The Editor's Desk

Welcome back to the *Upshaw Family Journal*. After a hiatus of about 19 years, we're back in business! This issue, although being prepared in February 2000, will be dated October 1981 and numbered Vol. 8 #4, in order to complete Volume 8 in proper sequence before Volume 9 begins in 2000.

I have continued Upshaw research over these intervening years and have several cubic feet of new Upshaw family data, in addition to much more data in computer files. The Upshaw Family Group record collection has continued to grow and now fills four 2-inch ring binders. Approximately half the sheets, including nearly all the older generations, are on Personal Ancestral File, version 4.03, popularly known as "PAF", which is the genealogical computer program I use.

Please take notice of the flyer insert in this issue which gives the new subscription rate ($18.00 per year). All back issues of the *Upshaw Family Journal* are available and a new topical index complete for Vol. 1-8 with over 1,800 references is available for only $8.00.

This issue contains one of the most important research items yet presented, which is the legal case of Elizabeth Upshaw vs. Le Roy Upshaw & others (Virginia Reports, Vol. 2, pp. 381-394). This proves that Capt. Leroy Upshaw was alive in Virginia as late as 1807, when this case was being heard before the Virginia Supreme Court. It is obviously he who married Milly Scott in 1805 Halifax County, Virginia, and who appears throughout various other south-central Virginia counties until as late as 1814, when he moved, evidently to Carter County, Tennessee, where there are Upshaw records. He died sometime after 2 Jan 1826 when he is found mentioned in Carter County, Tennessee Deed Book D, page 69. This court case in Virginia conclusively proves that he did not die in Elbert County, Georgia about 1800, as has been propounded for decades, so it is a very crucial piece of genealogical evidence about him.

If there is a reader who is an attorney and could reword the legal language of any of these legal cases into something more understandable, I would be glad to print that summary in a future issue of the *Upshaw Family Journal*.

Let me hear from you. Please send your Upshaw Family Group Records and your subscriptions with your Upshaw lineage and, above all, your Upshaw research to add to our files. The next issue will contain Upshaw records from miscellaneous states.

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Notes & News

John Chancellor
(The *Daily Telegraph*, London, England, 15 July 1996)

John Chancellor, who has died in New Jersey aged 68, was a pioneer of American television journalism. (Editor's note: much biographical information given).

John Chancellor had a daughter from his first marriage to Constance Herbert (dissolved 1956). He married secondly, **Barbara Upshaw**; they had a son and a daughter.

Charles A. Schulz
(*Temple Daily Telegram*, Temple, Texas, 27 Jun 1990, page 11-B)

Charles A. Schulz, publisher of The Taylor Daily Press and an active civic leader, died suddenly at his home in Taylor Tuesday. He was 49. Schulz, a native of Temple, had been president and publisher of the newspaper since 1980.

Schulz joined his father in the business and moved to Taylor in 1977 to assume management of Taylor Newspapers Inc., which prints numerous newspapers. Schulz's father, C. A. Schulz, had retired from the Temple Daily Telegram in 1973 as general manager and assistant publisher after serving with the paper for 44 years.

Before joining the family newspaper in Taylor, the younger Schulz was a stockbroker for Smith-Barney in New York and Dallas.

Schulz was active in community organizations and was named Taylor's Citizen of the Year in 1982. He was the city's Chamber of Commerce president in 1983.

While at Temple High School, Schulz was active in athletics ...He attended Washington and Lee University and graduated from the University of Texas at Austin with a degree in business in 1963.

Survivors are his wife, Keith; a son, Ensign Robert Schulz of Austin; a daughter, Sarah Elizabeth Schulz of Taylor, and his parents, Mr. and Mrs. Afton Schulz of Temple.

Funeral services pending.

(*Taylor Daily Press*, Taylor, Texas, 27 Jun 1990)

Funeral services have been set for 10 a.m. Thursday, June 28 at the First United Methodist Church in Taylor, the Rev. Mark Crawford and the Rev. Noble Atkins officiating. Burial will be in Temple's Hillcrest Cemetery.

Alice Upshaw Summerise
(*The Atlanta Constitution*, 4 Dec 1998)

Alice Upshaw Summerise, 75, of Cartersville, died Monday. Funeral, 2 p.m. today, Victory Life Church; Mack Eppinger & Sons. (Editor's note: this obituary was found in an internet index and there may be additional information in the newspaper notice).

Alice Boardman Upshaw
(*Atlanta Journal-Constitution*, 27 Mar 1989, p. 13-D)

Alice Boardman Upshaw, widow of the late Preston C. Upshaw, retired Chairman and CEO of Equifax Inc., died of coronary arrest after a prolonged illness. She was 83 years old. Mrs. Upshaw, daughter of Lot and Mary Alice Boardman, of Philadelphia, was educated in Philadelphia schools and graduated from Hood College, Frederick, Md. She had been a resident of Atlanta for the past 30 years. Although she lived a very private life, she was continuously active in helping those who were less fortunate. Her generosity and philanthropy to worthwhile causes improved life for thousands who never heard her name. Mrs. Upshaw was an active member of The Cathedral of St. Phillip Episcopal Church. A memorial service will be held Wednesday, March 29, 1989 at 2 o'clock at Spring Hill. In lieu of flowers, donations may be made to The Cathedral of St. Phillip or to The Goodwill Industries of Atlanta. H. M. Patterson and Son.

(*The Atlanta Constitution*, 28 Mar 1989, p. 6-B)

Mrs. Alice B. Upshaw of Atlanta, a homemaker, died of cardiac arrest Saturday at Crawford Long Hospital. She was 83.

The memorial service will be at 2 p.m. Wednesday at Patterson's Spring Hill Funeral Home, and burial will be Friday at Arlington Cemetery in Drexel Hills, Pa.

Her husband, Preston C. Upshaw, retired chairman and chief executive officer of Equifax Inc., died in 1987. Mrs. Upshaw was a Hood College graduate and a member of the Cathedral of St. Philip.

There were no immediate family members among the survivors.

Mrs. Bobbie Jo Upshaw
(*Houston Chronicle*, Sunday, 12 May 1985, p.23-24)
(contributed by Mrs. Marion Ledgerwood, Houston, Texas)

Mrs. Bobbie Jo Upshaw, 47, died Tuesday, May 7, 1985 in Wilmington, North Carolina after a brief illness. Mrs. Upshaw was born Nov. 6, 1938 in Wilmington and was the daughter of the late Raleigh Robert and Mandy Benton Brown. She attended the Damascus Road Church. Surviving is her husband, Kenneth R. Upshaw of South Houston; two sons, Stevie Herring, Schenectady, NY, Kenneth R. Upshaw Jr., South Houston; daughter, Mrs. Donna Dean Cox, Wilmington; sisters, Mrs. Peggy Jean Naylor, Wilmington, Mrs. Beatrice Raynor, Wilmington,

Mrs. Annie Ruth Kues, Baltimore, Maryland; grandchildren, Autumn Denise Cox, Angela Lynn Herring, Stephen Herring III, Jason Rowe. Funeral services were held 10:00 a.m. Friday in Wilmington at the Damascus Road Church with the Reverend Paul Brown officiating. Honorary Casket bearers there, were members of the Redeemed Gospel Group. Funeral services here in Houston will be held Monday, May 13, 1985 at 1:30 p.m. Forest Park Lawndale Funeral Chapel. Interment Forest Park Lawndale Cemetery.

Charles Bell Upshaw
Portrait Donated

(*The East Cobb Neighbor* (Cobb Co., GA), Thursday, 16 Feb 1984)

East Cobb resident Mary Upshaw Pike recently presented a portrait of her father, Dr. Charles Bell Upshaw, to Piedmont Hospital in Atlanta. Dr. Upshaw was one of the founders of the Dept. of Obstetrics and Gynecology at Piedmont Hospital and served on the hospital's Board of Trustees for 29 years. He also served as a Professor of Obstetrics and Gynecology at Emory University School of Medicine for 45 years. (A picture shows Ms. Pike with her brother Dr. Charles Bell Upshaw Jr., and her husband Dr. John Sanders Pike.)

Christine Ferguson Upshaw

Memorial Resolution written by the United Methodist Women, Louise Methodist Church, Louise, Mississippi, Freida H. King, President.

Whereas, in the death of Christine Ferguson Upshaw on December 1, 1983, the members of the United Methodist Women of Louise United Methodist Church mourn the passing of a beloved member and friend, and ...

Be it resolved, that this ... be made a part of the permanent record of the Mississippi United Methodist Church and the Methodist Advocate.

Christine Ferguson Upshaw ("Miss Chris") had been a member of the Louis Methodist Church since 1928 ... The year she moved to Louise she organized the Methodist Youth Fellowship and devoted more than fifty years of service to it. She directed the church choir and provided the church music on piano and organ for many years. She derived a special pleasure in playing the church chimes each evening for more than a quarter of a century.

"Miss Chris" became a member of the "Women's Missionary Society" in 1928 and served as it's president. Later, in the Women's Society of Christian Service she held many offices.

She served as president of the Vicksburg District for six years, District Secretary of Mississippi Education for six years, District Secretary of Spiritual Life for four years and District Officer for Youth. In the local society she served as president for several terms. When the organization became United Methodist Women she served as president, vice-president and Mission Coordinator for Christian Global Concerns. She served on the Worship Committee for the Conference and for her local church. She led the Betty Kern Prayer Group for years and also

taught the youth in Sunday School, later teaching adult class. ... In recent years ill health forced her retirement.

