

1874-19

Southampton County Chancery - McCleary, James vs Wills, Mary E

nullify will - then collect debt

Hurdley, John A.

34
c M Glenney

v } Papers

Wills

To the Hon. Edward P. Pitts
Judge of the Circuit Court for
Southampton County - ~~South~~ in Chancery.

Humbly complaining, sheweth unto
your honor, your Orator James McCleary
of the said County, and respectfully
represents as follows:

That at the November term ^{of the Circuit Court of said} ~~County~~ ^{County} AD 1866, your Orator obtained a
Judgement against Mary E. Wills, and
John A. Waudley for Thirty dollars (\$30.00 cents)
with legal interest thereon from the 1st day of March AD
1861 till paid, and his costs, subject to a Credit for \$7.70 cents, paid
October 25th 1865, and at the same term another judgement against
said Mary E. Wills, and William Drake for \$5.00 cents with interest
from Oct 20th 1864 till paid, and his costs, ~~the~~ copies of which said
judgements are herewith filed, marked "A" & "B" respectively.

Notwithstanding the said indebtedness
of the said Mary E. Wills (sometimes called
Mary A. Wills) to your Orator, she the
said Mary E. Wills, contriving to de-
fraud your Orator out of the debts
so due as aforesaid, did after the
institution of suits by your Orator
against her, the said Mary E. Wills,
to recover judgements on the bonds
before mentioned, to wit: On the
day of 30th day of May AD 1866
execute a deed of bargain and sale
to her the said Mary E. Wills' son John
J. Wills, by which said Deed, she the said
Mary E. Wills granted and conveyed to
him the said John J. all of the real estate

of which she was then seized and possessed. A copy of which said Deed admitted to record in the Clerks Office of the County Court of said County on the 16th day of July AD 1866 - is herewith filed as a part of this bill and marked "H".

Your Orator Expressly and confidently Charges that this Deed marked "H" by which the said Mary E. Wills granted and conveyed all her real Estate to her son John T. Wills was made to hinder, delay and defraud the Creditors of the said Grantor, the said Mary E. Wills, and especially to unjustly avoid the payment of the Debts due by her to your Orator, and that the said last named Deed is therefore fraudulent and void, and should be so declared by a Court of Equity. ^{That the said Mary E. Wills has not sufficient personal estate to satisfy the said Debts - and that the said John T. Wills and William Drake are insolvent.} Your Orator further Charges that the said John T. Wills is now and always has been very poor and entirely unable to raise the amount which he pretends to have paid for the purchase of said property from his said Mother and as your Orator verily believes, is totally and notoriously insolvent, and has been so all his life.

Your Orator is advised that such acts and doings are contrary to

Equity and good Conscience.

In tender Consideration of all which and in as much as your Orator is without remedy save in a Court of Equity, as this Honorable Court is, to the end therefore that justice may be done, your Orator prays that the said Mary E. Wills and John T. Wills may be made parties Defendant to this bill, and compelled to answer the allegations thereof fully and uncrasively. That the said John T. Wills state what Consideration if any, he has paid for the property conveyed to him by the said Mary E. Wills, by the Deed herewith filed, and from what source he obtained the means of making such payment.

That he state whether there is not some private agreement or understanding between him and his said Mother, that the latter should have the use ~~and~~ rents of the said Real Estate, or that it should be at some future day conveyed back to her, or to some other person or persons as she might direct.

Your Orator further prays that if the said John T. Wills should set up the Pretence that his Mother was indebted to him, and that therefore he was enabled to make the purchase before mentioned, the Court will order an account to be taken of

the transactions between the said
John T. Wills and his Mother,

That your Honor will decree the
Deed from Mary E. Wills to John T. Wills,
to be null and void and order the
property thereby conveyed or so
much thereof as may be necessary
to be sold, and the proceeds applied
to the satisfaction of your Complain-
ant's demands, and grant such other
and general relief as Equity may
dictate and the nature of the
Case may require.

