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IN THE PROBATE COURT.

IN RE ESTATE OF SARAH CROKER GIBERSON.

HALIFAX, THURSDAY, JUNE 18, 1936, 10.30am

Before THE REGISTRAR,

ROBERT F. YEOMAN, K.C.

MINUTES OF PROCEEDINGS.

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APPEARANCES:

M. B. ARCHIBALD, K.C., } for the Salvation Army, Halifax, executor.
T. C. DOYLE, }
R.A. LAWRENCE, J.F. SHAW & D.R. BISHOP (N.B. Bar) for Blanchard
Giberson.

JOHN F. SHAW for Lorna Doone Abbott.

MR. ARCHIBALD: I wish to register the exception, that these proceedings are by way of petition for administration - and I object. This is not the proper proceeding to take; the will should be attacked in some other way. I think the proceedings are wrongly instituted by petition for administration. I think the action should have been to set aside probate of the will. For the purpose of the record I would suggest that due consideration be given to this point, and the proceeding be amended in such a way that there will be no necessity to step in at a later stage to set aside the will; the parties are before the court, let it be a proper application; there should be an application to revoke the letters testamentary.

THE REGISTRAR: Either a citation could be issued returnable forthwith, everybody being here, or it could be returnable at a future date, and it could be agreed by everyone present that the evidence on this application could be used on the other.

MR. ARCHIBALD: I suggest you give consideration to this point: if it is sufficient to proceed with the petition for administration before us, that is all right; but, if not, that note be taken of this application: all it does, I submit, is to place Your Honour in a more favourable position to deal with it. It can be an application now.

MR. BISHOP: Would you allow it to be amended informally now?

MR. ARCHIBALD: I would do; it does not appear to me it is the right way to go about it; but there is certainly a provision for an application to revoke probate. I would be willing to go on today.

MR. SHAW: In view of the doubt as to the procedure in this case, I wonder if it can be agreed that the evidence taken today can be made a matter of record.

THE REGISTRAR: I will have prepared a citation, which will be addressed to Thomas H. Mundy, Halifax, executor under the last will and testament of Sarah Croker, deceased, and it will have the same recital as the other; it will be exactly the same except it will be to shew cause why the letters testamentary issued out of this court to Thomas H. Mundy as executor under the last will and testament of Sarah Croker on the 6th June, 1936, should not be revoked; and Mr. Shaw makes the suggestion that they be treated as one; they really are the same application, or the same thing is involved; it is better to have two citations. Is it satisfactory that the evidence be used in both applications?

MR. ARCHIBALD: I am only interested in the evidence revoking the will.

THE REGISTRAR: Is it agreed that the evidence in the estate of Sarah Croker Giberson shall be used in this?

MR. ARCHIBALD: If the application to set aside the will succeeds, while I have been cited in the other, my interest ceases unless there is an appeal.

THE REGISTRAR: It is agreed by all counsel present that the evidence presented this day, and at any adjournment, in the estate of Sarah Croker Giberson, shall be treated as part of the record in an application to revoke the letters testamentary in the estate of Sarah Croker, and be treated accordingly.

MR. ARCHIBALD: I thought it would be that the evidence taken in the revocation proceedings should be taken as evidence in the other.

THE REGISTRAR: I don't think so; I don't believe a citation to revoke letters testamentary is strictly necessary; it should be

Q. How long did you know her before you married her?
 treated on the basis of Mr. Shaw's application.

MR. BISHOP: I would like it understood that this evidence is to be admissible in all future actions - if there should be any.

THE REGISTRAR: I merely said that the evidence given today on the Sarah Croker Giberson estate, and at any adjournment of that hearing, would be used in the Sarah Croker hearing.

MR. SHAW: It can be referred to at any subsequent hearing to avoid the necessity of the people coming again.

BLANCHARD GIBERSON, being called and duly sworn, testified as follows:

Examined by Mr. Shaw:

Q. Your name is Blanchard Giberson?

A. Yes.

Q. Where do you live?

A. Andover, N.B.,

Q. How long have you lived there?

A. I have lived there 31 years according to me.

Q. What is your occupation?

A. Farmer.

Q. Farm at Andover?

A. Yes.

Q. It is near Andover?

A. Yes. That is the post office where we get our mail.

Q. Where is the place where your farm is located?

A. That would be Andover parish, pretty well the south end of the county; right on the boundary line.

Q. Has the actual place you live any name?

A. It used to have a post office out there years ago before we got free delivery, it was called Beaconsfield.

Q. Did you know a woman by name of Mrs. Sarah Croker?

A. Oh, yes.

Q. Did you marry that woman?

A. Yes.

Q. How long did you know her before you married her ?

A. Well, it must have been eighteen months.

Q. Were you any relative of her's ?

A. No, they were sitting the day were you married ?

Q. Do you remember where the marriage took place ?

A. Yes, before that had you been married ? The ceremony

Q. Where ?

A. Bath, Carleton county, N.B.,

Q. Any particular place at Bath ?

A. At the hotel; I forget the name of the hotel.

Q. Know who kept that hotel ?

A. Yes, Winslow Turney Giberson.

Q. Who was the officiating clergyman ?

A. Addington Giberson.

Q. Did you know him ?

A. Yes, for years.

Q. Was he in charge of the parish there ?

A. I could not tell you that.

Q. Was he in charge of a congregation - parish is more of an

English church name - was he in charge of the congregation ?

A. He was in charge of the congregation where I came from in

New Brunswick.

