

1799-005 SOUTHAMPTON COUNTY
CHANCERY PAPERS

PERSON'S HEIRS

vs. SMITH'S ADMINISTRATOR 6/1799

Person & al. heirs &c.
v. } Bills
Smith admors &c.

To the Justices of Southampton County,

In Chancery sitting —

Anthony Person and John

Person, heirs and devisees of their late father William Person deceased, respectfully shew — That several years ago ^{Smith} Sam^l ^{Smith} administrator of Joseph Smith deceased instituted an action of debt against them in the County Court of Greensville upon a bond of their father to his intestate, dated on the 20th day of August, 1788, & conditioned for the payment of £21.5 of Virginian money, — to which action they made defence upon the ground of payment, & at a Session of that Court in March, '91, the cause came on, & a Jury was sworn therein, but the Plaintiff Smith, influenced by some disagreeable forebodings of the event of the trial, thought proper to suffer a non-suit. After this the Complainants flattered themselves, that the Administrator Smith would not again harass them in relation to a bond, which from its long standing the law presumed to have been paid, & which, independent of such presumption, circumstances united in declaring against: But from motives, which the Complainants are at a loss, or rather unwilling to suggest, he brought a second suit upon that bond in the same Court, & a second time too, ^{altho'} ~~when~~ the Complainants were ~~ready~~ ^{in that Court,} & anxious for trial, suffered a non-suit! This manœuvre was in Mar. '95.

Again the Complainants indulged an expectation of being freed from all farther litigation about a bond, which they believed to have been paid, — but again they were disappointed! — The old bond was a third time put in suit, but not in the same Court, — the administrator being aware, that the two non-suits suffered by him in that Court, & the motives which apparently produced them, would there too strongly oppose his wishes. Accordingly the last action was instituted in the Court of this County, & perhaps had not the Complainants accidentally delayed making defence a little too long there would have been a third non-suit. But unfortunately conceiving that it would be in time to engage Counsel & make defence at the November instead of the August Session in '95, the Complainants did not come forward early enough, & the administrator

was at length indulged in the fruition of wishes — the darling object
of all his preliminary manœuvres, a judgment by default! —
The Complainants trust however that they are not yet without the
limits of redress, — for altho' Smith has succeeded at common law
it must be evident to all that his success is rather the effect of trick
& an improper use of the means furnished by the law, than of fair
decision.

Wherefore, and in order, that Laurence Smith, admin-
istrator &c of Joseph Smith deceased, who in this relation is without the
reach of the Complainants at common law, may answer this bill —
may be perpetually enjoined from proceeding to an execution of the judg-
ment thus obtained by him at common law against them — & that
the Complainants may have such farther relief as to this Court may
appear proper — They call for a writ of Injunction & of Subpe-
na &c.

Meat M. Robinson
for the Compls

Southampton County, to wit,

severally _____ This day Anthony Person & John Person
made oath before me a Justice of
the peace for the County aforesaid, — that the foregoing bill, so
far as it is drawn from their own knowledge, is true, —
& that so far as it is taken from the knowledge of others or other
evidence, they believe it to be true. Given under my
hand this 14th day of April in the year of
Christ 1790. —

Robt Mabry

Smith
vs
Persons

} Answer
in
} Chancery

(Filed)

State of North Carolina
Northampton County &c.

This day Lawrence Smith personally appeared before
me a Justice of the Peace for the County aforesaid and made oath
that the substance & matters of fact in the foregoing answer, so
far as they relate to his own knowledge are true, and that
so far as they are derived from information he believes
them to be true — Given under my hand this 3 day
of May — 1797

Larnes Vaughan

The answer of Lawrence Smith (as Adm^r of Joseph Smith dec'd)
Deft, to the bill of complaint of Anthony & John Person (Heirs &
devisees of William Person dec'd) complainants. Du 11

This Deft, saving & reserving to himself all and all manner
of advantage & benefit of exception that may be had or taken to
the many uncertainties, misrepresentations, and untruths in
the said bill of complaint contained for answer thereto or to
so much thereof as he is advised is material or necessary
to be answered, he answersh & saitheth That he did
institute a suit in the County Court of Greensville in the
manner as in the bill stated; to which the then Deft
offered the plea of payment, relying on length of time
only as a presumption to support the defence — That
this Deft's council being at that time, uninformed and of course
unprovided with circumstances to rebut the presumption
thought proper to direct a nonsuit rather than hazard
the event of a general verdict — That sometime after
this transaction he acquainted this Deft with his conduct
and the motives which induced it, with which he was
satisfied — whereupon, and on consideration of sundry circum-
stances & information his council brought a second suit, in
the same Court but could never prevail on the s^d Court, or
the council for the s^d Persons to proceed to trial; and thus

the cause was continued from time to time on their part against every effort on the part of this Deft's council in consequence whereof He was induced to dismiss it, and institute it in another Court where he hoped that the same might be tried agreeably to the rule of other suits on a similar footing. Thus it must appear that all the insinuations & suggestions in the said Bill relative to the forebodings & improper motives of the Plaintiff in the former action ^{- and the declaration of the Deft's Motion for trial a second time -} are not only uncertain, but they are really untrue. This Deft is surprised to find that the Compts have declared their belief that the aforesaid bond was ever paid? The reverse of which is a fact, and which circumstances & acknowledgements strongly shew not leaving a doubt that the same remains justly due at this moment as the following reasons will satisfy every unprejudiced mind. — In the year 1773 the aforesaid bond devolved on the Deft's hands by the death of his intestate, at which time payment could not have been presumed, nor doth he believe had been made — and since then, he expressly charges that the same hath not been paid. That sometime after the above date, to wit about the year 1774 or 1775 as well as the Deft recollects, he made application to Mrs. ^{Person} ~~Person~~ of the P^r Wm Person Deed for payment of the s^d bond, who acknowledged the same to be due & promised to discharge it so soon as some money came to her hands which she expected

