

1802-012

Chancery Causes: John Day's admr & al vs Francis Boykins & Robert Marshall's admr

Isle of Wight County

& al

Other SURNAMES: Peirce,
Davis, Jordan, Pierce

The deposition of William Jordan (carpenter)
a witness in a suit in Chancery
in Isle of Wight County Court,
where in Davis Day Claim. of John
Day and are plaintiff, agt. the
Claim. of Robert Marshall & Co.,
taken at the dwelling house
of Emanuel Will, this first day
of May 1801, - due notice being given,
this deponent being duly sworn,
deposeth and says, that he was
present when Robert Marshall purchased
of Thomas Pierce Esq. of John Day
& Co., the Mill and Lands now the
the property of Francis Dayakin
and that the Contract took
place in the year 1777, and
as far as this deponent knows or
believes in the Month of April
and further this deponent sayeth
not, -

William Jordan sub

sworn to before us, { Em. D. Mills

Dolphin Driver

The Commonwealth of Virginia, to *Em: Wells* and
Jephia Driver, Gentlemen greeting Know ye that We
trusting to your fidelity and provident ~~in~~ ⁱⁿ inspection, in
diligently examining *William Jordan* (Carpenter)
as well on the behalf of *David Day* ~~Amor~~ of *John Day* ~~and~~
as on the behalf of the Admon: of *Robert Marshall* ~~and~~
Command you or any two or more of you, that at such cer-
tain days and places you shall appoint you assemble
yourselves & the *Witness* aforesaid before you or any two
or more of you, you call and cause to come & diligently ex-
amine on the Holy Evangelists of Almighty God and
his examination into our County Court of Isle of
Wight— distinctly and plainly without delay, you shall
send & certify inclosed, returning also to us this Writ. —

Witnes ~~James~~ ^{*Witnes*} *James Young* Clerk of our said Court at the Court
house, the ^{28th} day of April 1801 in the 23rd year
of the Commonwealth —

e Nath: Young

Days Honor:

15.

3 Comm. to exp
3 minor titles
Marshall & Co.

ms.

Spa. in Aug?

Marshall's coming

James L. Bradley

18



8

152

78

26

18

26

18

26
18

१०

20
1

7 0
2 0

7

2

2

1

7

—

18

26
18

1881

18
20

20

34

五

3 4

$$\begin{array}{r} 634 \\ 53 \\ 50 \\ \hline 747 \\ 4 \end{array}$$
$$\begin{array}{r} 16 \\ 8 \\ \hline 128 \\ 66 \\ \hline 194 \end{array}$$

128

66

194

THE Commonwealth of VIRGINIA to the Sheriff of *Isle of Wight* county,
greeting. We command you, that you summon *William Jordan and Martha his wife*
Administrators &c of Robert Marshall decd: and Francis Boykin

to appear before our Justices of our county court of *Isle of Wight* at their courthouse
of said county, on the *first Monday in November* next, then and there
to answer a bill in Chancery against *them* exhibited by *Lewis Day Adminis-*
trator with the Will Annexed of John Day decd: of the goods & Chattels unadministered
by Thomas Price and William Davis late executors thereof decd:

And this *they* shall in no wise omit under the penalty of *100l. each*. And have
then there this writ, WITNESS *James Young* clerk of our
said court, the *8th* day of *October* 1796 and in
the *21st* year of the commonwealth,

W

James Young

Bond aforesaid by Marshall & Baykin to Pinner & Day.
 Created & established the Compliments claim, that the time of
 the execution thereof to wit the 3rd day of February 1780, is the
 proper period at which the value ought to be ascertained by the
 Deeds. These defendants deny that any contract existed
 that comes within their knowledge previous to the execution of
 the deed from Pinner & Davis to Marshall. They therefore
 pray to be hence dismissed with their Costs & wrongfully
 sustained

Ye. Lang. for Depts

The dep^t Baykin further said for answer. That
 he believed the land was sold or Cried out to Marshall
 in Decr. 1777. but that was no writing respecting it
 until the bond was given - he further states that
 at the time the bond was given. Marshall made
 a tender of the whole amount of the money to
 the obliges - & that it was a considerable time after
 the sale before the widows of Day & Brown died who
 always refused to take in this claim to the
 time of their death. That they were living
 at the time the deed was made, & that
 a copy was made the widow Day who
 was entitled to Dower in the said land
 threatened to claim the Dower, This
 dep^t prays to be hence dismissed be-
 cause of weight County Re. is

That Baykin made oath before us
 that the above answer is true & for as he
 knows & believes given under my hand the
 5th March 1800.

