

1907-25

Southampton County Chancery - (The) Taylor Wagon Works. vs Barnhill, E. et al

Sues for judgement against
individual as well as the Co.
also property sold to them be
found and returned and also
restrain from selling anything
until bills paid up.

Piland, J. F.
(Barnhill & Piland)

The Taylor Wagon Works ¹⁹⁰⁷

vs. { Bill in Equity

E. Bonhill and J. F.

Piland -

1905 Mch 13 - Filed

B. F. McLenore S.S.

Your complainant has been indulging the said E. Barnhill and allowing him to renew and curtail ~~the~~ the notes which he
To the Hon. R. R. Prentiss, Judge, of the Circuit Court of Southampton County, Virginia. still owes on this account.

Your complainant, The Taylor Wagon Works, a corporation chartered and doing business under the laws of the State of Virginia, of Lynchburg, Va., humbly complaining, sheweth unto your Honor the following cause :

Your complainant is engaged in manufacturing wagons in the City of Lynchburg, Va., and selling them to the retail trade. In the course of this business your complainant has sold a number of wagons to E. Barnhill, at Franklin, Southampton County, Virginia, who was engaged in the business of ^{making and repairing} selling wagons and other vehicles and other works of similar character, in said town. The orders for said wagons were in each case in writing and signed by said E. Barnhill and in one case by him and Parker Buggy Corporation jointly, and in every instance in the written orders, there is a provision that the good shipped thereunder shall be and remain the property of your complainant until the money for same shall have been paid. The originals of two of said orders are herewith filed, marked Exhibits A & B. and prayed to be read as a part of this bill. The said E. Barnhill has made partial payments on the wagons sold him by giving his notes for same and partially paying or curtailing same, but is still indebted to your complainant on account of same in the sum of \$377.81, of which \$134.86 is past due, \$137.95 will be due May 6th 1905, and \$105. will be due May 23rd, 1905. The said debt is evidenced by four negotiable notes, all signed by E. Barnhill made to your complainant and held by them, one \$91.62 given Nov. 4th 1904, due March 4th 1905, with \$1.12 protest fee; one \$41. given Feb. 6th 1905, due March 8th 1905, with protest fee \$1.12; one given Jan. 6th 1905, for \$137.95 due May 6th 1905; and one for \$105. given Jan. 23rd 1905 and due May 23rd 1905. All of said notes are still held by your complainant and nothing has been paid on either of them.

Your complainant has been indulging the said E. Barnhill and allowing him to renew and curtail ~~extinguish~~ the notes which he gave for the wagons sold him, and the above notes described are the ones which he still owes on this account.

Some time during the year 1904 as your complainant is informed, the said E. Barnhill formed a partnership in said business with J. F. Piland, but all of the wagons for which the above described notes are held were sold by complainant to said E. Barnhill and the entire transaction has been conducted with him alone. ~~Before~~ allowing the said notes due March 4th 1905 and March 8th 1905 to go to protest as above stated, to-wit, on February 28th 1905, the said E. Barnhill wrote to your complainant that he had "plaid out in business" and had sold out what little he had to Mr. J. F. Piland who was his partner, and this information your complainant finds is true. Your complainant alleges that among the assets turned over by said E. Barnhill to J. F. Piland are several of the wagons sold by your complainant to E. Barnhill and that the said wagons are still the property of your complainant and that they have the right to take the same. Your complainant alleges that the said J. F. Piland knows perfectly well that the said wagons are not paid for and that they belong, under the terms of the contract under which they were delivered to said E. Barnhill, to your complainant and that said Barnhill had no right to convey them to said J. F. Piland. Your complainant further alleges that the whole transfer by Barnhill to Piland was made with the intention of converting his property into money, securities or evidences of debt with intent to hinder delay and defraud his creditors, and that said assignment was either without consideration and was made with intent to hinder, delay and defraud the creditors of said E. Barnhill and that the said J. F. Piland was fully aware of such intention and was a party to it, and has left the said E. Barnhill in full possession of said property, nominally as an employee of said Piland, but as your complainant believes and charges, in pursuance of a concerted

