

1875-18

Santhampton County - Chancery

Kindred, David
admr, et al

vs

Beaton, Wm m

"To sell real + personal
property to pay mortgage"

David Kindred Admr
Est Benjamin B Kindred
decd

Lucy W. Kindred

John J. Kindred

Henry B. Kindred

Wallace Williams +

Lelia his wife

Eldridge C. Maget +

Laura his wife

William S. Clatche +

Bella L. his wife

Kindred

Bill
as $\frac{2}{3}$ ex libito

Beaton

1875 January Rules

1

To the Honorable George Blow judge of the
Circuit Court of Southampton in chancery sitting

Humbly complaining your Orators David
H Kindred who was both in his own right and
as administrator of Benjamin B Kindred dec'd
Lucy W Kindred, John I Kindred, Henry B
Kindred Wallace Williams and Sallie B his
wife who before marriage was Kindred
Edwidge C Magt and Louisa I his wife who
before marriage was Kindred and William I
Deloch and Bettie I his wife who before
marriage was Kindred shew unto your
Honor that sometime about the last
of March 1873 Benjamin B Kindred died
intestate leaving considerable estate both
personal and real and his mother Lucy
W Kindred and six brothers and sisters
to wit John I, David H, and Henry B
Kindred, Sallie B Williams, Louisa I Magt
and Bettie I Deloch his distributees and
heirs at law and that David H Kindred
qualifies as his administrator as will more
fully appear by a certificate of his
qualification herewith filed marked A
and prayed to be taken as a part of this
bill

Your orators shew further that on

Buyer B Kindred

The 5th of March 1873 by deed granted to
 Jm M Beaton for the sum of five thousand
 dollars a farm or tract of land known
 as the Colman's farm containing 1080
 acres more or less lying partly in Southampton
 and partly in Northampton N. Co. and five
 miles, nine ears and fifty pigs, one hundred
 barrels of corn, ten thousand pounds of
 fodder and twelve head of cattle and
 on the same day at the same time and
 place the said Benjamin B Kindred and
 Jm M Beaton by another deed biparte
 and which was in fact but a part of the
 other or defeasance of the same made
 this recital, Whereas by a deed of Bargain
 and sale By Buyer B Kindred in which the
 said Kindred conveyed to the said Beaton
 a tract of land and personal property all
 of which ~~is~~ ~~is~~ is more particularly
 described by the said deed of Bargain and
 sale reference to which is herein made
 and whereas the said Kindred is desirous
 to have the aforesaid property both real
 and personal conveyed to him upon
 his performing certain things, Now the
 said Beaton agrees that if the said Kindred
 shall pay to him within the period
 of two years from this date the sum

of five thousand dollars with interest at
 the rate of twelve per cent per annum
 then and in that event the said Beaton
 will convey or cause to be conveyed to the
 said Kindred all the property conveyed by
 the said Kindred to the said Beaton by his
 deed of Bargain and sale of this date, or
 so much of the property as shall then be
 on the farm conveyed by the aforesaid
 deed of Bargain and sale and the said
 Beaton agrees further that if the said amount
 of money is paid to him by the said Kindred
 within the said period of time, then
 he will surrender and give up to the
 said Kindred a bond which he holds
 against the said Kindred for \$5000 dated
 March 5th 1873 carrying interest at the
 rate of twelve per cent and it is further
 agreed between the parties to this instrument
 and agreement that if the money is not
 paid within the time stipulated then that
 Beaton surrender the said bond and the
 deed be absolute, All of which will
 more fully appear by certified copies
 of the said deeds both of Bargain and
 sale and defeasance herewith filed
 marked B and C and prayed to be taken
 as parts of this bill which were both

signed sealed delivered and recorded this same day

Your Orators charge and aver that these two deeds together with the grant of the land and personal estate and the defeasance of the same make a Mortgage to which both the rights of redemption and foreclosure attach

Your Orators state further and charge that Benjamin B Kindred the Mortgagor died in fifteen or twenty days after the execution of these deeds and David H Kindred both as one of his heirs at law and administrator and your other Orators as heirs at law have brought the suit for ^{the redemption} ~~the redemption~~ of this Mortgage property

