7. *Gawine Smith* v. *Elizabeth Smith et al.*

7.1 *Parchment Interrogatories*[163] *[1592]* *REQ 2/132/29, m. 4*

[*Marginal note*] deponents to be examined Mr Rafe Pudsley, John Waddes, William Knowles

Interrogatories to be ministered unto suche witnesses as shall be produced one the behalffe of Elizabethe Smithe, Arthur Norton, Raphe Weeckes, Christofer Bannkes, Samuell Owen and Mary Owen his wyffe, defendants, to the bill of complaint of Gawyne Smithe, complainant.[164]

1. Inprimis, whether dooe you knowe the parties plaintiff and defendants and howe longe have you knowne them.
2. Item, whether dooe you knowe or credibllie have harde[165] that the said complainant in or about the monnthe of Julie in the nyne and twentie yeare of the Queenes majesties raigne,[166] beinge then determined to travell beyonde the seas, was indebted to dyvers persons in severall somes of money amountinge in the wholle to the some of five hundreth & foure and twentie pownds or therabouts, yea or no.
3. Item, whether dooe you knowe or credibllie have harde that he the said Gawine Smith, the now complainant, did of his owne ernest request and desire laboure and travell by all wayes and meanes with the said Elizabethe Smithe, one of the nowe defendants and nowe and then the complainants wyffe, and with the frenndes of the said Elizabeth, that the debtes of the said Gawyn Smithe, amountinge to the aforesaid some, befor[e] his said pretended voyadge myght be satisfied and dischardged, yea or no.

[163]The pleadings from this case do not appear to have survived.

[164]The coachmaker and engineer who lived outside Aldgate. See Deborah Harkness, *The Jewel House: Elizabethan London and the Scientific Revolution* (New Haven, CT and London, 2007), pp. 162, 219; S.L. Adams, ed., *Household Accounts and Disbursements Books of Robert Dudley, Earl of Leicester, 1558–1561, 1584–1586*, Camden Society fifth series, 6 (Cambridge, 1995), pp. 273, 286; R.G. Lang, ed., *Tudor Subsidy Assessment Rolls for the City of London: 1541 and 1582*, London Record Society Publications 29 (London, 1993), p. 271.

[165]i.e. 'heard'.

[166]1587.

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4. Item, whether dooe you knowe or credibllie have harde that in consideration and for the payment of the aforesaid debtes of the complainant that the said complainant, about the eleaven daye of Julie in the nyne & twentie yeare of the Quenes majesties reigne, by his indenture of assignment did conveye, assure and sett over all his right title & interest of the said inne called the Three Nunes mencioned in the said bill of complaint unto one Henrie Porder of East Smithfeilde within the countie of Middlesex, blacksmith, & to one Raphe Weeckes, browne bayker[167] of London, absolutlie, to the use, benefitt, and behoouffe of the said Elizabethe, and for the dischardginge of the aforesaid complainants debtes with the appurtenaunces, with all singuler the writtings, escripts,[168] good[s] & chattells and impellments[169] in the same inne belonginge, exceipt certayne romes & chambers whearin the said complainant nowe dwelleth in, together with certayne goods & impellments reserved for the said complainant for the teerame[170] of those yeares which the said complainant was in possession before the maykinge of the said assignement, yf the said complainant did so longe live, and after the deceasse of the said Elizabeth that the said Henrie & Raphe should convey, assure, and sett over the residewe of the said yeares unto Christopher Bannkes and Marye Bannkes his sister, the children of the said Elizabethe, absolutlie as in the said indenture now playnlie appeareth. Declare your whole knowledge therin.
5. Item, whether dooe you knowe or credibllie have harde that at the time of the makinge of the said deed of assignement that ther[e] was ever anie intention or meaninge that the said Gawin Smithe should ever have anye benefitt or profitt of the said inne mencioned in the said bill of complaint, except certayne romes and chamber with certane goods before exampled, or that the said inne should be reassured to the said complainant at his retorne home againe, yea or no.
6. Item, whether dooe you knowe or credibllie have hard that the said deed of assignement was executed in dewe form of lawe by the said Henrie and Raphe absolutlie without trust. And whether did the said Henrie and Raphe absolutlie by there indenture of leasse conveay, assure, sett over & sell unto one Arthur Norton, one of the nowe defendants, the said inne or tenement with certayne goods & impellments to the same belonginge, exceipte certaine romes before exceipted, for the tearme of xxxj yeares absolutlie.

[167] Baker of brown or rye bread.
[168] Written documents, decrees, writs, etc.
[169] i.e. 'implements'.
[170] i.e. 'term'.

