Kennedy, Ophelia v Keating, Mary et al 1863 509/8

630/2

35/25

Kennedy (A) P

v

Keating (R) (D)

Mary Keating - widow
Anna Keating
Margaret Keating
Mary Jane
Agnes } minors of Patrick Keating deceased as D
Ellen

Peacock, E - Pl

AM, St Gardner D

March 63
oct 60
St Law

Rene Paul dec - gave land to Ophelia - what was Paul

Keating
executor
- wanted money
for his salted pricing

Affirmed

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of the St. Louis Land court **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Land Court in and for the county of St. Louis.

wherein Ophelia Kennedy was the plaintiff and Mary Keating et al were the defendants

in a civil action manifest error hath intervened, to the great damage of said plaintiff as by her complaint we are informed.

NOW, 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 St. Louis, in the County of St. Louis, in said State, on the third Monday in October 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 28th day of September in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty

Wm. S. Glanville,

CLERK.

State of Missouri }
County of St. Louis } ss.

I, Edward N. Gray
Clerk of the St. Louis Land Court within and for said County
in obedience to the within writ furnish a true and complete
transcripts of the record and proceedings of the cause therein
named as fully as the same remain in my office

In Testimony whereof I have to set my hand and affix
the seal of our said Court, at office in
the City of St. Louis this Twenty ninth
day of September A. D. 1870

Edward N. Gray Clerk

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State of Missouri }
County of St. Louis } S.S.

Be it Remembered that on the Twenty third day of September in the year of our Lord One thousand eight hundred and fifty eight there was filed in the office of the Clerk of the St Louis Land Court a petition

Which Petition is in the words and figures following, to wit:

Petition

Ophelia Kennedy as Plff

vs

Mary Keating, the widow and Anna Keating, Margaret P. Keating, Mary Jane Keating, Agnes Keating and Ellen Keating minor children of Patrick Keating deceased as Defendants

In the St Louis Land Court. October Term. 1858.

Plaintiff states that Rene' Paul died on or about the Fifteenth day of May - 185, seized and possessed of certain property, among others, a certain house and lot at the South East corner of block number 147 in the City of St Louis, which lot is Twenty five feet front on Sixth street by one hundred and twenty seven and one half feet deep along Cerre Street and bounded North by Robert Castle, East by Sixth street, South by Cerre' streets and West by an alley; that said Paul left a last Will and testament in writing dated the 5th day of May - 1851. which was duly filed for Probate and proved before the Judge of Probate of St Louis County, the 22nd day of May 1851 whereby in section 2 of said Will said Paul devised and bequeathed the foregoing described lot of ground and tenement thereon to said Plaintiff (then Ophelia Paul) with the following provision in words following to wit " Provided however that should she die without having lawful issue then the same lot shall revert to and vest in and belong to my right heirs to be held in the same manner as if this devise to the said Ophelia had not been made and in that event subject to the provisions hereinafter made as to the sale and division of my property and effects.

2 and such reversionary interest in said lot to be considered for these purposes a part of my estate."

Plaintiff also states that said last Will contained a further claude whereby decedant authorized his Executors or Administrators who might act. to sell and convey absolutely in fee simple &c all his property real, personal and mixed of whatsoever kind or wheresoever situate; the property sold to comprehend all that he might own or be interested in at the time of his death, embracing the Reversionary interest in the lot bequeathed to said Ophelia and with the exception only of what is bequeathed to said Ophelia in Section 2. aforesaid.

Plaintiff also states that Marshall Brotherton and Archibald Gamble were appointed Executors of said last Will and that said Marshall Brotherton alone consented to act as Executor and was duly qualified and entered on his duties as such.

Plaintiff further states that said Executor acting under and by virtue of the authority confided in him by said Will, sold the Reversionary interest so as aforesaid created to Patrick Keating for the price or sum of One hundred Dollars.

Plaintiff further states that at and before the time of said sale, said Keating was her agent and nominal guardian and received the rent and income of the aforementioned premises, that at the time of said sale, said Keating had in his possession money belonging to the plaintiff.

Plaintiff further states that said Keating purchased said Reversionary interest for her sole benefit and that he died while plaintiff was yet a minor. She therefore asks that the title to said Reversionary interest may be vested in her and for such other and further relief as is demanded in the premises.

E. Peacock Atty for Plff.

State of Missouri }
County of St. Louis } ss. Eber Peacock Attorney, plaintiff above named being duly sworn on oath says the above petition and the matters therein contained are true to the best of his knowledge and belief.

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Eber Peacock.

Sworn to and subscribed before me this 23d day of Sept. 1858.

C. A. Mauntz Clk.

By E. P. Walsh. D. Clk.

Upon the filing of the above petition the Clerk then issued to the Sheriff of St. Louis County a summond.

Which summons is in the words and figures following, to wit:

Summons

County of St. Louis. SS.

State of Missouri.

To the Sheriff of St. Louis County. Greeting:

We command you to summon Mary Keating, the widow, and Anna Keating. Margaret P. Keating. Mary Jane Keating, Agnes Keating and Ellen Keating minor children of Patrick Keating deceased to appear before the Judge of our St. Louis Land Court, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the second Monday of October next, then and there to answer the complaint of Ophelia Kennedy as set forth in the annexed petition; and have you then and there this writ.

Witness, Charles A. Mauntz, Clerk of our said Court with the seal thereof hereto affixed, at office in the City of St. Louis, this Twenty third day of September in the year of our Lord eighteen hundred and fifty eight.

Seal

Charles A. Mauntz. Clerk

By E. P. Walsh D. C.

Upon which summons the Sheriff made his Return in the words and figures following, to wit:

Shffs Return

Executed this Writ in the County of St. Louis this 24th day of September. 1858. by delivering a copy of the writ and petition as furnished by the Clerk to Mary Keating. also by delivering a copy of the Writ as furnished by the Clerk to Anna Keating. Margaret P.

4 Keating. Mary Jane Keating. Agnes Keating and Ellen Keating.

M. S. Cerre Sheriff
By J. A. Guion Dept.

And afterwards the following proceedings were had in this cause, to wit:

October Term 1858.
Friday October 15th 1858.

Mary Keating apnt.d Guard.n ad litem Const. & Ans.r of Mary Keating filed.

