

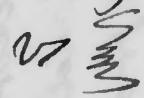
1871-044

SOUTHAMPTON COUNTY
CHANCERY PAPERS

STUART and Wife VS. BARHAM et al

3/1871

Other surnames: Stewart,
Applewhite, Turner, Day,
Comann, Rochelle

Stuart & wife
vs 
Rochelle & others

Bill & Answer

1854 May - Entry Dura 1st

1861 Mar. Rule to Comr.

1871 March Removed from the
Docket.

To the worshipful County Court of
Buckhampton County - In chancery -

Humbly explaining ~~cheerfully~~
your worships your orator Arrington C. Stuart
and your oratrix Mary F. Stewart, his wife,
that John Day departed this life ~~intestate~~
about the year 1816 or 1815, seized of a certain
tract of land as to which he died ~~intestate~~
and which descended to his only heirs at
law, viz his three children Edmund Day -
Martha Day (who intermarried with one Edmund
Day) and Frances Day (who intermarried with one
Nathaniel Rockelle) ^{the said Nathaniel Day since died} - ~~the said~~ Frances Rockelle
^{has also since} died ~~intestate~~ as to ~~her~~ her portion of the said land
leaving as her only heirs at law, her four children
Wm L. Rockelle - John R. Rockelle - Mary Frances Rockelle
(who has intermarried with the said A. C. Stuart) And Mar-
tha Rockelle (who intermarried with one Walter Apple-
white) and has since died leaving the following children
viz, John Walter - Mary Frances and William Edmund Applewhite

The said Edmund Day has also died having du-
ly executed his last will & testament which was admitted
to record in the clerk's office of the County Court of said County
^{in the year} 1847 of which is herewith filed as part of this bill -

By his said will, the said Edmund Day, gave and devised
his portion of the said tract of land, which was one third
in quantity, to the said Wm L. and John R. Rockelle, in equal
shares.

The said Martha Turner (as has her husband also)
has since died intestate as to her portion ($\frac{1}{3}$) of the said tract
of land, leaving as her only heir ^{at law} one John A. Turner
who by deed of bargain & sale recorded in the said office

in the year , and herewith (a copy) filed as part
of this bill, conveyed and granted his ^{said} interests in the said
land to one Leuthbert D. Barham.

Your Orator and Oratrix are advised that
they are entitled to one fourth of one third of the whole
of the said tract of land, that is to say to one twelfth
of the said land — that the said Walter Applewhite
and his wife or her said ^{three} children are also entitled to
the like quantity of one twelfth — that the said
William L. Rochelle and John R. Rochelle are entitled
to one third in equal shares (the portion of the said Edmund
Dag) or one sixth to each of the said William and
John and in addition thereto to the like quantity of
one twelfth each in right of their mother — that is to say
to three twelfths of the whole of the said tract of land
to each one of them, the said William and John Rochelle,
or six twelfths, or one half to the said William and John
Rochelle —

The said Wm L & John R Rochelle conveyed and granted
by deed of bargain & sale to the said C. D. Barham, three
eighths of the whole of the said tract of land, they be-
ing entitled as above stated to one half of the same —
which said deed (a copy) is herewith filed as part of
this bill — so that they are still entitled jointly to one
eighth of the whole of the said tract of land, or to
one sixteenth each of the same.

The said Walter Applewhite (his wife the
said Martha, being dead) has consented that his said
three children shall receive the entire benefit of their
said mother's portion or one twelfth.

The tract of land above alluded to lies in the
said county near the Crook Key, is supposed to contain
about 306 acres, and is bounded by the lands of the said C.
D. Barham, Ben E Pope & others.

Your said Orator and Oratrix are anxious for
a division of the said land so that they may obtain
their portion thereof — they therefore humbly pray
that the said C. D. Barham — William L. Rochelle —
John R. Rochelle — Walter Applewhite (together with
his said three children who are infants, and therefore
should answer by a guardian ad litem) parties de-
fendant to this bill — compel them to answer &c —
that your worship should appoint Commissioners
to allot or apportion to each of the parties interested in
the said land their proper share ^{or to make sale of the same} in the same,
and grant such other general relief as equity
may dictate and the case may require &c.

Ans J. Kindred
Pg

The Answer

The joint and several answer of Wm.
L. Rochelle — John R. Rochelle — C. D. Barham — Walter
Applewhite — John Walter Applewhite — Mary Frances
Applewhite and William Edmund Applewhite (the three
latter being infants by J. R. Edwards who is appointed
by the Court their guardian ad litem) to a bill
filed against them in the County Court of Southamp-
ton County, by J. C. Stuart and Mary F. Stuart.

These defendants saving &c, for answer
to the said bill say — that they admit the facts and
allegations therein charged and made and have no
objection to the decree prayed for — Barham —
Answer pray to be assigned &c —

County Court for Southampton County -

Arrington C. Stuart & wife

v. s.

Rockelle Nothens

Decree

This cause, this day, came on to be heard on the bill
the answer of defendants together with the replication thereto
and Exhibits; and was argued by Counsel: On Consid-
eration whereof the Court doth advise, order and decree
that Davis Bassett, Edwin Harris, Benjamin B. Kindred
and Samuel Bittle (any three of whom may act) be and they
are hereby appointed Special Commissioners for that pur-
pose — that the said Commissioners, taking with them
if necessary a competent Surveyor, lay off by lot or assign-
ment one twelfth in value of the tract of land of
which John Day died seized, lying near the Camp Keys, supposed
to contain about Three hundred acres, known as the "Day
Place" and bounded by the lands of C. D. Barkham, Ben E.
Pope and others, to Arrington C. Stuart and wife Frances
— one twelfth in value to John Walter Appleswhite - Will-
iam E Appleswhite and Mary F Appleswhite jointly - (they be-
ing the children of Martha Appleswhite who was Rockelle)
~~and one eighth~~ ^{jointly} and who was entitled to the said one twelfth)
One eighth to William L. Rockelle and John R. Rockelle
~~or~~ one sixteenth to each of them - and the balance
of the said tract they are to assign to the said C. D.
Barkham.