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And whether did the said Arthur Norton disbursse and paye for the said inne, with certaine goods and howshold stuffe, the some of 226 *li.* And whether was the said some payed to the said Henrie & Raphe absolutlie to the use & [behoufe of the said Elizabeth and for the payments of the aforesaid complainants debts, and whether hath the said[171]] Elizabeth paid the most parte or anie parte of the afore[said debts] yea or no. Speake your knowledge herin.

7. Item, whether dooe you knowe or credibllie have hard that after th[e] ensealling and deliverye of the said deed of assignement the said Elizabeth, now and then the complainants wyffe, should not make anie title, claime or demaunde to anie of the said goods & chattells of the said complainants yf she survived the said Gawin Smith, but she the said Elizabeth, for and in consideration of the aforesaid assignement so conveayed & assured by the said Gawin Smith to the said Henrie Porder & Raphe Weecks absolutlie to the use & behoouffe of the said Elizabeth, that she the said Elizabeth forever hold hersellff fullie satisfied, as well for her thirdes as for anie other thinge and thinges which she the said Elizabeth might or maye hearafter claime or aske towchinge or concerninge the premisses, yea or no.[172] Declare your wholl knowledge herin.

[*m. 4v*]
Termino pasche xxxiiij[173]

7.2 *Paper Depositions* *8 May 1592* *REQ 2/132/29, m. 1*

Depositiones capte apud Westmonasterium viij die Maij anno regni domine regine Elizabethe nunc &c xxxiiij ex parte Elizabethe Smythe et al. defendentes versus Gawyn Smythe querentem.[174]

John Waddes of the parishe of St Buttolphes withow[t] Allgatte, London, cooke of the age of xxxviij yeres or there abowts sworn and

[171] The membrane is torn and faded around a fold.

[172] The suggestion here is that, in agreeing to the alleged assignment of property, Elizabeth gave up her common law right to claim dower, traditionally a life interest in one third of any unencumbered real property (lands) that her husband held in fee during his lifetime, claimable through a writ of dower.

[173] Easter Term [12 April–8 May] 1592.

[174] 'Depositions taken at Westminster on 8 May 1592 on the part of Elizabeth Smith and others, defendants, against Gawyn Smith, plaintiff.'

https://doi.org/10.1017/S0960116308003035 Published online by Cambridge University Press

examined the day and year abovesaid deposethe and saiethe:

1. To the first interrogatorie this deponent saiethe he knowethe the said complainant and defendants and that he hathe known them for a longe tyme.
2. To the second interrogatorie this deponent saiethe that the said complainant in or abowt the said xxixth yere of the Quennes majesties raigne that now is did determyn to travell beyond the sees and that he at that tyme was indebtid to hym, this said deponent, in the some of ccc *li.* But what he the said complainant did then owe to others he saiethe he knowethe not.
3. To the third interrogatorie this deponent saiethe that he hathe hard that the now complainant did ernestlie travill and laboure by all the ways and means he could with the said Elizabethe, one of the said deffendants, and with her frends, that the said debts of the said complainants before his said viadge[175] might be satisfied and dischardged.
4. To the iiijth interrogatorie this deponent saiethe that he knowethe that in consideration and for the payment of the afforesaid debts of the said complainant that he, the saide complainant, did abowt July in the xxix yere of her majesties raigne by his indenture convey, assure and sett over all his right tytell and interest of the said inn called The Thre[e] Nonnes unto Henry Porder of E[a]st Smythfield in the countie of Middlesex, blackesmythe, and Raffe Weeks, brown baker of London, absoluetlie to the use, benefytt and behowfe of the saide Elizabethe and for the dischardging of the said complainants debts, with all and singuler the wrightings, escripts, goods and chattels and implements in the same in[n] belonginge, except certein romes and chambers wherrin the said complainant now dwellithe in, together with certein goods and implements reservid for the said complainant for the term of those yeres which the said complainant was in possession before the makinge of the said assignment, if the said complainant did so longe lyve. And after the decesse of the said Elizabethe, that the said Henry and Raffe should convey, assure and sett over the residew of the said years unto Chrystoffer Banckes and Mary Bancks his syster, the children of the said Elizabethe, as in the same indenture is specified, unto which said indenture for further answer (this deponent having subscribid his name as a wytnes thereunto) he referrithe hymselfe. And more he cannot depose.
5. To the vth interrogatorie this deponent saiethe that he neyther knowethe nor did heare that at the tyme of the makinge of the said

[175] i.e. 'voyage'.

