

28 Nov 1683 Humphrey Wharton

[Note: Gilbert Gerard, First Baronet Fiskerton (c 1632 – 1687) married one of Bishop John Cosin's daughters, Mary, as his second wife. He held many local government positions in County Durham and elsewhere. Isaac Basire was the son of Isaac Basire, the rector of Stanhope. Isaac Basire junior qualified as a barrister in 1671 and married one of Bishop John Cosin's daughters in 1672 at Stanhope. She was the widowed Elizabeth Burton. Isaac junior worked with his father on church matters and when his father died in 1676 he, although never ordained, continued to play a role in the church. He held many civic posts in Durham and elsewhere. The executors of Cosin's estate included the royalist Sir Thomas Orby, First Baronet and Myles (or Miles) Stapleton, who had been Bishop Cosin's secretary.

Only Wharton's bill in this case survives. No answer or witness depositions are known still to exist, so the outcome of the case (if it did go to court) is unknown. Artificial paragraph breaks added to improve readability.]

To the Right Honorable Frances Lord Guilford Lord Keeper Of the greate Seale of England

28th Novembris 1683

Bridges [added in a different hand]

Humbly complaineing sheweth unto yor. Lordshipp yor. Oratr. Humfrey Wharton of Gillingwood in the County of Yorke Esqr. That John late Lord Bishopp of Duresme in the yeare one thousand six hundred sixty and six takeing notice that yor. Oratr. had beene att greate charges of bringing upp of Levells sinking of Shafts and otherwise for the gaineing and wining of Lead Mynes in the Parishes of Stanhopp and Wolsingham in the County of Durham which yor. Oratr. held for terme of his life of the said Lord Bishopp by grante from him did out of kindnesse as he prtended to yor. Oratr. propound to yor. Oratr. to take a New Lease for three Lives and which he affirmed he would make to yor Oratr upon very moderate and reasonable Termes and because he could not doe itt without an Act of Parliament did oftentimes move yor Oratr that he would endeavour to procure an Act of Parliament to enable the said Lord Bishopp to grante to yor Oratr the said Lead Mynes for three lives affirmeing that without such grante yor Oratr would in likelyhood never be reimbursed what he had already layd out in and upon the said Mynes haveing an Estate onely for life wherein he promised his utmost assistance declareing he did not doubt but to obtaine an Act of Parliament accordingly if yor Oratr would joyne with him in effecting itt

Whereupon after many treatyes beewene them the said then Lord Bishopp and yor Oratr. came to Termes what sune of money yor. Oratr. should pay the sayd Bishopp

for a Terme for the said three lives and in the Moneth of October one thousand six hundred sixty and six it was mutually agreed by and betweene the said John late Lord Bishopp and yor Oratr that upon obtaineing the said Act of Parliament att the proper coste and charges of yor Said Oratr. and a grante made thereupon onto yor said Oratr. and his heires for three Lives of all the said Bishopps Lead Mynes in the said two Parishes of Stanhopp and Wolsingham in the sayd County of Durham yor Said Oratr should pay unto the said late Bishopp the sume of two thousand pounds and not more for the security of the payment whereof to the said Lord Bishopp in manner as is herein hereafter sett forth yor. Oratr. upon the three and twentyeth day of October one thousand six hundred sixty and six did seale and deliver unto the said late Lord Bishopp three writeings Obligatory one in the penall sume of two thousand pounds with Condition to pay to the said Lord Bishopp att his Exchequer in Durham one thousand pounds within two Monethes after the passing of the said Bill soe that the same be passed that prsent session of Parliament or any other Session of that or any other Parliament begun in the lifetime of the said Lord Bishopp one other writeing obligatory of one thousand pounds penalty with the like condition for payment of five hundred pounds att or before the expiraton and End of six Monethes And a third obligation of one thousand pounds with the like condition for five hundred pounds att and before the end and expiration of twelve monethes to compleate the said sume of two thousand pounds agreed upon as aforesaid as in and by the said three Obligations ready to be produced to this honorable Court may appeare Whereunto for [more] [hole in paper] certainty yor Oratr referreth himselfe

