

Williamson v. Daniel.

replied, that he had seen, or believed the account was on file ; would look for and return it ; and further said, there were no funds in hand to pay the debts of the estate ; and on a second application to the said Johns for the said account, he said, he had looked for it and could not find it.

A verdict was taken, subject to the opinion of the court, whether the above was sufficient evidence, to be left to the jury, of a subsequent acknowledgment of the debt, to take the case out of the statute of limitations. A judgment having been rendered for the defendants, the cause was brought by writ of error before this court.

February 23d, 1827. The cause was argued by *Jones*, for the plaintiff ; and by *Key*, for the defendants.

March 1st. MARSHALL, Ch. J., delivered the opinion of the court.—
*This was a suit brought in September 1822, on a promise alleged to have been made by the intestate of the defendant, who died in the year 1808. The defendant pleaded *non assumpsit*, and the statute of limitations, on which pleas issue was joined. By consent of parties, a verdict was found for the plaintiff, subject to the opinion of the court, whether the evidence, which is stated in a case made by the parties, be sufficient to be left to the jury as evidence of a subsequent acknowledgment, competent to take the case out of the statute of limitations. The court gave judgment for the defendants, which judgment is now before this court on a writ of error.

The court is of opinion, that the circuit court decided rightly. The original administrator, David Peter, did not acknowledge the debt, but said there were no funds in hand to pay the debts of the testator. This language might be used by a person not intending to give any validity to the claim, and ignorant of its real merits. The conversation with one of the present defendants, George Peter, was still further from being an acknowledgment. Had this even been a suit against the original debtor, these declarations would not have been sufficient to take the case out of the statute. The cases cited from 8 Cranch 72, and 11 Wheat. 209, are expressly in point. But this is not a suit against the original debtor. It is brought against his representative, who may have no personal knowledge of the transaction. Declarations against him have never been held to take the promise of a testator or intestate out of the act. Indeed, the contrary has been held.

Judgment affirmed, with costs.

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Limitation over after estate-tail.—Slaves.

An absolute bequest of certain slaves to P. H. is qualified by a subsequent limitation over, that if either of the testator's grandchildren, P. H., or J. D. A., should die without a lawful heir of their bodies, that the other should heir its estate, which converted the previous estate into an estate-tail ; and there being no words in the will which restrained the dying without issue to the time of the death of the legatee, the limitation over was held to be on a contingency too remote.

The rule of *partus sequitur ventrem* is universally followed, unless there be something in the terms of the instrument which disposes of the mother, separating the issue from her.

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APPEAL from the Circuit Court of Georgia. The controversy in this cause arose out of the following clauses in the will of James Daniel :

"I lend my wife twenty-one negroes," naming them, and also certain lands, during her natural life. And subsequently, "I give and bequeath unto my granddaughter, Patsy Hendrick, three negroes, viz., Joe, Parker and Willis—I also give her one-half of the negroes I have lent my wife, to her and her heirs for ever. I give and bequeath unto my grandson, Jesse Daniel Austin, son of Betty Austin, one-half of the negroes I have lent my wife, after the death of my wife, Nancy Daniel. Now my will is, that if either of my grandchildren, Patsy Hendrick, or Jesse Daniel Austin, should die without a lawful heir of their bodies, that the other should heir its estate."

Jesse Daniel Austin (now called by special act Jesse Austin Daniel) survived Patsy Hendrick ; and after the death of Nancy Daniel, the widow of the testator, took into possession all the negroes bequeathed to her during her life. Patsy Hendrick died about the year 1805, intestate, and without heirs of her body, being at the time of her death, an infant about nine years old, leaving Robert Hendrick, her father, and Louisa Hendrick, her half-*569] sister, by the father's *side, now Louisa Gibbes, one of the complainants, her next of kin. Robert Hendrick died in 1814, having first made his will, bequeathing his estate to the said Louisa, his daughter, and his wife Mary, now Mary Williamson, also a complainant. Some of the slaves, to wit, Sally and her children, were born in the lifetime of Nancy Daniel.

The court below determined, that the limitation over was too remote, and decreed one-half the slaves to the representatives of Patsy Hendrick, the complainants. It is also decreed, that the slaves, Sally and her children, did not belong to the estate of the tenant for life. The defendants appealed to this court.

