

1800-017

SOUTHAMPTON COUNTY
CHANCERY PAPERS

KIRBY'S HEIRS vs. KIRBY

1/1800

Other SURNAMES: Drake,
Arrington, Bell

To the justices of Southampton County
in chancery sitting.

William Drake and Gilpha his wife, Jno: arriving
son and Julia his wife, Moody Kirby, Patry
Kirby, Lewis Kirby, Gideon Bell Elizabeth and
Pamela Bell complaining shew unto the Court
that ~~on the~~ on the day of in the
year of Christ 1798 John Kirby died intestate
leaving a considerable real and personal estate
to wit: seven hundred acres of land in the
county aforesaid - two hundred and fifty acres
in the State of North Carolina also the following
Slaves to wit: Peter, Frank, Amy, Fed, Jimmy,
Rachael Cornelius, wealthy, ^{Charles} Sarah, Jimmy and
James. Your complainants further state that
since the death of the said Jno: Kirby, Ann
Kirby daughter of the Jno: Kirby has departed
this life leaving a last will and testament
disposing of her estate to your complainants
~~through Kirby, James and William Kirby~~, in such
and one William Kirby

Kirby

bill.

Kirby

Dee.

Sept 1798

July Decem.

Aug 1799 July. Decem.

Jan 5. 1800

Sept 1798 & Decem.

proportions as there is directed - that your Com-
plainants Gideon Bell Elizabeth Bell and Pamela
claim part of the said estate of John Kirby in
right of their mother Elizabeth ^{decd} daughter
of the sd Jno: Kirby decd. that your Complain-
ants have applied ~~to the court~~ to the before-mentioned
William Kirby to consent to a division of the estate
of Jno: Kirby and to bring into hotchpot the sd
250 acres of land & the negro James which he
the sd William Kirby received from the sd Jno:
Kirby in his life-time as an advancement
in life. But so it is ^{pleas} that the court the
sd Wm Kirby now denies receiving the
250 acres of land & the sd negro James and
refuses to bring the same in to hotchpot, but
opposes the division of the sd Estate whereof
Jno: Kirby died seized and possessed in leg the
same be made without the land & negro
advanced to him. Where your Complainants
pray that the sd William Kirby may be defendant
to this bill and that he may for his oath true
answer make to the same setting forth

the different kinds of property he received of
Jno: Kirby in his life, that the court will order
and decree a division of the sd estate of Jno: Kirby
in the following manner & form to wit: to William
Brake and Hilsha his wife one seventh part. to
Jno: Arington & Julia his wife one seventh. to Moody
Kirby one seventh. to Patsy Kirby one seventh, to
Gideon, Elizabeth and Pamela Bell one seventh
to be equally divided between them, to all of
your Complainants one seventh to be divided
agreeable to the last will & testament of Ann
Kirby decd. and that the court will appoint
proper persons to do the same and make report
thereof

The answer of William Kirby, Defendant, to the bill of complaint exhibited against him by William Drake & Gilpha his wife, & others, Complainants.

The Defendant, saving & answering as follows — He avers, that the land, containing 250 acres, in North Carolina, formerly owned by his father, John Kirby, was actually purchased of him by the Defendant, as by a deed from his father therefor, will appear. ~~As of this~~ ~~the~~ slave, called ~~Louises~~, the Defendant admits, that he never had any writing or deed from his father for him, nor did he ever actually pay money for him, — but he made a crop with his father in '73, as well as he remembers, & in the year following his father let him take this slave, with some other property, which the Defendant considered to be on account of ~~the~~ his part of that crop, which was left in his father's hands; however the slave is about 50 years old & of little value; & if to the Court it shall seem proper, the Defendant is willing to bring into hotch-pot. The other property received from his father, as last mentioned, was worth about ~~the~~ £12 or £15, & the Court will, no doubt, consider as not more than a payment for the Defendant's part of the crop.

As to the allegations of the bill of the Compts,
not already answered, admitted, or denied, the Deft
cannot say any thing in contradiction to them.

And finally the Deft ~~forgets to~~
~~dismiss with his costs~~ admits, that he is willing
to a division of the estate of John Kirby, & Anna
Kirby, - & prays hence to be dismissed with his
costs.

William Kirby



Southampton County, to wit,

This William Kirby made
oath before a Justice of the peace for the County
of ^{Southampton} that the foregoing answer is true as far
as he knows & believes. Given under my hand
this 18th of Sept. '98.

