

[Cover]

Supp Bill

Gurney

v

Birkbeck

Fol 45 Ex^d

[1]

Stamped "Received Writ Clerks' Office July 26 1849"

Handwritten notes "Berrey for (unreadable)" "Messrs Sharpe Field & Co fos 45 15"

1848 G. No. 60

In Chancery

Lord Chancellor

Vice Chancellor }
Knight Bruce }

13th July 1849 }
Berrey }

To the Right Honourable Charles
Christopher Baron Cottenham of
Cottenham in the County of Cambridge
Lord High Chancellor of Great Britain

Humbly complaining sheweth unto your Lordship your Orator Richard Hanbury Gurney late of Keswick in the County of Norfolk but now of Thickthorn in the Parish of Hetherset in the same County Esquire That your Orator on or about the thirtieth day of June one thousand eight hundred and forty eight exhibited his

[2]

Original Bill of Complaint in this Honorable Court and which Bill was afterwards amended and as amended was against Sir George Duckett John Benjamin Heath John Druce Ellen Yatman William Hamilton Yatman John Wright Edmund Jerningham George Floyd Duckett and Isabella his Wife George Burrard and Isabella his Wife Anthony George Wright Biddulph Sir Henry Pottinger Walden Warde and William Alexander McKinnon the younger Henry Birkbeck Dominic John Carrigars (*Corrigan*) Henry Robinson Margaret Campbell Mary Campbell Clare Campbell Henry Campbell Henry Burton Robert Burton John Bartlett and William Eyle (Eyke)as

[3]

Defendants thereto and thereby after stating (inter alia) that Indentures of Lease and Release bearing date the **sixteenth and seventeenth days of November one thousand eight hundred and twenty four** were made and executed between and by the said Defendant Sir George Duckett and Dame Isabella his wife who is since deceased of the one part and your Orator of the other part and thereby the said Sir George Duckett in consideration of the sum of Forty thousand pounds paid to him by your Orator granted bargained sold released ratified

£40,000 = £2,620,000 1824/2009

[4]

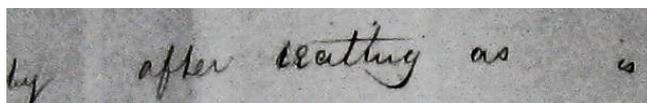
and confirmed unto your Orator his heirs and assigns All that the navigation or undertaking for making navigable the River Stort in the Counties of Hertford and Essex or one of them and all buildings and profits and advantages and other appurtenances thereto so hold the same unto your Orator his heirs and assigns to the use of your Orator his heirs and assigns subject nevertheless to the Provisos for redemption therein after contained upon payment by the said Defendant Sir George Duckett his heirs Executors admors. (*administrators*)

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or assigns unto your Orator his Executors Administrators and Assigns of the said sum of Forty thousand pounds with interest for the same at the rate of four pounds per cent per annum upon the day therein appointed payment of the same which day was then long since past and thereby after stating that an Indenture bearing date the **eighth day of May one thousand eight hundred and thirty four** was duly made and executed between and by the said Defendant Sir George Duckett and Dame Isabella his Wife of

[6]

the one part and the said John Wright and Edmund William Jerningham Sir George Duckett and Francis Giles therein described of the other part and that thereby after *****g (see below)* as is therein recited it was agreed and declared between and by the said parties thereto and particularly the said Dame Isabella Duckett did thereby direct that they the said John Wright Edmund William Jerningham Sir George Duckett and Francis Giles their heirs executors administrators and assigns should stand seized and possessed of or interested in the Equity of redemption then

A photograph of a handwritten document snippet. The text is written in cursive and reads "by after creating as". There is a small mark at the end of the line.

[7]

subsisting in the undertaking of the navigation of the River Stort as therein mentioned and also all the undertaking called the Hertford Union Canal established as therein mentioned and all and singular other the hereditaments and premises therein specified upon trust by and out of the rates tolls duties rents issues and annual profits of the said hereditaments and premises inter alia to levy and raise after the death of the said Dame Isabella Duckett in case she should die before the trusts thereafter declared for liquidation of the Mortgage

Hereditaments = Any kind of property that can be inherited

[8]

debts therein mentioned should be satisfied or determined leaving her Son and Daughter George Floyd Duckett and Isabella Duckett afterwards Isabella Burrard or either of them her surviving one clear annual sum of one hundred pounds sterling until the said trust for liquidation should be fully satisfied and determined or until both the said George Floyd Duckett and Isabella Duckett therein called spinster should previously die and should pay the same annual sum in the manner and at the times therein appointed unto the said George Floyd Duckett and

£100 = £6,550 1824/2009.

