

4 Dec 1684 William Montagu to Humphrey Wharton

[Note: Montagu was Chief Baron of the Exchequer. Atkyns, Gregory and Wright were Barons of the Exchequer. Judgement given in Wharton's case. Breaks in the transcript of the original text had been included to aid legibility.]

Ad huc Termio scd Michis A[nn]o xxxvi MS Car Scdi [Michaelmas term, 36 Charles II, ie. 1684]

E[xche]q[ue]r Buggin & quer
Wm Mountagu / Edw Atkyns / Wm Gregory / Robt Wright

p[er] M D R Regis
Jovis quarto die decembr[is] Inter Humphru Wharton Armig[e]r Quer et Reveren[d] in
Chr[ist]o p[at]rem Nathaniel Epi[scopum] Dunelm William Blackett Armig[e]r et al
Defend[an]tes p[er] Bill Anglicanum

Dunelm

This cause comeing to bee heard this day at Serjeants Inne Hall in Fleet Street before the Right Hono[ur]able the Lord Cheife Baron and the rest of the Barons of this Court Now upon opening of the Pl[aintiff]s Bill by M[aste]r Newport of Councill with the pl[ain]t[iff] & of the defend[an]ts Answeres by M[aste]r Dormer of Councill with the defend[an]ts and upon hearing of Sir Robert Sawyer Knight his Ma[jest]ies Attorney Generall M[aste]r Pollexfen M[aste]r Ward and the said M[aste]r Newport of Councill with the pl[ain]t[iff] & of Sir Thomas Jenner Knight one of his Ma[jes]t[ie]s Serjeants at Lawe Sir John Otway and M[aste]r Mountagu Two of his Ma[jes]t[ie]s Councill learned in the lawe Serjeant Pemberton Serjeant Jefferson & the said M[aste]r Dormer of Councill with the defend[an]ts

And upon reading of an Act of Parliam[en]t Entituled an Act to Enable John L[or]d Bishopp of Durham & his Successors to make Leases for three lives of certaine Lead Mynes beareing date about the nineteenth of December in the yeare 1667 And of a verdict obteyned at the Barr of this Court in Easter Terme in the eighteenth yeare of King Charles the Second wherein Humphrey Wharton the now Compl[ain]ant was pl[ain]t[iff] and William Hall Esqr Lessee under John then L[or]d Bishopp of Durham Defend[an]t. This Court is of Oppinion that this =defendt= matter is fitt to bee Tryed at lawe but the defend[an]ts Councill alledges that the matter in question is of noe reall value & the pl[ain]t[iff]s Councill insisting that this matter had beene before Tryed at the Barr & that it would require a very long examinac[i]on & soe not fitt for to be Tryed at the Assizes

It is this day ordered by this Court that a Tryall be had at the Barr of this Court this next Easter Terme upon an Acc[i]on of Trover com[m]enced in this Court by the

pl[ain]t[iff] by A Middlesex Jury And at the said Tryall the deposic[i]ons of such witnesses taken in this cause as are either dead or not able to travalle to the Barr of this Court shall be made use of by either party

And that the deposic[i]ons taken as well in the yeare 1664 betweene the said Humphrey Wharton Compl[ainan]t & John then Lord Bishopp of Durham & Wm Hall Esqr Defend[an]ts as alsoe the deposic[i]ons taken in the year One thousand Six hundred thirty three betweene Edwin Nicholson Esqr Compl[ainan]t & Humphrey & Thomas Wharton Esqrs then Moor masters def[endan]ts shall likewise be made use of at the said Tryall at Barr according to the direc[i]ons of the former Order

And in case a verdict be for the pl[ain]t[iff] upon the said Tryall then the defend[an]t is to pay onely such costs as usually are taxed for a Tryall at the Assizes & in case a verdict be given for the def[endan]t then the pl[ain]t[iff] is to pay such costs as are usually taxed for a Tryall at Barr

And it is further orderd by this Court that the Equity of this cause be reserved & that the Injunct[i]on granted in this Cause be continued until the hearing of this cause after the said Tryall & untill the further Order of this Court.

E[xche]q[ue]r Buggin & quer

p[er] M D R Regis
Jovis quarto die decembr

R Wharton
Rbt Hilton