

1823-006 Chancery Causes, Samuel Whitfield vs Benjamin Drew & al

Isle of Wight County

other surnames: Byrd, Wilson,
Smelly, Jordan, Smelley,
Purdie

Samuel Whitfield . . . Plaintiff

against ~~the~~ the chancery -

Benjamin Drew, Watson P. Grover & Co. - defendants

The decree nisi awarded by the Court in the month of January last against the deft. James R. Wilson having been returned executed, the bill of the complainant - therefore, as to that defendant is taken for confessed and the cause coming on to be heard upon the bill and the answers of the other defts, the deposition of Thomas Pardie, and was argued by Counsel: On consideration whereof the Court, being of opinion that the ~~same~~ deposition of Thomas Pardie filed as evidence in this case, regularly & legally taken and not objected to, may hereafter be material and important evidence to the said parties or some of them, should any future controversy arise about or in relation to the title to the lot and premises in the bill of complaint mentioned, doth adjudge, order and decree that the said deposition, agreeably to its legal effect, be, and the same is accordingly ^{hereby} perpetuated as evidence in proof of the lost commission and prior examinations charged in the said bill - and the Court, believing from the allegations in the complainant's bill, and the admissions contained in the answers filed, as between the complainant and the defendant Benjamin Dorr there is in the latter no legal or equitable title whatever to the said lot and premises, doth further adjudge, order and decree, that the defts. Walter P. Jordan and Thomas Smalley, upon receiving from the comp't. the sum of \$ three thousand two hundred dollars

that being the amount for which the said compt.
agreed to be bound to the said Benjamin Dorr
as a consideration for the lot & premises ^{with interest from 15th March 1820 till paid} aforesaid,
do convey, by a good & sufficient deed of record
to the complainant all their right & title, both
legal and equitable, in & to the lot & premises in
the said bill mentioned, with warranty of title
against themselves & all persons claiming by, through
or under them: And the court being further of
opinion, from the allegations in the said bill contained
together from the evidence & admissions in the said
answer stated & disclosed, as also from the deposition
aforesaid, that the lot & premises as charged in the said
bill, were purchased by the defendant Benjamin
Dorr of the said Richard W. Byrd & Emily his wife
in their life time, and the consideration satisfied
and paid; and being further of opinion that the deed
with the privy examination, executed by the said Rich.
W. Byrd & Emily his wife, altho lost by accident as
alleged by the complainant, and altho the terms of
the law seem to require the return & recording of
a deed to open & convey effectually the title of
himself & wife, should have legal effect & validity,
in consequence of which the remedy on the covenant
in the said deed contained, against the heirs of the
said Richard W. Byrd proper at law with the land
to the grantee Benjamin Dorr, and his assigns,
& the remedy, at least in equity, proper against
the defendants George & James R. Wilson attorneys
of the said Richard W. Byrd, doth further order
adjudge & decree that George Wilson for and in

behalf of the said infant defendants, Mary Ann
Byrd, Charles Byrd & George Byrd do ^{convey} ~~convey~~ to
the complainant by a good & sufficient deed, with
general warranty of title, the said lot & premises
in the bill mentioned: and the court, for the
reasons aforesaid, doth further adjudge & decree
that the defendant Benjamin Dorr, do ^{also} ~~convey~~
convey to the complainant by a good & sufficient
deed, with general warranty of title, the said lot &
premises in the bill mentioned; and liberty is reserved
to the said infant defendants to shew cause if any
they can against this decree at any time within
twelve ^{months} after they shall have respectively arrived to
the age of twenty one years.

Sam^r. Whitfeild
vs. ⁱⁿ ~~decree~~
Benj: Dorr & C.

Isle of Wight County to wit
Samuel Whitfield

January Court 1823
Compt.

against

Benjamin Drew Watson P. Jordan & Thomas Smiley,
and George & James R. Wilson Administrators of
Richard M. Byrd decd. and Mary Ann Byrd, Charles
H. Byrd and George M. Byrd Children & heirs of the
said Richard M. Byrd decd.

In Chancery

Defts

The Defendant James R. Wilson one of the Administrators
of Richard M. Byrd decd. having failed to file his answer to the Complainant's bill
filed in this cause: on motion of the Complainant by his Counsel, it is ordered
that unless the said Defendant James R. Wilson appear at the next Court and
file his answer, Judgment will be rendered against him for the Complainant
agreeable to the prayer of the said bill, and that a copy of this order be served on the
said defendant James R. Wilson

Teste Nathl. Young C.

