

(editor's note: This paper was transcribed from a handwritten cursive copy with various difficulties. For a perfect rendition, the reader might wish to consult the original, itself a copy, in the volume entitled *Literary Club Papers*, May 30, 1891 to February 6, 1892)

The Gains Case

When in the year 1860, the Gains case was before the Supreme Court of the United States for the sixth time, Justice Wayne in delivering the decision of the majority of the Court, concludes his opinion with these words:

“When hereafter some distinguished American Lawyer shall retire from his practice to write the history of his country's jurisprudence, this case will be registered by him as the most remarkable in the records of its courts. Thus after a litigation of thirty years has this court adjudicated the principles applicable to her (Mrs. Gaines) rights in her father's estate. They are now finally settled.”

Nevertheless seven years later this case was again before the court and in reaffirming the decision of 1860, Justice Davis closes his opinion with the following sentiment: “Can we not indulge the hope that the rights of Myra Clark Gains in the estate of her father Daniel Clark will now be recognized?”

The hope thus expressed by Justice Davis and was finally realized. But it was only after 24 years more of continual litigation. In the year 1891 the Supreme Court unloosed the last link of the chain of questions involved in this remarkable case.

The story involved in it may not be as instructive, nor as important as it seemed to Justice Wayne, yet it is interesting and furnished sufficient material for several romances. Most stories end with a marriage. Myra Clark Gains' began with hers.

It was not until after marriage that Myra learned the true story of her parentage. She was then a young woman of twenty six years. Her life up to that time had been passed in easy circumstances, but in comparative seclusion. Her home stood on the outskirts of the village of Wilmington, Delaware. Her marriage was romantic. It was opposed by him whom she considered to be her father and there was an elopement. A speedy reconciliation followed, and in the course of the talks that followed upon her return home she learned that Colonel Davis with whom she had lived from her infancy was not her father.

The story she then heard soon became a familiar household tale. A generation ago every one knew the romantic story of the wrongs of Myra Clark Gains. She was then urging her battles in a dozen courts. Undaunted by repeated defeats she was gradually, against apparently impossible odds, forcing her cause to a final decision that would establish her title to a princely fortune, and to and escutcheon free from the sinister bar. This is the story which was then told to her,

in part, much of it she had to search out and make available by persevering effort. And to do this and to convince the court of the truth of it, became the absorbing purpose of her life.

In the latter part of the 18th century, Zuline Carrierre, a Creole maiden married a Frenchman, a nobleman in reduced circumstances, by the name of Desgrange.. She was a mere child and he a middle-aged rouè. She possessed a voluptuous figure and the beauty for which her race is noted. Her eyes were dark and languishing. Snow and pink mingled in her cheek. The lines of her figure were alluring, —as Balzac would say. She thirsted for affection, and loved display. Her husband supplied her with neither. The fires of his youth were quenched, and his occupation, that of attending to a small wine house in the French Quarter, was not remunerative. The married life of this ill-matched couple was not happy.

In the same community and on terms of intimacy with the husband, there lived Daniel Clark, the father of our heroine. He was a native of Ireland and had been induced in his youth to come to New Orleans by an uncle who, upon his death, had made him heir to a fortune, which even in those days of extravagant ideas would be considered vast. This fortune grew in his hands and Daniel Clark was the Merchant Prince of New Orleans. His friends considered him a man of sensitive sense of honor and lofty pride. Abroad he was recognized as New Orleans' most leading citizen, and it is even said that Napoleon consulted him upon the value of Louisiana before Jefferson made the purchase.

It was Desgrange's ill-luck to be compelled to be absent in France during the first two years of the present century. During that absence an intimacy sprung up between his beautiful young wife whom he had left behind and Daniel Clark. It may be said in extenuation of their behavior, that the moral atmosphere of New Orleans in these days of decaying and degenerate Spanish rule, was not shocked by any lapse from virtue. Vice and luxury were the besetting sins of the community and Zuline and Daniel were no better and no worse than their fellows.

