared that all persons theretofore held to service and labor as

slaves should be fully confirmed in their freedom, and should become citizens of the United States (if born therein, and your Respt show that they and each of them are or were so born in the United States) and that they should be capable of buying selling holding having and inheriting property as other citizens of the United States might or could do.

They further show that in and by the constitution of the State of Mississippi by the people of said State in convention assembled in or about the month of August 1865 –it was declared as the organic law that Slavery having been destroyed in Said State should not thereafter exist and requiring the Legislature of said State at its next setting thereafter to provide by law for the protection and security of the person and property of the freedmen of the State – and that by the act of the Legislature of said State of Mississippi of 25 November 1865 and that of 21st February 1867 in amendment thereof passed in pursuance of the Said Constitutional provisions gave to your respondents and other freedmen the Same right to acquire receive have hold and inherit real and personal estate as was enjoyed by other citizens of the Said State.

They further Show that in and by the said Proclamation of the President of the United States and the acts of Congress, the constitution of the State of Mississippi and the laws thereof passed in pursuance thereto and by the price of other acts + laws of the United States and the State of Mississippi to which they pray leave to refer to these respondents were made citizens of the United States & of the State of Mississippi and entitled to all the lawful rights of such citizens to take have inherit and hold any and all estates that may bequested to them and that they are advised that they have the right now as such freedmen and citizens of the State of Mississippi to inherit and take the estate so bequested to them by the Said Testator A.B. Cowan freed from any and all conditions of departing from the State of Mississippi and residing in the said continent of Africa that this provision was not intended in the said will as a condition precedent to the taking of the said estate under said will but as a means of more surely carrying out the testators most human intention of granting them these respondents their freedom and providing a competency for them, they show now that the intention of the testator may be fully carried out without this requirement which by the laws aforesaid has become unnecessary and useless – they show and state that they do not desire the said lands and other property to be sold by the Executor beyond what is necessary to pay the just debts of the said Testator + the expenses of the administration and that they have been informed and believe and charge the truth to be that the said Executor has now paid of all the Said debts and has a surplus of funds of said estate in his

hands and that said Administration having been granted to the said Stamps more than one year since they are entitled to have as they are advised, the said estate distributed to them they being the sole and only legatees and distributes thereof they state that it is not their interest or desire that the same should be Sold either for the purpose division among themselves or for any other purpose, but that it is their desire and their intention that the whole residence of Said estate after paying off all the debts should be [illegible] and delivered over to them as tenants in common. Wherefore they pray the premises considered that this answer may be taken and considered as a crop Bill to the said petition of the Said Executor J.B. Stamps, and that under the proper process of this Hon Court he may be required to answer the Same. That his said petition to sell the said estate may be disallowed and dismissed upon final hearing, and that your Honor will upon the due inspection of said last will and testament the condition of said estate order and direct the said Executor to make his final account at a day to be fixed, + that in the mean time order that the lands mentioned in the said petition shall be surrendered to your Right, by him upon the execution of Such bond and with such penalties and conditions to refund any and all sums as may be required to pay the just debts of said estate if any remaining unpaid as your Honor shall think fit and proper which they now have tender in manner and form in this Hon Court shall direct if it Shall be ascertained by the answer of Said Exr J.B. Stamps that then yet remain any debts due by Said estate and may it pleas your Honor to require the said Executor to set forth what other lands or any interest therein the Said A.B. Cowan held at the time of his deth and what disposition thereof if any has been made by him since that time setting forth the same by particular description.

And may it pleas your Honor to grant them all proper process and orders and all other and general relief which they may Show themselves equitably entitled to.

L.V. Dixon Sol for Respondants

The State of Mississippi
DeSoto County

Probate Court
December Term 1868

Present and presiding the Hon Wm M. Johnston Judge of Said Court when the following orders and Decrees are made and had towit

Testimony of Andrew Smith witness for the respondents being duly sworn according to law States as follows.

I was acquainted with A.B. Cowan the testator he died the 20 of April 1864. At that time I was residing at Hernando. At that date the Confederate States Government was exercising Civil

Jurisdiction throughout the County of DeSoto. I was acting either as clerk or Deputy Clerk of the Probate Court at that time. We held a probate court in Hernando the County Seat of this County on the third Monday of March 1864 under the Confederate States Government. We had our usual officers of Shff Tax collector Justices of the Peace under the Confederate States Government. There was no officers in the county who pretended to exercise the functions of office or Government except those who held office under the Confederate States authority and the authority of the State of Mississippi up to that time, and until long after, there had been no change in the Government after the State of Mississippi passed the acts of Secession. Cross examination.

There was no civil Federal jurisdiction in the County Sometimes the Federal Military would make raids through the county remaining a Short time. I don't remember when the two contending armies had their lines. The Federal authority had possession of Memphis and Germantown and the Railwood in Tennessee. And I understand that their lien I mean the Federal lines was the Memphis and Charleston railroad. I understood thos parties had to get passes to pass north of Said lines from the United States military. I mean north of Memphis and Charleston Railroad. If a party was north of said line or in Memphis or German town they had to get a pass from the Federal military to come South. The Records of Probate Court was Scattered Some at TB Jones and Some at Dockeys about Eight miles west. They were put there for preservation from the depredations of the Federal Soldery. The Probate Court was also held at Hernando at the April Term 1864 and the Court was held, regularly at the County Seat being Hernando until August 1864. The Records during this time I mean Final Records and the Records of Deeds Still remained at Jones + Dockerys all the records we needed were here. I mean such as were necessary for the business of the court were here. There was times when the Shff and Tax collector were afraid to go to the neighborhood of Cowans and they generally avoided going there owing to Federal raids at other times they could go with Safety I used to go about that date in the neighborhood during the period I speak of the Confederate soldiers were here frequently. Sometimes one would go out and the other would be just behind them comeing in. The negroes were owned and continued as Slaves here during that period. Some would runaway and go into the Federal lines.

A.W. Smith