1844-013 SOUTHAMPTON COUNTY CHANCERY PAPER HINES VS. LAWRENCE et al 5/1844

other SURNames. James

~~Jy 14 Xa~~ 12-

Hines

v. } Papers

Lawrence

1842.

May. 10 Bond & Security given
pro. con.

June. Sp. Ex. in Dft. Jones

July Sp. Ex. in Dft. Sgarrine.

Oct. Leave to Dft. M. E. Lawrence
to answer

1843 Apl J. Continued

" Oct " Continued

1844. May Injn. Perpetuated

Southampton Co. Va.

Hines
vs
Laurence &c.

Bill
&
Exhibits

Parker. Atkinson & Sholar

1842 May 10. Bond & Sec. to give
& Sp. Ap.

(120 words)

Injunction prayed for in the within bill as amended, on the complainants complying with the conditions (as to Bond with security &c.) prescribed by Law,

To Clk. R. Edwards, Clerk of the Ct: Sopl. Court
of Law and Chancery for Southampton County.

Jas. H. Sholar
Petersburg 4th May 1842

To the Hon Richard H. Baker Judge of the Circuit Superior Court of Law and Chancery for the County of Southampton, your Complaintant Saml B Hines -

Humbly complaining shews unto your honour, that Saml J. James Mills E Lawrence and your complt executed on the 15th day of March 1841 a bond to John B Lawrence for the sum of $2253. 95/100 payable one day after date - and that judgment was confessed on this bond by the obligors in the month of last That your complt was induced so far as he was concerned, to give the confession, at the earnest solicitation of Mills E Lawrence. That on the 19th day of January 1842 fi fa was issued, and the sum of $923. 49/100 made by the sheriffs retaining fund in his hands belonging to Mills E Lawrence, The said James, having become insolvent as it is believed, which is known your complt is informed, and believes, was the result of a heartless and pernicious system of shaving practised upon him by the said Mills E. Lawrence. Your complt further shews, that after the application of this sum of $923. 49/100 - to the said execution, there remained due a balance of $, and that execution is not issued for this balance, and directions given to levy upon your complts property - Your complt. further shews unto your honour that this this execution is again issued, it has been paid (if it was so due) to John B Lawrence and that he has acknowledged in the presence of the sheriff of this County and various other individuals, that Mills E Lawrence had wholly settled the said judgment with him, and that he did not set up any claim whatever to it - that the said Mills E Lawrence had paid him the full amount and that the said John B Lawrence gave to said Mills E. an order on the sheriff for the money then made, or afterwards to be made - Your complt is advised, that Mills E Lawrence having paid and satisfied the said judgment, has thereby himself become surety and the said John B. Lawrence, having now no property in the said judgment, that the same was absolutely discharged, and satisfied forever - that the said Mills E Lawrence only has a judgment against himself, and that no execution can now be issued thereon against any body - that there is now no judgment - and that should ever

right the said Miles E Lawrence may have (in consequence of having discharged the said judgment) against your complainant and the said James (who your orator charges to be the principal in the said bond upon which judgment was obtained as aforesaid) and your compelt and said Miles E Lawrence being his securities) he must assert those rights in a different manner. Your complainant is advised, that the said execution having issued upon a judgment which is satisfied, that this court will cause the same to be quashed - upon any proceedings thereon -

Your compelt further shews unto your honour, that there have been large transactions - he will not stop here to enquire into the character of those transactions - between the said Miles E Lawrence and Saml T. James prior to the ___ day of ___ when your complainant joined the said James as security in a bond to the said Miles E Lawrence for $3.500 or thereabouts - Your compelt had been security for the said James to the said Lawrence on several occasions before. The bond executed to John B. Lawrence by James, Miles E Lawrence and your compelt was for a debt, due to Miles E Lawrence, upon which your compelt was James security - Your compelt was unwilling to become James security for this large amount, and told the said Lawrence so - when he agreed with your compelt that if he would become security on this bond of $3500 or thereabouts that he the said Lawrence would release him from all other bonds upon which he was security for the said James - although he was not only to this bond, but to bonds now held by others - Your compelt files with this bill, paper marked No 1 - which he prays may be considered as a part thereof, which will plainly shew to your honour the said agreement - the said pretended your compelt charges to be in the hand writing of the said Lawrence himself - Your compelt is aware, that even the pretended assent of John B Lawrence, he could not use this agreement against him, but as the debt is (if due to any body) due to Miles E Lawrence, and as he has in substance guaranteed your compelt against his liability for the said James, he is advised he may set up it as an answer to any demand of the said Miles E Lawrence against your compelt on account of this debt - Your compelt is advised that the said Miles E Lawrence, cannot in the first place cause any execution to issue - and in the second place, that the (your compelt) is not responsible to him shall or the bond upon which, he seeks to recover the amount

