State of Tennessee } Be it remembered
Bedford County } that at Chancery
Court, began and held in the town of
Shelbyville, on 20th day of November 1866, the
following final proceedings were had in the
case of,

"Richard Phillips & others } Filed Aug.
vs } 19th 1861.
R. T. & J. B. Allison Executors &c.

O. Bill –

To the Honorable B. L.
Ridley Chancellor &c. Presiding at Shelbyville.
The Bill of complaint of Richard Phillips, Samuel
Phillips, William B. Phillips, sons and children
of Bennett Phillips deceased, and of William
Phillips, Sophronia Duncan and her husband
Duncan, the said William & Sophronia
being children of Isaac M. Phillips deceased,
who was a son of said Bennett Phillips, and
Nancy Vancleve, and her husband Stephen
Vancleve – the said Nancy being a daughter
of said Bennett Phillips deceased, and Spencer
Hill, John Hill, Samuel Hill, Joseph Hill,
William Hill, Jeremiah Hill, Sarah Vancleve
and her husband William Vancleve, Nancy Hol-
den and her husband Spencer Holden, Frances
Grimes and husband Grimes and
Martha Potts & husband Richard Potts, Catherine
Renshaw & husband Renshaw – and

Bill.

Mary Nance and husband Riley Nance — the said Spencer, John, Samuel, Joseph, William Jeremiah, Sarah, Nancy, Frances, Martha, Catherine & Mary, being children of said Bennett Phillips deceased, — Kimbro S. and Thomas B. Allison Executors of Thomas Allison deceased in the Chancery Court at Shelbyville Your Orators and Oratrixes would respectfully represent to your Honor that said Bennett Phillips Dec'd, had a daughter who intermarried with one Thomas Allison — Her name was Rebecca, and that she had no children, being advanced in life when she married said Allison who was a widower and the father of several children. That some time after their marriage they in pursuance of a previous anti-nuptial agreement entered into a contract — a copy of which is herewith filed as part of this bill by which it was agreed that if she survived him, she was to take in lieu of Dower and distribution, that she should be paid at his death twelve Hundred dollars being the amount received by him of her at their marriage [redacted] if he survived her he was to pay to her next of kin said sum in one, two and three years time, or to whomsoever she might bequeath the same by Will or otherwise, That subsequent to this she died leaving him surviving her, and he since

C. Bill.

died, having made and published his last Will and Testament, of which he appointed Kimbro S. Allison and Thomas B. Allison Executors, and the same has been duly proved and recorded & they have qualified as such executors.

But they have not paid or caused to be paid any portion of said twelve Hundred dollars, refuse to do so. Your Orators and Oratrixes are advised and believe his estate is liable and bound to pay the same. This contract is based upon a sufficient and adequate con=sideration, and they refer to it again as though actually copied into the body of this Bill. Richard Phillips, one of your Orators has for greater certainty been appointed administrator of said Rebecca to receive the same, and in that character became a party complainant also. A question may arise as to what is meant by the words "next of kin" — in the instrument — whether it means the nearest blood relations or such as would take under the Statute of Distribution. All persons are complainants who would take under the statute as well brothers and sisters, as nephews and neices, —. Said Thomas Allison had a large estate both real and personal. The premises your Orators & Oratrixes pray that said Kimbro S. & Thomas B. Allison, who reside in Bedford County, be made defendants and for necessary process — and that they answer all the statements herein

Bill &c. to the best of their knowledge, information & belief, and on the final hearing will your Honor decree against said Executors for said sum in pursuance of said agreement — And all such other relief as may be authorized by the facts — and as in duty &c.

Thisener & Lric Sols.

Answer.

Richard Phillips & others
vs
K. J. & Thos B. Allison

Filed Sept. 6th 1861.

The joint answer of Thomas B. Allison and Kimbro J. Allison Executors &c. to the Bill of Complaint of Richard Phillips & others filed in the Chancery Court at Shelbyville Tenn.

