

Surname: BURCH, WOFFORD, MITCHELL, KIRK, JERNIGAN
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Louisville, Mississippi

Chancery Court Case No. 275 – Jeff Davis Burch et al vs. Margaret Mitchell et al
(Records located in open plastic tub in basement vault in Courthouse)

Jeff Davis Burch and Margaret Caroline Wofford by their next friend JA Wofford vs. Margaret Mitchell et al --
Original bill filed Oct 2, 1874.

Jeff Davis Burch and Margaret Caroline Wofford, minors by JA Wofford their next friend a citizen on the
County of Winston — Complainants Vs.

Margaret Mitchell, Jeff Mitchell minor, and Martha Kirk and her husband WM Kirk all of Winston
County, and Sarah Ann Jernigan and her husband JA Jernigan of Noxubee County — Defendants

Complainants respectfully show that on 5 Sept 1855 one TJ Mitchell executed a deed of gift in Winston
County which conveyed to his wife the said Margaret Mitchell and to his children Nimrod Mitchell, Emily
Mitchell, Amanda Mitchell, Mary Mitchell, Martha Mitchell now the said Martha Kirk, and Sarah Ann Mitchell,
now the said Sarah Ann Jernigan, the following land of great value in Winston County: E1/2 of NE1/4 and W1/2
of NE1/4 and E1/2 of NW1/4 and E1/2 of SW1/4 of Sec 14 T14 R14E. That said deed of gift was recorded on
Page 68 of Book O in the office of Probate Court in Winston County (now Chancery Court). Complainant asks
that this record of said deed may be read at the hearing as a part of this bill. That all of said children were at that
time minors (except the said Sarah Ann) and residing with their father the said TJ Mitchell and their mother the
said Margaret Mitchell upon said lands and continued so to reside for many years thereafter. That after the record
of such deed of gift on the 7 Dec 1855 the said Emily Mitchell departed this life unmarried and without issue.
After which on the 21 Aug 1856 the said defendant Jeff Mitchell was born the son of the said TJ and Margaret
Mitchell after which event the said Nimrod and Amanda Mitchell both departed this life minors unmarried and
without issue. That after the death of the said Nimrod and Amanda on the 19 of June 1872 the said TJ Mitchell
departed this life, seized and possessed in his own right as complainants are informed and believe of other lands
lying in Winston County: W1/2 of NW1/4 Sec 14 and SW1/4 of SW1/4 of Sec 11, NW1/4 of NW1/4 of Sec 13
and 11 acres in NW corner of SW1/4 of Sec 13 all in T14 R14E and of considerable personal estate consisting
principally of money, debts due to him, livestock and farming utensils, and that he had at that time growing upon
the lands conveying in said deed of gift crops of corn, cotton, and other things of great value. That after the
execution of said deed of gift the said Mary Mitchell was married to one Stephen Burch and bore as the offspring
of said marriage the said Jeff Davis Burch one of the complainants after which the said Stephen Burch departed
this life leaving the said Mary his widow who afterwards was married to the said JA Wofford and bore as the
offspring the said Margaret Caroline Wofford one of the complainants after which the said Mary departed this life
leaving her surviving her only children the said Jeff Davis Burch and Margaret Caroline Wofford, both of whom
are minors of tender years. That before the execution of said deed of gift the said Sarah was married to one JA
Jernigan with whom she now resides in said Noxubee County and after the execution of said deed the said Martha
was married to one WM Kirk with whom she now resides in Winston County.

Further complainants most respectfully show unto the court that the said TJ Mitchell as they are informed
and believe died intestate and that no administration of his estate has been granted by any court.

That at the time of the death of the said TJ Mitchell, the said Margaret Mitchell was residing upon the
lands conveyed in said deed of gift and that she has continued in the exclusive possession of said lands together
with all of the other lands of which the said TJ Mitchell died seized and possessed in his own right at aforesaid and
has received and enjoyed all of the results, crops, and profits of all said lands and that as complainants are
informed and believe, she has appreciated to her own use all of the said personal estate and crops of the said TJ
Mitchell deceased and has utterly failed to account for the same.

And now, complainants are advised and believe and so charge, that by the execution and record of said
deed of gift as aforesaid, the legal right and title to the lands therein conveyed as aforesaid rested in the said
Margaret, Nimrod, Emily, Amanda, Mary, Martha, and Sarah as tenants in common each holding under said deed
of gift one undivided seventh part of the land thence conveyed. That upon the death of the said Emily her interest
in said lands as conveyed vested in it said Mary, Martha, Nimrod, Amanda, and Sarah in equal parts. That upon
the death of the said Nimrod and Amanda, their respective interests in said lands so conveyed vested in the said
Mary, Martha, Sarah, and Jeff in equal parts. So that after the death of the said Emily, Nimrod and Amanda, the
said Mary, Martha, and Sarah became each entitled to 9/35 and the said Jeff to 3/35 of the lands so conveyed, that
upon the death of said Mary, her 9/35 interest in the lands conveyed as aforesaid vested in these complainants as

the children and lawful heirs of the said Mary and they are now entitled each to an equal undivided 9/70 part of the lands mentioned in said deed of gift.

