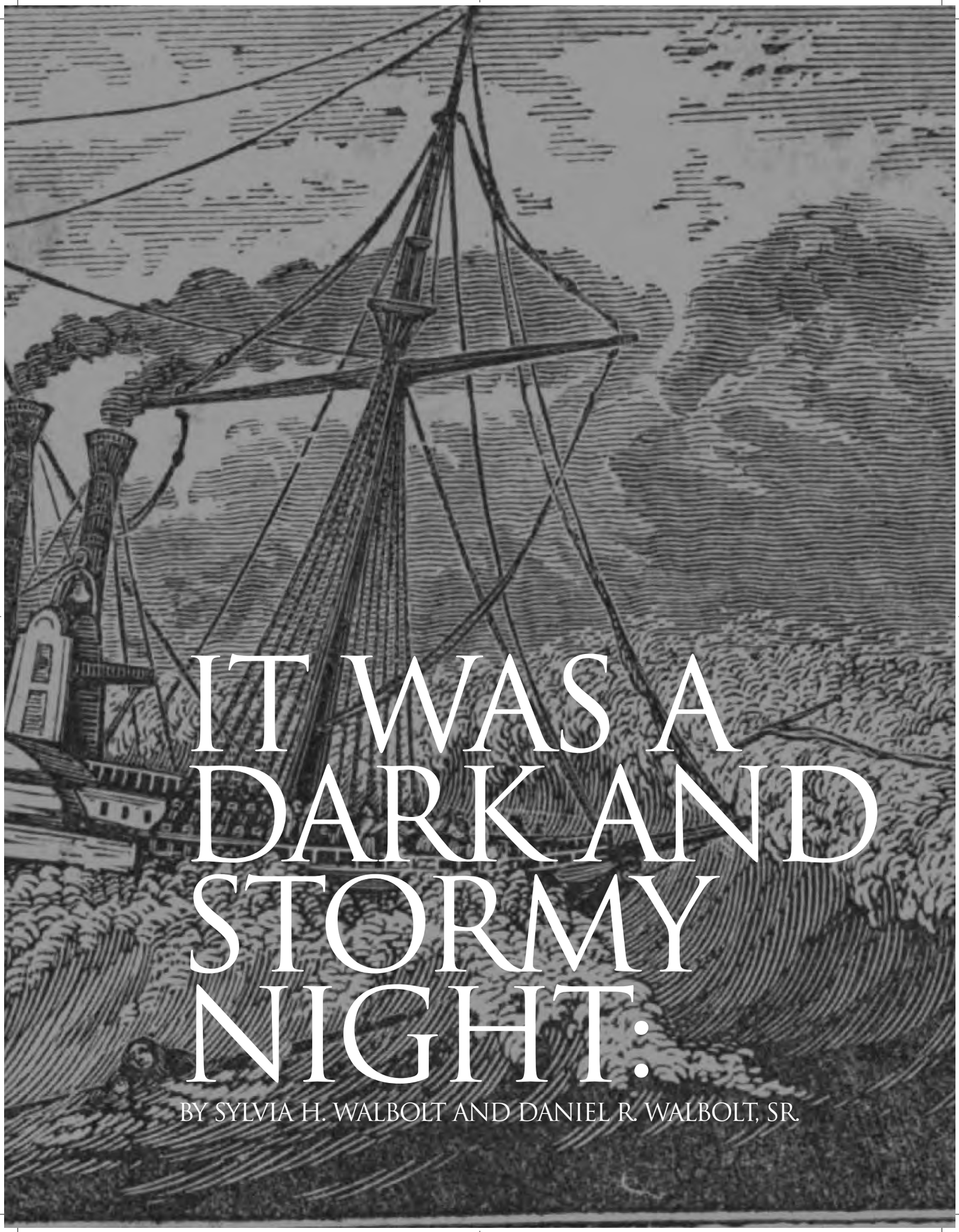


IT WAS A DARK AND STORMY NIGHT:

BY SYLVIA H. WALBOLT AND DANIEL R. WALBOLT, SR.

Hardy B. Croom

Previous page: Rendering of the Steamship 'Home" shipwreck, *Steamboat Disasters and Railroad Accidents in the United States*, by S.A. Howland, 1840.

It was a dark and stormy night on October 9, 1837, when Hardy Croom and his wife Frances, together with their three young children, all died in the wreck of the steamboat "Home" on their passage from New York to Charleston, South Carolina. Henrietta Croom, the oldest daughter, was about 16 years old, the son William 13, and the second daughter, Justina, seven. It was to have been a joyous voyage, as the family had been fortunate to secure passage on the steamship "Home" on its third voyage.

