1789002 SOUTHAMPTON COUNTY CHANCERY PAPERS KIRBY vs. COCKE, etal 8/1789

other SURNAMES: Clifton, Bell, Goodwyn, Johnson, Bolton

To the worshipful Court of Southampton sitting in Chancery—

Humbly complaining sheweth unto your worships your Orator John Kirby That on or about a certain Richard Kirby now deceased, the proprietor of a certain tract of land, late the property of his father Richard Kirby Kirby late of this County, lying & being on the Meherrin swamp in the s.d County, advertised to lease the s.d tract, for the term of three years, in a public manner and on the premisses. That on y.e day appointed for the leasing of the same y.r Orator together with a number of other people attended, but that previous to the leasing of the s.d land y.r Orator was greatly intoxicated, & being in that situation, he was induced to bid the sum of three hundred pounds for the s.d land for the term of three years, & gave his bond with Samuel Clifton as security for the same, He further sheweth that when he came to his senses & was informed of the enormous sum he had agreed to give & that the same was effected through undue means, Your Orator not having any intention of leasing the same when he went to the s.d plantation, represented to the s.d Richard Kirby the undue means which had been practised, & the inevitable ill consequences, that must attend the fulfilling the contract he had made, that the s.d Richard Kirby proposed to y.r Orator, that if y.r Orator would make

certain repairs on the houses on the s.d plantation
Viz. to repair two dormant windows & to build
a new porch to one of the dwelling houses on the
s.d plantation, & also to repair two other outhouses
that in consideration thereof he would release him
from any further rent, all which repairs y.r
orator has expressly charges he has made & com
pleted, He further sheweth that the bond so as
of s.d given by him, through certain unknown
means hath come to the possession of Thomas
Cochne of Grunsville whom y.r orator hath
understood, is only nominally the assignee
he not being interested in the recovery of the
sum therein mentioned to be due, the same
being to inure to the benefit of Samuel Clifton
who entered himself as security in the bond so
as aforesaid given by y.r orator, that suit has been
prosecuted upon the s.d bond, by the s.d Thomas
Cochne of the County of Benja.n Kirby who was assignee
of Richard Kirby, for the sum of £600 to be
discharged by payment of 300 & interest as
expressed in the s.d Judgment, on which Execution
is threatned to be taken out & levied on y.r orator
estate, He further sheweth that he hath made ap
plication to the s.d Thos. Cochne & Samuel Clifton
informing them of the circumstances of
Equity, herein before set forth in y.r orator favor
& the agreement be made with the s.d Kirby res
pecting the repairs to be made on the s.d houses on
the s.d plantation & requested them to release him from
the Judgment, But so it is the s.d Thos. Cochne
& Samuel Clifton combining & confederating
together, to injure & oppress y.r orator, refuse
to grant him such release, but threaten to ex
act payment of the whole sum together with
costs, all which actings & doings are contrary
to Equity & good conscience; In tender con
sideration whereof y.r orator being remedi
less by the strict rules of law & only & pro
perly relievable in this Court, where matters
of this nature are properly cognizable
To the end therefore that the s.d Defts may
upon their corporal oaths full true & per
fect answer make, to all & singular the
allegations herein before set forth, as fully
& particularly as if the same were herein
again repeated & interrogated & more par
ticularly that they may set forth & discover
whether your orator at the time of leasing
the s.d land was not greatly intoxicated, &
in such a situation as not to know what he
was doing, & whether the s.d land was not
rented for a greater price than it was worth
how much it was worth, what was his situ
ation when he gave the bond, hath not s.d
Clifton been informed by Richard Kirby dec.d
of the agreement made by y.r orator respecting
the repairs, & hath he not always understood
that y.r orator was to be exonerated from paying
of the s.d rent in consideration thereof, & that
y.r Worships will grant to y.r orator the Com
mon writs of subpoena directed to
the s.d Defts their attornies, solicitors, agents &

commanding them to cease from any further proceedings at Law against the Orator until the matter be heard in Equity

[redacted]

Divison p. 9.

