

1868-023

HENRY L. TYNES VS REPS OF JOHN CAMPBELL ETC

1868

CHANCERY CAUSES

NANSEMOND COUNTY
(SUFFOLK)

SURNAMES: BUTLER, VESEY, VEASEY

Costs

Clerk	\$15:00
Atto: tax & stamp	16:00
Shelf	20
Const: Phelps	50
Notary Pub. (W. L. R)	4:00
Geo: W. Coaling & P.	3:00
W. A. Butler (Wit)	50
Printer (Sun)	4:25
" " Virginian "	5:50
C. B. Hayden. Esq	50:00
	\$102 95

Costs

Richmond Dec. 6th / 866

Judge Moncure

My Dear Sir

I send you a Bill of praying an Injunction, which has been presented to Judge Lyons; & whose order you will see indorsed on it.

You will recognize the case, as presented in the Transcript before the Court of Appeals; of which there is an exhibit. And you will know, what I had no means of learning, the grounds, on which the Judges of the Court of Appeals divided.

I do know the grounds, on which Judge Robt. who decided the case in the Court below, proceeded.

His written opinion, which I send you, states those grounds. He considered the rejoinder defective for form.

He considered that the plea did not state such a defence as the Statute allowed; & that from the question of the sufficiency of the notice, which was not in writing: He did not seem to think the fact, that the notice was not in writing, fatal to the defence; but the contrary, if a waiver of it had been avowed well.

Had the Counsel, in the Circuit Court, amended his pleadings, by adding a plea, setting out the matter now presented in the Bill, I doubt not that Judge Robt. would have held the plea good.

And then, upon an equal division of the judges of the Court of Appeals, the result would have been exactly the same of what it is.

As to whether the two judges of the Court of Appeals, who were for affirming the judgment were the case as Judge Robt. did, I know not. If, like him, they considered that the plea was bad, not because it failed to aver that there was notice in writing, but because in other respects, it was faulty, then nothing has been decided in the case, but that the defence made out in the plea ^{being} is not sufficient, however sufficient the notice may have been.

It has not been decided that a verbal notice, under the circumstances, stated in the Bill here with presented, & attended by the consequences stated, would not suffice - It has not been decided that such a case would not suffice at law - For I infer judge Baker considered such a defence might be made at law.

But, while there is nothing known to me by which I can arrive at the grounds, on which the judges, who are for affirming the judgment, rested their opinions, and I cannot therefore conclude that, like judge Baker, they would have sustained a plea, good in other respects, and, pleading, instead of the fact of a written notice, a waiver of the plaintiff's right to require notice in writing; yet I feel at liberty to affirm that those judges did not mean to decide more than that the matter pleaded in the case, did not furnish a good defence in that case - it is in an action at law.

What they would have held, had the defence been made in Equity I know not. Nor do I suppose they went so far as to determine in their own minds. It was not necessary to be done to decide the case, and the intrinsic difficulties being just enough (two of their brethren were differing with them so far as they had to go to decide the case) I dare say they did not take upon themselves to determine any question not necessarily arising.

This much I say because judge Lyons refused the injunction on the ground that the thing was res adjudicata. His sympathies are for the surety, and he told me he thought judge Baker would & that had he sat on the Court of review he should have been for reversing the judgment.

Hearing this from judge Lyons, & seeing that Judge Baker would probably have been for the surety, had the pleading been difficultly framed the plea, and knowing that two of the four judges of the Court of Appeals, who sat in the case, thought the judgment erroneous, I can not rest content to see the surety succumb without further effort.

I submit that at least he should be allowed his injunction, that there may be a deliberate consideration of the case upon a trial. For, the granting the injunction does not by any means imply that the final decree will be to perpetuate it. If there are grave doubts, it seems to me the practice is, and that a very proper practice, to allow the injunction, that those doubts may be resolved upon deliberation & consideration, at the hearing of the case, where the Court may have the benefit of argument.

Judicial sympathy must be felt for the surety; and seeing the continuity of opinion, I think it will be agreed that, unless the judgment be an absolute bar, the case ought to be heard on its merits - something that as yet was not done on the trial in the Circuit Court where the judgment turned on a mere technicality as pleading; whatever may have been the case in the Court of Appeals.

And if, in the latter Court, the decision turned on the merits, and left no technicalities, about which there was anything, yet it is to be remembered that it was at law, the defence was set up, in the case decided, while it is now urged in Equity. And it by no means follows that because the defence was had at law, it is so in Equity, nor that it can now be urged in Equity because of the ineffectual attempt to get the benefit of it at law.

It was after the argument of the case that I found the Alabama decision of Pickens v. Yorbrough' admir 26th Ala 417. After it is true I handed a reference to that case in, before the Decision was announced, but, as I judged from the remarks of one of the judges (I believe yourself) not before the opinions had been formed. In expressing a regret at this to Judge Robertson, he told me that he had rather expected from me a motion for a rehearing before a full Court.

I told him I preferred to apply for relief to a Court of Equity. Added to the remark, I've always felt to ask a rehearing from the Court of Appeals, (which is so great that I have never yet done it) I felt that Equity was still open to an application for relief, notwithstanding what had been done at law, and that the case could be so much more fully set out in a Bill, than it had been in the ~~plea~~ plea, in the law case, that it was better to drop the latter, and file a Bill.

~~-----~~ If the pleadings did not present the real case, the defendant had to make, it would be a mere waste of time to have a rehearing of the case ^{that was} decided.

In thinking that the decision did not bar the doors of Equity, my course of reflection was that, even supposing the pleadings presented the same case, that the Bill does, yet, if that defence was not admitted at law, Equity would not allow it to fail, if, according to its principles, it was a good defence.

For, in insisting on the benefit of the waiver of written notice, the surety is claiming a right on matter of Equitable Estoppel.

Originally acts in pais did not constitute matter

of Estoppel at Law.

And, so far as they may now be taken advantage of at Law, it is by reason of the adoption in modern times by Courts of Law of the doctrines of Equity.

In this process of expansion some Courts of Law have gone farther than others. And we find different decisions accordingly by different Common Law Courts. There is considerable diversity to be observed in the decisions of the several States. I refer to the Duchess of Kingston's case in Smith's Lead Cases, (Note & without note) for a full exposition of this matter.

This controversy of adjudications has been most conspicuous in the admission, or rejection of ~~oral~~ ^{unsworn} evidence, & has offered to affect the title to land.

The question here is akin to the latter class of questions; the act for the relief of the Surety, like the Statute of Frauds, requiring a writing.

How far the Courts of Va have gone in allowing the title to land to be affected at Law, by acts in pais, operating by way of estoppel, I am not informed.

That a Court of Equity, in Va, will hold a party estopped by act from asserting his legal title to land, where his act in pais would make it fraudulent to do so, is affirmed in 2 Rob. Pr. old Ed. 30-32.

And I suppose, unquestionably that a Court of Equity would hold a ~~creditor~~ ^{estopped} from asserting his legal rights, against a Surety in a bond, held by him, where his act in pais would make it fraudulent in him to assert them.

And I feel equally sure that a Court of Equity would not feel shorn of this jurisdiction - its own original jurisdiction - by an ineffectual effort of the surety to make available, such act in pais, by way of estoppel at common Law.

Such a case would not fall under the rule that, "in all cases of concurrent jurisdiction, the Court, which first obtains possession of the cause, must decide it." For, the refusal of the Common Law Court, to admit the estoppel, would be a disclaimer of the Concurrent jurisdiction.

And indeed it is in all cases of concurrent jurisdiction, that the rule applies.

In the note of Hore & Wallace to the Earl of Oxford case, see 2^d Val Port 2^d, Lead Cor Eq, Hore & Wallace vol 4 67 margin, 100 at top Edic 1852, they say, in reference to it, "the rule thus established applies with little or no exception, in cases, within the original coordinate jurisdiction of Law and Equity. But its application is not so certain, or universal in matters, where the Courts of Law have borrowed and appropriated the doctrines of Equity. For, in such cases, the remedy at Law is often uncertain, and somewhat well established, is administered by different and less stringent methods. To hold it so. Equity is therefore averse to depriving the complainant of the right of making a defence purely equitable, in Equity, because it has become a matter of legal cognizance, and will sometimes allow it to be made on the ground of an injunction, after an unsuccessful attempt to set it up at Law. Calloway v McElroy 3 Ala 406, Harlan v Wyngate 2 S. J. Marshall 138, Clay v Hoy 2 Bibb 248, Ellis v Bibb 2 Stewart 53, Hampstead v Watkins 1 English 317, Rogers v Grundy 3 Peters 212. This point arose in the case of King v Baldwin 7th John Ch 552, where the complainant, who had failed in an attempt to set up an equitable defence, to an action on a promissory note, which he had signed as surety, came into Equity for relief, on the same matter, which had been overruled at Law.

This application was refused by Chancellor Kent, on

English is an American Reporter, and this case of Hampstead v Watkins is eminently worthy of being printed.

"the ground that the defence thus set up was insufficient both at Law and in Equity; but he expressed a strong opinion that, as the jurisdiction of both tribunals had become concurrent in questions of suretyship, the defence could not be sustained in one after being overruled in the other.

"But this decision was reversed by the Court of error, who held that, to preclude a party from relying on an equitable defence, as a reason for setting aside a legal decision, it must appear, not only that the defence thus relied on, was of legal cognizance, but that it was recognized and determined, as such, by the Court of Law; 17 Johnson 384.

Ch. J. Spencer said "if it be doubtful, whether a Court of Equity can take cognizance of the defence, and there exists no doubt of the jurisdiction of a Court of Equity, & if, in such case, a defendant at Law, under the influence of such doubt, omits to make his defence, or if he brings it forward and it be overruled, under the idea that it is not a defence at Law, it is not granting a new trial for a Court of Equity to afford relief, notwithstanding the trial at Law." 17 John 387.

In this case, a defendant to a suit at Law, being surety for his co-defendant, set up in his defence that the plaintiff, though urged by the surety to procure & collect the money from the principal debtor, had refused to do so, and delayed until the principal became insolvent, which defence was overruled. Held "the surety may notwithstanding, seek relief in the Court of Chancery on the same ground, as that set up by him at Law." 384

This case proceeded on the single ground that of "a preexisting equitable obligation, binding on the conscience of the creditor to exert himself to obtain payment of the principal, & and if he omits to do so and thereafter the principal becomes insolvent that the surety will be discharged." in the case before us In addition to that ground, there is the estoppel arising

out of the bond of proceeding to sue the surety, after
preventing him from discharging himself by a written
notice to sue, under the act of Virginia, (there being none such in N.Y.)
on the latter ground, there would seem to be no ~~ground~~
doubt of the jurisdiction of Equity to interfere, & in case
of any other bond, whatever doubt there might be on
the former ground. And Equity cannot have lost its
jurisdiction, by the surety bringing forward his defence
at law and its being overruled. In the language
of Ch Justice Spenser, in such a case, "it is not granting
" a new trial for a Court of Equity to afford relief not-
withstanding the trial at law."

"To preclude a party from relying on an equitable
" defence," see Horst Wallace's note *infra*, "as a reason
" for setting aside a legal decision, it must appear not
" only that the defence, thus relied on, was of legal cognisance
" but that it was recognised and determined, as such,
" by the Court of Law."

Now, in the case under consideration, whether the defence
was of legal cognisance, or not, it was certainly not
recognised and determined, as such, by the Court of
Law. On the contrary, it was considered by the Court
of Law, as naught.

If then, there was ever jurisdiction in Equity to grant
relief in the case, it remains, in full force, unaffected
by what has taken place at Law.

I have been thus particular on this branch of the
question, because it was just here that Judge Lyons'
difficulty lay.

In fact, no such difficulty exists in the matter of the
bond, upon which there has been no judgment as yet.
It will be borne in mind that there are two writings ob-
ligatory, on which the Bill prays to enjoin proceedings.
Upon the general question, I refer to the Duties of

of Kingston's case in Smith's Leading Cases (H & W's notes)
for illustrations of the rule of estoppel for acts in pais.
I had send also a note of Mr J. R. Kilby, the counsel in
the case now in the Circuit Court.

I deem it unnecessary to dwell on this branch of the case;
for to state it is to show fraud, in the plaintiff in the Com-
mon Law action.

The plaintiff's conduct has entrapped the complainant
in Equity into a course, from which he will suffer inju-
ry, if the former is now suffered to sue, as if he had not so
conducted himself.

I had at one time intended to send the books
I have cited, knowing that books in the country, oc-
cupied by the U.S. forces, so long, were scarce.

But it is so short a time before the Court of appeals meets
here, that I considered it not important. For, if it be de-
sirable to refer to books, such to be had in Fredericksburg,
action on the case can be deferred awhile without damage
to the applicant.

I am Yours Respectfully

James Alfred Jones.

Judge Moncure

Stafford

Virginia

Wm Smith

July 19 67

Dear Wm -

I send you rough notes on
the demerit to the Bill of Lyman & Campbell's
committee - prepared today. I have not seen
Kilby's notes & therefore do not know what
positions he takes with argument -

If the demerit is not sustained - we
shall ask leave to file the answer of

Eley or committee of Campbell - It
of course will be very general - as he
knows nothing of personal knowledge of
the matters alleged - It will be suffi-
cient however to put the complainant
to the proof of point - I will let
it for you by next Hancock Court -

I have not referred to the evidence
because that is before you - & I have a
very imperfect recollection of it -
I will be at next Hancock Court -

I presume you will be there with the
papers - I do not think there will be
any need of oral argument -

I have not been able to be
left Antwerp as yet - will do so
soon & write you -

Love
for you

J. F. Crocker

1.