of your compelt by execution - Yet execution is put in the hands of the sheriff of this county, and without the interposition of this court, your compelts property must be sold under this execution, upon a satisfied judgment; which judgment your compelt is not, at this time, to pay to the said Miles E Lawrence.

In Tender Consideration of all which, and for as much as your compelt is without remedy in the premises except in a court of equity, where such matters are peculiarly cognizable - To the End therefore, that justice may be done he prays that Miles E. Lawrence, John B Lawrence, Saml T. James may be made parties defendt to this bill, and true answer make upon oath, to the allegations - that John B. Lawrence state, if he has not assigned Miles E Lawrence payment in full of the judgment before mentioned - that Miles E Lawrence full answer make to all and singular the allegations of this bill, as if the same were true again expressly repeated - that the said John B Lawrence and all persons claiming may be enjoined from proceeding on the said judgment - that the execution now in the hands of the Sheriff of South Hampton be staid - that your honour will moreover enjoin the said Miles E Lawrence from ever hereafter, proceeding against him or security for said James, on the bond upon which the judgment was obtained, and execution issued as aforesaid - and that your honor, the premises considered, will grant unto your compelt, such other and further relief as justice and equity may dictate - And your compelt, as in duty bound will forever pray &c May it please your honour to grant the same.

Parker Wilkinson & Nicholson
p.q.

South Hampton County to Wit.

This day Saml B Hines personally appeared before me a justice of the peace for the County aforesaid and made oath that the facts and statements contained in the foregoing bill are true to the best of his knowledge and belief - Given under my hand this 9th day of May 1842 -

Wm H Nicholson

Miller & Lawrence

Nevada

1843 Oct 30

The answer of Mills & Lawrence to a bill exhibited against him and Jas B Lawrence in the Supreme Ct of Chattanooga by Saml B Hines

This respondent having and reserving to himself all advantage of exception to make bill for answer thereto answers and says

That it is true as charged that a bond was executed by Samuel J. James, Saml. B Hines & himself to Jas B Lawrence for the sum of $2253.95 on the day mentioned that the sum of $923.45 was paid on the same by means in the hands of the Sheriff belonging to this respondent after the rendition of the judgment by the Obligors in the bond. It is also true that the balance of the judgment was settled by this respondent with the said Jas B Lawrence, and that the said Jas B Lawrence did give to this respondent an order for the amount of the execution, and that thereby your respondent became subrogated as far as could be done into the rights of the said Jas B Lawrence ——— that your respondent as one of the securities of the said James had in part paid the whole amount of the judgment, when the

and Jacob B Lewis as connected with this respondent was equally bound to contribute one half of the amount due upon the judgment as appears by his own showing since it is charged in the bill of your respondent that the said James has become totally insolvent

your respondent therefore claims that the said Jacob B Lewis should be required to pay him one half of the said judgment as connected he has come into a court of equity for relief, and asking for equity he must do equity on his own part and is therefore bound to contribute as connected to James who is insolvent

your respondent denies that the bond of $3500 as mentioned in the bill has any connection with the said judgment nor can it be considered any part of the same. It is a bond due to this respondent by James and the complainant for which they are responsible to him alone. He denies that any other transactions between him and James can be brought into this controversy and that he is not bound to answer the same. As to the exception to the plaintiff exhibiting bills from any other responsible to respondent for the bond $3500 your respondent denies that it has any application to the judgment in favour of Jas B Lawrence, but that it had reference only to claims due to himself from the said James for which the said Lewis might be security and to none other. your respondent therefore claim that the said Lewis as connected should pay to him one half of the judgment in favour of the said Jas B Lawrence for which they were joint securities and which has been wholly satisfied by your respondent & having thus answered he prays hence to be dismissed with his costs &c

Signed
Mills & Lawrence

Sworn and county town
This day Mills & Lawrence personally appeared before me a justice of the peace of said county and made oath to the truth of the foregoing answer given under my hand & seal this 4th day of October 1843.

