

Botts v. Jeannerett et al.

Transcription

(This manuscript was transcribed and edited on FromThePage, November 2025.)

[Page 1]

174

S.W. ~~N-W~~ 2559 Filed 8 June '48

In Chancery - At Mobile N^o 1149.

John Seth Botts, by his next friend Tho^s R. Botts vs. Jeannerett, Crocket, M^cAfee, et al. A.D. 1848 -----
----- con^d June 1848.

Reversed and remanded 14 June 1849 Chilton J

S.W. 2569 Botts ~~v-D~~ v - Jeannerett etal - ----- Reversed & remanded 14th June 1849 minutes p 11
copied not to be reported

[Page 2]

175

Index to Record

- 1 Original Bill - Pages 1.
- 2 Exhibit No 1 - " 6.
- 3 Exhibit No 2 - " 7.
- 4 Exhibit No 3 - " 9.
- 5 Order of Publication - " 12.
- 6 Subpoena and Sheriff's Return - " 12. 13.
- 7 Affidavit of Non-residence - " 13.
- 8 Answer of Charles Bancroft - " 14.
- 9 Answer of Samuel B. Crockett and Wife - " 15.
- 10 Answer of William A. McAfee and Wife - " 19.
- 11 Order of Continuance - " 21.
- 12 Order to Publish Testimony - " 21.

---- Documentary Evidence ----

1. Will of John Instone - " 21.
2. Probate of Will of John Instone - " 23.
3. Will of William Botts - " 23.
4. Probate of Will of William Botts - " 25.
5. Record from Chancery Court of Tennessee - " 26.
- I. Bill - " 26.
- II. Exhibit to the Bill - " 28.
- III. Order of Publication against Andrew Armstrong - " 28.
- IV. Answer of John Bell & Wife - " 29.
- V. Replication of Wm Botts to ansr of Bell & Wife - " 30.

- VI. Decree pro confesso vs: Andrew Armstrong - " 31.
- VII. Final Decree - " 31.
- VIII. Master's Report. - " 32.

----- Complainants' Testimony -----

- 1 Testimony of George S. Botts - " 32
- 2 Do " Edmund Botts - " 38
- 3 Do " John H. Botts - " 43
- 4 Do " Samuel Herman, Senior, - " 47. 48
- 5 Do " Samuel Moss. - " 47. 48
- 6 Exhibit to Interrogatories to Herman & Moss - " 48.
- 7 Testimony of Joseph Woods and John P. Erwin - " 51.
- 8 Do " Dandridge S. Crockett - " 53.
- 9 Do " S. J. Major - " 54
- 10 Do " H. W. Sneed, and John McKee - " 55.
- 11 Deed referred to in interrogatories - being from A. Crockett to J McKee - " 57.
- 11 Division (Marked 2) referred in Interrogatories - " 60

----- Defendants Testimony -----

- I. Deposition of W. P. Loomis - " 63.
- II. Do " Dandridge S. Crockett - " 63.

[Page 3]

176

- III. Deposition of Jacob Swugest - Page 66.
- IV. Do " John McKee - " 68.
- V. Do " Alexander H. Rennick - " 69.

----- Documents referred to in Defts Testimony -----

- 1. Agreement of Mrs Botts Crockett & her husband consent " 71.
- 2. Mortgage from S.B Crockett to Anthony Crockett " 71.
- 3. Bill of Sale from S.B. Crockett & wife to Anthony Crockett" 72.
- 4. Original Agreement - " 74.
- 5. Division with Plat &c - " 75.
- 6. Bond - " 76.
- 7. Relinquishment of Dower - "76.
- 13. Exception to Complainants Testimony - " 79.
- 14. Opinion of the Chancellor - " 79.
- 15. Final Decree - " 80

[Page 4]

178 1.

In Chancery, State of Alabama - At Mobile Parties John Seth Botts, an infant, who sues by his next friend Thomas R. Botts, Complainant. vs. Samuel B. Crockett, and Anna Maria Crocket his wife; W^m A. M^cAfee and

Eliza Ann Eliza M^cAfee his wife, John W. Jeannerett, Administrator of John Instone deceased and Charles Bancroft ~ Defendants.

A transcript of the Record and proceedings had, in the foregoing Stated cause in the Court of Chancery for the first District of the Southern Chancery Division of Said State at Mobile.

original Bill Original Bill To the Honorable, the Chancellor of the Southern Chancery Division of the State of Alabama, sitting in the Mobile Chancery Court. Humbly complaining shews unto your Honor, your orator John Seth Botts, who is an infant under the age of Fourteen years, and resident of the State of Kentucky, and who sues by his next friend Thomas R. Botts, that his the only child and is the sole heir at Law of Jane Isabella Botts and also the sole heir and only child of William Botts her husband who both resided in the State of Kentucky. That said Isabella died in Kentucky intestate in September 1837, that William Botts was her administrator duly appointed by the County Court of Fleming County Kentucky in November 1837, and that said William Botts died in Kentucky in the year 1840. He further charges that said Jane Isabella Botts was formerly Jane Isabella Instone and one of the daughters of John Instone and of Ann Eliazbeth Instone his wife; that said Ann Elizabeth was the daughter of Elizabeth Benners, that said Elizabeth Benners died about the year 1804 or 1805, and said Ann Elizabeth died some time afterwards, and many years ago.

And your orator further charges that previously to the year 1826 there was in the hands of one Thomas Yeatman, formerly of Nashville Tennessee, a large sum of money, which was the property of said Jane and derived from M^{rs} Benners her grand mother, and which was held by said Yeatman in Trust for the sole use of said Jane Instone. Your orator further charges that to secure the said sum of money to said Jane, who was then unmarried, the said Thomas Yeatman an on the first day of February in the year Eighteen hundred and twenty six executed his note for the sum of Three thousand one hundred and thirteen dollars and sixty eight cents, and on the twenty first day of February in the year Eighteen hundred and twenty seven he made an other note for the sum of one Thousand and six dollars and nine cents, both of which bore interest from their date, and were made payable to the order of said Jane I. Instone, and also on the ___ day of ___ executed another note

[Page 5]

179 2

Original Bill note for the sum of Twenty five hundred dollars made payable to the order of said Jane I. Instone; which three notes were delivered at the time of their dates into the case and custody of John Instone, the father and guardian of said Jane, in trust to be kept by him for her sole use and benefit. And your orator further charges that the said John Instone afterwards was in necessitores circumstances, and that to secure him from want, the said Jane I. Instone did consent that he might use so much of the annual interest of said sums as his necessities might require during his lifetime but no more, and to be returned if he was ever able to do so, and never did in any manner dispose of or part with any portion of the principal of said debt nor consent that it should be disposed of by him nor by said Yeatman.

That said Yeatman however at the special request of said Instone, and under the belief that the rights of said Jane would be properly protected by said Instone, did make an agreement with him dated the 10th of November 1829, by which he agreed to lay out a portion of the money due to said Jane, in the purchase of land and slaves, taking the title in his own name, and agreed to give the management of the property to said Instone and all on him out of the annual profits a support for himself during his life; a copy of which agreement is herewith filed as an exhibit N^o 3, and he placed in the hands of said Instone thirteen hundred and eighty dollars, and in the hands of one Allen \$400 more, which were afterwards paid to said Instone, making \$1780. ~ of the funds of said Jane. That afterwards on the 23rd of June 1830, said Instone as the agent of said Yeatman, purchased of General Bertrand Clausel a tract of land in Mobile County, for which he paid out of the said money Fifteen hundred dollars, and took a title in the name of said Yeatman, as will appear by a copy of said Deed herewith annexed as Exhibit N^o1. Which being done the said Yeatman also placed in the possession of said Instone six slaves, named Alfred, Conney, Kitt, Jane, Robinson and Allen, and in consideration of this property said Instone

surrendered to said Yeatman the said note for \$2,500, made by him to said Jane which belonged to said Jane and which he held: Yeatman still however retaining the title in himself, and Instone taking from him an obligation to convey the same when demanded; all which will appear by an agreement made between them, a copy of which is herewith filed, dated the 16th January 1830. but the title, the obligation and the possession were held in trust for the said Jane, subject only to the support of said Instone during his life, and not to exceed the interest of the money due said Jane.

And your orator charges that said Yeatman did pay over to said Instone in his life time, divers further sums of said money, from time to time to be used in the improvement of said land, leaving of said fund only the sum

[Page 6]

180

Original Bill sum of \$___ in the hand of said Yeatman at the time of their respective deaths; the whole of the remainder had been laid out by Yeatman and Instone for said property, or placed in Instone's hands for said purpose and that in fact he expended more than the interest, and without ~~the~~ authority.

And your orator charges that the said John Instone continued in the possession of said property and its proceeds till his death, which occurred in March in the year 1834.

Your orator further charges that after the decease of said John Instone, one Andrew Armstrong produced a certain letter purporting to be written by said John Instone to him and caused the said letter to be admitted to probate in the County Court of Mobile County as the last will and testament of said John Instone and obtained letters testamentary on said Instone's estate, and insisted on the terms of said letter as a will, and as trustee constituted there by, he took into his possession, all said property both real and personal of which said Instone died possessed, declaring that he would execute the trusts as in said will was provided, a copy of which is here with filed as Exhibit No 2 - And your orator charges that on the 24th day of October 1837 the said Armstrong filed a Bill in Chancery in Mobile against the heirs and administrators of Thomas Yetman he being then deceased, for the purpose of obtaining a decree investing him the said Armstrong with the legal title to said property as trustee, so that he might dispose of it, as directed by said John Instone, on which Bill a decree was rendered on the 22nd of May 1840, by the Mobile Chancery Court, divesting the title to said property and all the property which said Instone had in his possession, out of said heirs, widow and administrators of said Thomas Yeatman, and vesting it in said Andrew Armstrong to be disposed of according to the trusts expressed in said will of John Instone. That by this decree said Armstrong was made trustee to pay himself \$1300. ~ and after the payment of this sum, one half of said lands, the slave Jane and boy Kitt were to be held by him for the use of Anna Maria Crockett (who is the wife of Samuel B. Crocket) and one half of the land and the slaves Alfred and Conney for the use of your orators mother, said Jane Isabella Botts: All which proceedings are of Record in this Honorable Court, and your orator prays to refer to the same as often as necessary. But your orator shews, that neither the said Jane nor the said William Botts nor your orator were in any manner parties to said decree, and that he is in no wise bound thereby, nor by the trusts thereby created. And your orator charges that the said Andrew Armstrong held possession of the said land and slaves, and of other property belonging to said farm, cattle, stock, furniture &c. and has received the profits of the same, ever since the death of the said John Instone, up to the time of his

[Page 7]

181 4

Original Bill his said Andrews death which occurred in ___ in the year 18__; that all the said property which said John Instone died possessed of, was purchased with the said money which was solely and exclusively the property of the said Jane the mother of your orator as before stated, and that she never did consent in any manner that it should be disposed of by said John Instone her father, otherwise than that he should be allowed to

use the interest, or so much of the interest as his necessities might require during his life and to be returned to her, if ever he was able to do so.

And your orator further charges that since the decease of said Thomas Yeatman, and of said John Instone, and since the decease of said Jane Isabella Instone, the mother of your orator and wife of William Botts your orators father, said William Botts administrator of said Jane Isabella his wife, recovered from the administrators of said Thomas Yeatman the balance due on said notes, which had been made to said Jane by said Yeatman, and said notes are cancelled. But that the full amount of all the sums which were used by said Yeatman for the purchase of the land; slaves and other property in Mobile County and placed in the possession of said John Instone as aforesaid was allowed to said Yeatman on settlement and deducted out of the amount due by him to said Jane, so that the whole of said property was purchased with her money and the price has been allowed by her said administrator, and she has thus paid for the whole of it.

Further complaining, your orator charges that said Andrew Armstrong, under the letter or will of said Instone and the said decree so by him obtained, did in his life time possess himself of all the said property real and personal, and refused to deliver it up to said Jane your orator's mother, or to said W^m Botts your orator's father and administrator of said Jane, and continued in possession receiving the rents, hires proceeds and profits from the time of the death of said Instone: Which have amounted to a large sum of money, to wit, the sum of \$___ ;

That he sold the stock, furniture utensils &c. and that he claimed to retain for himself the said sum of \$1300, but that in fact nothing was due him; that if any debt had been due him, the said property was not liable to pay any such debt. That said Samuel B. Crockett and Anna his wife who reside in Kentucky claim to be entitled to a portion of said property as being a trust fund, created by said Instone as aforesaid, in right of said Anna, who is also a daughter of said Instone. And further one William A. M^cAfee and his wife Ann Eliza (who is the daughter of said Samuel B. Crockett & wife) also residing in Kentucky, also set up a claim to a portion of said property as accruing to said Ann Eliza under the said trust made to said Armstrong, and the said M^cAfee has assumed to be entitled to the possession of a portion of said property, and has actually sold one of said slaves named Kit for the sum of \$500, which sum is in the

[Page 8]

182 5

Original Bill hands of Daniel Chandler Esqr. his agent, who as his agent has also rented the said land and other property, and received large sums of money as profits, rents &c. amounting to the sum of \$___ all which in equity belong to your orator, and for all which they are properly accountable. And your orator further shews that said Andrew Armstrong did never under any account whatever of the said property of which he claimed to be a trustee, and that since his death Charles Bancroft the Sheriff of Mobile County has been duly appointed administrator of his estate by the County Court, and refuses to render any account. That John W. Jeanerette has been duly appointed administrator of the estate of John Instone, by the County Court of Mobile County. And further he saith that said William Botts who was the administrator of his wife Jane, died in the year ___ and never reduced said property herein described into his possession during his life time, that the estate of said Jane has been fully settled, that there are no creditors or debts due by her estate, and there is now no administrator, and that your orator is entitled to her whole estate and to the whole of said property and its proceeds, and to an account of the same.

And your orator further charges that the said Jeanerette administrator of John Instone, and the said Samuel B. Crockett and Anna Maria his wife, and the said W^m A. M^cAfee and Ann Eliza his wife and said Bancroft administrator of Andrew Armstrong have combined and confederated together, with others to your orator unknown (and whom when discovered he prays may be made defendants to this Bill) for the purpose of oppressing your orator in the premises, under various pretences deny the right and title of your orator to said property, and refuse to account with him, and obstruct your orator in his rights thereto, and claim all said property themselves, whereas in truth and in fact they have not, nor hath either of them ever had any right or

interest in the same; All which is contrary to Equity, and tends to the manifest injury of your orator: In tender consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of the Common Law, and that your orator can only have relief in this Honorable Court; To the end therefore that the said John W. Jeanerette Samuel B. Crockett, Ann Maria his wife, William A M^cAfee and Ann Eliza his wife and Charles Bancroft may be made defendants to this Bill, and that they and each of them may full true and perfect answers make to the charges and allegations in this Bill contained as fully and particularly as if here specially interrogated therto, and particularly that they may set forth and discover what money has come to their hands arising out of said property, and what property they have and which was in the possession of said Instone, and what has been done with all said property; your orator prays that process of subpoena may issue, commanding those who are residents to appear in this Honorable Court within the time prescribed by law, and answer this Bill as required by the rules of this Court, and that publication be made as against those who are nonresidents, requiring them who to appear and answer as required

[Page 9]

183 6

by the rules of the court. And your orator prays that your Honor may decree that all title whatever; to said property above described, be divested out of said defendants and each of them and that the same be decreed to your orator. That an account be taken of all sums received and all liabilities incurred by the defendants and each of them, on account of said property, and that all the profits and proceeds there of accrued since the death of said John Instone be paid over to your orator, and that such other relief be allowed to your orator as his case may in Equity deserve, and in the mean time your orator prays that a Receiver be appointed to collect and manage said property till this suit be determined; and that said defendants be enjoined from disposing of the same or so moving the same out of the jurisdiction of this Court, but that they have the same forthcoming to abide the orders of the Court from time to time to be made in the premises.

And as in duty bound your orators will every pray &c Filed February 17th 1845 M.J. M^cRae Reg. } Stewart & Easton So^{lrs} for Complt.

Exhibit N^o 1 Exhibit N^o 1. To all to whom these presents shall come, Greeting: Know ye, that Bertrand Clausel, Count and Peer of France, for and in consideration of the sum of Fifteen hundred dollars of lawful money of the United States to him in hand will and truly to be paid by Thomas Yeatman of Nashville in the state of Tennessee, through his agent John Instone of the City and County of Mobile in the State of Alabama, before the ensembling and delivery of these presents, the receipt where of is hereby acknowledged, hath bargained sold and quit claimed and by these presents doth bargain sell and quit claim unto the said Thomas Yeatman to his heirs and assigns forever. All that certain tract or parcel of land situate about three miles from the City of Mobile, and fronting on the Bay of Mobile, heretofore known in the said City of Mobile by the name of the "Clausel Plantation" and butted and bounded as follows, to wit, on the North by the Plantation known and called by the name of the "Laurens Mandeville", on the south by the Plantation of Samuel H. Garrow Esqr. on the east by the Bay of Mobile, and on the west by lands belonging to person or persons unknown having a front on the Bay of Mobile of ten acres, and extending back forty acres, containing in the whole four hundred acres, be the same more or less, together with all and singular the priviledges and appurtenances to the same in any wise belonging or appertaining; And also all the right, title, interest, property, claim and demand whatsoever of him

[Page 10]

184 7

the said Bertrand Clausel of in and to the before described tract of land and premises, as well at law as in Equity, in possession as well as in expectancy, and particularly and expecially all the estate, right, title, interest, property, claim and demand whatsoever of every name nature and description which he the said Bertrand Clausel has holds possesses or enjoys of, in and to the before described tract of land and premises, in virtue of a

certain deed of conveyance, made and executed at the said City of Mobile on the 12th day of February in the year of our Lord 1820, by Miguel Eslava of the said City of Mobile then in his life time, but who is now deceased to the said Bertrand Clausel of the before mentioned and described tract of land and premises. It being the express intention of the said Bertrand Clausel to invest the said Thomas Yeatman in all respects with the same estate and title to the before described tract of land and premises, which he the said Bertrand Clausel possesses to the same at the execution of these presents. To have and to hold the same with all the rights which heretofore pertained & which now pertain to the said Clausel in virtue of the said deed of conveyance from the said Eslava, which was excuted by the said Eslava to the said Clausel with full and ample covenants of warranty, unto him the said Thomas Yeatman his heirs and assigns forever.

In witness whereof the said Bertrand Clausel by Joseph Lackanal and Victor Gannard hereunto duly authorized by virtue of the annexed letter of attorney from the said Clausel, hath hereunto set the hand & seal of the said Clausel at the City and County of Mobile this 23rd day of June in the year of our Lord 1831 Bertrand Clausel {seal} By J. Lackanal V. Gannard

Exhibit N^o 2 Exhibit N^o 2. Clausel Place Aug^t 26th 1832 Andrew Armstrong Esqr. My dear friend The contents of this letter will unfold to you the situation of my affairs with W^m Thomas Yeatman which I could not with propriety to myself and him make you acquainted with during my existence. It encloses M^r Yeatman's two notes payable to my daugter Jane and endorsed to me on which there is a balance due as they will shew of, with interest there on from the date of the last payment made on them. It also covers M^r Yeatman's contract and obligation to and with me to convey to my daughter Jane all the land and slaves in my possession at the time of my decease. But it was understood between M^r Yeatman and me that he should make such distribution as I should direct to be made at my decease of whatever money may be due to me by him and of all the negroes

[Page 11]

185 8

Exhibit N^o 2 and all other property in my hands at my decease and also of the land on which I lived, or the proceeds thereof. Now on presenting this my power given to him, I have no doubt of his strictly complying with my wishes as I believe him to be as honest and honorable a man as the world contains.

My first wish and desire is (and that I have expressed to him before in a letter which I wrote to him regarding the disposal of my property at my decease) that he should first pay to you the sum of Thirteen hundred dollars, and next that he should deed to you in trust for my daughter Anna Maria Crockett, one equal half of the land I live on, and the negro boy Kit, and the negro girl Jane; and that he shall deed to you in trust for my daughter Jane Isabella Botts, the other half of the land I live on with the negroes Alfred and his wife Conney and whatever difference may appear to be between the value of the land and negroes deeded to my two daughters that the amount of that difference shall be first taken out of the cash which remains due me by M^r Yeatman, and shall be paid to the one whose half is of the least value till both have equal, and then the remaining money in his hands to be equally divided between them; my desire and intention is that my daughters Anna Maria Crockett and Jane Isabella Botts should enjoy the interest arising on the lands during their lives, and at the death of Anna Maria Crockett that the title to the land should be to her eldest daughter Ann Eliza, but in case of her decease before her mothers then to be her mother's disposal and at the death of Jane Isabell Botts the title to the land to be in her eldest child, but if she dies without issue, then the title to the land to be vested in the surviving children of Anna Maria Crockett. It is also my wish that if either or both of my daughters would prefer to have the land sold and to have the proceeds either placed in the Savings, or other safe stock, that with their desire the Trustee M^r Armstrong can sell the land and invest the proceeds as before mentioned. My household furniture and farming stock to be sold and the proceeds to be placed in the Savings Bank at New Orleans for the benefit of the Mulatto boy Robinson whom I esteem as my own child to remain untouched till he shall be twenty five years old; he is now in his ___ year; and my further wish is that he should be put apprenticed to a House Carpenter until he is twenty years old. I hope my dear friend you will pardon me for trespassing so much on your goodness. May God bless you, farewell my dear friend. Jno. Instone

Exhibit N^o 3 Exhibit N^o 3 Contract and agreement made and entered into this 10th day of November 1829, between Thomas Yeatman of the City of Nashville in the state of Tennessee of the one part and John Instone of the Town of Columbia and state of aforesaid of the other part, Witnesseth, That whereas said Yeatman has empowered M^r Prichard C. Allen of the Town of Tallahassee in the Territory of Florida to enter for him one or two quarter sections of Congress lands in said Territory and has advanced to said Allen the sum of Four hundred dollars to pay for the same, and said Yeatman being desirous to have such land as said Allen my enter for him, improved and cultivated without delay has advanced to said Instone the sum of Thirteen hundred and eighty dollars, to purchase there with as many negroes and other requisites for his said Yeatman's use and account as he said Instone may judge will be most likely to effect a speedy and productive establishment on his said Yeatman's land with all the necessary accommodation, and conveniences for the comfort and support of a family thereon. And the said Yeatman being desirous to ~~said~~ furnish to said Instone an easy and agreeable employment in his latter days by means of which he might have secured to himself and whatever family he might have hereafter a comfortable and respectable maintenance during the remainder of his life, doth hereby contract and agree to and with him said Instone, that he the said Instone shall purchase for his said Yeatman's account under this contract and shall on his arrival in Florida purchase such other things for said Yeatman as his business and interest there may require, and which said Instone can pay for out of the money advanced to him by said Yeatman as aforesaid, and that said Instone shall enter on the land of said Yeatman with his hands, and shall erect thereon such buildings as he may deem necessary, and that he shall then and there take and assume the entire direction and management of said Yeatman's hands, lands and every other interst of his sai Yeatmans arising out of and appertaining to the same and shall continue to direct and manage the same as long as he shall live. And in consideration of the services and attention of said Instone in improving and cultivating said Yeatman's land, and manageing and directing his hands and transacting every other business of and concerning said Yeatman's interest in hands, lands and products thereof, he the said Yeatman agrees that the said Instone shall draw and use out of the proceeds of the labour of his hands or out of the products of his lands, whatever he may deem necessary for the entire support of himself and whatever family he might have during his life; he said Instone only to account when called upon, for any surplus in his hands which can be spared without detriment to the productiviness of the labor of the hands and land of said Yeatman under his direction and said Yeatman authorizes and agrees to let his hands erect a stone house on his lands for the use of said Instone to do any