Tynis v. Campbell's Committee & Co
1 1 1 1 1

Notes on behalf of the demurrant -
Edwin S. Smith.

The complainant is seeking in a court of Equity relief against a recovery at law. It is well settled that if the matters alleged in the bill were available to the complainant by way of defence to the suit at law, & he has neglected to avail himself of them, he cannot be permitted to resort to a court of Equity either to repair such neglect or review that decision. And this rule prevails, though the case be one in which before the court of law acted upon it, Equity but can exercise jurisdiction. See authorities cited 2 Pal Pr. (old Ed.) L. 212 - If, therefore, the matters alleged by the complainant in his bill, were available to him at the law trial, he is forever concluded by the judgment under the above rule. Let us see how far they were available. It must be admitted 1. That the defence which §§ 4 & 5 Ch. 146 of the Code, gives to the secret, is one that can be made in a court of law.

2. That if the creditor has done or said anything which is a waiver of and equivalent to the written notice, under the statute, that this is also a defence available in a court of law -

We may therefore safely say, that all matters alleged in the bill as to the acceptance of a verbal in lieu of a written notice, or as to the waiver of written notice, as a ground of admitting the surety to the benefits of the statute, are matters that were available at the law trial. And it follows as a necessary consequence, that if the complainant has any equity, it is in matters outside of, independent of, & deriving no effect from the statute. — such for instance as a fraud which equity would relieve in the absence of all statute on the subject. Let us look to the fraud alleged.

To express the case of the complainant most strongly it is this. That he was prevented by the fraud of Campbell - in ~~accepting~~ ~~waiving~~ ~~written notice~~ ~~accepting verbal notice in lieu thereof~~, from

giving him notice in writing so as to bring himself
as surety within the provisions & benefits of the
statute, and that in consequence of this fraud
he must suffer loss unless relieved in equity.

Of this case of fraud, we may say, that if it
be true, as is contended by the complainant, that
proof of waiver of written notice is equivalent
to proof of written notice in entitling the surety
to the benefits of the statute, then there has not
been, nor in the nature of the case, could there
possibly have been, any fraud on the complainant,
because according to this theory, a plea of
the waiver of the written notice would have
been as good a plea in bar of recovery, against
the surety, as a plea of written notice. If
the waiver was good at the time it was made -
it was always good ^{thereafter} & its validity & force
did not depend upon ^{the will of} Campbell - he could
not recall it - he could not escape from it.
If the waiver was not good at the time it was
made, the acceptance of it was a mere idle
act - a vain thing - the observance or non observance

of which could furnish no legal ground of complaint ^{by} the plaintiff.

But do the matters alleged ~~amount~~ if true, amount to a fraud. The fraud alleged is this, that Campbell when requested by Zynn to sue at once & expressly waived written notice & accepted verbal notice in lieu thereof, & promised forthwith to sue - but he did not sue, until the principal was insolvent - and upon trial objected to the sufficiency of the notice. This is the whole case - all else, to the effect of quieting the anxiety of the complainant & preventing him from giving the statutory notice - these matters of mere inference & argument. We have already said that if the waiver was good when made, it was good at the trial - and furnished a full defence - what now might have been the fraudulent purposes of Campbell, & consequently - the waiver of itself could not in the worst be coincident or a fraudulent act, capable of working injury to the complainant. The waiver to be good as a waiver must be good at law. For the ruling to the contrary, no notice to sue is a statutory ruling altogether. We shall

1 1 1 1

(7) Hereafter see, that according to the decision of our court there is no obligation on the Creditor to sue at the request of the surety & if loss ensues from failure to sue it is no ^{ground} relief either in law or Equity to the surety. Hence no waiver is good in Equity that is not good in law. Equity follows the law. It follows therefore if the waiver was not good when made it created ^{in fact} no obligations on the Creditor. The non-observance of which could give no title to the surety to any relief in law or Equity. The Creditor could sue or not sue at his option, ~~without~~ ^{without} there was no obligation on him to sue at the request of the ^{surety} Creditor, and any promise to sue was voluntary & not capable of being enforced. It would be folly to say, that the Complainant was enticed into a false security, by the mere promise to faithfully sue. He was cognizant of the delay to sue day by day - for he was a necessary party to any suit against the principal. The natural effect of the non-observance of the promise to sue, was to awaken instead of quieting the anxiety of the Complainant.

we respectfully submit, that the whole charge
of fraud stands properly reduced to this -
that ~~the~~ Campbell waived written notice
by accepting verbal notice in lieu thereof,
and afterwards in trial denied its sufficiency,
to bar his recovery. The bill shows that

Campbell accepted the verbal notice as a
waiver of the written notice at the request
of the Complainant. In doing this he only did
that which Tynes wished & requested him to do.
~~He~~ did not suggest to Tynes not to give written
notice - he did not say a waiver of written
notice was sufficient in bar of recovery -
- He did nothing to mislead the Complainant from
his duty to give written notice. It was the
Complainant, who, in the face of the wisdom &
policy of the law, voluntarily entrusted his
rights in the premises to the sufficiency of
a verbal waiver of ^{the} notice in writing requested
by the Shiller & to the frail & uncertain re-
liance of human memory. The bill
does not allege that Campbell waived his

right to test the sufficiency of a verbal waiver
of the written notice. ~~However the question~~
~~to the law.~~ He ^{only} says he is "satisfied with
said notice & waived any written notice" He
leaves the question of its sufficiency of a
verbal waiver to the law. It is like the
~~service~~ acknowledgment of the service of a
notice to take a deposition. The service is ac-
knowledged - but the sufficiency of the notice
is a matter of future question. It is
evident from the bill that Tynes proceeded
under the belief that the waiver of written
notice was as good under the statute as a
written notice. If it is not as good, it is ⁱⁿ
an additional instance of the common case
of a party acting under a mistaken under-
standing of the law, where no court even
relieves from the results of his ignorance.

Finally, we invite attention to the common
principle, "that fraud is no cause to be presumed,
and no ill ought to be clearly established
before it is taken for true" with the view

of claiming that unless the matters alleged in the bill, if true, clearly & satisfactorily establish a case of fraud - they must be taken to have been done in good faith.

We respectfully submit that the matters alleged, if taken to be true, do not constitute a fraud, and that they were available to the complainant by way of defence to the suit at law.

Again,

The matters alleged in the bill were substantially alleged as a defence in the suit at law - and the court determined that the defence was no bar to the action against the complainant. And according to the well established rule of law, the complainant ought to be held concluded by the judgment of the court.

But it is said that the ^{complainant's} pleadings did not present the matters in the pleadings alleged, fairly for the consideration of the court, in as much as they ^{were} ^{bad} ⁱⁿ ^{not} also alleging that the principal was, at the time of the notice, within the state & not insolvent &c -

this may be true - although it appears that the
 two dissenting judges of the Court of Appeals, must
 have considered the pleadings good - these judges
 must have been for the appellant on the merits
 of the defense - But suppose the plea itself
 was bad - and that the judgment below & the af-
 firmation of it above was the result of the
 rule that an erroneous judgment must
 be against him who committed the first
 error in the pleadings - This does not entitle
 the complainant to relief in Equity - Equity
 never relieves against mistakes in pleading.
 2 Story's Eq. Jur. § 897. The complainant
 had ample opportunity in the court below to
 correct his mistakes in the pleadings - The court
 always allows amendment of pleas or further pleas
 on sustaining a demurrer. But the complainant
 took issue with the court on the sufficiency
 of his pleadings, & appealed - and he ought
 now to be held bound by the judgment of the court
 whether that judgment was based on the merits
 of the matters pleaded - or on the insufficiency
 of those matters.

Tyner v Campbell's Commuter 2

No indulgence granted by a creditor to the principal debtor, will discharge the surety of such debtor, unless the creditor has bound himself in law or equity not to pursue his remedy against the principal for any length of time.

Harris v Croomer 2 Rand. 323

Baldwin J. v Humphrey v Hett 6 Gort. 523-4

King v Baldwin 2 Penn. Ch. R. 555-

A surety is not absolved from his obligations by requesting the obligee to sue & his failure to do so.

Croughlin v Leval 3 Call 70

Contra *Pain v Packard* 13 Johns. 174

+ *King v Baldwin* 17 Johns. 326-

This last case reverses the decision of Ch. Kent.

with the same. 2 Johns Ch. R. 555-

+ The case (17 Johns 326) is severely criticised &

disapproved by Warner v Beardsley 8 Wend 194

Equity will not relieve a party who has
had a day & opportunity to make his defence
against a demand set up against him a court
of law, but who by wholly failing to avail
himself of them, against a judgment that
has been rendered against him is consequence
of his default, when grounds that might
have been successfully taken in the court
of law, unless some reason founded in
fraud, accident, surprise, or some ad-
ventitious circumstance beyond the control
of the party, be shown why the defence
was not made in that court.

Meen v Ruelker 10 Grt. 309.

2 Keb. 212. See Old Ed. & authorities
cited.

Senator Van Vechten in King v
Baldwin 17 Johns R. 397.

72

7

Campbell's corner

Notes.

The Commonwealth of Virginia,

To the Sheriff of Nansemond County---Greeting:
YOU ARE HEREBY COMMANDED TO SUMMON *William Eley Sheriff*
and Committee, of John Campbell deceased.

to appear at the Clerk's Office of our *Ancient* Court, for the County of Nansemond, on the
first Mouday in *September* next, 1867, being rule day, to answer an ^{amended} bill in
chancery, exhibited against *him* by

Henry L. Lyles

and unless *he* shall answer the said bill by the next rule day
thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his
Office, this *17th* day of *August*, 1867, and in the *92nd* year of
the Commonwealth.

Peter B. Prentis, Clerk.

For The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

Kelby. p. 9

Henry L. Tynes

to { Sum: in Chy:

Wm. Eley, Shp. Haver
of Geo. Campbell died

To Sept: Rules 1867

Pro. O. No. 1. Page 20

case

1867. Aug: 17th: I acknowledge service at
the within: Wm. Eley, & then I leave record
as my hand & seal
Wm. Eley Shp.
& committee of Geo. Campbell died

The Commonwealth of Virginia, *Wm. A. Phelps, a Constable*
To, ~~the Sheriff~~ of Nansemond County---Greeting.
YOU ARE HEREBY COMMANDED TO SUMMON *William Eley Sheriff and*
Committee of John Campbell deceased and Wm. Vesey

to appear at the Clerk's Office of our *Circuit* Court for the County of Nansemond, on the
first Monday in *February* ~~next~~, 1867, *an original and an amended Bill*
chancery, exhibited against *them* being rule day, to answer ~~a bill~~ in
by
Henry L. Sykes

and unless *They* shall answer the said bill by the next rule day
thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his
Office, this *2nd.* day of *February*, 1867, and in the *91st.* year of
the Commonwealth.

Peter B. Prentis Clerk.

Note The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

Copy for
Wm. Vesey

Memo: The object of this Sub is to enjoin and restrain the defendant Wm. Vesey, Sheriff & Committee of John Campbell deceased, from further proceedings in two judgments at law, in the Circuit Court of Har- sersburg County, against Henry L. Tynes, the Complainant, and to release him, the said Tynes from the payment thereof.

Teste,

Peter B. Prentiss, Clerk

The Commonwealth of Virginia,

To, ~~the Sheriff~~ ^{Wm. A. Phelps} of Nansemond County---Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *William Eley Sheriff and*
Committee of John Campbell deceased, and Wm. Vesey

to appear at the Clerk's Office of our *Circuit* Court, for the County of Nansemond, on the
first Monday in *February* next, 1867, ^{an original and an amended} being rule day, to answer ^a bill in
chancery, exhibited against *them* by

Henry L. Sykes

and unless *they* shall answer the said bill by the next rule day
thereafter, the Court will take said bill for confessed, and decree accordingly.

And have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court, at his
Office, this *2nd* day of *February* 1867, and in the *91st* year of
the Commonwealth.

Peter B. Prentis, Clerk.

The Sheriff will, in his return, note the day on which this process is executed on each Defendant.

Kelly. p 4

Henry L. Tynes

vs. { Sumner ch. &c

Wm. Eley, Sheriff & Comtee
of John Campbell decd
vs.

To February Rules 1867

Prob. No: 1. Page 20

Ex: Co

Entered Kelly the 2nd 1867 and a true copy
hereof delivered to Wm. Eley shff and a committee
of the Canbyes decd. Wm. Eley is not
a resident of this county with
his wife & child.
J. Phelps
Quotable

Thence: the object of this book is to engage and recite
the defendant, Wm. Eley, Sheriff & Committee of John Campbell
decd. decd. from further proceedings in this judgment at
law in the Circuit Court of Hancock County - against Henry
L. Tynes, the defendant, and to release him, the said
Tynes, from the foregoing Sheriff

Teste, John B. Peck, Clerk

Virginia, s.c.:

John Campbell. Plaintiff	}	In Debt.	Pleas at the Court House, in the Town of Suffolk, before the Circuit Court for Nanssmond County, on Saturday, the Fifteenth day of October, in the year One Thousand, eight Hundred and Fifty-nine.
Against			
William Vesey and H. L. Tyner. Defendants.			

Be it remembered, That heretofore, to wit: on the 1st day of November, in the year 1858, came John Campbell, by his Attorneys, and sued out of the Office of the said Circuit Court, a summons against William Vesey and H. L. Tyner, which summons, with the endorsements and returns thereon made, are in the words following:

Summons
issued

The Commonwealth of Virginia:

To the Sergeant of the City of Norfolk, greeting:
You are hereby commanded to summon William Vesey and H. L. Tyner, if they be found within your bailiwick, to appear at the Clerk's Office of our Circuit Court, for our said County of Nanssmond, at the rules to be holden for the said Court, on the first Monday in December next, to answer John Campbell, of a plea of debt for \$1000. Damage \$30. And have them and there this writ. Witnesses, Peter B. Prentiss, Clerk of our said Court, at

The Office aforesaid, This 1st. day of November
1858, in the 83rd. year of our foundation.