On the "Home's" second trip from New York, it made the trip to Charleston in 64 hours, a new record, and, as a consequence, when the third trip was announced, it became "a hot ticket for the wealthy and prominent citizens of the day." The "Home" had been converted from a river going vessel to a steam powered passenger liner, and it was considered the crème de la crème of these new speedy vessels. In an omission during the refitting process, however, the new liner had been equipped with only three life boats and two life preservers.

On its third voyage, the "Home" had 135 passengers and crew, hoping to be part of a new record for the voyage. The passengers were unknowingly heading straight into a hurricane that originated in Jamaica, blew into Texas, and was heading across the southeastern United States to the Grand Banks of North Carolina. The Croom family could not have imagined that their deaths would result in a groundbreaking case of first impression before the Florida Supreme Court on legal questions relating to venue, conflict of laws, and the descent and distribution of Mr. Croom's estate. The deaths of the Crooms and other passengers are vividly depicted in the Coastal Guide cited infra, and *Smith v. Croom*, 7 Fla. 81, 1857 WL 1527 (Fla. 1857), the Florida Supreme Court's decision in the aftermath of this tragedy.

The boat had been in a storm for 36 hours when it ran aground about midnight. The boat "went to pieces in 15 minutes," as waves struck with "tremendous violence." *Smith* at 87-88. Of the approximately 140 passengers onboard, only 40 survived, some by swimming to shore clinging to wreckage.

Mr. Croom died, leaving a "plantation and negroes and most of his property" in Leon County, Florida. *Smith* at 83. At the time of the wreck, however, other slave labor, as well as Mr. Croom's wife and children, were residing in North Carolina, where Mr. Croom had long had a home.

Mr. Croom left no will, and litigation ensued. His surviving brother was appointed the administrator of the estate, but the deceased children's grandmother and aunt petitioned the Circuit Court to represent the children's interests in their father's estate.

The Florida territorial law was decidedly paternalistic. If a man domiciled in Florida survived his wife and children and died intestate, his surviving brothers and sisters would inherit all of his real property. If any children survived the father's death, male children inherited the property, to the exclusion of any female survivors, if the inheritance was deemed to have occurred by way of a "mediate descent" from the father.

If at the time of Mr. Croom's death his legal domicile was North Carolina and any of his children survived him, his non-realty personal estate would pass according to North Carolina law, to the petitioner grandmother and aunt as the children's next of kin. Under Florida law, where the estate was being administered, the petitioners, as the next of kin, would also be

entitled to the real estate in Florida. On the other hand, if Mr. Croom survived his children, then his brothers and sisters would inherit his property, regardless of whether his domicile was in North Carolina or Florida.

The Supreme Court's file – all handwritten of course – does not disclose why a case involving a shipwreck in 1837 was not resolved until decades later in 1857. What it does disclose is that, in the interim, and without the benefit of all the resources we have today to locate witnesses and other evidence relevant to the case, the lawyers were nonetheless able to track down and take testimony from eleven of the forty survivors spread around the country. Those particular survivors had knowledge of the actions of the Crooms during the 36 hours of the chaotic shipwreck. The search for these survivors must have involved difficult sleuthing — one witness was not examined until 1855. The lawyers also provided testimony from 25 individuals who knew Hardy Croom during his life in North Carolina and Florida, 67 pieces of correspondence relevant to the issues in the case, and various exhibits, including poll books reflecting Mr. Croom's voting history and a bill of sale for an African American man.

The 11 survivors of the wreck testified about the shipwreck and when members of the Croom family were last seen. As was customary in those days, the testimony before the trial judge is set forth in the pages preceding the Florida Supreme Court's decision. The description of the shipwreck is as enthralling as any novel. The evidence directed to the issue of domicile provides a fascinating glimpse into the old South. Assuming you haven't already put this article down to go read the decision itself, here is an appetizer to prompt you to do so.

On the question of survivorship, the petitioners — the children's grandmother and aunt — presented several medical witnesses who testified to Mr. Croom's poor health. He was thought to be consumptive and incapable of strenuous physical exertion. Several of the passengers on the steamboat that night confirmed he was in feeble health and also testified to the terrifying events as the boat broke apart in the night, as well as the physical effort that would have been required to make it to shore from the shipwrecked boat. In contrast to Mr. Croom, Mrs. Croom and the children were of normal health.

