1908-035 Chancery Causes: D. W. Curtwal vs E. E. Holland, admr of R. W. Nelms
Isle of Wight County + R. A. Edwards, sheriff

other surnames: Hall,
Harrison, Thorne, Thorn

U.S. Hallock v.s.

D. W. Lovett et al,

vs

Nelms Adms. et al

Bill of Complaint

Decr. 2d. 1890. Bill
with injn: order filed
Decr. 8th 1890, Bond
exd. & recd. with injn.
issued to 2d. Decl. Rls,

2d. Decl. Rls. Summ. Exd.
& returned n. Defts,

1st Jany, Rls. 1891.
Bill taken for confsd. &
cause set for hearing.

Virginia:

In the Circuit Court of Isle of Wight County:

D.W.Carr, Mattie V.Hall, James C.Harrison, Thomas Thorne and Claud C.Carr, plaintiffs:

Vs.

E.E.Holland, administrator of R.W.Nelmes, deceased and R.A.Edwards sheriff of Isle of Wight County:

The said plaintiffs, your orators, humbly complaining show to the court:

That at the October term I890 of this court said E.E.Holland administrator of R.W.Nelms deceased, procured a judgment against your orators as will more fully appear by an abstract from the Common law order book of this court herewith filed as an exhibit marked "A" and prayed to be read as a part of this bill. Your orators say that said judgment was obtaine without notice to them, that they were not summoned to answer the said action at law at that time but were summoned to appear at Rules to be holden for said court September next (or September I89I) as will more fully appear by reference to a certified copy of the process and the endorsement thereon herewith filed as an exhibit marked "B" and prayed to be read as a part of this bill. They say that said summons was dated September Ioth,I890 and they were commanded to appear at Rules the 3rd Monday in September"next." They say that said action at law against them was not properly on the docket of this court at its October term I890 and that no valid order could have been entered therein at said term of court:

Again, your orators say that before said October term I890 of this court they retained W.S.Holland an attorney practicing in this court to represent them in said action at law, that they had a valid and substantial defense thereto, and they say that their said attorney appeared in open court at the said October term I890 before the fifteenth day thereof and before said court

adjourned for said term and asked leave to file a demurer to the declaration and pleaded "non assumpsit". and asked leave to file other pleas in writing all which the court allowed, but that in the hurry of the moment and the bustle of the court room the Hon. C.W.Hill who was then presiding failed to make any note on his docket, and the clerk not having heard the said motion, or having heard it had forgotten it, entered up a judgment by default, in other words, entered an order confirming what he and the court supposed to be an office judgment. They say that said E.E.Holland administrator of R.W.Nelms and plaintiff in said action at law against your orators had notice that defense would be made to said action, that he wrote a letter to said W.S .Holland asking if any defense had been made or would be made by your orators to said action at law, and that said W.S.Holland by return mail wrote a letter to said E.E.Holland administrator aforesaid informing him that he, W.S.Holland, had been retained and would file a plea but would not ask for a trial in the absence of said E.E.Holland, that said E.E.Holland now has that letter. So your orators say that said judgment was obtained through mistake and ought to be set aside and annulled.

Your orators say they had and still have a valid and substantial defense to said action at law the nature of which they are not here called on to state, that all your orators except D.W. Carr had and still have another and additional defense which will fully appear by a certified copy of the note on which said action at law was founded herewith filed as an exhibit marked "C" and prayed to be read as a part of this bill. Your orators say that said E.E.Holland admr. as aforesaid has sued out of the clerks office of this court a writ of fieri facias directed to the sheriff of Isle of Wight County commanding him to &c. as will more fully appear by a certified copy if said writ herewith filed marked "D"

and prayed to be read as a part of this bill, and that said officer has levied the said writ on the goods and chattels of your orator D.W.Carr and declares his purpose to sell said goods and chatteld to satisfy said writ as soon as properly advertised. Your orators are advised that they are entitled to an opportunity to make their defense to said action at law.