Peter B. Prentiss. Clerk

Endorsement

Endorsement. "Debt"

Godwin & Crocker, p. q.

Return

Return. "Norfolk City, November 9th. 1858. Executed
by delivering a copy hereof to W. A. Jaynes, a white
person over the age of sixteen years, and explained
to him the nature of this process: Wm. Vesey not
being found at his usual place of abode.

Thos. J. Capnew. Sergeant.

Summons

"The Commonwealth of Virginia:

To the Sheriff of Nausemond County, greeting:
You are hereby commanded to summon Wil-
liam Vesey and Thos. J. Jaynes, if they be found with-
in your bailiwick, to appear at the Clerk's Office of
our Circuit Court for our said County of Nause-
mond, at the rules to be holden for the said Court,
on the first Monday in December next, to answer
John Campbell, of a plea of debt for \$1000. Dam-
age \$30, and have then and there this writ.

Witness, Peter B. Prentiss, Clerk of our said Court,
at the Office aforesaid, This 1st. day of November. 1858.
in the 83rd. year of our foundation.

Peter B. Prentiss. Clerk

Endorsement

Endorsement. - "Debt"

Godwin & Crocker, p. q.

Return

Return.— "Executed, and a true copy hereof delivered to Henry S. Jynes. Wm. Vesey is no inhabitant of my County.

William Eley. D.S."

And at another day, to-wit: At Rules held in The Clerk's Office of the said Circuit Court, on the 6th: day of December, 1858, came the plaintiff, by his attorneys, and filed his declaration against the defendants, which declaration is in these words:

Declaration

filed

"State of Virginia, Nausemond County, to-wit:
John Campbell complains of William Vesey and H. S. Jynes having been duly summoned of a plea of that they render to the said plff. The sum of \$1000 which they owe to, and unjustly detain from the said plff. and thereupon, the said plff. says, that heretofore to-wit: on the 3rd: day of Decr: 1854, at the said County, by their certain writing obligatory, sealed with their seals, and to the Court now shown, the date whereof is the day and year last aforesaid, promised and obliged themselves to pay to the said plff. on demand, \$1000; and the plff. avers that, although the said sum of \$1000, in the said writing obligatory specified, has, according to the Tenor and effect of the said writing obligatory, been long since due and payable, and although the said Wm. Vesey and H. S. Jynes have been often requested to pay the same to the said plff.; yet, the said Wm. Vesey and H. S. Jynes have not, nor has either of them paid to the said plff. the said sum of money or any

part thereof; but to pay the same to the said plff: have hitherto wholly refused, and still do refuse so to do, to the damage of the said plff: \$30. and therefore he sues &c.

Godwin & Crocker p. q.

Common
Order

Whereupon, the said summons having been duly executed on the said defendants, and they not appearing: on the motion of the plaintiff, by his attorneys, it was ordered, that judgment be entered for the plaintiff, against the defendants, for the debt and interest in the declaration mentioned, unless the said defendants should appear and plead to issue, at the then next rules.

Common
Order
Confirmed

At which day, to wit: at rules held in the Office of the said Circuit Court on the 3rd: day of January 1859, the defendants still failing to appear: on motion of the plaintiff, by his attorneys, it was ordered, that the last order made against them in this cause be confirmed.

Plea of
payment
filed, issue
and continued

And at another day, to wit: at a Circuit Court held for the County of Nausemond, at the Court House, in the Town of Suffolk, on Tuesday, the 19th: day of April, 1859, this day came the parties by their attorneys, and the defendants, by their attorney, filed a plea of payment, to which the plaintiff, by his attorneys, replied generally, and the case is continued.

And now at this day, to wit: at a Circuit

Court held for The County of Nansemond, at The Court House, in The Town of Suffolk, on the same day and year first herein mentioned, to wit: on Saturday, the 16th day of October 1859. This day came the parties by their attorneys, and the defendant H. L. Tynes, by his attorney, by leave of the Court, filed his special plea, in writing, which said plea is in these words:

Special
plea filed

"The defendant Henry L. Tynes, by Jno. R. Kilby, his attorney, prays over of said bond, &c, &c, and comes and defends &c, and says, that as to him, the said Tynes, the said plaintiff ought not to have and maintain his aforesaid action against him, because he says, that he being the security to said bond, gave notice to the said plaintiff, in the manner required by law, to wit: on the 1st day of October 1857, forthwith to institute suit on said bond, and the said Tynes avers that the plaintiff did not institute suit as directed, and as by law he was bound to do, whereby the said Tynes is not bound to pay to said plaintiff, and the said plaintiff has forfeited his right to demand of said Tynes, the debt aforesaid, all of which he is ready to verify. Wherefore he prays judgment, &c &c; to which the plaintiff filed a special replication, which said special replication is in these words:

Special
replication
filed

"And for replication to the plea of him the said deft. secondly above pleaded, the plff. says, that the notice in the said plea mentioned, was not in writing, as

required by law, and this he is ready to verify, and therefore" &c; to which the defendant filed a rejoinder, which said rejoinder is in these words:

Rejoinder
filed

"And the said Jynes, as to the said replication of the said plaintiff to the said defendant's plea, saith, that the said plaintiff ought not, by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him, the said Jynes, because he says he gave to said plaintiff verbal notice to sue on said bond faithfully, and called on the plff: to know if he was satisfied with such notice, when the plff: told him he accepted such notice as sufficient, and should proceed to act on it, and thereby accepted such notice in lieu of any written notice, and of this he is ready to verify: wherefore he prays judgment, if the said plff: ought to have or maintain his aforesaid action thereof against him, the said deft." &c; to that rejoinder the plaintiff filed a general demurrer, which said general demurrer is in these words:

General
Demurrer
filed
and Joinder

"The plaintiff says, that the rejoinder of the deft: is not sufficient in law," and the defendant joined in the said demurrer: Whereupon, the matters of law arising upon the plaintiff's demurrer to the said rejoinder being argued, it seems to the Court here, that the said rejoinder and the matters and things therein alleged, are

not sufficient in law to bar or preclude the plaintiff from the benefit of his replication to said defendant's plea. And thereupon, the defendants, with the assent of the plaintiff, waiving a trial by jury, upon the plea of payment, and submitting the trial of the issue under that plea to the Court.

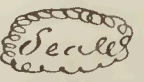
Judgment Therefore, it is considered by the Court, that the plaintiff recover against the defendants, One thousand Dollars, The debt in the declaration mentioned, with legal interest thereon from the 3rd. day of December, 1854, till paid, and his costs by him, about his suit, in this behalf expended. And the said defendants in mercy. &c.
Costs \$11.63.

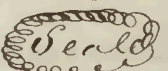
Fi. Fa. issued Upon the foregoing judgment a writ of Fieri Facias issued on the 18th. day of October 1859, which writ is now in the hands of the Sheriff of Nausemound County.

The following is a copy of the bond upon which this action was founded.

Copy Bond. "\$1000. On demand, we or either of us, promise to pay or cause to be paid to John Campbell, The sum of One thousand dollars, it being for value rec'd; for the pay't we bind ourselves, our heirs, &c, firmly, by these presents. As Witnesses our hands and seal, This 3rd. day of Dec'r. 1854.

Witness. Ro. H. Jynes.

William Vesey. 

H. L. Jynes. 

Nausemound Circuit Court Office (Jesse,
Oct. 25th. 1859.

Peter B. Pentis. Clerk.

John Campbell

[#]
v^o J Copy Record.

William Vesey FitzGerald

A + (B)

I, *Stodger, Printer of*

The Virginian, a newspaper printed in the
City of Norfolk, in the State of Virginia, do
hereby certify that the order hereto annexed
has been published *Every other day for*
five days - ~~once a week for four suc-~~
~~cessive weeks~~ in the newspaper aforesaid.

Given under my hand this *4th*
day of *March* A. D. 186*f*
Stodger R.

Cost of executing the said order, paid by
the above-named plaintiff, \$ *5.50*

TO WM. ELEY, SHERIFF OF
NANSEMOND COUNTY AND COM-
MITTEE OF JOHN CAMPBELL, DECD.
AND WM VESEY.—Take notice that I shall,
on the 15th day of February, 1867, next, at the
storehouse of Wm. A. Butler, in Chuckatuck, in
Nansemond county, Virginia, between the hours
of 8 a. m. and 6 p. m. of that day, proceed to
take the depositions of Wm. A. Butler and
others, to be read as evidence in my behalf, in a
certain suit in chancery, depending in the Cir-
cuit Court of Nansemond county, wherein I am
plaintiff and you are defendants; and if from
any cause the taking of the said depositions be
not commenced on that day, or if commenced,
be not concluded on that day, the taking of the
same will be adjourned and continued from day
to day or from time to time, at the same place
and between the same hours, until the same
shall be completed.

Respectfully, HENRY L. TYNES.
JOHN R. KILBY, D. A. fe5—eod(13)

Norfolk, Va., March 1867
Mr John R Kirby Suffolk
To The Norfolk Virginian, Dr.

S. HODGES & CO.
To Advertising

1867
Feb 1

5- Notice to W. C. C., Sheriff Nansemond
Co: 2 ads every other day 5-times

Rec'd Payment
S. Hodges & Co

5.50

John R Kelby
Suffolk
5,50

I, *S. Hodges Pub*

The Virginian, a newspaper printed in the
City of Norfolk, in the State of Virginia, do
hereby certify that the order hereto annexed
has been published once a week for four suc-
cessive weeks in the newspaper aforesaid.

Given under my hand this *13th*
day of *Feb* A. D. 186*7*
S. Hodges

Cost of executing the said order, paid by
the above-named plaintiff, \$ *5.50*

**TO WM. ELEY, SHERIFF OF
NANSEMOND COUNTY AND COM-
MITTEE OF JOHN CAMPBELL, DEC'D.,
AND WM VESEY.**—Take notice that I shall,
on the 15th day of February, 1867, next, at the
storehouse of Wm. A. Butler, in Chuckatuck, in
Nansemond county, Virginia, between the hours
of 8 a. m. and 6 p. m. of that day, proceed to
take the depositions of Wm. A. Butler and
others, to be read as evidence in my behalf, in a
certain suit in chancery, depending in the Cir-
cuit Court of Nansemond county, wherein I am
plaintiff and you are defendant; and if from
any cause the taking of the said depositions be
not commenced on that day, or if commenced,
be not concluded on that day, the taking of the
same will be adjourned and continued from day
to day or from time to time, at the same place
and between the same hours, until the same
shall be completed.
Respectfully, HENRY L. TYNES.
JOHN R. KILBY, P. C. fe5--eod113

To *Wm Eley* Sheriff of *Nansemond County* and *Committee*
of *John Campbell decd*, and *Wm Vasey*.

Take notice that *I* shall on the *15th* day of *February* 18*67*, next, at
the store house of *Wm A. Butler*, in *Churchatuck* in *Nansemond*
County, Virginia between the hours of 8 a. m. and 6 p. m. of that day, proceed to
take the Depositions of *Wm A. Butler*

_____ and others, to be read as evidence in *my* behalf, in a certain *suit*
in Chancery, depending in the *Circuit* Court of *Nansemond*
County, wherein *I am*

_____ are plaintiffs, and *ym*

_____ are defendants; and if from any cause the taking of the said Depositions be
not commenced on that day, or if commenced be not concluded on that day, the taking of the same will
be adjourned and continued from day to day or from time to time, at the same place and between the
same hours, until the same shall be completed.

Respectfully,

Henry L. Tynes

To the Sheriff of
County to execute.

}

by
 } notice to take
 }
 Campbell's staff. &
 15th Feb. 1867
 15th Feb. 1867

Hansom and County to be J.

This day, personally appeared before me a Justice of the Peace in and
 for the said County, Richard H. Reddick Jr., and made oath, that he
 did on the 6th day of February 1867, deliver to Wm. Eley Sheriff of Hansom
 County and Committee of John Campbell decd. a true copy of the within notice.
 Given under my hand, this 7th day of February 1867:

J. R. Ellis J.P.

The Deposition of Wm A. Butler, taken on the 15th day of February 1867, at the store house of Wm A. Butler, in Chuckatuck, in Nansemond County, Virginia, between the hours of 8: a.m. and 6 p.m. of that day, to be read as evidence in behalf of Henry L. Tynes, in a suit in Chancery now pending in the Circuit Court of Nansemond County, between the said Tynes as Plaintiff, and Wm Eley, Sheriff of Nansemond County, and Committee of John Campbell Decd, and Wm Vary, are Defendants - Taken pursuant to the annexed notices -

The said Wm A. Butler being duly sworn on the Holy Evangelists of Almighty God answers and says, as is set forth in his answers to the following questions -

1st Question by John R. Kilby, plaintiff's attorney.

Where do you reside, and how old are you and what is your occupation?

Answer. At Chuckatuck Nansemond County & was 33 years old last birth day; my occupation is that of a merchant

2nd Question by the same. Were you acquainted with William Beasy. John Campbell & Henry L Tynes. & how long have you known them

Answer I was acquainted with them & have been from early boyhood

3rd Question by same What was the pecuniary condition

of William Beary on the 3rd of December 1854 & during the years 1855. 1856 & 1857.

