

1869 - 17

Santhampton County

Barrett, E. Calhoun

vs

Jaynes, Elijah's Estate

(Injunction)

Creditor's Suit

Herman & Co etc

Keller, Samuel, Shipp -
Asst Comptroller

To sell real Estate

~~10~~ 98.92.

Barrett

~ { Papers

Kello &

1869 November Term

Dismiss this case
I 9 Minutes
p 9

In join

To the Honorable Edward H. Chapman
Judge of the Hustings Court for the City of Portsmouth
To the Hon. Richard H. Baker Judge of the Circuit Court
for the County of Southampton

Humbly complaining I sheweth unto your
Honor your Orator, E. Calhoun Barrett of the County of
Southampton, and respectfully represents as follows:

That the Circuit Court of the said County of Southampton,
at the Spring or May term thereof A.D. 1866, in the suit
therein pending of Herman & Co. vs. Eljah Dyner's
~~Adm.~~, made and entered a Decree directing and or-
dering, among other things, that Samuel Kello Sheriff
should be appointed Commissioner to sell the real es-
tate of which the said Eljah Dyner was seized -
A copy of which said Decree is herewith filed as part
of this Bill (marked A) -

That the said Kello proceeded to sell the real
estate known as "Dyner's Store" with the land there-
to attached about 82 1/2 acres, and your orator be-
came the purchaser for the sum of thirty hun-
dred and twenty five dollars, paying, in cash on
said purchase the sum of \$ Cents, and
executed his bond for the remainder of the pur-
chase money, to wit \$2868.56 - Cents with R. lead-
mus Barrett and Benj B. Knudsen of the said
~~County of Southampton~~ and John R. Parker of
the County of Sussex as his Sureties - A copy
of the Report of the said Commissioner, Kello,
of the sale, is herewith filed as part of this
Bill (marked B).

The said purchaser, your Orator, not
having paid the said bond the said Circuit Court
of Southampton, at the November term thereof
A.D. 1867, made and entered another Decree

ordering the said purchaser and his sureties to show cause, at the next May term AD 1867, why the said real estate should not be re-sold to pay the balance of the purchase money then due a copy of which said Decree (marked C) is herewith filed and prayed to be considered as part of this Bill.

Meantime on the 14th February AD 1867 the said Ele Barrett your orator sold the said real estate so purchased by him as aforesaid, to Rufus E Darden and entered into a written agreement with the said Darden for such sale, a copy of which said Agreement recorded in the Clerk's office of the County Court of Southampton County is herewith filed marked D, as part of this Bill -

That at the November term AD 1867 of the Circuit Court for the said County of Southampton the said Commissioner Kelso having brought suits on the said bond for the balance of the purchase money for the said real estate obtained judgment thereon against your orator, the said Ele Barrett and against the said R Le Mus Barrett and Rufus E Darden. ~~and also at the October term AD 1867 of the said Circuit Court for the County of Southampton~~ ^{and also} ~~judgment~~ your orator's said sureties, and has had issued by the Clerk of the Circuit Court of the said County of Southampton Executions on the said judgment, that is to say one Execution ~~against the~~ a Fieri Facias, against the said Ele Barrett, R Le Barrett and Rufus E Darden for the whole amount of the said purchase money then unpaid, to wit for \$2868.56 in Cents

and \$8.95 in Cents, Cents, and another Execution a Fieri Facias, against the said John R Parker for the whole of the said purchase money then unpaid to wit \$2869.00 in cents, and \$6.65 Cents: -

