1767-001 SOUTHAMPTON COUNTY CHANCERY PAPERS IVEY vs. ATKINSON & WIFE & al 5/1767

other surnames: Howell, Adams, Reese, Harris,

Jany
agst
Atkinson & Wife
& Howell

Bill &
Answ

6 Mar 64.
time to ans
May 64.
time to ans
Aug 64
Att. ag. w. to ans
Mar 66

Sup. Decm
July 1766 Sch. produced
2 sch. for hearing
Aug 66 Ord
Sept. cons. to be the
next court
Aug 1766
ord
Sep cons
Ordered
Dismd
Jan 1767
ord
May
Ordered
Dism

To the Worshipful his Majesty's Justices of the Peace
for the County of Southampton sitting in Chancery

Humbly complaining sheweth unto your Worships your
Orator John Ivy of this County That one Burwell Atkins
being seized & standing thereof in Fee in his
Demesne of a certain Tract or parcel of Land situate lying
being in the County containing fifty five Acres more or less.
Westerly by the Great Branch and on the other sides by the Land of Henry
Adams the said John Ivy your Orator Henry Westbrooke and bounding
at the Three Creeks on the South Side thereof he the said Burwell and Olive his Wife
the Twenty third Day of March last past came to an Agreement with
your Orator for the absolute Purchase thereof in Fee Simple for the
Sum of eight Pounds & in receipt one pound in part
Consideration Money as by a Receipt in Writing signed by the
Burwell Atkinson not here shewn to which your Orator for greater
Certainty reference may be had as part hereof is more
fully & particularly mentioned Your Orator shews That he rested
satisfied with the Certainty of his Purchase thus reduced to Writing as
the said Burwell & Olive his Wife assured your Orator that the same
was valid & that they would execute a proper Deed for the same
required But instead of doing this your Orator was informed
they had executed a Deed to one Nathaniel Howell for the same
Land And on asking the said Nathaniel was told by him that it
was true Accordingly the said Deed from Atkinson & his Wife
to the said Nathaniel was proved & recorded in this Court & the

Day of last past although the said
Nathaniel well knew of your Rator's Purchase before he made his &
before he had his Deed Recorded for the same Land was told by your
Rator of his Purchase & Bond & Advised not to pay the Consideration
Money (as he had not then done it as he informed your Rator)
[illegible] wherewith Rat[illegible] friendly [illegible]
applied to the said Burwell Atkinson & Olive his Wife before they
Conveyed to the said Nathaniel & to him joined Requesting a due performance
of his Agreem[t] aforesaid by the said Burwell & Olive And also joined
by the said Nathaniel who being a Purchaser with Notice of your
Rators prior Purchase is but a Trustee for your Rator and will
in Equity & Justice be considered as such But now so it is
may it please your Worships That the said Burwell & Olive tho' the
[illegible] knowledge of your Rator's [illegible] Purchase
prior to the said Nathaniel's pretended that having parted with
all that Legal Right they had in the Land to the said Nathaniel they
are not now obliged to make your Rator any Right or Satisfaction
which he may seek for of the said Nathaniel the said pretended
That he hath got the Legal Right by the said Deed and altho' he
knew of your Rator's prior Purchase) he will keep it and
[illegible] may take his Remedy as[illegible] the other Defts — All which
Actings & Doings of the said Burwell & Olive & Nathaniel being
contrary to Equity & Justice & tending greatly to the Ruin and
Hurt of your Rator & to defeat Consideration whereof and for
That your Rator is Remediless at Law and only & properly
relievable in this Court where he can have a Specific performance
of his Agreement with the said Burwell & Olive decreed him And
the said Nathaniel who had Notice of such Agreement & Purchase
decreed to convey the Land to him To the End therefore That the
said Defts Burwell & Olive & Nathaniel may on their respective
Corporal Oaths full true Perfect & Direct Answer make to all &
singular the Premises & [illegible]
Allegations & [illegible]
again repeated & interrogated and more particularly That
and each of them know of the Agreement aforesaid for the
Purchase of the said Land? Did not the said Burwell & Olive
make the same & the said Burwell receive twenty Shillings in
Part of the £8. Consideration Money mentioned in the
Rec[t] therein before mentioned? Did not the said Nathaniel
know of this before & before he had the same Land & thereupon did
[illegible] for the said Land? [illegible] any [illegible]
Was he not advised by your Rator & then not to pay his
as he knew his Right could not be good under the Circumstances
And that your Rator may have a decree That the said
Nathaniel's Purchase may be decreed null & Void And the other
Defts obliged to make him a good Title to the said Land or his
Paying the residue of the Purchase Money according to his
Agreem[t] or That the Deft Nathaniel in whom the Legal Title
aforesaid is vested may make such Deed — And
your Rator further or otherwise relieved in the Premises
according to Equity & good Conscience May it please your
Worships to grant his Majesty's Writ or Writs of Subpœna &

