

1855-010

Rockingham Co

Chancery Causes: Exr of Martin Miller vs. Heirs of Martin Miller

Wright, Root, Early, Sanger, Norman, Browse, Sprindal

Martin Miller Esq

or { Bill W

The heirs of Martin Miller

filed 5th Sept 1853

To the Hon John Henney, Judge of The Circuit Court of Bakingham County;

By our Brother Samuel Miller, of the County of Bakingham, humbly complaining, sheweth unto your Honour - that in the latter part of the year 1852, Martin Miller, the father of your brother deceased this life in the County of Roanoke - having first made and published his last Will and Testament - which was duly admitted to Probate at a Court held for Roanoke County, on the 20th of December, in the year 1852 - an office copy of which is herewith filed as a part of this Bill marked (A). and at the

Term of the County Court of Roanoke in the year 1852 - your brother, who is named Executor in the Will of said Martin Miller duly qualified as such.

In proceeding to discharge the duties of an Executor under said Will - various difficulties have arisen as to the persons entitled under said Will - there being conflicting claimants - when might your brother's property may be adjudicated by this Honourable Court - By the 3^d clause of Testator's Will he directs that his daughter Betsey & her children are to have the sum of \$1500 - with which was charged against her - The said Betsey was married to John Early of Bakingham many years since - and they made to Ohio - when ^{John Early} ~~she~~ ^{his wife Betsey having died some years before her father's} ~~she~~ ^{lives} the following in the names of their children: Anna, Susan, Elizabeth, Sally, Jacob, Martin, Lydia, Melinda, Noah, Joseph & Catherine Early, all of Ohio - and all infants with two or three exceptions - Betsey has been advanced \$700 or \$800 - & the question arises whether the husband of said Betsey is entitled to any portion of the balance willed to Betsey & her children - either under the 3^d clause or the 12th clause of said Will -

By the 6th clause of said Will Testator directs that Susan & her children should have but \$800 - But your brother in the lifetime of his father, ^{viz. Sept. 1st 1848.} and with the approbation of his father, paid out of his father's money \$1000 - on the purchase of a tract of land which was conveyed to said ^{Wm. Wright} ~~Wm. Wright~~ ^{by the vendors.} upon which the said Susan & her husband & children now reside - which was intended in the place of the \$800 - the said Susan was married to William Wright, of Amherst - who is now living - and they have the following children - to-wit - Susanna, John, David, Elizabeth,

Samuel, William, Nancy, Sarah, and Catherine Wright, all under the age of 21 years - being in Augusta - and the question arises as to the interest of the said William Wright - in the surplus to be distributed under the 12th clause of said Will - which need be considerable - after paying the specific portions given to each of the children.

Either a daughter of the Testator was married many years since to George Roof of Richshaw - and they are both now alive, and have the following children all infants to-wit - Esther, Joseph, Martha, Elizabeth, David, Daniel, John, Caroline, William, Mary Ann and Susan Roof - and the question arises as to the respective interests of the said George Roof - and wife, and their children, in the distributable surplus under the 12th clause of said Will -

Magdalen a daughter of the Testator mentioned in the 2^d & the 12th clauses of his Will, was married many years ago - to one Jerkin Norman, who now lives in Ohio - by whom she had the following children - to-wit - Esther married to Joseph Early - Susan married to Samuel Sanger - of Richshaw - and Catherine married to William Bruse - & Joseph Norman of Ohio - the only remaining children of the Testator, besides your Orator - are Jacob Miller of Ohio - Daniel Miller of Botetourt - and John and Joseph Miller of Richshaw - Magdalen was dead when the will of the Testator was executed -

In consideration of the premises, and in order that the conflicting pretensions of the said John Early & Peter his wife & their children & George Roof & Esther his wife and their children - and William Wright & Susan his wife & their children, arising under the said 2^d & 12th clauses of said Will, may be adjudicated - and whether the advancement of \$1,000, is to be regarded as a satisfaction or ademption of the legacy of \$800 - to the Testator's daughter Susan - that the said John Early & wife & their children - George Roof & wife & their children - William Wright & wife & their children - the above-named children of Magdalen Norman - Joseph Early - Samuel Sanger - William Bruse, - Jacob Miller, Daniel Miller, John and Joseph Miller

may be made defendants to this Bill - & required to answer the same - rather than a Guardian ad litem may be appointed to the infant defendants - that the rights of all parties under the said Will may be ascertained and decreed - and that your Orator may have such other and further relief as is adapted to his case. &c.