Ophelia Kennedy
vs.
Mary Keating, the widow, and Anna Keating. Margaret P. Keating. Mary Jane Keating. Agnes Keating and Ellen Keating minor children of Patrick Keating, deceased

Appointment of Guardian ad litem

Now at this day, on motion of the attorney for the defendants, Mary Keating is appointed Guardian ad litem for her minor children Anna Keating. Margaret Keating. Mary Jane Keating, Ellen Keating and Agnes Keating and thereupon the said Mary Keating, files herein her written consent to act as such guardian ad litem. and Answer of Mary Keating filed in this cause.

Which "Written consent" is in the words and figures following. to wit:

Const.n of Guard.n ad litem

Ophelia Kennedy
vs
Mary Keating. Anna Keating. Margaret Keating. Mary Jane Keating. Ellen Keating & Agnes Keating

In the St Louis Land Court, Oct Term 1858.

And now at this day comes the said Mary Keating the mother of the other defendants Annie Margaret. Mary Jane. Ellen and Agnes Keating who are all minors under the age of fourteen years, and consents to act as guardian ad litem for the said minor defendants in the above entitled suit.

Mary Keating.

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Ans. of Mary Keating

The Answer of Mary Keating filed as aforesaid is in the words and figures following. to wit;

Ophelia Kennedy
vs.
Mary Keating et al. Defts.

In the St. Louis Land Court.
Oct Term 1858

State of Missouri
County of St. Louis } SS. Mary Keating defendant for her separate answer to plaintiffs petition admits that Rene Paul died possessed of the property described in said petition and that by his last will and testament he devised and bequeathed the said lot of ground to the said plaintiff with the conditions and provisions in said will as set forth in said petition That Marshall Brotherton acting executor under said will by virtue of the authority and power confided in him by said will sold at public sale the Reversionary interest created by said Will in said property to Patrick Keating the late husband of said defendant in his life time for the sum of one hundred dollars —

The defendant further answering states that she has not any knowledge or information thereof sufficient to form a belief as to whether at the time of said sale the said Patk Keating was the agent of said plaintiff but she denies that at the time of said sale or at any other time he was the guardian of said plff or that at the time of said sale he had money in his hands belonging to said plaintiff.

Defendant further answering denies that said Keating purchased the said reversionary interest in said premises for the said plaintiffs benefit or that said plaintiff has any right title or claim of, in, or to the said reversionary interest Whatsoever.

The defendant charges the fact to be that the said Patrick Keating purchased the said reversionary interest at a public sale of the said Rene Pauls property and in his own right and for his own benefit and paid the full value

6 of the same and more than any other person at the time would pay for it, that he had at that time no money in his belonging to said plaintiff but said plaintiff at that time was indebted to said Keating and at the time of said Keating's death was still indebted to him and is now indebted to his estate the sum of one hundred and forty six 75/100 dollars.

Defendant further states that she has no knowledge or information thereof sufficient to form a belief as to whether the said plaintiff at the time of said Keating's death was a minor.

Defendant prays judgment against said plaintiff in this behalf.

A. M. & S. H. Gardner

State of Missouri }
County of St. Louis } Mary Keating the said defendant makes oath and says the foregoing answer and the matters as therein stated she believes to be true.

Mary Keating.

Sworn to & subscribed before me this 15th day of Oct A. D. 1858.

Chas A. Mantz, Clk,
By E. P. Walsh, D. C.

And afterwards the following further proceedings were had in this cause, to wit:

Saturday October 16th 1858

Ophelia Kennedy

vs

Ans.r of minor Defts by Guardn filed — Mary Keating the widow, and Anna Keating Margaret P. Keating, Mary Jane Keating, Agnes Keating & Ellen Keating minor children of Patrick Keating deceased } Answer of minor Defendants by Guardian filed in this cause.

Which answer of minor defendants is in the words and figures following to wit:

Ans.r of minor Defts — Ophelia Kennedy,

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Mary Keating, Annie Keating, Margaret Keating, Mary Jane Keating, Agnes Keating & Ellen Keating } In the St. Louis Land Court Oct Term 1858.

State of Missouri
County of St. Louis } SS.

The said defendants Annie, Margaret, Mary Jane, Agnes & Ellen Keating, being minors by their guardian ad litem for their separate answer to said plaintiffs petition state as to each and every allegation in said petition they have not any knowledge or information thereof sufficient to form a belief and therefore pray the Court to protect their rights in the premises.

Mary Keating guardian ad litem

State of Missouri
County of St. Louis } SS. Mary Keating guardian ad litem for Annie, Margaret, Mary Jane Agnes & Ellen Keating minors makes oath and says the foregoing answer of the said minors and the matters as therein stated she believes to be true.

Mary Keating

Sworn to and subscribed before me this 16th day of Oct. 1858.

Charles A. Mantz Clk
By E. P. Walsh, D. C.

And afterwards the following further proceedings were had in this cause, to wit:

Friday February 19th 1859

Ophelia Kennedy

vs

Mary Keating, the widow, and Anna Keating, Margaret P. Keating, Mary Jane Keating, Agnes Keating and Ellen Keating minor children of Patrick Keating, deceased.

Frank Gleaton made a party Pff

Frank Gleaton, having intermarried with the Plaintiff is made a party plaintiff in this cause, as the husband of the said Ophelia Kennedy.

And afterwards the following further proceedings were had in this cause, to wit:

October Term 1859

Monday November 23th 1859

Cause tried by the Court &c

Ophelia Gleaton and Frank Gleaton her husband
vs.
Mary Keating, the widow, and Anne Keating, Margaret P. Keating, Mary Jane Keating, Agnes Keating and Ellen Keating minor children of Patrick Keating deceased.

Trial Begun,
Now at this day, come said parties by their respective attorneys, said minor defendants, appearing by Mary Keating, their Guardian, and no jury being required by either party, this cause is tried by the Court upon the petition, answers, evidence and proofs adduced, and the Court having heard and not being fully advised of, and concerning the premises, takes time to consider thereon.

And afterwards the following further proceedings were had in this cause, to wit:

Tuesday November 29th 1859.

Trial ended & Judgmt.

