

North Carolina
Lincoln County

Joshua Barnett

vs

John Roberts } This was an action of trover brought to recover the
value of seven negroes. The Plaintiff claimed title to the negroes,
Thos. Walter Pollard by his will dated - 1768 bequeathed two
negro women and a man to Morris Roberts and his wife, during
their natural lives, and after their death, to Joshua Roberts,
Martin Roberts, John Roberts, Mary Roberts, Susannah Roberts
and Jane Roberts. The wife of Morris Roberts died many years
ago, ^{after being possessed of said negroes & increase many years,} and Morris died in October 1828. Joshua Barnett the
Plaintiff married Mary Roberts before the death of Morris - after the
death of said Morris Roberts, to wit, in March 1829, all of the said parties
entitled to the remainder (but except Joshua Barnett, who then died &
still does reside in the State of Indiana, for the purpose of dividing said
negroes, when the defendant for himself & as agent for Joshua Barnett &
wife, entered into an agreement, to abide by the division of said negroes, to
be made by three persons, chosen for that purpose, & who did divide
them & allotted the negroes sold for to Joshua Barnett & wife. When
the Defendants took them into possession as their agent. In a short time after
this division of said negroes, Defendant hired them out, alleging that he
did not well know, whether they belonged to Barnett or Magness, or
whether the Bill of Sale or Registered Copy could then be found -
(Defendant prove that at this time, he entered into the article for the division
of the Division of said negroes, ^{of the Division of said negroes, Registry} but asserted that said Barnett & wife, had given a
Bill of Sale for their right in said negroes many years before to one
William Magness, & that he was present when the bill of Sale was
executed, but it was then lost & he could not find it nor could he
find that it had been registered, & it was proved on the trial that neither
the original or copy could be found, at the time the division took place
He then proved that William Magness died in May 1816, that in a short
time afterwards, & before he administered a particular examination was
made of the papers of said William Magness deceased - & that the bill of Sale
could not be found among his papers. The Defendant swore that he had
not the Bill of Sale in his possession, & that he had not seen it since. It
was proven in Court for the purpose of registration, it was proven by the
Register of the County, that the bill of Sale, was not in his office, that
frequent search had been made for the registration of it, which could not
be found till after the commencement of this suit, ^{because he had omitted to register it,} that the copy, or
registered upon the registers books was a true copy of the original -
entered by him ^{at that time} on the day of 18 It was further proven

by Martin Roberts in behalf of the defendant that he drew the original bill of sale from Joshua Burnett & wife to William Magness. that he saw them sign it, that he witnessed the same, in presence of Joshua Burnett & his wife with John Roberts the Defendant, & it was delivered to the said William Magness. & that said Magness paid said Burnett, a horse, a bee, & some money in silver amounting to one hundred & fifty dollars, the price they had agreed upon for his claim to said negroes. The copy of this bill of sale upon the register's book was read to the jury to the reading of which copy plaintiff's counsel objected. It was proven that the Defendant & one Ben Magness administered upon the Estate of said William Magness in Lincoln County Court July Session 1816 & produced the letters of administration & that said Ben Magness died before said Morris Roberts.

The court was of opinion that the Defendant had suppressed & accounted for the loss of the Deed to Magness by the evidence given in, independent of the oath of the Deft. yet the Court in conformity to the practice of the State Courts of this State took the Deft's oath & the sworn copy of the Deed was admitted to be read to the jury.

The Court charged the jury that if Burnett had bona fide & for a valuable consideration conveyed all the interest he & his wife had in the negroes to Magness, he had no title to the negroes now, & therefore was not entitled to recover on this action. That the jury were not lawfully estopped to find the truth, & say who had the title to the negroes, nor was the Defendant in this case, under the evidence given in, estopped to show that he as the Admin. of Magness was entitled to the negroes. The jury found a verdict for the Deft. Plaintiff moved for a new trial. Because the court permitted & ordered evidence to be given to the jury. viz. the evidence in point of law. motion awarded & judgment for the Defendant. the plaintiff appealed &c.

a copy of Nathaniel's will, a copy of the Deed from Burnett & wife to Magness and a copy of the Deed of Submission to Arbitration or Commissioners to divide the negroes, and a copy of the Division made by the Commissioners, or Arbitrators, & a copy of the Receipt given by Deft. for balance in money to make up Mary Burnett's share equal to her the others, all to be made

a part of this case & sent to the Supreme Court
It appeared in evidence that the Deft, Mrs Roberts had
intermarried with the Sister of Magness, that Magness
died without children & left wife as one of his
Descendants. It was proved that at the time of the
Sale by Basset to Magness, the negroes had increased
to about the number of twenty, & that Morris Roberts
tenant for life was about seventy or seventy two years
of age, but a very hearty, healthy & strong
with a good constitution, & lived until he was
ninety six, or seven, years of age.