The result of this intimacy was a visit by Zuline to Philadelphia where a daughter was born to her. This child was given to Daniel Clark's mother to rear, and was amply provided for by him during his life. Zuline and Daniel returned to New Orleans. When after an absence of two years, Desgrange returned to New Orleans, he met with an unhappy reception. An ugly rumor had preceded him that he was a bigamist, and he was arrested upon that charge. It was said prior to his marriage with Zuline he had already married a wife in New York who was then living in France.

By some means Desgrange escaped from prison before his trial and disappeared from New Orleans. He was never heard of again. In the year 1803 Zuline with her sister Madame Despaer journeyed to New York for the purpose of procuring the

record evidence of Desgrange's first marriage. In this search they were unsuccessful. But in Philadelphia on their way home they met a gentleman by the name of Dr. Gardette who assured them that he was present at Desgrange's first marriage. In Philadelphia also they met Daniel Clark. It is said by Madame Despaer that Daniel thereupon urged Zuline to marry him. Madame Despaer also said that Zuline yielded and they were accordingly married by a Catholic priest in her presence and in the presence of two friends.

It turned out a generation later, when the actuality of this marriage was involved, that the priest who performed the ceremony had disappeared and left no sign. Even his name was forgotten. There was no record in the parish book. The two friends who had been present at the ceremony were dead or had drifted away and could not be found. Madame Despaer however lived and remembered. According to her this marriage was to remain a profound secret until actual proof had been obtained of Desgrange's former marriage.

The bridal party returned to New Orleans, and Daniel gave Zuline a magnificent establishment. Ostensibly they lived apart and Zuline was known to the world as Madame Desgrange. But their familiar relations continued and in the year 1806 Zuline gave birth to our heroine, Myra. This child was given to the family of Colonel Davis and was reared as one of his family until the time of her marriage.

A year later in 1807 Daniel Clark, whose natural ability and great wealth combined to make him a prominent figure in the new American Commonwealth, was elected to Congress from the district of New Orleans. Philadelphia was then the capital and when Daniel Clark went there to attend to his duties of state Zuline did not accompany him.

He had not served out his term when the disquieting rumor reached Zuline that he was paying attention to the beautiful Miss Gaten of Maryland with the apparent object of matrimony. Again Zuline undertook the long journey to Philadelphia. She found the report to be true. Daniel Clark denied his marriage with her and refused to see her. She consulted an attorney. He was evidently in Clark's employ; for he instructed her that her marriage with Clark could not be proven and hence was no marriage. Zuline did not die of disappointment. She was made of sterner stuff. She married Dr. Gardette, the gentleman who had said that he was a witness at her first husband's first marriage. She never saw Daniel Clark again. And although Zuline Desgrange Clark Gardette, née Carrière lived many years afterwards, it strikes one as remarkable that in all the litigation growing out of her clandestine marriage with Clark, she was never called as a witness by any party to the numerous controversies which for nearly sixty years compelled the attention of the Courts.

Daniel Clark returned to New Orleans. He never married again. It is said he always spoke of Madame Gardette with respect.

In the early part of the year 1813, he began to suffer from a malady which he felt would be fatal. His mind reverted continually to his daughter, Myra. His whole interest was centered in her, and all his talk with his old friends who gathered about his chair in the last months of his life, was of Myra and of his desire to provide for her and her education. A few days before his death he handed to his friend Chevalier De la Croix a sealed packet. "My last will," he said, "is finished; it is in this sealed packet with valuable papers. As you have consented I have made you in it tutor to my daughter. If any misfortune happens to me, will you do for her all you promised me?" And the Chevalier had promised. That promise so readily given was never kept.

Daniel Clark's will was written entirely by his own hand. The purport of it he made known to several friends. To two of them and probably to the Chevalier, although the latter always denied this, he read it aloud and discussed its contents. By it he gave his estate absolutely to his daughter Myra.

