

1867-011

NANSEMOND COUNTY/
(SUFFOLK)

JOHN HOSIER ET UX VS OWEN R. FLYNN ET AL
ET AL

1867

CHANCERY CAUSE

SURNAMES: WALTERS, RIDICK, DUKE,

N.B. EXHIBITS NOT FILED WITH SUIT
8/14/2001

Flynn

ats.

Storer wife had

4 Exhibits

filed with Flynn's

answer

At a Circuit Court held for Hansemond County, the 15th day of October 1866.
John Q. Hosier, and Roberta M. his wife and Lauretta E.
Cutler an infant under twenty-one years of age suing
by the said John Q. Hosier, her next friend. Complainants

Against & In Chancery

Owen R. Flynn, Charles Walters, Willis S. Riddick, admin-
istrator of David O. Duke deceased, Catharine S. Duke and
Owen F. Duke, an infant under twenty-one years of age. Defendants.

This cause came on this day to be heard on the Bill taken for confessed
as to the defendants. Willis S. Riddick administrator of David O. Duke
deceased, Catharine S. Duke and as to the defendant Charles Walters
against whom the plaintiffs appear to have proceeded by order of publi-
cation as prescribed by law against non resident defendants, and
he failing to appear and answer. The answers of Owen R. Flynn and
of Owen F. Duke, by Peter B. Prentiss his guardian ad litem, with general
replications to said answers, and were argued by counsel; on considera-
tion whereof the Court doth adjudge, order and decree that Owen
R. Flynn render before a Commissioner of this Court accounts of his
transactions as guardian of Roberta M. wife of John Q. Hosier for-
merly Roberta M. Cutler and Lauretta E. Cutler: which accounts
the said Commissioner will state and report to this Court, together
with any other matters deemed pertinent by himself or specially re-
quested by any of the parties.

A Copy;
Teste,

Peter B. Prentiss, Clerk.

Commissioner's Office.

Suffolk, Va. Nov: 3rd 1866

To

John Q. Hosier and Roberta M. his wife, and
Lauretta E. Cutler an infant under twenty one
years of age, suing by the said John Q. Hosier,
her next friend Complainants

and } In Chancery
Owen R. Flynn, Charles Walters, Willis
S. Riddick, a administrator of David O. Duke
deceased, Catherine S. Duke, and Owen F. Duke,
an infant under twenty one years of age - - - Defendants:

You are hereby notified that I have fixed upon the 11th
day of December next (Tuesday) if fair, if not, on the next fair
thereafter (Sunday excepted) to take and settle, at my office an ac-
count of the transactions of Owen R. Flynn, guardian of Roberta
M. wife of John Q. Hosier, formerly Roberta M. Cutler, and
Lauretta E. Cutler * * and report any other matters deemed pertinent
by the Commissioner, or specially requested by any of the parties. -
Said account being directed to be taken by the decree of Hansemond
Circuit Court, rendered on the 15th day of October, 1864, in a suit in
Chancery depending in said Court, and in which you are parties,
Plaintiffs & Defendants: at which time and place you are
required to attend:

Given under my hand, as Commissioner in Chancery of the
said Court, the day and year first aforesaid.

W. L. Riddick
Commr. in Chy.

Nov: 12th 1846 -

We acknowledge service of the within notice
for the Plaintiffs and Defendants -

Godwin & Brothers p. &

R. O. W. Freshhead. Atty.

for D. O. Duke's Admrs. &

C. S. Duke.

John R. Kilby Atty for
O. R. Flynn

Peter B. Prentiss.

per ad Litem

X.

1866 Jan. 1: Balance due on account reported
by John R. Kilby, a Commissioner of
Harrison County Court, by Owen R.
Hym as guardian of Lauretta E. Cutler
sister of Mrs. S. Cutler decd. \$2269.54
and to Roberta M. Cutler do. 2110.44

This day John R. Kilby, made oath that the
foregoing Balance, were reported by him
on the making up of the accounts of
Owen R. Hym as guardian aforesaid.

(signed)

Shorn to before
me 22^d. Feb. 1867

John R. Kilby

N. L. Riddick
N. P.



(B.)

Dr. Lauretta E. Cutter, orphan of John S. Cutter, decd.
In Trust. with Owen B. Flynn, guardian - C.P.

1866 Jan. 1 By Balance due ward on last annual
settlement, made to this date, by
John R. Kelly, a Commissioner of
Hampden County Court (see
affidavit hereto attached, marked (X) } \$2269. 54

1867: Jan. 1 By Int. on this Balance one year - 136. 17

" " " To Spr. Ct. Comm. on \$136.17 - \$ 6. 81

" " " " Balance due the ward - 2398. 90

\$2405. 71 \$2405. 71

1867: Jan. 1 By Balance due ward at annual set-
tlem. on from above } \$2398. 90

" " 29 To paid O. E. Hall, the husband of
this ward, the J. B. Norfleet per int. } \$234. 18

" Apl. 18 By Int. on \$2398. 90 - from Jan. 1st 1867 }
to Apl. 18th 1867 } 35. 98

" " " To Spr. Ct. Comm. on \$35.98 1. 80

" " " " Int. on \$234. 18: from Jan. 29th 1867 }
to Apl. 18th 1867 } 3. 12

" " " " Balance due the ward - 2195. 78

\$2434. 88 \$2434. 88

1867: Apl. 18 By Balance due the ward to date broken } \$2195. 78

" " " To amount invested in Confederate States
8 pr. Ct. Bonds - say on Apl. 18th 1863 } \$2000. 00

" " " " Int. on this investment from Apl.
18th 1863: to Apl. 18th 1867: (4 yrs) 480. 00

" " " By Balance due O. B. Flynn, the
guardian (in Confederate money &
now worthless) } 284. 22

\$2480. 00 \$2480. 00

(A.)

