

1848-036

SOUTHAMPTON COUNTY
CHANCERY PAPERS

TURNER et al vs. ROCHELLE'S ADMINISTRATOR

2/1848

Other surnames: Day,
Kirby, Murdaugh

1837 Oct 16th Received of the Clerk of Southampton County one bond returned
by the Comrs in this cause for the sum of \$171.70 ²/₁₀ dollars and 29th day of
November 1835 as my proportion of the sales -

John A. Turner

1144

John A. Turner Cal.

v 3 Bill,
3 answer
3 + decree

Step^r Murdaugh Suty.

Att^r of Nat^l: Rochelle de.

~~murdaugh Suty.~~ ~~Att^r of Nat^l: Rochelle de.~~

1835 May - Decree as filed &c.

" June. Rep: Ret: made for
by consent &c.

1848. Feby: Order to deliver
bond.

Southampton
Co: Co:

setting;

Assembly complaining, were unto the Court, your orators, John A. Turner, William
Rockelle, and John Rockelle, all of whom are infants, under the age of twenty one
years, the first suing in his behalf by Peter W. Edwards next friend,
and the two other orators suing by Frances Rockelle their mother the — and

and your orators by their said next friend beg leave further to represent unto the Court, that they have understood and verified, that the said Richard B. Day who has long since departed this life, being unable to pay the debt due and owing to the said Nathaniel Rockelle and as aforesaid secured, the said Trustee Edwin Turner, being called upon to perform the Trust in his part, did by virtue of the power and authority vested in him, discharge the duty required of him, by selling in the mode prescribed by the said Trust deed, all the right of the said Richard B. Day in the land and negroes in the widow Day's dower, formerly, but now Mrs Kirby, - at which sale, the said Nathaniel Rockelle became the highest bidder and purchaser, of the interest in the property so conveyed as aforesaid; so That of the rights and interest so purchased there was a female slave named Maria (the same slave being before particularly noticed, and described, as to her particular situation, differing from that of all the other dower slaves who are at this time in the hands of Mrs Senault & late Mrs Kirby) who was delivered up to the purchaser (Nathl Rockelle), who continued to hold possession of the said slave Maria, for many years, certainly more than five years, previous to his death in January 1834, ~~and~~ claiming title under the purchase aforesaid.

as to Richard B. Day's interest, and claiming other shares and parts thereof as husband of Frances, late Frances Day, one of the children and heirs of John Day deceased. That since the death of the said Nathaniel Rochelle, the slave Maria who had a child named Ben, came to the hands of Wm. L. Rochelle and Stephen Murdaugh who qualified in this Court as his administrators, who have held them since. That the said slave Maria has now a sucking babe born since the death of Nathl. Rochelle, and Wm. L. Rochelle having very recently died, the said slave Maria and her increase are ~~now~~ continued to be held by the said Stephen Murdaugh's surviving Administrator as the property of his intestate - your orator John A. Turner by his said next friend claims that he is entitled to all the rights and interests in the said slave Maria & her increase to which his mother the said Martha D. Turner, or his father, might be entitled, if they were living, and prays that the same may be allotted to him under a decree of this Court.

and your orator by their said next friend beg leave further to represent unto the Court, that they have heard it said, and they fully believe the truth of the report, that the estate of the said Nathaniel Rochelle is very much indebted, and is thought to be insolvent. That it is true ~~that~~ that the administrator of the said Nathaniel Rochelle has not as yet sold the interest which the estate of his intestate holds in Maria & her children, but he will ~~very~~ questionably be compelled to do so directly either voluntarily or by compulsion of the numerous creditors: That a sale made by either of these modes whereby unascertained and undivided rights and interests can only be sold, will be productive not only of great sacrifice, but will moreover, ~~be~~ endanger, if not totally defeat them, in ever recovering their shares or portions, in the aforesaid slaves, since they are liable to be sold to negro speculators, or others who may transport and carry them away, and so contribute and manage to deprive your orator of their just rights, before they could ask and obtain the aid and interference of a Court of Equity. That frequent applications have been made to the surviving administrator & their next friend for a sale of the said slaves, and distribution of the proceeds arising therefrom amongst the respective claimants, according to law, and a true representation made of the evils and injuries which would, and were likely to arise, not only to your orator, but to the estate of the said intestate, by selling undivided interests, instead of the whole interest in the said slaves, when their true value could be obtained:

