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1st was not a considerable portion of the rails, hedge fencing and other enclosing materials moved from the land now in dispute by Mr Walker some other person by his direction and when and to what amount?

2d What number of fruit trees was on the land in the year seventeen hundred and ninety two?

William Dunbar on his oath as aforesaid to the first interrogatory of Complainants deposeth and saith that he knows not.

To the second Interrogatory of the Complainants this Deponent saith that there appeared to be a few apple Trees only under the hill some two or three and some peach trees standing in an irregular manner around and upon the hill, perhaps from thirty to forty, may be fifty, there was a cluster of Damson Trees standing along the road leading at that time to the mill and further he this Deponent saith not.

Arthur Thompson upon his oath aforesaid. Imprimis to the first Interrogatory of Complainants deposeth and saith.

Item. There was about one hundred and fifty pannels of rails carried off the land to the Quarter plantation by Richard Reeder since Major Bennet Walker's death.

Adjourned 'til Thursday to meet at 10 o'clk. J. L. Millard Clk

Thursday the sixth day of March Eighteen hundred and seventeen. The Commissioner met agreable to adjournment.

Peter Drury aged about forty five years or there about (Summoned and attending on part of Complainants) being first duly sworn on the Holy Evangely of Almighty God Imprimis to the first and second Interrogatories of Defendants this Deponent deposeth and saith that he knows not, he was not acquainted with the Land.

To the third Interrogatory of Defendants this Deponent saith that there was three houses on the Land in the year seventeen hundred and ninety two, the hall in the Dwelling house appeared to be tolerably comfortable, the room on the north east part of the house appeared to be in tolerable repair, the kitchen appeared not to be in good repair he was not in it. There was a small house below the hill which appeared to be very good but he was not in it. there is now at this time on the said land a Dwelling house, kitchen, meat house, corn house, two stables to it, he is not certain if a Dairy or not, there is a house under the hill which is not in good repair now, it seems to be rather worn. The Dwelling house appears to be in good repair at present, the kitchen is also in good repair, the meat house also is in good repair, as to the corn house he does not know the repair it is in, it appears to be in tolerable good repair from a view of it in going to the house. Major Bennet Walker made the following repairs since the year seventeen hundred and ninety two, an addition has been put on of fourteen feet to the Dwelling house, well finished with a belcona above and a piazza below, the other part of the house has gone through repairs and is in good repair at present, the kitchen standing now has been built anew, and is in good repair and stands in another place from where the old one stood, there is a little room added on to the west end of the kitchen at the chimney end, Major Walker built the meat house which is at present in good repair the corn house and stable has been built by Major Walker.

Additional Interrogatory produced to and left with the commissioner by the complainant this sixth day of March Anno Dom. Eighteen hundred and seventeen.

3d Interrogatory. Did James Morgan to your knowledge intend to bid for the land bought in by Bennet Walker at the sale thereof, and what prevented him from doing so.

Imprimis. Peter Drury on his oath as aforesaid to the third Interrogatory of Complainants deposeth and saith, that James Morgan told this Deponent he intended to bid for the land bought in by Major Bennet Walker but was prevented by him from so doing, but did not tell him in what manner he was prevented and further saith not.

The Defendants Counsel then declined taking any further Depositions.

This Commission was closed. Given under my hand and seal at Leonard Town this 6th day of March Anno Dom. Eighteen hundred and seventeen

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Test. Jno L. Millard Clk. E. J. Millard. Commissioner (Seal)

Enoch J. Millard the Commissioner attended in the execution of this Commission at Leonard Town. to wit.

26 February 1817	1 days
1 March	1 "
3 "	1 "
6 "	1
	4 days. a

John L. Millard Clerk attended same time 2 do.

Dr Dr Dr for transcribing these depositions &c. 32 p sides a 6p 2.13 p

Whereupon the Court here passed their Interlocutory Decree in the words following to wit.

Nicholas Carberry and Andrew Ochler & Rose Ann his wife exct. Mary Millard & others the heirs & representatives of Bennet Walker deceased

The proceedings in this case as well as the able and ingenious arguments of the Counsel on each side have been duly considered. The object of the bill is to obtain from Bennet Walker representatives a conveyance for a tract of Land called "Yielding Berry" which land, as alledged by the complainants was in the year 1792 purchased at sheriffs sale by Bennet Walker at the instance and for the benefit of those under whom the complainant derive their title, with money furnished to him for that purpose. It appears satisfactorily established by the evidence in the cause that the Land was purchased in trust, and that therefore, the trustee having failed to perform what in Equity he was bound to have done, and the legal estate having devolved on the representatives in the cause the complainants must be relieved unless the grounds of defence are sustainable. The statute of frauds is no barrier to the recovery, and the length of time, either as applied to the act of limitation or as a foundation to infer a transfer of the Interest of the cestuique Trusts are no impediments to the recovery, the former not applicable to cases of this description, and the delay is clearly accounted for, without inferring thereby a transfer of Interest. From the evidence it is established that after the purchase, the trustee never took the possession or claimed rent until after the death of the first person for whom a life Estate was reserved, nor until after the widow of P. Carberry to whom also a life estate was to have been secured entered into a second marriage which continued until the filing of this bill. the coverture of course must protect her interest from the statute of limitations, if otherwise, it would have been applicable to the cause and the laches or delay of her husband in not pressing on her claim can never impair it. As the wife a feme Covert, under the trust was entitled to a life Estate, and as her right continued until it was by Deed transferred to the complainants in the cause, no well founded charge of neglect or delay is to them imputable. These remarks are equally applicable to the payment or assent on the part of the second husband, no matter with what motive it was done whether voluntarily or from imperious necessity, it could not affect his wife's Interest or those entitled to the property after his decease, as then the complainants are to be relieved, the only subject is the extent of such relief. It appears in this stage of the cause full justice cannot now be done, because the terms in which the conveyances to be made are not ascertained in order therefore that a final decision should be made, It is this 10th of March 1819 ordered that the Auditor of this Court state an account between the parties, in which he will state the rent received while rents were paid, and the annual value of the land since the time it has been in the possession of B. Walker and his heirs, and give him credit for all improvements made by him that enhanced the value of the property with Interest, on the rents, on the annual value and on the improvements. That he will state and thereon account containing the profits of the land from the date of the deed from Arthur Thompson and Wife to the complainants, the statements to be made from such evidence as is in the cause or from what shall be laid before him. and that he will in like manner ascertain and report whether sufficient assets have come from B. Walker to the Defendants in the cause, the account aforesaid to report to be subject to the further order of the Court. Jno. Johnson

And the said cause so standing was continued from Term to Term of the said Court until