1848-008 Chancery Causes: David A. Bain vs Richard H. B Denson et al

Dsle of Wight County

other surnames: Clarke, Wilson [Clarke & Wilson], Reid, Holleman

parties who shall appear to be entitled thereto. And your Orator further prays that the said several defendants, and each and every of them, may be injoined and restrained by the injunction of this hon. the Court from any and all further proceedings at Law, against your Orator for the said sum of $125.00 and will please grant all other, necessary & proper relief which may be meet in the premises.

David A. Bain signed

Robt. H. Whitfield Solr

3

Isle of Wight County: to wit:

David A. Bain personally appeared before me a justice of the peace for the county aforesaid, and made affirmation that the facts, as set forth in his Bill above, are true as far as he knows or believes; and that he further more, made affirmation that there is no collusion between him, and either or any of the said parties, in the said Bill mentioned.

Given under my hand this the 4th day of October 1847

J. B. Dizer J.P.

Sept 28 1848

Dec. Mutual Assurance Soc. Ins. by Thos. H. Wright & Clark Walke Sec. Ins. Fire

Clerks Office

Dists. Court Isle of Wight

David A. Bain
vs
Bill &c
Injn
Jessee, Clark Walke & Wilcox

October 4th 1847 Bill & Affts
& Orders & Subpoena
Oct. 28 1847 Ans. of Jessee & Wilcox
Nov. 1847 Rule, and Cert. issued
Dec. 1847 Ans. of Clark Walke
Sept. 1848 Rule to take Proofs
Dec. 1848 Proofs taken
1849 Feby. Rule for hearing
May Term 1849 cont.
Sept. Term 1849 Rule
Dec. Term 1849 Decree
Sec. Ct. Ap. 2 111

say to the said Marcus T. Denson (per agreement) the sum of £125:0. at
August Court, for Isle of Wight County - which was agreed to by sd Marcus, and your orator
did know of by virtue of said last agreement did take possession of his said Farm
and should have at the succeeding Aug.t County Court, paid, but for the
reasons hereinafter stated - the sum of £125. - to said Marcus T. Denson, and
should have regarded his receipt as good, indeed better than that of any one else, since
as your orator was cognizant of the whole transaction - he looked upon Marcus, as the only one entitled to the money.