That notwithstanding these repeated applications and representations, the said surviving administrator has done nothing, but hitherto hath refused, and still doth refuse to come to any division or sale with your orator next friend, touching the premises; he resorts to various pretexts, for non complying with these reasonable requests, amongst others, he says that as your orator are infants, he need not come to any division or sale with them during their minority: that as he is an administrator he is informed that he shall not be safe, in agreeing to a sale or division of the whole interest in the said slaves, without the sanction and authority of a Court of equity, which Court this is, and where matters of this character are properly cognizable and alone relievable.

To the End therefore they pray, that the said Stephen Murdaugh surviving administrator of Nathaniel Rochelle dec'd may be made defendant hereto with apt and proper words to charge them and that he be compelled to answer the allegations, fully and particularly, as if the same were here again repeated, and he thereto particularly interrogated: that he may set forth discover and declare what right or title, he has or pretends to have, or claim on behalf of his intestate to the slaves Maria & her two children herein before mentioned? Is he willing to surrender the said slaves for the purpose of division, or sale under a decree of this Court, and the proceeds, in case of sale, divided between the respective claimants according to law. Will not a sale of the undivided interests in the said slaves be destructive to the rights of all parties concerned? - and your orators by their

said next friend further shew unto the Court, that as all the parties interested in the slaves Maria & her increase, are now before the Court, that your Worships can and will by assent of all parties, at this time decree a sale of these slaves, and direct a distribution of the money arising from such sales, among all the persons entitled herewithout favoring for the termination of the life estate - ^{which is in the eyes merely} Your orators by their said next friend shew that ~~the~~ the present suit only embraces, the case of Maria & her children, and that the other former slaves, & estate in the hands of the late widow of John Day dec'd. who is still living is not embraced, or intended by any means, to be operated upon by these proceedings.

and your orators by their said next friend pray that your Worships will decree a sale of the slaves Maria & her children, that you will appoint a fit and proper Commissioner or Commissioners, to make sale of the same, and direct a distribution of the proceeds thereof; under the facts and circumstances herein before set forth, settle the rights of the respective parties, and decree to your orator such parts and portions thereof, as they shall be entitled to - and that your Worships will be pleased to make such other or further order, or decree in the premises for the relief of your orator as shall comport with the principles of equity and good conscience, and the laws of this Commonwealth - May it please ye to grant &c.

Presentis attor next friend:

Stephen Mordaunt's
answer

The Answer of Stephen Murdaugh, surviving administrator of Nathaniel Rochelle dec'd. to the Bill of Complaint of John A. Turner infant, suing by Peter Edwards his next friend, and William Rochelle and John Rochelle infants suing by Ignace Rochelle their mother. True friends, Complainants against this defendant in this Worshipful Court exhibited.

This defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exceptions to the many errors, uncertainties and misrepresentations in the complainant's said bill of Complaint contained, for answer thereto or unto so much thereof as he is advised it is necessary, material and proper for him to make answer unto, answers and says: That he admits the allegations set forth in the said bill to be true and correct, as far as he has heard and believes, and that so far from wishing to retard or injure the complainants in their just rights, he is much pleased that they have resorted to this Court, for the settlement of the rights and interests of all parties concerned. He admits the word: Rochelle (who has only died within a few weeks past) and himself on the death of Nathaniel Rochelle qualified as his administrator in this Court in due form of law, and took upon themselves the burden and execution thereof. He admits that the estate is very much embarrassed and he has good reason to fear that it is insolvent. That he found a slave named Maria, with a child named Ben, whom he qualified, in the estate, among the property of his intestate, that this woman has had another child, see the known have been, and there are in his possession as a son. That he has made diligent inquiries about the title which his Intestate held in the slave Maria, and finds that she was one of the original dowry slaves, assigned to the widow Day under a decree of this Court, as set forth and charged in the said bill, and that his Intestate became entitled to the possession of her in the mode and manner set forth in the bill. That he held her for many years before his death, far beyond five years, and she has been in the hands of his representative ever since, and so continues to be. and this defendant admits that a sale of the slaves must be made for the purpose of paying the debts of his Intestate, and he has delayed doing so, under the hope and expectation that some legal and proper plan might be devised, whereby a sacrifice of the property might be avoided, which would inevitably be the case, on a sale (made by himself or under execution by any one of the numerous creditors of his intestate) of undivided rights and interests, and as his main object is, that justice shall prevail, and the rights of all be fairly saved and protected he has no objection that a sale shall be made, and the proceeds thereof distributed, under a decree of this Court. That he believes in the exercise of a sound legal discretion, he ought to surrender the said slaves for sale, altho his intestate is entitled to the life estate in the said slaves, and since the plaintiffs have strictly speaking no right to ask for a decree now, when this life estate is worth nothing, and as greater sacrifices must ensue not only to the estate but to the plaintiffs if a sale is made without selling the entire rights together, so he is willing to the sale - and this defendant answers and says that he admits that the plaintiff John A. Turner is the only heir of Nathaniel B. Turner and Edwin Turner, who was one of the original heirs in the said estate, and he supposes that he is entitled certainly either under his father or mother. He also admits that the other infant plaintiffs are the children of Edmund L. Day, and also his residuary legatees, who he is informed are entitled under the will of their uncle the said Edm. L. Day, to all his rights in the dowry slaves Maria and Ben and their children. And this defendant being called upon to set forth, discover, and declare, what right or title he has, or pretends to have, or claim, on behalf of his Intestate in the slaves Maria and her two children, answers and says, that he claims for and in behalf of his said Intestate, all the right and interest which his Intestate wife Frances had, who was one of the children and heirs of John Day dec'd. and who was a party as Frances Day to the Chancery suit referred to by the plaintiffs in their bill - The marital right to the said slaves, having been rendered unquestionable, but the reduction of the slave Maria into the

actual possession of the said Intestate, during the Coverture; He also claims all the rights which Richard B. Day held in the said Slave Maria, which was not only his original share, but also ^{together with his wife} the interest which he acquired in the same, by the death of his infant brother John B. Day, which rights are fully embraced in the deed of Robert Jones the said R. B. Day, referred to by the bill, and under which the Intestate purchased, and received title and possession - upon receiving the respective parts or shares to which his intestate is entitled, he has no objection to a sale of the said slaves. And this defendant understanding, by the approval of the complainants in the bill, that nothing is to be effected in this suit, but the slaves Maria & her two children, and that the rights of this defendant's intestate as to any other interests, ~~the~~ has in the other domestic Slaves now held by the widow Kirby, late Day, and which is the defendant's understanding of the subject, having fully answered the bill, prays to be hence dismissed with his reasonable costs so wrongfully sustained - without that, that &c.

(signed)

Stephen Muddaugh

In Southampton County Court.
Term 1835.

John A. Turner an infant, under the age of twenty one years, }
suing by Peter Edwards — his next friend William }
Rockelle and John Rockelle infants also suing by) In Chancery
Frances Rockelle their mother & their next friend. — Compt. }
against

Stephen Murdaugh surviving administrator of }
Nathaniel Rockelle decd. — defts.

