

1909-012

Chancery Causes: Emma J. Hayes & Jacob Butler, for v.c. vs Miles Edward King & al

Isle of Wight County

67

other surnames: Gilliam, Mears,
Baton, Frazier, Williamson,
Cheeseman, Batten, Cheasman

To Messrs. E. H. Williams and Whitley,
Attorneys for Miles Edward King, and others:

TAKE NOTICE, that on Monday, the
17th day of January, 1910, I shall apply to A. S.
Johnson, Clerk of the Circuit Court of the County
of Isle of Wight, for a transcript of the record
in the suit of Emma J. Hayes and others v. Miles
Edward King and others, recently tried in that
court.

*W. M. Lett & Counsel
for Plaintiffs*

King et al.

Hayes et al

Notice.

Service of copy being
acknowledged
E. H. Williams of
Cousine for defendants.

Know all men that I, Emma Jane Hayes, plaintiff in the hereinafter styled cause, do give notice of lis pendens, by this memorandum which sets forth as follows: There is now pending in the Circuit Court of Isle of Wight County a certain cause, the title of which is Emma Jane Hayes, plaintiff, against Miles E. King et al et als, defendants; the general object thereof is to have set aside and declared void a certain paper probated on the 14th day of October, 1908, purporting to be the last Will and Testament of Martha Holt Butler; the description of

the land is as follows: *all that certain tract of land being Rose-Mack, Isle of Wight County and State of Virginia containing four (4) acres more or less and bounded as follows, to-wit: on the South east by the lands of Susannah Means on the South by the lands of Thomas L. Gilliam on the ~~South~~ West by the said Thomas L. Gilliam and on the North by the lands of the late George I. Purdie, deceased, being the same property that was conveyed to Martha Holt by George Murray on the 24th day of Oct., 1892 and of record in the Clerk's office of the Circuit Court of Isle of Wight County Virginia in deed-book No. 5 page No 190, i and all of that certain tract of land in Rose-Mack, Isle of Wight Co. State of Virginia bounded and described as follows to-wit: Commencing at an oak tree on the Purdie's corner leading to the house about 44 feet from Sarah K. Moore's corner and running to said corner, from thence along said Sarah K. Moore's line to a true corner of Geo. Hill's line from thence along said Hill's line to a corner of Robert Jackson's line from thence along said Jackson's line to a corner on S.E. and the name of the person whose estate is intended to be affected thereby is Martha Holt Butler.*

Witness my hand this 28th day of July, 1909.

Emma J. Hayes

STATE OF VIRGINIA, ~~Isle of Wight~~ County of Isle of Wight to-wit:

I, L. C. McLelland, a notary public in and for the County aforesaid, in the State of Virginia, do certify that Emma J. Hayes, whose name is signed to the writing above, bearing date on the 28th day of July, 1909, has acknowledged the same before me in my County aforesaid. My term of office expires on the 17th day of May, 1912.

Given under my hand this 28th day of July, 1909.

L. C. McLelland

Notary Public.

Virginia: Clerk's Office of the Circuit Court of the County of
Isle of Wight July 28th. 1909 at ten thirty o'clock A.M. this
lis pendens was filed and entered of record.

Teste,

J. H. H. H.
Clerk.

Emma J. Hayes.

25. } LIS PENDENS.

Miles E. King. et als.

28th
10:30 a.m.
Rly
Recorded & P. No. 77
294

J. Thomas Newsome & W. R. Walker p. 9.

Law Offices
Of
J. Thomas Newsome
548 25th Street
Newport News Va. *See*

128
Parl

I, Martha Holt Butler, being of sound and disposing mind, do hereby make, publish and declare this to be my last will and testament, hereby revoking all other wills by me at any time made:

I desire all my just debts to be paid.

I give and devise the following sums of money:

To my step-father, Richard Cheasman, the sum of Fifty (\$50.00) Dollars.

To John S. King, the sum of Fifty (\$50.00) Dollars.

To Emma J. Hayes and Alexander C. Hayes the sum of One (\$1.00) Dollar each.

To Jacob Butler, now my husband, the sum of Five (\$5.00) Dollars..