She was a teacher in the public school and taught private piano lessons. ...

She was the wife of Mr. J. D. Upshaw, retired planter, and the mother of Dr. Jeff Upshaw of Memphis, TN. She was the daughter of a minister and a devout mother, Rev. and Mrs. J.E.J. Ferguson. She was the oldest of four children, two sisters, Mrs. Mary F. Herlong and Mrs. Louise F. Trim, and one brother, Dr. James Ferguson. She was born at Chunky in Newton co. on 31 Dec 1905 and was educated at Whitworth College and Millsaps. "Miss Chris" was blessed with a devoted husband. They were married in 1928 and she joined the Louise community. Their three grandchildren, Christy, Jeff and Henry Walker Upshaw, were her pride and joy.

Mrs. Clara L. Upshaw
(*Atlanta Journal-Constitution*, 1 Dec 1984)

Mrs. Clara L. Upshaw of 1072 Oglethorpe Ave., SE, Atlanta, Ga., passed November 29, 1984, the mother of Mrs. Dollie Mae Kendall. Funeral plans are incomplete and will be announced later by McDowell Walker Mortuary, East Point.

(*The Atlanta Constitution*, 3 Dec 1984)

Funeral services of Mrs. Clara L. Upshaw of 1072 Oglethorpe Ave., S.E., will be held Tuesday, 4 Dec 1984 at 1 p.m. from Mt. Ariers Baptist Church, 152 Electric Ave., Rev. J.D. Davis officiating, interment Fairfield A.M.E. Church Cemetery, Jackson, Ga.. Survivors, daughter, Mrs. Dollie M. Kendall, sisters, Mr. & Mrs. Wade (Pearl) Bartow, Mr. and Mrs. Troy (Lola) Moore, brothers, Mr. M.W., Mr. Horace, Mr. Wesley Alonza, Mr. Early and Howard Upshaw, other relatives and friends. Family will receive friends at 1072 Oglethorpe Ave., SE, Atlanta, Monday evening from 7 until 9, and all are requested to assemble at the same address by 12 a.m. Tuesday. McDowell Walker Mortuary, East Point.

Elbert M. Upshaw
(*The Atlanta Constitution*, 24 November 1998)

Elbert M. Upshaw, 75, died Sunday. Memorial Service, 2 p.m. today, Peachtree Road United Methodist Church, H.M. Patterson & Son, Spring Hill. (Editor's note: this obituary was found on an internet index & there may be additional information in the actual newspaper notice).

Mrs. Etna Ann Brown Upshaw
(*The Mississippi Methodist Advocate*, circa April 1963, page 14)

The members of the Woman's Society of Christian Service of the Louise Methodist Church ... pay tribute to the memory of Mrs. Etna Ann Brown Upshaw who passed away 8 Apr 1963 and was laid to rest in the family plot in Glenwood Cemetery, Yazoo City, Ms., beside her husband, who preceded her in death in 1924.

Mrs. Upshaw was born near Dea(?)ville, Yazoo Co., MS, 2 Oct 1874; the daughter of William A. Brown and Elizabeth Elam Brown. She was married 24 Aug 1904 to the late Jefferson Davis Upshaw and came to make her home at Upshaw, a settlement whose postoffice has long been abolished. They had two children; a son, Jefferson Davis Upshaw of Louise; and a daughter, Alexandra, now Mrs. B. J. Barrier of Yazoo City, MS.

In 1906 when the Town of Louise was founded, Mr. and Mrs. Upshaw moved to the new community and built both a home and a business. Mrs. Upshaw's devotion to the Denise Methodist Church is demonstrated by her name being inscribed on the cornerstone of the building. Only in recent years had she become inactive due to ill health.

She worked in the Woman's Society of Christian Service, the Woman's Missionary Society, which preceded it, and was awarded a Life Membership Pin.

When the first little one-teacher school was established, Mrs. Upshaw served as one of a committee of three for its promotion. "Miss Ett" was always ready to lend a helping hand.

She is survived by her son, J.D. Upshaw of Louise, MS; her daughter, Mrs. B.J. Barrier, of Yazoo City, MS; four sisters, Mrs. Rossa B. Pepper, Vaughan, MS; Mrs. Bess B. Jones, Farmingdale, Long Island, NY; Mrs. Neola B. Hewitt, Jackson, MS; Mrs. Manda J.B. Swayze, Alburquerque, NM; two grandchildren, Dr. J.D. Upshaw, Memphis, TN; and Mrs. W.M. Nelson Jr., Yazoo City, MS; five great grandchildren, Christy and Jeff Upshaw III of Memphis, TN; and Lexie, Lisa and Wm. Nelson III, of Yazoo City, MS.

(Written by) Mrs. E. Campbell King, Miss Nina Pepper, Committee on Resolutions.

Forrest Upshaw Sr.

(Newspaper name unknown, Sunday, 26 Jan 1986)
(Contributed by Mac Upshaw, 11150 Fernaid Ave., Dallas, Texas 75218)

Forrest Upshaw, a native of Waxahachie and a retired druggist, died Friday at Tenery Community Hospital. Funeral services are to be held at 2 p.m. at the Boze-Mitchell Funeral Home Chapel with Rev. Gary Bronson and Rev. Fred Campbell officiating. Burial will be in Waxahachie City Cemetery.

Upshaw was born on 16 June 1896, lived all of his life in Waxahachie except during his teens when he lived in Indian Territory at Roosevelt, OK. He was a graduate of Waxahachie High School and attended Trinity Univ. when the college was in Waxahachie. Upshaw attended Danforth Pharmacy School in Fort Worth and was a registered pharmacist.

In early years he worked at McDade Pharmacy and Curlin Pharmacy. Later he worked for “Doc” Jim Gilliam and became owner of Gilliam and Upshaw drugs, which was known as “Waxahachie’s Oldest Drug Store” for about 50 years. He was a member of the Texas Pharmaceutical Assn. and numerous other pharmacy groups and associations.

Upshaw was a veteran of World War I and served at Camp Mabrey in Austin. He was a Disabled American Veteran and a member of the American Legion over 65 years. He was a member of the Lone Star Band of Waxahachie that toured as far as New York City.

He married the former Ola Pearl McGaffey on 29 Aug 1915. She preceded him in death Dec 1985.

Upshaw was the oldest member of the First Christian Church and served many years on the stewardship committee. He was a deacon emeritus of the church.

Survivors include 2 sons, Forrest Upshaw, Jr. and Mac Upshaw, both of Dallas; 3 grandchildren; 3 great grandchildren; and 4 nieces.

Pallbearers will be Joey Borders, Hermon Cook Jr., Munsey Bass, Jamie Borders, Dr. Jack Kelley and Brown Chiles, Jr. Honorary pallbearers are Hermon Cook, Sr., Marvin Borders, E.L. Hagler, Doyle West and Earnest Williams.

Mrs. J. D. Upshaw Jr.
(*The Yazoo Herald*, Wed., 7 Dec 1983, page B-7, "Louise News")

Mrs. J.D. Upshaw Jr. was the former Christine Ferguson, daughter of Rev. & Mrs. J.E. Ferguson. Rev. Ferguson served as the pastor of the Benton Vaughan, & Fletcher Chapel Methodist Churches in Yazoo County.

Mrs. Upshaw was brought up in the church & was active in all departments. She was a gifted pianist & taught music for many years.

She is survived by her husband, J.D. Upshaw Jr., of Louise; a son, Dr. J.D. Upshaw of Memphis; a brother, Dr. James Ferguson of Greensboro, NC; two sisters, Mrs. Robert Trim & Mrs. D.V. Herlong, both of Jackson; three grandchildren & other relatives.

Funeral services were held Friday morning at the Louise United Methodist Church. Rev. Richard Styron officiated. Interment was at Glenwood Cemetery, Yazoo City.

James Middleton Upshaw
(*The Atlanta Journal*, Thursday, 12 Feb 1987, page 7-D)

Mr. James Middleton Upshaw, of Tucker, died Wednesday, 11 Feb 1987. Survived by his daughter, Mrs. Joan Lucile Upshaw Kennedy, Decatur; sons, Mr. James Thomas Upshaw, Greenville, SC, Mr. William Maxwell Upshaw, Dawsonville, GA; nine grandchildren; eight great grandchildren. Funeral services will be Friday 11 a.m. at The McLane Chapel. Rev. C. Don Manning officiating. Interment, Floral Hills Memory Gardens. Lowndes & McLane Funeral Homes, Tucker.

Jefferson Davis Upshaw, Jr.
(*The Yazoo Herald*, Wed., 4 Jan 1984, p. 7, "Louise News")

The community was saddened on December 13 to learn of the passing of Jefferson Davis Upshaw Jr., prominent local resident, while visiting his son, Dr. Jeff Upshaw II, in Memphis. Less than two weeks earlier Mr. Upshaw had lost his wife, Mrs. Christine Ferguson Upshaw.

Mr. Upshaw was born 31 Aug 1905 at Upshaw (Mississippi). He was the son of Jefferson Davis Upshaw and Etna Ann Brown, from two prominent Yazoo and Holmes co. families. When the Town of Louise was laid out the family moved here where the elder Mr. Upshaw was appointed postmaster. When ill health required that he move to a drier climate the family moved to El Paso, TX. After his death, Mrs. Upshaw and the two children, J.D. Upshaw and Alexandria Upshaw Barrier, returned here to make their home.

