

Trial's
(A.+E.)
"Gaines"

LAW

41
Trials (A. & E.) - "Gaines"



Class law

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Kind as Title

L. C.



Gaines, Mrs. Myra (Clark) Whitney

MRS. GAINES' CLAIM.

1854?

Law
Trials
(A. & B.)
"Haines"

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THE
PRESENT POSITION OF MRS. GAINES' CLAIM
TO THE
ESTATE OF HER FATHER, DANIEL CLARK.

THE history of Mrs. Gaines' claim, and of the judicial proceedings in regard to it, will, it is believed, hereafter be considered one of the most extraordinary, as well as the most interesting, in the annals of American jurisprudence; and, as was well remarked by Judge Wayne in giving his opinion, "the case itself presents thought for our philosophy in its contemplation of all the business and domestic relations of life; it shows the hollowness of those friendships formed between persons, in the greediness of gain; it shows how a mistaken confidence given to others by a man who dies rich, may be the cause of diverting his estate, and depriving his family of their inheritance. We learn from it that long-continued favors may not be followed by any sympathy from those who receive them, for those who are dearest to our affections; and it shows, if the ruffian takes life for the purse which he robs, that a dying man's agonies, soothed only by tears and prayers for the happiness of a child, may not arrest a fraudulent attempt to filch from her her name and fortune."

Such has been Mrs. Gaines' bitter experience in the conduct of those who, under the mask of friendship, obtained her father's confidence, received his favors, and lived upon his bounty; and who, the moment that father died, instead of cherishing the child of his affections, bent all their efforts to rob that child of her inheritance. But it is not intended to attempt that history here, (a volume would hardly be sufficient for that object,) but merely to show the present position of Mrs. G.'s claim to the vast fortune her father designed for her, and whose belief that he had secured it to her, consoled his last moments on earth and smoothed his passage to the grave.

Some misapprehension seems to have prevailed in respect to Mrs. Gaines' claim, arising from the two diverse decision of the Supreme Court of the United States in regard to it; but a short explanation will suffice to show, that her present plan for obtaining her just rights is not at all embarrassed by those decisions, and their only effect is, to compel her to resort to a different tribunal.

It is well known, and the proceedings in the two suits alluded to clearly show, that when Mrs. Gaines filed her bill in the United States Court, she assumed the position that she was the sole heir-at-law of her father, and also that she was devisee of his estate under a will made by him in 1813, shortly previous to his death; which will, it is alleged, had been taken possession of by his Executors, named in a former will of Mr. Clark, and was by them destroyed. The said Executors were made parties to the said bill, and instead of answering, demurred to the same on various grounds; among others, that the United States Court had not jurisdiction in regard to lost or spoliated wills; and that "the Court of Probates was the proper and necessary forum in which to originate proceedings in such cases." The Court so decided; and the bill was therefore so amended as to withdraw from the decision of the Court, the validity of the will of 1813, and the cause proceeded solely on the ground of heirship. The first decision of the Supreme Court of the United States fully recognised Mrs. Gaines' rights as sole heir of Daniel Clark, and did adjudge, order, and decree accordingly. But that suit, owing to all the other defendants having demurred to the bill, only affected the property in the possession of Mr. Patterson, one of the defendants; and Mrs. G. was still obliged to force the other parties, (including Relf & Chew, the executors under the will of 1811) to answer; and this brought on the other decision of the Court, and in which last proceeding the defendants, perceiving that if they went to trial on the same evidence as before, they must utterly fail, succeeded in inducing the Circuit Court—contrary, as is believed, to long-established rules of evidence—to receive as testimony some very extraordinary documents, alleged to have been found since the former trial among the Ecclesiastical Records of the Roman Church. By their aid, the defendants succeeded in obtaining from the Circuit Court a decision adverse to Mrs. Gaines, and which decision was affirmed by the Supreme Court by one majority only.

