

P.P. Porter & H.M. Porter vs Jane Porter, Saml Pride & Wm M. BrynAda of
S.C. Gist Dec'd. , filed 28th July 1849

Graston P. Porter, citizen of Sevier County & Hannah Moore ? Porter, citizen of Cocke County, that on about 25 th Dec. 1842, James P.H. Porter, father of Complainants and Jane Owens, now citizen of Blount County entered into marriage contract which was probated and registered in both Blount and Sevier counties. Shortly afterwards marriage between James P.H. Porter and Jane Owens. Then she "removed to the county of Sevier where their said father had resided & where he continued to reside until his death." Contract conveyed considerable property mainly 13 slaves to Saml Pride as Trustee; this property to be enjoyed by James & Jane during their lifetime and then by the survivors during their lives. Pride authorized in contract upon joint requests of said James & Jane in writing to make sale of property in invest proceeds in manner specified in contract. About first day of May, 1846, their said father James P.H. Porter departed this life in said County of Sevier and left will on record leaving whole of property to Compts as his children and this gave them property he had acquired in marriage contract. Contract gave Jane power to dispose of slaves: Mariah, Charloty, Lucy, Milly, Ann & Lignenia but no others. James could leave the other slaves to his heirs. Charloty sold after marriage by decree of Sevier Chancery Court to pay debts of Jane that she owed at time of marriage. Charloty had two children, Ellen and Samuel, before she was sold, and under contract increase of slave belonged to James and as heirs Complainants claim Ellen and Samuelx at the death of Jane. But latter sold Ellen and Samuel to Spencer C. Gist "without the consent of Trustee. This deal made with Gist for purpose of "defrauding them of their rights and they charge that said Gist was fully cognizant and had notice of the situation of said slaves at the time of his purchase at least the said contract was long before that time Registered in Sevier County." Gist has since departed life intestate and Sevier County Court made William M. Bryan administrator and latter has filed bill in Chancery Court of Sevier suggesting insolvency of Gist's estate and has claimed Ellen and Samuel as part of Gist's estate. Order been issued by this court to sell these slaves as assets of Gist estate. Said Jane has other slaves and some increase among them they are now in Blount County. Complainants have been informed that she has threatened to remove with slaves to some other state. She is permitting said slaves "uz run about in idleness and dissipation, as will render them valueless to those entitled to them at her death." P.P. Porter has tried to get Pride to take action in "relation to said slaves so as to keep them from being entirely rendered valueless, but which he has declined." Contract "long and intricate" and want Court to interpret the same and Jane to make inventory of property, and slave increase. Want new trustee appointed. Asked that Jane be enjoined from removing property from state. That Bryan and Richard Lanning, C & M be enjoined from selling two slaves as assets of Gist estate. Robt H. Hynds, sol.

Cert., Cocke Co., Tenn., by P.P. Porter before Robt M. Anderson, Chancellor,
20 July 1849.

Answer of Jane Porter to P.P. Porter and Hannah Moon Porter, filed 11 May 1850. She admitted marriage contract and marriage soon afterwards. Respt states that "she is now and was at the time of the making of said contract unable either to write or to read writing." Therefore does not know if exhibit is true copy of what she signed. But believes it is substantially a true copy. She stated that "a most gross and unworthy fraud was practiced