J.D. Upshaw Jr. retired planter, was prominent in the civic, financial and church life on the community. He served on the town board of alderman, as mayor, in many capacities of the board of the Louise Methodist Church of which he was a member; and on the advisory board of the Louise Branch of the Deposit Guaranty Bank.

He attended the Gulf Coast Military Academy and the Univ. of Alabama. Funeral services were held from the Louise Methodist Church on Thursday 15 Dec with Rev. Richard Styron officiating. Interment was in Glenwood Cemetery, Yazoo City, with Stricklin-King Funeral Home in charge.

He is survived by his only child, Dr. Jeff D. Upshaw of Memphis; Dr. Upshaw's children, Jefferson Davis III of Dallas, Christy and Henry Walker of Memphis; one sister, Mrs. Alexandria U. Barrier, of West Point; one aunt Mrs. Neola B. Hewitt of Jackson; one niece, Mrs. W.M. Nelson, Jr. of West Point; and a number of cousins.

Mrs. Mamie Ruth Carter Upshaw
(*Atlanta Journal*, 8 Aug 1984)

Mrs. Mamie Ruth Carter Upshaw of 1690 Cooledge Rd., Tucker, died Tuesday 7 Aug 1984 at her residence. Funeral plans later. Lowndes and McLane Funeral Homes, Tucker.

(*Atlanta Constitution*, 9 Aug 1984)

Funeral Services for Mrs. Mamie Ruth Carter Upshaw of Tucker, will be Thursday, 3 p.m. from the McLane Chapel. Rev. William M. Suttles officiating. Interment Floral Hills Memory Gardens. Survived by her husband, Mr. James M. Upshaw, Tucker, daughter, Mrs. John T. Kennedy, Decatur, sons, Mr. James T. Upshaw, Greenville, SC, Mr. William (Bill) M. Upshaw, Dawsonville, GA, sisters, Mrs. Carrie Singleton and Ms. Nora Carter, both of Tucker, brothers, Mr. Clifford H. Carter, Mr. James W. Carter both of Tucker, 9 grandchildren, 8 great-grandchildren and other relatives. Lowndes & McLane Funeral Home, Tucker.

Mrs. Ola Pearl McGaffey Upshaw
(*Waxahachie Daily Light*, Friday, 6 Dec 1985, page 16)

Mrs. Ola Pearl McGaffey Upshaw, 87, of Waxahachie, died Thursday morning at the Renfro Nursing Home.

Funeral services are to be conducted Friday at the Boze-Mitchell Funeral Home with Rev. Gary Bronson officiating. Burial will be in Waxahachie City Cemetery.

Mrs. Upshaw was born on 18 Nov 1898, at Terrell and she was married to Forrest Upshaw n 1915. She was graduated from Hutchins High School, and attended St. Mary's College in Dallas, San Antonio Female College and Trinity Univ. in Waxahachie.

Mrs. Upshaw served as assistant secretary to the Ellis County draft board during World War I. She served five years as a director for the Ellis co. Museum and was chairman of the Gingerbread Trail antique show for six years and her home was one of the first on Gingerbread Trail.

Mrs. Upshaw was a member of the Shakespeare Club, Garden Club, was a charter member of the Heirloom Club and served three terms as president of the club. She also was a member of the Daughters of the American Revolution, Rebecca Boyce Chapter; member of the First Christian Church and of the Church's CWF.

Mrs. Upshaw was a member of the W.C. Tenery Community Hospital Auxiliary and served on the Board of Directors for the Ellis Co. Crippled Children's Assn. She was part owner and active in marketing for Universal Supply and Publishing Co. in Fort Worth for 25 years. She and her husband were charter members of the Waxahachie Country Club.

Survivors include her husband, Forrest Upshaw; 2 sons, Forrest Upshaw Jr. and Mac Upshaw, both of Dallas; 3 grandchildren; 3 great grandchildren; 2 brothers, Alva McGaffey of Hutchins and J.W. McGaffey of Arkansas Pass.

Pallbearers will be Lynn Lasswell, Jr., Munsey Bass, Ray Beck, Bill Spalding, J.B. Herrington and Marvin Borders.

Troy Barton Upshaw
(*The Atlanta Journal-Constitution*, 3 May 1994)

Troy Barton Upshaw, 83, of Highway 411, Rydal, Georgia, died Tuesday, May 3, 1994. Mr. Upshaw was born October 30, 1910, in Bartow county, a son of Madison ("Matt") Upshaw and Irene Maxwell Upshaw, a retired farmer, represented Bartow county in the Georgia House of Representatives from 1952-1956 and a member of Pine Log United Methodist Church. Surviving are his wife, Elizabeth Upshaw of Rydal, daughters, Sammie Shuman of Rydal, Rosemary Creech of Greenville, South Carolina, Anne Barton of Calhoun, Nancy Upshaw of Rome, a son, William D. Bearden of Marietta, eleven grandchildren, one great grandchild and a sister in law, Mrs. Murray ("Bette") Upshaw of Pine Log. Funeral services will be held Thursday May 5,

1994, at 11:00 A.M. from Pine Log United Methodist Church in Rydal, with Rev. Sanford Willard and Rev. Harry Hawkins officiating. Burial will follow in the Church cemetery. The family will receive friends at the funeral home Wednesday evening from 6:00 – 8:00 PM. In lieu of flowers, contributions may be made to Pine Log United Methodist Church. Owen Funeral Home, 12 Collins Drive, Cartersville, Georgia, is in charge of the arrangements.

MEMBER'S ROSTER (Alphabetical)
(Note: these addresses date from 1984, so please verify before using)

Vera Gibson Byerly, 1801 Winchester Way, Bedford, TX 76022:

GF) John Andrew Gibson (1854-1928) & Leila Creps (1864- ____)
GGM) Emily Catherine Upshaw (1827-1907) & James Littlejohn Gibson (1820-1893)
2GGF) James Upshaw (1795-1845) & Lucinda Ham (ca 1795-1865)
3GGF) John Upshaw, RS (1755-1834) & Amy Gatewood (1757-1826)
4GGF) Forrest Upshaw (ca. 1718-ca. 1759) & Ann Hunt (widow) (1725-1795)
5GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (ca. 1679-1763)

Dr. Bonita J. Campbell, 10869 Zelzah Ave., Granada Hills, CA 91344.
(No Upshaw lineage chart received).

Mrs. Lewis E. Corbett, 1176 King Richard Drive, Las Vegas, NV 89119.

Clarice Eufaula Turner (b. 5 Oct 1902) & Lewis Ellsworth Corbett (1900-1968)
M) Mamie Eufaula Aderhold (1882-1907) & Alonzo Ollis Turner (1878-1959)
GM) Josephine Elizabeth Upshaw (1851-1928) & Milton R. Aderhold (1847-1925)
GGF) James Upshaw (1814-1895) & T. Jane Spence (1826-1907)
2GGF) Forrester Upshaw (1770-1850+) & Ann Faulkner (1770-1830+)
3GGF) Leroy Upshaw, RS (1749-1826+) & Elizabeth Bradley (1750-1818+)
4GGF) Forrest Upshaw (1718-1759) & Ann Hunt (widow) (1725-1795)
5GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (ca. 1679-1763)

June U. Guiles, 3507 Fendall Ave., Richmond, VA 23222.
(No Upshaw lineage chart received).

Judith Marsha (Pritchett) Hall, 664 Bristol Ave., Simi Valley, CA 93065:

Judith Marsha Pritchett (b. 1948) & Stephen Morrow Hall
F) Lawrence Marcus Pritchett (1915-1972) & Marjorie Jeanelle Vaughn (1918-____)
GM) Lucy Beatrice Upshaw (1882-1971) & Daniel S. Pritchett (1877-1936)
GGF) Henry Clay Upshaw (1856-1924) & Josephine Francis Bartow Hudson (ca 1861-1910)
2GGF) Forrest Tinsley Upshaw (1796-1878) & Judith M. England (1821-?)
3GGF) Forrester Upshaw (1770-1850) & Ann Faulkner (1770-1830+)
4GGF) Leroy Upshaw, RS (1749-1826+) & Elizabeth Bradley (1750-1818+)
5GGF) Forrest Upshaw (1718-1759) & Ann Hunt (widow) (1725-1795)

6GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (ca. 1679-1763)

Tom Hanna, P.O. Box 1852, Nederland, TX 77627.
(No Upshaw lineage chart received).