plan between the two to delay, hinder and defraud the creditors of ~~the partnership~~ said E. Barnhill and particularly your complainant. Your complainant therefore alleges that all of said wagons which are still in the possession of either said Barnhill or J.F. Piland belong to complainant and should be restored to it by due process of law, and that any other property which the said E. Barnhill now owns and has in possession or has ~~partly~~ transferred to the said J.F. Piland shall be subjected to the payment of the debt of your complainant, and the alleged transfer of said property to said J.F. Piland, either by selling him an interest in same as a partner, or by selling the business to him outright, should be set aside as fraudulent and the said property subjected to the payment of the debts of said E. Barnhill, and particularly that of your complainant.

Yours complainant further alleges that the alleged transfer by Barnhill to Piland, either when he entered said firm as a partner or when he bought out the entire business, comes within the provisions of sec. 2460a of Va. Code 1904 in that no notice of such intended sale or transfer was given to the creditors of said Barnhill, no schedule of his debts was made out, and in brief none of the requirements of the said statute were complied with and your complainants had no sort of notice of said transfer or sale until after the same had been made as alleged by said E. Barnhill. Your complainant therefore alleges that by reason of the failure of said E. Barnhill to comply with said statute the said alleged transfer or sale to J.F. Piland is absolutely null and void and your complainant and the other creditors of said E. Barnhill are not in any manner bound by same and all the property thus sought to be transferred by said E. Barnhill is subject to the payment of his debts and particularly that of your complainant, and if any part of the said property has been (see margin)

Your complainant further alleges that while the notes which it holds have been given since the supposed formation of the partnership of Barnhill and Piland are signed by E. Barnhill

* sold or withdrawn by said J.F. Piland or with his knowledge or consent or by his employees, then the said J.F. Piland is liable to your complainant for the value of same. Your complainant alleges that the property has thus been withdrawn by Piland and that it is entitled to a judgement against him and an attachment against his property for same.

alone, your complainant alleges that both the said member of said firm are bound by said notes as they were given in the conduct of the business of said firm and the assets of said firm consisted in part of the property for which the said notes were given and said Piland was responsible along with E. Barnhill for said debts.

Your complainant alleges that the whole arrangement between E. Barnhill and J. F. Piland is intended to delay, hinder and defraud the creditors of the said E. Barnhill and particularly your complainant, and that the said J. F. Piland is a party to said intended fraud and has full knowledge of the intention of said Barnhill and is adding a betting him therein.

In tender consideration where, ^{of} your complainant, by virtue of the rights vested in it by statute, and forasmuch as your complainant is remediless in the premises save in a court of equity where such matters are heard and determined, your complainant prays that the said E. Barnhill and the said J. F. Piland be made parties defendant to this suit and be required to answer the same, though an answer under oath is hereby expressly waived : that an attachment may ^{be} issued against the property of the said E. Barnhill which he may have in possession or which he may have attempted to transfer to said J. F. Piland, and against the property of said J. F. Piland and the property of said firm of Barnhill and Piland, and the same be secured so as to be forthcoming to answer the order or decree of this court in this case : that the alleged sale or transfer by Barnhill be set aside : that the said property be subjected to the payment of the debt of whether in hands of Barnhill or Piland or both, your complainant, and that such of said wagons as may be found may be returned to your complainant : that a judgement may be rendered by the court against the said E. Barnhill and Barnhill and Piland for the sum owing to your complainant as above stated : that a Receiver for the said wagons and the property of said E. Barnhill and J. F. Piland be appointed by the court and

such other orders may be made as to secure the forthcoming of the said property to answer the future judgement of this court : that an injunction be granted restraining the said E. Barnhill or J. F. Piland from disposing of said wagons or of their said estates : and that all such other and further orders and decrees may be made and entered as the nature of the case may require or to equity may seem meet.

