

1850-008

SOUTHAMPTON COUNTY
CHANCERY PAPERS

MAGET

VS.

GURLEY et al

8/1856

other surnames: Spark, Diggs,
Oldner, Parker, Colquhoun,
BERRERA, Marmelinos, Martinez

James Albaret

is 3

Parker & all

1830 May R. Bell filed. H. L. Howard

apptd g. m. ad litem to infant Defs.

" June. Anor Infants. L. Rep. of Dr. Pub. v.

the Estate Parker.

" July Set for hearing as to. Dpts. E. V. Parker

~~at file in E. V. Parker~~

J. M. Gentry & Co. v. Dr. Briggs

" Aug. R. set for hearing as to infants,

1830 Aug. Dues at filed.

Colk - 1/4.25

To the worshipful county court of Southampton in
chancery sitting

Humly complaining your
complainant James Mayet sheweth unto your worships
that ~~in~~ some time since he entered into an agreement with
William & Spark (who has since departed this life testator)
for the purchase of lands in the State of Texas that he
placed in the hands of the said Spark the sum of one
thousand dollars to be paid ^{out} and invested in the purchase
of lands in that state, that in pursuance of their
agreement the said Spark went to Texas and purchased
of Godrick Colquhoun then a citizen of that state
the following tracts or parcels of land for which the
said Colquhoun has given him a deed executed at
the city of New Orleans the 27th day of April 1848 to
wit, One league and one labor of land situated on the
Rio Frio and known as survey No 161 in Section No 5
as is fully described in Patent No 380 issued to the
said Colquhoun as assignee of C. Corillo by the
government of Texas also half a league and half a labor
of land at or near the junction of the Yona with the Rio
Frio known as survey No 111 in section No 1 and fully
described in Patent No 148 issued to the said Colquhoun
as assignee of J. A. Borrera by the said government of
Texas also one third of a league of land situated about
twelve miles east of San Antonio and known as
survey No 104 in section 4 and described in Patent
No 371 issued to the said Colquhoun as assignee
of Jose Mamartine by the said government of Texas

Your complainant further states to the court
that the said William & Spark paid to the said
Colquhoun the sum of two thousand five hundred
dollars for the lands which were conveyed to him
by the above said deed and that these lands were
purchased by the funds furnished by your

complainant jointly with the said Wm A Spark all of which will more fully appear by reference to the said deed which is herewith filed marked A and prayed to be taken as a part of this bill.

That soon after the execution of the said deed by the said Colquhoun to the said Spark to wit on the 1st of June 1848 the said William A Spark in his own hand writing endorsed on the back of the said deed a memorandum in writing in the following words and figures to wit

June 1st 1848

James Meager is entitled one league and one labor of land for which I will make him a deed
witness
Wm A Spark

Wm A Spark

which written memorandum will be found endorsed on the deed above said. Your complainant says that these lands having been purchased jointly by himself and the said Wm A Spark the deed should have been executed jointly to both and he does not doubt that if the said William A Spark had been living that he would have given him a deed for his portion of the lands but that Spark was at that time in very bad health and soon after making the above endorsement of the said deed on his way home and without ever having made your complainant a deed as by his written obligations he had bound himself to do.

Your complainant further sheweth unto your worship that the said William A Spark died having first duly made his last will and testament, that he left Eliza V Parker formerly Spark his sister Octavia Diggs his niece and Phillip Alden his great nephew his heirs and distributees at law. That the said Spark after directing what disposition shall

be made of his lands in Southampton his interest in the steamer McDougle, and his negroes, says, The balance of my property of every description except five hundred dollars I leave to be equally divided between my nephews and nieces Eustace Parker and Juliet Parker children of my sister Eliza V Parker Octavia and Ludlow Diggs children of my niece Fanny Diggs and Phillip Alden son of my niece Octavia Alden as guardian I advanced for my niece Octavia Alden who was Octavia Spark about fifteen hundred dollars and expended about five hundred dollars of the principal of her estate if Mr Alden should claim this sum then I revoke that portion of my will in relation to his son. I appoint my friend John C. Gurley my executor and in addition to his commissions I give him five hundred dollars or six hundred and forty acres of my Texas land to be drawn for by lot as the balance is divided. All of which will more fully appear by reference to the said will a copy of which is herewith filed marked B and prayed to be taken as a part of this bill.

