

1858-040

Chancery Papers v. Culver

vs Neely + Neely

Southampton County

other surnames [R. J. + W. Neely]

Culver

r { Papers

July

Colours

~ } Stat. Rules

July

Southampton Circuit Court

George D. Culver

against

Ro. J. Nely & W^m Nely doing business under the name of R. J. & W. Nely

1858 Jan'y 19 Summons issued retble. to February Rules.
" Febr. R. Sum. ret. Executed. Bill filed. D. et al. vs. Defs.
" Mar. " Bill taken for confessed
" Apr. " Cause set for hearing of?
" May. 1. Dismissed by consent.

Killy & Chambliss

George D. Bulver

W. } Bill of
discovery in
Clay:

Ro. J. & W. Neely

1858 February Rules

Stamp. Cir. Ct.

(1862 words)

To the Hon. Richard H. Baker, Judge of the
Circuit Court of Southampton County - in
Chancery sitting

Complaining shew unto the Court
your Complainant George D. Culver - Your
Complainant represents to the Court and says that Ro,
J. Sum Neely, filed a Bill in Chancery in this
Court against your Complainant, seeking a settlement
of certain accounts and transactions growing out of
certain sawing & milling operations, between them
and your ~~Complainant~~, a copy of which Bill is filed
herewith - That this Respondent filed his answer
to said Bill alleging that all matters
growing out of said business have been
settled between the parties, except that the
sum of three hundred dollars referred to in
said answer is yet due and unpaid to ~~the~~^{you?}
Complainant, and further setting forth the purport
of a paper writing shewing a settlement of said
matters for 1856, which original paper is in the
possession of said Ro. J. Sum Neely, it is essential
necessary to protect your Complainant's rights in
said suit; that said original paper be
produced, so that the same may be used by
your Complainant in his defence in said
suit - which paper now referred to is to the
following effect " Franklin sept 24 Jan. 24 " 1836
" On the first day of January 1857 we promise to make

"good the amount of one thousand Dollars to George
"D. Culver for his service, in running the mill
"if according to our written agreement his net
"profits at \$3 per ~~the~~ feet does not reach that
"amount and furthermore providing the said
"Culver renders his service similar to last
"year (1833) R. J. W. Seely," —

Your respondent, ^{avows} he did ~~render~~ ^{render} his service,
similar to the year 1833, and that the foregoing
paper was executed & him by said R. J. W.
Seely & afterwards paid by them to your
respondent and taken in by them with a
Receipt on the same — That he is advised he
has no power to obtain possession of said paper
& be used as evidence as aforesaid except by the
aid of this Court, which he now invokes, as the said
R. J. W. Seely refuse to produce the same —

In consideration whereof & as this Court has
jurisdiction in the case — To the End your Com-
plainant prays that Ro. J. Seely & ~~son~~ Seely
doing business under the name of R. J. W. Seely
may be made Defendants hereto & be compelled
to answer the allegations herein, on oath, — That
they may be compelled to make known, set forth,
discover & produce the paper writing about set
forth in substance, or otherwise account for it
so as whether a writing to that effect was then
executed & paid — and that all further

relief maybe granted, consistent with Equity
se. and se

Kelly & Chantler p. 9

✓
Culver

2 { Sum. Chy.

July

1838 February Rules

Executed July
26th 1838 by deliver-
ing them a copy

Geo W. Hark Deputy
for Wm W. Donig's att.

THE COMMONWEALTH OF VIRGINIA :

*To the Sheriff of Southampton County—*GREETING

We command you to summon *Re. J. Nelly & Wm Nelly Lumber Merchants & Partners*

to appear at the Clerks office of our Circuit court of Southampton county at the Rules, to be
holden for the said court on the first Monday in *February* — next, to answer a bill in
Chancery exhibited against *them* — in our said court by —

Geo. D. Culver

And have then there this writ. WITNESS, LITTLETON R. EDWARDS, Clerk of our said
Court at the Courthouse, this *19* day of *January* 1858 in the *82^d*
year of the Commonwealth.

