1799007 SOUTHAMPTON COUNTY CHANCERY PAPERS WILKINSON vs. VAUGHAN'S EXECUTORS 9/1799

other SURNames: Holladay, Everett, Everitt, Porter, Holt, Murdaugh, Streater, Crocker, Johnson, Turner

Wilkinson

v. } Bill

Vaughn's exors

March 1797.
Comm.r &
Sure time to ans.r
A.d. Bill Taken for
Confessed -
Sept.r 1798
Sept.r Exam.r to file ans.r
at Nov.r ~~dem.r plea~~

Sept.r 1799
Decree

54. 6. 3. and 4 years
10. 16. 6

~~3 7 9~~
65. 2. 9
16. 0. 6
49. 2. 3

2. 14. 1/4
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To the Justices of Southampton County in Chancery sitting —

James Wilkinson, complaining, shews — That sometime in the year of Christ 1788 William Vaughn, then of the County aforesaid, but since deceased, & the Complainant, actuated by motives of mutual accomodation, made an exchange of certain bonds in the manner following, — Vaughn gave up to the Complt, with any assignment in writing, a bond from James Mundaugh, of Nansemond County, to a certain Edward Sheater, dated on the 20th day of February in the year 1786, & conditioned for the payment of £80 of Virginian money on or before the 25th day of December then next ensuing, — which bond had been previously assigned by Sheater to Elijah Crocker, by him to Nardy Grigard, & afterwards by Grigard to Vaughn: — and the Complt, in consideration thereof gave up to Vaughn a bond from Johnson of

conditioned for the payment of

£

& also gave to him, in order to make up the sum stipulated, the Complts own bond for the payment of the farther sum of £45.0.0 — That the Complt with due diligence & expedition prosecuted in Vaughn's name, as he was obliged to do in consequence of the bonds not being assigned by him to the Complt, a suit at common Law against Mundaugh in the County Court of Nansemond, & on the 12th day of November in the year 1788 obtained an Judgment for £54.6.3 with interest thereon from that time till payment, — which to the Jury before whom that case was brought appeared to be the balances then due on the bond, after deductions of the payments made to Sheater; — but to this judgment Mundaugh has since by a decree of the Court of the same County in its Chancery jurisdiction obtained a perpetual injunction except as to the sum of £16.—.6, it appearing that he had given this bond for more money than was originally due from him to Sheater: in which case too Mundaugh got a decree for his costs therein expended, to wit, 55 ℔ of tobacco at 1d ½ a ℔, 147 of Do at 1d ¼ a ℔, & £1.10 — as will appear to this Court by office copies of the judgment at Law & decree in Chancery, in the possession of the Complt & ready to be produced when it shall be requisite for the establishment of these facts. — That altho' in these suits Vaughn's name was used, yet the Complt was the person actually responsible for the costs recovered by Mundaugh, & has paid them, — & his likewise expended the farther sum of £ in the prosecution of the suit at Law, & in defending the suit in Chancery — That the Complt, in this exchange, parted with the bonds of Johnson, & gave his own to Vaughn, as he has stated above, upon the sole consideration of Vaughn's giving up to him the

