

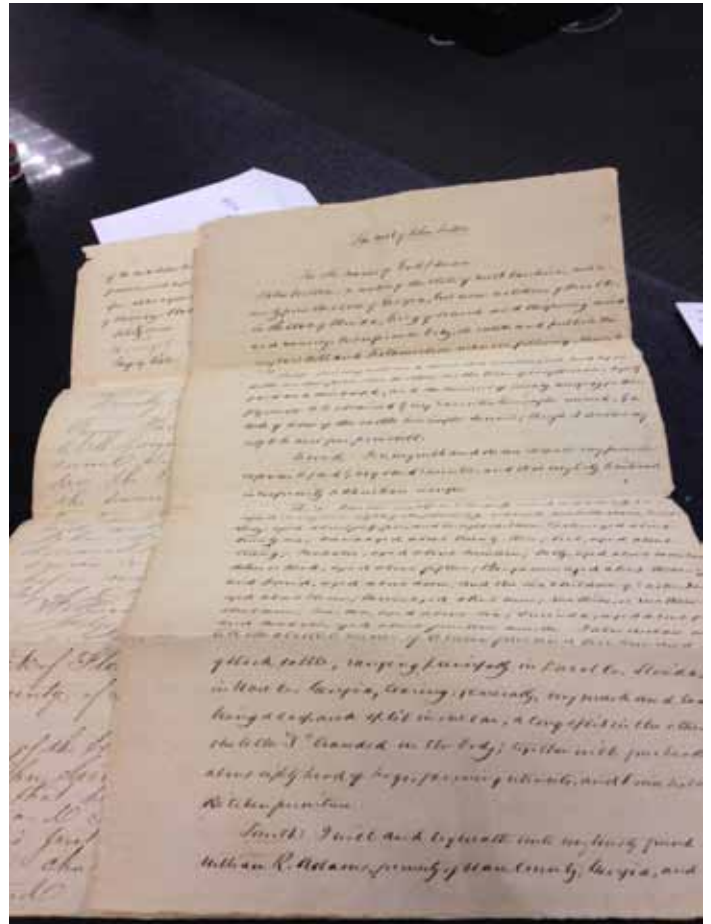
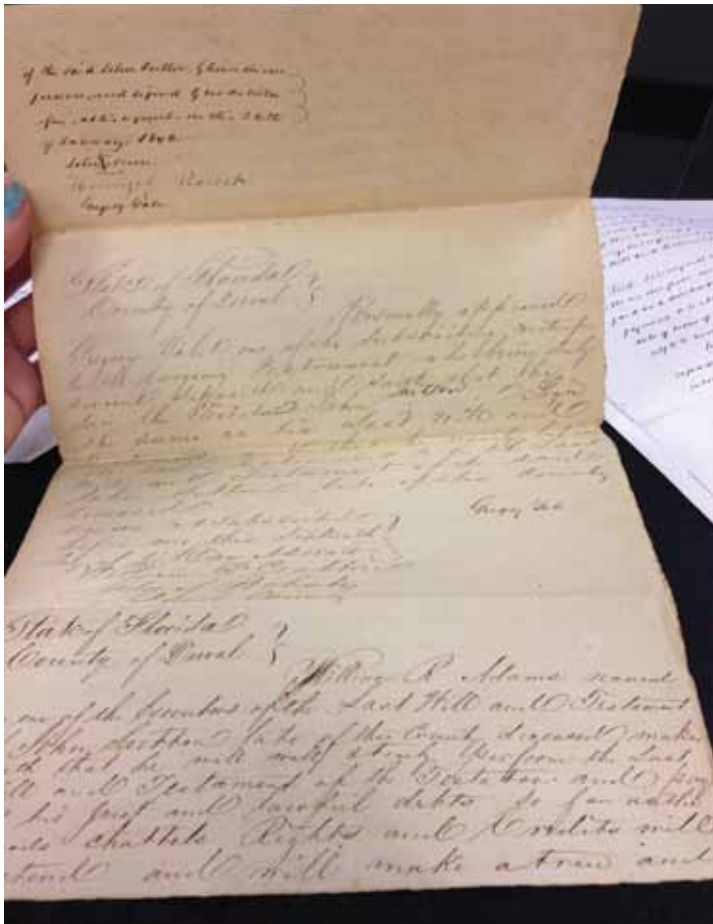
Tracing One Family's Path to Freedom, Through Love