upon her." And believes if truth can be brought to light court will declare contract void. Was widow in comfortable circumstances when James P.H. Porter made proposition of marriage. "Respt had known him for many years personally & by character and from that acquaintance she had confidence in his integrity & honor which she regrets to say was shamefully abused." Before marriage she insisted that her property be secured to her so she could dispose of it by will. "More especially was this the case in regard to her negroes whom she had raised and whom she did not intend to be owned by any other person after her death." Jane was childless and slaves occupied high place in her affections. Porter agreed and then drew instrument in writing embodying agreement. But she said contract never read to her as it now appears in exhibit. In fact he read only portion to her- "the first part and represented that the balance was in accordance with the intentions of Respt as previously expressed to him." She further stated that witnesses did not read contract nor was it explained to them. "A man of business and a lawyer dealing with an unlettered and too confiding woman." She was to have her own estate settled upon her with absolute power of disposition at her death. Porter represented himself to be person "in good circumstances entirely unembarrassed with debt, that he had a plantation which would at any time realize \$5,000 in cash but for which he asked \$6,000." And that he only owed \$90 to John Brabson. But Porter was "deeply and irretrievably embarrassed with debt and all his valuable property pledged for the payment of debts." Porter included Negro named Partick and all household furniture in trust with Pride for use of Respt Jane during her life, but in August year after marriage two negro women of Porter sold "either as execution sale or under a deed of trust." In Spring of 1844 Negro man Partrick "together with the plantation of the said James Porter were sold as Respt. now believes under a deed of trust of which the Hon. E. Alexander was trustee." She was "misinformed ... in respect to the real circumstances of the said James P.H. Porter." No household furniture of any value. She left all Porter possessed in "house which once belonged to him together with some of her own which had been taken there and which has never been returned." Knows nothing of Porter's will. Admitted sale of Charletty, and also sold Ellen & Samuel to Spencer C. Gist, he having bought their mother Charletty. Denies that Porter's heirs have any claim to children of Charletty or other slaves. Respt. Jane admitted that negroes except Charletty and girl named Mary, "previously sold to J.C. Fagg of Blount County with the written assent of said James P H Porter are now in her possession." Increase of two children besides Charletty's children since marriage. One of these died. Never heard of intention of moving to some other state until bill filed. Too old to think of moving. Wants to live rest of life in peace and freedom of "vaxation of such a suits as the complainants have seen fit to inflict upon her." Has suffered enough from them. David Owens her first husband did in Blount county about Nov. 1829 having made will which was recorded in said county. His will stated: "Further it is my will and sesire that my slave Matt be free at the age of fifty five years and that my slaves Silvia, Maria, Eliza, Marry, Mary, Charlotte, Patsy, Ellen and Gilbert be freed at age of forty five and also that the children of the female part of the said slaves be respectfully free at the age of forty five years and that this be a condition in the sale of said slaves." Previous clause in will called for sale of said slaves and William Fagg bid them off for Respt. Jane. Had always intended to carry out first husband's will and thought she had full power over slaves in marriage contract. Porter acquainted with Owen's will because it "had been submitted to his inspection but a

few days previous to the death of said David Owens." Two of slaves already freed. Gillespy & Lynn solts. Adk., before L.J. McReynolds, J.P., Blount County, April 8, 1850.

Depositions: 9 Dec. 1850, before Stephen J. McReynolds, J.P. Blount County. William Wallace, age about 56 years and John E. Tolee, aged about 27 years. Wallace remembered Major James P.H. Porter calling him into room at time of marriage contract. Porter and Mrs. Owens asked him to become trustee but he declined. Heard contract read then or at the time it was executed. "I well remember some of its provisions, the singularity of which struck me with much force at the time, and which I have frequently thought of since. I remember that among other things the Contract provides that a certain portion of Mrs. Owens negroes were conveyed absolutely to Major Porter & his heirs- the residence also at the death of Mrs. Owens to go the heirs of Porter, unless Mrs Owens should by will dispose of them, and said will to be witnessed by three witnesses- this portion or provision requiring three witnesses when thru law only required two struck me as being singular at the time." Dr. Pride not present at first interview, but was present when contract was executed. Mrs Owens present both times. He said he understood contract and thought it would be too complicated. Did not remember which interview contract read but it was read by Major Porter. Did not remember seeing witnesses sign contract. Thought contract signed late at night. "The marriage ceremony did not take place until after dark some time. It was postponed as I understood until the marriage contract deed of trust &c was recorded and registered." Could not say if contract was same he saw executed. "I have always understood that Major Porter was well Educated. I know he was considered when in the Prime of life among the best read, and best Judges of law- in after life his health was bad and I think that he pretty much withdrew from the practice of Law." Thought Mrs. Owens could read, but understood that she could not write. Mrs. Owens had confidence in Porter "not only from the fact that she married him but also from my personal knowledge of the intimacy that existed for many years between Major Porter and Mrs. Owens former husband." Mrs. Owens has no children and devoted to her slaves. "More so I think than we some times see manifested by white persons towards their children." Said "I see them about Towns, as I do other negroes, some of them I think are hired to some of the citizens- I have always considered them a smart family of negroes- somewhat spoiled by indulgence on the part of their Mistress, but not more so than other negroes would be under similar circumstances." Mrs. Owens got support from labor of her negroes. Had never heard of Mrs. Owens moving from state. Was in room when contract signed. Others present were: Dr. Pride, Col. J.C. Fagg, Major John E. Tolee. Latter Dept County court clerk and took acknowledgments of parties. Mrs. Owens was in room both times and took part in discussions regarding contract. "I was well acquainted with Maj Porter some forty years previous to his death. I always esteemed him as a high minded honorable and honest man and he was so esteemed, so far as I know and believe by the community." "An attempt to deceive and defraud any person, in contract of any kind, would in my opinion been at variance with his general bearing and character throughout life."

