

Probate, SC, York, James Brian Jr., 1878

South Carolina]
York County] In the Comm. Please
]]
MARTHA J. BELL, Plaintiff against] Relief Injunction
]]
AARON W. BRIAN, MARTHA J. SMITH]]
NANCY E. THOMASSON, JAMES M. BRIAN]]
SUSAN E. FLOYD, MARY J. WRAY]]
DANIEL M. HALL, SALLIE HALL JEFFERYS]]
who with plaintiff are heirs-at-law and]]
JOSEPH T. WALLACE, administrator of]]
JAMES BRIAN, deceased, defendant]]

The plaintiff above named, complaining of the defendants herein alleges:

I. That on the day of October 1878 **JAMES BRIAN** departed this life, intestate having left as his heirs-at-law his living children the plaintiff and the defendant **AARON W. BRIAN**, and his grand-children the other defendants named herein as heirs-at-law, to wit. **MARTHA J. SMITH** only child of **JAMES T. BRIAN**, a deceased son **NANCY E. THOMASSON** and **JAMES W. BRIAN**, children of **JEROME B. BRIAN**, another deceased son, and **SUSAN E. FLOYD**, **MARY J. WRAY**, **DANIEL M. HALL** and **SALLIE HALL JEFFERY**, children of **MARY A. HALL**, a deceased daughter of the said **JAMES BRIAN**, deceased.

II. That the said **JAMES BRIAN** at the time of his death was seized in fee of the following real estate situated in said county and state: to wit:

All that certain body of land, containing fifteen hundred acres, more or less lying about four miles north of York C. H. bounded by lands of **W. B. NUTT**, **R. R. MCCORKLE** [**ROBERT ROBINSON MCCORKLE**], **HIRAM THOMASSON**, **WILLIAM WOOD** and others, and made ref of the following tracts the **YOUNGBLOOD** tract, the **HAGIN** tract, the **BRUMFIELD** tract, the **DENSON** tract, the **WOODS** tract, the house place and other tracts.

III. That the defendant **JOSEPH F. WALLACE** is the duly qualified administrator of the goods and chattel, rights and credits of the said **JAMES BRIAN**, deceased, by virtue of letter from out of this Court to him on the day of October A. D. 1878. that the personal property of the said **JAMES BRIAN** is wholly insufficient to pay his debts, and that a portion of the lands described above have been seized by the sheriff of York County under sundry executions issued upon judgments against the land **JAMES BRIAN**, deceased. and that the lands so seized are advertised to be sold on Saturday in December next, in satisfaction of the said judgment debts.

IV. That plaintiff recognizes the fact that all the debts of the said **JAMES BRIAN** should be paid, but in confidence that a sale under Execution and for cash, and in the bodies as levied on, will be very detrimental to the interests of plaintiff, and that said lands can be sold by this court in bodies, and upon terms, that will insure much larger returns than can be hoped for under the sale now proceeding.

Wherefore plaintiff prays judgment:

1. That **R. H. GLENN**, the sheriff of York County be enjoined from selling the lands of the said **JAMES BRIAN** now under levy and advertisement for sale.

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2. That the lands described herein be sold by this Court upon such terms as may be just for the purpose of paying the debts of the said **JAMES BRIAN**, deceased, according to their legal priority, and for petition of any residue against the heirs-at-law according to their respective interests in the same under the facts stated herein.

3. That the creditors of the said **JAMES BRIAN**, deceased, be called in by publication according to the usual practice of this Court, to know their demands according to law.

4. For such other relief as may be just and equitable.

Witherspoon & Spencer
Plaintiff Atty.

November 30th, 1878

Court of Common Pleas
York County
1879 Judgment Roll #761

South Carolina
York County

Before me personally comes **MARTHA J. BELL**, the plaintiff above named, and makes oath that the above complaint is true of her knowledge.

M. J. BELL

Sworn to & signed before me ___ day of November A. D. 1878

J. A. MCLEAN, P. J.

Probate, SC, York, James Brian Jr., 1878

York

In the Probate Court

MARTHA J. BELL, plaintiff

v.

A. W. BRIAN, et. al., defendants

Complaint

Witherspoon & Spencer

Petitioner's Atty.

