Hughes, Moses vs. Whiteside, Josiah 1855 Montgomery 369/9

Townley, John M (admin)

584/24

mot to dismiss

W took slaves (Avey, Hetty, Eliza, Jordana

wrongful possesion

W denies - mot to dismiss sustained

dismissed

no representation after death of Hughes

1

Plaintiffs Petition

State of Missouri
Montgomery County ss

Be it remembered that on the 19th day of November 1850, Moses Hughes by his agent John M Lowrey filed in the office of the undersigned Clerk of the Circuit Court of said County the following Petition

Moses Hughes Plaintiff
Against
Josiah Whiteside defendant
In the Circuit Court Montgomery County

Plaintiff states that on the second day of April 1850, defendant took and received into his possession a negro woman named Avey aged about 38 years, of about the value of four hundred dollars, and her child an infant named Betty about six months old and of about the value of one hundred and fifty dollars, also Eliza a woman about seventeen years old and of about the value of six hundred dollars, and her child an infant named Jordana about Six months old and of about the value of one hundred and fifty dollars, all together being of about the value of thirteen hundred dollars, which said negroes were and are the property of Plaintiff. Plaintiff also states that said negro slaves are his negroes, and in fact and in law are his property and form part of his estate and that defendant still retains possession of said negro slaves, and refuses to give

them up to plaintiff, although demanded and although defendant knows he has no legal right or title to said slaves, and that the right title, and right of possession in and to said negro slaves is in and belongs to plaintiff; Plaintiff says he is injured and has sustained damages to the full value of said negroes, together with the hire of said negro slaves. He therefore demands judgment that defendant be compelled to restore said negroes to him, or be compelled to pay to plaintiff the full value of the said negroes together with such damages as he may have sustained for hire or otherwise

Shelby for Plaintiff

John M Tawney agent for plaintiff makes oath and says he believes the above petition and the matters therein as stated are true

John M Tawney

State of Missouri
Montgomery County } ss; I Jacob L Sharp clerk of the circuit court in and for said county certify that John M Tawney this day came before me and was duly sworn to the truth of the foregoing affidavit - In (L S) Witness whereof, I have hereunto set my hand and affixed the seal of said court at office in the Town of Danville the 19th day of November in the Year of our Lord 1860.

Jacob L Sharp Clk

3

Upon the filing of which said petition the undersigned clerk of the Circuit Court of Montgomery County aforesaid issued the following writ with a copy of said petition annexed thereto and delivered the same to the Sheriff of said County of Montgomery

Writ

"Montgomery County ss

The State of Missouri

To the Sheriff of said County Greeting

You are hereby commanded to summon Josiah Whiteside to be and appear before the Judge of our Circuit Court on the first day of the next term of said Court to be held in and for said County at the Court House in the Town of Danville on the third Monday of April next, There to answer to a petition filed against him by Moses Hughes. And do you have then there this writ

Witness Jacob L Sharp clerk of said Court with the seal of said Court affixed, done at office in the Town of Danville the 19 day of November 1850

Jacob L Sharp Clk By Saml I Sharp D Clk

Sheriff's return on Writ

Upon which said writ was endorsed the following return of said Sheriff

"Served the within writ by reading the same, together with the annexed petition in the hearing of Josiah Whiteside on the 2nd day of December AD 1850.

Sh'ffs fee $1.00

Green B. Bush Sh'ff M C

And afterwards to wit at the September Term of the Circuit Court of said County of Montgomery, begun and held in said County on the 15th day of September 1851, and on the 17th day of said month, the following proceedings were had in said cause as appears from the Records of said Court

Death of Deft suggested and Jno M Townley adm'r enters

"Moses Hughes

against

Josiah Whiteside

The death of the plaintiff in this cause having been suggested, John M Townley administrator of said deceased came into court by his Attorney and entered himself plaintiff in this cause and thereupon the cause is continued to next Term

And afterwards to wit at the April Term of the Circuit Court aforesaid A.D. 1853 and on the 20th day of said month the following proceedings were had in said cause

Answer filed

"John M Townley adm'r of Moses Hughes

vs

Josiah Whiteside

Answer filed and Continued

Answer

Said answer is in the following words

Townley adm'r of
the estate of Moses Hughes Plaintiff
vs Josiah Whiteside Defendant Apl T 1853

