

[In August 1665 Isaac Basire, rector of Stanhope, let his tithe ore to Humphrey Wharton for one year for a payment of £260 and with a bond of £500. At the end of the period in August 1666 Basire let his tithe ore to William Blackett and did not return either the counterpart of the lease or the bond to Wharton. Wharton therefore started legal action by exhibiting a bill of complaint to the Court of Chancery, 6 Clerks Office. This document includes Wharton's bill of October 1666 and Isaac and Frances Basire's answer in January 1667. Other papers in the Chancery case have not survived, nor a decision of the Court, but interrogatories and depositions in a parallel case in the Exchequer Court brought by Basire and William Blackett against Wharton have survived and are available in Dukesfield Documents – see TNA E134/19Chas2/East33 and TNA E126/9. Paragraph breaks have been inserted within this transcript to aid reading.]

## 26 Oct 1666 Humphrey Wharton to Edward Hyde

26 Oct 1666

To the Right Hono:ble Edward Earle of Clarendon Lord High Chancellor of England

Humbly Complaineing Showeth unto yo:r Lordshipp yo:r dayly Orato:r Humphrey Wharton of Gillingwood in the county of Yorke Esq that there are certaine Lead Mynes Lying and being within the parrish of Stanhopp in the County palatine of Durham commonly called and knowne by their severall names of Newmeadowheads Allersclough Whiterake Barkerburne Langtyhead & Gorbuttmay Midge Pitts and Greenfield out of which said Lead Mynes have beene by Custome as is pretended paid to the respective parsons of the said parrish A certaine Tyth in manner following (that is to Say) Att the chappell in Weredale Forrest or att the Chappell house or Smithy: house the owners proprieto:s or Farm:s of the respective Lead Mynes and the parson for the time being of the said parrish or his farm:r did usually meete Foure times in every yeare (vizt) upon every All Saints day Candlemas day St. Markes day and Lammas day and att those respective quarter days did Accompt together what Lead oare had beene gotten from quarter day to quarter day out of every the said respective Lead Mynes what charges the said Owners or Farm:s of the said Lead mynes had Expended in Ropes Roules Candles Timber Carriage of Timber workemens wages in the Sinkeing of Shaffts or pitts and driveing of Levells for the Conveying away of water in and aboute the Said Mynes all which being deducted the Said parson for the time being at the respective quarter Days aforesaid had his Tyth oare of Lead out of the cleare profits of the Said Lead mynes paid him the reprisalls and charges aforesaid First being deducted

And yo:r orato:r further sheweth that Isaac Basire doct:r in divinity parson of the said parrish on or about the Thirteenth day of September in the Seaventeenth yeare of the Raigne of our Sovereigne Lord King Charles the second by his deed Indented for and

in Consideration of the Rent thereby reserved and hereafter Expressed and for and upon noe other Consideration whatsoever did demise Grant and to Farme Lett unto yo:r orato:r his Executo:s Administrato:s and Assignes all that the said Isaac Basire his Tyth oare digged and delved within the parrish of Stanhope aforesaid (the Groves within the said Isaac Basire his Gleab only Excepted) To have and to hold the Said Tyth oare unto yo:r Orato:r his Executo:s Administrato:s and Assignes from the First day of August then last past for the terme of one whole yeare from thenceforth next and Imediately following yeilding and paying therefore unto the said Isaac Basire his Executo:s Administrato:s or Assignes the Summe of two hundred and Threescore pounds att the Feast of the purification of the blessed Virgine Mary and the First day of August then next following by even and Equall portions in which said deed Indented yo:r Lordshipps orato:s did Covenant with the said Isaac Basire that yo:r orato:r Should peaceably and quietly upon the First day of August last Surrender unto the said Isaac Basire all his Tyths of the said ore in Stanhopp parrish And yo:r orato:r doth Avert and will prove to this Hono:ble Court that there are noe more nor other Covenants in the said deed than are above Expressed And yo:r orato:r did on or aboute the said Thirteenth day of September in the said Seaventeenth yeare of the Raigne of our Sovereigne Lord the King that now is by his writeing obligatory became bound unto the said Isaac Basire in the Sume of Five hundred pounds Conditioned for the performance of all and Singular the Covenants in the said deed Indented above mentioned