And your complainant will ever pray, etc.

*The Taylor Wagon Works
by J. C. Perkins. City.*
J. C. Perkins. p. p.

The Taylor Hagon Works
& } Stat: Rules
Barnhill & Filand

The Taylor Wagon Works

(75)

E. Barnhill and J. F. Piland.

Individually and as partners.

Trading as Barnhill and Piland.

1905 March 13. ^{with Affidavit} ~~Sworn~~ ^{to} 1 Affil Rules.

" 1" Affil Rules. ^{Bill + Exhibits filed}

^{+ attaching} ~~Sworn~~ ^{ret.} Executed.

Deane Nisi.

1905 2" Affil Rules.

Bill taken for Confessed and cause
set for hearing.

Exhibit "A"

The Taylor Wagon Works

Bombardier & Co.

There are no promises or agreements except those that appear on this sheet.

No open accounts. If terms of this order are other than cash, a full settlement by note, payable in bank, will be made on receipt of invoice and bill of lading.

Any allowance or deduction on any of these goods, further than that covered by guarantee as stated in catalogue and on this sheet, will be left to the discretion of The Taylor Wagon Works.

Complaints that goods received were not in accordance with order will be made within five days after goods arrive, or they will be considered waived.

After obtaining receipt for goods "in good order" from the transportation company, the liability of The Taylor Wagon Works ceases, and they are not responsible for damage, delay or loss in transit. All goods crated and delivered free on board cars at Lynchburg, Va.

GUARANTEE.—These goods are guaranteed for one year. Should any breakage occur within that time by reason of defective materials or workmanship, we will replace it free of charge when such parts are returned to us, freight prepaid, for our inspection, but in no case will we pay repair bills unless made by our order and price previously agreed upon. We shall not be required to reset tire or renew tires worn out at any time. This guarantee is not intended to cover breakage by improper handling, or damage to paint or varnish resulting from the action of ammonia or extraordinary exposure to the elements.

Salmon, with attachment 50 - Copy 25
Recd. 18 Atty 10 do K 18. Rules 1.00
Entor. Return 35. filing bill 15. on affidavit
for attachment 15. Dec 20 36 - Lay Costs 40
filing away papers. 25

bill	3.87
Exp	1.00
Lay Costs	16.50
	21.37

Exhibit B

The Taylor Wagon Works

Bonhill Plant

There are no promises or agreements except those that appear on this sheet.

No open accounts. If terms of this order are other than cash, a full settlement by note, payable in bank, will be made on receipt of invoice and bill of lading.

Any allowance or deduction on any of these goods, further than that covered by guarantee as stated in catalogue and on this sheet, will be left to the discretion of The Taylor Wagon Works.

Complaints that goods received were not in accordance with order will be made within five days after goods arrive, or they will be considered waived.

After obtaining receipt for goods "in good order" from the transportation company, the liability of The Taylor Wagon Works ceases, and they are not responsible for damage, delay or loss in transit. All goods crated and delivered free on board cars at Lynchburg, Va.

GUARANTEE.—These goods are guaranteed for one year. Should any breakage occur within that time by reason of defective materials or workmanship, we will replace it free of charge when such parts are returned to us, freight prepaid, for our inspection, but in no case will we pay repair bills unless made by our order and price previously agreed upon. We shall not be required to reset tire or renew tires worn out at any time. This guarantee is not intended to cover breakage by improper handling, or damage to paint or varnish resulting from the action of ammonia or extraordinary exposure to the elements.

THIS IS GIVEN WITH THE UNDERSTANDING THAT NO COUNTERMAND BE ACCEPTED.

THE TAYLOR WAGON WORKS,

LYNCHBURG, VA.

ORDER NO.

2443

RECEIVED

ACKNOWLEDGED

SHIPPED

LEDGER PAGE

Dated July 31 1903

Please ship about September or as soon thereafter as possible

To E. Barnhill

Via S. R. B.

