1773-003 SOUTHAMPTON COUNTY CHANCERY PAPERS KIRBY + UXVAL VS. SIMMONS, 9|1773

other SURNAMES: Butts, Halcomb, Hallcome, Jones RUFFIN

Hardy & al
vs
Simmons } Bill

To the worshipfull the Judges of Southampton County Court sitting in Chancery

Humbly complaining shew unto your Worships your Orator & Oratrixes Benjamin Kirby & Anne his Wife & Mary Simmons, Sarah Simmons, Catherine Simmons by Benjamin Kirby her Guardein & next Friend and Mason Simmons by Albridgton Jones her Guardein & next Friend of the County of Southampton, That Charles Simmons late of the said County decd your Oratrixes Father being in his Lifetime & at the Time of his Death seized and possessed of a considerable real & personal Estate, consisting of Land & Slaves &c. did on or about the twentieth Day of September in the Year of our Lord one thousand seven hundred & fifty seven duly make & publish his last Will or testamentary Schedule in his own Hand Writing, and thereby among other things devised and bequeathed as follows, viz. "I give to Mary Simmons one Negro Girl named Patience, I give to Sarah Simmons one ditto named Rachel, I give to Ann one Ditto named Jenny, I give to Catharine Simmons one Ditto named Hagar, I give to Mason Simmons one Negro Girl named Sarah Blango", & shortly after he departed this Life. Your Orator & Oratrixes further shew unto your Worships, that John Simmons Heir at Law to his Father the said Charles Simmons decd possessed himself of the said Slaves so bequeathed to Your Oratrixes as aforesaid, and before the aforesaid Last Will was proved in this worshipfull Court & Letters of Administration upon the Estate of the said Charles Simmons decd [redacted]. Your Orator & Oratrixes further shew, that since the specifick Legacies bequeathed to them by the said Charles Simmons decd as aforesaid became due, the said Negro Women Slaves have had several Children, and that they have frequently applied in a friendly Manner to the said John Simmons (whom they pray may be Made a Party to this their Bill of Complaint) to have the same paid & delivered up to them & that he would account to your Orator & Oratrixes for their Hire & Profits since they became entitled to them, & Your Orator & Oratrixes were hopeful that he would have complied therewith as in Conscience he ought to have done. But now so it is may it please your worships that the said John Simmons altogether refuses to pay & deliver to your Orator & Oratrixes their said Specifick Legacies & their Increase or account with them for their Profits & Hire pretending that the said Charles Simmons did not make any such Will or testamentary Schedule as aforesaid, or that if he ever made any such that he revoked the same before his Death, whereas your Orator & Oratrixes expressly charge that the said Testator never revoked by any other Will or Writing in the said Testators Lifetime, all which Actings & Pretences of the said John Simmons are contrary to Equity and good Conscience & tend greatly to injure your Orator & Oratrixes. In tender Consideration whereof and forasmuch as your Orator & Oratrixes are remediless in the Premises except in a Court of Equity where Matters of this Nature are properly cognizable To the End therefore that the said John Simmons, may on his corporal Oath true & perfect Answer make to all & singular the Matters aforesaid as fully as if the same were here repeated & interrogated, & more especially that he may set forth and declare whether the said Charles Simmons did not duly make & execute such last Will or testamentary Schedule in his own Hand Writing & such Date & to such purport & Effect as aforesaid and thereby bequeathed unto your Oratrixes such specifick Legacies as aforesaid, & when the said Testator died, & whether the said Negro Wenches have not had several Children, how many & which of them had them. And whether your Orator & Oratrixes have not in a friendly Manner applied to him to pay & deliver up to them their specifick Legacies & their Increase, & to account for their Profits & Hire since they were payable & due, & whether he refused and for what Reasons, And that he may be compelled by Decree of this worshipfull Court to pay & deliver up unto your Orator & Oratrixes the said specifick Legacies & their Increase as aforesaid & to account for their Profits & Hire & that they may have such other & further Relief in the Premises as the Nature of this Case shall require & as to your worships shall seem meet, May it please your worships &c. &c.

Wm May Pltf.

Summons Adv
ad
Summons
Sept. 1772
and time
for Ans. & Com
Febr 1773
16 Lot
May 1773 Set for
hearing
June Cont.
Sep. 1773.
Decree for Pet.

The answer of John Simmons administrator of the goods and chatels of Charles Simmons dec'd to the bill of complaint of Benjamin Kirby and Ann his wife Mary Simmons Sarah Simmons Catharin Simmons by Benjamin Ruffin her guardian and next friend and Mason Simmons by Allbridgton Jones her guardian and next friend complainants

This defendant now and at all times hereafter saving and reserving to himself all advantages of exception to the manifold imperfections untruths and absurdities in the said bill contained for answer unto or to so much thereof as this defendant is advised is material for him to make answer unto he answereth and saith That he hath reason to believe the instrument of writing in the bill mentioned said to be the last will and testament of the said Charles Simmons dec'd was never by him intended as such but that the same was made by him to gratify his wife Elly & Sally Ruffin her Sister now the wife of William Simmons of this county they being very importunate and solicitous for him so to do That so soon as the same was executed this defendant hath been informed that the said Charles expressly declared the same should be void but that to obtain a little peace he consented to their frequent solicitation being that without it being recorded it would signify nothing This Def. hath heard that the manner of executing the said instrument was only as a deed of gift and that he never made any declaration of its being his will That there were several other slaves and lands which this defendant presumes he would have mentioned in the said instrument had he intended the same to have taken effect as his will This defendant further saith that after the decease of the said Charles which happened about the [illegible] day of Nov. in the year one thousand seven hundred and sixty he took out letters of administration assigned the widow of the said Charles her dower in the slaves and hath made himself liable to his sisters for their proportionable part of the appraised value thereof part of which this Def. hath paid They never till lately pretending any right under the instrument now set up as a will This Def. further saith that two of the said slaves Patience and Hagar are assigned in the widows dower That four of the remainder were appraised to sale to raise