And yo:r Orato:r further Sheweth that hee did pay att or about the Fifth day of February last the Said Summe of one hundred and Thirty pounds unto the Said Isaac Basire being his First halfe yeares Rent and the Summe of one hundred and Thirty pounds more unto Frances Basire wife of the said Isaac by the order and Appointment of the said Isaac upon the Twentyth day of August last being his last halfe yeares Rent in full satisfaction and payment of the said Summe of Two hundred and Sixty pounds reserved upon the aforesaid Lease by deed Indented as aforesaid And that Imediately before the payment of the last mentioned Summe of one hundred and Thirty pounds att the time aforesaid yo:r Orato:r by William Deacon his Steward demanded of the Said Isaac the delivering upp the said bond and Lease to be Cancelled But the said Isaac pretending that hee had Speciall occasions att Court the Assizes being then held for the County of Durham and the Judges then Sitting in Court that hee could not himself deliver the same but that hee had left them with the above said Frances his wife who would receive the said one hundred and Thirty pounds and give the said writeings upp unto the said William Deacon to be cancelled And that upon the payment of the said one hundred and Thirty pounds unto the said Frances by the direction of the sd Isaac as aforesaid in A Lower Roome in the house of the said Isaac att Durham shee the said Frances told the said William Deacon that the Writeings were in an upper Roome of the said house and that shee would Carry the money upp with her and bring down the said Lease and bond to the said William Deacon Butt soe itt is may itt please yo:r good Lordshipp that assoone as the Said Frances had carryed the

said Summe of one hundred and Thirty pounds into an upper Chamber shee the said Frances utterly refused to deliver up the said Lease and bond as alsoe the said Isaac her husband and both of them doe Still refuse to deliver the same upp hee the said Isaac since that time pretending that there were other Covenants in the said Lease besides the payment of the said Summe of Two hundred and Sixty pounds And in further profession of Malitious designes by the said Isaac against yo:r said Orato:r hath since caused yo:r Orato:r to be Arreasted by A Warrant upon A Quo:minus Issueing out of the Office of pleas in the Court of Excheqr att Westm:r and threatens to put the said bond of Five hundred pound in Suite against yo:r orato:r this very Terme with intent to recover of him the whole penalty thereof all which said Actings and doings of the said Isaac Basire and Frances his wife are Contrary to all Equity and good Conscience

In tender Consideration whereof and forasmuch as yo:r Orato:r cannot plead anything at common law in Barr to an Action already brought or to be brought Against him upon the above said bond of Five hundred pounds for performance of Covenants above mentioned for that the said Rents were not precisely paid upon the very days that the same ought to be paid but within very few days after as above mentioned nor noe other sufficient plea in Barr or be discharged of the said bond and of the Suites Commenced and threatned against him thereupon or Enforce the said Isaac Basire to make good his said promise to deliver upp the said bond and Lease to be Cancelled And forasmuch as diverse and Sundry persons that can Testify the truth of the premisses doe Inhabite in the County of Yorke and Elsewhere out of the Jurisdiction of the County palatine of Durham Soe that yo:r Orato:r cannot compel them by any Subpoena or process out of the Chancery att Durham to Appeare in the said County palatine of Durham to depose the truth of the premisses And to the intent and purpose that the said Isaac Basire and Frances his wife may upon their Corporall oaths true Answers make to all and Singular the premisses And in p[ar]ticular the said Isaac may Sett forth whether the sd Lease above mentioned was made upon any other Consideration than the payment of the above said Summe of Two hundred and Sixty pounds And whether the same being truely paid att the days above mentioned And whether any other words before or att the Sealeing of the said demise were used betwixt yo:r Orato:r and the said Isaac than the payment of the aforesaid Rents att the days and times above mentioned And to the End that the said Isaac Basire may be ordered to discharge yo:r Orato:r of and from the said bond and that all Suites att the Common Law thereupon Against yo:r orato:r may be Stayed And that yo:r Orato:r in and touching all the said matters and things may be relieved in this Hono:ble Court According to Equity & good Conscience May it please yo:r Lordshipp As well to grant unto yo:r said Orato:r process of Injunction to be directed to the said Isaac Basire commanding and Enjoyneing him his Counsellor Attorney or Agents and Sollicit:rs thereby to Surcease and stay all Suites and further proceedings att the Common Law against yo:r Orato:r upon the aforesaid bond untill the matters of Equity concerning the same be heard and determined in and by this Hono:ble Court As alsoe to Grant unto yo:r Orato:r his Ma:ties most Gracious Writt of Subpoena to be directed to them the said

Isaac Basire and Frances his wife thereby Demanding them att A Certaine day personally to be and Appeare before yo:r Lordshipp in the high Court of Chancery then and there upon their Corporall oaths to Answere all and Singular the premisses and further to stand to and abide [about 4 words obscured by parchment crease] direction and desire of this Court as to yo:r Lordshipp shall be Agreeable to Equity and good Conscience And yo:r Orato:r shall &c.

