

1840-014 Chancery Causes William H. Chapman & ut & William Sears & ut vs Patsy Everett &
Jas of Wight County Thomas M. Dashiell

other SURNAMES: Smelly,
Cowling, Fulgham, Smelley,
Woodrup, Pinner

Chapman's Wife &
Dashiell &

March 2nd 1835 Bill filed
April 6th: 1835 Depositions
came to hand under seal and
filed.

July Rules 1835 answer of
Thos. M. Dashiell and exhibits
referred to file.

August Rules 1835 general
rep. & ipse & cont.

September Rules 1835
cont.

To the Judge of the Circuit Superior Court of Law & Chancery for the County of Allegany,
Nevil, humbly complaining - shew to your honour, your orators & Petitioners William
H. Chapman and Martha S. his wife, and William Sears & Amelia his wife that one
William Smelly late of the county aforesaid departed this life about the year 1801
being made and published his last Will & Testament which was admitted to
record in the county court of Allegany County, an office copy of which Will is here
the court shown marked A & displayed to be considered & taken as part of this Bill.
The testator among other things bequeathed the land and plantation he then lived on, with
all the appurtenances to it belonging, also the land he purchased from Alexander
Woodrup to his son William Smelly till he arrived to the age of 28 years; and if at
that time he had heir or heirs lawfully begotten of his body then to him this heir for-
ever - but if he should die before that age, or leave no heir or heirs lawfully begotten
of his body then to his son John Smelly and his heirs forever. That the said W. Smelly
about the year 1801 being then about the age of twenty seven years, unmarried
and without issue removed from the commonwealth of Virginia and went to
some place beyond the State aforesaid, and by his connections in the State is supposed
to have died and without issue or having married, but, after he arrived to the age
200. your complainants aver that according to the laws of evidence, the
said W. Smelly was presumed after seven years from his leaving the
State not before, at which time he was beyond the age of 28 years; & the con-
dition or contingency upon which the estate was to vest in W. Smelly constituted an
estate tail, which by virtue of the act docking entails then in force was converted
into a fee simple, and since the said W. Smelly as they are advised know charge
arrived to the age of 28 years, they charge that he at his death had an absolute
fee simple estate in the lands mentioned in the devise aforesaid - the said W.
Smelly died intestate and without issue and above the age of 28 years, and therefore
his said real estate descended according to the Statute of descents of Virginia.
The said W. Smelly left as his heirs at law to said real estate John Smelly, Thomas
Smelly, Amelia the wife of Sears one of the p'ts: Nancy Bowling, Martha
Fulgham, and Jenny Everett, which said John, Thomas, Amelia, Nancy,
Martha, & Jenny were the full Brothers and sisters of the said W. Smelly decd. who at
his death had neither father or mother. Thomas Smelly aforesaid one of the brothers of
W. about the year 1813 being then about 19 years of age, unmarried & without issue,
went into the army of the United States and went beyond the commonwealth of Virginia
as your complainants are advised to Canada, and was never heard from by
any connections or other persons in this commonwealth from about the year 1814 -

so that your complainants charge that he died intestate, under the age of 28 years unmarried and without issue leaving no father or mother, but he left living the following persons entitled to his estate to wit your oratrix Amelia, one Martha Fulgham, Jane Everett, Nancy Cowling and the aforesaid John Smully brother & sisters of the deceased Thomas Smully. John Smully afterwards born the day of A.D. 1820 being under the age of 28 years, died testate married without a child, having by his will a copy whereof is here with filed marked No. 4 and prayed to be taken as a part of this bill divided all his estate real & personal (including his tools) to his sister Martha Fulgham to her and her heirs forever. Jenny Everett died intestate about the day of A.D. leaving one child who is now living to wit Patsy Everett. Martha Fulgham died about the year 1828 having previously conveyed by deed to Thomas M. Dashile (which deed is of record in the county court of Islop Night) an office copy whereof is here to annexed marked No. 5 and prayed to be taken as a part of this bill, lands devised in the will of Wm Smully the elder aforesaid, and by his will a copy of which marked No. 5 is here to also annexed & prayed to be taken as a part of this bill she devised to her son in law Thomas M. Dashile aforesaid the whole of her estate real & personal (except a slave) so that he has claimed to be entitled to all the rights of the said Martha Fulgham in the real estate which descended from Wm Smully aforesaid, and by means of gift and will of said Martha Fulgham, the said Dashile has for years had possession of and unjustly rec^d the rents of the greater part of the lands aforesaid, and applied the same to his own use, insisting that these belonged to the said Martha when in truth she was entitled only to a small share thereof. Nancy Cowling one of the sisters of the said Wm Smully the younger died about the day of A.D. intestate and left only one child who is your oratrix Martha S. Chapman who is her heir at law, and entitled to her interest in the lands aforesaid. Your complainants are advised that under this statement of facts of which they will offer abundant evidence, Wm Smully the younger attained the age of 28 years, and was at his death possessed as an estate of inheritance the tract of land wherein his father Wm Smully the elder died, also that land described in the said elder Wm Smully's will, as the land he purchased from Alexander Woodcup all which lands are within the county of Islop Night & in the jurisdiction of this court, that at the death of the said Wm the younger his lands aforesaid, descended to the persons as aforesaid called his heirs at law and that they ought now to be divided in just and legal proportions