And as in duty bound your
Orator will ever pray &c
May it please the Court &c

And I Kindeed p q

125
James McLennan

Pr

Mary E. Wills, & John T. Wills

Bill

1869 October 2nd

M. Channing

to } Ex. with bill

Wills

1 W,

This Deed made the 30th day of May in the year of our Lord one thousand eight hundred and sixty six (1866) between E Wills, grantor, of the one part and John T Wills, grantee, of the other part, both of the County of Southampton and State of Virginia. Witnesseth that the said Mary E Wills for and in consideration of the sum of Five hundred dollars (\$500) in hand paid by the said John T Wills the receipt whereof is hereby acknowledged, doth grant and convey unto the said John T Wills, all that tract of land lying in the County of Southampton, on which she now resides containing about three hundred and sixty acres more or less, and bounded by the lands of Levi Hurdleys estate Wm Drake, Amos Joyner, Eliza Harris, and Zachariah Doyal, the said lands to have and to hold to him and his heirs forever. And the said Mary E Wills doth warrant generally the property hereby conveyed.

Witness the following Signatures and Seal the day and year aforesaid

Mary A Wills (Seal)

Personally appeared before me J. D. Proctor J. P. Mary A Wills whose name is signed to the above deed and acknowledged it to be her Signature - May 30th 1866

J. D. Proctor J. P.

Southampton County. In the Clerks Office the 16th day of July 1866 This deed of bargain and sale from Mary A Wills to John T. Wills was received and together with the Certificate thereto annexed of the acknowledgment of the said Mary A Wills before a Justice of the Peace admitted to record. A Stamp of the internal revenue of the United States of the amount of fifty cents being affixed thereto.

Teste

L. R. Edwards Clk

Attest

Teste

L. R. Edwards D.C.

The Deposition of James Holmes
taken at the Office of Jno J. Stinson in the village
of Jerusalem, County of Southampton, on Thursday the fourth
of December AD 1869, between the hours of sunrise
and sunset, to notice duly served, to
be read as evidence on the
plaintiff in a suit now pending in
the Circuit Court of said County on the
chancery side thereof, in which James
McAleeny is plaintiff and Mary E.
(sometimes called Mary A.) Mills is
defendant and John T. Mills are defendants.
Taken before Walter Fud, a Commissioner
in Chancery for said Circuit Court.

James Holmes, having been duly sworn
upon the Holy Evangelists of Almighty God,
says and deposes as follows -

Sometime in the year 1867, in the
fall of that year, Mrs Mary E. Mills, ^{one of} the de-
fendants sent for me to come over to her
house - After I arrived there, she stated
that her business with me was to inquire of
me, if she could not make an affida-
vit before a magistrate and get a cer-
tificate from him to that effect so as
to enable her to set aside or annul the
Deed which she had previously made to
her son John T. Mills; that is, as I under-
stood from her the Deed of May 1866, and
which is the one now in controversy in
this suit. She went on further to say

that she did not owe her son John any thing, and that he had never executed any bond to her for the purchase money - that she had made the deed to John in order to avoid her debt

and taken to pay her - She seemed to be in much distress in consequence of having made the deed, and was very anxious to have it revoked. I was a Justice of the Peace of the County at that time which, I suppose explains her sending for me. I have been a Magistrate for about fifteen years until lately - I am nearly sixty eight years of age.

On inspecting the Deed I observe that Mrs Wells has conveyed a larger interest in the land than she is entitled to - Her children, of whom she has several have an interest in the land. Her husband Matthew Wells died intestate - I assisted in cutting off her dower as one of the commissioners.

Question by Plaintiff's Counsel.

What is the pecuniary condition of Mrs. Wells now and what was it in May 1866?

Answer - He had no visible property of any kind except his little interest in this piece of land. He has married lately - I don't know whether he got any thing by marriage or not -

And further the Dependent said that

James Holmes

The foregoing deposition of James Holmes was taken at the time, place and manner stated in the Caption.

Walter Ford - before me a Justice of the Peace in Chancery for the Circuit Court of Southampton County. Given under my hand this 4th day of November A.D. 1869.

James Holmes is entitled to \$5.50 cents for one day's attendance as witness - Walter Ford Com^o of Southampton County

The taking of the deposition in this cause is continued till to-morrow morning at 10 o'clock.

Walter Ford Com^o

Friday 10 o'clock A.M. November 5th 1869

The foregoing depositions continued according to adjournment on yesterday.

