

1845-006

SOUTHAMPTON COUNTY
CHANCERY PAPERS

HARRISON'S ADM'X. et al vs. HARRISON'S EXECUTOR
et al

other SURNames: James, Jones,
Susan, Jim, Charles, Martha, Mason,
Anthony, Tom, Sukey, Discy, Clara,
Judy, Carter, Henry, Betsy, Hannah,
John, Butts

Sampton.

Harrison's adm. $\frac{1}{2}$ ad.

v. $\frac{1}{2}$ Papers.

Harrison's Exr. $\frac{1}{2}$ ad.

Dft. Costs

Like	\$ 3.94
Law &	16.66
	\$ 20.60

1845 Nov. Bill dismissed.

Harrisons ading 90

v. } Stat: Rules 90

Harrisons Error: 90

Catharine Harrison in her own right and as administratrix & relict of Benjamin Harrison dec^d. James James and Sarah Ann his wife who before intermarriage was Harrison and daughter of the said Benjamin Harrison, Allen J. Harrison and Hannah A. Harrison John W. Harrison, Andrew J. Harrison, Elizabeth H. Harrison, Edwin M. Harrison and Benjamin F. Harrison infant children of the said Benjamin Harrison who sue by Catharine Harrison their next friend:

against

Edwards Butts Executor of Henry Harrison dec^d, William A. Jones and Susan, Jinn, Charles, Martha, Mason, Anthony, Tom, Turkey, Lucy, Clara, Judy, Carter, Henry, Betsey, Hannah, and John as devisees & legatees under the will of Henry Harrison dec^d.

1845 Jan^y 27th Subpoena & decree nisi issued returnable to February Rules -

" Feb^y Rules - Sup^a. &c. returned executed on Deft. Butts - the other Defts not found. New process was awarded on the 15th except Butts -

" March Rules - Sup^a. &c. ret^d. Executed except on Hannah who is dead. & Anthony who is not found - Bill filed & Sp^a. &c. awarded against Wm. A. Jones a defendant therein named.

1845 April Rules. Sup^a. &c. ret^d. Executed on Deft. Jones - Cause set for hearing as to Deft. Butts Exor. Harrison -

" May Term. The deft. Jones filed his demurrer to the plffs. bill and the plffs. join in the said dem. - Edwards Butts assigned go^{vt} ad litem to the defts. Susan, Jinn, Charles, Martha, Mason, Anthony, Tom, Lucy, Turkey, Clara, Judy, Carter, Henry, Betsey & John to defend them in this suit -

" Nov. T. Dem. Sustained bill amended with costs.

Harrison's ~~copy~~ & also
as ~~3~~ Bill
~~Harrison's~~ Ex^o & also

1825 March Rules.

2835 words.

To the Honorable Richard H. Baker judge of the
circuit superior court of law and chancery for
the county of Southampton in chancery sitting

Humly complaining shew unto your
honor your complainants Catherine Garrison in
her own right and as administratrix and executrix of
Benjamin Garrison died James James and Sarah
Anne his wife who before intermarriage was
Garrison and daughter of the said Wm Garrison
et aln J Garrison and Hannah of Garrison,
John W Garrison Andrew J Garrison Elizabeth H
Garrison Edwin M Garrison and Benjamin F
Garrison infant children of the said Benjamin
Garrison who sue by Catherine Garrison their
next friend that the said Benjamin Garrison
departed this life in the year 1867 intestate
leaving the said Catherine his widow who
qualifies as his administratrix and your other
complainants his sole heirs and distributees
at law

Your complainants state that in the year
1867 Benjamin Garrison senior father of Benjamin
Garrison the husband and father of your
complainants and under whom they claim
departed this life having first duly made and
published his last will and testament which
was admitted to probate in the county court
of Southampton on the 19th day of October
1867 and Benjamin Garrison and Henry Garrison
sons of the testator and executors appointed by
the said will qualifies as such all of which
will more fully appear by a copy of the
said will and certificate of probate filed
herein and prayed to be taken as a part
of this bill. The said testator among other

bequests and devises to his wife and the children
bequests and bequeaths to his son Henry as follows
"I give to my son Henry Harrison one half of my
land the part he now lies on to him and his
heirs forever also one negro woman named Susan
with her present and future increase two feather beds
and furniture two cows and calves one yearling the
horses and yearling in death in his possession at
this time two acres and ten cents and six hundred
and fifty dollars to him and his heirs forever
and to his son Benjamin. By another clause
as follows "I give to my son Benjamin Harrison
after the death of my beloved wife the other
half of my land and plantation whereon I now
live to him and his heirs forever also four
negroes namely Polly Cherry, Nathan Carter and
at the death of my wife two negroes named
Rachel and Venus and their future increase
two feather beds &c. In another clause the testator
directs that the residue of his estate be equally
divided between his three children. In pursuance
Henry and Benjamin and another clause is
to the effect following "If either of my sons
should die without lawful issue then and in
that case I give all the estate of every kind
which I have given him to the surviving
brother and his heirs forever"

