

1805-024 Chancery Causes: Joseph Holmes' adm^x vs Maxamillion Maxwell

Isle of Wight County

his [Deaf Rids.] Home in the Borough of Norfolk and had been for
several days before, awaiting a loan of money - The deponent further
swears that the said May Maxwell came to the Town of Norfolk on the
twelfth or thirteenth day of October in the year one thousand seven
hundred and ninety eight that he remained in Town until the
Twenty fourth of the same month and never left it for one hour;
The deponent residing in Town, and near Deaf Rids at the time,
was in the habit of seeing the said May Maxwell every day -
The deponent was so fully impressed at the time that a fraud
had been committed on May Maxwell, as well by the sale of the
Negro, in w^{ch} Holmes acknowledged He had no absolute right, as
to the date of the Mortgage said to be executed by May Maxwell
to Joseph Holmes in Smithfield on the sixteenth of October 1798,
as wth him this deponent knew May Maxwell was in the Borough
of Norfolk (and knowing that May Maxwell was unfortunately
given to drink to excess) that He noted the conversation & transcribed
on paper with the fullest conviction on his mind that a fraud
had been committed - And further swears that -

Norfolk Borough.

James Maxwell

The foregoing deposition was taken by James Maxwell, before
us, at the Borough Tavern in the Borough aforesaid, on Thursday
the 26 July, between the Hours of Ten in the morning and
Four in the afternoon - Given under our hands the 26 July
1794 -

W. Vaughan

J. E. Kell

The deposition of James Maxwell taken at the Town of Falmouth in the
Borough of Norfolk, on Thursday the twenty sixth day of July 1884, to
be read and evidence in the matter depending on the
Court of the County of Isle of Wight wherein Mary Holmes Administratrix
with the Will annexed is Plaintiff and Maximilian Maxwell defendant
permanently in the Commission hereto annexed.

The deponent being of lawful age & being free
from the Holy Evangelists of Almighty God doth depose and
swear that a few days subsequent to the date of a Mortgage given to Doct. Joseph
Holmes of Smithfield in Isle of Wight County by Maximilian Maxwell, on the
property of the said Maximilian in the Town of Smithfield, &c. the said
Holmes came to Norfolk for the purpose of obtaining payment of the said
Mortgage, and applied to Doct. J. R. Reid in the presence of this deponent &
knowing that the said Doct. Reid would settle the mortgage, to prevent a
foreclosure thereof and the consequent sale of the property - Doct. Reid
answered that he had been informed by Mrs. Maxwell that the mortgage
was for the payment of a Negro which Holmes had sold to
Hartshorn Negro, & the said Holmes had no right, the said slave
being held by the said Holmes as a Dowry Slave, or as Guardian of
some Orphan, to which Holmes answered that it was true, but whether
he meant that he held the slave in right of Dowry or as Guardian
this deponent cannot recollect. Doct. Reid then enquired of Holmes
the date of the mortgage, when Holmes answered that it was dated on
the sixteenth of October & presented the instrument to Doct. Reid for
perusal - after the Doctor had examined the paper & enquired of
Holmes if the mortgage was executed in Smithfield on Friday of the
date thereof to which Holmes replied that it was, on this Doct. Reid
replied that there must be some error or fraud in the instrument for
that Mrs. Maxwell was on that day (to wit the 10th Oct. 1790) at his

To M^{rs} Mary Holmes administratrix with the Will
annexed of Joseph Holmes deceased
Madam!

Take notice that on Thursday the twenty sixth
day of this instant July, at the Borough Tavern in the Borough
of Norfolk between the Hours of Ten in the Morning and Three
in the Afternoon, I shall proceed to take the deposition of James
Maxwell to be read as evidence in the suit depending in the
Court of Isle of Wight County wherein you are Plaintiff and
I am defendant when you may attend if you think proper

~~James Maxwell~~
Madam

Your most O^b Serv^t
Max. Maxwell

Norfolk 2^d July 1804

Isle of Wight County Court
2^d July 1804

The day Mr. Thomas Hancock
appeared before me I made oath that he
left a copy of the above notice at the house of
Mrs Mary Holmes given under my hand &

Thos Hancock

Shof Wright County) to wit:
The Commonwealth of Virginia to Thomas H. Parker, William Vaughan, ~~and~~
Miles King & J^r. I. Holt, Gentlemen Greeting: know ye that we trust-
ing to your fidelity, & provident circumspection in diligently examin-
ing James Maxwell

as well on the behalf of Mary Holmes Admoner &atrix with the Will
of J^reph Holmes and plaintiff as on the part of Maximilian Maxwell
defendant —

