

1877-14

Santhampton County - Chancery

Kello, J. Q. vs Calk, S. C.

"To settle Guardians"
Account

J. Q. Kello &
Maria his Wife

S. C. Calk -
Guardian
for Maria J.
Daughter
N. Kello.

Kello & wife

as 3

Coff

Answer of L. C. Coff

Shades & Killyford

1876 Nov. Term

To the Hon Geo: Blinn. Judge of the Circuit Court
of Southampton. In Chancery.

Humly Complaining, sheweth unto your
Honor your Complainant, J. Kello & Maria
J. his wife, as follows.

That at the Term of the County Court of
Southampton L. C. Cobb, qualified as the
Guardian of your Complainant's wife,
who was before marriage Maria T. Vaughan.
That by virtue of his qualification, he received
large sums of money for his ward. That
during the Year 18 , and after the
marriage of your Complainant with his
present wife, your Complainant met
the said L. C. Cobb, for a settlement of his
transactions as Guardian for his wife.
That your Complainant had to rely
upon the representations of the said
Cobb, in a great measure as to his
receipts. and when at last, they had
arranged upon a balance due from
the said Cobb, he the said Cobb. was
not prepared to settle the balance except
by giving over to your Complainant
the bonds of different parties. That
your Complainant did receive several
bonds from the said Cobb, against
different parties, and especially one
against D. W. Cobb for \$360. ⁷³/₁₀₀ dated
March 7. 1890. That your Complainant
thought from the representations of the
said Cobb that this bond was perfectly
solvent, but to his surprise, he has

Never been able to realize one cent upon the said bond, and your Complainant charges that the said bond is worthless. That L. C. Cobb, in using his own funds in this way was guilty of gross negligence because, this money was loaned to a party who, at the time owned very little estate, without requiring any security, and without even taking a waiver of the Homestead in the said bond. That your Complainant has never brought any suit upon the said bond, because it was useless, as the said L. C. Cobb died soon after he received the said bond, and by the return of his personal representative it will appear that his estate was insolvent; That it would be great injustice and against good conscience to allow this Guardian to screen himself from his own negligence by saying that we have received this bond, improperly taken by the Guardian, as so much money, and your Complainants charge that the Guardian should be held responsible for the cost of this bond. Your Complainants allege further that in making the said settlement, they took the bond of L. C. Cobb for \$488.³², upon the representation of the said Cobb that he did not receive more than \$500- from one Shidich for the sale of a negro belonging to his ward. Your Complainants wife

And in fact, your Complainants are informed & charge that the said S. B. Cobb did receive from the said Riddich \$800 for said negro. That your Complainants did execute to the said S. B. Cobb a paper writing purporting to be a discharge to the said Cobb of his liability as God for your Complainants' wife; but it was given under a representation of facts that did not exist and in fraud of your Complainants' right - and in justice should be set aside, and a new settlement had between the parties. In consideration whereof, as forasmuch as your Complainants are without remedy in the premises, except in a Court of Chancery where matters of this kind are peculiarly cognizable - to the end therefore that justice may be done, your Complainants pray that S. B. Cobb may be made a party defendant to this bill & compelled to answer the allegations thereof - That your Honor will grant an order setting aside the settlement heretofore had between the said Cobb & your Complainant & reopening the whole case - also an order directing a Commissioner of this Court to take an account of the transactions of the S. B. Cobb as Guardian of Maria J. Vaughan, now Kellie and your Complainants' wife - taking any & all accounts heretofore rendered or given for the same.

liable to be discharged & falsified, and
that your Honor will grant such other
further general & special relief in the
premises as Equity may dictate or the
nature of this case may require. And
as in duty bound, your complacence
will ever pray &c. May it please the
Court &c.

Pruitt & Thomas f.c.

Kello senise

or Bill & Exhibits

copy

1876 October Rules

Pruitt & Thomas f.c.

Kello suefe

v } Ex. with ^{pts.} answer

Cobb

C D E

The Estate of Daniel R. Lott decd.

In account with Elliott & Story his Executors

1872			¢	cts	1873		¢	cts
Dec.	9	By amt of Cash from Andrew Goodwyn, on Bond						5 00
		" amt Sales of brandy						109 70
1873	Mar 28	" amt from Wm J. Both on a/c						7 58
Sept	11	" Sales of chattel property due this day						113 1/4 40
1872	11	To paid W.W. More mason at Sale	3	00				
	19	" paid Andrew Goodwyn	14	5 1/2				
1873	Jan 20	" " J. S. A. Bardsam Crier	15	00				
Feb	17	" " Joseph Jordan	5	91				
"	"	" " Geo. J. Wells, Clerk at Sale	5	00				
"	"	" " Appraisers	1	00				
"	"	" " J. S. Both	95	80				
March	28	" " Taxes & tickets for 1872,	124	89				
Apr	5	" " J. G. Little for flour for family	10	00				
"	"	" " R. J. G. Drumwright	5	00				
July	21	" " J. S. Both	2	00				
Sept	15	" " Morris & Sons, Stamp on Brandy	47	1/2				
June	14	" " Edward Smith for Coffin	27	00				
Oct	29	" " Clark's Tickets	1	83				
		" " Attorney's fees retained	11	00				
		" " Commission on \$1258. 48/100 a 5 per cent.	12	93				
		" Balance due let.	82	1/4 01				