Executed Jan. 21. 1823
Wm. Woodward for Jos. W. Bullard Esq.

Wm. Woodward
at
J. W. Bullard Esq.
Wm. Woodward

Isle of Wight County to wit
Samuel Whitfield

against

Benjamin Drew, Watson P. Jordan & Thomas
Smully, and George and James R. Wilson Admini-
strators of Richard M. Byrd decd. and Mary Ann
Byrd, Charles S. Byrd and George W. Byrd children
and heirs of said Richard M. Byrd decd.

Compt.

In Chancery

Defendants

On motion of the complainant by his Attorney. It is ordered
that the Defendant George Wilson be and is hereby appointed Guardian ad litem
to the infant defendants Mary Ann Byrd, Charles S. Byrd and George W. Byrd
to defend their interest in this suit
and that a copy of this order be served on the said George Wilson

Teste

Nathl Young Ad

Exchanged Jan. 21st 1823

Wm. W. L. D. for Jos. W. Hallam
Giff

Wm. W. L. D.

as

Wm. W. L. D. order
to
pay to order. No

The deposition of Thomas Purdie of lawful age
taken at the Town of Wilson Davis in the town of
Smithfield and County of Edgefield, on the 14th
day of June 1823 between the hours of 7 o'clock
in the morning and 7 o'clock in the evening of
the same day (agreeably to notice and commission
hereunto annexed, to be read as evidence in a
suit in Chancery depending in the County Court
of Edgefield, in which Samuel Whitfield
is complainant and George James Wilson
administrator of Richard W Byrd decd, and
Mary Ann Byrd, Charles W Byrd and George
James Byrd (infant children of Richard W
Byrd decd and Emily W Byrd decd,) and others
are defendants -

This deponent having been first duly
sworn upon the Holy Evangelist of Almighty
God, the truth to speak, deposes & swears
That about the 1st day of May 1814 he called upon
Richard W Byrd decd. for the purpose of having a deed executed
by Richard W Byrd and his wife to him for the conveyance of
a lot of property - That on the same day Mr. Emily Byrd
did relinquish her interest in the said which was executed
by her husband and herself to him, before George Brown
James Southall - That after his business was settled, Mr. Brown
observed to Richard W Byrd in his house, that it would be
a good time to take the relinquishment of Mr. Emily Byrd
of her interest in the lot which Mr. Byrd and wife had
previously conveyed to him (it being the lot on which Mr.
Brown then lived and which he hath since conveyed to Mr.
Samuel Whitfield of Smithfield, and that the relinquishment
of Mr. Emily Byrd, as this deponent firmly believes, was
at that time taken ~~in the presence of the said parties~~
according to law - Whereupon this deponent saith not -
signed (Thomas Purdie

Whose My County Court; This day came before me
Merit Brown a Notary Public for the County of
Edgefield, by lawful authority duly admitted
& qualified to take deposition & Thomas Purdie
of lawful age, who made oath that the
 foregoing deposition contains the truth as

for as he knows or believes in which said deposition
was taken according to notice the annexed commission
and in the presence of George W. Wilson esq. of said Court
- given under my hand and Seal - the 14th day of
June 1823 -

Wm. Jordan Not. Pub.
" "



Thomas Purdie's

deposition

Came to hand under Seal
June 19th 1823 B. Lightfoot Esq.

The Commonwealth of Virginia to Merit Jordan Notary
publick — ~~Jonathan Justice~~ of the County of Isle of Wight
greeting Know ye that we trusting to your fidelity and prudent
circumspection in diligently examining Thoms ~~papers~~

as well on behalf of Samuel Whitfield Plaintiff and Benjamin Drew
Nation Jordan, Thomas Smelly, George and James R. Wilson admors
of Richard W Byrd decd and George Wilson Guardian ad litem to Mary
Ann Byrd, Charles W Byrd and George S Byrd children and heirs of the
said Richard W Byrd decd Defendants in a suit in Chancery now
pending in the County Court of Isle of Wight — command you or
any two or more of you that on such certain days and at such places you
shall appear, you assemble yourselves and the witnesses aforesaid before you
you call and cause to come and diligently examine on the Holy Evangelist
of Almighty God, and their examinations into our County Court distinctly
and plainly without delay you send and certify enclosed returning also
to us this writ. Witness Nathaniel Young Clerk of our said Court at
the Courthouse the 12th Day of June 1823 in the 47th Year of the Com-
monwealth —

Nathl Young

Whitfield

H.

