

1822-008 SOUTHAMPTON COUNTY FORT'S ADMINISTRATOR VS. GURLEY'S EXECUTOR

CHANCERY PAPERS

3/1822

other sURNAMES: Porter,  
miller

To the worshipful Court of Southampton County sitting  
in chancery complaining sheweth unto your worships  
your orator Benjamin Miller Adm. & Son of Joseph  
Fort adm. &c.

That your orator is informed there has been a  
Judgment entered in this Court against him as Adm. &c.  
in favor of Geo. Gurley Exr. - of Geo. Gurley dec. formerly  
Shiriff of the aforesaid County founded on a claim  
which to your orator seems oppressive, in as much  
as that the demand exhibited by the said Geo. Gurley  
cannot be supported by any evidence whatever within  
the knowledge of your orator; the records of the  
Court on which his reliance has been placed & to which  
your orator prays the Court will refer being  
involved in much obscurity and uncertainty as to  
the matter in controversy; the charges against the  
Estate of Joseph Fort adm. appearing to be for his  
failure to return certain Executions whilst he was  
acting as deputy Shiriff for the said Geo. Gurley &c.  
which executions your orator is persuaded were  
not sold for the money received by Joseph Fort he  
having returned the executions as appears of record  
not satisfied for want of property, want of buyers &c.  
Yet without any certainty of his liability to be  
charged with such failure or neglect to make  
return thereof, Judgment has been entered up against  
your orator, on the suggestion and misrepresentation  
of the said Geo. Gurley who from mistaking his  
remedy has had recourse to the estate of Joseph Fort  
instead of the debtors in those executions -

To the end therefore he prays that the said Geo. Gurley  
Executor may be made Defendant to this bill; and may  
answer the allegations therein contained on his corporate  
oath, and that your worship will enjoin and restrain  
the said Geo. Gurley from further proceedings on the said  
Judgment until this matter can be heard in equity,  
and that your worship will grant such other  
and further relief in the premises as may be consistent  
with justice; and may it please the court to grant  
the Commencement of writ of subpoena, commanding &c.

At Test 11th

This day appeared before me a Justice of the Peace for the City  
of Hampton the above named Ben. Miller and made  
oath to the truth of the allegations contained in this bill  
given under my hand this twentieth Day of October 1806

Jacob Darden

Wm. D. Darden

Filed by Mr. D.

July 1807 at 1806

July 1807 at 1806

Miller  
at  
No. 10  
of  
Hampton

Quilley Exr

adrs }  
Forts adrs } Answer

February 1807

Answer filio Vreps  
K. Frute de polue

March 1822 Inj. Disolved

Debts: costs      £ 3:70  
Fee                    5:00  
£ 8:70

4

In the worshipping court of Southampton in Chancery sitting  
The Answer of George Gurley Exor of George Gurley deceased  
to the bill of <sup>Injunction</sup> ~~Complaint~~ exhibited against him in this  
worshipping court by Benjamin Mellen ad? DRT of  
Joseph Fort deceased. This respondent saving and

reserving to himself all and every benefit of exception  
to the many errors imperfections and contents  
in the Complainant's said bill of injunction  
contained for answer thereto or to so much thereof  
as he is advised is necessary and material for him  
to make answer unto answering saith that  
during the time George Gurley the intestate of

this Respondent acted as the Sheriff of this  
County two executions in the name of Thomas  
Porter apes against William Hapies  
Porter against William Little for the sum of  
issued from the Office of this Court and as appears  
from the execution book kept by the Clerk were

in the first instance delivered to Joseph Fort  
the then deputy of your respondents intestate  
and returned as stated in the bill of Injunction  
but immediately after the return the said  
executions were removed and again placed

as you <sup>respondent</sup> <sup>accuses</sup>  
in the hands of Joseph Fort still acting as  
Deputy Sheriff who failed to make return  
how he had executed the same. in consequence  
of which <sup>misconduct</sup> <sup>admission</sup> was made  
against George Gurley in his lifetime and the

amount of the execution  
and paid by him in his lifetime. This respondent  
will further remark that he did not before  
know nor does he now believe that the act of  
assembly giving a remedy to the Sheriff by motion  
against his deputy contemplated throwing

the necessity upon the Sheriff of establishing his  
claim by matters of record only, and the  
Court will state the power of a Court  
of Chancery further than ~~some~~ reason ~~and~~  
a sound discretion would authorize to

say that there was no other evidence before  
them of the validity of the respondent's claim  
but matter of record, as the complainant  
has not stated there was no other evidence.  
But even if the complainant wishes to

after the matter has been once enquired into by a  
Court preparing ample powers to do justice between  
the parties, and of course were competent judges  
of the sufficiency of the testimony this respondent  
is perfectly willing to have a fair investigation.