[illegible]

By amt Bork down drw Ed,
with int on the said balance
from February 1st 1874, till paid

Super fully Submitted,
James R. Tyler, Secy

Copy Teste, James R Tyler, D.C

The Estate of Daniel W. Cuth, dec.
In account with Elliott & Story his Executors

1874				
July	1	By amt due Est. by last Report		\$ 824 01
May	1	To Paid Clerk's Fictive (retained)	\$ 10 00	
"	"	" " 1/2 of Clerk's Fictive in Suit of Cuth vs. Henderson & wife	2 75	
"	"	" " Commisarius Tyler, fee for in Suit vs. Henderson & wife	2 50	
"	"	" " paid Wm. B. Shandy, atty fee	6 00	
"	"	" Balance due Estate	804 76	
			<u>\$ 824 01</u>	<u>\$ 824 01</u>
May	1	To Balance due Est. by last Report, with int. from date, till paid	\$ 804 76	

Respectfully Submitted,
James R. Tyler
Commissarius

Wm. S. Miller
to
Elliott & Story
Cuth

Memorandum
for papers from
Clark

By commissioner Tylor report of Jan'y
1874 Elliot & Story the executor on the 11th
Sept 1872 had \$1258.18 cts & \$1136.40 cts of
which was from sales of personal estate
made 11th Sept 1872 copy executors acct
A May 18th 1874 Re. \$75.34 cts as per
Report of Sept 26th 1874 & by the Report of
E. L. Story commissioner to see his land
his land sold for \$450, in all \$1784.02 cts

This is to certify that the A Riddicks bond
mentioned in the Settlement between James R
Kellow & L C Cobb was only five hundred Dollars
the said was wrote by me one of the comm
issionez and I paid it over to him the said
L C Cobb

Aug 16th 1765

A. Lounpfer

I went to the residence of J. C. Cobb on the 28th
day of September 1836 and he being absent
from home, I delivered a copy of this summons to
Geywood Cobb, he being a white member of his
family and above the age of fifteen years, I
also gave information to him of its purport
W. L. M. J. J. H.

Kello & Wife
Cobb
1836 October Rules

The Commonwealth of Virginia,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—GREETING:

WE COMMAND YOU TO SUMMON

S. C. Cobb

if *he* be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court of Southampton County at the rules to be holden for the said Court, on the first Monday in *October next* — to answer —
a bill in Chancery exhibited against him in our said Court by
Richard Kello & Mariah & his wife

And have then there this writ.

WITNESS, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court House, this *20*
day of *September*, 187*6*, in the *101* year of the Commonwealth.

L. R. Edwards

Received from Leonard C Cobb a bond
against Daniel W Cobb amounting principal
and interest this day to \$382.87 as a bond
against Lucie C Vaughan amounting
principal and interest this day to \$192.86 as
a bond against Augustus Connerly amounting
principal and interest this day to \$44.13 as
a bond against Mrs J Cobb amounting
principal and interest this day to \$112.77 as
and \$18 cash. These bonds are in part
payment of the balance found due
my wife Maria J Kello by the said
L. C. Cobb as guardian but it is
understood that if W. J. Cobb should
demand that the ~~confidential~~ note be
applied to his bond which was executed
in February 1864 then the said L. C. Cobb
is to make up the deficiency on the
said bond. Also a bond from L. C. Cobb
of this date for \$47.13 as and a
bond for \$488.32 as from L. C. Cobb of
this date. This bond of \$488.32 as is
given for a bond supposed to be \$1000
less \$111.68 as received from A. Riddick
and it is hereby stipulated and agreed
that should L. C. Cobb have received
less than \$1000 then I am to refund
the difference should it be that he has
received more than \$1000 then he is
to pay me the excess over \$1000
These bonds and payment
amount in all to the sum of \$1284.88 as

The balance due my wife Maria
J. Kello from the said L. C. Cobb
as his guardian and who he shall
have join his own bonds and comply
with the agreement in regard to the
bonds of W. J. Cobb and the one of
\$2,888.32 as This receipt shall be a
discharge in full from all the
obligations of his guardian bond
given under my hand this 27th day
of March 1871

James R. Kello

James R. Kello

To 3 Receipt
L. C. Cobb

Filed with Dft. answer

The Verdict and answer of L. C. Cobb
to a bill in chancery in the Circuit
Court of Southampton County by Richd
S Kells and wife vs him

The defendant L. C. Cobb by Messrs
Shenck & Kilby his attorneys comes and
says The said Bill in chancery is not
sufficient in law

