

1835-007

SOUTHAMPTON COUNTY  
CHANCERY PAPERS

MYRICK

VS. DRAKE & al

4/1835

other SURNAMES: Briggs,  
Barmer, Claiborne

2195 X

Myrick

" 2 Papers

Drake

1833 April 5<sup>th</sup> Bill filed & signed  
awarded 8<sup>th</sup>

" " 12<sup>th</sup> Bond 8<sup>th</sup> executed & paid  
and order

" July - Answer to Bill 8<sup>th</sup>

" Nov. set for hearing 8<sup>th</sup>

1835 Apr<sup>l</sup>. Enjoin dissolved & bill  
dismissed.

Clerks fee. \$208

Stiff

Law. - - - 16.66

\$18.74

To pay for

This day personally appeared before me William L. Everett a  
Justice of the Peace for the County of Southampton James  
Myrick, and made oath that the Allegations contained in  
the within Will are just and true; Given under my hand  
this 6th day April 1833

Wm L. Everett JP

Myrick  
Against

Drake & Bell &  
copy of Court  
at Concord

by answer on answer to  
1833

To the honorable Robert B. Taylor judge of the  
Circuit Superior Court of Law & Chancery of the  
County of Southampton sitting in Chancery. Your  
Orator James Myrick begs leave respectfully to  
represent to your Honor that the employee a certain  
Ethelenee Drake of the said County as his overseer  
in 1831 on a plantation several miles distant from  
the residence of your Complainant & agreed to  
give him \$4 twenty dollars for his wages &  
furnish him 8 barrels of corn & 500<sup>ll</sup> of Pork for his  
support. That some time about the day of  
August 1831 the year for which he was employed  
the said Drake left the farm & took himself off  
from the service & employment of your Orator  
without the knowledge consent or notice of  
to your complainant leaving every thing in  
a most exposed condition at that horrid  
crisis when the insurrection had produced  
& actually carried the promises & rumors of the time of also  
such an ~~inexplicable~~ state of feeling that some  
time afterwards as soon as your Complainant  
was apprized of the desertion of the said  
Drake he was constrained as soon as he could  
at that season of the year & under the same  
circumstances to employ at a considerable  
expense another overseer that he could not

haviour do that in time to prevent a sacrifice  
much greater than even the whole years wages  
of said Drake was worth for among other most  
serious lapses that of his transgressions was a most im-  
portant one so much so as that from an orphan  
at that time that to be sufficient to yield thirty  
barrels of transgressions side only, was saved beside  
much other loss in the exposure of every thing  
on the plantation to the wanton assaults of  
the negroes. That the said Ethelred Drake  
afterwards for the benefit of John J. Drake  
instituted a suit against your orator on the  
law side of this Court to recover of him for  
his services for that year as his answer that  
your orator wrote to & explained the facts to  
his counsel & Augustine Blair who being  
a Lawyer at the bar & believed to be a very  
regular attendant on the Court he had  
selected to defend the case & explained to  
him in the Communication the nature  
of the case & requested him to appear the  
suit your orator being confirmed by  
incorporation at home that the said Blair  
was mentioned as he learns & believes by the extreme  
illness of a child so that he did not go to the

the last Supreme Court as your honour will no  
doubt recollect from the indulgence as he  
for his clients through his mother of the bar  
in his cases generally on the docket that  
under these circumstances your Complaint  
not showing till after when the Court had  
 arisen that his Lawyer was not there the said  
Drake obtained a judgment against him  
for the sum of \$71.25 by surprise which will  
appear by a copy of the judgment here to  
annexed as a part hereof & may be seen  
as such all of which acting & doings of the said  
Ed Drake & John J. Drake are unjust & iniquitous  
wherefore your honour is prayed to enjoin the  
parties from all further proceedings thereon  
& that they be made parties & compelled to  
answer the facts herein stated & that your  
honour be pleased on the bills answers &  
the testimony & your orator will be able to  
produce he believes abundant evidence to  
prove the facts herein charged either to perpe-  
trate the said injury or to make such  
order & decree as comports with justice the  
rights of the parties & the rules of this honorable  
Court & he as in duty will ever pray



