1851-004 Chancery Causes: James Vaughn v ad vs Andrew Lester's admr

Isle of Wight County

other SURNAMES: Vaughan, Johnson, Council, Counci11

To the honorble Richd H Baker judge of the Circuit Court of Laid and Chy for the County of Isle of wight, in Chancery Sitting. humbly complaining sheweth unto your honor, your orator James Vaughn and Caroline his wife (formerly Caroline Lester, a daughter of Andrew Lester dec'd). That sometime ago, Andrew Lester the father of your oratrix Caroline, intermarried with her Mother Sally Johnson by whom he had another daughter Margaret. That a few years afterward, their Mother Sally Johnson died her two daughters, Caroline and Margaret both of very tender years, surviving her: That by the death of their mother a certain Parcel of land belonging to her, descended to her two daughters her only heirs at law. That Andrew Lester the father, became the guardian to his children, Caroline and Margaret, and about the year, or in Decr 1836, obtained an order of the county Court of said County, to effect a sale, which was made on the 20 of Janry 1837 at the price of $275.00 as will appear by exemplification of the Records of such facts hereunto prayed to be taken as part of this Bill. That Margaret Lester, the younger sister, departed this life, some few Months time after the said Sale of Land, and to her interest or moiety of the price of said Land your oratrix Caroline was entitled, as her sole heir at law. That your oratrix was the ward of her father Andrew Lester, till his death which took place on the 29th Janry 1850, and after having made his last will & testament, duly proved and admitted to record, a copy of which is hereunto Jointed. That Joseph C Gamble the administrator with the will annexed of said Andrew Lester died has Qualified as ~~Executor of his last Will & testament~~, and as such pretended to settle the guardian ship transactions of Andrew Lester as guardian to your Oratrix, before a County Commissioner, and returned an account thereof, the 2 Copys of which is hereunto Filed, marked 'Z' and prayed to be taken as a part of this Bill. Your honor will perceive that two separate accounts were reported by the Commissioner made up on different principles - the In the One, no allowance, or credit was given to the Andrew Lester for the "Board" or support of your oratrix Caroline his daughter; in the other acct marked C, your Oratrix is charged with, and made to pay Board, to her father; and upon this acct "C" was confirmed by Court, at which time there was no Guardian to your complainant, Caroline and she had no Knowledge as to what course should be pursued before the County Court,

and ordered to be recorded. Your orator state this charge of "Board" allowed in said account (C) was illegal, unjust, and in this particular as in others they surcharge & falsify said guardians account. Her father was fully able to maintain and support his children - His estate is worth some $8.000, or $10.000. while the estate of your orator independent of him was only some two, or three hundred dollars - Moreover, during a portion of the time, during which she is charged board, ~~and~~ her father had only two children - and a portion thereof only one child your orator - until his subsequent marriage ~~during~~ your orator state it never was the intention of her father to charge her with her board, even if he had the right, under the circumstances to do so, as he has not; that "not the scratch of a pen" could be found, or was left by him, no evidence whatever existed, going to shew that he ever had such intention or wish. They state further more, that if it had been the intention of her father to charge her, mention would have been made of it in his said "bill". That while he left only four children of his last marriage, yet in and by his "bill" - he only gives 1/7th of his estate to your orator - an important fact bearing on the intention on this point.

Your orator charge that the charge under any & all aspects is erroneous and illegal; ~~they pray~~ that the sum of $45.90 at least is due her, instead of the balance of $234.90 found by the said "acct "C". That the said "account" is erroneous, in this other particular, that the guardian acct is made to close on the 25th October 1849 - when the guardian was living - his death (which terminated his guardianship totally) did not occur till Jany 29 1850. Your orator pray that the said accounts may be recommitted, and the Supt Council ~~of~~ adm'r. of the said Andrew Lester dec'd be compelled by an order of this Court to settle the said guardian transactions of his estate, on the principles above contended for, and correct the errors, as well as others which may be specified and pointed out. They have no adequate remedy save in this Honble Court &c: They pray that Supt Council ~~of~~ adm'r. of Andrew Lester dec'd may be made a party defendant hereto; and be compelled to answer the same. That your honor will Grant to decree on the principles herein set forth, and all other relief proper in the premises. and the "Commonly Subpoena"

James Vaughn
Caroline Vaughn
by
W. W. Whitehead D. S

Vaughn Thompe
vs
Lesters Exrs

James Vaughan &
wife
vs:
Jesse D Connell adm.
Andrew Lester

Bill &c.

Sept. rule 1857. Bill
filed & dismissed.

Oct. rule 1857 Bill to stand
for confessed & set for hearing.

