

Whitecliffe

by Mark Roy Henowitz

22nd Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "Whitecliffe," by Mark Roy Henowitz of Buford, Ga., as the winner of the *Journal's* 22nd annual Fiction Writing Competition.

The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year's entries reflected a wide range of topics and literary styles. In accordance with the competition's rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author's identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Henowitz and all of the other entrants for their participation and excellent writing.

The undertaker had the first motorcar in town. Actually it was a hearse. He thought it gave his funerals some real cachet. It did.

In those days I didn't own a motorcar. For transport, I preferred my old bay. I didn't use a typewriter either. I wrote my pleadings out in longhand. In a nod to modernity, I had recently tossed out my loyal crow feather quill in favor of a new-fangled fountain pen.

It didn't take a horse or a horseless carriage to traverse the two blocks from my home to my law office. My office was a run down, one room affair above the pharmacy and a straight shot across the red clay street from the Courthouse Square.

The windows of my office were open. It didn't help. It was as hot as lava. My shirt was glued to my back. The marbled glass paned door to my office on which I had stenciled my name and profession slid silently open. A man I did not know entered. He wore a black suit that had been in fashion 20 years earlier.

"I'm Moses Johnson," he said.

"Please have a seat," I said, motioning him to a beat up wooden chair.

Gently, he removed his cap and lowered himself into the seat.

"John McHugh is dead," he announced in his deep baritone. It was a soothing voice that enveloped me.



I nodded. Everyone in town knew that John McHugh, the only son of the late Lachlan McHugh, in his day the master of Whitecliffe Plantation, had recently died.

"My mother told me repeatedly," Moses Johnson continued, "that when John McHugh breathed his last, that under the terms of the will of his father, Lachlan McHugh, that I was the owner of Whitecliffe."

"Whitecliffe Plantation? That land has all been sold off years ago," I said.

"Not all of it. The house remains."

"That old place? It's falling down. No one has lived there for 50 years I bet."

"Nevertheless," that voice like syrup flowed on, "it's mine. It has come to my attention that Jimmy McHugh, John's son, Lachlan's grandson, has filed papers with the court to establish his ownership of Whitecliffe. I want you, Mr. Jakes, to prove to the court that I, in fact, am the true owner."

"Have you seen the will?"

"No."

"Have you seen Jimmy's suit?"

"No. I want you to do all that."

I leaned back in my scuffed and ancient chair. Since Whitecliffe, prior to the late unfortunate war, had been the grandest plantation in the county, housing both the McHugh clan and their more than 200 slaves, it seemed to me doubtful that Moses Johnson, a black man, was the true and actual owner of the place. Having no pressing business, in fact very little business at all, pressing or otherwise, I decided to take the case.

"I'll take your case," I said. "I'll investigate it. Look into it. Check back with me later today around sundown."

Moses Johnson nodded. He rose and as silently as he had entered. He slipped out of the office.

The seat of justice was directly across the red clay street from my office. I tramped down the stairs and then bounced across the lawn to the new courthouse. It was new in the sense that it had been built 40 years earlier, in 1870, to replace the

old wooden structure, which had burned to the ground. This version was red brick, with dramatic roof-lines and towers, making it appear taller than its two stories.

The single courtroom was on the second floor. At ground level were the clerk's vault, the sheriff's office and the Ordinary Court.

"I need to see Lachlan McHugh's will, please," I said to Selma, the perpetual clerk of the Court of Ordinary.

"Between you and me and the bedpost, that's quite a popular item," she said.

"Is that so?"

"O'Kelley pulled it a few days ago. He's representing Jimmy McHugh, the grandson. Did you know that?" She said, pleased with her command of the topic.

"No I didn't," I said, adding to her pleasure. "Who else looked at it?"

"A fellow that came all the way from Atlanta."

"Who does he represent?" I said, adding even more to her superior feeling.

Selma smiled. She still had dimples in her ancient cheeks. "Keep this under your hat, Marcus, but I understand that he represents some long lost Yankee cousins from Massachusetts. Now, who do you represent, Marcus?"

I shrugged and said nothing.

