1770-006 SOUTHAMPTON COUNTY CHANCERY PAPERS DRAKE'S ADMR VS FISHER 2/1770

other surnames: Wright, Scott, Johnston

11. 14. 6.
27. 8. 3¾.

29. 2. 11¼.

Janry
1760
Feby 7. 60.
Feby 7 7
Apr 24
Feby 7.
June 27

10 Dec 62
Feby 7.

9. 1. 8. ¾
8. 4. 7.

0. 17. 1. ¾
4. 11. 4

9 ¼

Allow
9 1

Drake
v.
Fisher
Bill
Decree
Costs
21

To the worshipfull Justices of Southampton
County Sitting in chancery

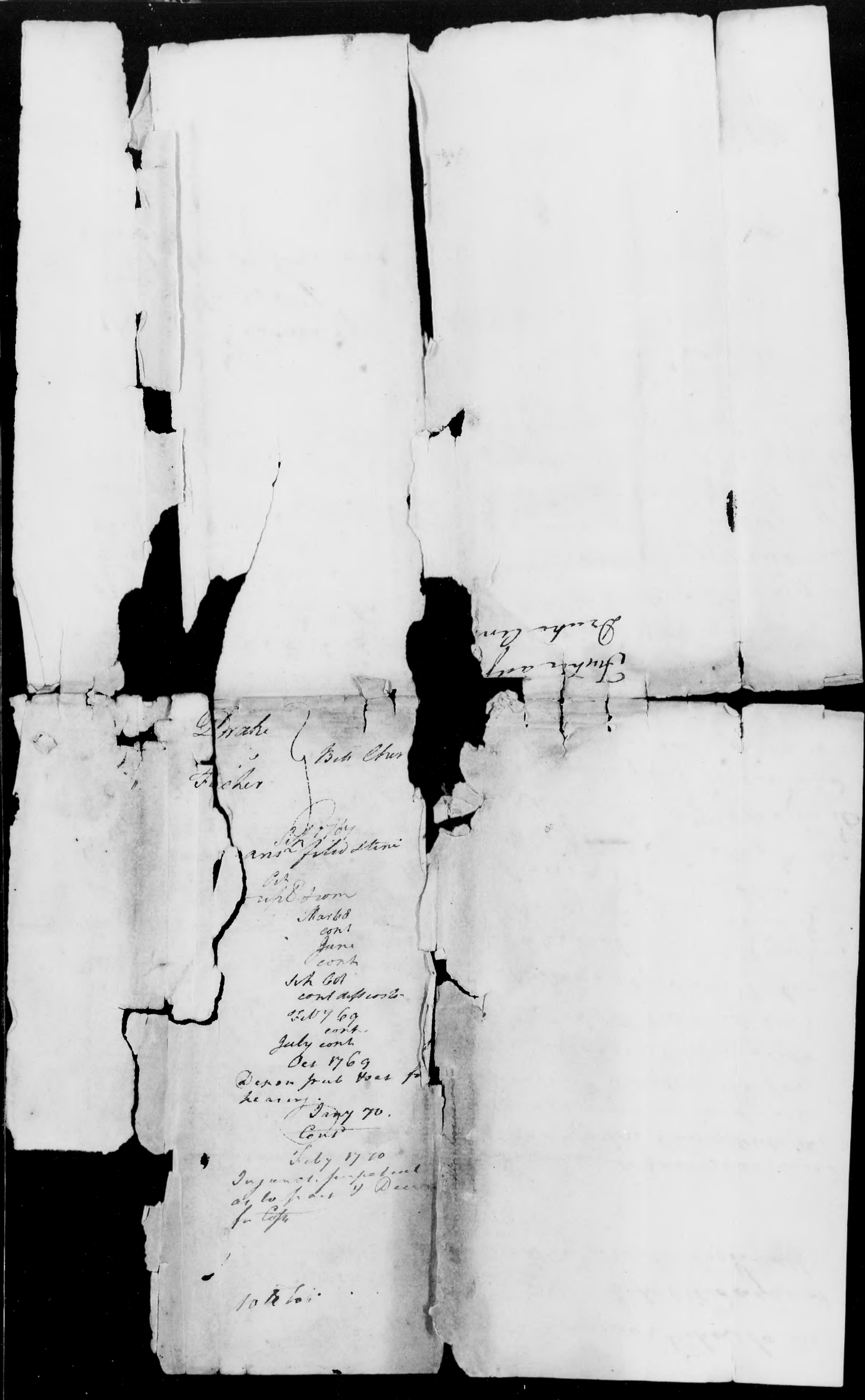
Humbly complaining sheweth unto your worships your orator
Barnaby Drake. Administrator de bonis of Timothy Drake dec.
late of this county dec.d That your orator's father the said Timothy
in his life having sundry dealings & transactions with one
Thomas Fisher of the county of Nansemond merchant. did on
such dealings become indebted to the said Thomas Fisher in
a considerable sum of money ~~& for the payment thereof gave his bond~~
~~Your orator further sheweth unto your worships that the said~~
~~Timothy before his death~~ made several considerable payments
~~on the same. Which are credited thereon~~ & the bond being
a penal one & unskilled in accounts. was prevailed
on by the said Tho: Fisher before the said accounts were
properly settled & adjusted to Sign a bond for the debt alleged
to be due by the said Tho: to himself. Your orator further
sheweth that the s.d Timothy ~~deceased~~ did before his death
make many considerable payments on the said bond &
particularly one to the value of £30. gratuity Value
the said Fisher was (Money, Tar, Pitch & other commodities
nearly to the amount of the debt really & bona fide due
to the said Thomas for which your orator understands he hath
not proper Credits. Your orator further sheweth that immediately
after the death of the said Timothy the said Tho: Fisher
commenced an action at law agt your orator as his Admin.
for the penalty of the said bond, notwithstanding your
orator alledges that the accounts & dealings between the s.d
Tho: & your orators intestate were not properly settled before
the giving the said bond nor hath the s.d Tho: Fisher given
all the just credits & payments. made by the s.d Timothy
in his life time as he hath been informed. & is now ——
prosecuting the s.d bond agt your orator & hath obtained
a judgment thereon for a much larger sum than is
bona fide due to him. But so it is may it please
your worships that notwithstanding your orator hath
represented to the s.d Tho: the iniquity of such proceedings
& hath frequently desired him to sink the accounts betw.
your orators intestate & himself prior to the giving the
bond agt. as he was ignorant in matters of account
& also to give him proper credits thereon. yet he persists in
the prosecution of his said action. All which is contrary
to natural justice. & to the right of your orator & his
& his intestates children claiming his est. In tender Cons.
Nor can your orator be relieved in any other manner than
by the interposition of this worshipfull court. To the end ——
Therefore that the said Thomas Fisher may upon his

