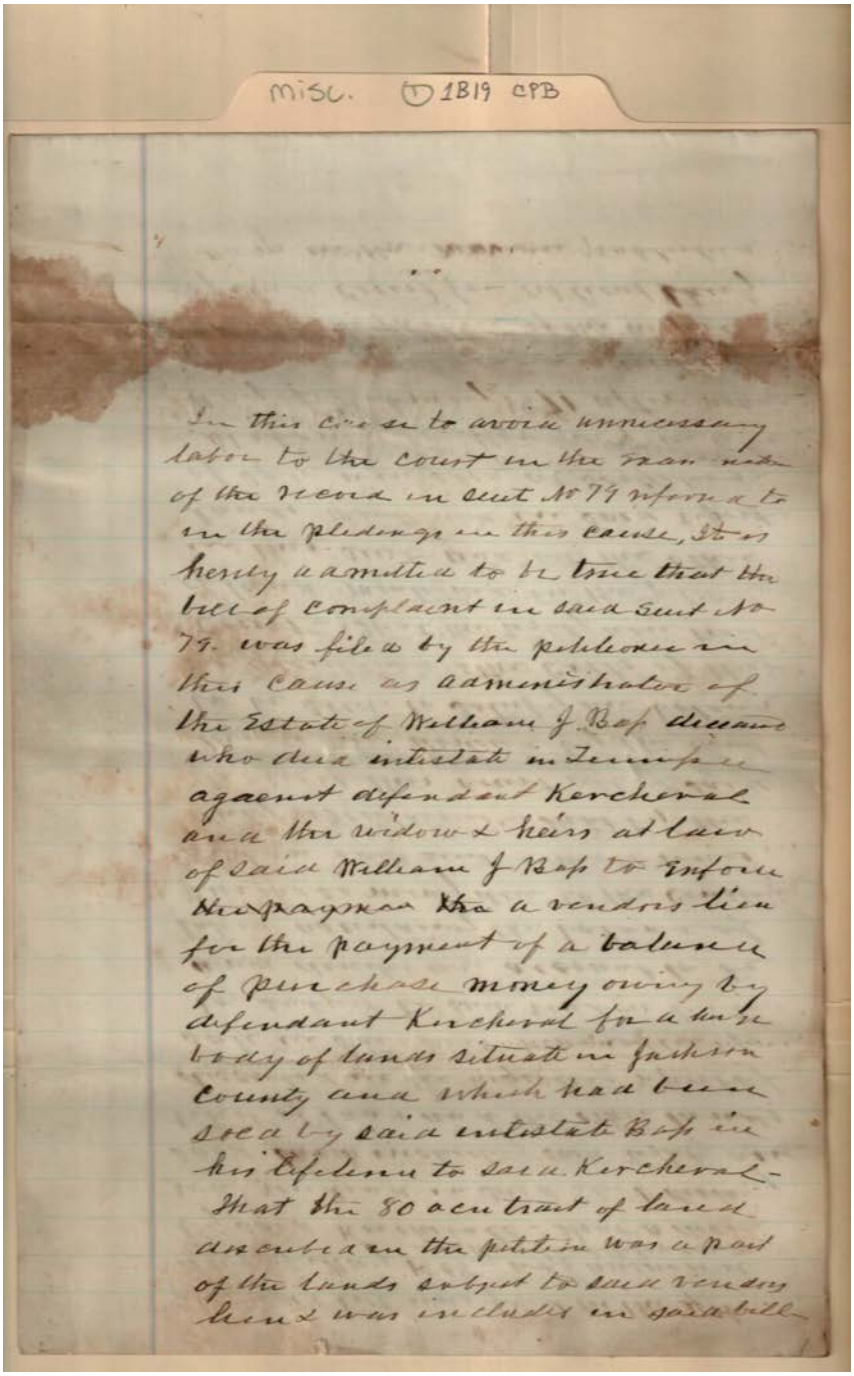


MISC. 1B19 CPB

In this case to avoid unnecessary
labor to the court in the same nature
of the record in cause No 79 referred to
in the pleadings in this cause, it is
hereby admitted to be true that the
bill of complaint in said cause No
79. was filed by the petitioner in
this cause as administrator of
the Estate of William J. Bass deceased
who died intestate in Tennessee
against defendant Kercheval
and the widow & heirs at law
of said William J. Bass to enforce
the payment of a vendors lien
for the payment of a balance
of purchase money owing by
defendant Kercheval for a large
body of lands situate in Jackson
County and which had been
sold by said intestate Bass in
his lifetime to said Kercheval -
That the 80 acre tract of land
described in the petition was a part
of the lands subject to said vendors
lien & was included in said bill

**Names:**
Bass, William J. Kercheval,

**Places:**
Jackson Co., AL

**Types:**
vendors lien

**Dates:**
c. 1871

That said bill was filed on the 4th day of May 1868 - was answered by said Kerchevall and the infant defendants - That a decree was rendered in said suit declaring said lands including said eighty acre tract of land and the other lands described in the Registers report of sale in said suit hereinafter referred to, subject to such vendors lien and decreed an account to be taken ascertaining the balance of purchase money due to the Complainant in said suit. which was duly ascertained - That by the decree of this Court all of said lands were directed by the Court to be sold to satisfy the balance so ascertained & the costs of the suit Court - That the eighty acre tract of land mentioned in the pleadings in this suit and all the other lands mentioned in said report of sale were sold at Scottsboro Alabama on Monday the 6th day of February 1871 after notice given by ~~publication~~ advertisement over the signature of the Register of said Court for at least thirty days ~~in the newspaper~~ published

**Names:**
Kerchevall,

**Places:**
Jackson Co., AL

**Types:**
vendors lien

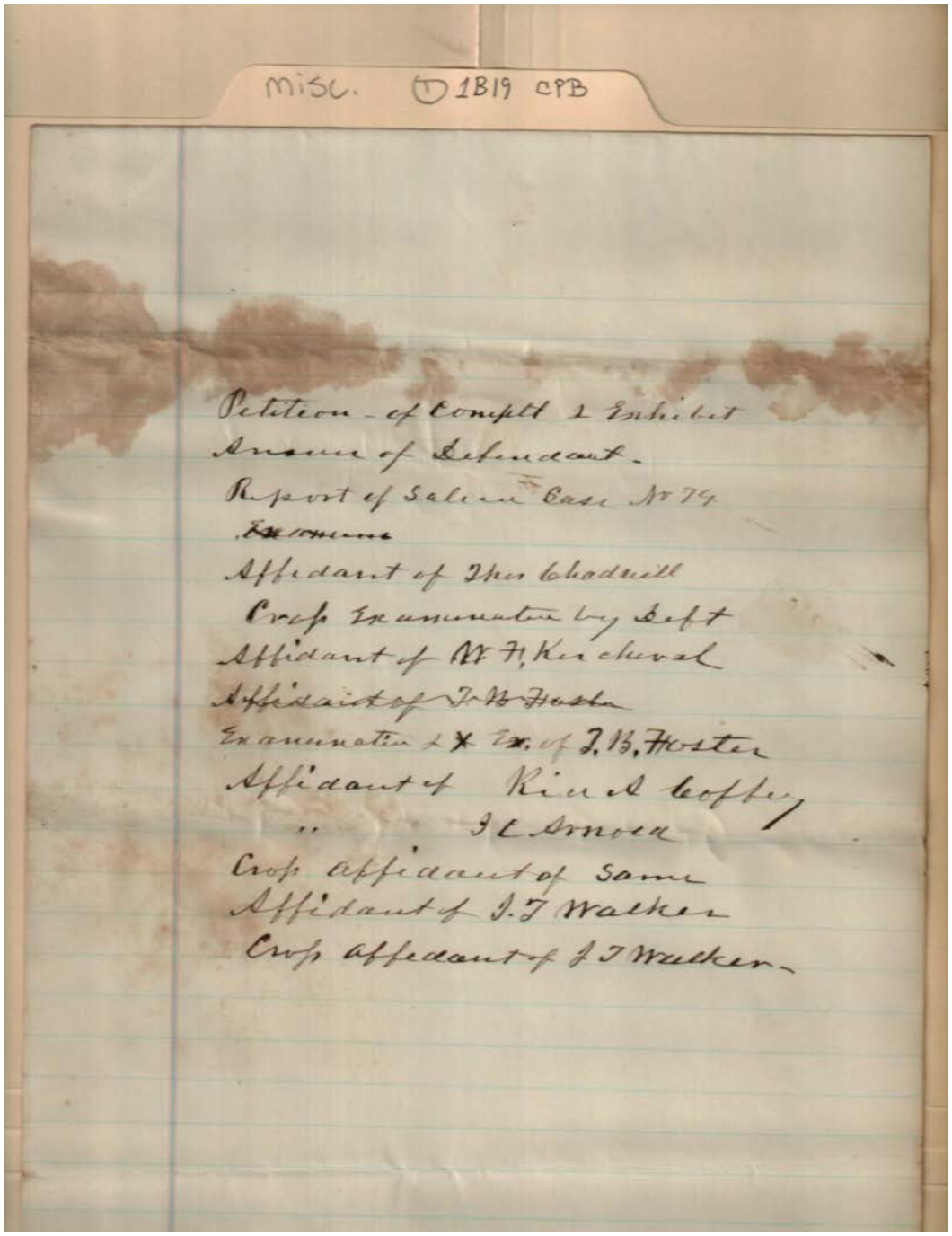
**Dates:**
c. 1871

in the Alabama Herald a newspaper
publisher in said County of Jackson
That said lands were sold under
in four lots or parcels, numbered
1. 2. 3. and 4- That a report of said
sale was made to said Chancery
Court in said cause on the 15th
day of June 1871. and
that no exceptions were filed thereto
and that the same was confirmed
by said Court at said June Term
1871- That upon the confirmation
of said report a decree was rendered
by the Court a copy of which to
be made by the Register is to
be a part of the evidence in this
cause - but the original report so
confirmed is to be before
the Court as evidence -
It is admitted that in the advertise
ment of said sale the Eighty acre
tract of land in this suit was
advertised to be sold as part of Lot
No Three, but it is also admitted
that at the foot of said advertisement
(as part of it was the following
statement here insert concluding
part of advertisement about
maps or plat of survey -

**Places:**
Jackson Co., AL

**Types:**
vendors lien

**Dates:**
c. 1871



MISC. (1) 1B19 CPB

Petition of Complt & Exhibit
Answer of Defendant.
Report of Salem Case No 74
~~Testimony~~
Affidavit of Thos Chadwill
Cross Examination by Deft
Affidavit of W. F. Kercheval
~~Affidavit of T. B. Foster~~
Examination & X Ex. of T. B. Foster
Affidavit of Rice A Coffey
" J C Arnold
Cross affidavit of Same
Affidavit of J. T Walker
Cross affidavit of J T Walker.

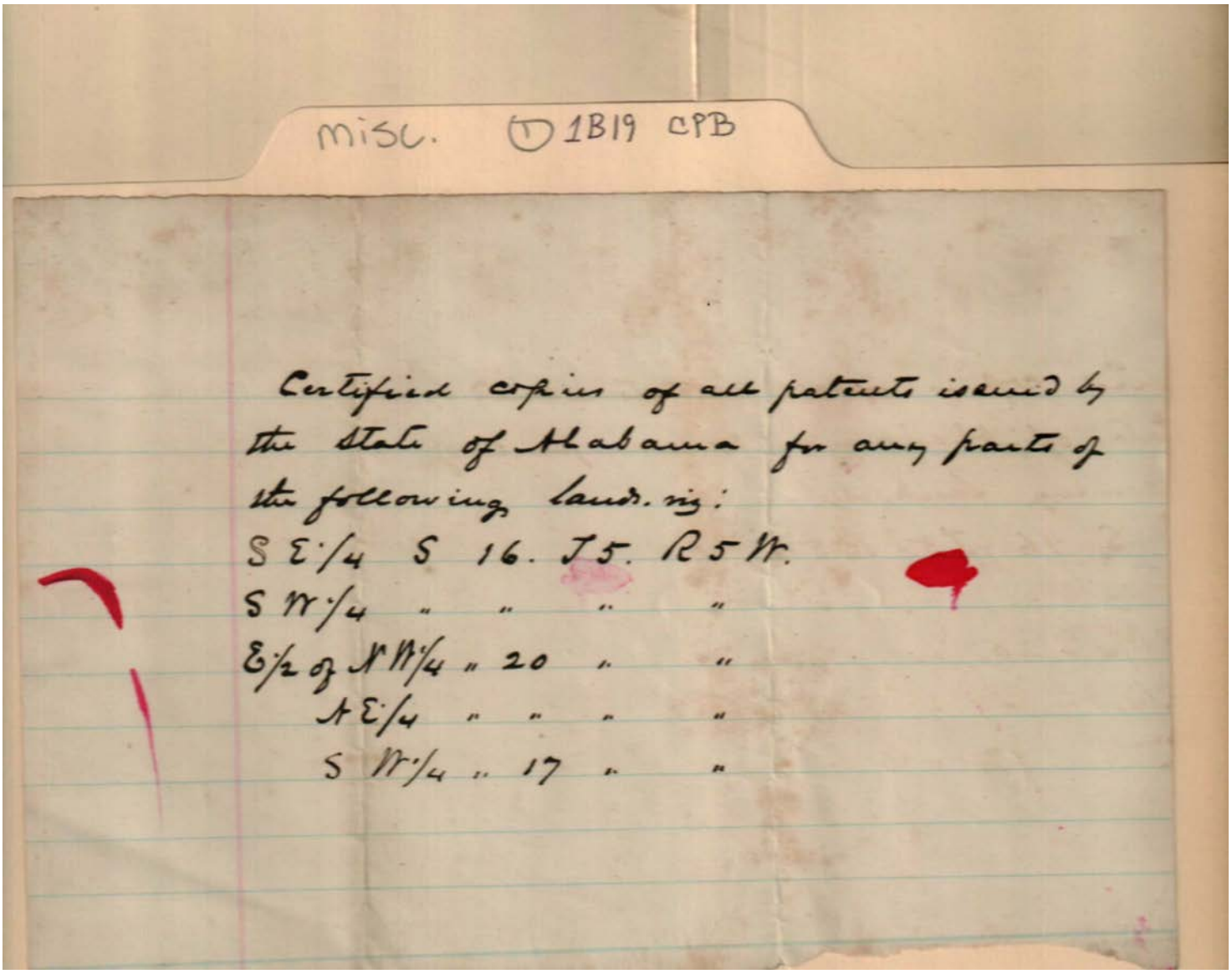
**Names:**

| | | |
|---|---|---|
| Arnold, J. C. | Coffey, Rice A. | Kercheval, W. F. |
| Chadwill, Thomas | Foster, T. B. | Walker, J. T. |

**Places:**
Jackson Co., AL

**Types:**
vendors lien

**Dates:**
c. 1871



misc. (1) 1B19 CPB

Certified copies of all patents issued by the State of Alabama for any parts of the following lands, viz:

S E 1/4 S 16. T5. R5 W.
S W 1/4 " " " "
E 1/2 of N W 1/4 " 20 " "
N E 1/4 " " " "
S W 1/4 " 17 " "

**Names:**
Township 5 Range 5 West

**Places:**
Alabama

**Types:**
memo

SW/4 of S 17. T5. R5W. patented by U.S. to Wm Elliott July 15. 1818.
119 acres of NE/4 of S 20 . . . State of Ala " June 1. 1830.
39 . . . . . Wm Dancey July 30. 1830.
39 . . E/2 of NW/4 . . . . Wm Elliott June 1. 1830.
39 . . . . . Isaac Lane April 20. 1831.
W/2 . . . . . U.S. to Wm Elliott July 5. 1818.
Moses Morris has met into possession of the above land, subject to the exercise of the right of way over the same by the T. C & D Railroad company. under purchase from William Matkin in 1845 and held such possession up to his death in 1849: and his son the plaintiff has held such possession ever since.

SW/4 S 15. T5. R5W. patented to John Gwen by U.S. July 15. 1818.
NW/4 S 21. . . . Joseph Sykes " " "
W/2 SW/4 S 16. T5. R5W. . " State of Ala June 5. 1837.
~~N/2 SE/4 . . . . . " . . "~~
E/2 SW/4 . . " . State of Ala Isaac Lane "
S/2 SE/4 " . " . . . . "
These lands in S 15. 16 and 21. were taken possession of subject to the exercise of said right of way by said T C & Decatur Railroad Company by James Fennell under purchase from Joseph Sykes of date April 27. 1843. who held such possession untie his death in ; and in in partition thereof among his children the SW/4 S 15 and SE/4 S 16 were allotted to his daughter the plaintiff Celia Davis. and the SW/4 S 16 and NW/4 S 21 to his daughter Ann Davis, who has uniformly held possession ever since

**Names:**

Alabama, State of
Dancey, William
Davis, Ann
Davis, Celia
Elliott, William
Fennell, James
Gwen, John
Lane, Isaac
Matkin, Williasm
Morris, Moses, Sr.
Sykes, Joseph
T. C. & Decatur Railroad Co.

**Places:**

Township 5 Range 5 West

**Types:**

property description

As to evidence of Protest and Notice.
The Notary's certificate is evidence of all the facts stated in it. Revised Code § 1089.
It is evidence of the Notary's authority, and of the protest being according to the law of the place.
It is only when the Protest is not made by a Notary or is not under seal, that proof of the official character of the officer and of the laws of the place of protest is required. 1 Parsons on Bills Page 634 Note p.

The allegation that the bill was duly protested is sufficient under the forms in the Code.
The laws of Louisiana authorizing it are but circumstances to prove the allegation and need not be pleaded.
Story's Equity Pleading § 28.
"It is competent for a Bank by custom or usage to establish a mode of giving notice. It is not necessary to plead the usage.
" The fact of notice is alleged. And it is established by proof of the usage."
Bindrat v Bank of Augusta 7 Ala. 324 (324)
The fact alleged is that the bill was duly protested. This is established by proof of the laws of Louisiana, the existence of which being circumstances in evidence need not be pleaded.

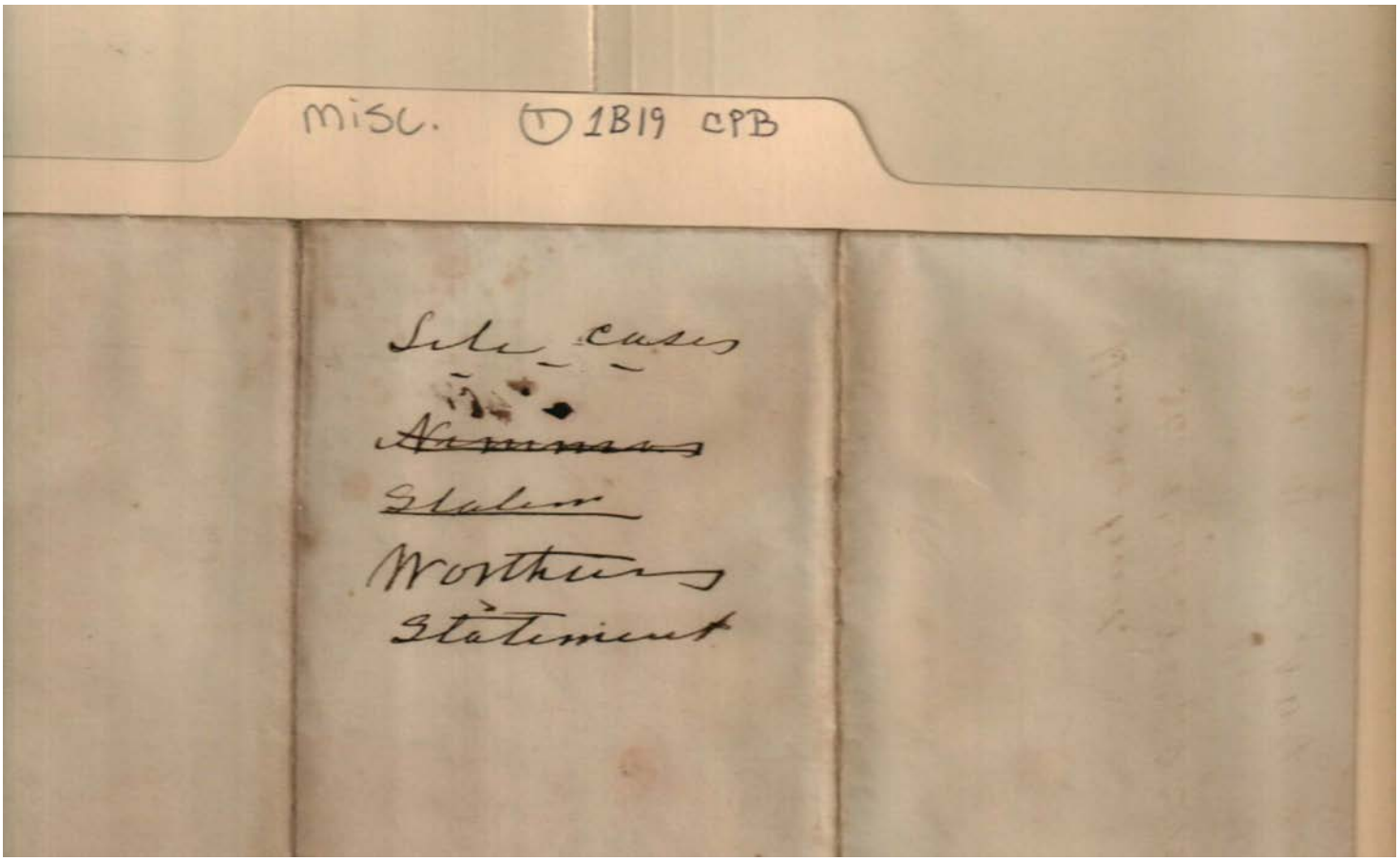
**Types:**
legal brief

"When a bill is defective for want of
" averments, the cause will be remanded
" with directions to allow an amendment."
Harrison vs Nickson 9 Peters (US) 483.

In this case the complainant claimed under a bequest to the testators heir at law, and failed to allege the domicile of the testator.
The court held that the domicile must be shown so as to inform the court of the country whose laws determined who was heir at law. No pleading of the laws of the domicile seems to have been required.
The laws of the domicile are treated as facts or circumstances of evidence of the claim of being the heir at law. and not required to be alleged.

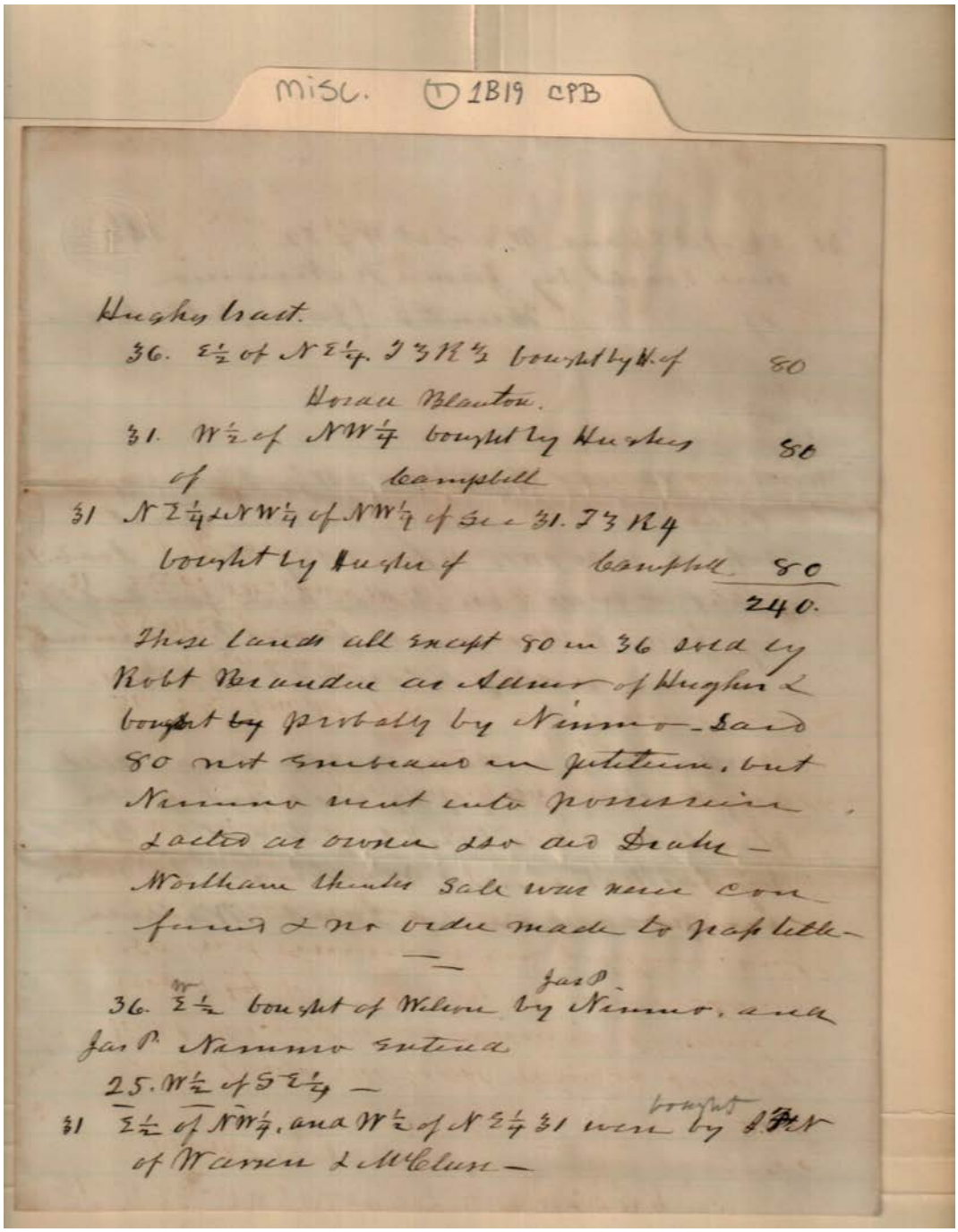
Defendants object to "Acts of Louisiana of 1855" and "Vol 19 La Reports". because particular acts or reports cases is not pointed out.
They should have objected only to so much of the acts or reports as are irrelevant.
Exceptions to the whole when any part is relevant and admissible must be overruled.

**Types:**
legal brief




**Names:**
Wortham,

**Types:**
memo



MISC. (1) 1B19 CPB

Hughes land.

36. E½ of NE¼. T3 R½ bought by H. of 80
Horace Blanton.

31. W½ of NW¼ bought by Hughes 80
of Campbell

31 NE¼ & NW¼ of NW¼ of Sec 31. T3 R4
bought by Hughes of Campbell 80
240.

These lands all except 80 in 36 sold by Robt Brandon as Admr of Hughes & bought by probably by Nimmo - Said 80 not embraced in petition, but Nimmo went into possession & acted as owner 2 yrs and Drake - Wortham thinks Sale was never confirmed & no order made to perfect title -

—

36. W½ E½ bought of Wilson by Jas P. Nimmo. and Jas P. Nimmo entered
25. W½ of SE¼ —
31 E½ of NW¼. and W½ of NE¼ 31 were bought by J. P. N of Warren & McClure —

**Names:**

Blanton, Horace
Brandon, Robert
Campbell,
Drake,
Hughes,
McClure,
Nimmo,
Nimmo, James P.
Warren,
Wilson,
Wortham,

**Types:**

property description

31. E½ of NE¼ and W½ of NW¼ 32 160
was bought by James F. Nimmo
of Hunter (James Hitchcock)

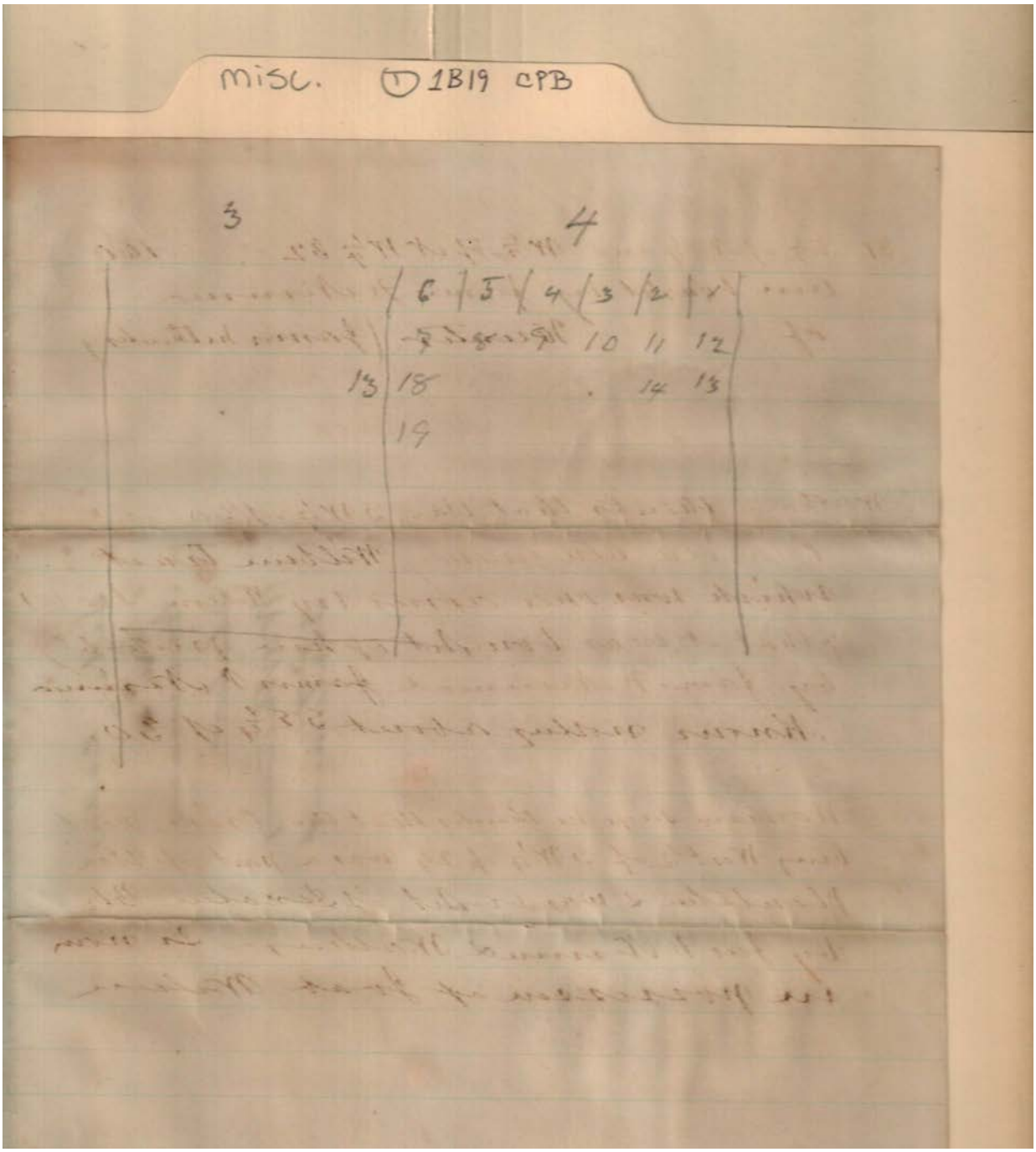
Wortham thinks that the SW¼ of 30 is
called the old quarry Wilburn tract
which was once owned by Wilson Loab,
& that it was bought of him probably
by James F. Nimmo & James P. Nimmo
. Knows nothing about SE¼ of 30.

Wortham says he thinks that the Crane Nest
bury West½ of SW¼ of 29 was a part of the
plantation & was bought of Decatur Blk
by Jas F. Nimmo & Watkins — is now
in possession of Joab Wilson

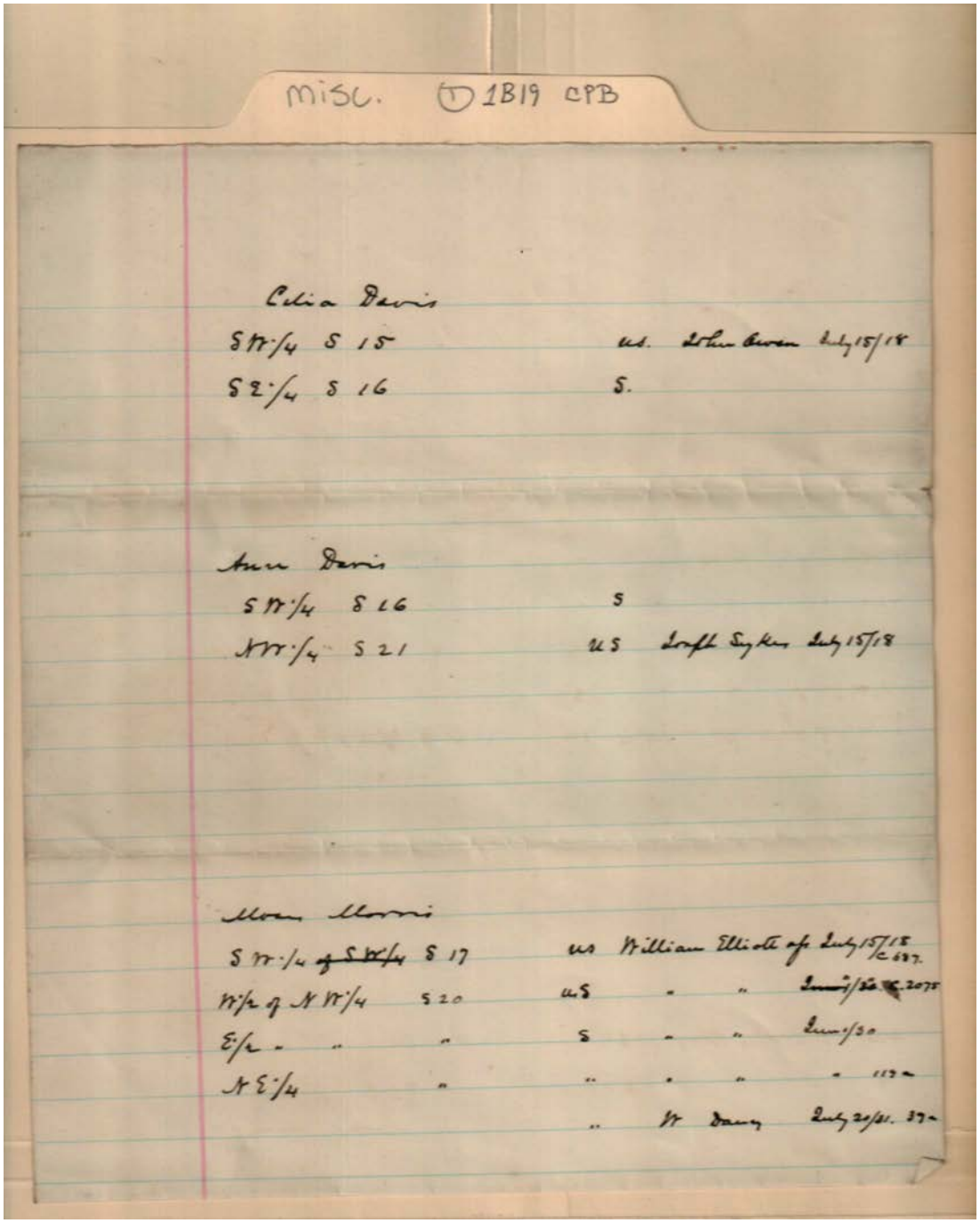
**Names:**

| | | | |
|---|---|---|---|
| Hunter, James | Nimmo, James F. | Watkins, | Wilson, Joab |
| Nestbury, Crane | Nimmo, James P. | Wilburn, | Wortham, |

**Types:**
statement




**Types:**
plat



MISC. 1B19 CPB

Celia Davis
S W 1/4 S 15 US. Arthur Green July 15/18
S E 1/4 S 16 S.

Ann Davis
S W 1/4 S 16 S
N W 1/4 S 21 US Joseph Sykes July 15/18

Moses Morris
S W 1/4 ~~of S W 1/4~~ S 17 US William Elliott of July 15/18 c 687.
W 1/2 of N W 1/4 S 20 US " " June 1/20 c 2075
E 1/2 " " " S " " June 1/20
N E 1/4 " " " " " " 1132
" W Dancy July 20/21. 37a

**Names:**

Dancey, William
Davis, Ann
Davis, Celia
Elliott, William
Gwen, John
Morris, Moses
Sykes, Joseph

**Types:**

property description

6.

