NRS13724 Best v Swinton

Bill of complaint filed 26th May 1817 to Baron (sic) Field

Ptff Anthony Best of Half Way House agreed to purchase from Michael Connelly of Prospect land situate at Prospect and Cattle Stock thereon for the sum of L100 and a deed poll was prepared and executed by which Michael Connelly did sell and convey lands to ptff and MC did sell and convey to ptff all the cattle stock depasturing thereon being 15 head of horned cattle and possession of the cattle was regularly made over to the ptff and the ptff entered into peaceable possession of the lands and cattle. On or about this period of time Anthony Swinton of Sydney issued process out of the Governor's Court for a considerable sum of money which he pretended to be due and owing by MC and had MC attached and while he was in gaol insisted upon his conveying to AS all his property including the lands at Prospect and cattle thereon (though MC told him that he had already conveyed the same to the ptff) and AS with the aid of one John Coffee forcibly entered on the lands and drove the cattle off to sell them

But now so it is that AS gives out and pretends that the bills and notes of hand of MC assigned to him by Burke Jackson even if they were for a gambling consideration were paid over by Burke Jackson to AS for a valuable consideration and the actions of AS are contrary to right equity and good conscience and tend to defraud the ptff of his property and the ptff is remediless by the strict rules of the common law and can only be relieved by the aid and assistance of this Honorable Court

And may AS true full and perfect answer make to all and singular the premises upon his Corporal Oath as fully and particularly as if the same were here fully repeated. [Here in a section not easily legible the allegations are repeated in detail and including the following allegation re jewelry.] Certain chains, seals and other trinkets of base metals were sold to ptff it being represented they were of gold.

Whether AS may be compelled by a decree of this HC to deliver over such Lands Tenements Hereditaments Cattle Stock Poultry and other property so obtained by AS to the ptff and that the said AS may be also compelled to account to the ptff for whatever he has sold of the same and to pay over the produce thereof to the ptff and such Damages as the ptff has been put to in consequence thereof and that the ptff may have such further and other relief in the premises as to Your Honor and this HC may appear meet and proper according to Equity and good conscience

Prayer for writ of subpoena commanding deft personally to appear and answer all and singular the premises and abide such further order and Decree as to Your Honor and this HC shall seem meet. And Your Orator shall ever pray &c.

WH Moore PS

Second Term 1817 Subpoena 26 May 1817 for the ptff against D returnable on the 28th day of May 1817

WH Moore PS

Affidavit sworn 29 May 1817 filed 30 May 1817 of Anthony Best of the halfway house on the Road to Parramatta Innkeeper. On or about 26th April last past the ptff purchased from MC a certain farm and cattle at Prospect and D happened by chance to come into the ptff's house on the occasion of such purchase and was therefore acquainted therewith. The ptff believes that MC had certain gambling transactions with one Burke Jackson and Burke Jackson obtained in consequence thereof certain bills of exchange or notes of hand from MC which Burke Jackson assigned and made over to D for the purpose of obtaining payment of the same from MC in consequence of which D issued a process forth of the Governor's Court and in order to better effect the purpose hereafter mentioned instead of allowing the ordinary course of the law to proceed caused John Coffee a Government servant of Mary McMahon (with whom D resides) to be made Special [sic]for the purpose of arresting the body of MC and John Coffee did arrest MC and lodged him in the Gaol. While he was there D persuaded him as the only condition on which he would consent to his liberation to assign convey and make over all his property to D who prepared a deed of conveyance of same which was executed by MC and a receipt for 5/- purporting to be the consideration thereof witnessed by John Coffee and the ptff is informed and believes that the above bills and the 5/- was the only consideration of the said conveyance excepting certain trinkets of base metal valued at 9d which D sold to MC as gold. In consequence of the conveyance Dproceeded to take forcible possession of all the property he could find including the Land and cattle purchased by the ptff from MC with the knowledge and privity of D and although servants of the ptff and of MC made every resistance D armed with pistols and other weapons of offence and assisted by John Coffee succeeded in obtaining possession thereof and as the ptff is informed has driven the cattle to Sydney for the purpose of sale

Sworn at his house at Sydney before Barron Field

Affidavit sworn 29 May 1817 filed 30 May 1817 of Michael Connelly of Prospect Hill Settler

In the present year he became acquainted with Burke Jackson a prisoner of Sydney who invited him to his residence in Sydney and there introduced him to D. They got him into a state of intoxication and kept him in that state for a considerable time the doors of the house being kept locked. While he was in a state of intoxication BJ and D obtained from him a variety of bills and other securities but of what nature and amounts he is ignorant. He received no sort of consideration for such bills bonds or other securities they being obtained in consequence of gambling transactions between the parties. Upon intoxication abating D communicated that he held some securities of his and on MC asking for what D replied that BJ had endorsed over to him some of MC's acceptances in favour of BJ and that D had sold MC 3 gold seals and a chain and ring and MC says he has a recollection of 3 seals being delivered to him by D but BJ immediately took them from him and he has never since had them in his possession. The chain and ring were deposited with Mrs Rickards a publican for a silk handkerchief and some rum. MC is informed they are not of gold but of some inferior metal of little value Shortly after MC was at Sydney for the purpose of registering deed of sale of Lands and cattle to the ptff when to his surprize he was arrested by John Coffee Govt Servant of D or of Mary McMahon with whom D resides at the suit of D and conveyed to common gaol. While he was in gaol D proposed that he should make over to D all his property and D would pay MC a good price as soon as Provost Marshal paid him a debt he owed him. MC replied that that was out of his power as he had already made such a conveyance to the ptff. D persisted in demanding such securities telling him he would indemnify him from all consequences. MC finding he could in no other way obtain his discharge from prison consented to do all that was required of him. In consequence D and John Coffee conveyed MC from the gaol to D's residence at the house of Mary McMahon and there imprisoned him by putting a chain against the door and locking the same and D laid a brace of pistols on the table which he stated were loaded with ball and John Coffee stood sentry over MC with a bill hook in consequence of which and of the bodily fear in which MC was placed he signed a number of paper writings the effect of which were as MC has since learned to convey and make over all his property to D and D and John Coffee made MC he being still in custody of D with his loaded pistols and John Coffee armed with the bill hook accompany them to his farm at Prospect in order that D should take possession of MC's property thereon (sic) in virtue of such deeds and other paper writingswhen D took forcible possession of 20 head of cattle and John Coffee drove them away to Sydney to D's residence although part of the said cattle had been previously sold to the full and perfect knowledge of D by MC to the ptff and after D had taken possession of the Farm and driven away the cattle MC was set at liberty and allowed to remain at his house and some time afterwards John Coffee brought back to the farm 9 head of the cattle stating that D had sent them to be depastured and the next day John Coffee came again for the cattle and MC endeavoured to prevent him from taking them away and John Coffee came again with D armed with his pistols. Lieut Lawson who was passing saw D presenting his pistols to MC's son in law remonstrated with him on the impropriety of his conduct. D went away but returned in a short time and threatened to blow MC's brains out but MC still resisted and succeeded in getting him off the premises but that night about 12 o'clock D returned broke open the gate, tore down the railing, broke open the stable door and drove away the 9 head of cattle since which MC has not been able to recover possession of same.

26 May 1817 Subpoena returnable 28 May 1817

24 June 1817 Appearance for D at the suit of the ptff to a Subpoena returnable 28 May 1817

Garling DS

1 month to answer from the 1st July 1817

15th August 1817 Garling for D further time to Answer for one week from this day. Granted.

Attachment 7 November 1818 agt D at the suit of the ptff for want of Ansr (sic) returnable 30th November 1818

WH Moore PS

Alias Attachment 20 October 1819 for the ptff against D for not answering returnable 1st November 1819

WH Moore PS

Same day order on parchment signed by Barron Field and sealed directing Provost Marshal to attach D and have him before the Court on 1 November 1819 to answer charge of contempt

Answer sworn at his house in George St 20 January 1820 before Barron Field J

Deft saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the Complainant's Bill of Complaint contained for answer thereunto he answereth and saith

In the beginning of 1817 D having a bill of exchange for L25 accepted by MC in the said bill named lost the bill and on request MC gave D a fresh Note for L25 and at about the same time D sold MC a quantity of ? and other articles of trade to the amount of L23-11-0 for which MC gave D his promissory note of hand and D afterwards received of Burke Jackson in the way of trade and for valuable consideration another note of hand of MC for L20 and D says that MC not being able to pay the two last mentioned notes when they fell due on or about 14 March 1817 executed and delivered to D warrant of attorney to confess judgment for L43-11-0 payable by two instalments and on 28 March judgment was entered in the Governor's Court and on 29 March the first instalment not being paid a writ of fieri facias was issued and on 28 March D also issued a writ of capias out of the Governor's Court directed to MC on which the Provost Marshal directed his warrant to John Coffee authorizing him to arrest the body of MC and on 28 March John Coffee did arrest and put into His Majesty's gaol of Sydney the body of MC and on 29 March finding MC was not possessed of any money relying entirely on the honor and integrity of MC to secure D in payment of money due D consented to and actually did release MC from his imprisonment in the gaol of Sydney without receiving any security or assignment of any description

D further says that being at MC's house at Prospect on 31 March 2 days after his release from prison MC did in consideration of debt of L72-11-0 propose to assign to D his Lands at Prospect and Stock and did accordingly prepare a Conveyance and Assignment of same which was there executed by MC and MC voluntarily assisted D and his servant in driving stock from Prospect to Sydney and on 1 April MC executed the conveyance and assignment in the presence of John Coffee and George Smith in order to its being registered in the Office of the Judge Advocate and on 2 April MC attended and was examined by the JA touching the execution of the conveyance and the consideration for the same and the deed was duly registered and on 4 April MC attended with D and assisted in branding the cattle with D's brand and left them in possession and as lawful property of D who after several months sold them and at time of all transactions MC was perfectly sober and in full possession of his senses and not under any duress or restraint whatever. D denies that any note or security endorsed or given to him by Burke Jackson was given to him for a gambling consideration but for goods sold and delivered and he does not know that any was given to Burke Jackson for a gambling consideration and D denies that note for L73-11-0 was received from MC for a gambling consideration but for various goods sold and delivered including a few items of jewelry but denies he represented to MC that any item was of gold which was of baser metal and D charged MC only a fair and reasonable price. And D says that at the time MC executed the conveyance or assignment to D MC informed D that he had signed some paper purporting to convey to the ptff the Land at Prospect but same was only signed with a view to defeat the Execution which MC expected to be levied thereon at the suit of D and for no other purpose and that MC did not receive any consideration for making over the Land but that same was only a colorable transaction or words to that effect and that at the time the conveyance to D was registered there was not any conveyance or assignment from MC or the ptff registered or left at the Office of the JA for registration and that D did not know or have any reason to believe that any legal or equitable conveyance from MC to the ptff was then in existence and D did not see the ptff or any person on his behalf in possession of the Land nor did D or any other person for him use any guns or pistols or exercise any force to obtain possession of the same and the cattle are the only property of which D has to the moment taken actual possession and denies all manner of combination or confederacy with which he stands charged. All which matters and things D is ready to aver and prove as this HC shall direct and award and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Note of Court fees

NRS 13724

Blaxland v Blaxland

Bill of Complaint only document in file. Damaged and significant portions illegible

NRS13724

Robert Campbell the elder v Robert Campbell the younger

Bill of complaint 10 May 1817 to Barron Field and the Magistrates the other members of the Court

Ptff in 1805 in Scotland took under his protection the deft his nephew who was indigent, provided him with every necessary and brought him back with him to NSW where he employed him as a clerk and directed him to keep account of the increase of his cattle. Ptff was summoned to England to give evidence re Bligh deposition and was absent from May 1810 leaving deft in charge of the cattle stock. Deft opened first one and then a second butcher's shop. He sold meat from the ptff's cattle in those shops and also to shipping in Sydney Harbour. Also he sold to His Majesty 's Stores between 1 January 1811 and 24 July 1813 91,237 lb weight of meat for which he received L3,421-7-9. Charles Hook who was left as managing agent of ptff dismissed deft. Deft has rendered no account of meat taken or proceeds received. In consequence of severe mercantile losses and of large outstanding balances due and owing Campbell and Co became embarrassed and the whole of ptff's landed property and cattle stock were mortgaged by Charles Hook to liquidate the debts of that house in consequence of which the said lands and cattle stock were delivered to the agent of the mortgagee in July 1813. On his return to the colony in March 1815 ptff "was struck with the utmost astonishment" at lack of returns to Hook and also at diminished state of cattle delivered to mortgagee's agent bearing in mind usual increase of cattle and also statements by deft in letters to ptff. Ptff sets out in full letters of deft of 30/07/10 and 25/10/10 which contain detailed statements of numbers of cattle. Ptff replied on 20/03/11 enjoining deft to be particular in his returns. On his return ptff found deft whom he had left as an indigent clerk to be "living in a most affluent manner, supporting a most expensive establishment." Ptff wrote requiring deft to furnish returns without delay. Deft by letter replied that he did not think it necessary to keep exact monthly returns but had attended to the affairs of the farms. There was further correspondence which did not produce any returns or accounts. There are allegations of various documents containing admissions or statements by deft which support ptff's case but this portion of bill (section 3) is partly illegible. Although deft pretends that he did render accounts to Charles Hook he did not do so. He also pretends that meat he sold to the shipping and the 2 butcher's shops and supplied to the domestic establishment he purchased from various cattle proprietors but it was not so purchased by him, all which pretences are contrary to right equity and good conscience. Ptff is remediless by the strict rules of the common law since he cannot come at a full discovery of all the matters alleged nor how his cattle stock has been disposed of nor what is the state of his accounts relative thereto but by the assistance of a court of equity. And the deft should upon his corporal oath set forth declare and discover the truth as to the allegations (repeated) in this bill including what quantity of meat sold in the 2 butcher's shops "was of the property...or the produce" of the ptff's cattle stock and whether meat sold to the shipping was not of the ptff's property and what was the amount received by the deft for the same respectively and whether the deft did not between 1 January 1811 and 24 July 1813 sell to His Majesty's stores 91,237 lb weight of meat for which he received L3,421-7-9 and whether that meat was wholly or in part the property of the ptff and whether Charles Hook demanded of the deft an account of all meat sold in the butcher's shops, to the shipping and to His Majesty's stores and intimated that in the absence of such account he would take possession of all the ptff's cattle stock whereupon the deft withdrew from the house and from the care of the cattle stock without rendering any account and whether it was the duty of the deft to enter any particular relating to the cattle stock in a book and whether the deft supplied the domestic establishment with meat from the butcher's shops and charged Charles Hook L1,410-0-111/2d for it and whether the deft did not kill and slaughter 365 cattle and 349 sheep of the ptff and whether the deft did not sell 24 horses of the ptff and whether the mercantile house of Campbell and Co did not become embarrassed and whether Charles Hook mortgaged and delivered to the agent of the mortgagee all the lands and cattle stock of the ptff in or about 1813 and whether the ptff did not immediately on his return to the colony demand from the deft a full accurate and particular account of the cattle stock and of the causes whereby the cattle stock had become so diminished in number and whether the deft on the ptff's return from England was not living in a most affluent manner supporting a most expensive establishment and in every way differently circumstanced to what the ptff could possibly have supposed and whether the deft did not positively agree promise and undertake that he would immediately furnish the ptff with a full accurate and particular account of the cattle stock of the ptff and whetherr the deft did not also undertake that he would account for all of the animals of the cattle stock which had been appropriated to the private advantage of the deft and would pay over to the ptff whatever sum of money should appear on such account to be due and owing to the ptff and whether the deft did not tear out and destroy pages of the Farm Book and what were the contents of the same and whether on the occasion of Charles Hook remonstrating with him on the impropriety of his conduct the deft did not send to Charles Hook a paper writing in which he admitted that he had slaughtered a considerable number of the ptff's cattle for the supply of shipping of the value of L600 and whether the deft did not make out an account in which he acknowledged L489 to be owing to the ptff and whether the deft did not set up a shop and there sell a large quantity of goods and whether those goods were not the property of the ptff and whether the ptff had not requested the deft to account for the cattle of the cattle stock of the ptff slaughtered and sold by the deft on his private account and whether the ptff has not frequently demanded of the deft to pay over such sums of money as are in right equity and good conscience due to the ptff and whether the deft has not hitherto wholly refused so to do and that the deft may be decreed to pay to the ptff such sums of money as may appear to be due to the ptff and that the several witnesses whose testimony may be considered necessary may be examined and that the ptff may have such further and other relief in the premises as the nature of the ptff's case doth or may require and as to Your Honor and this Honorable Court may seem meet.

May it please Your Honor to grant to the ptff a writ of subpoena directed to the deft and his confederates when discovered thereby commanding him them and every of them at a certain day and under a certain pain therein to be limited personally to be and appear before YH in this Honorable Court and then and there upon their several and respective Corporal Oaths true and perfect answer make to all and singular the premises and further to stand, and abide, such order and decree therein, as to YH and this Honorable Court shall seem meet and Your Orator shall ever Pray &c

19th May 1817

Appearance for Robert Campbell the Jr by Frederick Garling Deft's Solr

Friday 23d May 1817

Time for to Answer One Month - granted

further time for 2 weeks from 9th July

15th August 1817

Garling for Deft Campbell Junr

further time is given for one week from this date to file answer

Answer dated 28th November 1817

Deft admits that in 1806 ptff was in Scotland and met with deft but that so far from being friendless and in indigent circumstances deft was and had been for nearly 3 years previous apprentice to a surgeon in Greenock and had for some years been at a boarding school and acquired some knowledge of the Classics. Ptff was very solicitous to bring him out to this country and gave him reason to expect to realize a fortune in a few years. Admits that ptff might be at some expense in equipping him for the voyage Nor does deft deny there was every appearance of kindness and affection in ptff's general conduct towards him. Some time after his arrival in the Colony he was charged with the care of the ptff's farms and stock. He from time to time made returns to the ptff which were satisfactory to the ptff which were not always in the form which would be required of a person more habituated in such concerns. Admits ptff departed and left deft principal manager of his cattle (subject to the control of Charles Hook) but says he gave the deft no particular instructions in regard to the stock and deft made such entries in the Farm Book as appeared to him necessary. Deft denies that immediately on ptff's departure he set up butcheries for the fact is he set up the butcheries some weeks before the ptff's departure and had furnished the ptff with meat for his family and sent him a bill. When he set up butcheries he had 13 or 14 cattle his own property which were produce of cattle given to him by the ptff and one given to him by Mr Hook. He slaughtered 26 head of cattle belonging to the ptff which he fairly accounted for and whatever other cattle deft slaughtered and exposed to sale he purchased on credit from various individuals. Deft admits he sold some meat to ships' masters or agents but the animals concerned were his sole property purchased by deft on credit or otherwise. Admits he turned into His Majesty's Stores a considerable quantity of animal foods and says a great part was for and on account of Admiral Bligh (for whom deft acted as agent). Other parts were from animals he purchased from various people including Charles Throsby and Rev Samuel Marsden. Charles Hook turned into His Majesty's Stores a quantity of cattle the property of the ptff and 1000 sheep and got the receipts in which deft had no concern and commissariat books are not available. Deft denies that Charles Hook ever remonstrated with him on the impropriety of his dealing in meat nor did he ever demand any account of what he had turned into His Majesty's Stores or sold at the butchers' shops or supplied to shipping and therefore deft did not refuse to render any account thereof. It was not in consequence of any threat that deft withdrew himself from ptff's house but from a wish to give up the care and management thereof. Deft says there was no book specially provided and appropriated for entering particulars of the cattle and increase. Says the only cattle of the ptff he slaughtered were the 26 mentioned above and he is not obliged to account to the ptff for other cattle. Denies that he killed or slaughtered 365 cattle or 549 sheep of the ptff or sold the horses as alleged which he brought to Sydney by written order of Mr Hook to be sold by auction by Mr Bevan. Admits Campbell & Co did become embarrassed and Charles Hook did mortgage property and cattle were delivered to mortgagee's agents, 1000 to one and 1200 to another. A reckoning of the number of cattle precludes any conclusion that the deft appropriated any part of them. Admits that the ptff on his return to the Colony did require a return of the cattle stock and that deft referred to the deliveries and sales in ptff's absence that being the only return the deft could give. Deft says that ptff left deft in his accompting house when he departed for England but by no means entirely depending on ptff's employment for his support. For deft had acquired by trade & dealings One thousand pounds and situation ptff obtained for deft as assistant to the Naval Officer yielded deft an handsome addition to his income and occasion of improving his credit in the Colony. Says that when ptff returned from England deft was in possession of a house in Bligh St which deft had purchased before ptff left the Colony and that deft lived there in a decent & comfortable manner but in no way extravagant or expensive, that he had a young family to support and had had dealings with merchants and traders which had yielded him Twenty to Thirty thousand pounds. Deft denies that ptff stipulated that deft should give him a more particular account of the cattle stock nor did deft promise or undertake to account for the ptff's animals appropriated by him during ptff's absence or pay what sum of money appears to be due to ptff. For the fact is that deft had not appropriated any of the ptff's cattle stock other than the 26 head mentioned above. Denies that he wilfully or with any sinister view tore out or destroyed any leaves of the Farm Book in the loose way in which it was kept they may have fallen out and says that had he torn out leaves to defraud the ptff he would also have been careful to tear out the indexed state of the cattle and says that on reference to the overseers the state of the cattle might always have been ascertained. Deft admits letter to Mr Hook in sum of nearly L600 was acknowledged to be due to ptff but gives explanation of that statement. Admits that in an account stated signed by deft in his own hand there appears a balance of L489 but this was "over liquidated" by sums owing by Ptff to deft leaving a considerable balance due to deft. Says that he carried on trade as a merchant in his house in Bligh Street and sold and exposed for sale goods, wares and merchandizes but the greater part of these were purchased by the deft from various merchants and no part of them was the ptff's and those obtained from Campbell & Co have been accounted for by the deft and deft denies that he said he would pay over to ptff such sums as in right &c were claimed to be due to ptff for deft submits that on a fair & equitable statement there will be a balance due to the deft of upwards of L1000 exclusive of nearly six years service as a clerk And deft denies all and all manner of confederacy wherewith he stands charged. All which matters and things deft is ready to aver and prove as this Honorable Court shall direct and award. And humbly prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained

Note of Court fees

bm,nbz b

NRS13724

Campbell v Kable, Palmer & Gore

Bill of Complaint filed 5 May 1817 John Campbell sheweth that Henry Kable on or about 1 March 1810 having a claim on P for L75 sterling and P being desirous of liquidating same paid over to HK 2 promissory notes of Peter Hibbs one of which was for L150 sterling and the other was for 30 bushels of wheat that is to say in one of the said promissory notes dated 8 February 1809 PH promised to pay to P or his order 12 months after the date of the promissory note L150 sterling and in the other promissory note dated 27 December 1809 PH promised to pay to P or his order on demand the quantity of 30 bushels of wheat and HK on receiving the said promissory notes did deliver to P an acknowledgment receipt or acquittance for one note of hand drawn by PH for L150 and another on demand for 30 bushels of clean storeable wheat which I will be accountable to JC for signed HK March 1st 1810 And P further sheweth that the intent and purpose for which the said promissory notes were deposited in the hands of HK was that HK should repay himself out of the proceeds of the said promissory notes the sum of L75 and was to pay over to P the balance arising from the same And P further sheweth that HK issued out process at law to recover from PH the amount of the promissory notes and having obtained Judgment thereon Execution issued against the Effects of PH and 2 Writs of Fieri facias were directed accordingly to the Provost Marshal George Thomas Palmer And P further sheweth that GTP having been shortly after removed from the office of Provost Marshal the duty of carrying into effect the said Writs of Fieri facias devolved upon William Gore the now Provost Marshal And P further sheweth that GTP or WG or one or both of them levied upon the Goods and chattels of PH the sum of L200 sterling and upwards being the amount of Debt and costs recovered against PH by HK upon the promissory notes aforesaid And P further has frequently in a friendly manner applied to HK to account with him for the said promissory notes or the produce thereof and P well hoped that HK would have complied with his reasonable request as in Justice and Equity he ought to have done But now it is that HK combining and confederating to and with GTP and WG refuses to render any account to P of the said promissory notes or the produce thereof and although P has frequently applied to make known to P the sums so levied by them or one or both of them but GTP and WG wholly refuse so to do sometimes pretending that they never levied at all of the Goods and Chattels of PH and at other times acknowledging that they did levy of the Goods and Chattels of the said PH the sum of L200 sterling but they further deny that they paid over the said sum of L200 to HK all which actions and doings of HK GTP and WG are contrary to right equity and good conscience and tend to the great injury of P In tender consideration whereof and for as much as matters of this nature are not cognizable in a Court at Law but only in a Court of Equity To the end therefore that HK GTP WG and PH may upon their several Corporal Oaths true and perfect answer make to all and singular the Premises as fully and particularly as if the same were here again repeated and interrogated and particularly [here are repeated the above allegations] [And P prays] that they may set forth and render to P a full and particular account of the proceeds of the said promissory notes of PH as deposited for the purposes in the hands of HK and HK GTP WG and PH may pay over to P such sums of money as may appear to be due and owing on account thereof to P and that P may have such further and other relief in the Premises as to Your Honors may seem meet Prayer for Writs of Subpoena to 4 Ds

WH Moore

6th May 1817 Subpoena to Henry Kable George Thomas Palmer and William Gore returnable 12th May Instant

WH Moore Solr

16th May 1817 Appearance for George Thomas Palmer Henry Kable and William Gore to a subpoena returnable 12th May instant

Thos Wylde

Ds Atty

Brief To move for a Months time for the Ds George Thomas Palmer Henry Kable & William Gore to Answer

granted from the 20th May 1817

Wylde

31st July 1817

Campbell Esqre v Palmer, Kable & Gore

Attachment for not answering returnable 15th August

Moore

14 Aug 1817 Petition of the Ds Sheweth

That the P has filed his Bill Of Complaint in this Honorable Court against your Petitioners to which your petitioners have appeared and taken a Copy thereof That your petitioners have had but one order for time and are not in Contempt

Your petitioner (sic) therefore most humbly pray they may have three weeks further time to plead answer or demur to the Ps Bill

And your Petitioner (sic) shall

ever pray &c

Be it so, and

hereof give notice

forthwith

B Field, Judge

Filed 28th August 1817 Answer of Henry Kable

He answereth and saith that at or about the time in the Bill mentioned this D had a Debt or demand upon Peter Hibbs in the Bill named to the amount of L75 and this D was about commencing proceedings against the said PH for the recovery of the same in the late Court of Civil Jurisdiction And this D further answering saith that to the best of his recollection and belief the said Complainant called upon this D and requested that he would join two promissory notes as set forth in the Bill to this D's own Debt or Demand and this D denies that he ever gave the said Complainant any such acknowledgment for the same as set forth in the Bill And this D further answering saith that the intent and purpose for which the said promissory notes were deposited in the hands of this D was that the said D should proceed for the recovery of this D's own debt or demand and add the said two promissory notes of the Complainant thereto and after recovering the same that he this D would pay himself the said L75 due and owing him from the said H and was to pay the said Complainant if he recovered the same the amount of his said Notes in Goods and Merchandize And this D further answering saith that he this D did issue out process at Law to recover from the said PH the amount of his Debt or Demand as also the amount of the said Promissory Notes and paid Expenses in prosecuting the same the sum of L10 or thereabouts and having obtained Judgment thereon ? Execution Issued against the Effects of the said PH and Writs of Fieri facias were accordingly directed to the Provost Marshal as in the said Complainant's said Bill is mentioned And this D has received under such Writs of Execution from the Provost Marshal as follows in Cash L39-11-3 and L35-12-0 in Maize and no more leaving a balance due to this D of L10 or thereabouts And this D further saith that the said Complainant received in Goods of the said PH sold under one of the said Writs of fieri facias the sum of L33-15-0 and also Goods of this D amounting to L49 and upwards And therefore the said Complainant is indebted to this D in that sum and this D Denies that he ever refused to render to the said Complainant any account of the said promissory notes or the proceeds thereof But this D positively saith that the said Complainant well knew this D had received the whole amount of his Debt or Demand and the Goods from the said PH and well knew there is a Balance of L10 or thereabouts due to this D on the said Judgment from the said PH And this D denies all and all manner of unlawful combination and conspiracy whereunto he stands charged in and by the said Bill without that that there is any other matter or thing material or necessary for this D to make answer unto and not herein or hereby well and sufficiently answered unto confessed or avoided traversed or denied is true on all which matters and things this D is ready to aver and prove as this Honorable Court shall direct and award and humbly prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained

Sworn this 28th day of August 1818 Thos Wylde Henry Kable

before me Barron Field Judge

Filed 4th Sept 1817

The humble petition of the Ds Sheweth

That the P has filed his Bill Of Complaint in this HC against your Petitioners to which your petitioners have appeared and taken a Copy thereof That your petitioners have had but two orders for time and are not in Contempt

Your petitioners therefore most humbly pray they may have a fortnight's further time to plead answer or demur to the Ps Bill

And your Petitioner (sic) shall ever

pray &c

I hereby Consent not to pray for any further time

Thos Wylde

Solr for the Ds

Be it so, but

let this be pe-

remptory & hereof

give notice forthwith

B Field, Judge

Filed 25th Sept 1817 Answer of George Thomas Palmer

For Plea unto the Bill of Complaint saith that one or more writ or writs of Fieri facias or Execution did issue out of the Court of Civil Judicature at the suit of the D Henry Kable against the Effects of Peter Hibbs directed to the Provost Marshal to levy and make the sum of L186-5-4 or thereabouts all which matters this D GTP doth aver and plead in Barr of the Complainant's said Bill and for which he seeks to be relieved and humbly prays the Judgment of this HC whether he should be compelled to make any further or other answer to so much or such part of the said Bill as herein and hereby pleaded to as aforesaid And this D GTP without waiving the said plea but wholly relying and Insisting thereon for answer to the residue of the Complainant's said Bill not hereinbefore pleaded unto or to so much thereof as he this D is advised is material or necessary for him to make answer unto answereth and saith that he doth not answer nor can set forth as to his knowledge information or belief or otherwise as hereinafter contained whether the D HK on or about 1st March 1810 having a claim upon the Complainant for the sum of L75 sterling and being desirous of liquidating the same did or did not pay over to the said D HK the two certain promissory notes of PH set forth in the Bill Of Complaint or either of them nor whether the said HK upon receiving the said promissory notes from the Complainant if he did receive the same from the Complainant did or did not deliver to the Complainant an acknowledgment receipt or acquittance for the same in the words or the purport and Effect as set forth in the Bill or in any other words purport or Effect And the D GTP further answering saith that if the said promissory notes were in manner as stated in the Bill deposited with the said HK this D cannot to the best of his knowledge information or belief or otherwise than as hereinafter is contained set forth whether they were or not deposited to or with the intent or purpose that the D HK should repay himself out of the proceeds of the said promissory notes the said sum of L75 and to pay over to the C the Ballance owing from the same or further or for what other intent or purpose this D not being privy to or having any knowledge of the affairs and transactions with respect thereto as stated in the Bill And this D further answering saith that the said D HK might for any thing this D knows to the Contrary and this D believes that the said HK did some time in or about the month of March 1810 cause process to be issued in a Competent Court of Law against the said PH and in such action or process recover a verdict or Judgment for the sum of L186-5-4 or thereabouts but for or on what cause of action this D does not know nor can set forth and that this D some time in or about the beginning of the month of March 1810 was appointed Provost Marshal of this Territory pro tempore during the absence of the D WG who about such period was obliged to go to England and about such period and whilst this D was acting as Provost Marshal as aforesaid this D received one or more Writ or Writs of Fieri facias or Execution at the suit of the said D HK against the said PH to levy and make the said sum of L186-5-4 which this D GTP caused to be duly Executed according to the said Writ or Writs of Execution and that this D GTP by virtue of the said Writ or Writs of Fieri facias or Execution caused the Goods and Chattels of the said PH to be sold at public auction at and for the sum of L85-0-7 after deducting from the produce of the said sale the amount of the expences attending the said sale and also this D's legal ? as Provost Marshal with respect thereto and this D has accounted with the said HK as the P in the action in which the said Writ or Writs of Execution issued or his Agent for the produce of the said sale for all which causes this D doth humbly demand the Judgment of this HC whether he should be compelled to make any further answer to the Complainant's Bill and ? all ? Combination and Confederacy wherewith he is charged without his ? any other matter or thing in the said Bill contained is material or ? for this D to make answer unto and not hereinbefore pleaded answered confessed or avoided traversed or denied all which matters and things this D is ready to aver ? and prove as this HC shall award and direct humbly prays to be hence dismissed with his reasonable Costs and Charges in this ? most wrongfully ?

GT Palmer Thos Wylde

Solr for GTP

Filed 21st August 1818 Answer of William Gore Answereth and saith that he does not know nor can set forth as to his information knowledge or belief other than is hereinafter contained Whether D Henry Kable on or about 1 March 1810 having a claim upon P of L75 sterling and being desirous of liquidating the same did or did not pay over to D HK (sic) the 2 promissory notes of Peter Hibbs as set forth in the Bill or either of them nor whether HK upon receiving the said promissory notes from P if he did receive the same from P did or did not receive from P an acknowledgment receipt or acquittance for the same as set forth in the Bill And this D further answering saith that if the said promissory notes were deposited with HK this D cannot to the best of his knowledge information or belief or otherwise than as hereinafter contained set forth whether they were not deposited to or with the intent or purpose that D HK should repay himself out of the proceeds of the said promissory notes the said sum of L75 and to pay over to P the balance arising from the same or for that or what other intent or purpose this D not being privy to or having any knowledge of the affairs and transactions with respect thereto And this D WG further answering saith that the said D HK might for anything this D knows to the contrary and this D believes that the said D HK did some time in or about the month of March 1810 cause process to be issued in a Competent Court of law against the said PH and in such Action or process recovered a Verdict or Judgment for the sum of L186-5-4 or thereabouts but for or on what Cause of Action this D does not know nor can set forth And this D further answering saith that in or about the said Month of March 1810 he received a Writ of Fieri Facias against the Goods Chattels and Effects of the said PH at the suit of the said HK to levy a sum of L200 or thereabouts which this D WG caused to be duly Executed according to the Exigences (sic) of the said Writ of Execution and this D WG by virtue of the said Writ of Fieri Facias or Execution caused a certain Horse or Mare of the said PH to be sold at public auction and for the price or sum of L50 or thereabouts and after deducting from the produce of the said Sale the amount of the Expences attending the said Sale and this Ds legal charges as Provost Marshal with respect thereto He this D accounted with the said HK as P in the said Action in which the said Writ of Execution issued or his Agent for the produce of the said Sale And this D further answering saith that shortly after the Levy so made he this D was obliged to go to England and thereupon the said D George Thomas Palmer was appointed acting Provost Marshal of this Territory Pro tempore during the absence of this D for all which Causes this D doth humbly demand the Judgment of this HC whether he should be compelled to make any further answer to the Bill than as aforesaid And this D doth deny all unlawful combination and Confederacy wherewith he is charged without this that any other matter or thing in the said Bill contained is material or necessary for this D to make answer unto and not hereinbefore pleaded answered Confessed or Avoided traversed or denied All which matters and things this D is ready to aver Justify maintain and prove as this HC shall award and direct and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

Sworn before me 21st August 1818 Thos Wylde

Barron Field Ds Solicitor

Judge

Second Term 1818

Brief To move on behalf of D Palmer to dismiss this Bill for want of prosecution

The Answers of Ds Palmer & Gore filed as of the 3rd Term 1817

No proceedings had since

Terms elapsed 4 Term 1817

1 Term 1818

present 2d Term 1818

refused

Wylde

Tuesday 16th March 1819

Upon the Humble Petition of the D George Thomas Palmer this day preferred to His Honor the Judge of the said Court setting forth among other things that the said D filed his Answer to the Complainant's Bill of Complaint as of the third Term 1817 since which period the Complainant has not further proceeded in the said Suit and humbly praying the said Bill should stand dismissed as to him with Costs It is ordered that the D do set this Cause down in the paper for Wednesday the 24th instant when the Complainant will be required to show Cause against the said Bill being dismissed out of this HC with Costs

By the Court

John Gurner

Regr

Filed 17th March 1819 Petition by Defendant Palmer

The humble Petition of the Defendant George Thomas Palmer one of the Defendants

Sheweth That the Complainant in the second Term 1817 filed his Bill in this Honorable Court against your Petitioner and others setting forth that Henry Kable on or about the 1st day of March 1810, having a claim upon Complainant for the sum of L75 and Complainant being desirous of liquidating the same did pay over to said HK two promisory Notes of Peter Hibbs one for L150 sterling money and the other for thirty Bushels of wheat that is to say in one of the said promisory Notes dated 8th February 1809 the said PH undertook and promised to pay Complainant or to his order twelve months after date L150 sterling and on the other of said promisory notes dated 27th December 1809 the said PH promised and undertook to pay Complainant or his order on demand the quantity of thirty Bushels of wheat and the said HK on receiving the said promisory notes from Complainant delivered to Complainant an acknowledgment receipt or acquittance for the same

That the said Complainant in and by his said Bill further sets forth That the intent and purpose for which such promisory Notes were deposited in the hands of the said HK was that the said HK should repay himself out of the proceeds of the said promisory Notes the said sum of L75 and was to pay over to Complainant the Balance arising from the same And that the said HK issued out process at Law to recover from the said PH the amount of said promisory Notes as aforesaid and having obtained Judgment thereon Execution issued against the Effects of said PH and two writs of Fieri facias were accordingly directed to the Provost Marshal of this Territory (your Petitioner) and that your Petitioner having shortly after being removed from the said office of Provost Marshal, the duty of carrying into effect the said writs of Fieri facias devolved upon William Gore Esqr the then Provost Marshal

That said Complainant in and by his said Bill further sets forth That your Petitioner or the said WG or one or both of them levied upon the Goods and Chattels of the said PH the sum of L200 and upwards of sterling money being the amount of Debt and Costs recovered against the said PH by the said HK and that Complainant has frequently applied to the said HK to account with him for the same

That the said Complainant in and by the said Bill of Complaint prays that your Petitioner and the said WG and HK may set forth and render Complainant a full true and particular account of the proceeds of the said two Notes of hand of the said PH so deposited for the purposes aforesaid and that your petitioner and the said WG and HK might pay Complainant such sums of money as might appear to be due and owing on account thereof and for further relief in the scope of the Complainant's Bill

Whereunto your petitioner in and by his plea and Answer to the said Bill of Complaint and filed in this HC on the 28th September 1817 For plea thereunto saith

That one or more writ or writs of fieri facias or Execution did some time on or about the time in the Complainants said Bill mentioned issue out of the Court of Civil Judicature holden at Sydney in and for the Territory of NSW and at the suit of the said HK against the Effects of said PH directed to the Provost Marshal of this Territory to Levy and make L186-5-4 or thereabouts which your Petitioner did aver and plead in Bar of Complainants Bill of Complaint

That your Petitioner without waiving his said plea but wholly relying thereon for answer to the residue of the Complainants said Bill Did in and by his said Answer answer and say

That your petitioner did not know nor could set forth as to his knowledge information or belief or otherwise than as therein after contained whether the Defendant HK on or about the 1st day of March 1810 having a claim upon Complainant for the sum of L75 sterling did or not pay over to the said Defendant HK the said Notes of the said PH as in the said Complainants Bill mentioned and described or either of them nor whether said HK on receiving the said promisory Notes from Complainant, if he did receive the same from Complainant did or not deliver to Complainant an acknowledgment receipt or acquittance for the same as set forth in said Complainants Bill

Your Petitioner also in and by his said Answer further answers and says

That if the said promisory Notes were in manner as stated in the said Complainants Bill of Complaint deposited with the said HK, your Petitioner could not to the best of his knowledge information or belief or otherwise than as therein after contained set forth whether they were or not deposited to or with the intent or purpose that Defendant HK should repay himself out of the proceeds of the said Promisory Notes the said L75 and to pay over to Complainant the Balance arising from the same or for that or what other Intent or purpose your Petitioner not being privy to or having any knowledge of the Affairs and Transactions with respect thereto