Wm. Sumray J.P. (Seal)

Steiner
vs
Lawrence Neal

decree

not right as to
form – Mr. Latimer
has answered – Mr.
Edwards will alter
the decree in the
respect

R. H. B

1844 May Term

Haines 3 In Chancery
vs
Lawrence & others

This cause came on this day to be heard on the bill of the plaintiff, the answer of the defendant Mills & Lawrence, and the replication thereto, & exhibits filed in the cause, and it appearing to the satisfaction of this court, that the subpoenas awarded in this cause on the defendants John B Lawrence and Samuel F Jones have been returned executed and they still failing to file their answers, & the more than two months have elapsed since the service of the subpoenas upon the said defendants, on motion of the plaintiff his bill is taken for confessed as to the said defendants, and was argued by counsel, on consideration whereof the court doth adjudge order and decree, that the injunction awarded the plaintiff the 4th of May 1842, be enjoin the defendants John B Lawrence from proceeding on their judgment and execution issued from the clerk's office of the superior court of chancery ~~for the term~~ upon a judgment obtained by John B Lawrence for the sum of $22539/100, against the said Mills & Lawrence Samuel F Jones and the plaintiff in this cause, be made perpetual, without prejudice to the rights hereafter to be asserted by the said Lawrence, and the court doth further adjudge, order and decree, that each party to this cause pay his own costs.

To injoin the Defendant John B Lawrence ~~from~~ his agents & attornies and all others ~~therefrom~~ from further proceedings on a Judgment of the Circuit Superior Court of Law & Chancery for the County of Southampton recovered by him against the other Defendants & the plaintiff for the sum of $2253.95/100 with Interest from the 15th of March 1841 & costs The plaintiff having given bond and security as the law directs and filed a release of all errors at Law in the said Judgment & proceedings

Test P R Edwards Clk

Lawrence

Pl's Exhibits

vs

Hines

1842 June Rules.

Executed on
Samuel S Lawrence
Miles E Lawrence &
John B Lawrence
by delivering to
them in Norfolk City
a true copy of the
within Subpoena

6-816

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon Mills E Lawrence. John B Lawrence & Samuel T James

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 June next, to answer a Bill in Chancery exhibited against them in the said Court by Samuel B Hines

And unless they shall answer the said Bill within ~~four~~ Two months thereafter, the Court will take the same for confessed, and decree accordingly. And this they 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 10th day of May 1842, in the 66th year of the Commonwealth.

L R Edwards clk

[*One Copy to be delivered each Defendant.*]

To enjoin the Defts: John B Lawrence his agent Attorneys and all others Concerted from further proceedings on a Judgment of the Circuit Superior Court of Law & Chancery for the County of Southampton recovered by him against the other defendants and the plaintiff for the Sum of $2253.93/100 with interest from the 15 March 1841 till paid & Costs. The plaintiff having given bond and Security as the Law directs and filed a release of all errors at Law in the said judgment & proceedings.

Teste D R Edwards Clk

Davies
vs
Lawrence &c

Lawrence &c
1842 July Rules

D.S.C.

Received June 28th 1842 by mistake
a Writ of Error & Supersedeas Lawrence &c
29th 1842 Teste John B Lawrence

J. P. Holt Atty
for Plff: Defendants

THE COMMONWEALTH OF VIRGINIA,

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

We command you that you summon Mills & Laurence & John B Laurence

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 July next, to answer a Bill in Chancery exhibited against them & another in the said Court by

Samuel B Hines

And unless they shall answer the said Bill within ~~four~~ two months thereafter, the Court will take the same for confessed, and decree accordingly. And this they 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 5 day of June 1842, in the 66 year of the Commonwealth.

L R Edwards Clk

[*One Copy to be delivered each Defendant.*]

Laurence
& Laurence

Hines

vs } Exhibit

Laurence & Co

No. 1,

Saml B Hines

This is to certify that I have signed a bond
as security for Mr. Saml J Lamus say for Thirty
five hundred Dollars due one day after date and
dated the 20th March 1841 which Saml B Hines
has this day become security & This is to show
that it is the only note that Saml B Hines is
bound to me as security for Mr. Saml. J. Lamus
and I therefor exonerate him from any other
note which his name may appear on made
payable to me

Mills E. Lawrence

July 26 — 1841

I Mills E. Lawrence do hereby exonerate Saml B.
Hines from all claims by me as security
or any one else as security for
Saml. J. Lamus except the above name note above
stated

Mills E. Lawrence

X

Note of Pltfs counsel

Ahmis
vs
Lawrence

Injun to be perpet-
-ually, without pre-
-judice to Lawrence's
rights hereafter to
be asserted, and
each party paying
his own costs

R. H. B.

Hines
vs
Lawrence

} Note is reply to note by defendt counsel.

