

1808-008 SOUTHAMPTON COUNTY
CHANCERY PAPERS

NICHOLSON vs. EDMUNDS

3/1808

other SURNAMES: Bass,
Nicolson, Tyus, Lundy,
Lunday

Edmonds

Exposition.

June 1806. Rule filed

and known to in Court

St. K. R.

July Rule to answer

Sept Answer filed

Rule to dissolve

Order leave given to
amend bill

Not amended bill

filed Rule to

~~move~~

Answer filed &

To the worshipful Court of Northampton County in Open court sitting
Assembly complaining beneath unto your worships your orator Clerk
B. Nicholson that some time in the year 1780 his mother Mary Nicholson
deceased this life, after having first duly made and published her last will
and testament in writing, in which your orator and a certain Boye Lundy
were named and appointed as executors. That neither of them
was qualified in that office, owing to an agreement among all the
parties interested who were of full and lawful age, that they should annex
the estate which was small, pay the debts and distribute the same according
to the bequests of the will. That in consequence of this agreement they did receive
the said estate - made advertisement that creditors should exhibit their claims
for payment - and after satisfying all the demands which were brought
forward, divided the said estate among the distributees - Here your orator
being called to represent to your worships, that some time after the division
of the estate the said Boye Lundy was seized by a certain Marshall
in execution of his mother's and recovered judgment against them
in a common law suit of this Court for the sum of

Three hundred and thirteen, now amounts to the sum of thirty eight
pounds or thereabouts - to make which your orator's property has been seized
by a fieri facias - and the property which he has executed his father's
coming or delivery bond to the Sheriff - Your orator respectfully
states to your worships, that the bond, ~~and the property~~ ^{which} ~~was~~ ^{is} ~~now~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~hands~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~Sheriff~~ ^{is} ~~and~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~is~~ ^{is} ~~now~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~hands~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~Sheriff~~ ^{is} ~~and~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~is~~ ^{is} ~~now~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~hands~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~Sheriff~~ ^{is} ~~and~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~is~~ ^{is} ~~now~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~hands~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~Sheriff~~ ^{is} ~~and~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~is~~ ^{is} ~~now~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~hands~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~Sheriff~~ ^{is} ~~and~~ ^{is} ~~the~~ ^{is} ~~same~~ ^{is} ~~is~~ ^{is} ~~now~~ ^{is} ~~in~~ ^{is} ~~the~~ ^{is} ~~hands~~ ^{is} ~~of~~ ^{is} ~~the~~ ^{is} ~~Sheriff~~ ^{is} ~~and~~ ^{is} ~~the~~ 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of payment which your orator believes to have been raised by the lawes
of the land, he further represents to your worshipped bench, that he has
been frequently informed by his mother Mary Nicholson, that the
bond above mentioned had been fully paid and completely discharged.

Under which circumstances, it is said & iniquitous that the property
of your orator should be exposed to sale. In order to consider the
whereof and because your orator is exceedingly averse to the intervention
of a court of Chancery, he prays that the said Howell Edmund may
be made defendant to this bill and be compelled, on his corporate
oath to be by him taken on the Holy Evangelist of Almighty God, to answer
all and singular the allegations therein contained, fully and
unrepeivally - May it keep the Court to grant the bon on or under the
virtue of Exemption staying all proceedings in this case, till the matter
be fully heard in Equity - and by reason of the above relief
afforded by the Court - And again praying that the

Bill for

Edmund

June 18th 1785

and known to in Court

at the Court

shall have to answer

Sept 18th 1785

shall have to answer

shall have to answer

shall have to answer

shall have to answer

shall have to answer

shall have to answer

The wife of Colonel *W. H. H. H.*
 & *W. H. H.*
 & *W. H. H.*
 & *W. H. H.*

To the worshipful Court of London The being
in Chambers sitting - Humbly complaining sheweth
unto your worship your orator Charles B. Nichols, the following
matters, by leave of this worshipful Court duly granted,
~~and~~ amendatory to his bill of Injunction exhibited
here against a certain Howell Edmunds - that in
a conversation had and held between your orator
and the said Howell Edmunds, the said Howell offered
to take the sum of Ten pounds for the sum ~~as~~ mentioned
in the said bill of Injunction and to wait with your
orator ten years for the money - Wherefore I pray
that the said Howell may be made respondent thereto
and be compelled on his corporal oath to answer the
said allegation fully & unequivocally - May it please
the undersigned orator will ~~be~~