Your complainant further sheweth unto your worship that Juliet Parker Phillip Alden, Octavia and Ludlow Diggs are infants of tender years and that Eustace Parker who is of age is no inhabitant of this country having removed to California.

Your complainant states further that the will of William A Spark is altogether in the own hand writing of the said Spark it being an Olograph will as will appear by the certificate of Probate Sherrits annexed and that he is advised and has been informed by those skilled in the laws of Texas that the said William A Spark's will is made and executed according to the laws of the State of Texas and is valid to pass the

lands belonging to him in that State to his devisees

We tender consideration whereof and inasmuch
as your complainant is without remedy at law and
only entitled to relief in a court of equity where such
matters are peculiarly cognizable we therefore humbly
pray that the court would make John C. Diggs
Elihu V. Parker, Edward Diggs and Fanny Diggs his
wife Eustace Parker, and Juliet Parker Philip Adams
Petavia and Ludlow Diggs ^{who are} infants of tender years
by some fit and proper person their guardian ad litem
appointed for that purpose together with the other
parties defendant to this bill and compel them
as full and perfect answers make to the allegations
therein contained as if they had been summoned
more fully and specially interrogated and that
the court would decree that the above parties
make and execute unto your complainant a
good and sufficient deed for one league and one
labor of land in the State of Texas in compliance
with the written obligation and promise of the
said William A. Spark made to your complainant
by the said Spark in his lifetime and that the
court would grant such other and general
relief the premises considering as equity may
dictate and the nature of his case may require
and as in duty bound your complainant will
we pray we

Standa J. J.

Parkes pals

acces }

James Magit

return of H. S. Howard

guardian sa letter

Parker v ab

ad 3

James Maget

The answer of Philip Parker
Philip Alden, Octavia Digg, and Ludlow Digg infant
of tender years by Henry S Howard their guardian
ad litem to a bill in chancery exhibited as there and
others in the county court of Southampton by James
Maget

This defendant for answer to the said
bill or as much thereof as he is advised it is material
for him to answer answering says that he knows
nothing of the facts set forth in the plaintiffs bill but
requires proof and submits the interests of his ward
to the court whose duty it is to protect and guard
the rights of infants and having fully answered
says to be hence dismissed with his costs

Mayer

to } Br. Sub

Parker Jr

copy posted at the front door
G. House June 12: 1830

Virginia: At Rules held in the Clerks Office of the County Court of South-
ampton on the 3rd day of June 1850-

James Mayet
against

Plff

{ In Chancery }

John M. Gurley, Eliza V. Parker, Edward Diggs and Fanny Diggs
his wife, Eustace Parker, and Juliet Parker, Philip Oldner, Octavia
and Ludlow Diggs

Defts.

The defendant Eustace Parker 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 the next term and answer the bill of the plaintiff 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.

Attest

John L. R. Edwards Clk

James Magit
is 3 Deere
Parker is als

1850 August Capt.

Abaget
vs 3 Decree
Parker & ab

Two months having elapsed as
well since the filing of the
plaintiff's bill as the ^{service} of the subpoena in this
cause and the defendants John O. Parker Ely & Parker
Edward Diggs and Fanny Diggs still failing to appear
and answer the bill the plaintiff's bill is taken for
confessed as to these defendants, and Eustace Parker
who is an inhabitant of this country and against
whom the plaintiff appears to have proceeded
according to due course of law still failing to appear
and answer the plaintiff's bill is taken for confessed
as to this defendant. Whereupon this cause this day
came on to hear on the bill and exhibits filed
therewith the answers of John O. Parker Philip Alden
Betavia Diggs and Ludlow Diggs infants of tender
years by Henry S. Howard their guardian ad litem
general replication thereto and was argued by
counsel upon the hearing whereof the court doth
adjudge order and decree. That William B.
Shands who is hereby appointed a
commissioner for that purpose do make and execute to
James Abaget a good and sufficient deed with
general warranty to one league and one labor of
land of the lands lying and situated in the State
of Texas whereof William A. Spark deed seized
and possessed

2
R. S. G.

Magister

Sp. Chy.