corporal oath full true & perfect answer make to all & singular
the allegations of this Bill as fully & particularly as if the
same were herein again repeated & interrogated - & that your
worships will decree & order that some persons skilled in
accounts may be appointed to pick & settle the accounts
between your Orat & the Defts Testr. prior to
the bond given by the sd intestate - & that he may be
perpetually injoined not to proceed on the sd judgments
at law for any more than what shall by appear to be
justly & bona fide due to him on a just settlement
May it please your Worships to grant unto your Orat
not only his majestys writ of Sub but also his majestys writ
& writs of injunction to be directed &c

Sworn to in court

Wells

Drake
v.
Testr
} Bill
of inj
to dis
21



The Answer of Thomas Fisher to the
Bill of Complaint Exhibited against
him by Timothy Drake Complt

Deft Saving & Reserving to himself all & all manner
of Benefit & advantage of Exception to the many Untruths
Uncertainties Insufficiencies & Imperfections in the said
Complainants Bill of Complaint Contained for
Answer thereto Saith that the Account hereunto
annexed Exhibited now by the sd Deft for which he
prays may be taken as part of this Answer to the
Complainants Bill & that such Account Contains
to the best of this Defendants knowledge a true &
Just Account of all the Dealings & Transactions
Between the said [illegible] Father [illegible] Timothy Drake
deceased in his Life [illegible] & Will the sd Deft & the Complt
Since the Death of the [illegible] Timothy the Elder and
by the said Account [illegible] appears to be still due
[illegible] by the said Account
[illegible] appear that [illegible]
[illegible] Bill [illegible]
[illegible] Due to the Deft & this Part no Farthing
Therefore this Deft humbly prays that the
Injunction Obtained by the Complainant may
be dissolved & that this Worshipful Court Dismiss & that this
Deft may be at Liberty to prosecute his Judgment
in the Court of Common Pleas. & Deft Without that
that

