

1903-03

Southampton County Chancery

Bain, Thomas L.
Exor et al

vs

Perham, Henrietta
et al

"Court to Construct
a Road"

Birdsong, Thomas H.

Birdsong, Silas

Jucker, Robert

Thomas L. Davis, Esq.
et al. } Bill & Ex.

vs.
Martha E. Finch's
heirs

1902. 2nd Sept Rules filed


McIsaac & Corbett
Sgs

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE CIRCUIT
COURT OF SOUTHAMPTON COUNTY.

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Complaining sheweth unto the court your orators, Thomas L. Bain, Executor of Martha E. Finch, deceased, and Thomas H. Birdsong and Silas Birdsong, that sometime during the year nineteen hundred and one, the said Martha E. Finch departed this life testate, leaving your orator, Thomas L. Bain, executor of her estate, and providing, among other things, that a debt of \$ be paid to Thomas H. Birdsong, and after making some small specific legacies, devised the residue of her estate to Silas Birdsong: that Thomas L. Bain has, at the

term of the county court of Southampton County duly qualified as executor of the said Martha E. Finch's estate, all of which will more fully appear by reference to a copy of the said will, and also a copy of the letters of administration filed herewith as exhibits "A" and "B", and prayed to be read as a part of this bill.

Your orators respectfully represent that at the time of the decedent's demise she was in possession of a lot of land in the town of Ivor, Virginia, which was sold by authority of a deed dated December 7th., 1881, executed by Benjamin F. Bell to her and Thomas Eldred Finch jointly, in which deed the following language is employed:

"This deed made 7th. December, 1880, between B. F. Bell of the first part, and Martha Eliza Finch and Thomas Eldred Finch, of the second part, to Martha Eliza Finch during her life, then to Thomas E. Finch in fee simple,

WITNESSETH: That for and in consideration of the sum of \$450.00 in hand paid, the said B. F. Bell doth grant unto the said Martha E. Finch and Thomas E. Finch, a certain lot of land in the village of Ivor, county of Southampton, State of Virginia, containing one half acre, more or less, bounded on the North etc. - .."

That Thomas E. Finch died intestate prior to the death of Martha E. Finch, leaving as his nearest kin and heirs at law

Mrs. Henrietta Parham and Robert Tucker, residing in Dinwiddie County, Virginia, and by reason of the language used in the deed aforesaid these parties are claiming the property conveyed by Benjamin F. Bell by the aforesaid deed of December 7th., 1881.

Your orator, Thomas L. Bain further represents that the debts of the decedent are considerably in excess of the personal estate, and he is unadvised as to what course he shall pursue with reference to the real estate, and is seeking the aid of a court of equity that the deed in question may be properly construed and the rights of the parties ascertained.

Your orator, Thomas L. Bain, Executor, further represents that the said last will and testament of Martha E. Finch authorized him to sell the real estate, but that the cloud upon the title, growing out of the language used in the deed, and the claim of the heirs of Thomas E. Finch, as aforesaid, makes it impossible for him to dispose of the property without sacrificing same.

In consideration whereof, and for as much as your orators are remediless in the premises save by the aid of a court of equity where matters of this kind are alone and properly cognizable, they pray that Mrs. Henrietta Parham and Robert Tucker may be made parties defendants to this bill and required to answer the same, but answers under oath are hereby waived; that the court will construe the deed aforesaid of December 7th., 1881, and by its decree determine what kind of estate the said Martha E. Finch took in said deed, and direct your orator Thomas L. Bain Executor, how to proceed in the premises; that his accounts may be taken and inquiries directed, and all such other, further, general and special relief granted to your complainants as the nature of this case may require or to

Thomas L. Main Executor, and to proceed in the premises; that
is account may be taken and inquiries directed, and all such
other. Further, general and special relief granted to your
complainants as the matters of this case may require or to

equity shall seem meet. And notice is hereby given that the
court will be asked to allow reasonable attorneys fee to
plaintiffs counsel conducting this cause. And your complain-
ants will ever pray, etc.

Finch's Executor et al:
by Counsel.

Finch's Exor et als.
vs. { Stat: of Rules
Dorham et als.

Thos. L. Bain, Executor of Mary E. Finch,

Thomas H. Biedang & Silas Biedang

vs

Henrietta Parkman & Robert Tucker

In Chancery

1902. 9th September. Process issued To 2nd Sept. Rules

1902. 2nd September Rules process returned executed

Bice 2d exhibits filed

Decease Rice

1902. 5th Sept. Rules. Bill Taken for confessed

and Cause set for hearing.