Wiles Cary & Comp[a]

The answer of Olive Atkinson one of the Defts to the bill of Complaint of Jn° Ivey complainant

This Defendant now and at all times hereafter saving and reserving to her self all advantages of exception to the manifold untruths incertainties and imperfections in the complainants said bill contained for answer unto, or to so much thereof as this defendant is advised is material for her to answer unto she answereth and saith that she never made any such agreem[t] with the compl[t] for the sale of the land mentiond in the compl[ts] bill but purchased the same for her sone Nath[l] Howell & always intended it for him and never agreed to dispose of it to any one else without that that &c

Olive her + mark Atkinson

Sept[r] the 14 1764

the above Ans[r] Sworn to before me H Edmunds

Atkinson Olive

Answ
ord 3 Answ
Dupy

filed 8 pl 1764

The answer of Nath[l] Howell one of the defendants to the bill of complaint of Jn[o] Ivey complainant

This defs now and at all times hereafter saving and reserving to himself all and all manner of advantage of exception to the manifold uncertainties insufficiencies and imperfections in the said complainants said bill of complaint contained for answer thereto or to so much thereof as this defs is advised is material for him to make answer unto he answereth and saith that the land in the bill mentioned was by this defts mother Olive Howell now Olive Atkinson purchased whilst she was the widow of Edmund Howell this defendants father of one Robert Adams that the said Olive always told this defs that it was for him that she made the purchase this defs never knew of the said Burnett Atkinson and his wife Olive making any agreemt for the same with the complt other than that he hath heard that the complt applied to the said Burnett to get the same but he refused on which the complt told the said Burnett that it was all his land and if he could get it by cancelling or petitioning whether he would defend the bill the said Burnett then told him that if he would give him the sum of £8. 0. 0 if he got it he would not which the said complt agreed and as this defs hath heard gave the said Burnett the sum of £8 This defs further saith that his mother the other defs Olive always refused to get the same she having purchased it for this defs use nor does this defs believe that there was any other agreemt between the parties than as above declared

Nathaniel Howell

Sept[r] 13th 1764

the above answ[r] sworn to before me

H Edmunds

Ivey
v
Atkinson
Rough Jurne

May
Southampton ~~June~~ court 1764.

John Jory ~~Pltf~~ } In Chancery
v.
Bennett Atkinson & Olivi his wife & ~~Defts~~
Nathaniel Bowell . . . Defts

20
15
33
30
40
40
52
229

The cause was this day heard on the bill answer depos and the arguments of the counsel on both sides in consideration whereof It is ordered ~~that~~ decreed and ordered ~~that~~ the bill of the plaintiff be dismissed and ~~that the pltf pay the defts~~ the Pltf pay unto the defts his costs

The costs of the ~~pltf~~ defts 229
4 9 5
10 4 1 10

Jer Ll. 10.

Jury . . .

Atkinson & Wife } Pltffs
Thanet

Pol[e]on Ohio
Atkinson & Nath[l]
Green
Barron & Atkinson
Inhabitant

George the third by the grace of god of Great Britain
France and Ireland King Defender of the faith &c
To the Sheriff of Southampton County Greeting
we command you that you Summon Burwell
Atkinson & Olive his Wife & Nathaniel Harrell to appear before
our Justices of our said County Court at the Courthouse
on the second Thursday in March next
to answer a bill in Chancery exhibited against them
by John Ivey
And this they shall in no wise
omit under the penalty of £100 each And have then
there this writ witness Richard Hills Clk of our
said court at the Courthouse the 27th day of
February in the fourth year of our reign

R Hills Clk

Jury
Attorney
Atto

Exon Nathal
Stones Josiah
Atkinson Benen
Atkinson Nath.l
Atkinson

George the third by the grace of god of Great Britain
France and Ireland King defender of the faith &c To
the Sheriff of Southampton County greeting we
command you that you attach Burwell Atkinson
and Olive his wife late Nathaniel Howell so that you
have their body before our justices of our said
county court at the court house of the said county
on the second Thursday in September next to answer
us as well of a certain contempt to us offered as it is
said as upon those things which to them then
and there shall be objected and have then there
this writ witness R Kello Clk of our said court at
the court house the ninth day of August in the
fourth year of our reign

R Kello Cl

For not answering the bill of complaint
of [illegible] exhibited against them
John Ivey.

