1818-001 Chancery Causes: William Turner & wf vs Thomas Davis, extor of Jesse Athens & al

Dsbl of Wight County

other SURNames: CROCKER, ATKINSON

To the worshipful Court of Pasquotank County sitting in Chancery
Humbly complaining sheweth unto your Worships your Orator
Thomas Davis of the County aforesaid Planter and
Executor of the last will &c. of Thomas Sutton late of the County aforesaid
deceased in behalf of himself and all other Creditors and
Legatees of the said deceased that at the time of his death the said
deceased was possessed of a considerable personal estate and
disposed of the greatest part of his estate, by his last will and
testament in writing, by which he bequeathed his personal estate
to Elizabeth his wife; which among other things contained a
bond or obligation, now by Joseph Croker to the testator for about £20,
as your Orator is well assured that after the payment of the testators
debts &c, there remains in the hands of Thomas Davis the Executor, a Considera-
ble Sum of Money & other personal estate besides the above mentioned bond,
which ought, and in right and justice belonging to the Complainants.
But Thomas Davis the executor refuses either to deliver to your Complainants
either the bond of Croker afore mentioned, or any other part of the
assets of the estate; or, indeed even to render an account of his adminis-
tration, in order to shew what is ready and exactly due to your
Orator.

Your Complainants further shew to your worships, that Lyde
Pettins, the father of the said testator, died some Considerable time
before him, intestate, leaving a Considerable estate real and
personal, which yet remains undivided in the hands of Joseph Pettins
the administrator, to one fifth part whereof the said John was intitled
as distributer, which is due to him, forms a considerable
part of his estate, and is consequently vested in your Complain-
ants; but the said Joseph the administrator refuses to settle the
estate of the said Lyde, and the said Thomas Davis has not,
and it appears will not call him, the said Joseph, to an acct
whereby your Complainants are much injured.

Your Orator Humbly further shew unto the Court, that
immediately after a division was made of the lands of which Lyde
Pettins died seized and possessed (one fifth part of which was
alloted to an infant Child of his named Lyde) the Child Lyde
died intestate, leaving the said land and some Slaves, and
money

That Mary the Widow of Lipse the elder and mother of Lipse the younger, administred on the infants estate, and refuses to settle the Same. And that your Complainants under the residuary Clause of the Will of John Atkins, are entitled to one forth part of the Childs estate real and personal. That the estate which he Lipse the younger derived from his father, and which is supposed to be all, Consisted of 523¼ acres of land, one Slave named Esther (with at the division of his fathers estate) valuation £50. One other Slave named Linat valued at that time at ——— 15.0.0
money made due to him in said division, from Joseph Atkins ——— 0.18.8
Money made due to him in do from Peggy Atkins ——— 0.10.8 1.9.4
money made due him by Peggy, to Equalize the value of land — 5.0.0
money made due to him by your Complainants Tutator, to equalize land ——— 3.0.0 8.0.0
£77.9.4

making the Sum of £77.9.4, independant of his Share of the Intestate estate of his father which remains, as before stated, undivided, and also independant of the increase and profits of the Slaves and rents of the land; all of which is or ought to be in the hands of Mary the admx: who also was Guardian to the sd infant Lipse. It is further represented that a decree of this Court was Some time since obtained for the sale of the Said infants land, and a distribution of the proceeds, which has been Carried into effect, and it is believed the proportion which John Atkins was entitled to, is in the hands of the Said Mary, of the said Joseph or of the said Thos Davis.

It is further represented to your worships that the widow of Lipse the elder, has sold One or more of the Slaves which She held as her Dower of her husband Slaves, to which John Atkins, and of Course your Complainants are entitled in reversion, to one forth part. By which, equably to the act of assembly for such Cases made and provided, She has forfeited her dower in the Whole. And it is further stated to the Court that She the Said Mary has sold two of the Slaves belonging to Lipse her infant, on whose estate She admd for whom She was Guardian; notwithstanding the Said Lipse dies an infant of tender years: and Consequently not entitled.