Jim Kanally, 657 W. 70th Terrace, Kansas City, MO 64113:

GGM) Mary Elizabeth Upshaw (1803-1862) & Edward Manery (1790-1863)
2GGF) Forrester Upshaw (1770-1850+) & Ann Faulkner (1770-1830+)
3GGF) Leroy Upshaw, RS (1749-1826+) & Elizabeth Bradley (1750-1818+)
4GGF) Forrest Upshaw (ca. 1718-1759) & Ann Hunt (widow) (1725-1795)
5GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (1679-1763)

Charles Dennie McClure, 4885 Butner Rd., College Park, GA 30349:

Charles Dennie McClure (b. 1941) & Maxine Henley (b. 1950)
M) Georgia Helen Lorraine Wilson (1918-1965) & Charles Worth McClure (1912-)
GF) William Edwin Wilson, Sr. (1881-1969) & Addle Mae Setzer (1898-1966)
GGF) Samuel Asbury Wilson (1850-1925) & Mary Victoria Hornsby (1850-1911)
2GGM) Mary (Polly) Palmer Stubbs (1808-1859) & John Franklin Wilson (1808-1858)
3GGM) Nancy Ann Upshaw (1781-aft 1845) & John B. Stubbs (1777-1831)
4GGF) John Upshaw, Sr. (1755-1834) & Amy Gatewood (1757-1826)
5GGF) Forrest Upshaw (ca 1718-ca 1759) & Ann Hunt (widow) (ca 1725-1795)
6GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (ca. 1679-1763)

Pamela (Pam) Maxine Henley McClure, 4885 Butner Rd., College Park, GA 30349:

Pamela (Pam) Maxine Henley (b. 1950) & Charles Dennie McClure (b. 1941)
F) James Wilson Henley, Sr. (1906-) & Era Maxine Winn (1915-)
GM) Mary Maud Wilson (1884-1912) & Jefferson Bullard Henley (1883-1940)
GGF) Samuel Asbury Wilson (1850-1925) & Mary Victoria Hornsby (1850-1911)
2GGM) Mary (Polly) Palmer Stubbs (1808-1859) & John Franklin Wilson (1808-1858)
3GGM) Nancy Ann Upshaw (1781-aft 1845) & John B. Stubbs (1777-1831)
4GGF) John Upshaw, Sr. (1755-1834) & Amy Gatewood (1757-1826)
5GGF) Forrest Upshaw (ca 1718-ca 1759) & Ann Hunt (widow) (ca 1725-1795)
6GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (ca. 1679-1763)

Charles Ray Murray Jr., 3 Indian Rocks Ct., Arnold, MO 63010.

Charles Ray Murray, Jr. (b. 1963) & (1987) Johnna Kauffmann
F) Charles Ray Murray, Sr. (1937- _____) & Judith Elizabeth Jenning (1944- _____)
GM) Zola Elrod (1901-1973) & Adrian Murray (1895-1986)
GGM) Minnie Adella ("Della") Upshaw (1876-1953) & Grant Elrod (1869-1943)
2GGF) Reuben Upshaw (1832-1913) & Hettie Luticia Kerley (Gibson) (1851-1928)
3GGF) Middleton Upshaw (1808-1886) & Lucy Ann Colquitt (1813-1888)
4GGF) William Upshaw (1778-bef 1840) & Demima _____ (1787-1850+)

5GGF) Leroy Upshaw, RS (ca 1750-1826+) & Elizabeth Bradley (1750-1818+)
6GGF) Forrest Upshaw (ca. 1718-1759) & Ann Hunt (widow) (1725-1795)
7GGF) William Upshaw (ca 1666-1720) & Hannah (Forrest?) Carber (1679-1763)

Mrs. Paul R. Postler, Jr. (Mildred K.), 5531 Columbia Dr. No., Fresno, CA 93927.
(No Upshaw lineage chart received)

Mrs. Roy J. Tupper, Box 159, Rt. 1, Lake Arthur, LA 70549:

Vashti Lyon
M) Iva Mary Gibson (1903-1970) & Ralph R. Lyon (1903-1976)
GF) John Andrew Gibson (1854-1923) & Lelia Creps (1864-1928)
GGM) Emily Catherine Upshaw (1825-1907) & James Littlejohn Gibson (1820-1893)
2GGF) James Upshaw (1789-1847) & Lucinda Hamm (1789-1862)
3GGF) John Upshaw (1755-1834) & Amy Gatewood (1757-1826)
4GGF) Forrest Upshaw (ca 1718-1759) & Ann Hunt (widow) (1725-1795)
5GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (1679-1763)

Ronald L. Upshaw, 1902 Cleburn Dr., Arlington, TX 76012:

Ronald L. Upshaw (b. 1935)
F) Lige D. Upshaw (b. 2 Apr 1907, Lincoln Co., OK- ____)
GF) Steve Upshaw (b. 28 Jan 1870, Randolph Co, Ark.-d. 28 Oct 1940, Lincoln Co., Ok.)
GGF) Reuben ("Rube") Upshaw (1832-?) & (1) Elizabeth Martin (_____ - _____)
2GGF) William Upshaw (ca 1778-bef 1840) & Jemima _____(1787-1850+)
3GGF) Leroy Upshaw, RS (1750-1826+) & Elizabeth Bradley (1750-1818+)
4GGF) Forrest Upshaw (1718-1759) & Ann Hunt (widow) (1725-1795)
5GGF) William Upshaw (ca 1666-1720) & Hannah (Forrest?) Carber (ca. 1679-1763)

Mrs. Cassie B. Wilson, Box 223, Dumas, TX 79029:

Cassie Steward (b. 10 Jun 1904) & Clinton Wilson (b. 2 Jul 1901)
M) Willie Mae Upshaw (_____-_____) & William Taylor Steward (_____-_____)
GF) John Allen Upshaw (1861-1891) & (1884) Mary Alice Parker (_____-_____)
GGF) Thomas Allen Upshaw (1832-1924) & Mary Jane Fancher (1837-1915)
2GGF) John Upshaw (ca 1799-1850) & Tabitha Lawliss (1800- _____)
3GGF) Forrester Upshaw (1770-1850+) & Ann Faulkner (1770-1830+)
4GGF) Leroy Upshaw, RS (1749-1826+) & Elizabeth Bradley (1750-1818+)
5GGF) Forrest Upshaw (ca. 1718-1759) & Ann Hunt (widow) (1725-1795)
6GGF) William Upshaw (ca. 1666-1720) & Hannah (Forrest?) Carber (1679-1763)

QUERIES

Free queries to all persons: we suggest a limitation of 100 words or less, but hope that you will include as much data as possible. Please confine each query to one couple or family. Each query is assigned a reference number for permanent identification.

#40) Mrs. Patricia Asleson, 6106 Davenport Terr., Bethesda, MD. 20817

TARRANT) Researching Leonard Tarrant, whose will was proved in Essex Co., VA, 16 Jul 1718, who names as his Executors, "My loving friends, Paul Micou and William Upshaw", to who he leaves "all my books" (Essex County Will Book 3, pp. 26, 167).

#41) Shirley Bogart Harper, 4873 Butternut Hollow Ln., Bonita, CA 92002.

TORBERT) Several Torbert (Torbett/Talbert/Tolbert, etc.) researchers are working on a group of men, supposedly brothers, who came out of the Pendleton Dist., SC, in the early 1800s, several going to GA and 2 going to TN by the 1820s. We have learned that one man, Andrew Torbert (b. ca 1805, d. 1860-70) of Monroe Co., TN, was married to Nancy Ann Upshaw, who is said to have been born in GA. Andrew and Nancy Ann (Upshaw) Torbert had 3 daughters:

1) Manerva Ann Torbert, born ca 1833, married Joseph A. Peck in 1858.

2) Sarah E. Torbert, born ca 1836, married Wesley C.P. Jones in 1862.

3) Emily J. Torbert, born ca ____ , married Lewis Hunt.

We would like any information regarding this Nancy Ann Upshaw or Andrew Torbert.

TABLE OF LEGAL CASES 1658 - 1906

(Continued from UFJ Vol. 8 #3;
For an introduction to these records see UFJ Vol. 8, page 62)

Leroy Upshaw vs. James Oliver. Et alii. (Georgia)
(False Imprisonment)

"Dudley's Reports", Page 241-243; Reports of Decisions made by the Judges of the Superior Courts of Law and Chancery of the State of Georgia, by G.M. Dudley, Attorney and Counsellor at Law, of the Northern Circuit; published in New York, 1837.

[Judicial officers are not liable to civil suits for their judicial acts].

The plaintiff proceeded and proved by witnesses the arrest and imprisonment stated in the declaration. It also came out in evidence that the arrest and imprisonment complained of, had been ordered by the five first named defendants sitting as a court of ordinary, and the sixth being the coroner of the county, executed the order upon the plaintiff who was high sheriff of the

county. The plaintiff here closed the evidence in support of the action. Defendants' counsel then moved for a nonsuit on three grounds; viz.

1st. That the declaration does not set out the case fully, plainly and substantially. The declaration only states the arrest and imprisonment generally, without disclosing that the order of arrest and imprisonment was given by defendants in the capacity of a court.

2d. That by the act of 24 Geo. II. Thirty days' notice must be given before the commencement of any action against justices of the peace, revenue officers, etc.

3d. That no action will be against judges of a court or record for acts judicially done by them; and cited many authorities of ancient and modern jurisprudence, and the case of Brass v. Crosby, in 3 Wilson, 188, was also relied upon. A case reported in the New York Reports was read, which established the principle that judges of a court of record are not responsible at the suit of individuals for any thing done in their Judicial character -- that this case had been carried into the court of errors in that State, and that the decision of the Supreme Court was confirmed by a majority of that court.

Plaintiff's counsel contended that the admission of one of the defendants, that he knew the proceedings of the court were illegal, and that he would have stopped them, but that he thought them to be only for fun, which had been proven, ought at the least to sustain the action against him.

By the Court. The first ground does not appear to be well founded. The judiciary act of 1799 does not substantially innovate upon the common law in actions of this nature, if the facts of the case as they really happened, amount to a justification of the defendants, they can have the full benefit of them in their defense. The first ground is overruled. The second ground is that by the act of 24 Geo. II. Thirty days' notice was necessary previous to the commencement of the action. That statute has, for more than thirty years, been in force in this State. But does it apply to this case? The statute applies to justices of the peace, and certain revenue officers, who are not judges of a court of record, and who are liable to the suits of individuals. The present defendants, with one exception, are judges of a court of record, and the other defendant executed the order of that court, which is a sufficient justification for him. The statue then does not apply to the present case. The second ground is therefore overruled. If the defendants are not answerable in this action for the act states in the declaration, it is because those acts were done in their judicial character as a court of record, and this brings the third ground to our consideration.

