

1814-12

SOUTHAMPTON COUNTY
CHANCERY PAPERS

BRADSHAW & al vs. KITCHEN & al

7/1814

other surnames: Hargrave,
Windham, Travis

Lucy & Matilda Bradshaw.

vs. E. Bill

Kitchen Fairs.

Dec. 1873 Int. of Dues

order of publication

In the worshipful Court of Southampton County in Chancery
Sitting. Humbly complaining shew unto your worships, your
petitioners Lucy Bradshaw and Elizabeth Bradshaw, infant
children of William Bradshaw and Mary Bradshaw deceased,
by Benjamin Bradshaw, their next friend, that on the 9.th day of
October, in the year of our Lord 1795, a certain John Windham
of the County of Southampton, executed to the aforesaid Mary Brad-
shaw, at that time Mary Hargrave, a deed of gift, conveying
to her, in fee simple, a tract of land, in the said County of Southampton,
containing one hundred and fifteen acres, more or less, and also
the personal property and all the other estate, then owned by him,
as will fully appear by an attested copy of the said Deed of Gift
(which hath been duly admitted to record in the County Court of Southampton)
here annexed as a part of this bill. That the said Mary Hargrave
being entitled to the said land & personal estate as aforesaid, on the
21.st day of August 1798, made and executed a deed of gift thereof
to a certain Peter Kitchin, as will fully appear by an attested
copy of the said deed of gift (which hath been also admitted to record
in the County of Southampton) also here annexed as a part
of this bill. Your petitioners however by leave to state to
your worships, that the said Mary Hargrave made and
executed the said deed to the said Peter Kitchin, altogether
upon the consideration of an intended marriage, which was
about to be had and so bargained between them and in

part upon the express promise and agreement of the said Peter Kitchen, that he would, in a few days thereafter, be united in matrimony to her, in due form of law - But so it is, may it please the Court, that after the execution of the said deed, the said Peter Kitchen refused to be united in matrimony to the said Mary Hargrave, according to his said agreement, and removed into the State of North Carolina, where he still lives, publicly declaring, that he never would be married to the said Mary Hargrave - so that the said deed of gift, executed by the said Mary Hargrave to the said Peter Kitchen as expressed, became utterly void and of no effect, according to the well established principles, which prevail in Courts of Equity; as the said Peter Kitchen refused to comply with the promise and agreement, which formed the real essence and consideration of the said deed.

Being thus disappointed in her expectations of being united in matrimony to the said Peter Kitchen, the said Mary Hargrave remained single, untill all hope of such an union vanished, and then intermarried with the said William Bradshaw, by whom she had two children, to wit, your natives Lucy and Matilda - after which, both the said William and Mary Bradshaw departed

this life, without having made any disposition by will or otherwise, of the said land and other property, mentioned in the aforesaid Deed of Gift. Whereupon the said land descended to your natives, as heirs at law, of their said mother, Mary Bradshaw decd.

It is however with pain and mortification, that your natives have to inform your worship, that, notwithstanding the before mentioned deed of gift executed by the said John Windham, conveying the said land and other property, to the said Mary Hargrave, the said John Windham, by Deed of Bargain and Sale, executed on the 16th day of November 1808, conveyed the said land, in fee simple, to a certain Britain Travis Junr of the County of Southampton, as will fully appear by an attested copy of the said Deed of Bargain and Sale, also hereto annexed as a part of this bill - Your natives will not consume the time, and occupy the attention, of your worship, in proving the self evident proposition, that, after conveying the said land to the said Mary Hargrave, by the aforesaid Deed of Gift executed and recorded as aforesaid, the said John Windham could not convey any legal title to the said Britain Travis Junr or to any other person - It is too obvious to be denied, that as soon as the said Deed of Gift from the said John Windham to the said Mary Hargrave was executed and recorded, that very moment, all the Estate of the said John Windham

in the said land ceased, and became vested in the said Mary Hargrave - And as the said Mary Hargrave conveyed the said land to the said Peter Kitcher, by a Deed, made and executed upon a consideration, which was never fulfilled as aforesaid, and died without making any other disposition thereof, the same hath descended, and now belongs, to your oratories. But so it is, that the said land is now unjustly withheld from them by the said Britain Travis Junr who is in possession thereof, under the Deed of Benjamin Hale aforesaid, and is committing every species of waste & destruction upon the premises - which is contrary to Equity & good conscience & tends to the manifest injury of your oratories - In tender of consideration whereof & because matters of this sort are alone relivable in a Court of Equity, where matters of trust & fraud are properly cognizable - To the end therefore that the said Peter Kitcher & the said Britain Travis Junr (the said John Windham having sometime ago died intestate, and having no adm. or heirs known & your oratories) may be made defendants to this bill & compelled on their corporal oaths to answer all & singular the allegations herein contained and that as fully & perfectly as if the same were herein again repeated & they thereunto particularly interrogated - that the aforesaid Deed of Gift from the said Mary Hargrave to the said Peter Kitcher, may be declared null & void and decreed to be