L R Edwards Clk

Culver

Mr.

Re. J. & W. Neely

2 Exhibits filed
with the Rice

Nearly

to { Co. Bill

Quoted

Prepare Bill

Filed with Bill Feb'y Rules. 1858.

To The Hon. Rich^d. H. Baker Judge of the Circuit Court of Southampton County in chancery sitting. Humbly complaining sheweth unto your honor, your orators Robert F. Nely and W^m. Nely that sometime in the year 1854 in the month of June, the said Robert F. Nely and one George D. Culver, entered into an agreement, whereby among other things, it was agreed on the part of the said Nely to let his Steam Saw mill, at Franklin Depot Isle of Wight County Va. to cut or saw lumber by the thousand ft into the said Geo. D. Culver to cut 8 million of feet in the term of three years - commencing so soon as the said mill should be ready for operation. The management of which operation were to be under the management of the said Culver, and the supplying of logs, keeping the books, paying off the hands &c were the duties which the said Nely your orator was to perform, in conducting the partnership which they allege was thereby formed between the said parties, as will more fully appear by reference to the said agreement, herewith filed, marked 'c' and prayed to be taken as a part of this bill. Your orators further state, as the said agreement shows that the said Culver was to receive one half of the net profits arising from the contemplated business, at \$3.00 per thousand feet - that is to say, if there should be any net profits over the allowance of \$3.00 per thousand as aforesaid.

Your orators further state that though the said agreement was signed only by the said Culver and Ro. F. Nely one of your orators, that the understanding was, or it was known that your orator W^m. Nely was to be concerned as sharing with the said Robert F. Nely in his moiety and was to be regarded as interested as a partner, or interested to the extent of $\frac{1}{4}$ in the said business and in this view of the case and under the said agreement, the said Culver took possession & management of the saw mill &c about the 14th March 1855 and the business was carried by the said parties, until the 1st Jan'y 1857 - when by mutual consent, a dissolution took place. Your orators state, that it is desirable to have a settlement of the transactions of the said partnership, to ascertain the condition of its affairs and the liabilities as well as the profits if any thereof - They have no means of forcing a settlement of the concern save through the aid of a Court of Chancery. To the end &c they pray that the said Culver be made a party defendant to this bill and be compelled to answer the same - That an account of the partnership

or the transactions thereof, herein mentioned, be rendered before a Commissioner
of this Court, and that the same may be stated, settled, and fully closed. And grant
all ^{the} ~~the~~ and necessary relief which may be met in the premises, or the nature of the
case may require. If grant it.

R. H. Whitfield *per* 

Culver
at } copy
ans.
July

Filed with Bill Febry Rules
1858.

The answer of George D. Culver to a bill in Chancery filed in the Circuit Court of Southampton, Virginia by Robert J. Nely and Wm Neely.

This respondent saving and reserving to himself all just exceptions to said Bill &c. says that he did on the 26th day of June 1854 enter into articles of agreement with Robert J. Nely by which the said Nely let to this Respondent, a Steam Saw mill at Franklin Depot County of Isle of Wight State of Virginia to cut & saw lumber by the thousand feet on the following Terms to wit This respondent agreed to live at or near the above named place and Superintend the Mill to cut Eight Millions of feet in the term of three years, commencing as soon as the Mill and fixtures should be pronounced complete and to be at one half of all expenses attending the same, such as hiring labours, boarding the same, firing the timber, loading the cars keeping the mill in good repair &c &c except in case of an extraordinary break up in Mill or fixtures which should exceed Ten dollars at any one time - And your Respondent further says that by said agreement, it is provided that the said Robert J. Nely agreed to keep the Mill stocked with logs, to keep Cooks &c with the labours, pay money due hands at any time &c and that this respondent was to receive for his services one half of the net profits arising from the sawing at three dollars per thousand feet to be tallied as it was sawed & settlements semiannually and to have the Mill for the above named term of three years, provided the said articles, should be truly and faithfully discharged - And it was also agreed that if either party, without mutual consent, should break the said agreement, he should give to the other party three months notice and forfeit three hundred dollars.

