

1844-015 SOUTHAMPTON COUNTY  
CHANCERY PAPERS

KINDRED

VS. BARHAM

S/1844

18 D. 9

Kindred

v. } Papers

Warham

1841 Sept. Bill filed Sp<sup>a</sup> aw<sup>d</sup>?

" Oct. Sp<sup>a</sup> ret<sup>d</sup> not found & new Sp<sup>a</sup> aw<sup>d</sup>?

" Dec<sup>r</sup> Answer filed Gen. Rep. &c

1842 Febr. Set for hearing

" Apr<sup>l</sup>. Decree for account.

" Oct. Count<sup>d</sup> & or: for account to be as<sup>d</sup> by a leave of the Court

1843 Apr<sup>l</sup>. Count<sup>d</sup>?

" Sep. 29<sup>th</sup> Report

" Oct. Report reannounced

1844 May. Decree

Colk. \$12.88

Shff. 1.50

Law... 92.00

Law... 16.66

Tax... 75

\$ 122.79

Hindred  
vs  
Barham  
Compt  
Report

1843 September 29<sup>th</sup>

for \$2.33

Douglas Ky.

Kindred  
as  $\frac{3}{4}$  Bill.  
Barham

1841 <sup>Est.</sup> ~~1841~~ 184

To the Hon. Richard A Baker Judge of the Cir. Spr.  
Court of Van & Chi. in and for the County of Southampton  
Humbly complaining sheweth unto yr honour  
Your Orator Henry Kindred, that, on or about the —  
day of — your Orator, and one Jesse S Barham  
entered into a verbal agreement to become joint dea-  
lers and Co-partners in trade as merchants in  
dry goods, ~~house~~ <sup>hardware</sup> &c in the town of Jerusalem;  
and to divide the profits and sustain the losses  
arising therefrom into equal shares & proportions  
And your Orator further sheweth unto yr honour  
that in pursuance of the said agreement the said  
stock of dry goods, groceries, hardware, &c was purcha-  
sed, and your Orator paying the moiety of the expense  
and cost; and your Orator further sheweth unto  
your honour, that during the continuance of the said  
business, co-partnership and trade, between your  
Orator and the said Jesse S Barham, the said  
Jesse S Barham was the principal acting person  
concerned in the said business, and your Orator  
entrusted him with the receipt of all the money aris-  
ing therefrom, by means whereof the said Barham  
had received a very large sum of money beyond  
his share of the profits of the said joint trade or  
business; and the said Jesse S Barham acted so con-  
-trary to the true intent of himself & yr Orator as Co-  
-partners together, that your Orator was compelled  
to put an end to the said Co-partnership: Your  
Orator moved also shew unto your Honour that after the  
dissolution of the said Co-partnership, that there was  
an express understanding between your Orator and the  
said Jesse S Barham, that such of the stock of goods  
as remained on hand should be sold at public  
auction & the proceeds arising from such sale should  
be entered upon the Partnerships books for the  
benefit of the said Partners; yet so it is, the said  
Jesse S Barham did after this express agreement

a part of  
proceed to sell privately, the said goods; and ~~had~~  
not enter on the Partnership books the amount of  
such sale, nor has he accounted with your orator  
for the money arising from such sale; and your  
orator has at other times, frequently, and in a friend-  
ly manner, requested the said Jeph & Berham to  
come to a fair and just account, for all the monies  
which he hath from time to time received by and  
from the said joint trade & business, and to pay  
and satisfy unto your orator one moiety, or half part  
thereof: but now so it is, that the said Jeph & Ber-  
ham absolutely refused to comply with such your  
orator's request; sometimes giving out and pre-  
tending he hath, from time to time, delivered in  
fair & just accounts of all the monies received and  
spent by him for or on account of the said business  
and that your orator hath received one full half-  
part or share of the clear profits arising from the  
said trade or business, the contrary whereof your  
orator expressly charges to be true. All of which actions,  
doings & pretences are contrary to equity and good  
conscience and tend to the manifest injury &  
wrong of your orator in the premises; and therefore  
your orator prays your Honour that the said Jeph  
& Berham may answer this bill, and that the said  
Berham may set forth a full, true and particular  
account of all and every the sum & sums of money  
which he, or any person by his order, or for his use, has  
received in respect of the said Partnership; and that  
an account may be taken under the direction of  
this honourable Court of all the aforesaid Partner-  
ship dealings & transactions; and that the said  
Defendant may be compelled by a decree of this  
honourable Court, to come to a fair and just account  
with your orator for all and every the sum and  
sums of money which have or hath been received  
by the said defendant or by any other person

or persons by his order, or for his use by or from the said  
joint trade or business; and that the said Defen-  
-dant may set forth & declare, what sum or sums  
of money has received by him from the period  
of the dissolution of the said business & Co-partnership  
until the final sale of the remaining stock of  
goods at auction; and which sums of money have  
not been accounted for: And that your Honour  
would grant to your orator the Com: Mit of Affidavit  
to be directed to & commanding the said Defendant  
to stand to and abide by the decree of this Honour-  
-able Court: And that your Honour would grant to your orator  
such other further & general relief as to your Hon-  
-our may seem just & right & which may be consistent  
with the rules of this hon: Court; and your orator  
for your Honour will pray &

Doreglas P. J.

Kindred  
or  
Bachman } Insure.

440 word 41  
Filed October 25 1841

The Answer of Jesse S. Barham to The  
Bill of Complaint exhibited against  
him by Henry Kindred -

To the Hon<sup>ble</sup>. R. H. Baker Judge &c.

Your Respondent saving and reserving to  
himself all benefit of just & exception to the  
many errors, uncertainties and insufficiencies in  
the Compt's bill contained. For answer thereto, or  
unto so much thereof as he is advised it is at  
all material for him to answer. Answering -  
says, that it is true, that he entered into a  
copartnership with the Compt for the purpose  
of establishing and carrying on the merchantile  
business in the town of Jerusalem and that he  
was the principal acting partner. But he posi-  
tively denies having received more than his just-  
proportion of the profits, after paying the debts  
of the establishment. On the contrary he avers  
that he is prepared to show upon a fair settlement  
of the accounts, that the Compt will be found  
indebted to your Respondent on account of  
advancements to and purchases made by the Compt  
on his own account, And your Respondent believes  
that a knowledge of this fact has put it out of  
his power to make a settlement with the Compt.  
Your Respondent, avers, that he is justified in this  
belief, from the fact of his having at the instance  
of the Compt prepared ballance sheets shewing the  
condition of the business, and exhibited the same to the  
Compt for a settlement, after sd ballance sheets had  
been examined and reported to be correct by the clerks of the  
store who had the books before them as a guide, yet  
your Compt pretended not to be satisfied and  
refused to settle by them, without an attempt on his  
part to falsify the same in any particular.

As regards the other allegations of the bill, your  
Respondent denies them generally and demands  
proof of their correctness - He has no objections  
to the account's being ordered which is prayed  
for by the Compt's bill, his books are ready for  
an inspection and will be laid before a Commissioner  
of the Court whenever directed so to do, as he  
is as anxious for a final settlement as the  
Compt can properly be. and having  
answered the Prays to be here dismissed with  
his reasons the costs by him in this behalf  
expended -

Resdlyt Goodwyn for Defr

Southampton County to wit.

This day Jeph S. Burham personally  
appeared before me a (J.P.) for the County  
aforesaid and made oath that the above return  
contains the truth, according to the best of his  
knowledge and belief - Given under my  
hand and seal this 23 day of October 1841.