Lesson: to examine
wits.

Drew & others

To Thomas Smalley and Watson p Gordon adm^r
of Martha Gordon, and Benjamin Drew,
Take notice That I shall proceed to take
the depositions of Thomas Purdie and James
B Southall and others at the town of Wilson
Leas in the town of Smithfield and County
of Albemarle, on the 14th day of June 1823
between the hours of 7 o'clock in the morn-
-ing and 7 o'clock in the evening of the
same day, to be continued from day to day
until the depositions are completed, to be read
as evidence in a suit depending in the County
Court of Albemarle in chancery, in which
said Smithfield is compl^t and you
and others are dependants, at which time
and place you may attend if you choose.
Y. C.

Saml. Whitfield
4th June 1823


Will Mark Mr. Dow to acknowledge seeing her
 at Watons. London to do the same, and send it to
 me this week so that I can have it acknowledged
 by Mr. Smelly at Suffolk Court. as a

John to Dow
 John - in the
 of Mr. Thacker
 printed by

Wm. J. Thacker
 Wm. J. Thacker
 Wm. J. Thacker

The acknowledgements to have been received of this notice
 accordingly to Dow

To George Wilson and James Wilson administrators
= Executors of Richard W Byrd, and to George
Wilson Guardian ad litem to George James Byrd,
Charles W Byrd and Mary Ann Byrd infant
children of Richard W Byrd. Take notice,
That, on the 14th day of June in the present
year, at the Tavern of Wilson Davis in the town
of Smithfield and County of Wm of Wight,
between the hours of seven o'clock in the mor-
= ning and seven o'clock in the evening of the
same day, I shall proceed to take the depositions
of Thomas Pundin and James Pfootham touching
to be read or considered in a suit now depending
in the County Court of Wm of Wight, in chancery,
in which I am plaintiff, and Benjamin Bruns,
Thomas Pundley, respondents and others are defendants.
at which time and place you may
attend if you choose. I shall continue from
day to day to take the depositions, until they are
completed -

4th June 1823.

Wm L.
Saml. Whitfield

Whose Right County Court; This day came before me a
 Justice of the Peace in said County, Dr. Goodrich who
 made oath that on the ^{more than ten days past} day of June 1823
 he delivered a true copy of this notice to James R
 Wilson. Given under my hand this 14th day of
 June 1823 — J. P.

Whose M. County Ct. This day, Merit ~~James~~ Todd
 came before me and made oath that on this
 day, before the hour of ten o'clock in the morning
 he delivered to James R Wilson within named
 at the Town of Wilson Davis in said Office
 a true copy of this notice. Given under my hand
 this 14th day of June 1823. J. H. Purdie J. P.

To Jas. Wilson Esq.

notice

a copy —

Jas. Wilson

1823
 Given
 acknowledged before me after notice given me as one of
 the party N. H. Davis and for as letter to the court
 returned from court and Henry and his —

The Commonwealth of Virginia to the Sheriff of Isle of Wight
County, greeting. We command you, ^{as you have been sworn to execute our commands} to summon Benjamin
Drew, Watson Jordan administrator of Martha Jordan decd. Thomas
Smully, George and James R. Wilson Administrators of Richard
W. Byrd decd. Mary Ann, Charles W. and George J. Byrd, children
and heirs of the said Richard W. Byrd decd. to appear before the
Justices of our county court at the court house of the said county
on the first Monday in October next to answer a bill in Chan-
cery exhibited against them by Samuel Whitfield - and this
they shall in no wise omit under the Penalties of £100 each.