2. Is the wife a necessary party – If so how should she be brought into court?

2. Will it suffice to have a guardian ad litem appointed on behalf of application?

3. Must proof be made by depositions? must they be taken as in Chancery cases?

4 Must notice of application be given by publication if so for what length of time before hearing –

5. Would it be best for the widow to resign as guardian & application be by her successor –

3

in your Court under that act 1785. except that rendered by Saffold in 51 Ala (514) which merely held that a new from guardian was necessary to divest title –

There are reasons why I am anxious that the proceeding, which has been under that section, shall be in strict conformity with law,

If there be any other decisions please cite me to them even if not published in reports give me substance of them if you have time –

The Decisions of Probate of 1860 seem to have deemed it necessary that there should be personal service on the person in charge of the Chair – and after publication made in newspaper for 3 weeks – which seems to have thought that 40 days



**Types:**
legal brief

4

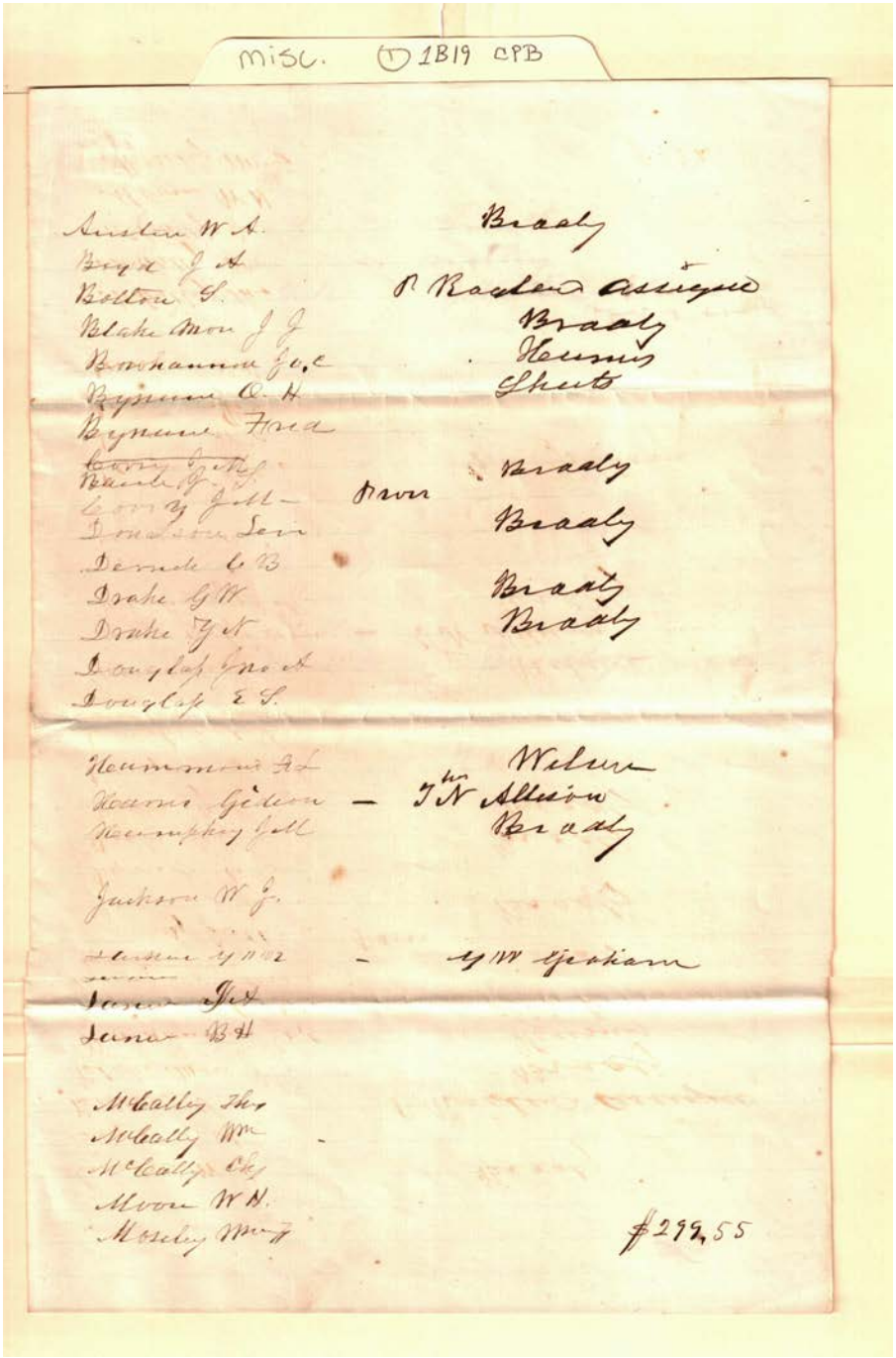
should intervene before
hearing application.
Neither of our 3 codes presently
define what shall constitute "good cause
shown", nor how or when it
shall be shown, nor who shall
be necessary parties, nor how
notice of application shall be
given, nor whether guardian
ad litem shall be appointed.
I do call your attention - I refer you
to sec. 2027. 2028 & 2029. Code of 52
2425. 2433. 2435. 2436 of " 68.
2780. 2785. 2786. 2808 " - 76
The sec. 2425 of R. Code and
new section given
by Earl & Sams do not as it seems
to me apply either to 2780 or 2785.
I think that a reference to
2027-8 & 2029 of Code of 52 show
that 2780 & 2785. should be
construed to gether, so far

5

as to require in each case a
representation in writing by the
guardian under 2785 as well
as 2780 - but 30 days notice of
sale in one case and 40 in
the other -
Wade Keyes by inserting sec 2780 (a) (2434)
after 2785. (2436) is calculated to
lead to supposition that the 40
days in 2785 - refers to notice of
application instead of sale
By the transposition it is left
uncertain whether notice of sale
shall be 30 or 40 days -
If the proceeding be had in
Probate Court these queries
~~present themselves to~~ arise -
1. Does the fact that the
guardian has an interest
in the property affect the
jurisdictional power of that
Court - If so - could it
be obviated by having an assign
ment of dower or Homestead



**Types:**
legal brief



MISC. (1) 1B19 CPB

| | | |
|---|---|---|
| Austin W A. | | Brady |
| Boyd J A | | |
| Bolton S. | | S Rader assigned |
| Blake Mon J J | | Brady |
| Bowhannon Jos C | | Humes |
| Bynum O. H | | Sheets |
| Bynum Fred | | |
| ~~Corry Jeff~~ | | |
| Bank J J | | Brady |
| Corry Jeff | Drw | |
| Donalson Levi | | Brady |
| Derrick C B | | |
| Drake G W | | Brady |
| Drake J A | | Brady |
| Douglas Jno A | | |
| Douglas E S. | | |
| Hammond F L | | Wilson |
| Humes Gideon | — | T N Allison |
| Humphrey Jeff | | Brady |
| Jackson W J. | | |
| Lanier G W | — | G W Graham |
| Lanier J A | | |
| Lanier B H | | |
| McCalley Thos | | |
| McCally Wm | | |
| McCally Chas | | |
| Moore W H. | | |
| Moseley Wm F | | $299.55 |

**Names:**

Allison, T. N.
Austin, W. A.
Beirn, J. S.
Blake, J. J., Mon.
Bolton, S.
Bowhannon, Joseph C.
Boyd, J. A.
Bradly,
Bynum, Fred
Bynum, O. H.
Corery, J. M.
Derrick, C. B.
Donalson, Levi
Douglass, E. S.
Douglass, John A.
Drake, G. W.
Graham, G. W.
Hammond, F. L.
Humes, Gideon
Humphrey, J. M.
Jackson, W. J.
Lanier, B. H.
Lanier, G. A.
McCalley, Thomas
McCally, William
Moore, W. H.
Moseley, William F.
Sheets,
Wilson,

**Types:**

list

MISC. (1) 1B19 CPB

Peevy L M — Smith
Petty D. H. — notting
Rayburn S K — J Walter Elliott
no relation

Sammons Groves — A W Smith
Shifflett J. L.
Scott J. H. — Bradly
Scruggs J. N. — Smith
Scruggs Jno W — Donegan
Spotswood P W — Smith
Studdart W J.
Taylor F M — Smith
Taylor Mrs M D — Bradly

Wright Wm — R H Wilson

**Names:**

Bradly,
Donegan,
Elliott, J. Walter
Notting,
Peevy, L. M.
Petty, D. H.
Rayburn, S. K.
Sammons, Groves
Scott, J. H.
Scruggs, J. N.
Scruggs, John W.
Sheffiels, J. L.
Smith, A. W.
Spotswood, P. W.
Studdart, W. J.
Taylor, F. M.
Taylor, M. D., Mrs.
Wilson, R. H.
Wright, William

**Types:**

list

MISC. (1) 1B19 CPB

When Executors incurred Expenses they are a Charge upon the Estate Roberson says

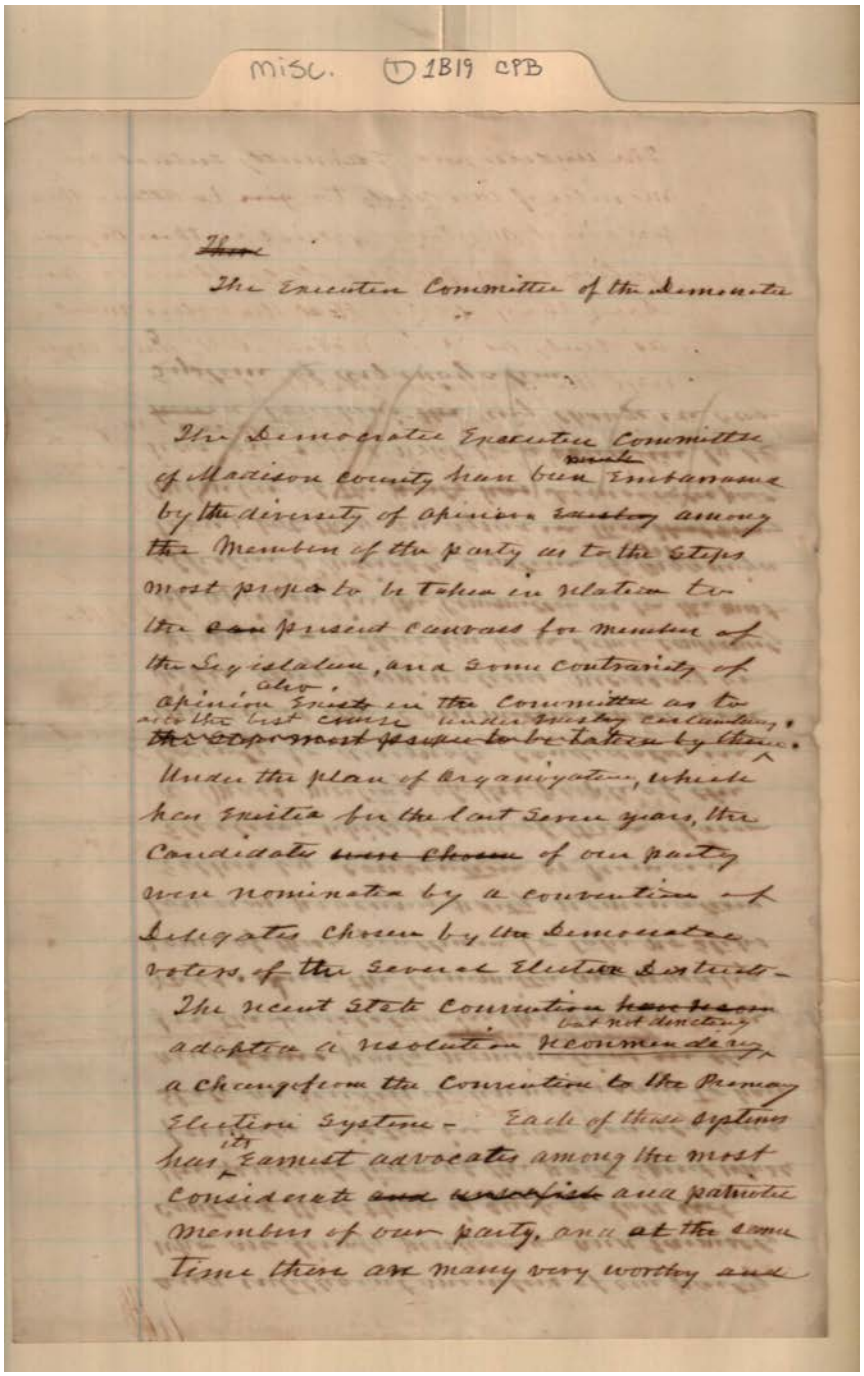
The lien is in form of Damages after payment made by him

Until payment - there is no lien - to Damages -

If the supplies have been enjoyed by the Estate - they ought to be paid for -

38 Ala - Trust Co vs Boykin - 510.
19 Illinois. 228

**Types:**
legal brief



MISC. (1) 1B19 CPB

~~Thus~~

The Executive Committee of the democratic

The Democratic Executive Committee of Madison county has been embarrassed by the diversity of opinion existing among the members of the party as to the steps most proper to be taken in relation to the ~~can~~ present canvass for members of the Legislature, and some contrariety of opinion also exists in the Committee as to which is the best course under existing circumstances. ~~the course most proper to be taken by them.~~

Under the plan of organization, which has existed for the last some years, the candidates ~~were chosen~~ of our party were nominated by a convention of delegates chosen by the democratic voters of the several election districts. The recent State Convention ~~has adopted~~ adopted a resolution but not directing recommending a change from the convention to the primary election system. Each of these systems has its earnest advocates among the most considerate ~~and unselfish~~ and patriotic members of our party, and at the same time there are many very worthy and

**Names:**
Democratic Committee
Executive

**Places:**
Madison Co., AL

**Types:**
speech

and intelligent members of one party who are firmly persuaded and earnestly contend that there is such a lull at the present time of the party spirit which formerly existed in our county and state, as renders it unnecessary to have any ~~some~~ party nominations ~~in the~~ for the legislature ~~in the County~~ in the present canvass. And the Committee are urged by some of these gentlemen to take no steps towards procuring party nominations either by convention or Primary Election; whilst some of them favor a Mass meeting of the people of the County to designate candidates, in the event the Committee shall consider any nominations necessary or proper. There has been some contrariety of opinion in the Committee as to the most effective & desirable system of Organization; but they are agree in this, ~~that any~~ that every member of the ~~party has~~ Democratic party has an equal right to ~~a voice in~~ be ~~heard~~ consulted touching ~~the~~ any change in our system of Organization

2

**Names:**
Democratic Executive Committee

**Places:**
Madison Co., AL

**Types:**
speech

My suggestions are not intended for the latter Class — I wish to contribute my mite towards getting unity of action among the former Class be they are in favor of the Convention or primary Election System — For without such Unity of action our County and State must become the prey ~~either~~ of a set of selfish men who are resolved to rule either by ~~them~~ using our party organization ~~for them were ad~~ (be it convention or primary) for their own advancement, or by uniting ~~openly or~~ covertly with the radical party, and running ~~either~~ as ~~the~~ Independent Democrats ~~or Republicans~~. Confident of their being more popular with the Radical party than any nominee of the Democratic party, however pure and able they may be ~~and~~ inspired ~~by~~ with a hope that they can profit by the prejudices of good Democrats against whatever system of organization may be adopted by our party — And we find a few ~~some~~ of this Class of would be leaders crying out that the Radical party is dead and there is no need of any party organization ~~When the~~ — Can they honestly believe that a party having 85000 Federal offices and countless government contracts at its disposal will

**Names:**
Democratic Executive Committee

**Types:**
speech

be without a party in any State without a miraculous improvement in poor human nature - Or that a ~~large~~ majority of the negro voters have been Emancipated from the control of the Federal office holders and their paler subordinates -

How often have we nominated men for office because of their supposed colored following and met with disappointment.

**Names:**
Democratic Committee Executive

**Types:**
speech

2

The absolute sovereign authority of the States in other respects over the Election will scarcely be controverted by the most ultra advocate of the power of Congress to regulate the Election of Members of Congress -

The great & good men who drafted the Constitution were familiar with the old Latin maxim "Sic utere tuo ut alienum non laedas"

The authority conferred upon Congress to prescribe the times of either Election as well as that of making, or altering regulations ~~for~~ to the ~~manner~~ time place & manner of the Election of Representatives was permissive - not mandatory -

There are 365 days in the year. If it be proper for Congress to interfere ~~as to~~ the manner of Electing Members of Congress, it should exercise its authority in such manner as not to interfere in any degree with State authority in regulating the Election of Presidential Electors -

That can be done by designating two different days for the Electors -

**Names:**
Democratic Executive Committee

**Types:**
speech

that the Democratic party cannot elect a majority of the members of the next House of Representatives ~~without such party organization~~ as well ~~because~~ concert of action among those ~~who wish to~~ Democrats who think it more important to the happiness and welfare of our people to place every department of the government under the government of the Democratic party, ~~than~~ merely to put ambitious office seekers into office by the aid of Radical votes –

Party success is as impossible without party organization as it would have been impossible for the Confederate authorities to have defended Richmond against the well organized armies of the North – for one month if every Confederate soldier had asserted and maintained "the right to fight on his own hook".

There is another proposition which every worthy to enjoy the blessings of a free government – It is this; that in no organization of any kind should a minority claim the right to rule the majority.

Men ~~in professing~~ claiming to belong to an organization who when found in a minority claim

**Names:**
Democratic Committee Executive

**Types:**
speech

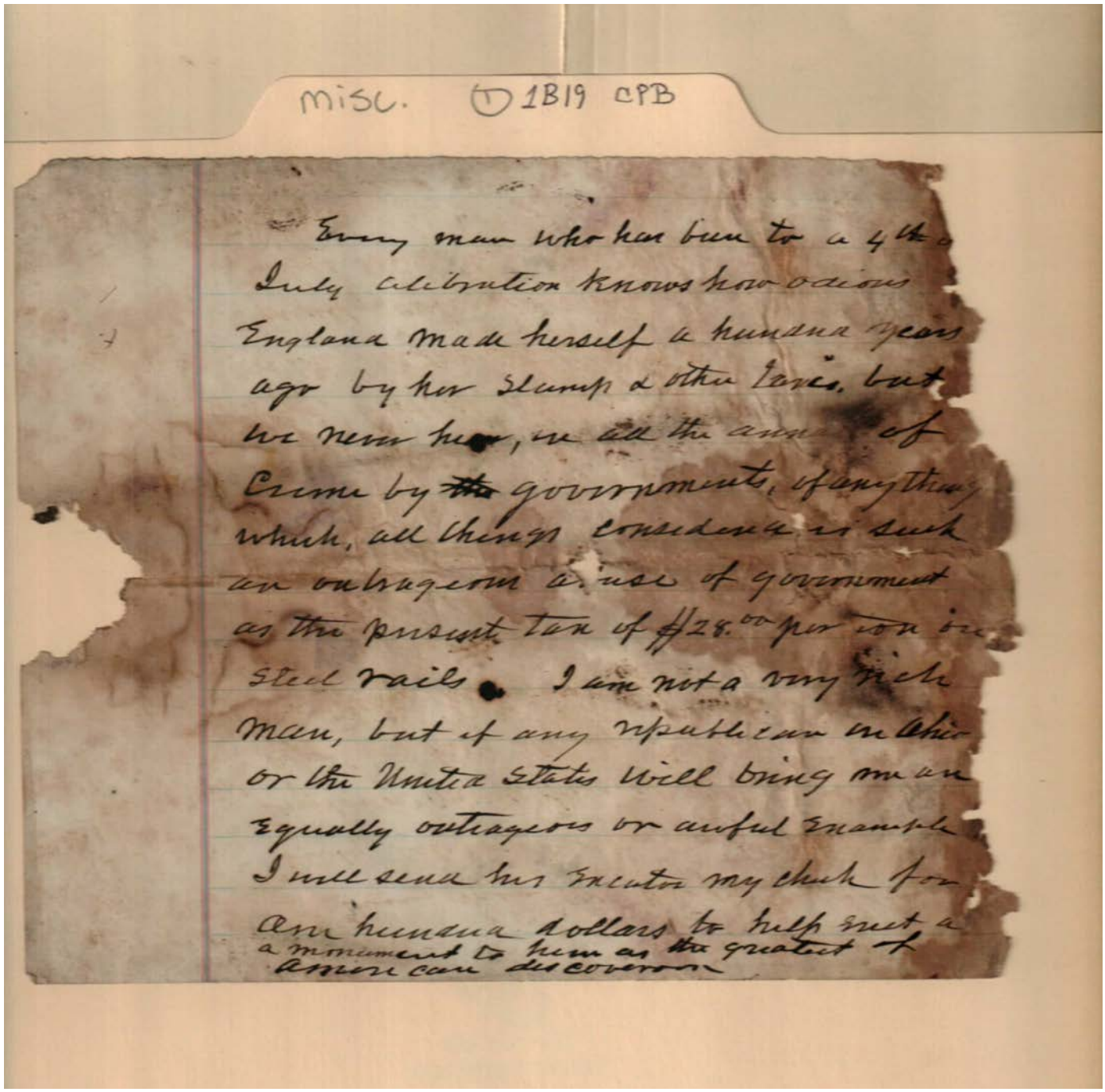
The intelligent honest and truly patriotic Democrat does not ally himself to his party to get office for himself or his friends, but to preserve those fundamental principles of free government and promote that ~~[illegible]~~ purity of administration ~~and [illegible]~~ which are essential to to the permanent peace and prosperity of the whole people — and who looks upon the officers chosen as the servants and not the masters of the people. He can see his own good in the promotion of the general good of the people whether that people think proper to select him as their servant or not —

~~But [illegible]~~

But a human nation is frail so in all parties ~~we may expect to~~ and in a county or district especially when a party is in the ascendant, we must expect to find some men so vain and ambitious or so hungry for the emoluments of office that they cannot see any thing good in any thing that does not give them some advantage over their associates —

**Names:**
Democratic Executive Committee

**Types:**
speech



MISC. (1) 1B19 CPB

Every man who has been to a 4th of July celebration knows how odious England made herself a hundred years ago by her stamp & other taxes, but we never heard, in all the annals of crime by ~~the~~ governments, of anything which, all things considered is such an outrageous abuse of government as the present tax of $28.00 per ton on steel rails. I am not a very rich man, but if any republican in Ohio or the United States will bring me an equally outrageous or awful example I will send his Executor my check for one hundred dollars to help erect a monument to him as the greatest of American discoverers

**Names:**
government taxation

**Types:**
broadside

It is so evident to be denied by any one who has any regard for truth, that great financial distress pervades the United States from the Atlantic to the Pacific & from the Lakes to the Gulfs -

Is it the fault of the Federal government or of our State government that such distress prevails in Alabama?

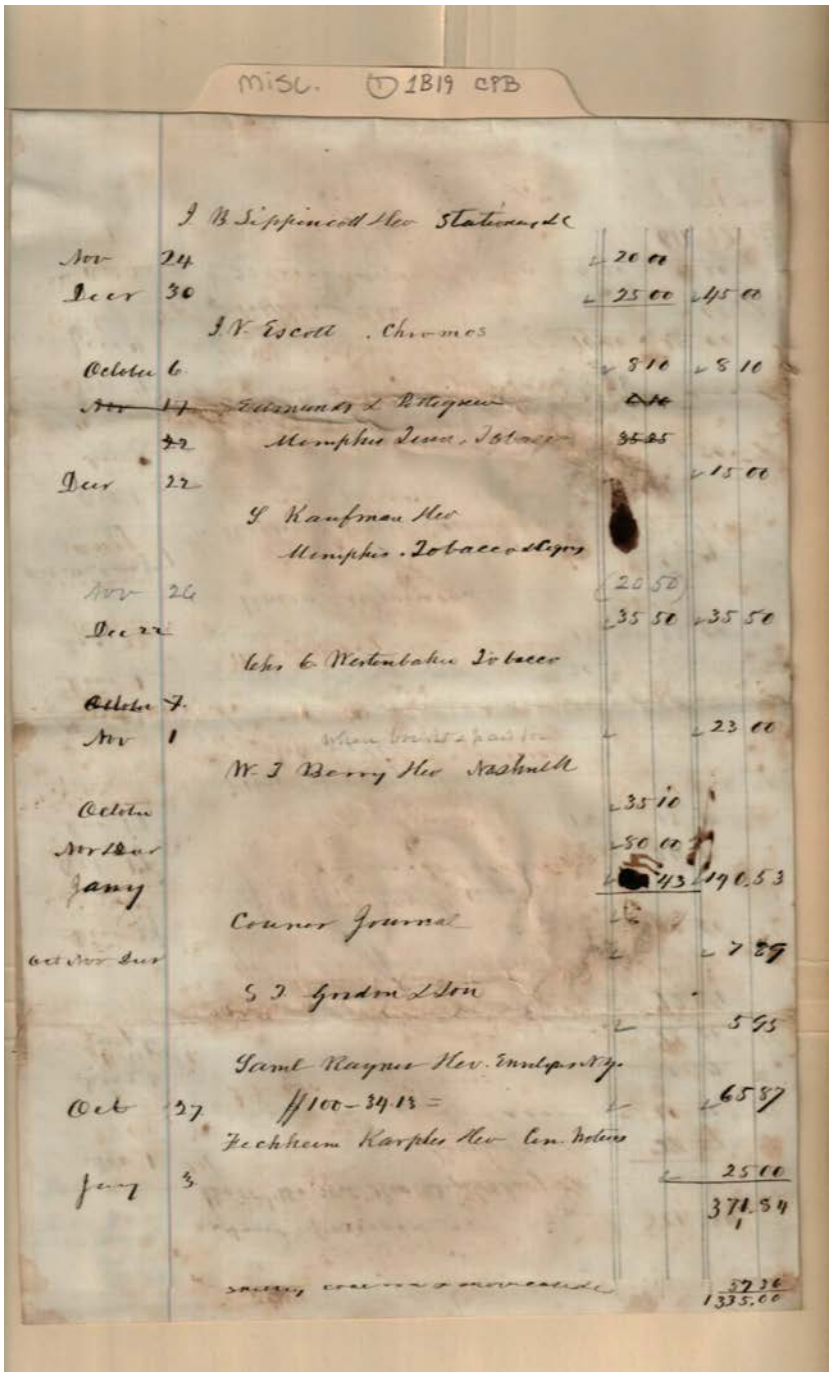
~~The Federal government since the war has assumed the exclusive right to provide a circulation ~~ ~~of ten per cent on the circulation of state banks thereby taxing them out of existence~~ ~~by a heavy tax of 10 per cent on~~ ~~and prevented the States from having any banks notes circulation~~

75) 1000 (13
75
250
225
125) 1000 (

Under the Federal laws which have existed since the war, the United States government is clothed with exclusive right to furnish a circulating medium - No State bank can issue a bank notes without paying a tax upon it ~~of ten per cent per annum~~ 8 times greater than you State & County tax combined - ~~Nine hundred dollar that is issued~~

**Names:**
Federal laws after the Civil War

**Types:**
broadside



page 1

**Names:**

Berry, W. T. & Co.
Edmunds & Pettigrew
Escott, J. N.
Fecham Karples & Co.
Gordon, L. T. & Son
Kaufman, S. & Co.
Lippincott, J. B. & Co.
Raynes, Samuel
Westenbaker, Charles C.

**Places:**

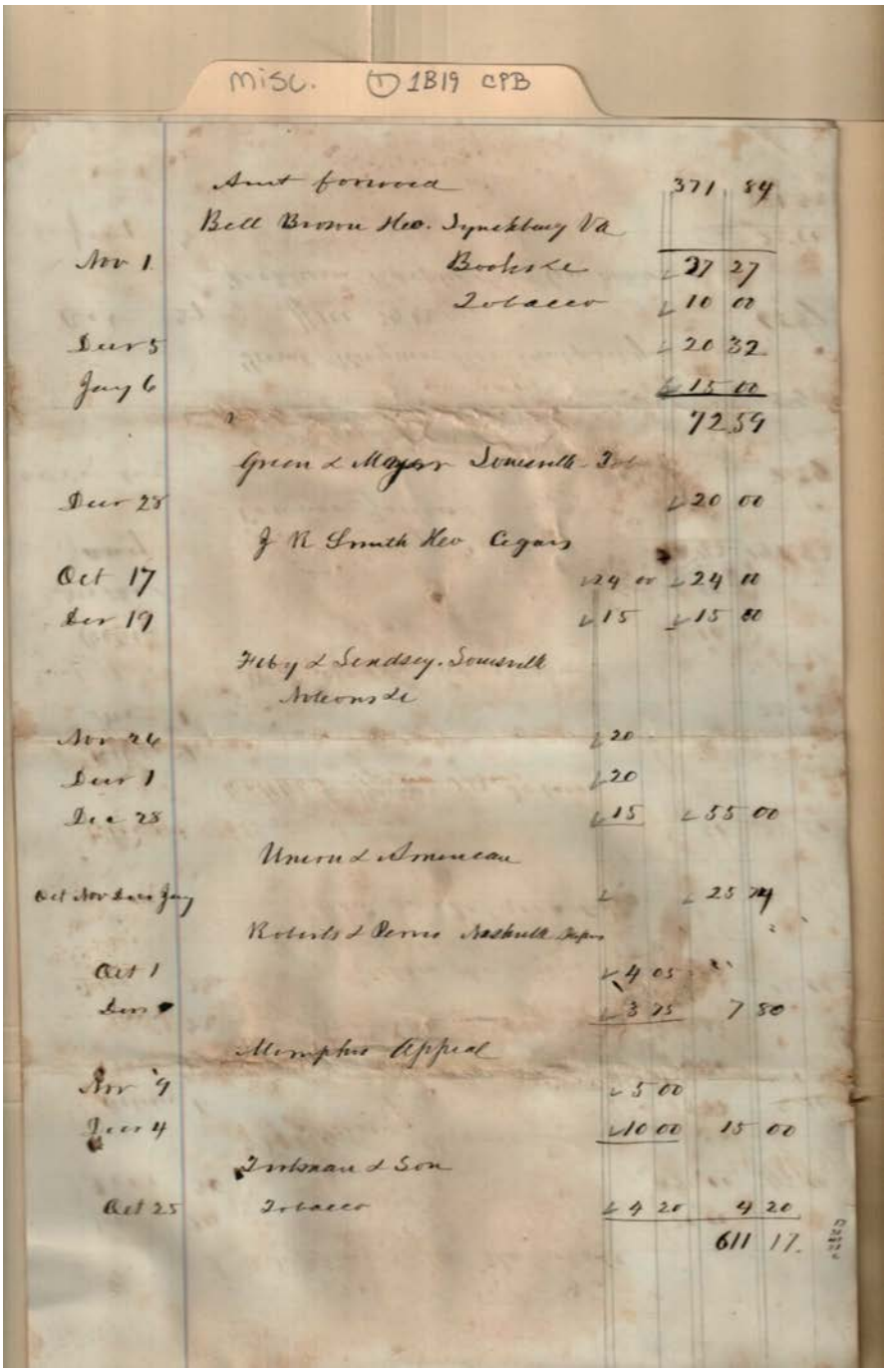
Memphis, TN
Nashville, TN
New York

**Types:**

account
financial report

**Dates:**

Jan 3
Nov-Dec
November
Oct 27
Oct-Jan
Oct-Nov
October



MISC. (1) 1B19 CPB

| | | | |
|---|---|---|---|
| | Amt forward | | 371 84 |
| | Bell Brown Hdw. Lynchburg Va | | |
| Nov 1 | Books &c | | 27 27 |
| | Tobacco | | 10 00 |
| Dec 5 | | | 20 32 |
| Jany 6 | | | 15 00 |
| | | | 72 59 |
| | Green & Majors Louisville Ky | | |
| Dec 25 | | | 20 00 |
| | J R Smith Hdw Cigars | | |
| Oct 17 | | 24 00 | 24 00 |
| Dec 19 | | 15 | 15 00 |
| | Foby & Lindsey. Louisville | | |
| | Notions &c | | |
| Nov 26 | | 20 | |
| Dec 1 | | 20 | |
| Dec 28 | | 15 | 55 00 |
| | Union & American | | |
| Oct Nov Dec Jany | | | 25 24 |
| | Roberts & Pervis Nashville Papers | | |
| Oct 1 | | 4 05 | |
| Dec | | 3 75 | 7 80 |
| | Memphis Appeal | | |
| Nov 9 | | 5 00 | |
| Dec 4 | | 10 00 | 15 00 |
| | Imbrau & Son | | |
| Oct 25 | Tobacco | 4 20 | 4 20 |
| | | | 611 17 |

page 2

**Names:**

Bell, Brown & Co.
Green & Majors
Lippincott, J. B. & Co.
Memphis Appeal
Roberts & Pervis
Smith, J. R. & Co.
Union & American

**Places:**

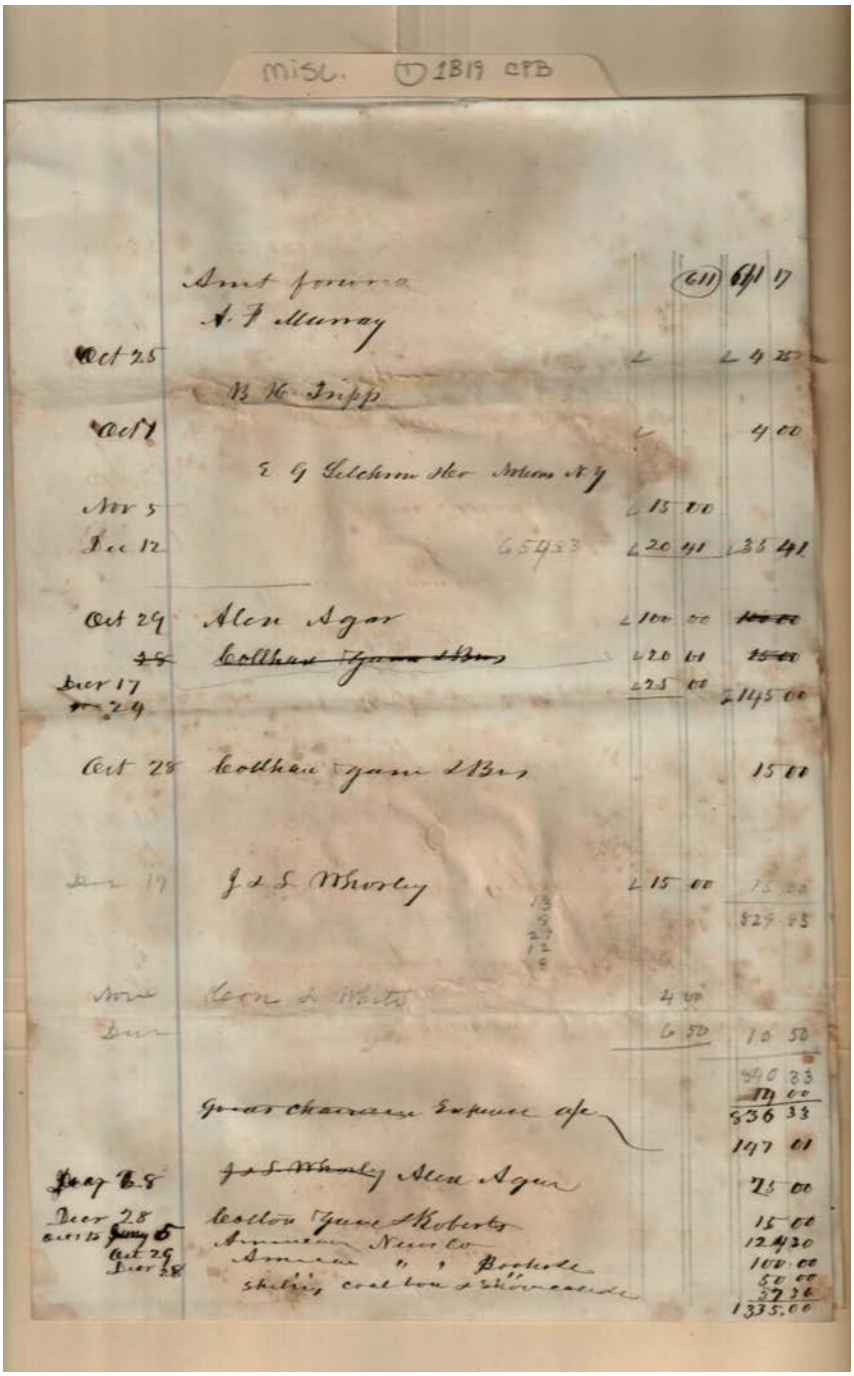
Louisville
Lynchburg, VA
Memphis, TN
Nashville, TN

**Types:**

account
financial report

**Dates:**

December
Nov-Dec
Nov-Jan
Oct-Dec
Oct-Jan




page 3

**Names:**

Agar, Alen
American News Co.
Colton, Yahm & Roberts
Lippincott, J. B. & Co.
Murray, A. F.
Selchson, E. G. & Co.
Tripp, B. H.
Worley, J. & L.

**Places:**

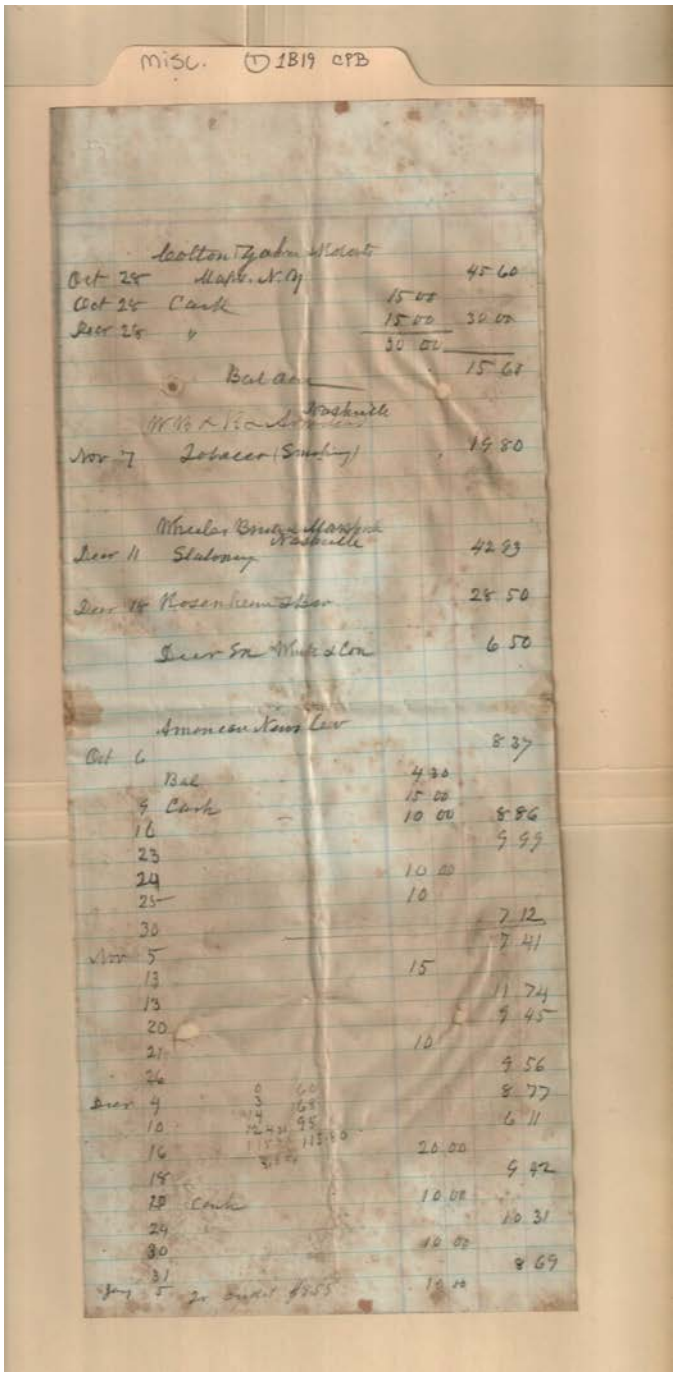
New York

**Types:**

account
financial report

**Dates:**

December
Nov-Dec
Oct-Jan
October




page 4

**Names:**

American News Co.
Colton, Yahm & Roberts
Lippincott, J. B. & Co.
Rosenheim & Bro.
Wheeler, & Marshall

**Places:**

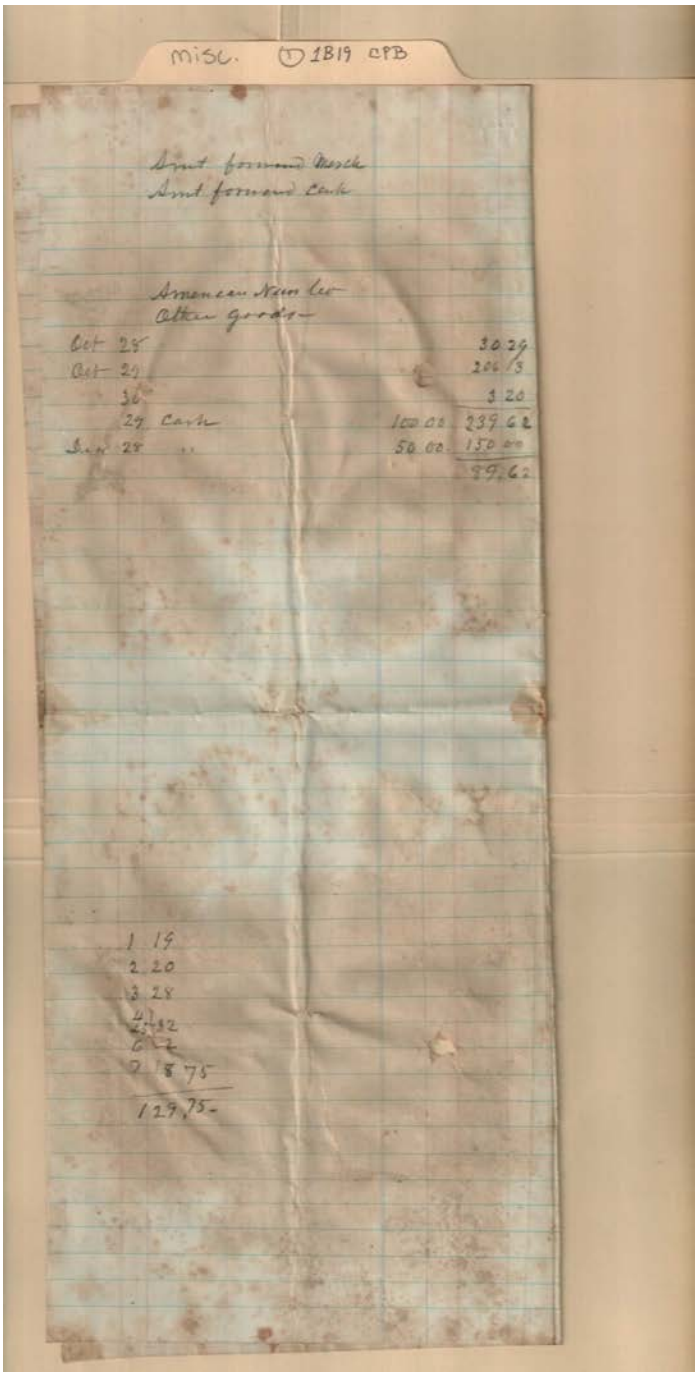
Nashville, TN

**Types:**

account
financial report

**Dates:**

December
Oct-Dec




page 5

**Names:**

American News Co.

Lippincott, J. B. & Co.