13th July 1785

The allegations of the within sworn to before me

D. Ridley

Wm. Ridley Esq.
Bill
Cocke & al
Filed Sept. 85

Coche q
ad
Kirby
} Ans.

The answer of Thomas Cocke one of the defendants to the bill of complaint of John Kirby exhibited against him

This defendant now and at all times hereafter saving and reserving to himself all advantage of exception to the manifold imperfections in the complainants said bill of complaint contained For answer unto or to so much thereof as he is advised is material for him to make answer unto he answereth and saith

That he is a stranger to the allegations in the complainants bill except as to the assignment of bond the commencement of the suit and the obtaining Judgment against him which he admits to be true That in consequence of Samuel Clifton making a conditional purchase of four negroes of the defendt. he suffered the assignment of the bond not as payment unless the same should be collected in a time fixed by the said Clifton and this respondent That the negroes have been suffered to remain in the said Clifton possession in expectation of the recovery of the money due on the said bond This defendant denies all unlawful com

binatin without that that He and prays to be hence
discharged with his reasonable costs

Wm. Cocke
D. Hunter & Respondent

Granville County
Sworn to & Subscribed
this 5th Day of March 1787

John Lucas

Clifton
adv
Kirby
} Ans.r

March
Ans.r filed
March 1789
Decree Appeal

The answer of Samuel Clifton one of the defendants to the bill of complaint of John Kirby complainant

This defendant now and at all times hereafter saving and reserving to himself all advantage of exception to the manifold imperfections and untruths in the complainants said bill of complaint contained for answer thereto or to so much thereof as this defendant is advised is material for him to make answer unto he answereth & saith That about the first of January one thousand seven hundred and eighty two the plantation in the bill mentioned was (in pursuance of an advertisment set up at sundry places) on the premises offered to be ~~sold~~ let to the ~~highest~~ bidder for the term of three years by Richd Kirby jr Esqr at which there were a great number of people assembled amongst whom were the complainant and this defendt that the complainant appeared determined to have the land for the term aforesaid and accordingly made a great number offers till at last it was cried out upon him at the sum of one hundred pounds per year for the term of three years the complainant then appearing to be intoxicated the taking bond of him was postponed till the next morning. That on the said next morning the complainant met the said Richard Kirby in order to give bond but before the bond was given he observed to the complainant that it was a high rent that he had agreed to give and proposed to let him the said John have the bargain but the complainant who was then quite sober refused alledging that he could make money by his bargain whereupon he entered into bond with this defendant his security to the said Richard Kirby for the said sum of three hundred pounds ~~agreed~~ at this time this defendant expressly avers that the complainant was quite sober not appearing to have drank in the least that day That some time in the summer of the year 1782 Benjamin Kirby a Nephew of the said John conceiving himself to be liable to the said John for the payment of the a considerable some of money in right of the complainants wife made application to the said Richard for the loan of the complainant bond in which the said Richard obliged him and in lieu thereof took bond of the said Benjamin for the sum of three hundred pounds and in consideration thereof assigned to him the bond of the complainant That the twenteenth day of August of the same year the said Richard Kirby came to the house of this defendant again in order to

