3d. Circuit: Chan Cause No. 35 Blount County.
Transcript

ET
1837

Hu. Henry ap Hugh.

vs

John Henry & Adm'r.

Chancery Court Maryville T.

Appeal to the

Supreme Court at Knoxville

Rec'd & filed Sept 13th. 1859
W. W. Allison Clk

S. A. Pope Sec'y

Enrolled Chancery causes Sept term 1859
in Page 268

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Know all men by these presents that we Hugh Henry Jr. & James Henry are held & firmly bound unto John Henry & Samuel Henry in the sum of Two Hundred & Fifty Dollars in the which payment well & truly to be made to the said John Henry & Samuel Henry we bind ourselves & our & each of our heirs Executors, administrators severally & jointly, firmly by these presents. Signed, & Sealed, & dated the 20th day of June 1854.

The Condition of the above obligation is such, that whereas the said Hugh Henry Jr. on this day hath filed a bill of Complaint in the Chancery Court at Mansfield against John Henry & Samuel Henry. Now, if the said Hugh Henry Jr. shall well & truly & with effect prosecute said bill of Complaint, or in case of failure to prosecute the same, to pay and satisfy all costs & charges on the same; or if said bill should be dismissed for want of prosecution or other cause, then, if the said Hugh Henry Jr. shall well & truly do

perform & Execute all such decree order or Judgment, as the said Court of Chancery shall make in relation to said bill, or the matters therein contained, then the above obligation to be void, else to remain in full force & virtue.

Hugh Henry (Seal)
By his Atty Robert Boyd
James Henry (C)

Attest
S B Boyd.

Hon J A Van Dyke Chancellor &c sitting in Chancery at Mangum in the County of Blount

Humbly Complaining shewith unto your Honor your Orator Hugh Henry Jr a citizen of Limestone County Texas that about the day of 1865 Hugh Henry the father of your Orator then a citizen of Blount County Tenn departed this life, having first made his last will & testament, a copy of which is hereto annexed and marked "Exhibit A" and prayed to be taken as part of this bill of complaint. By which it will appear to your Honor that the father of your Orator devised to your Orator certain personal property ~~and~~ real Estate & Money. And your Orator would show that John Henry was one of the Executors of his father's last will & Testament, and duly qualified as such and afterwards about 184 the said Respondent became & was appointed the guardian of your Complainant and your Said Henry of Little River as his security for his guardian-

ship. a considerable amount of money property & rents come to the hands of the said Respondent John Henry which he has wholly failed to account for to your Orator or any one to him though often requested. Your Orator would state that while the said John Henry was Executor of said will, and while he was guardian to Your Orator, he Your Orator resided in the family of & performed ~~[illegible]~~ work & labor for him - said John Henry also took Charge of the real estate devised in said will as the Executor and also as the guardian of Your Orator. Your Orator charges that on the 5th day of February 1842 the said Respondent as guardian of Your Orator ~~made~~ made an inventory and returned it to the Clerk of the County Court whereby he showed that there was then in his hands & in which he was chargeable the sum of Forty hundred dollars devised to Your Orator. Also the sum of One Hundred & Twenty Six dollars Your Orator's part of the negroes also the rent of lands for the years 1840 & 1841 amounting to the sum of 175 7/100 dollars all of which with interest thereon up to that time amounted to the sum of Four Hundred and Thirty Three dollars & ninety nine cents - Afterwards on the 19th day of January 1848 the said John Henry made a settlement with the Clerk of the County Court a copy of which is hereto annexed marked Exhibit B.

and made part of this Bill wherein he charges himself with the said sum of Four Hundred & Thirty Three 99/100 dollars and procures credit to be allowed him to the amount of One Hundred & Sixty 1½/100 dollars leaving in your Orators favor in that settlement the sum of Four Hundred & Seventy three 98/100 dollars. Your Orator does not expect to hold John Henry responsible in this bill for acts done or omitted to be done by him as Executor but only as Guardian. He insists however that said Guardian should be held to account for all monies or money that came to his hands as Guardian, or that by due diligence ought to have come to his hands as such. He insists that a large amount of personal property came to his hands or by due diligence ought to have come to his hands as Guardian more than said settlement shows and also of money as part of said Estate. He insists that said Your Orators Respondent John Henry should be held responsible for the reasonable rent of said land ever since 1840 at annual rests and the more especially as the said Respondent Henry has ever since had the use & enjoyment of said lands to his own use & benefit ~~Respon~~ Complainant would also state that he objects to the credit which has been allowed ~~the~~ said last mentioned settlement of One Hundred & Four 81/100 dollars & the interest thereon Your

Orator does not know what the items are

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Orator does not know what the items are that make up that credit. and has no means of knowing & he here calls on said Respondent to state & disclose the same. Your Orator would state that while he was a minor under the guardianship of said Respondent he performed labor & services for him, during nearly the whole time, and he is satisfied that his services is worth more than his boarding clothing & schooling during that time, and if any part of said Credits is for any of those things your Orator must protest against such a credit being allowed Your Orator insists that on whatever sum shall be found to be in the hands of said Guardian. or ought by due diligence to have come to his hands, interest at the rate of six per cent per annum. The premises considered Your Orator prays that the said John Henry and Samuel Henry of Little River the security in his guardian bond be made parties defendant to this bill & that process issue, & that they be held strict, true, full & perfect answers to make to this bill - and that an account be had in this cause, and if in anything your Orator has mistaken his remedy he prays for general relief & as in duty bound will ever pray &c.

Rogers & Boyd

Hugh Henry Jr

Sols for Complainant.

Exhibit D.