J. J. Daniel

State of North Carolina
Lincoln County

So all to whom these presents
shall come Greeting
Know ye that Whereas Walter Pollard of the County
of Chickasaw in the State of Virginia by his last
Will and Testament did devise & bequeath to
Morris Roberts & his wife Unity then of the same
County the following Negroes, Viz. One Negro Woman
named Bet a Negro Girl named Moll, & a Negro
Boy named Peter, to them during the term of their
natural life and after their Decease directed that
the said Negroes with their increase should be
equally divided between their six children (Viz.)
Susanna now the wife of Abraham Collins
Martin Roberts, Joshua Roberts, Mary now
the wife of Joshua Burnett, Jan now the wife
of Hugh Quinn, & John Roberts: And the
said Unity having died in the State of Virginia
and the said Morris Roberts having removed
to the County of Rutherford in the State of North
Carolina and who then departed this life some
time in the Month of October last. And the
said Negroes now having increased to the Number
of Forty One, now living And some con-
troversy having arisen between the said Aba-
ham Collins in right of his wife Susanna
Martin Roberts Joshua Roberts Joshua Bur-
net in right of his wife Mary by their agent
and Attorney in fact John Roberts Hugh
Quinn in right of his wife Jan and John Roberts
Respecting the division of said Negroes, with
respect to the Expense of raising the increase
thereof Which said Controversy the said parties had
agreed to submit to the Arbitrament Award and

final Determination of us William I. Wilson Thomas, L.
Slade and Lawson Henderson We having taken
upon ourselves the burden of said Award and have
learned the Allegations of the parties. do Award
That the said Negroes be equally divided among
the said parties without any Allowance being
made to any of them for raising any of the increase
thereof. And we do hereby award and direct
That the said Negroes now surviving be divided
in the following manner (To wit) To Abraham
Gollins in right of his wife Susanna the following
Negroes, Viz Rhoda a woman Forty years of age
valued at \$200. Her child Philip 4 months old
at \$75 Mary 4 years old at \$125. Dave 15
years old at \$400, Betty 24 years old at \$275.
Her child Lucinda One year old at \$125 Lucinda
a Girl 17 years old Valued at \$325. Luke 10 years
old at \$250. —

To ~~Abraham~~ Martin Roberts A Negro Man ^{named Abel} 50 years
of age Valued at \$230. One Girl Named Maria 14
years old at \$300 Peter a Man 31 years old at \$375
Sam 8 years old at \$200. Frank 5 years old at \$150
Lotty a woman 33 years old at \$325. Randle 5 years
old at \$150. —

To Joshua Roberts, Philis a woman 45 years old
at 165 dollars Peter 30 years old at \$440. Dicy
a woman 26 years old at \$280 Rich a boy 13 years
old at \$335. Lotty 6 years old at \$150 Peter 17
years old \$325 and Nero 23 years old at \$450

To Joshua Burnett in right of his wife ^{Mary}
Mary a woman 21 years old Valued at \$300.
Julia 6 years old at \$130. York 4 years old at \$110.
Moll ~~a~~ One year old at \$100. Bett at 19 years old
at \$325 Ken 21 years old at \$475. Campbell
Nineteen Years old at \$400. —

To Hugh Quins in right of his wife Jane, Take a man 38 Years old Valued at \$600. Mary 28 years old at \$275. Peter 13. years old \$350. Minerva 8 years old at \$200. Mariata 6 years old \$150. Peter 62 years old at \$100. Crease 8 years old at \$150.

