NRS13724

William Holton Hovell v George Charters

Bill of complaint 28 November 1817 to Barron Field William Holton Hovell of Narrelling in the District of Upper Minto For that in the early part of 1817 P was indebted in the sum of L120 to George Charters of Sydney dealer upon a promissory note drawn by P and payable to D for collaterally securing the payment of which sum of L120. D proposed to P that P should execute to D an assignment by way of Mortgage of certain Lands and Property which P possessed in the District of Upper Minto. And P consenting thereto D prepared a Deed or Instrument in his own hand writing to secure to himself the sum of L120. But in preparing the said Deed or Instrument D inserted in it the sum of L600 instead of L120 as the consideration thereof and stated to P that the sum of L600 was a matter of form the better to secure D the payment of L120 and that D would not assign the said Deed or negociate the said Note to any person whatsoever and D would give P a Certificate or Memorandum as a security or indemnity that P should not be called upon to pay by virtue of Promissory Note or Mortgage Deed any sum greater than L120 to all which P being ignorant of forms of law agreed and thereupon executed aforesaid Deed or Mortgage dated 16 April 1817. Deed is set out in full. It contains an acknowledgment the P is indebted to D in sum of L600 and whereas P is seized and possessed of 700 acres of land in the District of Upper Minto known by the name of Narrelling Farm P in consideration of the sum of L600 owing by him to D hath bargained and sold assigned and made over to D the Lands and specified stock depasturing thereon Provided that if P on or before 31 March next pay to D aforesaid sum of L600 together with Legal Interest for the same the Land shall revert back and stand reassigned as if this Deed had not been made. Certificate that on 31 March next P will be entitled to a credit of L480 out of the mortgage debt and when sum of L120 is paid D undertakes to deliver up all deeds papers &c attending said transaction And D delivered over to P said Memorandum in Writing as a security that P should not be called upon to pay more than L120 as due to D by P and P would have been contented to have paid on 31 March 1818 the sum of L120. But P has been informed that D has negociated the promissory note and assigned over the Mortgage for some valuable consideration to P unknown to Edward Eagar of Sydney Merchant who has been induced to purchase the same in consequence of D keeping Edward Eagar in ignorance of the real transaction and keeping from him the said Memorandum and which Note and Deed D negociated and assigned over without the Knowledge Privity or Consent of P and which if P were consulted on by D P would never have consented to by reason of which Assignment of the Deed P is advised that P is liable to pay to EE the full sum of L600 instead of L120 which is only and bona fide due and owing. And D by an advertisement in the Sydney Gazette of 15 November has notified an Intent to leave this Territory for Europe by the ship Harriott about to sail and as P believes D has applied for and obtained at the Judge Advocate's Office the Clearance required by persons leaving this Territory P believes that D has expressed his Intention and Determination never to return to this Territory. And P on finding that Deed and promissory note were assigned over as aforesaid and that D was about to leave this Territory whereby P would be deprived of all opportunity of showing that sum of L120 only was owing upon the Deed and P be subject to the payment of the entire sum of L600 P applied to D either to give him some good and sufficient Indemnity against being called on for the payment of L600 or to indorse on the back of the Deed the real sum owing all of which D refused to do BUT NOW SO IT IS may it please this Honorable Court that D is combining and confederating to and with divers persons at present unknown to P whose names when discovered P prays may be inserted in this his Bill of Complaint with apt words to charge them how to defeat and defraud P of his just rights and demands he the D and his Confederates give out and pretend sometimes that the said sum of L600 inserted in the Mortgage Deed is bona fide due and owing from P to D and at other times they the said Confederates will admit that the sum really due and owing from P is only L120 and that he the D and his Confederates pretend that the Balance of the said sum of L600 that is to say the sum of L480 was to be received by D as a loan from P to D Whereas P expressly charges the contrary to be the fact and D well knows that only the sum of L120 is due and owing from P to D as aforesaid all which Actings Doings and pretences of D and his Confederates are contrary to Right Equity and good conscience and tend to the Manifest fraud and Injury of P as aforessid IN TENDER CONSIDERATION whereof and for as much as P is remediless in the premises in and by strict Rules of common Law and can only be relieved by the aid and assistance of a Court of Equity where matters of this Sort are properly Cognizable TO THE END THEREFORE that D and his Confederates when discovered may true full and perfect answer make upon his and their Corporal Oaths to all and Singular the premises and effectually as if the same were here again repeated and he and they thereto particularly interrogated and more particularly that D may set forth and declare upon his Corporal Oath [the fact as to the detailed allegations made against him]. And that D may be compelled by a decree of this HC to deliver up to be cancelled or to reconvey to P the said Mortgage Deed in the said sum of L600 upon P paying over to D the said sum of L120 with interest for the same and that P may have such further and other relief as shall be agreeable to Equity and good conscience MAY IT PLEASE YOUR HONOR AND HC the premises considered to grant unto P not only His Majesty's most gracious writ of **Ne exeat Regno** to retain D from departing out of the Jurisdiction of this HC but also a Writ or Writs of Subpoena

Answer sworn before Barron Field at his house in George Street 29 November 1817 D saving to himself now and at all times hereafter all and all manner of benefit and advantage of exceptions to the manifold incertainties and imperfections in the Complainant's said Bill of Complaint contained for answer thereunto or unto so much thereof as materially concerns this D to make answer unto he answereth and saith that he admits that in early part of 1817 C was indebted to D in the sum of L120 and D having only C's promissory note in that sum and being apprized that C's circumstances were in a very doubtful state D some time in April applied to C to give him a collateral security by way of Mortgage of certain Lands in possession of C to more effectually secure payment to D which C refused to do unless D consented to take such Mortgage for the sum of L600 to answer some views of C's own whereupon D did consent to put a nominal consideration of L600 in the Deed of Assignment and gave to C the memorandum mentioned in the Bill by which it is expressed that C would be entitled to a Credit of L480 out of the sum of L600 and that upon payment of L120 D undertook to give up all deeds papers &c relating to the said transaction. And D denies that D proposed to C that C should execute to D an assignment by way of Mortgage of certain property in the District of Upper Minto but upon D applying to C to collaterally secure by mortgage L120 C refused to make an assignment for a lesser sum than L600 C alleging that he would be likely to derive certain advantages in negociating with other persons and C executed the Mortgage D not only delivered him the Memorandum that no more would be demandable than L120 but declared he would not claim any more under the Deed in any way whatever. And D admits that he did at the request of C prepare the Deed set forth in the C's bill but that such Instrument was never intended to secure more than the sum of L120 payable at the time hereinbefore stated and the said sum of L600 was inserted in the Mortgage at the instance of C and much against the will of this D and this D denies that he ever stated to C other than as aforesaid that the sum of L600 being mentioned in the Deed as a a consideration thereof was a mere matter of form or that the same was more effectually to secure to this D the sum of L120 but D admits that he told C that he would not on any pretence demand of C any greater sum than L120 and D denies that he undertook to negociate the said note or deed save that he did promise if he negociated the same to state the true consideration and D admits the deed to be in the words or to the purport or effect set forth in the C's bill and D admits the memorandum signed by him to be to the purport and effect as in the bill mentioned and to declare that when the sum of L120 was paid by C D did agree to deliver up all deeds and papers attending the transaction and D says said paper was meant to be a full indemnity against any claim greater than L120 and D admits that he hath assigned the same note and mortgage to one Edward Eager for the sum of L120 and no more in consideration of cattle and goods received from EE and then valued at L100 and no more but which only produced D L85 or thereabouts and that at the time of such assignment EE was well apprized of the same and that no greater sum of money than L120 was due upon the said deed or note and D saith that D applied to C to execute unto D a deed for securing the sum actually payable unto D and have that then existing cancelled but which C refused to comply with and D denies the C ever made any application to D for any other indemnity which he already held or that D refused to endorse on the back of the Deed of Mortgage the real sum bona fide due and D saith that on several occasions since the assignment D C and EE have had frequent meetings and consultations on matters relating to the affairs of C and on which occasions the sum of L120 was spoken of as the sum which C would have to pay EE and in which EE acquiesced. And D denies that he ever gave out or pretended that the balance of the sum of L600 that is to say L480 was to be received by D as a loan from C. On the contrary D admits that no more than L120 is payable on the ?foot of said transaction and which sum and no more EE as assignee thereof is authorized to take sue for or receive. And D admits he has advertised his intention to leave this Colony in the Ship Harriet for Europe and D denies all manner of Combination and Confederacy wherewith 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

Sworn at my House in George Street

Sydney the 29th November 1817 before me

Barron Field

Judge

NRS 13724

Howell v Hook and others

Bill of complaint 26 February 1818 to Barron Field Thomas Howell v (Charles Hook), William Redfern, Richard Jones and Margaret Rea concerning the Estate of Thomas Abbott Merchant died August 1812 Thomas Abbott Merchant died August 1812 having made a will on or about 10 July 1812 whereby he made bequests of L1000 to each of his father his brother William his sister Mary Abbott and his sister Grace Abbott with in the case of each of his siblings gifts over to their children and in case of his father dying or any of his siblings dying without issue he disposed of the failed interest among the others of them. He gave to Ann Carney his wife from whom he was separated L50 if she would release all rights of dower or otherwise concerning his estate otherwise 1/- only. He gave all the rest and residue of his estate real and personal to his respected friend and partner Ann Clarke and appointed Ann Clarke William Hobart Mansel and Charles Hooke his executors [p2] to whom probate was granted on or about 5 October 1812. Shortly after CH and WHM took upon themselves the whole of the concerns of TA. They proceeded to call in outstanding debts and make sale of the real and personal property and received proceeds of the sales without consulting AC or asking for or receiving her approbation or consent. CH has possessed himself of papers bonds bills and other securities and has commenced suits at law and in equity for recovery of the same particularly a suit against Thomas Gilberthorpe and CH has also possessed himself of divers articles of property of TA all of which he has converted to his own use and has not accounted for. WHM died on or about 23 March 1816 having published his will and appointed Richard Jones William Redfern and Margaret Rea his executors. And WHM at the time of his death had in his possession considerable funds belonging to the estate of TA and CH also has monies property or effects belonging to the estate and unaccounted for and unappropriated to the purposes of the estate. [p3] AC died on or about 14 June 1815 having first married the ptff whereby ptff is justly and equitably entitled to all the residuary property of TA And ptff has often applied to CH and to WHM and his executors for an account of the personal estate of TA and of the rents issues and profits of his real estate and that they might pay to him what upon the balance of the accounts might appear to be due to him and assign to him such part of TA's personal estate as consists in mortgages bonds or other securities and to be let into possession of the real estate of TA. But the said CH RJ WR and MR "combining and confederating themselves to and with divers other persons at present unknown to" the ptff whose names when discovered the ptff prays may be inserted herein contriving how to defraud the ptff and to defeat the ptff of the benefit he is entitled to under the will of TA in right of his wife they CH RJ WR and MR refuse to give or render any account of the personal estate or let the ptff into possession of the real estate they pretending that the personal estate was very small and inconsiderable not sufficient to pay the debts legacies and funeral expenses whereas TA [p4] died possessed of a considerable personal estate such as to pay the above and produce a surplus but the legacies were not paid and WHM was under some circumstances of embarrassment and employed a considerable part of the monies belonging to the estate in speculations in trade on his own private account and derived great benefit therefrom and they only made AC occasional small advances totalling not more than L200 all of which actions and doings of CH and WHM are contrary to right equity and good conscience and tend to the great injury of the ptff. In tender consideration whereof and for as much as matters of this nature are most properly cognizable and relieved in this Honorable Court in its Jurisdiction as a Court of Equity and in regard the ptff cannot compel an account or the payment of what is due but by the assistance of this Honorable Court To the end therefore that CH RJ WR and MR may upon their several Corporal Oaths true and perfect answer make to all and singular the premises. [Balance of p4, whole of p5 and first half of p6 repeat the allegations which Ds should answer. P6 then continues] And that the sd RJ WR and MR may set forth so far as they are able from the books writings accounts or other documents left by WHM or that belong to his concerns a just true and full account of all the monies goods chattels and effects that were in the hands of WHM at the time of his decease belonging to TA and which came into his hands or possession as executor and that CH may in like manner have discover **[?]** a full just and true account of all the monies goods chattels and effects that come into his hands as executor and that CH may render a correct statement of his knowledge of the transactions of WHM in respect of the estate with any other person and that CH RJ WR and MR may particularly and precisely set forth on oath all that they respectively know from books &c in possession of WHM [p7] or from any other means all and whatsoever they know relating to the administration and the executors of WHM may now be required to do what WHM ought to have done in his lifetime in regard to the administration and that the ptff may have such further and other relief as to this HC may seem meet May it please Your Honor and this HC the premises considered to grant to the ptff a writ or writs of subpoena directed to the Ds personally to be and appear to answer the premises

26 February 1818 Subpoena for Ds to appear

Wylde

2 March 1818 Appearance by Ds other than Hook

Amos Solicitor

Motion by Ds other than Hook for a month's time to answer. Granted 18 May 1818

19 May 1818 Motion by Hook for time to answer

1 July 1818 Attachment against Charles Hook for not answering bill Returnable 10 July 1818

Wylde

4 July 1818 Petition by Ds other than Hook for a Month's time to plead answer or demur

10 July 1818 Demurrer of Charles Hook [writing small and difficult to read] on ground that D was and is only a joint executor. Contains allegation that Ann Clark's "habits of drunkenness and depravity were so generally notorious as to prevent this D from acting or having any sort of intercourse with her"

July 1818 Answer of Richard Jones, William Redfern and Margaret Rea admits the will, the probate, the death of William Hobart Mansell on 23 March 1816, his will and their appointment as executors. They have acted as such executors "but are wholly unacquainted with what funds if any" he had of Thomas Abbott's. All the books and papers that came into their hands as relate to the Estate of Abbott they delivered to Charles Hook the surviving executor. Also they have accounted to CH for all the Estate and Effects of TA as has come to the hands and possession of Mansell in his lifetime. And they deny all manner of unlawful Combination and Confederacy charged against them.

31 July 1818 Petition of Ds that answer may be put in without oath. Consent of ptff attached.

6 Aug 1818 Petition by ptff to set down demurrer to be argued

Be it on Tuesday 21 Aug 1818 B Field J

Brief To move that D may deposit with the Clerk of the Court the Day Books and other writings referred to in his answer for the inspection of the ptff, his solicitor &c Granted 15 Sep 1818

19 Sep 1818 Attachment against Charles Hook for not answering bill Returnable 28 Nov 1818

Wylde

Sworn 21 Sep 1818 Answer of Charles Hook

Deft saith he doth beleive (sic) that Thomas Abbott departed this life on or about 2 August 1812 having duly made his will dated July 1812 but for certainty this D refers this Honorable Court to the Probate of the said will and saith that on or about 8 October 1812 this D and William Hobart Mansell and Ann Clark proved the will in the Court of Civil Judicature. That after the said will was so proved the said WHM took upon himself the management of the Estate of the Testator in which this D never interfered save as to the disposal of some few articles of Merchandize belonging to the Estate of the Testator which were left by him in the Stores of Robert Campbell the Elder (where this D resided at the time) until after the departure of the said WHM from this Place to Van Dieman's land (sic) which took place in or about the month of

that during the absence of the said WHM the Brig Active then partly belonging to the Estate of the Testator came into Port Jackson and this D in order to prevent any loss happening to the Estate of the Testator sold the Testator's Interest therein to Simeon Lord Esquire of Sydney for the sum of L1200 that he also received sundry small debts and sums of money from persons who were indebted to the Estate of the Testator who called upon this D to pay the same the particulars whereof are amongst other things fully set forth in the Schedule or Inventory attached hereto and marked with the letter A and this D further answering saith that the said WHM having as aforesaid taken upon himself the whole management of the Estate of the Testator and having got possession of all the Deeds, Books, Papers and accounts when the said WHM departed from this place he locked up the same here so that this D was able to obtain but little knowledge of the affairs of the Testator and in consequence thereof this D invariably refused to act therein further than he was unavoidably compelled to do. And this D further answering saith that the said WHM departed this Life on or about the time in the said Complainant's bill of complaint mentioned having previously made and duly executed his last Will and Testament appointing such Executors as in the said Bill of Complaint is set forth at which time a very large sum in money and securities for money was to the best of this D's Knowledge and beleif in the hands of the said WHM And this D further answering saith that shortly after the death of the said WHM this D applied to Richard Jones and William Redfern Esquires the acting Executors of the last Will and Testament of the said WHM decd for an account of all sums of Money and Effects belonging to the Estate of the said TA decd remaining in the hands of the said WHM at the time of his death and which had come to their hands as his Executors since his decease and that he this D received from them an account Current made up to 28 October 1815 in the hand writing of the said WHM whereby it appears that there remained in the Hands of the said WHM at the time of making such account Cash to the amount of L2724-16-7d as appears by a Copy thereof hereunto also annexed forming the Schedule or Inventory marked with the letter ? And this D further answering saith that he hath also received from time to time of the said RJ and WR Executors of the said WHM various Books, papers and documents relating to the Estate of the said TA from which this D has made out and sent to the said RJ and WR the 2 several accounts hereunto also annexed and marked B and C and has also made out the 2 several accounts marked D whereby this D charges the Estate of the said WHM to have Money and Effects belonging to the Estate of the said TA decd to the sum of L15233-17-21/2d or thereabouts be the same more or less of which said sum this D has received from the said RJ the sum of L2964-7-33/4 leaving a balance still remaining due from the Executors of the Estate of the said WHM to the Estate of the said TA of L12269-9-103/4 And this D further answering saith that since the Death of the said WHM he this D having obtained possession of certain of the Books, papers and accounts of the said TA that is to say six day Books and two Ledgers and also a Book containing an account of an Investment of Captain Weekly he has instituted proceedings at Law and in Equity in order to get in the Money which appeared to be due to the said Estate of the said TA as appears by the ?various debts due to the Estate on Judgments in Schedule I. And this D also commenced a suit against Thomas Gilberthorpe in which he obtained a decree that the sum of L150 should be paid to him but the whole Costs attending such suit were decreed to be paid by this D and that the Costs of the said D Gilberthorpe were taxed by His Honor the Judge of this Honorable Court at the Sum of L43-14-8 and the balance amounting to the sum of L106-5-4 is still in the hands of the solicitor employed by this D in the concerns of the Estate of the said TA as part payment of a large sum due to him as such solicitor as aforesaid. And this D further answering saith that the said Ann Clarke the late wife of the said Complainant possessed herself of all or a very considerable part of the Household Furniture, Plate, Linen, China, Merchandize, Goods, Apparel, Jewells and other effects of the Testator TA amounting in value to the sum of L430-19-6 as appears by her receipt for the same at the foot of an Inventory thereof a copy of which is also hereunto annexed being Schedule marked with the letter E. And this D further answering saith that the said AC collected and got in Monies due to the Estate of the said Testator TA as far as this D is able to ascertain to the amount of L552-4-111/2 according to the account hereunto also annexed by way of Schedule marked with the letter F. And this D further answering saith that the said AC departed this Life having previously married the said Complainant as in the said Complainant's bill of complaint is set forth. And this D further answering saith that the said Testator TA died possessed of a very considerable Estate but this D is utterly unable at present to state whether or not such Estate will eventually turn out sufficient to pay and discharge all his just debts funeral expenses and Legacies inasmuch as to the best of this D's knowledge and belief none of the Legacies bequeathed by the said TA the said Testator excepting a Legacy of fifty pounds bequeathed by him to his lawful Wife are yet paid (sufficient Money to discharge the same not having yet been got in to enable this D so to do). And this D further answering saith that this D and the said WHM in his Life time advanced to the said AC divers sums of Money as far as this D has been able to ascertain to the amount of L797-16-10 as appears by the Schedule hereunto also annexed and marked with the letter G And this D further answering saith that a general account (Errors Excepted) of the affairs of the Estate of the said Testator the said TA with the exception of such particulars as are hereinbefore otherwise set forth as the same now stands Debtor and Creditor with this D in which all the Monies paid and received by this D is hereunto also annexed and marked with the letter H. And this D further answering saith that suits are now depending between this D and the Executors of the said WHM to recover the balance supposed by this D to be due to the Estate of the said Testator TA from the Estate of the said WHM. And that a suit is also depending having been commenced by Mr John Palmer against this D as Executor as aforesaid to recover the sum of L800 and upwards. And this D further answering saith that there are various claims still unsettled and unliquidated which are made upon the Estate of the said Testator TA independent of the Legacies bequeathed by the said Testator's will And this D further answering saith that by the books and papers now in his possession it appears that there are a great many Debts due to the Estate of the said TA decd still outstanding but which this D has not yet been able to collect or recover on account of the great difficulty this D hath in collecting evidence of such debts that all or the greater part of the debts now outstanding on which Judgments have not yet been obtained are debts of so long standing that very few if any of them are recoverable and in consequence thereof this D has been at a very considerable expence and has taken infinite trouble to obtain acknowledgments and promises from the various Debtors to the said Estate and which he has actually obtained from some of them and is consequently about to bring actions and obtain Judgments thereon And this D further saith that such Debts as are now outstanding on Judgments are mostly against persons in insolvent circumstances and for that reason this D has not thought proper to issue Executions on such Judgments until he ascertains that such Debtors have property sufficient to pay the amount or part thereof after deducting the expences which would be necessarily incurred in obtaining such writs of Execution and levying thereunder And this D further saith that a list of the Debts now outstanding as appears by the several Books of accounts and documents now in the D's possession is set forth as correctly as this D is enabled to do in the Schedule or Inventory hereunto also annexed and marked with the letter I And this D denies all and all manner of unlawful combination and confederacy wherewith without this that there is any other matter, cause, or thing in the Complainant's said bill of complaint contained material or effectual in the law for him to make answer unto and not herein and hereby well and sufficiently answered avoided traversed or denied is true to the knowledge and beleif of this D all which matters and things this D is ready and willing to aver maintain and prove as this HC shall direct and humbly prays to be hence dismissed with his reasonable costs and charges in the Law in this behalf most wrongfully sustained

Sworn at my House in Sydney C Hook

this 21st day of September

in the year of our Lord 1818 before me

Barron Field

Judge

28 February 1823 Affidavit of James Lindsay Clerk to WH Moore deposing that he had on 26 February personally served on the ptff a notice of motion by Hook that on 28 February the bill might be dismissed for want of prosecution with costs to be taxed by the Master

7 March 1823 Affidavit of ptff sworn in open Court and filed. Deposes solicitor Thomas Wylde has died; all his papers relating to the cause were put into the hands of the Judge Advocate; he has not delivered them over and is now absent; ptff is very anxious to proceed to a hearing

Motion refused 28 February 1823

Court costs copy held [no new information]

NRS13724

Robert Jenkins v (James Hargraves) and Thomas Bowden

Bill of complaint filed Fri 5 May 1817 to Barron Field Robert Jenkins of Sydney Merchant believing that James Hargraves was a man of considerable property and was Copartner in a mercantile or trading establishment in this town which consisted of himself and Thomas Bowden of Sydney Merchant P did on the faith of the said Copartnership give credit to JH as acting Copartner in a quantity of goods and merchandize a full account of which P has delivered to JH which account JH has repeatedly acknowledged to be just and accurate and balance due to P on the adjustment of the same to wit the sum of L64-3-4 was just and accurate and in good faith and truth owing to P and that P hath repeatedly claimed and demanded payment of the said sum of L64-3-4 both from JH as the acting and managing Copartner in the said trading house but also from the said TB the other partner together with the said JH and P well hoped that JH and TB would have complied therewith without suit as in Justice and Equity they ought to have done but now JH and TB combining and confederating with divers other persons as yet to P unknown whose names when discovered P prays may be inserted herein as defendantts the said confederates do now absolutely refuse to pay or secure the payment to P of the said balance due to P of L64-3-4 sometimes pretending that JH is insolvent and that TB was not a partner in the said trading house or firm and at other times pretending that JH has enabled TB to pay and discharge the said sum of L64-3-4 whereas P says the truth to be that the said sum of L64-3-4 is still justly due and owing to P from the said JH and TB and that such actings doings and pretences are contrary to Equity and good conscience and tend to the manifest injury and oppression of P In tender consideration whereof and for that P is remediless in the premises by the strict rules of the common law and is only relievable in a Court of Equity where matters of this nature are properly cognizable To the end therefore that the Confederates may respectively full true direct and perfect answer make upon their respective corporal oaths to all and singular the matters and charges as aforesaid and especially that they may answer whether P did not so credit JH with goods and merchandize and whether the amount due on the settlement of the account is the said sum of L64-3-4 and whether TB did not know of and consent to the purchase of the said goods and merchandize from P and whetherr the house or shop in which JH and TB resided was not the place where the said trading or merchandizing was carried on by JH and TB and whether the said trading and merchandizing was not carried on on the joint account and for the joint benefit of JH and TB and whether TB has not acted frequently in the said house or shop as a trader and dealer in such goods and merchandize together with JH also whether JH and TB have not divided the profits arising from such trading and dealing and whether TB has not purchased goods for the use of such trading house as aforesaid and whether TB did not keep books of accounts together with JH in which the trading concerns of the said trading house were duly entered and whether JH and TB were not in point of fact absolute and perfect Copartners in the said trading concern carried on by and between them And further that they may be compelled by a decree of this Honorable Court to pay P the said sum of L64-3-4 so due to P as aforesaid and that P may have such other and further relief in the premises as to Your Honors may seem meet

Prayer for writs of subpoena to JH and TB to appear personally and to answer the premises and to stand and abide such order and decree as to Your Honors shall appear agreeable to Equity and good conscience

WH Moore

Petition by defendant TB filed 24 June 1817 that he may have a fortnight's further time to plead answer or demur to P's bill

TS Amos solr for deft TB

Direction dated ? July 1817 to Provost Marshall to attach TB and have him before the Court on 15 August next to answer

Answer of TB filed 7 August 1817

Illegible

Notice of motion filed 9 Aug 1818 by defendant TB to dismiss the cause with costs to be taxed for want of prosecution

TS Amos solicitor for deft

Served 11 Aug 1818

15 Aug 1818 no replication or other proceedings against defendant Bowden has been had since answer filed. Order that the suit stand dismissed with costs to be taxed for want of prosecution

8 Oct 1818 Bill of costs taxed at the sum of L19-18-0 by Barron Field

NRS13724

George Kirman v Michael Duggan, John Thomas Campbell, Darcy Wentworth, Thomas Wylde, John Harris, William Redfern, Robert Jenkins and William Gore

Bill of complaint George Kirman v Michael Duggan filed 28 Nov 1817

Largely illegible and one quarter missing

Appearance dated 1st Dec 1817 of the President and Directors of the Bank of NSW to ? at the suit of George Kirman

Affidavit (hard to read) of Richard Ward clerk to TS Amos P's solicitor sworn 4th dec 1817 of service of subpoena on the President and directors of the Bank of NSW

Attachment dated 24 Dec 1817 of Michael Duggan and the President and directors of the Bank of NSW for want of an answer at the suit of George Kirman

Amos solicitor for P

Injunction dated 24 December 1817 for P against Michael Duggan his attornies solicitors and agents to stay execution in a Cause touching the matters in the bill until answer and the Supreme Court shall make other order therein

TS Amos solicitor for the P

Answer filed 6 Feby 1818 After formal opening D saith he was possessed of the said Farm Lands and Premises as is in the bill expressed and described and that in or about the month of November 1812 he agreed to let the same to the P for the yearly rent of L20 for the term of 3 years to commence from 1 January 1813 and P took possession of said Farm Lands and Premises and held and enjoyed the same and D further saith that upwards of a year after P had been in possession of the said Farm and about the time mentioned in the bill D finding he could obtain no rent from and wishing to dispose of the said Farm Land and Premises caused them to be advertised in the Sydney Gazette to be let or sold the said Farm and Premises still continuing in the possession of the P and that in consequence of such advertisement for sale P applied to D to purchase same and that in or about the month of June then next following the treaty for the sale of such Farm Lands and Premises was concluded between D and P and D agreed to sell the said Farm Lands and Premises to P for the sum of L150 for which sum P gave to D two promissory notes of L75 each and at the same time agreed [illegible] until P should duly have paid and discharged his said two promissory notes for the sum of L75 amounting together to the said sum of L150 And this D further answering saith that he did not accept the said promissory notes in full discharge of the purchase money but that when the said promissory notes were duly paid and discharged presuming they would be paid and discharged at the time they became due then D would convey to P the said Land Farm and Premises and D says he did place in the hands of P the original Grant of the said Farm Land and Premises nor did this D ever agree to execute a further conveyance of the said Farm Land and Premises to P when the first of the said promissory notes of L75 was paid and discharged and D saith that P about the beginning of the year 1816 did pay into the hands of his solicitor William Henry Moore the amount of one of the promissory notes of L75 but that the other of the said Notes of L75 is still due owing and unpaid to D and D saith P told D he would pay him the amount of the said last promissory note of L75 and requested him to execute a conveyance of said Farm Land and Premises which D refused to do otherwise than on payment of the residue of the said sum of L150 one Moiety of which to wit the second note for L75 is still due owing and unpaid but that D told P that he was still considered by D according to his agreement to continue as tenant to D of the said Land Farm and Premises at the said yearly rent of L20 as aforesaid and D saith that P never did tender to him the amount of the said second promissory note for the sum of L75 nor did D ever refuse to accept same and to execute to P a proper sufficient and lawful conveyance of the Farm Land and Premises otherwise than as aforesaid and D always was and still is ready to receive a moiety of the said purchase money of L150 and D says that he has pretended and still doth pretend and state and declare that P is D's tenant of the Farm Land and Premises at the yearly rent of L20 and that he has commenced an action and recovered a verdict against P in this Honorable Court for L60 on account of rent due from P to D for the said Farm Land and Premises from 1 Jan 1813 up to 1 Jan 1816 and D saith he has mortgaged the said Farm Land and Premises to the Governor and Company of the Bank of NSW for the sum of L30 which D has an undoubted right to do considering himself the sole lawful owner and proprietor of the said Farm Land and Premises until the whole of the purchase money is paid to him and that D is ready willing and able to redeem the said mortgage and pay over the said sum of L30 to the said Bank and to execute to P a legal and sufficient conveyance of the said Farm Land and Premises and deliver them over to P free from all charges and incumbrances of any sort or description whenever P shall pay over to D the sum of L75 as due and owing as part of the purchase money and all arrears of rent due and owing by P to D as his tenant of the said Farm Land and Premises And D denies all manner of combination and confederacy &c And humbly prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained

Mick Duggan

Sworn at my house at Sydney

9 feb 1818 before me

Barron Field Judge

Exceptions taken by P to the Answer of D filed 19 feby 1818

First exception The Complainant excepts against the said Answer as insufficient forasmuch as the said Michael Duggan the said D has not set forth in the said Answer whether on or about the month of February 1813 or when otherwise the said Complainant did not give up to the said D possession of the said Farm Lands and Tenements in the Bill of Complaint mentioned And whether the said D did not receive and take possession of the Farm and premises from the said Complainant at such time and when otherwise which he ought to have done the same being prayed for by the P's bill

Second Exception The said Complainant likewise excepts against the said D's Answer as insufficient because the said D has not therein set forth whether he the said D has not peremptorily refused to execute to the said C the said Conveyance of the said Land and premises on payment being made of the said Second Promissory Note for L75 Currency which he ought to have done the same being also prayed for in the P's said Bill

Third Exception In all which particulars the Complainant insists the said D's said Answer is imperfect evasive and insufficient Wherefore the said Complainant doth except thereto and humbly prays that the said D may be compelled to put in a full and sufficient Answer to the said Bill of Complaint

TS Amos

Ptff's Solicitor

Motion filed 15th Augt 1818 that Injunction be dissolved

Rule nisi granted

Rule nisi Saturday 15th August 1818

Whereas the P hath obtained an injunction for stay of the D Michael Duggan's proceedings at law for the matters here in question until the said D MD should directly answer the P's Bill and this Court make other order to the contrary; now upon opening of the matter this day unto this Court by Mr Moore Solicitor for the said D MD it was alledged that he hath since put in a full and perfect answer to the P's bill and thereby denied the whole Equity thereof; it was therefore prayed that the said injunction do stand absolutely dissolved which is ordered accordingly, unless the P's solicitor having notice hereof shall on Friday next the 21st Instant shew unto this Court good cause to the contrary

By the Court

John Gurner

WH Moore

Solicitor for

the D Michl Duggan

Bill of filing fees

NRS 13724

Lord v Street, Campbell and Raine

Only document is bill of complaint (3 sheets) substantially illegible

NRS13724

Lord v Townson

Bill of complaint illegible

NRS 13724

Lord v Wells and Wells v Lord

Affidavit of Maria Lord Sworn 21 October 1822 at Hobart Town Filed 15th March 1823