between your complainants and the said Thomas M. Dashile & Patsy Everett; yet the said Thomas M. Dashile contrary to what is right, has held & possessed of the lands aforesaid for many years, and now refuses to surrender to your orators Noratrix their proportions and to pay to them any rents and profits arising from the same since he has unjustly withheld it from them; although the rents & profits have amounted to a large sum of money, all which can be ascertained by a tender consideration thereof, and for as much as your complainants are without remedy in the premises save in this court, they pray the said Patsy Everett & Thomas M. Dashile and all other proper persons shall be made defendants hereto, & be compelled on their corporal oaths, full, true, just & perfect answers to make to all & singular the allegations aforesaid, as fully as if the same were herein again repeated & they there to more particularly interrogated. That they especially answer and say - is it not true that Wm Smully the younger left the commonwealth of Va. when about 27 years of age, unmarried & without issue; and was he not living so far as they know or believe, or so far as was known or believed by his connections, for 7 years after he left the State of Virginia. did he not die intestate, and are not those stated herein to be entitled to his estate, his true & proper heirs: did not Nancy Smully marry one leaving as her heir at law an only child your oratrix Martha Chapman? is not the aforesaid Martha Fulgham dead testate, & does not the said Dashile claim under her: did not the aforesaid Jenny Smully marry Everett & die intestate leaving one child only her to wit the said Patsy Everett? That the said Dashile set forth plainly and distinctly whether he is not in possession of the lands aforesaid for many years rec^d the rents and profits to his own use, of the lands given to Wm Smully the younger now and under the will of Wm Smully the elder - how long has he held possession? and what is the annual value thereof; and that the defendants set forth in their answer, all knowledge which they have of the charges aforesaid: And that your Honor will decree partition of the lands aforesaid between your complainants & others entitled, or sale and partition of the proceeds: cause the said Dashile to render before a commissioner of your court an account of the rents & profits of the lands aforesaid, and make any other or further decree in the premises which may comport with equity; & as in duty bound they will pray - They pray the commth writ of Subpoena directed to the commanding J^{rs} -

J. C. Atkinson p. 95

Wm. H. Dashiell

May 1840

Non suit entered

Dashiell H.

Piece in

Chancery

March 2^d 1835 Bill filed

April 6th 1835 Deposition taken
in hand under seal of office

July Rules 1835 answer of the
m^r Dashiell & exhibits referred to
filed.

August 3^d 1835 General repl. &
issue & cont^d

November Rules 1835 cause
set for hearing.

May 4th 1836 Depoⁿ of Dixon
Pinn filed

Oct 8th 1836
Cont^d

May 6th 1837 cont^d

Oct 11th 1837 cont^d

May 5th 1838 cont^d

Oct 9th 1838 cont^d

The deed from John Tully to Jas. Hurlbarn
marked 7, ^{as copy of} James Hurlbarn will
marked 8 and the deed from Jas.
Hurlbarn to Martha Hurlbarn
marked 9 are herewith filed and
prayed to be considered as parts of
this cause.
The respondent submits to the court
the evidence produced whether
the said William Tully lived to
the age of 28 years, also under
the will of William Tully the date
whether an estate tail was created,
& connected by law into a fee simple,
as the plaintiffs suppose
and whether the limitations to
John Tully should the said
Mar, "leave no heir or heirs, ~~and~~
lawfully begotten of his body" is not
good; inasmuch as it contemplates
a failure of issue at the time
of his death, and not an inde-
finite failure; and, ²⁰ good, whether
the said Mar arrived to the age of
28 years, or died before that age.
~~leaving this question for your appointment~~
~~to be determined with the Court~~

And your respondent moreover says
that even if the said plaintiffs are
entitled to any portion of the lands
of Mar Tully dead, (which he altogether
denies) he holds a bond executed
to a certain Samuel Everett in
his lifetime by the said Mar Tully
for twenty one dollars dated the
10th June 1807. which ~~is~~
binds the lands of the said Mar Tully
which said bond marked L
is herewith filed & prayed to be taken
as part of this cause. The said
bond is ~~and~~ ^{respondent} but there is
property of your ~~respondent~~, but there is
no assignment thereof, ~~and~~
~~respondent~~ he has qualified as the
administrator of the said Samuel Everett
and claims the amount thereof
of the assets by descent from the
heirs of the said Mar Tully to wit
the plaintiffs in this cause, if indeed
they have any right to claim as
heirs, a certificate of said administrator
is herewith filed marked M
& prayed to be taken as part of this
cause.

your respondent also says that he
holds in his possession as his own
property another bond or specialty
executed by the said William Lively
in his lifetime to wit on the 17th day
of June 1807 payable 60 days after date
to a certain Quakerial Society for
the sum of two hundred and sixty four
dollars and eight cents subject to a
credit of \$35.20 endorsed on the same
on the said 17th day of June 1807 which
said specialty has been since assigned
to your respondent by an endorse-
ment thereon signed by the said
Quakerial Society on the 26th June
1835, which said specialty on its face
bears the name of the said New Lively
the said specialty is herewith filed
marked A and is prayed to be
taken & considered as part of this answer
and your respondent claims the amount
of the said specialty out of the assets
by descent from the heirs of the said
New Lively To wit the plaintiffs in
this cause, if indeed they have any
right to claim as heirs
and having thus answered your re-
spondent prays leave to be dismissed
with his costs &c

signed

James Sullivan per

Thos M. Darnall

The answer of Thomas M. Carlier to a bill exhibited against him & thus in the circuit Superior court of Lewis & Clarke for the county of Blaine by William & Chapman and Martha & his wife & William Leach and Amelia his wife

This respondent having and receiving to himself all benefit and advantage of exception to the many errors & insufficiencies of the said bill for answer thereto answers and says, that of ~~the~~ William Tully mentioned in the plaintiff's bill he knows nothing, he knows not whether or when he left the commonwealth of Virginia, what was his age, whether he was married or left issue, when he died, or how long he lived after leaving the commonwealth, but requires strict proof of all the allegations in the plaintiff's bill in relation thereto; he has heard heard & believes Nancy Tully did marry one Covell & die leaving as her heirs to her an only child Martha one of the plaintiffs; the said Martha Tully did die testate and your respondent has received the greater part of her estate under her will, he believes the said James Tully did marry Emmet who died before her, and the said James is since dead; your respondent further answering says that it is true that he has been in the possession of the lands devised on certain conditions and limitations to Mrs Tully by the will of William Tully his father and has been in possession of the same

about seven years by virtue of the last will and testament of Martha Fulplaw died; at the time the said land came into his possession it was not worth more than sixty dollars per annum but he has since rebuilt the mill and repaired the dwelling house and made other improvements amounting to at least eight hundred dollars which he prays may be allowed him in case any decree shall be rendered against him. Your respondent further averring that the said land was conveyed by John Tully, the brother of the said William Tully, ~~as was~~ entitled to the same under the will of Mrs Tully the elder ~~in~~ in the event that the said Mrs should die ~~not~~ before the age of 28 years or leave no heir or heirs lawfully begotten of his body, to a certain James Fulplaw by deed acknowledged in the Clerk's office of Hampshire county on the 1st Decr 1817. The said William Tully at that time being presumed in law to be dead and having left no known issue. The said James Fulplaw by his last will & testament admitted to probate on the 6th August 1821 gave all his estate includ-

