1861-09 Southampton Co. Hecht, Jacob Bros & Co et al vs Jaynes C E & C et al

Adt -

John D Haken
Kent Paine & Co.
D J Foley & Bro
H V Thompson

32 3 Kelly Islands

Jacob Hecht Bro, Hc. Sol:

v Bill & Tr:

a. E. Joyner Hc.

1858 October Rules.

S. ampa Cir. Ct.

(1845 words)

To the Hon: Richard H. Baker, Judge of the Circuit Court of Southampton County — Complaining shew unto the Court your Complainants, Jacob Hecht, Bro: & Co; John G. Hodsden (for Ch: Sharp); Kent, Paine & Co; and D. I. Foley & Bro; and H. V. Niemeyer —

Your Complainants represent to the Court and say, That A. E. Joyner and Simeon Joyner were merchants and partners doing busines under the name and style of A. E. Joyner & Co: at Boykins Depot in said County, and by their firm name purchased goods and otherwise became indebted to your Complainants and now owe them as follows — To your Complainants Jacob Hecht, Bro: & Co: the sum of $474:53, by note dated 8th April 1857 and payable six months after date (a copy of which note is filed herewith, marked (A) — the original being being filed in a suit at Law now pending against said A. E. Joyner & Co —; To your Complainant Jno. G. Hodsden $75:83, as appears by account filed herewith marked (B.); To Kent, Paine & Co a draft drawn in their favor on Wm Vesey & protested & yet due for $500. dated 9th Sep. 1857 & payable six months after date — a copy of which draft is filed herewith marked (C.) the original being filed in a suit at Law now pending against Wm Vesey); To D. I. Foley & Bro. $207:18 due by note dated 21st March 1858 & payable 30 days after date which note is filed herewith marked (D.) — and to H. V. Niemeyer $28:46 due by note due 10th May 1858 now in warrant which will be filed herewith marked (E.) — That the said A. E. Joyner & Co designing and intending to defraud hinder and delay your Complainants in the collection of their several demands, did on the 3d day of May 1858, execute a deed of Trust to Benj: B. Kindred as trustee to secure and protect Cuthbert D. Barham, Richard Darden, Stevenson R. Joyner, and Lucy W. Kindred and all others of their creditors, conveying all their the

said a. E. Jozner & Co. stock of dry goods, groceries, hardware and other merchandize of every description now in store of said a. E. Jozner & Co. at Boykins Depot — stock of hogs, cattle, carts, one buggy and harness, farming implements of every description, all bonds, notes, open accounts, and all other debts due the said A. E. Jozner & Co.

That by the said Deed of Trust (a copy of which is filed herewith marked (F) it is expressly provided, that the said firm of A. E. Jozner & Co. shall remain in peaceable possession of all property therein conveyed for the space of Eighteen months from the date of said deed, and shall carry on during that period the mercantile business in which they were then engaged at Boykins depot in the same manner as heretofore, and at the expiration of that time on the order of any party benefitted as sale may be made —

That the powers reserved to the said A. E. Jozner & Co. in the said Deed of Trust are incompatable with the avowed purpose of the grantors to furnish indemnity to their creditors; are equivalent in their effects to a power of revocation, and fully adequate to defeat the provisions of the said deed, and is therefore fraudulent per se, null and void: and are and were expressly intended to hinder, delay and defraud the creditors of said A. E. Jozner & Co. and particularly your Complainants — That the said A. E. Jozner & Co. are insolvent and that the property named in said Deed should be taken from their possession, —

That notwithstanding the deed of trust aforesaid is fraudulent and void as to your Complainants, creditors of A. E. Jozner & Co. it is nevertheless valid, ~~as to A. E. Jozner & Co. and the~~, so far as to divest A. E. Jozner & Co. of all right title, interest and estate in the property and effects therein named and no conveyance thereafter executed by said A. E. Jozner & Co. to secure the same property to the same creditors as named in the first fraudulent deed aforesaid, will be valid so as to defeat the right of your Complainants to set aside the previous fraudulent transfer — and that ~~as a matter of~~ reconveyance by a. E. Jozner & Co. the fraudulent grantors in the deed of trust aforesaid, to the original parties, will be & is fraudulent against the creditors of said A. E. Jozner & Co. of whom your Complainants are part-

