

Bill of Complaint dated 26 July 1838 heard in the Chancery Court

To The Right Honorable Charles Christopher Baron Cottenham of Cottenham in the county of Cambridge Lord High Chancellor Humbly complaining Your Orators infants under 21yrs namely Elizabeth Frances Ahmuty of about 8 yrs and Christopher Rigby Ahmuty of about 6 yrs by Christopher Gerard Rigby Collins of Sidmouth Devon their next friend. The Defendants to the Complaint William Somerville Ahmuty and Edith his wife and Charles Henry Moore.

The Answer of William Somerville Ahmuty and Edith Ahmuty 12 January 1839 summary

These two Defendants admit Thomas Arthur Staples Ahmuty the Testator made and published his last Will and Testament dated 22 October 1832 with three codicils as stated and that on his death Frances Ahmuty alone proved the Will with power reserved to Charles Henry Moore. And that Frances Ahmuty as executrix held all personal estate and effects and transferred into the names of herself and Charles Henry Moore £9899.5s.8d. 3% Consolidated Bank Annuities standing in the Testator's name in the books of the Governor and Company of the Bank of England to answer the legacy the Testator had settled on William Somerville Ahmuty and Edith his wife and their children. And that William Somerville Ahmuty received the dividends and that Frances Ahmuty during her lifetime received the proceeds on the residue of personal estate.

And that Frances Ahmuty departed this life in October 1836 having made her Will and as the sole executor renounced probate Letters of Administration of her estate and effects was granted to William Somerville Ahmuty by the proper Ecclesiastical Court and is now the legal personal representative. Since the death of Frances Ahmuty the other Defendant Charles Henry Moore has proved the Will and codicils of T.A.S Ahmuty the Testator and is now the legal personal representative.

The Defendants have had two children only Elizabeth Frances Ahmuty and Christopher Rigby Ahmuty and say William Somerville Ahmuty the father is unable to maintain and educate them according to their station in society and that these Defendants are necessary parties to this suit as they have an interest in said annuities and in the residuary estate.

The Answer of Charles Henry Moore 12 December 1838 sworn at the Public Office, Southampton Buildings Middx

This defendant believes Thomas Arthur Staples Ahmuty the Testator departed this life not 5 July 1833 as stated but the 4 July 1833 and left surviving Frances Ahmuty his widow, William Somerville Ahmuty (in the Will by mistake called William Ahmuty) and Edith his wife. That on the death of the Testator this Defendant willing to act as a trustee but not in the executorship and Thomas Harvey Baber also an executor and trustee believed to be and still resident in the East Indies, Frances Ahmuty alone proved the Testator's Will in England and Ireland. This Defendant (in the Will by mistake called Charles Moore) admits part of the estate consisted of 3% Consols and that Frances Ahmuty transferred £9899.5s.8d into their joint names and paid the legacies except to Thomas Harvey Baber believed not payable in consequence of his not acting as a trustee. And that after the death of Frances Ahmuty denies transferring said trust sum into his own name.

And that on 20 July last Arbuthnot and Latham of Great Saint Helens, Bishopsgate Street London transferred into his name as trustee £5186.5s.5d comprising £4941.15s 6d from two Bengal Remittable Loan Notes transmitted from India under power of attorney from Frances Ahmuty and the dividends thereof. And that since the death of the Testator he has paid William Somerville Ahmuty the dividends of said annuities. And prays the two Schedules hereto annexed be taken as part of his Answer set forth according to the best of his knowledge and belief a full true and particular account of all the funds and securities upon which the residue of the Testator's personal estate and effects were invested and how he has applied and disposed of same.