That such was also brought on the bond executed by the said Rufus E Darden to the said Ele Barrett for the purchase of the said property and judgment obtained at the said November term AD 1867 of the Circuit Court for the said County of Southampton, upon which an Execution a Fieri Facias, was duly issued out of the Clerk's office of the said Court, for the benefit of the said Kelso Commissioner - that the Sheriff of the said County of Southampton has already sold at public auction, for cash chattel property of the said Darden to the amount of upwards of seven hundred dollars which the said Sheriff has in hand to the credit of the said Executions against the said Ele Barrett & his sureties and against the said Rufus E Darden. Both Executions being for the benefit of the said Kelso Commissioner. ^{both the Court having been so brought} and that the said Sheriff of Southampton has furthermore garnished monies and effects in the hands of other persons, belonging to the said Rufus E Darden, to the amount of six hundred dollars and upwards which is believed by your orator to be perfectly good and will be made available to the credit of the said Execution at the May term next (1868) of the said Circuit Court for the said County of Southampton, at which time the said monies garnishing the debtors of the said Darden, & made returnable.

But notwithstanding the fact, that the title to the said real estate was to be retained till the whole of the purchase money was paid, and the said Circuit Court of Southampton, by the Decree made at the November term 1867 will proceed to resell the same to pay the balance of the purchase money, which your Orator believes the said real estate will sell for sufficient in cash, fully and abundantly to pay the said Sheriff of Southampton, ^{Commissioner as aforesaid,} is proceeding to sell the chattle property of the said E. B. Barrett, R. B. Barrett and Ben B. Knicker to pay and satisfy the whole of the said Execution so issued against them - and has furthermore placed in the hands of Richard L. Gobie, Sheriff of the County of Sussex, an Execution, (Fi Fa) against the Chattle Property of the said Jno R Parker - The said Sheriff of Sussex is also proceeding to sell sufficient of the property of the said Jno R Parker to satisfy the whole of the said Execution in the County of Sussex.

Thus your Honor will perceive that the said Rello, Commissioner as aforesaid is proceeding to make the ^{whole} amount of the said Execution out of both parties, that is to say out of the parties residing in Southampton and also out of the party residing in Sussex ^{thus collecting double the amount due.} the property of the said party Defendants having been levied on and advertised in both counties. When in fact the balance of the purchase money still due for the said real estate is made perfectly safe by the lien retained by the Circuit Court of Southampton, when the sale was first ordered.

To the clerk of the Circuit
 Court of Sampson County } On the motion
 of the Complainant who hath filed this his
 bill in vacation, and made oath thereof accor-
 ding to law, an injunction is awarded him
 according to the prayer of the bill: But the
 effect of this injunction is to be suspended
 until the said Complainant, or some person
 for him, shall enter into bond, payable
 to the Comth of Virginia, with one or
 more sufficient securities, in the clerk's
 office of the said Court, in the penalty
 of one thousand dollars, conditioned to
 pay all such costs and damages as
 may be awarded against the said Com-
 plainant in case the said injunction
 be dissolved.

Rich^d. H. Baker
 July 8. 1868.

107
 Barnett
 v Bill
 Kells del.
 1868 Feb 7 14. bond Security given
 Spa. & Inj. issued

60
 12
 68
 68
 136

All of which things and acting by the said Samuel Kello Commissioner as aforesaid is contrary to Equity and good conscience - especially as the property of the Defendants, owing to the unprecedented scarcity of money, if sold under the said Executions must be almost entirely sacrificed - a sacrifice and loss unnecessary to be inflicted upon them, when the balance of the said purchase money now due is made safe by the lien still retained by the said Commissioner under the decree of the said Circuit Court.

Your orator insists and is so advised that the said Kello Commissioner should first proceed to sell the said real estate under the order of the said Circuit Court of Southampton which it is presumed it is the purpose of the said Circuit Court to direct at its next term, having at the last term made an order as before stated against the purchaser and his sureties to show cause why that cause should not be taken -

Your orator is perfectly willing and expects to make up any deficiency which may be needed after the resale of the said real estate and so does his sureties; but surely it is a great hardship that his chattel property and that of his sureties should be sacrificed without the least necessity, when he and all the parties concerned are perfectly willing that the said real estate should be resold to pay the balance then due and will promptly make up the deficiency if any.