from, or through the hands of a certain Redley —
In this situation things remained thro' the paperage and the American war and until sometime early in the year ^{or thereabouts as near as this Deft can now recollect} 1787 — when he applied to Mr William Andrews (Treas of the P^r Wm Person Deed in right his wife the ~~Dee~~ ^{Dee}) for payment, who alledged that he had settled the estate & had no further concern therewith. At length the Deft instituted suit against the Compts in manner as herein before stated, and finally the one which produced the just judgment, now so unjustly enjoined. The Deft is advised that with respect to the perhaps of a third nonsuit which the Compt have introduced by way of hope had not their accidental delay prevented, that such idle suppositions are not proper objects of a Court of Equity — and that the Compts unfortunate ~~conceptions~~ ^{conceptions} of the time to obtain council & make defence is no reason for enjoining a judgment. The Deft is sorry to be charged with any thing like "trick, and an improper use of the means furnished by the law" — being conscious that his motions & conduct relative to this business have been pure & upright, and that he has been guided, & hath succeeded by a proper use of the means furnished by the law and hopes that he shall yet be paid this long-withheld, tho' honest, & just demand — He denies all fraud & wherewith he is charged, without that &c. and requests to be dismissed with his proper costs &c.
T^r Hill for the Deft.

ck.
Smith's Adm.

rs } Copy 2
Persons' Dismiss.

For the Defts.

Mar. 11. '90.

inj. granted - bill to
be filed at apt. rules.

Greenville County March Court 1791.

Lawrence Smith Admtor of Joseph Smith pl^t

against

John Cerson and Anthony Cerson . . . Defts

} In Debt

This day came the parties by their Attornies and thereupon came also a Jury, to wit, James Dupree &c who being elected tried and sworn the truth to speak upon the issue joined but by consent of the pl^t the said Jury was discharged from rendering their Verdict, and by his consent it is considered by the Court that he be non suited and pay to the Defts five shillings for Damages and their Costs by them in this behalf expended.

Teste P. Pelham C. J. C.

Defts Cts 1/10th
copy. 2/3 1/4

Greenville County March Court 1795.

Lawrence Smith Admtor of Joseph Smith pl^t

against

Anthony Cerson & John Cerson heirs & devisees
of William Cerson . . . Defts

} In Debt

This suit is discontinued by order of the Plaintiff's

Attorney
Defts Costs 114 Cents

Teste P. Pelham C. J. C.

Smith's adm

or

Person's heirs

} Jud &
costs.

Southampton August Session 1795.

Lawrence Smith admor. &c. of Joseph Smith decd. Plff

against
Anthony Person and John Person heirs & devisees
of William Person decd.

In Debt

Defts

Judgment by default for Forty two pounds ten
shillings and costs which are five dollars ninety two cents

Jas. D. Kauffmann D. C. C.

pen. Sal. her. de
} En Ch^{ry}

} Noisy bond.

Smith admor de

— Mar. '95. Inj.?

Bill f.

Sep. 1799 ~~Sept. 1799~~
Inj. deposited — A. R. W. H.

Sept. 1798

June 1799

Abates by Compd.

death —

2
Now all men by these presents
and firmly bound unto Joseph
the just and full sum of Forty
to be paid unto the said Joseph
ministrators or assigns. To wit
myself my heirs Ex. and
Seal and dated this 26th day

The condition of the above
Person do and shall well and
Smith his certain attorney his
Twenty one pounds five skill
lawful interest then the above
force and virtue

Seal'd & delivered
in the presence of
Wm Blunt
Baker White

of Northampton county North Carolina in
pounds ten shillings current money of Virginia
th his certain attorney his heirs, executors, ad-
payment well and truly to be made we bind
ourselves firmly by these presents. Seal'd with my
Seal. Broad Dorn 1766

tion is such that if the above bound William
lay or cause to be paid unto the said Joseph
ministrators or assigns the just sum of
current money of Virginia on demand with
igation to be void or else to remain in full

Will Person —

LP
Seal

A copy
Teste

Jn: D. Hauffmann D. C. 6
R

Know all men by these presents that we Anthony Person, John Person, & Edmund
Turner, all of the County of Southampton held & freely bound unto Laurence
Smith admor & of Jos. Smith dec^d in the full sum of ~~forty-five~~ eighty-five
pounds of current money of Virginia to the which payment well and truly to be
made unto ~~him~~ him

his heirs and assigns we bind ourselves our heirs & assigns jointly and severally
firmly by this presents sealed with our seals and dated this 14th day of April
1795.

The condition of this obligation is such that whereas the said ^{Laurence} ~~Laurence~~ Smith
admor & of Jos. Smith ~~has~~ hath ~~been~~ obtained a judgment at common law
against the said Anthony & John Person as heirs & devisees of W^m Person dec^d?
In the county court of Southampton for forty-two pounds & 10^s.

and costs and the said Anthony & John have
obtained an injunction to stay the execution of
the said judgment untill the matter in equity upon a bill for that purpose filed
can be heard & therefore the said Anthony & John Person

shall satisfy & pay the s^d judgment at common law
all costs & damages that shall be awarded to the said Laurence Smith admor
& of Joseph Smith dec^d?

In case the said injunction shall be dissolved then the above obligation to be void
or else to remain in full force & virtue

sealed & delivered in

In presence of
Robt. Mabry?

Anthony Person Seal

John Person Seal

Edmund Turner Seal

Seal