Jaith the accounts which then Jubsisted between them the balance
due this respondent very very considerable to discharge which
the said Richard assigned the bond of the said Benjamin over to
this ~~defendant~~ respondent and gave him power of sundry Slaves
with a power to collect them and to apply the money to the
credit of the said Richard and the surplus after discharging his
debt ~~to~~ aforesaid in case of his death he gave to the respondent in consideration of
the many services he had rendered him and also for the affection
which Jubsisted between him & the respondent whose wife was
the favorite Sister of the said Richard This respondent further
Jaith the said Benjamin Kirby not making use of the bond which
he had borrowed of the said Richard applied to the respondent
to exchange the same for his own bond which ~~this~~ he agreed to
on condition of its being assigned what assignment this respondent caused to be filled up
~~to another~~ defendant Thomas
Cocke That the reason of its being assigned to the said Cocke was
that the respondent had made a purchase of four Negroes from
of the said Cocke for the sum of two hundred and three pounds or
thereabouts on condition he paid him the money by a certain period
and the respondent requested the said Cocke to accept of an
assignment thereof not as payment but that in case it was
recovered in due time he might pay himself out of it That
this respondent never heard of any of the pretences set forth in the
complainants bill till after the assignment as aforesaid and in
fact he avers that no repairs were ever made on the said plantation
till some time in the Summer of one thousand seven hundred and
eighty six long after the death of the said Richard and after the last payment ~~of~~ became
due This respondent further saith that soon after the com
plainant had rented the ~~plantation~~ aforesaid the wife of this
respondent one day told him that Moody Kirby the complainants
son had been at his the respondents house and left a message to this purpose to
wit that his father John Kirby had been to Rich^d Kirby to let off his
renting the land who had promised him to let him off on condition
of sundry repairs and also that this respondent would take the
place on the terms proposed between the said Richard and the
respondent that the respondents wife told him that said she had
informed the said Moody that it was impossible for this respondent
to take the plantation as he had already rented another place
That soon afterwards the said Richard informed this respondent of
the proposal made him by the said John and that he had given
him this answer that if this respondent would take the planta
tion on the terms proposed between them before it was let
him on his immediately making sundry repairs That the terms which
were proposed by the respondent and the said Richard were that
they ~~should~~ should put on the plantation an equal number of Negroes
each of this respondent was to look after them & each receive an
equal share of the profits in case the plantation should not rent for a good rent
of the proposal for the reasons assigned ~~by~~ as above by his
wife This respondent denies all unlawful combination without
that that they

D^r Richer & respondent

9th March 1797 This day Samuel Cooper before
the made oath that the obligation contained in
the above ~~is~~ the truth the whole truth & nothing
but the truth

Tho Ridley

Cocke apl.
vs } Capias
Kirby } Dam

Ti

Jany 1785

Mar CO vo
Kirby Hl
May CO set aside
pay'mt. Hl
Def
Def

Executed on John Kirby, Ambrose
Baird Bail Robert Rainbolt
Bonner Bail

The Com

greeting

Clefton if he may be found within your Bailiwick & then safely keep so that You have his body before our justices of our P. court at the Court house on the 2d Thursday in Feby next to Answer Thomas Cocke assee of Benja Kirby assee Richd Kirby of a plea of debt for Six hundred Pounds damage twenty Pounds & have then there this writ witness Sl Kello Clerk of our P. Court at the Courthouse the 15th day of Jany 1785 in the 9th Year of the Commth

Sam Kello, Cc

Kirby
ads
Locke ajst. } Dedt.
Protestm.

May 1785

Southampton County St.

The Commonwealth of Virginia to Thomas Pitchly and Theodore Taylor — —

Gent.n greeting Know ye that We trusting to your fedelity & provident circumspection in diligently examining Dempsey Johnson a witness as well on behalf of John Kirby dep.t as on behalf of Thomas Locke aff.t Benjamin Kirby aff.d of Rich.d Kirby plff Command you or any two or more of you that at such place & time as you shall appoint you cause the witness aforesd to come before you & him diligently examine on the holy Evangelists of Almighty God & his examination into our Court of our P. County of Southampton without delay you shall send & certify inclosed returning to us this writ witness Sam Kello Clerk of our P. Court at y.e Courthouse the 12.th day of May 1785 in the 9.th Year of the Comm.th

Test

Sam Kello, Cl.k

Kirby
v.
Cocke } Dec
Lotest m

(On an Injunction)

Southampton ss

The Commonwealth of Virginia to Nicholas Nagett & Lyon Gurley

Gent. greeting Know Ye that We hunting to your fidelity & provident circumspection in diligently examining Rice Bolton Pierce & James Bell witnesses as well on behalf of Jn.o Kirby Complainant as on behalf of Thomas Cocke afs.d Defendant Command You or any two of you that You cause the witnesses aforesaid to come before you when & where You shall appoint & diligently examine them on the holy evangelists of Almighty God & their examination into our court of our County without delay You send & certify inclosed returning to us also this writ testimy Wm.o Kello Clerk of our s.d Court at the Courthouse the 6.th March 1786 in the 10 Year of the Commonwealth