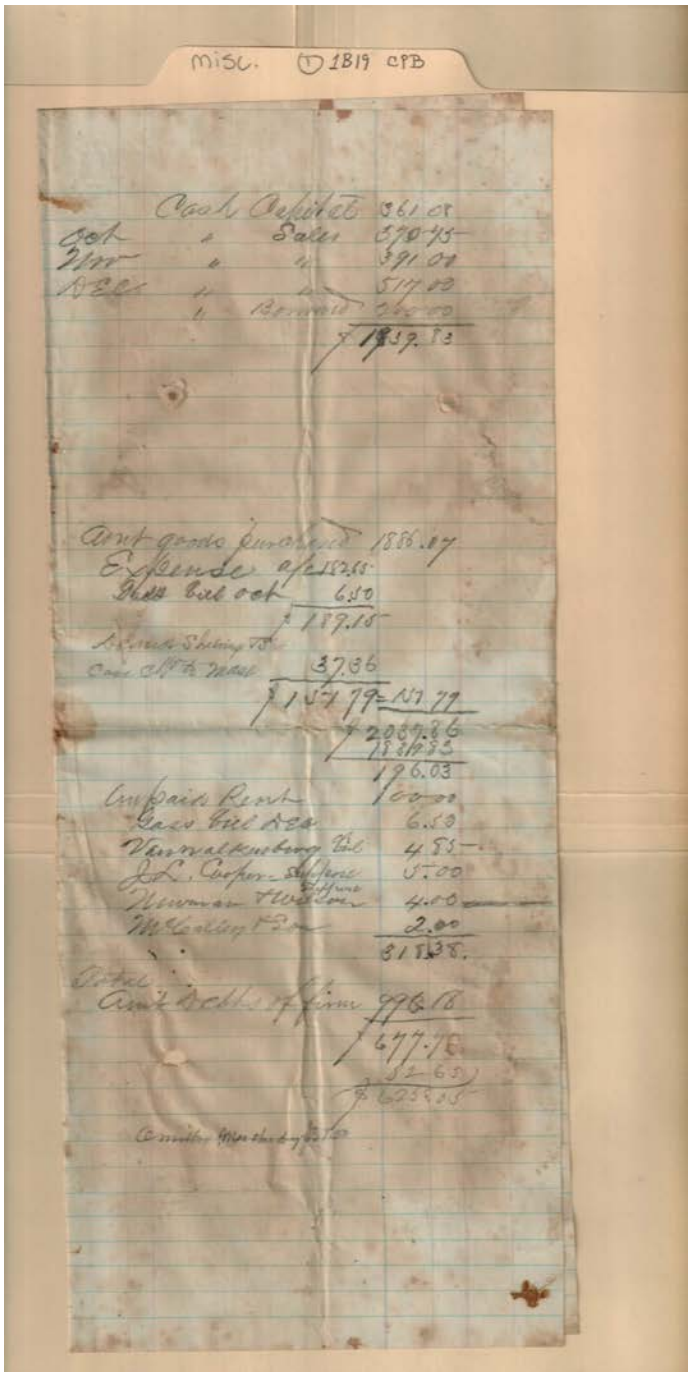
**Types:**

account

financial report

**Dates:**

Oct-Dec



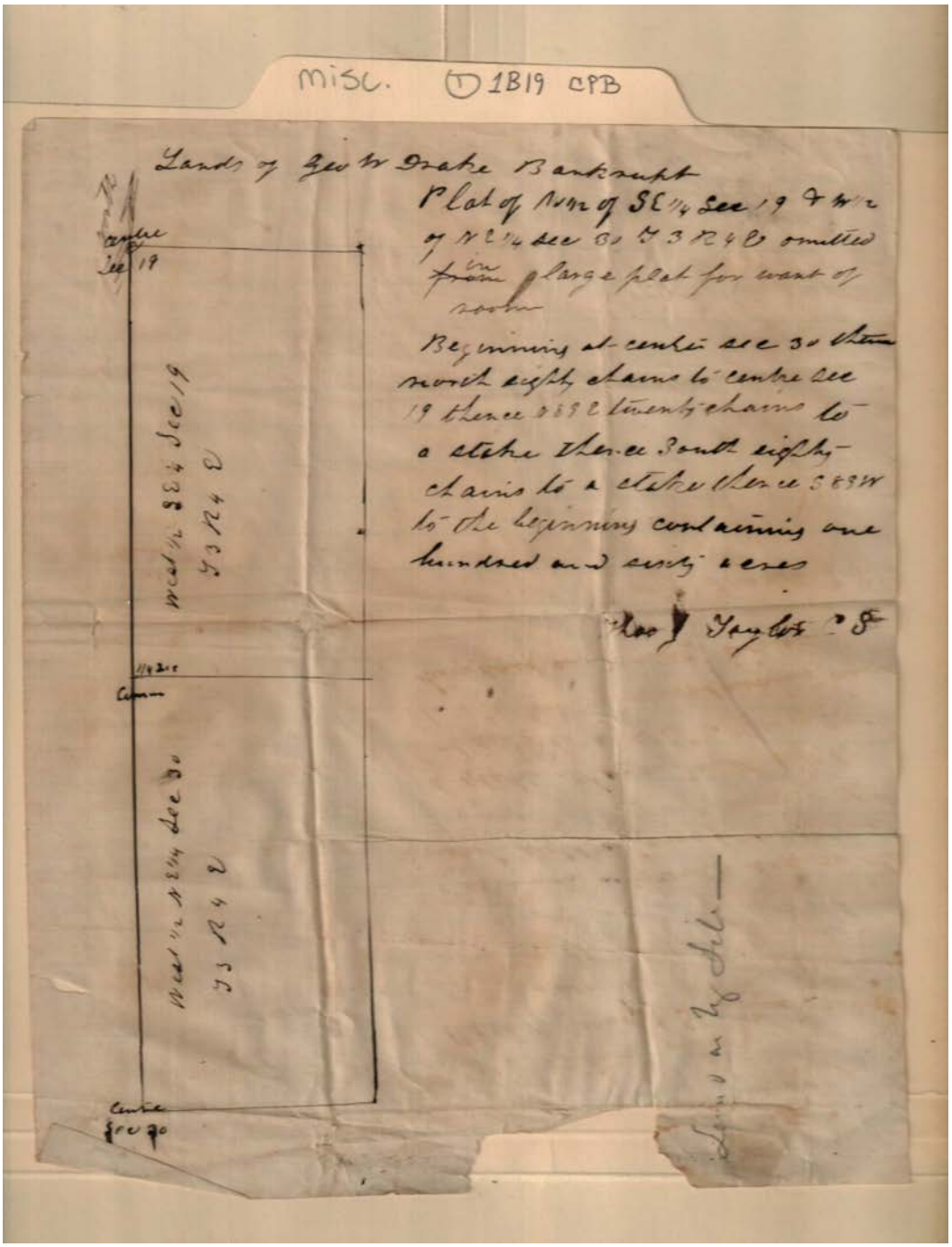

page 6

**Names:**

Cooper, J. L.
Lippincott, J. B. & Co.
McCalley & Son
Newman & Wilson
Van Valkenburg

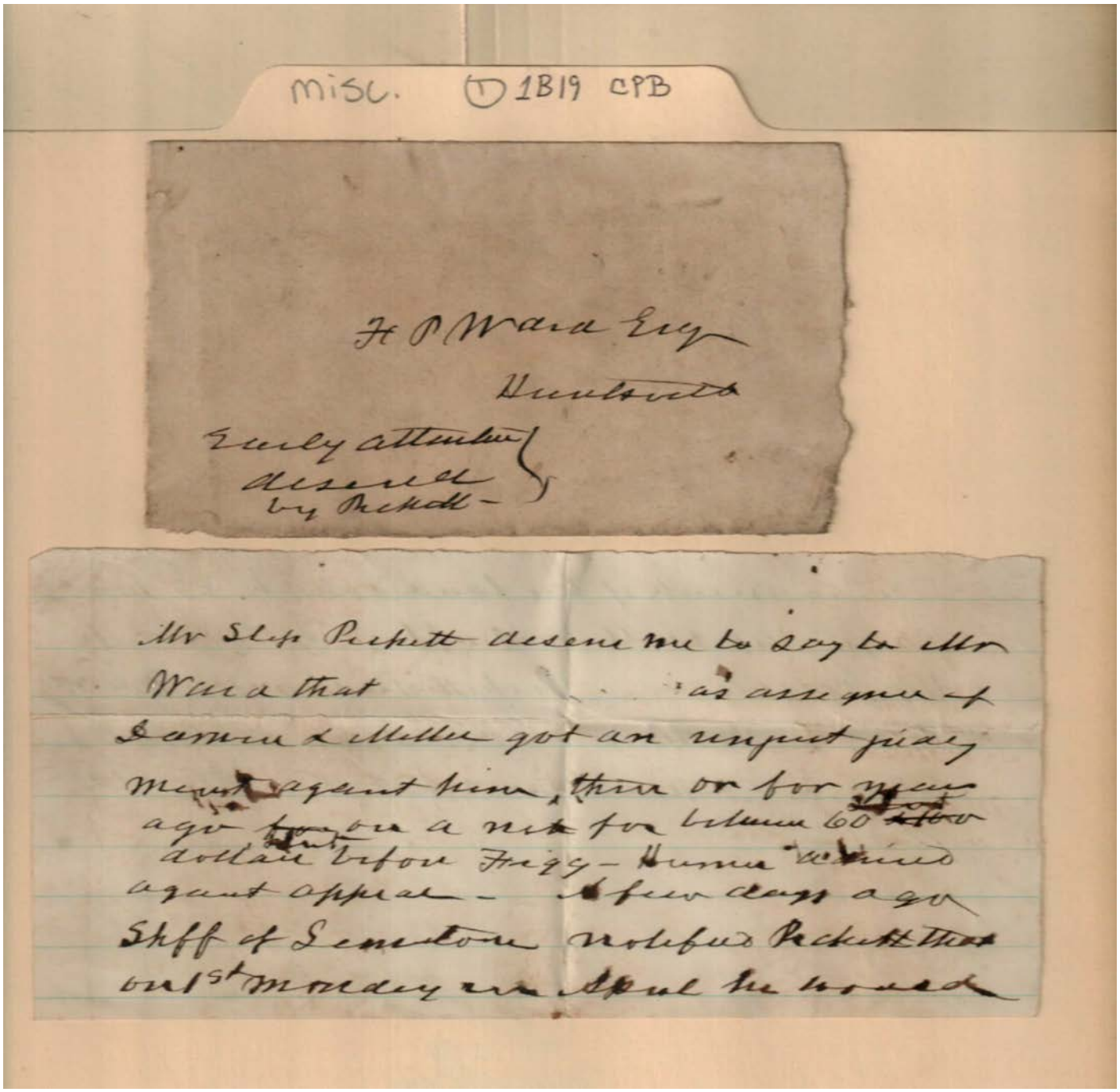
**Types:**

account
financial report




**Names:**
Drake, George W.

**Types:**
bankruptsy



MISC. (1) 1B19 CPB

F P Ward Esq
Huntsville

Early attention
deserved
by Pickett -

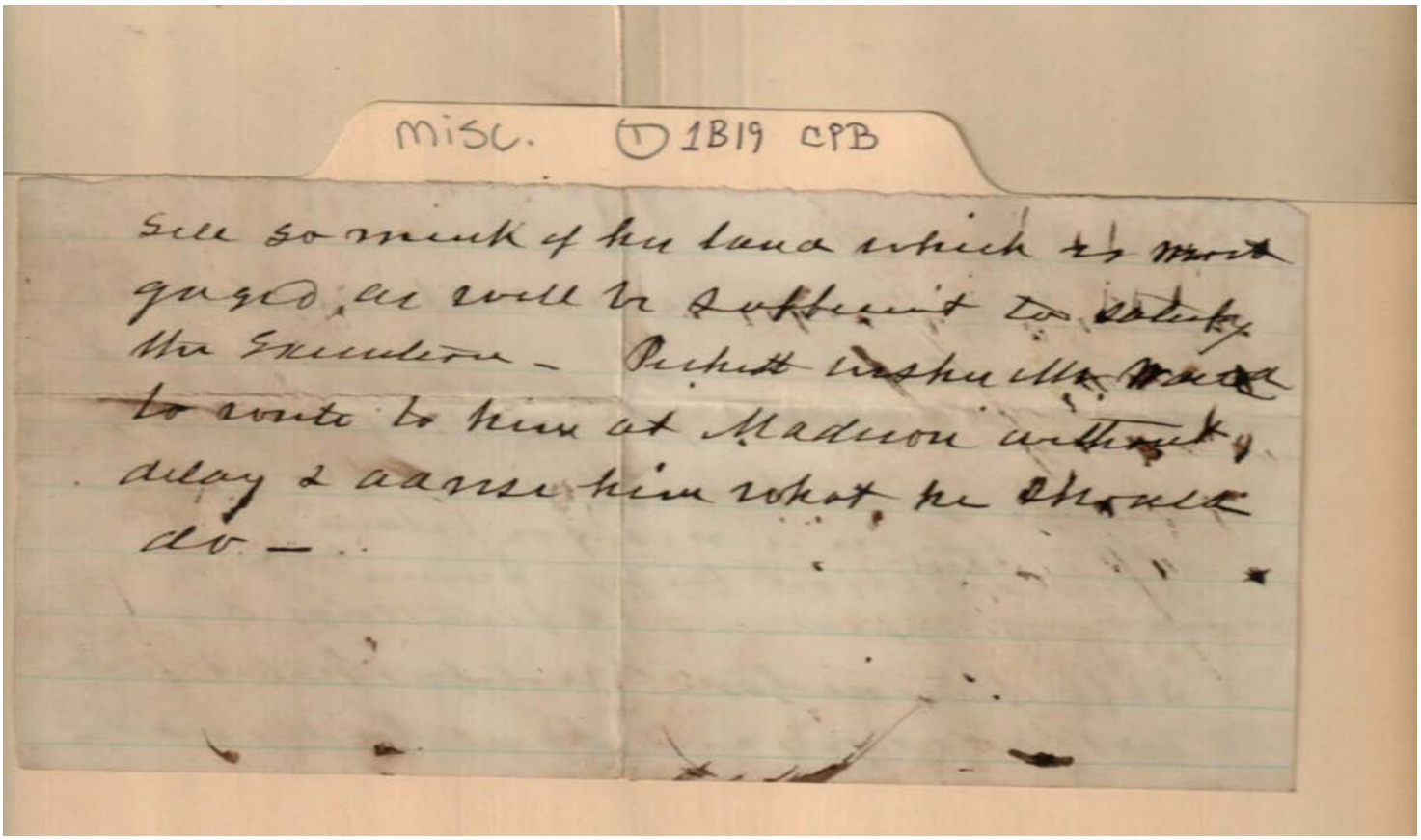
Mr Shep Pickett desires me to say to Mr
Ward that as assignee of
Darwin & Miller got an unjust judg
ment against him, three or four years
ago from a note for between 60 & 70
dollars before Figg - Humes & wished
against appeal - A few days ago
Shff of Jefferson notified Pickett that
on 1st Monday in April he would

**Names:**

| | | |
|---|---|---|
| Darwin & Miller | Pickett, Shep | Ward, F. P. |
| Figg - Humes | Ward, | |

**Places:**
Huntsville, AL

**Types:**
correspondence envelope

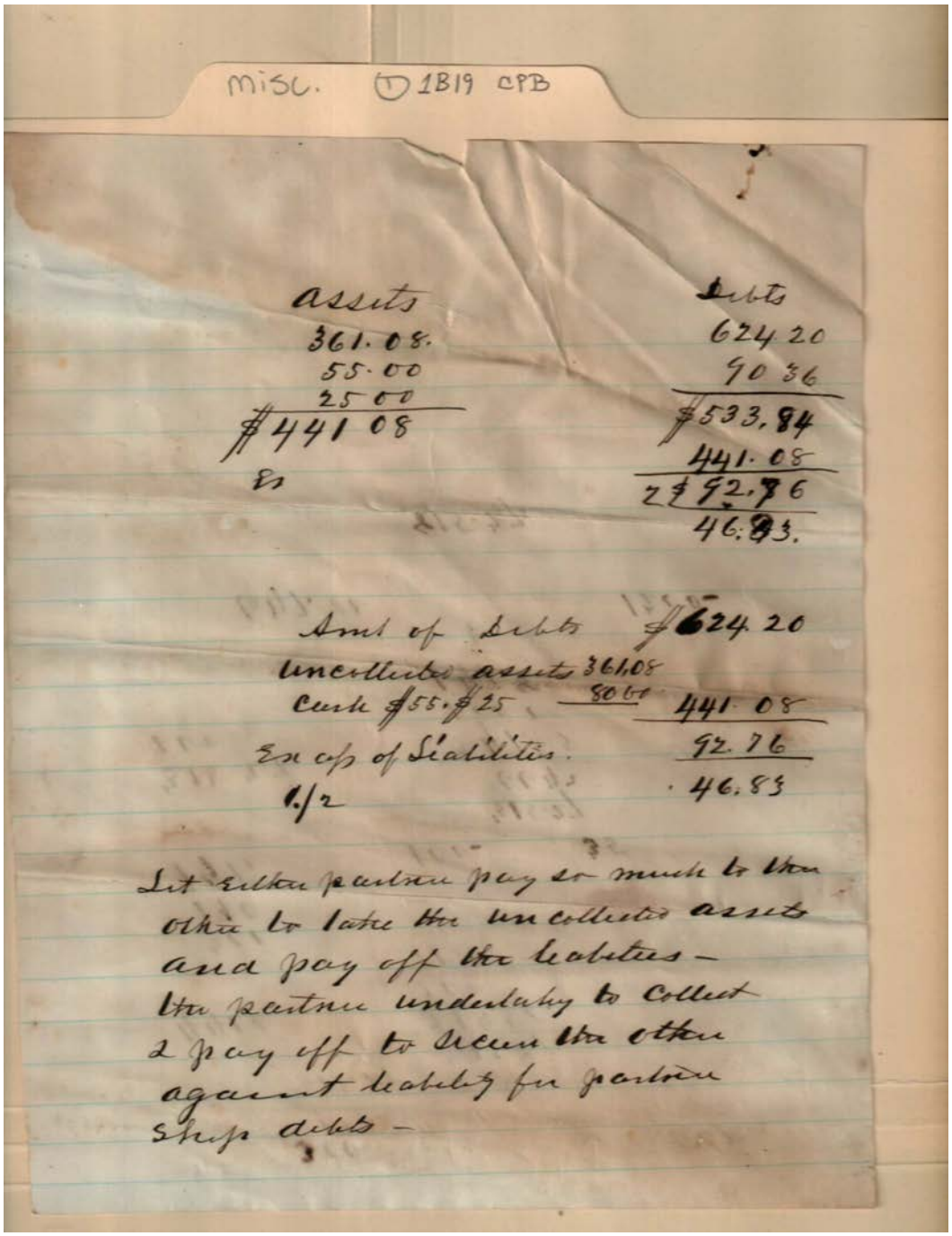


MISC. (1) 1B19 CPB

Sell so much of his land which is most
guarded, as will be sufficient to satisfy
the Execution - Pickett instructed Mr Ward
to write to him at Madison without
delay & advise him what he should
do -

**Names:**
Pickett, Ward,

**Types:**
correspondence



misc. (1) 1B19 CPB

assets
361.08
55.00
25.00
$441.08
8s

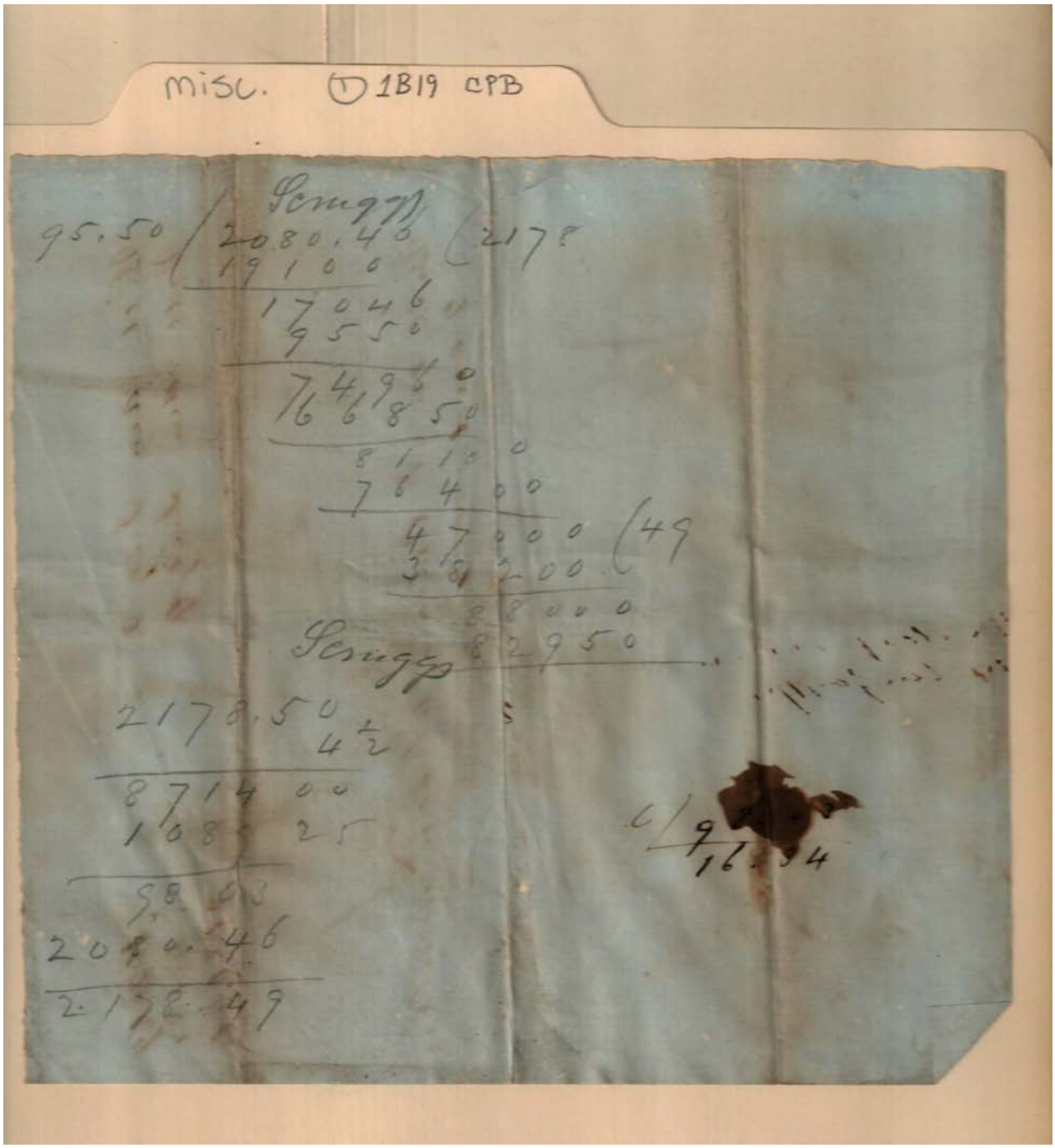
Debts
624.20
90.36
$533.84
441.08
2 $92.76
46.83

Amt of Debts $624.20
uncollected assets 361.08
Cash $55. $25 80.00 441.08
Ex of Liabilities. 92.76
1/2 46.83

Let either partner pay so much to the other to take the uncollected assets and pay off the liabilities – the partner undertaking to collect & pay off to secure the other against liability for partnership debts –

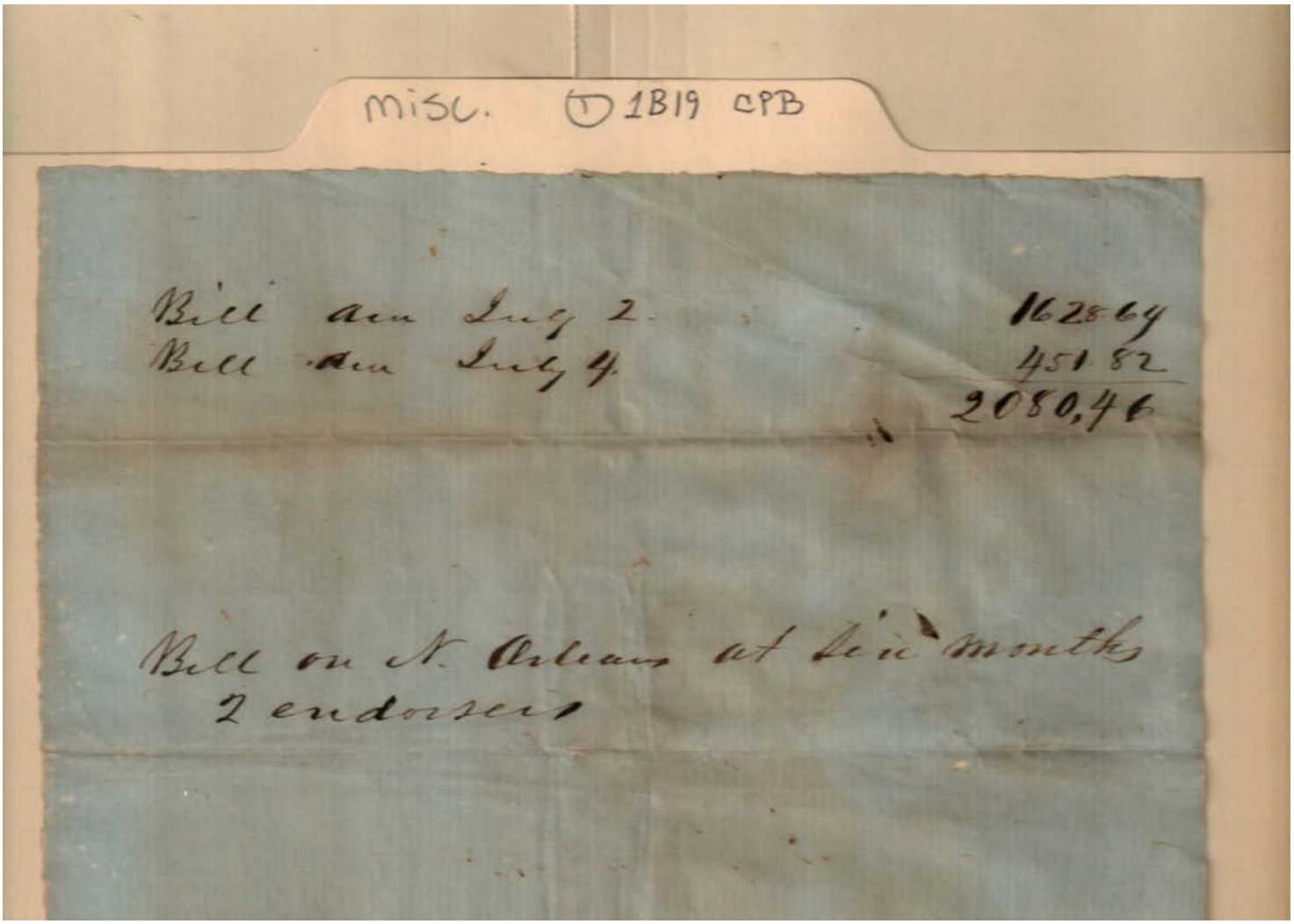
**Names:**
miscellaneous

**Types:**
bankruptsy



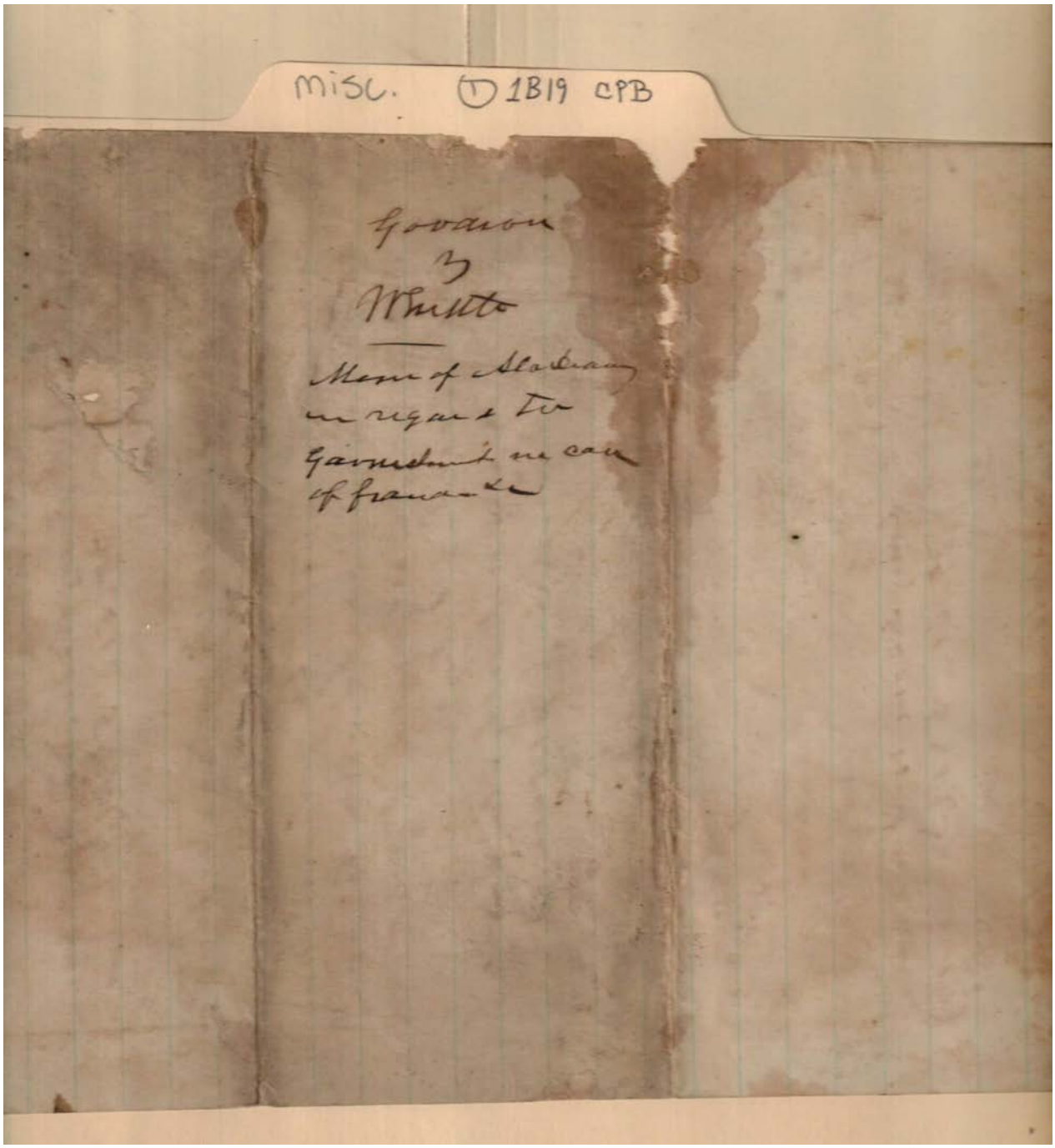

**Names:**
Scruggs,

**Types:**
numbers



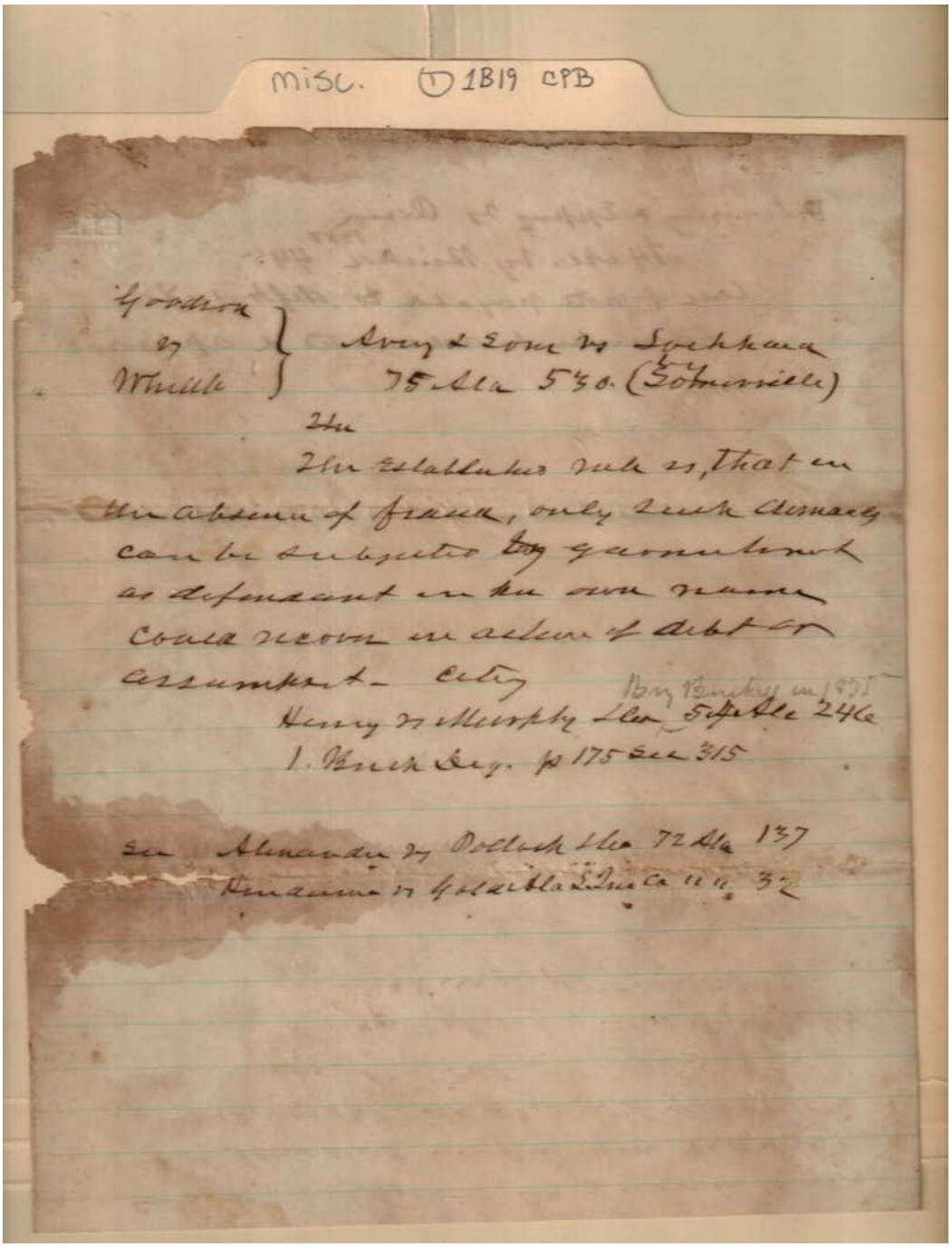

**Names:**
miscellaneous

**Types:**
bill




**Names:**
Goodson, Whittle,

**Types:**
legal note



MISC. (1) 1B19 CPB

Goodson } Avery & Sons vs Spokane
vs } 75 Ala 530. (Somerville)
Whittle }

The

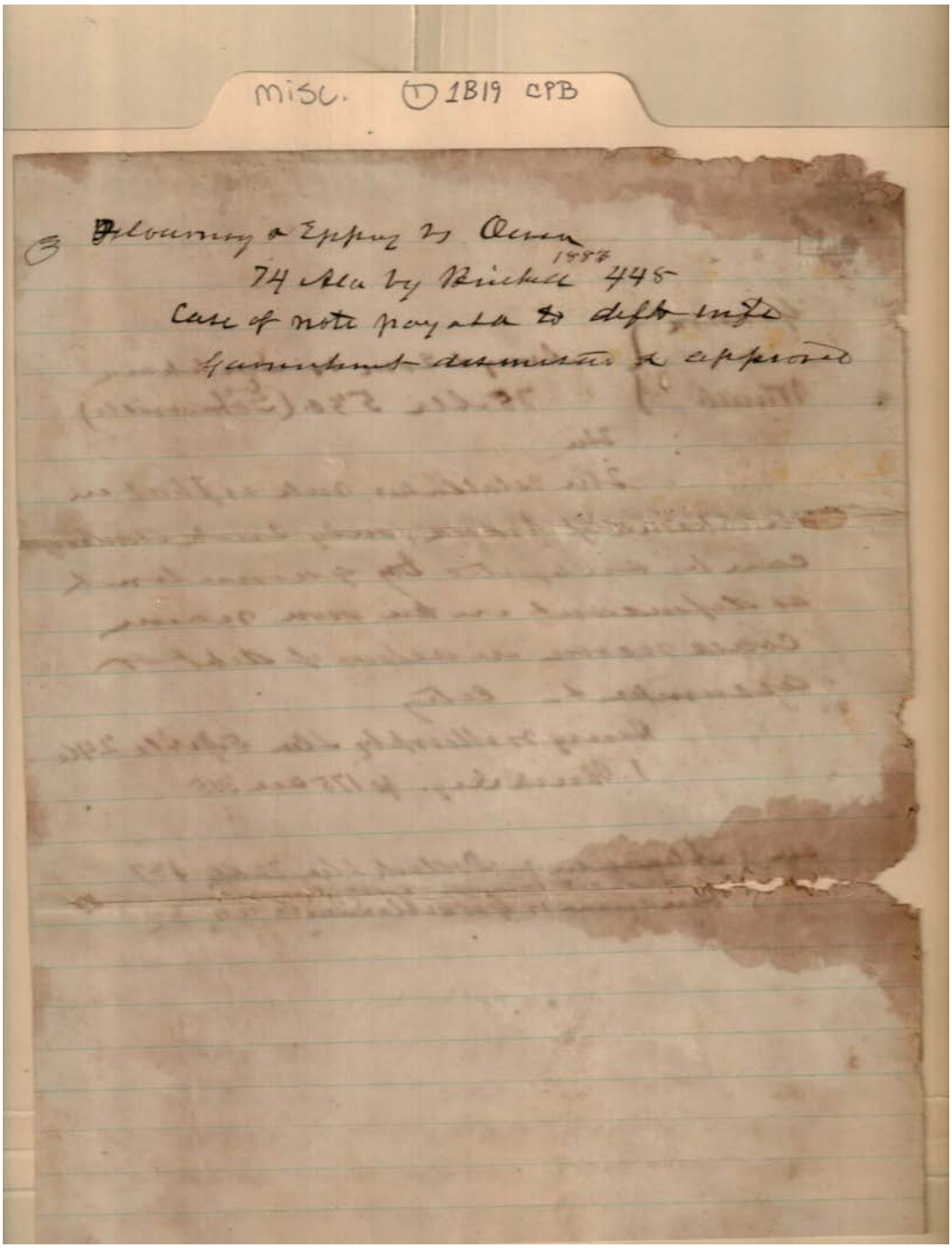
The Established rule is, that in the absence of fraud, only such demands can be subjected by garnishment as defendant in his own name could recover in action of debt or assumpsit - citing

Henry vs Murphy 1 Ala 5 Ga Ala 246
(Boy Bentley in 1851)
1. Brick Eq. p 175 Sec 315

See Alexander vs Pollock 1 Ala 72 Ala 137
Dunnavant vs Gulatta & Ins Co 11 A. 32

**Names:**
Goodson, Whittle,

**Types:**
legal note




**Types:**
legal note

In Chancery for the First District of the Eastern Division of Alabama.

Joseph B Kelly and
Fleming J Kelly
vs
Geo W Karsner
Eliza J Karsner, and
Keziah W Kelly

Brief for Complainants.

The bill in this case seeks to have a conveyance of land to a married woman, absolute on its face, declared a trust, and to have the trust, so declared, executed.

The answer of Mrs Karsner, the married woman, is made a cross bill and prays for the enforcement of a vendor's lien on 109 acres of land conveyed to complainants.

1.

The Cross Bill is disposed of by the testimony of Complainants, supported by that of Thomas J Mooring, that the 109 acres was exchanged for 38 acres, and paid for by this conveyance of the 38 acres to said

**Names:**

Karsner, Eliza J.
Karsner, George W.
Kelly, Fleming J.
Kelly, Joseph B.
Kelly, Keziah W.
Mooring, Thomas J.

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

Mooring.

See Dep of T J Kelly annex to Bill
" " J B Kelly " "
" " T J Mooring " " 3.

2.

In the case made by the original bill there is but one question of law viz. as to the capacity of a married woman to act as trustee; and but one of fact. viz whether the conveyance to Mrs Karsner was intended for her benefit or for her father's.

Law of the case

The legal question as to a married woman's capacity to act as trustee was settled, at the last term of the Supreme Court, in the affirmative, in the case of Nance adm'r Darwin & Pulley. We append a copy of the opinion in that case.

In that case the husband purchased two tracts of land partly with his own money and partly with his wife's, taking the conveyance of title to her, under a verbal agreement between them that she would hold the conveyance merely as

**Names:**

Darwin & Pulley
Karsner, Mrs.
Kelly, F. J.
Kelly, J. B.
Mooring, T. J.
Nance,

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

securities for the amounts of her money applied in the purchases respectively. The husband and wife afterwards executed jointly a deed of partition. And the court sustained the partition deed as a valid conveyance by the wife to the husband, upon the theory that she was trustee of the land for her husband and herself in the proportion of their respective contributions to the purchase money.