Maria Lord of Hobart Town Van Diemens Land in the Territory of NSW wife of Edward Lord late of Hobart Town aforesaid Esqr (but who is now residing out of the Jurisdiction of this Honorable Court that is to say in some part of the Kingdom of Great Britain or on his way thither maketh Oath and saith that the said EL and this deponent have resided and carried on trade and business at Hobart Town aforesaid for a very considerable number of years past, and this deponent further saith he said EL being in the Habit of making frequent Voyages to England, in order to carry on and conduct the mercantile part thereof to greater advantage and this deponent further saith that the whole of the trade and business at Hobart Town aforesaid hath hitherto been carried on under the General management of this Deponent the said EL only occasionally superintending the wholesale mercantile part thereof and the several Shipping concerns connected therewith and this deponent further saith that during such the Occasional absences of the said EL this Deponent continued to carry on manage and conduct as well the whole of the mercantile and shipping concerns connected with such business and the Agricultural and Grazing concerns of the said EL in VDL aforesaid, as also all other matters and Concerns in which he was in any way interested in the Island of VDL and for that purpose was always hitherto invested with full powers and authorities by letters or powers of attorn to manage carry on and conduct the same in the name of the said EL without the interference or controul of any person or persons whomsoever And this Deponent further saith that the said EL previously to his last departure from VDL for England which took place on or about the 30th day of April last with a view of relieving the Deponent in some manner in the management of the very extensive mercantile (p2) Agricultural and other concerns in the Colony proposed to Thomas Wells of Hobart Town aforesaid that he should assist this Deponent in the management thereof and should receive a remuneration for his trouble for so doing to which proposal the said TW in some measure assented but in consequence of his objections to act in any situation or capacity which might be considered that of a Clerk or servant the said EL was induced to Join the name of the said TW with that of this Deponent in a certain Instrument of procuration or Deed of Trust bearing date the 1st Day of January last duly executed by him on or about the day the same bears date a Copy of which is hereunto annexed marked A and this Deponent further saith that by such Instrument of procuration or Deed of Trust the said EL had more particularly in view the appointing the said TW as a joint agent with this Deponent for the purpose of keeping the several Books of accounts relating to the said mercantile business and of rendering any other assistance this Deponent might require or stand in need of in the Management thereof but in consequence of the said TWs objections to being considered as acting in the situation of a Clerk or servant as aforesaid the remuneration to be given to him for such his services was agreed by the said EL to be allowed him by way of Commission on the amount received and paid as expressed in the said Instrument of procuration and Deed of Trust but such instrument of procuration or Deed of Trust was never intended to restrain the Deponent or prevent her from acting in the general management of the whole of the said concerns in the way she always heretofore hath acted and the same expressly provides that all moneys to be received by virtue (p3) thereof shall be so received by this Deponent who alone it is thereby directed shall have the care custody keeping and responsibility therefor on account of the said EL And this Deponent further saith that in Consequence of the said mercantile concerns of the said EL having become very extensive and in order to reduce them into a smaller and more confined circle the said EL by such Instrument of procuration and Deed of Trust promised and undertook not to accept any Bills of Exchange or make any promisory notes or indorse either of the same until a sum of L26000 sterling which the said EL considered necessary for the liquidation of outstanding claims previous to his embarking in fresh mercantile concerns should be realised and that such Deed of procuration and Trust should continue and be in force for the term of three years by which time it was contemplated that the present mercantile affairs of the said EL would be wound up and concluded and this Deponent and the said TW upon being thereunto required by the said EL accepted such Agency and the Trusts mentioned in such Deed of procuration by a certain memorandum indorsed as appears by the Copy of the same hereunto annexed And this Deponent further saith that the said EL standing very largely indebted to certain persons in England as well as in these Colonies pointed out to this Deponent particularly as the receiver appointed by the said Instrument of procuration or Deed of Trust the method to be (p4) pursued for meeting such several claims on him and this Deponent saith that in order that no misunderstanding might arise as to the moneys to be forwarded to the said EL in England for the liquidation of demands on him there the said EL caused a certain memorandum or agreement to be drawn up and reduced into writing directing that the specific sums of money to be raised in the manner therein mentioned should be forwarded to him in England for that purpose leaving certain sums of money which were expected to have been received in the course of the said mercantile and agricultural transactions and more particularly such sums of money as were stipulated to be paid from time to time to the said EL by Mr John Riseley under an agreement entered into some time previously with him for the sale of certain cattle for the liquidation of such outstanding claims as were then about to become due from him to various persons in this Colony And this Deponent further saith that this Deponent and the said TW accordingly entered into and signed such agreement on or about the day same bears date that is to say the 29th day of April last three days previous to the departure of the said EL from the Colony for England a copy of which is hereunto also annexed and marked B And this Deponent further saith that the said EL (p5} as well to empower this Deponent and the said TW to make and execute a good and legal conveyance of the Schooner Victorine mentioned in the said last mentioned agreement in order the more effectually ro carry into execution his intentions as to raising sufficient moneys to enable him to meet the Demands against him in England caused a certain Deed or power of attorney to be drawn up and executed bearing date the 29th day of the said month of April last the day previous to the said EL's departure a copy of which deed is also hereunto annexed marked C by which said Deed or power of attorney this Deponent and the said TW are authorised and empowered to sell and dispose of and to make execute the necessary transfers and conveyances of the said schooner Victorine and the several lands and premises therein mentioned And this Deponent further saith that it was fully understood at the time the said last mentioned power of attorney was made and executed that the whole of the moneys to be received or obtained by the sale of the property therein mentioned was to be remitted to the said EL in England for the purpose of enabling him to pay and discharge the several claims on him there, but such power of attorney in no way alters or revokes any of the powers or Authorities given to this Deponent by the said EL in the (p6) first mentioned Deed of procuration and trusts (except as to the property therein mentioned) and which constitutes her the sole general receiver and keeper of all moneys to be collected and received for or on account of the said EL during his absence and what power and Authority was reserved to this Deponent for the purpose of enableing her to pay and discharge the claims about to become due from the said EL to persons in this Colony And this Deponent further saith that the said EL having entered into such arrangements departed this Colony for England in the Ship Royal George which saild on or about the said 30th day of April last and that at the time of his departure he stood indebted unto divers persons in the Colony in the sum of L10000 and upwards that is to say the said EL at the time of his Departure had Cash Notes in circulation to the amount of L3000 or thereabouts and he had also various acceptances or Bills of Exchange not then due in the hands of Messrs Kemp and Barker Messrs Read and Bethune and other merchants in Hobart Town aforesaid and more particularly bills of Exchange of the following amounts and descriptions that is to say, a bill of Exchange bearing date the 28th day of June (AD) 1821 drawn by George Weston Gunning upon the said EL and accepted by him for the sum of L266-17-7 sterling and payable Twelve months after the date thereof a certain other Bill of Exchange dated the 1st day of June (AD) 1821 drawn by George Weston Gunning upon and accepted (p7) the said EL for the sum of L3294 or thereabouts payable Twelve months after date, a certain other bill of Exchange dated the 28th day of June (AD) 1821 drawn by the said George Weston Gunning upon and accepted by the said EL for the sum of L204-10-6 Sterling payable Twelve months after date a certain other Billof Exchange drawn by Benjamin Orman and accepted by this Deponent on account of the said EL previous to his departure for L686-14-11 and which became due on the 8th day of September last And this Deponent further saith that the said EL also stood indebted to one Captain Ashmore in a sum of L1200 and upwards for goods purchased by the said EL of him, and to one Mr Vickers Jacobs in a sum of L2000 and upwards for goods purchased by the said EL of him And this Deponent further saith that she hath from time to time since the departure of the said EL paid various sums of money on account of some of the before mentioned claims amounting in the whole to the sum of L3000 and upwards (as well as various other sums on account of other claims) and which reduces the amount now due and owing by the said EL on account of the before mentioned debts to the sum of L7000 or thereabouts And this Deponent further saith (p8) that she is hindered and prevented from paying and discharging the whole of the aforesaid claims by the conduct of the said TW who this Deponent is informed and believes hath not only received various sums of money on account of the said EL in his mercantile and other concerns here and which were intended to go in payment and discharge of such claims and which the said TW refuses to pay over to this Deponent or to apply in the manner aforesaid but the said TW also refuses to cooperate or Join with this Deponent in making any arrangement for the discharge of such last mentioned debts and the several persons to whom such debts are due and owing threaten to sue the estate of the said EL for recovery thereof which would not only put the estate of the said EL to great expense but is also very injurious to the credit of the said mercantile concern And this Deponent further saith that the said TW hath received from one William Horton a sum of L100 and upwards either in money or by a Bill on account of the said EL and also some sum or sums of money as some satisfaction for the same from one William Presnal and this Deponent hath seen an Entry in the Books belonging to the said mercantile concern of the receipt of the sum of L246 or thereabouts and which this Deponent believes was so received by the said TW or by (p9) his Clerk or servant on account of the said mercantile or agricultural concerns of the said EL but which sums of money the said TW hath never accounted for or paid over to this Deponent alledging that he hath forwarded some moneys to the said EL in England And this Deponent further saith that such moneys were intended by the said EL to be applied in the course of the said mercantile concern in part payment of the aforesaid Debts due from the said EL in the Colony And this Deponent further saith that she verily believes that the said TW hath received various other sums of money on account of the said EL but this Deponent cannot particularly set forth the same in as much as the said TW refuses to account to this Deponent for what he has so received or to pay the same over to this Deponent or to apply the same in the manner directed by the said EL as aforesaid alledging that he hath forwarded monies to the said EL in England and that he is accountable only to him for what he hath so received And this Deponent further saith that she was applied to some time since by the said TW to sign her name jointly with that of the said TW to a certain draft Bill of Exchange or order which the said TW had drawn upon Mr John Dickson of Sydney for the payment of a certain sum of money due (p10) to Messrs Kemp and Company out of monies which were due and owing or about to become due and owing from the said John Dickson to the Estate of the said EL on account of wheat which had been sent to Sydney by the Brig Jupiter but that this Deponent refused to sign her name to such draft or Bill of Exchange because it was expressly stipulated by the said agreement a copy of which is hereunto annexed marked B that the proceeds of the said cargo of wheat were to be forwarded to the said EL in England and were not to be applied to the payment of any of the Debts due in this Colony as aforesaid and the Deponent hath been informed and verily believes that the said TW in consequence of such refusal of this Deponent to join her name with his in such transaction hath since drawn upon the said John Dickson in his own name solely for a sum of money claimed to be due by Mr Robert Lathrop Murray and which claim this Deponent believes to be at the best of a very doubtful nature And this Deponent further saith that the said TW continues to receive and be endeavouring to receive or get possession of the several debts so now remaining due and owing to the said EL in the Colony and that he is also endeavouring to prevent this Deponent from receiving the same and more particularly the several sums of money which are now due and owing (p11) and accruing due and owing from the said John Riseley to the said EL for and on account of Cattle as aforesaid and which the said TW is forwarding or is persuading the said John Riseley to forward to England instead of paying over the same to this Deponent or applying the same to the payment of the said several debts now pressing upon the Estate of the said EL in this Colony And this Deponent further saith that she hath been informed and believes that about 570 head of cattle amounting in value to a sum of L4500 or thereabouts have been killed by the said John Riseley the whole of which monies ought to have been paid over to this Deponent for the purposes aforesaid but this Deponent hath been informed that a sum of L1000 Sterling only hath been sent to the said EL on account thereof and further this Deponent is informed and believes that part of the said sum of L1000 was made up by L300 of Cash or thereabouts borrowed and which this Deponent verily believes was so borrowed in consequence of the monies received on account of the sale of such Cattle having been wrongly made use of And this Deponent further saith that the said T(p12)W stands indebted to the mercantile concern of the said EL in a sum of L700 or thereabouts for Cash and goods supplied to him from the Stores of the said EL and that he has borrowed and persuaded the said John Riseley Cattle or meat belonging to the said EL to a very considerable amount and that he gives out and represents that the said EL is largely indebted to him the contrary of which this Deponent verily believes to be the fact

Sworn before me at Hobart Town Maria Lord

this 31st day of October 1822

T Bell JP

Comr Sup Court

Affidavit of John Riseley Sworn 12th April 1823 at Hobart Town Filed 9th May 1823

John Riseley of Hobart Town Gentleman maketh Oath and saith that he this Deponent some time previous to the Departure of Edward Lord from this Territory entered into a Deed of Copartnership with the said EL whereby he became Joint Proprietor with the said EL in the Cattle Stock of the said EL in Van Diemens Land and that this Deponent and the said EL as such Copartners and Coproprietors employed one Charles Rowcroft to act as an Overseer of a part of their Cattle Stock at a Salary that the said CR has been dismissed from such his Situation as such Overseer as aforesaid in Consequence of his killing and converting to his own use the Cattle of the said Copartnership without the Deponents or the said ELs authority That Maria Lord Wife of the said EL aforesaid and Sister of this Deponent was and is extremely anxious to invest the said CR with all possible power and authority over the said Cattle Stock and in consequence of her having formed an Intimacy and Connection with the said CR of a nature which this Deponent considered so improper that he felt himself under the necessity of withdrawing from all Communication of himself and his family with the said Maria Lord And this Deponent further saith that he is well convinced that the said Maria Lord has in view to lavish the estate of the said EL upon the said CR She the said Maria Lord having caused to be delivered to the said CR considerable flocks of sheep obtained by her in payment of divers debts due to the Estate of the said EL from different persons And this Deponent further saith that he is well convinced that the said Maria Lord intends to aggrandize the said CR at the Expence of Mr Thomas Wells the said ELs Coagent with the said Maria Lord in whom the said EL has for several years past reposed the utmost Confidence as the Manager of his Mercantile Concerns And this Deponent further saith that after he had so broken off all family Communication with the said Maria Lord as aforesaid in Consequence of the improper Intercourse so kept up and maintained by the said Maria Lord with the said CR as aforesaid She the said Maria Lord proposed to this Deponent that if he would be reconciled to the said CR she would either give him the sum of L3000 of the monies of the said EL or that he this Deponent might take whatever Goods Wares or Merchandize he this Deponent might chuse from the Stores of the said EL free and clear from any Charge whatsoever for the (p2) same which Proposal this Deponent instantly rejected. And this Deponent further saith that the said Maria Lord has taken the said CR to reside with her in the houses of the said EL in Town and Country investing him with full power and authority over the Servants and Property of the said EL And this Deponent further saith that he verily believes the said CR is heavily in debt to the Estate of the said EL and that the said Maria Lord is lavishing and squandering away the Property of the said EL upon the said CR to the great Injury of the said EL and his large family of Children And this Deponent further saith that he verily believes the sole object the said Maria Lord has in view is to possess herself of as much of the Property of the said EL as she can get into her hands and if she not restrained therefrom by an Injunction of this Honorable Court the Estate of the said EL will suffer most material loss and Injury

Sworn at Hobart Town aforesaid John Riseley

this 12th day of April

in the year 1823

Before me

T Bell JP

Comr Sup Court

Affidavit of Thomas Wells Sworn 14th April 1823 Filed 9th May 1823

Thomas Wells the above named Complainant and Defendant maketh Oath and saith that some time in the Month of December in the year 1821 this Deponent in Consequence of having been for several years preceeding having been confidentially employed in the management of the Commercial Concerns of Edward Lord late of Hobart Town aforesaid but now of London Merchant this Deponent was applied to by the said EL to undertake the Management of his Mercantile Concerns during his proposed absence of some years from this Territory. That during a negociation which ensued on this Subject the said EL proposed to this Deponent that he this Deponent should become a Partner in his the said ELs Mercantile Establishment in order to this Deponent undertaking and possessing the whole management thereof He this Deponent refused such offer; that the said EL then proposed to this Deponent to undertake the entire management and Conduct of the same he the said EL allowing and giving to this Deponent a certain Sum per Centum upon all Monies and Mercantile Transactions which should pass through the Books of the said Mercantile Concern and that Maria Lord Wife of the said EL should be associated with this Deponent in the necessary powers of attorney executed by the said EL for the management of his affairs during his absence To which Proposal this Deponent assented and the said EL accordingly executed an Instrument of Procuration in which he appointed this Deponent and the said Maria Lord to be his Joint agents upon the terms and with the limitations in the said Instrument of Procuration mentioned The said EL also executed another Instrument of Procuration whereby he empowered this Deponent and the said Maria Lord jointly to sell and dispose of certain freehold and other Property at the Prices and upon the terms and conditions in the said Instrument of Procuration mentioned The said EL also executed a letter of attorney in the usual form appointing this Deponent and the said Maria Lord to be generally the said ELs joint agents during his absence And this Deponent further saith that previous to the departure of the said EL in Consequence of the powers confided jointly as aforesaid to this Deponent and the said Maria Lord this Deponent and the said Maria Lord caused a circular letter bearing their joint Signatures as the joint agents of the said EL to be printed and circulated in Van Diemens Land one of which is hereunto annexed in which circular letter dated the 1st day of January 1822 as by Reference thereunto will appear this Deponent and the said Maria Lord publickly announced that they were the joint agents of the said EL and as such this Deponent and the said Maria Lord called upon the Debtors to the Estate of the said EL to pay the amount of their respective Debts to this Deponent and the said Maria Lord as such joint agents of the said EL as aforesaid And this Deponent further saith that the said EL remained in Hobart Town for a considerable period of time after the Publication of the said circular letter as aforesaid and finally departed from thence on or about the 1st day of May 1822 this Deponent and Richard William Fryett of Hobart Town Merchant having previously become Securities to a large Amount for the said EL in Consequence of Detainers that were laid in the Deputy Judge Advocates office against them which said Securities are still (p2) outstanding And this Deponent further saith that this Deponent and the said Maria Lord continued to act together as joint Agents for the said EL accordingly for some time after the Departure of the said EL and as such jointly accepted divers Bills of Exchange made consignments of Merchandize and did a variety of other business on the account of the said EL and continued to act under the powers and trusts confided to them until the said Maria Lord thought proper to act in a manner which this Deponent considered derogatory to the Honor and Interest of the said EL to her Character as his Wife and to the General Interests of his Estate by adopting a most expensive and extravagent mode of living by the setting on foot a large Establishment by giving Balls and entertainments by establishing for the first time a set of Servants in liveries all of which most extraordinary mode of Conduct this Deponent attributed to a Connection and Intimacy she the said Maria Lord had formed with one Charles Rowcroft a person who had recently arrived in this Country and which Connection and Intimacy of the said Maria Lord with the said CR if not then of a Criminal Nature was of so suspicious a Character that this Deponent considered it due to the said EL to break off all Communication with the said Maria Lord further than was necessary in the performance of the Trusts confided to and undertaken by this Deponent which this deponent was always ready to attend to and to carry into effect to the best of this Deponents power and ability And this Deponent further saith that the said Maria Lord expressed her determination to take the whole of the said ELs Property and the entire management of his Concerns into her own hands and power and refused to suffer this Deponent further to interfere therein or to act in any way in further Prosecution of the Trusts and Powers confided to this Deponent jointly with the said Maria Lord as aforesaid And this Deponent further saith that he has never appropriated to his own use one shilling of the Monies or Property of the said EL but he verily believes the said Maria Lord has possessed herself of large Sums of Money having received as this Deponent is informed and believes not less than L12000 of the Property of the said EL since his Departure from Hobart Town as aforesaid independent of a very large Sum in which the said CR is indebted to the Estate of the said EL besides the considerable Sums which the said Maria Lord has squandered away in divers manners upon him the said CR She the said Maria Lord having now taken the said CR to reside openly in the houses of the said EL in Hobart Town and in the Country putting the said CR in complete mastership and authority over the Servants and Property of the said EL giving him the horses reserved for his own use by the said EL taking him with her upon all occasions in Town or Country wherever she goes and giving him in every way the same authority over and possession of the whole of the Property of the said EL as was possessed by the said EL himself before his Departure he the said CR opening the letters addressed to the house and taking upon himself full complete and entire authority over the same. And this Deponent further saith that he wrote to the said EL by the Ship Tiger to the Cape of Good Hope and other letters from friends of the said EL in VDL were also sent to him by the same Conveyance which letters this Deponent has good reason to believe were duly received by the said EL in which the said EL was made fully acquainted with the state of his affairs here and the Cause of the Differences which had taken place between this Deponent and the said Maria Lord as his joint agents. And this Deponent has been informed and believes that the said Maria Lord caused the said CR to write to the said EL by the said Ship Tiger the said Maria Lord not being herself able to read or write further than her own Signature And this Deponent further saith that the said EL being thus made acquainted with the Differences which had arisen between this Deponent and the said Maria Lord could if he had thought proper have discontinued such Joint Agency until the arrival of Eyre Coote Lord Esquire Brother of the said EL who or some other person duly authorized by him the said EL this Deponent is informed and believes is now on his way to VDL (p3) should have arrived to take charge of tha affairs of the said EL whereas this Deponent is informed and believes that a Packet of letters from the said EL directed to this Deponent and the said Maria Lord as his the said ELs joint agents as aforesaid has got into the possession of the said Maria Lord with letters to other persons therein contained the whole of which this Deponent has been informed and believes have been withheld by the said Maria Lord and CR toanswer their own Views and Purposes. And this Deponent further saith that if the said EL in any of the letters so intercepted by the said Maria Lord as aforesaid expressed a wish to discontinue the Trusts confided to this Deponent by the said EL as aforesaid this Deponent would gladly have surrendered the same. And this Deponent further saith that notwithstanding this Deponent and the said Maria Lord are expressly prohibited in the said Instrument of Procuration hereinbefore mentioned from purchasing Land or Merchandize except as is therein excepted yet the said Maria Lord has expended very large Sums the Property of the said EL in the purchase of land merchandize and other effects which this Deponent is informed and believes she has appropriated to her own Private Purposes. And this Deponent further saith that the said Maria Lord has obtained possession of divers Promissory Notes and Bills of Exchange the Property of the said EL and has caused Proceedings thereupon to be instituted in the Lieutenant Governors Court of VDL for many of which to a large amount she has obtained the Money and which this Deponent verily believes the said Maria Lord has wasted and devastated remitting no part to the said EL deeply as she knows him to be in England and that Remittances to him was one of the most important objects of the joint Trusts confided to him this Deponent and the said Maria Lord thereby preventing him the said EL the means of discharging his debts and probably subjecting the said EL to other most serious Inconveniences. And this Deponent further saith that he has repeatedly proposed to the said Maria Lord to surrender the Trusts confided to him to any respectable person who could be nominated and who would be willing to undertake provided such Surrender of the Trusts confided to this Deponent as aforesaid could be legally and with safety to himself could be made and that such person so to succeed this Deponent was wholly unconnected either with the said Maria Lord or the said CR But this the said Maria Lord has always refused insisting that she should have uncontrouled power over the Estate of the said EL unless indeed this Deponent had consented to associate in his place the said CR with the said Maria Lord in the Trusts so confided to him by the said EL as aforesaid a measure which for obvious Reasons however desirable it might be to the said Maria Lord this Deponent has considered it requisite to the Interest of the said EL to refuse. And this Deponent further saith that he verily believes that the sole object the said Maria Lord has in view is to possess herself of as much of the Property of the said EL as she can obtain and if she is not restrained by an Injunction of this Honorable Court from so doing the Estate of the said EL will suffer most material loss and Injury

Sworn at Hobart Town aforesaid Thomas Wells

this 14th day of April

1823 Before me

T Bell JP

Comr Sup Court

NRS13724

McNaming v O'Neil

Only document is bill of complaint filed 5 May 1817 which is largely illegible

NRS 13724

Middleton v Frazier

6th March 1822 Bill of Complaint

Humbly Complaining sheweth unto your Honor and this Honorable Court your Orator Thomas William Middleton of Sydney in the Territory of NSW Gentleman that Andrew Frazier of Sydney in the Territory of NSW Baker long time previous to the month of October 1818 had variousdealings and transactions with your Orator and particularly during the time he your Orator was principal Clerk in the Commissariat Office at the recommendation of your Orator the said AF got the custom of several of the Shipping in Sydney Cove Harbour in supplying them with Bread Biscuit &c from time to time As also of the Commissariat Department and in Consequence thereof a great friendship and intimacy existed between them And your Orator further sheweth unto YH and this HC that your Orator on or about the day of October 1818 was at the Shop and Warehouse of James Hankinson of George Street Sydney who then kept Commission Rooms for the Sale of Goods Wares and Merchandizes And your Orator met the said AF there and being on such friendly terms as before stated they began conversing about general business and the general News relating to the Colony And during such Conversation between your Orator and the said AF the said JH joined them and observed to the said AF that he had a bill due on that day and requested the said AF would lend him a Sum of about L200 for a short period upon which the said AF replied He would willingly lend such sum but he was then quite out of Cash but if the said JH would get a Note drawn for the Money required he the said AF would sign same and suggested as the means of raising the Money required that by your Orator indorsing same to the said JH and by the said JH indorsing the same to the Bank there being required three Names on all Bills and Notes discounted by the Bank that they would discount the same And your Orator further sheweth unto YH and this HC that the said JH approving of the offer of the said AF he your Orator at the particular request of the said AF drew a Note in his your Orators favour for L251-3-9 at three Months after date and Thomas ?Macvitee Esquire a respectable Merchant of Sydney being then present He was requested to Witness the same and having read the same over to the said AF he put his mark thereto in his presence and he the said TM subscribed his name as a Witness thereto And your Orator then indorsed the same and delivered it to the said JH in the presence of the said AF And your Orator further sheweth unto YH and this HC he has been informed that the said JH afterwards applied at the Cash Office of the Bank of NSW to get the above Note discounted but the said AF having only subscribed his mark to the said Note and there being a Standing Order or Ruling that no Bills or Notes should be discounted to which the Parties did not write their names the said Note could not pass the Board of Directors but the then Cashier Francis Williams took upon himself to discount the said Note out of Funds of the Bank intrusted to his charge as such Cashier and deposited the same among the other Bank Securities And your Orator further sheweth unto YH and this HC that at or about the time such Note became due the same was presented by the Messenger to the said Bank to the said AF for Payment who was required to pay the same And the said AF in Company with the said Bank Messenger came to your Orator respecting the said Note And your Orator feeling surprized the said AF should look to him observed he had nothing to do with the Note or the payment of it that he / Frazier had given the same for the Accommodation of Hankinson and that he must look to him for Payment And that your Orator had no interest in it whatever never having received one farthing on account of it And your Orator little doubted but the same was paid by H or by the said Frazier for his accommodation until the circumstances happened as hereafter stated And your Orator further sheweth unto YH and this HC that if the said AF had paid the said Note when it became due he would have been able to have obtained the amount from the said JH he being then in solvent Circumstances but since has become insolvent and is confined as a Prisoner for Debt and in execution for a large Sum of Money in Sydney Gaol And your Orator further sheweth unto YH and this HC that the said FW the late Cashier left that situation in the latter end of the month of December 1820 and in the month of January he disclosed to the President or to the Board of Directors of the said Bank he was several thousand pounds deficient in the Banks Funds and upon an investigation taking place by them it was discovered the fact and in order to make up a part of such deficiency the said FW handed over to the said President and Directors the before mentioned Promissory Note of the said AF which he had as aforesaid discounted out of the Bank Funds amongst various other Securities And the President and Directors of the Bank having applied to the said AF and not being able to obtain Payment of the same they sued him for the amount in the Plea side of this HC and the Cause coming on for hearing before the said Court the said Court pronounced a Nonsuit against the said President and Directors But the said President and Directors feeling themselves aggrieved by such Judgment appealed to His / then / Excellency Governor Macquarie as Judge of the High Court of Appeal against the Verdict Judgment Sentence or Decree of the Supreme Court so given and pronounced in the said Cause And the said Cause coming on for hearing in the said Court of Appeals such Court was pleased to reverse the said Verdict Judgment Sentence or Decree of the said Supreme Court and gave Judgment for the said President and Directors for the sum of L303 being the Principal and Interest then due on the said Promissory Note with Costs to be taxed which sum together with Costs your Orator has been informed the said AF has paid to the said President and Directors of the said Bank or to their Solicitor And your Orator further sheweth unto YH and this HC that on the day after the said AF had so paid the said Damages and Costs he applied to the Plea side of this HC by his Solicitor to get the said D arrested having sworn an affidavit that he had been informed and verily believed your Orator was then about departing clandestinely from the Colony on one of the Ships in the Harbour without obtaining a proper clearance / meaning the Harbour of Port Jackson / And he your Orator was arrested by virtue of a Capias obtained by such affidavit and carried to the Gaol of Sydney and remained there until he was delivered by Bail which he caused to be put in to obtain his release from thence And your Orator further sheweth unto YH and this HC that the said AF at the time he made such affidavit well knew your Orator had no intention of leaving this Colony And your Orator has frequently expressed to the said AF he had no intention of ever leaving the Colony and that at the time he so arrested your Orator he the said Defendant AF well knew your O had not made any preparations for leaving the same and that his Estate and Effects both real and personal remained uninterrupted And your Orator further sheweth unto YH and this HC that the said AF has by his said Affidavit sworn that he your Orator was justly and truly indebted to the said AF in the sum of L440 and upwards for money laid out and expended by the said AF to and for the use of your Orator and also for money lent and advanced by the said AF to and for the use of your Orator at his instance and request Whereas in truth and in fact your Orator is not indebted to the said AF in any sum of money whatever which your Orator will aver and prove before YH and this HC And your O further sheweth that the said AF having so as aforesaid paid such Damages his aforesaid Affidavit states your Orator is indebted to him for money paid laid out and expended on account of your Orator which your Orator denies and will prove the contrary to be the fact And the said AF has by your Orator been requested on several occasions at and about the time the said Note became due to pay the same and to issue process against the said JH And if he had done so he would have recovered the amount of him he being then in ability to pay the same But the said AF on such several occasions has refused so to do But now so it is May it Please YH and this HC that the said AF combining and Confederating to and with divers other persons at present unknown **[p2]** to your Orator whose names when discovered your Orator prays may be inserted herein and that be made Defendants hereto with apt words to charge them how to oppress and aggrieve your Orator in the premises sometimes pretends that he D made and drew such bill or Promissory Note for the accommodation of your Orator and not for the accommodation of the said JH Whereas in truth and in fact your Orator charges that the said Defendant drew such note at the particular instance and request of the said JH and so it will hereafter appear when investigated by this HC and at other times the said Defendant pretends that he made and drew such Note by the express request of your Orator for the accommodation of the said JH Whereas in truth and in fact and your Orator charges that the said Note was drawn in the manner before stated in order that the same might at the suggestion of the said Defendant as before mentioned after the same was Indorsed by your Orator and the said JH / be discounted by the said Bank and at other times the said D pretends that your Orator was Indebted to him in a large sum of Money for Money paid laid out and expended for Interest upon the same on your Orator's account Whereas your Orator charges that up to the day of May last he was not Indebted to the said D in any sum of Money on any account whatever And that since that time he your Orator has had no dealings or transactions whatever with the said D And your Orator further charges that the said D had no right to sue your Orator for any Monies he might pay for or on account of the said JH or for or on account of the said Promissory Note And your Orator further charges and so D well knew your Orator had no Interest in the same and that if the said Defendant had paid the said note at the time it became due according to the tenor thereof he might for the reasons before statedhave recovered and obtained the amount from the said JH All which Actings Doings and Pretences of the said Defendant are contrary to Equity and good Conscience and tend to the manifest wrong and injury of your Orator **In tender Consideration** whereof and for as much as your Orator is remediless in the premises except by the Aid of a Court of Equity before YH and this HC where matters of this nature are cognizable and relievable **To the end therefore** that the said Defendant may upon his Corporal Oath full true answer make to all and Singular the matters hereinbefore stated as fully and particularly as if the same were again repeated And he was interrogated thereto And particularly whether your Orator was not for a long time previous to the month of October 1818 principal Clerk in the Commissariat Office of this Territory and had various dealings with your O (sic) And Whether the said Defendant at the recommendation of your Orator did not get the custom and was not employed in supplying the Shipping in Sydney Cove Harbour with Bread Biscuit &c as before stated or how otherwise And that in consequence of the same or on what other account a great friendship and intimacy did not exist between your Orator and the said Defendant And Whether your Orator on or about the day of October 1818 or at what other time was not in the Shop or Warehouse of the said JH who then kept Commission Rooms for the Sale of Goods Wares and Merchandizes or how otherwise And Whether your Orator and the said Defendant were not in Company together when the said JH came to the said Defendant and requested him D should lend him a sum of about L200 for a short period or what other sum did the said JH require a loan of And Whether the said Defendant did not reply that he was out of Cash but would give a Note for the sum required if He the said JH would get one drawn And Whether he did or not suggest as the means of raising the Money required that by your Orator indorsing the same to the said JH and by the said JH indorsing the same to the Bank the said JH might obtain the money required by discount or what else did the said Defendant suggest And Whether your Orator did or not at the particular request of the said AF draw the Note as hereinbefore set forth And Whether the said Note was not signed by the said Defendant in the presence of the said TM who first read the same over to the said AF And Whether your Orator did or not indorse the same and deliver it to the said JH in the said Defendant's presence And Whether the said JH did or not afterwards apply at the Cash Office of the Bank of NSW to get the said Note discounted And Whether for the reasons before stated the same was not discounted And Whether the said FW did or not take upon himself to discount such Note out of the funds of the Bank entrusted to his charge and did or not deposit the same amongst the other Bank Securities and did or not about the time such Note became due cause the same to be presented by the Bank Messenger to D for payment And Whether he was not required to pay the same And Whether the said Defendant did not in Company with the said Bank Messenger come to your Orator respecting the same And Whether your Orator did not feel surprized the said Defendant should attempt to look to him for Payment and did not their (sic) observe he had nothing to do with the Note or the Payment of it, that D had given the Note for the accommodation of Hankinson and that he must look to him for Payment, for your Orator had no Interest in the same whatever never having received one farthing on account of it And Whether your Orator had not reason to believe the said Note was paid by Hankinson or by the said Defendant for his accommodation your Orator hearing nothing further respecting same And Whether if the said Defendant had then paid the same he would not have been able to obtain payment of the same from the said JH he then being in Solvent Circumstances And Whether the said JH hath not now become insolvent and is not now confinedas a Prisoner for Debt and in Execution for a large sum of Money in Sydney Goal (sic) And Whether the said FW the said late Cashier of the said Bank did or not leave that Situation the latter end of the month of December 1820 or when else And Whether or not he did in the month of January following or at what other time disclose to the President or to the Board of Directors of the Bank that he was several thousand pounds deficient in the Bank funds And Whether it was not discovered to be so upon an investigation taking place or how otherwise And Whether the said FW did not for the purpose hereinbefore stated hand over the said Promissory Note which he discounted as aforesaid to the President and Directors of the said Bank And Whether they did not apply to the said Defendant for same but not obtaining payment sue the said Defendant for the said Amount in the Plea side of this HC And Whether such Judgment was not pronounced in the said Court respecting the same as hereinbefore set forth And Whether the said President and Company feeling themselves aggrieved did not afterwards appeal to the Governor in Chief against the same and did or not the said Court of Appeal reverse the said Judgment and did not the said President and Directors obtain Judgment against the said Defendant for Principal and Interest on the said Promissory Note with Costs And Whether or not the said Defendant has or not paid such Principal Interest and Costs And Whether the said Defendant did not on the day after he had so paid such Debt Interest and Costs apply on the Plea side of this HC as before stated and make the Affidavit before set forth or what other Affidavit did he make And Whether your Orator was not arrested by virtue of a Capias issued under such Affidavit and was not carried to the Gaol of Sydney and did not remain there until he had by Bail put in to the said Action obtained an Order for his discharge And Whether the said Defendant did not at the time he made such Affidavit well know he had no intention of leaving the Colony And Whether your Orator has not frequently expressed to the said Defendant that he never had any intention of leaving this Colony And Whether he did not believe such expressions of your Orator to be true at the time he swore such Affidavit And Whether the said Defendant did not also know that your Orator at the time he was arrested had not made any preparations for leaving the Colony that his Estate and Effects both real and personal remained uninterrupted