Original

Filed

22 January 1879

JOSEPH F. WALLACE

Probate, SC, York, James Brian Jr., 1878

State of South Carolina
County of York

Court of Common Pleas

MARTHA J. BELL, plaintiff

against

AARON W. BRIAN, MARTHA J. SMITH, NANCY E. THOMASSON, JAMES M. BRIAN, SUSAN E. FLOYD, MARY J. WRAY, DANIEL M. HALL and **SALLIE HALL JEFFREYS**, who, with the plaintiff, are heirs-at-law, and **JOSEPH F. WALLACE**, administrator of **JAMES BRIAN**, deceased, defendants.

Summons for relief.

To the defendants above named.

You are hereby summoned and required to answer the complaint in this action, which is herewith filed in the office of the Clerk of the Court of Common Pleas for the said county, and to serve a copy of your answer to the said complaint on the subscribers, at their office in Yorkville, South Carolina, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated Yorkville, S. C., January 22nd, A. D., 1879

WITHERSPOON & SPENCER,
plaintiff's attorneys.

Probate, SC, York, James Brian Jr., 1878

On hearing the above report of sales, and on motion of Witherspoon & Spencer, atty. For the plaintiff and for the estate, it is ordered that said report be and is hereby confirmed, as the decree of this court.

T. J. MACKEY,
Presiding Judge

March 25th 1880

Probate, SC, York, James Brian Jr., 1878

York

In Common Pleas

M. J. BELL, plaintiff

v.

AARON W. BRIAN, et. al., defendants

and order of confirmation

Witherspoon & Spencer

plaintiff Atty.

Filed

March 10, 1880

JOSEPH F. WALLACE, C. C.

Probate, SC, York, James Brian Jr., 1878

South Carolina
County of York

In the Common Pleas

MARTHA J. BELL, et. al., plaintiff

vs.

A. W. BRIAN, et. al., defendant

To the Honorable Presiding Judge, 6th Circuit D. C.

I come to respectfully submit the following report of sales, after first duly auditing the same I exposed a tract of 115 acres in XXX entitled course to sale at York Court House on sales day first Monday in November A. D. 1880.

It was bid off by **J. H. WITHERSPOON** at and for the sum of \$6.70 per acre amounting to \$770.50 he paid me \$256.85 one third cash payment and gave bond payable in twelve months for balance principal money and a mortgage to secure the residue of the funds held subject to the further order of this court.

March 10, A. D. 1880

Respectfully submitted

JOSEPH F. WALLACE

C. C.

Probate, SC, York, James Brian Jr., 1878

Brian et. al. Real Estate ... Sales day 5 May 1879

304. J. D. Witherspoon	\$6.00
103. William Dobson	\$4.40
186. C. E. Spencer	\$6.95
306. J. W. P. Hope	\$5.00
152. W. D. Thommasson	\$4.60
117. C. E. Spencer	\$6.25
122. John Dalin [Dulin]	\$3.85

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It is further ordered that it be referred to JOSEPH A. MCLEAN, Esq., as special referee to inquire and report upon the allegations made in said complaints with leave to report special matter.

B. C. Prenley
Presiding Judge

April 1, 1879

Probate, SC, York, James Brian Jr., 1878

South Carolina]
York County] In Probate Court
]]
J. F. WALLACE] Petition of Administrator
Admin of **JAMES BRIAN JR.**,]
Deceased] 2-Dec-1878
]]
Requiring defaults herein]
to account for personal]
property alleged to belong]
to the estate of the deceased]
]]
Against]
M. J. BELL, T. J. BELL,]
JAMES B. BELL] *NOTE*
] **JAMES B. BELL & M. A. BRIAN** are siblings
Defendants]
JEROME M. BRIAN,]
M. A. BRIAN]

J. F. WALLACE, administrator, appears by **W B. WILLIAMS** Esq., defendants with **C. E. SPENCER** Esq, their attorney, 2nd December 1878.

JAMES B. BELL, sworn says a bay mare, alleged to be the property of the estate of the deceased, is deponent's property, deponent first owned the dame given to him by his grandfather, the deceased. Deponent returned the dame in exchange received the present bay mare; deponent regarded the saddle as his gift. Saddle mare in possession of **J. M. BRIAN**. Interest in cow claimed by deponent, interest therein derived from pasturing cattle for **BOYD** and others. Deponent received on half for attention to cattle. Deponent has a gold watch in possession.