Copy of Hugh Henrys Will

In the name of God amen. I Hugh Henry being of sound mind & memory make this my last will & Testament First I will my soul to almighty God hoping he will receive it through the merits of Jesus Christ. 2nd I order my body to be buried in a decent and Christian like manner at the discretion of my Executors hereafter named. 3d I order that my just debts be paid out of what debts due, if that is not sufficient I allow the ballance to be made out of my legacy of mothers estate. 4th I will & bequeath to my son Samuel Henry & my son Hugh Henry two Hundred dollars each for raising & schooling them. Till they are of age. 5 I will & bequeath to my son James Henry a certain gray filly claimed by him 6th I order that my land and Negroes & farming utensils and stock & family be kept together for the space of five years if thought best by beloved brothers John Henry & David Henry 7th I will & bequeath one Hundred dollars to Polly Jane daughter of Cynthia Dyer which I consider to be mine. when of age 8th I will & bequeath to my two grand Children Hugh Gamble & Alexander Gamble when of age One Hundred dollars each I allow my land and negroes to be equally divided

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among all my Childer except my Bro Jamd Childer Hugh Gamble & Alexander Gamble and Thely Jane Dyer all to recive their portion when of age. I do hereby disannull all other wills & Testaments and appoint John Henry & William McTeer my Executors in hopes they will take the Charge. In Witness whereof I have hereunto set my hand & seal this 12 March 1832.

Test
Sam Henry
John Henry

Hugh his + mark Henry (Se)

Exhibit "B."

A settlement was returned to Court confirmed and ordered to be recorded which is in the words & figures following to Wit.

State of Tennessee Blount County. I John E Toole Deputy Clerk of the County Court ~~aforesaid~~ of the County aforesaid have proceeded to make settlement with John Henry Guardian of Hugh Henry Jr of Hugh which is as follows to wit. I find said Guardian Chargeable with the following amount viz. To cash Inventory returned August 1842. $248.50
To Int up to Feby 18th 1846. 90 49 $298.99

I also find said Guardian has made the following disbursements for which he is entitled to Credit viz.

Voucher No 1 paid Saml. O'Neill 50
" " 2 " A Reagan 75.

Voucher No 3 paid Clerk Kennon 3.00
" " 4 " John Henry 102.31½
Interest on same up to July 18 1843 28.20
5 Will Wallace Sheriff. Tax 8.75
Guardian Services. 20.00 $160.06
$273.98

I have allowed the Guardian Twenty dollars for his services up to this time leaving a balance in the hands of the Guardian of Fortunard of Seventy Three 98/100 dollars and at Interest from 18th July 1843 all of which is respectfully submitted to the Consideration of the Worshipful County Court this 19th day of January 1844

J. Kennon Clk
By Wm. E. Toole Deply Clk

A true Copy as filed in my office this 24 May 1854 J. C. McCoy Clk.

Endorsed filed June 26th 1854 Saml. Price Ctr.

The seperate answer of Samuel Price Administrator of John Henry Dead to the bill of Complaint filed against his Intestate & Samuel Henry in the Chancery Court at Maryville by Hugh Henry

This respondant saveing the usual exceptions to the bill of Complain for answer to such parts as he is advised are material to be answered, answering said.

That it is true that the Father of Complainant

died probably at the time stated herein

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died probably at the time stated, having first made his last will & Testament in which one William McTier & Respondents intestate were appointed as his Executors, but it is wholly untrue that Respondents intestate ever took upon himself the execution of said Will nor qualified as Executor thereof, but it is true that Respondents intestate was the guardian of Complainant and as such Guardian Respondent does not know what amount of money or property came to his hands in Ky & Ohio, but it appears of record in the County Court of Belmont County the Copy of an inventory of which returned by said Guardian in his lifetime is herewith filed marked Exhibit A and asked to be taken as part of this answer, which Respondent insists is a full, true & perfect inventory of all the effects belonging to his said Ward, which came into the hands of said Guardian, nor does Respondent admit but wholly denies that by any want of diligence on the part of his intestate the amount thus received was less than it should have been, Respondent will admit that the settlement filed by Complainant as Exhibit B is one

of ~~[illegible]~~ the settlements made by intestate with the clerk, but Respondent insists & believes that other settlements were made with the clerk one of which submits marked Exhibit B and asks that the same may be taken as part of this answer, by which said settlement Your Honor will readily perceive that the amount then shown to be due Complainant is less considerably than the amount alledged in his Bill of Complaint. Respondent thinks the statement of Complainant that the Creditor gave his bond for a sum of one Hundred & Ten 31/100 dollars and the interest thereon, he does not know what the items are, and has no means of knowing is reckless assertion, as the account with the items are distinctly shown and set forth is filed ~~with~~ said settlement with the clerk as Voucher No 4 a copy of which Respondent can & will produce if thereto required. Respondent is also informed and so charges, and calls upon Complt. to show how the fact is, that his intestate some years before his death paid Complainant a Horse worth from one Hundred to one Hundred & fifty dollars besides a considerable sum of money perhaps to the full extent

of all that was due Complainant.

of all that was due Complainant, but respondents intestate being an old & feeble man and for years before his death being afflicted with paralysis may not have taken a receipt for same ~~and~~ or if so the same has been mislaid and has ~~yet~~ yet not been found. Respondent is not able to say what the rent of the land would have been worth, but presumes his intestate has allowed reasonable rent for it. As he is informed there was but about fifteen acres, and a considerable portion of that low wet and marshy, so as to be rendered uncultivable. Respondent insists that no rent was due Complainant on said land after he arrived at his majority, the precise time of which Respondent does not know, but is informed was about the year 1847. In answer to Complainants allegation of having performed work & labor for wife full worth more than his boarding, clothing, schooling &c Respondent can only say that he has been informed that whenever or early as Complainant was able to go to school he was going, and Respondent can state of his own knowledge that he visited ~~that~~ Complainant one time as a Physician

While he was living with his said Grandsin and at that time Complainant was afflicted as Respondent was informed with a disease of the head which incapacitated him from labor, and which respondent is informed continued for years. As already stated believes that his intestate in his lifetime and after Complainants majority made a final settlement with him and paid him, and respondent relies upon this settlement to the present suit. and for as much as the said Complainant has attained his majority more than six years before the beginning of this suit the defendant pleads & relies upon the statute of limitations and a full bar and defense to this suit to each & every part of the same as fully as it was presented in the form of a plea. And now having answered fully Respondent prays to be dismissed with his reasonable costs.

