Miss, Russell
Gentry, Oliver P
(Exec. Bowen, Charles)

Bowen, Samuel
VS Bowen, William

1854

Marion Co

3rd Cir

331/12

567/13

Barren, Mary - died & will devised to sons S & W in trust of daughter Celia Stone - 2 slaves, Hampton-Nancy
Nancy had son, Jim - charles got him

Gamble
R&R

Ohio Lig Pres X pH 9.5
800-634-5932

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Judge of the Third Judicial Circuit *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Circuit Court within and for the County of Marion

wherein Samuel A. Barron and William R Barron were plaintiffs and Rufell N. Moss and Oliver P. Gentry Executors of Charles A Barron deceased were defendants

in an ~~action of~~ civil action manifest error hath intervened, to the great damage of the said defendants as by their complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the ninth day of December in the year of our Lord one thousand eight hundred and fifty-three.

Wm. S. Glanville,

CLERK.

State of Missouri
County of Marion ss The Execution of the within writ appears by the transcript of the record and proceedings of the within Entitled Cause hereto attached. In testimony whereof I have hereto set my hand & affixed my official Seal this the 14th December 1853

W. T. Thompson Clk
Marion Circuit Court

1 Samuel A Borren and William R. Borren, against
Rufell N. Moss & Oliver P. Gentry Executors of Charles H Borren deceased.

State of Missouri
County of Marion } Be it remembered that heretofore
Filing of Petition. to wit, on the Fifth day of February one thousand Eight hundred and fifty one, there was filed in the office of the Clerk of the Circuit Court within and for the County aforesaid, a petition in the above entitled Cause in the words and figures following to wit:

Petition. Samuel A Borren, and William R. Borren pltffs
vs
Rufell N. Moss and Oliver P. Gentry Executors of Charles H. Borren deceased } Defendants
} In the Circuit Court of Marion County, in the State of Missouri.

Samuel A. Borren and William R. Borren plaintiffs, State that on the 8th day of June 1824 Mary H. Borren of the County of Sumner in the State of Tennessee made her last will and testament, whereby she among other things, devised to her two sons (the plaintiffs) in trust for her daughter Celia N. Stone, "two negro Slaves, Hampton and Nancy, during her natural life, with their increase; and then to the heirs of her body forever." That afterwards she appended to said will two Codicils, in no way changing or affecting the aforesaid bequest. That said Mary H Borren, after the making said will and Codicils, in the year 1827 departed this life, and afterwards, to wit on the day of 18 the said will and Codicils were admitted to probate, as the last will and testament of the said Mary H Borren, by the probate Court of Sumner County, in the State of Tennessee, an authenticated Copy of which said will, will be filed if required.

Plaintiffs state that said negro woman slave Nancy, devised to them in trust as aforesaid, after the death of the said Mary H Bower, gave birth to a child named Jim, a part of the increase of said slave Nancy, and that in the month of 1845. Said Celia N. Stone, having the possession of said Negro boy slave Jim, and other negroes, the increase of the said Nancy placed the said Negro Jim in the possession of one Charles H Bower. That said Bower departed this life in the month of 1850, without having delivered said negro boy Jim to said plaintiffs, or to the said Celia N. Stone. That said defendants after the death of said Bower, obtained letters testamentary upon the Estate of said Bower dec^d, and that said defendants, have not since the death of the said Bower, delivered the said negro boy Jim to said Celia N. Stone, or the said plaintiffs, although requested so to do. Plaintiffs state that they are the legal owners of said negro boy Jim, that the title to said negro is in them, that they are entitled to the possession of said negro, But that the defendants unlawfully withhold the possession of said negro boy Jim, although requested to deliver him to plaintiffs. Plaintiffs state that the present value of said negro boy Jim is at least seven hundred dollars.

Plaintiffs also state that the hire of the said negro boy Jim from the time ~~from the time~~ he came into the possession of the said Charles H Bower dec^d in the month of 1845, up to this time, being a period of upwards of five years, is worth the sum of four hundred dollars, which said sum, nor any part thereof was paid to said plaintiffs in the life time of said Bower by the said Bower, or any one for him, nor have his Executors, the said defendants, paid the same or any part thereof since his death. Wherefore said

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plaintiffs ask judgment for the return of said negro slave Jim; and in case the said negro is not returned or delivered to them, they ask judgment for the value of said negro boy Jim, being seven hundred dollars; and also judgment for the sum of four hundred dollars for the hire of said negro boy Jim; making the damages of the plaintiff amount to Eleven hundred dollars, for which they ask judgment.

Samuel A Borron & William R. Borron
By their attorney Thos L Anderson & A.W. Rust

Celia W. Stone makes oath and says that the foregoing petition and the matters and things as therein stated she believes to be true.

Celia W Stone

Subscribed and sworn to before me this 5th day of February 1851
A.W. Rust J.P.

Filed February 5th 1851, Thos E Thompson Clerk.

And afterwards to wit on the 5th day of February A.D. 1851, there issued from the office of the Clerk of the Circuit Court aforesaid a summons in the words and figures following to wit:

Summons to R.W. Mefs Ex.

State of Missouri
County of Marion ss The State of Missouri,
To the Sheriff of Marion County. Greeting,

We command you to summon Rufull W. Mefs (one of the Executors of Charles N Borron deceased) that he be and appear in our Circuit Court, at the Court house in the town of Palmyra, within and for said County, on the first Monday in March next, then and there before the Judge of our said Court, to answer a petition Exhibited in our said Court, against him and one Oliver P. Gentry Executors of Charles N Borron deceased, by Samuel A Borron and William R Borron, of which the accompanying

writing is a copy, and this you shall in no wise omit; and have you then there this writ. Witness my hand as Clerk of our said Court, and the seal thereof. Done at office in Palmyra at the County aforesaid, on the 5th day of February A.D. 1851.