To John Mears, my brother, the sum of Sixty-five (\$65.00) Dollars, being interest due me from him on a loan of Five Hundred (\$500.00) Dollars.

To my sister Clara , the sum of Twenty-five (\$25.00) Dollars, being interest due me from her, in satisfaction of what she owes me.

I give and devise all my clothes to Roxilla King.

I give, devise and bequeath to Sarah F. King, in fee simple, my tract of land in Isle of Wight County, State of Virginia, known as the "Murray" tract.

I give and devise to Miles E. King my horse and buggy.

All the rest and residue of my estate, both real and personal, not otherwise disposed of, I give, devise and bequeath to Miles Edward King, as an acknowledgement of his faithfulness and care to me during my life-time.

I hereby nominate and appoint James C. Frazer, of Morgantown, Monongalia County, West Virginia, executor of this, my last will and testament, with full power and authority to execute the same according to its true and intended meaning.

In witness whereof I hereunto subscribe and affix my seal
to this my last will and testament, in the presence of two witnesses,
this the 16... day of July....., A.D. 1906.

Martha Holt ^{her}~~X~~ Butler. Seal.
mark

The above signature of the testatrix, Martha Holt Butler, was
made, and the foregoing will was acknowledged by the said Martha
Holt Butler in the presence of us, two competent witnesses, present
at the same time; and we, the said witnesses, do hereunto subscribe
the said will in the presence of the said testatrix and of each
other, at the request of the said testatrix, this the 16th... day
of July....., A.D. 1906.

E. W. Chapman
.....

S. R. Johnson

Clerk's Office of the Circuit Court of Isle of Wight County October 14-1907
A paper writing purporting to be the last will and testament of Martha
Holt Butler, deceased, was this day produced before the Clerk of the Cir-
cuit Court of the County of Isle of Wight and proved by the oaths of
E. W. Chapman and S. R. Johnson, the subscribing witnesses thereto,
and ordered to be recorded as the true last will and testament of the
said Martha Holt Butler, deceased.

Teste S. R. Johnson C.C.

Last Will & Testament
of
Martha Holt Butler

We the Jury find
this will to be valid

signed
Geo. H. Delk
Foreman

We the jury find
this paper writing to
be the true last will
and testament of
Martha Holt Butler
deceased

Geo. H. Delk

Foreman

Will Book 34 p 141

Hays et al
King et al.

The Court instructs the Jury that a will
written by some other person than the testator, in
order to be valid, must be signed by the testator, or
the will acknowledged by ^{her} ~~him~~, in the presence of at
least two competent witnesses present at the same time,
and in this case where the will was not signed in the
handwriting of Martha Holt Butler, unless the jury
believe that the paper writing purporting to be her
will was acknowledged by her to be her will, in the
presence of E. W. Chapman and S. R. Johnson, then they
will find that the said writing is not a valid will.

So signed as above set forth or
acknowledged by her
in the presence of
two competent witnesses
at the same time
and in this case
where the will was not
signed in the
handwriting of
Martha Holt Butler,
unless the jury
believe that the
paper writing
purporting to be
her will was
acknowledged
by her to be
her will, in the
presence of
E. W. Chapman
and S. R. Johnson,
then they
will find that
the said writing
is not a valid
will.

The attestation of witnesses is not necessary for
such signature or
acknowledgment

testator, in such a manner as to
make it manifest that the same
is intended as a signature;

Respectable Ex. v. Proprietors
Oct. 5, 1899.

Hayes et al
King et al

The Court instructs the jury that the evidence of persons present, who was present at the execution of the will is entitled to peculiar weight to show that it was legally executed and further to show the mental condition of Martha Holt Butler, and also whether or not she made the will of her own volition.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

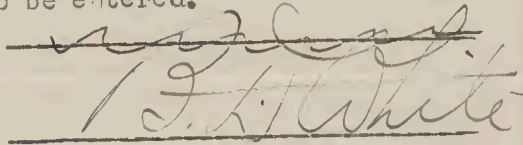
In Vacation, on the 27th, day of October, 1909.

Emma J. Hayes et als.) Plaintiffs.

vs.)

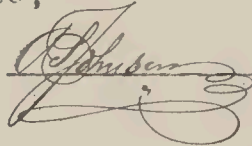
Miles E. King et als.) Defendants.

