

1844-120

SOUTHAMPTON COUNTY
CHANCERY PAPERS

ROCHELLE ^{ad} VS. CARROLL

5/1844

other surnames: Hines,
Inman, Cobb

Rochelle

v. } Papers.

Carroll

1844 May Incom Papers.

Rockelle

F. } Statement-

Carroll

1842

Decr. 26th Injon: granted.

1843.

Jan'y. 16th Bond Security given Wp^a Jp^r.

Feby. R. - Wp^a ret^d. "no inhabitant"

" 22^d Depositions filed.

Apr^l. 13. - Answer. W. Rep. &c

June .. - Set for hearing

Mr. B. Rochelle
vs Bill of Injunction.
James Carroll

(1980 words)

Parker & Mundough
for Compl^{ts}.

To the Honorable Richard H. Baker, Judge of the Circuit Superior Court of Law and Chancery of the County of Southampton in the Commonwealth of Virginia, on the Chancery side thereof.

Your complainant, Mrs. Martha C. Rochelle (of the County aforesaid) widow of Mr. James Rochelle deceased, as executrix of the said James Rochelle, and also, in her individual capacity, as residuary legatee of the said James Rochelle deceased, for and during the term of the natural life or of the widowhood of your complainant, sheweth:

That sometime in the year then 1835 the said James Rochelle died, a resident of the County aforesaid, seized of and entitled to a large estate consisting of lands, negro slaves and other property, and leaving a will, ^{as also of the certificate of executorship and an exhibit} whereof a duly certified copy is herewith filed marked exhibit A, and prayed to be referred to and taken as part of this Bill of Complaint: That among the negro slaves aforesaid was a female named Compt, who, for some time before and at the time of said James Rochelle's death, had been and was in the possession of Col Samuel B. Hines the brother of your complainant and also of the County aforesaid: That said Compt, when very young, was purchased by said James in his life time, from ~~the estate of~~ Mr. Robert Hines also a brother of your complainant and of the said Samuel B.: That said Compt during the tender period of her infancy was, by agreement between said James in his lifetime and said Samuel B., founded on the tender consideration of the dictates of benevolent humanity, permitted to be and remain in the possession of said Samuel B. — the mother of said Compt being a ^{negro} slave belonging to and in possession of said Samuel B. and ~~that~~ said Compt during her ~~infancy~~ childhood aforesaid was maintained, clothed and fed by said Samuel B. free of pecuniary charge or cost on the part of said Samuel B.; in consequence whereof, according to the impression and belief of your complainant, the said James in his life time, agreed and permitted the said Compt when somewhat grown and capable of useful service, further to continue in the possession and service of said Samuel B. ~~for the said Samuel B.~~ for and in consideration only that he the said Samuel B. should continue to feed and clothe said Compt during the period of her possession and service; which period, as your complainant believes, was determinable at and by the will or desire ^{either of said Samuel B.} of said James: That sometime in the year 1836 the estate of the said James Rochelle was appraised, and that the said Compt, being at the time of said appraisement about 18 or 19 years of age, was then released by said Samuel B. returned and delivered to the possession of your complainant, and ^{was} duly appraised at the sum of six hundred dollars, as one of the negro slaves lawfully belonging to and possessed by the estate of said James then deceased; she, the said Compt having, up to the time of the appraisement aforesaid, remained as aforesaid in the possession and service of said Samuel B.: That immediately or very soon after the appraisement aforesaid, ~~the~~ your complainant, placed the said Compt in possession of the said Samuel B. moved by the consciousness and righteous consideration that said

Comfort had, during her years of helpless and inefficient childhood, been ~~so~~ well and kindly maintained, clothed and fed by said Samuel B. placed her the said Comfort in the possession of the said Samuel B. upon the understanding and agreement ~~between~~ your complainant and said Samuel B. that he, the said Samuel B. in consideration of and as compensation for the possession, use and service of said Comfort (then a young and valuable slave) should well and sufficiently maintain clothe and feed said Comfort during the continuance of such possession, use and service, and that the same should cease, and he the said Samuel B. should faithfully return and deliver the said Comfort into the possession of your complainant whenever your complainant should or might desire, direct or require, or whenever the said Samuel B. should or might so choose to do: That the aforesaid agreement and understanding between said Samuel B. and your complainant was designed to be, and constituted, in truth and fact, in law and equity, a hiring (and nothing else) of said Comfort to said Samuel B. for the compensation of maintaining, feeding and clothing said Comfort as aforesaid, and for a period of time determinable at and by the will of either your complainant or of said Samuel B. as aforesaid: That after said apprenticeship, and during the time said Comfort so remained as last aforesaid in the possession, use and service of said Samuel B. she, the said Comfort, gave birth to two children, namely, Lucy, now living and aged about four years, and Margaret also now living and aged about two years; that said Comfort, together with her two children aforesaid, so remained in the possession, use and service of said Samuel B. (he clothing and feeding and sheltering them all) until about the month of July or of August in the year 1842; and that at the time last mentioned, by the mutual choice and desire of both the said Samuel B. and your complainant, he the said Samuel B. faithfully returned and delivered the said Comfort, Lucy and Margaret into the possession of your complainant — your complainant having permitted the said Lucy and Margaret to remain with their mother, in the possession of said Samuel B. from motives of proper and necessary humanity, founded on the infancy of said Lucy and Margaret, and the maternity of said Comfort: That since the last mentioned time or date, namely, on the 12th day of October in the year 1842, the said Samuel B. in the Clerk's Office of this Honourable Court, on the common law side thereof, confessed judgment in favour and behalf of one James Carroll of the County of Surry, for the sum of two hundred and eighty eight dollars and ninety cents (\$288⁹⁰/₁₀₀) with interest thereon from the 20th day of September in the year 1842, until the same should be paid, and costs: That upon said judgment, ~~and~~ and in order to satisfy the same, a writ of *Fieri Facias* has been duly obtained and sued out, returnable to the January rules in the year 1843 of said Court, and ~~has been~~ ^{was}, also, in pursuance of the direction of said Carroll, on the 22nd day of November in the year 1842, levied by the Sheriff of said Southampton County upon the said ~~the~~ negro slaves, Comfort, Lucy and Margaret, whilst and when they, the said Comfort, Lucy and Margaret were in the lawful possession