Jam.s Kello, Cl

Cicho
as
Tuby

Dedimus
Potestatem

July 1788

Southampton Set

The Commonwealth of Virginia to John Simmons
& William Hines
gentlemen greeting Know ye that We having in your fealty
and prowess especially in diligently ~~[illegible]~~ confiding
Benjamin Ruby Silas Ruby and Thomas Ruby ~~[illegible]~~ witnesses
as well on behalf of Thomas Locke & as on behalf of John
Ruby command ~~You~~ any two or more of you that you
cause the said witnesses to come before you when & where you
shall appoint & diligently examine them on the holy evangelists
of Almighty God & their examination in to our Court of the said
County without delay you send & certify inclosed ~~[illegible]~~ ~~[illegible]~~
~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~

Silas Kirby being of full age & first sworn on the holy evengelist of almighty God, deposeth & sayeth, that the day after the plantation of Richard Kirby Jr. was Rented; the defendant John Kirby was at this deponants house, & the deponant then told him the said John Kirby that he thought he had made a bad bargain in Renting the aforesd plantation; & that this deponant told him that he thought he might get off; but the sd John Kirbys Reply was that he thought he could make the money off of the plantation; & further this deponant sayeth not

Silas Kirby

sworn to before us this 2th day of Augt 1700

John Simmons Jr.
Wm Hunis

Benjamin Kirby being of full age & first sworn on the holy evengelist of almighty God, deposeth & sayeth that some time after the plantation of Richd Kirby Jr. was Rented, he the sd deponant went out to Halifax N. Carolina in order to get John Kirbys Bond of his Brother Richd Kirby, which he did by giving him Bond & Security for Three Hundred pounds that being the full amount of John Kirbys bond to Richd Kirby & this deponant further sayeth that in the conversation respecting the Bond due from John Kirby to Richd Kirby this deponant told the sd Richd that he thought that John Kirby had a hard bargain in the Land, & the sd Richard reply was that if his Uncle John Kirby had have got a man to live on the plantation & made certain Repairs he would have made him an allowance, but he has failed to do it therefore I am determined to make him pay the hole amount & further this Deponant sayeth not

Ben Kirby

sworn to before us this 2th day Augt 1700

John Simmons Jr. Wm Hunis

In obediance to a dedimus to us directed & is here
unto annexed have this day at the House of Benj.ª
Kirby taken the examination of Silas Kirby &
Benj.ª Kirby which is above Given under
our Hands this 12th day of August 1700

Peter Simmons J.P.

Wm Kenis

Dempsey Johnson
vs
Defs.

Dempsey Johnson being first sworn upon the holy evangelist deposeth & saith that sometime in January one thousand seven hundred & eighty two, being eight or ten days [illegible] Richard Thirby had made a plantation [illegible] this deponent was in company with the said Richard & John Thirby at South Quay & this deponent saith that he heard the said Richd Thirby agree with the s.d John Thirby to make the following repairs on the houses on the s.d plantation Viz. to repair two dwelling & to build a new porch to one of the dwelling houses on the s.d plantation, & also to repair two other outhouses on the s.d plantation, & this deponent also saith that the s.d Richard Thirby agreed in his presence to acquit the s.d John Thirby of the rent which he was to give for the s.d plantation, if he would make the repairs above mentioned, & said that his Uncle John Thirby should not suffer, & this deponent further saith that he was called upon as a witness to the s.d agreement & further this deponent saith not

Sworn to before us this 10th of June 1785

Dempsey Johnson

Childred Taylor

Jno Ridley

the Clerk of Southampton

Wm Bolton [illegible]