Your Orator David H Kindred as administrator of Benjamin B Kindred states that his intestate has but little or no estate outside of his equity of Redemption in this mortgage that that is all his estate to answer both to debts and distribution that he has ^{not} nor will have any assets to pay of this incumbrance and all your Orators as distributees and heirs at law state that no one of them can redeem but asks that all

the property Mortgage ^{both} by the land and
 personal estate to sold and after paying
 the incumbrance off them for ^{the} use
 for set off and then distribution
 Your orators are advised that this is
 a very clear case for the interposition
 of a court of equity the Mortgage
 did say soon after executing the
 Mortgage that the Mortgagee Wm M
 Beaton has been in possession ever since
 the execution of the deed and that
 the property is worth sold on the usual
 credits far more than the amount
 called for in the deed

In Tender Consideration whomst and
 incumbrance as your orators are entitled
 relief at law and only entitled to relief
 in a court of equity when such matters
 are peculiarly cognizable They therefore
 pray that Wm M Beaton may be made
 a party defendant to this bill and that
 the court would compel him as full
 and perfect answer make to the allegations
 therein contained as if he had been
 summoned more fully and specially
 interrogated that the court would deem
 a sale of the Edmunds farm on
 such reasonable credits as to the court

may seem right and of the personal
property conveyed and that the court
would direct one of its commissioners
to take an account of the rents and
profits of the said farm since it
has been held by the said Beaton
and of the value of such of the personal
property as has been wasted or consumed
and conveyed by the said deed and that
the purchase money of the said land
and personal estate and the rents and
profits be applied first to the payment
of the bond of Mr M Beaton and the
residue to the said Ben B Kinchard
debts first if any there for distribution
among his heirs at law and that
the court would grant such other and
general relief the justice considered as
equity may dictate and the nature of
this case may require and as in
duty bound your Obedt will ever pray
Shewes

Statement of B. B. Kindred

With Wyn Beaton

1873

Date		Description	Debit	Credit	Balance
March	5	To Amt Paid note to B. E. Pope	1456	00	
"	"	" " " " " " R. P. Pope	384	36	
"	"	" " " " " " a/c " E. Beaton (Pr request)	359	45	
"	"	" " " " " " " " Geo. H. Darden (")	200	00	
"	"	" " " " " " " " G. W. Trent (")	370	00	
"	"	" " " " " " Store a/c & interest 1872 -	544	20	
"	"	" " " " " " " " to date	158	73	
"	"	" " " " " " Paid J. B. Prince for writing deed, &c	10	00	
"	"	" " " " " " " " for recording agreement & c	2	50	
"	"	" " " " " " Cash to go to Jackson	25	00	
"	"	" " " " " " Paid Dr. C. D. Barham	25	00	
"	17	" " " " " " Amt Paid Dr. H. Barham on J. B. King			
"	"	" " " " " " " " closed note	1000	00	
"	5	" " " " " " Amt as bonus for agreement			
"	"	" " " " " " " " to consolidate debts	100	00	
"	"	" " " " " " Amt paid H. P. Pope (Pr request)	47	59	
"	"	" " " " " " " " Pay a/c	21	29	
"	"	" " " " " " " " " " for Mrs Lucy			
"	"	" " " " " " " " W. Heinzel as pr request	25	25	
"	11	" " " " " " Paid for coffin & other burial			
"	"	" " " " " " " " expenses	81	00	
"	"	" " " " " " Paid for Telegrams	2	78	
"	"	" " " " " " " " B. B. H. - Township Tax	1	13	
"	"	" " " " " " " " Mrs Lucy W. Heinzel, " "	1	50	
"	"	" " " " " " Store a/c to date	44	08	
May	31	" " " " " " Paid Ben Deberry for taking care hog	1	50	
"	"	" " " " " " " " E. Beaton 1/2 gal - brandy sent			
"	"	" " " " " " " " during last illness	1	75	
"	"	" " " " " " Paid R. D. Moore (Pr request)	54	75	4917 86
Apr	11	" " " " " " Pay a/c in N. C. -	33	17	
"	"	" " " " " " " " W. H. Dial (Pr Request)	12	05	
"	"	" " " " " " " " A. Henight (" ")	19	56	
"	16	" " " " " " " " R. D. Moore - keeping hogs	8	00	72 78
"	"	" " " " " " " " Carried over			4990 64