Selma frowned. Then she changed the subject. "Do you want to know how the will survived the 1870 courthouse fire?" Selma was not about to surrender the document before displaying still more extensive knowledge of the situation.

"Tell me," I said.

"All the court papers burned at that time. All the deeds. All the wills. All reduced to ashes. Mere ashes," she said dramatically. "The Ordinary Court judge in those days was a bit scattered. In the head, you understand." She tapped her skull. "The court papers were in complete disarray. Of course, I fixed all that when I took over."

"Of course. But how did the papers being in disarray save the McHugh will?"

"The will wasn't even in the courthouse. The judge had it and several other stacks of documents at home, on his kitchen table. The will was on his kitchen table." She was very satisfied with this revelation. Then to punctuate the tale, she slapped the will of Lachlan McHugh, the master of Whitecliffe, into my palm.

The will was folded and folded again. To one quarter its size. I smoothed it out. I plopped into a wooden chair at a small table in the corner.

Following the clauses about being of sound and disposing mind, the paragraph about a Christian burial, the directions to pay just debts, the will came to the meat of the matter.

"I give bequeath and devise all of my property to my son John, for Life, then to John's child or children for their lives, and upon the death of the last of John's children to my bodily heirs in fee simple, forever.

"But, if any of them contest the validity of this Will or any provision thereof, whether or not in good faith and with good cause, then all the benefits provided for such beneficiary are revoked and annulled.

"Next, I make the following contingent bequest and devise. I take note of my faithful servant Mary, who has cared for me in my declining years. If the above bequest fails for any reason whatsoever, then in that event only, I give, bequeath and devise all of my property to the child or children of said servant Mary, in fee simple forever. However, since I have been advised by counsel that Georgia law makes a nullity of any gift to one held in bondage and since the ultimate result of the present war being uncertain and unknown, this provision is to take effect only if such child or children of Mary are at the time of their birth free persons.

"If all of the above bequests fail for any reason, then all is to go to the persons nearest related to me by blood."

I refolded the will and handed it back to Selma.

"Now who do you represent?" she repeated. "I ask because Moses Johnson came out of your office not long ago. Of course, he is the child of Mary named in the will." She had me nailed. She smiled those dimples at me.

I left the Ordinary office and took three steps across the dusty hallway to the Clerk of Superior Court. The Old Clerk greeted me at the door. He had worked at the old, burned down courthouse and 40 years later was still on the job.

"Help you, son?"

"Yes, sir, I'd like to see the McHugh will case."

"Why's that?" he said wrinkling his brow clear through his bald head.

"It is public record, sir. I don't need a reason."

"I just thought maybe, just maybe, it's got something to do with Moses Johnson being in your office today." Like Selma across the hall, the Old Clerk knew a thing

or two about what went on in his town. He knew and he wanted me to know he knew. "A lot of people are interested in the case, son," he said. "Even a fellow that came all the way from Atlanta."

Grinning, he held out another set of quad folded papers. I thanked him, leaned against a wall and read.

The handwritten complaint, drafted by O'Kelley, whose office was next door to mine, was sweet and to the point. Jimmy McHugh was the only son of the Lachlan's only son, John, and the only grandchild of the deceased. Jimmy had no children and being a lifelong bachelor was unlikely to have any. There were no other parties with any interest. The will had been probated 45 years earlier. Vesting should not be postponed any longer. Jimmy was the sole and only heir and devisee. The court should declare Jimmy the owner of the deceased's only remaining asset, Whitecliffe.

I refolded the instrument. I handed it back to the Old Clerk, who had been looking at me cross-eyed the entire time.

I strolled onto the courthouse lawn. A couple of geezers were playing checkers on a bench. They ignored me. I didn't return to my office. I swung right, briskly covered the two blocks to my house, slapped a saddle on my old bay, and journeyed to Whitecliffe Plantation.



Lachlan McHugh got his fortune the old fashioned way. He married it. His father was an impoverished school teacher from Massachusetts, who had drifted into Augusta as the 18th century faded. Lachlan had the good fortune and the good sense to woo and win the hand of Katherine Fitzpatrick, the daughter of the master of Silver Hill, the largest plantation on the South Carolina side of the Savannah River.