Defendants 5

The defendant for answer to the Plaintiffs petition states that he does not know nor has any legal evidence that said John M Townley is the administrator with the will annexed of said Moses Hughes deceased and requires proof thereof, that he was not in the possession of the slaves in the said petition mentioned or either of them at the commencement of the plaintiffs action, that he did not then nor does he now know that said negroes were the property of Moses Hughes or that he had any right to the possession of the same He further states that according to the best of his information the said negroes were not when said action was commenced the property of said Moses Hughes, nor did they then constitute a part of his estate, nor was said Hughes then nor his estate now entitled to the said slaves or either of them, and that this defendant is not liable in law or equity to restore said negroes, nor either of them to, nor pay the plaintiff any sum of money or damages on account of the said negroes— He further states that said negroes are not of the value stated in said plaintiffs petition. Wherefore he asks to be discharged from the action with costs. And the defendant for further answer says that one Alban

6 " Glasby obtained a judgment in his
" favor against one Jesse B Clarkson
" and John F P Hughes in the Montgmery
" Circuit Court in the State Missouri
" at the November Term A D 1840 for
" $727.80 debt $141.50 damages, and for
" Costs - That an Execution issued
" from the office of the clerk of said court
" on said judgment directed to the Sheriff
" of said County of Montgmery Comman-
" ding said Sheriff to make said debt-
" damages and costs of the land and
" tenements goods and chattles &c of
" said Clarkson and Hughes, which
" Execution was returned by said
" Sheriff July 1st 1842, nothing made
" thereon, that afterwards to wit on
" the 29th day of December A D 1849
" another execution was issued
" from said office on said judgment
" directed to the Sheriff of the County
" of Osage in said State Commanding
" him to levy and make the aforesaid
" debt damages and costs, which said
" Execution was to said Sheriff of Osage
" delivered, and by him levied on the
" Slaves in the Petition mentioned
" as the property and in the possess-
" ion of said John F P Hughes in said
" County of Osage. That the Sheriff of
" said County of Osage by virtue
" of the said writ and levy having
" given due notice of the time, place
" and terms of sale, did expose to sale

7 at public auction and publicly sell
the said slaves on the 1st day of April
1850, at the Court House door in the
Town of Linn in said County of Osage
to the highest bidder for cash in hand
That the defendant was at the said
Sale the highest and best bidder, and
then and there became the purchaser
of said Avy and her child for the sum
of $160, also of Eliza and her child for
the sum of $475, that he then and there
paid said Sheriff said sums so bid
and took them said slaves into posses
-sion - That the said Sheriff then and
there gave him a bill of Sale
of said Slaves, and made his return
on said Execution to said Montgom
-ery Circuit Court - The defendant
says that for several years next
previous to said levy the above
levy and sale the said John F.
Hughes, had the possession of said
Slaves and held them out to the
Community in which he lived as his
absolute property and used them
as his own, gaining credit upon
the idea that he held out among his
neighbors, and that this was with
the privity and assent of the said
Moses Hughes. Wherefore he says
that the said Slaves were at the
time of ~~such~~ levy and sale in law
as to creditors of and purchasers
from or under said John F. Hughes

his said John F P Hughes property
and thus being liable to be sold
for the payment of said John F P Hughes
debts, and said Glasby said judgment
said defendant acquired by his said
purchase at said Sheriffs sale a
valid right and title to said slaves
And therefore he asks a judgment
against the plaintiff for the costs
herein incurred, said bill of sale
copy of said judgment, Execution &
hereunto filed. And for further
Answer defendant says he is in-
formed and so states the fact to
be that Moses Hughes, is the father
of said John F P Hughes, that he was
a resident of Nelson County
Virginia, and never resided in
Missouri, that said John F P
Hughes has been a resident of
Missouri for a great number
of years, that he was in said County
of Nelson Virginia about the Month
of November A D 1847, that his said
father Moses Hughes then and there
divided among his children several
of his slaves and that the said Avy
and the said Eliza were set-apart
and allotted to said John F P Hughes
by his said father Moses Hughes as
so much advanced upon his said
John F P's share in his fathers estate
and were then delivered to and