1874	Go Amt brot over—	4990 64
Jan'y 20	" Paid J. O. Hindland, & B. B.	
" "	" Hindland, note to Jos H. Barham in full	1415 62
		<u>6406 26</u>
May 25	" Amt pd Gayer,	18 35
		<u>6424 61</u>
June 6	" " " Gayer—	36 07
		<u>6460 62</u>

Ex.

No 1

with annex

Kindred & } In Chancery.
vs } In the Circuit Court of
Beaton } Southampton County.

The answer of W. M. Beaton to a Bill in Chancery exhibited against him in the Circuit Court aforesaid by David H. Kindred and others.

This respondent says that it is true that Benjamin B. Kindred died about the time named in said bill, but that he left no estate, real or personal, so far as your respondent knows; that the statement as to the heirs at law of said Benj B. Kindred is correct, so far as your respondent knows: that it is true that on the 3rd day of March 1843 the said Benj B. Kindred did by deed of bargain & sale of that date & duly recorded sell & convey to your respondent the real & personal Estate therein named for five thousand dollars, and it is also true that your respondent gave to said Benj B. Kindred a writing allowing him to repurchase the said property in two years - but your respondent denies that the deed of bargain & sale from Kindred to your respondent & this writing allowing the said Kindred to repurchase in two years were in any wise dependent on

each other. Your respondent affirms that the said Benj B. Kindred was greatly involved, and indeed about insolvent & called on your respondent to sell him the real & personal Estate aforesaid, so as to obtain the money to pay off his (Kindred's) debts. Your respondent finally consented to the sale & the deed for the same was duly executed and that, without any reference whatever to a resale by your respondent to said Benj B. Kindred. That after the sale was completed, your respondent, out of sympathy for said Benj B. Kindred, a neighbor & friend, voluntarily offered to allow him, as a personal favor, to repurchase the said Estate within two years, & he so with; to this voluntary offer, the said Kindred refused to accede & not until your respondent again urged him to avail himself of the privilege, (a personal one) did he, the said Benj B. Kindred, agree even to accept the privilege thus offered to him, as an independent matter, wholly disconnected from the sale & without consideration. That accordingly Jas B. Price Esq., attorney at law wrote the paper called an agreement & filed with the said bill

That as agreed on by your respondent and the said Benj B. Kindred, your respondent proceeded to pay off debts due by said Kindred to about the said \$5000- and accordingly paid \$4990. 64 and then finding that the said land was under a deed of trust in favor of Jos: H. Bankham, your respondent was compelled to pay the further sum of \$1415. 62 to said Bankham to get the title to said land clear, as will be seen by statement & receipts filed herewith & marked (to 1 & 2) -. Your respondent denies that the deed of bargain & sale aforesaid from said Benj B. Kindred to your respondent was executory or conditional or intended to be, or that the deed & the agreement, so called, make a mortgage & that the right of redemption or foreclosure attach to the same -. Your respondent further says that he is willing and has always been that the said Benj B. Kindred might repurchase the said property within the time named and he has offered to the heirs of said Kindred the same privilege, not as matter of right, but of grace -. Your respondent protests against any construction of the transaction that will declare the same to be a mortgage and that the payment of the \$5000- was a loan of money -. Your respondent had no money to lend, but purchased and paid for the said property with money, as

also the increased sum to said Jos H Braham making his purchase over \$6000. instead of \$5000. as he expected - and which is full value for the property. The bond executed by said Kinder to your respondent he is ready to surrender and it was not necessary to the agreement.