Ophelia Gleaton and Frank Gleaton her husband,
vs.
Mary Keating, the widow, and Anna Keating, Margaret P. Keating, Mary Jane Keating, Agnes Keating and Ellen Keating minor children of Patrick Keating deceased

Trial Ended,
And now again at this day come said Plaintiffs by their attorney, and also comes said Mary Keating by her attorneys and said minor defendants by their Guardian Mary Keating, and thereupon the trial progressed, and the Court being now fully advised of and concerning the premises, doth find the issues herein joined in favor of the defendants. It is thereupon Ordered and adjudged by the Court, that the plaintiffs herein, take nothing by their suit in this behalf, but that the defendants go hence without day and recover of said Plaintiffs and of Gideon Palmer, the security for costs in this

cause. their costs and charges herein expended, and have Execution therefor.

And afterwards the following further proceedings were had in this cause. to wit;

Friday December 2nd 1859

Mo. for New Trial filed

Ophelia Gleaton et al. vs Mary Keating et al. } Motion for New Trial filed in this cause,

(For which motion for new trial see "Bill of Exceptions" Clerk)

And afterwards the following further proceedings were had in this cause. to wit;

Monday December 19th 1859.

Mo. for New Trial overruled

Ophelia Gleaton et al vs Mary Keating et al. } Now at this day. the Court being fully advised of and concerning the motion heretofore filed in this cause for a new trial. doth order and adjudge that said motion be overruled.

And afterwards the following further proceedings were had in this cause. to wit;

Wednesday January 25th 1860

Agrmt to file Bill of Excp. &c.

Ophelia Gleaton late Kennedy et al. vs Mary Keating et al } Now at this day there is filed in this cause. an agreement in words and figures following, to wit; Ophelia Kennedy et al. vs Mary Keating et al In the St Louis Land Court. Oct. Term 1859 It is hereby agreed on the part of the part of the defendants that the plaintiffs may have until the first day of the next term to file a bill of exceptions and perfect an appeal to the Supreme Court St. Louis Jany 25th 1860 A. M. & S. H. Gardner Attys for Defts.

10 And afterwards "to wit" On the Twelfth day of March A.D. 1860. being the second Monday of the month last aforesaid, and the first day of the March Term 1860. amongst other proceedings, the following was had in this cause, to wit:

Bill of Exc.ns filed

Ophelia Gleaton, et al,
vs
Mary Keating, et als. } Bill of Exceptions filed in this cause.

Which Bill of Exceptions is in the words and figures following, to wit:

Bill of Exc.ns

Ophelia Kennedy Peff,
vs
Mary Keating et al defts } In the St. Louis Land Court, October Term 1858, No. 284.

Gid.n Palmer Test:

Be it remembered that on the trial of this cause, the plaintiff introduced as a witness; Gideon Palmer, who being duly sworn testified as follows, "I know the plaintiff and Frank Gleeton, they are husband and wife, they are both in the habit of coming to my store they have the reputation of being married, they lived together as husband and wife and acted and addressed each other as such, (to the introduction of which testimony defendant's counsel objected, which objection being overruled, defendants' counsel then and there excepted.)

Cross Examined by defendants Counsel.

I did not see the plaintiff married and of my own knowledge do not know that she is married to Frank Gleeton.

Ed. W. Paul's Test:

Plaintiff then introduced Edmund W. Paul, who being duly sworn on oath said, I know plaintiff and Patrick Keating. I have conversed with Keating on one or two occasions about the interest of Ophelia Kennedy in the Estate of Rene' Paul who was my father, there was a Reversionary Interest in property at the corner of Sixth and Berre' streets to be sold under my fathers will, on the day of the sale or the day before,

11 I met Keating and talked with him about it, he said he intended to bid on said Reversionary Interest for plaintiff and desired me not to bid on it. I intended to bid, but refrained from bidding at the sale, and Keating purchased the Reversionary Interest described in my father's will - plaintiff was at the time a minor and Keating was Agent for her in the collection of her rents and income at the time - I afterwards called on Keating to pay a bill I had against the plaintiff, from whom I had an order, which he paid, he then told me he had purchased the Reversionary interest in the property at the North West corner of Sixth and Levee Streets - Keating died about two years ago, at the time of his death plaintiff was a minor.

Cross Examined by defendant's Counsel. -

The conversation I had first with Keating was on the same day or the day before the sale, might have been two or three days before, by the Executor I do not recollect that I was present at the sale, when the Reversionary Interest in question was sold - At the time Keating paid me the bill, he stated that plaintiff had been advanced by him more money than was coming to her - the plaintiff is said to have colored blood her mother was a mulatto woman, don't know who her father is.

Mar. Brotherton's Test:

Plaintiff then introduced Marshall Brotherton, who being duly sworn on oath says. I knew Patrick Keating I was Executor of the Will of Rene Paul, the other Executor named in the Will Archibald Gamble did not qualify, I sold the Reversionary Interest created by the Will and Patrick Keating bought it for One hundred Dollars, I always understood it was purchased for plaintiffs' benefit - I understood from Mr. Keating that at the request of Mr. Archibald Gamble he had taken charge of plaintiffs' interests and collected her rents, paid taxes &c. And applied the balance to her benefit.

Cross Examined by Defendants Counsel.

Keating received the rents and income belonging to plaintiff before the sale of the Reversionary Interest and was applying the same

to plaintiffs' benefit. —

Archbld Gamble's Test:

Plaintiffs then introduced Archibald Gamble who being duly sworn on oath said. I knew plaintiff and Patrick Keating — At my request Keating took a general charge of plaintiffs' affairs and exercised a general control over them after Rene' Paul's death; — Keating often spoke to me about the girls' affairs and told me he was protecting her interests and at one time said he had or intended to purchase the Reversionary Interest for plaintiffs' benefit. —

Cross Examined by Defendants' Counsel.

I do not know when it was Keating made the statements to me about purchasing the Reversionary Interest; whether it was before or after the Sale.

Plaintiff then read in evidence the deposition of A. S. Jacobs of New York

Depsn of A. S. Jacobs

Deposition of Witness produced, sworn and examined at the office of John M. Eager Commissioner to take depositions &c for the State of Missouri, resident in New York No 34 Wall street in the County of New York in the State of New York, before me the undersigned John M. Eager a Commissioner in and for said City, County and State of New York appointed by the Governor of the State of Missouri to take depositions to be read in evidence on the trial of suits pending in the Courts of said State of Missouri, in a certain cause now pending in the St. Louis Land Court in the State of Missouri between Ophelia Kennedy Plaintiff and Mary Keating & other Defendants, on the part of the plaintiff.

