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## **The 1846 Last Will of John Sutton - What's Not So New in Will Drafting and Contests**

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### **I. Barriers to Manumission**

#### **A. Freedom of Alienation of Property:**

1. "The trend of the common law has been for centuries in the direction of freedom of alienation." 4 Bowe-Parker, *Page on Wills*, Vol 5, Section 42.4;
2. "It is conceivable that it might be held that if the provision were deemed contrary to public policy, the gift itself should fail, but such a holding would seem unjustifiable either on the grounds of construction or policy, and it has never obtained at common law, though legislation forbidding suspension of the power of alienation has been interpreted to this effect." *Id.*, at fn. 1.

#### **B. Florida Statute Prohibiting Emancipation of Slaves: 1829 Act to Prevent the Manumission of Slaves, in Certain Cases, in this Territory [Florida]**

1. "...any person or persons who shall manumit any slave or slaves, brought into this Territory after the passage of this act, shall forfeit and pay, for every slave so manumitted, the sum of two hundred dollars; one half to be paid to the Territorial Treasure and the other half to the person suing for the same."
2. "...any person or persons bringing into this Territory any slave or slaves, after the passage of this act, and wishing to manumit him, her or them, such person or persons shall, before he grants such manumission, give bond with two or more securities, in a sum equal to the value of such slave or slaves, to be approved of by the presiding justice of the county, in which such manumission may be granted -- conditioned for the transportation of every such slave or slaves beyond the jurisdiction of this Territory, within thirty days after the manumission of such slave or slaves."
3. "...any slave or slaves manumitted, contrary to the provisions of this act, shall not be deemed free, but shall be liable to be taken up, under an order from the superior or county courts, in the county in which such slave or slaves shall have been manumitted, which order shall be directed to the marshal or sheriff of the county."
4. "...it shall be the duty of the marshal or sheriff, to whom such order may be directed to advertise the sale of any slave or slaves taken up as provided by this act, at least twenty days previous to the day of the sale, and shall proceed and sell the same for cash, as soon thereafter as he shall deem expedient."

### **II. Grounds of Contest Alleged:**

- Undue Influence and fraud
- Lack of Due Execution
- Fraud, mistake
- Lack of capacity

- Violation of Florida Manumission law
- A. “Not of sound and disposing mind and memory”
  - B. “Very aged, and infirm bodily & mentally”
  - C. “He was then and had been for Years wandering in his intellect, and subject to the most childish and extravagant superstitions.”
  - D. “He was kept constantly supplied with and under the influence of ardent spirits.”
  - E. “...his credulity and imbecility made him an easy dupe to the artifices of designing persons who represented to him that the families of children heretofore mentioned were his offspring when in fact as Your petitioner is informed and believes, none of said children were his.”
  - F. “John Sutton being not of sound mind and disposing memory aforesaid was incompetent to make any disposition of his property by Will according to Law, and that ...his Last Will and testament as aforesaid is null and void.”
  - G. “Slaves cannot be manumitted and set free in this State either directly or indirectly except upon certain conditions, restrictions and limitations for which conditions, restrictions and limitations or any of them, said instrument of writing does not in any manner provide.”
  - H. “...so much of said Instrument as provides that certain personal property shall be appropriated to the use and benefit of such slaves, owning their slavery & otherwise is contempt to the Statutes of this State, which declares that Slaves shall not be entitled to have or hold any property.”
  - I. “...neither the said probate of the said instrument of writing or the said granting or issuing of Letters Testamentary thereon as such Last Will and Testament thereon, as such Last Will and Testament ever ought to be approved or confirmed by this Honorable Court, and Your Petitioner hereby most solemnly protests and enters his cause against any such approval or confirmation of the making to the said probate of the said granting or issuing of Letters Testamentary.”