That Defendant HK might for any thing your Petitioner knew to the contrary and your Petitioner believed that said HK did some time in or about the month of March 1810 cause proceedings to be issued in a competent Court of Law against the said PH, and in such Action or Process recover a verdict or a Judgment for the sum of L186-5-4 or thereabouts, but for or on what cause of action your Petitioner did not know and your Petitioner some time in or about the beginning of the month of March 1810 was appointed Provost Marshal in this Territory pro tempore during the absence of Defendant WG who about such period was obliged to go to England and that about such period and whilst your Petitioner was acting as Provost Marshal as aforesaid your Petitioner received one or more writ or writs of Fieri facias or Execution at the suit of said Defendant HK against the said PH to Levy and make the said sum of L186-5-4 which your Petitioner caused to be duly Executed according to the Exigency of the said writ or writs of Execution and that your Petitioner by virtue of the said writ or writs of Execution caused the Goods and Chattels of the said PH to be sold by public Auction at and for the sum of L85-0-7 after deducting from the produce of the said sale the amount of the Expences attending the said Sale and your Petitioner's legal charges as Provost Marshal with respect thereto and your petitioner had accounted with the said HK as the Plaintiff in the Action in which the said writ or writs of Execution issued as his agent for the produce of the said Sale

That from the time of filing such Answer of your petitioner until the third Term 1817, no further proceedings were had or taken by the Complainant against your Petitioner in which second Term your Petitioner moved this HC that the said Complainants Bill of Complaint should stand dismissed out of Court as to your Petitioner at which time the Complainants Solicitor undertook to speed the Cause and prayed for liberty to amend his Bill

That the Complainant has notwithstanding neglected to speed the Cause or amend his Bill as prayed

Your Petitioner therefore humbly prays Your Honor that as five full terms have elapsed since your Petitioner filed his Answer to the said Bill of Complaint and no further proceedings taken by Complainant since that period that the said Complainants Bill do stand dismissed out of Court as against your Petitioner with Costs to be Taxed by YH

And Your Petitioner will ever pray &c

Bill dismissed as to Defendant Palmer 24th March 1819

By the Court John Gurner

24 March 1819 Affidavit of Elijah Swainson Clerk to Thos Wylde D's attorney that on 22nd March he served the order of 16th March on Mr Moore P's attorney

on or about the 1st day of March 1810

Affidavit of William Freeman Clerk to Ds solr to the effect that the answers of Ds William Gore and Henry Kable were filed as of third term 1818 and since that time P has not further prosecuted his Bill against those Ds or either of them although Mr Moore his solicitor undertook to speed the cause in the said third term

Sworn in Court

1 November 1819

Barron Field Judge

Bill dismissed 1 November 1819

as to Gore and Kable

By the Court

John Gurner

Monday 1st November Order

Upon reading the affidavit of William Freeman and on hearing Mr Wylde Solr for the Ds and Mr Moore Solr for the Complainant It is ordered that the Bill of Complaint filed by the Complainant against the Ds who have filed their Answer thereto be dismissed out of this HC for want of prosecution with Costs to be taxed by his Honor the judge of this honorable Court

By the Court

Wylde John Gurner

Regr

Subpoena to appear and answer against Peter Hibbs at the suit of John Campbell returnable 15th Decr

WH Moore

plts Sol

18th Novr 1819

Filed 15th December 1819 Answer of Peter Hibbs

PH answereth and saith that he doth not Know nor can he answer or set forth as to his Knowledge information remembrance or belief whether the Complainant the said John Campbell was on or about 1 March 1810 indebted to D Henry Kable in the sum of 75 L Sterling Money or in any and what other sum nor can this D answer or set forth as to his Knowledge information remembrance or belief whether the said JC did or did not as a Security for the said L75 or any other sum deposit in the hands of the said HK 2 Promissory Notes or acknowledgments of this D one of which bore date 8 February 1809 for the payment to the Complainant of the sum of L150 to the said Complainant the said JC (sic) or his Order at One Year after the date thereof and the other a promissory note or acknowledgment of this D according to the then custom of this Colony and was dated 27 December 1809 for 30 Bushels of Wheat payable on demand to the C the said JC or to his order And this D further answering saith that he cannot according to his Knowledge Information remembrance or belief or otherwise than as hereinafter contained answer or set forth whether the condition on such Notes of Hand or acknowledgments were delivered to the said HK if such were delivered to him by the said JC were or were not that he the said HK should sue this D for the same and should repay himself out of the proceeds of the said promissory notes any sum or sums of money that might be due or owing to him from the Complainant the said JC and to pay over any Balance that might be left after paying and discharging any such Debt unto the Complainant the said JC or for what other intent or purpose the same may have been given over or deposited with the said HK nor whether the said HK on receiving the said 2 Several Promissory Notes or acknowledgments if he did so receive the same did or did not deliver to the Complainant an Acknowledgment or receipt for the same in the words or to the purport and effect set forth in the Bill or otherwise this D not being privy to or having any Knowledge of the affairs and transactions with respect thereto as stated by the said JC in his said Bill And this D further answering saith that he this D being indebted to the Complainant in the sum of L250 did in or about the month of February 1809 make and draw his promissory note in writing for the same sum payable to the Complainant or to his order One year after the date thereof and that being also in or about the month of December 1809 indebted unto the Complainant in a further sum of Money also make and draw his certain acknowledgment or promissory note according to the custom of this Colony whereby he promised to pay or deliver to him on his order or demand the Quantity of 30 Bushels of Wheat but how or in what manner the Complainant JC disposed thereof cannot set forth as to his knowledge information remembrance or belief save only this D saith that some time early in the year 1810 the D HK commenced commenced and prosecuted an Action at Law against this D in the late Court of Civil Judicature upon two several promissory notes or acknowledgments hereinbefore set forth to have been given to the Complainant JC and on or about 26 March in the same year the said HK recovered a Verdict against this D for the sum of L184 or thereabouts And this D further answering saith that shortly after the recovery of the said Judgment or Verdict against him by HK a Writ of Fieri Facias issued against this D to levy of this D's Goods and Chattels the said sum of L184 and also L2-5-4 or thereabouts the Costs of the said Action And this D further answering saith that the whole Amount of such Judgment and Costs was recovered and received from this D as near to best of this D's remembrance and belief in the following manner that is to say the other D WG who was acting as Provost Marshal part of the time such Writ of Execution was in force levied upon a mare the property of this D and the same was sold by public Auction to Mr Marr now of Castlereagh Street Sydney for the sum of L54-12-0 or thereabouts that 1731/2 bushels of Maize or Corn were shipped by the desire of the D HK on board the Governor Hunter at the price of 4/3d per bushel amounting in the whole to the sum of L36-17-41/2 and this D took from Mr William Rook the master of the said vessel his receipt for the same which this D has ready to produce and is in the words following "May 27 1810 Received on board the Governor Hunter from PH on JC's farm on account of HK 1731/2 Bushells of Corn for which I have given 2 receipts - Wm Rook" And this D further answering saith that after the departure of the said WG from this Territory the D GTP levied the whole remaining Sum due upon the said Judgment together with the full amount of the Costs and the Provost Marshal's Expences by selling and disposing of the Goods and Chattels of this D the principal part whereof are mentioned in the Inventory hereunto annexed but this D is unable to set forth the particular Account of what the said Goods produced the said GTP always having refused to give this D any Account thereof And this D further answering saith that some time in the beginning of the year 1814 a Writ of Scire facias issued against this D to revive the Judgment which had been obtained by the said HK as aforesaid and the said Scire facias coming on to be heard before the late Court on or about 30 April 1814 this D attended and produced to the said Court the Identical paper writing or Inventory hereunto annexed and this D also proved to the satisfaction of the said Court that the whole of the said Judgment and Costs had been fully paid by this D whereupon the said Writ of Scire facias was dismissed with Costs and no proceedings have been ever taken against this D since that period And this D further answering saith that this D never was during the year 1810 or ever before or since that period indebted to the D HK in any sum or sums of money whatever save and except on the Judgment obtained against him on the aforesaid promissory notes or acknowledgments he this D never having had any dealings whatsoever with him And this D denies all and all manner of Combination and Confederacy wherewith he stands charged in and by the said Bill of Complaint without that there is any other matter or thing material or necessary for this D to make answer unto and not hereby and herein well and sufficiently answered unto confessed or avoided traversed or denied is true all which matters and things this D is ready to aver and prove as this HC shall direct and award and humbly prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained

Sworn by the Defendant Peter Hibbs Peter Hibbs WH Moore

at my House this 15th day of December

1819 before me

Barron Field

Judge

17th January 1820

Subpoena for Henry Marr William Fleming and William Rook to testify and give Evidence in a certain Cause wherein John Campbell is Complainant and Henry Kable George Thomas palmer William Gore and Peter Hibbs are Ds on behalf of the Complainant - returnable immediately

WH Moore

Complts Solr

Filed 18th January 1820 Interrogatories by P

First Interrogatory Do you know the parties the Complainant and Ds [Henry Kable, George Thomas Palmer, William Gore, Peter Hibbs] or any and which of them? How long have you known any and which of them respectively? Declare the Truth and your Knowledge herein

Second Interrogatory Do you know the hand writing of the D HK? Did you ever see him write or sign his name and are you acquainted with his signature Look upon the paper writing now produced inscribed ? and which is dated March the first 1810 commencing with the word "Received" and purporting to be signed by the said HK Is the name "HK" set and subscribed to such paper writing of the proper hand writing of the said D HK or of whose hand writing is the same according to the best of your knowledge and belief? Do you know the hand writing of the principal part or body of such paper writing or receipt? And if so of whose hand writing is the same according to the best of your knowledge and belief? Do you know the hand writing of one William Fleming? Was or was not the said WF at or about the time of the date of such paper writing Clerk to the late Ellis Bent Esquire Judge Advocate of this Territory. Did you ever see him write or sign his name and are you acquainted with his signature? Are the Words Letters and figures "Regd No 310 Wm Fleming" of the proper hand writing of the said WF or of whose hand writing do you believe the same to be? Declare the Truth and all you know and believe touching any of the matters inquired of you by this Interrogatory together with the reasons and causes of your knowledge and belief fully and at large

Third Interrogatory Do you know of any Debt or Debts Sum or Sums of Money due owing or payable by or from the Complainant to HK one of the said Ds in or about the year 1810? If yea what Sum or Sums of money were so due and owing from the said C to the said HK? And did the said C give the said HK any and what Security or Securities to enable him to collect get in or receive the same and If so what Security or Securities did he so give to the said HK Declare all you know have heard or do believe touching or in any wise concerning any of the matters or things inquired of you by this Interrogatory Together with the reasons and causes of such your knowledge and belief fully and at large

Fourth Interrogatory Do you know of any Debt or Debts Sum or Sums of Money due owing or payable by or from PH one of the Ds to HK one other of the said Ds in or about the year 1810 or at any other time either before or since that year? If yea what sum or sums of money were so due and owing from the said PH to the said HK and whether upon any and what Bill or Bills of Exchange note or notes of hand or any other and what security or securities or how and in what manner and on what account did such Debt or Debts Sum or Sums of Money being so due owing and payable from the said PH to the said HK And which particularly of such Debt or Debts Sum or Sums of Money hath been at any time and when in any manner received got in or compounded for? And for how much Money or other Thing or Things or for ? particularly and when any and either or which of them now ? due owing and unpaid and what Security or Securities the same now rests or remains outstanding And did the said HK at any time and when take and pursue any and what legal or other method for recovery of the same or any and which of them Declare all you know have heard or do believe touching or in any wise concerning any of the matters or things inquired of you by this Interrogatory together with the reasons and causes of such your Knowledge and belief fully and at large

Fifth Interrogatory Did you the witness Henry Marr at any time and when purchase any Goods or Chattels of or belonging to the said PH at Auction any time in or about the year 1810 or at any other and what time? If yea to whom did you pay the money or moneys for the purchase of such Goods and how much did you pay for the same and what Goods did you so Purchase And whether was the Sale of the said Goods made under and by virtue of any Writ or Writs of Execution and at whose suit or suits or under what other authority or authorities or by whose direction did such Sale take place and for what purpose? Declare all you know have heard or do believe touching or in any wise concerning any of the matters or things inquired of you by this Interrogatory together with the reasons and causes of such your Knowledge and belief fully and at large

Sixth Interrogatory Were you the witness William Rook in or about the month of May 1810 Master of the Sloop or Vessel called the Governor Hunter? If yea did you or did you not in or about that month receive on board the said Vessel from the said PH at a farm he then occupied at or near Windsor 123 Bushels or thereabouts of good Storeable Corn or Maize and if so on whose Account and for whose use and benefit did you so receive the same and to whom did you give any receipt or receipts for the same and to whom did you deliver the same and on what Account or for what purpose And whether the same was not brought to Sydney and delivered to the said D HK or to some person or persons on his Account and for his ? and whether the same was not on Account of a Debt stated to be due and owing from the said PH to the said HK And whether it was not in part payment and satisfaction of a Judgment which the said HK had then obtained and was then seeking to recover against the said PH And whether the said HK or some person or persons on his behalf did not procure the said Maize or Corn to be turned into His Majesty's Stores at Sydney and at what price or prices or what price or prices (sic) was the said HK to allow to the said PH for the same? Declare all you know have heard or do believe touching or in any wise concerning any of the matters or things inquired of you by this Interrogatory Together with the reasons and causes of such your Knowledge and belief fully and at large

Seventh and Last Interrogatory Do you know of any other matter or Thing or have you heard or can you say any thing further touching all or any of the Matters in Question in this Cause that may tend to the benefit and advantage of the said Complainant in this Cause besides what you have now been interrogated unto or answered Declare the same fully and at large as if you had been particularly interrogated thereon

WH Moore

Complts solr

12th February 1820

Subpoena to rejoin for John Campbell against Henry Kable Geo Thos Palmer Wm Gore and Peter Hibbs returnable immediately

WH Moore Plts Solr

Filed 14th February 1820 Replication

This Repliant saving and reserving to himself all and all manner of advantage of Exception which can and may be had and taken to the manifold Errors uncertainties and Insufficiencies in the several Answers of the said Ds for replication thereunto or unto such part and parts thereof respectively as is necessary for this Repliant to answer unto by way of Replication Saith that he doth and will aver maintain and prove his said Bill to be true Answers of the said Ds are very uncertain evasive and insufficient in the Law to be replied unto by this Complainant without that there is any other matter or thing in their said Answers contained material or Effectual in the Law to be replied unto confessed or avoided traversed or denied is true all which Matters and Things this Repliant is ready to aver maintain and prove as this HC shall direct and humbly prays as in and by his said Bill he hath already prayed

WH Moore

Complts solr

22nd January 1820 The Examination of Henry Marr of Sydney in the Territory of NSW, Tradesman a witness on the part and behalf of the Complainant in a certain cause depending in the Supreme Court of Civil Judicature in and for the said Territory, wherein John Campbell is Complainant and Henry Kable George Thos Palmer Willm Gore and Peter Hibbs are Defendants

1 To the first Interrogatory this Examinant saith that he hath known all the parties complainant and defendants in the title of these Interrogatories mentioned for twenty years last past.

2 To the second Interrogatory this Examinant saith that he doth know the handwriting of the Defendant HK that he hath seen him sign his name and is acquainted with his signature that he hath looked upon the paper writing now produced marked A and which is dated Sydney March the first One thousand eight hundred and ten commencing with the word "Received", and purporting to be signed by the said HK and that the name "HK" set and subscribed to such paper writing is of the proper handwriting of the said Defendant HK according to the best of his knowledge and belief And this Examinant further saith that he doth not know the handwriting of the principal part or body of such paper writing or receipt And this Examinant further saith that he doth not know the handwriting of Willm Fleming in this Interrogatory named nor whether he was at or about the time of the date of such paperwriting Clerk to the late Ellis Bent Esqr Judge Advocate of this Territory nor did this Examinant ever see him write or sign his name nor is he acquainted with his signature

5 To the fifth Interrogatory this Examinant saith that he did on or about the 5th day of April in the year of our Lord 1810 purchase at public auction a mare for which he paid to the Defendant HK the sum of L53.11s in the promissory notes issued at that time as currency money by the said HK But whether the mare belonged to the Defendant Peter Hibbs or whether the sale of the same was made under or by virtue of any writ or writs of execution and at whose suit or suits or under what other authority or authorities or by whose direction such sale took place and for what purpose this Examinant knoweth not nor can set forth Except that he believes the said sale was made by one Richard Ridge who was at that time Deputy to the Provost Marshal of this Territory Henry Marr

Sworn at my House in Syd-

ney this twenty second day

of January in the year of our

Lord 1820 before me

Barron Field

Judge

7th February 1820 The Examination of William Fleming of Parramatta in the Territory of NSW a Witness on the part and behalf of the Complainant in a certain cause depending in the Supreme Court of Civil Judicature in and for the said Territory wherein John Campbell is Complainant and Henry Kable George Thomas Palmer William Gore and Peter Hibbs are Defendants

1 To the first Interrogatory this Examinant saith that he hath known the above named JC HK and WG for the last ten years and the said GTP and PH for the last eight years.

2 To the second Interrogatory this Examinant saith that he doth know the handwriting of the Defendant HK that he hath often seen him write and sign his name and is very well acquainted with his signature That he hath looked upon the paper writing now produced marked A and which is dated Sydney March the first 1810 commencing with the word "Received" and purporting to be signed by the said HK That the name "HK" set and subscribed to such paper writing is of the proper handwriting of the said Defendant HK according to the best of this examinant's knowledge and belief And this Examinant further saith that he doth not know the handwriting of the principal part or body of such paper writing or receipt And this Examinant further saith that he was at or about the time of the date of such paper writing Clerk to the late Ellis Bent Esquire Judge Advocate of this Territory and that the words letters and figures "Regd No.310, Wm Fleming" are of the proper hand writing of this Examinant

Wm Fleming

Sworn and examined at my

House in Sydney New South

Wales , this 7th day of February

in the year of our Lord 1820 be-

fore and by me

Barron Field

Judge

10th February 1820 The Examination of William Rook of Sydney in the Territory of NSW, Master Mariner a Witness on the part and behalf of the Complainant in a certain cause depending in the Supreme Court of Civil Judicature in and for the said Territory, wherein John Campbell is Complainant and Henry Kable George Thos Palmer Willm Gore and Peter Hibbs are Defendants

1 To the first Interrogatory this Examinant saith that he has known all the parties Complainant and Defendants in the title of these Interrogatories mentioned ever since they respectively arrived in this Colony.