Patrick Rowe having been duly sworn up on the Holy Evangelists of Almighty God, says and deposes as follows -

I am a resident of Southampton County, and reside in the immediate neighborhood of Mrs. Mary Wells (one of the Defendants) - Am sixty one years of age. I have had frequent conversations with Mrs. Wells since the execution of the Deed referred to by her to her son John. She has often told me both at my house and at hers, that the Deed was made to prevent the land from being taken for the payment of her debts - She repeated this to me only last Wednesday evening at my house;

stating that there was no foundation for the deed
 that her son had never paid her a cent for
 the land; he had he ever executed any bond
 for it - that she did not owe John a cent
 On the contrary he was rightly in debt to her
 was much as she had spent more for him than
 for either one of her children, of whom she had
 several, eight in number - She has always, ever
 since the deed to John was made, been much
 troubled about it, and has expressed a wish that
 the deed should be annulled, in order that her
 debts might be paid - that she made the
 deed at the request and entreaty of her son,
 John, who urged her to do so, for the purpose
 of avoiding the payment of debts, especially
 the debts due to James A. C. Cleary, the Plaintiff
 in this suit.

Patrick R. Rowe

The foregoing deposition of Patrick Rowe was
 taken, ~~and~~ subscribed and sworn to before me, at
 the time place and manner stated in the Caption
 Given under my hand this fifth day of November
 AD 1869.

Patrick Rowe is entitled to 50 cents
 for one day's attendance as his fee. }
 Walter Ford }
 Comr. - he charges
 for his cent. cost }

Fee (for hours) for taking these depositions \$3.00

Walter Ford
 Comr.

Handed in by Walter Ford Comr. November 5. 1869 - J. R. Edwards D. C.

McClung
2
Wills
Summons
in
Chancery

1869. Oct Rules
Circuit Court

Executed Oct 1st
1869 by delivering
to each a copy of
the within summons

G. W. Wise Dr
for D L Dols
shft

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of the County of Southampton---Greeting:

We command you to summon *Mary A (or S) Wiley & John S. Wiley*

if *they* be found within your bailiwick, to appear at the Clerk's Office of our Court of ^{Commons} Southampton County,
at the Rules to be holden for the said Court, on the first Monday in *October next to answer*
@ Bill in Chancery exhibited against them by James
McClung

And have then there this writ. *Oswin White*

Witness, ~~LITTLETON R. EDWARDS~~, Clerk of our said Court, at the Court-House, this *3rd* day of

September A. D., 186*9*, in the *9th* year of the Commonwealth. *Oswin White, cl*

James, Atcham
vs

Chas E. Will &c

Decree

November term '69

To be entered

E. P. Pitts

James McElenny
vs
Mary E. Mills & Mrs J. Mills

This Cause was this day heard on the
Complainant's Bill ~~together with~~ the Exhibit, filed
therewith the examination of witnesses, and the
Answers of the Defendants This day filed by leave
of the Court, and was argued by ~~counsel~~ ^{by consent of parties}
On Consideration whereof the Court doth advise,
order and decree that the Deed executed by Mary
E. Mills granting certain real estate to Mrs J. Mills,
~~and~~ admitted to record in the Clerk's office of the
County Court of Southampton County on the 16th day of
July A.D. 1866 be, and the same is hereby declared to be,
null and void — and unless the said Mary E. Mills
shall within sixty days from this date, fully pay and
satisfy the several judgments obtained by the said
~~Complainant~~ against the said Mary E. Mills, copies of
which said judgments are filed in this Cause with le-
gal interest thereon and the Costs the Sheriff of this
County shall sell, at public auction ^{for cash} having duly
advertised the time and place of sale, so much of
the real estate which belonged to the said Mary E. Mills
and was granted by the said Deed to the said Mrs J. Mills,
as may be necessary to pay the said judgments with the
Costs interest and Costs — that he pay the same to the said
James McElenny ~~and the balance if any to the said Mary E. Mills~~ — and report to the Court in order to a
final decree.

Atc Glenney
by
Mary E. Wells
Copy of Judgments

(A) x (B)

Saukrapaw Circuit Court. November 12th 1866.

James McHenry

against

Mary E. Wells & John A. Hendley

Plff.

In S. Ct.

Def.

The judgment obtained at the Rules not having been set aside and the Plaintiff being entitled to a final judgment, it is therefore considered that the Plaintiff recover against the Defendants thirty dollars, the debt in the declaration mentioned, with legal interest thereon from the 21st day of March 1861, till paid, and his costs by him in this behalf expended. This judgment is to be credited for \$7.70 paid October 25th 1865.

Costs \$7.09 c

Attest

Judge. S. R. Edwards, J.C.

Saukrapaw Circuit Court. November 12th 1866.

James McHenry

against

Mary E. Wells & William Trask

Plff.