Answer he was during those years, a Merchant doing a large business & was meeting his liabilities & was considered amply able to pay his debts

4th Question by same. State all you may know of any conversation between the said Henry L. Tynes & the said John Campbell relative to the liability of said Tynes as the security for the said Beary on his indebtedness to the said Campbell & especially whether any directions were given by the said Tynes to the said Campbell to sue on the claims he held against the said Beary & to which the said Tynes was the security & whether the said Campbell agreed to sue & release the said Tynes & whether the said Campbell waived written notice from the said Tynes to sue & whether the said Campbell accepted verbal notice to that effect & state generally all you know about the matter

Answer. About the latter part of 1855 or the beginning of 1856 the said Henry L. Tynes, John Campbell, a Mr Albert Lawrence & a Mr Jacob Beaton & this witness were in the counting room of John M Butters store house at Cheekatauck when the said Campbell commenced speaking of his poverty & during the conversation called on Mr Tynes to pay him the amount of a note which he (Tynes) owed him, which Mr Tynes said he would pay. Mr Tynes then remarked to Campbell "you have some claims against Wm Beary to which I am

"security & that I won't stand as security any longer &
"that you must release me, or bring suit and make the
"money out of Beasy" - to which Campbell assented
and agreed to both by words & gestures. Soon thereafter
Mr Tynes seeming desirous to understand that he was
to be released again directed Campbell to release him by
suit or other wise. when Mr Campbell said he would
proceed at once to sue Beasy & Campbell further remarked
that Beasy was perfectly good & could pay all of his debts.
Mr Tynes then said that he had his own family to take
care of & could not be bound any longer as Beasy's see-
curity & that he (Campbell) had no family & that Beasy
was his nephew & without any family also & that he
(Campbell) had as well trust Beasy himself as for him
(Tynes) to be bound for him. Mr Tynes was earnest in
his manner in directing Mr Campbell to sue & directed
that the suit should be brought forthwith & prosecuted to
collection so as to have the demands made out of Beasy
who was then perfectly good. This conversation was rep-
eated several times by Mr Tynes to Campbell to sue &
release him & Mr Tynes called on this witness & the other
parties present to bear witness of what was directed. Mr
Campbell declared to Mr Tynes that he would at once pro-
ceed to sue on said demands & release him Tynes, & on
Mr Tynes' desiring to know whether he (Campbell) was
satisfied with the directions given to him, Mr Campbell expres-
sed himself as satisfied by manner & word & said that he
would obey the direction he had received & sue & release

Mr Tynes. soon thereafter Mr Tynes left & seemed fully assured that Mr Campbell would faithfully do as he had agreed. Mr Campbell agreed to sue & release Mr Tynes without requiring any further notice.

5th Question by the same If suits had been brought by Campbell against Beary at the time when directed or in any reasonable time thereafter & prosecuted to judgment & execution could the money have been made out of Beary.

Answer, I should say it could as he was then doing a large mercantile business.

6th Question by same When did Beary leave Virginia
Answer Beary left Virginia in the spring of 1858 having failed in business just before he left

7th Question by same, At the time Mr Tynes gave the directions to Campbell to sue & release him from the responsibility as Bearys security aforesaid; did not Mr Tynes tell Campbell that he would give him a written notice if he desired it which was not given in consequence of Campbells accepting the repeated verbal directions aforesaid & agreeing to sue & release Mr Tynes

Answer Mr Tynes did on that occasion propose to give a written notice to Campbell to sue according to law if he (Campbell) desired it, but Campbell did not make the failure to give such notice in writing any excuse for not suing but when called on waived it & promised more than once that without any such written notice he would sue & make

Beasy pay the money & release Mr Tynes
8th Question by same, How did Campbell generally act
towards said Beasy who was his nephew

Answer, He always thought more of him than any
of his relations and was very indulgent towards him
, Beasy had great influence over the said Campbell
his uncle & I dare say that notwithstanding
Campbell's promise to sue as aforesaid yet if
Beasy had earnestly persuaded his uncle Mr
Campbell not to sue he would not have done so
for it was understood & known that Mr Beasy was
a favourite of his uncle Mr Campbell

9th Question by same, What has become of Albert
Lawrence & Jacob Beaton above referred to
Answer They are both dead

10th Question by same, How is it that you can recollect
the facts you have so clearly stated
Answer Because I was specially called on as a
witness & had the matter impressed on my mind
by the earnestness of Mr Tynes' conversation & because
the matter has been kept fresh in my mind by the
conversation in the village where I reside relative to
the subject ever since. The day after the directions
were given by Mr Tynes to Campbell to sue &
accepted by him Mr Tynes again called on me to
recollect what had transpired for if Campbell
did not sue & release him according to promise
that he (Tynes) would defend himself against any

demand that might be brought against him

And further this deponent says not

Signed

Wm A Butter

State of Virginia.

Nansemond County To wit

Jⁿ M Lowling a justice of the peace in & for ~~the~~
the said county & state do certify that the fore
going deposition was taken at the place on
the day & between the hours set fourth in the
annexed Notices & in the caption hereto

Given under my hand this 15th day of
February 1867

Jⁿ M Lowling JP

Charges \$3.00

Henry L. Tynes

vs Deposition
of Wm. A. Butler

Wm: Eley, Skff: & Comm^{er}
of John Campbell
decd doli

1867. July: 16th
came to hand under
cover, sealed -
clerk

JNO. R. KILBY,
Attorney at Law,
SUFFOLK, V.A.

COURTS—Nansemond, Isle of Wight,
Southampton & Norfolk Counties.

SUFFOLK, V.A.,

July 29 1867.

C. B. Hayden Esq
Smiths

D. Sir

Brooker writes
me that he has sent you his
notes in Campbell & Lyne &
desires to dispute the case — I
suggest then that you bring the
papers Court day you can
hear us at night, or early
Tuesday morning after our
Court — He intimates that after
a decision on the removers he
will want to file an answer
I have requested him to file
his answer now let your
opinion end the case after
one examination.

Yr Res^t
John R. Kilby

Postmenut 22

Sept 18 67

C B Hayden Esq

Dear Sir,

Mr Kilby informs
me that he has prepared an Amended
Bill to The Original & Amended bill
in *Yates v Campbell* - & that
he intends filing it with you -

But please to consider that it is not
to be filed with the defendants' consent -
but that he objects to the filing of the
same. If filed by order - we shall
have exceptions to file to the Amended bill
itself.

Very truly
Yours

Edwin J Crocker

Portsmouth N^e July 29 / 69

C. B. Hayden Esq.

Dear Sir,

We wish to invite your attention to the case of *Tynes & Capphile's Committ^e L.* We desire that the record should show that the demurrer was filed, & regularly set down for argument, and if overruled, that it was done so, after consideration. We desire it to be understood that the case is now before you only on the demurrer, and so that if the demurrer is overruled, the defendant may have leave to file answer, & take further evidence, if necessary. The deft. has not yet answered, because, it is thought, that his demurrer would end the case, but if this be not so, of course the defendant will wish to make further defence by answer &c.

It will suit our convenience to have the demurrer set down for argument on the second Monday, or the Tuesday following the second Monday of August at Suffolk - or at such other place -

Time you may designate.

There is really no necessity of haste in this suit -
we think haste may be prejudicial to the sept-
-isimond as he feels no degree of interest in the
suit. We have just discovered means of
proving that in 1st Oct 1857, W. Vesey
was insolvent, and we think on the coming
in of our answer, there will be need to both
parties to take evidence on the point of
solvency of Vesey at the date of the notice
to show &c.

Very truly &c
Godwin & Co. & Co.
attys for Campbell & Co.

Please file this.

Mr. Harden

Suffolk
10 July 1867

Sir

On reflection, I call your attention to the pleadings in *Zyng & Campbell* - The deft. files no answer, but simply demurs.

Now this being the case, can you look beyond the Bill? - The demurrer admits the facts in the Bill, but, of course, says, that they are not sufficient - In confining the consideration of the case to that point (admitting the facts), there can be no question as to the right of *Zyng* for Relief.

see - see 1 Dan. Ch. p. 599 &c

very Resp
John R. Kilby

Portsmouth Va

June 3^d / 68

John N. Kelly Esq

Dear Sir,

We do not contemplate
taking further testimony in the case of Tyner vs
Campbell & Co - and submit the case to the jury
as it now stands -

Yours -

J. D. Strother

Mr Hayden

I send enclosed
this note - I know
of nothing more to be
done - so you can
proceed. J. R. Kelly
4 June 1868

Campbell v. Tyler.

1. The court is of opinion that the rejoinder of the defendant Tyler to the plaintiff's replication is defective, and offers no sufficient answer to the said replication, because the said rejoinder does ^{not} plead and rely upon an absolute waiver of the said plaintiff's right to require notice in writing forthwith to institute suit upon the writing obligatory in the declaration mentioned, but on the contrary the said rejoinder merely pleads and relies ^{upon} certain evidence tending to show that the said waiver was made, and so leaving the fact of the waiver to be inferred from the evidence stated, instead of presenting the waiver as the matter of defence per se: and for that reason it seems to me the demurrer must be sustained.

2. The court is of opinion that there is another reason still more clear to show that the demurrer ought to be sustained.

The law is that upon the trial of a demurrer it is proper to go back and decide against the party who has committed the first fault: applying this rule to this case, it seems to the court that the demurrer should be sustained upon the ground that the plea of the defendant Tyler is defective not merely in form but in substance - The law declares that the party seeking relief shall give notice in writing forthwith to institute suit on the bond or contract sued on, and if in a reasonable time after such requisition he

(the creditor)

fail to institute such suit against the defendant,
a resident of the state & not insolvent, and to
prosecute the same with due diligence to judg-
ment and by execution, he shall forfeit his
right to demand of the party the money due on
such contract. Now in this case, it seems to
the court that the plea is defective in not
availing substantially ~~there~~ a compliance with
the requirements of the law under & by virtue
of which the defendant Tyner claims to be
exonerated from the payment of the debt in
question. The plea should have avowed
that the suit ^{was} not brought in a reasonable
time after such requirement, & prosecuted with
due diligence to judgment & by execution
by return & wherupon, as against the principal
debtor, the Plaintiff's debt has been lost.

Demurrer sustained & judgment
against the defendant accordingly.

R. H. Baker

It must be kept in mind that the plea avers ^{required by law.} notice in the manner
There was no defect therefore on this score. The question on this point
should not arise as to the sufficiency of verbal notice; so that in de-
ciding that the plea is defective in substance, Judge Baker
was not looking to the form of the notice but other matters.
It is obvious from his judgment on the
rejoinder, that he thought it a good notice
'this not written; if it had been well pleaded.'

J. H. Jones

Oct. 20. 1857.

Not at the
court.

Tyner

Seaver

Plts. notes

Zynes v. Campbell

This case (suit in Chancery) seeks relief for Mr Zynes, from the payment of the two Bonds in question on which he was security for Vesey —

1st on the ground that Zynes gave Campbell repeated verbal directions to sue, and would have given him formal written notice had not Campbell waived it and expressed himself satisfied without it.

2^d. ^{on the ground that} If Campbell had not accepted or waived the written notice, yet if he failed to sue after notice was given him to do so & his failure has been the means of injury to Zynes

1st as to the facts —

The testimony of Wm. A. Butler sufficiently shews that Mr Zynes gave Mr Campbell notice to sue, and that Campbell by manner & words accepted the notice & that Mr Zynes left under the impression no further notice was required — But for greater certainty he on the next morning again repeated the notice & when Campbell said he had not given him written notice, Mr Zynes at once was about to do so, but it was not insisted on by Campbell, & both by manner & words

gave the appearance that he would obey the direction, to sue, leaving Mr Zyns entirely satisfied that he was to be released, or that suits were to be brought —

That at that time Vasey was doing a large business & had ample credit & could have paid the debt if he had been sued —

That no suit was brought, and that after the lapse of 2 or 3 years Vasey failed & demand made on Zyns for payment.

That Vasey was Campbell's nephew, & the inference is strong that whilst he had agreed with Mr Zyns to sue, that his nephew, caused him to delay.

The defendant Demurs to the Bill & thereby admits the facts —

The witness Butler has been re-examined by Sept. atty, but does not disavow his former statement, even if allowed — But we contend that the witness should have had his attention called to such facts stated in his former deposition, as the Sept. desired to shew him in error about — (see Exception)

a paper marked "A" is also filed as shewing some discrepancy, But the

bare inspection of the paper, shows, that it
was a rough sketch only, hurriedly taken down
; but as far as it goes it is emphatic to
show how much in earnest Zyr was,
to get Released from these debts, and that
emphatic notice was given to Campbell to
see —

That as to the power of a Court of Equity
now to hear this case I only refer you
to Mr Jones' argument filed herewith &
4 Cranch 336 & cases referred to in Sand. Eq. 364 &c.

Judge Baker did not decide the case
on its merits in any way as will be
seen by the pleadings and by his opinion
also filed, but simply decided that the debts
(Zyr's) plea & Ref. in the Law suit were
defective.

A party "may" waive statutory provision, which,
if missed or would inure to his benefit" Sedgwick
on Statutory & Con. Law p. 190. Therefore "may"
waive the right to have a notice to see in "writing"

In the Branch Bank of Montgomery v. Perdue
3 Ala. (new series) it is said by the Court

"It was admitted to have been decided by this Court

"and in New York, that a surety in a note might
"give a verbal notice to the creditor to see the
"principal and that if the note could have been
"collected by promptly brought, the surety may
"resist a recovery against himself, if an action
"was not brought in a reasonable time after notice,
"by showing that the principal has become insolvent.

and under a statute of this State (Ala.) where
a written notice is given to see no action is
brought against the principal or surety in a rea-
sonable time, the surety is discharged, without proof
of the principal's insolvency.