Subscribed for Comp.
Isworn to in Court
Shells

Edmunds }
v^y } Answer
Nicholson }

Sep. 1800

Bill filed & rule
to dissolve

The answer of Howell Edmunds to the bill of complaint exhibited against him in the county court of Southampton by Charles B. Nicholson.

This defendant saving and reserving unto himself all advantages of exception to the uncertainties, insufficiencies and imperfections of the complainant's said bill of complaint, now and at all times hereafter, saved and reserved unto this defendant, for answer therunto, or so much thereof as this defendant is advised in any way material for him to make answer unto, doth answer and say That he is advised, by his counsel, That no agreement, ^{whatsoever} made and entered into among the parties interested in the estate of Mary Nicholson deceased, could exonerate her estate, from the payment of her just debts, That this defendant never saw any of the advertisements mentioned in said bill, and did not know of the sale until sometime afterwards. That this defendant — made frequent applications to the complainant for the said debt, but always without success, or ever having the justness of the said debt called in question. This defendant at length brought suit in the county court of Southampton aforesaid against the complainant & one Byrd Lunday, as mentioned in said bill — and recovered judgment. This defendant is advised that the complainant and the said Byrd Lunday admitted themselves to be executors, by not pleading to the said action, they were not executors, & have further admitted that they had assets in their hands sufficient to discharge the said debt, by not pleading, plene administravit, and no assets ultra

The defendant further, says, that he is advised the plea that the executors named in the will neither qualified in that office, can avail nothing, since from the complainant's own showing in the bill, they sold the estate of the testator &c. and were executors de son tort, if not rightful executors, in either case they were bound to creditors.

As for the said bond being barred from a recovery, from a presumption of law, of payment, This defendant says, he is advised there is no such presumption against the bond; the bond was executed on the 25th day of July 1790, ^{a few months} not more than thirteen years before the instituting the said suit, and that no presumption is raised ^{against the bond} until twenty years, and not then if the delay of payment can be accounted for. ^{which bond is made part of this answer} The defendant denies, that the said

bond ever was paid (as is stated in the bill) or any part thereof; & says
that the whole of the said bond, is now owing and unpaid. Without
that, that any other matter or thing, in the complainant's bill of Complaint
contained, material for this defendant to make answer unto, confessed or
avoided, traversed or denied, is true. All which this defendant is ready
to aver, maintain and prove, as this Hon^r Court shall decide. & pray
hence to be dismissed, with his reasonable cost and charges in this behalf
most wrong fully and unjustly sustained.

State of Virginia }
Southampton county } Jc

This is to certify that Howard Edmund ^{the deft^y} personally
appeared before me Mills Everett a justice of the peace for the county
of Southampton aforesaid, and made oath on the holy Evangelists, that
the matters of fact contained in the above answer are true as far as he
knows or believes,

Given under my hand this 15th day of September

1806.

Mills Everett

Edmunds.

ads {
Nelson } 18/10/18

If
The answer of Howell Edmunds to the amended bill of complaint
exhibited against him in the county court of Southampton by
Charles B. Nicholson.

This Defendant saving and reserving to
himself all advantages of exceptions to the uncertainties, insufficien-
cies & imperfections of the complaint, said bill of complaint, now
and at all times hereafter saved and reserved unto this defendant
for answer thereunto saith, That at sundry times this
respondent offered to ~~take~~ ~~the~~ complainant, as he was a near
relation. That he would make a sacrifice of a part of
the said debt, if he would pay the balance, rather than go
to law, but that the complainant would not pay any
pay any part thereof, and at length, told this respond-
ent before the commencement of the suit at law,
that he would not pay any part of the said debt unless
it was recovered by law. Without that, that any other
matters or things in the complaint, said bill of Complaint,
contained, material for this Defe. to make answer unto, could
avoid traversed or denied is true. etc which this Defe. is ready
to aver, maintain & prove, as this hon^d. Court shall ~~adjudge~~
direct & pray hence to be dismissed, with his reason abe cert. &c

Southampton county Va.