Dr. Roberta M. Cutter, orphan of John S. Cutter, decd.

In Acct. with Owen R. Flynn, Guardian.

Cr.

1866: Jan. 1 By Balance due the Ward on last annual settlement, made to this date, by John R. Kilby, a Commissioner of Newsemond County Court. (see affidavit hereto attached, marked X.) } \$ 2110. 44

" Dec. 8 To paid John Q. Hosier, the husband of this ward, as per recd. thro' J. B. Norfleet } \$ 232. 23

1867: Jan. 1 By Int. on last Balance, one year 126. 62

" " " To Int. on \$ 232. 23 from Dec. 8th 1866 to date. . 85

" " " " 5 pr. ct. Comms. on \$ 126. 62 ~ 6. 33

" " " " Balance due the Ward 1997. 65

\$ 2237. 06 \$ 2237. 06

1867: Jan. 1 By Balance due ward at annual rest as above brot. on } \$ 1997. 65

" Apl. 18 " Int. on said Balance from Jan. 1st 1867, to Apl. 18th 1867 ~ } 29. 96

" " " To 5 pr. ct. Comms. on \$ 29. 96 } 1. 50

" " " " Balance due the Ward ~ 2026. 11

\$ 2027. 61 \$ 2027. 61

1867: Apl. 18. By Balance due the Ward to date brot. on } \$ 2026. 11

" " " To Amount invested in Confederate States 8 pr. ct. Bonds - say on 18th Apl. 1863 } \$ 2000. 00

" " " " Int. on this investment from Apl. 18th 1863, to Apl. 18th 1867 (4 yrs.) ~ } 480. 00

" " " By Balance due O. R. Flynn, the guardian (in Confederate money) & now worthless } 453. 89

\$ 2480. 00 \$ 2480. 00

Commissioner's Office,

Suffolk, Va. March 6th 1867

To the Circuit Court of Hansemond County:

Pursuant to a decree of the Circuit Court of Hansemond County, rendered on the 15th day of October, 1866, in a suit in Chancery depending in the said Court between John Q. Hosier & Roberta M., his wife, and Lauretta E. Cutter, an infant &c. Complainants, and Owen R. Flynn, Charles Watters, Willis S. Riddick administrator of David O. Duke, deceased, Catherine S. Duke, and Owen J. Duke, an infant &c. Defendants: the undersigned, one of the Commissioners of said Court to whom was referred for settlement, by said decree, the account of the transactions of Owen R. Flynn, guardian of said Roberta M. & Lauretta E. Cutter, reports to the Court that on the 3rd day of November, 1866, he issued notices to the several parties aforesaid, requiring them to attend the settlement of the said account before him, at his said office, on the 11th day of December, 1866, which were returned to your Commissioner duly acknowledged: That the parties aforesaid appeared before your Commissioner (by attorney) in obedience to the said notices, and he thereupon examined the vouchers, stated and settled the foregoing account of the transactions of the said Owen R. Flynn, guardian of Roberta M. Cutter, - the wife of John Q. Hosier, and of Lauretta E. Cutter (now the wife of D. E. Hall) up to the 18th day of April 1867, and on that day finds a balance due by the said Roberta M.

Cutter (the wife of John G. Hosier) to her said guardian, of (\$453.89) Four Hundred & fifty three dollars & eighty nine Cents - but payable in Confederate States currency, or Treasury notes; and by the said Lauretta E. Cutter, (the wife of D. E. Hall) a balance of (\$284.22) Two Hundred & eighty four dollars & twenty two Cents - also payable in Confederate States Treasury notes - both of which balances, are of course, now worthless.

In arriving at these conclusions, your Commissioner reports that the defendant, O. R. Flynn, filed with his answer to Complainants' Bill, and before your Commissioner, Four Bonds, or Certificates of Loan, issued by the late Confederate States, for One Thousand dollars each, purporting to bear interest at the rate of eight per cent. per annum. These Bonds or Certificates the defendant claims ~~that~~ ^{are} the proceeds of an investment made by him in April, 1863, with the funds in his hands as guardian, belonging to the aforesaid wards; at which time he also claims that the Confederate States, who issued these Bonds were a de facto, as well as de jure government. Your Commissioner is clearly of the opinion that ^{the} ground occupied by this defence is tenable, and that ^{defendants} ~~they~~ should be allowed a credit to the amount of this investment, with legal interest thereon, as has been set forth more plainly in Accts. marked A. & B. accompanying this report. The reasons which have induced your Commissioner to so report, seem to him to be based upon true principles of Equity.

