1851-009 SOUTHAMPTON COUNTY CHANCERY PAPERS

REESE VS. SIMMONS' EXECUTORS etal

5/1851

other SURNAMES: BARNES, PORTER, BARHAM, FRANCIS, ARNOLD, PEETE, POPE, PERSONS

Reese

v. } Papers.

Simmons Exrs. &c

Collr. ℔ 5.04
Shff 2.00
Law 15.00
Taxe 75
℔ 22.79

3.31
16
20
20
40
23

504
200
166
71

2445

Reese

v } Stat. Rules

Simmons Exr. &c

Elizabeth Reese an infant of tender years by Isaac M Arnold her next friend

against

Nathaniel Simmons & Mark T. Peck exors of Edward A Simmons dec'd & Cuthbert D Barham & Thomas M Newsom exors of Nathaniel Francis dec'd

1851 Jany 2d Subpoena issued

" Febry Rules. Spa. ret. Executed. Bill filed & decree nisi v Dfts

" Mar " Bill taken for confessed.

" Apl " Cause set for hearing -

" May " Decree for pltff

Elizabeth Reese by &c

vs 3 Bill & Exhibits

Simmons Exr & als

To the Honorable Richard H Baker judge of the circuit court of Southampton County in chancery sitting

Humbly complaining your complainant Elizabeth Reese an infant of tender years who sues by Isaac H Arnold her next friend sheweth unto your Honor that some time since one Nathan Barnes of Southampton County died of full age and intestate having considerable estate and Richard Porter and Martha his wife, Virginia Barnes, Anne Eliza Porter and your complainant his distributees and heirs at law. That one Nathaniel Francis qualified as his administrator and settled his estate. That at the November term in the year 1845 of the county court of Southampton your complainant along with the other distributees above named filed a friendly bill against the said Francis alleging that there was no necessity for him to retain the negros belonging to the estate of the said Nathan Barnes as all his debts had been paid and satisfied, and asking for a distribution. That the court might appoint commissioners to divide the slaves belonging to the estate of the said Barnes. and if they could not be divided in kind then that they might be sold and the money arising from the sale be divided according to law and the rights of the parties, That the said Nathaniel Francis by his attorney answered the bill admitting all the material facts therein set forth, and submitting to such a decree as the parties desired, or any decree consistent with equity and the rules of the court. That a decree was rendered appointing Mark H Pete, Benjn E. Pope, Sampson B Reese, and James H Rawlings commissioners to divide the slaves belonging to the said Nathan Barnes estate, and to allot one fourth to Richard Porter and Martha his wife, one fourth to Virginia Barnes, one fourth to your complainant, one eighth to Richard Porter in right of his deceased daughter Mary and the other eighth to Anne E Porter. The decree further directed that in event the said slaves could not be divided in

hinx. That that Nathaniel Francis and Edwarx S Simmons who was appointed commissioners for that purpose should after giving the notice therein required sell the slaves on twelve months credit except for enough cash to pay expenses of sale &c &c

Your complainant further shewith unto your Honor that on the 15th of June 1846 Nathaniel Francis and Edwarx S Simmons the commissioners appointed by the court, reported that they had in obedience to the said decree sold the slaves belonging to Nathan Barnes' estate on a credit of twelve months that the said slaves sold for the sum of eighteen hundred and forty eight dollars ($1848) That Nathaniel Francis was paid the sum of two hundred and seventy five dollars and sixty cents the balance due him of the settlement of his administration account of the said Barnes' estate and the sum of sixty two dollars and thirty four cents was retained to pay expenses of sale commissions &c leaving a nett balance for distribution between your complainant and others of fifteen hundred and nine dollars and six cents ($1509.06) and that they took bonds in sums to correspond to the amount due each distributee according to the decree on demand twelve months from the 24th of January 1846, consequently the bonds taken for your complainant must have been for the sum of three hundred and seventy seven dollars and twenty six and a half cents ($377.26½) All of which will more fully appear by exhibit B piece of the bill, answer, decree and report herewith filed respectively A and Prayed to be Taken as a part of this bill

That on the 14th of October 1846 Edwarx S Simmons one of the aforesaid commissioners qualified as the guardian of your complainant in the county court of Southampton having given bond and security according to law. That the said Edward S Simmons never in his lifetime rendered any account of his transactions as her guardian. That the said Edward S Simmons has departed this life leaving considerable estate having first duly made his last will and testament and that Nathaniel Simmons and Mark. T. Peete qualified as his executors, That Nathaniel Francis the other commissioner has also departed this life having a large estate both real and personal having first duly made his last will and testament and that Cuthbert D Barham and Thomas M Newsome qualified as his executors