And Whether the said Defendant has not in such his Affidavit made Oath that your Orator was justly and truly indebted unto the said Defendant in the sum of L440 and upwards for Money paid laid out and expended by D to and for the use of your Orator And for Money lent and advanced by the said Defendant to and for the use of your Orator at his instance and request And D well knew at the time your Orator was not indebted to him in any sum of Money whatever and that he paid such Damages Interest and Costs on account of the said JH and not on account of your Orator And Whether the said Defendant has not on several occasions and at or about the time the said Note became due or at what other time and how often by your Orator been requested to pay the said Note and to issue process against the said JH And Whether if he had so done he would not have recovered the amount of him And Whether he was not then in Circumstances to pay the same And Whether the said Defendant has not refused so to do And Whether the said Defendant did not draw such a Note at the particular instance and request of the said JH And Whether your Orator up to the day of May last or at what other time was not Indebted to the said Defendant in any sum of Money on any account whatever And Whether your Orator since that time has had any dealings or transactions whatever with the said Defendant And that the said Defendant set forth the nature of such Dealings and transactions with your Orator if any there have been since that period And Whether the said Defendant had any good cause and in fact no right to sue your Orator for any Monies he might pay for or on account of the said JH or for or on account of the said Promissory Note And Whether the said Defendant did not well know your Orator had no interest in such Note And Whether he had paid the same at the time it became due according to the tenor thereof he might and could not for the reasons before stated have recovered and obtained the amount thereof from the said JH And that the said Defendant may be restrained by the Injunction of this HC from further Proceeding at Law against your Orator in the Action he has so as aforesaid brought against your Orator in the Plea side of this HC until this HC shall further order And that your O may have and receive such further and other relief in and touching all and singular the matters and things aforesaid as to YH and this HC shall seem meet and agreeable to Equity and good conscience and as to the nature of your Orators case may require

**May it please YH and this HC** the Premises considered to grant unto your Orator not only His Majestys Most gracious Writ of Injunction issuing out of and under the seal of this HC to restrain the said Defendant from further Proceeding at Law against your Orator in the said Action but also HMs most gracious Writ of Subpoena to be directed to the said AF and the rest of his Confederates when discovered thereby commanding them and each of them at a certain day and under a certain pain therein to be limited personally to be and appear before YH and this HC then and there to answer 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 will ever pray &c

Sworn 5th September 1822 Answer of Andrew Frazier

This D saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception to the insufficiencies uncertainties and other imperfections of the said Complainant's Bill of Complaint for answer thereunto or so much thereof as this D is advised is in any way material or necessary for him this D to make answer unto He Answereth and Saith that he admits it to be true that the said Complainant was for a long time previous to the Month of October 1818 principal Clerk in the Commissariat Office in this Colony and that he this D had some few Dealings and Transactions with the said Complainant And this D further answering saith that it was not at the recommendation of the said Complainant that he this D got the Custom and was employed in Supplying the Shipping in Sydney Cove Harbour with Bread Biscuit &c but he admits it to be true that a friendship and intimacy existed between this D and the Complainant And this D further answering saith that on the 19th day of December 1818 the said Complainant applied to the D opposite the Store house door of the Complainants Office in George Street and stated to him this D that he the Complainant had a large sum of Money to pay on that day and that he the Complainant would be much obliged to him this D if he would advance and lend him the said Complainant a sum of about L250 upon which he this D replied that he was then quite out of Cash That the said Complainant then observed that if he this D would draw a Note in his the said Complainant's favor (sic) it would answer his the Complainant's purpose just as well And this D further answering saith that at the request of the said Complainant he went into the Shop or Warehouse of Mr James Hankinson in George Street Sydney when a Note purporting to be drawn by him this D payable to the said Complainant or Order Three Months after the date thereof for the sum of L251-3-9 was prepared by the said Complainant to which he this D at the request of the said Complainant affixed his mark as the Drawer thereof and which was witnessed by Thomas McVitie Esquire who was then present but the same was not previously read over to him this D And this D saith that he did not receive any Consideration whatever at the time of his affixing his mark thereto or at any other time either previously or Subsequently thereto And this D further answering saith that no such meeting or conversation as stated in the said Complainants Bill of Complaint took place nor did the said JH ever apply to or request this D to lend him a sum of about L200 or any other sum whatever And this D most positively saith that it was not at the request of him this D that the said Complainant drew the said Note but the same was drawn by the said Complainant in the manner herein before stated and set forth And this D further answering saith that the said Complainant did not indorse the said Note over to the said JH in this D's presence but this D has heard and verily believes that the said Note was afterwards indorsed by the said Complainant as also by the said JH and that he the said JH did afterwards apply at the Cash Office of the Bank of NSW to get the said Note discounted And this D further answering saith that he has heard and believes that Francis Williams the then Cashier of the said Bank of NSW discounted the said Note out of the funds of the Bank entrusted to his Charge and that he deposited the said Note in a private Drawer of his own in the said Bank where he kept the same until it became due and payable And this D further answereth and saith that at the time the said Note became due namely on or about the 22nd of March in the year of our Lord 1819 the same was presented to him this D at his house in Cambridge Street Sydney by Joseph Potts the then and now Messenger of the said Bank of NSW and that at the time the said Note was presented to him this D he this D refused to pay the same and stated to the said JP that the reason of his so refusing to pay the same was because he gave it to accommodate the said Complainant and had never received any Consideration whatever for the same And this D thereupon referred the said JP to the said Complainant to procure payment thereof And this D further answering saith that a short time after the said JP had presented the said Note to him this D he met the said Complainant in company with the said JP opposite the Gaol in George Street and walked with them as far as Mr Simeon Lord's in Macquarie place where the said Complainant told him this D that he had no occasion whatever to trouble himself about the said Note as he would settle and pay the same by three o'Clock that day upon which he this D retired home perfectly satisfied with such assurance And this D further answereth and saith that about three o'Clock on the same day he the said Complainant called for him this D at his house in Cambridge Street Sydney and informed him that he had settled and paid the amount of the said Note And this D further answereth and saith that he is not aware of the said Complainant's feeling surprised that he this D should look to him for payment of the said Note nor did he the said Complainant ever observe to him this D that he had nothing to do with the same or the payment of it nor did he the said Complainant ever state to him this D that he the said D had ever given the said Note for the accommodation of the said JH or that he this D must look to him for the payment thereof And this D further answering saith that he the said Complainant could not be led to believe that the said Note was paid either by the said JH or by him this D for his accommodation as the said Complainant informed him this D that he the said Complainant had paid and settled the amount thereof as hereinbefore stated and set forth And this D further answereth and saith that he does not think he would have been enabled to recover the amount of the said Note from the said JH as he never rendered himself liable to this D for the same And this D further answering saith that he has heard and verily believes that the said FW the late Cashier of the said Bank of NSW left that situation **[p2]** about the latter end of the month of December 1820 or the beginning of the month of January 1821

portion torn out

interposed their appeal to his Excellency Lachlan Macquarie Esquire the then Governor of this Territory of NSW as Judge of the High Court of Appeals which came on for hearing on Wednesday the 28th day of November in the year of our Lord 1821 when His Excellency the Judge of the said High Court of Appeals was pleased to reverse the said Judgment Sentence and Decree so given and pronounced on the plea side of this HC as aforesaid and gave a Judgment and Decree against him this D for L305 being the principal and Interest due on the said Note with the Costs incurred by the said president and Company of the said Bank of NSW in the said High Court of Appeals and on the plea side of this HC And this D further answering saith that on Monday the 28th day of January in the year of our Lord 1822 he paid to Mr James Norton the Solicitor to the Bank of NSW the sum of L447-5-1 being the amount of the principal and Interest due on the said Note and the costs incurred by the said president and Company of the Bank of NSW in prosecuting the said suit on the plea side of this HC and of the said Appeal and Writ of Execution thereon And that he has also paid to Mr William Henry Moore this Ds Solicitor his taxed bill of Costs for defending the said Suit and Appeal so prosecuted by the said president and Company of the Bank of NSW the sum of L29-7-0 which two sums make together the sum of L526-12-1 and which he this D has paid for and on the Account of the said Complainant for the recovery of which with the Interest thereon he this D commenced an action against him the said Complainant on the plea side of this HC on the 29th day of January last and in Order to ground a Writ of Capias ad respondendum he this D did make the Affidavit as stated and set forth in the said Complainants said Bill of Complaint and in which he this D has made Oath that the said Complainant was justly and truly indebted unto him this D in the sum of L440 and upwards for Monies paid laid out and expended by him this D to and for the use of him the said Complainant and for Money lent and advanced by him this D to and for the use of the said Complainant at his instance and request At which time the said Complainant stood indebted to him the said D in the said sum of L506-12-1 which he this D paid as before mentioned for and on the Account of him the said Complainant And this D further answering saith that upon such Affidavit he caused or procured a Writ of Capias ad Respondendum to be issued out of the plea side of this HC and that he the said C was thereupon accordingly arrested by the Provost Marshal of the Territory of NSW at the suit of him this D And this D has heard and verily believes it to be true that he the said Complainant was carried to the Gaol of Sydney under and by Virtue of the said process where he remained until he had put in bail to the said Action and obtained an Order for his Discharge out of the ? of the said Provost Marshal And this D

? saith that at the time he made the said Affidavit ? he verily believed that it was the intention of the said Complainant to depart from this Colony And this D further answering saith that he the said Complainant has not ever expressed to him this D that he never had any intention of leaving the Colony And this D further answering saith that he does not know nor can he set forth whether the said Complainant at the time he was so arrested had made any preparations for leaving the Colony but this D has heard and verily believes that the said Complainant was greatly involved and had conveyed assigned or transferred the whole of his property both real and personal And this D further answering saith that the said Complainant has never at any time applied to and requested him this D to pay the said Note and to issue process against the said JH for recovery of the amount thereof but at the return thereof he the said Complainant informed this D that he had settled and paid the said Note as herein before stated ? And this D further answereth and most positively saith that the said Note was drawn at the particular instance and request of the said Complainant and not of the said JH And this D further answereth and saith that previous to the month of May in the year of our Lord 1821 the said Complainant and this D had various Dealings and transactions at which time the said Complainant was indebted to this D upon balance of account to him of about L3 and this D gave him a receipt for the same but which said balance the said Complainant did not then or at any subsequent time since pay to this D Since which time this D has had no dealings or transactions whatever with the said Complainant And this D further answereth and saith that he did not pay the said sum of L526-12-1 on Account of the said JH but on Account of him the said Complainant and that he therefore had no right whatever to sue the said JH for recovery of the same as he the said JH was no party to the said Note at the time of the drawing thereof and he this D having affixed his mark thereto at the instance and particular request of him the said Complainant And this D denies all and all manner of combination and confederacy wherewith he is charged in and by the said Complainants Bill of Complaint without that there is any other matter or thing material or necessary for this D to make answer unto and not herein and hereby 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 at my House in Sydney this The mark of

fifth day of September in the year x

of our Lord 1822 Andrew Frazier

Barron Field

Judge

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NRS13724

Midwood v Towers

Bill of Complaint filed 20th August 1823 Thomas Haigh Midwood of Hobart Town Merchant Some time in the year 1822 James Towers of Hobart Town Free Settler applied to ? represented to your Orator ? as a person well skilled in the art of distilling spirits and also represented the great profits and advantages that might be derived from the Erection of a Distillery in Hobart Town and more particularly the great advantages which your Orator might derive by embarking on such a Concern being thereby enabled to dispose of the Wheat and other Grain which your Orator was obliged to receive in payment for goods sold and delivered in due course of his trade as a Merchant to ? greater advantage than by exporting or disposing of the same to Government **And** your Orator further sheweth to Your Honor and this Honorable Court that the said JT then informed your Orator that being so well assured of the profits of such a Concern he was desirous of embarking in the same but was not possessed of a sufficient Capital to enable him to do so and proposed to enter into Copartnership with your Orator in a Distillery **And** your Orator further complaining sheweth unto YH and this HC that he was induced by such representations of the said JT to accede to his proposals of a Copartnership between them in the trade or business of a Distillery and it was accordingly agreed between your Orator and the said JT that your Orator should erect the necessary buildings for the purpose of conducting and carrying on the said Distillery at his own sole Expense and that the said JT should Superintend the Erection of such buildings and that your Orator should pay him at and after the rate of L75 a year during the whole of the time the said buildings should be erecting until they should be finally completed and that when and so soon as the said buildings were completedthat then the said Salary of L75 a year should cease and that he the said JT should take upon himself the entire superintendence management and conducting of the said business and take as his share and proportion of the said Concern one half part or share of the profits and proceeds thereof And that your Orator should receive the remaining other full half or share in the profits of the said Distillery And your Orator should not be required in any manner to take any active part in the management or conducting of the said Concern further than as he should see proper and convenient your Orator in lieu of such personal services bearing the expenses in the first instance of carrying on and conducting the same And it was expressly agreed and understood by and between your Orator and the said JT that the said Buildings and the Land attached to the same were to be considered and to remain the Sole and exclusive property of your Orator free from any claim or Interest of the said JT further than as before mentioned **And your** Orator further sheweth that in pursuance of such arrangement and understanding between the said JT and your Orator your Orator immediately applied to His Honor the Lieutenant Governor of Van Diemens Land for and obtained an allotment of land in Hobart Town for the purpose of erecting such Distillery as aforesaid and immediately commenced such Buildings and premises under the immediate superintendence and direction of the said JT and which have since been fully completed and in the Erection of which said Buildings your Orator actually expended out of his own private monies the sum of L1500 and upwards independant of the Salary before mentioned so to be paid to the said JT for his services in superintending the building of the same **And** your Orator further complaining sheweth unto YH and this HC that immediately upon the Completion of the said buildings your Orator applied for a License for the purpose of enabling them to distill Spirits from Grain on behalf of himself and the said JT and it was agreed that the said Concern should be carried on under the name or firm of JT and Company and the usual and customary Bonds required by Government were entered into and signed by each party **And** your Orator further complaining sheweth unto YH and this HC that the said JT immediately went to reside in the said premises and proceeded to distil spirits and has applied for to and supplied by your Orator with large quantities of Grain Money and other things to enable him to carry on the same and has actually made large quantities of Whisky or other Spirits and sold and delivered the same at very high prices and applied the proceeds thereof to his own sole use and ? Entered the same into General Books of Account and hath kept your Orator P in ignorance with regard thereto and the said JT hath drawn many Bills and given many acceptances in the name of the Partnership for but not in respect of the Partnership Concerns but for his own private purposes and is wasting and destroying the property of your Orator on the said premises **And** your Orator further complaining sheweth unto YH and this HC that the said JT in the beginning of this present Year applied to your Orator for a large advance of Money alleging that the said trade required more and that your Orator had not a sufficient Capital in the trade And your Orator further sheweth unto YH and this HC that your Orator having reason to complain of the conduct of the said JT in the above and many other respects acquainted him with the same and refused to advance any further Sum of Money and thereupon differences and disputes arising between the said JT and your Orator the said JT proposed ? for the dissolution of the Partnership to which your Orator acceded but the said JT afterwards changed his terms and your Orator not being able to come to any Agreement in that behalf with the said JT proposed to refer all matters in dispute to the arbitration of some indifferent persons to which the said JT acceded and Referees were mutually chosen by both parties and the ? of reference drawn up and duly Executed **And** your Orator further complaining sheweth unto YH and this HC that in pursuance of the terms of the said Bonds of Reference the said Arbitrators met according to appointment to proceed to the adjustment of the matters in difference between your Orator and the said JT and for the appointment of an umpire of which meeting timely notice was given to the said JT to appear before them with the Witnesses in support of his claims **And** your Orator further sheweth unto YH and this HC that the said JT instead of attending such meeting sent the following Letter to WW whom the said JT had appointed to act for him as his Arbitrator Hobart 21st March 1822 Sir As I find no order has been given by the Arbitrators upon Mr Midwood and myself for the production of Papers in order to enable you to see our respective claims and objections up to this date when your authority expires as I know of many objections I have against Mr Midwood's charges which will take some days to prepare and as you have not given any opinion and consequently cannot have differed on the subject there is no necessity for choosing an umpire I conclude the present Arbitration at an End But that no misconception of my motives or intentions may be made I am still ready to enter a new arbitration which please to communicate to Mr Midwood's Arbitrator I am Sir your obedient Servant JT **And** your Orator further complaining sheweth unto YH and this HC that upon receipt of such Letter the said Mr W having communicated the contents thereof refused to proceed further in such reference **And** your Orator further complaining sheweth unto YH and this HC that your Orator by himself and Agents have frequently made application since such meeting to Enter into a fresh Reference according to the terms of such Letter but which the said JT has from time to time evaded and have made frequent applications to the said JT to withdraw from the said premises and to admit your Orator to the same and to come to a just and true account with your Orator for all and any the Copartnership dealings and transactions with which just and reasonable request your Orator well hoped the said JT would have complied as in justice and Equity he ought to have done **But now so it is May it please** YH and this HC that the said JT combining and confederating with divers persons at present unknown to your Orator whose names when discovered your Orator prays may be inserted in his Bill of Complaint with proper and apt words to charge them how to defeat your Orator in the premises **pretends** that he hath an equal right with your Orator in the Premises and at other times that he is solely entitled to the same and refuses to admit your Orator into the said premises and has insulted and abused your Orator in a violent manner and treated your Orators Applications for possession of the said premises with the utmost contempt and ridicule and has threatened your Orator should he attempt to enter into the same and has refused to come to any account whatsoever and that your Orator is considerably indebted to him and that he has a right to retain the proceeds to his own use **Whereas** your Orator charges that the said JT having only contributed by his personal Superintendance to the Erection of the said Distillery as the Servant of your Orator at a Salary and to the said Copartnership Interest by his personal attendance upon their concern is not entitled to apply the proceeds thereof to his own use and your Orator is no manner indebted to the said JT **And** your Orator charges that the said JT hath received more than his due proportion of the partnership Profits and nevertheless is proceeding to collect in the Partnership debtsand records whereby the balance due from him will be increased to the great loss and injury of your Orator And your Orator charges that the said JT hath lately suffered the said Distillery and premises to become greatly dilapidated and out of repair to the great injury of your Orator to whom the said premises of right belongs **And** your Orator charges that the said JT hath actually entered into Copartnership in the business of Distilling with Rowland Walpole Loane and James Keating and keeps possession of the said premises in order that your Orator should not be able to compete with them in the market and intends to injure the said premises so as to prevent them being used as a Distillery All which actings doings and pretences of the said JT and his Confederates are contrary to Equity and good conscience and tend to the manifest wrong and injury of your Orator in the premises **In consideration** whereof and for as much as your Orator is remediless in the Premises by the Strict Rules of the Common Law and cannot have adequate relief except in a Court of Equity where matters of this nature are properly cognizable and relievable **To the end therefore** that ? the Confederates when discovered may upon their several and respective Corporal Oaths according to the best and utmost of their several and respective knowledge remembrance information and belief ? a perfect answer make to all and singular the matters aforesaid and as fully as if the same were here repeated and they particularly and respectively interrogated thereto **And** **More** ? the said JT may set forth upon his Corporal Oath **Whether** he did not at the time before mentioned apply to and represent himself to your Orator as a person ? also the great profits and advantages that might be derived from the Erection of a Distillery in Hobart Town and more particularly the great advantages which your Orator would derive ? of that kind or what other representations did he make to your Orator and when and at what other time and for what purpose **And Whether** the said JT ? was desirous of Entering into a concern of that kind but that he was not possessed of a sufficient Capital to enable him so to do **And Whether** he did not propose to your Orator ? with your Orator or how otherwise **And Whether** your Orator was not induced by such representations to accede to the proposals of the said D for a Copartnership ? such Copartnership entered into **And Whether** the Agreement entered into between your Orator and the said D was not to the purport and effect ? mentioned and whether in pursuance of such Agreement between your Orator and the said D your Orator did not apply to HH the lieutenant Governor of Van Diemens Land for and obtained an allotment in Hobart Town

[**hereafter the document raises the question in respect of each allegation made in the Bill down to]**

**And whether** D does not keep possession of the same premises in order to benefit himself and the said Rowland Walpole Loane and James Keating and to prevent your Orator from carrying on his concern or for what other reason **To the end** therefore that the said D may Answer the premises and that the said Copartnership may be declared to be dissolved and that Accounts may be taken of all and every the said Copartnership dealings and transactions between them and that the said D may be directed to pay over what if any thing shall upon such Account appear to be due from him your Orator being ready and willing and hereby offers to pay the said D what if any thing shall appear to be due to him from the said joint concern or for such Salary as aforesaid And that the said D may be directed to deliver over to your Orator the said Buildings and premises and that the same may be inspected and examined by competent persons and an account may be taken of the state and Condition of the delapidation of the same And if any shall appear that the said D may be directed to make good the same And that the said D may be in the mean time restrained by the Order and Injunction of this HC from disposing of any part of the said Copartnership money property or Effects or implements in the said buildings or from collecting or receiving any of the Debts due and owing thereto And for further and other relief is (sic) the bill **May it please** YH to grant unto your Orator His Majesty's most gracious Writ of Subpoena but **also** HM's most Gracious Writ of Injunction to be directed to the said JT commanding him at a certain day and under a certain pain therein to be inserted personally to be and appear before YH and this HC then 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 Petitioner shall ever pray &c

Geo Cartwright

Attorney

Subpoena returnable 8th Septr 1823 Cartwright & Ross Plaintiff's Attornies 20th Augt 1823

Court costs

Filing Bill 10 - 0

Subpoena 5 - 0

? for Appearance 2 - 6

Entd 3 Term 1823 17 - 6

NRS13724

Mileham v Campbell the Elder

No pleadings in file

The reasons for judgment below are copied from a typescript in the file. Despite what appears below there is evidence this judgment was delivered as it is dated 29th March 1820 and marked passed and entered by John Gurner the Registrar. However, the other document obtained is an extract from the Sydney Gazette of 19th February 1820 containing a judgment entitled Mileham v Campbell, sen. The orders are identical and the subject matter appears to be the same although the language in which it is expressed is different. No explanation can be perceived for the apparent

existence of two judgments in the same case

Reasons for Judgment 29th March 1820

This cause coming on this present Day before this Honorable Court in the presence of the Solicitors learned on both sides the substance of the P's Bill appeared to be that P was an Assistant Surgeon in His Majesty's service in this Territory of NSW and that for several years the Complainant has had dealings with D in this Territory and that on or about the year 1806 the said D being connected in partnership or having a certain Interest with one William Wilson of London Merchant solicited the Civil Officers of the Colony and amongst others the Complainant to employ the said WW to receive thier (sic) pay in England he the said D offering to make advances in Money, Goods Wares and Merchandizes to such Civil Officers and amongst others to P on condition of the said WW the Partner or Agent of the said Robert Campbell D being employed by them to receive their pay in England and in order to meet the convenience of D P agreed to the proposal made by D to P at his very urgent and pressing solicitation and P from time to time delivered over to D in order to be forwarded to England to the said WW the Partner or Agent of D certain certificates by which the said WW was enabled to receive from His Majesty's Government in England P's pay as Assistant Surgeon in this Territory and the amount thereof was charged in account against the Sums of Money so received from time to time by the said WW the said agent or partner of D and that in consequence of this system which continued for several years P in or about the year 1810 delivered over to D the necessary certificates to enable the said WW the said partner or agent of D to receive the pay of P in England as Assistant Surgeon in this Territory from the 22d day of September 1808 to the thirty first day of December 1809 being for pay due to P as Assistant Surgeon as aforesaid for Four hundred and sixty-five days at the Rate of Ten Shillings Sterling per Day in order to receive which in England ifplaintiff delivered over to the said D the necessary certificates which D stated to [p2] P were forwarded accordingly to the said WW the Partner or Agent in England of D and that the total amount of pay due to P as aforesaid for the period aforesaid and for which P delivered over Certificates to the said D to be forwarded to the said WW as aforesaid amounted to the sum of L209-5-0 and that in or about the period of time when P delivered over the said Certificates to the said D the said D departed from this Colony for England and the said D either took the said Certificates with him to England in order himself to receive the said sum of L209-5-0 so due to P as Assistant Surgeon as aforesaid or otherwise he the said D transmitted the said Certificates according to his usual and former custom to the said WW his said agent or partner in England aforesaid and that P from time to time drew from the said D Money, Goods Wares and Merchandizes on account of the said sum of L209-5-0 to the amount of L143-16-6 leaving thereby a considerable balance in P's favour and that in consequence of the said Certificates so delivered by P to D they were either taken by D to England or forwarded by D to his Agent or Partner the said WW and the said Sum of L209-5-0 for which the said Certificates were so given by P to D was received in London either by D himself or by the said WW on his the said Ds account and Plaintiff has been accordingly debited with the said sum of L209-5-0 by HM's Government for so much Money received by the said D or by the said WW on D's account in consequence of the said Certificates so delivered by P to D and that P applied at the Counting House of the said D as soon as he ascertained that the said Sum of L209-5-0 had been received either by the said D or by the said WW on the said Ds account and demanded payment of the Balance due to P between the sum of L209-5-0 received as aforesaid by the said D on P's account and the sum of L143-16-6 which P had received in Money, Goods, Wares, and Merchandizes from the said D on account of the said sum of L209-5-0 when P found to [p3] his extreme astonishment that some difficulty was made in paying over to P the said balance so due to P as aforesaid

But P was still more surprised when a demand was made upon him by the said D for the said sum of L143-16-6 on the very extraordinary ground that the said sum of L209-5-0 had been received by the said WW which WW had soon after become Insolvent and had been declared a Bankrupt And that in consequence thereof the said sum of L209-5-0 had not been received by the said D and that considering the excuse so made to be a mere pretence to defraud P of his just rights P resisted the payment of the said sum of L143-16-6 well knowing that the said D or his Agent or Partner the said WW had received the said sum of L209-5-0 on account of P and that therefore a considerable balance was due to P on the Settlement of the Account and D finding that P was determined not only to resist the payment of the said sum of L143-16-6 so demanded by the said D as aforesaid but also to endeavour to compel the said D to pay P the balance due he the said D commenced an action in the late Court of Civil Jurisdiction in this Territory against P and in consequence of P's not being enabled to examine the said D himself as to the true nature of this transaction a verdict went against P for the said sum of L143-16-6 Damages and for L3-13-10 for Costs of Suit and that P has repeatedly applied to D and requested D to come to a just and accurate settlement of accounts with P and that he would allow the said sum of L209-5-0 to be placed to the Credit of P such sum having been and it is admitted by the said D received by the said D or by his Partner or Agent the said WW on D's account And P well hoped that the said D would readily have complied with such P's reasonable [p4] request as in all right and justice he ought to have done And that the said RC D might be restrained from proceeding on the said proceedings at Law against the said James Mileham P and from issuing or causing the Writ of fieri facias from issuing forth of this HC and that P might have such further and other relief in the premises as to this HC should seem meet

Whereto the Solicitor for D stated that D by his answer alledged that previous to the transaction out of which the Complainants Bill had arisen this D had had dealings with ?D but by no means to any very considerable amount

That D left this Colony for England in the month of January 1805 and returned again here in 1806 bringing with him the intelligence of a Mr Chas Peace who had acted as Coll Agent for the Complainant and several other of the Civil Officers in the Territory not being capable of transacting any further business having been struck with an apoplexy a short time previous to Defts leaving England

And D admits that he might have suggested to the Complainant and to some other Civil Officers that Mr W Wilson mentioned in the said Bill of Complaint had for several years acted as agent to the Rev Saml Marsden principal chaplain and to Mr Charles Grimes Surveyor Gentleman

But D denies that he in any way whatever directly or indirectly made any sort of promise that he would become responsible for the conduct of the said Mr W Wilson

And D saith that he had for several years past been in the habit of making advances in Goods & Money to many of the Civil Officers of this Colony and amongst them to the Complainant But positively denies that he ever made it a condition that the said Mr Wilson should be employed as their Coll Agent in England

That he left this Colony again for England in 1810 but positively denies that he ever received from the Complainant any certificate or authority to enable him this D to receive from the said Mr W Wilson or any other person the pay of the said Complainant in England as an Assistant Surgeon upon the establishment of this Colony from the 22d Septr 1808 to 31st Decr 1809 or during any other of the periods charged in the said Complainants said Bill of Complaint

And D saith he is utterly ignorant whether the said Mr Wilson ever did or did not receive from the Complainant such Certificates [p5] or whether the said W Wilson received such pay of the said Complainants as in his said Bill of Complaint is charged or any other sum or sums of Money on account of the said Complainant or by his Order or Authority And D saith that he never himself received either the Ps Certificate or any of the said Monies to be received thereby as charged in the Complainants said Bill of Complaint: Nor does he know that the said Mr Wilson ever received such Certificate or that any of the Money charged by the said Complainant in his said Bill of Complaint to have been received by the said Mr W Wilson was ever so received no advice thereof having ever been received by this D either from the said Mr Wilson or from any other person or persons in that behalf. D admits that the said Mr W Wilson did about the year 1810 become Bankrupt but as to the present state of his pecuniary circumstances D is unable to make any statement

And D saith that in the year 1813 he commenced an action at law in the then Court of Civil Jurisdiction against the Complainant and recovered the Sum of L148-7-4 for his Debt and Costs for which sum D had given Instructions to Issue execution. And D hath also given Instructions to his Solicitor to sue the Complainant at law for recovery of the amount of the principal and Interest due on a certain Bill of Exchange Dated the 12th day of March 1803 drawn by the Complainant upon Thos Crafer Esqr Stationary (sic) Office palace yard Westminster payable to this D or order at ?4 days sight for L40 Sterling

This Cause coming on before this HC this Day to be heard and debated before His Honour Barron Field Esquire Judge, D'Arcy Wentworth and John Piper Esqres Justices members of the same Court in presence of the Solicitors learned on both sides and the Court having taken into consideration all the circumstances of this case and having heard all the proofs and evidence taken in this Cause as well on the part of P as on the part of the D and hearing the answer of the D and what was alledged by the Solicitors on both sides

The Court doth think fit and so orders and decrees and accordingly it is Ordered, adjudged and decreed the Deft shall be for ever enjoined from taking out Execution against the Complainant for the sum of L147-10-4 in the Complainants Bill mentioned and it is further Ordered, adjudged and decreed that the D shall be left to his remedy at Law upon the Bill of Exchange for L40 drawn upon the said Thos Crafer in his said answer mentioned and that the Complainants Bill for releif as to the balance of the sum of L209-5-0 in his said Bill mentioned be dismissed leaving the Complainant to his remedy against his Attorney WW's Assignees And that the D do pay to the Complainant the Complainants Costs to be taxed by the Master