Maynard & Todd Solr. Samel. Pride admr of John Henry Decd

State of Tennessee Blount County s

Before me the undersigned personally Came Samuel Pride the Respondent in the foregoing answer and made oath in the due form of law that the facts stated by him in the foregoing answer of

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his own knowledge are true and those stated on information he believes to be true

Sworn to & subscribed — Saml Pride

before me 30th November 1855

David D Foute (Seal)

Justice Peace for Blount County

Exhibit A.

County Court — Blount County Aug. T 1842.

Hugh Henry Jr of Hugh. An inventory of the Estate of said minor heirs was returned into Court & ordered to be recorded, which is in the words and figures following (viz)

Inventory of John Henry for Hugh Henry Jr of Hugh Dec'd.

Received Two Hundred dollars for schooling and raising — $200

Hugh Jr part of the Estate — 126

Rec'd his part of Rent 1840. — 5.00

" " " " " 1841. — 12.50

$343.50

Sworn to in Open Court August 1842

Jeremiah Kennon clk — John Henry Jr

By J. E. Tools D.C. — Guardian

I do certify that the foregoing a correct transcript from the records of my office. Witness my hand at office in Maryville this 4th Nov 1855

H M Cory clk

By N A Walker D clk

County Court of Blount County

Exhibit B.

Monday June 2nd 1835

Hugh Henry of Hugh. A settlement was returned to Court unexcepted to confirmed and ordered to be recorded, which is in words & figures following (viz) State of Tennessee Blount County. I William Lowry clerk of the County Court aforesaid, being authorized to make settlement with Adams Guardians & Executors have proceeded to make settlement with John Henry Guardian of Hugh of Hugh I find said Guardian chargeable with the following amount (viz) To amt due on last settlement made January 19 1826 $ 273.98 with Interest on $ 206.85½ July 18 1826. 26.50

$ 299.48

I also find said Guardian has made the following disbursements for which he is entitled to credit viz. Voucher No 1 paid Guardian exp. $ 66.12½

" " 2 " Clks fees 1.50 $ 67.62½

Bal due 231.86

bad at interest from 18 July 1835. I have not allowed said Guardian any thing for his services at this time, all of which is respectfully submitted to the Consideration of the Worshipful County Court. Will Lowry Clk

By James R. Lowe D.C.

I do hereby certify that the foregoing is

19 a true Copy As on file in said office this

19 a true Copy As on file in my office this 8th Nov 1855. J. C. McCoy Clerk of the County Court Blount County.

Endorsed Filed Dec 6th 1855 Saml. Price Clk

At a chancery court held at Maryville Chancellor Trousdale presiding the following order was made

Hugh Henry
" } November 27 1854.
John Henry } Death of John Henry suggested & admitted & suit revived against Saml. Price administrator of John Henry

May Term 29 May 1856 – In this case two months was granted Saml. Price Admr. of John Henry to file his defence so as not to delay the Court

May Term 1856. Judgment pro Confesso taken against Saml. Henry one of the respondents in this Cause for want of answer.

May Term 29 May 1856. Hon Chancellor Lackey presiding, the following decree was pronounced

Hugh Henry jr.
" } It is remembered that this Cause coming on the 29th day of May 1856 before the Hon Chancellor Lackey
Saml. Price Admr. of John Henry decd

upon the Bill, Answer of Samuel Price admr. and replication & Judgment pro Confesso taken against Samuel Henry & the Exhibits in this Cause being regularly set down for hearing upon the Pleadings

and the Chancellor being of Opinion that this is a fit & proper Case for an account. It is therefore ordered adjudged & decreed by his Honor that the Clerk & Master take and state an account between the parties. 1st let him state the amount of Complainants estate which came into the hands of Respondent Price's Intestate as Guardian. or which ought to have come into his hands by due & proper diligence either of money or other property. And the amount of the rents & profits ~~belonging~~ of the real Estate belonging to the Complainant. Giving to the respondent all proper Credits ~~and~~ proper Charges, payments, or disbursements & taking said account the master will charge the said Respondent with Interest at annual rests and the Master will strike the true balance between the parties. and either party is allowed to introduce any Competent evidence he may deem proper at the taking or at any time before the taking said account. and the Clerk is authorized to take the testimony of Sandy Henry one of the respondents and let him report at the next term. and all questions of law are reserved until the coming in of the report. And the master being a party to this suit it is ordered that W. D. McGinnis Esq. take and state said account.

November Term, 1856. 24th Nov. In this Case the previous order revived, and the Cause by the Consent of parties remanded to the rules.

21 On this 13th day of Nov. 1886 in pursuance of a previous agreement made in the Case of Hugh Henry against John Henry deceased and Dr. Saml. Pride admr. &c I proceeded in the presence of James Henry Esq. who appears as agent for Complainant and Dr. Saml. Pride Admr. & his Counsel John E. Todd at the Office of the Clerk & Master of the Chancery Court in Mayville and the Complainant in pursuance of the decree of the Court made at the last Term of the Chancery Court of said County, introduced introduced Samuel Henry Esq. one of the respondents in this Case aged 79 Years who deposed as follows.

Quest. 1st by Complts agent James Henry. Were you acquainted with the Complainant Hugh Henry of Hugh. If so who was his guardian, state when he was appointed, if Hugh lived with his Guardian how long he so lived?

Answer. I was acquainted with Complainant. John Henry was his Guardian I cannot state when appointed. Hugh Henry lived with his Guardian until about Ten years back or more. He went there shortly after the death of his father, Hugh Henry Sr and stayed there till the time he left as before stated. My recollection is that Hugh Henry died about 1880

Ques 2nd by same State if you please whether Complainant worked for his Guardian during the time he lived with him if he did what was his services worth during the time. Answer. Complainant worked some for his

for his maintain. I would think there was three or four years of his time when he first went there he was an expense. He had the scald head perhaps the time might have been longer he was in that fix. As to his labor I cant say what about that he worked in the Crop and as to what his labor was worth I cannot state. He works some getting more &c after he got well he was an active boy.