of your complainant: That the said Carroll (who is now and has been for some years past the husband of a niece of your complainant, and has been for a long time acquainted with the estate of said Samuel B.) filled with fraud and unjust intent, has long known, and well knew at the time of the judgment, direction and levy aforesaid, that the said Comfort, Lucy and Margaret and now well knows, that the said Comfort, Lucy and Margaret were not, and are not, in any manner, at law or in equity, the property of said Samuel B. Hines, and therefore not subject to any debt whatsoever of said Samuel B.: And that they, the said Comfort, Lucy and Margaret, by reason of the proceedings aforesaid, will probably be sold by the said Sheriff at the on the first day of the ~~term~~ January term in the year 1843, of the County Court of said Southampton County.

All which, the premises considered, your complainant avers, ~~has been and will tend to the same~~ is and will be contrary to equity and good conscience, and tends and will tend manifestly to the wrong and injury of your complainant, for which your complainant has none, or an insufficient remedy elsewhere than in this Honourable Court.

To the end, therefore, that justice may be done, your complainant prays that the said Carroll may be made a party defendant to this Bill of Complaint, and may be compelled to make, on oath, full and proper answer to the same and each and every allegation thereof, as though each and every allegation aforesaid were here repeated, and he, the said Carroll, thereunto specifically interrogated. Your complainant, also, prays that your Honour will forthwith, or as speedily as possible, by order duly made, enjoin and restrain the said Carroll, and the said Sheriff, and the every other person whomsoever, from selling or proceeding to sell or in any manner interfering with the said Comfort, Lucy and Margaret, ^{and your complainant's possession & property therein} by ^{virtue of the said} judgment, fieri facias and levy, or other proceedings, ^{whatsoever} incident thereto; that your Honour will decree such injunction and restraint to be perpetual; and that your Honour will grant to your complainant such ~~or~~ other and further relief in the premises, as the circumstances of the case may permit or require, and to your Honour shall seem meet, equitable and proper. Finally your complainant prays that the Commonwealth's writ of Subpoena may issue, directed ~~be~~, commanding &c. — And, as in duty bound, your complainant will ever pray &c.

Parker & Maudaugh,
Counsel for Complainant.

Southampton County, to wit:
This day Wth Martha B. Rochelle made oath before me, a Justice of the Peace in and for said County, that the matters contained in the foregoing bill of complaint, so far as they are stated to be of her own knowledge, are true, and so far as she has

heard them from others and declares her belief of them, she does believe them to be true.

Given under my hand this 22nd day of December in the year 1842.

N. M. Selwell J.P.

An injunⁿ is awarded to injoin and inhibit the defendant Carroll, the sheriff of S.ampton county, then agents, attorneys all others concerned from selling or removing or carrying or permitting to be sold or removed, or sent out of the county the slaves in the Bill mentioned, viz, Comfort, Lucy & Margaret until the further order of the court: and unless the plff^s or the def.^t shall enter into bond with sufficient security before the clerk of the circuit superior court t. of Southampton payable to the sheriff of the said county in the penalty of one thousand dollars, conditioned to have the said slaves forthcoming to abide any future order or decree of the court in relation thereto, then the shff of the said county is directed to hire out the said slaves monthly or otherwise as to him may seem right or until the further order of the court to the contrary.

To

The Clk of S.ampton
Circuit sup. court t.

Reid. H. Baker

December 26. '42

20.00
8.00
15.6
43.6

56
18
38

Carroll
at
Rockwell's Exp
Amuse

Apr. 8th - 1843.

To the Judge of the Superior Court
of Law and Chancery for the County of
Southampton in Chancery sitting

The answer of James Carroll to a
bill exhibited against him in said
court by Martha Rockelle in her own
right and as executrix of James Ro-
ckelle died

This respondent having and reser-
ving to himself all advantages & ex-
ception to the answer and im-
pugnancy in said bill in manner
and form as therein stated and
set forth for answer thereto answers
and says that he knows nothing
of his own knowledge of the circum-
stances under which the slave com-
pelt mentioned in the complainant's
bill was placed in the possession of
Genl. B. Miles by James Rockelle died
your respondent has indeed heard
that she was placed in his pos-
session at a very early age and
and he is informed that she
remained in the possession and
in the review of the said Genl.
B. Miles until about the month
of August 1842 when as charged
in the bill he pretended to return
the said slave complot and her
two children Lucy and Margaret
to the said complainant as if they
were in his possession or were loaned
If they or either of them were ever
delivered up to be oppressed as

charged it does not come within the knowledge of your respondent and he requires proof of the facts, he does not believe the delivery was open and in public, and that if there was any delivery it was only known to the said Yancey B. Hines and the complainant, your respondent is advised that from the complainant's own showing by her bill that the said slave Cora Fort vested absolutely in the said Yancey B. Hines by the length of possession from the time she was very young until the death of the said James Rochelle in 1835 without any demand being made for delivery, she then being about 17 or 18 years of age. The said slave had at that time become the property of the said Yancey B. Hines from an interrupted and quiet possession for 12 or 15 years;

