1837-008 SOUTHAMPTON COUNTY CHANCERY PAPERS BARKER and Wife VS. ROCHELLE et al

3/1837

other SURNAMES: Land, Williamson, Wrenn, Parker, Barham, Magee, Gilliam, Harrup

Barker & Ellis

vs Bill.

Rochelle &c

1836 Mar. Bill

" Sp: Ca. & Rt Rochelle

June

" Dft. Ann Rochelles intermarriage with J. M. Williamson suggested

" July: Dft: Devaney's ans filed resa.

" Sci fa v. Williamson & Ellis.

" Sep: Sci fa: Ex.ª. Am.ª of Infants filed. 2 R 06:

1837 March. Decree.

Clk	$4.04
Shff.	2.91
Cr: Pub.	5.50
Law &	5.50
	$17.95

To the worshipful the County Court of Southampton
in Chy sitting)

Humbly complaining shows to your
worships your complts Robert Barker & Polley
his wife that some time early in the last year they
agreed to sell a certain tract or parcel of land to one
William Rochelle of this county for the sum of
$320 — to be paid on the 25th day of Decr 1835 —
and put the said Wm Rochelle in possession of
the land and ordered a deed to be written but before
it was done the said Wm Rochelle departed this
life intestate as to his real estate leaving a widow
ensient of a child which has been borned and
also died, and one Benjn Drewry of this county has
been appointed curator by this court. Your Orator
& oratrix are informed that the heirs at law of Wm
Rochelle are Anne Rochelle his widow Nat-
Land & Mary his wife formerly Mary Rochelle
Robert Rochelle who is an infant of some of
the western states & the children of Nat Roch
elle decd to wit Wm Rochelle John Rochelle Mary
& Martha Eliza Rochelle your Orator & Oratrix pray
a specifick performance of the contract. But
so it is may it please your worships, Orator & Oratrix
are wholly remediless at law and only relievable
in equity to the end that Anne Rochelle widow
of Wm Rochelle decd Nat Land & Mary his wife
Robert Rochelle the heirs of Nat Rochelle decd
by their next friend Stephen Mordecai & Benjn Drewry
curator of Wm Rochelle decd may be made defts to the foregoing
bill of complaint and to answer the allegations
thereof they pray the common writ commanding
& directed against the home defts and
an order of publication against the absent
defts and decree that Benjn Drewry curator of

Wm. Rochelle be compelled to pay River Barker and wife $320. with legal interest from the 25th day of December 1835 - and ~~they will ever pray~~ grant them such other relief both general & special in the premises as may seem agreeable to equity and good conscience and they will ever pray &c

Wmyan

The Plffs in in cause here
Tender a deed marked A

Ben. Devany Curator Rochdale
Ctf.
ats
Answer
Barker and Ux:

Prentis p. Dr.

1836 June 20th

Southampton.
Co. Co.

To the Worshipfull the County Court of Southampton, in Chancery sitting

The separate answer of Benjamin Dewaney, Curator of the Estate of William L. Rochelle dec'd. one of the defendants to the Bill of Complaint of River Barker and Polly his wife, complainants, in this Worshipfull Court exhibited.

This defendant now and at all times hereafter saving and reserving to himself all benefit and advantage to the manifold errors, and insufficiencies in the complainants said bill of Complaint contained, for answer thereto, or unto so much thereof, as this defendant is advised is material for him to make answer unto, he answers and says, That he is an entire stranger to all the statements and allegations contained in the said bill of Complaint: he has no knowledge of any agreement, between the complainants, and the late William L. Rochelle, relative to a sale of land, and he requires as in duty bound, that the complainants produce before this Court clear and distinct testimony to support their alleged demand.- That the Estate of William L. Rochelle was committed to the hands of this defendant whilst he was [redacted] High Sheriff of the County by order of Court is admitted.- and acting in this fiduciary character he has declined yielding to the wishes of the complainants and has determined to do nothing in the premisses without the sanction and decree of a Court of Competent jurisdiction which Court this is.

