

1869. C No.124

Filed 10<sup>th</sup> April 1869

**In Chancery**

LORD CHANCELLOR

*Griff*

VICE-CHANCELLOR STUART

*Amended 14<sup>th</sup> June by order dated*

*11<sup>th</sup> June 1869*

{Chancery Stamp 10s}

<i>Between</i>	CHARLES CLARKE and JOHN CLARKE	} <i>Plaintiffs</i> }
	AND	
	ADA LOUISE CLARKE	}
	LIZZY KATE CLARKE	}
	STAFFURTH CLARKE	} <i>Defendants</i>
	JOHN KING WATTS, and	}
	TOBIAS NORRIS	}

[BILL OF COMPLAINT]

To The Right Honourable WILLIAM PAGE, BARON  
HATHERLEY, of Down Hatherley, in the County of  
Gloucester, Lord High Chancellor of Great Britain.

1. John Clarke, late of St Ives, in the County of Huntingdon,  
yeoman, an uncle of the above-named plaintiffs Charles Clarke and  
John Clarke, and of the above-named defendant Staffurth Clarke,  
duly made and executed his last will and testament in writing, dated  
the 30<sup>th</sup> day of March, 1849, and thereby devised and bequeathed as  
follows:-<sup>1</sup>

---

<sup>1</sup> No will details given in the bill of complaint.

2. The said testator died on the 9th day of October, 1849, without having revoked or altered his said will, which was on the 24th day of October, 1849, duly proved in the Consistory Court of Ely<sup>2</sup> by the testator's brother Staffurth Clarke, the executor named in the said will, and the plaintiffs believe that the said testator was not at the time of his death seized of or entitled to any real estate other than the freehold and copyhold hereditaments at Warboys in his said will mentioned and which respectfully consisted of a Close of Freehold land containing 10 acres or thereabouts of which he was seized for an Estate of inheritance in fee simple in possession of a close of copyhold land containing a.9 r.3 p.24 or thereabouts of which he was seized for an Estate of inheritance in possession to him and his heirs according to the custom of the manor of Warboys and which two closes adjoin each other

3. At the time of the testator's death, his nephew William Clarke named in his said will, and his nephew George Staffurth Clarke the devisee in trust also named in his said will, were both living, and they, as well as his other nephews named in his said will (that is to say) the abovenamed plaintiff Charles Clarke, and the said defendant Staffurth Clarke, had all attained the age of twenty-one years, but the above-named plaintiff John Clarke, the other nephew was at that time an infant of the age of 17 years.

4. Shortly after the death of the said testator an arrangement was made between his brother and executor the said Staffurth Clarke who under the said will was entitled for his life to the income to be derived from the investment, by the said will directed to be made, on the proceeds to arise from the sale of the copyhold hereditaments by the said will directed to be sold (after payment thereof of the testator's debts and funeral and testamentary expenses and all mortgages that might be charged on his Copyhold & freehold estates thereafter devised), and some of the testator's said five nephews, that is to say his said nephews William Clarke George Staffurth Clarke, and the above-named plaintiffs Charles Clarke, (who had all attained the age of 21 years under the said will were respectively entitled to equal fifth shares of the said proceeds, subject to the life estates therein given by the said will to the testator's said brother and executor Staffurth Clarke and his wife Jane Clarke) that the said copyhold hereditaments should not be sold, but that sufficient money should be raised by mortgage thereof to pay the testator's debts and the other charges and expenses charged thereon by the said will, and that the said executor Staffurth Clarke and his said wife Jane Clarke should, during their respective lives, receive the rents and profits of the said copyhold hereditaments, and should thereout pay and discharge the interest from time to time accruing due in respect of the mortgage to be made of the said hereditament and it having been ascertained that the sum of £235 would be sufficient to discharge the said debts, charges, and expenses, and inasmuch as the said will contained no power to mortgage the said hereditaments, but only a power of selling the same, and as the said

---

<sup>2</sup> Will was not proved in the Consistory court of Ely but in the Archdeaconry Court of Huntingdonshire.