Your complainant further shewith unto your honor that she is poor and friendless and that the money arising from the sale of the negroes belonging to Nathan Barnes estate is so far as she knows her whole estate, that since the death of Edward S Simmons, Isaac M Arnold her next friend qualified as her guardian and believing that she was possessed of the money aforesaid in the hands of her former guardian he has sent her to school and incurred much other expense in her education and maintenance which she is now wholly unable to pay unless she can get this money

That since the death of her former guardian Edward S Simmons his executors have settled his account as her guardian before the commissioner of the county court But Tenders to retain which she is debited in that account with some $28.77½ for expenses for her support she is not credited with one solitary cent, the executors stating that they know nothing of this own knowledge and could find nothing among the papers of their testator shewing that he have ever received either any money or any other kind of property belonging to your complainant, All of which will more fully appear by a certified copy of the said report herewith filed marked B and prayed to be taken as a part of this bill, Your complainant charges and has very reason to believe that the said Edward S Simmons died in his lifetime receive this money but failed either intentionally or through neglect to charge himself with it as guardian for it certainly was in his hands as commissioner that if he did not collect it, it was entirely his own fault and that he ought to be held responsible to.

your complainant for the said Money

In Tender consideration whereof and inasmuch as your complainant is remidiless at law and only entitled to relief in equity where such matters are peculiarly cognizable therein your Complainant humbly prays that your Honor would make Nathaniel Simmons and Mark L. Pitt executors of Edward G Simmons dec'd and Luther D Barham and Thomas M Newsome executors of Nathaniel Francis dec'd parties defendant to this bill and compel them as full and perfect answer make to the allegations therein contained as if they had been thereunto more fully and specially interrogated that they state specially in their answers if there be not a part sufficient in their hands to be administered of the said decedents Testators to pay your complainant her demand against their said Testators and that your Honor would decree if it seems to this court just and right that Nathaniel Simmons and Mark L. Pitt executors of Edward G Simmons should pay to your complainant the sum of $377.26½ which he either received or should have received as guardian But if the court does not think that the evidence would charge the said Simmons estate as guardian for your complainant, then that your Honor would decree that Nath'l Simmons and M. L. Pitt executors of E. G. Simmons and L. D. Barham and T. M. Newsome executors of Nath'l Francis dec'd should pay to your complainant the above said sum of $377.26 cts with interest from the 24th of January 1847 which their Testators received as commissions and failed to account for and that the court would grant such other and general relief the premises and evidence in equity may dictate and the nature of the case may require and as in duty bound your complainant will ever pray &c

Shaw & J. J.

Rec'd by me
as Z Deene
Simmons exr Pala

To be entered
R. H. B
May 6. '54

1851 May Flour

Reese by pe
vs 3 Decree
Simmons ex-r & als

Two months having elapsed as well since the service of the subpoena as the filing of the Plaintiffs bill in this cause and the defendants Nathaniel Simmons and Mark. T Pate executors of Edward G Simmons dec'd and Cuthbert D Barham and Thomas McNewsome executors of Nathaniel Francis dec'd still failing to appear and answer the bill is taken for confessed as to all the defendants whereupon by consent of parties this cause this day came on to be heard upon the Plaintiffs bill and exhibits files therewith and was argued by counsel on consideration whereof the court doth adjudge order and decree that Nathaniel Simmons and Mark. T Pate executors of Edward G Simmons dec'd do pay to the Plaintiff Elizabeth Reese out of the assets of their testator in their hands to be administered the sum of four hundred dollars and also the sum of twenty two dollars and seventy nine cents costs of this suit

V

Reese

v } Spa. Chy.

Frances. Exrs. &c

1851 February Rules

Executed on all the
parties by delivery a
true copy

John Barhan Dy
for A Myrick
Sheriff

The Commonwealth of Virginia - To the Sheriff of Southampton County. Greeting. We command you that you summon Cuthbert D. Barham & Thomas W Newsom executors of Nathaniel Francis dec'd and Mark T. Pasteur and Nathaniel Simmons executors of Edward R Simmons dec'd to appear at the Clerks Office of our Circuit Court of Southampton County at the Rules to be holden for said County on the first Monday in February next to answer a bill in Chancery exhibited against them in our said Court by Elizabeth Reese an infant of tender years who sues by her next friend Isaac M Arnold and this they 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 2nd day of January 1851 in the 75th year of the Commonwealth.