After the marriage and the dowry, Lachlan carved his own plantation out of a thousand acres on the river's Georgia side a few miles north of Beech Island. Soon

Lachlan's Whitecliffe was every bit as large and successful as its parent plantation. Lachlan's success began with his marriage to money, but was augmented by his study of and practice of scientific agriculture and was based on the labor of his hundreds of slaves.

Whitecliffe's cotton was floated down the Savannah River, which practically ran by Lachlan's front door. In Savannah the crop was cleaned, ginned, pressed and baled in the brick warehouses on the river's edge.

In time, Lachlan acquired interests in more than one of those warehouses, in which nearly all of the cotton produced in the South was first processed and then shipped to Liverpool, England. If cotton was king—and it was—then the men who ran the warehouses were the merchant princes. They and they alone, from their thrones above River Street, set the worldwide price of cotton. Lachlan McHugh was one of these princes.

Then came the War. And the blockade. And no cotton left the port of Savannah. And no prices were set. And the Cotton Kingdom was no more. Lachlan and the others were neither merchants nor princes.

Lachlan McHugh retired to Whitecliffe. Closeted and cocooned there. He withdrew into his own world awaiting the inevitable end. I've heard it said that he willed himself to die before the defeat of the Cause, remarking that he did not care to "Look behind that veil." Sherman's march to the sea began on Nov. 16, 1864. Lachlan had died three days previously.

His only son, John McHugh, enlisted as a captain. He was in the Commissary Corps in Gen. David Rumph Jones's brigade. Later he was promoted to colonel and was in the Quartermaster Corps of the Army of Northern Virginia. He was in that position when Lee surrendered at Appomattox on April 9, 1865.

John returned home to find his father dead, the slaves freed, the

crops unplanted and bank loans and taxes owed. He never lived at Whitecliffe again. He began to sell off the hundreds of acres in order to pay the debts. In the end all that remained were the house and a collection of out buildings on barely three acres.

My bay enjoyed the ride. She trotted up to Whitecliffe. It looked more like an oversized farmhouse than a grand plantation manor. I dismounted and tied the bay to a hitching post. Completed in 1849, the house was a white two story. At least it had been. The white had peeled off and faded long ago. The green shutters were speckled with the work of mud dauber wasps. The double deck porch was falling off the house. The tin roof rusted through. Windows were broken. The old mansion was going to rack and ruin.

To the side of the house were a kitchen house and a stable; both falling down. Close by the manor were four log slave cabins, which in the days of bondage would have held eight families serving out their life sentences. Possibly even the father of Moses Johnson.

Stepping warily on the broken porch, dodging the wasps, I gingerly crept to the front door. I twisted the glass knob. Locked. I slipped a thin metal strip I'd brought for the occasion out of my pocket and picked the lock. The door creaked as I pushed it inward.

No one had lived here since shortly after Lachlan had died. The son, John, lived in the fashionable district of Augusta. So did the grandson Jimmy. Only the spiders and their insect prey seemed to inhabit the place. Them and maybe a mouse family or two.

The ground floor contained a central hallway with two rooms on each side. I pushed through the webs, as thick as pea soup. The room to the right was a sitting room. The dust covered furniture arranged for a tea party that never came to pass. The room to the left was the old man's study. The desk still had papers on it; covered with

decades of dust. The walls were lined with leather bound books. I examined the spines. Plutarch. Rousseau. Goethe. Plato. Cicero. Livey. Tacitus. Then I saw a spine with no marking; a thin volume. I blew on it. The dust clogged my throat. I slipped it from the shelf. The book was the farm log of Whitecliffe; the handwritten journal of Lachlan McHugh, scientific farmer. It detailed the plantings, the number of acres sown in cotton and other crops, the date of planting, the yield per acre and the yield in dollars, livestock bought, sold and bred. Everything itemized, enumerated, listed and even graphed and charted.

I tucked the volume under my arm; locked the front door. Swung onto my old bay and rode back to town.

After watering the bay, putting her out to graze and leaving the farm journal in my house, I walked back to the center of town.