Ques 6 by same. State if Hugh the Complainant had any real Estate if so state how much. What would be the worth of the rents per annum of the land. Answer He had 24 acres about 20 acres of cleared land. I would think about one half the cleared land was in fine the other half for cultivation. The rents when well tended in Corn would amount to about ten bushel to the acre some years. the Land was tended in a good crop year would have brought about 870 bushel of wheat per acre. I would think the 20 acres of tillable land would be worth 20 dollars per year net profit at a low estimate, taking out expenses &c.

Ques 7 by same. Do you know if Complt. came at several times to get a settlement with John Henry his maintain. Answer He did

Ques 8 by same How long since John Henry gave up possession of the land of Complt. Answer three years & better I have raised 3 crops on it I brought it.

Ques 1st by Respondents Solicitor. Were you in an in during the same period for a brother of Complainant?

Answer I was.

Ques 2nd. Did there come into your hands under the will & for interest in the negroes & for rents embracing the year 1841 the same amount that came to the hands of Respondent, Answer. I expect so I think that was about it.

Ques 3d. Is the amount of Inventory now before you dated August 1, 1852 marked Exhibit "A" according to your knowledge & information the proper amount with which Respondent should have been charged at that date. Answer I think so.

Quest 4 From your knowledge of Campbell during the time he was with John Henry, would you consider the two hundred dollars set apart by the will for schooling & raising more than would have been a fair compensation for his guardian for the necessary outlay for such schooling & raising. Answer, I think it would be a plenty.

Ques 5. Was the land spoken of by you as belonging to Campbell in such a situation that his guardian could have rented the same so as to get rent as well for that portion of land cleared & not cultivated as that cultivated. Answer. As for the uncultivated land he could have got brush or pasture for it. he could have rented the balance by laying off ten acres by itself.

Quest 6 From the year 1841 up to the time respondent left his guardian what was the average price of corn & wheat. Answer. Corn at a quarter or 25 cents

Wheat at 50 Cents sometimes higher sometimes lower

Inst 7 State if you know of any payments made to Complainant by his Guardian after he arrived at his Majority. Answer I know of a Horse at One Hundred dollars paid by John Henry to him which payment was made about 5 Years ago perhaps more or less I cannot state exactly but since Complainant came of age.

Inst 8. When did Complainant arrive at 21 Years of age as near as you can recollect. Answer I cannot Tell for I do not recollect.

Inst 1st by James Henry Esq. on Examination. State if you know that the two Hundred dollars spoken of in the will of Hugh Henry was spent in schooling & raising Complainant. Answer I cannot Tell anything about it & further deponent saith not.

Sam Henry.

Sam. Henry Examination is by Consent of parties opened again and he further deposes as follows (to wit)

Inst 1st by Respondents Sol. Toole. In answer to a question of Complainant you say he had the scald head, and was an expense. State if you please if the Expense & labor necessarily incurred by Respondent during that period did not of itself consume the $200 allowed in the will for schooling and raising? Answer I have said that he was an expense during the time he was sick, but how much I am not

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able to say. And further saith not Sam'l Henry

Mrs Cummings

William Cummings next witness on behalf of Complainant introduced by James Henry Esq're who is of lawful age & deposes as follows (to wit)

Ques 1st by Complainants agent James Henry Esq'r.

Do you know the parties to this suit Hugh Henry & John Henry dec'd. Answer I do.

Ques 2nd Do you when John Henry became bro'r admin of said Hugh, did Hugh live with him when did he commence to live with him & when did he leave him. Answer I do not know when John became his bro'r admin. Hugh Henry lived with him John Henry. He commenced to live with him when Hugh was young say about 9 or 10 years old and stayed with him until about a year or 18 months before he went to the Mexican War which about the year 1848. He went out about the last of the war from Murphy & C. as I understand.

Ques 5th Did Hugh labor for John Henry while he lived there if he did what was his labor worth per annum. Answer. He did work for John Henry some part of the time while he lived with him and went to school part of the time. I would say he was worth his wages say two or 3 years. I have to night about this matter before & think I have talked with John Henry about the matter. I think his work from first to last would about balance

for the expense of keeping & raising schooling &c

Quest 1st by Respondents Sol. Did you speak of having talked to John Henry about the matter did he at any time say to you that Hugh Cain was worth his Expenses of raising and schooling?

Answer. I have heard John Henry speak of the boy at several times He said he was a good boy to work, some of the last years he lived there was when I heard this Conversation this is the Conversation I have alluded to.

Quest 2nd. If during the period Complainant lived with his Grandsire he was afflicted for four or five years with scald head, would you not suppose his grandsire ought to be paid for keeping him if so how much her answer.

Answer I do not know about the disease what effect it would have on him, I know that he did have something of the kind wad his head tied or patched up he also tied to keep it Concealed was my impression. I do not know the expense or trouble or what worth.

And further deponent saith not. Nill Cummings.

This Cause was by Consent Continued until after the November Term of the Chancery Court for Blount County. And at said Term the Cause in Court was Continued by Consent and the order that the Commissioner

W. D. McGinley proceed with taking the account and make report to the next term of the Court this cause continued. Now therefore we the parties to this suit hereby agree to continue to take depositions in this case and which are to be read in stating the account ordered on the 2nd January 1857 at the office of the Clerk & Master in Memphis this 15th Dec. 1856

Saml. Pride admr of
John Henry decd
James Henry agent.

Hugh Henry
vs
Saml. Pride admr. &c

In this cause the parties both wanting more proof & time to get witnesses &c & having on account of the extreme cold weather & sickness failed to meet as before agreed, the parties therefore further agree by consent to meet at the office of the Clerk & Master in Memphis before the Com W. D. McGinley on the 12th day of March next, at which time they have a right by consent & without further notice to introduce any further evidence they may desire, & McGinley is to proceed on that & succeeding day if necessary to complete the account ordered in this cause this 28 July 1857.

