1895-006
Nansemond Co (Suffolk) Chancery Causes: Charles B. Leet for etc vs Taylor Lumber Co. et al

Dunbar & Cope, Gay, Gardner, Holland, Britt

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON William P Taylor late William A Gay and Thomas E Gardner partners trading as The Taylor Lumber Company and E E Holland and Lee Bull Trustees

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the Third Monday in April 1894, to answer a Bill in Chancery exhibited against them in the said Court by Charles B Leet (who sues for the benefit and at the cost of John B Dunbar and Henry Cape partners trading as Dunbar & Cape his assignees)

and have then and there this summons.

WITNESS, A. P. GOMER, Clerk of our said Court, at his office, this 9th day of April 1894, in the 118th year of the Commonwealth.

Teste:

A P Gomer Clerk.

A Copy for
William P Taylor

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

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and have then and there this summons.

WITNESS, A. P. GOMER, Clerk of our said Court, at his office, this 9th day of April 1894, in the 118th year of the Commonwealth.

Teste:

A. P. Gomer Clerk.

Executed the 14th day of Sept 1874
by delivering a 2nd copy of the
within process to each of the
within named defendants in person

A. H. Baker
Sheriff

R R Rent's Pay
Charles B Lee & Co
Vs
John Chenoweth
The Dayton Bundles
& Knuckles.

1894
April Rules
Civil Monday

Assessment
Circuit Court
Rockingham Co Va.
Page 101.

To the Clerk of The Circuit Court of Nansemond County:

Charles B. Leet (who sues for the benefit and at the cost of John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape, his assignees)

Complainant

Against---In Chancery

William P. Taylor, William H. Gay and Thomas E. Gardner, late partners trading as The Taylor Lumber Company, and E. E. Holland and Lee Britt, Trustees.

Defendants.

Issue Summons in Chancery to 2Nd. April Rules 1894.

Tax, $1.50 Paid.

A.P.C

Robt R. Peters

P.Q.

LAW OFFICES
. OF .
HARMANSON, HEATH & HEATH.

L. HARMANSON,
JAS. E. HEATH,
JAS. E. HEATH, JR.

NORFOLK, VA., August 31st, 1894.

E. E. Holland, Esq.,

My Dear Holland:-

I enclose the answer of W. P. Taylor. Let Judge Prentis see it and try to arrange an early day with him for taking his depositions. Of Course, it is understood that we will enter a general demurrer to the bill.

Yours truly,

James E. Heath.

**Know All Men by These Presents,** That we, Charles B. Leet and John F. Lotzia

are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the just and full sum of One thousand DOLLARS, to the payment whereof, well and truly to be made to the said Commonwealth, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

And we waive the benefit of our exemption as to this obligation, and also waive any claim or right to discharge any liability to the said Commonwealth arising under this bond, or by virtue of the office, post or trust herein mentioned, with coupons detached from bonds of said Commonwealth.

Sealed with our seals, and dated this 24th day of October in the year of our Lord one thousand eight hundred and ninety four, and in the 117th year of the Commonwealth.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas in the Chancery cause pending in the Circuit Court of Nansemond County between Charles B. Leet who sues for the benefit and at the Costs of John B. Dunbar and Henry Cape partners trading as Dunbar Cape against William P. Taylor William A. Gay and Thomas E. Gardner late partners trading as the Taylor Lumber Company and E. E. Holland and Lee Britt Trustees, an injunction is awarded to restrain and prohibit the defendant from proceeding to enforce the award made on the 13th day of October 1893 by Paul D. Camp and J. W. Perry by motion in the Circuit Court of Nansemond County or by any other ways or means whatsoever until the further order of this Court. But before the Complainant shall have the benefit of this order he or some one for him shall execute a proper bond before the Clerk of this Court with security to be approved by him in the penalty of $1000. Conditioned to pay all such Costs and damages as may be awarded against him in case this injunction shall be dissolved.

Charles B. Leet SEAL

John F. Lotzia SEAL

SEAL

SEAL

SEAL

In the office of the Clerk of the Circuit Court of Nansemond County, on the 24th day of October 1894

The above bond was executed and acknowledged by the obligors (the surety justifying on oath as to his sufficiency) and recorded.

Teste:

A Copy Teste, C. L. Gomey Clerk

C. L. Gomey CLERK.

Charles B Lee

To Injunction Bond

The Commonwealth.

---

1894

Oct 24th.

A Copy.

Recorded in Official
Bond Book No 1 Page 88

Dunbar & Cape
Vs
Taylor Lumber Co.

Charles B. Lee (who sues for the benefit and at the cost of John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape, his assignees)

v.

William P. Taylor, William H. Gay and Thomas E. Gardner, late partners trading as the Taylor Lumber Company, and E. B. Holland and Lee Britt, Trustees.

