Mary G. Thorington, et al,
No. 437. vs.
J. Winter Thorington, et als.

In the city Court of Montgomery

In Equity.

To the Honorable Thomas W. Arrington, Judge of the City Court of Montgomery sitting in Equity.

Humbly complaining showeth unto your honor your orators William S. Thorington, Jack Thorington and Mary G. Thorington, and Henry C. Moses general guardian of Winter Thorington, Bessie May Thorington and Jack Thorington infants.

1. That Jack Thorington late of the County of Montgomery, having first made his last will and testament departed this life, leaving surviving him your orators Mary G. Thorington his widow and William G. Thorington and Jack Thorington his sons and also another son Robert D. Thorington who died in the year 1883 leaving surviving him the said infants J. Winter, Bessie May and Jack, his children. 2. That the said last will and testament has been duly admitted to probate in Montgomery County aforesaid, and orators attach hereto a copy of said said last will and testament marked Exhibit A, with leave of reference thereto as often as may be necessary.

3. That on the 6th day of January 1887 your orator Henry C. Moses duly qualified as general guardian of the above named children of Robert D. Thorington in the Probate Court of Montgomery County and gave bond as such guardian.

4. That at the last time of his death the said Jack Thorington was seized and possessed of the following described lands in Jefferson County in this State to-wit: one undivided half interest in the South east quarter of the North east quarter and the east half of the South east quarter of Section thirty-two (32) Township 17 Range Two (2) west, and also the following described lands in Shelby County in this State to-wit: one undivided interest in the north half of south east quarter, the north east quarter of south west quarter and the north west quarter of north west quarter all in Section 30, Township 20 Range 3 West, also the south west quarter of the north west quarter and south east quarter of north west quarter and north east quarter of south west quarter all in Section six (6) Township Twenty-one (21) Range 3 west, also the north half of the south west quarter and east quarter

of south east quarter of south west quarter all in section 28, Township 19, Range 3 west. 5. That by the third clause of his said will the said Jack Thorington devised the said lands and all his other property real and personal to your oratrix, Mary G. Thorington, and by the other provisions of his said will the said lands were devised in remainder to your orators William S. and Jack Thorington and their said brother Robert D. now deceased, by the sixth clause of his said will your oratrix Mary G. was authorized and empowered to dispose of all the estate and property devised by said will, by will to the said William S. Jack and Robert D. in such shares and proportions and under such safeguards in Trust or otherwise as she may deem wise and best in event of her dying said estate was to be divided equally among the said William S. Robert D. and Jack, all of which will more fully appear by reference to said copy of said will attached hereto as Exhibit A.

6. That oratrix Mary G. is the mother of the said William S. Jack and Robert D. and being anxious that her said sons William S. and Jack and the children of her said son Robert D. may now have and enjoy the benefit of the said lands as is hereinafter prayed, and desiring to cut off any and all right interest, power, title or estate, she may have or be entitled to, hereby offers to release and convey to the said William S. and Jack each one third interest in said undivided half interest and to the children of her said son Robert D. together, one third interest thereof, and she hereby offers to convey the same to her said children and grand children in the proportion aforesaid, or for their benefit to such person as the Court may direct. 7. Orators further show unto your Honor that the lands aforesaid in Jefferson County are near the city of Birmingham and wholly unimproved that they yield no income or profit and are incapable of being made to yield any income or profit without the expenditure of considerable sums of money, that the value of said lands in speculation in character and are now capable of being sold at a great advantage for the said William S. Jack and the said infant children of Robert D. and the said William S. and Jack are desirous of realizing by a sale thereof of their interest therein, and they believe that it is to the interest of the said infants that said lands should be sold and their share of the proceeds thereof be invested for their benefit.

8. Orators further shows that the said lands in Shelby County are supposed to contain coal and their value is conjectural and they cannot be successfully worked being in small tracts and disconnected. That said lands yield no income nor profit and orators verily believes that a sale then at the present time would be to the advantage of the adult devisees as well of the said infant children of Robert D. 9. Orators further shows that the annual taxes on said lands and other expenses incident to their care and management have to be borne from year to year and cause said lands to be a burden and charge on orators.

10. Orators further aver that the said one half interest is incapable of any actual partician among the persons entitled thereto, and your orators William S. and Jack cannot receive any income or profit therefrom nor can the said infant children of Robert D.

