

1792-012

Southampton County

Chancery Papers: William vs Clements' executor

11/1792

see also: Rochell v W & al vs William 1792-03

other surnames: Rochell, Butts,  
Peete

Gilliam

vs

Clements's ex'or

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Bill

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Novbr 1792 decem

To the worshipful the court of Southampton county in  
chancery sitting, Humbly complaining sheweth unto your  
worships your orator Tho's Gilliam that sometime ago  
about the day of \_\_\_\_\_ in the year of our Lord 1765  
a certain John Gilliam of this county departed this life,  
having first made & published his last will & testament,  
& therein amongst other things appointed a certain Benja  
Clements & your orator executors. Your orator further  
sheweth unto your worships that although he qualified as an executor  
to the will of the s<sup>d</sup>. John, yet he never acted as such during the  
life of Benjamin Clements (the other executor) who took upon  
himself the sole burthen & execution of the will. Your  
orator also sheweth, that the s<sup>d</sup>. Benja Clements survived his  
testator about fifteen years, during which time he  
hired out the slaves of the estate of the s<sup>d</sup>. John, received their  
income, & conducted the whole business of the estate.  
Things being in this situation, your orator never expected to  
have been called in relative to the s<sup>d</sup>. estate. But so it  
is may it please your worships that to the surprise  
of your orator, (the s<sup>d</sup>. Benja Clements having sometime  
on or about the 1<sup>st</sup> day of May \_\_\_\_\_ in the year of our Lord  
1780 departed this life, & leaving a certain Tho's Peete of this  
county, <sup>whom your orator prays may be made a defendant to his last will,</sup>  
his executor,) your orator had a bill preferred against him  
in this worshipful court, in the name of John Rochell  
& Judith his wife, William Butts & Mary his wife  
(a copy of which s<sup>d</sup>. bill being hereto annexed your orator


prays may be considered as a part of this his bill of complaint  
as surviving executor of the s<sup>r</sup>. John Gilliam dec<sup>d</sup>. These in setting  
forth that y<sup>r</sup>. was considerably in arrears to the s<sup>r</sup>. p<sup>r</sup>. in  
consequence of his s<sup>r</sup>. executorship. Your orator further  
sheweth unto your worships that it appeared to the  
auditors appointed by this worshipping court, that there  
was a balance due the estate of the s<sup>r</sup>. John Gilliam  
from the surviving ex<sup>r</sup>. from the 10<sup>th</sup> of August 1769  
£141-7-10 with interest on the same till June 1792,  
being £156-19; the whole amounting to £298-6-10.  
Your orator further sheweth, that at the time this s<sup>r</sup>.  
debt accrued, he had nothing to do with <sup>the</sup> estate, the s<sup>r</sup>.  
Benja. Clements having the sole management & control  
of the s<sup>r</sup>. estate. — But so it is may it please y<sup>r</sup>.  
worships that although your orator hath frequently applied  
in a friendly manner to Tho<sup>s</sup>. Peete the ex<sup>r</sup>. of Benja. Clements  
who was in his life the acting ex<sup>r</sup>. of John Gilliam, to  
reimburse & make whole y<sup>r</sup>. orator in the premises, yet  
he the s<sup>r</sup>. Tho<sup>s</sup>. hath as yet altogether refused to comply,  
with this y<sup>r</sup>. orator's most friendly & reasonable  
request, pretending & giving out in speeches ~~pretending~~  
~~and giving out in speeches~~ that he would not be  
justifiable in so doing, without the aid & inter=  
position of this worshipping court. All  
which actions & doings of the s<sup>r</sup>. Tho<sup>s</sup>. are contrary  
to equity, & good conscience. In tender

