

1805-037

Chancery Causes: Samuel Leghtfoot & Richard Williams vs John Scarsbrook

Isle of Wight County

Wills' exors

other surnames: Smelly,
Smith, Ward, Atkins

To the Honorable Court of Isle of Wight County sitting
in Chancery humbly complaining Shew unto the Court
your orators Lemuel Lightfoot & Richard Williams of the
County aforesaid.

That a Certain John Smalley late of this County departed
this life on or about the day of 17 after having
made his last Will and Testament, wherein he nominated
and appointed Mary Smalley his widow & Heir, and a
Certain William Ward his executor and executrix, That
your orators became bound in the usual form as securities
for the said executor as well fully appear from their bond
the condition of which is referred to. That in the life
time of the said John Smalley he was in April the day
1770. the said John Smalley gave his bond conditioned
for the payment of eighteen pounds to a Certain John
Tob Wills, who is also lately deceased. That in March
1787. the said John Tob Wills. in a suit brought by the
Justices of the County aforesaid, on the said executor's bond
recovered against your orators, as well as the executor a
judgment for the said debt, interest & Costs, and Wills
& Emanuel Wills the executors of the said John Tob Wills in
May 1796 on the judgment aforesaid recovered a second
judgment against your orators for the same debt, interest &
Costs, whereby your orators appear now to be chargeable &
subject to execution for the same, all the your orators were

never further bound, than that the executors aforesaid, should administer the estate of the said deceased according to law. Your orators conceive it necessary to suggest to the Court, that upon the institution of these several suits there appeared to be such a glaring impropriety, that they disregarded them altogether, and made no defence. Well knowing as they conceived, that this Court never would give a judgment against them, until a debt was found against the executors was found. which had never been in dispute as your orators know of.

Being barred by the act of limitations from superseding the said erroneous judgments your orators are driven to a Court of equity for relief, having not the smallest doubt, but it can be made manifest, except in ~~the case~~ with Thomas Smith Esq. which was done

under the authority, and by the express direction of this Court that the estate of John Smalley, was lawfully & fully administered; and in the administration aforesaid, your orators have ~~no~~ reason to believe that no debt of any kind have been paid by the said executors since the institution of the suit brought by the said John Sch Wills, but that the whole estate was exhausted by payments & judgments obtained, anterior to the said John Sch's demand.

In under consideration whereof, and for as much as your orators are without ^{only} remedy in a Court of equity. To the end therefore that the said Wills & Emmanuel

Wills executors of John Sch Wills deceased (who your orators pray may be made defendants to this bill of Complaint) may upon their corporal oaths fully, true and perfect answer make to all and singular the allegations in this bill contained: and that as fully and sufficiently as if the same were again repeated and interrogated.

And that your orators will injoin the said defendants and all others concerned from further proceedings at law, until this matter is fully heard before this Court in equity, and then make the said injunction perpetual, as to the judgment aforesaid, and make any other or further order or decree therein as may be found on the basis of equity and justice.

May it please the

Yours truly for Campbell

Sworn to in Court by Lem^d Dightfoot
November 8th. '90.

Jⁿ Young Esq. Secy.

Lightfoot 40
Bill of
Wills exors } Injunct.

November '95
Bill filed 40
Sept. '98.
Bill taken for confessed

March 1800
Bill taken for confessed

May 1800
Bill taken for confessed act
aside leave given to file
ans. 40

Augt. 1800
Cont. for Sept.

July 1801
Ans. filed rule for
disolution

March 1802
Cont. c

June 1804
Cont.

Sept 1805
Cont.

Sept. 1805
Injunct. dissolved & bill
prayed an appeal &c.

