1794-014 Chancery Causes: Daniel Herring vs George Purdie

Isle of Wight County

other surnames: Wilson

Purdie are contrary to Equity & good conscience and tend to in=
=jure your Orator In tender Consideration whereof and in
as much as your Orator is only relievable in a Court of Equity
~~where it~~ whose peculiar province it is, to grant
Relief in Cases of Accident To the End therefore that the
said George Purdie may be made a party Respondent to this
Bill with apt words to charge him, & be compelled on Oath fully
answer to make to all & singular the premises as fully and
distinctly as if the same were here again repeated and in=
=terrogated and more especially that he may declare —
Whether the Debt^ afs.^ was not due by simple Contract, what
was the original Amount thereof without Interest. Was not
the Tender & Refusal made as above set forth. And finally
has not every other Circumstance paid as also above relat=
ted. Your Orator prays that this Court will ~~grant~~ injoin the
said Geo: Purdie from proceeding on the Judg.^ afs. until
as to the Sum of £2.6.2 Interest as above said ~~Court~~
the the Matters hereof come be fully heard in Equity —
May it please to grant the Commonwealth most gratious
Writs of Subpa & Injunction. &C. &C. R. Carey for Compt.

Isle of Wight County Sct —
David Herring Gent. came before me and made Oath that the
allegations of the within Bill are true — Given
under my hand this 19th day of
August 1791.
C. L. Ballard

Herring
v
Purdie
Bill & Injn.

Herring
v.
Purdie
} Bill of
Injunct.

To the worshipful Court of Isle of Wight County sitting in Chancery humbly complaining sheweth unto your Worships your Orator Daniel Herring ——

That sometime in and about the yeare of Our Lord 1775 your Orator purchased of George Purdie Merchant divers goods Wares & Merchandizes to the amount of £5..11..1, that soon after this paper Money the then currency of this State became greatly depreciated in its value, in so much that your Orator did not think it just to discharge the Debt aforesaid in that currency tho' the Laws of the Land would have justified him in so doing. — That after the abolishion of the Paper Money your Orator recollecting that he owed the said Purdie the Sum aforsd. upon open account and being applied to by Capt. Wilson Cary who then paid unto Purdie to furnish his Argyle pronising to do it but if he again was not satisfied with it willing willing to discharge the same in Specie, he did thereafter by the Hands of a certain Jesse Herring tender unto the said Purdie the full Sum of £5..11 more than enough to discharge the Debt aforsd. which the said Purdie refused to accept. — That before the Court of this County after these Transactions the said Purdie instituted a Suit in this worshipful Court agt. your Orator for the above Sum of £5..11..1 and demanded Interest thereon till [illegible] That after the said Suit was at Issue your Orator duly took the Deposition of the said Jesse Herring which fully proved the Tender & refusal as above mentioned before the commencement of the said Suit, Reference being had to the said Deposition now among the Records of this County Court will further shew, & which he prays may be taken as & for part of this his Bill. — That at a Court held for this County on the day of 1790 this Cause came on to be tried in the absence of your Orator, and when the papers and exibits filed in the cause were called for to be read, the Deposition of the said Jesse Herring was by some accident or other mislaid, whereby your Orator failed in proving the Tender made as above set forth, in Consequence of which a verdict & Judgt. passed agt. your Orator for the Sum of £7..17..3, adding the Sum of £2..6..2 to the amount for Interest. That since the trial the Clerk has found the Deposition aforsd. which is now in Court — That said Purdie has sued out Execution agt. your Orator on the Judgt. aforsd. all which actings & doings of the said

defendant either furnished the complt with another copy of his account, or shewn him his books on which the account was stated amounting to £7..5..4 and he then objected to the articles taken up by Mr Norsworthy amounting to 2/10. and the charge of interest as above. — In April or May 1783 Jesse Herring tendered to this defts a sum of money which he said was to discharge this defts account against Daniel Herring the exact amount of which this defendant does not recollect, but he well remembers that the sum tendered to him did not amount to £5..11..1. which the complainant himself by his bill acknowledges to have been due at that time — Jesse Herring informed this deft when he made the tender aforesaid that he was instructed by Daniel Herring not pay any interest on the account. This defendant soon afterwards commenced a suit on the said account, the trial of which was delayed by the complt for seven years, he, sometimes, pretending that it was necessary for him to have the evidence of one John Lawrence, at other times, that of Jesse Herring at the trial, — but the testimony of neither of them was brought forward on the trial — This defendant confesses that he has obtained judgt for £7.17.3 on the account aforesaid, and issued Execn thereon — All which matters and things this deft is willing to aver and prove as this worshipful Court shall direct and award and prays to be hence dismissed with his costs in this behalf most wrongfully sustained —