George Staffurth Clarke was the devisee in trust for sale of the testator's freehold land in Warboys in remainder expectant, the successive life estates therein given by the said will to the said executor Staffurth Clarke and his said wife, it was further arranged that for the purpose of carrying into effect the said arrangement of mortgaging instead of selling the said copyhold hereditaments they should be ostensibly sold by the said executor Staffurth Clarke to the said George Staffurth Clarke for the sum of £400, and that the said George Staffurth Clarke should thereupon mortgage the same for the sum of £235, and that such last-mentioned sums raised on mortgage should be applied in payment of the said debts, charges, and expenses

5. In pursuance of the above arrangement the said executor Staffurth Clarke made an ostensible sale of the said copyhold hereditaments to the said George Staffurth Clarke, and convey the same to him by an indenture of bargain and sale, dated the 13th day of April, 1852, and expressed to be made between the said Staffurth Clarke of the one part, and the said George Staffurth Clarke of the other part, and the consideration stated in the said indenture of bargain and sale of the said copyhold hereditaments to have been paid by the said George Staffurth Clarke to the said executor Staffurth Clarke for the said sale and conveyance, is the sum of £400, and a receipt for that amount is also endorsed on the said indenture, but no money was in fact over paid by the said George Staffurth Clarke for or in respect of the said sale and Conveyance to him, but the said George Staffurth Clarke was admitted under the said indenture of bargain and sale to the said copyhold hereditaments on the 15th day of April, 1852, and the said indenture is enrolled on the court rolls of the said manor of Warboys and filed with the muniments of the said manor, and he, on the same day, mortgaged the same to Thomas Henry Bush of Huntingdon, in the County of Huntingdon by way of conditional surrender for securing the sum of £235, then advanced thereon by the said Thomas Henry Bush, and interest on the said sum, and the said George Staffurth Clarke, in further pursuance of the said arrangement, thereupon handed over the said sum of £235, so raised by mortgage as aforesaid, to the said executor Staffurth Clarke, who immediately applied part of the same in payment of a sum of £170, which, at the said testator's decease had been charged, on the said copyhold hereditaments in favour of a person named James Rogers of Warboys aforesaid, and this remained of the same in payment of the fines, fees and expenses of the said transaction, and in payment of the said debts and expenses charged on the said, copyhold hereditaments by the said will as above-mentioned.

6. Subsequently to and from the time of the said mortgage being

made as aforesaid until the death of the said Staffurth Clarke the executor (who died in the month of November, 1863, and was buried on the 3rd day of December, 1863), the rents and profits as well of the said copyhold hereditaments as of the freehold hereditaments devised by the said will as aforesaid, were paid to him by one John Thompson to the 11th day of October, 1859, and from thence by John Upchurch, the tenants in occupation of the said several hereditaments, and the said Staffurth Clarke paid thereout to the said Thomas Henry Bush all the interest on the said mortgage debt of £235, which accrued due during his the said Staffurth Clarke's life, and from and after his death his said wife Jane Clarke received from the said tenant John Upchurch all the rents profits of the same copyhold and freehold hereditaments which accrued after the death of the said Staffurth Clarke until her own death, which took place in. the month of December 1868, and she thereout paid to the said Thomas Henry Bush all the interest which accrued due during her life on the said mortgage debt of £235.

7 The said Jane Clarke died as above mentioned, intestate, and was buried on the 21st day of December, 1868, but no administration has been taken out to her goods and chattels, rights and credits.

8. The said George Staffurth Clarke, by conditional surrender, dated the 13th day of February, 1860, surrendered the said copyhold hereditaments to the defendant John King Watts, by way of mortgage for securing the sum of £50 advanced to him by the said defendant, subject nevertheless to the said mortgage of the same hereditaments to the said Thomas Henry Bush (there being no other motgage<sup>3</sup> due thereon, as appears by the court rolls of the said manor), and by an indenture dated the 13th. day of February, 1860, and expressed to be made between the said George Staffurth Clarke of the one part and the said defendant John King Watts of the other part. After reciting the said will of the said testator as or to the effect above stated, the said George Staffurth Clarke, in. consideration of the same sum of £50 granted and assigned unto the said defendant John King Watts, all that the undivided part or share of him the said George Staffurth Clarke, of and in the moneys to arise from the sale of the said freehold and copyhold estates in the said will mentioned, subject to a proviso for redemption of the same premises, on payment by the said George Staffurth Clarke to the said defendant John King Watts, of the said sum of £50, with interest thereon, as therein mentioned, and the said defendant asserts that there is an arrear of interest amounting, up to April 1st, 1869, to about £19. 4s. 6d. now due to him, on the said mortgage security.

9. The plaintiff Charles Clarke, by deed dated the 11th day of

---

<sup>3</sup> Sic

July, 1859, and expressed to be made between the said Charles Clarke of the one part and the said John King Watts of the other part, also mortgaged all his share of the proceeds to arise from the sale of the said freehold and copyhold hereditaments to the said John King Watts, to secure the sum of £50 which is still due and owing on the said security, with an arrear of interest amounting, on the 1st day of April, 1869, to £12. 12s. 0d.

