

1802-017 Chancery Causes: Ephraim Wheeler vs Maximilian Maxwell

Isle of Wight County

Other surnames: Blaney,
Fulgham, Young, Smith,
Robinson

11. Bill Injun
Maxwell

Dec. 19.

Bill filed H. D. given

Nov. 7. '99.

by com. & gen. Comm. & gen. & Co.

March 1800

Bill taken as confessed

March 1802

Cont. 1

Cont. 2

Cont. 3

Cont. 4

Cont. 5

Cont. 6

Cont. 7

Cont. 8

Cont. 9

Cont. 10

Cont. 11

Cont. 12

But your complainant, was fortunate enough, to intercede
with Mr Nathaniel Young, the D Maxwell's clerk (whose
orders were in effect, as above - Maxwell being at Norfolk)
to allow your Complot to move from the lot without
molestation - promising, that, when the D Maxwell returned
that the altercation should be settled to the D Maxwell's
satisfaction, by referring the matter in dispute to any
three gentlemen, two to be chosen by the D Maxwell
& one by your Complot. Accordingly on the D Maxwell's
return from Norfolk; the D Maxwell & your Complot
entered into a solemn agreement to refer all matters in
dispute between them concerning the lot & houses to
three gentlemen to wit: Charles Fulgham & James Young
chosen by Maxwell & Capt Thomas Smith chosen by
your Complot; who met & after duly considering the
matters in dispute, by a statement in writing, which
your complainant's premises may be made part of this bill
they the D Maxwell & your Complot agreed & promised that
your Complot should pay only £
for the lot & houses. Which determination of the
Gentlemen aforesaid the D Maxwell would not keep, but
fraudulently intending to injure your complainant
commenced a suit against your Complot at Common
Law charging your Complot with an enormous rent &
that on the trial of the said cause at Common Law your Complot's
attorney ^{being absent} Mr. Robinson, of your Complot papers necessary for
defence being mislaid. a judgment was obtained by Maxwell
contrary to every principle of equity & good conscience.
Your Complot acknowledges the D Maxwell has an account
independent of the suit aforesaid against him, but your Complot
has one superior in amount against ^{him} Maxwell & is willing to an open
& fair settlement. ~~your Complot acknowledges the D Maxwell has an account~~
~~independent of the suit aforesaid against him, but your Complot has one superior in amount against him Maxwell & is willing to an open~~
~~& fair settlement.~~

~~your Complot acknowledges the D Maxwell has an account~~
~~independent of the suit aforesaid against him, but your Complot has one superior in amount against him Maxwell & is willing to an open~~
~~& fair settlement.~~
In tender
consideration of the premises aforesaid and to the end therefore
that complete justice may be done your Complot - He prays
that the D Maxwell may be made defendant to this bill & that he
may true & perfect answer make, on his corporal oath, to the several
allegations herein contained as if here again repeated. Your
Complot calls for the Commonwealth's writ or writs of Subpoena
prohibiting the D Maxwell, his counsellors & abettors
from all further proceedings at Common Law &c
He will ever pray &c

Subscribed & sworn to before me
September 3rd 1777 the above bill sworn to before me
a justice of the ^{peace} for sd county -
J. D. King

To the Justices of the Court of Wight
sitting in Chancery

Ephraim Wheeler complaining shews unto
the court that on the day of in the year 1790
he rented a certain lot & houses in the town of Smithfield of
one David Blaney de'd for which he was to give the
sd Blaney thirty pounds current money per Annu. that
the sd Blaney informed your complainant on the day
of ~~November~~ following the above date, that he, the sd Blaney
had sold & conveyed the sd lot & houses to one Masamileu
Maxwell, but that your Complainant was to remain on
the sd lot agreeable to the contract made between him &
the sd Blaney; and your Complainant was farther
informed by the sd Blaney that he, your Complainant was
not to pay or to account with, the sd Maxwell for
the remaining part of the year 1790 as to the rent &c
which was understood by the sd Maxwell.

