

under the circumstances, he might reasonably have regarded it as his duty to bring the suit, I will not subject him to costs.

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 COLEMAN YELLOTT, for Complainant.

ST. GEORGE W. TEACKLE, for Defendants.

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 [An appeal was taken from the decree of the Chancellor, dismissing the bill in accordance with the above opinion, which is still pending.]

BEALE GAITHER
 vs.
 SUSAN GAITHER AND
 ELLEN GAITHER ET AL.

} DECEMBER TERM, 1861.

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 [TRUST—FRAUD—EVIDENCE.]

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 If an heir or personal representative or devisee, whose interest would be prejudiced by the insertion of a provision in a will in favor of some third person, induces the testator to omit such provision by assurances, either by words or silent assent, that his wishes shall be executed as though the provision were made, such assurance will raise a trust which will be enforced in equity on the ground of fraud.

If such trust be denied by the heir or devisee, it may be proved by parol, though the statute of frauds be relied upon as a defence.

But the Court will not interfere if there be any doubt or ambiguity in the evidence, and there is no case in which the party setting up such a provision has been successful, where a reasonable doubt in regard to the fact could be entertained.

In this case the will was executed in 1834, the testator died in 1836, and the person by whom the imputed assurance was alleged to be made died in 1849, and the bill was not filed until 1850. No reason for the delay was assigned, and the plaintiff entirely failed in producing clear and satisfactory evidence of the assurances set up in the bill. The Chancellor dismissed the bill.

Declarations of a grantor made since the execution of a deed, are inadmissible to impair the rights of parties claiming under it.

Declarations of a deceased attesting witness to a will, respecting the incapa-