At the time this investment was made by the defendant, as it seems to your Commissioner, in good faith, the circumstances surrounding the guardian were such as to render more liberal, ^{and necessary} the usual interpretations of the Courts in such cases. Amid Revolution and war, when confusion was the rule rather than the exception, - forced by an enemy to flee from his home and seek refuge elsewhere - with these funds belonging to his wards in his hands, he sought an investment in the preferred securities ^{of the Government}, under which he was forced to seek protection, and nothing has been shown to your Commissioner tending to impeach the good faith, and reasonable prudence of the guardian in acting as he did. Had that Government become successful & permanent - both de facto and de jure in the eyes of the world - it is scarcely probable that the authority of the guardian to make this investment would be questioned: but as that government is no longer, either de facto or de jure, loss has been effected by the guardian's act, and the question is, upon whom shall it fall? If upon the guardian, acting in good faith and with "reasonable skill and prudence", a great injustice, it seems to your Commissioner, would be done; and that this loss should not be borne by the fiduciary, your Commissioner thinks is sustained by good authority.

The act of the Va. Leg. (Richmond) (1862+3 - page 81) authorized similar investments when directed by a

Circuit Court at term, or by the judge in vacation. The investment in question was not in compliance with the letter of the statute. The judge of this Circuit, as well as the Defendant, were refugees from their homes and district - their homes in possession of the Federal troops; - and the general principle that, what a Court (under the above statute) would have authorized to be done, if done without such order, it will afterwards ~~approve~~ ^{sanction} - seems to apply with just force in this case; for it is scarcely probable that any Court having the authority would have denied an application to this effect.

The act of the Va. Leg., under the restored government Session 1865+6, ratified the above act. of 1862+3.

If the exigency of the case had made it necessary that the guardian should ~~have~~ expended the amount he invested in Confederate securities, for the education & maintenance of his wards, the proper Court would have directed it; or if it had been done without such previous application, when shown to the Court to ~~be~~ ^{have been} "judicious & proper", such expenditure would be allowed him in the settlement of his accounts, by the Court having cognisance thereof.

(Code Va. 1869. page 588 - sections 8 & 9 -)

The doctrine of the English Equity requires that a fiduciary "should invest the unemployed money" in his hands in government securities. If thus invested "he is not answerable for any loss on the

"depreciation of stock" (2 Lomax Exr. page 479)
Fiduciaries, and particularly, guardians, being
chargeable with interest upon the funds in their hands,
whether loaned out, or invested in their own business,
or unemployed, and liable to be compounded if not
paid annually, it is to their interest, as well as it is
their duty, to invest these funds in a profitable manner,
and if the money in their hands being currency is invested
in securities issuing from the same source that gives
the currency value, it would be "improper to hold
him responsible for its depreciation". (2 Wash. Rep.
page 248, Gaubert v. Gaubert.)

In the case of trustees, which your Commissioner deems
to be apposite, the authorities lay down the rule that
they are "liable only for gross negligence". (2 Story Eq.
jur. § 12681)

"With regard to the rules by which trustees should
be governed in the management of trust funds, the
laying out of money in securities, or allowing trust
money to remain in the hands of those from whom it
is owing, Lord Hardwicke remarked (Ex parte Polekin
Sub. R. 219.) that these rules should not be laid
down with such strictness as to strike terror into man-
kind acting for the benefit of others and not their own.
In the case of Knight v. Lord Plymouth, 3 Atk. R. 480.
S. C. Dickens R. 126, the same learned judge says:-
"Suppose a trustee having in his hands a considerable
sum of money places it out for the benefit of the

" Cestui que trust in the funds which afterwards sink
" in their value, or security; at the time apparently
" good, but which afterwards turns out not to be so,
" was there ever an instance of a trustee being made
" to answer for the actual sum so placed out? I answer,
" No. If there was no mala fides, nothing wrongful
" in the conduct of the trustee, the Court will always
" favor. x x x To add hazard or risk to trouble,
" and to subject a trustee to losses which he could
" not foresee, would be a manifest hardship, and would
" be deterring every one from accepting so necessary an
" office. x x x. Many other cases and opinions
" of learned judges might be cited tending to the same
" conclusions; and the fair result of the views which
" they present, and the reasoning they adopt is, that
" where a trustee has acted in good faith in the ex-
" ercise of a fair discretion, and in the same man-
" ner in which he probably would have acted if the
" subject had been his own property, and not held in
" trust, he ought not to be held responsible for any
" losses accruing in the management of the trust
" fund." (9 Gattan's Rep. page 557 et seq. Elliot v.
Carten & Co.)

As in the case of trustees, so it is in that of
personal representatives. They are "liable only for due
" care and watchfulness, and reasonable skill and prudence.
" And the extent of such care and skill will be the
" same as that of ordinary bailees for hire, that which

" prudent men exercise in the conduct of their
" own affairs." (Redfield on Wills, Part II. page 880.)

The English Court invariably directs "any
" funds under its control to be invested in the three
" per cents, and what it would order with a suit,
" it will equally sanction if done without suit."

(Hill on Trustees - page 377 marginal.)

