

Jefferson County Circuit Court
Case Files - Civil
November 1850, No. 22

Box #

7

Folder # 19

Cadwalader, Charles

Burgess, Thomas

Burgess, Mary Ann

Cox, Almira, et al

vs.

Johnston, Benjamin

Cadwalader, Catharine

Cadwalader, Isaac

Gillmore, Catharine, et al

Contest will

Other plaintiffs George Kidd, Hannah
Kidd; other defendant John Gillmore;
will of Eli Cadwalader

To the circuit Court of Jefferson County Miss
ouri. The petition of Charles Cadwallader Thomas
Burgess & Mary Ann his wife, Almira Cox, George
Kidd & Hannah his wife states that on or
about the 5 of March 1848, Eli Cadwallader dep-
arted this life at the County of Jefferson inter-
state and without a will as they are informed
and believe. Said Eli had surviving him a
wife Catharine, and the following children, to-
wit Charles Cadwallader, Mary who married Thomas
Burgess, Almira Cox, Hanna who married Geo-
rge Kidd, the petitioners; he also left surviving
him Isaac Cadwallader a son, and Catharine
~~was~~ a daughter who intermarried with John
Gibson. Your petitioners further shew
that on the 8th day of April 1848 Benjamin
Johnston came in vacation before the clerk of
the County Court of Jefferson County aforesaid
and presented for probate as the last will and
instrument of writing purporting to be the
last will & testament of Eli Cadwallader dec'd
a certified copy of which is here exhibited as a
part of this petition & prayed to be taken as
a part exhibit A. By reference to which it
will be seen that Benjamin Johnston is appoin-
ted executor of said alleged will in case Lawson
Cooley & Gabriel ^{Johnston} did or refused to act as such, they
refusing to act as such, Benjamin Johnston
presented the same and it was admitted to prob-
ate by the clerk of the County Court on the 8th
day of April 1848 as the last will & testam-
ent of said Eli Cadwallader dec'd. Your peti-
tioners state that that instrument of writing
as exhibited A is not the last will and test-
ament of Eli Cadwallader dec'd, that it was ex-
ecuted by said Eli Cadwallader on the 13th day
of October 1841 that after the execution thereof
some time in the fall of the year 1847 perhaps
in the month of November 1847, said Eli was
taken sick and made another and entire different
will from the one set up as his will by said
Benjamin Johnston exhibit A. This last will contain-
^{ing} provisions inconsistent and different from the
^{pretended} will admitted to probate, this latter will so made,

in November 1847 was duly made by said Eli and executed and published as his last will & testament, declaring at the time that it was his intention to revoke the will admitted to probate aforesaid after the execution of the second will, said Eli destroyed it and cancelled it by such destruction. After this in the month of March 1848 said Eli Cadwallader began to approach near his death and dictated a third will revoking all former ones, but before he could complete it and publish it, he became too far gone, and it was not finished or signed by him or by any one at his direction. Said Eli was perfectly in his senses and in sound mind until his death and never intended the pretended will he executed on 13 of October 1841 should be his last will and testament and after declared & complained of it, as not being satisfied with it. Your petition as further shews that after said probate the widow Catharine renounced the provisions of the will so far as she was concerned in the county court of Jefferson County. By reference to which pretended will it will appear that the entire estate is given to Isaac one his sons and five dollars to each of the others whom in truth & fact, it was only a sham and should never stand as a just disposition of his property and in as much as the said Eli became dissatisfied and revoked the first will, published a second & destroyed it without wishing to republish the first and finally died and on his death made all up to execute a third will inconsistent with the others, your petitioners deny the validity of the will executed on 13 of October 1841 aforesaid and pray this court to try its validity and make up an issue ^{whether} the writing produced and admitted to probate aforesaid be the will of said Eli Cadwallader. That Benjamin Johnston Catharine Cadwallader Isaac Cadwallader and Catharine & John Gillman be made defendants to this petition. petitioners shew that defen

damis refuse to distribute the personal & real estate
of Eli Cadwallader dead among your petitioners who
are the heirs of said Eli. who did seized of a
large amount of property. Your petitioners fur
ther pray for such other & further orders touching
the premises as may be necessary and in ac-
cordance with the law & practice of this court,
& as in duty bound will ever pray &c

A. Neal
atty for Petitioners

723

1086

Chas Caswell et al

vs

Spencer Caswell et al

Plt to contest validity
of a will

Filed

June 18th 1839

Mo: C. & A. Lehn

Clk

County of Jefferson St
the State of Missouri.

