1803-004 SOUTHAMPTON COUNTY CHANCERY PAPERS ROCHELLE vs. GILLIAM 2/1803

other SURNames: Rochelle, Tucker, Foster, Barham, Rochel

To the Justices of Southampton County Court in Chancery sitting? — humbly ~~complaining~~ sheweth unto the Court your Complnt Judith Rochell formerly Gilliam that a certain Thomas Gilliam late of Sthn County being possessed of a valuable Estate both real and personal in the County aforesaid departed this life sometime on or about the day of — one thousand seven hundred and intestate that is to say; so far as relates to the object of the present bill; his supposed will being but an incomplete instrument and not providing for the same — That of the Estate which the said Thomas was seized and possessed at the time of his death there remains to be divided one tract or parcel of land containing four hundred and eighty two acres more or less — as will appear from a deed hereto annexed and marked as part of this bill of complnt that your Complnt being one of the Children of the decd and daughter of his son John Gilliam decd" and as such is entitled to her proportionable part of the said land, being the one eighth part thereof but so it is that a certain Thomas Gilliam son of the deceased hath taken possession of the said tract of land under pretence of claiming it as his own and refused to allot to your Complnt her share as aforesaid which acting & doings are contrary to Law & justice & equity — That your Complnt hath made frequent & friendly demands of the s Thomas to come unto and cause to be made a division of the premises aforesaid but he hath denied & refused the same, persisting in his right thereto; notwithstanding the legal claim of your Complnt under the existing laws of the Comwlth at the time of the s Gilliam's decease — to the end therefore that the s Thos Gilliam may be made deft hereto and answer on oath the allegations of this bill as ample & amanner as if they were again set forth & repeated

particularly doth he not hold, possess & use the tract of land
afs^d. hath he allotted yr Complt his proportion as afs^d.
~~In consideration whereof, and for as much as yr Complt is pro-~~
~~perly relievable here, to the ends~~ That this Court will decree and
order that yr Complt receive the one eighth part of the land and
premises afs^d — and appoint Comrs for carrying the same into effect
allotting her share by proper metes & bounds having regard to quality
as well as quantity of the s^d land; or grant such further or other relief
as shall appear meet & consistent with justice &c — may it please
the Court to grant the Comw^lths Spa: directed to the s^d. defts. &c

Wm Hill for
the Complt.

Rochell
vs
Gilliam

Answer ...

The Answer of Thomas Gilliam to the bill of complaint exhibited against him in the Worshipful Court of Southampton County, by Judith Rochell.

This Respondent saving and reserving to himself all right of exception to the manifold errors imperfections and uncertainties of, and in the Complainants said bill of Complaint contained; for answer thereto, or to so much thereof as he is advised is material for him to answer, and says that it is true that Thomas Gilliam his father did depart this life after having duly made and published his last will and testament; and that he was quite silent in the same about the four hundred and eighty two acres of land as mentioned by the Complainant in her said bill. Here your Respondent begs leave to state the facts attending his case which he firmly believes are in the possession of the complainant, and are as follows. That during his infancy, Thomas Gilliam his father purchased a tract of land containing about one hundred and seventy five acres lying in the county of Isle of Wight for him this respondent, from a certain Thomas Brian esq. as will more fully appear by

reference to a deed from the said Francis to Thomas Gilliam who is particularly described by the addition of Younger. That subsequent to this, Thomas Gilliam his father made the following proposal to him to wit, that if he would agree to execute a deed to William Kirby for the before mentioned 175 acres of land, and confirm the title upon his attaining full age, that he in consideration thereof would purchase for him a tract of land from a certain Christopher Foster containing about four hundred and eighty two acres lying in the county of Southampton, which said parcel of land is the same mentioned by the Complainant. This Respondent also states, that he did fulfil his part of the aforesaid contract, and that his father in pursuance of his part, did purchase the said piece of land from his said Foster, for him, and that it was intended by his father that the deed from Foster should be executed to him, by the discrimination of Tho: Gilliam the Younger. And Your Respondent further shews that from mistake, accident, or fraud the deed from the said Foster was executed to Thomas Gilliam without the addition of Junior as was intended by his father, and expected by himself. Your Respondt lastly states that immediately upon the execution of this said deed by the sd Foster, his father put him in possession of the said deed and land, and that he has retained the same in his quiet and peaceable possession ever since, a period not less than twenty six years. Your Respondent lastly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained —

