1802-020 SOUTHAMPTON PAPERS
CHANCERY PAPERS

ATKINSON VS. CLEMENTS

2/1802

other surnames: Atkins, Urquhart, Holmes, Cock, Sebrell, Cocke, Boykin

Jefferson bill
4 8
Elements 8

Nov. 1801
T. Holmes Despon
DW. Arquebuse field

17 7
1.19
50
1169

991.

Ache

To the Hampton County Court
in Chancery sitting.

Thomas Atkinson, an infant, by his next friend Timothy Atkinson complaining shews, to the court, that on the day of in the year of Christ 179 John Clements, late of this county, during his last sickness, reposing special confidence & trust in his brother Francis Clements, directed his said brother, to whom, he should leave the greatest part of his estate, to pay unto, the complt, five hundred pounds, in consideration of that love & affection he bore for him, this Complt, as his God-son, and also in consideration of his being the brother of the said John Clements wife. That, some few days after the date aforesaid, the sd John Clements departed this life, leaving no last will & testament, nor declaring any disposition of his estate, (except some few verbal gifts — as this Complt has been informed & believes.

Your Complt, further states, that subsequent to the date aforesaid & since the death of the sd John Clements, the sd Francis Clements at several times & at several places, after mentioning the request, which his brother made of him as aforesd, promised, that he would faithfully pay the sd £500 to this Complt, and at the same time, assured the friends of this Complt, that it was unnecessary to establish the said gift, by the made pointed out by the Law, as it was expensive, for he, the sd Francis, would as faithfully pay the sd sum of money, as if he was compelled by a course of Law. Your Complt further states that the said Francis Clements is sole heir at Law to his brother the sd John Clements and is now in possession of

of his, the sd Johns estate which is very con-
siderable value. But now, so it is, may it
please the court, the said Francis combing
with sundry persons, unknown to your Compt,
give out in speeches, that he, the sd Francis,
never heard any thing of the conversation as
above related, nor even the substance thereof, but
fraudulently intending to injure your Compt,
the sd Francis now, denies that he is bound to pay
to your Compt the sd £500. In tender consi-
deration of the premises aforesaid, and as your
your Compts situation (who is an infant &
most liable to be imposed on in such cases)
is properly the province of a court of
equity — to the end therefore that justice
may be done your Compt — he prays
that the sd Francis Clements & all persons —
combined with him, when discovered may be
made defendants to this bill, that the said
Francis on his corporal oath may true & perfect
answer make to all & singular the allegations
herein contained, as if they were here again
repeated & interrogated — particularly tho!
whether the sd John Clements, a few days before
his death and during his last illness, did not
direct the sd Francis to pay to this Compt
for the reasons aforesaid the sd £500. or what
sum the sd John did direct him to pay?
Whether he did not persuade the friends of
this Compt not to resort to the Law to establish
the gift aforesaid and said that he would do
this Compt justice & would pay this Compt
as

as his brother the sd John, requested.
And your Compt father prays that the court
will decree that the sd Francis pay unto
your Compt the sd sum of £500. with
interest thereon from the day of
in the year 179 and that the court
will make such other or farther decree
in the premises they may think equitable
& as your Compt calls for the
Commonwealths writ or writs of
Subpoena directed to the Sheriff &c &c

Coake for the Compt

Atkins
v
Clements
&c
John Cook
Four Promises of
Clements presented
the Jury the will
denied by the answer

Tues. May. 1801

Atkins - - - Complt.
v
Clements } Answer.

The Answer of Francis Clements to the bill of complaint exhibited against him in the Worshipful Court of Southampton County by Thomas Atkins, by Timothy Atkins his guardian and next friend.

This Respondent saving and reserving to himself all right of exception to the manifold errors, uncertainties and imperfections of and in the Complainant's said Bill contained, for answer thereto, or to so much thereof, as he is advised is material for him to answer, and says that it is true that his brother John Clements did depart this life about the period mentioned by the Complt without leaving a last will and testament in writing. He admits that he is the sole heir at law of his brother, and that he is now in possession of the major part of his estate. He confesses that his said Brother did request him to pay unto the complainant the sum of twenty

five pounds. That he is now ready and willing to pay this sum to him or his guardian; That he has frequently acknowledged, that his brother did desire him to pay unto the Complt the aforesaid sum of twenty five pounds. But your Respondent denies most positively that his said brother John did ever request or direct him to pay unto the Complt five hundred pounds (as is stated in his bill) or any other sum than the before=mentioned twenty five pounds: And he also positively denies, That he ever has promised to pay unto the Complt the sum of five hundred pounds, as is alledged in the bill, or any other sum than twenty five pounds. He agrees, that he might have mentioned to the Complt and his friends, that it was unnecessary to establish by law the verbal gift made to him by his brother. That his intention always has been, and yet is, to comply with the will of his brother. but he again alledges that twenty five pounds was all that his brother desired him to pay to the Complt. And your Respondent begs leave to suggest, that the Complt so far from being lulled into negligence, or prevented from getting the gift established by law, on account of any of his speeches or promises, That he actually has used considerable exertions to get the said pretended will of John Clements admitted to record. Your Respondent knows nothing of the natural love and affection which it is stated by the Complt to have been entertained for him by his brother John Clements, on the contrary he believes that none ever existed, as there was no relationship between the Complt and the s^d John Clements. Your Respondent lastly prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