(Seal)

Th. E. Thompson Clk.

on which said writ appears the following Endorsement to wit:

Service on R.N. Mess

Executed this writ, by reading the same, and delivering to the within named Rufus N. Mess a copy of the petition and writ, done in Marion County Missouri this 7th day February A.D. 1851.

B B King Shff Marion Co

Shff fee 1.00

By D. F. Jackson Deputy.

And on the 5th day of February 1851. aforesaid, there also issued from the office of the Clerk aforesaid, another writ or summons in the words & figures following. to wit.

Summons to O.P. Gentry

State of Missouri

County of Marion ss The State of Missouri

To the Sheriff of Monroe County. Greeting

We command you to summon Oliver P. Gentry Executor of Charles N Boren dec'd, that he be and appear in our Circuit Court, at the Court house in the town of Palmyra, within and for said County, on the first Monday in March next, then and there before the Judge of our said Court to answer a petition Exhibited in our said Court against him and his Co-Executor Rufus N. Mess, by Samuel A Boren and William R Boren, of which the accompanying writing is a copy and this you shall in no wise omit. And have you then there this writ Witness my hand as Clerk of our said Court, and the seal thereof.

Done at office in Palmyra, at the County

5. Seal aforesaid, on the 5th day of February AD 1851.
Thos. D. Thompson Clerk

On which said writ appears the following Endorsement to wit:

Service on O.P. Gentry. I Executed the within writ, by reading the Same to the within named Oliver P. Gentry Executor of Charles H. Borrer deceased, and also delivered to the said Gentry an attested instrument of writing, purporting to be a Copy of the petition (which accompanied this writ) Done at Monroe County Missouri on the 11th day of February AD 1851.

Shff fee 1.00 Dan. M. Delaney Shff M.C.Mo

And afterwards on the 7th day of March AD 1851. at a Circuit Court Continued and held at the Court house in the town of Palmyra within and for the County aforesaid, during the March term 1851. of said Circuit Court before the Honorable Carty Wells Judge, the following among other proceedings were had to wit.

Defds file their answer
Samuel A. Borrer &c. plffs
vs
R. W. Moss and O.P. Gentry Executors Defts
} Civil action.

At this day comes the defendants, by their attorney, and file their answer to the plaintiffs petition.

Which said answer is in the words and figures following to wit:

Defendants Answer.
Samuel A Borrer and William R Borrer plffs
against
Russell W. Moss and Oliver P Gentry Executors of Charles H. Borrer dec. Defts
} In the Circuit Court of Marion County in the State of Missouri.

Russell W. Moss and Oliver P. Gentry defendants state, that they know nothing about the provisions of the will of Mary H. Borrer deceased, referred to in the plaintiffs petition, and call for proof of the same.

Defendants admit that they are the Executors of

of Charles H. Borrer deceased, and state that the said Charles H Borrer, in the month of 1844 married Catharine Stone, the daughter and one of the heirs of the body of the said Celia N. Stone, referred to in plaintiffs petition, and that some months after said marriage in the month of 1845, the said Celia N. Stone, Charles H. Borrer, and Samuel Stone and Barton Stone, two of the Children of the said Celia N. Stone employed an agent to bring the negroes referred to in plaintiffs petition from the state of to Mississippi, that the said Charles H Borrer paid said agent the sum of dollars, for that purpose, and that in consideration of the sum so paid, and the further consideration of love and affection, the said Celia N. Stone, with the consent of the said Samuel A Borrer and William R Borrer, plaintiffs, and with the consent of the Children and heirs of the body of the said Celia N. Stone, gave unto the said Charles H Borrer, the boy slave named Jim, referred to in plaintiffs petition. And at the same time, gave to the said Samuel Stone and Barton Stone, two of her children and heirs of her body, Each one of the slaves referred to in plaintiffs petition, as the increase of the slaves Hampton and Nancy.— Defendants state that the said slave Jim was always treated by the said Charles H Borrer as his property, that he the said Borrer paid the taxes on him, and that the boy was always spoken of by Celia N. Stone, and the Children of the said Celia N. Stone as the property of said Borrer, that the said Charles H Borrer, held peaceable and uninterrupted possession of said slave for five years, and sold said slave with the knowledge of all parties interested, Defendants state that said slave was the property of said Charles H Borrer

7 that said slave was given to him by the said Celia W. Stone, for the consideration aforesaid, and that no claim was ever set up or pretended to be set up until since the death of the said Charles H Borrer.

Russell W. Moss & Oliver P. Gentry
per their attorney F. Hollingsworth.

Francis W. Hollingsworth attorney for defendant, makes oath and says; that the matters and things set forth in this answer he believes to be true.

Subscribed and sworn to Francis Hollingsworth
before me this 7th March 1851.

Wm. V. Thompson Clk

Filed 7th March 1851. Wm. V. Thompson Clk.

Continuance at Mar: term 1851

And afterwards to wit on the 17th day of March 1851 during the continuance of the aforesaid March term 1851 of said Circuit Court held as aforesaid the following among other proceedings were had to wit:

Samuel A & William R Borrer H. pltff
vs.
R. W. Moss & O. P. Gentry Exr. H Deft } Civil action

At this day come the parties aforesaid by their attorneys, and thereupon this cause is continued till next term of this Court.

Continuance at Nov. Term 1851.

And afterwards to wit, on the 14th day of November 1851 during the continuance of the November term 1851. of said Circuit Court held as aforesaid, the following among other proceedings were had to wit.

Samuel A Borrer H. pltff
vs
Moss & Gentry Exr. Deft } Civil action

At this day come the parties aforesaid by their attorneys and thereupon this cause is continued till next term of this Court.