This cause came on this day ~~to be further heard upon the papers formerly read~~, and thereupon on the motion of the complainant, an injunction is awarded to restrain and prohibit the defendants from proceeding to enforce the award made on the 13th. day of October 1893 by Paul D. Camp and J. H. Terry, by motion in the Circuit Court of Nansemond County, or by any other ways or means whatsoever, until the further order of ~~the Circuit~~ this Court. But before the complainant

shall have the benefit of this order he, or some one for him, shall execute proper bond before the Clerk of this Court with surety to be approved by him, in the penalty of $1000. conditioned to pay all such costs and damages as may be awarded against him in case this injunction shall be dissolved.

Charles B. Lee et al

vs

Injunction

W. H. Taylor Lumber Co. et al

Entered Oct. 19, 1894

C. M. A.

Entered in Chancery Order Book K No 2 Page 599

Charles B. Leet, Whosoever.

v. Z. In Chancery

The Taylor Lumber Co. et als

Ontte motion of the defendant Wm. P. Taylor, leave is given him to file his demurrer and plea to the bill of the Complainant, and the same are filed accordingly. And thereupon the complainant joined in the said demurrer to the bill and ~~demurred generally and~~ filed a general demurrer to the said plea and moved to reject the same.

On motion of the defendant Wm. P. Taylor leave is given him to file his answer to the bill of the complainant and the same is accordingly this day filed, and the complainant replied thereto generally.

Charles B. Lee, Chancellor
vs
The Taylor Lumber Co. et als

Oct 19th 1894
Order allowing demurrer
& plea to be filed.
C M S

Entered in Chancery
Order Book
No 2 Page 599

Chas. B. Tuck for Pl.

vs.

The Taylor Lumber Co & others

On the motion of the defendant Thos. E. Gardner leave is given him to file his answer to the complainants bill & the same is accordingly this day filed

Charles B. Leet who
sues &c.
vs
The Taylor Lumber Co. &c.

8

Decree

To be entered
C W H
Oct 10, 1894

Entered in Chancery
Order Book No. 2
Page 566.-

In the Circuit Court of Nansemond County:

Charles B. Leet, for &c
v. } In Chancery.
The Taylor Lumber Company et als

This cause came on this day to be heard upon the plaintiffs' bill and exhibits and upon the answer of the defendant, The Taylor Lumber Company and the plaintiffs' replication to said answer, and was argued by Counsel: And it appearing from the statements of Counsel for plaintiffs and the said defendant made in open Court that the plaintiffs have agreed to accept and the said defendant (for seven hundred and fifty dollars ($750 00/100) in full of all demands and claims of the said plaintiffs, On the motion of the defendant The Taylor Lumber Company and by consent of the parties, it is ordered that the defendants E. E. Holland and Lee Britt, trustees, out of the funds in their hands as trustees belonging to the said defendant, do pay to the said plaintiffs or to their Counsel of record, the said sum of seven hundred and fifty dollars ($750 00/100) in full settlement and discharge of the claims and demands of the said Charles B. Leet and his associates, Dunbar and Cape, the plaintiffs in this suit, taking his or their receipt for said payment; and that said trustees do further, out of said fund, pay to the clerk of this Court and the Sheriff of said County all fees due them for services rendered in this suit.

And nothing further remaining to be done in this cause it is ordered that the same be removed from the docket.

C. B. Leet for te
vs Z Inbehaven
The Taylor Lumber Co et als

We consent to the order
The Taylor Lumber Co &
and James E Heath their
counsel
Lee Britt + E. E Sheppard
Dunton

Enter April 13, 1895-
Robert R. Willis.

Entered in Chancery
Order Book No. 2
Page 635.

The Taylor Lumber Company

v.

Charles B. Lee for P.

The defendants by their attorney come and say that the award should not be confirmed and made the judgment of the Court because the arbitrators neglected to adjudicate the questions which were submitted to them; and because the said award does not follow the submission, and does not end the controversy; because the arbitrator and umpire who signed it ignored uncontradicted and admitted facts as to "mutual accounts and indebtedness between the said parties" and for other reasons.

Robert A. Ellis
Attorney.

Charles B. Leet for W. H. Clinton

The Taylor Lumber Co.

The ~~joint and Separate~~ answer of
J. E. Gardner to the bill
of complaint filed against them and
others by Charles B. Lee (who sues for the
benefit and at the cost of John B. Dunbar
and Henry Cape partners trading as
Dunbar & Cape, his assignees) in the
Circuit Court of Hammond County

This respondent reserving the benefit of
all just exceptions to the said bill, for
answer thereto, answers and says:

He ~~They~~ admits
all of the allegations of the said bill. It does
proved before the arbitrators that the defendant
W. P. Taylor collected $2500 on account of
the purchase price of the said property and
that the said Lee at the request of said
Taylor paid a debt of $598.49 due to
Superior Supply company by the Taylor
Lumber company and that the deed for
the property had never been completely
executed or delivered. This respondent believes
that the said Lee should be allowed
credit for these payments, and that he
should be charged a reasonable amount
for the use and occupation of the mine
property for the two months during which
he had possession of it. This would leave
a balance in favor of the said Lee
which should be paid to him out of the

assets of the Taylor Lumber Company.
And being duly answered he prays
to be hence dismissed with his
reasonable costs in this behalf expended
the arbitrators failed to go into
the considerations of mutual accounts
which they ought to in good faith
to have done. T. E. Gardner.