N. M. Odell J.P.

Knicker }  
" } Henry  
Barham }

To be entered

R. H. B.

Kindred }  
as } In chancery  
Barkham }

Vi Sup. Court. N. Hampton

This cause came on to be heard upon  
the bill, answer and application thereto, and was  
argued by counsel. The consideration whereof  
the court doth order that the defendant send  
before <sup>John M. Gurley, a'cquies.</sup> ~~the court~~ <sup>specifically appointed for that purpose</sup> an account of  
the partnership in the bill mentioned  
who is directed to examine, state, and  
settle the same, and make report thereof  
to court with any matters specially stated  
deemed pertinent by himself or which  
may be required by either party to be  
so stated.

Kindred  
& Co. Deere  
Barham

Notice to the 22<sup>nd</sup> August  
next. issued June 12/1872

At a Circuit Superior Court of Law &  
Chancery held for the County of Southampton the  
6<sup>th</sup> day of April 1842.

Henry Hindred  
Against  
Jesse S Barkham

Deft }  
Deft }

This cause came on to be heard upon the bill, answer and replication thereto and was argued by Counsel. On consideration whereof ~~whereof~~ the Court doth order that the defendant under before John W Gurley, a Commissioner specially appointed for that purpose on account of the partnership in the bill mentioned. who is directed to examine & state and settle the same and make report thereof to Court with any matters specially stated deemed pertinent by himself or which may be required by either party to be so stated.

And now at another day to wit

At a Circuit Superior Court of Law and  
Chancery held for the County of Southampton  
the 3<sup>rd</sup> day of November 1842.

By Consent of parties so much of the order of April Term 1842 as refers the Accounts in this case to John W Gurley Special Commissioner is set aside And it is ordered that the aforesaid order be executed by a commissioner of this Court.

Copy.

Teste. J. R. Edwards 1842

Hundred  
to  
Barhan } Dozer

To be entered

R H B.

1843 Oct. Term

Thirsdred  
i  
Barham } Decree

This day this cause came on again to be heard on the papers formerly read, and the report of the commissioner and the court expressing no opinion as to said report; by consent of parties, doth order that the said report be recommitteed to the said Commissioner, for reexamination and resettlement; who is hereby directed, to state, settle and report the same together with any matters deemed pertinent by himself, or which may be required to be stated by the parties -

15  
Kindred

v. } Copy. Order

Warham

Southampton Circuit Superior Court November the 20<sup>th</sup> 1845.

Henry Kindred

Plff

against  
Jesse G. Barham

Def.

In Chancery

This day this cause came on again to be heard on the papers formerly read and the report of the Commissioner, and the Court expressing no opinion as to said report. By consent of parties, doth order that the said report be remitted to the said Commissioner for re-examination and settlement, who is hereby directed, to state, settle and report the same together with any matters deemed pertinent by himself or which may be required to be stated by the parties.

Attest

Date

L. R. Edwards Clk

76 entered

2 } Decem

Burham

To be entered

R.H. 13

1842, May Term

Thindred  
i }  
Burham } Decree

This cause came on again to be heard on the papers formerly read, together with the reformed report of Commr. Cobb, made pursuant to the order of November term 1843 & the exceptions <sup>thereto</sup> ~~and application thereto~~, and was argued by counsel. On consideration whereof the Court, <sup>overruling the said exceptions</sup> ~~doth overrule the exceptions~~ and confirming the said reformed report of the Commr., and doth further order adjudge and decree that the defendant Jesse S. Burham pay to the plaintiff Henry Thindred the sum of three hundred eighty three dollars and nine cents with <sup>interest</sup> ~~but~~ from the 31<sup>st</sup> May 1839. till paid together with the costs of this suit.

Kindred

to { Sp<sup>rs</sup> in l<sup>ty</sup> }

Berkham

1841. August Term

Dougl:

Specified by delivering  
A true copy to  
Berkham  
W. L. Seabrook Dr of  
The Pittman staff

**THE COMMONWEALTH OF VIRGINIA,**

*To the Sheriff of Southampton County, Greeting:*

We command you that you summon

*Jose S Warham*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *August* next, to answer a Bill in Chancery exhibited against *him* in the said Court by

*Henry Kindred*

And unless *he* shall answer the said Bill within <sup>*two*</sup> ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *1<sup>st</sup>* day of *July* 18*41*, in the *15<sup>th</sup>* year of the Commonwealth.

*L R Edwards*

[One Copy to be delivered each Defendant.]

656

Thridred

n {Spa. in Chy.

Burham

30 October Rules 1841.

Not found

~~Cope Drawing up~~  
~~Chas. Bellow suff~~

**THE COMMONWEALTH OF VIRGINIA,**

*To the Sheriff of Southampton County, Greeting:*

We command you that you summon

*Jose I Barham*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *October* next, to answer a Bill in Chancery exhibited against *him* in the said Court by

*Henry Knicker*

And unless *he* shall answer the said Bill within <sup>*ten*</sup> ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *6* day of *September* 18*91*, in the *66<sup>th</sup>* year of the Commonwealth.

*L R Edwards*

[One Copy to be delivered each Defendant.]

c

656

Kindred

v } Sp. in Chy

Barham

1841 November Rules

Executed by delivering  
a true copy Oct. 9/1841

Wm. C. Brown

Wm. C. Brown

**THE COMMONWEALTH OF VIRGINIA,**

*To the Sheriff of Southampton County, Greeting:*

We command you that you summon

*Jesse S. Durham*

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in *November* next, to answer a Bill in Chancery exhibited against *him* in the said Court by

*Henry Kindred*

And unless *he* shall answer the said Bill within <sup>*two*</sup> ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this *he* shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the *4<sup>th</sup>* day of *October* 18*81*, in the *66<sup>th</sup>* year of the Commonwealth.

*L R Edwards ds*

[One Copy to be delivered each Defendant.]

J. T. Juddins  
affidavit

John T. Judkins Clerk for the firm  
of Berkham & Kindred, states that the cash  
items included in the individual act  
of J. T. Berkham were credits on the  
acts of persons, who were indebted to the  
firm, some of them certainly were, but as  
to others, some of the smallest of the items  
he could not state positively - That all  
the goods taken out by B. & K. Berkham and  
Charles Berkham peddlers, had 15% added  
to their cost, when taken out; and that  
as much of them as were returned re-  
-sold were credited to them at cost;

John T. Judkins

Personally appeared before me a Justice  
of the peace, John T. Judkins and made  
oath that the above statement contains  
the truth, as far as he knows and believes  
to ever under my hand this 2<sup>d</sup> Nov-  
1845

James D. Boyant J. P.

Charles Boham

affidavit

Charles W. Berkham states that goods belonging to the firm of Berkham & Co. were placed in his hands as a pedler, and that he received the said goods with 15 per cent. added to their cost, and that when he returned the goods which were resold 15 per cent. were taken off the goods returned.

This day personally appeared before me and made oath that the facts above stated are true - Given under my hand this 20<sup>th</sup> Nov: 1843 -

G. W. Sturges J. P.

Kindred  
vs  
Barham

In Chancery

The parties with John Jenkins a witness attended before the Commr. agreeably to notice on the 22<sup>d</sup> day of August 1843. The defendant delivered the Commr. all the books belonging to the firm, and John Jenkins stated they had been kept by himself, and he believed they were correct.

The Commr. found several errors in the balance sheets and in the postings, and after a most labourous investigation, he finally concluded to take the ledger, and draw off all the accounts as they stood posted up for goods sold, then from the same book give credit for all the goods purchased; and in this form he has made his statement by way of report.

