1837-012 SOUTHAMPTON COUNTY CHANCERY PAPERS BENTON & al VS ROCHELLE

10/1837

other SURNames: Whitehead, Benton & Whitehead

(#) X. (#) 4

Denton & Whitehead

v. & Papers

Rochelle

1835 ~~March~~ ~~Feby~~ Writ filed Sparks as Inhabitant.

" June O. P. v Dft.

" Nov. Decree for valuation of property

1836. Apl. Decree &c

1837 Apl. Conf.

" Oct. Repl Decree

~~Clk~~	$4.59
Shff	21
Sawyer	16.66
Mr Cox	75
Printer	5.50
	$27.71

Clk	$6.21
Shff	21
Saw	16.66
Mr Cox	75
Printer	5.50
	$29.33

Benton & Whitehead

v } Fa. Attach.
} in Chy. P.

Benj^a. Rochelle

Hodges

1835 Feby. 11th

Co. anspt. sup. Co. Chy

To the Honorable Richard H. Baker, Judge of the Circuit Superior Court of Laws and Chancery, for the County of Southampton, in Chancery sitting. Humbly complaining, shews unto your Honor your Orator Thomas G. Benton and William B. Whitehead, merchants and partners under the firm of Benton & Whitehead, that on the 29th day of June, in the year 1832, a bond was executed by George G. Gurley and Benjamin Rochelle to John Lapsley for the sum of ninety five dollars, and was subsequently transferred by the said Lapsley to your Orator; that suit was sometime thereafter, to wit, on the day of in the year , instituted by the said Lapsley thereon for the benefit of your Orator, and process issued on the said Gurley only, the Sheriff returning "no inhabitant" in regard to the said Rochelle; that the said suit was prosecuted on to judgement against the said Gurley, and execution of fieri facias issued thereon, and returned "no effects"; as all of which will more fully appear by reference to an attested copy of the record of the proceedings in said suit, herewith filed and prayed to be considered as a part of this bill. And your Orator further shews that the said Rochelle, at the time the said suit was instituted, was an inhabitant of the County of Southampton, and continued an inhabitant thereof for some time thereafter; but they now that at the period of the institution of the said suit, and for some time antecedent thereto, as well as ever since, the said Rochelle has been a resident of the State of North Carolina, and consequently not accessible to the process of the Courts of this State. And your Orator further shews that the said Rochelle was, at the time when the said suit was instituted, was and still is entitled to a

tract or parcel of land containing about one hundred and twenty five and a half acres, and situate in the said County of Southampton, which he derived by descent from his father John Rochelle of the said County; which said tract or parcel of land was set apart and allotted to the said Benjamin Rochelle by a decree of the worshipful Court of Southampton, as one of the heirs of the said John Rochelle. All of which, your orator represent, will more fully appear by reference to an attested copy of the said decree herewith filed and prayed to be considered as a part of this bill. And your orator are advised that as the said Benj.a Rochelle has removed out of the County, so that process cannot be issued upon him, leaving lands therein, they are authorized to consider him as a non-resident against whom property they can levy an attachment with a view to the payment of their debts. In tender consideration whereof, and for as much as your orator are without remedy in the premises, except by the assistance of a Court of Equity where such matters are properly and exclusively cognizable: To the end therefore that the said Benjamin Rochelle (who is prayed to be made a defendant hereto) should be entire his appearance Conformably to the orders of this Court, may true and perfect answer make to all and singular the premises herein mentioned, and that upon his oath as fully as if the same were here again repeated and interrogated; or should he fail so to do, in order that your orator may not be defeated of their just right in this behalf, they pray that an order may be made restraining the said Benj. Rochelle, or any other person by his authority, from conveying away or in any wise disposing of the said lands and premises, until a final decree is pronounced in relation thereto; that your Honor will decree a sale of the said lands and subject the proceeds thereof to the payment of your orator's said debt, making such further order Concerning the same as may be Compatible with the provisions of the law; and that such other and general relief may be decreed in the premises as may Comport with the Equity and justice of your orator's rights, and as to your Honor may seem meet under the circumstances of the case.