Passed & Entered Barron Field, Judge

John Gurner 29th March, 1820

Interrogatories holed and partly illegible

NRS13724 Moore v Antill

Bill of Complaint (faint and damaged) Filed 4th December 1818 By Thomas Moore of Liverpool Esq One Andrew Thompson of Windsor departed this life in or about the month of October 1810 having made his will and appointed one Henry Colsen Antill and P his executors who duly proved the will and took upon themselves the burthen and execution of the said will and HCA possessed himself of the personal estate of AT and great part of the Real Estate and P always suffered HCA to receive the monies and P joined in many actions for recovery in due course of administration and it is P's intention shortly to leave the colony to go to England and for that reason he is desirous that he may be discharged by decree of this Honorable Court from further acting in the estate and he has offered to account for the monies and effects of the estate but HCA doth object to such arrangement All of which actings and doings of HCA are contrary to right Equity and good Conscience and P prays that he may be discharged from the said trust as executor as aforesaid and may be indemnified by the decree of this HC from all acts in respect of the said estate and P may have such further and other relief in the premises as to this HC may seem meet

TS Amos Solicitor for P

4th December 1818 Subpoena in Chancery for D returnable immediately

TS Amos P's Attorney

10th December 1818 Consent by P's solicitor that D be at liberty to file his answer without oath

Filed 11th December 1818 Answer of Henry Colden Antill Admits all of the allegations in the Bill of Complaint save that he denies that he is desirous that P should continue in the said Trusts and admits that upon the duly accounting by P under the authority of this HC of all monies and effects (if any) that have been received by him as executor it would better tend to the advantage of the estate if P were discharged from the Trusts and D humbly prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained

Frederick Garling Solicitor for D

10th December 1818

Friday 11th December 1818 Reasons for judgment and decree in the one document Decree is in form set out in P's petition of 29th October 1819 below. It was passed and entered on 17th December 1818 and filed 19th December 1818

This Cause coming on this day to be heard and debated before His Honor Barron Field Esquire Judge William Broughton and Richard Brooks Esquires Members of the said Court in the presence of the Solicitors on both sides upon Bill and Answer the Substance of the P's Bill appeared to be that one Andrew Thompson late of Windsor Esquire decd departed this life in or about the month of October 1816 [sic] having first made and published his last will and testament in writing and thereby amongst other things appointed the said Henry Colden Antill Esquire and the Complainant Executors of his said will and the said HCA and the Complainant duly proved the said will before the Court of Civil Jurisdiction in and for this Territory of NSW and the Complainant and the said HCA thereupon took upon themselves the burthen and Execution of the said Will and the said HCA possessed himself of all the personal Estate of the said AT and great part of the real Estates and although the Complainant was joined in many actions for recovery of personal Estate and in the Conveyances of the real and personal Estates in terms of the said will Yet the Complainant always paid over or otherwise suffered the said HCA to receive the monies and to account for it in due Course of Administration so that although the Complainant has Joined in many acts for the putting in of the real and personal Estate of the Testator as directed by the will the Complainant always considered the said HCA to be the only ostensible acting Executor and that it is the Complainant's intention shortly to leave this Colony to go to England and for that reason he is desirous that he may be discharged by the Decree of this HC from further acting in the trusts of the said will or as the said office of Executor thereto And that the Complainant has offered to account with the said HCA and to pay over to him any monies or Effects in his hands or that had come to his possession as such Executor if any such there be and to relinquish and give up all future acting in respect thereof but the said HCA did object to such an arrangement although by reason of the Complainant's leaving the Colony he should be rendered wholly incapable to act in any respect in the trusts of the said will and the said HCA's reasons for having a desire for the Complainant to continue in such trusts after his departure he refuses to discover Therefore that the said HCA might set forth what money has ever come to the hands of the Complainant out of the real and personal Estate of the said Testator and that an account might be taken by and under the authority of this HC of all monies that had been received by the Complainant and what has been paid by the Complainant in his due Course of Administration and that upon the Complainant paying what, if any thing, remain [sic] in his hands, upon taking such account in such way as this HC might direct the said Complainant might be discharged from the said trusts as Executor as aforesaid and might be indemnified by the Decree of this HC from all acts in respect of the said Estates of the said AT decd and for other and further relief in the premises is the Scope of the P's Bill Whereunto the Solicitor for the D alledged that he by answer admits that AT in the said Bill named departed this life on or about the month of October 1810 first duly made and published his last Will and Testament and thereby appointed him this D and the said Complainant Executors thereof and that they this D and the said Complainant shortly after the decease of the said AT proved his said Will in the late Court of Civil Jurisdiction in and for the Territory of NSW being the only Court in the said Territory which had the power to grant probates of Wills or Letters of Administration to intestate Estates And thereupon took upon themselves the burthen and execution of the said Will and the said D admits that he alone possessed himself of the personal Estate and Effects of the said AT and a great part of the Real Estates Although the name of the said Complainant hath pro forma been used in the several actions at law and suits which have been instituted for the recovery of the personal Estates of the Testator Yet that he this D hath always received the monies and effects recovered by means of such actions and suits and hath accounted and is still ready and willing to account for such monies and Effects as have been collected and received on account of the Estate of the said Testator in a due Course of Administration And this D admits that the Complainant have [sic] joined in the Execution of various Deeds of Conveyance and done many acts in recovering the real Estates of the said Testator and in disposing of some such real Estates according to the direction of the Will of the said AT Yet that the produce arising by Sale of such real Estates was always received by this D or placed under the Controul or at the disposal of this D Alone And this D beleives it to be true that the said Complainant always Considered that this D was the only ostensible acting Executor of the Will of the said Testator And the D beleives it to be true that it is the intention of the said Complainant shortly to depart from the Colony and to proceed to England and there to reside in future and admits that the Complainant hath offered to account with him this D of and concerning all Matters and things relating to the Administration of the real and personal Estate of the said Testator and to pay over to him this D all Monies and Effects if any which have come to his hands and possession as one of the Executors of the said AT And this D also admits that the said Complainant is desirous to relinquish and give up all future acting in respect of the Executorship in respect of the Testator's Will and to be discharged therefrom and from the trusts of the same by a Decree of this HC But this D denies that he is desirous that the said Complainant should continue in the said trusts and admits that upon the duly accounting by the said Complainant under the authority of this HC of all Monies or Effects, if any, that may have been received by the said Complainant as Executor of the last Will and Testament of the said AT and upon payment of what if any thing, that may appear upon taking such accounts to be in the hands or possession of the said Complainant in such way as this HC may direct that it would better tend to the advantage of the Estate of the Testator if the said Complainant was discharged from the trusts of the said Will and the burthen of the Execution thereof in as much as very Considerable difficulties may arise in discharging the duties of the trusts thereby required to be performed and great impediments may arise in duly administering the Estate and Effects of the said Testator in the event of the said Complainant being absent from the Colony where alone the said Testator had any real or personal property and where alone the same is to be administered

Whereupon and upon debate of this matter and upon hearing the Solicitors for both parties the Court having taken into consideration all the Circumstances do find that it will be for the benefit and advantage of the Estate of the Testator that the Complainant should be discharged from the trusts of the said Will and the burthen of the Execution thereof in Consequence of the difficulties that may arise in discharging the Trusts thereby required to be performed in the event of the Complainant being absent from this Colony

For these Causes the Court refer it to the Judge of this Court to take an account of the real and personal Estate of the said Testator AT that may have come to the hands and possession of the said Complainant as one of the Executors of the said AT deceased And that on taking such account the Complainant have Credit for all sums of money paid over by him to the said D HCA or otherwise in the Execution of the said Will or in the due course of Administration and that upon the Complainant paying what (if any thing) upon taking such Account shall remain in his hands to the D the Complainant be discharged from the Trusts as Executor as aforesaid and be indemnified by the Decree of this HC from all acts which he has done as Executor in respect of the said Estates of the said AT deceased and the Court doth reserve the question of Costs occasioned by this Suit and all further directions untill the Judge shall have made his report thereupon

Passed and entered

17th December 1818

John Gurner

18th December 1818 Filed 19th December 1818 Report by Barron Field J

In pursuance of the order made upon the hearing of this Cause the eleventh day of December instant I have been attended by Mr Amos Solicitor for the Complainant and Mr Garling Solicitor for the Defendant and it appears to me that no money has been received by the Complainant but in all cases where the Complainant has been joined in any act for the better execution of the trusts of the Will the said Defendant has been in the receipt of the money and payment of all Monies that have been paid in the Execution of the said Will or in due course of Administration and that no money whatever belonging to the real and personal Estate of the said Andrew Thompson deceased now remains in the hands of the said Thomas Moore the Complainant all which I humbly certify and submit to the Judgment of this Honorable Court

Barron Field

19th Dec 1818 Motion to confirm report

Granted 19th Dec 1819 John Gurner

Filed 29th October 1819 Petition by P

On the hearing of this Cause on 11 December 1818 It was ordered and decreed that it would be for the benefit and advantage of the estate That P should be discharged from the trusts of the said will of the said AndrewThompson decd and the burthen of the execution thereof in consequence of the difficulties that might arise in discharging the trusts thereby required to be performed in the event of P being absent from the Colony For these causes The Court did refer it to the Judge to take an account of the real and personal Estate of the satd Testator AT as might have come to the hands or possession of P as one of the Executors of the said AT decd That in taking such account P have credit for all sums of money paid over by him to D or otherwise in the execution of the said Will or in the course of administration And upon P's paying what (if any thing) upon taking such account shall remain in his hands to D P be discharged from the said trusts as Executor as aforesaid and be indemnified by the Decree of this Court from all acts which he has done as Executor in respect of the said Estate of the said AT decd And the Court did reserve the question of Costs occasioned by that suit and all further directions until the Judge should have made his report thereupon

And that in pursuance the said Judge hath made his report bearing date 18 December last past in relation thereto

Your Petitioner therefore humbly prays this HC to appoint a short day for the hearing of this Cause on the said Judge's report

And your Petitioner will ever pray &c

Geo Crossley Solicitor for P

Let this Cause be set down for hearing on 1 November

B Field J

Friday Oct 29th 1819 Order that this Cause be set down for further directions on 1st November next

John Gurner

1st November 1819 Decree

This Cause coming on this day for further directions to be heard and debated before this HC And upon reading the Report made in this Cause on 18 December last and upon hearing Mr Crossley Solicitor for P and Mr Garling Solicitor for D it is ordered adjudged and decreed that P and D's costs be referred to the Judge to be taxed and to be paid by D out of the personal estate of the said Testator to the Solicitor for P and the Solicitor for D respectively and to be allowed him in his account And it appearing by the Judge's Report that no money has been received by P but in all cases where P has been joined in any act for the better execution of the trusts of the Will in the pleadings in this Cause mentioned D has been in receipt of the money and payment of all monies that have been paid in the execution of the said Will or in due course of Administration and that no money whatever belonging to the real and personal Estate of the said AndrewThompson decd now remain in the hands of P And it is Further Ordered and Decreed that P be discharged from the said trusts as Executor of the Will of the said AT decd and that he be indemnified by the Decree of this HC from all acts which he has done as Executor of the said Estate of the said AT decd

By the Court

B Field Judge

Passed and entered

November 4th 1819 John Gurner

Bill of Costs

Note of Court Costs

NRS13724

Palmer v Crabtree & Wheeler

2nd March 1813 Hugh Woods' Note

4th May 1814 Received from Hugh Crabtree Hugh Wood's Note for L80 Sterling According to Agreements I say received by me

Samuel x Wheeler his mark

Witness present Margrat Cavanagh

8 July 1814 Deed of Conveyance Hugh Crabtree to Thomas Clarkson of 30 acres of land more or less

26 Feb 1818 Subpoena for George Thomas Palmer against Samuel Wheeler & Hugh Crabtree to appear &c

Wylde

Bill filed 28 Feby 1818

To the Hon Barron Field Esq Judge of the Supreme Court of Civil Judicature in and for the Territory of NSW and its dependencies and to the Worshipful Magistrates the other members of the said Court

Humbly complaining Sheweth unto this Honorable Court your orator George Thomas Palmer of Windsor in the Territory of NSW Esq That Samuel Wheeler late of Parramatta in the said Territory being seized in his demesne as of fee or otherwise well entitled to a certain Farm Lands and premises situate at Caddie Creek in the district of Mulgrave place in the said Territory and having in or about the month of June 1814 occasion for the sum of L80 he applied to one Hugh Crabtree late of Hawksbury (sic) in the said Territory settler to advance him the same upon the security of the same Farm Lands and premises and that the said HC having at that time in his possession a certain promissory note for L80 drawn by one Hugh Wood (who is since deceased) payable to the said HC he prevailed on the said SW to accept of such promissory note in lieu of such sum of L80 alledging that the same was as good as money and could be negociated and that if the same was not paid the said HC would take it back from the said SW and upon the faith of which the said SW by a certain Indenture or Instrument in Writing bearing date on or about the 4th day of June 1814 made between the said SW of the one part and the said HC of the other part did sell bargain alien and Assign the said Farm Lands and premises unto the said HC subject to a proviso for redemption of the said Farm Lands and premises upon the payment of the said sum of L80 as therein mentioned as in and by the same Indenture or Instrument in Writing reference being thereunto had will more fully and at large appear And your orator further sheweth unto this Honorable Court that the said SW did accept of such promissory note for L80 as hereinbefore stated for the consideration in said Indenture or Instrument in Writing in full confidence that the same would be paid or that the said SW would be able to negociate the same and the said SW did use his best endeavours to obtain payment or to negociate the said promissory note which being ineffectual he frequently applied to the said HC for the amount of the said L80 being the consideration alledged to be paid on the Execution of the said Indenture which the sd HC refusing the said SW considering that he had received no bona fide consideration for such assignment gave the said HC notice that he should consider the same null and void and in or about the month of August 1814 the said SW having contracted and agreed with your orator for the absolute sale of the same Farm Lands and premises so as aforesaid assigned to the said HC in and by certain Indentures of Lease and release bearing date respectively the 25th and 26th days of August 1814 the release made between the said SW of the one part and your orator of the other part the said SW in consideration of the sum of L81 paid in manner therein mentioned did bargain sell and assign over unto your orator and to His Heirs and Assigns for ever the said Farm Lands and premises by the description of all that Messuage or tenament (sic) and Farm and the Lands thereunto belonging containing 30 acres more or less called or known by the name of Wheelers Farm situate at Caddie Creek in the district of Mulgrave place in the Territory aforesaid To Hold the same to your orator His Heirs and Assigns for ever as in and by the same Indentures of Lease and release which your orator craves leave to refer to when produced will more fully appear and your orator hath at divers times since his said purchase by himself and agents applied to the said HC and in a fair and friendly manner desired him to deliver up to your orator the possession of the said Farm lands and premises and your orator hath also requested of the said HC that he would come to a Just and fair account with your orator touching the rents and profits of the same premises received by him or any other person or persons for his use and your orator well hoped that the said HC would have complied with your orators said Just and reasonable offers and requests But now so it is may it please Your Honor and this Hon Ct that the said HC combining and confederating with divers persons at present unknown to ? Sometimes pretends that he hath an Absolute Estate in law of the Farm lands and premises and that he did purchase the same so long ago as the year 1814 of the said SW and that the said SW did by some Indenture or Instrument in writing under his hand and seal release and convey the said Farm lands and premises unto him the said HC in consideration of a certain sum of money pretended to be paid to the said SW Whereas your orator charges that if any such Deed or Instrument in writing was executed by the said SW as aforesaid (which your orator doth not admit other than as herein before set forth) yet the said HC never paid any consideration for the same and the said HC at other times pretends that the said SW never did execute to your orator any Conveyance of the said Farm and lands as aforesaid the contrary whereof your orator expressly charges to be the fact as aforesaid all which actings doings and pretences of the aforesaid HC and SW are contrary to Equity and good conscience and tend to the manifest wrong and Injury of your orator In tender Consideration whereof and for as much as matters of this nature are not Cognizable in a Court of Law but only in a Court of Equity before Your Honor and this Hon Ct To the end therefore that the said HC and SW may upon their several and respective Corporal oaths full true perfect and distinct answer make to all and singular the matters and things herein before set forth as fully and particularly as if the same were here again repeated and Interrogated and more especially that they may set forth and discover whether the said SW was not seized and possessed of the said Farm Lands and premises as hereinbefore set forth and whether the said SW did not at or about the time herein before set forth or at what other time did not make such Mortgage to the said HC of the same premises as aforesaid or what other Mortgage by any and what deeds and to what purport or effect and whether the said HC did not pay the sum of L80 being the Consideration expressed to be paid in the said Mortgage by the promissory note herein before set forth or what other Consideration was really and truly paid and whether the said SW did not accept of such promissory note as the Consideration aforesaid in full confidence that the same would be paid and whether the said SW did or did not use his best endeavours to negociate the said promissory note or to obtain payment thereof and whether the amount of the said promissory note or any part of the money therein expressed was ever paid to the said SW or to any other person or persons by his order or direction for his use and whether the whole of the said L80 does not still remain unpaid And whether the said SW did not make and execute unto your orator such Indentures of Lease and Release of the said Farm Lands and premises as herein before set forth and for the consideration herein before Expressed or what other Indentures did the said SW make and Execute unto your Orator of the said Farm Lands and premises and for what other Consideration was or was not paid on the sealing and delivery of the same and whether your orator hath not at divers times since the said Indentures were made and Executed to him applied to the said HC as aforesaid to deliver up to your orator the possession of the said Farm Lands and premises and whether your orator hath not also applied to the said HC to come to a fair and Just account ? of the rents and profits of the same and more particularly that the said HC may answer whether your Orator hath not caused the said purchase deeds to be produced and shewn to the said HC and whether he did not Inspect or peruse the same and whether the said HC hath not pretended to be absolutely Intitled to the said premises under some and what Indenture or Instrument in writing and that the said HC and SW may answer all and singular the premises not only as to what they themselves know but also as to what they have heard been informed and believe concerning the same and when and by whom they had such information and that the said HC may come to a Just and fair account with your orator for the Rents and profits of the said premises since the said Indentures of Lease and Release were made and executed to him as aforesaid And that the said Indenture of Mortgage so made and executed to the said HC may be given up to be cancelled and that your orator may be let into possession of the said premises and may be further and otherwise relieved in the premises as to Your Honor and this Hon Ct shall seem meet and the nature of his case may require and according to the Rules of Equity and Good conscience May it please Your Honor and this Hon Ct to grant unto your Orator his most gracious writ of subpoena to be directed to the said HC and SW thereby commanding them at a certain day and under a certain pain therein to be Inscribed personally to be and appear before Your Honor in this Hon Ct then and there to answer the premises and to stand and abide such order and decree therein as to Your Honor may seem agreeable to Equity and good Conscience

And your orator shall ever pray &c

Thos Wylde

Filed 22nd May 1818 Answer of Samuel Wheeler one of the Ds He admits he was seized in his Demesne as of fee or otherwise entitled to a certain Farm Lands or premises situate at Caddie Creek in the District of Mulgrave place (sic) as in the Bill set forth and D having occasion for the sum of L80 he applied to Hugh Crabtree one of the Ds to advance him the same on the security of the said Farm Lands and premises and HC having a promissory note of one Hugh Wood for the sum of L80 he prevailed on this D to accept the same in lieu of money and alledged (sic) that such promissory note could be negociated and if the same was not paid he the said HC would take it back from this D and upon the faith of which statement this D made and executed unto the said HC the said Indenture or instrument in writing of the 4th day of June 1814 as in the said Complainant's said Bill is set forth and this D further answering saith he admits it to be true that he did accept of such promissory note for L80 as in the Bill of Complaint is set forth in full confidence that the same would be paid or that the D would be able to negociate the same and the D did use his best endeavours to obtain payment or to negociate the said promissory note which being ineffectual this D frequently applied to the said HC for the amount of the said L80 and this D further answering saith that the amount of the said promissory note nor any part thereof was ever paid to this D or to any other person or persons by his order or direction or for his use and that the whole of the said sum of L80 still remains unpaid and this D never received any bona fide consideration for the said assignment and in consequence he this D has given the said HC Notice that he should consider the same null and void and this D further answering saith he admits it to be true that in or about the month of August 1814 he this D contracted and agreed with the C for the absolute sale to him of the said Farm Lands and premises so assigned to the said HC as in the said Bill is set forth and this D in and by certain Indentures of Lease and release bearing date respectively the 25th and 26th days of August 1814 conveyed the said Farm Lands and premises unto the Complainant as in the said Bill of Complaint is alledged 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, that there is any matter or thing material or necessary for this D to make answer unto and not herein and hereby well and sufficiently answered unto confessed or avoided traversed or denied is true all which matters and things D doth aver and prove as this Honble Court shall direct and award and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

Jurat and signatures illegible

Order to the Provost Marshal for attachment of Hugh Crabtree so as to have him before the Court to answer to the said Court touching a Contempt which he as it is alledged hath committed against the said Court as also such other matters as shall then be laid to his charge and further to abide such Order as the said Court shall make in this behalf

To the Provost Marshal An attachment

against HC for not appearing and answering Barron Field

at the suit of George Thomas Palmer Esq Judge

Returnable 1st November 1818

Wylde

5th August 1818

Filed 6 August Affidavit of Thomas Broadhurst of personal service on 18 April 1818 on D Hugh Crabtree of a Writ of Subpoena commanding him to appear on 20 April

Sworn 6 August 1818

Before Barron Field Judge

Filed 6 August 1818 Petition of P sheweth D Hugh Crabtree hath not appeared or put in his Answer although served with a Subpoena and prays that he may be at liberty to make and process Contempt against the said D for want of an Appearance and Answer returnable 15th August inst And your Petitioner will ever pray &c

6th August 1818

Be it as prayed

B Field Judge

29th October 1818 Answer of Hugh Crabtree one of the Ds

Admits it to be true that Samuel Wheeler one of the Ds to the Bill of Complaint of the said Complainant was seized in his demesne as of fee or was otherwise well entitled to a certain Farm Lands and premises situate at Caddie Creek in the District of Mulgrave place and Territory of NSW And as in the Complainant's said Bill of Complaint set forth which said Farm Lands and premises were in the actual possession of this D who rented the same of the said SW And this D further answering saith that in or about the beginning of the month of June in the year 1814 while this D was tenant to the said SW of the said farm lands and premises the said SW applied to this D and requested him to advance the said SW a certain sum of money and offered as a security for repayment thereof to mortgage to him this D the said farm lands and premises ?which against this D for a considerable time refused to comply with that the said SW told this D that he had heard this D possessed a note of Hand of one Hugh Wood for the sum of L80 and that if this D would let him have it it would be as good as money to him he the said HW being at that time a man in very responsible circumstances and the said SW told this D at the time that he the said SW who is by trade a brickmaker was in the habit of receiving very considerable sums of money from the said HW by Orders drawn upon him by the Reverend Samuel Marsden in payment for bricks which he the said SW had made and was then making for building the Orphan School House at Parramatta and the said SM promised as a further inducement to this D to let him have the said Note that he this D should possess? the said Farm Lands and premises free from all rent from that time up to and until the repayment to him of the said sum of L80 And this D further answering saith that in consequence of such solicitation of the said SW he this D was induced to let the said SW have the said promissory note and a Deed of Mortgage was accordingly made and executed to this D on or about the 4th day of June in the year of our Lord 1814 as a security for the said sum of L80 upon the conditions aforesaid the whole of which circumstances will more fully appear by the said Deed of Mortgage a counterpart whereof was delivered to the said SW and the original is now in the possession of this D And this D further answering saith that the said SW never instituted any proceedings against the said HW for recovery of the amount of the said promissory note nor does he believe that the said SW did use his best endeavours to negociate or to obtain payment of the same as he verily believes that if he had so done he would have obtained the same the said HW at that time carrying on a very considerable business as a Butcher having dealings to a very great amount and as this D verily believes was in good credit and capable of discharging the same and which the said SW well knows as he had but a short time before applied to this D and requested him to exchange a promissory note of one Michael Nowland for L30 which he then held for one of the same amount of HW then held by this D as he preferred the latter and this D having dealings with the said MN consented to exchange same as he was able to make use of the same with equal advantage to himself as the note of the said HW which this D has no doubt was punctually paid And this D further answering saith that he is unable to state positively whether any part of the said note of L80 has been paid or not but the said HW told this D previous to his death that he had paid the said SW several sums of money from time to time on account thereof but this D does not recollect whether he mentioned to what amount And this D further answering saith that the said SW never gave this D any notice of the dishonour of such Note of Hand of the said HW until several months (this D verily believes six months) after the same had been delivered over to him when this D refused to take back the same and this D had up to that time fully conceived that the same had been satisfied and discharged And this D further answering saith that he admits that the said SW may have made and duly executed the Deed of Lease and Release of the said Farm Lands and premises to the said Complainant as in the said Complainant's said Bill of Complaint mentioned but this D never had any Knowledge thereof until a very considerable time after the same are stated to bear date And this D further answering saith that he hath pretended and still pretends that he is absolutely entitled to the said Farm Lands and premises under the Deed of the 4th day of June which was in the year of our Lord 1814 which is an absolute conveyance of the title thereof with possession to him subject to the condition that on payment of the sum of L80 to him this D on the 1st day of January which would be in the year of our Lord 1817 the same should revert to the said SW And this D therefore humbly conceives that he is still entitled thereto otherwise the whole of the said sum of L80 would become a total loss to this D which would not otherwise have been the case And this D denies all and all manner of unlawful combination and confederacy wherewith he is charged without that that there is any other matter cause or thing in the Complainant's said bill of complaint contained material or effectual in the law for this D to make answer unto and not herein and hereby well and sufficiently answered avoided traversed or denied is there to the knowledge and belief of this illegible aver maintain and prove as this Hon Ct shall direct and humbly prays to be hence dismissed with his reasonable costs and charges in the law in this behalf most wrongfully sustained

Sworn at my House George Street

Sydney this 29th day of October Hugh Crabtree

1818 before me

Barron Field

Judge WH Moore Solicitor for the said

Defendant Hugh Crabtree

Filed 10 May 1820 Replication of Complainant to the Answer of Hugh Crabtree This Repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said Answer for Replication thereunto saith he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto And that the said Answer of the said D is uncertain untrue and insufficient to be replied unto by this Repliant without that any other matter or thing 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 Repliant is and will be ready to aver and prove as this Honble Court shall direct and humbly prays as in and by his said Bill he hath already prayed

Thomas Wylde

Solicitor for the Complainant

Brief to move For Subpoena to rejoin to the Replication of the C to the Answer of Hugh Crabtree Returnable immediately Granted 10 May 1820

By the Court

John Gurner

12 May 1820 Upon motion made by Mr Wylde solr for the Complainant it is ordered that Subpoena to rejoin to the D Hugh Crabtree's answer shall forthwith issue

returnable immediately

By the Court

John Gurner

Reg

15 May 1820 Document re rejoinder to the replication of the Complainant to D Hugh Crabtree's Answer Returnable immediately

Wylde P's solicitor

Interrogatories for Plaintiff filed 5th November 1821 to witnesses to be produced sworn and examined in a certain cause depending and now at issue in the equitable jurisdiction of the Supreme Court wherein George Thomas Palmer is Complainant and Hugh Crabtree and Samuel Wheeler are Ds On behalf of the Complainant

1st Do you or not know or were you well acquainted with the Complainant and the Ds in the title of these interrogatories named or either or which of them in and for some and what time previous to the year 1814. Declare the truth and your knowledge herein

2d Do you or not know whether the D SW was or not for some considerable time previous to and in the year 1814 the reputed owner of and entitled to or claimed to be entitled to and the owner of a certain freehold Farm Lands and premises situate at Caddi Creek and was or not such Farm Lands and premises at such or what other time in the possession of the D HC or tenant thereof to the D SW or how otherwise

3d Did or not a meeting take place between the D SW the D HC and the witness or some and what other person or persons sometime on or about the 4th day of June 1814 or some and what other day on the subject of the D SW having been arrested by some or one and whom by name of his Creditors for debt and did or not the D SW on such occasion inform the D HC of such arrest having taken place for a Debt or sum of L80 or some and what other sum of money and request of him a Loan of money in order to enable him the said D SW to pay or satisfy the said Debt or how otherwise and did not the D HC declare his inability to grant such loan and state what passed or was said between the sd Ds on such occasion - Declare &c

4th Did or not the D HC in consequence of the application to him of the D SW for a Loan of money produce the paper writing now produced marked A appearing to be a promissory Note drawn by one Hugh Wood for the sum of L80 bearing date the 2nd day of March 1813 payable to the said HC or Bearer two months after Date and propose to the D SW that if he the D SW would give him the D HC an Indemnity or security or Mortgage on his said farm for delivering to him the said SW the said promissory Note he the D HC would deliver the said Note to the D SW and represent that he the D SW might in all probability get paid the amount thereof or how otherwise or whether the said D did not accept of such the proposal of the said D HC or how otherwise - Declare &c

5th Whether in consequence of the before stated application and proposal the said Ds HC and SW with some and what other person or persons did not forthwith from the time such proposal had been made and agreed to or at some and what other time repair to one John Brenan in order to draw the said proposed security or indemnity and whether the said JB did not draw up the same to be executed between the said parties the Ds and whether the same was not executed accordingly and state what was said by either of the said Ds to or in the presence or hearing of the other of them with respect to such security Indemnity or Mortgage - Declare &c

6th Was or not any and what consideration given by the D HC to the D SW further than the paper writing before shewn to you marked A on the executing or signing and as a consideration for the executing or signing of the said security Indemnity or Mortgage - Declare &c

7th Did or not the D HC on the occasion of the D SW executing the said security or Indemnity and at the time the same was executed or how otherwise undertake to and promise and agree with the said D SW that in the event of his not being enabled to obtain from the said Hugh Wood the Drawer of the before mentioned promissory Note L80 being the amount of the said note or a satisfactory security for the same within the space of three weeks or in some or what other time he the D HC should and would on having the said Note returned to him deliver up the said security Indemnity or Mortgage to be cancelled and consent that the same should be in the mean time deposited or lay in the hands of the said John Brenan ready to be delivered for such purpose or how otherwise - Declare &c

8th Whether the witness did or not some short time and how soon afterwards receive the said promissory Note from the D SW with information that he could not obtain any part of the amount thereof from the Drawer and with directions for such reasons to carry and deliver up the same to the D HC and to receive from him the before mentioned security Indemnity or Mortgage to be cancelled and whether he did not in consequence tender the said Note and proffer to deliver the same back to the sd D HC for such purpose or how otherwise and state all that the D HC said on such occasion - Declare &c

9th What became of the said security Indemnity or Mortgage and whether the said John Brenan is or not now dead

10th Whether in consequence of the D SW not being able to obtain the amount of the said Note he was not reduced to the necessity of going to Gaol for his said Debt and did or not give directions to witness to procure a purchaser of and for his said farm and in pursuance thereof whether the witness did or did not from a knowledge that the Complainant had a farm and Lands adjoining Wheeler's said farm or for some and what other reason apply to the said Complainant for and the said Complainant did not agree to and did not actually become a Purchaser of the said D SW's farm at and for the price or sum of L81 and did or not the said D SW by means of the said purchase money procure his liberation from his said Imprisonment or how otherwise - Declare &c

11th Look upon the paper writing now shown to you marked B and the signature of HC subscribed therein and state whether you have or not seen the said HC write or have a knowledge of the manner and character of his hand writing and whether the name of HC so subscribed is or not of the hand writing - Declare &c

12th Look upon the paper writings now shown to you marked C and D purporting to be a Lease and Release or Conveyances of the Farm Lands and premises of the said SW to the Complainant Were such paper writings duly executed signed sealed and delivered by the said D SW and is the mark or X thereto set or subscribed the cross or proper hand writing of the said D SW and were the same previous to the execution thereof by the said D read over to him by you or some and what other person and where was the said D when he executed the same and did the said D fully understand and was made acquainted with the nature and import of the said conveyances and are the names Geo Crossley and I Mitchell thereto set and subscribed as Witnesses to the due execution thereof of the proper hand writing of the said George Crossley and of the Witness or how otherwise declare &c

13th Was the sum of L81 therein stated to be the consideration money or some and what other sum of money paid or satisfied to the said D SW and how or in what way or how otherwise and was or was not L54 9s of the said consideration money paid by the C at the instance of the D SW to one Solomon Wiseman a Creditor of the D SW in order to procure the liberation of the said D SW from out of custody from the Sydney Gaol where he was detained on account of an arrest made for the Debt of the said Solomon Wiseman and did or not the D SW in pursuance of such payment obtain his liberation from out of the said Gaol and was not the remainder of such consideration money paid to the said D SW Declare &c