If she was in fact delivered in 1836 of which your respondent requires proof, still the title again vested in the said Yancey B. Hines by a delivery to him at that time and a continued possession until about the month of August 1842 when it is pretended she and her said children were surrendered to the complainant.

The history of that matter is that the said Yancey B. Hines

had become so indebted as to be entirely insolvent and was about to make a conveyance of all his property to satisfy debts due to the complainant and other poor creditors, then it was that he and the complainant determined on the surrender of the slave Cora Fort and her children Lucy & Margaret on the pretence ~~of the~~ that they were a mere loan, your respondent fully believes they never would have been called for or surrendered if the said Yancey B. Hines had not been totally insolvent, and that the surrender was nothing but a family arrangement to the injury and prejudice of the first creditors of the said Yancey B. Hines, as such your respondent is advised he had no right in law to give away any of his property as a gratuity to his wife where in justice it belonged to his creditors. As evidence of these facts your respondent files herewith as part of his answer a copy of a deed of trust dated the 12th August 1842 and marked D. whereby the said Yancey B. Hines conveyed all his property then in his possession for the purpose of paying poor creditors knowing as he did and as is manifest from the deed he was hopelessly insolvent. Believing as your respondent did

that the remainder of these slaves was
in law a fraud upon the rights
of the creditors and that the ~~legal~~
title still remained in the said
Yancey B. Hines. he determined to have
his execution levied on them which
was accordingly done as stated in the
bill of foreclosure and as in law he
considered he had a right to do,
your respondent considers the account
of this loan for about 20 years ~~as~~
without any demand being set up
and no time claimed either by the
said James Rochelle in his lifetime or
by the ~~de~~ complainant as his executrix
since his death as a loan story, and
a poor ground of title, he is fully
convinced that no claim would
ever have been set up, but for the
fact that the said Yancey B. Hines
became insolvent and was deter-
mined to throw as much of his
estate as possible into the hands of his
sister on whom he expected to rely
for future support during life.
your respondent denies all fraud
and has only pursued what he con-
sidered his just and legal rights
in endeavoring to receive a just
debt while the said Yancey B. Hines
it seems was unwilling to pay
although your respondent had
become connected with the family
by intermarriage; Under all the
circumstances your respondent claims

that his debt shall be paid
and ~~is~~ satisfied either by a sale
of said slaves or by the payment
thereof by the said employment
through whose agency he has been
promoted from proceeding with his
execution and making his just
debt, and he prays that the
said bill be dismissed and that
payment shall be decreed of his
debt damages and costs and
as in duty he will O
Signed ~~James Carroll~~

Meigs county to wit
This day James Carroll
personally appeared before me a justice
of the peace for the county of Meigs and
made oath to the truth of the fore-
going sworn and the matters there-
in contained so far as the same
depend on his own knowledge
and as derived from the know-
ledge of others he believes them
true. Given under my hand
this 4th of April 1843

J. M. Jordan J.P.

Rochelle

v: }

Garroll

To be entered

RHB.

1844, May Term

A judicial warrant, Southampton
County ~~Thence~~

Beckwith vs Correll,

This cause came on this day to
be heard on ^{the} bill & answer & replication & depositions
with the exhibits and proofs filed in the
cause and was argued by counsel: on
consideration whereof the court doth adjudge
order and decree that the injunction awarded
the plaintiff the 26th day of December 1842
be taken off the defendant from selling the
slaves Comfort, Lucy and Margaret in the
bill mentioned, under an execution issued
out of the Clerk's office of the circuit superior
court of law and chancery for the county
of Southampton in favor of the defendant
against Samuel B. Heiser, be made per-
petual: and that the defendant do pay to
the plaintiff her costs by her about her
suit in this behalf expended -

To injoin and inhibit the defendants Carroll and the Sheriff of Southampton County, their agents, attornies concerned from selling or removing or causing or permitting to be sold or removed or sent out of the Commonwealth the slaves in the bill mentioned, viz. Comfort, Lucy & Margaret until the further order of the Court. And unless the plaintiff or the Defendant shall enter into bond with sufficient security before the Clerk of the Circuit Superior Court of Law and Chancery of Southampton County in the penalty of One thousand dollars, conditioned to have the said slaves forthcoming to abide any future order or decree of the Court in relation thereto then the Sheriff of the said County is directed to hire out the said slaves monthly or otherwise as to him may seem right or until the further order of the Court to the contrary.

Teste L. R. Edwards Ck

Blackwell

to J. A. & J. A.

Carroll

1843. February 14th

Do Substantive

W. C. Blackwell
W. C. Blackwell

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon

James Carroll

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *February* - next, to answer a Bill in Chancery exhibited against *him* in

the said Court by *Martina W. Rockwell* as executrix of *James Rockwell* dec^d. and also in her individual capacity

And unless *he* shall answer the said Bill within ^{*two*}~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON

R. EDWARDS, Clerk of our said Court, at the Court-house, the day of

January

1843, in the

67th

year of the Commonwealth.