" received by said John F P Hughes as
" his own, and he soon thereafter
" brought them with him to said County
" of Osage and possessed and held
" them in the manner above stated as
" his own ever after till said levy and
" sale - That said children were born
" after their mothers came into said
" John F P Hughes possession as above
" stated. Wherefore said defendant
" says that said slaves were at the
" time of said levy and sale said John
" F P Hughes, and liable to be sold
" to pay said judgment and Execu
" tion of Alban Oglesby - He there
" fore asks to be discharged hence
" with his costs herein incurred
" Hunt and Porter for Defendant
" Josiah Whiteside
" makes oath and says he believes
" the matters and things stated in the
" foregoing answer as stated are true
" Josiah Whiteside
" Sworn to and
" Subscribed in open court 20th April
" 1853. before I A Sharp By D Sharp C

And afterwards to wit on the
22nd day of April 1853 at the April Term
of the circuit court aforesaid the
following proceedings were had in said

Copy Letters administration files

in said cause

John M Townley admr of Moses Hughes

vs

Josiah Whiteside

Copy of Letters of administration files & continues

Said Letters of administration are in the following words

" County of Osage ss

The State of Missouri

To all persons to whom these presents shall come greeting Know ye that whereas Moses Hughes late of the State of Virginia died intestate as is said having at the time of his death to property in this State which may be lost destroyed or diminished in value if speedy care be not taken of the same Now the end therefore that said property may be collected preserved and disposed of according to law we do hereby appoint John M Townley administrator (with a copy of the will annexed of all and singular the goods and chattles rights and credits which were of the said Moses Hughes at the time of his death with full power and authority to secure and dispose of said property according to law and the will of the deceased, and collect all moneys due said deceased and in general to do and perform all other

Copy of Letters of administration

11 " acts and things which are or hereafter may be
" required of him by law — In testimony whereof
" I E McJilton Clerk of Osage County Court
" have hereunto set my hand and seal of office
" L S at office in Linn on the fifteenth day
" of April 1851

E McJilton Clerk

" Recorded before delivered April 15th 1851

E McJilton Clerk

By W M Sanskin D C

" I E McJilton Clerk of the Osage County
" Court do hereby certify that the above
" and foregoing is a true copy of the Record
" now in my office (as recorded in Book
" A page 160 — In testimony whereof I
" have hereunto set my hand and offi-
" cial seal, affixed at office this 27 day
" L S of Nov 1852

E McJilton Clerk

By L M Jilton D C

And afterwards to wit at the September Term of the Circuit Court aforesaid AD 1854 and on the 20th day of said month the following proceedings were had in said cause

" John M Townley
" adm of Moses Hughes
" vs
" Josiah Whiteside

Motion to dismiss action filed, Motion to dismiss action filed, Motion and cause continued

And afterwards to wit on the 21st day of April 1855 at the April term of the Circuit Court aforesaid the following proceedings were had

John M Donnley
adm'r of Moses Hughes
vs
Josiah Whiteside

On motion to dismiss

Now at this day came the parties aforesaid by their attorneys, whereupon all and singular the premises were submitted to the Court, whereupon it is considered that said defendants motion be sustained, and the cause is dismissed accordingly, and it is further considered that said defendant recover of said plaintiff his costs about his defense laid out and expended and that he have thereof Execution

Judgment on motion to dismiss

And afterwards at the Term of said Court last aforesaid and on the day last aforesaid the following proceedings were had

John M Donnley
adm'r of Moses Hughes
vs
Josiah Whiteside

Bill of Exceptions filed

Bill of Exceptions filed

Bill of exceptions

Said Bill of exceptions is in the words following

John M Townley
adm of Moses Hughes deceased Plaintiff
against
Josiah Whiteside defendant

Be it remembered that at the September Term 1854 of the Montgomery Circuit Court, the defendant Whiteside filed his motion to dismiss the above cause for the following reasons

Motion to dismiss

Motion to dismiss here inserted as follows " Townley adm of Moses Hughes vs Josiah Whiteside

The defendant moves the court to dismiss the above cause on the ground that the action was commenced in the name of Moses Hughes after his death, which fact the defendant has since the last Term of the Court ascertained for the first time.

