

1909-102

Southampton County Chancery Strause Bros. & Co. vs

Hines, D. A. et al

Attachment
"Sale to null and void"

Strause, S. S.
Strause, M. M.
Wallerstein, Leon
2/4

Carnival, L. J.

8
Strauss Bros. Co.
12 3/4 Bell in Brewery.
Harris and Cornell

TO THE HONORABLE ROBERT R. PRENTIS, JUDGE OF THE
CIRCUIT COURT OF SOUTHAMPTON COUNTY, VIRGINIA:

Humbly complaining, your complainants, I. I. Strause,
M. M. Strause and Leon Wallerstein, partners trading as Strause
Brothers and Company, sheweth unto the Court the following
cause of complaint:

That on the 29th, day of June, 1904, and for some
time prior thereto P. A. Hines of Southampton County, Virginia,
conducted a general merchandise business at Dory, in said County
and State; that on the above named date (June 29th, 1904) the
said P. A. Hines executed and delivered to your said complain-
ants three negotiable notes herewith filed, marked " Exhibit A"
and prayed to be read as a part of this bill; that said notes
were and now are, evidences of amounts due your said complain-
ants for goods sold and delivered to the said P. A. Hines in
the usual course of trade; that no part of either of said notes
~~was~~ ever been paid to your complainants, but that the same are
now due and unpaid: That sometime between the 29th, day of
June, 1904, and the 30th, day of August, 1904, the said P. A.
Hines sold out his entire ~~of~~ stock of merchandise, in bulk, to
one L. J. Cornwell with intent to hinder, delay and defraud
his creditors; that so great was the anxiety and intent of the
said Hines and Cornwell to so hinder, delay and defraud the
creditors of the said P. A. Hines they failed to comply with
the law of this state governing the sale of stocks of merchan-
dise in bulk, as prescribed in Acts of 1902-3-4, page 884; that
in consequence of the failure on the part of the said Hines and
Cornwell to comply with the provisions of the said Act that
the said sale was fraudulent and void as against the creditors
of the said P. A. Hines and the merchandise in the hands of the
said L. J. Cornwell, or any part thereof, is liable to the

~~creditors of the said Hines~~

creditors of the said Hines, and that the said Comwell is himself personally liable to the creditors of the said Hines to the extent of the value of the merchandise so received by him and sold or withdrawn from said stock.

Your complainants further sheweth unto the Court that the said P. A. Hines is seised and possessed of certain real estate in Southampton County, Virginia, described as follows, to-wit:

(1) All of that certain lot, tract or parcel of land lying situate and being in Berlin & Ivor Magisterial District, in said County and State, bounded on the north by Alex. Comwell; east by Alex. Comwell; south by Berlin County road; west by Cobham road, and is the same land purchased by the said P. A. Hines of E. T. Rollings as evidenced by a certain deed dated January 22nd, 1898, and recorded in the Clerk's Office of Southampton County, Virginia, in Deed Book No. 45, page 250-251:

(2) That certain lot or parcel of land lying near Dory, Southampton County, Virginia, same being in the aforesaid Magisterial District, and is a part of the tract known as the Ann Gray tract, containing one and one-half (1-1/2) acres, more or less, commencing on the public road running from Airfield to Dory, Virginia, at a chopped black-gum tree, standing within a few feet of said public road; thence along said road in the direction of Dory 139 yards to a piece of iron rail, a corner post; thence at right angles 53 yards to a corner; thence at right angles 139 yards to a corner; thence to the starting point. This land is immediately opposite the dwelling house in which the said P. A. Hines now lives, and his store and divided from it by the County Road. It being the same lot or parcel of land conveyed to the said P. A. Hines by deed from the Surry Lumber Company, dated July 30th, 1902, and recorded in

the Clerk's Office of Southampton County, Virginia, in Deed Book No. 47, page 772, from which said deed the above description was taken:

(3) That certain tract or parcel of land lying in Southampton County, Virginia, adjoining the lands of P. A. Hines on the west, William G. Rollings on the north, A. S. Cornwell on the east and on the south by the public road, and containing eight (8) acres, more or less. It being the same lot or parcel of land conveyed to the said P. A. Hines by deed from A. S. and Cora L. Cornwell, dated September 27th, 1902, and of record in the Clerk's Office of Southampton County, Virginia, in Deed Book No. 48, page 509-10.