the said land (except some small bequest) to his wife Martha Fulplaw and the said Martha Fulplaw devised the same to your respondent by her last will & testament admitted to probate on the 2nd June 1828. Your respondent further averring that John Tully by his last will & testament admitted to record on the 1st Octo 1821, gave, devised & bequeathed all his estate real & personal (except his tools) to his sister the said Martha Fulplaw, wholly the said Martha acquired all the rights & interests of the said John Tully then possessed by him in ~~and~~ to the estate of his father and brothers who were then deceased and that on the 19th Sept 1825 James Tully and Elizabeth formerly James Tully and daughter of Mrs Tully the elder conveyed by deed to the said Martha Fulplaw ~~all~~ her rights, title, claims and interests of her, and to the estate both real and personal of her brothers John Tully and Mrs Tully, the said deed was admitted to record on the 2nd June 1826 in the ~~Clerk's~~ Clerk's office of Hampshire county. The will of William Tully marked A, the will of John Tully marked No 4, & the will of Martha Fulplaw marked No 5 referred to by the plaintiffs are also referred to by your respondent. ~~Copies of the~~

Myself as to the
 The day this is further appeared
 before me at the time of the process of law
 county a habeas corpus that the foregoing
 answer and the matters therein
 stated & contained are correct & true
 according to the best of his knowledge
 & belief and he may have the 13th day of
 June 1835
 J. H. Dwyer Jr.

Wm. H. Dwyer
 Esq.
 Captain of
 the
 militia
 July 1835
 Dwyer & Co.

Inskipright county Toront

This day Thos M Eastell
appeared before me a justice of the peace
of said county and made oath that
the foregoing answer and the matters
therein contained are true and stated are cor-
rect and true according to the best
of his knowledge and belief. Given
under my hand this 6th day of July
1835

J. A. C. Jordan

To Mr. Thomas de Beasly and Patsy Everett -
Take notice - that ~~John~~ we shall proceed to
take the deposition of Zachariah Everett &
others, at Nathaniel Dickinsons Tavern in -
in the County of Stansbury
on the 8th day of January 1835, between
the hours of 8 o'clock A.M. & 7 o'clock P.M.
of the same day, to be read as evidence
in the suit depending and to be decided
in the Circuit Superior Court of Law &
Chancery in the County of Essex, N.H.,
wherein we are plaintiffs and you are
defendants -

Wm. Chapman &
Martha his wife
Wm. & Amelia
his wife -

The commonwealth of Virginia to the Sheriff of Isle of Wight County
greeting, We command you to summon Thomas de Bashi-
ell & William Deas

to appear before the Judge of Circuit Superior Court of Law and
Chancery for the aforesaid county On the first Monday in February
next that being rule day to answer a bill in chancery in the said
court exhibited against them by Com. Chapman &
his wife Leatha S. and William Deas
& Amelia his wife —

And if the said Thomas de Bashiell and Wm
Deas

shall fail to answer the said Bill within four months from the
service of this subpoena the same will be taken as confessed. And
have then then this Writ Return at Nathaniel Young clerk of said
said court, at the court House the 24th day of January 1835 in the
59th Year of the commonwealth —

Nathl. Young Cl.
Clerk

To Mr. Thomas McKimble Spatry, Sheriff -
you will please to take notice that on
the first Monday in April 1835 at the
town of Willis & Woolly in the County
of Whif. Migt., between the hours of 8
o'clock A.M. & 6 o'clock P.M. of the
same day, we shall take the expositi-
-tions of Thoma Smalley and others
to be made as witnesses in the said
expenditure in the circuit Superior
Court of law and chancery for the
County of Whif. Migt. wherein we
are plaintiffs and you are defend-
ants.

Yours &c.

J. H. Chapman &
Martha his wife -

W. Leary & Samuel
his wife -

March 18. 1835

County of Alb of Bristol Jct -

This day came before the subscribers
petition for said County, Nathl. Pruden jr
who made oath that on the 19 day
of March 1834 he del. to ~~Thomas~~
a free white person above 16 years living with Thomas
in Washell a true copy of his petition
and explained the same to them
and that on the 19 day of the same
month he read the within notice
to Patrick Smith & explained the con-
-tent to be - given under my
hand this 6 day of April 1835 -

Matthew Langley D.

Chapman &
Washell

Take notice - That on the third day of May
1836, at the House of Dixon Primer in the
County of Wm. Wright, between the hours of
6 o'clock in the morning, and 7 o'clock
in the evening of the same day, we shall
take the deposition of Dixon Primer & others
to be read as witnesses in the said proceedings
and undecided in the Circuit Superior Court
of law and chancery, for the County of
Wm. Wright wherein we are plaintiffs and
you are defendants. - Yours &c.

april 22^o 1836

Mr. H. Chapman &
Martha Shier wife, &
Mr. Leary & Amelia
his wife. -

County of Shropshire. This day came
 before the undersigned who is a Justice
 of the peace in the County aforesaid
 stated J. Phillips — who made oath
 that a true copy of this notice was left
 on the 22 of April 1836, with Patrick Corbett
 at the House of Thomas Deas-
 hill, he being about 18 years old a son
 - son of Deas hill, farmer - living under
 my hand and seal this 2 day 1836

Matthew Laughton J.P.

Mr. Thomas de
 Deas hill

This is to be
 sworn to, given
 to me at
 Deas hill —

Patrick Corbett - sworn
 Patrick Corbett
 J.P.

The deposition of Thomas Smalley
of lawful age, taken on the 6th day of
April A.D. 1835, between the hours
of 7 o'clock A.M. & 6 o'clock P.M. of the
same day at the town of Miles & Woody in
the presence of Paul Coleman J.P. Dea. Hill dep.
in Blk of Wright County, to be read & evid-
-ence in the suit & proceedings in the cir-
-cuit Superior Court of Law and Chan-
-cery for the County of Blk of Wright, wherein
Mr Chapman and Martha his wife
and William Jay and Amelia his
wife are plaintiffs, and Thomas de
Dea. Hill and Patry Everett are
defendants.

