Box 6

Package 1

1825

Muse Tollison

Steven Tollison, Exors

vs.

Amy Tollison

Et Al.

In Equity (1)

State of South Carolina
Spartanburgh District } To the Honorable the Judges of
Court of Equity of the Said State—

Humbly Complaining Sheweth unto your Honors, Your orators
Muse Tollison and Stephen Tollison Executors and residuary leg-
atees under the will of their Father John Tollison deceased late
of the District of Spartanburgh, and the said John Tollison
at the time of Making and publishing his said last will and
Testament and at the time of his death was seized and pos-
sessed of a considerable real and personal estate and that
being thus seized the said John Tollison the Testator, on or
about the 24th day of July 1820, made his last will and Testament
in writing of that date, and which was duly signed and pub-
lished by him and attested as by law is required for passing
of personal property, and died intestate as to his real estate
were only two witnesses to the said will, and thereby among
other things devised as follows, that is Item I will give and devise
unto such of the children of my deceased daughter Nancy
Bryant as may be living at my death one hundred Dollars
each to be paid in property at valuation as they arrive at
lawful age or may marry to all but Wm F. Bryant who
shall receive no part with the other children of my deceased
daughter Nancy Bryant, exclusive of what I may give
them in my life time 2nd Item I will give and devise to my
daughter Lidia Sparks at my death one negro boy named
Isaac to her and the lawful heirs of her body forever ex-
clusive of what I may give her in my life time 3rd
I will give and devise unto my son Dennis John Tollison five
hundred Dollars to be paid to him at the pleasure of my
Exec^rs

4th I will give and devise unto my daughter Lucy Kirby to her and her heirs forever one negro man named Dick also seven hundred Dollars to be paid in property at my death at valuation exclusive of what I may give her in my lifetime 5th I will give and devise unto such of the children of my daughter Anna Gossett as may be living at my death one hundred Dollars each to be paid in property at valuation as they arrive at lawful age or may marry exclusive of what I may give them in my lifetime 6th I will give and devise unto my son Micd Tollison and his heirs forever one negro man named Cooper and seven hundred Dollars to be paid in property at Valuation exclusive of what I may give him in my lifetime 7th I will give and devise unto my son Eli Tollison and his heirs forever five hundred Dollars to be paid in property at valuation at my death exclusive of what I may give him in my lifetime; 8th I will give and devise unto my son Stephen Tollison and his heirs forever one negro boy named Dazo also seven hundred Dollars to be paid in property at valuation at my death exclusive of what I may give him in my lifetime 9th I will give and devise unto Berriman Quinn Son of my daughter Sty Quinn five Dollars at my death to be paid him property at valuation exclusive of what I have given his mother, and I never intend to give her any more 10th I will give and devise and order that all the rest residue and remainder of my estate both real and personal of what nature and kind soever and every part thereof be sold at public Sale and that out of the money arising from said Sale all my just debts funeral & just charges of proving this my will and Legacies herein made shall be paid the remainder of the money arising from said Sale I will and devise unto my sons Micd Tollison and Stephen Tollison to be equally divided between them, of which last will and testament your orators were appointed two of the Executors

And your orators further sheweth unto your Honors that the said John Tollison the Testator departed this life on or about the 27th day of March in the year of our Lord 1821 without reproking or altering the said will leaving the same in full force and virtue and your orators have since duly proved the said will in the Court of Ordinary for Spartanburgh District, and qualified thereon and took upon themselves the burthen and execution of the said will. And your orators further shew unto your Honors that in the discharge of the duties imposed on them in the execution of the said will they have caused an Inventory of the said testators goods to be made and had the same duly appraised which said appraise bill amounted to the sum of $12202.84 as will more fully appear by a copy of the appraise bill which is herewith filed as an exhibit and marked (A) And your orators further shew unto your Honors that they proceeded and sold at Public action all the personal Estate of the testator except what was specifically devised by name not having retained any part of the said personal estate for the payment of those legacies which were directed to be paid in property at Valuation, in as much as it was found to be entirely impracticable, your orators have therefore sold the property and intend by the approbation of this honorable Court to pay the said legacies in cash as they conceive this the only means by which the will of the testator can be carried into effect. And your orators further sheweth unto your Honors that the said testator was at the time of his death seized and possessed of a considerable real Estate say probably about 1100 acres which he attempted to divise, but not having strictly observed