Howell Edmunds

The matters of fact, contained in the
above answer, sworn to before me This 17th day of November 1806

J. V. C. Esq.

Feb. 25th 1868

Sir, Take notice on Monday the 14th of March next, at the house of
Joshua C. Sundry, in Waverly, in the County of Guilford,
in the forenoon, & Six O'clock in the afternoon, I
shall proceed to take the depositions of John T. &
Howel Bass, it being in consequence of an injunction
now depending in the County Court of Southampton
wherein I am Plaintiff & you are defendant - where
you may attend if you think proper —

Charles B. Nichols

Col. Howel Edmunds —

Southampton, North Carolina

Greenville 14th March 1808 - Russell Nicholson this day
appeared before me George Mason a Justice of the Peace for
the County aforesaid and made oath that he delivered to
Edmund of which the within is a true copy on the 25th day
of February last past - Given under my hand the day &
year before written - Geo. Mason JP

Edmunds -
Notice
for Nicholson -

Depositions

Depositions

Depositions ~~Senators~~
Ex parte

The ^{or affidavit} deposition of John T. us, of lawful age, taken
this 16th day of March 1808 before us, at the house
of Joshua C. Lundy in the town of Hinesford &
County of Greenville, between the hours of 10 o'clock
A. M. and six o'clock P. M. to be read as evidence
in an Infraction depending and undetermined
in the County Court of Southhampton, where in a certain
Charles B. Nicholson is complainant and
a certain Howell Edmunds is Defendant.

The said John T. us being first duly sworn on
the holy Evangelists of Almighty God, the truth, the
whole truth & nothing but the truth, to relate what
to the above matter of controversy, depose that
and faith - that 18 or 19 years ago, as well as he
remembers, Col. Howell Edmunds, demanded of Mary
Nicholson, ~~the~~ Security for articles which she had
bought at the sale of Joshua Nicholson, this Defendant
observed to the said Edmunds that Security was unnecessary
as he was indebted to the orphans of the said Joshua and
she had been appointed ~~the~~ Guardian to four of
them - He said ^{Edmunds} ~~that~~ acknowledged that he was so
indebted and requested this Defendant to write a
receipt to the said Mary Nicholson for as much as he
owed to the four orphans - To wit, Charles B. Nicholson,
Fanny Nicholson, Lucy Nicholson and Matilda Nicholson of
whom she was the guardian - This Defendant remembers
that the amount of the said receipt which he wrote at

The request of the said Edmunds, ~~amounted to~~ ^{was} the sum of thirty
six and forty pounds, giving each of them something more
than nine pounds - And further this Deponent said

not
Question by Court. Did you not regard to receipt which
you wrote at the request of the said Edmunds, as a final
settlement between him & Mary Nicolson -

Ans. I did -

Question by Green Trench Esq. Attorney for the Defendant -

Did you not marry Polly Nicolson daughter of the
said ~~Mary~~ ^{Mary} and are you not entitled to a part of
the estate of the said ~~Mary~~ ^{Mary} ~~Nicolson~~

Ans. I did marry Polly Nicolson, I have received my
part of the estate of the said Mary - ~~At least I think I~~
have - but there has been no final settlement of the
estate, by the Executors - ~~but there has been no~~

Question by same - Do you not think that you are
entitled to more of the estate of the said Mary Nicolson -

Ans. I do not.

Question by same - Will you not be gainer nor
loser by the result of this suit -

Ans. I shall not.

Question by same - Did the receipt you wrote for the
said Edmunds amount to as much as the bond owing by Mary
Nicolson? Ans. I do not know -

Question by ~~the~~ ^{Complainant's} attorney - But did you
not think the receipt a final settlement between Edmunds
and Mary Nicolson - Ans. I certainly did - but I
do not know.

