

1814-012

Chancery Cause: Willis Whitley, by &c vs Ann Whitley, widow of Elisha Whitley &c

Isle of Wight County

other surewames: Barber
Steingfield, Dick, Young

of the said will and testament after the death of its author; — or as to its contents substantially; indeed your Orator is informed that from the recent date of the will that not only the substance, but also, the expressions of the said will and testament, can be established by satisfactory evidence. — Your Orator here begs leave to inform the Court, that neither the said Joseph or Elisha Jr. who were named in the said will as the executors thereof, have, as in duty bound, produced the said will and testament to any Court having Competent Jurisdiction thereof, for probate; but, on the contrary, the said Joseph & the said Elisha, combining with the widow and with the ~~the~~ Children of the testator herein before named (your Orator except) — to injure and defraud your Orator, out of his fair and just rights as a devisee and legatee under the said will and testament of his said father, have suppressed, destroyed or hidden the said will and testament, and, under pretence that it has been stolen from the possession of the said Joseph, he has qualified in this honourable Court, as Executor of the said estate, under the act of assembly in and for such case made and provided. Your Orator, is in a very difficult situation in respect to the premises, being an infant and having to contend with so formidable a combination against his rights and

prays the immediate interposition of this honourable Court to aid him in the ~~recovery~~ ^{recovery} of his rights and, more especially, with a fair opportunity of establishing the allegations in this bill contained. To the end therefore he prays that the said Anne, the said testator's widow, the said Joseph & Elisha, who were named Executors, ^{were Whitley,} the said Benjamin Stringfield and Elizabeth his wife, Peggy Whitley, Nancy and Winnif Whitley may be all and each made defendants to this bill, and are called upon to give full, true and perfect answers make to each and every of its allegations. More especially that each defendant be made to answer positively, and distinctly ^{on oath} whether Elisha Whitley, Senr. the father of your Orator did not leave a last will and testament, at the time of his death? whether the said last will and testament was not possessed by the said Joseph at and after the testator's death, whether they know the contents, substantially, of the said last will & testaments — and, if so, what were the contents? How and by what means and in what manner it was lost, mislaid, taken, stolen or destroyed? What reason can they, or either of them assign why the sentiments contained in, and the substance of the said last will and testament, should not be established, by the decree of this honourable Court, as and for the last will and testament ^{of said Elisha Jr.} — Lastly, your Orator prays your honours, that the substance of the said

To the worshipfull Court of Isle of Wight County, in Chancery
sitting, Humbly Complaining shew^{eth} unto your worships your orator
Willis Whitley, an infant of Elisha Whitley, being by John
Barber his next friend. That your orators father departed this
life, in the said County, on or about the 19th day of
November in the year of our lord 1810. - seized and possessed
of a considerable estate, real and personal, and leaving
living at the time he died, a Widow Ann Whitley, and several
children beside your Orator, namely, Joseph, Elisha, William
Elizabeth, the wife now of Benjamin Springfield, Roger, Nancy,
and Winifred, all of whom are still living. That shortly
before his death the said Elisha the father, made his last
will and testament in writing, which will and testament
was written by Mr David Dick of the said County, at the
special instance of the said Elisha Whitley Sr- and by him
duly signed, executed and declared as his last will &
testament - and put by him in his directions, into the
Custody & possession of the said Joseph Whitley, one of the
executors therein and thereby named and appointed.
Your Orator further states that he is well informed &
truly believes that the said Joseph was in possession of
the said last will and testament, some time after the
death of the said testator. The provisions of which
will, generally, (if not expressly) can be established by
respectable testimony; such as can leave no doubt on
the mind of this honourable Court, as to the existence

Consider just and proper in the premises ~~and~~
~~prays~~ to having no wish but for the promotion
of Justice, and prays hence to be dismissed &c

Joseph ^{his} Whitley
marks Φ

Isle of Wight County to wit.

Sworn to before me, a Justice of the peace for said County
~~and~~ by Joseph Whitley - This day - Given under my hand
The - 26th day - of June 1811.

Francis B. Roy. Jr.

J. Whitley
ads } ans.
Willis Whitley }

March 1811

order for Ans.

April 1811

Ans. filed

July 1814 deems agreeable
to the answer of J. Whitley
the will establish as set
forth therein

[Faint, illegible handwritten notes in the right margin, possibly a continuation of the legal proceedings or a separate entry.]

interested in it, as well as from the great respect which ~~which~~ he had for the testator. This respondent paid very particular attention to the contents of the said will and testament, and he believes the following is the substance, and very near the identical words thereof, except the preamble, which he does not so well remember —

Item I lend unto my wife Nancy Whitley the plantation whereon I now live during her natural life or widowhood, also I lend her my negroe woman Trips, and one negroe girl Fanny, one feather bed and furniture, my Plantation utensils of every description, together with my Crop of Corn, Pease, fodder &c made on the plantation ~~the year~~ present year, one riding Chair, one horse and one mare & Colt and my Stock of Hogs, and after my wifes death I give the said Plantation to my son Willis Whitley and his heirs forever

Item I give to my Daughter Peggy Whitley one negroe girl Lisle to her and her heirs forever. —

Item I give to my daughter Winnifred, one negroe boy Sam and one bed and furniture to her & her heirs forever.