Lastly Do you know of any other matter or thing or have you heard or can you say any thing touching the matter in question in this cause that may tend to the benefit and advantage of the Complainant in this cause besides what you have been interrogated unto Declare the same fully and larger as if you had been particularly interrogated thereto

Cross Interrogatories on the part and behalf of the D Hugh Crabtree to be administered to Henry Rolfe a witness produced sworn and examined on the part of Complainant in a certain cause now depending and at issue in the Equitable Jurisdiction of the Supreme Court of Civil Judicature for the Territory of NSW and its dependencies wherein George Thomas Palmer is Complainant and Hugh Crabtree and Samuel Wheeler are Ds

First Look upon the Deed or Indenture produced and shewn to you dated the 4th day of June in the year of Our Lord 1814 and purporting to be made between SW of the one part and the D HC of the other part Whether or no was the said Deed or Indenture ?not or when signed sealed and delivered or in any and what manner executed and by any and what person or persons in your sight or presence or in the presence of any and what person or persons and whether or no is your name set or subscribed to or upon the said deed or instrument as a witness to the signing sealing delivery or execution thereof by any and what person or persons If yea is your name so set of your own proper hand writing and whether or no was any other person or persons present when the same was so signed sealed delivered and executed and if so whether the name or names of such other person or persons so present was or were written or subscribed as a witness or witnesses to such signing sealing delivery or execution of such Deed or Indenture and Whether such name or names are or is of the proper hand writing of any such person or persons respectively or how otherwise declare all you know have heard and do believe touching the several matters inquired of you by this interrogatory

Second Look upon the paper writing attached to the said Deed or Instrument and purporting to be a receipt signed by the D SW for a certain promissory Note of one Hugh Wood for L80 sterling and dated the 4th day of May in the year of our Lord 1814 was the same paper writing a receipt written at the time of the execution of the said Deed or Instrument and whether the same was written or delivered in your presence and by whom and for what purpose and whether the promissory note therein described was not at the time delivered over by the said HC to the said SW or when otherwise and whether the said SW did not receive the same as and for the consideration ? mentioned in the aforesaid Deed or Instrument or how otherwise declare all you know have heard and do believe touching the several matters inquired of you by this interrogatory

Third Were you acquainted with one Hugh Wood in the year of our Lord 1814 Whether he was not a Butcher residing in Sydney or where and whether he was not there considered to be a person in ? circumstances in life and in a very considerable and large way of business and whether he is still living or dead and when did he die and where Declare all you have heard and do believe touching the several matters inquired of you by this interrogatory

Fourth Whether the said SW ever presented the said Promissory Note of L80 to the said HW for payment thereof whether he presented the same himself or by or through any other person And Whether the witness was the person who presented the same and when and what was the answer made by the said HW to such presentation and at what time was the same so presented and where and for what other purpose and whether the said SW did not keep the said promissory note in his possession for a very considerable time after the same had been delivered to him by the said HC and for what period of time and for what purpose and Whether he ever commenced any proceedings at Law or in Equity against the said HW for the recovery of the amount thereof And Whether he ever offered to return the said Promissory Note to the said HC and when in particular And Whether if he ever did so offer to return the same it was not a very considerable length of time after he had first accepted and taken the same and Whether he ever ?tendered the same to be returned to the said HC and when and by whom where and in what manner and Whether the said HC thereupon refused to take back the same or how otherwise and for what reason and Whether if any such tender or offer to give back the said Promissory Note was ever made it was not made after the Decease of the said HW or how otherwise Declare all you know have heard and do believe touching the several matters inquired of you by this interrogation

WH Moore

Defendant Crabtree's Solicitor

7th November 1821 The Examination of Henry Rolfe of Port Hacking lime burner a witness produced from and examined on the part of the Complainant

1 To the first Interrogatory this Examinant saith that he has been well acquainted with the D Crabtree in the title of this Examination named ever since the year 1803 and with the D Wheeler ever since the year 1807 and that he hath known the above-named Complainant ever since the year 1814

2 To the second Interrogatory this Examinant saith that he understood that the D Wheeler was the owner of the freehold farm lands and premises situate at Caddi Creek in this Interrogatory mentioned and that the said farm lands and premises were in the possession of the D C as Tenant thereof to the D W about a twelvemonth previous to the year 1814

3,4,5 To the third fourth and fifth Interrogatories this Examinant saith that some time on or about the 4th day of June 1814 he was taken by the D W to the House of the D C to be a witness to the execution of the paper writing now produced by the Solicitor for the Ds in this cause and marked E and that on that occasion it was understood between the parties that the D W had been arrested by one Solomon Wiseman one of his Creditors for debt, but to what amount this Examinant knoweth not, and it was agreed between the Ds that C should deliver to W the promissory note now produced marked A, appearing to be a promissory note drawn by one Hugh Wood for the sum of L80 bearing date the 2d day of March 1813 payable to the said D C or bearer two months after date, stated to be then in the possession of Mr Henry Kable of Windsor in the Territory aforesaid in consideration of which the said D W executed to the said D C the aforesaid paper writing marked E purporting to be an Indemnity or Security by Mortgage on his said farm and it was further agreed between the parties that if the D W could not procure payment of the said promissory note in three weeks the said deed should be cancelled. And the Examinant further saith that the said deed was drawn by John Brenan in these Interrogatories named at the House of the D C and left in the hands of the said JB till the said promissory note should be paid.

6 To the sixth Interrogatory this Examinant saith that there was no consideration given by the D C to the D W other than the paper writing before shewn to him and marked A on the executing or signing and as a consideration for the executing and signing of the said Security Indemnity or Mortgage.

7th To the seventh Interrogatory this Examinant saith that the D C on the occasion of the D W executing the said Security or Indemnity and at the time the same was executed did undertake to and promise and agree with the D W that in the event of his not being able to obtain payment from the said Hugh Wood the maker of the before mentioned promissory note or a satisfactory security for the same within the space of three weeks he the D C should and would on having the said note returned to him deliver up the said Security Indemnity or Mortgage to be cancelled and consented that the same should be in the mean time deposited or lie in the hands of the said JB ready to be delivered for such purpose.

8th To the eighth Interrogatory this Examinant saith that he did about seven days afterwards receive the said promissory note from the D W with information that he could not obtain any part of the amount thereof from the Maker and with directions for such reasons to carry and deliver up the same to the D C and to receive from him the before mentioned Security Indemnity or Mortgage to be cancelled and that he did in consequence tender the said note and proffer to deliver the same back to the D C for such purpose but the said D positively refused to accept the said note and deliver up the said Deed.

9 To the ninth Interrogatory this Examinant saith that the D C admitted that he was then in possession of the said security indemnity or mortgage, and this Examinant believes that the said JB is now dead.

10 To the tenth Interrogatory this Examinant saith that in consequence of the D W not being able to obtain the amount of the said Note he was reduced to the necessity of going to gaol for his said debt and did give directions to him this Examt to procure a purchaser for his said farm and this Examinant did apply to the Complainant in this cause for and the Complainant did agree to and (as this Examinant understood) did actually become a purchaser of the D W's farm but at what price this Examinant knoweth not And this Examinant saith that the said D informed this Examinant that he did by means of the said purchase procure his liberation from his said imprisonment

11th To the eleventh Interrogatory this Examinant saith that he hath looked upon the paper writing now shewn to him marked B and the signature of the D C subscribed therein and that he hath seen the said D write and hath a knowledge of the manner and character of his handwriting and that the name of Hugh Crabtree so subscribed is of the handwriting of the said D C

Sworn and taken by me

this 7th day of November

in the year of Our Lord 1821 Henry Rolfe

Barron Field

Examiner

7th November 1821 Exhibit B on the part of the Complainant Illegible but appears to be copy letters from 1814

7th November 1821 The Cross Examination of Henry Rolfe of Port Hacking Lime-Burner a witness produced from and examined on the part of the Complainant

1 To the first Cross Interrogatory this Cross Examinant saith that he hath looked upon the deed or Indenture produced and shewn to him marked E dated 4th June 1814 and purporting to be made between the D Saml Wheeler of the one part and the D Hugh Crabtree of the other part and that the said Deed or Indenture was signed sealed and delivered by both the said Ds in the presence of this Cross Examinant of John Brenan and (as he thinks) of one Thomas Jones and of a woman who then lived with him and that this Cross Examinant's name was subscribed to the said Deed or Instrument as a Witness to the signing sealing delivery or execution thereof by both the said Ds And that this Cross Examinant's name so set and subscribed is of his own proper handwriting And that the said JB was present when the same was so signed sealed delivered and executed And that the name of the said JB is also written or subscribed to such signing sealing delivery and execution of such deed or Indenture and is of the proper handwriting of the said JB

2 To the second Cross Interrogatory this Cross Examinant saith that he hath looked upon the paper writing attached to the said Deed or Instrument and purporting to be a receipt signed by the D W for a certain promissory note of one Hugh Wood for L80 Sterling and dated 4th May 1814 and this Cross Examinant saith that he never saw the same till now

3 To the third Cross Interrogatory this Cross Examinant saith that he was not much acquainted with the said HW in the year 1814 and that he was a Butcher residing in Sydney in the Territory aforesaid but whether he was considered and reputed to be a person in responsible circumstances in life or in a very considerable or large way of business this Cross Examinant knoweth not and he believes that the said HW died by his own hand

Sworn and taken by me

this 7th day of November

in the year of Our Lord 1821 Henry Rolfe

Barron Field

Examiner

19th November 1821 The Examination of John Mitchell Extra Clerk in his Majesty's Commissariat for the Colony of NSW a witness produced sworn and examined on the part of the Complainant

12 To the twelfth Interrogatory this Examinant saith that he hath looked upon the paper writings now shewn to him marked C and D purporting to be a Lease and Release or Conveyances of the land and premises of the above-named D Samuel Wheeler to the Complainant and that they were duly executed signed sealed and delivered by the said D W in his this Examinant's presence and that the mark or X thereto set or subscribed is the cross or proper hand-writing of the said D W and that the same were previous to the execution thereof by the said D read over to him by the Examinant and that the said D when he executed the same was in the office of George Crossley in this Interrogatory named and that the said D did fully understand and was made acquainted with the nature and import of the said Conveyances and that the names "Geo Crossley" and "J Mitchell" thereto set and subscribed as Witnesses to the due execution thereof are of the proper hand-writing of the said GC and of this Examinant.

13 To the thirteenth Interrogatory this Examinant saith that he did not see any consideration-money paid to the said D W but that he understood from the said D that the sum of L54 9s of the said consideration-money was paid by the complainant at the instance of him the said D to one Solomon Wiseman a Creditor of the said D but whether it was to procure the liberation of the said D from out of Custody from the Sydney Gaol or how otherwise or whether the said D did in pursuance of such payment obtain his liberation from out of the said Gaol or whether the remainder of the said consideration money was paid to the said D or how otherwise this Examinant knoweth not

J Mitchell

Sworn and taken before and

by me this 19th day of Nov

ember in the year of Our Lord

1821

Barron Field

Examiner

19th November 1821 Exhibits C and D on the part of the Complainant Illegible but 2 documents registered in Judge Advocate's Office on 26 August 1814

9th May 1822 Upon motion made this day by Mr Solicitor Rowe and by consent It is ordered that Mr Rowe be appointed Solicitor for the Complainant in the stead of his late Solicitor Thomas Wylde decd

By the Court

John Gurner

23rd November 1822 A day is given to Ds to show Cause why Publication should not pass

Rowe C's Sol

By the Court John Gurner

Reg

Fourth Term 1823 Brief for P to move for a Subpoena to hear Judgment

6th November 1823 Upon motion made this day by Mr Rowe Solicitor for the Complainant it was alledged that a rule had been granted to the Complainant on the 23rd day of November last for the Ds to shew cause why publication should not pass and humbly moving that a Subpoena should issue for the Ds to hear Judgment and that service of such Subpoena on the Ds attorney should be deemed good service on the D

It is ordered accordingly

By the Court

John Gurner

Rowe C's Solicitor

7th November 1823 Subpoena to hear Judgment returnable 14th Novr 1823

Rowe Solicitor

18th November 1823 Upon motion made this day by Mr Moore Solicitor for the D Hugh Crabtree for an order that the rule to pass publication and the order for a Subpoena for the D to hear Judgment obtained in this cause together with all subsequent proceedings might be set aside for irregularity with costs to be taxed and on hearing Mr Rowe Solicitor for the Complainant and what was alledged on both sides It is ordered that the said Subpoena to hear Judgment made returnable on the 26th day of November inst [sic] and that this cause be set down for hearing on the last day of the present Term on which day this cause is to come on peremptorily for a hearing and in the meantime It is ordered that the Complainant file his petition that the said cause may come on peremptorily for such hearing on the said last day of the present Term

By the Court

John Gurner

Rowe

Filed 11th December 1823 Petition to set down Cause

To the Honble Barron Field Esquire Judge of the Supreme Court of Civil Judicature in and for the Territory of NSW and its dependencies &c &c &c

The humble petition of the Complainant

Sheweth

That your Petitioner issued out of this Honorable Court a Subpoena returnable in this Hon Court on the 14th day of November 1823 and requiring the said Ds to appear in this Hon Court to hear Judgment on the 18th day of November

That on the said 18th day of November it was alleged that the D Crabtree had witnesses to examine and this Hon Court was pleased to direct that this Cause should come on for a hearing peremptorily on the last day of the present Term

Your Petitioner therefore most humbly prays Your Honor that this cause may be set down in the peremptory paper for a hearing on the last day of the present Term

And your Petitioner will ever pray &c &c &c

11th Decr 1823

Be it as prayed and

hereof give notice forthwith

B Field

Judge

11th December 1823 Upon the Humble Petition of the Complainant this day preferred unto the Honorable Barron Field Judge of this Court for the reasons therein contained It is ordered that this cause be set down for hearing on the fifteenth day of December Instant and that the same do peremptorily come on for hearing on that day

By the Court

John Gurner

Reg

Rowe

23rd December 1823 Draft Minutes of Decree Rowe

This Cause coming on &c

It is ordered and decreed that the D Hugh Crabtree do come to a just and fair Account with the Complainant for the rents and profits of the Lands and premises in the said Bill of Complaint mentioned since the said Indentures of Lease and Release were made and executed to him by the said Samuel Wheeler and that the said Indenture of Mortgage so made and executed to the said D HC be given up to be cancelled And that the said HC do immediately give up possession of the premises hereinbefore mentioned to the said Complainant And it is likewise Ordered and Decreed that the said HC do pay unto the said Complainant his Costs by him about his suit in this behalf expended to be Taxed by the Master of this Hon Court And it is further ordered and decreed that upon the said D performing this the final order and Decree of this Hon Court that the said suit do stand abated

Filed 27th March 1824 Two bills of costs

Filed 31st March 1824 Richard Humphrey Templeton Clerk to Thomas Deane Rowe Solicitor for the Complainant in this cause maketh oath and saith that he did on the 8th day of November inst serve Mr William Henry Moore Solicitor for the D Crabtree with a true copy of a Subpoena issuing out of and under the seal of the Hon the Judge of this Hon Court in this cause returnable on the 14th day of November inst requiring the said D to appear in this Hon Court on the 18th day of November inst to hear Judgment in this cause and at the same time he this deponent served the said Mr Moore with a copy of the order of this Hon Court that service of the said Subpoena on the said Mr Moore should be deemed good service on the said D by delivering true copies of the said Subpoena and order to Mr Charles Moore Brother of the said William Henry Moore and at the same time he this Deponent shewed the said Charles Moore the said original Subpoena and order

Richd H Templeton

Sworn the 18th day of November 1823

Barron Field Judge

9th April 1824 I do hereby Certify that I have taxed and allowed the Complainant's Bill of Costs pursuant to the Decree made in this Cause at the sum of L99 9s 3d. I have also taxed and allowed conditional costs of the said Complainant at the sum of L4 17s 8d

Jno Wylde Master

9th April 1824 Writ of Execution George the Fourth by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith and So forth To Hugh Crabtree Greeting Whereas by a certain final Judgment or Decree lately made before our Supreme Court in Civil Jurisdiction in and for the Territory of NSW and its dependencies in a certain cause there depending wherein George Thomas Palmer is Complainant and you the said HC together with Samuel Wheeler are the Ds It is Ordered and Decreed that you the said D HC do come to a just and fair Accounting with the Complainant for the rents and profits of the lands and premises in the Bill of Complaint mentioned since certain Indentures of Lease and Release were Made and Executed to him by the D SW And that the Indenture of Mortgage Made and Executed to you the said D HC be given up to be cancelled And that you the said D HC do immediately give up possession of a certain Farm situate at Caddie Creek known by the Name of Wheelers Farm to the Complainant And it was likewise Ordered and Decreed that you the said HC should pay unto the said Complainant his Costs by him about his suit Expended to be taxed by the Master of this Hon Court and upon you the said HC performing such Order and Decree that the said suit should stand abated as by the said Decree doth and may more fully appear Therefore we strictly enjoin and command you the said HC that you do immediately do come to just and fair Account with the Complainant for the rents and profits of the said lands and premises as decreed And you do forthwith deliver up the said Mortgage to be cancelled And also do immediately give up possession of the said Farm Lands and premises And do pay unto the Complainant's Solicitor at his Office No 47 Philip (sic) Street Sydney NSW on the 15th day of May 1824 between the hours of Ten and Three of the Clock of the same day the sum of L99 9s 3d being the amount of the Complainant's Costs as taxed by the Master of this Hon Court according to the tenor and true meaning of the said Decree And hereof you are not by any means to fail at your peril

Witness the Hon the Judge of our said Supreme Court this 9th day of April in the year of our Lord 1824

Jno Wylde

Judge

Filed 15th May 1824 Affidavit of Thomas Trotter Palmer against Crabtree Writ of Execution Thomas Trotter of Windsor Road in the Territory of NSW Settler maketh oath and saith that he did on the 13th day of May instant personally serve the above named D with the Original Writ of Execution in this Cause of which the annexed paper writing is a true copy and at the same time read the same over to to the said D and required possession of the Land for and on behalf of and in the name of the Complainant and his the D's performance of the Decree as in the said Writ mentioned but the said D said he would be d--n-d if he would give up the possession of the said Land to any man and that he would not perform any part of order mentioned in the said Writ

Sworn before me this

15th day of May 1824 Thos Trotter

Jno Wylde

Judge

Filed 15th May 1824 Affidavit of William Douglass William Douglass Servant to George Thomas Esquire the above named Complainant maketh oath and saith that he accompanied Thomas Trotter to demand possession of certain Lands called Wheelers Farm for and on behalf and in the name of the Complainant That this Deponent heard the said TT read over a certain Writ to the said D and demand possession of the said Land when the said D said he would be d--n-d if he would give up the possession thereof to any man and further that he would not perform any thing mentioned in the said Writ

Sworn before me this

15th day of May 1824 William Douglass

Jno Wylde

Judge

Filed 17th May 1824 Affidavit of William Freeman William Freeman Clerk to Thomas Deane Rowe Attorney for the Complainant in this Cause maketh oath and saith that he did on Friday last serve Mr William Henry Moore the Attorney for the D (Crabtree) with a true copy of a written Notice purporting to be that the Complainant would on Monday at ten of the clock in the forenoon apply to the Hon the Judge of this Hon Court for an attachment of contempt to issue against the D for not performing the final Decree in this Cause and particularly mentioned and set forth in a certain Writ of Execution said to be served on the D on the thirteenth day of May last

Wm Freeman

Sworn 17th May 1824 before Jno Wylde Judge

17th May 1824 Upon reading the several affidavits of William Douglass Thomas Trotter and William Freeman It is ordered that an attachment of contempt do forthwith issue against the D for not performing the final Decree in this Cause and mentioned in the Writ of Execution served on the said D

By the Court

John Gurner

Rowe

17th May 1824 To the Provost Marshal of the Territory of NSW an attachment against Hugh Crabtree for not performing the final Decree of the Court Text largely illegible

19th May 1824 In the Supreme Court of Civil Judicature I do humbly commit to your Custody the Body of H Crabtree there to remain untill he shall Satisfy the said Court Pursuant to a Writ of and by virtue of a Writ of Attachment to the [sic] in this Cause Directed for which this Shall be your Sufficient Warrent [sic] Given under my Hand and Seal of Office this 19th day of May 1824

JT Campbell

Pro Marshall

To Mr J Redman

Keeper of HM Gaol

Sydney

Filed 31st May 1824 To the Provost Marshal Illegible I have caused the D Hugh Crabtree to be arrested and lodged him in Gaol 26 May 1824 J Campbell Provost Marshal

26th July 1824 The Memorial of Hugh Crabtree To His Honor Francis Forbes Esqr Chief Justice of the Territory of NSW The Humble Memorial of Hugh Crabtree now Confined in His Majesty's Gaol under an Attachment

Sheweth

That your memorialist about Eleven years Past took in Mortgage a farm from Samuel Wheeler for the sum of Eighty Pounds Situate in the District of Wilberforce near Cateye Creek fourteen Acres of which your Memorialist Cleared At a Very great expence The said SW disregardless of the said Mortgage sold the said farm to Geo Thos Palmer Esqr

That Memorialist and Wife being Aged Persons And in the most Indigent Sircumstances [sic] thought Proper to hold Possession of said farm as it was their only means of Support. Untill dispossessed by Mr Palmer and Lodged in Prison by Virtue of a Writ of Attachment where he lies upwards of Two months As may appear by the Copy of Annexed [sic]

That Memorialist must humbly acknowledge his fault in Contending against the legal authority he therefore humbly hopes Your honour will be Graciously Pleased to take his deplorable case into your humane Consideration and have him discharged from his Present Confinement

And Memorialist as in duty bound will ever pray

Hugh Crabtree

Parramatta 27th August 1824 Sir, I take the earliest opportunity of informing you (since I have been enabled to ascertain it) that Hugh Crabtree has surrendered the Farm in dispute between him and me to my shepherd who is now in possession of it in my behalf, I am, Sir, Yours ?obedtly Geo Thos Palmer

Mr Gurner

30th August 1824 Upon reading the Petition of the D It is ordered that the P upon notice of this rule to be given to his attorney do shew cause to this Hon Court on Monday the 6th day of September inst [sic] why upon D's complying with the Decree of this Hon Court so far as lays in his power the P should not make an allowance to D for his maintenance so long as he shall be kept in prison at the suit of the said P

By the Court

John Gurner

Reg

Filed 6th September 1824 Hugh Crabtree the above named D maketh Oath and saith that he hath not any estate or effects sufficient to maintain himself with necessaries in prison

Sworn in Court 6th Septr 1824

Francis Forbes CJ

It is ordered that the Sheriff do bring up the body of the above named D (Hugh Crabtree) before the Supreme Court on Wednesday the 22nd day of September 1824 at 10 o'clock in the fore noon For the purpose of being discharged out of custody as to this suit

By the Court

John Gurner

To John Mackaness Esquire

Sheriff

Court costs

NRS13724

Palmer v Hook

Bill filed 26th Feby 1818 To the Hon Barron Field Esq Judge of the Supreme Court of Civil Judicature in and for the Territory of NSW and its dependencies and to the Worshipful Magistrates the other members of the said Court

Humbly Complaining Sheweth unto this Honorable Court your Orator John Palmer of Parramatta in the Territory of NSW Esq having for a number of years previous to the year 1810 had running accounts and considerable dealings with one Thomas Abbott late of Sydney in the Territory aforesaid Merchant since decd by your Orator giving orders on the said TA both for Goods and money to your Orator's workmen and others employed by him in his Agricultural and other Concerns And your Orator being in or about the Month of May in the said year 1810 ordered to England on the public service a settlement of such accounts and dealings took place between your Orator and the said TA on or about the 3rd day of the said Month of May and on that occasion there appeared to be a balance due from your Orator to the said TA of L1556 7s 61/2d which balance arose principally for advances made by the said TA on your Orator's Account in Currency and for Goods delivered And your Orator then agreeing to give his promissory note for the balance in Sterling money it was expressly agreed between the said TA and your Orator that the payment of such promissory note was not to be sued for demanded of any person your Orator left in this Territory to represent him until your Orator's return to the same And that no Interest was to be charged on the said sum And your Orator further sheweth unto this HC that independant of the Accounts above stated to have been subsisting between your Orator and the said TA there was a public Account between your Orator who was then principal Commissary and the said TA in which there was a balance due to your Orator of L405 14s 111/2d subject to a subsequent deduction for whatever orders Drafts Bills or Notes commonly called store receipts were left in circulation and on a settlement adjustment of such last mentioned account it was agreed between your Orator and the said TA that such orders Drafts Bills or Notes commonly called store receipts were to be taken up by the said TA after your Orator's departure from this Country and for that purpose a Set of Bills bearing date the 31st day of March 1810 on the Lords of His Majesty's Treasury for the sum of L391 1s 31/2d was intended to be applied and whatever balance there might appear to be arising (p2) to your Orator out of the said Set of Bills after payment of such outstanding orders Drafts Bills or Notes commonly called Store Receipts which at that time was impossible to ascertain occasioned by the voluminous public business your Orator had thento settle after being for 20 years at the head of the Commissariat Department in this Colony and also occasioned by the custom which then and which still prevails of Individuals holding back such orders Drafts Bills or Notes commonly called Store Receipts until they wanted them consolidated was either to be remitted by the said TA to your Orator in England or Carried by the said TA to the credit of the said promissory note for L1556 7s 61/2d in whom your Orator from the long period he had been acquainted with the said TA and from the extensive Dealings they had had together had reason to place every confidence And your Orator further sheweth unto this HC that after the arrangements so as aforesaid made between your Orator and the said TA he departed this Territory for England where he arrived in the course of a few months thence ensuing And that while your Orator so remained in England the said TA departed this life having previously made his last Will and Testament in writing bearing date on or about the 10th day of July 1812 and thereof appointed Ann Clarke Mr William Hobart Mansel and Charles Hook Esq Executrix and Executors thereof which said Will was proved in the late Court of Civil Jurisdiction in the said Territory in the month of October following and Administration granted to the said Charles Hook William Hobart Mansel and Ann Clark as by the Records of the said Court and the said Will Lodged therewith will appear And that after the said Executors and Executrix had obtained such Administration they took upon themselves the whole of the concerns of the said TA and proceeded to call in and collect all the outstanding debts due to the said Estate and to make sale of the said Testator's Lands Farms Stock Goods Chattels and Effects And your Orator further sheweth unto this HC that notwithstanding the arrangements made and the terms agreed upon between your Orator and the said TA at the time your Orator so gave to him the promissory note for L1556 7s 61/2d as aforesaid the said Charles Hook William Hobart Mansel and Ann Clarke the Executors and Executrix of the said TA decd during the absence of your Orator and while he remained in England and contrary to the understanding which had taken place between your Orator and the said TA shortly after the decease of the said TA made application to the Agent of your Orator for payment of the said promissory note of L1556 7s 61/2d (p3) together also with one other promissory note of your Orator's for L51 15s in favour of one Henry Baldwin and your Orator's Agent not being prepared to answer the demand so made on him your Orator not having made any provision for the payment and indeed he considered he had no occasion so to do in consequence of the arrangements made and the mode of payment thereof so as aforesaid agreed upon between your Orator and the said TA the said Charles Hook William Hobart Mansel and Ann Clarke commenced an action on the said promissory notes in the late Court of Civil Jurisdiction in which Action they the said Charles Hook William Hobart Mansel and Ann Clark also included a sum of L119 18s 2d as being the Amount of fourteen orders which were regularly charged and Credited between your Orator and the said TA when they as is above stated came to a settlement and the same sum of L119 18s 2d forms a part of the said sum of L1556 7s 61/1d for which the said promissory note was given as aforesaid and the same action came on to be Tried in the said Court on or about the 5th day of January 1814 when your Orator's Agent for the reasons before stated nor any other person or persons on his behalf not being sufficiently acquainted with your Orator's concerns and connection and money transactions with the said TA of which indeed they were in total ignorance to enable them to make any defence the said Charles Hook William Hobart Mansel and Ann Clarke recovered against your Orator a verdict on the said promissory note for L1556 7s 61/2d together with the sum of L456 8s 6d for Interest thereon contrary to the adjustment and settlement which so as aforesaid took place between your Orator and the said TA and contrary to the understanding which had so taken place between them as aforesaid And also a verdict on the said promissory note for L51 15s in favour of said Henry Baldwin together with a sum of L119 18s 2d being the amount of fourteen orders drawn by your Orator on the said TA for monies and Goods and which had been included in and formed part of the said sum of L1556 7s 61/2d for which such promissory note was given the whole of which sum amounting to L2184 9s 21/2d And this last mentioned sum the said Charles Hook William Hobart Mansel and Ann Clark while your Orator was so absent in England as aforesaid caused to be made on your Orator's Lands Tenements Goods (p4) and Chattels in this Territory together with the poundage and expences of the Provost Marshal attendant thereon contrary to the intention of their said Testator and to the great damage of your Orator And your Orator further sheweth unto this HC that the said William Hobart Mansel departed this life on or about the 23rd day of March 1816 having first duly made and published his last Will and Testament in writing and thereof appointed Richard Jones William Redfern and Margaret Rea Executors and Executrix thereof And that the said William Hobart Mansel at the time of his death had Considerable Funds in his possession Belonging to the Estate of the said TA And your Orator further sheweth unto this HC that the said Ann Clark the Executor of the said Testator TA hath since departed this life and that the said Charles Hook is now the only Executor of the said TA decd and he hath in his hands Considerable property money or Effects belonging to the said Testator And your Orator hath repeatedly applied to the said Charles Hook to account with him for the surplus of the monies so obtained under the said verdict as aforesaid and to refund to your Orator the amount due to him as in Equity honesty and good conscience he ought to do But nevertheless the said Charles Hook refuses so to do And your Orator hath in a fair and friendly manner proposed to leave the accounts between your Orator and the said Charles Hook as the surviving Executor as aforesaid to the Award order final end and determination of two indifferent persons to be indifferently chosen between them whose award should be binding and conclusive on your Orator and the said Charles Hook and your Orator well hoped the said Charles Hook would have complied with such his reasonable request as in all Right Justice and Equity he ought to have done But now so it is may it please your Honor and this HC that the said Charles Hook combining and confederating together and with divers persons to your Orator at present unknown whose names when discovered your Orator prays may be inserted in this Bill of Complaint with apt and proper words to charge them how to defeat your Orator of his just demand he the said Charles Hook pretends that he hath not any monies Goods or Effects in his hands belonging to the Estate of the said TA decd Whereas your Orator charges the Contrary of such Pretences to be true And that the said Charles Hook hath monies Goods or Effects in his hands belonging to the said Testator TA And the said Charles Hook sometimes pretends that the verdict obtained by him the said Charles Hook is a sufficient Justification for him to hold any further investigation of the accounts between your Orator and the said TA decd whereas your Orator charges that the said verdict (p5) having been obtained in consequence of the Action having been brought against your Orator during his absence whereby he had no opportunity of making any defence your Orator's Agent here being utterly and entirely ignorant of the state of your Orator's Accounts in consequence of the said TA having expressly agreed with your Orator that no steps whatever should be taken against your Orator or in this concern during your Orator's absence from this Territory and that therefore the said Charles Hook ought in Equity and good conscience go into the

accounts between your Orator and the said TA as aforesaid all which actions and doings of the said Charles Hook as surviving Executor as aforesaid were and are contrary to right Equity and good conscience and tend to the manifest wrong and injury of your Orator In tender consideration whereof and by reason that your Orator is remedyless in the premises save in this HC in its Jurisdiction as a Court of Equity and that your Orator cannot in the ordinary course of Common Law compel the said Charles Hook to account with him for the monies so unjustly obtained under the Judgment as aforesaid To the end therefore that the said Charles Hook and his Confederates when discovered may upon their several and respective Corporal Oaths true full and perfect answer make to all and singular the premises as fully and particularly as if the same were here repeated and they distinctly Interrogated thereto to the best of their knowledge remembrance information and belief and more particularly Whether your Orator had not for a number of years previous to the year 1810 or when else running accounts and considerable dealings with the said TA and whether in or about the month of May in the said year 1810 your Orator was not ordered to England on public service And whether a settlement did not take place between your Orator and the said TA and whether there appeared to be due to the said TA from your Orator L1556 7s 61/2d or at what other time did such settlement take place and what other balance appeared to be due and whether such sum did not arise principally for Goods delivered and advances made in Currency money and did not constitute that amount in Currency money or what other amount And whether on the occasion of your Orator giving his note for that amount in sterling it was not expressly agreed between your Orator and the said TA and that the amount thereof should not be sued for or demanded until your Orator's return to this Territory And whether it was not agreed that no Interest should be charged on the said promissory note in consequence of your Orator's making the same Sterling and the demand against him only being Currency or what other agreement took (p6) place between them And whether there was not a further account between your Orators (sic) and the said TA called a public account upon which there was a balance of L405 14s 111/2d due to your Orator subject to such deductions as before stated or what other balance appeared to be due to your Orator and subject to what other deductions And whether such Set of Bills for L391 1s 11/2d was not left by your Orator with the said TA for the purpose of taking up outstanding orders Draft Bills or Notes as hereinbefore set forth or for what other purpose was such Set of Bills left in the hands of the said TA and whether the balance remaining after such payments was not to be remitted to England to your Orator or carried to the Credit of the said promissory note or where else was the balance to be remitted or to what other credit was it to be carried And whether your Orator did not shortly after making the Arrangement and agreements aforesaid with the said TA depart this Territory for England or at what other time and for what other place And whether the said TA did not depart this life in or about the month of July 1812 or at what other time And whether the said TA did not previously make his Last Will and Testament in writing bearing date on or about the 12th day of July 1812 and thereof appointed the said Charles Hook William Hobart Mansel and Ann Clarke Executors and Executrix thereof or of what other date was the said Will of the said TA and whom else did he appoint Executors and Executrix thereof And whether the said Will was not proved by the said Charles Hook William Hobart Mansel and Ann Clark in or about the month of October following and Administration thereof granted to them or whom (sic) else did prove the said Will and at what time and to whom else was Administration thereof granted And whether the said Charles Hook William Hobart Mansel and Ann Clark did not take upon themselves the concerns of the said TA and proceed to call in and collect all the outstanding debts and make sale of his Farms Lands Stock Goods Chattels and Effects And whether the said Charles Hook William Hobart Mansel and Ann Clark did not contrary to the Agreement and understandings between your Orator and the said TA and during his absence from the Country make application to the Agent of your Orator for the payment of the said promissory note (p7) for L1556 7s 61/2d and L51 15s or to whom else did they make application for payment And whether the said Charles Hook William Hobart Mansel and Ann Clark did not commence an action in the late Court of Civil Jurisdiction for the recovery of the two several promissory notes together with a sum of L119 18s 2d being the amount of fourteen orders drawn by your Orator on the said TA or on what other note or notes and for what other sum and sums of money did they commence such action And whether the said sum of L119 18s 2d was not regularly charged by the said TA and credited between your Orator and him at the time of the said Settlement on the 3rd day of May And whether the said sum is not included and forms a part of the said sum of L1556 7s 61/2d for which said promissory note of that date was given or to what other account was the said sum of L119 18s 2d charged And in what other note or notes was that sum included And whether the said action did not come on to be Tried in the said Court of Civil Jurisdiction on or about the 5th day of January 1814 or at any and what other time did the same come on to be Tried And whether the said Charles Hook William Hobart Mansel and Ann Clark did not recover a verdict against your Orator for L1556 7s 61/2d and L51 15s together with a sum of L456 8s 6d for Interest on the said first mentioned promissory note contrary to the understanding and agreement between your Orator and the said TA as aforesaid and also L119 18s 2d which had already been accounted for by your Orator to the said TA and included in such first mentioned promissory note or what other sum did they recover against your Orator or what other sum did such verdict Comprize And whether the said Charles Hook William Hobart Mansel and Ann Clark did not cause the said sum recovered by the said verdict to be made on your Orator's Lands Tenements Goods and Chattels together with the Poundage and Expenses attendant thereon or what other sum did they cause to be made on your Orator's Lands Tenements Goods and Chattels and what other Expences attended thereon And whether the said William Hobart Mansel did not depart this life on or about the 23rd day of March 1816 or at what time did the said William Hobart Mansel depart this life And whether he did not previously make his last Will and Testament in writing and (p8) thereof appointed the said Richard Jones William Redfern and Margaret Rea Executors and Executrix And whether the said William Hobart Mansel had not at the time of his death considerable Funds in his possession belonging to the Estate of the said TA or what other Funds had he in his possession and to what amount And whether the said Ann Clark hath not also departed this life and the said Charles Hook is not the only surviving Executor of the said TA deceased and hath not in his hands considerable property money or Effects of the said Testator or whom else is the surviving Executor of the said TA and whom else has property money or Effects of the said Testator TA And whether your Orator hath not repeatedly applied to the said Charles Hook to account with him for the surplus of the monies so wrongfully obtained under the verdict as aforesaid and to refund to your Orator the amount due to him And whether your Orator hath not also in a fair and friendly way proposed to have such account to the award order final end and determination of two indifferent persons to be indifferently chosen by your Orator and the said Charles Hook And that the said Charles Hook may upon his corporal oath expressly and particularly state and declare whether such his Statement of not having any Monies Goods or Effects in his hands belonging to the said Testator was not a Subterfuge invented by him the said Charles Hook for the sole and only purpose of enabling him to avoid coming to any Settlement And that the said Charles Hook may set forth how and in what manner he the said Charles Hook hath disposed of the Monies Goods and Effects of the said TA which hath come to his hands and that your Orator may have such further and other relief in the premises as to this HC shall seem meet and agreeable to Equity and good conscience **May it please** your Honor and this HC premises considered to grant unto your Orator His Majesty's gracious Writ of Subpoena to be directed to the said Charles Hook and the rest of the Confederates when discovered thereby Commanding them and each and every of them at a certain day and under a certain pain therein to be limited personally to be and appear before your Honor in this HC and then and there to answer all and singular the premises and to stand to perform and abide by such order direction and decree therein as to your Honor shall seem meet And your Orator shall ever pray &c