That notwithstanding, these facts, the said A. E. Jozner by a subsequent deed dated the 7th day of June 1858 conveyed to said Benj. B. Kindred the same property & estate to secure the same parties as in the first named deed (a copy of which deed is filed herewith and marked (G.) — which last named deed your Complainants charge ~~is void and fraudulent as to~~ mistaken to convey that which the grantors had already parted with, to the same parties as in the first deed & to secure the same debts, & this with a knowledge that the effects would not pay the debts named in the first deed aforesaid, and is an attempt to make valid that which is invalid and fraudulent — and should therefore not be regarded, but should, as your Complainants pray that it may be, set aside as null & void — and the property held liable to your Complainants demands —

In consideration whereof, and as this Court has power to grant the relief desired, your Complainants pray that A. E. Jozner & Simeon Jozner, partners as aforesaid Benj. B. Kindred, trustee, Cuthbert D. Barham, Richard Darden, Simeon R. Jozner & Lucy W. Kindred, may be made Defendants hereto and answer the several allegations herein on oath, and particularly, that A. E. Jozner & Co. say whether the several debts set forth as due your Complainants are not due — That both the aforesaid Deeds may be

set aside as fraudulent and void in full, and that the property referred to may be made liable to your Complainants' demands, that all proper accounts of said property may be taken that the same may at once be sold, and be taken charge of by the said Benj^a B. Kinsley as trustee, and that all further relief may be granted consistent with right &c.

John R Kelly
&
Wm B. Shands
} S. C.

7 Exhibits
filed with the Bill

Jacob Hecht, Bro. & Co

vs

A. E. Joyner & Co. et al

Jacob Hecht Bros.

(A)

$474.53 Copy

Baltimore April 8th 1857

Six months after date we promise to pay to the order of Jacob Hecht Bro & Co. four hundred and seventy four 53/100 dollars value received —

A. E. Joyner & Co.

No 230 Due Oct 8/11

Nicht Brod 46:

v. } Stat. Rules

Joyeux 46:

1859 Nov.

Colk.	ℳ 8.22
Stiff	3 50
Lau 1.	16.50
	ℳ 28.22

In Southampton Circuit Court

Jacob Hicks Bro. & Co. John E Hodsden (for Chas. Sharp) Kent Pruden & Co. D. J Foley & Bro. & H. V. Niemeyer

against

A. E. Joyner & Simeon Joyner who were merchants & partners doing business under the name and style of A. E. Joyner & Co. Benj. B Kindred, Trustee, Cuthbert D Barham. Richard Darden. Nevison R Joyner and Lucy W Kindred

1858. Sep. 21st. Summons issued Retble. to October Rules

" Oct R. Summons Rtd. Exd. on all the Defts except Simeon Joyner - he not a resident -
Bill filed. Decree Nisi v. all the Defts except Simeon Joyner

" Nov. R. Bill taken for confessed v all the Defts Simeon Joyner - and cause set for hearing as
to them on bill &c.

" Nov. Decree &c.

1859 Nov. Decree

1860 May Decree

1861 Apl. 1st Rept.

1866 May 7. Order to remove cause from Docket

Hicht Bro. Hi: 1°

& Z Sam. Chy.

Joyner Hi: 2°

1858. October Rules

Executed on all within
named Defendants except
Simeon Joyner who is
not a resident of My
County

Robt. McElwaine D.
for Sheriff Angyolett

The Commonwealth of Virginia,

TO THE SHERIFF OF SOUTHAMPTON COUNTY—GREETING:

WE COMMAND YOU TO SUMMON A. E. Joyner & Simeon Joyner late merchants & partners under the name style of A. E. Joyner & Co: Benjamin B. Kinder Trustee. Cuthbert D Barham. Richard Darden. Alexander R Joyner & Lucy W Kinder

to appear at the Clerk's office of our Circuit Court of Southampton County, 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 them —— in our said Court by ——

Jacob Hecht Bro. & Co brothers

and have then and there this writ. *Witness*, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court House, this 21st day of September 1858, in the 83 year of the Commonwealth.

L R Edwards clk