May it please &c

Wm D Rudyn, h.g.

Baxter & Whitehead

v. 3 Decrees.

Benj.a Rockell.

To be ordered.

R. H. Baker

Benton & Whitehead
vs.
Benjamin Rochelle } Chy. 4th

The defendant Benjamin Rochelle, who is out of this County, and against whom the plaintiff appears to have proceeded in the manner prescribed by Law against absent Defendants, still failing to appear and file his answer, on motion of the plaintiffs by Counsel, The Court doth take their bill for confessed: ~~And the case~~ And on motion of the father & mother of the plaintiffs by their Counsel, The Court doth order that Jno. M. Gurley, Davis Barrett and Thomas B. Worrell or any two of them, being first duly sworn do fairly value the tract containing about one hundred and twenty five acres & a half of land, which the said defendant derived by descent from his father John Rochelle, and which was set apart and allotted to him by Commissioners acting under the authority of a decree of the County Court of Southampton, and of which the defendant was possessed when he left this Commonwealth; and that the said Commissioners do also enquire whether the said defendant hath any personal estate, or funds, within the power of this Court, out of which the debt due to the plaintiffs, or any part thereof, can be discharged; and that they report their proceedings to this Court with a view to a further decree.

Minden & Whitehead
vs
Edens
Benja Rochelle

The defendant Benja Rochelle, who is out of this county, and against

When the plaintiff appears to have proceeded in the mode prescribed by law against defendants, & the failing to appear and answer, on the motion of the plaintiff's counsel, the bill of the plaintiff is taken for confessed: and the cause coming on to be heard on the bill exhibited, and the report of David Barrett and Newman B. Worrell, two of the commissioners, appointed to act under the order of this Court on the 4th Monday in May last, and the report of the commissioners to which no exception was filed, was argued by the plaintiff's counsel: On consideration whereof, ~~and it appearing from the said report that the said defendant has no personal estate in this Commonwealth, and that his real estate, to wit, a tract of land containing one hundred and twenty five acres and a half, it being the same that is referred to in the complainant's bill, is worth "three hundred and seventy six dollars and fifty cents, exclusive of the improvements put thereon by the Rail Road Company and Col. Clement Rochelle, and with the improvements put thereon by Col. C. Rochelle only, the said is worth five hundred and sixty four dollars and seventy five cents; and the plaintiff having executed bond with sufficient security, conditioned as the law directs,~~ the Court doth adjudge, order and decree that the defendant do pay to the plaintiffs the sum of ninety five dollars with legal interest thereon from the 29th day of June 1832 till paid, and the sum of nine dollars and seventy five cents, the amount of Costs

incurred by the plaintiffs in the suit aforesaid to be
them in their said bill of complaint, and also
~~the costs of this suit~~: And, unless the said defend-
ant shall pay the same, or cause to be paid ~~the day~~ first of May next
~~of sale hereafter mentioned~~, Thomas R. Gray, who
is hereby appointed Commissioner for the purpose, is
directed to sell the said tract
of land, to the highest bidder, on the premises,
for cash, after having advertised the time and
place of sale for four successive weeks, in one
of the newspapers printed in the town of Petersburg:
and at the court house door of the county of Southampton.
And the Court doth further order that the Com-
missioner do pay to the plaintiffs, out of the
proceeds of the sale, the debt, interest, and costs
aforesaid, together with the cost of this suit
and that he make a deed to the pur-
chaser, in due form, for the said tract
of land, and report his proceedings to this Court.

Benton Whitehead
vs Decree for sale
Benj. Rochelle

Benton Whitehead

n. 3

Rochelle

Burton Whitehead

v.

Rockefeller

} Decree.