Oct. Term 1857 passed
down.

Clk. $4.25
Atty. Gen. 15.75
Sheff. 1.00
$21.54

Jesse D. Connell's
Answer -

Vestus abm.
acc. 3 y. clyf.

Vaughan & wife
=
answer of Defts.
=

known as account "C" was adopted by the County Court of Isle of Wight and ordered to be recorded as the correct account - That the objections made to account "C", is because an allowance is made for "Board" to the Guardain, on the ground that he, the Guardain and Father, was fully able to maintain and support his children because his estate is erroneously stated to be worth $8.000 or $10.000, whilst in fact it does not exceed $7.000 - That it is not true that it was not the intention of the Father to charge board as charged in the bill, but in fact the truth is, that the father was under the impression that the share of his deceased daughter Margaret passed to him, and to him alone, to the exclusion of your female Complainant - That no account was ever made up by the Testator as Guardain in his life time, and if one had been made up, he would have charged the income to the support of his ward - That if your Testator's estate shall be compelled to pay the amount of principal and interest, claimed by your Complainants, together with the legacy of one Seventh, given by the will - the said Caroline will receive much more than the Testator ever anticipated - Your Respondent therefore insists that account "C" may be adopted, as the correct mode of settling the accounts between the Testator and your Complainants - That as to the other objections made to the account marked as "account C", it can make no difference whether it closed in October 1849 or the 29th January 1850, as claimed it should be - That he has offered to pay the amount due by account "C" and they have always refused to receive it, alleging that the account was erroneous and without, that, that &c -

(Signed) Jesse D Cornick Adm

Isle of Wight County to wit:

This day Jesse D. Cornick personally appeared before me and made that the foregoing Answer is true - Given under my hand this 21 day of October 1857 -

M. Womble - J.P.

3

The Answer of Jesse D. Councill administrator with the will annexed of Andrew Lester deceased, to the Bill of Complaint exhibited against him, by James Vaughan and Caroline his wife in the Circuit Court of Isle of Wight County.

This Respondent, saving and reserving to himself all just exceptions to said bill, for answer thereto, or to so much thereof, as he is advised it is material for him to make answer unto, answers and says, That it is true that Andrew Lester married with one Sally Johnson, by whom he had two children viz: Margaret and your female complainant Caroline - that the wife of said Andrew Lester, died leaving two daughters of very tender years, - that at the time of her death she was entitled to a small piece of land which descended to her children, subject only to the life estate of said Andrew Lester as tenant by Curtesy - That it is true that Andrew Lester qualified as the Guardian of his two children and sometime in Dec: 1836 he obtained a decree from the County Court of Isle of Wight, to sell the said land, and that on the 20th June: 1837. sold the same for the price of $275 - that Margaret died an Infant, and her interest in said sales passed to the female complainant exclusively. That he admits that he continued guardian of the said Caroline for the time of his death which took place about the 29th January 1850 - That Andrew Lester made a will, and that your respondent qualified as adm'r: with the annexed of his estate - That it is true that he as such adm'r: had a Commissioner appointed to settle the transactions of his Testator as guardian of his children - That two accounts were returned by the commissioner settled on different principles - one of which,

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Isle of Wight County, Greeting:

We command you to summon Jesse D. Councill administrator with the will annexed of Andrew Hester dec'd.

to appear at the Rules at the Clerk's Office of the Circuit Court of Isle of Wight County, on the first Monday in September next, to answer a bill in Chancery filed in said Court against him by James Vaughan and Caroline his wife.

And have then there this writ. Witness, N. P. Young Clerk of our said Court, at the Courthouse, the 27th day of August 1851, and in the 76th year of the Commonwealth.

N. P. Young C.

James Vaughan &c. Complt

vs. } Sam'l Sin Chy.

Silas D. Council Admr. of Andrew Fuller

To Sept. rule, 1851.

Whitfield & J.

28th August 1851 I delivered to Silas D. Council a true copy of this Sam'l Sin Chancy.

A. Jordan Dept
W. P. Jordan Sh

In Isle of

~~In Isle of Wight County Court April 7th 1857~~

In the Clerk's office of Isle of Wight County Court February 3rd. 1857 the foregoing accounts marked A & B. ~~were~~ was filed for exceptions, and at the April term of the said Court following, the said account (B) was confirmed by the Court and ordered to be recorded, Teste S. P. Young cc

A Copy, Teste S. H. Boykin D.C.

Virginia Isle of Wight to wit

I S. P. Young Clerk of the County Court of Isle of Wight do certify that the foregoing is a true copy of the Letters of Adm'r.