On the specific issue of the efforts of the various members of the Croom family to save themselves, several witnesses described hearing Mr. Croom's son "calling to his father in words like these: 'Father, you will save me, won't you father?' and 'You can swim ashore with me, can't you father'?" *Smith* at 87. One witness heard the father reply that it was impossible to swim. Another witness saw the young boy on a piece of the wreck, and yet another said the boy drowned while trying to reach land on a piece of the wreckage.

One of the witnesses who heard the son ask his father to swim with him later saw Mr. Croom "taken off with the sea at the time the breakers were washing away the cabin...." *Smith* at 90. The witness went to the wheelhouse where he heard the teenage daughter, Henrietta Croom, say she would give $5,000 if someone would help her get ashore, but she was washed off the wheelhouse and lost at sea.

At the conclusion of the testimony, the Chancellor dismissed the petition, finding that Hardy Croom survived his children, that his domicile at the time of his death (and therefore the domicile of his children) was Florida, and therefore all the real estate and personal assets descended Hardy Croom's adult brothers and sisters. The petitioners appealed to the Florida Supreme Court. Its opinion is a fascinating legal who-done-it, an example of superb preparation by the lawyers prior to the trial, and an important history lesson of the early development of opinion writing by the Court.

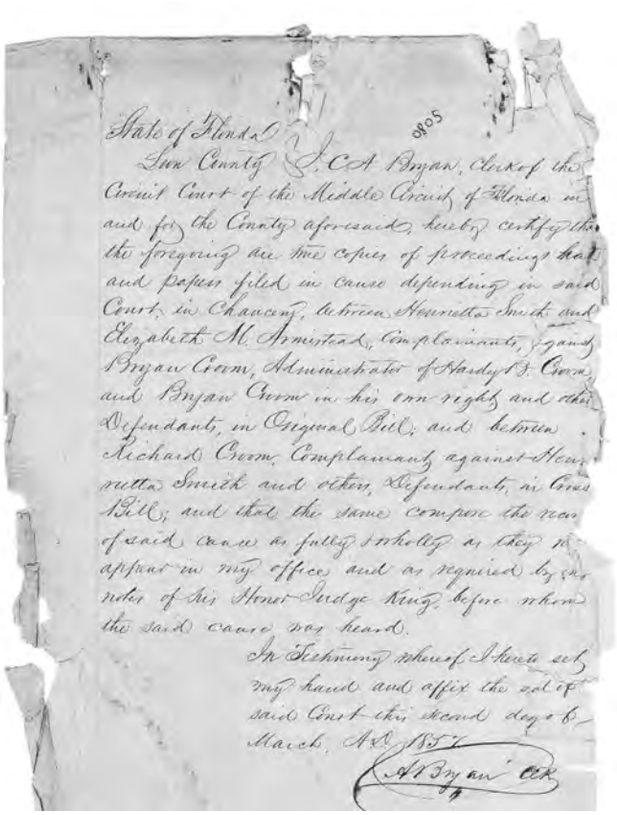
A note of time and place is in order. The "Home" shipwreck disaster occurred in 1837, when Florida was still a Territory, eight years from full statehood. The constitution of 1829, established in preparation for statehood, provided for a Supreme Court with appellate jurisdiction, four circuit courts — the Western, Middle, Eastern and Southern — and justices of the peace. Curiously, the circuit courts were granted all the powers of the Supreme Court.

What a fascinating opinion it is, all 49 pages of it. Remember, this litigation was conducted at the very beginning of Florida's legal system. The state was sparsely populated, with large areas almost completely isolated. The legal profession was also in its infancy; the few lawyers that were practicing at the time had "read the law" and were of uncertain experience and quality. Florida's first law school, what is now Stetson College of Law, did not open its doors until 1900. It is not surprising that the lawyers for the different Croom interests were from Savannah, Georgia and Charleston, South Carolina.

The Supreme Court's decision obviously was of first impression, as were all legal issues that came before the Court at that time, as it commenced formulating the long, rich body of common law that we have today. Of course, the development of law in the country itself was just a few decades into its making.

It is not surprising, then, that the Florida Supreme Court turned to the English common law for much of its guidance. The decision references several laws and opinions from the English courts, as well as American Citations to 1 Bum R. 364, 2 Peters Reports 58, 1 Cheeves Eq. R. 108 and 6 J.J. Marshall 46, that seem quaint today. Reliance by the Court on Kent's Commentaries, Story's Constitutional Law, D.Warris on Statutes, and Stark on Evidence - authorities hardly ever cited today - bring back memories of some older lawyers' first year in law school.

