

1806-013 Chancery Causes: John Dobbs vs Mary Holmes, admx of Joseph Holmes

Dale of Wight County

Other SURNAMES: Southall,
[Holmes & Southall], Wilson,
Fullgham, Homes, Fulgham

To the worshipfull Court of Ch of right in Chancery
Sitting humbly Complaing sheweth unto the Court
your Orator John Dobbs. That your Orator had some
dealing, with a certain Doct Joseph Holmes late of
this County, that Holmes died leaving the accounts
unadjusted, that many Holmes the adm^r - Committed
On actions at Law against your Orator on the
Acct - without giving the just Credits, and that
Doct James B Southall as the surviving partner
of Holmes and Southall, also sued your Orator,
upon an acct - suggested to be due them by y^r -
Orator. That at November term last these Causes
Came on, and a Judgement obtained in the
Case of Holmes adm^r - for the sum of - upon
Which Judgement execution has been sued
out & your Orator desirous to the necessity of
executing a forthcoming bond &c. - These
proceedings, your Orator states, though perhaps
legally Conducted are unjust and inequitable, for
that your Orator has a just & fair Claim, as adm^r -
of - Spencer Withers - against the said Holmes
for the sum of - £9. 17. 6. which was always
intended to be brought into their Settlement, both by
Holmes and your Orator; but Holmes it seems
willing to give the estate no necessary Credit or

your Orator says that balance due to your Orator
in his representative capacity could not in law be
offered as a discount against the acct on which
the bill was bottomed. Your Orator further states
that the acct due to him as adm^r of the said account would
not have been suffered to remain so long due, but that
because Holmes had virtually agreed to include
it in the settlement for which reason your Orator
became responsible to his intestate estate and
has actually paid it.

Your Orator further sheweth unto the Court
that he has an assignment of the judgment made
out of Suffolk District Court by Joseph Tully
against the said Mary Holmes for a sum
exceeding the whole judgment against him
which cannot be satisfied for want of property
on which to levy it.

He further sheweth to the Court that
the bill is in the name of J^r South & Son
is in fact for the use of Holmes estate, and not
for any manna for South & Son's advantage.

In tender consideration whereof and
in as much as your Orator is remedied only in
a Court of Equity - He prays your Worship that
the Plaintiff at law and all other persons be
injoined from further proceeding on the said
judgment until the parties are fully and fairly

heard in equity, that the Plaintiff at law be
made dependant to his bill and may on oath
full true and perfect answer make to all its
contents, and finally that the injunction be
perpetrated. — may it please the Court to
grant such relief as in their judgement
may appear just and equitable.

Barlow for Plaintiff

I do hereby declare ^{5th} 1803. Sworn to before
me a Justice of the Peace.

W^m H. King Jst

112
Lobby. 2 Bill -
17
Holmes

Dec^r. 1803

bill filed

Mar. 1804

rule for ans^r

April 1805

visi decree

July 1805

Obtains by the death

July Indgments
1805
No 1.

To the Worshipful Court of Isle of Wight in Chancery sitting, humbly
complaining sheweth unto the Court your orator John Dobb- That your Ora-
tor had some dealings with a certain Doctor Joseph Holmes late of this
County, that Holmes died, leaving the accounts unadjusted, that Mary
Holmes the Administratrix commenced an action at Law against your
Orator on the account without giving the just credits, and that Doct Holmes
W. Southall as the Surviving partner of Holmes and Southall, also sued
your Orator upon an account suggested to be due them by your Orator.
That at November term last these causes came on, and a Judgment ob-
tained in the case of Holmes Administratrix for the sum of upon which
Judgment execution has been sued out, and your Orator to the
necessity of executing a forth coming bond. These proceedings your
Orator states, though perhaps legally conducted are unjust and ine-
quitable, for that your orator has a just and fair claim, as Admini-
-strator of James Wilson against the said Holmes for the sum of £9-
17-0 which was always intended to be brought into their Settlement,
both by Holmes and your Orator; But Holmes it seems omitted to give
the necessary Credit on your Orators account, and that balance due to
your Orator in his representative capacity could not in Law be
offered as a discount against the account on which the suit was
bottomed. Your Orator further states that the account due to him
as Administrator as aforesaid, would not have been suffered to re-
main so long due, but because Holmes and he had virtually agreed
to include it in their Settlement for which reason your Orator became
responsible to his Intestates estate and has actually paid it.

Your Orator further sheweth unto the Court that he has an af-
firmation of a Judgment sued out of Suffolk District Court by
Joseph Fulgham against the said Mary Holmes for a sum

exceeding the whole Judgment against him which cannot be satisfied
for want of property on which to levy it. We further sheweth to the
Court that the suit in the name of James B. Southall surviving &c. is
in fact for the use of Holmes's estate, and not in any manner for
Doct. Southall's advantage - In Tender consideration whereof and
forasmuch as your Orator is remediless only in a Court of Equity -

We prays your Honorships that the Plaintiff at Law and all other
persons be enjoined from further proceedings on the said Judgment
until the parties are fully and fairly heard in equity. That the Plain-
tiff at Law be made Defendant to this bill and may on oath full, true,
perfect answer make to all its contents, and finally that the Injunction
be perpetual. May it please &c.