This defendant submits to this Court whether the complainants have made out such a case as are entitle them to relief in equity, against this defendant: This defendant has been advised, and therefore insists that the mere parol agreement as set out in the bill, if it should be proved, will not enable the complts to recover; and that in general a Court of Equity will not decree specific execution of an agreement in regard to a sale of land, unless there be some note, or memorandum in writing, evidencing the terms of the contract - Without that, that &c.

(Signed)

Benj Dewaney

Prentis. p. d.

Southampton County To wit:

This day Benjamin Dewaney who hath signed the foregoing Answer personally appeared before me a Justice of the peace in and for the County aforesaid, who made Oath that all the matters and things contained in the foregoing Answer so far as they depend upon his own knowledge are true; and so far as they depend upon the information derived from others he believes them to be true.

Given under my hand & seal this 18th day of June a.d. 1836.

William Briggs J.P. [seal]

Littleton R Edmond

Barker et al

1836 Aug. 18th

sitting

To the worshipful the county court of Southampton in chy

The separate answer of Littleton R Edwards guardian ad litem to infants heirs of Nathaniel Rochelle decd Wm Rochelle John Rochelle Mary & Martha Eliza Rochelle who are joint heirs of Wm L Rochelle decd. joint defendants to the Bill of complaint of River Barker & Polly his wife complainants in this worshipful court exhibited

This defendant now & at all times hereafter saveing & reserving to himself all benefit & advantage to the manifold errors & insufficiencies of the complainants said bill of complaint contained for answer thereto or unto so much thereof as this deft is advised is material for him to make answer unto. he answers & say. That he is an entire stranger to all the statements & allegations contained in the sd bill of complaint he has no knowledge of any agreement between the complainants and the late Wm L Rochelle decd relating to a sale of land & the answerer as in duty bound that the complainants produce before this court clear & distinct testimony to support their alledged demand. That the guardianship ad litem to the infants as above stated was granted him by this court and he determined to do nothing in the premises without the sanction and decree of a court of competent jurisdiction which court this is

This defendant submits to this Court whether the complaints have made out such a case as will entitle them to relief in equity against this defendant. This deft has been advised and therefore insists that the mere parol agreement as set out in the bill if it should be proved will not enable the complts to recover & that in general a court of equity will not decree specific execution of an agreement in regard to a sale of land unless there be some note or memorandum in writing (evidencing the terms of the contract) without that &c.

Barker &

" 30 Pub:

Rochelle &

Virginia. At Rules holden in the Clerks Office of the County Court of Southampton on the first Monday in April 1836.

River Barker and Polly his wife Plffs. In Chancery

against

Benjamin Dewey Curator of the estate of William L Rochelle dec'd. Ann Rochelle, Nathaniel D Sand and Mary his wife, Robert Rochelle and William, John, Mary & Martha Eliza Rochelle children of Nathaniel Rochelle dec'd Defts.

The defendant Robert Rochelle not having entered his appearance and given security according to the Act of Assembly and the rules of this Court and it appearing by satisfactory evidence that he is not an inhabitant of this Country, it is ordered that the said Defendant do appear here on the first day of June Term next. and answer the bill of the plaintiffs and that a copy of this order be forthwith inserted in some newspaper published in the Town of Petersburg for two months successively and posted at the front door of the Court house of this County.

Teste L R Edwards Clk

Copd.

Bachus Corps

3 2½ Men

Nicholls and

Nisa Barker and Polly his wife plff:

~~Ann Rochelle exrx of Wm Rochelle dec~~

J. M. Williamson and Ann his wife late Ann Rochelle, Robert Rochelle, Wm Rochelle, John Rochelle, Mary Rochelle and Martha Eliza Rochelle and Benjamin Kearney executor of the estate of Wm Rochelle dec~~d~~ and ~~Stat~~ defendants