Exhibit N^o 3 business there in for his own account, or on commission for others, for of any charge for rent; but in no wise does he authorize said Instone to do any other business for him beyond that of using the money as specified in this contract, or the purchase of negroes and other requisites for establishing and improving his said Yeatman lands, hiring out his hands when he saw fit and receiving their hire, selling the products of his land and receiving payment for the same & purchasing with said products, articles necessary for the miantenance of himself and family and for the use of his said Yeatmans hands and plantation, and further said Yeatman agrees to and with said Instone that if he should at any time prefer attending to other business than that of attending to the management of his said Yeatman's hands and lands that he the said Instone is at liberty at all times to do so, on his hiring or employing a suitable person to manage and direct the same in his absence and at his own private cost and expenses, and if it should at any time appear to said Instone to the advantage of said Yeatman to admit of hands to labor on his lands on the shares, he said Yeatman authorizes said Instone to make any arrangement he may think proper in that way. And further said Yeatman contracts and agrees to and with said Instone that in case Richard C. Allen should not procure any lands for him in Florida, that he said Instone is hereby authorized to call upon R. C. Allen and draw from him the sum of four hundred dollars which he advanced to him, and to purchase land therewith for him said Yeatman, either in Florida, Alabama or Tennessee, and for said Instone to

enter upon such land as he may purchase for said Yeatman with the negroes and other things, which he might have purchased for said Yeatman and direct the improvements and cultivation of the land and the labor of the hands, in the same manner and on the same terms and conditions as herein recited in case Richard Allen had procured land for said Yeatman, and lastly, in case no land should be procured or bought for said Yeatman either by R. C. Allen or John Instone, said Yeatman hereby authorizes said Instone to invest every property money &c of his in said Instones hands in negroes for his said Yeatmans account and to put such negroes as he may purchase for him said Yeatman to any labor or business which he said Instone may see fit, and that he said Instone may judge would afford the most profit to said Yeatman & to himself the most agreeable residence and surest maintenance for himself & family during the remainder of his life, he said Instone to be accountable to said Yeatman for any surplus in his hands over & above what may have been expended for the maintenance of said Yeatman such an account. Tho^s Yeatman {seal} Jno. Instone {seal} Jos. Woods John P. Erwin

[Page 14]

188 11

Exhibit N^o. 3 whereas by a written contract bearing date the 10th day of November 1829 between the undersigned Thomas Yeatman of the City of Nashville in the state of Tennessee and the undersigned John Instone late of Columbia and state aforesaid, Richard C. Allen of Tallahassee in the Territory of Florida was authorized by the undersigned Tho^s Yeatman to locate or purchase for the said Yeatman a tract of land in the said Territory of Florida as provided for in said agreement, and to which reference is made for more certainty, and whereas said R. C. Allen having failed to locate or purchase any land in the Territory of Florida in the manner as stated in said contract or agreement, and the said Instone having by authority from me as specified in said agreement and with my consent and approbation contracted in my behalf and for me purchased of Messrs. Lackanal and Gannard of the City of Mobile acting as the attorneys in fact of General Clausel now residing in France, a tract of land lying on Mobile Bay about three miles below the City of Mobile, containing 400 arpents, being ten arpens front on said Bay of Mobile & running back forty arpens, for the price and consideration of Fifteen hundred dollars. Now be it Known, that the undersigned Thomas Yeatman in part consideration of the said Tract of land, and in part consideration of the following slaves (which by me have been put into the possession of the said John Instone) viz. a negro man called Alfred aged about thirty one years, a negro woman called Conney his wife aged about thirty five, a negro boy aged about sixteen called Kit, son of said Conney & a negro girl called Jane daughter of said Alfred & Conney, as also for the hire of two mulatto boys called Robinson & Allen, which have also been been by me the said Yeatman put into the possession of said Instone to be by him retained untill each shall arrive at the age of twenty one years, have received from the said Instone my certain obligation payable to Jane I. Instone or order for the sum of Twenty five hundred dollars, and held by the said John Instone as the former guardian of the said Jane, and for the further consideration of one dollar to be in hand paid by the said John Instone his heirs &c. I the undersigned Thomas Yeatman do hereby bind myself my heirs executors administrators & assigns to convey all my right title and interest of and to all lands, slaves & their increase with all improvements on the land, farming stock & utensils and property of any and every kind of mine in the possession of said Instone whenever demanded by said Instone or his assigns. It is further understood by the parties, that should the contract for the purchase of the land on the Bay of Mobile from the attorneys of Clausel from any cause not be carried into effect, that then the same obligation on the part of the undersigned Yeatman shall apply to any other lands which said Instone shall decide to purchase for the said Yeatman. It is also understood that all the stipulations

[Page 15]

189 12

contained in the agreement aforesaid of the 10th of Novr. 1829 in favor of the said Instone shall be considered as included in the present, as also all stipulations therein contained in behalf of said Yeatman.

In witness whereof we have hereunto set our hands and Seals at New Orleans the 16th day of January 1830.
Tho^s. Yeatman { } Jno. Instone { } Test Sam^l Herman Moss

Order of Publication Order of Publication At Rules, Registers office of the Court of Chancery for the First District of the Southern Chancery Division of the State of Alabama, at Mobile, on Monday the 17th day of February AD 1845 the same being a regular Rule day of said Court the following order was made & entered in this cause by the Register to wit:

John Seth Botts, an infant, who sues by his next friend Thomas R. Botts Complainant. 1149 vs Samuel B. Crockett and Anna Maria Crockett his wife; William A. M^cAfee and Ann Eliza M^cAfee, his wife, and Charles Bancroft, Defendants

The complainant comes by his Solicitors and applies for an order of publication, and it appearing to the satisfaction of the Register, from an affidavit on file, that the defendants, Samuel B. Crockett and Anna Maria his wife, and William A. M^cAfee, and Ann Eliza his wife, are of mature age, and reside without the limits of the State of Alabama, to wit, in the State of Kentucky; that the place of residence of the said Samuel B. and wife is not known, but that said William A. and wife reside in Harrodsburg in said state; the said nonresident defendants are ordered to appear and answer or demur to the bill of complaint on file, within sixty days from the date of this order, or the same will be taken as confessed against them. And it is further ordered, that this order be published once a week for four weeks in the Herald and Tribune, a newspaper printed and published in the City of Mobile, and that a copy thereof be sent to the said William A. M^cAfee and his wife Ann Eliza, and that a copy be posted at the door of the Court House of Mobile County - all within fifteen days from the date of this order. Attest: M J M^cRae Register

Subpoena Subpoena The State of Alabama Mobile County } In Chancery - First District Southern Division To
John W. Jeanerette administrator of John Instone

[Page 16]

190 13

deceased, Charles Bancroft, Samuel B. Crockett and Anna Maria his wife, William A. M^cAfee and Ann Eliza his wife, Greeting:

We command you, That within thirty days from the service of this writ of Subpoena upon you, you file your answer or demurrer, to a bill of complaint filed in our Chancery Court, for the First District of the Southern Chancery Division against you defendants by John Seth Botts by his next friend Thomas R. Botts complainant - a copy of which bill of complaint, will be furnished you by the Sheriff of the County where you reside, or may be found, and that you appear before the honorable the said Court of Chancery, to be holden at the Court house of the County of Moible, on the First Monday of April A.D. 1845 and that you do further and observe what said Court shall direct in this behalf, under the pains and penalties prescribed by law, and in such case made and provided. Witness M.J. M^cRae, Register of said Court, and Seal thereof, at office, this fourth day of March A.D. 1845 Attest M. J. M^cRae Register 1st D. S. D.

To any Sheriff of said State - Greeting: We command you, that you execute this process agreeable to law, and have the same with your return thereon, at our next Chancery Court to be held as aforesaid Witness my hand and the seal of said Court this fourth day of March A.D. 1845 Attest: M.J. M^cRae Register

Sheriff's Return Sheriff's Return Rec^d. 4th March 1845 and on the 5th day of March 1845 I served a copy of the within subpoena and a copy of the original as furnished by the Register on John W. Jeanerette - only. Charles Bancroft Shff. M.C. By M J D Baldwin Dept. Shff.

Affidavit of Non-Residents Affidavit of Non-residence John Seth Botts vs John W. Jeanerette Et al } In Chancery Personally appeared before me Malcom J. M^cRae Register in Chancery, William C. Easton who being duly sworn sath that Samuel B. Crockett and Anna Maria his wife, William A. M^cAfee and Ann Eliza his wife

are non residents of the State of Alabama, and reside as this affiant is informed and believes in the State of Kentucky - that said M^cAfee & wife reside as this affiant is informed in Harrodsburg in said State, and that all said defendants are of full age. W.C. Easton Subscribed and sworn to before me this 20th Feby. 1845. M. J. M^cRae Reg }

[Page 17]

191 14

Answer of C. Bancroft Answer of Charles Bancroft To the Honorable Anderson Crenshaw Chancellor of the Southern Chancery Division of Alabama.

The answer of Charles Bancroft of Mobile County administrator of the estate of Andrew Armstrong late of said County deceased, to the Bill of Complaint of John Seth Botts by his next friend Thomas R. Botts vs. John W. Jeanette administrator of John Instone dec^d Samuel B. Crockett & Anna Maria his wife and William A. M^cAfee & Ann Eliza his wife and said Charles Bancroft Sheriff of Mobile County and ex officio administrator of Andrew Armstrong late of said County deceased.

This defendant now and at all times hereafter reserving to himself all right of exception to the manifold errors, omissions, imperfections in the said complainants Bill of Complaint contained, for answer thereto or to so much thereof as he is advised it is necessary for him to make answer unto - answering says that the said Andrew Armstrong died sometime in the month of ___ as this respondent is informed intestate - that this respondent never sought to obtain letters of administration upon his estate, but that at the instance of the Solicitors of the complainant (the defendant then being sheriff of Mobile County) he was appointed by the Honorable the Judge of the County Court of s^d County, administrator of the estate of said Armstrong on the 28th Decr. 1844. That since he was appointed he has made enquiry as to the effects of which he died possessed, or which he owned at the time of his death, & has been informed that he died possessed of no estate whatever, & that he was not entitled to any estate at the time of his death, which he had not reduced to possession.

That true it is that no effects of any kind or description whatsoever, have ever come to the hands of this defendant to be administered. That owing to the length of time which elapsed between the death of the said Armstrong, and the time when the Judge of the County Court appointed him administrator as aforesaid - if s^d Armstrong had any personal property at time of his death it is not possible that it can be recovered at this distant day - And further answering, this defendant says that he does not know whether said Andrew Armstrong ever rendered any account of the property which he is alledged to have held in Trust for the said complainant or not - nor does he know whether said Armstrong ever had or held any such property in his possession or not - that none such has ever come to the knowledge or possession of this defendant - And that he this defendant has never been called upon to give any account of said estate of said Armstrong, or of property which is alledged to have been in his possession - and that he has never refused to render an account as charged

[Page 18]

192 15

in said Bill of complaint.

This defendant further answering denies all confederacy & combination with the other defendants named in the said Bill of complaint, or with any other person or persons whomsoever. And further answering this defendant says that he has no knowledge of the other matters in this Bill of complaint alledged & set forth, save and except such only as he has herein stated & made answer unto - and having answered all things within knowledge concerning the matter in said Bill of complaint alledged according to the best of his knowledge and belief he prays that he may be hence discharged with his reasonable cost &c &c. Chamberlain & Rapier Sol^s. for Deft.

State of Alabama County of Mobile } Personally came and appeared before me Josiah Wilkins a Justice of the peace in & for the county aforesaid Charles Bancroft who made oath that the matters and things set forth in the foregoing answer are true in substance & in fact. Cha^s Bancroft Sworn to & subscribed this 10th April 1845. J. Wilkins J.P. } Filed Apl. 10th 1845 M. J. M^cRae Reg.

Answer of Crockett & wife Answer of Samuel B. Crockett & wife The answer of Samuel B. Crockett and Anna Maria Crockett his wife, late Anna Maria Instone, to a bill in Chancery filed in the Southern Chancery Division of the State of Alabama, sitting at Mobile by John Seth Botts, an infant under the age of fourteen years, suing by his next friend Thomas R. Botts.

These defendants saving and reserving to themselves, all right of excepting to the many errors and false Statements in said Bill contained, for answer thereto, or to so much thereof as they are advised are material to be answered by them, answer and say: That the said Ana Maria is a daughter of John Instone and Ann Elizabeth his wife who was a daughter of Elizabeth Benners - That said Elizabeth Benners departed this life in the Town of Frankfort, State of Kentucky, about the year 1804 - That said Ann Elizabeth Instone died near said Town in the County of Franklin about the third day of August in the year 1815; and these Respondents were married in the said County the 21st of May in the year 1816. The said John Instone and his wife Ann Elizabeth had four children, namely, Eliza Caroline, your Respondent, Anna Maria, John L. and Jane Isabella. The said Eliza Caroline intermarried with Dr. John N. Talbot of Louisville about the year 1817 or thereabouts, and died about the year 18__ without issue. The said John L. Instone died about the year 1821 or 1822 at Vermilion Bridge in the

[Page 19]

193 16

State of Louisiana unmarried and childless. The said Jane Isabella intermarried with one William Botts about the year 1828 and died in the year 1837, leaving the said John Seth Botts her only child. The said William Botts survived his said wife until the year 1840 when he died in the Town of Flemingsburgh County of Fleming, Kentucky. These defendants have been informed that said William Botts took out letters of administration on the estate of his said wife in the county of Fleming, but of this they have no personal knowledge. They are advised to say, that the Record of proceedings of the Fleming County Court - if any such exists - is the only legal and competent evidence of the fact.

These defendants further answering say, that as respects the moneys which was in the hands of the late Thomas Yeatman and the estate left by the said John Instone they will give what they understand, have been informed and verily believe to be the true state of facts. They are as follows: Mrs. Elizabeth Benners the mother of your Respondent Anna Elizabeth was entitled to a legacy from the estate of D^r Peter Remandet of Bristol England and Mrs Ann Elizabeth Instone was entitled to a legacy from the estate of one George Aitkin dec^d a citizen of Saint Croix in the West Indies. The money to which Mrs. Benners was entitled came into the possession of a Mr. Edgar of the City of New York and from him it was transferred to John Jacob Astor of the same City. The money coming from the estate of Aitkin was remitted from Saint Croix to Mr. James Yard of the City of Philadelphia, from whom it was drawn on the draft of John Instone and your Respondent Samuel B. Crockett; and the proceeds paid to Mr. Instone. The money in the hands of Astor was paid by him to the late Thomas Yeatman, then of Nashville to the use of the said John Instone. What disposition the said John Instone made of the money thus received, these defendants have no personal knowledge. They have understood that said Yeatman executed notes payable to his daughter Jane Isabella Instone and she by her endorsement transferred the same to her father the said John Instone. Whether Mr. Instone appropriated any portion of these funds to the purchase of real estate and improving the same and buying of slaves, these Respondents have no personal knowledge. They have been informed, verily believe and so charge the facts to be, that after the death of said Jane Isabella Botts, the said William Botts, as the administrator on her estate, instituted a suit in the Federal Court at Nashville Tennessee against the Representatives of said Thomas Yeatman - he having departed this life

- and recovered a large sum of money, upwards of Four thousand dollars, and the same was received by one Seth Botts as the administrator of the said Willaim Botts (he having also died) -

Respondents further answering say, they have been informed that the said John Instone before his death made and published his last will and testament, which after that event - which occurred in the year 1834 as they have been informed - the same was

[Page 20]

194 17

Answer of Crockett & wife presented to the proper Court of the County of Mobile State of Alabama, and upon being proved was duly admitted to Record as the last will and Testament of said John Instone dec^d - That the proceedings of said Court are in full force and unreversed. That by said will, the Testator divided his estate to your Respondent Anna Maria (upon certain conditions there in mentioned) and to her sister Jane Isabella Botts, the mother of the complainant. To an official copy of said last will and Testament and the orders of the Court admitting it to Record, reference is here made, and are prayed to be considered parts of this answer. These Respondents further answering say, that by the last will and testament of Elizabeth Benners dec^d which was duly admitted to Record in the County Court of Franklin County - that county being her residence at the time of her death and the proper Court for its probate - She devised her estate to her daughter Anna Elizabeth Instone during life, with remainder to her children - and that the legacy due to her from the estate of D^r Remandet was a part of her estate and which passed by the will of said Elizabeth Benners - It may be true that Thomas Yeatman executed the three several notes of \$3130.⁶⁸ \$1006.⁰⁹ and \$2500 - as charged in the Bill, but that they were delivered to John Instone in Trust for the use of J. Isabella his daughter, they utterly deny - Of the agreement alledged to have been made between Jane Isabella Instone and her father, by which he was to pay out a portion of the money in the hands of Yeatman, take a title in his own name and to have a support during life out of the profits, these Respondents have no personal knowledge and require full proof thereof. Whether the land and slaves which Instone possessed at his death in Alabama were purchased with a portion of the funds which had been placed in the hands of Yeatman these Respondents are entirely ignorant.

Of the particulars of the purchase of the Clausel place, the amount paid for it and the source whence those means came, your Respondents are ignorant - They are equally ignorant of the manner Mr. Instone became possessed of the slaves or the manner and means of payment. As regards the allegation of the bill that Armstrong commenced and prosecuted a suit against Yeatmans representatives in Mobile Chancery Court they know nothing.

They are advised that the Record is the best evidence of the fact, if it exists. These defendants deny that all the lands slaves & other property of which John Instone was possessed at his death were purchased with the money and effects of the said Jane Isabella - On the contrary, they alledge that every allegation in the bill, that the money in the hands of Yeatman and the estate in the possession of John Instone, were held in trust for the exclusive use and benefit of the said Jane Isabella, is gratuitous and wholly unfounded in fact. It was well Known by the said J. Isabella in her life time and by her husband before and after her death, that the whole estate, whether in the hands of Yeatman or in the possession of Instone, was in fact and in truth, the property and money of the said John Instone. For these Respondents alledge and

[Page 21]

195 18

Answer of Crockett & wife and charge, that after the death of the said Instone the said William & Jane Isabella Botts and these respondents, each with full Knowledge of all the facts and circumstances and contents of the said will, entered into and signed a writing by which it was agreed, that the estate of said Instone should be divided in strict accordance with said last will and testament of John Instone dec^d - A copy of which agreement

is here with filed as a part of this answer, the original being filed in a suit in Chancery in the Circuit Court of Fleming County Kentucky instituted by Respondents to recover their portion of the money collected by the administrator of William Botts dec^d from the Representatives of Thomas Yeatman dec^d as here in stated. And these Respondents feel confident that if either the father or mother of the complainant were now living, no attempt, such as is now making, would be made to defraud these Respondents out of their just rights. The cherished wish and desire of the said John Instone, as these Respondents feel well assured, was to divide whatever estate of which he might die possessed between your Respondents Anna Maria and her sister Jane Isabella in equal portions. And this was well Known to the said Jane Isabella and her husband William Botts.

These Respondents deny every material and important allegation in said bill inconsistent with the statements here in contained and require full proof thereof, and now having answered said bill they pray that the same may be dismissed and these Respondents allowed their reasonable costs in this behalf most unjustly expended. They pray that no decree may be made in this or in any other suit by which the provisions of the last will and testatment of said John Instone dec^d will be perverted or changed in any respect. S. B. Crockett Anna M. Crockett

Commonwealth of Kentucky, County of Franklin Set. Personally appeared before the subscriber, a Justice of the Peace in and for the County of Franklin aforesaid, and one of the Judges of the County Court of said County which is a Court of Record, Samuel B. Crockett and Anna Maria Crockett his wife, both of whom are personally known to me, and severally made oath, that the facts stated in the foregoing answer, so far as made from their own knowledge are true, and so far as made from the information of others they believe to be true. Given under my hand and private seal, this 25th day of March in the year 1845. James Shannon {seal}

State of Kentucky - Executive Department. Frankfort, March 25, 1845 I William Owsley, Governor the Commonwealth of Kentucky do here by certify that James Shannon whose name is signed to the within and foregoing certificate was at the time of the writing thereof, and now is a Justice of the Peace in and for the County

[Page 22]

196 19

of Franklin in this State, duly commissioned, qualified and acting as such, and by virtue of his said office, fully authorized to take acknowledgements, administer oaths &c. and to grant evidence thereof; that his certificate is in due form of Law, and full faith and credit, use, and of right ought to be reposed in all his official acts, as well out of, as in Courts of Justice.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Commonwealth to be hereunto affixed. Done at Frankfort, this 25th day of March 1845 and in the 53rd year of the Commonwealth. W^m Owsley
By the Governor Ben Hardin Secretary Filed 14th April 1845 M.J. M^cRae Reg.

Answer of M^cAfee & wife Answer of William A. M^cAfee & Wife State of Kentucky Mercer County } The separate answer of William A. M^cAfee and Ann Eliza (C) M^cAfee his wife to a Bill in Chancery exhibited against them & others in the Southern Chancery Division of the State of Alabama in the Mobile Chancery Court. - These defendants reserving and saving all manner of exception to the many errors, and false statements in the complainants Bill contained &c. For answer thereto or so much thereof as is material for them to answer unto, answer and says, That their interest in and to the land near the city of Mobile is residuary and contingent as provided for in the last will & testament of their deceased Grandfather John Instone who purchased said tract of land for the benefit of his two only surviving daughters Ann Maria Crockett & Jane Isabella Botts and willed the same to them by his last will & testament bearing date on the 26th day of August 1832 and which has been duly admitted to record in the proper Court in the City of Mobile a copy of which is herewith exhibited and made a part of this their answer, which said will was ratified by the sd. Jane Isabella Botts & her husband and the said Ann Maria & her husband in the life time of the said Jane I. Botts by an agreement drawn by sd. Botts & his attorney bearing date the 30th day of September 1834 which is herewith exhibited and made a part of this

their answer, which clearly prove that the said tract of land near Mobile, referred to in Complainants Bill is the property of s^d Ann Maria Crockett, and the legal heirs of the said Jane Isabella Botts in equal proportions.

These defendants deny most positively & explicitly that said tract of land was purchased with the money of the said Jane Isabella, as all moneys received by s^d John Instone on account of his wife was equally the property of s^d Instone's children, as appears by the last will and testament of Mrs. Elizabeth Benners, bearing date the ___ day of 18__ which is herewith exhibited and made a part of this their

[Page 23]

197 20

answer, and they therefore require full proof of every allegation in the complainants Bill contained, as these defendants believe them to be totally untrue. These defendants further state that Mrs. Instone by her husband John Instone had two other children living at her decease viz. Eliza Talbot & John Instone Jun^r who were equally entitled to part of the money collected of Astor and others, these children died without heirs of their body, and their father John Instone claimed their share which was one half. The whole of this money was retained by the s^d John Instone their ancestor and laid out for the benefit of his two only surviving daughters, and these facts can be fully established.

These defendants were always willing to see a fair and legal division of s^d land which was purchased equally with the money of s^d Ann Maria Crockett and having this answered the Complainants Bill they pray that said land may be sold on a reasonable credit or divided in such way as the honorable Court may direct so as to do equal Justice to all concerned, and they also pray that they may be dismissed with their legal costs - W^m A. M^cAfee Anna Eliza M^cAfee

State of Kentucky Mercer County } This day personally appeared before me a Justice of the Peace in and for s^d County duly authorized to administer oaths, William A. M^cAfee and Ann Eliza M^cAfee his wife and made oath to the truth of the statements in the foregoing answer so far as within their own knowledge, and what they state as coming from others they believe to be true.