This day came again the parties, by counsel, and the plaintiffs, by counsel, presented to the Judge of this Court their three several bills of exception, numbered one, two and three respectively, taken during the trial of the issue in this cause, and the same being inspected and found correct, were signed, sealed by the Judge of this Court, and ordered to be enrolled and made a part of the record. All of which is certified to the Clerk of this Court to be entered.


J. L. White

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight October 28th. 1909, the foregoing vacation order was received and entered of record.

Teste,

 Clerk.

Hayes
King.

Oct 28/1904

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

c Hayes et als.) Plaintiffs.
vs.) IN CHANCERY.
King.) Defendants.

This cause came on this day to be again heard upon the papers formerly read, and on the certificate of the verdict of the jury and the judgment of this Court upon the issue devisavit vel non, and the certificate of the evidence produced upon the trial of said issue, and the exceptions plaintiffs taken upon said trial by the ~~defendants~~ in said issue, and the motion of the plaintiffs in said issue to set aside the verdict on said issue and grant them a new trial, and was argued by counsel:

On consideration whereof, the Court, overruling said motion of the said plaintiffs in said issue of devisavit vel non, and confirming and approving said verdict and judgment of this Court on said issue, doth adjudge, order and decree that the paper writing in the bill mentioned, purporting to be the last will and testament of Martha Holt Butler, and which was admitted to probate in the Clerks Office of this Court, by the Clerk of said Court, on the 14th day of October in the year 1907, as the last will and testament of the said Martha Holt Butler, is the true last will and testament of the said Martha Holt Butler. And the Court doth further adjudge, order and decree that the order of the Clerk of this Court, made on the 14th day of Oct. 1907-1909, admitting said paper writing to probate, be and the same is hereby confirmed; and the said Emma J. Hayes,

desiring to present a petition for an appeal and supersedeas to this decree, it is further ordered that the same be suspended for the period of sixty days from this date upon the said parties, ^{when the plaintiffs shall} or some one for them, execute ^{ing} before the Clerk of this Court, with surety by him deemed sufficient, a bond in the penalty of \$100.00 payable to the Commonwealth of Virginia, with condition reciting this decree, and the intention of the said parties to present such petition, and providing for the payment of all such damages

as may accrue to any person by reason of such suspension in case a super-
sedeas to said decree shall not be ~~afforded~~ allowed and effectual
within said period.

Hayes et al.
King³ et al.

C.O. B. No. 6, page 636.

1909
Pl. 15.
Enter this
P.W.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA:

and Jacob Butler
Emma J. Hayes, ~~et al, et als,~~ ... Complainants,

vs.

In Chancery

Richard Chessman, Sarah F. King, John S. King, Alexander C.
Miles E. King, ~~et al, et als,~~ ... Defendants

Hayes, L. W. Williams, admr of John Mears Clara Butler, Rosilla King, and E. H. Williams, admr of C. T. A. Martha Holt Butler

This cause came on this day to be heard, on the complainants' bill , , etc,

On consideration whereof, the Court doth adjudge order and decree, that a issue be made up and tried at the bar of this Court, to ascertain and try whether or not any of the paper writing in the proceedings mentioned, admitted to probate as the last will and testament of Martha Holt Butler, deceased, be the true last will and testament of the said Martha Holt Butler, deceased, and if any part, how much of the said paper writing is the true will and testament of the said Martha Holt Butler, deceased ; and on the trial of the said issue, the defendants Miles E. King, *and others* ~~et al, et als,~~ are to maintain the affirmative, and the said plaintiffs, Emma J. Hayes, *and others* ~~et al, et als,~~ the negative.

IN THE CIRCUIT COURT OF ISLE
OF WIGHT COUNTY, VIRGINIA:

Emma J. Hayes, et al, et als,
complainants,

vs.

Miles E. King, et al, et als,
defendants,

IN CHANCERY
C.O.N. No. 6, page 627

DECREE

1909
Ch. H.
Carter his.
P. D. W.

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

Emma J. Hayes, et als.

vs.

ON ISSUE OUT OF CHANCERY.

Miles Edward King, et als.