In the name of God, Amen. I, Martha Eliza Finch of the County of Southampton State of Virginia being of sound mind and memory and wishing to dispose of my earthly goods do make this my last Will and Testament

1st My will is that all of my just debts be paid.

2nd I wish my Nephew Thos Henry Birdsong to be paid in full moneys he has advanced to me with legal interest thereon.

3rd. I desire that Thos L. Bain of Iowa be my Executor and I leave him as such and ask that the Court allow him to qualify without security. I also desire that he have full charge of all my property not disposed of in this writing to rent or sell on such terms as he deems fit and most proper and of the money realized from said rents or sales that a fund of Two hundred dollars be used by him for the purpose mentioned to wit:

1st To have an iron railing placed around my grave yard; 2nd To place three marble slabs one each at the heads of my deceased husband Wm H. Finch, T. E. Finch and myself Martha E. Finch; The remainder of the above mentioned Two hundred dollars I leave in the hands of the said Thos L. Bain

as a fund to keep in order my graveyard.

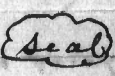
4th I give the bed in my chamber to my niece
Eura G. Struble lobby and my other bed to
Nannie L. Birdsong.

5th I give my watch which is a silver one
to my nephew Thos W. Lamb.

6th I give to Mrs. Mary Ida Bain my silver
spoons and my large iron pot.

7th After reserving the Two hundred dollars
mentioned above and giving to Maiee
Gillette Bell my bureau and large
Trunk I leave the entire residue of my
estate to Silas Birdsong my nephew.

In testimony whereof I have hereunto
set my hand and seal this 16th day
of June 1896.

Martha Eliza ^{her} Finch 
mark

Witness

B. W. Laine

E. N. Johnson

Jno. R. Dales.

I give Saeie B. Bell my black shawl, all
of my tin ware; small knives and forks; my
small china plates, and my biscuit plates.

I give to Mrs M. Alice Prettow my Two large
white dishes.

I give to Mrs. J. L. Davis my bowl and pitcher

I give to Nannie L. Birdsong ^{my} wardrobe

which is in Petersburg at a friends,

I also give to Annie L. Birdsong all of my best clothes,

Should I have a nurse, and she waits on me well I want her to have some of my worst clothes, also Ann Eliza Diggs to have some.

This is my will as much as the one Mr. Solis wrote, I hope it will be carried out,

M. E. Finch

June 27th 1901

Sauchoampton County Court October Term 1901.
A writing purporting to be the last will and Testament of Martha Eliza Finch died, was produced in Court and proved by the oaths of B. N. Laine and E. N. Johnson two of the subscribing witnesses Thereto and a Codicil to said will, having no subscribing witnesses was also produced in Court, and B. N. Laine and E. N. Johnson being sworn severally deposed that they are well acquainted with the handwriting of the Testatrix, and verily believe the said Codicil, and the name Thereto subscribed to have been wholly written by the Testatrix's own hand, whereupon the said will and Codicil are to be recorded, and on motion of Thos. L. Bain the Executor named in the will who made oath according to law entered into and acknowledged a bond in the penalty of seven hundred fifty dollars conditioned as the law directs, but without security the will directing that none

be required, which bond is ordered to be recorded.
Certificate is granted the said Thos. D. Bain for
obtaining a probate of the said will and codicil in
due form, On motion of Thos. D. Bain exr. of
Martha E Finch B.N. Laine, Ex. N. Johnson &
R. P. Bell are appointed appraisers who after being
duly sworn, will appraise the estate of said
decedent, and return the same under their
hands as the law directs.

Teste:

B. F. McDemore C. C.

A. Copay.

Teste:

L. A. Gay D. C.

Finch's Exrs et als.

vs. } Copy M. E. Finch's will
and qualification of
Finch's Exrs.
For same et als.

Ex. "A. V. B."

Geo. A. Southampton

or State for Order
Oct. Term 1802

Entered Oct. 7, 1902
Robert R. Mentes

Continued,
Page No. 464.

The above is a list of the
 names of the persons who
 have been appointed to
 the various committees
 of the Association.

~~In the Circuit Court of the County of Southampton, October~~
~~term, 1902.~~

Thomas L. Bain executor of the last will and testament of Mary
E. Finch deceased, Thomas H. Birdsong and Silas Birdsong.

Plaintiffs.

vs.

~~Note for Order.~~

Henrietta Parham and Robert Tucker.

Defendants.

This day came the defendants by their counsel and filed
a demurrer to the plaintiffs' bill, whereupon the plaintiffs
joined issue on said demurrer, and by consent of parties it is
ordered that this cause be taken for consideration by the judge
of this court in vacation, with liberty to the court to enter
a decree therein in vacation. in term, either of

record it is ordered that this cause
be submitted to the judge of this Court
for such decisions and decrees therein
in vacation, as might be made in term.