His son Benjamin as has been shown your
Honor married and left lawful issue your
complainants. The other son Henry possessed
himself of the estate bequeathed and devised to
him but never married and died in the
year 1844 without lawful issue having survived
his brother Benjamin and having first duly
made and published his last will and

Testament and appointing Edmund Butts and
Littleton H. Edwards executors thereof and the said
will was admitted by the county Court of
Southampton on the day of March 1844 and
Edwards Butts one of the executors therein named
qualified as such as will more fully appear
by a copy of the said will which is herewith
filed and prayed to be taken as a part of
this bill. By the said will the said Henry
Harrison devises the lands acquired under
the will of his father as follows "I give and
bequeath unto my servant Susan the land and
improvements on which I live containing one
hundred and sixty one acres being the land given
me by my father by his will unto her and at her
death to my two servants and their children
Martha and Mason to be equally divided between
them the said Martha and Mason and if any
thing should occur and the laws of this state
will not permit them to remain so that they
are compelled to remove to a free state it my wish
that my Executors or consanguineous appointees by
the court sell the land and divide the money
equally between my said servants Susan, Martha
and Mason unto them and their heirs forever"
and emancipates the following slaves to wit
Susan, Tim, Charles, Martha, Mason, Anthony,
Tom, Sukay, Tracy, Clara, Judy, Carter, Henry,
Betty, Hannah and John who are also legates
and devises under the said will and who are
the slaves or the descendants of the slaves
Susan bequeaths to the said Henry by the
will of his father your complainants further
charge that the said Henry Harrison before
his death or will sold to Williams & Jones

The following slaves to wit Mary, Susan, Harriet
Nathan Lewis Jimmy and Eveline who were
also the slaves or descendant of the slaves
bequeathed to him by his father Benjamin
Harrison Senior Your complainants are
advised and charge that as the said Henry
Harrison died without lawful issue all the
property devised and bequeathed to him by the will
of his father by force of the true intent and
operation of the said will belonged at his death
to the heirs of your complainants intestate Benjamin
Harrison junior and that the said Henry could
not lawfully dispose of the same by his last
will and testament

To the end therefore that justice and right may
be done in the premises your complainants pray
that the said Edwardes Brulls as executor of Henry
Harrison dec^d and the said William C. Jones
and ^{the said} Susan Jim Charles Martha Mason & Anthony
Tom Luky Lucy Clara Judy Carter Henry
Betsey Hannah and John as devisees and legatees
under the said will of the said Henry made
defendants by some proper person appointed to
defend them as guardians ad litem. Next with
apt and proper oaths to charge them and that
they answer the allegations contained in this bill
on oath unceasingly that your Honor will be
pleased to do as to your complainants as heirs
of Benjamin Harrison and survivors of Henry
Harrison the land and slaves and the
personal property devised and bequeathed to
the said Henry Harrison by the will of
his father the said Benjamin Harrison Sr
and grant such other and further general
relief the premises considered as equity may

dictate and the nature of this case may
require and that the commonwealth's writ
of Subpoena may issue commanding to
and your complainants will ever pray

Parker & Shanks J. G.

Wm A. Jones

to 3 Demerol

Harmon Ex 44

=

South —

1845 May 2^d

Wm A. Jones & ~~others~~

^{vs}
Hannous Ex & H

Demurrer

Cir: Supr. Ct: of Law & Chy.

South Co: To wit

The P. Defen ~~ants~~ ~~and~~ ~~the~~ ~~Plaintiffs~~

by Prostitution not conspiring all or any of the matters and things in the said Complainants bill contained, to be true in such manner and form, as the same are therein set forth, & alleged, do demur to the said bill, and for cause of demurrer show that the Complainants have not by their said bill made such a case as entitles them in a Court of Equity to relief, Wherefore and for divers other good causes of demurrer appearing in the said Bill the said defendants ~~do~~ demur thereto, and they pray the judgment of this Hon^{ble} Court whether he shall they be compelled to make any further & other answer to the said Bill, and they humbly pray to be dismissed from hence with their costs in this behalf sustained.