~~[illegible]~~ bond of ~~[illegible]~~ Mundaugh, - which the Compltt was then told, & induced to believe by Vaughn, was good for its nominal amount, subject only to a deduction of the payments made to Sheates anterior to the first assignment, - but which the Compltt has since, after much expence & trouble, discovered to be good only for £16.-.6 as will appear by the copies already referred to — and finally that the Compltt, conceiving that he was intitled to demand & have of Vaughn the full amount of so much of the money contained in Mundaugh's bond as the Compltt has been enjoined from the obtention of, & likewise the costs & expenditures above mentioned, has often required the same of William Vaughn, in his lifetime, & since his decease, of a certain Thomas Vaughn & Thomas Turner, who are executors of the testament & last will of William Vaughn, nevertheless William Vaughn, in his lifetime, constantly refused, & since, Thomas Vaughn & Thomas Turner executors of his testament & last will have also refused, & still refuse to pay the same to the Compltt, or to come to any terms with him in relation thereto — Wherefore, & for as much as the Compltt is only & properly relievable in a court of Chancery, - and to the end that the afore-mentioned Thomas Vaughn & Thomas Turner, may, upon their oaths, true & perfect answer make to all & each of the allegations & circumstances herein set forth as fully & particularly as if they were again repeated in distinct & separate interrogatories — That they as executors &c of William Vaughn may be compelled to pay unto the Compltt, under a decree of this Court, so much money as he has been barred from the obtention of by the afore-mentioned decree of the Court of Nansemond County, with lawful interest thereon from the 12th day of November in the year 1788 until it be paid, & also the costs & expenditures incurred by the Compltt in this business — and that the Complainant may moreover have such other & further relief as to this Court shall seem proper — The Compltt calls for the Commonwealth's writ of Subpœna to be directed to the afore-mentioned Thomas Vaughn & Thomas Turner executors of the testament & last will of ~~[illegible]~~ William Vaughn dec'd. summoning them to appear before this Court in order to answer this bill & abide by & perform such order & decree as shall be therein made respecting the matters above stated —

Marshall. Robinson
for the Compltt.

Vaughan's Exors
ads. } Answer
Wilkinson

Hill

The answer of Thomas Vaughan & Thomas Turner exors of the testament and last will of William Vaughan decd, Defts to the bill of Compt of James Wilkinson . . . Complt

These Defts saving &c admit that some trade or negociation of bonds took place between the Complt and their Testator, but as they have understood and believe the same was upon mere principles of Speculation in both, and that it was stipulated & agreed by & between them that if either of the said bonds, should thereafter be discovered not to be good for their nominal amount, Yt & that neither of the parties to the said exchange should be further or in manner whatsoever answerable to the other for the deficiency of the same, but that they should abide by the exchange then made without any recourse on each other — which mutual agreement these Defts conceive would entirely exonerate the sd Vaughan, or the Defts, as his exors from the charge & demands of the Complt — These Defts further add, that with respect to all the other ~~allegations~~ circumstances as related and set forth in the sd bill of Compt, they know

nothing and are un-informed — They are however induced to believe that their Testator considered the bond of Muidaugh's to be a good one, because, he parted with a likely negro-woman therefor, to Hardy Grizzard the last Assignor, and therefore no imputation can be supported against him on that account — The Defts alledge further, as they are advised, that supposing an injunction was obtained against the bond as mentioned in the Pltf Bill of Compltt, notice should have been given their Testator to defend the same, if the Compltt considered him as responsible the which doth not appear — and furthermore, that as he had parted with the right, possession, & direction of the Bond it was the Compltts duty & business to prosecute on the Assignments and in default thereof he cannot resort to this Court for relief whose province in cases of this kind is to afford it only where the means are exhausted, or sufficient energy cannot be had in a Court of Common law — These Defts request to be dismissed hence with their reasonable Costs &c without that &c

Nov: 20th 1798
Sworn to in open Court
J Kello. Cl

Pltf Bill for
Defts.

(360)

Wilkinson
vs
Vaughans ex?

Spec in Chs.

To March 1795

Execution Thos Turner & Thos Vaughan

Pd Arrington DF

THE commonwealth of Virginia to the Sheriff of Southampton county, greeting. We command you to summon Thomas Vaughan and Thomas Turner executors &c of William Vaughan decd

to appear before our Justices of our County Court of Southampton at the courthouse, on the second thursday in March 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 depending and undetermined between to answer a bill in chancery exhibited against them by James Wilkinson.

and this they shall in no wise omit under the penalty of one hundred pounds: And have then there this writ. Witness Samuel Tello clerk of our said court, at the courthouse, the 17th day of February 1795 in the 19th year of the commonwealth.

Jno D. Haussmann D.C.