And afterwards to wit on the 9th of March 1852 at a Circuit Court for said County of Marion, continued and held as aforesaid, before the Hon Carty Wells Judge the following among other proceedings were had to wit.

Amended Answer filed

Samuel A. & William R Bowen plffs
vs
Moss & Gentry Exr. of Bower defts
} Civil action

At this day come the parties herein by their attorneys, and thereupon, leave of the Court first being had and obtained, file their amended answer herein.

Which said answer is in the words & figures following to wit:

Amended Answer

Bowen & Bowen plaintiffs
ag.
Moss & Gentry Exr. of Bower Defds
} Marion Cir. Court March term 1852

The defendants by way of amended answer to plaintiffs amended and original petition, state that they deny the allegations of the plaintiffs, that they plaintiffs are entitled to the possession of the negro boy Jim, or that they are entitled to his value or hire. As to whether plaintiffs ever had the possession of said negro defendants have no knowledge or information sufficient to form a belief, and they demand strict proof. Defendants also deny, that said Negro has ever been in their defendants possession, or under their control as Executors of said Bower, and they say that at the commencement of this suit, they did not detain or have said negro, nor do they detain him now. They also state, that said Bower sold and transferred all his right, title and interest, in and to said slave to one on the day of 184 and that the wife of said Bower was then living, and was the daughter of said Celia W. Stone, and that since the sale as aforesaid, and the commencement of this

9 suit more than five years have Elapsed, and all claim for the same, if any there was is barred by limitation of Law. more than five years has Elapsed since the cause of action accrued, if any

O.P. Gentry one of defts on his oath states that the above answer is true to the best of his knowledge and belief.

Hollingsworth, Green, Pratt & Redd attorneys for Defts.

O.P. Gentry

Subscribed & sworn to in open Court March 16. 1853

Wm. E. Thompson Clk

Filed 9th March 1852. Wm. E. Thompson Clk

And afterwards to wit on the 13th day of March 1852, during the Continuance of the March term 1852 of the Circuit Court continued and held as aforesaid the following among other proceedings were had to wit.

Plaintiffs file Amended petition

William & Samuel A Borren pltffs
vs
Moss & Gentry Exr. Borrer Defts
} Civ ac.

At this day Come the plaintiffs herein and by leave of the Court file their amended petition in this cause

which said amended petition is in the words and figures following to wit.

Amended Petition

Samuel A Borren & Wm. R. Borren pltffs
vs
Russel W. Moss & Oliver P Gentry Executors of Charles H Borrer dec defts
} In the Marion Cir. Court March term 1852 Amended petition.

The said plaintiffs as an amendment and additional Count to the original petition herein filed, say, that said Charles H Borrer deceased in his life time sold the said negro boy slave Jim, without the consent of said plaintiffs and received as the value of

said negro the sum of 500 dollars, and converted and appropriated the said sum of money to his the said Borrs use without the knowledge or consent of said plaintiffs and the said Borrer failed in his life time to pay the said sum of 500 dollars so received for said negro to the said plaintiffs, or any part thereof, or to any person authorized to receive the same, and the said defendants, his Executors, have also failed to pay said sum of money, or any part thereof since the death of said Borrer, wherefore the said plaintiffs ask judgment for said sum of money and the interest thereon.

Rush and Anderson
for plaintiffs.

Celia W. Stone makes oath and says that the matters and things, as stated in the within amended petition, she believes to be true.

Subscribed and Sworn to before me this 30th day of March 1852 } Celia W. Stone
A. W. Rush J.P.

Filed 13th March 1852. Thos. T. Thompson Clk

Continuance at March T. 1852

And afterwards to wit on the 13th March 1852 during the Continuance of the term aforesaid, held as aforesaid, the following among other proceedings were had, to wit.

Saml. A. & William R. Borrer plaintiffs
Moss & Gentry Exrs. C. H. Borrer defendant } Civil Action.

At this day come the parties herein by their attorneys, and thereupon on motion this cause is continued until next term.

And afterwards to wit on the 17th day of August 1852 during the Continuance of the August term of said Circuit Court held as aforesaid, the following among other proceedings

11 were had to wit:

Continuance on Defts aff. August T. 1852

Samuel A. & William R Bowen plff
vs
Moss & Gentry Exc. C H Bower Deft
} Civil Action

At this day come the parties by their attorneys and thereupon the defendants file their affidavit and motion for a continuance, it is therefore ordered that this cause be continued till next term of this Court.

And afterwards to wit on the 24th day of March A.D. 1853 during the continuance of the March term 1853 of the Circuit Court for said County of Marion held as aforesaid the following among proceedings were had: to wit

Continuance Mar: T. 1853.

Samuel A & William R Bowen plff
vs
Moss & Gentry Exc. Chas. H Bower Deft
} Civil action

At this day come the parties herein by their attorneys, and thereupon on motion and by consent of parties, this cause is continued till next term of this Court.

And afterwards to wit on the 10th of August A.D. 1853, at a Circuit Court continued and held for said County of Marion at the August term 1853 at the Court house in the town of Palmyra, within and for said County, before the Honorable Carty Wells Judge, the following among other proceedings were had to wit:

Trial before Jury

William A Bowen and Samuel W Bowen plaintiffs
vs
Russell W. Moss and Oliver P. Gentry
Executors of Charles H Bower dec. Defendants
} Civil action

At this day come the parties herein by their attorneys and thereupon comes a Jury to wit Richard M Johnson, Thomas M.

Armstrong, Henry S. Sandford, G. M. Godman, Edward A Lockwood, Robert Q. Ruffner, Wesley W. Lair, Zachariah Parker, Arrington Gupton, Daniel Born, George See, & Harvey J. Mann, twelve good and lawful men, who were elected, tried and sworn the truth to speak upon the issue joined between the parties, who having heard a part of the evidence, the Court being about to adjourn, the jury were discharged until 10 O'clock tomorrow morning.