To the Sheriff of the county of Jefferson, greeting
We command you that you summon
Benjamin Johnston, Catharine Leadwallader, Isaac
Leadwallader, Catharine Gillmore and John
Gillmore if they be found in your county
that they be and appear before the Judge
of our circuit court on the first day of the
next term thereof to be held at the town
of Hillsboro within and for said county
of Jefferson on the fourth Monday of
November next, then and there to answer
unto Charles Leadwallader, Thomas Burges
and Mary Ann his wife, Almira Cox, George
Kidd and Hannah his wife, upon their orig-
inal petition filed in our said court a
copy whereof is hereto annexed, and
have you then there this writ,

Witness Tho C Fletcher, clerk
of our said circuit court with
the seal thereof hereto affixed
at office in Hillsboro this 23^d
day of July A D 1850.

Tho C Fletcher

CCK

I executed the foregoing writ by reading the
same and the petition hereto annexed by reading
in the presence and hearing of Benj Johnston
on 1st Aug 1850 and of Catharine Leadwallader
Isaac Leadwallader, Catharine Gillmore and
John Gillmore on 2^d Aug 1850 in Jefferson
county
Aug 2^d 1850
G. P. Johnston
— Sheriff

To the Circuit Court of Jefferson County Missouri
The petition of Charles Caldwell, Thomas Burgess
& Mary Ann his wife, Almira Cox George Reed & Hannah
his wife. States that on or about the 5th of March 1848
Eli Caldwell departed this life at the County
of Jefferson intestate and without a will as they are
informed and believe, said Eli had surviving him
a wife Catharine and the following children to wit
Charles Caldwell, Mary who is married Thomas Bur-
gess, Almira Cox, Hannah who married George Reed
The petitioners, he also left surviving him Isaac Cal-
dwaller a son, and Catharine a daughter who inter-
married with John Gillman. Your petitioners further
shew that on that 8th day of April 1848 Benjamin John-
stone came in vacation before the Clerk of the County
Court of Jefferson County aforesaid and presented for
probate as the last will an instrument of writing
purporting to be the last will & testament of Eli
Caldwaller dec'd. a certified copy of which is here exhib-
ited as a part of this petition & prayer to be taken as a
part exhibit A. By reference to which it will be seen
that Benjamin Johnstone is appointed executor of said
alleged will in case Eusebius Cooley & Gabriel Johnstone die
or refuse to act as such, they refusing to act as such
Benjamin Johnstone presented the same and it was admitted
to probate by the Clerk of the County Court on the 8th day
of April 1848 as the last will and testament of said Eli Cal-
dwaller dec'd. Your petitioners states that that instrument
of writing as exhibited A is not the last will and testa-
ment of Eli Caldwell dec'd, that it was executed by
said Eli Caldwell on the 13th day of October 1841 that af-
ter the execution thereof some time in the fall of the
Year 1847 perhaps in the month of November 1847 said
Eli was taken sick and made another and entire different

