

1858-017

SOUTHAMPTON COUNTY
CHANCERY PAPERS

NEELY ^{vs} VS. CULVER / CULVER

S/1858

other surnames: Neeley

Neely

& } Papers.

Calver

Neely
w } Stat. Rules

Culver

In Southampton Circuit Court

Robert T. Neely. vs. Wm. Neely

against
George D. Culver

1857 Sept. 5. Summons issued retble. to Sept. Rules
" R. Sum. ret. Ex? Bill filed Dece. Miss to Dft.
" Oct. Bill taken for confessed
" Nov. Cause set for hearing.
" " T. Ans. of Dft. filed by leave rep.
1858 May - Dft. by consent.

July

7 } Bill

Guthrie

1857 Sept. Rules

To the Hon. Richd. H. Baker judge of the Circuit Court of Southampton
County: in Chancery, Sitting, Humbly Complaining sheweth ^{unto} your Honor, your orator, Robert
S. Neely and Mrs Neely, that some time in the year 1854, ~~in the~~ ^{in the} ~~year~~ of that year, in the
month of June, the said Robt S Neely, and one George D. Culver, entered into
an Agreement, whereby among other things, it was agreed on the part of the said
Neely to let his Steam Saw Mill, at Franklin Depot, Isle of Wight County, Va.
to cut or saw lumber by the thousands and ft. unto the said Geo. D. Culver
to cut 8 million of feet in the term of three years - commencing so soon as the
said mill should be ready for operations - the management of which operations were
to be under the management of the said Culver, and the supplying of logs, keeping
the work, paying off the hands &c, even the duties which the said Neely your orator
was to perform, in conducting the partnership which they at large were thereby formed
between the said parties, as will more fully appear by reference to the said agree-
ment, herewith filed, marked "A," and prayed to be taken as a part of this
Bill. Your orator further states, as the said Agreement shews, that the said
Culver was to receive one half of the net profits arising from the contemplated
business, at \$3.00 per thousand feet - that is to say, if there should be any net profits
over the allowance of \$3.00 per thousand as aforesaid -

Your orator further states, that though the said Agreement was signed only by the
said Culver, and Robt S. Neely one of your orator, that the understanding was, or it was
known that your orator, Robt S. Neely was to be considered as dealing with the said
Robert S. Neely, ^{and his family} and was to be regarded as interested as a partner, or interested to
the extent of $\frac{1}{4}$ in the said business. And in this view of the case, and under the
said Agreement, the said Culver took possession & management of the said mill to
about the 14 March 1855 and the business was carried by the said parties, until
the 1st Jan'y 1857 - when by mutual consent, a dissolution took place - your orator
states, that it is desirable to have a settlement of the transactions of the said

partnership, to ascertain the condition of its affairs, ~~debts~~ and the liability
is well as the profits of any thereof. They have no means of procuring a settlement
of the concern save through the aid of a court of chancery. - To the end
they pray that the said Balton be made a party defendant to their
Bill and be compelled to answer the same -

That an account of the partnership or the transaction thereof, herein mentioned
be rendered before a commissioner of the Court, and that the same may
be stated, settled & fully closed - and grant all other and necessary relief
which may be met on the premises, or the nature of the case may require
or grant or -

Wm. H. H. H.

Neely's

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Culver

answer of
Culver.

1857 Nov. 9. Filed by leave.

(994 words)

The answer of George D. Culver, to a Bill in Chancery filed in the Circuit Court of Southampton County, Virginia by Robert J. Seely and Wm. Seely -

This Respondent saving and reserving to himself all just exception ~~said~~ Bill ~~se~~ says that he did on the 26th day of June 1854 enter into articles of agreement with Robert J. Seely, by which the said Seely let to ~~this~~ Respondent a steam saw mill at Franklin Depot County of Giles of West State of Virginia to cut saw lumber by the thousand feet, on the following terms - to wit. This Respondent agreed to live at or near the above named place and superintend the mill to cut Eight millions of feet in the term of three years, commencing as soon as the mill and fixtures ~~are~~ ^{should be} pronounced complete, and to be at one half of all expenses attending the same, such as hiring laborers, braving the same, piling the lumber, loading the cars, keeping the mill in good repair &c. &c. except in case of an extraordinary break up in mill or fixtures which ^{should} exceed ten dollars at any one time -

and your Respondent further says that by said agreement, it is provided that the said Robert J. Seely agreed to keep the mill stocked with logs, to keep books, settle with the laborers pay money due hands at any time &c. and that this Respondent was to receive for his service one half of the net profits arising from the sawing at three dollars per thousand feet to be tallied as it was sawed, settlements semi-annually, and to have the mill for the above named term of three years, provided the said

articles should be truly and faithfully discharged. and it was also agreed that if either party, without mutual consent, should break the said agreement, he should give to the other party three months notice and forfeit three hundred dollars.

That the mill was considered complete on 14th of March 1855, and then taken charge of by this Respondent.

That he believes it is true that Wm Neely was concerned with his brother Ro. J. Neely as stated in said Bill.

Your Respondent says that all matters growing out of said agreement for the year 1855 were duly settled and paid for and all matters between the parties closed, as appears by a Receipt of said Ro. J. & W. Neely filed herewith, dated Jan. 1st 1856, & marked (A.).