And afterwards to wit on the 11th day of August A.D. 1853, at the Circuit Court continued and held as aforesaid the following among other proceedings were had to wit

Trial & Judgment

Samuel A Borren & William R. Borren plaintiffs
vs
Russell W. Moss and Oliver P. Gentry Executors of Charles H Borrer deceased Defendants
} Civil action

At this day come again the parties herein by their attorneys, and also come again the Jury empannelled herein according to their adjournment to wit Richard M Johnson, Thomas M. Armstrong, Henry S. Sandford, G. M. Godman, Edward A Lockwood Robert Q. Ruffner, Wesley W. Lair, Zachariah Parker, Arrington Gupton, Daniel Born, George See, & Harvey J. Mann, who having heard the conclusion of the testimony and the argument of counsel, say on their oaths aforesaid, "we the Jury find for the plaintiffs the amount of seven hundred and sixty three dollars and twelve cents." It is therefore considered by the Court that said plaintiffs do have and recover against the estate of Charles H Borrer deceased, the said sum of seven hundred and sixty three dollars and twelve cents together with their costs, herein expended, and that this judgment be certified to the County Court of Marion County for classification against the estate of the said Charles H Borrer according to law.

And afterwards to wit on the said 11th day of

13. of August, 1853 at the Circuit Court Continued and held as aforesaid, the following among other proceedings were had to wit

Motion to Set Aside Judgment &c overruled

William R. and Samuel A. Borren plff
vs
Moss & Gentry Excr. of C H Borrer Deft
} Civil action

At this day come again the parties by their attorneys and thereupon the defendants file their motion to set aside the verdict of the Jury in this cause, and to grant them a new trial, which motion being seen and considered by the Court is overruled.

(note by Clerk, Said motion is copied in the Bill of Exceptions) at page 25.

And afterwards to wit on the 19th day of August A.D. 1853 at the Circuit Court Continued and held as aforesaid the following among other proceedings were had to wit:

Bill of Exceptions filed

Samuel A Borren and William R Borren plaintiffs
vs
Russell W. Moss and Oliver P. Gentry Executors of Charles H Borrer deceased. Defendants
} Civil action

At this day come the parties herein by their attorneys and thereupon the defendants file their Bill of Exceptions in this Cause, which being seen and Examined by the Court is received, signed and sealed and made a part of the record herein.

Which said Bill of Exceptions is in the words and figures to wit

Bill of Exceptions.

S. A. Borren & W. R. Borren plaintiffs
vs
Moss & Gentry Excr. of C. H. Borrer decd
} Marion Circuit Court August Term 1853

Be it remembered that on the 10th day of August A.D. 1853, the above entitled cause came on to be heard, before the Circuit Court of Marion County Missouri and thereupon the issues joined between plaintiffs and defendants, were submitted to a Jury of twelve good and

and lawful men, to wit, Richard M Johnson, Thomas M. Armstrong, Henry S. Sandford, G. M Godman, Edward A. Lockwood, Robert L. Ruffner, Wesley N. Lair, Zachariah Parker Arrington Gupton, Daniel Bow, George See, & Harvey L. Mann, who having heard the Conclusion of the testimony and the argument of Counsel, say on their oaths aforesaid and thereupon the plaintiffs introduced the following testimony to wit

Plaintiffs testimony.

1st. The transcript of the record of the will and Codicils of Mary Bowen deceased, made and recorded in the County of Sumner and state of Tennessee, in the words and figures following to wit.

Will of Mary H Bowen

Sum the 8th 1824. In the name of God Amen, I Mary H. Bowen of the County of Sumner and State of Tennessee, being now of sound mind and memory, but in the decline of life, and knowing the certainty of death do make and ordain this my last will and testament.

Item. I will and bequeath unto my two sons William R. Bowen and Samuel A. Bowen one hundred acres of land to be laid off at the west end of my survey, beginning at the Corner of Dunns, formerly Dedericks Corner and running to Cantrells line, so as to make the quantity, above named land, my two sons are to keep in trust for my daughter Louisa Sanders during of her natural life, and then to the heirs of her body forever, but it is to be Especially understood that should my Son in law in right of his wife, or my daughter Louisa Sanders or any person under them, bring suit and recover any thing in damages of money from the estate of my deceased Son John H Bowen for the mismanagement of his fathers estate, in that case I leave the above named land to be sold to pay said demand, or so much thereof as will be sufficient

15. for the same, and my two sons William R Bowen and Samuel A Bowen, may have any execution, that the said Sanders and wife may have against the heirs of my Son John H Bowen, levied on said land and sold, which sale shall be binding on me, as if the title to said land was in the heirs of my said son John H Bowen.

Item 2nd. I will unto my two sons William R. and Samuel A Bowen above named, one hundred acres of land to be laid off on the North end of my survey, adjoining of the land of Stephen Cantrell on the line running East and west for my daughter Celia N. Stone, during of her natural life, and then to the natural heirs of her body forever, but if my said daughter Celia N. Stone with the consent of my sons William R. and Samuel A. Bowen, think best to sell said land they can do so, and apply the proceeds to the use of my daughter Celia N. Stone during of her natural life, and then to the heirs of her body forever.

Item 3rd. I give and bequeath unto my sons William R Bowen, and Samuel A. Bowen, and my three grand-Children, Mary H Bowen, William Grant Bowen, and John H. Bowen, infant heirs of my son John H Bowen, the residue of my land in Sumner County, to be Equally divided in three lots, my son William R. one lot, my son Samuel A. one lot: and my three grand Children shall be valued by three or four respectable men, and my sons may take the same land at the valuation of 3 or 4 respectable men, if they wish it, and pay the same or their proportion to each grand Child, when they arrive at the age of twenty one years or marry severally - with legal interest on the same from the time of valuation, or if they should choose to pay it before, to be put out to interest for

their use.