will from the one set up as his will by said Benjamin Johnstone exhibit A. This last will contained provisions inconsistent and different from the pretended will admitted to probate. This latter will so made in November 1847 was duly made by said Eli and executed and published as his last will & testament declaring at the time that it was his intention to revoke the will admitted to probate aforesaid, after the execution of the second will said Eli destroyed it and cancelled it by such destruction. After this in the month of March 1848 said Eli Cadwallader began to approach near his death and dictated a third will revoking all former ones. But before he could complete it and publish it, he ^{became} too far gone and it was not published or signed by him or by any one, at his direction. Said Eli was perfectly in his senses and in sound mind until his death, and never intended the pretended will he executed on the 13th of October 1841 should be his last will and testament and after declaring and complained of it, as not being satisfied with it. Four petitioners further shew that after said probate the widow Catherine renounced the provisions of the will so far as she was concerned in the County Court of Jefferson County. By reference to which pretended ^{will}, it will appear that the entire estate is given to Isaac one of his sons and five dollars to each of the others when in truth and fact it was only a sham, and should never stand as a just disposition of his property and in as much as the said Eli became dissatisfied and revoked the first will, publishing a second & destroyed it without wishing to ~~be~~ publishing the first and finally died and on his death, he attempted to execute a third will inconsistent with the others. Four petitioners deny the validity of the will executed on 13th of October 1841 aforesaid and pray this court to try its validity and make up an issue whether the writing produced and admitted to probate aforesaid be the will of said Eli Cadwallader. That Benjamin Johnstone Catherine Cadwallader, Isaac Cadwallader

and Catharine & John Gillmore be made defendants to this
petition. Petitioners show that defendants refuse to distri-
bute the personal ~~property~~ & real estate of Eli Caawalla ac-
crued among four petitioners who are ~~officers~~ of said Eli
who also signed of a large amount of property. Four petitioners
pray for such other and further orders touching the
further premises as may be necessary and in accordance with
the law & Practice of this Court & as in duty bound ~~from~~
~~petitioners~~ bound will ever pray &c

I a Real Atty for Petitioners
A True Copy of the original petition on file
in my Office attest
Thos. C. Fletcher Clerk
cir 24

To Vircut North
November Term 1850

John Cadwallader et al

vs } defendant

Benjamin Johnston

Catharine Cadwallader

vs } defendant &

John Gyllmore

Catharine Gyllmore

Johnson Shotts \$500

Filed Oct 15th 1850
Thos L. McKee
Clerk

Charles Cadwallader	}	In the Circuit Court, of Jefferson County, Missouri,
and Others, — Plaintiffs		
Against		
Isaac Cadwallader		
and Others, — Defendants,		

Henry Bonaker, a defendant in the above suit, for Answer to plaintiffs Amended Petition, filed Nov. 24th 1856, says he knows nothing personally of the proceedings to foreclose said mortgage, of the sale, and purchase of the land described in said Petition by Isaac Cadwallader. If there was any fraud in any of these proceedings, this defendant never had any knowledge of it, and Plaintiffs should be held to strict proof. Defendant believes said suit to foreclose the said mortgage, and the sale of said land, were conducted fairly and honestly, and that no combination existed between Bon, Johnson & Isaac Cadwallader to deprive the heirs of Eli Cadwallader of their just rights. — Defendant states that Isaac Cadwallader purchased said land at Sheriff sale in 1831, — that he afterwards sold the same to Thomas Briggs, who sold the same to this Defendant, who is now the legal owner of the same. Defendant believes that the allegation in said petition that Isaac Cadwallader had been ^{paid} his mortgage debt & interest in the lifetime of said Eli, is not true. He believes no combination was ever made by Isaac Cadwallader and said Johnson to deprive plaintiffs, — that no arrangement was ever made by said Isaac, and John Hammond, to let him and

Eli's estate have the benefit of Isaac's purchase of said land. Defendant has no knowledge sufficient to form a belief, as to whether the County Court made any order for the sale of said land, and whether the sale was suspended in consequence of any agreement between said Isaac & Hammond in regard to letting Eli's estate have the benefit of his purchase, or not, and Plaintiffs should be held to the proof. - Defendant does not believe that John Hammond refrained from bidding at the sale when Isaac bought the land, in consequence of any agreement between him & Isaac.