2 To the second Interrogatory this Examinant saith that he doth know the handwriting of the Defindant HK that he hath seen him write and is acquainted with his signature And this Examinant saith that he hath looked upon the paperwriting now produced marked (A) and which is dated Sydney March the 1st 1810 commencing with the word "Received" and purporting to be signed by the said HK and that the name "HK" set and subscribed to such paper writing is of the proper handwriting of the said Defendant HK according to the best of this Examinant's knowledge and belief And this Examinant further saith that he doth not know the handwriting of the principal part or body of such paper writing or receipt And this Examinant further saith that he doth know the handwriting of William Fleming in this Interrogatory named and that the said William Fleming was at or about the date of such paper writing Clerk to the late Ellis Bent Esqr Judge Advocate of this Territory That he hath seen him write and sign his name and is acquainted with his signature And that the words letters and figures "Regd No.310, Wm Fleming" are of the proper hand writing of the said William Fleming according to the best of this Examinant's belief

6 To the Sixth Interrogatory this Examinant saith that he was in or about the month of May in the year of our Lord 1810 Master of the Schooner called the Govr Hunter And that he did some time in or about that month receive on board the said Vessel from the said PH at a farm he then occupied belonging to the Complainant below Portland Head 173 bushels or thereabouts of good storeable maize on account of the said HK and for his use and benefit And this Examinant saith that he gave a receipt for the same to the said PH and delivered the said maize to the said HK at Sydney aforesaid on his account and for his use But whether the same was or was not on account of a debt stated to be due and owing from the said PH to the said HK or whether it was in part payment and satisfaction of a judgment which the said HK had then obtained or was then seeking to recover against the said PH Or whether the said HK or some other person or persons on his behalf did or did not procure the said maize to be turned into His Majesty's Stores at Sydney and at what price or prices or what price or prices the said HK was to allow to the said PH for the same this Examinant knoweth not nor can set forth

William Rook

Sworn and examined at my

House in Sydney aforesaid this

tenth day of February in the

year of our Lord 1820 before and by me

Barron Field

Judge

10th February 1820 The Examination of William Rook a witness on behalf of the Complainant

In identical terms to but a different hand writing from the last document. however, the signatures appear to be copies rather than original

NRS 13724

Campbell v McArthur and Oxley

Filed 9th July 1818 Original Bill of Complaint 4 sheets substantially illegible

Bill of complaint

William Campbell of Sydney Merchant in or about the Month of July 1818 exhibited his original Bill of Complaint in writing unto this Honorable Court against John McArthur of Parramatta in the Territory aforesaid Esquire who was at the time(sic) the several Circumstances mentioned and set forth in the said Bill Of Complaint a general Copartner in Trade with one Garnham Blaxcell late of Sydney Merchant And your Orator further complaining sheweth to Your Honor and this HC that the said Bill of Complaint was exhibited by your Orator and prayed that the said JM might come to a free and just Account with your Orator touching all Monies due to the said P and all just demands and Accounts depending between the said mercantile house or firm of McArthur and Blaxcell and your Orator and that the said JM should pay to your Orator what should appear to be due upon the balance of such Accounts and for other general relief in the premises And your Orator further complaining sheweth to YH and this HC that it is stated and set forth in and by your Orator's Bill of Complaint amongst other things that the said GB had clandestinely withdrawn himself from the Colony in or about the month of April 1817 and as your Orator was informed and believed and as was generally understood had departed thislifeat the Island of Java in the East Indies and your Orator further complaining sheweth unto YH and this HC that in Consequence of the general understanding of the Death of the said GB John Oxley Esquire Surveyor General previously to your Orator's exhibiting his said bill of Complaint as aforesaid applied to this HC for Letters of Administration of the Estate and Effects of the said GB which application was refused by the said Court in Consequence of no legal Evidence having then arrived of the Death of the said GB and your Orator further complaining sheweth unto YH and this HC that the said GB having so clandestinely left the Colony and being then only supposed to be dead your Orator could not at the time of exhibiting his said Bill of Complaint against the said JM either make him or any legal representative of him a party to such suit And your Orator further complaining sheweth unto YH and this HC that proof of the death of the said GB hath since arrived in this Colony and since the proceedings in the said suit were at Issue the said JO has again applied to this HC for and has obtained Letters of Administration of the Estate and Effects of the said GB deceased And your Orator further complaining sheweth unto YH and this HC that the said JO has possessed himself of the whole or the greater part of the Deeds papers and writings belonging to the said GB deceased amongst which your Orator has no doubt there are many very Material and necessary papers and Documents to be exhibited and proved viva voce at the hearing of the said suit and without which your Orator cannot obtain the relief sought for by his said Bill of Complaint And your Orator further complaining sheweth unto YH and this HC that in consequence of the said JO having obtained such Letters of Administration of the Estate and Effects of the said GB deceased and having therefore now become his legal personal representative in this Colony your Orator is advised that previous to the hearing of the said suit it is necessary for him to file his Bill of Complaint in this HC by way of Supplement to make the said JO a party to the said suit and and your Orator further complaining sheweth unto YH and this HC that to obtain for your Orator the advantage of the said Deeds papers Documents Accounts Vouchers and other writings which are now in the hands of the said JO as Administrator of the said GB deceased And your Orator further complaining sheweth unto YH and this HC that the said GB in his life time always concealed from your Orator the several Accounts and Documents relative to the Transactions set forth in your Orator's said Original Bill of Complaint and which he ought in just (sic) and equity have discovered and delivered up to your Orator and your Orator ? that he is now entitled to apply to the said JO as his legal personal representative for a discovery and disclosure of all such Accounts Matters and Things without which your Orator cannot with safety proceed in the said original suit the said GB being during a great part of the time the Transactions which are stated in your Orator's said original Bill of Complaint the sole or principal Manager of the said Copartnership Concerns To the end therefore that they the said JM and JO may answer all and every the matters and things hereinbefore charged by way of Supplement to your Orator's said Original Bill as fully and effectually as if the same were here again repeated and that they the said JM and JO may discover and set forth whether they or one of them have not possessed themselves of all and singular the Books of Account Deeds papers and writings which belonged to the said GB deceased and what they have done with them and where the same now are and that your Orator may be at liberty to inspect and take Copies of all such Accounts Vouchers Deeds and Writings as relate or are in any wise connected with the several Circumstances and Transactions set out in your Orator's said Original Bill of Complaint and that your Orator may be at liberty to produce and prove the same viva voce on the hearing of the said Original Bill of Complaint of your Orator and that the hearing of the said suit may be adjourned until the said JM and JO have answered all and singular the matters and things herein before set forth and until the whole of the said Accounts Vouchers and Documents relative to the several Transactions set out in the said Complainant's said Bill of Complaint and which are admitted by the Answer of the said JM to have taken place are produced by the said JO the Administrator aforesaid and which your Orator prays may be compelled to set forth and discover and that your Orator may have such further and other relief in the premises as to YH and this HC shall seem meet

May it therefore please YH and this HC to grant unto your Orator His Majesty's most gracious Writ or Writs of Subpoena to be directed to the said JM and JO and to the rest of their Confederates when discovered thereby commanding them and every of them on a certain day and under a certain pain therein to be limited personally to be and appear in this HC then and there upon their several and respective Corporal Oaths full true direct and perfect answer to make to all and singular the premises aforesaid and further to stand to and abide by such Order and Decree thereupon as to YH and this HC shall seem meet And your Orator shall ever pray &c

WH Moore

Complt's Solicitor

Filed 19 Nov 1818 Replication to the Answer of John McArthur

This repliant saving to himself all and all manner of advantage of exceptions to the manifold insufficiencies and impertinences of the said Answer for Replication thereunto saith that he will aver and prove his said Bill to be true and sufficient in the Law to be answered unto by the said D and that the Answer of the said D is untrue uncertain and insufficient in the Law to be replied to by this Repliant and particularly this Repliant doth aver and insist that the said D was at the time mentioned in this Repliant's Bill of Complaint a general Copartner in Trade with Mr Garnham Blaxcell in the said bill mentioned and this repliant will prove this to be as well by the Answer of D as by other Evidence and means And this repliant doth further aver that the account of Sales inserted in his said Bill of Complaint is a true accurate and just account of Sales of the Cargo of the said Brig Harrington imported into this Colony by this repliant and sold and delivered by this repliant to the said Messieurs McArthur and Blaxcell as in this repliant's said Bill of Complaint is set forth

And this repliant doth further aver that the Cargo of Sandal wood imported into this Colony by this repliant in the Brig Favorite was consigned by this repliant to the said D and was sold and disposed of by the said D and the proceeds received by the said D as in this said repliant's said Bill of Complaint is set forth And this repliant humbly conceives and is advised that if the allegations of the said D as set forth in his said Answer were true ought not nor would they preclude this repliant from being relieved in this HC according to the prayers of this repliant's said Bill of Complaint. Without that there is any other matter or thing in the said D's said Answer contained material or effectual for this repliant to reply unto and not herein and hereby well and sufficiently replied unto confessed and avoided traversed or denied is true All which matters and things this repliantis ready to aver and prove as this Court shall award and prays as in and by his said Bill of Complaint he hath prayed

WH Moore

Complt's Solicitor

19th November 1818

Filed 23rd May 1820 Answer of John McArthur

virtually illegible

Interrogatories for the Examination of D's [John McArthur's] Witnesses

First Whether do you Know the parties C and D in the title of these Interrogatories named and if yea how long have you known them or either of them And whether you did know Garnham Blaxcell late of Sydney Merchant deceased in his life time and if yea how long did you know him before his death and where and how long since did the said GB depart this life set forth according to the best of your knowledge remembrance and belief herein fully and at large declare

Second Did you know if the said GB was or not the general Agent or factor for P in all his concerns in this Colony in the years 1808 and 1809 and that he continued to be such Agent or factor until the year 1816 or until any other and what other time as you know or believe declare

Third Was not the said GB from the year 1808 and from thence until the year 1816 or any other and what other year the Ships Husband or Agent for all the Shipping and mercantile concerns of P in the Colony of NSW and a partner with P and if yea did not the said GB as such Ships Husband or Agent or partner pay all the Outfits in this Colony and receive all the returns of such Ships or Mercantile Adventures and make up the accounts and pay or account to the several Owners or partners or any of them for their or his share of such Ships or Adventures in which they were concerned and was it ever known by you or do you believe that the said GB was the only person accountable each respective Owner or partner for each persons share or interest in such Adventures or Cargoes as were imported here in such Ships or exported to any other place or Country

Fourth Do yo know the hand writing of the said GB and if yea look upon the paper writing or Letter now produced and shewn to you marked No 1 of date the 23rd of March 1809 and say if it be or not the hand writing and signature of the said GB deceased as you know or believe declare

Fifth Did you or not in the month of March 1815 or at any and what other time receive a power of attorney from P and if yea was or not that power intended to authorize you amongst other things to settle the accounts subsisting between P and the said GB and had or not the said GB and the Complainant previous thereto had very extensive mercantile concerns together or how else and did or not P in all such concerns entirely confide the management thereof to the charge of the said GB as his partner agent or factor

Sixth Did or did not the said GB in his life time and previous to the 19th of November 1816 claim of P a large sum of money as due on balance of accounts and if yea what sum and did not P request of you on his behalf to make an arrangement with the said GB for the final settling their accounts and was or was not a proposal made by the said GB to submit to your inspection all accounts in any way relating to Transactions of Shipping or otherwise that had been between the said GB and P from the period of their first commencement to that present time And if yea was D in this Cause any party to such Settlement and was or not such proposal put into writing and have you such writing And if yea produce the same and set forth the Contents thereof and what was the Inducement for such proposal declare

Seventh Was or was not in consequence of such proposal an Agreement afterwards drawn up and duly signed by the said GB and P and was or not such Agreement delivered to you and if it be in your hands possession or keeping produce it and examine the same with the paper writing annexed marked with the Letter A and say if the said Agreement correspond (sic)with the paper so marked say if it be or be not a true copy thereof And if yea let it be marked and exhibited as part of your answer to this Interrogatory and state fully and at large whether the original agreement of which the said paper is a copy is or not signed by the said GB and William Campbell and as to the Execution thereof witnessed by you the said Charles Throsby or how otherwise declare all you know touching this Interrogatory with your reasons at large

Eighth Did or did not the said GB upon the execution of the Agreement mentioned in the preceeding Interrogatory withdraw the detainer he had lodged against the said William Campbell and suffer him to go to sea confiding in the Settlement of the accounts in terms of the Agreement or how otherwise declare

Ninth And were you not authorized by P in Settling the accounts existing between him and the said GB to claim for P from the said GB Credit for the amount of the Investment brought from China in the Brig Harrington in the year 1808 and also for the amount of the proceeds of the Sandalwood collected in the Brig Favorite and of all other profits arising from the different Voyages without any claim or pretended claim on D And do you not know that the said GB was the managing owner or Ships Husband of the Brig Favorite and has Absolute Controul over that Brig and her Cargoes when she arrived in Port Jackson on account of her respective Owners and by them fully authorised to sell or dispose of the said Brig or Cargoes as he thought fit

Tenth Do you know whether or not the late Mr GB in or about the month of August 1814 after the return of P from England transferred to P a valuable Stock of horned Cattle and an extensive Estate and if yea state what you know relating thereto and if yea have you not heard the said GB declare that in making such transfer the money to be paid for the same over balanced the amount then due by the said GB to P

Eleventh Did you or not purchase any goods from the late MrGB in the year 1808 or 1809 or any other time or any part of the goods brought by P from China in the Brig Harrington And if yea in whose name was the Bill of parcels of the Sales of such goods made to you

Twelfth Did you or not see P and Defendant respectively in England in the month of March in the year 1812 or at any other and what time of that or the Subsequent Year and if yea was you present at any interview between P and Defendant at D's Lodgings near Vauxhall or any other place and from what has past (sic) between P and you have you not reason to believe and do you or not believe that P never saw D in England but in your Company and state your reasons for so forming such a Belief fully and at large

Thirteenth Did you on any occasion at any interview between P and Defendant in England or any other place or at any time hear P make any demand of D of any account or say or pretend that D was indebted to him on any account whatever or did you ever hear D admit any money whatever to be due by D to P on any account whatever or did he ever in your hearing put P off or say he would take care and have P's accounts Settled and discharged on his return to NSW or did the said Defendant JM ever in your hearing say to the said William Campbell P that the said JM was a partner in the Mercantile House of M and B or that there ever was any such Mercantile House or firm of M and B in NSW or that the firm of M and B was greatly indebted to him the said Complainant or that the said Mercantile firm of M and B was possessed of abundantly sufficient funds the property of the said Mercantile firm to discharge any claim of P or any claims thereon And whether there ever was any Conversation between P and Defendant in the presence and hearing of you the said John Oxley to any such or the like Effect set forth to the best of your Knowledge remembrance and belief declare

Fourteenth If P has by his bill set forth any such Conversation to have taken place between the said plaintiff and Defendant in England in your presence and hearing and any Conversation to that or the like purport and effect as set forth in the foregoing Interrogatory is or not the same and every part thereof an untrue representation or how otherwise declare

Fifteenth Did you or not at the request of D procure P to visit D and had you or had you not any and what difficulty to prevail on P to accompany you to D and have you or not from what subsequently passed between you and P any and what reason to know or believe from P that he ? did see D in England in the year 1812 or while in England but in your Company and did or did not D on P saying to D that he had been long expected in NSW say to P in your hearing that he D had made arrangements for removing his family from the Colony of NSW and did not intend to return there any more or was not the Conversation to that or the like or any and what other purport and effect declare

Sixteenth Did you when with P and Defendant in England hear D ask P what success he had had in the numerous Adventures and Speculations that had been carried on between P and Mr B and if so did or not P answer in substance and effect that they had suffered great losses but that he still hoped their Affairs together would ? up well as he P was come to England on a most promissing speculation on account of Mr B himself and Mr Edward Lord and that P expected soon to obtain a Ship and Cargo to return to NSW and afterwards to proceed to collect pearls and pearl Oyster Shells at a discovery of his own which he was sure

would make the fortunes of all parties concerned and did not D ask P what funds he was possessed of to carry into effect such intended Speculation and what did P reply or was not such Conversation to that or the like purport or to what other purport or effect declare

Seventeenth Did or not D inform P that he D had transmitted to the late Mr B and placed to his account an account of the Sales of all the Sandalwood Shipdon board the Admiral Gawlier and of a remittance of L1000 received from China on account of freight due for the Favorite and with which did not the said P seem fully satisfied and did or did not P while he was in England converse with you in an unreserved manner as well with respect of his past Adventures and future prospects between him and the said GB and did or did not P intimate to you that he had any demand to make upon D or any account to Settle with D or was there ever any Conversation to that or the like effect as you have heard know or believe declare

Eighteenth From your knowledge of the late Mr B's affairs and his conversation with P can you say whether they had or not any very extensive concerns in trade together And whether P did not entirely confide the management of his concerns and Mercantile Transactions to Mr B his Agent factor or partner until their Connexion was broken off or until Mr B's authority was superseded by P giving a Letter of Attorney to Mr Throsby to manage his affairs and Settle their accounts declare all you Know touching this Interrogatory with your reasons at large

Nineteenth Was you or was you not intimately acquainted with the said Mr B's concerns and if yea have you any reason to believe that a general partnership existed between him and D or that there ever existed any connexion in trade otherwise than for Specific Adventures which ended with such particular adventure Do you not Know that the late Mr B made all his purchases and Sales solely in his own name and on his own account and did you or did you not about the year 1808 or 1809 make any purchases or transact any business with him And if yea was not such transactions in his own name or how otherwise declare

Lastly Do you know any other Cause matter or thing that may tend to the benefit of D in this Cause And if yea set forth the same with your reasons at large

TS Amos

Solicitor for D

Interrogatories for the Examination of Complainant's Witnesses

Largely illegible

Interrogatories for the Examination of Mr Robert Lathrop Murray

Largely illegible sgd Geo Crossley Sol for Defendants

6th September 1820 Interrogatories for the Examination of Darcy Wentworth Esq

First Do you know Robert Lathrop Murray and if yea have you had any and what Conversation with him ? any Account between the late Garnham Blaxcell Esquire deceased and Sir John ?Jamison Knight And if yea did not the sd RLM inform ? or give you to understand that he had Proofs or could Produce Proofs that would overturn the Settlement which had been made between the said GB and Sir John Jamison set forth the whole or what past between him and the said RLM relating to such Matters as far as ? can remember the Same Declare

Second Did the said RLM shew you any Document or Proof respecting such Accounts and when and where did he shew you any Account between the said GB deceased and the said Sir John Jamison or did the said RLM at any time and when

shew you any Account between the said GB deceased and P And if yea set forth the purport of such Account and also set forth the Conversation that past between you and the said RLM on the occasion respecting the same to the best of your remembrance Declare

Geo Crossley

Solicitor for Ds

Interrogatories for the Examination of William Henry Moore Solicitor for the Complainant in a matter of reference to the Master by order of this HC made 8th September 1820

Substantially illegible

Interrogatories for the Examination of John Piper Esq Mr Isaac Nichols and Henry Cole evidence produced on the part of P

First Interrogatory Do you Know P and Defendant in this Cause and how long have you Known them or either of them Did you Know Garnham Blaxcell deceased in the Complainant's bill mentioned and if yea for how long did you Know him before his Death and did you Know the said GB in the year 1808 and from that time to his departure from this Colony in the year 1817 or how otherwise declare

Second Was or was not P William Campbell Master or part Owner and Master of the Brig Harrington and did he or not trade in that Vessel from Calcutta China and other places to Port Jackson and was or not such trade in such Vessel carried on for the benefit of the said WC with the other Owners of the said Vessel as you have heard Know beleive or been informed declare

Third Did or did not the said WC in or about the year 1807 or any other time employ the said GB as Ship's Husband from that year up to the time she was piratically taken away from Port Jackson as you Know have heard and beleive declare

Fourth Was or was not the said GB in his life time the Agent of the said WC in Sydney and was or not the goods and Merchandizes from time to time in or after the year 1808 or any other and what time delivered over or deposited with the said GB for Sale as Agent to the said WC in any other and what other Capacity have you or not had any Conversation with the said GB relating to his acting as agent for the said WC and if yea set forth what passed on that occasion as far as you can remember have heard or beleive declare

Fifth Was or not such goods so deposited by the said P with the said GB in his own name and have you or not bought goods from time to time at the Warehouse of the said GB and was or not all the Bills or parcels of invoices of such Sales made out in the name of the said GB or how otherwise as you Know beleive or have heard declare

Sixth Do you know of any transaction in Mercantile Concerns between the said GB and D and if yea were such concerns as you Know have heard or beleive confined to certain Specific Adventures in Shipping or how otherwise and did or not as you Know or beleive such Specific Adventures relate to any other Matters of Trade than as to D being a part Owner in such Ships and Vessels and employing the said GB as the Ships Husband for such Ships or Vessels of which he was Owner or part Owner with others and did or not each of such Specific concerns end at the Determination of such particular Voyages Adventures or Speculation as You Know or beleive declare

