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In Reuter, Maria Burton and others vs. Jesse McKimzie
Circuit Court for Alle-
gheny County, is a Court of
Equity, 18th Nov 1843

Be it Remembered That herefore, I wit. on the 30th day of June in the year 1843, Moses McKimzie, by his Attorneys, Perry & Price, filed in this Court, his Bill of Complaint, against, Mrs. Burton Maria Burton and others, in the words following, To wit:

To the Honorable George A. Rouse Judge of the Circuit Court for Allegheny County, Sitting as a Court of Equity:
The Bill of Complaint of Moses McKimzie of Allegheny County, State of Maryland, respectfully represents, that a certain Jesse McKimzie many years since departed this life, intestate, leaving a large and valuable Real Estate, lying and being in Allegheny County, Maryland, and leaving his widow Catharine McKimzie surviving, and the following named children surviving, viz. Maria McKimzie who is intermarried with Mrs. Burton the said Maria and Mrs. her husband, both residing in Allegheny County, Maryland, also a daughter named Margaret McKimzie who is intermarried with one William McKimzie, with the said Margaret & William her husband, now reside, as before said, beyond the Jurisdiction of your Honorable Court, and the said Jesse, also left surviving a son named Benjamin F. McKimzie, who lives on the said real Estate in Allegheny County, aforesaid, also a daughter named Rebecca McKimzie, who is intermarried with one Henry A. Atkins the said Rebecca also died leaving one child surviving and her husband the said Henry, soon after the death of the said Rebecca, the said child also died, leaving the said Henry A. Atkins surviving, the said Henry now resides in Allegheny County, Maryland, and is of course tenant by the courtesy, and the said Jesse also died, leaving James McKimzie, a daughter, who is intermarried with one Wesley Burton the said James and Wesley her husband, now reside in Allegheny County, Maryland, also a daughter named Minnie McKimzie, who is intermarried with Simon Felt, the said Simon being left and now resides in Virginia, the said Minnie now resides in Allegheny County, Maryland, and also a son named Moses McKimzie, who now resides in Allegheny County, Maryland, and is your Complainant, and your further states that the said Catharine McKimzie departed this life in the year eighteen hundred and sixty four, And your further further states that the said Mrs. Burton and Maria his wife and William McKimzie and Margaret & his wife, have conveyed unto your Honor, all their right, title and undivided interest in the said Real Estate, being two hundred and sixty five acres of land, dated November, fourteenth in the year 1844, and recorded in Liber A. R. No 52, folio 28, as by a reference to said deed will more fully appear.

And your further further states that the said real Estate aforesaid is actually incapable of division among the parties entitled thereto, and that it would be for the benefit and advantage of all parties to have this same sold by a Justice appointed by your Honorable Court, and the proceeds of the said sale or monies brought into your Honorable Court and distributed thereunto.

to the rights and Equities of the parties entitled thereto
And your orator states that he is without remedy, except in your Honor
Court, whose matters of this kind are cognizable:

To this and therefore, that the said Ira Burton and Mariah his wife, (I
McKinzie and Margaret A his wife, Benjamin F. McKinzie, Henry A. A.
John M. Burton and Jane his wife, George Felt, and Amanda his wife,
answer the several matters and things hereinbefore stated as fully
particularly as if they were herein again repeated and then was specially
interrogated, and that the real estate may be sold and the proceeds
distributed as stated, and that your orator may have such other
further relief as the nature of their case may require.

May it please your Honor to grant unto your
Orator an order of publication, giving notice to the said (William)
McKinzie and Margaret McKinzie and George Felt, who are now residents
as before stated, of the object and substance of this Bill, and requiring
them to appear in this Court in person or by Solicitor on or before
a certain day, to answer the premises and shew cause if any they be
why a decree ought not to pass as prayed, and also as a writ of
habeas against the said Ira Burton and Mariah his wife, Benjamin
F. McKinzie, Henry A. Atkins, John M. Burton and Jane Burton his
wife and Amanda Felt, of Allegany County, aforesaid, commanding
them to appear in this Court, at some certain day, to answer the
premises, and abide by and perform such decree
may be passed in the premises, and will ever pray &c.

