

1794-011

SOUTHAMPTON COUNTY
CHANCERY PAPERS

SMITH vs. TAYLOR'S ADMR & al

8/1794

N.B. No further documentation is extant regarding this case, and it is placed in 1793 arbitrarily.

P.S. Torn piece with date "August 1794, Dissolved" found several months later in a different box.

Other surnames; McGarity,
McGarrity, Dorsey, Moore,
Randall

To the worshipful Justices of Southampton County
sitting in Chancery? —

Noron Smith. Humbly complaining sheweth unto the
Court, that some time on or about the day
of anno domini a certain Samuel
Dorsey was arrested by the Sheriff, or deputy Sheriff
of Soton County in two actions, one at the suit of
Moore, and the other, either at the suit
of Whithred Taylor, (now deceased) or one James McGarity
or some other person (he cannot now positively recollect)
but the proceedings therein will more evidently shew;
however, the said Taylor had the direction & management
of the latter — That the said Dorsey applied to
your orator to become his bail in the said actions
but on inquiring your orator was informed that the
latter as above mentioned was upon a claim for
money won at play, or gaming: he immediately
consented to become his bail in the one at the
suit of Moore; but expressed his unwilling-
ness & disapprobation as to the other — Some time
after, at Soton Court the said Dorsey (apparently
in great distress) ^{again} applied to your orator to become
his bail, or "that the miserable condition of
confinement in jail must be his portion"

This request being enforced by a profusion of Tears, streaming down his cheeks, operated considerably on your orator's humanity! — a short interval ensued — and the said Taylor & Dorsey had conversation together — In a few minutes they both informed your orator that indulgence was granted to Dorsey, provided he would give bond & security — and that the suit then against him should be dismissed. — The said Dorsey applied as before — and the said Taylor also solicited your orator to become his security in a bond for the sum of . . . the said Taylor assenting your orator at the same time, and agreeing, that at any future day he would accept of Doct. Randall as security for the said Dorsey in the bond aforesaid instead of your orator, & that he would exert himself in your orator's relief,

Thus circumstanced & importuned, by promises of clemency and friendship on the one hand — and anxiety and distress on the other your orator was completely overcome, and induced to subscribe that fatal obligation the judgment whereof now presses with so much weight, not without informing the said Taylor at the same time, that he would never

pay the bond aforesaid unless compelled thereto: on account of its arising from a gambling foundation — The said Taylor admitted that it arose in that manner, and that the same, or a greater part thereof had been won by a certain M^r Garity as well as your orator recollects, ~~and that he would exert himself in your orator's relief~~ but as Doct. Randall was then in a drinking way, at a future day he would agree to accept him in your orator's discharge; which nevertheless was not done, from what cause your orator knows not but probably from the death of the said Taylor . . . but that the foregoing were substantially the circumstances, and the condition inducing your orator to become security in the bond aforesaid he cannot omit herein most solemnly to charge — He further sheweth that the said M^r Taylor having departed this life on or about the day of 17th ^{with the will annexed} admon^d of his estate was committed to John Taylor by the Court of this County in the month of . . . in the year aforesaid. That not long after the said admon^d demanded payment of the bond before mentioned but your orator refused discharging the same, stating to him sundry reasons as have been herein before expressed, particularly that the said bond was given for money won at cards, dice,