And that he has a copy of the executorial account of Frances Ahmuty and divers others of particulars but that the Testator's books and papers always remained in the custody of Frances Ahmuty and has never had in his possession any books of account letters copies or extracts from letters papers documents entries memorandums writings relating to the personal estate of the Testator. And that he did not prove the Testator's Will nor act as executor during the lifetime of Frances Ahmuty but since her death and at the request of the Complainants solicitors has proved the Will and Codicils of the Testator in the Prerogative Court of the Archbishop of Canterbury being the proper Ecclesiastical Court. And that as surviving trustee is willing to account and in all things to act as this Honorable Court shall direct upon being indemnified in so doing and receiving his costs charges and expenses in this behalf incurred.

This Defendant submits to the judgement of this Honorable Court whether William Somerville Ahmuty father of the Complainants is unable to maintain and educate his children according to their station in society and believes William S Ahmuty and Edith his wife have an interest in said annuities and in the Testator's residuary estate and are necessary parties to this suit. Without this there is no any other matter cause or thing in the Bill of Complaint contained material or necessary for this Defendant to make answer unto and not herein and hereby well and sufficiently answered confessed traversed and avoided or denied is true to the knowledge or belief of this Defendant. All which matters and things hereinbefore contained this Defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct and therefore humbly prays to be hence dismissed with his reasonable costs and charges by him about his suit in this behalf most wrongfully sustained. Charles Henry Moore. George Lake Russell

Chancery Papers **Bill of Complaint** dated 26 July 1838

To The Right Honorable Charles Christopher Baron Cottenham of Cottenham in the county of Cambridge Lord High Chancellor Humbly complaining . . Your Orators infants under 21yrs namely Elizabeth Frances Ahmuty of about 8yrs and Christopher Rigby Ahmuty of about 6yrs by Christopher Gerard Rigby Collins of Sidmouth, Devon their next friend. The Defendants were William Somerville Ahmuty and Edith his wife and Charles Henry Moore whose Answers to the Bill have been summarized:

The Answer of William Somerville Ahmuty and Edith Ahmuty his wife dated 12 January 1839:

These two defendants admit Thomas Arthur Staples Ahmuty the Testator did make and publish his last Will and Testament dated 22 October 1832 with three Codicils as stated in the Bill and that on his death Frances Ahmuty alone proved the Will with power reserved to Charles Henry Moore. And that Frances Ahmuty as executrix did possess herself of all personal estate and effects and transferred into the names of herself and Charles Henry Moore £9899. 5s. 8d of 3% Consolidated Bank Annuities standing in the Testator's name in the books of the Governor and Company of the Bank of England to answer the legacy the Testator had directed to be settled on William Somerville Ahmuty and Edith his wife and their children.

The defendants admit Frances Ahmuty and Charles Henry Moore did pay William Somerville Ahmuty the dividends accrued due on said £9899.5s. 8d and that Frances Ahmuty received during her lifetime the interest dividends and annual proceeds on the residue of personal estate. They admit Frances Ahmuty did depart this life in October 1836 having previously made her Will and that the sole executor named did renounce probate. And that Letters of Administration of the estate and effects of Frances Ahmuty were upon her death granted to William Somerville Ahmuty by the proper Ecclesiastical Court and he is now the legal personal representative. Since the death of Frances Ahmuty the defendant Charles Henry Moore has proved the Will of T.A.S Ahmuty the Testator and is now the legal personal representative.

The defendants have had two children only namely Elizabeth Frances Ahmuty and Christopher Rigby Ahmuty infants under the age of 21yrs and say William Somerville Ahmuty the father is unable to maintain and educate them according to their station in society and that these defendants are necessary parties to this suit as they have an interest in said £9899.5s. 8d Annuities and residuary estate.

