

1869 C No.124

Filed 29<sup>th</sup> June 1869  
*Griff*

**In Chancery**

Vice Chancellor Stuart

**Between** CHARLES CLARKE AND JOHN

CLARKE - - - PLAINTIFFS

And

ADA LOUISE CLARKE, LIZZY KATE

CLARKE, STAFFURTH CLARKE,

JOHN KING WATTS and TOBIAS

NORRIS - - - DEFENDANTS

**The Answer** of JOHN KING WATTS of St Ives in  
the County of Huntingdon one of the above-named  
Defendants to the Amended Bill of Complaint of the above  
named Plaintiffs

IN ANSWER to the said Bill I JOHN KING WATTS say as  
Follows: -

1. I admit that the said John Clarke in the said Bill mentioned did duly make and publish his last will and testament in writing bearing date the 30<sup>th</sup> day of March, 1849, and thereby devised and bequeathed his real estates in Warboys in the County of Huntingdon

in the manner and upon the trusts as in the said bill is fully set forth and declared, but for greater certainty I crave leave to refer thereto when produced in this Honorable Court.

2. I believe it to be true that the said testator was at the date of his said will and at the time of his decease seized to him and his heirs for an estate of inheritance in fee simple in possession of a close of Freehold Land or Ground situate and being in Warboys in the County of Huntingdon containing 10 acres or thereabouts and that he was seized to him and his heirs according to the custom of the Manor of Warboys in the County of Huntingdon of another close of copyhold land or ground containing 9 acres 3 roods 24 perches or thereabouts, and I say that the two said closes adjoin each other, and are stated to contain together 20 acres or thereabouts, and that they are now in the occupation of John Upchurch as tenant thereof at the annual rent of £50 payable half yearly as I have been informed by the said John Upchurch and verily believe.

3. I admit that the said testator John Clarke appointed his brother Staffurth Clarke sole executor of his will, and died on the 9<sup>th</sup> day of October, 1849, without having revoked or altered the same, and that the said Staffurth Clarke the said executor duly proved the said will in the Consistory Court of Ely<sup>1</sup> on the 24<sup>th</sup> day of October, 1849.

4. I admit that at the time of the said 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 the will were both living and I believe that they as well as two of the other nephews named in his said will namely the above named Plaintiff Charles Clarke and the above named Defendant Staffurth Clarke had all attained the age of 21 years and that the said John Clarke the over nephew and above named Plaintiff was at the time an infant of the age of 17 years.

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<sup>1</sup> Actually proved in the Archdeaconry County of Huntingdon.

5. I have been informed and from the statements made to me by the said George Staffurth Clarke and in the 12<sup>th</sup> paragraph of this my Answer hereinafter set forth believe it to be true that shortly after the death of the said testator an arrangement was made between his brother and executor the said Staffurth Clarke (now deceased) who was entitled for his life to the income to be derived from the investment by the said will directed to be made of the proceeds to arise from the sale of the copyhold hereditaments by the said will directed to be sold (after payment of certain charges and expenses as therein mentioned and some of the said testator's said 5 nephews that is to say William Clarke George Staffurth Clarke and the Plaintiff Charles Clarke (who had all attained the age of 21 years and were respectively entitled to an equal fifth share of the proceeds to arise from the sale of the said freehold and copyhold estates after the decease of the said Staffurth Clarke (the brother and Jane his wife) 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 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 would pay and discharge the interest which might from time to time accrue due in respect of said mortgage to be made of the said hereditaments and it having been ascertained that the sum of £235 would be sufficient to discharge the said debts charges and expenses and that there was no power in the said will to mortgage the said hereditaments but only a power of selling the same and as the said devisee George Staffurth Clarke was the devisee in trust for sale of the testator's freehold land in Warboys in remainder expectant upon 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 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 the same sum be applied in payment of the said debts charges and expenses.

6. I believe that in pursuance of the said arrangement the said Staffurth Clarke the said executor did make a sale of the said copyhold hereditaments to the said George Staffurth Clarke and conveyed the same to him by an indenture of bargain and sale dated the 13<sup>th</sup> day of April 1852 as in the said Bill mentioned but for greater certainty I crave leave to refer thereto when produced to this Honorable Court but from the statements made to me by the said George Staffurth Clarke and hereinafter set forth in the 12<sup>th</sup> paragraph of this my Answer I believe that the said sale was merely ostensible and that no part of the consideration of £400 in the said indenture stated to have been paid by the said George Staffurth Clarke to the said Staffurth Clarke the executor was ever so paid excepting the sum of £235 raised by mortgage of the said hereditaments as hereinafter produced.