Further complainants are advised and believe and so charge that upon the death of the said TJ Mitchell, the said Margaret Mitchell his widow became entitled to a life estate in one third part of the said other lands of which the said TJ Mitchell died seized and possessed, not embraced in said deed of gift as her dower.

That upon the death of the said TJ Mitchell the legal right and title to all of said other lands of which the said TJ Mitchell died seized and possessed not embraced in said deed of gift vested in the said Sarah and Martha and Jeff and these complainants subject to the right of dower of the said Margaret as aforesaid. The said Sarah and Martha and Jeff being each entitled to one fourth and these complainants being each entitled to one eighth of said other lands all subject to said dower right.

Further complainants are advised and believe and so charge that upon the death of the said TJ Mitchell as aforesaid the said Margaret, Sarah, Martha, and Jeff became entitled each to one fifth part of said personal estate and these complainants became entitled to one tenth part of said personal estate, all subject to the right of the said Margaret then and within a reasonable time thereafter to elect to take one third part of said personal estate for life in lieu of one fifth a child's part in her which right of election the said Margaret as complainants are advised and believe has waived by failing for more than two years to make such election.

And now the premises considered and forasmuch as complainants are without adequate remedy save in account of equity and good conscience may it please your Honor to cause the said Margaret Mitchell and Martha Kirk and her husband WM Kirk and said Jeff Mitchell minor of said Winston County and Sarah Ann Jernagin and her husband JA Jernagin both of the County of Noxubee to be duly summoned and required to answer each and every allegation in this bill contained as fully and particularly as if they had been specially interrogated with reference therein and may it please your Honor to require the said Margaret Mitchell in her answer to state particularly the value of the crops growing upon the lands mentioned in said deed of gift at the time of the death of the said TJ Mitchell and what became of those crops and the value of the annual rents of the lands since the death of said TJ Mitchell and who has occupied the said lands and received the said rents and the crops produced thereon since the death of said TJ Mitchell.

3rd The amount of gold and the amount of currency belonging to the said TJ Mitchell at the time of his death and what has become of the same!

4th The debts due the said TJ Mitchell at the time of his death, from whom they were due and what has been done with them.

5th The amount and kind of personal property belonging to said TJ Mitchell at the time of his death, the value of such personal property and what has been done with it.

And further may it please your Honor to cause the land mentioned in said deed of gift to be partitioned according to law between these complainants and said defendants so that these complainants shall each have 9/70 part thereof, the said Martha Kirk and Sarah Ann Jernagin each 9/35 part thereof and the said Jeff 3/35 part thereof and may it please your Honor to cause the dower to be allotted according to law to the said Margaret Mitchell in all of the lands of which the said TJ Mitchell died seized and possessed not included in said deed of gift and to cause the remainder of said lands to be partitioned according to law between these complainants and said defendants Martha Kirk and Sarah Ann Jernagin and Jeff Mitchell so that these complainants shall each have one eighth thereof and the said Sarah and Martha and Jeff each one fourth thereof.

And further to cause the said Margaret Mitchell to account for and produce all of the money belonging to the said TJ Mitchell at the time of his death and all of the money collected upon debts due to him at the time or received for crops and personal property belonging to him at that time. And the value of all such crops and personal property appropriated by her to her own use. And the value of the rents of the land mentioned in said deed of gift and all of personal property of the said TJ Mitchell now unsold and unappropriated.

And to cause the proceeds of the growing on the land mentioned in said deed of gift at the time of the death of the said TJ Mitchell and the rents of said land since that time to be distributed among the parties to this cause so that these complainants shall each have 9/70 part thereof, the said Martha Kirk and Sarah Ann Jernagin each 9/35 part thereof and the said Jeff 3/35 part thereof.

And to cause all money belonging to said TJ Mitchell at the time of his death or collected since on debts due to him, or for personal property sold and all debts due the said TJ Mitchell at the time of his death and still uncollected and all personal property of the said TJ Mitchell still on hand and all such debts and personal property appropriated by said Margaret Mitchell to her own use to be distributed among the parties in this cause so that these complainants shall each have one tenth part thereof, the said Martha, Sarah, and Jeff and Margaret each one fifth part thereof.

And further if it be found impossible that the commissioners shall do report, to make partition of the lands as herein before prayed for fairly and equally without impairing the value of the property, then to cause the said

lands to be sold for cash and the proceeds to be divided among the parties in like manner as the lands were to have been partitioned.