Q. Were there any witnesses to the marriage ?

A. Yes, Turney Giberson and Margaret Keenan.

Q. Did you know both these parties ?

A. No, not Miss Keenan.

Q. Is there anybody here in court that was present at the time of the marriage ?

A. Yes, Turney Giberson.

Q. Where is he ?

A. This old gentleman sitting over there.

Q. When did this marriage take place ?

A. January 24, 1914.

Q. Have you any way of fixing that date ?

A. Well, not exactly.

Q. Can you remember anything that took place around about that

time that would fix it in your mind ?

A. Well, the war broke out in 1914, and we were married then; it was haying; we had two men hired.

Q. When they were cutting the hay were you married ?

A. Yes, she was there keeping house for me, and the war was on.

Q. How long before that had you been married ? The ceremony actually performed ?

A. It was the winter before.

Q. That is what I understand you to say, that you can remember the war breaking out, and haying time, and that your wife was with you, and that you had just been married the previous winter ?

A. Yes.

Q. By that you mean, when the snow was last on the ground ?

A. Plenty of snow, yes.

Q. After you married Mrs. Croker where did you go ?

A. We stayed there a night at this hotel.

Q. And you occupied the same room ?

A. Yes.

Q. Subsequently to that, did you live together as man and wife ?

A. Yes.

Q. After you left the hotel you went home ?

A. Yes.

Q. Remember how you went home ?

A. Drove a team home, a pair of horses and sleigh.

Q. And where did you subsequently live ?

A. At my home at Beaconsfield.

Q. Did you live together as man and wife ?

A. Yes.

Q. Under the same roof ?

A. Yes.

Q. Share the same bed ?

A. Yes.

Q. How old a man are you ?

A. I was born in '67.

Q. How old does that make you ?

A. 58.

Q. Are you very good at arithmetic ?

A. No.

Q. You say you are how old ?

A. 58, I think; I am pretty sure. The 6th May is my birthday, and it comes when I am pretty busy planting potatoes, and it went by and I don't know how old I am.

Q. Your wife left you ?

A. Yes.

Q. How long ago was that - what year ?

A. I think it was in '24 or '25.

Q. Did you ever hear from her ?

A. Yes.

Q. Ever see her ?

A. No, not since.

Q. How did you hear from her ?

A. She wrote me some letters, - three, I think.

Q. Where were they from ?

A. Halifax.

Q. Do you remember the street address ?

A. No.

Q. Did your wife tell you she had a daughter ?

A. Yes.

Q. What was her name ?

A. Lorna.

MR. ARCHIBALD: I don't think this is evidence.

MR. LAWRENCE: Yes, declaration of deceased people.

MR. SHAW: I merely brought that in to connect the identify of the woman.

Q. Did that daughter ever write you a letter ?

A. Yes.

Q. What was the nature of the letter ?

MR. ARCHIBALD: Where is the letter ? I object to that.

THE REGISTRAR: Your objection is quite proper unless it leads up to the production of the letter.

MR. SHAW: I don't think it is very important anyway.

CROSS EXAMINED BY MR. ARCHIBALD:

- Q. You were born in 1867, May 6th ?
- A. I think so, yes.
- Q. Your memory is not very good on this point ?
- A. I think not. I am not so sure; I think there was a brother.
- Q. Where did you meet this lady that you married ?
- A. She came to my place and hired me to dig a cellar, basement to put up a house.
- Q. How did you come to meet her ?
- A. That is how: she came to my place at Andover.
- Q. She was living there then ?
- A. Living with her mother.
- Q. Her mother lived at Andover ?
- A. Yes.
- Q. What was her mother's name ?
- A. Mrs. Merrick.
- Q. You knew her ?
- A. Yes.
- Q. Had she lived at Andover a long time ?
- A. Not very long.
- Q. Did your wife come to Andover with her ?
- A. No, she came afterwards.
- Q. What happened to Mrs. Merrick ?
- A. She died at Saint John.
- Q. Did she leave Andover after you had married this girl, as you say you were married ?
- A. Yes.
- Q. Were there any others in the family ?
- A. Yes.
- Q. In Mrs. Merrick's family ?
- A. She had no family.
- Q. Had she other daughters and sons ?
- A. Oh, yes; she had two brothers and - two boys and two girls.
- Q. Live at Andover ?
- A. They lived in Maine.
- Q. Did you know them, too ?

- A. Yes.
- Q. They were back and forth ?
- A. Yes.
- Q. Are they living now ?
- A. Well, now, I am not so sure; I think there was a brother lives over in Maine, but I would not be sure.
- Q. You say that the wedding, as you refer to it, took place in 1914 ?
- A. Yes.
- Q. In the winter time ?
- A. Yes.
- Q. You had known Mrs. Croker, as you called her at that time ?
- A. Yes.
- Q. A year before that ?
- A. Yes.
- Q. And part of the year before that again - eighteen months ?
- A. Somewhere near eighteen months.
- Q. You first saw Mrs. Croker some time in 1912 ?
- A. That would be correct pretty nearly.
- Q. What time of the year did you first see her ?
- A. In the summer time anyway.
- Q. I suppose you remember these things pretty well - the woman you married, when you first met her, and so on ?
- A. Yes, but I could not tell you the exact date.
- Q. You think the summertime ?
- A. I know it was.
- Q. How do you remember that so well ?
- A. I travelled on foot, no snow on the ground.
- Q. It was after the snow went ? Were you working at Mrs. Merritt's house at the time you first met her ?
- A. I didn't work at Mrs. Merritt's house at all .
- Q. Where did you first meet her ?
- A. She came to my place.
- Q. That is the first time you met her ?
- A. Yes.
- Q. Subsequently you dug a cellar or something for her ?