The Answer of Charles Henry Moore sworn at the Public Office, Southampton Bldgs, Middx dated 12 Dec 1838 This defendant believes Thomas Arthur Staples Ahmuty the Testator departed this life not on 5 July 1833 as stated in the Bill but on the 4 July 1833 and left surviving Frances Ahmuty his widow and William Somerville Ahmuty (in the Will by mistake called William Ahmuty) and Edith his wife. On the death of the Testator this defendant although willing to act as a trustee but unwilling to act in the excutorship and Thomas Harvey Baber also an executor and trustee was believed to be and still is resident in the East Indies, Frances Ahmuty alone proved the Testator's Will and Codicils both England and Ireland. This defendant admits part of the personal estate consisted of 3% Consolidated Bank Annuities and that Frances Ahmuty did transfer into the names of herself and this defendant (in the Will by mistake called Charles Moore) the sum of £9899. 5s. 8d. And that Frances Ahmuty out of the personal estate did pay and satisfy the pecuniary and specific legacies except the legacy to Thomas Harvey Baber believed to be not payable in consequence of his not acting as a trustee.

And this defendant denies that on the death of Frances Ahmuty he transferred the trust sum of £9899. 5s. 8d into his own name. And this defendant saith that on 20 July last Messrs Arbuthnot and Latham of Great Saint Helens, Bishopsgate Street, London transferred £5186. 5s 5d of 3% Consolidated Bank Annuities into his name as trustee, the sum of £4941.15s 6d Annuities being the produce of two Bengal Remittable Loan Notes transmitted from India under a power of attorney from Frances Ahmuty. The residue thereof being the produce of dividends of the £4941.15s 6d which Messrs Arbuthnot and Latham had received and invested. Since the death of the Testator this defendant has continued to pay William Somerville Ahmuty the dividends of said £9899.5s 8d. This defendant prays the two Schedules hereto annexed may be taken as part of this his Answer set forth according to the best of his knowledge and belief a full true and particular account of all the funds and securities upon which the residue of the Testator's personal estate and effects were invested and how he has applied and disposed of same.

This defendant admits he has in his possession or power a copy of the executorial account of Frances Ahmuty and divers others of particulars in that behalf enquired after and has in the Schedules annexed hereto set forth a full and true list., And that the Testator's account books and papers always remained in the custody of Frances Ahmuty and he has never had in his possession or power divers or any books of account letters copies or extracts from letters papers documents entries memorandums and writings relating to the personal estate of the Testator. And that he did not prove the Testator's Will nor act as executor during the lifetime of Frances Ahmuty but that since her death and at the request of the complainants' solicitors has proved the Will and Codicils of T.A.S Ahmuty the Testator in the Prerogative Court of the Archbishop of Canterbury being the proper Ecclesiastical Court. This defendant as surviving trustee is willing to account and in all things to act as this Honorable Court shall direct upon being indemnified in so doing and receiving his costs charges and expenses in this behalf incurred.

Heard in the Chancery Court **Bill of Complaint** 26 July 1838

To The Right Honorable Charles Christopher Baron Cottenham of Cottenham in the county of Cambridge Lord High Chancellor Humbly complaining Your Orators infants under 21yrs namely Elizabeth Frances Ahmuty of about 8 yrs and Christopher Rigby Ahmuty of about 6 yrs by Christopher Gerard Rigby Collins of Sidmouth, Devon their next friend. The Defendants were William Somerville Ahmuty and Edith his wife and Charles Henry Moore.

Summary of the Answer of William Somerville Ahmuty and Edith Ahmuty his wife 12 January 1839:

These two defendants admit Thomas Arthur Staples Ahmuty the Testator made and published his last Will and Testament dated 22 Oct 1832 with three codicils as stated in the Bill and that on his death Frances Ahmuty alone proved the Will with power reserved to Charles Henry Moore. And that Frances Ahmuty as executrix possessed herself of all personal estate and effects and transferred into the names of herself and Charles Henry Moore £9899.5s.8d. 3% Consolidated Bank Annuities standing in the Testator's name in the books of the Governor and Company of the Bank of England to answer the legacy the Testator had directed to be settled on William Somerville Ahmuty and Edith his wife and their children.