Tolee: Did not hear contract read but one of witnesses and took acknowledgments as acting dept. county court clerk. Said he was spoken to and asked draw bill as lawyer to set aside contract but was told he thought by Dr. Pride that both parties understood contract. Thought contract signed about

Thought General Wallace not present when contract was signed or he would have been witness since it was his custom to allow others to witness when he acted as Clerk. Mrs. Owens childless and "proverbial for her attachment to her slaves & in the one instance when I have known her to sell she did it with the greatest reluctance." Stated that if General Wallace said he was present when contract executed he would believe him.

State of Georgia, Maury County, 5 July 1851, Jane Breakbill, witness for P.P. Porter. She was about 62 years and evidence taken at her home. "I was acquainted with the said Jane and I was Joaking her soon after she had married the said Porter and she stated that she had made her self safe if her and him should disagree and she further stated that she intended about Eight Negroes to go to Porter or his children and I further understood from her she had Reserved the right of disposing of the Rest of her Negroes herself this conversation took place in Maryville just before they left Blunt county." Mrs. Owens said she made the contract because she had no children and could not control the negroes.

Hugh McDonald, J.P. Maury County, Ga., 5 July 1851.

Copy of the Nuncupative Will of J.P.H. Porter Decd.

"We George W. Massingill and Jane M. Lanning do state that the nuncupative Will of James P.H. Porter senr. was made by him on the 26th day of April 1846 in our presence, that it was made in his last sickness, a few days before his death, in his own habitation or dwelling house and where had been resident for many years next before his death and the same is as follows, to wit.

He said that it was his will and desire that his son Procter P. Porter, and his daughter Hanah M. Porter should have all of his property, and affects, that he had, or should remain at his death. He assigned as a reason for giving to or wishing his said son Procter P. and his daughter Hannah M to have all of his property and effects was he said, that he had given to each of his other children more than he could have for Procter and Hannah.

Made out by us and signed by us this 7th day of september A.D. 1846.

Sworn & subscribed to in open court
W.S.J. Ford, Clk

G.W. Massingill
Jane M. Lanning

True copy on Record, 30 March 1852, P.H. Toomey, Clk.

Transcript Sevier County circuit court; Note by James P.H. Porter, signed by Felix Axley & Levi Whittle, dated 31 Jan. 1844, for 743 dollars to Samuel Henry. Porter on 10 April 1843 came into court and admitted debt. Porter's land, 471 acres, 5th dist., adjoining C. Cowan & H.M. Thomas levied on 14 May 1843, J. Howard Shff., M.C. Rogers, Cir. court clk., by W.L. Rogers, Dept. clk. No sale on 31 Aug. 1843 for want of a bid. Land was sold court house door, Sevierville, 1st Mon. April 1844 for \$2000 sold to Samuel Henry "for the use of Samuel Bailey, Campbell Wallace & Co., A.E. Smith and A. Fine, administrator of Estate of George W Porter, dect." True Copy, M.W. McCown, Cir. Clk., 10 Dec. 1851.