10. The said plaintiff John Clarke, by deed dated the 20th day of September, 1859, and expressed to be made between the said John Clarke of the one part and the said John King Watts on the other part, also mortgaged all his share of the proceeds to arise from the sale of the said freehold and copyhold hereditaments to the said John King Watts, to secure the sum of £50 which is still due and owing on the said security, with an arrear of interest, amounting on the 1st day of April, 1869, to £12. 2s. 0d.

11. The said William Clarke, by deed dated the 20th day of September, 1859, and expressed to be made between the said William Clarke of the one part and the said defendant Tobias Norris of the other part, he the said William Clarke mortgaged all his share of the proceeds to arise from the sale of the said freehold and copyhold hereditaments to the said defendant Tobias Norris, to secure the sum of £50 which the said defendant asserts is still due, and owing on the said security, with a large arrear of interest.

12. The said executor Staffurth Clarke died in the month of November, 1863, as above mentioned, intestate, but no letters of administration have been taken out to his goods and chattels, rights and credits.

13. The said William Clarke, the nephew of the said testator, died in the month of December, 1862 (and was buried on the third day of January, 1863), intestate and without issue, but leaving a widow Charlotte Clarke, who on the 22nd day of November, 1864, married, and is now the wife of William Cox, but no letters of administration have been taken out to the goods and chattels, rights and credits of the said William Clarke.

14. The said George Staffurth Clarke, the nephew and devisee in trust named in the will of the said testator, died on the 14th day of April, 1865, intestate, leaving a widow Jane Clarke, who on the 30<sup>th</sup> day of December, 1866, married and is now the wife of William Birch, and two infant daughters namely, the defendants Ada Louise Clarke and Lizzy Kate Clarke, and no other children, and no issue of children

made as aforesaid until the death of the said Staffurth Clarke the executor (who died in the month of November 1863, and was buried on the 3<sup>rd</sup> day of December 1863), the rents and profits as well of the said copyhold hereditaments as of the freehold hereditaments devised by the said will as aforesaid, were paid to him by one John Thompson on the 11<sup>th</sup> day of October, 1859, and from thence by John Upchurch, the tenants in occupation of the said several hereditaments and the said Staffurth Clarke paid thereout to the said Thomas Henry Bush all the interest on the said mortgage debt of £235, which accrued due during his the said Staffurth Clarke's life, and from and after his death his said wife Jane Clarke received from the said tenant John Upchurch all the rents and profits of the same copyhold and freehold hereditaments which accrued after the death of the said Staffurth Clarke until her own death, which took place in the month of December 1868, and she thereout paid to the said Thomas Henry Bush all the interest which accrued during her life on the said mortgage debt of £235.

7. The said Jane Clarke died as above mentioned, intestate, and was buried on the 21<sup>st</sup> day of December, 1868, but no administration has been taken out to her goods and chattels, rights and credits.

8. The said George Staffurth Clarke, by conditional surrender, dated the 13<sup>th</sup> day of February, 1860, surrendered the said copyhold hereditaments to the defendant John King Watts, by way of mortgage for securing the sum of £50 advanced to him by the said defendant, subject nevertheless to the said mortgage of the same hereditaments to the said Thomas Henry Bush (there being no other mortgage due thereon, as appears by the court rolls of the said manor), and by an indenture dated the 13<sup>th</sup> day of February, 1860, and expressed to be made between the said George Staffurth Clarke of the one part and said defendant George King Watts of the other part. After reciting the said will of the said testator as or to the effect above stated, the said George Staffurth Clarke, in consideration of the same sum of £50 granted and assigned unto the said defendant John King Watts, all that the undivided part or share of him the said George Staffurth Clarke, of and in the moneys to arise from the sale of the said freehold and copyhold estates in the said will mentioned, subject to a proviso for redemption of the same premises in payment by the said George Staffurth Clarke to the said defendant John King Watts, of the said sum of £50, with interest thereon, as therein mentioned, and the said defendant asserts that there is an arrear of interest amounting, up to April 1<sup>st</sup>, 1869, to about £19. 4s. 6d. now due to him, on the said mortgage security.