And yor Oratr. further Sheweth that yor Oratr att his greate charges and expences did procure the said Bill to be passed the sessions of Parliament begun the tenth day of October one thousand six hundr[ed] [hole in paper] and seaven By vertue whereof the said late Lord Bishopp was enabled to grante the sayd Lead Mynes unto yor. Oratr for the Terme of three lives above mentioned and ought to have made and granted the same accordingly But yor Oratr sheweth that after the said Lord Bishopp had obtained the said Act though att the sole cost and charges of yor said Oratr and by his meanes privity and consent yet he the sayd Lord Bishopp refused to performe the Agreement aforesaid in granting the prmises to yor Oratr who had laid out vast sumes of money in Levells and other charges touching the sayd Mynes for fourteene Monethes before the passing the said Act unlesse yor Oratr. would pay or secure to him the sume of six hundred pounds more above the said two thousand pounds imediately upon sealing the said Lease for three Lives and att the same time acquitt and Release the said Lord Bishopp of and from all and all manner of debt and debts sume and sumes of money Accompt and Accompts for Lead sold and delivered by yor said Oratr. unto the said Lord Bishopp or his use which said Lead soe sold amounted unto the sume of foure hundred pounds more or thereabouts

And the said Lord Bishopp being a Powerfull man and yor Oratr being both unable and unwilling to contend with him and haveing laid out such vaste sumes as

aforesaid for wining the said Lead Mynes which depended on one single life was prvailed upon to pay the said Lord Bishopp two thousand fower hundred pounds in money and to seale and Execute unto the said Lord Bishopp one Deed or writeing for the payment of the further sume of two hundred pounds in case the said Lord Bishopp should be liveing and continue Bishopp of the said See of Durham upon the seaven and twentyth day of November one thousand six hundred seaventy and one which said sume of two hundred pounds was to be paid by yor Oratr in manner following (vizt) unto the said Lord Bishopp or his Assignes the sume of fifty pounds upon the seaven and twentyeth of November one thousand six hundred seaventy and two fifty pounds more on the seaven and twentyth of November one thousand six hundred seaventy and three, fifty pounds more on the seaven and twentyth of November one thousand six hundred seaventy and foure And fifty pounds more to compleate the said two hundred pounds on the seaven and twentyth of November one thousand six hundred seaventy and five

Notwithstanding which yor Oratr further showeth that Sr. Gilbert Gerrard sonne in Law to the said Lord Bishopp Dame [blank space] his wife daughter of the said Lord Bishopp since deceased though they were privy to all the matters and transactions above mentioned as well to the absolute Agreement first above mentioned for yor Oratr paying the sume of two thousand pounds as alsoe to the last mentioned Agreement for yor. Oratr. to pay six hundred pounds more than the said two thousand pounds and to acquitt the Just debts due to yor. Oratr. from the said Lord Bishopp for Lead as aforesaid in consideration of haveing a New Lease for three lives made unto him Yet they the said Sr. Gilbert Gerrard and his said Lady or the one of them (haveing a very greate influence upon the said Lord Bishopp) did obstruct yor said Oratr in obtaineing his said Lease and told him that notwithstanding the aforesaid contracts the said Lord Bishopp should never seale any Lease or Deed unto yor Said Oratr. of the said Lead Mynes unlesse yor Oratr would pay unto the said Sr. Gilbert Gerrard fifty pounds for his Labour and trouble he had beene att in the said two houses of Parliament touching the gaineing the sayd Act and alsoe gratifye his said Lady with a considerable sume of money soe that yor Oratr was enforced to pay unto the said Sr Gilbert Gerrard fifty pounds and to his then Lady a considerable sume of money yor Oratr finding the interest of the said Sr. Gilbert and his Lady soe greate with the then Bishopp that without his agreeing to their unreasonable demands hee yor said Oratr would be deprived of the benefitt of the said Speciall Act of Parliament and loose those greate sumes of money then expended by yor Oratr in casting of Levells and otherwise for advanceing and wining the said Lead workes which would amount to yor Oratrs damage of two thousand pounds and upwards

And yor Oratr further sheweth that he yor sd Oratr did att severall times pay unto the said Lord Bishopp or his Order the sume of two thousand and six hundred pounds according to Agreement and that the sayd Lord Bishopp did make and grant the aforesayd Lease for thee Lives unto yor. Oratr. And after yor Oratr. had fully paid and

satisfyed all his said moneys yor. Oratr did demand to have the said Note for the sayd two hundred pounds delivered upp which the said Lord Bishopp alleadged he could not doe for that he had burned all papers and writeings relateing to that affaire and amongst the rest that Note Deed or writeing for the said two hundred pounds and desired yor Oratr to doe the like for that he was unwilling anything should remain whereby to make itt appeare what sume or sumes of money yor. Oratr had paid or secured to him for renewing yor Oratrs said Lease in pursuance of the said Act of Parliament For that itt had beene affirmed in the house of Lords and oftentimes to severall of the spirituall Lords that the said Bill or act of Parliament was merely for the benefitt of his the said Lord Bishopps Successors and of yor Oratr who had laid out such greate sumes of money which would in processe of time redound to the benefitt of his Successors and that he the said Lord Bishopp had nothing for the same of your orator and yor Oratr thereupon rested satisfyed that he had burnt the said Deed or note for the two hundred pounds payable in foure yeares time as aforesaid

