

1823-002

Chancery Causes, John Stephenson vs Benjamin Drew & John Whitfield

Dale of Wight County

other SURNAMES, Baker,
Atkinson, VASSER

To the County Court of Isle of Wight sitting in chancery
humbly complaining. sheweth unto your worship your
orator John Stephenson. that sometime in the year
1819 or 1820 ~~a suit~~ two suits were ~~from~~ instituted in
the County Court of Southampton one in favor of
Richard W Baker and one in favor of Archibald
Atherton against a certain John Whitfield
that your orator at the particular request and
desire of the said John Whitfield became his
appearance bail in each of the aforesaid suits
that the said John Whitfield before the rendition
of judgments against him left the State of Virginia
without having paid the said debts or any part
thereof since which time your orator in consequence
of his indenturing as appearance bail aforesaid
has been compelled to pay to Richard W Baker
the sum of \$38.60 on the 8th day of April 1820 —
and to Archd. Atherton the sum of \$29.35 at the
^{same time} ~~same~~ said sum of money unpaid by him or
himself to the said Atherton and Baker on the
8th day of April 1820 — since which time he
has not been able to recover or receive of the
said John Whitfield any part ^{of the money} then paid upon
his account. — Your complainant ^{leaves} ~~hugs~~ to state
that he has heard and believes it to be a fact that
previous to the time on which John Whitfield aforesaid
left the Commonwealth of Virginia he delivered
to a certain Benjamin Brew of the County of aforesaid
or to his agent, a certain parcel of Brandy
or other produce valued at Sixty Eight Dollars which
was to be placed to the credit of Whitfield's Bond
or obligation then holden by and due to the said
Brew and that Brew executed to him a receipt
for the said produce.

That sometime thereafter or before that period Brew
caused a suit to be brought upon Whitfield's obliga-
tion and a judgment hath been rendered thereupon
against the bail in the action who hath paid the
amount thereof to Brew who failed to give a
credit upon the obligation or judgment for the sum
which Whitfield had paid in part thereof before

he left the State. That he supposes Whitfield came to pay to Whitfield or some of his creditors the
with him Brown receipt for the sum which he
paid in part of the said obligation and by
reason of the absence of the receipt and ~~thereby~~
by the innocent omission of the said Brown and
of his Counsel to allow the proper credit the
said Brown hath not only received the sum
of \$85. or thereabouts - of the said Whitfield
before he left the Commonwealth, but hath
since received the whole amount of the said debt
without any regard to the credit to which Whitfield
was entitled - making the said Brown now indebted
to the said John Whitfield in the sum of
or more. - Your orator is not informed that
there are any effects of the said Whitfield, or ~~any~~ credit
in the State of Virginia out of which your complainant
can recover the demand, save the money in the
hands of the said Benjamin Brown which money
he is informed he cannot recover if the said
Brown without the aid of this Court in which
he is properly and alone relievable. - Therefore
he prays the aid of this Court. He prays that the
said Benjamin Brown ~~be~~ and the said John
Whitfield be made defendants unto and that
they be compelled upon their corporal oath
shall, true, just and perfect answer to make
to all and singular the allegations aforesaid
as fully as if the same were here again repeated
and that they shew more particularly intended
that the said Brown say whether he hath any money
goods, credit or effects in his hands belonging to the
said Whitfield - ~~whether he hath~~ and what
amount - hath he not recovered upon the obli-
gation upon which he prosecuted a suit against
Whitfield the nominal amount. Did he not receive
of him before he left the State of Virginia, some
money or produce in part of the said obligation -
and how much and to what amount?
and has he not received and received more
than is due him in justice or equity - and
if he does he not consider himself bound

to pay to Whitfield or some of his creditors the
amount for which he Whitfield was entitled to
a credit - What is the amount in his hands which
does not belong to him the said Brown and what
has been over paid - and that he also answer
and say without equivocation or mental reservation
~~whether the amount~~ if the facts aforesaid are
not true and correct, and that he state fully
all the important circumstances concerning the
receipt executed to, and the judgment recovered
against Whitfield and his bail or his security -
Your orator prays that your worship will allow
him to proceed in this case according to the custom
of the Court of Equity against absent debtors
and that you will make any order for
his relief which may seem consistent with
Equity and Justice. -

Attorney for J. G.

Stephenson
against Bill
Whitfield & Drus
Chapm. Co. Ct

May 1821 bill filed &
order of publication etc.