Item 4th I will and bequeath unto my two Sons William R. and Samuel A Brown, in trust for my daughter Celia N. Stow, two negroes named Hampton and Nancy, during of her natural life, with their increase, and then to the heirs of her body forever.

5th. Item. I will that at my death, all my estate, both real and personal, not before named; be Equally divided between my five Children, and three grand Children (to wit) Louisa Sanders, Katharine Campbell, William R. Brown, Samuel A Brown, Celia N. Stow, and my grand Children Mary H. Brown, William Grant Brown, and John H Brown an Equal share, and my three grand Children Collectively one share

6th Item I will that all my estate both real and personal, that may come to the hands of my Executors, for the use and benefit of my daughters Louisa Sanders, Catharine Campbell, and Celia N. Stow remain in the hands of my Execs In trust for my said daughters during of their natural lives. and then to the heirs of their bodies forever.

Item 7th. I will that my landed estate in Kentucky, may either be sold or divided as my Executors may think proper for the benefit of my children and grand children to be divided in the same manner and proportion as the rest of the estate already disposed of. 7th. by it it is my will that my four old negroes (to wit) Saban, Suey, Sarah and Nanny who have been faithful and obedient and assisted in raising up my family, are to be at perfect liberty, and to live with any of my children that they may choose, my sons William R. and Samuel Brown

17 to see that they are kindly treated, and to have permission to visit their Children at reasonable times and to see them well taken care of.

8thly and lastly. I constitute my two Sons William R. Bowen and Samuel A Bowen, Exec.s of this my last will and testament, I hereby revoke all former wills. In testimony whereof I have hereunto set my hand and affixed my seal the year and date above written.

Witness Mary H. Bowen (Seal)

Hubbard Sanders,

Cloe Sanders.

H. Russell.

N.B. It is my wish that Laban and Sarah live with my son Wm. R. Bowen and that Lucy and Winny live with Samuel A Bowen or with Celia or any of them they wish.

Mary H Bowen (Seal)

In pursuance to my last will and testament it is my will and desire, that my young negroes already divided by will, be divided as follows, viz. To my daughter Celia Stone and heirs of her body, negro girl Sukey, Item, to my daughter Louisa Sanders and her heirs negro girl Polly, Item to my son Samuel A. Bowen Negro boy Simon, Item to my grand Children, Mary Bowen, Grant Bowen, John Bowen heirs of John H Bowen dec.d Negro girl named Celiah one share. Item to my daughter Katharine Campbell negro girl named Madeline, Item, to my son William Bowen negro boy named Harry, Lastly the residue of my young negroes heretofore divided to be equally divided among the above named heirs with this Exception, that my daughter Tabitha Moore

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have negro girl Narcissa, or a horse saddle and bridle together with a bed and furniture as Equal to said negro girl, at her option. In Conclusion it is my desire the whole of the aforesaid negroes shall remain in possession of my son William Bowen, agreeable to an agreement entered into between him and myself, until all my just debts are paid, and so soon thereafter as may be expedient to be divided as herein specified. In testimony whereof I have hereunto set my hand and seal this 3rd day of April in the year of our Lord one thousand Eight hundred and twenty seven

In presents of
Cloe Sanders,
James M Grey,
Maria K Grey,

Mary her X mark H Bowen (Seal)

Alteration in Mrs Bowens will.

I will that my daughter Tabetha Moore have one of my young negroes, or a horse and my saddle with my bed and furniture, also my family bible; I will that my son William R Bowen, have three Cows, and Calves, one steer, 10 head of Sheep, twenty head of hogs, one bed and furniture; I will that my son John H Bowens Children, have two cows and Calves, ten head of sheep; I will that my daughter Celia W. Stone have one Yoke of Steers, and one Cow, or heiffer, I will that my brother Hendley Russell have one bed and bed clothes, and one of my mare colts next spring if they have a vez one April 16th 1825. I will that all this be done before division takes place, and I also will that my heirs relinquish all claim to the above mentioned four negroes before said division.

Test
Persen E Harris
H Russell

Mary H Bowen

19 State of Tennessee, Sumner County. May term 1827
The last will and testament of Mary H Bowen deceased, was Exhibited in Court for probate, and was duly proved agreeable to law by the oaths of Hubbard Sanders, Cloe Sanders and Henry Rufell subscribing witnesses thereto, and ordered to be recorded. A Copy Test

A H Douglas Clerk of Said Court

State of Tennessee, Sumner County. I John L. Bugg Clerk of the County Court of Sumner County, Certify that the foregoing is a full, true and perfect transcript of the record of my office of the will, Codicils, and probate of the will of Mary H Bowen. In testimony whereof I have hereunto set my hand and affixed the seal at office in the town of Gallatin this 17th day of February 1851

(Seal)

John L. Bugg Clerk

State of Tennessee, Sumner County, I George A. Wyllie, Chairman of the County Court of said County, do hereby Certify that John L. Bugg is Clerk of the County Court of said County, duly Elected and qualified as such, that his foregoing attestation is in due form, and by the proper officer. Given under my hand and seal this 18th February 1851.

George A Wyllie J.P.
Chairman of Sumner County Court.

State of Tennessee, Sumner County. I John L. Bugg Clerk of the County Court of Sumner County, Certify that George A Wyllie whose named is signed to the foregoing certificate, is and was at the time of signing the same an acting justice of the peace for said County, and Chairman of said Court, duly Elected, commissioned and qualified as such, and that his signature is genuine. Given from under my hand at office this 18th February 1851.

