

1830-036

SOUTHAMPTON COUNTY
CHANCERY PAPERS

DAVIS & WEST

VS. AMOS DRAKE

3/1830

Other SURNAMES: Hines
Cobb, James, Little, Bittle

Receipt of

Thomas J Davis of
William West

vs—

Amos W. Bates

1829 May Juries awarded the
pett. on giving bond &c

1830 March Juries dissolved here
disfranchised with costs & appeal granted
on giving security &c in 60 days

Plaintiffs Costs.

clerk...

Shff...

Law &c...

Defendants Costs

clerk... \$2:08

Law... 5:00

\$ 7:08

\$ paid

Damages at 10 pcts Court from 17th May 1829 to 16th March 1830

Costs

Chancery
Oct from 19th January 1830 to 17th May 1829

\$ 70:78
1:39
5:34
77:71
6:45

To the honorable County Court of Southampton in Chancery
sitting

Humbly representing shew unto your worship your orator
Thomas I Davis & William Vest that by a decree of
this honorable court made at the August term 1818
Samuel B Davis George Thier 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
duty as well appears by their report dated the 8th
of March 1823 a copy of which is herewith exhibited
Martha Davis and prays to be taken as a part of
this bill & directs that Martha Davis widow and
relict of Edwin Davis deceased & 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 I Davis some time
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 notes with
good and sufficient security to the said Elizabeth
John James Samuel James Amos Drake and Sampson

Little who had intimated with Elizabeth James and
actually did execute his notes under seal with Thomas
To Bittie his security that is to say your brother Thomas
I by express agreement with the said Amos Drake
and on condition that he the said Amos Drake should
procure the collection of the said debt due to him as
above said and give day of payment until the 25th of
December 1827 your note the said Thomas I executed
his note under seal with the said Thomas To Bittie
with security thereto to the said Amos Drake which
said note is dated the 19th of March 1827 and carries
interest from the 25th of December of the same year
for the sum of \$55 current money of Virginia as
well appears by a copy of the said note here with
by his attorney marked B which said sum amounts to
\$ more than the said debt due the
said Amos Drake with legal interest thereon from
the 18th of December 1822 the date of the report of
the commissioners then in before referred to to the said
25th of December 1827 when the said note became
due and payable which as your brother is instructed
renders the said contract usurious, void, and of no
effect

yet may it please your worship the said Amos

Drake in order to enforce the said usurious contract
instituted a suit on the said note against your
brother Thomas I and Thomas To Bittie his security in
the county court of Loudhoughton which your said brother
employed counsel to defend on the plea of usury which
plea he was prepared to establish by competent evidence
but it so happened that the counsel then employed
and on whom your brother relied to sustain his defence
was compelled to leave the state on business of im-
portance before the said suit was ready for trial -
it was called up at November term 1828 not more
than a week or ten days after his counsel had
left the State and without notice to your brother
under such circumstances your brother is informed
that the trial of the said suit would not have
been proffered by the plaintiff's counsel nor ruled by
the court but for an understanding between the
said counsel and a gentleman of the Bar repre-
senting at the time your brother's counsel, that if
a judgment at Law was entered up your brother
might waive himself of all the advantages in a
court of equity which he could have by reason in a
court of law and that if it was established to the
satisfaction of such court that the said note was

execution for an usurious and illegal consideration
that the said court should decree the same to be
void and of no effect - not withstanding any rule
to the contrary which might be supposed to govern
the decisions of a court of Chancery ~~relates~~ in relation
to such contracts and under this decree must judgment
was rendered against your orator Thomas I and Thomas
to Bitter for the sum of \$ and \$ costs
which since more satisfactorily appears by a copy of the
said judgment filed here with practice & on which
said judgment execution issued against the goods and
chattels of your said orator Thomas I Davis who in order
to gain time and await the return of his counsel
who was daily expected ~~execution~~ and to retrieve his
property from the hands of the sheriff executed as
delivery bond with your orator William West as security
which said bond being for filed a judgment was
obtained thereon against your orators Thomas I & William
whose property is liable to be taken by the sheriff
and sold under execution unless this worshipsful court
should intervene for his protection and relief. In order
to which your orator prays that the said arrest writs
may be made dependent here to and that the answer
the premises the the sheriff of this county be also
made a party and that he and all other persons

be restrained from all for the proceedings on the said
judgment and execution until the matter and things
herein set forth can be heard and the same fully &
finally determined. That your worships may decree
the said debt, judgment, and execution to be removed
here and void and grant such other general relief
touching the premises as to your worships under all
the circumstances may seem just and equitable and
the common wealth out of subpoena of injunction
may issue commanding with or without your orators
will we pray

Passes 39

Southampton County to wit

Personally appeared before me a justice of the
peace of the said county Thomas I Davis & William
West and made oath that the statements herein
^{made} ~~contained~~ 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 9th day of May 1829

James T. Hewitt Seal

Amos Drake
aty { Amos R.
Davis &c

filed 3^d of June 1829

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

The Answer of Abner Drake to
the Bill of complaint exhibited against him
in this worshipful Court by Mr. P. S. Davis & H. W. Webb.