Sworn to before me this 9th day of
October 1894 in the county of
Nansemond by the said T. E.
Gardner.

R. H. Rawles
Notary Public.

Answer of

T. E. Gardner

Charles B. Leet, who sues &c
v. Z. M. Chauncey
The Taylor Lumber Co. et als.

The defendant William P. Taylor says that the Complainant's bill is not sufficient in law.

E. E. Harland
Harmanson, Heald & Heald Counsel
for Wm. P. Taylor.

Charles B. Lee, Trustee
v. Z. Mitchell
The Zeylon Lumber Co. et als.

Demurrer of W. C. Zeylon.

In the Circuit Court of Nansemond County:

Charles B. Leet, who sues for the benefit and at the cost of John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape, his assignees, complainant

Against

William P. Taylor, William H. Gay and Thomas E. Gardner, late partners trading as the Taylor Lumber Company, and E. E. Holland and Lee Britt Trustees. Defendants.

The seperate plea of William P. Taylor, to the bill of complaint exhibited against him and others, in the Circuit Court of Nansemond County by the above named complainant.

The said defendant by protestation, not confessing all or any of the matters and things in said bill of complaint contained to be true in manner and form as the same are therein set forth, for plea, nevertheless, to said bill, doth plead and aver:
That the matters set out in the bill of the complainant and sought to be litigated in this suit, were referred to the determination of arbitrators chosen by the complainant and the defendants, and said arbitrators fully settled and determined the same; by their award in writing a copy of which is filed as an exhibit with the plaintiff's bill, and herewith vouched as a part of this plea. Wherefore the said defendants prays judgment whether he shall be compelled to make any other or further answer to said bill and prays to be hence dismissed with his reasonable costs in this behalf wrongfully sustained.

Hamilton Heath & Heath p.d.
E. E. Holland

Charles B. Lett, Executrix
v.
Z. McKinney
The Leyden Lumber Co. et al

Plea of W. P. Leyden.

Hammonson, Heath & Heath, Att'ys

Circuit Court of Nansemond County:

Charles B. Leet (who sues for the benefit and at the cost of John B. Dunbar and Henry Cape partners trading as Dunbar & Cape, his assignees) Complainant.

Against

William P. Taylor, William H. Gay and Thomas E. Gardner late partners trading as The Taylor Lumber Company, and E. E. Holland and Lee Britt Trustees Defendants.

I, William P. Taylor, in answer to the bill of complaint filed against me and others by Charles B. Leet, who sues for the benefit and at the cost of John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape assignees of Charles B. Leet, say as follows:

I admit that I did on the 7th day of June 1892, acting for and in behalf of the firm of The Taylor Lumber Company, (composed of William H. Gay, Thomas E. Gardner and myself) sell to the said Charles B. Leet for the sum of $21,500, the saw mill plant, including real and personal property belonging to the said The Taylor Lumber Company, located in Nansemond County Va. near the town of Suffolk.

The deed conveying such property to the said Leet was drawn in accordance with instructions given by the said Leet and myself, and not by instructions of myself alone, as the bill implies, if it does not state; it was signed and acknowledged by me the day it was drawn, and by my wife on the 9th day of June 1892. The other members of The Taylor Lumber Company, William H. Gay and Thomas E. Gardner, had authorized and approved of the said sale made by me and had expressed themselves as being entirely willing and ready to unite in a deed conveying and transfering the property to the purchaser

and the deed of conveyance was left by the said Leet and myself with R. R. Prentis to be executed by them in pursuance of their agreement to execute the same. It was subsequently executed by Gay, but Gardner has failed and refused to execute it. The said Leet was put into full and complete possession of the entire property purchased by him as aforesaid pursuant to said sale on the 9th day of June 1892 and the said Leet paid $300, at one time and $2200, at another, but said last payments was not made on the dates alleged in the bill, not in fact until after the said Gardner had refused to, execute said conveyance and the said Leet well knew that he had so refused. It is not true that said payments were made upon my assurance to the said Leet that the said Gardner would execute and deliver said deed, for I made no such assurance after he refused to unite in the deed, and as before stated the aforesaid payments was made after that and afetr the said Leet knew that he declined and refused so to unite. Nor is it true that I ever assured the said Leet that my co-partners could be forced to specific performance of the contract by legal process. On the contrary after the said Leet knew that Gardner had refused and declined positively to execute the said deed and after the payment of the said $300 and $2200, I went to the said Leet and offered to cancel the sale and to take the property back and pay him back the $2500 paid by him, if he would deliver up the property to which proposition the said Leet replied that he had bought and taken possession of the property and would not surrender it, and would take legal steps to compel Gardner to execute the deed. It is not true therefore that the said Leet remained in possession because he relied upon any assurance of mine given after Gardner had declined to unite in said deed, which fact