My office was above the pharmacy. Next to the pharmacy was the hardware store. Above it was the law office of O'Kelley. I bounded up the creaking and groaning stairs. O'Kelley sat behind his desk in the one room office, whose window framed the courthouse. He was fat as a hog, wheezed like a jackass and was as slick as a fox.

"Marcus," he said, struggling to his feet and offering me his hand. I shook it. He motioned to a chair. "What can I do for you?" he said grinning as he collapsed back into his seat.

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"I read your Complaint in the McHugh will case," I said.

"What's your interest in that?" he said, screwing up his face.

"I represent Moses Johnson. He's the son of Mary. He's named in the will as the contingent beneficiary."

"That provision, Marcus, only comes into play if the initial bequest fails. It does not fail. My client, Jimmy McHugh, is the grandson of the testator. All we are asking for is earlier vesting."

"You're asking for more than that."

"Maybe. Maybe. But the court isn't going to award Whitecliffe Plantation to Moses Johnson. Come back down to earth, Marcus."

"I hear that some Massachusetts heirs of McHugh are also making a claim."

"Yes. Yes indeed. I've talked to their Atlanta lawyer, a Mr. Sparks. He also should be pragmatic. He's got no claim. Besides, the court is not awarding Whitecliffe Plantation to Yankees. I mean, Marcus, consider the intent of the old man, for God's sake."

"When is the hearing?"

"Judge Pitts will be here in two days time." The judge rode the four-county circuit. He came to our county at least once a month. "We'll be heard at that time."

I shook O'Kelley's hand and left. Down his stairs. Up my stairs.

The postman had crammed a parcel through my slot. I tore off the string and the brown wrapping. Inside was a book, if it could be called a book, the pages being crudely hand sewn together.

I whipped out my magnifying glass and gave the manuscript the Sherlockian treatment. The glass revealed the paper to be ribbed and fraying. Clearly the pages were of cotton composition, not the wood pulp paper in current use.

The glass further showed the brown ink, not the blue of current vogue, to be iron gall. The iron in the ink was in fact oxidizing; literally rusting. The magnification revealed the rust to be in fact eating the paper upon which it lay.

The manuscript dealer, a member of a notoriously fallible profession, had represented the book as a diary, stolen like so many other items, by the Union forces of occupation during their 10-year sojourn in our town and then spirited to Ohio. My glass showed the pages in fact to be of the correct age. Now, thanks to my purchase, the volume had made the complete circle, back home. The diary would fit snugly into my growing collection, which included soldiers' letters, deeds of slaves, war photos, as well as the farm journal I had purloined from Whitecliffe that very day.

I flopped into my chair, put my feet on the desk and paged through the diary.

I was lost in space and time when my door slid silently open. Moses Johnson glided through. I looked up and motioned him to the chair. I took my feet off the desk.

"The hearing will be in a few days," I said. "When Judge Pitts gets to town. Do you want to attend?"

"No. I think not. I'll leave that to you. I'd rather stay away from the courthouse."

"I understand. That's not a problem."

"What are the chances?"

"I'd have to say slim. However, not zero. I've got a card or two up my sleeves."

"Aces?"

"Maybe not aces. But, they still may trump our foes. It's a dicey situation, considering who the players are. We are talking about Whitecliffe Plantation after all."

"Of course."

I leaned forward. "How old are you?" I said.

"Forty-five. Possibly 44 or 43."

"Have you got any proof of your birth?"

"I'm here. That proves I was born."

"Anything that proves the date of your birth? Any writing?"

He shook his head.



Judge Pitts arrived in town on Tuesday. The Old Clerk sent his 10-year-old grandson across

the street to tell me that the case would be heard on Wednesday morning. I tossed the kid two bits for his trouble.

At the appointed time, I walked across the red clay road to the Courthouse Square. I climbed the steps to the second floor courtroom. It was a high ceilinged affair and wainscoted all around. There were no spectators in the pews. Even the checkers-playing geezers on the courthouse lawn agreed that this action was not worth a look. Simply put, the grandson of Lachlan McHugh was seeking his rightful patronage, the crumbling Whitecliffe Plantation manor house. Opposing him were a black man and some distant Yankee relatives. The result, in the geezers' opinion, was clearly cut and dried.

