1779 - D16 Chancery Causes: Thomas Smith vs John Scarbrooke Wills

Isle of Wight County

other surnames: Bryant, Godwin, Robertson

Smith
v
Wills } Papers

Mar: 1772 Cont.d

July 1772

Dep.t & Int for hear.g

March 1773

Continued

June 1773
Cont.d

Septem.r 1773
Cont.d & Dep.t

Oct.o 1773
Cont.d

May 1774
Cont.d

Oct.o 1779
Dism.d agreed

Then appears that the said Bill of Sale was Dated long before the time of his denying it, Whether he did not then agree to cancell it Whether the Estate of the said Bryant that was conveyed to him by the said Bill of Sale did not then appear to be sufficient to discharge his own demand & two other demands that were to the amount of near three Hundred Pound, Whether it was not then secured for that purpose & afterwards sold to discharge the said Debts, Whether your Orator hath not been obligid to pay the Sum aforesaid as Security for the said Bryant, And that the said John Cranbrooke Willes by a Decree of this Worshipfull Court may be Compelled to pay unto your Orator the aforesaid Sum of £61. 13. 2. ——— & Interest thereon And that your Orator may have such other & further Relief in the Premises as to your Worshipps shall seem agreeable to Equity & a good Conscience May it please &c.

Pat. Dea. for Compt.

Smith
vs
Willes
} Bill in Chan.

Sept. 1771. Ans.

by which means severall of his Slaves were taken from their Labour & Sold to his great Damage & Distress — He further sheweth That not suspecting but That the said Willis Bill of Sale was really executed for a valuable consideration & not with an intent to defraud & deceive the Creditors of the said Bryant he judged it more prudent quietly to submitt to the loss of the Debt aforesd. than add to it by commenceing Suit ag.t Bryant Your Orator further Sheweth That during these transactions a Judgment was obtained against the said Bryant for a large Sum of Money by one William Robertson who thinking his Debt insufficient to secure took about and having some suspicion of fraud as your Orator hath been since informed Sun the said Willis Bill of Sale issued an Execution upon his Judgment against Bryants Estate; and had the same levied upon which the aforesaid John Scarbrooke Wills was sent for who immediately ordered the Sheriff to desist from levying the Execution as the effects were his own property & seemed to him for a valuable consideration, but upon his being desired to produce his Bill of Sale and the same shortly after him the Sale appeared to be long before the time of his having so positively denyed that any such Writing was executed & further appeared that the Sum owing to him was a mere trifle in comparison to the Value of the effects Sold and so clearly appeared to be fraudulent and done with an intent to deceive and defraud Creditors That the said Wills readily agreed to cancell it and join with the said Robertson in taking a Mortgage on Bryants Estate which was accordingly executed and there being still a Residue a Person then present who had a demand against the said Bryant immediately had the said Residue secured to him, by which the whole Estate of the said Bryant was then absolutely conveyed and your Orator by being deceived as aforesaid intirely Bereft of all hope of ever getting his Debt from Bryant whose whole Estate was soon after sold to satisfy the aforesaid Mortgage & your Orator hath never received the least satisfaction for his Debt Your Orator further sheweth unto your Worships That he hath frequently applyed himself to the said Wills for the payment of the Debt due from the said Bryant to him as aforesaid alledging that as the Execution which was levied on his Estate was prevented from being levyed on Bryants by reason of the Bill of Sale aforesaid the said Wills ought in all justice to indemnify him as it then so evidently appeared to be fraudulent But now so it is May it please your Worships that the said John Scarbrooke Wills absolutely refuses to comply with this Request All which Doings and Doings of the said Defts are contrary to equity and good Conscience and tend to the Ruin & Impoverishment of your Orator In tender Consideration whereof & forasmuch as your Orator is remediless at the common Law & only relievable in this Worshipfull Court where matters of fraud & Deceit are properly Cognizeable To the end therefore that the said John Scarbrooke Wills may upon his Corporal Oath & to the best of his knowledge & belief full true direct & perfect answer make to all and singular the Premises & this Bill as fully and particularly as if the same were herein again repeated & interrogated more especially that he may set forth & discover Whether the aforesaid John Bryant did not reside in this County possessed of a large Estate about the time before mentioned, Whether he did or did not take a Bill of Sale for every particular thereof & what were the particular Articles therein contained, what was the real Sum owing to him and what were his Reasons for including so many more Articles in the Bill of Sale than was sufficient to satisfy his demand, What were his Reasons for denying that he had any Bill of Sale on the said Bryants Estate, Whether the aforesd Wm Robertson did not levy an Execution as aforesaid Whether he did not order the Sheriff to desist from levying the said Execution, Whether it did or did not