And yor Oratr. further sheweth that one of the three Lives mentioned in yor Oratrs said Lease dyeing yor Oratr applyed himselfe to the said Lord Bishopp to add a new life in the said Lease which he refused to doe unlesse yor Oratr would pay the said Lord Bishopp six hundred pounds for such life to be added which yor oratr denying to pay any such unreasonable sume the said Lord Bishopp to induce yor oratr to condescend thereunto then told yor Oratr that though he demanded six hundred pounds for adding the said life yett in effect he should gett fower hundred pounds for that he had already cancelled or burned the above recyted Deed or writeing sealed by yor Oratr to the said Lord Bishopp for payment of two hundred pounds in four yeares in case he the sayd Lord Bishopp lived and continued Bishopp of Durham upon the seaven and twentyth of November one thousand six hundred seaventy and one and had abaited yor Oratr two hundred pounds in that bargaine of what he intended to have had notwithstanding yor oratr had paid and expended such vast sumes as aforesaid And yor oratr trusting to the faire speeches of the said Lord Bishopp and that he had burnt or cancelled as aforesaid the sayd Deed or writeing for the sayd two hundred pounds and that yor Oratr should not att any time after be any way troubled sued or molested upon or by reason of the said Deed or writeing he yor said Oratr did comply and agreed to pay and accordingly did pay the said Lord Bishopp the said sume of six hundred pounds by him demanded for adding a new Life to yor said Oratrs said Lease which otherwise he should not have done and the said Lord Bishopp thereupon did execute and seale a new Lease for three lives unto yor said Oratr of the said Lead Mynes and premisses and yor Oratr well hoped he should have rested att peace and quiett and not have been att any time sued or questioned concerning the premisses

But now soe itt is may itt please yor Lordshipp that the said Lord Bishopp of Durham afterwards dying and the said Sr Gilbert Gerrard and Isaac Basire Esqr who married another of the daughters of the said Lord Bishopp and were assistant to him in looking out and burneing his sayd papers relateing to the said affaire with yor oratr. about the

said Lease and Act of Parliament though they were and are privy to all the said transactions and the promissed Declarations and Agreements of the sayd Lord Bishopp as aforesaid now denyes yor Oratr. had paid for renewing the said Lease and that the said two hundred pounds was paid and satisfyed eyther the said two thousand and six hundred pounds or six hundred pounds and that the said Lord Bishopp had often in their hearing declared that he had burnt or intended to burne or destroy the same and that yor oratr should not nor ought to pay any more on accompt thereof yett they the said Sr Gilbert Gerrard and Isaac Basire for some unjust Ends of their owne contrary to the said Lord Bishopps minde and intent haveing as is pretended kept the said Note or Deed for two hundred pounds from being burnt or cancelled or the same by some other indirect meanes being come to their hands and confederateing and combyneing themselves together with Sr. Thomas Orby knt and and Barr[one]t and Myles Stapleton Esqr. Executrs of the said Lord Bishopp and Trustees for the sayd Sr. Gilbert Gerrard and Isaac Basire as to the psonall estate of the said Lord Bishopp & with diverse other psons unknown to yor Oratr. which when discovered yor Oratr prayeth they may be made ptyes to this Bill with apt words to charge them and with an intent & by Agreement to share and devide what shall be recovered & betweene them they the said confederates doe all joyne together to make a prey of & to vex and oppresse yor sd Oratr. & with unjust suites att Common Law to enforce him to pay unto them or some of them the said sume of two hundred pounds alleadging that the Deed or covenant for paymt of the sayd sume of two hundred pounds by fifty pounds p[er] Ann[u]m for four yeares is in their or some of their custody uncanceled & that the sayd sume or any pt thereof was paid by yor Oratr. to the sayd Bishopp in his lifetime & thereupon they the sayd confederates in the names of the sayd Sr Thomas Orby and Myles Stapleton the surviveing Executrs of the sayd Lord Bishopp have of late comenced suite att common Law gainst yor Oratr upon the said Deed or covenant intending & giveing out they will recover the sd two hundred pounds & interest of yor Oratr although they the sayd confederates doe very well know that yor said Oratr. did fully satisfy pay and discharge the sd Deed or covent & the two hundred pounds therein mentioned payable in four yeares by fifty pounds p[er] Annm unto the sd Lord Bishopp in the sd severall sumes of money soe paid as aforesd or some of the them & it was the sd Lord Bishopps Agreement & intentions that yor Oratr should be discharged thereof & he did verily beleive that the same had beene burnt & did agree that the same should be burnt & cancelled not onely for that as the now confederates doe very well know that the sayd Deed or covenant for the payment of the sd two hundred pounds was Extorted from yor sd Oratr. the same or any more than the two thousand pounds being noe pte of the aforementioned Originall Agreemt & yor Oratr haveing noe consideration for the same but for that the same was in truth satisfyed in the two thousand & six hundred pounds or six hundred pounds & the Note Deed or security declared to be burnt & discharged nor would yor Oratr have paid or agreed to pay the sd six hundred pounds on the renewall of the sd last mentioned Lease if he had not been assured by the sd Lord Bishopp that the same was burnt & that yor Oratr should not be questioned or troubled concerneing the same & he the sayd Lord Bishopp did beleive that the same had beene

