

1803-023

Chancery Causes: Nathaniel Wills & co vs Joseph Fulgham & John Barber

Isle of Wight County

Other SURNAMES: Symm  
[Andrew Symm & Company],  
Godwin, Peden, Fullgham  
[Andrew Sym & Company],  
Sym.

Wells et al  $\frac{1}{2}$   
vs  $\frac{1}{2}$  Bill. . . . .  
Fulgham et al  $\frac{1}{2}$

filed Nov 7 C. 99.

the tender consideration wherewith and for as  
much as your. Orator & Oratrix are reminded  
at Law, they solicit the interference of Your  
Worships—

To the end wherefore they pray  
that the said Joseph Fulgham and John Barber  
may be made defendants to this bill of Com-  
plaint, and that they may upon their oaths  
full true and perfect answer make to  
all and singular the allegations herein  
contained, and more especially if the negro  
who was sold to satisfy the execution sued  
out by Andrew Symm &c. was not one of  
the Dower Slaves of Wills formerly  
Peden who was the widow of the said James  
Peden: if the proceeds of the sale of the said  
negro did not exceed the amount of the debt of  
Andrew Symm &c. by the sum of  
and if that sum has not been paid to the said  
Jno Barber? They lastly pray that your  
Worships will decree the said overplus to  
be paid to them, or make such other order  
or decree in the premises as may be  
consistent with justice & equity.

May it please

Rich<sup>d</sup> W. Byrd  
J<sup>r</sup> 2

To the Justices of Isle of Wight County, sitting  
in Chancery humbly complaining, she ~~wrote~~  
unto Your Worships your Ovalor and Ovarice  
Hathaniel Wills and Mary. his wife -

That some time in the year 1799. a  
judgment was obtained by Andrew Symon  
Esq Breuer and Robert Godwin as executors of  
James Peden. That upon this judgment an  
execution was sued out against the estate  
of the said James Peden. That Joseph Fulgham  
the Sheriff of the county aforesaid, could not  
find any ~~other~~ property in the hands of the  
beforementioned executors. That upon this  
circumstance being discovered, the said Sheriff  
was indemnified to sell a negro who had  
been allotted to Mary ~~Wills~~ formerly Peden  
~~as of her dower~~ The female complainant  
as of her dower. That subsequent to the death  
of James Peden her former husband, she  
reintermarried with the aforesaid Hathaniel  
Wills, by Virtue of which he joins in this  
Bill. Your Ovalor and Ovarice further  
state that there was an overplus of  
remaining in the hands of the aforesaid Shff.  
After discharging the debt or value execution  
of the said Andrew Symon Esq. which sum  
was by him paid into the hands of ~~the~~ John  
Barber. That they are in justice and equity enti-  
tled to this sum either in whole or in part -  
and that they cannot obtain the same without  
the aid of this Court -

Isle of Wight July 28<sup>th</sup> 1800 - Joseph Fullyham  
made oath before me a Justice of the Peace  
for said county, that the within answer is true  
to the best of his knowledge & belief

Dolphin Drive

Fullyham }  
to } Answer  
Wm. Wolfe }

The answer of Joseph Fullgham a deft. to a bill  
filed in chancery in the county court of Isle of  
Wight, by Nathl. Wills and Mary his wife, against  
this respondent of John Barber

This respondent for answer to  
said bill, or to so much thereof as he considers  
material, answering saith, that it is true as  
stated in the bill, that by virtue of a fieri facias  
against the estate of James Peddie dec'd. <sup>by A. Syme & Co.</sup>  
issued out of the county court of Isle of Wight, and  
put into his hands to execute as sheriff thereof, he  
did sell a negro boy which he understood was  
a down slave, that there was a surplus after  
satisfying said Execution of £      which he  
paid to the order of Brewer Godwin the acting  
executors of said Peddie, who this respondent believes  
to be the only persons intitled thereto, and the  
only persons of course who could execute a  
legal discharge for the same, and further  
this respondent knoweth not - he begs hence  
to be dismissed with his costs so wrongfully  
sustained. ~~At~~ ~~It~~ Barber for Deft.

this respondent being only an agent or attorney for the ex-  
in this case and having no material interests in the event,  
begs to be dismissed with his costs in this behalf so very  
wrongfully sustained - May it Please &c -

John Barber

City of Wright County, Aug - 20th 1888 - the above named  
John Barber made oath before me, a Justice of the Peace for  
said county, to the truth of the foregoing answer, as far as  
depends on his own knowledge, & as far as depend on the  
information of others he believes to be true -

John E. Smith

Barber  
to  
Wills V. Barber } Answers

41  
The separate answer of John Barber one of the defendants, to the bill of complaint of Nathaniel Will of Mary his wife, filed in the wishfull court of Isc of Wights in chancery, against this respondents and Joseph Tullyham.