Item I give unto my son Joseph Whitley, one Negroe Boy Brister and one bed and furniture to him & his heirs forever. —

Item I give to my daughter Nancy Whitley one bed and furniture to her and her heirs ~~forever~~. —

Item I give unto my son Elisha Whitley all my land lying on the north side of the road leading from Cookes Swamp to black water ~~River~~ containing sixty acres more or less, also one horse and one Bed & furniture which he has already in his possession, to him & his heirs forever. —

Item I give unto my son Williams Whitley, five Shillings to him and his heirs forever. —

Item I give to my daughter Elizabeth Stringfield five Shillings to her and her heirs ~~forever~~. —

Item It is my will and desire that after the death of my wife Nancy Whitley, the negroes and their increase together with the other estate ~~but~~ lent her during her life, should be equally divided between my ~~three~~ sons, Joseph Whitley, Elisha Whitley, and Willis Whitley & their heirs ~~forever~~. —

Item it is also my will and desire that the balance of my estate should be sold, and, after paying my just debts should be equally divided between my three sons Joseph, Elisha & Willis Whitley, and my three daughters, Nancy, Peggy & Winnifred Whitley, ~~to them~~ and their heirs ~~forever~~. —

I nominate and appoint my sons Joseph Whitley and Elisha ~~and~~ Whitley my whole and sole Executors of this my last Will and testament. In witness my hand this 30th day of Octr 1810.

Signed, Elisha Whitley

Witnessed by:
David Melms
Sally - Melms
David Dick

This respondent denies all combination with others and intention on his part, to defraud or injure the complainant; on the contrary he (this respondent) was desirous to have the said will and testament recorded and executed, and he, most certainly, would have had it done, had not the will been stolen from his possession. — This respondent will, most cheerfully submit to such decree or order as this Court shall

The answer of Joseph Whitley - to a bill of Complaint exhibited in The County Court of Isle of Wight, in Chancery by Willis Whitley, an infant of Elisha Whitley, suing by John Barber his next friend, against Ann Whitley the widow of Elisha Whitley Senr, This respondent, Elisha Whitley, William Whitley, Benjamin Springfield and Elizabeth his wife, Peggy, Nancy and Winnifred Whitley.

This respondent, confesses that Elisha Whitley Senr made, executed and declared his last Will and testament On or about the Thirtieth day of October in the year of our Lord eighteen hundred and ten, That the will and testament aforesaid, was written by Mr David Dick at the special instance and request of the testator Elisha, That the said will and testament was, by the said testator committed to the care of This respondent; he being one of the executors therein named. That the said testator Elisha, died about the 19th day of November 1810. - That This respondent was then, and for several days afterwards, in possession of the said last Will and testament of the said Elisha, that he is the more certain of that fact, having, several days after Testators death, shewn it to Nathl Young Esquire, the Clerk of this honourable Court, This respondent is fully persuaded that the said will and testament was, against, his will, consent or knowledge, taken from his trunk wherein he had deposited it for safe keeping, by some person to him not certainly known; at any rate it was so taken from his possession. -

From the recent date of the said last will and testament, from the attention he paid to its contents the knowledge he had of the estate and all parties in

Elisha Whitley
ad } ans=
Willis Whitley

that, that statement is so near the identical words
of the said will and testament, that no essential
injury will be done to the original ~~from~~
by the adoption of the said statement, as and
for the will & testament aforesaid, which this
respondent believes was stolen from the
possession of him the said Joseph: This defendant
therefore adopts that statement in the answer of
the said Joseph, as it is now filed in this Court &
prays it may be taken & considered as a part
of this his answer. — This defendant denies
all combination and intention to defraud, with
which the complainant charges him. — He will
submit with cheerfulness to such decree or order
as this worshipful Court shall judge right and
proper — and prays hence to be dismissed &c.
Elisha Whitley

The foregoing answer was sworn to before me
a Justice of the peace for the said County, by
Elisha Whitley, — the thirteenth day of June —
1811. — Given under my hand — the day & date just
mentioned.

For me, R. P. Boykin

The answer of Elisha Whitley to the bill of Complaint exhibited in the county Court of Isle of Wight in Chancery, by Willis Whitley an infant of Elisha Whitley dec^d suing by John Barber his next friend, against Ann Whitley, the widow of the said Elisha dec^d, Joseph Whitley, this respondent, William Whitley, Benjamin Stungfield and Elizabeth his wife, Peggy, Nancy and Winnifred Whitley.

This respondent knows that his father the said Elisha Dec^d did make and publish his last will and testament on or about the 30th day of October 1810 that he named therein Joseph Whitley and this respondents as executors thereof, that he died on or about the 19th day of November, that the said last will and testament was in the hand writing of Mr David Dick, that testator put it into the possession of said Joseph Whitley, and that he saw it in his possession several days after the death of said testator. This defendant accompanied the said Joseph when he applied, to shew it to Nath^l Young Esq^r Clerk of this Court, and heard Mr Young read it. This respondent was & is so intimately acquainted with the said testator, estate, family & circumstances and also with the will & testament itself, that he is confident he remembers the substance of it. He has read, with attention the statement of its contents, in the answer of the said Joseph to the Complainants bill, as recollectes by said Joseph, and this defendant feels a strong conviction

Whitley P. f.^o
174
Spa: in Chff

Whitley cross: H.B.

March 1811

Barber for County

Rule for the

Receipts

To Wm. W. W. W.

The Commonwealth of Virginia to the Sheriff of the
County of Wight greeting: You are hereby commanded
to Summon Joseph Whitley and Elisha Whitley executors of
Elisha Whitley decd: Ann Whitley the said Elisha's widow, William
Whitley, Benjamin Shingfield & Elizabeth his wife, Peggy Whitley
Nancy Whitley and Winifred Whitley —

to appear before the Justices of the County ^{Court} of Wight
at the Court house of the said County on
the first Monday in March — next to answer
a bill in Chancery exhibited against
by William Whitley an infant of Elisha Whitley decd: being his son
and that they shall in no wise omit under the
penalty of \$100^{each} — And have thou there this
Writ — Witness Nathl. young Clerk of our said
Court at the Court house the 7th day of January 1811
in the 35th year of the Commonwealth —

Nathl. Young
