

1811-015

Chancery Causes: William Mountfort vs John Eley's infants, by v c

Isle of Wight County

Other SUR Names: McClenney,
Council, Mountford

Wm Mountfort
is
Elected as Bill
Exhibits enclosed
Johnson

March 1811 Bill filed
Augt. 10th 1811 and filed & heard
decided & ordered that the deft. Godd
Commis^r should make a party for his
ward make conveyance of the
lands in the bill ment^d &c. per

Isle of Wight

that on the 24. of Decr. 1807. the said Zachariah McCuney advanced the whole sum borrowed by your orator of the said John Eley, to wit Fifty seven pounds fourteen Shillings Six pence, which was then paid to the said John Eley as will appear from his receipt bearing date the 24. Decr. 1807. the S^r receipt is here annexed & prayed to be taken as a part of this bill. Your Compt. here begs leave to remark that the phraseology of the receipt as well as the bond of Eley prove that the conveyance was intended merely as a security for the repayment of the money lent. & the receipt more over proves that according to the understanding & true meaning of the parties the Land was redeemed on the 24. of Decr. 1807. For on that day, the day preceeding the one on which the first payment was to be made your orator discharges the whole debt principal & interest.

That at the time the S^r money was advanced by the said Zachariah McCuney he took an assignment of the bond from Eley as will appear from the S^r bond hereto annexed. — That the said bond was to be held by the said McCuney until your Compt. should repay him the money with lawful interest. That your Compt. not having it in his power to raise the money on the day fixed on to do it on the day of Decr 180 the said McCuney refused to restore the S^r bond & contended that Eley was bound to convey the title to him. — That your orator repeatedly tendered the amt. principal & int. to the said McCuney which he uniformly refused during the life time of the said Eley to receive. Your Compt. states that Eley was at all times

after the 24. of Decr. 1807. willing to reconvey the Land to this Compt. on obtaining his bond. But your Compt. could not during the lifetime of the said John Eley obtain from the said McCuney the said bond. Your orator was at all times willing to have released the S^r Eley from all liability on his bond on receiving a reconveyance of the Land. Your orator here refers to the assignment on the back of the bond & the receipt hereto annexed & above referred to. But now so it is may it please your Honours that it is impracticable for your orator to obtain a reconveyance of the said Land except by the aid of this Hon^{ble} Court. To the end therefore he prays that your Honours will lend your aid & that, Mills, Mount St. Zebulon, Hartwell & Willis Eley infant

The children & devisees of the S^r John Eley be made parties defendants to this bill — That as they are infants of tender years & under the age of twenty one years some fit & able person be appointed to defend them. That the S^r Debt. be compelled to answer the several allegations here in contained & as fully & particularly as if he were here again repeated & they thereto particular by interrogated. — That your Honours will decree that the S^r Land be reconveyed to your orator that you will grant to him such other & further relief in the premises as may be deemed meet & consistent with the principles of Equity

May it please your Honours to grant to him the writ of Subp^a. Commanding &c.
May it please &c.

J. P. M. M. att^o for Compt^r
4

To the Honble the Court of Isle of Wight County in Chan-
cery sitting

Humbly complaining shews unto your Honors
your orator William Mountfort that some time on or
about the 12th day of May 1807 he borrowed of a certain John Eley late of the
said County the sum of Fifty seven pounds fourteen shil-
-lings Six pence to be returned with lawful interest there-
on in the following proportions & at the following periods
to wit: Forty four pounds four shillings Six pence on the
twenty fifth day of December one thousand eight hundred
seven & thirteen pounds ten shillings on the twenty fifth
day of December one thousand eight hundred & eight.

That in order to indemnify & secure to the said Eley
the repayment of the aforesaid sum of money with
interest at the several periods stipulated & agreed on
your Complainant executed to the said Eley an absolute
conveyance in fee simple for a certain tract or parcel
of land situate lying & being in the County aforesaid
containing by estimation one hundred & twelve Acres more
or less, it being the land left to this Compt. by his father.
That at the time the said Eley received the said
conveyance he executed his bond in the penalty of Fifty
seven pounds fourteen shillings Six pence, to your orator
conditioned to recover to him the said tract or parcel of
on the aforesaid sum of money with interest being
paid - Your Compt. here annexes the 1st bond bearing
date the 12th day of May 1807. & prays that it may
be taken as a part of this bill. -

Your Compt. represents that the said John Eley ^{having} a demand
for money applied to your orator for payment - That being
unable himself to raise the money he applied to a
certain Zachariah M. Cleuney ^{to lend} it to him who agreed to
do so on being secured by a lien on the land which
your Compt. at a ... agreed to give.

Montfort
as
Lloy, for you } Answer

that it is in their power to do either the
one or the other, as they choose; and
they state, that they choose to pay the
penalty of the said bond in preference
to recovering the land; which ^{they} are
readily & willing to do at any moment.
Your Respondents know nothing upon
the subject of their own knowledge
and therefore pray to be hence dis-
missed with their costs in this behalf
expended —

The names of Mills Eley, Merit Moon Eley,
Zebulon Eley, Hester Eley & Willis Eley
~~inhabitants by Godwin Council their guardians~~
The children and devisees of John Eley, to the
use of complaint exhibited against them
in the worshipful court of Isle of Wight
by William Mountfort.