To The Honorable Robert B. Taylor judge of The  
circuit Superior court of Law & chancery for the  
county of Southampton in chancery setting the answer  
of Ethelana Drake to the bill of injunction filed  
in him & John I Drake by James Myrick The  
Respondant says that it is true the said my-  
rick employed him as an Overseer for the year  
1831 at the price stated in plaintiffs Bill & says  
that he lived in his employment as an Overseer until  
the middle of October of the same year that he had  
not left the service of said myrick for twenty four  
hours or absented himself from the plantation for  
that length of time until sometime in the first of  
September or first of August when he went to  
see his Father who was then on his death bed  
and at that time this Respondant was taken  
sick also and was confined fifteen days by sick-  
ness when he returned & commenced again the super-  
intendence of the said myrick's business but his death  
preventing such that he could not attend to his  
business in such a way as he thought necessary  
he gave the said myrick notice of the fact &  
notice of his intention to quit to which the said  
myrick made no objection and this Respondant  
says that his only reason for quitting was the  
above stated and that he quit with the  
knowledge & consent of the said myrick that  
he came away from the plantation of the  
said myrick nothing but his own property

and as to the provisions of the said request  
he disclaims any knowledge he carried away  
meat of his own that he purchased of John  
y. maron for the use of his family & the 5th  
of corn which the said request was to have  
furnished him with he received in full no  
more than he was entitled to in proportion to the  
time he was in his employment as to the crop

of Brandy the pl. complains of it was owing  
to the want of cask and no default of  
this Respondent he further says that he  
only demanded of the said request pay for  
the proportionable time he was in his employ-  
ment, which he quitted with his knowledge  
& consent what loss the said request may  
have sustained by not employing other superinten-  
dances this Respondent knows not, & having  
answered all that he considers relative to the  
case at issue prays that the said injunction  
be dissolved & that he have execution for  
his debt & costs and such further relief as  
to this Honorable Court may seem just & for  
which he will be pay &c

Edward Drake

The answer of John J. Drake to the bill of in-  
junction exhibited him & E. Drake by James request  
the This Respondent says that his true that  
his Brother E. Drake lived for J. request on  
the terms as stated in his bill and his also true

that he lived with him since the month of  
October 1831. and quitted the said request's emp-  
loyment in bad health, as he understood & al-  
ways believed with the knowledge & consent of  
the said request. That he is the father of  
any plaintiff in the suit at law or the  
said request on account of his <sup>Brother</sup> son as to  
the said request (he) This respondent have  
ing advanced his Brother the money to relieve  
him in sickness contracted in the service of  
the said James request who now seeks  
to depose him of his job & have earned  
wages, the loss of Brandy alleged to imple-  
Bill was owing to his not providing suffi-  
cient vessels for saving it - as to the other  
matters of the pl. Bill This Respondent  
knows nothing & having answered prays  
a dissolution of said injunction with  
execution costs &c & for such further  
relief as to this Honorable Court may  
seem just & proper & for which he  
will be pay &c

John J. Drake

This day E. the Laura Drake & John  
J. Drake made oath before me to the truth  
of the foregoing answers in charging to a bill  
exhibited to them by James request sworn my  
hand & seal at Jerusalem this 15th of June  
1833 -

N. de, S. de, R. de

~~Drake~~

~~no { loc: Judgt.~~

~~Myrick~~

Myrick

no { Exhib. with bill)

Drake)

Southampton Circuit Superior Court. October the 30<sup>th</sup> 1832

Ethelred Drake for John Drake . . .

against

James Myrick.

Pliff

} In Case

Def

This day came the plaintiff by his Attorney and the defendant being solemnly called came not, and a jury to wit Edmund Halcome, John A. Hill, Lewis N. Branch, Richard Halcome, James Wells, Winard Jackson, William Harrison, Zebulon L. Simmons, Bolling S. B. Barrett, Eli Joyner, James West and John R. Williams who being sworn diligently to enquire of the damages in this suit upon their oath returned a verdict in the following words to wit "We of the jury find for the plaintiff a sum of Seventy one dollars and twenty five cents." Therefore it is considered by the Court that the plaintiff recover against the defendant the damages aforesaid and his costs by him about his suit in this behalf expended And the said defendant in money 8c.

Plaintiffs Costs \$8.72.

Attest Teste James Rockwell Clk

C. S. C.

McNair

vs. S. S. & S. S.