Henry Kindred plaintiff

In account with Jesse J Barham acting Partner

| 1836 |                                     |   | Page |         |
|------|-------------------------------------|---|------|---------|
|      | To Mills Sumner acct for goods sold |   | 4    | 23 00   |
|      | " L. Beaman                         | " | 5    | 35 83   |
|      | " M. Barham                         | " | "    | 2 98    |
|      | " C. D. Barham                      | " | "    | 47 15   |
|      | " J. W. Parker.                     | " | 6    | 32 88   |
|      | " ditto                             | " | "    | 106 23  |
|      | " D. H. Drongood                    | " | "    | 12 60   |
|      | " T. C. Jones                       | " | 7    | 107 23  |
|      | " A. M. Sebrell                     | " | 8    | 143 03  |
|      | " E. Batts                          | " | 9    | 58 33   |
|      | " J. H. Barham                      | " | 10   | 128 41  |
|      | " J. H. & A. M. Sebrell             | " | 11   | 12 38   |
|      | " J. Williams                       | " | "    | 2 25    |
|      | " J. Thorp                          | " | "    | 12 63   |
|      | " E. Polkinhorn                     | " | 12   | 21 17   |
|      | " C. Barham                         | " | "    | 130 00  |
|      | " A. O'Leary                        | " | 13   | 13 52   |
|      | " T. N. Story                       | " | "    | 12 25   |
|      | " do                                | " | "    | 6 39    |
|      | " H. Blow                           | " | 14   | 2 11    |
|      | " J. Drewary                        | " | "    | 23 52   |
|      | " M. Rockwell                       | " | "    | 147 22  |
|      | " B. W. Barham                      | " | 15   | 1894 55 |
|      | " ditto                             | " | "    | 2199 46 |
|      | " ditto                             | " | 16   | 282 20  |
|      | " J. J. French                      | " | 17   | 42 42   |

Continued forward

1836

Brought forward  
To A. H. Nicholson acct for goods sold

|                 |   |    |      |    |
|-----------------|---|----|------|----|
| " J. Joiner     | " | 17 | 46   | 73 |
| " M. Sumner     | " | 18 | 10   | 00 |
| " E. E. Briggs  | " | "  | 16   | 63 |
| " H. Kinsaid    | " | "  | 25   | 89 |
| " J. J. Barham  | " | 19 | 574  | 00 |
|                 |   | 20 | 814  | 09 |
|                 |   |    | 6984 | 90 |
| " M. Cook       | " | 21 | 11   | 31 |
| " ditto         | " | "  | 3    | 00 |
| " J. H. Sanier  | " | "  | 59   | 09 |
| " A. Stephenson | " | 22 | 29   | 00 |
| " D. Butte      | " | "  | 23   | 40 |
| " J. C. Reese   | " | 23 | 53   | 04 |
| " A. C. Jones   | " | "  | 96   | 70 |
| " D. Godwin     | " | 24 | 327  | 18 |
| " W. A. Spark   | " | 25 | 50   | 45 |
| " E. Thomas     | " | 26 | 24   | 25 |
| " A. M. Delt    | " | "  | 4    | 50 |
| " E. Halcomb    | " | 27 | 8    | 51 |
| " L. H. Waller  | " | "  | 10   | 44 |
| " B. Applewhite | " | "  | 11   | 25 |
| " J. Doyle      | " | 28 | 31   | 94 |
| " M. Doyle      | " | "  | 30   | 39 |
| " J. J. Porter  | " | 29 | 8    | 26 |
| " W. D. Hood    | " | "  | 16   | 52 |
| " E. Butts      | " | 30 | 15   | 91 |
| " C. Joiner     | " | "  | 101  | 95 |
| " A. H. Darby   | " | 31 | 3    | 00 |
| " J. J. Barham  | " | "  | 128  | 85 |
| " W. Simmons    | " | 32 | 23   | 23 |
| " J. Vick       | " | "  | 20   | 58 |
| " J. Futrell    | " | 33 | 129  | 33 |
| " M. Jones      | " | 34 | 42   | 82 |
| " A. Joiner     | " | "  | 4    | 50 |
| " J. Coth       | " | 35 | 69   | 35 |
| " J. Polkinhorn | " | 36 | 20   | 37 |
| " H. Strong     | " | "  | 53   | 14 |
| " J. Barnes     | " | "  | 75   |    |
|                 |   |    | 8397 | 39 |
| " M. E. Nickles | " | 37 | 56   | 60 |
| " H. Joiner     | " | 38 | 60   | 61 |
| " J. W. Newton  | " | 39 | 20   | 34 |
| " C. Stephenson | " | "  | 16   | 14 |
| " W. Plythe     | " | "  | 14   | 15 |

Can forward

\$8565 23

Amount brought forward  
To T. R. Beale acct for goods sold

|                   |   |    |      |    |
|-------------------|---|----|------|----|
| " R. Nickles      | " | 39 | 15   | 50 |
| " J. T. Beale     | " | 40 | 58   | 28 |
| " E. Woodard      | " | 41 | 39   | 75 |
| " M. Wallace      | " | 42 | 128  | 53 |
| " N. Mumford      | " | 43 | 1    | 00 |
| " E. Waller       | " | "  | 2    | 13 |
| " D. Bap          | " | 44 | 3    | 56 |
| " J. Joiner       | " | 45 | 3    | 31 |
| " M. Williams     | " | "  | 2    | 09 |
| " A. Wallace      | " | 46 | 5    | 63 |
| " M. Williams     | " | "  | 11   | 67 |
| " L. R. Gardner   | " | 47 | 12   | 96 |
| " W. Myrick       | " | "  | 1    | 50 |
| " J. Drake        | " | 48 | 2    | 00 |
| " H. Blow         | " | "  | 20   | 53 |
| " J. M. Ponce     | " | 49 | 29   | 94 |
| " W. M. McGlenery | " | 50 | 20   | 77 |
| " W. Worrell      | " | "  | 4    | 50 |
| " E. Drake        | " | 51 | 8    | 62 |
| " R. Porter       | " | "  | 63   |    |
| " A. Myrick       | " | 52 | 88   |    |
| " J. Barham Junr  | " | "  | 50   |    |
| " J. Barham Junr  | " | 53 | 19   | 31 |
| " L. Joiner       | " | "  | 13   | 11 |
| " J. Muddaugh     | " | 54 | 3    | 50 |
| " J. Vick         | " | "  | 2    | 50 |
|                   |   | 55 | 42   | 55 |
|                   |   |    | 9082 | 59 |
| " J. Peale        | " | "  | 10   | 89 |
| " E. Butts        | " | 56 | 25   |    |
| " A. M. Williams  | " | "  | 38   | 77 |
| " R. Halcomb      | " | 57 | 129  | 49 |
| " B. Coth         | " | 58 | 54   | 02 |
| " L. P. Nicholson | " | 59 | 97   | 60 |
| " A. Pope         | " | "  | 5    | 00 |
| " J. M. Garley    | " | 60 | 32   | 09 |
| " T. Puttens      | " | 61 | 119  | 49 |
| " R. Barker       | " | 62 | 2    | 46 |
| " W. Judkins      | " | 63 | 52   | 46 |
| " G. Abbott       | " | 64 | 18   | 25 |
| " J. Pope         | " | "  | 9    | 34 |
| " J. C. Turner    | " | 65 | 40   | 83 |
| " J. Davis        | " | 66 | 75   |    |
| " J. Barham       | " | "  | 18   | 58 |