Seventh Is it or is it not the Custom of the Trade or how otherwise for the Ships Husband to act as agent or manager for all the Owners and to Settle their respective accounts and pay each part Owner his share and is or not the Shares of each part Owner always considered as the Seperate property of such part owner according to the proportion of such Shares in the Vessel and is or not the Ships Husband the only person to whom such particular owner considers accountable for the produce of the Cargo and Settlement of the accounts and is it or not as you Know or beleive the Custom of the Trade for the Ships Husband to direct the Sale of the Merchandizes in his own name and when Disposed of apply the appropriation of the monies when divided to such respective part Owners according to each party's respective share and has any such respective part Owner according to the Custom of the trade any Demand upon the other Owners in such Specific Adventure in case such Ships Husband failed to pay one of the particular Owners his Share or any part of such Share of such Adventure or how otherwise declare

Eighth Is it not Customary in Shipping concerns for the persons having a proportionate share in a Ship or Vessel to appoint one of such parties or some other person to manage the Concerns of such Vessel to make all purchases and sales on account of such Ship or Vessel and upon Settling the accounts for such person appointed Ships Husband to be accountable only to such respective share holders of such Vessel as to the profit or loss in any particular Voyage and where such Ships Husband has appropriated the Cargo or share of each proprietor in the Ship is he or not as you Know or beleive the only person liable to pay the share of each Owner to such respective Owners or how otherwise declare

Ninth Was or not the said GB and the said John McArthur Joint Owners of the Brig Elizabeth and was or not the Cargo of Sandal wood brought in the Brig deposited in the Warehouse of the Witness Isaac Nichols and was any other Sandal wood imported in any other Vessel except Vessels of which the said JM was part Owner deposited there and when and at what time and on what occasion declare

Lastly Do you Know of any other Cause Matter or thing that may avail D in this Cause and if yea declare the same with your reasons at large

TS Amos

Sol for D

Tried 28th Nov 1820 Bill Dismissed By the Court John Gurner

[Note on back of p4 of Original Bill of Complaint]

NRS 13724

Campbell v Oxley and Macarthur

Can't be found separately from Campbell v McArthur and Oxley

NRS13724

Campbell v Singleton

Only document bill of complaint filed 8 May 1817

**Humbly Complaining** sheweth unto this Honorable Court your Orator Robert Campbell of Sydney in this Territory Merchant that on or about the 27th day of June in the year of our Lord 1814 William Singleton of Wilberforce in this Territory being seized in fee of a certain Estate of inheritance herein after mentioned and being indebted to your O in the sum of L509-17-11 Sterling due to your O on a Judgment recovered by your O against the said WS with interest on the same did propose to mortgage to your O the said freehold Estate of inheritance which he did affirm to your O to be free from all prior incumbrances and your O further sheweth unto this HC that the said WS in order to secure to your O the repayment of the said sum of L509-17-11 did accordingly by Indentures of Assignment by way of Mortgage bearing date the said 27th day of June in the year of our Lord 1814 and made or mentioned to be made between the said WS of Wilberforce of the first part and Your O of the second part reciting that the said WS was seized in fee of a certain farm buildings and allotment of Land containing Ninety Acres more or less called Singleton Farm in the Township of Wilberforce in the district of Mulgrave place on the North side of the River Hawkesbury it was and is by the said indenture witnessed that for the consideration therein mentioned to the said WS in hand paid by your O He the said WS did bargain sell assign and make over unto Your O His heirs and assigns all the said Freehold land Buildings and estate aforesaid situate as aforesaid to hold to Your O his Executors Administrators and Assigns for ever But with the Proviso that if the said sum of L509-17-11 with interest should be repaid to Your O by half yearly installments of L100 each Sterling with interest on the last day of January and on the last day of July in every year untill the said Sum of L509-17-11 with the interest and all Costs Charges and all other incidental expenses should be fully repaid unto Your O then and in that case the said Lands Buildings and Estate should be reassigned to the said WS his heirs Executors Adminstrators or Assigns And the said WS by the said Indenture for himself his Executors Administrators and Assigns did covenant promise and agree to and with your O that he the said WS his heirs Executors Administrators and Assigns should and would well and truly pay to your O his Executors Administrators or assigns the said sum of L509-17-11 with interest and all costs charges and expences as aforesaid at the place and on the days in the said Indenture mentioned without any deduction or abatement whatever as in and by the said Indenture when produced to this HC will more fully and at large appear And Your O further sheweth unto this HC that the said sum of L509-17-11 or any part thereof hath not been paid to Your O or to any person on his behalf and that the same now remains due and owing to Your O together with arrear of interest and thereby the estate and interest in the said Mortgaged premises is now become absolute in Your O and his heirs and Your O well hoped that the said WS would either have paid Your O the said sum of L509-17-11 and the interest for the same or else peaceably and quietly deliver up possession to Your O the said Mortgaged premises together with all deeds or writing relative to or concerning the same as in justice and equity he ought to have done **But Now** so it is may it please this HC that the said WS combining and confederating to and with divers other persons at present unknown to Your O whose names when discovered Your O prays he may be at liberty to insert herein as parties Defendants hereto contriving how to wrong and injure Your O in the premises he the said WS pretends that he never made and executed such indenture as aforesaid the contrary whereof Your O charges to be true and so the said Confederate will sometimes admit but then he pretends that he has repaid Your O the said sum of L509-17-11 whereas Your O charges the said sum of L509-17-11 to be still due owing and unpaid to Your O all which actings doings and pretences of the said WS and his Confederates are contrary to equity and good conscience and tend to the manifest wrong of Your O **In tender Consideration** whereof and forasmuch as Your O is remediless in the premises by the strict rules of the common law and relievable in a court of Equity **To the End** therefore that the said WS and his Confederates when discovered may upon their several and respective Corporal Oaths according to the best and utmost of their respective knowledge information and belief full true perfect and distinct answer make to all and singular the matters hereinbefore mentioned as fully and as particularly as if they were here again repeated and they and each of them thereunto distinctly interrogated and more especially that they may answer and set forth in manner aforesaid whether the said WS was not indebted to Your O in the sum of L509-17-11 and whether Your O did not recover a Judgment against the said WS for that sum and whether the said WS did not propose to Your O to secure payment of the said sum of L509-17-11 to Your O by Mortgaging to Your O a certain freehold Farm Estate and lands of inheritance called Singleton farm consisting of ninety Acres and situate lying and being in the District of Mulgrave place in the Township of Wilberforce and whether an Indenture of Assignment by way of Mortgage was not executed accordingly between the said WS of the first part and Your O of the second in which the said WS for the consideration therein mentioned did sell make over assign and convey unto Your O his Heirs Executors and Assigns all the said freehold Estate Buildings and land consisting of ninety Acres as aforesaid called Singleton Farm as aforesaid situate in the district of Mulgrave place as aforesaid to have and to hold to Your O his heirs Executors administrators and assigns for ever with a Proviso that if the said WS should repay to Your O the said sum of L509-17-11 by regular half yearly Installments of L100 each sterling with interest which said installments were to be payable on the last day of January and the last day of July in every year then and in that case Your O should reassign the Lands Tenements and Buildings to the said WS his Heirs administrators Executors and Assigns and whether the said WS did not covenant in the said Indenture of Assignment that he would well and truly pay to Your O the said sum of L509-17-11 with interest for the same and all costs charges and other expences incidental thereto and whether the said sum of L509-17-11 is not still due and owing to Your O with a large arrear of interest thereon and whether the Right Estate and Interest in the said mortgaged premises is not become absolute in Your O and whether Your O hath not frequently applied to the said WS to repay to Your O the said sum of L509-17-11 and whether he hath not refused to comply with such Your Orators requests and the said WS may be decreed by this HC to come to a just and fair account to Your O of the principal and interest now due and owing by a short day to be appointed together with Your Os costs and in default thereof that the said WS may stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim in or to the said Mortgaged premises and every part thereof and that Your O may have such further and other relief in the premises as the nature of the case may require and to this HC shall seem meet

May it please Your Honor and this HC the Premises considered to grant unto Your O His Majesty's most gracious writ of Subpoena to be directed to the said WS and his Confederates when discovered thereby Commanding them on a certain Day and under a certain pain therein to be limited personally to be and appear before YH and this HC and there to answer the Premises and to stand to and abide such order and decree therein as to YH shall seem agreeable to equity and good conscience and Your O shall ever Pray &c

WH Moore

NRS13724 Collins v Evans and Mountgarrett

12 February 1818 Petition of ptff that service of the subpoena on Frederick Garling Attorney for D Evans to appear and answer the Bill may be deemed good service on George William Evans

12 February 1818 Be it so and hereof give notice forthwith B Field J

12 February 1818 Affidavit of George Crossley of Sydney Gentleman. Ptff came from Hobart where he had for many years resided and was in Sydney in December 1817 when he was served with a summons in ejectment at the suit of the Ds claiming certain Lands in Van Diemens Land to which an appearance was entered by TS Amos Attorney for the ptff. Ds live in VDL and the ptff seeks an injunction restraining D Evans from proceeding at law until he shall have filed his answer and Frederick Garling is the Attorney of the D Evans and by reason of the great distance from hence to VDL it is difficult to get a Subpoena personally served

Bill of complaint 13 February 1818 to Barron Field. 2 sheets. Both sides lived in Van Diemen's Land. Ptff occupied farm with houses on it. Deft Evans commenced action of ejectment on the common law side of the court. Ptff sought injunction to restrain deft from proceeding with common law action until this suit was heard. Ptff alleged parties were in partnership. Under the agreement the title documents to the land were delivered to the deft by way of security. The deft was obliged to return them to the ptff on conditions which had been fulfilled and was not entitled to sue on them but obliged to return them to the ptff.

TS Amos Ptffs Solicitor

13 February 1818 Subpoena to appear and answer to the Ptff's Bill returnable 14 March

14 February 1818 Petition by ptff that service of Subpoena on Mr WH Moore may be deemed good service on D Mountgarrett Petition dismissed 14 February 1818 B Field J

16 February 1818 Affidavit of Frederick Garling To move that the ptff do give D Evans Security for his Costs Ptff for some years past resided at VDL. Has lately become extreemly (sic) involved in his circumstances and is indebted in very large sums of money which he is unable to pay as he has admitted to deponent. Further ptff some time since departed from this Country for Calcutta whence it is not expected that he will return. He is beyond the seas and not within the Jurisdiction of this Honorable Court. Deponent believes that ptff has instituted this suit for the purpose of harrassing said D and by heavy Expences it will incur induce D from proceeding at Law to recover Estate unlawfully withheld by ptff. D resides at VDL in consequence of which not only will there be difficulties and delay in obtaining instructions for answer but being a Civil Officer he will not be able to proceed to Sydney to swear answer without special permission of Lieutenant Governor which cannot be obtained if his public duties require him to be in VDL and in any event he cannot come to Sydney without incurring very heavy expenses and risking his life by a voyage at Sea

Sworn in Court before BF J

Rule granted for Security for Costs

21 February 1818 Affidavit of John Mitchell Clerk to PS. On 13 February he served Mr Garling with an order for service on him and the subpoena.

21 February 1818 First Term 1819 21 January 1819 Ds appear by WH Moore their Attorney to Subpoena

WH Moore Ds Attorney

3 March 1818 Affidavit of John Mitchell Clerk to PS. An order was made that service of the Subpoena on Mr Garling the D's Attorney should be deemed good service on D Evans the ptff at Law. This order and subpoena was served on Mr Garling on 13 February and no answer is filed

3 March 1818 Attachment for want of an Answer Returnable 1 May 1818

TS Amos Ps Solicitor

3 March 1818 Injunction to stay Proceedings at Law by George William Evans until hearing of this Cause Pursuant to an order of this Court

TS Amos Ps Solicitor

21 January 1819 Petition of GW Evans Deputy Surveyor to Barron Field sitting at Hobart Town to change his solicitor from Frederick Garling who did not come to Hobart Town Granted 21 January 1819

First Term 1819 21 January 1819 Ds appear by WH Moore their Attorney to Subpoena

WH Moore Ds Attorney

First Term 1819 21 January 1819 Jacob Mountgarrett appears by WH Moore his Attorney to Subpoena in Equity

WH Moore Ds Attorney

Answer of D Evans 1 April 1819 sworn in Hobart

Very small writing practically illegible

WH Moore Ds Solicitor

Note of Court fees

n'v

NRS13724

Cooper v Reddington

Filed 23rd April 1919 Bill of Complaint 2 sheets Both have significant holes and major parts are illegible

Joint and Several Answer of Michael Reddington and Connor Reddington Ds say that they have heard and believe it to be true that the said P did live with the said John Reddington as his Servant or Housekeeper for the space of 15 years or thereabouts and the said JR did commence business in a very humble way the said P living with the said JR as such his Servant or Housekeeper as aforesaid And Ds further answering say that they have heard and believe that the said JR carried on Trade or business in a House in Pitt Street the said P living with the said JR as such his Servant or Housekeeper as aforesaid and the said JR by the profits of his said Trade and business was enabled to purchase the premises in whjch he so carried on his Trade situate as aforesaid and such were the same premises in which P now resides And Ds further answering say that they have heard and believe that the said JR did carry on the Trade or business of a Victualler and general Dealer in the said premises in his own name but they deny that P and JR ever carried on such public business together otherwise than by P officiating in the conducting and, carrying on the said Trade or business as a Servant of JR but as to profit or loss on the account of the said JR alone and not on the joint Interest or account or in any way to the mutual benefit of JR and P And Ds say that they have heard and believe that it was by the labour and exertions of JR and by his own perseverance alone that he was enabled to purchase the Lands Farms Houses Goods Chattels Estates and Effects of which JR was possessed of at the time of his decease And Ds further answering say that they have no Knowledge of the Amount or Particulars of the real or personal Estate of which JR (sic) otherwise than what they have learnt by hearing from the other Ds in the said Bill named the executors of the Testator but these Ds believe that the statement set forth by the other Ds in their answer is correct and true And these Ds further answering say that JR did not as these Ds have been informed and believe nine or ten years ago or at any other time present the P with a Filly Foal or Female Colt but at about that time JR had a Female Colt in his possession and which was sent by JR to a Mr William Hayes to rear and bring up and the said WH did accordingly rear and bring up the said Filly Foal and after the same was so reared and brought up the same was placed amongst the stock of the said JR And these Ds say that they have heard and believe that P was never possessed of any stock of her own and that the said stock of JR was never considered the joint property of JR and P but the same was the property of JR only And these Ds have also heard and believe it to be true that the said Filly Foal has produced a very considerable increase to the Amount of Thirteen or Fourteen Horses Males and Females and that JR did previous to his death present the Son of the D James Chisholm with a horse one of the produce of the Filly as set forth in the Bill And these Ds further say that they do not know or believe that P ever did remonstrate with JR on his so disposing of the said horse or that JR did ever present or deliver over to P six or any other number of horses as a remuneration for the said horse so given by JR to the son of the D JC And these Ds further answering admit it to be true that JR did depart this life on or about 7 October 1816 and that JR did previous to his death make such last Will and Testament as is set forth in the Bill and these Ds do not know or believe that P did ever deliver over to the other Ds Richard Fitzgerald and JC the sum of L270 sterling or any other sum of money whatever save and except the sum of L200-0-4 mentioned in the answer of the said other Ds but these Ds have heard and believe that P did deliver over to said other Ds divers Goods Wares and Merchandizes of JR which Goods Wares and Merchandizes the said other Ds caused to be sold by public Auction by Mr David Bevan and after payment of the Duties and Expences attendant thereon that such Goods Wares and Merchandizes amounted to about L240 as mentioned in the other Ds answer and also that part of such Goods Wares and Merchandizes and of the Household Furniture late of the Testator P possessed herself of And these Ds further answering say that they have heard and believe that the whole of the monies received by the said other Ds on account of the Estate and Effects of JR have been paid and expended in due course of Administration and that the Estate of JR was at the time of the said other Ds answer being put to P's Bill Indebted to the said other D JC the principal acting executor of the Estate in the sum of L103 or thereabouts as stated by the Schedule or Inventory annexed to the said other Ds answer And these Ds further answering say that they have heard and believe that the said other D JC has paid and advanced P anaccount of the Legacy so bequeathed to her by the said Will of JR the sum of L353-11-8 or thereabouts And these Ds further answering say they are the Brothers of the Testator JR and the same persons as are named in the Will And these Ds deny all and all manner of combination and confederacy wherewith they stand charged in and by the Bill without that there is any other matter or thing for these Ds to make answer unto and not herein and hereby well and sufficiently answered unto confessed traversed or denied is true all which matters and things these Ds are ready to aver and prove as this Honorable Court shall direct and award and humbly pray to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained

Thos Wylde

Solicitor for the Ds

Sworn 2nd September 1818 Answer of James Chisholm Very poor condition

Richard Fitzgerald was also a D, he and Chisholm being Executors of a Reddington Estate

6th November 1818 Replication of the Complainant to the Answer of Richard Fitzgerald and James Chisholm Executors of JR deceased Ds

Answer filed 2nd Sept 1818 This Replicant saving and reserving to herself all and all manner of Advantage of exception to the manifold insufficiencies of the said Answer for replication thereunto says that she will aver and prove her said Bill to be true certain and sufficient in the Law to be answered unto and that the said Answer of the D is uncertain untrue and insufficient to be replied unto by this Replicant without that that any other Matter or thing whatsoever in the said Answer contained material or effectual in the Law to be replied unto confessed and avoided traversed or denied is true All which Matters and things this Replicant is and will be ready to aver and prove as this HC shall direct and humbly prays as in and by her said Bill hath already prayed

17 December 1818 Petition of Ds

P is willing that Petitioners answer shall be put in without oath

Petitioners pray that they may have leave to put in their answer without oath

Be it so,

upon the consent of

the Solicitor for Complainant

B Field Judge

Interrogatories for Examination and Cross Examination of witnesses to be produced sworn and examined on the part of P

First Whether do you know the parties Complainant and Ds in the Title of these Interrogatories named or either and which of them and Whether you did know John Reddington late of Sydney deceased and if yea for how long did you know him and where or how long since did JR depart this life Set forth according to the best of your Knowledge Remembrance information and belief fully and at large

Second Whether you knew the Complainant and JR on their first arrival in this Territory and if yea were they or not living as servants to one William Cox as overseer of a farm called Canterbury Farm and if yea upon their leaving that service did not the Complainant and JR become Joint dealers and Copartners in trade and Whether JR and C did not by their mutual labour care and industry obtain a sufficient sum to enable them to purchase a House in Pitt Street and to embark in business as Joint dealers and in the capacity as Licensed Victuallers And whether by such their mutual labours and Joint dealings or how otherwise they did not obtain property sufficient to purchase the House and premises in which they lived together for a number of years as Joint traders and Copartners in trade And whether they JR and the Complainant were not living together as such dealers and Copartners in the public line of trade in the said House in Pitt Street Sydney at the time of the death of JR decd

Third Whether the Complainant and JR were not living together and as copartners in trade for more than 13 years or how long previous to the death of JR And whether from the profits arising by their Industry and Joint dealing and more particularly from the labour of the Complainant in managing the Public House trade they did not acquire considerable sums of money And whether the Principal part of the business and the management of the public House was not in a general way vested in the Complainant or how else And whether by the profits arising from such Joint trading and industry JR was not enabled or how otherwise to make considerable purchases in Lands goods and Stock And whether the Complainant was not told by JR that such purchases of lands goods and stock were made for their joint account and profit And whether at the time of the Death of JR the said lands goods and chattels were not of considerable Value or how otherwise declare