Disposition An
Wills exors } Bill
(Ans)

To the Worshipful Court of Isle of Wight County, sitting in Chancery
humbly complaining she unto the Court your Orators Samuel Slightfoot and
Richard Williams of the County aforesaid. That a certain John Smelly
late of this County departed this life on or about the day of 17
after having made his Will and Testament, wherein he nominated and
appointed Mary Smelly his Widow and executrix, and a certain William
Warg, his Executor and Executrix; That your Orators became bound in the
usual form as Securities for the said, executor as will fully appear from
this bond, the condition of which is referred to: That in the life time of the
said John Smelly to wit, in April the day 1790. the said, John Smelly
gave his bond, conditioned for the payment of Eighteen Pounds, to a certain
John Sck. Mills, who is also lately deceased. That in March 1787. the
said John Sck. Mills in a suit brought by the Justices of the County
aforesaid, on the said, Executors bond, recovered against your Orators as
well as the Executors, a Judgment for the said, £18..0 Interest and costs,
and Willis and Emanuel Mills executors of the said John Sck. Mills died
in May 1796. on the Judgment aforesaid, recovered a second Judgment
against your Orators for the same debt, Interest and costs, whereby your
Orators appear now to be chargeable and subject execution for the same,

Altho' your Orators never further bound, than the Executors aforesaid,
should administer the estate of the said, decedent according to law.

Your Orator conceives it necessary to suggest to the Court, that upon
the institution of these several suits there appears to be such a glaring
impropriety, that they disregard them altogether, and made no De-
fence, well knowing as they conceive, that this Court never would give
a Judgment against them, until a devastant against the Executors was
found, which had never been in issue as your Orators know of. being barred
by the act of Limitations from superseding the said, erroneous Judgments
Your Orators are driven to a Court of equity for relief -

having not the smallest doubt but it can be made manifest, except in a case with Thomas Smith Lett. which was done under the authority and by the express directions of this Court that the estate of John Smelly, has been legally and fully Administered. And in the Administration aforesaid, your Orators have reason to believe that no debts of any kind have been paid by the said executors since the institution of the suit brought by the said John Sek. Mills; but that the whole estate was by payments and Judgments obtained, anterior to the said John Sek. Mills, demand.

In tender consideration whereof, and for as much as your orators are without remedy only in a Court of Equity. To the end therefore that the said Willis and Emanuel Mills executors of John S. Mills decd. who your orators prays may be made defendants to this bill of complaint, may upon their corporal oaths, full, true, and perfect Answer, to all and singular the allegations in this bill contained, and that as fully and sufficiently as if the same were again repeated and interrogated

And that your Worships will injoin the said defendants, and all others concerned, from further proceedings at law, until this matter is fully heard before this Court in equity, and then make the said Injunction perpetual, as to the Judgment aforesaid; and make any other or further order or decree as may be founded on the basis of equity and justice

May it Please vs

Forbrough for Comptt.

A Copy
Teste

W. Lightfoot D. C. 1776.

The Pleas of Wills and Int Wills Executors of John de Wills, defend-
ants to the bill of Complaint of Samuel Lightfoot & Richard
Williams Complainants, in the worshipfull Court of Isle of
Wight in Chancery. —

The defendants by protestation not Confess
Or acknowledging all or any of the matters and things in
the Complainants said bill of Complaint contained, to be
true, in such manner and form as the same are therein
and thereby charged and alledged, for plea unto the
said bill say — That if the Complainants, either in their
individual and ordinary Capacities, or as securities, for
the executors of John Smalley, as in the bill mentioned,
ever had any Cause of Complaint, against these defendants,
Or ever had any equity against the judgement obtained
at law, by these defendants testator, against them. ~~Or against~~
~~the judgement subsequently obtained by the defendants~~
~~as executors of John de Wills against them, as in the bill mentioned~~
(Which these defendants do in no sort admit) — the same did
accrue or arise above five years before filing the said
bills, and above five years before serving this defendants with
any process to appear and answer the same. — and therefore they
plead the Act of Limitations for such Cases provided. —
And for further plea these defendants say —
That the Complainants by their own shewing, are barred
by the Act of Jeofails — because they shew that in two several
actions at law against them ~~for the~~ on which the two
Judgements complained of were obtained, they were
in Contempt to the Court and declined every kind
of defence, although the equity now Contended for
ought, to have constituted their defence at law. — and
Therefore they plead the said Act of Jeofails ~~The Law made under it, in bar of the Complainants~~
And for another and further plea these
defendants say that, if ever the Complainants in the Capacity
of securities for John Smalleys executors, ever had any Cause
of Complaint against these respondents. Or ground of
equity against the Judgement in the bill spoken of which
was sued out by these defendants ^{or} the Complain-
ants, Which these ~~respondents~~ defendants by no means admit
the same did accrue or arise above five years

