1909-92 Southampton County Chancery Rives, A.W. Trustee vs Barden, C.L. et als

2 sell land to pay off lien

Debratch, Billie S.
Chappell, Peter
Prince, J. B. trustee
McLemore, J. L.
Bane, Walter
Jenkins, John S. 3/4
Bane + Jenkins

In the Circuit Court of Southampton County, Virginia:

To the Hon., Robert R.Prentis Judge of the said Court:

Your orator A.W.Rives trustee, humbly complaining shows to the Court, that by his certain deed of trust dated August 10th 1878 of record in the Clerk's office of the County Court of Southampton County, a copy of which is herewith filed as an exhibit marked "A" and prayed to be taken and read as a part of this bill, W.J.Harrell conveyed to your orator as trustee his entire interest in and to a certain lot at Boykins and a certain tract of land containing 50 acres near Boykins, both in the County of Southampton and in the state of Virginia, and fully described in said exhibit, to secure to one S.B.Drewry his certain bond therein named for five hundred dollars; that on the 25th day of September 1878 the said S.B. Drewry assigned " without recourse" the said bond to one H.L.Hill, and that on the 7th day of February 1891, the said assignee H.L.Hill, assigned the said bond to Boone & Jenkins who now hold the same, and who wan't their money and have requested your orator to proceed to sell in accordance with the provisions of said deed of trust, the said land to pay the balance due on the said bond.

Your orator is imformed and here charges that while said H.L.Hill was the owner of said bond, the said C.L.Barden instituted a suit in this Court, against H.L.Hill and others, one object of which, was to have certain credits placed on the bond aforesaid, and after an issue out of Chancery and the verdict of a jury responsive thereto, and after other proceedings in the said suit of C.L.Barden against said H.L.Hill and others, a decree was enterered in the said suit on the 8th day of November 1890 by which it was duly adjudged and decreed that there was then due on the said bond for five hundred dollars, and secured as aforesaid, a balance of one hundred and eighty (186) dollars and forty four (44) cents with interest thereon from the 7th day of November 1890 till paid, which balance with interest is now claimed by said Boone & Jenkins assignees as aforesaid, and to secure which they claim a lien by virture of the said deed of trust. Your orator is imformed and believes that said C.L.Barden now claims credits on said balance, in fact, claims it has been paid in full to the said Boone & Jenkins.

Your orator says that the maker of said bond is dead and insolvent.

And your orator says that after making the said deed of trust the said W.J.Harrell and others conveyed the said lot and tract of land to said C.L.Barden subject to the lien of the said deed of trust, and that afterwards, to wit on the 30th day of January 1884 the said C.L. Barden made his deed of trust conveyed the said lot and land to J.B.Prince trustee, to secure a debt therein to Mrs C.R.Pope, and that under and by virtue of the deed of trust last aforesaid, the said J.B.Prince trustee sold and conveyed the said lot and tract of land; to J.L.McLemore the lot for one thousand and eight; dollars; and to Mrs Bettie S. Deloatch the said tract of land for six hundred and forty five (645) dollars and fifty (50) cents, and that said Mrs Bettie S.Deloatch is in possession, and claims to own the said tract of land, but that the said J.L.McLemore by deed dated June 1st 1897 conveyed the said lot, for and in consideration of one thousand (1000) dollars to C.L.Barden, and that the said C.L.Barden on the same day by his certain deed of trust to J.B.Prince trustee, conveyed the said lot to secure to Peter Chappell and J.L.McLemore two debts respectively, in the said deed of trust mentioned, and that said C.L.Barden is now in possession, and claims to own, subject to the deed of trust last aforesaid, the said store lot at Boykins.

And your orator says, that although the said Boone and Jenkins exhibit to him the said bond, and assured him of the balance due thereon, and while he had no doubt of the honesty of purpose on their part, he has a doubt as to the legal effect of this contention, and, therefore has a doubt as to the amount which said deed of trust now secures, and for which it is a lien, and, he also has a doubt as to which piece of property he should subject to the payment of any balance , having cause to believe either the tract now in the possession of Mrs Deloatch, or the lot in the possession of the said C.L.Barden as aforesaid, would pay all claimed by said Boone and Jenkins.

For these reasons your orator is advised that it is both his privelege and his duty to invoke the aid of this honorable Court in the premises.

Notice is hereby given that the Court will be asked to allow all proper counsel fees and other expenses incurred by your orator in this matter of suit and sale.