Abraham S. Jacobs of lawful age being sworn and examined on the part of the Plaintiff deposeth and saith as follows. —

I reside in the City of New York in the State of New York and am in no business at present. I resided in St. Louis in the State of Missouri from the year 1839 to the month of September 1856. I was well acquainted with Patrick Keating dec^{d} during my residence in St. Louis. While I lived in said St. Louis I was in the habit of buying and selling real estate there.

13 At one time during my said residence in St. Louis I saw an adver=
=tisement for the sale of some real estate near to some ground I owned.
It was to be a public sale, of land belonging to either Gabriel Paul or René
Paul then deceased. Marshall Brotherton was the Administrator
of the Estate of said deceased Paul. I was about to attend the said
sale and passing on the street I met Patrick Keating deceased.
We commenced a conversation about the sale of said advertized land.
I told him that I should like to buy the land which was so advertised and
which was located on the North West corner of Carre Street and Sixth Street in said
St. Louis. Said Patrick Keating advised me not to interfere with the sale nor buy
or bid on the land as he was going to buy it in for the benefit of Ophelia Kennedy
the Plaintiff in this suit.

Jacob W. Fecter Esq the Counsel for Defendants
here objects to the foregoing statement of Patrick Keating and further
objects to witness stating any thing further which he may have heard
said Keating say in relation to any thing connected with said land)

And further deponent saith not.

Abraham S. Jacobs.

State of New York. }
City & County } ss. I, John M. Eager a Commissioner in and
for the said City County and State of New
York appointed by the Governor of the State of Missouri to take the depositions
of witnesses of witnesses to be read in evidence in the Courts of said State of
Missouri. do hereby certify that Abraham S. Jacobs the deponent whose place
of residence is the City of New York was by me sworn to testify the whole truth
of his knowledge touching the matter in controversy in the cause aforesaid;
and that his deposition was reduced to writing and subscribed by him in my
presence on the fifteenth day of March 1859 between the hours of eight o'clock in
the forenoon and six o'clock in the afternoon at the office of John M. Eager No.
34 Wall Street in the City of New York, in the County and State of New York.

In testimony whereof I have hereunto set my hand and

Seal

affixed my official seal as Commissioner aforesaid at said City of New York this 15th day of March 1859.

John M. Eager.
Commissioner as aforesaid.

The foregoing being all the testimony introduced on the part of the plaintiff in chief;

Robt. S. Bakewell's Test:

Whereupon Defendants introduced Robert S. Bakewell, who being duly sworn said I knew Alexander Kennedy. he was convicted of felony about two or three years ago he was sentenced to the State's Prison, he is yet alive. —

Defendant then offered in evidence the copy of the Marriage Certificate or Record of Marriage of Alexander F. Kennedy and Ophelia Paul which is as follows. —

Marriage Certficte of Alex. F. Kennedy & Ophelia Paul

"On the 3d of Nov. 1852. I the undersigned "joined in the holy bonds of matrimony. Alexander Francis Kennedy, son of "Washington Kennedy and Julia Kennedy on the one part and Ophelia Paul, "Daughter of Emilie on the other part.".

Signed " A. J. Heim "
" " Ophilia Kennedy "
" " Delphene Florez "

Signed " Alexander F. Kennedy. "
" John Baltimore "

"I the undersigned Priest of the Roman Catholic Church at the "Cathedral of St. Louis in the City of St. Louis in the State of Missouri "and having charge of the Registers of Baptisms, Marriages and Burials "required by the Ordinances and Customs of the Roman Catholic Church and "said Cathedral to be kept thereof, do hereby certify that the above is a true copy "of the Registry of Marriage of Alexander F. Kennedy and Ophelia Paul as "contained in the register of Marriage kept by me at said Cathedral.

"In faith of which Signed St. Louis "

"25th April 1859"

Signed "E. M. Saulsnier "

"Sworn to and subscribed " "before me the undersigned Notary Public

Notarial Seal

"within and for the County of St. Louis Mo. this 25th day of "April 1859. Witness my hand and Notarial Seal."
Signed "Owen V. Tiernan" "Notary Public"

A. M. Gardner's Test:

Defendant then introduced A. M. Gardner, who being duly sworn on oath said, I know plaintiff and Patrick Keating, Keating had a desk in my office I have heard plaintiff asking Keating for money frequently in my Office. I have heard him tell her that she had over-drawn her account, both before and after the sale, that she was extravagant- I have heard him tell her he had advanced her more than was coming to her I heard of Keating's purchase at the time of the sale of the Reversionary Interest and joked with him about it and about its being so bad an investment, he said it might do his children some good. I never heard her claim the property of Keating, or that he had bought it for her benefit.

Deed from M. Brotherton Ex. of Rene Paul to Pat. Keating

Defendants then offered in evidence the Deed from Marshall Brotherton Executor of the Will of Rene Paul deceased to Patrick Keating.

Whereas, by the last Will and testament of Rene Paul deceased bearing date May fifth Eighteen hundred and fifty one, duly proven and recorded in the office of the Judge of Probate of the County of Saint Louis in the Record of Letters and Wills Book D. page 247 and following, a copy of which Will is also of record in the Recorders office of said County of Saint Louis in Book W. No 5 page 227 and following Archibald Gamble and Marshall Brotherton were by said Rene Paul nominated and appointed Executors of his said last will and testament,

And whereas said Archibald Gamble failed to qualify himself to act as an Executor, and said Marshall Brotherton having duly qualified became the sole acting Executor of said Will;

And whereas by the said Will in the second section thereof the said Paul did devise and bequeath to Ophelia Paul that certain "house and lot at "the South East corner of Block number One hundred and forty seven in the City

"of St. Louis which lot is twenty five feet front on Sixth Street by one hundred "twenty seven and a half feet on Cerre Street and is bounded North by "Roberts Castle, East by Sixth Street, South by Cerre Street and West by "an alley" "To have and to hold the same to her and to her heirs "and assigns forever, Provided however that Should She die without having "lawful issue, then the same lot shall revert and vest in, and belong to the right "heirs of said Paul, to be held in the same manner as if this devise to the said "Ophelia had not been made; and in that event subject to the provisions "herein after made as to the sale and division of my "(said Pauls) "property "and effects, and such reversionary interest in said lot to be considered for "those purposes as part of my (said Paul's) Estate"