Question by the complainants to Witnes-
-s: Do you know, and are you acquaint-
-ed with one William Smalley, son of
William Smalley, the elder & his family
of the County of Blk of Wright, who
Wm Smalley the younger was the ^{brother} son
of one Martha Tuley, deceased? If so,
say how you became acquainted with
the said Wm Smalley the younger; was
you related to him? if so in what way?
what became of the said Wm Smalley
the younger? Did he die testate or
intestate, married or unmarried,
with or without issue, and who were
his heirs at law? make them answers to

each of the said questions and state
any facts within your knowledge
as to the death ~~of the same~~ and birth of
the said Smully the younger, &
also any thing within your know-
ledge to show where he is, what
became of him, & who were his heirs,
if dead.

Answer of Thomas Smully to the
questions contained in the foregoing
interrogatory.

Answer. I know from his infancy the said
Mr. Smully in the said interrogatory named,
had the said daughter the same even referred
to be full brother and sister. He was my
own cousin. - He left the state of Virginia
the year in which the embargo was laid
by Congress - he came away as a surgeon
for speculation in which he, & John Barber
were engaged ~~and~~ and Thomas Bottaday went with them
the said Smully. I know not when he died
whether intestate or testate, with or without
issue. - Question by counsel. Do or do you
not know any thing of the family register
in which the birth of said Smully was put
down, and if so say what you do know
answer of Smully. I know that there was
a register - it was in a book entitled "by his
dictionary" and is ~~referred to~~ raised by the
Capt. Barber that is it, probable it is lost -
but I can't say when I saw it last.

Question by the complainants to Thomas Smully
- did you know Jane Dwyer who was Jane
Smully? if so, of whom was she the reputed
child? who was her father? was she in
any way connected by blood with Mr.
Smully the younger? if so, in what degree?
Is the said Jane living or dead? if dead,
who was left her kin at law? did she
die testate or intestate, married or single,
and who were her children living at her
death, and what has become of them
or either of them? make true answer
to this interrogatory.

Answer of Thomas Smully to the last
interrogatory. - answer. I do know Jane
Dwyer, she was the reputed child of Mr. Smully
the elder and his wife; she was sister of Mr.
Smully the younger; she is dead; Peter Dwyer
was the only kin that I know of. - I think
she ~~the said Jane~~ ^{the said Jane} was a widow when she died,
and the said kin living in Feb of 1812.

Interrogatory by the compe[?] to Thos. Smully.
Do you know and are you acquainted
with Amelia who was Amelia Smully,
with Martha Smully who was Martha
Smully, and afterwards Martha Tugham,
with Nancy Smully - Thomas Smully
and John Smully - if so, state what has
become of them - are any of them dead?
if so who are their children or heirs at
law? make true answer to this ques-
-tion -

Answer of Thos. Smully to the last interro-
-gatory. - I do know such a person as Ame-
-lia Smully, she married William Smith
then married Mary of St. Carolina;
I know Martha who was afterwards Martha
Tugham & first Smully; I know Nancy
Smully, Nancy died ~~and~~ after marrying
Coville, & Mrs. Chapman wife who is the
compe[?] is the only child of her she left
at her death. -

Interrogatory to Thos. Smully by the compe[?].
When did you ~~see~~ Smully the father of
the young Smully, Mrs. Tugham & others
live when he died? Do you know a
plantation or tract of land which was
Smully the elder purchased of Alexander
Woodruff? if so, who are now possessed
of the pieces of land aforesaid? and
what is the annual value of each
tract so as aforesaid described?
make answer to this interrogatory -
Answer of Thos. Smully - answer -
At his death, Mr. Smully the elder lived
at the Brick House - in City of Wight
which the wife Thos. de Barhill lives
- I think Mrs. Tugham lives at the same
place when he died - she was then Mrs.
Smully - Mr. the elder died Christmas
1800 I think - I know the land which
Mr. Smully the elder purchased from
Alexander Woodruff - it was 1000 acres
- Thos. de Barhill is in possession of the
Brick House & was wholly in possession of
the Woodruff land - a part he has sold
- the Brick House tract was not the last for

what ~~was~~ I know not. - ^{question} How old
was Mr. Smalley the younger when he left
Virginia - and who had been his pen-
sioner? answer of ~~the~~ ^{Mr.} Smalley - I never was
his pensioner and can't tell his age
when he left - -
Question - was the said Mr. Smalley heard
from after he left the state? if so, how,
when and by whom? about the year
he left he wrote to John Barlow re: will
- if him about \$1000 on acct of the
wages. - Question by wife? -
who were the relations of the said
Mr. Smalley, if he did inter. take with the
- set if we. - answer - of his wife, Mary
- the Fulham Jane Everett Benjamin
Mason, Mary's cousin's mother of the
plff: Martha - and his brother John
and Thomas. - Question by plff: what
became of John and Thomas? Thomas
enlisted about '12 or '13 in the war and
went to Canada before he was of
age. I think he was then under 18
years of age. - I recd. a letter from him
about the last of the war saying that
he was a prisoner then in Halifax
where Scotland and I know nothing
more of or from him - - John left the
state of Virginia after he was 21 years

likely the year he was 21 years old;
he went to Georgia in 1818 or 1819. he
said as I am told with yellow fever
in 1820 - -

Question by How old was ~~Smalley~~ ^{Mr.} Smalley
when his father died - He was under the
age of 21 years - question - was he a
not above 21 years when he left the
state of Virginia - answer - I think
he was of age when he left Virginia.
Question - did or not the said Mr.
Smalley after he was 21 years old
make several trips to Georgia before
he finally left the state? I
believe he did but I can't say whether
one, 2 or 3. - - I do not or not know
any thing or to when Mr. Smalley
the younger was how? I can't tell
precisely. I think it was about the
latter part of the Revolutionary war
his father the Elder Mr. Smalley Sec'd
- in to be was sent for ~~from~~ from
the Encampment when Mr. the younger
was born. - answer his father first
son - ~~he was~~ ^{he was} so on and so
you not believe that when Mr. Smalley
the younger left the state of Virginia
he was above 22 years of age?
answer I believe he was more than
22 years old when he left -

Invention by Capt. ^{to Thos Smelly} Can you form any
 any person of the age of Thos Smelly the
 younger from the family register allow
 me 22? Answer I cannot.