all the formalities required by law for the devising of real Estate your orators are informed that the Testator as to his real estate must be considered as having died intestate and if so he has left the following heirs who are entitled to a distributive share of the said real estate, that is Amy Tollison widow of the testator the Children of Nancy Briant one of his daughters, who are Elizabeth Harvey wife of John Harvey, Charlotte Briant William F. Briant John Briant Polly Harvey wife of William Harvey ~~Polly~~ Sally Kirby wife Wright Kirby Eli Briant Muse Briant James Briant and Alfred Briant & Lidia Sparks a daughter wife of Josiah Sparks John Tollison of Mr Major Gossett Eli Tollison and Ann Queen wife of James Queen who together with your orators are entitled to a distributive share of the said Real estate according to the provisions of the act of the Legislature in such case made and provided. And your orators further shew unto your Honors that the said Testator some time before his death had sold a small tract of land in Rumsey District to one James Orr and gave his bond for titles but that he died without having made the said titles to said James Orr as he intended to have done.

And your orators further shew unto your honors though it is with pain they are compelled thus to call to the view of this honorable Court the frailties of their deceased father the testator, yet in Justice to themselves they are forced to state to this Court that the said testator some time considerable time before his death by some from some cause unknown to your orators, becaming forgetful of the duties of a husband and a Father and being seduced by the youthful charms of a certain Polly Smith, and being led to believe

that he could legally and morally be discharged from the obligation of the marriage contract with his lawful wife the mother of your orators, discharged himself from his bed and board and actually had the marriage ceremony performed between himself and the said Polly Smith and that he continued to live with her as tho she had been his lawful wife untill the time of his death and that she became the mother of a number children, of whom the testator was the reputed father, the names of the said children are as follows, (viz) James Smith a Mulatto Binding Smith a Mulatto Josephus Berryman Smith a Mulatto, Lucinda Smith a Mulatto and Alfred Smith a Mulatto who are illegitimate children.

And your orators further shew unto your Honors that the said Testator being influenced as they suppose by the importunity of the said Polly Smith the mother of those illegitimate children, did during the time he thus lived with her game and conveyed unto the said Polly Smith her mistress and her illegitimate children, contrary to the true and solemn by act of the legislature in such case made and provided Considerably more than one half of the clear value of his estate, to the great injury and prejudice of his lawful wife and his legitimate children, some of which gifts are made by a direct conveyance others and made by third persons to whom the said testator had conveyed the property mentioned in said deeds in trust for the benefit of those said illegitimate children and their mother the said Polly Smith all which will more fully appear by copies of the said Deeds of gift a file of which is herewith exhibited and marked B. and your orators & humbly charge that the whole of those deeds were without any valuable consideration, and that they were

executed through trustes for the express purpose of avoid-
ing the act of the legislature. And your orators further state
unto your Honors, that the said Testator also indorsed to some
those illegitimate Children and their mother a number of
notes of hand to considerable amount (say) to the sum of
Six or Seven Thousand Dollars so that by one means
and another he has given to this woman and her chil-
dren about eighteen Thousand Dollars out his estate
of thirty thousand, as your orators can clearly shew
and they expressly charge that ~~charge that~~ the said Polly
Smith and her said Children have retained a consid-
erable portion of the goods and Chattles and Cash
belonging to the said Testators estate, which it is not now
in the power of your orators ~~expressly~~ specifically and to the precise am-
ount to set forth, but which they hope the said Defts will
be compelled to discover and account for.