Jm. Mills

Given to by 1000 for a pen Court
 3rd March 1802 -

Jm. Mills
 Clerk
 Dep^t Adm^r

The answer of William Lusk & Martha his wife adm^{rs}
of Robert Marshall dec^d. & Francis Baykin def^{ts} to the
bill of Complaint of Davis Bay adm^r with the will
annexed of John Bay dec^d. Compl^t.

These defendants saving & reserving to themselves
all manner of exception to the uncertainties & imperfections
in the said Complainants said bill of Complaints contained
for answer thereto, as to so much thereof as these defendants
are advised is material for them to make answer unto, they
answering say. That it appears from the note to which
the Complainant refers. That an interest was to be allowed
on some moiety thereof from April 1770. and on the other
moiety from October 1770. and altho the said note bears
date in December 1779. yet it creates a presumption that
the contract did exist respecting the said land anterior
to the date of the note, but these defendants presume that
it could not have been at an earlier period than April
1770 the time that the first interest commenced. These
defendants conceive, that the Complainant must be greatly
mistaken as to the said contracts being effected in October
1777. for upon reference to the deed of Oliver & Davis the son
of Bay to Marshall they find it to bear date on the 2^d
day of December 1779 and until then altho a contract
might have been spoken of, yet none was carried into effect,
nor could the exec^s of Bay before that period, have legally
demanded the money of Marshall for the Land. no money
could have been due, or recoverable before a conveyance was
regularly made of the Land to Marshall, nor can an earlier
period than that be resorted to to affirm its value by the
scale of depreciation, but these defendants relying upon the
justice of this Court, conceive that as the entry into the

it in specie agreeably to that scale which they unjustly insisted ought to be applied according to the date of the Specialty embracing the debt, & not with reference to the Time of the original contract, that produced the Debt which latter time they fraudulently concealed, & denied to be as stated above by the Complainant— That under this unfair pretence, this Debt was withheld from Pierce, & Davis, in their Lifetimes, & since their Deaths, has Been withheld from the Complainant by Marshall, & Boykin, in the Lifetime of Marshall, & since his Decease, by Boykin, who also pretends, that being only bound for the payment of this Debt as a Security for Marshall, he cannot safely discharge the same agreeably to an application of the scale of depreciation to the state of the original contract that created the Debt, unless consented to by William Jordan, & Martha his wife later Marshall, who is the Administratrix of the goods chattels rights & credits of Robert Marshall, & that they have refused to consent to such an application thereof altho' it is well known to them as well as to Boykin, that the Specialty altho' dated on the 3^d Day of February 1780, was merely given to secure the payment of a debt contracted on the 1st Day of October 1777. & under these pretents, Boykin, combining with W^m Jordan & Martha his wife Administratrix &c of Robert Marshall, still refuses to settle this Debt with the Complainant & pay him the same— Wherefore I for as much as the Complainant is only & properly relyable in a Court of law every when facts fraudulently concealed as in the present case, can alone be discovered— I now Order that Francis Boykin, & William Jordan & Martha his wife Administratrix &c of Robert Marshall Dead: May respectively upon their oaths & best of proof answer made to this Bill & each of its allegations that they may be compelled to pay to the Complainant this Debt of £ 150. 5 agreeably to the scale of Depreciation in October in the year 1777, when in fact it originated, with lawful Interest on one moiety thereof from the 1st Day of April 1778 & on the other from the 1st Day of October following— & that the Complainant may have such other & further Relief as may be equitable & proper in relation to the premises— May it please Vc.—