And whereas Section third of said Will directed and empowered said Executor to sell and convey all the property of said Rene Paul, and contains the following clause, to wit; "The property to be sold as aforesaid is to comprehend, "all that I may own or be interested in at the time of my death embracing the "reversionary interest in said lot bequeathed to said Ophelia; and with the "exception only of what is bequeathed to said Ophelia in section two (2) above"

And whereas pursuant to the said direction the said Marshall Brotherton proceeded to the sale of the said property. and on the fifteenth day of April eighteen hundred and fifty two, did cause said Reversionary interest in said lot of ground to be offered for sale at public auction, at which sale Patrick Keating became and was the highest bidder for said Reversionary interest in said lot of ground, at the price and sum of one hundred dollars,

Now therefore I the undersigned Marshall Brotherton sole acting executor of the last will and testament of Rene Paul deceased in Pursuance of the authority and directions given in and by said Will, in consideration of the premises and of the sum of one hundred dollars to me in hand paid the receipt whereof is hereby acknowledged have bargained and sold and do by these presents bargain sell convey and confirm unto said Patrick Keating and to his heirs and assigns the aforesaid reversionary interest in said lot of ground, and all right title and interest whatsoever, in and to said lot of ground which I can or may as Executor

17 aforesaid convey under and in virtue of the said Will of said Rene Paul deceased.

To have and to hold the same with all the rights and privileges thereunto belonging unto the said Patrick Keating and to his heirs and assigns forever.

In Testimony whereof. I the said Marshall Brotherton sole acting Executor as aforesaid have hereunto set my hand and seal this fifteenth day of April eighteen hundred and fifty two.

Marshall Brotherton
Executor Rene Paul. Seal

State of Missouri
County of St. Louis } SS. Be it remembered that on this twenty first day of April eighteen hundred and fifty-two before me the undersigned a Notary Public in and for said County came Marshall Brotherton who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in writing as party thereto and he acknowledged the same to be his act and deed as the sole acting Executor of the last Will and testament of Rene Paul deceased for the purposes therein mentioned.

In Testimony whereof I have hereunto set my official signature and seal the day and year last above written.

Seal

Henry W. Williams.
Notary Public. St. Louis Co. Mo.

State of Missouri
County of St. Louis } I the undersigned Recorder in and for said County certify that the foregoing instrument of writing was filed for record in my office April 22nd 1852 and is truly recorded in Book B. No 6 page 549.

Witness my hand and official seal the date aforesaid.

Seal

S. D. Barlow Recorder.

Bill of Exc[eptions] conveying to said Patrick Keating the said Reversionary Interest.

This being all the testimony introduced on the part of the defendants: — plaintiffs in rebuttal introduced the Record

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Record of Ca. Court
Divorce Ophelia
Kennedy

of Circuit Court of St. Louis County

October Term 1857.

In the Saint Louis Circuit Court.
October 27th 1857.

Ophelia Kennedy
vs
Alexander Kennedy

Divorce.

Now at this day come the said plaintiff by her attorney, but the said defendant although duly notified and solemnly called comes not wherefore on motion of said plaintiff by her attorney this cause is submitted to the Court upon the pleadings and proofs, and the Court having heard said proofs and being satisfied therefrom that said plaintiff is an innocent and injured party, it is therefore, considered adjudged and decreed that said plaintiff be absolutely and forever divorced from the bonds of matrimony by her contracted with the defendant, and restored to all the rights and privileges of an unmarried person It is further ordered by the Court that the plaintiff pay the costs of this proceeding and that execution issue therefore.

State of Missouri
County of St. Louis } ss.

I, Stephen Rice Clk. of the Saint Louis Circuit Court within and for the County and State aforesaid certify the above to be a true copy of an order in the above entitled cause as fully as the same remains of record in my office.

In Testimony Whereof I hereto set my hand and affix the seal of said Court at office in the City of Saint Louis this 12th day of March 1860.

Seal

Stephen Rice Clk.

Bill of Exceptions

divorcing Alexander Kennedy from Ophelia Kennedy—

The foregoing being all the evidence offered on the trial of this cause, the plaintiff then asked the following instructions

Plffs Instns

1st. If the Court sitting as a jury believe

Refused to Inst.

19 from the evidence that Patrick Keating after the death of Rene Paul was the agent of the plaintiff in the receipt of the current rents and income of the property described in plaintiffs petition and while so acting and being in the reception of said rents & income he purchased the reversionary interest mentioned in said petition then he is to be considered as having purchased for plaintiffs benefit.

Refused to Inst.

2nd If the Court sitting as a jury believe that said Patrick Keating declared he purchased the Reversionary Interest mentioned in Plffs petition for the sole use and benefit of Ophelia Paul or Kennedy, at the sale thereof. by the Executor under the Will, then said Keating is to be considered as a trustee for said Plaintiff.

Refused to Inst.

4th The plaintiff being in possession of the life estate or conditional Fee to the property described in plffs petition has such a possession as will take the case out of the Statute of Frauds. the Reversionary Interest sued for having been carved out of said property.

Refused to Inst.

5th The said Patrick Keating being in the receipt as plffs agent of the current rents & income from said property described in plffs petition, said property being in her possession and there being no evidence of any settlement between them, he is to be considered as having used her money in the purchase of the Reversionary Interest mentioned in said petition and therefore must be regarded as her Trustee.

Refused to Inst.

6th A Quasi Guardian or person acting and exercising a general control over the affairs of a minor is subject to the same responsibility and liability as a legally constituted Guardian and any purchase by him of any interest or claim carved out of or affecting the minors property is to be considered in equity as a purchase for said minors benefit and he is to be regarded as a Trustee for said minor — If therefore the Court sitting as a jury believe that said Patrick Keating exercised a general control over the affairs of plaintiff, she being a minor, he is to be considered as a Quasi Guardian and therefore if he said Keating purchased the Reversionary

20 Interest mentioned in plff's petition, while exercising a general control over the affairs of plaintiff she being a minor at the time, he must be considered as a Trustee for her said plff as to the said Interest

Which the Court refused to give, to which refusal the plaintiffs objected and then and there excepted; — plaintiff also asked the following instruction "If the Court sitting as a jury believe from the evidence that Patrick "Keating was the agent of plaintiff in the reception of her rents and "income from the property described in plaintiffs' petition and while so "acting and receiving said rents he purchased the Reversionary Interest "mentioned in said petition and declared he had purchased said Interest "for said plaintiffs benefit, then he is to be considered as the Trustee for "said plaintiff and so the Court as said jury will find", Which Instruc=tion the Court gave after adding the words, — "provided he used the funds "of plaintiff in payment of the purchase money" to which addition to said Instruction, plaintiff objected and then and there excepted.