Your Orator, further says, that (as it appears, by the records of the Courts hereinafter
mentioned, or the proceedings referred to) - Benj.n T. Clarke & Jas. Lemmon Wilson, merchants
partners, trading under the style of Clarke & Wilson; and Charles & Geo. Reid also merchants,
had obtained judgments - the former in the County Court of Nansemond County for the
sum of £40. with Int. from 8th March 1845 - the former of £0.88 Costs - and the latter in Supr. Court
of Law of Eight - for £92.4.9 - with Int. from 20. August 1845 - the former of £7.6.8 Costs. as appears from
Copies of the same, or the Calendar hereunto filed marked "A" & "B" & prayed to be) - against
the said Marcus T. Denson, sometime before the rendering of the said
Farm by the sd Denson - : and shortly after the making of the said last agreement
between your Orator & Marcus T. Denson - , and while the said sum of money
£125 - was in the hands of your Orator & owing by him to the said
Marcus - ; but before the day of payment aforesaid - : Writs (or executions) of
"Ca Sa" were issued by the sd creditors of Marcus T. Denson - and placed the
same in the hands of the Sheriff of Isle of Wight. who, by his deputy James M.
Indan, levied the same on Marcus T. Denson, who thereupon, to wit, on the
20th July 1847 at the County aforesd County, took the oath of the Insolvent
debtors, as the law in such cases provides. - whereupon, as your orator
is advised, the legal title to property of every kind, belonging to sd Marcus T. Denson
vested in the Sheriff of sd County, for the benefit of the execution creditors, and
in as much as your orator was informed, that the said Marcus T. Denson, in the schedule
given in by him, did not refer to the indebtedness of your orator to him - , your orator
was called on by the said Sheriff of Isle of Wight not to pay the said £125: to
Marcus T. Denson - but to him, for the benefit of sd creditors - : which he was about to do,
but about the same time, he was notified by sd Richd H. B. Denson, that the said sum of
£125 - only was due him - , upon the ground that his sd brother had settled the
same for him the sd Richd, a matter which your orator avers was new to
him; as he had certainly vested to no one else, but Marcus, and by the last
agreement, between the same from Marcus, on terms made only between your
(though he does not deny the right of claim which sd Richd H. B. Denson may have in this way)
Orator & Marcus, and that the sum (as by the last agreement) of £125 - was to
to be pd to Marcus, whose receipt was to be good acquittance to your orator,
during time of these transactions, did he ever know or hear of any claim of
Richard Denson, nor was any regard in any way, ever had to him, by either party
in their two several agreements - except the accepting of sd Richd as surety
for the rent as aforesaid - . your orator, verily, that he was and is greatly embarrassed
by these conflicting claims, and as he has no interest or claim on the said sum
of £125 - or so upon the several claimants to settle the point, without
subjecting him to loss or injury - that he was ready to deliver the said sum of
money to any one, or either of the parties - if he could do so without risk to
himself - that he owed it to some one by virtue of his agreement with Mr T. Denson -
That he had & has now no claim thereon and was only desirous of ascertaining the true legal
owner - . your orator further states, that he has not only been threatened
by the said parties with suit, but they have, that is to say, the said Richd.
H. B. Denson for his own benefit (treating as aforesaid the sd Marcus as his agent, or Manager on sd
Farm) and Jno. A. Holleman Shff. of sd county for the benefit of the said
Clarke & Wilson, and Geo & Charles Reid - have - actually instituted suit
in the aforesaid Supr. Court of Law & Chy for the County of Isle of Wight against
your orator - for the recovery of the said sum of £125:0. contrary to Equity
and good conscience: and much to the injury of your orator who, he alleges
cannot protect himself in either suit at Law, on account of the circumstances
of the transaction, and the peculiar character of the proceedings observed
in that Forum. Wherefore, and for prayer, that the said Richd H. B. Denson
, and Jno. A. Holleman Shff. of the County aforesaid and Benj.n T. Clarke & Jas. Lemmon
Wilson, and Geo. & Charles Reid - may be made parties defendants, to this Bill
and be compelled, on their several oaths, to answer the same and (the sd defendants
only) may severally set forth & discover what right & title they and each of them
claim, or have in & to the said sum of £125:0.; and how they & each
of them make out the same; and that they may set forth to which of them
the said sum of £125: does, or does of right belong, or is payable, and may
interplead and settle, and adjust their demands & claims between themselves - your orator being ready & willing and hereby offering to pay
the said sum of £125: to such of the said claimants to whom the same
shall appear to belong, being indemnified. And that your orator
may be at liberty to bring the same in to this honorable Court; which
your orator doth hereby offer to do, for the benefit of such of the several

To the Hon. Rich.d H. Baker judge of the Circt Supr. Court of Law. and Ch.y for the County of Isle of Wight: In Chancery Filling &c: Humbly complaining sheweth unto your Honor, your orator David A. Bain of the county aforesaid, That, on the 1st day of January 1846, being the owner and in possession, of a farm &c: in the County aforesaid, for reasons and objects which it is here needless to specify – he, the said David A. Bain, your orator, determined to break up, and discontinue his business of farming &c: – offered by public advertisement & other means – his farm aforesaid for rent, for the balance of the year 1847. – Shortly after this announcement, your orator was applied to by one Marcus J. Benson to rent his said farm –, and after the usual negotiation in regard to such matters, your orator agreed to rent to the said Marcus J. Benson, his said farm – The terms of which renting or leasing – were discussed, arranged, and mutually acceded to by your orator, and the said Benson –. But knowing or supposing, from the well known credit of Marcus J. Benson – that the rent of $90 which it was agreed I should receive – might be placed in Jeopardy –; and as I designed to be absent from the county – I demanded security – in accordance with the terms between us – of the said Marcus J. Benson, for the due payment of the said rent. I gave him, perhaps, a blank bond to be signed by himself, and some other person as his security – as I was indifferent who the security was, provided he was a capable & good & responsible: & a very short time thereafter, the said Benson returned with a letter addressed to your orator, on which he by Rich.d H. B. Benson who thereon pledged himself to see the rent paid – or words to that amount thereto, as your orator conceived, and retained the pledge letter as evidence of the obligation of R. Rich.d H. B. Benson who is a brother of Marcus, to pay the said rent: he no other debt light had your orator regard the letter – he had nothing to do with Rich.d H. B. Benson in regard to the said farm, or the terms on which it was rented by Marcus – your orator made the bargain with Marcus in his own right, and for the reason aforesaid demanded security of M.r Marcus, and so that was obtained, whether, by uniting on the Bond with Marcus, or by independent assumption was a matter of no moment to your orator. (The said letter when rec.d filed, Marked "A".