Copy of Adm. a c c t.
filed with Pet. & Exc.
Refunded to Adm.

A.

D^r. Caroline V. Lester & Margaret Lester, children of

1837 Octo. 25	To 5 pr. cent comt. on $246.74 Rects.	12	33
" " "	Balance due Caroline & Margaret Lester	234	41
		$ 246	74
1838			
Octo. 25	To 5 pr. cent comt. on $14.06 receipts		70
" " "	balance due the said C. & M. Lester	247	77
		$ 248	47
1839			
Octo. 25	To 5 pr. cent comt. on $14.86 rect.		74
" " "	Balance due the said C. & M. Lester	261	89
		$ 262	63
1840			
Octo. 25	To 5 pr. cent. comt. $15.71 receipts		78
" " "	Balance due the said C. & M. Lester	276	82
		$ 277	60
1841			
Octo. 25	To 5 pr. cent comt. on $16.60 receipts.		88
" " "	Balance due the said C. & M. Lester	292	59
		$ 293	47
1842			
Oct. 25	To 5 pr. cent comt. on $17.55 receipts.		87
" " "	Balance due the said C. & M. Lester	309	27
		$ 310	14
1843			
Octo. 25	To 5 pr. cent comt. on $18.55 receipts.		92
" " "	Balance due the said C. & M. Lester	326	90
		$ 327	82
1844			
Octo. 25	To 5 pr. cent Comt. on 19.61 receipts.		98
" " "	Balance due the said C. & M. Lester	$ 345	53
		$ 346	51

Vouchers to Estates
A
Dec'r 1^st

James Vaughan &c
vs
Lester Admr:

Decree

This cause came on this day to be heard, on the Bill, Answer & Exhibits filed, Replication, Proofs, and was argued by counsel, on consideration whereof, the court being of opinion, that the statement marked "A" is the basis of this decree whereby the sum of $45-7.19 was ascertained to be due, doth order, adjudge and decree, that the defendant Jesse D. Councile admr with the will annexed of Andrew Lester pay to the Plaintiff, the sum of $45-7.19 out of the assets of his testator in his hands to be administered with Interest on $431.32 from the 25th Octob 1849, and the costs by the Plaintiff in this behalf expended: and that the defendant pay to the Plaintiff their costs in this behalf expended.

Andrew Lester, dec'd account with said Andrew Lester their Exor &c

1837			
Octo. 25	By this sum received from sale of their mothers land sold to Jas Wyatt	240	74
		$ 247	74
1838			
Octo. 25	By this sum due last year	234	41
" "	By Int. on $234.41 one year	14	06
		248	47
1839			
Oct. 25	By this sum due last year	247	77
" "	By Int. on $247.77 one year	14	86
		$ 262	63
1840			
Octo. 25	By this sum due last year	261	89
" "	By Int. on $261.89	15	71
		$ 277	60
1841			
Octo. 25	By this sum due last year	276	82
" "	By Int. on $~~272~~ 276.82 .59 one year	16	60
		$ 293	42
1842			
Octo. 25	By this sum due last year	292	59
" "	By Int. on $293.59 one year	17	55
		$ 310	14
1843			
Octo. 25	By this sum due last year	309	27
" "	By Interest on $309.27 one year	18	55
		$ 327	82
1844			
Octo. 25	By this sum due last year	326	90
" "	By Interest on $326.90 one year	19	61
		$ 346	51

1845			
Octo. 25	To 5 pr. cent comn. on $20.73 receipts		1 03
" "	" Balance due the said C. & M. Lester	365	23
		$ 366	26
1846			
Octo 25	To 5 pr. cent com. on $ 21. 91 receipts		1 09
" "	" Balance due the said C. & M. Lester	386	05
		$ 387	14
1847			
Octo. 25	To 5 pr. cent comn. on $ 23. 16 rec.		1 [illegible]
" "	" balance due the said Caroline Lester	408	[illegible]
		$ 409	21
1848			
Octo. 25	To 5 pr. cent comn. on $24. 48 rec year		1 22
" "	" Balance due the said Caroline Lester	431	32
		$ 432	54
1847			
Octo. 25	To 5 pr. cent comn. on $ 25. 87 receipts		1 29
" "	" balance due the said Caroline Lester	455	90
		$ 457	19