Mrs. G. might now, in consequence of further discoveries made by her, and additional evidence which it is in her power to produce, institute new proceedings to establish her rights as heir-at-law, with every prospect of success; but she has been advised that her better course now is, to adopt the suggestion of the Supreme Court of the United States, and resort to the Court of Probates of the State of Louisiana, and there prove the will of her father, made in 1813; and she has so determined.

By that will, her father (with the exception of some inconsiderable legacies to others) devised and bequeathed his whole estate to her, and at the same time declared her to be his legitimate heir. The proof on this subject is full, clear and overwhelming; and as to the probability of success in taking this course, she refers to the annexed legal opinions, either expressed or concurred in, of the several distinguished jurists whose names hereafter occur; each of these gentlemen being intimately acquainted with the merits of this claim, and with all the circumstances connected with it.

Mrs. Gaines is advised, that the proceedings to obtain probate of the

will may be completed in about eight months, in spite of all opposition; and with such an accumulation of evidence as exists in her favor, backed by such a weight of legal authority, to doubt of success would be an impeachment of the value of all human testimony, and an injurious reflection upon the wisdom of American law, and the purity of American jurisprudence.

Mrs. G. feels no such doubt. Sustained by the good Providence of God, inspired by a hope that has truth and justice for its basis, she will prosecute the claim with unfaltering steps, and with all the energy which a sense of wrong added to a sense of duty can give; confident that, in the end, she must triumph over all the forces which treachery and malice can raise up to oppose her.

OPINION
OF THE
HON. J. A. CAMPBELL,

NOW ONE OF THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES.

Mrs. Myra Clark Gaines contemplates the renewal of her suit for the establishment of the Will, made by her father in 1813, a short time before his death, and which she alleges was destroyed after his death.

The facts in regard to the execution and contents are exhibited in the reports of the cases, in which Mrs. Gaines was a party, found in 2 Howard, S. C. R.; 6 Howard, S. C. R.; and 12 Howard, S. C. R. For this reason it is deemed unnecessary to refer to them more particularly.

The first question that arises is, is there a Court which has the jurisdiction to set up a Will which has been lost or fraudulently destroyed?

The answer is, that a Court having jurisdiction of testamentary matters and authorized to admit wills to probate, has such jurisdiction.

1 Phillimore, 128; 3 *ibid*, 116; 2 Adams, 223.

3 Carteis, 741; 3 Porter, 51; 3 Barb. Ch R, 158.

8 Metcalf, 487; 5 B. Monroe, 58; 17 Louis. R. 4.

2. The next inquiry is, is there sufficient evidence which can now be employed, to prove the existence and contents of the will?

The litigation commenced by Mrs. Gaines in 1834 was before the Probate Court, and was founded upon the allegation of the existence of the will of Daniel Clark, at his death, revoking that which had been admitted to probate, and establishing his daughter Myra as his heir. The Executors of the will of 1811, and the legatees of Mary Clark, sole devisees therein, were made parties to the petition. Testimony was taken, upon an issue formed. The case was not prosecuted to a trial. The testimony is now in existence. Where the witnesses have died, this testimony is competent.

1 Adol. and Ells 3; 2 H. and I 301.

2 Phil. Ev. chap. 1, sec. 7.

The Supreme Court, in the case reported in 6 Howard, deemed this evidence sufficient; and Judge Wayne, in his dissenting opinion, affirms, (12 Howard,) that no doubt of the existence and destruction of that will exists.

The testimony is plain, clear, and distinct. None of the witnesses have ever been impeached, nor any discredit of them attempted. The character of *Boisfontaine* is sustained by witnesses examined by Mrs Gaines' adversaries, and nothing to his prejudice is affirmed.

It is safe, therefore, to affirm that the testimony to sustain this will is abundant.