And for that the Will of said Hughes has not been probated in any County in this State as he is informed and believes - That there is no will or copy filed with the supposed copy of letters of administration

Hunt & Porter
Att for Deft

And at the April term 1855 of said Court the said motion came on to be heard; and it was

Bill of exceptions resumed

"proven by the defendant Whitesides
"and admitted by the plaintiff John
"M Lowndes admr &c that Moses Hughes
"in whose name the suit was originally instituted died on the 2nd
"day of November 1850, in Nelson
"County Virginia, and that the
"suit was commenced by his agent
"John M Lowndes on the 19th day of
"November 1850, after the death of
"the said Moses Hughes, And also
"on the hearing of said motion
"plaintiff John M Lowndes admr
"of Moses Hughes introduced
"in evidence against the granting
"of said motion, a copy of Letters
"testamentary with the will annexed
"of Moses Hughes deceased, and
"the certificate of probate in the
"County Court of Nelson County
"Virginia with the certificate
"of record from the County Court
"of Osage County

The Copy of Will and Letters testamentary aforesaid are here inserted as follows

"I Moses
"Hughes ex of Nelson County and
"State of Virginia do make this my
"last Will and testament, revoking
"all others heretofore made, as fol-
"lows to wit at my death
"First, I wish my wife Elizabeth

Will of Moses Hugh 15

to have during her natural life or
widowhood the tract of land on
which I now live, which comprises
my fathers old tract, and the tract
I bought of Samuel Stuckland
and all the enteys adjoining; and
the tract lying on Rock River
which I bought of James Edwards
And at her death or marriage I
bequeath all of said lands to my
four daughters Jennetta, Elizabeth
B, Frances C, and Sarah L or their
heirs, said lands to be advertised
by my Exr and sold for one third
Cash, and the remainder in two
equal annual payments with the
usual security taken to secure the
two last payments, except my four
daughters may otherwise agree on
a division of said lands, the pro
-ceeds to be equally divided be
-tween them or their heirs

Secondly. I bequeath to my
son Moses B at my death my
Javeles tract of land lying on Cub
Creek

Thirdly. I wish my wife to have
during her life or widowhood
the following slaves to wit Lutetia
a woman, Nelson, Avy, Henry
Preston and Elick her children
Mariah a woman and Jordon
her husband, Robert, Margaret
Louis, Wyatt and Drucilla

16 " then children, Seely a woman, Schuy-
-ler a man, Henry a man and Ren-
-ben a man and then increase; and
" at her death I wish an equal division
" among all of my children or their heirs
" all of said slaves and their increase
" except Jordon and Mariah his wife
" and their two youngest children that
" may be at my wifes death, which four
" slaves she may dispose of as she may
" choose among my children or their
" heirs

" Fourthly, at my death I wish
" my wife to have her choice of three
" beds, bedsteads and their furniture
" my black walnut cupboard, one
" bureau, one walnut folding
" table, one square walnut table
" and what chairs I have, her choice
" of one yoke of Oxen, two cows
" and calves, one ox cart and two
" horses, also one thousand pounds
" of pork, or three fourths of that
" quantity of bacon, and fifty bar-
-rels of corn

" Fifthly - At my death I wish my
" Executor to proceed to sell on
" twelve months credit all of
" my property not herein bequeathed
" except for sums under five dol-
-lars which must be cash, and
" out of the proceeds, with all other
" claims which I may die seized of
" not named proceed to pay my just

17 " debts; and the remainder if any
" to distribute among all of my chil
" -dren or their heirs equally
" Sixthly. Having recently allotted
" the greater portion of my slaves among
" all of my children and delivered the
" same to them, except my son John
" F P Hughes, and my daughter Eliza
" -beth B who married Moses W Hughes
" which slaves I hire to them, and at
" my death I will to my son Moses
" B Hughes, in trust all of said slaves
" money and other property arising
" under my will for the special bene
" -fit of my daughter Elizabeth B and
" her children, and it is my wish that
" my daughter Elizabeth B shall have
" full discretion for her benefit
" to use the interest or any part of
" the principal of all moneys so be
" -queathed by my wife, and if any part
" of said monies at her death be un
" -expended my will is for the resi
" -due of money as well as all of
" said slaves, and their increase to
" be equally divided among all of
" her children or their heirs; And at
" my death I will to Dr John M Tomlin
" in trust all of said slaves above hired
" to my son John F P Hughes and any
" other slaves or effects of any kind
" arising under any will, for the
" special use and maintenance
" of himself and family during his lifetime

