

1823-002 SOUTHAMPTON COUNTY
CHANCERY PAPERS

BARNES' admr vs. BARNHAM + ux + al

7/1823

other surnames: fort, Myrick

Barnes to
y 3 Bile
Barham to

443

Wm. J. Wm. J. Wm. J. Wm. J.

~~Wm. J. Wm. J. Wm. J. Wm. J.~~

1823 March - Law: Cook signed by you
to build a Fort to defend the fort this land
April 4th 1823 Bile filed -

July 8th 1823 Answer filed

Ba

~~Wm. J. Wm. J. Wm. J. Wm. J.~~ Chy

To the worshipful the County Court of Southampton sitting
in Chy. Humbly complaining shew to your worship
your orator ~~James Barnes~~ ^{William Barnes} ~~James Barnes~~ ^{William Barnes}
~~James Barnes~~ ^{administator of his late wife} ~~James Barnes~~ ^{Rebecca Barnes} dec^d. formerly
Fat & daughter of Joshua Fort dec^d. that the s^d. Joshua
Fort their grand father died many years since leaving
duly executed a will (of which an attested copy is
hereto annexed as a part of this Bill). that the widow
of the s^d. testator has lately departed this life having
regularly appointed a certain Sam^l. Backham her executor
also qualified & has now in his possession the whole of
the personal estate of the s^d. dec^d including that lent
her for life by the said testator with the exception of the
slaves. Your complainant further represent that the
said testator left eight children also were originally
entitled to this property in remainder, but that there having
since died without issue & the five survivors being then
exclusive distributers the right is now confined to three
or three issue. That the seven children were as follow
ing Joshua Fort who has died leaving an only daughter
Priscilla - who has died without issue. - Rebecca
the ~~widow~~ ^{widow} ~~of your orator~~ ^{of your orator} Joseph who has since died
leaving issue a son Robert Fort - John who has died
without issue - Betty who has intermarried with the s^d.
Sam^l. Backham - Edwin who has died without issue &
Tempe who intermarried with a certain W^m. Myrick since
dec^d. leaving her a widow. Your complainant further
show that the said Sam^l. Backham as ex^r of the said
Caelia Fort relic of the s^d. testator now holds in the
personal estate (except negroes) lent her testatrix for life
as afores^d. & claiming it as belonging to her estate & refuses
to deliver it or account for its value to your court & the
other persons entitled in remainder as afores^d. Your court
further show that much of this personal property consisted
of valuable flocks of Hares, Cows, Sheep & Hogs (as
evidence of which your court's here exhibit the
Inventory & appraisement of the estate of the s^d. testator)
that the s^d. widow for a great many years had the use
& benefit of these flocks which in the nature of things
were constantly changing by death & increase, so that

it is possible (a fact of which your complainants are ignorant) that there might not have been left by the said testatrix any one individual animal of the flock then originally lent to her. That under these circumstances however your complainants are advised that her estate is responsible at least for an equal number of equal value with those originally lent, but that the 1st exor refuses to account for them in any manner whatever which is contrary to equity & justice. He takes no consideration whereof & inasmuch as your complaint is without remedy in the premises at law - to the end therefore that the said Sam^l. Buckham & Betsy his wife individually & the said Sam^l. Buckham as the executor of the will of said Testatrix - the said Eliza Felt infant daughter of John Felt dec^d. by some guardian to be specially assigned to her by your worship - the said Robert Felt, son of Joseph Felt dec^d. and the said Temperance Myrick widow of Wm Myrick dec^d. may be made defendants hereto & compelled to answer the premises fully & explicitly as to each particular allegation - that the said Sam^l. Buckham specially discover the amount & description of the personal estate of his testatrix what property she left which had been originally lent her for life as aforesaid or which is the increase of stock originally lent and all other matters relative to the foregoing allegations - that your worship have an account made up before some proper Commissioner of the property or value in money for which the estate of the said testatrix is chargeable as aforesaid and finally decree to your worship the proportions to which they may appear entitled & moreover grant them general relief in the premises. May it please your worship to grant the Cert in the Court of Sp. & C. &c.

Brookman & Co.

Barham
at } Inf.
Barney }

Sz. Adm'ts

This day came before me a Justice of the peace for the County
of Southampton Samuel Barham who made oath that the
within answer contains the truth as far as he knows. or
believes - Given under my hand this 16th day of June 1823

Wm^H Goodwyn J.P.

Barner
7
Barkham etc In Chf.

The separate answer of Samuel
Barkham to the bill of Complaint exhibited against
him & others in this worshipful Court by William Barner.