That early in January, to wit. on or about the 24th Jan. 1856, this respondent and the said plaintiffs, altered the said agreement in so far as the mode of payment & compensation of this respondent was concerned, and instead of payment as ^{in said agreement of} stated, "one half of the net profits arising from the sawing at three dollars per thousand feet" and as set forth in said agreement the said Plaintiffs, in lieu thereof, executed to this Respondent, ^{and accepted by him} a writing to the following effect "Franklin Depot Va Jan. 24th, 1856 "On the first day of January 1857 we promise to make good the amount of One thousand dollars to George D. Culver for his services in running the mill, if according to our written

"agreement, his net profits at \$3. per 1000 feet does not reach that amount and furthermore providing the said Culver renders his services, "similar to last year (1855) R. J. & W. Neely."

That this respondent did perform under his services as required, and that the said plaintiffs paid this Respondent the said one thousand dollars, and that all expenses, charges, debts & thereby were settled so far as this Respondent is concerned. and he denies that he is liable to said Plaintiffs, for any debt, or other liabilities growing out of said agreement, if any were due, and he denies the right of the plaintiff, therefore to call upon this Respondent for a settlement of any partnership or other debts or contracts growing out of said business.

This Respondent further charges that the plaintiffs are indebted to him the sum of Three hundred dollars, by virtue of the last clause of said agreement which was not altered. That by virtue of said provision in said agreement, the plaintiffs did on 1st day of Oct. 1856 (give to this Defendant? three months notice to quit said employment as appears by the writing herewith filed & marked (B.) and ^{they} thereby become indebted to this respondent three hundred dollars being liquidated damages agreed on by the plaintiffs to be paid as aforesaid whenever such ^{notice} should be given.

Your Respondent denies the plaintiffs right to call on this Defendant for settlement of the accounts demanded. And prays a decree

against the plaintiffs for said sum of three hundred
dollars, and having answered prays to be hence
dismissed &c. Geo D Culver

Southampton County to wit,

I John Atkinson a Justice of the peace
for said County and made oath that the facts set
forth in said answer are true as he verily
believes - Given under my hand this 7
day of November 1857.

John Atkinson J. P.

THE COMMONWEALTH OF VIRGINIA :

To the Sheriff of Southampton County—GREETING

We command you to summon

George D. Cahner

to appear at the Clerks office of our Circuit court of Southampton county at the Rules, to be holden for the said court on the first Monday in *September Inst.* ~~next~~, to answer a bill in Chancery exhibited against *him* in our said court by *Robt. J. Neely &*

Wm. Neely (Sometimes known as Robt. Neely & Co.)

And have then there this writ. WITNESS, LITTLETON R. EDWARDS, Clerk of our said Court at the Courthouse, this *5th* day of *September* 1857 in the *82^d* year of the Commonwealth.

L. R. Edwards

Executed by delivering a Copy of this
Summons to within named George A Culver
on the 7th September 1857 at 8 O'clock
A.M.

Wm W Briggs shff

at New York

to J. J. Davis Esq.

Delivered

1857 September 7th

Articles of Agreement, made between
Robert J. Neely and George D. Culver.

Witnesseth: That said Robt. J. Neely doth agree to let his steam saw mill, at Franklin Depot, county of Isle of Wight, state of Virginia to cut or saw lumber by the thousand ft., unto said Geo. D. Culver on the following terms to wit: That he agrees to, at or near the above named place & superintend the Mill: to cut eight millions of feet in the term of three years, commencing as soon as the mill and fixtures are pronounced complete. and also to be at one half of all expenses attending the same: such as, hiring labourers, boarding the same, piling the lumber, loading the cars, keeping the Mill in good repair &c. &c. Except in case of an extraordinary breakups in the mill or fixtures, which exceeds ten dollars at any one time.

The said Robert J. Neely agrees to keep the mill stocked with logs, to keep books settle with the hands, pay money due hands at any time &c. &c. The said George D. Culver to receive for his services, one half of the net profits arising from the sawing at three dollars per thousand feet, tallied

as it is ^{Sawed} ~~loaded~~ on the Cars, settlements
semiannually, and likewise to have the
mill for the above named term of three
years, providing the above articles are
truly and faithfully discharged.

If either party without mutual con-
sent breaks this agreement, I shall give
three months notice and forfeit three
hundred dollars.

In witness whereof, the said parties have
hereunto set their hands & seals this
twenty-sixth day of June one thousand
eight hundred & fifty-four.

Attest-

W. H. H. H. H.
W. H. Williams

Robert J. H. H. H.

George J. H. H. H.

March 14th 1855. Geo. D. Culver agrees to take the mill
to run according to the above agreement. R. J. H. H. H.
George J. H. H. H.

(8.)

Franklin's Depot Jan 14th. 1837, Record of
Gen. D. Culver his share of expenses for
hire Machinery &c &c for the year
1835.

B. J. A. W. M. S.

(B)

Blackwater Steam Mill
Mantlin Depot Oct. 14/56

Mr George. D. Culver,

As our agreement
specifies three months notice on
either party becoming dissatisfied we
have this day concluded to give the
required notice that your services
will not be required longer than
New Year as you appear to be very
much dissatisfied

Yours &c
R. J. G. V. Mearns

Isaac Jones
Alex. Howell
E. H. Tyler
True Believers of
Notice

Culver gave
a Receipt 1836.

Neely,

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Culver

2 Exhibits filed
with ans.

Teely
or
Culver
and
Culver
or
Teely

These cases may
be dismissed
agreed.

John R Kilby
Robt Whitfield