The deposition or affidavit of Howell Bap^t taken this 14th
March 1808 before us at the house of Joshua C. Lundy
in the town of Hinesford / County of Greenville, between
the hours of 10 o'clock A.M. & six o'clock P.M. & he
read as evidence in an Infraction depending since
terminated in the County Court of Southampton, where in fact
B. Nicholson Ex^r of Mary Nicholson Dec^d is complainant
and Howell Edmunds is defendant -

The said Bap^t of lawful age, being first duly sworn
on the holy Evangelists of All mighty God, the truth, the whole
truth & nothing but the truth & state, relative to the above
matter of controversy before the Court - that some time in
March 1807 he saw Col. Howell Edmunds at the store
of Henry Barron in the County of Southampton - The
Complainant Charles B. Nicholson asked the said Edmunds
what was the amount of the debt which Mary Nicholson paid
owed to him - He said Edmunds replied the debt originally
was forty pounds or thereabouts. He said Edmunds
further observed, he had received a note from Mary Nicholson
due by a W. Reese for nine pounds or thereabouts - W.
Nicholson then mentioned to him what he owed to the or
phans of Joshua Nicholson - He said Edmunds then
admitted that he ~~the~~ ^{Reese} owed the orphans about
nine pounds each, but had settled for the proportion
of three with Mary Nicholson their guardian in the way
of discount - W. Nicholson then mentioned a fourth
orphan, but this defendant left the piazza before the
conversation on that subject terminated - When this de-
ponent returned, the said Nicholson and Edmunds
were reasoning up the amount of the debt due the
orphans with Reese's note of nine pounds added to them

and as well as he remembers it was about forty five or
forty six pounds. But Mr. Edmund turned off in
a passion & said the money he had brought with him was
justly due and Mr. Winflow wished to choose him out of
it. And further this deponent said not.

Sworn to before us this 14th March 1808 -

Geo. Mason J.P.G.

James C. Finkle J.P.G.

J.B. The notice in this case was duly given &
the defendants Attorney Green Turner Esq. present.

Geo. Mason J.P.G.

James C. Finkle J.P.G.

M. Nicolson ?
to
W. Edmunds

Note
written to Wm. C. C.
1883.

Hills,

I Mary Nicolson of the County of South-
ampton State of Virginia do promise to
pay or Cause to be paid unto Howell Edmunds
of Northampton County State of NorthCar-
olina the full and Just Sum of Twenty pounds
Five Shillings & Seven pence Current Money
of Virginia it being for Value received with
Lawfull interest from the date hereof as wit-
ness my hand and seal this 25th day of July
one Thousand seven hundred & Ninety

Test

Colin Nicolson

Mary Nicolson



On bond for payment of money - bail noting.

W. H. Will attor
for def.

Edmunds & Debb
- 107
C. Nicholson & Henry
to Wm. - Court 1803.

Executed Oct. 29th 1803

J. L. Bishop J. for
J. Brown S. H.

H. C.

The COMMONWEALTH of VIRGINIA,

To the Sheriff of *Salton* county, greeting:

YOU are hereby commanded to take *Charles B. Nicholson & Bard*
Lindsay exors (D. & Fort) of *Mary Nicholson deced*

if *they* be found within your bailiwick, and *them* safely keep, so that
you have *their* bodies before the justices of our court, at the court-house
of the said county, on the *third monday in Nov. next* to answer
Howard Edmunds in a plea of Debt for twenty pounds 5/4.
Yo Cy. with interest &c
damage ten dollars — — — — —

and have then there this writ. Witness, *Samuel Kello* —

clerk of our said court, the *19th* day of *October* 1803 in the *20th*
year of the commonwealth.

Samuel Kello & Co.
(D. & Fort)

acknowledges of late by not
pleading more adm. t.

And denies bill & must
be disproved by his witnesses.
Bond not given to him
as Geo. bond being for
20 only could not
embrace

Michael
to
Hyland
Amesbury

Knew all men by these presents that we Chs Whithell
and _____ are here and firmly bound
unto Howell Edmunds in the full and full sum
of One hundred & fifty dollars — to which payment
well and truly to be made we bind ourselves each of us
and each of our heirs ex^t and adm^r jointly and severally
firmly by these presents sealed with

Chas B. Whitson