Your orator further states & avers, that some time in July of this year 1847 –, he had resolved to return again to Isle of Wight, and preferred, if possible to regain his farm which was then in possession of Marcus J. Benson as aforesaid – whereupon he submitted some propositions to the said Marcus –, which were agreed to by him. The result of which was that your orator, on taking back his farm – and after allowing so much for the labour of said Marcus, in making the crops, then growing, and deducting the rent due to that time; or apportioning the same – was indebted & promised to

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Clarke & Wilson

ats. Answer

Bain

Filed November 1st
1867.

Answer of Clarke &
Wilson to Bill of
J. A Bain

and having answered, pray that the said Rem of $125: may be decreed to them &c.

B. F. Clarke (Seal)
S. Jennings Wilson (Seal)

Isle of Wight Co: to wit:

Benj. F. Clarke and S. Jennings Wilson personally appeared before me a justice of the peace for the county aforesaid, and made oath that the facts as stated in their answer hereto annexed are true to the best of their knowledge & belief. Given under my hand this 28th day of October 1847—

Jno. F. Thomas J.P.

Bain
vs
Clarke & Nelson & alias

The Joint and separate Answer of Benj.ⁿ Clarke & Thomas Nelson to a Bill of Complaint filed by them & others by David Bain in the Rich.d Sup.r Ct. of Chancery for the County of Isle of Wight — The Isle of Wight County to wit:

These respondents, saving & reserving &c: to so much of said Bill, as they are advised it is Material for them to answer, answer and say, that while personaly they know nothing of the facts detailed in the said Bill, relating to the leasing of the said Farm by said Bain to Marcus T. Benson, and the terms thereof as therein set forth, yet they have every reason to believe the same to be true, and that the sum of ₤125: which the said Nelson admits to be due from him, does of right belong to them, or rather the legal title to the same is in the Sheriff of Isle of Wight for the benefit of your respondents, by reason of the taking of the Oath of Insolvency, by the said Marcus T. Benson, on an execution of Ca Sa: taken out by your respondents, and levied on the said Benson, as in the said Bill is alleged, all of which facts as therein set forth, are as far as your respondents can conceive, are true & correct. your respondents having every reason to believe that the money for said sum of ₤125:- was bona fide, the property of their debtor Marcus T. Benson - which by operation of the Act of Assembly - became vested in the Sheriff of Isle of Wight as aforesaid - for their benefit -, on the refusal of said Bain to pay the Same over to them, did institute suit against him, as he, in his 3.d Bill, states, and by them was no other method by which they could assert their claims, and they believe the said Rich.d H. B. Benson (pretending that the said Sum of ₤125: belongs to him which these respondents believe to be false) has also brought suit at the 3.d Comm.th at Law for the same sum of money: and as your respondents have no desire to embarass the said Bain who clearly as he admits, has no interest in the controversy, are perfectly willing to relinquish the same, as between themselves & 3.d Rich.d H. B. Benson, in the manner & according to the principles governing such cases — they therefore assert their claims to the said ₤125; and pray, that the same should be decreed to be paid to them by this honorable Court: and that the claim of said Benson (R.d H. B.) to the same is groundless & collusive —

Reid, Chas

Geo. & Chs Reid
Ref to answer
Fra & S. Bain.