The above is the demurrer
of the above

Harrison's administrative & others -

v. 9

Harrison's Exor and others -

This case is submitted upon the bill and exhibits and a general demurrer thereto, and the question to be decided by the court arises under a clause of the will of Benjamin Harrison senior - The testator by separate clause, gives property both real & personal, to his two sons, Henry and Benjamin, and then in a subsequent clause directs as follows "If either of my said sons, should die without lawful issue, then and in that case I give all the estate of my said son which I have given him to the surviving brother and his heirs forever" - Benjamin Harrison married & died leaving children of the marriage lawfully begotten, in the life time of Henry who lived many years after and died in 1843 - without having married and without leaving lawful issue, having just made & duly published a last will & testament disposing of all the property which he had acquired under the will of his Father, whose will was made in 1804 - Benjamin's widow & children living at the death of Henry -

Two questions arise under this state of facts, to wit, whether the limitation over to Benjamin, would have been good if he had survived Henry, and secondly whether his death in the life time of Henry will prevent its taking effect in favour of his children -

The counsel for the plaintiff assumes the affirmative of both propositions so far as relates to the personal property

Two axioms seem to be well established - That the courts will place such a construction upon wills as will fairly carry out the intention of a testator, and that in respect to personal estate they in the language of Judge Roane in the case of Higginbotham vs. Ketchum 2nd Case 265 "incline to lay hold

of any words which tend to restrict the generality of the words dying without issue - to mean without issue living at the death -

Thus in the case of Foth vs Chapman 1st New Williams 563 and numerous other cases in the English reports as well as our own the word living is considered sufficient to define the period of time ^{It suggests that the words then & in that case have a similar import} when the limitation over is to take effect. They appear to ~~be~~ to be as strong if not stronger than that is at the time of the death of the 1st taker in that case that is if he dies without lawful issue or children at the time of his death.

In Hill vs Burrow 3rd Cal 303 - Judge Roane says "slight circumstances indeed have been laid hold of to produce this effect (that is to limit the period time dying without issue) such as the words living, then, a limitation to a person in fee for life &c. but yet there must be some such" - The case of Hill & Burrow was a will of real estate only, and the word then was not used. - In the case of Brown vs Broy 1st Cal 294, President Pendleton lays great stress upon the word then - and tho the word then was also used I should infer from his remarks that the word then would have supported the limitation over. In Royle vs Royle administration 2nd Munf 478 - the testator uses the identical words found in the will under consideration - The judge who delivered the opinion of the court went upon the ground that the slaves limited over were those which came by the wife and seems to lay little stress upon the words then & in that case - This case is referred to for the purpose of showing how astute the courts have been in seizing upon any words

of a restrictive character - and it will appear by subsequent decisions - that the word then has been much relied upon -

In Timberlake vs Graves 6 Mun: page 174 Judge Roane says "the ground upon which the opinion of the court is founded is that the devise over to the niece is to them only & not to them and their heirs - it purports a limitation to themselves I was intended as a personal benefit to them - This construction is justified by the words then & in that case I equally to be decided" - See also Jackson & Jackson 6 Mun: 187 - Caudle & Caudle same vol: page 455 - Brown executor of Mayes vs Leebetter & others - 2nd Mun: page 521 - Dial vs Hooper page 194 - Gilmer

The counsel also relies upon the act of Feb. 4th 1819 as a legislative sanction & approval of the decisions of the court of appeals relied upon and argues that he has not the means pursuing the decisions of the courts further being separated from the greater part of his library - He believes that the question has arisen in several cases in Litch reports, and Mr. C. Robinson who has given the opinion against the construction he contends for relies according to his recollection, particularly upon a case in the 9th Litch - The counsel read over that case, but not with due consideration some months ago, & is induced to think that Judge Parker who delivered the opinion of the court places great emphasis upon the word then -

Assuming that if Benjamin Harrison had survived his brother Henry the limitation over would have been good the next question which arises is does the death of Benjamin before Henry avoid

the effect of the limitation in favor of his children -
It is submitted with some confidence that the
limitation on should take effect in favor of the
children and the case of Pinbury versus Elkin reported
in 1st Pure Williams page 563 - is relied upon
in support of this proposition, and also in support
of the limitation on - The book is not before me
but from my recollection it is conclusive on the
first point & seems to be so considered in the
opinion of the court of appeals in the case of
Royal vs Royal administrators 2nd Mun: 490

In that case the President deciding the opinion
of the court say "with respect to the second question
submitted namely whether notwithstanding
the death of Lucy the Mother in the life time of
John the son the claim limited to her by the
will supposing the limitation to be good became
vested in the appellee as her administrator the
court adopts the affirmative opinion in support
of which the case of Pinbury vs Elkin is supposed
to be decisive authority"