In Bridley vs Wyman 23 How (US) 500 the owner of real estate conveyed it to a married woman to conceal it from his creditors. He then found a purchaser, and the married woman conveyed to him; her grantor the original owner, receiving the purchase money. After the death of the married woman her heirs at law sued for the land, relying on her deed being held invalid, because executed by her alone, her husband not joining in its execution. The Court held that the conveyance to her, without consideration or contract, made her a trustee of the land for the grantor; and that, as trustee, she

**Names:**
brief

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

could convey the land without his husband joining in the execution of the deed of conveyance.

Facts of the case.

On March 7. 1856. Rufell J Kelly conveyed all his lands to his two sons, the complainants. Dep. F J & J B Kelly Exhibits. copy filed

On May 18. 1856 they reconveyed the land to their father. Dep. F J Kelly Exhibit 5.

And on the same day, May 18. 1856. this father and his wife, Keziah W Kelly, conveyed a part of the land to the sons. (Exhibit 6 Dep. J B K)

and Col R J Kelly conveyed the balance to his wife. Keziah W Kelly.

On October 8. 1874, on a voluntary separation Mrs Kelly, at Col Kelly's request, conveyed the lands she held the title of to his daughter, Mrs Karsner, in her absence and on a recited consideration suggested by Col Kelly, of one thousand dollars; the real consideration being the separation, and Col Kelly's relinquishment of all interest in and control over her lands in Tennessee.

Col Kelly remained in possession of the lands conveyed to his daughter paying taxes and appropriating rents

**Names:**

Karsner, Mrs.
Kelly, F. J.
Kelly, J. B.
Kelly, Keziah W.
Kelly, Russell J.

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

until his death on May 10. 1879.

If Mrs Kelly had testified that the lands were conveyed to Mr Karsner, not for her own benefit, but for the use of her father. under the decision of Nauen adm vs Dewrin & Pulley. and Bibby vs Wyman 23 How 500. there could have been no question of Mr Karsner's accountability as trustee.

But Mrs Kelly testifies that her conveyance was intended to be absolute and for the individual benefit of Mrs Karsner. The questions are, first. does not Mrs Kelly's acts and declarations, at and before the execution of her conveyance to Mrs Karsner. speak louder than her words now and outweigh them; and second. Whether her acts and declarations since the conveyance do not so contradict her testimony as to deprive it of all weight. And we think the conclusion must be in the affirmative on both points of inquiry.

/

Col Kelly was embarrassed by security debts there in suit (Dep. 1B 179 & Rec 53. 92 & 115) and conveyed all his lands to his son. On May 18. 1866 they reconveyed to him.

**Names:**
Karsner, Mrs. Kelly, Col. Kelly, Mrs.

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

and he then conveyed a part to them in consideration of their paying certain debts of his, and the balance to his wife in consideration of her joining in his conveyance to his sons and relinquishing dower in these lands.

The natural inference is that Col Kelly was apprehensive that his previous conveyance to his sons would not stand against his creditors: and that the conveyances of May 18. 1866 were a contrivance to mend up. Mrs Kelly now relinquished dower in other lands as recited in Col Kelly's deed to her. 1st Dep K W Kelly ans to Int 6. In the latter part of 1866, when Col Kelly became apprehensive that Mrs Kelly intended to hold his lands. she told him that neither she nor any of her kin wanted any of his money or property. Dep of Sanford ans to Int 4. Col Kelly stated in her presence, before this separation, that he had conveyed property to her on account of his liability as security for Dr Jordan: and that he wanted his children then living to have it, having given his

**Names:**

Jordan, Dr.
Kelly, Col.
Kelly, K. W.
Kelly, Mrs.
Sanford,

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

deceased son Pierce Kelly a full share. and Mrs Kelly again replied that neither S he nor any of her Kinsfolks wanted any of his property. Dep J M Massingale Int 5. On the Friday before they separated, Col Kelly said in her presence that he wanted his sons to have what he had: and she made no reply. Dep. Ann Massingale Int 4. She told L A Wortham, the day before the separation, that she had come down from Tuscumbia to convey the land back to Col Kelly. Dep L A Wortham Int 4. Mrs Kelly admits that Col Kelly asked her to convey the land to Mrs Karsner, before she left. 1st Dep of Mrs Kelly Int 12. And she admits that he suggested the consideration of $1000 recited. 2d Dep of Mrs Kelly X Int 12. Before executing her deed to Mrs Karsner on Oct 8. 1874 she first proposed to convey to Col Kelly himself. He declined because of pending suits against him; and wanted it made to his sons or to them and his daughter jointly. She refused because of her dislike to J B Kelly. Col Kelly then suggested that she should convey to Mrs Karsner his daughter, stating that he was not afraid. but she would do right about the land:

**Names:**

Karsner, Mrs.
Kelly, Col.
Kelly, J. B.
Kelly, Mrs.
Kelly, Pierce
Massingale, Ann
Wortham, L. A.

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

and that he intended it to be divided at his death among his three children. And thereupon Mrs Kelly conv.d to Mrs Karsner. Dep. F E H Stegar & K T Daniel Int 6.
Col Kelly often spoke of the land conveyed to Mrs Kelly, in her presence, as his; and she never disputed it. Dep Mary W Kelly Int 23.30.
These acts and declarations of Mrs Kelly, while she held the title of the land, are admissible evidence as part of the res gestæ, showing the nature and character of her title
as 82 N.C. 46.
Brickell Dig
They speak louder than her mere words, and outweigh her testimony to the contrary.

2.

Mrs Kelly's acts and declarations, after her conveyance to Mrs Karsner, although not evidence directly against Mrs Karsner, are admissible to disprove Mrs Kelly's testimony in the cause. In Venable et al vs Bank of Ala. 2 Peters 107. 119. The Court said: "There is also testimony
" in the cause, from several witnesses,
" of the confession of Venable (the grantor)
" as to the object of the deed, and

**Names:**

Daniel, K. T.
Karsner, Mrs.
Kelly, Col.
Kelly, Mary W.
Kelly, Mrs.
Stegar, F. E. H.

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

"of subsequent acts of control over the
"estate to some extent, from which
"unfavorable inferences have been
"deduced, at the argument, against
"the validity of the deeds. It has
"been said at the bar that these
"confessions and acts, being subse-
"quent to the execution of the deeds,
"ought not to prejudice the title of
"McDonald, and are not evidence to
"bind him.

"It is true that neither the acts
"nor confessions of the grantor, under
"such circumstances, are evidence
"to defeat the title of the grantees.
"But they are certainly admissible
"to disprove the answer of the grantor,
"when he is a party to the bill. If
"they discredit his answer, they with-
"draw from the case all the influence
"which his concurrence in the
"statement of the grantor would
"otherwise have; and to this extent
"they have a bearing upon the whole
"merits of the case; but not beyond it."

The previous acts and declarations
of a witness, inconsistent with his

**Names:**
McDonald,

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

present statement, are always admissible to contradict and discredit him: but not, otherwise, evidence against the party introducing him. And we offer the acts and declarations of Mrs Kelly, after her conveyance to Mrs Karsner, simply to withdraw from the defence the support of Mrs Kelly's testimony.

Mrs Kelly, after her conveyance to Mrs Karsner, when on a visit to Col Kelly in his last illness, noticed Mrs Karsner's neglect of her father, became apprehensive that she would claim the land conveyed to her, and expressed her regret that she had given her an opportunity to do so. And she spoke of having to produce her deed, at one time, to relieve Col Kelly's apprehension that she had sent it to Tennessee and intended to keep the land from him. Dep: J. H. Mafingale Qrts 11. 12.

After Col Kelly's death she said that she had given him back his land to keep him from losing his mind; that it was his living will and wish that his sons should have the land:

**Names:**
Karsner, Mrs. Kelly, Col. Kelly, Mrs.

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

and that she thought that justice ought to be done. Dep. Ann Mofingale Int 5. She disapproved of F. J. Kelly's uniting the land from Karsner. Dep. M W Kelly Int 13. And on September 24. 1880 wrote to Mrs B Kelly's wife, complaining of having been pushed down and walked over long enough, stating that she wanted and must have what was her own, and suggesting that nothing had been done right - no common rational judgment nor feeling, much less legality. Dep of M W Kelly. Exhibit. Mrs Kelly's explanation of that letter is incredible. She could not have meant that Mrs Karsner had pushed her down and walked over her. If she did, it would have been strange that she herself should have selected Mrs Karsner among Col Kelly's children to convey the land to; and still stranger, that she should never have intimated her purpose to Mrs Karsner, nor have informed her, orally or by letter, of having conveyed her the land.

**Names:**

Karsner, Mrs.
Kelly, Col.
Kelly, F. J.
Kelly, J. B.
Kelly, M. W.
Kelly, Mrs.
Massingale, Ann

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

We think a fair construction of the letter is, that Mrs Kelly meant that the conveyance of the land to her was illegal, her conveyance of it to Mrs Karsner unwise, and the withholding of the thousand dollars promised her unjust.

When the bill was filed, the character of it was communicated to Mrs Kelly, and a copy of it offered to be sent to her, and a history of the case asked of her. If the allegations of the bill had been untrue, then certainly was the time for her to say so. But she called for the copy, received it, and then had nothing to say against it. 1st Dep of K W Kelly Int 24. Mrs Kelly's 1st deposition was taken on May 7. 1881. and her second deposition on July 23. 1881 — not three months apart. In her second deposition she says that Mrs Karsner left the next morning after her first deposition was taken. (2 Dep K W Kelly x Int 17). While in fact Mrs Karsner left the same day Mrs Kelly's first deposition was taken. (2nd Dep of Mrs Karsner x Int 2). Mrs Kelly is admitted to have been in feeble health.

**Names:**
Karsner, Mrs.
Kelly, K. W.
Kelly, Mrs.

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

And this error of memory in so short a time indicates feebleness of mind.

These contradictory acts and declarations of Mrs Kelly out weigh her words, and deprive the defence of the support of her testimony. The case is left to stand on the testimony of Dr F. E. H. Stegar and K. T. Daniel Esqr who were sent for to prepare and witness the deed. And this testimony is that the conveyance was prepared as directed by the parties: that it was intended to be to Mrs Karsner in trust for her father, whose wish, then expressed was that it should be equally divided at his death, among his three living children; and that the conveyance was agreed on because he would not take the conveyance to himself. Mrs Kelly would not make it to his sons, and he was willing to trust his daughter. Dep. Stegar and Daniel.

3

Mrs Karsner admits that the land was

**Names:**
Daniel, K. T.
Karsner, Mrs.
Stegar, F. E. H., Dr.

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

conveyed to her, in her absence, without contract or consideration; that Mr Kelly never intimated her intention to do so before the execution of her deed, and never communicated with her orally or by letter for two years; that her father remained in possession paying taxes and appropriating rents during his life.

Dr Stegar and K T Daniel Esq prove that the conveyance was procured by her father, not with the intention of making an advancement to his daughter, but, in trust for him during his life, and remainder in fee to her two brothers and herself with equal interests.

And Mrs Mary W Kelly proves that Mrs Karsner beseeched Mr K W Kelly before the execution of the deed, for keeping the title to the land, and, after the execution of the deed, said he old neck ought to be broken for not releasing it sooner. Dep Mary W Kelly ans 1, Int 28.

This deposition of Mr K W Kelly was taken on June 29. 1881. Mrs Karsner's deposition has been taken three times, viz June 2. 1881.

**Names:**

Daniel, K. T.
Karsner, Mrs.
Kelly, K. W.
Kelly, Mary W.
Kelly, Mrs.
Stegar, Dr.

**Places:**

First Dist. E. Div. of Alabama

**Types:**

chancery court

**Dates:**

Nov 10, 1881

July 5. 1881: and October 7. 1881. And in neither of her depositions does she deny this statement of Mrs Mary W Kelly.

4.

If the proof was up satisfactory that Mrs Kelly, like Mrs Blakely in Bridley vs Bynum 23 How US 500. held the land, conveyed to her, in trust for the grantor, it would be immaterial, because the conveyance to her was "for her sole and separate use and as her sole and separate estate without marital restriction limitation or incumbrance. This made it a common law or equitable separate estate which she could bind or convey herself alone. So that her conveyance to Mr Karsner under Col Kelly's direction was valid whether she held the land in trust or as her separate equitable or common law estate.

Cabaniss & Ward for Complt.

N. B. I asked on Genl Walker to brief the facts in this case. he having written all the deeds but one. And I ask that a consideration of the case be postponed, until January that he

**Names:**

| | | |
|---|---|---|
| Cabaniss & Ward | Kelly, Col. | Kelly, Mrs. |
| Karsner, Mrs. | Kelly, Mary W. | Walker, Genl. |

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881

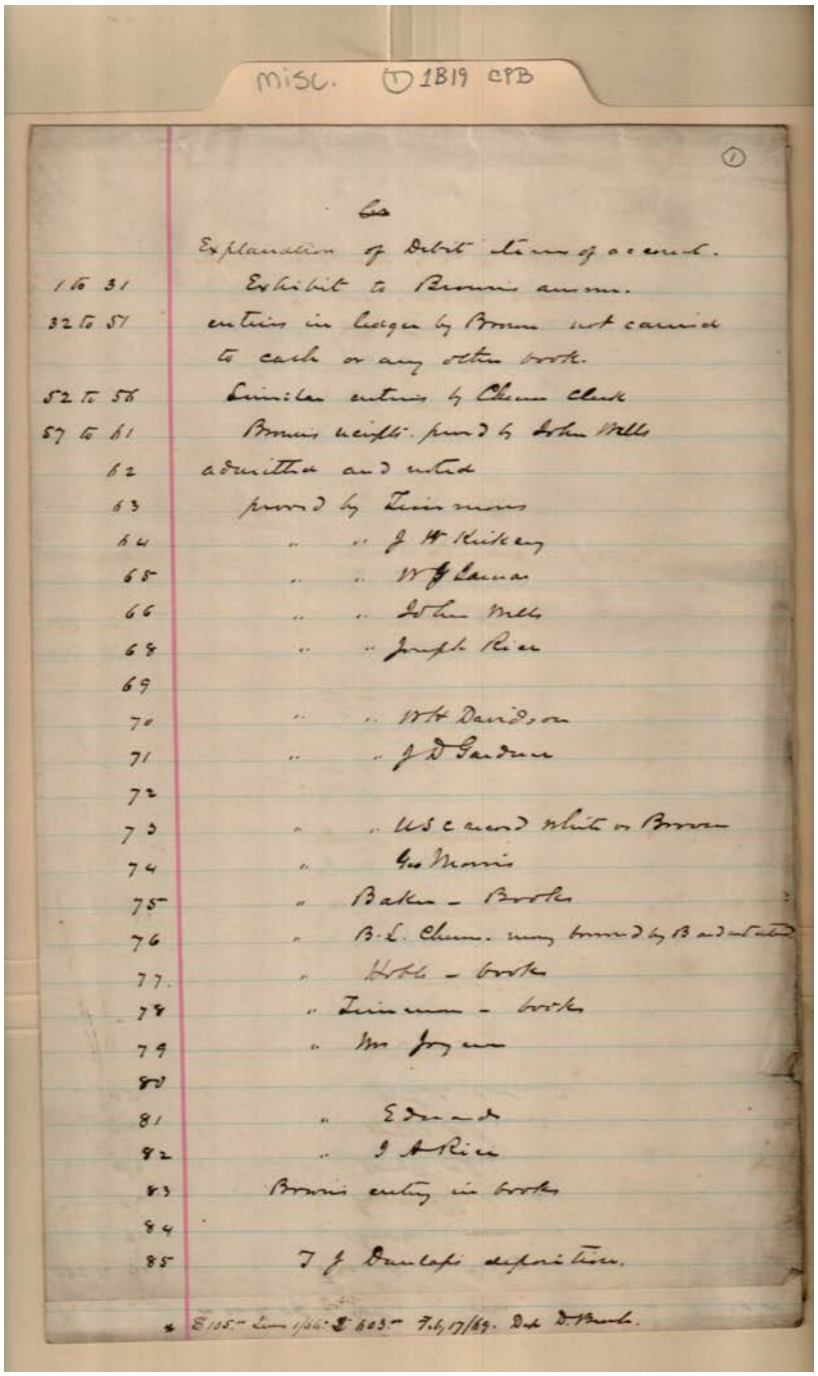
may argue it.
I have had the papers but one week myself, and six of the depositions were not opened until day before yesterday. So that I have been hurried; and Genl Walker has had no opportunity to brief the case.
Nov 10. 1881. F. P. Ward

**Names:**
Walker, Genl.
Ward, F. P.

**Places:**
First Dist. E. Div. of Alabama

**Types:**
chancery court

**Dates:**
Nov 10, 1881



MISC. 1819 CPB

①

Explanation of Debit items of account.

1 to 31 Exhibit to Brown's answer.
32 to 51 entries in ledger by Brown not carried to cash or any other book.
52 to 56 Similar entries by Chas Clark
57 to 61 Brown's receipts proved by John Wells
62 admitted and noted
63 proved by Timmons
64 " " J. H. Kirkey
65 " " W. J. Jamar
66 " " John Wells
68 " " Joseph Rice
69
70 " " W. H. Davidson
71 " " J. D. Gardner
72
73 " " W. S. Cameron White & Brown
74 " Geo Morris
75 " Baker - Books
76 " B. L. Chas. many proved by B and admitted
77 " Hobbs - books
78 " Timmons - books
79 " Mr Joyce
80
81 " Edwards
82 " J. A. Rice
83 Brown's entry in books
84
85 T. J. Dunlap's deposition.

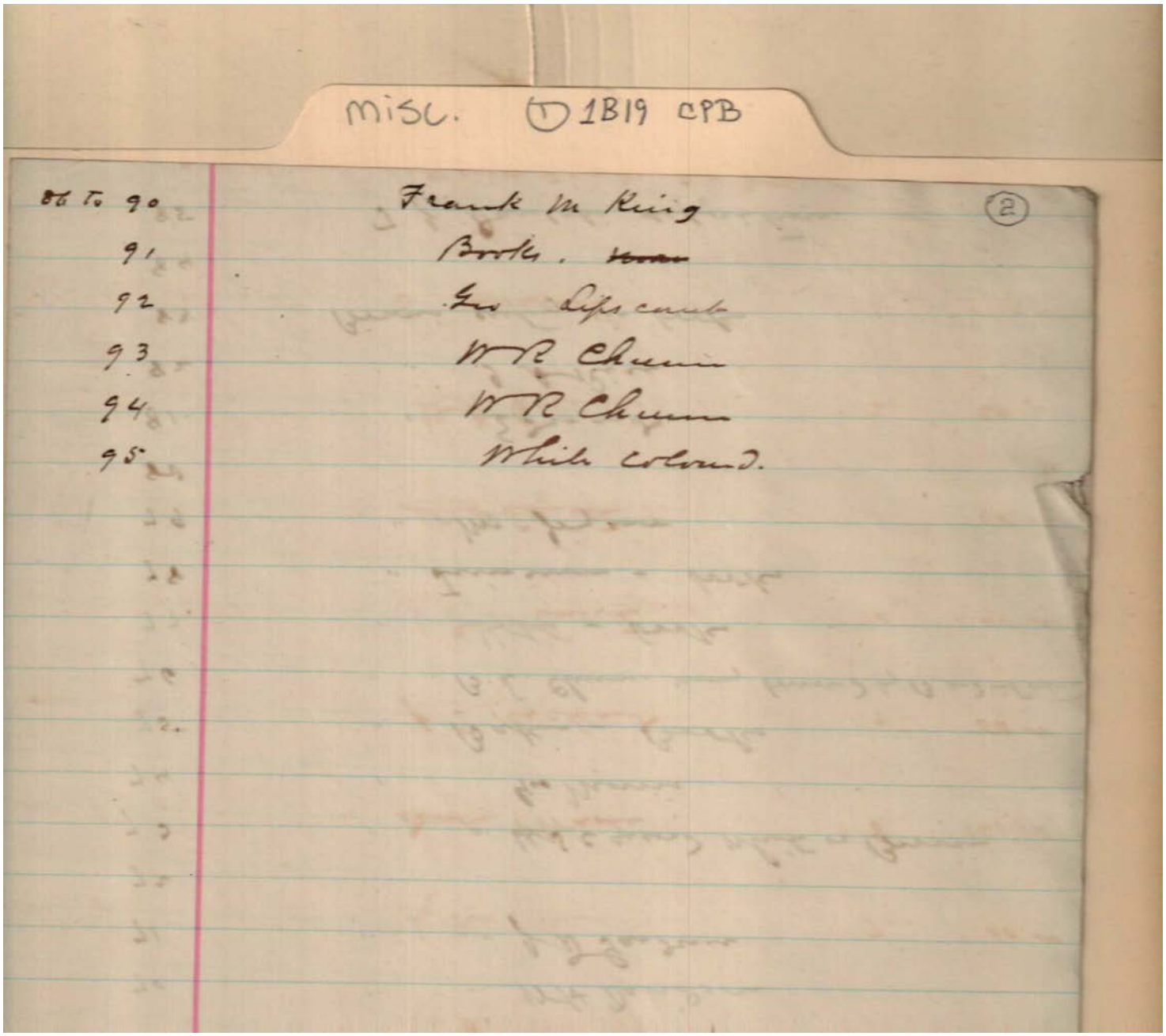
* $155 Cam 1/26: $603 7.6/17/69. Dec D. Marks.

**Names:**

| | | | |
|---|---|---|---|
| Brown, | Edwards, | Jamar, W. J. | Rice, Joseph |
| Davidson, W. H. | Gardner, J. D. | Morris, George | Timmons, |
| Dunlap, T. J. | Hobbs, | Rice, J. A. | Wells, John |

**Types:**

| | |
|---|---|
| account | receipt |



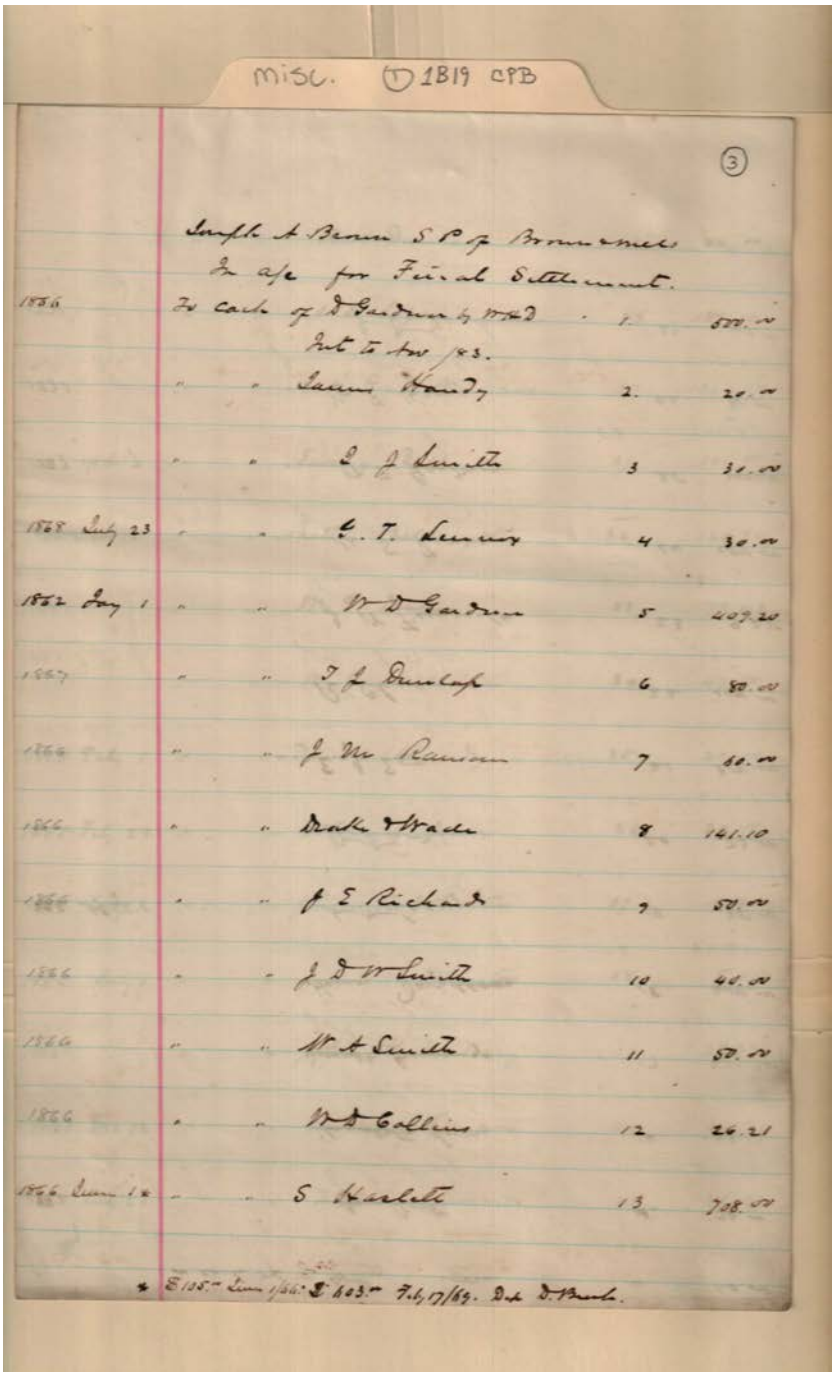
MISC. (1) 1B19 CPB

(2)

86 to 90 Frank M King
91 Books.
92 Geo Lipscomb
93 W R Chunn
94 W R Chunn
95 White colored.

**Names:**
Chunn, W. R. King, Frank M. Lipscomb, George

**Types:**
receipt



Misc. (1) 1B19 CPB

(3)

Joseph A. Brown S P of Brownsville
In a/c for Final Settlement.

| | | | | |
|---|---|---|---|---|
| 1866 | To Cash of D. Gardner by Wm D. Debt to two yrs. | | 1. | 500.00 |
| | " " James Handy | | 2. | 20.00 |
| | " " Q. J. Smith | | 3 | 30.00 |
| 1868 July 23 | " " G. T. Lennox | | 4 | 30.00 |
| 1862 Jany 1 | " " W. D. Gardner | | 5 | 409.20 |
| 1867 | " " T. J. Dunlap | | 6 | 80.00 |
| 1866 | " " J. M. Ransom | | 7 | 40.00 |
| 1866 | " " Drake & Wade | | 8 | 141.10 |
| 1866 | " " J. E. Richards | | 9 | 50.00 |
| 1866 | " " J. D. W. Smith | | 10 | 40.00 |
| 1866 | " " W. A. Smith | | 11 | 50.00 |
| 1866 | " " W. D. Collins | | 12 | 26.21 |
| 1866 June 1st | " " S. Haslett | | 13 | 708.00 |

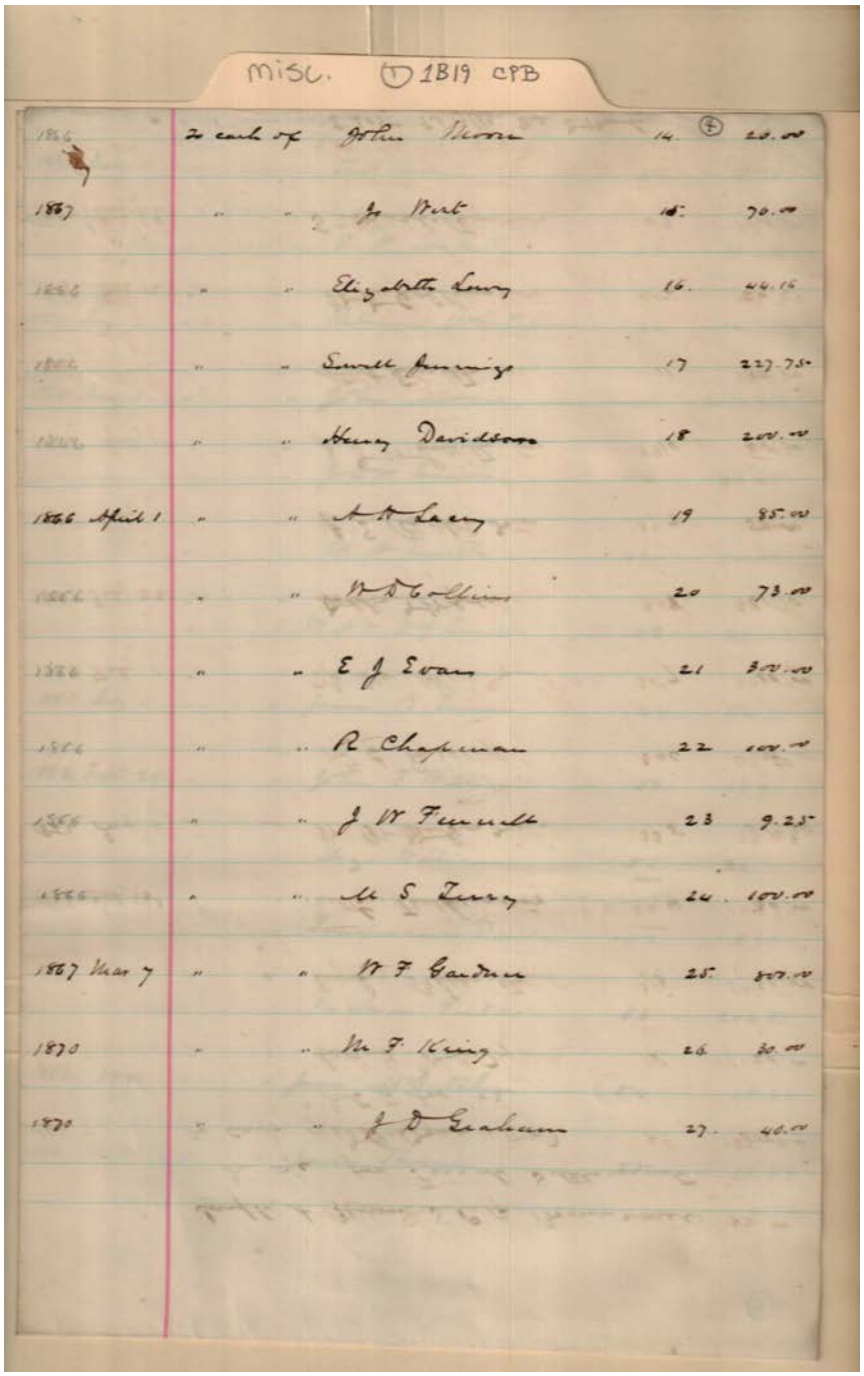
* $105.00 Com 1/66: $603.00 7.6.17/69. Dr. D. Brown.

**Names:**

| | | | |
|---|---|---|---|
| Brown, Joseph A. | Gardner, D. | Lennox, G. T. | Smith, Q. J. |
| Collins, W. D. | Gardner, W. D. | Ransom, J. M. | Smith, W. A. |
| Drake & Wade | Handy, James | Richards, J. E. | |
| Dunlap, T. J. | Haslett, S. | Smith, J. D. W. | |

**Types:**
account

**Dates:**
1862 1866 1867 1868



MISC. (1) 1B19 CPB

| | | | | |
|---|---|---|---|---|
| 1866 | To cash of | John Moore | 14 | 20.00 |
| 1867 | " " | Jo West | 15 | 70.00 |
| 1866 | " " | Elizabeth Lowry | 16 | 44.15 |
| 1866 | " " | Sewell Jennings | 17 | 227.75 |
| 1866 | " " | Henry Davidson | 18 | 200.00 |
| 1866 April 1 | " " | A H Lacey | 19 | 85.00 |
| 1866 | " " | W D Collins | 20 | 73.00 |
| 1866 | " " | E J Evans | 21 | 300.00 |
| 1866 | " " | R Chapman | 22 | 100.00 |
| 1866 | " " | J W Fennell | 23 | 9.25 |
| 1866 | " " | M S Terry | 24 | 100.00 |
| 1867 May 7 | " " | W F Gardner | 25 | 300.00 |
| 1870 | " " | M F King | 26 | 30.00 |
| 1870 | " " | J D Graham | 27 | 40.00 |

**Names:**

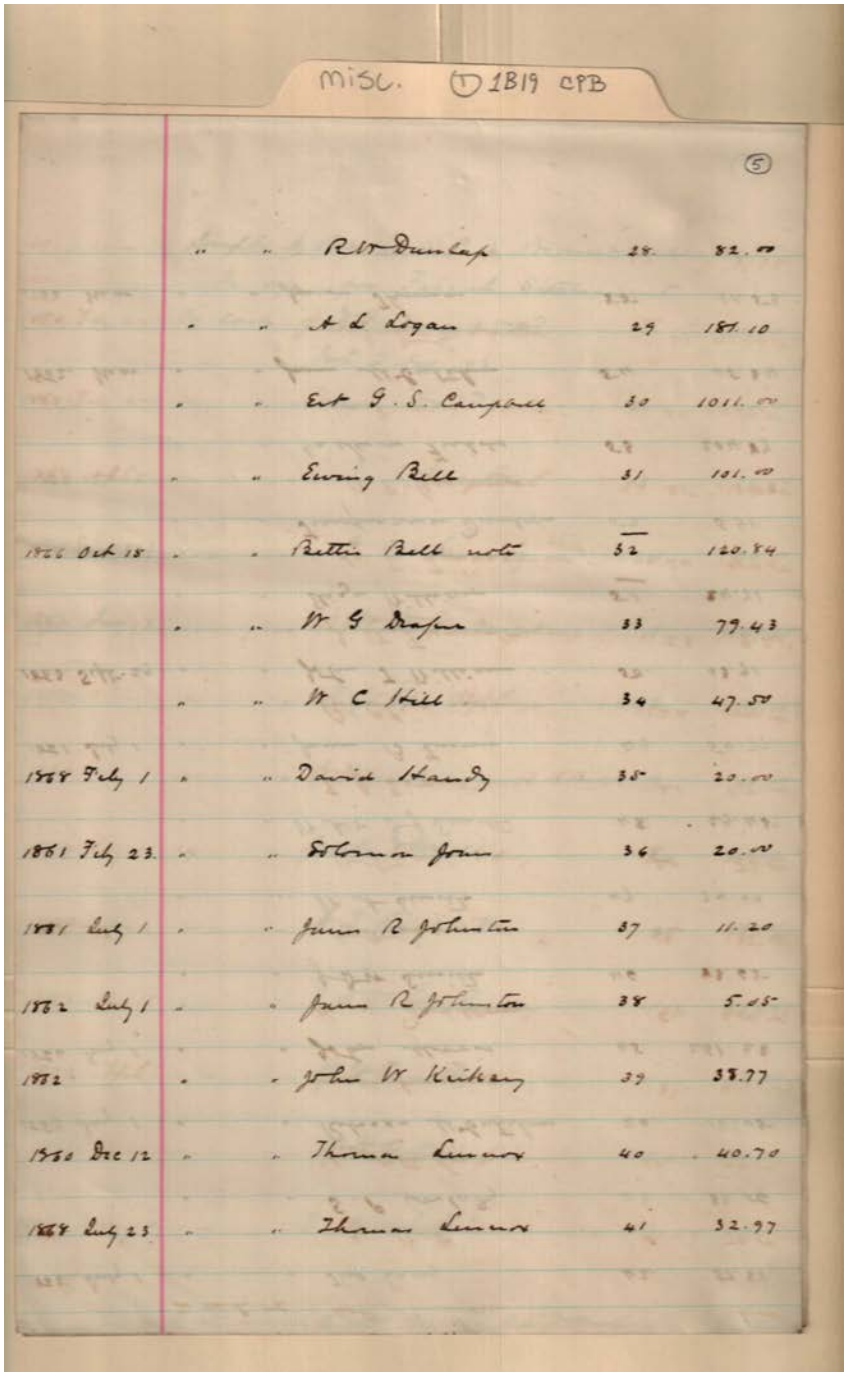
Brown, John
Chapman, R.
Collins, W. D.
Davidson, Henry
Evans, E. J.
Fennell, J. W.
Gardner, W. F.
Graham, J. D.
Jennings, Sewell
King, M. F.
Lacey, A. H.
Lowry, Elizabeth
Terry, M. S.
West, Jo

**Types:**

account

**Dates:**

1866
1867
1870



MISC. (1) 1B19 CPB

(5)

| | | | | |
|---|---|---|---|---|
| | " " | R W Dunlap | 28 | 82.00 |
| | " " | A L Logan | 29 | 181.10 |
| | " " | Est G. S. Campbell | 30 | 1011.00 |
| | " " | Ewing Bell | 31 | 101.00 |
| 1866 Oct 18 | " " | Bettie Bell note | 32 | 120.84 |
| | " " | W G Draper | 33 | 79.43 |
| | " " | W C Hill | 34 | 47.50 |
| 1868 July 1 | " " | David Handy | 35 | 20.00 |
| 1861 July 23 | " " | Solomon Jones | 36 | 20.00 |
| 1861 July 1 | " " | James R Johnston | 37 | 11.20 |
| 1862 July 1 | " " | James R Johnston | 38 | 5.05 |
| 1862 | " " | John W Kirksey | 39 | 33.77 |
| 1860 Dec 12 | " " | Thomas Lennox | 40 | 40.70 |
| 1868 July 23 | " " | Thomas Lennox | 41 | 32.97 |

**Names:**

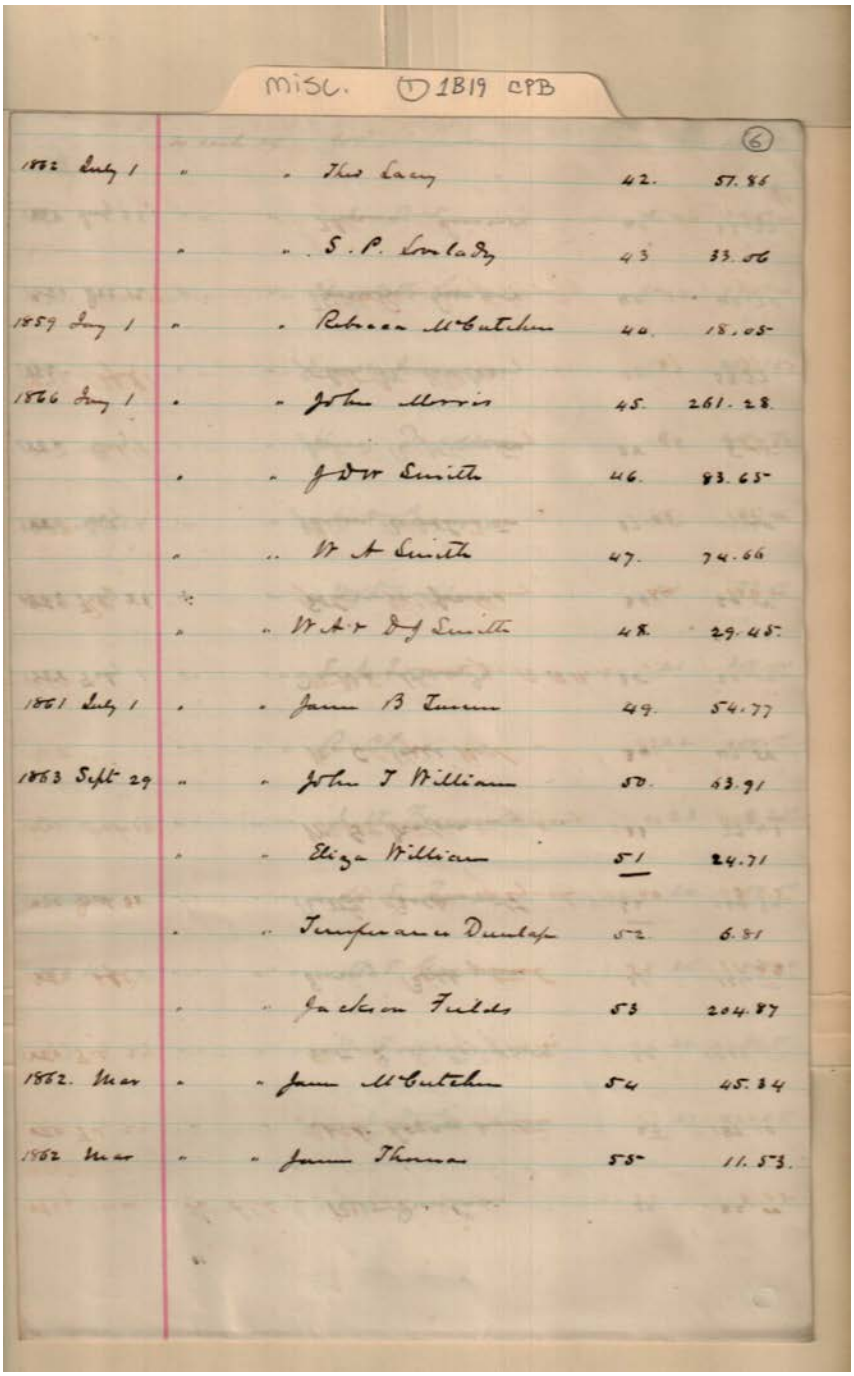
Bell, Bettie
Bell, Ewing
Campbell, G. S., estate
Draper, W. G.
Dunlap, R. W.
Handy, David
Hill, W. C.
Johnston, James R.
Jones, Solomon
Kirksey, John W.
Lennox, Thomas
Logan, A. L.