By consent of the parties and with the assent of the Court
this cause came on this day to be heard on the bill and
answer filed, and was argued by Counsel, on consideration
whereof the Court doth adjudge order and decree, that
James D. Mapsonburg and Stephen Murdaugh

who are hereby appointed Commissioners for that purpose,
after giving ten days notice of the time and place of sale,
proceed to sell at public auction to the highest bidder, on
a credit of six months, the slaves Maria, together with her
children Ben, and a sucking babe named in
the bill mentioned. That the said Commissioners, without
regard to the above direction, as to a sale upon credit, receive
from the purchaser or purchasers a sum in cash, sufficient
to pay the expenses of sale, and costs of suit, and apply the same
accordingly. That after deducting the said expenses and
costs, divide the nett amount of sales ^{as shall be hereafter directed,} ~~into three equal parts~~
~~and~~ taking bonds with ample security from the purchaser or
purchasers, at such sale, and in such way as to enable a distribution
of the nett proceeds of sales to be made amongst the several parties
now entitled thereto: And to effect this object, the Com^{rs} hereby ap=
=pointed will first divide the nett proceeds into 5 — equal parts
or shares, and ^{the deft adm^r as purchaser from} assign one of the said parts to Richard B. Day; one to Edmund
L. Day — one to John M. Day, one to Nathl. Rockelle in right of his wife -
Frances, and the remaining part unto the Compt. in right of his mother,
Martha G. — Secondly, the Com^{rs} will ^{then} subdivide the 1/5 assigned and bid
off for Mrs. M. Day, between Nathl. Rockelle's ad. claiming Mrs. Rich^d. B. Day & pur
chase; ~~Edmund~~ and this his wife Frances, which will make two parts under this
subdivision — or 2/4 — then one fourth to Edmund L. Day — & the remaining 1/4
unto the Compt. Mrs. A. Turner; Thirdly, the parts or shares which have
been ascertained as coming to Edm^d. L. Day, are then to be allotted and
assigned unto the infant Compt. William and John Rockelle, ^{as} ~~and~~ ^{who} ~~as~~
residuary legatees under the will of the said Edm^d. L. Day, ^{and} ~~and~~
singly entitled thereto: The whole proceeds of sales being then accounted for,
and the particular ~~share~~ amount to which party is entitled, being as=
certained by actual calculation, the Com^{rs} will proceed to take the
bonds with security as herein before directed, for such sum.

as shall be found due to each party respectively. The parts or shares due
the infants are to be made payable to their legal and proper guardians;
and all which bonds are to be delivered over to the parties respectively
entitled to the same: - and in the event that there should be no
legally qualified guardian for the said infant complainants, when the
sale shall be made under this decree, the said court is
directed to take the bonds for the parts due the said infants, payable
to themselves, for the benefit of the infants, and return the same to court
and make report of their proceedings to this court in order to a
final decree.

Decree.

Southampton May Court 1835.

John A Turner an infant under the age of twenty one years being by Peter Edwards his next friend, William Rochelle and John Rochelle infants also being by Frances Rochelle their next friend