The current of authorities from the earliest dawn of jurisprudence down to the latest reported cases, not only in the courts of Great Britain, but of the United States, shield judicial officers from civil actions and criminal prosecutions (except by way of impeachment) for acts done in their judicial character. But it is said that if judicial officers are irresponsible for their acts, the liberty of the citizen is in imminent danger. To this is may be replied, that when judicial officers so far forget themselves as to act corruptly, or oppressively, they are subject to impeachment; and if convicted, may be not only removed from, and incapacitated to hold a judicial office, but may be made responsible to individuals for any acts of oppression by them committed per colore officii. The rights and liberties of the citizen are not then so completely under the control of an

unjust or oppressive court, as may have been imagined. The conduct of a judge cannot long be corrupt or oppressive, before he will be subjected to impeachment, and, upon conviction, made responsible for his misdeeds. But is said Magarrity has clearly rendered himself responsible by his admission. The authorities, which have been produced, countenance no such distinction. The reason of the exemption of judicial officers from suits at law for their judicial acts repels the distinction set up against him. The authorities are based upon the broad ground, that judicial officers are not liable to civil suits, for their judicial acts. The court believes that the welfare and peace of the community depend upon a strict adherence to the principle which has been universally established by all civilized nations upon this matter. If Megarrity's conduct has been of a character incompatible with his office -- if it has been corrupt, let him be impeached; but while he wears the ermine of justice, let it be respected. The court upon the best consideration it has been able to bestow upon this question, feels itself bound to decide that the action cannot be sustained.

In support of the principle recognized in the foregoing decision, the student is referred to the following cases. Aire v. Sedgwick, 2 Roll. Rep. 199. Hammond v. Howell, 1 Mod. 184. 2 Mod. 218. 12 Mod. 386. 1 Salk. 396. Staunford's Pleas of the Crown, 173. 2 Black. Repts. 1141. I Ld. Raym. 454. Phelps v. Sill, 1 Day's Cases in Error, 315. Yates v. Lansing, 5 Johns. 282.

Elizabeth Upshaw Against Le Roy Upshaw, And Others (Virginia)

Virginia Reports, Vol. 2, Pages 381-394; Reports of Cases Argued and Determined in the Supreme Court of Appeals of Virginia; with select cases, relating chiefly to points of practice, decided by the Superior Court of Chancery for the Richmond District, Vol. II; by William W. Hening and William Munford; published in Flatbush (N.Y.), 1809.

(Editor's Note: In an attempt to secure the court records from the earlier trial on this case, I received the following reply from the Virginia State Library, dated 4 Feb. 1982):

> "The records of the Richmond City Superior Court of Chancery prior to 1865 are missing. It is believed that they were destroyed when the old State Courthouse was burned in 1865. Therefore, we are not able to supply the Court record desired by you."

(Editor's note: While the court records of the trial preceding the State Superior Court trial are not extant, it is likely they contain very similar, if not nearly identical, information. This case probably originated in the Amherst County Court where Elizabeth Upshaw lived, and I have found that the Chancery Circuit Court Order Books in Amherst are extant. I plan to have a researcher check these for us).

[A husband dying in the life-time of his wife has not a right to devise away slaves to which she is entitled in remainder or reversion, the particular estate having not expired; though he may, in his life-time, sell his and her interest in them, for a valuable consideration].

On an appeal from a decree of the Superior Court of Chancery for the Richmond District Court, pronounced on the 3d of June, 1803, in favour of the appellees, as plaintiffs, against the appellant, defendant.

In such case, however, if the husband does devise such slaves away from the wife, and devises other property to herself for life with remainder over to other persons in fee simple; and she takes possession of the estate devised to her by him; holds it for many years, and then disposes of part of it to those entitled in remainder, in consideration of their enlarging her interest in the residue for a fee-simple; she thereby makes her election to accept the provision made for her in the will, and precludes herself from holding the slaves also; these circumstances together with her taking possession of the slaves, being sufficient evidence of her having such knowledge of the two funds as is requisite to make such election obligatory.

Interest allowed to devisee of slaves, in remainder, and certain expenses of maintenance, etc. the devisee having paid a sum of money to relieve them from execution, while in possession of tenant for life, and afterwards, supposing herself entitled to them, and having taken them into her own possession, was compelled by a Court of Equity of relinquish them.

This suit grew out of the last wills of **John Hunt** and **William Upshaw**; and the sole question was, whether, under the circumstances of the case, **Elizabeth Upshaw**, sister of the former and wife of the latter, by accepting the provision made by the will of her husband, had not so far made her election, that she could not afterwards retain the property which the said Hunt, during the time when she was the wife of the said Upshaw, had devised to her, and which property her husband had bequeathed to other persons.

The facts were these. **John Hunt**, being entitled to the reversion of a number of slaves after the death of his mother, **Ann Upshaw**, who was still living, made his will on the 28th of December, 1760, which consisted of the following bequest only: " I give and bequeath unto my sister Mary **Ann Dillard**, and **Elizabeth Upshaw**, all my Negroes after my mother's decease to be equally divided, except one young Negro named **Cemp**, to **James Upshaw**, to them and their heirs lawfully begotten forever". The testator died soon after, and his will was duly proved and admitted to record in the Court of Essex county, on the 19th of January, 1761. **Elizabeth Upshaw**, the legatee named in the will, was at that time the wife of **William Upshaw**, who, on the 17th of January, 1761, made his will, whereby he "lent to his said wife, **Elizabeth Upshaw**, the whole of his estate both real and personal during her widowhood, and after her decease to the heirs of **James Upshaw**, to be equally divided amongst them", etc. and on the 1st of June 1761, he annexed a codicil in these words: "N.B. The negroes in the possession of Mrs. **Ann Upshaw**, that was gave my wife by her brother **John Hunt**, my part I desire may be equally divided amongst my uncle **Forrest Upshaw's** three children at their mother's decease, **Leroy**, **Milley**, and **John**, to them and their heirs forever."

Of this will he appointed his wife and **James Upshaw**, executrix and executor.

William Upshaw never reduced those negroes into possession, having died shortly after making his will, (which, with the codicil, was duly proved on the 17th of August, 1762) and **Ann Upshaw**, the tenant for life, having survived him, died in the year 1795. **Elizabeth**, the widow of **William Upshaw**, accepted the provision made for her by the will of her husband, and after being in possession of his whole estate for more than twenty years, she gave up pat of it to those entitled in the remainder, (the children of **James Upshaw**,) in consideration of their enlarging

her interest in the residue to a fee-simple: she also, on the death of **Ann Upshaw**, took possession of a moiety of the slaves which had been bequeathed to her by her brother **John Hunt**.

The appellees, (the complainants in the Court of Chancery,) are the three children of **Forest Upshaw** named in the codicil to **William Upshaw's** will, and were brothers and sisters, of the half blood of **John Hunt**. In March, 1797, they filed their bill in the High Court of Chancery, against **Elizabeth Upshaw**, stating the above facts, claiming a discovery of those slaves, and asserting a title to them and their profits, on the ground that the title in remainder in the said slaves after the death of **Ann Upshaw** either vested in **William Upshaw**, or, being devised away by him, ought not now to be claimed by his widow, who under his will had held property of greater value and received the profits thereof for more than twenty-five years, and thereby, as well as by the contract since made with the other legatees of **William Upshaw**, had made her election to submit to his will.

The appellant, (the defendant in the Court of Chancery,) in her answer, admits the wills of **John Hunt** and **William Upshaw**, but contends that as **John Hunt** was entitled as heir at law, to the slaves in reversion after the death of his mother, **Ann Upshaw**, by which they were held for life in right of dower; and, as **William Upshaw** died before the expiration of the dower estate, he could not deprive her of the slaves which had been specifically bequeathed to her by the will of **John Hunt**, and which had never been reduced into possession by her husband. None of the other allegations in the bill are denied in the answer; but she states that she was obliged to pay, together with **James Dillard**, her sister's husband, the sum of 77l.16s.4dl-2, towards the discharge of **John Hunt's** debts, for which those slaves were liable, and advertised, to be sold by his administrator; which she supposes to have been the full value at that time, as they were under the incumbrance of her mother's dower estate; and therefore hopes that she may be considered in the light of a purchaser, inasmuch as if the slaves had died she must have lost her money, **John Hunt** having left no other estate to pay his debts; but, in any event, that she may be considered as entitled to a lien on the slaves, for the money so paid with interest.

The proof as to the payment of the debts of **John Hunt** was very defective, resting merely on the declarations of **Dillard** that he had paid a certain sum of money to the administrator, with some other circumstances not of themselves amounting to full proof.

The Chancellor being of opinion that the defendant **Elizabeth Upshaw** could not righteously retain both one half of the slaves which belonged to **John Hunt**, and the property bequeathed to her by her husband, and that by disposing of part of the latter, she had disabled herself to resign the one and elect the other, decreed that on payment by the plaintiffs to the defendant of one half of those debts of **John Hunt** with which the said slaves were chargeable, the defendant should deliver up such of them as were held by her, with the increase of the females, and account for their profits before a commissioner, who was also to state an account of the said debts of **John Hunt**.

The defendant appealed to this Court.