March 12th, 1827. The cause was argued by *Berrien*, for the appellants, citing *Fearne*, 445, 471, 478, 482, 485 ; *Prec. in Ch.* 15 ; 1 P. Wms. 534 ; *Prec. in Ch.* 108 ; 3 P. Wms. 253 ; 3 Johns. 289 ; 2 Mass. 56 ; 1 P. Wms. 663 ; 3 Atk. 396 ; 2 T. R. 720 ; 7 *Ibid.* 585 ; 8 Ves. 11 ; 17 *Ibid.* 479 : and by *Wilde*, for the respondents.

March 16th. MARSHALL, Ch. J., delivered the opinion of the court.—The first bequest to Patsy Hendrick would pass the slaves therein mentioned to her absolutely, were not this absolute estate qualified by the subsequent limitation over, if either of the testator's grand-children Patsy Hendrick, or Jesse Daniel Austin, should die without a lawful heir of their bodies, that the other should heir its estate. We think these words convert the absolute estate previously given, into an estate-tail ; and, if so, since slaves are personal property, the limitation over is too remote. There are no words in the will which restrain the dying without issue to the time of the death of the legatee. The remainder over is to take effect, whenever either of the immediate legatees should die without a lawful heir of his or her body. The gift in remainder is a gift to the stock, and is limited over on a contingency too remote to be allowed by the policy of the law.

Newman v. Jackson.

*The second point is, we believe, well settled. The issue is, we believe, universally considered as following the mother, unless they be separated from each other by the terms of the instrument which disposes of the mother.

Decree affirmed, with costs.

NEWMAN, Plaintiff in error, v. JACKSON, Defendant in error.

Notice of sale.

Question as to the sufficiency of a notice of sale of real property, under a deed of trust. No particular form of such a notice is prescribed by law; it is sufficient, if the description of the land be reasonably certain, so as to inform the public of the property to be sold.

ERROR to the Circuit for the District of Columbia.

March 2d, 1827. This cause was argued by *Key*, for the plaintiff in error; and by *Swann*, for the defendant in error.

March 12th. TRIMBLE, Justice, delivered the opinion of the court.—This was an action of ejectment, brought to recover lot No. 99, in Threlkeld's addition to Georgetown, with the improvements thereon, fronting sixty feet on Fayette street, and one hundred and twenty feet on Second street. The plaintiff in error was tenant in possession of the premises, appeared to the action, and, upon entering into the common consent rule, was admitted to defend, and pleaded not guilty, upon which issue was joined.

Upon the trial in the court below, the plaintiff gave in evidence a deed from John W. Bronaugh to Thomas G. Moncure, conveying to him, in trust, for the payment of certain enumerated creditors, "a lot on Fayette street, and Second street, in Georgetown, fronting 60 feet on Fayette street, and 120 feet on Second street, with the buildings, *improvements and [*571 privileges," in trust, to secure the payment of the enumerated debts, within thirty days; and if not then paid, the property conveyed in trust to be sold, "after a week's notice in the Messenger," &c. The plaintiff gave in evidence the notice published in the Messenger, under, and in pursuance of which, the property was sold at public auction, in these words, to wit:

"By virtue of a deed of trust to the subscriber, for the securing certain moneys therein mentioned, will be exposed to public sale, on Thursday, the 4th of March next, for ready money, the following described property, viz., lot No. 99, in Peter, Beatty, Threlkeld and Deakins' addition to Georgetown, fronting 60 feet on Fayette street, and 120 feet on Second street, with a two-story brick dwelling-house, in excellent repair, thereon. The sale to take place on the premises.

THOMAS G. MONCURE, Trustee.

"The above sale postponed until the 4th day of May next, when it will certainly take place. March 24th, 1819."

The plaintiff proved, that the lot conveyed by the deed of trust had been sold on the premises, at public auction, by Moncure, the trustee, on the day mentioned in the notice, and that Jackson became the highest bidder and purchaser; and the plaintiff gave in evidence the deed of conveyance made by the trustee to Jackson, for lot No. 99, &c., in pursuance of the public