The Defendants then asked the following Instructions

Defts Instns

Refused C. B. Lord

If the Court finds from the evi=dence that the plaintiff Ophelia Kennedy is the daughter of a mulatto woman then plaintiff cannot recover in this action without proof to the satisfaction of the Court that said Ophelia is a free person.

Refused C. B. Lord

The Court declares the law to be that to entitle the plaintiff to recover she must prove that Patrick Keating at the time he purchased the reversionary interest now claimed by said plaintiff was acting as her agent and for her benefit in making said purchase and paid for the same with the money of said plaintiff or had money in his hands to be applied or that he afterwards did apply the money of said plaintiff for that purpose

which the Court refused to give, to which refusals, defendants objected and then and there excepted,

21

Court's Instn.

And the Court of its own motion gave the following instruction.

A

Unless the Court sitting as a jury finds from the evidence that at the time of the purchase of the property in question by Patrick Keating that he said Keating was acting as the agent of said Ophelia Kennedy or had money in his hands belonging to said Ophelia Kennedy or that he purchased said reversionary interest with her money and for her benefit or that after such purchase he applied her funds to the payment of such purchase money then plaintiff is not entitled to recover in this action.

Given by Ct. Court

Bill of Exch'.

to the giving of which motion plaintiffs objected and then and there excepted, this being all the evidence in the case, it was submitted to the Court and afterwards the Court returned a verdict for the defendants — Afterwards in due time the plaintiffs by attorney filed a motion for a new trial.

Mo. for New Trial

Ophelia Kennedy Plff
vs.
Mary Keating } In the St. Louis Land Court
October Term 1859.

Now at this day comes the plaintiff by attorney and moves the Court that the judgment rendered in the above cause be set aside and that plaintiff be allowed a new trial for the following reasons to wit,

1st, Because the Verdict and Judgment were against the Law.

2nd. Because the Judgment was contrary to the evidence.

3rd. Because the Verdict was against the Law and evidence.

4th. Because the Court erred in refusing to give the 3rd Instruction asked by plff without the addition of the last two lines commencing with "provided he used &c".

5th Because the Verdict was

22 directly against the Instruction given of the Courts own motion and marked A.

6th Because the Court erred in refusing to grant the 1st 2, 3, 4, 5, 6 instructions as asked for by plaintiff

Eber Peacock Atty for plff.

Which motion was afterwards overruled by the Court, to the over-ruling of which, the plaintiffs then and there excepted and prays this Bill of Exceptions which by agreement of Counsel she was allowed to file on the first day of March term may be signed, sealed and made a part of the Record.

C. B. Lord.

State of Missouri }
County of St. Louis } S.S.

I, Edward N. Tracy Clerk of the St. Louis Land Court, within and for said County, certify the foregoing Transcript to be a true and correct copy of the Record and proceedings had (as required) in the case of Ophelia Kennedy plaintiff and Mary Keating and others defendants as fully as the same remains of record in my Office

In Testimony Whereof I hereto set my hand and affix the seal of our said Court at office. in the City of St. Louis. this Twenty ninth day of September A.D. 1870

Edward N. Tracy Clerk

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8300 words 12.45
Certificate 1.00
13.45

88. ~~112~~ ~~250~~ ~~[illegible]~~ ~~[illegible]~~

March Term 1863

(2)

Ophelia Kennedy
appellant

vs

Mary Keating & others,
respondents.

Appeal Land Court.

Land Court

E-M.

E. Peacock Atty for Plff

A. M. & S. H. Gardner Attys for Defts

Filed 4th Octr. 1860.
W. S. Glanville
Ck.

This Transcript $13.45 paid by Plff

$10.00 paid by E. Peacock atty. / assgt. of errors /

1863 May 27. Respondents statement & brief filed subtd on brief
1863 June 3. Affirmed. Opn filed Dp 183

Ophelia Kennedy
vs
Mary Keating Lal

Paul makes a will and dies leaving certain real estate to Ophelia Paul pltff. by his will – subject to the condition in the will that in case Ophelia dies without ~~heirs~~ issue the property shall revert to ~~his~~ and vest in & belong to his right heirs the same as if the devise had not been made. and in that event subject to the provisions in said will afterwards made as to the sale & division of his property & effects. and said reversionary interest in said real estate was to be considered for that purpose as part of his estate.

Said will contained a further clause authorizing & directing the sale of all Paul's estate including by mention this reversionary interest. ~~and~~ in dispute.

Marshall Brotherton & Archbld Scamble were nominated executors in the will but Brotherton only qualified.

Brotherton sold this reversionary interest & it was purchased at his sale by Patrick Keating.

Pltff. claims that Keating was her quasi guardian & she a minor and that at the time of his ~~sale~~ purchase he had monies of hers in his hands & acted as her trustee in the purchase & wrongfully took the title in himself. Pltff. claims to have proven that she was a minor at the time of the sale & that Keating purchased for her.

The charges requested amount to a request to charge that if in the opinion of the jury Keating was the trustee of pltff in managing the

estate in which the reversion was, that he had no right to bid against his cestui que trust and could not because of his fiduciary relation become a purchaser thereof. and viewed in this light the charge as requested was good law sought to have been given.

Moreover the profit is clearly not only against the law arising upon the case as stated in the record but is clearly against the evidence. For that not only establishes his fiduciary relation but that recognizing it he acted on it smeeds the purchaser as trustee for pltff in point of fact.

The judgment of the court is clearly wrong on the law separately - on the facts separately and especially is it wrong putting the law & the facts of the case together.

Hill on Trustees 782. title "of the Disability of Trustees

27 Mo. Repts. 249. Kelly vs. Johnson
1 Johns. Chy Rep. 582 - pr

The whole case shows such bad faith on the part of the trustee or quasi guardian as to call for the intervention of the court in setting aside his purchase - especially his bad faith in ~~gett~~ preventing competition at the sale.

The case is in the nature of a bill in equity & should be so considered here & the whole grounds of the judgment of the court below should be accordingly reviewed.

R. S. Hall
E. Peacock } pr pltff in Error.

No 112.