John L. Bugg Clerk

Plffs: Testimony

Th. S Miller

2nd Plaintiff also introduced Thomas S Miller a witness who testified that for many years he was the partner of Charles H Bower, defendants intestate; doing business in Hannibal; that in the year 1845, witness went to Kentucky on business and at the request of Mrs Stone, brought out three negroes the boy Jim one of them, Jim was, when he landed at Hannibal, sent to the house of Charles H Bower, one, he thinks, went to Samuel A. Bowers. Said Bower paid to witness $20. for his expenses and trouble, and the balance was paid by others not recollected, thinks it was paid by Mr Hallack and S. Stone, Mr Hallack married one of the children of Mrs Celia N. Stone, and Samuel Stone is her son, Witness believes that one of the negroes he brought out was put into the possession of Hallack, the son in law of Mrs Stone, and that witness has seen the negro there: Charles Bower married one of the daughters of Mrs Stone sometime in the year 1844, and she died in the fall of 1850 a short time before the death of Charles H Bower, who died in October 1850. Mrs Celia N. Stone lived after the death of her husband B. N. Stone, who died in the year 1844, principally in Missouri, with her children. She sometimes stayed with Mr Hallack, and sometimes with her brother in Hannibal, and she sometimes was at Charles H Bower. From the time the negro boy Jim was put into the possession of Charles H Bower, he used him as his own property, and held and managed him as other masters and owners of slaves. About the 10th of February 1846 some six months or thereabouts after receiving the negro as before stated, Bower sent the slave to New Orleans and there sold him between the middle and last of February 1846 and received for him 521 dollars, but at Hannibal where the parties resided the slave was not worth that much by from 50 to 75 dollars. Samuel A Bower, one of the plaintiffs then resided in Hannibal & had for many

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years before, and continued to reside there for many years afterwards. Witness did not know where the other plaintiff resided, never saw him or knew any thing about him, Witness brought the negroes from Kentucky at the instance of Charles Barrow and Wm. C. N. Stone, and found them in Scott County Kentucky, where he received three of them from one and brought the three to Missouri as before stated, the negroes had never before been in this state to the knowledge of witness.

Plffs. close Evi:

The Plaintiffs offered no more evidence.

Admissions by Plff

It was admitted by plaintiffs that Barton N. Stone the husband of Celia N. Stone, lived for many years before his death in the state of and died very shortly after the marriage of Charles H Barrow with Catharine Stone the daughter in the year 1844.

It was admitted that the negro boy Jim was part of the increase of the negroes mentioned in the will, conveyed to plaintiffs in trust for Mrs Celia N. Stone, and that the other two brought to this state by witness T. S. Miller were also.

Defendants testimony offered

The defendants then introduced Rufus N. Mills who was duly sworn to testify; and by him defendants offered to prove that Celia N. Stone, shortly after the death of her husband B. N. Stone, gave all her right title and interest in and to the said Negro Jim to Catharine the wife of Charles H. Barrow deceased.

Defendants also offered to prove that at same time Celia also gave one negro Each to Wm Hallock. and Samuel Stone, her other two children, Also that Each of these Negroes was put into the possession of the said parties.

Objection by Plff Sust.d by Court.

To all of which Evidence offered by defendants plaintiffs objected, and the Court sustained the objections and Excluded and rejected the testimony, to which opinion

of the Court sustaining said objection and rejecting said testimony the defendants Excepted.

Kents Com: read

Defendants read from Kents Commentaries the Evidence contained of the Common law and decision of the Courts in the State of Tennessee.

This was all the testimony.

Instructions asked by Defᵗ.

Defendants then asked the Court to instruct the Jury as follows

Borren plaintiffs
v
Moss & Gentry Exᵒʳ of Borrer Defts

Marion Circuit Court
August T. 1853

The defds ask the Court to instruct the Jury as follows to wit.

Given

1ˢ That the legal Effect and operation of the Will, the transcript of which was read in evidence, is to vest the whole beneficiary interest in and to the negroes therein mentioned, and their increase in Mʳˢ Celia W. Stone.

Refused

2 That said Celia W. Stone, after the death of her husband had full power under, and by virtue of said will, to dispose of said property sued for, unless the same was reduced to possession, by her said husband during his life.

Refused

3. That there is no evidence in the case, that the plaintiffs Ever accepted the trust, or had at any time Either the possession or control of the negroes mentioned in the said will, or of their increase, and that without such evidence the plaintiffs are not entitled to recover.

Refused

4 That said Celia W. Stone, had the right to dispose of her interest in said property, and if the Jury believe from the evidence that she gave the negro boy Jim to Charles H. Borrer, they should find a verdict in favour of defendants.

Refused

5ᵗʰ. That if Charles H. Borrer had, more than five years space of time, from the time he held adverse possession

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of said negro, and claimed him as his own property until his death, that the plaintiffs cannot recover in this action, and the Jury should find a verdict for the defendants

Given

6th That if the Jury believe from the evidence, that the negro boy Jim, was put into the possession of Charles H Bower in September 1845, and from that time until his death, was claimed as his own property, adversely to the claim of plaintiffs, and all others, and that said Bower died in the month of October 1850, that in such case the Jury should find a verdict in favour of defendants, If they also shall find that such claim of Bower and adverse holding was known to one of the plaintiffs and Celia N. Stone, during all the time the negro was thus claimed and held.

Refused

7th That Celia N. Stone had the right to dispose of said property for and during her natural life, and if the Jury shall find that she did dispose of it, by gift, sale or otherwise they should find for Defendants.

Refused

8th That unless the Jury shall believe from the evidence in the cause, that the plaintiffs never did accept the trust, or have the possession or control of the property, the plaintiffs cannot recover, and that the burthen of proof of these facts, lies upon the plaintiffs.