Drake

2d June 1833-

Executed on John I  
Drake the 23<sup>rd</sup> day of  
May 1833 by delivering  
to him a true copy  
of the Decree of the Court  
W. J. Howell Dy of  
Carr Bowers off

To shew the defendants their agents, attorneys and all others from further  
proceedings on a judgment obtained in the commonlaw side of the Circuit and  
superior Court of Law & Chancery for Southampton on the 30<sup>th</sup> day of October 1832  
by the defendant Ethelred Drake for the benefit of the other defendant against  
the plaintiff. The plaintiff having given bond with good security and filed a  
release of all errors at Law in the said Judgment & proceedings -

Teste James Rachelle Ck

28

# THE COMMONWEALTH OF VIRGINIA:

To the Sheriff of Southampton County--Greeting:

We command you that you summon *Echeldred Drake and John S Drake -*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery, for the County of Southampton, at the Rules to be holden for said Court, on the first Monday in *June next* to answer a bill in Chancery, exhibited against *them* in the said Court, by *James Myrick*.

And unless the said Defendants shall answer the said bill within four months thereafter, the Court will take the same for confessed, and decree the matter thereof accordingly; and this *they* shall in no wise omit under the penalty of 100l.

And have then there this writ: Witness, JAMES ROCHELLE, Clerk of our said Court, at the Courthouse, this *2<sup>d</sup>* day of *May* 1833, and in the *5<sup>th</sup>* year of the Commonwealth.

*James Rochelle Clk*

I acknowledge and service  
of the within notice  
March 17/1834 John P. Drake

I acknowledge and  
service of the within  
notice  
March 19/1834

Wm. D. Drake

Co'd on both as above stated

J. H. Myrick  
Const

Myrick

to E. H. H. H.

Drake

1834 April 18<sup>th</sup>

Ethelred Drake for Inc. J. Drake - Take notice  
that I shall on Saturday the 22<sup>nd</sup> instant  
at the Stere house of Benjamin Williamson in the  
County of Southampton between the hours of 8 o  
Clock in the morning and 1 o clock in the evening  
of that day proceed to take the deposition  
of Alexander Wriggs & others and to continue  
to take from day <sup>to day</sup> till the an all taken to  
be read or evidence in a suit now depending  
in the Superior Court of Law and Chancery for  
said County of Southampton in which suit you  
are plaintiff and I am defendant - when  
and where you may attend if you think proper

Mar 17/1834

Ed. Allyn

Pluff

Myrick

as { Depo.

Drake

Cover to Home Sealed April 1<sup>st</sup>  
1834

The deposition of Alexander Briggs of Southampton  
County, taken before us at the store house of Benjamin  
Williamson in said County, on Saturday the 22<sup>nd</sup> day of  
March 1834, pursuant to notice, to be read as evidence  
in a suit now pending in the superior court of law and  
chancery to be held for the afore said County of Southampton  
whereas Ethelred Drake for John G. Drake plaintiff and  
James Myrick defendant, the deponent, being just duly  
sworn, deposes and says as follows - to wit -  
Question by defendant -

How much Brandy do you think might  
have been made at my water lens Plantation the  
year Dec. Ethelred Drake lived there as owner in 1831  
by good management -

Answer, My opinion is, I think there might have been  
made something like thirty or forty barrels, by proper <sup>new</sup> manage-  
ment by some - do you not think the crop was badly  
managed -

Answer - I was not in the crop during the year - but  
from what I could discover by passing by the part which  
I did see, I thought badly cultivated -

No <sup>other</sup> question being put, the deponent says not  
sworn to and subscribed before us this day } Alexander X Briggs  
and year above written } mark  
Jas. A. M. C. B.  
Jas. A. M. C. B.

626 James Rochelle Clerk of the superior  
court of law and chancery for the  
County of Southampton

Buff

Myrick

~ 5 Sep.

Drake

Came to hand sealed July 7/1834  
(no notice accompanied this sep.)

Coleman & Lyne's acc  
4 Rand: 454.

Randolph & Randolph  
6 Rand: 174-

2 John 91-27uck 493-

2 Kent 590-

Chetty on, extracts 161-

168-172-

Sinclair & Bowler 913-

Gras 172-

The deposition of Benj<sup>m</sup> Barmer taken before us at the stone house of Benj<sup>m</sup> Williamson on the fifth day of July 1834 to be read as evidence in a suit now pending in the Superior Court of law and Chancery for the County of Southampton State of Va, whereas Etchell & Drake for the benefit of John & Drake plffs & James Myrick depts —

This deponent first duly sworn deposes to and saith as follows  
Inw. by depts —

At what time in the year 1831 did you move to my plantation called Watentoo, where Mr Drake lived in the early part of said year.