Your Complainant for the day of January
1791 & after the sd Mas: Maxwell had taken possession of
the above-mentioned lot & houses, your Complainant entered
into an agreement with the sd Maxwell for the occupation
of part of the sd lot & houses to wit two rooms below - two
rooms above - a cellar - stable - ^{part of} garden, for the use &
occupation of which, your Complainant was to board the
the sd Maxwell, as to meat & drink, from the day of
April in the year 1791 to the end of the same. that the sd
Maxwell commenced board with ^{your} Complainant, but on the
day of May following without any apparent cause to your
Complainant, he, the sd Maxwell quitted your Complainant's table
& contrary to every principle of reason, raised a large
account against your Complainant for rent &c. and
ordered your complainant to move his family out of
the houses with an intention, (as your Complainant was at
that time informed) of injuring him, expecting that your
Complainant was without money & then he, the sd Maxwell
might seize his furniture &c. ~~But after that~~

Maxwell
adv: } Answer
Wheeler

the year 1797 he was to take board for rent as long as he chose to do so but denies that he was bound to do so for the whole time stated in the Compt^s bill, or for any given period of time. But had the case been as stated in the bill, the reasons which compelled him to leave the Compt^s table were such as he conceives would completely exonerate him from any charge therefor, the reasons were, the deranged state of the family for several weeks, occasioned by Whellers extreme illness, originating in an accident, his Wifes attention and time being thereby wholly occupied, no care was exercised towards the management of the usual family affairs, so as to render boarding comfortable or convenient, either to the Compt^s or Def^t.

The large account complained of by the Plaintiff raised for Rent &c. speaks for it self, This Def^t considers it reasonable and his opinion has been corroborated by the verdict of a respectable Jury who were competent Judges of the subject.

It is admitted by this defendant that a reference of all matters between him and the Complainant was at one time agreed upon and the Gentlemen stated in the bill referees were mutually chosen but he positively denies that two of them were chosen by him, he also admits that they had a meeting at Whellers House, but that before he could have an opportunity of being heard, he was so inhospitably treated by the Compt^s as to be compelled to leave the house he does not know whether these Gentlemen undertook to make any calculations or statement whatever, If they did he considers the proceedings as nugatory, for the reasons just assigned.

The Complainant states that his attorney was absent at the trial of the cause at law, it may be true that Mr. Robinson was absent but he left an able and learned counsel to act for him —

It is also complained that the present Plaintiffs papers necessary in the trial of that cause were mislaid, but he does not state what these papers are — This defendant knows of no papers on which the Compt^s can possibly rely for a credit against the Judgement so enjoined, for independent of that Judgement this defendant has very considerable claims against the Complainant which far exceed any just claims of his.

This defendant denies all fraud, or intention to injure the Complainant, with which he is so unjustly charged and prays to be hence dismissed with his necessary costs in this behalf expended & he will ever pray &c. &c. &c. —

Suon to Lupae me

This 3 April 1800

J. Mead

The Answer of M^r. Maxwell to the bill of Injunction, of Ephraim Wheeler filed in the worshipfull court of Isle of Wight, against him to stay a Judgement at law, obtained by this respondent against the complainant —

This respondent now and at all times hereafter saving and reserving to himself all manner of exception to the many bold errors, misstatements, and untruths, in the complainants said bill contained — For answer thereto, or so much thereof

as he is advised is material for him to answer, he answering that he knows nothing of what David Blaney may have told the complainant about rents for part of the year 1796, nor can he believe any such conversation on that subject, between them ever took place as is stated in the complainants bill, But granting its truth, he denies its efficacy to destroy his claim or any part of it, for that part of the year aforesaid in which the said Rented premises belonged to him — more especially as at the trial at law, for its recovery, the same question was taken up by the defendants counsell, and your orator, produced proof in court that Wheeler during that year did allow, to, or acknowledge your respondent as his landlord, and more over it is not believed that David Blaney ever did expect or receive one shilling of rent from the complainant for the time charged by the defendant — Blaney constantly told him so, and it was their bargain that the defendant should be entitled to the rents aforesaid and the court does not even intimate that he ever did pay the same to David Blaney This defendant acknowledges that in