Thos Wylde

Filed 18th July 1818 Plea of Charles Hook and others to the Bill of complaint of John Palmer The said D by Protestation not confessing or acknowledging any of the matters or things by the said Bill of complaint set forth and alledged to be true for plea thereunto saith that the said Complainant and the said Thomas Abbott decd did upon the 3rd day of May 1810 make up state and settle an account in writing then finallyconcluded upon between the said Complainant and the said TA in which said account the said Complainant did acknowledge that he was indebted to the said TA in a balance then admitted to be due and owing from the said Complainanf to the said TA amounting to the sum of L1556 7s 61/2d as appears by the said account in Writing signed under the Hand of the said Complainant. And this D for further Plea saith that this D, William Hobart Mansell and Ann Clark Executor and Executrix of the Estate and Effects of the said TA decd commenced an Action in the late Court of Civil Jurisdiction in this Territory against the said Complainant and recovered a verdict therein for the sum of L2184 9s 21/2d as by reference to the records of the said late Court of Civil Jurisdiction will appear And this D doth plead the said account stated and settled and the Verdict of the said late Court of Civil Jurisdiction in bar to the said bill of the said Complainant and humbly demands the Judgment of this HC whether he shall make any other or further answer thereunto and prays to be hence dismissed with his Costs and Charges on this behalf most wrongfully sustained

Sworn before me this 18th

day of July 1818 WH Moore Def Solr

Barron Field C Hook

Judge

Answer of Charles Hook D Usual preliminaries He saith that he doth believe and admit to be true that the said Complainant and Thomas Abbott had dealings together previous to the year of Our Lord 1810 as appears by entries in the books of the said TA by which it appears that certain Goods Wares and Merchandizes were sold by the said TA to the Complainant during the years of Our Lord 1809 and 1810 And this D further answering saith that he doth admit and believe it to be true that the Complainant was ordered to England on public service nearly about the time mentioned in the Complainant's Bill but this D is unable to say whether any Settlement of account took place previous to the Complainant's departure for England as aforesaid or at any other time or that any balance was ever found to be due from the Complainant And this D further answering saith that he believes that from the prices charged for the divers articles of Merchandize sold to the Complainant as entered in the said Books as aforesaid that such prices were charged in Currency money that this D is utterly unable to state whether the promissory note mentioned in the Complainant's said Bill of L1,556 7s 61/2d was given as a balance of any account or for what other consideration or how otherwise; And this D further answering saith that by an entry in the Ledger of the said TA dated on the 3rd day of May in the year of Our Lord 1810 the Complainant is made Debtor to the amount of the said promissory note of L1,556 7s 61/2d and it further therein appears that the said Complainant is given Credit for the sum of L595 13s 03/4d Cash for monies paid on his account and for goods furnished him up to that date. And that the Complainant is also charged in such Ledger for Goods supplied and monies advanced him on said 3rd and 10th day of May in the year of Our Lord 1810 to the amount of L15 10s; And this D further answering saith that he does not know whether the amount of such promissory note was charged in Currency money or Sterling but to the best of this D's knowledge and belief it was in Sterling it being so expressed in the said promissory note; And this D further answering saith that he has a perfect recollection of having been told by the said TA that George Thomas Palmer Esquire son of the said Complainant did not know that the said TA held the said Complainant's promissory note for such amount as aforesaid or that he would not have acted thereupon as he had done and the said TA further stated to this D that he had promised to the said Complainant previous to the said Complainant leaving this Territory as aforesaid that such promissory note should not see Day light until his (the Complainant's) return or words to that effect; And this D further answering saith that he had no knowledge whatever of the said TA having ever agreed not to charge Interest on the said promissory note in consequence of the amount thereof having been made in Sterling money or on any other account; And this D further answering saith that it appears by the said Ledger and by certain other papers that there was another account kept by the said TA entitled John Palmer Esquire on account of Government by which it appears that there was a balance due to the said Complainant of the sum of L432 2s 63/4d but such accounts not having been balanced and several of the Items and figures not being sufficiently intelligible to enable this D to strike the balance he is totally unable to make any correct statement thereof; but this D is utterly unable to state whether the said account last mentioned was to be subject to any deduction of any sort whatever. That it further appears by a Memorandum attached to the said further account last mentioned that a set of Bills to the amount of L391 1s 11/2d was given to cover the amount of certain receipts which were outstanding at the time of the Complainant's departure for England as aforesaid but this D beleives (sic) that the amount of such set of Bills is included in the said account of L432 2s 3/4d (sic) so appears to be due to the Complainant as aforesaid; And this D further answering (p2) saith that he knows nothing of any undertaking of the said TA to remit any balance to the C in England or to what other account any such balance if such there was was to be carried; And this D further answering saith that the said TA departed this life about the time in the Complainant's said bill of complaint mentioned having previously made his last will in manner therein stated. That William Hobart Mansell one of the Executors named in such will and who has since departed this Life acted generally in the management of the affairs of the said Testator, The name of this D being merely made use of pro forma. That the sd WHM without having consulted this D thereon commenced an action against the Complainant but for what amount this D is unable positively to say that such action came on to be tried about the time in the Complainant's said bill of complaint mentioned at which trial the said WHM obtained a verdict against the Complainant for the sum of L2184 9s 21/2d being the amount of such promissory note and Interest and of another promissory note in favour of H Baldwin for the sum of L51 15s and for the sum of L119 18s 2d being the amount of certain orders as in the Complainant's said Bill of complaint is set forth. But this D is totally unable to set forth whether the said sums of L41 15s (sic) and L119 18s 2d or any other sums were included in the amount of such promissory note of L1556 7s 61/2d or for what sum or sums of money the said Promissory Note was given; And this D further answering saith that he believes that the whole amount of said Verdict and Costs was made of the said Complainant's Goods, Chattels, Lands, Tenements and Effects together with poundage and all other incidental Expences; That said WHM departed this Life about the time in the Complainant's said Bill of Complaint mentioned making such Will and appointing such Executors as in the Complainant's said Bill are mentioned; that at the time of the death of the said WHM this D believes he the said WHM had considerable funds in his Hands arising from the Estate of the said TA but this D cannot set forth the amount thereof not having come to a final settlement with his Executors in order to obtain which the D has been under the necessity of filing his Bill of Complaint against the said Executors of the said WHM in this Hon Court; And this D further answering saith that the said Ann Clark is also since deceased whereby this D has become the sole surviving Executor of the said TA and this D admits that he has in his Hands funds the property of the Estate of the said Testator to the amount of L287 6s 4d or thereabouts as appears by the Schedule hereunto annexed marked with the letter A, in which Schedule is a true and accurate account Errors excepted to the best of this D's knowledge and as far as the same can be made up of all the monies and Effects which have come to the Hands of this D of the Estate of the said Testator the said TA decd; that considerable Debts are now due and outstanding to the said Estate an account whereof is hereunto annexed and marked with the Letter B, which said account is just and accurate to the best of this D's knowledge as far as the same can be made up Errors excepted And this D further answering saith that the said two accounts marked with the Letters A and B contain a full entire statement of the whole Estate of the said TA decd which now remains unadministered, and this D admits that the said Complainant has frequently applied to this D to enter into a fresh settlement and adjustment of the accounts between the said TA and the said Complainant upon which accounts a Judgment was obtained against the said Complainant as aforesaid but this D has always hitherto refused so to do not considering himself at Liberty to comply with such request of the said Complainant without being so enjoined by a Decree of this Hon Court And this D denies all and all manner of combination and confederacy wherewith he is charged by the said Bill of Complaint without that there is any other matter cause or thing in the Complainant's said Bill of Complaint contained material or effectual in the Law for him this D to make answer unto, and not herein and hereby well and sufficiently answered, avoided, traversed or denied, is true to the knowledge and belief of this D, all which matters and things this D is ready and willing to aver maintain and prove as this Hon Court shall direct and humbly prays to be hence dismissed with his reasonable Costs and Charges in the Law in this behalf most wrongfully sustained

Sworn at my House in

George Street this C Hook

29th day of September in

the year of our Lord 1818

Before me

Barron Field

Judge

Schedule A Debtor The Estate of Mr Thomas Abbott in account Current with Charles Hook surviving Executor &c

Schedule B Debts which now appear to be due to the Estate of the late Thomas Abbott deceased by the Books and Papers belonging to that Estate delivered to D since the death of WH Mansel by his Executors

Court costs

This contains item for order to refer this cause to Mr Campbell

Also rule to enlarge time for arbitrator to make his award

NRS13724

Palmer v Palmer

Can't be found 17/8/16

NRS 13724

Riley and Burnie v Frazer

Bill of Complaint Virtually illegible

Filed 6th July 1819

In the Matter of a Mortgage Deed of Simeon Lord to the above three parties

Subpoena to Compel Andrew Frazer to Answer Bill filed herein - returnable the 15th day of August next

Norton

Atty for Riley & Birnie

Court costs

filing bill 10-0

Subpoena 5-0

Search for appearance 2-6

Do for answer 2-6

NRS13724

Ritchie v Terry

Can't be found 6/6/16

NRS 13724

Shortt v Berry and Woolstonecraft

Filed 21st February 1823 Bill of Complaint

Humbly complaining sheweth unto Your Honor and this Honorable Court Your Orator Francis Shortt late of Cape Town Cape of Good Hope Merchant and now of Sydney in the Territory of NSW that in the year of Our Lord 1806 your Orator chartered from William Heyman of London the Brig or Vessel called the Fly Thomas ?Selk Master for a Voyage from England to the Cape of Good Hope That your Orator paid towards the Freight of said Vessel L750 sterling in London and the further sum of L350 sterling after his arrival at the Cape of Good Hope which latter sum was paid by the firm of Shortt and Berry hereinafter mentioned That your Orator and Alexander Berry formerly Surgeon of the Honourable East India Company's Ship Lord Hawkesbury and now resident in the Territory of NSW as Partner of the Commercial Firm of Berry and Woolstonecraft embarked on board the said Brig at Portsmouth and sailed together with your Orator from said Port the 4th day of February 1807 That the said Brig was principally laden with Goods Wares and Merchandizes on account of your Orator and being your Orators Property but had also on board a considerable Quantity of Merchandizes on account of said AB Your Orator further sheweth that on or about the 15th day of April 1807 the said Brig anchored in Table Bay Cape of Good Hope and that on the 17th day of the same Month it was there agreed between your Orator and the said AB that they should form a commercial Establishment under the Firm of Shortt and Berry and that the Profits and Losses which might accrue thereupon should be divided between them the said Partners in the proportion of their respective Interests when said Copartnership was formed as aforesaid That the Investment Capital or Stock in Trade originally deposited or invested in said Firm by the said AB amounted to the sum of L7807-9-8 and no more And that your Orator deposited therein as his Capital or Stock in said Firm property to the Amount of L18412-18-01/2 That the said Firm of Shortt and Berry accordingly transacted business as Merchants and Ship Owners on an extensive scale at the Cape of Good Hope and elsewhere Your Orator further sheweth unto YH and this HC that amongst other transactions of Shortt and Berry at the Cape of Good Hope said Firm purchased from ?Thos Johnson and Company Merchants there a Spanish prize Ship called ?El Reaparadora burthen about 526 tons admeasurement for the sum of 22500 Rix Dollars A Rix Dollar being at that time equal to 3s9d sterling and which said ship said Shortt and Berry subsequently named the City of Edinburgh whereof they appointed Simeon Pattison master that several repairs and alterations were made on said vessel by said Shortt and Berry after the purchase thereof as aforesaid and that the said repairs and alterations with outfit of said vessel amounted to the sum of 47898 rix dollars and 5s or thereabouts exclusive of the sum for which said vessel was originally purchased which was paid by your Orator as herein after mentioned That having fitted out said ship for sea the said Shortt and Berry loaded an extensive assortment of goods and property therein amounting in value at the first costs thereof to about 143000 rix dollars and consisting of provisions, wines, spirits and various other articles the property of said firm of Shortt and Berry That said vessel sailed from the Cape of Good Hope with the said Cargo on the 4th of September 1807 for NSW under the direction of AB as Supercargo, leaving at the Cape of Good Hope your Orator responsible for all the debts due by said firm and for all demands upon them That it was the intention of said Firm of Shortt and Berry that the said AB should dispose of said Cargo in NSW and return loaded with timber and other articles to the Cape of Good Hope aforesaid where he expected to return and appear in the month of June 1808 nine months after his departure That the property left behind with your Orator at the Cape of Good Hope at defendant's departure would have amounted after payment of the debts due by said Firm to about 15000 Rix dollars Your Orator further sheweth that in december of the said year 1807 a bill of 6000 Rix dollars which said AB had accepted in the name of said Firm in July preceding drawn by William M Hopley for himself and Samuel Murray who were then considerably indebted to said Firm was presented by the then holders of said bill, to your Orator for payment of the same Although it had been accepted without value received and merely for accommodation, unknown to and contrary to the wish of your Orator, who had informed said AB before he so accepted same that your Orator had been requested to accept such bill, but had refused to do so That your Orator was compelled to pay said debt no part of which had ever been recovered from said Murray and Hopley, or either of them, they having both become Bankrupt previous to its falling due, and of which transactions your Orator informed said AB at NSW Your Orator further sheweth unto YH and this HC that in consequence of an understanding between your Orator and the said AB previous to the departure of the said AB on said Voyage to NSW, Your Orator purchased in October 1807 from the Court of Admiralty at the Cape of Good Hope for 2010 rix dollars the prize ship Truth, for and on account of said Firm of Shortt and Berry and employed John Osmond Esqre Ship Wright at ? Bay to effect the requisite repairs on said vessel, which was subsequently named the Harriette and which repairs and other necessaries provided for said ship Truth amounted to the sum of 1349 rix dollars and one ? of which transactions your Orator also informed said AB who approved thereof by letter from Sydney, and who requested that she might be sent to NSW, as being of a size better adapted to that Colony, but which could not be complied with for the reasons hereinafter stated Your Orator further sheweth that the only remittances which said AB has made to or that has ever reached your Orator on account of said Cargo, or from the emoluments or earnings of the said ship the City of Edinburgh, were two bills of exchange on the Right Honourable the Lords Commissioners of His Majesty's treasury amounting together to the sum of L7412-19-4 and which did not reach your Orator until the 2nd of January 1810 That previously thereto and by reason of the said ABs not having made more early remittance, the said Ship Truth was sold under an execution by the Chamber for regulatory estates, that is to say on the 20th of June 1808 the time expected for the return of said Defendant, at the instance of said JO for the repairs done on said Ship and of other persons for supplies therein and that the same was purchased by said Osmond for 1481 rix dollars Your Orator further sheweth that the said two bills of exchange were indorsed by your Orator to Messrs Hamilton Prosser and Patrick Home to be applied towards the payment of debts of said Firm of Shortt and Berry, no part of which did your Orator retain for his own use, as he had been led to expect the prompt return of said AB with a Cargo of timber as before mentioned, which would have been of great value at the Cape of Good Hope, exclusive of the further proceeds of provisions, wine, spirits and other articles shipped on board said City of Edinburgh as herein before mentioned That until the year 1811 no further information on accounts of said AB, or of his proceedings were received by your Orator, except a Copy of a Charter party entered into by the said AB with the NSW Government dated 24th February 1808 for the City of Edinburgh to proceed to Norfolk Island to evacuate that settlement and certain correspondences with his Honor Lieutenant Governor Foveaux relative thereto, Accompanied by a survey and expenses of outfit of said City of Edinburgh; That in such correspondences said AB declares his intention on the 7th of January 1809 of transmitting all the ? of ? of the said AB to his agent in London, together with certain monies and claims for monies on Government to the amount of L16183-18-4 Your Orator further sheweth that the said AB on his return to NSW from the evacuation of Norfolk Island, went therefrom to the Fidgee Islands, and thence to New Zealand, at which places respectively he took on board said Ship the City of Edinburgh, a valuable cargo of sandal wood, timber and spars, which he did not bring to the Cape of Good Hope, but sailed therewith to Lima in South America and there disposed of same to a great amount and that said Ship was employed by certain Merchants there to make a voyage to Spain with a Cargo shipped thereon, that on said Defendants passage from Lima to Cadiz in Spain as aforesaid, said ship City of Edinburgh was lost, and also said Cargo, but that said AB and the crew of said vessel were saved and made their way to Cadiz, where said AB was paid by the agents of the persons by whom he had been employed to make said voyage or by the Spanish Government a very large sum of money for his trouble and loss on such voyage as aforesaid From Cadiz your Orator lost sight and all trace of Defendant Your Orator further sheweth that the name of your Orator has been omitted **[p2]** by said AB in all his transactions since his departure from the Cape of Good Hope, and has not appeared therein, and that the existence of said Firm has been questioned in the Courts of NSW by the agents of the said AB, although your O was by far the most interested partner in said Firm and was held as the only responsible party by the Creditors of Shortt and Berry, even before the said City of Edinburgh sailed from the Cape of Good Hope Your O further sheweth that continuing ignorant of said AB's transactions, and fearful of consequences, your Orator was induced in January 1812 to send John Hendrick Stadler at great expense to NSW, in order to recover the proceeds of said Cargo of the Ship City of Edinburgh, and for other purposes connected therewith but it was contended in the Courts there that the said Firm of Shortt and Berry was unknown as before mentioned and said JHS was compelled to return to the Cape of Good Hope without having effected the purposes of his said Voyage That your O since the year 1810, never heard from the said AB, or had any accounts respecting him, except by letter from James Birnie Merchant Rio De Janeiro stating that the said AB had arrived there in the said Ship City of Edinburgh, having on board a valuable cargo from Lima for Cadiz, and that the said JB had urged said AB to make remittances to your Orator, but without effect, and stating that the name of your Orator was omitted by the said AB in all his transactions there That your Orator on receiving such Communication from said JB wrote from the Cape of Good Hope to Sir James Duff his Majestys Consul General at Cadiz and to Mr Ewart his Majestys Consul at Barcelona for intelligence respecting the proceedings of said AB by whom your Orator was informed that said AB was supposed to have gone from thence to South America, where he had transactions to settle That said Ship City of Edinburgh was lost off the Azores or western Islands on her passage from Rio De Janeiro as aforesaid That your Orator has twice suffered imprisonment at the Cape of Good Hope on account of the debts of said Firm of Shortt and Berry, and that in order to pay off and discharge said debts, as well as to support himself and family at the Cape of Good Hope, your Orator has been obliged to mortgage his private patrimonial inheritance in Scotland That from thence to the arrival of the crew of the Ship Grace from NSW in the month of June 1822 , Your O had no intelligence whatever of said AB, neither could he trace him. though he used his best endeavours That said passengers informed your Orator that said AB had been some time settled at Sydney in NSW, where he had entered into a partnership with a person of the name of Edward Woolstonecraft That your Orator has at a Great expense made his voyage thither to obtain redress against said AB, and has found that such Copartnership doth exist between said AB and said EW and that said Berry and Woolstonecraft have by means of their trading as aforesaid, the said AB as partner of said Firm of Shortt and Berry and the said AB and EW as partners of said Firm of Berry and Woolstonecraft by means of the trading and business carried on in the name of Berry and Woolstonecraft accumulated property to a very large amount That the Goods or stock and capital originally invested in said last mentioned Firm of Berry and Woolstonecraft by said AB were the proceeds and profits arising out of the trade and business so carried on by said Firm of Shortt and Berry, and that no other funds were invested therein but such as he accumulated by means of his transactions on account of said Firm of Shortt and Berry That from said AB's information, and that of other persons, the said EW well knew of the existence of said firm of Shortt and Berry at the time he the said EW entered into Copartnership with said AB, and also knew that said AB had never made any final settlement with or rendered any accounts whatever to your Orator therein And your Orator further sheweth that said EW had been previously to the establishment of the said Firm of Berry and Woolstonecraft, a merchant or trader in England, and that he had left that Country without making a final settlement with his Creditors there And that said AB knew that his affairs were not settled there, and that said EW came to NSW with a very limited or circumscribed capital or property and that the greater part if not the entire (sic) Capital of said Berry and Woolstonecraft arose from the trade business and earnings of said AB on account of said Firm of Shortt and Berry, And your Orator further sheweth that shortly after said Firm of Berry and Woolstonecraft was established in NSW said Berry returned therefrom to England to settle the affairs of said EW and that on such settlement being made, a full payment of the debts of said Berry and Woolstonecraft, accumulated whilst resident there as a Merchant aforesaid did not take place, but that said AB compounded with his said EW creditors That the said Defendant AB after accomplishing said settlement in England returned to NSW, where he arrived in the latter end of the year 1821, and hath since continued and still doth continue to carry on business with said EW, under the Firm of Berry and Woolstonecraft to the entire exclusion of your Orator therein Your Orator further sheweth unto your Honour and this HC that the said Firm of Shortt and Berry has never been dissolved and is still in existence, and that your Orator hath never yet been furnished with any accounts whatever respecting the proceeds of said Cargo of said City of Edinburgh, or on account of the trade and business of said Firm of Shortt and Berry or even any communication from said AB since the year 1809 respecting the same, Although your Orator hath lately repeatedly applied to said AB and said EW for same, and also to come to a fair and just account with your Orator, for all the receipts and profits, disbursements and expenditures which the said Defendants have been put to or received on account of the said partnerships or either of them and to pay to your Orator his proportion of such profits But now so it is May it please your Honor and this HC that the said AB combining and confederating to and with the said EW, and to and with divers other person and persons at present unknown to your Orator, but when named when discovered, your Orator prays may be made parties to this your Orators bill of complaint, with apt and proper words to charge him them or any of them, now refuses to come to any account with your Orator or to render any statement of his receipts or profits, disbursements or expenditures on account of said Ship the City of Edinburgh or of her Cargo as aforesaid, or to come to any account whatever respecting his proceedings since his departure from the Cape of Good Hope as aforesaid, or to make any payments on account of the same to your Orator or otherwise in any manner to satisfy the demands of your said Orator although repeatedly required by your Orator so to do, and threatens and intends to receive the outstanding debts due to the said Copartnership and the said AB as partner therein, And the said EW also refuses to come to any account with your Orator touching or concerning the business and transactions so carried on as aforesaid in the name of said Berry and Woolstonecraft All which actings and doings and refusals as aforesaid are contrary to Equity and good conscience and tend to the manifest wrong and injury of your Orator in the premises In consideration whereof and for as much as your Orator is remediless in the premises by strict rules of common law and cannot have adequate relief in the premises except in a Court of Equity, where matters of this kind are properly Cognizable and relievable To the End therefore that the said AB and said EW and his and their confederates according to the best and utmost of their several and respective Knowledge remembrance information and belief a full true and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were herein again repeated and they particularly interrogated thereto paragraph by paragraph, and more especially that the said Defendant AB may in manner aforesaid answer and set forth whether the said AB did in the year 1807 leave England in the Brig or Vessel called the Fly with any goods wares and merchandizes on board thereof, and whether the said Brig was chartered by your Orator, and whether said vessel arrived at Table Bay on or about the 15th day of April 1807 having your Orator also on board thereof And whether on the 17th day of the said Month of April 1807 your Orator and said AB entered into partnership under the Firm of Shortt and Berry at the Cape of Good Hope And whether the terms of the said Partnership were not that the profits and losses of the said Firm and the transactions therein should be divided between your Orator and said Defendant at the rate and according to the proportions of the respective stock or capital of your Orator and the said Defendant AB at first deposited therein by each respectively And whether the goods wares and Merchandizes so shipped on board the Fly by the said Defendant, were not the sole and only property invested by said Defendant as his proportion of the stock of said Firm at the time of its establishment and amounting **[p3]** at the invoice prices to the sum of L78112-7-8 **[7807-9-8]** sterling , or what other goods and to what amount And whether the stock or property invested in said Firm by your Orator was not of much greater value than that of D the said AB and whether it did not amount to the sum of L18412-18-01/2 And whether the said Firm of Shortt and Berry transacted business at the Cape of Good Hope as Merchants and Ship Owners in the year 1807 And whether said Defendant received intelligence from your Orator, of the arrival by the Ships Venus and London at the Cape of Good Hope of a further assortment of goods and merchandizes at the Cape of Good Hope after said Defendants departure therefrom and consigned to said Defendant Amounting to the sum of L529-6-6 And that the said Defendant may in manner aforesaid set forth whether the said Firm of Shortt and Berry purchased in the said year 1807 at the Cape of Good Hope from R: I: Johnson and Company merchants there, the Spanish prize ship elRaparadora burthen about 526 tons and whether said ship was afterwards named by said Firm the City of Edinburgh, and whether said Ship was not purchased at the price or sum of 22500 rix dollars Cape Currency And whether the value of the rix dollar of the said Shortt and Berry at the Cape of Good Hope was not of the value of 3/9 sterling or thereabouts And whether several expensive repairs were not made upon said vessel on her becoming the property of the said Firm and amounting together with supplies to the sum of 47898 rix dollars, 5 skellings And whether the payment for such vessel, and for such repairs and such supplies was made to said R: I: Johnson and Company during the residence of said Defendant at the Cape of Good Hope, or whether your said Orator was not left there to answer said payments and all demands respecting and against said Firm And whether other and various necessary expenses attended the purchase of said Ship, and whether the same or any part thereof was paid by the said Defendant And whether the said Vessel the City of Edinburgh was not in said year 1807 fitted out for sea, and loaded with a very extensive cargo of provisions, wine, spirits and other articles, and whether the same did not amount to, or was not valued at 143000 rix dollars and whether insurance was not written for to London for the sum of L29000 sterling or for what other sum and by whom was any letter written, And whether so fitted out and laden as aforesaid the said Ship sailed from Table Bay Cape of Good Hope on the 4th of September 1807 for NSW under the direction of said Defendant as supercargo and leaving at the Cape of Good Hope your Orator And whether the property left behind by said Defendant with your Orator there was not estimated at the sum 15000 rix dollars aforesaid in value or thereabouts after payment of debts And whether the said Defendant previously to his departure from the Cape of Good Hope in July 1807 did not accept a bill of Exchange in the name of said Firm, drawn by William M Hopley for himself and Samuel Murray, and whether such acceptance was not contrary to the desire of your Orator, and whether your Orator told said Defendant before he had so accepted said bill that your Orator had refused to accept such bill, to which he had been requested And whether the said Defendant made his Voyage to NSW in the beginning of the year 1808, and whether he disposed of said Cargo there And whether it was not intended by said Firm, that said Defendant should after disposing of the said Cargo at NSW return to the Cape of Good Hope with timber and other property, And why the said Defendant AB, never afterwards returned thither, since his departure from Table Bay as aforesaid, in the year 1807 And that said Defendant may set forth whether he the said Defendant and your Orator agreed between themselves previous to the departure of said Defendant from the Cape of Good Hope as aforesaid, that your Orator should purchase the prize Ship Truth there on account of said Firm, and whether the said Ship was not purchased accordingly, and whether the said Defendant was not informed of such purchase by your Orator, and whether he did not express by letter his desire to your Orator that said Ship Truth should be sent to NSW to said Defendant, and whether the said AB ever at any time and when made any remittances to your Orator further than the said two treasury bills for the sum of L712-19-4, and at what time he did so send said two bills to your Orator, And whether said Ship Truth has not been sold under Execution at the Cape of Good Hope, and whether said Defendant was not informed of such sale by your Orator And whether a Charter party or agreement was entered into by said Defendant with the NSW Government for the evacuation of the British settlement at Norfolk Island, and whether the terms of said agreement have been complied with, and whether the said AB has received the emoluments thereof, or if not, why he has not so received them, and whether any and what remittances in money were made to London in the year 1809 or about that period by said Defendant, and why was not part thereof remitted to your Orator, and whether said Defendant did not return to NSW after his evacuating Norfolk Island, and landing the settlers and inhabitants thereof at the Derwent, and when did he so return, and whether he obtained any timber in NSW or whether he went to the Fidgee Islands and thence to New Zealand, and loaded with sandal wood and timber there the said City of Edinburgh, and whether he proceeded with said Cargo to Lima and sold same there to a great amount, and when was he so at Lima as aforesaid and whether he was not employed at Lima and by whom to go with said Ship to Cadiz with a Cargo, and whether he did not embark on said Voyage, and whether said Ship was not lost and where and when on said Voyage, and whether said Ship was insured, and if not, why And whether said AB was not nevertheless paid for his so undertaking said Voyage or for his losses thereby upon his arrival at Cadiz, or at any time afterwards and by whom and how much, And whether the said Defendant hath not carried on all his transactions and business up to the period of his forming a Copartnership with the said EW and since that period in his the said ABs own name solely or in that of said Berry and Woolstonecraft and without using and entirely omitting the name of your Orator therein, and whether the said AB did not make use in writing of the name of said Firm of Shortt and Berry at the Cape of Good Hope, and did he ever use the same since his departure therefrom, and may state his reasons for not afterwards using the name of said Firm of Shortt and Berry And whether your Orator was not the most interested person therein and the only responsible person at the Cape of Good Hope and whether JHS put forth any claims of your Orator against the said AB or his agents in the Courts of law in NSW in the year 1812 respecting said Firm of Shortt and Berry and whether upon such occasion the existence of said Partnership was not questioned and whether by the Agents of said Defendant there, and whether said Defendant instructed his said agents so to dispute and question said partnership and for what reason he did so advlse them and who those agents were whom he so advised as aforesaid, and whether said JHS was unable to obtain any redress therein, and whether said Defendant did ever at any time and when since the year 1809 make any communications by letter or other to your Orator respecting his proceedings as a partner in said Firm of Shortt and Berry, or the trade or business he has carried on since that period, and if not, why he has not so informed and advised your Orator And whether said Defendant was not at Rio De Janeiro in the year 1812 or at any time and when since his departure from the Cape of Good Hope and whether he saw said JB, there, and whether he was urged by said JB to make some remittances to your Orator, and why he did not make such remittances to your Orator and whether said Defendant had a valuable Cargo on board said City of Edinburgh at Rio De Janeiro, and whether said AB had in said year 1812 any and what funds or property in the hands of any and what agent in London And whether the said Defendant has not been aware of and informed of the imprisonment at the Cape of Good Hope of your Orator on account of the debts due by said Firm of Shortt and Berry, and when and by whom was he first so informed thereof And that said Defendant may state at what time after his being at Rio De Janeiro and at Cadiz, he returned to NSW and when he entered into partnership with said EW, and whether he then informed said EW of the existence of said Firm of Shortt and Berry, and that the **[p4]** said Defendants AB and EW may in manner aforesaid answer and set forth what funds stock or Capital the said Defendant AB brought into said Firm Berry and Woolstonecraft when first formed and from whence such funds proceeded and whether they did not arise from and out of his business and trade carried on as a partner of said firm of Shortt and Berry or from what other source same has proceeded or arisen And whether said AB did not inform said EW at the time they formed said partnership, or whether said EW did not then know of the existence of said Firm of Shortt and Berry, or when did EW first learn of its existence from the said AB or from any other person and whom and whether said EW was not also informed at any time and when that there had not been any final settlement between the said AB and your Orator respecting the business of said Firm of Shortt and Berry And that the said Defendants may also answer and set forth whether the said EW was not a Merchant in England and where previous to the Copartnership of said Berry and Woolstonecraft, and whether the said EW did not fail in business there and become Bankrupt in England previous thereto, and whether said AB Knew thereof at the time of the formation of his establishment with the said EW And whether said EW settled with his Creditors before he left England, or at any time and when and by whose interference afterwards And whether said AB did not go to England to settle said EW's affairs there And that said Defendants may answer and set forth whether said EW brought any capital into said Firm of Berry and Woolstonecraft at its first Establishment or at any time afterwards and to what amount and whether the debts due by said EW in England and so settled by said AB were not of an amount greater than said Capital so invested by said EW in said Firm of Berry and Woolstonecraft and whether said AB returned last from England in the year 1821 And whether said ?final Establishment of Berry and Woolstonecraft have not realized considerable property by their Joint transactions and whether there were not many outstanding debts due and owing to said Firm of Shortt and Berry when said Establishment of Berry and Woolstonecraft was formed and whether the greater part thereof hath not been since collected and received by said Defendants and whether the same have not been applied and added to the funds of said Firm of Berry and Woolstonecraft And whether the said Firm of Shortt and Berry is not still in Existence, and hath never yet been dissolved, and whether said Defendant AB hath ever furnished any statement of accounts to your Orator respecting the trade or business of said Firm of Shortt and Berry since the year 1809, or ever given any information to your Orator respecting same, or given your Orator any information other than such as has been herein before mentioned in this your Orators bill And whether the said Defendants have not been repeatedly applied to for same by your Orator since the arrival of your Orator in NSW and whether the share which the said AB now has, and the amount of the claims which he may be entitled to on account of his Copartnership transactions with said EW have not arisen from his original deposits therein, or from ? since made therein and arising out of the former proceeds of his trade or business of his said Firm of Shortt and Berry And that the said Defendant AB may set forth a full true and particular account of all and every sum or sums of money which he or any person by his order or for his use has received in respect of the said Partnership of Shortt and Berry, and that the said Defendants AB and EW may set forth the like amount in respect of said Copartnership of Berry and Woolstonecraft and of all or any sum or sums of money which he or either of them claim to be due to them or either of them from any and what person and persons respecting said Copartnerships or either of them [Interpolated line illegible] And that the said Defendants may be compelled to come to agreed and fair account with your Orator of all and every the sum and sums of money which have or hath been received by the said Defendants or either of them or by any other person or persons by their or either of their uses ?? trade or business of said several Copartnerships or either of them and that the said Copartnership of Shortt and Berry may be dissolved under ?? said Defendants may be decreed to Join with your Orator in the sale of all property and effects whatever of or belonging to their Copartnerships or either of them and that a dividend or share thereof proportionate to the Capital invested by your Orator in said Firm of Shortt and Berry as aforesaid and also of all monies which upon taking the aforesaid accounts shall appear to have been received by the said Defendants or any or either of them may be paid unto your Orator And that in the mean time a proper person may be appointed by this HC to receive and get in sue for and recover in the name of said Firm of Shortt and Berry or of Berry and Woolstonecraft or of such other name or names as should be necessary all the outstanding debts due and owing to the said Partnerships or either of them or to said AB as partner thereof and also all debts that may accrue due and become payable to the said Firm of Shortt and Berry or of Berry and Woolstonecraft and that such receiver or such other person or persons as this HC shall direct may be nominated and appointed a trustee or trustees in and over the affairs of said partnerships or either of them and that the ? may deliver into his or their the said trustee or trustees possession Custody or power all goods wares and merchandizes and of what nature and every nature and Kind soever of which they the said Defendants now are or hereafter may as partners aforesaid become possessed of or entitled unto, and that all properties which may hereafter arrive in NSW consigned to said AB and EW may also be delivered over to the said trustee or trustees and that the said trustee or trustees may be impowered to transact conduct and carry on the trade and business of said Berry and Woolstonecraft in as full and ample a Manner as the said Berry and Woolstonecraft might have transacted conducted and carried on the same, for the benefit of your Orator and such other person and persons as shall appear to this HC to be entitled to the proceeds thereof