11. Orators further aver that Winter Thorington is an infant over the age of fourteen years and that Bessie May Thorington and Jack Thorington are infants under the age of fourteen years and that they all live with their mother Sallie G. Thorington who resides in the City and County of Montgomery.

To the end therefore that orators may obtain the relief hereinafter prayed and that the defendants thereto may answer the several paragraphs of this bill as by note hereunder written they are required. Orators pray your Honor that the said J. Winter Thorington, Bessie May Thorington and Jack Thorington may be made parties defendant by proper subpoenas and that guardian at litem may be appointed to protect their interest herein. And upon the hearing may it please your Honor to decree that the said undivided interest in said tracts of land may be sold for a division among the persons entitled thereto as aforesaid upon such terms and in such manner as to your Honor shall seem meet, and that the share thereof to which said infants are entitled be invested by their said guardian for their benefit, and that the said guardian be authorized and empowered to join with the said Mary G. William S. and Jack in the necessary conveyances to pass the title thereto and for such other and further relief as the nature of their case may require and to your Honor shall meet and as in duty bound &c.

Troy, Tompkins & London.
Solicitors for Complainants.

note:
The defendants are required to answer each of the foregoing paragraphs

numbered one to eleven inclusive, but answer under oath is expressly waived.

Troy, Tumpkins & Gordon.
Solicitors for Complainants.

Exhibit A.

The State of Alabama, } Exhibit A.
City & County of Montgomery. } In the name of God, Amen.

I Jack Thorington of the City and County of Montgomery aforesaid, being admonished of the uncertainty of the present life do hereby make and publish this my last will and testament, hereby revoking and making void all former wills by me at any time heretofore made.

Item First. I direct that all my debts, and Funeral Expenses (which I wish to be of moderate expenditure) to be paid as soon as ~~may~~ be reasonably done.

Item Second. I own a policy in the Aetna Life Insurance Company of Hartford, Conn. for the sum of Ten Thousand Dollars, also, a policy of insurance for the sum of ten thousand dollars, in the Equitable Life ~~Assurance~~ ~~Company~~ Society, New York, both of which policies it is my intention, if able, to perpetuate, and keep alive for the term of my life, and both of which are for the benefit of my wife - Mary L. Thorington and payable to her at my decease. Item Third. I give and bequeath unto my dearly beloved wife, Mary L. Thorington during her widowhood all of my entire estate, real and personal, and mixed which I now have, or may have, or be entitled to, at the time of my decease. Item Fourth. It is my will and desire that at the time of my decease, if I should not leave sufficient means on hand to pay within a reasonable time all of my present indebtedness now secured by a mortgage on real estate, that my wife should pay the same out of any funds received from the policies of life insurance described in Item Second, upon the party owning and holding said indebtedness and mortgage, transferring and assigning the same to her as her individual property, and as for her sole and separate use and benefit, clear of all other claims and demands whatsoever.

Item Fifth. If the issues, increase, rents and profits of my estate shall exceed the expenditures of my wife, it is my desire, the surplus shall become and form part

of the principal of my estate. Item Sixth. If my wife shall not marry again it is my will and desire, she shall have the power and authority, and she is hereby invested therewith to dispose of all the estate and property she may have, or die possessed, or be entitled to, by her will, to our beloved children, Robert W., Jack and William S. and on such shares and proportion to them, or the survivors, and under such safeguards in trust, or otherwise as under the circumstances then existing, she may deem just and wise and best for them, and in the event of her dying intestate, the said estate and property to be distributed to our said children, equitably, and share and share alike, or to the survivors or survivors of them. Item Seventh. It is my will and desire that should my wife marry again, that in that event there shall be an immediate division of all my estate into four equitable parts or shares, that my wife shall receive one of said parts or shares and that the three other parts and shares shall be immediately paid over to my said children Robert W. Jack, and William S. or the survivors or survivor of said children.

Item Eight. I hereby ordain my beloved wife Mary L. Thorrington, and my son William S. Thorrington my Executrix and Executor of this my last will and testament, and hereby, by express provision to that effect, exempt them from giving security on their bond. In testimony whereof, I have hereunto set my hand and affixed my seal this 12th day of April A. D. 1870.

Filed in office Jan 7th, 1887.