consideration whereof, & as your orator is properly  
relievable in this worshipping court of equity, where matters  
of this kind come properly before your worships, To the end  
of this kind come properly before your worships, To the end  
therefore that the s<sup>r</sup>. Tho<sup>s</sup>. Peete, the ex<sup>r</sup>. of Benja.  
Clements dec<sup>d</sup>. who was in his life acting ex<sup>r</sup>. of John Gilliam  
dec<sup>d</sup>. may on his corporal oath full true & perfect  
answer make to all & singular the allegations herein  
contained, <sup>& that as fully as if they were herein again repeated</sup> but more especially that he may set  
forth & disprove, whether he is not the ex<sup>r</sup>. of Benja.  
Clements dec<sup>d</sup>. & was not he the s<sup>r</sup>. Benja. left ex<sup>r</sup>. together  
with y<sup>r</sup>. orator, to the will of John Gilliam dec<sup>d</sup>. Did not  
he the s<sup>r</sup>. Benjamin Clements take upon himself the whole  
& sole burden & execution of the executorship during  
his life, & did it not appear to the auditors that  
there was a balance due the estate of John Gilliam during  
the acting of the s<sup>r</sup>. Benja. to the amount of £298-6-10.  
Does he not conceive that the estate of Benja. Clements  
is properly liable for the same. & notwithstanding does  
he not refuse to pay the same. — And that this  
worshipping court may order & decree that the s<sup>r</sup>.  
Tho<sup>s</sup>. Peete, the ex<sup>r</sup>. of Benja. Clements dec<sup>d</sup>.  
who was in his life acting ex<sup>r</sup>. of John Gilliam  
dec<sup>d</sup>. to pay unto y<sup>r</sup>. orator the sum of £298-6-10  
it being the amount which appears to be justly  
due from the estate of the s<sup>r</sup>. Benja. Clements to  
your orator, in consequence of your orator

having so much to pay out of his own proper estate  
to the legatees of John Gilliam dec<sup>d</sup>, or make any  
other or further decree as may be for the relief of  
your orator, or agreeable to equity, is the prayer  
of your orator, & your orator shall ever pray.

May it please the court to grant unto your  
orator, the commonwealth's most precious writ  
or writs of subpoena &c. —

B<sup>n</sup> Drew att<sup>y</sup> for the pl<sup>t</sup>



The answer of Thomas Peete executor of Benjamin Clements  
decd. to the bill of complaint exhibited against  
him in the worshipful Court of Southampton  
County by Thomas Gilliam. This respondent now  
& at all times reserving to himself all advantages  
of exception to many errors & insufficiencies in the  
said bill contained for answer thereto or for  
so much as he is advised is material for him  
to answer the answer & says: That, ~~he is the~~  
True it is this respondent is the surviving executor of  
Benjamin Clements decd. & he acknowledges that  
his Testator qualified with the complainant  
as executor of the last will & testament of John Gilliam  
decd.: but that the said Benjamin Clements took  
on himself the sole execution of the will of the decedent  
John Gilliam this respondent knows not; from re-  
port, however, & circumstances he is induced to be-  
lieve that his Testator may have acted principally  
in the management of his estate - This respondent  
further answers & says, that it may be true that his  
Testator & complainant account of John Gilliam  
did return their account current to Southampton  
Court on the 10th of Aug. 1769 leaving a balance  
due to the estate of the said John of £141. 7. 10; never-  
theless, it evidently appears that the said executors were  
entitled to the credit of sundry sums omitted in  
their debts - as part of those sums this respondent  
will mention funeral expenses - fees to the secreta-  
ry & to the Clerk of Southampton County as appears  
from his books - Commissions & sundry disburse-  
ments attending the execution of the said estate - After  
the deduction of the above sums this respondent con-  
ceives that the just balance will appear by a count