Saml. Pride admr of
John Henry Decd
James Henry agent.

Thursday 12 March 1857. Clerk & Masters Office.
Present Dr Pride admr of John Henry decd

and James Henry Agent for Hugh Henry. And the Respondant who had summoned Thomas Keeble declined to examine him but thereupon James Henry Agent &c Requested to have his deposition taken thereupon Thomas Keeble aged 68 Years was examined upon his oath duly administered to him by me and he deposed as follows. Question 1st by Hugh Henry Agent. James Henry Were you acquainted with the Complainant Hugh Henry. Answer. Yes I was eight Years with him on the farm where John Henry died and joining farm formerly owned by Hugh Henry

Quest 2nd. Who was Guardian for Hugh? Answer. John Henry was my understanding. He told me so.

Quest 3rd. How long did Hugh Henry live with his Guardian

Answer. From 6 to 8 Years I recollect

Quest 4th. You will state whether Hugh Henry the Complt had any land during the time he lived with John Henry, If he had how much and had he the land all the time he lived there.

Answer. He had a piece of land. I helped to fence it off. I was employed to help about the fence by John Henry. My understanding was he held the land the time while he lived with John Henry. John Henry told me it was Hughs land, I know nothing about his title to the land. There was I suppose from 15 to 18 acres of the bottom, but of the upland I do not know how much there was there might be 6 or 7 acres or such a matter.

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Inst 5. Please to state what the land would be worth of clear profits.

Answer. I think about one third part of the bottom may net land for meadow & pasture I would say there was from two to four acres of this land in good meadow all the time Hugh was there I will say that the bottom that was for grain cultivation would bring from twenty to 25 bushels of corn to the acre per year. I would say the land to take out all expense would be worth about one dollar & twenty five cents by the year per acre I mean all the cleared land which was I think about 25 acres.

Inst 6 State if while Hugh lived with John Henry he worked. If he did what sort of a hand was he for work.

Answer He was a smart boy, a good hand to work a little past common when he did work.

Inst. 7. State if you know if Hugh went to school while he lived with John Henry. If he did you will state if his work he did while he stayed there would pay for his board & schooling.

Answer. He did go to school some. Two schools I think and some others. His work he did for John Henry would be sufficient to pay for his schooling, boarding &c I think.

Cross Examination.

Inst by Respondent. Do you know any sickness or disease

Hugh had during the time John Henry was in asylum. Answer: We had a very poor herd when he was there.

Inst 2nd How long did that poor herd continue?

Answer. A year or two I don't know exactly how long.

Inst 3d What would it be worth to take care of him while in that condition, Answer. I can't tell you he was going about ~~a good deal~~ during the time and went to school a good deal of the time while his herd was poor.

Inst 4. Do you know of anything else in money or property except schooling ~~[illegible]~~ and clothing, that the said Hugh Henry was paid by his guardian.

Answer There was a stock that Hugh got at one hundred dollars but I don't know on what account.

Inst 5. Was you acquainted with Hugh's brother James share in that land

Ans It was there in the same body but I don't know any thing about it. And further deponent saith not,

Thos. Keeble.

Witnesses examined by me who claim one days attendance. Commissioners Fee. 3.00

Samuel Henry 1 day. 75

Will Cummings 1 " 75

Thos. Keeble 1 " 75

Wm McCurley Com.

Hugh Henry pr. } In this Case, at a former term
Saml. Pride adm. r } of the Chancery Court of Blount

County for the reason that the Clerk & Master is one of the parties to the suit and incompetent to state the account in this case. I have therefore at various times in the presence of James Henry Esq. who acts as agent of Complt. and Dr Pride the Respondent & his Solicitor taken in writing by consent to save expenses, and the evidence desired by the parties then. Since that time by consent of the parties, At my house in in Maryville I have proceeded to take the account as directed by the decree in this case. And I find that there has come to the hands of and by reasonable diligence should have come into and be accounted for by John Henry & Resp. Pride to said Hugh Henry for the following sums of money. (To wit) 1st Money left apart by the will of Hugh Henry dec.d for schooling and raising said ward which sum has been allowed John Henry by the Clerk of the County Court commencing as the ward paid for schooling & raising by labor & service (see depositions of Saml. Henry Wm Cummings & Thos Keeble on file.

See Inventory dated August 1842.	$200.00
Rent Dt. on same from Aug. 1st 1842 to 25 May 1857 by same inventory.	$274.71
Fanny Hughs share of the Negroes of his Fathers Estate see same Inventory	126.00
Int on same from Aug 1842. to May 25 1857.	178.00
	$778.71

To amt brot over.	$772.71
To Rent of Land shown by same Inventory for the Years 1840 & 1841 Brt for 1 Year.	17.80
To amt Brt on above Sum to 25 May 1857.	24.34
To rent for the Year 1842. taken from the Estimate of Amt. Recvy in his application	20.00
To Interest on same to 25 May 1857.	39.27
To Rent for the Year 1843 Same	20.00
To Interest to 25 May 1857.	28.74
" Rent for the Year 1844	20.00
" Interest to 25 May 1857	25.59
" Rent for the Year 1845.	20.00
" Interest on same to 25th May 1857	20.18
" Rent for the Year 1846.	20.00
" Interest to 25 May 1857	17.91
" Rent for the Year 1847	20.00
" Interest to 25 May 1857.	15.77
" Rent for the Year 1848	20.00
" Interest on same to 25 May 1857	13.75
" Rent for the Year 1849.	20.00
" Interest to 25 May 1857	11.84
" Rent for the Year 1850	20.00
" Interest to 25th May 1857	10.04
" Rent for the Year 1851	20.00
" Interest to 25 May 1857	8.34
" Rent for the Year 1852.	20.00
" Interest to 25 May 1857	6.74
" Rent for the Year 1853	20.00
" Interest to 25 May 1857	5.28
	1242.67