And your orators further shew unto your Honors that the
said Polly Smith and her said illegitimate Children or at least
some of them are now proceeding or threaten to proceed by
due course of law to enforce the collection of those notes of hand
that are thus assigned to them, without waiting for this
honorable Court to decree whether the transfer is void or
or not, though they well most clearly void as those
deeds of gift are of a date prior to the assignments of
those notes and they the deeds alone are more than one fourth part of
the clear value of the Testators estate so that the notes
of right belong to complainants as the executors of the
said Testator; and your orators are fearful if those Defen-
dants are permitted to collect the money due on the
said notes that it will be difficult for them to get the
same out of their hands should this honorable Court
decree that the said notes belonged to the Executors
of the Testator, and not to the said Defendants

And your orators further shew unto your honors that the said Testator in his life time did according to the provisions contained in those deeds of gift to his said illegitimate children convey away the property mentioned in those deeds to other persons, by absolute deeds of conveyance, so that the last mentioned deeds operated as a defeasance of the former as will more clearly appear by a copy of one of those latter deeds, which is herewith filed as an exhibit and marked (C) And your orators further shew to your honors that one Col. Joseph Collins has now obtained the appointment of Guardian to those illegitimate children and that he is acting for them. And your orators further state to this honorable Court that there will arise a question on the construction of the will of the Testator as to the effect of the residuary clause of the said will, on that part of the estate of the testator which is the excess of the one fourth of the same, conveyed by the said deeds of gift to his said mistress and her illegitimate children, as the residuary legatee claim the same exclusively to themselves while the other heirs contend that the testator must be considered as having died intestate as to that part of his Estate if the said deeds should be set aside by this Hon. Court and that therefore the same is subject to diversion amongst all the representatives of the testator according to the statute of distributions. And your orators further charge that that the said Testator at the time of the execution of some of those deeds of gift and the assignment of those notes of hand to his said Mistress and her illegitimate children was by no means of sound mind, but that it was done wholly through the agency of the said Polly Smith

and her said Children during the last illness of the said Testator. And your orators further shew unto your Lordship that they have often applied to these defendants in the most friendly manner to have all the matter touching the estate of the said Testator amicably settled but that they have refused to comply with their reasonable request as in Justice and Equity they ought to have done.

But now so it is may it please your Lordship that the said Defendants or at least some of them combining and confederating together and with other persons at present unknown unto your orators whose names when discovered your orators pray may be herein inserted with apt and proper words to charge them, and contriving how to injure and oppress your orators in the premises sometimes pretending that those of the lawful heirs who are defendants are equally entitled to a distributive share of the estate when the testator has contrary to Law attempted to convey to his said bastard Children and their mother the said Polly Smith, and those said illegitimate Children and their mother pretend that the testator has not given them a larger share portion of his estate than he lawfully might do, and that they have not concealed any of the goods and Chattles debts or money belonging to the said Estate whereas your orators charge the contrary thereof to be the truth. All which actings and doings are contrary to Equity and good conscience and tend to the manifest wrong of your orators in the premises. In tender consideration whereof and for as much as your orators are remediless in the premises at and by the direct and strict rules of the common Law and cannot have adequate relief save in a Court of Equity where matters of this and the like kind are properly cognizable and relievable

To the end therefore that each and every of the

Defendants and their Confederates when discovered may upon their several and respective Corporal oaths full true and perfect answer make to all and singular the matters and things herein before stated and charged as fully and particularly as if the same were here repeated again and they thereto severally interrogated; and that not only as to the best of their respective knowledge and remembrance but also as to the best of their several and respective information and beleif and more especially that they may answer and set forth whether the Copy of the will set forth in the Commencement of this bill is not a true Copy? and whether the testator did not die about the time set forth? and that the said Dolly Smith and her minor children by their Guardian the said Col— Joseph Collins may answer and set forth whether those deeds of gifts and Conveyances which purport to be made by three persons and not directly from the testator were not in truth executed in consequence of a trust reposed in the persons by whom they were made which the said testator had imposed on them at the time he Conveyed the said property to the said trustees for the benefit of his said bastard children and their mother? and that they the said Illegitimate Children and their mother may fully set forth and discover what amount of Notes the said testator assigned over or indorsed to them and each one of them and when the same was done? and was or was not the said testator on his death bed at the time? and was he or was he not in body and of Mind at the time or was he in his perfect senses at the time the same notes were assigned and was not the same done without any valuable consideration.