As your orator is without relief, in the premises save in a Court of Equity, where such matters as these are properly cognizable

He therefore humbly prays that your Honor
would enjoin and restrain the said Sheriff
of Southampton^{County} and the said Sheriff of
Superior County from proceeding further to
collect or satisfy the Executions, Fi Fa's, in
their hands as before described, until the fur-
ther order of the Circuit Court for the said County
of Southampton -

That your Honor would grant such other
and general relief, Equity, Remedies, as the
Nature of the case may require -

and as in duty bound your orator
will ever pray &c -

May it please your Honor &c

Alfred Kendrick

Attorney for Complainant

State of Virginia }
County of Southampton } Jo. Wick

This day personally appeared before
me Wm R. Parker a Justice of the Peace for the said
County in my said County, Eleanora Barrett
a resident of my said County, and made oath
that the statements made in the foregoing Bill
are true to the best of his knowledge and belief,
given under my hand this 5th of February 1868.

Wm R. Parker J.P.

Barrett
with } Agreement
Davidson

(D)

3

This Agreement made this 12th day of February in the year 1867 between E. Calhoun Barrett of the first part and Rufus E. Darden of the second part. Witnesseth as follows:

At heretofore the Circuit Court of Southampton County, at the May Term thereof in the year 1866, in a suit pending therein, the style of which is "Herman H. Co. vs. others and Elijah Joyner's adm." did make and enter a decree in which among other things it is ordered that Samuel H. Kello Sheriff of the said County, be appointed a special Commissioner to sell at public auction the tract of land with all the buildings and privileges thereto attached or belonging, commonly known as "Joyner's Store" which said tract of land is supposed to contain about eighty two acres more or less, lying in the County aforesaid and is the same on which the said Elijah Joyner resided at the time of his death, and the said Kello did either at the last September or October Term of the County Court of the said County (at which of the said Terms it is not now remembered with certainty but it is believed to have been at the September Term) sell the said real estate, at public auction and the said E. C. Barrett became the purchaser thereof for the sum of three thousand and twenty five dollars, of which said sum the said purchaser paid about one hundred and fifty six dollars in cash and executed his bond with certain sureties thereto for the remainder of the purchase money, to wit, for about the sum of twenty eight hundred and sixty nine dollars on demand and payable twelve months from the date of the said bond but bearing interest from the date thereof; the title to which said real estate, was, according to the direction of the said decree of the said Circuit Court, to be retained by the said Commissioner till the whole of the said purchase money was paid, or the further order of the said Circuit Court.

Now this agreement witnesseth that the said Barrett has this day bargained and sold the whole of the said real estate to the said Darden with all the buildings and privileges thereunto in any manner belonging or pertaining, which were so purchased by the said Barrett as aforesaid for the same sum of three thousand and twenty five dollars of which said sum the said Darden has paid the said Barrett one hundred and fifty six dollars and executed his bond to the said Barrett for the balance of the purchase money, to wit, twenty eight hundred and sixty nine dollars, on demand and payable on the same day on which the bond executed by the said Barrett to the said Commissioner is on demand and payable and bearing interest from the same day of the said Barrett's bond. It is agreed by the parties hereto that the said Darden shall pay the amount of his

bond executed to the said Barrett, when the same may fall due, to the said Kello Commissioner as aforesaid in order that the same may go to the perfecting of the title of the said Darden to the said real estate; And the said Kello is then to make and execute a deed for the said real estate to the said Darden instead of to the said Barrett; and such payment of the said bond to the said Kello shall be a full satisfaction and payment of the said bond to the said Darden notwithstanding it may be made payable to the said Barrett.