L R Edwards Cl

Porter & wife & others

vs

Bill, answer Demurrer &c

Barnes' administrator.

Copies

Exhibit A

Fee $ 9.40

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

Humbly complaining show unto your worships your compts Richard Porter, and Martha his wife, Virginia Barnes, Elizabeth Reese and Ann Eliza Porter, the three last of whom are infants by L. R. Edwards their next friend. That Nathan Barnes of this County has died, after attaining full age intestate possessed of several negro slaves and some chattle estate more that sufficient to pay and satisfy all his just debts. That Nathaniel Francis has qualified as his admr: and has now all his personal estate in possession, except what has been expended in a due course of administration. That your complainants are the distributees of Nathan Barnes and entitled to the balance of his estate after the payment of his debts. That your compt: Martha Porter is the mother of Nathan Barnes, your compt: Virginia Barnes is a daughter of Jno. H. Barnes, a brother of the whole blood, and Elizabeth Reese a daughter of Martha Reese, a sister of the whole blood. Ann Eliza Porter is a sister of the half blood. your compt Richard Porter, also states that he is the father and consequently the heir to his decd child Fran. who was a sister of the half blood to Nathan Barnes. That there is no necessity for the admr: longer to hold the personal estate, as all the debts a-gainst his intestate have been satisfied. and they have ap-plied in a friendly way to him for a settlement and distribu-tion, but he has heretofore declined to accede to their reasonable request, and your complainants are without remidy save in a Court of equity.

In Consideration of all which & in as much as your compts are remidiless in the premises, except in a Court of Equity. To the end therefore, they pray that Nathaniel Francis admr: of Nathan Barnes decd may be made a deft to this bill and compelled to answer the allegations hereof fully and unevasively. That your worships will appoint Comrs: to divide the slaves belonging to Nathan Barnes, now in the hands of his admr. according to Law and the rights of the parties. & if they cannot be divided in kind that they may be sold & the proceeds divised. They pray the Comth's Subpa directed &c. Commanding &c. and grant such other and general relief in the

premises as equity may dictate.

May it please your worships &c.

Chs & M. atto. for Compts:

Answer of Nathaniel Francis, adm of Nathan Barnes to the foregoing bill, exhibited against him by Richd Porter & others in the County Court of Southampton.

This respondent saving and reserving &c for answer to said Bill says, that he admits all the material facts therein charged - and has no object to such decree as the parties desire or any decree consistant with equity and the rules of this Court, and having answered prays to be dismissed with his costs - as in duty &c.

C & M. for Defts.

In Southampton County Court November 17th 1845

Richard Porter and Martha his wife Virginia Barnes Elizabeth Reese, and Ann Eliza Porter, the three last of whom are infants by L.R. Edwards their next friend. Pltffs } In Chancery

against

Nathaniel Francis administrator of Nathan Barnes dec'd Defts

This day this cause was docketed by consent of parties, with the assent of the Court, came on to be heard on the Bill and answer and was argued by counsel, on consideration whereof, the Court do adjudge, order and decree that Mark T. Peete, Benja E. Pope, Sampson C. Reese and James A. Sessoms, any three of whom may act be appointed Comrs for the purpose of dividing the slaves of Nathan Barnes which are now in the hands of Nathaniel Francis the admr: That they divide the said slaves and allot one fourth to Richard Porter, and Martha his wife, one fourth to Virginia Barnes, daughter of John A. Barnes, dec'd one fourth to Elizabeth Reese daughter of Martha Reese, one eighth to Ann Eliza Porter, daughter of Richard Porter, and the remaining eighth to Richard Porter heir of his deceased daughter Mary Porter. & report their proceedings to Court. If the said slaves cannot be divided in kind, then Nathaniel Francis, Edwin L. Simmons who are appointed Comrs for that purpose, shall after giving 20 days previous notice of the time and place of sale by advertisement at one or more places in the neighborhood and at the Courthouse door, sell the above mentioned slaves, to the highest bidder on a credit of 12 months (except cash sufficient to pay the expenses of this suit & of the sale) That he take bonds and security of the purchasers in such sums as to assign one fourth of the proceeds to Richard Porter & wife, one fourth to Virginia Barnes one fourth Elizabeth Reese, one eighth to Ann Eliza Porter and one eighth to Richard Porter. That they report their proceedings to Court in order to a final decree.