- A. Yes.
- Q. Was the Merrick place near yours ?
- A. Oh, yes, a mile or so.
- Q. This cellar you dug, was it near your place ?
- A. Well, it would be a little further away than Mrs. Merrick's.
- Q. Anyone living with Mrs. Merrick at the time ?
- A. Mr. Merrick.
- Q. When did you start work on this cellar you dug ?
- A. Shortly after she came to see me.
- Q. Don't you know when ?
- A. No.
- Q. It was summer time, too ?
- A. Yes.
- Q. You think it was ?
- A. Yes.
- Q. You saw Mrs. Croker quite a lot after that ?
- A. Pretty often.
- Q. That summer and the next and the next summer, and the next winter you were married ?
- A. Yes.
- Q. You knew she was a widow at the time ?
- A. Yes.
- Q. Know her first husband ?
- A. No.
- Q. Know what his name was ?
- A. Croker, - I think she told me his name was Harry; I think so.
- Q. How long had he been dead ?
- A. I could not tell you that.
- Q. You knew he was dead ?
- A. She told me he was.
- Q. That is the best information you have ? Do you know where she had lived before she came to Andover ?
- A. She had lived in Halifax before she came down.
- Q. That was the report from her ?
- A. Yes, owned a house in Halifax.
- Q. Did she own the property where she was having this cellar dug?

- Q. Were there any children of this marriage?
- A. Yes.
- Q. Still own it, or is it -
- A. She sold it.
- Q. After she was married to you?
- A. Yes.
- Q. Did you live in her house, or your house, after you were married?
- A. We lived in my house for a certain length of time, and I rented my farm for two years.
- Q. When was that?
- A. 1917 and 1918.
- Q. And then you lived over at her place?
- A. I was there some of the time.
- Q. Was she living at her place some of the time after you were married?
- A. And she went there, yes.
- Q. And lived in her own house?
- A. Not all the time, she would go and come back.
- Q. There was nobody else in her house?
- A. No.
- Q. How often did she go - leave your house and go to her own house?
- A. She would go every week or two weeks in the summer.
- Q. Just in the summer time; how far away was it?
- A. It must have been a mile or a mile and a quarter.
- Q. Were these the only times she would go to her own house, in the summer time?
- A. She went in the winter, too; I had to drive her in the team.
- Q. Would she stay all night there?
- A. Yes.
- Q. And stay a few days?
- A. Sometimes.
- Q. Alone there?
- A. Yes.
- Q. Was this your first marriage?
- A. Yes.

Q. Were there any children of this marriage ?

A. No.

Q. How old was this lady when you married her ?

A. I could not tell you myself, according to - she was not as old as I was, according to what she told me.

Q. This happened in 1914 ? In 1917 and 1918 you rented the property . How did it happen she came back to Halifax ?

MR. BISHOP: I object to that question. Did she come back?

MR. SHAW: I object to the question on the ground he said she came back in 1925.

Q. How long after 1918 before she came back to Halifax ?

MR. BISHOP: You asked that.

Q. What were the circumstances of her going away ?

A. She claimed she was sick and wanted to be doctored, and thought there was no doctors any good only in Halifax.

Q. When did she come ?

A. 1924 or 1925.

Q. Don't you remember; that is not so far away as 1914 ; don't you remember when it was she came to Halifax - how many years ago ?

MR. LAWRENCE: He said he didn't know exactly.

MR. ARCHIBALD: On cross examination I can see if he cannot be exact.

A. I can only tell you about the price of potatoes, when they were high or low.

Q. Were they low or high ?

A. Away down low; times was hard; struggling to make a living.

Q. Was that 1924 ?

A. 1924, 1925, 1926 they was high; we bought a new automobile.

Q. She came back for a doctor ?

A. Yes.

Q. How long was she gone ?

A. She never came back.

Q. Did you give her money to come to Halifax ?

A. Oh, no.

Q. She had money when she was living with you ?

- Q. Did you come to Halifax to find out how she got along with
- A. She got some cheques, coupons, or interest from government bonds she had; she had to go to town every three months; when the interest came in I had to take her to town; that was in the bank and I never seen it.
- Q. Know how much money she had ?
- A. I never did.
- Q. Never asked her ?
- A. No.
- Q. Never enquired how much she had ?
- A. No.
- Q. Give her money from time to time ?
- A. Yes, a little bit.
- Q. For the house ?
- A. For what she wanted to do with it.
- Q. For clothing ?
- A. To do as she liked with it.
- Q. All those years you never talked about or had any knowledge what estate she had ?
- A. No.
- Q. Never asked her ?
- A. I never asked her.
- Q. And she never talked ?
- A. I have talked to her son; I wanted her to buy me an automobile one time, but she didn't give it to me - you bet she didn't.
- Q. You didn't discuss business matters with her; you didn't talk your business with her much ?
- A. No.
- Q. Or she with you ? She kept house for you there ?
- A. Yes.
- Q. Just you and she in the house ?
- A. Most of the time.
- Q. Sometimes a hired man ?
- A. Yes.
- Q. Did she have help in keeping the house ?
- A. No.

Q. Did you come to Halifax to find out how she got along with the doctors? Medical treatment?

A. No.

Q. You never came?

A. No.

Q. Did you write her?

A. Yes.

Q. How long did you keep up correspondence?

A. Two or three months.

Q. And she didn't come back and correspondence dropped - and that was the end of it?

A. Yes.

Q. You didn't know what was happening to her here and didn't make it your business to find out?

A. No.

Q. She was your wife and you didn't think it was your concern at all?

A. Well, when I did make up my mind to come down, I took sick myself.

Q. How long were you sick?

A. Heart - and been that way for seven or eight years.

Q. Are you under doctors care now?

A. No, but I have been.

Q. When did your doctor finish his job on you?

A. Well, I have not seen a doctor for it must be five years - let me see now - I would have to figure that, too.

Q. Five years?

A. Yes.

Q. It has been some years since you saw a doctor?

A. Yes.

Q. About this wedding ceremony - how far is Bath from Andover?

A. It is three miles to Beechwood - how far from that? It is about 12 or 13 miles I suppose from where I live to Bath; it may be 14.