Complts In Chancery

against

Stephen Murdaugh surviving administrator of Nathaniel Rochelle dec'd

By consent of parties and with the assent of the Court this cause came on this day to be heard on the bill and answer filed, and was argued by Counsel. On consideration whereof the Court doth adjudge, order and decree that James DeHavenburg and Stephen Murdaugh who are hereby appointed Commissioners for that purpose, after giving ten days notice of the time and place of sale, proceed to sell at public auction to the highest bidder, on a credit of six months, the Slaves Maria, together with her children Ben, and a sucking babe named in the bill mentioned. That the said Commissioners, without regard to the above direction, as to a sale upon credit, receive from the purchaser or purchasers a sum in cash sufficient to pay the expenses of sale, and costs of suit, and apply the same accordingly. That after deducting the said expenses and costs divide the nett amount of sales as shall be hereafter directed, taking bonds with ample security from the purchaser or purchasers, at such sale, and in such way as to enable a distribution of the nett proceeds of sale to be made amongst the several parties now entitled thereto: And to effect this object the Commissioners hereby appointed will first divide the nett proceeds into five equal parts or shares, and assign one of the said parts to the Defendant adnor H. as purchaser from Richard W Day. One to Edmund S Day. One to John M Day, one to Nathl. Rochelle in right of his wife Frances, and the remaining part unto the Complainant John A Turner in right of his mother Martha B. Secondly the Commissioners will then subdivide the $\frac{1}{5}$ assigned and laid off for John M Day between Nathaniel Rochelle's Est: claiming thro: Richard W Day by purchase and thro: his wife Frances, which will make two parts under this subdivision, or $\frac{2}{5}$. Then one fourth to Edmund S Day, and the remaining $\frac{1}{5}$ unto the Complainant John A Turner - Thirdly, the parts or shares which have been ascertained as coming to Edmund S Day, are then to be allotted and assigned unto the infant Complts John A Turner - Thirdly the parts or shares which have been ascertained as coming to Edmund S Day are then to be allotted and assigned unto the infant Complainants William and John Rochelle as residuary legatees under the will of the said Edmund S Day who are exclusively entitled thereto. The whole proceeds of sales being then accounted for and the particular amount to which each party is entitled, being ascertained by actual calculation, the Commissioners will proceed to take the bonds with security as heretofore directed for, such amount as shall be found due to each party respectively. The parts or shares due the infants are to be made payable to their legal Guardian or proper Guardian, all which bonds are to be delivered over to the parties respectively entitled to the same. And in the event that there should be no legally qualified guardian for the said infant Complainants when the sale shall be made under this decree, the said Commissioners are directed to take the bonds for the parts due the said infants payable to themselves, for the benefit of the infants and return the same to Court. - And make report of their proceedings to the Court in order to a final decree -

lck. \$237
Lm. 10 50 \$12.37

Attest Teste L.R. Edwards Secy

Sales of Negro woman Maria & 2 Children \$736.00
 By Expenses of Sale . . . \$49.19
 By bond to St. Rochelle's admr. 343.40.5
 By bond to Mr. A. Turner . . 171.70.2 1/2
 By bond to Wm & John Rochelle 171.70.2 1/2 } 736.00.
 736.00

In obedience to the within order the undersigned commissioners proceeded to make sale of the negro woman Maria and children therein mentioned on the 29th ultimo; when they were bid off by Francis Rochelle at the price seven hundred and thirty six dollars. The cost of suit and expenses of sale amounted to forty nine dollars and 1/100, which being deducted left six hundred and eighty six dollars 8 1/100 for distribution.

Wm. To the Administrator of Stath^{ts} Rochelle \$343.40 ⁵/₁₀
 John A. Turner 171.70 ²/₁₀
 Wm. Rochelle 85.85 ¹⁰/₁₀₀
 John Rochelle 85.85 ²/₁₀
 \$686.81

Bonds have been taken for the respective sums the amount due to Stathaneel Rochelle made payable to Stephen Munday as Administrator and is retained by him and is appearing to your Commissioners that the remaining infant defendants have no legal guardian. The bonds are made payable to your Commissioners and are herewith returned to court all of which is respectfully Stathaneel Rochelle's admt. —

For Commissioners

E. W. Maysbury —
 Stephen Munday

1835 June 25th R^d N.

The bond due John Rochelle amounting to \$85.85/100 due Decr. 29/1835 delivered to E. W. Maysbury of Coz. Feb. 22/1848.

Six months after date we Francis Rochelle and Cuthbert D Barham
promise to pay to Stephen Murdaugh and James D Massenburg Comrs. The
just and full sum of eighty five dollars $85/100$ to the payment whereof we and
each of us bind ourselves and our joint-and several heirs as witness our
hands and seals this thirtieth ninth day of May eighteen hundred thirty five

Wt
James Targy Co-

Francis Rochelle *Seal*
C. D. Barham *Seal*