Bryan & Woodrow P. Q.

}

Samuel Miller
Orator of Martin Miller.

Miller Exr.

v. } Answer of the
} Infant Defendants
Miller's Legatees

The joint answer of the infant children of John Early and
Betty his wife & the infant children of William Wright and
Susan his wife - and the infant children of George Roof and
Esther his wife, by their Guardian ad litem, A. H. C. Sprinkel
to a Bill of Complaint exhibited against them and others in the
Sircuit Court of Rockingham County, by Samuel Miller Execu-
tor of Martin Miller dec'd

When Respondents saving & reserving to themselves the benefit of
all proper exceptions to the complainants Bill, for answer
say that they are the grand children of Martin Miller dec'd
that the said Martin Miller dec'd departed this life in
the year 1852, having first made and published his last
Will & Testament, a true copy of which they believe is
filed with Complainants Bill - they believe that under the
Will of their said Grandfather they are entitled as great
tenants with their mothers in the estate devised by said
Will or a portion thereof - and they submit their interests
arising under said Will to the protection of the Court
Having assured they pray they may be taxed dis missed with
their costs, &c.

A. H. C. Sprinkel
Guardian ad litem

Master Millers Exr.

v.

Joseph Miller & others.

Assess of at St. C. Sprinkler's Guardian ad litem ^{v for infant defts.} filed
& at per Leoring - on motion of P. C. T. J.

The separate answer of William Wright to a bill in equity, exhibited by Samuel Miller executor of Martin Miller deceased, against the heirs and devisees of Martin Miller dec'd. in the Circuit Court of Rockingham County.

This respondent having & receiving the benefit of the several exceptions to the complainant's bill, for a new & so much thereof as he deems it material for him to answer. Saith it is true that in 1848, this respondent was about making a purchase of a tract of land, which purchase was approved by the testator, and on the first of September 1848. Saml. Miller, the executor, with the knowledge & consent & approbation of his father the testator, used one thousand Dollars, of the testator's money, for the purpose of making the down payment, on the land, this being the full amount of the down, or cash payment. Respondent's wife, Susan Wright, at the request of her brother, Samuel, executed a receipt for the \$1000, which has been filed by the plaintiff with the bill. The title to the land was made to this respondent, with the ^{although the contract was made by Samuel.} consent of the testator. Respondent having answered so far as facts within his own knowledge are concerned, submits the questions arising under the will, and the construction of the will, to the decision of their honorable Court, and prays to be hence dismissed with his costs &c.

Rockingham County to wit:

William Wright
+
marks

This 27th day of September 1852, William Wright personally appeared before the undersigned Justice of the

Peace for said County, and duly made oath to the ^{truth of the} facts contain-
ed in the foregoing answer in Chancery, according to the best of
his knowledge & belief. Given under my hand.

O. B. Stirling, J. P.

Answer of
John Stirling

amt of costs up to June
1st 1853 is \$38.53

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Martin Miller's Case } Papers
 } in Chancery
 }
 } Joseph Miller & others }

Bold chry —

1853 March Order of Publication awarded,
& con. on Rule. April new spa awarded
& continued on Rule. May June. July
continued on Rule August new spa
awarded & continued on Rule. Sept
Bill & Exhibits filed & Asst Sprinkel
appointed Guardian ad litem for the
infant defendants. October term
Answer of Guardian ad litem filed
and set for hearing by Prof counsel
and Decree. & continued on Docket
The balance of the year,
1854 continued on Docket all the year
1855 may continued on Docket,
Oct. Final Decree,

Final Exam to be
held Oct 1855

Martin Miller's Exr.

vs

In Chancery:

Joseph Miller et Al.