The Subpoena in this cause having been executed and the bill filed more than 4 months, and Fillelon Rodgers having appeared to the cause and the defendants J. M. Williamson and wife late Ann Rochelle, ~~Stable~~ defendant and Mary his wife and Robert Rochelle having failed to file their answer, the bill of the complainant is taken as confessed against them, it appears that the absent defendant Robert Rochelle has been served against by order of publication according to the statute in such cases made and provided - and this cause this day came on to be heard on the bill of the complainant, exhibits filed, ~~explanation~~, answer of the defendant Kearney and of the infant by their special guardian by the County Court appointed, the depositions, documents and examination of witnesses; on consideration whereof, the Court doth adjudge, order and decree as specified in the contract in the bill stated - that the complainants make a good and sufficient deed for the piece of land in the bill mentioned lying in Clapton County called Mary's containing by estimation 80 acres more or less

being the lands sold to him by the plff: to Wm Rochelle in his lifetime & after possession of the said Rochelle at his death, which sale is to be made to the defendants Robert Rochelle Wm Rochelle, John Rochelle Mary Rochelle Martha Rochelle, ~~Stable~~ sufficient

ni law to convey to them or the heirs
at law of Wm L Rochester, a good and
indefeasible title to the same with
warranty of title - and the Court doth
also adjd. and decree that upon
the ~~delivery~~ execution of the said deed for the land
aforesaid
the said Benjamin Swan as
a Curator of the estate of Wm L Rochester
pay to the said Union Bank the plff
the sum of $320 with interest thereon from
25th Decr. 1835 till paid and the costs of
this suit - to be paid out of any of the
~~of~~ the said estate in his hands to be
administered &c — Liberty is reserved
to the infant defendant to shew cause
(if any they can against this decree
in a year and a day after they shall
respectively arrive to the age of 21 years.

266

Barker Wife

vs 3 Cos: Decree

Rochelle Cab

Satisfied
Per L. Schrell Atty
Blymyer Atty

Bill due Decem 25 1835 — 39 00
Int. to date Oct 25 38 — 42 18
Costs — 11 95
392 13
16 60
$376 13

The plaintiffs in compliance with the within decree have executed a Deed which has been recorded in the County Court of Southampton

L R Edwards Clk

May 6th 1837.

Southampton County March Court 1837–

River Barker and Polly his wife Plffs. } In Chancery

against

John M Williamson and Ann his wife late Ann Rochelle, Robert Rochelle William Rochelle, John Rochelle, Mary Rochelle and Martha Eliza Rochelle and Benjamin Dewany Curator of the Estate of William L Rochelle dec'd & Nathaniel D Land and Mary his wife Defts.

The Subpoena in this cause having been executed and the bill filed more than four months – and Littleton R Edwards having been appointed guardian ad litem to the infant Defendants – and the defendants John M Williamson and wife late Ann Rochelle – Nathaniel D Land and Mary his wife and Robert Rochelle having failed to file their answer, the bill of the Complainant is taken as confessed against them, it appearing that the absent Defendant Robert Rochelle has been proceeded against by order of publication according to the Statute in such cases made and provided – And this cause this day came on to be heard on the bill of the Complainant, exhibits filed, answers of the Defendant Dewany and of the infants by their Special guardian by the County Court of Southampton appointed, the replications thereto, and examination of witnesses. On consideration whereof the Court doth order, adjudge and decree a Specific execution of the contract in the bill stated – that the Complainants make a good deed for the piece of land in Southampton County called Maney's Containing by estimation eighty acres more or less being the lands proved to have been sold by the plaintiffs to William L Rochelle in his lifetime and in possession of the said Rochelle at his death which deed is to be made to the Defendants Robert Rochelle, William Rochelle, John Rochelle, Mary Lond formerly Mary Rochelle and Martha Rochelle and to be sufficient in law to convey to them or their heirs at Law of Wm L Rochelle a good and indefeasible title to the same with warranty of title – and the Court doth also adjudge, order and decree that upon execution and recording of the said deed for the land aforesaid the said Benjamin Dewany admor: & Curator of the estate of William L Rochelle pay to the said River Barker the plaintiff the sum of three hundred and twenty dollars with interest thereon from the 25th December 1835 till paid and the costs of this suit, to be paid out of any assets of the said intestate in his hands to be administered &c Liberty is reserved to the infant defendants to shew cause if any they can against this decree in a year and a day after they shall respectively arrive to the age of twenty one years