The Deposition of Benj.a Adams of full Age being also sworn in the same Suit Deposeth & saith that he was riding (some time after this Dep.t understood Burwell Atkinson had sold his Land to Nath.l Howell) with the s.d Burwell Atkinson and the s.d Atkinson informed him that he had sold the said Land to the said Nath.l Howell for the Consideration sum of five Shillings & the making of one p.r Breeches and the sum of thirty Pounds Cash to be paid the s.d Atkinson Son when he should come of Age and further this Deponent saith not

10th July 1765 Sworn to before Pat.k Tidley. Henry Taylor James Jones

Benjamin Adams

The Deposition of Joseph Reace of full age being also sworn in the same Suit Deposeth & saith that he heard the s.d John Ivey say since the Commencement of the s.d Suit, that whatever Cash he expended in getting the s.d Land that the same sum was to be deducted out of the Purchase Money of the s.d Land & further saith not

his
Joseph R Reace
Mark

10th July 1765 Sworn to before Pat.k Tidley. Henry Taylor James Jones

Southampton Co.ty to wit,

Pursuant to the within Dedimus Potestatem to us directed We have examined Edward Harris, Lucy Adams, Benjamin Adams & Joseph Read whose Depositions We send herewith Annexed

Certified under our hands & Seals this tenth Day July 1765

Tho. Tidley.

Henry Taylor

James Jones

Jury
Attorney Gl

Exd July Court
1765

George the third by the grace of god of Great Britain France and Ireland
King defender of the faith &c To James Ridley Henry Taylor and
James Jones ~~~ gent greeting know ye that we trusting to your ~
fidilitys and providence circumspection in diligently examining whatsoever
witnyes as well on behalf of John Ivey plt as Burwell Atkinson & Olive his
wife and Nathaniel Howell Defts. command you or any two or more of you
that at such certain days and places as you shall appoint you assemble
your selves and the witnyes afores'd before you or any two or more of you you
call & cause to come and diligently examine on the holy evangelists of almighty
god and their examination with our court of our county of Southampton
without delay you shall send and certifie inclosed returning also
to us this writ witnys Richard Kello clerk of our said court at the
courthouse the fifteenth day of march in the fifth year of our
reign

R Kello C

The Deposition of Edward Harris of full age in a
Suit in Chancery depending in Southampton County
Court, between John Ivey Plt & Burwell Atkinson
& Olive his Wife & Nathl Howell Defts being first sworn
upon the Holy Evangelists of Almighty God, Deposeth &
saith that about Seven Days after the 3d Burwell Atkinson
had Executed a Deed to the said Nathaniel Howel for
his Land, the Deponent being now in the house
he heard the 3d Burwell Atkinson ask the 3d Howel if
he had rec'd satisfaction for the 3d Land the 3d Burwell
answered that he should upon the 3d Howels paying
him five Shillings Virginia money for making him one pr
Breeches & further this Deponent saith not

Edwd Harris

Sworn to before
Ridley.
Henry Taylor
James Jones.

The Deposition of [illegible] full age being
also sworn in the same suit Deposeth & saith that
Nathaniel Howel [illegible] came to the House of John Ivey where this
Deponent was & the wife of the 3d Ivey & Nathl
Howel was mentioning Burwell Atkinsons selling
his Land to the 3d Ivey, that the wife of the 3d Ivey
inform'd the 3d Howel that her Husband had
purchased the 3d Land & paid part of the Consideration
Money & that her Husband had given a Bond
for the Acknowledgment thereof as coming drawn
This Deponent further saith that the [illegible] was
at the House of the 3d Ivey at the time the 3d Ivey & the
3d Atkinson was entering into Writings about the 3d
Land, after the same was concluded upon Olive the
Wife of the 3d Burwell came to the 3d Ivys House
understood what had been done which she
at, upon which the 3d Ivey tells the 3d Atk

Southampton Co[y]ss Court

Pursuant to the within Order of Court to us directed We the Subscribers have Viewed and Laid off the Land therein mentioned Beginning at a Corner Gum Standing in Benjamin Adams's Corner Line and Running thence with the Division Line as Run and Marked Thence Course[d] and Distance as Run and Marked Thence Course[d] and Distance as Run and Marked Thence Course[d] and Distance as Run and Marked to the Beginning Corner Tree Given under our Hands & Seals this Fifth Day of July 1765

Test Jno Hicks

Benjn Taylor

James Jones

Jury
Jno Atkinson Jr

Jno De Witt

Recd. July Court
1765

I the undersigned Lucy Adams do hereby Relinquish my Right and Title to the Land and Plantation whereon I now live unto Mr Joseph Atkinson Jun[r] and do hereby Promise to Make over unto the said Atkinson a Deed for the same when Requested Witness my Hand this 10th July 1765

Lucy Adams

Sworn to before me

Jno Hicks

Jno Hicks

Clerk

Memorandum the word Children was Interlined before Signing

Lucy Adams

Sworn to before me

Jno Hicks

Clerk