

other.

Sworn to and subscribed before us in open Court
 The first day of September 1851 (Signed) Anders. S. Bell
 (Signed) John Anderson
 (Signed) C. Harris

6. Last Will of George M. Waters

Gwinnett county was created by the Acts of December 15 and December 19, 1818, from the Cherokee cession of July 8, 1817, and the Creek cession of January 22, 1818. County seat: Lawrenceville.

The text of Major George M. Waters' last will is taken from a transcribed version in Georgia Supreme Court Case No. A-1681, through the courtesy of the Department of Archives and History, Atlanta.

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State of Georgia

In the name of God Amen. I George Morgan Waters of the County of Gwinnett in the State aforesaid being of sound mind and body do make and declare this to be my last will and testament, hereby revoking all other wills and testaments by me heretofore made and executed.

First. I bequeath my soul to God hoping for his mercy through the only merits of our Lord and Savior Jesus Christ.

Secondly. I direct my qualified Executors to pay all my just debts.

Thirdly. Whereas I own and hold in possession the undernamed Slaves, To Wit, Rory, Queen, his wife, her children Binah, George, Rory (infant), Mary sister to Rory, & her children William and Rose, Mary's brothers Pompey & Tom-Mary's sister Caroline and Caroline's daughter Dinah (with the exception of Pompey the above people are at present in Bryan County in this State). Also the following Slaves in Gwinnett County, State aforesaid, to wit: Polly, her children James, Morgan, (James & Morgan at present not in Gwinnett County), Jefferson, Cherokee, John, Elizabeth, boy Swimmer, George, girl Polly, Peggy sister to Polly, her children Charles, Bowling, Betsey, Betsey's children Young Peggy, Catherine, Willey, Georgia, Thomas, infant girl Josephine, Jenney sister to Betsey, Jenney's children, to wit, Sarah, Harriet, Hughes, Henry Clay, and infant boy Clarke, Lydia, sister to Jenney, Lydia's children Hannah, Jeffrey and infant boy, Susan, alias Suckey, sister to Lydia, Suckey's infant girl Caroline, Prudence sister to Peggy and Polly, Prudence's daughter Cynthia. On account of the faithful services of my body servant William (the husband of Peggy) I will & desire his emancipation or freedom with the future issue and increase of all the females mentioned in this Item of my will. If it is incompatible with the humanity &c of the authorities of the State of Georgia, I direct my qualified Executors to send the said Slaves out of the State of Georgia to such place as they may select; and that their expenses to such place shall be paid by my executors, out of my Estate; and that the whole of this proceeding be conducted according to the laws and decisions of the State of Georgia, I having no desire or intention to violate the Spirit, or intention, or policy of such laws; and I do further direct, that if any person to whom any bequest or disposition contained in this Item, [should] offer any impediment to its being carried into execution, he or she shall, in no event, receive any part of my said estate; but my executors are enjoined to withhold from the person so opposing, any share or portion herein devised and bequeathed to him or her, and to distribute the share so forfeited amongst my other heirs, per Stirpes and not per Capita. I desire that the said

Slaves (if compelled) may select their residence out of the State of Georgia, and in any part of the world.

Fourth. I give and bequeath to my qualified Executors in trust for the benefit of the children of my deceased daughter Catherine, the former wife of William H. Fitts, the following Slaves, to Wit, Sawney, his wife Lucy and their children, Bicha, Nanny, August, Ancil and April, with the future issue and increase of the females. I also give and bequeath in trust to my qualified Executors to my deceased daughter's children, Harriet & Catherine Fitts, my plantation called Warsaw in this County containing about one hundred & thirty (130) acres more or less. Also three lots of land within Forsyth County known as Nos. three hundred & thirty (330) Three hundred & thirty one (331) Three hundred & thirty two (332) and fractional lot NO Thirty six (36), all within the first district, first section of said County. I also give and bequeath in trust to my qualified executors to my Decd. daughter's children Harriet & Catherine Fitts Six hundred Dollars (\$600.00). I wish my qualified Executors to have this amount laid out in the Education of my Grand Daughters Harriet & Catherine Fitts and for no other purpose whatever. Should it please the providence of God to take to himself either of my poor Grand daughters Harriet & Catherine Fitts before they become of age or married, I give and bequeath the whole amount mentioned in this Item of my will to the survivor. And should it please God to remove by death both of my Grand daughters, Harriet & Catherine Fitts before they obtain of age or are married, I then give and bequeath the whole amount mentioned in this Item of my will to the children of my Daughter Williamina C. Cleland wife of James Cleland and to the children of my Daughter Sarah M. Charlton wife of the late Dr. Thomas J. Charlton, share and share alike.