Parker & Co

1850 March Rules

Executed on
Substit. Parker & John
M. Gusty Eustace Esq.
Pain Parker Ad. J. J. J.

Wm. Parker depy of
S. John Corcoran Esq.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon *Eustace St. Pierre Parker. Juliette
Parker. and John M. Gurley*

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 *March*
next, to answer a Bill in Chancery exhibited against *them* in the said Court by

James Magott

And unless *they* shall answer the said Bill within ^{*two*} ~~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 *24th* day of *January* 18*80*, in the
74th year of the Commonwealth.

L. R. Edwards

[One Copy to be delivered each Defendant.]

14
C.S.L.

Wager

v. } Sp. Chy.

Parker &c

Executed January
31st 1850 on Philip
Oldner and delivered
to him a true copy
of this Sp. Chy.

D.B. Rugger D. for
J. Branch Serjt.

THE COMMONWEALTH OF VIRGINIA,

Sergeant of the Town of Petersburg
To the Sheriff of Southampton County, Greeting:

We command you that you summon *Philip Oldner* (infant)

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 *March* next, to answer a Bill in Chancery exhibited against *him and others* in the said Court by

James Magget

And unless *he* shall answer the said Bill within *two* ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* 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 *24* day of *January* 1850, in the *74* year of the Commonwealth.

L. R. Edwards Clk

[One Copy to be delivered each Defendant.]

D. R. Edwards

Clerk of the County Court of
Greenehampton County

Ct. House

Maget

Spa. Chy.

Parker &

1850 March Rules

656

Need too late to execute.
J. R. Johnson &
for Proctor & Co.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of ^{Sanquhar} ~~Southampton~~ County, Greeting:

We command you that you summon *Octavia Diggs and Sudlow Diggs*
(*infants*)

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 *March* next, to answer a Bill in Chancery exhibited against *them* ^{and others} in the said Court by

James Magers

And unless *they* shall answer the said Bill within ^{two} ~~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 *2d* day of *January* 1850, in the *74th* year of the Commonwealth.

L R Edwards

[One Copy to be delivered each Defendant.]

6.6.

Maget

in } Sp. Chy.

Parker &

1850 May Rules

(Philip Oldner is an infant)

Executed April the
24th 1850 on Phillip
Oldner and delivered
to him a true Copy
of the within Sp. A
Chy.*

D. B. Dugger D. for
J. Branch Sergeant.

THE COMMONWEALTH OF VIRGINIA,

To the ~~Sherrif of Southampton County~~ ^{Sergeant of Petersburg}, Greeting:

We command you that you summon *Philip Oldner*

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 *May* next, to answer a Bill in Chancery exhibited against *him* ^{others} in the said Court by

James Hager

And unless *he* shall answer the said Bill within ~~four~~ ^{two} months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* 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 *17th* day of *April* 1850, in the *74th* year of the Commonwealth.

L. R. Edwards 106

[One Copy to be delivered each Defendant.]

Executed

Robt Smith Jr
for W^m R Smith Sr

Wm R Smith

2. { Sp. eny.

Parker &

1850 May 2nd

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of ^{Fauquier} ~~Southampton~~ County, Greeting:

We command you that you summon *Edward Diggs and Fanny Diggs*
his wife. Octavia Diggs, Sallor Diggs and Fanny Diggs

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 *a May*
next, to answer a Bill in Chancery exhibited against *them & ^{thurs}* in the said Court by

James Staget

And unless *they* shall answer the said Bill within ^{*two*} ~~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 17th day of *April* 1850, in the
74th year of the Commonwealth.

L R Edwards

[One Copy to be delivered each Defendant.]

Magee

Spa. Chy.