Can forward

| Amount brought forward              |   |   | page |     |       |
|-------------------------------------|---|---|------|-----|-------|
| To J. J. Newcom acct for goods sold |   |   | 67   | 29  | 82    |
| " W. S. Williams "                  | " | " | "    | 10  | 20    |
| " G. J. Jenkins "                   | " | " | 68   | 33  | 27    |
| " M. J. Whitney "                   | " | " | 69   | 26  | 39    |
| " Cobb & Rochelle "                 | " | " | "    | 9   | 86    |
| " J. Doyle "                        | " | " | 70   | 9   | 35    |
| " J. Davis "                        | " | " | "    | 1   | 00    |
| " L. R. Edwards "                   | " | " | 71   | 77  | 81    |
| " T. J. Pattow "                    | " | " | 72   | 23  | 14    |
| " A. Westbrook "                    | " | " | 73   | 34  | 52    |
| " A. Obery "                        | " | " | "    | 18  | 31    |
| " E. Turner "                       | " | " | 74   | 17  | 6     |
| " A. Obery "                        | " | " | "    | 1   | 83    |
| " J. Taylor Jr "                    | " | " | "    | 2   | 25    |
| " A. Simmons "                      | " | " | 75   | 10  | 57    |
| " B. W. Waller "                    | " | " | 76   | 5   | 06    |
| " P. H. Rawlins "                   | " | " | "    | 23  | 85    |
|                                     |   |   |      | 100 | 34 85 |
| " J. McElenny "                     | " | " | 77   | 7   | 48    |
| " W. Matting "                      | " | " | 78   | 1   | 25    |
| " W. Butts "                        | " | " | 79   | 24  | 47    |
| " M. Griffin "                      | " | " | 82   | 28  | 66    |
| " T. F. Hughes "                    | " | " | 83   | 19  | 04    |
| " J. Pope "                         | " | " | "    | 11  | 38    |
| " J. B. Bryant "                    | " | " | "    | 14  | 66    |
| " C. Rochelle "                     | " | " | 85   | 19  | 57    |
| " E. Fleming "                      | " | " | "    | 11  | 81    |
| " A. Drewry "                       | " | " | 84   | 9   | 75    |
| " W. E. Beale "                     | " | " | 86   | 9   | 63    |
| " J. T. Westbrook "                 | " | " | "    | 10  | 69    |
| " R. Scott "                        | " | " | 87   | 61  | 70    |
| " E. Underwood "                    | " | " | "    | 80  |       |
| " A. R. Gardner "                   | " | " | 88   | 25  | 44    |
| " J. Griffin "                      | " | " | "    | 9   | 23    |
| " D. R. Harrison "                  | " | " | 89   | 33  | 16    |
| " A. P. Briggs "                    | " | " | "    | 13  | 38    |
| " R. Drewry "                       | " | " | 90   | 42  | 57    |
| " J. Williams "                     | " | " | "    | 15  | 38    |
| " L. P. Nicholson "                 | " | " | 91   | 48  | 89    |
| " ditto Guardian "                  | " | " | 92   | 45  | 93    |
| " G. A. C. Parham "                 | " | " | 93   | 17  | 18    |
| " J. Hines "                        | " | " | "    | 19  | 42    |
| " Doctr Coker "                     | " | " | 94   | 10  | 00    |
| " A. Adams "                        | " | " | "    | 1   | 0     |
| " C. Bryant "                       | " | " | 95   | 7   | 63    |
| Can forward                         |   |   |      | 105 | 83    |

| Amount brought forward        |   |   | page |     |    |
|-------------------------------|---|---|------|-----|----|
| To Bryant acct for goods sold |   |   | 95   | 38  | 08 |
| " Mr Hart "                   | " | " | 96   | 6   | 38 |
| " R. Mabry "                  | " | " | "    | 18  | 85 |
| " A. Griffin "                | " | " | 97   | 56  | 43 |
| " G. Whitney "                | " | " | "    | 21  | 10 |
| " W. Coker "                  | " | " | 98   | 48  | 79 |
| " J. Williams "               | " | " | "    | 1   | 00 |
| " J. B. Hines "               | " | " | 99   | 53  | 55 |
| " E. Butts "                  | " | " | 100  | 62  | 97 |
| " J. D. Bryant "              | " | " | "    | 72  | 94 |
| " J. Drewry "                 | " | " | 102  | 93  |    |
| " G. L. Simmons "             | " | " | "    | 23  | 67 |
| " W. Williford "              | " | " | 105  | 25  |    |
| " J. Cobb "                   | " | " | "    | 1   | 38 |
| " M. Pope "                   | " | " | 103  | 4   | 82 |
| " M. Denegre "                | " | " | "    | 30  | 45 |
| " J. James "                  | " | " | 104  | 23  | 18 |
| " B. Davis "                  | " | " | 106  | 2   | 13 |
| " W. Rochelle "               | " | " | "    | 3   | 00 |
| " D. Tills "                  | " | " | 107  | 19  | 44 |
| " D. W. Simmons "             | " | " | "    | 6   | 99 |
| " E. Gardner "                | " | " | 108  | 3   | 50 |
| " J. Vick "                   | " | " | "    | 25  | 65 |
| " A. P. Nicholson "           | " | " | 109  | 1   | 50 |
| " E. Coker "                  | " | " | "    | 14  | 42 |
| " E. J. Williams "            | " | " | 110  | 1   | 50 |
| " E. Joener "                 | " | " | "    | 15  | 25 |
| " J. W. Turner "              | " | " | 111  | 27  | 70 |
| " A. Rochelle "               | " | " | 112  | 2   | 66 |
|                               |   |   |      | 111 | 94 |
| " J. T. Jenkins "             | " | " | 112  | 19  | 50 |
| " J. M. Gurley "              | " | " | 113  | 17  | 44 |
| " A. B. Vaughan "             | " | " | "    | 120 | 41 |
| " W. C. Parker "              | " | " | 114  | 88  |    |
| " J. C. Newcom "              | " | " | "    | 6   | 34 |
| " A. Horn "                   | " | " | 115  | 1   | 07 |
| " Jas A Turner "              | " | " | "    | 11  | 51 |
| " J. Simmons "                | " | " | 116  | 53  | 06 |
| " B. Simmons "                | " | " | "    | 4   | 26 |
| " J. Drewry "                 | " | " | 117  | 25  | 65 |
| " Jones & Webb "              | " | " | "    | 172 | 41 |
| " R. Barnes "                 | " | " | 118  | 21  | 13 |
| " G. Plant "                  | " | " | "    | 57  | 96 |
| " W. C. Beale "               | " | " | 119  | 11  | 00 |
| Can forward                   |   |   |      | 105 | 83 |

| Amount brought forward           |   | page | \$ | ¢  |
|----------------------------------|---|------|----|----|
| To W. Kitchen and for goods sold |   | 119  | 5  | 72 |
| " J. L. Barham "                 | " | 120  | 5  | 00 |
| " J. Griggard "                  | " | "    | 2  | 74 |
| " R. Darden "                    | " | 121  | 12 | 19 |
| " J. Barham "                    | " | "    | 1  | 98 |
| " W. Thomas "                    | " | 122  | 5  | 20 |
| " D. Waller "                    | " | "    | 15 | 75 |
| " A. Pope "                      | " | 123  | 1  | 50 |
| " J. Pope "                      | " | "    | 51 | 95 |
| " Jones Sebrile & Co             | " | 124  | 3  | 75 |
| " A. Mabry "                     | " | "    | 10 | 56 |
| " M. James "                     | " | 127  | 4  | 41 |
| " C. Waller "                    | " | "    | 3  | 97 |
| " J. Kello "                     | " | 128  | 16 | 99 |
| " J. R. Williams "               | " | "    | 5  | 75 |
| " A. Williams "                  | " | 126  | 8  | 09 |
| " R. Hitt "                      | " | "    | 21 | 00 |
| " J. Clayton "                   | " | 129  | 24 | 64 |
| " J. Ellsworth "                 | " | "    | 13 | 45 |
| " M. Ellis "                     | " | 122  | 19 | 30 |
| " J. Little "                    | " | 130  | 5  | 75 |
| " W. Briggs "                    | " | "    | 3  | 00 |
| " S. M. Ford "                   | " | 131  | 7  | 5  |
| " B. Ellis "                     | " | "    | 21 | 69 |
| " J. Council "                   | " | 132  | 2  | 92 |
| " W. & E. Harrison "             | " | "    | 4  | 00 |
| " E. Brantly "                   | " | 133  | 16 | 42 |
| " J. Polkenhorn "                | " | "    | 16 | 75 |
| " J. R. Butts "                  | " | 134  | 5  | 60 |
| " J. S. French "                 | " | "    | 7  | 56 |
| " T. Johnson "                   | " | 135  | 48 | 86 |
| " W. C. Gray "                   | " | "    | 10 | 36 |
| " A. Branch "                    | " | 136  | 7  | 47 |
| " F. Jordan "                    | " | "    | 4  | 64 |
| " T. Calcut "                    | " | 139  | 6  | 00 |
| " P. Dole "                      | " | "    | 2  | 25 |
| " B. Devany "                    | " | 137  | 6  | 82 |
| " J. W. Russ "                   | " | "    | 13 | 27 |
| " W. Whithead "                  | " | 138  | 5  | 25 |
| " A. Moore "                     | " | "    | 9  | 63 |
| " A. Oberg "                     | " | 140  | 1  | 13 |
| " B. F. Wall "                   | " | "    | 32 | 68 |
| " W. W. Jones "                  | " | 141  | 1  | 25 |
| Can forward                      | " | "    | 9  | 42 |