In S. Ct.

Def.

The judgment obtained at the Rules not having been set aside and the Plaintiff being entitled to a final judgment, it is therefore considered that the Plaintiff recover against the Defendants, Seventy five dollars, the debt in the declaration mentioned, with legal interest thereon from the 29th October 1864, till paid, and his costs by him about his suit in this behalf expended.

Costs \$7.09 c

Attest

Judge. S. R. Edwards, J.C.

Mary A. Wells
and
Geo. J. Wells
Esqs
James McKelvey
Surveyor of D^{ist}

The Joint and several Answer
of Mary & Mills (sometimes called Mary & Mills)
and of John T. Mills, to a Bill filed in the
Circuit Court of Southampton County, in the Chancery
side thereof, against them by James McElenny.

These Defendants, for Answer to so much
of the Complainant's Bill as they are advised it is
material for them to make answer to, say -
That while they deny any purpose or intention to
defraud the Creditors of the Defendant, Mary &
Mills, or to defraud any one, they admit their
willingness to have a Decree entered setting
aside, ~~and annulling the said~~ and declaring
void the said Decree of bargain and sale from the
said Mary & Mills to the said John T. Mills,
which grants and conveys the real estate of the
said Mary & Mills to the said John T. Mills - and
that the same so much thereof as ~~the said~~
Mary may be entitled to or so much of the same
as may be necessary, may be sold to pay the
debts due to the said James McElenny as
shown by copies of the judgments filed with
the Complainant's Bill -

And having answered they pray to be dis-
missed with their reasonable costs &c.

W. R. Plummer
per

Counsel for Defendants
Mary & Mills & John T. Mills

M. Clenny

to } Notice

Hills &c

Executed

W. W. Driggs
by J. D. Coole, shff

Mrs Mary E. (or A.) Wills, and Thos. J. Wills

You will please take notice that I shall, on Thursday the 4th day of November next, between the hours of sunrise and sunset, at the Office of John I. Kindred in the Village of Jerusalem, County of Southampton, proceed to take the depositions of James Holmes, Shugars Laine, Nathan Johnson & others, to be read in my behalf in a suit now pending in the Circuit Court of said County, in which I am plaintiff and you are defendants. And if from any cause the said depositions should not be ~~completed~~ on that day, the taking of the same will be continued from day to day until they are completed,

October 21st 1869

Yours respectfully
James M. Cluney
By Counsel

To The Sheriff
of Southampton County—
To Execute

all Cleary

vs

Wills

Decree

June Term 1874

to be entered

Geo. V. Wood

Circuit Court
Southampton County —

McCleung vs Wiles

This cause was this day again heard on the papers formerly read & was argued by Counsel: On consideration whereof it appearing to the Court that nothing further is necessary to be done herein it is ordered that the same be dismissed from the Docket, subject to be restored thereto, on the motion of any party interested.

McClenny

& } Sp^a

Hills of

4th day Nov- 1869 at Jerusalem

Executed.

W W Briggs Dy
for D & S. v. S. S. S.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—GREETING.

WE COMMAND YOU TO SUMMON

Shugars Sam James Holmes & Nathan Johnson

to appear ^{at} before the *Law Office* of *our* *J. Kin dred* in ~~Court~~ of Southampton County, at
the Court House, on the *4th* day of *November next* Term *to*

to testify and the truth to say in their depositions then and there to be taken, on behalf of
James McElenny in a suit in Chancery depending & undetermined in our Circuit Court of
Said County between James McElenny Plaintiff & Mary E. Mills Defendant

Abner White

and have then there this writ.
the Court House, this *21st*
Commonwealth.

Witness, ~~LITTLETON R. EDWARDS~~, Clerk of our said Court, at
day of *October* 186 *9*; in the *94th* year of the

O. White Clk

M. Clenny

Stat. Rules

Wills

1874

Letk	175
Shiff. Sides	2 60
Comm Ford	3 00
Sat Holmes Wht	50
Pat. Rorie	50
Law & Co	15 30
	\$ 29 63

In Southampton Circuit Court.

James M. Chenny

Plff.

against
Mary E. Wills & John T. Wills

Defls.

1869. Sep 27. Summons issued

" Oct R " returned Executed - Bill filed. D. Nisi to Defls.

" Nov " Bill taken for confessed & Cause set for hearing &c

" " J. Decree setting aside deed

1874 June Dismissed