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indenture that there was ever any intencion or meanynge that the said complainant should ever have any benyfytt or proffytte of the said in[n] except certeyn romes and chamber with certeyn goods before exceptid, or that the said in[n] should be reassuerid to hym the said complainant at his retorn home agein, for this deponent saiethe that he beinge then at th[e] ense[a]ling and delyverie of the said indenture did not heare any suche speches.

6. To the vjth interrogatorie this deponent saiethe that the said Henry and Raphe absoluet[l]ie [*m. 2*] by there indenture of leas[e] did convey, assure and sett over and sell unto one Arthur Norton, one of the nowe deffendants, the said in[n] or tenement with certein goods and implements to the same belonginge (except certein roomes before excepted) for the term of xxxj yeres absoluetlie. But saiethe he did not see the said Arthur Norton disburse and paye the said some of ccxxvj *li* to any persone to the use of the said Elizabethe for the use of the said complainants debts, but saiethe he verelie thinckethe that there was so moche money paid, for that that he this said deponent had ciiij *li*, parcell of the said money, paid unto hym by the said Porder, Weeks and the said Mystris Smythe, in parte of payment of the debt of the said complainant due to hym this said deponent. And this deponent saiethe that she the said Elizabethe Smythe hathe paid to hym this said deponent all his debt, savinge onelie fowre score and ten pounds and somewhat more. And he allso saythe that he was a wytness & did allso subscrybe his name to the said indenture. And more he saiethe he can not depose to his now remembrance.
7. To the vijth interrogatorie this deponent saiethe he referrithe hymselfe for the further answer touchinge the same to the said indenture made by the said complainant. And more or otherwyse to his now remembraunce he saiethe he can not depose.

By me John Waddys

7·3 *Parchment Depositions* *28 May 1592* *REQ 2/132/29, m. 3*

William Knowles, servant to William Miller of Grays In[n] in the countie of Myddlesex, esquyre,[176] of the age of xxv yeres or there abowts, sworn and examined the xxviij day of May, deposeth and

[176] I can find no record of a William Miller in the Gray's Inn admission registers or pension book, although there are two Thomas Millers, adm. 1555 and 3 August 1592 (see *Gray's Inn Register*, pp. 26, 81).

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saiethe:

1. To the first interrogatorie this deponent saiethe he knowethe all the said complainant and deffendants, savinge onelie the said Arthur Norton, and saiethe he hathe known them all abowt v or vj yeres.
2. 3. To the ij and iijd interrogatories this deponent saiethe he can say nothinge certanely to his now remembraunce of his this deponents knowledge.
4. 5. To the iiijth and vth interrogatories this deponent saiethe that one Mr Raffe Pudseye of Grays In[n], esquyre,[177] did cause hym this said deponent to draw & ingrose a certeyn indenture of assignment betwene the said complainant and the parties in the said interrogatorie namyd and the childern of the said Elizabethe Smythe, one of the said deffendants, whereby the said complainant did convey his interest of the said tenement called the Thre[e] Nons to suche uses and intents as in the said indenture are specified, unto which said indenture, being sealled & delivered, for the certeynetie of the farther answer touchinge the said interrogatorie this deponent referreth hymselfe. And more to his now remembrance he saiethe he can not certeinlie depose of his own knowledge.
6. 7. To the vj and vijth interrogatorie this deponent saiethe he can say nothing more then he hathe all reddy deposid touching the said interrogatorie.

William Knolles

7.4 *Parchment Interrogatories* *[1592]* *REQ 2/132/29, m. 8*

Interrogatories to be mynistred and inquired of on the part & behaulfe of Gawyne Smythe, complainant, against Elizabeth Smythe, Arthur Norton, Henrye Porder, Ralfe Weeks, Christopher Banks, Samuell Owen and Marye his wyfe, defendants.

1. Inprimis, whether doe you knowe the parties plaintiff & defendants and whether doe you knowe one messuage or tenement inne with th[e] appurtenances comonly called & knowne by the name of the Three Nunnes, & one little tenement with th[e] appurtenances scituate on the west syde of the saide tenement inne in the occupacion of one Nicholas Dobbes, all sett & beinge in the parishe of St Buttolphe without Algate, London.

[177] Ralph Pudseye of Staple's Inn, adm. Gray's Inn 1575: see *Gray's Inn Register*, p. 48; see also *Gray's Inn Pension Book*, pp. 49, 83, 87, 90, 99.