And for as much as your orators are without adequate remedy save in this court where such matters are alone and properly cognizable they pray that said E.E.Holland administrator of R.W.Nelms deceased, and said R.A.Edwards sheriff of Isle of Wight County be made parties defendants to this bill of complaint and be required to answer the same, an answer on oath is hereby expressly waived as provided by statute, that said judgment and writ of fieri facias be annulled and cancelled, that your said orators be permitted to make their defense to said action at law in a court of law where they can have a jury, and that said E.E. Holland administrator of R.W.Nelms, deceased, his agents and attorneys be forever restrained from sueing out any other writ or writs of fieri facias on said judgment, that said R.A.Edwards, sheriff of Isle of Wight County, his deputies, agents and attorneys be forever restrained from selling under said writ now in his hands or any other writ now sued out or that may hereafter be sued out on said judgment any property belonging to your orators, or any one of them, that said property levied on be released and be restored to its owner if in the hands of said sheriff, that a fee be allowed to counsel conducting this suit for your orators, that said judgment, writ of fieri facias and all other proceedings in said action at law by said E.E.Holland administrator of R.W.Nelms, deceased, against your orators be declared void and be set aside, that all such further and general relief may be afforded your complainants as to equity and good conscience may seem meet and proper; and they will ever pray &c.

W. S. Holland Atty.

Virginia:

County of Isle of Wight, to wit:

I, ~~John M. Taylor a justice of the peace~~ N. T. Young a notary public in and for the county of Isle of Wight do certify that D.W.Carr one of the complainants in the foregoing bill in chancery came before me in my said county and made oath in due form of law that the statements in said bill contained so far as made upon his own knowledge are true, and so far as made upon the knowledge of others he believes them to be true. Given under my hand this 2nd, day of December 1890.

A. T. Young ~~J.P.~~ Notary Public

A. Mcvan-Locke

vs. { Mchancey

& W. Pleasants Admr

Answer of E. E. Holland

Answer of E. W. Pleasants Admr

Filed by order of Court May 25th 1891

E. E. HOLLAND,
ATTORNEY AT LAW,
SUFFOLK, VA.

Everett Waddey Co., Stationers and Printers, Richmond, Va.

state in said bill of complaint.

6th. This defendantsays that said action at law was regularly matured and properly on the docket at the October term of the Court 1890, that the order confirming the office judgment in said action at law, was properly and legally entered, that said judgment so obtained is binding and effectual, that said judgment cannot be legally annulled and cancelled in this action, and that the injunction awarded the said complainants in this case ought to be dissolved.

And now having fully answered this defendant prays to be hence dismissed with his costs &c.

E. E. Holland
Admr R. W. Sulens decd.

E. E. Holland,
p. q.

soon afterwards informed by the Sheriff of said Isle of Wight County that an order had been entered confirming the office judgment in said action at law, and that an execution had issued and was then in his hands.

This defendant was not present in Court at the time the said action at law was called and hence cannot deny that the said W.S.Holland, atorney did demur to the declaration in said action, and did plead "non-assumpsit" and ask leave to file other pleas, but this defendant does not admit that such was done and calls for proof thereof. This defendant submits however that there ought to be some record evidence of said demurrer and of said plea ~~(either an entry on the docket of the Judge of said Court or of the Clerk thereof or some other written evidence)~~, and that in the absence of such evidence the Court must consider that such demurrer and plea were not filed or entered. There is no such evidence that said W.S.Holland, attorney did demur to said declaration or did plead, and this is shown by the fact that the Clerk of said Court entered up a judgment, as under the statute, he is in such cases requirded to do. This defendant therefore submits that the said judgment is as effectual and binding as if pronounced upon a trial upon the merits.

4th. This defendant submits that this Court has no power, in this proceeding to set aside and annul said judgment.

