

1820-032 Chancery Cause: John Cunningham vs Jacob Waterfield

Isle of Wight County

Other Surnames: Wills,
Laurence

Birmingham }
vs } Bill
Waterfield }

August 1800

Bill filed

August 1807

Ans^r filed &c

~~to~~

- May 1802 dismissed
with leave to re-translate
in 3 months

Starfield

in a great degree neglected the business so as to occasion great loss of Custom, and time, and waste of property.

Your Orator further states that, besides an unusual degree of indolence, On the part of said Waterfield, he undertook and bestowed much of his time and attention on making a crop for himself, and on various Speculations in Bacon, ^{or for his own use & benefit} the sale of which ought to have been made, agreeably to the true spirit and meaning of their Contract, for their mutual benefit, if at all undertaken; being, it is presumed, Carried ^{on} with the funds ^{of} the Concern. and the former was purely a waste of time to the Concern. —

Thus by indolence, and the misapplication of his time, in violation of the Contract he, the said Waterfield occasioned, great losses to your Orator. —

A few of which losses he begs leave to state to the Court in ~~an~~ ^{an} ~~and~~ ^{and} ~~stated~~ ^{stated}, hereto annexed and prayed to be made and taken as a part of this bill, amounting to £19.12.0 — all of which Conduct On the part of said Waterfield is contrary to justice and good Conscience. — In tender Consideration Whereof and forasmuch as your Orator is without remedy only in a Court of equity; on account of the want of legal right of partner ^{or} Partner, and because many of the transactions complained of are locked up in the secret recesses of said Waterfield's own mind; from which it is the province of a Court of equity to make discovery, in such Cases. — He your Orator therefore prays, that said Waterfield may be made defendant to this bill, and make full and true answer ^{on oath} to all and singular the allegations it contains. That he discover and set out, whether the Contract is not, in substance, correctly stated herein, whether he did not violate it as stated, how much of his time was appropriated during that year to his own purposes. What

were the number, nature and extent of his Speculations during that period, which were not brought into the Copartnership account — in what did they consist and how much did he make by them. What portion of his time was passed of in private indulgence, and private indolence and amusements and what quantity of plank, and toll was lost for want of due care. — Your Orator prays that, after a full, fair and proper hearing of the parties and evidence, ~~that~~ The Court, will decree the said Waterfield to pay to your Orator, the said £19.12.0. with legal interest thereon, and such other sum or sums of money, as, from the whole exhibits may appear just and proper, and add any other order or decree, which may be deemed necessary and proper for the advancement of Justice. — Your Orator avers that the Contract herein before stated was fulfilled on his part. — may it please you.

Barber P2

Jacob Waterfield To John Cunningham Dr.

1804		
June	To half the com ⁿ on Bacon sold for George Benn	£0.15.0
July	To half the profits on 1000 lb d ^o sold in Norfolk	1.10.0
July	To half the profits on 1000 lb d ^o sold in d ^o	1.10.0
Aug ^t	To half the profits on 1000 lb d ^o sold in d ^o	1.10.0
Sept ^r	To half the profits on 1000 lb d ^o sold in d ^o	1.10.0
Sept ^r	To half the profits on 1000 lb d ^o sold in d ^o	1.10.0
Dec ^r	To half the profits on ~~1000 lb d^o~~ 33 barrels corn sold in Norfolk, whole profit £5.7.6.	2.13.9
	To time you lost tending your crop, on account of Jack West leaving you	7.10.0

1805		
April 17 th	To a balance due me on the Meal and plank account, as stated by M ^r Josiah Grey this day	1.3.3
		£19.12.0