Thomas Fisher

Virginia County
Nov 10th 1767
Sworn to before me
[illegible]

Berkeley

Job Wright of full Age being first sworn on the Holy Evangelist Deposeth and sayeth that about twelve or thirteen years ago he was in Company with Thomas Fisher and Timothy Drake the Father of the present Defendant and heard Thomas Fisher say that he was to pay Thirty Pounds to one Arthur William for the said Timothy Drake and that he saw Twenty Pounds of the said money paid, and further saith that he heard Thomas Fisher say that he Intended to take the Deed in his one name as Security for the said money, but that when Timothy Drake had paid him back the said money that then he would make him a Title to the said Land and further saith not

Job Wright

Taken before us
ye 19th Augt 1769

Jesse Brooke
A Jones

James Jordan Scott of full age Solomnly affirmeth and saith that he heard Thomas Fisher say that if Timothy Drake the Father of the Defendant should never pay him for the said Land that he had Conditionally agreed with the said Timothy for, he was to pay to him the said Thos. Fisher the sum of twelve, or fifteen pence, p Barrel for Every Barrel of Tarr he burnt on the said Land

Jur. Jordan Scott

Taken before us
ye 19 Augt: 1769

Jesse Brooke
A Jones

Richd Johnston being of full age being first sworn upo
the Holy Evangelist of Almighty god Deposeth and saith
that he heard Thos Fisher say that if Timothy Drake
did not pay him for the Land he bought of Arthur
Williams in a certain time that he the said Thos Fisher
was to keep the Land as his one and further saith not

his
Richard X Johnston
mark

Taken before us
the 19th of Augt 1769

Jesse Browne

A Jones

Timothy Drake son of Timothy Drake Dec. being of
full age being first sworn on the Holy Evangelist
Deposeth and saith that in the life time of his
father he was Hired to Thomas Fisher at the Rate
of Eight pounds p year and that he stays with him
the said Fisher abought Eight months and
that he understood that his Hire was to be applyd
to the Credit of his Father Decd with the said
Fisher and further saith not

his
Timothy X Drake
mark

Taken before us
the 19th Augt 1769

Jesse Browne

A Jones

Trembletts

Drake

Acy 1764
unpaid
Aug 64
Praym 66
Cont

Ex. to Jno Wilkinson Esqr

Elect Barnaby

Young Butt Esqr

15
39 5 8 2
15 14 3 2
6 4

15 10
12 4 18

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 take Baker & Brake if he be found within your Bailiwick, and him safely keep, so that you have his Body before our Justices of our said County-Court, at the Court-House of the said County, on the second Thursday in May next to answer Trouble and Damage one hundred and two pounds

and have then there this Writ. Witness W. Fitzhugh Clerk of our said Court, at the Court-House aforesaid, the 13th Day of April in the fourth Year of our Reign

W. Fitzhugh

Drake
~
Fisher

Ded Peters

George the third by the Grace of God of Great Britain
France and Ireland King defender of the faith &c To
Jesse Browne & Albridgton Jones ~~~~ and Gusting
Know ye that we trusting to your fidelity & prooderth
circumspection in diligently examining whatsoever matters
as well on behalf of Barnaby Drake Esq as Temple & Fowler
Esqrs Command you or any two or more of you that at
such certain days & places as you shall appoint you
assemble yourselves and the witnesses aforesd before you
or any two or more of you you call and cause to come
and diligently examine on the holy evangelists Salvation
god and their examination into the court of our said county
of Southampton without delay you shall send and
certify inclosed returning also to us this writ with
Witness Richd Tullo clerk of our said court at the court
house the 8th day of April in the ninth year of our
reign.

R Tullo

Recd Jany 31. 1760 Tob.o to the Value of three pound two Shillings & 8d ——— Semble & Fisher

Recd Feby 9. 1760 for the Value of one pound two Shillings ——— Semble & Fisher

Recd Apr.l 24.th 1760 for the Value of ~~ten Shillings~~ Semble & Fisher

Recd June 27. 1761 for the Value of six pounds Seventeen Shillings & 3 ——— Semble & Fisher

Recd Oct.r 10. 1762 Cash on Act. the within twenty four pounds one shilling ——— Semble & Fisher

7 July 1759.
Debt ——
int. to 4 Feb.y 7th
to July 8. 1770

£61 14. 6.
27. 7. 2 3/4
79. 1. 8 3/4
58. 4. 7. 4
20. 17. 1 1/4
4. 11. 4.
16. 5. 8 1/4

Jany 31. 60. £
Int. to July 8. 70.
Feby. 9. 60. ——
Int to Feb 8. 70.
Ap 24. 6.0 £ ——
Int. July 8. 70 ——
June 27. 61. ——
Int to July 8. 70.
Oct 10. 62. ——
Int to July 8 70.