The defendants admit Frances Ahmuty and Charles Henry Moore paid William Somerville Ahmuty the dividends on said Annuities and that Frances Ahmuty received during her lifetime the interest dividends and annual proceeds on the residue of personal estate. They admit Frances Ahmuty did depart this life in October 1836 having previously made her Will and that the sole executor named did renounce probate. And that Letters of Administration of the estate and effects of Frances Ahmuty were upon her death granted to William Somerville Ahmuty by the proper Ecclesiastical Court and is now the legal personal representative. Since the death of Frances Ahmuty the defendant Charles Henry Moore has proved the Will of T.A.S Ahmuty the Testator and is now the legal personal representative.

The defendants have two children only namely Elizabeth Frances Ahmuty and Christopher Rigby Ahmuty infants and say William Somerville Ahmuty the father is unable to maintain and educate them according to their station in society and that these defendants are necessary parties to this suit as they have an interest in said Annuities and in the residuary estate.

Summary of the Answer of Charles Henry Moore 12 December 1838

sworn at the Public Office, Southampton Buildings, Middlex

This defendant believes Thomas Arthur Staples Ahmuty the Testator departed this life not on 5 July 1833 as stated in the Bill but the 4 July 1833 and left surviving Frances Ahmuty his widow and William Somerville Ahmuty (in the Will by mistake called William Ahmuty) and Edith his wife. That on the death of the Testator this defendant willing to act as a trustee but not in the excurtorship and Thomas Harvey Baber also an executor and trustee believed to be and still is resident in the East Indies, Frances Ahmuty alone proved the Testator's Will and codicils in England and Ireland. This defendant (in the Will by mistake called Charles Moore) admits part of the estate consisted of 3% Consolidated Bank Annuities of which Frances Ahmuty transferred £9899.5s.8d into their joint names and paid the pecuniary and specific legacies save to Thomas Harvey Baber believed not payable in consequence of his not acting as a trustee. And this defendant denies on the death of Frances Ahmuty he transferred the trust sum of £9899.5s 8d into his own name.

This defendant saith on 20 July last Messrs Arbuthnot and Latham of Great Saint Helens, Bishopsgate Street, London transferred into his name as trustee £5186.5s.5d being £4941.15s 6d from two Bengal Remittable Loan Notes transmitted from India under power of attorney from Frances Ahmuty and the residue the dividends thereof. Since the death of the Testator this defendant has continued to pay William Somerville Ahmuty the dividends of said £9899.5s 8d and prays the two Schedules hereto annexed be taken as part of this his Answer set forth according to the best of his knowledge and belief a full true and particular account of all the funds and securities upon which the residue of the Testator's personal estate and effects were invested and how he has applied and disposed of same.

This defendant admits he has a copy of the executorial account of Frances Ahmuty and divers others of particulars but that the Testator's account books and papers always remained in the custody of Frances Ahmuty and has never had in his possession any books of account letters copies or extracts from letters papers documents entries memorandums and writings relating to the personal estate of the Testator. And that he did not prove the Testator's Will nor act as executor during the lifetime of Frances Ahmuty but since her death and at the request of the complainants' solicitors has proved the Will and Codicils of T.A.S Ahmuty the Testator in the Prerogative Court of the Archbishop of Canterbury being the proper Ecclesiastical Court. This defendant as surviving trustee is willing to account and in all things to act as this Honorable Court shall direct upon being indemnified in so doing and receiving his costs charges and expenses in this behalf incurred.

This defendant submits to the judgement of this Honorable Court whether William Somerville Ahmuty father of the Complainants is unable to maintain and educate his children according to their station in society and believes William S Ahmuty and Edith his wife have an interest in said £9899. 5s. 8d and in the Testator's residuary estate and are necessary parties to this suit. Without this there is no any other matter cause or thing in the Bill of Complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered confessed traversed and avoided or denied is true to the knowledge or belief of this defendant. All which matters and things hereinbefore contained this defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct and therefore he humbly prays to be hence dismissed with his reasonable costs and charges by him about his suit in this behalf most wrongfully sustained. Charles Henry Moore. George Lake Russell

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This defendant submits to the judgement of this Honorable Court whether William Somerville Ahmuty father of the Complainants is unable to maintain and educate the children according to their station in society and believes William S Ahmuty and Edith his wife have an interest in said £9899. 5s. 8d Annuities and in the Testator's residuary estate and are necessary parties to this suit.