This respondent answering to himself
for answer to so much of the said bill as
he is advised it is material for him to
answer, ~~confers~~ refers to the answer filed in
this worshipful Court, by Samuel Sanger
at the Suit of the said Complainants
which applies to the same transaction
charged to this respondent, & which ^{answer} he
believes in all respects to be true - (and
which he prays your worship to
take as the answer of this respondent
in the premises. (And having now
fully answered he prays to be hence
dismissed with his costs &c.)

Produce P. S.

Southampton County &c.

Personally appeared
before me Alex^r. Myrick a Justice of
the peace for the said County, Abner Drake
who made oath that the foregoing answer
in Chancery is true to the best of his know-
-ledge & belief. Given under my hand
this 3rd day of June 1829. —

Alex^r Myrick J. P. (Seal)

Drake

in Elopsy gudgt

Davis y^d

Southampton County March Court 1829
Amos Drake

Plff

against

Thomas I Davis & William Mesh

Dfts

On Delisery bond

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

Extract L R Edwards DC

Parrish
To Z. vote.
Prake

(A Copy)

With Interest from the 25th day of December next.
we Thomas I Davis and Thomas W. Tuttle do promise
to pay or Cause to be paid unto W. Amos Drake the just
and full sum of fifty five dollars current money of Virginia
it being due for value of him rec^d for which payment
we bind ourselves our heirs & firmly by these presents
As witness our hands and seals this 29th day of
March 1827

Attest.

John Simmons

Thomas I Davis (Clerk)

Thomas W Tuttle (Clerk)

A copy
Teste James Rockwell & Co

Davis & Co

To { Engrain and

Amos Drake

Know all men by these presents that we Thomas J Davis & William West
and Thomas A. West ————— are held and firmly bound unto Amos
Drake in the sum of two hundred and eighty three dollars and twelve cents
to the payment whereof well and truly to be made to the said Amos Drake his
certain Attorney his executors, administrators or assigns, we bind ourselves our
heirs Executors 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 J Davis & 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 recovered against in the Court aforesaid on
a forthcoming bond in favour of the above named Amos Drake for the
sum of one hundred and forty one dollars fifty six cents. To be discharged by
the payment of Seventy dollars and seventy eight cents with legal Interest
from the 19th of January 1829 till paid & 5 1/2 cents cents Now if the above
bound Thomas J 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 or else to remain in full force and virtue

Witness
James Rochelle

Thomas J Davis Seal
William West Seal

Thos. J. West Seal

Southampton County Court Clerks Office 31st day of July 1829

We Thomas J Davis & William West in consideration of the terms upon
which an injunction hath been granted us by the County Court of South-
ampton to stay until the of a judgment recovered against us in the said
Court by Amos Drake on a forthcoming bond, for the sum of one
hundred and forty one dollars 56 cents cents. To be discharged by the payment
of \$70.78 cents with Int. from 19th of January 1829 till paid & costs so hereby
release unto the said Amos Drake all and every error or errors at Law in the
said Judgment & proceedings Given under our hands and seals.

Witness
James Rochelle

Thomas J Davis Seal
William West Seal

Davis &

A. Epp. Co. D.

Drake

Know all men by these presents that we Thomas J Davis William West
are held and firmly bound unto Amos

Drake in the just and full sum of one hundred and eighty two dollars forty six cents
to be paid unto the said Amos Drake 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 or assigns jointly and severally firmly by these presents sealed
with our seals and dated this day of

The condition of the above obligation is such that whereas At a Court held for the
County of Southampton on the 16th day of March 1830 in a suit in chancery depending
in the said Court between the above named Thomas J Davis & William West plaintiffs
against the above named Amos Drake defendant. It was adjudged, ordered & decreed by
the Court that the injunction awarded the plaintiffs on the day of May 1829 to restrain
the defendants from further proceedings on a Judgment recovered by the defendant
against the plaintiffs in the County Court of Southampton for the sum of \$141.56 cents
& costs but to be discharged by the payment of \$70.78 cents with interest thereon from
the 19th day of January 1829 till paid and the costs be disposed with damages
according to Law that the plaintiffs bill be dismissed and that the plaintiffs pay to the
defendant his costs by him about his defence in that behalf expended. From which
decree of the Court the plaintiffs have appealed to the 3rd day of the next Term of
the Superior Court of Chancery for the Williamsburg District. If therefore
the said Thomas J Davis & William West shall prosecute the said appeal with
effect, or pay and satisfy the Judgment aforesaid and all damages & costs awarded
against them, and shall perform in all things the decree aforesaid ~~in the~~
the same be affirmed then the above obligation is to be void or else to remain
in full force and virtue

Signed sealed & acknowledged }
in the presence of }

Seal

Seal

Seal

Seal