Wm C Parker for the plaintiff

Southampton

July 16th 1845

Addenda

If I may be permitted to indulge in a little
verbal criticism I should rely upon Johnsons
Dictionary for the meaning of the words then &
case - Then - at that time. afterwards - immedi-
ately afterwards - soon afterwards - in consequence
thereof - for this reason - that time -

Case - if it should happen

W. C. P.

To be entered

R. H. B.

\$8.45 November Term

Harrison admth & ac. }

27

Harrison; Exor. L. }

This day came the parties by their attorneys, and the other def^{ts} in this cause also demurred generally to the Poffs bill, in which demurrer the Poffs joined - and then upon the demurrer of the ^{other} def^{ts} Jones and the demurrer of the def^{ts} to the Poffs bill being argued: it is the opinion of the court that the said Demurrer is good. Therefore it is deemed and ordered that the said bill be dismissed and that the Poffs pay to the def^{ts} their costs.

Harrison & adme

2 } Sp^a in City

Harrison's Gro. &c

1844 August Rules.

Committee on Edwards

Butler of Sand L. L. ~~and~~

~~Delegates~~ 20th and on the
other defendants on the 20 June

W. B. Farrod, D. J. J. J.
Saml. B. Shires, Secy

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon *Edwards Butts Exor. of Henry Harrison dec^d Susan. Jim. Charles. Martha. & Susan. Anthony. Tom. Suckey Lucy. Clara. Judy. & Carter. Henry. Wiley and Hannah & John. Slaves emancipated by the will of Henry Harrison dec^d and legates under the said will* —

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *August* next, to answer a Bill in Chancery exhibited against *them* in the said Court by

Catharine Harrison administratrix of Benjamin Harrison dec^d

And unless *they* shall answer the said Bill within ^{*two*} ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *they* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *10th* day of *June* 18*44*, in the *68th* year of the Commonwealth.

L R Edwards Clk

[One Copy to be delivered each Defendant.]

Harrison's Exr of

to } Sp^a in Chf

Harrison's Exr of

1815 February Rules

Created a Edwards Birth

Wm, a Bile Deputy of

Sammuel B. Hines Sheriff

Susan from Charles &c

not found B. W. Goodwyn
deputy of Saml B. Hines Sheriff

Atty. p^o

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting :

We command you that you summon *Edwin de Kells Esqr. of Henry Harrison*
de? Susan. Jinn. Charles. Martha. Mason. Anthony. John. Lukey.
Lucy. Clara. Judy. & Carter. Henry, Welsy. and Hannah and John
Slaves emancipated by the will of Henry Harrison de? and legatres
under the said will

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the
County of Southampton, at the Rules to be holden for the said Court on the first Monday in

February - next, to answer a Bill in Chancery exhibited against *them* in
the said Court by *Catharin Harrison admpr. of Benjamin Harrison de?*
James James & Susan Ann his wife formerly Harrison, Allen I Harrison
and Hannah W Harrison. Elizabeth Harrison, John W Harrison
Andrew J Harrison Elizabeth A Harrison. Edwin M Harrison.
Benjamin F Harrison infants under age who sue by their next
friend Catharin Harrison

And unless *they* shall answer the said Bill within ^{*two*} ~~four~~ months thereafter, the Court will
take the same for confessed, and decree accordingly. And this *they* shall in no wise
omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON

R. EDWARDS, Clerk of our said Court, at the Court-house, the *27* day of

January

1845, in the *69th* year of the Commonwealth.

L. R. Edwards

[One Copy to be delivered each Defendant.]

Harrison's ad. 4. 8^o

v. { Sp. in Chy

Harrison Exor 4^o
1845 - March Rules -

Executed on all except
Hannah & Anthony.
Hannah is dead. Anthony
not found B. B. Fordyn
deputy of Genl. B. B. Thiff

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon *Susan Jim Charles Martha Mason*
Anthony Tom. Lukey Lucy Clara Judy Harter Henry
Deloy and Hannah and John Slaves emancipated by the
will of Henry Harrison dec^d and legat^{ies} under the said will

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the

County of Southampton, at the Rules to be holden for the said Court on the first Monday in

March — next, to answer a Bill in Chancery exhibited against *them* ^{& another} in

the said Court by *Catharin Harrison* ^{de^y} *of Benjamin Harrison*
de^y James James & Sarah Ann his wife formerly Harrison Allen
J Harrison and Hannah A Harrison John W Harrison Andrew
J Harrison Elizabeth H Harrison Edwin M Harrison Benjamin
F Harrison infants under age who sue by their next friends
Catharin Harrison

And unless *they* shall answer the said Bill within ^{*two*} ~~four~~ months thereafter, the Court will
take the same for confessed, and decree accordingly. And this *they* shall in no wise
omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON

R. EDWARDS, Clerk of our said Court, at the Court-house, the *3* day of

February 184*5*, in the *69th* year of the Commonwealth.