or some other gaming - The said Admor ^{admitted} ~~acknowledged~~ this
to be the truth but endeavoured to evade the force of
the objection by saying that it was not gaming to his brother
intimating that the said Etheldred had purchased the claim
or demand of some other person - but now so it is
that the said defendant John Taylor Admor as aforesaid
combining & confederating with the said ^{McGarety}
together with divers others who when discovered your orator prays
may be made Defs to this his bill of Complaint in order to
injure your orator hath instituted suit on the said obligation
obtained judgment thereon (notwithstanding your orator's defence)
and now threatens him with execution for the same - In tender
consideration whereof and for as much as your orator can only be
relieved in a Court of Equity, to the end therefore that the said
Defs John Taylor & ^{McGarety} may on oath true
answer make to the premises as fully as if the same were again repeated
particularly that they may set forth & discern whether the sum of money
as mentioned in the bond aforesaid was not won of the said Samuel Dorsey
by the said Etheldred Taylor or by the said ^{McGarety}? or
whether was not the bond aforesaid given for a sum of money won
at gaming, or what was the consideration of the first action against
the said Dorsey? was not your orator prevailed on to join in the bond aforesaid
on the promise & condition as herein stated? hath not the said Admor
been informed by his intestator Eth^d Taylor or by some other person concerned
in the demand that the original claim against the said Dorsey was on
gaming? did not the Defs In: Taylor in a conversation with your orator
respecting the said demand admit that ^{it} originated or was founded
in gaming? or words to that effect? That the said Defs do may
be enjoined to and that the Com^{rs} writ of subpoena be may be
directed to

Nov. 16. 1793 Sworn to in county of Hampshire ^{The} ~~File~~ ^{for the Compt}

The answer of John Taylor, admin^r of Etheldred Taylor dec^d,
to the bill of complaint exhibited against him, by
the worshipping Court of South Hampton County, by
Aaron Smith - This respondent, for answer to so much
of the said bill as he is advised is material for him to
answer, says that, true it is Etheldred Taylor died on or
about the day of anno Dom. ; & that a d^mon of his
estate, with the will annexed, was committed to this re-
spondent. This respondent has instituted suit, & recovered
judgement on a bond, given by Samuel Derry & the
complainant to his testator, & conditioned for the pay-
ment of £ Whether the said bond was given for
a sum of money won at play, or gaming, or what was the con-
sideration thereof, is unknown to this respondent, as he
was not privy to the transaction, nor has he ~~any~~ ^{any} ~~information~~
information respecting the same - Altho it should be
allowed that the bond was given upon a gaming consi-
deration (which this respondent does not confess) yet that
circumstance could not now operate against the validi-
ty of the said judgement; because (according to Act of
Assembly in such case made & provided) such circum-
stances was pleadable at law in opposition to the obtaining
of the said judgement; complete remedy for the complain-
ant was (if anywhere) at law, obtainable; & relief in chan-
cery can only be had where the party was remediless at
law.

Altho this respondent conceives the various other allega-

trious of the bill to be entirely immaterial, yet to gratify the complainant he declares that, as to actions formerly instituted against Samuel Dorsey by Moore, or E. H. H. Taylor deed, or James Megarity, or some other person, he is profoundly ignorant: nor does he know of any promises or conditions upon which the complainant became security to Dorsey, saving the one condition contained in his bond.

sworn to in court

J. D. Hausmann D.C.

May 1st 1872
J. D. Hausmann
D.C.

Smith
no } Injunction.
Taylor

Smith

is

Injⁿ

Taylor's adm

August 1794 deposited
in the common.

Know all men by these presents that we Aaron Smith & James Small Turner

are held & jointly bound for J^o Taylor ad^rors of E^th in the sum of
Nineteen pounds six shillings

Current Money of Virginia to the which payment well & truly to be made unto
the said J^o Taylor ——— his heirs & assigns we

bind ourselves our heirs execs. and admors. jointly & severally firmly by these
presents Sealed with our seals this 16th day of Decr 1793

The Condition of this obligation is such that where
as the said J^o Taylor ad^rors of E^th hath obtained a judgment at common law
against the said Aaron Smith ——— in the County Court of South-

and costs against the said Aaron Smith hath obtained an injunc-

tion to stay the execution of the said Judgment until the matter in equity
upon a bill for the purpose filed can be heard. If therefore the said Aaron
Smith shall satisfy and pay the said Judgment

at common law and all costs & damages that shall be awarded to them
in case the said injunction shall be —

disolved

Full force &

sealed &

in presence

the coa

above obligation is not void
}
}
} Aaron Smith Seal
James Turner Seal