In Paine v. Packard 13 John. N. Y. 174. The
Court said "where the creditor did an act, injurious
to the surety or omitted to do an act, when required,
which Equity this only to the surety enjoined upon
him to do, and which omission was injurious
to the surety, in either of these cases the surety would
be discharged" — see also 7 John 332.

13 John 383. 17 John 384. 6 Wend. 610

10 Wend 163. 13 Wend 375.

1 Stewart (Ala.) 11. 3 Stewart (Ala.) 9 & 160

In Bruce v. Edwards, 1 Stewart (Ala.) 11. The
Court says "It has been so often decided, as to be
considered the settled Law of this Court (Ala.)
that a surety may quicken the diligence

5

of the creditor by requiring him to put in suit the security by which the debt is evidenced, & if upon such requisition suit is not brought and it appears that it might have been made available, the subsequent insolvency of the principal, is a good defence for the surety even at Law. See 3 D. 9 & 160.

In Pickens v. Garbrough's admr
26 Cal. R. (new series) 417. The Court says " In relation to the sufficiency of the notice — The record shows that the agents of Pickens gave notice to Davis that he had rec^d. the notes from Wieriger, and while they were in his possession, that his principal was the surety of Harner upon them, and to bring suit upon the same against the parties thereto — and ~~within~~ in our opinion would have been sufficient as a statutory notice had it been in writing, and it requires no argument to show that the party to whom the notice is to be given may waive its being in writing —

If the notice however did not fully meet the requisitions of the statute, it would be good at Common Law, when connected with proof showing the failure to sue, and the damage to the surety from such failure

See also 3^d D. (9 & 160.)

The Alabama statute is similar to the Virginia statute.

The fact the Campbell made the impression on Ives that he would sue & thus quieted Ives' fears, by so doing has caused Ives to lose, or likely to lose, would be a fraud on Ives - To allow Campbell to mislead Ives & then make him lose by so doing, would not be in accordance with "good conscience" -

without entering into a lengthy discussion of the case I submit it to the Court -

(The Books referred to I have examined at the State Library in Richmond)

Respectfully
John R. Kilby, Jr.

June 1867.

If there was any material variance in Butler's
rep. as given before Conley & his statement in
paper "A", It should not be regarded
as it is indeed a very imperfect statement -
and see 1 Greenleaf, Ev., note (1) p. 585

Lynce
m

Campbell

notes of
Mr. R. Kelly
pels. atto.

At a monthly Court, held for Nansemond County the 14th:
day of May 1866.

On the motion of Henry L. Tynes, and for good cause shewn,
the Court, revoke the powers of Robert H. Tynes, administrator
of John Campbell, deceased: [The said Robert H. Tynes, having
had due notice of this motion and refused to give any new bond
and security] and on like motion, administration, of the Estate
of the said John Campbell, unadministered by the said Robert
H. Tynes, is committed to William Eley, Sheriff of this County.

A Copy:

Teste:

Peter B. Prentiss, Clerk.



Barroto, Feb

(D)

Virginia: At a Supreme Court of Appeals held
at The State Court House, in the City
of Richmond, on Tuesday, March 10th:
1863.

H. L. Sykes. Plaintiff. { upon a writ of
against John Campbell and William Vesey. Defendants } Supersedeas
to a judgment recovered by John Campbell
against William Vesey and The Plaintiff,
in the Circuit Court of Hanseman County
on the fifteenth day of October 1859.

This day came the parties by their Counsel, and the
Court having maturely considered the transcript of
the record of the judgment aforesaid and the argu-
ments of Counsel, and being equally divided in
opinion, therefore in pursuance of the Act of Assembly
in such case made and provided, it is considered
that the said judgment be affirmed, and that
the defendants recover against the plaintiff, damages
according to law, and also their costs, by them about
their defence in this behalf expended.
Which is ordered to be certified to the said Circuit
Court.

Defendants' Costs in the
Court of Appeals \$26.52

A Copy
Teste

W. J. Starke. C. C.

In the Clerk's Office of the Circuit Court of Nansemond County, the 22nd
day of March 1866. The foregoing copy of a Judgment of the
Supreme Court of Appeals of Virginia, was received in vacation, and
entered of record according to Law.



Teste: Peter B. Prentiss, Clerk.

A Copy: Teste,

Peter B. Prentiss, Clerk.

Signed
20th of March: Judgment
Campbell &c.

(6)

L. Exhibits
filed with Bill of
Inq. v. Campbell's
adw &c.

Wm. A. Butler

On the last day of the year in 1855-
at 56 - Myself & Deft. Campbell
were sitting in the country road
at my store in Chickstock, about
8 O'clock at night - Mr. T. J. came in -
Deft. came in - After the usual
salutations, Mr. T. then remarked
to Mr. Campbell - "That the Bond
which you hold for Wm. Vesey Kin-
ciple & myself as security, you
must make the money out of
him or relieve me of the same".
Campbell, then remarked, with a
good deal of - ~~the~~ Campbell did
not say I will or any thing of
Campbell. ~~the~~ ~~any~~ ~~that~~ ~~only~~ ~~from~~ ~~it~~ ~~a~~ ~~thing~~
the kind but only the ~~the~~ ~~the~~ ~~the~~
thrift and strong man than he had been - He has ~~the~~ ~~the~~ ~~the~~
that way at the conversation at that
store. I only came in to buy a dozen tails cigars. I
turn in the subject.
have stood as long as I intend to stand.

About 8 O'clock next morning Mr.
Campbell & myself were about
to take a drink in the bar, when
Mr. T. came in - T. then remarked
as he came in, "That the Bond
which you hold for W. Vesey & me,
as security, you must make a

relieve me" & then called on me
to take notice that he had
given Campbell notice to
make the money on the bond
or to relieve him of the same
To which remark, Campbell
again said "Eh" - That was
all that was said then & at
all other times, in my
presence, or with my knowledge.

Wm A. Butler

(A)

1862 apr. 1st

ans. due to Lydia

M. Vasey \$1757.12

and to Wm. J.

Vasey — \$ 2138.78

\$3895.90

and ans.

due by Mary

A. Vasey to

H. L. Zins } 469.45

\$3426.45

0

(B.)

H. L. Rudick

ans.

-To Henry L. Syner, Esq.

Take notice that I shall on the 24 day of June 1867, next, at
office of John Kilby, in
Suffolk — between the hours of 8 a. m. and 6 p. m. of that day, proceed to
take the Depositions of W. A. Butler

and others, to be read as evidence in my behalf, in a certain suit
, depending in the Circuit Court of Hancock
County, wherein you
are plaintiffs, and J. W. Casey

are defendants; and if from any cause the taking of the said Depositions be
not commenced on that day, or if commenced be not concluded on that day, the taking of the same will
be adjourned and continued from day to day or from time to time, at the same place and between the
same hours, until the same shall be completed,

Respectfully,

To the Sheriff of
County to execute.

} Wm. Elery, Sheriff of
Hancock Co. & Commissioner
of Probate & Jno. Campbell de'd

Service of Notice

acknowledged

Jan 10 1867

John R. Kelly
att'y for Byers

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY—Greeting.

YOU ARE HEREBY COMMANDED TO SUMMON

W. A. Butler

to appear before the _____ of our

day of *June* 1867 to testify and the truth to say in behalf of

Court of Nansemond County, on the

24

Staff of John Lewis Campbell & Co. millers of the estate of the Campbell decd

in a certain matter of controversy in our said Court, depending and undetermined between

Robert T. Campbell & Co. vs. Co.

the 1 son of John Lewis Campbell & Co. millers of the estate of the Campbell decd

And this _____ shall in no wise omit, under the penalty of £100.

And have there

there this writ.

Witness, PETER B. PRENTIS, Clerk of our said Court, at his Office, the

10

day of

1867, in the

91st

year of the Commonwealth.

N. L. Riddick Secy

Types

ms. { Sub. for L. A. Butler

Eley, Miss & Mrs. Campbell

dead.

Jul 10th 1864 Executed under a true
copy hereof attested to by L. A. Butler
H. A. Phelps
By J. W. Eley

Tynes

11:

Eley, Shff. & Horn.
of Geo. Campbell

} on ch.

The Deposition of William A. Butler taken pursuant to the annexed notice and summons, at the office of John R. Kelly, in the town of Suffolk, Virginia, on the 24th day of June, 1867 between the hours of 8 A. M. and 6 P. M., to be read as evidence on behalf of Wm. Eley, Sheriff and Committee of John Campbell decd. in a certain suit in Chancery depending in the Circuit Court of Nansemond County, and wherein the said Wm. Eley, Shff. & Committee as aforesaid is defendant and Henry L. Tynes is plaintiff.

William A. Butler being first duly sworn deposeseth and saith as follows:

1st Question by Deft's Atty.

Examine paper marked (A.) (here said paper was handed to witness) and say whether the signature is yours or not?

Answer. Yes.

2nd Question by same.

When and under what circumstances did you sign the said statement marked (A.)?

Answer. It was some time before the war, and it was in Suffolk that I signed said paper. I do not recollect at what place - whether at the Court House or at McQuinn's Hotel - one or the other, to the best of my recollection. I do not remember any particular circumstance connected with my signing said paper, except

that Mr. Godwin asked what I knew about the matter between Hynes and Campbell - the conversation between them in our counting room in Chock-atuck, relative to the notes in dispute. I told ~~him~~ him all I knew about it, which he wrote down and I signed. This paper (marked (A.)) is a fair statement of what I told Mr. Godwin, who was one of the Counsel in the case.

3rd. Question by same.

Was the subject of that conversation between Hynes and Campbell, at the time you made said statement to Mr. Godwin, fresh in your recollection?

Answer. I cannot say that it was fresh in my memory. It had been some ^{time} before that it had occurred.

4th Question by same.

Was the matter then more fresh in your memory then now.

Answer. I think the matter is more fresh now. After making this statement to Mr. Godwin, on returning home I conferred with two other gentlemen ~~with others~~ ~~present~~ Mr. Beaton and Mr. Lawrence - both of whom are now dead, who had been present also at the conversation I have mentioned, and in frequent conversations with these gentlemen my mind was more refreshed as to the facts of the conversation between Hynes & Campbell. These conversations with Beaton & Lawrence occurred ~~after~~ immediately after my signing the statement written by Mr. Godwin - on my re-

turn home, and was frequently renewed with them at different periods within eighteen months thereafter. My recollection is that the statement made to Mr. Godwin was made before I knew of any suit in the case, or before I had received any subpoena. I was afterwards summoned as a witness, and attended Court during four days, but was not examined.

5th Question by Same.

Did you know ^{the said} John Campbell well?

Answer. I had known him for ten or twelve years before he died, and knew him very well. He was an old bachelor, and considered somewhat flighty about some matters. He considered himself "ticked" and was thought at times to be crazy, and ^{at} others to be quite rational, and ^{then} was a man of intelligence and general information. He was always right and rational about money matters, though I think that at times, when he thought persons were trying to cheat or defraud him, that he became partially crazy, and would shut himself up in his room and have no communication with any one for several days. He frequently fancied that certain persons were trying to poison or "trick" him. I have heard him say that Henry L. Tyner was one of these.

6th Question by Same.

What did you ~~xxxxxx~~ ^{mean} ~~xxxxxx~~ by the term "Eke" used in the written statement. (Marked A.)

Answer. I only meant to make the same impression on Mr. Godwin's mind, that had been made on mine

by Mr. Campbell.

7th Question by same

Was this an exclamation frequently used by Campbell, or not?

Answer. It was frequently used by him

8th Question by same

Was this exclamation with him invariably one of of aspert or dissent?

Answer. I always considered it to ^{be} used by him as one of aspert.

9th Question by same.

How did Campbell ~~express~~ usually express dissent?

Answer. I don't recollect; but I think that when he was dissatisfied or did not like a question asked him, he would turn off and would not answer at all.

10th Question by same.

In what sort of mood or condition of mind did Campbell seem to be on the occasions you mention in the written statement, as those in which the interviews between Tynes & Campbell took place?

Answer. In the evening, at which the first conversation took place. Tynes and Campbell both had been taking a drink or two; but in the morning they were both perfectly fresh. On the ~~morning~~ evening alluded to, Mr. Tynes came in and asked Campbell to take a drink, and also asked Beaton & Lawrence

to join him, which ~~had~~ they did. After taking the
drink (which was in Wm. A. Butler & Co's counting room
in Chockatuck) ~~Tynes~~ ~~exclaimed~~ they returned
in the sitting room, and a conversation ensued
upon general subjects, I don't ~~know~~ ^{recall} who commenced
the conversation exactly ~~now~~, but during the con-
versation Mr. Tynes told Mr. Campbell that, ^{about} the
bond he, Campbell, held against Wm. Veasy
with him, Tynes, as security, he must release him
as such security, or bring suit. This was repeated sev-
eral times - Mr. Campbell's reply was that "Billy
is in a more thrifty condition than he ever was - he
has two large stores" Tynes, replied that "he did
not care if he had a dozen" - he must re-
lease him or bring suit - he should not stand it
any longer" (By "Billy" Mr. Campbell meant
Wm. Veasy.) Mr. Campbell with a nod of his
head, exclaimed "Eh-hu". In the morning the
~~same~~ parties - Mr. Tynes & Mr. Campbell, ^{Lawrence and Beaton not present} met
at the bar of my brother, and Mr. Tynes again
told Mr. Campbell that "he must bring suit on that
bond of Veasy's, or release him as security". Mr.
Campbell replied that "it required written notice"
and Tynes then said that "he would give him
one damn quick if he wished it." Again
Mr. Campbell replied with a nod of his head
and exclaimed "Eh-hu". Mr. Tynes ~~then~~ called
on me ~~there~~ to bear witness that he had offered

to give Campbell written notice, and would give him such notice if he desired it. Mr. Campbell again replied that "Billy is in a thrifty condition". This is about all, except that ~~it was~~ ^{it was} ~~repeated~~ repeated several times in the conversation.