For as much as your orator is remediless save in this honorable Court where such matters are alone and properly cognizable, he prays that the said C.L.Barden, Bettie S.Deloatch, Peter Chappell, J.B.Prince trustee, J.L.McLemore, and Walter Boone and John S. Jenkins, partners in business under the name and style of Boone & Jenkins, be made parties defendants to this bill, and required to answer the same, but an answer under oath is hereby expressly waived, that the balance due on the said bond to secure which there is a lien on the said property, be ascertained, that your orator be fully instructed as to how he should subject the said property to sale in order to satisfy the balance, that all proper enquiries and accounts be directed, taken, stated and reported to court, that your complainant be afforded all such other, further and general relief as the nature of his case may require or as to equity and good conscience may seem meet. And he will ever pray &c.

Chandler & Holland Sol:

A. W. Rives by
W. R. Shands Jr.
Wm S. Muller his attys

Rivers. Trustee
vs. } & Statement of Rules
Borden et als.

A. W. Rives. Trustee, Plaintiff

vs.

L. L. Barden. Peter Chappel. J. L. McLemore. Billie S. Deloach. J. B. Prince. Trustee, and Walter Boone & John D. Jenkins, partners trading & doing business under the name & style of Boone & Jenkins Defendants

In Chancery

1898. 18th. March. Process Iss'd. to 2nd Mch. Rules

1898. 2nd March Rules. Process returned executed.

Bill and exhibits filed.

Decree Nisi vs. Defendants

1898. 3rd. March Rules. Bill Taken for confessed and Cause set for hearing.

Rives. - Trustee

vs { Copy D.J. from
W.J. Harrell to A.H. Rives
Trustee

Ex. "A"

Bordeau et als.

1898. "Mch. Rules filed

L. A. Gay b.b.

75. als

This Deed of Trust made this the 10th day of August 1878, between Wm. J. Harrell, the grantor, of the first and A. H. Rives, Trustee, of the second part. Witnesseth: that for and in consideration of five dollars in hand paid to William J. Harrell, the grantor by A. H. Rives, the Trustee, the receipt of which is hereby acknowledged, the said W. J. Harrell do grant and convey unto the said A. H. Rives, the Trustee his entire interest in the following real estate lying and being at and near Boykins Depot, Southampton County, Virginia, Viz: lot at Boykins Depot Va. containing one half acre be the same more or less, with all the improvements, appurtenances &c. on said lot; said lot is bounded on the West by the County Road; on the North and East by the lands of William M. Beaton, S. B. Drewry & C., and on the South by the lands of E. B. Beaton; and, also, his interest in about fifty acres of land near Boykins Depot, Va.
It being the dower land of his mother Mrs. Sallie A. Harrell, said land is bounded on the West by the County

Road; on the South and East by the lands of Henry Kindred deceased; and on the North by the lands of William M. Beaton. This Deed is however, made in trust to secure a note due Samuel B. Drewry of five hundred dollars, bearing even date with this writing and on demand the 1st day of January 1879. It is further agreed by both parties to this writing that if a sale should become necessary, the Trustee, shall give twenty days notice in three public places in the County, sell for Cash and be allowed five per cent Commission. In testimony whereof I have hereunto set my hand and seal this the 10th day of August, 1878.

The interlineations were made before the parties signed this writing. } H. J. Harrell, (Seal)
A. H. Rives, Trustee.

Southampton County, to wit:
I, David N. Kindred, a Justice of the Peace for the County aforesaid do Certify H. J. Harrell and A. H. Rives

whose names are signed to the above instrument of writing bearing date this the 10th. day of August 1878, acknowledge the same before me in my said County. And I do further certify that the insertion of these words "and S. B. Drewry, were made before the signing of the above writing. Given under my hand this the 10th day of August 1878.

David H. Kindred, J.P.

Southampton County, In the Clerks Office August 12th 1878.
This Deed of Trust from Wm. J. Harell to A. H. Rives, trustee, for the benefit of S. B. Drewry, was this day received and together with the certificate thereto annexed, admitted to record.

Testo: L. A. Edwards, C.C.

A copy,

Testo: B. F. McLemore, C.C.

Pr. West, D.C.

Reives, Franklin

vs. } Corpy Stat: of Costs

Bordeau & L.

Rives. Trustee

vs. } Stat: of Costs

1898 L. L. Barden

March 18th Sum. 25. & Cop: 91, receipt 18. atty. 10. Docket 18 = 1.62

Rules 1.00. Entering return 35. fil. bill 15 = 1.50

Do. Ex. 15. Copy Ex. & 5. fil. Bardens Ans. 15 = 1.05

Decree & copy & 2. Tax Costs &c. 40 = 1.12

~~1900 April 16th~~ } 2 Continuances on the Docket 50 = 50
1901 Nov. } 5 Continuances 1.25 1.25

fil. away papers 25. future costs about 1.50 1.75
Tax costs 3 years at 10 cts 30 = 30

Clerk $9.09

Shff 1.00

Corrected Statement Lawre. 16.50

~~1900. May 3rd~~ $26.59

Teste: L. A. Gay Clk.