Given under my hand this 11th day of July 1845. P.R. Dunn J.P.M.C.

State of Kentucky Mercer County } I Thomas Allen Clerk of the Court for the county afr^d do certify that P. R. Dunn Esqr. whose name is subscribed to the foregoing certificate is an acting Justice of the peace in and for the county afr^d duly commissioned and qualified and as such full faith and credit is and ought to be given to all his official acts as such.

In testimony whereof I have here unto set my hand & seal of office this 12th day of July 1845 Tho. Allen

State of Kentucky Mercer County } I Elias Tompkins presiding Justice of the Mercer County Court do certify that Thomas Allen whose name is subscribed to the foregoing certificate is Clerk of the Court for the county afr^d and that his said certificate is in due form of law.

Given under my hand this 12th day of July 1845 Elias Tompkins J.P. M.C.

Filed 3rd Nov/45 M.J. M^cRae Reg.

[Page 24]

198 21

Continuance Continuance At a Special Term of the Chancery Court for the First District of the Southern Chancery Division of the State of Alabama, begun and held at Mobile on the First Monday of December A.D.

1845 on the 9th day of December 1845 the same being a day of said Term the following entry was made in this cause to wit: by order of his Honor Anderson Crenshaw Chancellor.

John Seth Bott by &c Complt vs John W. Jeanerette et al Defts } This cause is continued

Continuance Continuance At a Term of the Chancery Court aforesaid began & held at Mobile on the First Monday of April A.D. 1846 & on the 6th day of April 1846 the same being a day of said Term - the Honorable Anderson Crenshaw Chancellor presiding the following entry was made in this cause to wit:

John Seth Botts by &c Complt vs Jeanerette Crockett Et al Defts } This cause is continued on motion of defendants.

Order to publish Testimony Order to publish Testimony At a Term of the Chancery Court aforesaid begun & held at Mobile on the 2nd Monday of December A.D. 1846 & on the 14th day of December 1846 the same being a day of said Term the following order was made in this cause - the Honorable Anderson Crenshaw Chancellor presiding -

John Seth Botts by &c Complt. vs Jeanerette Crockett et al Defts } In this cause by consent it is ordered that the testimony on file be published -

Documentary Testimony Documentary Testimony Will of Instone Clausell place Augt. 26th 1832

Will of Instone Andrew Armstrong Esquire My dear friend The contents of this letter will unfold to you the situation of my affairs with Mr. Thomas Yeatman which I could not with propriety to myself & him make you acquainted with during my existence. It encloses Mr. Yeatman's two notes payable to my daughter Jane & endorsed to me on which there is a balance due as they will shew of ____ with interest thereon from the date of the last payment made on them - It also covers Mr. Yeatman's contract & obligation to & with me to convey to my daughter Jane all the land & slaves in my possession at the time of my decease - But it was understood between

[Page 25]

199 22

Instone's Will Mr. Yeatman & me that he should make such distribution as I should direct to be made at my decease of whatever money may be due to me by him and of all negroes and all other property in my hands at my decease and also of the land on which I lived or the proceeds thereof. Now on presenting this my power given you to him I have no doubt of his strictly complying with my wishes as I believe him to be as honest & honorable a man as the world contains - My first wish & desire is (& that I have expressed to him before in a letter which I wrote to him regarding the disposal of my property at my decease) that he should first pay to you the sum of Thirteen hundred dollars - and next that he should deed to you in Trust for my daughter Anna Maria Crockett one equal half of the land I live on & the negro boy Kit & the negro girl Jane & that he shall deed to you in Trust for my daughter Jane Isabella Botts the other half of the land I live on with the negroes Alfred & his wife Conney and whatever difference may appear to be between the value of the land & negroes deeded to my two daughters, that the amount of that difference shall be first taken out of the cash which remains due me by Mr. Yeatman and shall be paid to the one whose half is of the least value, till both have equal value & then the remaining money in his hands to be equally divided between them - My desire & intention is that my daughter Anna Maria Crockett & Jane Isabella Botts should enjoy the interest arising on the lands during their lives and at the death of Anna Maria Crockett that the title to the land should be in her eldest daughter Anna Eliza but in case of her decease before her mother, then to be at her mother's disposal & at the death of Jane Isabella Botts the title to the land to be in her eldest child, but if she dies without issue then the title to the land to be vested in the surviving children of Anna Maria Crockett.

It is also my wish that if either or both of my daughters would prefer to have the land sold & to have the proceeds either placed in the Savings Bank or vested in Bank or other safe stock so as they could have the

interest thereof, that with their desire the Trustee Mr. Armstrong can sell the same & invest the proceeds as before mentioned - My household furniture & farming stock to be sold the proceeds to be placed in the savings Bank at New Orleans for the benefit of the Mulatto boy Robinson whom I esteem as my own child to remain untouched until he shall be twenty five years old he is now in his __ year, & my further wish is that he should be put apprentice to a house carpenter until he is twenty years old - I hope my dear friend you will pardon me for trespassing so much on your goodness - May God Bless you. Farewell my dear friend Jno. Instone

Certificate of the Clerk The State of Alabama Mobile County } I Drury Thompson clerk of the County Court of said County testify that

[Page 26]

200 23

the foregoing is a transcript of the original will of John Instone as upon file in my office. Given under my hand & seal of office this First day of December A.D. 1841 D. Thompson Clerk

Probate of Will The State of Alabama Mobile County } Be it remembered that at an Orphans Court begun & held for the County aforesaid at the Court House in the City of Mobile on the third day of May eighteen hundred and thirty six the following order was made to wit: May 3 1836. Andrew Armstrong this day produces the will of John Instone dec^d and proves the same - whereupon it is ordered that the same be admitted to probate as a testamentary disposition of personal estate, and on motion of said Armstrong it is ordered that letters testamentary issue thereon to him on his giving bond in the sum of Ten Thousand dollars and the Court accepts as his securities William Jones Jr. and George S. Gaines.

The State of Alabama Mobile County } I Drury Thompson Clerk of the County Court of Mobile County aforesaid do hereby certify that the foregoing is a true and correct transcript of the order of the Honorable the Orphans Court of said County admitting to probate the will of John Instone deceased and granting letters testamentary on said estate to Andrew Armstrong as the same remains of record on the minutes of said Court on file in my office. In Testimony whereof I have hereto affixed my name and the seal of my office at office this the 6th day of April 1846. Attest: D. Thompson Clerk

Will of William Botts William Botts Will I William Botts of Fleming County in the State of Kentucky do certify this second day of October in the year Eighteen hundred and thirty five make and declare this as my last will and Testament. I direct that the property being the Tanyard property I purchased of Cornelius Drake lying in Mason County Kentucky which was conveyed to me by Deed from said Drake bearing date 31st day of October 1834 be sold on such credit as my Executor here in after named shall think most advisable: And I also direct that the Houses and Lots in which I now reside in Flemingsburg be sold by my executor on such credit or credits either with or without interest, as my Executor shall think most advisable. And that the said Tanyard property and said Houses and Lots be sold in such time after my death as may be thought most suitable by my executor. And whereas sometime in the last winter, I sold to my brother George W. Botts a tract of land in Wilcox County in the State of Alabama containing

[Page 27]

201 24

W^m Bott's Will containing three hundred and twenty acres for the price of sixteen hundred dollars and there yet remains due to me of the said purchase money Twelve hundred and ninety six dollars, for which I hold my said brother's note, and as I gave to him no bond or obligation for the conveying of said land. Now I direct that when he shall have paid to my executor the said balance of the purchase money my executor shall convey the said three hundred and Twenty acres of land to him by deed of general warranty. And whereas, I also sold the House & Lot of ground now occupied by Elisha Hurt as a Coffee house in Flemingsburg, to Peter Anderson, now I direct that when the last payment of the purchase money for the same shall be paid my executor convey the

same to said Peter Anderson according to the tenor of my bond to said Anderson. And I further direct that when the money for all of said property shall be secured by my executor he shall invest it in the purchase of Real Estate some place in the state of Kentucky - I also direct that all my out lots in and adjoining the Town of Flemingsburg be sold - and my negro girl slave named Rachael I also direct to be sold, and the proceeds of the sales of said out lots, and said negro girl, I also direct to be laid out in the purchase of real estate in Kentucky. The said purchase of real estate to be made by my executor according to his best Judgment, and discretion. And the title to such real property as my executor may purchase with the proceeds of the sales of said property, and the money due me for the land in Alabama and the aforesaid Coffee House in Flemingsburg, I direct to be made to my daughter Emma Virginia for her life and the remainder to her heirs. And I direct that all money that may be on hand at my decease and all monies that may then be due me shall be actively employed by my executor so as to produce the best revenue, which in his judgment it may be capable. And lastly I hereby appoint my father Seth Botts my sole executor of this my last will and testament, and I direct that no security of any kind shall be required of him. And as my father may not live to execute fully this my will, - now in the event of his dying or becoming incapable to execute this will before the same shall be executed, I hereby appoint my brothers John, Edmund and Thomas Botts Joint executors of this my last will and testament. And in the event of their becoming executors it is my desire that they give security according to law. In witness whereof I have here unto set my hand and seal the day and year aforesaid William Botts {seal} Signed Sealed and acknowledged to be the last will and testament of said Testator in presence of us } A.G. Burgess John A. Cavan }

[Page 28]

202 25

Probate of Botts' Will Probate of William Bott's Will At a Court held for Fleming County on the 23rd day of November 1840. This writing purporting to be the last will and testament of William Botts dec^d was produced in Court, and proved by the oath of John A. Cavan a subscribing witness thereto, who also proved the attestation of A.G. Burgess another subscribing witness thereto to be the will of said Will. Botts and ordered to be recorded which is duly done. Att: W. T. Dudley Clk

Fleming County Sct. December Term 1842 - John H. Botts, Edmund Botts and Thomas R. Botts, three of the executors named in the will of William Botts dec^d this day came into Court, and took the oath of executors, and entered into bond in the penalty of \$25000 with John T. Walker, H. J. Darnall and Leaken D. Stockton sen^r their securities and probate of said will was granted them in due form of law - Seth Botts sen^r having departed this life.

Fleming County Sct December Term 1842 - Ordered that Thoms R. Botts be appointed Guardian to John S. Botts, Infant Orphan of William Botts dec^d on his entering into bond in the penalty of \$25000 - with John H. Botts, Edmund Botts and Augustus H. Botts his securities which was done -

Certificate of Clerk Certificate of Clerk The State of Kentucky - Fleming County Sct. I William T. Dudley, Clerk of the Court for the County aforesaid certify that the foregoing five pages contain a true copy of the last will and testament of William Botts dec^d and the order qualifying John H. Botts, Edmund Botts and Thomas R. Botts Executors and granting to them probate of said will and also of the order appointing Thomas R. Botts Guardian to John S. Botts infant &c of said William Botts dec^d.

In testimony whereof I have here unto set my hand and affixed the seal of the Fleming County Court at Flemingsburg this 22nd day of December 1843 W. T. Dudley C.F. C.C.

State of Kentucky, Fleming County Sct. I William W. Blair presiding Justice of the Court for the County aforesaid, certify that William T. Dudley whose name appears to the foregoing official certificate is clerk of the Fleming County Court duly elected and qualified as such, and that his said certificate is in due form of law. Given under my hand this 22nd day of December 1843 W^m W. Blair P. J. F.C.C.

[Page 29]

Chancery Court Records Franklin Tennessee Records of the Chancery Court of Franklin Tennessee State of Tennessee S.S. At a Court of Chancery begun and held at the Court House in the Town of Franklin on the 4th Monday being the 28th day of October A.D. 1839 for the District composed of the Counties of Williamson & Davidson. Present the Honorable Louisford M. Bramlitt Chancellor of the Middle Division of said State.

Bill William Botts Adm^r &c Compl^t vs John Bell & others Defts Be it remembered that on the 4th day of January A.D. 1838 a Bill of Complaint was filed in this Honorable Court which is in the words and figures following to wit: To the Honorable the Court of Chancery to be held at Franklin State of Tennessee. Your orator William Botts of the State of Kentucky and administrator of the goods, chattels, rights and credits of Jane I. Botts dec^d late of Kentucky would respectfully state that in February 1828 he married the said Jane I. Botts, who at the time was Jane I. Instone daughter of the late John Instone and that he continued the husband of the said Jane until her death which occurred in the month of September 1837, and that since her death he has obtained from the County Court of Fleming County, State of Kentucky letters of administration on the Estate - the said Jane and your orator both being residents of the county at the time of her death.

Your orator would further state that prior to his marriage to the said Jane she was entitled to a large sum of money held for her use and benefit by a certain John Jacob Astor of the the City of New York but which had been paid by him to a certain Thomas Yeatman of the state of Tennessee to be held by the said Yeatman in like manner for the use and benefit of the said Jane. That whilst the money was so held by the said Yeatman and before the marriage of the said Jane to your orator, to wit, on the first of February 1826, the said Yeatman executed his note for part of the money so held by him to the said Jane, and afterwards in like manner executed another note for a further part of the money so held by him. The latter note was executed the 21st February 1827 and was for one thousand and six dollars and nine cents, and the former note was for Three thousand one hundred and thirteen dollars and sixty eight cents, and both notes carried interest from their dates. Your orator would further state that at the time of executing the notes aforesaid the said John Instone father of the said Jane was in laboring circumstances and to afford him some assistance in his embarrassed condition the said Jane consented that the interest accruing upon the notes might from time to time be paid by the said Yeatman to him, and after the marriage of the said Jane to your orator, he in like manner consented for the interest to be paid to the said John Instone. But your orator is informed and so charges the fact that the said Jane never either before or after her marriage

[Page 30]

consented for the said John Instone her father to receive any part of the principal due as aforesaid to her, and that neither said Jane nor any one else authorized by her ever assigned either of said notes to the said John Instone or any other person. That when executed the notes were as your orator is informed placed in the hands of the said John to be held by him not for himself, but as the natural guardian of his daughter and to be kept for her use and benefit and that said notes were in fact so kept by the said John until the time of his death which happened in the month of March 1834 in the State of Alabama and city of Mobile. Your orator would further state that said Yeatman did from time to time pay the said John in his life time various sums of money exceeding in the whole as your orator is informed the interest which had accrued on the notes, but after crediting all payments so made there remained due to the said Jane and your orator as her husband on the first of July 1831 Two thousand, Eight hundred and Eighty dollars and eighty cents, no part of which has ever been paid by said Yeatman or his Representatives.

That the said Yeatman has departed this life intestate leaving Jane Yeatman his widow to whom administration of his estate was afterwards granted by the legally constituted authority and that she has since intermarried with John Bell of Nashville both of whom are made defendants hereto. - Your orator would further state, that the said Thomas Yeatman left at his death ample estate both real and personal which has come to the hands of his

administratrix and heirs to pay all demands against him - But now so it is may it please your Honor the said administrators have not paid the demands aforesaid which was so due and owing to the late wife of your orator, although they will know it is justly payable to your orator as her administrator, and they pretend that your orator has not competent authority to receive the payment and give them a legal acquittance for the same, because they alledge that the notes which were executed by the said Thomas Yeatman deceased to the late Jane I. Botts are not in the possession of your orator, but in the possession of a certain Andrew Armstrong of the State of Alabama who claims the same as Executor of the last will of the said John Instone dec^d Whereas in truth and fact the said Armstrong, though he has caused a writing alledged by him to be the last will of the said Instone to be proved before the Court of Probate in Alabama and has take upon him the execution of that will by qualifying as Executor, yet he has no interest whatever as Executor or otherwise in said notes, and will know that the notes rightfully belonged to the said Jane in her lifetime and should be paid to your orator as her administrator, but the said Armstrong Executor as aforesaid, who is also made a defendant hereto, retains and fraudulently refused to deliver up said notes to your orator.

In tender consideration whereof and for as much as your orator is remediless in the premises by the strict rules of the Common Law, to the end therefore that Justice may be done, your orator prays that the defendants may respectively upon their corporal oaths true and perfect answers make to the allegations of this Bill as fully as if the same were again repeated by interrogatories and that finally a decree may be

[Page 31]

205 28

rendered compelling the administrator and heirs of said Yeatman dec^d to pay the amount due as aforesaid with interest to your orator and that the said Executor Armstrong be decreed to surrender up the notes aforesaid, and that such other and further orders and decrees be made as may be consistent with the Equity of the case.

Your orator exhibits his letters of administration and makes the same part of his Bill. May it please your Honor to grant unto your orator the Commonwealth's writ of subpoena directed &c and he will as in duty bound pray &c W^m Botts Adm^r of the Goods &c of Jane I. Botts Deceased Foster & Fogg Solicitors

I acknowledge myself the complt's security Nashville Jany. 4th 1838 S.B. Fogg {seal}

Exhibit to the Bill Exhibit Kentucky Fleming County Sct } November Term 1837 On motion of William Botts who made oath and gave bond in the penalty of \$20.000. Twenty Thousand Doll^s with Seth Botts and John Botts, his securities, conditioned according to Law, administration on the estate of Jane I. Botts Deceased is granted him in due form of Law. A copy Attest: G.M. Stockton Clk.

Kentucky, Fleming County Sct. I G.M. Stockton Clerk of the Court for the county aforesaid hereby certify that the foregoing is a true and correct copy of an order made at the last November Term of said Court. In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at Flemingsburg this 3rd. day of December 1837. G.M. Stockton Clk.

Kentucky, Fleming County Sct. December 18th 1837. I Henry S. Powers presiding Justice of the peace in and for said County certify that the foregoing attestation of Geo. M. Stockton (who is Clerk of the Fleming County Court) is in due form of Law. Given under my hand the day and date aforesaid. H.S. Powers

Publication ordered for Armstrong Whereupon process issued for Jno Bell & wife and returned duly executed. And on the 9th day of June 1838 the following order was made in the office of the Clerk and Master, to wit:

It appearing by affidavit that the Defendant Andrew Armstrong is not a citizen or resident of the State of Tennessee, so that the ordinary process of this court cannot be served upon him.

It is ordered that publication be made for three successive weeks in the Nashville Whig a newspaper published in Nashville requiring said defendant to appear at the next Term of this

Court to be held at the Court House in the Town of Franklin on the fourth Monday in October next then and there to answer the complainants Bill or the same will be taken for confessed as to him and set down for hearing exparte as to him.

Answer of John Bell & wife And on the 6th day of October AD 1838 the following answer was filed to wit: The Answer of John Bell and Jane his wife adm^f and adm^x and of Thomas Yeatman dec^d to the Bill of Complaint exhibited against them and others in the Court of Chancery at Franklin by William Botts.

These defendants saving the usual exceptions answer and say. That they admit the marriage of Complainant with Jane I. Botts as stated in the Bill. That said Jane was the daughter of John Instone. That said Jane died in 1837. It may also be true that complainant has been appointed her adm^f but this they have not been duly informed of, and therefore they require full proof by the production of the letters of administration on her estate duly authenticated.

Respondents also admit that prior to the marriage of complt to the said Jane, she was entitled to a sum of money held for her use & benefit by a certain John Jacob Astor and which had been paid by him to Tho^s Yeatman in like manner for her use & benefit. That said Yeatman executed his promissory and note for the money so held by him as stated in he Bill and the interest upon said notes was paid by said Yeatman as therein set forth. Respondents do not admit nor do they believe it to be true, that Thomas Yeatman was not authorized to pay & the said John Instone was not authorized to secure the principal due upon said notes. The said John Instone held the possession of said notes and had the same authority as Respondents believe and insist to receive the principal as the interest of said notes and from the cautious habit and business talents of Thomas Yeatman Respondents have no idea he ever would have made any payments on said notes, that he was not authorized to make.

Respondents have never seen either of the notes and therefore cannot speak from certain information as to whether they were endorsed or not, but the probability is they were endorsed as John Instone received and complainant admits was authorized to receive the interest due upon the notes. Respondents also admit that John Instone held the notes aforesaid as stated in the Bill, but whether he kept or held them for the benefit of himself or his daughter, or how, or in what manner he held them Respondents have no knowledge or satisfactory information or belief and therefore they require proof of the allegations in the Bill as to the manner said Jno Instone held said notes.

Respondents admit the death of John Instone and that administration has been granted upon his estate as stated in the Bill. Respondents do not know whether said John Instone held said notes till his death or not, nor do Respondents know what has become of said notes, they have been negotiated or assigned off or not, or what has become of them. Respondents admit said Thomas Yeatman in his life time made various payments upon said notes exceeding the interest due thereon as stated in the Bill, but what were the amount of those payments Respondents do not know, nor have they any means of ascertaining except by the production of the notes themselves. They therefore insist under

Answer of John Bell & wife all the circumstances of this case no decree can or ought to be rendered against them, nor should they be compelled to pay the balance alledged to be due on said notes, to complainant or any one else till the notes themselves are produced.

Respondents admit the death of Thomas Yeatman and they are his Adm^r and Adm^x as stated in the Bill. That said Jane Yeatman the widow of Tho^s Yeatman has married the said Jno Bell. They also admit that said Tho^s Yeatman left a large estate & they have assets in their hands amply sufficient to pay all demands against said estate. Respondents admit they have refused to pay the amount alleged by complainant to be due upon said notes to him, and the reason of the refusal as they are informed by their agent to whom the application for payment was made, was that the notes were not produced; and Respondents insist that this is a sufficient reason. Respondents are ready & willing to pay said notes whenever they are produced and presented by a person legally authorized to receive payment. But until that is done they must insist that complainant has no right to enforce payment. Respondents have no knowledge where said notes are, nor how much has been paid on them, nor who it is that holds or has the legal title to them except as before stated. Respondents believe from information Andrew Armstrong of Mobile did once hold said notes, but whether he now holds them, or did hold them at the commencement of this suit Respondents do not know. Respondents having fully answered compts Bill pray to be hence dismissed with their costs &c Campbell & Fletcher Sol^{rs} for Defts.

State of Tennessee Davidson County } John Bell and Jane his wife appeared before me Joseph Norvell a Justice of the Peace for said County and mad oath that the matters stated in the foregoing answer in their own knowledge are true and those stated on the information of others they believe to be true. John Bell Jane Bell Sworn to & subscribed before me 5th Oct. 1838. Jo Norvell }

Replication of Botts And on the 15th day of November 1838 the following Replication was filed, to wit, The Replication of William Botts Complainant to the answer of John Bell and wife Defendants. This Repliant saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, inaccuracies and insufficiencies of the answer of the said defendants for replication thereto saith that he does and will aver, maintain and prove said Bill to be true, certain and sufficient in law to be answered unto by the said defendants, and that the answer is very uncertain, evasive and insufficient in law to be replied unto by this Repliant without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true, all which matters and things this Repliant is ready to aver maintain and prove as this

[Page 34]

208 31

Honorable Court shall direct and humbly pray as in and by his said he has already prayed. Foster & Fogg Solicitors

Pro Confesso against Armstrong And at the Rules holden at the office of the clerk & master for November 1838 the following order was entered to wit:

Publication have been regularly made for the defendant Andrew Armstrong and he having failed to appear and answer the Complainants Bill the same is taken for confessed as to him.

And at the Rules holden at the Office of the Clerk & Master for October 1839 the cause was set for hearing by the Complainants Solicitor.