The defendt. rests his claim to any decree, upon the principle, that he who "asks equity must do equity."

This is not a case in which that principle applies. The defendts have obtained leave on a falsified suggestion - it is confessed. This court must therefore set aside the injunction. If the defendt. has any claim, he must assert it in the proper forum. He is abusing the process of this court. He cannot in this way deprive the courts of Land of their jurisdiction. If he could or ever any one who paid money or surety, could cause execution to issue (having agreed with the pltff that his ex. should not be issued) and then the defendt. enjoined proceedings, all he would have to do, would be to say, "he who asks equity must do equity." The whole question is "Has the ex. been satisfied?

Johnson J.

Mills Lawrence & Jno B Lawrence

vs

Jared B Mines

This is an injunction to an execution in favour of Jno B Lawrence vs. Mines & M. Lawrence as securities. pr J. J. Jones

The bill shows that the whole amount has been paid by Mills Lawrence and no part of it by Mines who was equally bound to pay. ~~—~~ Mills Lawrence has a clear right to recover one half of the debt from Mines after M Lawrence had paid $900 ~~the execution was then~~ by monies retained in the hands of the sheff, he paid the balance to Jno B Lawrence and took up one for that balance. On the supposition as entered into by Mines that, he had no right to collect it of Mines under the execution still he is entitled to one half the debt by Mines over shewing. He has come into equity for relief

he is thereby bound to do equity, and pay his portion of the debt to the commissioner who paid the whole to the plaintiff

A decree is thereupon entered in favour of Miles Lawrence for one half the debt paid by him to J. B Lawrence

Ch Chancellor

The paper purporting to exhibit claims cannot possibly apply to the debt due the Lawrence

Lawrence
vs
Lawrence
Note

which I have no power to introduce, from any doubt of the debt there due to Lawrence, and the decree ought to be for the whole sum, and the reference to the Commissioner is to ascertain the amount due, after the whole sum is paid

Hines

vs } Injun: bond & Releas
of Errors

Laurence &c

Know all men by these presents that we Samuel B Hines & John M. Gentry are held and firmly bound unto John B Lawrence in the just and full Sum of two thousand nine hundred and ~~Seventy four~~ dollars and 62½ cents to be paid unto the said John B Lawrence his certain attorney his executors administrators or assigns. to the payment whereof well and truly to be made we bind ourselves our heirs. Executors. & administrators jointly Severally firmly by these presents. Sealed with our Seals and dated this 10th day of May 1842.

The Condition of the above Obligation is such that whereas the above bound Samuel B Hines hath obtained from the Judge of the Circuit Superior Court of Law and Chancery for Southampton, an injunction to stay until the further order of the said Court all further proceedings on a Judgment of the said Circuit Superior Court of Law Chancery, on the common law side thereof. Obtained by the above named John B Lawrence against Samuel D James. Mills E Lawrence & the said Samuel B Hines for the Sum of two thousand two hundred fifty three dollars ninety five cents with interest thereon from the 16th day of March 1841 till paid & Costs. Now if the said Samuel B Hines shall well & truly pay and satisfy the judgment aforesaid and also all such costs as shall be awarded against him and all such damages as shall be incurred by him in case the injunction aforesaid shall be dissolved then the above Obligation to be void or else to remain in full force and virtue.

Witness.

Sam'l B Hines (Seal)

John M. Gentry (Seal)

I Samuel B Hines in consideration of the terms upon which an injunction has been granted me by the Judge of the Circuit Superior Court of Law & Chancery for the County of Southampton to a judgment of the said Court. recovered against Samuel D James. Mills E Lawrence & Sam'l B Hines for the sum of two thousand two hundred & fifty three dollars ninety five cents with Interest from the 16th day of March 1841 till paid & Costs. by John B Lawrence do hereby release all errors at Law in the said Judgment Proceedings. Given under my hand & seal this 10th day of May 1842.

Test.

Sam'l B Hines (Seal)