At which time the land was sold & rent stopped
See the deposition of Saml Henry he says he has
fought the land and had three crops off it.
Quit but over. $1242.67
I find John Henry entitled to the following
Credits which he has rightfully paid out &
expended for his ward
For Cash paid Saml Pride for medical services
see Voucher No 1 the Voucher is not Complete but
I have calculated interest on it and allowed it $5.00
By Interest on same up to 25 May 1857 from Jany 2d 1842 the date of receipt 7.15
By Voucher No 2 in settlement in settlement made 19 Jan 1846 Clerks fees
paid Nathaniel Reagan 75
By Interest on same to 25 May 1857 1.85
" Voucher No 3 in same settlement Clerks Fees. 3.00
" Interest on same from 19th Jany 1846 to 25th May 1857. 3.82
Voucher No 4 has been wholly disregarded as it is
made up of an account for clothing boarding schooling
&c which by the court was paid for in work see
the depositions of Saml Henry Wm Cummings &
Thos Kuble on file. Voucher No 5 is wanting
in the file but as the clerk of the County court
allowed the credit and as I suppose the
taxes did accrue on the land and ought to
be paid I have allowed a credit on it. 3.75
Interest on same from 19th May 1846 to 25 May 1857 4.77
I have allowed the Guardian the same allowance
made him by the clerk of the County Court which

allowance comes up to 18 May 1845 but the allowance was made to him on the 19th Jany 1846. 20.00
Interest on same to 25 May 1857. 2.14
74.83

Amt of principle charged $1242.67
" " Credits Brought over. 742.83

In the settlement made 18 May 1846 the clerk of the County Court allowed the Guardian his account of $66.12½, which on inspection proves to be an account for clothing & boarding &c which cannot be allowed by me. In depositions of Saml Young Will Cummings & Thos Keeble on file. Voucher No 2 is not on the bill but the clerk allowed the Credit for his fees which I suppose to be right & I have allowed it. 1.50
Interest on same from 18 May 1846 to 25 May 1857 1.44
I find by the deposition of Saml Young Esq. that said Ward was paid by Guardian one Horse at One Hundred Dollars about 5 Years before he deposed which was Bt Oct 1886 which is allowed by me 100.00
By Interest on same for 5 Years 6 mos 12 days to 25 May 1857. 38.09
Full Amt of Credits $318.76

Total amount due to Complainant principle $1024.91
& Interest. I have in addition to what has been heretofore allowed the Guardian and allowed him 25 dollars. $25.00
leaving yet due Complainant in full. $1001.91
I have computed Interest at annual rests on all sums both in charging and Credits paid by the

Guardian up to 25 May 1857 all of which is respectfully submitted

W. D. McGinley
Special Commissioner &c

At the October Term 1857, Chancellor Vandyke presiding the following order was made

Hugh Henry & Hugh
vs
Saml. Poole admr.

The death of Complainant in this case was suggested by Respondents Sol & admitted by Complainants.

May Term 1858. This Cause continued by consent of parties because of absence of Complainants Solicitor

Hugh Henry
vs
Saml Poole admr.

Respondents Exceptions to Commissioners Report.

1st The Com. should have stated the account from year to year.

2d There is Error in allowing Guardian nothing for schooling Ward. He will set apart $200 and there is nothing to show it was not needed & used. See deposition of Saml Henry Esqr.

3d Interest is computed at annual rests up to the time of stating the account this is wrong after the ward came of age certainly after decree of Guardian it was a new recurring demand and the Guardians duty as Trustee ceased.

4th No allowance is made for Legal paid on Sheriffs order

5th The Commissioner pays no heed to settlements made with County Court Clerk

6 He has disallowed the Vouchers, admitted by the

Clerk of the County Court & not in any way impeached.

7th It is shown that Complainant was for 2 years say three or four or more, an expense by reason of his health but no allowance is made for it.

8th The report is in other respects objectionable in not allowing the Guardian sufficient compensation for his services in not allowing for a saddle furnished him &c &c. Mayn and Sol

Endorsed Filed May 27 1857, Saml Price Clk.

At the Nov Term 1858 Chancellor Vandyke presiding the following order was made

James Henry admr of Estate of Hugh Henry dec'd. vs Saml. Price admr of John Henry dec'd

This cause coming on to be heard & determined before on this the 28th day of November 1858 before Chancellor J. Irvin Vandyke upon the report of William D McCauley special Commissioner made at a former term of this Court and upon exceptions thereto. His Honor is pleased to order, adjudge & decree that upon exceptions 1st 2d 4th 5th 6th 7 & 8th be overruled & disallowed & that the 3d Exception thereto be sustained & he doth further order adjudge & decree that the special commissioner recast the account on the basis of the present report in all things with this exception that he so alter & modify his report as to calculate interest at annual rests until the said Ward arrived at his

(37)

majority, and after that time he will calculate the balance found to be in the hands of his ward in cash at simple interest to the date of his report & that he will report hereof to the next term of this Court.

Hugh Henry admr
James Henry Esq.
vs
Saml Price admr
of John Henry decd.

In this Case the parties mutually agree that the account heretofore taken by N D McGinley the special Commissioner appointed for that purpose and which account was ordered to be retaken and corrected in certain particulars at the last term of the Chancery for Blount County be retaken by said Comr at the Clerk & Masters Office in Maryville on Saturday the 7th day of May 1859 and at which time he agrees that he may take and state it without any other & further notice. 27 Apl 1859

James Henry admr
Saml Price Admr of
John Henry decd.

I James Henry Admr &c Complt in a suit now pending in the Chancery court of Blount County against Saml Price admr &c of the estate of John Henry deceased do to save costs and trouble &c & be cause the fact is that my said Hugh Henry was around and came at his majority or 21 years of age on the 30th day of

March 1848 this 10 May 1850. Thereof I agree the above date is correct and shall be used as true in said case. James Henry Adm.