[In a separate hand: 'Ed Mann']

**17 Jan 1667 Isaac Basire**

[Note: The word 'dampnification' means harm or damage or loss.]

The joint and Severall Answeres of Isaac Basire Doctr in Divinity and Frances his wife defend[an]ts to the Bill of Complaint of Humfrey Wharton Esqr. Compla[ina]nt

The said defendants having to themselves now and at all tymes hereafter all manner of benefit and advantage of Exception to the manifold incertainties & insufficiencies of the said Bill of Complaint and of the matters and things therein contained for their full and perfect answeres thereunto or unto so much thereof as any way concerneth them these Defendants or either of them so make answer unto they do jointly and Severally answer and Say And saith the said Isaac Basire for himself saith that it is and this Defendant hopeth to prove unto this Honorable Court that within the Rectory and Parish of Stanhope in Weredale in the County of Durham and the precincts and tithable places thereof there now are and for and during all the tyme whereof the memory of man is not to the contrary there have been diverse and Severall lead Mines and Groves opened and wrought wherein and out of which diverse great quantities of lead Oare have bene from tyme to tyme digged wrought and gotten and that there now are far more and other Lead Mines and Groves which art lying and being and wrought within the said Parrish of Stanhope than the said Complant hath in his said Bill of Complaint expressed or set down for this defendant saith and hopeth to prove that over and besides Allerclough Langteyhead and the White Parke lying and being within the said Parrish which are mentioned in the Complants Bill and which are now wrought there are also these Severall Groves or Lead Mines hereafter named and comonly known by the names of Howsike Elmford LodgeSlitfeild Tod Stone Grove <Parke> Rispy Myers Longwell Wolf Clough Greenewell South Graine East and West and the Ewetree all within the said Parish of Stanhop and the precincts and titheable places thereof But this defendant doth not knoe any Lead Mines called NewMeadowheade Barkerburne Garbut May Midge Pits or Greeneifeild in the said Complainants Bill mentoned or any of them nor any other Lead Mines there said as aforesaid

And this Defendt further saith he hath bene informed and hopeth to prove that by and according to ancient Custome for all the tyme before mentioned used and approved of within and throughout the said Rectory and Parish and the precincts and titheable places of the same there hath bene paid and hath been used and ought to be paid unto the Rector and Parson of the said Rectory Church or Parsonage of Stanhop aforesaid for the tyme being or his Farmers or Tenant thereof by the Owners farmers or occupiers of any Groves or Lead Mynes there the Tenth part of all the Lead Oare by them respectively from tyme to tyme digged wrought and gotten within the said Rectory or Parsonage or any the precincts or titheable places thereof in cleane well washed and dressed oare without any deduction subtraction or defalcation of any charges or reprizes whatsoever in or about the digging getting or working of the same or for wages or materialls about the same or otherwise for and in lieu and in the name and stead of the Tithes of the said Oare and that the said Tithe Oare as abovesaid hath bene and is paid sometimes as the oare was ready and was demanded and sometimes quarterly yet not quarterly only as is now pretended

And this Defendant further saith it may be true that the owners Proprietors or Farmers of the Severall and respective Groves & Lead Mines and the Parson of the Said parish for the tyme being or his Farmer have usually met at the four tymes in the yeare in the Bill mentioned at Saint Johns Chappell in Weredaile forrest or the Chappell house comonly called Smithy house and there the said Parson or his farmer did see and peruse all the Severall Bookes and notes of account of the Moormaster for the tyme being and of the said owners Proprietors or Farmers and their Workemen that thereby he might rightly be informed whether he had the full and just Tenth part of all the Lead oare won and wrought out of the Severall Lead Mines or Groves within the Said Parish truly set forth and paid or delivered unto him his Farmer or Deputy or Farmers or Deputies there But this Defendt doth deny that his this Defendants Predecessor Parsons or Rectors of the Said Rectory or Parish Church of Stanhop aforesaid or any of them to this Defendts knowledge or that he this Defendant at any tyme have allowed or abated any Such charges as in the Said Complants Bill are alledged or any charges at all <Nor> this Defendt Saith he hath bene credibly informed and hopeth to prove that he this Defendant and his Predecessor Parsons of the Said Parish of Stanhop their Farmers or Deputies have usually and from tyme to tyme during all the tyme aforesaid received and had their Tith of and out of the Severall and respective Groves and Lead Mines within the Said Parish without any allowance or deduction of any charges wages or bycharges whatsoever for working or getting of the Same