In tender consideration whereof, your complainants being without remedy save in a court of equity, where such matters are alone and properly cognizable, your said complainants pray that the said P. A. Hines and L. J. Cornwell may be made parties defendant to this bill and required to answer same, though answer under oath is hereby expressly waived; that the said sale be declared null and void; that an attachment issue against the estate of the said P. A. Hines and L. J. Cornwell; that a receiver be appointed to take charge of the said stock of merchandise, and that all such other and further relief, both general and special may be afforded your complainant as the nature of their case may require or to equity shall seem meet.

Notice is hereby given that the Court will be asked to allow reasonable attorneys' fees to be paid to plaintiffs' counsel out of any funds coming under the control of the Court.

And your complainants will ever pray &c.

STRAUSE BROTHERS & COMPANY,

By *John P. Jones and Arthur C. Jones* their Attorneys.

STATE OF VIRGINIA, {
Southampton County, { to-wit:

This day E. Frank Story, Attorney for Strause Brothers and Company, the complainants in the bill hereto attached, appeared in person before me, a Commissioner in Chancery in and for the County aforesaid, in the State of Virginia, and made oath that the matters in the foregoing bill stated as of his own knowledge are true, and that those stated upon information derived from others he believes to be true.

Given under my hand this 6th, day of June, 1905.

Joseph B. Prince,
COMMISSIONER IN CHANCERY.

The Commonwealth of Virginia,

To the Sheriff of the County of Southampton Greeting:

WHEREAS J. J. Strause, M. M. Strause & Leon Hallsstein

Partners trading as Strause Brothers & Company
have

instituted in our Circuit Court of the County of Southampton, a certain ~~Suit~~
in Equity against

J. A. Hines and L. J. Cornwell

which ~~Suit~~ is now pending in the said Court: And there having been filed in the Clerk's Office of our said Court an affidavit that the claim of said plaintiff asserted in the said suit is believed to be just, that the affiant believes the plaintiffs are entitled to or ought to recover ~~Two hundred & Sixty nine~~ ^{and} ~~269~~ ^{dollars} at the least, with interest thereon to be computed after the rate of six per centum per annum from the 29th day of August, 1904, till payment, and that to the best of the said affiant's belief the said defendant:

1. ~~is~~ a foreign corporation, or ~~is~~ not a resident of this State, and ~~has~~ estate of debts owing to said defendant within the ~~term~~ of ~~the~~ in which the action is, or ~~is~~ sued with a defendant residing therein:

2. ~~is~~ removing, or about to remove out of this State, with intent to change domicile:

3. ~~is~~ removing, or intend to remove, or ~~has~~ removed:

~~owns~~ own estate, or the proceeds of the sale of ~~any~~ property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;

4. ~~Is~~ converting, or ~~is~~ about to convert, or ~~has~~ converted ~~his~~ property, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud ~~his~~ creditors;

5. ~~Has~~ assigned or disposed of, or ~~is~~ about to assign or dispose of, ~~his~~ estate, or some part thereof, with intent to hinder, delay or defraud ~~his~~ creditors;

Therefore we command you, that you attach the estate of the said J. A. Hines and L. J. Cornwell for the amount of the said ~~debt~~, with interest thereon, as aforesaid, and the costs, and that you secure such estate so attached in your hands, or so provide that the same may be forthcoming and liable to further proceedings thereupon to be had before our said Court, on the 1st day of the next July term thereof; and that you make return hereof at the rules, to be held in Clerk's office of our said Court, on the 3rd Monday in June next (or to the said Court on the first day of the next term thereof) how you have executed the same. And have then there this writ.

Witness, B. F. McSernone Clerk of our said Court, at the court-house
this 6th day of June, 1905, in the 129 year of the Commonwealth.

B. F. McSernone C. C.

The Plaintiff designate_____

as being in possession of effects of, or being indebted to the defendant.

I executed the within attachment by levying on the stock of general merchandise, consisting of dry-goods, notions, boots, shoes, hats, caps, groceries, vares, and other articles of merchandise usually kept in a general merchandise store, located in the store-house at Dory, Southampton County, Virginia, known as the "P. A. Hines Store", and by delivering a true copy of this attachment to each of the within named defendants, P. A. Hines and J. L. Cornwell, in person, in Southampton County, Virginia, this 6th, day of June, 1905.