J. R. Edwards

[One Copy to be delivered each Defendant.]

Rochelle

& } Sp^o.

Carroll

21st February 1843.

Executed on Sally
Cott Saml B. Hines
& Oliver N. Hines
John D. Turner & for let
Harrison & for let
Wm. L. Drull & of
Wm. L. Everts & off

Wm. L. Drull & of

The Commonwealth of Virginia:

To the Sheriff of Southampton County—Greeting:

WE COMMAND YOU, THAT YOU SUMMON Sally Cobb. Samuel B. Hines.

John D. Turner. Oliver H. Innman & Norfleet Harrison

to appear ^{at the Office of John Mordough in Jerusalem Southampton County} before the ~~Justices of our County Court of Southampton, at the Courthouse,~~ on the 21st day of February next Term to testify and

the truth to say, on beha'f of Martha Rochelle in her own right and as Exec^{tr} of ^{James Rochelle dec^d} in a certain matter of controversy in our ^{said Court, before the} ~~said Justices~~ depending and undetermined, between ^{said Rochelle}

Plaintiff and James Carroll

Defendant . And this they shall in no

wise omit, under the penalty of 100 pounds. And have then there this writ. WITNESS,

LITTLETON R. EDWARDS, Clerk of our said Court, at the Courthouse,

the 16th day of January 1843, in the 107th year of the Commonwealth.

L. R. Edwards Clk

~~I hereby certify that on Monday 23rd Janry.
1843 I delivered a copy of the within notice to Charles
Carroll. Given under my hand at this 25th Janry.
1843.~~

~~Thos. R. Caranip St.
Ben. C. Reed Sff.~~

Sumy ~~known to before me.~~
County to wit

John R. Cocharup personally appeared
before me and made oath that he delivered a true
copy of the within notice to Charles Carroll on
the 23rd day of Janry, 1843. Given under my
hand this 25th Janry, 1843.

Charles H. Green, J.P.

Wagoner #

Sumy County.

John R. Cocharup

Office February 22nd 1843

Carroll

7

to 3 notice

Richelle

Jerusalem. January 16th. 1843.

To

Mr. James Carroll.

Sir,

Take notice that on Tuesday the 21st day of February, 1843, between the hours of 8 o'clock A. M. and 4 o'clock P. M. at the Office of Mr. John Munday in the Town of Jerusalem and County of Southampton, I shall proceed to take the depositions of Sally Cobb, Samuel B. Hines, John D. Turner, Oliver H. Inman, Norfleet Harrison and others, to be read as evidence in a suit depending in the Circuit Superior Court of Law and Chancery of said County of Southampton, on the Chancery side of said Court, wherein I am plaintiff and you are defendant, and shall continue the taking of said depositions from day to day until the same shall be completed, Sundays excepted. You can attend, accordingly, at the said time and place, if you choose.

Martha Rochelle,
in her own right and as ex^{or}
of James Rochelle dec^d.

Rockville

v. } Depositions

Carroll

1843 Feby. 22^d handed in by
L. P. Nicholson Justice of the Peace
L. R. E.

to be read ~~in~~ evidence
Depositions, in the case suit of Martha Rochelle, executrix
vs against James Carroll depending in the Circuit Superior
Court of Law and Chancery of the County of Southampton in
the Commonwealth of Virginia, on the Chancery side of said
Court, taken before Lemuel P. Nicholson a Justice of the
Peace of said County, at the Office of John Phundough in the
Town of Jerusalem in said County, on ~~the 21st day~~ Tuesday the
21st day of February, 1843, between the hours of 8 o'clock
A. M. and 4 o'clock P. M. in pursuance of notice duly given
and herewith filed.

Deposition of Oliver H. Inman, he the said Inman having
been first solemnly sworn on the Holy Evangelist of Almighty
God. He swears and says as follows - That on the year
1835 the first part of the year I went to take Heins to
him as an overseer and remained with him as an
overseer for some years - and that soon after I went
there to him, take Heins observed to me that a little
woman named Comfort who I supposed to be
about fifteen years of age, belonged to Mr James
Rochelle and that he did not wish her abused, and
that Mr Rochelle let her remain with him as a
favour, and that when the apprehension of the Negro
belonging to the estate of Mr Rochelle took place
that this girl Comfort was sent down to Mrs
Rochelle to be appraised with them, though he says
that he does not recollect when this apprehension
took place - and that just before or immediately
after the apprehension referred to, that take Heins observed
to me that if he kept this woman Comfort named
above, that he should have to pay Heins, and asked
me what I thought she was worth? I told him \$20
and offered a note for him to him, as she was
a good hand, though I don't know whether take
Heins actually paid him or not (I doubt)
I swear by perjury 10 cents. Do you know
what was the general opinion in the
neighbourhood, as to whom the property and
woman named Comfort belonged?
Answer, I do not know the general opinion of the
neighbourhood, as I never troubled myself, at all
about it

Question by Defendant's atty. Do you know actually, that this girl Comfort
was sent down to be appraised - Ans, I know that she was

Rochelle

&

Carroll

} Inj. or.

