

1830-134 SOUTHAMPTON COUNTY
CHANCERY PAPERS

DAVIS & WEST

VS. JOHN JAMES

3/1830

Other SURNAMES: Hines
Cobb, Drake, Little, Bittle J

Thos as I Davis &
William West

vs

John James

1829 May Juryn awarded
the p^{ty} in giving bond &

1830 March. Juryn. dissolved bill.
dismissed with costs & appeal granted
on giving security & in 60 days.

Plaintiffs Costs.

clks

Shff

Law &c.....

Defts Costs

clks. \$2.08

Law. 5.00

\$7.08

per se ipso

Principal
Dut. from 19th January 1829 to 17th May 1829
Costs
Damages at 10 p^{er} cent from 17th May 1829 to 16th March 1830.

\$70.78
1.39
5.34
77.71
6.45

To the worshipful County Court of Southampton in Chancery
Sitting —

Sheweth complain'g shew unto your worships your orators
Thomas J Davis and William West that by a decree of
this worshipful court made at the August term 1848
Samuel B Davis Judge Davis and Benjamin Cobb were
appointed commissioners to divide the real estate
of John James deceased between the widow and heirs
of the said John James who in the execution of that
as well appear by their report dated the 18th of
March 1842 a copy of which is herewith exhibited
marked (A and Injuncta to be taken as a part of
this bill) directed that Martha Davis widow and
relict of Edwin Davis deceased and one of the heirs of the
said John James should pay to Elizabeth James
John James Samuel James and Amos Drake each
respectively \$33 — That the said Martha Davis who
is the mother of your orator Thomas J Davis sometime
afterwards being greatly harassed and pressed for
the payment of the above sums and being at
the time unable to advance the money your orator
the said Davis agreed to execute his note with
good and sufficient security to the said John
James Samuel James Amos Drake and Sampson

Letter who have intimated with Elizabeth James &
notary did execute his notes under seal with
Thomas W. Bittles his security that is to say your note
Thomas I by express agree ment with the said John
James and on condition that he the said John James
should for bear the collection of the said debt due to
him as afore said and give away of pay ment until
the 25th of December 1824 your note the said Thomas I
execute his note under seal with the said Thomas
W. Bittles security thrust to the said John James
which said note is dated the 19th of March 1824 and
carries interest from the 25th of December of the same
year for the sum of \$55 current money of Virginia
as will appear by a copy of the said note here-
with exhibited marked B which said sum amounts
to \$ more than the said debt due the
said John James with legal interest there on from
the 18th of December 1822 the date of the report of
the commissioners here in before referred to to the
said 25th of December 1824 when the said note
became due and payable which as your brother
is instructed under the said contract usurious,
void and of no effect

Yet may it please your worship the said

John James in order to enforce the said usurious contract
intended a suit on the said note against your
brother Thomas I and Thomas W. Bittles his security in
the county court of Southampton which your said note
employee counsel to defend on the plea of usury which
plea he was prepared to establish by competent evi-
dence but it so happened that the counsel thus
employed and on whom your note relied to sus-
tain his defence was compelled to leave the state
on business of importance before the said suit was
ready for trial. — It was called up at noon-
day term 1828 but more than a week or two days
after his counsel had left the state and without
notice to your note under such circumstances your
note is informed that the trial of the said
suit would not have been prepared by the plaintiffs
counsel nor relied by the court but for an
understanding between the said counsel and
a gentleman of the bar appearing at the
time your note's counsel that if a judgment
at law was entered up your note might avail
himself of all the advantages in a court of equity
which he could have exercised in a court of law

and that it was established to the satisfaction of such
court that the said note was executed for an usurious
and illegal consideration that the said court should
decree the same to be void and of no effect - not with-
standing any rule to the contrary which might be
supposed to govern the decisions of a court of chancery
in relation to such contracts and under this agreement
judgment was entered against your orator Thomas I
and Thomas W. Botte for the sum of \$

\$ costs which will more satisfactorily appear
by a copy of the said judgment filed here with marked
C on which said judgment execution issued against
the goods and chattels of your said orator Thomas I
Lewis who in order to gain time and await the
return of his uncle who was daily expected and to
relinquish his property from the hands of the sheriff
execution a delivery bond with your orator William
West as security which said bond being forfeited
a judgment was obtained thereon against your
orator Thomas I and William whose property is
liable to be taken by the sheriff and sold under
execution unless this honorable court should intervene
for his protection and relief - In order to which your
orator prays that the said John James may be

made a defendant here to and that he answer the premises
the sheriff of this county he also made a party and
that he and all other persons be restrained from any
further proceeding in the said judgment and execution
until the matter and things herein set forth can be
heard and the same fully and finally determined