11th Question by same

Was there any^{thing} else said by Byrnes and Campbell in the two conversations spoken of, on the subject matter thereof, ^{and}

Answer. Nothing that I now recollect.

12th Question by same.

Are you satisfied that what you have just deposed is a full and correct statement of the substance of the said conversations?

Answer. So far as my memory now serves me.

13th Question by same.

Were these two conversations between Byrnes and Campbell, the only conversations you ever heard between them on this subject?

Answer. These were the only two.

14th Question by same.

In the first or evening conversation, was there any thing said about the written notice?

Answer. I do not remember. I cannot say whether there was or not.

15th Question by same.

At what time did these conversations occur?

Answer. I can't say positively, but think, it was

in 1854 or 1855.

16th Question by same.

Have you not stated during the examination today that ^{you thought} these conversations occurred since 1858.

Answer. I did say at first that I thought it was about 1857 or 1858, but after reflection, I recollected that it was before either of those years.

17th Question by same.

In your examination on the 15th February, 1867, taken before Justice Cowling, had you before you, or had you refreshed your recollection recently, by any written memoranda having reference to the subject matter of that deposition?

Answer. I had no such memoranda.

18th Question by same.

Had you on that occasion any other means of refreshing your memory as to the aforesaid conversations?

Answer. No.

19th Question by same.

Have you as distinct a recollection now of those Conversations as when your deposition was taken by Justice Cowling?

Answer. Yes.

20th Question by same.

Did Campbell, in any other words, ^{and manner} than you have mentioned in to-day's examination, promise to Sykes that he would bring suit on the bond?

Answer. No.

21st Question by same.

When did Beaton and Lawrence die?

Answer. Beaton died in 1862 - I have heard that Lawrence died in 1861.

22nd Question by same.

What was the pecuniary condition of Beasy at the time of these conversations.

Answer. He was generally regarded as solvent.

(The Plaintiff Bynes, by his Attorney excepts to the questions propounded by the Attorney for Campbell's ~~Exors~~ Committee, because they seek to discredit his former statements without first calling his attention to the fact, whether he had in a previous examination made such statements.)

Question by Plaintiff's Atty.

When you signed the paper (marked A) was it in a hurry, and was there any cross-examination, or was it under oath?

Answer. Mr. Godwin asked me, when I made this statement to him - contained in paper (marked A) if I had any objection to his writing it of - and having none he prepared the paper and read it to me, and after the alterations were made on its face, I signed it, without cross-examination, and not under oath.

2nd Question by same.

In the beginning of the conversation referred to between Tyner and Campbell, did not Campbell first commence the same by speaking of his poverty &c.

(This Question is objected to by Defendants' Atty, as being leading and suggestive.)

Answer. I don't recollect now that Mr. Campbell first commenced the conversation, but I think that something was said about, his, Campbell's poverty. but of this I will not be positive. In the same conversation he spoke to Mr. Tyner about a small debt that Mr. Tyner owed him, which he desired him to pay.

On further reflection I think these conversations ~~and facts~~ between Tyner and Campbell occurred in the latter part of 1855 or in 1856. It was during the winter season.

~~Question by~~

And further this deponent saith not.

Wm A. Butler

State of Virginia:

Naucesumond County to-wit:

I, W. L. Riddick, a Notary Public for the County aforesaid, in the said State, do hereby certify that the foregoing deposition was duly taken, sworn to and subscribed before me at the time and place mentioned therein. Given under my hand this 24th day of June, 1867.

W. L. Riddick

A. P.

Notary Pub. Fee \$6.00
Wm A. Butler. Attest. \$50
\$6.50

Tynes

W: of Reposition.

Eley, Shiff & Co. of Geo.
Campbell des.

Came to hand 24th June 1867
miller cover, sorted. *clt*

Tynes

vs { Chy: such pending in Cir: Court of Hounslow County
Campbell's Estt: & ~~Common Law~~.

This day, Henry L. Tynes, the plaintiff in
this case, personally appeared before me and made
oath, that William Verry, one of the defendants -
shown; is not a resident of the State of Virginia.

(Signed)

Signed to before me, in my
Office, this 2nd: day of
July: 1867.

H. L. Tynes

Peter B. Prentiss, Clerk

Jynes &

25 { Affidavit of non-
residence of deft: Versey

Mo: Campbell's still
L.

VIRGINIA --AT RULES HELD IN THE CLERK'S
office of the Circuit Court of Nansemond
County, on Monday, the 4th day of February,
1867.

Henry L. Tynes,

Complainant,

IN CHANCERY,

Against,

William Eley, Sheriff and Committee of John
Campbell, deceased, and Wm. Vesey,

Defendants.

The object of of this suit, is to restrain and in-
join the defendant William Eley, Sheriff and Com-
mittee of John Campbell, deceased, from further
proceedings, in two judgments at Law, in said
Court, and to relieve the Complainant, from the
payment thereof. Affidavit having been made,
that the defendant, Wm. Vesey, is not a resident
of the State of Virginia, he is hereby required to
appear in the said Clerk's office, within one month
after due publication hereof, and do what may be
necessary to protect his interest.

A Copy--Teste.

fe8-4t. PETER B. PRENTIS, Clerk.
John R. Kilby, p. q.

I, do hereby certify that the notice appearing
has been published in the Christian Leader,
for four successive weeks, and that the price
charged therefor, is the regular price for ad-
vertising in said paper. Given under my
hand this 4th day of March 1867.

A. B. Wellens Editor
& Proprietor

Price of Advg.
\$6.25.

Henry L. Tyne

75 { Certificate Pub:

Wm. Eley, Staff: & Comm. of
Geo. Campbell dec'd & ad.

Filed 4th March 1867
vch

Virginia

at Rules, held in the Clerk's Office, of
the Circuit Court of Nansemond County
on Monday the 4th day of February 1867.

Henry L. Iynes Complainant.

against } In Chancery.

William Eley, Sheriff and Committee, of
John Campbell, deceased, and Wm. Vesey. Defendants

The object of this suit, is to restrain and enjoin the defend-
ant William Eley, Sheriff and Committee of John Camp-
bell, deceased, from further proceedings, in two judgments
at Law, in said Court, and to relieve the Complainant,
from the payment thereof. Affidavit, having been made
that the defendant Wm. Vesey, is not a resident of the
State of Virginia, he is hereby required to appear in the
said Clerk's office, within one month, after due publi-
cation hereof, and do what may be necessary to protect
his interest.

Teste:

Peter B. Prentiss, Clerk

Henry L. Tynes

27th { Or: Pub:

Wm: Eley, Shff: & Commr
of John Campbell
died 24th.

In the Clerk's office of the Circuit Court
of Nauset County on Saturday the second
day of February 1867.

William Eley Sheriff and Committee Plaintiff
of John Campbell deceased
against ^{In Debt: suit lately pending in}
^{The Circuit Court of Nauset County}

William Osey and Henry L. Sykes Defendants

Costs.
Ck \$5.00
Att. Fee 3.50
Shff 1.50
\$9.00

This day, came the defendant Henry L. Sykes in his proper
person, and the said defendant acknowledged the plaintiff's
action, for four Hundred and Ninety one dollars and fifty
nine cents, parcel of the Debt in the declaration mentioned
with legal interest on three Hundred Dollars part thereof,
from the 25th day of November 1849 till paid and the Costs,
therefore, it is considered that the plaintiff recover
against the said defendant Henry L. Sykes, Four
Hundred and Ninety one dollars and fifty nine
cents with legal interest on three Hundred doll-
ars, part thereof, from the 25th day of November,
1849. till paid and his costs by him about his suit,
in this behalf expenses, and the said defendant,
in mercy &c.

A Copy
of
Test,

Peter B. Prentiss Clerk

Wm: Eley, Shff: & Comm^{rs}
of John Campbell deed

vs } Co: Judgt:

Henry L. Tynes

Virginia: At a Supreme Court of Appeals, held
at the State Courthouse in the City of
Richmond, on Tuesday, March 10th 1863.

H. L. Dwyer

Plaintiff

} upon a writ
of supersedeas

against

John Campbell and William Vesey defendants
to a judgment recovered by John Campbell
against William Vesey and the plaintiff
in the circuit court of Hansemond County,
on the fifteenth day of October 1859.

This day came the parties by their counsel and
the court having maturely considered the transcript
of the record of the judgment aforesaid and the
arguments of counsel, and being equally divided
in opinion, therefore in pursuance of the Act of
Assembly in such case made and provided,
it is considered that the said judgment be
affirmed, and that the defendants recover against
the plaintiff, damages according to law, and also,
their costs by them about their defence in this
behalf expended.

Which is ordered to be certified to the said circuit court.
Defendants costs in the
Court of Appeals (\$26.32)



Copy

Weste

M. A. Starks

In the Clerk's Office of The Circuit Court of Hansemond County, the 22nd day of
March 1866.

The foregoing copy of a judgment of the Supreme Court of Appeals of Virginia,
was received in vacation, and entered of record according to law.

Weste,

Peter B. Prentiss, Clerk

Agnes
vs & Co: Judgment
Campbell &c

1866

March 22nd: Received by
The Clerk of the Circuit
Court of Nansemond
County ^{in vacation} and entered of
record according to Law.

Recorded. Com: Law. Order
Book No 1. Page 1.
Nansemond

2
Lynes

17

Campbell's Representative &c.

This cause, in which the plaintiff has proceeded in the mode prescribed by Law, against about Defendants as to W^m. Vesey, Came ^{on} to be heard on the Bill of the Complainant & exhibits filed therewith and the first and second amended Bills filed by the plaintiff in said cause, & on the answer of the defendant W^m. Ely Sh. & Committee aforesaid, to the original and first amended Bills, with replication thereto, & on the second amended Bill taken for confessed, as to the defendant Ely, Sh. & Com^{rs} aforesaid, on whom process had been duly served the failing to answer the same, & on the Demurrer of the Defendants to the original & first amended Bill, which Demurrer was overruled & on the examination of witnesses & was argued by Counsel. On Consideration whereof it is by the Court C. B. Hayden esp (sitting as Judge aforesaid) adjudged, ordered & decreed that the Injunction granted in this cause be perpetual and that the defendant W^m. Ely Sh. & Committee of Bro. Campbell deced

227

7

Campbell Rep to

I direct that the
within decree be
entered as the result of
my examination of the
within named cause -

C. B. Hayden

→

be forever barred from further proceedings
on the two judgments at law referred
to in the proceedings: and that the
Plaintiff ^{recover} the costs by him expended
in prosecuting this suit

At a Circuit Court held for Nausemond County, on the
17th day of April, 1867:

Henry L. Tynes Complainant.
against John Chauncy
William Eley, Sheriff and Committee of
John Campbell deceased, and Wm. Vesey. Defendants:

On the motion of the defendant Wm. Eley, Sheriff
and Committee of John Campbell deceased, and for
reason appearing to the Court, leave is given him
to re-examine the witness W. A. Butler, who was ex-
amined by the plaintiff on his behalf on the fifteenth
day of February last, and whose deposition is filed with
the papers in this cause. And the parties, plaintiff and
defendant, having, in pursuance of the Act of Assembly,
passed the twenty first day of February, 1867, with the con-
sent of the Court, selected C. B. Hayden Esq. a practising
lawyer of this Court, as a proper person to whom the
decision of this cause shall be referred, it is therefore
ordered that the same be referred to the said C. B. Hayden,
who will proceed to try the said cause as the Judge would
do, were he sitting.

A Copy

Teste:

Peter B. Prentiss. Clerk

Henry L. Tynes

13th & Co: Secre

Wm: Eley, Shff: & Com^{ee} of Ino:
Campbell died 1st 18:

Henry L. Jones

21

Campbell, Sheriff &c.

On the motion of
the defendant Wm. Eley Sheriff & Committer
of the Campbell Jail deceased, ~~deceased~~ and for
reason appearing to the Court, leave
is given him to re-examine the wit-
ness W. A. Butler who was examined
by the plaintiff on his behalf on the
15th of February last, and whose deposi-
tion is filed with the papers in this
cause - And the parties plaintiff
and defendant, having, in pursuance
of the act of April 21st 1867, with the consent of the Court, se-
lected C. Mayden Esq. a practicing law-
yer of the Court, as a proper person
to whom the decision of this cause shall
be referred, it is therefore ordered that
the same be referred to the said C. C.
Mayden who will proceed to try
the said cause as the Judge ^{do} would,
when he sitting

My
W. W. Deane
Campbell &c

Apr 18. 1867
To be entered
Rich. H. Baker

We consent to this Deed
John R. Kilgus
Hydrom Heroku
A.C.

Entered

We Consent to this
Deed

1
Sydney M. Campbell &

This cause having been
by order of this Court of the 17th of April
1867, referred to C. B. Hayden Esq., a practicing
Lawyer in this Court for decision, according
to the provisions of an act of the General
Assembly of Virginia passed the 21st of
July 1867 "~~and~~ entitled "an act au-
thorizing a Practising Lawyer of the State
of Virginia to decide causes, or preside
at the trial thereof, under certain
circumstances", and the said C. B.
Hayden having duly considered the case
has rendered, ~~the following decree~~
~~"I do hereby order it"~~

~~whereupon it is ordered that~~
a decree therein, which is ordered
to be entered as the Judgment of
this Court, and that the Clerk in
taxing the costs of the said day
\$50 to said C. B. Hayden for his
services herein; which decree
is as follows.