Mr. A. S. Hamilton

Memorandum to Pepp's Hill

1872

and the fact that the same may be dis-

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The Demurrer of Henrietta Parham and Robert Tucker to a certain Bill of Complaint exhibited in the Circuit Court of the County of Southampton by Thomas L. Bain, executor of the last will and testament of Mary E. Finch deceased, Thomas H. Birdsong and Silas Birdsong, plaintiffs, against said Henrietta Parham and Robert Tucker, defendants.

These defendants say that the plaintiffs' bill is not sufficient in law, and they pray that the same may be dismissed &c.

Geo. S. Bernard
for do.

Finch's 240. 240.

vs. { State: of 2000

Parkman & Tucker

Finch's Exor. et als.

vs. { Statement of Costs

Parkman & Jackson

Sum. 26.2 26. receipt 18. atty. 10. Docket 18 = .97

Riches 1.00, entering return 35. fil. bill 15 = 1.50

D. exhibits 15. copy exhibits 1.00 = 1.15

replication 15. 2 decess 72. Tax costs &c. 40 = 1.27

filing away papers 25 = 25

6 hrs \$5.14

Total: L. A. May 4, 4.

2/4/1903 J. H. Birdsong paid \$2.52

2.52
\$2.58

Finch's Exor et als.

vs. }

SUBPENA
IN CHANCERY.

Parham et als.

McLemore & Corbin p. q.

To *2nd* September Rules.

Leicestershire Court.

*We acknowledge legal service to
within seven months.
Hammill Parham
Robert Fisher
J. S. Hamond
J. P. Hamond
attys.*

The Commonwealth of Virginia,

To the Sheriff of the County of Dinwiddie Greeting:

WE COMMAND YOU, That you summon Henrietta Parham and

Robert Tenner

to appear at the Clerk's Office of the Circuit Court of the County of
Southampton at the rules to be held for the said court on the 3rd Monday in
September 1907, to answer a bill in chancery exhibited against them
in our said court by Thos. L. Bain, Executor of Mary E. Finch,
Thomas A. Birdsong & Silas Birdsong

And have then there this writ. Witness L. A. Gay, Clerk
of our said court, at the courthouse, the 9th day of September 1907, and
in the 127th year of the Commonwealth.

Teste: L. A. Gay Ck.

Circuit Court of Southampton,
In Vacation.

Bain, Executor &c.

v. } Note for Decree
Parham & Tucker.

Entered Dec 21, 1902
Robert R. Stullis

For Consent that the
within decree may be
entered.

Entered Page 478.

ANATATION, 101 THE 21st, 1902, 1003.

IN THE CIRCUIT COURT OF THE COUNTY OF SOUTHAMPTON, IN

IN THE CIRCUIT COURT OF THE COUNTY OF SOUTHAMPTON, IN
VACATION, ON THE 21st., day of December, 1902.

Bain, Executor of Finch et als.)

vs. Note for Decree.)

Parham and Tucker.)

This cause came on this day pursuant to the order entered by consent of parties at the October term, 1902, of this court to be heard in vacation before the judge of the court upon the papers formerly read and was argued by counsel.

On consideration whereof, the judge of this court, being of opinion that, under the deed in the bill mentioned dated on the seventh day of December, eighteen hundred and eighty one, executed by Benjamin F. Bell to Martha Eliza Finch and Thomas Eldridge Finch, ^{the} said Martha Eliza Finch took only an estate for her life in the lot of land described in said deed situate in the village of Ivor in the county of Southampton and thereby conveyed, and that at her death the defendants Henrietta Parham and Robert Tucker ^{as the heirs at law of Thomas Eldridge Finch,} became the sole owners of said property, doth sustain the defendants' demurrer to said bill and doth adjudge, order and decree that said bill be and it is hereby dismissed, ^{the plaintiffs and defendants each paying} ~~and it is further ordered that the~~ ^{their} ~~plaintiffs pay to the defendants~~ ^{costs in this behalf expended} ~~the plaintiff Thomas L. Bain, the Executor of said Martha Eliza Finch, deceased, out of the goods and chattels of said testatrix in his hands to be administered, the said plaintiffs Thomas H. Birdsong and Silas Birdsong out of their own estates,~~ ^{one half of the costs of this suit, said costs not to include any} ^{statutory Attorney's fees.}

*In the Clerk of the Circuit Court
of Southampton County*

ROBERT H. DAVIS