Very and Truly
Yours for Compliance

Whereupon the Court has passed the following Order of Publication:
Moses McKinzie
vs
Ira Burton, Mariah Burton and al

In the Circuit Court for
Allegany County, sitting as
Court of Equity, No. 10

The object of this Bill is to obtain a Decree
with the Real Estate of which Jesse McKinzie, died seized and possessed
as Equitably entitled.

The Bill States that many years since, Jesse
McKinzie of Allegany County, died intestate, leaving a large and valuable
real estate, lying in Allegany County, and left surviving him his wife
Catherine McKinzie who had since died, and also the following named
children his heirs at Law, Mariah McKinzie, who intermarried with
Ira Burton, Margaret McKinzie who intermarried with William McK.
Benjamin McKinzie, Rebecca McKinzie who intermarried with Henry
A. Atkins, and that the said Rebecca, also died leaving one child
that the child has since died leaving the said Henry A. Atkins
surviving, who is tenant by the County, and the said Jesse, also
left a daughter, named Jane McKinzie, who intermarried with John
M. Burton, and Amanda McKinzie who intermarried with George
Felt, and the Bill also states, that Mrs. McKinzie and Margaret
his wife and George Felt are now residents and living in the State
of Virginia, and beyond the jurisdiction of this Court, and the rest of
the heirs are citizens of Maryland.

property is incapable of division among the parties entitled thereto, prays that the same may be sold and the proceeds brought into court, and distributed therefrom to the parties entitled thereto. The Bill also prays for an order of publication against the resident defendants.

It is thereupon Ordered by the Clerk of the Circuit Court for Allegany County, sitting as a Court of Equity this 30th day of June 1866, that the complainant by causing a copy of this order to be included in some newspaper published in Cumuli in Allegany County, once in each week for one month before the 31st day of July next, give notice to the said absent defendants of the object and substance of this Bill, and warn them to appear in this Court, in person or by solicitor, on or before the first day of November next, to answer the premises and show cause if any they have why a decree ought not to be passed.

Whereupon issued summons to Daniel Duneau, Sff of Allegany County, which summons was returned by said Duneau, endorsed on the back, Thus, Summoned, Daniel Duneau, Sff.

In the Circuit Court for Allegany County, April Term 1866.
Summon Ira Burton, Maiah Burton, Benjamin F. McKinzie
By A. Atkins, John W. Burton, Jane Burton, Amanda Dicks,

To appear before the Circuit Court at Oct. Term 1866, to answer
Bill of Complaint of Moses McKinzie.

To the Sheriff of Allegany County, Returnable Oct 1st 1866.

H. Nesley, CLK

The following is the first Summons which was issued in the cause. To wit:

In the Circuit Court for Allegany County
April Term 1866.

Summons Ira Burton, Maiah Burton, B. F. McKinzie, By A. Atkins, John W. Burton, Jane Burton and Amanda Dicks. To appear before the July Term 1866, to answer the Bill of Complaint of Moses McKinzie, against them in said Court Exhibited.

To the Sheriff of Allegany County, Returnable July 21st 1866.

Issd June 30th 66,

H. Nesley, CLK

And on the 3rd day of October 1866, was filed in the cause the answer of defendants. To wit:

Moses McKinzie . . . In the Circuit Court for Allegany County, sitting as a Court of Equity.
Ira Burton, and others . . . No 1604 Equity.

The answer of Henry Atkins, Benjamin McKinzie, Amanda Dicks, Wesley Burton, and Jane Burton his wife, to the Bill of Complaint of Moses McKinzie, against them exhibited.