Refused

9th That if the Jury believe from the evidence that the negro boy Jim, was put into the possession of Charles H Bower in September 1845, and from that time until his death, the negro boy was claimed as his own property, and held adversely to the claim of all other persons, and that during his life he sold and disposed of him for his own use and benefit, and that said Bower died in the year 1850, in the month of October without any claim or demand being made on him for

the negro or his hire, that in such case the plaintiffs are barred by limitation, and cannot recover in this action.

Which said instructions the Court refused, (except the 1st and 6th which were given) and to the opinion of the Court refusing defendants instructions they Excepted.

Instructions given by Court

Thereupon the Court gave the following instructions:-
1st If Charles H Borrer was in the possession;- held the possession of the slave;- and claimed to hold it, against the right of the plaintiffs;- the commencement of the holding being more than five years before this suit was brought, the plaintiffs cannot recover in this action. But to entitle the defendants to this defense the Jury must be satisfied from the evidence that Borrer claimed during that time to hold the slave as his own, and not in right of Mr Stone.
2nd If the Jury find for the plaintiffs, the criterion of damages is the value of the slave (at the City of Hannibal, (at the time, the slave was taken away) to be sold by Borrer, and interest at 6 per cent on that sum, until the present time.

Remarks of Court in presence of Jury

And immediately before giving said instructions the Court also remarked to the Counsel in the presence and hearing of the Jury, "that he did not recollect any evidence, on the subject of an adverse possession by Borrer," that he, the Judge, did not recollect of any evidence on that point,

Ex: of Def.

To all of which the defendants objected and Excepted.

Verdict of Jury

The Jury returned the following verdict
We the Jury find for the plaintiff the amount of

25. Seven hundred and sixty three dollars and $\frac{12}{100}$ (763.12) cents. amount of principal and interest. R. Q. Ruffner foreman".

Defds motion to set aside verdict &c

Defendants moved to set aside the verdict and for a new trial, in words & figures following to wit.

S. A. & W. R. Bowen
vs
Moss & Gentry Exec^rs of C. H. Bower

Defendants move the Court to set aside the verdict of the Jury in this cause, and to grant them a new trial, because.

1st The verdict is contrary to law and the testimony in the cause.

2nd Because the verdict is contrary to the instructions of the Court.

3rd Because the Court gave to the Jury illegal and improper instructions.

4th Because the instructions given to plffs are contrary to law.

5th Because the Court refused instructions offered by defendants.

6th Because the Court rejected important and legitimate testimony offered by defendants.

7th Because the Court improperly made remarks in the presence and hearing of the Jury, without reducing the same to writing, which had a tendency to mislead the Jury.

overruled

Which said motion was overruled, and to the opinion of the Court overruling said motion defendants Excepted.

B/E

Defendants present this as their Bill of Exceptions to the decisions of the Court, and ask that it be signed and made part of the record herein, which is done.

Carty Wells

Filed August 19th 1853 Thos. E. Thompson Clk

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State of Missouri
County of Marion ss I Thomas E Thompson Clerk of the Circuit Court, in and for said County of Marion, Certify that the foregoing twenty five pages, contain a full, true and complete transcript of the record and proceedings had in said Circuit Court in relation to the cause therein mentioned and also of all the original papers, filed in said cause and property forming a part of the record thereof, as fully and completely as the same remains of record and on file in my said office. In testimony whereof I have hereto set my hand, and affixed my official seal. Done at office at Palmyra in the County aforesaid, this the 14th day of December A.D. 1853.

Thos. E. Thompson Clk

Bill of the Costs:

To whom due	By Pltff	By Deft	Total	
Barnabas B. King Shff Marion Co	5 60	3 35	8 95	
D. M. Delaney Shff Monroe Co	1 00	– –	1 00	
Joseph Dudding Constable Marion Co	" 25	– –	" 25	
Wm J. Morrow Shff Macon Co	1 00	– –	1 00	50 p.c. by pltff
Wm A Maddox Shff Marion Co	2 30	3 80	6 10	
Thomas S. Miller Witness . . .	– –	3 90	3 90	
Wm D. Marmaduke " . . .	1 70	– –	1 70	
Wm R. Kidd " . . .	. –	1 70	1 70	
Amanda W. Bowen " . . .	5 10	. . .	5 10	
Marion County Jury fee . .		3 00	3 00	
Thomas E Thompson Clk Marion	14 26	9 90	24 16	
this Trans. Certif: & Seal		10 25	10 25	
Total	31 21	35 90	67 11	

Thos. E. Thompson Clk

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(13) 3

March. T. 1854

Samuel A Borren &
William R. Borren
Depts. in Error.

vs

Russell W. Moss &
Oliver P. Gentry
Exec^rs of C. H. Borret dec^d
Pepps. in Error

Writ of Error to
Marion Cir: Court.

Anderson } attys for
Rush } plaintiffs

Pratt & Redd } attys for
James S. Green } Deft

Filed 18 February 1854
Wm S. Glanville
Clerk

Rev

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Bowen & Bowen } Sup Court
vs } March Term 1854
Moss & Gentry }

Appellant alledges that the court below Erred in the following particulars

1st in Excluding the evidence to prove a gift by Celia W. Stone to Charles Bower appellants Testator.

2nd the court Erred in refusing the 2nd. 3rd. 4th. 5th. 7th. 8th & 9 Instructions asked by the defendants

3rd the court Erred in the remarks made in the presence of the Jury

E. G. Pratt
Atty for Appellants

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Bowen & Bowen
vs
Aloss & Gentry Ecs
of Ch. H. Bower

assignments of
Errors

Filed 21st March 1854.
Wm L Glanvin
Clk

Bowen &
Bowen
vs
Bowen's Extrs

The plaintiffs claim as trustees under the will of Mary H Bowen of Tennessee. By that will certain slaves and their increase were bequeathed to the plaintiffs in trust for her daughter Celia W Stone "during her natural life and then to the heirs of her body forever" The negroes at the time of the death of the testatrix were in Tennessee and were subsequently brought to Mississippi. The defendants offered to prove that Mrs Stone gave the slave now sued for to ~~the~~ her son in law Bowen whose executors are the defendants but the Court refused to admit the testimony. Mrs Stone at the commencement of this suit was in full life and swore to the petition of the plaintiffs.