Plaintiffs costs to mt.	Blake	\$ 5.30
	Shffs	2.05
	Law	16.67
	Tax	<u>75</u>
		\$ 24.76

Exhibit A.

Comfort

Lucy

Margaret

Rachel

to } Exhibit with bill
Carroll }

I James Rochelle of the County of Southampton and State of Virginia.
do make this writing as and for my last Will and Testament as follows to wit
1 It is my will and desire that the Tract of land I purchased of William Scott
called Bucks containing 519 acres the tract of land I purchased of the Estate of
John Thomas died containing about 337 acres both lying near the Town of Am-
-salom, a small tract of land containing about 80 acres lying on the South Side of
Northway river at or near the thick creek bridges and also a tract of land which
I own lying in the County of Nansemond containing 192 acres be sold by my
Executor on such terms and at such time as she may think advisable and
that she execute legal deeds of conveyance for the same and apply the proceeds
of such sales to the payment of my debts. 2. After the payment of my debts I lend
unto my wife all the rest and residue of my estate of what ~~kind~~ nature & kind
soever during her life or widowhood for the maintenance of herself and children
requesting her to give them the best education my estate will afford.

3. And whereas my son John and Daughter Martha derived title to some places
by the death of their half Brother which are in my possession and has not been
allotted to them should they claim them independent of my estate. It is then
my will and desire that so much more of my estate be allotted to my son James
as will make his estate equal to theirs. Revoking all other wills. I do
appoint my wife, Executor of this my last Will. Given under my hand and
seal this 17th day of August 1835.

Teste

James Rochelle

Wm A Spark

Clements Rochelle

Winney ^{her} Doyal
mark

At a Court held for the County of Southampton the 21st day of September 1835
The last Will and Testament of James Rochelle died was this day proved by the
oaths of William A Spark Clements Rochelle and Winney Doyal churchmen
thence and ordered to be recorded. And on the motion of Martha Rochelle
the Executor therein named who made oath and together with George Blom
William A Spark and Samuel Baines her securities entered into &
acknowledged a bond in the penalty of fifty thousand dollars conditioned
as the law directs Certificate is granted her for obtaining a probat of said
Will in due form

Teste L.R. Edwards CLK. P.T.

A Copy Teste

L.R. Edwards CLK

Skins

So } D. Trust

Rockelle of ad Trustee

D

Alpy

Rockelle

~ } Exhlt. in the Dfts and

Carroll

This Indenture made and entered into this day of August 1842
Between Samuel B. Hines of the first part ^{Sellers} R. Edwards and Thomas S. Shelton
of the second part and Martha Rockelle and John W. Rockelle and all the
other creditors of said Hines of the third part. Witness that the said Hines
is indebted to various individuals and wishes to secure all his creditors
and all who are bound for him as his securities non in consideration of the
premises and the sum of one dollar in hand paid by the said Edwards
and Shelton the receipt whereof is hereby acknowledged the said Hines
has this day bargained sold conveyed and delivered and does by these
presents bargain sell transfer deliver and convey unto the said Shelton
and Edwards all his Estate of every kind and description consisting of
his tract of land the same on which he now resides containing about
1500 acres be the same more or less with all appurtenances thereto belonging
saving and reserving to himself his heirs and assigns the two grave yards
with an half acre of land attached to each all his slaves numbering
thirty seven all his growing crop all his stock wagons carts furniture
both household and kitchen all his rights and credits together with
all other estate of every kind and description not here mentioned it
being the object of this deed to convey unto the said Edwards and
Shelton every thing belonging in any way to the said Hines. To have
and to hold all the said property unto them the said Edwards and
Shelton their heirs Executors &c with the future increase of the female
slaves forever upon trust nevertheless that the said Edwards
and Shelton shall keep all the said property together until the
growing crop is made when they shall after giving reasonable notice
of time and place of sale sell all said property at public auction
upon such terms and conditions as they shall think best after
consulting the creditors of the said Hines in order to carry out the
provisions of this deed provided the personal property is not sold any
longer credit than 12 months and the land on a longer credit than
one two and three years and out of the proceeds pay in the first
place all expenses attending the execution of this trust then in
the second place all debts due to the Estate of James Rockelle
in any way and all other debts for which that Estate or Mrs
Martha Rockelle or John W. Rockelle may in any way be bound
for the said Hines it being the intention of the said Hines that
the said Estate and the said Martha Rockelle and the said
John W. Rockelle shall be saved harmless in all respects before
any other debt due by the said Hines is paid, In the third