This defendt saving & reserving &c. for answer thereto
or so much thereof as it is material for him to
answer as he is advised saith. That it is true that
a certain Joshua Fort died a number of years since
leaving a will properly executed & authenticated as the
Complainant has in his bill alleged. - That certain
property was disposed of in that will to the widow
of the said Joshua Fort for life & after her death then
to the children of the said Fort who with their
issue are now reduced to five three having died
without issue as is alleged by the Complainant

That the property so disposed of was designated by
the word personal estate which from the operation
of the law existing at that time did not include slaves
(they having been disposed of by a separate paragraph
& the Complainant having ^{misstakenly} complained against the
defendants in regard to them.) That as it will app-
ear from the inventory & as from the bill of the
Complainant a large proportion of the said property
consisted of stock of horses cows hogs & sheep in addition
to which there was some furniture - as to which this
respondent is perfectly disposed to give such information
as he is possessed of but excuses himself from answering

particularly as to each article thereof as he would be
compelled to relate to the inventory & appraisement of Joshua
Fort's estate which is equally accessible to the Complainant
he can only say that he does not know what furniture
she was in possession of under her husband's will & thinking
it but reasonable that when the Complainant has made
appear to the Court what price she did so receive that
then the respondent should be accountable for the
appraisement of so much after deducting ~~that sum~~ sum
which it probable the same would be diminished in
value from the use of more than forty years
to be by them disposed of as the subsequent facts declared
in this answer shall render advisable. - That
your respondent in fact has little doubt but that
the horses given to the widow together with their
increase if any were all dead at her death as
she then was in possession of neither & as is believed
she never sold any of them. - Of the sheep this
respondent has to plead total ignorance as it is
impossible that he can know whether the stock
which she left amounting to 27. - in number
were those or the increase of those given away by the
will of Joshua Fort die. - a fact which this respon-
- dent did not recollect to call the attention of the Court
to in relation to the horses in this that the possessor for a
term of those animals would not seem liable for their
increase because - because they are not animals
generated promiscuously like cows or sheep & then raised
with little or no expense but incurred at the charge
of the party & gesticulated at the total demise of the dam -

for a considerable length of time. — In relation to the
hogs this defendt. can only say that he is at a loss as to the
intention of the testator. because they are not generally
the subjects of loan. but are from the very nature of
the use to which they are put that lived animals —

They produce no profit to their owner, from their labour
or ~~prices~~ nor from their clothing as sheep. — therefore it
must be inferred that they were given to be eaten.

and as many hogs are raised from few breeders, & as more
persons are fond of changing their stock it is to be presumed
that at least a dozen different stocks have become
extinct since the death of Joshua Fort in 1781.

This defendant also suggests to the Court the impropriety
of assaying to any person except the Eor of Joshua
Fort. for injury which the complainant alleges he has
sustained. because none of the parties claim Carlie
Fort the widow. — the complainant if entitled any
redress is entitled by Notice of Joshua Fort, with
as one of his delegates, & therefore must sue to the
Eor of his will. the Eor is responsible for all the
estate of his testator. & where one person is entitled
to a life estate and another to the reversion it
is the duty of the representative to take such steps
as will ensure the return of the property after the
determination of the particular estate which he has
the power to do by refusing to deliver until land & security
be tendered for their redelivery at the proper time.

This defendt further alleges that the ~~testator~~
John Fort died some time in the year 1796 or — 7.
leaving a will in which a certain Edmond Fort
was the residuary legatee. — that among other things

two negroes were given to Temperance Fort when she became
of age or married. ~~two negroes~~ ^{the negroes} & ~~did not~~ otherwise dispose
of them until that contingency otherwise than by the
ancillary clause in the said will to Edwin Fort.

That this defendant in right of his wife Mary formerly
Fort is one of the ~~legitimate~~ ^{children} of the said Edwin Fort who
died sometime past intestate - that this defendant believing
that there is a considerable part of said estate not
administered - that the objects of the will have been
satisfied save the bequest to Edwin Fort. - that no
money or property has been paid to Edwin Fort or his
heir or rep^{ts}. - And that in default of the execs there
is named the said Complainant Banner qualified
as his adm^r. - This def^t having fully answered;
prays the Court to consider the equity of the case in
assembling whether any thing can from the premises in
the will alleged be recovered. & if so not to decree the
p^t of any thing from this def^t to the Complainant until he
has satisfied this Court by rendering an account that
nothing is due from him to this def^t as above alleged.
- that he may never be dispossessed with his cats &c.
Samuel Barkham

Barkham
atq } Inf^r
Banner }
Sg. Adm^rts

This day came before me a Justice of the peace for the County
of Southampton Samuel Barkham who made oath that the
within answer contains the truth as far as he knows. or
believes - Given under my hand this 16th day of June 1823

Wmth Goodwyns J^{ps}

Barham. Joint
Fort. Ansⁿ
Mycket. 3
at Barham 3

July 3rd 1823 answer filed

This day came before me a Juried of the peace for the
County of Southampton Samuel Parkham who made oath
that the within answer contains the truth as far as
he knows or believes. Given under my hand this 16th
day of June 1823

Wm B. Goodwyn J.P.