And this Defendt confessit h it to be true that on or about the tyme in the Bill of Complaint in that behalfe mentioned he this Defendant by his Deed Indented for the consideration in the Bill in that behalfe mentioned and no other did demise grant and to farme let unto the said Complant his Executors Administrators and Assignes all that this Defendts Tith Ure digged and delved within the said Parish of Stanhope (the Groves within the Defendts Glebe only excepted) To hold from the first day of August

then past for one whole yeare ending on the first day of August now last past One Thousand Six Hundred Sixty Six rendring unto this Defendt the just and whole Sume of two Hundred and threescore pounds to be paid at the Parsonage House in Stanhop aforesaid that is to say One Hundred & Thirty pounds at Candlemas then next and One Hundred and Thirty pounds the remainder thereof at and upon the first day of August last past And the said Complant did thereby Covenant with this Defendt that he the said Complant Should peaceably fully & quietly at the end of the said yeare that is to say upon the said first day of August now last past Surrender unto this Defendt all his Tithes of the said Ure in Stanhop parish aforesaid and this Defendt confeseth that there is no more or other Covenants contayned in the said Deed or Indenture than in the said Bill of Complaint in that behalfe is expressed as by the said Indenture of Lease whereunto this Defendt <for> his most certainly herein referreth himself most plainly and at large it doth and may appeare and for the performance of the Covenants grants and agreemts on his behalfe to be performed in the said Lease contained he the said Complainant by his obligation bearing the same date in the Bill in that behalfe menconed [mentioned] became bound unto this Defendt in the Sume of five hundred pounds as by the said Bond and Condition thereunder written may appeare

And this Defendt further saith & confeseth that on or about the fifth day of February last he received the sume of one Hundred and thirty pounds or thereabouts being the first halfe yeares Rent due by the Complant unto this Defendt and that the said other Defendt Frances Basire his wife did receive the other halfe yeares Rent about the Twentieth day of August last in full Satisfaction and paymt of the said Two Hundred & Sixty pounds but this Defendt doth deny that to his knowledge or remembrance he had any such or the like discourse with William Deacon in the Bill named or that he this Defendt did promise to deliver the said Bond and Counterpart of the said Lease or either of them unto the said William Deacon upon the paymt of the Remainder of the said Rent as in and by the said Complants Bill is therein and thereby untruly set forth or used any words or pretences to such or the like effect Yet nevertheless it may be true and this Defendt doth admitt that this Defendt might and did tell the said William Deacon that if he or the said Complant did pay the said last halfe yeares Rent in the absence of this Defendt he would leave directions with his said wife to receive the same and he would also leave A discharge or Acquittance for the receipt of the same or words tending to the same effect And this Defendt Frances Basire for herselfe saith and confeseth it to be true that on or about the said Twentieth day of August last being after this Defendts husband was gone to the Court of Assizes at Durham there to attend the Assizes the said William Deacon did repaire unto her this Defendt and in a lower Roome of her said Husbands house at Durham he did pay unto her One Hundred and Thirty pounds which was the latter paymt of the said Rent reserved upon the said Lease but She this Defendt doth deny that She promised to the said William Deacon to deliver the said Lease and bond or either of them unto him or said the same or either of them were or was in any Upper Roome of the said house yet confeseth that She said She would carry the money up with her but utterly denyeth

that She said She would bring downe the said Lease and bond or either of them or any Counterpart of the said Lease to the said William Deacon as in the said Complants Bill is untruly alledged for to her this Defendts remembrance the said William Deacon did not at all mention the said Lease and Bond or either of them till he had paid unto her this Defendt One Hundred Twenty Nine pounds of the said One Hundred and Thirty pounds and then he asked her this Defendt if She had the Bond and this Defendt answered him that She had it not but She had an acquittance left by her husband under his hand and Seale for the receipt of the said latter paymt which She would and thereupon did give unto the said William Deacon