| Amount brought forward        |   | page | \$ | ¢  |
|-------------------------------|---|------|----|----|
| To R. Blyhe purchase of goods |   | 142  | 2  | 19 |
| " W. Nicholson "              | " | "    | 5  | 13 |
| " J. Lane "                   | " | 143  | 8  | 1  |
| " R. E. Barnes "              | " | "    | 17 | 46 |
| " G. Gardner "                | " | 144  | 12 | 75 |
| " S. James "                  | " | "    | 5  | 10 |
| " S. Channel "                | " | 145  | 1  | 05 |
| " T. Knight "                 | " | "    | 9  | 5  |
| " S. Briggs "                 | " | 146  | 10 | 19 |
| " J. Whithead "               | " | 123  | 78 | 43 |
| " M. Pope "                   | " | "    | 2  | 69 |
| " D. Butts "                  | " | 147  | 5  | 0  |
| " E. F. Reddick "             | " | 148  | 15 | 80 |
| " A. R. Thomas "              | " | 146  | 7  | 35 |
| " T. Magist "                 | " | "    | 6  | 75 |
| " T. Everett "                | " | 147  | 4  | 28 |
| " S. Thorpe "                 | " | "    | 2  | 00 |
| " W. J. Sebrile "             | " | 148  | 4  | 5  |
| " J. James "                  | " | "    | 28 | 36 |
| " W. Cothran "                | " | 149  | 2  | 37 |
| " E. Harrison "               | " | "    | 21 | 21 |
| " J. Drake "                  | " | 150  | 2  | 57 |
| " J. M. Seannell "            | " | "    | 1  | 51 |
| " C. G. Barham "              | " | 151  | 40 | 92 |
| " M. Folk "                   | " | "    | 8  | 8  |
| " R. A. Kello "               | " | 152  | 2  | 88 |
| " H. Joines "                 | " | "    | 11 | 12 |
| " J. Williams "               | " | 153  | 5  | 00 |
| " T. J. Mahon "               | " | "    | 2  | 00 |
| " G. Goodwyn "                | " | 154  | 11 | 19 |
| " R. Lamb "                   | " | "    | 28 | 32 |
| " J. M. Donnel "              | " | 157  | 63 | 66 |
| " E. Butts "                  | " | "    | 31 | 88 |
| " A. Drew "                   | " | 158  | 40 | 49 |
| " W. Doyle "                  | " | "    | 4  | 38 |
| " J. Banks "                  | " | 155  | 9  | 60 |
| " F. Butts "                  | " | "    | 5  | 88 |
| " J. L. Scott "               | " | 156  | 9  | 3  |
| " T. Butts "                  | " | "    | 14 | 09 |
| " ditto "                     | " | 159  | 3  | 77 |
| " J. M. Faircloth "           | " | "    | 2  | 69 |
| " J. Harrison "               | " | 160  | 6  | 38 |
| Can forward                   | " | "    | 8  | 8  |
|                               |   | 129  | 25 | 53 |

|                                  |   | page | \$   | ¢  |
|----------------------------------|---|------|------|----|
| Amount brought forward           |   |      | 129  | 55 |
| To W. Phillips purchase of goods |   | 161  | 225  |    |
| " J. Mearns                      | " | "    | 382  |    |
| " J. Senow                       | " | 162  | 458  |    |
| " E. Drake                       | " | "    | 310  |    |
| " J. Plythe                      | " | 163  | 1100 |    |
| " Mr. Davis                      | " | "    | 469  |    |
| " T. Reese                       | " | 164  | 1212 |    |
| " J. A. Scott                    | " | "    | 1876 |    |
| " R. Barker                      | " | 165  | 511  |    |
| " N. Barham                      | " | "    | 1857 |    |
| " B. C. Barham                   | " | 166  | 1657 | 70 |
| " M. Newson                      | " | 167  | 1572 |    |
| " W. T. Barham                   | " | "    | 100  |    |
| " J. Moody                       | " | 168  | 1000 |    |
| " J. Bryant                      | " | "    | 415  |    |
| " C. Pierce                      | " | 169  | 344  |    |
| " P. L. Beckman                  | " | "    | 1438 |    |
| " F. T. Reddy                    | " | 170  | 187  |    |
| " R. A. Ballard                  | " | "    | 178  |    |
| " W. H. Feltz                    | " | 171  | 225  |    |
| " P. Pierce est.                 | " | "    | 500  |    |
| " M. Birdsong                    | " | 172  | 1926 |    |
| " A. G. Reese                    | " | "    | 113  |    |
| " M. Davis                       | " | 173  | 300  |    |
| " G. Menford                     | " | "    | 275  |    |
| " J. D. Maysenburg               | " | 174  | 819  |    |
| " R. Sohier                      | " | "    | 431  |    |
| " S. Rochelle                    | " | 177  | 19   |    |
| " G. H. Fogg                     | " | "    | 1578 |    |
| " E. Hart                        | " | 178  | 240  |    |
| " R. Ricks                       | " | "    | 187  |    |
| " L. Coth                        | " | 175  | 100  |    |
| " B. Cumner                      | " | "    | 138  |    |
| " R. H. Ricks                    | " |      | 147  | 33 |
| " A. L. Richardson               | " | 179  | 257  |    |
| " E. Adams                       | " | "    | 363  |    |
| " L. Woodward                    | " | 180  | 363  |    |
| " - Rawls                        | " | 181  | 520  |    |
| " C. C. Barham                   | " | 125  | 661  | 14 |
| " J. Sohier                      | " | 5    | 1546 |    |
| " J. Worrell                     | " | 63   | 2300 |    |
| " H. Daewry                      | " | 176  | 302  |    |
| " ditto                          | " | "    | 150  |    |
|                                  |   |      | 155  | 44 |