And at the October Term 1839 the following order was entered to wit. By consent of parties Francis B. Fogg, who was appointed a Special administrator for the prosecution of this cause is made a party complainant. And now, to wit, on the 31st October A.D. 1839 being the day & year first above written the following decree was entered, to wit:

Final Decree This cause came on to be heard this 31st October 1839 upon Bill answer; Replication and testimony as to the administrators of Thomas Yeatman and upon Bill taken pro Confesso as to Andrew Armstrong when it appeared to the Court that Thomas Yeatman in his life time received a considerable sum of

money from John Jacob Astor of New York for Jane I. Botts then Instone, afterwards the wife of Complainant and executed with her assent and for his use, notes therefor to John Instone her father, and he was suffered to receive the interest and a part of the principal during her lifetime - that said Jane I. died in Kentucky as stated in the Bill and that John Instone died in Alabama and that complainants severally administered as stated in the Bill. It further appeared that Andrew Armstrong afterwards got possession of said notes and refuses to deliver them up and that he retains them without any authority.

It is therefore ordered, adjudged & decreed that it be referred to the Clerk and Master to inquire and report what is the amount of the principal and interest due on said notes from the estate of Thomas Yeatman and that he report instantly.

Master's Report And the Clerk & Master made a report in the words and figures following to wit:

To the Honorable the Chancellor of the Middle Division of Tennessee - The Subscriber Clerk and Master to whom the above cause stands referred by an order made in the cause with directions to ascertain and report the amount due upon the notes in the pleadings mentioned, respectfully reports that there is due on the notes, calculating interest to this day the sum of \$4321.13/100 as will appear from the annexed Statement. All of which is respectfully submitted. Oct. 31st 1839 Benj. Sitton C & M

Which not being objected to the same is in all things confirmed. It is therefore ordered, adjudged and decreed that John Bell and Jane his wife as administrators of Thomas Yeaman pay to the Complainants the said sum of Four Thousand, three hundred and twenty one 13/100 Dollars with interest from this time, out of which sum the costs of this suit are to be paid, but before the money is to be paid over to Complainant William Botts as administrator of his wife, he is to give bond with good security payable to the administrators

[Page 35]

209 32

administrators of Thomas Yeatman in the penalty of Eight Thousand Dollars, conditioned to indemnify and save them harmless in their payment of said money. And it is further ordered, adjudged and decreed that said Andrew Armstrong deliver up said notes of Thomas Yeatman to be cancelled and said notes upon payment of this decree are declared to be satisfied and paid.

Certificate of Clerk State of Tennessee This is to certify that the foregoing is a true & faithful Transcript of the Record & proceedings had in the cause heard & determined in the Court of Chancery holden at Franklin wherein William Botts adm^r et al are Complts and John Bell & others Defts as the same remains of record in said Court.

In testimony whereof I Benjamin Litton Clerk & Master of said Court have hereto set my hand & affixed the seal of said Court at office this 23rd day of February A.D. 1844. Benj Litton C & M. By Isaac Litton D.C.

Chancellor Certificate State of Tennessee Giles County } I Lonsford M. Bramlett Chancellor for the Middle Division of Tennessee do certify that Benjamin Litton whose name is subscribed to the foregoing certificate as Clerk and Master of the Chancery Court at Franklin was Clerk and Master of the Chancery Court at Franklin aforesaid and within the Middle Division and that his said Certificate is in due form. Given under my hand this 4th day of March 1844. Lonsford M. Bramlett Chancellor for the Middle Division of Tennessee

Complt's Testimony Testimony on the part of Complainant John Seth Botts by his next friend Thomas R. Botts vs Samuel B. Crockett & wife W^m M^cAfee & wife Chas. Bancroft adm^r & J. W. Jeanerette adm^r } In the Chancery Court of Mobile County State of Alabama -

Interrogatories Interrogatories to be propounded to George A. Botts, of New Orleans, a witness for the Complainant.

Interrogatories by the Complainant

1. Are you acquainted with the parties to this suit, and were you acquainted with John Instone, formerly of Mobile - If so, when

[Page 36]

210 33

did you become acquainted with him, and was your acquaintance intimate.

2. Were you frequently in his company, and did he converse freely with you, and did you ever converse with him concerning his affairs and those of his daughters.

3. Please state what were his statements as to the property and prospects of Jane I. Botts his daughter, the wife of William Botts, and what did he say in relation to his property, and her rights of property and in respect to the property he had in possession, and of the means upon which he lived. Please state what explanation he made to you if any on these subjects.

4. Please state what moneys and property he alluded to in those conversations. Where was he living and what property had he in possession.

5. Please state if at the time of those conversations, he was friendly with William Botts, the husband of Jane, and if at the time of those conversations any falling out had occurred between them, or did their falling out occur afterwards or before such conversations. How did he express his feelings towards William Botts and his daughter Jane, were they kind or hostile. Where were these conversations.

6. Please state if a quarrel occurred between William Botts and Mr. Instone. If so, state what it was about - When it occurred, and whether or not after that time Mr. Instone did not express much hostility to William Botts, and why.

7. Please state what were the habits of John Instone in the latter part of his life, - Whether he continued in his full mind, or became feeble of mind; whether he became intemperate, and whether or not his mind and actions were impaired by the use of ardent spirits and if he was much addicted to drink in his latter days or not.

8. If you know any thing further material in this controversy, please state it. Stewart & Easton Sol^{rs} for Compl. Jany. 29. 1846.

Cross Interrogatories Cross Interrogatories

1st Have you any interest in this suit, or will you be in any way benefitted by a favorable termination of it - Are you related to the complainant, and how are you related to the late W^m Botts. - State your age - and where you have resided during your life.

2nd When did you become acquainted with the late Jno. Instone - Did you ever reside with him, or live in the same place with him - If so - state when - where - & how long - and what were your opportunities of knowing his views, wishes & opinions.

3rd If you ever had any conversation with Mr. Instone about his affairs & particularly about his daughter - state how often you have had such conversations - When & where were they had & held - and state fully every thing he said about his property - how he intended it to go - between whom was it to be divided - of what did it consist - did he tell you in what it consisted - did you know

[Page 37]

211 34

the property - & if so describe it - & who was present at those conversations

4th Were you present at any difficulty or falling out between Mr. Instone & Mr. Botts - and how do you derive your information - State fully - If present, state when & where it was - what was it about - What was said between the parties - & if they were not afterwards reconciled & friendly.

5th Where did Mr. Instone die - Where were you at the time of his death - and how long had you been in Mobile. Was Mr. Instone capable before his death of managing of his property and of transacting business - Was he occasionally or habitually intemperate - Where did he die - & what was the state of his mind in the month of August 1832 - Was he then of sound mind and disposing memory - and was this his situation on the 26th of Aug. 1832 -

6th Did not W^m Botts & Jane I. Botts after the death of Mr. Instone agree that his property should be divided agreeably to his last will & testament - Did they not with a knowledge of Mr. Instones wishes agree to make such a division of the property as the instrument in writing purporting to be his will directed - State fully and particularly all you know of this fact - and all you have heard W^m Botts & Jane I. Botts say about it.

7th Have you or not reasons to believe (and state what they are) that W^m Botts & Jane I. Botts approved of the will of Mr. Instone - agreed to abide by - and to divide the property as he requested - State fully and particularly.

8th Do you or not know that W^m Botts as the Adm^r of Jane I. Botts instituted a suit in the state of Tennessee against the Representative of Tho^s Yeatman for the recovery of the money due by him to the said Jane and the said W^m Botts - & his Adm^r Seth Botts received the money.

9th Relate all you know that will benefit the defendants as fully as if you were particularly interrogated thereto. Campbell & Chandler Deft's Sol^{rs}.

Commission Commission to take testimony John Seth Botts by next friend vs S.B. Crockett & wife & W. M^cAfee & wife and others } The State of Alabama. Mobile County Chancery Court - First District - Southern Chancery Division. To O.V. Jackson Associate Judge of the City Court of New Orleans Lou^a Esqr. Greeting: Know ye, That we in confidence of your prudence and fidelity, have appointed you, and by these presents do give you or any one of you, full power and authority to take the deposition of George A. Botts witness on the part of complainant in a cause depending in our said Court, wherein J. S. Botts

[Page 38]

212 35

by next friend is Complainant and S. B. Crockett & wife and W. M^cAfee & wife and others are the defendants and therefore we command you, or any one of you, that at such time and place, or times and places as you may appoint, you do cause the said George A. Botts to come before you, or either of you, and then and there examine him on oath, on the interrogatories and Cross - interrogatories annexed. And that you, or either of you do take such examination, and reduce the same into writing and return the same annexed to this writ, closed up your your seals, or the seal of any one of you, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness Malcolm J. M^cRae, Register of our said Court, at office, and also the Seal there of this fourth day of February A.D. 1846 Attest: M.J. M^cRae Register

Commissioner's Return Commissioner's Return State of Louisiana City of New Orleans } In pursuance of the annexed Commission to me directed from the Chancery Court, Mobile County, State of Alabama, I, O. V. Jackson, associate Judge of the City Court of New Orleans, in the state of Louisiana, have caused to come before me at my office in the City of New Orleans, on the 6th Feby. 1846 George A. Botts a witness on the part of complainant in a cause of depending in the Court aforesaid. Wherein J. S. Botts by next friend is

Complainant, & S. B. Crockett & wife, and W. M^cAfee & wife & others are the defendants; and the said witness being duly sworn upon the Holy Evangelists of Almighty God to give just & true answers to the questions & Cross questions propounded to him & accompanying said Commission, depose & saith as follows.

Deposition of George A. Botts To the 1st Question - he saith that he is not acquainted with other parties to the suit than Tho^s R. Botts - he was acquainted with said John Instone formerly of Mobile - thinks he first became acquainted with him in 1832, and on acquaintance was very intimate.

To the 2nd Question - he saith that he was frequently in company with s^d Instone, and conversed with him freely, and have had conversations with him respecting his affairs and those of his daughter.

To the 3rd Question - he saith, that said Instone stated to him that every thing he possessed, the property on the Bay about two miles below Mobile, as he thinks is the distance, all belonged to his daughter Jane I. Botts the wife of Wm. Botts - the property above alluded to about 2 miles below Mobile, he informed deponent he had bought with the funds of his daughter Jane - Does not recollect any other explanation, than that of his stating his insolvency, and he stated something about funds being in the hands of Mr. Yeatman which belonged to his daughter Jane

[Page 39]

213 36

Does not distinctly recollect other explanations.

To the 4th Question - he saith, that the money alluded to in those conversations and the property in Mobile before alluded to with the negroes thereon & the appurtenances - also funds in the hands of Mr. Yeatman &c - he was then living on the place 2 miles below Mobile, and he had this property with negroes &c in his possession.

To the 5th Question, he saith, that at the time of these conversations he was friendly with W^m Botts, the husband of Jane, and at the time no falling out had occurred between them to deponents knowledge - their falling out occurred afterwards - He expressed himself at the time of those conversations towards W^m Botts & his daughter Jane in a very friendly manner - those conversations occurred along in 1832 & 33 -

To the 6th Question, he saith, that he was in Mobile at the time a quarrel occurred between W^m Botts & Mr. Instone - Saw W^m Botts & his wife Jane at the time in Mobile, and saw the latter crying in consequence of such quarrel - but deponent did not converse with Mr. Instone on the subject -

To the 7th Question, he saith, that the habits of John Instone in the latter part of his life were very intemperate - so much so that he became feeble of mind - Deponent has known him under the influence of ardent spirits for 3 or 4 days at a time by the excessive use of which his mind & body were impaired.

To the 8th Question, he saith, that he knows nothing further material in this controversy - Deponent would say that he has heard Jn^o Instone say, that Mrs Crockett, his daughter had already received all her portion & that he was very hostile to D^r Crockett her husband, for having squandered all the property.

Answers to Cross Interrogatories Answers to Cross Interrogatories To the 1st Cross Interrogatory, he saith, that he has no interest in this suit, nor will be in any way benefitted by a favorable termination of it - the father of John Seth Botts, Compl. was the cousin of Deponent - Deponents age is 34 years, and has resided in New Orleans for the last 15 years & before that in Flemingsburg, Kentucky, where he was born.

To the 2nd Cross Question, he saith, he thinks in 1832 he first became acquainted with the late John Instone - he staid in Mobile about 4 or 5 months with Instone, who resided about 2 miles below Mobile, and where deponent

was in the habit of passing 3 or 4 days at a time with Mr. Instone - his opportunities of knowing his views, wishes &c grew out of our great intimacy, having constant conversations with him &c.

To the 3rd Cross Question, he saith, that he has had such conversations a great many times - in 1832 & 1833 in the Town of Mobile and at Instone's place below Mobile - he always stated

[Page 40]

214 37

Answers to Cross Questions G.A. Botts to deponent that he had no property himself, that he was insolvent that he had not a dollar, that it was all the property of his daughter Jane - he said nothing about how he intended his property to go, but on the contrary that he had none of his own - he stated that the place he resided on & every thing on it belonged to his daughter & was bought with her money - he also spoke of money of his daughter Jane in the hands of Yeatman in Tennessee, and with a portion of which the place below Mobile had been purchased - Deponent knew the property very well, it was situated about 2 miles below Mobile on the Bay and it was where Instone resided - he has no recollection of any other persons being present at those conversations, excepting Instone and myself - there was an old German Gardner about the premises, who may have been present - Deponent never had any conversations with him -

To the 4th Cross Question, he saith, that he was in Mobile at the time that W^m Botts and Instone had a falling out - Deponent was staying at the Mansion House with W^m Botts & wife when the falling out occurred at the Mansion House - and this was sometime he thinks in the winter of 1833 - one cause was about a negro that W^m Botts brought from Kentucky, and promised to let Instone have him or his services, and after making that promise, he sold the negro in Mobile, this was one of the causes of difference between them - the other causes, so far as Deponent could understand, were about W^m Botts wishing to take possession of the place, where Instone resided, but this Deponent derived from the information of others - they were not afterwards reconciled or friendly so far as Deponent knows.

To the 5th Cross Question, he saith, that Mr. Instone died, he cannot say positively, but he believes in 1835 - Deponent was in New Orleans at the time - Deponent had not been in Mobile for about 8 months previous to his death - presumes he was capable of managing what little business he had to manage, up to the 8 months previous to his death - Deponent speaks of this capacity when in his lucid intervals, altho he considered Mr. Instone, as a man habitually intemperate - cannot speak of the state of his mind at the time of his death. In the month of August 1832 cannot speak of the state of his mind positively, as his intimacy with him did not commence before or the fall of 1832 - when Deponent first knew him, his habits were then very intemperate, and occasionally could not attend to any business.

To the 6th Cross Question, he saith, that he knows nothing about what is herein asked him - he has never seen W^m Botts or his wife, since the death of Mr. Instone.

To the 7th Cross Question, he saith, that he knows nothing whatever of what is herein asked him, and has no reason to believe that W^m Botts & Jane I. Botts either approved or disapproved of the will - in fact knows nothing about it.

To the 8th Cross Question, he saith, that he knows nothing, of what is here in asked, excepting what he has heard from others.

To the 9th Cross Question, he saith, that he knows nothing

[Page 41]

215 38

further material to the defendants. Geo A. Botts

Certificate of Commissioner I O.V. Jackson, associate Judge of the City Court of New Orleans, Louisiana, do certify that the foregoing answers of Geo. A. Botts were reduced to writing by me, at the time and place stated in the caption - that the witness was duly sworn to the truth of the same & subscribed the same in my presence after it had been read over to him.

Given under my hand this 6th Feby 1846 at New Orleans Lou^a. Fees of &10 - O.V. Jackson Judge &c

John Seth Botts by his next friend Thomas R. Botts vs Samuel B. Crockett & wife W^m M^cAfee & wife Cha^s Bancroft Adm^r & J. W. Jeanerette Adm^r } In the Chancery Court of Mobile County, State of Alabama

Interrogatories to Edmund Botts Interrogatories to be propounded to Edmund Botts of Fleming County, Kentucky, a witness for the Complainant

1. Are you acquainted with the parties to this suit, and were you acquainted with John Instone, formerly of Mobile. If so, when did you become acquainted with him, and was your acquaintance intimate.
2. Were you frequently in his company, and did he converse freely with you, and did you ever converse with him concerning his affairs and those of his daughters.
3. Please state what were his statements as to the property and prospects of Jane I. Botts, his daughter, the wife of William Botts, and what he did say in relation to his property, and in respect to the property he had in possession, and of the means upon which he lived. Please state what explanation he made to you if any on these subjects.
4. Please state what moneys and property he had in possession, and what property he alluded to in those conversations.
5. Please state if at the time of those conversations he was friendly with William Botts, the husband of Jane, and if at the time any falling out had occurred between them, or did their falling out occur afterwards or before such conversations. How did he express his feelings towards William Botts and his daughter Jane, were they kind or hostile, when were those conversations.
6. Please state if a quarrel occurred between William Botts and Mr. Instone - If so, state what it was about, when it occurred, and whether or not after that time Mr. Instone

[Page 42]

216 39

did not express much hostility to William Botts, and why.

7. Please state what were the habits of Mr. Instone in the latter part of life, whether he continued in his full mind, or became intemperate, and whether or not his mind and actions were impaired by the use of ardent spirits, and if he was much addicted to drink in his latter days or not.
8. If you know any thing further material in this controversy please state it. Stewart & Gaston Sol^{rs} for Compl^t Jany. 29. 1846

Cross Interrogatories to Edmund Botts Cross Interrogatories to Edmund Botts 1st Have you any interest in this suit, or will you in any way be benefitted, if the Compl^t. succeeds - State your age - Where you have lived - Your means of Knowing Mr. Instone - If you ever lived with him - & when - & how long - & how you are related to W^m Botts dec^d

2nd If you ever had any conversation with Mr. Instone about his affairs & particularly about his daughter - State how often you have had such conversations - When & where were they held - Who were present at the time - & state fully every thing he said about his property - how he wished it to go - between whom was it divided - of what did it consist - Did you know his property - If so, State of what it consisted.

3rd Were you present at any difficulty with Mr. Instone & W^m Botts - What was it about - When & where did it happen - Did the parties become reconciled - & were they afterwards on friendly terms.

4th Where did Mr. Instone die - Where were you at the time of his death - & how long had you been in Mobile - Was Mr. Instone before his death capable of managing his property - was he occasionally or habitually intemperate - And what was the state of his about the 26th of Aug. 1832 - was he of a sound & disposing mind & memory.

5th Did Mr. Instone leave a will - and did he or not wish his property to be divided between Mrs. Crockett & Mrs. Botts - & their children - In his conversations did he or not so express his wishes & intentions - and was not such the tenor of his last will & testament

6th Do you or not Know that W^m Botts & his wife or either of them approved of the will of Mr. Instone, and agreed & were willing that his property should be divided as he requested - State fully & particularly.

7th Have you or not reasons to believe (and state what they are) that W^m Botts & his wife agreed to abide by the will of Mr. Instone and were willing to divide the property as he requested - State fully all you have heard W^m Botts or his wife say about it -

8th Do you or not know that W^mBotts as the adm^r of Jane Botts instituted a suit in Tennessee against the Representatives of Tho^s Yeatman for the recover of moneys due by him to

[Page 43]

217 40

Mrs Botts and which he had received for her - And that W^mBotts or his Representative received the money - State what you know or have heard the said W^m Botts or his adm^r say about it.

9thRelate all you know that will benefit the defendants as fully as if you were particularly interrogated thereto. Campbell & Chandler Sol^{rs} pro. Complts

Commission to take Deposition of Edmund Botts Commission to take Deposition of Edmund Botts John Seth Botts by next friend vs S.B. Crockett & wife W. M^cAfee & wife & others } The State of Alabama - Mobile County Chancery Court - First District - Southern Chancery Division To Dorsey K. Stockton Esqr. Greeting: Know ye, That we in confidence of your prudence and fidelity, have appointed you, and by these Presents do give you, or any one of you, full power and authority to take the deposition of Edmund Botts witness on the part of the Complt. in a cause depending in our said Court, where in J. S. Botts by next friend is Complainant and S. B. Crockett & wife and W. M^cAfee & wife and others are the defendants, and there fore we command you, or any one of you, that at such time and place, or times and places, as you may appoint, you do cause the said Edmund Botts to come before you, or either of you, and then and there examine him on oath on the interrogatories and Cross interrogatories annexed. And that you, or either of you do take such examination and reduce the same into writing and return the same annexed to this writ, closed up under you Seal, or the Seal of any one of you, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid. Witness Malcolm J. M^cRae, Register of our said Court at office, and also the seal thereof this fourth day of February A.C. 1846. Attest: M.J. M^cRae Register

Commissioners Return Commissioner's Return Pursuant to the annexed Commission to me directed I D. K. Stockton caused to appear before me at Flemingsburg, Kentucky, Edmond Botts named in said Commission who being by me first duly sworn in reply to the accompanying Interrogatories and Cross Interrogatories answers as follows, to wit.

Answering to first Interrogatory said Deponent

[Page 44]

Deposition of ~~George A. Botts~~ Edmund Botts says, he is acquainted with the Complt. John Seth Botts, and the defts. Sam^l B. Crockett & wife, that he is not acquainted with William M^cAfee, but knew said M^cAfee's wife before her marriage, has never known Charles Bancroft or J. W. Jeanerette.

That he became acquainted with John Instone in the City of Mobile Ala^a in the year 1831 - that he remained about three months at Mobile, of which time he spent about one half at the residence of said Instone and became intimate with him -

Answering the Second Interry. said Deponent says, that he was frequently in the company of said Instone and conversed freely with him, respecting said Instone's affairs and that of his daughters.

Answering third Interro. Said says, that in frequent conversations with said Instone he informed Deponent that he was in embarrassed circumstances, and that he would not have had a home to call his own except for the Kindness of his daughter Jane who had allowed him the use of her means which had been in the hands of Thomas Yeatman of Nashville Tennessee whith which he had purchased the place on which he then resided and all the negroes upon said place except one or two that had been born since the purchase and that at his death the entire property belonged to his daughter Jane, the wife of William Botts, and mother of Complt. John Seth Botts. Said Instone further stated to deponent that Sam^l B. Crockett & wife as well as his son John had rec^da similar or equal property to that of Jane.

Answering Fourth Interroy. Deponent says, that said Instone had a tract of land upon the Bay adjacent to Mobile, four or five negroes, some few mules, a horse & small amt. of household ~~furniture~~ property.

Answering 5th Interroy. Deponent says, said Instone appeared friendly towards William Botts and His wife as far as deponent could infer from his conversation.

Answering 6th Interroy. Deponent says, he has never seen said Instone since January 1832 and knows nothing of any quarrel between said Instone and William Botts.

Answering 7th Interroy. Deponent says, that when he knew said Instone he was very intemperate and his mind frequently so impaired by drink that he would consider him disqualified from attending properly to business

Answering 8th Interroy. Deponent says, that nothing further occurs to him, which he considers material to this controversy.

Answering first Cross Interrogatory Deponent says, he has no interest in the issue of this suit - That he

[Page 45]

Deposition of Ed^d Botts is a farmer and at this time and upon several occasions previously has been deputy Sheriff of the County of Fleming - is in the thirty seventh year of his age - has resided in Fleming County Ky. since the year 1810, except the time he before stated he resided in Alabama. That his means of Knowledge of said Instone was the spending the greater portion of three months at his house. That he is the brother of William Botts dec^d

Answering 2nd Cross Interroy. Deponent says, that the conversations with said Instone, respecting the property on which he lived and concerning his daughters property occurred twenty times he is confident - he believes oftener - said conversations occurred at Instone's own house - he remembers no person being present except in one instance, then Andrew Armstrong of Mobile was present and joined in the conversation and reiterated the same. That Instone stated he had no property, but that he was then enjoying and here tofore described by him in this deposition, and that it belonged to his daughter Jane and went to her at his death. The property as before

stated consisted of a tract of land, four or five negroes, some mules, one horse & small amt. of house hold property.

Answering 3rd Cross Interroy. Deponent says, he knows nothing of any quarrel between William Botts & said Instone - he never heard William Botts speak of the property of said Instone or respecting it.