These defendants admit the facts matters and things stated in said Bill, and are willing that a decree for the sale of said land, should pass, and Justice should be administered to make

Witness

Henry McMillan
John McKeen

Moses McKenzies

Ira Burton and others

Hunny Atkins

B.F. McKenzie

Wesley ^{his} Burton

E. L. ^{ward} Burton

Annanda ^{her} Burton

I the Circuit Court for Allegany County
Sitting as a court of Equity
At West Equity

The separate answer and disclaimer of the
Burton and Annanda Burton his wife to the Bill of Complaint against
them Exhibited. These defendants admit the facts, matters and things
stated in said Bill of Complaint to be true, and disclaiming any
right, title or interest in the said land described therein. Having sold
their right to Moses McKenzie the complainant in said Bill. As
stated in said

Witness John McKeen

H. McMillan

Ira ^{his} Burton

Martha Burton

And on this 8th day of October 1866, was filed in the cause here, the
copy of deeds from Burton & up and McKenzie to Moses McKen-
zie, referred to in the Bill of Complaint, and marked Exhibit A, B
as follows. Exhibit

50¢
312.50

At the request of Moses McKenzie this
Deed was recorded Nov 1st 1866

This Deed, made this 14th day of November, in the year eighteen
hundred and sixty four, by us Ira Burton and Martha Burton his
wife and William McKenzie and Margaret A. McKenzie his wife
of Allegany County, in the State of Maryland, Witnesses, for and in
consideration of four hundred dollars, now the said Ira Burton and
Martha his wife and William McKenzie and Margaret his wife do
grant unto Moses McKenzie of said County and State, the two undivided
sixth parts in and to all those several tracts or parcels of Land
lying and being in said County and State, called "Lilly of the Valley"
"Addition to Lilly of the Valley" and "William's Deed" which were sold
and conveyed to Jesse McKenzie by William McKenzie, by deeds bear-
ing date the 11th day of October 1855 and recorded in Liber 113
N. O. folio 276, 277 & 278 one of the Land Records of said County, and
also all that other tract or parcel of Land, being in said County, & State
and called "Oblong" which was granted to the said Jesse McKenzie by
the State of Maryland, by Lettice Patent, bearing date, on the 16th day
of February 1850, which said two undivided sixth parts in and to
said tracts or parcels of Land descended to the said Martha Burton
and Margaret A. McKenzie, as children and heirs at Law of the
said Jesse McKenzie, now deceased.

Witness our hands and seals

Ira ^{his} Burton (seal)

Martha ^{her} Burton (seal)

William McKenzie (seal)

Margaret A. McKenzie (seal)

Attest
J. B. Widener

State of Maryland
Allegany County J. B. Widener

of November, in the year eighteen hundred, and sixty four, before the
subscribing Justices of the Peace of the State of Maryland in and for
Allegany County, personally appeared, Mrs. Burton and Maria Burton
his wife and William McKinzies and Margaret A. McKinzies his wife
and did each acknowledge the foregoing and to be their respective
acts.

J. B. Kildonan Jr.

¹³ True Copy - Sent - & Replied to
And on the 25th day of October was filed in the cause the answer
of M. & M. D. McKenzies as follows. To wit:

vs
 In the Circuit Court for Allegany County
 sitting as a Court of Equity,
 No. 1000 Equity

The answer of William McKenzie and Margaret A. McKenzie, his to the Bill of Complaint, against them exhibited.

These defendants admit the facts and things stated in the said Bill, and submit to each case as may be found in the premises.

Dist

Mr. Wm. Tuck.

William McKnight

Manuel A. H. Lopez

the sixth day of November 1866, and filed in their case the affidavit of non-residence in the words following. To wit: State of Maryland, Allegany, Co.

I hereby certify that on this 5th day of November 1866, before me the undersigned a Justice of the Peace, personally appeared Henry Atkins, who made oath in due form of Law that George Fink one of the defendants named in No 444 on the Equity docket of the Circuit Court for Allegany County, is a non-resident, and does not reside in the State of Maryland, but resides Beyond the jurisdiction of this Court. In the best of his knowledge and belief

James Beaton

Andrew Goulding, Jr.

And on the same day, to wit. Nov-6th 1806. was filed in this cause the certificate of the Printer, annexed to the order of Publication, which certificate and order, are in form following, to wit:

I hereby certify that the annexed order of Publication, was published in the Alleganese a newspaper printed in the City of Ann Arbor, once in each week for one month before the 31st day of July 1866.