These Respondents saving and reserving the usual exceptions to complainants Bill, and for answer to so much as they are advised is material to answer, state that they and the executors of Thomas Allison deceased, who was the husband of Rebecca Phillips, having intermarried with said Thomas Allison, being somewhat advanced in life — having no children — but that said Thomas had several children when they intermarried. Respondents further admit that their testator, Thos Allison and his wife did execute a paper writing — a copy of which is annexed to complainants bill — but require that the Original shall be produced at the

Answer. bearing for greater certainty as to its contents. But Respondents positively deny that any such agreement or writing was executed between Thomas Allison and his wife Rebecca, at the time it was done in accordance with a previous Ante-nuptial agreement. Respondents further admit that said Rebecca Allison departed this life before her husband Thomas Allison — that he died afterwards, having made and published his last will and testament in which he appointed Resp'd.ts his Executors — that the will has duly been proved and that they have qualified as his Executors — They further admit that they have not paid any part of the money claimed by complainants for the reason that they are advised that complainants are not entitled to the same — They deny that the contract is based upon a sufficient and adequate consideration, and is not a binding contract between husband and wife — that it is not binding upon either party — that by the marital rights of Thomas Allison, all the money and personal property of his wife Rebecca became his, — that he reduced the same to his possession and the property then became absolutely the property of the husband — Said conveyance was a mere voluntary conveyance on the part of the husband without consideration, and was not

Answer. 6

at all binding on the part of the wife — It was not registered — it was ~~not a~~ an agreement between husband and wife without the intervention of any other person — and with a sufficient legal consideration passing between either of the parties to bind them. Respondents insist that such a contract is entirely void under the facts and circumstances of the case — The death of Rebecca Allison left the husband the owner of said estate mentioned in said agreement, and he was not bound to give it to any person as it was absolutely his own property. Respondents cannot admit that the parties complainant are the Administrator & next of kin to said Rebecca Allison — and if this point is material the proof should be for the Court. Respondents are advised that that part of said contract set out in Complainants Bill, binding said Thomas Allison to pay said sum of twelve hundred dollars to her next of kin, in the event of the death of said Rebecca — is void for uncertainty and complainants cannot recover under any event — Respondents having fully answered they pray the Hon. Court to decree them all the relief that they may be entitled to from all the facts and circumstances of the case — and in duty bound they will ever pray.

Buchanan & Scudder Solr.

Answer.

On this 30 August 1861 personally came before me the undersigned Thomas B. Allison and Kimbro T. Allison, parties defendants, and made oath that the facts stated in the foregoing answer are true to the best of their knowledge information and belief — K. T. Allison
Sworn to & subscribed before me T. B. Allison
30th Augt. 1861. W. J. Whitthorne C.M.

Answer

Richard Phillips & others
vs
K. T. & T. B. Allison

Filed Nov. 4th 1861.

The further answer of K. T. Allison & T. B. Allison to the Bill filed by Richard Phillips & others, to an exception to the former answer. — Respondent supposes that Rebecca Phillips is the administrator as stated in the Bill, but has no personal knowledge of the fact further than he is so informed at this time — Respondents cannot admit that complainants are the next of kin to Rebecca Allison they have no information or knowledge that they or all of them are such or any of them — and therefore they deny the fact and require proof upon the same — They make this further answer according to the best of their information, knowledge and belief and believe the above facts as they have stated them. Sworn to and K. T. Allison
subscribed before me 4 Nov. 1861. T. B. Allison.
W. J. Whitthorne C.M.

Exceptions.

Richard Phillips & others
vs
R. T. & I. B. Allison Exrs

This should have been before the above ans.
Filed Oct. 24th 1861.

In this case complainants except to the answer of defendants because it says they cannot admit that complainants are the administrator and next of kin of Rebecca Allison and requires proof of the same — when it, the answer, should be that they admit or deny according to the best of their knowledge information and belief — thus complainants are or are not the next of kin of said Rebecca Allison — which exceptions Complainant Gray may be allowed and they compelled to answer. Vincent Evis —

Exceptions examined and allowed and defendant required to answer by Rule day in December 1861. October 24th 1861. W. J. Whittemore C.P.M.

Order.

Richard Phillips & others
vs
R. T. & I. B. Allison Executors of
Thomas Allison dec'd.

Entered 6th Sept. 1861.

