1801-033 SOUTHAMPTON COUNTY CHANCERY PAPERS

BOYKIN vs. SUMMERELL + al

7/1801

26
10
180
36
216
18

26.8
18.
27.6

Boykin
vs
Summerell

Bill

Exhibited
Recorded
July 1801
Rejected D. Duncan
final.

To the worshipfull court of Southampton County sitting in chancery. William Boykin humbly complaining sheweth that on the 8th day of January 1783 John Summerell duly made & published his last will & testament & after devising a part of his estate to his son John Summerell & his heirs, he continues in the following words to wit: I lend unto my loving wife Sarah Summerell the use of the remainder part of my land, that I have not herein before given, during my said wife's widowhood or natural life, but at my said wife's marriage or death I give & bequeath such land, before lent to my wife, to be equally divided between two of my sons George & Samuel Summerell, if my said sons George & Samuel Summerell should disagree in dimen respecting such land [illegible] such land shall be sold to the highest bidder between my two sons George & Samuel only, & which of my said sons George or Samuel, shall give most for such land shall pay unto the other, his proportion such gift of land, I give unto my aforesaid two sons George & Samuel and to their heirs forever, an attested copy of which will is hereto annexed & prayed to be taken as a part of this bill. Your orator states that [illegible] said John Summerell afterwards died without having altered or revoked his will, his widow hath

vince departed this life, whereby the estate in the said land became the absolute property of the said George & Samanuel Summerell; that some time after this & before a division took place between the brothers your orator became the purchaser of the proportion of George Summerell for valuable consideration & in consequence thereof a deed of bargain & sale to your orator was executed by the said George Summerell. But notwithstanding he (the said George) had actuall parted with his interest in the land, yet did he in combination with the present defendant proceed to an actual & specific division of the land without once applying for the consent of your orator. The said George Summerell your orator prays may be made a party to this his bill All which actings & doings of the said George Samuel Summerell are contrary to equity & good concience & tends to the injury & oppression of your orator & in tender consideration whereof & for as much as your orator is without remedy by the strict rules of law, To the end therefore that the said George & Samuel Summerell may on their corporal oaths full true & perfect answer make to all the allegations in this bill contained as fully & particularly as if the same were here in again repeated & interrogated but more particularly Did not the said George Summerell convey to your orator all his right title & interest in the said land together with the appendages & appurtenances, before the division made? Did not your orator pay valuable consideration to him the said George for his proportion of the land? Did your orator ever give any consent to the division beforenamed Did he not on the contrary most positively refuse to consent? May it please the court to order & decree that the said land may be sold according to said will & testament of John Summerell & to order & decree such other matter as to them shall appear most consonant to equity & your orator shall ever pray &c

Exhibit for Complt.

NOT DEACIDIFIED = 3/2/92

Boykin
vs
Summerlin
Ans?

The answer of Samuel Summerell to the bill of Complaint of William Boyton exhibited against him & George Summerell in the Court of Southampton

This dep.t saving & reserving to himself all manner of exception to the many uncertainties & imperfections in the Complainants said bill of Complaint contained for answer thereto, or to so much thereof as this dep.t is advised is material for him to make answer unto, he answering saith

That this dep.t father died by his last will devised to this dep.t & his brother George a tract of Land to be divided between them & this dep.t the Defendant agreed with his brother to divide the same to him & his heirs only. This dep.t & his brother did accordingly make a division which was agreeable to both parties, and to this dependent believes & may equitable owne — This dep.t admits that George Summerell might

from so much of the said Land
as the Complainants, but the Consideration
how is not to be Considered as to any agree-
ment in the decision. if indeed there
has been any fraud in the division the wid-
ow and Heirs may have another
division to be made. but it being an entire
settlement agreed by his father the Trustee his
Estate ought not Compel him to relieve,
the division all fraud in this business and
prays to be hence dismissed with his
reasonable Costs & the Complaint dismissed

Southampton County to wit

The above answer was legally Sworn
to by Samuel Seamonds before me this
25th day Sept 1802

William Bailey

Baykin
vs
Summerell

Interl'y
Decree

March 1800

no inhabitant

Sat. Sibell Dy for

Incorporated Hff

Southampton county March Court 1800

William Boykin Compltt
vs
Samuel Summerell dfft } In Chancery

On the motion of the complainant by his counsil the defendant not appearing to answer his bill which has been taken as confessed it is decreed & ordered that the lands in the s.d bill mentioned be sold according to the directions contained in the last will & testament of John Summerell decd and that this court will at some future day appoint commissioners for that purpose unless the defendant appear at May court to answer the bill of the complainant and it is ordered that the dfft be served with a copy of this decree.