Q. The witnesses were Miss Keenan and W. Turney Giberson. You

have been in and out of Bath quite often ?

A. Yes. *clergyman didn't give you one ?*

Q. You go there quite a lot - and you don't know the witnesses?

A. I knew Turney Giberson; I didn't know the lady.

BY THE REGISTRAR: *something in the records at Exeter.*

Q. Was he a relative of yours ? *What congregation*

A. Yes. *minister have at that time ? Where was he preaching*

Q. What relation ?

A. He can tell you better than I can. *have congregations;*

BY MR. ARCHIBALD: *he preached.*

Q. What relation ? *different places; he had churches here and*

A. I don't know myself - a long ways off.

Q. How long have you known him ? *Baptists in that section at that*

A. I must have known him 35 to 40 years since I first saw him.

MR. ARCHIBALD: I ask that the other witnesses be excluded.

WITNESS EXCLUDED.

Q. What is your religion ?

A. Primitive Baptist. *preachers ? Were they licensed to*

Q. The clergyman who married you belonged to that faith ?

A. Yes. *don't know about that.*

Q. Where is that clergyman now ? *Maritime Baptist group, or by*

A. Dead. *us ?*

Q. He died how long ago ? *by were by themselves until 1904.*

A. I don't know; he has not been dead very long; may be four years

Q. Did he give you any certificate of the ceremony ?

A. Well, now, she had one. *you ?*

Q. You never had a certificate ? *as that gentleman who was in*

A. No. *as W. Turney Giberson.*

Q. You are positive you never had a certificate at all ?

A. No. *was the certificate, the ceremony was performed ?*

Q. Never received one ? *and wife, you and the woman you married*

A. No. *check ?*

MR. BISHOP: Ask did he at any time receive one; it

might be misleading. signs of husband and wife - intercourse ?

THE REGISTRAR: On re-examination you can ask.

Q. You didn't get a certificate at the time ?

A. No, not at the time.

Q. The clergyman didn't give you one ?

A. No.

Q. Did you get one later ?

A. No. We found something in the records at Fredericton.

Q. But you didn't get any certificate ? What congregation did this minister have at that time ? Where was he preaching at that time ?

MR. BISHOP: These people don't have congregations; ask where he preached.

A. He preached in different places; he had churches here and there.

Q. Were there many Primitive Baptists in that section at that time ?

A. Oh, yes, a lot.

Q. A number of clergymen among them - preachers ?

A. Yes.

Q. How did they become preachers ? Were they licensed to preach ?

A. I don't know about that.

Q. Were they associated with the Maritime Baptist group, or by themselves ?

MR. BISHOP: They were by themselves until 1904.

Q. Was this clergyman a relative of yours, too ?

A. Yes.

Q. What relation was he to you ?

A. He would be the same relation as that gentleman who was in here, as W. Turney Giberson.

Q. Were they brothers ?

A. No.

Q. You lived as husband and wife, you and the woman you married - Mrs. Croker ?

A. Yes.

Q. And had the usual relations of husband and wife - intercourse ?

A. I suppose so.

Q. You mean that you did it

A. Yes.

Q. Do you still belong to this Primitive Baptist faith?
Are they still in existence?

A. Yes; I don't belong to anything; I am a Russellite; that is what my people was and I did belong to them one time.

Q. And the marriage took place right in the hotel?

A. Yes.

Q. What time of day?

A. It was night, after supper.

Q. Did you bring the clergyman there?

A. He came there himself afterwards.

Q. Did you apply for any license?

A. Yes, I had to drive six miles to get the license.

Q. Did you have to fill out a form to get the license?

A. I don't know about that.

Q. Or pay two or three dollars to get it?

A. I paid for it.

Q. You don't know if you filled out a form, - make any affidavit or declaration - were you sworn?

A. I don't think so.

Q. You gave particulars about yourself and your intended wife?

A. Yes.

Q. Who did you apply to?

A. Well, now, when we got to Bath, there was no license there, and we went down to the next town, I forget - Bristol; there was none there, and we had to go to Florenceville, further down the river, in the same county; and this gentleman went in and got the license, and they took me in there - I don't know - I got a license anyway, and got married.

Q. After that was obtained the ceremony was performed?

A. Yes.

Q. Know where the wife's first husband, Croker, died? Where was he living?

A. In England.

Q. Is that from something you learned now or your own knowledge?

A. It is what she told me; he died in England.

Q. And all those years you made no effort to discover her at all?

A. No.

Q. Was it a case of good riddance - was that the way you felt?

A. Oh, no.

Q. You just didn't bother?

A. I just forgot to answer her letter; I was busy digging potatoes, and when it came to me to write to her, I wrote, and I wrote again, and some time after I wrote again, and got no answer to neither one.

Q. Have you quite a substantial farm up there?

A. Oh, yes.

Q. Pretty good farm?

A. Yes.

Q. Own an automobile?

A. I own a Ford model T; broke down.

Q. You didn't attempt to drive to Halifax?

A. No, I don't drive at all.

Q. It didn't concern you whether your wife might be in want or not?

A. Well, when she would not answer my letters what could I do? When I did make ready to come here I took sick and could not come; that is all.