Fifth. I give and bequeath to my qualified executors all the rest and residue of my estate both real & personal and choose in trust in action that they will hold the same together without any distribution until all my directions contained in the third Item of this my will shall have fully and in all respects [been] complied with; and so soon as that has been done (and not before on any pretence) I direct that they shall divide my estate real and personal into three equal parts or Shares, and I give, devise and bequeath one Share or equal part thereof to my son Thomas J. Waters, his heirs, executors, administrators and assigns forever.

Sixth. I direct my qualified executors to hold with the exception of one thousand dollars exclusive of Interest, say, out of my daughter Williamina C. Cleland's share of portion of my real and personal estate to be paid over to my son Thomas J. Waters, his heirs and assigns, trustee to my daughter Williamina C. Cleland & children, being the amount of my note dated 25th July 1840 and made payable to Thomas J. Waters, trustee &c, this disposition and arrangement is in Justice to Thomas J. Waters and for his security &c. During my life I have given to my daughter Williamina C. Cleland and to her children considerably more than this amount, more so than I have given to any of my other children. I wish it however to be distinctly understood that my son Thomas J. Waters, his heirs and assigns, is to pay as trustee as aforesaid the above amount of one thousand dollars, exclusive of interest thereon, to his sister Williamina C. Cleland and children out of his own individual sources or means. The amount is not to be considered (as he receives an equivalent or the same amount from his sister Williamina C. Cleland's share or portion from my estate) a debt against my estate or to be drawn from my real and personal estate whatever. Nor is it to militate or take from one particle to the carrying out by my qualified executors the third Item of this my will and testament. The balance share or portion of my estate real & personal (after deducting the above mentioned sum, principal and interest to be paid over to Thomas J. Waters, his heirs and assigns in trust

by my daughter Williamina C. Cleland) I give and bequeath to my daughter Williamina C. Cleland during her natural life, and from and after her death, to her children, to them, their heirs, Executors, Adms. and assigns, share and share alike forever.

Seventh. I direct my qualified executors to hold one other equal share apart thereof for the use and benefit of my daughter Sarah M. Charlton of Savannah, Chatham County, the widow of my deceased friend Dr. Thomas J. Charlton during her natural life and from and after her death to her children, to them, their heirs, Executors, Adms. and assigns forever.

Eighth. And I direct my qualified executors in the division of my Negroes among my children to divide the said Negroes in families so that the principles of humanity may be observed and the separation from each other be as free from pain as possible. I also hope and pray (out of respect to my memory) that the division of my estate among my children may be without wrangling or litigation & c.

Lastly. I nominate and appoint my esteemed friends Robert M. Charlton of Savannah, Chatham County, my daughter Sarah M. Charlton of Savannah, Chatham County, A.R. Smith of Lawrenceville, Gwinnett County, William Rogers of Forsyth County & my son Thomas J. Waters my Executors and Executrix to this my last will and Testament.

In witness whereof I have hereunto set my hand & seal this 12th day of March in the year of our Lord one thousand eight hundred and fifty one (1851).

The words "by death" in the fourteenth (14) line 3rd page, "Share or portion of my Estate" in the twenty first (21) line 4th page interlined before signed. Signed, Sealed & declared by the testator as his last Will and Testament in the presence of us who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses thereto.

(Signed) George M. Waters

Test. Joseph W. Baxter
B.E. Strickland
John Smith

7. Major Waters' Will: A Supreme Court Ruling

The third item of Major George M. Waters' last will and testament became a celebrated issue for diverse interpretations as to the testator's true intent and purpose. Williamina C. Cleland, his daughter, and other heirs contended that Waters wanted only to free his body servant, William, and the "future increase" of all females named in Item 3. The executors, on the other hand, maintained that it was his will that all 47 slaves named were to have their freedom upon the death of their master. The plaintiffs appealed a lower court decision to emancipate the slaves to the Supreme Court of Georgia, before justices Joseph. H. Lumpkin, Ebenezer J. Starnes, and Henry L. Benning.

In Judge Lumpkin's opinion written September, 1855, he conceded to the right of a testator to free his slaves, but emphasized, in the end, that such a practice was not in the best interest of the slaves, of society, and of the State of Georgia. In reviewing the case, Judge Lumpkin held:

1. That the intention of the testator was to manumit all the slaves mentioned in this [the 3rd] item of the will.

2. That it was the wish of the testator for the slaves to be set free and remain in Georgia, provided the consent of the Legislature could be obtained for that purpose; otherwise, they were to be removed beyond the limits of the State, they to select the place where they could be free.