Robt Goodwyn

Kirby Co

vs

Kirby &

} Decree

Sept 17 98
3

At a Court of Quarterly Session continued & held for the County of Southampton the 18th day of September 1798

William Drake & Gilpha his wife Jⁿ. Arrington and
Julia his wife Moody Kirby Patsy Kirby Lewis Kirby
Gideon Bell Elizabeth & Pamela Bell : complainants
against
William Kirby dependant

In
Chancery

This cause was this day heard on the bill of the complainants the answer of the dependants & the exhibits filed therein on Consideration whereof it is decreed & ordered that John Simmons & William Simmons Moody Collier & Samuel Drury or any three of them (taking with them a surveyor) proceed to make partition and division of the lands whereof John Kirby died seized in this county into seven equal parts having regard to quality as well as quantity & thereof assign one part to William Kirby, one to Gilpha Kirby, one to Moody Kirby one to Julia Arrington the wife of Jⁿ. Arrington one to Patsy Kirby one to Elizabeth Gideon & Pamela Bell, children of Elizabeth Bell and the other seventh being the portion of Ann Kirby died divide equally between Moody Kirby, Gideon Bell and Lewis Kirby - and also divide the slaves of the said John Kirby mentioned in the bill (to wit Peter Frank Amy Fed Jimmy Rachael Cornelius Wheatthy Sarah Charles Jenny & James) into seven ~~equal~~ shares and make assignment of the s^d shares to the same persons as directed with respect to the lands except Ann Kirbys share or part of the s^d slaves which they are to divide equally between William Kirby Moody Kirby Gilpha Drake & Gideon Pamela & Elizabeth Bell agreeable to the last will & Testament of Ann Kirby died, but if a division of the slaves of Ann Kirby cannot be made in kind the commissioners are hereby directed to make sale of her share thereof at public auction on a credit of 12 months (taking bonds with sufficient securities payable to the parties for their respective proportions & divide the proceeds ~~agreeable~~ as is directed with respect to the slaves of Ann Kirby above mentioned and it is further

decree & orderd that the defendant William Kirby
bring the negro James in the bill mentioned into holch
pot or that he account with the Commissioners for his
value — and that the Commissioners make report of
their proceedings in order to a final decree

Teste

Samuel Kello Esq
(11)

Kirby vs

vs

Kirby vs

} Decree

Sept. 1798
3

Kirby de
no } Decree de
Kirby }

Southampton county. August Term 1799

William Drake & Zephra his wife
John Worington & Julia his wife
Moody Kirby, Patsy Kirby dec'ds, Kirby
Gideon Elizabeth & Pamela Bell children
of Elizabeth Bell who was daughter of J^r
Kirby dec'd

against

Compts

William Kirby

Def^t

In Chancery

No report having been made under a former
decree of this court in this cause it is ordered that
Daniel Butts Benjamin Kirby Thomas Butts
Charles Briggs jr and Henry Parker ~~successors of~~
~~them~~ be added to the commissioners heretofore app-
ointed to divide the estates of John Kirby & Ann Kirby
and that they or any three of them proceed without
delay either by themselves or in conjunction with
the former commissioners to carry into effect the
former decree by completing what is left unfe-
-rmed and as is directed in the decree aforesaid
& that they ~~make~~ report of their proceedings to
the ~~next court~~ in order to a final decree

Sam^l Kello D

Kirby; heirs

vs
Kirby & Subp.

Executed 20. Sept.

Robt Mabry

17 62

5 06

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6 7

The Commonwealth of Virginia, to the Sheriff of Southampton
County greeting, We command you to summon William Kirby
to appear before our Justices of our County Court of Southampton
at the Courthouse, on the third Monday of November
to answer a bill in Chancery exhibited him by William Drake &
Helpha his wife. John Arrington & Julia his wife. Moody Kirby,
Ann Kirby, Martha Kirby an infant, Pamela Bell, Gidian
Bell, & Elizabeth Bell infants, by their next James Bell and
James Bell admors of John Bell dead and this he shall in
no wise omit under the penalty of £100: And have then chose this
writ. Witness Samuel Kelso clerk of our said Court, at the Court house
the 20th day of September in the 22th. year of Commonwealth
Kelso C.

We the undersigned, Commissioners acting under an order
of Southampton court ~~have made a division of the lands~~
~~of John Kirby and agreeable thereto do make report that~~
a just division of the ^{slaves} negroes of the John Kirby ^{cannot be made} & think the
court would more justly decree ^{a sale} of them.