And if complainants have mistaken the nature or extent of the relief to which they are entitled then to grant unto them such other or further relief as they may be entitled to under the facts in this bill set forth. And they will as in duty bound even pray. Jeff Davis Burch and Margaret Caroline Wofford by JA Wofford. RG Rives, Solicitor for Complainants. 2 Dec 1875. Recorded in final Chancery Record No. 3 Pg 19-23.

Citation issued Oct 2, 1874 to be served to Margaret Mitchell, Jeff Mitchell, Martha Kirk, WM Kirk, Sarah Ann Jernagin, and JA Jernagin.

Motioned filed Oct 12, 1874 by defendants for leave to answer complainants' bill in 60 days from this date.

Answer to Bill filed Dec 23, 1874 — [summarized by MKJ] Margaret Mitchell agrees with the facts related to the deed of gift and to whom it was given and the names and dates of who died after it was given. But she denies that TJ Mitchell was at the time of his death possessed of a considerable personal estate. For as she was informed and believes and charges that TJ Mitchell only had at the time of his death \$65 in money which was used to defray the burial expenses. That the only debts due him consisted of notes and accounts to wit: one account against Henry Mitchell for \$50, one account against David Haggard for \$25, and one account against John Wofford for \$15, one note signed by John Ivey for \$10, all of said notes and accounts the defendant has been unable to collect. That the only livestock are one horse. Defendant has no knowledge of any other money belonging to as debts overdue or other personal property owned by TJ Mitchell at the time of his death.

Defendant denies that TJ Mitchell was growing on land in the deed of gift crops of corn, cotton, and other things of great value. Also some months previous to the death of TJ Mitchell, he had been absent in the State of Texas and the defendant had with her own money and own expense caused crops to be planted and cultivated on said land during 1872.

She admits that Mary married Stephen Burch and that Jeff Davis Burch was born at the defendant's house and is now and has been from the day of his birth living with her. She has carried all expenses to support Jeff Davis and that JA Wofford has never incurred any expenses on account of Jeff Davis and he has no right to be in this as next friend of Jeff Davis Burch.

She admits to residing on the land of the deed of gift, but her possession has been exclusive and Jeff Davis Burch and Jeff Mitchell have enjoyed the possession of said land with her and have derived support. She is aged and infirm and it has required hard labor to enable her to keep the taxes paid and to support herself and Jeff Davis Burch and Jeff Mitchell.

Also after the record of the deed of gift and before the death of TJ Mitchell, Mary the mother of Jeff Davis Burch and Margaret Caroline Wofford received from TJ Mitchell personal property in aggregate the sum of \$1875 and Sarah Ann received personal property of \$880. Martha received \$249.50.

That the value of the annual rents would not exceed \$150 annually.

Recorded in Book 3 Pg 24-27.

Exceptions to answer filed Jan 15, 1875 by complainants. Excepts thereto for impertinence and says that so much of said answer beginning with fourth line from bottom of page 6 and going down to end of 14th line from top of page 7 is impertinent. Also beginning with first line of page 9 and going down to end of 10th line from bottom of same page. RG Rives, solicitor for complainant. Recorded Record Bk 3, Pg 27 [MKJ Note: Did not match up exceptions to defendants answer but suspect it had to do with JA Wofford having no right to be listed as next friend of Jeff Davis Burch.]

Alias writ filed Mar 27, 1875 to be served on Sarah Ann and JA Jernagin in Noxubee County to appear.

Notice to Sheriff of Noxubee County filed Mar 31, 1875 – Order to fine sheriff \$100 for failing to return citation for Sarah Ann and JA Jernagin to appear for October Term 1874.

Motion filed Apr 12, 1875 by JW Eastland, Commissioner for confirmation of his report on exceptions to answer filed in this cause. Record Book 3 Page 28.

Commissioner's Report filed Apr 12, 1875 – After hearing complainant's bill and defendant's answer and exceptions to the answer, is satisfied that said exceptions are not well taken and overrule the same. Commissioner asks to be discharged.

Motion for writ of dower filed Apr 12, 1875.

Motion for appointment of Guardian ad litem filed Apr 12, 1875 for protection of interests of Jeff Davis Burch and Margaret Caroline Wofford minor complainant and Jeff Mitchell minor defendant.

Answer of Guardian ad litem filed Apr 12, 1875.

Motion for decree Pro Confessa filed Apr 12, 1875 by complainants against Martha Kirk and WM Kirk and Sarah Jernagin and JA Jernagin.

Order to set cause down filed Apr 14, 1875. Recorded Book 3 Pg 32.

Decree Pro Confessa filed Apr 14, 1875. Kirk and Jernagen failed to enter a plea so consider this bill to be taken as confessed and allegations as true in this cause.

