1819-032 SOUTHAMPTON COUNTY CHANCERY PAPERS KIRBY et al VS. KIRBY'S EXECUTOR 11/1819

other surnames; Kerby, Pond, Clifton, Cobb

To the Worshipful Court of Southampton County sitting in Chancery humbly complaining sheweth unto your worships your orator & orators Miles Kirby Thos. Kirby Silas Kirby & Patsey Bond formerly Patsey Kirby.

That Benj. Kirby late of Southampton departed this life in the year 1804 after making and publishing his last will & testament bearing date 1799: wherein he left to Mary Kirby his Wife, for and during her life the plantation and tract of Land whereon he then lived, remainder over & with all his personal Estate to her the said Ann Glover.

That at the time of the said Benj. Kirby's death he owned and held in fee simple, two other small tracts of land, one of which has been sold under a Decree of this Court for the benefit of your orators complainants who are the eighth heirs and distributees to the undisposed of Estate which did belong to the said Benj.

That your complainants find by a Deed bearing date 1794 executed by Benj. Clements and recorded in this Court and which Deed it is prayed may be taken and considered as

a part of this Bill that the said Benj.a Kirby purchased of the said Clement & others eighty six Acres (more or less) which said tract or parcell is not disposed of by the Will of the said Benjamin, and therefore descends to your orators & oratrix in parcenary he having died intestate as to this, and the other ample parcel of land, as will fully appear by reference to the said Benj.a Will, recorded in this Court. Feb.1801 That your complainants by Law being entitled to the said tract of 86 Acres, and the same being too inconsiderable to make a division thereof in land; they pray that the Court will decree a Sale, and an equal distribution of the money amongst your complainants. To the end therefor they pray that commissioners may be appointed to carry the same into effect.

Your complainants further state to the court that the said Ann Kirby widow & relict of the said Benj.a continues during her life in possession of the said tract of 86 Acres - and at her Death setting up no claim to the said Land, make no mention thereof in her will; that she appointed Benj.a Cobb her Executor, who duly qualified, and is if any person now in possession of the said tract of Land - he is therefore prayed to be made defendant to this Bill

May answer &c. and as in duty bound &c.

and also that Thomas C[illegible] & Lidia his Wife late Lidia Kirby Samuel Clifton and Susanna his Wife late Susanna Kirby if they or any of them are living be made Defendants, or if not living their heirs &c. may answer &c. Pray &c. Subpa &c. Complts.

The Answer of Benj.a Cobb Exr of Ann Kirby Dec.d to a Bill in chancery exhibited against him in the County court of Southampton by Miles Kirby Thomas Kirby Silas Kirby & Patsey Pond formerly Patsy Kirby.

For Answer thereto saith - That he readily admits the allegations contained in the foregoing bill are true - But in Justice to the Estate of Robert Goodwyn Dec.d and from an equitable right held by the d.d Rob.t Goodwyn heir to forty three Acres of the Eighty six conveyed by the said Deed in the bill mentioned to Benj.a Kirby this respondent is obliged to deny that the complainants are entitled to the whole quantity claimed under and by the said Deed. For altho' the d.d Kirby did obtain a title by Deed to the whole 86 Acres - yet this respondent is able to establish by good evidence that the d.d Robert Goodwyn did purchase and by agreement between him and the d.d Kirby was to have one half the 86 Acres, and that the same was by the parties laid off and allotted to the said Goodwyn by a line of marked trees, altho' a Deed was not executed for the same by the d.d Kirby to the said Goodwyn. This respondent has no objection to such Decree as will do complete Justice to the parties concerned and hopes that provided the Court shall decree a sale of any part of the said tract, that the 43 Acres claimed by the Heir of Rob.t Goodwyn will be reserved for his use according to the former division thereof, and that the commissioners appointed to make sale of the other part be

Ruled the
Defendant to
Rejoin in
Forty Days
Bill and
Answer —

June Court 1813 Attest B Peete

Aug. 1813 Ruled the Defendant to Rejoin in Forty Days

instructed to that effect — denying all fraud
combination &c — the Respondent Prays hence to
be Dismissed

Benj. Cobb.

Kirby et al

v.

Cobbs.

Bill & Answer

Interlocutory Decree

Copied

To the worshipful Court of Southampton County sitting in Chancery humbly complaining sheweth unto your worships your Orators & oratrix Miles Kirby Thomas Kirby Silas Kirby & Patsey Pond formerly Patsey Kirby

That Benjamin Kirby late of S.ampton made his last will & testament in the year 1799 leaving to his wife Ann Kirby for life the plantation & tract whereon he then lived, remainder over With all his personal Estate to his the said Ann forever. That subsequent to his making the said Will, he the said Benja Kirby purchased a small tract of one hundred Acres more or less under a decree of the Court, being the land held by Benja Stewart at his death, which will appear from a deed executed by commissioners to him the Kirby and recorded in this Court, in 1802. That in the year 1804 Benja Kirby departed this life intestate as to the said 100. acres of Land, he never having devised it to any one — or mentioned it in his said Will. That your complainants are the only rightful

of the said Benja Kirby dec? and by the Laws of this Commonwealth entitled to a tract of 100 Acres of land - which they your complainants pray may be sold and an equal Distribution of the money arising from the sale, made amongst them, the value of the said land being too inconsiderable to admit of a division thereof in land according to Law, in such cases made & provided. That commissioners be appointed to carry the same into effect &c

Your Orators & oratrix further state that the said Elizabeth Kirby widow & relict of the said Benja Kirby continued during her life in possession of the said tract of 100 Acres of land, and at her death, setting up no claim to the said land made no mention thereof in her last will & testament, that she appointed Benjamin Cobb her Executor, who duly qualified & is if any person, now in the possession of the said tract of land; he is therefore prayed to be made Defendant to this bill that he may answer &c

Fort for Compt.