3. The next inquiry will be, what would be the effect of the probate of the will of 1813, upon the property which Clark had at the time of his death ;

All the property *legally disposed of, in the course of administration*, would be placed beyond the reach of the claims of Mrs. Gaines and the other devisees under that will. The words, "*legally disposed of, in the course of administration,*" are employed to define precisely what would be excluded from the claims, which the will of 1813 legally established would give. The powers of executors to dispose of property, are limited in Louisiana, both in respect to the time and manner of their employment. The sales by Chew and Relf were made long after their power to do so had ceased, and in a manner different from that which the law permitted. Their sales were void.

Mrs. Clark, the devisee under the will of 1811, concurred in these sales, *and her interest, and her's alone could pass.* The rights created by the will of 1813 would not be impaired by her sale.

The principle of the Roman, as well as the common law, is, that no person can transfer to another a larger estate than belongs to him. The rights that Mrs. Clark had, were all she was entitled to convey, and when a paramount right appeared, the title thus conveyed must necessarily be destroyed. Had the Executors pursued the requirements of the law, *the heirs* would have been divested by their sales. Failing to pursue the requirements of the law, their acts did not bind even Mrs. Clark. Her concurrence in their acts concluded her and those claiming from her. Mrs. Gaines derives all her rights from her father, and is not concluded by the acts of Mary Clark, the devisee under the will of 1811.

The statutes of Louisiana, in reference to this subject, were discussed, and references made to the decisions of that State, in 6 Howard's Reports, 550; and reference is made to that discussion and those authorities now. On this point we feel no doubt.

12 Robinson, R. 552.

4. The next inquiry is, has the decision made in 1852, by the Supreme Court of the United States, any influence upon the validity of the will of 1813 ?

The bill of Mrs. Gaines was originally framed to set up the will of 1813. The facts tending to show the existence and destruction of that will, were averred, and the Executors to the will of 1811 were parties to the bill.

Upon the discussion of the demurers to the bill, in 1844, (2 Howard, S. C. R.) the Supreme Court of the United States decided that the Court of Chancery had a very limited and qualified jurisdiction over the subject of lost or *spoliated* wills, and that the Court of Probate, was the proper and necessary forum for such cases, and that the remedy there must be shown to be inadequate, before a Court of Chancery would interfere to

grant relief. The bill of 1845 was amended so as to withdraw the decision of the validity of the will of 1813, and the prayer for relief upon it, from the Court.

These facts appear in the opinion delivered in 1852, and in the record of the cause then before the Court. It is obvious, therefore, that the decision could not impair rights which the Supreme Court had previously determined it had no jurisdiction to inquire of at all. Nothing is said in the opinion of Justice Catron of the claims of Mrs. Gaines under the will, and upon well-settled principles nothing could prejudice a claim not in issue with it.

24 Wend., 585; 14 Peters, 156; 1 Dana, 109.

5. A question now arises as to the effect of the statutes of limitation, or prescription, as it is termed in the Louisiana Code, upon the claim of Mrs. Gaines under the will, or to affirm the will. There is no prescription in the Code relative to the proof of a will. Minors and persons under interdiction cannot be prescribed against, except where it is specially provided by law. The faculty of accepting or renouncing an inheritance becomes barred by the lapse of time for the longest prescription of real estate: (30 years.)

Code of 1808, 104 §94; Code of 1825, 1023, 3512, 3488, 3519.

This period has not expired.

6. Wherein does the position of Mrs. Gaines differ from that she occupied in 1834, when she commenced her suits in New Orleans?

Mrs. Gaines commenced in New Orleans by a petition to revoke the probate of the will of 1811, and to establish the will of 1813.

The Executors and Devisees to the will of 1811 were made parties to the suit, according to the laws of Louisiana, and answered; testimony was taken, and a day for a hearing appointed. Mrs. Gaines having had occasion to suppose the Judges partial or interested, was advised to desist from that suit, and to apply on the same grounds to the Federal Courts.