Fourth Whether about ten years before his death or at any and what other time JR did not deliver to the Complainant a filly foal or female Colt the dam of which died by accident And whether such filly foal was not from that time the separate property of the Complainant And whether the Complainant did not send the said filly foal to be reared or brought up to the care of one William Hayes And whether when such filly was of age to run with the stock it was not suffered to remain with the said WH till she had 2 or 3 foals and after that was she not suffered to go with messieurs Blaxlands Horses And whether the first heifer they possessed was not paid for by the Complainant by $126 to the said William Cox or how else And whether the future stock of cattle which passed in the name of JR was not the Joint property of JR and the Complainant as Copartners And whether the said Stock was not acquired by their Joint trading and by the increase and profit of their Joint trading And whether the said filly and her female increase had not at the time of the death of JR produced an increase of 10 Male and female or any other and what number of increase And how many if any have been the increase of the original dam and the increase of the increase since the death of JR And whether JR did not in his life time declare and acknowledge the said filly and all her increase and the increase of such increase to be the property and seperate (sic) goods of C And whether JR about a year or how long before his death present to a Son of the said James Chisholm one of the Horses part of the produce of the said filly foal the property of fhe Complainant And whether upon such occasion the Complainant did not remonstrate with JR of the impropriety of such conduct in giving away one of the Complainant's Horses without her License And whether upon the Complainant saying she would fetch her Horses JR did not respond ? to C her Pick of six of the best Cows in the herd as an Exchange for the Horse And whether Patrick Partland the Overseer of the Cattle did not receive orders from JR to Pick the Cows and mark them for the Complainant And whether such Cows were not accordingly delivered by the said JR's order to the Complainant ? or otherwise and how And **whether** such Six Cows were not suffered to run in the herd and were not with their increase the sole property of the Complainant And whether such six Cows with their increase not remaining in the herd ? in the name of the said JR but the Joint property of him and the Complainant at the time of his death And whether such six Cows and their Increase the property of the Complainant did not come into the hands and possession of Ds And whether the same are not now in their possession or how otherwise declare

Fifth Whether you do know that the said JR in his life time did make his last will and testament in writing under his hand and Seal and if yea when and where did he make the same and how long before his death was the same made and do the words following to wit In the name of God ?Adieu I JR of Pitt Street Sydney in the Territory of NSW Victualler and dealer being of sound and disposing mind and understanding and considering the perils and uncertainty of human life do with a view to prevent controversy and disputes after my decease in regard to the appropriation and disposal of my worldly Estates and Effects make publish and declare this as and for my last Will and Testament In the first place i humbly recommend my Soul to God who gave it with my body I commit to the earth to be decently interred and I desire and ? that all my just Debts and the expenses of my funeral may be fully paid and satisfied and the rest residue and remainder of my goods Chattels property Estates Lands Houses Furniture Stock and Effects whatsoever and wheresoever in this Territory I give and dispose of as follows that is to say I give and bequeath to Ann Cooper who has lived with me for several years past and for whom I am anxious and desirous to make suitable provision in acknowledgment of her services Fidelity and Attention the sum of L700 Sterling money which I direct my executors herein after named to recover and pay over to her the said AC and to take her own Acknowledgment and receipt for the same within 3 months after my decease I give and bequeath unto my God Son Timothy Lacey aged seven years the son of John Lacey all that Farm and those premises comprizing 110 Acres of land situate lying and being on the South bank of the River Hawkesbury and called or known by the name of Balleugh Farm given and granted unto me and my Heirs and Assigns for ever by His Excellency Governor Macquarie under the Seal of the Territory to Hold the said farm land and premises thereto belonging and every part and parcel thereof to the said TL as his right and lawful Estate and duly ? with him and his Heirs for ever And it is my will and desire that the ? proceeds ? thereof shall be applied to the use of the said TL and go towards his maintenance and education from the time of my decease until he shall attain the age of 21 years at which period I desire he may be put into full possession of the said farm Lands and premises and have hold and enjoy the same free from the Controul (sic) or interruption of any person whatever and from him to desend (sic) to his Heirs for ever and as to the rest residue or remainder of my goods Chattels property Estate lands houses Stock and effects of what kind soever or wheresoever I give and bequeath the same and every part and parcel thereof unto my dear Brothers namely Michael Reddington and Connor Reddington both residing at present at Athlone in Ireland who as well as myself were the Sons of Francis Reddington formerly of Balleugh in the County of Roscommon Ireland to be by them the said MR and CR taken received and enjoyed share and share alike between them in fair and equal Proportions But if it should happen that either of my said Brothers should depart before me leaving no issue born on his body then I give the whole of my said Property to the Survivor and in case either of my said Brothers should depart this life before me leaving issue then I give his proportion or Moiety of my property or effects ? unto the children of such deceased brother in equal shares and proportion And in Case there should only be one Child then such share or moiety to such Child exclusively And I hereby nominate constitute and appoint my two respective friends Mr Richard Fitzgerald of ? and Mr James Chisholm of George Street Sydney Executors of this my last Will trusting that they will take upon themselves the burthen of the execution thereof and fully confiding in their Integrity Judgment and Fidelity to do what they will ? or proper for the benefit of my Estate after my decease to preserve and secure the interests thereof to the Legatees hereinbefore named And I hereby revoke and make void all former and other Instruments of a Testamentary nature by me at any time heretofore made and declare this only to be my last Will and Testament to which I have set my hand and Seal at Sydney this 18th day of February 1814 Sgd John Reddington Sgd sealed published and declared by the Testator JR as and for his last Will and Testament in the presence of us who in his presence and in the presence of each other have set and subscribed our names as witnesses thereto Sgd Wm Bennett - F - Michael Robinson with the attestation certain or express the last Will and Testament of the said JR deceased as you know or believe declare

Sixth Whether the said JR did not at the time of his death possess the property hereinafter mentioned Jointly or how else with the Complainant that is to say Cash L276 Book Debts L2300 Merchandize in Store L600 Box Hill Estate 2350 acres Value L1175 South Creek Estate 110 acres L100 part of a farm at Richmond Value L200 Three dwelling houses in Sydney L580 & ? furniture value L100 210 head of Horned Cattle L1470 amounting in all to L6800 or what other sum And Whether a moiety or half part of such property except for the South Creek farm being purchased by the said JR with earnings and profits arising from the Joint Trade are or not the right and property of C or how otherwise declare

Seventh Whether at the time of the death of the said JR the sum of L275 sterling money the product of their Joint trade was not in the House where the Complainant resided and where they carried on their Joint trade at the time of the Death of the said JR And Whether such Money was not delivered over by the Complainant to the said D And Whether a very large and valuable assortment of goods wares and Merchandize amounting in Value to L600 and upwards was not on the death of the said JR delivered by the Complainant to the said D And Whether such delivery was not in the full and entire belief and Confidence that the said D would have divided the same and made a just Settlement with the Complainant of the Claims and demands which the Complainant had on the remaining property of which the said JR stood possessed at the time of his decease

Lastly Do you Know of any other matter or thing that may tend to the benefit or advantage of the Comp;ainant in this cause if yea declare the same as fully as if you had been thereunto particularly interrogated

TS Amos

Solr for C

Interrogatories for the Cross Examination to Witnesses sworn and examined on the part and behalf of the Ds MR and CR

First Did you know the Complainant in this Cause and Whether you did know John Reddington late of Sydney deceased and if yea for how long did you know the Complainant and how long did you know the said JR before his death declare

Second Did you know the said JR and the Complainant ? live at Sydney or any and what other ? or not the Complainant and the said JR up to the time of the death of the said JR live together and was not the said Complainant always managing the trade of the House by selling of the goods in the House or Shop and in serving the liquors and Victuals in the Public house where the said JR and the Complainant resided or otherwise and how declare

Third Was or not the said JR and the Complainant in very low Circumstances when they first came together or how otherwise and was or not what they possessed at the time of the death of the said JR acquired by the trade and their Joint labour care and industry or how otherwise declare

Fourth Did you or did you not shortly after the death of the said JR and from whom or how get possession or hold in your possession a Mare called Nancy and if yea was not the Mare then in foal and did not the Mare from hard ? or from what other Cause die or how else was or not the said Mare Nancy at that time ? was she or was she not ? or how otherwise what was the value of the said Mare big with foal at the time of her death and was or not that Mare the Mare that was given by the said JR to the Complainant when in foal of only a few days ? the dam of which had died and was she or not called Nancy as being the name of the Complainant and was not the Complainant Ann always called Nancy by the said JR or how otherwise and how many increase of that mare was had previous to the death of the said JR as you know or beleive and did not such Mare with her increase come into the possession of the said Ds Richard Fitzgerald and James Chisholm as you know or beleive Declare

Fifth Did you or not take an Inventory of the Stock of Horses, Cattle and of the Stock in trade after the death of the said JR and ? set out what Stock in trade Household Goods Horses Horned Cattle Leases and Freehold Estates or other ? of the said JR and the Complainant or either of them ? of the death of the said JR Declare

Lastly Do you know any other Cause Matter or thing that may tend to the interest of the said Complainant and if yea set forth the same fully and at large

TS Amos

Solr for the Complainant

Examination and Cross Examination of a number of witnesses on the Interrogatories

Charles Gray Ds MR & CR's witness

William Hayes Ds

Charles Gray xx

John Lacy xx

John Lacy Ds

Michael Hayes Ds

Michael Hayes xx

Edward Quin C's witness

Michael Doran C

Thomas O'Connor C

Richard Norris C

Thomas Reynolds C

William Bennett C

William Christie C

Christopher Kennedy C

Michael Robinson C

Martin Short xx

Samuel Terry xx

Martin Short Ds

John Connell Ds

Joseph Murray C

Samuel Terry Ds

John Connell xx

William Morgan C

Patrick Partland C

Accounts of James Chisholm

17th December 1818 Petition of Ds Richard Fitzgerald Michael Reddington and Connor Reddington to put in answer without oath

I do Consent to the Prayer of this Petition if your Honor shall please to order the same

TS Amos

Solr for P

17th Decr 1818 Be it so, upon the consent of the Solicitor for the Complainant

B Field

Judge

19th December 1818 Orders made on hearing of cause

Cannot be found

22nd February 1819 P's charges

The said P's charges against the said Ds Richard Fitzgerald and James Chisholm the Executors of the said Testator John Reddington deceased are set forth in the first, second, third, and fourth schedules hereto annexed

And the said P craves leave to add to or alter the said charge as he (sic) shall be advised

Schedule the first

The said Legacy or sum of L700

became due on the 7th day of

January 1817 for which the P

charges she ought to be paid the said

sum of 700-0-0

Interest from the 7th day of Jany

1817 unto the 22nd day of Feby 1819

being the day of Exhibiting this charge

at L8 per cent being 2 years 1 month &

15 days 119-0-0

L819-0-0

Second Schedule

A Horse sold to William Morgan

by the Testator in life time 40-0-0

Another Horse sold to Captn Martin for 46-0-0

Another Horse sold by the said

Executors part of the produce of the

Mare called Nancy to David Allan 25-0-0

The original Dam or Mare called

Nancy killed by the default of the

said Executors 40-0-0

L156-0-0

Third Schedule

The said P charges that the said RF and JC have in their

possession the remaining increase of the said Filly called

Nancy 13 Horses male and female which the P charges

ought to be forthwith delivered to her in terms of the said

decree

Fourth Schedule

In October 1815 Six Cows pointed

out which were then heavy in calf 6-0-0

These Six Cows would in December

1815 have Six Calves 6-0-0

The said Six Cows in October 1816

would have other Six Calves 6-0-0

And the said Original Six Cows

would in September 1817 have

other Six Calves 6-0-0

And the said Six Cows in June

1818 have other Six Calves 6-0-0

And the said Six Cows in the

beginning 1819 would probably

have other Six Calves 6-0-0

Three of the Calves the increase

from the increase from them (sic)

Calves in December 1815

would in December 1817 have

3 Calves 3-0-0

And again in October 1818 have

other 3 Calves 3-0-0

And the 3 Female Calves calved

in October 1815 would in 1818 have

3 Calves 3-0-0

And then again in the beginning

1819 other 3 Calves making in number

six head of horned Cattle which 6

head of Cattle the said P claims

to be delivered to her under the said

decree 3-0-0

48-0-0

Filed 23rd Feb 1819 State of Facts (7 pp)

By the Decree made on the hearing of this Cause on the 19th day of December 1818 it is amongst other things ordered adjudged and decreed that the said Complainant should be paid her legacy or sum of L700 or so much as has remained unpaid

And the P states that the said sum of L700 bequeathed in and by the sd Will is directed to be paid to the P within three months after the death of the said Testator

And the P further states that the said John Reddington the Testator died on the 7th day of October 1816

And that the said legacy or sum of L700 became due and payable on the 7th day of January 1817

And the said P states that from the 7th day of January 1817 ought (sic) to have Interest on the said L700 until paid

And the said P states that Interest on the said L700 from the said 7th day of January 1817 to the said 7th day of January 1819 at the rate of L8 per Cent is L112

And the said P further states that Interest ought to be calculated on the said L700 until [p2] paid

And the said P states that in and by the said decree the filly called Nancy in the said bill mentioned and her increase and the increase of such increase were decreed to be the property of the P

And in and by the said decree it is referred to HH the Judge to take an account of such of the said horses as had been sold by the Testator (in his life time) or by the said Ds Richard Fitzgerald and James Chisholm his Executors since his decease and what sum It is decreed should be paid by the said Executors out of the personal estate of the said Testator

And that such of the said horses as remained with all their increase and the increase of such increase should be forthwith delivered to the said P

And the said P further states that in and by the Answer of the said Ds RF and JC that at the time of putting in the said answer (that is to say) on the 2nd of September 1818 the said Filly had produced an increase of 13 Horses male and female

And the P says that since the 2nd of September 1818 a further increase has been produced of two foals from the increase of such increase making in all exclusive of the original Dam fifteen horses male and female

And the P states that the Testator [p3] (in his life time) sold to one William Morgan one of the said Horses and for which the said P alledges she ought to be paid the sum of L40 And also another Horse sold to Captain Martin for Forty six pounds

And the P further says that the said Ds the Executors sold to one David Allan Esqre another of the said Horses since the death of the said Testator and for which the P claims to be paid another sum of L40

And the P further states that the Mare called Nancy was taken by the Ds the Executors into their charge after the death of the said Testator and which they sold or delivered to one John Lacy when she was big with Foal by the default of the said Executors she was killed by the said JL by being overworked for which the Complainant alledges she ought to be paid another sum of L40

And the P states that the remaining 13 Horses male and female are now in the possession or keeping of the said Ds the said Executors and which 13 Horses male and female the P says ought to be delivered to the P in terms of the said decree

And the said P further states that in and by the said Decree six cows in the said bill mentioned and their increase and the increase of such increase are in and by the said decree decreed to be the property of the Complainant and with their increase and the increase of such increase be forth[p4]with delivered to the Complainant

The said P states that since the making of the said Decree she has applied to the said Ds RF and JC the said Executors for the delivery of the said Cows and their increase and the increase of such increase but which they have refused to deliver to the P

And the said P further states that she has applied to the said Ds the Executors and represented to them the difficulty of making a true estimate of the increase and the increase of such increase from the said six Cows without an inspection of the Cattle and the original six as picked out by the said Patrick Partland being pointed out and the P requested the said Ds the Executors to suffer the said PP to go with one William Christie their present superintendant or manager of the stock and to point out to the sd WC the said original six cows as set apart by him in or about the month of October 1815 but the Ds the said Executors have refused to comply with such request

And the P further states that she has caused application to be made to the said WC who had the Cattle in charge when the said PP left them and now has the charge of the said herd of Cattle in possession of the said Ds RF and JC the Executors as aforesaid [p5]

And the said WC has informed the P that all the original Cows are in the Ds flock of cattle in his charge and in case the said 6 Cows so set apart by the said PP was pointed out to him he could then state accurately what were the number of the increase from the said 6 Cows and the increase of such increase since they were so set apart by the said PP in the year 1815

But by reason of the said Ds the Executors having refused to suffer the said PP to go to the Herd and to point out the said 6 Cows the said P is compelled to make a charge of what is deemed would be the natural increase and the increase of such increase And the P further states that to the course of nature the P being denied any legal manner to estimate the same

The P states that the said 6 Cows being heavy in Calf as in proof in the Cause when so set apart in October 1815 would produce 6 Calves male and female in the month of December 1815

And that in the month of October 1816 the the said 6 Cows would produce other 6 Calves male and female

And in the month of September 1817 the said 6 Cows would produce other 6 Calves male and female

And in the month of June 1818 the [p6] said 6 Cows would produce other 6 Calves male and female

And in the beginning of the year 1819 the said 6 Cows would produce other 6 Calves male and female

And the P states that taken one half of the produce of the said 6 Cows in 1815 to be females the Calves would in the year 1817 produce each a Calf

And again in 1818 other 3 Calves

And the three other female Calves Calved in 1816 would in 1818 produce each another Calf

And the same last mentioned 3 female Calves would in the beginning of 1819 produce other 3 Calves making in all with their original Dam 48 in number

Which 48 in number the P states to be in the possession of the Ds RF and JC the said Executors and ought to be delivered in terms of the said Decree

And the P states that the original 6 Cows being pick'd out as the best in the Flock their increase are the stoutest and beasts of the best quality which the P avers is the reason why the Ds the Executors will not suffer the P to have them pointed out

And the P avers that the average price of these Cattle being the best of the breed young and old ought to be taken at L7 per head and which in point of value would amount to L336

[p7] And the P states that by taking payment for the 48 head of Cattle at that rate she would be a considerable loser for that the original 6 Cows and 18 of the female calves would produce on sale an average price of L12 per head so that only 24 head of the female cattle would produce L288 and then leaving the other 24 at an average of L6 per head they would amount to L144

But the P avers that she ought to have her number of Cattle in Kine and the Ds the Executors having refused to admit the P by the said PP to point out her original 6 Cows set apart for her by the said PP so as to enable the increase and produce of such Cows to be ascertained and the increase of such increase

The P submits and states that for these reasons she ought to have 48 head of Cattle and of the best in the Ds flock (that is to say) 21 Males and 27 Females to be taken as her share of Cattle in and by the said Decree directed

Which State of Facts the P most humbly submits to the consideration and judgment of YH the Judge to whom this Cause stands referred

And the said P is ready to aver maintain and prove this her state of facts in such way and manner as to YH shall seem meet

Filed 24th March 1819 Bill of costs

Orders 2nd September 1819

George the third by the Grace of God of the United Kingdom of Great Britain and Ireland King defender of the faith and so forth to Richard Fitzgerald and James Chisholm Executors of John Reddington deceased and Michael Reddington and Connor Reddington and to all and every other person to whom the tenor of these Presents doth in any wise relate or concern Greeting Whereas by a certain final order Judgment or decree lately made in our Supreme Court in and for the Territory of NSW in a certain Cause therein depending wherein Ann Cooper was Complainant and you the said RF JC MR and CR Ds It is ordered and decreed in the words following that is to say Wednesday the 2nd day of June in the year of our Lord 1819 Between AC P and RF and JC Executors of JR deceased and MR and CR the Heirs at Law Ds this Cause coming on this day for further directions to be heard and debated before this HC in presence of the Solicitors learned on both sides and upon hearing the report made in this Cause on the 14th day of May last and upon hearing Mr Amos Solicitor for the P and Mr Wylde Solicitor for the Ds it is ordered adjudged and decreed that the Ds RF and JC the Executors pay to AC the P the sum of L624-4-0 reported due and it is further ordered adjudged and decreed that the said Ds deliver to the P one Horse, the Mare two foals and one filly now in the Ds possession and that the Ps and the Ds costs be paid by the Executors as ? also the P's and Ds' subsequent costs which several costs of the P up to the 3rd day of April last were taxed at the sum of L316-10-4 And the Ps subsequent Bill of Costs at the sum of L86-15-6 making together the sum of L403-5-10 and the Ds bill of Costs up to the said 3rd day of April was taxed and allowed at L200-17-1 and the Ds subsequent Bill of Costs taxed and allowed at the sum of L53-12-0 making together the sum of L254-9-1 which said sum of L403-5-10 It is ordered adjudged and decreed be paid by the said Ds Executors to the Ps Solicitor and the said sum of L254-9-1 be paid by the Ds the said Executors to the Ds Solicitor And it is further ordered adjudged and decreed that upon the Ds the Executors paying to the P the said sum of L624-4-0 and delivering to the P the horse the Mare two foals and one filly that the bill filed in this Cause be then dismissed by the consent of all parties By the Court Barron Field Judge As by the said Decree duly entered and remaining as of record in our said Supreme Court doth and may more fully appear Therefore we Strictly enjoin and Command you and every of you the said RF JC Executors of JR deceased and MR and CR do immediately pay or cause to be paid unto the said Complainant the sum of L624-4-0 and deliver to the P one Horse one Mare two foals and one filly and the Ps Costs of L403-5-10 and effectually to perform fulfill and Execute all and every the matters and things specified and contained in the said final Judgment or decree so far as they in any way relate to or concern you according to the tenor and true meaning of the said decree and thereof you are not by any means to fail at your peril