"Sydney v Campbell &

Lyons

61

Campbell's adm

1868

Oct. Court —

seem to be
entered.

Rich. H. Baker

entd

Know all men by these Presents, that we, Henry L. Tynes and Robert H. Tynes are held and firmly bound unto the Commonwealth of Virginia in the sum of Three Thousand 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. Sealed with our seals, and dated this 2nd: day of February, One thousand Eight Hundred and Sixty-Seven.

The Condition of the Above obligation is such, that whereas the above bound Henry L. Tynes on his Bill in Chancery against Wm: Eley, Sheriff and Committee of John Campbell deceased and Wm: Vesey, addressed to the Hon: Richard H. Baker, Judge of the Circuit Court of Hanover County, has obtained from the Hon: R. C. L. Moncure, one of the Judges of the Court of Appeals of Virginia, an injunction to enjoin and restrain the said Wm: Eley, Sheriff and Committee of John Campbell deceased from further proceedings in two judgments at law, in the said Circuit Court And whereas it is provided by the order of the said Judge, awarding the said injunction, that the same is not to take effect until bond with surety be given in the penalty of Three Thousand Dollars, conditioned as the law directs: Now therefore, if the said Henry L. Tynes, shall pay the said judgments and all such costs as may be awarded against him and all such damages as shall be incurred, in case the said injunction be dissolved, then this obligation to be void or else to remain in full force & virtue.

Executed in the presence of
Peter B. Prentiss

H. Tynes
R. H. Tynes

Seal

Seal

Henry L. Tynes
To \$4th Bond
Commenced the
1867
Feb: 2nd: Executed &
Filed

In the Clerk's Office of the Circuit Court of Howard County
the 2nd: day of February 1867.

This day Henry L. Tynes and Robert H. Tynes signed and acknowledged the within bond - and the said Robert H. Tynes, the surety thereto, made oath before me, Clerk of the said Court, that his estate, after the payment of his just debts and such liabilities as he has incurred for them, is worth the sum of Three Thousand Dollars.

Given under my hand, this 2nd: day of February 1867.

Peter B. Prentiss. Clerk

H. L. Tynes

ii

Campbell's Committee

The defendant, Wm Eley,
Sheriff of Nansemond County & Committee of the
Estate of John Campbell died, says that the
Bill of the complainant is not sufficient in
law.

Gordon & Crocker

P.S.

7
3
Campbell's Counter

Don't know

1867. June 24th. Filed
clerk

This Indenture made this 5 day of August 1867
between William Vesey of the City of Norfolk of the first
part and Robert W Bowden and Jazewell Taylor of
the second part, Witnesseth that the said William
Vesey for the sum of five dollars here in hand paid
by the said parties of the second part doth grant and
assign unto the said R W Bowden and Jazewell Taylor
the following property to wit; 1st A certain House
and lot in Suffolk in the County of Nansemond
situated on Gallilee Street extending thereon fifty
feet and running back one hundred and fifty feet
2d A lot of land on the South side of Wide Water
Street in the City of Norfolk at the East corner of
Newtons lane, and the term of years yet to come and
unexpired in the same and the lease thereon subject to
the rents covenants and conditions of said lease from
heirs of George Newton deceased and all the buildings
and improvements on said lot of land, In trust to
secure the President Directors & Company of the Bank
of Virginia the payment of the Note of the said
William Vesey of this date at ninety days to R W Bow-
den Cashier payable at the Office of the Bank of
Virginia at Norfolk for the Sum of Three thousand
Six hundred & eighty dollars and ninety four cents
or any other notes or notes for the whole or any part
of said debt that may hereafter be given in renewal
and continuation of said note it being contemplated
to renew the said Note under curtail at each success-
ive renewal of not less than five hundred dollars or
otherwise at the pleasure of the Directors of said Bank
of Virginia at Norfolk and the said W Vesey agrees to
to keep the buildings on the said lots hereby conveyed
insured against fire to their full value at his costs and
to assign the policies to the Trustees in this Deed for

the purposes of this trust. Witness the following
signatures and seals the day and year first herein
written

William Vesey (Seal)

R W Bowden Trustee (Seal)

Jazewell Taylor Trustee (Seal)

In the Clerks Office of the Court of the Corporation of
the City of Norfolk on the 22 day of August 1857.

This Deed was acknowledged by William
Vesey and Robert W Bowden Trustee two of the
parties thereto and admitted to record

Teste Jno Williams cc

A Copy

Teste Hcy M Bowden cc

Vesey
to } Trust
Va Bank &

Exhibit "2"
with answer

Book 37 ~~pg 306~~

This Deed made this the fourth day of December in the year Eighteen hundred and fifty seven, Between William Vesey Merchant of the City of Norfolk grantor of the one part and Andrew J Nock of the said ^{City} ~~Said~~ Trustee of the other part, Whereas the said William Vesey of the first part, is justly indebted in sundry and divers sums of money which he has become unable fully to pay and discharge, and the said party of the first part being desirous to secure his creditors or endorsers in the several Banks of said City all of whom and which being hereafter named;

Now therefore this Deed Witnesseth that the said William Vesey of the first part doth grant assign and release unto the said Andrew J Nock the Trustee the following property to wit; one three story Brickhouse situated on Cambells Wharf in the City of Norfolk and at present occupied by Oliver & Co, one new Brickhouse on Broad Water Street in the City aforesaid and at present occupied by Caffey & Howard, One improved lot on Black Water River in the County of Isle of Wight in the State of Virginia one house and lot, on Galilee Street in the town of Suffolk Virginia, two shares in the Steamer Seabird, and all the stock of goods now in possession of the said party of the first part at his place of business on Cambells Wharf also the chattels merchandize, bills bonds notes book-accounts, claims, demands, choses in action, books of accounts judgments, evidence of debt, fixtures and property of every name and nature connected with said business, and every other property belonging to the said party of the first part, as well all the stocks of liquors in the Store of Merwin & Moore belonging to said grantor as per schedule marked "A" To have and to hold the same to the said party of the second part his heirs and assigns-

In trust Nevertheless for the following purposes that is to say, that the ^{said} party of the second part shall take

possession of all and singular the property and effects hereby assigned or conveyed to him by the party of the first part, and sell ~~and~~ ~~sell~~ and dispose of the same upon such terms and conditions as in his judgment he may think best, and most for the interest of the parties concerned and convert the same into money, And also to collect all and singular the said debts, dues, bills, bonds, notes, accounts claims, demands, and choses in action, or so much thereof as may prove collectable, and thereupon to execute, acknowledge and deliver all necessary conveyances and instruments for the purposes aforesaid and by and with the proceeds of such sales and collections, the said party of the second part shall first pay all the just and reasonable expenses, charges and commissions of executing and carrying into effect this deed in trust, and all the rents, and taxes due and to become due on the aforesaid property until the same shall be sold and disposed of and by and with the residue and avails of such sales and collections, the said party of the second part shall first and above all pay and discharge in full all the obligations Bonds or notes endorsed by Henry L Tynes and Robert Lawrence of the party of party of the first part to the Banks or parties immediately mentioned, the said Banks being in Norfolk to wit: Farmers Bank, Bank of Virginia, Exchange Bank, Franklin Savings Bank, James W Whitehurst & Co, William M Buskey and to all parties to which the party of the first part is indebted by reason of money borrowed within the last sixty days. If the said avails and residue of sales and collections be not thus expended and paid to the said Banks then they shall be held and paid by the said party of the second part to Henry L Tynes and Robert Lawrence of Chuckatuck Virginia, to indemnify them as endorsers of the Notes, bonds and evidences of debt, held by said Banks against the grantor as well to indemnify said H L Tynes

as security of a certain note held by John Campbell against said grantor of this deed of trust, and if the said net proceeds and avails shall not be sufficient to pay and discharge the same in full, then such net proceeds and avails shall be distributed pro rata, share and share alike among the said Banks or between the said Henry L Tynes and Robert Lawrence according to the amount of their respective claims. And Secondly by and with the remainder & residue of the said net proceeds, if any there shall be, the said party of the Second part shall pay and discharge all the debts due from the party of the first part to the Citizens of Norfolk Virginia, And lastly the said party of the Second part shall return the surplus of the said proceeds, if any there shall be to the said party of the first part his executors, heirs or assigns, And for the better execution of these presents and of the several trusts hereby reposed the said party of the first part does hereby make nominate and appoint the said party of the Second part his true and lawful Attorney with full power to do and perform all acts or things which may be necessary in the Premises as fully and completely as the said party of the first part might or could do were ~~not~~ these presents not executed, hereby ratifying whatever the said party of the second part shall lawfully do in the premises. In Witness whereof whereof the said parties have hereunto set their hands and seals the day and year first above written

Signed sealed and delivered } William Vesey (Seal)
in the presence of } Andrew J Nock (Seal)

In the Clerks Office of the Court of the Corporation of the City of Norfolk on the 5th day of December 1857, This Deed was acknowledged by William Vesey and Andrew J Nock parties thereto and admitted to record

A Copy Teste Jno Williams C.C.
Roy M Bowdoin C.C.

Visay
to ³/₄ Trust
Tynes &c

Ex. with cons.

Book 37 pg 376

§ 2000 Know all men all men by these presents that I have
sold to W^m Buskey the store on Broad Water
Street where Caffee and others keeps for the sum
of two thousand dollars as an indemnity for all
the endorsements of the said Buskey for myself
this the sixteenth of Jan one thousand eight hun-
-dred and fifty seven

Teste

J^c Hornsby }
Tho^s J Kempe }

W^m Vesey

In the Clerk's Office of the Court of the Corporation
of the City of Norfolk on the 21st day of January
1857

This Deed was proved as to William Vesey party
thereto by the oaths of Thomas J Kempe and J^c
Hornsby the witnesses thereto and admitted to record.

Teste, J^{no} Williams
A Copy Teste

Henry M Bowden c^c

Wesley
to 3
Buskey

Exhibit "1"

with answer

37-Book 120 pg

See Soc

Lyne,

17

Campbells' Rep. &c

3 Intuity

plus with ours;

The answer of Wm Eley Sheriff of
Harrison County & Com. miss. of the
State of John Campbell dec'd, to
the original & amended bills exhibited
against him & Wm Vasey in the Circuit
Court of Harrison County by Henry
J. Lyons.

This respondent for answer
to said bill of complaint, for answer
says,

That it is true as alleged by the
Complainant that the estate of Jas.
Campbell was committed to
him as shuff. as you said.

That it is also admitted that the
said complaint was sworn to the
book in his bill mentioned, and that
suits were instituted thereon & that the
proceedings therein had as by the complainant
in his bill alleged.

That this respondent has no personal
knowledge of the conversations alleged
to have occurred between the complainant
& the said Campbell in the presence of
Wm Butler at Church Mills, on the 18th
of Oct. 1857. ~~but that having information~~
~~that said conversations were~~
~~was not made~~ and therefore calls

for proof-

That This respondent knows nothing of the contents of papers alleged by the complainant, but requires the complainant to establish the facts of fraud, clearly & satisfactorily, before he is entitled to any ruling by reason of the same.

That This defendant cannot admit that Wm Verry was on the 1st Feb: 1857 solvent - but he has been informed that he was not - and he files with this answer as a part thereof, Exhibits, '1' '2.' & '3' which were duly executed by Wm Verry respectively on the 16 Jan. 1857, 5 day of August 1857, and 4th Decr 1857 - This defendant has been informed that the records of the Circuit Court & the Corporation Court of Memphis City show, unsatisfied judgments to the amount of several thousand dollars, against Wm Verry, which were obtained in 1858.

That This respondent was in 1857, acting Sheriff of Hanson & County, he is satisfied that Wm Verry was not the owner of much visible property -

This respondent has been informed that the property conveyed in deed No 3, was insufficient to pay the debts of the first class therein mentioned.

This respondent submits whether, if the
complaint gave the notice to serve
on the 1st & 2nd Oct 1857, as alleged, the
the said Campbell could by due
diligence, have obtained judgment &
execution on the said bond before
the 4th Dec 1857.

This respondent being a married
man has to be dismissed with
his costs &c.

Wm Ely Aff. to
Committee of Geo Campbell
dec^d

This day Wm Ely personally appeared
before me & made oath, that the facts
and statements set forth in said Bill
are true as he believes -

Given under my hand this
12th Aug. 1867.

John R Kelly
Notary Public

Lynes

m.

Campbell's Rep. to

owner of
Sept. Eliz. Sh. Co.

Filed Aug 12. 1867

To the Hon. Richard H. Baker, Judge
of the Circuit Court of Stanswold County.

Complaining shew unto the Court
your Complainant, Henry L. Jones -

Your Complainant respectfully represents to the Court and says, that he filed his Bill in Chancery, with an Exemption thereon endorsed, in this Court sometime about the day of _____ against Wm. Elz, Sheriff & Committee of John Campbell dec'd; seeking relief from the payment of two judgments at law rendered in said Court in favor of said Campbell's Representative against your ~~Respondent~~^{Complainant} who was surety to said Campbell in two Bonds for money due him by one Wm. Vasey, on the grounds as set forth in said original Bill and also in an amended Bill heretofore filed in the cause, and which are referred to, for the information of the Court.

Your Complainant by way of amendment to his said original Bill further says, that he has discovered an error in a date named in said Bill, and which was by accident inserted in said Bill, and which he desires to correct - That in said original Bill your Complainant states that it was, on or about the 1st day of October, 1857, that he executed

thesaid Campbell to bring suit on the said
two Bonds (referred to in said original Bill)
against the said W^m Vasey &c. and when the
circumstances transpired in connection
therewith in the presence of W^m A. Butler,
whereas in fact it was the latter part of the
year 1835, or early in the year 1836, when
such division & circumstances, took place
as set forth in said original Bill.