delivered up to be cancelled - that the aforesaid Deed of Benjamin Hale from the said John Windham to the said Britain Travis Junr may be also declared null & void and be decreed to be delivered up to be cancelled, as it relates to your oratories - that the said Britain ^{Travis Junr} may be immediately enjoined from committing waste & destruction upon the said land, untill the matters of this bill are fully heard and determined in Equity - that your oratories will decree that the said Britain Travis Junr deliver up the said land to your oratories and account with them for the profits & rents thereof, since the same has been in his possession - that any other & general relief may be granted in the premises, founded with Equity & good conscience - May it please the Court to grant the form more at the writ of subpoena & of injunction for manding? and as he is duly bound, your oratories, & their said next friend, will ever pray &c.

Shkth for Compt.
" "

Travis }
 adv } Answer
 Brachhaus

July 21st 1814 answered

Like -

22/11/98

Blowing Rock

Let the undersigned Court of Southampton in Chancery sitting
The answer of William Harris jr to the bill of complaint
exhibited against himself and Peter Kitchen by Lucy Bradshaw
and Matilda Bradshaw infant children of William Bradshaw
and Mary Bradshaw deceased by Benjamin Bradshaw
their next friend - This respondent now and at all
times saving and reserving to himself all and every
benefit of exception to any error imperfection or misstatements
in said bill contained for answer thereto so much
thereof as he is advised is material and necessary
for him to make answer unto answering saith that
he purchased the said tract of land of John Rendham
for a valuable consideration, being assured by the
said Rendham that his title to the same was good
and your respondent entertains no doubt from information
which he derived from John Rendham and others
that the deed upon which the complainants
rely from Rendham to Mary Hargrave was
obtained under circumstances which would induce
a Court of equity to pronounce it to be null and
void. In fact the deed itself bears evidence of
fraud upon its face in this - that there is no valu-
-able consideration moving Rendham to execute
such deed. That the deed conveys the whole estate
of a man far advanced in years, and thus he
is deprived of the means of supporting old age in
a comfortable manner, and the deed bears

late subsequent to the time of recording it.
All these circumstances are calculated to excite
suspicion and when coupled with others which
your respondents hopes he shall be able
to establish will leave no doubt that
the deed upon which the complainants
found their title to the land in question
was obtained by means and under circumstances
which will render it void. & far from having
committed any waste on the land, it is a fact
that as it has been much improved since it
came into the possession of your respondents
As to the deed from Mary Hargrave to Peter
Kitchen your respondent is ignorant upon what
consideration it was made, nor is it very material
to his defence that he should know, because if
Windham's deed to Mary Hargrave is deemed
to be cancelled it will be admitted that ^{the} right
conveyed to Kitchen depending upon the validity
of the deed from Windham to Hargrave is
destroyed with the deed. your respondents
having answered and denying fraud combi-
-nation & prayer to be heard dismissed with
his costs in this behalf most very respectfully
submitted &c.

This day William Francis personally appeared
before me a Justice of the Peace for the County
of Southampton and made oath to the truth of the
 foregoing answer. Given under my hand this
21st July 1814
Francis Ridley J.P.

~~187~~ 261
Bradshaw K

m } Duree
Kitchen K } Mine m Francis

To July 1814

Enclosed

J. F. Wardlaw D

of J. F. Wardlaw & Co
1814 July answers filed resp.
Spec. claim to take dep.

This Indenture made this 16th day of November in the year
of our Lord one thousand eight hundred & eight Between John
Windham of the County of Southampton of the one part & Britain
Travis Inn^r of Southampton of the other part; Witnesseth that
the said John Windham for and in consideration of the sum
of Two hundred dollars to him in hand paid by the said
Britain Travis Inn^r before the sealing & delivering of these
presents the receipt whereof the said John Windham doth here-
by acknowledge and thereof and of every part & parcel doth
fully clearly & absolutely acquit exonerate and discharge the said
Britain Travis Inn^r his heirs executors and administrators by these
presents and for divers other good causes and considerations him thereunto
moving the said John Windham hath granted bargained & sold
aliened enfeoffed and confirmed & by these presents for himself his
heirs & Successors do grant ^{bargain} & sell alien enfeoff and confirm unto
Britain Travis his heirs and assigns forever one certain tract or
parcel of Land containing one hundred and fifteen acres lying
in the County of Southampton & bounded as followeth (To wit) -
Beginning at a lightwood post a corner of Britain Travis's line
and of Mary Wellman's line thence along the said Wellman's line to
a pine a corner of said Wellman's line thence by William Atkin's line
to a willow oak a corner of said Atkin's line thence by Wm^r
Inez's line to the horse pen branch thence up the various courses
thereof to James West's line thence along the said James West's
line to Britain Travis's line thence along the said Travis's
line to the beginning; To have and to hold the lands hereby
conveyed & all and singular the premises herein mentioned & intended to
be ~~heretofore~~ granted with the reversion & reversions, remainder and
remainders, rents and services of the premises also all the estate
right, title, Interest, Claim & demands of him the said John Windham