9. The plaintiff Charles Clarke, by deed dated the 11<sup>th</sup> day of

July, 1859, and expressed to be made between the said Charles Clarke of the one part and the said John King Watts of the other part, also mortgaged all his shares of the proceeds to arise from the sale of the said freehold and copyhold hereditaments to the said John King Watts, to secure the sum of £50 which is still due and owing on the said security, with an arrear amounting, on the 1<sup>st</sup> day of April, 1869, to £11. 12s. 3d.

10. The said plaintiff John Clarke, by deed dated the 28<sup>th</sup> November, 1859, and expressed to be made between the said John Clarke of the one part and the said John King Watts of the other part, also mortgaged all his share of the proceeds to arise from the sale of the said freehold and copyhold hereditaments to the said John King Watts, to secure the sum of £50 which is still due and owing on the said security, with an arrear of interest, amounting on the 1<sup>st</sup> April, 1869, to £12. 2s. 2d.

11 The said William Clarke, by deed dated the 20<sup>th</sup> day of September, 1859, and expressed to be made between the said William Clarke of the one part, and the said defendant Tobias Norris of the other part, he the said William Clarke mortgaged all his share of the proceeds to arise from the sale of the said freehold and copyhold hereditaments to the said defendant Tobias Norris, to secure the sum of £50 which the said defendant asserts is still due and owing on the said security, with a large arrear of interest.

12. The said Executor Staffurth Clarke died in the month of November, 1863, as above mentioned, intestate, but no letters of administration have been taken out to his goods and chattels, rights and credits.

13. The said William Clarke, the nephew of the said testator, died in the month of December, 1862, (and was buried on the third day of January, 1863), intestate and without issue, but leaving a widow, Charlotte Clarke, who on the 22<sup>nd</sup> day of November, 1864, married, and is now the wife of William Cox, but no letters of administration have been taken out to the goods and chattels, rights and credits of the said William Clarke.

14. The said George Staffurth Clarke, the nephew and devisee in trust named in the will of the said testator, died on the 14<sup>th</sup> day of April, 1865, intestate, leaving a widow, Jane Clarke, who on the 30<sup>th</sup> day of December, 1866, married and is now the wife of William Birch, and two infant daughters namely, the defendants Ada Louise Clarke and Lizzy Kate Clarke, and no other children and no issue of children

him surviving, and the said defendants Ada Louise Clarke and Lizzy Kate Clarke, are the co-heiresses at law, and also the customary co-heiresses of the said George Staffurth Clarke and are both infants, the said defendant Ada Louise Clarke having been born on the 6<sup>th</sup> day of November, 1860, and the said Lizzy Kate Clarke having been born on the 31<sup>st</sup> day of October, 1864, but no letters of administration have been taken out to the goods and chattels, right and credits of the said George Staffurth Clarke.

15. The said Thomas Henry Bush was after the death of the said George Staffurth Clarke admitted on the 1<sup>st</sup> day of November, 1866, to the said copyhold hereditaments comprised in the said conditional surrender of the 15<sup>th</sup> day of April, 1852, made to him as aforesaid by the said George Staffurth Clarke, but the said Thomas Henry Bush has never entered into the possession or receipt of the rents and profits of the said copyhold hereditaments, such rents and profits having been as above stated, always received by the said Staffurth Clarke and Jane Clarke, his wife, the successive tenants thereof for life, and no rents of the said hereditaments have been paid by the tenant thereof to any person since the death of the said Jane Clarke.

16. Under the circumstances aforesaid the plaintiffs are advised that the said Sale by the said executor Staffurth Clarke of the said copyhold hereditaments by the said George Staffurth Clarke (ought so far as it can be done without prejudice to the rights of the said Thomas Henry Bush under or by virtue of the said conditional surrender of the 15<sup>th</sup> day of April 1852) to be set aside and declared void in equity as against the plaintiffs and all other persons enlisted under or by virtue of the said Will of the said Testator to share in the proceeds of the sale therein directed of the said Copyhold hereditaments and that the said defendants Ada Louise Clarke and Lizzy Kate Clarke are trustees within the intent and meaning of the Trustee Act, 1859, of the equity of redemption now vested in them as customary co-heiresses of the said George Staffurth Clarke, of and in the said copyhold hereditaments to which the said George Staffurth Clarke was admitted as aforesaid, and which were by him mortgaged as aforesaid to the said Thomas Henry Bush by way of conditional surrender, and to which the said Thomas Henry Bush has been admitted as aforesaid.

