1850-023 SOUTHAMPTON COUNTY CHANCERY PAPERS

MASSENBURGH VS. MASSENBURG'S ADMINISTRATOR + al

S/1850

other SURNames: Pretlow Ricks, Sparks, Rochelle, Gurley, Mason

25

Massenburg
v
Massenburg
} Papers.

1850 May Dismissed

Masenburg

vs } Stat: Rules

Masenburg

Mary A. Mapenburg

against

James D Mapenburg

1849 Dec 8 Subpa & Pc issued

1850 Jany Rules Spa Pc returned executed.

" Febry " Bill filed

" Apl " Cause Set for hearing

" May 9. Dismissed

Simeon R Edwards

"Clerk of Southampton County"

Jerusalem

So: Hampton County

Va

To the Honble Richd K. Barbour, Judge of the Circuit Superr Court of Law & Chy for the County of Southampton, in Chy Sitting. humbly complaining sheweth unto your Honor, your Oratrix, Mary L. Mosenburgh, formerly Mary L. Pretlow, and widow of the late James Mosenburg dec.; That previous to her marriage with her late husband James Mosenburg dec., entered at that time, which took place on the 19th Feby 1840, She, as well as her brother John Pretlow, was the Ward of one Alfred Ricks, who had duly qualified as her guardian, and received into his hands whatever property that belonged to her & her brother: That as a security for, and in part forming a portion of her estate, the said Alfred Ricks took a bond bearing date the 29th November 1842 & payable (one day thereafter, to himself as guardian of the said John & Mary L. Pretlow, for the sum of $4392. 4/100. of & executed by Wm Parks, James L. Mosenburg, Clements Rochelle, Jno M. Gurley & John G. Thomson. (the Obligors). your Oratrix alleges that the said bond or security was held, & considered by her said guardian Alfred Ricks, as her property, entirely, especially & peculiarly as her own after his settlement with her brother the said John Pretlow which as she believes took place prior to the time hereinafter mentioned when the same was transfered to her late husband.

On the 19th Feby 1840, your Oratrix, being still the Ward of the said Alfred Ricks. intermarried with James Mosenburg. That on the 22d April 1840 the said Ricks, as in duty bound, paied over & transfered to the said Mosenburg her husband, (besides other property) the identical Bond above named, unchanged, in form, character, name, date, amount &c; as a portion of the property, or a chose in action, belonging to your Oratrix. That the said Mosenburg her husband, receiving the same as such, kept the said bond, or chose in action, unaltered & unchanged, & in the identical form in which it was received by him, until his death which took place occurred on the 20th Sept 1840. That the said James L. Mosenburg qualified as the Admr of her husband, James Mosenburg dec and found among his papers, the said Bond, in the same character, in which it was executed; and that the said Administrator of Ricks, or in some other capacity has since collected the Amount with interest accrued by the same, from the said Obligors. Your Oratrix further states that She survived her husband, the said James Mosenburg, and therefore in right that the said bond, being a chose in action & originally belonging to her, having never been reduced into possession by him in his life time, survived to her on the death of her husband, as her own property; and claims the same as against the said Jas L. Mosenburg admr of the her late husband.

She has repeatedly urged upon the said Administrator to respect her rights & pay over the proceeds of the said bond, collected by him from the said Obligors — But he has as

constantly refused, alleging that the said ~~Bond~~ Bond was paid to ~~the said~~ her late husband, on a settlement which he, in her right, and on reference to her property, had with her said ~~character~~ guardian. Your orator avers that the said Administrator has ~~entirely~~ misunderstood, the nature, force and effect of the duty of the relation, of a guardian, and the import of the word settlement. The law imposes it, as a most solemn obligation & makes the guardian responsible for the omission, to place & invest in some form, returning interest, the monies &c: of the ward; and the security or evidence of such investment or loan, must necessarily be, a chose in action; and whenever a settlement shall take place with the ward, he fully acquits himself, by paying over to the ward such securities or choses in action, especially so, if the Ward raises no objection to receiving the amounts due in that form or character. And a settlement is nothing more than accounting with the ward, & delivering over the property whether, real, personal, mixed, bonds or Cash &c: and the receipt given to the guardian in such cases, is nothing more than evidence that the guardian has released himself of the trust, and substituted the ward in respect to the estate held by him the guardian, to his legal rights and the prosecution of the property, and can never be construed as changing the character of the property which may be transferred by the guardian & accepted by the ward. Your orator contends, that, as to this object, & in view of the principles applicable to this & similar cases, the guardian, in respect to the property, is but, and the same, with & identical, in legal contemplation, with herself, that is the same as if the said bond was executed & made payable to herself, by name, upon her self to be above the age of 21 years. What possible difference can there be, between the two cases? Your orator charges that the said bond was given to her; that she is entitled to the proceeds: that she is without adequate remedy, save in a court of Equity &c:

She prays that the said James D. Shaftesbury may be made a party defendant to this Bill, either in the capacity of administrator of James D. Shaftesbury dec'd. or in his own rights; or in whatever capacity he may pretend to hold the right to, and control over the said bond; or in both, and as such answer the same & his corporal oath, & discover all facts he may know in regard to the allegations in this Bill and in what right or capacity he continues to hold said Bond, or the proceeds thereof, the amount received & when; and of whom:

Your Orator prays that this honble Court will decree the payment of the sum received by the said James D. Shaftesbury with interest, on the said Bond, to her, as her own individual property, and grant all other and necessary relief which may be meet & fit &c in the premises & also the Commonwealth prays &c.

Mary H. Pretlow

B. W. Whitfield atty for pltff

6.S.6

Muspenburg

v. } Sp. Chy

Muspenburg's adv.

1850 January Rules

Execution on the 17th
day of December 1849

Mr Isbell & J
Clarden Sheriffs

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon James D Mapsenbury as administrator of James Mapsenbury and James D. Mapsenbury individually

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in January next, to answer a Bill in Chancery exhibited against him in the said Court by

Mary H. Mapsenbury

And unless he shall answer the said Bill within ~~four~~ two months thereafter, the Court will take the same for confessed, and decree accordingly. And this he shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the 8 day of December 1849, in the 74 year of the Commonwealth.

L R Edwards clk

[*One Copy to be delivered each Defendant.*]