R. Edwards

[One Copy to be delivered each Defendant.]

1056

Harrison's army of
in Spanish Chy.

Harrison's Exor. of

1815 April Rules.

Executed
By Goodwyn Deputy of
Saml B. Hines Sheriff

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting :

We command you that you summon *William A Jones*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in

April next, to answer a Bill in Chancery exhibited against ^{others} ~~him~~ in

the said Court by *Catharin Harrison admq. Benjamin Harrison dec. James James. & Sarah his wife formerly Harrison, Allen J Harrison and Hannah A Harrison. John W Harrison, Andrew J Harrison, Elizabeth H. Harrison. Edwin M Harrison Benjamin F Harrison infants under age who sue by their next friend Catharin Harrison.*

And unless *they* shall answer the said Bill within ^{two} ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *they* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON

R. EDWARDS, Clerk of our said Court, at the Court-house, the *3^d* day of *March* 1845, in the *69th* year of the Commonwealth.

R. Edwards

[One Copy to be delivered each Defendant.]

Benj^a Harrison's Will

Harrison's adm. *g^d*

v } Exhibit with Bill

Harrison's Exor. *g^d*

IN The Name of God amen. I Benjamin Harrison of Southampton County being weak of body but of sound mind and memory do make and ordain this my last will & testament in the following manner:

Item " I lend to my beloved wife Hannah Harrison the use of half my Land and plantation whereon I now live also three Negroes namely Rachel Venus & Septia an feather bed & furniture one horse two cows & calves of her choice during her natural life also I Give to my said wife twenty Barrels corn & two saws & spigs and at the death of my wife all the property lent her except the land & two Negroes to wit Rachel & Venus shall be equally divided between my Children Temperance Harrison Henry Harrison & Benjamin Harrison

Item " I Give to my daughter Temperance Harrison one Negro woman named Aggy & her child Sarah two feather beds & furniture two cows & calves one bay mare called Polly & two ewes to her & her heirs forever."

Item " I Give to my son Henry Harrison one half of my land the part he now lives on to him & his heirs forever also one Negro woman named Susan with her present & future increase two feather beds & furniture two cows & calves one yearling two horses the horses & yearling he hath in possession at this time two cows & lambs & six hundred & fifty dollars to him & his heirs forever.

Item " I Give to my son Benjamin Harrison after the death of my beloved wife the other half of my land & plantation whereon I now live to him & his heirs forever also four Negroes namely Dolly Chamy Nathan & Easter & at the death of my wife two Negroes named Rachel & Venus & their future increase two feather beds & furniture one sorrel mare called Fanny one bay horse called Deland two cows & calves two ewes & lambs & two hundred dollars to him & his heirs forever."

Item " I Give to my Grandson Harrison McEmore one Gray mare one feather bed & furniture one cow & yearling two sows & two sheep (the feather bed he hath in possession) to him & his heirs forever also two hundred dollars to be deposited in the hands of my son Henry Harrison to be paid out for the support of said Harrison McEmore as my son Henry shall think proper.

Item " I Give to my Grand son Paschal Blair Harrison provided

he arrives to the age of twenty one years two hundred Dollars to him
& his heirs forever. if it to be equally divided between my three
children Temperance Henry & Benjamin to them & their heirs forever

Item my will & desire is that my Negro woman Jimmy should be
equally divided between my two sons Henry & Benjamin Harrison to them
& their heirs forever

Item my will & desire is that the residue of my Estate be equally
divided between my three children Temperance Harrison Henry Harrison
& Benjamin Harrison to them & their heirs forever.

Item " If my daughter Temperance Harrison should die without lawful
issue born under wedlock then & in that case I Give all the
estate of every kind which I have given her to my two sons
Henry & Benjamin Harrison to be equally divided between them to them
& their heirs forever.

Item " If either of my sons should die without lawful issue then
& in that case I Give all the estate of every kind which I have
given him to the surviving Brother & his heirs forever.