5th. This defendant denies that said complainants have any valid and substantial defence to said action at law, and alleges that their bill of complaint does not show or set out any such defence, which said defence they are called on to

prove that said complainants had notice that said action at at law had been institutedand would regularly mature for trial the October term, I890, and that under said belief they employed said attorney to represent them in said action at said term and defend the same. It is ~~claimed~~ admitted also by said complainants that their said attorney did appear for them at said term and, as they claim, did demur and plead at said term. This dfendant therefore denies that said judgment was obtained without notice to said complainants, and alleges that said complainants had notice of said action at law, had ample opportunity to defend said action at law, and actually appeared in Court by an attorney in said action at law, and made no complaint that said action at law was improperly on the docket of said Court but actually allowed a judgment to be rendered against them in said action. This defendant therefore submits that they are now estopped from taking advantage of said clerical error, if any, and must abide by their action in the premises.

3rd. This defendant denies that said judgment was obtained through mistake. It is true that this defendant had notice that defence would be made to said action at law; that he did write to W.S.Holland, attorney, asking him if any defence would be madebysaid complainants, and that said W.S.Holland, attorney did write to said defendant informing him that he had been retained and would file a plea, but would not ask for a trial in the absence of said defendant. It is also true that said defendant never replied to said letter, intending to attend said Court and ask for a trial of said action at law, but as a fact he did not attend said term of said Court, and was

The demurrerand answer of E.E.Holland, Administrator of R.W. Nelms, deceased, to a bill in equity exhibited against him in the Circuit Court of the County of Isle of Wight by D.W.Carr and others

The defendant says that the bill is not sufficient in law. And the defendant reserving to himself the benefit of all exception to the many errors in said bill contained for answer thereto or to such parts thereof as he is advised that it is materail for him to answer, answers and says:

Ist. It is true that this defendant recovered a judgment against said plaintiffs or complainants at the October term I890 of the Circuit Court of Isle of Wight County, and sued out of the Clerks Office of said Court a wrut of fieri facias directed to the ~~Clerks Office~~ Sheriff of said County, as he had a right to do by virtue of his judgment against said complainants.

2nd. This defendant is at a loss to understand how the said complainants can say that said judgment was obtained without notice to them. It is true there may have been a slight clerical error in the summons or process executed by being served on or delivered to said complainants, but it is admitted that the said complainants employed W.S.Holland, Esq, an attorney, to represent them in said action at law, at said OCTOBER TERM I890, instructed said attorney to PLEAD at said OCTOBER TERM I890, and otherwise to defend said action at law for them at said OCTOBER TERM I890. It is true also as alleged that said W.S.Holland, attorney, did write to said defendant, plaintiff in said action at law, and inform him that he would plead at said October term I890 These admissions

Executed this the 10th day of December 1890, by delivering a true copy of this process, to the within named C. & E. Holland Administration, in person

W. S. Holland Sheff.

FORM NO. 200

Carr D. W. et als.

vs.

SUBPŒNA IN CHANCERY.

Holland E. E. et
admr. et als.

Jo. S. Hollands p.q.

To Second Dist. Rules.

1890. Circuit Court.

Isle of Wight Co.

Mr. W. S. Holland
atto. for Pleff. will
file
Clk.

By order of the Circuit Court of Isle of Wight County, on the 3rd Thursday in September 1890, the bill of complaint in the above styled cause was ordered to be taken for confessed, against the defendant, C. & E. Holland, unless he appeared here on the first day of the next term of said Court, and answered the said bill; and on the motion of the complainant, by counsel, it is ordered that a commissioner of this Court do enquire and report what estate the said C. & E. Holland died seized and possessed of, and whether the same or any part thereof has been aliened by him or descended to his heirs at law, and what liens exist thereon, and in what order they ought to be paid; and that he do enquire and report what debts are due from the said C. & E. Holland's estate, and in what order they ought to be paid; and that he do enquire and report what personal estate the said C. & E. Holland died possessed of, and what has been disposed of by his administrator, and how; and that he do enquire and report what other matters may be necessary to a full understanding of the cause. Given under my hand this 8th day of December 1890.

H. C. Glossey, Clk. of said
Circuit Court

Everett Waddey,
Stationer and Printer,
Richmond, Va.
Form No. 300.