was as well known to Leet as to any one else, and because he had paid $2500; but it is true that he declined to pay the amounts which he had agreed to pay and he put his refusal upon the ground that Gardner had failed to execute the deed of conveyance, all the time claiming however that the property was his notwithstanding Gardner's refusal to sign and insisting that he would retain possession & compel him to sign the deed of conveyance. It is true that Leet paid on the 23rd day of July 1892 a debt of $598.49, due by the said Taylor Lumber Company to the Suffolk Supply Company. When I sold the property, a part of the agreement was that additional insurance amounting to $3000, should be taken out upon the mill and kilns for the benefit of the said Taylor Lumber Company by the purchaser, and oh the 6th day of August a policy for that sum was ~~paid~~ issued by the State Insurance Company to The Taylor Lumber Company upon the mill and kilns, the premium upon which was paid by the said Leet after the fire, but which I told the agent of the Co. at the time The Taylor Lumber Company would pay if Leet ## failed to pay it, and which I have good ground for believing was charged to The Taylor Lumber Co. when the policy was issued. It is not true that I ever agreed that a policy of insurance for $3000. should be taken out on said property assigned to Leet as security for the amounts which he had advanced. The terms of refusal to said insurance is as above stated by me. It is not true that there was any understanding ## that in case of fire the amount which should be realized on said policy should be paid to Leet to indemnify him from loss on account of such advancements made by him to The Taylor Lumber Company. He had made no advancements. He had made a payment on account of his purchase, and he had paid a note of $598.49, held by the Suffolk Supply Co. against The Taylor Lumber Co. as a further part of the purchase price. The said policy of $3000 was for the protection of the said Taylor Lumber Company and not for the benfit of the said Leet, except

as a protection to the property which he had bought and taken possession of, and held as his own subject to the unpaid purchase price thereof. Never until after the fire did Leet claim that his right to said property was dependent upon or effected by the action of Gardner. His claim & action was to the contrary.

I admit the allegations contained in the second paragraph of the said bill. The Taylor Lumber Company as vendor of the property, simply claimed, that until the unpaid purchase price was paid by the vendee, Leet, the said Company was entitled to have the insurance money ~~to be~~ collected and the proceeds of sale of the land and debris of the mill thereon applied thereto. Leet was insolvent and owed The Taylor Lumber Company $21,500, and the interest thereon, subject to the payments of $300 and $2200, and $598.49, the amount of the note aforesaid, and until this was paid, he had no claim in law or equity to the proceeds of said policies or the sales of the mill property. His right ~~## ########~~ was an equity of redemption and nothing more.

I admit the submission in writing to Paul D. Camp and Howard Johnson and the selection of J. W. Perry as umpire and that Camp and Perry made their award in writing on the 13th day of October 1893 and returned the same, and I am informed that a rule has been ordered by this court upon said award as the statutes in such cases provides. The said award disposes of every question submitted. All the evidence upon all the matters involved and in dispute were heard, and all questions settled and determined. I deny therefore, that the arbitrators and umpire decided two of the three questions submitted, but ignored and failed to decide the other question. It is true that they decided that the proceeds of insurance of the said policy in the Virginia State Insurance Company and the land and debris (or as they term it the Salvage) of the burnt property

were liable and subject to the patment of the debt for the unpaid purchase price of said property and that the said Leet had no claim or lawful demand against the said Company because of the payments made by him on account of the purchase price and no claim to the said insurance until the balance of the purchase money was paid. Leet was in possession of the property using it as his own and had been for two months or more when it was destroyed. He had taken upon himself to compel Gardner to execute the deed of conveyance, and had positively refused to surrender the property and be placed in statue quo, because of the refusal of Gardner to then become a party to the conveyance, and with the facts before them the arbitrators determined that the property purchased, or what remained after the fire and the collaterals, that is to say the insurance policies or their proceeds, belonged to said Company, that is to say, the said Company was entitled to the same, until Leet discharged his debt for the purchase price. Such was their judgment and such is the true meaning and intent of their language, whether aptly or clearly expressed ### or not. The arbitrators were not lawyers, not skilled in technical language, but plain, honest, business men of high character and intelligence and large experience, who heard all the evidence and determined as above stated. It is not true that they determined that the failure upon the part of Gardner to execute the conveyance to Leet prior to the fire relieved Leet of his responsibility as purchaser, and that what remained of the property, notwithstanding the fact of the sale to Leet and his possession pursuant thereto, belonged to said Company. They did hold that it belonged to the Company subject to Leet's right of redemption. Nor is it true that said arbitrators ignored the question of mutual accounts.

They fully considered and passed upon this question and such action upon their part is plainly deducible from their award.