And it is further agreed and understood by the parties hereto, and so covenanted, that if the said Samuel Kello Commissioner as aforesaid, shall obtain judgment and due out and execution upon the bond executed to him by the said Barrett and his sureties, before the said Darden shall have paid to him, the said Kello, the amount of the bond so executed to the said Kello by the said Barrett, then and in that event, the said Darden shall return and restore full and entire possession of the whole of the said real estate to the said Barrett; and the said Barrett is to sell the said real estate, at public auction, having duly advertised the same at six public places in the said County and in some newspaper published in the City of Norfolk or Petersburg for thirty days preceding the sale, and out of the proceeds pay the said execution, and the balance if any, pay to the said Rufus O Darden. But should the said real estate not sell for sufficient to satisfy the said execution the said Barrett is not to be debarred his usual right of action for breach of covenant against the said Darden. And the said Barrett has the right to bring suit on the said Darden's bond for the benefit of the said Kello Commissioner as aforesaid. And the said Darden is allowed and privileged to take immediate possession of the said real estate to enjoy and use the same, but not remove any of the buildings or injure the said real estate or any part thereof except such as may result from the legitimate and proper use.

Witness the following signatures and seals.

E. Calhoun Barrett (Seal)

Rufus O Darden (Seal)

Southampton County In the Clerk's Office February 14th 1867.
This agreement between E. Calhoun Barrett and Rufus O Darden was acknowledged by the said Barrett and Darden and admitted to record, a stamp of the internal revenue of the United States of the amount of five cents being affixed thereto and duly cancelled.

Attest - L. R. Edwards
Copy - L. R. Edwards

Barrett

~ } Stat. Rules

Hill. & P

In Southampton Circuit Court.

E. Calhoun Barrett.

against
Samuel Wells Sheriff Commissioner the said Wells Sheriff of Southampton County. & R. L.
Dobie Sheriff of Sussex County.

1868 Feb. 8. Bill filed & Inj. awarded.

" " 14th bond & security given & Sup. & Inj. issued.

" March R. Sup. & Inj. returned Executed. D. Nisi & Affa.

" Apr. R. Bill taken for confessed.

" May .. Cause set for hearing.

Barrett

v { Injun bond

Kello &

Know all men by these presents that we E. Calhoun Barrett R. Cadmus
Barrett. John R Parker & Ben. B. Kindred
are held and firmly bound unto the Commonwealth of Virginia in the just
and full sum of One thousand dollars, to the payment whereof well and truly
to be made we bind ourselves, our heirs, executors and administrators jointly and
severally firmly by these presents. Sealed with our seals and dated this 14th
day of February 1868.

The condition of the above obligation is such that whereas the above
bond E. Calhoun Barrett hath obtained from the Judge of the Circuit
Court of Southampton County an injunction to stay until the further order
of the said Court, all further proceedings on two executions of *Fieri Facias*
issued from the Clerks Office of the said Court one directed to the Sheriff
of Southampton County, and the other to the Sheriff of Sussex County, upon a
judgment obtained in the said Court in favor of Samuel Kello Sheriff and
Commissioner against E. Calhoun Barrett. R. Cadmus Barrett. John R
Parker and Ben. B. Kindred for twenty eight hundred and sixty eight dollars
and fifty six cents with interest and costs. Now if the said E. Calhoun
Barrett shall pay and satisfy all such costs and damages as may be
awarded against him in case the said injunction be dissolved then the
above obligation to be void or else to remain in full force and virtue.

E. Calhoun Barrett

(Seal)

R. Cadmus Barrett

(Seal)

J. R. Parker

(Seal)

Ben. B. Kindred

(Seal)

In the Clerks Office of Southampton Circuit Court February 14th - 1868

The above bond was acknowledged by the obligors thereto and R. Cadmus
Barrett. John R Parker and Ben. B. Kindred the securities made oath that
their joint estates after the payment of all their just and lawful debts are worth
the sum of One thousand dollars, the penalty of the said bond as they verily
believe.