Q. When you got better some years ago you had forgotten about it?

A. The money was all gone, the doctor took all and I didn't have enough to pay my way down here.

Q. You didn't have money to come down here?

A. I have not had since.

Q. You could not get enough out of the Ford T to get down here?

A. No.

RE-EXAMINED BY MR. SHAW:

Q. Did you say it was about ten years since you saw your wife?

A. Yes, that long or more.

Q. Do you think after that time you could recognize a picture of her?

A. Yes, I have no glasses -

Q. You can't remember?
 A. MR. ARCHIBALD: I assume this is an indulgence to my learned friend; it is not re-examination.

A. THE REGISTRAR: I don't think it should be excluded.

A. She did have a picture I could recognize.

Q. After the marriage did the minister give you any marriage certificate?

A. No.

Q. Did you know at the time if the minister had a license or not?

A. No, that didn't concern me.

Q. Did you marry the woman in good faith?

A. Oh, yes.

Q. You say you married her in good faith?

A. Yes.

Q. By that did you understand that everything was regular?

A. Yes.

MR. ARCHIBALD: What did you suggest to the witness?

Q. Did you at the time understand that everything was regular?

THE REGISTRAR: It is a little bit leading.

MR. ARCHIBALD: 100%.

MR. SHAW: I want to understand he knows what I understand by good faith.

Q. Did you ever attend any meetings, religious meetings, conducted by the Rev. Mr. Giberson?

A. Yes, lots of them; ever since I could walk.

Q. You knew he was a minister?

A. Yes, seen him baptise hundreds.

Q. They were religious meetings?

A. Yes.

Q. A Christian religion, I suppose you call it?

A. It had some semblance to that.

Q. You said you drove six miles to get a license?

A. Yes, from this hotel.

Q. And you were asked if you had to fill out any form.

A. I don't know; I could not tell you.

- Q. You can't remember ?
- A. No.
- Q. Do you think the form may have been filled out for you ?
- A. There must have been something.
- Q. After your wife left you, you said you were sick - were you in hospital ?
- A. Yes.
- Q. Are you a good letter writer ?
- A. Oh, I can write some.
- Q. Do you enjoy writing letters ?
- A. Not very much, no.
- Q. How many letters of a social nature would you write in the course of a year ?
- A. Oh, I suppose ten or twelve.

THE REGISTRAR: Is this evidence ?

MR. SHAW: Re-examination as to why he didn't correspond with his wife.

THE REGISTRAR: I don't think that calls for any extended evidence; the evidence is she left him for a purpose and never returned, and he wrote a number of letters, and apparently she had money of her own. I don't think that need be over-stretched.

- Q. Did you find any documents, any certificate of marriage - by certificate of marriage I mean something that usually the minister fills out and hands to one of the parties - was one given to your wife ?
- A. There was, yes, one given to her.
- Q. Did you find that ?
- A. Yes, I found that.
- Q. But none was ever given to you ?
- A. No, never was.
- Q. Did you just find that certificate recently ?
- A. Yes.
- Q. When you began to look for it you found it ?
- A. Yes, it was in her bureau.
- Q. But you were correct in saying no certificate had ever been

issued to you ?

A. I have never seen it..

MR. ARCHIBALD: My learned friend is discussing a certificate that has been found, and it should be produced.

MR. BISHOP: I don't know that you can force us to; and I don't know if it is admissible.

THE REGISTRAR: I think it would be to your interest to get it in evidence.

MR. ARCHIBALD: I don't see any reason for withholding it. I agree to that certificate being put in evidence as a document that he found in his wife's room.

THE REGISTRAR: It has some slight value as shewing that a Sarah Croker had a property at Andover, N.B., You agree to exhibit marked E/1 being put in evidence for what it is worth ?

MR. ARCHIBALD: I have been urging it be put in evidence for some time.

THE REGISTRAR: Do you ask it be put in evidence - yes or no ?

MR. SHAW: I am not asking that it be put in evidence, but if my -

MR. ARCHIBALD: I will ask it if he does not put it in; I understood from my learned friend - he said, I will go into that in re-examination, and he put that in front of me.

THE REGISTRAR: It is not a proper question, if he found a document, if you don't put the document in.

MR. SHAW: tenders the exhibit marked E/1.

MR. ARCHIBALD: As a document found in his wife's effects.

MR. LAWRENCE: I tender the exhibit marked E/2, certified copy of the registration of a marriage from the books of the registrar, who is the proper officer for the registration of marriages in the county in which this took place; this was got from the proper officer; we have the affidavit of the officer who made it; the date of that

agrees with the testimony of the witness, it was 1914,

but not with exhibit E/1. think we should go into that

MR. ARCHIBALD: I don't want to delay my learned friend in the matter of producing records, but I don't think he could prove a marriage in the divorce court - done before.

THE REGISTRAR: Do you object to the reception of this document? I have seen it done in original matters, but

MR. ARCHIBALD: I think there should be further proof with respect to it, but I am quite content my learned friend should go on at the present time; there will be an adjournment in any event.

Q. THE REGISTRAR: I think it should be received subject to objection at this stage. a gentleman telephoned to me,

after MR. SHAW: I agree. few days ago.

Q. MR. BISHOP: I think that must be received in evidence without proof but only for what it is worth; we realize we must prove the marriage further.

A. THE REGISTRAR: Received subject to objection.

Q. MR. ARCHIBALD: There are several things about this: there has evidently been a good deal of research to find this certificate, not only by my learned friends, but by myself. I think if you receive it subject to objection that in the meantime you will have thought about it, and on another occasion I may be in a position to consent to it, or object more strenuously.