17. The plaintiffs are desirous that two new trustees should be appointed in place of the said defendants Ada Louise Clarke and Lizzy Kate Clarke, of the freehold hereditaments devised by the said will of the said testator John Clarke to the said George Staffurth Clarke, in trust for sale as aforesaid, and that two fit and proper persons should be appointed as such trustees for the purpose of selling the said freehold hereditaments and distributing the proceeds of such sale in pursuance of the trusts for that purpose



contained in the said Will, and the plaintiffs are desirous that the same two persons should be appointed new trustees of the said will in place of the said George Staffurth Clarke, deceased, for the purpose of carrying into effect the trusts, powers, and authorities of the said will, so far as the same respectively affect the said copyhold hereditaments by the said will directed to be sold as aforesaid, of the purchase-moneys to be produced by such sale;

18. The plaintiffs are also desirous that all the estate and interest of the said Ada Louise Clarke and Lizzy Kate Clarke, as such customary co-heiresses of the said George Staffurth Clarke as aforesaid, in the said copyhold hereditaments, subject to the said mortgage of the said hereditaments to the said Thomas Henry Bush should be vested in the said two persons so to be appointed trustees as aforesaid to be held by them, upon and with and subject to the trusts, powers and authorities by the said will of the said testator John Clarke expressed concerning the said copyhold hereditaments or such of the said trusts, powers and authorities as are now subsisting and capable of taking effect.

[PRAYER]

THE PLAINTIFFS PRAY AS FOLLOWS:-

1. That two fit and proper persons may be appointed trustees or trustee in place of the said defendants Ada Louise Clarke and Lizzy Kate Clarke, of the freehold hereditaments devised by the said will to the said George Staffurth Clarke, upon trust as aforesaid, and that an order may be made vesting the said freehold hereditaments in the said two persons to be appointed trustees as aforesaid for such estate and interest as the said George Staffurth Clarke, if now living, would have, or as the said Ada Louise Clarke and Lizzy Kate Clarke now have therein as co-heiresses at law of the said George Staffurth

Clarke, to be held by the said Trustees to be appointed as aforesaid upon and subject to the trusts by the said will expressed concerning the said freehold hereditaments or such of them as are now subsisting and capable of taking effect.

2. That the same two persons to be appointed Trustees of the said freehold hereditaments as aforesaid may be also appointed trustees of the said will of the said testator John Clarke, in place of the said George Staffurth Clarke, deceased, for the purpose of carrying into effect the trusts of the said will so far as the same affect the copyhold hereditaments by the same will directed to be sold as aforesaid and the purchase-moneys to be produced by such sale and that subject and without prejudice to the rights of the said Thomas Henry Bush under the conditional surrender of the 15<sup>th</sup> day of April 1852 the said Sale by the said executor Staffurth Clarke of the said copyhold hereditaments to the said George Staffurth Clarke may be set aside and declared void in Equity and that the said defendants Ada Louise Clarke and Lizzy Kate Clarke may be declared trustees within the intent and meaning of the Trustee Act, 1850, of whatever estate and interest in the said copyhold hereditaments may be now vested in them as customary co-heiresses of the said George Staffurth Clarke, and that an order be made vesting the said copyhold hereditaments in the said two persons to be appointed for such estate and interest as the said George Staffurth Clarke, if now living, would have, or as the said defendants Ada Louise Clarke and Lizzy Kate Clarke as such customary co-heiresses as aforesaid now have therein, to be held by the said newly appointed trustees upon and with and subject to the trusts, powers and authorities by the said will expressed concerning the same copyhold hereditaments, or such of the said trusts, powers and authorities as are now subsisting or capable of taking effect.

3. That the defendant John King Watts or some other fit and proper person may be appointed to represent for the purposes of this suit the estate of the said George Staffurth Clarke deceased and that the defendant Tobias Norris or some other fit and proper person may be appointed to represent for the purposes of this suit the estate of the said William Clarke deceased.

4. That for the purposes aforesaid, all proper and necessary directions may be given, enquiries made, and accounts taken.

5. That the plaintiffs shall have such further and other relief as the nature of the case shall require.

NAMES OF DEFENDANTS

The defendants to this Bill of Complaint, are: -

ADA LOUISE CLARKE  
LIZZY KATE CLARKE  
STAFFURTH CLARKE  
JOHN KING WATTS, and  
TOBIAS NORRIS

GEORGE MILLER

Note- This Bill is file by MR.  
ALFRED EUGENE WATTS, of No  
18, Bedford Row, in the County  
of Middlesex, Agent for JOHN  
KING WATTS, of St. Ives, in the  
County of Huntingdon, Solicitor  
for the above named plaintiffs.