Parker & P

1850 May Term

Executed on Edya or
Parker, Julietta Parker
and John M Gunley by
giving them a copy of
Spa.

Eustice St. Pierre Parker
no inhabitant

Edward J Turner
Sgt of Alex. Myrick Gff.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon *Eliza V. Parker. Juliette Parker.*
Eustace F. Pierre Parker. and John M. Gurley

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 *May*
next, to answer a Bill in Chancery exhibited against *them* ^{& theirs} in the said Court by

James Magist

And unless *they* shall answer the said Bill within ^{*Two*} ~~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 *17th* day of *April* 1850, in the
74th year of the Commonwealth.

L R Edwards

[One Copy to be delivered each Defendant.]

Order of Publication

VIRGINIA—IN CHANCERY.—At Rules held in the Clerk's office of the county Court of Southampton on the 3d day of June, 1850:

James Maget
against

Pltf.

John W. Gurley, Eliza and Parker, Edward Diggs and Fanny Diggs his wife, Eustace Parker, and Juliet Parker, Philip Oldner, Octavia and Ludlow Diggs.

Defts.

The defendant, Eustace Parker, 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 August term next, and answer the bill of the plaintiff, 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 Courthouse of this county.

A Copy—Teste,

EDWARDS

TOWN OF PETERSBURG, TO-WIT:

Personally appeared before me, an Alderman of said Town, *John P. Harwood* Clerk of the Intelligencer Office, and made oath that the annexed Order of Publication has been published weekly for *Eight* weeks, successively. Given under my hand, this *7th* day of *Augt* 18*50*.

Chas. Cortine Aldr.

Printers fee \$5.00

Rec'd. & paid by Wm. B. Shanon Esq.

John H. Syme.

By John P. Harwood

Magist

v } Record

Parker & Co

At a Court held for the County of Southampton at the Courthouse thereof on the nineteenth day of August in the year of our Lord one thousand eight hundred and fifty and of the Commonwealth the seventy-fifth.

Be it remembered that heretofore to wit: on the twentieth day of April 1850 came James Marget by his Counsel and sued out of the Clerk's Office of the Court aforesaid Subpoenas & decess nisi against Eliza V Parker, Juliette Parker, Eustace St Pierre Parker John M Gwily, Edward Diggs, and Fanny Diggs his wife Octavia Diggs, Ludlow Diggs and Philip Alden, which Subpoenas & decess nisi with the return thereon made are in the following words & figures to wit (here insert Subpo. & first the one directed to the Sheriff of Southampton. & the one directed to Shff Fauquier & 3^d the one directed to the Sergeant Potteryburg)

And at another day to wit: At Rules held in the Clerk's Office of the said Court on the first Monday in May, 1850 ^{in the year} came the plaintiff by his Counsel and filed his bill against the Defendants which bill is in the following words and figures to wit (here insert bill & exhibits A & B)

And on the motion of the plaintiff Henry S Howard is appointed guardian ad litem to the ^{without} defendants Juliette Parker, Philip Alden, Octavia Diggs, and Ludlow Diggs to defend them in this suit.

Afterwards to wit: At Rules held in the Office aforesaid on the first Monday in June in the year 1850 the defendants Juliette Parker, Philip Alden, Octavia Diggs and Ludlow Diggs by their guardian ad litem filed their answer in these words (here insert answer) to which answer the plaintiff by his Counsel replied generally And the defendant Eustace Parker not having entered his appearance and given security &c. (here insert Order publication)

Afterwards to wit: At Rules held in the Office aforesaid on the first Monday in July 1850 the subpoena in this cause having been executed on the defendants Eliza V Parker John M Gwily, and Edward Diggs and Fanny his wife and two months having elapsed as well since the filing of the bill as since the service of the subpoena and they failing to appear and plead answer or demur On the motion of the plaintiff by Counsel his bill is taken for confessed as to those defendants and the cause is set for hearing as to them.