Ans. by depts.

In the latter part of September,

Inw. by depts. How much Brandy was there when you went on the plantation made in that year.

Ans. I found five barrels there.

Inw. by depts. How much do you think the orchard ought to have made from appearances, at the time you settled there.

Ans. It looked like there had been great waste, from the loss of the rotten apples on the ground.

Quest. by depts. Did Mr Drake return to the plantation after you went there in Sept. — To live

Ans. No.

Quest. How much corn did you make on the plantation in the year 1830. And how much in the year 1832, & ~~how much cotton~~

Ans. In the year 1830 I made one hundred & thirty odd Barrels & in the year 1832 Two hundred & forty six Barrels

Quest. How much did you gather of Mr Drake's crop in the year 1831 —

Ans. I gathered Seventy five Barrels & none appeared to have been destroyed.

Quest. Did the plantation look to you like it had been under good management.

Ans. It did not, that he had hauled a part of the rails from around the orchard — at least they were <sup>this</sup> stripping —

Benj<sup>m</sup> X Barmer for Mark

Subscribed and sworn to before us this 5<sup>th</sup> day of July 1834

Jos. Leane J.C.  
Geo. H. Barham J.C.

Myrick

is { Release Error

Drake

I James Myrick — of the County of Southampton in conformity  
with the Conditions upon which an execution hath been awarded by the Judge of  
the Circuit Superior Court of Law and Chancery, directed by Law to be held  
in the County of Southampton to a judgment of the said Circuit Superior Court  
of Law and Chancery for the County of Southampton recovered against me on  
the 31<sup>st</sup> day of October 1832 by Etheldred Drake for John S Drake —  
solemnly release all errors at Law, in the said judgment and proceedings.

Given under my Hand and seal this 12<sup>th</sup> day of April 1833

Test. :

J. Myrick

J. Myrick (Seal)

Notes - of Gifts.  
can. in myk.  
V. Drake -

Note Submitted to the Honorable R. H. Baker Judge  
in my neck & brackles - by Sifts court,

1st. When a party may defend himself at  
law but has failed to do so he shall not  
have relief in equity unless he was prevented  
by fraud or accident or the act of the  
opposite party unmix'd with negligence  
on his own part. 1. J. C. R. 90. 15. Rand.  
1, 125, 580,

2nd. Mistakes of the party or his coun-  
sel in the management of his cause are  
not sufficient grounds for an injunc-  
tion. 1 Mac, 64. 4 Rand. 193, 498,

3rd. When a cause has been fully <sup>heard</sup> ~~argued~~ in a court of law a court of equi-  
ty ought not to interfere unless fraud or  
surprise be suggested and proved,  
which is not done in this case. The  
complainant not intending ~~for~~  
that he was obstructed in making a  
full & full defence see 2nd. Tuck 459  
460 -

4th in the present case a suit was  
instituted on the facts, i.e. Joynice, broug  
ght to a hearing, argued by counsel and a  
verdict rendered for \$71.25 cost \$8.72 as a  
compensation to the plaintiff for the  
times he was in the employment of the  
complainant

The record of this suit is referred  
to both in the bill & answer, and though  
not made an exhibit in either, is worth  
note, in the apprehension of the Dept.  
counsel, admissible as proof of the facts  
above suggested —

Gray. p. 2.

P.S. This is no notice in relation to one of the alpe  
sessions. & the other proves nothing

Myra or Isabella  
Notes of Cornelia  
Bainwell

My dear Mr. Graham  
Notes of Mr. Piff's counsel

The Mr. Piff counsel seeks  
to submit that the  
defendant here was  
entitled to nothing  
if he violated the  
contract in getting  
the service of Mr. Piff  
at the time and in the  
manner I under the  
circumstances specified  
in the bill.