W. M. Robinson
for the Compt.

Attest

J. Young Clerk

To the Justices of Isles of Wight County, Sitting in Chancery—

Davis Day administrator with the Will annexed of John Day deceased, as to such of his goods chattels rights & credits as were let unadministered by Thomas Peirce, the elder, and William Davis, who were executors of his last Will and Testament, and who have lately died intestate, complaining, respectfully Shews— That on the third day of February in the year 1780, Robert Marshall, who has since died, and Francis Boykin, both of this County, bound themselves in a Specialty of that Date to Peirce & Davis, who have both since died, as executors &c of John Day for the payment of One hundred and fifty pounds five shillings of current money, with lawful interest on one moiety thereof from the fourth day of April, and on the other from the fourth day of October, ~~the~~ in the year 1778. which specialty is herunto annexed— That this Specialty ought to have been given as early as the 4th Day of October, in the year 1777, when Marshall purchased of the Executors, Peirce & Davis a Tract of Land in this County, which they sold & conveyed to him by virtue of the Will of their Testator, John Day for the sum of £ 150. 5, payable in moieties at six & twenty Months from the Day of the Sale & for the payment of which he was then to have bound himself, with Security, but the taking of Specialties for these payments having been then omitted for the want of convenience & time Marshall, afterwards, under various unjust pretails, failed to come forward for the purpose, altho, after importuned, until the 3^d day of February, 1780 the date of the specialty Shewn to the Court, prior to which he ought to have paid the £ 150. 5, instead of then binding himself, with Boykin his Security, for the payment thereof. That Peirce, & Davis, not foreseeing the difficulties that have since resulted, thought it advisable to take from Marshall, & Boykin, this Specialty for the £ 150. 5 as they were then not prepared to pay the Debt. stipulating particularly for interest on each moiety thereof from the period at which it ought to have been paid— That this Specialty was not discharged while the paper Money, current at its date, was in circulation, but after it was declared by the Legislature, to be no longer payable in satisfaction of Debts between individuals, & a scale of depreciation was established for ascertaining its value in specie. Marshall, & Boykin, who had previously Shewn no anxiety to pay the Debt, pretended, upon being called on for it, that they were ready to discharge

Nov. 1799.
Ans. filed
Court.

March 1800
Prop. r. day
2. day ans. filed
and 8. March.

Aug. 1800
prop. file tomorrow

March 1801
cont. 2. Jan. 1801

Day admo. de

v. } Bill

Baykin Sal.

~~(see next page)~~
~~(see next page)~~

Nov. 1799
filed for ans.

Dec. 1799
filed for ans.

Jan. 1800
filed for ans.

Feb. 1800
filed for ans.

March 1800
filed for ans.

Nov. 1798
Court.

May 1799
leave given Sept. to send

at June Court next of
Court.

March 1802

Jud. for £60. 2. with Int. at
5% bank on 1/2 thereof from the
4th of Apl. 1798 to the expiry
of 20 years & on the other 1/2
from the 4th Dec. 1798 for 20

years & costs c. of the Deft.
prayer an appeal to the
Deputy Sheriff of Chye,

747 & 500 cents
40
787 fifas

after it was declared by the Legislature to be no longer payable
in satisfaction of debts between individuals, & a scale^{of depreciation}, was
established for ascertaining its value in specie, - Marshall & Baykin,
who had previously shewn too anxiety to pay the debt, pretended,
upon being called ^{on for} ~~for~~ it, that they were ready to discharge it in
specie agreeably to that scale, which they unjustly insisted ought
to be applied according to the date of the specialty embracing the
debt, & not with reference to the time of the original contract,
that produced the debt, ~~which latter time they fraudulently concealed,~~
~~and attempts has been stated above by the Complainant~~
~~that the said debt has been withheld from the complainant, by~~
~~Marshall & Baykin, in the lifetime of Marshall, & since his~~
~~death by Baykin, & William Jordan & Martha his wife, late~~
~~Mother-in-law of Marshall, & Robert Marshall deceased, to~~
~~withhold the administration of his goods chattels rights & credits~~
~~from him duly entitled.~~ That under this unfair pretence,
this debt was withheld from Pierce & Davis, in their lifetimes,
& since their deaths, has been withheld from the Complainant, by
Marshall & Baykin, in the lifetime of Marshall, & since his decease,
by Baykin, who also pretends, that being only bound ~~as security~~ ^{for}
for the payment of this debt as a security for Marshall, he
cannot safely discharge the same ~~therefore~~ agreeably to an
application of the scale of ~~depreciation~~ depreciation to the date
of the original contract, ~~as the effect of which would be~~, that created
the debt, unless consented to by William Jordan, & Martha his wife,
late Martha Marshall, who is the administration of the goods chat-
tels rights & credits of Robert Marshall, & that they have refused
to consent to such an application thereof, altho' it is well known
to them as well as to Baykin, that the specialty, ^{altho' dated on the 3^d} ~~dated on the 3^d~~
day of February, 1780, ^{was merely given} ~~given to Baykin, to secure~~
to secure the payment of a debt contracted on the 4th day of
October 1777. - Under these pretences, Baykin, combining with
William Jordan & Martha his wife administration &c. of Robert
Marshall, still refuses to settle this debt with the Complainant
& pay him the same - Wherefore I fear as much as the
Complainant is only & properly relievable in a Court of Chancery,
where facts fraudulently concealed, ~~concealed~~ as in the present
case, can alone be discovered - In order that Francis

Baykin, & Wm. Jordan & Martha his wife administrators of
of Robert Marshall dec^d may respectively upon their oaths
true & perfect answers ^{make} to this bill & each of its allegations —
that they may be compelled to pay to the Complainant this debt
of £150.5 agreeably to the scale of depreciation in October
in the year 1777, when in fact it originated, with lawful interest
on one moiety thereof from the 4th day of April, 1778, and
on the other from the 4th day of October following — & that
the Complainant may have such other & farther relief as
may be equitable & proper in relation to the premises —
MAY it please ~~the~~

Mr. Mr. Robinson
for the Compl.

