

1814-015

Chancery Causes: Thomas Carrall & ux vs Thomas Joiner, executor of Edmond Heath

Ish of Wight County

Other SURNAMES: Uzzell,
Carrall, Broadfield

To the worshipfull Court of Isle of Wight in Chancery sitting,
Humbly Complaining shew unto the Court your Orator and
Oratrix Thomas Carew and his wife - That
One Edmund Heath late of the said County - departed this life
on or about the day of 1680, having first
made and published his last will and testament in writing
by which he devised to your Oratrix, who was at that time his
wife - the residue of his estate &c as will more fully
appear by reference had to an attested copy of the will
itself which is hereto annexed and prayed to be taken
and considered as a part of this bill. - That one Thomas
Lorimer - qualified as executor of said will - and sold off
his testators estate to a very considerable amount, on a
Credit of That your Oratrix became a
purchaser at the sales, and in compliance with the terms
of sale &c she gave her bond for the amount, say £

That she has since intermarried with your Complainant
Thomas - That they have been sued by Lorimer on the
aforesaid bond - and, being unable to sustain any
legal plea against it - as they were advised, they were
under the necessity of suffering Judgement by default
to be entered up against them: On which Judgement
Lorimer has issued execution and has had it actually
levied on your Complainants property; which is
now advertised by the Sheriff for sale. -

Your Complainants beg leave to represent to
the Court - that the actings and doings of the said
Lorimer in this behalf are oppressive and fraudulent.

for that he has a sufficiency of assets belonging to the estate to meet & discharge all the debts which were due by his testator without the aid of the small debt due by your Complainants — That the ^{sd} Loner has had an acc^t Court of the estate made up and returned to this Court — as your Complainants are informed, which exhibits a small balance either way — yet your Complainants are credibly informed, and believe that the said Loner has kept back a number of obligations belonging to the estate, for debts which were due to testator in his life time, amounting to a large sum of money; which obligations he seems neither willing to collect nor to deliver them to your Complainants —

Thomas his husband as residuary legatee; but continues to hold up the said bonds, while he is oppressing your Complainants with unnecessary prosecutions at law —

In tender consideration whereof and as much as your Complainants are without remedy only in a Court of equity — to the end therefore they pray that the said Thomas Loner be made defendant to this bill of Complaints and, on solemn Oath full, true and perfect answer make to all and singular the allegations it contains — more especially that he answer and say how many bond or other obligations belonging to his testator's estate, he has not accounted for — Who are the debtors? how much do they severally owe? When did each of them become due? whether they are not in amounts more than equal, when collected to pay all testator's debts & close the administration

without forcing or receiving payment from your Complainants? whether indeed, when the said bonds shall be collected, a considerable residuum will not become due to your Complainants.

That He be enjoined from further proceeding at law on his said Judgment against your Compts until the further order of this Court. and that on a fair & full hearing of the parties — such further or other order or decree may be made and entered for your Complainants relief, as may, conform with and promote Justice and equity. — may it please &c —

Barber for Compts

Isle of Wight County, to wit. —

Thomas Carrell made oath before me — one of the Commissioners Justices of the Peace in and for the said County, that the said bill is true as far as he knows and believes. — Given under my hand the day of 1809

Thos. Carrell & Co
vs.
Linn - Es.

Bill

Linn - Es.

To the worshipping Court of Isle of Wight in Chancery
Sitting. Humbly Complaining shew unto the Court your
Orator and Pratria Thomas Curriel and Elizabeth his
Wife, which Elizabeth was formerly Elizabeth Heath the
Widow of Edmond Heath dec'd. That the said Edmond
Heath made a last will and testament, an attested
Copy whereof is hereto annexed and prayed to be
taken and considered as a part of this bill: by
which, it will appear your Pratria is entitled to
the estate of said Edmond, after the administration
is closed, as a residuary legatee. - That he, the
said Edmond left a considerable Estate, besides
debts due to him - which fell into the hands of
Loimer, who undertook the administration
of said Edmond's estate with the will annexed.
That your Pratria became purchaser at the Sale of
said Edmond's estate of articles amounting to the
Sum of _____ for which, in order to comply
with the terms of sale & at the special demand of the
said administration, she executed a bond or obligation

That the said former administrator, with the
intention to injure and defraud your Complainants,
in this behalf, instituted suit at law in this Court
on the said obligation and, because of the ~~strict~~ ^(by which your Complainants could not set up their proper defence there) rules of pleading at common law, he obtained
Judgment that actually issued execution thereon;
although it is certain that he has assets more than
sufficient to pay all the testators debts, and, on
a fair settlement of the estate, there will be a residue
due to your Complainants, in right of the Complainant
Elizabeth, more than sufficient to pay the debt now
claimed from them by the said administrator;
all which is contrary to justice, equity and good
Conscience. — In tender consideration