Plaintiffs Costs $17.95 Cents

Teste L R Edwards C C

6. 6

Barker Hulse

m. 3 Sp. in Coty

Rochelle Vs

1836 March Rules

Executed upon
Ann Rochelle widow of
Wm L. Rochelle, Miles
Rochelle, John Rochelle
Mary Rochelle & Martha
Eliza Rochelle & Peggy
Devany Executor of the
Estate of Wm L Rochelle
dec'd. Robert L Rochelle
No interlocutors.

N. M. Salmon

The Commonwealth of Virginia:

To the ~~Sheriff~~ County of Southampton — County.—GREETING:

You are hereby commanded to summon Wm Rochelle widow of Wm L Rochelle dec'd Robert Rochelle Williams Rochelle John Rochelle Mary Rochelle and Martha Eliza Rochelle and Benjamin Deveny curator of the estate of William L Rochelle dec'd

to appear at the Clerk's Office of our ~~Circuit~~ County ~~Superior~~ Court ~~of Law and Chancery for the~~ ~~County~~ of Southampton, on the first Monday of March next, that being rule day, to answer a ——— Bill exhibited against them & others ——— in the said Court by River Barker and Polly his wife ———

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 100*l*. And have then there this writ.

Witness—~~JAMES ROCHELLE~~ Littleton R Edwards, Clerk of our said Court at the Court House, the 23d day of January 1836, and in the 60th year of the Commonwealth.

L R Edwards C C

[*One copy to be delivered to each defendant.*]

Delivered a copy to Nath[l] Dand & Mary his wife on
the 5th day of March 1836

Thomas Birdsong
Dep[y] of
Wm Parham Shff

Sumner & wife
vs
Eppes & Coles

Petition &
1836 March Rules

The Commonwealth of Virginia:

To the SHERIFF of Sussex County.—GREETING:

You are hereby commanded to summon Nathaniel D Jones & Mary his wife

to appear at the Clerk's Office of ~~our Circuit Superior Court of Law and Chancery for the~~ County Court of Southampton, on the first Monday of March next, that being rule day, to answer a ——— Bill exhibited against them & others in the said Court by River Barker & Polly his wife

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 100*l*. And have then there this writ.

Witness—~~JAMES ROCHELLE~~ Littleton R Edwards, Clerk of our said Court at the Court House, the 25th day of January 1836, and in the 60th year of the Commonwealth.

L R Edwards clk

[*One copy to be delivered to each defendant.*]

Southampton County to wit

This Day personally appeared before me Pope Drewry a Justice of the Peace for the County aforesaid Benj. Griffin & Richd Rochelle and made oath that Richd Rochelle, and Nathaniel D Land acknowledged Service of the within Notice on the 16th day of May 1836 and that Benj. Dewany & L R Edwards acknowledged Service on the 18th day of May 1836 Given under my hand and Seal this 15th day of June 1836

C. D. H. Barham J. P. [Seal]

We acknowledge Service of the within notice on the 16th day of May 1836 -

Rd Rochelle

N D Land

L R Edwards

Benj. Dewany

Barham

vs

Rochelle and others

Execution

Issued June 15th 1836

Returnable to the next Superior Court to be held for the County of Southampton on the 4th Monday after the 4th Monday in September next