All which actings and doings are Contrary to Equity and good Conscience, and much to the injury of your Complainant for tender Consideration Whereof. and for as much as your Orator is without remedy at law. To the end therefore they may that the said Thomas Davis Executor of John Atkins, the said Joseph Atkins individually, and as admr of Lipse Atkins Sent: The said Mary Atkins individually, as administrator and as Guardian of Lipse Atkins Junr be made defendants to this bill, and may On their Corporal oaths, full, true and perfect answer make to all and Singular the allegations it Contains, and that as fully as though they were here again repeated and interrogated. —

More especially that Thomas Davis, answer and say, whether he is not the Executor of John Atkins, What estate came to his hands and how he has administered it, what residue there is in his hands and what it Consists of — and that he pay over the same to your Complainants. —

That Joseph Atkins state when and [illegible] his intestate Lipse came to his hands and how [illegible] and that further shew how much the land of Lipse the younger Sold for, Who were made parties to the Suit, on which the decree for Sale was founded, and how the proceeds, and to whom distributed the Sale was founded, and how the proceeds, and to whom distributed

That Mary Atkins answer &c. &c. &c. say, What estate her intestate Lipse was possessed of When she died, what part thereof has Come to her hands, and how she has administered it, including Slaves and increase of Slaves, interest on money and other profits, and that She pay to your Complainants John Atkins their share of said estate.

Your Orators further pray that the said Davis may be decreed to deliver & pay over to your Complainants such residue of John Atkins estate as Shall appear on a fair trial to be in his hands, equably to the true intent and meaning of said Johns Will. —

That Joseph Atkins be Ordered and decreed to settle according to law, the estate of Lipse Atkins Sent: dec: in his hands as admr and that he pay over to your Complainants the due proportion which John Atkins was entitled unto at the time of his death, and which Constituted part of the residue of the said Johns estate. — and that he Joseph the said Mary, or the said Thomas Davis, as the Case may be,

All Available Text Successfully Captured

may be decreed to pay over to your Complainants, the proportion of the proceeds of the land of which Lyle Atkins the Younger died seized to which John Atkins was entitled. And finally that your Worships will make such other order or decree in and concerning the premises, for your Complainants benefit, as may accord with Justice and equity. — may it please Yr. J. Barker for Plaintiff

Jenner & Wife
vs
Jno. Atkins. Jr. &c
1803. Dec. Subpa. issd.

Aug. 1804
Bill filed
April 1805
Mesne decree
June 1805
Answ. as to J. Atkins filed
April 1806
Court.
June 1810 Order to amend bill
October 1818 dismd. at the complts. costs

The answer of Thomas Davis exor of John Atkins to the bill of compt. exhibited against Joseph Atkins, Mary Atkins & himself in the court of Isle of Wight county by William Turner & Elizabeth his wife.

This Respondent saving to himself all right of excepting to the various errors contained in the said bill, for answer thereto says, That he has settled the estate of John Atkins as far as he had any thing to do with it, with the compt. Turner, gave him up the bond in his bill mentioned took his receipt in full which is here to annexed and prayed to be taken as a part of this answer. He knows that John Atkins did receive a negro woman and some boys from his father by way of advancement. He lastly prays to be hence dismissed with his costs in this behalf expended.

Sworn to before me by Thos. Davis.

Edmd Wills

Timmerhuis
en
Dairy store

The respondent answer of Joseph Atkins to the bill of complaint exhibited against Thomas Davis and himself in Isle of Wight court by William Turner and Elizabeth his wife.

This Respondent saving to himself all right of excepting to the various errors contained in the said bill, for answer thereto, says that it is true that he is the admin of his father Jesse Atkins, and it is possible that after the debts due from his said intestate are paid, that something will be due to the complts. But he alledges that there are debts still hanging over his head, indeed he says there are some suits now depending against him as admin aforesaid, and therefore he can not now settle the estate, or ascertain even to his own satisfaction, whether the distributees will be intitled to any thing, and if they are intitled to any thing, he can not tell what or how much. This respondent therefore can not answer the bill now as fully as he wishes, but as soon as the suits (which are now depending) be determined, he is determined to report to the court a fair account of his transactions. He adds that the complts owe about £20 to the estate for articles purchased at the sale by John Atkins which he is advised should at any rates be deducted from their claim.

This Respondent prays to be hereby discharged with his costs in this behalf expended.

Sworn to before me.

D B Southall

Tumendum
is
attinis adum

The answer of Mary Atkins individually, and as admx and as guardian of Jesse Atkins jr. to the bill of complaint exhibited against Joseph Atkins, and Thomas and herself in the Worshipful court of Isle of Wight, by William Turner and Elizabeth his wife.

