

5. This defendant excepts to the first question and answer of Charles Michael, because he the question is leading and asks for the statement of a conclusion and not a statement of a fact from which the conclusion is to be drawn.

6. And this defendant excepts to the second question and answer of the said Charles Michael for the same reasons as given in the 5th exception.

And this defendant excepts to all other improper, irrelevant and immaterial testimony offered on behalf of the plaintiffs.

Wherefore this defendant prays your Honors to reject all of said testimony to which this defendant has excepted.

(Filed March 17, 1917)

H. K. DeLauter
Solicitor for Frank Stillions.

No. 9516 Equity.

IN THE CIRCUIT COURT FOR FREDERICK COUNTY.

Lucretia Kefauver, et al.

vs.

Frank Stillions, et al

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In E Q U I T Y.

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O P I N I O N

In this case the bill was filed for the purpose of obtaining a decree to sell certain real estate, for the purposes of partition amongst the heirs at law of Isaac Michael, deceased.

The Plaintiffs are alleged to be nephews and nieces of the said decedent, and the defendants to be also nephews and nieces, except Frank Stillions, who is alleged to be the surviving husband of Mary Ann Stillions, a deceased daughter of said decedent. The defendants, except Frank Stillions, are alleged to be non-residents against whom an order of publication was prayed. The same was granted and the order published, and a decree pro confesso taken against the adults and answers filed by guardian ad litem for the non-resident infants.

The only person contesting the granting of a decree for the sale of the property is the defendant, Frank Stillions, who claims title to the property by virtue of a devise to him from his wife, Mary Ann Stillions, whose title, it is contended, was acquired by prescription, and the writing on the back of the receipt hereinafter mentioned.

It appears from the testimony that the decedent, Isaac Michael, purchased the property at Sheriff's Sale on February 19, 1864, and took a receipt for the purchase money, (\$302.50), but no deed was ever passed for the land. Isaac Michael entered into possession however and resided there on the premises until his death in 1886. On the back of the Sheriff's receipt above mentioned are the following words, written in lead pen oil; "Mary B. Michael present by her father". Just when these words were written does not appear. Mr. Thomas, a witness for Stillions, testified that Isaac Michael told him that he (Michael) "made this over to Mary Ann. He wrote it on the back of it". Other witnesses testified that the writing looked like that of Mary Ann Stillions herself who was the last surviving daughter of Isaac Michael. Mary Ann was married to Stillions about the year 1898. After the death of her father, Mary Ann continued to live on the premises and remained there until shortly before her death, when, for some reason, she was taken to Montevue, where she died. The defendant, Frank Stillions, also resided there after his marriage to Mary Ann, and still so resides.

The only heirs of Isaac Michael are his nephews and nieces, who live in different parts of the United States. No heir of Isaac Michael, other than Mary Ann Stillions, has occupied the premises in question since the death of the intestate in 1886.

The only contested question for the Court to decide is whether the defendant, Frank Stillions, has the title to the property, and incidentally whether this Court has jurisdiction to determine that question.