|                                              |    | page | \$    | ¢  |
|----------------------------------------------|----|------|-------|----|
| To amount brought forward                    |    |      | 155   | 44 |
| deduct error over charged in B. C.           |    |      |       |    |
| Barham's account on page 15. & 16.           |    | "    | 1942  | 25 |
|                                              |    |      | 135   | 68 |
| deduct error in M. E. Ricks amt              |    | 3.00 |       |    |
| ditto in L. P. Nicholson                     |    | 6.90 | 9     | 00 |
|                                              |    |      | 135   | 69 |
| To amount Cash sales, see Cash book & Ledger |    |      |       |    |
| " amt Cash rec'd this month                  |    |      | \$178 | 50 |
| " ditto                                      | do |      | 430   | 55 |
| " ditto                                      | do |      | 397   | 71 |
| " ditto                                      | do |      | 384   | 57 |
| " ditto                                      | do |      | 334   | 68 |
| " ditto                                      | do |      | 243   | 17 |
| " ditto                                      | do |      | 498   | 88 |
| " ditto                                      | do |      | 391   | 77 |
| " ditto                                      | do |      | 161   | 86 |
| " ditto                                      | do |      | 138   | 80 |
| " ditto                                      | do |      | 130   | 01 |
| " ditto                                      | do |      | 90    | 06 |
| " ditto                                      | do |      | 279   | 36 |
| " ditto                                      | do |      | 268   | 84 |
| " ditto                                      | do |      | 333   | 11 |
| " ditto                                      | do |      | 343   | 19 |
| " ditto                                      | do |      | 296   | 12 |
| " ditto                                      | do |      | 230   | 32 |
| " ditto                                      | do |      | 387   | 53 |
| " ditto                                      | do |      | 306   | 37 |
| " ditto                                      | do |      | 192   | 83 |
| " ditto                                      | do |      | 141   | 79 |
| " ditto                                      | do |      | 106   | 85 |
| " ditto                                      | do |      | 168   | 28 |
| " ditto                                      | do |      | 244   | 73 |
| " ditto                                      | do |      | 184   | 00 |
| " ditto                                      | do |      | 287   | 99 |
| " ditto                                      | do |      | 287   | 36 |
| " ditto                                      | do |      | 178   | 00 |
| " ditto                                      | do |      | 256   | 12 |
| " ditto                                      | do |      | 343   | 26 |
| " ditto                                      | do |      | 289   | 53 |
| Nett amt of goods on amt & for Cash          |    |      | 8504  | 34 |
| To amount of goods sold at auction           |    |      | 22063 | 53 |
| & account sales rendered                     |    |      | 6668  | 36 |
| nett amount of goods sold by                 |    |      | 22731 | 89 |
| firm from their component to this            |    |      |       |    |
| disposition of business                      |    |      |       |    |
| Car'd forward                                |    |      |       |    |

1839  
May  
1837  
May

Page 49  
22731 89

To amount brought for wance  
By amt of Goods purchased up to  
to this time of Ledger page 34 720834  
To amt of Stock put in by the  
partners of the firm which  
was admitted by them to the Comr  
equally the sum of \$2170.48  
By balance due for goods to this day \$ 2867 38  
By amt paid in N York page 61 1292 76  
" ditto do " 468 64  
" ditto Norfolk " 67 50 50  
" ditto Petersburg " 75 39 00  
" ditto Norfolk " 83 15 66  
" ditto Petersburg " 92 57 14  
" " W.D. Whithead " 104 4 50  
" " N York " " 3289 19  
" " Norfolk " " 29 23  
" " ditto " 119 53 86  
" " ditto " " 83 00  
" " ditto " 142 13 64  
" " N York " 149 2150 50  
" " Baltimore " " 736 30  
" " Norfolk " " 728 80  
" " - Stoughton " 153 72 12  
" " for Merchandise " 171 113 09  
" " Norfolk " 196 6 83  
" " Baltimore " " 1663 00  
" " Norfolk " " 85 75  
" " D. R. Newson " " 424 73  
" " N York " " 26 60  
" " J. W. Davis " " 6 25

By expence account see page 18 50  
" " " 5-65 81  
" " " 13-64 66  
" " " 27-105 07  
" " " 34-20 00  
" " " 41-120 00  
" " " 49-31 70  
" " " 55-8 95  
" " " 61-67 97  
" " " 67-137 91  
" " " 75-172 25  
" " " 83-4 42  
" " " 92-97 44  
" " " 104-435 00  
Amounts Car'd for \$1339 68 14271 76 22731 89

Amounts brought forward

\$1339 68 14271 76 22731 89  
To expence see page 110 11 25  
" " " 119 26 00  
" " " 128 12 00  
" " " 142 7 00  
" " " 149 80 00  
" " " 153 125 56  
" " " 163 15 71  
" " " 171 8 00  
" " " 179 478 31  
" " " 196 23 13 2126 64 16398 40

1839  
May

By balance due the firm " " " \$6333 49  
from the acting partner  
J. S. Barham the defendant  
with interest from this date  
till paid

1840  
Feb 17

The plff. is entitled to  
one half of this amount to wit  
Interest to Feb 17<sup>th</sup> 1840 " " 3066 74  
To paid J. S. Barham Bond (A) " " 110 54  
" " 260 60  
3537 88

By bonds & acc'ts of Receipt in part 1335 29

By ditto do 400 73  
Cons. Reel's Rec't ditto 110 60 1846 62  
By balance due the plff. " " \$1691 26  
with interest from this  
date till paid

Note A. This bond was due from the firm for money  
borrowed; & I think it fairly to be presented it was  
to pay some debt due for goods bought, and as  
the defendant has had credit for all his invoices  
agreeably to the books of the firm, the Comr. has  
therefore charged the defendant with this bond  
The plff. also paid a bond to Thomas Dutton of  
\$488.46 which appears <sup>was</sup> one half the amount due Dutton  
which the defendant states was for Brandy bought  
and sold in the store; as the books don't show  
this fact, and the defendant <sup>not</sup> having charged it  
in his invoices, if it was for Brandy sold in  
the store, the Plff. should be bound for one half  
and therefore the Comr. don't charge the debt  
with this bond

Car'd forward

It appears from the books that several Horses, Waggon  
Gies &c are charged amount to \$488.46 the books do  
not show what became of this property; and in the  
expense account it is not charge as expenses; the  
plaintiff says he knows nothing about, and says John  
Fred Rios who was the Clerk. the Comr. then presumes  
the defendant might have retained them, and there-  
fore they ~~are not~~ are not included in this  
Statement

Comr for  
to wit Aug 23<sup>d</sup> 7 Hrs

Respectfully Submitted  
Sen Cobb Comr

|        |   |
|--------|---|
| " 24   | 6 |
| " 25   | 6 |
| " 26   | 4 |
| Sept 1 | 6 |
| 2      | 4 |
| 11     | 7 |
| 12     | 5 |
| 13     | 4 |
| 14     | 6 |
| 15     | 7 |
| 16     | 5 |
| 19     | 5 |
| 20     | 3 |

75 Hrs charged to the plff.

Southampton Cty SC.

Sen Cobb personally appeared before me  
and made oath the above fee bill  
Given under my hand this 29<sup>th</sup> day of  
September 1843

Gerr Newsum JP

Thirteenth

2 } Ex:cc-

Barham

Thindred

2

Barham

The defendant Joseph S. Barham, by Bradley and Goodwyn, his attorneys, comes and excepts to the report of the commissioners filed in this cause and prays that the same may be opened and recommittees to the said Commissioners for the following reasons:

1<sup>st</sup> - The defendant states that the commissioners failed to give him credit for the store act of the plaintiff Thindred, which amounts to the sum of \$574.00 as appears from the report.

2<sup>d</sup> - The commissioners failed to give the defendant credit for the sum of \$92.83, which is one half the amt: of insolvent claims received by Thindred, as appears from the receipt of the said Thindred, (filed and marked

3<sup>d</sup> - The commissioners failed to give the defendant credit for a sufficient amt: called in the act: reported "was overcharged in B. W. Barham's act." Upon an examination of B. W. Barham's act. with which the defendant is charged (see Lidger page 15 ~~and~~ 166) it will be found that merchandise to the amt: of \$921.65, was returned by B. W. Barham, the balance making up the sum of \$1942.25, which is the error reported in B. W. Barham's act, and with which the defendant is credited, consisting of acts cc. returned as reference to the above pages of Lidger will show - The items of B. W. Barham's act: consist of goods not sold to Barham, but delivered to him as a pedlar, with 15 per cent added and to the cost of the goods, with the understanding, that the goods which were unsold should be returned at cost - B. W. Bar-

hans act: with which the defendant is charged, consisting of ~~\$1894-65-2199-46-282-20~~, making the sum of ~~\$4376-21~~, is made up of the amt. of goods delivered to him, with 15 percent added to their cost - and the goods returned amounting to the sum of \$921-65, were returned at cost - consequently the credit is not sufficient by 15 pct. on \$921-65 - making the sum of \$138-24

4" - Goods were also delivered to Charles W. Barkham on the same terms and for the same purpose as those delivered to B. W. Barkham, and by reference to ledger page 125, it will be seen that goods to the amount of \$246-90, ~~which~~ was the cost of the goods returned, were returned by the said Charles W. Barkham. Consequently the defendant ought to have an additional credit by 15 pct. on \$246-90 to wit - the sum of \$37-03. The defendant refers to ledger page 125 and to the affidavit of Charles W. Barkham as evidence of the above facts.