James Henry admr of Hugh Henry decd
vs
Saml. Price Admr of John Henry decd

In this Case at a former term of this Court and before the death of Complainant Hugh Henry & for the reason that the clerk & master is a party to the suit & incompetent to state the account in this Case, I was therefore appointed special Commr for that purpose. I have proceeded at various times in the presence of James Henry Esqr. who acted for Complt. & after the death of Complt. & Dr Price the Respondent & his solicitor to take the evidence without notice & strict formality (to save expense) and by consent all the evidence the parties offered. Then at my home by consent and without formal notice to the parties at my house in Memphis I proceeded to state the account ordered in this Case & did so & made my report to the May Term of said Court 1849 which report was by respondent excepted to & one the exceptions sustained by the Court. Now therefore in pursuance of the decree made at the last term of the Court directing the account in this case to be restated. By consent of the parties & without any formal notice proceeded at my house in Memphis to restate the said account which I have done upon the basis of the former report with the exception that I have only charged the Executor with Interest at annual rests

till the ward became of age, which proved to be on the 30th day of March 1848. I find that there came to the hands of or should have come to the hands of John Henry decd. by devise of Capt Hugh Henry decd. and should be accounted for by Respondent under the following named.

Amt of Investment made by the will of Hugh Henry decd for schooling and raising said Ward which sum has been allowed John Henry by the Clerk of the County Court erroneously, as the Ward paid for his schooling & raising by his letter in the depositions of Saml. Henry William Cummings & Thos. Keeble on file The Inventory dated Aug 2 1842 Two hundred dollars. $200.00

To Interest on same Computed as ordered by the decree at the last term from Aug 1st 1842 to 28 May 1859 264.51

To amt Hughs share of Negroes of Father's Estate see same Inventory 126.00

To Int from Aug 1st 1842 to 28 May 1859. 166.64

To rent of Hughs land shown by same Inventory & 1/3 interest on it 17.80

To Interest on same to 28 May. 1859 28.46

To the rent of Hughs Land for 1842 taken from the deposition of Saml Henry & see deposition 20.00

To Interest from 1st Jany 1843 as ascertained by decree to 28 May 59. 20.87

To rent for the year 1843 see same as above 20.00

To Int on same from 1st Jany 1843 to 28 May 1859. 22.72

To Rent for the Year 1844 as above. 20.00

" Interest from January 1st 45 Computed as above to 28 May 1859. 20.29

926.60

To Amt brt forward	$926.69
To Rent of Land for the Year. 1845	20.00
" Int on Same from Jany 1st 1846	1808
" Rent for the Year 1846.	20.00
" Int on Same as above to 22 May 1849	15.89
" Rent for the Year. 1847.	20.00
" Interest on Same as above.	18.57
" Rent for the Year. 1848.	20.00
" Interest simple without rests	13.47
" Rent for the Year 1849.	20.00
" Interest simple	11.27
" Rent for the Year 1850.	20.00
Interest	10.07
" Rent for the Year. 1851	20.00
Interest.	8.87
" Rent for the Year 1852	20.00
Interest	7.67
" Rent for the Year 1853	20.00
" Interest simple on Same from Jany 1st 1854 at which time I consider the rent due to Christmas to the 23 May 1859.	6.27

At which time Hughs Interest in the land was sold & rent stopped see the disposition of Land Henry v. Total & Sons amount Charged to. $1211.00

I find the Estate of John Henry entitled to the following credits with interest calculated at rests till the 22 and 23 of May & then simple to 23 May 1859.

41.

Amount paid Samuel Pinto for medical bill see Voucher No 1. $5.00

Interest on same to 23 May 1857 6.92

By Voucher No 2 in settlement made 19 January 1848 Clerks Ringans Fees. 75

Interest Calculated as above 88

By amt Clerks Fees in same settlement. 300

Interest on same to 23 May 1857. 378

Voucher No 4 has been wholly disallowed as it is made up of an account for clothing schooling &c and the proof shows that Hugh paid for same to his Guardian in most see depositions of Saml. Henry William Cummings & Thos. Keeble on file.

By Amt paid for Taxes on land. 375

" Interest on same as above. 464

I have allowed the Guardian for his services the same amount allowed him by the Clerk of the County Court which allowance comes up to 18 May 1845 but the allowance was made on 19 January 1848 2000

Interest on same to 23 May 1857. 2507

In the settlement made 18 May 1845 the Clerk of the County Court allowed the Guardian his account of $6.12½ which on inspection proves to be an account for clothing schooling &c which cannot be allowed by see see depositions above referred to on file.

42

By Clerks fees in said settlement 1.50
" Interest on same to 28 May 1859 1.42
$76.66

Total amt Chargeable but own. 1211.00
By Amt Credits but forward 76.66
" One Horse paid by Smardin 100.00
" Interest on same from 13th Nov 1861 to 28 May 1859. in exposition of Saml. Nemy Sr. 4.16

To Total amt. Chargeable 1211.00
By full amount of Credits 221.82
Full amount due to 28 May 1859 $989.18
additional allowance to Smardin 25.00
$964.18

I have computed the interest as directed by the order of last term & find the above sum due to Complainant as above stated all of which is respectfully submitted to the Court. this 18 May 1859.

W.D. McGinley
Special Commissioner.

Endorsed Filed 18 May 1859.
W.D. McGinley Com'r &c

Respondents Exceptions to report of Commissioner to May Term 1859.

1st The acct is erroneous in allowing nothing to Smardin for scholing road.

2nd. No allowance is made for taxes paid on Spring Land

43 3rd The settlement with the County Commissioners and

43.

3d The settlement with the County Court clerk, and the Vouchers allowed by him are disapproved ~~by him~~ and disallowed, things unimpeached.

4. No allowance is made for support of Ward for several years when he was an idiot by reason of ill health.

5 The commissioner has failed to allow the $250.00 additional compensation to Executrix which was allowed in his former report and confirmed by a former decree of this Court.