W. E. McLean Publisher

100

G. W. E. Weber, Publisher

Order of Publication

Moses H. King

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Mr. Burton. Maria Burton and

5. In the Circuit Court of the District of Columbia, sitting as a Court of Equity, in 1864.

The object of this Bill is to obtain a Decree to give the real estate of which Jessie McKenzie died seized and possessed, or equitably entitled to. The Bill states that marriage of Jessie McKenzie of all her lands died intestate.

Abraham McKenzie, who intermarried with Isaac Burton, Margaret McKenzie, who intermarried with William McKenzie, Benjamin McKenzie, Rebecca McKenzie, who intermarried with Henry A. Adams and the said Rebecca also died, leaving one child, that the said child has since died, leaving the said Henry A. Adams surviving, who is tenant by the entirety, and the said Jesse also left a daughter, named Jane McKenzie, who intermarried with John W. Burton and Amanda McKenzie, who intermarried with George Fiedt, and the Bill also states that William McKenzie, and Margaret his wife, and George Fiedt are now residents and living in the State of Virginia, and beyond the jurisdiction of this Court, and the rest of the heirs are citizens of Maryland. The Bill also states that the said property is incapable of division among the parties entitled thereto, and prays that the same may be sold and the proceeds brought into Court and distributed thereunto to the parties entitled thereto. The Bill also prays for an order of publication, against the non-resident defendants. It is therefore ordered by the Clerk of the Circuit Court for Allegany County, sitting as a Court of Equity, this 30th day of June 1866, that the complainant, by causing a copy of this order to be inserted in some newspaper published in Cumberland, in Allegany County, once in each week for one month, before the 31st day of July next, give notice to the said absent defendants of the object and substance of this Bill, and require them to appear in this Court in person or by solicitor, on or before the first day of November next, to answer the premises and show cause, if any they have, why a decree ought not to pass as prayed.

True copy - Disto

H. Resley, Ck.

Whereupon the Court here passed the following decree, which was filed in this cause, on the 21st day of February 1867, Disto.

Moses McKenzie

No. 4604

vs
Isaac Burton and others

In the Circuit Court for Allegany County,
as a Court of Equity. June 1866

This case standing ready for hearing, and being submitted, the Bill, answers, Exhibits and were read & considered. Whereupon this 21st day of February, eighteen hundred and sixty seven, by the Circuit Court for Allegany County, sitting as a Court of Equity, adjudged, ordered and decreed, that the Bill of Complaint be and the same is hereby taken pro confesso, as against the non-resident defendants George Fiedt, other the other defendants having answered the Bill. It is therefore adjudged ordered and decreed, that the real estate in the proceedings mentioned, be sold, and that Thomas Perry and William Mc. Pinn, be and they are hereby appointed trustees, to make and sale, and that the course and manner of their proceedings shall be as follows: They shall first file their Bond with the Clerk of this Court, in the penalty of three thousand dollars current money, to be executed by them, and a surety or sureties, to be approved by this Court, or the Clerk thereof, conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them by any future decree or order in the premises. They shall then proceed to sell, having previously given at least three weeks

of the time, place, manner and time of sale, which terms shall be as follows, viz. one half cash and the balance in one year, without from the day of sale, the purchaser to give Bonds, for the deferred payments, with security, to be approved by the Trustees. And as soon as may be convenient, after the making said sale, the said Trustees report to this Court upon oath, a full and particular account of the proceedings under this decree, with the name of the purchaser or purchasers, and on the ratification of such sale or sales by this Court, and on the payment of the whole purchase money, and not before said Trustees, by a good and sufficient deed, to be executed and acknowledged agreeably to Law, shall convey to the purchaser or purchasers of said property, and to his heir or their heirs, the property to him, her or their heirs, free clear and discharged of all claims of the parties to this cause, and of any person or persons, claiming by, from or under them, And the said Trustees shall bring into this Court, the money arising on such sale, and the bonds or notes, which may be taken for the same, to be disposed of under the direction of this Court, after deducting therefrom the costs of this suit and such commissions to the said Trustees as this Court shall allow, in consideration of the skill, attention and fidelity, wherewith he shall appear to have discharged his Trust.