In 1844, as before stated, her case was modified according to the opinion given by the Supreme Court, in 2d Howard, S. C. R. She desisted from asserting her claim as devisee, or from attempting to set up the will in that suit; but relied, unfortunately as it now appears, upon her claim as heir-at-law. That claim was defeated.

The Court had determined that it could not decide upon her title under the will of her father. The questions of the execution, validity, and construction of that will, and the rights it confers by the laws of Louisiana, are questions not disposed of by that decree, and are not affected by it.

Mrs. Gaines, then, will go to the Probate Court with all the rights she had when this litigation commenced.

J. A. CAMPBELL.

WASHINGTON, *Sept.* 10, 1852.

I entirely concur in the foregoing opinion,

WALTER JONES.

WASHINGTON, *Sept.* 28, 1852.

OPINION

OF

F. PERIN, ESQ. OF LOUISIANA.

Daniel Clark, of New Orleans, died in that city in August, 1813. A will made by him in 1811, leaving a large estate to his mother, Mary Clark, was admitted to probate shortly after his death. His Executors named in that will administered on his estate, continuing to sell property, as Executors, until 1820.

After the succession was thus settled in 1834, Mrs. Myra Clark Whitney and her husband filed their petition in the Court of Probates for the parish and city of New Orleans, to annul the proceedings under the will of 1811, and set up a will of 1813, by which it was alleged that the testator had recognised the said Myra as his legitimate child, and had instituted her his universal legatee, by which he had given her the whole of his estate, with the exception of some particular legacies. Chew and Relf, the Executors of the first will, and the heirs of Mary Clark, were made parties to the proceedings.

The plaintiffs proceeded in the cause, and took the deposition of various witnesses to establish her capacity as the legal heir of Clark, and also to prove the will of 1813, which it was alleged had been "either lost or mislaid, or had been destroyed." This evidence was deemed by their counsel amply sufficient to establish both branches of the case. A day was fixed for trial, and the defendants ruled into Court by a subpoena *duces tecum* for the production of papers. The Judge having refused to compel the parties to produce the documents or account for their loss, the plaintiff's counsel moved a continuance. This was refused; and on motion of defendants, the plaintiffs were non-suited, they paying the costs of this suit.

Printed Record, p. 1114.

It is said that the course pursued by plaintiff's counsel was adopted from their belief that the Judge was biassed by feelings and interest against them, and that in case of an adverse judgment, the Supreme Court was not in a position which gave any promises of a reversal; two or three of the Judges holding lands under the title of Chew and Relf.

The judgment of non-suit was rendered June 8, 1836. P. R., p. 115.

The testimony in that suit will be found on pp. 1060, 1072, 1087. Mrs. Harriet Harper, Col. Bellechasse and Pierre Baron Boisfontaine. Mrs.

H. (p. 1060) says, that she read the will of 1813 about four weeks before Clark's death. It was wholly written in his own hand-writing, dated in July, 1813, and signed by him. That in this will he left his entire estate to the said Myra, after naming some other legacies—his mother for \$2,000 per annum, and two other small bequests; that the testator acknowledged his daughter as his legitimate child, &c. She further states that she suckled the child, and Clark repeatedly visited her, and acknowledged Myra as his legitimate daughter.

Bellechasse testified (p. 1072) to the same facts. Boisfontaine (p. 1087) says that he was at the house of Clark before his death; and in the presence of Delacroix, he produced a small packet, and said that his last will was contained in that. He acknowledged to them that he had "given her all his estate in his will," with an annuity to his mother, &c. All these depositions were taken contradictorily with the defendants. The testimony thus taken is in the records of the Probate Court, in original.

On the 28th of July, 1836, the plaintiffs filed their bill in Chancery in the Circuit Court of the United States for the Eastern District of Louisiana, setting forth Myra's claims under the double capacity of heir-at-law and universal legatee under the will, making the heirs and executors of the will of 1811, *and the holders of all the property purchased of them*, parties defendants. P. R., p. 1 et seq.