A. E/2 Received subject to objection.

Q. MR. BISHOP: May I ask for your ruling?

A. THE REGISTRAR: I don't rule as to admissibility at this stage; I reserve it. The point will be argued. I am not altogether satisfied as to some features of the evidence as to the marriage; I have not formed any opinion one way or the other, but the marriage should be proved up to the hilt.

Q. MR. LAWRENCE: Do you think it necessary to call evidence of the New Brunswick law in 1913?

A. THE REGISTRAR: Are you offering other evidence at this stage?

MR. LAWRENCE: Yes. married, and told him to look

THE REGISTRAR: I don't think we should go into that until we receive the evidence.

MR. BISHOP: I cannot see, in the first place, why our witnesses were excluded; I have never seen it done before.

THE REGISTRAR: I think counsel has that right.

MR. BISHOP: I have seen it done in criminal matters, but not often then. I didn't object, but I thought it was taking advantage of us. I thought you were going into intimate relations and that is why I consented.

RE-CROSS-EXAMINED BY MR. ARCHIBALD: are a lot of photographs;

Q. E/1, tell me just when you found this certificate. but I

A. Let me see now: after this gentleman telephoned to me, after I went home - just a few days ago.

Q. Just within the last few days?

A. Yes.

Q. You found this in your own house?

A. Yes, into her drawer or bureau.

Q. The bureau in the room she had?

A. Yes.

Q. You had not seen it all these years?

A. No, I had not seen it.

Q. How did it escape the house cleaning?

A. We don't have any house cleaning; we have no ladies there.

Q. You live alone there?

A. No, I don't live alone; there are a couple of guys there.

Q. You make your living entirely by farming?

A. Cut wood, hardwood, slabwood, birch - and haul it to town in winter.

Q. How many acres in that farm?

A. 125.

Q. House and barns?

A. The house keeps out the rain in some way.

Q. You never saw this when your wife was living with you?

A. I did not; I never saw it.

MR. LAWRENCE: He said he found it after I telephoned him;

Q. I asked him if he was married, and told him to look around among the papers. Brunswick -

BY THE REGISTRAR: covered all over.

Q. When did you first learn of Mrs. Croker's death ?

A. By telephone.

Q. Mr. Lawrence telephoned you ? wedding ceremony between

A. Yes. who was just on the stand and a woman ?

A. Yes, MR. SHAW: Do you intend to produce certain photographs

Q. What of the late Mrs. Croker ?

A. Well, MR. ARCHIBALD: I don't know that I intend; I have been

looking over some. There are a lot of photographs;

Q. Know there may be a stage when they will be helpful, but I

A. I don't think this is the moment.

Q. As his wife ?

A. Yes.

AND THEN THE WITNESS WITHDREW.

THE REGISTRAR: I think he understands you; before

W. TURNEY GIBERSON, being called and duly sworn, testified as follows :

Examined by Mr. Shaw :

Q. Your name is Turney Giberson ?

A. Yes.

Q. Where do you live ? particular place ?

A. Cariboo, Maine. hotel; it was called the old Giberson hotel.

Q. Is that near the New Brunswick border ?

A. Ten miles. sorry I cannot give you - I don't want to commit

Q. How long have you lived there ? think it was in 1913 when

A. I have lived there since I first went to Cariboo 44 years ago, last February; but I have been away different times.

Q. Do you know the last witness ?

A. Yes, I have known him. you think you first went there in

Q. What relation is he of yours ?

A. I would have to go back quite a ways ; I think his father and my father were first cousins.

Q. Are there a great many Gibersons up your country ?

A. Too many, - no, there are not very many up there.

Q. Not up where you are now ?

- A. No.
- Q. But up in that corner of New Brunswick -
- A. They are scattered all over.
- Q. It is a common name ?
- A. Yes.
- Q. Can you remember attending the wedding ceremony between this man who was just on the stand and a woman ?
- A. Yes, I do.
- Q. What was the woman's name ?
- A. Well, I don't know as I can tell you what her name was before she was married.
- Q. Know her after she was married ?
- A. I met her.
- Q. As his wife ?
- A. Yes.
- THE REGISTRAR: I think he misunderstands you; before the second or first marriage ?
- Q. I mean, did you know her name before she married Giberson ?
- A. I never saw her before.
- Q. Where did this marriage take place ?
- A. Bath, N.B.,
- Q. What part of Bath, any particular place ?
- A. Well, no, - at the hotel; it was called the old Giberson hotel.
- Q. And when was this ?
- A. Well, I am sorry I cannot give you - I don't want to commit myself - I want to be careful, but I think it was in 1913 when I went to the hotel .
- Q. Were you running the hotel ?
- A. Yes, I had it rented.
- Q. Do I understand you to say you think you first went therein 1913 ?
- A. Yes.
- Q. Was it the summer ?
- A. In the fall.
- Q. Was it shortly after that that this marriage took place ?
- A. I think it was in January.

Q. It was in January following your opening the hotel ?

A. Yes, as near as I can guess.

Q. You think you opened the hotel in 1913, in the fall ?

A. I think so.

Q. Do you remember the minister who officiated ?

A. Yes, Rev. T. A. Giberson.

Q. Was he well known in that community ?

A. Yes, lived there all his life, parents and raised.

Q. How old was he at that time ?

A. He was two years younger than me; I will be eighty years old next birthday.

Q. Was he in charge of congregations there ?

A. Yes, pastor of several churches through the country.

Q. Recognized by all the people as a minister in the common sense of the word ?

A. Yes, he was a good minister.

Q. Do you know if he was ordained ?

A. Yes, I was right there when he was ordained; the minister's name was Rev. Charles Order from Hartland, N.B.,

Q. At what place was he ordained ?

A. Bristol, three miles below Bath.

Q. You can remember the ceremony well ?

A. Yes.

Q. Was it quite an outstanding event in the community ?

A. Yes, a large crowd of people.

Q. It was well known in that area he was a minister ?

A. Yes, he was a young man.

Q. Do you remember the day of the marriage; do you remember what happened that day; did the party marrying go right away ?