18 " and not to be used by him or his trustee
" in payment of any debt now contracted
" or other liability, nor those to be here
" - after contracted without the con
" - sent of both, and at his death
" all effects arising thus under
" my will I wish equally divided
" among his Children or their heirs
" And provided in either case the
" above trustees may die, remove
" or refuse to act, or from any
" other cause it should become
" necessary to appoint another
" It is my wish for the court for
" the County in which my Children
" may live to appoint a new and
" stated trustee to carry out my
" will in either case
" Seventhly. If the funds set
" apart for the payment of my
" debts should prove insufficient
" it is my wish that all of my Children
" shall refund equally for the dis
" charge of said debts
" Eightly. In order to carry into
" effect the provisions of my will
" I herein appoint my Son Moses B
" Hughes and William M Combs
" my Exrs as witness my hand and
" seal this 12th day of January 1850
" Signed and Moses Hughes (Seal)
" acknowledged in the
" presence of Ryland Rodes
" William Dillard

" At a court held for Nelson County
19 " the 25th day of November 1850. This
" instrument of writing purporting
" to be the last will and testament
" of Moses Hughes deceased was
" produced in said court and
" proved by the Oaths of Ryland
" Rodes and William W Dillard
" the subscribing witnesses thereto
" and ordered to record and on
" motion of Moses B Hughes, one
" of the Exrs therein named who made
" Oath, and together with William
" C Roberts and William A Roberts
" his securities, entered into and
" acknowledged a bond, in the
" penalty of Six thousand dollars
" Conditioned as the law directs
" probate of said of said will is
" granted is granted him in due
" form

" Copy teste Leslie S J Masses Clk
" Filed 14th April 1851 & duly Recorded
" E M Jolton clerk
" By W M Lamkin DC

" State of Missouri
" County of Osage Sect

" I William M Lamkin
" clerk of the County Court within
" and for the County aforesaid do
" certify that the foregoing three
" pages contains a true full and
" perfect copy of all the will and
" testament of Moses Hughes deceased

" and of the probate thereof as fully
" as it now remains on record in the
" clerks office of the Osage County
" Court - In testimony whereof, I here
" unto set my hand and annex the
" seal of said Court at office in Linn
" Mo this 14th day of March A.D. 1854
" Wm M Lamkin clerk

" State of Missouri
" County of Osage } Osage County Court
" May Regular Term 1854
" Amongst the records of the proceed
" -ings had on the third day of said
" term of said court is the following
" to wit -
" Ordered by the Court that the follow
" -ing Dow bond be approved and
" filed, and the letters thereon granted
" be approved
" Also the proof and probate
" of the will of Moses Hughes dec'd
" Attest Wm M Lamkin Clerk

will annexed

" County of Osage ss -
" The State of Mis-
" souri to all persons to whom
" these presents shall come greeting
" Know Ye that whereas Moses Hughes
" late of the State of Virginia died
" testate as is said having at the time

21 Letters of administration with

of his death property in this State, which
may be lost, destroyed or diminished
in value if speedy care be not taken
of the same; to the end therefore that
said property may be collected pre-
served and disposed of according
to law, we do hereby appoint John
M Townley administrator with a
copy of the will annexed, of all and
singular the goods and chattles, rights
and credits which were of the said
Moses Hughes at the time of his death
with full power and authority to
secure and disposed of said prop-
erty according to law and the
will of the deceased, and collect
all moneys due said deceased
and in general to do and perform
all other acts and things which are
or hereafter may be required of him
by law - In testimony whereof I E
McJilton Clerk of Osage County
have hereunto set my hand
and seal of office at office
in Linn on the fifteenth day of April
1851 E McJilton Clerk
Recorded before delivered April
15th 1851, E McJilton Clerk
By Wm W Lamkin DC
State of Missouri
County of Osage ss
I Wm W Lamkin
Clerk of the County Court within
and for the County aforesaid