L. R. Edwards. Clk

To injoin and restrain the Sheriff of Southampton County and the Sheriff of Sussex County from further proceeding on the executions directed to them respectively. Issued from the Clerks Office of the Circuit Court of Southampton County, upon a judgment obtained in the said Court in favor of Samuel Hells Sheriff & Commissioners against E. Calhoun Barrett, R. Cadmus Barrett, John R Parker & Ben. B. Hindred for twenty eight hundred and sixty eight dollars and fifty six cents, with interest and costs until the further order of the Court, the plaintiff having given bond & security in the penalty of one thousand dollars conditioned to pay and satisfy all such costs & damages as may be awarded against him in case the said injunction be dissolved.

Teste

L. R. Edwards Clk

Barrett

{ Sp. & Inj.

Hells

1868 March Rules

Sussex

of acknowledgment legal service of the writ
 R. R. Dotson Clk
 Sussex County

THE COMMONWEALTH OF VIRGINIA,

Sussex
To the ~~Sheriff~~ of the County of ~~Southampton~~—GREETING:

We command you to summon *Sam'l Kello Sheriff & Commissioner, the said Kello Sheriff*
of Southampton County & R. L. Dobie Sheriff of Sussex County

if *they* be found within your bailiwick, to appear at the Clerk's office of our court of Southampton County,
at the Rules to be holden for the said court, on the first Monday in *March next to answer a bill in*
chancery exhibited in our said Court by E. Calhoun Barrett. 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 courthouse, this *14* day of
February A. D., 186*8*, in the *92^d* year of the Commonwealth.

L. R. Edwards

To restrain and enjoin the Sheriff of Southampton and the Sheriff of Sussex
 from further proceeding on the executions, directed to them respectively, issued
 from the Clerk's Office of the Circuit Court of Southampton County, upon a
 judgment obtained in the said Court in favor of Samuel Helle Sheriff and
 Commissioners against E. Calhoun Barrett. R. Cadmus Barrett. John R
 Parker & Ben B. Kindred for twenty eight hundred and sixty eight dollars and
 fifty six cents with interest and costs, until the further order of the Court. the
 plaintiff having given bond & security in the penalty of one thousand dollars,
 conditioned to pay and satisfy all such costs and damages as may be
 awarded against him in case the said injunction be dissolved

Teste J. R. Edwards 66

Barrett

Spa. & Injunct

Helle

March Rules

Executed Feb. 17th

1868 by delivering him

a copy

E. L. Story

for J. Helle

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of the County of Southampton—GREETING;

We command you to summon

*Sam Hells Sheriff & Commissioner. the said Hells Sheriff of
Southampton County & R L Dobie Sheriff of Suffolk County.*

if *they* be found within your bailiwick, to appear at the Clerk's office of our court of Southampton County,
at the Rules to be holden for the said court, on the first Monday in *March* next to answer a bill in
Chancery exhibited in our said Court by E. Calhoun Barrett. 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 courthouse, this *14th* day of

February A. D., 186 *8*, in the *92^d* year of the Commonwealth.

L. R. Edwards

Herman & Co & Co

4

Elijah Joyner's adm

copy of Greene

(A)

Southampton County Nov 5 1866

William A Turner & John B Whitehead merchants & partners doing business under the name of Style of Herman H^c who, sue for themselves and all other creditors of Elijah Joyner dec^d who may make themselves parties hereto on the usual terms. Diffs: }
against

Wm H Daughtry adm^r of Elijah Joyner

vs

In obedience to a decree of the Circuit Court of Southampton County made at the May Term 1866. I proceeded to sell in the manner and on the terms directed in said decree on the 17th day of September 1866, the following real estate belonging to the estate of Elijah Joyner dec^d. A tract of land in said County containing 406 $\frac{1}{2}$ acres more or less & adjoining the lands of B J Bryant called the Lewis Worrell tract, which was purchased by Wm H Daughtry for \$925.00 for which after deducting his proportion of expenses of sale & which was \$42.66 he gave his bond for \$782.34 with M. C Daughtry, Walter Myrick & Joseph E Warren Securities. A lot of land at Morris containing about one half of an acre more or less & house on same, which was purchased by Joseph E Crumpler for \$60.00 for which after deducting his proportion of expenses of sale & which was \$3.10 he gave his bond for \$56.90 with Augustus Crumpler and Wm H Daughtry Securities. The house tract of land containing 82 $\frac{1}{2}$ acres more or less, adjoining the lands of John B Jenkins & others which was purchased by E. C. Barrett for \$3025.00 for which after deducting his proportion of expenses of sale & which was \$156.44 he gave his bond for \$2868.56 with R. Cadmus Barrett, John R Parker & Benjamin B Hinder Securities which bonds are filed herewith and costs paid as follows.

