

heirs argued that this legacy set up a trust in violation of Louisiana law. They cited *Heirs of Henderson v. Rost* in support of their position. Chief Justice George Eustis ruled against the heirs, affirming the decision of the lower court: “The distinction between this and *Henderson’s* will . . . is obvious. *Henderson* made no disposition of his property in favor of any one, but simply provided that it should forever form part of his succession and be administered by his executors and commissioners to be named after them to the end of time—while *McDonogh* has made a valid disposition of his property, and the perpetuity of the bequest is merely the consequence of the perpetual existence of the legatee” (emphasis in original).<sup>12</sup>

During the same term, the supreme court heard another case in which a testator attempted to free a number of his slaves, *Succession of Cresswell* (1853). **Elihu Cresswell**, a New Orleans slave dealer, wrote a will in which he bequeathed freedom and \$50 to his slave Gabriel “for his long and faithful services, that he may acquire his freedom in the slave States, or be sent to the free United States of America, as he may desire.” He also left freedom to all slaves that he happened to own at the time of his death, and transportation to a free state, the expense of which was to come from the succession. The remainder of his succession he left to his mother, or her heirs if she should have predeceased him. One of Cresswell’s appointed executors failed to keep the funds of the succession in a bank, as required by law. For this irregularity, the probate court dismissed him and fined him 20 percent of the value of the succession. He sued for his commission on the value of the succession (a fee to compensate executors for their services), including the value of the slaves, whom he had made no attempt to emancipate. The probate court refused to include the slaves in the evaluation. Justice Rost affirmed the decision. A new executor emancipated the slaves and subsequently sent them to New York.<sup>13</sup>