

1821-010

Chancery Causes: John Cunningham vs John Urquhart and Joseph Ruffin

Isle of Wight County

other surnames: Cuthbert
[George Gordon & Company]
Gordon, [Horsborough &
Kennon] Horsborough, Kennon,
Peter, [Horsburg & Cannon]
Horsburg, Cannon, Wheeler,
Donaldson, Ashly, Douglas,
Love, Cunningham

defendants to this bill and on ~~with~~ their oaths
full, true and perfect answer make to all and
singular the allegations it contains, as fully as the
they were here again repeated and interrogated,
more especially ^{whether} ~~that~~ the said Ruffin did not
give the instructions to your Orator herein before
stated, whether there was ever any real consideration
re-ly your Orator, for which the obligation in
question was executed, whether Urquhart has not
the protest which your Orator entered, or what he
or his father have done with it, and that he produce
it with his answer to this bill - and whether your
Orator did not make as short a voyage as is
Common -

Your Orator lastly prays that
the said Urquhart and all others be enjoined
from further proceeding at law, or the said
Judgments, untill the parties are fully heard
in equity - and that ~~thus~~ the injunction
be made perpetual - may it please V.

Perkin P22



Loma Cunningham this day came before
me and made oath to the above bill

R. Driver,
Dec. 2nd 1805

whose Temper was irritated by such ungenerous charges, told the said Wm Urquhart that though he was innocent, although he (your Orator) was poor & he (Urquhart) was rich, if ever he had it conveniently in his power without embarrassment to his family, he would pledge his word to make him (Urquhart) a present of the sum demanded. To this proposition which was intended as an appeal to his justice, rather than as a bona fide promise. Thus being no *quid pro quo* --; but, the love of money got the better of justice and the proposal was acceded to. he said he would be satisfied, and calling his son John Urquhart, who is now his executor, desired him to get a small bit of paper and have the thing certified, which was repeated to him, as above stated, in substance. Your Orator had full and complete confidence in John Urquhart and therefore did not examine minutely what he signed, he had previously declared he would execute no obligation for the claim, and that he should only feel bound in honour on acct of his promise, when convenient; but not bound by any legal tie, as he was not by either justice or equity. Your Orator however finds too late that he was deceived and that while he thought he was signing a certificate of what had passed, he was actually executing a bond or note for the money. On which obligation suit has been brought in this Court and judgment obtained, contrary to justice and equity.

In tender considerations whereof and for as much as your Orator is only and properly relievable in a Court of equity. To the end therefore he prays that the said John Urquhart and ~~John~~ ^{Joseph} Ruffin may be made

which he could neither see or control, was bound by usage in such cases, to do the best which lay in his power for the owners and Shippers. He entered a protest as customary in such situations and proceeded to consult his brother Captains from the United States, as to the Conduct he should pursue. After deliberating a day or two, a Vessel arrived from Barbadoes with news, that American Vessels were retailing their Cargoes of Flour at eight dollars and fifty Cents and nine dollars of barrel. Your Orator was advised by the best informed of his Countrymen there, that since he was bound to Barbadoes and a market, he would be justifiable, and it would be commendable in him, as it would be greatly in favour of his employers, to stay where he then was and make the most he could of his Cargoes, for the benefit of its owners. —

Your Orator accordingly, procured a Sale of his Cargoes of Flour, through the agency of ~~the house~~ a certain George Gordon & Co. merchants at that place. When the flour was unladen, ^{your orator} ~~it~~ was astonished to find it was old flour, the barrels of which had been shaved anew, to give it a new appearance; its smell and taste was such as made your Orator despair of ever getting it received from him; but contrary to expectation, by ~~lowering~~ ^{consenting} to lower the price of some of it, he got it off, and made such haste with the return Cargoes, as to leave every American vessel in port which he found there on his arrival. At Norfolk he found Cutburt the flour Shipper, dissatisfied as well as Ruffin the owners, and being conscious of the purity & even merit, of his Conduct, in the