Transcript, Sevier County Circuit court; 8 April 1842, President & Directors

David Owens' Will:

To all whom it may concern be it known that I David Owens of Blount County and State of Tennessee being weak in body but of sound and disposing mind and memory do make and establish this as my last will and Testament with respect to such worldly Substance as it hat pleased God to bless me to wit first after my Decease my wish is that my body be buried in a decent and Christian like manner and my Sould I recomend to God who gave it and my fundral expences and just debts to be paid as soon as my Executors herwin - afternamed can make it convenient- I will and devise to my loving wife Jinny her heirs and assigns one fifth part of my tract of Land where I now live to be laid of according to the discretion of my executors so as to include the Buildings and Spring and witha s little prejudice as conveniently may be to the other four fifths of said tract of Land and the owner or owners or purchasers or purchasers of said four fifths under the authority of this will to have free access to said Spring doing as little damage as may be to the part herein devis ed to my Said wife. I also will and bequest to my said wife all right and title that I have or might have in and to two Slaves to wit a Negro man called Ben and a agre woman called Aggy which She my said wife lately received of her fathers Estate. I also will to my said wife a certain Sorrel mare now in the possession of John Fagg and a certain Bay mare and colt now in the possession of Julius Fagg also a certain cow and calf called her cow. My will is that my said wife have one Hundred Bushels of corn for her use and the use of the family. Also that one beef cow be Sold for the use of the family to procure necessaries. I will and bequeath to my grand Son David Owens to wit David Owens a Son of my son James Owens my gray mare Saddle and Bridle but if he cannot get them or they cannot be conveniently Sent to him before the time of the Sale of the other property herein atherized to be Sold then said gray mare Saddle and Bridle to be Sold by my executors and the proceeds of said Sale to be vested in the said David ever and above his Equal Share with his Brothers and Sisters as herein after provided. It is my will and desire that all my other Estate real and persoanl not herein Specially devised be Sold according to the discretion of my Executors and the proceeds thereof divided as follows to wit I will and bequeath to my sons Robert James and William and to my Daughter Sally Donahoo the Sum of five Dellers Each. I will and bequeath to the children of my said Daughter Sally Donahoo by her husband Henry ? Donahoo the sum of three Hundred Dellers to be divided Equally amongst them. I will and bequeath to my grand children Louise Jane Owens Sally Owens Peggy Owens David Owens William Owens Robert Owens William Owens Fleming Owens and Mary Owens children of my son James Owens all the residue of the proceeds of the Sale of my Estate not herein Specially devised to be Equally divided amongst them except one fifth of the proceeds thereof of the Sale of the Slaves and other personal property which I will and bequeath to my said wife Jinny. I further will and bequeath to my said wife all my House Hold and Kitchen furniture except the cupboard and Table. Further it is my will and desire that my slave Matt be free at the age of fifty five years and that my slaves Silvia Maria Eliza Harry Mary Charlett Patsy Eleanor and Gilbert be respectively free at the age of forty five years and also that the children of the female part of the said Slaves to respectively free at the age of forty five years and that this be a condition in the sale of said Slaves. Lastly I do hereby constitute & appoint my wife Jinny and my friend James Wilson Executors of this my last will and testament hereby revoking and disamulling all former wills that might or may have by me been made. In witness whereof I have hereunto Set my hand and seal this

twenty first day of October in the year of our Lord one thousand Eight Hundred and twenty seven

His
David X Owens (seal)
mark

Signed and acknowledged before us as witnesses to the foregoing will and testament in the presence of the said David Owens and at his request and in the presence of each other

John Wilinon, James Trundle, William Thomas, Thomas Owens.

Transcript, President & Directors of the Bank of Tennessee vs. James P H. Porter & Others, debt \$540, 8 April 1842, Sevier County Circuit Court, M.C. Rogers, Clk., W.L. Rogers, D. Clk. James P.H. Porter, 23 March 1841 made note and agreed to pay George W. Porter above amount. Note was endorsed by George W. Porter, James P.H. Porter Jr., and C. Cowan. Aug. 6, 1842 above defendants confessed debt in Sevier Court. J. Howard Shff. sold Clary & Hager two Negro women belonging to James P H. Porter, 7 Aug. 1843, "made one hundred & twenty five dollars." Sold negro man Patrick belonging to James P. H. Porter to Spencer C. Gist for \$200. one 1 April 1844.