22 do certify that the foregoing page
contains a true full and perfect
copy of the Letters of administra-
-tion, with a copy of the will there
-unto annexed, granted to John
M Townley on the estate of Moses
Hughes deceased, as fully as they
now remain on Record in office
of the Clerk of Osage County Court
In testimony whereof, I here
(D) - unto set my hand and annex
the seal of County Court
at office in Linn Mo this the 15th
day of March A D 1854
Wm W Lamkin Clerk

State of Missouri
County of Osage 3
Osage County Court
May Regular term 1851
Among the Records of the proceeds
had on the third day of said term
of said court is the following
to wit — Ordered by the Court that
the following admr bonds be ap-
-proved and filed, and letters
thereon granted be approved
The bond of John M Townley
admr of Moses Hughes &c

Attest
Wm M Lamkin
Clerk

23

Bill of exceptions continued

The court upon the hearing of said motion, sustained the same and dismissed the said cause to which opinion and decision of the court in dismissing said cause the plaintiff objected, and excepted and hereby files this his bill of exceptions, which he pray the court to sign & seal and make the same a part of the record in this cause

Carty Wells

And afterwards to wit on the 30th day of June A D 1855, in the vacation of said Circuit Court, the following proceedings were had in said cause to wit

State of Missouri
Montgomery County } In the vacation of the Circuit Court 30th June 1855

John M Tinsley adm of Moses Hughes
vs
Josiah Whiteside

Now at this day the said plaintiff files his written order for an appeal to the Supreme court, and it appearing to the undersigned clerk that a bill of exceptions has been filed by said plaintiff at the last term of said court, it is considered that said appeal be granted

Jacob L Sharp By Saml T. Sharp DC

Appeal granted

24

State of Missouri
Montgomery County } ss

I Jacob L Sharp clerk of the Circuit Court in and for said county certify that the foregoing which purports to be copied, is truly copied from the records of said court

In Witness whereof, I have hereunto set my hand and official seal. Done at office in the Town of Danville the 30th day of June A D 1855

Jacob L. Sharp clerk
By Samuel T. Sharp

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State of Missouri ~~74~~ 17

Montgomery Circuit Court

17 Oct. Term. 1856

John M Turnley admr
of Moses Hughes appellant

(74) vs Record

Josiah Whiteside
respondent

Appeal — Montgomery
Circ. Court.

Filed 3d September 1855
Wm S. Glanville
Clk.

Clerks fee
D & Sharp copy 5,50
Cert .50
$6.00

9.17

Fulton Oct 15th 1855

Mr Dunscomb.

Dear Sir,

In the Case of Townley Admr. of Moses Hughes against Josiah Whiteside from Montgomery County, since taking the appeal, Mr John Townly is dead, and I would be glad if the Case could be continued until an Admr is appointed, the parties live in Osage County and all that I have heard from the is that Mr John Townley is dead nor do I yet know of any other Admr having been appointed.

Yours Respectfully

Thomas Ansell

There are but Two points in the Case.

1st Moses Hughes lived in Virginia, and died a few days before the Institution of the suit, in Montgomery County Missouri.

2nd Administration was taken out in Osage County, and a Copy of the Will filed in said County - but the Copy of the Will not properly Certified in Virginia - Was the Administration valid, as taken out in Osage County Missouri.—

this is the whole Case and if it can be decided and the other party wish it I have no objection.

13

Hughes adm.

Ⓓ.

Whitesides

Letter from
Thos. Ansell

Received October 17th 1855.
Wm L. Glanville
Ck.

John M. Townley Adm.
of Moses Hughes – Appt.
Vs.
Josiah Whitesides – Appee

} Appeal from the Montgomery Circuit Court –

Now at this day comes the said defendant by his attorney and moves the Court to dismiss the Appeal in this cause – for the following reasons to wit:

At the October Term 1855 of the Supreme Court – a suggestion of the death of Plaintiff was made and admitted by the Appellee –

At the March Term of the Court 1856 – the cause was continued – but no substitution of the Representative of Plaintiff either at the October Term – at the March Term or at the present term –

Broadhead atty for Respondent –

Townby adm^r. of
Hughes
v^o.
Whitesides

Motion to dismiss
appeal

Filed 23 Oct. 1856
Wm L Glanville
Ch