Circumstances under which he was placed, your Orator left the vessel and employ, in disgust: — But not until he had delivered the return Cargoes to Cutburt. — Subsequently your Orator understood from Wm Ingham that he and Ruffin had been sued by Cutburt to recover damages on acct of the miscarriage of the voyage, that they had submitted the case to referees who had awarded two hundred dollars damage. Ingham proceeded to charge your Orator with one third of the amount. He contended it was right I should pay $\frac{1}{3}$ of the loss since it was as he said ~~my~~ ^{your orator's} fault it was incurred. To these charges and ^{this} reasoning your Orator opposed the truth of the case. Stated it was not his fault in any degree, for that it was impossible at the time alluded to and under the ^{then} existing circumstances to beat up from St Vincent to Barbadoes without openly violating the instructions of Wm Ruffin, for the risk, in every light, would have been great. — Your Orator humbly conceives that, Cutburt could never have recovered a Shilling against them, had a proper defence been made to his suit; such as the case admitted; and therefore, had he been otherwise liable to bear a $\frac{1}{3}$ of the loss, the owners, certainly, by a submission to referees, without his consent, had done away the responsibility. Your Orator however denies, that either by Custom, in such cases, or by any special agreement, he was or ought to be liable for any loss; being on monthly wages & having no other interest in the voyage whatever and having fulfilled the trust reposed, to the extent of his power, skill and judgement. But your orator

To the worshipfull Court of Isle of Wight in Chancery,
sitting, humbly Complaining sheweth unto the Court, your
Orator John Cunningham. That your Orator, about the
day of 1779, sail'd from Norfolk, as
master of the Schooner, John Eapen, owned by
with a Cargo of Flour, Ship'd by Wm
Cuthbert, merchant Norfolk, for which your Orator
executed bills of Lading in the usual form, for
Barbadoes and a market, which will more fully
appear by reference to a Copy of said bills of Lading
herunto annexed and prayed to be Considered as
a part of this bill. — When your Orator was about
to enter on the said Voyage, he was informed by Joseph
Ruffen, one of the owners of the Schooner, that no
insurance would be made on the Vessel that trip,
and Cautioned your Orator therefor, to run no risque
which could be possibly avoided. There being
much danger of Capture about that period, your
Orator felt an uncommon degree of solicitude and
anxiety about the voyage. Your Orator made every
possible exertion to accomplish the voyage to the
satisfaction of his employers, and all concerned;
but, by ~~an~~ ~~at~~ ~~these~~ Chain of untoward Circum-
stances, frequently, inseparable from Navigation,
your Orator found himself, when he thought near
Barbadoes, close to the Island of St Vincent. He
was then ~~for~~ about sixty leagues to the leeward
of the port in Barbadoes where he intended, had
the trade wind & a rapped Current against him,
and his Vessel in a very leaky State, and what
added to his embarrassments, he was chased by
a large Ship so closely, it was with difficulty he
gained the harbour of . Your Orator
being placed in the situation by Circumstances

But he calls for proof as to that statement since almost all the other allegations of the bill are wholly incorrect. This Respondent lastly prays that the injunction of the Compt. may be dissolved and that he may be hence discharged with his costs in this behalf expended.

John Ingraham appeared before me and made oath that the foregoing statements are true as far as he knows or believes.

Jam. Calvert
Octo. 6th / 306

Cunningham
vs
Ingraham & Co. } Resuer

should pay to the owners of the flour (viz. Messrs. Horsborough & Kemmer, & Thomas Peter) the sum of £210. which sum they actually paid. That the award of the arbitrators was returned to the district court of Suffolk and entered up as the judgment of the court. That a copy of the said judgment with the receipt of Thomas Peter, for himself and the other owners of the flour, is now filed in the court of chancery at Williamsburg in a suit there brought by the said owners of the flour against the said William Ingham & Joseph Ruffin suggesting that since the said award was rendered, they have discovered that the Compt. did not deliver either to William Cutbert their agent or to themselves five hogheads of Rum which they allege he brought in for them from St. Vincent as a return cargo. Your Respondent is under some apprehension that the additional value of that rum will also be extracted from the Company of Ingham & Ruffin, which in fact should also be paid for by the Compt. He says too, that the said Ingham & Ruffin demanded of the Compt. the full amount of the said award, because the loss had been incurred by his improper and illegal conduct in violating the express orders he had received from them, But in consideration of the doleful statements of the Compt., they agreed to discharge him from the whole of their said claim, upon his paying

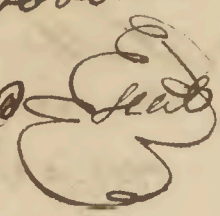
one third of the amount of the said award. That the said Compt. caught at this generous offer with eager eagerness, and agreed to pay that amount. That the said William Ingham met with the said Compt. at Isle of Wight court house, and expressed his sorrow at not being able to pay the money at that time, but agreed to give his bond for the amount. That your Respondent was then called on to prepare a bond, which he immediately wrote whilst the Compt. was actually looking over. He begs leave to refer the court to the bond itself, which he has no doubt will satisfy them that the writing could not have been intended as a certificate or as any thing else but an obligation to pay money. He avers that he pursued the instructions of his father in writing the bond, which instructions were given in the hearing and presence of the Compt. and he is most positively convinced that the Compt. well knew it to be a bond for the payment of money. He expects to prove that the Compt. has promised to pay off the amount of the bond long since its execution. And he avers that such a promise was made to him the Compt.