That your worships may decree the said note judg-
ment and execution to be unusuriously null & void and
grant such other general relief touch of the premises
as to your worships under all the circumstances
may seem just and equitable and the common-
wealth writ of subpoena of inquisition may be issued
commanding restraining &c and your orator will
ever pray

Parker Pq

Southampton County to wit
Personally appeared before me a justice of the
peace of the said county Thomas I Lewis & William
West and made oath that the statement herein
made upon their own knowledge are true and those
made upon the information of others they believe to
be true - Given under my hand and seal this

May 9th day of March 1829

James Freyhardt Seal

Mr. James
at 3 Answer.
Davis &c

filed 3d June 1829

To the worshipful the County Court of Southampton
County sitting in Chancery.

The Answer of John James to the Bill
of complaint exhibited against him in this worshipful
Court by Thos. S. Davis & Wm. West.

This respondent referring to himself
all benefit of exceptions to the said Bill for its num-
erous errors & defects, for answer to so much thereof
as he is advised it is material for him to answer
states - that it is true that in the division of the estate
of John James dec'd Martha Davis had to pay to your
respondent the sum of \$33.00 & the same
sum to the other individuals mentioned by the complain-
ant ^{as they have represented, which is as she, however}
^{after the settlement in 1822 is charged - the division actually occurred in 1818 -}
with the interest from some time in the year 1818 for, from
which time your respondent, & the other individuals
referred to waited with her until the spring of 1827
which will show to your worship whether they were disposed
to oppress & embarrass the said Martha Davis as the
complaint have insinuated. That when he (as well as the
other three) then required their just due to be paid them
the said Thos. S. Davis (who now falsely & disgracefully
attempts to avoid his own note as a suggestion of usury
which he it is true proposed himself, but which was
rejected) offered to your respondents & the others, that if
they would wait with the said Martha Davis until the
end of that year, they should be paid a premium
of two per cent a year. That this was at once
refused, your orator & the others declining the adoption
of any such usurious contract. That it was then
proposed to them to take each, Thos. S. Davis' note
with Thos. W. Pitts as co. for the sum respectively
of \$55, payable the 25th Decr. 1827, from the
claim against the said Martha Davis who was
to be thereupon released; that your respondent
(& the others as far as he understood their views)
regarding the note thus offered & signed by those two

as a fair & legal subject of inquiry and
as probably good for the amount, tho' not as certain
- by so, as they were both persons in slender cir-
- cumstances, after some difficulty & reflection
agreed to trade for the said notes - just as
they would have given, or speculated their claim
against the 1st Martha Davis, for a house or
any other piece of property - & without any
idea of taking an unfair interest from
the 1st Martha Davis. That your worship
will at once perceive that the notes are not
the obligations of the said Martha Davis
but of third persons, for which your respon-
- dent presumes they had a right to trade
freely, fairly, & legitimately as, cer-
- tainly conceiving they did do. And indeed
altho' the said notes were intrinsically worth
much less than money, it will still appear
that very little, if any, discount from them
was deducted, when your worship estimated
the long time, for which the \$33 was
carrying interest, & the proportion of costs
for which the said Martha Davis was respon-
- sible in the Chancery proceedings, which had
for their object the division of the estate
of the said John James before referred to.

In relation to the understanding char-
- ged to have existed between the Council
at the time of the trade at law, your respon-
- dent, while he denies that the Comptrol^r could
by any true testimony have proved any wrong
in the transaction, at once admits that as he
has been informed by his Council it was agreed

that if a Bill in equity should be thereafter
presented on the ground of wrong, that it should
not in opposition thereto be relied on that
the defence was one exclusively cognizable at
law - ~~but~~ other words that if the Comptrol^r
could prove by collaterals, independent testimony
that illegal wrong existed in the transaction
- such as would have vacated the notes at law
- that the same remedy might still be obtained.

But your respondent having now
fully answered, prays to be hence discharged
with his costs, most unjustly incurred &c
and as in duty bound, he will ever pray.

John James.
Pro duce J. B.

Southampton County Court,

This day personally appeared
before me Alex^r Myrick a Justice
of the Peace for the said County John
James who made oath, that the foregoing
Answer in Chancery, containing the truth
to the best of his knowledge & belief.
Given under my hand this 3rd day
of June 1882.