And that the said Defendants and their confederates when discovered may be restrained by the injunction of this HC from receiving any of the said Debts owing or to become due to the said partnerships or either of them, and may also be restrained by the like injunction from all further proceedings, and from commencing any actions or actions at law for touching or concerning any of the matters herein before mentioned, and from receiving any sum or sums of money or property whatever for or on account of said partnerships or either of them and from continuing to retain power over such monies or properties, until the decree of this HC shall be made in this cause And that the said Defendants may be decreed to bring in and deposit in this HC all deeds papers writings and books of account and all vouchers and other documents in their hands custody possession or power of touching or concerning the matters aforesaid 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 not only HM's most gracious writ of Subpoena to be issued out of this HC directed to the said AB and the said EW thereby commanding them and each of 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 then and there full true direct and perfect answers make to all and singular the matters and premises herein before set forth, but also HM's most gracious writ of Injunction to restrain the said Defendants from all proceedings and from receiving into their possession any properties whatever of or belonging to said Copartnerships or either of them And that the said Defendants and their confederates when discovered may be ordered to abide by and perform such order direction and decree in the premises as to YH and this HC shall seem meet, and your Orator will ever pray

Chas H Chambers

Plts Solicitor

21st Feby 1823

Sworn 24th May 1823 Joint and Several Answer of Alexander Berry and Edward Wollstonecraft

3 sheets many holes and largely illegible

Sworn 6th and filed 10th September 1825 Answer of Edward Wollstonecraft

This D now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had to the many errors uncertainties insufficiencies and other imperfections in the said Complainants said Bill of Complaint contained **for Answer** thereto or to so much thereof as this D is advised is material or necessary for him to make answer unto **Answereth and Saith** that the said Francis Shortt did at or about the time in the said Bill stated exhibit his Original Bill of Complaint in this HC against Alexander Berry in the said Bill mentioned and this D thereby stating and praying to the effect in the said Bill set forth so far as the same is therein set forth And that the said AB and this D were served with process of Subpoena and have appeared to the said Bill and put in their answer thereto and that such proceedings were had therein as in the said bill set forth but for his greater certainty nevertheless this D craves leave to refer to the said Original Bill and other proceedings now remaining as of record in this HC And this D admits it to be true that Simeon Lord in the said Bill named had in his custody and possession various Letters papers accounts and writings some of which appeared to relate to certain concerns and business carried on by the said FS and the said AB and this D saith that as this D having arrived in this Colony in the latter part of the year 1819 and having some time previously entered into Copartnership with the said AB he the said AB requested this D to wait on the said SL and endeavour to close a long outstanding Account which subsisted between the said SL and the said AB relating to the business done by the said SL as the Agent of the said AB in the year 1808 and that this D accordingly applied to the said SL and had interviews with him on the Subject of the said Account during the former of which the said SL produced and placed in the hands of this D various Letters papers accounts and writings part of the letters papers accounts and writings in the said bill mentioned together with certain other Letters and papers not in the said Bill of Complaint mentioned and set forth and requested this D to place the same in the hands of the said AB for the purpose as he the said SL stated of convincing the said AB that the said SL at all times acted towards him in a most friendly manner and that he had not complied with the directions or requests of the said Complainant And this D accordingly placed the said Letters documents and papers in the hands of the said AB who retained and still has the same in his possession And this D denies that he undertook to return the said Documents and papers to the said SL or that the said SL even required him so to do until a short time before the said Complainant FS filed his said bill of Complaint against this D and the said SL, but this D on the contrary saith that he understood and believes that the said SL intended the said papers to remain in the hands of the said AB Several of them being the property of the said AB and consisting of the Letters and documents addressed to him by the said FS from the Cape of Good Hope And this D further answering saith that the said Letters papers accounts and writings so delivered over by the said SL to this D to the best of this Ds knowledge remembrance and belief consisted of a Letter from the said Complainant to the said SL Dated Cape Town the twelfth of October 1809, A Letter from the said Complainant to the said AB dated Cape of Good Hope the Ninth of October 1809, a Letter from one Musgrave to the said Complainant Dated Saint Helena the Second of July 1809; an Accounts Current stated to be between the Complainant and the said AB and Messieurs IM Endres & Company and John Osmond and Company; an Account of damage and deficiency of Several Casks shipped for the said Complainant by Messieurs Guillod and Mortimer, also a Certificate of State of Case shipped by Mr Philip Lowe to the said Complainant, also particulars of a claim of the said Complainant on Mr James Richardson, Also Certificates of the deficiency of Articles Shipped by Messrs Josepo Sons and Company to the said Complainant; Also a Letter from the said Complainant to JR of London dated Cape Town the Ninth of August 1807 Also Messrs Maude and Robertsons Certificate respecting the insurance on the Cargo of the Brig Fly; Also a Bill of Lading of Aloes shipped by the Complainant on the Brig Fly consigned to JR of London, Also Messieurs Maude and Robertson's Certificate of Wines shipped in the Woodland Castle; Also a Customhouse Certificate that the duties were paid thereon; Also a Letter from JR dated Sloane Street Seventeenth of July 1806 to the Complainant acknowledging the receipt of L100, Also a letter of attorney from the Complainant to the said SL dated the tenth of October 1809, and also of certain other letters or papers that are not mentioned and set forth in the said Complainants Bill of Complaint and of no other Documents or papers whatsoever without there is any other matter Cause or thing in the said Complainants said bill of complaint contained material or necessary for this D to make answer unto and not herein and hereby well and sufficiently answered avoided traversed or denied is true to the knowledge or belief of this D **All** which matters and things this D is willing to aver maintain and prove as this HC shall direct and hereby prays to be hence dismissed with his reasonable Costs and Charges in this behalf most wrongfully sustained

Edwd Wollstonecraft

James Norton

Sworn by the above named Edward Wollstonecraft

the sixth day of September 1825, before me

George Mills

Commissioner of the Supreme Court

Filed 4th October 1825 Interrogatories to be administered to John Mackie

First While you resided in the Cape of Good Hope was the Commercial Firm of Shortt and Berry known and acknowledged there Do you know the House No 2 ? Street Cape Town and what sort of a House is it, fit for a large or a small Family And did you ever understand that it had been converted from a ? Stable into a Hire House and explain what is meant by a Hire House How are Houses usually sold at the Cape for Cash or on ? and say what that means - why are Houses and Lands usually purchased in the latter mode rather than in the former Would you know the signatures of John Andreas Truter, Colonel Bird, Seyneir Beck Notary Public, George Anderson Esquire and Hamilton Ross Esquire and Mr Borchards Deputy Fiscal - Look at the paper writings marked H, H and G now produced and shown to you - Whose Hands writing as to the signatures thereto are they to the best of your opinion - Do you know any other Matter or thing relating to the said parties in the Title of these Interrogatories named besides what you have been before Interrogated unto - Declare &c

Filed 14th October 1825 Interrogatories to be administered to Simeon Lord

First Did you receive a Letter from the Complainant dated Portsmouth 1806 or January 1807 for your Ship Sydney Cove Did you receive another Letter from Complainant dated from Simons Bay Cape of Good Hope beginning September 1807 for Ship City of Edinborough introducing the D Berry and Captain Pattison of that Ship to your Civilities and informing you that Complainant and said D Berry had entered into Business at the Cape as Merchants under the Firm of Shortt and Berry among many other Letters which you received from Complainant at the Cape Do you recollect receiving one dated in October 1809 to yourself by HM's Ship Hindostan and an open Letter from the D Berry inclosing several original Documents and what became of that Letter and Documents on the D Berry's delivering to you Complainant's Introductory Letter or subsequently did he ever express you as Agent for the Ship City of Edinborough that he was connected with Complainant only in said Ship and her Cargo or that a general Commercial Establishment or Firm had been Entered into under the style or Title of Shortt and Berry among other Transactions of said Firm did D Berry acquaint you that he shortly expected another Ship called the Truth the property of said Firm and that previously to his Sailing with the said Ship City of Edinborough for Norfolk Island in May 1808 on account of Government he left with you a Letter of Instructions for the Master of said Ship Truth in the event of his Arrival during his D Berrys absence and also Instructing you what he wished you or his Agent to do in regard to the said Ship Truth Did D Berry ever express to you his regret that no opportunity occurred of sending Complainant remittances to relieve him from his responsibility and heavy claims against the Firm of Shortt and Berry at the Cape and from England was Berry aware that a Cargo of Timber and Coals had not been procurable here in obtaining a Cargo of Timber or Spars at New Zealand than he found subsequently in 1809 or 1810 Had Captain Thompson of the Ship Boyd much difficulty in procuring what hard wood he took on Board here Did the D Berry express to you his determination to go to the Fee Jee Islands for Sandal Wood and proceed thence with it to China or Manilla there to sell said Cargo and Ship City of Edinborough or put her under the Spanish Flag and proceed with her to South America instead of returning to the Cape with Timber or Spars and Coals

Did D Berry ever express to you any Doubts of the legality of a private Ship unsanctioned by the Court of Directors of the East India Company Did you after in January 1809 Enter into Copartnership with D Berry - on that occasion did D Berry decline, alledging that being already in Copartnership with Shortt at the Cape he would not accede to your proposal without having first obtained his said Partner's concurrence and that though no formal Deed of Copartnership existed as to the Commercial Firm of Shortt and Berry yet such Firm being known and acknowledged he could not in Justice or in Honor were he ?even warranted by Law to do so; do any such act of his own account, while said Copartnership existed Did you in or about the year 1812 give Evidence in the Court of Civil Jurisdiction in this Colony that you were aware of the Existence of the Commercial firm of Shortt and Berry and whether you did or not deliver the aforesaid Letter and Vouchers from Shortt and Berry per Hindostan to the Agents of said D Berry or to whom else and under what or any condition And did you not intrust the D Edward Woolstonecraft with your Books of Account in which were Entered the Transactions of the City of Edinburgh so far as you had to do with her and her Cargo Did you not also intrust to said D Woolstonecraft the original orders and Vouchers Say whether you have ever received said Books and Vouchers transmitted you per Hindostan have ever been returned to you by said D Woolstonecraft or have you ever demanded them have you not paid large Sums to said Ds Berry and Woolstonecraft or to either or which of them or to their Firm And state as nearly as you can the amount And whether such sums were the property of Shortt and Berry and arising from Sales of their Goods and the Papers marked s and t now shown you true Copies of the Letters received by you per Hindostan Did you receive the Papers and Documents mentioned in the Complainants open Letter inclosed to you for D Berry - what became of such Vouchers papers and writings Declare fully Would you have undertaken to have Loaded the City of Edinburgh with Coals and Timber in part payment of your debt of L6333 Was the Ship Boyd at or about the time the City of Edinburgh was here chiefly Laden with Coals and Timber for the Cape of Good Hope and on whose account - Would it have been more difficult to have Loaded the Ship City of Edinburgh with Coals and Hard wood and to have filled her at New Zealand with Spars than would have been experienced in Loading the Boyd Can you state who built or caused to be Built and furnished the House lately known by the sign of the Greyhound in Castlereagh Street Sydney for whose use was it so built and furnished and who resided in it Do you know of any Female and whom by name receiving any monies or goods and to what value or amount arising from the Cargo of the Ship City of Edinburgh or from the proceeds of the same Did you pay her any money or deliver her any such goods and by whose directions Did the said Female accompany the D Berry to Norfolk Island, in what capacity did she do so Had or had not the D Berry when in the City of Edinburgh sufficient funds to have purchased a return Cargo of Coals and Timber from Individuals at the time he sailed for the Fee Gee Islands and China and subsequently did you or not have any Bills and to what amount and of what description left with you and to whom were they to be sent could Cash have been procured on said Bills sufficient to have purchased a Cargo of Coals and Timber exclusive of the L6333 and other sums due by you Were there any other Bills intrusted to you for transmission and to what amount Can you state whether D Berry had any suspicion that his proceeding to China with the City of Edinburgh Declare &c Was it concerted between you and D Berry or how otherwise that the City of Edinburgh was to have been sold in China or Manilla and an East India Ship purchased in lieu thereof and why Do you know whether said D Berry applied to the Government of NSW for leave to go with the Ship City of Edinburgh to China and to return thence with a Cargo for Port Jackson and was or not such application complied with When the D Berry sailed for the Feegee Islands and China do you know whether he had a Licence so to do either from the East India Company or from the Government of NSW Was it concerted between you or not that D Berry should return to NSW from China or that he should proceed thence to the Cape of Good Hope or Elsewhere declare fully &c Do you know of any other matter or thing relating to the parties in the title of these Interrogatories named besides what you have been Interrogated unto Declare &c

Filed 14th October 1825 Interrogatories to be administered to Thomas Macvitie

Significantly illegible

Filed 14th October 1825 Interrogatories to be administered to John Mackie

First While you resided in the Cape of Good Hope was the Commercial Firm of Shortt and Berry known and acknowledged there Do you know the House No 2 ? Street Cape Town and what sort of a House is it, fit for a large or a small Family And did you ever understand that it had been converted from a ? Stable into a Hire House and explain what is meant by a Hire House How are Houses usually sold at the Cape for Cash or on ? and say what that means - why are Houses and Lands usually purchased in the latter mode rather than in the former Would you know the signatures of John Andreas Truter, Colonel Bird, Seyneir Beck Notary Public, George Anderson Esquire and Hamilton Ross Esquire and Mr Borchards Deputy Fiscal - Look at the paper writings marked H, H and G now produced and shown to you - Whose Hands writing as to the signatures thereto are they to the best of your opinion - Do you know any other Matter or thing relating to the said parties in the Title of these Interrogatories named besides what you have been before Interrogated unto - Declare &c

Filed 14th October 1825 Interrogatories to be administered to George Thomas Savage

First Did you know the Complainant at the Cape of Good Hope Were you there when he and the D Berry arrived in April 1807 Was the Commercial Firm of Shortt and Berry known and acknowledged there Was the Prize Ship Truth afterwards named the Harriet purchased by the said Firm Was she afterwards and when sold at Simon's Bay where she was purchased by the ? in consequence of no remittances arriving from the D Berry from the Colony of NSW to Complainant Was the said Ship sold three days prior to that on which she was advertized by the said ? Do you know whether in January 1810 the Complainant received from the D Berry two Government Bills from this Colony for L7412 odd If yea Did the Complainant Shortt immediately on the receipt of them or when else call a public meeting of the Creditors of the Firm of Shortt and Berry and did he or not Indorse them to the Creditors of the said firm Did any of them offer a portion of such remittances to the Complainant for his support and did he or not accept thereof Was or was not the Complainant prior to the Arrival of the said Remittances under great pecuniary Embarrassment on account of the Debts due by Shortt and Berry or on what other Account did he become Embarrassed and were his Circumstances after the Arrival of said Bills better or otherwise Did you or not hear at the Cape of Good Hope that Complainant endeavoured to conceal and appropriate said Bills to his own use Do you know the writing and signature of Mr William Robertson partner of Mr ?Maude at the Cape of Good Hope Do you know the usual mode of purchasing Lands and Houses there if by Cash or by ?house Securities or how otherwise Do you know the hand writing of Mr ?Venables also of Mr ?Osmond on the paper writings now produced and shown to you marked A, B, C and whose signature do they purport to be Do you know the House No 2 ? Street belonging to Shortt and Berry and what sort of a House is it Do you remember its being sold by ? or otherwise in consequence of Complainants said pecuniary Embarrassments What sort of a House or Cottage did the Complainant live in after the ? of his former residence and was it in a respectable part of the Town Did Complainant frequently or ever express to you his uneasiness at not receiving Letters from his partner meaning the D Berry nor remittances and regretting his long absence At the period of the said D Berry's departure for NSW Did you understand that Shortt and Berry were considerably indebted for the Cargo sent by Ship City of Edinborough and that Complainant remained at the Cape and could not obtain liberty to depart from thence his Creditors holding him responsible for the debts of the said Copartnership and for return of said Ship and proceeds of her Cargo purchased by said Firm of Shortt and Berry

Lastly Do you know of any other Matter or thing relating to the said Copartnership Firm of Shortt and Berry besides what you have before been Interrogated unto If yea Declare &c

Filed 14th October 1825 Interogatories to be administered to James Birnie

First Were you at the Cape of Good Hope in the years 1808 and 1810 Did you know the Complainant there and of the existence of the Commercial Firm of Shortt and Berry In 1810 Do you recollect the rate of Exchange Did it during that year vary from time to time and what was the increase and decrease of such variations Did you understand that the D Berry had remitted from the Colony of NSW to Complainant Bills of Exchange, if you know to what amount Declare &c Did the Complainant pay such Bills to the Creditors of the said Firm of Shortt and Berry Should you know the writing of Mr William Robertson there Look at the paper writing marked A now produced and shown to you whose signature to the same do you believe it to be Did you jointly with John Thomas Campbell Esquire receive per Brig Queen Charlotte in the year ?1819 or when else a Box containing many original Documents and Vouchers touching the Affairs of the said Copartnership Firm of Shortt and Berry and among them a Letter from Mr Berry to Shortt dated in or about the year 1808 Expressing his wish for the Arrival here of the Ship Truth What became of these papers Did Shortt when he saw you at the Cape in June 1822 express his regret that the said papers had never reached him Did you give information to the said Complainant at that time of the D Berry being in these Colonies and immediately thereupon or when else during your stay there Did Shortt proceed to this Colony if you know for what purpose or if he stated to you for what purpose he so departed from the Cape of Good Hope Declare &c Did not said Mr Robertson on your return to this Colony in the year 1825 on your touching at the Cape of Good Hope on your passage thither Express his satisfaction to you that Complainant after so many years of fruitless search had at length found his partner the said D Berry and that the said Firm of Shortt and Berry was then considerably indebted to himself and partner Mr ?Maude Would Coals and Timber have brought good prices at the Cape in or about the years 1808, 1809 and 1810 Do you know the hand writing of Mr James Birnie late of the Cape of Good Hope but now of Rio de Janeiro Look on the Paper writing now produced and shown to you marked D whose signature to the same do you believe it to be

Lastly Do you know of any other matter or thing relating to the said Copartnership Concern of Shortt and Berry besides what you have before been Interrogated unto If yea Declare &c

nj

NRS13724

Styles v Inch

Bill of Complaint 15 April 1818 P James Richard Styles of Sydney Settler sheweth that in or about the month of October 1809 Ann Grant of Sydney departed this life having previously made and executed her last Will in which she gave and bequeathed all her estate real and personal in manner following that it should be divided in three equal parts one of which she gave to her son Joseph Inch another she gave to her daughter Ann Inch and the third she gave to Joseph Inch now of Pitt Street Sydney with whom she then cohabited and who was the reputed father of Joseph Inch and Ann Inch her children and the Will was witnessed by James Gordon now a Magistrate at Van Diemens Land who wrote the Will at the request of the Testatrix and by William Redfern of Sydney an Assistant Surgeon on the Medical Establishment and John Alcock now of VDL Settler and the Will was delivered over to Joseph Inch who was appointed one of the Executors and in whose custody it was when AG departed this life under and by virtue of which JI entered into possession of the whole of the real property of AG and took possession of all the personal property of AG consisting of 252 head of horned cattle 562 sheep 6 horses 50 swine a very large and valuable selection of goods wares and merchandize L2000 Sterling and divers other property to a very large amount and which JI still has possession of and a very large increase has accrued and been acquired by JI And P further sheweth that he arrived in this Territory in the ship Darkins in November 1817 as a free settler and went to reside at the house of AG decd now occupied by JI in Sydney and there became acquainted w AI And P sheweth that JI proposed to P to intermarry with AI and in order to obtain P's consent thereto JI communicated to P the property which AI was entitled to under the Will of AG and as a further Inducement to P to intermarry with AI JI proposed to P that as soon as marriage should be completed JI would give as a further marriage portion 30 head of horned cattle And P sheweth that fully confiding in the promises so made to him by JI P consented to the proposed marriage which was celebrated on 27 January 1818 And P sheweth that soon afterwards he communicated to JI his wish to commence business as a settler for which purpose he requested that JI would make the necessary arrangements as to property which AI was entitled to under the Will of AG And P sheweth that he also applied to JI to produce the Will in order that the same might be proved when JI to the astonishment of P denied having any such Will in his possession or that any such Will had been made by AG and on P further pressing JI thereon and stating that all the subscribing witnesses to the said Will were still living and were ready to come forward and certify the same JI declared that he would not give P nor AI the daughter and Legatee of AG any part of her said Legacy nor would he admit that any such Will was ever made or now existed but denied all knowledge thereof And P sheweth that he applied to JI to deliver over the 30 head of horned cattle which he solemnly promised to give to P as a marriage portion with AI but JI not only refused so to do but turned P and AI out of the apartments which they then occupied in the premises the property of AG and obliged P and AI to seek for a residence elsewhere JI positively and peremptorily refusing to aid or assist in any way the maintenance or support of P or AI or to give or deliver to them any part of the property given and bequeathed to her by the Will of AG and JI positively and peremptorily refused to give over to P the said 30 head of horned cattle or any part thereof which he so promised as a marriage portion with AI And P has often since in a fair and friendly manner applied to the said JI to produce the Will and cause the same to be proved and also to come to a fair and accurate Settlement of the property which JI has possessed himself of in and by virtue of the Will or however otherwise which was the property of AG at the time of her decease And also that JI would deliver over to P the 30 head of cattle which he promised to give to P as a marriage portion with AI And P well hoped that JI would have complied with P's reasonable request as in all Justice and Equity he ought to have done But now JI combining and confederating with divers persons unknown whose names when discovered P prays may be added to this Bill as Ds thereto with apt and sufficient words to charge them how to defraud and defeat P of his just demands the said confederates give out and pretend that P has no claim whatever either on his own account or that of his wife on the said JI either under the Will of AG or on any other account whatever sometimes pretending that AG was not at the time of her decease possessed of any real or personal property whatever Whereas P expressly charges the contrary to be the fact and that she was possessed of very considerable Estates and Houses and Lands and several hundred head of horned cattle sheep swine and other stock a very great quantity of goods wares and merchandise and a large sum of ready money all of which JI has possessed himself of and JI at other times pretends that AG did not make any Will or Testament whatever Whereas in truth and fact AG did make and execute her last Will to the effect and in the presence of the witnesses hereinbefore set out And JI at other times admits that AG did make and execute her Will as aforesaid but then JI pretends that the said Will has been lost or destroyed and has never been seen or heard of since the death of AG Whereas and in truth and in fact the contrary is the case as P has hereinbefore charged all which actings pretences and doings of JI and his confederates are contrary to Equity and good conscience and tend to the manifest wrong of P In Tender Consideration whereof and forasmuch as P is remedyless in and by the strict rules of the Common Law in regard P cannot come at a full discovery of all the matters herein contained but upon the oath of JI and the other divers persons hereinbefore mentioned and cannot obtain relief but by the aid and assistance of a Court of Equity where matters of this sort are properly cognizable To the End therefore that JI and the rest of the confederates when discovered may upon his and their corporal oaths true full and perfect answer make to all and singular the premises and more especially that JI may upon his corporal oath declare and answer [here are repeated the individual allegations made above] And that JI may set forth a full and true account of the Plate ready money Household Goods ?Bank Bills store receipts Gold Silver and Copper Coin Stock in Trade and all the other Effects of AG decd which have ever come to the Custody or power of JI or any other person for his use or benefit and how the same has been used applied or disposed of and when where and to whom and whether the same and what part thereof is now in the hands of JI and to what value and that JI may be decreed to bring into this Honorable Court and prove in the Ecclesiastical Jurisdiction the Will of AG and that JI may be decreed to pay over to P as the husband of AI whatever may appear to this Honorable Court to be due to her under the Will of AG decd and that JI may be decreed to deliver over forthwith to P the said 30 head of horned cattle so promised to be delivered over to P as a further marriage portion and that P may have such further and other relief in all and singular the premises as may appear to this HC to be agreeable to Equity and good conscience Prayer for grant of Writ of subpoena directed to JI and his confederates when discovered commanding him them and every of them at a certain time and under a certain pain personally to be and appear before Your Honor in this HC and there to answer the premises and to stand and abide such order and Decree therein as to this HC shall seem agreeable to Equity and good conscience And your Orator will ever pray

Thos Wylde

Subpoena for JRS and Ann his wife against JI Returnable 1 May 1818

Wylde

15 Apl 1818

Petition by D filed 8 July 1818 prays that he may have a Month's time to plead answer or demur to the Bill

WH Moore D's Solicitor

July 8 1818

Be it so and hereof give notice

forthwith

B Field Judge

Petition by P filed 4 August 1818 prays that YH would be pleased to rescind order for extension of time and would be pleased to make an order that D plead answer or Demur to the Bill within such time as YH wd be pleased to direct or in default thereof an attachment should issue against him for contempt

4 August 1818

Be it as prayed, unless

D plead answer or demur

on Thursday next

B Field Judge

Answer Sworn before Barron Field at his house in Sydney 7 August 1818

D now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors uncertainties and imperfections of and in the Complainant's bill of complaint contained answereth and saith that about 25 years ago D then being a Government servant working in the Brickmaker's gang became acquainted at a Public House in Sydney then kept by John Lowe with AG mentioned in the bill who was then a woman in Indigent circumstances possessing nothing whatever of any sort or description but a very few articles of wearing apparel; That D took AG to live with him and she continued so to do to the very period of her Death; That AG during the whole period of her so living with D as aforesaid never possessed any property whatever of her own except such necessary articles as were from time to time given to her by D; that AG never to the knowledge of D possessed any houses, lands, horned cattle, sheep, swine, nor Horses except one Horse which was paid for by D and given to AG by D and which was Shot by accident before the Death of AG And D further saith AG never to the knowledge of D possessed any Goods Wares or Merchandizes nor any other property of any sort or description whatever except as aforesaid And D further saith that AG never possessing any property whatever could not have any to bequeath in the manner stated in the bill nor is any Will of AG now in D's possession or in that of any other person to the best of D's knowledge or beleif And D saith that he never promised P any marriage portion or property whatever in consideration of his marriage with AI or on any other consideration whatever and D went to a very considerable expence on the occasion of his said marriage with AI having previously equipped AI with every sort of cloathing and personal necessaries and presented her with articles of household furniture as was necessary for commencing House keeping And further kept and supported AI and P after their marriage untill P stating to D that his intention in marrying AI was to live as a Gentleman without any effort to contribute himself towards his own support but to continue to be maintained solely at the Expence of D. D was induced to remonstrate with P on the extreme impropriety of such an Idle Life when P quitted premises of D and filed his bill of complaint against D in this HC

WH Moore Def Solicitor

Exceptions to Answer filed 21 ?August 1818

First Exception For that D hath not answered and set forth according to the best of his knowledge information remembrance and belief whether AG previous to her Death did make declare and duly execute her Will in writing

Second Exception For that AG having so made her Will whether same is not in the possession of D or whom else

Third Exception For that D hath not answered and set forth according to the best of his knowledge information remembrance and belief whether she did not therein give and bequeath all her Estate real and personal in manner in the Bill set forth

Fourth Exception For that D hath not answered and set forth according to the best of his knowledge remembrance information and belief whether D was not the reputed Father of JI and AI and whether the Will of AG was not duly attested and witnessed in the manner set forth in the Bill and whether JI was not named as the executor of AG

By all which particulars P insists that D's Answer is altogether evasive Imperfect and insufficient wherefore P doth except thereto and humbly prays that D may be compelled to put in a full and sufficient answer to the Bill

Thos Wylde

nm

16 Dec 1818 P's Costs

24 Dec 1818 Attachment against JI at the suit of JRS for not paying the taxed costs on arguing P's exceptions to D's answer

Wylde

Attachment for P against D for not putting in a further answer returnable 13 Feb 1819

Further Answer illegible Sworn before Barron Field at his house in Sydney 16 February 1819

TS Amos Solicitor for the D

Brief To move to amend the Bill The Will of AG has been found and the Bill will have to be fresh drawn and Joseph Grant named therein will be made a party Complainant thereto

Granted 24 Feby 1819

P to pay costs of amendment as taxed

By the Court John Gurner

18 May 1819 D's bill of costs on changing solicitor

Note of Court fees

NRS13724

Charles Throsby v John Thomas Campbell

Bill of complaint 24 November 1817 in pieces and illegible.

