

Rigby Collins v Clarke
Court of Chancery Bill of Complaint
11th November 1831

To the Right Honorable Henry Baron Brougham and Vaux of Brougham in the county of Westmoreland and Lord High Chancellor of Great Britain

Humbly complaining sheweth unto your Lordship your orator the Reverend Christopher Rigby Collins of Sidmouth in the county of Devon and of the city of Bath clerk that by certain Indentures of Lease and Release appointment on mortgage bearing date respectively the fourth and fifth days of March one thousand eight hundred and thirty one the release appointment and mortgage being duly and legally made and executed by and between Richard Clarke the younger of Henton in the parish of Wookey in the county of Somerset gentleman (the defendant hereinafter named) of the one part and your orator of the other part reciting that

by Indentures of Lease and Release dated respectively the twenty fifth and twenty sixth days of May one thousand eight hundred and thirty the release made between Thomas Clarke of the first part Richard Clarke the elder of the second part John Whitelocke of the third part the said Richard Clarke the younger of the fourth part and William Truman Harford Phelps of the fifth part

for the consideration therein mentioned the messuages or dwelling houses lands and hereditaments thereafter described and granted and hereinafter mentioned with the appurtenances were with other hereditaments released and conveyed and then stood limited to the use of such person or persons for such estate or estates interest or interests upon such trusts and for such purposes either absolutely or conditionally and subject to such powers provisoes declarations and agreements as the said Richard Clarke the younger at any time or times thereafter by any deed or instrument in writing to be by him legally executed

should direct limit or appointment with remainder to the use of the said Richard Clarke the younger and his assigns for life with a limitation to the use of the said William Truman Harford Phelps his executors and administrators during the life of the said Richard Clarke the younger in trust for him and his assigns with remainder to the use of the said Richard Clarke the younger his heirs and assigns for ever and further reciting that the the said Richard Clarke the younger having occasion for the sum of three thousand pounds had requested your orator to lend him the same which he had agreed to do on having the repayment thereof with interest secured as therein and hereinafter mentioned

it was by the said Indenture of the fifth day of March one thousand eight hundred and thirty one witnessed that in consideration of the sum of three thousand pounds sterling money to the said Richard Clarke the younger in hand then paid by your orator the receipt whereof is thereby acknowledged the said Richard Clarke the younger pursuant to and in exercise and execution of the power and authority given to him by the said therein recited Indenture of Release and of all other powers and authorities in him in any wise thereunto enabling

did by the said deed or instrument in writing by him the said Richard Clarke the younger legally executed absolutely and irrevocably direct limit and appoint and also grant bargain sell and release unto your orator (in his actual possession then being by virtue of a bargain and sale to him thereof made by the said Richard Clarke the younger in consideration of five shilling by Indenture bearing the date the day next before the day of the date of the said Indenture of the fifth day of March one thousand eight hundred and thirty one for the term of one year to be computed from the day next before the day of the date of the same Indenture of bargain and sale and by force of the statute made for transferring uses into possession)

and to his heirs all that messuage or tenement situate at Henton aforesaid and near the river with the outbuildings garden and premises thereto belonging late in the occupation of Thomas Barnes and others but then of the said Richard Clarke and also all that newly erected messuage or dwelling house

situate near the last mentioned messuage with the gardens outbuildings and premises to the same belonging containing together one acre more or less and also all that orchard behind the last mentioned messuage or dwelling house and near the river containing one acre

and also all those three closes of arable ground lying near and adjoining the said orchard containing two acres and also all that close of pasture land called Bath's Ground otherwise Bees Ground lying near the last mentioned closes containing four acres and also all that close of meadow or pasture ground called or known by the name of the Over or Upper Allotment containing nine acres formerly two closes and numbered 121 and 122 on the plan annexed to the Award of the Commissioners appointed by an act of Parliament for enclosing the waste lands in Wookey aforesaid

also all that close of pasture ground called the Lower Allotment containing six acres and numbered 120 on the said plan and a close called Averys adjoining to the said last mentioned close and into the same containing one acre more or less numbered 119 on the said plan also all that close piece or parcel of meadow or pasture ground called or known by the name of the Little Moor Allotment containing three acres and two roods and numbered 1 on the said plan also all that paddock or orchard called Innie containing one acre and also all that close of pasture land called Ballthorne containing six acres more or less all which said messuages lands and premises were situate in the parish of Wookey aforesaid

and also all those two closes pieces or parcels of pasture land called Vailshedges containing together twelve acres more or less situate at Godney in the parish of Meare in the said county of Somerset all which said messuages land and hereditaments were then in the possession of the said Richard Clarke the younger or his tenants together with all houses outhouses edifices buildings ways paths passages waters watercourses hedges ditches fences trees woods underwoods and the ground and soil thereof common and common of pasture and and other rights liberties casements privileges advantages emoluments rights members and appurtenances whatsoever to the said several hereditaments and premises thereby granted or any of them belonging or in any wise appertaining

and the reversion and reversions remainder and remainders rents issues and profits thereof and of every part thereof and all the estate right tithe interest use trust property benefit claim whatsoever at law or in equity of him the said Richard Clarke the younger therein or thereto or in or to any part thereof and all deeds evidences and writings whatsoever relating to the same hereditaments or any part thereof then in the possession of the said Richard Clarke the younger