Bill of Exception No. 3

Be it remembered that on the trial of this issue, after the jury has returned their verdict, the defendants in the said issue moved the Court to set aside the said verdict and grant a new trial, because the said verdict was contrary to the law and the evidence, because of error in admission of evidence, and because of misdirection of the jury, but the Court overruled the said motion, and refused to set aside the said verdict and to grant a new trial on the said issue, to which ruling of the Court, counsel for defendants excepted and tendered this their bill of exceptions Number 3, which they pray may be signed, sealed and made a part of the record in this issue, which is accordingly done within thirty days from the date of the adjournment of the Court at which this opinion was announced, and the Court certifies as part of this bill of exception, the evidence introduced on the trial of the issue, as follows:

The plaintiff in the issue, to maintain the issue on his part, introduced in evidence, E. W. Chapman, who testified as follows: That he knew Martha Holt Butler for four or five years; she came to his shop and asked him to witness a paper. This was perhaps two or three years ago. He signed the paper, and the will in question being introduced in evidence and shown to him,

He said that his name thereon was signed by him. Mr. S. R. Johnson, the other attesting witness to the will was there at that time. The testator and these two witnesses were all there present at the same time, and the witness^{es} signed their names in each others presence and in the presence of ~~Mr.~~ *Martha Holt* Butler. He has no recollection that the will or the attestation clause was read over to him. He had no knowledge that it was her will that he was witnessing. She asked him to sign a paper. He knows now that it was her will. Does not know whether she made her mark in his presence; has no recollection that she did, but would not swear that she did not. He said that she was of sound mind at the time, and had heard her say she wanted the property to go to her nephew, the defendant King.

On cross-examination, witness testified that he thought when he signed the paper, it was signed by him so that ~~Mr.~~ *Martha Holt* Butler could get money from West Virginia. There was nothing said at the time to change his opinion that it was signed for that purpose, and he never heard of its being a will until sometime after her death. He says that he did not read the paper nor any part of it, but signed it and returned to work; that he has no recollection whatever of her signing or making her mark in his presence.

The plaintiff further to maintain his issue on his part, introduced in evidence, J. S. Davis, who testified as follows:

He is a Justice of the Peace and fully informed on the execution of wills; that Martha Holt

3.

Butler came to him with defendant King, and asked him if she could execute a will or fix her will up. The paper in evidence is the will which she brought. He read it to her. Defendant King was with her to witness it, but he told her that King could not sign as a witness because he was the beneficiary under the will. Thereupon, all three went to Carrollton and there found S. R. Johnson, the other attesting witness, and Martha Holt Butler got E. W. Chapman and brought him to S. R. Johnson. They were asked to sign the paper, and they did sign it. She made her mark in the presence of these two witnesses, S. R. Johnson and E. W. Chapman, and they signed it in her presence, and in the presence of each other, all present at the same time with defendant King and witness present. That he read the will to Martha Holt Butler, but not in the presence of the attesting witnesses, nor has he any recollection that he read the attestation clause in their presence, but would not swear that he did not. When he read the will to her, she said it was all right. She had told him before this time that she wanted to make a will. He said that the only writing he did, was to insert "16th July" in two places, which are in his handwriting.

On cross-examination, witness said defendant King was twenty or twenty-four years old, and Martha Holt Butler was forty or forty-five years old, and her husband about the same age.

He said that in making her mark, witness held the pen in his hand, and Martha Holt Butler touched the pen and he made the mark.

King was present when the will was read to Martha Holt Butler. It was read to her only once,

4.

and that was at witness's home.

And the Court further certified as part of the evidence in this cause introduced in the trial of this issue that it is a fact that the will and signature of Martha Holt Butler was written on a typewriter, and only the cross-mark and the dates were made by pen and ink, as also the signatures of the two attesting witnesses, which were in handwriting.

And the Court certifies that the foregoing ~~the evidence and~~ evidence is all of the evidence introduced on the trial of this issue.

Given under my hand and seal.

J. D. White

Judge.

Seal

IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

Emma J. Hayes, et als.

vs.

ON ISSUE OUT OF CHANCERY.

Miles Edward King, et als.

Bill of Exception No 2.

