

James Lewis

against

Jacob Lewis and Simon Kuefer

A copy of the decree of the Court of Appeals in this cause, was received by the Clerk of this Court on the
seventh thereof the 2^d day of April 1849 and is in these words-

Virginia: At a Special Court of Appeals held at the State Courthouse in the City of Richmond on
Thursday March 8th 1849.

James Lewis

against

Jacob Lewis and Simon Kuefer

Appel:

Upon motion from
appellee } decree pronounced by the

§ 295.

§ 296

§ 297

Copy of

Circuit Superior Court of Law and Chancery held for Southampton County, on the 18th day of
April 1843, in a suit in which the appellant was plaintiff and the appellees were defendants-

This day came the parties by their counsel, and the Court having maturely considered the transcript of the
record of the decree aforesaid and the arguments of counsel, is of opinion, that the contract stated in the bill, is
founded on a legal and sufficient consideration, and that the appellee Wm. is responsible for the conse-
quences of all impediments to an exact fulfilment of it, occasioned by her own acts, and the appellant is respon-
sible for all such as were occasioned by her acts, whether they proceeded from inadvertence, carelessness or
design- That the said appellee Kuefer disabled himself from a full performance on his part, by allowing
the execution to be laid on the property of the appellant, and thereby making it necessary for her to give the
forthcoming bond- On the other hand, the appellant offered to perform his contract and give the appel-
lant the full benefit of it, as soon as he was apprised by his bill of his unconstitutional breach of it- He
was prevented from doing so, by her having in the first instance improperly informed him from
proceeding against the defendant Jacob Lewis, by her persisting in the Court below, and by her
appeal to the Court of Appeals in the injunctive which wholly prevented the appellee Wm. from
fulfilling his contract- How far these acts may prevent the appellee from making the
money out of the other obligors cannot be known now. Justice will be obtained by having the
appellant out of a Court of equity, to seek her remedy at law, for such damages as have been
occasioned by the act of the appellee Wm. This remedy would be unavailable, if he is allowed
to plead the statute of limitations- As both parties have contributed to the delay, the appellee
should be enjoined from pleading or in any manner relying on the statute of limitations, to
any action which the appellant may bring on the contract in the bill mentioned; Therefore it is
decree and ordered, that the said decree be reversed and annulled, and that the appellant do pay
into the appellee, as the parties substantially performing, their costs by them about their defence
in in this behalf expended- And this Court proceeding to pronounce such decree as the said
Circuit Superior Court ought to have pronounced, it is further decreed and ordered, that the in-
junction awarded the plaintiff in this cause, on the twenty sixth day of February 1843, be dissolved,
and her bill dismissed, and that each party pay their own costs in this said Circuit Superior
Court. But this decree is to be without prejudice to any action at law which the appellant may
be advised to bring on the contract in the bill mentioned, and that the appellee be relieved
from pleading or in any manner relying on the statute of limitations as a defence to such action-
Which is ordered to be certified to the said Circuit Superior Court-

Appellee costs in the

Court of Appeals } § 38, 387

Attest.

Teste. S. Atter. c. c.