Francis Clements personally appeared before me one of the Justices of the peace for the county of Southampton and made oath the within answer is true in all its parts - Given under my hand and seal this 17. day of August A.D. 1801 -

Jno. Urquhart (Seal)

C. Williams
vs
Clements
Pltf's Bill
&
Defts Answer

Filed Aug. 17. 1801

C. Williams - vs - Clements - Answer -

Atkins
vs
Clements
} Subp: in Chan.y

to Nov 1800

Executed
Jno. Urquhart Jeff.

THE Commonwealth of Virginia to the Sheriff of Solon county, greeting: We command you that you ~~take~~ summon

Francis Clements

to appear

~~if he be found within your bailiwick, and safely keep, so that you have~~ ~~him~~ before the Justices of our said County Court of Solon at the Courthouse, on the third Monday in November next ~~to answer~~ to answer a subpoena in chancery exhibited against him by Thomas Aitkin an infant by Timothy Aitkin his next friend and this he shall in no wise omit

And have then there this writ: Witness Samuel Hall — clerk of our said court, the 20th day of October 1800 in the 25th year of the commonwealth.

Sam Hall CC

Atkinson &
vs
Clements

Gen.l Comm.t

Dec.r 1800

Southampton County Sct

The commonwealth of Virginia to Daniel Butts & Rob^t. Goodwyn — Gentlemen Greeting

Know ye that we trusting to your prudent circumspection in diligently examining whatsoever witnesses as well on behalf of Thomas Atkinson & Timothy Atkinson his next friend as on behalf of Francis Clements and we do give to you power to call and cause to come before you the witnesses aforesaid when and where you shall appoint and diligently examine them on the holy evangelist of Almighty and their examination so taken that you distinctly certify us thereof under your hands and seals and send into our S^d County Court you are to send them enclosed with this writ Witness Sam^l Kello clerk of our S^d Court at the 19th day Dec^r 1800 and in the 25 year of the Commonwealth

Sam^l Kello Clerk

I acknowledge the within notice

Fr. Clements

Sir

Please to take notice that I shall proceed to take the deposition of John Cooke in a matter of controversy depending and undetermined in the Court of Compton County between Thomas & Atkinson by Timothy & Atkinson his next friend & Francis Clements at the house of William Brick laws on Monday the 19th this Inst between the Hours of 10 Clock in the forenoon & 4 in the afternoon where you may attend if you please

Timothy & Atkinson

Mr Fr. Clements

Jany 3rd 1801

Atkinson
vs
Clements
} Depon

Files Aug 1800

The deposition of John Cook of Lawful age being first sworn on the holy Evangelist of Almighty God deposeth & sayeth that some time in the month of June 1799 as this deponent recollects, he was at Capt Lemon Boykins in the county of Southampton when in course of conversation how John Clements lately deceased had disposed of his estate Francis Clements brother to the sd John Clements observed that his brother John had left to Thomas Atkinson son of Timothy Atkinson five hundred pounds which money he the sd Francis would have raised & put out on interest in some goods hands either in the sd Timothy's or some other good person

John X Cook
Mark

~~further sayeth that~~
In presents of Dan Butts
& Bot. Goodwyn

The deposition of James Sebrell of Lawfull age being first sworn on the holy Evangelist of almighty God deposeth & sayeth at the time John Clements died he was in Baltimore & when he returned home I herd that John Clements had left several legasees and among the rest Mr. Atkinsons two sons, as to the sum that was left either I know not, some said five hundred pounds & others twenty five and, after I had been at home three or four days I saw Mr. Clements and ask'd him how much his brother Jno did leave the sons of Mr. Atkinson, and he said twenty five pounds to one & fifty to the other, and that he thought do. & further this deponent saith not

In presents of
Bot Goodwyn Daniel Butts

Jas. Sebrell

To the Clerk of Southampton County

W. Urquhart's
Depon
Files Nov. 1801

Southampton Sct

Agreable to a Commission to us directed from the Worshipfull Court of Southampton County bearing date the 20th of October 1804. we have caused William Urquhart to appear before us at William Urquhart Sons Store who being first sworne on the Holy Evangelist of Almighty God deposeth & saith that he was frequently with John Clements during his last Sickness, that in all the times he visited him he never mentioned his intention of making a Will or giving away any article of his property otherwise during the time of his Sickness he appeared sometimes in his senses & reflection but for the most part rather deranged. The last time this deponant was at his the said John Clements house which was the day previous to his death he went in Company with Timothy Atkinson & the s. Timothy Atkinson sat in a Door (the weather being hot) there appeared to be no prospect of John Clements death so near they were playing & fanning with Feathers in their hands, This deponant sat at some distance & then Timothy Atkinson say to John Clements. Mr Urquhart was in the room; did he want any thing wrote he made no Answer that this deponant heard nor did he indicate any disposition to have any thing wrote, This deponant came home & next morning heard he the s. John Clements was dead. the s. John Clements did not appear well in his senses although he was sitting up & further