Your Respondent denies that the Compt. left the vessel either voluntarily or with disgust, on the contrary he was dismissed by her owners. He believes that the said vessel was in fine order and she at that time was a fast sailing vessel. He has never seen the protest alluded to in bill, although possibly such a one may have existed.

The seperate answer of John Ingham to the bill of complaint exhibited against Joseph Ruffin and himself in the Worshipful court of Isle of Wight by Joseph Ruffin -

This Respondent saying to himself all right of excepting to the various untreats, errors and misrepresentations in the complaint said bill contained, for answer thereto, or to so much thereof as he is advised is material for him to answer, says, that it is true the complaint was employed by his father and Joseph Ruffin to go a capt. of a vessel called the John Lapsen, from Norfolk to Barbadoes, and that the said vessel was chartered with flour by William Luthbert. But he says, that in consequence of the open violation of the orders given to the complaint by Joseph Ruffin, and the damages they were legally exposed to on that account, the said William Ingham & Joseph Ruffin demanded ^{such} satisfaction from him as would indemnify them, ~~from~~ and threatened to sue the complaint in case of his failing to do so. That the owners of the said flour instituted two suits agt. the said William Ingham & Joseph Ruffin in the district court of Suffolk, which suit was referred to arbitration with the consent of the complaint notwithstanding his shameful statements to the contrary, as will more fully appear by adverting to the annexed letter (written by the complaint) which is prayed to be taken as a part of this answer. That the said arbitrators awarded that the said William Ingham & Joseph Ruffin

1806 July 4th I hereby certify that Jos
Bustin appeared before me and made oath
to the foregoing allegations - Given under
my hand & seal this day & year abovesaid

Charles Briggs J.P. 

Wright

Ans - 

Cunningham

Nov. 1806

Ans. 

said Cunningham to be cautious & to avoid speaking any Vessel at sea (but this charge necessary at that time on account of the many privateers infesting the seas between this Country & the West Indies) could not be supposed to imply that this respondent instructed or desired the said Cunningham to touch at any Market except at the place of his destination (to wit Barbados).

The complainant asserts in his bill that he was not interested in the voyage beforementioned; this respondent hopes that the complainant has only asserted and not sworn to the said allegation inasmuch as this respondent is able to prove that the said Cunningham brought in from St. Vincent's Rum Sugar & Brandy ^{on his own account}.

This respondent begs leave to state to your worships, that in consequence of the failure of the aforesaid voyage, a suit was brought by the Shippers of the cargo beforementioned against William Urquhart & this respondent, owners of the Schooner John Casson in the district Court of Suffolk, that the defendants in this suit (to wit William Urquhart & this respondent) not thinking that a jury of Farmers could be competent to decide in the aforesaid cause proposed to submit all matters in dispute between the said parties to Luke Wheeler James Donaldson Warren Esqly James Douglas & Alexander Love - Gentlemen Merchants at that time living in the Town of Norfolk except the last mentioned - These Gentlemen arbitrators awarded against

William Urquhart & this respondent the sum of £1000 - The son of the said William Urquhart will produce a receipt for in full ^{paid} to Thomas Peter, one of the owners of the Cargo, beforementioned - This respondent was advised of a bond executed by the complainant John Cunningham to William Urquhart & Jos. Ruffin owners of the Schooner John Casson aforesaid but was not present when the said bond was executed or when the complainant offered to make the aforesaid bond good to William Urquhart a present.

This Respondent in his answer to the Bill exhibited against him requests leave to observe that ~~it behoves him not to say whether the said William Urquhart was rich or whether John Cunningham was poor, but trusts that the members of the worshipful Court of Isle of Wight will pay no regard (in deciding causes) as to the wealth of one or the poverty of the other~~ - In consideration of the foregoing statement of facts this respondent prays that the injunction obtained by John Cunningham against W. Urquhart & this respondent may be dissolved & that the judgment obtained by them against the said Cunningham be made perpetual.

