

1835-020

SOUTHAMPTON COUNTY
CHANCERY PAPERS

HARRIS VS WESTBROOK'S EXECUTORS

6/1835

Harris

" 3 Papers

Westbrooks

1835 Feb. Ball filed &

" Sum. Defam: by Dr. Pluff's
Atts.

To the Honourable R. H. Baker, Judge of the Superior
Courts of Law & Chancery to be holden for the County
of Southampton,
Harris

vs
Westbrook & Co.

Humbly Complaining, sheweth
unto your Honour, your Orator Lowell Harris, that
David Westbrook, late of the County of Southampton,
deceased, being possessed of very considerable personal
estate, consisting of various descriptions, did on or
about the day of duly make and publish
his last will and testament in writing, of
the date, and thereby, after giving divers other pecu-
niary legacies, gave or bequeathed unto your orator
three hundred dollars, until ~~the~~ the children of
your orator should attain the age of twenty one
years. as will more fully appear by the sd will, which
your orator prays may be considered as a part of
this bill. And your orator further sheweth that
the sd testator did appoint Person, Simon T. and
David Westbrook as executors to his last will and
testament, or the probate thereof, whereunto your
orator for greater certainty referreth the same
shall be produced to this Honourable Court
(reference being had thereto) will appear, And
your Orator further sheweth that the sd testator
departed this life on or about the day of
without altering or revoking his sd will, whereupon
the sd. Person. Simon T. & David Westbrook, duly
proved the same in the County Court of So Anptown
and obtained probate and took upon themselves the
execution thereof, and by virtue thereof possessed
themselves of all the personal estate of sd testator
of considerable amount, and more than suffici-
ent to satisfy all just debts, funeral & testamentary
expenses, and legacies. And your orator further
sheweth, that he has frequently & in a friendly

manner applied unto sd Executors (having previously
tendered a refunding bond for the same, and requested
them pay and satisfy unto your Orator the said legacy
of \$300.00 together with lawful interest for the
same, and to come to a fair and just account
for and in respect of the personal estate and
effects of sd testator, which have been received by
them & apply the same in a due course of
administration and your Orator hoped that
such his reasonable requests would have been
complied with, as in justice & equity they
ought to have been; but now so it is,
may it please your Honour, that sd Exrs con-
fiding & confederating with divers other persons
at present unknown to your Orator, whose
names when discovered, he prays may be herein
inserted, with apt and proper matter & words
to charge them as parties thereto, & contriving
how to injure and oppress your Orator in
the premises, absolutely refuses to comply
with your orators reasonable requests aforesaid
sometimes pretending that sd testator in his
lifetime never made sd will & testament of
such date, purport & effect, as is herein before
mentioned & set forth and that therefore the
sd Plaintiff is not entitled to the sd legacy
whereas your Orator expressly charges the contrary
of such pretences to be true & that the sd testator
in his lifetime did duly make & publish his
last will in writings of such date, purport
and effect as is herein before mentioned &
set forth, and that virtue thereof your Orator
is become entitled to said legacy of \$300.
and so the Exrs at other times gives out
& pretends that the personal estate & effects
of sd testator which have come to his hands,
Custody, or power, were very small and

inconsiderable and not more than sufficient
to satisfy & pay the just debts of sd testators estate
whereas your Orator expressly charges that the personal
estate & effects that have come into their hands
are very considerable and more than sufficient
to satisfy the debts & expenses of sd estate, wherefore
he claims to be entitled to sd legacy of \$300.
as it would appear if the sd Exrs would set
forth a full, true and particular account of
sd personal estate & every part thereof and how
in what manner, to whom and for what the same,
and every part thereof, has been applied or disposed of,
but which he refuses to do, or make your Orator
any satisfaction whatever, for & in respect of his
just demands, all which actings, doings &
pretences of sd Confederates, are contrary to equity &
and good conscience & tend to the manifest wrong
& injury of your Orator in the premises, he considers
action whereof, & for as much as your Orator is
remediless in the premises, by the strict rules of the
Common Law, & cannot have adequate relief, except
in a Court of Equity, where matters of this kind
are properly cognizable & relievable, to the end
therefore, that the sd Exrs & their Confederates, when
discovered, may upon their several & respective oaths, accor-
ding to the best & utmost of their several & respective know-
ledge, remembrance, information & belief, a full, true,
perfect, & direct answer, to all & singular the matters
aforesaid & that as fully as if the same were here repeated.
& they particularly interrogated thereto; And more espec-
ially that sd Exrs may in manner aforesaid, answer and set
forth wheather sd testator did not duly make & publish
his last will in writings of such date & purport & effect
as heretofore in that behalf mentioned or of some & other
other date & to some & to what other purport & effect and
wheather sd testator did not after death of his life without
altering or revoking sd will & wheather sd Exrs did not
after prove sd will & take upon themselves the execution
thereof, and wheather in that right or some other they did not
appropriate themselves of all the personal estate & effects of sd
testator and wheather they were not of considerable amount