Jack Thorrington. (Seal)

V. M. Elmore, Register.

Affidavit As to Infancy of Defendant.

Mary L. Thorrington, et als vs. J. Winter Thorrington et als } In the City Court of Montgomery In Equity.

Personally appeared before me V. M. Elmore Register in Chancery, Alexander T. London who being duly sworn says he is one of the solicitors for the Complainants affiant further says that the defendant J. Winter Thorrington is an infant over the age of fourteen years and the defendants Bessie Mary Thorrington and Jack Thorrington are infants under the age of fourteen years and that all of said infants reside with their mother Sallie B. Thorrington who resides in the City and County of Montgomery.

Alex T. London.

Sworn to and subscribed before me this 7th day of December 1887.
V. M. Elmore
Filed in office Jan. 7, 1887. Register In Chancery.
Summons for Winter Thorington, Jack Thorington & Bessie May Thorington.
The State of Alabama,
To any sheriff of the State - Greeting:
You are hereby commanded to summon Winter Thorington, an infant, Bessie May Thorington, an infant, Jack Thorington, an infant to appear and plead to, or answer, within thirty days from the service hereof, the bill of complaint filed in the City Court of Montgomery, in Equity, against him and others, by Mary L. Thorington, et als. (to a copy of which bill he is entitled on application to the Register) Witness hand of the Register and seal of the City Court this the 7th day of January A. D. 1887.
V. M. Elmore, Register &c.
Executed by leaving a copy of the within for Winter Thorington, Jack Thorington, Bessie May Thorington, with their mother Sallie C. Thorington this the 7th day of January, 1887.
T. J. Herbert, Sheriff
by Jas A. Laprade.
Certificate of James Jackson, Justice of The Peace of Choice of Guardian Ad Litem by J. Winter Thorington.
Mary L. Thorington, et als. vs. J. Winter Thorington, et als. } In the City Court of Montgomery, In Equity.
Personally appeared before me James Jackson a Notary Public and ex officio Justice of the Peace in and for Montgomery County, Joseph Winter Thorington an infant over the age of fourteen years and chose nominated and appointed John Sindrat Winter as and for his guardian ad litem to represent him in the above entitled cause. I further certify that the said infant was made known to me. Given under my hand and seal this 7th day of January 1887.
Filed for office January 7, 1887. James Jackson (Seal)
V. M. Elmore. Register. N. P. and Ex off. J. P.
Consent Of John Sindrat Winter To Act as Guardian Ad Litem
Mary L. Thorington, et als. vs. J. Winter Thorington, et als. } In the City Court of Montgomery, In Equity.
I hereby consent to act as guardian ad litem for the three minor defendants in the above entitled cause viz, Joseph W. Thorington, Bessie May Thorington and Jack Thorington.

Filed in Office 10th day of January 1887.
V. M. Elmore, Register.

John Guidrat Winter

Order of Register Appointing J. Guidrat Winter Guardian Ad Litem for Infant Defendants.

Mary L. Thorington et als. vs J. Winter Thorington et als. } In the City Court of Montgomery. In Chancery.

In this cause it is made to appear to the Register by the affidavit of Alex T. London, Esq., that the defendant J. Winter Thorington is in the belief of affiant, an infant over the age of fourteen years, and that the defendants Bessie May Thorington and Jack Thorington are infants under the age of fourteen years and resides with their mother Mrs Sallie G. Thorington and it further appears, that a summons on the bill of complaint in this cause was served upon their mother the said Sallie G. Thorington on the 17th day of January 1887; and it further appears that J. Guidrat Winter Esq. has been nominated by the said J. Winter Thorington to act as guardian ad litem for him; and it now further appearing, that the said J. Guidrat Winter Esqr., is in all respects a suitable person to act as guardian ad litem for each of the other of said infants under fourteen years of age, and the said J. G. Winter Esq., having filed his consent in writing to act as guardian ad litem for all of said infants; it is now thereupon ordered by the Register that the said J. G. Winter Esq be, and he hereby is appointed guardian ad litem in this cause for all the said infant defendants.

(Entered order book page Forty) V. M. Elmore, Register.

Answer of John G. Winter as Guardian Ad Litem.

For J. Winter Thorington, Bessie May Thorington & Jack Thorington.

