1840-014 SOUTHAMPTON COUNTY CHANCERY PAPERS TREZVANT vs. BARKLEY and Wife 11/1840

other SURNames: Waddill, Berkley, Barclay

Inzpruck

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Barclay Hoefe

[illegible] by Lewis Morris Esq. 1854

Eliza Berkley formerly Eliza Waddill for answer to the bill and amended bill, exhibited against herself & Britton Berkley in the circuit superior court of law & chancery for Southampton county, Virginia or to so much thereof as she is advised is material for her to answer sayeth. That many years before she purchased the house & lot in the town of Jerusalem, and entered into the mercantile business Theodore Trezvant had been engaged in business in the town of Petersburg, had failed in that business, and came to Jerusalem, utterly and wholly bankrupt, and insolvent. That his brother James Trezvant in order to enable him to make a maintainance for his family, engaged in a mercantile business in Jerusalem, and made the said T. Trezvant his agent to conduct it; that this business was carried on in this way for several years for the exclusive benefit (so far as the profits were concerned) of said James Trezvant, and the many creditors of the Trezvant were informed whenever they made application to said T. Trezvant for adjustment, and payment of their demands, that he was only acting as agent, & that he had no beneficiary interest in business which he was there conducting as agent. That after this business had been carried on for some years by James Trezvant, he disposed of his interest & sold the merchandize &c to his brother Lewis G. Trezvant, who carried on the business in his name; the said T. Trezvant still acting as agent. That the said Trezvant still protesting he had no beneficiary interest in the business, and that he merely acted as agent; That about this time your respondent would most respectfully represent to your honour, the Trezvant intermarried with the sister of your respondent, and that from some cause to your respondent unknown, his brother for whom he was there doing business as agent

became dissatisfied & resolved to sell out. That your respondent entertaining for her Sister all the feelings which should animate the bosom of one sister for another, and seeing the destitute condition to which she would be reduced consented at the solicitations of her friends to purchase of Lewis Treyvant the stone house, and goods, and to permit the said L. Treyvant to conduct the business for her in her name as her agent, and from the profits of the store, to draw so much as would be a support and maintainance for himself, and family. Your respondent would represent to your Honour that her uncle Robert Watkins devised to her by his last will, and testament the sum of one thousand, six hundred, & eighty dollars to be paid to her at the death of her mother, and in order to enable her to carry out the wishes she had, to aid and assist her sister, & to add to her comfort, that the father of your respondent advanced the above amount before the death of her mother, and with this sum in part the stone house & goods were purchased, and the balance was purchased on a credit which was afterwards discharged by money arising from the sale of goods from the store. That the said mercantile business was carried on until the death of the sister of your respondent, when your respondent resolved to discharge the said Thos: Treyvant from her employment, and to take the business in her own hands. That your respondent carried out her intentions so far as to dispose of a portion of the goods, but continued him so far only as was necessary to close the business, and that she gave him back the money; say: the sum of nine hundred & eighty dollars to settle and discharge ~~debts for goods; That~~ which he alledged to be due in Philadelphia for goods; That your respondent, and the said Thos: Treyvant had a settlement in the year 1895

and he brought your respondent in debt- for the sum of Three hundred & Thirty nine dollars which your respondent discharged. This was a settlement of his transactions as her agent in closing the mercantile business- your respondent would represent to your Honour, that the allegations contained in the bill & amended bill of L. Treyvant, that your respondent boarded with him, is wholly groundless, and untrue. Your respondent it- is true lived in the house with L. Treyvant, and her sister. but the entire family was supported, and maintained from the store of which your respondent was sole owner, and so far from boarding with him, the said L. Treyvant & family in fact & truth boarded with her, and were supported, and maintained by her means, and he often declared that he was wholly bankrupt and insolvent, and a maintainance, and support was all he expected for compensation for the services he rendered as her agent. Your respondent would further state, that even the medical bill for services rendered to the sister of your respondent (who was the wife of L. Treyvant,) during her last illness, and the funeral expences, were paid, and discharged by your respondent out of the proceeds of the store