After the manifold demurrers, pleas, continuances, &c. incident to a Chancery cause, the case was tried by the Supreme Court of the United States, on demurrers, in 1844, when the Court decided that they would not entertain jurisdiction over that part relating to the will, and recommended the plaintiffs to go before the Court of Probates of the State. This was a non-suit of her claims under that title. 2 Howard, S. C. R.

The cause was proceeded with, testimony taken, &c. and was ended by a judgement of the Supreme Court in 1852, adverse to the claim of the said Myra as legal heir. 12 Howard, S. C. R.

However, it should be stated that the case was upon its merits decided, and is reported in 6 Howard, in favor of Mrs. Gaines, declaring her to be the legal heir of Clark. The Court further decided that the sales made by Chew and Relf of the property of the succession were absolutely null and void. To this opinion there was no dissentient voice.

The sole ground upon which the same Court thus reversed its own decree, was what is known as the Ecclesiastical Record. P. R. p. 807. This was a prosecution against Des Grange, for bigamy, who was the first husband of Zulime Carriere, the mother of Myra. The record of this prosecution was brought in to rebut the one produced by plaintiffs, (p. 862,) which was a suit against Des Grange by the said Zulime for a divorce. In the latter case final judgment was rendered, divorcing the parties on the ground of the bigamy of Des Grange. After taking testimony in the former case, the tribunal before whom the proceedings were pending, gave the following decree:—"Not being able to prove the public report which is contained in the original decree of these proceedings, and having no

proofs for the present, let all proceedings be suspended, with power to prosecute them hereafter, if necessary; and let the person of Geronimo Des Grange be set at liberty, he paying the costs." P. R. p. 817.

It is admitted by all that this amounted to nothing as a decree, and the only importance that was attached to the record was the testimony of Zulime Carriere, the mother of Myra.

This is the remarkable sentence upon which turned one of the most important civil suits ever instituted:—(P. R. p. 815.)

"Being asked whether she had recently heard that her husband (Des Grange) was married to three women, if she believed it, or does believe it, or has any doubt about the matter which rendered her unquiet or unhappy?—

"Answers, That although she had heard so in public, she does not believe it; and the report has caused her no uneasiness, as she is satisfied it is not true; she also swears that she is twenty-two years old!"

It is unnecessary to make any comment upon the effect that should have been given to this statement by the Supreme Court.

It is now the purpose of Mrs. Gaines to place herself, if possible, in the position she occupied prior to the 8th of June 1836, when she was non-sued in the Probate Court. Whether she can assume that attitude, is an inquiry involving some points of the laws and practice of Louisiana, requiring particular notice.

That the Probate Court of the State has jurisdiction over the subject is a matter that has been admitted by all the judges and lawyers who have had anything to do with it. (C. C. 1637.) The Code of Practice and the decisions founded upon it are plain and direct upon this point. Nor does it alter the case at all by the fact that the will was lost or destroyed. The Probate Court having jurisdiction of the *subject*, a lost instrument can as well be established there as in a Court of ordinary jurisdiction,

Civil Code, Art. 2258; 17 Louisiana R. 4.

Did Clark make a will in 1813, and if so, was it sufficient in terms to revoke that of 1811?

All that the law requires to establish an olographic will, (which is one wholly written, dated, and signed by the testator in his own handwriting; C. C. 1567,) is the declaration of two credible persons, (Civil Code, Art. 1648,) which is similar to the provisions contained in the old Code. The loss of an instrument can be established by the oath of the party interested in it, and the testimony of one witness, or by such circumstances as render the loss probable.

Civil Code, Art. 2258.

This "declaration of two credible persons" should be made under oath, but no law requires that it should be done contradictorily with every one having an interest in defeating the will intended to be proved. The proof of a will is usually made after publication, and the declaration of the witnesses made before the Judge without any cross-examination.

Civil Code, Art. 1639.