**Types:**

account

**Dates:**

1860
1861
1862
1866
1868



| | | | | |
|---|---|---|---|---|
| 1862 July 1 | " | " Theo Lacey | 42. | 57.86 |
| | " | " S. P. Lovelady | 43 | 33.56 |
| 1859 July 1 | " | " Rebecca McCutchen | 44. | 18.05 |
| 1866 July 1 | " | " John Morris | 45. | 261.28 |
| | " | " J D W Smith | 46. | 83.65 |
| | " | " W A Smith | 47. | 74.66 |
| | " | " W A & D J Smith | 48. | 29.45 |
| 1861 July 1 | " | " James B Turner | 49. | 54.77 |
| 1863 Sept 29 | " | " John T Williams | 50. | 63.91 |
| | " | " Eliza Williams | 51 | 24.71 |
| | " | " Temperance Dunlap | 52. | 6.81 |
| | " | " Jackson Fields | 53 | 204.87 |
| 1862. Mar | " | " James McCutchen | 54 | 45.34 |
| 1862 Mar | " | " James Thomas | 55 | 11.53. |

**Names:**

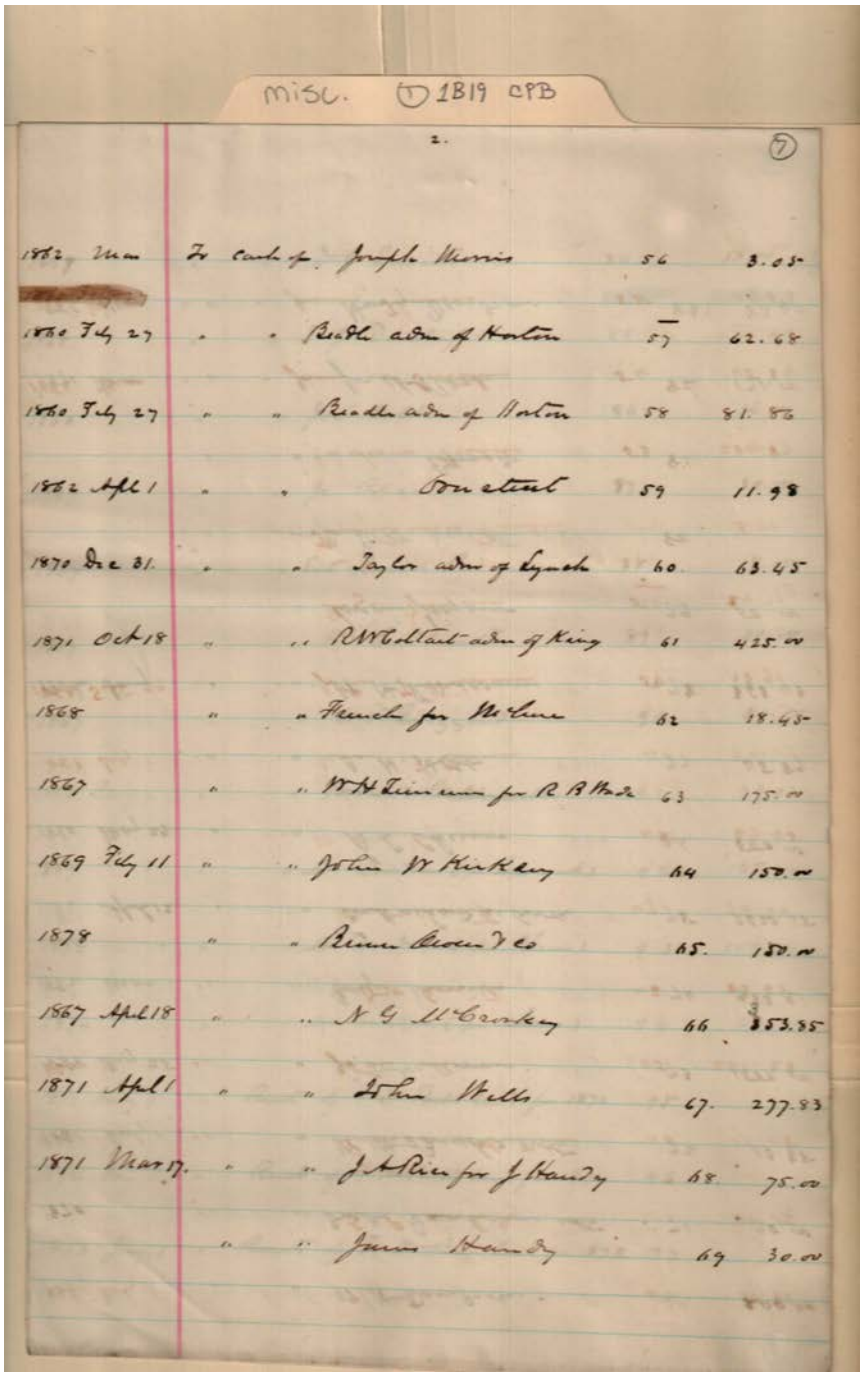
| | | | |
|---|---|---|---|
| Dunlap, Temperance | McCutchen, James | Smith, J. D. W. | Williams, Eliza |
| Fields, Jackson | McCutchen, Rebecca | Smith, W. A. | Williams, John |
| Lacey, Theo | Morris, John | Thomas, James | |
| Lovelady, S. P. | Smith, D. J. | Turner, James B. | |

**Types:**

account

**Dates:**

| | | |
|---|---|---|
| 1859 | 1862 | 1866 |
| 1861 | 1863 | |



MISC. (1) 1B19 CPB

2. (7)

| | | | | |
|---|---|---|---|---|
| 1862 Mar | To cash of | Joseph Morris | 56 | 3.05 |
| 1860 July 27 | " | " Beadle admr of Horton | 57 | 62.68 |
| 1860 July 27 | " | " Beadle admr of Horton | 58 | 81.86 |
| 1862 Apl 1 | " | " Bonestreet | 59 | 11.98 |
| 1870 Dec 31. | " | " Taylor admr of Lynch | 60 | 63.45 |
| 1871 Oct 18 | " | " R W Coltaet admr of King | 61 | 425.00 |
| 1868 | " | " French for McLure | 62 | 18.45 |
| 1867 | " | " W H Timmons for R B Wade | 63 | 175.00 |
| 1869 July 11 | " | " John W Kirkley | 64 | 150.00 |
| 1878 | " | " Rice Cloen & Co | 65. | 150.00 |
| 1867 April 18 | " | " N G McCroskey | 66 | 353.85 |
| 1871 Apl 1 | " | " John Wells | 67. | 277.83 |
| 1871 Mar 17. | " | " J A Rice for J Handy | 68. | 75.00 |
| | " | " James Handy | 69 | 30.00 |

**Names:**

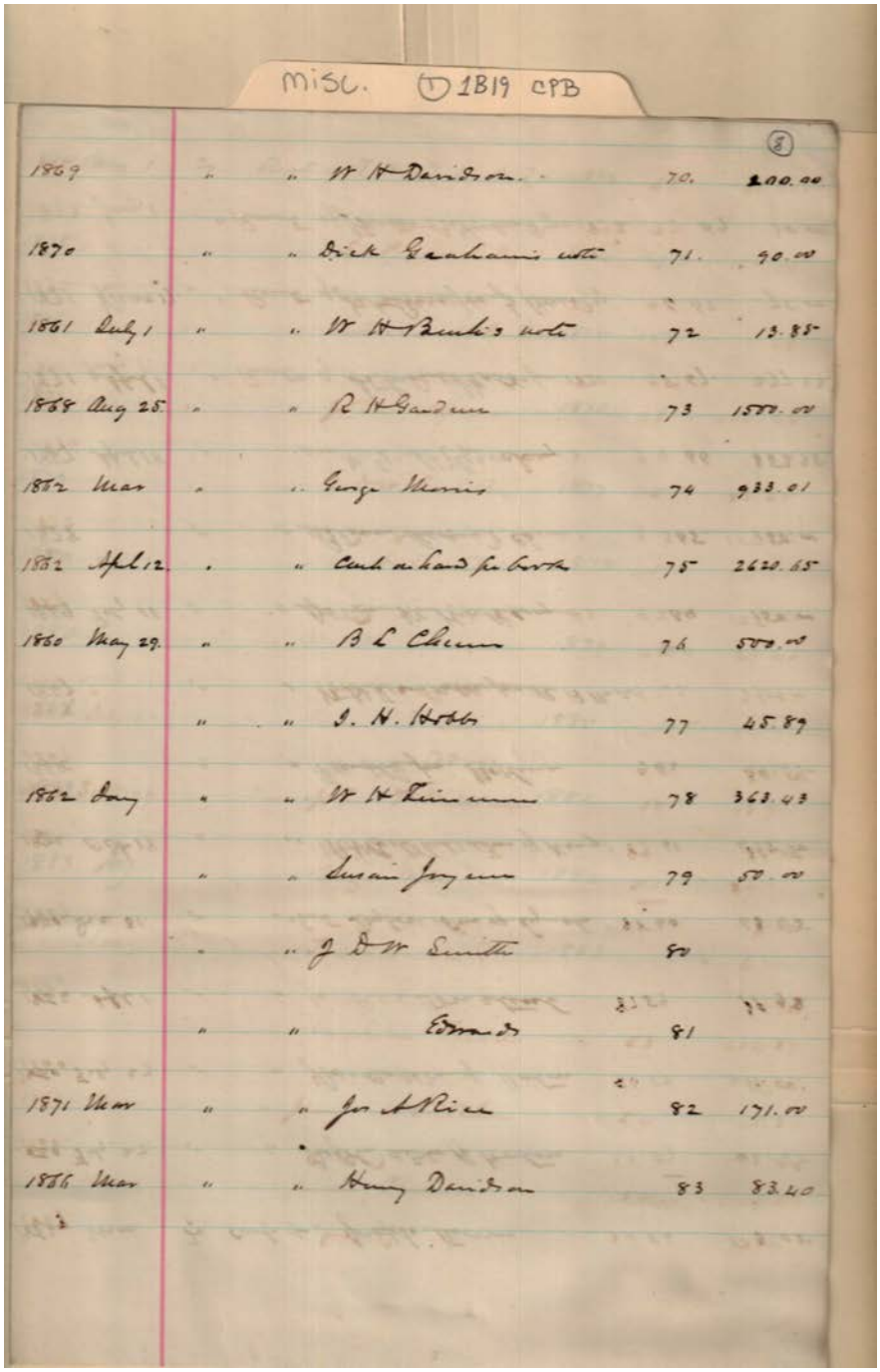
Beadle, admin. of Horton
Coltaet, R. W., admin. of King
French,
Kirksey, John W.
McCroskey, N. G.
Morris, Joseph
Rice, J. A. for J. Handy
Taylor, admin. of Lynch
Timmons, W. H. for R. B. Wade
Wells, John

**Types:**

account

**Dates:**

1860
1862
1867
1868
1869
1870
1871



MISC. (1) 1B19 CPB

(8)

| | | | | | |
|---|---|---|---|---|---|
| 1869 | " | " | W H Davidson | 70. | 200.00 |
| 1870 | " | " | Dick Graham's note | 71. | 90.00 |
| 1861 July 1 | " | " | W H Burk's note | 72 | 13.85 |
| 1868 Aug 25. | " | " | R H Gardner | 73 | 1500.00 |
| 1862 Mar | " | " | George Morris | 74 | 933.01 |
| 1862 Apl 12. | " | " | Cash on hand for Corth | 75 | 2620.65 |
| 1860 May 29. | " | " | B L Chunn | 76 | 500.00 |
| | " | " | J. H. Hobbs | 77 | 45.89 |
| 1862 Jany | " | " | W H Timmons | 78 | 363.43 |
| | " | " | Susan Joyner | 79 | 50.00 |
| | " | " | J D W Smith | 80 | |
| | " | " | Edwards | 81 | |
| 1871 Mar | " | " | Jos A Rice | 82 | 171.00 |
| 1866 Mar | " | " | Henry Davidson | 83 | 83.40 |

**Names:**

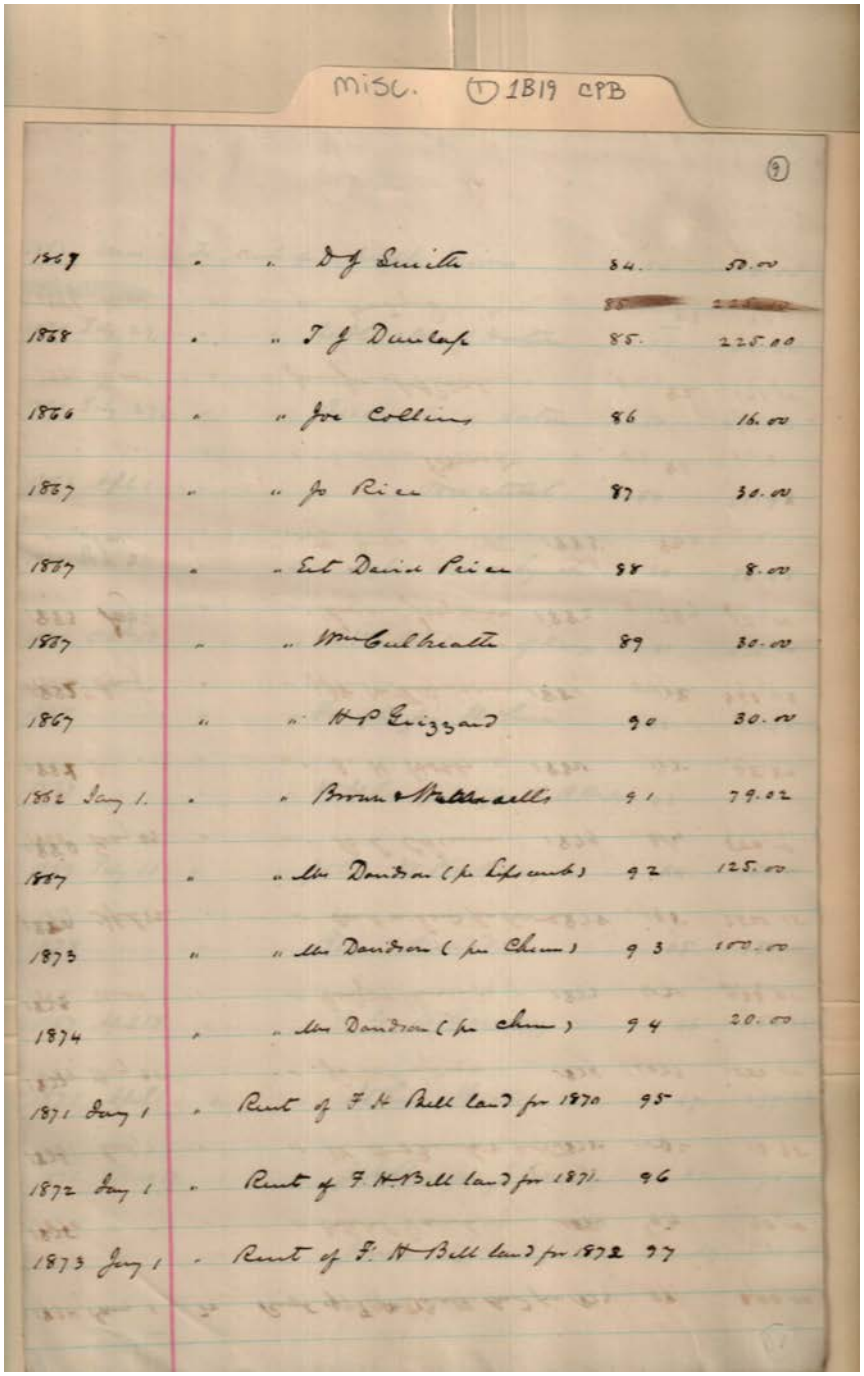
| | | | |
|---|---|---|---|
| Burk, W. H. | Edwards, | Joyner, Susan | Timmons, W. H. |
| Chunn, B. L. | Gardner, R. H. | Morris, George | |
| Davidson, Henry | Graham, Dick | Rice, Joseph A. | |
| Davidson, W. H. | Hobbs, J. H. | Smith, J. D. W. | |

**Types:**

account

**Dates:**

| | | | |
|---|---|---|---|
| 1860 | 1862 | 1868 | 1870 |
| 1861 | 1866 | 1869 | 1871 |



MISC. (1) 1B19 CPB

(9)

| | | | | |
|---|---|---|---|---|
| 1867 | " | " D J Smith | 84. | 50.00 |
| 1868 | " | " T J Dunlap | 85. | 225.00 |
| 1866 | " | " Joe Collins | 86 | 16.00 |
| 1867 | " | " Jo Rice | 87 | 30.00 |
| 1867 | " | " Est David Price | 88 | 8.00 |
| 1867 | " | " Wm Culbreath | 89 | 30.00 |
| 1867 | " | " H P Grizzard | 90 | 30.00 |
| 1862 Jany 1. | " | " Brown & Walthall | 91 | 79.02 |
| 1867 | " | " Mrs Davidson (for Life ins) | 92 | 125.00 |
| 1873 | " | " Mrs Davidson (for Chem) | 93 | 100.00 |
| 1874 | " | " Mrs Davidson (for Chem) | 94 | 20.00 |
| 1871 Jany 1 | " | Rent of F. H. Bell land for 1870 | 95 | |
| 1872 Jany 1 | " | Rent of F. H. Bell land for 1871 | 96 | |
| 1873 Jany 1 | " | Rent of F. H. Bell land for 1872 | 97 | |

**Names:**

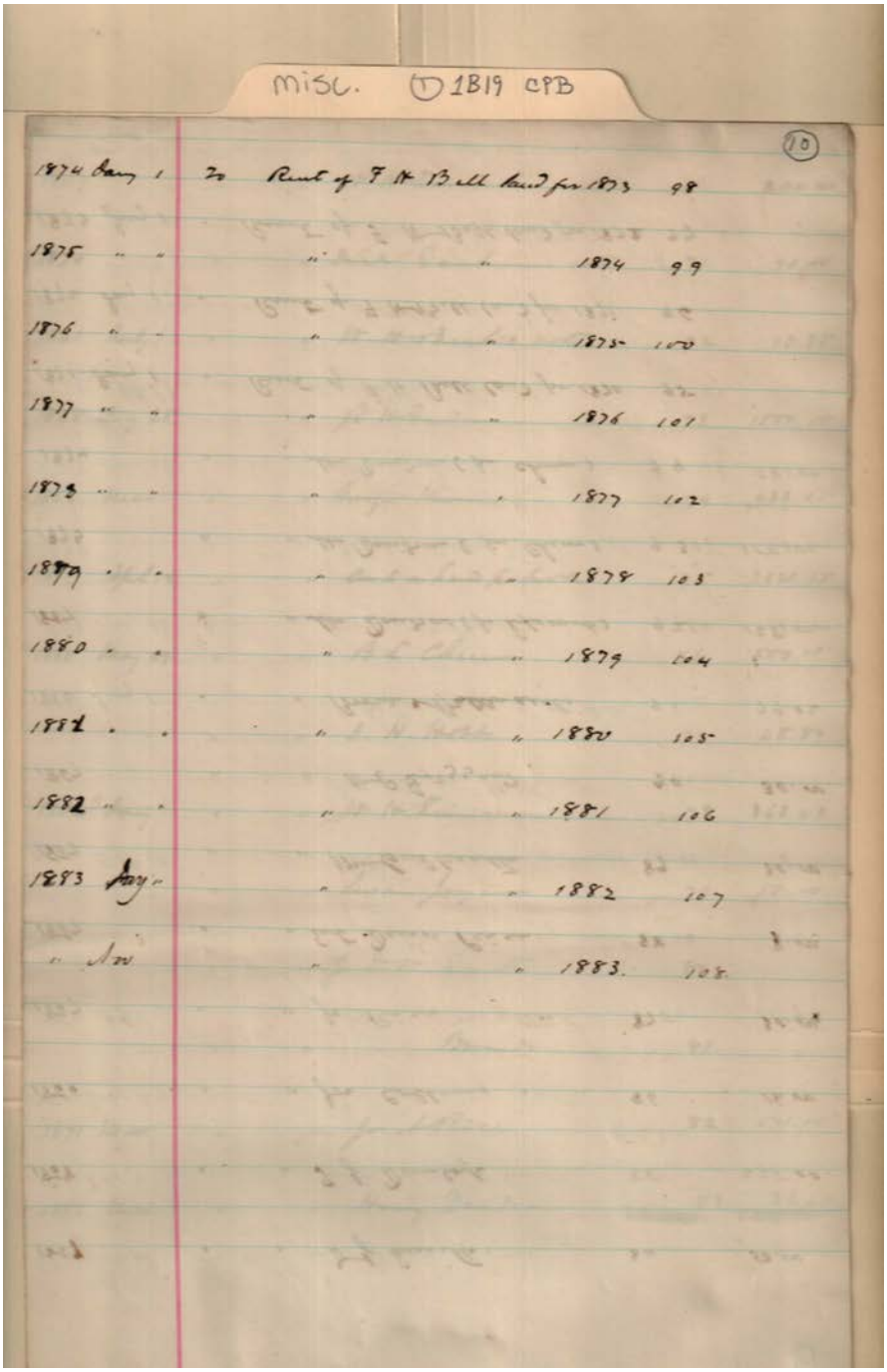
| | | |
|---|---|---|
| Bell, F. H. | Davidson, | Price, David |
| Collins, Joe | Dunlop, T. J. | Rice, Jo |
| Culbreath, William | Grizzard, H. P. | Smith, D. J. |

**Types:**

account

**Dates:**

| | | |
|---|---|---|
| 1866 | 1867-1874 | 1968 |
| 1867 | 1871-1873 | |



MISC. (1) 1B19 CPB

(10)

| | | | | |
|---|---|---|---|---|
| 1874 Jany 1 | To | Rent of F. H. Bell land for 1873 | | 98 |
| 1875 " " | | " " | 1874 | 99 |
| 1876 " " | | " " | 1875 | 100 |
| 1877 " " | | " " | 1876 | 101 |
| 1878 " " | | " " | 1877 | 102 |
| 1879 " " | | " " | 1878 | 103 |
| 1880 " " | | " " | 1879 | 104 |
| 1881 " " | | " " | 1880 | 105 |
| 1882 " " | | " " | 1881 | 106 |
| 1883 Jany | | " " | 1882 | 107 |
| " Jan | | " " | 1883. | 108 |

**Names:**
Bell, F. H.

**Types:**
account

**Dates:**
1875-1883

equity or jurisdiction, and no multiplicity in a suit by a stockholder for a receiver to collect debts, take possession of assets fraudulently withheld by various persons and apply them to the payment of the debts of the company

The two last cases were merely joint stock companies, not incorporated, but organized under an act of parliament with a board of trustees. And in chancery practice are treated as corporations.
1 Daniel 30. Bacon v Robertson 18 How 485.

In Taylor v Salmon 4 Milne & Craig 134. 139
The distinct character in the same party of Share holder and admnr claimant are recognized.

3 Ground of Demurrer. not making the corporation a party.
1 This was done by amendment.
2. The bill alledges that the stockholders in 1868 agreed that it was without a valid board of directors, and without the means of organizing one, and placed the management of its affairs in the hands of J C Bradley as agent and nominal president.

**Names:**
Bradley, J. C.

**Types:**
judgement

MISC. (1) 1B19 CPB

This was a voluntary dissolution: and turned the company into a partnership

Green's Brice's Ultra Vires 65b.
Ellis v Bloom 19 Johns 456.
Pennimman v Briggs 1 Hoff 300
2 Kent Com 311. 312
Methodist Church South 16 How 288.
71 Ala 7*

4 Ground of Demurrer. Multifariousness. The bill prays for a receiver to do what unfaithful trustees should have done. It is necessary then to make all persons parties who withhold the assets. Else they could not be applied to payment of debts.

Venable was the only debtor against whom a decree was prayed. unconnected with the fraud. And it has abated as to him.

A demurrer for multifariousness was overruled in three of the preceding cases:

Cunningham v Pell 5 Paige 607.
Taylor v Miami Exply Co 5 Ohio 162.
Wallworth v Holt 4 Myl & Craig 619.

And in the two others is:

Bank of St Mary's v St John Powell Sol 25 Ala 566.
Jackson v Ludelling 21 Mall 616. no objection for Multifariousness was made.

* Chapman vs Hall adm Ala

**Names:**
Brewer, Moore,

**Types:**
judgement

Res Adjudicata or Estoppel

It is a sufficient answer to the defendants plea of Res adjudicata or Estoppel, on account of Brewer & Moore's agreement to share their recovery against Walker and Chapman with the estates of G W Neal and Thomas Fearn, that complainant was not licensed to practice law as administrator of Thomas Fearn. Complainants agreement that compensation for his legal services should be made to his intestate's estate could not deprive the estate of rights it already had.

"A solicitor having brought suit under an agreement with the client that he should have a proportion of the avails for his services is no answer to the action: nor does it make him a proper party."
Hall vs Lind 7 Hill 566.

There are five other grounds against the plea. viz:

Complainants stipulation with Brewer & Moore did not influence the defendants to buy the title they rely on.
"No declarations or acts give rise to an

**Names:**
Chapman, Fearn, Thomas Neal, G. W. Walker,

**Types:**
judgement

" estopped, unless they have been relied on and
" acted on, and unless this denial would
" prejudice the person in whose favor the
" estoppel is claimed"
Herman On Estoppel 341 § 330.

" Receipting for goods as the property of the
" defendant in an attachment does
" not estop the party from proving property
" in himself afterwards unless the failure
" to levy on other property of the defendant
" was caused by the party's act."
Dewey v Fields 4 Met 384.

" A man who bids for his own goods
" wrongfully sold is estopped from dis-
" puting the title of the purchaser; but not
" from suing the officer who made the sale."
Hearn v Rogers 9 Barn & C 517.
Herman On Estoppel 342 § 330.
Wharton on Evidence
10 Adolphus & Ellis 472.

" In estoppels in pais it is an indispen-
" sible and essential requisite that the
" representations or acts should have influ-
" enced the conduct of the person setting
" them up or alleging them."
Pounds v Richards 21 Ala 424.

**Types:**
judgement

6.

"Admissions or declarations will not operate
" an estoppel against the party making
" them, unless he derives some advantage
" or gains some object thereby, or the
" opposite party is induced to act upon
" or sustains some injury in consequence
" of trusting to its truth."

Hemby vs Hemby 15 Ala 91.

To constitute an estoppel in pais there
must be:

1. An admission inconsistent with the
claim set up or evidence offered.
2. An act done on the faith of it.
3. An injury by allowing the admission
to be disproved.

Dobyd vs Odell 3 Hill 219.

2.

The stipulation with Brewer & Moore
was made after the acquisition
of the title relied on by the defendants.
"There can be no estoppel where the act
" or representation is made or done after wards"

Herman On Estoppel 347 § 335.

"A judgment in a former suit for freedom
" in favor of the petitioner's mother, does not

**Names:**
Brewer, Moore,

**Types:**
judgement

operate an estoppel on one claiming under
the defendant therein"
Bloodgood vs Geasy 31 Ala 575.

3

"Mutuality is a necessary ingredient of
estoppel. There can be no estoppel upon
one party unless the other is equally estopped."
Herman On Estoppel 257 § 229. 33 Miss 143.

"Estoppels must bind both parties or they
bind neither: and where the defendant
takes nothing by the husband's deed, he
is not estopped from showing the truth
in answer to the claim of dower"
Edmundson vs Montague 14 Ala 370.

"Mutuality is an essential ingredient
in all estoppels: and as a stranger cannot
be bound by a covenant nor hindered by
an estoppel, the law will not let him
claim the benefit of an estoppel against
another."
Bently vs Cleveland 22 Ala 814.

4

A good title is not forfeited by pur-
chasing a bad one.
"Acceptance of a bill of sale by an

**Types:**
judgement

MISC. (1) 1B19 CPB

" administrator will not preclude him from
" deducing title through his intestate."
Pond vs Wadsworth 24 Ala 581

"Grantee in fee holds adversely to
" all the world, and has the same
" right to deny the title of this rendors
" as the title of any other party."
Murryman vs Bourne 9 Wall 592.

5

Void contracts do not create estoppels.
"Estoppel can not arise from a promise
" made on Sunday."
Hafley vs Rogerman 27 Ala 281.

"An agreement made by counsel to have
" a portion of the thing or damage recovered,
" as compensation for his services, is champ-
" ertous and void."
Holloway vs Lowe 7 Porter 448.
"Such an agreement will not preclude
the attorney from recovering a reasonable
compensation for his services."
Same case 1 Ala 246.

**Types:**
judgement

1

The equity of the bill for an account of the Hotel furniture can not be maintained for three reasons. viz:

1 It was personal property and not on view at the sale. The sale was on the street at the front door of the Hotel. And the furniture in distribution and use through the Hotel.

"In selling personal property the property to be sold must be present, so that it may be seen handled and estimated and ready for delivery else it is void."

Rose on Judicial sales 335 § 1033

Brown v. Dispcomb 8 Porter 476.

2. When the state laws in relation to writs of execution and the proceedings thereon were adopted by act of Congress of May 19. 1828 (Brightly's Digest 269 § 6) the sale of personal property was by the law of Alabama (Clay's Digest 216 § 75) required to be at the Court house, if the property could conveniently be moved there.

The attention of the Marshall and the President of the company was called to this provision of law: and it was insisted that the sale should

be made in compliance with it. But it was made otherwise and without any pretense of inconvenience in taking the furniture to the court house.

3 The furniture was in the possession of the lessee who announced at the sale that the term of his lease had not expired and that the purchaser's taking possession would be resisted.

"A vested remainder in slaves can
" not either at common law or under
" the statutes of the state be attached or
" seized under execution during the
" continuance of the life estate, while the
" slaves are in possession of the tenant
" for life."

Gooden & Welch vs Longmire 35 Ala 668.

The opinion in this case shows that the same rule applies to all goods and chattels of a tangible nature, as well as slaves, and to remainders after a term of years as well as for life.

Venable the lessee had possession of the furniture and the right to retain it until Jany 1. 1872. And he resisted and announced his purpose to maintain his right to such possession.

**Names:**
Venable,

**Types:**
judgement

2.

Chapman's purchase of the Brewer & Moore debt ~~unsecured~~ and of the real estate of the Hotel Company, was constructively fraudulent as against the stock holders and inured to their benefit, independently of and apart from his being a director. and of intentional fraud.

See Brickell's answer to 7 interrogatory 44.
Bank of US v Deveaux et als 5 Cranch 61.
Bacon v Robertson et als 18 How 485.
Jackson v Ludeling 21 Wall 616
Walker's answer.
Answer of Chapman Children.
"Stockholders of a corporation are as
" between themselves partners"
Angell & Ames on Corp. 6 Ed § 591 note 2.

In 1868 the stock holders disorganized the corporation and made it a partnership.
Deposition of Bradley
" F P Ward
" W W Eliot
Answer of Chapman to 36 Int in B & M Suit.
"A corporation may be disorganized by surrender
" of its corporate rights. And if a corporation
" suffers acts to be done which destroys its
" object and end, it is equivalent to a
" surrender of its rights"
Slee v Bloom 19 Johns 456.

**Names:**

Bradley, Chapman, Walker,
Brewer, Moore, Ward, F. P.

**Types:**

judgement

"If a corporation has no legal existence
" because it has no legal organization
" it is to be treated as a partnership."
Hill vs Beach 12 N J E (1 Bert) 31.
3 U S 1 Series 615. § 34. 26/630: 29/
Smith vs Swormstedt 16 How 480 487
71 Ala 581

An individual partner can not purchase debts or property of the partnership for his own benefit.

**Types:**
judgement

8.

3.

The intentional sacrifice brought about by Chapman. made his purchase fraudulent and void.

Ryers v Seaight 19 How 303
Ripley's Assignee v Pease 3 C & J 40
page 657. Oct 14. 1876.
Bonley's adm v Mouble assignee 56 Ala 32
Nelson v Rockwell 7 C & J 281. Oct 11. 1878.

4

Chapman's directorship vitiated his purchase.

The record proves his election.
His failure to repudiate it at the meeting when the organization was abandoned because of want of stockholders in this over right to trade a band. corroborates it; and outweighs his denial of knowledge of his election.

5

The charge of fraudulent conspiracy is proved.

U S v Cole 5 McLean 513.
Kelly v People 55 N.Y. 14 A R 342. 350.
Commonwealth v Manning & Child 10 Paige 497.
4 Mend 259: 7 Hill 104: 3 Greenleaf 93.
30 Ala 503. 510

**Names:**
Chapman,

**Types:**
judgement

(1)

Hotel Suit.

The complainant is entitled to relief against the conveyance of the real estate. because of intentional fraud.

The undisputed facts show that prior to Geo. W. Neal's death, there was a formed design to acquire the property for the joint benefit of Chapman Neal and Bradley's wife: and that the modification of this purpose, after Neal's death, did not exclude Mr. Bradley's interest.

The defendants, by making false explanations of unfavorable circumstances, discredit themselves and add to the original weight of the admitted facts.

See complainants brief on this point.

But while there is no reasonable doubt of the actual fraud alledged, it is unnecessary for the court so to decree because complainant is entitled to the same relief, for constructive fraud on each of three separate grounds, viz.

1

In 1858 three tenths in amount of the

**Names:**
Bradley, Chapman, Neal, George W.

**Types:**
judgement

(2)

stockholders, at Bradley's office, dissolved the corporation and placed its property under the agency of Bradley for their own benefit.

That they had a right to do this see Shea v Blount 19 Johnston

Penniman v Briggs 1 Hopkins

Gray

And that the effect was, as between themselves to make it a partnership is sustained by two cases directly in point.

16 Howard

12 Sandford

2

Chapman's purchase to purchase was aided by Bradley in violation of his duty to the stockholders and this gave them the right to set aside the sale.

It was not necessary for Chapman to know of Bradley's acts to make them binding on him. He could not take the benefit of Bradley's act in his favor without ratifying his agency.

14 Vesey

3 Cowen

Dev. E.

Pennitt case Woods

It was not necessary that Bradley should

**Names:**
Bradley, Chapman,

**Types:**
judgement

(3)

have the promise of a reward. Reasonable grounds for hope of it was sufficient.

Reliance on a voluntary grantee's gratitude is a fraudulent motive. And parting with value without compensation is notice to the grantee of the grantor's reliance on his gratitude. Irwin's Case Cole.

Chapman did satisfy Bradley's agency by offering to pay Bradley's right what he had persuaded Bradley to pay for accomplishing the object in another way.

3.

Independent of Chapman's connection with the company or with Neal and Bradley and of Bradley's agency for him.

His acquisition of the property in pursuance of a premeditated purpose and formed design to get it at a bargain, would have been an abuse of the process of the court and therefore constructively fraudulent.

The law enjoins on every man to "So use his own as not to injure another:" and in the use of its legal process it absolutely requires it.

A creditor can resort to legal process only to collect his debt. If any part of his purpose is to oppress or sacrifice

**Names:**
Bradley, Chapman, Neal,

**Types:**
judgement

(4)

the debtor. his purchase will be set aside.
If the facts show, or the creditor admits that a part of his purpose was to sacrifice the debtor's property, the unfair part of his purpose vitiates his purchase.
In Ray's Adm v Wamble 58 Ala 32, the sale under execution was set aside, not because of inadequacy of price, but because "the facts and circumstances of
" this case induce the presumption of a
" formed design, on the part of the purchaser,
" to acquire the lands at much less than
" their value, and to accomplish that
" end by taking advantage of the unfortunate
" condition of the defendant in execution"
" page 39.
The presumption spoken of such formed design invalidates the purchase as constructively fraudulent, at the option of the debtor.
Can a case be made by an admission instead of presumption of the formed design?
And the recent unfaithfulness of an agent places the debtor in a more unfortunate condition than want of money. Want of money would not prevent others from buying at full value. But an unfaithful agent might, by depreciating the value of the property or magnifying the incumbrances,

(5)

"When such a purchase is attended by
" circumstances, like those attending this
" purchase, indicating a formed design
" to profit by the embarrassment of the
" mortgagor, and to acquire his lands
" for a sum wholly inadequate when
" compared with their value, the sale
" should not be permitted to stand."

Rays Adm vs Wmble 50 Ala page 40.
No circumstances could indicate more
strongly than an advisive of the formed
design. And no embarrassments could
be more detrimental to the debtor than
for his agent to be secretly circling the
formed design.

The gist of fraud in Ludeling vs Jackson
21 Wall was:

"Before he cud out the executory process,
" he conceived the scheme of forcing a
" sale of the mortgaged premises, not
" for the purpose of paying the debt
" which was a lien upon them, but
" for profit that might be made out
" of the purchase. page 623

In Byers vs Surget 19 Howard. The
evidences of fraud are summed up:
" When all these acts on the part of
" the appellant are adverted to, they
" impel irresistibly to the conclusion that

**Types:**
judgement

(6)

" the gross inadequacy of consideration
" in the sale and purchase of these
" lands was the premeditated result
" which the proceedings by appellant
" were put in practice to insure."

Suppose Byers had admitted such a premeditated result. Would his standing in court have been better?