The act of the Va. Leg. (Richmond) 1862 & 3. ratified
by the Va. Leg. under the restored government 1865 & 6.
expressly designated such securities as the defend-
ant, ^{invested} in as guardian for the benefit of his wards,
at a higher rate of interest than usual, as proper
for such purposes and under such circumstances,
and your Commissioner is forced to conclude
that any Court of competent jurisdiction within
the State would have directed the investment of
these funds as they were invested; and having made the
investment in good faith, and in the exercise of the
same prudence which the defendant used in the con-
duct of his own affairs, your Commissioner be-
lieves that he should not be held liable, nor his
successors, to make good the loss which has occurred
~~from~~ the depreciation of these securities.

Upon this basis, believing it to be sustained by
the best authorities, your Commissioner reports
the balances before mentioned to be due by the
several wards, to their guardian, Owen R. Flynn, but
as these balances are necessarily in Confederate

Currency, ~~they are~~ ^{it is} consequently worthless.

Your Commissioner further reports to the Court that after the Completion of the said Accounts, he retained them in his office ten days for the examination of parties, during which time no exceptions were filed thereto, and the said Accounts, with the evidence relating thereto, and with the aforesaid Copy of decree and notices, are herewith returned.

Given under my hand as Commissioner aforesaid, the day and year first aforesaid.

M. L. Radcliff
Comm'r in Chg.

Commissioner's fee \$ 30.

Hosier & al.

v. J. Cronin Rept.

Flynn et al.

1867. March 16th Feb.
et al.

John L. Hosier & wife & al

vs } Ch. Suit. pending in the Cir. Ct. for D.C.
Owen R. Flynn & al

This day personally appeared before me
a Notary Public in & for the City of Portsmouth,
Virginia, D. J. Godwin and made oath that
Charles Walters one of the defendants in the
foregoing suit, is not a resident of the State of
Virginia as he verily believes.

Sworn to & subscribed by
D. J. Godwin in the
City of Portsmouth Va
this 28 Apr 1866.

J. F. Crocker
N. P.

D. J. Godwin

Hosier v.

vs { Affidavit of
Non-residence
of dft. Walters

Plym. L

filed 3 Sept: 1864.
city.

I, *J. Richard Sewell*, editor
of The Virginian, a newspaper printed in the
City of Norfolk, in the State of Virginia, do
hereby certify that the order hereto annexed
has been published once a week for four suc-
cessive weeks in the newspaper aforesaid.

Given under my hand this *4th*
day of *October* A. D. 1866.

J. Richard Sewell

Cost of executing the said order, paid by
the above-named plaintiff, ~~\$2.50~~ 9.00

VIRGINIA.—At rules held by the Clerk's
office of the Circuit Court of Nansemond
County, Monday, the 3d day of September,
1866:

John Q. Hosier and Roberta M. his wife and
Lauretta E. Cutler, an infant, under twenty-
one years of age, suing by the said John Q.
Hosier, her next friend. Complainants
against

Owen R. Flynn, Charles Walters, William B. Ed-
dick, Administrators of David O. Duke, de-
ceased, Catherine S. Duke, and Owen R. Duke,
infant, under twenty-one years of age. Defendants.

IN CHANCERY.

The object of this suit is to settle the accounts
of the defendant, Owen R. Flynn, as guardian, of
the female complainants, and to subject the es-
tate of the said David O. Duke, one of the ex-
ecutors of the said guardian, to the payment of the
balance due thereon, and affidavit having been
made and filed that the defendant, Charles Wal-
ters, (the other security,) is a non-resident of this
Commonwealth, it is ordered that he appear
here within one month after due publication
hereof and do whatever is necessary to protect
his interest, and that a copy of this order be pub-
lished in the "Norfolk Virginian," a newspaper
published in the city of Norfolk, once a week for
four successive weeks, and posted at the front
door of the Court House of Nansemond County,
on the first day of the next County Court.

A Copy—Teste:

PETER B. PRENTIS, Clerk.
GODWIN & CROCKER, p. q. sc4-lawdw

No: 2. Rosen b

2nd

{ Cont: 4 Sub.

Owen R. Flynn and

A D 186

Given under seal of the

cessive weeks in the calendar of the

has been supplied once a week for four suc-

cessively certify that the order hereto annexed

City of Norfolk in the State of Virginia do

The Virginia a newspaper printed in the

1

Virginia:

At Rules, held in the ^{The Circuit Court of} Clerk's office of Nan-
semond County, on Monday the 3rd day of
September 1866.

John L. Hoscer and Roberta M. his wife, and
Lauretta E. Cutler, an infant, under twenty one
years of age, suing by the said John L. Hoscer, her
next friend. Complainants
against. } In Chancery.

Owen R. Flynn, Charles Walters Willis S.,
Riddick administrator of David O. Duke deceased,
Catharine S. Duke, and Owen F. Duke, an infant
under twenty one years of age. Defendants,

The object of this Suit, is to settle the accounts of the defendant Owen
R. Flynn as guardian, of the female Complainants, and to subject
the estate of the said David O. Duke, one of the securities of the
said guardian, to the payment of the balance due thereon, and
affidavit, having been made and filed that the defendant
Charles Walters (the other security) is a non-resident of this Com-
monwealth; It is ordered that he appear here within one month after
due publication hereof, and do whatever is necessary to protect
his interest and that a copy of this order, be published in the "Norfolk
Virginian", a newspaper published in the City of Norfolk, once, a
week, for four successive weeks, and posted at the front door
of the Court House of Nansemond County, on the first day, of the
next County Court:

Teste:

Peter B. Prentiss. Clerk

Hosier & Co. Ltd.