In Southampton County Court, June 15th, 1846.

Richard Porter and Martha his wife, Virginia Barnes Elizabeth Reese and Ann Eliza Porter, the three last of whom are infants by L. R. Edwards the next friend - Plffs } In Chancery

against

Nathaniel Francis, admor: of Nathan Barnes decd Deft }

The Commissioners in this cause this day their report in these words, Vizt: "According to a decree of the court of Southampton County made at Nov. Court 1845, decreeing the sale of the Slaves belonging to the estate of Nathan Barnes decd for division, we have proceeded to sell on a credit of twelve months except cash sufficient to pay the expense of sail and the sum of $275.60 cents due Nathl Francis, the admr. of said Barnes in the Commissioners report for the settlement of said estate, and taken bonds in sums to correspond to the amt: due each legatee according to decree on demand twelve months from the 24th of Jany 1846, that being the day of sale of the following slaves.

Hartwell.

	Purchasers	
	Nathl: Francis	$443.00
Amt of each received $338.94.	Amt: due Nathl Francis admr:	275 60
	Commissions for selling $45.96 Lawyers fee $10.00	55.96
	Auctioneers fee $5.00 Clerks fee 2.38	7.38
		$338.94
		443 00
Amt: due from Nathl Francis on his purchase		$104.06

Henry	Jas H. Person	570.50
William	Sampson L. Reese	163.50
Rosetta & 3 children	George W. Newsom	526.00
Hester	Harrison D. Moore	145 00
		$1509.06

The above sum of $1509.06 cents is the amt: due from proceeds of the sales of Nathan Barnes' slaves, in bonds due twelvemonths from the 24th day of Jany 1846 to the amount of $1405.00 leaving a balance of one hundred and four dollars and six cents due from Nathl. Francis on his purchase for which sum the said Nathl Francis is personally bound to the Court of Southampton County for the benefit of the heirs of Nathan Barnes decd

Nathaniel Francis, Edward L. Simmons } Commissioners

The foregoing are True Copies
Teste. L. R. Edwards. C. C.

Elizabeth Reese

Guardian &c

Rees

v 3 Exhibit with Bill

Summons Exec

Fee 2 3 cts

Elizabeth Reese, a minor

In account with Edward L. Simmons her guardian

			Dr.		Cr.	
1847			$	cts	$	cts
		To cash paid Wm A. Sykes by order of court	12	63		
		" cash paid B. S. & H. P. Pope account	4	20		
Dec	31	" balance due the guardian	10	83		
1848		" Cash paid Circle Tickets		44		
		" Cash paid Mrs. C. Kennedy account	5	50		
		" cash paid Co: St. Pierce atty fee	5	00		
		" interest on balance due last year	1	00		
Dec	31	" Balance due the guardian	28	77		

The Commissioners reports further that he has examined the guardians bond and finds it to be in the penalty of fifteen hundred dollars with Simpson C. Reese and James H. Perkins as securities, he believes the security good for the penalty of the bond, but does not know whether the penalty is sufficient or not as he can ascertain nothing as to the amount of the Wards estate. The Commissioner reports further that at the request of Isaac M. Arnold now guardian of the said Elizabeth Reese he summoned Nathaniel Simmons and Mark T. Pate executors of Edward L. Simmons dec'd he having departed this life, to appear before him on the 14th of December and settle their testators transactions as guardian of Elizabeth Reese before him, that pursuant to that notice one of the executors of the said E. L. Simmons appeared before him at the time named and exhibited the vouchers as above reported, at the same time stating that he could find nothing in the papers of his testator showing that he has ever received any money or property belonging to the said Elizabeth Reese all of which is respectfully submitted by.

William B. Hands, Commissioner.

Commissioners fee $1.00
charged to guardian

At a Court held for the County of Southampton the 17th day of February 1857
This Account of Edward L. Simmons guardian this of Elizabeth Reese.
having lain one month and upwards in the Clerks office & there being no
exceptions thereto. was examined confirmed and ordered to be recorded.

Teste.

L. R. Edwards, C.C.

A Copy Teste. Henry L. Howard, D.C.