Given under my hand and seal at Sydney in the Territory of NSW this 16th day of August in the year of our Lord 1819

Barron Field

Crossley Solicitor

for the Plaintiff

2nd Septr 1819 Judge

Filed 12th November 1819 Affidavit of William Fallon, William Christie and John Smith

12th November 1819 Order on application for attachment of Ds Fitzgerald and Chisholm for disobedience of orders

Upon reading the writ of Execution issued on a Decretal Order made in this Cause on

the day of last and also upon reading the several affidavits of Geo Crossley Gentleman and the several affidavits of Jas Smithers, Miles Leary, James Chisholm, William Freeman, Thomas Wylde, William Fallon, William Christie and John Smith and an Order of this HC made on the 4th day of Novr instt whereby it was Ordered that the Ds Richard Fitzgerald and James Chisholm (the Ds above named) should peremptorily shew Cause to this Court on this day why a writ of Attachment should not be Issued against the said Ds for their contempt in not paying the monies and delivering the Horses pursuant to the Decree and writ of Execution issued in this Cause And the said Order Nisi coming on this day to be debated and it appearing unto this Court by the said Decretal Order and the Affidavit of the said JC that the sum of L94-4-0 only remains due and unpaid to the Complainant of the sum [p2] of L624-4-0 directed to be paid to her by the said Decretal Order and that the further sum of L14-11-0 only remains due and unpaid to the said Complainant out of the 2 several sums of L316-10-4 & L86-14-6 making together the sum of L403-5-10 of the Costs directed to be paid to the said Complainant by the said Decretal Order and that application by the said Complainant for an Attachment of Contempt against the said Ds was made & that the present & a former application for an Attachment of Contempt on this said Order Nisi were obtained on the grounds that the said Ds had contumaciously refused to pay obedience and to comply with the said writ of Execution made on the said Decretal Order and also that they had refused after proper & legal demand made of the said sum of L624-4-0 & the two several sums of L316-10-4 & L86-15-6 and to deliver to the said Complainant 36 Head of Horned Cattle & particularly that they had refused to deliver to the said Complainant one Mare, one Horse 2 Foals & one Filly mentioned in the said Decretal Order agreeable to & in manner as is directed by the said Order And it also appearing to this Court that the said Ds had before any such application was made delivered unto the said Complainant the said 36 Head of Horned Cattle and that the said Complainant had on or about the 21st day of May last purchased at auction a certain Leasehold ? or tenement & ? of & belonging to the said Ds as Executors of the Testator named in this Cause & late belonging to the said Testator wherein the said Complainant lives & [p3] resides at & for the price or sum of L420 the said Complainant having been declared the highest Bidder & the Purchaser thereof at such sum And that it had been settled or agreed upon between the said Complainant & the said Ds at the time of the said sale that the said sum of L420 should be set off & deducted from the sd sum of L624-4-0 named in the said Decree as also that the several sums of L25 L35 & L50 had been paid by the D JC to the said Complainant in further discharge of the said sum of L624-4-0 and that the said several sums of L420 L25 L35 & L50 making together the sum of L530 being set off and deducted against the sd sum of L624-4-0 left only the sum of L94-4-0 as due to the said Complainant on account of the said sum of L624-4-0 directed to be paid to her by the said Decree And that the said Ds had tendered and proffered to pay the said sum of L94-4-0 to the said Complainant & that the said Complainant had refused to take or receive the same and likewise that the sum of L388-14-10 had been paid by the said Ds to the said Complainant for and towards the sum of L403-5-10 And that there only remained the sum of L14-11 as due to the said Complainant for & on account of the said sum of L403-5-10 as directed to be paid to the said Complainant by the said Decretal Order And also that the said Ds [p4] had likewise tendered and offered to pay to the said Complainant the said sum of L14-11 And that the said Complainant had likewise refused to take & receive the same And also that the said Ds previous to the said Applications had done all in their power to deliver to the said Complainant the said one Mare, one Horse, two Foals and one Filly by the said Decree also directed to be delivered to the said Complainant And that but for the neglect of the said Complainant & her agents the said Complainant might have received the same and that the said Ds have lately delivered to the said Complainant the said Horse Mare Foals & Filly at her House and premises in Sydney It is therefore ordered that the said Order of the said 4th day of Novr Instant & the Complainants application to this HC for an attachment of contempt against the said Ds for a disobedience to the said writ of Execution be dismissed And it is further Ordered that the said Complainant shall pay to the said Ds the Costs of & occasioned by the several applications made by the said Complainant for an Attachment of Contempt against the said Ds for a disobedience of the said Writ of Execution to be Taxed by the Judge of this HC And such Costs when Taxed shall and may be deducted by the said Ds from and out of the sum of L94-4 named in the said Decree and that [p5] after such deduction made that the Balance only of the said sum of L94-4 shall be paid by the said Ds to the said Complainant as the Balance then remaining due of the before mentioned sum of L624-4 then to be paid with the before mentioned sum of L14-11 under the said Decree and to be payable in like manner as the said Balance of L94-4 and the said sum of L14-11 would have been payable in case this Order had not been made

By the Court

(signed) B Field

Judge

NRS 13724

Crossley v Amos

30 August 1819 Bill of Complaint

Sheweth George Crossley of Sydney Gentleman That by Indenture duly executed bearing date 1st May 1817 and made or mentioned to be made between Thomas Sterrop Amos of Sydney Gentleman one of the Attornies of the Supreme Court of the one part and your Orator by the name of GC of Sydney Gentleman late a practising Attorney or Agent in and before the late Court of Civil Jurisdiction and Governors Court of the Territory of NSW of the other part after reciting that your Orator had proposed to become the assistant or principal Clerk of the said TSA in his office of an Attorney and Solicitor of the several Civil and Criminal Courts in the said Territory of NSW and in the business of a Conveyancer Equity Draftsman and Special Pleader for the term of five years or such further or extended term as therein mentioned your Orator receiving and being paid by the said TSA as a recompense for his services and in lieu of a salary one moiety or half part of the nett gains and profit arising from the Practice after deducting all Disbursements made in the undertaking and carrying on the various affairs and suits incident thereto and also the yearly sum of L400 to be taken quarterly by the said TSA for his own use and subject to the Stipulation and Agreement therein expressed to which proposal the said TSA in consequence of the great experience local Knowledge and Ability of your Orator engaging to use his utmost exertions in promoting and carrying on the Practice of the said TSA in consideration of the Covenant and Stipulations therein reserved he the said TSA did covenant with your Orator that from and after the date and execution of the said Indenture and until the full end and term of Five years he the said TSA did take your O as the assistant or principal Clerk in his Office of an Attorney or Solicitor of the several Civil and Criminal Courts in the said Territory and also in his Profession or business of a Conveyancer Equity Draftsman and Special Pleader and all matters incident thereto and that he the said TSA should allow and pay your Orator one half of the profits of all the Law Business conveyancing or other business after first deducting the moneys paid out of Pocket in conducting and carrying on the said business and the sum equal to L400 Sterling per year or in proportion to that yearly sum at every Settlement and for the purpose of ascertaining the profit of the said business the said TSA should provide and keep such and so many Books as should be necessary in which the said TSA should from time to time fairly enter every day a true and Just account of all monies received and paid in the said business and of all writing and Attendances fees and other matters according to the nature of the said concern whether it be for pleadings copies of pleadings or conveyances as the case might be and that the said Books of account and all Bills specialties Bonds Letters of and concerning the said business should be open to the inspection of either party and ready at all times to be seen perused and copied by either party his Executors Administrators or Assigns And your Orator did covenant with the said TSA that your Orator should and would during all the said term of five years unless prevented as therein mentioned at all reasonable times exercise himself to the best of his ability in drawing or settling all necessary Pleadings and Conveyances that might come to be prepared in the office of the said TSA and use his best endeavours for the advancement of the business and the management of the same and cause daily a true entry of all monies paid and received and of all writings and fees due and ? in respect of such business and well and truly account and pay over to the said TSA all monies that might from time to time come to his hands in respect of such business and in all things to be Just and faithful to him in every account and legal concern And the said TSA did in and by the said Indenture Covenant with your Orator that the said TSA should and would during the said Term of five years unless prevented as therein mentioned exercise himself in the business or concern to the Utmost of his Ability in Attending the business of the Courts and otherwise for the benefit of the concern and enter or cause daily enteries to be made in one or more Books to be kept for that purpose of all monies received and paid and of all fees or demands for writing or any other business so that at the end of every three Months unless the parties should agree a longer time as an account might be made out and the profits of the said business for the preceeding three months ascertained and upon such account being taken and all monies out of Pocket that had been paid in the said business being first deducted and such proportionate part of the said Yearly sum of Four Hundred Pounds to be first taken by the said TSA as to all the ? residue and remainder of such monies should be equally divided between the said TSA and your Orator and the said TSA did covenant to pay one half of such Surplus to your Orator at every such Settlement and so in proportion of all the outstanding Debts when got in to be accounted for in like manner and in case of the Death ? Survivor should as speedily as possible after such event make up ? persons account and deliver a list of the money due and balance from each Debtor and as soon as conveniently may be collect and get in the same and pay a proportionate part according to the said Agreement to the Executor or Administrator of the deceased And if it should happen that such Death should be that of your Orator the said TSA should in that case when the outstanding Debts were ascertained give his undertaking in writing to pay to such Executor or Administrator of your Orator his proportionate share of such outstanding Debts when got in without delay And in and by the said Indenture it is agreed that neither the said TSA or your Orator after the execution of the said Indenture should do any law business or conveyancing save only such as should be brought to the Joint account and subject to the division according to the true intent and meaning of that Indenture and in case at any time within the space of time therein mentioned your Orator should be admitted an Attorney then that from the time of such admission your Orator should have an equal Share in the Profit of the business or have liberty to withdraw from the concern as therein mentioned as in and by the said Indenture reference being thereunto had may fully and more at large appear And your Orator further sheweth to this Honorable Court that it was agreed between the said TSA and your Orator that the business should be carried on in the Lower part of your Orators House in Pitt Street and that at the Settlement a yearly rent for the two lower rooms where the business was to be carried on was to be Eighty pounds a year to be taken by your Orator as a Disbursement in the business at such Settlement And it was further Stipulated and Agreed that your Orator should pay out of the monies received in the Clerks Wages and their maintenance and all other Disbursements of every nature and Kind except the official fees which being always debitted to the said TSA were to be paid by him and allowed in such Settlements And your Orator further Sheweth unto this HC that your Orator has from time to time paid out of his own monies or out of the monies he has from time to time received belonging to the concern and subject to account your Orator has paid divers securities given by Mr Amos on account of payments to the Officers and otherwise and all the expenses of the Witnesses that have been subpoenaed in every Case and all monies paid for the said Office and for travelling and other expenses in and about the said concern and which will be subject to an account when ascertained And your Orator further Sheweth unto this HC that he has made due enteries in the Books of account or upon papers used as Books of account of all the concerns of the said business that come to your Orators Knowledge and of his receipts and disbursements ? which when ascertained will be found as your Orator verily beleives to be a very considerable sum of money over and above the monies received by your Orator in the Joint concern And your Orator further Sheweth unto this HC that the said TSA has not from time time made due enteries in the Books or in any Book subject to the inspection of your Orator of his receipts and payments of monies or of business done according to the Covenants in the said Indenture And your Orator has oftentimes requested him to account for such monies and to let it be duly entered and to have Settlement according the terms of the said Agreement and he has often promised to make such arrangement but which he has neglected and refused to do And your Orator for want of such account and Settlement was unable to state in the Books how the concern stood And your Orator further Sheweth unto this HC that your Orator is rendered unable to set out the true account of receipts and disbursements in this his Bill of Complaint because the said TSA on the sixteenth day of August 1819 did take from the premises and out of the Possession of your Orator and from the place where the business was carried on in your Orators absence all or the greater part of the Books papers and writings of and belonging to the said concern and a great part of your Orators private **[p2]** Books receipts papers and securities for monies and such as in no ways related or concerned the business of the office but solely relating to and being your Orators seperate property and which receipts securities books and writings so taken away out of your Orators house the private property exceed the value of many thousand Pounds but the contents of which your Orator cannot set forth by reason that the said TSA has got possession of not only the receipts and securities belonging to your Orator but of the greater part of the Books and papers that would give an account of their Contents And your Orator further Sheweth unto this HC that your Orator ? by himself as by others have applied to the said TSA to redeliver your Oratorall such papers Books and securities as also to restore or deposit for safe custody all the Books papers writings ? relative to the Joint concern which he so possessed and took from the office under your Orators management and out of his Possession but which he refuses to deliver And your Orator further Sheweth unto this HC that on the sixteenth day of August instant the said TSA being struck off the Roll of Attornies of this HC your Orator presented a Petition to this HC stating ? your Orator acted as an Attorney for many years in the Colony for most of the respectable Inhabitants of the Territory of NSW And your Orator further stated to this HC that your Orator not being allowed to practise on the arrival of Mr Amos he entered into the connexion aforesaid with him from which time your Orator has entirely conducted the business of the said Mr Amos's office and managed the several Suits carried on in the same and these suits Your Orator believes to be Eighty in number or more and from his great Knowledge ? your Orator believes they could not be put in the hands of any other Solicitor without very considerable prejudice to the parties who had been the Clients of Mr Amos and principally because his Clients (sic) because your Orator had the management of his Office and the greater part of them had before the arrival of the Crown Solicitors been the Client of your Orator shall be able to prove that they or the greater part of them only became Mr Amos's Clients in consequence of your Orator having the management of his Office And your Orator by the said Petition praying among other things that your Orator might be admitted an Attorney of this HC or otherwise be allowed to proceed in the several Causes then depending and which had hitherto been conducted by your Orator in Mr Amos's office in such manner and under such terms as this HC might impose and that your Orator might be allowed to proceed for the recovery of the several Debts due to himself and the said concern of Mr Amos's Office And your Orator further Sheweth unto this HC that such Petition came on before this HC on Friday the twentieth day of August 1819 by the order of Court declare amongst other things that they had taken the whole of your Orator's Petition into consideration and did order that your Orator should be at liberty to proceed as Attorney of all persons who have suits depending in Mr Amos's office to the final close of such suits and recovery of such monies and Debts your Orator from time to time accounting to all parties under the direction of this HC and pay in due course all monies he may receive and act in all things as a true and faithful Attorney according to the order and direction of the Court from time to time and pay all fees of Office due by Mr Amos to any of the Officers of this Court and after payment thereof to account and pay over all the Surplus monies to the parties entitled to receive the same And it was further ordered that all papers Securities and other proceedings in the several Causes of the respective Clients who should signify their desire to continue their respective Causes under the management of your Orator should be under his conduct and management as an Attorney of this HC for that purpose specially appointed And it was further ordered that your Orator be permitted to sue in person for the recovery of any Debt or damages due to himself or by the said order of this HC reference being thereunto had may appear And your Orator further Sheweth unto this HC that by reason of the said Thomas Sterrop Amos having so got possession of the said Books and papers your Orator is unable to make out the accounts to the close of the concerns But now so it is may it please this HC that the said Thomas Sterrop Amos Combining and Confederating with divers other persons at present unknown to your Orator whose names when discovered your Orator prays may be here inserted and they made parties hereto with apt words to charge them and every of them to wrong and injure your Orator in the premises In tender Consideration whereof and for as much as your Orator is remediless in the premises save only in a Court of Equity where matters of fraud and of this nature are only relievable To the end therefore that the said Thomas Sterrop Amos and the rest of the Confederates when discovered may upon their Corporal Oath full true direct and Perfect answer make to all and singular the Matters aforesaid as fully and effectually as if they were here repeated and they were thereto seperately Interrogated And more especially that he the said Thomas Sterrop Amos may answer and set forth whether he did or not on the 1st day of May 1817 or at any other and what other time execute the Indenture of Agreement hereinbefore set forth or an Indenture of Agreement to any other and what other purport or effect And whether in consequence of the Covenants in the said Indenture your Orator did not to the Utmost of his power exercise himself in the Office carried on in the name of the said Thomas Sterrop Amos in drawing all legal Proceedings and in the business of a Conveyancer Equity Draftsman and Special Pleader and all other Matters incident thereunto And whether your Orator was not after the said Thomas Sterrop Amos taking to his own use the said sum of L400 Sterling by quarterly payments to have an equal division of all the rest and residue of the Profits of the said business or how otherwise And whether your Orator has not as far as it relates to his transactions in the said business made due enteries of the monies received and paid in the Books or papers used as Books And whether your Orator hath or not often requested the said Thomas Sterrop Amos to make the enteries of his receipts and payments by him made in the said business And whether he has or not made any such account or entry and that he may produce the same and if not why not And whether the Books of accounts and all Bills Specialities and other writings in the Possession of your Orator was or not always open in the Office for inspection by the said Thomas Sterrop Amos at all times so far as the Proceedings were ? due whether the said Thomas Sterrop Amos did or not in and by the said Indenture covenant as hereinbefore mentioned or how otherwise And whether or not it was agreed between the said Thomas Sterrop Amos and your Orator that the business should be carried on in the lower part of your Orator's House in Pitt Street And whether on the Settlement of accounts a rent of L80 a year was or not to be allowed your Orator for rent of the Premises And whether it was not stipulated and agreed that your Orator should pay out of the monies received in the concern all or any and what part of the Clerk's wages and their maintenance And whether your Orator has not paid such Clerk's wages and maintenance and all or any and what part of other disbursements except the official fees which being always debited to the said Thomas Sterrop Amos were or not to be paid by him And whether your Orator has not paid great or any and what part of such official fees or taken up and paid the Securities that have been given by the said Thomas Sterrop Amos for payment thereof or how otherwise And whether your Orator has not paid great or any part of the expences of Witnesses subpoenad in the several causes and also paid to them all monies allowed for their Attendances as Country Witnesses or otherwise on each and every trial and if not what part of such moneys paid to Witnesses have been paid by the said Thomas Sterrop Amos or who else And whether your Orator has not paid for all the ? used in the said Office or any and what part of it and also for all or any and what writings done by ? in the said Office and also for all or any and what writings done by writers out of the office and for the writing paper Books of account and other necessaries ? for the said office or any and what part thereof are for any and what travelling and other expences in and about the concern And whether your Orator had not from time to time made or caused to be made just and true enteries in the Books of account ? papers used as Books of account of all the concerns of the said business or such part thereof as came to your Orator ? accepts and payment therein And whether the said Thomas Sterrop Amos has or not from time to time made any and what enteries in the Books or in any and what Books subject to the inspection of your Orator of his receipts and payments or of the business done by him and if not why not And whether your Orator has not often requested the said Thomas Sterrop Amos to bring in his account of business and of monies ? it be duly entered and brought to account in the Office Books and often requested the said Thomas Sterrop Amos to let the accounts be settled according to the terms of the said Agreement And whether he has or not often promised to make such arrangement but neglected or refused so to do And whether your Orator was or not for want of such account unable to state in the Books how the concern stood And whether the said Thomas Sterrop Amos And (sic) was or not on the 16th day of August 1819 or at any other and what other time struck off the roll of Attornies of this HC And whether after the said Court had so ordered him to be struck off or declared their resolution to strike him off he did not while your Orator attending in Court or otherwise Absent from the Office go and take **[p3]** from your Orator's House and out of your Orator's possession and from the place the business was carried on all or the greater part of the clients papers and securities and all the Books of account and books and papers belonging to the concern and many or any and what part of your Orator's private Books receipts vouchers papers and securities for moneys And whether Such private Books receipts vouchers papers and securities so taken out of your Orator's House or any and what part thereof did not relate to or were not your Orator's seperate property or how otherwise And whether such receipts securities Books and writings so taken away by the said Thomas Sterrop Amos the private property of your Orator was not to a very considerable value to your Orator in amount or whether they did not relate to a very considerable and what amount in value to your Orator or how otherwise And whether the said Thomas Sterrop Amos has or not got possession not only of the receipts and securities belonging to your Orator but of the greater part and what part of the Books and papers that would give an account of your Orator's private affairs and the contents of the papers taken away And whether your Orator has not requested a return of the said papers And whether the said Thomas Sterrop Amos has not refused so to do And whether your Orator has not requested all the Books papers and securities belonging to the concern to be deposited in the hands of persons to be appointed as receivers And whether he has not neglected or refused so to do And whether all such Books and papers was not in the possession of your Orator in his House in Pitt Street until after the said Thomas Sterrop Amos was ordered to be struck off the roll of Attornies And whether immediately after he did not go out of Court and take out of your Orator's possession from your Orator's Dwelling House and in his absence and without his consent all such Books papers writings and securities for money And whether the same is not to a very considerable or any and what amount And whether such order of Court as hereinbefore mentioned to be made on the 20th day of August 1819 was not made by this HC And whether he the said Thomas Sterrop Amos has been duly served therewith And that all your Orator's receipts Books papers securities and writings that was as aforesaid taken from his House be forthwith restored and the proceedings in the different causes and all the Books papers and writings relating thereto may be delivered to your Orator to enable him to make out the accounts of the concern and of the receipts and payments made in the same up to the 16th day of August aforesaid and that a receiver may be appointed by and under the order and direction of this HC and out of the first proceeds of monies to be got in from the Books your Orator may be allowed to pay over to the Officers of this HC and of all the other courts or otherwise all the fees due to such respective Officers and that upon the making such payment the receipt may be accepted by such receiver as money disbursed in the Joint concern and that as the monies come in after payment of such Official Debts the Surplus be paid into the Bank in the name of such receiver taking a receipt for the same and when the accounts are made out so much may be applied in the first place to pay your Orator what he has paid and disbursed for Witnesses Clerks Writers or other necessary things in the respective Suits or for necessaries for the Office and payments made for the said Thomas Sterrop Amos after the accounts ascertained and allowing thereout all monies received by your Orator in the concern And that the said Thomas Sterrop Amos may also set forth and account for all the monies by him received and after the reductions of all monies by him paid the balance may be struck and the Surplus monies divided according to the terms of the said Deed or Indenture And that the accounts of all sorts to be ascertained by and under the order and direction of this HC and subject to the Controul and direction of the same **May it please** this HC to grant unto your Orator HM's most gracious writ of Injunction to prohibit the said Thomas Sterrop Amos from receiving any money from the Books of account until such Settlement your Orator from time to time paying all monies he may receive after payment thereout all Office fees up to the 16th day of August instant as aforesaid and monies to the respective Clients immediately after paying to such receiver or into the Bank in the name of such receiver all such monies as may come in belonging to the Joint concern subject to such account payment and division as this HC shall direct and order concerning the same And also His Majesty's most gracious writ of Subpoena to be directed to the said Thomas Sterrop Amos or his Confederates when discovered commanding him and them at a certain day and under a certain pain to appear in this HC and answer to all such Matters and things as aforesaid and to stand to abide and Keep and to do and receive what this HC shall have considered of them in this behalf