Geo A. Pearce

And on the 19th day of March 1867. The Trustees filed in the cause their Bonds, as follows, to wit:

Know all men by these presents, that we, Thomas Perry, and William M. Pines and Charles Perry of Allegany County & State of Maryland are held and firmly bound unto the State of Maryland, in the full and just sum of Three Thousand dollars current money, to be paid to the said State of Maryland, or its certain attorney, to which payment well and truly to be made and done we bind ourselves, and each of us, our heirs, each of our executors and administrators, jointly and severally, firmly by these presents, sealed with our seals & dated this 21st day of February in the year eighteen hundred and sixty seven, Whereas by a decree of the Circuit Court for Allegany County sitting as a Court of Equity, bearing date on the 21st day of February in the year eighteen hundred and sixty seven, and passed in a cause in the said Court wherein Moses McKenzies Complainant and John Burrows and others are defendants, the above bound Thomas Perry and William M. Pines, have been appointed Trustees to make sale of certain real estate in the proceedings in said cause mentioned. Now the conditions of the above obligation is such, that if the above bound Thomas Perry and William M. Pines, do and shall well and faithfully perform the Trust imposed in him by said Decree, or that may be required in them by any future decree or order in the premises, then the above obligation to be void otherwise to remain in full force and virtue in Law.

Thomas Perry (seal)
Wm M. Pines (seal)

Wm McKimzie

vs

Jos Benton, and others

In the Circuit Court for Allegany County as
a Court of Equity.
No 1604 Equity

In the Honorable George A. Pearce, Judge of the
Circuit Court for Allegany County, sitting as a Court of Equity.
The report of Thomas Perry and William M. Price, Trustees appointed
by the decree in this cause, to make sale of certain Real Estate therein
mentioned, shews, that after giving Bond, with the security for faithful
discharge of their trust, as required by said decree, and giving notice
of the time, place manner and terms of sale by advertisement in the
"Alleghenian" a newspaper printed in Cumberland, Allegany County,
for more than three successive weeks before the day of Sale, and
by handbills, extensively circulated throughout said County, they did,
pursuant to said notice, attend in front of the Store of Humphreys
and Long, in the City of Cumberland, on Saturday the 26th day of March
1867 at 11 o'clock A.M. and there and there offered at public sale, to
the highest bidder, the said Real Estate, it being all the Land conveyed
to Jesse McKimzie, dec'd on and from William Myers, and by Patent
from the State of Maryland, and sold the same to John Tuscher
he being then and then the highest bidder therefor, at and for the
sum of Two thousand and seventy two dollars (\$2072) and
they have received from the said John Tuscher, one half of said
purchase money, on day of Sale, and they have also taken the Bonds
of said John Tuscher, with John Rhodenbousen as his security, for
the payment of the balance of said purchase money, in one year, with
interest from day of Sale. And they further report that said sale
was made by one of said Trustees and one of the undersigned,
William M. Price, but the said Perry, has no doubt of the truth
of the facts therein set forth.

Thomas Perry }
William M. Price } Trustees

State of Maryland, Allegany County, Do. wit

On this 14th day of March 1867, before the undersigned
a Justice of the Peace, in and for said County, personally appeared
the above named Thomas Perry and William M. Price, and made
oath that the matters and things stated in the foregoing report
are true to the best of their knowledge and belief, and that the
sale therein reported was fairly made.

Andrew Gordon, J. P.

Whereupon the Court passed following order, Do. wit,
Ordered, that the sale made and reported by Thomas Perry and
William M. Price, Trustees in the above cause, be ratified and
confirmed, unless cause therefor be shown on or before the 20th day
of May next. Provided a copy of this Order be inserted in
newspapers printed in the City of Cumberland, once in each of
four successive weeks before the 17th of April next.
The report states the amount of Sale to be \$2072.