Your respondent for answer to the many allegations contained in the bill, and amended bill of L. Treyvant respecting the purchase of the lot- & store house in the town of Jerusalem, which was the original cause of this suit saveth. That it- is not- true, that said L. Treyvant paid or advanced any portions of the purchase money, nor could he have done so, for at that time he was utterly insolvent, and unable to discharge the smallest demand against him. That the store house, lot,- and goods were purchased in the manner before recited, and with the money paid your respondent by her father

and which was devised to her by her uncle. The deed of Bargain & Sale was made, and executed by Lewis C. Treyvent to your respondent, and was only recorded in the Clerks office in the County of Southampton. That it is true your respondent left T. Treyvant in possession of the lot, when she left there on the death of her sister; but he only continued in the possession as the agent of Musgaugh & Treyvant, and that a lease was made to the said Musgaugh & Treyvant of the premesis, which deed of lease was entrusted to the honour of said T. Treyvant after having been signed by your respondent, & which lease was suppressed by said Treyvant, and that after determination of the aforesaid lease, the said premesis was sealed to the said T. Treyvant by your respondent. Your respondent would farther say, that it is not true that she ever admitted the receipt of four hundred dollars from T. Treyvant to be applied to the purchase of the lot in controversy, and so far from it, she most positively denies, that he ever advanced or contributed a dollar for that object, and that the lot was purchased by her alone, and paid for by her means. Your respondent would state that so far from T. Treyvant endeavouring to effect a settlement with her, that she was always anxious, and ready to have one, and that she could not procure it from said Thé. Treyvant. That as your respondent has before answered, there was a settlement of the transactions of said Treyvant as agent, in which she yielded much to his necessities, and that the only remaining unsettled account between them, is that due her for the lease of the aforesaid house & lot for eight years, and a store account due by your respondent to said T. Treyvant. Your respondent would also further shew, That it is not true in fact that T. Treyvant was

unacquainted with her intention to remove to the South, that in fact he was apprised of this intention, and could at all times have effected a settlement. She verily believes that it is wholly untrue that there is no means to satisfy any demands which may be established against your respondent for that: at the time of the removal of your respondent she knew of no demand which was just, that could be brought against her, yet a large amount of property was left in the State, and is still in the State of Va. to wit; the sum of about $3000. Your respondent would further shew unto your Honour, that she is greatly the sufferer by her kindness to the said Thé. Treyvant, and by employing him as her agent; That as your respondent has before stated, when he the said Thé. Treyvant came to Petersburg from this town of Petersburg he had been unfortunate in business, and was bankrupt, and had heavy debts ~~to discharge~~ hanging over him, which he was unable to satisfy; That after her taking him in employment as her agent, one Daniel Dugger of the town of Petersburg sued out ~~an~~ execution against the said T. Treyvant, and ordered the officer to levy on the goods of your respondent, which he did; and that your respondent forbid the sale, yet the said Dugger indemnified, and a sale was made, by which your respondent was greatly damaged. So much so that she was forced to close the business which had hitherto been very prosperous. It is true your respondent after words brought suit on the indemnifying bond, and recovered payment, yet this did not compensate her for the loss she had sustained, by the breaking up of her business, and a forced sale of her goods. Yet notwithstanding all these losses, and inconveniencies, your respondent was unwilling to be hard with the said T. Treyvant, and

did not- hold him answerable for this damage which she sustained by his means- Your respondent would also state that the first Levy did not- ligniate the claim of the said D. Digger, and that a second was made in the manner of the first, and that goods worth $150 to $200 was sold under this second execution, which your respondent never sued for, or recovered, and which she yielded up to the said I. Treyvent in the settlement which they had in the Autumn of 1835- Now therefore your respondent having made full, fair, and true answers to the many allegations in the bill of the said I. Treyvent and believing that a court of Equity should not- entertain the said bill, pray your Honour that the said bill be dismissed, and your respondent recover cost- &c, and your respondent for your Honour will forever pray &c.

