

1889-05

Southampton County - Chancery

Clayton, Allen A.

vs Kello, Samuel B.

Land to be sold and
money paid to Plaintiffs
to execute deed

Clayton Ex-^{me}

as 1/3 Bill
3 exhibit
Kells

1888. Appl. Rules - filed

To The Honorable C. W. Hill judge of
the circuit Court of Southampton County
in chancery sitting

Humbly complaining your
Orator Allen A. Clayton who acts both in
his own right and as executor of the last
will and Testament of Richard W Clayton
decd sheweth unto your Honor that
sometime in the year 1880 or thereabouts
Richard W Clayton in his lifetime sold
to D-Samuel B Kells a Tract of land
lying in Southampton County containing
one hundred and five acres it being a
part of the Gray Tract for the sum of two
hundred and eighty two dollars, Samuel B
Kells paying at the time twenty dollars
earnest money and having paid in all
about one hundred and twenty dollars
as well as your Orator is informed,
that Richard W Clayton placed Samuel
B Kells in immediate possession of the
said Tract of land and he has held it ever
since. That Richard W. Clayton in his lifetime
never made him a deed for the said Tract
nor has any one else done so since nor
has Samuel B Kells paid him the large
Balance of the purchase money due to

cost the sum of one hundred and sixty
two dollars with interest from the year 1880

Your Orator sheweth further unto
your Honor that in the year 1884 Richard
W Clayton departed this life having first
duly made and published his last will and
Testament leaving considerable estate both real
and personal and that your Orator Allen
A Clayton who was appointed executor
therein probated the said ^{will} at the March
Term 1884 of the county court of Southampton
qualified as executor giving bond in the
sum of \$7000 with security, all of which
will more fully appear by a certified copy of
the said will herewith filed marked
exhibit A and prayed to be taken as a part
of this bill

Your Orator sheweth further unto
your Honor, that the said Richard W
Clayton after making sundry bequests as will
more fully appear by the said will made the
following residuary clause "I desire as soon
after my death as may be expedient, that my
bonds and accounts be collected, my life insurance
policies be settled up and collected all my
personal and real estate be sold the said
legacies be paid out of the proceeds of said
collection and sales, and I further ^{with} that

after all my just debts shall have been paid
out of the surplus of the said proceeds
The residue shall belong and it is hereby so
bequeathed to Allen A. Clayton and his
his former spouse, and I do hereby
nominate and appoint Allen A. Clayton
executor to carry into effect this my last
and Testament"

Your Orator sheweth further and state
unto your Honor that by virtue of the power
vested in him by the will that he has he
proceeded to collect the debts that he has found
The chattel estate into money and sold all
The real estate and paid the debts and
nearly paid all the special legacies and
has applied to Samuel B. Kells who
purchased the 10.5 acres of land from his
testator for the purchase money still due
on the same, offering to give him a deed
for the same as soon as he pays the
money, and which the said Kells has
up to this time failed to do, and so
your Orator is in court invoking the aid
of a court of equity to enforce this
contract for the sale of this land Your
Orator charging fully and distinctly that
he is ^{authorized} empowered by the will to sell
the real and make deeds therefor

In Tender consideration whereof and
inasmuch as your Orator is without relief
at law - and only entitled to relief in a court of
equity where such matters are peculiarly cognizable
the Plaintiff prays That Samuel B Kells 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 herein
contained as if he had been personally more
fully and specially interrogated And That the
court would decree that unless the said
Samuel B Kells shall within three months
after its order pay to your Orator the sum
of \$162 with interest from the year 1880
your Orator giving him a deed for the
10.5-acres of land upon the said payment
Then that the said land may be sold
and the purchase money and interest due
paid to your Orator And That the court
would grant such other and general relief
the premises considered as equity may dictate
and the nature of his case may require
and as in duty bound your Orator will
ever pray he

Shanda & Long.

Clayton's ¹²⁸ Ex or
125
Stat. Rules
Kells.

Allen A. Clayton, Ex'r
of the last Will and Testament
of Rich^d. W. Clayton dec^d.
against
N. B. Kelso.

Plff

Def

1888. Mch 22. Sum: issued to April Rules

" April Rules. Sum: ret^d. Executed. bill + Exhibits
filed. decree nisi to Def.

" May " Bill taken for confessed and
caused set for hearing.

In the name of God, Amen
I Richard W. Clayton of the County
of Southampton and State of Vir-
ginia, being in good health and of
sound mind, but knowing death
may occur at any time, and being
desirous to dispose of my worldly
effects somewhat different from
the provisions of the Statute Laws
governing descents, do make, Consti-
tute, and Ordain this my last will
and Testament - revoking all other
wills heretofore made by me.

1st I give unto my brother Robert W.
Clayton, and his heirs forever \$2000.⁰⁰
two thousand dollars.

2nd I give unto my half brother Allen
A. Clayton and his heirs forever \$2000.⁰⁰
two thousand dollars.