I deny that it was proven by the complainant and admitted by me, that complainant had advanced the sum of $3098. 49, and it was proven that he paid according to his agreement $50 for insurance taken out by him pursuant to his agreement for the benefit and protection of said Company. It is not true however that said Company was indebted to him for said sums. He was entitled to credit for the payments made by him and received credit therefor in the award made by said arbitrators. Said arbitrators heard all the evidence and admissions, fully considered them, ignored nothing, and passed upon the said claim of said Leet, which in fact was the only claim he set up and the only matter of account claimed by him to exist between him and the said Co.

I deny that by said award the contract of sale, or the sale, is declared abrogated and annulled, or that by said award the plaintiff received nothing for the payments he made. He received the property purchased by him. He received all he bargained for or was entitled to receive.

The argument made by the plaintiff in his bill as to the necessary legal and equitable result of the judgment of the arbitrators is as unsound and illogical, as some of his allegations of fact are from inception.

It is not true that said Company has all the property that the fire left and $3248.49 of the complainants money. It is true that plaintiff paid $3098.49 and that the arbitrators so found, and it is also true that the said Co. is entitled to hold the insurance, and the property left by the fire, and the balance of the purchase money is unpaid, and the

arbitrators so decided. The land and debris are not worth to exceed $1200, and were valued by the arbitrators, as I am informed at that sum, and after crediting Leet with his payments $3098.49 and with insurance and value of land and debris, or salvage, there will still be due The Taylor Lumber Co. by the said Leet, who as before stated in insolvent, ~~about~~ more than $1,000, in.principal exclusive of interest.

I deny that said award is void as charged by the said complainant, and I deny that any of the grounds alleged by him upon which he bases his conclusion that the same is void, in fact exist, and I deny all statements made by complainant not specifically admitted.

The said award left nothing unconsidered or undetermined that was submitted to the arbitrators for settlement; it is full, complete and final upon each and every matter of difference submitted, and is just and impartial and should stand as made, and be entered up as the judgment of this Court.

And having fully answered I pray to be dismissed &c.

W. P. Taylor

Lect, whosoever
v. } In Equity
The Taylor Lumber Co

Answer of W.P. Taylor.

Sept. 1. 1894

L. Harmanson. James E. Heath. James E. Heath, Jr.

HARMANSON, HEATH & HEATH,

ATTORNEYS AT LAW,

*OFFICES IN BUILDING, 57 MAIN ST.*

OPPOSITE ATLANTIC HOTEL, NORFOLK, VA.

Whereas by an agreement in writing entered into on the 4th. day of October 1893 between W. P. Taylor, W. H. Gay and T. E. Gardner, late partners as The Taylor Lumber Co. and E.E. Holland and Lee Britt, Trustees, parties of the one part and Chas. B. Leet and Jno. B.Dunbar and Henry Cape, partners trading as Dunbar & Cape, Assignees of the said Leet, parties of the other part; Paul D. Camp and Howard N. Johnson were named as parties to arbitrate, award and determine all differences and disputes concerning the settlement as to the purchase and sale of certain property of The Taylor Lumber Company and as to the alleged mutual account and indebtedness between thexxxi said parties, and as to the proper person to whom the sum of $3,000.00, the proceeds of policy #45,219 of the Virginia State Insurance Company of Richmond, Virginia,now held by Mess. E. E. Holland and Lee Britt, Trustees, should be paid. And whereas J. W. Perry, under and by virtue of the agreement aforesaid, did sit in the Town of Suffolk County of Nansemond, State of Virginia on the 13th. day of October 1893 and after hearing all the evidence and the arguments of Counsel, do make this their report and award under powers contained in agreement aforesaid.

1st. The sum of ($3,000.00) Three thousand Dollars the proceeds of policy number 45,219 of the Virginia State Insurance Company of Richmond, Virginia, now held by Mess. E. E. Holland and Lee Britt, Trustees, is the property of The Taylor Lumber Company and should be paid by the said E. E. Holland and Lee Britt, Trustees, to the said The Taylor Lumber Company,

2d. That the land upon which the mill was formerly located, and all salvage thereon, is the property of The Taylor Lumber Company.

Given under our hands and seals, this the 13th. day of October in the year eighteen hundred and ninety three.

Paul D. Camp (Seal)

_____ (Seal)

J. W. Perry (Seal)

Corporation of the City of Norfolk, to wit:

I W. D. Pender, Notary Public for the Corporation aforesaid in the State of Virginia, do certify that Paul D. Camp and J. W. Perry, whose names are signed to the writing above, bearing date on the 13th. day of October in the year 1893, have acknowledged the same before me in my Corporation aforesaid.

Given under my hand this the 13th. day of October in the year 1893.

W. D. Pender

Notary Public

Award.

Exhibit No. 3.
with Bill of
Lee
v.
Taylor Lumber Co.

THIS AGREEMENT made this 4th. day of October 1893, between W. P. Taylor, W. H. Gay and T. E. Gardner, late partners as The Taylor Lumber Company, and E. E. Holland And Lee Britt, Trustees, parties of the one part, and Charles B. Leet, and John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape, assignees of the said Leet, parties of the other part.