To John Roberts, A Negro man named Ike Thirty five years old Valued at \$850. Rhoda 28 years old at \$260. Nerva 11. years old at \$225 Charles 8 years old at \$200, Gabe 10 years old at \$250. —

We do Award that Joshua Roberts do pay to Abraham Collins in right of his wife Susanna \$58. 33 1/3 cents, Making her share with the Value of the Negroes aforesaid, named to her to Amount to \$1833. 33 1/3 cents in full of her share in the Negroes aforesaid; That he also pay to Martin Roberts \$103. 33 1/3 cents which with the amount of the Negroes before named to him will make the sum of \$1833. 33 1/3 in full amount of his share

That he also pay to Joshua Burnette in right of his wife Mary \$93. 33 1/3 cents, which with the amount of the Negroes before named to him will make the sum of \$1833. 33 1/3 cents in full amount of his share

That he pay to Hugh Quins in right of his wife Jane the sum of Eight dollars 33 1/3 cents, which with the amount of the Negroes named in his Lot will make the sum of \$1833. 33 1/3 in full amount of his share — To John Roberts the sum of \$48. 33 1/3 cents, which with the Value of the Nary named to him in his Lot aforesaid will make the sum of \$1833. 33 1/3 cents in full amount of his share

And we do further Award that all further controversy respecting the said premises shall cease and that the said parties at any time hereafter at the request of any of the said parties and at the proper cost of the party requesting the same shall execute a quit claim for the Negroes named

in this said Lott. In Witness whereof we have here
unto set our hands and seals this 24th day
of March in the Year of our Lord one thousand
eight hundred & twenty nine

Wm. Wilson Seal

Thos L. Shade Seal

Wm. Henderson Seal

Award

State of North Carolina
Lincoln County

Thomas Walter Parris

of the County
of Chatham by the State of Virginia by his
last Will & Testament, did devise & bequeath
to Morris Roberts, ^{his wife's sister} son of the same County &
late of the County of Rutherford in the State
of North Carolina the following Negroes viz a
Negro woman named Betty a Negro girl named Moll
& a Negro Boy named John
during the term of his natural life & after
his death directed that the said Negroes with
their increase should be equally divided between
Susan (the wife of Abraham Collins) Charles Roberts
Joshua Roberts, Mary (the wife of Joshua Burnett) Saml
Roberts (the wife of Hugh Allen) & John Roberts

Children of the said Morris Roberts, & he
having departed this life some time in the
month of October last, and the said Negroes
having now increased to the number of
forty one and some controversy hath arisen
between the said, Abraham Collins in right of his
wife Susan, Charles Roberts, Joshua Roberts, Joshua
Burnett in right of his wife Mary, Hugh Allen
in right of his wife Jane & John Roberts
respecting the Division of the same & each regard
to the expense of raising the said increase
which said controversy the said Parties have
agreed and do hereby agree to submit to the
arbitrament, award and final Determination
of J. M. Nelson, Thomas L. Clark & James H. Jackson
arbitrators indifferently chosen, to be decided
by them upon the principles of Equity and
Justice, and the said, Abraham Collins, ^{his wife} Susan,
Charles Roberts, Joshua Roberts, Joshua
Burnett & his wife Mary, Hugh Allen
& his wife Jane & John Roberts and his wife be half
do mutually covenant

and agree with each other that they
will stand to abide by & perform the
award of the said ^{James Wilson Thomas}
~~Charles James Thomas~~ a Majority of them
if made in writing within two months
from the date hereof, for the true and
faithful performance of which they the
said ^{James Wilson Thomas} ~~Charles James Thomas~~ Martin
Roberts, Joshua Roberts, John Roberts for Joshua
Bermet & his wife Mary, Hugh Sum & his wife
Jane & John Roberts for himself

do hereby bind themselves their heirs Ex-
- cutors and administrators severally to each
other in the penal sum of twelve thousand
Dollars: In Witness whereof they have hereunto
set their hands & seals this 33rd day of March
A.D. 1829 & on the 5th day of the Indepen-
- dence of the United States -
Signed sealed and
acknowledged in
presence of

P. J. Johnson

W. M. Thomas

Joshua Roberts
for Joshua Bermet
& his wife Mary

Hugh Sum
for himself & his wife Jane

John Roberts

And the above named parties do agree
and desire that this their submission
be made a rule of Lincoln County

Superior Court of Law in the State of
said in behalf whereof they have presents
set their hands & seals the day & year
before written — Susana ^{my} Collins
for myself John Collins (Seal)

Susana ^{her} Collins.
for herself & ^{mother} Robt. Collins (Seal)

Acknowledges
in presence of
D. J. Johnson

21 Roberts Seal

Joshua ^{his} Robert Seal
mark

John Roberts Cal.
for Ashua Penn
to his wife Mary

Hugh Winthrop
for himself & his wife

John Roberts (Seal)

Arbitration
Board