22th } Or: Pub:

Thyru Lal:

Horse in

3

Flynn

Piff Exceptions to the Right
of Conn & Reddick

The plaintiffs & their attorneys
except to the report of the said Conn &
on the ground,

That it appears that Flynn the
guardian was at the beginning of the
war, a debtor to his words - and that
he did not then hold any securities or
investments belonging to his words, except
the bond of Jas. B. Hurlbert & Jesse Perry
filed with his answer.

That it further appears that the
money which Flynn invested in Confederate
stocks, was the proceeds of the sale of
his own property.

That the investments were not made in
his name as guardian or in his words
name -

Edwards & Crocker

W. J.

Hogin

73

Flynn

Exemption to Right
of Cox's Redoubt

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:
YOU ARE HEREBY COMMANDED TO SUMMON *Owen R. Flynn, Charles Walters, Willie S. Riddick administrators of David O. Duke deceased, Catharine S. Duke and Owen F. Duke an infant, under twenty one years of age.* —

to appear at the Clerk's Office of our *Circuit* Court, for the County of Nansemond, on the first Monday in *September* — next, 186*6*, being rule day, to answer a bill in chancery, exhibited against ———— *them,* ———— by

John L. Hosier, and Roberta M. his wife, and Lauretta E. Cutler, an infant under twenty-one years of age suing by the said John L. Hosier, her next friend ————

and unless ———— *they* ———— shall answer the said bill by the next rule day thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his Office, this *14th* day of *August* 186*6*, and in the *91st* year of the Commonwealth.

Peter B. Prentis. Clerk.

Pr The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

Godwin & Crocker. p. 9

John L. Hosier & wife
Val:

vs { Summons in Chy:

Owen R. Flynn Val:

To Sept. Rules 1866.

Pro: B. No: 1. page 11

Cir: Co

Executed August 18th 1866, & where copy have
delivered to O. R. Flynn, Clerk of District &
Catharine B. Peck, Charles Mathers is no
inhabitant of my County

Wm H. H. H.

1866 Dec. 8 Recd. of Wilson Amblett Trustee
for James B. Amblett, the sum of Two hundred
and thirty two dollars and twenty three cents,
being one half of a Bond & Interest, due by said
Amblett &c. to Owen R. Hyman and now filed in
a Chancery suit in the Circuit Court of Maryland
County, by said Hyman as the property of his coars,
Robertta & Laura Cutler, which said Robertta
is now the wife of the undersigned, John D. Hozier,
— This payment now made is to be allowed as
a credit on said Amblett's Bond &c. as a
Credit in the settlement of the accounts of said
Hyman as the guardian of my said wife.

Given under my hand this 8th. Dec 1866.

Attest
Peter B. Prentiss

John D. Hozier



\$ 500

On demand after date we promise to
pay to Owen R Flynn or Order, the full and
just sum of Five Hundred Dollars
and Cents, for value received. For which payment,
well and truly to be made We bind our heirs, executors, and
administrators, jointly and severally, firmly by these presents. Witness
hand and seal this first day of February 1857

WITNESS,

Lath B Norfolk
Jesse Perry

SEAL.

SEAL

1858. Feb 1. \$ King Thirt Dollar
 returned on within at 10.00

nothing on within of the same

1859 Feb 1 I paid Thos. Dole an
 amount to date on salary

belong to date on February

1860. Feb 1. ⁸ Interest in William
Thirty Dollars = 30

Thirty Dollars

1861. Feb 1. \$ Recd Thirg-Dollars
Interest on within

Interest on within

1863 Feb 15 - Paid Scales
Dollars Interest,

Dollars Interest,

1865 August 18th Paid, Secured
five Dollars interest to date

five Dollars Intant to State

1865 Aug 15th Price 3 Seventy
Dolls Seventy two cents on birth

Dolls Seventy-two Cents on birth.

143.

(A)

1867. Jan. 29th. Recd of Wilson Norfleet, Trustee for
James B. Norfleet, the sum of Two Hundred and thirty-
four dollars and eighteen cents, being the remaining half
of a bond and interest, due by said Norfleet &c to Owen
R. Flynn, and now filed in a Chancery suit in the
Circuit Court of Nausomus County, by said Flynn, as
the property of his wards Roberta & Lauretta Cutler,
which said Lauretta is now the wife of the undersigned
D. E. Hall - This payment now made is to be
allowed as a credit on said Norfleet's bond & also
as a credit in the settlement of the Accounts of
said Flynn, as the guardian of my said wife.

Given under my hand this 29th day of
January 1867.

Witness
Peter B. Prentiss

D. E. Hall



Hosier tal.

n.

Hymn tal.