And this Defendt Isaac Basire for himself further saith it may be true that he hath put the said Bond in suite against the said Complant as he <conceiveth> under the favor of this Honoble Court he lawefully may do for breach of the Covenant of Surrender above said but he denyeth the same is so done either maliciously or in prosecution of any malicious designe whatsoever and saith he confesseth that the same is done no otherwise than justly and legally and for that this Defendt hath Sufficent cause for soe doing as he conceiveth for this Defendt saith he verily believeth and hopeth to prove unto this Honoble Court that he this Defendt is really dampnified by reason and occasion of the Complants nonperformance of his said Covenant the full value of the said Sume in the said bond contained partly by reason of the non paymt of the said Rent from his present Tenant who cannot peaceably and quietly enjoy this Defendts Tithes of lead oare to him devised for the Rent thereby reserved, and also by reason of Costs of Severall suites and also the mayntayning & keeping of Servants on purpose to watch the many several Groves out of which the lead oare is dayly and as this Defendt believeth sometimes wholly carried away by the said Complan.ts Agents that he may know his due out of them And this Defendt saith he verily believeth that the said Complan.t doth endeavour to breake and destroy the above mentioned ancient and laudable Custome of tithing the said Lead Oare within the said Rectory and Parish of Stanhop aforesaid for whereas in the old Tacks the Moore Master his Produc<ers> or their Deputies did as this Defendt hopeth to prove unto this Honoble Court reserve the tithes to be paid according to the Custome as above said he the said Complant hath and doth usually in the Tacks which he makes & setteth unto the Tenants and Severall Grovers of the said Groves and Lead Mines within the Rectory and Parish of Stanhop aforesaid and which the said Complant hath formerly made and set unto them as well before the end and expiration of his said terme and while he formerly enjoied the said Tith ure under this Defendts demise as since the determination thereof as this defendt likewise Hopeth to prove bind them to pay the said Tith of all and every their Oare that have bene or shall be gotten and digged or otherwise obtained out of the said Lead mines and that also in cleane well washed and dressed Oare without any mention of any deduction or abatemt for any charges or by-charges whatsoever (as is now pretended) unto him the said Complant and to the Moormasters his Successors from tyme to tyme and at all tymes during the continuance of their Tacks And the more to encourage them to deny the said Tith Oare to the Parson, the said Complant hath also

covenanted with the Tenants and Grovers of the said Groves and Lead Mines within the said Rectory and parish of Stanhop aforesaid to secure them from and defray all the charges debts and Judgmts of any suite or suites which in any Court Temporall or Spirituall shall be commenced against them or any of them for the said Tith as this Defendt hopeth to prove unto this Honoble Court

And this Defendt further also saith he is informed and hopeth to prove that the said Complant doth by himself or his deputies still further encourage the Severall Grovers Proprietors and owners of the said Groves and Lead Mines within the Rectory and Parish of Stanhop aforesaid not to render or pay the Tith or Tenth part of the Lead Oare by them respectively from tyme to tyme wrought and gotten within the said Rectory or Parsonage or the precincts or titheable places thereof unto this Defendt Rector of the said Parish Church of Stanhop or his farmers or Tenants thereof as by the said Custome they ought to doe unless this Defendt his farmers or Tenants will take such quantity of Lead-Ure and only out of such Groves as the said Moormasters Deputies or the said Grovers or Farmers themselves say is the tith and tenth part and with such deductions as they please And as this Defendt is also informed and hopeth to prove he the said Complant will not permit or Suffer his Deputies or the said Proprietors Farmers or Grovers to Show unto this Defendt or his Farmers or Tenants their books or notes of account whereby they may be truly informed how much Tith doth rightly belong and appertaine unto him this Defendt as anciently and by the said Custome they ought to do and peruse But this Defendt saith that Soe as the Complant will peaceably surrender and deliver up unto this Defendt the said Tithes of Lead Oare rent and become due Since the determination of the said Lease and will also Satisfy his reall dampnification by reason or occasion of the Complants Non performance of his said Covenant and his Costs at Law and this Court occasioned thereby as aforesaid this Defendt will Surcease the said suite at Law and deliver up the said Bond and Counterpart of the said Lease unto the Complant

And this Defendt further saith he doth not now remember what words before or at the Sealing of the said Indenture of Lease were used betwixt the Complant and this Defendt but true it is there is no other consideration mentioned in the said Lease at the making thereof saving what this Defendt hath herein above set downe yet there is also therein contained the said Covenant of quiet Surrendering this Defendts tithes which this Defendt hath also herein above set downe and was aswell intended that the said Complant Should fully performe as to pay the said yearly Rent reserved and made payable in and by the said Lease Without that that all or any of the actings or doings of them the said Defendts or either of them are contrary to all equity and good Conscience And also without that that any other matter or thing whatsoever in the said Bill of Complaint contained material or effectuall for them these Defendts or either of them to make answere unto and not <herein or> hereby well and Sufficently answered unto confessed and avoided or otherwise traversd or denied is true All which matters and things these defendts are ready to aver maintaine justify and prove as this Honoble



Court shall Award and humbly pray to be heare dismissed with their reasonable Costs and charges in that behalfe most wrongfully had & sustained.

Capt & Jurate apud Civitatem Dunelm Decimo Septimo die Januarii Anno Regni Regis Caroli S[e]c[un]di Angl &c Decimo Octavo Coram Chr Mickleton Rob: Smith [both signed]

[Taken and sworn at City of Durham 17th January in the year of King Charles II England &c 18 in the presence of Chr Mickleton Rob Smith – ie 17th January 1667]