On a sultry midsummer night nearly eighty years ago Daniel Clark lay tossing upon his deathbed. There were present in the room his faithful old slave Lubin and one of his partners, Richard Reif. His last words were to Lubin to charge him, as soon as possible after his death to take his will and valuable papers to his old friend, Judge Pitot, whom he had nominated one of his executors. He would find the packet in a certain black wallet in his private room. And so he died. But when Lubin went to get the wallet, he found the door of the private office locked on the inside, and as he stood at the door he heard the rustling of papers.

It was Richard Reif whom he saw coming out of the office a short time afterwards. Two days later when the black wallet was opened there was found, not the will which Daniel Clark had read to his friends, but in its stead a provisional will written two years before his death in which everything was left to his mother, and in which Richard Reif was named as one of his executors without bond, and with full power to settle his estate.

Upon the suggestion of some of the friends a search was made for the later will. It was never found. The earlier will was admitted to probate. Richard Reif was appointed executor and entered upon the discharge of his duties. No charges at that time were made against him. The friends of Daniel Clark forgot their duty to his child and acquiesced in what they must have known to be a great crime. The Chevalier de La Croix went further.

Within a month after Clark's death he purchased from the executors some hundreds of slaves. His punishment was delayed but when it came it was heavy. During the next few years the vast estate of Daniel Clark passed into other hands. The city grew out over the plantations. Much of it was subdivided and

platted. In some instances it increased many hundred fold in value. And during this time Myra Clark, residing in the family in which she had been placed by her father grew up to womanhood. As we have said, it was not until twenty years later, at the time of her marriage, that Myra Clark learned the story of her parentage. She had known no other father than Colonel Davis. His motive for concealing from her her father's name and history has never been disclosed. It may have been an affectionate hope that she would ever look upon him as her father.

But the record does show that after Daniel Clark's death Colonel Davis presented to the executors a bill of expenses for taking care of Danielle Clark's illegitimate child. In all probability, therefore, he was actuated by a kindly regard for her feelings, and delayed until he could delay no longer, telling the facts which to his mind were conclusive, that her birth was illegitimate. But the meager facts disclosed to her by Colonel Davis did not satisfy Myra. From that time her whole life was devoted to unraveling this mystery.

Two years after her marriage Myra and her husband made their appearance in New Orleans and took their first step in the most remarkable legal controversy of the present century. They endeavored to have the probate of the will of 1811 annulled for fraud. The local court was not predisposed in her favor. In fact, scant courtesy was shown to a foreigner who dared to attack the reputation of men like Richard Reif. Becoming convinced after a delay of more than a year, that she could not expect justice in the Probate Court, she abandoned the cause in that court and resorted to the United States Court for the District of Louisiana. Local prejudiced confronted her even here. Judge Harper was a law unto himself. The Supreme Court of the United States had repeatedly decided that the District Court of Louisiana possessed equity jurisdiction and should proceed according to the equity rules established by it. Judge Harper thought otherwise and refused to entertain Myra's suit. Every tactic was resorted to to compel the Judge to proceed and finally after a three years struggle the Supreme Court of the United States again affirmed its decision on the question of jurisdiction, but decided that it could not compel a district judge to entertain a suit or to render a judgment. Four years more gone and nothing had been accomplished.

In the meantime Myra's husband died of yellow fever. She was left with a meager fortune and three little children. She was surrounded by enemies. Her friends were few. Her cause was ignored by the court, and her means were rapidly disappearing. Then two things happened that had a decided effect upon her fortunes. Two years after the death of her first husband she married General Gaines, a gentleman of wealth and standing. Thereafter her cause was known and is still known as the "Gaines Case." The other fortunate fact was that Congress transferred the jurisdiction of equity causes from the District Court to the Circuit Court. The court was unable to agree. The District Judge still had

doubts as to their power to entertain jurisdiction. Accordingly they certified to the Supreme Court their disagreement. Again that Court assured them that their right to entertain the suit was undoubted and expressed a regret at the apparent determination of the district judge to act in disregard of their repeated decisions.