In answer to be much of said bill as this respondents considers matter he answering saith, that a negro boy a descendant of one of the slaves of which James Pedin died possessed. (Who for ought this respondent knows may be one of the slaves assigned to said Mary for life, by the last will and testament of said James Pedin her former husband, in lieu of dower, a copy of which will is hereto annexed, & offered to the court as part of this answer.) Was taken by Joseph Tullyham Sheriff of this county, & sold, by virtue of a fieri facie sent out of this county, by Andrew Sym Esq vs said Pedin Executors, that there was a surplus of money, after satisfying said execution, of which said respondents received by virtue of an order drawn by Brewer Godwin the acting executor of said Pedin, with which order your orator received instructions from said Executors, as his attorney, to pay said money, to other creditors of said Pedin's estate, to which purpose the said money has been appropriated. — This defendants conceives that he has been made a party to this suit improperly, and that there is no equity in the complainants bill contained — for the following reasons — he was only acting in this particular case as an agent for ~~him~~ and attorney for James Pedin acting executors, in which capacity, as he had no room for the exercise of his discretion, no responsibility can or ought to attach to him, even admitting the complainants to be injured, which this defendants does by no means admit to be the case. Because said Mary had a larger share of the chattel estate of said Pedin her former husband devised to her by said Will & Testament, which the executors might have detained from her until the debts were paid (& which as this case itself proves) must have been disposed of for that purpose, and which in the event of the grant of a bill being granted, must the executors will be under the necessity of pursuing. And because the will which assigns the negroes from which the one sold issued, to said Mary for life says nothing about their increase which w<sup>d</sup> favour the construction contended for by the complainants — and lastly because by the ~~decisions~~ decisions of the courts of appeals in this state, which gives the true legal construction to the laws of the state, another remedy is pointed out, which as is now here applied for refused.

~~The respondents facts being that the~~

Wells Wife }  
Sum. }  
Wells Wife }  
Wells Wife }

I acknowledge the  
service of the  
within for. Thompson  
Jr.

Wells Wife  
O. G. High

Wells Wife  
O. G. High

March 1800

lands

March 1802

sub. P.

May 1803  
Pth. bill L. in A. &  
Sub. for Dept. his cont.  
Pth.

144 Cents  
100  
144 Pth. if P.

The Commonwealth of Virginia to  
to the <sup>baillie</sup> ~~Sheriff~~ of Isle of Wight County, greeting:  
We command you to ~~take~~ summon Joseph  
Thelgerson Sheriff

of us before us with him or his bailie at the  
~~safely~~ so that you have his body  
before the Justices of our said County  
Court at the court house of the said County on  
the first Monday in November next to answer  
Nathaniel Wells & Mary his wife

And have there this writ. Witness our  
Young Clerk of our said Court at the court  
house the 11th day of October — 1799  
in the 24th year of the Commonwealth —

J. J. Young  
Clerk

Caecilia

William H. H. H.  
for  
Dr. J. H. H.

Wills wife

or

Barber

Spa. on Chg.

re. Wm. H. H. H. 99. after all. H. H.  
Sp. H. —

THE Commonwealth of VIRGINIA to the Sheriff of *Isle of Wight* county,  
greeting. We command you, that you summon *John Barker*

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 *him* exhibited by *Nathaniel Wills*  
*and Margherit wife*

And this *he* shall in no wise omit under the penalty of 100l. And have  
then there this writ, WITNESS *James Gearing* clerk of our  
said court, the *11th* day of *October* 1799. and in  
the *24th* year of the commonwealth,

*J. Gearing*

Presented Saml Woodley Esq  
for Secy of the Board

Wills Key?

To: } als Spain Chy.  
Barber }

THE Commonwealth of VIRGINIA to the sheriff of Isle of Wight county,  
greeting, We command you, that you summon John Barber

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 him exhibited by Nathaniel  
Wills and Mary his wife

And this he shall in no wise omit under the penalty of 100l. And have  
then there this writ, WITNESS James Young clerk of our  
said court, the 8th day of November 1799 and in  
the 24th year of the commonwealth,

J. Young  
J. Young