

614

SUPPLEMENT TO
Record No. 906

MYRTLE GORDON SEARLES' ADMR.

v.

GEORGE S. GORDON'S ADMR., ET ALS.

FROM THE CIRCUIT COURT OF HENRICO COUNTY.

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel

H. STEWART JONES, Clerk.

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VA

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

MYRTLE GORDON SEARLES' ADMR.

v.

GEORGE S. GORDON'S ADMR., ET ALS.

SUPPLEMENT TO RECORD NO. 906.

VIRGINIA:

County of Henrico, to-wit:

The following is a transcript from the records of the Circuit Court of the County of Henrico, of 2 Chancery Causes, pending therein under the short style of

Clifford W. Fuller, Executor of the last will and testament of George S. Gordon, deceased, et als.,

vs.

Myrtle R. Gordon Searles, et als.

And

Cannon & DeYoung, Admrs. d. b. n. c. t. a. of George S. Gordon, Deceased,

vs.

Elsie Gordon Stelle, et als.

Which is ordered to be made by Mr. Collins Denny, Jr., one of the attorneys in the said Causes, and is to be deemed and treated as a part of the transcript of the record of said Causes, ordered by Jerome C. Fisher, Admr. d. b. n. c. t. a. of the estate of Myrtle Gordon Searles, and which transcript bears date the 15th day of October, 1929, now pending in the Supreme Court of Appeals of Virginia.

Supreme Court of Appeals of Virginia.

Six vouchers filed as Exhibit Brubaker No. 5, being vouchers Nos. 13 $\frac{1}{2}$, 275, 276, 277, 280 and 284, filed as part of Brubaker's depositions taken on November 21, 1919, and returned with Commissioner Shields' Report of November 8, 1921.

page 2 }

EXHIBIT BRUBAKER NO. 5.

13 $\frac{1}{2}$

Clifton Spgs. N. Y. May 17, 1907.

Received of C. W. Fuller, Trustee for Rhea—under will of Geo. S. Gordon, Dec'd. One Thousand Dollars To apply on support and maintenance said Rhea.

MYRTLE R. SEARLES.

\$1,000.00

275

Cleveland, O., Mch 13, 1911.

Received of C. W. Fuller Exr. Est. Geo. S. Gordon, Dec'd. Twenty-four Hundred twenty five & 35/100 Dollars Advance acct. share Est. of M. R. Searles in said Est. (Olson Land Cont.)

S. W. SEARLES,
Exor. Est. M. R. Searles.

\$2,425.35

276

Cleveland, O. Mch 13, 1911.

Received of C. W. Fuller Exr. Est. Geo. S. Gordon, Dec'd. Thirty two Hundred Sixty nine & 79/100 Dollars Advance acct. share est. M. R. Searles in said Est. (Wimer contract).

S. W. SEARLES,
Exor. Est. M. R. Searles.

\$3,269.79

277

Cleveland, O., March 13, 1911.

Received of C. W. Fuller, Exr. Est. Geo. S. Gordon, dec'd.

Two Hundred & Eleven 05/ Dollars Advance acct.
page 3 } share Est. M. R. Searles in said Est. (Griger Land
Cont.).

S. W. SEARLES,
Exor. Est. M. R. Searles.

\$211.05

280

Cleveland, O., Aug. 7, 1911.

Received of C. W. Fuller, Exr. Est. Geo. S. Gordon, dec'd.
Five Hundred Dollars Acct. distributive share Est. M. R.
Searles in said est.

S. W. SEARLES,
Exor. Est. M. R. Searles.

\$500.00

284

Cleveland, O., Sept. 26, 1911.

Received of C. W. Fuller, Exr. Est. Geo. S. Gordon One
Thousand Dollars Adv. acct. share Est. M. R. Searles—said
est.

S. W. SEARLES,
Exor. Est. M. R. Searles.

\$1,000.00

The exceptions filed on the 22nd day of December, 1924,
by the estate of Myrtle Gordon Searles to the Commissioner's
report of December, 1924, are in the following words and
figures:

Virginia:

In the Circuit Court of the County of Henrico:

Clifford W. Fuller, Executor, etc.

vs.

Myrtle R. Gordon Searles, et al.

And

page 4 } John L. Cannon and B. I. DeYoung, Administra-
tors, d. b. n. c. t. a. etc.

vs.

Elsie Gordon Stelle, et al.

EXCEPTIONS ON BEHALF OF THE ESTATE OF THE WIDOW.

Now comes John R. Searles, Administrator d. b. n. c. t. a. of the Estate of Myrtle Gordon Searles and except to the report of the Master Commissioner filed December 17th, 1924, as follows:

Question #4. Interest on amount due from Fuller Estate and American Surety Company.

We except to that portion of the Commissioner's finding and report upon Question No. 4, which charges the Estate of Fuller, and the American Surety Company with interest at only three per cent (3%) after November 1st, 1919, on the ground that it is in error as to the law and the facts.