In Stern v Childs, the creditor was doing no more than she had stipulated for the right to do. She was getting herself no benefit of the sacrifice of the defendants debtor's property. And she was under no obligation to save the debtor from incidental sacrifice. She thought her motive to collect her debt was sufficient to support her action; and that any additional motive was mere surplusage. But the supreme court held that while the motive to collect her debt, standing alone, would have supported her action. Yet mixing with that fair motive an unfair one, destroyed the sufficiency of the fair motive, and made her violate the rule of so using her own as not to injure another, in the use of process which

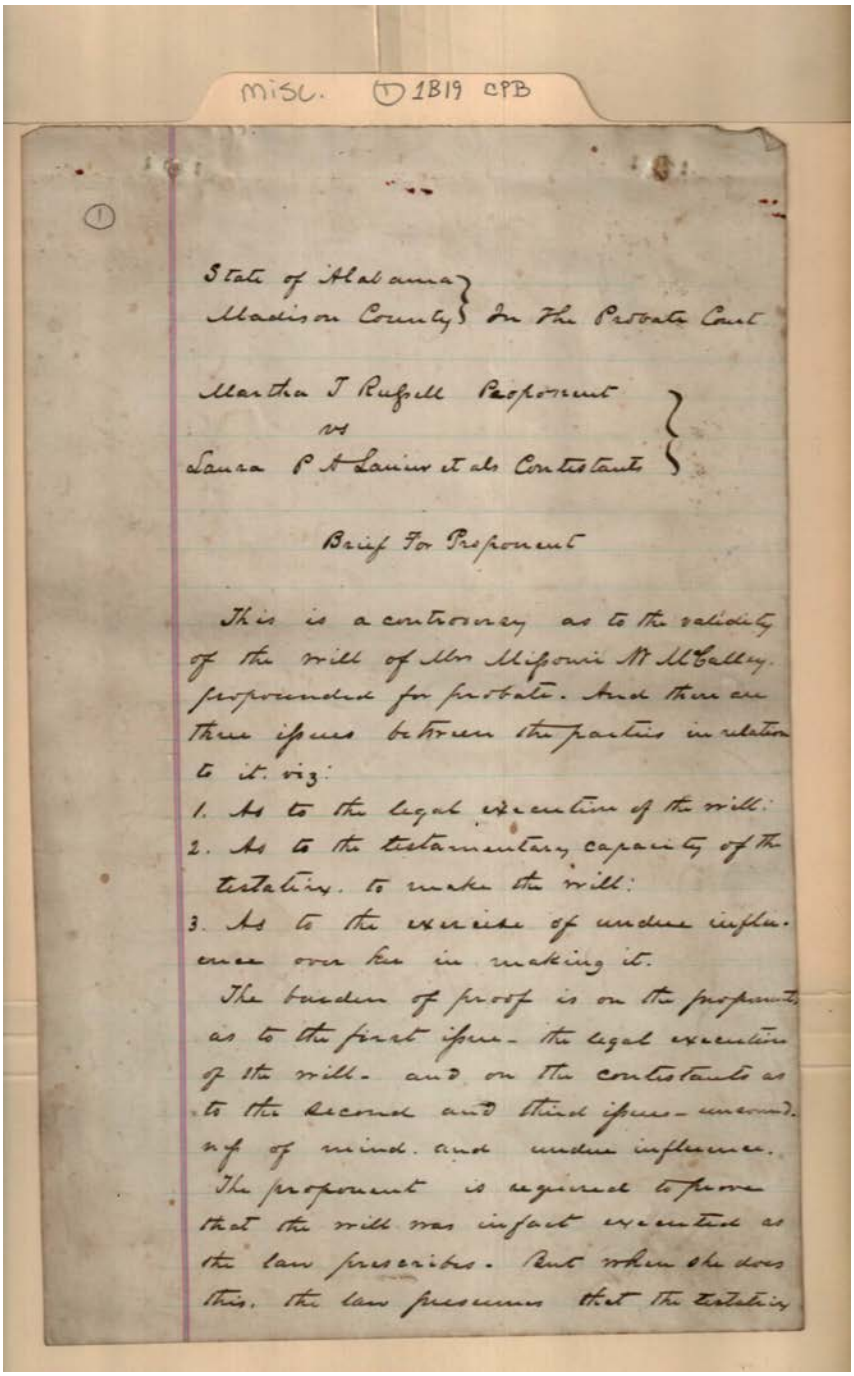
**Types:**
judgement

(7)

by agreement had been vested in her, instead of in the court.
Mrs Childs was under no obligation to save Mrs Struve from incidental sacrifice. But she was under an obligation not to premeditate her sacrifice, whether she got any benefit from it, herself, or not.
And her disregard of this negative obligation made Mrs Childs action constructively fraudulent. which gave Mrs Struve the option to restrain Mrs. Childs action or set aside the result of it.

**Names:**
Childs, Mrs. Struve, Mrs.

**Types:**
judgement



MISC. (1) 1B19 CPB

(1)

State of Alabama }
Madison County } In The Probate Court

Martha T Russell Proponent
vs
Laura P A Lanier et als Contestants

Brief For Proponent

This is a controversy as to the validity of the will of Mrs Missouri W McCalley. proponended for probate. And there are three issues between the parties in relation to it. viz:
1. As to the legal execution of the will:
2. As to the testamentary capacity of the testatrix. to make the will:
3. As to the exercise of undue influence over her in making it.
The burden of proof is on the proponents as to the first issue - the legal execution of the will - and on the contestants as to the second and third issues - unsound of mind. and undue influence.
The proponent is required to prove that the will was in fact executed as the law prescribes. But when she does this, the law presumes that the testatrix

brief

**Names:**
Lanier, Laura P. A.
McCalley, Missouri W.
Russell, Martha T.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(2)

was of sound mind and free from undue influence, and requires the contestants to prove unsoundness of mind or undue influence.

All three requisites - legal execution, soundness of mind, and freedom from undue influence - are essential to the validity of a will. But, on proof of the execution of the will, the law presumes soundness of mind and absence of undue influence, unless proof to the contrary is made by the contestants.

33/563 Stubbs v Houston 33 Ala 555. 563.

The jury are to be governed by the charge of the Court as to what the law is on each of these issues, and then determine, for themselves, from the testimony whether the requirements of the law have in fact been complied with.

As to the legal execution of the will. We expect the Court to charge you that the law in relation to the execution of wills in Alabama, is such, that it is not essential that Mrs McCalley should have written her will or subscribed her name to it herself. But that if her name

**Names:**
McCalley, Mrs.

**Places:**
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**Types:**
probate court brief

was written, at the top or bottom, by another, in her presence and by her directions, and she acknowledged it to be her will to the attesting witnesses when she called on them to attest it. it was a sufficient execution on her part: that it is not essential that the witnesses should be informed of the contents of the will, or that they should remember seeing her name to the will: but that the jury may find from other evidence than the testimony of the attesting witnesses, that her name was written either at the top or bottom of the will by herself or by another in her presence and by her direction.

Our statute of wills is a transcript of the English one, and must receive the same construction.

29/541 Armstrong vs Armstrong 29 Ala 538. 541

35 ~~34~~/187. Bailey vs Bailey 35 ~~34~~ " 187.

"The testator's declaration before witnesses is equivalent to signing" 1 Jar. 212. n. 9.

1 Jar. 212. n. 9. " "A will subscribed by three witnesses before whom the testator declared it to be his will but did not sign it: such declaration is equivalent to signing it before them, and such will is good within the 5th

**Places:**
Madison Co., AL

**Types:**
probate court brief

"Section of the statute of frauds."

1 Vesey 11. Ellis v Smith 1 Ves Jr 11

"A will subscribed by three witnesses at the testator's request and in his presence, he declaring it to be his will, is well attested within the Rev: Sts: c 62 § 6, although neither of the witnesses saw him sign it, or heard him acknowledge his signature thereto, and only one of them saw his signature thereto."

1 Mete 349. Devery v Devery 1 Mete 349.

The Massachusetts statute like the Alabama one is a substantial reenactment of the English statute of frauds.

"If by signs, motions, consent, or attending circumstances, the attesting witness is given to understand by the testator that he had already subscribed the paper as his will, it is a sufficient acknowledgement."

6 Ohio 307. Randebaugh v Shelley 6 Ohio 307.

"If the testator acknowledge the instrument as his will to the attesting witnesses, without alluding to any other act of signing, he will be presumed to intend his name in the body of the will as his signature."

1 Sax 206. 2 b. 1 Sax. 206. 2 b.

**Places:**
Madison Co., AL

**Types:**
probate court brief

"It is not essential that the testator should write his own name. Although his name is not written by himself, nor subscribed to the will; Yet if it be written in the beginning of the will by another in his presence and by his direction; and if it be acknowledged by him to the attesting witnesses, at the time he calls on them to attest and subscribe it, it will be as effectual as if with his own pen he had written it."

29/541. Armstrong v Armstrong 29 Ala 538.541

"Where a testator, who had previously signed his will, merely requested the witnesses to subscribe the memorandum of attestation, though they neither saw his signature nor were made acquainted with the nature of the instrument they attested, the will was none the less duly attested."

1 Jar 210. n 8. 213. K. 1 Jar 210 n 8: 213 K.

"It is not necessary that the testator should sign the will in the presence of the witnesses, nor that they should subscribe their names in the presence of each other.

30/414 Woodcock v McDonald 30 Ala 411. 414
38/ Hall v Hall 38 " 131

**Places:**
Madison Co., AL

**Types:**
probate court brief

"It is not necessary that the subscribing witnesses should be informed of the contents of the will"

19/80. Sewell v Carlisle 19 Ala 80.

The want of recollection on the part of the attesting witnesses will not defeat the will.

1 Jar: 207 n 7 : 220 x.

"Where the will is in the handwriting of one of the attesting witnesses and the testator made his mark, and the witness has no recollection of the actual execution of the will, but takes it for granted that the testator made his mark, and the witness's habit was never to attest a paper he did not see executed, it is prima facie sufficient proof of execution to let the instrument go to the jury".

31/525 Hughes v Hughes 31 Ala 519. 525

"If, from forgetfulness, the subscribing witnesses should fail to prove the formal execution of the will, other evidence is admissible to supply the deficiency: or if the subscribing witnesses all swear that the will was not duly executed, they may be contradicted and the will supported by other witnesses or circumstances."

38/133-4 Hall v Hall 38 Ala 131. 133-4

**Places:**
Madison Co., AL

**Types:**
probate court brief

"The court is not bound to have positive
" affirmative evidence that a will was
" signed, or a signature to a will acknowl-
" edged by a testator in the presence of
" the witnesses, before it can pronounce
" for the validity of the will."

7 Ser 633. Blake v Knight 7 Sumit 633.

"Will under the circumstances held
" to have been signed by the deceased
" before the witnesses subscribed it, con-
" trary to the recollection and belief of
" the witnesses, their testimony not being
" sufficiently positive to counterbalance
" the presumption arising from the circum-
" stances."

7 Ser 681. Cooper v Bockett 7 Sumit 681.

"A testator produced a paper to three wit-
" nesses which had his name (in the same
" handwriting as that of the body of the will)
" subscribed to it and requested them
" "to sign their names under his" — Held
" a sufficient acknowledgement of the
" signature as that of the testator, although
" there was no evidence that the signature
" was his handwriting, or if made by some
" person for him, made in his presence and
7 Ser 803. " by his direction." 7 Sumit 803.

**Places:**
Madison Co., AL

**Types:**
probate court brief

Supposing the court to be satisfied with these authorities and to charge the jury as we expect, Mrs McCalley's execution of the will was doubly good. Mrs Russell proves that she wrote Mrs McCalley's name at the beginning of the will in her presence and under her direction. This alone was sufficient without her signature at the bottom. 29 Ala 541

29/541.

But the conclusion is irresistable that Mrs McCalley subscribed her name at the bottom before it was attested. Mrs Russell proves that she got out her will, said she would fill it up and be ready for the witnesses, and took it to the table and wrote something on it. The name of Mrs Russell as legatee, the date, and the signature are all in the same hand writing with the same pen and ink. And the attesting witnesses saw her write the date – the only part of the filling up that needed to be left until the witnesses came to attest it. And the subscribing witness prove that she declared it to be her will, and requested them to attest it; which they

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

did, in her presence, and in the presence of each other.

It is true that the attesting witnesses do not remember seeing Mrs McCalley's signature to the will. But dont say that it was not there. They do say that it was their habit not to attest the execution of papers without seeing them signed or hearing their execution acknowledged. They also say that they would have called attention to the absence of her signature, if they had noticed it. And they give a satisfactory explanation for their flurry and confusion, in being prohibited by Mrs McCalley from reading the will.

**Names:**
McCalley,

**Places:**
Madison Co., AL

**Types:**
probate court brief

2.

As to Mrs McCalley's testamentary Capacity.

We expect the Court to Charge. viz:

that less capacity is required for making wills than for making contracts and attending to the ordinary business of life; that if Mrs McCalley had mind and memory enough to recollect the property she was about to bequeath, and the person to whom she wished to will it, and the manner in which she wished it to be disposed of, and to know and understand the business she was engaged in – she had, in contemplation of law, a sound mind; that she had a legal right to be governed by partiality pride or caprice in disposing of her property; and that neither a mistaken notion on her part, as to the feelings of her relations towards her, nor the fact that her will is unnatural and inequitable will invalidate it.

In support of these propositions, we cite the following authorities. viz:

"Moral insanity is a disorder of the feelings and propensities; and if not proceeding from or accompanied with insane illusions, the legal test of insanity, is insufficient to set aside a will.

**Names:**
McCalley, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

"Perversion of moral feelings does not
" constitute unsoundness of mind, so as
" to render an act per se invalid.
"A will can not be set aside on account
" of any moral obliquity or prejudice
" exhibited by the testator in the devises
" of his will, nor because the testator
" makes an unjust and unnatural
" disposition of his property. An error of
" fact or prejudice will not amount
" to an insane delusion."

1 Sax. 103-4. 1 Sax. 103-4.

"Capacity to make a contract is suffi-
" cient to make a will.
"A testator of sound mind, in the absence
" of fraud and undue influence, may
" make such disposition of his property
" as partiality, pride or caprice may
" dictate."

17/84. Coleman v. Roberts 17 Ala 84.

"That the testatrix should make a valid
" will, it was not necessary that her mem-
" ory should be perfect, and her mind
" unimpaired. If she had memory and
" mind enough to recollect the property she
" was about to bequeath, and the person to
" whom she wished to will it, and the

" manner in which she wished it to
" be disposed of, and to know and un-
" derstand the business she was engaged
" in, — she had, in contemplation of
" law, a sound mind; and her great
" age, bodily infirmity, and impaired
" mind, would not vitiate a will
" made by one possessing such capacity."

31/72 Taylor v Kelly 31 Ala 59. 72

" The fact that a will makes an unnat-
" ural and inequitable disposition of
" property, does not per se destroy its
" validity, if executed by a person of
" sound ~~mind~~ and disposing mind
" and memory

" A mistaken notion on the part of the
" wife, that her husband intended to
" convert, to his own use, the property
" composing her separate estate, which
" induced her to make a will excluding
" him from all participation in her
" property, does not avoid such will.
" A person may be competent to make
" a will without possessing such ca-
" pacity as would enable him to
" transact the ordinary business of life."

32/555. Mosser v Mosser 32 Ala 551. 556

17 A.D./722. Sic v Sac 4 McCord 183. 17 A.D. 722.

**Places:**
Madison Co., AL

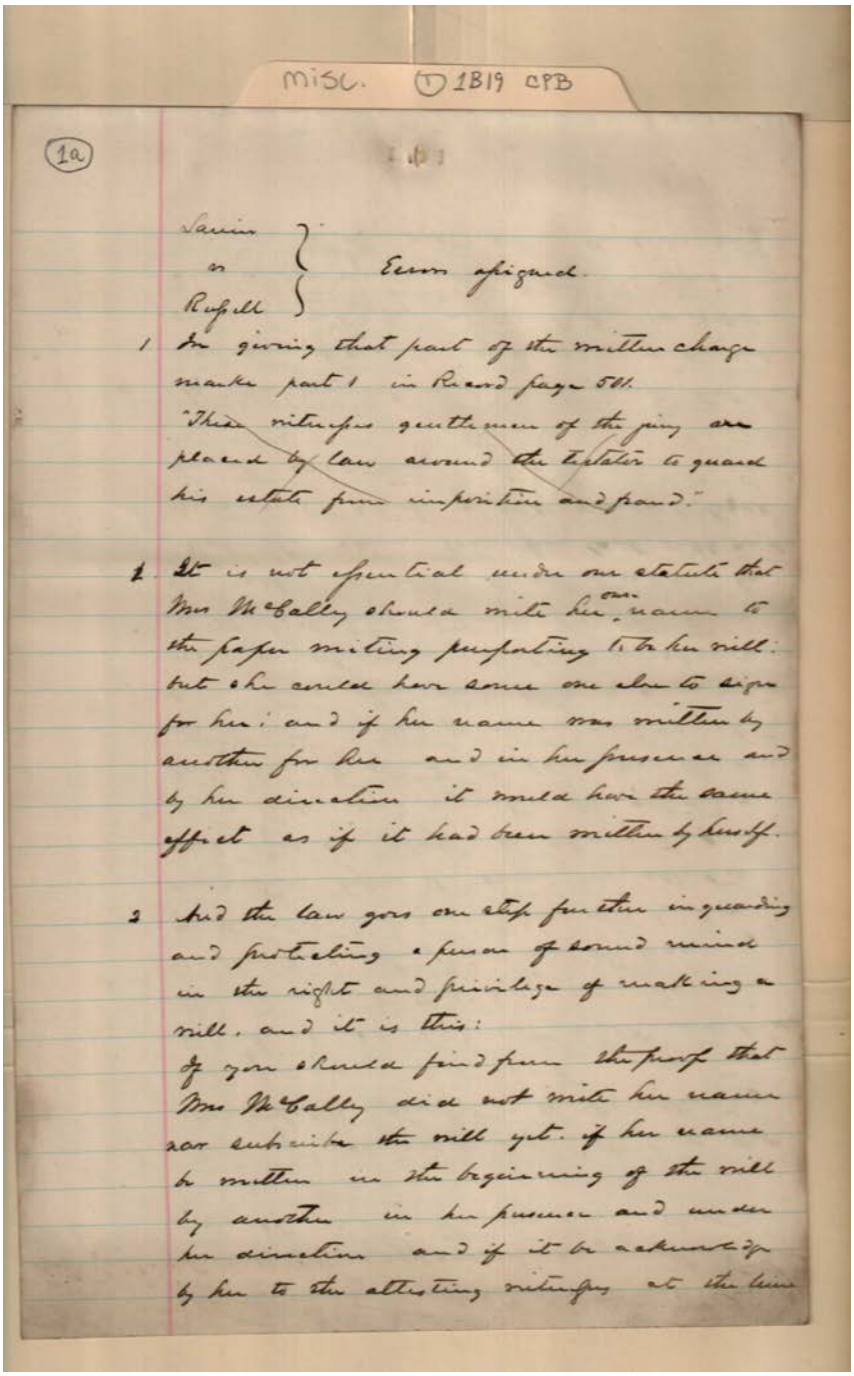
**Types:**
probate court brief

The law presumes that Mrs McCalley was of sound mind.
The attesting witnesses say she was.
And all who were most intimate with her during the last year of her life, and had the best opportunity of observing her mental condition, say so: and recite circumstances of her manners conversations and actions to prove it.
Mrs McCalley attended to all her business after her first attack of apoplexy, that she did before. She appointed an agent to attend to her out door business. She selected and purchased her own clothes; paid for making and mending; contracted for her board; and paid her bills as they became due, without having to be reminded of them.
And she considered the question of the legal effect of her first attack of apoplexy in relation to her testamentary capacity, and had a business man, she named, consulted about it.

**Names:**
McCalley, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief



MISC. (1) 1819 CPB

(1a)

Lanier
vs
Russell } Errors assigned.

1 In giving that part of the written charge marked part 1 in Record page 501.
"These witnesses gentlemen of the jury are placed by law around the testator to guard his estate from imposition and fraud."

2. It is not essential under our statute that Mrs McCalley should write her own name to the paper writing purporting to be her will: but she could have some one else to sign for her: and if her name was written by another for her and in her presence and by her direction it would have the same effect as if it had been written by herself.

3 And the law goes one step further in guarding and protecting a person of sound mind in the right and privilege of making a will, and it is this:
If you should find from the proof that Mrs McCalley did not write her name nor subscribe the will yet if her name be written in the beginning of the will by another in her presence and under her direction and if it be acknowledged by her to the attesting witnesses at the time

**Names:**
Lanier, McCalley, Mrs. Russell,

**Places:**
Madison Co., AL

**Types:**
probate court brief

(1b)

she calls on them to attest and subscribe it. it will be as effectual as if with her own pen. she had written her name thereto.

3 If the jury should find from the proof that Mrs McCalley presented to the attesting witnesses an instrument in writing to which she had not written or subscribed her name. but that her name had been written by another person in the beginning of the will in her presence and by her direction before the same was attested and that she placed or spread the same on a table and requested the attesting witnesses to attest the same. and they did attest it in her presence. and she at the same time then and there by signs writing word or otherwise declared or acknowledged to the attesting witnesses at the time she called on them to attest or subscribe that the same was her last will and testament. such a will would be legal in its execution.

4 If the jury believe from the proof that there was any deficiency of evidence of the subscribing witnesses as to whether Mrs McCalley signed her name or whether her name was signed to the will when the subscribing

**Names:**
McCalley, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(1c)



witnesses attested. then the jury can look to the testimony of Mrs Russell the person who is alledged to have written the will and was present when it was signed and attested to supply any defect in the testimony of the attesting witnesses on the point as to whether Mrs McCalley signed the will and whether her name as signed by her was subscribed to the will at the time the subscribing witnesses attested attested the same.

5 It matters not how this property is acquired, whether by inheritance or individual industry.

6 The questions that the law considers are is it the property of the testator: and is he in condition to make a legal will. These being answered in the affirmative the law forbids any interference with or change of testamentary disposition.

7 When a will is contested upon the ground of mental incapacity as in this case. The presumption of law is in favor of the capacity of the testator to make a will.

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(1d)

8 To arrive at a satisfactory conclusion on this point it is your right to look to the testimony bearing upon the intermediate date - that is the time that the proof satisfies you that her mind was unsound, and the date of the execution of the will. the testimony of the attesting witnesses at the time of the execution: and if you believe that her mind had so recuperated and received strength and understanding sufficient to make a will expressive of her own mind. expressive of her wishes and directions as to what disposition shall be made of her estate after she shall have departed this life. then in contemplation of law she would have mental capacity to make a will.

9 It is well established by the laws of Alabama that a person may be sensible to transact the ordinary business of life. and yet be able to dispose of his property by will. The standard of capacity fixed by the law as requisite to the making of a will is not such as enables a person to transact the ordinary business of life.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(2a)

10 If therefore you believe from the proof that on the 13th day of July 1881. the time alleged that Mrs McCalley executed the will, that she possessed memory and mind enough to recollect the property she was about to bequeath and the person to whom she wished to will it. and the manner in which she wished it disposed of. and to know and understand the business that she was engaged in, that is that she was making a will - then she had in contemplation of law a sound mind and bodily infirmity and impaired mind would not vitiate a will

11 If therefore you believe from the proof that at any time after Mrs McCalley was stricken with the first stroke of ~~paralysis~~ apoplexy that she was competent and qualified to make a contract relative to her business and that this capacity to make a contract continued up to the execution of her will, then in contemplation of law she was of sound mind and disposing memory.

12 The influence exercised by Mrs Russell must have been such as to coerce and constrain the will of Mrs McCalley to do that

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(26)

which was against her will. but which from fear the desire to please, or some other feeling Mrs McCalley was unable to resist.

13 There must be evidence of such direct influencing or coercion arising from words or inferred from acts on the part of the Beneficiary as could not be resisted or that the motive impelling Mrs McCalley was tantamount to force or fear before you can legally declare this will void on the ground of undue influence.

14 But these suspicious circumstances attending the writing or preparing of the will are entirely removed by affirmative evidence that the will expresses the spontaneous intentions of the testator.

15 The authorities in this country agree that where a will is drawn by a person standing in a confidential relation to the testator who takes a considerable benefit under it. that it is not necessary to prove that the will was read over to the testator or that

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(2c)

instructions were given by the testator for its drawing. but the jury must be satisfied that the will expresses the real intentions of the testator.

16 If therefore the jury believe from the proof that it was difficult for Mrs McCalley to write by reason of a stroke of paralysis or other bodily infirmity and she requested Mrs Russell to write out her will for her and gave her the New York ledger. a newspaper containing in it a will which she desired Mrs Russell to copy and in obedience to this request Mrs Russell did copy the will from one in newspaper leaving blank the name of the beneficiary the date and place for signature and that Mrs McCalley with her own hand filled the blank with the name of the beneficiary. and filled the date and signed her name thereto as the law requires. and that the will expresses the spontaneous intentions and true will of Mrs McCalley. then if these facts are established to the satisfaction of the jury. it is for you to say whether they remove the unfavorable presumptions and suspicious circum.

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(2d)

stances arising by reason of Mrs Russell having prepared or written the will, and whether they should have any weight at all in this case.

17. It is not necessary even in the case where the will is drawn by a person standing in a confidential relation to Mrs McCalley even if Mrs Russell's testamentary capacity is doubtful - that the precise evidence of Mrs McCalley's knowledge of her will should be shown in the shape of instruction to draw the will or that she read it over. It must not be understood that direct evidence of Mrs McCalley's knowledge of her will is necessary - Circumstantial evidence satisfying the law that Mrs McCalley knew the contents of the instrument may be sufficient for that purpose.

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

3a

3

Charges refused

1 Although a state of absolute incompetency on the part of Mrs McCalley may not be shown by the evidence, yet if her mind was very greatly impaired and weakened so much so as to make her easily susceptible to influences the testamentary disposition of her property should not be sustained unless affirmatively proved to have been fairly made, to have emanated from her of her own free will without the interposition of Mrs Russell and to have accorded with her testamentary intentions otherwise expressed or to be implied from the existing state of her family relations.

2 Although the jury may believe from the evidence that Mrs McCalley had sufficient capacity to make a will, yet if they find in the facts & circumstances of suspicion in the preparation of the will by Mrs Russell and further find that Mrs McCalley both in body and mind was greatly weakened and impaired by disease, so much so as to make her pliable and yielding and non resisting, and if they further find from the evidence

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(3b)

that Mrs McCalley reposed great trust and confidence in Mrs Russell. and that it is not shown that at any time prior to the execution of the will that she had expressed any purpose or intention to leave her property or any part thereof to Mrs Russell. and if they further prove that said will was written in secret soon after Mrs McCalley had gone to bed at Mrs Russell's. and that no one was present at the writing of said will but Mrs Russell and Mrs McCalley and that the subscribing witnesses were invited to be present by Mrs Russell without disclosing to them the purpose of their presence and that they were not well acquainted with Mrs McCalley habits and characteristics. and that no one was present at the attesting of said will but the subscribing witnesses Mrs McCalley. Mrs Russell and Mrs Russell's adopted daughter. and that Mrs McCalley had then living in Huntsville a sister Mrs Harris and two nieces Mrs Halsey and Mrs Rison and a brother in law Dr Harris who was her agent and adviser. and that she was on friendly terms with all these relatives. and that none of them were notified of the intention

**Names:**

| | | |
|---|---|---|
| Halsey, Mrs. | Harris, Mrs. | Rison, Mrs. |
| Harris, Dr. | McCalley, Mrs. | Russell, Mrs. |

**Places:**
Madison Co., AL

**Types:**
probate court brief

(3c)

1

of Mrs McCalley to make a will, and that none of them knew that she had made a will until after her death: and if the jury further find that all that was said to the subscribing witnesses was either by Mrs Russell, "Gentlemen Mrs McCalley wishes you to witness her will" or by Mrs McCalley by writing exhibited on her slate, "Gentlemen I wish you to witness my will" or that Mrs McCalley said when Van Valkenburg manipulated a disposition to read it "no it is private" or "a secret" and is my will; and that Cooper one of the witnesses wrote on the slate "is this your last will and testament?" and handed it to her, and she having read it replied by an affirmative not or by the monosyllable "yes"; and the jury do not find in the evidence either the fact that Mrs McCalley's signature was to the will when the witnesses attested it, or the fact that she signed it in the presence of the witnesses; and on finding these facts to be true, then unless the proponent has proved beyond a reasonable doubt that Mrs McCalley knew the contents of the will when she signed the same; and that

**Names:**
Cooper, McCalley, Mrs. Russell, Mrs. Van Valkenburg,

**Places:**
Madison Co., AL

**Types:**
probate court brief

(3d)

proponent has also proved to the satisfaction of the jury that the intent and purpose of making the will originated with Mrs McCalley and that it correctly expressed her free and voluntary purpose. their verdict must be for contestants.

3 If the jury find that Mrs Russell's pecuniary condition is good, that she is not connected with the testatrix by ties of blood or marriage. that testatrix had kindred and connection by blood and marriage with whom she was on friendly terms. and that part of the property devised to Mrs Russell is the family homestead of the Fords and of the mother and father of testatrix. and that the mother and father are buried there. then each of these facts should be considered by the jury with reference to the question as to whether said will is natural or unnatural.

4 That if the jury find from the evidence that Mrs McCalley had prior to the making of her will a severe stroke of paralysis which greatly weakened her physically

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(4a)

and mentally, and that she was in this condition of physical and mental makeup when said will was executed; and if they further find that Mr McCalley had made five or six wills before her stroke of paralysis at Mrs Blunts, that she was easily flattered and persuaded. that she had great trust and confidence in Mrs Russell. that Mrs Russell had great influence over her. that after her removal to Mrs Russells she lived alone with Mrs Russell. no one else living with them except a young son of Mrs Russell's and a dependent girl a protege of Mrs Russells. that Mrs McCalley while confined living with Mrs Russell was confined to the house because of her difficulty of locomotion. that the will was written by Mr Russell with no one present except Mrs McCalley that said will disposes of all of Mrs McCalley's estate, that there is no evidence to show that Mrs McCalley had ever declared her purpose to leave the property or any part of it to Mrs Russell. that there is no evidence of declaration made by her of her intention to leave her property to others. that her relations with her sisters and her nieces

**Names:**
Blunt, Mrs. McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(4b)

had never been estranged, but that they were kind and affectionate to her and she to them. that the attesting witnesses were invited by Mrs Russell to go to the house - that these witnesses were not on intimate terms with Mrs McCalley, and had not conversed with her since her first attack of apoplexy - that no one was present when said will was attested except Mr McC. Mr R. the girl who lived with Mrs R and the witnesses. that Mrs R was in such position as to see Mr McC. and Mr McC her. that Mrs McC when the witnesses went in was seated at the table with the will lying on it. that Mrs McC did not ask them to witness the will, but held up a slate on which was written. "Gentlemen I want you to witness my will. that this was not written on the slate after the witnesses got there, but was on the slate when they went there. If the jury find all these facts to be true they will be authorized to find that undue influence had been exercised and may find a verdict for contestants.

5. In considering the inquiry whether the will is natural or unnatural the jury

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

(4c)

should ascertain what obligation Mrs McC was under to Mrs R. and if it should appear that there was none or a small and slight one, then if the jury find Mrs McC estate worth from $8.000 to $10000. the disproportion between the value of the estate and the obligation is a circumstance tending to show the unnatural character of the will

**Names:**
McCalley, Mrs. Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief

3.

As to undue influence
"To make a good will, a man
" must be a free agent. But all
" influences are not unlawful.
" Persuasion, appeals to the affections,
" or ties of kindred - to a sentiment
" of gratitude for past services, or pity
" for future destitution, or the like - these
" are all legitimate, and may be
" fairly pressed on the testator.
" A testator may be lead, but, not
" driven: and his will must be the
" offspring of his own volition, and
" not the record of some one else's.
" To constitute undue influence
" some act or acts must be done
" to cause the testator to dispose of
" his property contrary to his desires."
1 Jar 132-3. 1 Jarman on Wills 132.3.
"A man may by fair argument
" and persuasion, or even flattery,
" induce another to make a will.
1 Jar 139. " and even to make it in his favor. 139.
" Kindness and attentions do not of
1 Jar. 140. " themselves, constitute undue influence.
" Gratitude, love, esteem, or friendship
" which induces another to make a
" testamentary disposition of property.

**Places:**
Madison Co., AL

**Types:**
probate court brief

" can not, ordinarily, be considered
" as arising from undue influence
" and all these motives are allowed
" to have full scope, without in
" any way affecting the validity
Ibid: 141 " of the act. 141.

And although the influence acquired by kind offices be exercised over a testator above eighty years of age, whose bodily faculties are impaired and who without good reason, entertains feelings of hostility towards his family, the will can not on
" " " that account be invalidated. 141.

"To constitute undue influence
" some act or acts must have been
" done to cause the testator to
" dispose of his property contrary to
" his desire."

19/81. Leverett vs Carlisle 19 Ala 80. 81

"It is not enough that he is dis-
" suaded by solicitation or argument
" from disposing of his property as
" he had previously intended; it
" must be equivalent to moral co-
" ercion, and constrain the testator
" to do that which is against his will,

**Places:**
Madison Co., AL

**Types:**
probate court brief

" but, which from fear, the desire
" of peace, or some other feeling
" he is unable to resist."

Gilbert vs Gilbert 22 Ala 529. 532

Taylor vs Kelly 31 " 59. 72.

"A legal presumption of undue influence does not arise from the facts that the testator was a man of weak mind, and addicted to drinking; that he was nigh unto death when the will was executed; that he was surrounded by the persons who were principally benefitted by the will, while none of his own relatives were about him; and that the provisions of the will were unnatural; although the jury may not be prohibited from inferring undue influence from these circumstances"

33/148. Pool vs Pool 33 Ala 145. 148

There is no proof of undue influence. There is positive proof of its absence. The will was made pursuant to purpose long entertained and often expressed. And Mrs McCalley left under he own

**Names:**
McCalley, Mrs.

**Places:**
Madison Co., AL

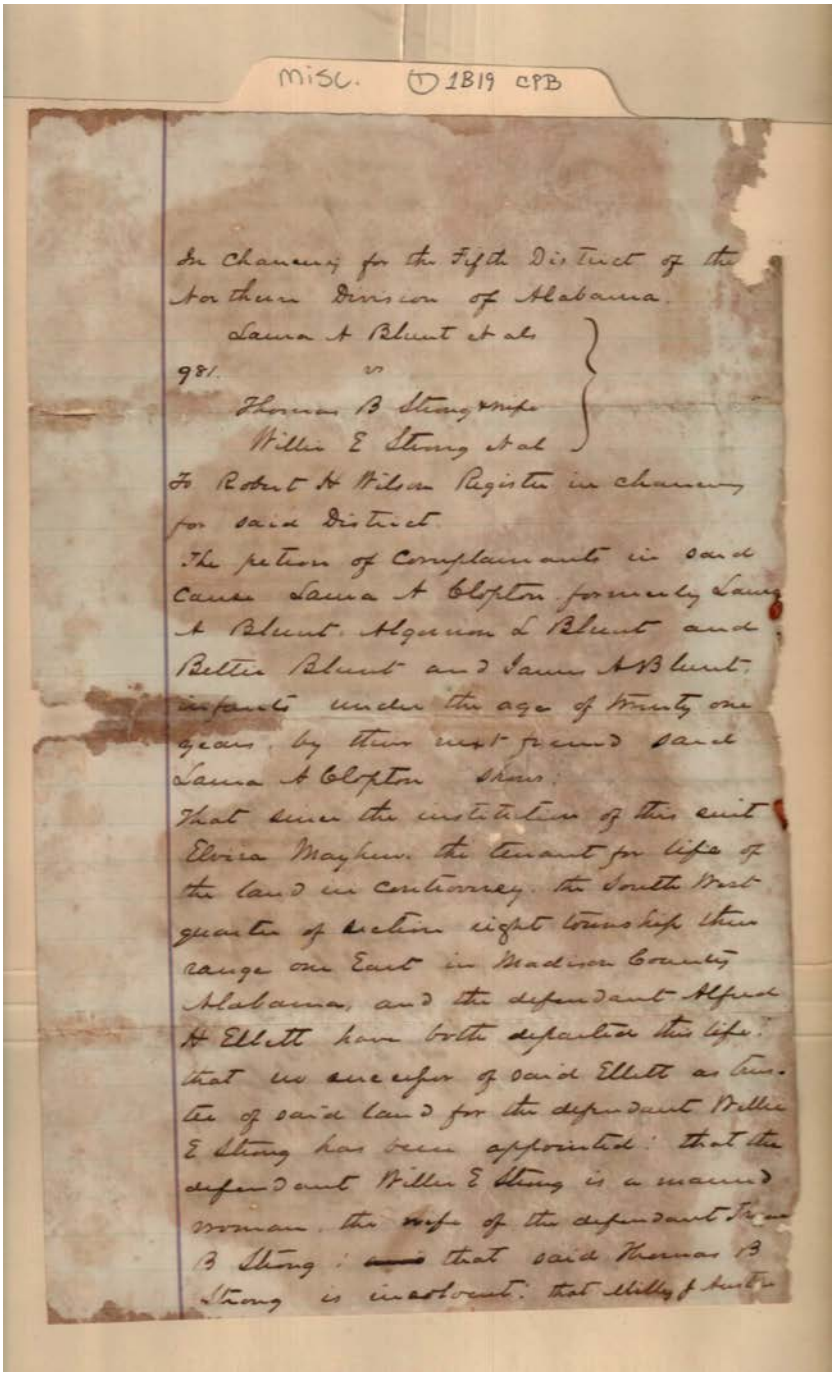
**Types:**
probate court brief

hand an explanation of her motives, written long before she went to Mr Russell's to board, and perhaps before Mr Russell came to Huntsville to live.

**Names:**
Russell, Mrs.

**Places:**
Madison Co., AL

**Types:**
probate court brief



MISC. (1) 1B19 CPB

In Chancery for the Fifth District of the Northern Division of Alabama.

Laura A Blunt et als
981. vs
Thomas B Strong & wife
Willie E Strong et al

To Robert H Wilson Register in chancery for said District.

The petion of Complainants in said Cause Laura A Clopton formerly Laura A Blunt, Algernon S Blunt and Bettie Blunt and James A Blunt infants under the age of twenty one years by their next friend said Laura A Clopton shews:

That since the institution of this suit Elvira Mayhew the tenant for life of the land in controversy, the South West quarter of section eight township three range one East in Madison County Alabama, and the defendant Alfred H Ellett have both departed this life: that no successor of said Ellett as trustee of said land for the defendant Willie E Strong has been appointed: that the defendant Willie E Strong is a married woman, the wife of the defendant Thomas B Strong: ~~and~~ that said Thomas B Strong is insolvent: that Milly J Austin

**Names:**

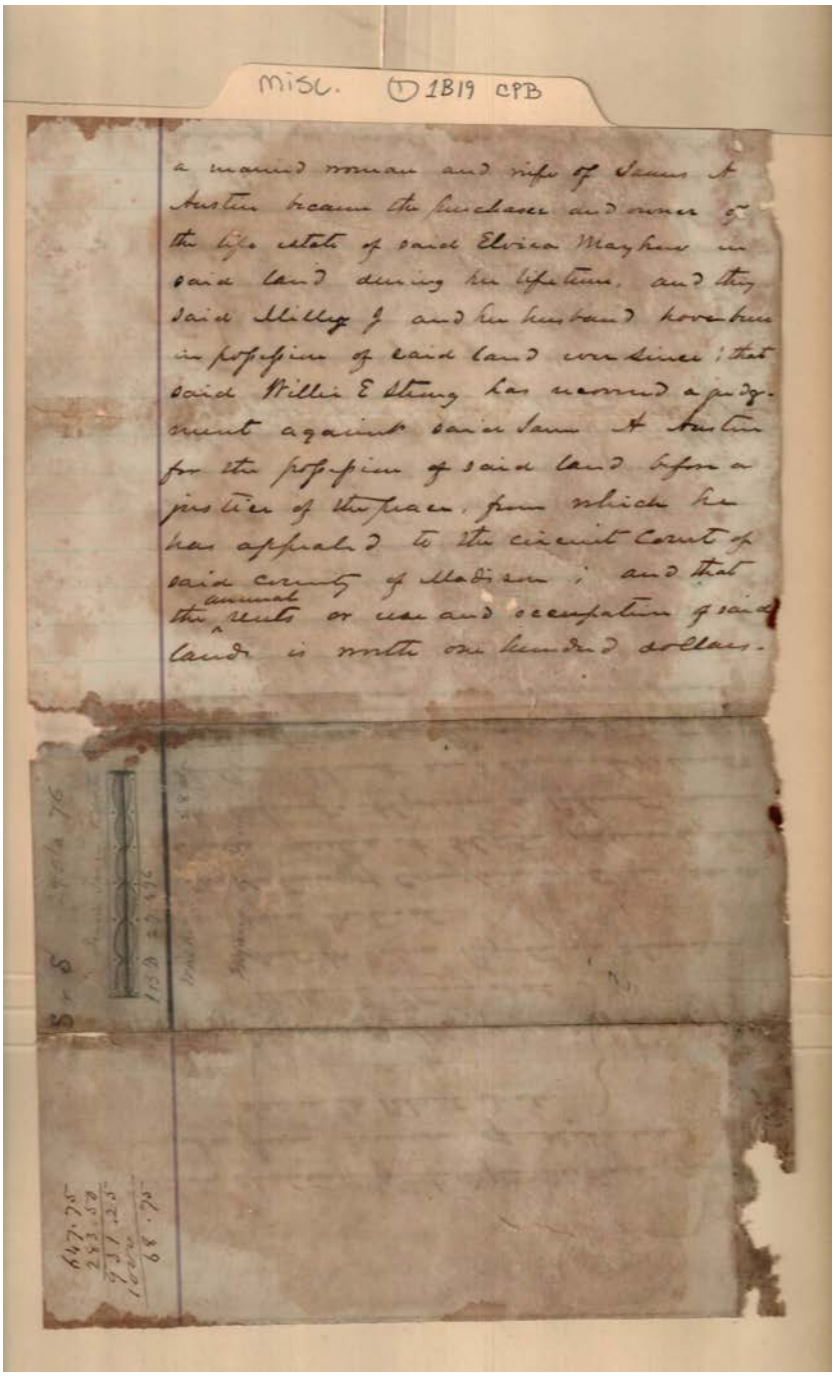
Austin, Milly J.
Blunt, Bettie
Blunt, James A.
Blunt, Laura A.
Clopton, Laura A.
Ellett, Alfred H.
Mayhew, Elvira
Strong, Thomas B.
Strong, Willie E.