[9]

and (sic) Isabella Duckett in equal shares and proportions and in case either of them the said George Floyd Duckett and Isabella Duckett should die during the continuance of the said annuity then and thenceforth to pay the whole of such Annuity to the survivor and also to levy and raise after the death of the said Sir George Duckett in case he should die before the trusts thereafter declared for liquidation of the said Mortgage debts should be satisfied or determined leaving the said George Floyd Duckett and Isabella

[10]

Duckett or either of them him surviving one clear annual sum of Two hundred pounds sterling until the said Trusts for liquidation should be fully satisfied and determined or until both the said George Floyd Duckett and Isabella Duckett should previously die and should pay the same annual sum in the manner and at the times therein appointed unto the said George Floyd Duckett and Isabella Duckett in equal shares and proportions and in case either of them the said George Floyd Duckett and Isabella Duckett should die during the

[11]

continuance of the said annuity then and thenceforth to pay the whole of such annuity to the survivor (such last mentioned annuity of Two hundred pounds to be without prejudice to and in addition to the said annuity of one hundred pounds thereinbefore made payable to the said George Floyd Duckett and Isabella Duckett after the decease of their said Mother and from and after full payment and discharge of all such Mortgage debts and interest as in the said indenture aforesaid and subject and without prejudice to all and

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singular the trusts and powers *orated* expressed and declared as in the said Indentures mentioned of and concerning the said trust hereditaments and premises and annual produce thereof it was by the said Indenture agreed and declared that they the said John Wright Edmund William Jerningham Sir George Duckett and Francis Giles their heirs executors administrators and assigns should stand seized and possessed of and interested of and in as well the said several trust hereditaments and premises so conveyed and assigned to them respectively as therein aforesaid

[13]

and the rates tolls duties rents issues and annual profits arising therefrom as also the stocks funds and securities in or upon which any such rates tolls duties rents issues and annual profits should or might be laid out or invested and accumulations thereof upon trust ~~thereof~~ in the first place thereof to levy and raise during the life of the said Isabella Duckett spinster one clear annual sum of One thousand pounds sterling and to pay the same to her or her assigns in manner and at the

[14]

times therein appointed and subject thereto in trust for the said George Floyd Duckett his Executors administrators and assigns absolutely for ever and thereby stating that the said Isabella Duckett in the month of **January One thousand eight hundred and thirty eight** intermarried with her present husband George Burrard and the said George Burrard and Isabella his Wife were Defendants thereto and that no settlement affecting the said annuities of one hundred pounds and two hundred pounds and one thousand pounds or either of them was executed on the occasion

[15]

of such marriage and thereby further stating that an Indenture bearing date **the twenty third day of July one thousand eight hundred and forty four** was made and executed between and by the said Defendant George Floyd Duckett of the first part the said defendants George Burrard and Isabella his Wife of the second part the said Defendant Sir George Duckett of the third part your Orator of the fourth part and the said Defendant Henry Birkbeck of the fifth part and thereby after reciting amongst other things that

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your Orator had required further Securities for the payment of Thirty eight thousand ~~pounds~~ six hundred and fifty pounds remaining due to him as therein mentioned being dissatisfied with the security then existing for the same and that the said George Floyd Duckett and George Burrard and Isabella his Wife had agreed upon the application and request of the said Sir George Duckett and as an inducement to your Orator to postpone the immediate calling in the said mortgage but without limiting his right to call in

£38,650 = £2,880,000 1844/2009

[17]

the said Mortgage but without limiting his right to call in the same at any time to make the assignment thereafter contained it was witnessed that in consideration of the premises they the said George Floyd Duckett and George Burrard and Isabella his Wife as to and concerning and so far as related to the said respective annuities of One hundred pounds and Two hundred pounds so provided for and directed to be paid to them the said George Floyd Duckett and Isabella Burrard and the survivor of them

[18]

as aforesaid and the said George Burrard and Isabella his wife as to and concerning and so far as related to the said Annuity of one thousand pounds so secured to her the said Isabella Burrard as aforesaid did bargain sell assign and transfer unto the said Henry Birkbeck his Executors administrators and Assigns all those the said several and respective expectant annuities of One hundred pounds and Two hundred pounds so respectively provided for and secured to them the said George Floyd Duckett and Isabella Burrard and the

