

1826-006

SOUTHAMPTON COUNTY
CHANCERY PAPERS

EVANS VS GURLEY'S ADMINISTRATOR etal

7/1826

other surnames: Thomas

Coary } Rice
Thomas }

^{20th Dec 1876}
Feb 4 1876, John Thomas appointed guardian
of the person of Infant Sifts.

Provincy att.

To the worshipping the County Court of Southampton
in Chancery sitting - Humbly complaining sheweth
unto your worships your orator William T. Evans. that sometime
- me. in the month of December 1825. he entered into an agreement
with a certain Henry Gurly (since dead) for the sale on the
part of this complainant of a tract of land in this County
containing by estimation acres or thereabout. for which
the said Gurly agreed to pay to him the complainant. the sum
of 2200 dollars. at two payments in the following manner.
One half or \$1100. Cash for which however this complainant
consented to consult his convenience so far as to wait with
him a short time. for the purpose of allowing him an oppor-
- tunity of making some collections which he would probably do
in a few weeks and to allow him a credit on the second last
payment for the other half of months ~~the~~ giving bond
with good security for the same. That the complainant thereupon
executed to the said Gurly a deed for the said land which has
been duly recorded in the clerk's office of this County, that the
said Gurly executed his bond for the second payment on demand
the day of 182 at the same time requiring of the Compt^l
- he being a married man & his wife yet an infant an indom-
- nifying bond conditioned that the wife of the said Compt^l when
of proper age. should should release her title to dower or that the
said Gurly should not be injured by her claim. which demand in
the part of Gurly the respondent considered quite reasonable and was
willing & had agreed to perform. but was not at that time prepared to

give the necessary security - that together with the circumstances that the said bond of indemnity could be easily given in a short time and the cash payment was expected to be made in a few days the Compt. trusting to the known responsibility & punctuality of the said Gurly did not think it necessary to demand any written evidence of the same. as it was contemplated by both parties that the business would be arranged in a few days by the Compt. giving the bond required & receiving the purchase money or such part as was convenient & if not all the balance in a short time afterward. - This Complainant begs leave to state that these arrangements which otherwise no doubt would have been completed ere this time were prevented by the sudden death of the said Gurly which occurred during their pendency leaving the affair in the state before spoken of and the whole of the first payment due except the sum of two hundred dollars paid early in January of the present year. for which the Compt. gave his receipt to the said Gurly - This respondent is advised that this Court will take cognizance of his case being one so entirely founded on accident and trust and they being (or either of them) circumstances that always give a Court of Equity jurisdiction. - The Compt. is also advised to institute his suit in this Court. inasmuch as the matter can be disposed of here with more expedition & less expense to all parties than elsewhere. the more so as from frequent conversations with the representatives of the said Gurly he has discovered a fair & liberal disposition on his part. & from his own inspecting of the affair a perfect willingness to pay the debt even if not

that he being a representative and the Compt. evidence entirely oral. he could not receive any voucher which would be understood at a distant settlement of his account. unless the same were furnished by a decree of Court. or the introduction of testimony which he at the time might not be prepared to introduce. - The Complainant begs leave to state that the said Henry Gurly died intestate & that John Thomas qualified as his administrator that he left a widow Rebecca & four infant children - Set William Richard. Henry - George Thomas - and John W Gurly all of whom are prayed deft heirs, & that a fit & proper person be by the Court appointed ~~as their~~ ^{to the infants} guardian to defend their rights in this behalf. - That the personal estate of the said Gurly in the hands of the said John Thomas his adm^r is more than amply sufficient to satisfy his debts - This respondent. Complainant entertains strong hopes that from the circumstances herein set forth & on such evidence as is furnished by the deed itself - the bond for the second payment - and the receipt for the two hundred dollars (which the adm^r is called upon to produce) the Court would grant him relief. but he expects to furnish evidence of conversations of the said Gurly which go to show the existence of the debt and that the same had not been paid. - In tender consideration of the premises. & to the end that justice may be done between the parties it is prayed. that the said John Thomas, as well as the other deft prayed. make true & perfect answer thereto. & that he either admit or deny apts. that the Comth Court of Spec be granted a general relief and as in duty he well may pray &c. William Evans.

- Hurley's ad. ad.:

at 3 am
Evans.