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Rives Prentice
vs. } 1st Decree
L. L. Barden et als.

Entered April 5. 1898.
Robert R. Prentiss

Entered page - 203

In the Circuit Court of Southampton County.
April Term 1898.
Rives, Trustee
vs.
L. L. Barden et als.

This cause came on this day to be heard on the bill of complaint taken for confessed as to Willis S. Deloach, Peter Chappell, J. B. Prince Trustee, J. L. McLemore, and Walter Boone and Jno. S. Jenkins trading as Boone & Jenkins who have been duly summoned to answer, on the answer of L. L. Barden filed this day by leave of Court with general replication thereto, and was argued by Counsel:

On consideration whereof the Court doth adjudge order and decree that one of the Commissioners of this Court enquire and report the liens on the lands in the bill mentioned stating their priorities; and whether the said land has been sold for delinquent taxes. Any matter deemed pertinent by the said Commissioner or any party in interest.

Leave is given any defendant, not already having done so, to file his or her answer within sixty days from the rising of this Court.

A Copy.
Testa: L. A. Gay C.C.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County--Greeting:

We command you to summon Peter Chappell

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court on the 3rd Monday in Mch 1898 ~~next~~, to answer a bill in Chancery exhibited against him & others in our said Court by A. W. Rives Trustee

And this he shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, L. A. GAY, Clerk of our said Court, at the Courthouse, this 18th day of March, 1898, in the 122 year of the Commonwealth.

Teste: L. A. Gay C. C.

A Copy—Teste: L. A. Gay C. C.

Bardin C. L.

adv. Z Answer of C. L. Bardin

Pltfs' Intes.

1898. Apl. 4th filed.

L. A. Gray Clk.

In the Circuit Court of Southampton County.

C. L. Barden et als.
ads. Answer of C. L. Barden,
A. W. Rivers, Trustee,

This respondent for answer to said bill or so much thereof as he is advised it is necessary for him to answer, Answering, says: It is true that W. J. Harrell executed a deed of trust to the plaintiff as trustee to secure a debt of $500 - due to S. B. Drewry, and that said bond was assigned by S. B. Drewry to H. L. Hill, but your respondent denies that said H. L. Hill duly assigned said bond to Boone & Jenkins, until after the said bond had been duly paid off and discharged by your respondent while the same was in the custody of said Henry L. Hill.

Your respondent represents that the balance found due to H. L. Hill by him of $186.44 in the suit of Barden vs. Hill referred to in the plaintiff's bill, was the remainder of the $500 bond, as set forth therein, but in obedience to said judgment of the Court, he paid to said Hill the sum of $186.44 with the interest due thereon, on or before the 7th day of Feby. 1891, which sum was paid by a draft drawn on Boone & Jenkins, accepted by said Hill, and paid by Boone & Jenkins on the 7th day of Feby 1891, and the said draft charged up by Boone & Jenkins to the account of your respondent, and paid by him to Boone & Jenkins in the course of their dealings.

Your respondent was unaware that said bond was worn in the hands of said Henry L. Hill, when he paid him the balance due thereon

for the reason that same had for years been filed in the papers of the Common Law action of Barden vs. Hill, and this sum of $186.44 was a balance found due upon a general settlement and allowance of claims and counter claims between the parties, much less did he suspect the bond had been assigned to third parties when he was paying to H.S. Hill the balance due thereon.

Your ~~orator~~ respondent states further, that since the settlement with H.S. Hill as aforesaid, in order to negotiate a loan upon the property covered by the deed to Harrell's trustee, and before he knew of the existance, in the hands of Boone & Jenkins, of this bond, he obtained from said Hill a release deed, wherein the said deed to A.W. Rivers Trustee, is released as is evidenced by the said paper hereunto exhibited; and upon this release your respondent did borrow money upon the land covered by the deed of trust first aforesaid: to wit: $600. from one Peter Chappe and $400. from Jas. L. McSimore which deeds are duly recorded in the County Court Clerks Office of this County, said loans having been made upon the faith of the said record title of your respondent, and without any knowledge on the part of the persons loaning that such a bond was in existance. It is true there is a judgment docketed against your respondent for the amount of the decree of Nov. 8th. 1890, but said judgment was paid when the $186.44 was paid it being one and the same debt, as will appear

by reference to the original papers of Barden vs. Hilly

Your respondent further says, that by the decree of Nov. 8, 1890, in the above named cause, the plaintiff herein was directed to expose the property in question to public sale to collect the sum of $186.44 unless same was paid by your respondent within 90 days from that date, but that same was paid as aforesaid on or before Feby 7th. 1891. and the judgement should have been marked satisfied rather than after a lapse of seven years, assigned to Boone Jenkins.