This cause came on this day to be heard on the papers formerly read, and the report of the commissioner to sell the land and to pay over the money to the plaintiffs; on consideration whereof the Court doth confirm the said report, and direct the [illegible]

65

Benton & Whitehead

v. & Span. Lehy

Rochelle

February Rules 1835

Mo. Inchattelaus

Ups. Drewry Capias

Benj. Drewry Sum

Lives in N Carolina

The Commonwealth of Virginia:

To the SHERIFF of Southampton — County.—GREETING:

~~You are hereby commanded~~ We command you that you ~~to~~ summon Benjamin Rochelle —

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, on the first Monday of February — next, that being rule day, to answer a — Bill exhibited against him —

— in the said Court by Benton & Whitehead —

And unless the said defendant 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 he shall in no wise omit, under the penalty of 100*l*. And have then there this writ.

Witness—JAMES ROCHELLE, Clerk of our said Court at the Court House, the 20th day of January 1835, and in the 59th year of the Commonwealth.

James Rochelle clk

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

Burton Whitehead

vs. Affidavit

Benj. Rockhill

May 18 1835

Southampton County, to wit:

This day appeared before the Subscriber, a Justice of the Peace for the said County, William B. Whitehead, who made oath that so far as he knows and believes Benjamin Rochelle, against whom he has instituted a suit in Chancery to attach his property as an absent debtor, is absent from this Commonwealth. Given under my hand this 16th day of March 1835.

Can Bowen J.P.

Benton & Whitehead

v Z Proof Jun.

Nashville

1835 Oct. 19

VIRGINIA.—At Rules holden in the Clerk's Office of the Circuit Superior Court of Law and Chancery for the County of Southampton, on the first Monday in June, 1835:

Thos. G. Benton and William B. Whitehead, Merchants and Partners, under the firm of Benton & Whitehead, *Plffs.*

AGAINST

Benjamin Rochelle, *Deft.*

IN CHANCERY.

The Defendant 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 Plaintiffs: and that a copy of this order be forthwith inserted in some newspaper published in the Borough of Norfolk, for two months successively, and posted at the front door of the Court House of this County. A Copy. Teste,

L. R. EDWARDS, *D. C.*

june 12 F2m

I CERTIFY *that the annexed Notice, in the case of* Benton & Whitehead vs Rochelle *has been inserted once a week for Two Months successively, in* "THE AMERICAN BEACON," Newspaper, *published in Norfolk, Va. commencing* June 12th 1835.

William C. Shields

of Shields, Nottrum & Grigsby,

Publishers of the Beacon.

SWORN *to before me, an Alderman of Norfolk Borough, by* William C. Shields *this* 15th *day of September* 1835.

A. Sorsby

Benton & Whitehead

vs Exp

Rochelle

1836 April 1st

Commissioners' Report
on the Valuation of
Benja. Rochelle's land

Agreeably to an order of the Circuit Superior Court of Law and Chancery for Southampton County, Va, dated October 31st 1835. and hereto annexed. We the undersigned Commissioners as expressed in said Order. have viewed the tract of land, lying in the aforesaid County. containing One hundred and twenty five and half acres, which was allotted to Benjamin Rochelle as mentioned in said Order. and Value the same at three hundred and seventy six dollars and fifty cents. or three dollars pr. acre, exclusive of the improvements put thereon by the Rail Road Company and Col. Clements Rochelle, and with the improvements put thereon by said Col. Clements Rochelle exclusive of those belonging to the Rail Road Company, we value the aforesaid tract of land at five hundred and Sixty four dollars and seventy five cents. or four dollars and fifty cents pr. acre.- We have also made inquiry respecting the personal Estate and funds of said Benjamin Rochelle as directed by said order. and have ascertained that he has none in this County.- Respectfully Submitted to the Court. Given under our hands this 31st day of march 1836.

Davis Barrett

Thos. B. Worrell

Mejors Davis Barrett and Thomas B Worrell Two of the within
named Gentlemen this day made oath before me that
they had some few days previous to this faithfully to their
best Skill and Judgment discharged the duties required
of them agreable to the annexed decree given under my
hand this 31st day of March 1836

Jacob Barnes J.P.