Mason

July 17th 1876 am. Geo-

To the worshipful, the County Court of Southampton,
sitting in Chancery:

The separate answer of John Thomas
admr of Henry Gurley dec^d to a bill of Complaint ex-
hibited against him, adm^r as afores^d and others, the widow
and heirs of ^{the s^d} Henry Gurley dec^d by William Evans -

This Respondent moving & for answer, to the said bill
says, that it is true, that the decedent died intestate, and
letters of Admr on his estate were granted to your Respon-
dent: that he found amongst the papers of his Intestate,
one which he here exhibits as a part of this answer,
importing to be a receipt from Mr. Evans, to the s^d Henry
Gurley for \$200. "in part of a tract of land sold him",
dated on the 9th day of Dec^r 1825, - That neither this, nor
any other paper in his possession, contains the slightest
exposition of the terms of any contract between the Compl^t
and decedent concerning the sale of the said tract of
land, - He farther states, that altho^g the estate is amply
sufficient to meet all its engagements, inclusion of this
if your worships shall deem it justly chargeable therewith,
yet he believes, that situated as the family now is, it
will be far more advantageous to them, to have the money
advanced, returned, the Deed cancelled, and to refuse
to carry the pretended contract into effect. Entertaining
this opinion, he relies on the Statute of frauds & perjuries,
and objects to the prayer of the p^{ttf}'s bill, since there is
no memorandum ^{of the s^d agreement} ~~thereof~~ in writing signed by the said
Henry or by any one for him. - As to the execution of
the deed, your Respondent demanded proof, that it was delivered
to the said Henry, and contends, that the said Evans

could not by his own act, make that a matter, which
was, so far as both parties acted, a mere part agree-
ment -

Your Respondent in conclusion begs leave to state,
that in all these matters he throws himself on the Court,
of your Honors. shall be opinion, that the Contract
must be specifically executed, on hearing the proofs -
he states, that the said Evans is a married man, that
his wife is not yet of full age, and that necessarily ought
to be given for her relinquishment of dower -

and having answered he prays to be hence dismissed
the

The answer of
de? and of

Curley widow of Henry Curley

orphans of the said Henry. by John Thomas
their next friend, by the Court here appointed to protect
their interests in their behalf, to the bill of complaint
submitted to this Court, by Mr. Evans, against them, &
the said Thomas as adm. of the said Henry -

These Respondents saving d. for answer to the said
bill say, that they know nothing of the circumstances
and rely on the answer exhibited by the said adm.
as fully as if all the statements therein contained
were set forth, pray to be hence dismissed &c.

Evans: Deere
y
Thomas &c

Evans
vs
Gurleys
admt.

In Chy Decree

This Cause this day Came on to be heard upon
the bill answer & exhibits & was argued by Counsel
whereupon the Court doth adjudge order and decree
that John Thomas adm^t of Henry Gurley dec^d pay
to the Complainant the Sum of Eleven hundred
dollars with legal interest from the 1st day of March
1826 subject to a Credit of two hundred dollars
paid by Gurley to the said Evans in his Gurley lifetime
in part discharge of the said debt. which sum of
eleven hundred dollars was the first payment for
the land in the bill mentioned - and it appearing to
the Satisfaction of the Court that the said Thomas
has not in his hands at present available assets of
the said Gurley estate sufficient to discharge the
debt aforesaid but abundantly sufficient for that
purpose when he shall have had time to collect
the debts due to the estate & that wishing to sell property
the Court doth stay the effect of this decree until the
1st day of Nov^r 1827 and the Court doth farther
decree that the effect hereof is to be suspended
until the said Evans shall give a bond with security
to be approved of by the said Thomas or by the Court
to the said Thomas for the benefit of the heirs of
the said Gurley ~~in~~ the sum of two thousand

dollars. Conditioned that the present wife of
the Compt Evans. shall at a reasonable time after
she shall arrive at the age of twenty one years.
execute a Conveyance of her dower right to the
said land. in such manner as the said Thomas
may require. or that the said Evans. will indemnify
the said heirs of Gurley & their heirs for any loss sustained
by them from her failure to make such conveyance
or ~~that~~ such conveyance by the wife be made of
her interest aforesaid if she shall have the legal
capacity to do so before the said 1st Nov. 1867