Quantity	Catalogue No.	Brand	GEAR OR COMPLETE WAGON. (BE EXPLICIT.)	Price Each	Salesmen must not use this column
3	30	Taylor	573+88 bar wheels @	43.00	
27	"	"	" " " "	41.00	
1	275	"	" " " "	37.85	
3	305	"	" " with Tongue	31.75	
1	304	Victor	" " " "	24.20	
1	205	Taylor	" " " Tongue	29.75	
1	344	"	" " " "	25.30	
2	218	Victor	" " " "		

All parent part wheels to be received

ORDER No. 2443
 RECEIVED AUG 21 1903
 ACKNOWLEDGED AUG 21 1903

22 SEP 17 1903

Remarks Trucks to be 4 ft 10 inches from axle to axle

NOTICE - It is understood that the agreement on the back of this order is accepted as part of contract.

Terms which 2 agree to 4 months note, or 5% 10 days per cent.
 Discount for Cash if paid in 10 days from date of invoice, in accordance with the following:

- 1. No agreement or understanding with agents will be recognized unless so stated in this order. Insist on a copy of this order.
- 2. The title to all goods shipped on this order, and also all goods hereafter shipped to the maker of this order, shall be and remain in The Taylor Wagon Works until they receive the money therefor.
- 3. This order is taken subject to the approval of The Taylor Wagon Works, at its office in Lynchburg, Va.

Signed

E. Barnhill

Purchaser.

BAKER-VANTER CO., MANUFACTURERS, HOLYOKE, MASS.

The Taylor Wagon Works

vs.

AFFIDAVIT FOR
ATTACHMENT.

*E. Bonnell & J. F.
Piland*

Filed the *13th* day of *March* 1905.

In the Circuit Court of the County of Southampton

The Taylor Wagon Works

Plaintiff

against

In Chancery

E. Barnhill and J. F. Pilaud
 individually and trading as

Barnhill and Pilaud

Defendants

J. C. Parker, Attorney for Plaintiff

maketh oath and saith, that he believes

the claim, for which the above entitled ~~action~~ ^{suit} is instituted, to be just; that he, the affiant, believes

that The Taylor Wagon Works is entitled to and ought to recover in said action

\$377.81 (at the least), with interest thereon, to be computed at the rate of Six (6)

per centum per annum, from the 8th day of March ^{as to \$134.50} 1905, till paid; and that ^{as to \$137.95} ~~to the~~ ^{will be due May 6th 1905; and that}
~~best of belief the said defendant~~ ^{will be due May 23rd 1905; and that to be best of his}
 belief the said defendant E. Barnhill and J. F. Pilaud

~~1. is a foreign corporation, or not a resident of this State, and has estate or debts owing to said defendant within the of in which the action is or sued with a defendant residing therein;~~

~~2. removing, or about to remove out of this State, with intent to change domicile.~~

~~3. removing, or intend to remove, or has removed~~

~~own estate, or the proceeds of the sale of property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;~~

~~1. is converting, or are about to convert, or has converted this property or some part thereof into money, securities, or evidences of debt, with intent to hinder, delay or defraud third creditors.~~

~~2. has disposed of certain wagons belonging to plaintiff to J. F. Pilaud who~~
 3. Has assigned or disposed of, or is about to assign or dispose of, his estate, or some part thereof, with intent to hinder, delay or defraud his creditors.

Subscribed and sworn to before me, this 13th day of March , 1905.

C.

as 6-8/37 25% from May 23rd 1905 to 6-8/100-00

The Commonwealth of Virginia:

To the Sheriff of Southampton County- Greeting.