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612
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To the Clerk of Southampton

County

Court

Southampton County

This day Thomas Vaughan personally appeared before me and made oath, that Thomas Holladay and Jesse Holt, are material witnesses in a suit in Chancery depending in the court of said county of Southampton, between James Wilkinson complaint. and the said Thomas, and Thomas Turner Executors of William Vaughan dec'd. Defts. You are therefore authorized and required to issue a commission in the form of a Dedimus Potestatem to two Justices of the peace for the aforesaid county, to empower them to take the deposition of the said Thomas Holladay and Jesse Holt. Given under my hand this 20 day of October Anno Domini

Benj. Blunt J.P.

Col. Hill

Vaughan's Exors.

ads. Dedimas protest.

Wilkinson

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18
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102

Southampton county ss.

The commonwealth of Virginia to Benj. Blick & William Edwards Gentlemen justices of the peace of Southampton county greeting: Know ye that we trusting to your fidelity and provident circumspection in diligently examining Thomas Holladay and Jesse Holt witnesses as well on behalf of Thomas Vaughan and Thomas Turner executors of the last will and testament of William Vaughan decd. defendants as on behalf of James Wilkinson complainant. Command you or any two or more of you that at such time and place as you shall appoint you assemble yourselves and the witnesses aforesaid and diligently examine them on the Holy Evangelists of Almighty God and their examinations into the court of our said county of Southampton without delay do you send certified under your hands and seals returning to us also this writ. Witness Samuel Hillo clerk of our said court at his office the 2nd. day of November 1795 and in the 20th year of our foundation

Jno. D. Kaufmann D.C.C.S.C

To the Clerk of Southampton

The affidavit of Jesse Holt who being sworn on the holy Evangelist of Almighty God, deposeth and sayeth. That about six or eight years past William Vaughan applyed to him to go to Haray Grigard and inform him that he would let him the said Grigard have the Negro girl that they had being bargain about, and take James Mundaughs bond in part payment for her if he Grigard would indorse the said bond, to which Grigard consented, and did indorse the same to William Vaughan and sent it by this deponent to said Vaughan, but he does not know the amount of the bond nor price of the Negro girl —

This deponent being asked if he had any reason to believe that Vaughan Doubted the justness of the said bond before he left Wilkinson have it, sayeth no, he had not and further sayeth not

Jesse Holt

Done before us at the house of Thomas Holladay on the 7th day of November 1795

Bir. Blount Seal

Wm. Edmunds Seal

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entd Nov. 12. 1788
nov 12 1792

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71-7-6

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-16

Unto the annexed Commission we the subscribers have this day (at the house of Thomas Holladay) proceeded to take the affidavit of Thomas Holladay, who after being sworn on the holy Evangelists of Almighty God, deposeth and sayeth — That some time in the latter part of year 1787 or the beginning of the year 1788 he heard William Vaughan (now dec'd) and James Wilkinson upon a bargain and trade for a bond or account, or perhaps both, bond and account of Nathan Johnson which was then in possession of James Wilkinson, and a bond of James Mundaugh of Nansemond county, which he understood was passed from said Mundaugh to Edward Hunter and endorsed by him to Elijah Crocker and from Crocker to Hardy Gaizard and from Gaizard to William Vaughan, and after some conversation Vaughan says to Wilkinson, I will give you Mundaughs bond, and take Johnsons as far as it will go, if you will give me your bond for the balance to which Wilkinson appeared to consent, but says, Vaughan if you know Mundaugh better than I do I will not endorse his bond, if you take it you shall take it as it is, I will not be liable. It shall stand as a Dunsh of Horse, to which Wilkinson consented, and Vaughan was to take Johnsons on the same terms, and then they exchanged papers — On being asked if he had no reason to believe that there was a dispute in justness of the bond before this exchange or trade took place, he sayeth no, he never heard that there was, and further sayeth that he believes that Vaughan did receive the amount of the debt due from Johnson to Wilkinson — and being further asked if he knows how Vaughan came by the bond, sayeth that Vaughan applyed to him to know Mundaughs circumstances, and informed him that he was about to trade for his bond, and wanted to know something of his abilities to pay it — And further sayeth not —