Moody Collier
Henry Parker
Charles Wight

We Moody Collier Charles Briggs & Henry Parker Have according to an Order
of this Court proceeded to lay of and divide the ~~estate of John Kirby dec'd~~
into seven ^{equal} parts, ~~also dividing part of Land into three parts~~
~~with more~~

Land Valued tot £ 1105. 10
157. 18. 6 $\frac{3}{4}$ each Share

Ann Kirby's tot of Land No. 1. £ 157. 18. 6 $\frac{3}{4}$
Zilpha Kirby No. 2. £ 157. 18. 6 $\frac{3}{4}$
Julia Kirby No. 3. £ 157. 18. 6 $\frac{3}{4}$
Elizabeth Gideon & Pamela No. 5. £ 157. 18. 6 $\frac{3}{4}$
Belle Children of Elizabeth
William Kirby No. 4. £ 157. 18. 6 $\frac{3}{4}$
Patsy Kirby No. 6. £ 157. 18. 6 $\frac{3}{4}$
Moody Kirby No. 7. £ 157. 18. 6 $\frac{3}{4}$
1105. 10. --

Kirtley ad 3
105
Kirtley V Report
Jan 4. 1800

Agreeable to a Decree of the Court of Southampton made
August Court 1799 We the Commissioners have divi-
ded the Real Estate of John and Ann Kirby as follows
No 1 contains 21 1/2 Acres } Beginning
and ended at

Agreement to a Deed made in Hampton Aug. 16th 1799
The Commissioners have divided the Lands of John
and Ann Kerby as follows Viz.
To Ann Kerby No. 1 contains 216 1/2 Acres Valued at £157-10-6 3/4

Zelpha Drake No. 2 --- 28 1/2 Do. --- £157-10-6 3/4

Julia Arrington No. 3 --- 61 Do. --- £157-10-6 3/4

William Kerby No. 4 --- 17 1/2 Do. --- £157-10-6 3/4

Gideon Bull No. 5 --- 195 1/2 Do. --- £157-10-6 3/4

Martha Kerby No. 6 --- 215 1/2 Do. --- £157-10-6 3/4

Moody Kerby No. 7 --- 19 1/2 Do. --- £157-10-6 3/4

No. 1 Begins at a forked Holley on the side of the Apemucsock
Swamp and is bounded by Stewart line to a Marsh Oak
thence along Benjamin Kerby's line to a pine in Robt. Goodwins
line thence along Robt. Goodwins line to a black Gum in
Foster's line thence along Foster's line to white Oak thence a
new line S. 56 E. 64 poles a cor pine, thence a new line N. 89 E. 71 p
a cor pine in Moody Kerby's line thence S. 65 E. 61 p. a pine in Zelpha
Drakes line - same course 62 poles along D. Drakes line to a
post thence N. 30 1/2 E. to the beg. Holley.

No. 2 Beginning at a post in Ann Kerby's line thence N. 65
west 62 p. a pine thence S. 74 1/2 W. 94 p. a poppinon tree, thence
along Martha Kerby's line N. 66 E. 26 p. a cor black Gum, thence
along John Arrington's line N. 30 1/2 E. to the beginning post.

No. 3 Beginning at a forked Holley on the side of the Apemucsock
Swamp in Stewart's line thence along Ann Kerby &
Zelpha Drakes lines S. 30 1/2 W. 202 p. a cor black Gum in Mar-
tha Kerby's line thence along D. Martha Kerby's line N. 77 E. 176
poles a black Gum side Apemucsock Swamp thence up a slope
to the beginning

No. 4 Beginning at a white oak side Apemucsock Swamp thence
N. 57 W. 110 p. a pine in Martha Kerby's line thence S. 74 1/2 W. 147 p. a
pine in D. Kerby's line thence along Gideon Bull's & Pampha
Bells line N. 25 E. 205 p. a pine near the Apemucsock Swamp
thence up the various courses of D. Swamp to the beginning white
oak.

No. 5 Beginning at a pine in William Kerby's line near the
Apemucsock Swamp thence S. 55 W. 205 p. a cor pine in
Martha Kerby's line thence along D. Kerby's line S. 34 1/2 W. 01
pole a red oak in Goodwins line thence S. 2 W. 71 p. a black Gum
in Himes line thence along Himes line to a red oak
in Himes line thence along Himes line to a Sassafras
at the side of the Apemucsock Swamp thence up D. Swamp
the various courses to the beginning pine.