Invention What was the age of the
 said Thos Smelly when he left the
 state of Virginia? Answer
 I don't know exactly, but
 I believe he was more than
 22 years old. — Thos Smelly

Chapman Smith &
 383 Superior St
 New York City
 April 10th 1835 came to know
 (was not of age)

Minutes of Wm. W. H. - certify that the foregoing
 deposition of Thos. Smelly was taken before
 to tried before us on the day, time & place
 mentioned in the preamble in the presence of
 David Hill the defendant - signed & sworn on before
 and read this 10th of April 1835

Matthew Daugherty (P)
 David Roberts (P)

The deposition of Zachariah Ennitt about 56 years
of age taken at the tavern of Mrs Catharine Dickman
in Suffolk and witnessed by Henry B. B. on the 15th
of June 1835 between the hours of 8 o'clock
Am, & 7 o'clock P.M. of the same day to be
read as evidence in the case in the Circuit
superior Court of law and chancery for the
County of Bedford is which Mr. Chapman
Martha his wife and Mr. Lear, and Amelia
his wife are plaintiffs and Thomas de Kaski,
-all and Patrick Ennitt are defendants.
Question by the complainants to Ennitt
were you acquainted with William Smully
-son of Mr. Smully formerly of Alb of
Bedford ~~one of~~ whose sister married Ennitt
first and then Fulgham: if so, say
when did he leave the state of Virginia
last and how old was he then?

Answer of Zachariah Ennitt

I was acquainted with the

said Mr. Smully the younger son of Mr. Smully the son
he had a sister by the name of Patsy or Martha
she married first Ennitt and then James Fulgham
he the said Mr. Smully the younger left the
state of Virginia in June 1807 I think
he was then twenty one or two years of age
-Question by plaintiffs - were you raised in the
same neighborhood with Mr. Smully
the younger - what is now age & how
do you answer the knowledge of the
age of Mr. Smully?

Answer I was raised in the same neighborhood &
well acquainted with the family of his father: I am fifty
six years of age; he derived the information from what
he said his father (say & old Capt Ennitt).
Question - did Mr. Smully ever return to Virginia
or you know after he left in 1807?
Answer no sir;

person - he was a negro speculator and the Bond
was given for the Bal: of a negro sold him by me
Zachariah Cuvier

Stamens County, to wit, this 8th of June
1835 at the town of Catharine Dickerson
in the presence of Mrs. Maria Hill
one of the defendants - the above deposition
was taken & signed before me a justice of
the peace for said County. Given
under my hand this 8th of June
1835 -

Nath. P. Folsom

[illegible]

The clerk of the Circuit Superior
court of Law & Chancery for
the County of Solent in the State of New York

Washington Mississippi Territory Aug 21st 1820

Dear Sir,

you are not yet forgotten by me

I have the pleasure to inform you that my prop^{ts}

are flattering & I expect to do very well

The money I owe you I am sure to you as

soon as you render me a statement of my acc^t

which I wish you to do as soon as possible —

together with any money that you may have

paid on my acc^t (and all credits — the money

Rec^d by Shivers) & Sales of my property —

With a little time I shall be able to ^{pay} all

my debts, which I will do as fast as possible

I have suffered more uneasiness of mind than

language could express — I am anxious to hear

from you (address your letter to this place)

and I will soon be able to answer it

Remain your friend

William Smalley

51.18
35.50
15.68

1384.04

25

John Barber Esq
Attor at Law
Suffolk Virginia

Wm Smalley
to
Barber } Allen
Jan 9. 25
1870

Copy of ~~Dec~~ enclosed
Copy of answer -
1870 July 30 - duplicate
- sent - & a letter
covering them & copy
herein. -

Chapman &

Reo. here

to be filed with
the report of
Mr. Raines.

The deposition of Dixon Pinner of Deep Night
of lawful age taken on this 3^d of May 1836, at
the house of Dixon Pinner in the County of
Deep Night, between the hours of 6 o'clock a.m.
and 7 o'clock p.m. of the same day, to be
read as evidence in the saids proceedings and
made use in the Circuit Superior Court
of Law and Chancery for the County of
Deep Night, wherein John Chapman & Martha
his wife, and Mr. Gray and Amelia his
wife are plaintiffs and Thomas de Sa, his
and other are defendants -

The deponent having been sworn that truth to
speak, says that he knows one Mr. Smully
who was the son of Mr. Smully the Elder,
of the County of Deep Night - that in the depo-
- nent was the uncle of the said William
the younger - That his mother was the sister
of this deponent - ~~he thinks that in 1807~~
~~that while he lived in Charleston, South Carolina~~
~~he moved to his present residence~~ this
deponent says that he ~~thinks~~ became a
security for the said Mr. Smully in 1807
or 1808 - ~~he~~ that his security was for the
purchase of a negro - that the said Mr.
Smully was engaged in negro trading and
that this deponent believes he had made
one or two trips with slaves before he
became his security - that the said Mr.
Smully then left this part of the County
as he thinks in 1808, and has never
returned - This deponent knew the said
Smully very well and there was an
impression on the mind of this deponent
when Mr. Smully went away, that he
was then about 20 years of age - The
impression was produced on his circum-
- stances, that about that time, it was
said his secret heart had turned him
off, and that it had injured his mind

he can. it was thought then that ~~it~~
unless he did many ~~by~~ by the time
he was 28 years of age, he would
lose the land given by his father.

Question by Mr. Attorney. Look upon a paper
purporting to have been signed by Mr. Smully
dated Washington Mississippi Territory
January 25-1810, and signed "John Barth
Esq. atty. at law" and fold it so that it
look also at the endorsement on the back
thereof in there words "Mr. Smully
to John Barth 25
Barth 1810"

copy of acc. enclosed

Copy of answer.

1810. July 30. duplicate sent to

phoe to say in whose hand writing are
the endorsements, if you know?
answer. The endorsements in my opinion
are in the hand writing of John Barth
and: whom he had falsely attested as a witness
and the said John Barth is dead.