Answering 4th Cross Interroy. Deponent says, he cannot state the year said Instone died - that deponent was in Kenty. when Instone died, and cannot say how long it was before the death of Instone that deponent was at Mobile. He cannot say that Instone was not capable of managing his property - he considered him a bad hand to make a bargain - that said Instone was generally sober in the morning & drunk in the evening - that he could not call him a sot - that he never saw Instone after January 1832.

Answering 5th Cross Interroy. Deponent says, he never saw any will of said Instone - never heard him speak of making any or of dividiiing his property, but always that it belonged to his daughter Jane.

Answering 6th Cross Interroy. Deponent says, that he has heard of a writing by which William Botts & his wife & Crockett & wife agreed to abide by the will of said Instone, but never saw the writing, nor heard William Botts or his wife speak of it

Answering 7th ~~Interroy.~~ Cross Interroy. Deponent says, he never heard of said agreement of Botts & wife & Crockett & wife to abide by the will of said Instone or any thing respecting said agreement, until since the death of Botts & wife and the controversy about the property.

Answering 8th Cross Interroy Deponent says, that he never heard of the suit instituted by William Botts against Yeatman until a few months past - that he has heard his father who was William Botts Exc^t say that he had received money from Nashville on account of William Botts, but cannot state the

[Page 46]

220 43

amount of or from whom received.

Answering 9th Interroy. Deponent says, that nothing further occurs to him & further saith not. Edmund Botts

Commissioner's Certificate Certificate of Commissioner State of Kentucky Fleming County sct } I Dorsey K. Stockton commissioner acting under a commission to me directed from the Mobile County Chancery Court. First District, Sothern Chancery Division, do here by certify, that I caused to appear before me Edmond Botts personally known to me, named in said commission at Flemingsburg, County & state aforesaid on the 25th day of February 1846 - That said Botts was by me legally sworn to testify the truth and the whole truth and that he testified as is set down in the preceeding. That the testimony was by me reduced to writing and that the same was subscribed by said deponent in my presence after it had been first read over to him.

That I am not of kin to either party in said suit and have no interest therein. Given under my hand as Commissioner aforesaid this 25th day of Feby. 1846 D. K. Stockton Com^t Com^{rs} fee for taking the foregoing deposition paid by Compl^t \$2. D.K. Stockton Com^t }

Interrogatories to John H. Botts John Seth Botts by his next friend Tho^s R. Botts vs Samuel B. Crockett & wife W^m M^cafee & wife C. Bancroft adm^t & J. W. Jeanerette adm^t } Interrogatories to be propounded to John H. Botts, a witness for the Complainant residing in Fleming County, Kentucky

1. Are you acquainted with the parties to this suit, and particularly with Samuel B. Crockett and Anna Maria Crockett his wife.
2. Have you ever conversed with Samuel B. Crockett concerning any claim which he or his wife had to property in Mobile, or in the hands of John Instone - or claimed under the will of Mrs. Benners the Grand mother of his

wife, or to any funds formerly in the hands of Mr. Yeatman of Nashville. If so, please state when and where such conversations occurred, and what were the statements made by said Crockett in said conversations in respect to said property, and in respect to the claims of his wife, and in respect to the rights of John Seth Botts, the Complainant, and were such conversations before or after the death of John Instone.

3. Please state if you know when Samuel B. Crockett was married also when William Botts was married.

4. Please state if you ever saw John Instone. If so, when it was

[Page 47]

221 44

and where. Did he then visit Mrs. Crockett and did he visit Mrs Jane Botts. Was he on friendly terms with both. Please state also if at that time Mrs. Botts was in needy circumstances, or in comfortable circumstances, and also whether Mrs Crockett was in needy circumstances or in comfortable circumstances. Was either or both of them well provided for, or were either or both of them then in want of all they could obtain as means of subsistence, and which was needy if either. Please state what were the circumstances of William Botts and of Samuel B. Crockett as to property.

5. Do you know if Samuel B. Crockett was wealthy or not - was he at any time in prosperous circumstances, or was he dependant on his practice as a Physician for means of support for his family.

Had he ever any property to any considerable amount - was he solvent or insolvent. Was he dependant on his wifes property, did he get property by his wife, did he controul it, and was his wifes property used for the support of his family, was his family large, was he a provident man and thrifty or was he often involved in debt.

6. Do you know if Mrs. Crockett obtained property from the estate of Mrs. Benners and what became of it. How much did she obtain and when. Has it contributed to support the family of Mrs Crockett.

7. If you know any thing further material in this controversy please state it. Stewart & Easton Sol^{rs} for Complt. 29. Jany. 1846

Cross Interrogatories to John H. Botts Cross Interrogatories to John H. Botts 1st Have you any interest in the suit or will you be benefitted in any way if the Complt. recovers - Are you related to the late W^m Botts - State your age & where you have lived.

2nd If you have ever had any conversations with Sam^l B. Crockett as referred to in the second direct Interrogatory state how often you have had them - When & where & who were present - State fully and particularly every thing he said.

3rd Did Mrs. Crockett & Mrs. Botts receive any property from Mrs. Benners or from her estate - If so, how much - into whose hands did it go - and what became of it.

4th Did or not Jno. Instone die seized & possessed of considerable real & personal estate. If so, how much & in what did it consist.

5.th Do you know how he left his property - and state if you ever heard W^m Botts or his wife say if Mr. Instone left a will, & how his property was to be divided.

6th Do you or not know that they agreed to divide his property as he requested in his last will & Testament - that they recognized his will & were willing to be guided by it.

7th Do you or not know that it was the wish of Mr. Instone that his property should be divided between Mrs Crockett & Mrs. Botts & did not Mr. & Mrs Crockett & Mr. & Mrs. Botts agree to abide by

[Page 48]

his wishes and make such a division of his property.

8th Relate all you know that will benefit the defendants as if particularly interrogated thereto Campbell & Chandler Sol^s pro Defts.

Commission Commission to take the Deposition of John H. Botts John Seth Botts by next friend vs Sam^l. B. Crockett & wife W. M^cAfee & wife & others } The State of Alabama - Mobile County Chancery Court - First District Southern Chancery Division To Dorsey K. Stockton Esqr. Greeting: Know ye, That we in confidence of your prudence and fidelity, have appointed you, and by these presents, do give you, or any one of you, full power and authority to take the deposition of John H. Botts a witness on the part of Complainant in a cause depending in our said Court, where in John Seth Botts by his next friend is the complainant and Samuel B. Crockett & wife; W. M^cAfee & wife and others are the defendants and therefore we command you or any one of you, that at such time and place, or times and places, as you may appoint you do cause the said John H. Botts to come before you, or either of you, and then and there examine him on oath, on the interrogatories and cross interrogatories annexed. And that you or either of you do take such examination, and reduce the same into writing and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness Malcolm J. M^cRae Register of our said Court, at office and also the seal thereof, this sixth day of February A D 1846 Attest: M.J. M^cRae Register

Deposition of Jno. H. Botts Deposition of John H. Botts Pursuant to the accompanying Commission to me directed I caused the said John H. Botts therein named to appear before me, who being first legally sworn in reply to the accompanying interrogatories and Cross interrogatories answers as follows (to wit)

Answering 1st Interroy. Deponent says, that he is acquainted with the Complt. John Seth Botts and with the defendants Sam^l B. Crockett & wife - that he knew the wife of William M^cAfee when a girl, but he is not acquainted with either of the other defendants.

Answering 2nd Interroy. Deponent says, that in August 1840 he was at Frankfort, Ky. in attendance upon an extra session of the Legislature, of which deponent was a member.

That Sam^lB. Crockett called on deponent and in conversation inquired whether William Botts intended going to Mobile to attend to the estate left by John Instone stating that he (W^mBotts) was very much neglecting his interest. In the same conversation said Crockett stated that all

[Page 49]

Deposition of John H. Botts the property which Mr. Instone had left at Mobile belonged to his daughter Jane, wife of William Botts. In same conversation Crockett requested deponent to talk with W^m Botts and urge him to go to Mobile alledging as a reason for his solicitude, that his (Crocketts wife) was anxious on the subject, being desirous, that her sisters child should desire the full benefit of the property, belonging to its mother. Nothing was said about Mrs Benners will, nor of any funds that was or had been in the hands of Thomas Yeatman that deponent remembers - said conversation occured after the death of John Instone, and about two months before the death of William Botts. Deponent mentioned the conversation with Crockett to William Botts on his return home and received for answer, about this, that he understood his own business and that he (deponent) might write Crockett if he chose.

Answering 3rd Interroy. Deponent says, that William Botts married in Feby. 1828, that he does not know the year Crockett was married, but it must have been many year previous, as shortly after William Botts marriage he saw a daughter of said Crockett at W^m Botts house, nearly grown.

Answering 4th Interroy. Deponent says, he never knew John Instone - remembers once seeing a man on the street in Flemingsburg Ky. who he was told was John Instone - knows nothing of Instones feelings of friendship towards either of his daughters - William Botts was in independant circumstances exclusive of his wife's property, and continued so to his death - cannot speak particularly of Crocketts circumstances except from general report, which was that he managed his affairs badly.

Answering 5th Interroy. Deponent says, that his knowledge of Crockett and circumstances is not such as to enable him to answer this question circumstantially - has always understood that Crockett resided upon a tract of land acquired by his wife - deponent knows Crockett has several, but cannot state the number - cannot say whether his wifes property was or was not used for the support of his family further than here in stated - as to his being a provident man he can only say that he has always understood that he mangaged badly.

Answering 6th Interroy Deponent says he knows nothing of the estate of Mrs. Benners or how much of it Mrs. Crockett acquired.

Answering 7th Interroy Deponent says, nothing occurs to him further material to this controversy.

Answering 1st Cross Interrogatory Deponent says - that he has no interest in this controversy and will not be benefitted or injured if Complt. succeeds - that he is the brother of William Botts, is in his fiftieth year and has resided in Fleming County, Ky. since the year 1810.

Answering 2nd Cross Interroy. Deponent says - that he remembers but one conversation he had with Crockett on this subject, which occurred at Frankfort in Augt. 1840

[Page 50]

224 47

that he stated said conversation in his preceeding answer N^o 2.

Answering 3rd Cross Interroy. Deponent says he knows nothing of any property which Mrs Botts or Mrs Crockett acquired of the estate of Mrs. Benners or whether either acquired any.

Answering 4th Cross Interroy. Deponent says he has no knowledge of what personal estate John Instone died possessed of.

Answering 5th Cross Interroy. Deponent says that he knows nothing of the will of Instone except from rumour never saw said will, nor has he ever heard W^m Botts or his wife say any thing respecting Instone's will or how Instone's property was to be divided.

Answering 6th Cross Interroy. Deponent says that he knows nothing of an agreement of Botts & wife to divide the property of Instone, according to his will, he has heard of such a writing within a few months past, but never heard either party mention it directly or indirectly.

Answering 7th Cross Interroy. Deponent says he never spoke to Instone in his life and knows nothing of his wishes with respect to his property and knows nothing of an agreement of Mrs Botts & Mrs Crockett to divide the property of their father except from rumour as before stated.

Answering 8th Cross Interroy. Deponent says that he knows nothing further that would be or at least that he is advised or occurs to him, would be material to this controversy and further this deponent saith not Jno H Botts

Commissioners Certificate Commissioner's Certificate State of Kentucky Fleming County sct } I D K Stockton
Commissioner acting under a commission to me directed from the Chancery Court Mobile County. First

District. Southern Chancery Division, do hereby certify that I caused to appear before me at Flemingsburg Fleming County Kentucky on the 25th day of February 1846 John H. Botts named in the accompanying commission. That said Botts was by me legally sworn to testify the truth and the whole truth and that he testified as is set down in the preceeding. That the testimony was by me reduced to writing - and that the same was subscribed by said deponent in my presence after it had been first read over to him - that I am not of Kin to either party in said suit and have no interest therein - Given under my hand as Commissioner as aforesaid this 25th day of Feby 1846 D.K. Stockton Com^r Com^r fee for taking the foregoing deposition paid by Compl^t \$2. D.K. Stockton Com^r

Interrogatories to be propounded to Samuel Herman Sen^r and Samuel Moss witnesses for Complainant

[Page 51]

225 48

Interrogatories Interrogatories for the Complainant

1. Please examine the Instrument of writing herewith purporting to be signed by Thomas Yeatman and by John Instone and witnessed by Samuel Herman and Samuel Moss, and dated the 16th of January 1830, and state if you please whether the same was signed and sealed, or acknowledged in your presence by the said parties, and whether you did subscribe the same as witnesses to attest the execution thereof, and if said Instrument was executed by them.

2. If you know any thing further material to this controversy please state it Stewart & Easton Sol^{rs} for Compl^t. 29 Jany. 1846

Cross Interrogatory Cross Interrogatory

1st The witnesses will state any thing that they know that will benefit the defendants as fully as if they were particularly interrogated thereto. Campbell & Chandler Defts Solicitors

Exhibit to Interrogatories Instrument of Writing referred to in foregoing Interrogatories Whereas by a written contract bearing date the 10th day of Novembr 1829 between the undersigned Thomas Yeatman of the City of Nashville in the State of Tennessee and the undersigned John Instone late of Columbia and State aforesaid, Richard C. Allen of Tallahassee in the Territory of Florida was authorized by the undersigned Thomas Yeatman to locate or purchase for the said Yeatman a Tract of Land in the said Territory of Florida as provided for in said agreement, and to which reference is made for more certainty, and whereas said R. C. Allen having failed to locate or purchase any land in the Territory of Florida in the manner as stated in said Contract or agreement and the said Instone having by authority from me as specified in said agreement and with my consent and approbation contracted in my behalf and for me purchased of Messrs Lackanal & Gannard of the City of Mobile acting as the attorneys in fact of General Clausell now residing in France a Tract of Land lying on Mobile Bay about three miles below the City of Mobile containing 400 Arpents being Ten Arpents front on said Bay of Mobile & running back forty Arpents for the price and consideration of Fifteen hundred dollars.

Now be it known that I the undersigned Thomas Yeatman in part consideration of the said Tract of Land and in part consideration of the following slaves (which by me have been put into the possession of the said John Instone viz. a negro man called Alfred aged about Thirty one years, a negro woman called Conney his wife aged about thirty five, a negro boy aged about sixteen called Kit son of said Conney & a negro girl called Jane daughter of said Alfred & Conney as also for the hire of two Mullato boys named Robinson & Allen which have also been by me the said Yeatman put into the possession of said Instone to be by him retained until each shall arrive at the age of twenty one years) have

[Page 52]

received from the said Instone my certain obligation payable to Jane I. Instone or order for the sum of Twenty five hundred dollars and held by the said John Instone as the former Guardian of the said Jane and for the further consideration of one dollar to be in hand paid by the said John Instone his heirs &c to me the said Yeatman my heirs &c. I the undersigned Thomas Yeatman do hereby bind myself my heirs Executors, administrators & assigns to convey all my right, title and interest of and to all lands Slaves & their increase with all improvements on the Lands, Farming utensils Stock and property of any and every kind of mine in the possession of said Instone whenever demanded by said Instone or his assigns. It is further understood by the parties that should the contract for the purchase of the land on the Bay of Mobile from the attorneys of Clausell from any cause not be carried into effect that then the same obligation on the part of the undersigned Yeatman shall apply to any other lands which said Instone shall decide ~~the~~ to purchase for the said Yeatman. It is also understood that all the stipulations contained in the agreement aforesaid of the 10th Novem^r 1829 in favor of the said Instone shall be considered as included in the present as also all stipulations therein contained in behalf of said Yeatman.

In witness whereof we have hereunto set our hands & seals at New Orleans the 16th day of January 1830 Tho Yeatman {seal} Jn^o Instone {seal} Test Sam^l Herman S. Moss

Commission to take Depositions Commission to take Depositions John Seth Botts by next friend vs S. B. Crockett & wife W. M^cAfee & wife & others } The State of Alabama - Mobile County Chancery Court - First District Southern Chancery Division To O. P. Jackson associate Judge of the City Court New Orleans Louisiana Greeting: Know ye, That we in confidence of your prudence and fidelity, have appointed you, and by these Presents do give you, or any one of you full power and authority to take the deposition of Samuel Herman and Samuel Moss witnesses on the part of complainant in a cause depending in our said Court, wherein J. S. Botts by next friend is complainant and S. B. Crockett & wife and W. M^cAfee & wife are the defendants, and therefore we command you, or any one of you, that at such time and place or times and places as you may appoint, you do cause the said Herman & Moss to come before you, or either of you, and then and then examine them on oath, on the interrogatories and Cross Interrogatories annexed. And that you or either of you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under you seals or the seal of any one of you into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness Malcolm J. M^cRae, Register of our said Court, at Office and also the seal thereof, this fourth day of February A. D. 1846 Attest: M J M^cRae Register

[Page 53]

Deposition of Sam^l Herman Deposition of Sam^lHerman State of Louisiana City of New Orleans } In pursuance of the annexed Commision to me directed from the Chancery Court. Mobile County, State of Alabama, I. O.P. Jackson associate Judge of the City Court of New Orleans in the State of Louisiana, have caused to come before me at my office 60 Royal Street in the City & State aforesaid Samuel Herman one of the witnesses named in said Commission, on the part of Complainant in a cause depending in the Chancery Court aforesaid, wherein J. S. Botts by next friend is Complainant and S. B. Crockett & wife and W. M^cAfee & wife are the defendants, and the said witness being duly sworn by me upon the Holy Evangelist of Almighty God to give full & true answers to the interrogatories & Cross interrogatories propounded to him depose & say as follows viz.

To the 1st Interrogatory, saith, that he examined the instrument of writing here with purporting to be signed by Thomas Yeatman and by John Instone, and witnessed by said Herman and Samuel Moss, and dated the 16st of January 1830, and states that the same was signed and sealed in his presence by the said parties as well as he can recollect after so long a lapse of time, and this deponent did subscribe the same as a witness to attest the execution thereof and s^d instrument was executed by them.

Instrument annexed Marked A.

To the 2nd Question, he saith that he Knows nothing further -

To the 1st Cross Interrogatory, he saith that he knows of nothing that will benefit the defendants - in fact so long a time has elapsed since signing the Instrument that he can only answer and say what he has above stated
Sam^lHerman

Commissioners Certificate Commissioner's Certificate I O V Jackson associate Judge of the City Court of New Orleans, do certify that the fore going deposition was taken before me at my office 60 Royal St. in the City of New Orleans, State of Louisiana on the 18th day of February 1846 at 11 O'clock A.M., that the said deponent Sam^l Herman was duly sworn by me, that he testified as is set down, that the testimony was by me reduced to writing, and was subscribed by the witness in my presence, after its having been first read over to him.

In whitness whereof I have hereunto subscribed my name this 18th February 1846 O.V. Jackson Judge

The other subscribing witness to s^d Instrument annexed. S. Moss, I am informed, after making diligent inquiry, is dead - O.V. Jackson Judge

[Page 54]

228 51

Commission to take Deposition of Joseph Woods & John P. Erwin John Seth Botts by next friend vs Sam^l B. Crockett & wife & others } The State of Alabama - Mobile County Chancery Court - First District. Southern Chancery Division To John Hugh Smith Esqr. Greeting: Know ye, That we in confidence of your prudence and fidelity have appointed you, and by these presents do give you, full power and authority to take the deposition of Joseph Woods and John P. Erwin witnesses on the part of Complainant in a cause depending in our said Court, wherein John Seth Botts by next friend is complainant and S. B. Crockett & wife W. M^cAfee & wife and others are defendants and therefore we command you or any one of you, that at such time and place or times and places as you may apppoint, you do cause the said Woods and Erwin to come before you and then and there examine them on oath, on the interrogatories and cross interrogatories annexed. And that you, or either of you do take such examinantion and reduce the same into writing and return the same annexed to this writ, closed up your seals or the seal of any one of you, into our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the cause aforesaid.

Witness Malcolm J. M^cRae, Register of our said Court at Office And also the seal thereof this fourth day of February A. D. 1846 Attest: M. J. M^cRae Register

Comr^s Return Commissioner's Return State of Tennessee Davidson County } The 21st day of March 1846 I have on this day proceeded to take the depositions of John P. Erwin and Joseph Woods witnesses for Complainant - the former about the age of fifty five, the latter about the age of sixty five, at the office of the Mayor of Nashville on Cedar Street in said Town in obedience to a commission hereto annexed, to be read as evidence in a suit now pending in the Chancery Court for the First District of the Southern Chancery Division of the State of Alabama at Mobile, wherein John Seth Botts by his next friend Thomas R. Botts is complainant and Sam^l B. Crockett & wife et al. are defendants. The said John P. Erwin after being sworn on the Holy Evangelists to speak the truth the whole truth and nothing but the truth concerning the matters in dispute between the said parties deposes as follows

Jno P. Erwins Deposition Answer to first Interrogatory for Complainant. 1 I have examined the instrument of writing purporting to be signed by Thomas Yeatman and John Instone dated 10th day of November 1829 and state that the said instrument was witnessed by me and acknowledged by the parties thereto in my presence.

2 I was acquainted slightly with John Instone, but I know nothing of any property that he may have owned never having occasion to inquire.

[Page 55]

229 52

Answer to the third Interrogatory of the Complainant 3 I know nothing more material to either party

Answer to first Cross Interrogatory 1st Whether Mr. Instone dec^d acquired any property or died seized and possessed of any, I am unable to state.

Answer to Second Cross Interrogatory 2nd I do not know the situation of Mr. Instone at the time the deed of writing referred to, was executed, nor from whom the money referred to was received

Answer to third Cross Interrogatory 3rd I know nothing of Mr. Instone's will, nor any thing of any agreement of W^m Botts and his wife concerning it.

Answer to 4th Cross Interrogatory 4th I know nothing more about the matter and further this deponent saith not J. P. Erwin

Adjourned to the 23rd day of March 1846

Jo^s Woods Deposition The said Joseph Woods after being sworn on the Holy Evangelists to speak the truth, the whole truth and nothing but the truth, concerning the matters in dispute between the said parties deposes as follows.

Answer to first Interrogatory for Complainant 1st I have examined the deed signed by Thomas Yeatman and John Instone dated 10th November 1829. I witnessed said deed with John P. Erwin. The signature of Thomas Yeatman is in his own hand writing. The deed was acknowledged by the parties thereto before me.

Answer to the Second Interrogatory for Complainant 2nd I was acquainted with John Instone at the time the deed above referred to was executed - said Instone at said time was acting as clerk or book-keeper or in some other subordinate capacity in the house of Robinson Yeatman at Columbia in this state - said Instone had no property at that time or afterward that I know of.

Answer to 3rd Interrogatory for Complainant 3rd I know nothing further material to Complainant -

Answer to first Cross Interrogatory 1st I never Mr. Instone as clerk of Thomas Yeaman - I know nothing of said Instone's acquiring property afterwards or his being seized and possessed of any at the time of his death.

Answer to Second Cross Interrogatory 2nd My impression was (at the time the deed referred to was executed) that the said Instone was insolvent - I know not from whom the money referred to was received.