Latin legal terms abound, most unfamiliar today. "In haec verba, domicilium originis," "proprio marte," "animus revertende," "facto et animo," and "jus gentuim," if they appear at all today,



State of Florida
Leon County } I, C. A. Bryan, Clerk of the Circuit Court of the Middle Circuit of Florida in and for the County aforesaid, hereby certify that the foregoing are true copies of proceedings had and papers filed in cause depending in said Court, in Chancery, between Henrietta Smith and Elizabeth M. Armistead, Complainants, and Bryan Croom, Administrator of Hardy B. Croom, and Bryan Croom in his own right, and others Defendants, in Original Bill, and between Richard Croom, Complainant against Henrietta Smith and others, Defendants, in Cross Bill; and that the same compose the record of said cause as fully & wholly as they appear in my office and as required by the order of his Honor Judge King, before whom the said cause was heard.
In Testimony whereof I have set my hand and affix the seal of said Court this second day of March, A.D. 1857
A. Bryan Clk

Copy of page certifying copies of proceeding by C. A. Bryan, Leon County Clerk of the Circuit Court of the Middle Circuit of Florida in Leon County dated "Second day of March, A.D. 1857"

are probably part of a law school skit or a law review article by Justice Scalia. It all makes for fascinating reading, and here is just a brief overview of the Court's lengthy opinion.

On the first issue before it, the Florida Supreme Court declared that, "[u]pon a full review of all the testimony bearing upon the question of survivorship, we have been irresistibly led to the conclusion, that in the common calamity which overtook the highly interesting family, whose melancholy fate has brought mourning and grief to a large circle of relations and friends, the father perished before either his daughter Henrietta Mary, or his son William Henry, and that of the sister and brother, the latter was the last survivor." *Smith* at 149.

The Court began its explanation of the basis for that conclusion by noting "the painful anxiety which is always engendered, when the determination of a fact is made to rest in a great measure upon presumption." *Smith* at 140. It explained that this was not a reference to "the legal presumption recognized by the civil law, which is founded upon the circumstances of age, sex and physical strength," as that presumption is not recognized in Florida. *Id.* Rather, the court meant "the presumption arising from the attendant circumstances, which results in producing the conviction in the mind that the fact is as it is alleged." *Id.* The requisite certainty need not "exclude the possibility that the fact be otherwise; but only that it should be of such a degree induced by appropriate evidence as will produce moral conviction." *Smith at* 140-141.

Then, citing *Underwood vs. Wing* (31 Eng. L. and E Repts., 297), the court said the issue of survivorship in a case of a common calamity had to be proven "as any other question of fact, either by positive or circumstantial evidence," and that it was not enough to say "that if you had to lay a wager you would rather lay it one way rather than the other." *Smith* at 142-143. Declaring *"there must be evidence as to who is the survivor,"* the court said that while there was no legal presumption based on age and sex, "when the calamity, though common to all, consists of a series of successive events, separated from each other in point of time and character, and each likely to produce death upon the several victims according to the degree of exposure to it, in such a case, the difference of age, sex and health becomes a matter of *evidence* and may be relied upon as such." *Smith* at 143-44 (emphasis added). The court further said that where a common danger proved fatal to all parties, "the last one, seen or heard...must be adjudged the survivor, unless there be something in the nature of the circumstances to rebut the presumption." *Smith* at 144.

In the end, the Supreme Court concluded that the father perished before either his daughter Henrietta or his son William. *Smith* at 149. While there was "conjecture" to the contrary within the "range of possibility" that the father survived, it was "of too vague a character to combat a rational presumption which has been deduced from known facts." *Smith* at 148. The court further concluded that the teenage Henrietta Croom survived her father, but not her brother.

The court then turned to the question of domicile. It was undisputed that Mr. Croom's "domicile of origin" had been North Carolina, where he was born and resided until "the date of the removal of his slaves to Florida and the establishment of his agricultural interest" in Florida in 1831. *Smith* at 149-150. "It is the fact of this establishment of his agricultural interest here, and a divided residence consequent thereon, that has raised the question with respect to his "domicile of succession." *Smith* at 150.

The court began its analysis of this issue by rejecting the notion that the term "domicile of succession" is a term that is "not susceptible of a definition and consequently unintelligible." *Smith* at 150. In the court's beautiful words:

> it would be a reproach to our language to suppose that its poverty is so extreme that no apt and appropriate words could be found in its extensive vocabulary sufficiently comprehensive to compass the meaning of a legal term of everyday use. And it would be greater libel on the noble science of law to charge it with the use of a term incapable of definition, and consequently unintelligible to the legal

apprehension. *Smith* at 150.