Done before us this 7th day of November 1795 — —

Thomas Holladay

Benj. Blunt Seal

Will. Edmunds Seal

Colo Samuel Kello

Clerk of

Lay. Wilkinson
vs. } Deposition
Will: Vaughan Esqrs

Southampton Court

By virtue of a commission to us directed, we have proceeded to take the deposition of Sarah Everett and Thomas Porter in a suit in chancery now depending in the county court of Southampton between James Wilkinson plt: and Thomas Vaughan & Thomas Turner exors: of William Vaughan dec? defendants, as follows

Sarah Everett of lawful age being first duly sworn on the holy evangelists of almighty God - deposeth & saith, That her late husband Benjamin Faircloth sold to William Vaughan, about nine or ten years ago, a mare for which Vaughan agreed to give fifteen pounds, which he said he could not then pay, that he would not give his own bond, but would let him have a bond of James Wilkinsons which he had gotten in exchange for James Murdoc's bond, which Faircloth agreed to take.

That the deponents husband asked the said Vaughan whether he thought Wilkinson would ever recover the amount of the said bond from Murdoc, who replied that great men could do great things - but insinuated that, if he had held possession of the said bond, he never would have been able to collect it - This deponent further says that the 15£ agreed to be given for the mare were afterwards paid by the said James Wilkinson - and further saith not Sally Everitt

Thomas Porter of lawful age being first duly sworn on the holy evangelists of almighty God — deposeth and saith — that some time about the year 1788 he purchased of James Wilkinson a horse for which he gave his bond to the said Wilkinson for the sum of eighteen pounds, which bond was afterwards assigned by the Sd. Wilkinson to William Vaughan; that in a conversation with Vaughan he, to the best of this deponents recollection, informed him that he got this deponents bond from Wilkinson in exchange — for James Murdocs, which he had let the said Wilkinson have. This deponent further says that afterwards his bond was assigned by Vaughan to Jesse Holt, to whom he paid it — and further saith not Thos. Porter

Cross Keys, September 5th 1799

The foregoing depositions were sign'd & sworn to before us the day & date above. Given under our hands & seals

Benjn. Cornish Seal

James Gee Seal

At a Court held for Nansemond County November the 12. 1788

William Vaughn Pltf. against James Murdaugh Deft. in debt. The parties appeared by their attorneys and there came a jury by name John Barker, Thomas Granberry, Willis Wiggans, James Everitt, William Reddick, Christopher Norfleet, John Carwile, Nathan Johnson, Joseph M. Godwin, Charles Whitlock, Robert Jordan, & Robert Jordan jur. who being elected sworn and affirmed do say they find for the plt fifty four pounds six shillings and three pence with interest thereon from November the 12th 1788 till paid and the Costs &c. It is Considered by the Court that the plt. have Judgment against the defts for the said sum and Costs of this suit and the defts. in mercy &c.

A Copy
Teste
Tho. Newsom DC

James Murdaugh Plt
against
William Vaughan Deft } In Nansemond County Court

Deft Cash 55 & 100 . 3 1/2 } ₰ 30/-
147 . 80 . 3 1/4

A Copy
Teste
Tho: Swepson DC

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cpd.

Mundaugh
v
Vaughn } copy Jud.

Oct. '93. Bill f.

P. Williamson
v. } Ch.
Tho. Vaughn & Thomas Tann exors &c. of Wm Vaughn dec.d —
p.
Feb. '95. Lubsp.

Bill

At a court held for Nansemond County November the 12th 1792

James Murdaugh . . . . . Plt.

against

William Vaughn . . . . . Deft } In Chancery

This cause by consent came on this day to be heard on the bill and Answer and the Arguments of Counsel on both sides on Consideration whereof It is Decreed and Ordered that the injunction obtained by the plt: to stay the proceedings on a Judgment in the bill mentioned be dissolved as to sixteen pounds six pence and stand perpetual as to the residue of the said Judgment in the bill aforesaid mentioned & that the plt: recover against the deft his costs by him about his suit in this behalf expended

Costs 55 Tob: @ 1/2 } 0.3.0
147 do @ 1/4 }

A Copy Test
Thomas Swepson D. C.