And now having answered the complainants bill he prays hence to be dismissed with his reasonable costs about his suit in this behalf expended. And he will ever pray &c.

A L Barden

Sworn to and subscribed before me this 5th. day of April 1898.

L. A. Gay N.P.

Hill Henry L.

To } Release

Bardin C.L.

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Filed for Record
Oct 1st 1918

Whereas, by deed of trust executed on the 10th. day of August 1878, by W. J. Harrell to A. W. Rives trustee, to secure a debt of $500. due to Samuel B. Drewry, payable Jany. Ist. 1879, the said grantor did convey a lot in the town of Boykins, said to contain one half of an acre bounded by the lands of W.M.Beaton, the Public road, the lands of E.B.Beaton et als. and also a tract of land lying south of said town of Boykins, containing about 50 acres, same being the dower interest of Mrs. Sallie A. Harrell, bounded by the lands of W. M.Beaton, the estate of Henry Kindred and others, for better description of which, reference is made to the said deed, recorded in D.B. # 33 page 422. And whereas after the execution of the bond aforesaid the same was transferred to, or assigned to, Henry L. Hill; And Whereas the real estate conveyed to secure said indebtedness, was afterwards purchased by one, C.L.Barden, subject to the deed of trust aforesaid; And Whereas the said C. L.Barden has fully paid off and discharged the said deed of trust debt due to H.L.Hill as aforesaid, and is now entitled to have the property released of the lien aforesaid.

Now therefore this deed made this 4th. day of September 1896, by and between Henry L. Hill, assignee, as aforesaid of the first part, grantor, and C. L.Barden, grantee of the second part, Witnesseth: That for and in consideration of the premises, and the payment and discharge of the debt aforesaid, said party of the first part, does hereby release his lien upon the said real estate, and doth hereby reconvey to said C. L. Barden all of his the said grantors interest in the said real estate, vested in him by virtue of the deed of trust aforesaid.

Witness the followin signatures and seals.

Henry L. Hill (seal)

State of Virginia,
County of Southampton to-wit:-

I, Jas. L. McLemore a Comr. in Chy. of the Circuit Ct. in and for the county and state aforesaid, do hereby certify that Henry L. Hill, whose name is signed to the writing above bearing date September 4th 1896, has acknowledged the same before me in my county aforesaid.

Given under my hand this 5th day of September, 1896.

Jas. L. McLemore Commr.
in Chancery Circuit Court.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County--Greeting:

WE COMMAND YOU THAT YOU SUMMON C. L. Barden, Peter Chappell, E. L. McLemore, Willie S. Deloach, J. B. Prince-Trustee, and Walter Boone and John S. Jenkins partners trading & doing business under the name & style of Boone & Jenkins

to appear at the Clerk's Office of our Circuit Court of Southampton county, at the Rules to be holden for the said Court on the 3rd Monday in Mch. 1898 ~~next~~, to answer a Bill in Chancery exhibited against them in our said Court by A. W. Rives Trustee

And this 1st shall in no wise omit under penalty of law. And have then there this writ.

WITNESS, L. A GAY, Clerk of our said Court, at the Courthouse, this 18th day of March, 1898, in the 122nd year of the Commonwealth.

Teste: L. A. Gay C. C.

We hereby acknowledge to good service of the within summons

Borne & Jackson
by Shields for their agents
L.R. Simmons Trustees

C. P. Bardeen by J. F. McNamara
L. F. McNamara
Peter Chapelle by J. F. McNamara

Rivers. Trustee

vs } Sum. In chy.

L. L. Bardeen et als.

1898. 2nd March Rules
Lin. Co.

Executed as to Billie S. Deloach and C. L. Bardeen by delivering a copy of this Summons to each of them on the 21st day of March 1898

R. D. Mann Co. Clk
for J. W. Willing Sheriff

(2)

Standerson }
W. S. Holland } p. q.

-1909-
River Justice
vs 3pl Dance
b. L. Borden et. als.

Entered April 5, 1898
Robert Ellis

Entd -203-
Cp. for 36

Rives Trustee

vs

C. L. Borden et. al.

This cause come on this day to be heard on the bill of complaint taken for confessed as to Bettie S. Delaatch Peter Chappell, J. B. Prince trustee, J. L. McLemore, and Walter Boone and Jno S. Jenkins trading as Boone & Jenkins who have been duly summoned to answer, on the ~~answer~~ of C. L. Borden filed this day by leave of court with general replication thereto, and was argued by counsel:

On consideration whereof the court doth adjudge order and decree that one of the Commissioners of this court ~~examine~~ and report the liens on the lands in the bill mentioned stating their priorities, and whether the said land has been sold for delinquent taxes.

Any matter deemed pertinent by the said commissioner or any party in interest.

Leave is given any defendant, not already having done so, to file his or her answer within sixty days from the rising of this court.