And have then there this writ. Witness Nathaniel Young
Clark of our said court at the court house the 21st day of
September 1822 in the 5th Year of the Commonwealth

Nath. Young

Received of the Sheriff of Isle of Wight County
the sum of \$100.00 for the above writ
Sept 21 1822

The Commonwealth of Virginia to the Sheriff of Isle of Wight
County, greeting: we command you as you have seen heretofore
commanded to summon Benjamin Drew, Watson Jordan,
Thomas Smiley, George and James R. Wilson administrators
of Richard M. Byrd dec'd, Mary Ann, Charles M. and George S.
Byrd, children and heirs of Richard M. Byrd dec'd ^{and Emily B. Byrd} to appear before
the Justices of our county court at the courthouse of the said county
on the first monday in September next to answer a bill in
chancery exhibited against them by Samuel Whitfield.

And this they shall in no wise omit under the penalty of
£100 each. And have them there this writ. Witness Nathaniel
Young Clerk of our said court at the courthouse the 20th day
of August 1822 in the 4th Year of the Commonwealth

Nath. Young

Whitfield

5

as

W
W
W
W
W

Alt. Spa. in Chy.

Drew Gothers

Baker for Pitt

not in circles

W. Whitfield at W. B.
for W. Whitfield at W. B.

The Commonwealth of Virginia to the Sheriff of Isle of Wight County,
greeting. We command you to summon Benjamin Drew, Watson Jordan
and Thomas Smully, and George Nelson and James R. Nelson Administrators
of Richard W. Byrd decd. and Mary Ann Byrd, Charles W. Byrd and George S.
Byrd children and heirs of Richard W. Byrd decd. to appear before the justices
of our county court at the courthouse on the first Monday in August next to
answer a bill in Chancery against them by Samuel Whitfield -
And this they shall in no wise omit under the penalty of \$100 each.

And have them show this writ. Witness Nathaniel Young Clerk of our
said court at the courthouse the 20th day of June 1822 in the 40th Year of
the Commonwealth.

Nathl. Young

all the parties summoned except George Wilson

J. M. D. H. H.

Whitfield

W.

W. H. H. H. H.

W.

Drew & others

Baker p. 9

To the County Court of Whof Right Setting in
Chancery - The answer of Mary Ann Byrd, George
James Byrd and Charles W Byrd infants, to by
George Wilson who hath been appointed guardian
ad litem to the said defendants - to a bill of
complaint exhibited in the Court aforesaid
against them and others by Samuel Philpott.

Then defendants saying & say they
believe it to be true that their father Richard
W Byrd by deed for the sum of twenty five hundred
dollar sold and conveyed the property in question
to ~~the said~~ Benjamin Brues one of the defendants.
that it was the maiden property of the mother of
the infants defendants and they do not know
that their said mother Emily B Byrd decd. did ever
relinquish her right of intant in the said lot
after she arrived to the age of twenty one years;
they have by descent from the said Richard
W Byrd and Emily B Byrd real and personal
estate, to an amount much more than equal
to the purchase money paid for the real
estate in controversy - that the said Richard
W Byrd died intestate on or about the day

of Monday and that the said Emily
B Byrd died on or about the day of ~~the~~
- intestate - that they are the only children of the
said decedents - Then defendants say that they
are infants under the age of twenty one years, &
are not personally acquainted with any the
material facts set out in the complainants bill of
complaint - They submit their rights and interests
in the matter in question to the protection of the
Honorable Court - (signed - Geo. Wilson

Whof W. County Court. This day George Wilson made oath
before me that the foregoing answer contains is true as far
as depends upon his knowledge, and that so far as it
depends upon the knowledge of others he believes it to be
true - Given under my hand this 22nd day of Apr. 1823. Edmund Ransom

Pyro's infants
as 3 answer
Whitfield

quality and send
him by the boy.

a. a
—

To the County Court of Shelby County in City¹⁷
sitting - The answer of Geo. Wilson one of the
administrators of Richard W Byrd decd, to
a bill of complaint exhibited in the County Court
aforesaid, against Benjamin Bruns, Watson Jordan
and of Martha Jordan, George Wilson and
James Wilson adrs of R. W Byrd decd, and
against George Byrd, Mary Ann Byrd and
lebr. W Byrd infant children of R W Byrd
decd, and others by Saml. Whitfield -