This Defendant denies that he ever had any notice that any agreement between Hammond & said Isaac had been made respecting the sale of said land, or that he was informed before he purchased of Bingsess, that any such agreement had ever existed, and denies that he had any notice before his said purchase, that any fraud existed in any proceeding, relative to the sale of said property, or that he had knowledge of any facts indicating in the least the appearance of any fraud whatever, by any person connected in any manner with the proceedings to foreclose said mortgage and the sale of said land. And denies that he ever heard any fraud alleged about the matter, until this suit commenced. He therefore states that he is an innocent purchaser of said land, not tainted in the least with any fraud, if any exists (which he does not believe), and should not therefore be disturbed in his title to the same. He therefore denies that Plaintiffs are entitled to any decree

against him for title to said land, or for rent
or for any of the relief they ask for in their
petition. - He states that he is informed
and believes, that in the foreclosure of said
mortgage by Isaac Cadwallader, it was not
necessary to make the heirs of Eli Cadwal-
lader parties to said suit, or to give them
notice of said proceedings, - but, that the mak-
ing of Johnson, the Executor, a party in said
proceedings to foreclose, was sufficient; and
that said proceedings are not void for that reason.
He admits that said Isaac, and Bingers, are
trustees for the Estate of Eli Cadwallader, in
regard to said land. But avers that they have
ing had the legal title to said land, have
conveyed the same, - that is, Isaac to Bingers,
and he to this Defendant, who is the legal
owner of the same. So far as he has acquired
any knowledge of said proceedings to foreclose
said mortgage, and the sale of the land,
and purchase by said Isaac, defendant
believes they were fair and honest, and
not fraudulent and void. And Defendant
believes the subject of fraud has been
seized upon by Plaintiffs, with a view of
making a plausible show of complaint,
upon finding that their first plea for set-
ting aside the judgment of foreclosure, on
the ground that the heirs of Eli Cadwallader
had not been made parties thereto, has
become a hopeless failure. Defendant has
no knowledge sufficient to form a belief, whether
in the suit to foreclose said mortgage, New John-
son, appeared without service of process or not,
if it is material, plaintiffs are required to make

Proof thereof, - nor has he any knowledge sufficient to form a belief, as to whether the sale of the land, (under the order of the County Court, if any such existed) was suspended by the consent of Burgess, in consequence of any agreement between said Isaac, & Hammond, if any existed, -

Defendant therefore denies that Plaintiffs are entitled to a decree, setting aside the foreclosure of said mortgage, and sale of said land, or to any relief prayed for,

} Abner Green
} Atty. for H. Bonaker

Henry Bonaker, defendant, makes oath and says he believes the above answer, and the matters therein, as stated, are true,

Sworn to and subscribed, Henry Bonaker

before me Feby 4th 1857
Thos C Litcher clerk

By C. Honey sept

In Circuit Court
Jefferson County.

To, Coarwallace
Bothers, vs,

J. Coarwallace
Bothers

Answer of
Me, Bothers to
Companion's petition

Filed July 4th 1854
Jno. C. Fletcher
Clerk

Charles Cadwallader, & others, Plaintiffs }
Against }
Thomas Burgess, & others, Defendants, }
In the Circuit Court
Jefferson County,

Thomas Burgess & Mary Ann, his wife, defendants in the above entitled cause, for Answer to the Amended Petition of plaintiffs filed Nov. 24th 1836, state, that they believe that the allegation in said petition that Eli Cadwallader paid off said mortgage debt & interest to Isaac Cadwallader is totally untrue, - that they have no information sufficient to form any other belief. They have no knowledge sufficient to form a belief, as to whether Benjamin Johnston, Executor of said Eli, appeared in Court, in the suit to foreclose said mortgage, without service of process or not, and if material, Plaintiffs are held to the proof. They are advised, and therefore state, that in the proceedings to foreclose said mortgage, it was not necessary to make the heirs of Eli Cadwallader parties, or to give them notice of said proceedings. They therefore deny that said judgment of foreclose is null & void for that reason. They admit said Isaac Cadwallader purchased the land described in said petition at public sale, and that he conveyed to these Defendants, who afterwards conveyed the same to Henry Bonaker, the present owner of the land. But they deny that said proceedings to foreclose said mortgage were fraudulent, if any fraud, either in obtaining said judgment by said Isaac, or in effecting said sale & purchase of the land, was practiced, these Defendants know nothing of it, and they do not believe