Your respondent would consider it unjust to have to surrender his purchase, after having paid for it & to wait the result of a sale on long credit, which would compel your respondent to give up the property. purchased & place some one's credit against your respondent's ready money. Your respondent is advised that at most, the transaction can only be construed to be a conditional sale, which if ^{not} implied with, fixes the title absolutely in your respondent. Your respondent soon after his purchase, of the said real & personal Estate, took possession of the same, has cultivated the land, stocked the same & improved it, paid the taxes and never charged or received any interest on the purchase money. And having answered prayer hence to be dismissed &c.

Wm. Beaton

Prince Hilby p.d. -

Southampton County Court.

This day personally appeared before me, James R. Tyler, a Commissioner in Chancery for the Circuit Court of Southampton Wm. Beaton whose answer is above written and made oath that the statements contained in the said answer, so far as made of his own knowledge are true and such statements as are made therein from knowledge or information derived from others he believes to be true. Given under my hand this 24th day of February 1895.

James R. Tyler
Comm. in chancery.

Kindreds

vs 3

Beaton

Answer of

W.M. Beaton

1875 July 26

^B
Hundred
50¢ eggs -
Pratt

(Alfred)

This Deed of Bargain and Sale made this 5th day of March 1873 between Bm. B. Kindred, Grantor of the first part, and W. M. Braton, grantee of the second part Witness. That in consideration of the sum of five thousand dollars, the receipt of which is hereby acknowledged, the said Bm. B. Kindred does grant and convey to the said W. M. Braton and his heirs forever with general warranty the following real estate lying in Southampton County Virginia, and Southampton County North Carolina containing 1080 acres, be the same more or less, bounded by Moshannon River on the North, on the East by the lands of S. W. Wood, West by the lands of Cyrus Tallow and South by the lands of Cyrus Tallow, and commonly known as "The Edmunds Farm", and the following personal property to wit: five mules, nine sows and fifty pigs, one hundred barrels of corn, two thousand pounds of fodder and twelve head of cattle.

Witness the following signatures and seals.

Bm. B. Kindred 

Southampton County. In the Clerk's Office, March 5th 1873.
This Deed of Bargain and sale from Bm. B. Kindred to W. M. Braton, was this day received and acknowledged by the said Kindred to be his act and deed and admitted to record.

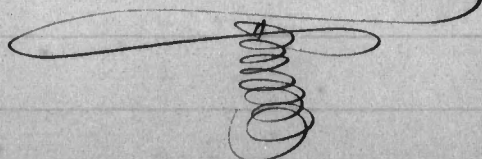
Testo

J. R. Edwards C. C.

Copy

Testo,

J. R. Edwards C. C.



June 5th 1878 - Received three hundred and seventy two dollars & fifty five cents (\$372.55) in part of the within bond.

November 11th 1868 Received three thousand and two hundred dollars in part of the within bond.

March 2nd 1869 Received fifteen hundred dollars in part of the within bond.

1873 March 17th Recd of Wm. Beaton for B. B. Beaton one thousand one hundred and eighty seven \$1000. for Jos H Beaton

This bond is secured by a deed of trust recorded in the Clerk's office of Southampton County which is duly stamped.

J. H. B.

Ans I Kin dred
and

Benj. B. Kin dred

13mo \$6000.00

To

Joseph H. Beaton

Exhibit

(No 2)

with annex

1874 Jan. 20. Recd in full for 1871 Beaton hundred and fifteen dollars & 63c - paid by Wm. Beaton
by Jos H Beaton

\$6000.00 Cents

On demand with interest from
date we or either of us promise to pay to Joseph H
Barham the sum of Six Thousand dollars, for
value received - and for the payment of which
we bind ourselves severally and jointly, with the
witness our hands and seals this tenth day of
May, one thousand eight hundred and sixty six.