And that they the said (10) Polly Smith and her children may fully and particularly set forth and discover whether the said Testator had not a considerable sum of money in his possession at the time of his death and how much and whether there was not property to a considerable amount which the said testator had given them in his life time of which they have rendered no account to the Executors? and whether the said Testator had not in his life time given them considerable sums of money and how much? and what property had he given them?: And that the said Defendants may answer the premises and that the said Polly Smith and her said Children may be compelled to account for all the money they and each of them may have received from the testator or his Estate since his death and that those deeds of gifts and Conveyances and the indorsment or assignments of those notes to them by the said testator may be declared to be null and void as far as the full amount of the same may exceed the one fourth of the clear value of the estate of the testator and that the same may pass to your Orators under the residuary Clause Contained in the will of the said testator?, And that your orators may be authorized to discharge the legacies and the said will which are directed to be paid in property, by paying the amount of the same in money for the reasons above stated?, and that they be authorized to execute good and sufficient titles in fee simple to the said Lands &c according to the conditions of the said bond of the testator for the land therein mentioned. And that your Honors may grant unto your orators the writ of partition of this honorable Court for the purpose of obtaining a division of

the real estate devised amongst those legally entitled thereto according to their respective interests in the same; and that in the mean time an Injunction may be awarded by this honorable Court to restrain the said Polly Smith and her said illegitimate Children or their guardian or attorney & agents from from collecting the moneys due on those said transfered notes untill the final decree of this Court shall determine to whom the money due on the same of right belongs; and that your honors may grant such other and further relief in the premises as from the circumstances of the case to your honors shall seem meet. And may it please your Honors also to grant unto your Orators the writ of subpoena of this honorable to be directed to the said A my Tollison and the Children of Nancy Brant and the rest of the said Defendants commanding them at a certain day and under a Certain penalty therein to be inserted, personally to be and appear before your Honors in this honorable Court then and there to answer the premises and to stand to and abide such order and decree therein as to your honors shall seem agreeable to Equity and Good Conscience. And your petitioners will ever pray &c

A. W. Thomson

Comp.d S.C.

The State of South Carolina
In Equity

The Ans of Colin Joseph Collins Guardian to James Bird song Smith alias James Tollison Josephus B Smith alias Josephus B Tollison

The Exors of Tollison
vs
Colin Jos Collins &
others

alias Bird song Tollison Lucinda Smith alias Lucinda Tollison Alfred Smith alias Alfred Tollison & Elija C Smith alias Elija C Tollison

minors under twenty one years of age

The Defendant Colin Joseph Collins Guardian as aforesaid now and at all times hereafter Reserving to himself all manner of exceptions to the manyfold errors and insufficiencies in the said Complainants bill of Complaint Contained for Answer thereto or so much thereof as he is advised it is necessary or Material for him to make answer unto answering saith. That he believes and admits that John Tollison the Testator was seized and possessed of a considerable real and personal Estate at the time of making his said Will and at his death, This Deft also believes and admits that John Tollison the Testator died at the time as set forth by Complainants make and executed his last Will & Testament in the manner and form as alledged by Complts. and did make the devises and bequests therein as Complts State in their bill and that Complts are two of the Executors appointed in said Will. and that Bird song Smith alias Tollison was also appointed an Executor by the said Will who has qualified as such This Deft further answering saith

that he has heard and believes that the Testator died about the time set forth by Compt leaving his said Will in full force and unrevoked and that the said Will has been duly proved and Compt qualified as Executor and taken op on Thursday the Executor thereof. This Deft admits that has been an appraisement of the Estate of the Testator but whether the whole Estate has been appraised this deft cannot say and he believes the Exhibit A to be a true copy of that appraisement. This Deft also admits there was a sale of the personal Estate of the Testator as alledged by Compt as he has been informed This Deft further answering admits that he has been informed and believes that the said Will of the Testator was not executed so as to pass Real Estate but that Quantity of Real Estate the said Testator died seized and possessed of this deft does not know — That this Deft is informed and believes that the said Testator died intestate as to his Real Estate and that the persons named by Compt will be entitled to a distribution of the same. This Deft does not know of his own knowledge that a sale of land was made by Testator in his life time to James Orr and bond given for title but has heard the same. This Deft further answering saith that he has been informed that the mother of Compts was the wife of the Testator but does not know the fact. that he has also heard that the Testator had intermarried with Polly Smith but does not know the fact but knows that the said Testator lived with her as his wife until his death.