Isle of Wight County Commissioners office, Janr. 7th. 1851

Pursuant to an order of the Court of said County and at the request of Jesse A. Councill admr. of Andrew Lester dcd. I have examined, stated and settled an account of the said Andrew Lester's Guardianship of his two children Caroline & Margaret Lester from October 25th. 1837 to the 25th. of October 1849, which account marked A. shews the said Andrew Lester indebted to Caroline Lester the sum of four hundred and fifty five dollars and ninety cents with Int. from said 25th. Octo. 1849. all paid. Margaret Lester sister to the said Caroline Lester died sometime in the year 1846 - her portion of the aforementioned sum descended to her sister, the said Caroline Lester; so she the said Caroline Lester is entitled to the whole amount of said sum of $455.90 with interest. in settling said account made no allowance to the said Andrew Lester the father of said Caroline and Margaret Lester for their support and maintenance (save the comms. on receipts) their said father being bound to support & maintain them. To which account the said Jesse A. Councill executor as aforesaid by his attorney Robert R. Prentis objected, on the ground that no compensation is allowed in said account for support and maintenance of said Caroline and Margaret Lester, their father and guardian Andrew Lester being in very moderate circumstances, and as the said children had funds - the income thereof ought to have been allowed him for board &c. and desired your Commissioner to state a second account of said transactions, allowing the guardian to use the annual income of their estate for boarding &c. Your Commissioner has accordingly stated the account marked C. in that account the annual income of the estate of said children is allowed the guardian for board &c. from Octo. 25th. 1837 to Octo. 25th. 1849 - which account shews the sum of $234.95 due on the said 25th. Oct. 1849 with Interest all paid - All of which is submitted to the Court.

Barth. Sightfoot Comr.

Comms. for $10.

charged to Lesters' admrs.

acct. concluded Janr. 7th. 1851

C.

Dr. Caroline V. & Margaret Lester children of Andrew Lester In account with said Andrew Lester, Guardian Cr.

1837				1837			
Octo. 25	To 5 pr. cent comt. on 246.74 acct'd		12 33	Octo. 25	By this sum received from sale of their mothers		
" "	" Balance due the said C. & M. Lester		234 41		land, that is to say, $123.37	246	74
		$	246 74			$ 246	74
1846				1846			
Octo. 25	To board & clothing said children from Octo. 25/37 to this day 9 years		126 54	Octo. 25	By this sum due 25th Octo 1837	234	41
" "	" balance due said C. & M. Lester		234 41	" "	By Int. on $234.41 from Octo. 25th 1837. 9 years	126	54
		$	360 95		(Margaret Lester died about this time)	$ 360	95
1847				1847			
Octo. 25	To board & clothing Caroline Lester this year		14 06	Octo. 25	By this sum due last year	234	95
" "	" balance due said Caroline Lester		234 95	" "	By Int. on ditto one year	14	06
		$	249 01			$ 249	01
1848				1848			
Octo. 25	To board & clothing said Caroline this year		14 06	Octo. 25	By this sum due last year	234	95
" "	" balance due said Caroline		234 95	" "	By Int. on $234.95 one year	14	06
		$	249 01			$ 249	01
1849				1849			
Octo. 25	To board & clothing said Caroline this year		14 06	Octo. 25	By this sum due last year	234	95
" "	" Balance due said Caroline		234 95	" "	By Int. on $234.95 one year	14	06
		$	249 01		(The Guardian died about this time)	$ 249	01

Due Caroline Lester Octo. 25th 1849. $234.95

The foregoing account marked C. was made up the instance of Ro. Burtis atto. for Lesters admr.

1845			
Octo. 25	By this sum due last year	345	53
" "	By Int. on $345.53 one year	20	73
		$ 366	26
1846			
Octo. 25	By this sum due last year	365	23
"	By Int. on $365.23 one year	21	91
	Margaret Lister died about this time	$ 387	14
1847			
Octo. 25	By this sum due last year	386	05
" "	By Int. on $386.05 one year	23	16
		$ 409	21
1848			
Octo. 25	By this sum due last year	408	06
" "	By Int. on $408.06 one year	24	48
		$ 432	54
1849			
Octo. 25	By this sum due last year	431	32
" "	By Int. on $431.32 one year	25	87
		$ 457	19

The g.dr. died about this time.

Due Caroline Lister Octo. 25. 1849. $455:90

Vaughan Serfe
v. Zebly.

Testes annex.

Copy decree for sale of land refused to be filed.

In The County Court of Isle of Wight, Dec. 5th 1836.

Caroline Tesler and Margaret Tesler infants suing by Augustus Ballard their next friend. Complainants

against

Andrew Tesler Defendant

In Chancery.