£ 3. 6. 8
1. 13. 7. 1/2
1. 2.
16. 0.
10
3. 6. 2
6. 17. 3.
2. 18. 6.
24. 1.
8. 16. 3. 2

5. 6. 8.
2. 18. 2.

Injunction
Int from Mar 1759.
Copies in Chancy

£58 4 7 1/2

6/ 367 Debt. 60.
61. 4. 3. 11. 4
4. 11. 4

Timothy & Barnaby
Debtors, Bond for
£51. 14. 6 ——
July 9. y. 1759

& Barnaby ——
Mar 65
Int to cont 92 Virgin
Grant Warrs.
July 1765
cont.d
Aug 65 bill sworn to
Fisher to abs.
Sept.r cont.d for ans.r
Aug 1766
cont.d for answer
Sept cont
Oct cont
Dec.r cont
a pet. con
May
cont
Sept cont
July
cont

£3. 14

KNOW all Men by these Presents, That We Timothy Drake Sr. and Barnaby Drake, his Son, are held and firmly bound unto Henning Temple & Tho Fisher in the just and full Sum of One Hundred and Three Pounds Nine shillings, Current Money of Virginia

To be paid unto the said Temple & Fisher their certain Attorny, their Executors, Administrators, or Assigns: To which Payment well and truly to be made, We bind ourselves, jointly and severally, our joint and several Heirs, Executors, and Administrators, firmly by these Presents. Sealed with our Seals, and dated this Seventh Day of July Anno Dom. One Thousand Seven Hundred and Fifty Nine

THE Condition of the above Obligation is such, That if the above bound Timothy Drake Sr. and Barnaby Drake his son, ~~Or Either of them~~ do and shall well and truly pay, or cause to be paid, unto the said Henning Temple & Thomas Fisher their certain Attorney, ~~their~~ Executors, Administrators, or Assigns, the just Sum of Fifty One Pound Fourteen shillings and six pence Current Money as aforesaid Then the above Obligation to be void; or else to remain in full Force, and Virtue.

Sealed and Delivered in the Presence of

Jam: Bridger
John Taylor

his
Timothy T Drake
mark
Barnabas Drake

Know all Men by these Presents That We
Barnaby Drake & Richard Kello
are held & firmly bound unto Temble & Fisher
of the same County in the full & just Sum of £103 9.
to binds Current Money To be paid to the said Temble &
Fisher his Certain Attorney Executors & Admors
To which payment well & truly to be made We bind
ourselves each of us our & each of our Heirs Exors
and Admors jointly & severally firmly by these
presents Sealed with our Seals & Dated this
15 Day of March 17[illegible]

The Condition of this Obligation is such That Whereas
the above bound Barnaby Drake hath obtained
an Injunction to stay the ~~proceedings~~ Execution on a Certain
Judgment obtained in the Court of the County of Southampton
held by the above named Temble & Fisher ~~the 15th~~
against the above bound Barnaby Drake ~~this~~ Day
~~of this~~ Day ~~last past~~ Now if the above bound
Barnaby Drake his Heirs Exors shall well & truly pay
and satisfie all such Sum or Sums of Money & Costs
which shall be now due & owing ~~on the Decree~~
upon the Judgment aforesd. and also satisfie & pay
unto the said Temble & Fisher all such Cost as
shall be awarded agst him in Case the Injunction aforesd
be dissolved Then this Obligation to be void or else to
remain in full force power & Vertue Barnaby Drake Seal

Sealed & Delivered
in Presence of
Wm Fisher

Richd Kello Seal

57. 14. 6.

7 July 1770. 10 7 Years 1m

3. 6. 8
1. 13. 7½
1. 2.
11.
10.
3. 5 ½
6. 17. 3
2. 10. 6.
24. 1.
8. 16. 32
49. 19. 9¾
5. 6. 8
2. 10. 2
8. 1. 7½
50. 1m 7

Chas Dyer

69
68
67.
66

221.
30
1719.

45
9
36

24. 10
3. 1. 4.
4 11. 6