August 1824

Bill drawn vs. Jeff. Drus

March 1822 order of Bench

Drus filed

Jan. 1823

Dismissed

Attorney at Law

Chancery sitting: ~~By the court~~ The separate answer of Birja-
min Doss to a bill of complaint exhibited in this Court
against John Whitfield and himself by John Stephenson
Complainant. This respondent saving and reserving to
himself every benefit and advantage of exception to the
many errors and insufficiencies in the said bill contained
for answer thereto saith: it is true he held some time since
John Whitfield's obligation for a sum of money as charged
in the said bill, and that Whitfield afterwards delivered
to this respondent brandy or other produce amounting to
the sum of \$ in part discharge thereof: a receipt
as your respondent believes was given for the produce then
received, but no credit was entered upon the bond.

your respondent subsequently commenced suit against the said Whitfield upon the said obligation, and judgment was recovered thereupon for the full amount of the same, without first deducting the amount of the produce above mentioned, and which was received to be applied as a credit upon the said obligation: this error in the rendition of the said judgment, unassisted by any thing like design on the ^{of this respondent,} part, was altogether the consequence of negligence & omission on the part of the said Whitfield, in whose possession the amount of the credit had before been placed. It is moreover true that the said judgment was rendered both against the said Whitfield and a certain Napier & Co

the said Whetpelt and a certain
appearance bail, and your respondent further, ^{states and} admits that
the said Vaper against whom the said judgment had been
rendered as aforesaid, has paid to your respondent, who at
the time was unapprised of its impropriety & injustice, the
amount in full of the said judgment. Your respondent

therefore has received innocently, but contrary to right and
justice the sum of \$ more than that to which he
was entitled by virtue of the said judgment, and for which
said last mentioned sum your respondent is willing to
account as to the court may deem just & proper: But
your respondent, under the circumstances above mentioned,
does not believe that the money so remaining in his hands
and which was improperly paid to him in satisfaction of
the said judgment ought to be now considered the property
of the said John Whitfield & liable for the payment of
his debts: for in truth this sum of money last mentioned
was paid to your respondent not by Whitfield but by the
said ^{Waper} his innocent appearance, and paid
by him the said Waper too when nothing was in fact
due and owing - your respondent is advised that Whitfield
could have no claim against him for the money so as
formerly paid by mistake, the same having been paid
by Waper upon whom no legal or moral obligation was
requiring such payment - Without that &c. And
your respondent desires all fraud &c. and prays to be
hence dismissed with his costs in this behalf expended.

(Signed)

B. Brew

Sh of Wight County, to wit: This day the above named
Berg. Brew appeared before the subscribers a justice of the
Peace for the County aforesaid & made oath that the statements
contained in the foregoing answer so far as the same depend
upon his own knowledge are true: So far as the same depend
upon the knowledge of others he believes them to be true -
Given under my hand & seal this 4. day of ^{March} ~~Feb~~ A. D. 1862.

Joseph W Ballard

Prof. Drew:
ad^{to} answer
Mr. Stephenson -
Pallor.

Wm. Wright & Co. Co.

The commonwealth of Virginia to the Sheriff of Isles of Wight
County greeting we command you to summon John Whitfield
and Benjamin Drew to appear before the Justices of our
county court of Isles of Wight at the court house of the said
county on the first Monday in May next to answer the bill of compl-
aint ~~in~~ the said court exhibited by John Stephenson against them —
and ^{that} they shall in case they omit under the penalty £100 ~~each~~ and
have them there this writ Witness Nathaniel Young clerk of our said
court at the Court house the 24th day of April 1821 in the 45th year of the
commonwealth —

Nathl. Young
Clerk

Memo. The object of this suit is to restrain the
within named Defendant Benjamin Drew
from paying away conveying away or secreting
the debts he has owing to the within mentioned
John Whitfield - 24

Attest Atkinson attorney
for the complainant

Hepleman
m.
Whitfield, & Drew

Executed on Benjamin Drew
John Whitfield no inhabitant

Imperial D. S.
J. Jordan

Isle of Wight County Court,

August Court 1821.

John Stephenson

Complainant

against

$\frac{2}{3}$ In Chancery
 $\frac{2}{3}$

John Whitfield and Benjamin Drew. Defendants

The Defendants Drew having failed to file his answer to the bill of Complaint exhibited against ~~the~~ Defendant and him, by the said Complainant. It is ordered that unless the said Defendant Drew appear here at October Court next and file his answer, Judgment will be entered for the Complainant against him agreeable to the said bill —

Teste Nathl. Young Esq

Stephenson

115.



De ore nisi

Drew

26 October 1821

Beato

115. 115. 115. 115.

John Stephenson compl

ⁱⁿ John Whitfield & Benjamin Drew depts

The depts John Whitfield, not having
entered his appearance according to the
order of the Court, and the rules of this Court, and
it appearing by satisfactory evidence that he
is not an inhabitant of this Commonwealth
It is ordered that the said depts do appear
here on the first day of September next, to
be holden for the County of ^{Suffolk} ~~Mass~~,
and answer the bill of the plff, and that
a copy of this order be forthwith inserted
in some news paper published in the County
of Suffolk for two months successively
and posted at the front door of the
Court House of this County. And that
the depts Benjamin Drew be restrained from
paying, conveying away or disposing of the debts by him
owing to, or the effects in his hands belonging to
the said John Whitfield. —

Stephenson

to My Dear

Whitfield