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court



a married woman and wife of James A Austin became the purchaser and owner of the life estate of said Elvira Mayhew in said land during her lifetime, and they said Milly J and her husband have been in possession of said land ever since; that said Willie E Strong has secured a judgment against said James A Austin for the possession of said land before a justice of the peace, from which he has appealed to the circuit Court of said county of Madison; and that the annual rents or use and occupation of said land is worth one hundred dollars.

**Names:**
Austin, James A. Austin, Milly J. Mayhew, Elvira Strong, Willie E.

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court

Third. Your Orator is informed and believes it to be true and states that in the year 1872 or 1873 or in the early part of the year 1874 the said defendant Critcher having become ~~[illegible]~~ insolvent, was upon her voluntary petition filed in the District Court of the United States for the Northern District of Alabama, ~~at Huntsville~~ sitting in bankruptcy at Huntsville, was adjudicated a bankrupt, & that in the course of proceedings had in said bankrupt court upon such petition & adjudication one

**Names:**
Critcher,

**Places:**
Huntsville, Alabama

**Types:**
court document

p. 8. that said defendant Critcher after the date of said title bond and prior to his adjudication in bankruptcy hereinafter mentioned did become entitled to credits on accounts of the notes given as for said for the balance of said purchase money and that said Grandison Greenwood in his lifetime gave to said Critcher receipts or acknowledgements in writing subscribed by him specifying the credits to which said Critcher was so entitled and the transaction out of which said Critchers right to the credit mentioned in such receipt or acknowledgement arose & and the said Critcher claims that he is entitled to other credits than those specified in said receipts or acknowledgements subscribed by said ~~testator~~ but what is the precise amount of such additional credits so claimed this ~~respondent~~ complainant has not been advised -

**Names:**
Critcher, Greenwood, Grandison

**Places:**
Huntsville, Alabama

**Types:**
court document

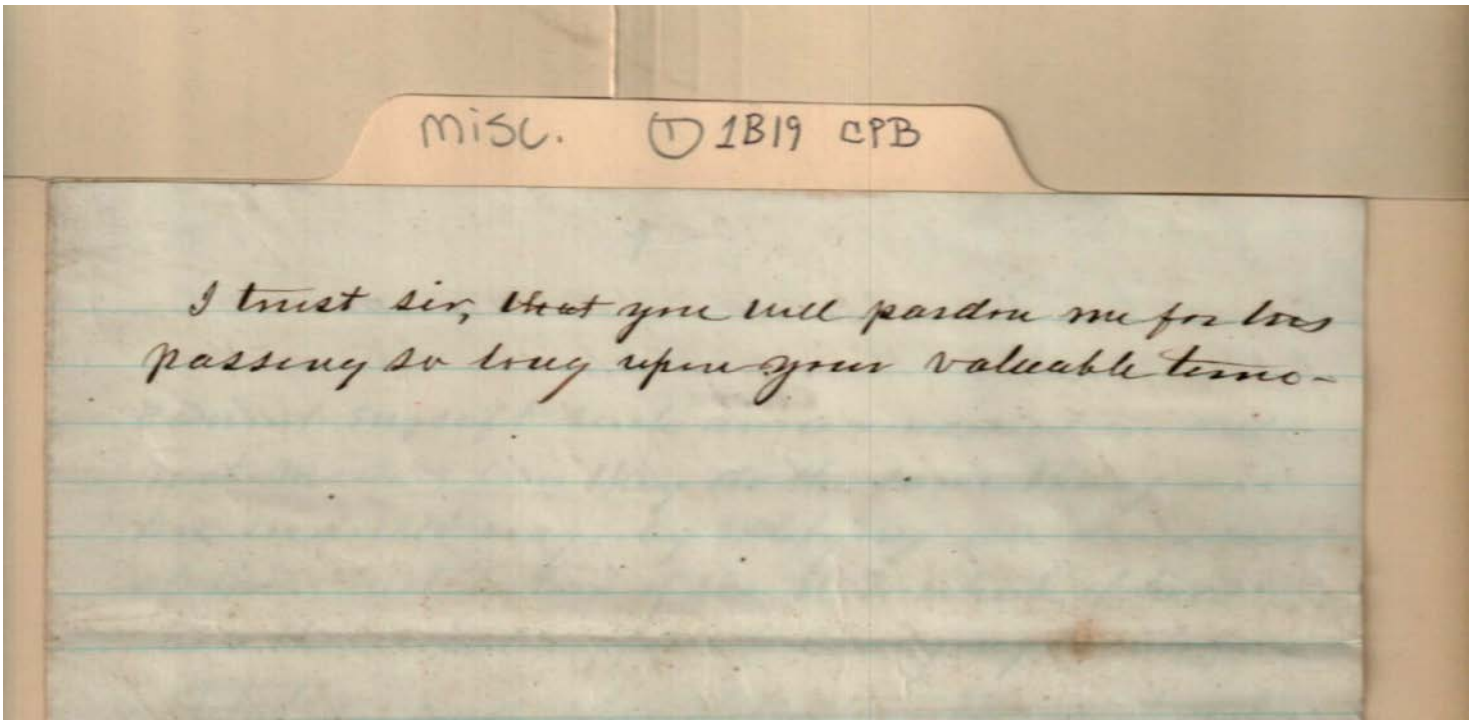
to the rights of complainants under said deed of Trust; and that complainants are entitled to the decree of this Court for the sale of so much of the lands described in the bill of complaint as may be necessary to ~~provide the~~ secure to them the indemnity provided by said deed of trust - and ~~that~~ It is accordingly ordered & decreed that it be referred to the Register of this court to ascertain & report to this court as soon as may be practicable. What amount of money is necessary to be raised by such sale to protect complainants Street and Jordan against ~~th~~ loss by reason of the liability incurred by them as sureties of the said defendant Miller on the appeal & supersedeas bond described in complainants bill, and ~~how much thereof of the~~ indemnity so he will set forth and show how much of the judgment in favor Albert G Henry against said defendant Miller & Complainants Street and Jordan as his sureties ~~has~~ has been paid & When & by whom paid, and how much thereof if any remains unpaid & who is entitled thereto.

~~Also~~ He will further ~~show~~ ascertain

and set forth ~~what costs have been incurred~~ ~~& expenses~~
~~by complainant herein including the~~
~~costs & expenses of the Execution & recovery~~
~~of said deed of trust & the~~
the costs & expenses of said deed &
the Execution of said trust including
the expenses incurred by said trustee
in the prosecution of this suit and
also what would be a reasonable
compensation to said trustee for
her services as such under said
deed, and ~~what amount of rents~~
~~of any has been realized~~
~~credit the said trustee is entitled~~
Also ~~what amount~~ the value
~~of the rents realized by complainant~~
~~for the year 1877.~~

**Places:**
Huntsville, Alabama

**Types:**
court document


MISC. (1) 1B19 CPB
I trust sir, that you will pardon me for thus
passing so long upon your valuable time.

**Types:**
memo

cannot engraft such an amendment in a direct mode; can they do the same thing in an indirect way, by ratifying an amendment of the Constitution of the U.S. which if held valid has the double effect of changing the State constitution and also of depriving the people of their own State of the power to modify or abrogate such change in the future, if found to be oppressive or inexpedient? Surely not, if it be true that the major includes the minor proposition, or that an agent having general but not special instructions is bound to be governed as far as ~~practicable by the~~ practicable by the general instructions or that he cannot do indirectly what he is forbidden to do directly – Nor of the truth of the Preamble of the Federal Constitution is to be maintained, or the "self evident truth" of 1776 still insists that "Governments derive their just powers from the consent of the governed"

A final affirmative vote of our Legislature ~~would bind~~ at this time would bind the people of our State perhaps irrevocably without their assent thereto – whilst the non action of the Legislature could only serve to delay the enjoyment of any benefits which might

**Names:**
amendments

**Types:**
politics

result from the ratification of the amendments, for the people at their next election can if they so desire ~~cand~~ ~~band~~ choose representatives instructed at the ballot box, to vote for the amendments

But if any action is taken by the present Legislature, I ~~submit~~ respectfully suggest that the Legislature prior to voting upon the amendments should ~~resolve~~ adopt a resolution to the effect

1st That the action of ~~that~~ Legislature was not to be regarded as final ~~but~~ ~~it~~

2nd That a vote of less than two thirds of the members in each house should be regarded as a rejection of the proposition.

3rd That if it should receive a two thirds vote then the question should be referred to the people and to the next legislature in conformity to the requisitions of the State constitution touching its direct amendment –

My reason for suggesting such precautionary resolution is an apprehension, not unauthorized I think by the signs of the present day, that ~~it~~ without ~~such resolution~~ some qualifying resolution of that character a vote of the ~~two~~ majority of the members of the Legislature voting upon the question, though done with a view to its speedy reference to the people, may be treated by the dominant party in Congress as a ratification of the amendment –

**Names:**
amendments

**Types:**
politics

The long acquaintance between us will I trust excuse this liberty which is prompted by informed that efforts are being

Hearing I learn that efforts are being made to induce you to convene the Legislature in extra session with a view to its early & final action upon the recent propositions to amend the Constitution of the United States: and not concurring in that view, I take the liberty of addressing you this communication –

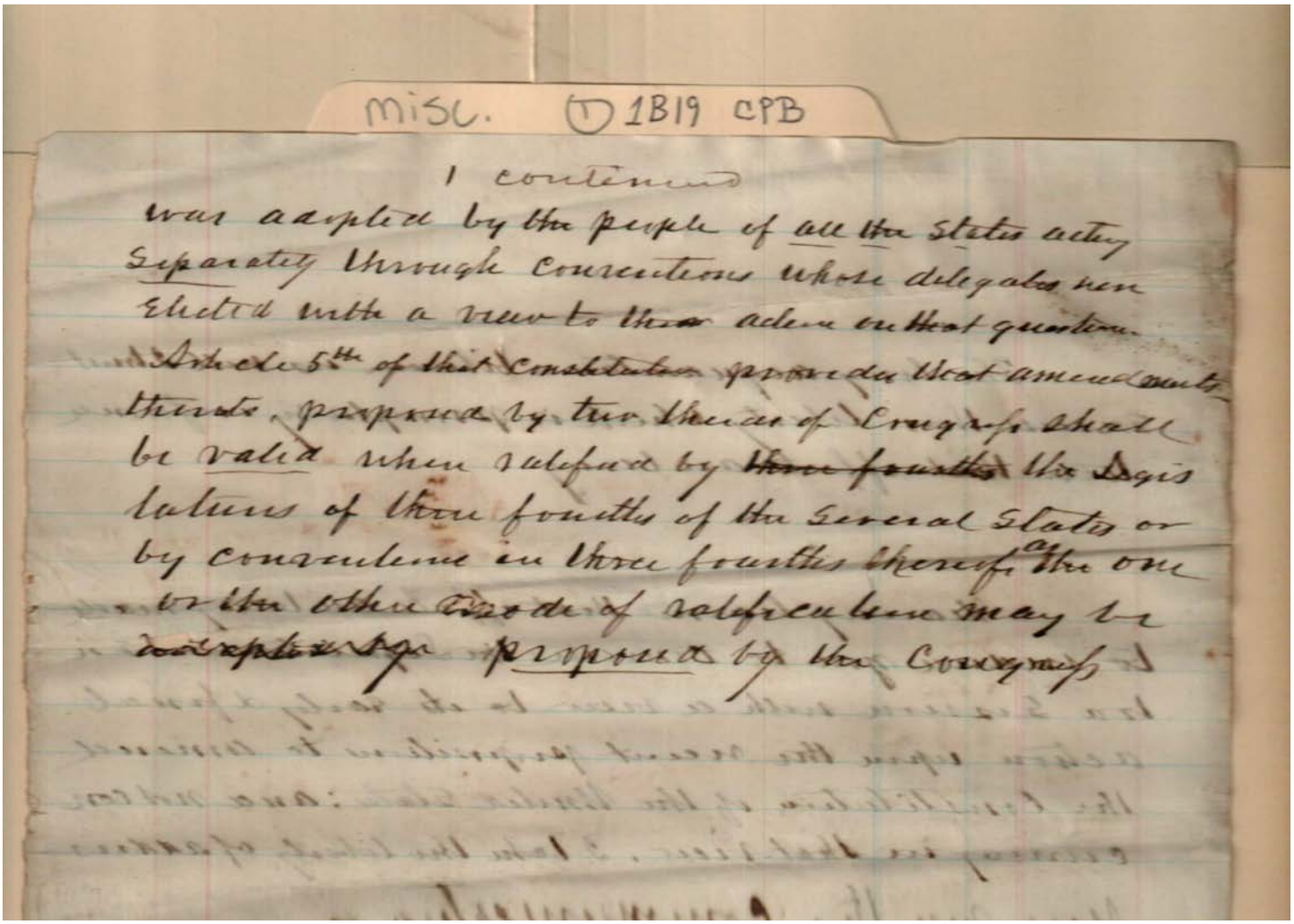
It is not my purpose to discuss the merits of the proposed amendments, but to present a few thoughts upon touching the question of the proper duties of the Legislature upon propositions of this character now presented. And since it is composedly sprung a new question of the highest importance, and a question similar to mine has not been, so far as I am aware, agitated in the public press, I hope in view of our long acquaintance it will not be regarded as an unwarrantable presumption –

I do not think the Legislature should be convened in extra session because if now assembled it should not as I conceive reject the proposition of two thirds of the members of each house are not in favor of the amendment. And if two thirds are in favor of its adoption or rejection of the amendments, they should by a proper joint step to submit the question of amendment to a vote of the people at the next general election of Representatives

The following train of thought has led me to this conclusion – The Federal Constitution

**Names:**
amendments

**Types:**
politics



MISC. (1) 1B19 CPB

1 continued

was adopted by the people of all the States acting separately through conventions whose delegates were elected with a view to their action on that question. Article 5th of that constitution provides that amendments thereto, proposed by two thirds of Congress shall be valid when ratified by ~~three fourths~~ the Legislatures of three fourths of the several States or by conventions in three fourths thereof, as the one or the other mode of ratification may be ~~adopted by~~ proposed by the Congress

**Names:**
amendments

**Types:**
politics

2

No amendment of that Constitution affecting a change in any of its essential features, was ever adopted prior to the recent war, nor any of that character even proposed by Congress, prior to that time, so far as I know; nor any which were of such a nature as to require any change in the organic law of any of the States. The amendments now proposed, of that character - going to a change of both the Federal and State constitution - and changes be deliberately considered I do not propose to discuss the constitutional power to make such changes without the consent of all the States, further than to say that such power was contended in 1826 in Congress by Mr Everett then a distinguished representative from Massachusetts - that it has never been adjudicated, not affected by precedent since the year 1865 - and that, the fact that the people of the Several States in framing their State Constitutions, (some of which, serving as precedents for the others, were nearly contemporaneous with the adoption of the Federal Constitution) do not prescribe the manner, in which the legislature of the States shall ascertain the sense of the people touching amendatory propositions to amend the Federal Constitution, tends to show that amendments of the character now proposed were not contemplated at the time of the adoption of the Federal Constitution or

**Names:**
amendments

**Types:**
politics

any of the State Constitutions.

The State Constitutions all manifest on the part of their framers a sense of the importance of stable governments, and great caution on the part of the people of the State, ~~have very careful~~ in framing their constitutions to guard against ~~any~~ changes of any character in the organic law of their State governments, without mature deliberation, upon the part of the people, as well as the Legislatures; ~~and~~ some of them prohibiting amendments ~~within~~ more than once in a specified ~~period of time~~ number of years. Our own State requiring the affirmative action of two thirds of each house of two successive legislatures, and an intervening vote of a majority of the people voting after three months notice. This precaution is obviated although the power exists ~~exclusively~~ in the people of the State making such change in its Organic law, to abrogate the amendment if found imprudent or oppressive.

It cannot be presumed therefore that the framers of our State Constitutions contemplated that there should be less deliberation or less care taken to ascertain the sense of the people upon a proposition to amend the Federal Constitution, especially when such proposition implies radical changes in the Organic law of the State Governments. For such change may effected ~~by~~ indirectly by a change of the Federal

**Names:**
amendments

**Types:**
politics

constitution ~~government~~ (which is paramount to the State constitution) it passes out of the power of the people of the State to correct it if found oppressive. And whilst the negative vote of Alabama on such proposition or even her non action, will outweigh the united ~~votes of~~ affirmative votes of the great States of New York and Pensylvania on the proposition to adopt or ratify - yet on a proposition to abrogate after adoption, the negative ~~[illegible]~~ vote or non action of the little State of Rhode Island or Florida would be a counterpoise to the United affirmative votes of Alabama New York & Pensylvania in favor of continued -

The impression seems to exist in the minds of some of our people, who appear to lead, that the Legislatures ~~[illegible]~~ their authority to act upon such propositions from the Congress of the United States under the Federal constitution, - and that it is therefore competent for them to act without consulting the people, whose agents they are - even tho such action may produce a change in the form of the State government - Such a view is inconsistent with every principle of our system of government - with the leading "self evident truth" enunciated in the declaration of Independence that ~~all [illegible]~~ Governments derive "their just powers from the consent of the governed" - and with the very preamble of the Federal constitution -

which declares that that Instrument is ordained and Established by "the people" ~~and~~ that Constitution was adopted by

In adopting that Constitution the people of the several States acted as independent sovereign powers, no one being bound except those, ratifying it ~~[illegible]~~ ratified it; and accordingly after our government went into operation, N. Carolina and R. Island remained separate independent powers, because they refused ~~for a year or two~~ at first to ratify the Constitution.

The Federal Constitution clearly contemplates, that in acceding or declining to act upon propositions to amend it, the people of the several States, (having reserved all powers not expressly granted) shall be left to as full the exercise of sovereignty as they possessed when it was originally adopted — Nor ~~is the~~ existence of such right of full sovereignty ~~one that that such right of sovereignty exists~~ in relation to such action or non action ~~is not~~ inconsistent with the fact that if adopted in a constitutional manner by three fourths of the States the amendment is binding upon all the States — For that was the compact between the States, by their acceding as full sovereigns; the inconvenience of requiring the assent of every one of the States may become manifest under the old Confederation which this government succeeded

**Names:**
amendments

**Types:**
politics

(1)

In chancery for the fifth District of the Northern Division of Alabama.

William F. Walker et al
vs
Henry Jordan and Robt C Brickell Exors of Fleming J McCartney Dec'd et al

Cross interrogatories propounded by the complainants to LeRoy P. Walker to whom the defendants have propounded interrogatories in chief. 3:

1 If you answer the second interrogatory in the affirmative. then, state when and where you became acquainted with each or either of them?

2 Is it not true that you never were acquainted with said Martha H Bone?

3 Is it not true that your acquaintance with said Matthew H Bone commenced in the office of the defendant Brickell in Huntsville?

4 Was he not introduced to you by said Brickell?

5 Did you not commence the first conversation between him and yourself. by remarking to him that. you were informed by Brickell that he desired a bill in chancery to be filed for setting aside the probate of Fleming

**Names:**

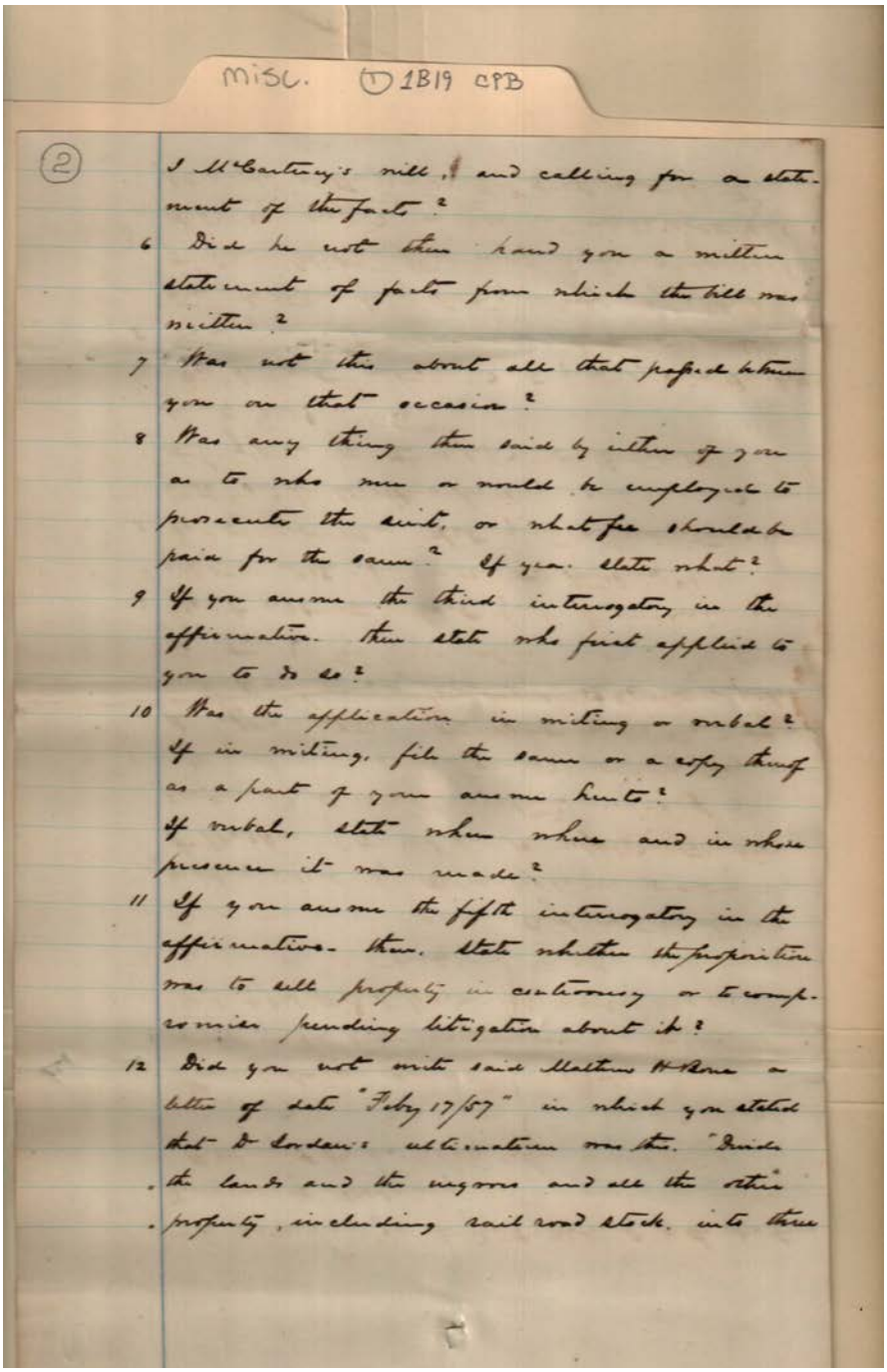
Bone, Martha H.
Bone, Matthew H.
Brickell, Robert C.
Jordan, Henry
McCartney, Fleming J.
Walker, LeRoy P.
Walker, William F.

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court



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(2)

J. McCartney's will, and calling for a statement of the facts?

6 Did he not then hand you a written statement of facts from which the bill was written?

7 Was not this about all that passed between you on that occasion?

8 Was any thing then said by either of you as to who was or would be employed to prosecute the suit, or what fee should be paid for the same? If yes, state what?

9 If you answer the third interrogatory in the affirmative, then state who first applied to you to do so?

10 Was the application in writing or verbal? If in writing, file the same or a copy thereof as a part of your answer hereto? If verbal, state when where and in whose presence it was made?

11 If you answer the fifth interrogatory in the affirmative, then, state whether the proposition was to sell property in controversy or to compromise pending litigation about it?

12 Did you not write said Matthew H. Rice a letter of date "Feby 17/57" in which you stated that Dr Jordan's ultimatum was then, "Divide the lands and the negroes and all the other property, including rail road stock, into three

**Names:**

Jordan, Dr.
McCartney, Fleming J.

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court

(3)

parts of equal value and Mrs Bone to draw for one of them. The house hold & kitchen furniture to be held without division. The plantation to be kept up this year and she to get one third proceeds thereof after deducting expenses. My estimate of the worth of her share under this proposition is about $34 000.? If you file a copy thereof.

13. If you say that you have no copy of such letter then show the circumstances that you now and your firm's letter books contain no such copy between the last letter of a prior date and the first letter of an after date?

14 Was not said proposition, of said letter of date February 17. 1857, for compromise of the then pending litigation in relation to the property of said McCartney's estate? or was it for the sale of any part of it to Dr Jordan?

15 If you say it was a proposition of sale to Dr Jordan, then state what the consideration for the sale was?

16 What was the value of the property of said McCartney's estate?

17 Did not the appraisers or commissioners appointed by Dr Jordan and Mrs Bone to value and divide the property value the property in Madison County Alabama on December 29. 1857 at one hundred and twelve thousand dollars, value in gross of the crop growing that year and the chose household & kitchen furniture

**Names:**

Bone, Mrs. Jordan, Dr. McCartney,

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court

(4)

in action or debts due the estate, and the same shall be directed by said McCartney to be sold?

18 Have you not seen the appraisement made then? And does it not show that valuation? If not state what the valuation was?

19 Did you not on "Feby 19/58" write said Matthew H Bone that you had prepared the papers for the commissioners and that it was subject to his order?

20 If you have that paper file it with your answer hereto? If you have not the paper but a copy of it, file that or another copy?

21 Did not said McCartney's estate own lands in Jackson County Alabama? If you state the amount and value of them?

22 Had not a tract of land in Mississippi belonging to said estate been sold for ten thousand dollars under an agreement of the parties that the purchaser money should be held to abide the litigation in place of the land?

22 Did not said appraisers or commissioners value the lands of said estate in Madison County Alabama at thirty six thousand three and six hundred and forty eight 14/100 dollars? And had not one third of it been allotted to Mrs Bone as dower which she or her husband then held for the term of her life?

23 Was there not on record in the Probate Court of said county of Madison in Deed Book V page 358 a deed of trust of his property by Dr Jordan to

(5)

John W Weaver of date June 30. 1845 to secure the payment of his indebtedness to said McCartney and others, in which it was stated that his indebtedness to said McCartney was not ascertained but believed to be about thirteen thousand dollars?

24 Is it not true that said Jordan was the Guardian of said McCartney and had made no final settlement of his guardianship at McCartney's death?

25 Was not a decree rendered in said Probate Court of date April 25. 1859 pertaining to the final settlement of said Jordan's administration of the estate of James McCartney the father of said Fleming J McCartney as ascertaining a balance in his hands for distribution of twenty three thousand one hundred and eighty nine 36/100 dollars and recitting that said Jordan had charged himself as guardian with said McCartney's one third thereof?

26 Was not the will of said Fleming J McCartney written by the defendant Brickell and attested by only two witnesses? And did not the law of Mississippi require a will of real estate, not wholly written and signed by the testator, to be attested by three witnesses?

27 Did not said Martha H Bone inherit the lands of said McCartney in Mississippi under the statute of descents in that state?

**Names:**

Bone, Martha H.
Brickell,
Jordan,
McCartney, Fleming J.
McCartney, James
Weaver, John W.

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court

(6)

27. Was it not under your advice that she consented for the Mississippi lands to be sold and the purchase money to abide the result of the suit to set aside the will?

28 If, in answer to the eleventh Cross interrogatory, you say that the proposition was to sell property in controversy and not to compromise pending litigation about it. then say whether it was to sell Mrs Bone's claim to all except the household and kitchen furniture and forty thousand dollars worth of the other property in controversy, or to sell all except that, if she was successful in setting aside the will and establishing her right to the property?

29 Was the proposition an arrangement dependent on the setting aside the will and to be carried out only in the event the will was set aside? Or was the setting aside the will one of the terms of the proposed agreement?

30 Was she to have the forty thousand dollars, if the will was sustained?

31 Was Jordan to pay the debts of herself and her husband if the will was sustained?

32 Had not the household and kitchen furniture been appraised at
And was it worth more than that amount?
If yes. state how much.

33 If it was not a compromise but a conditional

**Names:**
Bone, Mrs.
Jordan,

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court

(7)

sale what other consideration than the payment of the debts of her husband and herself to McCalley & Co Wm H Powers. Haley & McKibbon. Wm T Blount. and Stewart & Derrick was she to receive?

34 Were not these debts as follows viz:

To McCalley & Co $1197.25
" Wm H Powers
" Wm T Blount
" Haley & McKibbon 453.00
" Stewart & Derrick 80.00

35 Did all the debts exceed $.
If yea by how much?

36 Now supposing the property of McCartney situate in Alabama to have been worth one hundred and twenty thousand dollars exclusive of the household and kitchen furniture, would not the effect of your proposition to Jordan, if a sale and not a compromise was meant, have been, that when her title to all the property became absolute by setting aside the probate of the will, she would give Jordan her dower interest in the Alabama lands and her fee simple of the Mississippi lands as a bonus to induce him to buy eighty thousand dollars worth of the property at the price of
the amount of the debts mentioned?

37 By what considerations were you led to consider such an arrangement advisable to your client?

**Names:**

Blunt, William T.
Halsey & McKibbon
Jordan,
McCalley & Co.
McCartney,
Powers, William H.
Stewart & Derrick

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court

(8)

38 If you answer the sixth and seventh interrogatories in the affirmative - then state whether or not after Jordan's acceptance of your proposition you wrote said Mathew H Bone a letter of date "April 24/57" informing him that Jordan and yourself had agreed on a compromise of which the terms were in substance as follows viz:

1. He is to pay you $40000 worth of property to be valued by persons selected by the parties.
2. He is to pay all debts contracted by you and unpaid.
3. You are to retain all the property purchased by you.
4. You are to have the household and kitchen furniture.
5 The Crop now growing is to be divided according to the property allotted to you.
6 The mill is to be set aside, which carries with it all the costs with it in your favor. viz?

If you file a copy of said letter with your answer hereto.

39 If you say that you have no copy of your letter of date April 24. 1857 to said Bone. then show the commissioner that neither you nor your firm's letter books contain a copy of such a letter between the last letter of a prior date and the first letter of an after date?

**Names:**
Bone, Mathew H. Jordan,

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court

(9)

40 Did not your said letter of April 24. 1857 also say that Jordan refused to allow anything for Mrs Bone's dower in the land, and that you thought it advisable to yield that point?

41 If you answer the eighth interrogatory in the affirmative. then state which of the parties signed first and when and where each signed it?

42 By whom was it attested?

43 If you have the original agreement, file it with your answer hereto?

44 If you have not the original, state when where and in whose possession you last saw it?

45 If you have not the original, state how you know a copy of it?

46 If you say that you kept a copy, file that copy with your answer hereto?

47 If such copy does not contain the names of the attesting witnesses, state why this name was omitted?

48 Was there not an appeal in the name of Jordan and Brickell as Executors from the decree of the Chancery Court setting aside the probate of McCartney's will?

49 Was the appeal actually taken by them or by legates in their name?

**Names:**
Bone, Mrs. Brickell, Jordan, McCartney,

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court

(10)

50 Did the executors or legatees employ the solicitors who prosecuted the appeal?

51 Did the solicitors who represented the executors in the Chancery Court or others prosecute the appeal

52 If you cannot answer the three preceding interrogatories of your own knowledge, do so on the information you have received from said executors or either of them?

53 If you answer the twelfth interrogatory in the affirmative, state when where made in what order and in whose presence it was executed?

54 Who were the attesting witnesses to it?

55 If you have the original of this last agreement file it with your answer hereto?

56 If you have not the original, how do you know a copy of it?

57 If you say that you kept a copy, file such copy with your answer hereto

58 If the names of the attesting witnesses are omitted in that copy, state why?

59 When where and in whose possession did you last see the original of this second agreement?

60 Did Jordan sign this second or last agreement before or after Bone & wife signed it?

61 Was not the stipulation that Jordan should

**Names:**
Bone, Jordan,

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court

(11)

pay McCartney's debts contained in the last agreement a provision added to the terms of the original agreement?

62 Did you not in a letter to Mathew H. Bone of date "July 2/57" say that you enclosed the agreement signed by Dr Jordan, for him and his wife to sign it; and call his attention to the fact of having added the provision for Jordan's payment of McCartney's debts? If you file a copy of said letter with your answer state so?

63 If you say that you have no copy, then show the circumstances that you can not your firm's letter book contain such a copy between the last letter of a prior date and the first letter of an after date?

64 Were you in partnership with the defendant Brickell when the arrangement between Jordan and Bone & wife was negotiated?

65 Did you not suggest the compromise to Mr Bone?

66 Had the matter been spoken of between Brickell and yourself before you suggested it to Bone?

67 Did not Bone inform you that Mrs Bone wished it to be expressly stated in the agreement that the property relinquished by her should belong to the legatees? And did you not answer that it could be done?

**Names:**
Bone, Mathew H. Brickell, Jordan, Dr. McCartney,

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court

(12)

68 When you handed Bone the written agreement did he not call your attention to the fact that you omitted to express the stipulation desired by Mr Bone?
And did you not assume that Jordan represented the legatees and that Mr Bone had better get her share of the property out and let the legatees look to Jordan for theirs?

69 Did you then expect Jordan to claim the property relinquished by Bond & Wife as a purchase on his own account and for his own benefit?

70 Did not Jordan qualify as administrator of McCartney's estate on Aug 31. 1857 and give bond as such in the sum of Two hundred thousand dollars?

71 Did not apply for letters of administration on his estate on ?

72 When you advised Bone to make the compromise with Jordan, was not Brickell present and did not Bone ask his advice in the matter?

73 Did not Brickell advise him to make it and give as his reasons therefor, that Mrs Bone would get as much as she needed and the children meaning legatees would get as much as they ought to have?

**Names:**

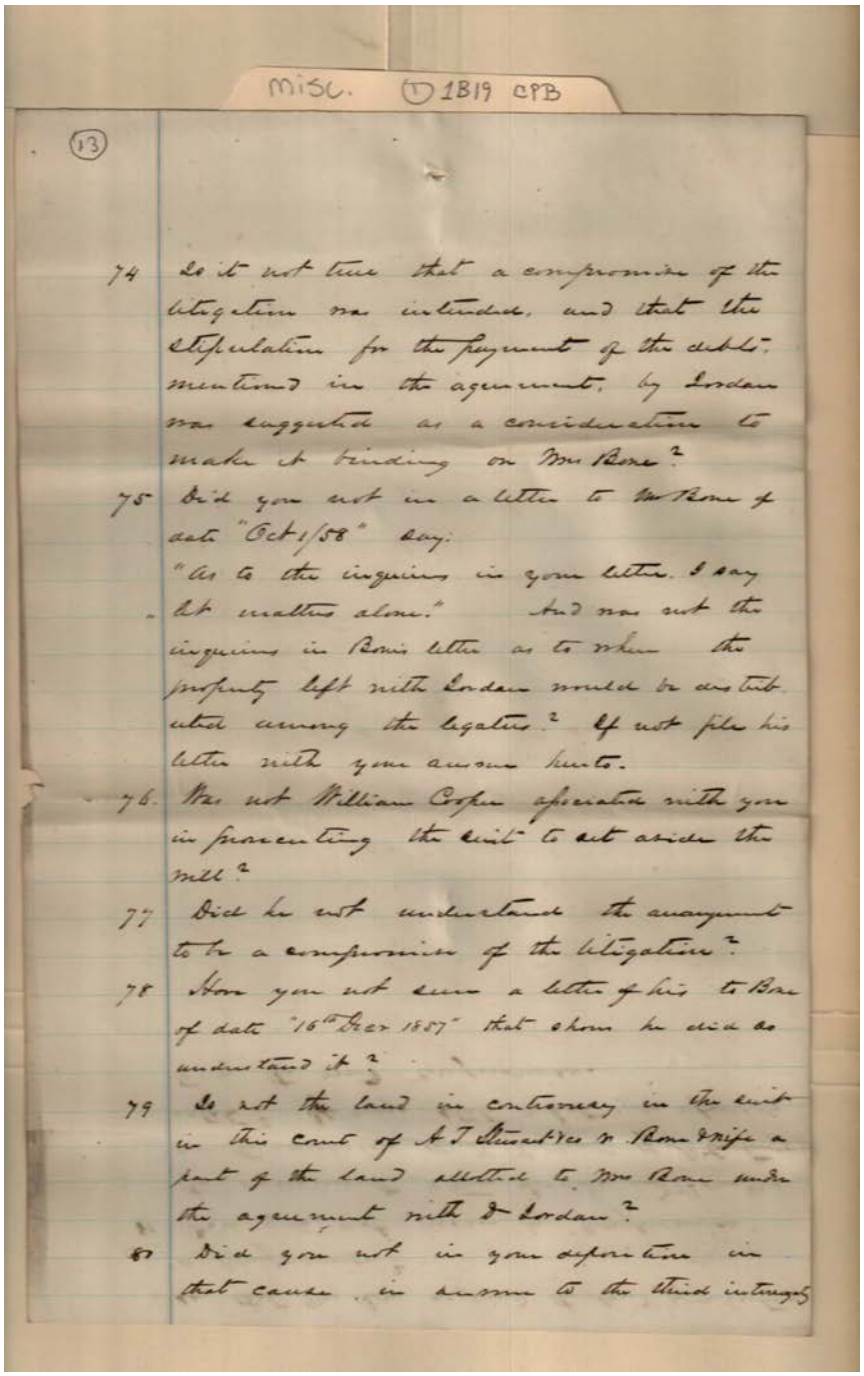
Bone,
Bone, Mrs.
Brickell,
Jordan,
McCartney,

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court



MISC. (1) 1819 CPB

(13)

74 Is it not true that a compromise of the litigation was intended, and that the stipulation for the payment of the debts mentioned in the agreement, by Jordan was suggested as a consideration to make it binding on Mr Bone?

75 Did you not in a letter to Mr Bone of date "Oct 1/58" say:
"As to the inquiries in your letter. I say let matters alone." And was not the inquiries in Bone's letter as to when the property left with Jordan would be distributed among the legatees? If not file his letter with your answer hereto.

76. Was not William Cooper associated with you in prosecuting the suit to set aside the will?

77 Did he not understand the arrangement to be a compromise of the litigation?

78 Have you not seen a letter of his to Bone of date "16th Decr 1857" that shows he did so understand it?

79 Is not the land in controversy in the suit in this court of A J Alexander vs Bone & wife a part of the land allotted to Mr Bone under the agreement with Dr Jordan?

80 Did you not in your deposition in that cause, in answer to the third interrogatory

**Names:**

Bone, Mr. Bone, Mrs. Cooper, William Jordan, Dr.