The answer does not  
deny, positively that  
he did so violate  
the contract but  
rather argues the  
facts as a justification  
of the violation.  
The other matter is the  
balance of affirmation  
I not see supported by  
any evidence at all.  
The two assertions of  
the plaintiff would  
the reply sustain  
to be greater even

than that alleged  
by the bill

= The circumstance  
of the voluntary  
departure at the  
time of the insurrection  
& the great waste  
of property left to  
the negroes without  
notice as well as the  
peril of the lives of the  
slaves under their new  
excited state of feeling  
unmistakably instances  
of, which but too often  
occure as well as the  
absolute purpose betide  
at that season & under  
the circumstances of  
excitement & inability of  
obtaining an overseer  
to manage the fair  
miles distant from  
the residence of the  
an relief as to know  
the defendants not  
entitled to a century  
the compensation  
claim is

Myrick v. Drake -

- 1 The charge that this judgment at law was obtained by surprise in consequence of the absence of counsel is not sustained by proof: upon a motion to dissolve, a material allegation not denied by the answer is admitted (Randolph v. Randolph 6 Rand: 194) but when the case comes on for final hearing, as in this instance, the rule is otherwise - see Coleman v. Dyne's ex. 4 Rand: 454: the allegation of surprise then, in this case, altho not denied by the answer, is not to be considered as true, because it is not supported by proof, and the injunction for that reason should be dissolved.
2. Suppose the ground of surprise in obtaining the judgment to be true so as to bring the case under the jurisdiction of a court of equity upon its merits: the inquiry then will be as to the truth of the charge involving a claim to relief in equity: the Bill states that the defendant Eustorius Drake, after he had been engaged at a certain price as the plff's overseer for the year 1831, left his service without his knowledge or consent before the end of the year, by reason of which the plff's were greatly injured - the answer denies this charge by stating that he, Drake, became sick & left the plff's service with his consent & approbation, and the question is, upon whom does the burden of proof by the rules of chancery law, devolve - The answer will preponderate when it denies what is affirmatively charged in the Bill and not when it asserts a right affirmatively in opposition to the plff's demand: it is, frequently a matter of difficulty to lay down the rule very firmly and distinctly: if the matter alleged by the def't be not in denial but in avoidance, it must be established by evidence abundant - the charge in this case consists of a single fact, that is to say, of the def't's leaving left the plff's service without his consent, which the def't in his

answer denies, and of which there is no proof - see  
2 Tucker's note, 493 - Had v. Ten Eyck 2 John: 89 -

3. If the def.<sup>t</sup> left the plff's service not as<sup>t</sup> but with the  
consent of the plff, the def.<sup>t</sup> is entitled to pro rata compen-  
sation for his services - 2 Kent 590. Chitty on contracts  
161. 168. 172. Sinclair v Booth 7 D & B. 92 -

Injunct to be dissolved & Bill dismissed with  
costs.

Rich<sup>d</sup> H. Baker

note.

Myrick

" 3 Injun bond

Drake

Innall men by these presents that we James Myrick and River Barker

are held and firmly bound into Ethelred Drake for John J Drake -

are held and firmly bound into Ethelred Drake for John J Drake -

and the just and full sum of One hundred and fifty nine dollars ninety four cents  
to be paid to the said Ethelred Drake for John J Drake - . . . .

To be paid to the said Esthelder & Drake for John J. Drake - . . . .

to which pay ment, well and truly to be made, we bind ourselves and heirs, Executors  
and administrators jointly and severally firmly by these presents sealed with  
our seals and dated this 12<sup>th</sup> day of April 1833

and administrators jointly and severally firmly by these presents sealed with

on Seals and dated this 12<sup>th</sup> day of April 1833

The condition of the above obligation is such, that whereas the above  
bond, James Mayrick \_\_\_\_\_

Bound, James Myrick

which obtained from the Judges of the Circuit Superior Court of Law and Chancery directed by Law to be held in the County of Southampton an injunction to stay until the further Order of the said Court. all further proceedings on a Judgment of the Circuit Superior Court of Law and Chancery. recovered against him by the above named Ethelred Drake for John Drake on the 21<sup>st</sup> day of October 1832

directed by Law to be held in the County of such accepted an injunction to stay

until the further Order of the said Court. all further proceedings on a Judgment of the

Circuit Superior Court of Law and Chancery. received against him by the above

named Ethelred Drake for John Drake on the 21<sup>st</sup> day of October 1832

for. Seventy one dollars twenty five cents — ~~and interest thereon to~~

~~We Computed after the rate of \$100 per centum per annum from the day~~

~~of~~ ~~the~~ ~~same~~ and the costs. Now if the said

James Myrick. — shall will and truly pay and satisfy the Judgment

afterward and also all such costs and damages as shall be awarded against

And in case the information aforesaid shall be defective then the above Obliga-

tion to be held rules to remain in full force and effect

Signed, sealed and delivered: J. A. M. Smith (Seal)

in presence of

Feb. 20. 1861.
 River Mouth (A. 10)

John B Barker

\_\_\_\_\_