Watch was delivered to deponent's mother when he was about fifteen years old. Deponent has the watch now in possession. Admitted, a possession as a deed of gift of watch to deponent dated 17th May 1873, attested by **J. B. BRIAN**. Deponent claims shotgun, now in possession of **J. M. BRIAN**. The gun, a gift from **JAMES BRIAN**, deceased, to deponent:

Declarations of deceased objected to by Administrator's attorney. Deponent also claims a sword, as a gift made him by deceased in his lifetime, now in possession of **J. M. BRIAN**.

Deponent has not informed the administrator that he claimed articles before mentioned, does not know whether the administrator was advised as to the articles or not. Deponent lived with his grandfather from infancy. As to the saddle, deceased said to deponent, he would not need the saddle long and when he, deceased, was done with it, the saddle, deponent, might have it.

In reply:

Deponent says the gray mule belongs to his father, **T. J. BELL**, deceased in his lifetime borrowed the mule as they were scarce of horses and mules. Deponent says his father sent word to deceased to keep the mule until he, **T. J. BELL**, sent or called for it. Deponent says the hog, is the property of **M. A BRIAN**. Deceased gave

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the hog to his sister. Deponent says the silver watch was given to **J. M. BRIAN** by deceased, he, deponent, heard the deceased say he had given the silver watch to **J. M. BRIAN**. Deponent says the gray mule is the property of **J. M. BRIAN**. Deponent says deceased gave the mule to **J. M. BRIAN**. Deceased said the mule was **J. M. BRIAN**'s after he, **J. M. BRIAN**, claimed it. Deponent knows that **J. M. BRIAN** paid deceased a note before death of deceased, does not know amount.

J. MARTIN BRIAN, sworn, says the gray mule came from **T. J. BELL**, does not know whether his grandfather bought the mule or not.

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Deponent says his grandfather gave the bay mare to **JAMES BRIAN BELL**, deceased said the mare was Jimmies, sometime back. Deceased never called the mare anything else than Jimmies mare. Deponent says his grandfather called him in said he had given a bed to each of the following persons to wit: one to Mrs. **BELL**, one to Mrs. **J. M. BRIAN** one to 'Bide' Brian, nurse in last illness. And deceased asked deponent to see that they received the beds. Deponent no one claims the calf, the steelyards, cob grinder, sausage grinder, tubs, boxes or barrels, or his pistol, or mahogany box.

Deponent received the pistol from **D M. HALL** but deceased claimed it as his. Deponent says deceased gave the hog to **M. A BRIAN** in his presence. Twas given her when a pig **M. A BRIAN** has always taken care of it. Deponent says he heard **J. BRIAN BELL** ask deceased to buy him a saddle and deceased said he had a saddle, that would do for both of them. Deponent says **J. B. BELL** received half of the proceeds of one cow sold.

page 4 of 6

and he heard deceased say **J. B. BELL** was to have half of the one now on the premises. Deponent says deceased gave him the silver watch, and when deceased handed him the watch said he had given **J. B. BELL** the gold watch. Deponent has been using and has had in his possession the silver watch about three years. Deponent heard deceased say he had given the gun and sword to **J. B. BELL**. Deponent has controlled the gray mule for three years now in his possession. The colt, given him by **D M. HALL**. Deponent loaned mule for some time to **W N JACKSON** for it's feed. Deponent says owed deceased a note about the 1st of July, when he paid it. The note, same as testified to by **J. B. BELL**. Amount of note \$127. Note has been destroyed. Never owed deceased any other note.

Deponent says his wife, **M. A BRIAN**, resided with deceased, her grandfather. Deponent received the pistol from **D M. HALL**. Deceased got the pistol one day from some purpose and said it was his. The deceased and he put the pistol in his drawer.

page 5 of 6

T. J. BELL, sworn, says he knows a gray mule, now in deponent's possession, deponent loaned to deceased to work. Deponent there was no sale of the mule to deceased. After or before the mule was loaned, deponent borrowed \$70 from the deceased, which he was never paid. On one occasion Col. **JACKSON** deceased were at deponents house. Col. **JACKSON** wanted to buy the gray mule, and deceased said he would like to keep the mule deceased did keep the mule until he died. **W S. WOOD**, sworn, says he knows that deceased needed a mule, the were high priced at the time. Deceased went to **T. J. BELL**'s and came back with a gray mule, and said