[illegible] Evangelist dep[illegible]

was some time early in the ye[illegible]
John Shirby to repair certain hou[illegible]
plantation which the s[illegible] John [illegible]
of Richard Kirby dec[illegible] this Dep[illegible] sa[illegible]
hath made the following repair[illegible]
s[illegible] houses Viz. That he hath repair[illegible]
[illegible] the one of
dwelling houses & also repaired two [illegible]
outhouses on the s[illegible] plantation; all wh[illegible]
repairs this Dep[illegible] saith are compleated in
manublike manner & that [illegible]
[illegible] as above mentioned This Dep[illegible] far[illegible]
that the s[illegible] repairs have cost the s[illegible] Shirby [illegible]
pounds & that he is of opinion that the s[illegible]
is not worth more than ten pounds
& further this Dep[illegible] saith not

Sworn to before us this 10th of May. 1786

Nicholas [illegible]
Geo: Gyr[illegible]

James Bell being sworn upon the holy [illegible]
deposeth & saith that some time after the
tation of Richd Shirby dec[illegible] was leased by Joh[illegible]
he heard Sam[illegible] Clifton tell the s[illegible] John [illegible]
that he was to bid up the s[illegible] land & that if it
was cryed out upon him the s[illegible] Clifton that
he was to have it, at his own price & fur-
ther this Dep[illegible] saith not

James Bell

Sworn to before us this 10th of May
1786

Nicholas Maget
Geo: Gurley

Diana Kirby

D. Jason

Diana Kirby being sworn deposeth & saith the sworn & the plantation was rented out Jn.° Kirby Rich.d Kirby & Sam.l Clifton came & home with the s.d Kirby her husband, & she was informd by them that Jn.° Kirby had rented Rich.d Kirbys plantation & Negroes to give £100 a year rent for three years & that her husband was to be his Secy she askd the s.d Jn.° Kirby whether it was so & he replied he knew nothing of it. she then persuaded her husband not be the s.d Jn.° Kirbys Secy as he appeard to be so intoxicated as not to know what he was about on this Sam.l Clifton offerd himself as Jn.° Kirbys Secy & went to the table where Rich.d Kirby was writing the bond & further saith not

Sworn to in Court March 16.th 1789

Dianah Kirby

Moody Kirby being first sworn deposeth & saith that

Rob: Goodwyn being Sworn in Court deposes that he has
made the last year on the plantation that Jn: Kirby rents of Robt
Kirby abt 6 barrels of brandy & near 20 barrels of cyder
& he supposes there may be about 4 or 5 hundred fruit
trees

Sworn to in Court 16 March 1789

Robt Goodwyn

Jas Bell
dupon

James Bell being sworn in Court deposes that the repairs made ~~that the repairs~~ made to the houses rented by John Kirby of Rich^d Kirby were begun in the latter end of the Winter or in the Spring in the Year 1785 —

Sworn to in Court March 16th 1789 James Bell

Thereby acc[ount] to for costs in cockin of [illegible]

Sheriff's Fees
to
Cocke Co

Know all Men by these presents that we John Kirby & James Bell, are held & firmly bound unto Thomas Cocke assignee of Lord Clifton in the sum of £600 to be pd to the s.d Thos. Cocke assignee his certain attorney his heirs Exec.rs &c;

The condition of the above obligation is such that ~~if the above bound~~ whereas the above Thos. Cocke hath obtained Judgm.t in the court of S.t Thomptons against the s.d John Kirby — now if the above bound John Kirby shall well & truly pay ~~& cause to be paid~~ & satisfy all such sum or sums of money & Tobacco & costs, which shall be now due & owing to the s.d Thos. Cocke & also pay unto the s.d Cocke, all such costs as shall be awarded against him in case the Injunction ofs.d be dissolved Then this obligation to be void or else to remain in full force & virtue