Be it remembered that this cause came on to be heard on complainants motion to take their bill for confessed, and it appearing to the satisfaction of the Court that process has been served on defendants five days before the present term of this Court and they having failed to plead, answer or demur to complainants, the same is taken for confessed

Depositions.

Richard Phillips & others

vs

K. T. & N. B. Allison -

In the Chancery Court - Bedford County Tenn.

Deposition of James Foster witness for the Complainant taken upon notice at the Office of the Clerk & Master of the Chancery Court in Shelbyville on the 29th day of January 1862 in the presence of the Complainant and defendants attorneys - and the witness being duly sworn - said deposition was reduced to writing by the Complainants attorney - and then the said Witness deposeth and saith as follows -

James Foster for the Complainant, States that Richard Phillips, Samuel Phillips William Phillips are sons of Bennett Phillips - Isaac M. Phillips was also a son of Bennett Phillips - he had one child, a daughter, but I do not recollect her name - he probably had another child if so I am not positive - Nancy Vancleve was also a daughter of Bennett Phillips - Mary Hill was a daughter of Bennett Phillips She is now dead. She had several children one was named Spencer - I think one was named John - there was one named Bennett though I think he is dead - I think one was named William but cannot be positive - One was named Sarah she married William Vancleve - I think one was named Nancy - though I am not positive as to the fact - I do not know who she married. Spencer Holden married one of

Deposition of

the girls — I think it was Nancy — though I will not be sure — Evan Holden did not marry either of the girls — that is if he did I have no recollection of the fact — One was named Francis I do not know whom she married — One was named Martha — that is I think there was — but I will not be positive. I do not know to whom she was married. I think one of the Children was named Mary. One of the girls married a man by the name of Nance I think his name was Wesly — but cannot be sure. It has been so long since I knew the family that I cannot state positively as to their names or to whom they were married. It has been twenty years or longer since they moved to West Tennessee — Upon reflection I think it was Buck Nance that married one of the girls — Further this deponent cayeth not.

James Foster.

The foregoing Deposition was taken before me as stated in the Caption and reduced to writing by complainants Counsel — and I certify that I am not interested in the event of said Cause — nor of kin or Counsel to either of the parties — Given under my hand this 29th January 1862 —

William J. Whitthorne C. & M.

Order. Richard Phillips & others
vs
R. S. & J. B. Allison Exors &c, } Entered March 20th 1865 –

In this case the death of Samuel Phillips one of the Complainants is suggested and admitted and the case is revived by consent in the name of William Gonny and Edmund Cooper Esq. his Executors. And the death of Allison one of the defendants & who is also one of the Executors of Thomas Allison deceased is suggested and admitted and Complainants elect to proceed against the surviving Executor.

Articles of Agreement –

Made part of Bill

Articles of Agreement made and entered into between Thomas Allison of the County of Bedford and State of Pennsylvania of the one part – and his wife Rebecca Allison of the the other part – witnesseth – Whereas the said Rebecca Allison was at the time of her marriage possessed of money and property to the amount of about twelve hundred dollars which went into and became part of the estate of the said Thomas Allison – and whereas the said Rebecca Allison has no child to inherit any part of said estate – She agrees to take the sum of twelve hundred dollars in full satisfaction of her claim and interest in said Estate and hereby relinquishes all further claims against the same.

For and in consideration of the above agreement and relinquishment on the part of the said Rebecca Allison, the said Thomas Allison agrees to pay or cause to be paid to the said Rebecca Allison according to a provision in his last Will and Testament the sum of twelve Hundred dollars. The said Thomas Allison also agrees and binds himself to pay the said twelve Hundred dollars (in case the said ~~Richard~~ Rebecca Allison should die first) to her next of kin or to whom=ever she may bequeath the same by Will or otherwise — in three equal annual instalments. In testimony whereof we have here unto set our hands and affixed our seals — this 26th day of March 1859.

Signed & acknowledged in presence of us,
Jennings Morris
Thomas B. Allison.

Thomas Allison (Seal)
Rebecca Allison (Seal)

Thomas Allison's Will.

