

Minutes of the Court of Ordinary, January 25th 1844

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January 25th 1844

The Court met at Chambers
Present their Honors, Alexander Mauldin, Elihu S. Barclay
& James Crocker Esqrs. Judges of the Court

Georgia

Pickens County

In the name of God Amen

I Kinchen Barr of Habersham County
and State of Georgia, being of weak body, but of sound and disposing
mind, do make and ordain the following to be my last will and testament
Item 1. To my wife, Elizabeth Barr I give and bequeath to her
during her natural life, and after her death to Joel Hunt in
Trust for my Daughter, Catharine Hunt, wife of said Joel
Hunt and her bodily heirs forever, the plantation, whereon I now
reside, known as lot No. 35 in the 2^d district of Habersham County
also, a negro man by the name of Matt about twenty six years
of age and a woman named Lotty twenty six years old
also the Stock of Horses, hogs, cattle, plantation tools &
Household & Kitchen Furniture, which may be and said
plantation

Item 2^d. I give to Joel Hunt in trust for
my daughter Catharine Hunt, wife of said Joel Hunt
during her natural, and after her death to the heirs of her
body, a tract of land in Habersham County State of
Georgia No 38, Dist 2. Known as Mount Zionah, also one
negro girl by the name of Luccinda, about eighteen
years of age.

Item 3^d. At my death my will is that
my body shall be decently interred, and all my just
debts be paid, and the balance of my estate both real
and personal, and all debts which may be due me, I
give and bequeath to Joel Hunt of Habersham
County, In Trust for Catharine Hunt, wife of said
Joel Hunt and the heirs of her body forever in fee simple
to be used for the benefit of the said Catharine
Hunt and her bodily heirs only.

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Item 4th I appoint Ezekiel McBray my Executor
In witness whereof I the said Kitchum Carr hath
hereunto set my hand and seal in the City of Augusta
on the fifth day of November 1843,
Signed sealed and acknowledged
in presence of.

John T. Wooten

Edward W. Collier

William R. Fleming

Kitchum Carr Seal

Georgia } In the Court of Ordinary of Richmond
Richmond County } County - In Chambers, 12th January 1844
Personall appeared before us in Chambers, William R. Fleming,
a subscribing Witness to the foregoing instrument of writing, who
being duly sworn, saith that he was present, and did see Kitchum Carr
the within named, sign seal, and publish and declare the same to be his
Last Will and Testament, That he was of sound and disposing mind
and memory, and that this deponent together with John T. Wooten &
Edward W. Collier, signed the same as witnesses at the request and in
the presence of the testator and of each other.

Sworn to before us this Twelfth day of January 1844

B. H. Warren J. S. C. R. C.

W. R. Fleming

James Harper J. S. C. R. C.

Georgia }
Richmond County } Codicil to the last will & Testament of Kitchum
Carr - know all men by these presents, that I Kitchum Carr of
the County of Habersham and State of Georgia, being weak in
body, but of sound and Disposing mind & memory, do make the following
Item to my last will and testament, which was executed by me on the
5th day of the present Inst,

Item, I will and bequeath to Alfred Carr of Habersham County,
and State of Georgia, who is the son of my wife Elisabeth Carr, the tract
of land, in Habersham County, whereon the said Alfred Carr now resides, and
better known as the Goodrum place as a legacy - In testimony whereof
I have hereunto set my hand and seal this thirteenth day of
November 1843, Signed sealed and acknowledged

John T. Norton
Edward W. Collier
W. H. Fleming
H. Carr Seal

Georgia } In the Court of Ordinary of Richmond County
Richmond County } In Chambers 12th January 1844
Personall appeared before us in Chambers. William H. Fleming a subscribing
Witness to the foregoing instrument of writing, who being sworn saith that he was
present and did see Kintchen Carr the within & foregoing named, sign seal and publish
and declare the same to be his codicil, to his last will and testament, that he was of his
and disposing mind and memory, and that this deponent, together with John T. Norton
& Edward W. Collier signed the same as witnesses, at the request and in the presence of the
testator, and of each other - Sworn to before us, this twelfth day of January 1844
B. H. Warren J. S. C. R. C. }
James Harper J. S. C. R. C. } W. H. Fleming

Georgia } Leon P. Dugas Clerk of the Court of Ordinary in and for said
Richmond County } County, in said State do hereby certify that the foregoing is a true copy
of the will and codicil of Kintchen Carr, deceased, as proven in Chambers and deposited
in my office - Witness my hand and the seal of the said Court this twelfth day of
January 1844 Leon P. Dugas, Clerk, C. O. R. C.