This cause came on this day to be again heard on the papers formerly read & on the report of W. L. Rivdick Comr. made pursuant to the Decree of the 15th day of October 1866, ^{and on exceptions to said Report} ~~to which report there is no exception~~, and was argued by Counsel. On Consideration ^{of rule said exceptions & doth} ~~whereof the Court doth~~ Confirm the said Report. (and doth adjudge, order and decree that the plaintiffs take nothing by their Bill; ~~and that the same be dismissed - and it is ordered that the Defendant pay the costs of the said D^o said~~ ~~Comr. for & his own costs by him expended in~~ ^{defense of this} ~~the cause, and that the plaintiffs pay their own~~ ~~costs~~, and the cause is discontinued from the Docket.

Hogier Jr.

n

Flynn

Oct. 1867
~~Office~~ et. Secrecy

To be entered.

R. H. Baker

Entered

at a Quarterly Court. held for Nassau and County the 13th.
day of August. 1866.

On the Motion of Willis S. Riddick, who made oath as the
law directs and entered into a Bond, in the penalty of One
thousand Dollars, conditioned according to law, with Edward
C. Riddick, his security therein, who justified on oath as
to his sufficiency, (and which said bond, being acknowledged
by the obligors therein, is ordered to be recorded) let-
ters of administration, on the Estate of David O. Duke, de-
ceased, in due form are granted him.

A. Copy:

Teste:

Peter B. Prentiss. Clerk.

Copy order of Qualifica-
tion of Willis S. Riddick
as Adm^r of David O. Duke
dec'd

(a)

Virginia:

at Rules held in the Clerk's office of the Circuit
Court of Hanover County on Monday the
3rd day of September 1866.

John L. Hosier and Roberta M. his wife, and
Lauretta E. Cutler an infant, under twenty one
years of age, suing by the said John L. Hosier, her
next friend Complainant.

against. } In Chancery

Owen R. Flynn, Charles Walters, Willis S. Riddick
administrators of David O. Duke deceased, Catharine
S. Duke, and Owen F. Duke, an infant, under twenty
one years of age. Defendants

On the motion of the Complainant, by Counsel. Peter B. Prentiss, is
appointed guardian ad litem, to defend the infant defendant,
in this suit, and it is ordered that notice be given the said
Guardian of his appointment by serving on him a copy of this
order.

Teste:

Peter B. Prentiss. Clerk

1866. September 3rd: I acknowledge service of this order, and
that I have received a copy here of

Peter B. Prentiss. ~~clerk~~
gou. ad litem

Hosier Sup: dal:

$\frac{11}{15}$ $\int$ or: affptq: qdu: ad litem

Flynn dal:

11/15/1871

11/15/1871

Hoggin & me &c

or

Flynn &c

This cause came on this day to be heard upon the bill taken for contempt as to the defendant Willis S. Haddock adm'r of David O. Decker dec'd, Catherine S. Decker, and as to the defendant Charles Wolters against whom the plaintiffs appear to have proceeded by order of publication as heretofore against non resident defendants & he failing to appear & answer. The answers of Owen R. Flynn and of Owen F. Decker by P. H. Prentiss his guardian ad litem, general replications to said answers, and was argued by counsel: On consideration whereof the court with outdye order & decree that Owen R. Flynn &c render before a com'r of this court an account of his transactions as guardian of Roberta M. wife of Jas L. Hoggin formerly Roberta M. Cutler and Lavinia E. Cutler, which ^{account} ~~report~~ the said com'r will file & report to this court together with any other matters deemed pertinent by himself or specially requested by any of the parties.

Massin &

4 }

Flynn &c

Seven Oct 2

1866

To be Enslaved

Enhanced

94C R.9

To the Hon. Richard W. Baker, Judge of the Circuit
Court of Hansemond County —

The answer of Owen R. Flynn, to a Bill
in chancery exhibited in the Circuit Court of said
County by John L. Hosier and wife and others, against
him and others —

This Respondent saving &c. says, in answer
to the allegations in said Bill, and in defence of his
conduct and action in the premises, that it is true
he did qualify in Hansemond County Court as the guardian
of Roberta M. and Lauretta E. ^{female} the Complainants in
said bill, and received their estate into his hands
consisting chiefly in money, and that he regularly
had made out by a Commissioner of Hansemond County Court
from year to year, as required by Law, his accounts as
such guardian; and that on the 1st day of February
1857 he loaned to James B. Norfleet a part thereof
to wit: \$500. and took his Bond with Lepe Perry as
security, for which all interest has been paid up to 15th
August 1865, & on the last named day a further payment
of \$70.72 was paid — That although this Bond is
simply made payable to your Respondent, in his own
name, yet it was part of the funds of said
female Complainants ^{charged to your Respondent}, and he now surrenders the
said Bond, subject to the order of Court. His filed
herewith marked (A.) : That the Balance
of the funds of said wards, your Respondent held
as money, having Bonds and other evidences of Debt