Know all men by these presents that I Thomas Allison being in feeble health, but of sound memory do make and ordain this my last Will and testament, as follows, revoking all others — viz — 1st I will that all of my just debts be paid as soon after my decease as possible. 2nd. I will and bequeath

Will.

to Robert J. Patton a certain tract of land lying on the West of Elm Creek and bounded on the North by the lands of J. B. Allison on the West by the lands of Mary King – and on the South by the lands of A Wilson containing about one hundred and thirty acres to have and to hold the same in fee simple after he becomes twenty one years of age – which land shall be counted to him as his part share of my estate. He shall have the right to settle upon said land immediately after my decease, and continue the same free of rent until his majority – I will and desire that all the property which I may own at the time of my decease be sold on a credit of 12 months – and the proceeds of said sale together with all the rents and money which may be on hand at the time of my decease be collected as soon as possible – and that an equal division of the whole sum be made between the following named persons (Except R. T. Allison whose share shall be three hundred dollars less than what would be his equal share) R. T. Allison Matilda Sims, Nancy Cull, Sally T. Cooper Thomas B. Allison – I will that out of the three hundred dollars to be deducted from the distributive share of R. T. Allison as above directed, sixty dollars be paid to R. J. Patton

Will.

and the balance equally divided between Matilda Sims — Nancy Call, Sally T. Cooper and T. B. Allison — I will and direct that the distributive share of my Estate falling to Matilda Sims as directed as directed in this Will be paid over to a guardian appointed for the purpose — who shall enter into bond with good security to carry out this provision of this Will and that said guardian pay over the interest of the amount in his hands annually to Matilda Sims or her husband during the natural life of either of them. I also will and direct that said guardian shall pay over out of the principal two Hundred dollars to each of the children of Briggs and Matilda Sims as they respectively become of age — And at the death of Briggs and Matilda Sims or the last one of them the sum remaining in the hands of the Guardian shall be divided among the children as to make them all share equally in the amount received of my estate.

I hereby appoint, authorize and empower my two sons R. T. & T. B. Allison my true and lawful Executors to Execute this my last Will and Testament. In testimony whereof I have hereunto set my hand and seal, this 11th day of October 1859.

Thomas Allison (Seal)

Signed and acknowledged
in presence of us —
Jennings Moore
E. F. King

A true Copy from the original, as admitted to probate — on the 7th November 1859 —

Joseph H. Thompson Clk.

Deposition taken 13th June 1866.

Richard Phillips Adm. &c. vs
T. B. Allison Ex. of Thomas Allison

In the Chancery Court of Bedford County Tennessee. Deposition of Jennings Moore, a witness for Complainant in the above case taken upon notice on the 13th day of June 1866 at the office of W. N. Cowden in the town of Lewisburg, Marshall County, in presence of Complainants Counsel — The said Witness aged about 58 years — being duly sworn deposed as follows — to wit —

Question 1st by Complainants — — Were you acquainted with the late Thomas Allison & wife? if so, state whether you wrote an agreement or deed between them? When was it, and what was said by them at the time as to why they wanted it written? — State all that then passed between them.

Answer. — I was acquainted with Thomas Allison and wife. I wrote an agreement

or deed between them about two or three months before the death of the said Thomas Allison. When I arrived at the house, (I was sent for) I found them contending about the amount of money or notes of which Mrs. Allison was possessed at the time of her marriage with the said Allison — She claiming that she had fifteen hundred dollars in money, notes and property — He contending that it would not exceed the amount of one thousand dollars. The object in view, as stated at the time was to make such an agreement as to satisfy the widow and clear his estate of any legal claim she might have after the decease of the said Thomas Allison — After a good deal of controversy they came to an agreement which I wrote out at the time — which seemed to be satisfactory to both parties — And they signed and acknowledged it in my presence, on the day it bears date, and have it in my possession at this time. The said Thomas Allison was in bad health and did not expect to live but a short time — and sent for me to write his Will. The contract, deed or agreement was made upon the supposition and belief, that Mrs. Allison would survive her husband — And he could not make a Will as he desired until the wife's claims were satisfied.

2nd. – By same.

State whether or not in that conversation anything was said of notes of hers then uncollected if so what was it?

Answer. There was something said about a note on some one of the Phillips – but I cannot state the particulars as to whether it was collected or not.

3rd. By same. – State whether Mr. Allison had been previously married? and whether she had or had not, and what was his age, & her age as well as you can judge of it?