By depts. counsel you have been ques-
tioned about the age of Mr. Smully
do you know or you know any
thing of his age with any certainty
and I cannot say with any
certainty I only repeat my
impressions of his age.

do you know anything of his
counting & being turned off
I only know of it being
a total talk

How can he be heard from after
his young man.

I only understand he had
written several letters to
Mr. Barth & perhaps to others

Question by Mr. Attorney. How often occasionally when a boy
at the house of Mr. Smully the young father
who married your sister - if so, did you appear
to be about the same age? if any difference
in your age how much as you supposed?
answer. I was occasionally there, sometimes
5 or 6 times a year, played with the
said Mr. the young, and suppose
2 or 3 years difference - but this is con-
-jecture - ~~the father~~ I think I was
the oldest. He knew I was, the
biggest. He was born in 1775 -

~~and for the first time~~
I my sister had one child older than
Mr. Smully. I think that child was
older than myself. - my sister Betty
the mother of Mr. Smully was born 1758
23^d December accord to the family
record. - (signed)

Louisa Pinno

Court of the Night Tel. This day the judge
expositor of Lewis Pinno was taken on the 3^d
of May 1836. at the house of Dixon Peck
in the presence of the defendant Mr. R.
Chapman one of the juries. - Even though
my hand and head the afection of the
pear this 3^d of May 1836 -

John Godwin J.P. (J.P.)

May 4th 1838 came to hand
under seal N. Young Esq.

The Clerk of the Circuit Sup^{ts}
at Law N. Y.

Edw Wright

Chapman Esq.

Bar hire 3rd serps.

Respectfully Obedient

Chapman Wife vs. Barhile &c

The bill charges that Mr. Smelly the elder by his will devised to Mr. Smelly his son the lands on which he lived &c till he arrived to the age of 28 years; and if at that time he had him or being lawfully by the off his body then to him and his heirs.

That the said Mr. the younger left the state of Virginia after he was 26 or 27 years of age, that his absolute and natural death has never yet been ascertained and that as the law does not presume death until seven years after not being heard from, therefore he died about the age of 28 years, and no issue was ever heard of.

It is contended on the facts in evidence that Mr. died above the age of 28 years & was therefore entitled as an estate of inheritance to the lands devised to him as aforesaid. If he did not die until after he was entitled to the estate, then the plaintiffs and the defendants are entitled to his real estate as descended.

The evidence of Thomas Smelly filed in the cause is relied upon as proof that he was above 28 years of age before he was presumed dead.

The defendant Barhile claims under Mrs. Fulgham who claimed from John Smelly who it is said by the opt. was entitled to the lands lent to Mr. because says the opt. Mr. died under the age of 28 years & in that event the remainder over was to John. - so that the fact as to whether Mr. lived to 28 years is a most important fact in the case.

The plaintiffs contend that the devise by Mr. Smelly the elder to Mr. the younger, contains two conditions - one that he should be 28 years of age - the other that he should have him of his body. - and that the second condition or contingency whereon the estate was to vest in Mr. constituted an estate tail, which was converted into a fee simple, & if he was 28 years old his estate was good. -

But the defl. says, if our charges are true then
are coparceners, yet he has made improvements,
and must be paid for them. The answer is,
that Mr. Fulgham under whom the defendant
claims, was a sister of the ~~deceased~~ ^{deceased} Smelly
and must have had notice of the defect in
the title which she held - and John Smelly
who conveyed to the devisee of Mr. Fulgham
was a full brother of Mr. Smelly, and ^{was} a ~~son~~
that he ^{was} ~~was~~ only part owner. - Even a Court of
Equity under the circumstances of the case,
will not decree compensation for improvements,
although under some circumstances the per-
-centage would be compelled to pay only the
value of the land before the improvements were
put. - But no fraud has been practiced by the
defl. on the defendant, or on any person
under whom he claims. -

The defl. says that he is a bona fide purchaser of the land.
Mr. Smelly - that ought not to be paid because
of the falseness of the demand.

The defl. asks that the d. will decree an apportionment
of the land & a division of the land.

view Hill in Newrow - 3 case 342.
Taher Tally - 3 case - 354. } a contingent case
Sydney Sydney - 2 case 263.

- 1 a court of equity has no jurisdiction in this case, because the title of the p[ar]ty is denied
2. The testimony in this case probably shows that Mr. Snellby died after he had arrived to the age of twenty eight years, and if so my opinion is that under a proper construction of the will, his title the land in question became absolute. and the authorities referred to in the other case -

Chapman & Co

or

Warwick St

Adm for the purpose
by counsel for
the p[ar]ty. -

Warrant on p[ar]ty
Warwick St 403. or
Warrant on p[ar]ty.

As the Judge of the Circuit Superior
Court of Law & Chy: for the State of N. Y.

In the Common Law Court of Dist of
N. Y. it is a suit of Chapman vs. Bissell
vs. Bissell in which I am a party.
For the Chy: side are two cases
to wit, Chapman vs. Bissell
& Bissell vs. Chapman
in which I am a party plaintiff;
I desire these suits to be dismissed.

(Signed)
May 5. 1840.

Wm. Chapman

Order of the pet.

Sheweth all men by these presents that I, Martha Bulfinch of the county
of Suffolk, in the State of Virginia, for and in consideration of the sum
of one hundred dollars which I have to and for the said Thomas M. Baskett
the sum of one dollar to me in hand paid by the said Thomas M. Baskett
Baskett at or before the executing and delivery of these presents the receipt
whereof is hereby acknowledged, both given and granted and by these presents
do give and grant unto the said Thomas M. Baskett his heirs, executors, adminis-
trators and assigns forever, all that tract or parcel of land that was formerly
owned by Rebecca Smith and by her estate to William Smith, the other one
half of the tract or parcel of land that the said William Smith purchased
from Robert A. Cook, which said tract or parcel of land, was devised to me
by brother John Smith in his last will and testament, which said tract or
parcel of land contains one hundred and eighty five acres of the same more or
less and bounded by the lands of Charles Powell being the lands of Thomas
Smith, John Hampton and others together with all and singular the houses
buildings, ^{hereditaments} woods, ways, waters, and water courses, profits, and advantages, and in-
closures, hereditaments and appurtenances whatsoever to the said land
belonging or in any way appertaining, or with the same in any way
or appertaining, together with all and singular the houses, buildings, hereditaments
or appertaining to the same or any part thereof, and the same and the
same and the same and the same and the same and the same and the same
part and parcel thereof. To have and to hold the same unto the said
land and premises unto the said Thomas M. Baskett his heirs, executors,
administrators and assigns forever, together with the said premises and the
same and the same and the same and the same and the same and the same
said Thomas M. Baskett his heirs, executors, administrators and assigns
free from the claim of the said Martha Bulfinch her heirs, executors and
administrators, and of all persons claiming therefrom that with and
without force and fraud by these presents. In testimony whereof the said
Martha Bulfinch hath hereunto set her hand and seal the first day of December
in the year one thousand eight hundred and one in the
County of Suffolk, Virginia.