This respondent saith and reserves to
for answer say ~~that~~ he recollects that
about the day of in the year
Benjamin Bruns and others were at the
house of Richard W Byrd who was then living
and in Smithfield, and that among other things,
a conversation was holden between the
said Bruns and Byrd about Mr Byrd relinquin-
-ging his interest in the lott mentioned in the
complaints heretofore said that to the best of
his remembrance and belief on that day
the prior examination of Mrs Byrd was taken
and that she was then above the age of twenty
one year - This respondent further states that in
a memo. or fn book belonging to the said
Richard W Byrd and now in the respondents
possession, he the said Byrd in his lifetime,
charged Benjamin Bruns as follows

"To one lott sold you in the town of Smithfield
"at \$2500, one half payable the 20th of
"April 1807 without interest, and the other
"payable 20th Apr. 1808 with interest from 1. of
"January 1807 - \$2500
"By Cash 20th May 1807 1250
"To interest on \$1250 from 1. Jan 1807 till the
"1. Sept. 1810 - 13 years and 8 months 3 275
\$275

1810 Sept. 5th By Dr. Drums of Rent up to this day \$1008.9
 " By balance in Cash to this day \$516.0
 \$1525.0

That he believes the personal estate of his
 intestate in the hands of himself and his co-
 administrator James ^{from which will remain after paying} Wilson is much more
 than the value of the lot or parcel of
 land described in the complainant's bill -
 He prays the Court to protect the interest of
 his intestate's estate and prays he be
 reimbursed with his reasonable costs & in
 this behalf sustained -

Geo Wilson one of the
 Admin of M^r. M. Byrd -

Shropshire County Jct. This day came before
 me a Justice of the Peace in said County, John
 Wilson who made that the foregoing answer
 is true as far as he knows or believes to be true
 sworn my hand and seal this 9th day of
 October 1822 -

Edmund Peain J.P.

The joint and separate answers of Watson P.
Jordan, ^{adm^r of Maathys Jordan} and Thomas Smelly to a bill of
complaint exhibited in the County Court
aforesaid by some whitefeild against them
and others. These defendants having and
reserving to for answer thereto or unto
as much thereof as they are advised it is
material for them to answer, answering
say that on or about the day of
Admⁿ a certain Benjamin
Brew one of the defendants in the suit aforesaid
for the purpose of securing a debt due from
him to the said Maathys Jordan in
his lifetime executed a deed in trust
to one of the defendants Thomas Smelly
for the benefit of the aforesaid Maathys Jordan
to secure a debt of which a part is yet unpaid;
that the said Watson P. Jordan is her adm^r
and he has agreed to release to the said
said whitefeild the property which he has
purchased of the said Brew, and which is
included in the said deed, provided the
proceeds of the sale are paid over or secured
to him as adm^r or aforesaid - and that the
said Thomas Smelly will release the property
aforesaid whenever he shall be instructed or
authorized so to do by the said Watson P. Jordan
administrator of the said Maathys P.
Jordan deceased

Westmoreland County Pa. This day came before
me Thomas Smalley & Watson J. Jordan a sworn
Matthias Jordan who made oath that
the foregoing answer contains the truth as
far as they know or believe - given under
my hand as a Justice of the Peace of the
County aforesaid, this 3rd day of ^{July} 1873

Joseph Godwin J.P.

Jordan Smalley
as: Zancus
Whitfield

To the County Court of Shropshire in Chancery
sitting; the answer of Benjamin Brew to
a Bill of complaint exhibited in the County
Court aforesaid by Samuel Whitfield against
the said Benjamin Brew, Watson Jordan adm.
of Martha Jordan, George Wilson and James
Atkinson adm. of Richard W Byrd and George
Byrd, Charles Byrd and Mary Ann Byrd &c.

This respondent having and reserving
to himself now and at all times hereafter, all
and every manner of benefit and advantage
of exception &c. for answer thereto, or such
part thereof as he is advised it is material
or proper for him to answer, answering
says, that sometime in the month of April
1807, Richard W Byrd and his wife Emily,
by a deed of bargain and sale, for the
consideration of twenty five hundred dollars
conveyed to him this respondent a lot of land
in the town of Smithfield, the maiden estate
of Mr Byrd, and the property described in the
complaints hereto; That the said wife of Richard
Byrd was examined by two justices of the
peace, and the privy examination duly
recorded. That the said Emily Byrd as this respon-
-dent is now advised, was at the time her privy
examination was taken, under the age of twenty
one years - and that after she arrived to lawful
age another deed of bargain and sale for the
lot aforesaid, was executed by Byrd and his wife
Emily who was again examined pursuant
to law, by two justices, but your respondent has
since ascertained that the commission and certifi-
-cate of privy examination last taken, were