Answer. – Thomas Allison had been previously married – Mrs Allison had not. – I suppose he was seventy years old and judged her to have been about sixty.

4th By same. How many children had he when they were married, or the representatives of children?

Answer – He had four children living and one dead, which was represented by a son, being his grandson.

5th By same. – Did you or not at the time you wrote the instrument or agreement between them, write a will for him if so was there any provision in it for her? if not, why not?

Answer – I wrote a will for him at the time, in which there was no provision

made for her, because he had agreed to pay to her or her next of kin some twelve hundred and fifty dollars in lieu of her claim upon him or his estate.

And further this deponent sayeth not,

Subscribed and sworn to before me June 18th 1866.

Jennings Morrow.

W. B. Holden J.P. for Marshall County.

The foregoing Deposition was taken before me at the date in the Caption and reduced to writing by the witness — And I certify that I am not interested in the cause nor of kin or Counsel to either of the parties — And that I sealed up the Deposition and delivered the same to W. H. Theiner Esq. without its being out of my possession or altered after it was taken. Given under my hand this 18th day of June 1866.

W. B. Holden J.P.

J.P. for Marshall County.

Bill of Cost. Witness Jennings Morrow 1 day $1.00

24 miles - 40 to $ .96

Ferriage of Duck River .25

W. B. Holden J.P. for taking Dep. 1.00

$3.21

Rec'd & Filed June 18th 1866

Lewis Gillman C.T.M.

Decree

Richard Phillips Admr. & others
vs
T. B. Allison

Nov. 20th 1866.

Be it remembered that this cause came on for hearing, upon Bill, answer, replication Exhibits and proof - before Hon. John P. Steele Chancellor - this 20th Day of November 1866 - when it appeared to the satisfaction of the Court that Thomas Allison defendants testator, being a widower far advanced in life near seventy years of age, intermarried with one Rebecca Phillips also advanced in life, who had never been previously married, not long before the death of said Thomas Allison - that she had when they married of her own property, twelve hundred dollars in notes and money most or all of which went into the possession of said Thomas Allison - and that said Thomas Allison had by a previous marriage five or six children, all of whom were grown - and one of whom was dead, leaving a child or children - and that shortly before the death of Thomas Allison, and in contemplation of that event and to settle and adjust any claim his said wife might have on his estate after his death, he and his said wife mutually agreed - that his estate should pay her after his decease, if she should survive him

said sum of twelve Hundred dollars - that she owned before their marriage - and in the event he should survive her that he would pay to her next of kin, or to any person she might direct by Will or otherwise and that she in consideration thereof agreed to release any and all claim she had or might have on his estate for Dower and Distribution - in writing signed and sealed by them on the 25th of March 1859, and that they delivered the said writing thus signed and witnessed into the hands of one Jennings Moore as a mutual friend for safe keeping - and that at the same time and place, said Thomas Allison Executed his will in which he made no provision for his said wife because of said agreement made by and between him and his said wife as afore said - and the Court being of opinion that said writing or agreement is binding on the estate of Thomas Allison doth decree accordingly - and inasmuch as the said Rebecca Allison departed this life before her husband, & without making any appointment by "Will or otherwise", the Court is of opinion and so decrees that her next of kin are entitled under said Agreement to said

Decree.

money thus agreed to be paid in one, two and three years — Counting at farthest from the date of the Probate of his Will, which was at November term 1859, (as appears from a copy of said Will now on file in this case,) of the County Court of Bedford County, with interest after the respective payments fall due — And that sum now amounts to an aggregate of fifteen Hundred and sixty dollars — And it further appearing to the satisfaction of the Court that said Thomas Allison executed his last Will and Testament, which was duly proved in the County Court of Bedford County as aforesaid — of which he appointed his sons R. T. Allison and Thomas B. Allison Executors, who gave bond and qualified as such at said term of said Court — And that R. T. Allison has since departed this life, and that complainants elected to proceed against the surviving Executor Thomas B. Allison — it is therefore ordered, adjudged and decreed by the Court that complainants recover of said Thomas B. Allison Executor aforesaid said sum of fifteen hundred and sixty dollars and the costs of this cause, for which execution will issue — And the defendants

dissatisfied with said decree pray an appeal to the Supreme Court which to him is granted upon his giving bond and security according to law — which is now here accordingly done.