Affidavit having been made and filed in the Clerks Office of our said Court, as required by section 2964., of the Va. Code 1904., We therefore

command you, that you attach any wagons, manufactured by the Taylor Wagon

Works, that you may find in the hands of E. Barnhill or J. F. Piland and any estate of the said E. Barnhill, whether in his own hands or in the hands of J. F. Piland, and any estate of the said ~~E. Barnhill~~ firm of Barnhill and Piland or of J. F. Piland, that formerly belonged to E. Barnhill or Barnhill and Piland, for the amount of the said \$ 377.81 with interest thereon as aforesaid and the cost, and that you secure such wagons and such estate so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon to be had before our said Court, and that you make return hereof at the rules to be held in the Clerks Office of our said Court on the 1st Monday in April 1905., how you have executed the same. And have then there this Writ Witness B. F. McLemore Clerk of our said Court, at the Court house this 12th day of March 1905., Teste:

in the 129 Year of the Commonwealth.

B. F. McLemore

Executed the within attachment by serving a copy of same on E. Barnhill and J. F. Piland, each, in my county, and by attaching the following property at the place of business of Barnhill and Piland in Franklin, Va., to-wit, 3 wagons, one engine, 1 lathe and fixtures, 1 lot of porch balusters, 1 set of tools, 1 rip saw, 1 shaver, 1 planer, 1 jointer, 1 grindstone, 1 boring machine, 1 small bandsaw, 1 bellows, 1 forge, 1 anvil and 1 lot of iron, all apparently the property of E. Barnhill or formerly his and sold by him to Barnhill and Piland or J. F. Piland: all this 12th day of March 1905. J. L. Gillette, Sheriff

Barnhill and Piland.

L. A. Bull Deputy
for J. L. Gillette, Sheriff

Spa in Chan:

S

The Taylor Wagon Works.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON.....E. Barnhill and J. F. Piland.....
individually and as partners, trading as Barnhill and Piland,.....

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 1st.....Monday in April 1905.....

next, to answer a Bill in Chaucery exhibited against.....them.....in our said

Court by.....The Taylor Wagon Works.....

And this...they.....shall in nowise omit under penalty of law. And have then there this writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this
...13th...day of...March....., 1905..., in the 12..9...year of the Commonwealth.

Teste :

B. F. McLemore....., C. C.

The Commonwealth of Virginia
To the Sheriff of Southampton County. Greeting
Affidavits having been made and filed in
the Clerk's Office of our said Court as required
by Sec. 2964 of the Va. Code 1904, ~~you are~~
~~thereby~~ we therefore command you that
you attach ~~your~~ any wagons manufactured
by the Taylor Wagon Works that you may
find in the hands of E. Bomhill or J. F. Piland,
and any estate of the said E. Bomhill, whether
in his own hands or in the hands of J. F. Piland,
and any estate of the said firm of Bomhill
and Piland, or of J. F. Piland that formerly belonged
to E. Bomhill or Bomhill & Piland, for the
amount of the said \$377.⁸¹ with interest
thereon, as aforesaid, and the costs, and that
you secure such wagons and such estate
so attached in your hands, or so provide that the
same may be forthcoming and liable to further
proceedings thereupon to be had before our said
Court, and that you make return hereof at the
return to be held in the Clerk's Office of our said
Court on the first Monday in April next - how
you have executed the said.

Witness -

-1907-

Taylor Wagon Works

v. } Decree remaining
} came fraudulent

Bonhill obtained

Enter -

Jan. 23rd 1907

Robert E. Dantes

Entered in

D.O.B. p. 321

There are removed from the record upon consideration thereof. It has also been
found that this person is to be heard upon the motion of his attorney that
he should be removed from the record.

As.) Decree remaining from record.

Taylor Wagon Works.

Taylor Wagon Works,

vs.) Decree removing from docket.

Barnhill and Piland.

This day this cause on to be heard upon the motion of plaintiff that same be removed from the docket, upon consideration whereof, it not appearing that the defendants have appeared or answered, and no objection being raised to the granting of said motion, the court doth adjudge, order and decree that this cause be removed from the docket, that the plaintiff pay the costs incurred therein, and that the attachment issued therein be abated.