Decree filed Apr 14, 1875

The Court being satisfied that the minors Jeff Davis Burch and Jeff Mitchell have since the death of TJ Mitchell lived with the defendant Margaret Mitchell and received from her upon the lands occupied by her their support and maintenance and are not entitled to demand and receive anything from her on account of rents of said lands. And the court being further satisfied that neither of the defendants Sarah Ann Jernagin or Martha Kirk or either of their husbands are entitled to demand and receive from defendant Margaret Mitchell any sum whatever and that none of the parties in this cause are entitled to demand and receive any sum whatever from her on account of the personal assets of TJ Mitchell deceased.

And there having been some contest as to the right of complainant Margaret Caroline Wofford to demand and receive any sum from defendant Margaret Mitchell on account of the rents of land aforesaid and for the ending of said contest, the said Margaret Mitchell having in open court consented for a decree to be entered against her in favor of said Margaret Caroline Wofford for the sum of \$100 with stay of execution 8 months. Another court being satisfied that in no event would the said Martha Caroline Wofford be entitled to demand and receive from defendant Margaret Mitchell on account of said rents more than said sum of \$100.

And the court being satisfied that defendant Margaret Mitchell is entitled to a life estate one third part of lands in Winston: W1/2 of NW1/4 of Sec 14, SW1/4 of SW1/4 of Sec 11, NW1/4 of NW1/4 of Sec 15, and 11 acres in NW corner of SW1/4 of Sec 15, all in T14 R14E as her dower in said lands. And that complainants are each entitled to one eighth part and defendants Sarah Ann Jernagin, Martha Kirk, and Jeff Mitchell are each entitled to one fourth part of the remainder of said lands. And that defendant Margaret Mitchell is entitled to an equal undivided seventh part of the following lands in Winston: E/12 of NE1/4 and W1/2 of NE1/4 and E1/2 of NW1/4 and E1/2 of SW1/4 of S14 T14 R14E and that defendants Sarah Ann Jernagin and Martha Kirk are each entitled to 9/35, Jeff Mitchell to 3/35, and complainants each 9/70 of said last described lands.

It is therefore ordered by the court that a unit of dower issue in accordance with the provisions of the statute in such case make and proved for the allotment of dower of said Margaret Mitchell in said first described lands. Further ordered that John Ware, WN Eichelberger, and John N. Perkins, 3 discreet and competent householders in said County be and they are hereby appointed to act as commissioners to make a fair and equitable partition of all said lands amongst the claimants as follows: after dower has been allotted and provided for in the lands first described, said commissioners shall divide the remainder into eight equal parts and allot and set apart to complainants Margaret Caroline Wofford and Jeff Davis Burch each one of said parts and to defendants Sarah Ann Jernagin, Martha Kirk, and Jeff Mitchell each 2 of said parts. And they shall divide last described lands into seventy equal parts and allot and set apart to defendants Sarah Ann Jernagin and Martha Kirk each 18 parts and to defendant Margaret Mitchell 10 parts and to defendant Jeff Mitchell 6 parts and to complainants each 9 parts.

But if said commissioners shall find in consequence of nature a condition of the lands are herein required to be divided and the number of shares into which said land must be divided it is impossible to make partition fairly and equally without impairing the value of the property, they shall so report to this court and shall not make any partition of any said lands.

It is further ordered by the court that defendant Margaret Mitchell pay to JA Wofford in trust for the benefit of complainant Martha Caroline Wofford the sum of \$100 for which execution may issue after the expiration of months from this day. 14 Apr 1875. CA Sullivan, Chancellor. Recorded Book 3 Page 34.

Commission to partition lands issued May 27, 1875.

Commission to allot dower issued May 27, 1875.

Motion filed July 12, 1875 by Commissioners for more time to make their report.

Execution issued Dec 17, 1875 to Sheriff of Winston County of goods, chattels, lands, and tenements of Margaret Mitchell late of your county. Cause to be made the sum of \$100 for decree against her for benefit of Margaret Caroline Wofford a minor (to be placed in hands of JA Wofford as trust fund for use of such minor). Also further sum of \$52 as costs awarded to officers of Chancery Court for their laborers. JS Conner Sheriff executed Dec 17, 1875 by leaving on one horse and one yoke of oxen. JS Conner per HK Foster DS paid THF Hanna for driving stock \$2. Received on this execution from sale as described property \$27 and the same applied to part payment of cost for keeping stock. H Picks to HK Foster \$15. Sheriff cost for having and mothering mare and for his having stock brought to courthouse \$2. Paid to YAF Hanna the balance \$5.80. Jan 3, 1876. Applied to the payment of Chancery cost. No other property found subject to this execution.