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2. Item, whether doe you knowe or have hearde that the said complainant about July in the nyne & twenteth yeare of the Quenes majesties raigne that nowe ys[178] traveiled into the parts of Germanye in & about her highnes affayres, yea or no.
3. Item, whether doe you knowe or have hearde that the sayde complainant before his goinge did, by his indenture bearinge date the eleaventh daye of the said moneth of July in the saide nyne & twenteth yeare of her highnes raigne, assigne & sett over his interest & terme of yeares of, in & to the said tenement inne, with certeyne implements of houshould stuffe and goods & chattells in the same inne then beinge, & the saide other tenement with theyre appertenances unto the said Henrye Porder and Ralfe Weeks, yea or no.
4. Item, whether doe you know or have hearde unto what use, entent & purpose & for what cause the same assignment was made, yea or no.
5. Item, whether was yt promised or spoken by the said Elizabeth Smythe or any other the defendants or by Ralfe Pudsey esquire that the saide assignment, uppon the returne of the said complainant, should be determynid & made voyde, or otherwise that the premisses should be reassured unto the said complainant or that he should have & injoye the same or any of them agayne, yea or no.
6. Item, yf noe such promise were made, nor speache had or uttered by any of the said defendants or the sayde Ralfe Pudsey, whether was yt meant or intended by the said defendants or any of them or by the saide Ralfe Pudsey, or spoken or meant by the saide complainant, that the same assignement uppon the returne of him the saide complainant should be determynid & made voyde, or otherwise that the premisses, or any of them, should be reassured unto him the saide complainant, or that he should have & injoye the same or any of them agayne. Declare your whole knowledge therein & what you have hearde & what you thinck in your conscience touchinge the same.
7. Item, what other materiall matter or thinge touchinge or concerning the premisses do you knowe of your owne knowlege or have hearde of the credible reporte of others.

[*m. 8v*]
Termino pasche xxxiiij Elizabethe regine[179]

[178] 1587.
[179] Easter Term [12 April–8 May] 1592.

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7.5 *Paper Depositions* *2 June 1592* *REQ 2/132/29, m. 5*

Depositiones capte apud Westmonasterium secundo die Junij anno regni domine regine Elizabethe nunc &c xxxiiij ex parte Gawyn Smythe querentis versus Elizabeth Smithe, Arthurum Norton et al. defendentes.[180]

Josua Franck of Woaldam Water in the countie of Essex, gentleman of the age of fortye yeares or thereabouts, sworne and examyned the daye & yeare abovesaid deposeth and saiethe:

1. To the fyrst interrogatorie [he] deposeth and saithe that he verie well knoweth the parties plaintiff & defendants & that he also knowethe the said messuage or tenement inne & the said other tenement in that interrogatorie mencioned.
2. To the second interrogatorie this deponent saythe that the saide complainant about fyve yeares now past traveled beyond the seas into the parts of Germanye as he taketh yt about her highnes affayres.
3. To the third interrogatorie he saithe that he hath hearde that the saide complainant before his departure assigned & made over his estate & interest in & to the said tenement inne & the said other tenement unto the said Henrye Porder & Ralfe Weekes, two of the defendants, uppon trust & confidence ~~untill his returne~~ and more he can not depose.
4. To the 4th he saithe that not long before the departure of the saide complainant, this deponent being in the saide tenement inne, & one Mr Ralphe Pudseye a counsellor at the law then present, he the saide Mr Pudsey as it seemed having then lately dealt in some busynes & setting thinges in order betweene the said complainant & [*m. 6*] the said Elizabeth Smithe, one of the defendants, he the said Mr Pudsey used theis speaches or the like in effect unto this deponent, *viz*: Now I hope theis people,[181] meaning the saide Gawyne & Elizabeth Smithe as this deponent took yt, will be quiet, for saieth he, Gawyne Smithe hath taken a verye good course in my mynde, & yett notwithstanding there ys nothing done but that he may comaund yt agayne yf he come home alyve. And this deponent further saythe that about the same tyme the saide Gawyne Smithe, walking with this deponent before the said tenement inne, he the said Gawyne amongest other speaches used theis words, or the like in effect, unto this deponent, *viz*: Nowe my mynd ys well satisfied insomuch as I

[180] 'Depositions taken at Westminster on 2 June 1592 on the part of Gawyn Smith, plaintiff, against Elizabeth Smith, Arthur Norton, and others, defendants.'

[181] Replaces 'twayne'.

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have taken order for payment of my debts if God shall take me awaye.