This decision had the proper moral effect. The Circuit Court entertained the case, but on demurrer decided that Myra Clark Gaines had not a sufficient cause and accordingly dismissed it. The Supreme Court was called upon to correct this error and remanded the case to the Circuit Court to be tried.

From the time of filing her suite until she was able to have it tried upon its merits, eleven years had elapsed. The case then tried was that involving the title of only one defendant - Charles Patterson. The Supreme Court of the United States in 1848 finely rendered its decision. It was a victory for Mrs. Gaines. It was decreed that Zuline was the legal wife of Clark at the date of Myra's birth and that her marriage with Desgrange was void ab initio because at the time of its celebration he already had a wife living. Myra Clark Gaines being the legitimate daughter of Daniel Clark could not, under the civil law in force in Louisiana, be disinherited. Therefore the will of 1811 whereby the whole property was devised to the mother of Clark was void as to Myra and she as heir was entitled to the estate. The opinion of the Court was delivered by Justice Wayne. It is scholarly and exhaustive. His analysis of character and evidence is keen and logical. Justice Calvin dissented.

Apparently now after so many years of delay she was to enjoy what was rightly hers. Naturally the other defendants would acquiesce in the decision in the Patterson case. In this hope she was disappointed. Each case thereafter was bitterly contested. In the year 1851, three years later, the cause was again in the Supreme Court. The questions involved were identical with those decided by the Supreme Court in 1848. The testimony was almost the same. The decision however was very different. This time justice Calvin delivered the opinion of the majority of the Court and Justice Wayne dissented. The decision of 1848 was held for naught and disregarded by the court on the ground that it was rendered in a collusion suit, it having been shown that Mrs. Gaines had agreed to pay all of Patterson's costs and attorney fees and not to molest him in his property. The court further held that the marriage between Zuline and Clark even if it were celebrated was invalid because she at the time was the legal wife Desgrange. Mrs. Gaines was therefore an illegitimate child under the Louisiana law incapable of inheriting from her father. The defeat of Mrs. Gaines was absolute and to anyone else would have been crushing. The court however had passed on her right simply as air of Daniel Clark. If the will of 1813 could be probated she could then claim as devisee. It was a desperate chance but the prize justified exhausting all means.

In the meantime General Gaines had died. He had devoted his whole fortune to her cause. Costs were heavy and retainers had to be paid. So far there had been absolutely nothing realized from the estate of her father. In order to raise money, at one time the General and Mrs. Gaines had traveled about the country delivering lectures jointly and on different subjects. She was a woman of strong individuality, of considerable personal beauty, and possessed the faculty of enlisting sympathy with her cause.

People listen to her and were convinced of the justice of her claim. She did not hesitate to borrow. Thousands of dollars were loaned to her to be repaid when her cause was decided in her favor. I am told by one who resided in New Orleans in the fifties, that in society Mrs. Gaines was a brilliant figure. At the yearly balls given at the St. Charles Hotel she was always the center of a circle of gentlemen. Her admirers were generally professional men and learned, and she was able to meet and argue with them upon every branch of knowledge. She had a wonderful gift of conversation, and with her banter and ready wit could entertain a dozen at a time. In appearance she was attractive. Her eyes were dark, her skin white, and her figure plump. In these respects she showed her Creole descent. Her qualities of mind she inherited from her Celtic father.

In 1853 she began in the Probate Court of Louisiana her effort to establish her father's will of 1813. Forty years had elapsed since his death. No one had seen the will after it was placed in the little black wallet shortly before he breathed his last. It was an olographic will; that is one entirely in the handwriting of the testator. There had been no signatures of witnesses to it. Those to whom he had read it in those last days were alive but aged and infirm. However their testimony was clear and could not be impeached.

