

1790-005

Southampton County

Chancery Papers: Battle vs Barham

11/1790

To the worshipful Justices of Southampton county sitting in
chancery — humbly complaining sheweth unto your
worships that your Orator James Battle brought suit against
one Joel Barkham in the ~~the~~ court ^{of this county} for the sum of
being on account of taking care of, and feeding some
cattle (belonging to the Deft) at his special instance
& request; which acc^t & matter in dispute was by
consent of ^{the} Parties ~~was~~ left to be settled by arbitrators
or Referees, whose award was to be the judgement of
the Court — your orator further shews that the said
Joel Barkham had the matter arbitrated without
giving him, or his attorney any notice of the same
in consequence of which manifest injury has been
done your orator — who also shews that by the
not having notice of the time & when the
matter was to be arbitrated, he was deprived of all
opportunity of shewing the nature and proof of his
demand against the said Joel Barkham, as thereby
he was particularly deprived of the testimony of
Col^o Fisher who ~~your~~ orator has been informed
by him, & verily believes could have supported beyond
the possibility of equivocation, the demand which
your orator has against the said Joel Barkham —
~~which~~ ^{actings & doings} ~~your~~ ^{orator} charges to be unjust & inequitable —
But now so it is, may it please your worships
that the said Deft^s (combining &c with divers others
who when discovered your orator prays may be made
Deft^s to this his bill have endeavoured to injure
your orator in this business) proceeded by virtue of
the award aforesaid & the judgement thereon, to take out
an execution or *fi fa* for costs, amounting to

In tender consideration whereof and forasmuch
as your orator is properly & only relie-

vables in this court, where matters of surprize, fraud
& accident are cognisable; to the end therefore that
the said Deft may upon his corporal oath, full, true,
& perfect answer make to the promisses as particularly
as if the same were here again set forth & interrogated

That the said Deft may discover whether he did not
proceed in the arbitration without giving notice to the
complainant or his attorney? — whether he did not
agree to pay for feeding of his cattle aforesaid? — and
whether he did not avail himself of the advantage
of not giving notice of the award so agreed to ^{be} made
all which actings & doings are contrary to equity
& good conscience — That the said Deft &
all others may be enjoined from proceeding on the
partial, & unjust award & execution as aforesaid until
the further order of this court — that a fair
reference may be directed, or a trial at law
ordered, or the matter finally decided here as
this worshipful court shall think fit — that
your orator may be relieved according to equity &
good conscience — may it please your worships
to grant to your orator a writ or writs of subpoena &
injunction to the said Deft Directed to —

sworn to this 10th day of April 1789 — before
me —

John Simmons J^r



Barham
vs
Bottle } Ans. vs.

Novbr 1790 dissolved

The answer of Joel Barram defendant, to the Bill of Complaint of James Battle exhibited against him —

The said defendant saving to himself all manner of advantage of exception to the many untruths, errors, uncertainties, and other imperfections in the said Bill of Complaint contained, for answer therunto, or to so much thereof as this defendant is advised is material for him to make answer unto. He answereth & saith, that true it is that this defendant did agree to submit all matters in dispute between him & the Complainant to Certain Gentlemen appointed for the purpose. So far from this defendants taking advantage of the Complainants absence in this business, the Complainant informed this defendant that a Certain Col. Jno. Simmons was to attend the settlement for the said Complainant, & this defendant saith that Col. Jno. Simmons was present at the time the referees made the settlement, and he did not in consequence of this information give notice to the Complainant.

He further saith in answer to the said Complainants Bill, that the Cattle which he charged this defendant for feeding & taking care of, were the publicks Cattle, and were the property of Thomas Clements Esq. the County Commissioner, & that this defendant never agreed to pay him for the same, and told him at the time the Cattle was driven from this defendants Plantation, that the Comings aforesaid was to settle with him, & not this defendant, and further this defendant told him the Complainant, that this defendant in like manner was to look to the Commissioner for Satisfaction for the publicks Cattle that he then had in his possession & was feeding. He denies all Combination, fraud &c. and prays to be hence discharged with his Costs & Charges in this behalf wrongfully sustained.

Sworn To in Court
August 1790

Yorktown for Def.