Bill of sale: "I Jane Porter of the county of Blount and state of Tennessee do sell bargain transfer & convey unto Spencer C. Gist of sevier county Tennessee two small negroes towit a girl named Ellen aged about three years old & a boy aged about Sixteen months old samuel fer and in consideration of the sum of three hundred Dollars which negro the said Jane Porter sell her interest alone in untill they arive at the age of forty five (at which time they are to be free she hearby warenting and defending the said negroes unto the said Spencer C. Gist his heir's anad assigns forever sofar as her intrust is concerned in testimony whereof I have hearunto set my hand and seal this 12 May 1847.

Witnesses present, C.D. Anderson, J.C. Fagg

signed
xXXXXXXXXX
her
Jane X Porter
mark

Depositions: Julious C. Fagg, aged about 41, before Stephen J. McReynolds, J.P. Blount County, at home in Maryville of Jane Porter. Fagg said known negroes since he was a boy "they are the same negroes Uncle David Owens willed to be Free at the age of forty five." "Aunt Jane Owens" bought negroes at sale of David Owens. "When Aunt Jane Owens & Mr. J.P.H. Porter were to be married I under stood there was a marriage contract between them which I never saw untill the evening they were married notwithstanding I was about the House more or less every day on the night the afore sd J.P.H. Porer & Jane Owens were married I was called on to bring the Clerk to take h their acnolledgement to the marriage contract and to witness the same after which I went with the clerk to the clerks office I there for the first time with the assistance of J.E. Toole the clerk read the contract. I was verry mutch surprised at its contents as I found it verry different from what I had expected & from what I thought I had been told I there fore went badk to aunt Owens and told her to distrey the contract between her & Mr. Porter and not to marry him for he had decieved her and had taken the advantage of her in the marriage contract She expressed her disbelief in what I told her I then told her some things that were in the contract. She said it was not so I

then tried to get her to distroy the contract & marry him if she would without any marriage contract & let his creditors have the benifit of her property but I could do nothing with her for her confidence was unshaken in Mj Porter. Some time in the night before they were married Doct Pride came in & was handed the marriage contract or took it & was reading it to himself when Aunt Jane asked him if it was all right he said he supposed it was but the marriage contract was not read out ther that night by him or any one else after I went there which was before night.... I told her the next morning after her & Mj Porter was married & in the presance Mj Porter that she Mrs. Owens was decieved in the marriage contract and told her of some of its provisions which she denied and asked Mj Porter if it was so all the conversation I had with her before & after their marriag convinced me that she had been decieved ' imposed on in the marriage contract by Mj Porter." Said witnesses did not hear the contract read. Always understood Porter to be "an eminent lawyer and a well educted man." He had taken papers to Sevierville for Porter to examine for his Aunt Jane. She could not write or read writing. Loves her negroes and unwilling to part with them. Said negroes were hired to good masters except small ones. Said he heard Maj. Porter tell her that he had given her a "first rate negro man and a good farm." She made will at his house about eight years ago when Porter was present and Doct Pride wrote will and signed by three witnesses. Did not expect to benefit by suit but wanted justice done. Had not been promised any of the negroes. Did get deed from her for some of negroes before she and Porter were married. Did not recollect his Aunt telling him that she had no children and would not object if Maj. Porter's children got the slaves. "Did you ever say to Compt P.P. Porter or to the Rev. Wm H. Rodgers in his presence at san Juan in Mexice that you expected to have a lawsuit with the said Compt Porter when you come home or at some time about some negroes?" Answered that he might have said this but did not remember it. Said he did tell his Aunt that he would file bill to have marriage contract set aside if she would give him interest in negroes. Said his Aunt living with him at this time and that he had talked to her council.

William Toodle aged about 60: Said he married Jane and Maj. Porter but did not remember year but about 1/2 9:00 @'clock. Said Porter had reputation of honest man and Jane was woman who conducted her own business. 4 March 1851

Note dated 2 Nov. 1842 made by James P H. Porter, endorsed by A. Lawson Jr., for \$568.92. Note payable to Campbell Wallace & Co., payable at their "counting room at Knoxville."

Note for \$400. made by James P.H. Porter to George W. Porter, 25 Aug. 1840, payable 1 Dec. 1842. Suit for collection brought by Abraham Fine, adm. George W. Porter, April 8, 1843. Both above notes paid out of proceeds of sale of farm to Samuel Henry for \$2000.