No. 6 Beginning at a black Gum side the Apemucsock Swamp
in John Arrington's line S. 71 W. 176 p. a cor black Gum in Zelpha
Drakes line thence N. 56 W. 27 p. a poppinon in Moody Kerby's
line thence S. 76 W. 150 p. a black Gum in thence along R.
Goodwins line to a red oak in Gideon Bull's line
thence along Bells line N. 34 1/2 E. 01 pole a pine same course
along William Kerby's line 147 p. a pine, thence S. 57 E. 110 p. a white
oak side the Apemucsock Swamp thence up D. Swamp to the beg. black
Gum

No. 7 Beginning at a black Gum in R. Goodwins line thence N. 67 E.
160 p. a poppinon in Martha Kerby's & Zelpha Drakes line thence N.
17 E. 92 p. a pine in Ann Kerby's line thence N. 65 W. 05 pole a pine, thence
S. 99 W. 72 pole a pine thence N. 56 W. 64 p. a white oak in Foster's line
thence along Foster's line to a cor pine thence N. 62 W. 92 p. a
red oak in Edwin Simmans's, thence along Simmans's

Wm. S. Cummings have also divided
An Kerby into 3 parts

To Gidian Bell N^o 1 contains 52 1/2 Acres L^{52-12-10 1/4}

To Lewis Kerby N^o 2 contains 02 D^o L^{52-12-10 1/4}

To Moody Kerby N^o 3 contains 02 D^o

L^{52-12-10 1/4}

to a Gum in Rot. Goodwins line thence N. 25 E 35 P.
~~thence a new line on Martha Kerby to the big Gum~~

Beginning at a pin in Stewarts line thence along a
new line L³⁶ to a cor white oak ~~thence~~ in Moody Kerby line
thence along S. Kerby's line to a pin in Zephra Drakes then
along Drakes to a cor post in John Springtons line then
along Springtons line to a forked Holley in Stewarts
line thence along Stewarts line to the big?

Big? at a spanish oak in Stewarts line thence
along ~~Stewarts~~ line to a pin in Benjamin Kerby's
line thence a new line L⁴⁴ to a cor white oak in
Moody Kerby's line thence along Kerby's line to a cor
white oak in Gidian Bells line thence along Bells line
to the big?

Big? at a pin in Ben Kerby's line thence along Kerby's
line to a pin in Goodwins line thence along Good
wins line to a white oak in Fosters line thence
along Fosters line to a white oak in Lewis Kerby's
line thence along S. Kerby's line N. 44 E. to the big?

Charles Briggs Jr.
Genny Parker
Moody Collier

In the Name of God Amen, I Anne Kirby of South-
ampton County, being Sick and weak in body, but of perfect
sense & memory, thanks be given to Almighty God there-
fore I do make & ordain this my last Will and Testament
in manner as followeth — first and principally I
bequeath my Soul into the Hands of Almighty God my Cre-
ator, and Jesus Christ my Redeemer fully trusting
in his merits for remission of all my sins, and for
what estate God hath blessed me with in this life, I
do dispose of, as is hereafter express'd — Secondly I
bequeath my part of Land to be equally divided between
Moody Kirby, Gideon Bell & Lewis Kirby. — Thirdly; I
give and bequeath the bond I have against my Father's
estate to Gideon Bell — Fourthly; I give and bequeath
my Part of Negroes, and also the money arising from the
Account of Sales to be equally divided between my brothers
& Sisters, William Kirby, Moody Kirby, Gilphy Drake,
Gideon, Pamela, & Elizabeth Bell. — Fifthly; I give
and bequeath to Pamela Bell my Bed Furniture
Sixthly — I give and bequeath to Pamela Bell
& Elizabeth Bell, my share between them —
Seventh. I give and bequeath my Clothes, one half to my
Sister Gilphy Drake; the other half to Pamela and
Elizabeth Bell. — Eighthly — I give and bequeath
to my Sister Gilphy Drake, one half dozen Silver
Tee Spoons. — Ninthly. I give and bequeath to Pa-
mela Bell, my silver Shoe buckles & Pin cushion chain
and the remainder except one share to be equally
divided between the above mentioned

Truly. Bequeath my Trust to Eliz. Bell -
I desire that alldoy fullier may be my Executor
of this my last Will and Testament -

Signed, Sealed
In presence of

Ann Kirby Seal

Nicholas Williams
Silas Kirby
James Bell

At a Court held for the County of Southampton the 21st
day of May 1798. This Will was produced in Court
by the oaths of Nicholas Williams, Silas Kirby,
& James Bell the witnesses thereto and
ordered to be recorded - Upon the motion
of James Bell, (The Executor therein named
refusing to take upon himself the burthen of
the Execution thereof) ~~James Bell~~ who
made oath according to Law, Administration
with the Will annexed is granted him, giving
Security whereupon &c

J. W. Wells

A true Copy
teste

J. W. Wells

Ann Kirby

Wills

Copy for

A. C. Cooke