### **III. Witness Testimony**

- A. William Adams
  1. Executor testifies “that on May 16, 1846, Gregory Yale, one of the subscribing witnesses did take the oath prescribed by law for proving wills in common form, and that this Respondent [William Adams] took the oath prescribed by law, as Executor of said Last Will and testament of John Sutton deceased, and that therefore Letters testamentary were granted and issued by your Honor as Judge of Probate to said Adams, this Respondent, according to law & that said Respondent Entered upon, and discharged the duties imposed upon him by law under said Last Will and Testament.”
  2. Respondent William Adams testifies “that said John Sutton, at the time he made his said last will and testament, was not of sound disposing mind and memory, the allegation is not true and that the further allegations of imbecility, credulity and superstition, and more especially the charge that he was kept supplied with ardent spirits and constantly under the influence of them are all false and in fact have no basis for their fabrication.”

3. Adams testifies that “the said Last Will and Testament is legal in every respect, and believes that in law it must and will be sustained and remain in full force answering to the true intent of the testator.”
4. Adams testifies: “And this Respondent denies that there is any Law in this state which interferes with or interdicts any part of said last will & testament of said John Sutton in respect to said slaves mentioned therein, either in respect to future emancipation, or to the holding or having the benefit of personal or other property under the provisions and conditions of said Last Will and Testament.”

B. Drafting Attorney Gregory Yale

1. “--Made appointment with Mr. Newbern, one of the Executors on January 20, 1846 to draw the will at Sutton’s request, but being unable to keep the appointment, met afterwards with Adams...arrived at Sutton’s house at 9 o’clock at night found old Sutton with his family, he directed supper to be prepared for Adams and myself and had a conversation with him.”
2. “after supper introduced the subject of drafting up his Will, saying his (the deceased) intention was to set the negroes free if it could be done according to the laws of this State and consulted with witness as to the best way of doing it. I told him the negroes could not be absolutely manumitted by the laws of the state and remain here, that the only way would be to remove them to some “free state” or direct his Executors to do it. As they had been brought here after the Act of 1829.”
3. “Expressed a strong disinclination for his next of kin to get possession of them, if any person he wanted Adams to have them, after explaining his wishes he expressed his willingness to submit to the plan I should suggest in order to carry them into effect.”
4. “Concerned about the free states and seemed averse to have the negroes go out of the United States, at the same time was willing to leave that in a great measure to the wishes of the negroes themselves under the direction of his executors. After conversing freely upon the subject that evening, he suggested the completion of the business should be deferred till the next morning, as I was fatigued. Accordingly I went to bed. I came to the conclusion that evening from the manner he expressed himself that evening and from his general mode of expressing himself on this and other matters.”
5. “I concluded he was a man of strong mind & energies above that of ordinary men. ...next morning after breakfast talked the matter over again pretty much as we had the evening before. He instructed me to draw the Will as it has been drawn, after drawing it, read it to him in the presence of some other persons he assented to it. I then made a fair copy of it and read it over to him more than once, in the presence of Mr. Peacock, Mr. Moore and some other persons, after having heard it read, he assented to it. Signed and requested us to sign it as witnesses.”
6.
  - a. “I called the witnesses to witness the state of his mind telling them that as an Attorney I would not draw a will for a man who was not capable of making a will and it would be their duty to refuse to witness it unless they thought him in his right mind.”
  - b. “Deceased said that he was in his ‘right senses’.”
7.
  - a. “the name of deceased was written by me & he made his mark.”
  - b. “he manifested a great deal of shrewdness or Keanness & a full perception of what he was about.”