Eliza W Barkly

Territory of Florida Jackson County: Before the subscriber a Justice of the Peace in and for said County personally came Eliza Berkley who being duly sworn says that the facts set forth above in her answer to Complainants Bill are true to the best of her knowledge and belief

Eliza W Barkly

Sworn to & Subscribed before me
this 16th day of September 1840
Richard Wilson Justice of the Peace (Seal)

Territory of Florida: Jackson County: I John B Taylor Clerk of the County Court of Jackson County do hereby certify that Richard Wilson before whom the above affidavit was made, is an acting Justice of the Peace in and for said County, duly and legally qualified
In Witness whereof I have unto set my hand and affix the seal of said Court this 16th day of September in the year of our Lord eighteen hundred and forty
John B. Taylor Clerk

Territory of Florida Jackson County: I Richard H Long Judge of the County Court of Jackson County, hereby certify that John B Taylor whose name appears to the foregoing Certificate is and was at the time the same bears date, Clerk of said Court, that full faith and credit should be given to his attestation as such, and that the same is in due form. Given under my hand & private seal there being no seal for my Office provided by law this 17 September 1840
Rich'd H Long (Seal)
Judge Jackson County Court

The Seperate answer of Britton Berkley to the bill of injunction exhibited against himself, and Eliza his wife formerly Eliza Weddell in the circuit ~~court~~ Superior court of Law & Ch: for the County of Southampton State of Virginia, or to so much thereof as he is advised it- is material for him to answer. Sayeth: That he has no personal knowledge of the facts set- forth, and alledged previous to his intermarriage with Eliza Weddell and which she has answered; but to show to your Honour that, that portion of said Bill which asserts that the Treyvent endeavoured to effect a settlement with him after his intermarriage is not- true; but wholly grounded, that your respondents did go from the State of North Carolina to Jerusalem Va. on several occasions in order to procure a settlement; but that the said Treyvent could not- be induced to settle; but always put- it- off, and delayed it, and that he the said Treyvent promised to pay him a visit, and to adjust the unsettled accounts, which he never did, and that all his efforts to bring him to a settlement were unavailing, and that at- the very time he was in Jerusalem endeavouring to procure a settlement, the said I. Treyvent instituted a suit against your respondent, & wife. Your respondent would also state, that the said I. Treyvent was duly apprised of his intended removal to the South, and that he the said Treyvent took advantage of this knowledge, and instituted suit on the eve of your respondents removal when your respondent would be far removed and unable to give the said suit that attention which was necessary- And your respondent would state that he is utterly at a loss to account for said Treyvents ~~bill altogether~~ allegation in his bill, that his Judgement will be valueless as your respondent now has more than two thousand dollars in Va. in property, and money, and

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that said Treyvant had notice of this intended removal, and could have held him to bail so as to secure the debt which he now sets up, if recovered, as to the claim which the said J. Treyvant sets up for an unsettled account your respondent Bill beg leave to file an account marked (A) which he prays may be read as a part of this answer, which will shew your Honour that the said J. Treyvant is now indebted to your respondent in a balance on said settlement Your respondent having thus answered all facts within his personal knowledge - and believing that a court of Equity should not entertain the Bill of said Jhe: Treyvant, he prays your Honor to dismiss the said Bill, and to award your respondent cost &c and your respondents for your Honour will forever pray &c

Britton Barkley

Territory of Florida Jackson County: Before the subscribe a Justice of the Peace in and for said County personally came Britton Barkley who being duly sworn says that the facts set forth in his above answer to Complainants Bill are true to the best of his knowledge and belief

Britton Barkley

sworn to & subscribed before me this 16th day of September 1840

Richard Wilson Justice of the Peace (Seal)

Territory of Florida Jackson County - I John B Taylor Clerk of the County Court of Jackson County do hereby certify that Richard Wilson before whom the above affidavit was made is an acting Justice of the Peace in and for said County duly and legally qualified. In Witness whereof I hereunto subscribe name and affix the seal of said Court this 16th day of September A.D. 1840

John B. Taylor Clerk

Territory of Florida Jackson County: I Richard H Long Judge of the County Court of Jackson County hereby certify that John B Taylor whose name appears to the foregoing certificate is and was at the time the same bears date, Clerk of said Court, that full faith and credit should be given to his attestation as such, and that the same is in due form. Given under my hand and private seal, there being no seal for my office provided by law, this 17th September 1840

Rich H Long (Seal)