¹⁶
Barnon 5 to 14 June 1823

This day personally appeared before me a Justice
of the Peace for the County of St. Albans, Temperance
Myrick who made oath that such of the
allegations in the above bill contained as come
within her own knowledge are true & such
as do not she believes to be true given
under my hand ~~and~~ this 14 day of
June 1823.

Alexander F. Bates J.P.

This day personally appeared before me, a Justice of
the Peace for the County of St. Albans, Lawrence Cook who
made oath that such of the allegations in the above
Bill contained, as come within his own knowledge
are true, and such as do not he believes to be
true, - Given under my hand this 16th day of
June 1823 —

Wm. B. Goodwyn J.P.

Barney
7.
Barham de

In Chy.

The joint answer of Samuel Barham
Barney, Barham his wife formerly, Est. - Eliza Fort wife
daughter of Joshua Fort dec'd by Lawrence Cook her
guardian specially so by the Court appointed to answer
for her in this suit. Robert Fort & Temperance. Reply
to the bill of complaint exhibited against them in this
Court by William Barnes. adm^r of his late wife Rebecca
Barney. - These respondents saying & answering &c for answer
thereto or so much thereof as they are advised it is material
for them to answer. Say that in reference to the leading
facts in this case. They can but refer the Court to the
answer of Saml Barham. ^{Exor} adm^r of Caelia Fort dec'd.
where they will be found fully explained so much of
which as can have relation to situation of these parties
is prayed to be taken as a part of this answer.
These respondents admit that they have received
such part of the estate of Caelia Fort dec'd. as
was bequeathed to them therein including the sum of
\$634.⁰⁰ of the am^t of the Sacy. of Caelia Fort's estate.
and having fully answered pray hence to be dismissed
of Saml Barham etc

Barnes adm^{tr}
no
Barham & } Appa in chcy.

To April county court 1823

Executed on Sam Barham
& wife & Temp deyrick,
Robt Fort & Eliza Fort
are no inhabitants

Edw. B. Butler depy for
Thos. Ridley sheriff

The Commonwealth of Virginia, To The Sheriff of Southampton county

GREETING:

You are hereby commanded to summon *Samuel Barham and Betsey his wife individually and the said Samuel Barham as Executor of Beliah Fort dec^d. Eliza Fort infant daughter of Beliah Fort dec^d. Robert Fort son of Joseph Fort dec^d. and Temperance Elmyrick relict of Mrs. Elmyrick dec^d.*

to appear before the Justices of our county Court of Southampton County, on the *Last* day of the next court, to be holden at the Courthouse, in said county, to ~~testify and the truth to speak on behalf of~~ *answer a bill in chancery* ~~exhibited against them by William Barnes adm^r of his late wife Rebecca Barnes dec^d.~~ *in a certain* matter of controversy in the said court depending between plaintiff and

defendant; and this *They* shall in no wise omit, under the penalty of 100L— and have then there this writ. — Witness *at his office* *county* *James Rochelle*, Clerk of the court aforesaid, the *19th* day of *March* 1823; in the *47th* year of the commonwealth.

James Rochelle C.

Joshua Forts.
Inventory & appraisement
of the property

An Inventory and Appraisement of the Estate of Joshua Fort decd.
Taken The 11th day of December 1781