Answer to third Cross Interrogatory 3rd I know nothing about the will of said Instone or any agreement concerning it, on the part of W^m Botts and his wife

Answer to fourth Cross Interrogatory 4th I know nothing more about the matter that will benefit

[Page 56]

230 53

either party - and further this deponent saith not Jos. Woods

Commissioner's Certificate Commissioner's Certificate I certify that the foregoing depositions are all in my own hand-writing that I am in no wise related to either of the parties, that the same was taken before me on the day, at the place and they have not been out of my possession, or in any wise altered, added to or changed, since they were signed by the said John P. Erwin and Joseph Woods. This 23rd day of March 1846. Fees for taking the above depositions \$5. } Jno Hugh Smith Mayor of Nashville and Commissioner to take the above depositions I

certify that the above named deponent Jno P. Erwin can scarcely write his name being affected by paralysis Jno Hugh Smith

Commissioners Return Return of Commissioner Tho^s D. Tilford John Seth Botts by next friend against S. B. Crockett & wife } In Chancery In obedience to a commission from the Chancery Court of Mobile County First District, Southern Chancery Division in the State of Alabama, I have caused to come before me, at the clerks office of the Franklin County Court in the town of Frankfort, State of Kentucky, on the 5th day of June 1846, the witnesses whose names are mentioned in said commission for the purpose of taking their respective depositions as by said commission directed: The first witness examined was Dandridge S. Crockett aged about 42 years, who being first duly sworn deposeth and saith:

Dandridge S. Crocketts Deposition 1 Question: Will you please examine the paper now shown you. purporting to be a power of attorney executed by S. B. Crockett and Anna M. Crockett, dated 22nd Jan. 1836 (marked A.) and state whether or not the signatures of S. B. Crockett and Anna M. Crockett to said writing are not genuine and state your means of knowing their hand writing.

Answer: I have examined the said paper and I state that said signatures of S. B. Crockett and Anna M. Crockett are genuine, and in their own proper hand writing. I have seen them both write frequently and have had every means of knowing their writing.

2. Question: Will you please examine the letter now shown you, from S. B. Crockett to Messrs Stewart & Thornton attos. at Law Mobile Ala. and marked B. and state whether or not said letter is not in the hand writing of S. B. Crockett and whether his signature to said letter is genuine.

Answer: I have examined said letter and I have no hesitancy in saying that said letter was written by S. B. Crockett in his own hand and that his signature thereto is genuine. Dange S. Crockett

[Page 57]

231 54

S. J. Majors Deposition Also the deposition of Sam^l J. M. Major taken at the same time and place and for the same purpose, who being first duly sworn deposeth and saith

1st Question: Are you acquainted with the parties to this suit and particularly with the Deft. S. B. Crockett and Anna Maria Crockett his wife residing in Franklin Co. Ky. If so, how long have you known them Answer: I have known S. B. Crockett and Anna Maria Crockett from their childhood.

2nd Question: Please state whether the Power of attorney herewith annexed (marked A.) is subscribed by you as a witness and whether you subscribed it at the request of Sam^l B. Crockett and his wife Anna Maria and if they signed or acknowledged it in your presence and if you know it to be their act and deed.

Answer: I subscribed said Power of Attorney as a witness/ S.B. Crockett signed it before I went to his house and I saw his wife Anna Maria Crockett sign her name. They both however in my presence acknowledged said power of attorney to be their act and deed for the several purposes therein. I did not see S. B. Crockett sign said instrument but he acknowledged it to be his signature and I know it to be genuine.

3rd Question: Exame the certificate of Ew^dS. Coleman as annexed to said power of attorney, as Presiding Justice of the Franklin County Court and say whether or not he was Presiding Justice at the time of the execution of said power of attorney and whether his signature is genuine. Answer: I know that Ew^d S. Coleman was presiding Justice of the Franklin County Court at the time said power of attorney was executed and I know his signature thereto to be genuine.

4th Question: Examine the letter now shown you from S. B. Crockett to Messrs Stewart & Thornton attos. at Law Mobile Ala (and marked B.) and state whether or not said letter is in the hand writing of S. B. Crockett and

whether his signaure thereto is genuine. Answer: I have examined said letter and it is in the hand writing of S. B. Crockett and his signature thereto is genuine.

5th Question (Cross Interrogatory) Do you or not know that the late Jno. Instone left a will disposing of his property and that W^m Botts and Jane I. Botts in their lifetime agreed that the property of Mrs. Instone should be divided as the will directs. Did they not sanction the disposition that Mr. Instone made of his property and were they or not willing that his property should be divided between W^m Botts & Mrs. Crockett and other heirs. Answer: I know nothing relative to the property of Mr or Mrs Instone and of course cannot answer this question.

Cross examined by Defendant 1st Question: Examine the paper now shown you (marked 2) dated 30th Sept. 1834, purporting to be an agreement signed by

[Page 58]

232 55

Anna M. Crockett and Jane I. Botts and the agreement following signed by S. B. Crockett and W^m Botts and state whether or not the signatures of each thereto annexed are genuine or not. Answer: I have seen Anna M. Crockett write once and I believe her signature thereto to be genuine. I know nothing about Jane I. Botts' signature, whether genuine or not - neither do I know any thing about William Botts' signature - but I know the signature of S. B. Crockett to be genuine. And further this deponent saith not. S. J. M. Majors

H. W. Sneed's Deposition Also the deposition of Henry Sneed taken at the same time and place and for the same purpose, who being first duly sworn deposeth and saith.

1 Question. Examine the power of attorney herewtih annexed (marked A.) and state whether or not the signatures of S. B. Crockett and Anna M. Crockett thereto are genuine or not. Answer: I have examined said paper and the signature of S.B. Crockett is genuine. I do not know whether the signature of Anna M. Crockett is genuine or not.

2nd Question: Examine the letter now shown you from S. B. Crockett to Messrs Stewart & Thornton attos. at Law Mobile Ala. (marked B) and state whether or not said letter is in the hand writing of S.B. Crockett and whether his signature thereto is genuine. Answer: I have examined said letter and it is in the hand writing of S.B. Crockett and his signature thereto is genuine.

And further this deponent saith not. H. W. Sneed

Deposition Jno. McKee Also the deposition of John M^cKee taken at the same time and place and for the same purpose, who being first duly sworn deposeth and saith.

1 Question: Are you acquainted with the parties to this suit and particularly with the deft. S.B. Crockett and Anna M. Crockett his wife: If so how long have you known them. Answer: I have known S. B. Crockett and wife for upwards of 30 years. The infant of W^m Botts I have know for several years.

2nd Question: Are you acquainted with the hand writing of Sam^l B. Crockett and wife. If so, examine the instrument of writing here shown you (marked A.) and say if the signatures of S.B. Crockett and Anna M. Crockett thereto affixed are genuine or not. Answer: The signature of S.B. Crockett is genuine and I believe the signature of Anna M. Crockett to be genuine, altho' I am not sufficiently familiar with her writing to be positive.

3rdQuestion: Please state whether Mrs Crockett has or had any property proceeding from the estate of Mrs. Benners, if so what is it. Answer: I understood that all the property conveyed to me in Trust by A. Crockett by deed dated 30th Aug. 1823 for the use of Mrs. Crockett, was derived from Mrs. Benners, except 20 acres of land and one negro - also except a purchase made by said Crockett of Talbot & wife.

4th Question: State if you are a Trustee for Mrs. Crockett for

property held for her own use. What property is or was so held. Where did it come from; when did she obtain it. Did she obtain it all at one time or at several times and what was its value when obtained. Answer: I am the trustee for Mrs. Crockett. The property so held came originally from Mrs. Benners and consists of 150 acres of land and 7 slaves. It was conveyed to me as trustee by A. Crockett and I now hold it as such. She obtained it on 31st May 1826. She obtained the whole at one time and the value of the whole property at that time I suppose to be about \$2500 -

5th Question: Please annex a copy of any deed of Trust in your possession concerning such property, or other instrument by which you are invested with title to money or property for her. Answer: I have been furnished with a certified copy of the deed of The Deed of Trust (marked C) from A. Crockett to me as Trustee for Mrs. Crockett and a certified copy of the division of the estate (marked D) which I hereby annex.

(Cross Interrogatories)

1st Question: Do you or not know that the late Jno. Instone left a will disposing of his property and that W^m Botts and Jane I. Botts in their lifetime agreed that the property of Mr. Instone should be divided as the will directs. Did they not sanction the disposition that Mr. Instone made of his property and were they or not willing that his property should be divided between W^m Botts and Mrs. Crockett or their heirs. Answer: I cannot answer this question as I do not know the facts.

2nd Question: State fully what property Mrs. Crockett and Mrs. Jane I. Botts received from the estate of Mrs. Benners - from whom did Mrs. Benners derive the property and what became of it after Mrs. Benners received it - State also what property they received from Mr. & Mrs. Instone. Answer: The property which the said Anna Maria and the said Jane I. received from the estate of Mrs. Benners in Franklin Co. consisted of land and negroes. I am not sufficiently advised to state how Mrs. Benners became entitled to said estate. The land and slaves in Franklin County were divided between the said Anna Maria and Jane I. - In regard to the latter part of the question I cannot answer positively. Mrs. Instone was the daughter of Mrs. Benners and I think only had a life estate in the property. I refer to the papers for a more particular statement of facts on these subjects.

The parties mutually agree to waive the 3rd and 4th Cross Interrogatories directed to Jno. M^cKee)

And further the deponent saith not. John M^cKee

Certificate of Com^r Commissioners Certificate I Tho. D. Tilford one of the Commissioners named in the foregoing

dedimus, do hereby certify, that on the 5th day of June 1846 I caused the witnesses named in the dedimus viz. Dange. S. Crockett, S.J. M. Major, H.W. Sneed and John M^cKee (the parties having agreed to waive the examination of the others named) to come before me at the clerks office of the Franklin Co. Court, who being first duly sworn testified as it is set down in the foregoing pages; that the testimony was by me reduced to writing; that it was subscribed by the witnesses in my presence after its being first read over to them - I do further certify that the foregoing pages contain all the evidence taken before me and that those questions named in the dedimus, which were not asked were waived by the parties: Given under my hand this 23rd day of June 1846 Tho D. Telford Conv^t

Deed from A. Crockett to John M^cKee referred to (mark C) This Indenture made this 30th day of August in the year 1823 between Anthony Crockett of the County of Franklin and State of Kentucky of the one part, and John

M^cKee of the same County and state of the other part Witnesseth. That in consideration of his said Anthony's respect and affection of his daughter-in-law Anna M. Crockett late Anna M. Instone and further because the chief of the estate here in after described having descended to the said Anna from her mother or the relatives of her mother and came into the possession of the said Anthony in consequence of the marriage of his son Samuel B. Crockett with the aforesaid Anna M. and the said Anthony being desirous of restoring said estate real personal and mixed and of leaving the same to the said Anna M. and her children, and in consideration of the further sum of one dollar to him the said Anthony by him the ___ for the use and in behalf of the said Anna M. Crockett late Anna M. Instone in hand paid, the receipt whereof is hereby acknowledged he the said Anthony Crockett hath granted, bargained sold and delivered over and by these presents does grant bargain sell and deliver over to the said John M^cKee & his heirs, interest as hereinafter declared and mentioned the following described land and slaves, to wit, one tract of land estimated at twenty & half acres on the Kentucky river above Frankfort about two miles, the same which was conveyed to the said Samuel by the said Anthony - also one equal undivided half of a tract of land on the South fork of Benson Creek in the county of Franklin supposed to contain three hundred acres be the same more or less, it being the same tract of land on which John Instone formerly lived and now in the occupancy of Doct^r S.B. Crockett and deed to the said Samuel B. Crockett and others by Christopher Greenup and by said Samuel B. Crockett to the said Anthony Crockett, with the appurtenances & improvements thereunto belonging - also one negro man Isaac, and one equal and undivided moiety of the estate, interest and title to the following slaves, a negro man called John, a boy called Jerry, a woman called Johanna, a woman called Hannah, a yellow woman called Mary and her four children to wit, a boy called Joe, a girl called Harriet, a girl called Sylvia and an infant called Charles Edward - Together with all and singular the increase of the said females,

[Page 61]

235 58

(C) Trust Deed A. Crockett to Jno. M^cKee To have and to hold the aforesaid tracts of parcels of land together with the appurtenances and the aforesaid slaves and the increase of the females to the said John M^cKee and his heirs in Trust as herein after specified forever, and the said Anthony Crockett covenants to warrant and defend the title to said land and slaves against all persons claiming or to claim by thro' or under him but not against the claim of no other person or persons whatever. This conveyance is made upon the following tenents and conditions, that whereas Samuel B. Crockett and Anna M. Crockett his wife late Anna M. Instone have simultaneously with the execution and delivery of this deed, executed and delivered unto the said Anthony Crockett an assignment and transfer in writing by which they have assigned, transferred and set over to him the said Anthony, the right title and interest of them the said Samuel B. and Anna M Crockett his wife late Anna M Instone in a legacy in the hands of John Jacob Astor of the city of New York to one fourth part of which the said Anna M. Crockett is entitled as one of the representatives & heirs of Elizabeth Benners her late grand mother, and which was paid into the hands of the said John Jacob Astor by William Edgar one of the executors of Doct^r Reneaudet formerly of the city of Bristol in the Kingdom of Great Britain as the property of Elizabeth Benners deceased or that of her representatives, and it may be necessary to execute a bond of indemnity to John Jacob Astor or to some other individual in the City of New York who may be procured to join in a bond to said Astor to save said Astor harmless & free from loss before said Astor will pay over said legacy to said Anthony to which the aforesaid S. B & Anna M. Crockett are entitled as aforesaid and to secure him the said Astor in like manner harmless upon paying over the residue of said legacy to Jane Isabella Instone and to Thomas Yeatman assignee to John Instone who claims one half of said sum of money as heirs at Law of John S. Instone Jr. his son who has departed this life and as heir at Law of his daughter Eliza Caroline also dec^d both of dying with out leaving any child or children. Now therefore the said Anthony Crockett in making this conveyance reserves to himself the right and power of charging the estate here in conveyed with any mortgage or deed of Trust which may be necessary to effect the object aforesaid and retains & reserves the power of executing such mortgage or deed of Trust as will charge the lands and negroes here in conveyed & give a lien upon the same in the hands of the aforesaid John M^cKee trustee as aforesaid so as to subject said land & negroes to be sold to raise any sum or sums of money as may be necessary to save harmless any person or persons who may enter into any bond,

contract, article of agreement or other instrument of writing to save said John Jacob Astor harmless & free from loss upon his paying over the whole or any part of s^d legacy or money in his hands to which the heirs of Mrs Elizabeth Benners may claim under the will of the said Doct^r Reneaudet of Bristol in England as aforesaid, - But the said Anthony Crockett reserves no other or further power, priviledge or controul or interest in the land and negroes conveyed as aforesaid

[Page 62]

236 59

(C) Trust Deed S. Crockett & Jno. M^cKee and this conveyance is made upon trust - Nevertheless and to the use & interest that the said John M^cKee Trustee his heirs executors, adm^{rs} & assigns shall stand seized of and hold and possess the land negroes and estates herein before conveyed unto him both real & personal and every part and parcel & interest herein before conveyed to the user and trusts herein after declared except as the same shall have been limited & restricted by the power & contracts herein last before reserved by him the said Anthony, that is to say, first to the use of the said Anaa M. Crockett daughter-in-Law of said Anthony and wife of S. B. Crockett and late Anna Maria Instone during her natural life. 2nd that he the said John M^cKee Trustee his heirs executors administrators and assigns shall permit the said Anna M. Crockett to have the use benefit, rents, hires profits increase and emoluments of said estate and property during her natural life for her support & maintenance. 3rd The said Trustee his heirs &c. is & are expressly prohibited from suffering or consenting that the said property estate, rents, profits, issues or emoluments or any part thereof shall be applied to the use advantage disposition or management of Samuel B. Crockett the husband of said Anna R. Crockett separate & apart from her the said Anna M. or in any other wise than for comfort, support and accommodation - 4th After the death of the said Anna M. the said estate real & personal shall be held by the said John M^cKee Trustee his heirs &c to the use of such of the children of the said Anna M and Samuel B. Crockett as shall survive her and that the said Trustee shall and will convey the estate to such survivor or survivors, child or children of the said Anna M. as shall survive her and living at her death. 5^{thly} In default of such surviving child or children then to the use of the right heirs of the said Anna M. Crockett late Anna M. Instone. 6^{thly} If it shall seem expedient to the said Trustee and be agreeable to the said Anna M. Crockett the said Trustee is hereby directed to appoint a Stewart or manager of said estate both land and negroes he the said Stewart or manager entering into bond with approved security to account at such times as may be prescribed for the product profits and issues of said property to the Trustee aforesaid for the uses and Trusts above enumerated, and the said John M^cKee Trustee as aforesaid for himself his heirs &c covenants to and with the said Anthony Crockett his heirs &c to take upon himself and accept the execution of the Trusts herein confided in him & that he the said Trustee his heirs & shall and will at all times here after have, use, hold, possess, and dispose of and stand seized of and assert his rights & interest in the said estates in land and slaves both real and personal, and all the appurtenances, & its issues, emoluments and appendages subject to and in execution of the uses, trusts & interest herein before declared. In testimony of the premises the said parties have hereunto set their hands & affixed their seals the day & date above written. Anthony Crockett {seal} John M^cKee {seal} Note the following interlineations were made before the signing of this Instrument 7th line from the beginning "chief of the" 23rd line last page for 1 sheet "and Samuel B. Crockett" and 27 do "the" 12 do 1st sheet page last sheet as above "subject" }

[Page 63]

237 60

Certificate of Record Certificate of Record Commonwealth of Kentucky. Franklin County Sct. I Willis A. Lee Clerk of the County Court for the County of Franklin do certify that the foregoing deed of Trust from Anthony Crockett to John M^cKee was produced to me in my office on the sixth day of Sept 1823 and acknowledged by said Crockett and M^cKee to be their act and deed for the purposes therein mentioned and the same is truely recorded in my office. In testimony whereof I have hereunto set my hand as clerk as aforesaid Fee 93.3/4 cents}

paid by Botts & Crockett Att. Willis A. Lee clk A Copy attest: A. H. Rennick clk A.H. Rennick clk Franklin Cty ct.

(D)Division Division referred to in proceeding Interrogatories We the subscribers having been called upon by Anna Maria Crockett and John M^cKee her Trustee and Jane I. Instone and her father John Instone to divide a Tract of land on which Samuel B. Crockett now lives and certain negroes and their increase formerly the estate of Elizabeth Benners deceased into two equal halves one of which is claimed by Anna Maria Crockett in behalf of herself & children by her Trustee John M^cKee under a deed of conveyance from Anthony Crockett to said M^cKee, and the other half is claimed by Jane I. Instone one fourth part as her own original right under the will of her grand mother, Elizabeth Benners and one other fourth the original right of her deceased brother John Lucas Instone which part has been conveyed to her by her father as heir at Law to his sons estate and by Thomas Yeatman of Nashville in the State of Tennessee to whom said fourth was mortgaged to secure the payment of certain monies paid by said Yeatman for account of said John L. Instone deceased in the State of Louisiana which said monies said Jane I. Instone has assumed to pay to said Yeatman out of a legacy to her which said Yeatman has to collect in the City of New York, we do now report that in compliance with the request of the parties aforesaid, we have made as equal a division of the land and negroes as to quantity, number quality and value as in our opinion it was possible to be made and that the parties mutually declared themselves to be well satisfied & pleased with the division we had made and that each immediately made choice of the half of the land and negroes they preferred to wit. Anna Maria Crockett & her husband and John M^cKee her trustee chose the half of the land on which the house in which Samuel B. Crockett lives distinguished on the plat here unto annexed by figure 1 and the following negroes to wit, Jerry a young man and his mother called Johanna and a girl called Harriet a boy Charles E. and an old woman called Hanna. And Jane I. Instone has chosen the lot of land distinguished on the on the plat annexed by the figure, 2, and the following negroes to wit, a man called John a Mulato woman called Mary and her three children called Joe a boy, Sylvia a girl and Albert a boy

[Page 64]

238 61

and as this lot was thought rather the best by us Jane I. Instone agreed to let her sister have the use of such of her house hold furniture which was gifted to her by Peyton Short Esqr. as may be necessary to her convenience during her life to the value of one hundred dollars and at her death if any remaining to be equally divided amongst her surviving children. And the parties aforesaid did execute the annexed bond and obligation to abide by our division and their own choice or lot as may fall to them to the choice of each lot we were witness and of their perfect agreement as to equality of the division and choice as here in before stated. In witness where of we have signed our names hereunto this 31st day of May 1826 Chs. Julian W^m Boyd

State of Kentucky SS I Alexander H. Rennick Clerk of the County Court for the County of Franklin in the state aforesaid, do certify that the foregoing transcript is truly copied from the Records in my office. Witness my hand as clerk as aforesaid this 6th day of June 1846 A H Rennick Clerk of the Franklin County Court Fee 60 cents

Defendants' Testimony Defendants Testimony Interrogatories to be submitted to John M^cKee Alexander Rennick Jacob Sweegest Dandridge L. Crockett and ___ Loomis witnesses for the defendants in a cause pending in the Court of Chancery at Mobile and in which John Seth Botts is plaintiff and Samuel B. Crockett & Anna Maria his wife et al are defendants

Interrogatory 1. Were you acquainted with John Instone formerly of Tennessee but who died near Mobile Alabama - Do you know any thing of the settlement of his estate - who were his next of kin at his death - and do you know of any agreement among them about the division of the estate.

Interrogatory 2. If you know any thing of any agreement for a settlement state who were the parties to it - was it in writing or parol - If in writing please attach it to your answers or if you cannot do so state the contents of the same and state when you last saw the original and in whose possession - If the agreement was a verbal one state

what it was - and the inducements to it - answer fully and at large what you know on the subject of this Interrogatory.

Interrogatory 3. If you know any thing of the circumstances of Instone in his life please state the facts in your knowledge, or what you may have learnt from the parents of the plff - will you state how he became possessed of the said estate & what claims had the defendants to it.

Interrogatory 4. Will you state every thing that you know that will explain or elucidate your testimony or is material to the issue between the parties or that will benefit the defendants - and attach any letters, deeds or evidences in writing in your possession that relates to this issue and explain the same - answer fully and at large. Campbell & Chandler for Defts

[Page 65]

239 62

Notice to Counsel Messrs Stewart & Easton will take notice that we shall examine such other witnesses as we may think needful for the interests of the defendants on the interrogatories above - and that we shall not confine ourselves to those mentioned in the caption Campbell & Chandler for Defts

Notice of Interrogatories filed Notice of Interrogatories filed The State of Alabama Mobile County } Court of
Chancery To Messrs Stewart & Easton - Greeting: You will please take notice, that in a certain cause pending in
our Court of Chancery for the First District of the Southern Chancery Division of said State at Mobile wherein
John Seth Botts is complainant and John W. Jeanerette adm^r et al are defendants interrogatories to John M^cKee,
Alex^r Rennick, Jacob Sweegent, Dandridge L. Crockett and ____ Loomis witnesses for the said Defts have been
this day filed in my office; which said Interrogatories will remain on file as aforesaid for ten days, during which
time you may file cross interrogatories if you think proper. Witness Malcolm J M^cRae, Register of the Court of
Chancery aforesaid, at office, this 19th day of April A D 1846 Attest: M J M^cRae Reg. 1st. Dis. So. Ch'y Div.
Ala. &c

Sheriffs Return Rec^d 20th April 1846 and on the same day I served a copy of the within notice and
Interrogatories, as furnished by the Register on Stewart & Easton. C. Bancroft Shff M.C By O. W. Austine Dept
Shff

Commission Commission John Seth Botts vs Jeanerette & Crockett et al } The State of Alabama Mobile
County Chancery Court - First District Southern Chancery Division To James Shannon and Jeptha Dudley
Esqrs. Greeting: Know ye, That we in confidence of your prudence and fidelity have appointed you, and by
these presents do give you, or any one of you, full power and authority to take the deposition of John M^cKee,
Alexander Rennick, Jacob Sweegest Dandridge L. Crockett and ____ Loomis witnesses on the part of Defts in
a cause depending in our said Court, wherein John Seth Botts is complainant and Jeanerette, Crockett et al
are defendants and therefore we command you or any one of you, that at such time and place, or times and places as
you may appoint, you do cause the said witnesses to come before you, or either of you, and then and there
examine them on oath, on the interrogatories annexed. And that you, or either of you do take such examination,
and reduce the same into writing and return the same annexed to this writ, closed up under your seals or the seal
of any one of you, into

[Page 66]

240 63

our said Chancery Court, with all convenient speed, that the same may be read in evidence on the trial of the
cause aforesaid. Witness Malcolm J. M^cRae, Register of our said Court at office and also the Seal thereof this
fourth day of May A.D. 1846. Attest: M J M^cRae Register

Commissioners Return Commissioners Return John Seth Botts and who sues by his next friend against S. B. Crockett Et al } In Chancery In obedience to a Commission from the Chancery Court of Mobile County. First District, Southern Chancery Division in the State of Alabama, I have caused to come before me, at the Clerk's office of the Franklin County Court, in the Town of Frankfort, State of Kentucky on this the 5th day of June 1846, the witnesses whose names are mentioned in said commission for the purpose of taking their respective depositions as by said Commission I am directed. Deposition of W.P. Loomis The first witness examined was W. P. Loomis, aged about 48 years and who being sworn upon the Holy Evangelist to speak the truth the whole truth and nothing but the truth, concerning the matters in dispute between the parties to said suit deposeth and saith.