To the worshipfull Courts of Sale of Wight in Chancery sitting,
Humbly Complaining shew unto the Court your Orator John
Cunningham. That about the later end of the year 1803
Or beginning of 1804. your Complainant & one Jacob Water-
field, in conjunction, rented the mills, call'd West Mills
in said County. That it was understood and agreed
by and between them that they were to be joint and equal
partners in said mills and the transactions growing out
of them; but it was specially stipulated and agreed to
by and between them, that your Orator should find two
millers to attend the Saw and Grist mills, in consideration of the
Waterfields undertaking to manage, superintend, direct
and, when necessary, assist in whatever might be wanting
or needfull in or about said mills: such as ~~attending~~ taking up
and putting down again the stones, keeping the
mill in good order, ~~and~~ ^{seeing} that justice and rule should
be pursued towards customers, rolling up logs to the
Saw mill ~~see see see~~. He the said Waterfield also agreed
as a further duty on his parts, to purchase Corn on the joint
account in order to grind for the Norfolk Market, to carry the
meal to that market & sell it ~~see~~. In short he engaged,
undertook and promised expressly to employ all his time,
talents and attention for the use and benefit of said
partnership Concern. It was agreed also by and between
them, that if at any time during the year the water should
so fail that the Saw mill was stoped, the hand furnished
by your Orator, was, during such suspension, to work
for your Orator & be under his direction. —

Your Orator states that he found himself
deceived and taken in by said Waterfield; for, in place
of his bestowing that Care, paying that attention and
rendering ~~those attentions~~ ^{services} to the business and rendering up
Complainant Accounts of his transactions and paying
him a share of the profits. As he had solemnly promised
and undertaken to ~~do~~ do. — He, the said Jacob ~~Waterfield~~

of your Honours to a part of that where the Compel.
admits that he had discovered a mistake in favour
of this Def. This Def. farther states that after the delivery
of the Corn this Def. on the application of the Compel.
let him have three bushels of Peas. The Def. then
thought it impossible but that the Compel. must be satis-
fied as this Def. was well persuaded that his aft. was
well paid. — This Def. states that the Compel. is
or was in possession of the settlement made in the
presence of Josiah Gray. This Def. prays that he
may be compelled to produce it.

This Def. denies all fraud & combinations
prays to be hence discharged with his reasonable
costs &c

Isle of Wight Co. The above bill sworn to before
me

Nathl. Wills

Aug. 3. 1807

Waterfield

Birmingham

Ans^o

Augt. 1807. ans^o filed

grace the Compl. presents himself before a Court of Equity he will take a little notice of them: The Compl. appears to have had one point fixed to wit that he must have a suit against this Def. He appears then to have been engaged in building a foundation to set on - He could not come out & raise an account charge for money advanced to the Copartenary - which had been expended and unaccounted for - He then, strange to tell charges the Def. with a tort in violating his contract; & instead of bringing his case before a Jury of his Peers the proper constitutional tribunal for enquiring into breaches of contracts & fixing on proportionable damages: He presents himself before this Court in its Equitable capacity - & prays them to decide facts & ascertain damages. If the contract had been broken & were one capable of being performed now in kind a Court of Equity might properly be resorted to for a specific performance of the Contract. But it will not be pretended that that can be done, the Bill itself shews it: It prays that £19. 12. may be decreed to the Compl. for the breach that he pretends has been made of the Contract. In order to give some colour to his application to this Court in his Equitable capacity - He pretends that the "transactions complained of are locked up in the secret recesses of the said Waterfalls own mind" meaning thereby that there were facts in the private knowledge of this Def. which he wished disclosed. - Let us enquire into the nature of those secret facts is relation to the Mills having lost work by the negligence of this Def. Such a fact if it existed must have been notorious in the neighbour hood. - But this Def. denies the existence of it. - Is it relation to the Bacon Speculations charged upon this Def. cannot be, because there must be a contract to produce a speculation, there must be two parties entered to a contract. So that fact cannot be proved by this Def. - But this Def.

denies that Cunningham would have any thing to do with his speculations on Bacon or any other subject except the Meal & Plant produced by the Mill. - This Def. will here notice a presumption of the Compl. to wit He presumes that this Def. must have used the partnership fund in buying Bacon - Strange presumption - Cunningham never advanced any money for the concern How then could his money be used. - But this Def. will not only disprove the fact but positively deny having used any money belonging to Cunningham in any such speculation. - This Def. states that whenever he discovered that any profit could be made by a speculation on Corn for the concern he bought it. - That during that year he purchased of several individuals Corn for the use of the Mill or rather for the purpose of speculating on when turned into Meal. He purchased of Nathaniel Stills W. Lawrence & at the Norfolk market for which he advanced his own money to the amount of one hundred ten dollars without receiving any allowance for it. - This Def. states that he was up & attending on the Mill at the darkest & most unpleasant seasons of the night & year whenever the mill was in any probable danger from the weather for the purpose of watching over her & actually in order to promote the interest of the concern himself ground the whole Christmas night & day, & in the year 1803. sold the Meal for the mutual benefit of himself & the Compl. - This Def. states that he has paid the Compl. his proportion of the profits fairly & honestly that they had a settlement in the presence of Joseph Gray - when a balance of five dollars only was found due to the Compl. - This Def. states that after that the Compl. wrote to this Def. & requested that he would let him have a barrel of seed Corn for which he agreed to allow this D. 4. dollars. The latter is here annexed & referred to, to prove the application. This Def. avers that the Corn was delivered agreeable to the request - This Def. states that he has attended