And for answer to the said bill or
as much thereof as he is advised it is
material for him to answer The said L. C.
Cobb answering says that he was the
guardian of Maria Vaughan now
Kells and that as well as he remembers
she and Richd S Kells were married
in December 1870 and on the 27th of
March 1871 some three months after
the said marriage he sent Richard
S Kells in the office of Wm B Shanks
an attorney at law on the 27th of
March 1871 by appointment and then
paid him the sum of \$1284.88 and
the balance due him and his wife
from this defendant on a settlement
of his guardian account, and that
there are then the said Richard S

Filed Nov. Term 1871

Kells gave him not only a receipt but a discharge in full from all the obligations of his guardians bond and that this receipt and discharge was drawn and written by his attorney Mr B Shanas and signed by the said Richard S Kells all of which will more fully appear by the said receipt herewith filed marked A and prays to be taken as a part of this answer. The said receipt herewith filed shows exactly how the payment was made. This defendant says that all the bonds given over to Richard S Kells have been collected by him except the bond of D. W. Cobb and that he owes him some 150 or \$200 on his own bond which he is ready to pay him at any time.

And this defendant says the statement of the plaintiffs bill that he received from A. Kiddick \$800 instead of \$500 is untrue that he received only \$500 from this source for Maria Vaughan as will appear by a certificate from A. Compler one of the commissioners herewith filed marked A and he is prepared to show it by legal proofs when the time comes, and this defendant ^{denies} that he has been guilty of fraud in any manner form or shape.

in, of, or towards either Richard S. Kells or
his wife Maria T. Vaughan, and that
this young lady was his niece, that
she had but a small estate and
whilst this defendant lost almost all
his ^{own} estate he was so furnished as
to support his niece and save all her
estate save this one bond of D. W. Cobb's.
This defendant claims that this bond
of \$360.73⁰⁰ was money lent to D. W.
Cobb by him as guardian but that
it was money due him from
D. W. Cobb, as executor of his grand
father Leonard Cobb of whom she was
one of the legatees, and that it was
improper for him to take any bond
with the waiver of the Homestead
because there was then no such law
that this bond was taken March 7th 1870
and the Homestead Law was not
passed and approved until June 27th
1870. This defendant says further
that when he paid the said bond of
\$360.73⁰⁰ of D. W. Cobb over to the plaintiff
Daniel W. Cobb was possessed of land
and personal estate that his wife
owned some \$5000 worth of real estate
of which Daniel W. Cobb was possessed
of a life estate, that Daniel W. Cobb
lived some six months after this bond

* in this court and could not mean at law
a breach of the agreement implied.

was assigned to him that at least one
term of the Circuit Court elapsed after
the assignment of the bond and that
Richd S Kells could have obtained a
judgment and made his money and that
this debt has been lost by his own fault
and he has no recourse against this
defendant* and the plaintiff Richard S
Kells had a conversation before the bond
was assigned to him with Daniel W Cobb
and Mr D. W. Cobb told him he would
pay it the next fall and it was lost
by Kells' delay and he took the bond with a
full approval of its condition
his defendant's account files

extracts from Commissioner Tyler's reports
of the settlement of Daniel W Cobb's estate
showing marked C. D. W. E. showing that
\$1784.02 etc came to his executor E. L. Storey,
hands and every cent of this would have
gone to pay Cobb's bond had Kells
obtained his judgment previous to his death
as there was no judgment against him

And further this defendant saith not
and having fully answered prays him
to be dismissed with his costs etc

Shannas is Kilby for days
L. C. Cobb

Southampton County to wit

This day L. C. Cobb appeared before me and
swore oath that the facts set forth in the above
file are true to the best of his knowledge and
belief given under my hand this 18th of October
1874

James R Tyler, Comm^r in Chancery

In Southampton Circuit Court

J R Kello and Maria J his wife
against
L. C. Cobb

1876 Sept 20 Summons issued

" Oct R Summons ret.^d Executed Bill filed D Nisi
v Deft

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

" Nov J. and I dem filed by leave of court & granted rep.

1877 May Dismissed at Defts costs

96
Hillo & Wife
vs. State Rules

Cobb

1877 May Term

Kello swipe
vs 3 Scene.
Lopp

Nov: Tenn 1896

To be entered
Geo. R. Bond

Yelloknife
vs $\frac{4}{3}$ Deere.
Costt.

This day this Cause came on to be heard on the bill of the Complainant's exhibits therein, & the demurrer of the Defd., and was argued by Counsel. On Consideration whereof, the Court doth over-rule the demurrer, and leave is hereby granted the Defd. to file his answer, which is accordingly done.

Kellon wife

on 3 Decem

Cobb

On motion of the
Plaintiff this suit
is ~~discontinued~~ ^{ordered to be removed from the docket} ~~being~~ ^{costs} paying to the defendant
L. C. Cobb his in this suit expenses

Kells is wife
no 3 Duna
Cobb

May Term 1877
To be entered
Geo. Blod.