O'Kelley, attired in his rumpiled seersucker suit, was seated behind the plaintiff's table.

Behind the other table was a city lawyer with slicked back hair, pince-nez glasses, a walrus mustache and a prodigious belly. He was decked out in a three piece suit, some kind of flying collar and was weighted down by a solid gold watch chain.

O'Kelley commenced with the introductions. "This is Mr. Sparks," he said about the walrus-mustached apparition. "He's from Atlanta. He represents some alleged heirs from Massachusetts." His words were spit out with a contemptuous flavor. O'Kelley next nodded in my direction. "This is Marcus Jakes. He represents the colored fellow."

The introductions complete, I started to offer my hand to the Atlanta walrus. He gazed at me with hooded eyes, like a falcon studying a mole scampering below him. Fearing he might strike, I withdrew my hand and smiled at him instead. I couldn't tell if he smiled back beneath his prodigious mustache.

There was no third station, so I tossed my satchel, uninvited, onto the walrus's table. "I guess we're bunking together," I joked.

Before the walrus had a chance to respond, the bailiff bellowed,

"All rise."

Judge Pitts entered from the side door. He was balder than an eagle, older than the hills, and ran a no nonsense court. He took his place behind the raised bench.

"Be seated. I know Mr. O'Kelley and Mr. Jakes. Who are you?" the judge grunted at the pince-nez wearing walrus to my right.

"I. C. Sparks," the walrus said, rising.

"You see what?" the judge said.

"I. C. Sparks, your honor. That's my name. I represent certain relatives of the deceased Mr. McHugh."

"I see." Judge Pitts peered at the walrus over his outsized glasses. Perhaps the judge was familiar with Sparks' reputation among the Atlanta legal establishment as similar to that of a famished lion among herbivorous wildebeests.

Then the old judge turned to me. "Who do you represent, Mr. Jakes?"

"Moses Johnson, your honor, the true owner of Whitecliffe," I said, putting my cards on the table.

"Indeed," the judge responded prior to taking my cards as well as my whole pile of chips. "Mr. O'Kelley, what have we got here?"

"The will of Lachlan McHugh. He died in 1865. The will, written in 1864, calls for several life estates followed by vesting in his great-grandchildren. The public policy of this state favors early vesting. The will was probated 45 years ago. We subscribe to the position that the time has come to vest the corpus in Lachlan McHugh's only devisee and only grandchild, Jimmy McHugh."

"I've read the will, Mr. O'Kelley. Do you see anything wrong with the bequest to your client?"

"No, your honor."

"If it please the court," my tablemate was chomping at the bit to get into the action. "The clause in question violates the Rule Against Perpetuities."

"Perhaps," the judge said slyly, "Mr. Sparks, you could explain to Mr. O'Kelley that rule of law."

The walrus assumed a professorial air. He took his pince-nez off

his nose and waved it about as he spoke. "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest. The will here, grants a life estate to the son, John, followed by a life estate to the child or children of John, followed by vesting. The grandson, Jimmy McHugh, was not a life in being at the time the will was written nor when the will was probated. Therefore, the provision fails."

"Very succinct, Mr. Sparks. Mr. Jakes," the judge addressed me, "any thoughts?"

"No," I said. Why speak, I figured, when someone else was doing my job for me? And doing it better than I could.

"Mr. O'Kelley?"

"It doesn't matter, judge," O'Kelley, warrior of a thousand battles, responded dismissively. His scorn was undisguised. The old fox clearly intended to slip the hangman's noose. "If the provision is invalid, then the property goes to the last party qualified to take. That party is McHugh's son, John. My client is the sole heir of John. If, however, it does not go to the last party qualified to take under the will, because the entire gift is void, than it passes by intestacy to the heir of the Lachlan McHugh. My client is his sole heir." All roads, it appeared, led to O'Kelley's client. "It doesn't matter. It simply does not matter."