Alex^r Myrick (Read)

James

in Exchequer Judgt.

Davis & Co

Southampton County March Court 1829

John James

against

Thomas J Davis & William West

Plff

On Delivery bond

Dfts

Judgment against the defendants for \$141.56 cents and costs. To be discharged by the payment of Seventy dollars Seventy eight cents with legal interest thereon from the 19th January 1829 till paid and the costs viz \$5.54 cents

Contract

L R Edwards & Co

Q Jarvis & Co.

To £ note
James.

(A Copy)

With Interest from the 25th day of December next we
Thomas I Sears and Thomas W Tuttle do promise to pay
or cause to be paid to John James or his order the just and
full sum of fifty five dollars current money of Virginia
it being due for value of him received for which payment
we bind ourselves our heirs &c. firmly by these presents
As Wth Test our hands & seals this 19th day of March
1827
Attest.
Benja^d West

Thomas I Sears Esq
Thomas W Tuttle Esq

A Copy Issd James Bechell Esq

Davis & Co
To Esqrs: Gent
John James

Knew all men by these presents that we Thomas I Davis, William West and Thomas A. West are held and firmly bound unto John James in the just and full sum of two hundred and eighty three dollars and twelve cents to the payment whereof well and truly to be made to the said John James his certain Attorney his Executors, Administrators, or assigns we bind ourselves our heirs and administrators jointly and severally firmly by these presents sealed with our seals and dated this 31st day of July 1829

The Condition of the above obligation is such that whereas the above bound Thomas I Davis and William West have obtained from the County Court of Southampton an injunction to stay until the further order of the said Court all further proceedings on a Judgment obtained in the said Court against them by the above named John James on a forthcoming bond for one hundred and forty one dollars and fifty six cents to be discharged by the payment of Seventy ~~one~~ dollars and twenty eight cents with legal Interest thereon from the 19th day of January 1829 also paid and \$5.54 cents costs. Now if the said Thomas I Davis and William West shall well and truly pay satisfy the judgment aforesaid and also all such costs as shall be awarded against them and all such damages as shall be incurred by them in case the Injunction aforesaid shall be dissolved, then the above obligation to be void and to remain in full force and virtue -

Witness

James Rochee

Thomas I Davis

Seal

William West Seal

Thos A West Seal

Southampton County Court Clerks Office 31st day of July 1829

We Thomas I Davis & William West in consideration of the terms upon which an Injunction hath been granted us to a Judgment of the County Court of Southampton recovered against us by John James on a forthcoming bond for the sum of \$141.56 cents to be discharged by the payment of \$70.78 cents with Interest from the 19th January 1829 do hereby release unto the said John James all & every error or errors at Law in the s^d judgment and proceedings. Given under my hand and Seal.

Festo

James Rochee

Thomas I Davis Seal

William West Seal

Davis Jr

To Elpp. bond

John James

Know all men by these presents that we Thomas & Davis & William West

are held and firmly bound unto John James

in the just and full sum of One hundred and eighty two dollars forty six cents to be paid unto the said John James his certain Attorney, his Executors, Administrators or assigns for the payment whereof well and truly to be made we bind ourselves our heirs, Executors & Administrators jointly and severally, firmly by these presents sealed with our seals & dated this day of,

The Condition of the above obligation is such that whereas. At a Court held for the County of Southampton at the Courthouse on the 16th day of March 1830 in a suit depending (in Chancery, in the said Court between the above bound Thomas & Davis and William West plaintiffs against the above named John James Defendant. It was adjudged, ordered and decreed, by the Court that the Injunction awarded the plaintiffs on the day of May to enjoin the defendant from further proceedings on a Judgment recovered by the defendant against the plaintiffs in the County Court of Southampton for \$141.50 cents & costs, but to be discharged by the payment of \$70.78 cents with legal Interest thereon from the 19th January 1829 till paid and the costs be satisfied, with damages according to Law that the plaintiffs be dismissed and that they pay to the defendant his costs by them about his defence in this behalf expended.

From which decree of the Court the plaintiffs prayed an appeal to the third day of the next term of the Superior Court of Chancery for the Williamsburg District. If therefore the said Thomas & Davis and William West shall prosecute the said Appeal with effect or pay and satisfy the Judgment aforesaid and all costs and damages awarded against them, and shall perform in all things the decree aforesaid in case the same shall be affirmed then the above obligation to be void or else to remain in full force and virtue.

Signed sealed & acknowledged
in the presence of

Seal

Seal

Seal

Seal