This respondent states that he believes the judge  
obtained against the complainant <sup>was</sup> <sup>to</sup>  
strictly in conformity with law and the principles  
of justice. That the executions were delivered  
to Joseph Fort, not returned, and the money  
mailed he has no doubt. nor does he know of  
any <sup>longer</sup> <sup>interference</sup> <sup>or</sup> <sup>hope</sup> <sup>for</sup> <sup>any</sup> <sup>ground</sup> <sup>for</sup> <sup>the</sup> <sup>interference</sup>

of a Court of Chancery. He prays that  
would dissolve the injunction against him and  
suffer him to obtain and receive the benefit of  
his judgment at law. and he prays to be hence  
dismissed with his costs in this behalf most  
wrongfully and unreasonably sustained and  
will be

January 17, 1807

This <sup>day</sup> George Gurley personally appeared before me as  
Justice of the peace and made oath to the truth of the above  
allegations as far as they depend upon his own knowledge and  
as far as they depend upon the knowledge of others he believes them to be true.  
J. V. C. J. P.

Chulays Ex.  
vs } John Renner  
Dansen Hoff

To July 1814

I acknowledge our service of this within  
J. Renner Hoff

The Commonwealth of Virginia To Jacob Darden Shff to whose  
hands the estate of Joseph Fort hath been committed —  
greeting for certain causes moved before our Justices of our County Court of  
Stafford in Chancery to you we command and firmly enjoin that all  
matters and excuses whatsoever set aside in your proper person, you be  
before the Justices of our said county court on the third Monday in  
July — next to shew good and sufficient cause if any you can  
why a certain bill of Injunction and the proceedings thereupon had against  
Bryan Miller ad V. of J. Fort  
~~in~~ in our said Court heretofore brought by Geo. Linsley ex. George  
Linsley ad — shall not be revived in the name of J.  
Jacob Darden Shff as afores? — and further to do and receive  
what our said Court shall in that part consider And this you shall  
in no wise omit under the penalty of \$100. and have then thus this  
Writ Writings Samuel Kello Clerk of our said Court at the Court  
house on the 3 day of June 1814 in the 38<sup>th</sup> year of the  
Commonwealth

Sam Kello

Southampton County N.C.

The deposition of Thomas. Porter of  
lawful age, taken before us this 31<sup>st</sup> day of  
January. 1807. in a certain matter of controversy  
depending & undetermined between Benjamin  
Millar Admr. de bonis non. of Joseph Fort. de?  
Complainant: & George Gurley executor of George  
Gurley. decd. defendant. on an injunction now  
depending in the County Court of Southampton  
(by Consent of Parties). —

This deponent, deposes and says, being sworn  
on the whole. Evangelist of Almighty God.  
"that Joseph Fort as deputy sheriff of George  
Gurley. decd. did levy an execution in his favour  
on the Property of William Little to wit on  
one Negro Man by the name of Lewis for  
the sum of £... — And also another  
execution in his favour on the Property of  
William Harris, to wit one bay mare for  
the sum of £0.0. —

Further this deponent says not.

Thos. Porter

Question by the attorney for Benjamin Millar —  
was there not other executions in the hands of  
Joseph Fort at the same time yours, was —  
Against Little. — Ans<sup>r</sup>. Yes. there was. Two  
others. — Question by the deft: what  
was the cause of your not receiving the

Amount of your execution against Little—  
Ans<sup>r</sup>: because, Howel. Edmunds. had not  
Money. Enough. to Pay for the Purchase  
of Lewis— — Question by the Jeff.  
was. there Purchaser. at the sale of  
the mare. or not — Ans<sup>r</sup>: Yes there was—  
Question by the Attorney for Benjamin Mullan  
was. there. any. Money. paid you by Clark  
For. on Account of these two executions—  
Ans<sup>r</sup>: I do. not recollect— whether there  
was. or was not — J. P. Porter

The foregoing depositions taken & signed  
before us. this 30<sup>th</sup> day of January One  
Thousand Eight Hundred & Seven.—

Given under our hands and  
Seals —

Charles M. Jones (Seal)

Wm. M. Jones (Seal)