Thomas Gilliam made oath that the statements contained in the foregoing answer are true. Given under my hand and seal this 18th day of December 1799 —

Jas. Wilkinson Esq

William Dal
ado
Rochelle

Southampton Sct

The Commonwealth of Virginia to Elisha King and Joseph Goodwyn Justices of the peace for the County of Dinwiddie

Gentlemen greeting Know ye that We trusting to your prudence and circumspection in diligently examining Mary Tucker an aged witness on behalf of Thomas Gilliam as well on behalf of Judith Rochelle Wm Johnson Wm Butts & Mary his wife & Robert Tucker & Mary his wife Command you or any two of you to call & cause the s.d Witness to come before you when & where you shall appoint & diligently examine her on the holy evangelists of Almighty God what she may know in the cause now depending in the county court of Southampton between the parties afores.d And her examination so by you taken you are to send inclosed to us under your hands & seals in our s.d court & have then there this writ witness Wm Kello Clerk of our s.d Court at the Court house the 27th day of November 1797 & in the 22d Year of the Commonwealth

Wm Kello D.S.C.

Mary Tucker of Lawful age a Witness in the Suite, Judith Rochelle & others against Thomas Gilliam depending in the County Court of Southampton, after being duly Sworn upon the Holy Evangelist of the Almighty God deposeth & Saith, That when her Brother Thomas Gilliam the younger, was about two years old he had a deed, for a Tract & Parcel of Land by a Certain Thomas Francis, and when he the Said Thomas Gillim the younger, arrived to the age of about Seventeen years, his Father, Thomas Gilliam the elder Said to him in the hearing of this deponant, that if he the Said Thomas Gilliam the younger, would agree to make over his Right to the above mentioned Tract of Land to William Kerby, when he came of Age who was inclined to purchase the Said Land, that he the Said Thomas Gilliam the elder, would purchase for him his Said Son Thomas, the younger, a Tract of Land then the Property & in possession of Christopher Foster Junr. & that the deed Should be given from the Said Foster to his Said Son Thomas the younger upon this the Said Thomas Gilliam the younger, agreed to the Bargain, his Father Thomas the Elder Sold his Said Sons Land & Purchased the Said Fosters Land, for his Said Son Thomas agreeable to contract in consequence of which the Said Thomas Gilliam the younger took immediate possession of the Said Land purchast of Said Foster and Continues in possession to this days, This deponant further Says that Several years after the Said Thomas Gilliam the younger had possession of the Said Fosters Land he discovered that there was no Conveyance between Senr. & Junr. in the Deed for the Said Tract of Land Foster to him, and Supposed that it would cause a dispute hereafter, This deponat hearing of it mentioned it to Thomas Gilliam the elder, who acknowledged he knew nothing of it, as he could neither Read or write, but Said his Son Thomas might have a deed Such a one

as

As would please him, but it appears it was neglected, this is what this deponant knows of the matter and is so confident of what She have deposed. That being a claimant in the Lands her Father Thomas Gilliam dead. Intestated have Conveyed all her Title to her husband Robt. Tucker, but the Land this deponants Brother Thomas Gilliam possesseth, and that by Some that this deponant have a Share in, tho this deponant thinks his Title so good and just. That She has Refused to Convey her right to any one but him the Said Thos. Gilliam the Younger, which this deponant have done by deed as have ing Reference to the Records of the County Court of Southampton will more fully appear, and further this deponant Saith not

Dinwiddie Sct.