before filing the said bill, and above five years
before they were served with any process to ~~appear~~
appear to and answer the same. and therefore these
defendants plead the act of Limitations for such
cases made and provided, and prays to have
the benefit of the said acts - and the law and practice
under them. - All which matters these defendants
settle over - and plead in bar of the Complainants
said bill, and of the Complainants pretended demand
for which he seeks to be relieved by his said bill.
and these defendants pray to be hence dismissed
with their reasonable costs in this behalf wrongfully
sustained. - Thus Done Barlow for Defts

Witnesses Ex^{rs} }
do } Plea-
Lightfoot Herms }

To the bill exhibited in this Court by Samuel Lightfoot & Richard Williams, complainants, against Morris & Emanuel Wills, execs &c of John S. Wills, depts, the Defendants, saving to themselves all the benefits of excepting to the bill of the complainants, answer as follows. — They admit, that their testator had a demand, founded on a bond, against John Smelly, dated, as they believe, in the year '81. For that demand, institution was made in the Court of Chancery of this County, & obtained a judgment, against his executors. The suit was commenced as early as Sept. '83, & the judgment therein was rendered in Sept. '88, upon the confession of the execs of Smelly. They also admit, that, some time afterwards, their testator instituted another suit in the names of the Justices of this County, against the execs of John Smelly, & the Defendants, their securities, founded on the bond given by the former, upon their qualification as execs, for the regular administration of the assets of their testator, & entered into by the latter as their securities; & that, in this action, ^{the} complainants also obtained a judgment. The Defendants likewise admit, that, since the death of their testator, they have received the latter's goods, by virtue of a writ of *facias*. But the Defendants cannot conceive, that the complainants made 'no defence' to the obtaining of these judgments against them, because of the 'glaring impropriety' of the suits! On the contrary, it is generally found, that the principle of self-interest ~~always~~ prompts one to make a defence,

when he has a good one to make, & that the same
principles generally induce one to decline the expense &
trouble of a defence, ^{if he be} a conscious rep. of its weakness
& inutility. The Defendants have more respect for the Court
of Law of this County than to believe, that in an action
brought against the execs of J. Smelly, & their securities, for
the ~~assault~~ ^{assault} purpose of setting at the latter, the Court would
have given ^{a judgment} against the securities, without being satisfied, by
sufficient evidence, of their liability to pay the demand in
question, in consequence of assets having come to the hands
of their principals, the execs of J. Smelly, for that purpose,
& having been misapplied. But the Complainants, ~~have~~ ^{say, they have}
not the smallest doubt, but it can be made manifest,
except in a case with Thomas Smith gent. which was done under
the authority of this Court, that the estate of John Smelly has
been legally & fully administered. The Defendants, however,
must still doubt upon this point — indeed, must still be-
lieve, that this point cannot be established. Indeed, the manner
in which the first judgment was obtained, admits that the
estate of J. Smelly has not been definitely made up by the
securities, now the Compls, in the subsequent action,
corroborates the admission. It is to be regretted, that the
Compls did not attempt to share the regular & full admin.
of the personal estate of J. Smelly, at an earlier period, when
more evidence, upon the subject, than can now be had,

might have been adduced. Among other evidence, now
lost, may be mentioned, the testimony of Jesse Atkins, late
of this County — His testimony was important, upon this sub-
ject — He is now dead. But it is believed, that the point
is settled, & that this Court will not suffer it to be again agi-
tated, particularly as it cannot, at this great distance of time,
have the full light of evidence, which it must formerly
have had, & which it might again have had, by way of
special indulgence to the Compls, had they been come
forward in time? It seems not a little singular, that the
Complainants should complain of the rigid rules of law, & come
into this Court for redress; and at the same time, endeavour
to better their case here, by alleging, that the John S. Wills
had gotten a judgment against them, without having previ-
ously conformed to a doubtful & irregular practice of
the Courts of Law; altho' too the very same points must
have been established, in the way in which he proceeded,
that would have been, had he adopted the procedure,
which the Compls have been so good as to point out,
as the only legal & proper one! This Court will see,
by adverting to the case of Tho. Smith, mentioned by
Compls, evidence of J. Smelly's execs having misapplied
the assets of their testator. But as the point is settled,
the Defendants suppose, that case will not be looked
into. Upon the whole, the Defendants conceive, that
they are, both legally & equitably, entitled to enforce