In the presence of
Ezra Lyle

Thomas Jordan
Charles Murphy

Martha Bulfinch

Nottingham County January 2nd 1824 The foregoing due of Pitt was found
in the book office by the oath of Thomas Parker and before me
was of the witness stands I continued for further proof. and on the 20th day
of April 1824 the said due was fully proved by the oath of James Park
the other witness stands I admitted to record

Teste Nathl. Young J. S.
Nathl. Young J. S.
Clerk

Fulgham
to 3rd Dec. 1824
Dashed

exhibit
c. 25. 4

4

Chapman wife &c.

vs

Dashed &c.

March 2nd 1825

by J. T. M.

In the name of God amen I John Smully at present of the
city of Savannah County of Chatham State of Georgia being in
a weak state but of sound mind and memory do make this my
last will and Testament, revoking all others heretofore made by me,
First I nominate my true and trusty friend Henry Smithson my
executor to see the foregoing carried into effect, that is to say I request
and require my executor to pay all my last debts, funeral charges
a nurses bill and other charges that may be right & reasonable,
I give to my friend Henry Smithson all my tools of any description
whatsoever and whosoever to be found, Now lastly all my
estate real and personal I give devise and bequeath to my
beloved sister Martha Fulgham to her & her heirs forever.

Signed John Smully Ld.

Signed & sealed
in presence of us
26th Sep. 1820

Henry Miller
John Lillibridge Justice of
the peace for the county &
State aforesaid

At a Court held for Chatham County the 1st
day of October 1821 The foregoing will was presented in court
& proven by certificates thereto annexed & ordered to be recorded
Attesty J. F. N. Young C. C. l.

I Martha Fubgham of the County of Hillsborough and State
of Virginia do make this my last will and testament in
manner and form following that is to say First I Give to my
daughter Anne Barhill my negro man Scotton and her heirs
forever Secondly all the rest and residue of my estate
of whatsoever kind it may be both real and personal I Give
to my son in Law Thomas M. Barhill and his heirs fore-
ver. Thirdly and lastly I do hereby nominate and appoint
my son in Law Thomas M. Barhill executor of this
my last will and testament In Witness whereof I have
hereto set my hand and seal this twenty fifth day of
January One thousand eight hundred and twenty eight
Signed sealed and delivered
In the presence of

Martha Fubgham

Robert Gay

Edward B Gay

Honriette Mary Ann Gay

At a Court held for Hillsborough County
the 2nd day of June 1828. The above Will was presented
in Court by Thomas M. Barhill the executor therein
named who made oath thereto according to law, and the
same being proved by the oaths of Robert Gay Edward
B Gay and Honriette Mary Ann Gay the witnesses thereto
and ordered to be recorded and on the motion of
the said executor who together with John Clark and
Nathaniel P. Phillips his securities entered into and
acknowledge a bond in the penalty of five thousand
dollars conditioned as the law directs certificate was
granted him for obtaining probate in due form of law

John

Nath. King

Abner

Nath. King

cc

Martha Putnam's

note

Feb 21

to Mr. S.

Chapman &

Washburn

March 2nd 1833 filed by
J. H. W.

MS. 20. 25

This Indenture made this sixth day of October in the year one
Thousand eight hundred & seventeen between John Smelly of the
County of Salisbury & State of Virginia of the one part and
James Fulghum of the County and State aforesaid of the other
part witnesseth That the said John Smelly for & in considera-
tion of the sum of Seventeen hundred Dollars to him in
hand paid by the said James Fulghum at or before the
making and delivery of these presents, the receipt where
of is hereby acknowledged, Have bargained, sold
and by these presents doth bargain and sell unto the
said James Fulghum his heirs, and assigns a certain tract
a parcel of land situate in the County of Salisbury
it being the same land & plantation that my Father
William Smelly formerly lived upon bounded by the lands
of Thomas Smelly, Gideon Purcell & Jesse Hutchings, also
one other tract or parcel of land which the said William
Smelly purchased from Alexander Woodruff bounded by the lands
of Jesse Hutchings, John Scott, Thomas & Mary or Mary
Gay, together with all and singular the Houses buildings
yards, gardens, orchards, lands, tenements, meadows,
pastures woods, ways waters & watercourses, profits and
commodities advantages, emoluments hereditaments and
appurtenances whatsoever, to the said lands belonging or
any wise appertaining or with the same used or enjoyed
or accepted, reputed, taken or known as part parcel
a member thereof or as belonging to the same or any
part thereof and the reversion and reversions the remainder
and remainders yearly and others rents issues and profits thereof
and of every part and parcel thereof I have and to
hold the said bargained land & premises, here in before
mentioned or intended to be bargained and sold and every
part and parcel thereof with every of their rights, members
and appurtenances whatsoever to the said James

belonging to the said James Fullghum his heirs and assigns
for ever to and for the only proper use and behoof of him
the said James Fullghum his heirs & assigns for
ever and the said John Smelly for him self and his
heirs the aforesaid lands with ~~all~~ and singular the
privileges and appurtenances before mentioned unto the s^d
James Fullghum his heirs & assigns free from the
claim of him, the s^d John Smelly his heirs executors
or administrators and of all and every person claiming
ther form shall will and do warrant and forever defend
by these presents in witness where of the said
John Smelly hath hereunto set his hand and
and fixed his seal this day and year above written.