5" - The Comm: failed to give the defendant credit for his wages from Sept. 1838 to June 1839 - \$112-50 - also for board & washing for self and Clarke \$82-57, and for services, board & washing, from June 20<sup>th</sup> 1839 to Jan: 20<sup>th</sup> 1840 \$161-50, making in all the sum of \$336-50. The defendant refers to ledger page 20, as evidence of the above charges, and a comparison of the expence act: reported, with the journal from which the several items of expence were taken will show that the above items of expence are not contained therein.

6" - The defendant Barkham's act, with which he is charged is partly made up of several cash items making in all to about \$400-00. The defendant <sup>is</sup> being charged

with these items. These cash items are credits on the act: of persons, with which the defendant is charged, which were improperly charged to the defendant, and not allowed in the expence act: The defendant refers to the affidavit of John T. Judkins, who was clerk in proof and explanation of the above facts -

7" - The defendant objects to the charge of \$110- interest - The firm was not incorporated as dissolved until ~~October~~ <sup>October</sup> 1839, and the defendant refers to the auction book as evidence of the fact -

The defendant Barkham begs leave to state that at the time the act: reported was before the Comm:, he was attending to business in the State of S. Carolina and could not be present; it is true the defendant spent a few hours with the Comm: on one occasion and from what passed between them, he inferred that the Comm: understood the books sufficiently well to make out a correct act: from them. The defendant is really of opinion that great injustice has been done him in the act reported, and prays that in consideration of the reasons above set forth and in consequence of his inability to be with the Comm: in order to explain the books, the said act: may be opened and re-committed for further settlement -

Personally appeared before me a justice of the peace, Jesse T. Barkham and made oath that the facts above set forth are true to the best of his belief and I remanded - Given under my hand this 2<sup>d</sup> Nov: 1843 -

J. W. Morrow J. P.

Kindred  
in  
Barham

Note of Plffs Counsel 2  
applies to exceptions to the  
~~superior~~ court of  
Ct. of Gt. Br.

exceptions overruled &  
decided according to the  
Report - see 3<sup>rd</sup> rule of  
Court page 11

R. H. B.

Kindas }  
" }  
Barkham }

The defendt excepts to the reformed report of the court. Can the court consider these exceptions? The defendt should have brought the matters excepted to, to the attention of the court while the acct was before the court & cause special statements to be made. The court & the p<sup>ty</sup>, would probably have accompanied statements thus made with such evidence as would have established the correctness of the acct. But the defendt refers in his exceptions to the books &c. Those books are not before the court. They constitute no part of the record of this case. They <sup>exceptions filed</sup> are simply statements of the defendt unsupported statements. And if continuances can be had by such a course, there will be no end to suits for settlement of partnership accounts.

The court reports that he has settled the accounts. How can the defendt say that he has not been credited by the acctt allowed to in his exceptions? He was not due (he says) that he has been. The report shows that he has been credited according to the books. It is submitted that the exceptions were filed, are too late. That this court can not engage into them.

Besides, the report was returned on the 30<sup>th</sup> March. These exceptions are filed 20<sup>th</sup> April. They should have been filed while Rogers was in the court office for exceptions. The ten days prescribed by law. The court asks for a decree. Both or for lump

Comm. Report  
reformed

1844 March 30<sup>th</sup>

March 28<sup>th</sup> 1844

Kindred  
vs  
Barham

Reformed report—

The Court at Nov<sup>r</sup> term 1843 ordered that the former of the Comr. in this Case, be recomitted to the same Comr. for reexamination and settlement, which is done in the following form

In B. C. C. Barham's account one of the Dollars, the sum of \$1348.57 was charged as Merchandise, and by reference to the Journal it appears that of this sum \$717.96 was for bonds & accounts put in his hands for collection; therefore as it was not for goods sold, that amount should be deducted from amount of goods sold. It also appears that the debts, there account was not properly charged, as there was sundry items of Cash charged to him amounting to \$487.89 which for the above reasons should also be deducted. The Comr. made a mistake in the expence account by charging the defendants wife's board &c. the error is \$144.25. all of which will be explained in the following statement

Henry Kindred

In account with J. S. Barham defendant

|      |                                        |        |    |       |    |
|------|----------------------------------------|--------|----|-------|----|
| 1839 |                                        |        |    |       |    |
| May  | By amt of goods sold as former report— | "      | "  | 22731 | 89 |
|      | deduct error in B. C. C. Barham's acct | 717    | 96 |       |    |
|      | ditto as J. S. Barham debt             | 487    | 89 | 1205  | 85 |
|      | Nett amt of goods sold                 | "      | "  | 21526 | 04 |
|      | To amt paid for goods former report    | 14271  | 76 |       |    |
|      | " " expence account ditto \$2126.64    |        |    |       |    |
|      | deduct error                           | 144    | 25 | 1982  | 39 |
|      | By balance due the firm                | \$     | "  | 5271  | 89 |
|      | The plff. proportion one half          | 2635   | 94 |       |    |
|      | To paid Ans Stephensons bond           | 260    | 60 |       |    |
|      | The plff. balance can forward          | \$2896 | 54 |       |    |

1839  
May

|                                                   |         |         |
|---------------------------------------------------|---------|---------|
| By plffs balance brot forward                     | "       | 2896 54 |
| To the plffs account omitted in the former report | 574 00  |         |
| " paid the plff his pro. insolvent bonds          | 92 83   |         |
| " " Sundry items as last report                   | 1846 62 | 2513 45 |
| By balance due the plff.                          | "       | 383 09  |

with interest thereon from this date till paid

The defendant states that Benjer W. Barham, and Charles W. Barham were employed by the firm to Peddle off goods for them; and that 15% was added to the goods placed in their hands, and that they had frequent settlements, and the goods which were unsold, were returned at costs without adding the 15% and he therefore contends that he is entitled to 15% on all the goods so returned, and he exhibits the affidavits of the said Pedlars to prove this charge.

The Ledger shews that the accounts of the Pedlars are fully and particularly balanced in every instance Vizt. they are charged with all the goods received, and credited by goods returned, and the balance in full for money, bonds & accounts received for goods sold; thereby shewing that the defendant received full compensation for his goods placed in their hands for sale; if therefore the 15% was omitted to be added to the goods returned, the defendant received an equivalent in money, bonds and accounts for goods sold and the Pedlars if any person, is entitled to 15% instead of the debt.

The defendant has also filed the affidavit of John Jenkins, the late Clerk in the stores of Barham and Kindred, in which he states that he thinks the Horses and waggons were sold and charged in the Cash accounts. The Commr when the former report was before him, particularly interrogated the said Jenkins on this subject particularly, and he then

then stated that he did not recollect what became of the horses & waggons, and the Commr. so reported in his former report, his statement then & now conflicting the Commr. Can take no further notice of the Horses & waggons

The plaintiff directs the Commr. to state, that the affidavits now exhibited, were taken without any notice him and he therefore objects to their being used against his claim. - The Plff. also insists the debt, should produce his invoices and receipts, for the amounts credited to him in the Commr's report for goods purchased for the firm, and that he shall object that any shall be allowed which are not exhibited.