This cause was argued on the 29th of June 1807, by Hay and Randolph, for the appellant, and by Wickham, for the appellees. On account of the continued indisposition of Judge Lyons, who sat in the cause, the other Judges delayed giving an opinion till this term, when they were unanimous for affirming the decree of the Chancellor.

Hay, for the appellant. The first question is, had **William Upshaw** a right to devise those slaves to the appellees? Or did they not survive to his wife? This question he had supposed was forever settled by the decision of this Court in Wallace and wife v. Taliaferro and wife, (a) where it was resolved, after a full consideration of the acts of 1705, and 1727, and a review of all the cases, that the husband could not devise slaves, to which he was entitled in right of his wife, unless they were reduced into possession during the coverture; and, in the event of the wife's surviving the husband, the slaves also survived to her.

Another point arises in the case which is attended with more difficulty. It may be said that, admitting **William Upshaw** had no right to dispose of those slaves from his wife, still, as he has given her a beneficial interest under his will, she will be compelled to make her election, and cannot take both. In answer to this, the authority of Powel may be quoted, who expressly says that no case has gone so far as to establish this general position. (b) But if the doctrine be correct, as laid down by Bacon. (c) and others, that no person may claim under the will and against the will, it cannot effect the case of **Elizabeth Upshaw**: she claims those slaves under the will of **John Hunt**, not under that of **William Upshaw**. The appellees, **Le Roy Upshaw** and others, claim under the will of **John Hunt** alone.

Randolph, on the same side, relied on the case of Cull and wife and others (d) as decisive of this question. In that case it was held that the testatrix merely intending to give away property, to which she believed she had a right, but being mistaken in that belief, the doctrine of election did not apply. The reason of the difference between our case and others is this. It may be supposed that it was never the intention of a man especially in the case of his wife, to give her estate away. William Upshaw believed the Negroes were his; for he devises them as his part.

Wickham, for the appellees. It was not contended that these slaves were absolutely vested in **William Upshaw** the husband of the appellant; for according to the decision of this Court in the case of Wallace and wife v. Taliaffero and wife, the wife surviving the husband is entitled, in remainder, to slaves not reduced into possession during the coverture; yet it is equally true, that if the husband chooses to exercise an act of ownership over them, as to release his interest, or dispose of them in any manner, he has power to do so. The husband in this case, having such right, exercises it by giving the slaves to the appellees. He gives by the same will, all his estate to his wife during her life. She accepts of the provision of the will; and afterwards puts it out of her power to renounce it, by a sale of the property. Taking possession of this estate she had a right to dispose of it. She had an estate for life under the will of her husband upwards of twenty years in possession; this she sells for other property: she sells it for value received. She must be considered as having an interest because she derived a benefit. If a wife takes as devisee she takes as devisee in all respects. She may make her election either to stand by the will or not. In this case she has made her election, and has by her own act, put it out of her power to renounce it.

The authority relied on by Mr. Randolph, even if it had not been overruled by latter determinations, does not apply. There, a person was merely exercising a power; she was not disposing of an estate of her own by will. She had no idea that she was giving away her own property. But the case of Cull and wife v. Showell and others, as to the point relied on by the opposite counsel, has been impeached in the case of Whistler v. Webster, (a) and other cases.

All the cases on the doctrine of elections go to establish the principle, that a person cannot claim under and against a will.

Thursday, April 28. The Judges delivered their opinions.

Judge Tucker. The appellees filed their bill, stating that **John Hunt**, being possessed of several slaves and other property, made his will December 28, 1760, whereby he devised to his sisters **Mary Anne Dillard**, and **Elizabeth Upshaw**, (the appellant,) all his negroes after the death of his mother, **Anne Upshaw**, who was also mother of the appellees. That **William Upshaw** the husband of **Elizabeth**, the legatee, on the 17th of January, 1761, made his will, whereby he gave to his wife his whole estate real and personal during her widowhood, and after her decease to the heirs of **James Upshaw**, equally to be divided amongst them; and by a codicil dated in June, 1761, he devised "the negroes in the possession of Mrs. **Anne Upshaw**, that were given to his wife by her brother **John Hunt**, his part he desired might be equally divided among his uncle **Forest Upshaw's** three children, at their mother's decease." The appellees are those children -- and **Elizabeth Upshaw** having taken possession of the estate of her husband **William**, and enjoyed it more than twenty years, on the death of her mother **Anne Upshaw**, possessed herself of a moiety of the slaves, devised to her by her brother **J**. **Hunt**; to recover which is the object of the bill. The appellant admits the wills of **J**. **Hunt** and **William Upshaw**; but contends the latter had no right to bequeath the slaves in question; he having died in the life of **Anne Upshaw**, who held them as her dower. And that she was obliged to pay, together with **James Dillard**, her sister's husband, the sum of 77L. 16s. 4d. 1-2 toward the discharge of **John Hunt's** debts for which those slaves were liable and advertised by the administrator to be sold: which she supposes to have been their full value at that time, as they were then under the incumbrance of her mother's dower estate: and, therefore, hopes she may be considered as a purchaser, **J**. **Hunt** having no other estate left for payment of his debts; but in any event that she may be considered as having a lien in the slaves for the money so paid with interest.

The Chancellor decreed the slaves with their profits to the appellees, upon payment by them to the appellant of one half those debts of **J**. **Hunt** with which these slaves were chargeable. The defendant appealed.

The doctrine of elections seems to have been fully considered by Mr. Powell in his treatise on devises. Therein he lays down the following principles, on the authority of Lord Ch. J. Talbot, in the case of Streatfield v. Streatfield. "When a man takes upon him to devise what he has no power over, upon the supposition that his will, will be acquiesced under, the Court of Chancery will compel the devisee to take entirely, but not partially under it; there being a tacit condition annexed to all devises of this nature, that the devisee do not disturb the disposition that the devisor has made."

To the same effect are the remarks of Lord Ch. J. De Grey, in his judgment in Pulteney v. Lord Darlington; "A man may be a mean, and indirectly, give what is not his own, either by express condition or equity arising upon an implied condition." And to the same effect is Whistler v. Webster.

And the rule equally applies, says Powel, whether the benefit under the will be immediate or consequential; for though the effect in such cases is, that the devise operates as a satisfaction for the previous interest of the devisee, yet the principles by which satisfactions strictly speaking, are governed, do not apply to cases of this kind; therefore, it is not necessary that the thing devised should be of the same nature, or of adequate value, with the thing in lieu of which it is to be received.

And Lord Talbot, where the will comprised both real and personal estate, and the land, to which one child was entitled in tail, was thereby given to another, and a personal legacy to the tenant in tail, went so far as to infer an intent, that whoever took by that will should comply with the whole, and put the party to an election of the estate tail, or the personal legacy.

To these rules there are some exceptions, or rather qualifications, as if the devisee be a creditor, and not a volunteer, and some others.

But (it is said) no case upon this rule has yet gone so far as to establish the proposition that, if a devisor in his will takes upon himself to dispose of an estate in which he has no interest, but which is absolutely another's and, in the same will, gives a beneficial thing to the owner of such estate, the owner of the estate shall either waive the benefit of the devise, or renounce his estate: the foundation of the rule being a supposed misconception of the testator as to the situation of his own property. And this observation was particularly relied on by the appellant's counsel.

True, it is, **William Upshaw**, by his codicil, gave the appellees what he had no power to bequeath; his wife's interest in the dower slaves held by her mother being merely a reversionary interest, which, in the event of her surviving her husband, without his disposing thereof in his life-time, or reducing the slaves into possession, would survive to her. But it is clear from the words of the codicil, that he thought the slaves were his own, and that he had a power to bequeath them by his will. This was clearly a misconception of his right in respect to them. For, though he might have sold his wife's reversionary right, it being a vested interest, yet, if he neglected to do so, he could not dispose of it by will, but it would survive to her. The case of Dade v. Alexander, I conceive, does not affect this principle; for the husband's right was in that case decided to be absolute, in case he survived the wife; but here she was the survivor.

But, in order to put a devisee to the alternative of either waiving his own interest under a will, or foregoing his claim to some interest disposed of therein, to which he is previously entitled independent of the will, it must be clearly evinced that the devisee's taking both will defeat the general intent of the devisor.

In the present case it was manifestly the testator's intention to limit his bounty to his wife to the period of her widowhood, or perhaps her life, after which he bequeaths the estate before given to her, (or rather, to use his own words, lent to her,) for life, at most, to the children of **James**

Upshaw. Whether he was at that time apprised of the bequest of his wife in **John Hunt's** will, does not appear; but the codicil manifests an intention to make some provision for his uncle **Forest Upshaw's** children, the appellees; and he has done it in such a way, as to compel the appellant to elect either to forego the use of his property, so long as she continued a widow, or to renounce the benefit of the reversion, whenever it should happen. The devise to her being of the use of his whole estate during her life, gives great weight, I think, to this construction. In the case of Whistler v. Webster, it is held "that a clear knowledge of the funds, being requisite to election, no person shall be bound to elect without such previous knowledge." Many other cases may be cited to the same effect: and the rule appears to me to be so reasonable, just, and consonant with every principle of equity, that I think it ought to be adopted. In the present case, the com-promise between the appellee and the remainder-men may be considered as some evidence of such knowledge; and the nature of that comprise is such that it would seem that, in making it, she had determined her election. Otherwise, I should have inclined to think she could not have ben considered as concluded of her election, until the death of **Anne Upshaw** put it in her power to ascertain the amount and value, both of the property and estate bequeathed to her, and of that bequeathed from her, by her husband's will. But taking all the particular circumstances of the case together, I am of opinion that the decree be affirmed, as to this particular point. But I think the Chancellor ought to have allowed interest upon the money paid to prevent the sale of the negroes by Hunt's executor. In that respect I think the decree erroneous; but I concur in the decree which has been agreed to in conference.