The Answer of Jacob Waterfield to the Bill of Compl:
exhibited against him by John Cunningham, in the
Hble the Court of Isle of Wight County

This Respondent now & at all times hereafter,
saving & reserving to himself all necessary & proper exceptions
to the many untruths, errors, uncertainties, & other insufficiencies
in the Compts: said Bill of Complaint contained, for answer
thereto or to so much thereof as he is advised is material
or necessary for him to make answer to: He answers &
says: That he rented the Mills called Wests & gave his own
bond for the payment of the money. That this Def.
agreed with the said M^r Cunningham that if he would find
a Miller & a hand to attend the Saw, he might have one
half the neat proceeds of the Mill after paying the rent &
other incidental expences. This Def. agreeing to attend the
market & make sale of the Meal & Plank.

This Def. states that the proposition was accepted by the
Compt. - That the agreement had relation to no other
subject except the Mill. - That he never did nor would
he ever have entered into a contract which should have
made him the servant of the Compt. - This def. avers
that during the said year he carried on the business
of the Mill faithfully honestly & with industry - He
denies most positively every charge against him for
neglect of his duty at the said Mill, but on the contrary
states that he managed her to the best of his skill
& abilities, as well on account of his own interest as
with a view to the interest of the individual Cunningham -
He denies that
~~that~~ the Mill was idle or wanted work from her this respects
inattention, but avers that the Mill was always well
supplied with custom & had more work than she could
do, a fact well known in the neighbourhood. -

As to the Compts: subjoining an account made up of pro-
bable gains, which he fancies this Def. made on Bacon
& other speculations this Def. considers them as not merit-
ing any attention, but is ready to show with plain truth

Executed

Birmingham

as

$\frac{2}{3}$ Pa. in chry

Waterfile

Barber Ann
for pth. $\frac{2}{3}$

W. H. M. M. L. S. for

W. H. M. M. L. S. for

The Commonwealth of Virginia to the Sheriff of Isle of Wight County
Greeting; we Command you, that you Summon Jacob
Watfule

to appear before the Justices of our County, Court of Isle of Wight at
their Courthouse of said County, on the first Monday in
March next then & there to answer a bill in Chancery
against him Exhibited by.

John Cunningham

and this he Shall in no wise omit, under the penalty of \$100
and have then there also this writ. Witness Nathaniel
Young Clerk of our said Court the 20th day of December 1805
& in the 30th year of the Commonwealth —
Nathl. Young

John Cunningham
Name Order
after Settlement

84.67 1/2
40.00 0 1/2
44.67 1/2
100.00 10 1/2
100.00 3

Sir) being in want of some seede corn, and my fellow
cuffe tells me that your corn will suite my land,
has inducet me to sollicit you to Send me one bar-
-ral of your corn, that is, two barrals in the ear,
and I will give your account Creddit for four $\text{\$}$,
that is, the Meal & plank account which M^r Grey
drew of for us, last thursday, as there is but a small
ballance due on that head, you was kind enough
to offer me half a barral as a present, but I do not
choose to accept of it as such, but am willing to pay
you for the whole of the barral, and which I shall be
thankfull to you to spare me as I am planting corn,
As I have discoverd my self in an error in hart of the other
account, and as I allways am open to convictions and to
do every body Justice, shall come up this afternoon, and I
think there is no doubt but we will settle finally our accounts
as I hate to be at variance, I am yours &c
John Cuninghame 17 April 1705.
Mr. Jacob Waterfields