Mejors Davis Barrett
vs
Thos. B Worrell

At a Circuit Superior Court of Law and Chancery Continued and held for the County of Southampton on the 31st. day of October 1835—

Thomas G Benton and William B Whitehead merchants and partners under the firm of Benton & Whitehead — Plffs

against

Benjamin Rochelle Defdt

The Defendant Benjamin Rochelle who is out of this County and against whom the plaintiffs appear to have proceeded in the Cause prescribed by Law against absent Defendants Still failing to appear and file his answer: On motion of the plaintiffs by Counsel, the Court doth take this bill for confessed and on the further motion of the plaintiffs by their Counsel, the Court doth order that John M Gailey David Barrett and Thomas B Worrell . . . . . or any Two of them being first duly sworne, do faithfully value the tract of land Containing about One hundred and twenty five acres and a half which the said Defendant derived by descent from his father John Rochelle and which was set apart and allotted to him by Commissioners acting under the authority of the County Court of Southampton and of which the defendant was possessed when he left this Commonwealth and that the said Commissioners do also inquire whether the said Defendant hath any personal estate or funds within the power of this Court out of which the debt due to the plaintiffs or any part thereof can be discharged; and that they report their proceedings to this Court with a view to a further decree

A Copy

Teste L. R Edwards Clk

Benton & Whitehead

vs } Report

Rochelle

Pursuant to the above decree, I have proceeded to sell the Land in said decree mentioned, after due notice, when one Clements Rockett became the purchaser and having complied with the terms of sale I have made him a Deed for said Land & paid over the money arising from said sale to the plaintiffs in the suit all which is respectfully submitted

October 31st 1837. S. R. Gray. Com'r

Pleas before the Honorable the Judge of the Circuit Superior Court of law and Chancery for the County of Southampton at the Court-house of said County on Tuesday the eighth day of July in the year of our Lord one thousand eight hundred and thirty four and of the Commonwealth the fifty-ninth.

Be it remembered that heretofore to wit. At Rules held in the Clerks Office of the Circuit Superior Court of law & chancery for the County aforesaid on the first Monday in June in the year 1833 came John Jeffreys for the benefit of Benton & Whitehead by his Attorney and filed his declaration against George G Gurley and Benjamin Rochelle of a plea of debt, which declaration is in the following words and figures to wit.

"Southampton County, to wit. John Jeffreys p.l.ff for the benefit of Benton & Whitehead complains of Geo: G Gurley & Benj- Rochelle defts in custody &c of a plea of debt that they render to the pl.ff the sum of $95 with interest thereon from the 29th day of June in the year 1832 till paid, which to him they owe & from him unjustly detain- For that the said Defendants on the day and year aforesaid at the County aforesaid by their certain writing obligatory sealed with their Seals and to the Court here now Shewn the date whereof is the same day and year aforesaid acknowledged themselves to be held and firmly bound unto the said plaintiff in the said sum of $95 to be paid to the said plaintiff when afterwards they the said defts. sh.d be thereto required Nevertheless the said defts. altho often requested the said sum of $95 with interest as aforesaid to the said Pl.ff have not paid, but the same to him to pay they have hitherto refused & still do refuse, to the damage of the said Pl.ff $20- and therefore he sues &c.

Baker p.q."

Whereupon the defendant Gurley being arrested and not appearing on the motion of the plaintiff by his attorney it was ordered that judgment be entered for the plaintiff against the defendant Gurley for the debt and interest in the declaration mentioned and costs unless the said defendant should appear and plead to issue at the then next Rules- And the Sh.ff having returned that the defendant Rochelle was not an inhabitant of this County it was therefore ordered that this suit abate and be dismissed as to that defendant.

At another day to wit. At Rules held as aforesaid on the first Monday in July in the year 1833 aforesaid came the plaintiff by his Attorney and the Defendant Gurley still failing to appear it was ordered that the last order made against him in this cause be confirmed.