This cause came on to be heard this 14th day of October 1853 - upon the Bill and Exhibits - the Answer of William Wright - and of the infant defendants by A. St. G. Sprinkel, their Guardian ad Litem in this Bill, and the Subpoena issued in the cause, having been returned executed, more than one month upon the other home defendants; and the order of Publication against the absent defendants, herewith filed, being duly executed. The Bill as to the last mentioned home defendant, and as to the absent defendants is taken for confessed: Whereupon, the argument of Counsel being heard, the Court is of opinion, that the husband of Betsy Early is entitled to nothing under the 3^d and 12th clauses of the will of the Testator Martin Miller - the said Betsy Early having died in the lifetime of her father leaving children - but the children of the said Betsy Early - are entitled to receive the legacies given to their said mother in the said clauses of said Will - the Court is further of opinion, that William Wright - the husband of Testator's daughter Susan, is entitled to receive whatever may be coming to Susan under the 12th clause of said Will - and that the legacy in said clause to Susan & her children, was intended by the Testator to go - and does go wholly to Susan, and no part thereof to her children - but that in the distribution under the 12th clause of Testator's Will - Susan & her husband are to be charged with and account for two hundred Dollars - that being the amount advanced to them by the Testator ~~was~~ in his lifetime, over and above the legacy of \$800, given to Susan by the 6th clause of Testator's Will.

The Court is further of opinion that as George Roof & his wife Esther, both survived the Testator - and are now alive - the said George Roof is entitled to demand and receive, whatever may be due under the 12th clause of Testator's Will, to Esther & her children the language used, in the opinion of the Court, vesting nothing in the children of said Esther - The Court is further of opinion that as Magdalen Norman, a daughter of the Testator, departed this life before her father, and indeed was dead when his will was executed, the children of the said Magdalen are entitled to demand and receive - whatever is devised to the said Magdalen, in the 2^d clause

Rockingham County to wit:

This day Samuel Miller personally appeared before the subscriber a Justice of the Peace for said County, and solemnly affirmed that William Browne & Catharine his wife, Joseph Norman, Anna Early, Susan Early, Elizabeth Early, Sally Early, Jacob Early, Martin Early, Lydia Early, Malinda Early, Noah Early, Joseph Early, Catharine Early, Jacob Miller, who will be made defendants to a suit in Chancery which the affiant intends to bring as executor of Martin Miller ^{are all non-residents of the State of Virginia} died in the Circuit Court of Rockingham, given under my hand February 28 1859.

O. G. Stulings J.P.

Miller Exor *Zaficavit* as
10
Miller oother
to nonnuncants

Filice 3rd March 1853

The object of this suit is to ask the Court to construe certain portions of the will of Martin Miller dec. viz. the clauses in which the testator devises to his daughters Elizabeth, Esther, and Susanna & their children.

Rockingham County, Va Wit:

This day Am. M. K. Martmann personally appeared before me a Justice of the Peace for the County aforesaid and made oath that the annexed notice was published in the Rockingham Register for four successive weeks, and a like copy posted at the front door of the Court-house of said county. —

Given under my hand this 11th day of October, 1853.

Henry J. Martmanns J.P.

Sprinkles Fee, \$5.50.

VIRGINIA, To Wit:

AT Rules held in the Clerk's Office of the Circuit Court of Rockingham county, on Monday the 7th day of March, 1853, (it being the first Monday in the month.)