The separate answer of Joseph Ruffin to the Bill of Injunction exhibited against him on the chancery side before the worshipful Court of the County of Isle of Wight by John Cunningham - This respondent saving and reserving to himself all & every benefit of exception to the many errors, imperfections & Untruths in the complainants said Bill contained, for answer therunto or to so much thereof as is material for him to make answer unto answereth & saith ^{on} 1798. -

That in the year of our Lord 1797 this respondent own'd jointly with William Ungutart a Schooner call'd or named the John Eason, that this respondent acting at that time for said William Ungutart and himself chartered the said Schooner to William Cuthbert of Norfolk (agent for Messrs Horsburg & Cannon of Petersburg & also of Thomas Peter of Cabin Point) to carry a load of stone to Barbadoes and employ John Cunningham as Capt. of the said Schooner to perform the voyage - This respondent gave to the said Cunningham written instructions to proceed to the Island of Barbadoes and to no other place, hereby denying positively that the said John Cunningham was directed to any market or Island except Barbadoes - This Respondent does not deny that he instructed the

27th June 1870. A copy of the
weather was delivered to the weather
man at Market Birmingham

Wm
H. Holliman Esq
Bury Green Hill

Longhurst St
at
Mr Osborn
Birmingham

Isle of Wight County (low ik)

May Court 1820

John Cunningham -

Compt.

against

John Arguehart of Co. Ruffin - Defts.

on Injunction

Ordered, that the injunction be dissolved with leave to
reinstat^e within three months, and that a copy of this order
be served on Rachel Cunningham the administratrix &c
of the complainant -

Attest Teste. Nathl. Young) C^l

Isle of Wight County March Court 1821.

Rachel Cunningham adm^{or}: of John Cunningham
dec^d:

against

3 Compl^t?

John Uguhart ad^{or}: of William Uguhart dec^d and
Joseph Ruffin which said Joseph Ruffin was a surviving
obligee of the said William Uguhart.

Upon an Inj^{un}
motion filed
by the said
J^r Deft^s John Cunningham

ham to stop the proceedings of a Judg^{mt} ^{at Law} obtained against him in the
county court aforesaid in favour of Joseph Ruffin surviving obligee as aforesaid.

This cause this day came on to be heard upon the bill,
answer, and exhibits filed in the cause, and was argued by counsel, on consi-
deration whereof the court is of opinion that the complainants bill be dissolved
with cost and that the defendant John Uguhart recover against the complain-
ant the sum of one hundred and twenty four pounds thirteen shillings and
four pence - But to be discharged by the payment of sixty seven pounds
six shillings and eight pence with six per cent Interest thereon from the
5th day of April 1802 till the 5th day of November 1805 and ^{damages} at the rate of
ten p^{er} centum per annum on the said sum of sixty seven pounds six shillings
and eight pence from the aforesaid 5th day of November 1805 till the 5th day of
March 1821. and six per cent Interest thereafter on the aforesaid sum of sixty
seven pounds, six shillings and eight pence til paid, and six dollars and ^{eighty} five
cents, and nine dollars and forty cents the cost of the injunction -

A Copy Teste Nath^l Young &c
J^r C^l

Exhibit

St James London - 11th

Wright
" } Sci. fa.
Birmingham's annex
Tugboat
for Wright

The Commonwealth of Virginia to the Sheriff of Henric County greeting; Whereas in
an injunction in Chancery lately depending in the Court of our said County between John
Cunningham Complainant and John Arguehart ^{admr of said Cunningham} & Joseph Ruffen Defendants it was in our
said Court so far proceeded that the bill and answer was filed therein, but before the
same could be heard in equity, the said John Cunningham departed this life having
first made his last will and testament in writing and thereof appointed Rachel
Cunningham his executrix who refused to take upon herself the burden of the
execution thereof, but hath duly qualified in the County Court aforesaid as
administratrix with the will annexed of the said John Cunningham and
has been being there situated, at a Court held for the said County, at my term
1820 it was ordered that the injunction aforesaid should be dissolved with leave for
the Complainant's administratrix to reinstate the same within three months
thereafter - nevertheless the said suit still remains to be reinstated and fairly
heard in equity as aforesaid, and the said Defendants hath supplicated us for
a proper remedy in this behalf - We therefore being willing that right and justice
should be done, Command you that you make known to the said Rachel
Cunningham administratrix with the will annexed of the said John Cunningham
that she be before the Justice of our said County Court at the Court house
on the first Monday in December next to show cause why the said injunction
shall not be fully heard in equity if to the said Defendants it seems expedient
and further to do and receive what our said Court shall in this part consider
and have then there this will. Witness Nathaniel Young, Clerk of our
said Court at the Courthouse the 24th day of October 1820 in the 45th
year of the Commonwealth —

Nathl. Young
Clerk