And now at this day, to wit. At a Special Session of the Circuit Superior Court of Law and Chancery held for the County aforesaid in the day and year first aforesaid to wit, on the eighth day of July 1834. On the motion of the defendant by his Attorney who pleaded payment to which the plaintiff replied generally the judgment obtained against him in the Clerks Office is set aside. and thereupon came a jury to wit. Henry Moore. John C Turner. Bolling S Barrett. William T Rowe. Hardy Joyner. William Prince, John I Drake. Person Westbrook, James E Peters. Archer Vick. Joseph Joyner. & Samuel James who being elected tried and sworn the truth to speak upon the issue joined upon

their oath returned a verdict in the following words towit "We the jury find for the plaintiff the debt and interest in the declaration mentioned, subject to a credit of ten dollars the offset found - and assess his damages to one cent." Therefore it is considered by the Court that the plaintiff recover against the defendant the sum of Ninety five dollars with legal interest thereon from the 29th day of June 1832 till paid the debt and interest in the declaration mentioned - subject to the credit of ten dollars - together with the one cent damages assessed as aforesaid and his costs by him in this behalf expended And the said defendant in Mercy &c

Plaintiffs Costs $9.75.

The following is a copy of the Execution which issued upon the foregoing judgment -

"The Commonwealth of Virginia. To the Sheriff of Southampton County - Greeting - We command you that of the goods and chattels of George G Gurley late in your bailiwick you cause to be made the sum of Ninety five dollars with legal interest thereon from the 29th day of June 1832 till paid which John Sepeley for the benefit of Benton & Whitehead lately in our Circuit Superior Court of Law & Chancery for Southampton County hath recovered against him for debt - also nine dollars and 75 cents for his costs in that suit expended. Whereof he is convicted as appears to us of record: and how you shall have executed this writ. make known at the Clerks Office of our said Circuit Superior Court of Law & Chancery at Rules to be holden for said Court. on the third Monday in October next - and to have then there this writ. Witness James Rochelle clerk of our said Court. at the Courthouse this 25th day of July 1834 in the 59th year of the Commonwealth

James Rochelle clk

This execution is to be credited for Ten dollars - J Rochelle clk.

Shffs: endorsement & return - "Came to hand July 29/1834 - No Effects -

Jesse Drewry deputy of
Benjamin Dewey Shff -

The following is a copy of the bond upon which the foregoing action is founded.

"On demand we or either of us do promise to John Sepeley or his order the just & full Sum of Ninety five dollars - Witness our hands Seals this 29th day of June 1832 -

Geo. G Gurley (Seal)
Benj.a Rochelle (Seal)

Teste
Wordy D Bishop.

Teste James Rochelle clk

(A)

Rochelle
&c. vs.
Rochelle

August 20th 1832.

By consent of parties by their Counsel the interlocutory decree made in this cause at December Court 1831 is amended so as to direct the Commissioners or such of them as may act, to divide equally, (according to quantity and quality) between the plaintiff Lucy Gurley and the defendants Benjamin Willis & Mary Rochelle the lands which descended to them from their grand father John Rochelle dec'd and which lies adjacent to the lands directed by the former decree to be divided. And that the said Commissioners or such of them as may act, make report in order to a final decree.

November the 19th 1832.

This day came the parties by their Counsel and the Commissioners appointed to make division of the lands in the former interlocutory decrees made in this cause mentioned this day made a report in the following words and figures to wit.

"Agreeably to the annexed order to us directed by the County Court of Smith county We the undersigned have proceeded to set apart and divide the lands of John Rochelle Jun. dec'd in the following manner to wit. To Willis L Rochelle (orphan of John) We have assigned Lot No 1. Mary Rochelle Lot No 2. Lucy Gurley Lot No 3. and to Benjamin Rochelle Lot No 4. all of which is respectfully submitted to the Court. November 19th 1832. Zacheus Story, Samuel Story, Mills Story."

Whereupon by consent of parties it is decreed and ordered that the report aforesaid in manner and form as aforesaid made be held firm and stable and be binding forever between the parties. and that the costs of this suit be proportionally borne by the said parties.

Copy. Teste James Rochelle clk

The Lot assigned to Benjamin Rochelle contains 125 1/2 acres.