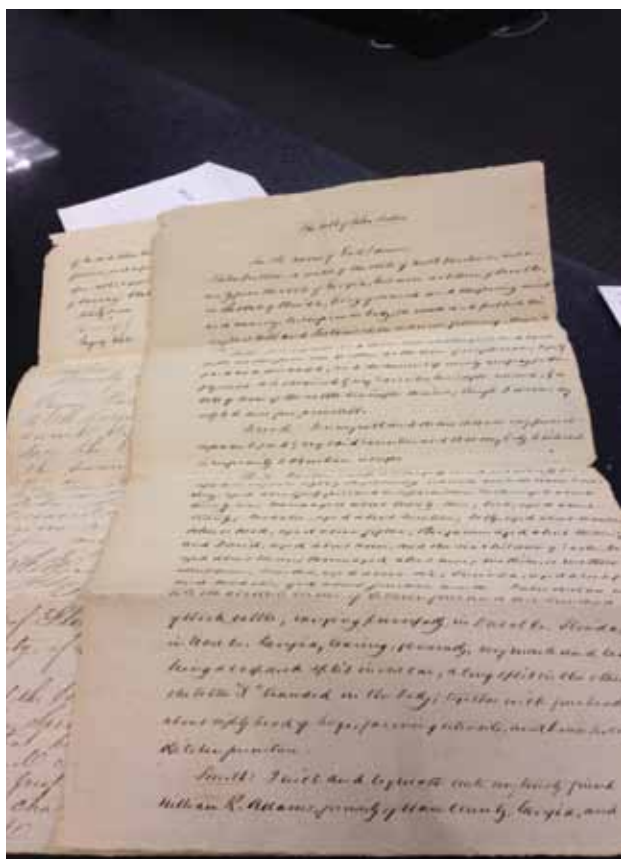
By Terry Franklin

This story is about my search, as a trust and estate lawyer, to find answers to questions about my family's heritage and to try to discover evidence of the role that rape or love may have played in how my family came to be.

I grew up in Chicago, where my mother's family lived after migrating from Southern Illinois. We always knew that our ancestors had settled in Southern Illinois in the mid-1840s. Family lore and research performed by a long-deceased distant cousin informed us that there was a will made by my great-, great-, great-, great-grandfather, John Sutton, who died in 1846. We had an abstract of a portion of the will made by John, a white farmer in Duval County, Florida. (Jacksonville is the county seat.) Based on the abstract, we knew that the will provided first for the payment of John's debts and, then, for his "mulatto slave Lucie" and her eight children, including her daughter, Easter, and Easter's own six children to be set free on John's death. The will included a specific direction that they all be moved "to the states of Illinois, Indiana, Ohio, or a foreign country where they and their children could live free forever." We also knew that the will named a trustee to take ownership not only of John's slaves, but also of his 400-500 head of

Terry Franklin is a partner in the Los Angeles, California, firm of Sacks Glazier Franklin & Lodise LLP and a member of the Section Council.





branded cattle, four horses, 80 hogs, farming utensils, and household furniture. The abstract made clear that the will expressly instructed John's

I had long known that my heritage included a slave-owner and his female slave. What I did not know, and what gnawed at me, was whether John Sutton had a white wife and children in addition to my ancestor Lucie and her children.

trustee, William Adams, to sell John's personal property to fund the relocation of his slaves to freedom. Thus, I had long known that my heritage included a slave-owner and his

female slave. What I did not know, and what gnawed at me, was whether John Sutton had a white wife and children in addition to my ancestor Lucie and her children.