his heirs and assigns of in or to the said land & premises every
part thereof with the appurtenances herein before mentioned
unto the said Britain Travis, Junr. his heirs & assigns for-
ever and the said John Windham, for himself his heirs and
from all & every other persons or persons, whatsoever claiming or
demanding the said lands or premises doth hereby warrant
& forever defend unto the said Britain Travis Junr. his heirs
and assigns to the only proper use & behoof of him the
said Britain Travis, his heirs and assigns forever. In
Witness whereof I the said John Windham doth here-
unto set my hand & seal this day and year as above written

Signed sealed & delivered
in presence of
Britain Travis Junr.
Edwin Travis
John Travis
Benja. Travis

John ^{his} Windham Seal
mark

Memorandum, that on the 16th day of November one thous-
and eight hundred & eight. Peaceable & quiet possession of
the lands within mentioned was had & taken by John
Windham & by him delivered to the within named
Britain Travis, to hold to him his heirs & assigns
forever, According to the form & effect of the within
written Indenture

Witness
Britain Travis Junr.
Edwin Travis
John Travis
Benja. Travis

John ^{his} Windham Seal
mark

Received the sum of Two hundred dollars the consideration
of the within mentioned this 16th day of November 1808

Witness
Britain Travis Junr.
Edwin Travis
John Travis
Benjamin Travis

John ^{his} Windham Seal
mark

At a Court held for the County of Southampton on the 16th
day of February 1809. This Indenture with a memorandum
and receipt thereon endorsed, was proved by the oaths of
Edwin Travis, John Travis & Benjamin Travis, three of
the witnesses thereto and is ordered to be recorded

Copy Test

Samuel Rella

Samuel Rella

Windham
To
Travis

Deed

Copy

Windham
To
Hargrave } Dec

Copy

To all to whom these presents shall come greeting know ye that
I John Windham senr. of the county of Southampton for divers
good causes & considerations but more especially for and in con-
sideration of the love & goodwill which I have and do bear to my
loving niece Mary Hargrave, now living with me do give
grant & set over & by these presents doth give grant & make over to
the said Mary Hargrave & her heirs forever, all the lands and
plantation I now live on containing by estimation one hundred
and fifteen acres more or less & bounded as usually known
by my neighbours also I give her & heirs all my household goods
of every denomination whatever together with all my stocks of every
kind and including all & every thing that I am worth to this day
all which I freely give unto her & her heirs forever to the only proper
use of the said Mary Hargrave & her heirs forever - To have
and to hold the said premises with the appurtenances thereto
belonging absolutely without any other manner of conditions -

Given under my hand & seal this 9th day of October 1795 -

Signed Sealed & delivered

in presence of
Charles Briggs
William Briggs

John Windham ^{his} Seal
mark

At a court held for the county of Southampton the 9th day of
October 1795 - This deed of gift was acknowledged by the
within named John Windham, party hereto and ordered to
be recorded -

A True copy
Teste

Samuel Kello
Samuel Kello

Hargrave }
~~To~~ } Dec
Hitchens }

copy

To all to whom these presents shall come greeting Know ye that
I Mary Hargrave of the county of Southampton ~~for divers~~ good
causes and considerations but more especially for and in consideration
of the love and goodwill which I have and do bear to Peter Kitch-
=en do give grant and set over and do by these presents doth give
grant and makes over to the said Peter Kitchen, and his heirs
forever all the lands & plantations I now live on containing by esti-
=mation one hundred and sixteen acres more or less and bounded
as usually known by my neighbours also I give him & his
heirs all my household goods of every denomination whatsoever
together with all my stocks of every kind & including all
and every thing that I am worth to this day all which
I freely give unto him and his heirs forever to the only proper
use and behoof of the said Peter Kitchen, and his heirs
forever. To have and to hold the said premises with
the appurtenances thereto belonging absolutely without any
other manner of condition. Given under my hand
and seal this 21st day of August 1798.

Signed sealed & delivered
in the presence of us
Collins Kitchen
John Windham
John Kitchen

Mary ^{her} X Hargrave (seal)
mark

At a Court held for the county of Southampton the 15th
day of October 1798- This deed of gift was proved by the
oaths of Collins Kitchen & John Windham two of the
witnesses thereto And at a court held for the said county the 17th
day of December this deed was fully proven by the oath of
John Kitchen the other witness thereto & ordered to be recorded
A True copy Teste Samuel Kello Samuel Kello