Signee & attor delivered

in presents of

James Fullghum
James B. Dole

John Smelly Seal

Smully
to (Recd
Kearney and)

December 1st 1817 Ackn^d
in the Clerk's Office and ad-
mitted to record

Euskell
ad^d by
Chapman & Co

July 1838 filed by
deft^r att^r -

Wile of Wright County, December 1st 1817 the
Instrument was acknowledged in the Clerk's
Office by John Smully the parties here
to and admitted to record

Teste
Nathl. C. Young C. J.

\$71 on demand I promise to pay or cause to
be paid unto Lemuel Everitt his heirs or assigns
the just sum of seventy one Dollars current money
of this Common wealth to which paymen well
and truly to be made I bind my self my heirs Executors
and administrators firmly by these presents sealed
with my seal and dated this 10th of June 1807

Left

Lachariah Everitt

William Smully Seal

True Truly
bond

(L)

Chapman &

is

2

Dashfield

July Rates 1835

exhibit & file by

dept: att:

Isle of Wight County Court,

I do hereby certify that at a Court held for the said county of
Isle of Wight the 2nd day of June 1835 On the motion of Thomas M. Dashiell who
made oath therein according to Law, and together with Mills W. Darden his security who
justified on oath as their sufficiency entered into and acknowledged their bond in
the penalty of Two thousand dollars conditioned as the law directs, certificate was
granted the said Thomas M. Dashiell for obtaining letters of administration with
the will annexed of Samuel Eversitt decd. in due form. In testimony
whereof I have hereunto set my hand this 8th day of June 1835.

Nathl Young B. Mag
"C"

Certif. of Thomas M.
Dashiell adenorth to
Samuel Everett's est.

(M)

Chapman

vs 3 exhibit M^o
Dashiell &

Jury Rules 1835 filed
by apts. atts.

60 Days after date I promise to pay or
Cause to be paid unto Zachariah Covert

His Heirs or assigns the just Sum of
^{Sixty four and Eighty Cents}
Two Hundred and ~~Twenty~~ Dollars Current
money
= of Virginea to which Payment well and Truly

to be made I bind myself my heirs, Exors, &
Administrators - firmly by these presents -
Sealed with my Seal & dated this 17th Day
of June AD 1804

Test
James Covert Will and Molly Covert

June 14th 1804 Recd of the Within
Note thirty five Dollars and twenty
Cents in full of anote

Test

Samuel Gerritt

Zachariah Everett

Deposited the within to Jos. M. Davis
for the use of the Town of Newbury
the June 1835
Zachariah Everett

254 Dollars

Smelly to Everett

Smelly
to
Everett

(227)

Chapman to
or
Dorchester

July 1835
Price by order of the

I James Fulgham of the county of Ischofright and state of Virginia do make my last will & testament in manner & form following that is to say: First I give to a Nancy Everitt daughter of Samuel Everitt one bed & furniture to her & her heirs.

Secondly I give to Betsy Everitt daughter of Samuel Everitt one bed & furniture to her & her heirs.

Thirdly all the rest & residue of my estate of whatsoever kind it may be I give to my beloved wife Betsy Fulgham & her heirs forever.

Fourthly, & lastly I do hereby nominate & appoint my beloved wife Betsy Fulgham Executrix of this my last will & testament. In witness whereof I have hereunto set my hand & seal this 18th day of December 1818.

Signed, sealed & declared
in the presents of
Thomas Smully

Exam Gale

Thomas Dixon

James Fulgham 

At a court held for Ischofright County the 8th day of August 1821
The foregoing will was presented in court and proved by the oaths of Thomas Smully Exam Gale and Thomas Dixon the Witnesses thereof and ordered to be recorded. and time allowed Betsy Fulgham the Executrix therein named to qualify whenever she shall think fit.

Teste Nathaniel Young

11 copy Teste Nath. Young
" 100 "

James Fulkham's
Mill



y

Duskeell

ad:

Chapman & Co.

July 6th. 1835 exhibit
G. filed by dep't attor.

This Indenture made and entered into this nineteenth day of September in the year one thousand eight hundred and Twenty five by Jinney Everitt of the first part, and Martha Fulgham of the second part, both of the County of Islop-wright and state of Virginia, witnesseth: That the said Jinney Everitt for and in consideration of the sum of one hundred and twenty five dollars to her in hand paid by the said Martha Fulgham at or before she enrolling and delivery of these presents (the receipt whereof is hereby acknowledged) have bargained and sold, and by these presents doth bargain and sell unto the said Martha Fulgham her heirs and assigns, all the right, title, claim, and interests of, in, and to the Estate both real and personal of my brothers Thomas Smully and William Smully which I am now entitled to, or may hereafter be entitled to; the reversion and reversion, remainder and remainder, issues and profits thereof and every part and parcel thereof. To have and to hold the said bargained estates both real and personal which the said Jinney Everitt now hath or may hereafter have as aforesaid unto the said Martha Fulgham her heirs and assigns forever (to and for the only proper use and behoof of her the said Martha Fulgham her heirs and assigns forever). And the said Jinney Everitt for her self, and her heirs, the right, title & claim as aforesaid free from the claim of the said Jinney Everitt and her heirs, and every person unto the said Martha Fulgham will & do warrant & forever defend by these presents. In witness whereof the said Jinney Everitt hath hereunto set her hand & seal the day and year first above written. —

Signa sealed & delivered
in presence of —
Wm. Duncan
William Everitt
Alfred Jordan &

Jane Everitt Seal
mark

1825
Essex (Might-County) October 2nd: 1825. The foregoing indenture
was proved in the clerk's office by one of the witnesses and
continued - And on the 2nd day of January 1826 it was
fully proved in the clerk's office by Mm: Everett and
Thomas Dixon and admitted to record.

Teste Nathl. Conroy C. J. M. C.

may 1835
to
Hulgham

Eventh
to Decd
Hulgham

October 3^d 1825 proved in the
Clerks Office by one of the wits.
& cont^d

January 2^d 1826 fully proved
in the Clerks Office by William
Eventh & Thomas Dixon, and
admitted to record

Recorded

Daskin
ad.
Hulgham

July 1835 filed by dep^t
Counsell