Samuel Miller, Executor of Martin Miller, dec'd.—Plaintiff,

AGAINST

Joseph Miller, John Miller, Susanna Wright, Susannah Wright, John Wright, David Wright, Elizabeth Wright, Samuel Wright, William Wright, Nancy Wright, Sarah Wright, Catharine Wright, Esther Roof, Esther Roof, Joseph Roof, Martin Roof, Elizabeth Roof, David Roof, Daniel Roof, Caroline Roof, John Roof, William Roof, Mary Ann Roof, Susan Roof, Joseph Early and Esther, his wife, Samuel Sanger and Susan, his wife, Daniel Miller, William Brouse and Catharine, his wife, Joseph Norman, Anna Early, Susan Early, Elizabeth Early, Sally Early, Jacob Early, Martin Early, Lydia Early, Malinda Early, Noah Early, Joseph Early, Catharine Early, and Jacob Miller—Defendants,

IN CHANCERY.

THE object of this suit is, to ask the Court to construe certain portions of the will of Martin Miller, dec'd., viz: The clause in which the testator devised to his daughters, Elizabeth, Esther and Susanna, and their children. And it appearing by an affidavit filed in this cause, that the defendants, William Brouse and Catharine, his wife, Joseph Norman, Anna Early, Susan Early, Elizabeth Early, Sally Early, Jacob Early, Martin Early, Lydia Early, Malinda Early, Noah Early, Joseph Early, Catharine Early, and Jacob Miller, are not residents of this State; it is ordered, that the said defendants do appear here within one month after due publication of this order, and do what is necessary to protect their interests; and that this order be published once a week for four successive weeks, in the Rockingham Register, a newspaper published in Harrisonburg, and posted at the front door of the Court-house of this county, on the first day of the next County Court.

A copy—Teste,
A. ST. C. SPRINKEL, Clerk.

March 12, 1853.—4w

Order 3 million
of 3rd million
Publications

Magdalens children } (Joseph Early & Esther his wife, Samuel
and Sauges & Susan his wife, of Rockingham.) William
Browne & Catharine his wife, & Joseph Norman of Ohio.

Elizabeths children: } Anna Early, Susan Early, Elizabeth
Early, Sally Early, Jacob Early, Martin Early, Lydia
Early, Malinda Early, Noah Early, Joseph Early & Catharine
Early, of Ohio. two or three of the Early children of Mass.

Esther Roof's children: } Esther Roof, Joseph Roof, Mar-
tin Roof, Elizabeth Roof, David Roof, Daniel Roof, John
Roof, Caroline Roof, William Roof, Mary Ann Roof, Susan
Roof, all under 21. & of Rockingham.

Jacob Miller of Ohio.

Susanna Wrights children: } Susanna Wright, John
Wright, David Wright, Elizabeth Wright, Samuel Wright,
William Wright, Nancy Wright, Sarah Wright, Catharine
Wright, all under 21 & of Rockingham City.

Samuel Miller of Rockingham. of Rockingham. Esq.
Daniel Miller of Botetourt.

John Miller of Rockingham. —
Joseph Miller of Rockingham. —



Received of my Father Martin Miller one
thousand Dollars of my legisee
September 1th 1848

L Susan McNight

THE COMMONWEALTH OF VIRGINIA, TO THE SHERIFF OF ROCKINGHAM COUNTY,=

GREETING:

YOU are hereby commanded to summon *Joseph Miller, John Miller, Susanna Wright, Susanna Wright, John Wright, Basia Wright, Elizabeth Wright, Samuel Wright, William Wright, Nancy Wright, Sarah Wright, Catharine Wright, Esther Roof, Esther Roof, Joseph Roof, Martin Roof, Elizabeth Roof, David Roof, Daniel Roof, Caroline Roof, John Roof, William Roof, Mary Ann Roof, Susan Roof, Joseph Early & Esther his wife, Samuel Sanger & Susan his wife, Daniel Miller, William Brown & Catharine his wife, Joseph Norman, Anna Early, Susan Early, Elizabeth Early, Sally Early, Jacob Early, Martin Early, Lydia Early, Malinda Early, Noah Early, Joseph Early, Catharine Early & Jacob Miller, — Wright and George Roof* to appear at the Clerk's Office of our Circuit Court holden for Rockingham County, on the *1st Monday in April* next, to answer a bill in Chancery exhibited against *them* by *Samuel Miller Executor of Martin Miller ad.*

and you are also hereby required to notify the said Defendants that unless *they* shall answer the said bill, within ^{*one*} ~~two~~ months thereafter, the Court will take the same for confessed, and decree accordingly; and this *they* shall in no wise omit under the penalty of £100. ^{*each*} And have then there this writ. Witness ARTHUR ST. C. SPRINKEL, Clerk of our said Court at the Court-House the *5th* day of *March* ——— 1853 and in the *47th* year of the Commonwealth.