A. No.

Q. What happened ?

A. They stayed there until next day at noon.

THE REGISTRAR: What bearing has this, now ?

MR. SHAW: Corroborating the testimony of the former

witness.

MR. LAWRENCE 26 W. TURNLEY GIBERSON, direct examination
cross examination

- THE REGISTRAR: I don't like to do that; I want
as long as your interests are the same as Mr. Shaw's and Mr.
A. I was right there.
Q. Did you sign the license?
A. Yes.
Q. Did you assist Mr. Giberson at the time in getting the license?
A. Yes.
Q. Did you drive to get it?

THE REGISTRAR: I would rather you asked, how did you go
there; or where did you go, and how did you get there.

- Q. Where was the license obtained?
A. In Florenceville, N.B.,
Q. How did you get there?
A. Drove there in my team.

CROSS EXAMINED BY MR. ARCHIBALD:

- Q. How long did you stay there at Bath?
A. I think about two years, at that time.
Q. Then you returned to Maine?
A. Yes.
Q. Have you any record shewing the year you came to Bath from
Maine?
A. Not with me; I only had a few minutes notice.

- Q. Did you buy the property or rent it?
A. I rented it.
Q. There was a lease signed?
A. No, I went there and thought perhaps I would buy it, but I
didn't.
Q. You are not sure what year you came there?
A. No, I would not want to swear to it; I know I was there, and
I know it happened while I was there.

BY MR. SHAW:

- Q. You were asked if you had any papers; you could produce
papers?
A. Yes, I could shew them; I have receipts of taxes I paid on
the property which I could produce.

AND THEN THE WITNESS WITHDREW.

MR. LAWRENCE being desirous of calling Mr. Bishop -

THE REGISTRAR: I don't like to do that; I rather frown on that, as long as your interests are the same as Mr. Shaw's and Mr. Lawrence's.

MR. BISHOP: I announced Mr. Shaw was acting for me and my client Mr. Giberson. I have some documents bearing on all these matters; I don't see how they could be produced in evidence in any other way.

THE REGISTRAR: I think the English practice is that a person cannot act in two capacities.

MR. BISHOP: I could not be an examining counsel and give evidence today.

THE REGISTRAR: If your name was struck off the record -

MR. ARCHIBALD: I think it is a matter for your Honour.

THE REGISTRAR: I didn't think there was any question at the time when giving names of counsel at the start.

MR. ARCHIBALD: I had anticipated these various things would be proved but it never entered my mind it would be endeavoured to be proved by one of the counsel.

MR. SHAW: It was not my understanding from the first Mr. Bishop was acting as counsel; I didn't think he had any standing here at all.

MR. ARCHIBALD: It is all the same thing; we are quibbling over words.

THE REGISTRAR: It is a matter of sound practice.

MR. BISHOP: I think it is rather vital; I would have made different arrangements had I known. I would ask that we be allowed to have any further evidence you desire along this line taken by commission.

THE REGISTRAR: If you had peculiar knowledge no one else had I would think it was in the discretion of the court to take your evidence; but many people could probably give the evidence you propose to give and I would prefer you didn't give the evidence. We will treat it that way for the moment.

MR. BISHOP: We had intended to bring the Rev. Mrs. Giberson down, but she is sick. I think a commission should sit at Bath if we have not already proven it by ample evidence, which I think is most conclusive already; we are more than ready to prove this matter to the hilt. If Mr. Archibald wishes anything proven we will consent to a commission, and we would also like a further opportunity.

MR. ARCHIBALD: There may be certain things that can be done by commission such as more or less formal matters of record, but it seems to me in a matter of this nature, where a good deal more than records are involved, that after all Woodstock is not such a tremendous distance from Halifax, and there is an estate of twenty odd thousand dollars involved, that the witnesses should be here and heard by your Honour. I think your Honour should see them at first hand; if I have any witnesses I want your Honour to see them; I want to see them at first hand, too.

THE REGISTRAR: I could go up there without any greater cost than a commission; I could do that.

MR. ARCHIBALD: I would be agreeable to that.

MR. SHAW: I could not very well object to that.

1.245 p.m. THE PROCEEDINGS WERE ADJOURNED FOR LUNCHEON

2.35 p.m.

RESUMED.

CAROLYN ALEXANDER BISHOP, being called and duly sworn, testified as follows:

Examined by Mr. Lawrence:

- Q. Where do you live?
- A. Woodstock, N.B.,
- Q. How long have you lived there?
- A. Just since last October.
- Q. Did you ever know a man by name of the Rev. Addington Giberson?
- A. Yes.
- Q. Where did he live?
- A. He lived in Bath, N.B., just before I was married; I was supervisor of home economics and I visited all the schools up

MR. ARCHIBALD: I have not very much to say to that. I don't and down the Saint John river, and taught sewing.

Q. And this man, the Rev. Mr. Giberson, was a recognized minister of the religious denomination?

A. Yes.

Q. Did you know him personally?

A. I knew him well enough to speak to; I don't think I was ever introduced to him - I don't remember that I was, but I may have been; for 3½ years I travelled up and down there and saw him often on the train, and he was a friendly sort of man and he always spoke to me, and I always spoke to him.