Interrogatory 1. Will you please examine the paper now shewn you, purporting to be an agreement between Anna M. Crockett and Jane I. Botts, dated the 30th day of September 1834, and also an agreement thereunder written, which purports to have been made between S. B. Crockett and William Botts, also dated the 30th day of Sept. 1834 - State whether the signature of Jane I. Botts to the said writing purporting to be an agreement between her and Anna M. Crockett, is or is not in the hand writing of the said Jane, and also state your means of knowing her hand writing.

Answer. I have examined the said paper and I state that I have no doubt of the fact that the name of the said Jane I. Botts appearing to said agreement is in her own proper hand writing. I was well acquainted with Mrs. Jane I. Botts, both before and since her marriage with William Botts. I have seen her write, and have received from her notes in her own hand writing, and I am satisfied that her name to said agreement is in her hand writing. And further this deponent saith not. W. P. Loomis

Deposition of Dangr S. Crockett Deposition of Dandridge S. Crockett The second witness examined was Dandridge S. Crockett aged about 42 years, and who being sworn as above deposeth & saith. Interrogatory 1. Were you or not acquainted with Mrs. Anna M. Crockett, wife of Samuel B. Crockett, and Mrs Jane I. Botts now dec^d who was the wife of William Botts dec^d If so will you state whether the paper now shewn you, purporting to be an agreement between the said Anna M. and Jane I. is or not signed in the hand writing of the said Anna M. and the said Jane I. and also state what means of knowledge you have

[Page 67]

241 64

Crocketts Testimony of their hand writing.

Answer I am satisfied that the names of the said Anna M. and Jane I. appearing to said agreement are in the hand writing of them respectively - that is to say, the name of the said Anna M. to said agreement is in her own proper hand, and the name of Jane I. to said agreement is in her own proper hand. I was well acquainted with the said Anna M. and the said Jane I. - have seen them both write frequently and have no doubt of their signatures being genuine

Interrogatory 2. Will you state whether you are or not acquainted with Samuel B. Crockett. If so will you state whether you do or not know his hand writing - If yea, state whether the signature of said Crockett to the writing on the same paper, and below the agreement above referred to between Anna Maria Crockett and Jane I. Botts is or not in the hand writing of Said Samuel B. Crockett.

Answer He is my brother, I lived with him for many years, I have seen him write frequently, and his signature to said writing is in his own hand writing

Interrogatory 2. By same. Do you know any thing about the division of the lands and slaves in this county between Anna Maria Crockett and Jane I. Botts - If you do, state all you know upon the subject.

Answer I can't state the particulars of the division - I know that a division of some land and slaves, which were desired by Mrs. Benners to her daughter Ann Elizabeth during her life, and after her death to her surviving

children; was made between Anna Maria Crockett and the said Jane I. Botts (the said Jane at the time being unmarried) they being the only children of the said Ann Elizabeth, who survived her. I have seen the report of the commissioners who made the division, and read it. I know that the division was made but as to further particulars, I refer to the report of the Commissioner.

Interrogatory 3. At the time of said division had or not the said Mrs. Benners and said Ann Elizabeth departed this life.

Answer They had departed this life. Dangr. S. Crockett

Crocketts Testimony Continued Crocketts Testimony Continued The parties not having time to finish the taking of the said Dangr S. Crockett's deposition on this day, the further taking was continued until June the 6th 1846. Now on this day, to wit, the 6th day of June 1846 the said D. S. Crockett was further examined as follows.

Interrogatory Were you acquainted with John Instone formerly of Tennessee, but who died near Mobile, Alabama - Do you know any thing of the settlement of his estate who were his next of kin at his death, and do you know of any agreement among them about the division of the estate.

Answer I was well acquainted with said John Instone. I do not know any thing of the settlement of his estate. At his death he had only

[Page 68]

242 65

two children living, to wit, Anna Maria Crockett and Jane I. Botts (who were his next of kin I suppose) I understood that there was an agreement entered into between the said Anna Maria, and the said Jane I. by and with the assent of their respective husbands. The paper now shown me, referred to in the deposition of Loomis, and also referred to in the former part of this my deposition, marked (2) which purports to be an agreement between said Anna Maria and Jane I. with the written assent of their respective husbands thereunder written, on the same half sheet of paper, relating to the division of said estate, is signed by said Anna M. Crockett and the said Jane I. Botts, both of whose signatures are in their respective hands, as I have heretofore stated in this my deposition. I have as above stated frequently seen the said Anna M. and the Jane I. write and know their said signatures to be genuine. I make the same statement as to the signature of Samuel B. Crockett.

Interrogatory If you know any thing of any agreement for a settlement state who were the parties to it - was it in writing or parol - If in writing please attach it to your answer, or if you cannot do so state the contents of the same and state when you last saw the original and in whose possession - If the agreement was a verbal one state what it was - answer fully and at large what you know on the subject of this interrogatory.

Answer I know nothing more than I have stated in my answers above, which I believe fully answers this interrogatory.

Interrogatory If you know any thing of the circumstances of Instone in his life please state the facts in your knowledge - or what you may have learnt from the parents of the plaintiff - Will you state how he became possessed of said estate, and what claims had the defendants to it.

Answer I lived with the said John Instone for several years whilst he was residing in Kentucky - or rather with S. B. Crockett with whom said Instone also resided. I think he was insolvent whilst he was residing in Kentucky. He may have got possession of some estate from his mother-in-law Mrs. Benner, which belonged to his children - If he had the controul of any estate, it was his children's. I don't think he owned in his own right any estate. I do not know what were his circumstances after he left Kentucky. I further state that I was informed, and I think the information was acquired from all the parties, that there was a considerable sum of money in the hands of Jno. Jacob Astor, which belonged to the children of s^dInstone, to wit, Anna Maria and Jane I. and which they were entitled to as devisees of Mrs. Benners. A power of attorney was given by the Anna M. & Jane I. to

Henry Clay to receive the money from Astor, but which said Clay failed to receive. I then by the direction of the parties took the papers out of Clays possession and placed them in the hands of Tho. Yeatman who drew the money. The money was rec^d by Yeatman after Instone left Kentucky.

Interrogatory Will you state any thing that you know that will expalin or elucidate your testimony or is material to the issue between the parties or that will benefit the defendants and attach any letters or evidences in writing in your possession that relates to this issue and explains the same answer fully and at large.

Answer I know of no paper in my possession that is material to the

[Page 69]

243 66

points in issue - nor do I now remember any fact touching the controversy which is material - if there be any the parties can call my attention to it by special interrogations.

The following interrogatories were propounded by the Complainant. Interrogatory How long since you understood that Mrs. Crockett has an interest in the money in the hands of Yeatman received from Astor.

Answer I first understood she had an interest in it before the money was received by Yeatman, and have up to this time never heard her interest questioned.

Interrogatory Have you or not been informed that Mrs. Crockett has long since rec^d her interest in the money.

Answer No I have not - My father held a Mortgage on some property of S. B. Crockett and by an arrangement made between John Instone and my father Anthony Crockett, it was agreed that my father should relinquish said Mortgage and convey all the property to John M^cKee in trust for Anna Maria Crockett and her children. For the purpose of making my answers more specific, I here refer to the said mortgage from Samuel B. Crockett to Anthony Crockett dated the __ day of ___ a certified copy of which I make a part of my answer. I also refer to a bill of sale made by said Samuel B. Crockett and his wife Anna Maria to said Anthony Crockett, dated the 30th day of August 1823 a certified copy of which I make a part of this answer. I also refer to the deed of Trust made by said Anthony Crockett to John M^cKee, dated 30th day of August 1823, a certified copy of which I make apart of this answer. These papers will explain the transaction much better than I can from recollection.

Question Question by the defendants. State whether S. B. Crockett was or not much embarrassed and state whether the embarrassed condition of his affairs was or not the reason why said deed of Trust was made.

Answer Said S. B. Crockett was much embarrassed. I suppose that was the reason the said deed of Trust was made to s^d M^cKee.

And further he saith not. Dange. S. Crockett

Deposition of Jacob Sweegest Deposition of Jacob Sweegest Also the deposition of Jacob Sweegest taken on the said 6th of June at the place and for the purposes in the caption mentioned. The Deponent being of lawful age, say 52 years, and first duly sworn as above deposeth and saith.

Interrogatory Will you state every thing that you know that will explain or elucidate your testimony, or is material to the issue between the parties or that will benefit the defendants and attach any letter deeds or evidences in writing in your possession that relates to this issue and explains the same - answer fully and at large.

Answer The only answer which I can make to the above interrogatory is this, - That a paper has been placed in my hands to examin., which purports to be an agreement made between Anna Maria Crockett and Jane I. Botts dated the 30 day of September 1834,

244 67

with a writing on the same sheet immediately following said agreement being the written assent of S.B. Crockett & William Botts to the agreement made by their said wives respectively, which is signed by them the said S. Crockett & Wm. Botts, and of even date with said agreement.

I state that I was acquainted with said W^mBotts and with his hand writing, having seen him write, and that I believe his signature to said written assent is in said Botts own proper hand.

And further this deponent saith not J. Sweegest

Adjournment The parties agreed to adjourn the further taking of depositions in this cause until the 22 day of June 1846. This agreement was made in my presence, and to my knowledge. Given under my hand this 6 day of June 1846 J. Dudley

Deposition Sweegest Continued And now, to wit, on the 22nd day of June 1846 the said parties appeared for the purpose of a further examination of witnesses here in and the said Jacob Sweegest, being again called, and the question above propounded to him being again read to him he further says.

That he was well acquainted with the late William Botts of Fleming County from the time of his marriage with Jane Instone. That he has been acquainted with the complainant for a longer period. During his acquaintance with Botts the deponent had frequent conversations with him about the claims of Mrs. Botts & Mrs. Crockett (daughters of the late John Instone) to funds belonging to them in the hands of Yeatman or Erwin in the State of Tennessee and to real estate and some personal property in or near Mobile in the State of Alabama - in all the conversations Botts stated that the property belonged to the sisters jointly. He being an active business man was more negligent in prosecuting the claim.

He further stated that on the 22nd day of January 1836 deponent wrote a power of attorney from the said Samuel B. Crockett and his wife Anna Maria to the said William Botts authorizing and empowering him to adjust the claims of the said Crockett & wife to any property real or personal in the state of Alabama. This deponent has the said power of attorney now before him in his own hand writing, but cannot file the same here with, because it has already been attached to the deposition of other witnesses taken by the complainant in this cause. This deponent has no doubt but what the said William Botts called upon this deponent to write said power of attorney. Indeed such is his present recollection. He further states that in his frequent conversations with said William Botts in relation to said property he always understood that the property was owned jointly by the said Botts and wife and the said Crockett and wife. He has never heard from him said Botts the slightest intimation to the contrary.

And further this deponent saith not J. Sweegest

245 68

Deposition of Jno. M^cKee Deposition of John M^cKee Also the deposition of John M^cKee taken for the purposes above stated. The deponent being of lawful age and first duly sworn deposes and saith

Question No 1. Were you acquainted with John Instone formerly of Tennessee but who died near Mobile Alabama - Do you know any thing of the settlement of his estate - who were his next of kin at his death - and do you know of any agreement among them about the division of the estate.

Answer to Question No 1 Deponent states as follows - that he was well acquainted with the said John Instone. I do not know any thing of the settlement of said Instone's estate. I was made a trustee by a deed of trust from

Anthony Crockett now deceased - I refer to said deed for a more particular description of it, the property and the character of the trust. It is the same (being in fact the only deed of the kind of which I have any knowledge) which is recorded in the clerks office of the Franklin County Court dated 30th of August 1823, a certified copy of which has been procured by one of the parties hereto to be filed in said suit. On the 31st day of May 1826 the said John Instone, the said Jane I. Instone (she then being unmarried) and the said Anna M. Crockett, and myself as the trustee of the said Anna M. Crockett entered unto an agreement, which was reduced to writing and signed by all the parties. The original agreement is now in my possession and I attach the same to this my deposition as a part thereof marked (Instone papers). In pursuance of said agreement the said William Boyd and Charles Julian sometime there after did go on & make a division between the said Jane I. and the said Anna Maria which division the parties accepted and abided. The same was entered of record in the office of the clerk of the Franklin County Court, a certified copy of which I make a part of my deposition and hereto attach the same marked (Division). I refer to said division for a more particular statement of facts connected therewith. I further state that after the said Jane I. Instone intermarried with the said William Botts, he the said Botts acquiesced in said division. I acted as his agent up to the time of his death, and made him returns of the rent received by me for him until his death. I have also paid to Seth Botts rents received by me as af^d since the death of the said William Botts, up to the time of his death. At the time the deed of Trust af^d was made to me the said Samuel B. Crockett was very much embarrassed.

The 2 and 3 questions were waived by the parties.

Question No. 4. Will you state any thing that you know that will explain or elucidate your testimony, or is material to the issue between the parties, or that will benefit the defendants - and attach any letters deeds or evidences in writing in your possession that relates to this issue and explain the same - answer fully and at large

-

[Page 72]

246 69

Answer I further state that I have always understood from all the parties Botts & wife Crockett and wife and from John Instone that the property of the Benners estate, whether in lands, slaves money and all the property of every kind was to be equally divided between the said Anna Maria and the said Jane I. who were the only surviving heirs. I never heard of any one of the parties setting up any claim inconsistant with an equal interest in the two surviving sisters afs^d I speak with confidence on this point. From my relation to the parties as shewn in this deposition I have ~~every~~ had every opportunity of knowing the claims of the parties to the property in question, and I am fully confident that if any different claim had been set up by either party, I should have known it. The only qualification that I make to the above is this, that Jane who resided with the said Samuel B. Crockett until her marriage with said Botts claimed in her own right some inconsiderable articles of household property - with this exception I never heard of any other claim than an equal joint interest in the property. I further state that the said John Instone up to the time he left this county and state was very much embarrassed in pecuniary affairs. He had no property or but little, if any, unincumbered.

Deposition of John M^cKee I understood that he was however profitably employed by Thomas Yeatman after he left here. Originally there were four children to wit. Eliza C. Instone, who intermarried with John N. Talbot, Anna Maria who intermarried with Samuel B. Crockett, John L. Instone and Jane I. who intermarried with William Botts. The said John L. departed this life without issue. His father John Instone claimed to be the heir of said John L. and claimed the fourth part which the said John L. was entitled to,. The said Samuel B. Crockett purchased out the interest of Talbot and wife. For the purpose of making the interest of the said Anna Maria and the said Jane I. equal the said Instone gave to his said daughter Jane I. the fourth which he said John had so inherited from his son John L. The said wife of Talbot has also departed this life after the sale to said Samuel B. Crockett as above stated. At the time of the death of the said John Instone the said Jane I. and the said Anna Maria were the only surviving children. And further this deponent saith not. John M^cKee

Adjourned until Tuesday the 23rd of June 1846

Deposition of A.H. Rennick Deposition of Alexander H. Rennick And now, to wit, on Tuesday the 23 day of June 1846 the parties appeared, and proceeded with the further examination of witnesses.

The deposition of Alexander H. Rennick taken on the 23 day of June 1846 to be read as evidence for the purposes in the Caption stated. The deponent being of lawful age and first duly sworn deposeth & saith.

Question No 1. Were you acquainted with John Instone formerly of Tennessee, but who died near Mobile Alabama. Do you know any thing of the settlement of his estate. Who were the next of kin at this death, and do you know of any agreement among them about the division of the estate.

[Page 73]

247 70

Answer to Question No 1 I was well acquainted with the said John Instone. A division of the estate derived from Mrs. Benners, which was in this county was made between Anna Maria Crockett, and Jane I. Botts, (then Jane I. Instone) on the 3 day of June 1826 as appears from the record of the same, now remaining in my office. I have copied said division for one of the parties hereto, and I refer to it for a more particular representation of the facts. It will be seen that the division is equal, or was intended to be so. At the time of the death of the said John Instone his next of kin were his two surviving children Anna M. Crockett and Jane I. Botts. I know of no agreement about the division of the estate except the one under which the above division was made.

The parties waive the 2nd Question as the deponent knew nothing of the matters referred to in the same, more than he has stated above.

Question No 3. If you know any thing of the circumstances of John Instone in his life please state the facts in your knowledge, or what you may have learnt from the parents of the plaintiff. will you state how he became possessed of said estate, and claims had the defendants to it.

Answer to Question No 3 Before and up to the time the said John Instone left this County and state he was insolvent - nothing could be made out of him by execution. The estate in Kentucky came from Mrs Benner as her will will shew. Instone married a daughter of the said Mrs. Benners.

Question No 4. Will you state every thing that you know that will explain or elucidate your testimony, or is material to the issue between the parties, or that will benefit the defendants, and attach any letters, deeds or evidences in writing in your possession that relates to this issue and explain the same, answer fully and at large.

Answer Question to No 4. I have no paper in my possession, other than such papers as I have official possession of, relative to the matters in controversy. There are records in my office, I being the clerk of the Franklin County Court. I have given official copies of many of these papers to the parties, and I refer to them for a better representation of their contents some time before the death of said William botts I placed the seal of my Court to a letter of attorney from Crockett and wife to said William Botts authorizing said Botts to collect money in Alabama and to do other business in relation to the estate of John Instone dec^d said power of attorney is now before me, and is filed with the depositions taken on behalf of the plaintiffs. I refer to it for greater certainty. I have always understood from William Botts that said Crockett and wife were equally interested with him and his wife in the estate of John Instone deceased and of Mrs Benners deceased. And further this deponent saith not. A. H. Rennick

Documents & Papers referred to and attached to the foregoing Depositions

[Page 74]

248 71

Agreement Mrs. Botts & Mrs. Crockett Agreement of Mrs Botts & Mrs. Crockett We Anna Maria Crockett of Franklin County, and Jane I. Botts of Flemingsburg both of the state of Ky. daughters of the late John Instone dec^d of Mobile do hereby mutually agree and bind ourselves our heirs &c to abide by the wish of our said father as expressed in a letter or writing to Andrew Armstrong Esqr. of Mobile, as to what our said deceased father my have given to us through the said Andrew Armstrong Esqr. Given under our hands this 30th day of September 1834 Anna M. Crockett Jane I. Botts

Husbands Consent We Samuel B. Crockett of Franklin County Ky. husband of the above named Anna Maria Crockett and William Botts of Flemingburg Ky. and husband of the above named Jane I. Botts do hereby consent and agree to the stipulations made by our wives in the above writing. Given under our hands this 30th day of September 1834 S. B. Crockett William Botts

Mortgage of S.B. Crockett to A. Crockett Mortgage from S.B. Crockett to Anthony Crockett This Indenture made on this 29th day of September in the year 1819 between Samuel B. Crockett of Frankfort of the one part, and Anthony Crockett of the County of Franklin & State of Kentucky of the other part, Witnesseth, that the said Samuel is indebted to s^d Anthony in the sum of four thousand five hundred dollars payable in three years from & after the 20th day of this month & the said Samuel hath agreed to secure the payment there of by a mortgage on the property herein after mentioned, now for and in consideration of said money so due & owing by the said Samuel to the said Anthony, and to secure the payment & for the true & faithful discharge of said debt for which the said Anthony hold the obligation of s^d Samuel he the said Samuel hath bargained and sold & assigned, and by these presents, he doth bargain & sell and assign unto the said Anthony & his heirs forever the following property, and all the estate right and interest of the said Samuel there in, that is to say, one equal undivided half of a tract of land on the South fork of Benson creek in the County of Franklin supposed to contain three hundred acres be the same more or less - the same tract whereon John Instone at present (& for sometime past) lives deeded to Samuel & others by Christopher Greenup, one other tract of land estimated at twenty & an half acres on the Kentucky above Frankfort about two miles the same which was conveyed to said Samuel by said Anthony, one negro boy called Isaac, one equal undivided interest or moiety of the estate & use to slaves following to wit. a boy called Jerry, a woman called Hanna, a woman called Johanna, a yellow girl called Mary, a mulatto girl called Harriet, a mulatto boy called Joe, and infant child called Sylvia, a negro man called John, the said Harriet, Joe and Sylvia being the children of said slave Mary with all their future increase To have and to hold the said tracts of land, with the appendages & appurtenances, and the said slaves and increases, that is to say, the estate

[Page 75]

249 72

and interest of said Samuel aforesaid unto the said Anthony and his heirs forever & the said Samuel for himself & his heirs Exe^{rs} & adm^{rs} doth covenant & agree with said Anthony & his heirs Ex^{rs} & adm^{rs} that he said Samuel will forever warrant and defend the title and interest herein before intended to be conveyed unto the said Anthony and his heirs and assigns against the claim & demand of all persons claiming or to claim - Upon condition nevertheless and to the intent & in trust and confidence, that if the said Samuel B. Crockett his heirs Exe^{rs} or adm^{rs} shall well & truly satisfy & pay to said Anthony his heirs Exe^{rs} or adm^{rs} the said obligation for four thousand five hundred dollars, at the end of three years from the twentieth day of this month according to the force & effect of said obligation, then the estate herein conveyed to said Anthony and every part thereof shall cease, and the s^d Anthony his heirs Exe^{rs} & adm^{rs} shall reconvey & reassign the same to said Samuel and his heirs Exe^{rs} and adm^{rs} and the said Samuel for himself & his heirs doth covenant & agree with said Anthony & his heirs Exe^{rs} & adm^{rs} that he said Samuel will well and truly pay unto the said Anthony the aforesaid sum of \$4.500 at the end of three years from the 20th day of this present month of Sept^r 1819.