- c. “said he came from Georgia here under the impression that he could manumit these persons of color here, but after his arrival here sons advised he could not do so.”
  - d. “from all I saw of him, should judge him to be a man of sound and disposing mind. Never saw him before that occasion or after —”
- C. Examination of Gregory Yale by Court: “Saw no ardent spirits in the house. Some person apologized for not having any in the house.”
- D. Cross-Examination of Gregory Yale:
  1. “should judge from Sutton’s appearance he was about sixty (60) age...Witness asked if he should not think Sutton was near (80) Eighty years of age. Said he thought not. Did not appear to have any of the indications of extreme old age. No faltering in the voice. No apparent deficit in his truth. And had a remarkably keen eye. No apparent deficit of hearing.”
  2. “Mr. Adams never made any suggestion as to the best plan for manumitting the Negroes. And when about the house manifested a great deal of indifference upon the subject. The provision by which Adams was to have the property if the will should ever be decreed to be illegal was made at my suggestion – Adams stated that if the property ever came to him by that provision he would still carry the intentions of the Testator into effect by carrying the negroes out of this state —”
  3. “Lucy said she desired to remain here if she could. Expressed a repugnance to going into a cold country. Where a different mode of living prevails from that of this Country. And repugnance to getting into the hands of the next of kin. Who had frequently threatened to whip them if they ever came to their hands after the death of Sutton – said she would as soon be in the hands of the next of kin as Adams Except as to the treatment. Her suggestion however was not regarded as to the propriety of the provision giving the property to Adams – was a sensible old Negro.”
- E. Testimony of John Moore
  1. “Witness sworn, says that the mark to his name signed to the papers exhibited as Sutton’s Will is his mark looks very much like it. Mr. Yale and Mr. Peacock witnessed it also. Saw Sutton make the mark to his name in the will or one very much like it. Never signed or witnessed any other will.”
  2. “Sutton made his mark to his signature to the paper now exhibited. Knew old man Sutton well. Knew him pretty much for 12 or 14 years before he came to this County always thought he was a strong minded man. Thought he was in his senses when he made the Will. Just before he signed it I said to him “Mr. Sutton do you think you are in your proper senses right now.” He said “I think I am so. Now as much as ever I was.” From what I heard him say in conversation when Mr. Yale was talking to him, he said he wanted his family free. Some talk was had of taking them to a foreign country, he said. The negroes said they would rather stay here and maybe nobody would trouble them. You will see after I am laid away.”
- F. Cross Examination of John Moore
  1. “When Sutton made his mark to the will he made no remark of any account.” “Mr. Yale wrote my name to the Will. Somebody asked me to write my name. I might have asked Mr. Yale to write my name. Mr. Yale asked me to sign my name. told him I could not write and asked him to write and I would make my mark.”

2. “Never heard the old man say whether some of the children of Lucy was not his. Has heard some persons say so —”

G. Answer of Henry Bennett

1. Admits that John Sutton “did on or about 24<sup>th</sup> January 1846...make and Execute his last will and testament according to Law...”
2. “And this Respondent admits the proof of said will by Gregory Yale one of the witnesses to said will...and that said will was duly submitted and probate granted Theron according to Law, and William R. Adams was duly qualified by this Honorable Court as an Executor of said Estate.”
3. “And this Respondent generally denies all and every allegation made by the said complainant as to the infirmities and incapacity of said John Sutton deceased at the time he made & executed his said Last Will and testament—and this Respondent denies that there is any ground for the charge of illegality...”

**IV. Work Around in Anticipation of Invalidity of Will**

- A. “Fifth: ...in case the above conditional bequest of the said slaves to the said William R. Adams, be in anywise impeached in a court of justice by any other persons except the said Adams, claiming a right to said property under me, or in any other respect, as invalid, or as against the existing laws of Florida, and it shall be so decreed and judged by any competent court, then the said bequest of the said slaves to the said Adams shall be, and I so declare it to be, absolute and unconditional, vesting the absolute property to the said slaves to the said Adams and his heirs, making him my universal legatee to all the above named property.”
- B. “Sixth: I do hereby nominate and appoint the said William R. Adams, and Jon S. Newbern and Henry Bennett...my Executors to this my last will and testament; and do injoin upon them the strict execution of their trust, by promoting the great object of my desires and wishes in having the said slaves sent into a free state as aforesaid.”

**V. Final Decree, March 10, 1847**

“And now on this day came the said Petitioner by his attorney Joseph B. Lancaster, Esquire and the said William R. Adams and Henry Bennett by their attorney James W. Bryant, Esquire and this matter came on for a hearing and final Decree, and was argued by the Counsel for the respective parties and all said singular premises being duly considered by the Court. It is ORDERED, ADJUDGED AND DECREED, that the Probate of the Last Will and Testament of John Sutton deceased which will was admitted to Probate on the sixteenth day of May AD 1846, Be and the said Probate is hereby AFFIRMED. And it is further ORDERED, ADJUDGED AND DECREED, that the said Petitioner Shadrack Sutton do pay all the Costs of this Suit Taxed at Twenty Eight Dollars and Eight Cents.”

William F. Crabtree  
Judge of Probate  
County of Duval