In the present case however, the parties have proved beyond contro-

versy, the existence, contents, and loss of the will, after citing the parties adversely interested, and giving them the fullest opportunity of cross-examination.

(See testimony of Messrs. Harper, Bellechasse, and Boisfontaine, cited above.)

This evidence was taken in the Court having jurisdiction over the will, and would be admissible and competent in the new case, to every extent it might have had in the first suit, on showing that the witnesses were dead.

On this point, see the authorities cited by Judge Campbell.

The "declaration of two of the same witnesses" were again solemnly taken under commission from the United States Circuit Court, in 1837, while one of the questions at issue was the will of 1813, and one of the objects in taking the testimony, was to prove the existence and contents of that will. There were no *separate* declarations. Defendants, who possessed the whole estate left by Mr. Clark, instituted the severest cross-examinations, as will appear by reference to pp. 359 and 375 of the printed Record. The witnesses being dead, this testimony could now be used for any purpose to which it would apply in controversies between the same parties or their heirs, or any person holding through them.

After the strictest scrutiny into the character of these witnesses, through long years of litigation, they have come out unsullied from the impeaching process, and continue to be what the Code denominate "*credible persons*."

As an illustration of the general doctrine above stated, the testimony of Boisfontaine may be cited. P. R. p. 386.

His deposition was taken before the Probate Court on the 28th May, 1835, during the pendency of plaintiff's suit in that Court; and on the 23d of June, 1849, it was introduced and admitted in evidence in the Circuit Court, as if taken under its own commission, the witnesses having died before the commencement or the trial of the second suit. Much stronger is the case applied to the Probate Court, which is not bound, in the proof of wills, by the general rules of evidence. A peculiar law is made expressly for this object; and all that the law requires is "the declaration of two credible persons." (C. C. 1648.)

The testimony is then ample, and now competent to establish the existence, contents, and loss of the will.

That this will revoked the will of 1811 is a proposition not only true on general principles, but the express laws of Louisiana has given to it that effect.

A testament may be revoked by making a subsequent one containing provisions contrary to those embraced in the first, or by using words in the last will specially revoking it.

Civil Code, Art. 1684.

Thus the revocation could be made expressly or by implication. In the first will of 1811 the whole of his estate was left to his mother; by that of 1813, it was given to his daughter, with the exceptions above stated. Of course the two cannot stand.

Civil Code 1683.

It is scarcely necessary to inquire what effect this will would have, if established. By universal law it must be enforced to the exclusion of all previous disposition by testament. But there is, moreover, a legislative enactment on this subject.

A revocation made in a posterior testament has "its entire effect, even though the new act remains without execution."

Civil Code, Art. 1687.

This law with the same provision of the old Code, would give to the will that force which was so plainly indicated by the testator, constituting his daughter not only his universal legatee, but acknowledging her therein to be his legitimate child. This would entitle her to the entire estate left by her father; as we have seen that all the sales of the executors, Chew and Relf, were declared null by the Supreme Court. 6 Howard.

A question now arises as to the fatal effects produced by the Ecclesiastical Record.

The answer is very simple. It cannot be introduced in the State Court for any purpose whatever.

Besides the objection that it is not the record or judicial proceedings of any tribunal recognized by law, and that the present plaintiff was no party to the proceeding (4 New Series, 6 and 51), it is yet liable to a more peremptory objection set up by Article of the Civil Code 2260. By this article, the testimony of Zulime Carriere, the *mother* of Mrs. Gaines, is absolutely excluded. It can neither be used for nor against her daughter. The article reads thus:—

Art. 2260 (3d clause): "The husband cannot be a witness for or against his wife, nor the wife for or against her husband; neither can ascendants with respect to their descendants, nor descendants with respect to their ascendants."

