1811-029 SOUTHAMPTON COUNTY CHANCERY PAPERS SUMMERRILL vs. BRANCH 11/1811

other surnames: Summerill, Summerrell, Stephenson

No 306

Sam'l Mercull

vs

Branch

Bill in Chy.

September 1810 Bill

Febr Rule

Oct Rule

Nov Rule

Subpoena to

Sept. Ch. 1810

To the worshipful court of Southampton
County sitting in chancery humbly complain
=ing sheweth unto your worships your
orator Elizabeth Summerville &c.
That on the 22nd day of January 1808
a certain Edward N. Branch with
Henry Branch his security his surety
executed to your complainant a bond
for the payment of one hundred eighty
one Dollars and thirteen cents, in the
penalty of $362:26 payable on or
before the 22nd day of the month of
October then next following, which
bond was for a valuable consideration
and attested by George Branch & Nat.
Stephenson as will appear by reference
to the said Bond, which it is prayed
may be taken & considered as part of this
Bill of complaint. That a credit
was entered on the said Bond the 11th
day of November 1808 for $15:75 which
had been paid — also $16 more had
been paid and was not placed
thereon as a credit. That your
complainant did on the 26th day of
February 1809 receive a further
payment of five Dollars, & suffered
the said Edward N Branch to take
the said Bond to write the credit
thereon

and suspecting no fraudulent intention did subscribe her name thereto without reading or examining what he had written: supposing it rightly done, & that the right credit of £5 had been entered. — But to your oratrixes astonishment, she has since found that he the said Edward N. Branch did with design to cheat & defraud her, of the money so justly due, write on the back of the said bond a credit for one hundred and sixty Dollars; when at that time there was only five Dollars paid, knowing your oratrix was illiterate and could not read writing without great difficulty except a kind of scrawl which she had made familiar, by often endeavouring to write her own name

In tender consideration whereof & in as much as it is the province of a court of Equity to take cogni=zance in matters of fraud mistake &c — To the end therefore your complainant prays the said Edw? N. Branch be made Defendant to this Bill, & may be compelled to answer the allegations therein contained, fully, truly, & unevasively, on his corporal oath and say if he did not as is stated in this Bill, wrongfully put the s. credit of £160 — on the said Bond, when it ought to have been only five Dollars; That the court will Decree the said Edw? N. Branch pay to your complainant the full amnt. of her demand agreeable to the s. Bond, after Deducting the proper credits, as herein before stated, which in Justice he ought to do; and for such other and further relief as may be consistent with equity and good conscience — And as in duty bound she shall ever pray. —

Fort &
Stith for
complainant

The Answer of Edward S Branch to a Bill of Injunction exhibited against him in the County Court of Southampton by Elizabeth Summerlin &c

This respondent now and at all other times hereafter saving and reserving to himself all and all manner of Exceptions to the complainants Bill of its errors imperfections untruths and absurdities for answer thereto or for towards thereof as he is advised it is material for him to answer saith, That true it is he did Execute a Bond with Henry Branch his Security to the said Complainant on the 22nd day of January 1808 for the sum of $181,13 in the penalty of $362:26 as far as your respondent knows or believes. that the said Bond was for a valuable consideration your respondent admits. That a credit of $5.76 the 11th November 1808 was entered on said Bond he denies not. That 7/6 more ever paid and not credited on said bond is equally true That on the 20th day of February 1809 your respondent did actually pay unto the said complainant One hundred and sixty dollars according to the credit entered on the said bond by him that he did not cheat nor defraud the said Elizabeth nor did he intend so to do. and that the said credit ought to be $160. and not $5 as the said Complainant so unjustly alledges. This respondent prays that the Complainants

over

injunction be decreed and dismissed &c.

Cobb p.d

Southampton November 19th 1811

Edward A Branch this day made oath before me that all the matters and statements contained in the above answer are true.

Benj Cobb JP

Branch
ads & ans
Sumpter

Answer

Replication

E. H. Brands

To the worshipful Court of Southampton

The exceptions of Eliz. Summerell to an answer filed by Edw. N. Branch in a suit in Chancery wherein the said complainant and the said Edward N. Branch are defendants

The said Edward N. Branch in his answer to the complainants bill of complaint states that he has paid to the said Elizabeth Summerell the sum of $160 on the 20th Feby 1809 which most solemnly avers upon the face of it is entirely erroneous, and wilfully false; that he nor no other person for him ever made any such payment to her, or to any for her directly or indirectly. And furthermore declares she never did receive any money, or other kind payment on the said bond of his mentioned in the original bill of complaint, but what is there in that bill stated as credits, which were made in part for and on account of the said bond of £281-13- which became

December the 22nd A.D. 1823

This day appeared before me

187

Summerville
v.
Branch & Son
Sin Chy

To September 1810.

Executed the 20th
day of August 1810
Henry Lumsden Dep
of James Gee Shff

The Commonwealth of Virginia to the sheriff of Southampton County greeting: We command you to Summon Edmund A Branch to appear before the Justices of our said County Court on the 3rd Monday in September next to answer a bill in Chancery exhibited against him by Elizabeth Summerell And this he shall in no wise omit upon the penalty of £100. And have then there this writ Witness Samuel Kello clerk of our said Court, the 21st day of August 1810. in the 35th year of the Commonwealth

H Hunter DC

We Edward N. Branch and Henry Branch do
Promise to pay to Elizabeth Summerell or her
order the Just Sum of One Hundred and Eighty
one Dollars & 13 cents Current Money of Virginia
On or before the 22nd day October next We —
Bind Ourselves and each of our heirs Executors &c
in the penal sum of Three Hundred and Sixty
Two (Dollars) & 26 cents of the like Money in testimony
We have fixd our hand and Seals this 22nd
day of Jany 1808 —

Edwd N. Branch seal
his
Henry ✦ Branch seal
mark

Geo. Jest Branch
Nathl. Stephenson

November th 11 — 1808
Recivd the Sum fiftien dollers and 75 cents in part
of the within note Elizabeth Summell

February 20 — 1809 Recevd the Sum of one hundred
and sixty dollers in part of the with note
Elizabeth Summell