Judge Roane. If the case of Cull v. Showell, (Ambler, 728) relied upon by one of the appellant's counsel, had never been overruled, or departed from, he might have had more cause to be "sanguine" upon the strength of it, than he was at present. The ground of decision in that case (which was decided in 1772) has, however, been expressly overruled in the cases of Whistler v. Webster, (in 1794), of Wilson v. Townsend, (in 1795) of Blake v. Bunbury, (in 1792) and perhaps in other cases. In those decisions it is considered as the settled doctrine of a Court of Equity that no man shall disappoint the will under which he claims; and that, therefore, if a man bequeaths to another, property to which he has no title, but which belongs to a third person, to whom he gives by the same will other parts of his estate, such third person must elect and convey his property to the devisee, or he cannot take the property devised to him under the will: that the only question is, did the testator intend (clearly upon the face of the will) the property to go in such a manner? and that the Court will not ask whether he had power to do so: that it is immaterial whether the testator thought he had the right, or, knowing the extent of his authority, under the influence of this principle, intended, by an arbitrary exertion of power, to exceed it: that the legatee, in such case, cannot dispute the ownership of the property bequeathed to the other: and that the legatee can only take the property on the terms on which it was given.

These doctrines are full up to, and even go beyond the case before us: I say go beyond it, because the testator not only considered the negroes in question as his own, having bequeathed them by the terms "my part of the negroes given to my wife by her brother **John Hunt**," but also because, although the property in those negroes was not then absolutely vested in him, yet from the unsettled state of the law at that time upon this subject, he might naturally have concluded the law in this respect to be otherwise. It is not equitable that, when property is given to another upon a consideration, the property should be exacted, and yet the consideration withheld.

It is not necessary in this case to inquire into the extent of the rule that a party electing must have a clear knowledge of the situation and amount of the fund elected. In this case the compromise, made with the devisees over, of the estate derived to the appellant under her husband's will, not only disabled her from electing the other interest; (she having thereby conveyed the absolute interest in part thereof to such devisees, and herself acquired the absolute interest in the residue;) but was made after so great a lapse of time, that she must have had a clear and undoubted knowledge of the value and actual situation of both the interests.

On the merits, therefore, the case is clear for the appellees. I concur, however, that the decree be corrected so as to allow the appellant interest upon the money paid by her to redeem the negroes in question.

Judge Fleming. It is admitted by all parties that the testator, **William Upshaw**, had no right to, or vested interest in, the negroes bequeathed to the appellees; but that, under the will of **John Hunt**, the right was in the appellant upon the death of her mother **Anne Upshaw**. The most material point in the cause then is, whether the appellant, to whom her husband lent the whole of his estate during her widowhood, should be put to her election, either to take under the will, and relinquish her right to the negroes, or to renounce all claim under the will, and take the negroes bequeathed to the appellees, which she claimed under the will of **John Hunt**?

The case of Cull and wife v. Showell and others, in Ambler, 727, seems in favour of her not being put to her election; but later cases, as Whistler v. Webster and others that have been cited, have overruled that case, with some exceptions, and qualifications; and it seems now settled, that where the devisee is instructed, and hath a clear knowledge of the amount or value of the estate claimed under the will, the election must be made; but, otherwise, the legatee shall not be put to an election.

In the present case it seems that the appellant must, of necessity, have been so instructed and informed; because the whole of the estate was devised and bequeathed to her, during her widowhood; and she was appointed the executrix of her husband's will; and that she, after having remained in possession of the estate, more than twenty years, made a contract with the legatees in remainder, whereby she gave up to them a part of the estate, in consideration of their conveying to her an absolute right to the residue; which affords the strongest evidence of her having already made her election with full notice and information of the value of the estate she took under the will of her husband.

But it appears clearly to me that she ought to have been allowed interest on the money she paid to redeem the negroes chargeable with the debts of **John Hunt**: and that, in the account to be taken of the profits of the slaves that came into her possession on the death of **Anne Upshaw**, a just and reasonable allowance ought to be made her, for the support and maintenance of the aged, the children, and others that were unprofitable, (if there be any such among them) and for other incidental expenses which she may have incurred on their account; as I have been taught by experience, that the maintenance of a parcel of negroes, where a considerable proportion of them are breeding women, is rather expensive than profitable.

I am therefore of opinion that the decree is in those respects erroneous, and ought to be reversed.

The opinion of the Court was, "That there was no error in so much of the decree of the Superior Court of Chancery as decides that according to the principles of equity the appellant cannot retain both the slaves bequeathed to her by the will of her brother **John Hunt**, on the decease of his mother **Anne Upshaw**, who held the same for her life in right of dower, and the property devised and bequeathed to her by her husband **William Upshaw**, by whom those slaves at the death of the said **Anne Upshaw**, were bequeathed to the appellees; and as directs the said slaves, with their progeny, to be delivered to the said appellees, with an account of their service and the profits arising therefrom; and as requires the appellees to recompense the appellant for the monies paid by her in discharge of the debts of **John Hunt**, with the payment of which those slaves were chargeable: but that there is error in the said decree in not allowing to the appellant interest upon the monies paid by her. And this Court is further of opinion that a just and reasonable allowance should be made to the said appellant for the support and maintenance of such of the said slaves as are, or may have been aged, infirm, children, or otherwise expensive or unprofitable to the holder; as also for such taxes, doctor's bills, and other reasonable expenses paid or incurred by the appellant on account of those slaves, as she shall be able to prove: Therefore it is decreed and ordered, that so much of the said decree as is contrary to the above opinion be reversed and annulled, and that the residue thereof be Affirmed," etc.

Upshaw vs. Upshaw (Virginia)

The American Decisions, Vol. 3, Pages 632-636; Cases of General Value and Authority Decided in the Courts of the Several States from the Earliest Issue of the State Reports to the Year 1869. Vol. III, published in San Francisco, Cal., 1910.

Power of Husband over Wife's Property. -- A husband dying in the lifetime of his wife, has no right to dispose of slaves by will, to which she is entitled in remainder or reversion, the particular estate not having expired; though he may, in his lifetime, sell his and her interest in them for a valuable consideration.

Election by Wife Under Husband's Will. -- Where the husband made a devise of slaves to other parties, in which he wife had a remainder, and a devise of other property to herself for life, with remainder over to others in fee simple, and she took possession of the estate devised to her, held it for many years, and then disposed of part of it to those entitled in remainder in consideration of their enlarging her interest in the residue to a fee simple, she thereby makes her election to accept the provision made for her in the will, and precludes her from also holding the slaves; these circumstances, together with her taking possession of property, being sufficient evidence of her having such knowledge of the two funds, so as to make her election obligatory.

Appeal from a decree of the superior court of chancery. The facts appear from the opinion.

Hay and Randolph, for the appellant.

Wickham, for the respondents.

Tucker, J. The appellees filed their bill, stating that **John Hunt**, being possessed of several slaves and other property, made his will December 28, 1760, whereby he devised to his sisters, **Mary Anne Dillard** and **Elizabeth Upshaw**, the appellant, all his negroes, after the death of his mother, **Anne Upshaw**, who was also mother of the appellees. That **William Upshaw**, the husband of **Elizabeth**, the legatee, on the seventeenth of January, 1761, made his will, whereby he gave to his wife his whole estate, real and personal, during her widowhood, and after her decease to the heirs of **James Upshaw**, equally to be divided amongst them; and by a codicil, dated in June, 1761, he devised "the negroes in the possession of Mrs. **Anne Upshaw**, that were given to his wife by her brother, **John Hunt**; his part he desired might be equally divided among uncle, **Forest Upshaw's** three children, at their mother's decease." The appellees are those children; and **Elizabeth Upshaw**, having taken possession of the estate of her husband, **William**, and enjoyed it more than twenty years, on the death of her mother, **Anne Upshaw**, possessed herself of a moiety of the slaves devised to her by her brother, **J**. **Hunt**; to recover which is the object of the bill. The appellant admits the wills of **J**. **Hunt** and **William Upshaw**, but contends the latter had no right to bequeath the slaves in question, he having died in the life of **Anne Upshaw**, who held them as dower. And that she was obliged to pay, together with **James Dillard**, her sister's husband, the sum of seventy-seven pounds, sixteen shillings and four and a half pence, towards the discharge of **John Hunt's** debts, for which these slaves were liable and advertised by the administrator to be sold, which she supposes to be their full value at that time, as they were then under the incumbrance of her mother's dower estate, and therefore hopes she may be considered as a purchaser, **John Hunt** having no other estate left for payment of his debts; but, in any event, she may be considered as having a lien in the slaves for the money so paid, with interest. The chancellor decreed the slaves, with their profits, to the appellees, upon payment to them by the appellant of one-half those debts of **John Hunt**, with which these slaves were chargeable. The defendant appealed.