Be it remembered that upon the trial of this issue, after the evidence had been introduced, the defendant asked the Court for the following instruction:-

(Here insert instruction as offered)

but the Court refused to give the instruction as offered, and amended the said instruction, so as to read as follows:

(Here insert instruction as amended)

to the refusal to give the instruction as offered, and to the amending of the said instruction and to the giving of the said instruction as amended, the defendants by counsel objected, but the Court overruled the said objection and gave the said instruction as amended, to which ruling of the Court the defendants by counsel excepted, and tendered this their bill of exceptions/ Number 2, which they pray may be signed, sealed and made a part of the record in this issue, which is accordingly done within thirty days from the date of the adjournment of the Court at which

this opinion was announced, *and the Court further certifies that this was the only instruction given to the jury,*

J. D. White

Judge.



IN THE CIRCUIT COURT FOR THE COUNTY OF ISLE OF WIGHT.

Emma J. Hayes, et als.

vs.

ON ISSUE OUT OF CHANCERY.

Miles Edward King, et als.

Bill of Exceptions No. 1

Be it remembered that on the trial of this issue, the plaintiff to maintain the issue on his part, after E. W. Chapman had testified, as set forth in bill of exceptions Number 3, introduced as a witness on his behalf, J. S. Davis, and after he had testified that he was present when the will was executed, though not an attesting witness, the following question was propounded to him by the attorneys for the plaintiff in this issue: "Did Martha Holt Butler make her mark on the paper in evidence in the presence of the attesting witnesses, or did she acknowledge it to be her will in their presence?" to the propounding of which question counsel for defendant objected, but the Court overruled the objection and permitted the said J. S. Davis to testify, as set forth in bill of exceptions Number 3, to which ruling of the Court counsel for defendants excepted, and tendered this their bill of exceptions Number 1, which they ask might be signed, sealed and made a part of the record in this issue, which is accordingly done within thirty days from the date of the adjournment of the Court at which this opinion was announced, and the Court certifies as part of this bill of exception, the evidence set forth in bill of exception Number 3.

Given under my hand and seal.

[Signature]
Judge.

~~CONFIDENTIAL~~

In the Circuit Court of Isle of Wight County.

Emma J. Hayes et als.) Plaintiffs.

vs.

)

~~In Chancery.~~

Miles E. King et als.) Defendants.

This day came the parties, by counsel, and a jury, to wit: x x x
x x x x x x x x x x x x , who were duly sworn well and truly to ascertain
and try whether or not any of the paper writing in the proceedings men-
tioned, and admitted to probate as the last will and testament of Martha
Holt Butler by the Clerk of this Court on the day of
1909, be the true last will and testament of the said Martha Holt Butler,
and if any part, how much of the said paper writing is the true last
will and testament of the said Martha Holt Butler, and having fully
heard the evidence and argument of counsel, retired to their room, and
after some time returned into Court having found the following verdict,
"We the jury x x x x x x
whereupon the plaintiffs in the issue out of chancery, by counsel, moved
the Court to set aside said verdict and grant them a new trial, upon the
grounds that the said verdict is contrary to the law and the evidence,
for misdirection of the jury and for errors in admitting and excluding
evidence, which motion is overruled, and therefore it is considered by
the Court that the said paper writing is the true last will and testament
of the said Martha Holt Butler, and the Court doth order doth order
that said verdict and this judgment be certified to the chancery side
of this Court, to be there dealt with according to law: to which action
of the Court in overruling said motion, and entering up said judgment
upon said verdict, the plaintiffs in said issue out of chancery excepted.

Haystack.
Kingstack.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU to summon *James S. Davis, Rosa Haskins, Rosa Newby, William Matthews, George Purdie, J. A. Ashby, George N. Guy, Clarence Gorman, and J. E. Warren* to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the court-house thereof, on the *15th* day of *October* 190*9*, to testify and the truth to say in behalf of the *defendants*

in a certain matter of controversy in our said court, before the said Judge depending and undetermined, between

Emma J. Hays, Plaintiff,
and *Wiles E. King et al*, Defendant:

And have then there this writ. Witness, *Nathaniel F. Young*, Clerk of our said court, at the court-house, the *11th* day of *October* 190*9*, and in the *34th* year of the Commonwealth.

