

The Filson Historical Society

Mss. Clark-Hite Papers. **MICROFILMED**  
A

.C593 Legal papers  
174

Augustine Windle

v.

Rep. of Jost Hite et al.

1790

52x41

*h. Hite*

To the Honourable the Judges of the High Court of Chancery  
Humbly complaining sheweth unto your Honours your Petitor Augustine Wendle, that  
about the      Your Petitors father contracted with Louis Bate for two  
hundred and fifty acres of the North mountain survey of 1600 acres for your  
Petitor, that in consequence of the said Agreement made with your Petitors  
father, James Wood at that time the surveyor of the County by the direction and  
in the presence of Louis Bate made a survey for your Petitor on the said North  
Mountain, but instead of the two hundred and fifty acres, only surveyed  
for him one hundred and thirty five acres as will appear by the annexed  
memorandum of the courses of the said Land given to your Petitor by the  
said James Wood to which your Petitor refers - Your Petitor further sheweth  
that the said Louis Bate received from his said father and himself a set  
of waggon wheels at the price of forty shillings in part pay of the said  
Land, and that your Petitor has been in possession and lived on the said Land  
ever since without being disturbed in his possession by any person whatsoever  
until the Bates and others Complainants in a suit of Chancery against Fairfax  
and other defendants served your Petitor with a copy of the Decree made in the said  
suit and threatens to turn your Petitor out of possession of the said Land, they  
combining and confederating together to injure your Petitor - All which doings  
and doings of the said Bates and others who your Petitor prays may be made  
defendants to this Bill are contrary to equity and good conscience, and tend  
to injure and oppress your Petitor - In tender consideration whereof and  
for as much as your is remediless except in this Honourable Court where  
matters of this sort are properly cognizable - To the end therefore that the said defendants  
may upon their Corporal oaths especially John and Isaac Bate true and distinct  
answers make to and singular the premises as fully as if the same were herein  
again repeated and interrogated to be answered unto, particularly that they  
may say whether your Petitors father did not make such contract for him  
as is set forth above? whether the survey was not made for him by direction of  
Louis Bate? whether the memorandum hereto annexed is not the writing of  
James Wood? and whether they do not know or have heard that the said Louis  
Bate received from your Petitor or his father a set of Waggon wheels in  
part pay of the said Land and that by a Decree of this Honourable Court  
your Petitor may be quieted in possession of the said Land, have his costs in  
this

be half expended, and such other and further relief as shall be agreeable to equity &c.  
 May it please your Honours to grant unto your Orator a writ of  
 subpoena &c. directed to &c. and your Orator shall pray &c.

A Copy John Brown C.B., C.C.

All Wines  
 White Vind } Co. Rice

North M<sup>o</sup> 9:20.

See M<sup>o</sup> 5. - L  
 table for his papers.

M<sup>o</sup> 6.  
 he ought to have  
 about 107 acres.

Defts:

Isaac (New D.)  
 I know nothing of this claim  
 John Rice knows nothing of this matter, except that  
 he remembers his Father Joint Rice received Wagon  
 wheels of Frederick Weller the Complainant's  
 Father, but does not know whether they were  
 given in part price of the land, sold, or not.  
 The memo. delivered to in the Rice is not true.  
 Therefore cannot answer that part of the

Andrus - He may know nothing of the facts  
 stated in this Rice

James Attag knows nothing of the facts - stated in this side.

The Agents for the District of East Herts. directed me to make  
a map of the land granted by Lord Fairfax contained within the bounds of  
a patent <sup>dated</sup> granted by Lord Fairfax to Reynolds Borden, <sup>the whole of which is within the N. mountain</sup> also of the land  
contained within the bounds of a patent dated the <sup>day</sup> of <sup>a party of which</sup>  
granted by Lord Fairfax to Frederick Barrett: ~~and to run the line between~~  
~~is within the N. mountain grants~~ - of the land contained within the  
bounds of a patent dated the <sup>day</sup> of <sup>granted by Lord</sup>  
Fairfax to Charles Huddle - the whole of which being within the  
N. mountain grants - and of so much of the land contained within  
the bounds of a patent dated the <sup>day</sup> of <sup>granted by Lord</sup>  
granted by Lord Fairfax to Augustine Wendle - as lies within the  
North mountain grants - then to run the line of the north  
mountain survey ~~from~~ the lower end of the land granted by Lord  
Fairfax to Aug. Wendle to the upper end of the land granted  
by Lord Fairfax to Fred. Barrett: ~~is within the N. mountain~~  
Then to run the lines of a survey said to be made by David Vance  
and agreed to the aforesaid Aug. Wendle as the land purchased by  
him of East Herts - then to lay down the dividing line between Aug.  
Wendle and John Wendle the sons of the aforesaid Aug. Wendle  
now deceased - then to lay down the

The report for the purpose of last year is to be made  
 a copy of the same for the purpose of the same  
 of a copy of the same for the purpose of the same  
 of a copy of the same for the purpose of the same

Mary H. Smith  
 Wm. H. Smith  
 Wm. H. Smith  
 Wm. H. Smith  
 Wm. H. Smith

*[The text in this block is extremely faint and illegible due to extreme fading or bleed-through from the reverse side.]*

N. Mountain 4600 Acres.

Augustine Windle agt Hite and others Chy

Will state that his father contracted with Joel Hite for 250 Acres of this Survey, that James Wood by direction and in the presence of said Hite made a survey for the Compt but instead of 250 acres only 135 Acres were laid off as will appear by the annex'd Mem: of course - and that a set of Waggon wheels were paid in part at the price of 40¢.