6 The commissioner has made an error of $40.00 in the total amount of Credits allowed by him

Fred. Maynard Markham
Sol. for Respondent.

Endorsed Filed May 31st 1859. Sam'l Cole C.M.

At the May Term 1859 Chancellor Vandyke presiding the following order was made.

James Henry Admr. of Hugh Henry Dec'd.
vs
Sam'l Cole Admr. of John Henry dec'd

This cause coming on to be heard & argued this 30th day of May, 1859 before Hon T. Nixon Vandyke Chancellor &c on the report of Wm McGinley special commissioner & on exceptions of respondents solicitors it is ordered that the 4th & 5th Exceptions be sustained which being done it is ordered that the balance be overruled, and the report be in all things confirmed. And because it appears that

there was remaining in the hands of Resp
ondents intestate John Henry the sum
of Nine Hundred & Sixty four dollars
& 18 Cents, due & owing to the Complainants
intestate, which has never been accounted for
or paid over. It is therefore ordered adjudged
& decreed that the said Complainant James
Henry Admr of Hugh Henry decd recover of the
said Saml. Pride Admr of John Henry deceased
which has come to his hands of the said John
Henry Estate to be administered, the said sum of
Nine Hundred & Sixty four dollars 18 Cents
& the Costs of this Cause for which Execution may
issue to be levied of the goods & chattels, rights &
Credits of his intestate in the hands of said
Pride Admr to be administered, From which decree
respondents pray an appeal to the next term
of the Supreme Court at Knoxville on the
2nd Monday of September next & the appel-
lant is allowed one month to give bond
and security.

Know all men by these presents that we Saml
Pride administrator of the Estate of John
Henry Decd and Thos A Sope are held & firmly
bound unto James Henry admr of Hugh
Henry decd in the penal sum of Two Hundre-
d & fifty dollars of the payment of which

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well & truly to be made to the said James Henry
admr as aforesaid, we bind ourselves our heirs
Executors &c jointly & severally by these presents.
Signed sealed & dated this 14th day of June 1859.
The condition of the above obligation is such
that whereas the above bounden Saml Price
admr of John Henry deceased, has prayed an
appeal from a decree of the Chancery court
at Manyville pronounced against him at
the May term 1859, to the Supreme court of
Errors to be held at Knoxville on the
second monday of September 1859. Now
if the said Saml Price admr as aforesaid
shall well & truly and with effect prosecute
said appeal or in case of failure so to do
to pay and satisfy all costs & charges for
the same then this obligation to be void otherwise
to remain in full force & effect
June 25 1859.

Entered filed 25 June 1859.

Saml. Price (Seal)
admr of John Henry decd
J. H. Pope. (Seal)

7

State of Tennessee } I Lemuel Price Clerk & Master
Blount County } of the Chancery Court do certify
that the foregoing is a true full & perfect
copy of the aforesaid original cause on file
and as appears of record in my office
Given under my hand and the seal of office
at office in Maryville the 10th day of
September 1869

Lemuel Price C. & M
Chancery Court
Maryville

Bill of Costs

State Tax

350

Bill of Costs.

State Tax. 3.50

Clerk & Master Price For filing & Ans. 50 - Proc. bond 75 - Record do. 25 1.50

" is. copy of bill 1020 words 1.02 Subp. to Ans. 75 1.77

" Record Decree 730. words 73 filing Exceptn 14 140 2.13

" 11. continuances 275 Docketing cause 4 times 120 3.95

" 11. Orders entered 110. Fee print pro conf. 25 1.35

" Recording costs 50 Final Decree 75 125

" Entering appeal & taking bond 75

" Transcript 11592. words 1159 Seal 50 12.09 24.29

Comr. al Gainey " Notice to parties 25 3 depositions 3 3.25

" " Report to May Term 57. 1040 words 10.04

" " " " " 57 1114 11.14 24.43

Shff Gettemy " Serving copy of bill 2 parties & Subp. 3.00

" Sum. 2 witnesses 50 3.50

$56.22

By the Court:-

The death of Hugh Henry - the original Complainant - was suggested and admitted at the November Term 1857 of the Chancery Court and it is now said the decree is erroneous because no formal revivor of the Cause in the name of James Henry his adm.r is to be found in the record. This objection cannot prevail. In all the subsequent stages of the suit and in various agreements on file - James Henry is treated by the Court and by the defendants

as his adm.r without any objection in the Court below. It now comes too late here. He will prescume the suit was duly received and that the order has not been placed in the record.

The chief objection to the decree is that John Henry - the guardian - is not allowed credit for boarding, clothing and schooling - Hugh Henry his ward. It is manifest the rejection of this credit was proper. There are no vouchers or proof as to the guardian's expenditures for clothing & schooling. But aside from this, it fully appears from the depositions of Samuel Henry - the tenant of the guardian and Cummings and Stubble that the labor & services of the ward - for the guardian - were sufficient to cover his board, clothing & schooling during the entire period of his guardianship. Cummings talked with John Henry, the guardian, about the matter and it is evident from what he said and from the witnesses own knowledge that John Henry was entitled to no credit on this account.

It is true the will of the ward's father directs $200.00 to be applied to his education &c but if it was

not so applied, or if his labor covered his education & then of course the guardian should be charged with it.

The $25.$\frac{00}{100}$ allowed in the Commissioner's first report, for the services of the guardian and denied by the Chancellor to be credited in the decree - which, it seems - was omitted - will now be credited.

In all other respects the decree will be affirmed with costs.

A careful examination of the record satisfies us the guardian here, has no cause to complain of this decree. The ward's estate is matter of simple and plain calculation. It consists of $200.00 the legacy in the will - $126.$\frac{00}{100}$ his share in his father's slaves - and the rents of his land - $20.$\frac{00}{100}$ per year - at a low estimate. The Commissioner's report is made with much care and upon correct principles: and we are unable to see that the defendant has failed to get any other credit to which he is entitled.

Decree affirmed with costs. Wright.