The Commonwealth of Virginia,

Summond

To the Sheriff of the County of ~~Isle of Wight~~ ", Greeting:

WE COMMAND YOU, that you summon E. E. Holland administrator of R. W. Nelms deceased and R. A. Edwards sheriff of Isle of Wight county

to appear at the Clerk's Office of the Circuit Court of the County of Isle of Wight, at the rules to be held for the said Court on the third Monday in December, 1890, to answer a bill in Chancery, exhibited against them in our said court by W. W. Carr, Mattie T. Hall, James C. Harrison, Thomas Thorn and Claud C. Carr,

And have then there this writ. Witness, N. P. YOUNG, Clerk of our said Court, at the court-house, the 5th day of December 1890, and in the 115th year of the Commonwealth.

N. P. Young clk.

By order of the Judge of the Circuit Court of Isle of Wight County, the bond thereby required having been executed, the Sheriff of said County, his deputies, agents and attorneys, are enjoined and restrained from selling any property of the complainant, and from further executing the writ of fieri facias in the bill mentioned, or any other writ now sued out or hereafter to be sued out on the judgment in the bill mentioned. And the said E. E. Holland adm. as aforesaid, his agents and attorneys, are enjoined and restrained from suing out any other writ of fieri facias, and from further proceedings on the one now sued out, or hereafter to be sued out on said judgment, till the further order of this Court.

Given under my hand this 8th day of Dec. 1890.

A. P. Young c.I.C.C.
Clerk

FORM No 390

SUBPŒNA
IN
CHANCERY.

Com. A.W. Parker, &c.

vs.

Nelson R.W.'s adm'r, et al.

To E.E. Holland and p.q.

To 2d Dec. Rules.

1890 Circuit Court.

I do acknowledge service of this summons by an officer, and hereby accept legal service of same, as if served by copy delivered by an officer, Dec. 8th 1890.

Ro. A. Edwards
S.I.C.

Everett Waddey,
Stationer and Printer,
Richmond, Va.
Form No. 300.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU, that you summon E. E. Holland adminis-
trator of R. W. Nelms deceased, and
R. A. Edwards sheriff of Isle of Wight
County

to appear at the Clerk's Office of the Circuit Court of the County of Isle of Wight, at the rules to be held for the said Court on the third Monday in December, 1890, to answer a bill in Chancery, exhibited against them in our said court by D. W. Carr, Mattie V. Hall, James C. Harrison, Thomas Thorpe and Claude C. Carr.

And have then there this writ. Witness, N. P. YOUNG, Clerk of our said Court, at the court-house, the 3rd day of December 1890, and in the 115th year of the Commonwealth.

N. P. Young clk

D.W.Carr et.als.

Vs.

Nelms admr. et.als.

ROUGH DECREE.

December 2nd, 1890

To be entered.

CMD

Dec 2. 1890

D.W.Carr, Mattie V.Hall, James C.Harrison,Thomas Thorne and Claud C.Carr.

Vs.

E.E.Holland admr. of R.W.Nelms,deceased, and R.A.Edwards, sheriff of Isle of Wight County:

This day came the complainants by their attorney in open court and presented their bill of complaint sworn to b by D.W.Carr and on their motion, and on due consideration thereof the court doth adjudge, order and decree that an injunction be awarded the said complainants in accordance with the prayer of the said bill of complaint, restraining said sheriff, his deputy, ~~and~~ agents and attorneys from selling any property of the complainants and from further executing said writ of fieri facias or any other writ now sued out or hereafter to be sued out on said judgment and restraining said E.E.Holland admr. as aforesaid his agents and attorneys from sueing out any other writ of fieri facias and from further proceeding on the one now sued out or hereafter to be sued out on said judgment till the further order of this court. But before said injunction shall take effect the said D.W.Carr or one of the said complainants shall execute before the clerk of this court an injunction bond in the penalty of $ 50 — with surety by said clerk deemed sufficient and conditioned according to law, and the court doth further order that process with usual and proper endorsment thereon issue for said defendants returnable to Rules.

To be endorsed

C/D

Mem 25.1872.

Entered

In the Circuit Court of Isle of Wight County-

D.W.Carr and others-

vs - Inchancery

R.W.Nelms' administrator and others

On the motion of defendant, by Counsel, leave is given to file an answer in this cause, which is accordingly done.