Judge Jackson County Court

Theadore Trezvant

1833 to 1835 — To Eliza W Waddell Dr

(Exibit A)

Feby 16	To Rent for Store House & Lot in the town of Jeausalem State of Virginia County of Southampton Leased to Dr Luis Trezvant and James Murdaugh for the term of three year commencing the 16th of February eighteen hundred and thirty two and ending the 16th of February eighteen hundred and thirty five at one hundred and ten dollars pr annum payable at the expiration of each year all of which Theadore Trezvant assumed to pay $330.00		
	Interest on the $330.00 for 1 year 19 80		
	first two year to the 16th of feby 1835	349	80
	Interest on $349.80 to the 16th of feby 1840	105	38
	To Rent for the aforesaid House and for five year commencing the 16th of February eighteen hundred and thirty five and ending the 16th of February eighteen hundred and forty at one hundred and twenty dollar pr year payable at the expiration of each year $600.00		
	Interest on the first year to termination of lease 72 00	672	00
		$1127	18

6.56

Irregular

v 3 Spa. wide by

Barkley Sheets

1839 November Rules

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon Britton Barkley & Eliza Willis wife

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 the said Court on the first Monday in November next, to answer a Bill in Chancery exhibited against them in the said Court by

Theodore Irgnant

And unless they shall answer the said Bill within four months thereafter, the Court will take the same for confessed, and decree accordingly. And this they shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the 21st day of October 1839, in the 64th year of the Commonwealth.

L. R. Edwards Clk

[*One Copy to be delivered each Defendant.*]

Southampton County to wit:

This day personally appeared before me a justice of the peace for the County aforesaid, Saml. J Douglas, and made oath that he delivered a true copy of the within notice to Theodore Tregvant on Wednesday the 22nd. day of July 1840. Given under my hand this 22nd. day of July 1840.

N. M. Sebrell J.P.

To Theodore Legrand

Please take notice that I shall in virtue of a commission issued from the the Clerk's offices of the Circuit Supr. Court of Law & Chancery for Southampton County, on the 20th day of August 1840 at the residence of John Waddill in the county of Hertford, State of North Carolina between the hours of nine in the morning, and six in the evening, proceed to take the deposition of the said John Waddill to be read as evidence in a Chancery suit now pending in the Circuit Superior Court of Law & Chancery for the County of Southampton State of Virginia, in which you are plaintiff, and Britton Barkley & Eliza his wife, formerly Waddill and myself are defendants, at which time & place you may attend if you think proper.

James Magee, for himself
and as attorney in fact for Barkley
and wife

Trezant

v 3 Depositions

Barclay et al

Came to hand under seal November
3d. 1840

Bedford County N.C. Augt 20th 1840.

We Abm. Riddick & Henry L. Williams ~~of the~~ Justices of the peace for said County agreeably to a commission from the Sup. Court of Law & Chancery for the county of Southampton & State of Virginia do proceed to take the deposition of John Waddill & also pursuant to notice served on the plaintiff T. Ingvant at the instance of the defendants by their counsel what deposition is to be had in evidence in a Chancery suit now pending in the circuit sup. Court of Law & Chancery for the said County of Southampton in which Thos Ingvant is plaintiff & Britton Barkley & Elyza his wife, formerly Elyza W. Waddill are defendants James Mapt Esq. being attorney in fact for said Defendants

The said Witness John Waddill being duly sworn deposeth & sayth.

That Thos. Ingvant came to Jerusalem from Petersburg on a state of insolvency & transacted business in the former place as agent first for his brother James & afterwards for his brother Lewis C. Ingvant — Lewis C. Ingvant sold out the whole of the establishment, goods storehouse & Lot to Elyza W. Waddill now Elyza W. Barkley & returned Thos. Ingvant for her agent. That the said T. Ingvant agreed to receive a maintenance for himself & family for his services as agent for the said Elyza W Barkley which he always had from the store as if it had been his own. And Waddill ~~his~~ father in his lifetime lent his daughter Elyza W. Waddill now Elyza W Barkley sixteen hundred & eighty dollars to enable her to buy out L. C. Ingvant for which sum & interest the said Elyza has subsequently to the death of our father N. Waddill settled with me as Executor. At the death of Mrs. Ingvant who was sister to the said Elyza. the latter resolved to discharge the said T. Ingvant from her employment and did so; but at the earnest solicitation of the said T. Ingvant she still confided the settlement of her affairs in Philadelphia to him & also the collection of her ~~dues~~ debts due the store. I advised her to this course contrary to her previous determination. The said Elyza & the said

