September Court 1746

Summons Jo Thomas Williams
N.E. Thomas Prather. John Smith Ser.
P.G. Co.J

Whereupon the said John Smith Prather. Thomas Prather and Thomas Williams by William Cumming their Procurator appear and this Cause is Continued Untill Next Court and the same Day is Given to the Libellants and Libellees also At Which said Next Court to Wit the Second Tuesday of November Being the twelfth day of the same Month Anno Dominie 1745 Came again the said Parties Libellants and Libellees by their Procurators aforesaid [illegible] Whereupon the said John Smith Prather and Thomas Williams having filed their Answer to the Libel and Complaint aforesaid the same is Received and follows in these Words Viz.

The Answer of Thomas Williams and John Smith Prather two of the Defendants to the Libel and Complaint of Joseph Willburn Simmes and Rachel his Wife Complainants

The Defendants now and at all Times hereafter Saving and Reserving to themselves all and all manner of Benefit of Advantage of Exception to the manifold Uncertainties and Insufficiences of the Complainants said Libell of Complaint for Answer thereto or so much thereof as the Defendants are advised is any wise material for them to make Answer unto, Answer and Say, that they Admit that Jane Smith in the Libel mentioned the Libellant Rachel her Grand Mother Died Possest of a Considerable Personal Estate more than Sufficient to Pay and Satisfy her just Debts in manner as in the said Libell is Set forth and that she made her Last Will and Testament in Writing; But the Defendants do not Admit that the Testatrix Jane Smith did appoint the Defendant Thomas Williams and John Prather her Executors, or that they did Administer on the Deceased's Estate as Executors Administrators or any Other way, but the Defendants say that by the Last Will and Testament of the said Jane Smith now Remaining in the Prerogative Court of this Province it appears that she appointed a Certain William Prather her Executor who by Virtue thereof the Defendants believe did Administer on the said Deceased's Estate, The Defendants Admit it may be true that the Testatrix devised the Residue of her Personal Estate Equally to be Divided amongst Sundry Persons named in the said Will for that Purpose amongst whom was the Libellant Rachel, but for more Certainty Refer to the said Will. The Defendants Admit that it may be true that the Distributive Part of the said Jane Smiths Estate belonging to the Libellant Rachel might amount unto the Sum of Twenty Eight Pounds Gold and Silver Currency in manner as in the said Libell is Set forth but for more Certainty leave it to the Libellants to Prove the Same and the Defendants do say that of their Certain Knowledge they do not know that Martha Yoakley the Libellant Rachel her Mother Recieved the aforesaid Sum of Twenty Eight Pounds of the Executor aforesaid or any other Person on behalf of the Libellant her Daughter But believe if she Received the same that she has Since Repaid it to the said Libellant Rachel, for those Defendants do say that the said Martha Yoakley the Libellant Rachel's Mother was very Indulgent and Beneficent to her said Daughter in Advancing & Providing for her in Marriage and after her Husbands Death Paying Money for her in her Widowhood and those Defendants Say that after the said Legacy (if Due) had Lyen Over for all Arrears of Twenty odd Years undemanded and the said Martha Yoakley had Lyen Six or Seven Months Sick and Languishing on her Death Bed and the Libellant

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Rachel Tending on her for the Greatest Part of that Time and no Demand made thereof (that ever the Defendants heard off) they are now Surprised that after the Death of the said Martha Yoakley they should be called upon for the same at this Honourable Court and the Defendants humbly pray and Rely the Judgment of this Honourable Court that in Case it should be made appear that the said Martha Yoakley had received the said Sum of Twenty Eight Pounds in the Libell mentioned in manner as therein set forth Whether the same is a Testamentary Affair and Cognizable in this Honourable Court. The Defendants admit that the said Martha the Libellant Rachel's Mother Intermarried with a Certain Stephen Yoakley in manner as in the Libell set forth. The Defendants say they are unacquainted and deny that the said Stephen Yoakley in the Libell mentioned delivered to the Libellant Rachel a Negroe Woman named Esther and a Negroe Child named Cuach as a Security for the Payment of the aforesaid Sum of Twenty Eight Pounds in manner as in the s.d Libell is Set forth; But the Defendants say that they are Rather induced to believe that the Negroes aforesaid were paid by the said Stephen to the said Rachel in Satisfaction of the said Legacy and afterwards were Purchast by him of her, for that after the Death of the said Stephen who soon afterwards died in manner as in the Libell set forth, the Negroes aforesaid were appraised by the said Martha in the said Stephen Yoakleys Estate as a part thereof and afterwards Still Continued in her Possession as a part thereof till her Death without Being Claimed by the said Libellant Rachel that ever the Defendants heard off. The Defendants believe that after the Death of Stephen Yoakley in the Libell mentioned the aforesaid Martha Administred on the said Deceased's Husbands Estate and that the Libellant Rachel lived with her Mother the said Martha until her Intermarriage with the said William Pottinger her first Husband which happened about Eighteen or Nineteen Years ago, The Defendants Admit that the said Martha Departed this Life some Time in the Month of October Seventeen hundred and Forty two Possest of the Negroes aforesaid and Left Behind her a Considerable Personal Estate and made her last Will and Testament in Writing and appointed Thomas Prather in the Libell mentioned and these Defendants her Executors, who Proved the same and took upon them the Burthen of the Execution thereof in manner as in the said Libell Set forth. The Defendants Admitt that by Virtue of the Will aforesaid and the Administration to them Granted the said Thomas Prather and those Defendants Possest themselves of the said Deceased's Personal Estate and Negroe Woman and Child aforesaid. These Defendants Admit that the said Libellant Rachel her former Husband Departed this Life in manner as in the said Libell Set forth for any thing these Defendants know to the Contrary and that after his Death she Intermarried the Other Libellant Joseph Willburn Simmes as in the said Libell Set forth. But these Defendants dont Admit to be True that the Libellant Rachel Before her last Marriage and that the Libellants since their Intermarriage did ever demand of and from the aforesaid Martha during her Widowhood the Negroes or Legacy aforesaid in manner as in the said Libell is Set forth. But the Defendants Admit that Since the Death of the said Martha and the Probate of the Will aforesaid and the Administration Granted to them and the said Thomas Prather the Libellants Demanded of them the Negroes aforesaid. Without that, that any Other matter or thing in the Libellants said Libell Contained material or Effectual in the Law for those Defendants to make Answer unto and not herein and hereby well and Sufficiently Answered unto Confessed or Avoided, Traversed or Denied is true to the Knowledge and Beleif of these Defendants, all Which matters and Things these Defendants are ready and Willing to aver Justify maintain and Prove as this Honourable Court shall award and humbly Pray to be hence Dismissed with