

[HIGH COURT OF CHANCERY
Decrees and Orders] [1]

[Final Chancery decree awarding the bulk of James
Smithson's estate to be paid to the United States in
trust to establish the Smithsonian Institution]

[1]

Saturday 12th May 1838

**The President of the United
States of America**

Plaintiff

**Charles Drummond & Her
Majestys Attorney General**

Defendants

This Cause coming on the first day of February 1837 to be heard & debated before The Right Honorable the Master of the Rolls in the presence of Counsel learned on both sides His Lordship did order that the plaintiffs Bill should be amended by stating the act of Congress passed in the year 1836 & the said Bill being amended in Court accordingly upon hearing the said act of Congress & also the power of Attorney granted to Richard Rush Esquire mentioned in the said Bill as amended read

His Lordship did order that it should be referred to the Master to whom the Cause *Hungerford vs Drummond* stood transferred to carry on the account directed by the Decree of the 15 day of December 1829

and It was ordered that the said Master should enquire whether John Fitall in the pleadings of this Cause named was living or dead

and if the said Master should find that the said John Fitall was dead then It was ordered that he should enquire and state when he died

& It was ordered that the said Master should enquire whether Henry James Hungerford in the pleadings also named was living or dead

& if the said Master should find that the said Henry James Hungerford was dead then It was ordered that he should enquire & state when he died & whether he was married or unmarried at the time of his Decease & if married whether he left any & what Children or Child him surviving

& the said Master was to enquire & state the ages of such Children respectively if more than one

& It was ordered that the said Master should enquire & state to the Court whether Madame de

la Batut had any Claim on the said Testator Smithsons Estate;

and for the better discovery of the Matters aforesaid the usual Directions were given

and His Lordship did reserve the Consideration of all further Directions & of the Costs of this Suit until after the said Master should have made his Report

That in pursuance of the said Decree the said Master made his Report dated the 23 day of March 1838 which stands absolutely Confirmed by an order dated the 27 day of March 1838 & thereby certified

he found that the sum of £53-7-6 was justly due & owing to Messrs Thomas Clark & Company the Solicitors for the Defendant Charles Drummond from the Estate of the said Testator

and he found that the said John Fitall was dead & that he died at Bush House Wanstead in the County of Essex on the 14 day of June 1834

& he found that the said Henry James Hungerford assumed the name of de la Batut & was known as Baron Eurice de la Batut & died at the Royal Hotel called the Donzelle situate at Pisa on or about the 5 day of June 1835 without ever having been married & without leaving any Issue

and the said Master certified that

he was of opinion & did find that the said Mary Ann de la Batut in her right was entitled to a Claim on the Estate of the said Testator James Smithson for an Interest during the life of the said Mary Ann de la Batut in a Moiety of the annual Income or sum of 7673 livres de Rentes in the Report mentioned amounting in value £150-9-0 Sterling money of Great Britain & Ireland Calculated at the Current rate of Exchange in the City of London on the 8 day of March 1838

& he found that the Income arising from the said French Stock or fund called livres de Rentes was payable & paid half yearly by the French Government on or about the 22^d day of March & the 22^d day of September in each year

& he also found that there was due & owing to the said Mary Ann de la Batut or the said Theo-

[1] Copied from the National Archives, C 33 / 886 / 002, Chancery: Entry Book of Decrees and Orders, 1837-38 vol B, pp 579a, b.

dore de la Batut in her right from the Estate of the said Testator James Smithson the Sum of 13,427 Francs 75 Centimes for arrears of the said annuity from the 22^d day of September 1834 to the 22^d day of March 1838 amounting in value to £526-11-6 sterling money of Great Britain & Ireland Calculated at the Current rate of Exchange in the said City of London as aforesaid

and he found that the annual Income or Annuity to which the said Mary Ann de la Batut or the said Theodore de la Batut in her right was entitled for her life out of the Estate of the said Testator James Smithson amounted to £150 & 9 shillings Sterling Money of Great Britain and Ireland as aforesaid

And whereas the above named plaintiff & Richard Rush did on the 3^d day of May 1838 prefer their petition unto the Right Honorable the Master of the Rolls setting forth as therein set forth & praying

that the residue of the several Stocks Funds & Securities & Cash respectively standing in the name of the Accountant General of this Court in trust in the said Cause *Hungerford vs Drummond* & in trust in this Cause which should remain after providing & satisfying the annual and other payments directed by the Will of the said Testator & the Costs & Charges to which the Estate of the said Testator had been rendered liable by virtue of the several proceedings & Measures aforesaid or any of them which might be respectively transferred the amount thereof to be verified by affidavit in the Books of the Governor & Company of the Bank of England & paid to the petitioner Richard Rush