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survivor of them during the life of such survivor by the said Indenture of the **Eighth day of May one thousand eight hundred and thirty four** and also the said Annuity or yearly sum of one thousand pounds by the same Indenture secured for the time therein appointed to her the said Isabella Burrard during her life to hold receive and take the said annuities of one hundred pounds two hundred pounds and one thousand pounds and other the premises thereby assigned unto and by the said Henry Birkbeck his

[20]

executors administrators and assigns *there*** for and during the natural lives of the said George Floyd Duckett and Isabella Burrard respectively but nevertheless upon ~~trust~~ trust for your Orator his Executors administrators and assigns and it was by the said Indenture *f*** witnessed that for the considerations *** he the said George Floyd Duckett did bargain sell and release and also assign unto the said Henry Birkbeck his heirs executors administrators and assigns all and singular

[21]

the trust hereditaments and premises rates tolls duties rents issues and annual profits stocks funds and securities accumulations and other the premises in the said Indenture of the **Eighth day of May one thousand eight hundred and thirty four** described or mentioned or referred to and which were thereby subject to the prior trusts thereof directed and declared to be in trust for him the said George Floyd Duckett his Executors administrators and assigns and every of them and every part thereof respectively

[22]

to have hold receive and take the said hereditaments and premises rates tolls duties rents issues and annual profits stocks funds and securities accumulations and other the premises thereby respectively released and assigned and every of them and *every* part thereof *mite* and to the use of the said Henry Birkbeck his heirs executors admors. and assigns upon trust for your Orator his heirs executors administrators and assigns and for further and better securing to your Orator his Executors administrators

[23]

and assigns the due payment of the sum of Thirty eight ~~thousan~~ thousand six hundred and fifty pounds so remaining due to your Orator in respect of the said sum of Forty thousand pounds as therein mentioned and the interest thereof and subject to the same or the like right and benefit of redemption in equity on payment to your Orator his executors administrators and assigns of the said sum of Thirty eight thousand six hundred and fifty pounds and the interest thereof as

[24]

the hereditaments and premises contained in the said Indenture of Release dated the seventeenth day of November one thousand eight hundred and twenty four were *** immediately before the execution of the now stating Indenture were subject or liable to under or by virtue of the same Indenture or the Proviso and Agreement therein contained and to the intent and so that the said Annuities and sums of money stocks and funds thereby

[25]

respectively assigned or intended so to be might be receivable and if your Orator his Executors administrators and assigns should think fit be received by the said Henry Birkbeck his Executors administrators and assigns and if he or they ~~se~~ should so require but without obligation so to do or any loss or liability for not doing be applicable and be applied in or towards payment satisfaction and discharge of the said sum of Thirty eight thousand six hundred ~~pounds~~ and

[26]

fifty pounds and the Interest thereof or such parts of the same as should from time to time remain unpaid in such order and manner as your Orator his Executors administrators and assigns should think proper it is by the said Bill prayed that an account might be taken by and under the direction of this Honorable Court of what was due and owing to your Orator for principal and interest on the said securities and that the

[27]

said Defendant might be decreed to pay to your Orator what should appear to be justly due and owing ~~from him~~ to him on taking together with the cost of this suit by a short day to be appointed by this ~~Honorable~~ Court for that purpose your Orator being willing and hereby offering on such payment being made to reconvey the said Mortgage

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~~premises and~~ hereditaments and premises to the said Defendant as this Honorable Court shall direct and that ~~an account may~~ in default of such payment the said Defendants and persons claiming under them might be absolutely barred and foreclosed of and from any right and equity of redemption in a (space) to the said mortgaged premises and every part

[29]

thereof and that your Orator might have such further and other relief in the premises as to your Lordship might seem meet
And your Orator further sheweth by way of Supplement that.....

[30]

.....since the filing of the said Bill and before the said Henry Birkbeck was served with a copy thereof and on **the Twenty ninth day of (sic) December one thousand eight hundred and forty eight** the said Henry Birkbeck departed this life having duly made and published his Will bearing date **the third day of January one thousand eight hundred and forty eight** and thereof appointed his Wife Elizabeth Lucy Birkbeck and his son Henry Birkbeck both

[31]

of whom are Defendants hereto his Brother in law Robert Barclay and his Nephew John Henry Gurney also a Defendant hereto Executrix and Executors by his said Will and the said Will was on **the seventh day of April one thousand eight hundred and forty nine** proved by the said Defendants Elizabeth Lucy Birkbeck Henry Birkbeck and Henry Gurney alone in the proper Ecclesiastical Court and your Orator further shews that the said Will contained a