Benton & Whitehead
a & E. on bill
Rochelle

(13)

To the Worshipful Court of Southampton in Chancery Sitting — Humbly complaining shew unto your Worships your Orator George G Gurley and your Oratrix Lucy his wife, that your Oratrixes father John Rochelle departed this life in the year leaving your oratrix and her brothers Willis Rochelle, Benjamin Rochelle and Mary Rochelle who are his only children and heirs — the two latter being still infants under the age of 21 years to whom a guardian ad litem your Worships will please appoint them to defend them in this suit and that the same may be made defendants hereto with apt and proper words to charge them and be compelled by their said guardian so appointed to answer the same — That the said John Rochelle deceased died seized & possessed of a tract of land lying on the South side of Nottoway river containing between 300 & 400 acres which is liable to equal division between his said heirs — Your Orator and oratrix therefore pray that your Worships will appoint Commissioners to divide the said tract of land into three equal parts assigning one thereof to your oratrix Lucy and the other two to Benjamin and Mary and grant such other and further relief touching the premises as to your Worships may seem just and expedient and your Orator and Oratrix will ever pray &c

Parker p.q.

The answer of Benjamin, Willis & Mary Rochelle infants under the age of 21 years by Clements Rochelle their guardian ad litem appointed to defend them in this suit to a bill of Complaint exhibited against them in this Worshipful Court by George G Gurley and Lucy his wife.

These defendants saving &c admit the allegations of the said bill and are perfectly willing that the Court should appoint Commissioners to make the division of the said tract of land as asked for by the defendants bill and pray to be hence dismissed &c

Parker p.q.

At a Court held for the County of Southampton on the 19th day of December 1831

George G Gurley and Lucy his wife ..... Plffs } In Chancery

against

Benjamin, Willis and Mary Rochelle infants under the age of twenty one years by Clements Rochelle their guardian ad litem ..... Defts

This cause came on this day to be heard on the bill and answer and was argued by Counsel — Whereupon the Court doth order, adjudge and decree that Zachariah Story, Samuel Story and Mills Story, any two of whom may act, be appointed Commissioners to divide the said tract of land into four equal parts assigning one equal part to Lucy Gurley, one to Benjamin Rochelle, one to Willis and one third to Mary Rochelle and that they call in the aid of the County Surveyor if deemed necessary by them to the due execution of the duties herein directed, and that they make report to this Court of their proceedings in order to a final decree.

Benton & Whitehead

J. E. Bond

Rochelle

Know all men by these presents that we Thomas G. Benton, Wm. B. Whitehead, & Elliott Whitehead are held and firmly bound unto Benjamin Rochelle in the just and full sum of two hundred and fifty dollars to be paid unto the said Benjamin Rochelle his executors administrators or assigns: for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 2nd day of April, 1836

The condition of the above obligation is such that whereas, in a suit lately depending in the Circuit Superior Court of Law and Chancery for Southampton County between Thomas G. Benton and William B. Whitehead, merchants and partners under the firm of Benton & Whitehead plaintiffs and Benjamin Rochelle defendant it was on the 2nd day of April, 1836 decreed that the said Defendant pay to the plaintiffs the sum of ninety five dollars with legal interest thereon from the 29th June 1832 till paid, and the sum of nine dollars and seventy five cents, and the costs of the suit: And unless the said defendant should should pay the same on or before the day of sale of the said hereinafter mentioned the Sheriff of this County, should a certain tract or parcel of land in the County of Southampton containing about one hundred and twenty five acres, to the highest bidder, on the premises for cash, after having advertised the time and place of sale for four weeks successively in one of the newspapers in the Town of Petersburg and at the Court house door of the County of Southampton And the Court did further order, that the Sheriff do pay to the plaintiff out of the proceeds of the sale, the debt interest and costs aforesaid: Now if the said Thomas G Benton and Benjamin Whitehead shall perform the future orders & decrees of the Court in that behalf then the above obligation to be void or else to remain in full force & virtue.

Signed Sealed & delivered
In the presence of
Mills L. Daughtrey
James M. Holland

Thos G. Benton (Seal)
Wm B. Whitehead (Seal)
Elliott Whitehead (Seal)