June Term 1828

Millard is the heir at Law of the said Mary Millard. and thereupon on motion of the said Andrew Ochler and Rose Ann Ochler his wife the said John Llewellin and Mary Llewellin his wife the heirs at Law of the said Jeremiah Booth and Ann Booth his wife. and Mary Ann Millard heir at Law of the said Mary Millard are by the bount there permitted to appear and become parties in this cause as heirs, the said John Llewellin and Mary Llewellin his wife in the place and stead of the said Jeremiah Booth and Ann Booth his wife. and the said Mary Ann Millard in the place and stead of the said Mary Millard. whereupon the said John Llewellin and Mary Llewellin his wife and Mary Ann Millard heirs at Law as aforesaid appear in bount here by Clement Dorsey and Raphael Neale and become parties in this cause as heirs in the place and stead aforesaid. And the said cause so standing was continued from Term to Term of the said bount until March Term Eighteen hundred and twenty seven when the said Andrew Ochler by his solicitor aforesaid suggested to the bount here the death of Rose Ann Ochler his wife one of the said complainants. and that Mary Ann Ochler and Elizabeth Ann Ochler are the heirs at Law of the said Rose Ann Ochler and thereupon on motion of the said Andrew Ochler by his solicitors aforesaid the said Mary Ann Ochler and Elizabeth Ann Ochler the heirs at Law are by the bount here permitted to appear and become parties in this cause as heirs in the place and stead of the said Rose Ann Ochler. whereupon the said Mary Ann Ochler and Elizabeth Ann Ochler heirs at Law as aforesaid appear in bount here by Andrew Ochler their Guardian and become parties in this cause as heirs in the place and stead of the said Rose Ann Ochler,

Whereupon the bount here passed the following Decree to wit.

Andrew Ochler and others
ag.t
James Walker and others heirs of Bennet Walker

In Chancery March Term 1827

This cause being submitted to the bount for their decision the bill, answer and all other proceedings were by the bount read and considered. Independently of the lapse of time which has taken place since the alleged purchase and the circumstance of the death of the trustee some years before suit was brought. This bount is not satisfied by the evidence in the cause that Walker did purchase for the benefit of James Barberry, as stated by the complainants, the only testimony to that fact being the proof made by Thomson and wife whose testimony is very much shaken by the circumstance of their paying rent to the trustee. If the bill had been filed against Walker in his life time he would have had the benefit of his answer instead of which the parties wait until his death and after he had made considerable improvements before they institute any proceeding to recover the property. It is also a circumstance of some weight that the purchase money was not advanced by James Barberry in whom it is alledged a resulting trust vested and under whom the complainants claim. It is therefore this sixteenth day of March 1827. adjudged, ordered and decreed that the bill filed in this cause be and the same is hereby dismissed but without cost.

John Stephen. J. R. Plater.

Whereupon the said Andrew Ochler by his solicitors aforesaid and the said Mary Ann Ochler and Elizabeth Ann Ochler by their Guardian aforesaid prayed an appeal from the decree aforesaid to the bount of Appeals for the Western shore and the same was accordingly granted. And thereupon it was ordered by the bount that the record and proceedings aforesaid with all things thereunto relating be transmitted to the said bount of Appeals for the Western shore and the same are transmitted to the said bount accordingly

Test. St. Harris Clk

Saint Marys bounty to wit.

I hereby certify that the foregoing is truly taken from the record of proceedings of Saint Marys County bount.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this sixteenth day of April in the year of our Lord one thousand eight hundred and twenty seven.

Seal

St. Harris clk
St. Marys bounty bount.

June Term 1828

And now come into the bount of Appeals here, as well the said appellants by Henry Ashton and Frederick D. Stone their Attornies, as the said appellees by Clement Dorsey and Raphael Neale their attornies: and thereupon, on motion of the said Appellees by their attornies aforesaid, it is ruled by the bount here, that the said Appellants assign the errors in the record of proceedings aforesaid, or in the giving the decree aforesaid or else said bought before the bount of Appeals here, for correcting the errors supposed to be therein, or judgment by the bount of Appeals here will be entered against them in default thereof: And the said Appellants by their attornies aforesaid, say, that in the record of proceedings aforesaid, and also in the giving of the decree aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the decree aforesaid, was given for the said against the said Appellees when by the law of the land that decree ought to have been given for the said Appellants against the said Appellees therefore in that there is manifest error, and they pray that the decree aforesaid for that error, and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that they the said Appellants may be restored to all things which they have lost by occasion of the said Decree, and that the said Appellees may rejoin to the errors aforesaid, and so forth: And thereupon it is ruled by the bount of Appeals here, that the said Appellees join in the errors by the said Appellants above assigned in the record of proceedings aforesaid, or judgment by the bount of Appeals here will be rendered against them in default thereof, and the said Appellees by their attornies aforesaid, pray that a day may be given to them to join in the errors by the said Appellants above assigned in the record of proceedings aforesaid, until the first Monday in December next: and to them it is granted: the same day is also given to the said Appellants.

At which said first Monday in December being the third day of the said month in the year of our Lord one thousand eight hundred and twenty seven which said day was given to the said Appellees to join in the errors by the said Appellants above assigned, come again into the bount of Appeals here, the parties aforesaid, by their attornies aforesaid: and the said Appellees by their attornies aforesaid, say there is no error in the record of proceedings aforesaid, nor in the giving of the decree aforesaid, and they pray that the bount of Appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid by the said Appellants above for error assigned, and that the said Decree may be in all things affirmed, and so forth.

Thereupon for the process of and upon the premises, between the parties aforesaid, it is by virtue of an act of Assembly in such case made and provided, further continued, before the bount of Appeals here, until the second Monday in June next: the same day is given to the said parties, there then to hear the judgment of the bount of Appeals here, of and upon the said premises, and so forth.

And now at this day, to wit, the said second Monday in June being the ninth day of the said month, in the year of our Lord one thousand eight hundred and twenty eight come again into the bount of Appeals here the parties aforesaid, by their attorneys aforesaid, and the decree given in from aforesaid, as the matters aforesaid, by the said Appellants above for error assigned, being seen, and by the bount of Appeals here fully understood, and mature deliberation thereupon had: for that it appears to the bount of Appeals here that there is manifest error in the record of proceedings aforesaid, and also in the giving of the decree aforesaid.

Therefore it is adjudged ordered and decreed by the bount of Appeals here that the Decree of Saint Marys County bount sitting as a bount of Equity be reversed annulled and held entirely as void.

And the said bount of Appeals proceeding to pass such decree as the County bount of Saint Marys ought to have passed.

It is further adjudged ordered and decreed that the Appellees James Walker. Harriet Walker Joseph Walker Ann Walker John Llewellin and Mary his wife and Mary Ann Millard heirs at Law of Bennett Walker by a good and sufficient Deed or Deeds of conveyance duly executed acknowledged and recorded according to law grant convey and transfer unto the Appellants Andrew Ochler Mary Ann Ochler