Test, Nathaniel F. Young

NOTE.—Appear before the Clerk and claim your attendance.

October, 12th 1909. Executed the within
by serving two copies in each of the
within named parties, ^{in person} et al.
Dora Mearns. who is not a resident
of my County. W. A. Edwards

By R. Aug. Edwards S. S. ^{Shiff}

CONTROVERSY.

Mrs. Edging et al.

SUBPOENA
FOR
WITNESS.

ad

Emma J. Edwards

County Court,

the 15th day of Oct.

1909

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU to summon

E. M. Chapman

to appear before the Judge of our Circuit Court of the County of Isle of Wight, at the court-house thereof, on the *15* day of *Oct* 190*9*, to testify and the truth to say in behalf of the *plaintiff*

in a certain matter of controversy in our said court, before the said Judge depending and undetermined, between *Emma*

J. Hayes

, Plaintiff,

and

Miss E. King et al

, Defendant:

And have then there this writ. Witness, *Nathaniel F. Young*, Clerk of our said court, at the court-house, the *15* day of *October* 190*9*, and in the 12*31* year of the Commonwealth.

Test. Johnson
cc

NOTE.—Appear before the Clerk and claim your attendance.

B 52738

Executed Octo. 12th 1909. by leaving
a true copy of the within Summons
on E.W. Chopin in person or his
residence in the County of
Searles.

W.H. Edwards
By R. Aug. Edwards, D.S.

CONTROVERSY.

Emma Peterson

vs

SUBPOENA
FOR
WITNESS.

Paul Peterson

Plaintiff, Court,

the 15th day of Oct

1909

The Commonwealth of Virginia,

To the ~~Sheriff~~ ^{Sergeant of the City of Newport News} of the County of Isle of Wight, Greeting:

^{again}
WE COMMAND YOU that you summon Clara Batten

to appear at the Clerk's office of the Circuit Court of the County of Isle of Wight
at the rules to be held for the said Court, on the 1st Monday in September 1909,
to answer a bill in chancery, exhibited against her father in our said court for
by Emma J. Hayes

And have then there this writ. Witness NATHANIEL F. YOUNG, Clerk of our said court, at
the court-house, the 24 day of August 1909, and in the 12th
year of the Commonwealth.

Test, N. F. Young
Clerk

2

Emma Haynes

vs.

}

Alia's
SUBPOENA
IN
CHANCERY.

Miss Emily et al

James Newsome p. 9

To 1st Sept Rules,
Circuit Court.

1909

B83119

Presented in the City of
Newport News Virginia on
the 6th day of September
1909. by delivering a true
copy of the within Subpoena
to Clara Patton in person.

E. W. Milstead Sergeant City
of Newport News Virginia

By C. C. Custis Deputy Sg.

Sgt. per 609

The Commonwealth of Virginia,

Sergeant of the City of Newport News.
To the ~~Sheriff of the County of Isle of Wight~~, Greeting:

WE COMMAND YOU that you summon *Miles E. King, Richard. Greenman,*
John S. King, Alexander L. Hayes, Jacob Butler L. H.
William, admr of John Mears, decd. Lebara Patton,
Roxilla King, Sarah F. King and E. H. Williams,
administrator et al. of Martha Holt Butler, deceased.

to appear at the Clerk's office of the *Circuit* Court of the *County* of *Isle of Wight*
at the rules to be held for the said Court, on the *3rd* Monday in *August* 190*7*,
to answer a bill in chancery, exhibited against *them* in our said court for
by *Emma L. Hayes*

And have then there this writ. Witness *A. S. Johnson*
NATHANIEL F. YOUNG, Clerk of our said court, at
the court-house, the *9th* day of *August* 190*7*, and in the *12 1/2*
year of the Commonwealth.

A. S. Johnson
Clerk

Emma J. Hayes

vs.

}

SUBPOENA
IN
CHANCERY.

King et al

Newsom & Walker p. 9

To 2nd August Rules,
Circuit Court.

1909
B 3119

Clara Batten. Not
found in my bailiwick
August. 16th 1909.