I do constitute and appoint my two sons Henry Harrison &
Benjamin Harrison the whole and sole Executors of this my last
will and testament. In witness whereof I have hereunto set my
hand & affixed my seal this 30th day of July Eighteen hundred
& seven

Signed sealed & delivered
in presence of
Cordall Francis

Benjamin Harrison (Seal)
Maker

Wm⁺ Welford
Mark
Thomas Harrison

Thos Rowell

At a Court held for the County of
Southampton on the 19th day of October 1807

This will was presented in Court by Henry &
Benjamin Harrison the Exrs therein named proved by the oaths
of Cordall Francis Thomas Harrison & Thomas Rowell three of the witnesses
hereto and ordered to be Recorded and on the Motion of the
said Exrs who made oath accg to law probat is granted them
in due form giving security whereupon

Attest J R. Edwards Clk

Henry Harrison's will

Harrison's army &c

v. } Exhibit with bill

Harrison's Exor: &c

I Henry Harrison of the County of Southampton and State of Virginia being in perfect health do make my last will and Testament in manner and form following that is to say
1st I wish my Executors whom I shall hereafter appoint immediately after my decease to advertise and sell all the perishable property I may leave and out of the proceeds of such sale pay my just and legal debts and if my perishable Est. should be insufficient to pay the same it is my further desire that they sell one of my Negro Men Jim or Charles or both if requ^d and pay all such debts as I may lawfully owe.

2^{ndly} It is my desire and wish and I do hereby give and bequeath unto my old servant Susan her freedom and liberty and for her meritorious services it is my earnest request that my Executors whom I shall hereafter appoint to Release and set her at perfect liberty the old servant Susan and to act as trustees for her in every instance and I do hereby make the following provision for her maintainance for my said servant Susan

1st I Give and bequeath unto her and her heirs forever the following property to wit one feather bed and furniture one desk one loom one spinning wheel three chests all my kitchen ware and furniture one trunk with all her clothing wearing apparel and bed clothes one coffee mill and for said iron one cupboard and two pans one horse and cart of her choice one years provision for herself and horse all the fowls on the plantation one sow & pigs and one cow and calf of her choice

3^{rdly} It is my further wish and request that if my debts are paid without selling my two Negroes Jim and Charles that I have and bequeath them as follows that my Executors may dispose of them by hire by the year or otherwise at the option of her the said Susan for the annual support of my old Negro woman Susan their mother during her life and at her death I do hereby give them their freedom provided she may be supported without the sale of them being requ^d and if she should remove to any free state it is my request that my Ex^{rs} permit the sd Jim and Charles to go with her and of course receive their freedom.

4th I Give and bequeath unto my servant Susan the land and improvements on which I live containing one hundred and sixty one acres being the land given me by my Father by his will unto her and at her death to my two servants and their children Martha Mason to be equally divided between the said Martha & Mason and if any thing should occur and the laws of this state will not permit them to remain so that they are compelled to remove to a free state it is my wish that my Exors or Commissioners appointed by the Court sell the land and divide the money equally between my said servants Susan Martha and Mason unto them and their heirs forever.

5th I do hereby give and bequeath my servant Anthony his liberty and freedom and particularly request my Exors that they set him at perfect liberty immediately after my decease and I do further give and bequeath unto my said servant Anthony the tract of land and improvements of all kinds which I purchased of Joseph M. Darnall called Breuners land containing by estimation and survey two hundred and fifty five acres unto him the said Anthony and his heirs forever and if he should die without lawful heir I wish and desire and do hereby bequeath the land to be equally divided between my servants John Martha and Mason unto them and their heirs and if the laws of the state or any thing else should occur so as to prevent the said Anthony from remaining in this state in that case my wish and desire is that my Exors or Court appointed by the Court sell said land and pay the proceeds over to the said servant Anthony if he be alive if not to his heirs if no heirs to the said John Martha and Mason equally or to their heirs &c.

6th I Give and bequeath unto my said servant Anthony one bay mare one yoke of oxen one cow & calf one sow and pigs one feather bed and furniture and one cart and wheels and one years provisions unto him and his heirs forever.

7th I do hereby Give and bequeath unto my servant Mason and her children Jant Tachy Lucy Clary July and Carter and all her future increase from this time their entire freedom and liberty to each and every one of them and my positive wish is that my Exors

set them at perfect liberty immediately at my decease and I do by this will give and bequeath unto the said Mason one feather bed & furniture her years provision for herself and children one sow and pigs and one cow and calf unto her and her heirs forever.

8th I do hereby give and bequeath unto my servant Martha and her children Henry Betsey and Hannah their liberty and freedom entire also to her future increase and it is my earnest wish and desire that my Exors set them at perfect liberty at my decease and I do further by this will give and bequeath unto the said Martha one years provision for herself and her children also one feather bed & furniture one cow & calf and one sow and pigs unto her and her heirs forever.