J. W. Bryan
DEPUTY FOR J. L. GILLETTE, SHERIFF.

To

term, 190

P. A.

vs.

ATTACHMENT.

Form No. 243.

Levied on the following real estate of the defendant, P. A. Hines, this 6th, day of June, 1905, to-wit:

(1) All of that certain lot, tract or parcel of land lying situate and being in Berlin & Ivor Magisterial District, Southampton County, Virginia, bounded on the north by Alex. Cornwell; east by Alex. Cornwell; south by Berlin County Road; west by Cobham road, and is the same land purchased by the said P. A. Hines of E. T. Eollings as evidenced by a certain deed dated the 22nd, day of January, 1898, and recorded in the Clerk's Office of Southampton County, Virginia, in Deed Book No. 45, page 250-1:

(2) That certain lot or parcel of land lying near Dory, Southampton County, Virginia, same being in the afore-said Magisterial District, and is a part of the tract known as the Ann Gray tract, containing one and one-half (1-1/2) acres, more or less, commencing on the public road running from Airfield to Dory, Virginia, at a chopped black-gum tree, standing within a few feet of said public road; thence along said road in the direction of Dory 139 yards to a piece of iron rail, a corner post; thence at right angles 139 yards to a corner; thence to the starting point. This land is immediately opposite the dwelling house in which the said P. A. Hines now lives, and his store and divided from it by the County Road. It being the same lot or parcel of land conveyed to the said P. A. Hines by deed from the Surry Lumber Co.

(3) That certain tract or parcel of land lying in Southampton County, Va., adjoining the lands of P. A. Hines on the west, W. G. Rollings on the north, A. S. Conwell on the east and on the south by the County Road, containing 8 acres, more or less, and is the same land purchased by the said Hines from A. S. and Cora L. Cowell.

J. W. Bryan
DEPUTY FOR J. L. GILLETTE, SHERIFF.

Frank J. Ross & Co.

vs. }

AFFIDAVIT FOR
ATTACHMENT.

James Cornwall.

Filed the day of 189

In the District Court of the County of Southampton

J. J. Strauss, et al. Strauss
and Leon H. Weinstein, partners
trading as Strauss Brothers Company.

Plaintiff

against

P. A. Hims and R. G. Arnold.

Defendant

In Chancery.

E. Frank Story maketh oath and saith, that he believes
the claim, for which the above entitled action is instituted, to be just; that he, the affiant, believes that
Strauss Bros. Co. the official plaintiffs entitled to and ought to recover in said suit
\$64,100 (at the least), with interest thereon, to be computed at the rate of six (6)
per centum per annum, from the 19th day of August 1904, till paid; and that to the
best of his belief the said defendant P. A. Hims

1. is a foreign corporation, or is not a resident of this State, and has no estate or debts
owing to said defendant within the State of Virginia in which the action is or
sued with a defendant residing therein;

2. is removing or about to remove out of this State, with intent to change his domicile;

3. is removing, or intend to remove, or has removed his

his own estate, or the proceeds of the sale of his property, or a material part of such estate or
proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will
be unavailing;

4. is converting, or is about to convert, or has converted his property or some part
thereof into money, securities, or evidences of debt, with intent to hinder, delay or defraud his creditors;

5. Has assigned or disposed of, or is about to assign or dispose of, his estate, or some
part thereof, with intent to hinder, delay, or defraud his creditors.

Subscribed and sworn to before me this 6th day of June 1904

B. F. McNamee C.

Franklin D. Co.

no 3 "Exhibit A."

James Cornwell

7/29
\$89⁶⁸

Richard W. June 29-1904
One Month after date We promise to pay to

STRAUSE BROTHERS & CO., or order, without offset,

Eighty Nine & 68/100 Dollars,

Negotiable and payable at The Natl Bk. of Va. Richmond Va.

Value received. The drawer and endorser of this note hereby waive the benefit of our Homestead exemption as to this debt.

No. Due July 29 P. A. Hines

SEAL
SEAL

NO PROTEST.