The decision of the probate judge was against the probate of the will and the thousand occupants of the land claimed by Mrs. Gaines heaved a sigh of relief. In the year 1855 the case reached the Supreme Court of Louisiana. To the intense surprise of everyone that court admitted the will to probate. She at once reinstated her suit in the United States Circuit Court. Five years later her case reached the Supreme Court for the sixth time. Caleb Cushing was her counsel. She claimed as a universal devisee under the will of Daniel Clark. The defense was that she was an adulterine bastard. Under the laws of Louisiana a bastard was incapable of receiving a devise from a father. The case was tried upon the same evidence presented in the other cases, with the additional evidence of the probate of the will of 1813. The evidence offered covered over eight thousand pages.

It fell to the happy lot of Justice Wayne again to deliver the majority opinion of the Supreme Court. He had been her champion in every appeal. Justice Catron consoled himself by delivering a caustic dissenting opinion. Chief Justice Taney

and Justice Grier vented his impatience in the following words:

“I wholly dissent from the opinion of the majority of the court in this case both as to the law and as to the facts. But I do not think it necessary to indicate my opinion by again presenting to the public view a history of the scandalous gossip which has been buried under the dust of half a century, and which a proper feeling of delicacy should have allowed to remain so; I, therefore, dismiss the case, as I hope for the last time, with the single remark that if it be the law of Louisiana that a will can be established by the dim recollection, imaginations or inventions of a vile gossip after forty five years, to disturb the title in possession of bona fide purchasers without notice, of an apparently indefeasible legal title, *haud equidem invidio, miror magis.*” I do not envy them their laws but rather wonder at them.

It is significant that the ablest minds of the court were among those dissenting.

A decision of a majority of the court was in Mrs. Gaines's favor on all points.

In the year 1868 the case was before the Supreme Court on the 7th, 8th and 9th appeals. The decisions were again favorable to Mrs. Gaines.

The reasoning of Justice Davis upon the facts is entertaining.

“The conduct of Clark,” he says, “is susceptible of easy explanation. He had contracted an unfortunate marriage, and in many respects a disreputable one, having married a person with whom he had previously lived improperly, who, without a divorce, had married again. Possessed of commanding influence and high position, and mingling in social intercourse with the best society of the country, it was natural that he should be desirous of concealing his marriage; but when sickness overtook him and he necessarily reviewed his past life, it was just as natural he should wish to repair the consequences of his folly (to use no harsher term) by a deliberate acknowledgment that the child born of that marriage was legitimate.”

It is easy to see the struggle in the mind of Clark on this subject. He had sustained improper relations with a woman of uncommon personal attractions, to whom he was passionately attached. This woman he afterwards married, and lived with in secret for several years. Estrangement took place and he separated from her. She had repaired to Philadelphia to procure evidence of her marriage; but being unable to get it, and advised of its invalidity, had married another man with whom she was quietly living. Two children were the result of the intercourse between them, one born before and one after marriage. The latter the legitimate heir of the father, if he married the mother, believing in good faith that she was capable of contracting marriage.

To acknowledge a marriage with such surroundings was to lose social caste, and put in peril a woman whom he once loved and still professed to respect. Not to acknowledge it was to bastardize a child for whom he had great affection, and to see a large part of his estate go to others who had no claim on his bounty. There were thus presented to his mind conflicting motives. Duty to himself and society, and affection for his child, prompted him to proclaim his marriage, while pride, the fear of social degradation, and the natural desire not to inflict additional injury upon Zuline, impelled him to a contrary course. That he yielded to the influence of unworthy motives and lived for years a life of deception, only proves that his baser nature during that time got the control, and that he acted as other men in similar circumstances have acted before him. But, before he died, the better nature of this man of lofty pride and sensitive honor was aroused and gained the ascendancy.”

And again, “It is asked why Clark should marry her if he could live with her without it? The natural answer would be, he loved her, and wished to terminate the existing disreputable connection; for we have no right, unless there is clear proof it is so, to ascribe a bad motive for a good act. It may be Zuline was unwilling longer to continue the connection, and Clark, rather than part with her, married her.”