9th I do by this will give and bequeath unto my servant John his entire freedom and it is my desire and wish that my Exors immediately at my decease set him at perfect liberty and I also give and hereby bequeath unto him the said John the following property to wit one horse one feather bed and furniture one cow and calf and one sow and pigs unto him and his heirs forever.

10th and if there should be any property that I have not disposed of in my will above I wish it to be equally divided between all my legates above mentioned particularly my clothing and house hold furniture unto them and their heirs.

11th AND Lastly I do hereby appoint Edwards Balls Jt R. Edwards the prest Clerk and Havel Harris Exors to this my last will and testament by the made and I do hereby request and solicit them that they and each of them will qualify to this my will and carry the same into effect as specified in the will and further that they or either of them will immediately at my decease take charge of this will and see the same duly Recorded for which I signify they may receive their future Remors &c Testimony whereof I do hereby verbe all other wills by the made and have hereunto set my hand and affixed my seal the 15th day of Oct 1840

Signed sealed and published by Henry Harrison
as and for his last will and testament in the presence
and hearing of us who at his request and in his
hearing had subscribed our names as witnesses

Henry Harrison (Seal)

John A. Person }
Wm J. Everett. }

At a Court held for the County of Southampton on the 13th day of March 1844 This Last will and testament of Henry Harrison as was proved by the oaths of John A. Person & Wm J. Everett the subscribing witnesses thereto and ordered to be Recorded. Gileston R. Edwards & Howell Harris two of the Executors therein named appeared in Court and refused to take upon themselves the burden of the execution of said will On Motion of Edwards Butte the other Executor therein named who made oath and together with James W. Parker & William J. Schell his securities entered into and acknowledged @ bond in the penalty of Ten thousand dollars conditioned as the law directs. Certificate is granted him for obtaining a probate of said will in due form.

Teste I R. Edwards Cllk

A Copy

Teste. I R. Edwards Cllk

X
Notes of Puffs
Council.

The demurrer in
this case is sustained
upon the ground 1st
that the property given
to Henry Harrison is
made absolute by the
act of 1776 and 2^d
because Benjamin
Harrison died in the
life time of his brother
Henry. R. H. B.

Exp 18. 45

Harrison & Co.

17

Harrison & Co. J.

In Court Sup. Ct. of Law & Eq. for Southampton
Not by Thos. S. Shoben counsel for Harrison's
Exor & W. A. Jones.

The ppgs in this cause claim by virtue of
the Will of Benj^d. Harrison &c. There is no controversy
or dispute as to the identity of the property, slaves &c.
Indeed it is admitted that the slaves mentioned in
the Compt's bill are "Susan and her descendants." The
Bill admits that Henry Harrison survived his
brother Benj^d. The question then submitted, comes
properly before the court by a demurrer to the Bill.
Have the Ppgs as heirs in. of Benj^d. Harrison, ac-
cording to their own shewing, right to recover the slaves
in controversy?

The clauses of Benj^d. Harrison's will
bearing upon the question are the following.

"I give to my son Henry Harrison one half
of my land, the part he now lives on, to him and
his heirs forever. also one negro woman named
Susan with her present and future increase.
two feather beds and furniture - two cows and
calves, one yearling - the horses and yearling
he ~~has~~ in his possession at this time - two ewes
& lambs and six hundred and fifty to him
& his heirs forever" and the following

"If either of my sons should die without ^{lawful} issue
then & in that case I give all of the estate of every

land which I have given him to the surviving brother & his heirs forever -

Benj. Harrison (the son) died first - (several years ago) & left wife & children - the pps -

Henry Harrison (the son) died in 1844 - without "lawful issue" without having married -

The following is an extract from Conway Robinson's opinion on this subject - it is all that it is necessary to copy, because the other part is the statement of the facts -

"The act of Octo. 1876 declares that, any person who then held, or thereafter should have any estate in fee tail in any lands, or slaves shall stand seized, possessed, or entitled of, in, or to such lands or slaves in fee, and absolute fee simple benefit in like manner as if the deed, or will had conveyed the same to him in fee simple any words - limitations, or conditions in the deed or will to the contrary notwithstanding?" Hen. Stat. at Large p. 226 -