To Have and to Hold the said hereditaments and premises with the rights members and appurtenances unto your orator his heirs and assigns to the only proper use and behoof of your orator his heirs and assigns for ever subject to a proviso or condition therein contained for the redemption of the said promises upon payment of the said Richard Clarke his heirs executors administrators or assigns unto your orator his executors administrators or assigns of the sum of three thousand pounds with interest thereon at the rate of five pounds per centum per annum on the fifth day of September one thousand eight hundred and one as in and by the said Indenture and to which for greater certainty your orator craves leave to refer to when produced to this Honorable Court will at large appear

and your orator further sheweth unto your Lordship that the said principal sum of three thousand pounds was in fact lent to the said Richard Clarke upon the execution of the said mortgage and that he signed a receipt thereon by reference to such Indenture of Mortgage will appear and your orator further sheweth that the said sum of three thousand pounds or any part thereof was not paid to your orator or any other person or persons for his use or on his account according to the proviso in the said Indenture contained whereby the estate and interest of your orator in and to the said mortgaged premises became absolute at law

and your orator further sheweth unto your Lordship that the whole of the said principal sum of three thousand pounds together with an arrear of interest for the same is still due and owing to your orator upon the security of the said mortgaged premises and which are a very scanty security for the same

and your orator well hoped that the said Richard Clarke the younger would have paid to your orator the said principal sum of three thousand pounds and the interest due thereon or want have suffered your orator to have peaceably and quietly held and enjoyed the said mortgaged premises

and for that purpose your orator hath frequently by himself and his agents applied to the said Richard Clarke the younger and requested him to pay the said principal sum of three thousand pounds and all interest for the same unto your orator or else quietly and peaceably deliver up possession to your orator of the said mortgaged premises together with all deeds evidences and writings relating to or concerning the same and to release all his right title and equity of redemption of in and to the same premises to your orator but now so it is

may it please your Lordship that the said Richard Clarke the younger combining and confederating with divers other persons to your orator at present unknown but whose names when discovered your orator prays he may be at liberty to insert therein with apt and proper words and matter to charge them as parties defendants hereto and contriving how to wrong and injure your orator in the premises the said defendant absolutely refuses to comply with your orators said requests some times pretending that he never made or executed any such deed or indenture of mortgage as aforesaid and which the said defendant will at other times admit but then he pretends that he has paid off and satisfied the said principal sum of three thousand pounds together with the interest thereon or some part thereof

whereas your orator charges the contrary thereof to be true and that the whole of the said principal sum of three thousand pounds with an arrear of interest thereon still remains justly due and owing to your orator upon the security of the said mortgaged premises and which the said defendant will at other times admit but then he pretends there are or is some other mortgages or mortgage or other incumbrances or incumbrance upon or affecting the said premises but the particulars thereof he refuses to discover

whereas your orator charges that if there are or is any other mortgages or mortgage or incumbrances or incumbrance upon or affecting the said premises besides your orators said mortgage the said defendant ought to set forth and state the particulars thereof and when and to whom and by whom and for what sum of money or other consideration the same were respectively made and in whom the same are respectively now vested all which actings pretences and refusals 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 at the Common Law and cannot obtain any adequate relief therein without the aid of a Court of Equity where matters of this nature are properly cognizable and relievable to the end therefore that the said Richard Clarke the younger and the rest of the confederates when discovered may upon his and their several and respective corporal oaths and according to the best and utmost of his and their several and respective knowledge remembrance information and belief full true and perfect answer make to all and singular the several matters aforesaid

and that as fully and particularly as if the same were here repeated and he and they severally and respectively distinctly interrogated thereto and more especially that the said Richard Clarke the younger may in manner aforesaid answer and set forth whether such Indentures as are hereinbefore mentioned to bear date respectively the fourth and fifth days of March one thousand eight hundred and thirty one were not duly and legally made and executed of such date between such parties and of or to such purport or effect as hereinbefore in that behalf set forth or some other and what Indentures of some other and what date or between some other and what parties or to some other and what purport effect or how otherwise

and whether the said principal sum of three thousand pounds or some other and what part thereof was not advanced and lent to the said defendant upon the execution of the said mortgage or at some other and what or how otherwise but of the said defendant did not sign a receipt for the said principal sum of three thousand pounds or some other and what sum or how otherwise and whether the said