WHEREAS certain differences and disputes have arisen between The Taylor Lumber Company, and Charles B. Leet with reference to ybe purchase and sale of certain property of The Taylor Lumber Company, and as to alleged mutual accounts and indebtedness between the said parties, and as to the proper person to whom the sum of $3000., the proceeds of policy No. 45219 of The Virginia State Insurance Company, of Richmond, Virginia, now held by Messrs. E. E. Holland and Lee Britt, as Trustees, by virtue of the agreement dated October 11th. 1892, shall be paid.

NOW THEREFORE this Agreement WITNESSETH, that the said parties have this day agreed to submit the questions to arbitration, and they mutually promise and bind themselves, their executors, administrators, assigns &c., each to the other, that they will on their respective parts, in and by all things well and truly perform and keep the award of Paul D. Camp and Howard M. Johnson, indifferently chosen by the said parties to arbitrate, award and determine all such differences and disputes, and all manner of actions, causes of action, suits in equity, contracts, covenants, promises and accounts, by and between the said parties and involved in the said differences and disputes, so as the award of the said arbitrators be made and set down in writing under their hands and seals, ready to be delivered to the said parties in difference, on or before the day of 1893.

And if the said arbitratore shall not make such their award of and concerning the premises, within the time limited as aforesaid, then the said parties mutually promise and bind themselves, their executors, administrators, assigns &c., each to the other, that they will on their respective parts, in and by all things well and trly perform and keep the award, determination and umpirage of such person as may be chosen by the said arbitrators for umpire, in and concerning the premises, so as the said umpire do make and set down his award and umpirage in writing, under his hand and seal, ready to be delivered to the said parties in difference on or be fore the 15th. day of October 1893.

And it is hereby agreed by and between the said parties, that these presents, and the submission hereby made of the said matters in controversy, shall be made a rule of the Circuit Court of the County of Nansemond, to the end that the said arbitration and award in pursuance of the presents, according to the statute in that case made and provided.

Witness the following signatures and seals.

W. P. Taylor (seal)

T. E. Gardner (seal)

W. H. Gay (seal)

(seal)

(seal)

C. B. Leet (seal)

James B. Dunbar (seal)

Henry Cape (seal)

Dunbar & Cape.

Arbitration
Agreement

Exhibit No. 2.
with Bill of
Lee &c
v.
Taylor Lumber Co.

WHEREAS certain differences and disputes have arisen between The Taylor Lumber Company, a copartnership composed of W. P. Taylor, William H. Gay and T. E. Gardner, lately doing business near Suffolk, Virginia, and Charles B. Leet, with reference to an alleged purchase and sale of certain property of The Taylor Lumber Company, and as to the collection of certain policies of insurance on such property;

NOW THEREFORE this Agreement Witnesseth, that it is mutually understood and agreed that the policy of insurance for Three thousand Dollars, issued by the Virginia State Insurance Company, of Richmond, Va., on the mill and kilns dated August 6th. 1898, and numbered 45219, shall be collected by Messrs. E. E. Holland and Lee Britt as Trustees, and the proceeds thereof held by them to await the settlement of the differences and disputes between the said parties, as to such alleged purchase and sale, and as to the proper person to whom the proceeds of such policy of insurance should be paid.

But it is expressly understood and mutually agreed that if the said The Taylor Lumber Company shall succeed in holding the said Leet responsible as the purchaser of [illegible]roperty then the said proceeds and the mill site and boilers on the mill site are to be held responsible to to the Taylor Lumber Company to pay any damages or any amount for which the said Leet may be held liable to The Taylor Lumber Company on account of such alleged purchase; and that if the said Leet shall succeed in establishing his claim to the proceeds of the said policy and escape from liability as the alleged purchaser of the said property then the said E. E. Holland and Lee Britt, Trustees shall promptly and without delay pay and deliver such proceeds of such policy to him or to his attorneys or assigns.

And this agreement is not to prejudice either party in the prosecution of his or their legal or equitable rights, but both are to have the same legal and equitable rights as they would have had if such insurance policy had not been collected by said Trustees, or by The Taylor Lumber Company.

And it is further agreed that thexamounts due on the the two drafts drawn by the Taylor Lumber Company and accepted by the John L. Roper Lumber Company, one for $2500. dated April 4th. 1892, and payable ninety days after date, and the other for $2000. dated April 21st. 1892, and payable ninety days after date, and secured by a deed of trust on the property destroyed, which drafts are now held by said Charles B. Leet, shall be paid in full out of the amount of money collected on the Insurance policies on the property known as The Taylor Lumber Company mill, to Charles B. Leet or his assigns or attorney, promptly and without any delay as soon as it is collected, and this shall be full authority to Wilbur J. Kilby, Trustee and to any other person into whose hands or possession such insurance money may come to pay over such money that is the amount due on such drafts to the said Leet or his assigns, and this also is without prejudice to the xx rights of either party.