The old judge glanced over at the table I shared with the walrus. The Atlanta advocate was on his feet in an instant. "Mr. O'Kelley's client has brought this action in order to object to a term of the will. He has asked the court to modify the will as to the time of vesting. He has challenged the will. The will clearly states that if anyone entitled to take under that paragraph objects to any term of the will, even in good faith, than that person takes nothing."

O'Kelley wasn't about to concede that point. "My client did not challenge any term of the will at all. He merely requested earlier vesting."

"I see," said the judge. "Mr. Jakes, have you nothing to contribute?" The old man just didn't want me left out. He sought to pull me into the fracas.

"Clearly, Mr. Sparks is correct," I said. "The Rule Against Perpetuities voids the bequest. The In Torrorem clause, forbidding any challenge to the will, cuts off the grandson with nothing. I would add that the will is clear and precise that if that provision fails for any reason, then the property goes to the child of Mary, my client."

My tablemate added a caveat, "It goes to your client, if and only if, he was born a free man. Otherwise, it goes by the next paragraph of the will to the relatives nearest related by blood to McHugh. These relatives are my clients, the grandchildren of McHugh's father's brother."

"Interesting," the judge said. "I will rule presently on the matter of the Rule Against Perpetuities and on the matter of the In Torrorem Clause. Before I do, let us address the issue of the contingent gift to the child of Mary. The will claims to state the law of our state that a gift to a slave is null and void. Is this a correct statement of the law Mr. O'Kelley?"

"Judge," said O'Kelley, "it does not matter what the Law of Slavery is or was. My client takes, either under the will or as the sole heir at law. Period." O'Kelley was in no mood for a theoretical debate about the merits or demerits of gifts to slaves.

"Mr. Jakes?" The judge cast his gaze on me.

I didn't know the answer, so I threw a smoke grenade. "Your honor, this is the 20th century. The Law of Slavery has been in disuse in our state for nearly 50 years. It is archaic. It has no bearing on this case or any other case. The court should carry out the intent of the testator with no regard for the Law of Slavery. In equity, my client is entitled to take, as McHugh intended and directed."

My tablemate regarded me as a horned owl might regard a chicka-

dee that had landed on his branch. "Judge," the Atlanta advocate spit, "you did not ask Mr. Jakes to opine on what century we inhabit. You asked him if a gift to a slave was valid or void."

"I know what my question was," the judge said, his voice as frigid as an arctic gale.

Undeterred, the walrus continued, "Under the 1818 Anti-Manumission Act, a gift to a slave was invalid and void. All actions to free slaves in Georgia were null and void."

"Is a gift of property in a will an endeavor to free a slave?" the judge said.

"The 1818 Act went on to prohibit not only direct manumission, but freedom granted indirectly or virtually. The Act specifically prohibited allowing a slave to benefit from his labor or skill. By implication, a gift for the benefit of a slave clearly fell under the prohibition and was void."

"The will seeks to avoid this problem," the judge observed, "by making the gift contingent on Mr. Jake's client being born a free man. How

do we determine if someone is born a free man? Do you, Mr. Sparks, accept that Lincoln's Emancipation Proclamation of Jan. 1, 1863, freed the slaves of Georgia?"

"No, I do not."

"Explain."

"Lincoln had no jurisdiction in Georgia at that time."

"Then what is the correct date when the slaves were at liberty?"

"The Georgia Convention of 1865 created the new post-war Georgia Constitution which recognized the abolition of slavery. The Constitution was approved by the Convention on Nov. 7, 1865."

The judge looked at me for my opinion.

I blew more smoke. "Lincoln effectively freed the slaves. As the Union army moved through Georgia, the slaves in its path were liberated," I said.

"Were the slaves of Whitecliffe in that path?" the judge asked.

"Ultimately," I lied.

"I think not," the judge declared with finality. "Georgia was sep-

arate from the Union. Lincoln's decree was of no legal effect. Sherman never came to Whitecliffe. The slaves of Whitecliffe were not free until the ratification of the Georgia Constitution on Nov. 7, 1865.

"Mr. Sparks, you've addressed the issue of a gift to a slave being a nullity," the judge continued. "But, Mr. Jake's client is not a slave today. Does it really matter at all whether or not he was born a slave?"