Whereof and for as much as your Complainants
are properly relievable in this Court of equity. To the
end therefore they pray that the said former be made
defendant to this bill of Complaint and on oath
full, true and perfect answer make to all and
singular its allegations, as fully as though they were
here again repeated and by themselves, particularly
interrogated. That the said former administrator
of said estate, as well as in his own name and

Capacity, and all others be enjoined from further
proceedings at law — until the case shall be
fully heard in equity — and lastly that the injunction
be made perpetual — and such other or further order
or decree entered for your Complainants relief and
the promotion of Justice and equity, as this Court
shall deem necessary — may it please you
Barber P²

Thos Canell & wife (Bill
vs of
Limer, adm'r & Injunct

Sept. 1009

Bill paid

~~Aug. 1815~~
Bill taken for

The Clerk Court
City of New York
County N.Y.

Belonging to the Estate of S^r Edmund Heath
in the hands of said Jayner. one against
a Mr. Fowler of Eastern Shore one against
a Mr. Hare of Petersburg. and one against
a Mr. Wilson of New York which he refused
to do by saying the people did not live
in the County.

Question by the Plaintiff Carroll, do you recollect
-at S^r Jayners answer when I claimed a
Demand the S^r Bonds as the Estate of said
which was given to my wife after the Debt
of S^r Heath was paid, as I then charged
him of not taking that due diligence
to collect the S^r Bonds as he ought to
have done that they would be lost to the
Estate for the want of ~~them~~ ^{not} being pro-
secuted in time.

Answer. He said he was not bound
to give them up. that it would be waste
time or money to collect them and
that he should not give him self any trou-
ble about them.

Question by the S^r did not the S^r Jayner
show you S^r Bonds— Answer. He did

Question by the S^r do you recollect
the a mount of said Bonds alluded to
Answer. I do not.

And further this Dependant says not
Thos. Wiggall for

Isle of Wight County

July 16th 1814.

Sworn to before us.

Andru Woodley (J.P.)

Saml. Woodley (J.P.)

The Affidavit of Capt. Thomas Hazzell of
Lawfull age taken by Consent of the parties
who are also present at the House of Andrew
Woodly in the County of Isle of Wight the 16
th of July 1814. to be used as evidence
in a Suite depending on an Injunction now
depending in the County Court of Isle of Wight
wherein Thomas Carrell & Elizabeth his wife
Late Elizabeth Heath Plffs and Charles Proceeds
Exor of Henry Jayner who was the Exor
of Thomas Jayner. decd who was the admor of
with the will annexed of Edmund Heath
decd Deft after being duly sworn on
the wholly Evangelist of all mighty God
depose & said

That some time after the S. Thos. Jayner
admor to S. Heath had brought Suite a
gainst S. Carrell & wife on the Bond
they had given for articles ^{except the Sale of}
S. Heath this Deponent in going to Court
called with S. Carrell at the Dwelling
house of S. Thos. Jayner and this Depon-
ant heard the S. Carrell offer the said
Jayner to pay of S. Bond of his wife &
his as her Security on which Suite was br-
ought If he the said Jayner would deliver
to him in right of S. wife Sundry Bond
Turn over

Canella
to $\frac{2}{3}$ Griss bonum
Healths comor.

Know all men by these presents that we Thomas Canale and Robert Tyner
are held and firmly bound unto Thomas Tyner adm^r of Edmund Keatts
in the sum of thirty pounds nine shillings current money of Virginia to which payment
well and truly to be made, we bind ourselves, our heirs, executors administrators, jointly
severally firmly by these presents, sealed with our seals, & dated this 30th day of September
1809 —

The condition of the above obligation is such that whereas the said Thomas Tyner
as adm^r aforesaid has obtained a judgment at common law against the said Thomas
Canale & Elizabeth his wife & in the county court of Isle of Wight for fifteen pounds four shillings
and six pence and costs, and the said Thomas Canale
has obtained an injunction to stay the execution of the said judgment until the
hearing the matter in equity upon a bill for that purpose filed & therefore
the said Thomas Canale " " " " shall satisfy and pay the said
judgment at law and all costs & damages that shall be awarded to the said
Administrator " " " " in case the said injunction shall
be dissolved. that then the above obligation to be void, else to remain
in full force and virtue —

Signed & Sealed

In presence of

D. D. Dick

Thos. Canale
Robt. Tyner