Bain P
= vs = In Chy
Reid & Others

The Joint and seperate Answer of Charles & George Reid, to a bill of Complaint filed against them & Others by D. A. Bain, in the Circt-Supr. Court of Law & Chy. for the County of Isle of Wight. I These respondents saving & reserving &c: for answer to so much of said Bill, as they are advised it is matereal for them to answer: answer and say; that not being residents of the County aforesaid, but citizens of the City of Norfolk, they cannot speak as of their personal knowledge of many of the facts stated in said Bill, but admit the same to be true. These respondents further say, that it is true they transmitted some time ago to their attorney a claim vs one Marcus. T. Denson, on which suit was instituted & ~~Judgment~~ obtained, as set forth in said Bill. as they were advised by their said attyr: but which heretofore has been unavailing from the real or pretended insolvency of said. M. T. Denson. They charge that the said debt, (or Judgt & Cost) is still due and unpaid, and as far as they are informed, that the said sum of $125, in the hands of said Bain in the manner set forth by him, should be made subject to your respondents Claim. They have no desire to embarrass the said Bain, neither can they blame him for the suit he has instituted; and are willing to contest the matter with the said Richd H. B. Denson. as in the said Bill is suggested, and on the principles governing such cases of interpleading. and they therefore charge that the said sum of $125. in the hands of said Bain should be decreed by this honoble Court to be paid over to them &c:

Charles Reid
George Reid Signed.

Norfolk City
Chas & Geo Reid personally appeared before me an Alderman of the city of Norfolk and made oath that the facts in their answer above set forth are true as far as they know & Believe, given under my hand this the Sixteenth day of October 1844

Wm G Camp Alderm

We acknowledge the within
Police
Sept 29/47

B. F. Cantrell
S. Junius Wilson
Josiah Hallaman

David Cantrell
vs.
Josiah Hallaman
Circ. Ct.

Action
Debt
1847

Mr. Clerk

THE COMMONWEALTH OF VIRGINIA,

To the ~~Sheriff~~ Sheriff of Isle of Wight County, Greeting:

You are hereby commanded to summon Josiah Holleman Sheriff of Isle of Wight County, Benjamin F. Clarke and S. Symms Wilson and Richard H. B. Denson

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for Isle of Wight County, at the Rules to be holden for the said Court, on the first Monday in ~~November~~ October next, to answer a Bill in Chancery, exhibited against them in the said Court, by David A Bard

And unless the said Defendant shall answer the said Bill within two months thereafter, the Court will take the same for confessed, and decree the matter thereof accordingly. And this they shall in no wise omit, under the penalty of £ 100.

And have then there this Writ.

WITNESS, Nath. P. Young Clerk of our said Court, at the Courthouse, the 28th day of September 1847, and in the 72nd year of our Foundation.

N. P. Young Cl. C.

(One Copy to be delivered each Defendant.)

"The Plaintiff Bain having paid into Court, to the Clerk thereof, to the credit of the suit of Denison vs Bain, and the Shff: for Clarke & Wilson Dals. vs Bain, the sum of $125. an injunction is awarded to restrain the Plffs: in each of the aforesaid cases from further proceedings at Law until the further order of the Court."

Copy Teste

N. P. Young Clk.

Executed on Richd. H. B. Denison Decr. 1st. 1847 by delivering to him a copy of this subpoena.

D. H. Raby Dy.
for H. L. Upton Shff.

Danl. D. Bain
vs
Richd. H. B. Denison &c.

A. N. 13. Denison Esqr.

To Dec. T. 1847.

N. N. Whitlock
Clk.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Nansemond ***County, Greeting:***

You are hereby commanded to summon Richard H. B. Denson

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for Isle of Wight) County, at the Rules to be holden for the said Court, on the first Monday in December next, to answer a Bill in Chancery, exhibited against him & others in the said Court, by David A Bain

And unless the said Defendant shall answer the said Bill within two months thereafter, the Court will take the same for confessed, and decree the matter thereof accordingly. And this he shall in no wise omit, under the penalty of £ 100.

And have then there this Writ.

WITNESS, N. P. Young Clerk of our said Court, at the Courthouse, the 10th day of November 184 7, and in the 72nd year of our Foundation.