FORM No. 200.

E. E. Holland admr.

vs. { Summons in an action of Assumpsit

D. H. Carr Exr. als.

E. E. Holland p. q.

3rd Monday in Sept. Rules,

Isle of Wight Circuit Court.

1890

A copy

Everett Waddey, Stationer and Printer, Richmond, Va. } Form No. 200.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight Greeting:

We Command you to summon D. H. Carr, Mattie W. Hall, Jas. C. Harrison, Thomas Thorne and Cland L. Carr

to appear at the clerk's office of our Circuit Court of the County of Isle of Wight at the court-house thereof, at the Rules to be holden for said court, on the third Monday in September next to answer E. E. Holland admr of R. H. Nelms deceased

of a plea of Trespass on the case in assumpsit for $105.00

Damage $105.00 Dollars. And have then there this writ.

Witness, N. P. Young, Clerk of our said court, at the court-house, the 10th day of September 1890, and in the 115 year of the Commonwealth.

A Copy Teste. N. P. Young D. C. N. P. Young clk

Mattie V. Hall

Jas. C. Harrison

Thomas Thorn

Claude D. Carr

$105.00/100

Suffolk Va Sept 9th 1889

Sixty days after date I promise to pay unto A. H. Nelms or order, negotiable and payable without offset, at the Farmers Bank of Nansemond Suffolk, Virginia One Hundred & Five Dollars for value received, and it is agreed upon and by the parties that the interest on this note shall be payable in advance, and we, principal and endorsers, hereby waive the benefit of our Homestead Exemptions as to this debt.

credit this order.

D. H. Carr

A copy Teste

S. F. Young D.C.

FORM NO. 306.

Carr D.W. et als,

to { INJUNCTION BOND.

Commonwealth

Decr. 8th 1890.
This bond was signed,
sealed & acknowledged
by D. W. Carr & Geo. W.
Uzzell, the obligors, &
filed.
Teste, S.P. Gunn Clk

Everett Waddey, Stationer and Printer, Richmond, Va. } Form No. 306.

Know all Men by these Presents, That we D. W. Carr and Jacob A. Harrison and George W. Uzzell are held and firmly bound unto the Commonwealth of Virginia, in the sum of fifty ~~~~~ dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and also of any claim, or right to discharge any liability to the Commonwealth arising under this bond, ~~or by virtue of said office, post or trust~~ with coupons detached from bonds of this State. Sealed with our seals, and dated this ..... day of December, one thousand eight hundred and ninety-~~seven~~ two.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above bound D. W. Carr and Mattie V. Hall, Jacob A. Harrison, Thomas Thorn and Claud A. Carr

on their bill in chancery against E. E. Holland adm'r of R. W. Nelms dec'd. and H. A. Edwards sheriff of Isle of Wight County

addressed to the Judge of the Circuit Court of the County of Isle of Wight has obtained from the said Judge an injunction to injoin and restrain said sheriff from selling or further proceeding under execution of fieri facias on judgment vs. the plaintiff, and the said E. E. Holland adm'r. of Nelms from further proceeding on said suit or from suing out any other writ on said judgment v. ~~~~ until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until D. W. Carr or some one for ~~~~, shall enter into a bond, with good security, in the clerk's office of the said court, payable to the Commonwealth of Virginia, in the penalty of fifty ~~~~ dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said D. W. Carr, Hall, Harrison, Thorn, & Claud A. Carr shall pay all such costs as may be awarded against them, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, otherwise to remain in full force and virtue.

Executed in the presence of

N. O. Young clk ct

D. W. Carr SEAL.

his
George W. Uzzell SEAL.
mark

SEAL.

In the Clerk's Office of the Circuit *Court of the* County *of* Isle of Wight.

This day personally appeared before me N. O. Young, Clerk of the Circuit Court of the County of Isle of Wight, George W. Uzzell, and made oath that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expects to have to pay, is worth the sum of fifty ~~~~ dollars, over and above all exemptions allowed by law.

Given under my hand this 8th day of Dec., 1890.

N. O. Young Clerk.