This Cause came on this day to be heard on the bill, answer & filed, and was argued by Counsel; on Consideration whereof the Court doth adjudge, order and decree that Andrew Tesler who is for that purpose appointed a Commissioner do advertise for at least twenty days before the sale the land in the bill mentioned, which belonged to Sally, the wife of the defendant Tesler on her marriage, and which belonged to the Complainants at the death of the defendant, but which he has surrendered to them. That he sell the same to the highest bidder on a credit of nine months, except for so much as will pay the costs of this suit and of the sale, which will be cash; taking two bonds in equal amts: for the credit part, with good security, which said bonds are to be made payable to the Complainants, that is to say, one bond to be payable to each of the Complainants; and which bonds are to be returned to this Court and filed subject to the order of the Court. That the Commissioner make a deed to the purchaser, and make report to this Court in order to a final decree.

A Copy.

Teste W. P. Young cc.

Vaughan & wife

vs: Ex Chy.

Costs accrd.

Copy report of sale of land named in bill.

In obedience to a decree of the County Court of Isle of Wight
bearing date Dec. Court 1836, the undersigned being appointed
in said decree Commissioner to make sale of a tract
of land therein mentioned for the purpose of making a
division between Caroline and Margaret Vesler infants
named in said decree, did make sale of said land
on the 20th. day of January 1837, at public auction,
to John B. Laurence, being the highest bidder, for $275.
and after paying the Attorney $10., Clerk $4.50, Commission
on the amount of sale $13.75, leaving a balance of
$246.75, did then divide the balance of the proceeds
between said infants, and took bonds as follows, one
bond of John B. Laurence and John Freeman security
to Caroline Vesler for $123.37½ One bond of John
B Laurence and Mines E. Darden security for $123.37½
to Margaret Vesler, of which the above sums make
up the amount of sale. Given under my hand this day
and date above written.

Reuben Vesler

A Copy.

Test W. P. Young D.

Vaughan wife

Bly.

Exeter ave.

Copy of Exeter ave.
refused - in pltf's bill.

and such part of my household & kitchen furniture as she may not think proper to keep.
Eighthly. At the death of my beloved wife, I give and bequeath to my four daughters, Isabella Ann, Louisana, Martha J, and Mifouri L Tester all of my real & personal estate that I loaned to my beloved wife, to them and their heirs forever.
Lastly, I do nominate ~~and~~ appoint my wife Sarah Tester my whole and sole executrix to this my last will and testament, hereby revoking and annulling all & former wills by me heretofore made. In witness whereof I have hereunto set my hand and affixed my seal this eleventh day of August One Thousand eight hundred & forty nine.
Signed, Sealed published and ~~and~~ Andrew Tester Esq
and ~~and~~ in the presence of
Simon B. Roberts
Arthur F. Beal
I. D. Connell

In the County Court of Isle of Wights, Feby. 4. 1850.
This will was proved by the oaths of S. B. Roberts, Arthur Beal and I. D. Connell the witnesses hereto and ordered to be recorded. and on the motion of Isaac D. Connell (with the consent of the widow in writing, who refused to qualify as executrix) who made oath and with Wm. E. Barns his security, who justified, entered into and acknowledged bond in the penalty of $5000: & conditioned according to law, Certificate is granted him for obtaining Letters of administration, with the will aforesaid annexed, ~~of~~ on the estate of said Andrew Tester dec.
Copy. Teste W. P. Young cc.

I Andrew Vester of the County of Isle of Wight and State of Virginia, do make, ordain, constitute and appoint this to be my last will and testament, in the manner and form following, to wit:
First, it is my will and desire that all my just debts be paid. Secondly, I give and bequeath unto my daughter Caroline A. Vester, one twelfth part of my estate to her and her living issue. Thirdly, I lend to my wife Sarah Vester during her natural life, the following property to wit: my home land and plantation with five or ten acres of the old tract of land, four negroes, Viz: Jim, Silvia, Margaret and Mary, and the increase of Margaret increase, household & kitchen furniture or such part as she may think proper to keep, one horse, gig and harness, cart & tackle, all of my sheep, two cows and pigs, ten sheep, one ox, two cows and calves, farming utensils, one years provision, one barrel of brandy, one barrel of vinegar.
Fourthly, I leave in the hands of my wife, the remaining part of my personal estate to be kept and managed to the best advantage for the benefit of my four last children Judith Ann, Louisiana, Martha I, and Mifonia I Vester, and as each child arrives to the age of eighteen, then my wife Sarah Vester will give off their proportionable part of my estate.
Fifthly, I give and bequeath to my daughter Martha I. Vester one hundred & fifty dollars for the purpose of schooling her. Sixthly, I give & bequeath to my daughter Mifonia I. Vester one hundred & fifty dollars for purpose of schooling her.
Seventhly, It is my will and desire that my executrix sell all of my other lands, with the remaining part of my crop, stock, plantation utensils