destroyed & therefore did not in all that time make the least demand of the sayd two hundred pounds though he lived & continued Bishopp till after the sayd seaven & twentyth of November one thousand six hundred seaventy & two,

All which doeings of the sayd Confederates are contrary to all right Equity and good conscience In tender consideration whereof & of all the aforesaid premisses & for that yor oratr is voyd of remedy by the Course of the Common Law & cannot there plead the matter of Equity before alledged nor any other sufficient Plea in Barr or be discharged of the said Deed & covenant for payment of the sayd two thousand pounds [a mistake for £200?] or of the suite now commenced against yor Oratr for the same for that yor oratr hath noe such precise prooffe of the said premisses by witnesses now liveing as the Common Law in such Cases require But yor Oratr is properly to be relieved in Equity before yor Lordshipp where he hopeth the said Sr Gilbert Gerrard & the rest of the said Confederates will upon their Oathes confesse the premisses to be true in such sorts as aforesaid & if they shall deny the same that yett yor Oratr shall be able to make such prooffe thereof as may in Equity move yor Lordshipp to releive yor oratr therein

Therefore & to the End the sd Sr Gilbert Gerrard Isaac Basire Sir Thomas Orby & Myles Stapleton & the rest of the sd Confederates when discovered may come & p[er]fect Answer make to all & Singular the premisses & more pticularly may upon their Oathes declare what Agreemt was made between the sd Lord Bishopp & yor Oratr in or about the sd moneth of October one thousand six hundred sixty & six touching yor Oratrs procuring the said Act of Parliamt and the said Bishopps makeing a Lease for three lives when the same should be procured and what sume or sumes of money was payd by yor Oratr to the said Lord Bishopp or to the sd Sr Gilbert Gerrard Dame (blank space) his wife or any in reference thereunto & upon wt acctt such sume or sumes were soe paid & pticularly tht the sd Confederates may sett forth if the Said two hundred pounds mentioned in the sd Deed or writeing (for wch. yor oratr is now sued at Common Law) were not fully satisfyed & paid by yor sd Oratr unto the sd Lord Bishopp in the sd two thousand & six hundred pounds or in the six hundred pounds paid by yor oratr on the renewall of his sd Lease & whether the sd Lord Bishopp did not accept of the same as well in discharge of the sd Deed or writeing & the sume of 200£ therein mentioned as alsoe in full of the Fine agreed by yor Oratr to be paid for renewing the life as aforesd & may true Answers make to all & every the matters & things above mentioned And tht all suites at Common Law thereupon commenced agt yor oratr may be stayed & May it therefore please yor Lordshipp the premisses considered aswell to grante unto yor Oratr. his Ma[jes]ties writt of Injunction to surcease & stay all suites at Common Law untill the matters of Equity concerning the same be heard & determined in this Hnble court As alsoe to grant unto yor Oratr processe of subpena to be directed to the sd Sr Gilbert Gerrard & Isaac Basire Sr Thomas Orby & Myles Stapleton & the rest of the sd Confederates when discovered thereby comanding them & every of them att a certaine day & under a certaine paine

therein to be lymitted psonally to be& appeare before yr Lordshipp in this Honorable court then & there to Answere all singular the premisses & further to stand to & abide such further order & direction therein as to yor Lordshipp shall seeme agreeable to Equity & good conscience And yor oratr as in duty bound shall ever pray &c

Wrightson

Jo: Ansell [both names in a different hand]