In anticipation of a 100th birthday celebration for my Great-Aunt Viola, who had spent her life in Southern Illinois, the questions about my ancestry, and just what Lucie meant to John Sutton, kept floating to the surface of my mind. I felt a burning need to obtain access to the entire will—to try to learn what John Sutton was all about. My lifelong study and knowledge of the brutal history of American slavery, reinforced recently by seeing the horrors of American

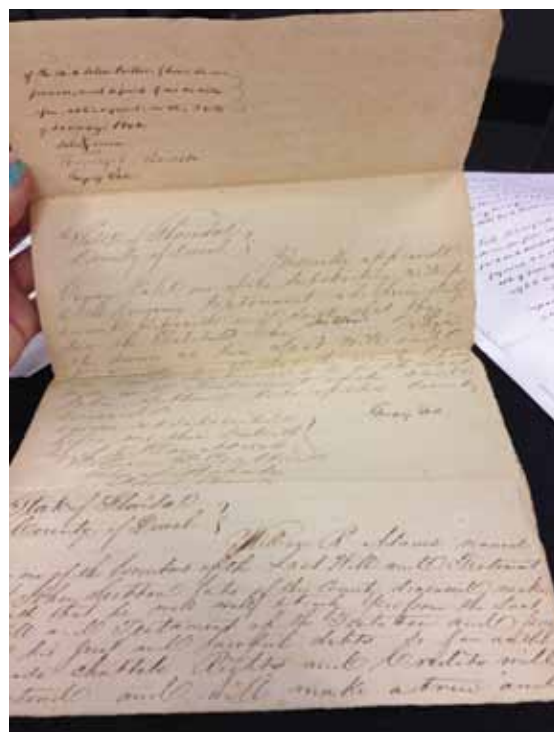
slavery depicted in the film, *12 Years a Slave*, heightened my need to know how much rape played a part in John Sutton's legacy.

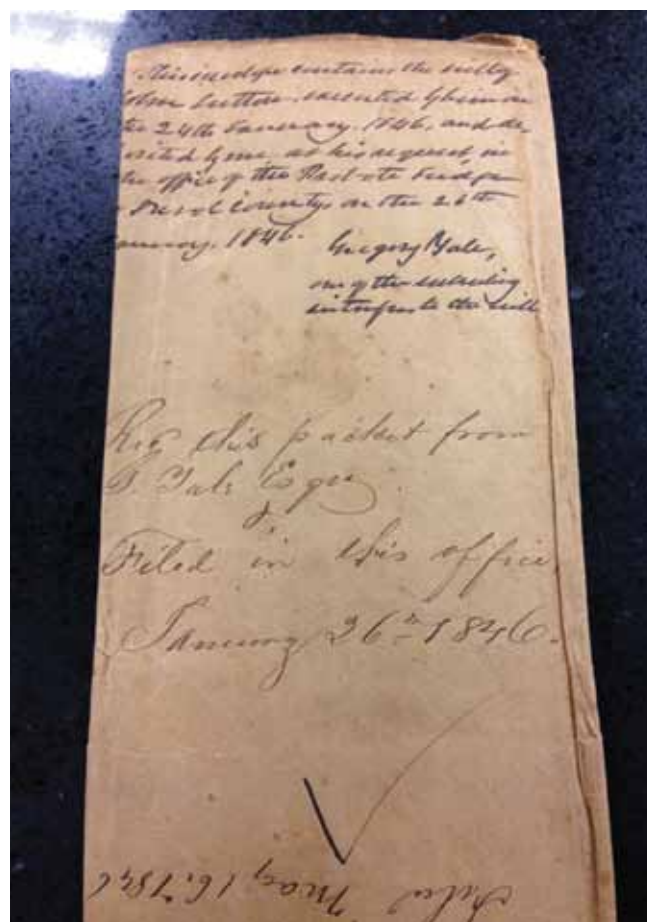
The week before we were scheduled to fete my great-aunt and honor her life (an extraordinary existence that included high school and college degrees, a career as a teacher, and a six decade marriage to a Tuskegee airman), my desire to see John Sutton's will grew more and more pressing. How could I track down the will? All I had was the abstract. But the abstract had key clues—it identified the book and page numbers where the will had been recorded in Duval County, Florida, where John Sutton lived; in Ware County, Georgia, where his executor lived; and in Pope County, Illinois, where my family settled after John died.