After discussing various definitions of the term, the court summed up by saying the evidence must establish "an actual residence" and "the deliberate intention to make it his home" — i.e., "'an intention to remain there for an unlimited time.'" *Smith* at 150.

The first acts the court considered were Mr. Croom's establishment of plantations in and the removal of his slaves (except for a few house servants) to Florida, the evidence that he had voted in Florida, as well as the establishment of a home in Leon County. As such, "the bulk of his fortune" and "the center of his business" plainly was in Florida. *Smith* at 150. Nonetheless, he had not abandoned his "family mansion" in North Carolina, where his wife and children continued to live prior to the shipwreck "with the accustomed retinue of servants." *Id.* Citing various authorities, the court declared that the act of voting, if admissible at all to establish intention, was of little weight. The court concluded the evidence regarding Mr. Croom's acts did not establish a present intent to make Florida his present domicile of succession.

Moreover, Mr. Croom's oral declarations were "so vague in point of date and expression, and so very contradictory in terms," that the court did not consider them at all. *Smith* at 150. This left the written declarations, which were contained in the family's correspondence between 1830 and 1837. Here too, however, the court found a "vacillation of purpose" in the correspondence. *Smith* at 163. Ultimately, the court was persuaded by a letter from Mrs. Croom telling Mr. Croom "before you settle permanently," to "give yourself time to judge." *Smith* at 101.

Regardless of the definition of "domicile of succession," the court held it was North Carolina, not Florida. The non-abandonment by Mr. Croom of his home in North Carolina and "the continued residence of his family there, surrounded by the entire domestica instrumenta of a gentlemen's establishment" persuaded the court that Mr. Croom had not formed a present intention to make Florida his present home. *Smith* at 166.

Apart from its bearing on the issue of domicile, the Crooms' fulsome correspondence is historically fascinating and shocking in its own right. Mr. Croom's "negroes" are casually accepted as his property, to be moved to a new location as he sees fit. Mrs. Croom bemoans the expense of a "good house" in Florida, saying the expense "would be better in negroes ..." *Smith* at 103. At the same time, she "sends her love to the negroes and [says] to 'tell them to have all things ready against I come out there.' *Smith* at 104. Much of the correspondence relates to the purchase of particular slave labor and the hire of that labor to others.

In one 1835 letter, Mrs. Croom referred to "the wilds of Florida," and her husband answered from Tallahassee, saying of Florida that "[i]t is a good country for planting and merchandise, but I cannot say it is a desirable country to live in..." *Smith* at 103. The Crooms also wrote about their concerns of moving to Charleston, where Mr. Croom could "enjoy a more cultivated society and greater literary means than I can elsewhere find at the South," but where "the cholera has so long prevailed…" *Smith* at 108. Mr. Croom asked his brother to keep him "'advised of the health of Charleston, so that I may be able to judge of the propriety and safety'" of going there with his family. *Smith* at 117.

This small sample of the correspondence will hopefully whet your appetite to read all of the correspondence recited in this case, as well as the testimony regarding Mr. Croom's life in Florida and elsewhere. But it is now time here to turn back to the remaining question in this case: whether the descent of Mr. Croom's property to his surviving children — Henrietta and William — was "an immediate or a mediate descent from the father?" *Smith* at 167.

On this issue, the court pointed to the decisions of the United States Supreme Court in *Gardner v. Collins*, 2 Peter' Rep. 58, and describing Judge Story's opinion for the court in some detail, declared that it was "so strongly on point" that "its authority cannot be easily denied or resisted." *Smith* at 178.

Based on that authority, the Florida Supreme Court held that:
[t]he words "descent from the father," as employed in our statute of descents, must be construed to mean an immediate descent from the father, and that the real estate which William Henry Croom derived by descent from his sister, Henrietta Mary, does not come within the operation of the [statute] so as, upon the death of William Henry, without issue, to secure the descent to the paternal, in exclusion of the maternal kindred. *Smith* at 178.

Thus, the Court held that of the two survivors of Hardy Croom, Henrietta died after her father, and William was the last to die. Upon Hardy Croom's death, the inheritance of both Henrietta's and William's one half of Croom's estate descended immediately. When Henrietta died, the half of the estate she inherited did not descend to William immediately under the statute. Thus, the children's grandmother and aunt were entitled to one half of the Florida realty, and the father's brothers were entitled to the other half.

This decision is worth reading in its entirety for multiple reasons. To begin with, it is a terrific story and shows in a vivid way what life in the South was like in those days for a wealthy plantation family. It also is a wonderful illustration of how differently opinions were written then than now. It also demonstrates a reverence for the law and a scholarly, but fulsome, use of the English language.