Without this there is no any other matter cause or thing in the said Bill of Complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered confessed traversed and avoided or denied is true to the knowledge or belief of this defendant. All which matters and things hereinbefore contained this defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct and therefore he humbly prays to be hence dismissed with his reasonable costs and charges by him about his suit in this behalf most wrongfully sustained.

Charles Henry Moore. George Lake Russell

First Schedule

Part 1 - Particulars of the several funds upon which Frances Ahmuty the executrix invested the residue of the Testator's estate into the joint names of herself and Charles Henry Moore with the dates of the transfers.

Part 2 - Particulars of funds at the time of the death of Frances Ahmuty and in whose names such funds are now standing.

Part 3 - Separate account of the sums of money received by Charles Henry Moore since the death of Frances Ahmuty in respect of dividends and of his application thereof. Charles Henry Moore as surviving Trustee under the Will of the late Lieutenant Colonel Thomas Arthur Staples Ahmuty on account with the cestui que trust.

Second Schedule - List of documents and papers in the defendant Charles Henry Moore's possession

Copy abstract of Deed of Trust executed by William Collins Esq dated 1 August 1810

Letter from Sir Thomas Staples dated 14 January 1833

Two accounts current with James Elliott

Messrs Ball & Company's account current with Lieutenant Colonel Ahmuty

Messrs Smith Payne & Smith's account ditto

The Provincial Bank of Ireland's account ditto

Captain Baker's account as to arrears of pay due to Lieutenant Colonel Ahmuty

Probate of the Will and Codicils of Lieut. Col T.A.S Ahmuty granted to Frances Ahmuty the 9 October 1833

Copy Marriage Settlement of Thomas Arthur Staples Ahmuty Esq. with Miss Frances Staples 2 December 1803

Bond of Robert Smyth Esq of Portlick in Co. Westmeath dated 16 January 1824 in penalty of £200 for securing £100 and interest

Warrant of Attorney by Robert Smyth Esq dated 16 January 1824 to confess judgement on Bond for £200

Copy of executorial account of Mrs Frances Ahmuty of the estate and effects of Lieut Colonel TAS Ahmuty

Bundle containing forty one vouchers inclusive relating to the payments in executorial accounts

Eight Bank receipts relating to transfers made by Frances Ahmuty to Trustees

Copy duplicate receipt for Bengal remittable Loan Note for 31,700 Sicca Rupees deposited by Lieutenant Colonel Ahmuty with Accountant General Fort St George and dated 31 December 1822

Copy duplicate receipt for Bengal remittable Loan Note for 6000 Sicca Rupees deposited by Lieutenant Colonel Ahmuty with Accountant General Fort St George and dated 18 January 1823

Duplicate Power of Attorney dated 4 August 1835 from Mrs Frances Ahmuty to Messrs Arbuthnot & Company to receive payment of Bengal remittable Loan Notes

Duplicate letter of instruction from Mrs Frances Ahmuty to Messrs Arbuthnot & Company dated 8 August 1835

Bundle of papers and letters relating to Bengal remittable Loan and its payment of including Messrs Arbuthnot and Frasers' account thereof transmitted from India and some letters of Messrs Arbuthnot & Latham relating to the investment of the proceeds

Five Bank receipts relating to investment of proceeds of Bengal remittable Loan Notes in £3 percent Consols and dividends thereon

Four Bank receipts re to investment of dividends on trust funds by Mr Moore since the death of Frances Ahmuty

Two Cases with Mr G.L Russell's opinion thereon

Double probate of the Will and Codicils of T.A.S Ahmuty granted to Charles Henry Moore on the 31 July 1838

General Trust Account kept by Mr Moore from commencement of trust to the present time