place the said trustees shall pay all debts upon which Edward
Burt Thomas DeBarn Nicholas Schell and George Blaw are the
securities of the said Hines as well as Alexander Pater delinquent of \$250
borrowed money upon which no interest is charged. The said Hines
considers himself under peculiar obligations to save these gentlemen
obligations which do not rest upon him in so great a degree in relation
to other debts. In the fourth place the said trustees shall pay
all other debts due from the said Hines. The said trustees in making
sale of the land shall have power to sell it all together or divide
it in parcels as to them may seem best. They shall have power
to do all and every thing necessary to save and get to market
the growing crop. In paying the creditors in the order in which
they are named they the said trustees shall have the power to
deliver over the lands in payment where the property is sold upon
a credit. If the creditors refuse to receive the lands the securities
of the said Hines to such creditors may receive them but the said
Hines does not by this indenture acknowledge the justice of
any debt due to Mills & Lawrence either from him the said
Hines or from Samuel J. James for whom the said Hines was security.
On the contrary the trustees are instructed to oppose the recovery
of all such debts either those in which suit is already instituted
or those on which suits may be hereafter instituted and all
expenses incurred in doing so shall be paid by them as expenses
incurred in the execution of this trust. They are also instructed
to resist the recovery of a debt due & held by the Exchange
Bank at Norfolk for upwards of \$4000 upon which J. W. Rochelle
is one of the securities unless the said Lawrence shall induce
the said bank to accept such an amount in payment thereof as the
said trustees shall think proper to pay by way of compromise but what
ever is paid on this debt is to be first paid in order to save himself J. W.
Rochelle all the other creditors of the said Hines must be wholly paid before
any thing is paid to said Lawrence on any debt (except in order as
above to save J. W. Rochelle) The reason of this is that the said
Hines paid to said Lawrence high money who afterwards violated
all his promises and assurances. In testimony whereof the said Hines
Edwards and Gholson have this day and year above written set their
hands and seals

Samuel B. Hines (Seal)
J. R. Edwards (Seal)
Thos. J. Gholson (Seal)

Southampton County in the Clerk's office the 12 day of August 1862
This deed of trust between Samuel B. Hines of the first part ^{Debitors} R.
Edwards and Thos. J. Gholson of the second part and Martha and
John W. Rochelle and others of the third part was acknowledged
by Hines and Edwards two of the parties admitted to record

Teste
Augustus W. Hurd Clerk
Alphy Teste L. R. Edwards (Seal)

Crop v Crop - 9 Sept
Shields v Anderson 3 do
Sydney v Lee 4 do

Reckell v Cornell -

Notes of plaintiff's
counsel

J. Sampson

Harvie v Wickham

6 Sept 236.

These three cases
continued
may be ~~continued~~

the papers returned

to me R.H.B.

Spencer v Ford

1 Rob. Rep. 648

Stephens v Commonwealth

8 Sept.

Rockell vs Carrell -

In this case the counsel for the plaintiff asks for a perpetuation of the injunction -

The evidence in the case establishes a living and not a loan -

At the time that Carrell was purchased by the plaintiff's testator and left at last Haven, she was an infant ~~at the time~~ and her mother belonged to Col. Hines, what feasible mother could Hines have borrowed, & the humanity might induce him to permit her to remain with her mother -

~~She was~~ supported and clothed by Col. Hines ~~but~~ without compensation for many years until she arrived at an age to be serviceable, and then Mr. Rockell the protest of men, permitted her to remain, by way of compensation until ~~Col~~ Hines was satisfied for the expenses he had incurred -

In 1836, when last Hines in the opinion of the world, was perfectly solvent, and possessed of a large property - ^{and her children} this woman ~~was~~ sent to her service, to be ~~afforded~~ ^{afforded}, & was ~~afforded~~ as before

to the estate of the plaintiff's testator -

The case afterwards returned to est. Wines, as the evidence abundantly proves a hunting -

and before any judgment is obtained against est. Wines by the defendant, Comfort and her children are returned to the plaintiff in whose possession they were at the time, they were seized upon to satisfy the defendant's claim.

But even under the supposition that the slaves in question were loaned and not hired, ~~and~~ that they remained for more than four years in possession of the loaner - we submit that the defendant under the circumstances of this case as a purchaser of est. Wines had no right to buy his execution upon them, as the possession of the plaintiff.

1. Est. Wines could not as loaner acquire title to the slaves by any length of possession unless his possession was adverse, by demand & refusal of possession by the creditor's creditors of the high, nor could his creditors, unless he had obtained a lien by judgment and execution - & both at the time when the slaves were apprehended as a part of Mr. R's estate, or when they were again returned to him &c. the plaintiff & the defendant obtained any lien by judgment or otherwise -

In all the cases which have been decided in favor of the rights of creditors upon property loaned it will appear that such creditors had obtained a lien upon the property of the loaner, whilst the subject loaned was in his possession -

And this case is analogous in principle to that of a vendor of personal chattels by absolute deed remaining in possession, & it has been decided by the Court of Exchequer in the case of Bygones and see 4th Bur & Thunders & Anderson 3 B. & A. 1841 that if possession is taken by vendee before the rights of any creditor attach the sale is good against vendor's creditors -

We hold that the execution should be postponed upon both grounds, first that the slaves were never loaned but hired -

And secondly that the rights of the creditors did not attach until after the slaves had been delivered to their rightful owner -

Barber & Thunders -

Canroll
at
Rockelle
Notes of Dept
Council

Gastin Backdale

October 10/1904

council at Rockwell

Testimony

The council for the defendant cause relies upon the long continued possession of the slave property by Enoch Wines to show property in him.

From the plaintiff now showing she was in Wines possession from the time she was an infant until the year 1836 after Jas. Rockwells death without any thing being paid by Rockwell for keeping or any hire being paid for her services by Wines. There is no evidence to show she was returned to the state to be appraised except that the owner said she was sent for that purpose but he knows not whether it was done, and the further evidence of Wines that she was appraised. This testimony ought not to be received for he is the party to the fraud and therefore not competent to disprove the act of himself which is shown as a fraud on his creditors.