In obedience to a Commission from the Worshipful Court of Southampton (which is hereto annexed) to us directed have Examined & taken the deposition of Mary Tucker as above this day at the house of Robert Tucker of the Said County Given under our hand & Seals this 25th day of January 1798

Elisha King Seal

Joseph Goodwyn Seal

Gelliam
vs
Rochelle ex.

Gard.
Am.

April 1799

The Commonwealth of Virginia to Elisha King
Braddock Goodwyn Joseph Goodwyn - - - -
Gentlemen greeting, Know ye that we trusting to your fidelity
and provident circumspection in ~~diligently~~ examining what-
soever witnesses as well on behalf of Thomas Gilliam as on
behalf of Lewe Rochelle ex.r &c of John Rochelle dec.d DO
Empower you to call and cause to come before you the witnesses
afores.d when & where you shall appoint and diligently ex-
amine them on the holy Evangelists of almighty God and
their examinations so taken into our court of our S.d county
of Southampton without delay You are to send &c certify
inclosed, returning to us also this writ witness Sam.l Kello
Clerk of our s.d court at the Court House the 23.d April 1799
and in the 23.d Year of the Commonwealth

Sam.l Kello, CC

In obedience to a Commission from the Clerk
of the Court of Southampton to us Directed have
meet at the house of Robert Tucker in Dinwiddie
County Where Mary Tucker of Lawfull age a
Witness in the Suite Judith Rochelle and others against
Thos Gilliam Depending in the County Court of ——
Southampton after being Duely Sworn upon the holy
Evangelist of Almighty God Deposeth and Saith that
When her brother Thos Gilliam the younger was about
two years old he had a Deed for a tract and parcel of
land by a certain Thos Francis and when he the said Thos
Gilliam the younger arrived to the age of about Seventeen
years old his father Thos Gilliam the elder said to him in the
hearing of this Deponant that if he the said Thos Gilliam
the younger would agree to make over his Write to the above
mentioned tract of land to William Riley when he came of age
Who was inclined to purchase the said Land that he the said
Thos Gilliam the elder would purchase for him the said Son
Thos the younger a tract of land then the property and in
possession of Christopher Foster junr and that the deed
should be given from the said Foster to him his said son
Thos the younger Agreed to the Bargain his father Thos the
elder sold his said sons land and purchased the said Fosters
land for his said son Thos agreable to Contract in
Consideration of which the said Thos Gilliam the younger
took a immediate possession of the said land purchased
of the said [redacted] Foster and continues in possion of
to this day and the Deponant further saith that Several
years after the said Thos Gilliam the younger laid possion
of the said Fosters land he Discovered that there was no Distinction
Between Sr & junr in the Deed for the said tract of land Foster
to him and supposed that it would Cause a Dispute

hereafter this Deponant hearing of it mentioned to Thos Gilliam the elder who acknowledged he knew nothing of it as he could neither Read or write but said his Son Thos might have a Deed such a one as he would please him but was neglected this is what this Deponant Knows of the Matter and is so confident of what she hath deposed that being a Claimant in the lands of her father Thos Gilliam Decd intestate have conveyed all her Right to her husband Robert Tucker and the land this Deponants Brother Thos Gilliam Possesseth and that it is thought by some that this Deponant hath a Share in the which this Deponant thinks his title a good and just one and that she has Refused to convey her Right to any one but him the said Thos Gilliam the younger which the Deponant done by Deed as having Reference to the Records of the County Court of Southampton will more fully appear and further this Deponant saith not

Mary Tucker

Dinwiddie Jct

In Obedience to a Commission from the County of Southampton to us Directed which is here to annexed have examined and taken the Deposition of Mary Tucker as above this 14th day of May - 1800

Given under our hands

Elisha Rives

Braddock Goodwyn

The Clerk of Southampton

Rochelle
vs
Gilliam
} Depos

Filed — Nov. 1799

By Virtue of the annexed Commission to us directed we the Subscribers have proceeded to take the Depositions of Arthur Foster Senr & Col Barham at the House of Abraham Nicholson this 16th day of Novr 1799, Isaith Rochelle Pltff vs Thomas Gillam Deft — Notice duly proven —