To the Justices of Isle of Wight County,

Sitting in Chancery —

Davis Day administrator

with the Will annexed of John Day deceased, as to such of his goods chattels rights & credits as were left unadministered by Thomas Peice, the elder, & William Davis, who were executors of his last will & testament, & who have lately died intestate, complaining, respectfully shews — That on the 3^d day of February in the year 1780, Robert Marshall, who has since died, & Francis Baykin, both of this County, bound themselves in a specialty of that date to Peice & Davis, who have both since died, as executors &c. of John Day, for the payment of £150.5 of current money, with lawful interest on one moiety thereof from the 4th day of April ~~to the 4th day of April 1778~~, & on the other from the 4th day of October, ^{in the year 1778,} ~~being the date of the specialty~~ which is hereto annexed ~~for the payment of the same~~ ^{specialty} — That this specialty ought to have been given as early as the 4th day of October in the year 1777, when Marshall purchased of the executors Peice & Davis, a tract of Land in this County, which they ~~did~~ ^{ought} by virtue of their will of their Testator, John Day, for the sum of £150.5, payable in moieties at six & twelve & for the payment of which he was then to have bound himself, with security, months from the day of the date, — but the taking of specialties for these payments having been then omitted for the want of convenience & time, Marshall afterwards, under various unjust pretenses, failed to come forward for that purpose, altho' often importuned, until the 3^d day of February, 1780 — the date of the specialty shewn to the Court, prior to which he ought ~~actually~~ to have paid the £150.5, instead of then binding himself, with Baykin as his security, for the payment thereof.

— That Peice & Davis, not foreseeing the difficulties that have since resulted, ^{thought} ~~found~~ it advisable to take from Marshall & Baykin this specialty for the £150.5, as they were then not prepared to pay ^{the debt}, stipulating particularly for interest on each moiety thereof from the ~~time~~ period at which it ought to have been paid. — That this specialty was not discharged while the paper money, current at its date, was in circulation; but

Marshalls
to E. of In. Bay

of 9th Day Dec^r

I ^{we} do promise to pay to *The Pierce & William Davis Executors to the*
or to their Assigns, the Sum of *One Hundred & fifty pounds two*
Shillings with interest on one half from the 4 day of April 1778
and on the other Half from fourth October following

for Value received of ~~them~~ To which Payment well and
truly to be made ~~we~~ do bind ~~myself~~ Heirs, Executors, and Adminis-
trators, in the Penal Sum of *One Hundred & fifty pounds two shillings*
of Legal Mony

IN WITNESS whereof ~~we~~
have hereunto set ^{our} Hand and Seal, this *9 day February* Day
of ~~the~~ ^{1st} ~~of~~ Anno, Dom. One Thousand Seven Hundred
and ~~Seventy~~ *Eighty*

Scaled and Delivered }
in the Presence of }

T. M. C. C.

Wm. B. C. C.

Robert Marshall

Francis Boylston

Says Adair

13.

Apical
Baykin Bond

Know all Men by these presents that we Francis Boykin
& Andrew Woodly are held and firmly bound unto Davis Day
Administrator of John Day Decd: in the just and full Sum of
one hundred and ^{fifty five pounds five shillings} ~~and~~ current money of Virginia to
which payment well and truly to be made to the said Davis Day
or his heirs or assigns, we bind our selves and each of us our and
each of our Heirs Executors and Administrators jointly and
severally firmly by these presents sealed with our Seals and dated
this 7th day of June 1802 —

The condition of this obligation is such that whereas the said
Davis Day, Administrator of John Day Decd: hath obtained a
Judgment against the said Francis Boykin in the County
Court of Isle of Wight for ~~sixty~~ pounds Interest and cost, and the
said Francis Boykin hath obtained an appeal to the high Court
of Chancery to stay the Execution of said Judgment until the
hearing of the matter of equity upon for that purpose filed, if
Therefore the said Francis Boykin shall satisfy and pay the said
Judgment ~~at common Law~~, and all cost & charges that shall be awar-
ded to the said ~~Francis Boykin~~ Davis Day in case the said Ap-
-peal shall be dissolved then the above obligation to be void or
-therwise to remain in full force & Virtue —

Witness
Wm. Young

Francis Boykin

And: Woodly