Pursuant to a Commission from the worshipfull the County Court of
Southampton hereunto annexed & to us directed we have taken
the Deposition of Sarah Simmons formerly Sarah Butts Spinster
aged, who being first sworn upon the holy Evangelists of Almighty God
deposeth & saith, That she [illegible] Charles Simmons
the Writing now lodged among the Records of Southampton Court,
which had been wrote by himself in her Presence, That he was then
in his perfect Senses & did the same & his own good Will & pleas-
ure signed by him with Deliberation, he delivered the same to
this Deponent, with this express direction, to take Care of it.
That sometime after, the said Charles sent to this Deponent for
the said Writing, & having made another Gift under the former, which
she believed to be the Hand Writing of the said Charles as well as
the former, he sent it back to her again. She further deposeth & saith
that to induce the Writing & signing of the first Gift & the last, the said
Charles has married another wife, & had a Child by her, in whose
Favour the said last Will, That he had three other
Writings for the said Negroes, That he never applied to this
Deponent for the said Writings again or ever desired her to destroy it.
This Deponent says that she heard That the said Charles had made a
Will That he had burned it. This Deponent having asked
the Defendant, if Mr. Simmons made any Declaration to induce
her believe that he intended this first mentioned Writing for his last Will, she
answered no, but that she believes he intended the Negroes given
by the said Writing for the said Children & that the said Gifts were
agreeable to his express Intentions at that Time. This Deponent
Declares that her Reasons for taking Care of the said Writing was
that she firmly believed it contained the sincere Intentions &
Gift of the said Charles; That sometime before he made the last
This Deponent asked him, if that was all he intended to give
them, & answered that he had given them to see which would
have the least Luck in the world. That the said Negroes mentioned in
said Writing were always called by the Names of the Children
to whom they were given. And further This Deponent
saith

saith not &c

Sworn to before us the 6th
Day of April 1773

Sarah Simmons

Charles Briggs

Benj.a Rusling Js

Simmons Dat

&

Simmons ad.

Spa in Chan.

Ed. T R

March 1772

Cons for bill

May 1772

Cont.d

Jun Cons to

Answer

July bill filed

Vt Hue

George the third by the Grace of God of Great Britain
France and Ireland king Defender of the Faith &c To
the Sheriff of Southampton county greeting We command
you that you Summon John Simmons admor de of Charles
Simmons decd to appear before our justices of our said
county court in Chancery at the courthouse on the second
thursday in March next to answer a bill in Chancery
exhibited against him by Mary Simmons Sarah Simons
Benjamin Kirby & Ann his wife Catherine Simmons
& Mason Simmons and this he shall in no wise omit
under the penalty of £100 And have then there this
writ Witness Richard Kello Clerk of our said court at
the courthouse the twenty second day of February in the
twelfth year of our reign

R Kello C

Simmons
vs
Simmons
Dep

Southampton Sct

George the third by the grace of God of Great Britain
France and Ireland king defender of the faith &c To
Charles Briggs & Benjamin Ruffin
Gent. greeting Know Ye that We trusting to your fidelity
and provident circumspection in diligently examining
whatsoever witnesses as well on behalf of Mary
Simmons Sarah Simmons Benjamin Kirby & Ann
his wife Catharine Simmons [illegible]
Mason Simmons pltffs as on behalf of John
Simmons admr &c of Charles Simmons decd defendt
Command you or any two or more of you that at such
certain days and places as you shall appoint you
assemble yourselves & the witnesses aforesaid before you
or any two or more of you you call and cause to come
and diligently examine on the holy evangelists of
Almighty God And their examinations into our court
of our said County of Southampton without delay you
shall send & certify inclosed returning also this writ
Witness Richard Kello clerk of our said Court at the
Courthouse the 14th day of November in the thirteenth
Year of our Reign

R Kello C

The Execution of this Commission appears by the ~~Dep~~
Deposition of Sarah Simmons hereunto annexed.
Rust. Falconer

Charles Briggs

Benjn Ruffin

Simmons
vs
Simmons
Dep

Simmons
vs
Simmons
Dep

L. 31.12.2

Richard Hall aforesd of full age being sworn in the same cause deposeth
That he lived with the said Charles Simmons dec'd the last
last years of his life. That some time in the said period a
conversation arose between the said Charles and this deponent
concerning the ill consequences of a person dying without
with whereupon the said Charles observed let him die
when he would he should die without one. This deponent
asked the reason the said Charles answered that he could
not please any body & himself too in the making a will
that he had made but one of which did not please his
wife the other did not please Sarah Simmons the other
deponent who was sister to the first wife of the said Chas.
and therefore he said he'd be damned if he ever made
another for that the Law would make a will good enough
for him. That the said Charles told this deponent that in
the last will he had given all his children an equal
part which displeased Sarah Simmons who thought the
children by the first wife ought to have the most and in the
second will he had made an alteration which had displeased
said Sarah. This deponent saith the said Charles if
instead of what he had been informed were given by the
to be present of writing in the possession of Wm. Simmons were
in over and above the part the Law would give them
to him he died without will who answered he did not
& it would stand good as it was not recorded
and further saith not

Sworn before us the 9th day of } Richard Hall Comr
April 1793 }
Charles Briggs
Benjn Rassin jr.