Command you or any two or more of you that at such certain days
& places you shall appoint, you assemble your selves & the witnesses
aforesaid; before you or any two or more of you, you call & cause to
come & diligently examine on the holy evangelist of Almighty
God, & such examination in writing into our County court of
Shofswight, distinctly & plainly without delay you shall send
& certify inclosed, returning also to us this writ. Witness Nathaniel
Young, Clerk of our said court at the Courthouse, the 20th day of May
1804 in the 28th year of the Commonwealth —

Nathl. Young

To the worshipfull Court of Isle of Wight sitting in Chancery
sitting, humbly, Complaining sheweth unto the Court your
Oratrix Mary Holmes administratrix, with the will annexed,
of Joseph Holmes dec^d. That one Massanilian Maxwell
of the town of Smithfield, in the aforesaid County, was justly
indebted to your ~~said~~ Oratrix ~~administratrix~~ intestate
in the just and full sum of One hundred & fifty pounds
Current money of Virginia, with interest thereon from the
sixteenth day of October - 1798. And being seized, in
fee, of a certain improved lot, in the said Town of
Smithfield, known in the plot of said Town by Number
9 - in order to secure the payment of the aforesaid Sum
of One hundred and fifty pounds & interest as aforesaid
by a certain indenture, bearing date the day and year
last aforesaid, for the Consideration therein expressed,
did Grant, bargain, sell &c, unto your Oratrix ~~intestate~~
Intest, the aforesaid lot with its improvements, and the
reversion and reversions, remainder and remainders &c &c
to have and to hold the said lot and improvements &c
to the said Joseph Holmes, your Oratrix intestate, his heirs and
assigns forever. Subject, however, to an equity of
redemption, on the following terms, to wit, that if the said
Maxwell, his heirs &c should will and truly pay, the said
£150 - with interest as aforesaid, on demand, to the said
Holmes &c that the said Intest should, in that case

be void; but that the said Joseph his heirs &c. On the non
payments of the said £150 & interest as aforesaid, should
as soon as convenient, after advertising a day and place
of sale, for a convenient length of time, in some public
newspaper, proceed to sell the same to the highest bidder
for ready money, and out of the proceeds thereof,
satisfy and detain to himself, the aforesaid sum
of money and interest, with all reasonable expenses.
And the surplus (if any) to be paid to the said
Maximilian Maxwell or his legal representatives.
Which said deeds, or indentures, hath been duly
recorded in this Court, a copy of which is hereto
annexed, and prayed to be taken and considered
as a part of this bill. — Your Orator further begs
leave to state to the Court, that no part of the said
money was paid during her testator's life, that a
suit in Chancery which he had instituted to foreclose
the said Maxwell's equity of redemption in the aforesaid
premises, abated by his death. That no part of
the said money has been paid to your Orator, since
his death altho' often demanded; whereby the estate
and interest in the said lot and improvements
has vested in your Orator, as representative of the
said Joseph, subject, however, to the trusts in the
said deed mentioned; but now so it is, may it
please your worships, that the said Maximilian

Maxwell combining and confederating with others to
injure and disturb your Orator, in the premises, and
to defraud her of the principal sum of money
and interest as aforesaid; absolutely refuses to
deliver up the said lot and improvements, to pay
the principal mortgage money due & interest thereon,
agreeably to law, or to suffer any purchaser to
take possession thereof. Your Orator is thereby rendered
unable to execute the trust reposed in her
without the aid of a Court of equity, having
jurisdiction — To this end therefore, that the said
Maximilian Maxwell be made a defendant to
this bill, and may, on his corporal oath, full
true and perfect answer make, to all and
singular the allegations therein contained,
and that as fully as tho' they were herein again
repeated and interrogated — And that the
said Maxwell be decreed, to pay your Orator
the aforesaid sum of £150 with interest as
aforesaid & the costs of this suit, with all
other reasonable expenses, arising out of the
trust &c. — Or in failure thereof, that he be
decreed to deliver into your Orator's peaceable
possession the lot & improvements aforesaid.
Or that the Court will Order certain Comm

Commissioners to sell the premises at public
Sale, pay your Oatrix his principal, interest
& costs as above said, & pay the said Maxwell the
residue, if any, of the proceeds. Or that your
Worship will make such other, or further
Order or decree in the premises, as may comport
with equity, and good conscience. —
May it please V^{ts} —

John Barber

Polines adm^{rs}

as

Maxwell

Bill

March 1803

bill filed

August 1803

bill taken as con^g

Aug. 1804

depo. filed

April 1805

States by Defts death