8/29
\$89⁶⁸

Richard W. June 29/04
Two Months after date We promise to pay to

STRAUSE BROTHERS & CO., or order, without offset,

Eighty Nine & 68/100 Dollars,

Negotiable and payable at The Natl Bk. of Va. Richmond Va.

Value received. The drawer and endorser of this note hereby waive the benefit of our Homestead exemption as to this debt.

No. Due Aug 29 P. A. Hines

SEAL
SEAL

NO PROTEST.

9/29
\$89⁶⁹

Richard W. June 29-1904
Three Months after date We promise to pay to

STRAUSE BROTHERS & CO., or order, without offset,

Eighty Nine & 69/100 Dollars,

Negotiable and payable at The Natl Bk. of Va. Richmond Va.

Value received. The drawer and endorser of this note hereby waive the benefit of our Homestead exemption as to this debt.

No. Due P. A. Hines

SEAL
SEAL

NO PROTEST.

Strause Brothers & Co.
or } Stat. Reelers

Hines & Cornwell

11 December 1881
Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above named matter.
I am sorry to hear that you are having trouble with your reels.
I will be glad to send you a set of reels if you will send me the amount of the bill.
Very respectfully,
Hines & Cornwell

J. J. Strause, M. M. Strause and
Leon Wallerstein, Partners trading as
Strause Brothers & Co.

vi

J. A. Stines and L. J. Cornwall.

1905. June 6. Summons issued to J. J. Strause.

" " " Affidavit for attachment filed.

" " " Attachment issued to 1 day July Term

" 2^d . Rules Return: Process returned.

Bill & Exhibits filed.

Deceit nisi

1905 1 July Rules. Bill taken for
Confessed & Cause set for hearing

Strause Bros. & Co
or } Spia: in Chin

Hines & al:

1905. 2. June 6th.

I executed the within summons
by delivering a true copy of
same to each of the within
named defendants, P. A. Hines
and L. J. Cornwell, in per-
son, in Southampton County,
Virginia, this 6th, day of
June, 1905.

Wm. Bryant
DEPUTY FOR J. L. GILLETTE, SHFF.

THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF SOUTHAMPTON COUNTY, GREETING:

WE COMMAND YOU TO SUMMON *P. A. Hines and L. J. Cornwall*..

Received of the Sheriff of Southampton County
June 1905
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 *June*..1905.....
next, to answer a Bill in Chancery exhibited against.....*them*.....in our said
Court by...*I. I. Strause, M. M. Strause and Leon Wallerstein*..partners
trading as Strause Brothers & Company.

And this...*they*.....shall in nowise omit under penalty of law. And have then there this
writ.

Witness, B. F. McLEMORE, Clerk of our said Court, at the Courthouse, this
...*6th*....day of....*June*....., 1905., in the 12..*9*..year of the Commonwealth.

Teste :

B. F. McLeMore....., C. C.

-1909-

Frause Bros. & Co.
vs. (Notice for Receiver:

Hines & Cornwell:

I executed the within notice
by delivering a true copy of
same to P. A. Hines and L. J.
Cornwell in person, in South-
ampton County, Virginia, this
6th, day of June, 1905.

Lawrence
DEPUTY FOR J. L. GILLETTE, SHERIFF.

RECEIVED BY THE SHERIFF OF SOUTHAMPTON COUNTY, VIRGINIA, THIS 6TH DAY OF JUNE, 1905.
J. L. GILLETTE, SHERIFF.

TO P. A. HINES AND L. J. CORNWELL:

PLEASE TAKE NOTICE: That on Saturday the 10th, day of June, 1905, at the office of Honorable Robert R. Prentiss in the town of Suffolk, Virginia, we shall ask the Honorable Judge of the Circuit Court of Southampton County, Virginia, to appoint a Receiver to take charge of the stock of goods in the store-house at Dory, Southampton County, Virginia, known as the P. A. Hines store, which is now occupied and controlled by L. J. Cornwell; and allege as our reason for asking for the appointment of such receiver that the said stock of goods has been fraudulently conveyed by the said P. A. Hines to L. J. Cornwell with the intent to hinder, delay and defraud the creditors of the said P. A. Hines.

June 6th, 1905.

Respectfully,

STRAUSE BROTHERS & COMPANY,

By *[Signature]* their Attys.