The Deft answers they believe the Compt Hite contracted for Land but the quantity or price - or whether Windle complied with his part the Contract they know not - that the Compt and two other of the Windles have brought each a suit - stating claims extremely vague, and each have attempted to deceive the other by his own oath -

Christopher Windle that within the years 1787 & 1788 -

Interested 1786 before Com: - Heard Joel Hite say he was going to survey Land for Augustine Windle, and understood the survey was made by David Warner - that Hite received four pair Waggon wheels at the price of \$4.00 one half of which was towards the price of Augustine Windle's Land and the other half towards Valentine Windle's Land - and he holds Land claimed by Hite

Christopher Windle 1787 - Now says - that Augustine Windle within the year 1787 intended upon a tract of Land which his father Philip Windle bought from Joel Hite that about 3 years after, Hite came up with David Warner and laid off the Land Augustine Windle lives on of about 130 Acres - that Hite received four pair Waggon wheels from Augustine Windle in part pay for said Land at 40¢ each wheel

Interested Valentine Windle. That Philip Windle bought of Joel Hite 200 Acres of Land at £3. a hundred for his son Augustine - that the Land was laid off and supposed to be 200 Acres. and that Augustine Windle paid 4 Waggon wheels

Interested Thos. Carr & Wm. Hite. While Hite, Vance, and Valentine Windle had a fumbled to lay off Augustine Windle's Land, but does not remember what quantity was laid off

Augustine Windle is a Witness for Valentine Windle and Frederick Carr & both within Survey & Ch. Windle - all in the Survey

Valentine Windle claims under the same <sup>number</sup> with Augustine Windle and does not disclose the quantity he holds

Valentine Windle has a pro. deed

N<sup>o</sup> 20 N. Mountains

Argentine Wends

Attend to this Statement

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[illegible]

side of Inders run  
Locust

the side  
black oak  
in a hollow

5241

- X 2 black oaks on a ridge  
Y Wh. oak and a hickory  
Z between a Wh. oak and a black oak  
a a Wh. oak and a black oak  
b stake  
c 2 black oaks on side a ridge  
d a hickory and a black oak  
e 2 Black Walnuts  
f a black oak  
g a hickory  
h 2 Wh. oaks

Mountain  
Survey

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Virginia to Wit.

At a High Court of Chancery  
held at the Capitol in the City of Richmond  
August 5<sup>th</sup> 1790.

In the Case of Augustine  
Mindal in possession of part of the four thousand  
& six hundred Acres of Land called the North  
Mountain tract for sale of which part to the  
possession Joist Hite is stated to have contracted,  
two of the Plts. in the principal case, Isaac  
Hite & John Hite by their answer to the Bill of the  
possession, confessed their belief that their father  
Joist Hite, had made a Contract for sale of  
some land, to the father of Augustine Mindal, &  
the Court premises this to be part of the land, which  
was the subject of that Contract, that the purchaser  
when he entered into it, had the making equal  
provisions, & separate settlements for his three  
Sons in contemplation, because one of them,  
Christopher, whose title is indisputable had a  
separate share, & that the quantity designed for  
every Son was about two hundred Acres, because,  
Christopher's which is ascertainable by the receipt,  
conceded in his case, with an endorsement on it  
in Dutch, acknowledging the bargain to be three  
pounds per hundred as a sworn interpreter,  
before the Commissioners in the Year one thousand  
seven hundred & seventy deposed, some what  
exceeds that quantity & therefore the Court believing  
the testimony of Christopher Mindal & Lewis

Stephens, the witnesses who were examined to prove  
the propriety of equity & <sup>to</sup> whose credit the exceptions  
made on behalf of the P<sup>ts</sup>. in the principal  
case are blown away by the probabilities which  
conspire with it & believing moreover that the Land  
designed & laid off for Augustine Mendal,  
is that the Bonds of which are described in the  
exhibit declared by General Wood examined in  
Court to resemble the hand writing of David  
Nance is of opinion that Augustine Mendal  
a grant to whom by the Lord Proprietor includeth  
the Land now claimed by him, doth fall  
within the first of the reservations contained  
in the decree of the eighth day of May in the  
Year one thousand seven hundred & eighty six, as to  
the Land described in <sup>the</sup> said exhibit & supposed  
to be one hundred & thirty five Acres, & therefore the  
Court doth adjudge Order & Decree, that the said  
Decree of the eighth day of May in the Year one  
thousand seven hundred & eighty six. be not  
carried into execution, as to the one hundred &  
thirty five Acres or other quantity of Land, contained  
within the bonds described by the formentioned  
exhibit but that the Possessor thereof be quieted,  
provided that within twenty one Days after he shall  
have been served with a Copy of this Decision  
he <sup>do</sup> to pay or tender to the P<sup>ts</sup>. in the principal  
case or to him who shall be authorized by them  
to demand & receive, two pounds & one Shilling  
the price of the Land, after deducting forty shillings  
a credit allowed by the Court for Wagon  
wheels with Interest from the day of

January in the Year 1740 & the Costs expended  
by them on this occasion.  
Costs 110 Wtob & L.S.

Attest  
Teste

Peter Tinsley b. H. 6. 6

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Al Wundal

o } Co. Dorce  
Note Lod }

Principal — 2-1-0

11/11/1880 Ink. — 5-4-10

11000 Tow — 13-9

for — 5-0-0

paid J. Clark £12-4-7

May 16. 1798

paid

May 10th 1798

£12-4-7

Then send the above

of Ch. Jona. Clark

Local Hite