Georgia } E. Gehril McBravey, do solemnly swear that this duplicate writing
Habersham County } contains the true and last will of the within named Kintchen Carr
deceased, so far as I know or believe, and that I will well and truly execute the same by
paying first the debts and then the legacies contained in said will, so far as in goods and
chattels will thereto extend, and the law charge me, and that I will make a true and
perfect inventory of all such goods and chattels so help me God - Sworn to before us
in Chambers, also being duly subscribed this 25th January 1844
James Crocker J. S. C. }
A. Mauldin J. S. C. } E. Gehril McBravey
E. J. Barclay J. S. C. }
Philip Martin J. S. C. } Court of ordinary in Chambers January 25th 1844

The last will and testament of Kintchen Carr, deceased, having been by a certified
copy from the Court of Ordinary of Richmond County, exhibited in said Court and the
Executor (E. Gehril McBravey) of said Will having been qualified to the same - It is
ordered that said certified copy be perused & that William H. Carr, Joseph H. Carr & Starr
James West Junr. & James West Jr. be & they are hereby appointed appraisers in the estate of Kintchen Carr
& in the Court of Ordinary, Chambers, 25th Jan 1844 - It is further ordered that
McBravey Executor of the last will and testament of Kintchen Carr deceased be permitted
to manage the estate real and personal at his discretion so as not to conflict
with said will or the rights of creditors

The Court then

Adjournd -
appraisers, William H. Carr }
Joseph H. Carr } James Crocker J. S. C.
James West Junr. & James West Jr. } A. Mauldin J. S. C.
E. J. Barclay J. S. C.

Georgia

Habersham County } In Court of Ordinary of said County, March
Term 1844

Now at this term of the court comes Elizabeth Barr widow of Kinchen Barr late of said County deceased, and entered in said Court, her solemn caveat against the further execution ~~execution~~ of the last will and testament of the said deceased, upon the following grounds to wit: First that said will is altogether contrary to the laws and constitution of said State, in all its provisions so far as relates to the devises and bequests made to Joel Hurst in trust for his wife Catharine, as said devises and bequests to said trustee, for the use of the said Catharine, his ~~Ces~~ ~~trust~~ ~~trust~~ trust, and are contrary to acts prohibitory thereof passed the 16th February 1799 and also the 21st December 1821, and the constitution of said State

Secondly, That at the time of making and executing said Will and testament the said Kinchen Barr was not of a sound and disposing mind and memory, but was altogether of an unsound mind and ~~poor~~ Memory, and thereby wholly incapable of making and executing the same, which said unsoundness besides otherwise being apparent was manifested fully by his devises and bequests as aforesaid to the trust as aforesaid calling and naming in said will the said Catharine the wife of the said Joel & his daughter &c. whereas he always appeared and demeaned when of his mind and sound in health that the said Catharine, the wife of said Joel was his daughter or of any affinity to him

Thirdly, Because said will and testament, limits a life, than an unconditional fee simple estate in all its provisions to the said trustee for the uses aforesaid to the heirs of the body of the said Catharine, wife of said Joel, and therefore cannot be construed so as to vest an unconditional fee simple estate to her or the heirs of her body, being expressed to be a life estate, tho such are so inconsistent in the limitations set forth in said will and testament, and cannot be so construed as to conform within the provisions of the act of 21st December 1821 as explanatory of the act of 16th February 1799, so as to pass said devises and bequests, into an unconditional fee simple estate, but that they are by said limitations less than such estate. Still an estate in Tail general to said Catharine and the heirs of her body, and contrary to the laws aforesaid and therefore null & void. Upon the foregoing grounds and for various informality and exceptions to said will and testament

the said ~~will~~ ^{Malcolm I. Walker} enters this his solemn
 caveat against the execution of said will and testament & declares the same to be null & void
 in law & in Equity, and that the estate of said deceased is intestate, & subject to distribution according
 to the laws in such case made & provided. He therefore by attorney as aforesaid prays this honorable
 Court: for a rule nisi directed to Ephraim McBravey, the executor of said will and testament
 to bring before said Court the said will & testament, for solemn probate at the term of said Court to
 be held on the first Monday in May next, in order that your caveator may be heard in his objection
 on the premises aforesaid, and that the said executor may show cause if any he has why the said will
 and testament ^{should} ~~may~~ not be set aside revoked & undone null & void. Malcolm I. Walker, atty pro, contra
 In Court of Probate, March term 1844. It appearing to the Court from the foregoing grounds of
 petition & caveat that the caveator is the last will and testament of Benjamin Carr deceased, prays to
 be heard, upon the grounds set forth in his caveat. It is ordered by the Court that
 Ephraim McBravey, the executor therein named, appear before our next Court of
 Probate, to be held on the first Monday in May next and bring said will
 and testament before said Court, for solemn probate, in order that the said Benjamin
 Carr, the said caveator, may be heard upon said caveat, and that the said executor
 then, cause if any he has why said will and testament should not be revoked &
 declared null and void.

I acknowledge due & legal service of this Rule & caveat, this 4th March 1844

Ephraim McBravey Exr.

The Court then adjourned, til the first Monday in
 April next.

E. S. Bailey
 E. S. Bailey
 James Crocker J. & C.

E. S. Bailey