A. P. Young clk.

(One Copy to be delivered each Defendant.)

Paid to Receipt-
Clerk Omicron

Recd. of Rob H Chitfield atty. the sum of thirty six dollars 48 cts: being my portion of the amount decreed by the Cir. Supr. Court of Law & Chy. for the County of Isle of Wight at October Terms 1848. in the case of D. A. Bain v. Benson & others. to be paid me as one of the creditors of Marcus J Benson. & the costs also paid me in the Cir. Court of Chy and in the Court at Law by them for Clarke & Wilson & Reid v. D. A. Bain.

$10.26 . . . This 28th October 1848.

Clarke & Wilson

36.48 Amt. as portion
10.24 cost
$46.72

Gen Chas Reid
Cat - in Chg
Capt Revd Bd
Dunbar

1

Rec'd of Robt Mebane Sheriff the sum of Seventy six Dollars & 93 cts.
being the portion of Charles Pyle Dec'd to the sum of $176; deposited
in Court, in case of Strain Vs Pyle, & Clark & others, & paid
by decree of Court in that case October Term 1848.
Nov 1st 1848.

Chas F Fisher Reid

Comptr. Report and
Returns

David R Bain vs. Clarke & Wilson, Reid & Duncan &c

Report and Return of No. 4 Child filed Comptr. to distribute fund per decree in suit of Sup Ct Chancy - of Isle of Anglesea. in the above cause to wit:

By amt. Rec'd. of Clerks of Court, filed in suit of Bain .. $126:00

To amt of costs decreed paid to Clarke & Wilson & Geo Hy and Charles Reid & the Clerk $11.89

To amt. pd. Clarke & Wilson their portion of balance per Rept- 36.48.

To do - pd Geo & Chas Reid ditto ... per Receipt filed 76.63

all settled per Receipts in cause filed — $125:00 $125:00

by like consent, the Court doth order that the Clerk of this Court pay to the said Clarke and Wilson and Chalk and Gage Reid, ~~Esqrs~~ the sum of One hundred and ~~twenty~~ four dollars which was paid into Court by the aforesaid Davis & Bain under an order of the 20th of October 1867 - the said money to be paid pro rata to the said Defts, creditors of Marcus Brinson.

Bain
vs
Brinson & Others

Decree for the
Collector - Salary
- Fees by the
Commissioner of the
Courts

Filed
Nov 27, 1867

David A Bain & R. & B. Bain & Josiah & Adamson,
, Benjamin F Clarke and S. Lennox Wilson
merchants and partners under the style of
Clarke and Wilson, and Charles Reid & George
Reid ——————— defendants.

On the motion of the complainant, the
death of Josiah Adamson late of St: of
Isle of Wight is suggested, and by consent of
parties this suit is ordered to go
his executor - and the subpoena having
been executed, and the pltffs: Bill filed
more than 2 months, the same is taken
pro confesso as to all except Clarke Wilson
and Chs and George Reid who have
filed their answers - and the cause coming
on this day to be heard on the Bill of the
complainant, the answers of the said
Wilson & Clarke and Chs & George Reid, exhi-
-bited thereto and proofs read by counsel
On consideration whereof and by
consent of the parties, the Court doth
adjudge and decree that the injunction
be perpetuated, and that the ~~suit~~
~~parties in this cause~~, ~~and the~~
suit at law of Deverell & Bain, and
~~Clarke Wilson & Bain~~, & Adamson & al. to
Clarke and Wilson & Bain be and the
suit be dismissed, ~~with~~ and that the
parties respectively pay their own costs - and

Bain

n: Dunn

Denison Kans.

As be enclosed

R H B

Enclosed

and the pl'ff. Bain have leave to
Court, to the Clerk thereof, to the use
of the suits of Deacon
Bain, Otterbein & Co. to Clark Nelson &
Co Bain, the sum of $125, and judgments
is accordingly to be Bain the pl'ffs in
each of the aforesaid cases, from
further proceedings at law. to
the makers to continue in
this suit, shall be fully heard
— until the further order of
the court