& that the Boxes & Packages mentioned in the said Masters Report might be delivered into the Custody of the petitioner Richard Rush

Whereupon all parties Concerned were ordered to attend His Lordship on the matter of the said petition when this Cause should come to be heard for further Directions

and This Cause coming on this present day to be heard before The Right Honorable the Master of the Rolls for further Directions on the said masters said Report & as to the Matter of Costs reserved by the said Decree In the presence of Counsel learned on both sides Upon opening & Debate of the Matter & hearing the said Decree the said report the said order dated the 27 day of March the said petition & the accountant Generals Certificates read & what was alleged by the Counsel on all sides

His Lordship doth Declare that the plaintiff is entitled to the residue of the several Stocks & Securities & cash respectively standing in the name of the accountant General of this Court in Trust in this Cause and also in a certain other Cause of *Hungerford vs Drummond* in the Masters re-

port mentioned & the other property of James Smithson the Testator in the pleadings in this Cause named after providing for the payment herein after directed

And It is ordered that

the £62,739-19-2 Bank £3 per Cent Annuities £12,000 reduced Annuities & £16,100 Bank Stock respectively standing in the name of the said Accountant General in trust in the Cause *Hungerford vs Drummond* & the Sum of £1765-2-0 Cash in the Bank remaining on the Credit of the said Cause be respectively Carried over in Trust in and to the Credit of this Cause

& the said accountant General is to declare the trust of the said several sums of stock accordingly subject to the further order of this Court

And out of the said sum of £1775-2-0 Cash when so Carried over & the Sum of £204-6-8 Cash in the Bank on the Credit of this Cause It is ordered that the Sum of £53-7-6 be paid to Mr Thomas George Fynmore

And thereout also It is ordered that the sum of £526-11-6 be Carried over with the privity of the said accountant General & placed to the Credit of this Cause to an Account to be entitled *The Account of the Annuitant Mary Ann de la Batut*

And thereout also It is ordered that the sum of £25 be paid to Mrs Elizabeth Fitall as Executrix of John Fitall deceased

And It is ordered that it be referred to the Master to whom this Cause stands referred to tax all parties their Costs of this Suit & relating thereto properly incurred The Costs of the plaintiff & of the Defendant Charles Drummond to be taxed as between Solicitor & Client

And It is ordered that the amount of such Costs when taxed be paid out of £1364-9-8 Cash which will then be remaining on the Credit of this Cause after the several before mentioned payments in manner following that is to Say

the Costs of the said plaintiff to Mr Thomas Clarke his solicitor

& the Costs of the Defendant Charles Drummond to Mr Thomas George Fynmore his Solicitor

& the Costs of Her Majestys Attorney General to Mr George Maule her Solicitor

And It is ordered that

£5015 Bank £3 per Cent Annuities part of the £6810-19-7 like Annuities standing in the name of the said Accountant General in trust in this Cause & any Interest which may accrue on the said sum of £5015 Bank £3 per Cent Annuities previous to the Carrying over hereby directed

be in like manner carried over in Trust in this Cause To the *separate* account of Mary Ann de la Batut entitled *The Account of the Annuitant Mary Ann de la Batut*

& the *said* accountant *General* is to declare the trust thereof *accordingly* subject to the *further* order of this Court

And It is ordered That the *Interest & Dividends* which shall accrue due *during* the life of the *said* Mary Ann de la Batut be paid to her *during* her life or until the *further* order of this Court for her separate use & on her sole receipt by equal half yearly *payments* on the 22^d day of *September* & the 22^d day of March in every year the first payment whereof to be made on the 22^d day of *September* next

And It is ordered that the *said* £62,739–19–2 Bank £3 *per Cent* annuities £12,000 reduced Annuities & £16 100 Bank Stock when so *respectively* Carried over & £1795–19–7 £3 *per Cent* annuities residue of the *said* £6810–19–7 like Annuities after such *carrying* over of part thereof as *aforesaid* & the residue of the *said* sum of £1364–9–9 Cash after the payments thereout herein before directed the amount of such residue to be *verified* by *affidavit* be transferred & paid to Mr Richard Rush in the *plaintiffs* Bill named

And It is ordered that the Boxes & Packages in the Masters report of the 28 day of June 1831 in the *said* Cause of *Hungerford vs Drummond* mentioned be delivered into the Custody of the *said* Richard Rush as Attorney or *otherwise* for the *plaintiff*

& for the *purposes* *aforesaid* the *said* accountant *General* is to draw on the Bank *according* to the form *prescribed* by the Act of *parliament* & the *general* rules & orders of this Court in that case made and provided

And any of the *parties* are to be at *liberty* to apply to this Court as they may be advised. *H. H. fin*