In the Supreme Court

Ophelia Kennedy
vs
Mary Keating Ex'x

Brief for Plffs in Error
Appellants

Filed April 18. 1862
A.W. Mead
Clk

(4)

Ophelia Kennedy
Appellant
vs
Mary Keating
Respondents

In the Supreme
Court
March Term 1863

Respondents Statement &
Brief —

This suit was brought to
divest the widow & heirs of Patrick Keating
decd of their title to a reversionary interest
purchased by him in his life time in a
lot of ground in Block 147 of the City of
St Louis at the corner of Sixth & Cerre
Streets (25 by 127½ feet)

The allegations of the petition are
that one Rene Paul by will bequeathed
the said lot to the plaintiff — with the proviso
that should she die without lawful issue
the lot should revert to the heirs of said
Paul — That said reversionary interest
should be deemed a part of his estate &
sold as such — That Marshall
Brotherton & Archibald Gamble were named
executors — but Brotherton alone qualified
& acted under the will
As such executor Brotherton advertised &
sold the said reversionary interest at
public sale to Keating for $100 —

Plaintiff further alleges that at & before the time of said sale Keating was acting as her agent & nominal guardian, receiving the rents of said property & had in his possession money belonging to her & that he purchased said reversionary interest for her sole benefit

The answer admits the devise with the conditions & provisions in the will as stated in the petition

Admits the sale by the executor & the purchase by Keating

It denies that Keating was the agent or guardian of the plaintiff - or that he had any money in his hands at the time of the sale belonging to the plaintiff - or that he purchased said reversionary interest for said plaintiff or for her benefit or that said plaintiff has any right, title or claim in or to said interest whatsoever -

Defendants claim that Keating purchased said reversionary interest at a public sale in his own right & for his own benefit & paid the full value therefor

That plaintiff instead of having money in Keating's hands at the time of the purchase was indebted to him &

always continued in his debt & is still indebted to his estate in the sum of $1462.75

Trial by the court & judgment for defendants.

Brief

From the evidence it appeared that after the death of Rene Paul at the request of Archibald Gamble one of his executors Keating in the language of the witness "took a general charge of plaintiffs affairs & exercised a general control over them"

That on several occasions before the sale Keating had said he intended to purchase the interest in question for plaintiffs benefit

Nothing was said at the sale - deed was made to & the purchase money paid by Keating -

After the sale no admissions or statements were made by him tending even to show that he had purchased for plaintiffs benefit on the contrary claimed it as a purchase that might be of some benefit to his children - and that both before & after the sale plaintiff was indebted to him or had overdrawn her account with him -

It was also in proof that the plaintiff is a mulatto or the child of a mulatto

woman & no evidence of freedom —

There is no allegation or pretence that Keating did not pay full value for the interest —

Nor is there any allegation or pretence of fraud in the transaction

Nor was there any proof tending even to show that Keating paid for it with plaintiff's money

On the contrary it is alleged & there is proof tending at least to show that both before & after the purchase that plaintiff had over drawn her account & was indebted to Keating — Nor is there any denial of the allegation that she is still indebted to his estate

In all her conversations with Keating after the sale up to his death when charged by him with overdrawing her account she never claimed or intimated that he held or had purchased this interest for her benefit

The court refused all of plaintiffs instructions except the 3d which was given with an addition included in brackets as follows —

" If the court sitting as a jury believes
" from the evidence that Patrick Keating
" was the agent of pltff in the reception of her
" rents and income from the property in
" described in pltffs petition & while so
" acting & receiving said rents he purchased
" the reversionary interest mentioned in
" said petition & declared he had purchased
" said interest for pltffs benefit - then he
" is to be considered as the trustee for said
" pltff & so the court will find - Provided
" he used the funds of pltff in payment of the
" purchase money "

The court refused all of defts instructions
but gave the following on its own motion

" Unless the court sitting as a jury finds
" from the evidence that at the time of the
" purchase of the property in question by Patk
" Keating he said Keating was acting as
" the agent of said Ophelia Kennedy & had
" money in his hands belonging to her or
" that he purchased said reversionary
" interest with her money & for her
" benefit & that after said purchase he
" applied her funds to the payment of
" such purchase money then pltff is not
" entitled to recover in this action -

The appellant files a general assignment of errors

The theory of the pltff's case (as gathered from the instructions asked) is based upon the idea that Keating was acting as the agent or nominal guardian of the pltff & must therefore have purchased & held the interest in question as her trustee —

It is simply the naked question of the right of Keating to purchase in his own right & for his own benefit — appellant's relying upon the well established rule that a party will not be allowed to purchase & hold property for his own use & benefit to which he stands in a judiciary relation & contested by the cestui que trust

It will be observed however that that rule cannot be applied to this case where the sale was made by a public officer under proceedings adverse to the plaintiff's interest & which Keating had he been acting as her trustee or guardian had not the power or means to prevent —

An actual guardian however

funds in his hands may lawfully become the purchaser for his own use of his ward's real estate sold by the Sheriff under a judgement against the ward's ancestor
32 Penn. State, R 315 Chorpenning Appeal

The reasons which forbid, an agent or trustee to purchase the trust property - apply to the case where he is the seller & not where he purchases from one appointed to sell - as in this case
Peter's C C Rep - 364 Prevost v Gratz
see page 378

Even if it were admitted that Keating had or was acting in a fiduciary capacity as regards the appellant & the property in question (either as her agent trustee or quasi guardian) - still he could become the purchaser as it was an absolute sale made by a public officer entirely without his control - nothing except fraud (which is not even alleged in this case) could divest the title
6 Watts & Serg^t 18 Fisk v Sarber

A purchaser at a public sale who has paid the purchase money can only be held a trustee on the ground of fraud
10 Watts 313 Harris v Conner
13 John 220 Sheldon v Sheldon

This was a public sale made to the highest bidder - no circumstances of fraud - money paid by the purchaser should not be disturbed

Even a guardian ad litem in partition may become a purchaser at the sale
11 John 446 Jackson v Woolsey -

The instructions given by the court were certainly ~~as~~ favorable for the pltff ~~as~~ the proof would justify or the correct law of the case sanction -

It is further urged by the Respondent that this being a proceeding in equity to enforce a trust respecting an interest in land it cannot be maintained unless ~~such~~ such trust is evidenced by an agreement in writing
5 Cush 90 - Walker v Locke