that any fraud was practiced, or combination entered into between said Isaac and Benjamin Johnson, in the proceedings to foreclose said mortgage; These Defendants deny that they, or either of them, had any knowledge that said Isaac & John Hammond made any agreement, by which Hammond was to refrain from bidding at said sale, & Isaac was to bid off the land, & give the Estate of Eli the benefit of his purchase, - They believe that no such agreement was ever made between said Isaac & Hammond, If any fraud was practiced by said Isaac, in said proceedings, or in making said agreement with Hammond, these Defendants have no knowledge sufficient to form any other belief than what they have stated. That all such allegations are totally untrue, - These Defendants deny that they, or either of them, assented to the alleged agreement between Isaac & Hammond, or that they knew any thing of it, - and they very believe no such agreement ever was made, They have no knowledge sufficient to form any belief of whether an order of the County Court had been made for the sale of the land, & if so, whether the land was sold or not, or the sale stopped by any agreement as alleged or not, and if material, plaintiffs are required to prove it, said Burgess denies that he assented to suspending the sale by Johnson, or that he knew any thing of it, or had any thing to do with it, and denies that he knew of any arrangement between Johnson & Isaac & Hammond, in regard to said order of sale, or ⁱⁿ suspending said sale, and he denies that he & Isaac are trustees for the benefit of the estate of said Eli. Bonaker is an innocent purchaser

of said land, and should not be disturbed in his title. Dependents believe said sale was fairly conducted, & that the land was fairly & honestly purchased by Isaac Cadwallader, and that there is no foundation whatever for any of Plaintiffs allegations of fraud.

Dependants deny therefore that Plaintiffs have any right to any of the relief prayed, - that there is any just ground for disturbing the title of Banker to said land, or setting aside said judgment of foreclosure, or giving the heirs the right to redeem, or in granting the prayer of Plaintiffs.

} Anna Green
Atty. for Dependents

Thomas Burgess, a defendant, makes oath, and says that he believes the above Answer and the matters therein as stated are true,

Signed & sworn to before me
Feb 23^d 1857.

Chas C Fletcher
Clerk.

Thomas^W Burgess
Mar 11

1086

In Circuit Court
of Jefferson County
v. Lawrence & Son
vs.
Wingard & others
Plaintiff
vs.
Defendant

Filed Feb 23^d 1857.
Geo. C. McRee
Clerk

In the name of God amen; I Eli Cadwallader of the county of Jefferson in the state of Missouri being of sound mind and disposing memory, & calling to mind the uncertainty of human life and wishing to dispose of all such worldly Estate as it has pleased God to bless me — — — with, do hereby publish this my last will and testament in manner & form following that is to say, First. I desire to be decently buried without funeral pomp & with as little expence as may be. Secondly, I give devise & bequeath to my beloved wife, Catharine, in lieu of her dower all my real Estate consisting of one hundred & sixty acres of Land situate in Said county & state on the waters of Little Rock creek and a part of the same, upon which we now reside, together with all the improvement thereon & privileges thereto belonging for her the Said Catharine to have hold and enjoy the same for & during her natural life, and ^{at the death} of my said wife all the land devised or bequeath to her as aforesaid to belong to my son Isaac & him ^{his} heirs and assigns forever and it is hereby expressly understood that in case my said wife should again marry then and in that case the before mentioned Land immediately to descend & belong to my said son Isaac the same as though my ^{said} wife was dead; Thirdly, I give and bequeath to my daughter Elvira Williams, Elizabeth Wilson, Mary Ann Burgess, Catharine & Hannah Cadwallader, each the sum of five Dollars in money, which sum together with former advancements making an equal proportion of my Estate, 4^{thly}. I give and bequeath to my son Charles the sum of five dollars in money which sum together with former advancements made him constitute and amount to an equal proportion of my Estate, 5th It is my desire that all my Just Debts be fully paid, and for that purpose that all my personal Estate be by my Executors sold and applied accordingly and that if any be paid

to my said wife to be by her disposed of as she may
think proper & lastly I do hereby nominate constitute
and appoint my worthy friends Sawson Cooley and
Gabriel Johnston my Executors to this my last will and
testament and in case of the death or refusal of either of
my said Executors then & in that case I appoint my trusty
friend, Benjamin Johnston, In testimony whereof, I
Eli Cadwallader the Testator have to this my last will
written on one sheet of paper set my hand and seal
this 13th day of October in the year of our Lord one
thousand Eight hundred & forty one.