Given

Barham Mann

Clerk Barham

Steps Benja. Deaney exctor of the estate of Wm L Rochelle
decd Ann Rochelle Nathaniel D Land & Mary his wife Robert
Rochelle & Littleton R Edwards guardian ad litem to the infts
of Nathaniel Rochelle decd. Wm John Mary & Martha Eliza
Rochelle take notice that on the 15th day of June 1886
we shall proceed to take the depositions of Solomon D Parker
Samuel Barham Matthew Gillian Barham Wrenn
and others at the house of George A C Barham
in the County of Southampton & State of Va between
the hours of 10 Oclock a m 5 Oclock (p m) to be read
as evidence in a suit pending ~~as aforesaid~~ in the county
court of Southampton on the Chancery side in which
~~you~~ we are pltffs & you are defts at which time
and place you may attend if think proper if
If the above depositions are not taken on the day
above mentioned they will be continued from day
to day until completed.

yours &c
River Barker
Polly Barker

Barker & wife

v 3 Depo:

Rochelle &c

Sworn to by Geo: A.C. Barbour
Justice of the Peace

Question by same. - Did Wm S. Rochelle occupy the land during the year 1835. & in what manner.

answer. He did. he made a crop on it. he also got rail timbers. & timber for a house. & wood & Still wood.

And Further your deponent saith not.

Jonathan Harrup

Hampton County to wit.

I Dan'l G. Basham one of the commonwealths Justices of the peace for the county aforesaid certify thos. Basham. Wm Kenn. Sal. P Parker. S. Basham. & Henry. M. Magee personally appeared before me deposed as above on the 15th day of June 1836 having been previously sworn and agreeably to notice Mathew Gilliam & Jonathan Harrup appeared on the 16 inst and deposed as above. in like manner given under my hand this 16th day of June. A.D. 1836

D. G. Basham J.P.

The depositions of Barham Wrenn Samuel Barham. Solomn D Parker. Henry M Magee Matthew Gilliam & Jonathan Harrup taken before George & Barham a Justice of the Peace for the County of Southampton the the 15th & 16th days of June 1836, at the house of George & Barham in the County aforesaid between the hours of 10. O'Clock A M & 5 O'Clock P M. agreeable to notice to be read as evidence in a Suit in Chancery depending in the County Court of Southampton wherein River Barker and Polly his wife are plaintiffs and Benj.a Dewany Curator of the estate of Wm. Rochelle dec.d, Ann Rochelle, Nathaniel D Sand & Mary his wife Robert Rochelle & Littleton R Edwards Guardian ad litem to the infants of Nathaniel Rochelle dec.d Williams. John, Mary & Martha Eliza Rochelle are defendants — The Deponants being first duly Sworn on the holy evangelist of Almighty God deposeth & saith as follows —

Barham Wrenn. Sworn.

Question by the Plff. What do you know concerning the the contract between River Barker & Wm Rochelle dec.d. about a certain tract of land. —

answer. I was called on by Mr Rochelle & Mr Barker to value a tract of land in company with S Barham Jr. It was valued at four Dollars per Acre Mr Rochelle expressed perfect satisfaction at the price set by us. Mr Barker was not present. Mr Rochelle told me after doing Barham that the contract was confirmed —

Q. by Sand. do you know whether Rochelle cultivated the land the year 1835

ans. I do not.

And further your deponent saith not.

Barham Wrenn

Solomon D. Parker sworn

Question by Plff what do you know concerning the contract between ~~between~~ River Barker and Wm L Rochelle dec'd in the sale of a certain tract of land

Answer I heard Wm L Rochelle say he had bought Barkers land, that the said tract of land was sold for 80 acres, for which he was to pay $4.00 pr. Acre or $320.00,

Question Did Rochelle have the land in possession or exercise any ownership over the same

Answer I saw new rails around the field, & Rochelle said he had them put there, his cart & oxen were then engaged in carrying Rails around the field

I further this deponent says not.

Sol. D Parker

Sam'l. Barham sworn.

Quest by Plff What do you know about the contract between Barker & Rochelle for a certain tract of land sold by R Barker to Wm L. Rochelle

answer. I was called on by Wm L. Rochelle to meet Mr Barham Wiseman to set the price on said land Rochelle stated that Barker had selected Wiseman & he had chosen me. we met & appraised the land to four Dolls pr Acre. to which Rochelle expressed himself satisfied, at the next County court Rochelle told me he had seen Barker who was well satisfied with the price & that he should take the land. & further more I saw Rochelles hands getting brick wood & his carts hauling it off.