(The following is the Appeal bond given in pursuance of the above decree.)

Appeal Bond.

"Know all men by these presents, that we, R. B. Davidson & Geo. W. Buchanan, of the County of Bedford and State of Tennessee are held and firmly bound unto Richard Phillips Adm.r & others in the penal sum of two hundred and fifty dollars, for the payment of which, we bind ourselves, our heirs Executors, Administrators and assigns. Given under our hands and seals, this 20th day of November 1865.

The Condition of the above obligation is such, — That Whereas Thomas B. Allison hath prayed and obtained an Appeal to the Supreme Court of the State of Tennessee, at Nashville, from a Decree of the District Chancery Court a Shelbyville in the 2nd. District of the Chancery Courts of the State aforesaid, rendered against him in favor of the said Richard Phillips Adm.r & others — Now if the said Thomas B. Allison shall well and truly prosecute the said Appeal with effect, or in the event he fail therein, shall well and truly pay all costs, and abide by such decree as shall be pronounced

in said cause by the Supreme Court – then this bond to be void and of no effect – otherwise to remain in full force.

In Witness whereof the said parties have hereunto set their hands and seals – the day and date above written. R. B. Davidson (L.S.)

Geo. W. Buchanan (L.S.)

(L.S.)

Bill of costs –	State Tax	$ 3.50	$3.50
Filing Bill &c, 50 cts – Proc. Bond 25 –		.75	
1 Copy of Bill 90 cts – 1 Supa. 75 cts –		1.65	
Filing Answer 25 cts – Aff. to same 25 –		.50	
Filing Exceptions & giving notice		.50	
Filing Amd. ans. &c Aff. to same 25 cts		.50	
Entering 2 Orders on Min.		.50	
Docketing Papers & dockets –		.80	
Giving notice of filing ans –		.25	
W.J.H. Taking 1 Deposition		1.00	$5.95
Docketing 4 terms –		.80	
Entering order suggesting death		.25	
Final Decree 75 cts – Bill of costs 50 cts		1.25	
Appeal and Appeal Bond		.75	
Transcript of Record		5.00	
L. T. Certificate & seal		.75	$8.80
James Foster Witness 1 day 28 m.		$2.12	
Jennings Moss Witness 1 day mileage		$2.21	
J. R. Stem D.S. 1 Spa. 2 Depts		2.00	$6.33
Total Amt. Costs –			$24.58
W.B. Holden J.P. 1 Deposition		1.00	
Amt. Costs			$25.58

23 00
4.00

State of Tennessee } I Lewis Tillman, Clerk
Bedford County } & Master of the Chancery
Court at Shelbyville, County and State above
mentioned, do certify that the foregoing is a full
true and perfect Transcript of the record
in the case of Richard Phillips Adm.r &c. vs Thos
against R. T. & J. B. Allison Ex.rs &c., as appears
and remains of Record in my Office — In
Witness whereof I have hereunto set my hand
and seal — this Nov. 24th 1866.

C.C.C. Seal C.C.

Lewis Tillman C.&M.
By Dpty L. Tillman Jr.

Richard Phillips Adm.r vs Thos & J. B. Allison

Transcript

24

A. Dec 4th Dec 1866
E.P. Docket 4th Circuit

Filed Sept 1866
Isaac Armstrong
Clerk

Enrolled Book B
Equity Enrolments
Page - 213 - 217

Ex. No. 617
Bedford

Richard Phillips
& others
vs
J B Allison

3

The defendants allege that the decree of the Chancery Court is erroneous.

There is no consideration for the contract between William Allison & his wife, and it being the intention of the parties to make a contract, the courts will treat it as such. It being a contract, if the wife had coverture, she was not bound by it, but could have taken dower out of the estate of Wm Allison.

It is a mere voluntary conveyance of money or personal property, belonging to wife in possession of the husband, to the wife, and the husband surrender her claiming the possession all the time. This case is almost similar in facts and principles of law of that of Pong and Patterson Adm vs Gilt Ex, 2 Humphreys page 216, which concludes the complainants from recovery.