Amount of Sales

\$3910.00

Paid J R Kilby Cash

\$50.00

" Wm B. Chandler

50.00

Carried over

100.00

Amount of Sale brot Over

\$3910.00

" Cash " "

100.00

Paid Auctioneer

10.00

" Clerk

5.00

Commissions on Sale

87.20

202.20

Saml. Kelly Shff & Co

3707.80

by E B Story. D. C.

Southampton Circuit Court. May Term 1866.

William A Turner & John B. Whitehead merchants & partners doing business under the name & style of Herman & Co. who sue for themselves, and all other creditors of Elijah Joyner dec^d who may now make themselves parties hereto on the usual Terms

Plffs

against

In Chancery

Wm A Daugherty adm^r of Elijah Joyner dec^d.

Def.

This cause came on to be heard on the papers formerly read & on the report of Sam Kells Sheriff of Southampton County made pursuant to the decree of November Court 1865 to which report there is no exception, and on the petition of Alfred T. Stephenson filed this day by leave of the Court and was argued by Counsel: On consideration whereof the Court doth confirm said report and doth adjudge order and decree that Wm A. Daugherty administrator of Elijah Joyner dec^d make a report of all payments made by him under the decree made in this cause at May Court 1866. and the Court being of opinion that the interest of all parties will be promoted by a sale of the real estate referred to in the cause, doth further adjudge order and decree that Sam Kells Sheriff of Southampton County proceed to sell before the Courthouse door of Southampton County on some Court day on credit of twelve months with interest from date (except for costs of sale and reasonable attorneys fee to plaintiffs and defendant which will be cash) after giving at least twenty days notice of such sale by advertisement at the Courthouse door of said County & at four other public places in said County, the lands of which said Elijah Joyner died possessed and not heretofore sold, and described in the proceedings as follows

- 1st. A tract of land in Southampton County containing 406 $\frac{1}{2}$ acres more or less and adjoining the lands of B. J. Bryant & called the "Ludis Worrell tract."
 - 2^d. Lot of land at Monroe containing about one half acre more or less & house on same
 - 3^d. The home tract containing 82 $\frac{1}{2}$ acres more or less adjoining the lands of John B. Jenkins & others
- And that bond and good security be taken for the purchase money and the title to said lands to be withheld till the further order of the Court.

Attest

Juste

L. R. Edwards cly

Herman & Co.

to { Copy done

Joyner's adm

(6)

Southampton Circuit Court November 9. 1867
Wm H Turner and John B Whitehead merchants & partners doing business
under the name & style of Herman & Co. who sue for themselves and all other
creditors of Elijah Joyner dec^d who may come in make themselves parties
hereto on the usual terms.

Plffs

against.

Wm H. Daughtry adm^r of Elijah Joyner dec^d. Def^t.

It appearing by the report of Samuel Kelle Sheriff and Commissioner
made in above case that E. C. Barrett R. Cadmus Barrett John R Parker &
Benjamin B Hindes have not paid the sum of twenty eight hundred and sixty
eight dollars and fifty six cents for the purchase of the real estate, pur-
chased under proceedings had in this cause. It is ordered that the said
parties be summoned to the first day of the next Term to shew cause why
the real estate thus purchased by them should not be resold to pay said
debt.

Attest

Test

L. R. Edwards Clk