Witness
H. W. Arham

Geo. S. Kindred Seal

Ben. B. Kindred Seal

126

Hundred &
n } Stat. Rules

Beaton

Belk

1.49

Law

15.00

//

19.49

In Southampton Circuit Court

David A Kindred who sues both in his own name and as administrator of Benjamin B Kindred dec^d Lucy W Kindred John S Kindred, Henry B Kindred Wallace Williams & Ballie B his wife who before marriage was Kindred Eldridge C Maget & Louisa I his wife who before marriage was Kindred & William I Deloach & Bettie I his wife who before marriage was Kindred

Am^a against
Wm M Beaton

1874 Decr 23 Summons issued

75 Jan R. Sum. Ret. Executed - Bill filed - D. Nisi to Deft.

Feb. Bill taken for confessed Cause set for hearing.

" " T. Answer of Deft filed by leave of the Court.

May. Decree 36 Co 20 Cts 46 40 Ems & 88 for Dft.

Nov. 2

This day J. Leg. Carver made oath before
Me J. R. Tyler a Court in Chancery for South
ampton County, that he delivered to Mr.
Beaton a copy of this summons on the
1st day of January 1835

James R. Tyler,
C^{ll} in Chancery

Attest
to
J. R. Tyler
1835 January 1st

The Commonwealth of Virginia,

To the Sheriff of Southampton County---Greeting :

WE COMMAND YOU TO SUMMON

M^m. W Beaton

if *he* be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court on the first Monday in *January next*

To answer a bill in Chancery exhibited against him in our said Court by David H Knired who sues both in his own right & as admor. of Benj. B Knired dec^d & others

And have then there this Writ.
the Court House, this *23^d*
year of the Commonwealth.

Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at
day of *December* A. D. 187*4*, in the *99th*

L. R. Edwards Clk

Hundred Ho

to } Copy Record

Beaton

At a Circuit Court held for the County of Southampton
at the Courthouse thereof on the 6th day of May in the year of our
Lord one thousand eight hundred and seventy five and in the ninety ninth
of the Commonwealth.

Be it remembered that heretofore to wit, on the thirde day of December A.D.
1874, came David H Kindred who sues both in his own name and as administrator of
Benjamin B Kindred dec^d. Lucy W Kindred &c by their Counsel and sued out of
the Clerks Office of the Court aforesaid a Summons in Chancery against William
M Beaton, which with the return made thereon, is in the following words, to wit.
(here insert Summons & return)

And at another day to wit, At Rules held in the Clerks Office of the said Court
on the first monday in January 1875 came the Plaintiff by their Counsel
and filed their bill in Chancery against the Defendant which is in the words and
figures following, to wit.

Here insert bill & exhibits.

And the Defendant having been served with a copy of the Summons in this cause
and he failing to appear, it was ordered that unless he appear and plead, answer
or demur to the Plaintiff at the then next Rules to be held for the said Court, the
said bill would be taken for Confessed and the matters thereof decreed accordingly.

At another day to wit. At Rules held in the Clerks Office aforesaid on the
first Monday in February 1875, the defendant still failing to appear. On the
motion of the Plaintiff by their Counsel, the said bill is taken for Confessed, and
the cause set for hearing.

And at another day to wit. At a Circuit Court held as aforesaid on the first
Monday in March 1875 — On the motion of the Defendant by his Counsel, leave
is granted him to file his answer, which is filed accordingly and is in these words to wit.
Here insert answer and exhibits.

And now at this day to wit, At a Circuit Court held for the County aforesaid
on the day and year first herein aforesaid, to wit on the 6th day of May in the
year 1875 —

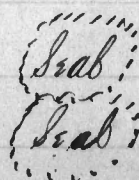
This cause came on this day & here was tried —