in his possession to meet the same - That thus
matters continued till the late war broke out in
April 1861, at which time your Respondent resided, as
he had done all his life, at Suffolk in said County,
& was then merchandizing, as he had been for many years,
and was the owner of a number of negroes & considerable
amount of goods, wares, merchandize & debts - That
he continued in Suffolk till 25th March 1863
✓ ^{some time after} ~~where~~ the Federal Army took possession of Suffolk, and
with a large force held the same - That after the
Commencement of the war in April 1861 & previously to
the occupation of Suffolk, by the Federal troops, in May
1862, for a considerable portion of said period and
especially the latter part, Treasury Notes of the late
Confederate States was the Chief currency & was then
valuable, and was recognized as the Legal Currency
of Virginia, receivable in payment of Taxes, and
other public dues, and was received by your Respondent
without hesitation as the legal currency of the Gov-
ernment under which he was living & whose Laws
he was bound to obey, and in the stability of which
he had reason to rely - That under these circum-
stances and in good faith, he sold his own property
and collected his own debts due him & converted into money
by receiving the payments thereof all the assets, which
he had to pay his wards with & to which they were
entitled, in said Confederate States Treasury notes, and
in consequence of the oppression and annoyances to

to which he was subjected to by the said Federal troops
(and their Commanders, (his premises, in the mean time
having been taken from him, at which he transacted
his business, and he ordered out of his own dwelling
house, & from which he was compelled to depart &
which was taken possession of & occupied by Federal
officers), he was compelled to take his funds then
collected and that to which his funds were entitled
and escape out of the Federal lines, and become a Refugee
dependent on friends for a home - That under
these Circumstances, and not knowing what better to
do, and having no Court or Judge in Nausemout
County or in the District to whom he could appeal
for direction, he proceeded to do that which he did with
his own funds, and which he believed a prudent
man ought to have done, and that which many did
by order of the Hon. Judge of this Court, on or about
^{April} ^{(a few weeks after his escape from Suffolk}
~~June~~ 1863, invested the same in 5 per cent Coupon
Bonds of the Confederate States of America, being
the Government then over him & to the Laws of
which he was bound to pay obedience - That in
making such Investment he complied with
the act of the General Assembly at Richmond
passed March 5th 1863, entitled "An act au-
thorizing Fiduciaries to invest Funds in their
hands in certain cases, and for other purposes"
except that he did not first obtain an order of
the Judge for that purpose, and which he could

not so of the Judge of his own Circuit, as he ^{the Judge} was
a Refuge from home, as well as your Respondent, &
that your Respondent, from the great anxiety &
distress he was then in, ^{could obtain} ~~had~~ no fit opportunity to
find another Judge to make such application to -

That he is advised & charges that any Judge would
under the act of assembly referred to, have authorized
just such an investment as he made, and that con-
sequently a Court of Equity will consider that as done
which would have been done if an opportunity had
presented itself (and the exigencies of the case had
allowed - That by the terms of said act of assembly
it is expressly declared that whenever any guardian
& may have in their hands moneys received in the
due exercise of his trust, belonging to the estate or
trust fund held by him as such fiduciary & which
moneys any such fiduciary & may from the nature
of his trust, or for any cause whatever be unable to
pay over to the cestui que trust or parties entitled, it
shall be lawful to apply to any Judge & for investment
as provided by said Law - That whether Your
Respondent is to be considered a mere debtor to his
said wards, owing the money to them or not, yet he
is entitled to the same protection, being just such a person
as having in his hands moneys received & as the Law refers
to, and had all the rights of those who might by accident
have held Bonds or other evidences of debt due by third parties,
and that there is no reason or equity which would

(5.)

prevent a guardian who might happen to be a settor to his ward, from paying such debt or investing the same in the same manner as if it ^{had} happened to be owing by any one else and paid over to him — But that in the case of your Respondent he had the funds in money to satisfy the Balance due his said ward but as they were Infants, there was no one to whom he could pay it, ~~and~~ and consequently, should be entitled to the benefit of the act of a party aforesaid, passed by a government claiming the allegiance of your Respondent & which was, as he is advised a Government defacto and de jure —

That the Bonds of the Confederate States, referred to above amount to four thousand dollars and are filed herewith marked (B. C. D. & E.) —

Your Respondent prays, that he may have all the benefit the disturbed condition of the Country, & the deranged condition of monetary affairs & the dangers & uncertainties of the times during the Late war, entitle him to, and having acted in good faith, in the investment of the funds due his ward, he claims the protection of this Court, and especially does he invoke its protection, to prevent the sale of the small parcel of Real estate now owned by the dependent widow & only child of David C. Duke who is now dead & who was one of your Respondent's securities & his guardian Bond — That although it may be considered hard for the female Complainants to lose what money they

had, yet it would be much more so for the heirs
of a security, ruined already by the late war, to be
compelled to pay any part of such loss, when the
principal, your Respondent, has done all that he
could do to save what was due them - and that in
losing the amount due the said Complainants, he
absolved all he had and is now poor and Involunt,
thus shewing to the Court that this loss has not been his
gain, and that he lost all of his own estate at
the same time, and that these Calamities, the result
of the late war, should not fall on your Respondent
under the Circumstances herein before set forth -

(And) having answered pray to be hence
dismissed &c.

John R. Kelly p. q.