The 8th appeal involves the liability of the Baron de la Croix to account to Mrs. Gains for the value of the slaves which he had bought from the executor of her father so soon after his death. The Baron had testified that he had not known the contents of the will of 1813 and that the only time on which Daniel Clark had talked with him about Myra, he had said that she was his natural child.

Justice Wayne thus characterized his testimony: “there is in it that cold hardness of a man of the world, unmindful of the relations of former friendship, whilst professing to regard them, but built in unison with kindness, and not at all so with seriousness of exact truth. Such men will not swear to what is false, but they may speak what is not true by an indifference to exactness in what they do say.”

The Court found that he purchased the slaves in bad faith and was bound to account for the value. The question of amount was referred to a master to take evidence, and fifty five years after he had made his original purchase, he was compelled to pay again for them to the daughter whom he had solemnly promised her dying father to cherish and protect.

But even though defeated, her antagonists did not lay down their arms. They brought a suit in the Louisiana state court to annul the probate of the will of 1813. Mrs. Gains tried to have the case removed to the United States Court. The State Supreme Court decided against her and rendered judgment setting aside the will.

It was not until 1875 that this branch of the case reached the United States Supreme Court. The point at issue was of vital importance. Again the Supreme Court was divided but the majority favored Mrs. Gains. The cause was remanded and on 30th April 1877, a decree was rendered confirming the will of 1813 and finding that it had been probated by the Supreme Court of Louisiana in 1855 upon sufficient legal and truthful testimony.

Upon the same day a decision was rendered in her favor against four hundred and ninety two defendants were in possession of her property. These poor people not only lost their land and all improvements placed on it by them but by the year 1881 judgments had been received by Mrs. Gaines against them for rents and profits amounting to nearly six hundred thousand dollars. But the city of New Orleans eventually paid this amount for them, for in the year 1884 the city had purchased this tract of land and conveyed it with covenants of warranty.

In the year 1889 the Supreme Court of the United States rendered judgment against the city of New Orleans for \$576,707.92 with interest from 1881. Upon March 2, 1891, the same court reaffirmed the decision of 1889 and added an item of 34,000.00 for costs against the city. In neither of these cases was the Supreme Court unanimous. A bare majority found for the executors of Mrs. Gaines. She was not alive to enjoy the completeness of her victory. As long as she had lived she had pressed her case, in the words of Justice Wayne, "with a vigor and energy hardly ever surpassed, in defiance of obstacles which would have deterred persons of ordinary mind and character." She was justified by her success. Yet as we read over the story as set out in the numerous reports we can not escape the impression that the court erred in its conclusion. And when we study over the evidence pro and con of that clandestine marriage the impression deepens almost into conviction that such marriage never took place.

We cannot doubt that the last will of Daniel Clark was purloined and destroyed by Richard Relf. But the restoration of that will alone did not entitle Mrs. Gaines to recover the property. It was necessary to show in addition that Zuline and Daniel Clark were married. For the Louisiana code natural fathers and mothers are prohibited from disposing of property in favor of their adulterine children.

The fact the marriage was never published to the world; that three years after the alleged celebration Zuline received a decree for alimony from Desgrange; that for years afterwards Daniel Clark denied it, and courted another young woman with matrimonial intentions; that six years later Zuline married Dr. Gardette; that it was never proven that Desgrange was married before he became the husband of Zuline; and the fact that improper relations between Zuline and Daniel Clark existed before any rumor of Desgrange's bigamy was heard of and the result of which relations was an illegitimate child which Clark acknowledged all these are facts difficult to explain in accord with the fact of a valid marriage between them

in 1803. Nevertheless the Supreme Court of the United States did this, but it took them nearly half a century in which to accomplish this result. It is said that hard cases make bad law. Judges are human. The personal presence and interest of a beautiful, bright woman in a court trying her case are potential. We believe that an example of this is the Gain's case.

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