In testimony whereof the said Samuel hath hereto set his hand & seal the day first herein written. Note - The interlineation & erasure in two places so as to write sum of money \$4.500 were done by the writer before the

execution here of. Samuel B. Crockett {seal} Signed sealed acknowledged & delivered in presence of these witnesses }

Acknowledgement Franklin County Sct. I Willis A. Lee Clerk of the Court for the County aforesaid, do certify that Samuel B. Crockett appeared in the office and acknowledged the foregoing Indenture to be his act & deed, on the 29th day of Sept^r in the year 1819, and that the same is truly recorded In testimony whereof I have hereunto set set my hand as Clerk as aforesaid Att. Willis A Lee A copy atteste A.H. Rennick Clerk Franklin County Court

Bill of Sale Crockett & wife to A. Crockett| Bill of Sale from S. B. Crockett & wife to Anthony Crockett This Indenture made this 30th day of August 1823 between Samuel B. Crockett and Anna Maria Crockett his wife late Anna Maria Instone of the County of Franklin & State of Kentucky of the one part, and Anthony Crockett of the County & state aforesaid of the other part. Witnesseth, That whereas the said Samuel B. Crockett on the 29th day of Sept^r 1819, did execute and deliver to the said Anthony Crockett a deed of Mortgage for the purpose therein explained and upon the property here in after described which Mortgage is recorded in the County Court of Franklin and the several sums of money intended to be secured by said Mortgage not having been paid according to the terms and condition of the same. Therefore in consideration of the premises and of the futher sum of one dollar to them the said Sam^l B.

[Page 76]

250 73

Bill of Sale S.B. Crockett & wife to A. Crockett & Anna M. Crockett by the said Anthony Crockett in hand paid at and before the delivery of these presents, the said Samuel B. Crockett and Anna M. Crockett his wife late Anna M. Instone, have granted bargained sold aliened enfeoffed confirmed, remised & released and by these presents, do grant, bargain sell alien enfeoff confirm, remise and release unto the said Anthony Crockett and his heirs all the right, title & interest of them the said Samuel B. Crockett and Anna Maria Crockett his wife late Anna M. Instone to the real and personal property described in said Mortgage as follows, to wit: One equal undivided half of a tract of land on South fork of Benson creek in the county of Franklin supposed to contain three hundred acres be the same more or less it being the same tract of land on which John Instone formerly lived deeded to said Samuel & others by Christopher Greenup - One other tract of land estimated at twenty & a half acres on the Kentucky river above Frankfort about two miles the same which was conveyed to the said Samuel by the said Anthony. One negro boy called Isaac, one equal undivided mority of the estate & interest and title to the slaves following to wit: a boy call Jerry, a woman called Hanna, a woman called Johanna, a yellow girl called Mary, a mulatto girl called Harriet, a mulatto boy called Joe, child called Sylvia, an infant called Charles Edward, and negro man called John, the said Harriet Joe & Sylvia & Charles Edward being the children of the said Mary and their increase -

To have and to hold the said tracts of land as above described together with the appurtenances & advantages thereunto belonging or in any wise appertaining together with the interest & estate of said Samuel B. And Anna M. Crockett in the slaves aforesaid and the increase of the females, unto the said Anthony Crockett and his heirs and to his and their sole use and behoof forever and the said Samuel B. and Anna his wife covenant for themselves & their heirs the title, interest and estate herein before conveyed to the said Anthony and his heirs they will forever warrant & defend against themselves and their heirs and all persons claiming or to claim by thro' or under them or either of them - and further that said Anthony & his heirs shall hold the same forever discharged & freed from all equity of redemption.

In testimony of the premises the said Samuel B & Anna M. his wife have hereunto set their hands and affixed their seals the day & date above written. Note, The following words were interlined before the signing of this instrument 18th line 2nd page "an infant called Charles Edward". 19 and "Charles Edward" Samuel B. Crockett {seal} Anna Maria Crockett {S}

Acknowledgement Franklin County Sct. I Willis A. Lee Clerk of the Court for the County aforesaid do certify that the foregoing deed was produced to me in my office on the sixth day of September 1823 and acknowledged by Samuel B. Crockett & Anna Maria his wife to be their act & deed. And the said Anna Maria being by me examined separate and apart from her said husband and the said deed being shewn and explained to her, she declared that that she acknowledged the same of her own free will and accord and relinquished her right of inheritance in & to the premises &c. conveyed without any threats or persuasions of her said husband and wished not to retract the same whereupon the said deed is truly recorded in my

[Page 77]

251 74

said office. In testimony whereof I have hereunto set my hand as clerk as aforesaid Att. Willis A Lee Clk A Copy atteste Fee \$1.50 paid by W. M^cafee for Crocketts A.H. Rennick C/oc } A. H. Rennick Clerk Franklin County Court

Original Agreement Original Agreement Agreeable to an understanding and agreement entered into this 31 May 1826 between John Instone as friend to his daughter Jane Instone and John M^cKee as trustee for Anna Maria Crockett formerly A. Maria Instone, they have mutually appointed W^m Boyd & Ch^s Julian to divide & apportion the estate of Mrs. Benners inherited & willed to the said Anna Maria & Jane, and they do for themselves & for and in behalf of their principals Anna Maria & Jane bind themselves to stick to and abide the award, division & allotment which shall be made of the said property between the said parties and to carry the said allotment & division into full operation & execution without any hindrance or molestation of either party & to do all those acts & things relating to the same, in the same spirit & friendship as is intended by the Commissioners aforesaid and to the faithful performance of the same each of them bind themselves in the penalty of Five Thousand dollars recoverable in any state in the United States, or any Court of Competent Jurisdiction within the same. Witness our hands & seals the day above written. John Instone {Ls} John M^cKee Trustee {Ls} Jane I. Instone {LS} Anna M. Crockett {LS} Test Ch^s Julian John M. Black

Division Division We the subscribers having been called upon by Anna Maria Crockett and John M^cKee her Trustee and Jane I. Instone and her father John Instone to divide a tract of land on which Samuel B. Crockett now lives and certain negroes and their increase formerly the estate of Elizabeth Benners dec^d in two equal halves one of which is claimed by Anna Maria Crockett in behalf of herself and children by her Trustee John M^cKee under a deed of conveyance from Anthony Crockett to said M^cKee & the other half is claimed by Jane I. Instone one fourth part as her own original right under the will of Grand mother Elizabeth Benners and one other fourth the original right of her deceased brother John Lucas Instone which part has been conveyed to her by her father as heir at Law to his son's estate and by Thomas Yeatman of Nashville in the State of Tennessee to whom said fourth was mortgaged to secure the payment of certain monies paid by said Yeatman for account of said John L. Instone dec^d in the State of Louisiana which said monies said Jane I. Instone has assumed to pay to said Yeatman out of a legacy to her, which said Yeatman has to collect in the

[Page 78]

252 75

City of New York. We do now report that in compliance with the request of the parties aforesaid, we have made as equal a division of the land and negroes as to quantity number quality and value as in our opinion it was possible to be made and that the parties mutually declared themselves to be well satisfied and pleased with the division we had made, and that each immediately made choice of the half of the land and negroes they preferred to wit: Anna Maria Crockett & her husband and John M^cKee her trustee chose the half of the land on which the house in which Samuel B. Crockett lives, distinguished on the plat hereunto annexed by figure 1. and the following negroes, to wit. Jerry a young man and his mother called Johanna & a girl called Harriet a boy Chalres E and an old woman called Hanna. And Jane I. Instone has chosen the lot of land distinguished on the

plat annexed by the figure 2. & the following negroes, to wit, a man called John and Mulatto woman called Mary & her three children called Joe a boy Sylvia a girl and Albert a boy, and as this lot was thought rather the best by us Jane I. Instone agreed to let her sister have the use of such of her household furniture which was gifted to her by Peyton Short Esqr as may be necessary to her convenience during her life to the value of one hundred dollars and at her death if any remaining to be equally divided amongst her surviving children - And the parties aforesaid did execute the annexed bond and obligation to abide by our decision and their own choice or lot as may fall to them to the choice of each lot we were witness and of their perfect agreement as to the equality of the division and choice as herrin before stated. In witness whereof we have signed our names hereunto this 31st day of May 1826 Chas. Julian W^m Boyd

Plat Rest of the page is a diagram of the plat of land.

[Page 79]

253 76

Franklin County Sct By consent divided the above tract of land which formerly belonged to John Instone equally between his heirs as directed which division line runs as follows, to wit. Beginning 12 poles from the original corner at B on the Map thence N28 W93 poles to Fig 2 near the mouth of the lane a stake, thence N64 E 8 poles to a stake at fg 3. thence N. 28 W 75 1/2 poles to a Stake and sugar tree nearby opposite the Dwelling house, thence N. 64 E 48 poles to a stake in the corner of the lot opposite said Dwelling house at 5. thence N. 16 W 114 poles to the original line at pg. 6 -

Bond We Samuel B. Crockett & Anna Maria Crockett & John M^cKee her Trustee and Jane I. Instone all of the County of Franklin and State of Kentucky, do hereby bind ourselves our heirs executors and administrators and assigns in the penal sum of Five thousand dollars. Witness our hands & Seals this 31st May 1826 -

The condition of the above bond is such that whereas Charles Julian and William Boyd Esquires have been called upon by us the undersigned to make an equal division of the tract of land on which Samuel B. Crockett now resides containing three hundred acres or thereabouts and ten negroes all of which descended from the estate of Elizabeth Benners deceased & are now attached & being on said land and to which said land & negroes we each of us claim one equal half - Now if a division shall be made by said Julian and Boyd and lots drawn or choice made by each of us both of land and negroes and both abide and remain quit and satisfied with our lots or choice and without inteferece or disturbance with the lot or choice of the other, then and in that case this obligation to be null and void, but in case of either of us meddling interfering or disturbing the lot or choice of the other then the party so meddling interfering and disturbing the other shall pay to the party disturbed in their lot or choice the full amount of this bond. Witness our hands and seals the day and date above written Anna Maria Crockett {LS} John M^cKee Trustee {LS} Jane I. Instone {LS} Samuel B. Crockett {LS}

Relinquishment This Indenture witnesseth that whereas a division has been made in conformity with the annexed bond by Charles Julian & William Boyd Esqrs of the tract of land & of ten negores attached to and living on said land - And as the annexed report will show Jane I. Instone made choice of the lot of land distinguished on the plat hereunto annexed by figure 2. containing one hundred & fifty acres or thereabouts and of the following negroes to wit, John a middle aged man, Mary a woman and her three children Joe a boy Sylvia a girl and Albert a boy. Now we do by these presents forever linquish all right title interest or claim vested in us whatsoever in and to said land and slaves as specified in the annexed report to be the choice of Jane I Instone.

[Page 80]

254 77

As witness our hands & seals this third day of June 1826 - Anna Maria Crockett {LS} John M^cKee Trustee {LS} Sam^l B. Crockett {LS}

Relinquishment This Indenture witnesseth, whereas a division has been made in conformity with the annexed bond by Charles Julian and William Boyd Esquires of the tract of land & of ten negroes attached to & living on said land. And as the annexed report will shew, Anna Maria Crockett and John M^cKee her Trustee made choice of the lot of land distinguished on the plat hereunto annexed by figure 1. containing one hundred & fifty acres or thereabouts and the following negroes, to wit, Jerry a young man and Johanna his mother, Harriet a young girl, Charles E. a young boy & Hannah an old woman - Now I do by these presents forever relinquish all my right title interest or claim whatsoever in & to said land and slaves as specified in the annexed report to be the choice of my sister and her Trustee John M^cKee Esqr. As witness my hand & seal this third day of June 1826.
Jane I. Instone {Seal}

Certificate of Acknowledgement Clerks Certificate of Acknowledgement Kentucky SS. I Alexander H. Rennick Clerk of the Franklin County Court, do certify. that the foregoing report, bond & deed between Mrs Anna M. Crockett & Jane I. Instone was produced to me in my office on the nineteenth day of June 1826 & was acknowledged by John M^cKee to be his act & deed and afterwards on the 20th day of June 1826 was acknowledged by Samuel B. Crockett Anna M. Crockett & Jane I. Instone to be their act & deed. And the said Anna M. Crockett being by me examined separate and apart from her husband and the foregoing instrument being again shewn and explained to her, she declared she again acknowledged the same to be her act & deed, with the threats, persuasions or coercion of her said husband and that she relinquished all her right of inheritance in and to the premises & wished not to retract the same all of which is truly recorded the date above written. A.H. Rennick Clk Fee \$2⁰⁰ paid by W. M^cAfee for Crockett A true Copy atteste A H. Rennick Clk Franklin County Court A.H. Rennick C/cc The above is a copy of the division I refer to in my deposition taken this day in a suit in Mobile in the state of Alabama between Botts & Crocketts. June 23rd 1846. A.H. Rennick

Certificate of Commissioner Commissioners Certificate State of Kentucky, Franklin County To wit: In pursuance to the commission hereto attached, directed to James shannon and my self or any one of us, I caused the witnesses therein

[Page 81]

255 78

Certificate of Commissioner named to come before me at the time and place in the caption mentioned, and proceeded to take the deposition of W. P. Loomis, and had the same reduced to writing as appears on page 1 and 2 and at the same time and place I in like manner took the deposition of Dandridge S. Crockett as will appear on page 2.3.4.5.6 7 & 8. not having time to finish the examination of the said D.S. Crockett on the 5 day of June 1846, I adjourned until the next day, the 6 of June 1846, on which day the examination was completed. And also in like manner, I took the deposition of Jacob Sweegest, the first part of which appears on pages 8 & 9 when the parties who were both represented by agents and counsel agreed that the further examination of witnesses should be adjourned until the 22 day of June 1846, to which time I accordingly adjourned - And on the 22 day of June 1846 the parties by their agents and counsel again appeared and thereupon the further examination of said Jacob Sweegest was again resumed and his deposition as thus taken may be found on pages 10 & 11.

I also on the said last mentioned day took the deposition of John M^cKee which will appear on pages 11.12.13.14.& 15 and not having time to finish on this day I adjourned until the next day viz. June 23 1846, when I also in like manner took the deposition of Alexander H. Rennick which may be found on pages 15.16. and 17. Thus completeing the examination of all the witnesses mentioned in said commission.

I further certify that each of the said witnesses were severally sworn to the statements made by them in their respective depositions, and which after the same was reduced to writing was read over to them respectively, were signed by them in my presence as appears from an inspection of the same. Said oaths were administered by me to the said witnesses respectively, in the usual form as stated in the caption. I further certify that the

parties plaintiff and defendants, by their attorneys and agents were present during the taking of the foregoing depositions, and they did by agreement waive any exception which might be taken to said depositions on account of any informality or departure from the rule and practice of your honorable Court, upon such subjects. It was agreed by them, on account of the inconvenience I labor under in writing to much extent, that a gentleman whom I selected for the purpose should reduce the examination of s^d witnesses to writing which was done accordingly. But the whole was done under my inspection, supervision and direction, and the same has been done fairly and justly. It will be perceived that other questions, besides those which were certified to me to be propounded to said witnesses, in some cases were propounded and the answers thereto were reduced to writing, and in some instances some of the questions which were certified afr^d are omitted. This was done by the consent of the parties as afr^d and any exception on that account was expressly waived.

I also hereto attach the several papers proven by the witnesses

[Page 82]

256 79

and referred to by them as far as they can be had viz.

1. Agreement made between Anna Maria Crockett and Jane I. Botts signed by them, and also the written assent of their husbands signed by them marked (2).
2. The Mortgage from Samuel B. Crockett to Anthony Crockett marked (Mortgage).
- 3 The deed of Trust from Anthony Crockett to John M^cKee marked (Deed of Trust).
4. Bill of sale from Samuel B. Crockett & wife to Anthony Crockett marked (Bill of Sale).
5. The original agreement made between John Instone, John M^cKee, trustee as afo^d, Jane I. Instone and Anna M. Crockett marked (Instone's papers)
6. A copy of the division between Anna Maria Crockett and Jane I. Botts marked (division). N.B. The papers N^o 3, deed of Trust, is filed with plff's depositions. All of which is respectfully ~~subject~~ submitted. Given under my hand this 23 day of June 1846 J. Dudley Attorneys fee for taking the above depositions for defendants, paid by defendants - \$15.00 -

Exceptions to Testimony Exceptions to Testimony John Seth Botts vs Crockett & wife et al } The defendant Mrs. Crockett & the defendants M^cAfee & wife except to the Statements and declarations of Samuel B. Crockett being received as evidence because it appears that he has no title to the subject of this suit and that he could not bind the interests of his wife by his acts or declarations.

2. The defendants aforesaid except to the competency of the letter of Sam^l B. Crockett as evidence for the cause above stated.

3. The defendants object to the declarations of John J. Instone as testified to by the witnesses Botts' as wholly incompetent. Campbell & Chandler for Defts

4. Record of the Court of Chancery in Nashville excepted to because the defendants are not parties to that record, nor are in any manner concerned therein. Campbell & Chandler Filed 6th April 1847 M.J. M^cRae Reg.

~~Minutes~~ opinion of the Chancellor Opinion of the Chancellor At a Term of the Chancery Court aforesaid begun and held at Mobile on the First Monday of April A.D. 1847 and on the 9th day of April 1847, the same being a day of said Term, the Honorable Anderson Crenshaw Chancellor presiding the following order was made in this cause - John Seth Botts Complt. vs. W. Jeanerette et al Defts } This cause was submitted for a decree on the pleadings & proof with written arguments of the counsel.

The principal question, raised by the pleadings and arguments seems to be whether the land and negroes which are the subject of controversy, are to be considered as the exclusive property of the Complt. or whether they are to be equally divided between the complt. and the defendants, Crockett & wife

From the pleadings and the proof, I think the following inferences are fairly deducible, to wit, that Jn^o Instone was insolvent and had no property of his own - that the money which he drew from Yeatman and vested in land and negroes in Alabama, belonged to the estate of Mrs. Benners - that under the will of Mrs. Benners, Mrs Botts & Mrs. Crockett became equally entitled to the fund on the death of their mother Mrs. Instone. That the certain land and negroes, derived from the estate of Mrs Benners, were divided between Mrs. Botts & Mrs. Crockett, yet it does not appear that the property now in controversy was embraced in that division, and the reasonable presumption is that this property has never been divided. - That it has been uniformly admitted by all the parties that this property rightfully belonged to the children of Instone in equal proportions. That this view of the case is corroborated by the will or letter of Instone to Armstrong, which seems to embody his dying declarations & in which he makes an equal division of the property, and states that there had been motives for concealing its true condition and which may well account for his having given a different representation at other times - when to these facts is added the subsequent agreement between Botts & wife & Crockett & wife to abide by the will of Instone taken in connexion with the power of attorney, afterwards given by Crockett & wife to Botts, empowering him to collect their portion of the property in Alabama the conclusion to my mind becomes irresistible that the property was held in trust for the equal benefit of Mrs. Crockett and of Mrs. Botts, and that it has never been divided. Hence it follows that the Complt is not exclusively entitled to the property in controversy, but that the same ought to be divided equally between him & Mrs. Crockett. And I attain to this conclusion, whether the defendants objections to the Complts' testimony be sustained or overruled, it is therefore ordered that they be overruled. The Counsel can draw up the decree in conformity to this opinion. (Signed) Crenshaw Chancellor

Final Decree Final Decree And at the term of the Court last aforesaid, to wit, on the 13th day of April 1847, the same being a day of said term - the Hon^{ble} Chancelor Crenshaw presiding, the following decree was made to wit. John Seth Botts by &c Complt vs Jeanerette, Crockett et al Defts } This cause coming on to be heard upon the Bill, answers and proofs was argued by counsel

It is declared by the court that the monies with which the property specified in the will of John Instone dec^d was purchased was a portion of the estate of Elizabeth Benner and belonged to Jane Isabella Botts & Anna Maria Crockett in equal portions and the agreement between them to abide the will of John Instone is satisfied and established - It is further declared that the said parties are entitled to an account from the ad^r of Andrew Armstrong of the estate of the said Instone, that came to his hands and of what remains undisposed of, of the estate in the hands of said administrator, or the administrator of said Instone.

It is further ordered that the master take an account between the said complainant and the defendants Crockett & wife, and the balance that may be due from the one to the other be ascertained in executing the will of said Instone and the agreement aforesaid. It is further ordered that the master report the name of a suitable person to act as trustee under the said will for Mrs. Crockett. And that the Complt. is hereby invested with the share of the estate of his mother discharged from the Trust. It is further ordered that the costs be paid out of the said estate.

Writ of Error. - Writ of Error - The State of Alabama - To the Register in Chancery, Mobile, Greeting: - Whereas it is represented that in the Record, } and proceedings of a cause tried and determined at a Term of the Court of Chancery for the First District of the Southern Chancery Division of said State at Mobile, begun and

held on the first Monday of April in the year of our Lord one thousand eight hundred and forty Seven wherein John Seth Botts, by his next friend is complainant and John W. Jeanerette Samuel B. Crockett & wife et al are defendants, Manifest error hath intervned to the damage of the said Complainant

Therefore we command you to Send, Certified under your hand and official Seal, a Transcript of the Record in Said cause to the Judges of our Supreme Court at a Term thereof to be holden on the first Monday of June next, that if error there be, the Same may be corrected. Witness, Malcolm J. M^cRae, Register of our Said Court of Chancery, at Office, this Second day of May in the year of our Lord One thousand eight hundred and forty eight and of American Independence the 71st year. Issued 2^d day of May 1848 Attest: M J M^cRae Reg 1st Dis So chy Div Ala at Mobile

[Page 85]

259 82

Citation Citation in Error. The State of Alabama. Court of Chancery - for the First District of the Southern Chancery Division of said State of Mobile - To the Sheriff of Mobile County Greeting: Whereas, at a Term of the Court of Chancery aforesaid, held on the first Monday of April 1847 a certain cause in Said Court, wherein John Seth Botts, by his next friend is Complainant and Jeanerett, Crockett et al are defendants a decree was rendered against Said Complainants to reverse which he the Said John Seth Botts, by &c had applied for & obtained from this Office, a Writ of Error, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the first Monday of June next -

Now you are hereby commanded without delay to cite the Said defendants, or Campbell & Chandler their Solicitors to appear at the next Term of our Said Supreme Court, to defend against the Said Writ of Error if they think proper. Witness Malcolm J. M^cRae, Register of the Said Court of Chancery, this Second day of May 1848 Attest: M. J. M^cRae Reg: 1st Dist So Chy Div at Mobile

Return Sheriff's Return Recd 2 May 1848 and on the Same day I served a copy of the within notice on Campbell and Chandler George Huggins Sheriff M.C. By M. J. P. Baldwin Deputy Sheriff

The State of Alabama Mobile County } I Malcolm J. M^cRae, Register of the Court of Chancery for the first District of the Southern Chancery Division of said State, at Mobile, do hereby certify that the foregoing Eighty One pages and Thirty Two lines contain a full Complete and Correct Transcript of the Record and proceedings had in Said Court of Chancery in a certain cause therein pending wherein John Seth Botts by his next friend Thomas R. Crockett is Complainant and John W Jeannerett, Samuel B. Crockett & wife et al are defendants, as the Same remain of Record in my Office. In Testimony whereof I have hereunto Set My hand and affixed the Seal of

[Page 86]

260

Said Court of Chancery, this fifth day of June in the year of Our Lord One thousand Eight hundred and forty Eight and of the American Independence the Seventy first year. Attest M J McRae Reg.

Supreme Court of Ala June Term 1849 And the said John Seth Botts, by his next friend comes and says, that in the record and proceedings & rendition of the Judgment, ~~th~~ in this cause there is error in this.

That on the Bill answers Exhibits and proofs the court erred in rendering its decree in favor of the Complainant, and should have decreed the Whole of the property in the Land of Armstrong to have been trust property solely for the use and benefit of the Complainant.

The court should have decreed that an account be taken of all the property held and left by John Instone received from Yeatman, and of it proceeds after the Same came to the hand of Instone, over and above the

Maintenance & support of said Instone & family, and that the whole be ~~decr~~ paid to the Complainant, and also should have ordered all the personal property to be delivered to the Complainant, and that all title which the defendants had a claimed should be decreed to the complainant in the land of Mobile. George N. Stewart -----
----- No error in the record J. A. Campbell for Deft Sol^r for Complt. & Plff in Error.