

1798-020

SOUTHAMPTON COUNTY
CHANCERY PAPERS

HOLMES vs. BOWERS

12/1798

Holmes } Bill.
27
Bowers. }

Decr 1798
Dein for want of
bond & secy. &c

To the Worshippful Court of Southampton in chancery sitting,
humbly complaining Sheweth unto the Court your orator Joseph Holmes.
of the County of Isle of Wight.

That your orator had an account
against a certain John Bowers of this County, for the tuition of his son
and some articles of medicine amounting to about the sum of Sixty three
pounds, that of this he paid him through the hands of one Costarphen
ten pounds, two dollars Murep was also placed to his credit for e-
recting a stile, and twenty pounds for timber & the building of a
small house, leaving a balance of about £ 33. Still due to your ora-
tor. your orator further sheweth, that on or about the day of

1779 he put the said account into the hands of Richard Gasham
requiring, that if the said Bowers failed to give his bond for the
balance, that suit should be thereupon instituted, your orator con-
fessing indisputably, that the said Bowers upon application, stated
no objection to your orator's account, only to some trifling charge
of medicine furnished his son while sick at your orator's house,
and that he repeatedly promised, that he would go down to
Southampton & see your orator himself, and adjust that point &
if he did not pay him the money, he would then give his bond,
under these promises your orator waited some months, but finding
that no balance was to be placed on him, he decided that suit
should be instituted, and which was accordingly done,
your orator's attorney, as he has been informed, considering the said
Bowers as a man of great integrity & circumspection, did suppose that
his promises upon this occasion was unexceptionable, not doubting but said
Bowers would confess in Court, the sum that he had repeatedly done
to him, and that the only point left upon for dispute, was the trifling
charge for medicine furnished his son, that the matter stood when
the jury was sworn, when to the great astonishment of your
orator's attorney, the said Bowers refused to acknowledge what
he had before done, and brought forward a lengthy account
against your orator for the timber & the building of the said house,
making out therefrom that your orator was in his debt, & evidence
also establishing, that the timber & the building was reasonably worth
what he had charged, ^{in its present state,} when the fact is, that the said Bowers only built
the shell, or outside of the house, ^{with a few shales} the other parts having afterwards been com-
pleted by other workmen at your orator's expense, Hence it will be
necessary to state the agreement & circumstances respecting the house

The said Bowers agreed with your order to furnish timber & build a small house, and your order was to allow him in such and what any two good workmen said it was worth, after his work was done to the house, your order called upon a Mr. ^{Jeffrey Whitehead} ~~Chapman~~, the person whom Bowers had employed to build the house, and one other respectable workman, who valued the said building as far as Bowers had completed it, & the timber furnished by him to £20. and no more, and for this sum the said Bowers was credited in account with your order.

Notwithstanding the premises, upon the trial of the cause in March term last, a verdict was found in favour of the said Bowers, entirely owing to the surprises, & the improper state your order allowing was in, after the jury was sworn, and which your order is well exposed could not have been if he had had the smallest notice of the nature of Bowers defence, judgment was thereupon given against your order for the costs of the suit, and he is now threatened with an execution for the same, which matters & things your order is well exposed, is contrary to every principle of justice.

In tender consideration whereof, and for as much as your order is remedied in the premises, only in a Court of equity, who has a controlling power over the Courts of law, and whose province it is to guard against frauds, accident & trust, and to grant new trials in all cases, where former trials were unfairly obtained.

That the said misfeasance that the said John Bowers, who your order prays may be made defendant to this bill of Complaint may upon his corporal oath full, true & perfect answer make to all and singular the allegations in this bill contained, and that as fully and sufficiently as if the same was again herein repeated, and interrogated.

And that your worship will injoin the said defendant from further proceedings at law, on the aforesaid judgments until this matter is fully & fairly heard before this worshipful Court of equity, and if thereupon it should appear to the Court, that your order was surprised into the former trial, and that the same was unfair, that your order shall decree, that a new issue be made up, between the parties aforesaid & that a new trial be had thereupon, that full and ample justice may be done between them, and make any other or further order or decree in the premises for your orders relief or may be consistent with justice.

Shew'd please

Yours for Campbell

All of which County is well

Joseph Holmes appeared before me a justice of the peace for the County aforesaid, and made oath that the allegations in the foregoing bill as far as comes within his knowledge are true, and those that come within the knowledge of others he believes to be true. Given under my hand the 23 day of April 1798.

Thos King D