not returned to Court according to law, as he
has ascertained by a proper examination;
and he supposes that the said Commission &
said examination have been lost or mislaid
either by himself or the justices who took the
recognition, and whose duty he presumes
it was to have returned them to the Court of
the County. This respondent cannot gain say
any of the allegations of the complainant;
inasmuch as far as his knowledge of the trans-
action extends, they are strictly true and
correct. and he is willing and desirous that
the Court shall make any decree in the
premises, for the relief of the complainant
which may comport with Equity & good
conscience. - He prays leave to be dismissed
with his reasonable costs in this behalf sustained.

B. Drew
Clerk

The High Court of the County of ... This day came before
me, a Justice of the Peace for the said County,
Benjamin Drew, who made oath that the
forgoing answer contains the truth as far
as ~~he~~ depends upon his knowledge,
and as far as depends upon the knowledge
of others he believes it to be true. Given
under my hand this 25. day of October
1872 -

Edmund Peain (W.)
~~Edmund Peain~~
Clerk

Drew

*ad: } Answer
 } in Chy
Whitfield*

This to be sworn to.

4th Nov. 1822 filed

To the worshipful court of Isle of Wight County in
chancery sitting humbly complaining sheweth unto your
worships your Orator Samuel Whelpley, that some time in
the month of April in the year eighteen hundred and seven
Richard W. Byrd and Emily, his wife, by deed of bargain and
sale for the consideration of twenty five hundred dollars conveyed
to Benjamin Drew a lot or piece of land in the Town of
Smithfield, the maiden estate of W. Byrd: the said Emily
wife of the said Richard W. Byrd was examined privily and
apart from her husband pursuant to law by two justices
of the peace, and the said privy examination was duly
recorded: at the time, however, of such privy examination
the said fine court was under lawful age; but after
age, she united with her husband in another deed of
bargain and sale for the same property, and was again
privily examined by two justices, under a proper commission
obtained from the clerk of the court of Isle of Wight:
the commission and privy examination last aforesaid were
not returned to court according to law and are now lost
and insaid - your Orator, however states, that perol witness
can be obtained to prove and establish the privy examination
and acknowledgment last aforesaid: each of the said deeds
contains, jointly, a general warranty by the said Richard W.
Byrd & wife, and their heirs, of the title so as aforesaid
conveyed: the said Richard W. Byrd & wife are both dead, leaving
Mary Ann Byrd, Charles Byrd and George Byrd, minors, their
children and heirs at law: the said Richard W. Byrd at the
time of his death left a large personal estate, now in the
possession of George Wilson & James B. Wilson executors of the
said Richard W. Byrd and guardians of the said minors who
have received by descent other real estate from their father
of greater value than the lot or piece of land so as aforesaid
conveyed to the said Benjamin Drew: And your Orator
further states that aforesaid, to wit, on the day of

in the year eighteen hundred and
the said Benjamin Dyer, by deed of bargain and sale for the
sum of ^{conveyed to your Orator the lot}
or piece of land of an acre with the appurtenances, and at the time
of the sale so made to him, the said lot or piece of land with
the appurtenances, together with other lands, were incumbered
by a deed of trust given by the said Benjamin Dyer to
a certain Thomas Smalley for the benefit of Martha Jordan
to secure a debt of which a large part is yet unpaid;
the said Martha Jordan is now dead & Watson Jordan her son
is her administrator, by whom it has been agreed to release
to your Orator provided the proceeds of the sale were paid
over or secured to him as administrator as aforesaid. And your
Orator further charges that both the said Benjamin Dyer and
himself were altogether ignorant of the imperfections and objections
to the deed so as aforesaid executed by the said Richard W.
Byrd and wife. Upon the foregoing circumstances and state-
ment of fact your Orator is advised that the deed of bargain
and sale first made by the said Byrd and wife, may be
avoided by her heirs on account of her minority, notwithstanding
the acknowledgment on her privy examination and the record
of it, but that such evidence is admissible, proving first the
privy examination and acknowledgment, to give legal effect and
validity to the second deed of bargain and sale so as aforesaid
executed by the said Byrd and wife. It must however be admitted
that the terms of the law seem to require the return and
recording of a deed to assure and convey effectually the title
of husband and wife, notwithstanding after such conveyance,
but before the return of it, the female is believed could not
ever by appearing in court and desiring to retract her
acknowledgment, destroy the title. And your Orator further
charges that should the heirs of the said W. Byrd on att-
aining the age of twenty one years assert their title to the
lot or piece of land & appurtenances so as aforesaid conveyed