The doctrine of election seems to have been fully considered by Mr. Powell, in his treatise on devises. Therein he lays down the following principles, on the authority of Lord C. J. Talbot, in the case of Streatfield v. Streatfield, CAS. Temp. Talbot, 176: "When a man takes upon him to devise what he has no power over, upon the supposition that his will will be acquiesced under, the court of chancery will compel the devisee to take entirely, but not partially, under it; there being a tacit condition annexed to all devises of this nature, that the devisee do not disturb the disposition that the devisor has made." To the same effect are the remarks of Lord C. J. DeGrey, in his judgment in Pulteney v. Lord Darlington, cited 2 Fenb. 325, note 1: "A man may by a mean, and indirectly, give what is not his own, either by express condition, or equity arising under an implied condition." And to the same effect is Whistler v. Webster, 2 Ves. Jr. 371. And that rule equally applies, says Powell, whether the benefit under the will be immediate or consequential; for though the effect in such cases is, that the devise operates as a satisfaction for the previous interest of the devisee, yet the principles by which satisfactions, strictly speaking, are governed, do not apply to cases of this kind, therefore it is not necessary that the thing devised should be of the same nature or of adequate value with the thing in lieu of which it is to be received: Powell on Devises, 450. And Lord Talbot, where the will comprised both real and personal estate, and the land, to which one child was entitled in tail, was thereby given to another, and a personal legacy to the tenant in tail, went so far as to infer an intent that whoever

took by that will should comply with the whole, and put the party to an election of the estate tail or the personal legacy: Powell on Devises, who refers to 2 Vern. 14, 617, and Id. 555.

To these rules there are some exceptions, or rather qualifications, as if the devisee e a creditor and not a volunteer, and some others: Powell, 454, 458, 459, 463. But, it is said, no case upon this rule has yet gone so far as to establish the proposition that if a devisor, in his will, takes upon himself to dispose of an estate in which he has no interest, but which is absolutely another's, and in the same will gives a beneficial thing to the owner of such estate, the owner of the estate shall either waive the benefit of the devise, or renounce his estate; the foundation of the rule being a supposed misconception of the testator as to the situation of his own property: Id. 465. And this observation was particularly relied on by the appellant's counsel.

True it is, **William Upshaw**, by his codicil, gave the appellees what he had no power to bequeath, his wife's interest in the dower slaves held by her mother, being merely a reversionary interest, which, in the event of her surviving her husband, without his disposing thereof in his lifetime, or reducing the slaves into possession, would survive to her. But it is clear, from the words of the codicil, that he thought the slaves were his own, and that he had a power to bequeath them by his will. This was clearly a misconception of his right in respect to them. For, though he might have sold his wife's reversionary right, it being a vested interest, yet, if he neglected to do so, he could not dispose of it by will, but it would survive to her. The case of Dade v. Alexander, 1 Wash. 30, I conceive, does not affect this principle, for the husband's right was, in that case, decided to be absolute, in case he survived the wife; but here she was the survivor.

But in order to put a devisee to the alternative of either waiving his own interest under a will, or foregoing his claim to some interest disposed of therein, to which he is previously entitled, independent of the will, it must be clearly evinced that the devisee's taking both will defeat the general intent of the devisor: Powell on Devises, 466. In the present case, it was manifestly the testator's intention to limit his bounty to his wife to the period of her widowhood, or perhaps her life, after which he bequeathed the estate before given to her, or rather, to use his own words, lent to her, for life, at most, to the children of **James Upshaw**. Whether he was at that time apprised of the bequest of his wife in **John Hunt's** will, does not appear; but the codicil manifests an intention to make some provision for his uncle **Forest Upshaw's** children, the appellees; and he has done it in such a way as to compel the appellant to elect either to forego the use of his property, so long as she continued a widow, or to renounce the benefit of the use of his whole estate during her life, gives great weight, I think, to this construction. In the case of Whistler v. Webster, 2 Ves. Jr. 371; 2 Fonb. 326, note l, it is held "that a clear knowledge of the funds being requisite to election, no person shall be bound to elect without such previous knowledge." Many other cases may be cited to the same effect; and the rule appears to me to be so reasonable, just and consonant with every principle of equity, that I think it ought to be adopted. In the present case, the compromise between the appellee and the remainder-men may be considered as some evidence of such knowledge; and the nature of the compromise is such, that it would seem that in making it, she had determined her election. Otherwise, I should have inclined to think she could not have been considered as concluded of her election, until the death of **Anne Upshaw** put it in her power to ascertain the amount and value, both of the property and estate bequeathed to her, and of that bequeathed from her by her husband's will. But taking all

the particular circumstances of the case together, I am of the opinion that the decree be affirmed as to this particular point. But I think the chancellor ought to have allowed interest upon the money paid to prevent the sale of the negroes by **Hunt's** executor. In that respect, I think the decree erroneous; but I concur in the decree which has been agreed to in conference.

Roane, J., delivered a concurring opinion.

Fleming, J., concurred.

The opinion of the court was: "That there was no error in so much of the decree of the superior court of chancery as decides that, according to the principles of equity, the appellant cannot retain both the slaves bequeathed to her by the will of her brother, **John Hunt**, on the decease of his mother, **Anne Upshaw**, she held the same for her life, in right of dower, the property devised and bequeathed to her by her husband, **William Upshaw**, by whom those slaves at the death of the said **Ann Upshaw** were bequeathed to the appellees; and as directs the said slaves, with their progeny, to be delivered to the said appellees, with an account of their service and the profits arising therefrom; and as requires the appellees to recompense the appellant for the moneys paid by her in the discharge of the debts of **John Hunt**, with the payment of which those slaves were chargeable; but that there is error in the said decree in not allowing to the appellant interest upon the moneys so paid by her. And this court is further of opinion, that a just and reasonable allowance should be made to the said appellant for the support and maintenance of such of the said slaves as are or may have been aged, infirm, children, or otherwise expensive or unprofitable to the holder, as also for such taxes, doctor's bills, and other reasonable expenses paid or incurred by the appellant on account of those slaves, as she shall be able to prove. Therefore, it is decreed and ordered, that so much of the said decree as is contrary to the above opinion, be reversed and annulled, and that the residue thereof be affirmed," etc.

Upshaw's Heirs vs. Streshly et ux (Kentucky)
(Opinion of the Court by Judge Logan)

Kentucky Reports, Vol. 6 (Bibb, Vol. 3), pages 444-446. Reports of Cases at Common Law and in Chancery Argued and Decided in the Court of Appeals of the Commonwealth of Kentucky from Spring Term 1813 to Fall Term 1814, Inclusive, by Geo. M. Bibb, Third Edition, Volume III, Published in Cincinnati (N.D.).

[October 11. The testator devises a part of his property slaves, stock, etc. to certain of his children declaring that **Lucy** and **Sarah** have received their portions; he then devises a contingent interest to the legatees and Lucy, and finally after the life estate given to his wife devises that portion to be divided among the legatees – **Lucy** and **Sarah** are not entitled to take a portion of his estate, by the description of legatees.]

Streshly and wife exhibited their bill to recover a proportion as a legatee of certain property under the will of **John Upshaw**, the father of **Mrs**. **Streshly**.

The testator, after devising to his wife for life, certain land, houses and improvements, household furniture, slaves, stock, etc. declares in the next place that his daughters, **Sarah** and

Lucy, have received their part of his estate; and then proceeds to give the residue to his other children. But with this exception, that "if any recovery is had in Kentucky, I give one half of it to my son **Edwin** and his heirs forever, and the other moiety to be equally divided between my other legatees and **Lucy**: and if any of the said legatees die unmarried or without lawful issue, his or their parts to be equally divided between all the survivors and **Lucy** and their heirs forever.

But not having disposed of the absolute right in the personal property which had been given to his wife for life, he wills that interest equally between all his legatees. In the distribution of that property the executor gave it to the other children in exclusion of **Lucy**. To recover a distributive share of which, **Lucy** and her husband have brought this suit; and having obtained a decree in their favor, the plaintiffs in error have prosecuted this writ of error.

The only question material to be determined is, whether **Lucy** is one of the legatees of her father? The solution of this question must depend on the true intent and meaning of the testator as deducible from the will.

It is obvious that the testator commenced his will with an intention of giving the whole of his estate to his other children, under the belief that his daughters, **Sarah** and **Lucy**, had before received an equal proportion. But inasmuch as his estate might prove more valuable than the testator expected, owing to the uncertainty of contested property in Kentucky, he seems to have been induced to make farther provision for **Lucy**, depending upon that interest -- an interest evidently considered by the testator as doubtful and uncertain; for, says he, "if any recovery is had in Kentucky," then in that event he makes such and such disposition thereof.

But in this provision of the will the testator seems pretty clearly not to have considered Lucy as one of his legatees: for he devises one half to his son, **Edwin**, and the other moiety to his "other legatees and **Lucy**." But the express mention of her name here was necessary, because no bequest to her had been previously given. The same idea, however, is observed by the testator in distinguishing this daughter from those of his children whom he intended as his legatees: for, says he, "if any of the said legatees die unmarried or without lawful issue, his or their parts to be equally divided between all the survivors and **Lucy**;" evidently showing that he did not consider **Lucy** as one of his legatees, and that he meant to keep up the distinction between them and her. Had he understood **Lucy** as one of the legatees in his will, then the bequest over to all the survivors, would have been deemed as comprehending her, without particularly naming her.

The testator, then, having expressly named **Lucy** as contradistinguished from his legatees in this instance as coming in for a part of certain property, and having shown almost in the commencement of his will that he did not intend to recognize her as among his legatees, because he had before provided for her: when, therefore, he devised a considerable property depending upon the life of his wife, to all his legatees, without again connecting Lucy expressly by name, as he had before done, we think the just inference is that he did not intend this provision as extending to her. -- Decree reversed, etc.

(Table of Legal Cases 1658-1906 concluded)