The walrus held up Volume 46 of the Georgia Reports, as if he were Moses on Sinai displaying the Commandments. "The case of *Bennett v. Williams*, judge, answers your question. The case is at 46 Georgia 399. It was decided by the Supreme Court of Georgia in 1872, seven years after slavery ceased to exist. The facts are uncomplicated. John Cotton died in 1859, with a will dated in 1850. He devised two lots of land in Monroe County, in trust, the profits to be applied to the benefit of three slaves." Here, Sparks dramatically flipped open

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Volume 46 and read, “Old Perry, his wife Silvey and their granddaughter, Elizabeth, a mulatto girl.” He looked up from the book. “Years after the end of slavery, the three former slaves sued Cotton’s executor to enforce the bequest.

“The opinion of the Court was unanimous. Clearly, the enjoyment and control of the profits of the land by the three persons would have been entirely inconsistent with their condition as slaves. But, they were no longer slaves. The question was, when did the will speak? This, your honor, is the point, the crucial point, the indispensable point.” He waved Volume 46 about. “The will is construed under the law as it existed at the time the will took effect, that is, at the death of the testator in 1859, prior to the abolition of slavery. It is not construed under the law of 1872, subsequent to the abolition. Because of this rule,

the former slaves, the Court held, took nothing.”

The judge shook his bald head. “Mr. Jakes? Any thoughts?”

I cranked up my smoke machine. “The Court could have and should have ruled the other way. The condition of the three persons was so changed, their status under the law was so different, the intent of the testator was so clearly manifested, that under the law as it existed in 1872, the bequest should have been declared valid not void.”

The walrus’s eyeballs bored into me like drills. “Absolutely not,” he thundered. “Under the mandatory requirements of the statutes, in the case of Cotton’s will, the control of the land by slaves would have been contrary to, incongruous with and irreconcilable with their status at the time the will took effect. Any change in their status after that date is irrelevant. The Court was correct that the former slaves took

nothing. This case is directly on point. This decision controls here. In our case, McHugh died before the 1865 Convention and the freedom of the slaves. In order to take, the child of Mary must have been born a free man.”

The judge peered over his Broddingnagian glasses at me. “The Laws of Slavery are of no effect today. Period. But, those laws were in full force and effect at the time this will was probated. Now, Mr. Jakes,” he said with the air of a Doubting Thomas, “was your client born a free man?”

I froze. I had not expected to get this far. I thought the case surely would have been resolved against me well before this point. My mouth was as dry as the Sahara. I stared straight ahead. The courtroom was silent. The interval stretched and stretched until it could be calculated in geologic time.

“Mr. Jakes,” the judge broke the silence, “was your client born a free man?”

Aroused from my inertness, I pulled from my satchel two volumes. One was the farm journal that I had purloined from the Whitecliffe manor house. The other was the sewn together diary that I had received from the manuscript dealer in the post.

I held aloft the thin leather-bound farm journal. “I offer into evidence the farm records of Whitecliffe Plantation.”

O’Kelley, who had been forced into silence during the walrus’s peroration, struggled to his feet. “Objection. What evidence is there of the authenticity of this book?”

“I state, on my honor, as an officer of the court, that I stole this book, myself, from Whitecliffe, three days ago,” I said.

“On your honor, as an officer of this court, you state that you are a thief?” the judge said.

I handed the book to the judge. “On my honor, I am a thief. I took it right off of the shelf where it sat for 45 years; right off of the shelf in the study. The book is written in Lachlan McHugh’s own hand.

Mr. McHugh was a student of and proponent of scientific farming. This volume contains the record of every seed planted, every plant harvested, the yield per acre, the profit or loss. It contains the record of every cow and horse purchased, sold or bred."

"Where is a scintilla of proof to substantiate any of this?" O'Kelley said dismissively.

The judge thumbed through the book. "I'll accept it."