Mr. Francis says that, "that as well as he
recalled it was in the month of March
in the year 1797 he was requested by
Mr. Maywell & Mr. Wheeler to take
notice of the agreement they were then
about to make & after some conversation
Mr. Maywell agreed that Mr. Wheeler
should continue in the house
until Christmas. And Mr. Francis
further observed that he was present when
there was an arbitration between
Mr. Maywell & Mr. Wheeler concerning
their accounts by the late Thomas Smith
on the part of Wheeler & James Young
& Charles Folgham on the part of Maywell
& that he did not hear, as he recollects
any abusive language from either
party

Nathl. Young

Smithfield February the 4th ¹⁸⁰¹ Day
Young made oath before me that above
is just to the best of his knowledge

W. King

The affidavit of Nathaniel Young of Lawfull age
being sworn before ~~me~~ ^{notice being acknowledged} the undersigned, concerning
a certain matter of controversy depending & unde-
-termined in Isle of Wight Court between Max:
Maxwell & Ephraim Wheeler - the sd Young
deposeth & saith - Some time in the month
of July or August in the year 1797, (at which
time the deponent lived with the sd Max:
Maxwell) he went to David Blaney's after
money for the sd Maxwell - the sd
Blaney agreed to pay the money, but stated
that Maxwell would be ~~entire~~ in his debt
was it not for the Rent of the house
that the sd Ephraim Wheeler then lived
in, which he, the sd Blaney, had to
account with the sd Maxwell for.

In the month of September in the above
year the sd Maxwell & the sd Wheeler
had some dispute - the sd Maxwell
~~thereupon wrote a letter to the sd Wheeler~~ immediately
ordered the sd Wheeler to leave his house
- the sd Maxwell then went to Norfolk &
~~thereupon wrote a letter to the sd Wheeler~~ gave this deponent
orders to make the sd Wheeler move out
of the house and to attach as much
of his property as would settle the Rent.
And farther saith not as to his own knowledge
But being asked what, he knew or had
come to his knowledge from the knowledge
of Francis Young, his brother, this deponent
answers & says - that he did hear his brother

Maxwell

14.

Wheeler

Enjun. Bonds

3^d Sept 1799.

Enjun. Bonds

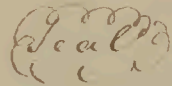
39 n 14 n 0
31 n 14 n 0
30 n 18 n 0

Know all men by these presents that we Ephraim Wheeler
and Augustine C. Cocke
are held and firmly bound unto Margimelian Maxwell
in the sum of sixty three pounds eight shillings
of current money to which payment well and truly to be made
we bind our selves our Heirs Executors and Administrators joint
ly and severally by these presents sealed with our seals and dated
this 3^d day of 1799.

The condition of this obligation is such that whereas
the said Margimelian Maxwell
hath obtained Judgment at common law against the said
Ephraim Wheeler in the County of Isle of Wight for Thirty
One pounds fourteen shillings
and costs and the said Ephraim Wheeler
hath obtained an injunction to stay the execution of the said
Judgment untill the hearing the matter in equity upon a
bill for that purpose filed. If therefore the said Ephraim Wheeler
and Augustine C. Cocke shall satisfy & pay the said
Judgment at common law and all costs damages that shall
be awarded to the said Margimelian Maxwell
in case the said Judgment shall be dissolved that then the a-
bove obligation to be void or else to remain in force & virtue.
Signed and Sealed
in presence of

Jⁿ Young


Ephraim Wheeler



Aug^t C. Cocke