The decision in *Bell v. Gillispie* 3rd Rand. 273, and many other decisions have I think very clearly established that the estate given to Henry Harrison was an estate in fee tail, and that under the statute he became possessed

of an estate of absolute property in the slaves in question. If indeed Henry Harrison had been married by his brother Benjamin, and the limitation over had been only to him without the words "and his heirs forever" it might perhaps have presented a case for the application of the principle laid down in *Timberlake v. Graves* 6 Monr. 174 *Grisham v. Grisham* 6 Monr. 187, and *Dillake v. Hodges* 194. But there can be no application to this for the plain reason that the limitation over in this case is not merely to the surviving brother, as ^{purporting} was stated in *Timberlake v. Graves* a limitation to himself, and intended as a personal benefit to him, but is to him, and his heirs forever. There is nothing here, then, to prevent the words "in absolute fee simple" from having the effect, and operation as often given them by the Court of Appeals. The interpretation of these words was before the Court in *Callow v. Pope* 3 Leigh 107 Judge Tucker said, for the hundredth time, the same interpretation which had before been given to these words was then asked to, and it will, I have no doubt be asked to if any question shall be brought before the Court on this issue. My opinion

+

Judge May has given an opinion to the same effect
but I shall not quote from it -

Indeed in the view of the
case which I take, it is not necessary to
refer to the act of 1776 or the decisions under
it - they can have no reference to the present
case - because that question does not arise -
If Benjⁿ. Harrison had survived Henry, then
the investigation of ~~the~~ would be proper.

Admit the "limitation over" good, and yet it is
a limitation to the "surviving brother" - Benjⁿ. Har-
-rison did not survive Henry, & therefore accor-
-ding to the plain language of the will could
not claim the estate left to Henry - Supposi-
-ng "the limitation over" good, Henry Harrison
at the death of Benjamin would have been
entitled to the estate bequeathed to him, if he
had left no "lawful issue" - but he did
leave lawful issue, & therefore Henry was
not entitled (supposing the "limitation" good) -
The whole estate would in the event of Benjⁿ. dying
without children ("lawful issue", have vested
absolutely in Henry - would not therefore his
leaving children ("lawful issue") have a most
singular effect, if it were to defeat his ^(Henry's) taking
the est. of Benjⁿ. absolutely; and at the same
time make him hold his own "legacy & devise"
upon "condition" - ?

If Benjⁿ die without "issue" Henry holds his
own estate, & Benjⁿ' absolutely - but if Benjⁿ
die with ~~out~~ "issue" Henry can not claim Benjⁿ'
estate at all, & his own loses its' absolute char-
-acter - There is nothing in the will which
could be made to justify such consignation &

The will says "If either of my sons should die without
"lawful issue" I. L. to the surviving brother
& his heirs forever -

Now it is manifest, that
the heir of Benjⁿ Harrison can not claim
the estate of Henry - except they claim this
Benjⁿ; and Benjⁿ can't claim because
he did not survive Henry - ^{If this way not so} It would
be making the heir of Benjⁿ entitled to that,
which he could not claim & was not entitled
to - and that too when there was nothing
in B Harrison's will, which would enable
them (the heirs) to claim in any other way or
manner, than as his claim - namely this their
anxiety - But if the Deffs claim were sustain-
ed, it would in effect be deciding that one
could claim & recover as heir, that, which it would
be admitted, his ancestor could not claim & recover.
And this would involve a legal absurdity -

It is submitted, that in any aspect of the question
the demurrer must be sustained -

Petersburg Aug 2. 1845 -

Respectfully
Thos. J. Glover

10 copies

To

The honorable

Judge Rich^d A Baker

Treas of
Judge Douglass

Norfolk

Libby

Atty of Mass
Council

Southampton July 17th 1845

Dear Sir,

Judge Douglass is going through Norfolk, he will perit, tomorrow, and I avail myself of the opportunity of sending my notes in the case of Morrison and Morrison, which you have under consideration during vacation. notwithstanding the imperfect view they present of a case of great importance to my clients. Most of my books are still in Petersburg and I have been obliged to rely in some degree upon a very frail memory. My principal reliance however, is as is too often the case, upon the information and industry of the Judge to supply the deficiencies of the counsel.

I have kept a copy which I shall show Gibson, when I see him, altho. I understood at the time the papers were placed in your hands he did not contemplate submitting an argument

with uncommon regard
I am very respectfully
Yrs &c

Wm C Parker

+ Here Mr. Robinson's opinion is continued.

My opinion then is, that Henry Harrison
had as much right to sell, or convey the shares
in question as he would have had if he had
bought them with his own money, and I am
consequently of opinion that the children of his father
Benjamin can maintain no claim under the clause of
the will thus referred to. — Wm. Robinson

There is a postscript to Mr. Robinson's opinion by
Mr. B. W. Leigh ^{who} says, "Whether the limitation over
to the 'surviving brother' was good in its
creation or not, Benjamin Harrison or his
representatives can maintain no claim to the
shares in question because he did not name
his brother — B. W. Leigh