Thos. Ingvant had a settlement of all thos transactions relating to the said Ingvants agency for the said Elyza in the fall of 1835 on which settlement the said Elyza fell in debt to the said T. Ingvant about the sum of four hundred dollars which she has by giving an order on Major Vick in part. A ballance of $49 dollars I am charged to her on the account of said Ingvant. I understood from W. Ingvant that he while transacting business for said Elyza W. Barkley formerly Waddell boarded in her house & lived on her means for which his services as her agent were to compensate her as his only means of doing so, he being bankrupt & unable to pay any thing. Elyza W. Waddell now Barkley paid her sisters (Mrs. Ingvants) medical acct. to Drs. Spark & Nicholson during her last illness & also her funeral expences. I am enabled to state these facts from having the vouchers in my possession.

I am not enabled to speak from personal knowledge as to whether W. Ingvant did or did not advance $400 as he alleges to have done towards the purchase of the house and lot in Jerusalem at which the said Elyza transacted business. I was not present at the time of the purchase but from all the circumstances connected with that transaction I do not believe he ever paid — or advanced one dollar of his own money for that purpose. On the contrary I am fully impressed with the belief that the house & lot were wholy had for one of the means of the said Eliza.

I as the friend & brother of the said Eliza leased the said house & lot to Mundaugh & Ingvant (Doct. Ingvant) for whom the said T. Ingvant acted as agent in carrying on a mercantile business. The term of lease was for three years from Feb. 1832 at $100 per Ann. In 1835 Elyza W. Waddell (now Barkley) in my presence again leased the said house & lot to Thos. Ingvant for the term of five years to take effect at the expiration of the first lease to Mundaugh & Ingvant which latter lease terminated last Feb. By the said T. Ingvant agreed to pay him $125 per Ann. The said Elyza executed a lease in writing to Mundaugh & Ingvant for the — first lease of three years which lease was placed in the possession of the said T. Ingvant in whose possession I have seen it. I have often heard W. Barkley the husband since his intermarriage with Elyza W. Waddell urging a wish for a settlement with T. Ingvant & he left my house on several occasions to go to Jerusalem for that purpose but always said on his return that he could not effect one with him. In the settlement which took place in my presence between the said Elyza & T. Ingvant & which I aided them in making for his agency for the said Elyza the said Elyza yielded every demand of said Ingvant, nor did she exact from him many claims to which she was justly entitled.

Further this deponent saith not.

Wm Waddell

Agreable to the annexed commission we Abram Riddick and Henry D Williams acting justices of Hertford Cty N.C. met at the house of John Waddell Esqr in said Cty and state between the hours of Ten and Four on this day it being the 20th day of Aug proceeded to take the deposition of John Waddell

We do certify that the above & written is the deposition of John Waddell, sworn to before us —

A Riddick J.P.

Henry D Williams J.P.

The Commonwealth of Virginia: To any two Justices of the Peace for the County ~~To~~ of Hertford State of North Carolina — **Greeting:**

Know ye that we trusting in your fidelity and provident circumspection do diligently examining whatsoever witnesses on behalf of Britton Barkley and Eliza his wife and James Maget in a suit in Chancery depending in the Circuit Superior Court of Law & Chancery for the County of Southampton in which Theodore Ingvant is plaintiff and Barkley and wife & Maget Defendants —

command you, or any two or more of you, that at such day and place as you shall appoint, you assemble yourselves, and the witness as aforesaid before you, you call and cause to come, and diligently examine on the Holy Evangelist of Almighty God, and their examination into our said Court distinctly and plainly without delay you send and certify enclosed returning also this writ: Witness, ~~James Rochelle~~ Skilton R Edwards, Clerk of our said Court, at the Courthouse this 22nd day of July 1840 in the 65th year of the Commonwealth.

S R Edwards Clk