The judgment obtained against the Complainant, -
I therefore, they trust, that the injunction granted to
the Compts will be dissolved; & that they, the
Defendants, will be hence disburied with their costs.

Attest Wm. Wells, Adm.
Executor of J. S. W.
Dec 1800

- Isle of Wight County, to wit,

This day Willis Wells, acting exor of J. S. W.,
made oath before me, a Justice of the peace for the
County aforesaid, - that the foregoing answer is true, so
far as it rests upon his own knowledge, & that so far
as it is otherwise derived, he believes it to be true
Given under my hand, this 18th day of August
1800.

John Capron

Willis dat. more de
ad. 3 August
light foot dat.

Isle of Wight County, to wit, ^{by} Francis Young made oath before me
that he saw Lemuel Lightfoot, and Richard Williams sign the
within release of errors, Given my hand this third day of
July 1798

John Barber

Islcof Wight County, to wit,

We do hereby agree and release all errors
at law on a Judgment and proceedings which Willis Emanuel
Wills Executor &c of John Lch. Wills decd. hath obtained against us
in Islcof Wight County Court for the sum of Eighteen pounds with
Interest &c from the 25th of April 1798. and the costs Given
under our hands this day of 1799

Amuel Lightfoot

Richd Williams

Release of Error &c

Isle of Wight County, to wit, We do hereby agree & release all errors at law
on a Judgment and proceedings which Morris & Emanuel Wills Esqrs: V. of John
Lch: Wills Decd: have obtained against us in Isle of Wight County Court for the sum
of Eighteen pounds with Interest V. from the 25th: of April 1772 and the Costs,
Given under hands this

day of
Signed 179

Serimel Lightfoot
Richard Williams

A copy Teste of
In Witness V. Decd:

William & M^{rs} J^{rs} M^{rs}
High Street

Announces of
Exercises in a
Lute of L. M. M.

Know all men by these presents that we Lemuel Lightfoot, Richard Williams,
and Henry Howard, are held and firmly bound unto Willis and Emanuel Wills executors
of John L. Wills decd. in the sum of thirty six pounds, Current Money of Virginia,
and four hundred and twelve pounds of Tobacco ^{thirty shillings}
to which payment well and truly to be made unto the said Willis and Emanuel Wills of
their heirs and assigns, we bind ourselves our heirs Executors and administrators, jointly
and severally firmly by these presents, sealed with our seals and dated this 7th day
of March 1797

The Condition of this obligation is such that whereas the said Willis &
Emanuel Wills executors of John L. Wills decd. have obtained a Judgment
at common law against the said Lemuel Lightfoot, and Richard Williams,
in the County Court of Isle of Wight for Eighteen pounds and two hundred and
six pounds of Tobacco and fifteen shillings — and Costs and the said Lemuel
Lightfoot and Richard Williams have obtained an Injunction to stay the Execution
of the said Judgment until the hearing of the matter in equity, upon a bill for
that purpose filed. If therefore the said Lemuel Lightfoot and Richard Williams
shall satisfy and pay the said Judgment at common law and all Costs & Damages that shall
be awarded to the said Willis and Emanuel Wills in case the said Judgment shall be
disposed, then the above obligation to be void or else to remain in full force & Virtue.

Lemuel Lightfoot

Sealed & Delivered
In the presence of

J. Young

Rich^d Williams

Henry Howard

200
Tob. 450
7th March 1797

10
100
30

206
212

Lightfoot V:

as: { Injun. Bone

Willis sign.

filed 7th. March

1797