

The raising of said dam said additional three feet, and the land damages connected therewith, cost the plaintiff at least the sum of \$10,000. Since December 22, 1865, the value of said mill has been diminishing. Six hundred dollars would have been a large compensation for the permanent right to flow back upon said wheel to the height of three feet in December, 1865. Mr. Ballard offered the defendants that sum at one time after their purchase.

The findings of fact in regard to the knowledge by the grantees of Albert Back of his agreement with the plaintiff make it impossible to order a decree for the conveyance of the easement to the plaintiff.

The position of the case is that the grantees, in the belief that the plaintiff desired to buy the mill site for the purpose of having the right to flow a part of it, bought the premises to prevent the destruction or disuse of the property as a saw-mill, and immediately permitted the plaintiff to flow, for the purpose of ascertaining what the damage would be, with the promise to sell the right for its value, and continued the license without any serious objection for nearly 15 years, but never came to an agreement with the plaintiff. Until December 1, 1880, the plaintiff was a licensee.

The bill will be dismissed, with so much of the taxable costs as consists of cash disbursements for printers' and examiners' fees.

RALSTON v. TURPIN.¹

(Circuit Court, S. D. Georgia, W. D. ———, 1885.)

1. GIFT BY A WEALTHY YOUNG MAN, OF FAST HABITS, TO AN AGENT, UPHHELD AS AGAINST HIS WIFE WHO WAS HIS FORMER MISTRESS.

T. was an intimate friend of R.'s family, and was R.'s guardian. R. had utmost confidence in and friendship for him. When R. became of age, T. settled his accounts as guardian, but R. employed the firm of which T. was a member as his real-estate agents. T. thus had the active management of most of his property. R. made two wills in favor of T.'s children. He afterwards married the complainant, whom he had long known as a prostitute. After the marriage, upon T.'s suggestion whether R. desired to carry out his former purpose, R. made a gift of property, amounting to \$40,000, about half of his estate, to T., as trustee of his children, reserving the income for life. Mrs. R. filed her bill, after R.'s death, to set aside the gift, on account of undue influence exercised by T. over R., and of R.'s mental weakness caused by his dissipation. The gift was upheld, and the bill dismissed.

2. MENTAL WEAKNESS ARISING FROM INTOXICATION INVALIDATES CONVEYANCE, WHEN.

Where there is great weakness of mind in a person executing a voluntary conveyance, arising from age, sickness, intoxication, or any other cause, though not amounting to absolute disqualification, the transaction will be very closely scrutinized, and a court of equity will, upon a proper and seasonable application, set the conveyance aside. But where the evidence relied on to show such

¹ Reported by Walter B. Hill, Esq., of the Macon bar. See notes at end of case.

mental weakness arising from intoxication shows that the grantor had periods of sobriety in which he was able to attend to business, and fails to show that he was intoxicated at the time the conveyance was made, it is not sufficient to avoid the transaction, although it appears that the grantor was a hard drinker, and that habits of intoxication had affected his health and frequently rendered him unfit for business.

3. CONFIDENTIAL RELATIONS—GIFT BY PRINCIPAL TO AGENT.

A gift by a principal to an agent is valid, unless the party who seeks to set it aside can show that some advantage was taken by the agent of the relation in which he stood to the donor. If it appears that the conduct of the agent is fair, honest, and *bona fide*, it is immaterial that the deed of gift may have been drawn up by his solicitor without the intervention of a third party.

In Equity.

Lanier & Anderson and *W. Dessau*, for complainant.

Bacon & Rutherford and *Hill & Harris*, for defendant.

SPEER, J. The complainant, Ida Ralston, a citizen of the state of New York, prefers her bill against George B. Turpin, as trustee of his children; against William C., Frank M., George B., and Walter H., the children of said George B. Turpin, the *cestuis que trust*, all of whom reside within this jurisdiction. The object of the bill is to have canceled certain deeds of gift made to the respondents by James A. Ralston, who was husband of complainant, to recover the premises conveyed by the deeds, and for the rents, etc. The property involved consists of five business houses, with the lots upon which they are situate, on Cherry street, in the city of Macon, known as the Ralston Hall property. The value is between forty and fifty thousand dollars. James A. Ralston, Jr., died on the fourth day of July, 1883. He had inherited from his parents a very valuable estate, consisting largely of city property in Macon. The bill alleges that James A. Ralston, Jr., had not attained his majority at the time he became the owner of this estate, and that at the September term, 1867, of the Court of Ordinary of Bibb county, the respondent, George B. Turpin, was appointed his guardian, having been selected as such by Ralston. In the month of March, 1870, the mother of James A. Ralston, Jr., Mrs. Aurelia L., who, in the mean time, had married Dr. Nathan Bozeman, made her will, in which she bequeathed to James A. Ralston, Jr., a large estate, and named George B. Turpin as one of the executors. Turpin qualified, and acted in both capacities. The bill charges that Turpin "ingratiated" himself in the confidence of Mrs. Bozeman, and acquired a large influence over young Ralston, who, it is alleged, had little capacity for the affairs of business. Ralston became 21 years of age in 1869; Turpin very soon thereafter made his final settlement as guardian, *i. e.*, on the third day of May, 1869, and delivered to Ralston his entire estate, and took his receipt therefor. Turpin, who was a real estate agent, in partnership with J. Monroe Ogden, continued to manage the estate of young Ralston, which consisted almost entirely of the business houses in Macon.

James A. Ralston, Jr., was an extravagant, dissipated, and dissolute man, and Turpin, it is charged, acquired undue influence with