E. H. Willstead, Sergeant
City of Newport News, Va.
By C. C. Curtis depy. atty.

The Commonwealth of Virginia,

Sergeant of the City of Newport News
To the ~~Sheriff of the County of Isle of Wight~~, Greeting:

WE COMMAND YOU that you summon *Miles E. King, Richard Cheesman, John S. King, Alexander C. Hayes, Jacob Butler, L. H. Williams admr. of John Mears, decd. Clara Patton, Royilla King, Sarah J. King and E. H. Williams, administrator et al of Martha Holt Butler deceased*

to appear at the Clerk's office of the *Circuit* Court of the *County of Isle of Wight* at the rules to be held for the said Court, on the *3rd* Monday in *August* 1909, to answer a bill in chancery, exhibited against *them* in our said court for *by Emma J. Hayes*

And have then there this writ. Witness *A. S. Johnson* ~~NATHANIEL F. YOUNG~~, Clerk of our said court, at the court-house, the *9th* day of *August* 1909, and in the *12/34th* year of the Commonwealth.

Teste A. S. Johnson c.c.

A. copy, Teste: A. S. Johnson c.c.

A Copy for

Leah Ballou.

1654 10y 10m

vs.

}

SUBPOENA

IN

CHANCERY.

p. q

To..... Rules,

Court.

B 31119

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU that you summon

Miles E. King, Richard Chessman, John S. King, Alexander Hayes, Jacob Butler, R. H. Gilliam, Adm'r of John Mearns de'd, Clara Patton, Rosella King, Sarah F. King, Wm. E. Williams, Administrator & Ex'r of Martha Holt Butler - deceased

to appear at the Clerk's office of the *Leicester* Court of the *County* of *Isle of Wight* at the rules to be held for the said Court, on the *3rd* Monday in *August* 190*9*, to answer a bill in chancery, exhibited against *them* in our said court for by *Emma J. Hayes*

And have then there this writ. Witness *W. B. Johnson* NATHANIEL F. YOUNG, Clerk of our said court, at the court-house, the *28th* day of *July* 190*9*, and in the *124th* year of the Commonwealth.

Test. [Signature]

Executed the within process Augt. 9th 1909.
by serving true copies thereof on Miles E. King, Rees.
Chamman, John S. King, Alexander C. Hayes, Jacob
Butler, L. W. Fickian adm. re. Rosetta King Sarah
D. King, + E. H. Williams adm. re. in person
at their residences in the County of Suffolk.

W. A. Edwards atty

By. R. Augustus Eaves Esq.
D.D.

Emmal S. Hayes

vs.

SUBPOENA
IN
CHANCERY.

Miles E. King et al

Plaintiffs

P. 9

To J. S. King
Rules,

Chancery
Court.

1909

B 3119

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU that you summon Miles E. King, Richard Cheesman, John S. King, Alexander C. Hayes, Jacob Butler, L. W. Gilliam, administrator of John Mears, dec'd. Elara Balton, Roxie King, Sarah E. King and A. H. Williams, administrator et al of Martha Holt Butler deceased.

to appear at the Clerk's office of the Circuit Court of the County of Isle of Wight at the rules to be held for the said Court, on the 3rd Monday in August 1907, to answer a bill in chancery, exhibited against them in our said court for by Emma Hayes.

And have then there this writ. Witness ~~NATHANIEL F. YOUNG~~ ^{A. S. Johnson}, Clerk of our said court, at the court-house, the 28th day of July 1907, and in the 12th 34th year of the Commonwealth.

Teste A. S. Johnson c.c.

A copy. Teste A. S. Johnson c.c.

Lelasa Bacon

vs.

}

**SUBPOENA
IN
CHANCERY.**

p. 9

To *Rules,*

Court.

B 31119

To the Honorable Judge White of the Circuit Court of
Isle of Wight County, Virginia;

Humbly complaining, sheweth unto the Court, your
complainants, Emma J. Hayes and Jacob Butler, who sue for them-
in their own right
selves, and all other interested parties who are willing to contri-
bute to the cost of this suit, that they are respectively the
sister and husband and therefore heirs at law and distributees
of Martha Holt Butler, deceased, who recently departed this life
in said County, seized and possessed of valuable real and
personal property located in said County. Other heirs at law
and distributees known to your complainants are G. W. Gilliam,
Administrator Estate of John W. Mears, John F. Mears, Susanna
Mears, Louisa Mears, Nancy Mears, William Mears, Eugene Mears,
children of John W. Mears; John S. King, Richard King, Miles E.
King and Clara Baton.