Ch fo 24. 115. — 1. 40 43. 8 fo 41 ff

Taulcons for the defts

Sworn to before Brewer Godwin

Pendleton
adm
Herring

The answer of George Purdie, defendant, to the bill of complaint exhibited against him by Daniel Herring, complainant.

This defendant saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the complainants said bill of complaint contained, for answer thereunto, or unto so much thereof as materially concerns this defendant to make answer unto, answereth and saith - That it is true that the complainant was indebted to this defendant, in October 1775 in the sum of £5..11..1. for goods wares and merchandize, by this defendant sold and delivered to the complainant - That this deft, according to his custom, delivered to the complainant a copy of his account about the 5th of October - 1775 at which time the amount of the account appeared to be only £5..0..3, but this deft soon after discovered that he had committed an error of 8/. in extending the prices of some articles, and that he had neglected to charge 2/10 for linen and shallom which were taken up by John Norsworthy (tailor) for the use of the complt, which together with the sum of £5..0..3 made the sum of £5.11.1

This defendant begs leave further to suggest that notwithstanding hostilities had commenced between this country and Great Britain, & articles of merchandize had in consequence thereof, taken a considerable rise that this deft, in consideration of the complainants promising to make him payment in a few months, did actually charge the goods at the lowest cash prices, as will appear by his account, reference thereto being had. That it appears from the books of this deft that he had charged the complt 1/9 for interest on the above account from January 1776 till May 1st. - at which time, as well as this deft recollects, a copy of the account was given to the complt. This deft further sheweth that he continued to receive paper money from his debtors until ~~May~~ June 1779, & that no offer of payment was ever made him by the complt. That some time about the beginning of the year 1783 this deft applied to the complainant for payment of his account, & observed to him that he must have forgotten it, which he said was really the case; - at this time this

Herring
v.
Purdie.
} Injunct. Bond

May 1791
Injunct. Bd filed & an
Injunct. Sp.r granted
July 1791
Rule for Answ.r
August 1791
Answ.r filed & Motion to be Dissolv
Injunct on 1st Day of Sept. Term
Sept.br 1791
Notice to Dissolve Injunct. at Rule
Court nxt
Oct.r 1791
Mot.n for Dec. tomorrow.
March 1792
Notice to Dissolve Injunct. at
Rule Court nxt
August 1792
Notice to Dissolve Injunct. at Sp.r
Court nxt
April 1794
Rule to Dissolve Injunct
at Sep.t Court
August 1794 Injunct. Dissolv.d
& Bill dis.d

15
5
25
30
25
15
115

26
10
26
10
20
1.8
40
1.48

Know all men by these presents that we Daniel Herring William Bridger are held & firmly bound unto George Purdie in the just sum of fifteen pounds seventeen shillings & 6d Current Money of Virginia to the which payment well & truly to be made to the said Geo. Purdie & his Heirs & Assigns we bind ourselves our Heirs Execrs & Admors jointly & severally firmly by these presents Sealed with our seals & dated this 2d day of May 1791. ——

The Condition of this obligation is such that whereas the said George Purdie hath obtained Judgment at Common Law against the said Daniel Herring in the County Court of Lancaster for seven pounds seventeen shillings & 6d & Costs, & the said Daniel Herring hath obtained an injunction to the Execution ~~Judgment~~ as to the Int. Costs in the said Judgment until the hearing of the matter in equity upon a Bill for that purpose filed, if therefore the said Daniel Herring shall satisfy & pay the said Judgment at common Law as to the said Int. & all Costs & damages that shall be awarded to the said George Purdie in case the said injunction shall be dissolved then the above obligation to be void or else to remain in full force & Virtue ——

Sealed & Delivered
In presence of
Francis Young

Daniel Herring Seal
William Bridger Seal