G. A. Pearce

Trusted certificate, filed May 21st 1867. Do. wit.

It is further certified that the amended order, was inserted in the "Allegany" newspaper printed in the City of Cumberland, once a week for four successive weeks, prior to the 17th day of April 1867.

^{5th}
"Order of Ratification"

Wm. Nelson

Moses McKnight

vs
Ira Burton and others

2. No 1604 on the Equity Docket of the
3. Circuit Court for Allegany County

Ordered, That the sale made and reported by Thomas Perry and William M. Rice, Trustees in the above entitled cause, be ratified and confirmed, unless cause to the contrary be shown, on or before the 20th day of May next. And a copy of this order be inserted in some newspaper printed in the City of Cumberland, once in each of four successive weeks, by the 17th of April next. The Report states the amount of sale to be \$2.00.

Geo. A. Pearce

True copy - Test - H. Reedy, Ck

The following Petition, Order and Amended Answer, were filed among the papers in this case, without any date of their being filed, but they being considered necessary to give full exhibition of the case, they are recorded for it.

Moses McKnight

2. No 1604 Eq. of the Circuit Court
3. for Allegany County

vs
Ira Burton and others

3. Sitting as a Court of Equity.

To the Honorable George A. Pearce, Judge of the Circuit Court for Allegany County, sitting as a Court of Equity.

The Petition of John Wesley Burton and E. James his wife, and Henry A. Atkins, two of the defendants named in the bill of Complaint in the above cause, respectfully shew, that, heretofore, they filed the answers to the said Bill of Complaint, and signed their names thereto as Wesley Burton and Henry Atkins, and not as corrected stated in the Bill of Complaint, and the mistake arose from the fact that they are known and called, both by the name of John Wesley Burton and Henry A. Atkins and Wesley Burton and Henry Atkins, they therefore pray your Honor to grant leave to your petitioners, to file in amended answers to said Bill of Complaint, that the true names of your petitioners, are as stated in the said Bill, being John Wesley Burton and Henry A. Atkins, and with ever pray &c

Jacob Brown
Sol for Petitioners

Whereupon the Court passed following order.
The above petition having been read and considered, it is ordered this 20th day of February 1867, by the Circuit Court for Allegany County, sitting as a Court of Equity, that the Petitioners have leave to file their amended answers to the said Bill of Complaint.

Agreement

We agree, that the petitioners named in the within petition, shall

Moses McKimzie

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Joa Bilton and stess

In the Circuit Court for Allegany County.
as a Court of Equity
No. 1604 Equity

The amended answer of John Wesley Burton, & E. Jane Burton his wife and Henry A. Atkins by Jacob Brown their Solicitor to the Plaintiffs Bk of Complaints filed in this case. The defendants John Wesley Burton and Henry A. Atkins, admit the matters and facts stated in said Bk of Complaints to be true and are willing that a decree may be passed as prayed for. Used as V₂

Jacob Brown
Solter L. Ed. H.

And on the 14th day of May 1867. was filed in the cause here. the Auditors corrected report as follows:

Moses McKenzie

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Dr. Burton and al

2. Further Vicount Court for Allegany County,
as a Court of Equity.
No. 1684

to the Honourable George A. Parker, Judge of the Circuit Court for Alle-
gheny County, as a Court of Equity. The auditor respectfully reports, that he
has examined the papers in the above case, and therefrom has stated the within
account between the proceeds of the estate of Jesse McKimzie, deceased,
and Thomas Parry & Williams vs. Price, Trustees for the sale thereof,
in which, after allowing to the Trustees the usual commissions and the costs
and expenses incident to the Trust, the balance of proceeds have been distrib-
uted amongst the heirs of said deceased, which is respectfully submitted (as
this audit is made to correct one made and filed herein May 15th 1867,
which was erroneous.

May 17th 1867

J. J. McKenney, Auditor.

The Real Estate of Jesse McKinzie, dec'd, In and with J. Perry & Mrs. M. Rice. Chancery.

[illegible]