Sam.l Kello Cl

I send the within mentioned ~~Jordan~~ Sam[t] Summerell with a true Copy of the within deed

Jo Ruffin Dy
for I Wrightsman Shff

Boyken
vs
Summerell
Deed
Proved

Southampton Court March 1800

Wm Baykin Jr. agst Samuel Summerell Def.
Geo. Summerell } Chancery.

Heard on the bill of the plaintiff which is taken for confessed & decreed & ordered that the lands in the bill of the complainant be sold as is directed by the last will & testament of John Summerell dec'd unless he appears & files his answer on or before next Court next & that a Copy of this decree be serv'd on the Def't Defendant

J Bello D

At a Court of quarterly session continued and held for the County of Southampton the 17th Day of Sept. 1800

Wm. Boykin Complainant
against
Samuel Lummerell Defendant } In Chancery

This cause was this day heard on the bill of the Complainant, the answer, ~~the answer~~ of the defendant, the exhibits filed, & the arguments of the Council on either side, on consideration whereof it is decreed & Ordered, that William Bailey, Solomon Hobbs & Edward Bailey, or any two of them, make sale of the land devised by John Lummerell, to his sons George & Samuel Lummerell, and to be divided between them, on a Credit of Nine Months, taking bond and sufficient security of the purchaser, restricting the sale to the Complainant & defendant in this suit in the manner directed by the will of the said John Lummerell dec'd between his two sons George & Samd. and that the s'd Commissioners, pay one moiety of the s'd price of the s'd land to the party, who shall bid the same therefor, and that they notify the parties of day and sale - And make return of their proceedings, in order to a final decree herein —

Sam'l Mellichamp

Mr. Samuel Summerell

Sir,

Take notice that the 31st day of March 1801, is the time appointed by us, to execute the deeds respecting them, we are required, at which time, on the said premises, you are required to attend if you please ——

Will. Bailey
Edwd. Bailey
Jo L. Holland
Commissioners

Southampton ss.

William Whitehead appeared before me Samuel Calvert, one of the Justices of the peace for the said County, & made oath that on the 18th of this month, he delivered to Samuel Summerell, one of the parties of the foregoing Decree, a true Copy of said Decree & Notice hereto annexed — Given under my hand this 19th day of March, 1801

Sam Calvert.

Orphans
vs
Summerell

June 1801
Copy

Boykin
vs
Summerell
Nov.r
to ~~Sept.r~~ 1798

Spa
In
Chy

Executed the 17
day of Sep.r 1798
Rich.d Mabry DS
Sr
Rob.t Mabry Shff

The Commonwealth of Virginia to the Sheriff of Southampton County. Greeting

You are hereby commanded to summon Samuel Summerell to appear before the justices of our said court at the Courthouse of said county the third monday in November next to answer a Bill ~~Subpoena~~ in chancery exhibited against him by William Boykin and this he shall in no wise omit under the penalty of One hundred pounds and have then there this writ. Witness Jas Kello clerk of our said court at the Courthouse the 17th day of Septr 1798 and in the 23d year of the commonwealth

Jas Kello jr D.C.

Agreeable to a decree of the Honorable Court of Southampton, Dated September 17th 1800 — We did on the 31st day of March 1801. proceed to the Sale of the tract of Land mentioned in said decree, after giving the parties legal Notice, thereof, only one of the Parties William Boykin attending) who became the purchaser, for the sum of Three hundred Dollars — One Moity of said Sum We have taken Bond & Security for, Conformable to said decree — Witness our hands & seals this 31st March 1801. —

Wm. Bailey (Seal)

Sal. Holmes (Seal)