and what amount & more than sufficient to satisfy all
just debts, funeral & testamentary expenses and legacies,
and whether sd Pltff is not entitled to sd legacy of 300⁰⁰
and whether your Orator has not made such request and
application to sd Defdts as are herein before set forth, &
whether sd Defdts have not refused & does not still refuse
and that sd Defdts may set forth a full, true & particular
account of sd testators personal estate & effects, together
with the value thereof, and how much & what part
have come to their hands & how it has been administered
and whether any & what part remains in their hands
unadministered, and that sd Defdts may be decreed to
render an account of said effects & to render the same in
or due course of administration & that thereof your
Orator may be fully satisfied & have the aforesaid
legacy, together with lawful interest on the same, from
such time as this Court may appoint, and decree
such further and other relief as the nature of the
Case may require and to the Court may seem
meet, ~~and~~ therefore prays that the writ of Supremacy
be awarded & ~~that~~ ^{Reddy for Pltff}

^{Solon County is wit.}
This day Lord Harris made oath before
me J.P. to the truth of the within bill -
Given under my hand & authority of the
peace for said County on the 9th day of
Decr. 1834.

Wm. A. Basham J.P.

51 103 4031

41234
Lee
Northbrook, Ill

656

Harris

3 Sp. in. l. l. l.

Westbrooks

February Rules 1835

Executed by delivering
a true copy to each

Jan. 10/1835

Copy Drawing out of

Buy. Drawing stuff

The Commonwealth of Virginia:

To the SHERIFF of *Southampton*

County.—GREETING:

You are hereby commanded to summon *Person. Simon J David Westbrook*
Executors of David Westbrook and

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the
County of Southampton, on the first Monday of *February* next, that being rule
day, to answer a _____ Bill exhibited against *them* —

in the said Court by *Joel Harris* —

And unless the said defendants shall answer the said bill, within four months thereafter, the
Court will take the same for confessed, and decree the matter thereof accordingly.

And this *they* shall in no wise omit, under the penalty of 100%. And have
then there this writ.

Witness—JAMES ROCHELLE, Clerk of our said Court at the Court House, the *15*
day of *December* 1834, and in the *59th* year of the Commonwealth.

James Rochelle c/c

[One copy to be delivered to each defendant.]

At a Court held for the County of Southampton the 18th day of November 1838
This last Will and Testament of David Westbrooke was proved by the oath of
Robert S. Musgrave and Burwell Murfee two of the Justices thereof and ordered
to be recorded And on the motion of the Executors named in the said Will who
made and entered into an acknowledged Bond in the penalty of Fifty thousand
dollars (the Court requiring no security) Conditioned as the Law directs Certifi-
cate is granted them for obtaining probat. of said Will in due form.

A Copy
Testes
James Rochelle Clk

David Westbrooke

Will

Harris

& Ex. with bill

Westbrooke

In the name of God Amen I David Westbrooks being weak in body but of sound and disposing memory do make and ordain this my last Will and Testament, hereby revoking all the other will or wills verbal or written heretofore made by me

Item 1st I leave and bequeath to my Daughter Lucy Drew a piece of land formerly belonging to Geo Stephenson viz all that part of the Stephenson plantation lying east of the cross fence which runs from the lands belonging to the estate of Joel Harris dec^d to the lands of Jos^d Claud, or if the contemplated new road should be established all the land east of the new road, which is expected to run near said fence.

Item 2nd I leave and bequeath to my Sons Person, Turner and David all the balance of my lands, to be equally divided amongst them according to value. It is my will that the house in which I live should be allotted to my son David's tract, and that my sons Person & Turner should draw for the other two tracts.

Item 3^d It is my will that my sons in law Scott Drew and Joel Harris should return the negroes I loaned them to my estate and that an equal division by appraisement, and allotments be made into five equal shares of these and all the balance of my negroes viz I leave one share to my son Person one share to Turner one to David one to my Daughter Lucy Drew and one to the children of my deceased Daughter Mary Harris.

Item 4th I leave to my Daughter Lucy Drew after my death three hundred dollars to her and her heirs forever. I leave to the children of my deceased Daughter Mary Harris three hundred dollars to them and their heirs forever.

Item 5th It is my will that the negroes allotted to, and the money will be to the children of my deceased daughter Mary Harris, be placed in their possession each ones portion when he or she may become of lawful age or marry. In the mean time until such event take place, it is my will that the negroes and money be lent to my son in law Joel Harris.

Item 6th I leave and bequeath to my three sons to be equally divided amongst them by appraisement, valuation and allotments all the balance of my estate horses stock of cattle, hogs sheep farming utensils household and kitchen furniture together with all the balance of my estate not heretofore disposed of.

Item 7th I hereby nominate and appoint my sons Person Turner & David my whole and sole executors of this my last Will and Testament, and it is my will and desire that the Court allow them to qualify without giving any security. Given under my hand and seal this 30th October 1832

Signed Sealed and delivered
In presence of
Robt. T. Musgrave
Charlotte Musgrave
Barwell Musgrave

David Westbrooks (Seal)