Though a trust need not be created by writing yet to take the case out of the statute of frauds its terms & conditions must be clearly manifested & proved in writing

Loose & general declarations of intention of holding property in trust for others is not sufficient for the declaration of a trust which equity will recognize or enforce

5 John Ch R 1 Steere vs Steere

If it is assumed that Keating ought to be bound by his declarations made before the purchase — then it is submitted that something more is required than the mere violation of a parol agreement (if such had been proven in relation to the purchase of land) before equity will decree the purchaser to be a trustee

The plff assumes that being in possession of the life estate & conditional fee (so called in plffs instructions) & being a minor (which is an apparent contradiction) the creation of the trust under these circumstances is taken out of the statute of frauds which requires it to be manifested or proved by some writing

The Statute makes no such distinction

The answer of the defts being a full denial - it was not necessary to plead the Statute

But to entitle the plaintiff to recover it was necessary for her to show that the trust had been created or the promise to convey made in writing - there being no allegation of fraud

11 Mo. R. 65 Wildbahn v Robideaux

The evidence in this case shows further that the plff is a mulatto or the child of a mulatto woman & there was no evidence of emancipation -

The first instruction asked by defts should have been given

In all slave holding states - color raises the presumption of slavery & until the contrary is shown a person of color in this state is presumed to be a slave

7 Mo. R. 197 Kennick v Chloe -

The Respondents submit therefore that the judgment in this case ought to stand

1st Because there was no such trusteeship

shown as could be enforced in equity

2d Because there was nothing shown to take it out of the Statute of frauds

3d Because the plff was shown to be incapable of maintaining an action under our statutes

A M & S H Gardner
Attys for
Respondents

No 112

March Term 1863

Ophelia Kennedy
Appt

v

Mary Keating
et al Respts

Respondents
Statement & Brief

Gardner
for Respts

Filed May 27. 1863
A.W. Headley
Clk

C

Ophelia Kennedy
vs
Mary Keating et al

This is a proceeding in the nature of a bill in equity to divest the defendants of their title to a reversionary interest in a lot of ground in the City of St. Louis and to vest the same in the plaintiff. The petition alleges that one Rene Paul, who died in 1851, devised and bequeathed by his last will and testament to the plaintiff, a lot of ground in Block No. 147 in the City of St. Louis, being the South East corner of said Block, & containing twenty five feet front on sixth street, by one hundred and twenty seven & a half feet deep along Leave street. That said devise is subject to a provision as follows
"Provided however that should she
" die without having lawful issue
" then the said lot shall revert to and
" vest in, and belong to my right
" heirs, to be held in the same manner
" as if this devise to the said Ophelia
" had not been made, and in that
" event subject to the provisions hereinafter

made as to the sale and division of my property and effects, and ~~said~~ Reversionary interest in said Lot to be considered for that purpose a part of my Estate."

The petition further alleges that said will ~~contained~~ authorized and empowered the Executor to sell and convey all the property of said Estate, real personal and mixed, embracing the Reversionary interest in the Lot of ground aforesaid, and that the Executor did sell such Reversionary interest to Patrick Keating at the price and sum of one hundred dollars - that at the time of said sale Keating was the Agent of said plaintiff, and receiving the rents and income of said premises, said plaintiff then ~~was a minor~~ being away in the hands of said Keating and that said Keating purchased said Reversionary interest for the sole benefit of said plaintiff -

The Patrick Keating being deceased, the Suit is brought against his widow and heirs at law —

The answer of the defendants admits the devise as stated in the petition, but denies that Keating was the agent of plaintiff, or that he had any money in his hands at the time of the sale belonging to plaintiff, or that he purchased said reversionary interest for the benefit of plaintiff, and charges the fact to be that he purchased said interest at a public sale for his own benefit and paid full value therefor, and that at the time of said purchase said plaintiff, instead of having money in his hands, was indebted to him and still continues indebted to his estate —

The proof upon the trial was that Keating acted in the capacity of agent of plaintiff in collecting the rent for the lot devised to her ~~the plaintiff~~, and

exercised a general control over her affairs, and previous to the sale had expressed an intention to purchase said reversionary interest for the benefit ~~of said plaintiff~~, but no such intention was expressed at the sale nor was there any evidence tending to show that at the time of the sale he had any money in his hands belonging to plaintiff, but on the contrary the evidence tended to show that she was indebted to him — The sale was a public sale by the executor of Paul, and Keating, being the highest bidder, became the purchaser —

The court below decreed in favor of the defendants, whereupon the plaintiff sued out her writ of error — The theory of the plaintiff as shown in the instructions asked by her was, that ~~of a Trustee~~ Keating was acting in the capacity of a Trustee for plaintiff, having the general charge and control of her affairs, and according to one of the settled principles

of Courts of Equity, could not take advantage of his situation to obtain a personal benefit to himself at the expense of his *cestui que trust*. It is true that in Equity all acts done by a Trustee in respect to the trust property are deemed to have been done for the benefit of the *cestui que trust*, and not for his own benefit, and it is upon this principle that Courts have held that if a Trustee purchases a Mortgage on the trust Estate at a discount he will not be allowed to avail himself of the difference; but the purchase will be held a trust for the benefit of the *cestui que trust*. It is also a well settled principle of Equity law that a Trustee cannot become the purchaser of the trust property at a sale made by him, But it is not perceived how these well established principles of Equity law can be invoked in behalf of the plaintiff in this case, for the Reversionary interest sold as aforesaid was not trust property nor was it any interest ~~in the lot~~ belonging to the plaintiff

Nor was it in the hands or under the control of Patrick Keating, but on the contrary it belonged to the estate of Rene Paul and was sold at public auction by his executor in obedience to his will. No good reason therefore can be given why Keating should not be permitted to purchase said interest for his own benefit as well as any other property belonging to the estate of Paul.

It is true that if he purchased it under an agreement or understanding with the plaintiff that he was to make the purchase for her benefit he would be held to have made it in trust for her and a court of Equity would enforce such trust, or if he purchased it with the money of the plaintiff a resulting trust would be created by operation of law and this was the view taken by the court below, but the evidence failed to establish either, and the court properly decreed in favor of the defendants — The other Judges concurring the judgment will be affirmed —

M. V. N. Bay

112

Ophelia Kennedy

vs

Mary Keating et al

Opinion

N. T. V. Bay

Filed June 3rd 1863

A. W. Mead

Clerk

Aff-