3rd I give unto Judith Ashburn, Thomas
W^c Glenney, John W^c Glenney, and Robert
W^c Glenney - Children of my sister Car-
oline W^c Glenney and their heirs for
ever \$2000.⁰⁰ two thousand dollars that
is to say, to Judith Ashburn \$500.⁰⁰ five
hundred dollars, to Thomas W^c Glenney
\$500.⁰⁰ five hundred dollars, to John W^c
Glenney \$500.⁰⁰ five hundred dollars and
to Robert W^c Glenney \$500.⁰⁰ five hundred dollars

4th I desire, as soon after my death-as may be expedient- that my bonds and accounts be collected, my life insurance policies be settled up and collected all my personal and real estate be sold, the aforesaid legacies be paid out of the proceeds of said collection and sale, and I further wish that after all my just debts shall have been paid out of the surplus of said proceeds the residue shall belong (and it is hereby so bequeathed) to Allen A. Clayton, and his heirs forever, aforesaid.

5th I do hereby nominate and appoint Allen A. Clayton aforesaid, executor to carry into effect this my last Will and Testament. In evidence of sincerity of purpose and feeling, that I have made this Instrument after consideration and reflection, and that it is made as I wish, I subscribe the same this 16 day of June 1882.

In the presence of } R. H. Clayton. (Seal)
}

The said Richard H. Clayton at Zuni, in
Isle of Wight Co. Va. on the said 16th

day of June 1882, signed and sealed
this instrument and published and
declared the same to be his last will
and testament, And we, at his re-
quest and in his presence and in the
presence of each other have herewith
written our names as Subscribing
Witnesses.

Char. B. Crumpler
Char. M. Joyner
B. Hara

R. H. Clayton

Will

Exhibit "A"

At a County Court-held for the County of South-
ampton, on the 17th day of March 1884, the last
Will and Testament of Richard H. Clayton
Esq^r was produced in Court by Allen A. Clayton
the executor therein named, and proved by the
oaths of Charles M. Joyner, and B. Hall, two
of the subscribing witnesses thereto, and ordered
to be recorded as the true last will and Tes-
tament of the said Richard H. Clayton Esq^r.
And upon the motion of Allen A. Clayton
the executor therein named who made oath
according to law and together with R. W.
Stephenson, A. J. Stephenson and H. H. Hill
as his securities (who justified on oath as to their
sufficiency) entered into and acknowledged a bond
in the penalty of seven thousand dollars
conditioned as the law directs which bond
is ordered to be recorded. Certificate is granted
the said Allen A. Clayton for obtaining a
probate of the said Will in due form.

Teste -

J. B. Prince, C. C.

This deed, made this 10th day of January in the year
One thousand eight hundred and eighty between

Richard W. Clayton of The first part, and
Dr. Saml B. Kello of The second part;

Witnesseth, that, in consideration of the sum of Two hundred and
eighty-two dollars, the said Richard W. Clayton does grant
bargain and sell unto the said Dr. Saml B. Kello with
General Warranty, all of a certain piece or parcel of
Land, situate in Southampton County Va a portion of
The Jordan or Gray's tract, bounded as herein described -
Commencing at a Hickory Cor on Mrs Ponds line - Thence along
a Chopped line (Mrs Ponds) S 24 W. 26° 32' 36" to Gum FA on
Kello's Mill Pond - Thence S. E'ly along high water mark
of said Pond to the Mill road, Thence S. E'ly along
Mill race to Tarrah Swamp - Thence up said Swamp
to Ash Cor - Thence S. 64 W up old Mill path to Cor

Thence N 27 W along Chopped line and Mill road - Thence
N 30 W along said Mill road to Cor. Hickory at Com-
mencement - Containing 105. Acs 'more or less'

The said Richard W. Clayton covenants that he has
the right to convey the said Land to the grantee: that
he has done no act to encumber the said Land; that the
grantee shall have quiet possession of the said Land, free
from all encumbrances, and that Richard W. Clayton
his heirs and assigns partly of The first part will execute
such further assurance of The said Land as may be requisite
Witness the following Signature and Seal, made this
day of 1880.

Seal
C. W. Kello

Deed of Bt Sale
From Richd W. Clayton
105 Acres
To Dr. Saml. B. Kello

1017
129
—
888.

105
74
—
129

Clayton's Exor
n } Sum
Kells

1888. April Rules

Cir: Ct:

Ex. March 28th 1888
by delivering a copy of
this Commodity to
S.B. Kells

A.F. Cobb Left for
J.W. Williams & Shuff

The Commonwealth of Virginia,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—Greeting:

WE COMMAND YOU TO SUMMON *Saml. B. Kells*

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 *April* next, to answer a bill in chancery exhibited against *him* in our said Court by *Allen A. Blayton* Ex'r of the last Will and Testament of *Richard H. Blayton* dec'd. —

And this *he* shall in no wise omit; and have then there this writ.

B. F. McLenore
Witness, ~~J. B. Prince~~, Clerk of our said Court, this

27 day of *March*

188*8*, in the *112* year of the Commonwealth.

Deeds: B. F. McLenore C. C.

Clayton's Extⁿ

as } Deere

Kills

To be enclosed

C. M. White
May 8th 1843

Clayton's Exr

vs 3

Kells

Deane

On motion of the plaintiff his bill
is dismissed