Subpoena to appear and answer 25 November 1817.

Appearance by Frederick Garling 26 November 1817.

16 December 1817 attachment by Barron Field.

24 December 1817 Injunction (?application) to stay execution in a cause touching the matters in the bill until answer or other order

TS Amos ptff's solr

Answer sworn 10 January 1826. Text of copy is too small to read and in any event incomprehensible without bill

Affidavit of deft sworn 23 March 1826 (11 pages) recounting history of neglect of deft over years by solicitors, first Frederick Garling, then James Norton, leading to 2 attachments against him for disobeying subpoena to file answer, neither of which was successfully executed.

1 April 1826 order that Mr Wentworth be at liberty to take answer off the file of the Court.

3 April 1826 petition by deft to change solicitor from Frederick Garling to William Ch Wentworth.

5 April 1826 rule for change of solicitor.

Demurrer filed 2 Oct 1826. The D by protestation not confessing or acknowledging all or any of the matters or things in the said Complainants bill to be true in such manner and form as the same are therein set forth and alledged doth demur thereto and for cause of demurrer sheweth that the said C hath not in and by his said bill made or stated such a case as doth or ought entitle him to any such discovery or relief as is thereby sought and prayed for from or against this D wherefore this D demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained and prays to be hence dismissed with his reasonable costs in this behalf sustained

WC Wentworth WC Wentworth

Defendants Solicitor

Friday 22 June 1827 draft rule to dissolve injunction.

Certificate that on 1 August 1827 ordered that injunction obtained by ptff restraining deft's proceedings at law for the matters in question in this cause until the deft should answer the ptff's bill be absolutely dissolved and there have not been any other proceedings in this cause since the date of the said rule.

Draft rule to dismiss bill Sat 7 June 1828.

NRS 13724

Wentworth v Gore and Mcmahon

Sworn 10th February 1818 Answer of William Gore

The said D now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the Manifold errors uncertainties and imperfections of and in the Cs said bill of Complaint contained for answer thereunto or unto so much thereof as this D is advised is material for him this D to make answer unto he answereth and saith that he doth admit it to be true that he this D was at the time in the said bill of Complaint mentioned seized in fee Simple and possessed of a good and sufficient Estate in the Houses Lands farms Messuages Buildings tenements and Hereditaments situate as in the said Bill of Complaint and particularly mentioned and described and this D doth admit that having occasion for a Sum of money he did apply to the said Darcy Wentworth the C to Assist him therewith and that the C did agree to supply this D with the sum of L606 and that in Consequence thereof this D doth admit that the Indenture Mortgage Deed or Instrument in writing in the said Cs said bill of complaint mentioned alledged to bear date the 2nd day of January in the year of our Lord 1815 were duly executed by the said parties thereto for such intent and purpose as in the said bill of Complaint is set forth according to this Ds Knowledge remembrance and belief but for better and more perfect certainty therein and as to the contents thereof he this D craves leave to refer thereto when the same shall be produced unto this Honorable Court and this D does admit that the said sum of L606 was paid by the said C to this D and this D does not Know or believe that the said C has ever received any part of the said sum of L606 or interest save and except the sum of L97 and some shillings not exceeding L98 to this Ds remembrance and belief was paid by this D to the C And this D doth admit that the sum of L606 with Interest for the same is now due and owing from this D to the said C except for the sum of L97 and some shillings paid as aforesaid which said sum of L97 was so paid to the C as aforesaid this D insists ought to be deducted from the said sum of L606 and Interest due and owing from this D to the C as aforesaid And this D admits that in the said hereinbefore mentioned Indentures there was a proviso to the Effect that if the said sum of L606 so lent and advanced by the said C to this D as aforesaid was not duly repaid in the manner and at the times therein particularly mentioned and expressed that then and in such case it might be lawful for the said C to proceed to the sale of the said Lands Tenements and Hereditaments Houses and premises in the said hereinbefore mentioned Indenture Mortgage Deed or Instrument particularly described bargained Sold Assigned conveyed and made over by this D to the said C and this D doth admit that in the said Mortgage Deed or Instrument in writing hereinbefore mentioned this D did covenant with the said C that he had a good title to the said Land Tenements Hereditaments Houses and Premises therein conveyed and made over to the said C and that this D would do any further Act or Deed for the more effectually securing and confirming the several Estates and properties therein assigned conveyed and made over by this D to the said C And this D admits that the periods of time consented and agreed upon by this D for the repayment of the said sum of L606 are long since passed gone by and expired and that in consequence thereof the said C in and by virtue of the said Indentures Mortgage Deed or Instrument in writing hereinbefore mentioned is at liberty to proceed to the Sale of the said Lands Tenements and Hereditaments Houses and premises in the said hereinbefore mentioned Indentures Mortgage Deed or Instrument in writing bargained sold Assigned conveyed and made over as aforesaid And this D denies all and all manner of unlawful Combination and Confederacy wherewith he is charged by the said Bill of Complaint of the said C without that there is any other Matter cause or thing in the Cs said Bill of Complaint contained material or Effectual in the Law for him this D to make answer unto and not hereby well and sufficiently answered avoided traversed or denied is true to the Knowledge and belief of this D all which matters and things this D is ready and willing to aver maintain and prove as this HC shall direct and humbly prays to be hence dismissed with his reasonable Costs and charges in the Law in this behalf most wrongfully sustained

Sworn at my House in George Street Wm Gore TSAmos Solr

Sydney this tenth day of February in

the year of our Lord 1818 before me

Barron Field

Judge

NRS13724

West v Jenkins and others

Filed 24th September 1818 Bill of Complaint

Humbly Complaining sheweth unto this Honorable Court Your Orator Absolam West late of Sydney in the Territory of NSW Dealer that your Orator having for a considerable time previous to and in the year 1813 had considerable dealings and mercantile transactions and accounts with William Jenkins of Sydney aforesaid Dealer since deceased and James Jenkins of Sydney aforesaid Dealer surviving Copartner in Trade with the said WJ deceased your orator at the sittings of the late Court of Civil Jurisdiction held at Sydney aforesaid in and for the said Territory of NSW in the month of July 1813 obtained a Judgment against the said WJ and JJ for the sum of L55-7-6 and at the sittings held in the same Court in the month of January 1814 your orator obtained one other Judgment against the said WJ and JJ for the sum of L46-19-10 which said Judgments so obtained by your orator against the said WJ and JJ as aforesaid together with a further sum of L61-10-3 due to your orator on balance of accounts stated and settled between your orator and the said WJ and JJ amounted in the whole to a sum of L163-17-7 due and owing from the said WmJ and JJ to your orator on the 15th day of January 1814 And your orator further sheweth unto this HC that early in the said month of January 1814 your orator caused a writ of execution to be issued out of the said Court of Civil Jurisdiction against the said WmJ and JJ on the first of the above mentioned Judgments and upon or shortly afterwards the said WmJ came to your orator and stated to him that they the said WJ and JJ owed judgment and other debts to several persons which they were then unable to pay and that they had in hand building a schooner which they were unable to finish for want of money And the said WJ proposed to your orator that if he your orator would pay the Judgment and other debts so as aforesaid due by them the said WJ and JJ and advance them as much money as would enable them to finish the said schooner he the said WmJ together with the said JJ would execute a Mortgage to your Orator of their Houses Lands and other property payable in three Months from that time And your Orator understanding at that time that the total (p2) amount would not exceed more than L600 he your Orator agreed to such proposal in order to secure the monies so as aforesaid then due to your Orator from the said WJ and JJ and it was agreed that the said Deed of Mortgage should express the sum of L1000 and that your orator should advance monies from time to time for the purpose of discharging the debts of the said WmJ and JJ and building the said schooner as (with the sum due to your orator at that time) would amount to about that sum and upon a final settlement of accounts should the money so to be advanced by your orator not amount to the said sum of L1000 in the event of any Bill of Foreclosure being filed on the said proposed Deed of Mortgage no advantage should be taken of the sum of L1000 so to be mentioned in the Deed but that your orator should be repaid only so much as he should actually advance in addition to the debt so due to him with Interest And your Orator further sheweth unto this HC that in pursuance of the said agreement the said WJ and JJ by a certain Indenture under their respective hands and seals bearing date the fifteenth day of January 1814 made between the said WJ and JJ of the one part and your orator of the other part they the said WJ and JJ in consideration of the sum of L1000 Expressed to be due unto your Orator Did sell bargain release assign Transfer and set over unto your Orator All that new stone built and shingled Dwelling House Messuage or tenement with the enclosed Garden and Wharf situate and lying at Cockle bay adjacent to the Town of Sydney and bounded by Mr Blaxcells Premises and all that allotment of enclosed ground situate at end of the Garden of John Birch Esquire in Charlotte Square Sydney and all that other dwelling House with the Outhouses Garden and Appurtenances thereunto belonging wherein the said WJ then resided together with an unfinished Schooner of the Burthen of Forty Tons or thereabouts then lying at Cockle Bay aforesaid and also a Grey Horse a Bay Mare and Cart and harness three Bullocks Harness for two horses and fifteen pigs of various conditions To hold to your Orator his Executors Administrators and Assigns as his and their proper Estate Cattle Goods and Chattels and further stating that the said Indenture of Mortgage that the said WJ and JJ were possessed of and entitled unto a Dwelling House with the outhouses Garden and other appurtenances thereunto belonging and appurtaining then in the occupancy of the said WJ and whosoever was a lien or Mortgage collateral as security with the Joint promisory note of them the said WJ and JJ To Darcy Wentworth Esquire for the sum of L205 (p3) Sterling It was witnessed that the said last mentioned and described premises were in like manner as were the foregoing premises and other property sold released and transferred unto your Orator his Executors Administrators and Assigns by them the said William and JJ for the Consideration aforesaid subject to the payment of the said sum of L205 Sterling to the said DW Esquire or his legal representative and which said property Estate Cattle Goods and Chattels were to be subject and entitled to the Equity of Redemption of the same upon payment of the said Sum of L1000 with Interest by the said WJ and JJ to your orator within three Calendar months from the date of the now reciting Deed And Your Orator further complaining to this HC that the said Mortgage to the said DW for the said sum of L205 in the said Deed mentioned has as your orator has been informed and believes been sold assigned released Transferred or in some way made over to Mrs Mary Saunders hereinafter mentioned the Mother in Law of the said JJ but for what Consideration or in what manner your orator is not sufficiently informed to set forth to this HC And your orator further sheweth unto this HC that by a Certain Instrument in writing and under the respective hands and seals of your orator and the said WJ and JJ bearing date the said fifteenth day of January 1814 after reciting the said herein before in part recited Mortgage It is agreed and and (sic) covenanted upon by and between the said parties that at any time previous to the foreclosure of said Mortgage the Sums really and bona fide due thereunder by reason of any intermediate payments made thereout should be that amount only which upon a fair Impartial settlement of the parties aforesaid should appear really and truly due and owing and none other and thereto the parties subscribing did severally agree and bind themselves as in and by the said Deed of Mortgage and the said Instrument in writing when produced to this HC will more fully and at large appear And your orator further sheweth unto this HC that at the time of the Execution of the said Indenture of the fifteenth day of January 1814 the said WJ and JJ stood Indebted to your orator in the sum of L163-17-7 upon the herein before stated Judgment and the Balance of accounts stated and settled and Immediately after the Execution (p4) of the said Indenture your orator paid the following sums in discharge of Judgments and other debts due from the said WJ and JJ being the sum of L66-13-4 in part discharge of a Judgment Campbell the Elder against the said WJ and JJ L22 in discharge of a Judgment Rose against Jenkins L24-0-2 in discharge of a Judgment ? against Jenkins L11-11-6 in discharge of a Judgment Charters against Jenkins L18 to the Provost Marshals officer for fees due to him on the foregoing Judgments and a sum of L13 paid by your Orator to Mr Thomas Rushton amounting in the whole to the sum of L155-5-0 actually paid by your orator in discharge of Judgment debts due by the said WJ and JJ and at their Especial request and in consideration of the said Indenture of the fifteenth day of January 1814 And your orator also made advances of Cash to the said WJ and JJ at several dates from the tenth day of February to the twenty fifth April 1814 for the purpose of building the said Schooner amounting in the whole to the sum of L184-7-7 which said several sums namely L163-17-7 L155-5-0 and L184-7-7 amounting together to the sum of L503-10-2 actually due and owing and paid by your orator as and for the consideration money of the said Indenture of the fifteenth day of January 1814 and which several advances and payments are particularly set forth in the Schedule hereunder written or hereunto anexed (sic) And your orator further sheweth unto this HC that the said sum of L503-10-2 and Interest or any part thereof was not paid to your orator or any other person on his account according to the proviso in the said Indenture of Mortgage mentioned at the time therein mentioned or at any other time except a sum of L66-13-4 which your orator received from one Thomas Bowden on account of the said WJ and JJ which sum being deducted from the total amount of the sums advanced by your orator on account of the said W and JJ and of the debt due to your orator from the said W and JJ (p5) leaves a balance of L436-16-2 principal besides Interest due to your orator And your orator further sheweth to this HC that WJ in or about the month of 1814 departed this life Intestate and the said JJ since his death hath possessed himself of the Horse Mare Cart harness Bullock and pigs in the said Indenture mentioned and the said WJ and JJ previous to the death of the said WJ or the said JJ have or hath sold and disposed of the same as your orator hath heard and belives (sic) And your orator further sheweth unto this HC that the said sum of L436-16-10 or any part thereof hath not been paid to your orator or to any other person on his account and the same now remains due and owing to your orator together with arrears of Interest due thereon And your orator further Complaining sheweth unto this HC that Immediately or soon after the said Schooner named in the said Mortgage Deed was finished a Certificate of Registry thereof was obtained from the office of the Secretary to His Excellency the Governor in which said Certificate of Registry the names of the said WJ and JJ were inserted as the owners of the said Schooner without the Knowledge or Consent of your orator and the said Schooner was shortly afterwards put up for Sale by public auction And your orator further sheweth unto this HC that he attended both in his own person and by his Agents at the said further Sale of the said Schooner an (sic) gave public notice not only to the auctioneer but to all the persons present that the said Schooner was not the absolute property of the said WJ and JJ but that your orator had a mortgage upon her as aforesaid notwithstanding which notice so given in the most public manner by your orator and his agents as aforesaid the said Schooner was purchased by one George Chartris late of the said Territory for a considerable sum and he the said George Chartris received possession of the said Schooner accordingly That the said George Chartris sold and disposed of the said Schooner to Mr George Crossley of Sydney in this Territory who again sold the said Schooner to Mrs Mary Reiby also of Sydney in this Territory in whose possession she now is And your orator further complaining Sheweth unto this HC that on or about the nineteenth day of February last past the said (p6) Houses lands messuages and premises herein before mentioned and described and which were mortgaged to your orator as aforesaid were also put up to public auction And the same were purchased by one Mrs Saunders whom your orator is informed and believes is the mother in law of the said JJ that previous to the said sale that your orator attended personally and by his agents and solicitor and gave public notice not only generally to all the persons who attended there but also particularly in writing to Mr Simeon Lord the auctioneer on that occasion which said notice in writing was expressed in the words following that is to say

Take Notice that the House and premises situate No 30 Cambridge street and the House and premises situate in ? being the Residence of Mr JJ advertized by you in the Sydney Gazette for sale by public auction on the nineteenth day of February instant were amongst other things by Indenture bearing date the fifteenth day of January 1814 mortgaged by one WJ since deceased and by the said JJ unto one Absolam West for a valuable consideration and a Bill is now about to be filed in the Supreme Court of Civil Judicature in the Territory of NSW to foreclose the said Mortgage and I hereby give you Notice and you are hereby required not to proceed to a sale of the said premises or either of them or any part thereof as you will answer it at your peril Dated this eighteenth day of February 1818

To Simeon Lord Esquire Thomas Wylde

and to all whom it may Solicitor for the Agent of

Concern Mr Absolam West

And your orator further complaining Sheweth unto this HC that notwithstanding such General public notice so made and given by your Orator as aforesaid and the particular notice delivered in writing to the said Mr Simeon Lord the auctioneer as aforesaid the said Mrs Saunders the Mother in law of the said JJ purchased the said Houses messuages and premises as aforesaid for the sum of L340 And your Orator well hoped that the said JJ would either have paid your Orator the said sum of L436-16-10 and the Interest for the same or would have suffered your Orator to have peaceable and quiet possession and to have held and enjoy (sic) the said property Estate Goods Chattels and for that purpose your orator hath frequently applied to the said WJ and JJ in the lifetime of (p7) the said WJ and to the said JJ since the death of the said WJ and requested him and them in a friendly manner to pay and discharge the said sum of L436-16-10 and the arrears the said JJ after the death of the said WJ of Interest due thereon or also peaceably and quietly to deliver up possession to your orator of the said Mortgaged premises and to release all right Title and Equity of redemption in and to the same premises to your orator and to his Heirs the said WJ and JJ in the lifetime of the said WJ and the said JJ since the death of the said WJ well knowing as your orator charges the truth to be that the said mortgaged premises are a very slender and scanty security for the principal and Interest now due to your orator therein and your orator well hoped that the said WJ and JJ in the lifetime of the said WJ and the said JJ after the death of the said WJ would have complied with such reasonable request of your orator as in Justice and Equity they ought to have done But Now So it is May it please this HC that the said JJ combining and confederating himself with divers other persons at present unknown to your orator whose names when discovered by your orator may be made parties Defendants hereto contriving how to wrong and injure your orator in the premises he the said JJ sometimes pretends that he never made and Executed such Indenture of Mortgage as aforesaid the contrary whereof your orator charges to be true and so the said confederates will sometimes admit that but then he gives out that he hath confessed Judgments statements and Recognizances to several persons in several considerable sums of money and several other Grants Conveyances and several Incumbrances which will effect the said premises prior to your orators Title to the same but refuses to discover the same or to whom he hath sold Mortgaged or incumbered the premises aforesaid or the respective considerations or conditions thereof or the persons to whom he hath confessed such Judgments statutes (sic) and Recognizances or for what sum or sums and for what considerations so that your orator cannot proceed at Law for the recovery of the said Mortgaged premises Whereas your orator charges that such Conveyances Mortgages and other Incumbrances if any such there be are not prior to your orators said Mortgage or if any of them are prior to Your Orators said Mortgage which your orator does not admit the same are voluntary and fraudulent and made without any Consideration really and truly paid for the same and such Judgments Statutes and Recognizances were not (p8) for the payment of any Just Debts but without any Consideration and voluntarily and contrived on purpose to deprive your orator of his principal and Interest due on the said Mortgage and thereby to set your orator at defiance and at other times the said JJ pretends that the said Mortgage hath been paid off and satisfied Whereas your orator charges that there has only been a sum of L66-13-4 paid on account thereof as aforesaid and that the full and Just sum of L436 -16-10 together with Interest thereof still remains Justly due and owing to your orator and the said WJ and JJ in the life time of the said WJ have repeatedly and in the presence of several persons acknowledged that the said sum of L436-16-10 was still due and owing from them to your orator and have promised your orator to pay off the same and to pay and satisfy the Interest due thereon and the said JJ since the death of the said WJ hath in like manner acknowledged such last mentioned sum of money due and owing to your orator on the said Mortgage Deed and hath promised your orator to pay off the same and satisfy the Interest due thereon but which he now refuses to do All which actings doings and pretences of the said JJ are contrary to Equity and good conscience and tend to your orators manifest wrong and Injury In tender consideration whereof and for as much as your orator is remedyless in the premises save in this HC in its Jurisdiction as a Court of Equity and that your orator cannot foreclose the Equity of redemption in the said hereinbefore in part recited Mortgaged premises but in a Court of Equity where matters of this nature are properly cognizable To the end therefore that the said JJ 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 herein before mentioned as fully particularly and distinctly interrogated and more especially that they may answer and set forth in manner aforesaid whether your orator having considerable dealings and mercantile accounts with the said WJ and JJ did not at the sittings of the late Court of Civil Jurisdiction held at Sydney aforesaid obtain against them as herein before set forth and (p9) whether there was not a sum of L61-10-3 then due to your orator on balance of accounts or some other and what sum of money and whether your orator did not at or about the time herein before set forth cause a writ of Execution to be issued forth of the said Court against the said WJ and JJ and whether upon or shortly afterwards the said WJ did not come to your orator and state to him that the said WJ and JJ owed Judgment and other debts to several persons which they were then unable to pay and that they had in hand building a Schooner which they were unable to finish for want of money and did not propose to your orator that if your orator would pay the Judgment and other debts so as aforesaid due by them the said WJ and JJ and advance them as much money as would enable them to finish the said Schooner he the said WJ together with the said JJ would not Execute a Mortgage to your orator of their Houses Lands and other property and whether such morgage was not redeemable and the money for which the same was given and executed was not to be repaid in three months from that time or what other deed did the said WJ agree to Execute to your orator and at what other time was the same to be paid and whether your orator did not agree to such proposal in order that the monies so due to your orator from the said WJ and JJ should be secured and whether it was not agreed that the said Deed of Mortgage should express the sum of L1000 and that your orator should advance monies from time to time for the purpose of discharging the Debts of the said WJ and JJ and building the said Schooner as with the sum due to your orator at that time would amount to about the said sum of L1000 or what other Sum and whether your orator agreed to any other and what proposal and for what purpose and to what effect And if your orator did not agree to advance to the said W and JJ the said sum of L1000 what Sum did your orator agree to advance and whether upon a final and General Settlement of accounts or in the event of any Bill of foreclosure being filed on the said proposed Bill of Mortgage it was not agreed that no advantage should be taken of the Sum mentioned in the said Deed should such Sum not amount to the said Sum of L1000 as aforesaid and whether your orator was not to be repaid only so much money as he should actually advance together with the debt so due to your orator with Interest and whether in pursuance of the said agreement the (p10) said WJ and JJ did not enter into such Indenture bearing date the fifteenth day of January 1814 or what other Indenture or of what other date and to what effect and purpose and to whom executed and to whom and what sum was asserted in such Indenture to be due and owing to your orator by the said WJ and JJ as aforesaid And whether your orator did not enter into such Instrument bearing date the said fifteenth day of January hereinbefore also set forth with said WJ and JJ to the purport and effect as herein before set forth or what other Instrument and of what other date and of what other purport or effect did your orator enter into with the said WJ and JJ and whether at the time of the Execution of the said Indenture of the fifteenth day of January 1814 the said WJ and JJ did not stand indebted to your orator in the sum of L163-17-7 upon the said Judgment and upon the Balance of accounts stated and settled or how otherwise and whether your orator did not immediately after the Execution of the said Indenture pay the following Sums in discharge of Judgment and other debts due from the said WJ and JJ Viz the Sum of L66-13-4 in part discharge of a Judgment Campbell the elder against the said WJ and JJ L22-0-2 in discharge of a Judgment Lana v Jenkins L11-11-6 in discharge of a Judgment Chartris v Jenkins L18 to the provost marshals officer for fees due to him upon the foregoing Judgment and a Sum of L13 paid by your orator to Mr Thomas Rushton amounting in the whole to the Sum of L155-5s Sterling and whether such Sums were not actually paid by your orator in discharge of Judgment debts due by the said WJ and JJ and at the special request and in Consideration of the said Indenture of the fifteenth day of January 1814 and whether your orator did not make advances in Cash to the said WJ and JJ at several periods and times from the tenth February to the twenty fifth April 1814 for the purpose of building the said Schooner amounting in the whole to the sum of L184-7-7 (p11) and whether such said several Sums namely L 163-17-7 L155-5s and L184-7-7 amounting to the Sum of L503-10-2 are not actually due and owing and paid by your orator as and for the Consideration money of the said Indenture of the said fifteenth day of January 1814 and whether the said sum of L503-10-2 and Interest or any part thereof was ever paid to your orator or to any other person on his account according to the proviso in the said Indenture of Mortgage mentioned or at any other time Since Save and except the sum of L66-13-4 which your orator received from the said Thomas Bowden on account of the said WJ and JJ and whether if such Sum of L66-13-4 is deducted from the said final Sum of L503-10-2 does not it leave a balance of L436-16-10 principal besides Interest due to your orator and whether the said WJ did not some time in or about the month of 1814 depart this life Intestate and whether the said JJ hath not since his death possessed himself of the horse mare Cart harness Bullocks and pigs in this Indenture mentioned and whether the said WJ and JJ previous to the death of the said WJ or the said JJ since his death has or hath not sold and disposed of the same and whether the said sum of L436-16-10 together with the arrears of Interest thereon is not now remaining due and owing to your orator And whether immediately or soon after the said Schooner named in the said Mortgage Deed was finished the said WJ and JJ or one and which of them did not obtain a Certificate of Registry thereof from the office of the Secretary to His Excellency the Governor and whether the names of the said WJ and JJ or of one and which of them were not inserted as proprietors or proprietor thereof in the said Certificate of Registry And whether your orator had any knowledge of or ever gave his Consent thereto and whether the said Schooner was not shortly afterwards exposed to sale by public auction and whether your Orator did not attend such sale both privately and by his agents and did not give public notice that the Schooner was mortgaged to (p12) your Orator as aforesaid or how otherwise and whether notwithstanding such public notice so given by your orator and his Agents as aforesaid the said Schooner was not purchased by one George Chartris for a considerable and what Sum and whether the said George Chartris did not obtain possession of the said Schooner accordingly And whether the said George Chartris did not dispose of the said Schooner to Mr George Crossley and whether Mr George Crossley did not dispose of the said Schooner to Mrs Mary Reiby and whether the said Schooner is not now in her possession or how otherwise and whether on or about the nineteenth day of February or when otherwise the said Houses Lands Messuages and premises herein before mentioned and described and which were mortgaged to your orator as aforesaid were not put up to public auction and whether the same were not purchased by a Mrs Saunders and whether the said Mrs Saunders is not the Mother in law of the said JJ or how otherwise and whether previous to the said sale of the said Houses Messuages and premises as aforesaid your orator did not personally and by his Agents give public notice to all persons present the said Houses Messuages and premises were mortgaged to your orator as aforesaid And whether your orator did not by his Solicitor give written notice under his Signature or how otherwise to Mr Simeon Lord who was the Auctioneer employed on that occasion and whether the said written notice was not expressed in the words following or how otherwise

Take Notice that the House and premises situate at No 30 Cambridge Street Sydney and the House and premises situate in Cockle Bay the residence of

Mr James Jernkins Advertized by you in the Sydney Gazette for sale by public auction on the nineteenth day of February instant were amongst other

things by Indenture bearing date the fifteenth day of January one thousand

eight hundred and fourteen mortgaged by one WilliamJenkins since deceased and the said James Jenkins unto one Absolam West for a valuable consider-

ation and a Bill is now about to be filed in the Supreme Court of

Civil Judicature in the Territory of New South Wales to foreclose the said

Mortgage and I hereby give you notice and you are hereby required not

to proceed to a sale of the said premises or either of them or any part

thereof as you will answer it at your peril Dated this eighteenth

day of February one thousand eight hundred and eighteen

To Simeon Lord Esquire Thomas Wylde

and to all others whom Solicitor for the Agents of

it may concern Mr Absm West

(p13) And whether notwithstanding such public notice and such notice in writing as aforesaid the said premises were not purchased by the said Mrs Saunders the said Mother in law of the said JJ and whether the said Mrs Saunders did not give the sum of L340 or what other sum for the same and whether the said Mrs Saunders has not obtained procured and received a Conveyance Assignment or Transfer to herself of the Mortgage herein before mentioned to have been made of the said Houses Messuages and Premises by the said WJ and JJ to DArcy Wentworth Esquire and that the said DArcy Wentworth may answer Whether he the said DArcy Wentworth has any or what claim still existing or outstanding in or upon the said Houses Messuages or premises And whether your orator did not in a friendly manner apply to the said JJ and request him to pay your orator the said sum of L436-16-10 and the amount of Interest due thereon or else peaceably and Quietly to deliver up possession to your orator of the said mortgaged premises and to release all right title and Equity of Redemption in and to the same premises to your orator and his Heirs And whether the said WJ and JJ in the life time of the said WJ and the said JJ since the decease of the said WJ did not well know that the said Mortgaged premises so Mortgaged to your orator as aforesaid were a very slender and Insufficient security for the said sum of L436-16-10 and Interest so remaining due to your orator on the said advances And that the said JJ may be decreed to Pay and Satisfy to your orator the said sum of L436-16-10 and all Interest thereon due and owing and to accrue due and owing by a Short rate together with your orators Costs and in default that thereof the said JJ and all persons and all persons claiming upon him may be foreclosed of and from the Equity of Redemption in and to the said mortgaged premises and every part thereof and may deliver over to your orator all Deeds papers and writings whatever relating to the same and that your orator may have such further and other relief in the premises as to Your Honor and this HC shall seem meet as the nature of your orators Case may require

(p14) May it therefore please Your Honor and this HC to Grant unto your orator His Majestys most Gracious writ of Subpoena to be directed to the said JJ and DArcy Wentworth and the said Mary Saunders thereby commanding them at a Certain day and under a certain time therein to be inserted to be and appear before YH and this HC then and there to answer the premises and to stand to and abide such order and Decree thereon as to YH shall seem agreeable to Equity and Good Conscience

One page Schedule showing how monetary claim is made up

NRS 13724

Wheelwright, Lloyd, Langston v Underwood Kable and Underwood

22nd November 1817 Plea and Answer of James Underwood, Henry Kable and Joseph Underwood

Significant parts illegible

For plea say that the said JamesU did not send and despatch the said JosephU to England as in the said Complainant's said Bill is set forth but that the said JosephU with the produce or proceeds of a certain consignment of Goods Wares and Merchandizes which he ? received by a certain Ship or Vessel called the Sydney Cove from Rio Janeiro and the produce or proceeds of certain ? of Goods Wares and Merchandizes which he the said D JosephU had ? from the Indies he the said D JosephU having taken several voyages thither previously to the month of ? 1815 and brought from that place various valuable Cargoes of Merchandize of a very large and extensive amount which he the D disposed of among the Merchants in this Colony to a large profit he the D the said JosephU in or about the month of July 1815 departed from this Colony for England in a Ship or Vessel called the Sydney ?Packett with property to a very large and considerable amount in value which this D had received from and out of the produce or proceeds of the said before mentioned Consignment from Rio Janeiro and various other places and the means before mentioned and this D JosephU also took with him on Board the said Ship the Sydney ?Packett a Quantity of Seal Skins and on his arrival in England did invest the same or a great part of the thereof in the purchase of a certain Ship or Vessel called the Harriett and this D JosephU did also invest in ? purchase Goods Wares and Merchandizes on credit and otherwise to upwards of the amount of L15000 and this D Saith that the said Goods Wares and Merchandizes were shipped on board the said Ship or Vessel called the Harriett as aforesaid and this D with the said Ship or Vessel and Cargo in or about the month of November ?1816 left England for this Territory and that he the said D JosephU did? at certain Ports ? Rio Janeiro and the River Derwent Hobart Town in and ? to this Colony and that he the said D JosephU did ? at certain Ports [illegible]