These Respondents admit, that
the conveyance from the complot Mountfort
to their father was intended as the evidence
of a conditional sale, although it seems
to be an absolute conveyance upon the
face of it. They admit that the said
Jno. Eley executed to the said Mountfort
a bond in the penalty of fifty seven pounds
fourteen shillings and six pence, conditioned
to recover the said land to the said
Mountfort upon receiving back the
money he had lent him. ~~Upon the said~~
Respondents are advised that they are
bound to pay the penalty of this bond
or to recover the land agreeably to its
condition to the said Mountfort; but

Mountford

ms

3

Selfhood as
in
Channing

M. Channing &c

Johnson for
compt. 3

Nov^r 1809

Rule for bill

aug^r 1810

als. sp. a

Recd. at M^r Channing & John Channing &c
Jany. Mc. W. H. H.

The Commonwealth of Virginia to the Sheriff of Blenheim County Greeting;
you are hereby commanded to summon Zachariah M. Clemy, and John
Ely n — n — n — n — n — n —

to appear before the Justices of our county court at the Courthouse of said County
on the first Monday in November next ~~then~~ and there to answer a bill
in chancery against them exhibited by William Mountford n —

And this they shall in no wise omit under the penalty of £100 each
and have then there this writ. Witness Nathaniel Young Clerk of our said
Court at the Courthouse the 14th day of October 1809 in the 34th year
of the commonwealth —

Nathl. Young
— (S) —

Note The Ship will execute this subpoena on Mills, Merit M. Zebulon Hartman
and Willis Eley only

W. Young

Mountford

17 } Mr. Sp. in Ch. 4

Mr. Cleary

Johnson for 3
compts. 3

~~Executed~~ Service acknowledged
H. W. Mills

The Commonwealth of Virginia to the Sheriff of Isle of Wight County greeting you are hereby
commanded to summon Zachariah M. Clemmings Mills Eley, Merit M. Eley, Zebulon Eley
Hartwell Eley, and Willis Eley infants children of John Eley et al
to appear before the Justices of our county court at the Courthouse of said County on the
first Monday in August next then and there to answer a bill in chancery against
them Exhibited by William Mountford

and this they shall in no wise omit under the penalty of £100 each and have
then there this writ. Witness Nathaniel Young Clerk of our said Court at the Courthouse
the 5th day of July 1810 in the 35th year of the Commonwealth

Nathl. Young
C

December 24th 1807

I assign the within contents
to Capt Zachariah Mc Genny —

William Mountfort

Capt Whitehead

October one thousand eight hundred
& nine. I Re. assign the within
contents to William Mountfort

Charlotte Mc Genny

Zachariah Mc Genny

William Mc Genny

Thow all men by these presents that I John Eley of the County
of Blount are held and firmly bound unto William Mount
fortt of said County in the full and full sum fifty seven pounds
fourteen shillings & 6 lawful money of this Commonwealth to which
payment well and truly to be made I bind myself my heirs &
Executors Adm^r &c. as witness my hand this twelfth day of may
one thousand eight hundred and seven

The Condition of the above obligation is such that where as
the said William Mountfortt has given the sd John Eley a deed
for a certain tract or parcel of land left him by his fathers
will for the sum of fifty seven pounds fourteen shillings
& 6 lawful money of Virginia, which said sum is to be paid unto
the said John Eley at the following periods forty four pounds
four shillings & 6 on the twenty fifth day of december next &
thirteen pounds ten shillings on the twenty fifth day of decem^r
Eighteen hundred & eight, now if the said John Eley do and
shall make the said William Mountfortt the same right
to the afore said land as he has received by the afore mentioned
deed, by the said William Mountfortt paying the sd John Eley
the above mentioned sum of fifty seven pounds fourteen shillings
& 6 in the following manner above mentioned then in that case
the above obligation is void other wise shall remain in full
force power &c.

Witness

Arthur Fowler
John M. Eley

John Eley (Seal)

J Derrins
Note

\$ 6⁷⁵/₁₀₀

Left to a Treasurer
paid 100 g

am. \$20

1807. 15

Nine months after date, We promise
to pay, or cause to be paid unto William
Bailey adm^r of Lemuel Bailey dec^d or
order, the sum of Sixty seven dollars & 15 C^{ts}.
_____ for Value received.

Witness our hands, & Seals this 17th day Dec. 1807.

Test.

Emelius Dering

John Dering Secy

John Goodson Secy

October, the 20th 1899
I enclose the within receipt to
William Montfort
Zachariah M. Clemmy

Charlotte M. Clemmy
William M. Clemmy

December 24th 1807

Recd of Capt Zachariah M Cluney

The sum of fifty seven pounds four teen shilling & six
pence in full of a sum William Mountfortt was to
pay me in Redemption for a certain tract of land

To me ———

John Eley

Reps. Whitehead