On a Wednesday, I opened my ACTEC (American College of Trust and Estate

Counsel) directory and flipped to Florida. I found several attorneys based in Jacksonville, none of whom I knew personally. Randomly, I picked two Fellows of ACTEC who seemed to be about my same age. I called each and, as neither was available, I left messages asking them to call me back. Within hours, I had messages back from both of the lawyers I called. Calling back and reaching voice mail, I decided to leave a more detailed message explaining that I was trying to track down an old will from 1846 and had no idea where or how to start the search.

Later that day, I received a call back from ACTEC Fellow Anne Buzby-Walt. We talked as if we had been friends forever, and I explained that I was trying to find my ancestor's will before my great-aunt's imminent birthday celebration. Anne was wonderful but explained right away that there had been a fire in Jacksonville in the early 1900s and that most old records had been destroyed. Disappointed, I thanked her, expressed my appreciation for her help, and told her I looked forward to meeting her in the future. I hung up and began to set my sights on checking the Georgia and Illinois records.





When I arrived at my office the next day, a message awaited me from Ann Tatem, a paralegal who worked in the office of ACTEC Fellow Tim Flanagan, for whom I also had left a message. Ann's message said that Tim had forwarded my request to her, and she would be happy to try to help me investigate further. I called her back, explaining that I had already heard about the fire, so I wasn't sanguine about having any success. Ann acknowledged the fire, but she offered to call the courthouse and do a little investigating. By this time, I had told her about my centenarian great-aunt, and Ann was as excited as I was. An hour later, I got a call from Ann letting me know she had spoken with a clerk, and there was a file for a John Sutton, but the clerk didn't know what was in the file, or even if the John Sutton was the same John Sutton for whom I was searching. The file was in archives, but Ann told me the clerk would have it pulled in two days. Ann and I hung up, both of us excited about what we would learn that Friday. When I got to work on Friday, my first voice mail message was from Ann. "They've got the Sutton file! Call me." I held my breath and called Ann right away. She told me she would send her attorney service to the courthouse and call me when she knew what the service found.

Two hours later, Ann called to say

the attorney service was at the courthouse and the file was that of the *right* John Sutton. "Take pictures! Get copies!" I told her. Within an hour, I received an e-mail of digital images of John Sutton's January 6, 1846 will, handwritten by a lawyer in sepia ink on tea-colored parchment, marked with an "X" by great-grandfather X4 John—duly witnessed, admitted to probate, and filed and recorded—it's red wax seal still vibrant nearly 170 years later!

When I read the entire will, I learned that John had no white wife or other children. And being of sound mind and memory, but "infirm in body," John had taken all the right steps to protect the woman I believe he loved, and his children and grandchildren, from being subject to the dangers that faced free blacks in the antebellum South.

As I thanked Ann profusely for her diligence and enthusiasm, I imagined Lucie and her brood, first mourning John, and then packing up all the earthly goods that had not been sold to finance the migration—caravanning their way through Florida. And Georgia. And Alabama. And Tennessee. And Kentucky. To settle in Pope County, Illinois.

What an amazing journey, I thought (especially as a trust and estate lawyer), to discover that John Sutton had marked his will on January 6, 1846, that he was deceased and the will was probated by May of that same year, and that my family had found freedom by December, when the will—my own family's "Free Papers"—were recorded in Pope County, Illinois.

I may be accused of being a traitor to my race or an apologist for slavery for writing this article. I don't deny the evils and abuses of slavery—or the perversity it imposed on our country's history and its people, the effects of which linger today. Maybe I am romanticizing or am just a romantic. But my Pollyannaish optimism tells me that this is a real love story. A story about how love, like water, finds its own path, despite obstacles in its way; or, perhaps like a weed, pushes up through the cracks—even to overcome the peculiar institution of American slavery. ■