A. St. C. Sprinkel

We, Joseph Early - and Esther Early - acknowledge
due & legal service of the within Subpoena in
Chancery -

Joseph Early
for
Esther + Early
moor

M. Miller Esq
w }
A. Miller Esq }
w }
A. Miller Esq }

Bell chy -

April 1840

~~1000 Dollars which I have no objection to~~
Joseph Early, Esq. Clerk of the Court, County of
William, Maryland, Esq. Clerk of the Court, County of
and George R. Esq. Clerk of the Court, County of
1000 Dollars which I have no objection to

THE COMMONWEALTH OF VIRGINIA TO THE SHERIFF OF ^{County} ~~ROCKING-~~
~~HAM~~ COUNTY,—GREETING:

YOU are hereby commanded to summon *Daniel Miller*

to appear at the Clerk's Office of our Circuit Court holden for Rockingham County, on
the first Monday in *September* next, to answer a bill in Chan-
cery exhibited against *him & others* by *Samuel Miller Executor*
of Martin Miller acd.

and you are also hereby required to notify the said Defendants that unless *he*
shall answer the said bill, within one month 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

ARTHUR ST. C. SPRINKEL, Clerk of our said Court at the Court-House the
24th day of *August* 1853 and in the *78th* year of the Commonwealth.

A. St. C. Sprinkel

I acknowledge the service of the within subpoenaed
Daniel Miller

M. Miller Esq

of the in
chey

(22)

J. Miller of

Browny

Sept 1860

Augusta

THE COMMONWEALTH OF VIRGINIA, TO THE SHERIFF OF ~~ROCKINGHAM~~ COUNTY,

GREETING.

YOU are hereby commanded to summon *Joseph Miller, John Miller, Susanna Wright, Susanna Wright, John Wright, David Wright, Elizabeth Wright, Samuel Wright, William Wright, Nancy Wright, Sarah Wright, Catharine Wright, Esther Roof, Esther Roof, Joseph Roof, Martin Roof, Elizabeth Roof, David Roof, Daniel Roof, Caroline Roof, John Roof, William Roof, Mary Ann Roof, Susan Roof, Joseph Early, & Esther his wife Samuel Sanger & Susan his wife, Daniel Miller, William Bruce & Catharine his wife, Joseph Norman & Anna his wife Susan Early, Elizabeth Early, Sally Early, Jacob Early, Martin Early, Lucia Early, Malinan Early, Noah Early, Joseph Early, Catharine Early, Jacob Miller, George Roof & ^{Wright}* to appear at the Clerk's Office of our Circuit Court holden for Rockingham County, on the *1st* Monday in *May* _____ next, to answer a bill in Chancery exhibited against *them* by *Samuel Miller Executor of Martin Miller decd,*

and you are also hereby required to notify the said Defendants that unless *they* shall answer the said bill, within ^{*one*} ~~two~~ months thereafter, the Court will take the same for confessed, and decree accordingly; and this *they* shall in no wise omit under the penalty of £100. ^{*each*} And have then there this writ. Witness ARTHUR ST. C. SPRINKEL, Clerk of our said Court at the Court-House the *5th* day of *April* 1853 and in the *7th* year of the Commonwealth.

Arthur St. C. Sprinkel

Exd by handing to Mrs Susan
Might copy of this met
26 April 1853

Stamford Dm
M 14 M 6 1/2

Augusta

M. Miller Esq

2 Apr in

2 ch

J. Miller Esq

Bowling

May Rules