To the Worshipfull Justices of the Court of Right
County sitting at Chancery —

Humbly Complaining sheweth unto your Worships your Orator Thomas Smith of this County that sometime in the Year 1766 one John Bryant resided in this County — possessed of a considerable Estate consisting of Slaves Stocks of all kinds & Household Furniture to a large amount which Estate the said Bryant had the possession of for many years during which time your Orator nor no other Person as he believes knew or even suspected but that the Estate so possessed by the said Bryant was his own & that he held the same clear of all Incumbrance as he had never heard that Bryant was indebted to any Person to a large amount. Your Orator further sheweth that during the time aforesaid the said Bryant applyed to him & requested him to become his Security to one James Godwin for the Sum of £53.6.10 & Int. which Request your Orator agreed and accordingly became his Security for the said Sum. —

He further sheweth unto your Worships that some time after this Transaction he heard a Report that the said Bryants Estate was Mortgaged or Sold to one John Scarbrough the Willis whom your Orator prays may be made Defts to this his Bill of Complaint upon — which he applyed himself to the said Bryant and desired to be informed of the certainty thereof which Bryant then positively contradicted & the said Report was afterwards also contradicted by the said Willis to many Persons that applyed to him for that Purpose your Orator further sheweth that the said Godwin about the time that your Orator had the above confirmation of the falsity of the above Report commenced an Action against the said Bryant and your Orator for the Recovery of the Sum aforesaid upon which a Judgment was obtained and an Execution issued which was levied on the Estate of your Orator & the said Willis having by this time publish-ly declared that he had a Bill of Sale for the whole Estate of the said Bryant which was executed for a valuable consideration upon which your Orator was compelled to pay the said Godwin the Sum of £61.13.2 for the Debt, Interest & Costs of the said Judgment

aforesaid ~~the~~ his security upon having his just demand
agst the s.d Bryant paid to him & offered the same to some
of the said Bryants Creditors This defend denys all
Combination &c prays to be hence dismissed with his
costs. in this behalf sustained Without that that &c

John Sch Wells

S. Cooper Wigham J.P.
Sworn to before me
this 3 day of August 1770

Jam.s Bruyere

Smith
&
Wells
Ans

The answer John S Will, defendant to the bill
of complaint of Thomas Smith complt.

This defendant now and at all times saving & reserving to
himself all advantages of exception to the many untruths
insufficiencies & imperfections in the complainants
said bill of complaint contained for answer thereto or to
so much as this defend. is advised is materially concern
him he answereth & saith, that this defendant did
obtain & take a bill of sale from one John Bryant for
the greatest part of his negros & personal estate which
was dated about the month of [illegible] 176 . had all the
the names of several slaves are mentioned therein yet
many of them were incumbered before the date of such
bill of sale to this defendant — to sundry persons &
liable to the satisfaction of other demands prior to
this defend claim. that said bill of sale was executed
by the said Bryant for a valuable consideration
with no intention to defraud any creditor but only to
secure this defend. just demand & for his indemnification
as security for said Bryant for large sums. That true
it is that William Roberton did levy an execution
on the estate of the said Bryant comprized in this defend.
bill of sale — but that no suit was then commenced
or prosecuted against the said Bryant by the said James Godwin
or the complt. for any debts due them. from the said
Bryant. That after said execution was levied the said
Roberton agreed to restore the goods taken thereby &
and the said Bryant did then execute a mortgage jointly to the said Roberton &
this defendant of the greatest part of his slaves &
personal estate in order to secure the debts & demands due
owing to them respectively whereupon this defend did
then cancel & make void the bill of sale before
mentioned — duly for his security on the joint mortgage
aforesd — That sometime after by the consent of the said
Bryant, the slaves & other estate mentioned in
the said mortgage were exposed to public sale at a credit of
seven months & bona fide sold for the most that could
be got, that the money arising thereby was not sufficient
to satisfie & pay this defend his just demands against the
said Bryant. This defend. denys his knowledge.
of the complts demand until after the sale of the goods
joined to him by the last mentioned mortgage — That
so far from intending any fraudulent practice this
defend was always willing to have delivered up &

Smith
—
Wills
Sha
in
Chan

Febry 1769.
Executed

Jethro Gale

March Court

Apl. Court

June Term
Rd. Court
1770
April — Court
Recd. Rep. & Com

George the Third by the Grace of God of
Great Britain France & Ireland King Defender
of the Faith &c. To the Sheriff of Isle of Wight
County Greeting We Command you that you
Summon John Cornbrooke late of
Appear before our Justices of our Court of our
said County in Charge at the Courthouse on the first
Thursday in March Next to Answer a Bill
in Chancery exhibited against him by Thomas
Smith and this he in no wise omit under
the Penalty of [illegible] pounds and have then there
this Writ Witness Richard Baker Clerk of
our said Court at his Office the 17. Day
of February 17[illegible] in the Twenty Ninth Year of
our Reign

Rich. Baker