This Respondent saving reserving to herself all right of excepting to the manifold errors, untruths and uncertainties of and in the complts said bill contained, for answer thereto, or to so much thereof as she is advised is material for her to answer, Says, it is true that she administered upon the estate of Jesse Atkins junior, and that she qualified as his guardian. She admits the will of John Atkins, but submits to the court the true construction of it, which she is advised is different from the construction put upon it by the complt. in as much as John never was in possession of any portion of his brother Jesse's estate. But admitting that John had any right to dispose of a part of Jesse's estate, yet the complt is mistaken in supposing that Jesse was intitled to a fifth of his father's estate, because he was only intitled to a fifth after deducting your Respondent's dower. She is also advised that the complts are not intitled to one sixth part of the said Jesse's estate if indeed they are intitled to any portion of it. Yr Respondent states that Joseph Atkins and the said John Atkins being of the half blood only, could not be intitled at any rate to more than one sixth part each of the said Jesse's estate, because he left two sisters of the whole blood independent of his mother, (Yr Respondent) who it is believed, is intitled to a portion of his personal estate. She states that although she has been always willing to settle her intestate's estate, yet it has been impossible for her to do so until Joseph Atkins settles the estate of Jesse Atkins the elder who was the father of Jesse the younger. She adds that the said John Atkins received a likely negro woman about twenty two or three years of age and three likely boys from his father Jesse Atkins in his life time by way of advancement: and that the said woman

after being delivered to the said John had two other children before the death of the said Jesse Atkins the elder. That the eldest of the three boys first named was five or six years of age, the next oldest, three or four years of age and the youngest about two months of age at the time of the said advancement. She states too that her said husband at the same time advanced to the said John a bed and other furniture worth then about £12. That notwithstanding these large advancements, the said John by some improper means came in for a full distributive share of his whole estate without bringing into hotchpot the aforesaid advancements. That at the division of the estate of the said Jesse, the said John received two negroes & his proportion of the land as will more fully appear by the return of the commissioners hereto annexed and prayed to be considered as a part of this answer. She adds also, that at the sale of the estate of the said Jesse Atkins the elder, the said John purchased articles on a credit to the amount of about £20, no part of which has been paid for. She has been informed and believes it to be true that Joseph Atkins received the proceeds of the sale of the land to which John was entitled as heir of Jesse, and paid to the Compt. Turner his full proportion thereof. She annexes hereto an account of the said Joseph Atkins against the said Turner as a part of this answer, together with the necessary evidence to establish the same. This Respondent is informed that that part of the bill seeking a forfeiture of her dower requires no answer, as no case can be produced where a court of equity was ever applied to for the purpose of inforcing a forfeiture. But if the attempt was made in a proper court, she thinks herself fully justifiable in selling the negro, as he was a runaway and there was great danger of loosing him altogether, as he went as far as Richmond. She denies that she sold the two negroes charged in the bill as belonging to Jesse Atkins the younger, but she admits that they were sold under an order of court by commissioners, that she bought one for £10 and that she received the price of the other which was £43. Your Respondent is advised that this court can not decree agreeable to the prayer of the compts particularly as to the land, because all the parties interested are not made parties to the suit. She has been credibly informed that John Atkins in his life time sold the negroe woman and four children received as an advancement for £149, a third of which would probably have been allotted to her as her dower, which would have left £99.6.8, to one 5th part of which the said John was intitled. So that the compts are indebted to the estate of Jesse Atkins senior as much as to herself as will more at large appear by adverting to an account thereof hereto annexed as a part of this answer. She lastly prays to be hence dismissed with her costs in this behalf most wrongfully expended.

Mary Atkins appeared before me and made oath that the statements contained in the foregoing answer are true as far as she knows or believes.

James B Southall

Tennessee
vs
Watkins Pl.
} Answer

The Commonwealth of Virginia to the Sheriff of Isle of Wight
County greeting we command you that you summon Elizabeth
Athins Widow of Jesse Athins, Joseph Athins Elizabeth Athins and Peggy Athins
to Appear before our Justices of our county court of Isle of Wight
at their courthouse of said county, on the first Monday in November
next then and there to Answer a bill in chancery against them
exhibited by William Turner & Elizabeth his
wife
And this ~~—~~ shall in no wise omit under the penalty of £100.
said And have then there this writ. Witness Nathaniel
Young Clerk of said court the 15th day of August 1803 and in
the 28th year of the Commonwealth

Nath'l Young

I acknowledge the service of the within
for myself, & for my five children
Elizabeth, Peggy, Atkinson &c & their
Guardian ——— this 23d of Jany. 1803

Elizabeth X Atkinson
mark

Nov. 1803
Atk. Sp. Cas to Jos. Atkins

Not Entered on the Docket
of Sec. Sup. Ct. Johnson D. for
Wm Blount &c

The Commonwealth of Virginia to the Sheriff of Isle of wight
county greeting we command you that you summon
Joseph Atkins
to Appear before our Justices of our County Court of Isle of wight
at their Courthouse of said County, on the first Monday in March
next then and there to Answer a bill in chancery against him
exhibited by William Turner & Elizabeth
his wife
And this he shall in no wise omit under the penalty of
£100 And have then there this Writ. Witness Nath:
Young Clerk of our said Court, the 15th day of Nov.
1803 and in the 28th year of the Commonwealth
Nath: Young.