The slave was returned immediately after the alleged appraisement (which ought to have been proved by this evidence) and remained in his possession until a few days before he made his deed conveying all his property to meet debts due the plaintiff and her tutor &c and there is no evidence that any hire was ever charged or paid. There was never talk about hire, but

it was all talk nothing was ever paid or offered to be paid.

From 1836 till 1842 the slave was again in Wines possession. It is said by an old lady that there was a demand made at Ed Wines house the negro redelivered and redelivered to him again, but this was all done in the family and entirely unknown to the public, it therefore amounts to nothing.

Originally this slave was worth not more than \$40 or \$50. The and her children have been raised by Wines and are now worth some \$ or 600 dollars and are given up just at the moment Wines fails to his next relative. Why did he give her up if she was in his possession or vice versa is contended by the plaintiffs counsel. It was done in the month of August not the end of the year. There was no need of remunerating a hired negro.

It is perfectly clear that the negro was subject to conveyance in Wines possession even immediately after a pretended delivery. The case of Guittus Wines vs. Rockdale & Wines settles it. The court in a concise opinion say that the five years possession by Rockdale & Wines and acted a title in him which cannot in favor of his creditors notwithstanding he regrets thereafter have returned the same to the plaintiff from whom he derived them. The due from Wines for the bene-

fit of his creditors beats on its face a legal fraud where it attempts to postpone at least one creditor and prevent payment of his claims. This delivery of the slave must be considered in the same light.

He had no power to give away property to the prejudice of his creditors when he was in the very act of insolvency and bankruptcy. It is settled that a father cannot give to his children under similar circumstances, and no one can be thus generous to his finances on whom he expects to rely for support in after life. I consider the title to said slave to have vested in Wines years ago. His possession has been long enough to bar a writ of right for land, such a loan was never before heard of, and now it is contended that Wines creditors must pay for raising slaves for Rockdale estate.

No remuneration would ever have been made if Wines had continued solvent. The and and this remuneration then all that could be done, was to be done for the benefit of the family. Will the court favor any such undue conveyance contrary to every principle of equity?

It is therefore asked that the case inquest be dissolved and that the def cancel may shake his debt out of the slaves levied on for the debt made the execution in the hands of the sheriff.

Notes of
Mudfield

17 in. Per 345

2 Mound 543

4 Mound 313

1 Red Pra 374.515.

2 H Hm? 289

10 Ligh 193-196.

Gault in Barker date 5 Mound 101

Crop & Crop — 7 Ligh

Shelled & anderson 3 do

By river & by — 4 do.

Collins & Loffler 10 do

Bearley in Brown 3 H Hm?

Lewis in Adams 6 Ligh

Carroll v. Rochelle - Disposition

The first doubt that clouds the title of Mrs. Rochelle to the property in the slave Comfort is, to be found in the circumstances which attended the sale of the woman, while an infant, by Robt. King to Mr. Rochelle. Not one of the elements material, to the change of title to personal property ^{can} be traced in that transaction. No delivery is made - no possession given, and no price is paid; and if it were a contract between a creditor of Robt. King and the complainant, would not the sale, in the absence of any recorded instrument (accounting for the severance of possession from the title - to the property -) by the peculiar & strong language of the act of 1832 - be regarded as fraudulent, not constructively, but absolutely - and if so, such sale under such circumstances could never vest a perfect right & title in Rochelle. Robt. King asserts no title, Rochelle under the operation of our act, could not obtain ~~it~~ ^{out} with a deed recorded, and it must therefore follow the possession which remained for 17 or 18 years with Col. King without even a legal demand, or so much as a claim by the pretended owner; and even then, the demand consisted of a pretence of sending the negro to be appraised. after which (1832) the negro again ^{was} returned to the custody of Col. King, and with him remained until 1862. No effect can be given to this appraisement; because so far as it respects evidence of title, or re-delivery of Comfort to Rochelle it is no evidence, because the appraisement is evidence of theft, and is not to be found on record. If this appraisement had taken place, and been recorded; then it ~~would~~ ^{might} perhaps have been as operative as a deed, stating & accounting for the separation of possession from title to Comfort, ^{might} have been if recorded. For if there had been a deed between Robt. King & Rochelle in the first sale disclosing all the circumstances, even stating that one, also, between Rochelle & Col. King reserving a hire or so much per annum, and that deed not recorded, the possession of Col. King to the slave for five years would have vested in him ^{the title} so effectually that, nothing less than a sale of her to Rochelle to could have deprived a creditor of King, from claiming her as subject to his debt. - and an appraisement not recorded has no greater effect than the deed not recorded. 2nd Muf? 543. 4th Sid 313. The pretended hiring there is nothing - the pretended return of Comfort to be appraised is nothing for there never was a legal appraisement; the record contains none. In fact the appraisement could not be introduced as evidence of title in Rochelle at all, because it ^{the} (appraisement) is ex parte -