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devise of ~~the said~~ estates vested in the said testator ~~Henry Gurney alone in the proper Ecclesiastical Court of the and your Orator further shews that he said Will contained a~~ devise of the Estate vested in ~~the said Testator~~ upon Trust or by way of Mortgage at the time of his decease and that the said Defendant Henry Birkbeck the younger is the heir at law of the said Testator And

[33]

your Orator is advised that he is entitled to have the *** relief against the said Defendant Elizabeth Lucy Birkbeck the younger John Henry Gurney as if the said Henry Birkbeck deceased had died before the filing of the said Bill and as if the said Defendants Elizabeth Lucy Birkbeck the younger and John Henry Gurney had been made parties to the said Bill in the place of the said Henry Birkbeck deceased
To the end therefore that

[34]

the said Defendants may if they can show why your Orator should not have the relief hereby prayed and may upon their several and respective corporal oaths and according to the best and utmost of their

several and respective Knowledge remembrance ~~infor~~ information and belief full true direct and perfect answer make to all the several Interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer the same that

[35]

is to say

1 Whether at or about the time hereinbefore in that behalf mentioned or at some other or what time your Orator did not exhibit his Original Bill of Complaint in this Honorable Court against such several persons as hereinbefore in that behalf mentioned as Defendants to appear and to answer the said Bill or some or one and which of them or some other and what person or persons and whether or not

[36]

against the said Henry Birkbeck as a Defendant to be bound in such manner as hereinbefore in that behalf or how otherwise and whether the said Bill did not state and whether or not pray to such purport and effect as hereinbefore in that behalf mentioned so far as the same is hereinbefore set forth or state or pray to some other and what purport and effect or how otherwise
And whether since the filing of the said Bill and whether or

[37]

not before the said Henry Birkbeck was served with a copy thereof and whether or not at the time hereinbefore in that behalf mentioned or at some other or what time the said Henry Kirkbeck (sic) did not depart this life or how otherwise
And whether he did not duly or in fact make and publish his Will of such date as herein before in that behalf mentioned or some or one and which of them or some other and what person or persons

[38]

Executrix and Executors or Executor or Executors of his said Will or how otherwise
And whether the said Will was not at the time herein before in that behalf mentioned or at some other and what time proved by the said several Defendants herein before in that behalf mentioned or some or one and which of them or some other and what person or persons in the proper Ecclesiastical Court or in some other

[39]

and what ~~Ecclesiastical~~ Court or how otherwise and whether the said Will contained any and what devise of the Estates vested in the said Testator upon Trust or by way of Mortgage at the time of ~~the~~ his decease or how otherwise
~~And whether the said Will contained any and what devise of the Estates~~
And whether the said Defendant Henry Birkbeck the Younger was

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is not the heir at law of the said Testator or how otherwise ~~or whether~~ and who is such heir at law
And whether your Orator is not entitled to have some relief against the said Defendants Elizabeth Lucy Birkbeck Henry Birkbeck the younger and John Henry Gurney or some or one and which of them as if the said Henry Birkbeck (sic) deceased ~~has~~ had died

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~~before the filing of the said Bill~~

~~And whether or not as if they the said Defendants Elizabeth Lucy Bireckbeck Henry Bireckbeck the younger and John Henry Gurney had been made parties to the said Bill in the place of the said Henry Bireckbeck deceased or how otherwise and if not why not And whether the~~
Pencil note in margin "Prayer" that your Orators may have the same relief against the said

[42]

Defendants hereto as if the said Henry Birckbeck ~~the younger~~ had died before the filing of the said Bill and ~~that~~ the said Defendants had been made parties thereto in the place of the said Henry Birckbeck deceased

~~And that your Orator may have such further or other relief in the premises~~

Pencil note in margin "Stop" and signature "J V Prior"

as to your Lordship shall

[43]

May it please your Lordship the premises considered to grant unto your Orator Her Majesty's most gracious Writ or Writs of Subpoena issuing out of and under the Seal of this Honorable Court to be directed ~~to the said~~ Elizabeth Lucy Birkbeck Henry Birckbeck and John Henry Gurney ~~and the rest of their confederates when discovered thereby commanding them and every of them at a~~

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and each ~~and every~~ of them at a certain day and under a certain penalty therein to be limited personally to be and appear before your Lordship in this Honorable Court and then and there full true direct and perfect answer make to all and singular the premises and further to stand to perform and abide by such further order direction and decree

[45]

therein as to your Lordship shall seem meet

And your Orator will ever pray &c

(signed) J.V. Prior

Note – All the Defendants are respectively required to answer the Interrogatory

Sharpe Field Jackson and Newbold
41 Bedford Row
Middlesex

Agents for Foster Unthank Burroughs and Robberds
Norwich