Turner Plff.

vs

Atkins

Sp.o in Chy

Executed and Returned 2d Inst.

Allan & Blunt Sol.ts

The Commonwealth of Virginia to the Sheriff of Isle of Wight
county greeting we command you that you summon
Mary Atkinson and Joseph Atkinson & Thos Davis Excrs of John Atkinson
to appear before our Justices of our county court of Isle of Wight
at their courthouse of said county, on the first Monday in March
next then and there to Answer a bill in chancery against
them exhibited by William Turner and Elizabeth
his wife
And this they v. u.
shall in no wise omit under the penalty of
£100 each
And have then there this Writ. Witness Nath. Young
Young clerk of our said court, the 20th. day of January
1804 and in the 28th.
year of the Commonwealth
Nath. Young

Emma Wright
vs. } Bath Cir. Ct.
Atkinson Co. Ga. }

Executed John Hunt by
Wm Hand Sh'ff

FC

Turner Atk.

Atkins vs Dab

In Chl

At July Court a motion must be made to have
new parties made to the suit viz: Elizabeth Davis Pltf in lieu of
Peggy Atkinson Pltf. children of Jesse the elder.
Also to refer the cause to Special Com.s to make
out state settle & report an account of Thomas
Davis admrs of John Atkinson Estate of Joseph
Atkinson admrs: on the Estate of Jesse At-
kinson ~~dec'd~~, & Mary Atkinson admrx
on the Estate of Jesse Atkinson the younger.
Com.s Judge Woodley. Jno. McBoykin —
Wm. Jordan

Referred to Master Com.s
T. Smedley

Suggest death of Tom Davis
estate of John Atkins committed
to Pltf. he made Def.

Turner Use
vs
A. M. Benson Feb. 1818

Mem:

The Clerks will at the next Rules file a general Repl. as to such of the Defts. who have answered Interrogatories now filing —

Johnson a.a.a.
June 1818

Isle of wight County Court

April Court 1805

William Turner & Elizabeth his wife Compl^ts

against

Mary Atkins, Joseph Atkins and Thos. Davis exor. of John Atkins dec^d. Def^ts.

In Chancery

The Defendants having failed to file his Answer to the bill of Complaint Exhibited against them, by the Complainants in this Cause, It is ordered that unless the Defendants appear at June Court next and file their Answer, that Judgment will be entered for the Complainants against them, agreeable to the prayer of the said bill —

Teste Wall^m Young Clk

Transcribed Thos. Ward
to
Wm Price
Atkinson Pet

Execution on Joseph Atkinson &c

N. W. Applewhaite Sh'ff
for
W. Wills Sh'ff

In the name of God Amen I John Atkins of Isle of Wight
County being weak in body but in perfect mind & senses, blessed be God
for the same do make & ordain this my last Will & Testament Viz.
In the manner & form following? Item I give to my loving wife Eliza-
beth Atkins my tract of land I now live on containing fifty four Acres be the
same more or less to her & her heirs forever. Item I give to my loving
Wife Elizabeth Atkinson my negroe Woman named Lenny also my negroe
girl Dicky by name each of the above mentioned negroes unto her & her
heirs forever. Item I give to my loving wife Elizabeth Atkins the bonds &
all the debts due me to her & her heirs forever. Item I give unto my
wife Elizabeth Atkins all the remainder part of my Estate whether not
above mentioned after paying all my just debts & funeral charges to
her & her heirs forever. Whereas I have hereunto set my hand & affixed
my seal this 15th day of October 1798. I leave Thomas Davis my whole
Sole Executor of this my last Will & Testament 1798 Oct. 15th —

Signed Sealed & delivered
in presence of us

Solomon Brantley

Solomon Brantley

Thomas Davis

John Atkins Seal

At a Court held for Isle of Wight County the 3rd day of June 1779.

This Will was presented into Court by Thomas Davis the Executor therein named, who made oath thereto according to Law and the same being proved by the oaths of Edwards Davis Catherine Broadfield and Willis Brantley the witnesses thereto was ordered to be recorded.

Mosby Sheppard Clk. Lightfoot A.C.

John Atkinson

Will

(Probate)

July 10th 1824 Rec.d of Thomas Davis Admr. of John Atkins dec.d in full of all demands against the said Estate of J. Atkins dec.d

his
Wm. + Learner
mark

Witness

Witness