The report shows (on pp. 11 and 12) that the Surety Company has steadily maintained that there was no shortage for which they were liable, but that the shortage was against Fuller, as Trustee for Rhea Searles, and that they have not been prevented, by other litigation, from paying the shortage.

Likewise, the controversy raised by them as to commissions, and similar questions, which this report shows to be unfounded, shows their unwillingness to pay the deficiency for which they are liable.

We submit, further, that even if anything less page 5 } than the legal rate of interest should be charged, three per cent (3%) is too low a rate and that if the amount of the defalcation had been paid into Court, it could have been safely invested under direction of the Court, in securities which would give a much larger return.

The Surety Company submitted no evidence as to the amount earned by the funds wrongfully taken by the administrator and we believe it to be the unquestioned fact that these have made large profits since November 1st, 1919. (Report, p. 28.)

Lastly, this low rate of interest should not be continued into the future, and unless the Surety Company now pays into Court the amount of the shortage, it should continue to pay the legal rate of interest on the money which it withholds from the widow and next of kin.

Question #5. The computation of the widow's one-half interest.

We except to the findings and report upon the computation of the widow's one-half share on the ground that this is

erroneous in law in considering the judgment for alimony as a debt.

Question #7. Charge of Interest on Amount paid Widow.

We except to the whole of the report upon this question and particularly to the last paragraph, giving the Executor "Recourse against any of the beneficiaries for recovery of the amount of any interest with which he may page 6 } be charged on account of overpayments, or advances" on the ground that this is erroneous in law, and upon the evidence in this case.

We submit that it is the law of Virginia, as well as of other states, that an Executor has no right to recover interest on payments to the widow.

Question #10. As to Interest Charge on Overpayments to Widow.

We except to that portion of the report upon this question particularly stated in the three paragraphs on p. 90 which directs that in the statement of the account interest be charged on overpayments to the widow, on the ground that this is erroneous in law.

Respectfully submitted,

THOMPSON, HINE & FLORY,
Attorneys for the Estate of Myrtle Gordon
Searles.

A letter from Jerome C. Fisher, to William E. Crawford, Commissioner, dated November 22, 1926, and filed with Mr. Crawford's November 1928 Report is in the following words and figures:

LETTER OF JEROME C. FISHER.

"Mr. William E. Crawford,
Traveler's Insurance Building,
Richmond, Virginia.

RE: Gordon Estate.

Dear Mr. Crawford:

I have been told in a rough way, of Judge Scott's ruling

and that the account had to be estated and, therefore, was returned to your jurisdiction.

I wish to state that you have my sympathy.
 page 7 } We have dug up out of the old papers, some of
 the vouchers which bear very directly on the ques-
 tion of part of the payments being for the support of Rhea,
 and these we will wish to put before you.

I would appreciate it if, when this matter has been put in your hands, you would designate a time when we can offer them, and probably some explanation with them. In the meantime, I am taking it up with other counsel and it may be that this whole phase of the matter can be agreed upon between us.

However, I just wanted you to know that we did desire an opportunity to submit this to you.

Very truly yours,

JEROME C. FISHER."

Fisher:EL.

NOTICE.

A notice to take depositions in the State of Michigan and California and is in the following words and figures:

Virginia:

In the Circuit Court of the County of Henrico.

Clifford W. Fuller, Executor, etc.,

vs.

Myrtle R. Gordon Searles, et als.

And

John L. Cannon, Executor, etc.,

vs.

Elsie Gordon Stelle, et al.

NOTICE TO TAKE DEPOSITIONS.

page 8 } To: Henry Crofut and Collins Denny, Jr., Adminis-
 trator in Virginia of the Estate of Rhea Gordon
 Searles, c/o Denny and Vallantine, Travellers Building,
 Richmond, Virginia.

You will take notice that on the 25th day of April, 1927, at the office of the Michigan Smelting and Refining Company, Detroit, Michigan, between the hours of 9:00 A. M. and 6:00 P. M. of that day, and further that on the 2nd day of May, 1927, at No. 621 Security Building, Los Angeles, California, between the hours of 9:00 A. M. and 6:00 P. M. on that day, I shall proceed to take the depositions of John R. Searles, et al., to be read in evidence in my behalf in the above suit pending in the Circuit Court of Henrico County, Virginia; and if from any cause the taking of said depositions be not commenced on that day, or if commenced they be not completed on that day, the taking of the said depositions will be adjourned from day to day at the same place and between the same hours until they are completed.

JOHN R. SEARLES,
Executor of the Estate of Myrtle Gordon
Searles.

By THOMPSON, HINE & FLORY,
his Attorneys.

Service of the above notice by copy is herewith acknowledged this 6th day of April, 1927.

COLLINS DENNY, JR.,
Admr. in Va. Estate Rhea Gordon Searles."

The decree entered in the said causes on the 23rd day of July, 1928, is in the following words and figures:

page 9 } DECREE OF JULY 23, 1928.

Virginia:

In the Circuit Court of the County of Henrico.

C. W. Fuller, Executor, etc.,

vs.