Mary L. Thorington et als, vs J. Winter Thorington, et als. } In the City Court of Montgomery. In Equity.

The separate answer of J. Winter Thorington, Bessie May Thorington and Jack Thorington by their guardian ad litem John Guidrat Winter who for answers severally and respectively for said defendants to the original bill of complaint filed in the above entitled cause, says:

1. He for each of said defendants admits all of the allegations to be true contained in paragraphs 1, 2, 3, and 4, of said bill and that Exhibit A, attached to said bill referred to in paragraph 2 is a substantial copy of the

last will and testament of Jack Thorington the paternal grandfather of said defendants. 2. He for each of said defendants, neither admits nor denies the allegations contained in paragraph 5 of said bill, they being more conclusions of law as to the construction of said will, but he admits to be true all contained in paragraph 6 of said bill. 3. And for further answer for each of said defendants he denies all the allegations contained in paragraphs 7, 8, 9, & 10 of said bill, but he admits as true the allegations contained in paragraph 11, and all other matters of fact not herein admitted he denies to be true and calls for strict proof thereof.

Filed in Office January 10, 1887.
V. M. Elmore
Register.

John Gindrat Winter.
As guardian ad litem for J. Winter Thorington, Bessie May Thorington & Jack Thorington.

Note of Testimony.

Mary L. Thorington et als, vs. J. Winter Thorington et als. } In the City Court of Montgomery. In Equity.

This cause is submitted for final decree on pleadings and evidence. Complaint being called offers the following testimony to-wit: 1st. Bill and Answer. 2nd. Deposition of George H. Gilmer. Defendant being also called offers the following testimony to-wit: 1st. Answer of Defendants. I hereby certify that the above note of testimony is correct, this 31st day of January 1887.

Filed in Office 31st day of January, 1887. V. M. Elmore, Register &c.
Entered Minutes Page 82.

Final Decree.

Mary L. Thorington et als. vs. J. Winter Thorington et als. } In the City Court of Montgomery. In Equity.

This cause is submitted upon the pleadings and evidence and upon consideration thereof, the Court doth find and declare that the Complainants are entitled to the relief prayed, and it further appearing to the satisfaction of the Court that the lands described in the bill of complaint are wholly unimproved and yield no income or revenue and are incapable of being made to yield any income without the expenditure of considerable sums of money, and it further appearing to the satisfaction of the Court that the said lands are incapable of actual partition, and that a sale of the said land is necessary in order to divide the same, and it further appearing to

the satisfaction of the Court that a sale of said land will be to the interest of the infants Winter Thorington, Bessie Troy Thorington and Jack Thorington defendants herein. It is therefore considered by the Court that complainants and H. C. Moses guardian of the infant defendants, he and they are hereby authorized and empowered to sell the said lands described in the bill on such terms and at such time as they may deem most to the interest of the said infant defendants either at public or private sale and to execute and deliver to the purchaser or purchasers deeds of conveyance therefor, and it is further ordered and decreed, that the purchaser or purchasers shall pay to the said Henry C. Moses one third of the proceeds of said lands after the costs are deducted therefrom to be used and invested, or loaned by said guardian for the benefit of said infants, as required by law, and it is further adjudged and decreed that the complainants W. S. Thorington and Jack Thorington and the said H. C. Moses Guardian of the said infant defendants each pay one third of the costs of this suit. February 1st 1887.

T. M. Arrington.
Judge of the City Court of Montgomery.

Entered Minutes Page 82-3.

State of Alabama,
Montgomery County. } I, W. H. Parks, Register in Chancery and of the City Court of Montgomery, In Equity in and for said State and County hereby certify that the foregoing pages numbered from 1 to 9, contain a full, true and correct copy of the bill, and exhibits thereto, Affidavit of infancy of defendants, Summons, certificate of James Jackson, Consent of John S. Winter to act as Guardian, Order of Register appointing Guardian ad litem, Answer of Guardian ad litem, Note of Testimony and Final decree in the case of Mary L. Thorington et als. vs. in the City Court of Montgomery, In Equity as the same appears of record and on file in this office.
Given under my hand and seal of office this 8th day of December, 1903.

W. H. Parks, Register in Chancery.

Filed for record May 13th 1904 and recorded.

A. P. Longshore, Judge of Probate.

Register in Chancery City Court of Mont.