Evans.
4 { Affidavit
Gurley H f
W. L. Cary

The affidavit of Henry Evans of lawful age taken at
the Tavern of Robert Goodwin in the town of Jerusalem, on the 23rd August 1826, to be
read in evidence in a suit now depending in the Chancery
Side of the County Court of Southampton County, in which
William Evans is Compt & John Thomas, Adm^r of Henry
Gurley & they are defendants. This deponent being first duly
sworn deposes & saith. That he was on the day of
Dec^r 1825. being old Solon Court. present with William Evans
and Henry Gurley at which time the said William Evans
told Gurley that he had told his (Evans') wife to make her
relinquishment of dower in the land which he had sold to
Gurley. to which Gurley replied that he could not take
it then as Mrs Evans was not of age. but that it should
make no difference if he would give him an
indemnifying bond, which he Evans was to do -
This deponent further states that he was present on Tuesday
the next day (after there had been a sale in Jerusalem),
late in the evening when after Gurley & Evans had been
alone together as this deponent believed doing some kind of
business Evans asked Gurley if he could pay him any thing
towards the first payment, which was to be cash. To which
Gurley replied that he had failed in making collections.
That he had expected to collect \$600 but had collected only
\$200. which he was under the necessity of using another way
that if he would wait until Saturday or Friday or Saturday
next he would come to his house & pay him as much
as he could and give his bond for the balance of the
first payment & would take a bond of indemnity from
Evans for the conveyance of his wife, when she came of age

within a day or two after that time & before the Friday or Saturday
after at which time he was to have gone to Evans' he was taken
ill & died in a few days, without going down to Evans'
at all.

- during these conversations the deponent heard
Gentry speak of having to pay to Evans different sums of money
at different times, as he believed, for which he had not given
his bond. And cannot charge his memory except as to
three hundred dollars, to be paid before the first of Jan^y 1826
and further this deponent saith not.

The deponent Henry J. Evans, made the above statement
after being duly sworn. Given under my hand & seal
this 23 Aug 1826.

Robt. Goodwin J.P.

Wm. Evans

Recd. To

By Gurley

\$200.00

Rec^d Dec^r 9th 1825 of Henry Gurley
two hundred dollars in part for a tract
of land sold him

William T. Evans,

Ivan
to } Deed
Gurley }

Ivan
to } Deed
Gurley }

Ivan
to } Deed.
Gurley }

Dec. 19th 1825 out. or pro. of day

Recorded

Pago

481

[Signature]

This Indenture made and entered into this twenty
seath day of November One thousand eight hundred
and twenty five between William T Evans of the
first part and Henry Gurley of the second part
Witnesseth that the said Evans of the first part for and
in consideration of the sum of two thousand two hundred
dollars to him by the said Henry Gurley in hand paid
the receipt whereof is truly acknowledged hath given, granted,
bargained & sold & by these presents doth give grant bargain
and sell unto the said Henry Gurley of the second part
a certain tract or parcel of land situate in the County
of Southampton and State of Virginia in the fork of
Attorney Swamp & Flaggys run containing by estimation
two hundred and forty five acres more or less being contiguous
to the land of James Scott. William Washington (of Geo)
Lemuel Hart decd Zebediah Washington as by them owned
in and about the year 1803 being the same land which
is conveyed in two tracts the one containing two hundred
and forty acres the other three hundred and five acres by
deed executed on the 22nd day of October in the year 1803
by William Washington & wife Joseph Washington Andrew
Washington & others to William Evans which deed is of record
in the Clerks office of the County of Southampton aforesaid

And which deed is referred to for the boundaries and other
designations of the said land. To have & to hold the same
to him & his heirs forever. — And the said William T Evans
for himself his heirs executors &c warrants and defends to the
said Henry Gentry his heirs Executors & assigns full free and
complete title to the same to the full extent against
the lawful claim or claims of himself his heirs his
Mother Mary Carr & her husband John Carr or any future
husband. either as to any right or claim on their part to the
same or any part thereof or any interest therein. & of all other
persons. — In testimony whereof the said William T Evans
hath set his hand & seal this day & year above. —
In presence of.

William T. Evans

J. Middleton

Decr 9th 1825

Southampton County

In the Clerk's Office the 9th December 1825
This Indenture was acknowledged by William Evans the party hereto
and admitted to record. And at a Court held for the aforesaid County
of Southampton on the 15th Decr 1825 This Indenture as
aforesaid was entered upon the proceedings of the day

Inte. James Nicholls. Clk