Further your deponent saith not.

Sam'l. Barham

Henry. M. Magee sworn

Ques by Plff What do you know of the contract for land between R Barker & Wm L Rochelle

Ans. In the month of Feb. 1835 I was asked by Mr. Rochelle to write a deed. saying that he had bot Eighty acres of land of River Barker for which he was to pay four Dolls pr. acre saying that Mess. S. Barham & B. Wiseman set the price. he also gave me a deed for a guide. in giving the boundaries. he also asked the given nam of Barkers wife.

Further your deponent saith not.

Henry M. Magee

Mathew Gilliand sworn

Quest. by Plff. Did you live with Wm L Rochelle in the year 1835.

Answer. I did. — Qu. as you know any thing of the contract betwen Rochelle & Barker

Ar. Nothing but what Wm Rochelle told me

Dr. Cooper for Plff. What did Rochelle tell you.

Answer. He told me when he returned from a sale (at which place he saw Baker.) that he had bot. Mcanny's land of Baker. he (Rochelle) further stated that Baker told him to take possession of the said Land & use it as his own. that they. B. & R. had named two men by whose award they were to abide as to the price. he afterwards told me he was to pay four Dolls pr. acre. for s.d Land.

Q. by the Plff. Did Rochelle occupy the land in the year 1835

answer he did. Q. Question by the same. did Rochelle not get timber off the land & join fences. with those on the tracts bot of Baker answer he did

Q. by the same. Did you not infer from Mr Rochelle's conversation about s.d Land & his directions. for its management, that he considered it his in fact. altho no deed had been made by Baker.

Answer I did. Q. Did he make a crop on the land in the year 1836. Answer he did. & further your deponent saith not.

Jonathan Harrup sworn, Matthew Gillison

Q. by Plff. do you know any thing about the land purchased of Wm L Rochelle of R Baker. if so state it.

answer. I know only what Mr Rochelle stated to me, I wished to rent a house & applied to Mr Rochelle, he said I might have the house at Mcanny. that he had bot the land of River Baker, that S. Barham & Barham Wasson were to set the price, that they had agreed to abide by their decision (as to price) & that I might move there at any time.

Cert.

c

166

Barker & Ellis

vs 3 Scifas

Rochelle &c

1836 August Court.

Executed

Silas Dewey atf

J. Benja Brodhead 8

The Commonwealth of Virginia: To the Sheriff of Southampton County Greeting - Whereas
Reuben Barker and Polly his wife heretofore exhibited to our County Court of Southampton sitting
in Chancery their bill of complaint against Ann Rochelle widow of William L Rochelle
decd, Robert Rochelle, Nathaniel Land and Mary his wife, William Rochelle, John Rochelle,
Mary Rochelle and Martha Eliza Rochelle and Benjamin Dewey Executor of the Estate of
William L Rochelle decd: whereupon sundry proceedings have been had as appears from the
records and files of the said Court. but before a final decree could be pronounced in the said
cause the said Ann Rochelle intermarried with and took to husband John M Williamson
as by the insinuation of the said Reuben Barker and Polly his wife in our said Court we
have been given to understand: and the said Reuben Barker and Polly his wife having
supplicated us for a proper remedy in that behalf and we being willing that what is right
and just should be done: Therefore we command you that you make known to the said
John M Williamson and Ann his wife according to Law that they be before the
Justices of our County Court aforesaid at the Courthouse on the first day of August Term
next. to shew if any thing for themselves they have or know to say, why the said Court
should not be proceeded in to a final decree against them. and be in all things in the
same plight and condition as it was at the time of the marriage aforesaid and further
to do and receive what our said Court shall in that part consider. And have then there
this writ. Witness Littleton R Edwards Clerk of our said Court at the Office the 22d
day of July 1836 in the 61st year of the Commonwealth

L R Edwards clk