iron with the account current dated 1799. This re-  
spondent conceives that he is conventionally bound  
to unostentatiously against the enormous accumulation  
of interest on the aforesaid balance - He begs leave  
to ~~urge~~ <sup>plea</sup> to your worship, the occlusion of the Courts of  
Justice for a long period during the war may have  
precluded from his testator the possibility of recover-  
ing the debts due the estate of John Gilliam & conse-  
quently have rendered him incapable of settling  
with the sd. estate - This respondent further answer-  
ing observes that, since he has qualified as exor  
of the will of Benjamin Clements (which is not less  
than <sup>eight or</sup> nine years) he has repeatedly solicited & urged  
John Rochelle, who is said in the bill to have claim-  
ed against the estate of above-mentioned John Gilliam,  
to hasten & complete such arrangement of his affairs  
as might conduce to a final settlement of the estate  
of his testator Benjamin Clements - This respon-  
dent further answers & says, that he has in his possession  
the bonds of Thomas Gilliam for a large amount, if  
the same were given to his testator Benjamin Clements as exor  
of John Gilliam dec'd. he, therefore, hopes that whatever  
balance may be decreed to be due to the said complain-  
ant that <sup>your worship</sup> will also decree that <sup>the</sup> ~~the~~ <sup>same</sup> ~~same~~ <sup>same</sup>  
testator as exor of <sup>John Gilliam</sup> ~~Benjamin Clements~~ may discharge the  
recovery of the complainant against your respondent -  
This Respondent &c.

J. Taylor P. R.

Gilliam  
185  
Letter of Clementine }  
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To Nov. 1792

By order

Benjamin Franklin



THE Commonwealth of Virginia to the Sheriff of *Southampton* county  
greeting: You are hereby commanded to summon *Thomas Pette* sur-  
viving ~~exor.~~ *exor.* of *Benjamin Clements* decd. who was in his  
~~life time acting exor of John Gilliam decd~~  
to appear before the Justices of our said county court of *Southampton* at the  
courthouse, on the *2<sup>nd</sup> thursday* in *November* next ~~to testify and~~  
~~the truth to say in behalf of~~  
~~in a certain matter of controversy in our said court; before our said Justices de-~~  
~~pending and undetermined between~~ *to answer a bill in chancery ex-*  
*hibited against him by Thomas Gilliam*

And this *he* shall in no wise omit, under the penalty of 100l. — And have  
then there this writ. Witness *Sam: Vello* Clerk of our said court, at  
the courthouse aforesaid, this *20<sup>th</sup>* day of *August* 1792 in the *17<sup>th</sup>*  
year of the Commonwealth.

*Jno: D. Hausmann* Pl. C.

An additional Aced Current of the Estate of John Gilliam  
decd.

To Mr. Secretary for Probate of will 57 - 5 -  
To Ck of Southampton as p Ticket 65 W<sup>o</sup> L<sup>o</sup> - - - - - L<sup>o</sup>. 8. 1  $\frac{1}{2}$   
To Commission for settling Est. . . . . 18. 8. 3 -

£19. 1. 4  $\frac{1}{2}$

Wm. Dute Esq<sup>r</sup> B.C.

we the Sub. have audited the Above Aced. & find the above  
Charges not entered, in the Original Aced Current Given  
under our hands this 9 Day of Nov<sup>r</sup> 1792

J<sup>o</sup>h<sup>n</sup> Edmunds

J<sup>o</sup>h<sup>n</sup> T. Blow Sen.

W<sup>m</sup>. Taylor

23. 3

122. 6. 5 1/2  
5

611. 12. 3 1/2  
2 3 2  
12  
3 87  
3/4 0

6. 2. 3 3/4  
7

42. 16. 2 1/4  
3

128. 8. 6 3/4  
3/4

12. 4. 7 1/2

1. 10. 6 3/4

142. 3. 9

122. 6. 5 1/2

264. 10. 2 1/2

298. 6. 10

33. 16. 8 1/2

711. 8. 10

677. 12. 2 1/2

691. 8. 10

38. 2. 9  
2. 17 1/2

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166  
30  
196

711. 8. 10  
670

19. 1. 4 1/2  
9/5 6. 10 1/2

14. 1.

1. 18. 2

2. 17. 3

~~4. 18. 8~~

38. 2. 9

2. 17. 3

41. - -