Arthur Foster Senr being of full age after being Sworn on the Holy Evangelist of Almighty God Deposeth & Saith that on or about the year 1763 his Brother Christopher Foster informed him that he had sold a tract land to Thomas Gillam Senr that he afterwards saw T. Gillam in possession of said land Working and tending &c and that said tract of land is the same now in dispute between Pltff & Deft

Question by the Plaintiff do you not recollect that your son Surveyed the aforesaid tract of land

Answer he saw him engaged in the Business &c

that he was Called on to shew the lines

2d Question by the Plaintiff — who did your son Charge the expences of said Survey too

Answer to Thomas Gillam Senr as appears by his Book which has once fell into my hands

3 Question by the Plaintiff, do you recollect or Will that Thomas Gillam Senr made Some al Years after the purchase of said Land —

Answer I do & that I was a Witness to said Will
& Recollect that Mr Thomas Gillam Senr. did Will
the aforesaid land to one or two of his Grand —
Children —— I further this Deponent sayeth
not

Joel Barham being of Lawful age & first being Sworn
on the Holy Evangelist of almighty God deposeth
& saith — That at the time that Sterling Foster
Son. of Arthur Foster Junr was about to Survey the
land now in dispute, he was Called on to bear the
Chain, which this deponent did, after running E a white
Oak, a Corner tree between L. Gillam & Robin Barham
a dispute arose concerning the lines, when Robin
Barham, asked Thomas Gillam Senr. why his Son
Thomas Gillam the present Def.t did not contend for
the land, his Ans. was that he never had given his
Son the land & that he never intended to do it &
further this Deponent sayeth not

Given under Our Hands & Seals this day &
year first above Written

James Millar Seal

Lewis Ford Seal

Rochelle
vs
Gilliam
Comm.

Southampton county Sct

The commonwealth of Virginia to James Millar
— O —
J Lewis Fort

Gentlemen justices of the peace know ye that we
trusting to your fidelity and circumspection in examin
ing

witnesses as well on behalf of Sucath Rochelle Pltff
as on behalf of Thomas Gilliam Deft we do empower
you to call and cause to come before you the witnesses
aforesaid when and where you shall appoint and
diligently examine them on the holy evangelist of
Almighty God and their examination so taken into
our court of our said court you are to send enclosed
to us under your hands & seals returning also this
writ witness Sam Hall clerk of our said court
at the Cthouse the 12th day of March 1798 & in the
22d year of the commonwealth

Sam Hall jr D C
(L)

Rochelle
v
Gilliam
Feby 1803 Sept[r] ret[d]
Indorsed as by

Agreeable to an Order of the Honourable Court of Southampton
~~Court~~ bearing date November 1802 We have proceeded to
lay off the Lands of Judith Rachel Pl'ff } In Chancery
Against Thomas Gilliam Def't }

Bounded as to wit Beginning at a black walnut
just below the lower corner of the Apple Orchard
thence South sixteen degrees East Thirty two pole to a
persimmon tree thence North seventy degrees East forty
Eight pole to a stake thence North Eight degrees East
twenty five pole to a Sycamore a corner thence South
Eighty degrees West Sixty pole to the Beginning containing
Eight & three quarter Acres including the Houses Orchard
Given under our hands this Ninth day of February
one thousand Eight hundred & two

John Appleton

Rand'l Newsum

Robert Nicholson

November court 1802

Judith Rochell pltff
Against
Thomas Gilliam Defd } In Chancery

This cause was this day heard on the bill and answer exhibits and other documents depositions and arguments of the council, on consideration whereof it is decreed and ordered that the said Judith Rochell recover of the said Thomas Gilliam 1/8 part of the tract of land in the bill mentioned containing 482 acres more or less and that Robert Nicholson John Applewhite and Randolph Newsum or any two of them with Richard P. Clements the county surveyor proceed to lay off by proper metes and bounds having regard as well to quality as quantity & deliver the same to the said Judith Rochell and that she recover her costs by him about his suit in this behalf expended &c

Sam. Kello R