principal sum of three thousand pounds or any and what part thereof was ever and when paid to your orator or to any other and what person for his use or on his account by the said defendant or any other and what person according to the proviso for that purpose in the said Indenture contained or how otherwise

and whether by reason of such default as aforesaid or otherwise and how the estate and interest of your orator in and to the said mortgaged premises do not become absolute law or how otherwise and whether the whole of the said principal sum or some and what part thereof together with some and what arrear of interest thereon is not still due and owing to your orator upon the security of the said mortgaged premises or how otherwise

and whether the said premises are not a scanty security for the said principal money and interest or how otherwise and whether your orator hath not made or caused to be made to the said defendant such application and requests as hereinbefore in that behalf set forth or some other and what application or requests to such or the like or some other and what purport or effect or how otherwise and whether the said defendant hath not and for what reason refused to comply with your orator aforesaid requests or how otherwise

and that the said defendant may set forth and discover what if any mortgages or mortgage or other and what incumbrances or incumbrance there are or is upon or affecting the said mortgaged premises besides your orators said mortgage and what is the nature of such incumbrances respectively and when and by whom to whom the same were respectively made and for what consideration or sum of money and what is due thereon respectively and to whom

and that the said Richard Clarke the younger may answer the several matters aforesaid and that an account may be decreed to be taken of the principal money and interest due to your orator upon and by virtue of the said mortgage as aforesaid and that the said defendant be decreed to pay to your orator what shall appear due and to grow due on the taking of such account together with your orators costs by a short day to be appointed by this Honorable Court

and that in default thereof the said defendant and all persons claiming under him may be absolutely barred and foreclosed of and from all equity of redemption or claim in and to the said mortgaged premises and every part thereof and may deliver up to your orator all deeds evidences and writings relating to or concerning the said mortgaged premises and that your orator may have such further and other relief in the premises as to your Lordship shall seem meet as the case shall require

may it please your Lordship the premises considered to grant unto your orator His Majestys most gracious Writ and Writs of Subpoena issuing out of and under the seal of the Honorable Court to be directed to the said defendant Richard Clarke the younger and his confederates when discovered and *thereby commanding him and them and each and every of them at a certain day therein to be named* and under a certain penalty therein to be specified personally to be and appear in this Honorable Court and then and these full true direct and perfect answer make to all and singular the matters and things aforesaid and further to stand abide by fulfil and perform such further order direction or decree therein as to your Lordship shall seem meet as the nature and circumstances of this case shall or may require

And your orator shall ever pray etc

Robt. Wray

Descendants of Richard Clarke

Richard Clarke of Wookey, miller in his Will names house and fifteen acres of land more or less at Priddy;
 3 sons Thomas Clarke, Richard Clarke and John Clarke;
 their uncle John Stott; their grandfather Thomas Stott deceased; daughter Betty Clark;
 Mary Marchant dau of Rose Marchant of Wookey deceased; and house and mill at Wookey
 Witnesses John Stott. John Gutch.

Richard Clarke

m 13 July 1703 Ann Thacker at Wells Cathedral

1 Richard Clark b. 22 Sept 1715 Wookey

m 14 Sept 1740 Sarah **Stott** at Wells Cathedral

1 Thomas Clarke b.1743 d. 5 Dec 1820 Henton

2 Richard Clarke b.10 April 1748 Wookey

3 John Clarke b.10 June 1750 Wookey

1 Thomas Clarke b. 1743 d. 5 Dec 1820 Henton - all children born Wookey

m1 19 Oct 1767 Jane Stott in Street d. 22 Nov 1778 Wookey-

1 Elizabeth Clarke b. 13 June 1769

2 **Thomas Clarke** b. 20 Nov 1770 d. 25 Sept 1845 Wookey

3 Jane Clarke b. 8 March 1772

4 Sarah Clarke b. 25 Dec 1773

5 John Clarke b. 26 Nov 1775 d. 8 June 1840

m 24 April 1806 Wookey Ann Cook b. 1771

1 John Cook Clarke b. 1802 d. 30 June 1845

2 Thomas Clarke

3 Elizabeth Clarke b. 1813

m 18 Dec 1834 Wookey Matthew **Stott** b. 1806 Henton d. 7 June 1883

6. Ann Clarke b. 16 Nov 1777

7 **Richard Clarke** b. 9 Nov 1778

m2 20 June 1796 Wookey Jane (Frances) White dau George White and Ann Blessly

1 Elizabeth Clarke b. 31 March 1797

2 Charles William Clarke b. 24 Aug 1798 d. 25 Nov 1838

3 Mary Ann Clarke b 20 Sept 1801 d. 1858