7 Louis. R. 281; 9 *ibid.* 559; 10 *ibid.* 114 and 194.

This article has been too often before the Courts of Louisiana to admit of any doubt of its construction. It is well settled, that for no purpose, and in no civil proceedings, can the testimony of the *mother* be used in evidence for or against her child. If it could not be introduced directly and orally on the trial of the cause, much less could it be taken from the record of any other suit.

Chancery has its own rules of evidence, and the Circuit and Supreme Courts must have considered that the articles of the Code were not binding on them.

Thus, the whole ground-work of the decision in 12 Howard is taken away, and the elaborate opinion based upon it must fall harmless in the proceedings about to be instituted.

But should these judgments be taken as finally concluding the question then at issue, still it does not affect the rights of Mrs. Gaines claiming under a *different title* from that set up in the United States Court. The two positions of heir-at-law, and *universal legatee*, are as distinct, separate, and independent of each other, as conveyances from different persons to the same property.

Should the will be established (and we have seen that there is no question of it,) her rights are drawn from that; and in executing the will, the law declares that it shall have its "entire effect."

From the lapse of time since the birth of Mrs. Gaines (1806,) it might be supposed that prescription (Statute of limitations) has intervened, to bar the rights which it so clearly appears she was the possessor of. The slightest examination will show that the plea could not be entertained for a moment.

Prescription does not run against minors.

Civil Code, Art. 3488, 3519.

She, then, became of age in 1827; suit was instituted in the Probate Court in 1834, after seven years prescription. This suit was pending until June, 1836, when, as we have seen above, a non-suit was granted by the Court, *on motion of the defendants*. Suit was again instituted in the Circuit Court in July, 1836. In both cases her title under the will was expressly set up. The latter suit, so far as regards her rights under that title, was pending until 1844, when the Court, at the instance of the defendants, again *non-suited* the plaintiffs. From the last decision to the present time is but nine (9) years.

The defendants could not acquire a title against Mrs. Gaines under the conveyances they held from Chew and Relf, under thirty years continued and uninterrupted possession after she became of age. Civil Code, Art. 3438-3512.

Both suits interrupted prescription, and it did not begin to run again until the Supreme Court (6 Howard) decided that they had no jurisdiction over the will in 1844.

Here are the provisions of the Code on this subject.

Art. 3482.—"There are two modes of interrupting prescription, that is, by a natural interruption, or by a legal interruption."

Art. 3484.—"A legal interruption takes place, when the possessor has been cited to appear before a Court of Justice, on account of either of the property or of the possession; and the prescription is interrupted by such demand, *whether the suit has been brought before a Court of competent jurisdiction or not.*"

Art. 3485.—"If the plaintiff in this case after having made his demand abandons or discontinues it, the interruption shall be considered as having never happened."

"When prescription has been interrupted, it re-commences to run only from the cessation of the interruption."

Riviere vs. Spencer, 2 Mar R. 82.

"Prescription is interrupted by a suit *though the plaintiff therein be non-suited.*"

Chretien v. Theard. 2 New Series (of Martin) 582.

"An error in the prosecution of a suit in consequence of which it is dismissed, does not deprive the party of the benefit of pleading his institution of it, as a bar to prescription."

Prall v. Petts, Curator, 3 Louis. R. 282.

"It is only the *voluntary withdrawal* of a suit instituted by a party, that deprives him of the benefit of pleading it as a bar to prescription, *but not a non-suit.*"—*Ibid.*

In a more recent case, where the Court *intimated* to the party that he could not obtain judgment in the form in which he had brought his suit, and the plaintiff *withdrew* it, and afterwards brought suit on the same cause of action, the Court allowed him to introduce the first suit to interrupt the prescription set up by the defendants.

F. PERIN.

NEW YORK, July 25, 1853.

NEW YORK, August 6, 1853.

DEAR SIR :

I have, at your request, read attentively, the opinions written by Judge Campbell and Mr. Perin, in Mrs. Gaines' case, and concur with both those gentlemen in the view they have taken of the Louisiana law as applicable to the matters involved in the same.