O. R. Flynn

1866. Sept. 10th. Sworn to before me, in my Office,
by O. R. Flynn.

Peter B. Prentiss. Clerk

Hosier wife &

7

O. R. Flynn Sal.

Answer of O. R.
Flynn.

filed Octo: 3. 1886
elk

The answer of Owen F. Duke an infant under twenty one years of age by Peter B. Prentiss his Guardian ad litem to a Bill in Chancery exhibited in the Circuit Court of Nassau and County. by John Q. Hosier and Roberta his wife & also against him the said Owen F. Duke & also:

This respondent for answer to the said Bill, answers and says that he is a stranger to all and singular the allegations in the Com-
plainant's bill set forth; and ignorant of ^{his} rights & liabilities, submits the same to the Court; and prays, that no order or decree, may be made in the premises, to his injury. Having answered prays that he may be hence &c.

Peter B. Prentiss.
Guardian ad litem

Easter Day: Lre:

th } Answer of infant
vs } defendant by
} gon: ad titulu

Hy m Lre:

To the Hon. Richard H. Reese, Judge of the
Circuit Court of Hancock County.

As your orators John D. Houser & Robert M. wife,
and Lammie E. Cutler, are infants under twenty-
one years of age, coming by the said John D. Houser
her next friend, respectfully shew, that on the
11th day of August 1856, in the County Court of
Hancock County, Owen R. Flynn qualified
as Guardian of your orators, Robert M. wife
of said Houser, formerly Robert M. Cutler, and
Lammie E. Cutler, with David O. Duke and
Charles Wallis as his co-guardians, and entered into
bond, in the penalty of \$2000. conditioned according
to law, that no copies of said qualifications bond
and are herewith filed for the reason, that
the originals thereof were lost, in the destruction,
by fire, of the Clerk's Office & records of said Court,
on the 1st day of February 1866.

That the said Owen R. Flynn, as such guardian,
received the estate of his said wards, your
orators, which was substantial: that your orators
have frequently called upon their said guardian
for settlement & for money, which he has refused,
and now allege, that he is wholly insolvent, and
unable to pay your orators claims, and your
orators believe and therefore charge that the said
Flynn is wholly & notoriously insolvent.

That David O. Duke, one of the co-guardians of the said
Flynn departed this life in the year 1855; leaving no

his only heirs at law & distributees, a son named
Owen F. Duke who is an infant under twenty-one
years of age, and his widow, Catharine S. Duke. That
the said David O. Duke died seized and possessed
of certain real estate, situated in the County of
Nassau, consisting of a tract of land of one hundred
& thirty (130) acres, more or less, in the Upper Parish
thereof, and adjoining the lands of George R. Smith &
Franklin Butler & others: also a tract of half ($\frac{1}{2}$) an
acre, more or less, situated very near the limits of
the Town of Suffolk, in said County, and adjoining
the lands of Catharine Jones & Willis H. Babb.
That Willis S. Kiddick duly qualified as the admin-
istrator of said David O. Duke dec'd, in Nas-
sau County Court, on the 13th day of August 1866,
a copy of which qualification is herewith filed, marked
(A) and found to be taken as part of that Bill.
That the personal Estate of the said David O. Duke
is wholly insufficient to pay his debts, and his only
estate consists of the lands above mentioned, which
your orators claim are liable to their claim aforesaid.
In tender consideration whereof, your orators pray that
Owen R. Flynn, Charles Walter, Willis S. Kiddick,
administrators of David O. Duke deceased, Catharine
S. Duke, and Owen F. Duke, the last an infant
under twenty-one years of age be made parties defen-
dants hereto: That a guardian ad litem be assigned
to the infant defendant, Owen F. Duke: and that the said
Owen R. Flynn be required to render an account

of his transactions, as guardian of Robert M. Culler,
now the wife of John D. Hosier, and of Lavinia E.
Culler, and that the sums found due your orators
may be decreed to be paid them - that Willis S.
Ridgick, administrator of Daniel O. Duke deceased,
render an account of his transactions as such, and
that an account of the Estate and debts of the said
Daniel O. Duke be taken, & that the lands of the said
Duke be sold and the proceeds thereof applied to
the payment of your orators' demand; & that all
other and further relief be granted your orators as
the merits of their case may require or to Equity
shall seem meet & they will ever pray for
Godwin & Crocker P. D.

John L. Kosier Sup:

due
17th } Bell

Owen R. Flynn Bal:

Horvick

to { Chy. Notes.

Thyrum L

1866. Aug. 14th Sum. in Chy. issued to Sept. Rules 1866

" Sept. 3rd Bill & Exhibit filed - Conditional decree to "all the adult depts."

except Charles Walters.

" " Proper affidavit having been made & filed, as to the non-residence of
the depts: Charles Walters, an or: of Pub: is awarded, as to him.

" " Peter B. Prentiss appt'd gen: at litem to the infant depts: Owen &
Duke, who filed his ans: to which there was a gen: repl: & the cause set for
hearing as to him.

" Oct. 3. Ans: of ~~Sept~~ Thyrum filed & gen: repl: thereto - Decree (Conditional) confirmed.

" " " or as to depts: Cha^s. Walters, having been published & posted according to law.
same - set for hearing. (Oct. 15th) Decree for access:

1867. March 16th Paper filed - " Apr. 19th Continued (Oct. 11th) Final Decree

Chy: Notes