And the said Court further appoints the said
John R. Rockelle Special Commissioner with authority
to make sale of the said two eighths and one eighth of

the said tract of land, either publicly or privately,
~~for cash~~ or on a credit of six months, except enough
in cash to pay the expenses of sale and of this writ.

~~But the said Commissioner Rockelle is~~
taking ~~these~~ bonds from the purchaser with sufficient per-
sonal security, ~~as far as~~ for the purchase money
and retaining the title to the said land till the further
order of this court.

That the said special Commissioner is not to proceed
to the discharge of the duties enjoined by this decree until
he shall have executed in the clerk's office of this County
Court of this county, bond in the penalty of Two hundred dol-
lars payable to the Commonwealth of Virginia and Con-
ditioned for the faithful performances of the said duties.

And the said Commissioners are required to re-
port to this Court in order to a final decree.

Stuart of wife

W³

Rockelle & others

Decree

1854 May Term.

Southampton County Court - August 1839
In chancery.

Stuart & Wife

vs

Rockelle & others -

This cause this day came on again to be heard on the papers formerly read - and was argued by counsel: on consideration whereof and it appearing to the court that an error was committed in the decree rendered in this cause at the May term last - the court with advice given and decreed ^{this suit be hence forward conducted under the style of Stuart & Wife vs Day & others} that David Canell, Edmund Harris, Benjamin B. Rindred, Samuel Bittle and Thomas B. Merrill (any three of whom may act) be and they are hereby appointed Special Commissioners, taking with them, if necessary, a competent Surveyor, lay off by lot or assignment as hereafter directed the tract of land lying near the Crook Keys, known as the "Day Place", supposed to contain about three hundred acres and bounded by the lands of C. D. Barkham, Ben E. Pope & others - that they allot or assign one sixteenth of the said tract of land to Amington C. Stuart and his wife Mary Francis - one sixteenth to the heirs of Martha Applewhite, to wit in equal portions to John W. Applewhite, Wm E Applewhite, and Mary F. Applewhite - one fourth to the heirs of Richard Day - that is to say one sixth in fee-simple of the said fourth to Sally Day widow of the said Richard Day - of the balance of the said fourth, one ~~fourth~~ ^{third} to Wm Day - one ~~fourth~~ ^{third} to Susan Comann wife of Algernon Comann - one ~~fourth~~ ^{third} to the child of Louisa Comann by her marriage with the said Algernon - and the remainder of the said tract of land to be divided D. Barkham (that is to say five eighths) as assignee of Martha Turner's heirs and of Wm L. & Geo R. Rockelle) And the said court further appoints ~~the said~~ Geo R. Rockelle Special Commissioner with authority to make sale

Of the said three fifths directed to be allotted or assigned
to the heirs of Richard Day ~~and~~ to Stuart wife and to the
plaintiff's children or the public or privately, on a
credit of six months except enough in cash to pay the expenses
of this suit and of the sale of said land, taking bond or bonds
with sufficient personal security, ~~and~~ upon which he
is directed to make a deed to the purchaser conveying
the said portion of land directed to be sold with special
warrants - and to pay over the money therefor as in-
dicted and directed by this decree above.

But the said special commission is not to pro-
ceed to the discharge of the duties enjoined by this decree until he
shall have executed in the clerk's office of this court bond in
with sufficient security personal security in the penalty of Two
hundred dollars conditioned for the faithful performance of his
duties according to law.

And the said Commission is directed to report to this court
in order to a final decree.

Stuart wife

vs

Day & others

Doone

1859 August Court.

Stewart

to } Co. Order

Rochelle &c

Executed March
28th 1860, by delivering
him a copy of
The within sum money

G. W. Birds

Shff

Southampton County Court March Term 1861.

Stewart Dillie
against

Rochelle &c.

Plaintiffs } In Chancery
Defts }

On the motion of the plaintiffs by counsel, the Court doth order that John R. Rochelle, the Commissioner in this cause do appear here on the first day of the next Term of this Court to make a report of his proceedings under the decree pronounced in this cause at the August Term 1859 of this Court.

Attest

Teste

L R Edwards Clk

Know all Men by these Presents, That We John Rockell and John
J. Kindred

are held firmly bound unto the Commonwealth of Virginia, in the just and full sum of
Two hundred Dollars, current money of Virginia, to the payment
whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and
severally, firmly by these presents. Sealed with our seals, and dated this 13th day of
September A. D., 1859

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound

John Rockell as Commissioner appointed by the County Court of Southampton at its
August Term 1859. by a decree in the suit of Stewart & wife against Rockell
of & for certain purposes therein mentioned

shall faithfully discharge the duties of his said office or trust, according to law, then the above obligation
to be void or else to remain in full force and virtue.

Signed, Sealed and delivered }
in the presence of the Court. }

Henry S. Howard, D.C.

John Rockell { SEAL }

John J. Kindred { SEAL }

{ SEAL }

{ SEAL }