Eli Cadwallader
mark

Signed publish and delivered
by the said Eli Cadwallader as and
for his last will and testament in presence of as who
at his request has signed as witness to the same in his
presence and in presence of each other

G J Johnston

L S Hollenbeck

State of Missouri
County of Jefferson

County Court of Jefferson County

In Vacation April 8th A.D. 1848

Be it remembered that L S Hollenbeck
one of the Subscribing Witnesses to the foregoing will personally
appeared before me J W Alford Clerk of said Court and
being by me duly sworn deposes and says that he saw the foregoing
named testator Eli Cadwallader sign the foregoing instrument
of writing which he publish as his last will that he the ^{said} testator
was at the time of sound mind and over the age of twenty one
years and that this deponent attested said will as one of the
Witnesses thereto by subscribing his name to the same in the presence
of the said Testator which said proof is deemed by me sufficient
to Establish said will

L S Hollenbeck



In Testimony whereof I have hereunto set
my hand and ~~seal~~ affixed the Seal of said Court
at Hillsboro this 8th day of April 1848

J W Alford Clerk
By Jos C Fletcher J Clerk

State of Missouri }
County of Jefferson }

County Court of Jefferson County

In Vacation April 19th A.D. 1848

Be it remembered that - Gabriel J. Johnston one of the
Subscribing Witnesses to the forgoing will personally appeared
before me Johnson H. Alford, Clerk of Said Court - and being
by me duly sworn deposes and says that - he saw the forgoing
named testator Eli Cadwallader sign the forgoing instrument
of writing which he published as his last - will that he
the said testator was at the time of signing the same of
Sound and Disposing mind and over the age of twenty
one years and that - this deponent - attested said Will
as one of the witnesses thereto by subscribing his name
to the same in the presence of the said Testator which
said proof is deemed by me sufficient to establish said
will

G. J. Johnston

In Testimony whereof I have hereto set my hand
and affixed the seal of said court at office
in Hillsboro this 19th April 1848

J. H. Alford, Clerk

A true copy of the original will on file
in my office and of record in office of Clerk County
Court,

In Testimony whereof. I hereto
set my hand and affix the seal
of said Court at office Mar
13th 1851.

Thos. C. Fletcher

Clerk

Copy of
Bill of Ed. Kadwallader

Filed Mar 3^d 1837.
Jas C. Nichols
Clerk

fee 1.25

Charles Cadwallader
vs
Isaac Cadwallader }

Now at this comes the said plaintiffs and said defendants having made default heretofore and not having shown any cause for said default, & still come not although often solemnly called, ~~and the court~~ said plaintiffs submit their cause to the court who now proceeded to investigate the same on the petition of plaintiff and doth find that on or about 5th day of March 1848 Eli Cadwallader departed this life at the county of Jefferson Missouri intestate and without any valid will in existence, that before his death he revoked, ~~to be~~ ^{the instrument purporting} ~~will~~ executed on 13th day of October 1841, which instrument was admitted to probate before the clerk of the county court of Jefferson County Missouri on ~~the~~ day of April 1848, said court doth ^{further} find that said Eli Cadwallader left the following heirs at law to wit Charles Cadwallader, Mary Ann, wife of Thomas Burgess, Almira Cox, Hannah wife of George Kidd, petitioners and Isaac Cadwallader & Catharine wife of John Silvers; therefore the court doth over-adjudge and decree that said instrument of

~~Writing executed on 13 day of October 1847 and subject~~
~~entirely admitted to probate on~~
~~day of April 1848.~~ Be. set aside and held of
 no force or value in law or equity to effect
 the rights of said heirs of Eli Cadwallader
 aforesaid. and that the estate both real and
 personal of said deceased remaining after
 payment of debts & to be distributed ^{do descend} among
 the heirs of deceased, ~~be distributed, share~~
~~and share alike and equally to each of them~~
 in the same manner as if the said Ancestors had
 died intestate.

Chas Cadwallader
 et al

vs
 Gledrochal

Decree