Your Complainant further says, That
since the filing of said original Bill,
the defendant W^m Eley Sheriff & Comptroller
of John Campbell dec^d, has filed an answer
in this case, and with said answer has filed
certain exhibits, which, your Complainant
deems necessary to refer to, he says, That he
knows nothing of the Bill of sale to W. M.
Busby (exhibit No. 1. with said answer)
except that after said Vasey's failure in business
which was in December 1867, Vasey told him he
had sold the property referred to — That the
deed (Exhibit filed with said answer) from
said Vasey to And. J. Arch, Trustee & dated 11th
Dec 1867 was made without consultation with
your Complainant by any one, and only heard of
it after it was made — That Vasey was perfectly
able to pay the debt to Campbell, at the time
when Campbell was directed to sue as aforesaid

and that he continued able to pay, the same
till his failure in Dec. 1857 - a period of
about two years - That your Complainant
feeling perfectly assured of Vosey's solvency
endorsed Vosey's paper at some of the Norfolk
Bank, whilst he (Vosey) was merchandizing
in Norfolk in 1857, but did not suppose that
the ~~fact~~ fact that Vosey, like other merchants
had need of Bank accommodation, was
any witness of his insolvency, on the contrary
Vosey was then doing a large mercantile
business in Norfolk & had credit - and
your Complainant avers that Vosey was perfectly
able to pay said debts to Comptee at any
time between 1st Jan'y 1856 & Dec. 1857 -

That Vosey became indebted to the
Bank as referred to, in said deed to
Stock Trustee, & your Complainant & one
Rosalene, believing in the solvency &
knowing of the good credit of said Vosey, did
endorse for said Vosey, as above stated, and
when the notes became due your Complainant
endorsed them in Blank ^{for renewal} and delivered them to
Vosey, who filled them up for sums different
from that intended by your Complainant, &
when the deed of Trust to Stock Trustee was made
in Dec 1857, the said Vosey undertook to secure
these Bank debts first, and then the above

named settls to Campbelle next — That Arch
sold Visey's goods & paid the Bank, a part
of said settls due them & your Complainant
believe, and then the Bank demanded
payment of your Complainant of the Balance
due on the note thus endorsed, and your
Complainant paid the same — which he
has never received back again.

That no part of the settls due Campbelle
by Visey & to which your Complainant was
the security as aforesaid was ever paid by
said Arch Trustee, or any one else.

Your Complainant again says that
Visey was amply able to pay said Campbelle
the settls aforesaid at any time from 1st Jan.
1856 to the fall of 1857, during a period
of nearly two years.

That the said Visey was living in
Norfolk in 1857 doing a large
mercantile business and had real
estate in Nanamoud County also.

(And your Complainant prays that
said Wm Ely, Sheriff & Comr of Mo. Campbelle & Co
may be made defendants here to and answer the
allegations herein, & that appropriate relief may be
granted to

J. L. Jones

This day Henry L. Jones came before me
& made oath that the facts and
statements contained in the foregoing Bill
are true to the best of his knowledge and
belief. Given under my hand Aug 17 1867

John R. Kilby
Notary Public

Lynes

n

Campbell's Ref:

fr.

2^d. Amended Rice

Filed Aug: 17th 1867
LM

To the Hon. Richard H. Baker, Judge of the Circuit
Court of Hanscom County -

Complaining shew unto your Hon. your
Complainant Henry L. Tyner -

Your Complainant respectfully represents
to the Court and says that he has exhibited his Bill
in Chancery, in said Court against Wm. Eley, Shff.
& Committee of Mo. Campbell decd. and Wm.
Vesey, having for its object the enjoining of the said
Wm. Eley, Sh. & Committee as aforesaid from further
proceeding to recover of your Complainant certain
debts therein referred to, and alleging among
other things that your Complainant should not
be required to pay said debts, because he has given
the said Campbell notice to sue them & which
he had failed to do, and as is fully set out in said
Bill, and now by way of amendment to said original
Bill, your Complainant further says, that by the
said conduct of the said Campbell (as set forth in said
original Bill) he was prevented from giving him
on the day referred to in said Bill, a notice in writing
forthwith to institute such on said Bond or writings
obligatory and to prosecute the same with due diligence
to judgment & execution, as he fully intended them and
there to do "

(and your Complainant prays that the said
defendants to said original Bill may
be made defendants hereto & be required to

to answer the same, and that all proper relief
may be granted

John A. Kilby p. v.

Synes

n { Amended
Bill

Campbell's adm

To the Hon. Richard N. Baker, Judge of the Circuit
Court of Nansemond County -

Complaining, shew unto ^{the Court} your Complainant,
Henry L. Lynes of said County.

Your Complainant respectfully sheweth to the
Court and says, That on the 3^d day of December
1854, one William Visey executed his writing oblig-
atory, with your Complainant as security to one
John Campbell for one thousand dollars payable
on demand - a copy of which is in the record filed
herein & marked (A) ; And that on the 13th
day of October 1835, the said Visey executed another
writing obligatory, with your Complainant as the
security, to said John Campbell for \$300, payable
on demand, but subject to the following credits to wit:
\$28.61 on 3^d Jan'y 1849; \$24. on 2^d July 1849 & of
\$10. on 25th Nov. 1849, ~~no other credits~~.

That at the ~~dates~~ of the execution of the said
writings obligatory, the said Campbell, as well
as the said Visey, and your Complainant were
citizens of Virginia, resident in Nansemond
County aforesaid - That on the 1st day of
October 1857 whilst the said Visey was still a
resident in Nansemond County, in Virginia
aforesaid & was merchandizing at Chuckatuck
in said County, and not insolvent, but in the
possession of, & owning ample estate, perfectly
able to pay the said debts, your Complainant
believing that the said debts had been due long

enough, and desiring to lessen his liabilities, went to the said John Campbell, still a citizen and resident of Hansemond County, state of Virginia as aforesaid, as was your Complainant, and in the presence of Wm A. Butler, directed him the said Campbell, forthwith to institute suit on said Bond, or writings obligatory, and to prosecute the same with due diligence to judgment and execution and desired to know of the said Campbell whether he would accept such notice as sufficient, or whether your Complainant should give him (Campbell) a notice in writing to that effect; whereupon the said Campbell declared himself satisfied with said notice & waived any written notice - That the day after the giving of such notice, your Complainant again in the presence of said Butler again repeated his notice, and desired to know of him the said Campbell, whether he was satisfied with the notice he had given, whereupon the said Campbell expressed himself as satisfied therewith and required no written or other notice, but declared that he should proceed to collect the said debts due by the Bond aforesaid.

That no suit was brought on the said Bond in a reasonable time after the said requisition, and your Complainant, relying upon the sufficiency of his said notice, gave himself

no further concern about the said debts, knowing that the said Vesey was amply able to pay the same; and the matter passed from the thoughts of your Complainant.

But so it is, your Complainant avers that on the 1st day of November 1858, more than a year after said notice was given, the said John Campbell, greatly to the surprise of your Complainant brought suit on the said Bond, against the said William Vesey and your Complainant: The suit on the Bond of \$1000. was brought in the Circuit Court of Hanseman County & the suit on the Bond for \$300. was brought in the County Court of Hanseman County & from thence transferred to the Circuit Court where the same is now pending and now undecided -

That at the time the said suits were brought to wit: on the 1st of Nov. 1858, the said Wm Vesey was living in the City of Norfolk, to which place he had removed, and was there engaged in

Merchandizing to a large extent, and whilst there became entangled and became in failing circumstances, and soon thereafter failed & became insolvent and removed beyond the limits of Virginia: That the suit on the Bond of \$1000. was, brought as aforesaid, in the Circuit Court of Hanseman County & your Complainant filed his plea, alleging the waiver of written notice on the part of said Campbell

& to which plea the Defendant demurred, and on the issue as made up, the Court decided against your Complainant. That an appeal was taken to the Supreme Court of Appeals of Virginia, and therein, the Court was equally divided, leaving the judgment of the Court below to stand, which was to the effect, that the plea was insufficient at Law & no more - all of which will be seen by the records filed herewith as part of this Bill & marked B. & C -

That after the said John Campbell had commenced the said suit he died, & Ro. H. Zynes became his administrator in due course of law, & that at the May Term 1866 of Staunton County Court, the said Ro. H. Zynes was displaced as such administrator & the estate of said John Campbell committed to the hands of Wm. Eley Sheriff of Staunton County for administration - as will be seen by a duly certified copy of ~~the~~ the order of Court relative thereto, filed herewith & marked (D). Your Complainant Charges that it was a fraud in the said Campbell, to waive written notice and accept verbal notice (and thereby quieting the anxiety of your Complainant, so as to prevent the giving of notice in writing, still to fail to sue in a reasonable time, and yet to hold your Complainant

responsible, and to object that the verbal notice was not sufficient in Law.

Your Complainant further says, that he has suffered great ~~damage~~ in trouble, anxiety, expense, and sleep protected by this Court, will suffer great loss in the payment of said Debts —

Your Complainant avers that if suits had been brought at the time, when such notice was given, & prosecuted with diligence to judgment & Execution, they would have been effectual in making the money out of the said Vosey; and he submits, that the subsequent insolvency of said Vosey, should not cause the loss to fall on your Complainant, but on the said Campbell, by whose deceptive & fraudulent action in the matters referred to, your Complainant has incurred much anxiety and loss, especially when the Court shall know, as it is now avers, that the said William Vosey was the nephew of the said Campbell, and that in order to save the said Vosey, his nephew from the mortification of being sued, he held up the said claims after agreeing to sue & close up the same, as is hereinafter set forth.

Your Complainant avers that the acts of said Campbell were injurious to him, and by omitting to do, that which equity & good conscience required, and which was his duty to do, injury has been done your Complainant,

and that by the failure of the said Campbell in a reasonable time after said requisition to institute & prosecute suits against the obligors in the said Bonds, the same being all residents in the State of Virginia & not insolvent, he forfeited his right to demand of your Complainant, who was a mere surety in the same, the money due thereby, and that ^{your} Complainant is entitled to be discharged and relieved from the payment of any sale of said claims — Wherefore your Complainant prays that the said Wm Eley, Sheriff and Committee of John Campbell decd. may be restrained & enjoined from further proceedings in said suits, and that your Complainant may be protected and relieved from the payment of said debts.

In consideration whereof and as this Court has jurisdiction to grant the relief prayed for
To the end your Complainant prays that Wm Eley, Sheriff & Committee of John Campbell decd, & Wm Vasey may be made defendants hereto, and may be compelled to answer the severally allegations herein, in oath, and that as fully, as if they were here again repeated, that the prayer of your Complainant as aforesaid may be granted, and that all further and proper relief may be granted consistent with Equity &c.

H. J. Symes

John R. Kilby p. q.

Virginia

Nansemond County I to wit:

I, W. L. Riddick a ~~Justice of the~~ ^{Notary}

~~Public~~ ^{Public}

~~leg~~ in and for said County do certify that
Henry L. Ignes the Complainant in the foregoing
Bill, personally came before him & made
oath that the facts and statements set forth
in said Bill are true to the best of his
knowledge and belief. Given under my
hand this 11th day of June 1866.

W. L. Riddick

N. P.

Richy p. 2.

Henry D. Jones

M. J. Rice

Pro. Campbell's Rep.

to

1867

July: 2nd The Honorable members of
Henry D. Jones, returned as
my Office & Campbell's judgment
as required by the injunction
he also returned the Bond re-
quired hereby - see Bond
last week City & Bond
judgment
John B. Stevens Clerk

Monroe & Co. et

Richmond, Va. 21. 1866

Injunction refused

Wm. L. Lewis, Judge of the
District Court of Richmond

The Bill presents a case proper to be deliberately considered
& decided by the Court; and therefore (without meaning to
indicate any opinion upon the merits of the case) an
injunction is awarded according to the prayer of the
Bill; but is not to take effect until bond with surety
be given in the penalty of three thousand dollars con-
ditioned as the law directs, (Code of 1860 page 737, ch. 179
sec. 10); nor ^{is it to take effect} as to the proceedings at law on the bond for three
hundred dollars in the bill mentioned, until judgment is
confessed by, or obtained against, the complainant or the action
now pending on said bond, & if obtained without being confessed,
until a release of all errors in the said proceedings is executed
by the complainant & filed in the Clerk's office of the Circuit Court
of Hanover and County.

To the Clerk of the Circuit
Court of Hanover and County

Chas. C. L. Moncure
Jan 4 9th 1867.

Tynes

vs { Chy: Notes

Eley, Shff: & Commr of Campbell & al.

1867. Feb: 2nd Injⁿ: bond executed filed

" " " Sums in chy. with cryⁿ: filed

" " " Affidavit of non-residence of Deft: Vary. Made & filed

" " " 4th: Belts ^{original returned} & exhibits - filed - & conditional decree

vs deft: Chy, Shff: & Commr in

" " " Or: pub: awarded vs deft: Vary.

" " " 14th: Deposition filed

" March 4th Conditional decree vs deft: Eley, Shff: & Commr in
confirmed

" " " Or: of Pub: filed - & the same having been heard &
published according to law & as app^r: the
cause is set for hearing, on Mo: of Campbell's Atto:

" Apr: 17th Decree directing the Deft: & W. A. Butler
to be re-taken, & for C. B. May Secy: to
close the cause

" " Decree to bill filed

Octo 15th Continued

1868. Apr: 22nd Continued

" Octo: 23. Decree perpetuating injⁿ in

Chy: Notes