Given under our hands this 11th. day of October 1892.

The Taylor Lumber Co
pr. W. P. Taylor

E. E. Holland Atty

Lee Britt, Atty

C. B. Leet

Robert R. Prentis, Atty.

Agreement
Oct. 11. 1892

Exhibit No. 1.
with Bill of
Lee to

v.

Taylor Lumber Co.

CIRCUIT COURT OF NANSEMOND COUNTY.

Charles B. Leet ( who sues for the benefit and at the cost of John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape, his assignees) Complainant.

Against

William P. Taylor, William H. Gay and Thomas E. Gardner, late partners trading as The Taylor Lumber Company, and E. E. Holland and Lee Britt, Trustees. Defendants.

To the Honorable Chandler W. Hill, Judge of the Circuit Court of Nansemond County:

Complaining showeth unto the Court, your Complainant, Charles B. Leet ( who sues for the benefit and at the cost of John B. Dunbar and Henry Cape, partners trading as Dunbar & Cape, his assignees) the following case:

1. That on the 7th. day of June 1892 William P. Taylor, claiming to be acting for himself and his copartners, William H. Gay and Thomas E. Gardner, who together composed the firm The Taylor Lumber Company, undertook to sell to the Complainant, Charles B. Leet, the entire saw mill plant, including real and personal property, belonging to The Taylor Lumber Company, located in Nansemond County, Virginia, near the Town of Suffolk, for the price of Twenty-one Thousand Five Hundred ($21,500.) Dollars. The Deed conveying such property to the said Leet was drawn in accordance with the instructions of the said Taylor, was signed by him, and on the 8th. day of June 1892 was signed and acknowledged by his wife. It was understood that in a few days it would be signed, acknowledged and delivered by the other two partners and their wives, and in the mean time it was left for safe keeping with Mr. Robert R. Prentis, Attorney at Law, and not delivered.

interval on the 10th. day of June 1892,
In the ~~mean time~~ the said Leet was put in possession of the property. The Complainant relying upon the assurance of the said Taylor that The Taylor Lumber Company would execute and deliver the said deed for the said property, paid on the ~~8th.~~ 8th. day of June 1892 $300. and on the 10th day of June 1892 $2200. aggregating ~~day of June 1892~~, $2500. on account of the purchase price of the said property.

In a few days afterwards he learned that the other two partners Messrs. Gay and Gardner repudiated the action of their co-partner, and they both declined to sign and deliver the said deed. The said William P. Taylor however assured the Complainant that he had full authority from his co-partners to sell the property, and that they would in a short time confirm his action, and execute the conveyance, and that if they failed to do so they could be forced to specific performance of the contract by legal process. Relying upon these assurances, because he wanted the property, and as he had already paid $2500. of the purchase money he retained possession of the same, but positively refused to pay any further part of the purchase money, or to deliver the Deed of Trust to secure the deferred payments, until The Taylor Lumber Company should execute the conveyance of the property.

A few weeks after that time the said William H. Gay did sign the said deed, but the said Gardner showed no sign of yielding. While the transaction stood thus, on the 23rd. day of July 1892, at the request of the said Taylor he paid off the note due by The Taylor Lumber Company to Suffolk Supply Company, amounting to $598.49. As the said Gardner still refused to sign the said deed Complainant asked that an insurance policy be taken out for his benefit and assigned to him as security for the amounts which he had thus advanced, and the said Taylor agreed to accede to this request.

Accordingly a policy of insurance was on the 6th. day of August 1892 written by The State Insurance Company in the name of The Taylor Lumber Company for $3000., with the understanding that in case of a fire, the amount which should be realized thereon should be paid to the said Leet to indemnify him from loss on account of such advancements made as aforesaid to The Taylor Lumber Company.

2. That shortly after this, namely, on the 10th day of August 1892, the said saw mill property was destroyed by fire, and The said The Taylor Lumber Company claimed all of the insurance on the said property, assigned all of the policies of insurance to E. E. Holland Esquire and Lee Britt Esquire, as Trustees, for collection and distribution among the creditors of The Taylor Lumber Company, as the Complainant is informed. Along with other policies the policy of The State Insurance Company for $3000. above referred to, was assigned to the said Holland and Britt Trustees, and Complainant's right to receive the money due thereon was denied. Thereupon on the 11th. day of October 1892 an agreement was entered into between the said parties, authorising the said Holland and Britt , Trustees, to collect and hold the money due thereon until the questions in dispute between the parties claiming the same could be adjusted and determined. A copy of the said agreement is herewith filed, marked Exhibit No. 1. and Complainant prays that it may be read as a part of this bill.

3. That afterwards, to wit, on the 4th. day of October 1893, the said parties agreed in writing, under seal, to submit all the questions at issue between them to Messrs. Paul D. Camp and Howard N. Johnson, as arbitrators, and in case of their disagreement to such umpire as they might select.