Although the record furnishes no evidence of the law of Tennessee in relation to the bequest in the will of Mrs Bowen we see that whatever estate passed by it ~~to~~ in the trust for the benefit of Mrs Stone could not be less than an estate for her life and from the offer of the defendants to prove that Mrs Stone parted with her interest in the slave in controversy to her son in law Bowen we are to assume such to be the fact. We have then the case of trustees suing for a slave or his value when the cestui que trust for life has transferred her interest in the slave to another and is still in full life herself. And this suit

is brought in a court where the legal and equitable estates are not to be separately regarded. Unquestionably the plaintiffs would not be allowed to recover the slave from their own cestui que trust nor can they recover from her grantee while yet her estate continues. The object of this action is to put the value of the slave into the hands of the trustees for the use of Mrs Stone ~~against~~ the contrary to the transfer of her right alleged by the defendants to have been made to her son in law. This cannot be allowed

The judgment is reversed and the cause remanded with the concurrence of the other judges

A R Gamble

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Bowen & Bowen
" }
Bowers; Exte

Opinion

HRG –

Filed 20th May 1854.
Wm. L. Glanville
clk

S. A. Bowen
against
Bowens adms

Appeal from the Marion Circuit Court.

Points and authorities

The ~~Appellee~~ Respondent by his Counsel urges.

1st The Rule in Shelly's Case cannot apply herein for various ~~reas~~ reasons — 1st. Even under the most rigid English decisions the manifest intention of the testator prevailed, so as to make the children of the Devisee or Legatee for life take by purchase and not by descent. ~~By~~ The 4th and 6th clauses in the Will of Mrs Bowen shew a clear intent that the property was to vest in the Trustees for the use of Celia W Stone during her life only, and that after her death her children were to become the beneficiaries of the trust. See Kents Com V. 4 p. 216 edition of 1832. —— 2nd In the application of "The Rule" there is a difference between legal and equitable estates. This antipeculiar rule growing out of peculiar Legislation has never been ~~countenanced~~ favored in Equity, and the Chancellor in cases of Trusts ~~has ever~~ growing out of a Will has looked to the intent of the Testator, which ~~is~~ is made to prevail even when a more technical construction would favour the application of the Rule in the Law Courts. 4th Kents C 218-30. This doctrine is so fully discussed by Chancellor Kent, and his references so full, that citations of other authorities here would be needless.

2. As to the Statute of Limitations. Can the Statute run against a Trustee? If it can run against the Trustee it does not commence so to run till ~~the~~

~~till~~ the latter part of of February 1846 when C H Bower sold the negro ~~out of the state~~ and appropriated the proceeds to himself - he then became liable to Bower the Trustee for the value the negro he, Bower having put ~~the~~ him out of the jurisdiction of the Courts of the State. Bowers ~~approp~~ sale of the slave and appropriation of the Money ~~Showed~~ manifested his adverse holding as regarded ~~and~~ the Trustee and all the Beneficiaries of the trust, including those entitled to the limitation over after the expiration of the life estate. Bower the Trustee then for the first time ~~he~~ was entitled to the money for which he sued and obtained judgment. The suit was commenced on the 6th of February 1851 - Bower sold the negro in the latter part of February 1845 - The Five years had not elapsed even allowing no time for taking out letters of administration.

3d - The Record (imperfect as the Bill of exceptions manifestly is) shows a State of case entitling the plaintiff to a recovery equal to the amount of the judgment. ~~A reversal~~ A Reversal could not benefit the Defts, and would but accumulate the Costs unnecessarily.

Anderson & Richmond
for Respondents

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Bowen
against

Bowens Admin=
istrators

Points & authorities
for Respondents

Bowen & Bowen
vs
Moss & Gentry Executors
of Charles H. Bower

Supp. Court
March Term
1854

Statement

in 1824 Mary H. Bowen a resident of the State of Tennessee by her will bequeathed Two Slaves and their Increase to Plaintiff upon the following Trusts
1st for the use of Celia W. Stone during her natural life
2nd remainder in the use to the heirs of her natural Body forever
the Slave in controversy is a descendant of one of the slaves named in the Bequest
In 1845 who was then a widow by her agent delivered the slave Jim to her son in Law Charles Bower defendants Testator
defendants alledge & offer to prove that at the time of the delivery 1845 Celia W Stone gave the Slave to Bower pffs Testator which evidence was excluded
in Feb. 1846 Bower sold the slave for the sum of $521.00
this action was Instituted by pffs a Trustee under said will to recover the value of the slave returnable to the march Term 1851

Appellants rely on the following points and Authorities
1st that the Devise over of the Equitable Interest to the Heirs of

the Body of Celia W. Stone is void being an attempt to create an Estate in Perpetuity

Appellant refers to the rule in Shelly's case

2nd that a gift by Celia W. Stone is sufficient to pass all her Interest and if the remainder over be void would vest in the Donee the absolute ownership of the Equity

3rd that if the devise over be held good the gift of Celia W. Stone would pass her Estate for life in the Equity and this Court could not be maintained during her life

4th that upon either Hypothesis it was Error to exclude evidence of the gift

E. G. Pratt
Atty for Appellants

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Bowen & Bowen

vs

Moss & Gentry
Ex. of Bowen

Brief for
Appellants