Your complainants believe and so allege that the
said Martha Holt Butler died intestate. Since her death, a paper
writing purporting to be her last will and testament has been
admitted to probate in the Clerk's Office of the Circuit Court
of said County, whereby she gives the chief ^{part} ~~part~~ of her property
to one Miles Edward King.

The records of the Circuit Court of said County
show that said paper was admitted to probate on the 14th day of
October, 1907, and an attested copy of the said paper is herewith
filed and marked exhibit "A" and is to be taken and read as part
of this bill; that James C. Frazier, named as executor by the
said paper writing has declined to qualify as such executor and
that E. H. Williams, who qualified as administrator C. T. A.
thereunder and who has made partial distribution of the property
of the deceased acted in his own wrong and without authority.

2.

Your complainants allege and charge that the paper writing aforesaid of which probate has been had is not the will of the decedent, Martha Holt Butler.

In tender consideration whereof and for as much as your complainants are remediless in the premises save by the aid of a Court of Equity where matters of this kind are alone properly cognizable, they pray, that Miles Edward King, Richard Cheeseman, Sarah F. King, John S. King, Alexander C. Hayes, & W. Gilliam, administrator of John Mears, deceased, Clara Baton, Roxilla King, and E. H. Williams, ^{C. J. A.} administrator of Martha Holt Butler, deceased, be made parties to this Bill and required to answer the same but not on oath - answer under oath being hereby expressly waived; and this merely as a step or part of the proceeding to obtain a trial before a Jury; that proper process issue; that an issue devisavit vel non be made up and tried by a Jury of this Court to ascertain and try whether the said paper writing admitted to probate as aforesaid is or is not the true last will and testament of the said Martha Holt Butler; that the said probate be set aside; That all property heretofore distributed by the said E. H. Williams by reason of said paper writing be immediately accounted for to the parties entitled thereto; that the said paper writing be declared and decreed not to be the last will and testament of the said Martha Holt Butler; that the said E. H. Williams be enjoined and restrained from further distributing any of said estate, and that all such farther and general relief may be afforded your complainants as the nature of their case may demand or to equity shall seem meet.

And your complainants will ever pray,

Emm J. Hayes
Jacob Butler

by
Newson & Walter
Attys.

CITY OF NEWPORT NEWS:

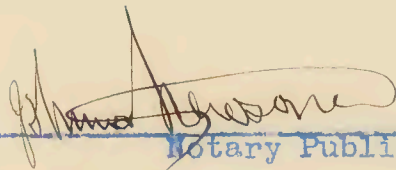
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52 To-WIT:---

STATE OF VIRGINIA

:

Personally appeared before me, J. Thomas Newsome, Notary Public in and for the City and State aforesaid, Emma J. Hayes and Jacob Butler, the complainants in the above cause and made oath, in the City and State aforesaid, that the statements and alligations therein are true to the best of their knowledge and belief.



Notary Public.

My commission expires April 13th, 1910.

^{Bill filed}
2nd August Rules - 1909 in Sum
returned executed on Miles E
King - Richard Sherman - John S King
Ally and C Hayes - Jacob Butler -
L H Williams, admsr re - Roxana King
Samuel F King and E H Williams
adrs re - Bill filed. Dece re nisi
as to them. Alias summons issued
for Clara Butler sent to Attorney for
H.H.

1st September Rules 1909
Alias summons for Clara
Butler returned executed - De-
ce re nisi as to her. Case set
for hearing as to other ~~and~~
defendants.

2nd September rules 1909
All ~~and~~ parties. Defendants
having been served with
process. Case set down
for hearing

3

Emma J. Hayes et al complainant

vs

Miles Edward King defendant
et al, et als

Original Bill

Newsome & Walker P. Q.

Law Offices

of

J. Thomas Newsome

548 25th Street
Newport News Va.