Afterwards to wit: At Rules held in the Office aforesaid on the first Monday in August 1850 on the motion of the plaintiff by his Counsel this cause is set for hearing as to the defendants Juliette Parker, Philip Alden, Octavia Diggs & Ludlow Diggs

And now at this day to wit At a Court held for the County aforesaid on the day
and year first herein aforesaid to wit the nineteenth day of August 1850 Five months
having elapsed &c. (here insert decree)

Lodwick Colquhoun

20th Dec

William A Spark

20th 659

Delivered & filed for record
on the 27th Feb 1850

at 3 o'clock PM

James S. Sweeney

City of New York

Receiving 85

James H. Bagot is entitled one league and one
labor of land, for which I will make him a Deed.
J. H. Bagot

Wm. A. Spark

June 1st 1848

Know all men by these presents, that I
Ludovic Calcuthous of the City of New Orleans
but recently of the County of Bexar, in the State
of Texas for and in consideration of the sum
of Two thousand five hundred hundred dol-
lars to me paid by William A Sparr of the
County of Southampton in the State of Virginia
the receipt whereof is hereby acknowledged, have
bargained sold, aliened and conveyed and do
hereby bargain sell, alien and convey unto the said
William A Sparr, all the right title interest
and claim which I have in and to certain
tracts or parcels of Land situated within the County
of Bexar in said State of Texas, viz, to One
League and one Labor of Land situated on the
Rio Grijo, and known as Survey No 101 in Section
No 5, as is fully described in Patent No 380 issued
me as assignee of C. Barillo, by the Government of
Texas; also half a League and half a Labor
of Land, at or near the junction of the Leon with
the Rio Grijo, known as Survey No 111 in Section
No 6 and fully described in Patent No 148 issued
to me as assignee of J. A. Berrera, by the said Govern-
ment of Texas; also One third of a League of Land
situated about 12 miles East of San Antonio, and
known as Survey No 104 in Section 4 and described in
Patent No 571 issued to me as assignee of Jose M.
Machuz by the said Government of Texas,
I have and to hold the said Land

together with all and singular, the rights, heredi-
taments &c. thereto belonging, or in any manner
appertaining, to him the said William A. Spark,
his heirs and assigns, to their proper use, benefit and
School House

State of Louisiana.
CITY OF NEW ORLEANS.

Before me, ALBERT CHILDE AINSWORTH,
Commissioner for the State of Texas _____ to act in this City,
duly appointed and sworn,

Personally came *L. Colquhoun*, to me
well known who acknowledged that he had signed, sealed
and delivered the Instrument of Writing herunto annexed, as his free
and voluntary Act and Deed for the purposes therein mentioned.

In Faith Whereof, I grant these Presents,
under my Signature and Seal of
Office, at NEW ORLEANS, this 27th
day of April 1848.

A. Childers
Commissioner

State of Texas }
County of Bexar } I James S. Trueheart Clerk of the County
Court of said County do hereby certify, that the
foregoing instrument of Writing was filed for registration in my
Office on the 27th day of February A.D. 1850 and duly recorded
in the records of said County in Book No. 1. On Page 511
This deed was filed on said day at 3.0 P.M. Witness my hand
and Seal of said Court
the date above written
James S. Trueheart Clerk
City of New Orleans

together with all and singular, the rights, hereditaments &c. shewments belonging, or in any manner appertaining, to him the said William A. Spark, his heirs and assigns, to their proper use, benefit and behoof forever

And the said Ludovic Colquhoun, for him self, his heirs, said Land rights, hereditaments &c. to the said William A. Spark, his heirs and assigns shall and will by these Presents, warrant and defend against the lawful claims of all persons whomsoever claiming by or through him the said L. Colquhoun his heirs & assigns

In witness, seals and delivered at the City of New Orleans, this 27th day of April 1848

In the presence of
James A. Sargent
E. W. Harris

L. Colquhoun

State of Texas
County of Bexar

I James S. Trueheart Clerk of the County Court of said County do hereby certify, that the foregoing instrument of writing was filed for registration in my office on the 27th day of February A.D. 1850 and duly recorded in the records of said County in Book No. 1. On Page 577

Witness my hand and seal of said Court the date above written
James S. Trueheart Clerk
City of Bexar