7. I admit that the said George Staffurth Clarke was admitted to the said copyhold estate under the said bargain and sale on the 15<sup>th</sup> day of April 1852 and that the said George Staffurth Clarke thereupon on the same day duly surrendered the said copyhold hereditaments to one Thomas Henry Bush for securing the sum of £235 by way of mortgage and for the reasons aforesaid I believe that the said sum of £235 was paid over by the said George Staffurth Clarke to the said Staffurth Clarke the executor for the purpose of being by him applied and that the same was by him applied in payment of the debts of the said testator as in the said Bill mentioned.

8. I believe that the said sum of £235 is still justly due and owing to the said Thomas Henry Bush upon mortgage of the said copyhold hereditaments with and arrear of interest due thereon from 15<sup>th</sup> day of October 1868. I have been informed and believe that the interest on the said mortgage debt has been regularly paid to the said Thomas Henry Bush by the said Staffurth Clarke the

executor up to the time of his death in the month of November 1863 and subsequently by the said Jane Clarke up to her death in the month of December last.

8. I admit that the said Thomas Henry Bush was admitted to the said copyhold hereditaments under his said conditional surrender from the said George Staffurth Clarke on the 1<sup>st</sup> day of November, 1866, but I believe that the said Thomas Henry Bush never entered into possession of the said hereditaments, but always received the interest moneys due after the death of the said Staffurth Clarke the executor as well as before the date of such admission on the said mortgage security as if no such admission had been taken from the said Jane Clarke the tenant for life of the proceeds of the said hereditaments up to her death in the month of December now last past. I say that I have seen the last two receipts given for such interest monies, and that such receipts are written in the words and figures following: -

“Recd. April 16<sup>th</sup> 1868 of Mrs Clark Five Pounds  
“ seventeen shillings and sixpence for half years  
“the 15<sup>th</sup> April

“per T. H. Bush  
“Thos Bush”

£5	17	6
	<u>4</u>	<u>6</u>
5	13	0

“Recd Oct 16<sup>th</sup> 1868 of Mars Clark Five Pounds  
seventeen shillings and sixpence for ½ years Interest

“p T. H. Bush  
“Thos Bush”

£5	17	6
	<u>3</u>	<u>6</u>
5	14	0

9. I am informed and believe that the said Jane Clarke died on the 21<sup>st</sup> day of December, 1868, and that no administration to her

goods and chattels rights and credits has been at present been taken out.

10. I say that for several years previous to the year 1860 I had well known the said Staffurth Clarke the executor of the said testator and had been consulted by him relative to some matters of business, and that I also know well the said Jane Clarke his widow, and all the children of the said Staffurth Clarke and Jane his wife.

11. I have been informed and believe that the rents and profits of all the said freehold and copyhold hereditaments which accrued thereon up to the 11<sup>th</sup> day of October 1863 were regularly paid by the said John Upchurch and by John Thompson the tenants thereof to the said Staffurth Clarke who died as before-mentioned in the month of November, 1863, and that all such rents and profits as accrued subsequently to the 11<sup>th</sup> day of October, 1863, up to the 11<sup>th</sup> day of October, 1868, were regularly paid by the said John Upchurch to the said Jane Clarke who died as before mentioned in the month of December, 1868, and that there is another half year's rent due for the said hereditaments on the 11<sup>th</sup> day of April last past, and which remains unpaid.

12. I say that on the 23<sup>rd</sup> day of January 1860 the said George Staffurth Clarke applied to me to lend and advance him the sum of £50 upon mortgage of the undivided part or share of the monies to arise from the sale of the said freehold and copyhold estates upon the decease of his father the said Staffurth Clarke and of his mother the said Jane Clarke. He stated that he was only entitled to one fifth share of the money to arise from the said freehold and copyhold estates. He produced a copy of the will of the said John Clarke the testator and upon perusing the same I found that he the said Staffurth Clarke the executor had no power under it to make any mortgage of the said hereditaments and upon my making enquiries of the said George Staffurth Clarke in respect thereof he informed me that a short time after the testator's death it was ascertained that a sum of money was required to discharge the testator's debts and funeral and testamentary and other expenses

and to pay a debt to a person named James Rogers. He also stated that the said Staffurth Clarke the executor had conveyed the said copyhold land to him the said George Staffurth Clarke in order to enable him to raise some money thereupon, but that there was no actual or real sale by auction or otherwise and that it was only an ostensible sale and that he and the said Staffurth Clarke the executor had put a value on the said copyhold land at the sum of £400 and that it had been agreed that the same land should be ostensibly conveyed to him the said George Staffurth Clarke by the said Staffurth Clarke for that amount and which was accordingly done as above stated. He also stated that he the said George Staffurth Clarke never paid any part of the said purchase or consideration money for the said copyhold estate to the said Staffurth Clarke the executor other than the said sum of £235 raised by mortgage of the said copyhold estate of the said Thomas Henry Bush as hereinbefore and hereinafter mentioned. Nor did he the said George Staffurth Clarke borrow any money of the said Staffurth Clarke the executor upon mortgage of the said copyhold estate. Nor was it understood or agreed that any part of the apparent or ostensible consideration of £400 should remain unpaid upon the security of the said copyhold estate. He also stated at the same time that a person named Thomas Henry Bush had agreed to advance £235 upon mortgage of the said copyhold estate and had in fact done so and that a mortgage had been made out to him for that sum but that no other mortgage to any person had been then made or was intended. I afterwards searched and examined the Court Rolls of the Manor of Warboys in the county of Huntingdon whereof the said copyhold estate is holden and found enrolled thereon an indenture of bargain and sale or conveyance made from the said Staffurth Clarke the executor to the said George Staffurth Clarke of the said copyhold hereditaments for the sum of £400 and I also found thereon the admission of the said George Staffurth Clarke under such indenture and also a conditional surrender made from him the said George Staffurth Clarke to the said Thomas Henry Bush dated the 15<sup>th</sup> day of April 1852 for securing the sum of £235 and interest but no other conditional