With great regard, yours,

PIERRE SOULE.

GEORGE WOOD, Esq.

DEAR MADAM :

I have examined the Trust Deed and suggested some amendments. Mr. Clark has made a new draft and inserted them, and I think it is now correct.

I have read your papers; and among others, the opinion of Judge Campbell.

This opinion appears to have been prepared with much care. His reputation as a jurist stands high. He is familiar with the law of Louisiana, and is much more competent than I am to give an opinion upon your case.

His opinion appears to me to be satisfactory in regard to the topics treated upon in it.

The opinion of Mr. Perin was prepared agreeably to my direction. I examined him fully upon all the topics. His answers were direct and explicit, and at my request he reduced them to writing. At my request also Mr. Soule examined the opinions, and wrote to me expressing his concurrence. It could not be expected of me to give an opinion upon Louisiana law. If the case were my own, I would rely upon the opinions of these gentlemen, and I think their views are perfectly satisfactory.

Truly, yours,

GEORGE WOOD.

NEW YORK, 8th August, 1853.

MRS. GAINES.

DEAR MADAM :

I have had the honor to receive your note of yesterday, asking my opinion as to the weight of testimony which has been already adduced by the execution of your father's will.

It appears to me to be very strong, nor have I seen anything to impeach the witnesses. The character of the principal witness seems admitted to be good, and the testimony is direct and clear. I see no reason to doubt that such testimony, uncontradicted or not impeached, would be sufficient before a court of competent jurisdiction to establish the will.

You desire me to express my opinion on the standing of the two legal gentlemen who have given opinions on your case. My only objection is, that it seems useless and superogatory to pronounce on the professional character of two such distinguished men. Mr. Jones, of the District of Columbia, has a reputation commensurate with the limits of the country, and is known to every member of the profession for his abilities and learning.

Mr. Campbell, recently elevated to the Supreme Court of the United States, enjoys an enviable reputation, and his appointment is universally considered as of happy augury for the character and usefulness of that high tribunal.

Of two such men, nothing that I can say can increase the standing and authority.

I am, with great respect,

Your most obedient servant,

WILLIAM KENT.

NEW YORK, April 19th, 1853.

MRS. GENERAL GAINES.

DEAR MADAM :

The opinion given by Judge Campbell, and concurred in by Walter Jones, Esq., is so clear, so well considered, and so supported by facts and law, as not to need extraneous support.

Judge Campbell, who has recently been appointed a Judge of the Supreme Court of the United States, in addition to commanding talents, is well versed in the laws of Louisiana, and has made himself thoroughly acquainted with the case in all its bearings, both as to facts and law.

General Jones was one of the counsel in the case before the Supreme Court of the United States, and has for a long series of years been one of the most eminent counsel at the bar of that Court.

I feel no hesitation in saying, that I entirely concur with them in the opinion they have given.

With great respect,

Yours,

OGDEN EDWARDS.

MRS. GENERAL GAINES.

NEW YORK, June 7th, 1853.

NEW ORLEANS, *July 8th*, 1854.

We have been called upon by Mrs. Gaines, to give our opinions in reference to her present position, and her prospects in claiming the estate of her father, Daniel Clark.

She is about to set up the will of 1813, made in her favor. The questions arising under this will, have never been passed upon; and she is now free to pursue her rights under it, unaffected by the proceedings or judgment on her claim, as heir at law. The will is not now in existence; but a lost will may be established as well as any other lost instrument.

The witnesses, we consider sufficient, in number and respectability; and we anticipate no difficulty in getting it proved and its execution ordered. We have every confidence that Mrs. Gaines will succeed in reclaiming an estate of which she has been so long deprived, and her position in life become what was so anxiously desired by her father.

EDMOND S. GOOLD,
WM. S. STANSBURY,
WARREN MOISE,
J. M. SMILEY,
F. PERIN.
P. E. BONFORD.

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MRS. GAINES' CLAIM.

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