Barber for Plaintiff

Dobbs

no.

Copy bill

Holmes Admop.

Copy Teste

W. Lightfoot D. C.

The answer of Mary Holmes administratrix of Joseph Holmes to the bill of complaint exhibited against her in Isle of Wight court, by John Dobbs.

This Respondent saying to herself all right of excepting to the various errors contained in the said bill, for answer thereto or to so much thereof as she is advised is material for her to answer, Says that it is true she did obtain such a judgment against the compt. as he has alledged in his bill, but she knows nothing of any agreement between her testator Doctor Holmes and the compt. respecting the discount of a debt ^{said to be} due to Spencer Wilson, nor does she believe that there ever was any such agreement. A statement of two facts will be sufficient to prove the improbability of this part of the compt's bill, the first is that the said doctor Jos. Holmes left an account (which she believes to be just) against the estate of the Spencer Wilson amounting to £ and the second is, that the compt. at the trial of the cause before the jury wholly denied the account on which the judgment complained of was obtained which as a man of honor he could not have done if such a discount ever was agreed, for an agreement to discount is an admission of each party's claim. She knows nothing of any claim of the compt. as representative of Spencer Wilson against the said Joseph Holmes and therefore she insists on its being proven, she submits to the court the propriety of decreeing that the compt. pay to her the aforesaid amount due from Spencer Wilson as well as of disproving the injunction - on - If the compt. has the advantage of a judgment against her as admin. of Jos. Holmes (which requires proof as it is unknown to her) it surely can not effect this case. For the court will not suffer such low artifice to make a judgment valuable in the hands of the compt. which was of no value in the hands of Joseph Fulgham, particularly as orphans will be materially injured by it. She positively asserts that the estate of the said Joseph Holmes is not sufficient to pay off the claims of his wards which have been established by the decrees of this court, and that there is another suit depending against her by another ward for the

recovery of her portion. She repeats that these claims
~~one~~ (which are debts of the first dignity) are more than
sufficient to absorb the whole of the said Joseph Holmes's
estate. She lastly prays to be hence dismissed with
her costs in this behalf expended.

Sworn to before me a justice of the peace for
the said county by Mary Holmes.

July the 5th 1806—

Mills Garden

Dobbs... {
" { Answer
Holmes contra }

Dobb
" Missi.
Holmes Admiring

Escorted

Henry W. Kelly
No. 1000 1/2 St.

Isle of Wight County to wit,

John Dobbs

against

Mary Holmes Admin: of Joseph Holmes decd. Deft.

April Court 1805

Comptt.

On Injunction

The Defendant having failed to file his answer to the bill of complaint, exhibited against her by the complainant; It is ordered that unless the Defendant appear here at June Court next, and file his answer, that Judgment will be entered against her for the complainant, agreeable to the prayer of said bill—

Teste Nathl Young Clk.

The Commonwealth of Virginia,

To the Sheriff of

County, greeting:

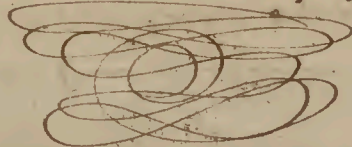
WE command you, that of the Goods and Chattels of *Joseph Holmes*
~~now in the hands of Mary Holmes his administratrix~~

in your bailiwick you cause to be made *Two hundred Dollars*
current money of Virginia which *Joseph Fullingham*

late in our District Court, held in Suffolk, hath recovered against
Hers — for debt; also, *One penny, Seven Dollars & Ninety six*
cents, which to the said Fullingham in the same Court were
adjudged as well for his damages as for his costs by him about
~~*which to the said his suit in that behalf expended, if so*~~
~~*in the same Court, were adjudged much thereof, the said Fullingham*~~
Holmes hath in her hands to be administered, but if not,
then the costs to be levied of her own proper goods & chattels
~~*costs by*~~ — ~~*about*~~ — ~~*paid in that behalf expended; whereof the*~~
said Holmes is

convict as appears to us of record. And that you have the same at the
Clerks Office of our said District Court, in Suffolk, on the *Second*
day of *August* next, to render unto the said *Fullingham*
Damages of the debt and costs aforesaid. And have
then there this writ. — Witness *John Carter Littlepage*, Clerk of our
said Court, at Suffolk, the *30th* day of *June* 1802
in the *26th* Year of the Commonwealth.

John C Littlepage



Memo:

This execution is to be discharged by the
payment of Seventy eight Dollars & thirty four cents
with Six per cent interest thereon from the 11th Day
of October 1800 till payment of the Damages & costs
herein mentioned.

John C. Lillipage



Fullerham }
Holmes }
H. J. J. J.

W

June 3rd 1802 -

So hereby assign over unto John Rodds. all my right, title,
and interest in and to this Execution for value received

Jos. J. J. J.

A/C
Doct^r J. Holmes

vs
Dobbs —

1803 nov — fa depts

Mr Joseph Holmes	Dr			
To the Est. of Spencer Wilson dec ^d				
To keeping a Negro Woman				
Lucy & 2 Children the year 1798		7	10	0
To 20 bushels Oats	at	2	7	6