John Kirby

James Bell

Sealed & delivered
in presence of

John Nivison

Jan^{y} 1st 1782

I do hereby Assigne the within Contents, Unto Benjamin Kirby, in Presents of

Test, Silas Kirby

Benj^{a} Kirby

assigned to Th^{s} Cooke Sept^{r} 10th 1783

B Kirby

~~assigned to Th^{s} Cooke by~~

~~S Clapham~~

~~Sept^{r} 10th 83~~

Cooke agst
B. Kirby

Cooke agst
B. Kirby
Sept^{r} 1783 & 221

Know all men by these presents that, we John Kirby and Samd. Clifton of the county of Southampton & State of Virginia, are held and firmly Bound unto Richd. Kirby of the same County & State, in the Just and full sum of Six hundred pounds Specie, Virginia Currency to be paid unto the said Richd. Kirby, his certain Attorney, his Heirs Executors, Administrators, or Assigns, to which payment well and truly to be made, we bind our selves, our Joint and Several, Heirs, Executors, & Administrators, firmly by these presents, Sealed with our Seals, & dated this fourteenth day of Decem. one thousand seven hundred & Eighty one —

the Condition of the above Obligation is such that if the above Bound John Kirby & Samd. Clifton, Ds and shall well & truly pay or cause to be paid, unto the said Richd. Kirby, his certain Attorney, his Heirs, Executors, Administrators or Assigns, the Just Sum of three hundred pounds Current money as above, As follows. to Wit one hundred pounds, to be paid the first of January one thousand seven hundred & Eighty three, one hundred pounds first January, one thousand seven hundred & Eighty four, the other hundred pounds first Jan.y one thousand seven hundred & Eighty five, if Not punctually performd, to bear Intreast from the date here of, then the above Obligation to be Void, or else to remain in full force & Virtue

Sealed and delivered in the presants of —
Kirby his Portis mark
Thomas Kirby

John Kirby [Seal]
Sam.l Clifton [Seal]

Kirby
as
Cocke
Inj: &

Bp. Jeo. m bille filed
& Com to plead

Crabb Barnes &
Cellars Stoke com

Cockerell
as
Ainsley
&
Jones

Aug 1786
Trin Term

Southampton County ju.

Thomas Cocke assignee of Benjamin ~~Clifton~~ Kirby who was assignee of Richard Kirby complains of John Kirby and Benja Clifton in custody &c of a plea that they render unto him five hundred pounds specie which to him they owe and from him unjustly detain For that whereas the said defendants on the fourteenth day of December in the year of our lord one thousand seven hundred and eighty one at the parish of Northampton and county aforesaid by their certain writing obligatory sealed with the seales of the said defendants and to the court of the commonwealth now shewn whose date is the same day and year did acknowledge themselves to be held and firmly bound unto the said Richard Kirby in the just and full sum of five hundred pounds specie to the which payment well and truly to be made they did bind themselves their heirs executors and administrators firmly by the said presents And whereas afterwards to wit the first day of January in the year one thousand seven hundred and eighty two the said five hundred pounds or any part thereof not being paid the said Richard Kirby the day and year last mentioned at the parish and county aforesaid by his certain Indorsement on the back of the said writing obligatory according to the form of the act of assembly in such case made and provided did assign the same to the said Benjamin Kirby which assignment the said plaintiff brings here into court by virtue whereof the said Benjamin Kirby became in

intitled to demand and receive the said five hundred pounds in the said writing obligatory mentioned of all which premises the said defendant had notice And whereas afterwards to wit the tenth day of September in the year of our lord one thousand seven hundred and eighty three the said five hundred pounds ~~or~~ any part thereof still not being paid the said Benjamin Shirley by his certain indorsement on the back of the said writing obligatory according to the form of the act of assembly in that case made and provided which to the court is now here shewn did assign the same to the plaintiff of which the said defendant the same day and year at the parish and county aforesaid had notice by means whereof the said plaintiff became intitled to demand and receive of the said defendant the said five hundred pounds in the said writing obligatory mentioned Yet the said defendant altho often required the said five hundred pounds or any part thereof to the said plaintiff hath not paid but the same to him to pay hitherto hath altogether refused to the plaintiffs damage of pounds and therefore he brings suit &c

D Tucker & Pdl.