Q. It was generally known that it was customary for him to solemnize marriages in the province?

MR. ARCHIBALD: I object.

A. I knew he was a minister.

Q. Ever know of him solemnizing marriages?

A. Not any one that I can remember.

Q. But you knew him as a minister.

THE REGISTRAR: AND THEN THE WITNESS WITHDREW.

MR. SHAW: We think we have arrived at the point where the court may think it necessary to prove the identity of Mrs. Croker in Halifax is the Mrs. Croker referred to in the evidence. We also believe there is in the possession of the executor certain documents and papers, and we wish to give him notice to produce those documents; we think that being in court there is a duty to produce such documents; they happen to be in the preferred position where they control these documents and it should be a matter for the court to examine them at any time. We think they should be requested to produce them if they are in their possession.

THE REGISTRAR: You can give notice to produce.

MR. SHAW: This is a different situation to the ordinary action; the executor has no right to stand in a preferred position and withhold any documents.

MR. ARCHIBALD: I have not very much to say to that. I don't think I am under any obligation to produce a mass of photographs for other parties to the action to go over until they satisfy themselves there is one satisfactory photograph; they are photographs of different people; I don't know who they are myself. I don't feel that I am under any obligation. If there was a request for a certain photograph -

MR. BISHOP: We don't know what the photographs are.

MR. SHAW: I happen to have seen one, which I request you to produce; a photograph of an old lady and a young lady.

MR. ARCHIBALD: These photographs through this enquiry somewhere will come into it. Until today it was impossible for me to know a great deal about what evidence my learned friends were basing their application upon; I knew in some general way. I propose to ask the court for a long adjournment. I have enquiries to make in New Brunswick and in England; you may think I am going to a lot of pains in respect to this matter but I think it is a case that requires it.

THE REGISTRAR: I would think so because there is one very important thing that has to be established: if by any chance Mr. Croker was alive at the time the marriage took place to Mr. Giberson, it would simply be the second marriage would be a nullity.

MR. BISHOP: It must be definite and clear that the estate should not be one cent responsible for any enquiry like that; it could go on for years. They could take unlimited funds and go to the ends of the earth when we have evidence that must be conclusive

THE REGISTRAR: There will be no justification for allowing any unreasonable expenses. Have you concluded your case?

MR. SHAW: If the executors are going to admit the identity I have concluded my case; if not, I have not concluded. I would like them to produce such documents from the estate that I asked for.

THE REGISTRAR: You don't ask me on the evidence that is presented to revoke the letters and grant administration in

this case. There is very little evidence presented except that this man swears that he married a Sarah Croker, and that she went to Halifax, and that he got two or three letters, he does not know the address or where the letters came from; and there may be a dozen Sarah Crokers; it is not an unusual name.

MR. SHAW: That is the reason we want the photographs and it is unreasonable for the court to be hampered.

MR. ARCHIBALD: They should come forward with their photographs and evidence; the executor is under no obligation; if there was any evidence came out today, it was largely through cross examination as much as direct examination, because I was anxious to get at the facts.

MR. BISHOP: I consider we have presented evidence here, very definite evidence: you cannot always say, that is the man, that is the woman, and I don't know really how much further we could go without possibly identification of photographs, and we have changed the burden of proof now; I hold, unless the other side makes a very strong case that our evidence must be taken as conclusive. We have not to do all the proving in this case.

MR. SHAW: Will you grant an adjournment sufficiently long to give notice to the executors to produce these documents?

THE REGISTRAR: I don't think that will get you anywhere at all; if they don't produce them you can give secondary evidence.

MR. LAWRENCE: We admit the issue of identity is still in the air. We have not discharged the onus, - but we want to get at these papers and documents.

THE REGISTRAR: That is for you to make a move.

MR. BISHOP: Will you accept a forthwith issue for a subpoena?

MR. ARCHIBALD: No, I cannot do that; the executor can do that, Major Mundy. He was here all morning; I have no idea where he is now.

THE REGISTRAR: There would be no point in asking Mr. Archibald to do that; the man himself who has the documents ought to produce them, and it would be necessary to serve him personally.

MR. ARCHIBALD: I consider it is a very dangerous and difficult performance in respect to these photographs; they are dim,

blurred, old, and in all kinds of condition. I will take very strong objection to the evidence in any event. We have no information at what period the photograph was taken, or where or when.

MR. SHAW: If the photographs are produced, we could bring witnesses as to time etc.,

THE REGISTRAR: Are you satisfied as to proof of the Croker marriage?

MR. ARCHIBALD: No, I don't think that has been proven by any means. I made enquiry in New Brunswick; I don't think there were any official records at Fredericton.

MR. BISHOP: They are at Woodstock.

MR. SHAW: Are you not satisfied there was a marriage?

MR. ARCHIBALD: No, I am not.

MR. BISHOP: How far have we to go to prove the marriage?

THE REGISTRAR: I cannot rule on that at this stage.

I may take the evidence of Miss Heenan in Montreal without counsel being present; but evidence taken in Woodstock counsel should be present.

MR. BISHOP: I would like the photographs produced at Woodstock.

Any moveables should be deposited in court. Will I have the privilege of recalling Mr. Giberson at Woodstock if I so desire?

THE REGISTRAR: Yes. The matter is adjourned until Monday, July 20th, at 11 a.m. D.S.T. with the understanding that at that date a definite time will be fixed within a few days from that time when evidence will be taken at Woodstock, Bath or Saint John, the place to be agreed upon between myself and counsel.

R. Eccles
Official Reporter.