Plaintiff Cts \$ 21.79 }
Def'ts " 19.49 }

Transcript of Record \$4.²⁰ —

This Agreement entered into this 5th day of March 1873 between
H. M. Draton and Ben B. Winfred Witnesses: That whereas by a deed of
bargain and sale executed this day by Ben B. Winfred, in which the said
Winfred conveyed to the said Draton a tract of land and personal property
all of which is more particularly described in the aforesaid deed of bargain
and sale, reference to which is here made, and whereas the said Winfred is
desirous to have the aforesaid property, both real and personal, reconveyed
to him upon his performing certain things. Now the said H. M. Draton
agrees that if the said Winfred shall pay to him within the period of
two years from this date the sum of five thousand dollars, with interest
thereon at the rate of twelve per cent per annum, then and in that event,
he the said Draton will convey or cause to be conveyed to the said Ben B.
Winfred all the property conveyed by the said Winfred to the said Draton
by his deed of bargain and sale of this date, or so much of the said property
as shall thus be in the form, conveyed by the aforesaid deed of bargain and
sale - And the said H. M. Draton further agrees that if the said amount of
money is paid to him by the said Winfred within the said period of time,
then he will surrender and give up to the said Winfred, a bond which he
holds against the said Winfred for five thousand dollars, dated March 5th
1873, carrying interest at twelve per cent per annum. And it is further
agreed by both of the parties to this agreement that if the said amount of
five thousand dollars with interest as aforesaid is not paid to the said
Draton, within the time aforesaid, then the said Draton surrenders the aforesaid
bond five thousand dollars to the said Winfred, and the aforesaid deed of
bargain and sale is absolute. Witness the following signatures and seals
March 5th 1873.

H. M. Draton
Ben B. Winfred



Southampton County - In the Clerk's Office March 5th 1873.
This Agreement between Wm H. Braten and Saml D. Nindred, was this day
received and acknowledged by the said Braten and Nindred and admitted to
record.

Testo,

J. R. Edwards C. C.

A Copy

Testo, J. R. Edwards C. C.



Nindred
Do } Agreement
Braten


A Copy

12
Savannah County Court March Term 1873.

On the motion of David H. Windred, who made oath according to law and together with Eldridge C. Meager his security, (who justified on oath as to his sufficiency) entered into and acknowledged a bond in the penalty of two hundred dollars, conditioned according to law, which bond is ordered to be recorded. Certificate is granted him for obtaining letters of administration on the estate of Benjamin B. Windred dec? in due form.

A Copy

Teste, G. R. Edwards C. C.

Kindred
to $\frac{3}{3}$ Bond
Beaton

Price

On demand two years after date, with
interest from date at 12 per cent per
annum, for value received, I owe
and promise to pay W. M. Beaton
Five thousand dollars - Witness my
hand and seal March 5th 1873.

Ben. B. Kindred

Memoandum for Clerk

Copy certificate of D. H. Kindred
qualification as actor of B. B. Kindred

A

Copy deed of Bargain is sent from
B. B. Kindred to Wm M Beaton

March 5th - 1873

B

Copy agreement 5th March 1873

between Wm M Beaton & B. B. Kindred

C

And file in papers

And ~~it appearing~~ ^{having} that the defendant has been served with a copy of the Summons in
this cause and he failing to appear, it ^{was} ~~was~~ ordered that unless he appear and plead, answer
or demur to the plaintiffs bill at the ^{then} next Rules to be held for the said Court, the said bill
^{would} ~~would~~ be taken for confessed and the matters thereof decreed accordingly

Kindred &
~
Beaton

1895

Del. Ct.
order

As he entered

Geo. V. Blod.

Hundred or

N

Beaton

On the motion of the Defendant
by his Counsel, leave is given him to file
his answer in this case, which is filed
accordingly.

Kindred &

M

Beaton

1875

May Term

Final Exam

To be entered.

University.

Kindred &c

Or

Beaton,

This cause came on this day to be heard on the Bill of the Complainants & Exhibits filed therein, & on the answer of the Defendant & Exhibits filed with the same, & on Replication to said Answer, and was argued by Counsel; On consideration whereof the ^{Court} deciding that the record shew no mortgage as contended for by the Plaintiffs, but an absolute sale, with the privilege of repurchase in two years from the 5 March 1873, on the terms set forth in the Agreement filed in the cause, which they have failed to do, and therefore entitled to no relief, doth adjudge order & decree that the Plaintiffs take nothing by their Bill, and that the Defendant recover his costs ^{of the Plaintiffs} by him expended in defending this suit.