"In addition to cows and horses, the journal also contains a record of another plantation chattel," I said. "In Lachlan McHugh's own hand is a complete record of every slave bought, every slave sold, every slave born. Under Georgia law, and in derogation of the Common Law, the child followed the condition of the mother. Every slave born on Whitecliffe was the property of McHugh. As a matter of property law, it was incumbent upon him to substantiate ownership. Every birth was noted in his journal.

"I call the court's attention to the years of 1863, 1864 and 1865. The births of many slaves are noted. Each entry shows the name of the mother, the date of birth, the gender of the baby and the name of the baby. There is no baby born to Mary noted in the journal. Moses Johnson is not in the book. He is not shown as a slave born on Whitecliffe."

"This proves nothing," exclaimed my tablemate. "Nothing. McHugh may have been too ill or too distracted to make the entry. The war and the ending of the war may have caused such confusion that normal record keeping had ceased. The absence of the birth in the journal proves nothing about when Moses Johnson was born."

The judge leaned back in his chair. "You're trying to prove a negative, Mr. Jakes?"

"I have proven it. The detailed and precise scientific journal of Mr. McHugh is clear. Moses Johnson was not born a slave on Whitecliffe."

"Have you got anything else," the judge said before he ruled against me.

I turned to O'Kelley. "Are you acquainted with a Miss Evelyn Collins?" I asked him.

O'Kelley appealed to the judge. "I'm not a witness for Mr. Jakes in this case, your Honor."

"Mr. Jakes?" the judge said.

"If you'll please indulge me," I said.

"Answer the question, Mr. O'Kelley."

"I knew Evelyn Collins. She was my wife's aunt."

"What was the vocation or avocation of Miss Collins?"

"She was a midwife."

"For how long did she midwife in this county?"

"Forty years. Maybe longer."

"I hold in my hand the Midwife's Diary of Evelyn Collins," I said, raising the sewn together book I had received in the mail from the manuscript dealer.

"I knew Miss Collins," O'Kelley said disgustedly, "but I don't vouch for any diary."

The walrus joined in. "Are we to now have yet a second unsubstantiated volume placed into evidence?"

"Mr. Jakes," the judge said, "we reluctantly allowed the farm journal. But, now this? What proof is there of its provenance?"

"When were you born, your honor?"

"It's not enough that Mr. O'Kelley is your witness. Now I'm to be brought to the stand as well?"

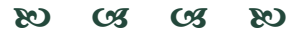
"If it please the court."

"It does not please the court, not at all. I was born Aug. 10, 1845."

I handed the sewn together book to the judge. "Please turn to the page I've marked. The entry is for Aug. 10, 1845. Miss Collins assisted in the birth to Sarah Byrd Pitts. A healthy baby boy, one Hiram Byrd Pitts was delivered. It shows your birth, your honor. I ask you to authenticate this book."

The judge studied the page. Did his eyes mist slightly at the mention of his sainted mother? If so, he quickly blinked it away. Then he looked up and growled, "The book is authenticated. Proceed."

"Please turn to the next page I've marked, Jan. 17, 1866," I said. "The entry shows the birth to Mary Johnson of a baby boy, Moses. This was several months after the Georgia Convention recognized the abolition of slavery. Moses Johnson was born a free man."



On a crisp autumn day, I rode my old bay out to Whitecliffe.


The rusted through roof had been replaced by shiny new tin. The sunlight's reflection off of the bright silver blinded me. The sad peeling and insect infested walls had been scrubbed and whitewashed until they gleamed. The shutters were a pleasing forest green shade. A spanking new first floor porch wrapped the ground floor.

Way up on the skeleton of the partly completed second story porch stood Moses Johnson, hammer in hand. He slammed a nail into a new floorboard. Then he waved his hammer at me.

"Looks great; I wouldn't have recognized the place. What are your plans?" I said, remaining in the saddle.

He leaned against a vertical beam. "I'm going to live in it," he said. "I've got the outside about fixed up. Next I'll begin on the interior. By the way, I still haven't settled your fee."

"Fee? I don't think so. I would like to keep the plantation journal I stole from you. Other than that, there is no fee. In fact, I should be paying you. That was the most fun I've had in years."

Moses Johnson smiled. He leaned over and banged another nail into the porch. 



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