surrender of the said hereditaments to any person whatsoever.

13. I say that on the 13<sup>th</sup> day of February 1860 I advanced to the said George Staffurth Clarke the sum of £50 upon a mortgage which was effected by a conditional surrender dated the 13<sup>th</sup> day of February 1860 of the said copyhold hereditaments the equity of redemption in the same copyhold estate being then by virtue of the indenture of bargain and sale of the 13<sup>th</sup> day of April 1852 and the admittance of the 15<sup>th</sup> day of April 1852 respectively hereinbefore mentioned vested in him subject to the same mortgage to the said Thomas Henry Bush and by an indenture of assignment of the undivided part or share of him the said George Staffurth Clarke of and in the monies to arise from the sale of the said freehold and copyhold estates in the said will mentioned and which said indenture is dated the same 13<sup>th</sup> day of February 1860 and which indenture is now produced and shown to me and which is marked with the letter "B" and a copy of which conditional surrender is now produced and shown to me and is marked with the letter "A." The said conditional surrender for £50 is entered on the Court Rolls of the said Manor and the original document is deposited with the steward of the Manor according to the custom thereof and I say that the said sum of £50 with an arrear of interest thereon amounting to the sum of £19 4s. 6d. is still due and owing to me upon the said securities up to the 1<sup>st</sup> day of April last past.

14. I say that I also advanced the said Charles Clarke one of the Plaintiffs in this suit on the 11<sup>th</sup> day of June 1859 the sum of £50 upon an indenture of mortgage of that date of his share of the said monies to arise from the sale of the said freehold and copyhold hereditaments and which said indenture is now produced and shewn to me and marked with the letter "C" and I say that the said sum of £50 with an arrear of interest due thereon amounting to £11 12s. 3d. is still due and owing to me thereon up to the 1<sup>st</sup> day of April last past.

15. I say that on the 28<sup>th</sup> day of November, 1859, I advanced the said John Clarke one of the Plaintiffs in this suit the sum of £50



upon an indenture of mortgage of that date of his share of the monies to arise from the sale of the said freehold and copyhold estates, and which said indenture is now produced and shown to me marked with the letter "D," and I say that the said sum of £50 with an arrear of interest amounting to the sum of £12 2s. is still due and owing to me upon the said security up to the 1<sup>st</sup> day of April last past.

16. I believe that the said William Clarke mortgaged his Share of the monies to arise from the sale of the said hereditaments to the said defendant Tobias Norris as in the Bill mentioned but for greater certainty I crave leave to refer to the indenture of the 20<sup>th</sup> day of September 1859 in the 11<sup>th</sup> paragraph of the Bill mentioned when the said indenture shall be produced to this Honorable Court. And I believe that the said William Clarke died at the time mentioned in the said Bill intestate leaving a widow Charlotte Clarke and who is now the wife of William Cox in the said Bill mentioned.

17. I believe it to be true that the said George Staffurth Clarke died on the 14<sup>th</sup> day of April 1865 leaving two infant daughters the above-named Defendants Ada Louise Clarke and Lizzy Kate Clarke his only children his co-heiresses at law him surviving and that the said Ada Louise Clarke and Lizzy Kate Clarke are his customary heiresses of the said copyhold land in Warboys and I believe

that the said George Staffurth Clarke left a widow named Jane Clarke who has since inter-married with and is now the wife of William Birch.

18. I am informed by the said John Upchurch the tenant and believe it to be true that there is now due from him for the use and

occupation of the said copyhold and freehold land and hereditaments  
half a year's rent up to the 11<sup>th</sup> day of April last past amounting to  
the sum of £25.

HENRY T. J. JENKINSON

*J. King Watts*

} Sworn at *Saint Ives in the County of Huntingdon* this  
} *Twenty eighth day of June one thousand eight*  
} *hundred and sixty nine.*

*Before me*

*Jas Vaughan*

*A Commissioner to administer Oaths in Chancery in  
England*