This Deponant saith not
Taken before us this fourth day of November 1801 } Willm Urquhart

Edwin Tyler
John Urquhart

Clements
and
Atkins &
Comm.

Sampson County to wit

The Commonwealth of Virginia to Edmund Tyler & John Mcmichael Gentlemen greeting know ye that we trusting to your provident circumspection in diligently examining William Mcmichael and Solimon Holmes witnesses as well on behalf of Francis Clements Deft as on behalf of Thomas Atkinson by Timothy Atkinson Pltff and we command you to cause the witnesses aforesaid to come before you when and where you shall appoint and diligently examine them upon the holy Evangelist of Almighty God and their examination so taken that you distinctly certify us thereof under your hands and seals returning to us also this writ Witness Sam Kello clerk of our said Court at the Courthouse the 29th day Oct 1801 and in the 26 year of our Commonwealth

Sam Kello C.D.C

To the Clerk of Southampton County

I agree that the within deposition shall be taken & considered so far as it relates to what the deponent heard Mrs Dillard say, as the deposition of Mrs Dillard herself

Southampton County Sc.

Agreable to a Commission to us directed from the Worshipfull Court of Southampton bearing date the 15th. of February 1802, We have caused to come before us at the Store-house of Wm. Urquhart & Son Simon Boykin of full Age, being first sworn on the holy Evangelist of Almighty God the truth to say in a certain matter of Controvery, depending & undetermined in the s. County court of Southampton, between Timothy Atkinson (in behalf of his Son Thomas Atkinson) Plaintiff and Frances Clements Deft. Deposeth & Saith — That soon after the death of Jn. Clements that he heard Mrs. Betsy Boykin (now Mrs. Dillard) say that she heard Mrs. Wm. Urquhart ask Frances Clements if his Brother Jn. Clements desired him to give Tho. Atkenson son of Timothy Atkinson the sum of Five hundred pounds he answered he did, & that he s. Frances Clements would see that he had the Money, Sometime after this the said Deponent inform'd Frances Clements that he heard Mrs. Dillard say that she had heard him the s. Frances Clements say that his Brother John had given the s. Tho. Atkenson son of Timothy Atkinson the above mention'd sum of Five hundred pounds to which the s. Frances Clements reply'd there was no such thing that his Brother John had left him the s. Thomas Atkinson only Twenty five pounds which he intended to pay, after this conversation took place between the s. deponent & the s. Frances Clements the deponent inform'd Mrs. Dillard that the s. Frances Clements denied what she had inform'd him, She then said she had forget what she had heard about the same having heard so much — and furthermore this deponent saith not. Given under our hands this 27th. day of February 1802 —

Simon Boykin Dea

Taken before us this 27th Day of Feby. 1802

Jno. Urquhart

Sal. Holmes.

The Commonwealth of Virginia to John Hyguhart & Solomon Holmes, Gent. Greeting, Know ye, That, We trust=ing to your fidelity & provident Circumspection in Simon Boykin as a Witness as well in behalf of Timothy Atkinson as on the behalf of Francis Clements, Do empower you to call & cause to come before you the Witness aforesd. when & where you shall appoint & diligently examine him on the holy Evangelist of Almighty God, & his examination so taken into our Court of our s. County of Southampton without delay, you are to send & Certify inclosed returning to us also this Writ. — Witness Sam. Kello, Clerk of our Court at the Court house the 15th. February 1802, and in 26th. Year of the Commonwealth. —

Sam Kello Jun DC

11

Sol°. Holmes Depon

Toled Nov.
1801

1/

Southampton Sct

Agreeable to a Commission to us directed from the Worshipful Court of Southampton County bearing date the 20th of October 1801 We have caused Soloman Holmes to appear before us at the Store House of William Urquhart Esqr being first sworn on the holy Evangelist of Almighty God, and being of full Age Deposeth & Saith that the day after John Clements died, he heard Frances Clements say that his Brother John Clements had left no Will, but had directed him to pay away some Legacies, and that it was his determination to comply with his Brothers request and that he desired him to give John Atkinson £50, and his Brothers wearing Apparel and to Thomas Atkinson the Sum of £25 they being the Sons of Timothy Atkinson and further the deponent Saith not

Sol^{o} Holmes

Taken before Us
this 4th day of Nov^{r} 1801

Edm^{d} Lee

John Urquhart