Myrtle R. Gordon Searles, et als.

Cannon and DeYoung, Admrs., etc.,

vs.

Elsie Gordon Stelle, et als.

These causes came on this day to be further heard to-

gether upon the papers formerly read, upon the decree of the Supreme Court of Appeals of Virginia entered on the 28th day of May, 1928, upon th appeal of John L. Cannon, Executor of C. W. Fuller, deceased, and the American Surety Company from the decree entered herein on the 10th day of November, 1926, together with the written opinion of said court of Appeals referred to in its decree, and upon the decree of the said Court of Appeals entered on said 28th day of May, 1928, on the appeal of Collins Denny, Jr., Administrator, etc., and Henry Crofut from the aforesaid decree of November 10, 1926, which said decrees of the Supreme Court of Appeals of Virginia were certified to this court on the 21st day of July, 1928, and were argued by counsel.

Upon consideration whereof, it is adjudged, ordered and decreed, in obedience to the decree of the Supreme
 page 10 } Court of Appeals of Virginia entered on said first
 mentioned appeal, that these causes be and are hereby recommitted to Commissioner William E. Crawford and he is hereby directed to restate the accounts embraced in his report filed herein on December 28, 1925, in accordance with the principles set forth in the aforesaid written opinion of the Supreme Court of Appeals of Virginia.

The decree entered in the said causes on the 10th day of May, 1929, is in the following words and figures:

DECREE OF MAY 10, 1929.

Virginia:

In the Circuit Court of the County of Henrico.

C. W. Fuller, Executor et als.,

vs.

Myrtle R. Gordon Searles, et als.

And

John L. Cannon and B. I. DeYoung, Administrators, &c., of
 C. W. Fuller, deceased,

vs.

Elsie Gordon Searles, et als.

This day came the estate of C. W. Fuller, by counsel, and filed a certificate of deposit of the State-Planters Bank & Trust Company, dated May 6, 1929, showing the deposit by the estate of C. W. Fuller to the credit of this court in this cause of the sum of One Thousand One Hundred and Eighty-

page 11 } six Dollars and Forty-four cents (\$1,186.44), as directed by decree entered herein May 4, 1929, and it appearing to the court that the above payment is in full discharge and satisfaction of all liability on the part of C. W. Fuller, deceased, or of his estate to the estate of George S. Gordon, deceased, arising out of the transactions of said C. W. Fuller, deceased, as executor and as trustee for Rhea Gordon under the said will, and also in full discharge and satisfaction of any and all liability on the part of the American Surety Company of New York to the estate of George S. Gordon, or to said trust fund, because of its suretyship on the bond of C. W. Fuller, executor of the will of said George S. Gordon, the Court doth so adjudge, order and decree, and doth discharge the said estate of C. W. Fuller and the said American Surety Company of all further liability in the premises.

page 12 } State of Virginia,
County of Henrico, To-wit:

I, Samuel P. Waddill, Clerk of the Circuit Court of the County of Henrico, do certify that the foregoing is a true transcript of so much of the record in said causes as Collins Denny, Jr., Attorney has requested to be copied.

Given under my hand this 12th day of November, 1930.

SAMUEL P. WADDILL, Clerk.

Fee for transcript, \$3.00.

page 13 } IN THE
SUPREME COURT OF APPEALS OF VIRGINIA
AT RICHMOND.

MYRTLE GORDON SEARLES' ADM'R.

vs.

GEORGE E. GORDON'S ADM'R., ET ALS.

Take notice that the undersigned will, on November 19, 1930, at 10:30 o'clock A. M., or as soon thereafter as counsel

may be heard, move the Supreme Court of Appeals of Virginia, at Richmond, at its court room, for permission to file as a supplement to the record in the above mentioned cause the following items contained in the record of this proceeding before the Circuit Court of Henrico County, Virginia:

1. Six vouchers filed as "Exhibit Brubaker No. 5", being vouchers Nos. 131½, 275, 276, 277, 280 and 284.

2. The exceptions filed by the estate of Myrtle Gordon Searles to the Commissioner's report of December, 1924.

3. A letter from Jerome C. Fisher to William E. Crawford, Commissioner, dated November 22, 1926, and filed with Mr. Crawford's November, 1928, report.

4. A notice given by Mr. Fisher to the other parties to the effect that he would take additional depositions in April and May, 1927.

page 14 } 5. Decree of May 10, 1929.

6. Decree of reference of July 23, 1928.

COLLINS DENNY, JR.,
Administrator of Estate of Rhea Gordon
Searles.

Endorsed on Back.

The undersigned hereby accepts legal service of the within notice this 8th day of November, 1930, and consents to the inclusion in the record of the items mentioned herein.

THOMPSON, HINE & FLORY,
WELLFORD & TAYLOR,
Counsel for estate of C. W. Fuller, American
Surety Company of New York, and Henry
Crofut.

ROBT. E. SCOTT,
Counsel for John L. Ingram, Admr., et als.

A Copy—Teste:

H. STEWART JONES, C. C.

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