**Places:**

Fifth District
Northern Alabama

**Types:**

chancery court

(14)

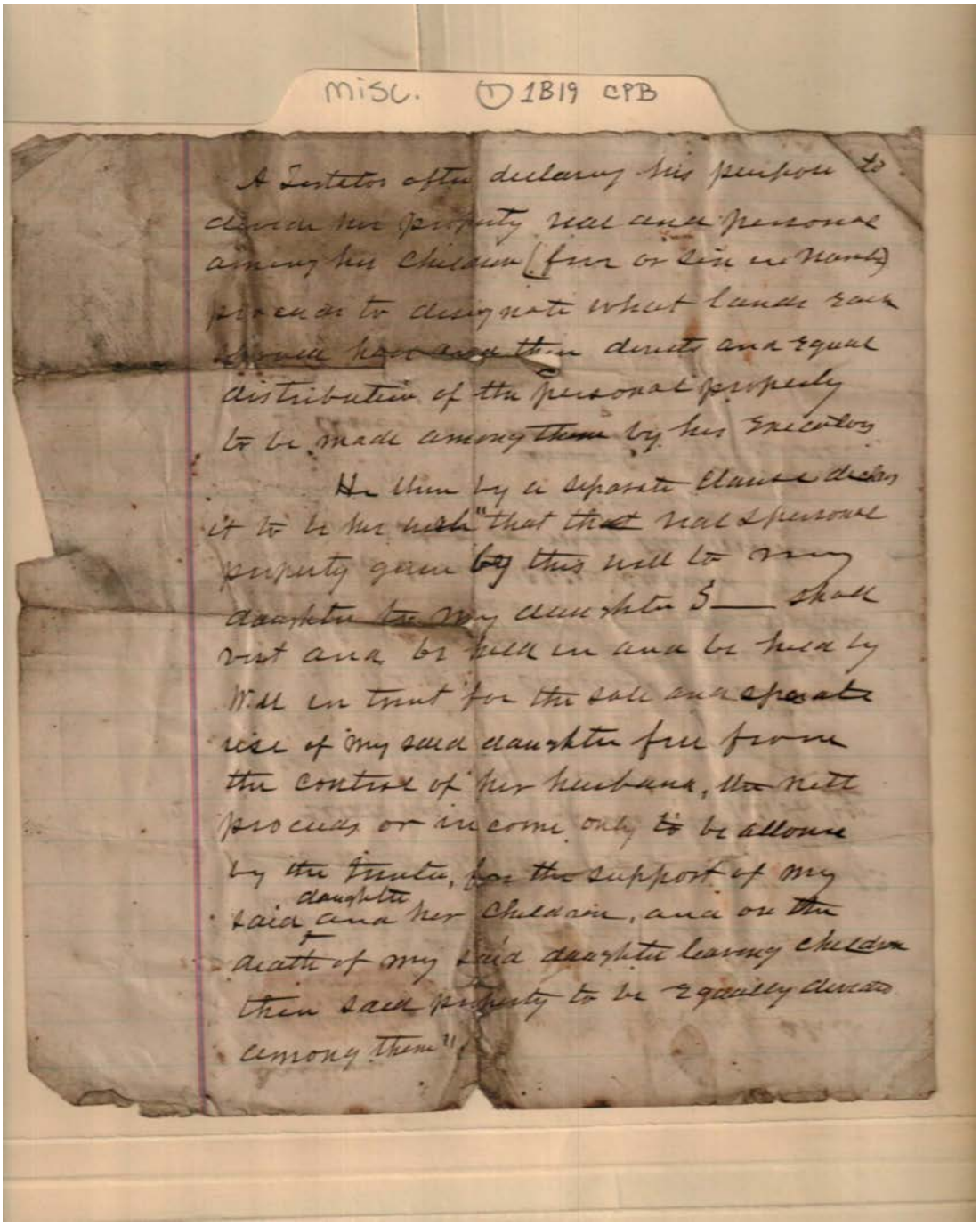
say that Mr Bone acquired the land by inheritance "or Compromise"?

81 Did you not mean by "Compromise" the agreement between Jordan and Bone & wife for the division of the property of McCartney's estate? If so, state what you referred to by the word compromise.

**Names:**
Bone, Mrs. Jordan, McCartney,

**Places:**
Fifth District
Northern Alabama

**Types:**
chancery court



MISC. (1) 1B19 CPB

A Testator often declaring his purpose to
divide his property real and personal
among his Children (five or six in number)
proceeds to designate what lands each
of them has and then directs an equal
distribution of the personal property
to be made among them by his Executors.

He then by a separate clause declares
it to be his will "that that real & personal
property given by this will to my
daughter to my daughter S___ shall
vest and be held in and be held by
Will in trust for the sole and separate
use of my said daughter free from
the control of her husband, the rent
profits or income only to be allowed
by the trustee, for the support of my
said daughter and her Children, and on the
death of my said daughter leaving children
then said property to be equally divided
among them".

**Types:**
legal note

Dawson

The daughter survives the husband. She has ~~several~~ two children all of whom have attained the age of 21 years - & were living when the will was made & testator knew that fact & Queries -

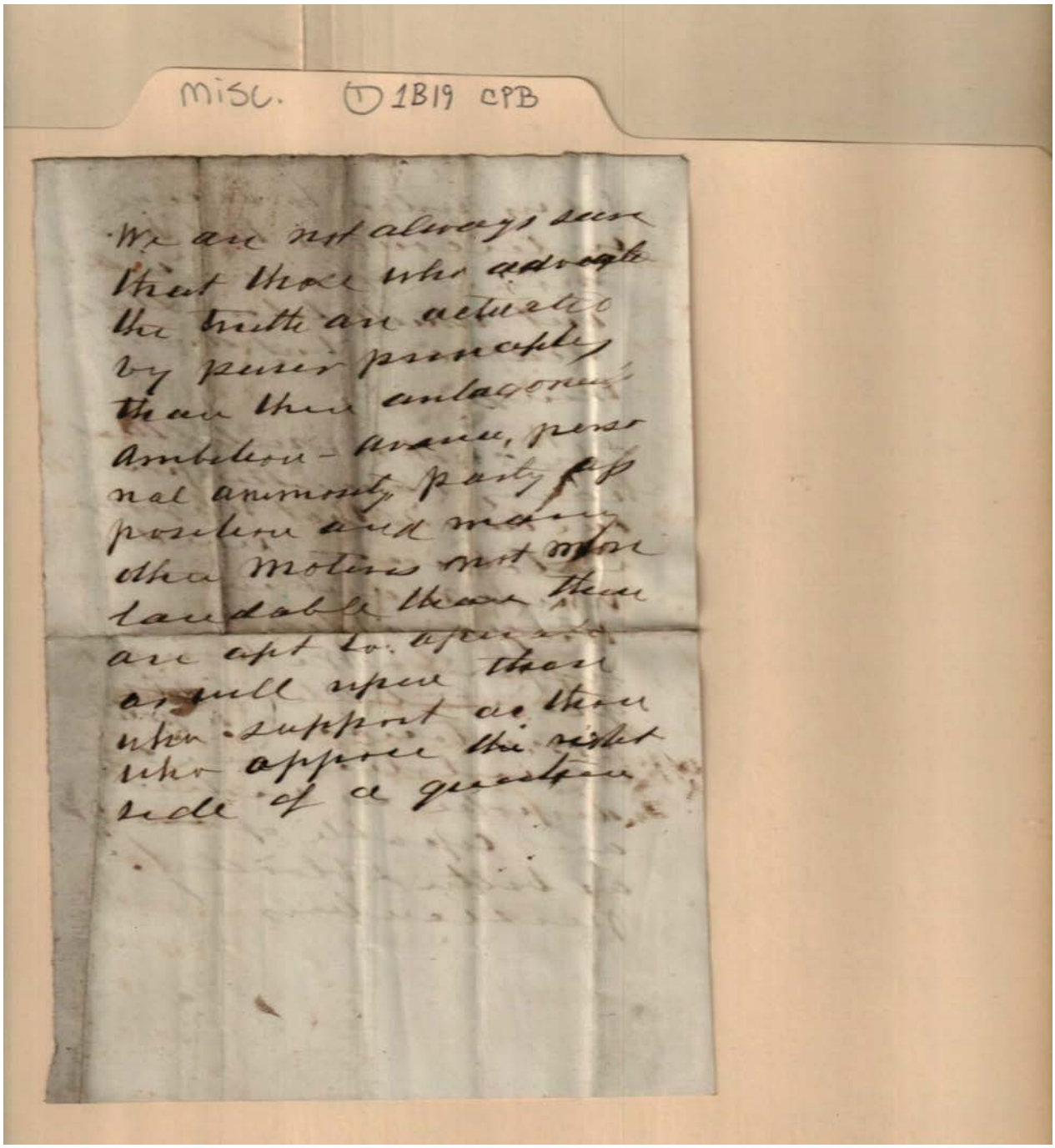
1 What estate has the daughter in the property?

2 What estate has each of the children of the daughter beyond a support during his or her life?

3. If one of the children shall die ~~being~~ unmarried in lifetime of the mother ~~will it~~ and the other survive the mother will the surviving child succeed to the whole estate or may the mother dispose of part of the estate by will -?

4 ~~If one of the daughters shall die with children.~~

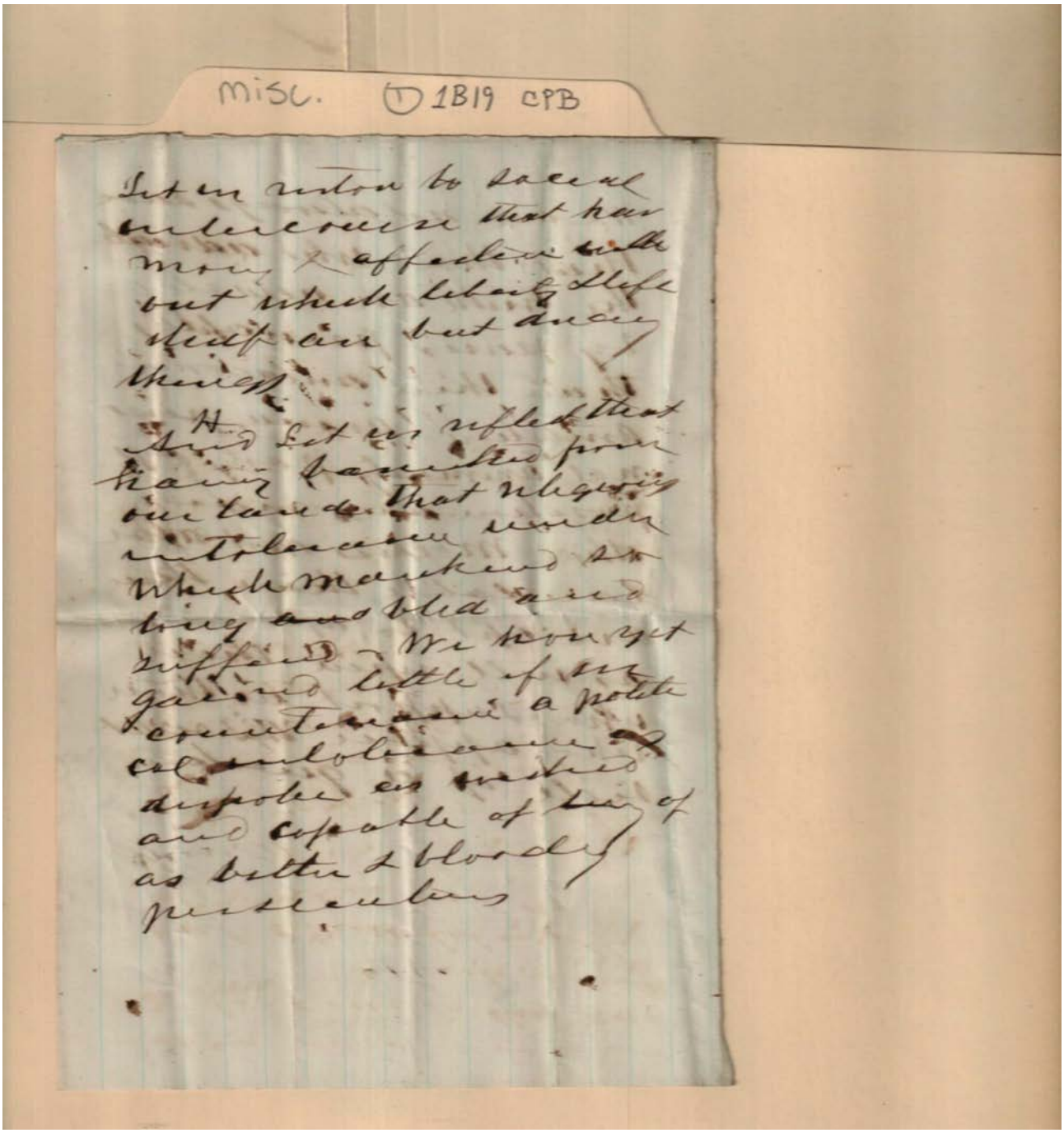
4 If both ~~daughters~~ die in lifetime of the



MISC. (1) 1B19 CPB

We are not always sure
that those who advocate
the truth are actuated
by purer principles
than their antagonists
ambition - avarice, perso
nal animosity, party sp
position and many
other motives not more
laudable than these
are apt to operate
as well upon those
who support as those
who oppose the right
side of a question

**Types:**
politics



MISC. (1) 1B19 CPB

Let us return to social intercourse that has many & affections without which life itself is but a dreary thing.

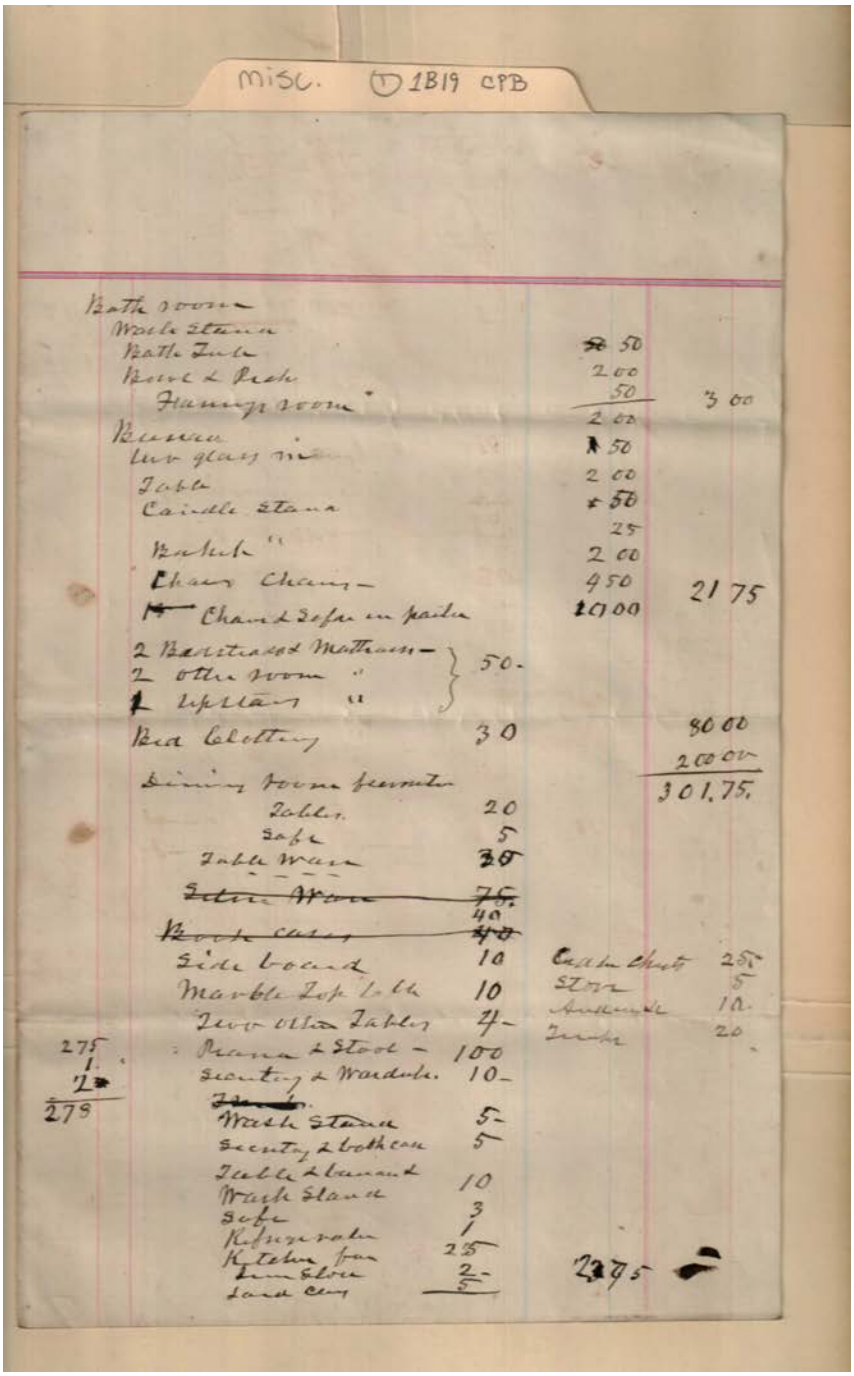
And let us reflect that having transmitted from our land that religious intolerance under which mankind so long and bled & suffered. We now yet gaining little of the countenance a polite & enlightened people as despotic as ever and capable of as bitter & bloody persecutions

**Types:**
politics

prevent the Election of any officers. radical to office - I thank the Editor for this laudable appeal and I thank him for reproducing it - It is worthy to be kept as a standing warning to all those who desire the success of our party more than that and complete advancement of the prosperity of the people of the whole State. ~~than the advancement of themselves or so a~~ in a greater degree, than the promotion to office, of themselves or their neighbors or personal friends -

But whose business is it to find out whether or not such a convention will be necessary? How is the Editor and others doubtful of such necessity to be convinced of it? How many days before the Election must this important fact be ascertained & established to the satisfaction of all Democratic aspirants for office if it be necessary to obtain the assent & pledge of such aspirants; and if no man is to be regarded as a traitor, who does not participate in and bind himself to abide the results of the convention?

**Types:**
politics



MISC. 1B19 CPB

Bath room
Wash stand
Bath Tub
Bowl & Pitch
Hanging room
Kitchen
two glass ware
Table
Candle stand
Bench "
Chairs Chairs
Chairs & Sofa in parlor
2 Bedsteads Mattresses
2 other room "
1 upstairs "
Bed Clothing
Dining room furniture
Tables
Safe
Table Ware
~~Stove Wood~~
~~Book Cases~~
Side board
Marble top table
Two other Tables
Piano & Stool
Secretary & Wardrobe
~~Stand~~
Wash Stand
Secretary & bookcase
Table & bureau
Wash Stand
Safe
Refrigerator
Kitchen furn
Iron Stove
Lawn Chairs

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| 40 | | | |
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| 10 | | Carpet Chairs | 25 |
| 10 | | Stove | 5 |
| 4- | | Andirons | 10. |
| 100 | | Irons | 20 |
| 10- | | | |
| 5- | | | |
| 5 | | | |
| 10 | | | |
| 3 | | | |
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| 25 | | | |
| 2- | | | 275 |
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275
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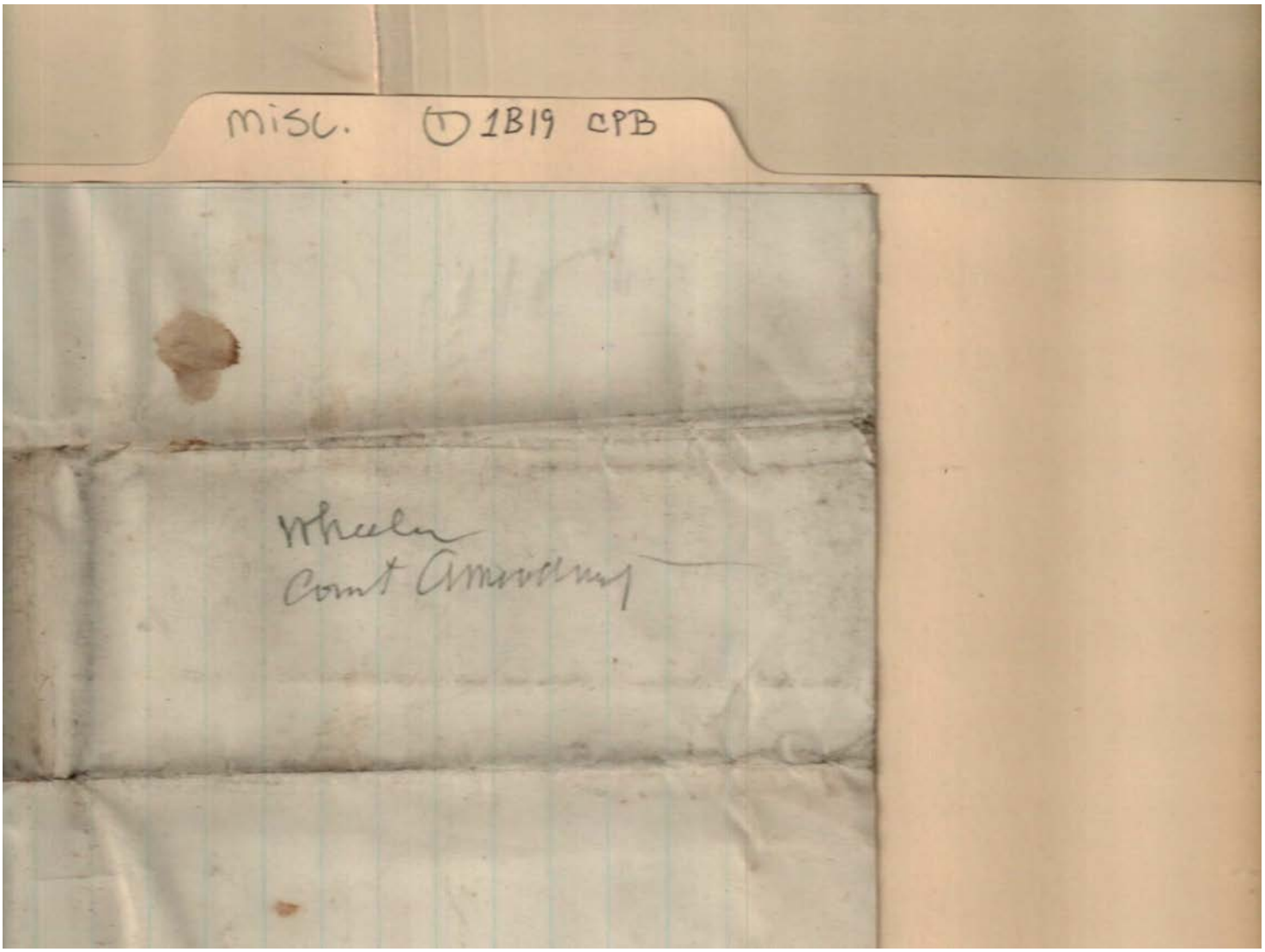
2
279

**Types:**
inventory




**Names:**
Wheeler,

**Types:**
memo

had emerged from the democratic
Construction of the power conferred upon
Congress, as taught by Jefferson & Madison -
You cite those departures as authority for
other departures. That line of argument
is fast converting our government into
a government of precedents instead of
a constitutional government -
A resort to Article V for needful chan
ges that time & change of circum
stances may render necessary

**Types:**
politics

Drake the trustee bought the lands conveyed in deed of trust. and became admr of one of the distributees under the deed - he has never filed an account or made settlement as admr charging himself with his intestates share of the trust fund - he cannot therefore say, he owns as admr and not as trustee so as to hold the land free from lien.
10 Ala 299 - 9 Pickering 395. 9 Metcalf 525.
5 Masons C C R 95

**Names:**
Drake,

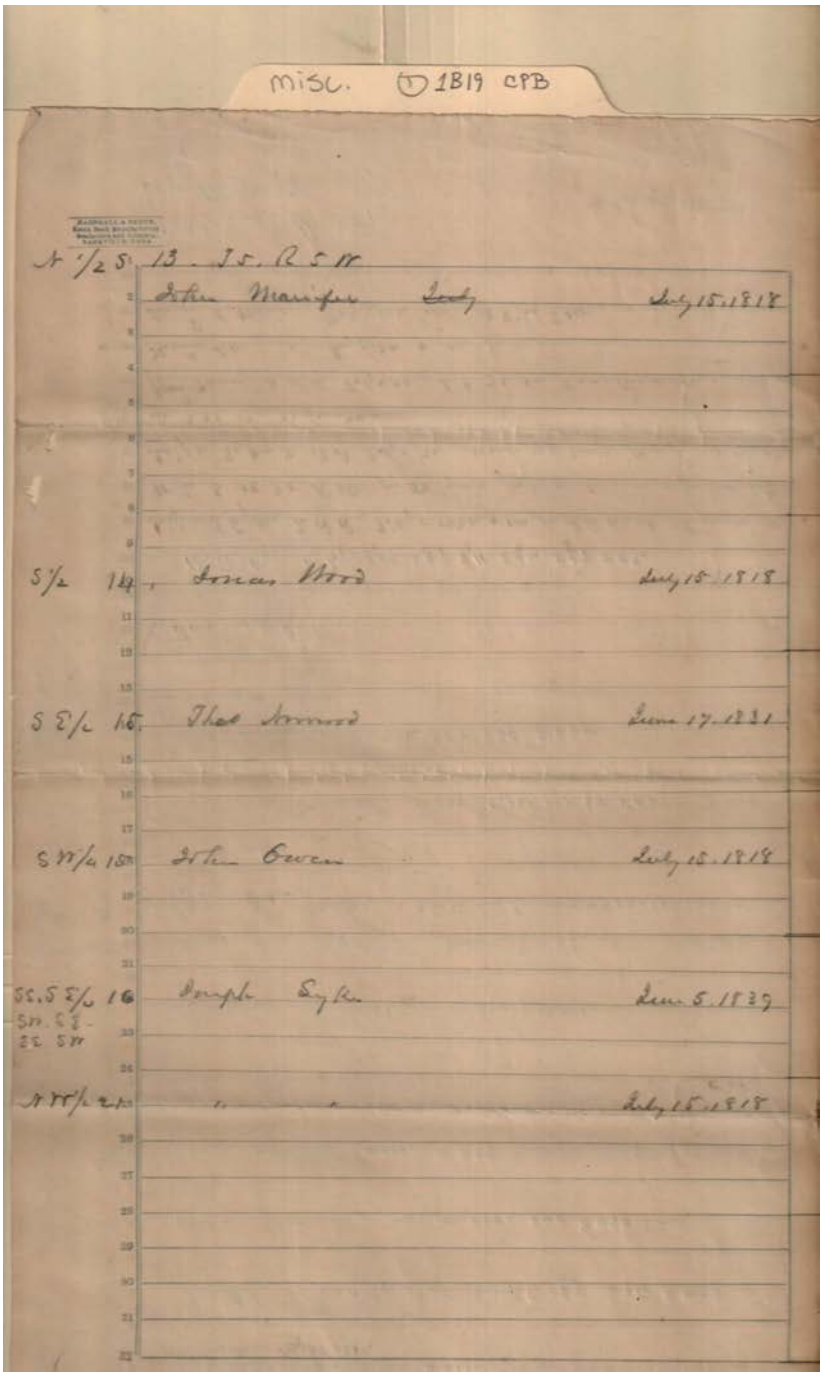
**Types:**
legal note

I think if you will examine the original deed of trust, you will find Mary A. Critz's share to be two thousand dollars, instead of three thousand dollars as stated.—

Jacob Critz—

**Names:**
Critz, Jacob
Critz, Mary A.

**Types:**
correspondence




**Names:**

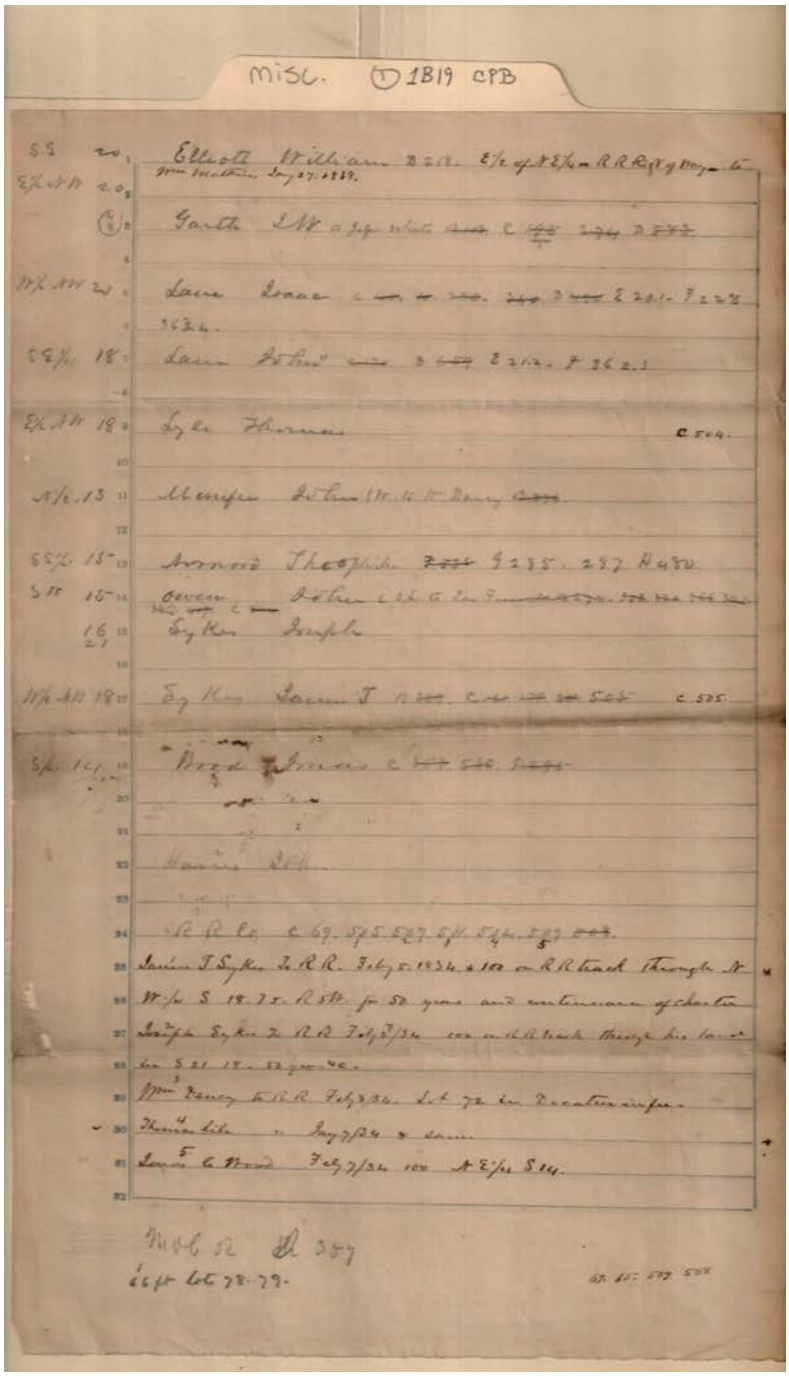
Gwen, Thomas
Menifee, John
Norwood, Thomas
Sykes, Joseph
Wood, Jonas

**Places:**

Morgan Co., AL

**Types:**

list




**Names:**

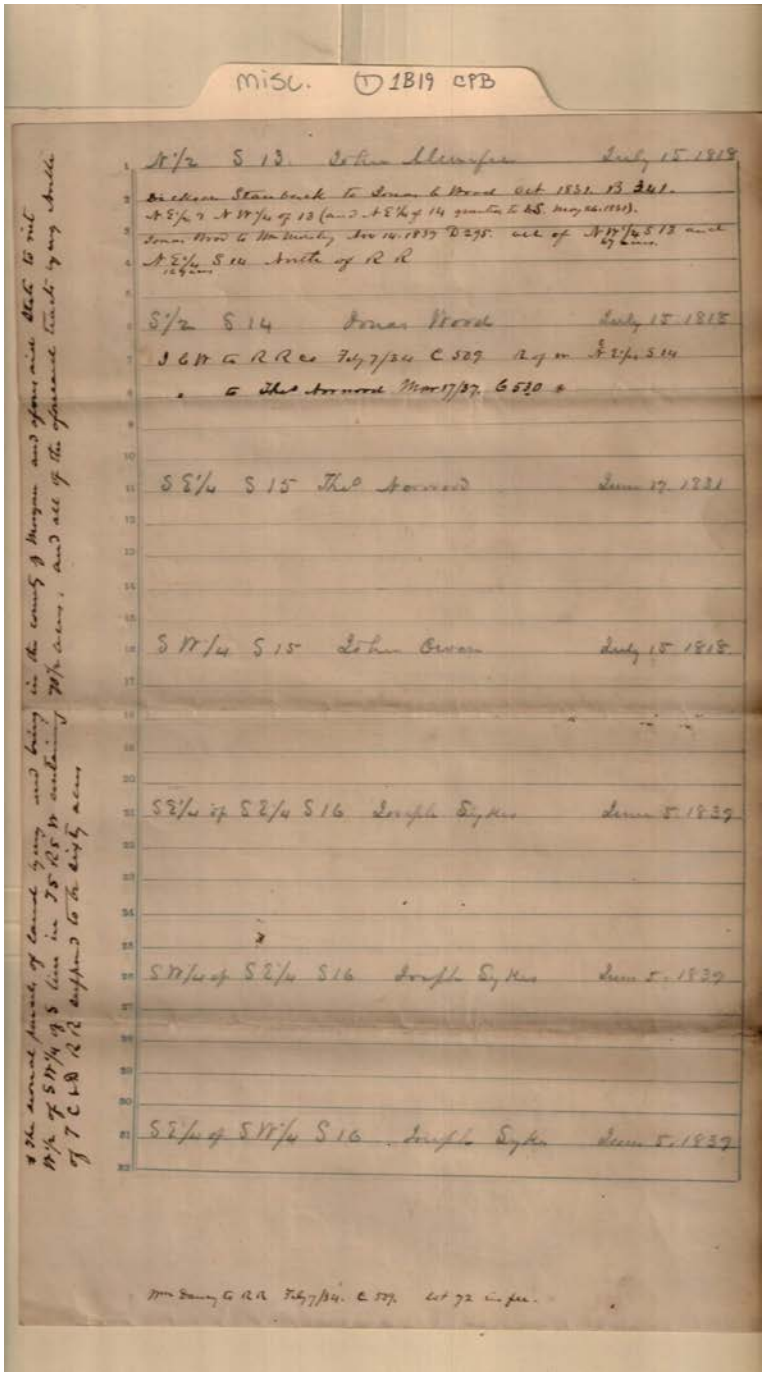
| | | | |
|---|---|---|---|
| Arnold, Theophilus | Garth, J. W. | Lane, John | Mennifee, John |
| Dancey, William | Harris, John | Lile, Thomas | Sykes, James T. |
| Elliott, William | Lane, Isaac | Lyle, Thomas | Wood, Jonas C. |

**Places:**

Morgan Co., AL

**Types:**

property description



MISC. 1B19 CPB

N 1/2 S 13 John Menifee July 15 1818
Dickson Stanback to Jonas C Wood Oct 1832 13 241.
N E 1/4 & N W 1/4 of 13 (and N E 1/4 of 14 granted to US. May 22. 1833).
Jonas Wood to Theo Norwood, Nov 14. 1837 D 295. all of N W 1/4 S 13 and N E 1/4 S 14 less 12 acres
North of R R

S 1/2 S 14 Jonas Wood July 15 1818
J G W to R R Co Feb 7/34 C 529 Reg on S 1/2 S 14
" to Theo Norwood Mar 17/37 G 530 *

S E 1/4 S 15 Theo Norwood June 17 1821

S W 1/4 S 15 John Owen July 15 1818

S E 1/4 of S 1/2 S 16 Joseph Sykes June 5 1839

S W 1/4 of S 1/2 S 16 Joseph Sykes June 5. 1839

S E 1/4 of S W 1/4 S 16 Joseph Sykes June 5. 1839

Mon Bancy to R R Feb 7/34. C 529. Let 72 in fee.

* The second parcel of land being the corners of Morgan and Lawrence Counties and all of the fractional Twp. 7 C L D R 22 adjoining to the City of Decatur

**Names:**

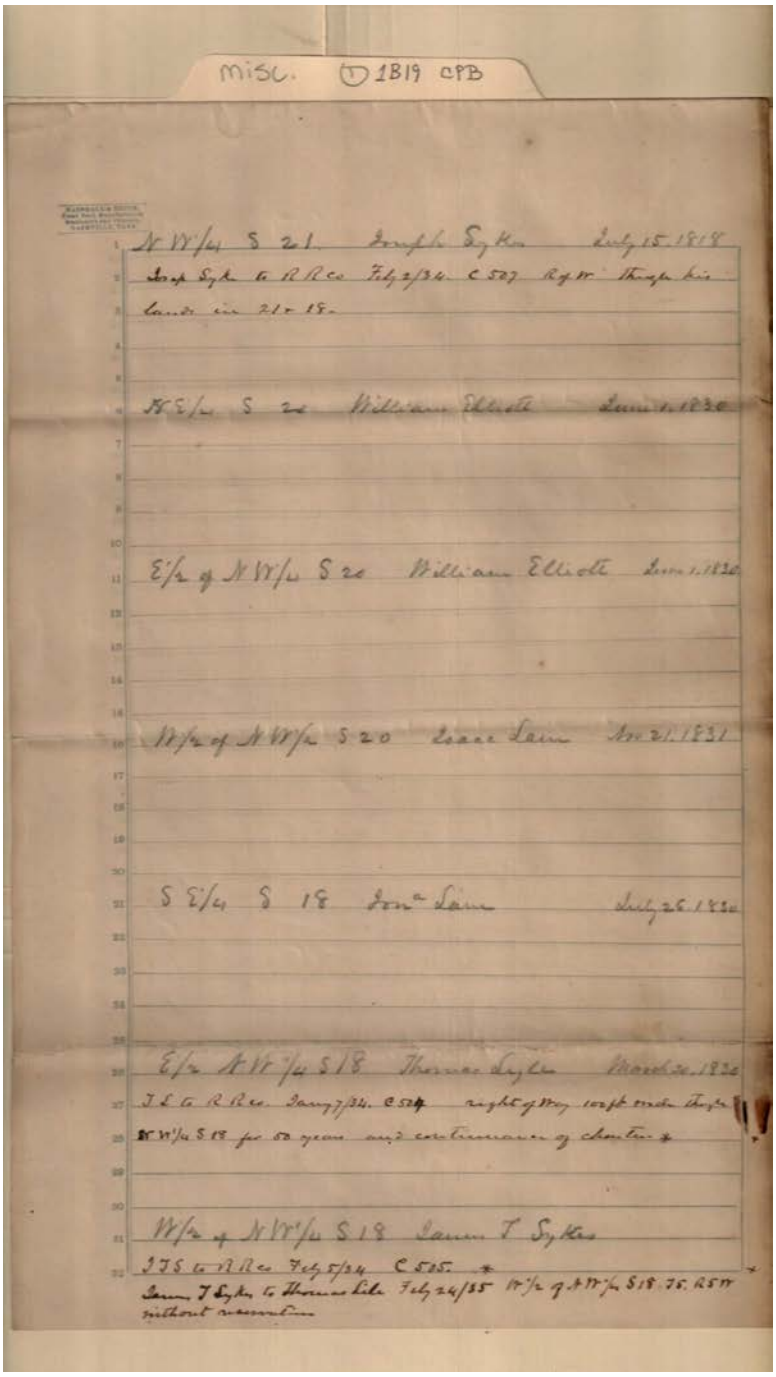
Menifee, John
Norwood, Theo
Owen, John
Stanback, Dickson
Sykes, Joseph
Wood, Jonas C.

**Places:**

Morgan Co., AL

**Types:**

property description



MISC. (1) 1B19 CPB

N W/4 S 21 Joseph Sykes July 15, 1818
Joseph Sykes to R R Co Feb 2/34 C 507 Right of way through his lands in 21 & 18.

N E/4 S 20 William Elliott June 1, 1820

E/2 of N W/4 S 20 William Elliott June 1, 1820

W/2 of N W/4 S 20 Isaac Lane Mar 21, 1821

S E/4 S 18 Jonathan Lane July 26, 1820

E/2 N W/4 S 18 Thomas Lyle March 20, 1820
J & G R R Co Jany 7/34. C 504 right of way 100 ft wide through N W/4 S 18 for 50 years and continuance of charter *

W/2 of N W/4 S 18 James T Sykes
J T S to R R Co Feb 5/34 C 505. *
James T Sykes to Thomas Lile Feb 24/35 W/2 of N W/4 S 18. T5. R5W without reservation

**Names:**

Elliott, William
Lane, Isaac
Lane, Jonathan
Lile, Thomas
Lyle, Thomas
Sykes, James T.
Sykes, Joseph

**Places:**

Morgan Co., AL

**Types:**

property description

## Table of Contents

## Name & Place Index

# Frances Cabaniss Roberts Collection

**Preferred Citation:** Frances Cabaniss Roberts Collection, Archives and Special Collections, M. Louis Salmon Library, University of Alabama in Huntsville, Huntsville, AL.

**Collection Scope and Content:** The Collection of 114 Linear ft. includes a total of 156 Archival Boxes. The Frances Cabaniss Roberts collection covers the historical records of the Cabaniss Roberts family. This collection contains extensive correspondence records of the Cabaniss Roberts family circa 1830 to 1930.

**Archives/Special Collections Access Restrictions:** None



**Provenance:** Gift of Johanna Shields on October 28, 2006.

THE UNIVERSITY OF
ALABAMA IN HUNTSVILLE

**The UAH Archives and Special Collections**
**M. Louis Salmon Library**