5. To the 5th interrogatorie this deponent saithe that about one yeare after the departure of the said Gawyne Smithe, this deponent being present with the saide Mr Pudsey in his chamber at Grayes Inne he the said Mr Pudsey, amongest other speaches, [*m. 7*] used theis wordes or the like in effect unto him this deponent *viz*: Well, well, if Gawyne Smythe come over all shall be well. And this deponent further also saithe that he hath divers & sundrye tymes hearde the sayd Elizabeth Smythe wishe and saye I would my husband would come home that he might lett the house, for I am wearye of keepinge yt, servaunts are for naught.
6. 7. To the vj and vij interrogatories this deponent can say nothinge

Josias Franke

7.6 *Court Order* *3 February 1593* *REQ 1/17, p. 32*

Towching the cause at the sute of Gawen Smith, complainant, against Elizabeth Smith, Henry Porder and others, defendants, in presence of the counsaill learned of both the said parties it is ordered that the same matter shall be sett over to be heard in this court uppon the third day of the nexte terme peremptorily.[182] At which day if the said complainant faile to attende with his counsaill for the hearing of the same cause accordingely, then in his default the same matter shal be from hence dismissed. And further it is ordered that the said Henry Porder shall at the said day bringe & shewe furth in this court the deede of feoffement made by the said complainant mencioned in the bill & aunswere of both the said parties in this courte.

7.7 *Draft Court Order*[183] *7 June 1594* *REQ 1/46*[184]

Gawen Smythe, plaintiff, Elizabeth Smythe and others, defendants. Uppon the mocion of Mr Sergeant Harris[185] beinge of counsaill with the said defendants yt is ordered that Elizabeth the late wife of and

[182] 4 May.
[183] The order book for this date has not survived.
[184] This draft order book is not paginated.
[185] Thomas Harris, created serjeant-at-law 1589: see Baker, *Serjeants at Law*, p. 516; and see Richard Robinson, *A Briefe Collection of the Queenes Majesties Most High and Most Honourable Courtes of Recordes*, ed. R.L. Rickard, *Camden Miscellany*, vol. 20 (London, 1953), p. 18.

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executrix of Henry Porder, one of the defendants, and Raffe Weeks, on[e] other of the defendants, or one of them, upon Monday next coming, which is by a former order appoynted for the hearinge of the same cause, shall bringe and shewe furthe in this corte the deed of assignement made by the said complainant unto them the said Henry Porder and Raffe Weeks of the tenemente called the Three Nunnes without Algate, to th[e] end that uppon sight thereof her majesties Counsaill in this corte may the better proceed to take order in the same cause betwene the said parties as to equitie shall apperteyne.

7.8 *Draft Court Order*[186] *10 June 1594* *REQ 1/46*[187]

Uppon openinge of the cause at the sute of Gawen Smythe gent, plaintiff, against Elizabeth Smythe the separated wyef of the said Gawen and others, defendants, in presens of the parties and their counsaill learned yt ys ordered that the said defendants, or somme of them, shall uppon Friday next commynge shewe furthe in this courte the deed pretended to be made from the feoffees in truste of the children of the said Elizabeth, to th[e] ende that uppon sight thereof her majesties Counsaill in this courte may further proceed to take order for securitie of payment of the residue of the money payable by vertue of the assignement in the bill mencioned.[188] And for allowance to be given for the mayntenance of the said Elizabeth and also for consideracion to be allowed unto the said children of the said Elizabeth over and above their porcions, suche as to them shal be thought fitt to be made in that behalf.

7.9 *Court Order*[189] *9 November 1594* *REQ 1/18, p. 61*

Towching the cause at the sute of Gawen Smith gentleman, plaintiff, againste Elizabeth Smith the separated wief of the said Gawen and others, defendants, uppon mocion made to this court on the behalf of the said defendants yt is ordered that the same matter shal be heard againe in this court uppon Wednesday next coming peremptorilie.

[186]Masters John Herbert, John Aubrey, and Julius Caesar presiding.
[187]This draft order book is not paginated.
[188]I can find no entry concerning this case for Friday 14 June.
[189]Master Julius Caesar presiding.

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7.10 *Court Order*[190] *25 November 1594* *REQ 1/18, p. 97*

Towching the cause at the sute of Gawen Smith gentleman, plaintiff, against Elizabeth Smith the separated wief of the said Gawen and others, defendants, uppon the mocion of Mr Serjeant Heale[191] being of counsaill with the said complainant it is ordered that the said defendants or one of them shall bring and deliver into this court the deed made from the feoffees mencioned in a former order in this cause made betwene the said parties dated the xth day of June last past by or before Thursday next coming, or els[e] in default thereof an attachement shall be awarded against them the said defendants for theire contempts.[192]

[190] Masters John Herbert and Julius Caesar presiding.

[191] John Hele, created serjeant-at-law 1594 and later appointed Queen's serjeant in 1602, ktd. 23 July 1603: see Baker, *Serjeants at Law*, p. 517; Sainty, *Law Officers*, p. 17.

[192] This appears to be the final reference to this case in the archive.

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