This Deft further answering saith that he has heard & believes that Polly Smith is the mother of Several Children of whom this Deft is Guardian - and has heard that the Testator was the Reputed father but does not know the fact and admits the names of the Children to be as Complt have set forth

This Deft further answering saith that he does not know of his own knowledge that the said Testator ever Conveyed to the said Polly Smith and her Children any of his Estate real or personal other than such as appears from some paper which this Deft has seen neither does this Deft know or admit that the Testator has conveyed on behalf of his Estate or any one part to the said Polly Smith and her Children This Deft admits and believes that the Copy deed contained in exhibit B to be true Copies of the Deeds which this Deft as Guardian to the persons named therein has in his possession

This Deft further answering saith that he knows of no other deed than those contained in exhibit B nother does he know of his own knowledge that said Deed were made deadly & by their persons to avoid any act of the Legislature that any deeds were ever made in trust for the use and benefit of the said Children and does not know the Consideration of said deed except from what is expressed in them - This Deft admits he has in possession as Guardian to Benjamin Tollison two notes of hand under seal indorsed by Thos Tollison dated 4 this Deft believes and admits to Benjamin Tollison Copies of which are contained in exhibit E also two other notes Indorsed by by the said Testator to Elijah Tanrade Tollison Copies of which are here with exhibited and marked

but upon what Consideration those notes were Indorsed they Deft doe
not know and that they Deft has put those notes in suit for the
recovery of the Amount of them as Guardian to the persons to whom
they are Indorsed That they Deft has in her Possession no other
Note or one of Ample Indorsed by the said Tedaler to Mary Tollison
and that the said Mary Tollison Indorsed the same Note to
they Deft upon the Consideration that he would become guar
dian for her Children and Defend and protect their Rights and
Interest. Which they Deft agreed to do and they Deft Considers
the said note and the Amount there of Three & pr cent thereon
and Property that they Deft at the time said note was
Indorsed to him did not know upon what Consideration
it Had been Transfd. to Mary Tollison & neither does they
Deft Yet know of his own knowledge — Ady of this Ans and Indorse
ment are Relied on as part of

Note that have been Indorsed by said Tedaler to the said Mary
South Mary Tollison or her Children neither has he seen any Such

This Deft does not Know. that the said of his own knowledge that
the said Tedaler ever gave or Sent to Mary Smith and her
Children any except what ordered the Jurat before Stated
Sale of the fact, neither does this Deft know what the said
Tedaler was worth. This Deft further Answering, saith. that
he does not know of any Goods and Chattels obtained by the said
Polly Smith or her Children which belonged to the said Tedaler
at the time of his death or any cash This Deft further answering
saith that he does not believe that the Property mentioned in the

the deed of Conveyance (if the same ever exceeds the Juspon
empty allledged) to be one fourth part of the whole Estate of the
said Testator. This Deft is advised to hear Compt alledges that if
the note should be collected it would be impossible to get the money
from them as this Deft is their Guardian and will have
the money when collected and will be answerable for it and his
sureties if by a decree of this Court he may be compelled to it is
behalf of his wards — This Deft knows nothing of any deed of defeasance
nor does he admit the same but requires due proof of the same thereof.
This Deft says he does not admit that any deed
the Testator in his last illness nor that he was of unsound mind
at the execution of the same. nor that he was of unsound mind at the
time of signing said note, or that
it was done thro the agency of Polly Smith and her children. That
this Deft does not know of any money they got his hands by the said
Testator in his life time nor any other property than as he
has set forth — This Deft does believe that the said Testator
had any money in his possession at his death nor does this
Deft know of his own knowledge having executed any property belonging
to the said Testator at the time of his death. That this Deft on
behalf of his said Ward having executed all the property belonging
all the property mentioned in Compts bill were given to the said
Polly Smith and her Children for the purposes as Compt states
(Independant of the Income of said property) yet he does
not admit or know that it will exceed one fourth of the whole
of the said Testators Estate. That this Deft has reason to be
lieve that the return of Allen Tollison one of the Executors of the
debts due the Estate of said Testator does not include the whole

debt due the Estate at his death a Copy of which I have
& have with Exhibited and Marked No. ~~2~~ 1
~~and should~~ that Shal this Suit has been answered ~~not~~ by Jno
Lian Rather out of the cause from because no Subpoena as he has
been informed has been Issued or his bond to answer. Which
ought to have been done tho his answer is in Substance the same
it would have been in any form this Suit desiring all contain
ful Combinations and hoping that he may be soon dismissed
with his Reasonable Costs.