Col. Hines had an interrupted possession of Comfort from 1818 to 1862 - saving the pretended return for appraisement in 1835 - what then, as it respects the rights of his creditors, is the effect and force of such possession? ~~Is it~~ not (vide 2 mss. 5-63-1 Nov. 1835-1845-15) - the possession of the loanee, (Hines) "entire to the benefit of his creditors," as much so as any other property which s^d loanee might have (always) owned - that is to say - if Hines were the loanee for more than 5 yrs of a slave (Comfort) and had at the same time other slaves ~~also~~ which he had forever owned, would not the slave Comfort, in this case, been as much subject to the debt of his creditor as the ^{s^d} other slaves - unquestionably: then as it respects a creditor the very moment that the five years possession, in a loanee, of a slave, have been completed, from that moment such loaned slave stands on the same legal ground of liability to him ^{the creditor} as the other slaves which ^{may} be loaned, or which always belonged to the debtor. If this be the case, how can a return of the loaned slave, by the debtor (Hines), at a moment of great indebtedness - on the very verge of hopeless insolvency, be regarded as any thing more than a gift of that to which his creditor was entitled, to a third person - Would your Honor have allowed a gift (without any consideration), by Col. Hines, of (his) other slaves, to Rochelle while he was overwhelmed with debt, to be good & valid against his creditors? The Stat. of Fraud. reply NO; as well as common justice. But, as we have above shewn, that the right of creditors, to the loaned slave (I use such expression to designate between the slaves which one may hold as loanee and his own right) - in the hands of his debtor (for more than 5 yrs) - is just the same, as it is to the other slaves of the debtor - then a return of such loaned slave to the lender, would be as much a gift "of the right that ensured to the benefit of the creditor," as the gift or conveyance of other slaves would be, as above stated & equally void as to creditors - So that the return ^{of Comfort}, in August 1862, by Col. Hines, to Rochelle, was just the same fraud upon the rights of his creditors, as if he had given over all of his other

slaves to Rochelle would have been. Now if Hines, in August 1862, had delivered or given to Rochelle his other slaves, could not Carroll, have treated such a gift - as fraudulent - as to him, and can there be the slightest doubt, but that he could have levied on them, in the possession of Rochelle - or set aside such a gift - But we have above seen, that his (Carroll's) the creditor's - right & title to subject such other slaves, ~~and~~ is no greater than it was upon the slave Comfort - and if so he could levy on her ^{in up she had been in Rochelle possession five years} in the possession of Rochelle, as well as upon any other slaves - Carroll acquired an interest in Comfort after she had been with his debtor 5 years - no less and no more, than he had in the other slaves (if he had any of Hines) so that the pretended return of Comfort, is as it respects Carroll, nothing more than a gift by Hines of that s^d interest, to Rochelle - I admit the proposition, that loaned slave of a debtor, stands just upon equal ground ^{with}, or as to his other slaves, as it respects the rights of creditors, the conclusion is inevitable, that the debtor or loanee, can ^{not} by ^{any} return of "loaned slave" to the lender - deprive his creditor of the "benefit that ensured to such creditor," no more than a gift of other slaves, when greatly indebted, would deprive his creditors of the right to make them liable. The return by the loanee, is ^{but} a gift of that "benefit" away from the creditor - This view of the question explodes the argument of counsel, that the return of Comfort - was made before Carroll obtained his judgment, or lien - the point or question of lien has not ^{the} slightest connection with the case, unless it was a sale of Comfort, before the placing execution was placed in the hands of the sheriff. If "A" obtains an judgment & issues execution against "B," but not until, ~~and~~ "B," had completed a sale of a horse with "C," then the horse in "C's" possession would not be subject to any lien - (or any debt in any manner) of "A." But suppose "B" is greatly indebted, - is insolvent, and makes a gift of the horse to "C," would not "A" have a right to enforce the horse to the payment of his ^{own} or debt. Now we regard the return of Comfort, by Hines, as but a gift of that which ensured to the benefit of his creditor - Hines could no more deprive Carroll of this s^d "benefit" than "B" could deprive "A" of the latter right to the horse, otherwise than by a sale - Hines was too greatly indebted to give away of his property, here is the rub -

No. 16. Whitfield, P.R.

Rockelle
" { Injoi: bnd
Carroll

Know all men by these presents that we Martha B Rochelle, John W Rochelle
George A Newsum - are held and firmly bound William L Over-
ett Sheriff of the County of Southampton in the just and full sum of One thousand
dollars: To the payment whereof well and truly to be made unto the said William L
Overett Sheriff as aforesaid, we bind ourselves our heirs, executors and administrators,
jointly and severally, firmly by these presents. Sealed with our Seals and dated
the 16th day of January 1843.

The Condition of the above obligation is
Such that whereas the above bound Martha B Rochelle hath obtained from the Judge
of the Circuit Superior Court of Law and Chancery for Southampton an injunction to enjoin
and inhibit James Carroll, and the Sheriff of Southampton County, their agents, attorneys
and all others concerned from selling, or removing, or causing or permitting to be
sold or removed, or sent out of the Commonwealth Slaves Comfort, Lucy and
Margaret, which said Slaves have been seized upon by the Sheriff by virtue of
the Clerks Office of the Circuit Superior Court of Law and Chancery for the County
aforesaid in favour of James Carroll against Samuel B Hines. NOW if the said
Martha B Rochelle shall have the said Slaves forthcoming to abide any future order
or decree of the said Circuit Superior Court of Law and Chancery in relation thereto
then the above obligation to be void or else to remain in full force and virtue.

Witness

Martha B Rochelle. (Seal)
John W Rochelle (Seal)
G A Newsum

In the Clerks Office of the Circuit Superior Court of Law & Chancery for
Southampton County.

This day John W. Rochelle, & Geo. A. W. Newsum
made oath before me Clerk of the said Court that their estates after the payment
of all their just debts ^{are} worth the sum of One thousand dollars. Given under my
hand this 16th day of January 1843.

L R Edwards clk