7 Beds and furniture	£ 365 00	Lumber	400
271 st feathers	21 60	2 Taylors and Shup Shears	120
one Walnut desk	4 00	1 Grind Stone	200
4 Tables	48 00	4 Saddles & Bridles	24 00
20 chairs	24 00	2 Looms	16 00
1 Candle Stand	4 00	Flays and Harnefs	12 80
3 chests	24 00	Barre and boxes	4 00
one Bofate	28 00	5 Trays	2 00
earthen ware	4 00	1 Spice Mortar	4 80
2 Guns	48 00	6 pair Cards & Brocombs	24 00
Suggs and bottles	4 00	4 Tubs 4 Pails	4 00
4 Candle sticks & 17 tapers	4 80	4 Spinning wheels	8 00
Books	32 00	1 dutch oven	2 40
1 Rose and 2 flat irons	8 00	5 Potts and Hooks	16 00
1 per hand Iron & Tong	8 00	1 frying pan	2 00
Pewter measures	12 00	Grid iron & Skillet	2 00
1 slate and pair Steelyards	24 00	3 old Barrells	120
1 violin	8 00	2 Iron Pott racks	4 80
1 dressing glass	12 00	1 Copper Kettle	12 00
2 Linnen wheels and Hatchets	24 00	5 Ram. Hides	20 00
Pistols and Holsters	4 00	old Barrells of Iron	9 60
2 Chamber Potts	12 00	Flay	2 00
1 Side saddle	4 00	1 Whip & Carr	16 00
1000 ^{lb} Cotton	133 33	Cart and wheels	64 00
250 pounds sugar	5 00	1 flay brake	2 00
Wheat	15 20	165 barrells Corn	520 00
30 pounds wool	14 80	4 Sifters	1 60
Leather	9 00	8 Horsec	53 60
54 pairs of glass	54 00	28 Garce	14 00
a parcel of Lumber	4 00	1 Case of Carrots	18 00
old Barrells	4 80	13 Hoes	17 60
1 Trunk and Cradle	1 00	2 per. iron meads	64 00
1 Deer skin	1 00	Carpenters Tools	9 00
Tallon	4 00	Coppers Tools	4 80
5 Reap hooks	24 00	1 Case of Razors & Thers	24 00
Knives and forks	16 00	Money scales &c	32 00

18 baskets	2400
1 Dayg	200
2 old Panels	80
62 Hogs	30000
1000	6400
29 Sheep	5800
38 Cattle	40000
Tobacco	
3 plows and hors	
4 Axes	
1 old Sain	1200
Coast Wainep	320
Perter	9600
~~Seague~~ Negroes	
Mile	16000
Gampson	44000
David	48000
Sim	48000
Jack	48000
Ann	40000
Sim	40000
Phil	32000
Micajah	24000
Cate	1600
Pep	40000
Gill	36000
Clary	40000
Bridget	40000
Vick	40000
Abilly	32000
Liddy	32000
Minney	16000
Eddy	20000
Nanny	4000
950 pounds Tobacco	7600
7 Gallons Brandy	22000
1 Steer	16000

Benjamin Lewis
 Mrs. Simmons
 Mark Nicholson

At a Court held for the
 County of Southampton the 13th
 day of December 1781
 This Inventory & appraisement
 of the estate of ~~John~~
 was this returned
 and ordered to be recorded

Teste

Samuel Kello cl^k

a Copy Teste

A. Nicholson d^o

Lewis Thorpe Etc.

Joshua Forts.

Mile

Abney

In the name of God amen I Joshua Fort of the County of Hampshire
County and parish of Saint Peter being in sound and perfect sense &
memory do make this my last will and testament in manner following
Item I give and bequeath to my son Joshua Fort one hundred acres of Land
more or less the line to run from a rod out a corner. Joseph Foster Land
a straight line to the creek bridge (the land on the south side of the said
line) which said Land I give to my son Joshua Fort him and his heirs
forever

Item I give and bequeath to my son Joseph Fort all my Land
in Brunswick County lying on the south side of Masons
which said Land I give to my said son Joseph to him
and his heirs forever

Item I give and bequeath to my son John Fort two negroes
between the ten and fifteen years of age in Law of Land
which said negroes I give to him and his heirs forever

Item I give and bequeath unto my son Edwin Fort after the
death of wife my plantation whereon I now live with
all the Lands joining thereto that I have not given
to my son Joshua which said Land I give to my
son Edwin to him and his heirs forever

Item I lend to my living wife during her natural life five negroes
namely Will Sampson Harpers Gile and Betty also one third
part of my personal Estate

Item I give and bequeath to all my children the remainder of my Estate
of what kind or nature lower or wheresoever found to be equally
divided as they come of age or marries. by my Executors or
persons appointed by them to them and their heirs forever -
My will and desire is that my wife shall have the use of my
whole Estate to educate and maintain my children upon
until they come of age as before mentioned

I hereby constitute and appoint my loving wife my son Joshua
and my Brother in Law Joseph and Lewis Sharp my whole and
sole Exors to this my last will and testament hereby revoking
all other wills by me ~~heretofore~~ made as I have herunto set my
hand and fixed my seal this 15th day of March 1781.

Signed Sealed published & declared
by the Testator to be his last will
in presence of

Joshua Fort Seal

John Simmons

Benjamin Lewis

Sprattley Simons

At a Court held for the County of Southampton the 8th day of
Nov^r 1781 This will was presented in court by Lewis Sharp the
Exor. therein named and proved by the oaths of Bro Simmons
and Benjamin Lewis two of the subscribers and ordered
to be recorded And on the Motion of the said Exor. who
made oath according to Law Certificate is granted him
for obtaining a probat ~~thereof~~ in due form giving fully intimation
Jb.

Witness etc etc

Attest
Teste James Dechees Esq.