P Farrow
Solr for

South Carolina
Spartanburgh District } Personally came before me Joseph Collins who on his solemn oath says that the facts stated in this answer are true to the best of his knowledge and belief Sworn to before me 22 October 1821.

J. Foster C.C.D.

Jno Collins

State of South Carolina
Spartanburgh District

To William Golightly, Daniel White, James Poole, Antony Bates
& Richard Thompson Esqrs Union districts and
& said districts and
& State aforesaid —

S. Foster
C. E. S. D.

Whereas it hath been suggested to and in our Court of Equity at Spartanburgh
Court House, that John Tollison decd late of the districts and State aforesaid,
said, deceased, was in his life time and at the time of his decease seized and
possessed, in fee simple of certain plantations or tracts of land, situate, lying
and being in the districts and State aforesaid, more particularly and fully de-
scribed in the bills of complaints of the heirs of John Tollison decd and Amy Tollison
and others, heirs and distributees of the said John Tollison Decd for this purpose
among them Purposes filed in the office of the commissioners of the Court of Span-
tanburgh Districts, of which said tracts of land the said John died intestate
leaving the following heirs (to wit) Amy Tollison widow of the said John Tollison decd
the children of Nancy Bryant one of his daughters, who are Elizabeth Harvey wife of John Harvey, Charlotte
Bryant, William F. Bryant, John Bryant, Polly Harvey wife of William Harvey, Sally Shirley wife of Bright
Shirley, Eli Bryant, Nuta Bryant, Jane Bryant and Alfred Bryant and Lydia Sparks a daughter wife
of Hezekiah Sparks, John Tollison, Lavicy Shirley, wife of Richard Shirley, Anna Sodbette wife of Absolom Sod-
bett, Eli Tollison and Sitha Quinn & James Quinn —

And no division or Partition having been made, the said Exors of John Tollison
decd as above named, have filed their bill in our said court of Equity, praying for a
writ of partition and division of the said tracts of land agreeably to the acts of
the General Assembly in such case made and provided and the said Johnson Tol-
lison and others attending to the same — Now the said William Golightly, Daniel
White, James Poole, Antony Bates and Richard Thompson Esqrs Union districts afore-
said, being first sworn fairly and impartially to execute this writ of partition
according to the best of your knowledge and understanding, are hereby com-
anded and required, That in your proper persons, you go to and upon the premises
aforesaid in the presence of the parties aforesaid, by you to be summoned if they
will take present, and the said plantations or tracts of land, together with the build-
ings and other improvements, respect being had to their value, you cause to be di-
vided in the manner and proportions herein before mentioned, and that you
cause the several and respective parts to be delineated and designated to them to
be held in severalty, so that neither of the parties have more of the said inheri-
tance than belongeth them to have — And the same Partitions, by you, as afore-
said to be made, you are requested plainly and distinctly under your hands and
seals to have before the aforesaid Judges of the said State at the Court of
Equity, to be holden at Spartanburgh Court House on the first Monday in
June next and in what manner you shall execute this our writ,
them and there make known unto us, and have you then and there this writ.

Witness Simpson Foster Esqr commissioners of the said Court

of Equity at Spartanburgh Court House the fourth monday in February in the year of Our Lord one thousand eight hundred and twenty three and in the forty seventh year of the Sovereignty and Independence of the United States of America &c.

D. B. Thomson
Compt. Ad.

South Carolina
Spartanburgh District

Personally appeared before me Spartanburgh District aforesaid William Wright, Daniel White, James Poole, Anthony Bates & Richard Thompson Esqrs. who being duly sworn, say that they will fairly and impartially execute all and singular the premises contained in the annexed writ of partition to the best of their understanding and knowledge.

Sworn to before me this 30th Augt. 1823
John Edson J.P.

Richd. Thomson

D. White
Wm. Wrightly
James Poole
Anthony X Bates
mark