to your Orator, the personal estate of their father in the hands
of the said Geo. & James R. Wilson, or also the real estate descended
from him the said Byrd in the hands of their very heirs, will
be liable under the warranty of title given as aforesaid by the
said Richard W. Byrd; for the remedy, as your Orator is
advised, on the covenant against the heirs of him the said
Byrd would pass at law with the land to the grantor, and
officers of the land, and the remedy, at least in equity,
would pass against the said Geo. & James R. Wilson as mortg. as
aforesaid. But so it is, your Orator cannot obtain relief
in the premises without the interposition of a court of Chancery.

In Tender Consideration whereof &c. To the end
therefore that the said Benjamin Dyer, Watson Jordan admr. of
the said Martha Jordan, George Wilson and James R. Wilson ad-
ministrators of the said Richard W. Byrd, and Mary Ann Byrd,
Charles Byrd & George Byrd infant children of the said Richard
W. Byrd and wife appearing in this case by ^{Thomas Smalley} ~~George Wilson~~
their guardian as ^{Thomas Smalley} ~~George Wilson~~ may be made defendants hereto, and
may then and perfect answer make to all and singular the
premises as fully and particularly as if the same were here again
repeated and interrogated: that the said Benjamin Dyer may
state and set forth a perfect and distinct account also history
of the said transactions so far as the same come within his
knowledge, and the said Geo. and James R. Wilson admrs.
as aforesaid may also give an account of the said transactions
so far as the same have come within their knowledge &
moreover whether the personal ^{property} in their hands belonging to their
said estate, and which will not be required for the payment
of debts, is not greatly above the value of the lot or piece of
land & appurtenances so as aforesaid ^{conveyed} to your Orator. that the
said Mary Ann, Charles & George Byrd, or some person for them,
do state & set forth an account of the real estate which has
descended to them from their father, and that the said Watson
Jordan & Thomas Smalley do state whether they will release to
your Orator upon receiving the money now due for the lot or

Piece of land aforesaid: Your Order prays that your worship will
 perpetual, by decree, the proof of the lost commission and privy con-
 vention if any; so that hereafter he may obtain a valid deed
 for the said lot or piece of land & appurtenances: or that your
 worship will decree to your Order a new deed from the said
 Mary Ann, Charles & George Byrd on the ground that the first was
 by accident or mistake prevented from having complete legal
 operation, or thereby, that your worship will decree to your
 Order security out of the real & personal estate of the said Rich^d
 W. Byrd to make good the title, or that the owner of the
 real & personal estate of the said Rich^d W. Byrd be restrained
 from alienation till the title of your Order be perfected:

And lastly your Order prays your worship for such other
 or further order or decree in the premises as may seem equitable
 to equity & good conscience - And your Order shall in prayer be

Rich^d W. Byrd p.p.

93
 15
 465
 93
 3913 93
 4013

Sam^l W. Byrd

vs. Billie

Bey. Drimtel

Baker.

Sept. 1022 Bill filed

Nov 1022 ans^r of B. Drimtel
 & ans^r of Geo Wilson

Jan 1823 Will decree awarded
 to Capt. James B. Wilson - Geo
 Wilson app^r & Ben. addition to defend
 the int^r of the infant depts Mary
 Ann Charles & George Byrd.

Mar 1023 ans^r of Smalley and
 Jordan filed

May 1823 the ans^r of B. Drimtel & Geo

me 1023 Gent^l up^d & Com.
 awarded -

June 19th 1023 Thomas Purdie
 depts came to hand & order seal

Decr 1823 on mot^r of Pl^{ty} for his
 att^r this cause is set for trial
 and came on to be heard on the
 bill, ans^r & deposition and decreed
 that the depts make a good
 & sufficient deed with warranty
 of title to the lessees & pay to
 lessees the cost of this suit.

(See decree)

John W. Byrd & Co