Vaughan
ads
Wilkinson
} Answer

copied for ~~F. Hill~~
44 cents

The Answer of William Vaughan to the bile of complaint exhibited against him in the worshipful court of Southampton County by James Wilkinson. This respondent for Answer to the said bile or so much as he is advised is material for him to answer he answers & says. It is true that on or about the day of in the year he gave up to the complainant a bond from James Murdaugh of Nansemond County to Steater of the same county conditioned for the payment of £ which by assignment of the said Steater had become the property of this defendant. It is also true that the complainant gave up to this defendant in exchange for the above mentioned bond a bond from Johnson of conditioned for the payment of £ & also gave his own bond for the further sum of £ Whether the complainant has prosecuted with due deligence & expedition in the name of this respondent, a suit at Law in the court of Nansemond county, upon the bond in which the said Murdaugh was bound & obtained a Judgment for the same & whether the said Murdaugh has since by a suit in Chancery obtained a perpetual injunction against the said Judgment except as to the sum of £ 16, 6, 6 upon its appearing that the said bond was given by the said Murdaugh for a larger sum than was really & originally due from him to the said Steater & whether after the obtention of such injunction the said Murdaugh had a decree for his costs as stated in the bile of the complainant and Whether the complainant be responsible for such costs, are all circumstances with which this defendant intirely unacquainted ~~with~~ as well as unconcerned But this defendant denies that the said Murdaughs bond assigned to the defendant by the said Steater was good only for the sum of £ and affirms that the said bond was good & Valuable according to its whole nominal amount. For allowing it to be true (Which however this defendant does not confess) that a part of the said bond was not recoverable against the said Murdaugh. Yet it was recoverable against Steater the assignor of the defendant & against him the complainant should have brought his suit before he could have recourse on this defendant. This defendant answering also shews that altho the bond had not been recoverable against Murdaugh the obligor or Steater the assignor of the defendant, Yet that the defendant can in no wise be responsible, for he says that at the time the Exchange above stated of the bonds above mentioned was made, that it was mutually and expressly stipulated & agreed between the complainant & the defendant that if either of the said bonds should ~~be~~ thereafter be discovered not to be good for the nominal amount, Yet that neither of the parties to the said Exchange should be further or in any manner answerable to the other for the deficiency of the same; But that they should abide by the Exchange

thun made without any recourse one upon the other, which mutual agreement this defendant conceives would entirely Exonerate him from the charge of the complainant supposing every fact stated in the bill to be true which however This defendant by no means concedes for these & divers other causes & Considerations this defendant can by no means agree to pay to the complainant as much money as he has been barred from the detention of by the injunction by the said Murdaugh obtained, if that has been the case, or that he is responsible for the costs & expenditures by the complainant expended as above stated.— This defendant prays to be dismissed with his reasonable costs &c.

C Taylor for deft.

A true Copy Teste

Jno. D. Kaufmann D.C.

Murdaugh
vs
Mullaman

Wilkinson

vs

Adams

Vaughan Esqrs

Virginia, to Southampton County to wit

The Commonwealth of Virginia to Benjamin Blunt and James Gee Gentlemen, Greeting, Knowye that we in confidence of your prudence and Circumspection, Do impower you to call & cause to come before you, when & where you shall appoint Sally Everett — Thomas Porter and Nathan Johnson

witnesses as well on behalf of James Wilkinson plaintiff as on behalf of Thomas Vaughan & Thomas Turner Exors. of William Vaughan dec.d Deft.s and diligently to examine them on the holy Evangelist of Almighty God, what they may know concerning the Controversy now depending in the Court of our County of Southampton, between the parties aforesaid and their examinations, into our Court of our said County you are to send & certify under your hands & Seals enclosed, returning to us this writ witness Lemuel Kello clerk of our said Court at the Courthouse the 15.th Day of October 1798 & in the 23.rd year of our Incorporation —

Test Lemuel Kello C.