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deceased told deponent, he got the mule from **T. J. BELL** for it's feed. Deponent says a good mule is worth \$25 to \$30 a year. Deponent heard deceased say, he had given **J. BRIAN BELL** his gold watch, sword and gun. Deponent says he had heard deceased speak of the gray mule as **J. M. BRIAN's** mule deponent knows that **J. M. BRIAN**.

page 6 of 6

Mrs. **M. A BRIAN**, sworn, says she heard her grandfather, deceased, say many times he gave the mare to Jimmie. Deponent heard deceased say Jimmie was to have the saddle after his death, or whenever he, the deceased, was done with it. Deponent heard deceased say **JIMMIE**, Mr. **BOYD** wants you to raise him another cow, take care of the cow and the half interest is yours. Deponent heard deceased say the gold watch was **JIMMIE's** and the silver watch was **J. M. BRIAN's** Deponent says deceased said the gun and sword were Jimmies. Deponent says she heard deceased say he had given the gray mule to **J. M. BRIAN**. Deponent says her husband, **J. M. BRIAN**, paid deceased a note of \$127 and she saw deceased hand her husband the note after payment.

Mrs. **M. J. BELL**, sworn, says that she heard her deceased father say he had given **M. A BRIAN** a bed and that he wanted the old negro women to have a bed for her services as nurse during his sickness. Deponent says paper, exhibit A, was sent to her with the gold watch.

A bed was delivered to the nurse before the death of the deceased.

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South Carolina]
York County] 7-Oct-1878
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MARTHA JANE BRIAN BELL]

J. A. MCLEAN
Probate Judge, York County

Your petitioner respectfully represents, that **JAMES BRIAN JR.** (her father) late of York County State aforesaid, deceased, died on the 4th day of October (Friday) inst. intestate. Deceased died leaving some personal estate, and to guard same from loss or being wasted, asks that you appoint her friend, **JOSEPH F. WALLACE** Esq. Administrator of said deceased's estate and your petitioner will ever & c.

October 7th A.D. 1878

M. J. BELL

File No. 5475
York County Courthouse

Probate, SC, York, James Brian Jr., 1878

JAMES BRIAN, Deceased]
Personal Property on]
premises not sold claimed]

one gray mule
one bay mare
two beds and bedding
one pair of steel yards
one calf
one hog
one cob grinder
one sausage grinder
tubs, boxes and barrells
one saddle
interest in one cow

Personal Property not on premises claimed to belong to the Estate of JAMES BRIAN

two watches, one gold, one silver
one shot gun
one pistol and shooter
one sword
one mahogany wood box
one young bay mule
notes on J. M. Brian for \$225

Probate, SC, York, James Brian Jr., 1878

York County]
South Carolina]
] 22-Jan-1879
Personally appeared]
MARTHA S. BELL]

Who being first duly sworn says:

I. That a cause of action exists in favor of the above named plaintiff against the above name defendant and others, the grounds of which appear by the sworn complaint of the plaintiff in this action on file in the office of the Clerk of said Court; that in said action the plaintiff took to enjoin and restrain the sheriff of York County from selling the real estate of **JAMES BRIAN**, deceased, under execution for cash, to the prejudice of the heirs-at-law, and prays that said real estate may be sold under an order from this court under such terms as may be just for the purpose of paying the debts of **JAMES BRIAN**, deceased, according to their legal priorities and for ____ of any residue amongst the heirs-at-law of **JAMES BRIAN**, deceased, and that the creditors of said deceased be called in by publication, and for each other relief as may be just and equitable.

II. That **AARON W. BRIAN** and **MARTHA J. SMITH**, two of the defendants in this action, are necessary parties to the action, the former residing at Camden, Ouachita County, Arkansas, and the latter residing at Jacksonville, Polaski County, in the state of Arkansas; that **MARY J. WRAY**, another defendant and necessary part, resides at Kings Mountain, Cleveland County, in the state of North Carolina; and that defendant **SALLY HALL JEFFREYS**, and other necessary parties reside at Hendersonville, Henderson County, in the state of North Carolina: each of the aforesaid defendants being heirs-at-law of **JAMES BRIAN**, deceased, and non-residents of the state of South Carolina, and it not being in the power of the sheriff of York County to serve either of them personally with the summons and complaint in this action.

Sworn to and subscribed before me this 22nd day of January, 1879.

MARTHA J. BELL
JOSEPH F. WALLACE

Probate, SC, York, James Brian Jr., 1878

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