The Commr. called on the debt, for these vouchers, and he stated that he had either lost or mislaid them. - The Commr. also called on John Jenkins the Clerk, to say whether he had seen the invoices with receipts to them, as charged in the Ledger and he stated that he had, and he therefore allowed them.

The defendant claims a credit of \$322.23 for Brandy and Bacon bought of Henry D. Vaughan and which he carried to Norfolk and sold; but there is no credit on the books for the sales of these articles, and the Commr. presumes it was applied to the payment of goods bought in that place, and for which the defendant has credit for in the former report.

Commr for March 26<sup>th</sup> 6 Hrs  
" 27. 5. do  
" 28. 5. do

Respectfully Submitted  
Jen. G. G. Commr

16 Hrs \$16.00

Charged to the plff

Kindred

to } Exceptions

Busham

1844 April 10<sup>th</sup>

Kindred

to

Burham

Memorandum

The defendant Jesse S Burham by Bradley Swordsman, his attorney, excepts to the reformed report of the Commissioners returned in this cause, and prays that the same may be opened and recommitted for the following reasons.

- 1<sup>st</sup> - The commissioners failed to give the defendant credit for the following sums of money, to wit - the sum of \$337-69, paid Henry B. Vaughan, for brandy which was sold in the store. (see Cash-book p. 30) - for the sum of \$25-31 paid Thomas Pattow for one barrel brandy sold in the store. (Cash-book p. 10) - the sum of \$25-00 paid for the purchase of set of chaise harness - and also for the sum of \$93-30, paid Seth R Strong, adm: for merchandise, sold in the store. (Cash-book p. 12)
- 2<sup>d</sup> - Cash-book p. 40 - shows that the sum of \$1018-80 was paid N. B. Vaughan for the purchase of bacon. The firm of Burham & Kindred gave their bond for this amt: which when paid by the defendant, as appears from an entry on the same page, amounted to the sum of \$1076-19 the rest being \$57-39. which last sum the defendant claims a credit. The bacon bought was sold in Exeter and the proceeds applied to the payment of debts there, for which the deft: has credit in the first report.
- 3<sup>d</sup> - The commissioners failed to give the defendant credit for the sum of \$200-00 paid for the purchase of 3 waggons - one at \$80 - one at \$55 - and one at \$65 - and also for the sum of \$240-00 paid for 3 horses - one at \$100 - one at \$66 - and the other at \$80 - (Cash-book pages - 8 - 12 - 14) - The amts: received for the sale of the waggons & horses were entered in the cash accounts, with which

the debt: is crossed. as appears by reference to Cash  
book - pages (30-31-13) &c. - one of the waggons was sold  
at auction, as appears by reference to auction book  
4". The defendant excepts to the charge of interest.  
if any but, should be allowed, it ought not to  
commence until the auction sales closed in  
Decr: 1839. (see auction book)

The defendant Berham states, that he has exam-  
ined the books, in connexion with both reports  
and can not find where the above items of  
credit have been allowed him by the Comrs:  
and he therefore, prays that the report may  
be recommitted for further settlement

Jesse S. Berham personally appeared before  
me a justice of the peace, and made oath  
that the facts set forth in the above exceptions  
are true to the best of his knowledge and  
belief - Given under my hand this 20<sup>th</sup> day  
of April 1844.

Geo D. Nichols J. P.

Kindred

v.

}

Oran.

Barham

Hindell

v.

Barkham

} By consent of parties. so much of the order of  
April term 1842. as refers the accounts in this case to  
John M. Geary, Special Comr. ~~is~~ set aside; and that  
the aforesaid order be executed, by the Court of this Court.

Attest: \_\_\_\_\_  
J. M. Geary, Special Comr.

From 19<sup>th</sup> 1843 I acknowledge service  
of the within notice Henry Hindred

Hindred  
as  
Bartham } Comd.  
Noticed

At a Circuit Superior Court of Law and  
Chancery held for the County of Southampton  
on the 5<sup>th</sup> day of April 1842

Henry Kindred  
against  
Jesse Parham

Plff.  
Def.

This Cause came on to be heard upon the bill, answer  
and replication thereto and was argued by counsel. On considera-  
tion whereof the Court doth order that the defendant render before  
John M. Gurley a Commissioner specially appointed for that  
purpose, an account of the partnerships in the bill men-  
tioned, who is directed to examine, state, and settle the same  
and make report thereof to Court with any matters spe-  
cially stated deemed pertinent by the parties himself or  
which may be required by either party to be so stated

And now at another day to wit

At a Circuit Superior Court of Law & Chancery  
held for the County of Southampton the 3<sup>rd</sup> day  
of November 1842.

By consent of parties so much of the order of April Term 1842  
as refers the accounts in this case to John M. Gurley  
special Commissioner is set aside, and it is ordered that  
the aforesaid order be executed by a Commissioner of this  
Court

A Copy Teste L. R. Edwards Clk

Comrs Office Decr 12<sup>th</sup> 1843

I have appointed <sup>Wednesday</sup> ~~Monday~~ the 23<sup>rd</sup> day of August-  
next to take up the accounts directed by the above order  
of the Court, on which day the parties will attend at the  
Courthouse in the Town of Jerusalem, with <sup>their</sup> vouchers  
accounts & testimony for examination & settlement  
(Wednesday 23 Aug)

Lucy Galt Comr

Kindred }  
or  
Barlow }

Not by Poff, counsel  
in reply to captives of  
the capt.

Kindred }  
100 } Note by counsel for Kindred  
Barkaw }

The pff is willing that the defendt should be credited by the amt of the Pffs amt of \$594.00: This amt. deducted from the balance due Pff, will leave \$1117.25. due on 17. Feb 1840:

The other exceptions filed by the defendt are it is submitted, without foundation - The exception as to \$92.82 is without evidence to support it. While the fact is, that each partner m<sup>d</sup> about the same amt. of bad debts.

The second exception is also without any evidence; and like the first, can not be sustained, even admitting the defendt's statement to be evidence. The defendt Barkaw, it seems would deliver goods to the pedlars, and 15 p<sup>cent</sup> was added on the cost - The defendt complains, that B. W. Barkaw returned \$1942.25 worth of goods thus delivered, & that the cosd. should have credited the defendt with this amt. and 15 p<sup>cent</sup> besides: Now surely if the pedlars m<sup>d</sup> the goods with 15 p<sup>cent</sup> added to cost they ought to return them such as they did not sell at the same price. If they are to receive goods at 15 p<sup>cent</sup>, sell such as they can sell (the most salable) and then return the unsold goods at 15 p<sup>cent</sup> less than they gave for them

by returning several times, they would consume the whole stock. It would be a ruinous operation to any mercantile concern, to let out its goods at cost & 15 per cent, & then allow 15 per cent in addition to this price, upon all goods returned - Thus, <sup>suppose</sup> ~~thus~~ ~~but~~ ~~we~~ have let out in this way \$1000 worth of goods, at cost, 15 per cent added. would make \$1150. The pedler is charged with this amt. He sells \$250, & comes back & proposes to return \$900. worth. and claims that he must be allowed 15 per cent on this amt. so proposed to be returned: The amt. thus claimed is \$135. The merchant will have made the sum of \$89.50. on the \$250. sold, and have paid to make \$135.

3<sup>d</sup> The third exception, is that the defend<sup>t</sup> is charged with \$400. "cash items". Now the defend<sup>t</sup> is admitted for every cent, he paid out. amounting to upwards of \$2000. he should therefore be charged with what he received.

The last exception is that the defend<sup>t</sup> is charged with \$110.54 interest. This amt. should be much larger. He had funds, bonds & assets in his hands from 1836, and this is the only charge of interest - and this after a dissection of the firm -

Exhibit for P<sup>g</sup>