That the Mill was considered complete on 14th of March 1855 and then taken charge of by this Respondent.

That he believes it is true that Wm Neely was concerned with his brother Ro. J. Nely as stated in said Bill.

Your Respondent says that all matters growing out of said agreement for the year 1855 were duly settled and paid for and all matters between the parties closed, as appears by a Receipt of said Ro. J. & W. Nely filed herewith, dated Jan'y 1st 1856 & marked, A,

That early in January to wit. On or about the 24th Jan'y 1856 this respondent and the said plaintiffs, altered the said agreement in so far as the mode of payment & compensation of the Respondent was concerned, and instead of

payment as stated in said agreement of one half of the net profits arising from the sawing at three dollars per thousand feet and as set forth in said agreement the said plaintiffs in law thereof, executed to the Respondent and accepted by him a writing to the following effect: "Franklin Depot Va Jan. 24th 1856 On the first day of January 1857 we promise to make good the amount of one thousand dollars to George D Culver for his services in running the mill, if according to our written agreement his net profits at \$3. per M feet does not reach that amount and furthermore providing the said Culver renders his services similar to last year (1855) R. J. & W. Nuly"

That this respondent did perform & render his services as required, and that the said plaintiffs paid this Respondent the said one thousand dollars, and that all expenses, charges, debts &c thereby were settled so far as this Respondent is concerned and he denies that he is liable to said Plaintiffs, for any debt, or other liabilities growing out of said agreement, if any were due, and he denies the right of the right of the plaintiffs therefore to call upon this respondent for a settlement of any partnership or other debts or contracts growing out of said business. This respondent further charges that the plaintiffs are indebted to him the sum of three hundred dollars, by virtue of the last clause of said agreement which was not altered - That by virtue of said provision in said agreement, the plaintiffs did on 1st day of Oct. 1856 give to this defendant three months notice to quit said employment as appears by the writing herewith filed & marked B. and they thereby became indebted to this respondent three hundred dollars being liquidated damages agreed on by the plaintiffs to be paid as aforesaid whenever such notice should be given.

Your Respondent denies the plaintiffs right to call on this defendant for settlement of the accounts demanded and prays a decree against the plaintiffs for said sum of three hundred dollars and having answered prays to be hence dismissed &c
Geo. D. Culver
Southampton County to wit.

I John P. Boykin a Justice of the Peace for said County and made oath that the facts set forth in said answer are truly believed Given under my hand this 7 day of November 1857
John P. Boykin J.P.

Exhibit "A"

Franklin Depot Jan 1st 1836 Rec^d of Geo. D. Culver his share of expenses for hire, Machinery &c &c for the year 1835.

R. J. & W. Nuly

"B"

Black Water Steam Mill
Franklin Depot Oct 1st 56

M. George D Culver.

As our agreement specifies three months notice on either party becoming dissatisfied we have this day concluded to give the required notice, that your services will not be required longer than New Years as you appear to be very much dissatisfied

Yours &c

R. J. & W. Nuly

Attest

Justice

J R Edwards Clk

Keels

Franklin Depot Pa. Jan 24th 1856

On the first day of January 1857, we promise
to make good the Amount of one thousand dollars to
George D. Culver for his services in running the mill;
If according to our written agreement, his net profits
at \$3. per ~~100~~ feet does not reach that amount. And
furthermore, providing the said Culver renders his
services similar to last year (1855)

~~Wm. H. Hitt~~
Wm. H. Hitt

INDEX TO DEEDS

TON COUNTY, VA.

R	S	T	U	V
on Page	Begins on Page	Begins on Page	Begins on Page	Begins on Page

Deeds and contracts from firms or companies are indexed in each member's name if so signed.

Senior and Junior are carried under the same head.

GRANTEE

Chancery Causes
Decided
November term
1858