A copy of
The said agreement is herewith filed marked Exhibit No.2.and Complainant prays that it may be read as part of this bill. The said arbitrators being unable to agree, selected Mr. J. W. Perry, as umpire, and on the 13th. day of October 1893, the said Camp and Perry returned their award. A copy of the same is herewith filed marked Exhibit No. 3, and Complainant prays that it may be read as part of this bill. From the face of this award it appears that the said arbitrator and umpire decided two of the three questions submitted, but ignored and failed to decide the other question. They decided , first, that the proceeds of the policy of insurance in question, of the Virginia State Insurance Company, is the property of The Taylor Lumber Company, and secondly that the land upon which the mill was located and all salvage thereon is the property of The Taylor Lumber Company, and thus determined by reason of the failure of the said The Taylor Lumber Company to convey the property, in accordance with the said agreement to the said Leet, before the occurrence of the fire that the said Leet is not responsible to them as a purchaser of the same, ~~all~~ and that what remains of the property still belongs to The Taylor Lumber Company, but they entirely ignore all questions of mutual accounts between the said parties, although these questions were also submitted to them. There was no conflict whatever in the testimony on these questions of mutual accounts. That it was proved by the Complainant and admitted by the said Taylor that the Complainant had advanced the sum of $3098.49 to the said Company, and paid the sum of $150. for insurance as above alleged, for all of which The Taylor Lumber Company was responsible, and yet notwithstanding the clear, undisputed and indisputable evidence that the said

The Taylor Lumber Company was thus indebted to the Complainant, the said arbitrator and umpire ignored all of such evidence and admission, and made no award whatever as to this clearly proven claim of the Complainant against The Taylor Lumber Company. By the said award the contract of sale is declared abrogated and annulled, the land and salvage are adjudged to belong to The Taylor Lumber Company, the proceeds of the insurance policies are all put in their power, but no provision is made requiring them to refund the part of the purchase money for the said property which they have received from the complainant, and thus the Complainant has received nothing in return for his money.

That the necessary legal and equitable result of adjudicating that all the insurance, and all the property involved in the controversy belongs to The Taylor Lumber Company, is, that the money paid to them on account of the purchase price of the said property, should be refunded to the Complainant, because the consideration for such payment has failed.

The result of the award is therefore, that The Taylor Lumber Company has all of the insurance on the property amounting to $16,100. all of the property that the fire left, and has never parted with its title to any part of its assets to the Complainant, and has in addition the sum of $3248.49 of the Complainant's money, paid on account of the purchase price of the said property, which amount the said The Taylor Lumber Company refuse to repay to the Complainant.

In neglecting to adjudicate the questions arising on the mutual accounts of the parties the said award is defective because it does not follow the submission and does not end the controversy.

The complainant is advised and therefore charges that the said award is void because the arbitrator and umpire who signed it ignored the uncontradicted and admitted facts of the controversy as to the amount of the indebtedness of the said The Taylor Lumber Company to the Complainant; that it is void because it fails to follow the submission and determine the questions of "alleged mutual accounts and indebtedness between the said parties", and that these questions of account and indebtedness are so intimately and closely connected with the other questions which they undertook to determine, that to enforce the said award would be inequitable and unjust; that the said award is neither mutual nor final, in that it leaves a most vital and important part of the controversy undetermined and unsettled, and makes a new controversy instead of settling all the existing disputes as was contemplated by the parties.

Forasmuch therefore as the Complainant is without remedy save in a Court of Equity where such matters are properly cognizable and relievable, he prays that the said William P. Taylor, William H. Gay and Thomas E. Gardner, late partners trading as The Taylor Lumber Company, and E. E. Holland and Lee Britt Trustees, may be made parties defendant to this bill, and required to answer the same( but answers under oath are hereby waived), that they may be enjoined from proceeding to enforce the said award by motion in the Circuit Court of Nansemond County or by any other ways or means whatsoever, that the said award may be wholly set aside, annulled and avoided, and for such other, further and general relief as the nature of the case may require, and the principles of equity may justify.

And Complainant will ever pray &c.

Let a Summons go &c.

Charles P. Lee

Robert C. Stubbs.

P.Q.

State of Virginia,

County of Nansemond, to wit:

This day personally appeared before me, the undersigned, a Notary Public for the County aforesaid, in the State of Virginia, Charles B. Leet, and made oath that he believes that the statements made in the foregoing bill are true. Given under my hand thid 7th. day of April 1894.

C. H. Causey Jr.

Notary Public.

Charles B. Lee for Pl.

v. Bill

& 3 Exhibits

The Taylor Lumber Co.

R R Prentis p.q

Charles B Lee-Jr &c

vs. In Chancery

The Taylor Lumber Co &c

1895

April 13th.

Removed from

Docket.

Nansemond

Circuit Court.

Costs

| | |
|---|---|
| Clerk. | 6.25 |
| Shff. | 2.50 |
| atty | 15.00 |
| Say | 1.50 |
| | $25.25 |