

1803-022

Chancery Cause: Anthony Payne vs Robert N. Cooke & William Smelly

Isle of Wight County

other surnames: Outland,
Cook

Peyman
" } Bill
Cochran

(I W)

July '99

Bill filed 6 times

March 1800

~~Bill was to be taken by the state~~

~~State taken for confederates~~

~~to Smelly. Ans. filed~~

as to Smelly & bill taken

for confederates. And abated

as to book

May 1803

Abatesley Defts death

to vest your estate of his possessions therein, which belongs to
doings of the said Cooke & Smiley, are repugnant to every prin-
ciple of justice, more especially as your estate under the law of
descent, is the rightful heir of his son Anthony, his interest in the
land having not been derived by purchase or descent from
his father, In London consideration whereof and for as
much as your estate is a sound remedy in the premises by the strict
rules of the Common Law, and only and properly relievable in a
Court of equity

To the end therefore that the said Robert
N Cooke & William Smiley, who your estate prays may be made
defendants to this bill of Complaint may upon their Corporal oath
fully and perfectly answer make to all and singular the allegations
in this bill contained, & that as Coparship as if the same were
again herein repeated & reiterated, more especially that they
see for the same, whether they did or know, or really believe
that the said John Bullard did give the said two acres of
land & premises to your estate & his son or is therein set forth,
and he nevertheless by your estate the possession of the said
land, has he not retained the possession thereof ever since,

And that your worship will decree that your Complaint
be granted in the possession of the said land against the
claim or claims of the said defendants, and all other
person or persons whatsoever, and that the said gift of the
said John be confirmed, & made absolute & unshaken
by the claims of every person whatsoever, and make any other
or further order or decree for the relief of your Complaints
as may seem meet. May it please the

For answer to Complaint

To The Honorable Justice of the Peace of Isle of Wight sitting in Chancery
Humbly Complaining ^{the} Thence into the Court your orator ~~Anthony~~ Anthony
Payne ~~of the County of Isle of Wight~~

That your orator on or about the day of
intermarried with ^{Quelland} the daughter of a Certain
John Quelland late of the County of Dorset, and by her had issue
a Son by the name of Anthony, That in the lifetime of his said
Son he was on the day of 1795 while your orator
resided in the County of Greenwille where he was settled, the said
John Quelland sent to your orator to come into Isle of Wight to
see him, alleging that he had business of importance to com-
-municate, that upon his arrival the said John Quelland told
your orator that he was desirous in affairs and was very im-
-pressed that your orator & his wife with their Son, should come & reside
near him, and told your orator that upon the consideration of their
removing from Greenwille to the County of Dorset, he would give
your orator & his Son jointly the fee simple in one hundred acres
of his land, upon which your orator agreed, and the said John
went upon the said land & had it marked out by poles & boundaries
and delivered possession thereof to your orator, and pointed out
to him, what part thereof he conceived most advisable to
build & improve upon. Your orator further sheweth
the Court, that in consequence of this agreement he with great in-
-convenience & expense gutted his possessions in the County of Green-
-wille & removed to Isle of Wight as aforesaid, and did on the same
improvements on the aforesaid land, aided too therein by the
said John Quelland, and so thereof continued improving and
greatly improved until the day of 1799 when
your orator's Son then being about five years of age was unfortunately
drowned, leaving your orator childless, This misfortune which
ought to have been compensated, was greatly & detrimentally aug-
-mented by the said John Quelland's declaring, that as your orator's
Son Anthony was dead, he would never convey the said land
to your orator, or make him any right thereto whatever, and in
fact did dispose of it with his other lands to Robert N. Cooke,
who has since made Sale thereof to a Certain William Smalley, who
combining & confederating together, are using their utmost efforts

The Answer of William Smelley to the
bill of complaint exhibited against
Robert M. Cook deceased and himself
in the Worshipful Court of Isle of Wight
County by Anthony Payne -

This Respondent saving and
reserving to himself all right of excep-
ting to the various errors, uncertainties
and imperfections of, and in the said bill
of complaint contained, for answer thereto
or to as much thereof as he is advised
is material for him to answer, & says,
that it is true that the complainant did
intermarry with ... Outland the daugh-
ter of John Outland deceased and that he
had by her a Son by the name of Anthony
as stated in the said bill of complaint.

He also admits that the Complainant with his aforesaid wife once resided in the County of Greenville, and that the said John Outland sent for him the said Complainant, and told him that as he was advancing in years he was anxious that he and his Son and wife should reside near him, and that in consideration of their removing to Isle of Wight from Greenville that he would grant the use and occupation of one hundred acres of Land lying in the said County of Isle of Wight to him and his Son. But here this respondent begs leave to state the facts attending the said agreement which were as follows. The said John Outland intended, and in consequence of that intention agreed that the said Anthony Payne the Complainant should enter and enjoy the said hundred acres of

Land until a particular period when he meant that the said Land should be to the use of his Grandson Anthony Payne who was unfortunately drowned at the age of about five. He thinks that from his recollection he can say, that the said John Outland never intended the said piece of Land or any part thereof for the Complainant in fee simple, nor did he ever make any right or title to the same to his said grand son Anthony Payne which banishes all idea of the Complainant inheriting it from him. But he is confirmed in his belief of this statement from the circumstance of the s^d Outland's having sold this identical piece of Land to Robert H. Cook from whom your Respondent purchased it. This Defendant further states that he is now in the full and peaceable possession of the said

Land, and that he considers his title thereto
as good as can be under the existing
Laws of his Country. Your Respondent
also states that if Your Worship shall
be induced to believe that there ever
was such an agreement entered into
between the said John Butland and the
Complainant as is alledged in his said
bill of complaint, he craves the benefits
of the act of Assembly relative to agreements
and contracts concerning Land, "entitled
an act to prevent frauds and perjuries,
by which it will clearly appear that all
such contracts are void unless committed
to writing. - This Respondent lastly
prays to be hence discharged with his
reasonable costs in this behalf most
wrongfully expended.
Sworn to before me D. Driver
May 5th 1800 -

Payne 9
os. 3
Book 10 3

Excoptes
N. Young
John
Chas. Wood

THE Commonwealth of VIRGINIA to the sheiff of *Isle of Wight* county,
greeting. We command you, that you summon *Robert N. Cook and William*

Smelly

to appear before our Justices of our county court of *Isle of Wight* at their courthouse
of said county, on the *first Monday in March* next, then and there
to answer a bill in Chancery against *them* exhibited by *Anthony Payne*

And this *they* shall in no wise omit under the penalty of 100l. each And have then
there also this writ. WITNESS *James Young* clerk of our said court
the *23^d* day of *January* 1799, and in the
23^d year of the commonwealth

J. Young