Geo Crossley

in person

30th August 1819 Affidavit as to the truth Of Bill

George Crossley of Sydney Gentleman maketh Oath that the Bill hereto annexed is true in substance and matter as far as the same is stated to be in the Deponent's knowledge and the rest of the matters contained in the said Bill this Deponent believes to be true

Sworn in Court

before me Barron Field

Judge

Court costs

filing bill 10-0

NRS13724

Crossley v Allan and Palmer

George Crossley of Sydney Gentleman was many years a practising Attorney and Solicitor in and before the Courts of Law and Equity at Westminster and continued to practise as Agent before the Courts of this Territory and was to act on the instructions of Deputy Commissary General Allan and Assistant Commissary General Palmer as to bringing actions in the Governor's Court against debtors to the Crown. And P brought many such actions before his retainer was cancelled and a suit was brought in this Honorable Court and it was ordered that P's bill of costs be referred to be taxed by the Judge and the bill was taxed and the Judge's allocatur was for L632-13-8 And P's cause came on to be tried and by reason of John Palmer having employed P in his official capacity and the business whereon the debt arose being recovery of Debts due to His Majesty the Court was pleased to declare P's claim was for a debt due by the Crown for which the officer was not personally liable and thereupon a nonsuit was entered and P paid to Thomas Wylde Crown Solicitor L17-4-6 for costs of such nonsuit and P was advised that the way to enforce a Crown debt was by petition to HM to be referred to the Lord Chancellor and P has frequently in a fair and friendly manner applied to JP and David Allan requesting that they pay and satisfy P's fair and just demand but they at some times pretend that they are not answerable to any process issued forth of this HC and at other times pretend that P had never any authority from either of them to proceed [illegible] ALL WHICH actings and doings are contrary to Equity and good Conscience and tend to P's Manifold wrong and injury IN consideration whereof P is denied less? in the premises in and by the strict rules of the common law so that P cannot have any relief in the premises save in a court of equity where matters of this sort are properly cognizable and that the said DA and JP may be compelled by the decree of this HC to pay and discharge to P the said sum of L632-13-8 as by the rule of Court and Judge's Allocatur was awarded to P as aforesaid And that P may have such further and other relief in the premises as to Your Honor and this HC may deem (sic) meet and proper and according to equity and good conscience Prayer for writs of subpoena directed to DA and JP commanding them at a certain day and under a certain pain to be and appear before this HC then and there to answer to the premises and to stand to and abide such order and decree therein as to this HC shall seem agreeable to Equity and good Conscience And your Orator shall ever pray &c

TS Amos

Solicitor for Plaintiff

29 August 1818 Subpoena for David Allan and John Palmer to appear returnable 1 Sept 1818

4 September 1818 Appearance for John Palmer

Wylde

8 September 1818 Affidavit of James William Watt Clerk to TS Amos solicitor for P of personally serving on 31 August 1818 David Allan with a subpoena by delivering a true copy to him at his house in Woolloomoolloo and showing him the original tested 15 August 1818 which subpoena was for him to appear on 1 September 1818 and says that on 8 September he searched at the Judge's office and was informed by the clerk that no appearance was entered

On backsheet motion for an attachment against DA for his contempt in not appearing to a subpoena and for his default in not putting on an answer in due time Ordered to stand over untill Mr A was informed of it

Tuesday 8 September 1818 Upon the motion of Mr Amos Solicitor for the P and upon reading the Affidavit of James William Watt It is ordered that a writ of attachment be issued against the Deft DA for his contempt in not having appeared to a Subpoena duly issued in this Cause

By the Court

Amos Solicitor for the P

Motion for a month's time for D Palmer to Plead Answer or Demur to P's Bill of Complaint

Wylde

Granted 8th September 1818 By the Court John Gurner

11th September 1818 Appearance for David Allan

Returnable on 1st September Ult

Thos Wylde

Filed 15 September 1818 Petition by DA to have a month's time to plead answer or demur to P's Bill

8 September 1818 Be it so & hereof give notice forthwith B Field, J

9 October 1818 Petition of Ds that they may have 14 days further time to plead answer or demur to P's Bill

9 October 1818 Be it so & hereof give notice forthwith

B Field, J

Joint and Several Answers of John Palmer and David Allan sworn 2nd November 1818 assert among other things that the taxation obtained by P was not a valid taxation of costs in the Governor's Court which should have been by the Judge Advocate or the Judge or some other officer of the said Court and the Costs were taxed Ex Parte and say that the amount exceeds the amount of P's charges and Ds question whether P ought to have proceeded against so many or all of the persons sued and some of them were Crown employees who could have had their debts deducted from their salaries and payment of the debts could only be made under Warrant of the Governor and there was no such Warrant

Thos Wylde solicitor for Defendants

Sworn by John Palmer and David Allan before Barron Field Judge

in case of JP at his house Sydney

14th November 1818 Notice of motion that an attachment may be issued against Ds returnable immediately for their contempt in not filing their Answer

16th November 1818 I hereby undertake that the Ds Answer shall be filed on or before Thursday next in default whereof I consent to an attachment being issued for want thereof returnable immediately

Thos Wylde Ds Sol

20 November 1818 Attachment against DA and JP

TS Amos

20th November 1818 To allow for an attachment against Ds for not putting on an Answer returnable immediately

By the Court John Gurner

23 November 1818 Subpoena for George Crossley to hear Judgment

Returnable 4th December next

TS Amos P's Solr

4 December 1818 To be set down for Trial on the Adjournment day

TS Amos

11 December 1818 After reading the bill & answer a Decree was made that it should be referred to the Judge to see what was due to the P and reserving the consideration of Costs and further directions until the Judge should have made his report the Court declaring that the debt due to the Complainant was a debt due from HM Government and in the opinion of the Court the suit had been necessarily brought in this Territory to establish the claim as in all probability HM Minister would send it to the Lord Chancellor of England for his decision and without the establishment of the proof here the Chancellor of England would in all probability have nothing to guide his decision

Friday 19th February 1819 Order that Report made by Barron Field J bearing date 18th February instant and all the Matters and Things therein contained do stand ratified and confirmed. By the order and authority and decree of this Court to be observed and performed by all parties thereto according to the tenor and true meaning thereof

By the Court

John Gurner

Filed 15th March 1819 P's Bill of Costs

Ds' Bill of Costs

We consent that the Master's Report bearing date the 18th March inst do stand ratified and confirmed

TS Amos Solicitor for P Thos Wylde Solicitor for Ds

23rd March 1819 Upon reading the Judge's Report made in this Cause on 18th March instant and upon hearing Mr Amos Solicitor for P and by Consent of Mr Wylde Solicitor for Ds it is ordered that the said Report stand ratified and confirmed by the Order and Decree of this Court

By the Court John Gurner

NRS 13724

Crossley v Terry

Filed 13th Decr 1819 Demurrer of Samuel Terry to the Bill of Complaint of George Crossley

The said D by protestation not confessing or acknowledging all or any of the matters or things in the Complainant's said bill of complaint to be true in such sort manner and form as the same are therein and thereby set forth and alledged for answer to the said Complainant's bill of complaint this D doth demur in ? and for cause of Demurrer Saith that it appears of the P's own showing in his said bill of complaint that he claims or pretends to claim a disclosure and discovery of the matters contained in the P's said bill of Complaint under and by virtue of a certain corrupt contract made by Indenture bearing date the first day of May which was in the year of our Lord 1817 between Thomas Sterrop Amos by the name and description of Thomas Sterrop Amos of Sydney Gentleman one of the Attornies of the Supreme Court of the one part and the said Complainant of the other part the said Thomas Sterrop Amos being then an Attorney Solicitor and Proctor of the Supreme Court of Judicature holden at Sydney in and for the Territory of NSW and its Dependencies with the Intent and purpose and for the Establishing a Copartnership and the making of a Division of the Fees due and right payable to the said Thomas Sterrop Amos as such Attorney Solicitor and Proctor of the said Supreme Court between himself the said Thomas Sterrop Amos and the said Complainant the said Complainant not being an Attorney Solicitor or proctor of the said or any other Court in the said Territory or Elsewhere nor being in any other way qualified to make a charge of or to have or receive any of the Fees due and of right payable to an Attorney Solicitor or proctor of the said Court such contract or agreement made in the nature of a Deed of Copartnership being contrary to law and the rules and practice prevailing in the said Supreme Court and therefore and for divers other good causes of Demurrer the Complainant's said bill of his own shewing appearing this D doth demur and doth demand the judgement of this HC whether he ought or shall be compelled to make an answer thereto other or otherwise than as aforesaid and humbly prays to be thence dismissed with his Costs by him in this behalf wrongfully sustained

Thos Wylde

Solicitor for D

Court costs

NRS13724

Geils v Gordon

Bill of Complaint 20th August 1822

Substantial portions [especially of p1] illegible

NRS13724 Gore v Eagar

Bill of complaint 21 February 1818 to Barron Field. Six sheets. First sheet just legible. 2nd sheet totally illegible. Third sheet just legible in part. 4th sheet legible in part. 5th sheet partly legible. 6th sheet not quite legible. Ptff was Provost Marshal and agreed to employ deft as a clerk in his office but precise cause of action and full details cannot be divined. There is certainly an allegation that deft embezzled or misappropriated moneys received for bail bonds and made false returns to writs of fieri facias (p 1).

Bill of complaint is only document in file.

NRS13724

Hook v Gilberthorpe

Bill of complaint filed 5 May 1817 Charles Hook of Sydney Merchant sole surviving executor of Thomas Abbot late of Sydney sheweth that Thomas Gilberthorpe of this Territory stood indebted to the estate of TA in the sum of L988-1-101/2 for which sum the executors of TA to wit the P William Hobart Mansell and Ann Clark of whom P is now the only survivor recovered a verdict in the Court of Civil Judicature which verdict His Excellency the Governor sitting as Judge in the Court of Appeals was pleased to affirm on 20 March 1813 and was further pleased to recommend that no execution should issue provided that TG submitted to the decree pronounced by HE and should pay to the executors one fourth part of the debt in Four months from the said 20 March 1813 with colonial interest one other fourth part of the debt with colonial interest in eight Months therefrom one other fourth part of the debt with colonial interest in Twelve Months therefrom and the residue of the said debt with colonial interest in eighteen Months from the said 20 March 1813 and P sheweth that three out of the four aforesaid installments have been paid by D to George Crossley of Sydney who at that time acted as Solicitor for the Executors and who as such was authorized to receive the same but D has never yet paid the fourth installment amounting to L253-12-3 notwithstanding that he had been repeatedly called upon by P in a friendly manner so to do as in justice and equity he ought to have done But now so it is that D combining and confederating with divers other persons at present unknown to the P whose names when discovered P prays may be added refuse to pay to the P the sum of L253-12-3 sometimes pretending that he has also paid the said sum to George Crossley and at other times pretending that he has paid the said sum to Ann Clark by giving her a bill of exchange or a promissory note whereas P charges contrary to be the fact and asserts that no such promissory note has been paid or bill of exchange discharged and no such security can be found among the papers of the executors all which actings and pretences are contrary to equity and good conscience and tend to P's great wrong and injury IN TENDER CONSIDERATION whereof and forasmuch as P is remediless at common law and cannot be relieved but in a court of equity TO THE END that TG and the Confederates may true distinct perfect and sufficient answer make on their corporal oaths to all and singular the matter aforesaid and more especially whether P is sole surviving executor and [here are repeated the above allegations] and whether said last installment or any part thereof is not still due owing and unpaid to P and that P may have such further and other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience MAY IT PLEASE YOUR HONORS to grant to P Writ of Subpoena directed to TG personally to be and appear before YHs to answer the Premises and to stand to and abide such order and decree as to YHs shall seem agreeable to equity and good conscience

WH Moore

6 May 1817 Subpoena to D to appear returnable 12 May Instant

WH Moore Solr

15 May 1817 Appearance of D returnable 12 May 1817

TS Amos

20 May 1817 To move for six weeks time to answer plead or demur to P's Bill

This is a Country Cause D living at Pitts Town and the first application D having appeared and not being in contempt

Amos

Granted from the 20th May

John Gurner

Motion that the plea may be taken without oath being a plea of fact in Law subject to the Legal decision of the Court - the D lives in the Country and the plea being filed without oath if necessary on time being given it will be verified

P's Solicitor has notice of the motion

20 Aug 1817 4 days to verify from this time

Amos

Defendt Atty

PLEA of TG filed without oath 1 July 1817 P's bill is to compel D to pay an alleged sum of L988-1-101/2 stated to have been recovered by executors of TA in the Governor's Court the order of which is set out in full D not confessing or acknowledging any of the matters in the said bill contained to be true doth plead in bar and for plea saith that after the order on appeal the D and the executors of the said TA entered into an agreement in writing by which the terms as recommended by HE the Governor were agreed to be carried into execution between the parties Appellant and Respondents in the appeal and in compliance with such recommendation and agreement D says he paid and satisfied to the executors the full sum of L988-1-101/2 with all interest due thereon at or about the respective times mentioned that is to say the first two instalments were paid to Mr George Crossley their solicitor and the third instalment was paid to Charles Hook and the fourth instalment making the full sum of L988-1-101/2 with all interest thereon was paid on or about 13 September 1814 to Ann Clark for which payment D took a receipt and discharge acknowledging receipt on 13 September 1814 of TG of L256-18-0 and containing these words "being in full discharge of the principal Money and Interest remaining due on the decree made in this Cause" all which matters this D doth aver and plead in bar of the bill and of P's pretended demand for which he seeks to be relieved by his said bill and D prays to be hence dismissed with his reasonable Costs in this behalf wrongfully sustained

TS Amos D's Solicitor

Sworn at my house in Sydney

25 August 1817 before me

Barron Field Judge

Exceptions to D's plea

In argument

Wednesday September 24th 1817

Moore

Petition by P filed 1 Nov 1817 Barely legible but prays for (inter alia) time to put on his further answer

Further answer of TG filed 2 Jany 1818

Totally illegible

Friday 27 February 1818 Decree

In the Supreme Court NSW

In Equity

This Cause coming on to be heard this day before the Hon Barron Field Judge of the SC aforesaid D'arcy Wentworth of Sydney Esquire and Richard Brooks of Sydney Esquire Members of the said Court The substance of the P's bill appeared to be that the said Thomas Gilberthorpe stood indebted to the Estate of the said Thomas Abbott in the sum of L998-1-101/2d for which said Sum the Executors and Executrix of the said last will and testament of the said TA To wit the said Complainant Charles Hook William Hobart Mansell and Ann Clark of whom the Complainant the said CH is now the only Survivor recovered a Verdict in the Court of Civil Judicature in this Colony which Verdict His Excellency the Governor sitting as the Judge of the Court of Appeals was pleased to affirm on the 20th day of March in the year of Our Lord 1813 and was further pleased to order that the said sum of L998-1-101/2d should be paid and discharged by four equal payments all of which were to be fully paid and discharged with Colonial Interest in eighteen months from the said 20th day of March in the year of Our Lord 1813 and that three of the said payments had been duly made Therefore that the said TG the said D may discharge the said last payment with Colonial Interest and to be releived is the of the said Complainant's bill [sic] Whereto the solicitor for the said D alledged that he by answer admits that the said Verdict was recovered against him for the said sum of L998-1-101/2d as aforesaid and that His Excellency the Governor sitting as Judge of the Court of Appeals was pleased to affirm the same and to order the said sum of L998-1-101/2d to be paid and discharged by four equal payments as aforesaid and that three out of the four payments have been made and discharged by the said D and that the said fourth payment had been made in manner following that is to say in Cash or other Sterling Notes the sum of L106-18-0 or thereabouts and a Note of hand payable at Six months after the date thereof signed by the said D for the sum of L150 Sterling making together the total amount of the said fourth last payment so ordered to be made as aforesaid that the said Note of hand was when it became due by the then holder of the same demanded payment of from the said D at a certain house in Sydney but the same was not then paid because it was not presented at the said D's proper residence that several other Persons have since applied to the said D for payment of the said Note but because none of the said Parties had the said Note to produce the said D did refuse to pay the same And that if the said Note had been produced the said D would have paid the same And the said D verily beleives the said Note is now in circulation Whereupon and upon debate of the matter and hearing what was alledged by the Solicitors on both sides His Honor the Judge of the said Court and the Members thereof decreed that the said D do pay to the said P the sum of L150 Sterling upon his executing a bond of Indemnity (to be settled by the said Judge) against the payment of the said Note and Interest to any Person who shall produce the same And that the costs of this suit to be taxed in the usual manner be paid by the said P to the said D

William Henry Moore By the Court

Solicitor for the Plaintiff B Field

Judge

Passed and entered

3 March 1818

John Gurner

Regr

9 May 1818 Writ of Execution of Decree

WH Moore P's Solr

9 May 1818 Order sealed under the hand of Barron Field that D immediately pay or cause to be paid to P the sum of L150 sterling

13 May 1818 Affidavit of WH Moore of personal service of Writ on D on 11 May 181

13 June 1818 Attachment against D returnable 15 August 1818

WH Moore P's Solicitor

Note of Court fees