The answer of Benja Cobb Exr of Elizabeth Kirby dec? to a bill in Chancery exhibited against him in the County Court of Southampton by Miles Kirby &c

For Answer thereto saith that true it is as set forth in the said bill. Elizabeth Kirby has departed this life, after making her last Will & testament wherein she has appointed him her Executor, since which he duly qualified to the said Will. In his said testatrix having never any mention of the said tract of acres of land therein, he can exercise no right, nor pretend to hold or claim the possession. He is also obliged to admit on an inspection of the said Benja Kirby's last will & testament, that the said 100 Acres of Land is not devised to any person and is wholly omitted and never mentioned in his said Will. And hence this respondent prays that he may be dismissed &c

Benj Cobb

Compton County to wit

Agreeably to the within decree to us directed We the undersigned have after due notice made sale of the tracts of land within mentioned & Benj. Cable became the purchaser for the sum of fifty one dollars & fifty Cents & have taken his bond as directed by said decree for the same & within specified. We have also executed to Robert Goodwyn heir of Robert Goodwyn dec'd a deed of conveyance for the other 43 acres of land as the within decree directs. Given under our hands this 23d day of August 1813

Edw. D Butts

Dan'l Butts

Geo Haines

Mary &c
vs
Robert Goodwyn &c
Decree
Filed 1813
Sept. 1813
Clerks Office

Southampton June Court 1813.-

Miles Kirby Thomas Kirby Silas Kirby
& Patsey Pond formerly Patsey Kirby Compt.s

against

Benj.a Kirby Exr. of John Kirby dec.d Defts.

In Chancery.

This cause was this day docketed by consent of parties heard on the bill answer and arguments of Counsil whereupon it is decreed and ordered that Daniel Butts, John Simmons, George Holmes, and Edward Butts or any three of them make sale of forty three Acres of Land it being one half of a tract or parcel of Land containing eighty six Acres purchased by Benj.a Kirby of Benj.a Clements Newbern Windham & Jont. Windham and of which said forty three acres the said Benj.a Kirby died seized & possessed on a credit of six Months after giving due Notice of the time and place of such sale taking bond and security of the purchaser, and assign the same in equal proportions to the complainants; and that they execute a Deed of conveyance to the purchaser for the same.

And it is further decreed and ordered that the said commissioners execute a Deed of conveyance to the heirs of Robert Goodwyn dec.d for the remaining forty three Acres, of the said Tract of Land according to a division made between the said Robert Goodwyn dec.d and the said Benj.a Kirby dec.d whilst they were both living as will appear by a line of marked trees made by them - and that the said commissioners make report to the Court in order to a final Decree.

Teste James Rochelle D.C

Rec'd from Benj Cobb Eight dollars & fifty cents in full for my proportion of the land within mentioned & conveyed to the within grantee Witness my hand this 8th day of February 1814

Witness
Robert Goodwyn

Silas Kirby

Not deacidified 1992

Benjamin Kerby's Will

A Copy

At a court held for the county of Southampton the 20th day of February 1804 This will was presented in court by Ann Kerby the Executrix therein named proved by the oaths of Samuel Calvert and Benjamin Simmons two of the witnesses thereto & ordered to be recorded & on the motion of the said Executrix who made oath according to law certificate is granted her for obtaining a probat thereof in due form she giving bond and security whereupon &c.

Sam Kello

A Copy Teste

James Rochelle D.C

In the name of God amen I Benjamin Kerby of Southampton County and State of Virginia do make and ordain this my last will and Testament in manner and form following that is to say—

First I lend to my beloved wife Ann Kerby all my Lands and plantation whereon I now live lying in the said county of Southampton for her use during her natural life

2nd " I give and bequeath to my said beloved wife Ann Kerby all my estate (not before mentioned) of every Kind whatsoever to her and her heirs forever ——

3rd " I give and bequeath after the death of my said wife Ann Kerby all the land and plantation lent her as aforesaid, to my nephew Benjamin Kerby, Son of Thomas Kerby, to him and his heirs forever

Lastly I do hereby constitute and appoint my said wife Ann Kerby, Executrix and my friend Samuel Drewry Executor to this my last will and Testament revoking all wills by me made heretofore, In testimony whereof I have hereunto set my hand and Seal this Seventh day of December one thousand Seven hundred and ninety nine.

Published & declared by the testator to be his last will & testament & Signed Seald & delivered in the presence of us

Sam.l Calvert
Thos. Butts
Benj.a Simmons

Benjamin Kerby Seal