To say the least of the case, the equities of complainants and defendants being equal, the subject matter being in the possession of the defendants, the court of Chancery will not give the power to two

power - would the Equity be with those who are strangers in Blood, the Complainants, or would not the fund remain with the defendants, who are the heirs at Law and distributees of William Allison -

The wife of William Allison was first then the heir bound, being in possession, if he had ever transferred the fund, would it not sooner to heir -

D L Scruggs for defendants -

Richard Pettit
Comrs
Ex 3

J B Allison
Party & Solicitor

Phillips vs Allison

M. L. Davidson for deft. cited Perry vs Gill & Patterson 2. Munf. — Hackney vs. Hackney. 8. Munf. 452.

He also insisted that Powell vs. Powell. 9. Kemp, was no authority to support the post nuptial contract in this case, because the common law that the widow was entitled to dower in all of the lands of which the husband was seized during coverture, was the law of Va, where the contract was made. Hence to part with the right of dower was a valuable consideration. He also insisted the case of Fitzgerald vs Irvine 4 Grad, was not a controlling authority. There, Fitzgerald, the older, consented that his son, might sell his expectancy in his estate, promised to make a will in accordance therewith, which he did. Hence, that case may rest on its peculiar facts.

Phillips

Wm Bruce

Allison

Richard Phillips Lathers

vs

N. T. & T. B. Allison

The bill is filed in this case to compel defendants, executors of Thomas Allison to pay complainant, about twelve hundred dollars with interest.

Thomas Allison & his wife, before marriage he being a widower & she quite an old Lady who had never been married, entered into a parol agreement as is alleged, that what estate she had being mostly money, should go to his relations, at her death. After the marriage & when he was expected to die, shortly, they executed a writing under seal, by which he claimed if he survived her, to pay to her next of kin, or to any person she might designate by her will or otherwise, twelve hundred & fifty dollars, taking ~~to her sole use & benefit & of her on this~~ marriage, in consideration of her agreeing to release all claims, on his estate if she survived him, for dower & distributive share. This instrument was signed & by both, & lodged, with the mutual friend who wrote it for safe keeping. At the same time he executed his will, the same person witnessing both instruments, by which he made no provision for her, whatever, because of the agreement they had then & there executed. Both parties being entirely satisfied, with the contract, she expecting & asking nothing under the will, but relying upon the contract. She, however, died shortly afterwards & before her husband. He survived her only a short time, & his executors, refuse to pay the money & this bill is filed by the next of kin to enforce its collection.

The proof is satisfactory that about the sum sought to be recovered, is the amount she had

at the time of the marriage, in many & notes and the proof renders it probable, that he had not actually collected, or received it all to suspicion at the time of the execution of the contract. Complainants are the next of kin of Mrs Williams.

The case of Sannell vs Sannell of Hume 477. 482 & 3. also 488. quoting with approbation, the case of Barlow vs Barlow Adm'r, 10 Ohio 371. Also the case of Slassing vs Hyde, 3 Sum Williams 334. are cited in Sec 11 Sumd 258 - where a release of an expectancy was held to be a sufficient consideration. The contract was held valid.

26.

Richard Philips
Letters -

Brief.

N. T. & T. B. Akiran

Richard Phillips, Edmund Coppin and William George Executors of Samuel Phillips, dec'd,
William B. Phillips, Legatees.

vs. }

T. B. Allison.

As it appears to this Court from the Chancery Court at Shelbyville and upon consideration thereof, that the contract, entered into between Rebecca Allison & Thomas Allison, her husband, was without consideration, the property of the wife, having been acquired by the husband upon the death of said ancestor, it is therefore adjudged decreed by the Court that the decree of the Court below be reversed, and that complainants bill be dismissed ~~and that defendant recover of complainants~~, ~~and~~ and the Court being of opinion that defendant, under the facts of this case should pay the costs of this Cause, both here & there accordingly it is therefore ordered & decreed, that complainants recover of defendants the costs of this cause in this Court & the Court below, for which execution will issue, to be levied of the goods and chattels, rights & credits of Thomas Allison, in the hands of defendant to be administered.

Richard Phillips
Letters.

Lewis.

T. R. Lewis

Entered 409