John G Newbert
vs
James R Coulter
In Blount Chancery
& Supreme Court

Brief of Thos N. Brown Solicitor for Defendant

As the "assignment of Errors" of the Complainants in this cause are rather in the nature of an Extended brief of the facts and questions involved in this whole cause and record, I deem it proper for me to address myself to this whole record in a brief manner in order to properly present our defence.

The main allegations of the Bill are that Complainant, Newbert, purchased from the Defendant Coulter a one half interest in the old "McGee Mill property" in Blount County some seven or eight years before the filing of this Bill, for the consideration of six hundred dollars, and that the consideration was paid, and that Defendant made him a title bond for title. That after his purchase of the half interest, the mill property was levied upon by the Sheriff to satisfy a Judgment from this Court, for damages by back water from the mill dam, to the property of C. B. Davis and wife. The property was sold for cash

thousand dollars,
C.B. Davis & wife were about to bring a second suit for same cause and were talking of making complainant a party. When, at the solicitation of defendant and a promise on his part to pay one half of proceeds of sale of mill property to complainant, he delivered up the title bond to defendant.
Now complainant claims of of defendant, either six hundred dollars the alleged consideration, on the five hundred dollars, half of the amount for which the mill property sold, But it is very hard to tell from this record which amount he claims. but seems to be just which ever amount he can get. (Like the boy who, when asked, what he asked for his bunch of pins. answered that Daddy said for me to take ten cents if I could get it, if not, to take five cents for it) So if complainant cant get six hundred dollars, he will most willingly take five hundred.
The defendant in his answer admits the sale to complt of a one half interest in the mill property. But he denies that the consideration was six hundred dollars, and insists that it was estimated to be a thousand dollars, as the title bond shows, Record page He further denies that complainant ever paid him the purchase money, and denies that he ever promised to pay complt five hundred

dollars on half of what the mill property should sell for, and says that on a fair settlement complt really owes him

The real facts of this case, as appears from this record are these.
Sometime in the seventies, the defendant Coulter purchased the old McKeen Mill property, which before his purchase had been in litigation for many years and in consequence of the litigation, the mill dam had almost rotted down, and in the meantime C.B. Davis & wife had erected a small mill just above the dam on the same stream, so that when defendant Coulter rebuilt the old McKeen mill dam Davis and wife claimed that the back water from Coulters dam flooded their mill wheel, and so Davis & wife filed a bill in the chancery court seeking to have the McKeen or Coulter dam torn down, or abated that case came to this court and was decided in defendant Coulters favor, the court deciding in substance, that Coulter had the right, not only to keep his dam at its present height at that time, but to raise it even higher than it was, That, there had been no abandonment of any water or back water privileges while the property was in litigation,
Immediately after the rendition or perhaps before final decision of this decision by this court, C.B. Davis

and wife brought another suit against defendant Coulter in the Circuit Court for damages caused by over flow of back water from defendants dam. Or in other words, for the same cause. Simply in a different court.
During the pendency of the damage suit in Circuit Court, Complainant Newbert, who is a Son in law of defendant and is also a Mill Right. Was working upon the Mill for defendant. There was an unsettled account between them for some work done and some money that complainant had of defendant from, But neither party knew how the account stood between them, as complainant himself swears.
(See answer to 4 questions 4-5-6 & 7 his deposition transcript page 33)

Defendant was being hard pressed for money to defend this damage suit when he made a proposition to his Son in law. the complainant (who was then in good circumstances financially but has since become insolvent and broken up) that he take a half interest in the mill property and help defendant defend the suit. complainant accepted the proposition.
The title Bond on file (Transcript pages 77 & 78) shows the consideration to have been - one Thousand dollars

defendant Damages it was estimated to be one thousand dollars. (See defts deposition transcript, page 65 Question 2 ans)

In payment of the consideration complainant was to cancel his account against defendant for some work and for some money that deft had gotten, neither party knew the exact amount, and complainant was further to bear one half of the costs of the Lawsuit with Davis & wife, Witnesses, Lawyer fee &c. and take his chances on the result of the suit. If they lost he was to bear half the costs and damages, if they gained the suit he was to have a deed for a one half interest in the Mill property, which in that event would be very valuable. Both parties felt very sanguine of their success by reason of the recent decision of this court in defendants favor on the Chancery suit about Same cause and very same parties, It was just such a trade and contract as any partner in law and Equity would most likely make with each other, being interested in each others welfare.

That this was the contract and trade, I think this record abundantly shows, Complainant is the only witness who says that it was not the contract. His wife, who is his only witness

beside himself, admits that she was not present when the contract was made, and also admits that she does know anything about the Law-suit whether her husband was to pay any costs Lawyers fees witnesses &c or not,

(See her answers to cross questions 2 page 45 and 7 page 46 of transcript in her deposition)

She thereby discloses her ignorance of this whole matter except as she had heard her husband talk and that most likely, since the beginning of this suit,

On the other hand defendant tells most positively and specifically that that was the contract

(See his deposition Questions 2 & 3 pages 65 & 66 of transcript)

Carlton is corroborated by two disinterested witnesses, J S. Boling and Andrew Hatchen,

Boling, who lived upon the property at the time, heard the Parties make the contract or repeat it in his presence At which time complainant advised defendant not to compromise the suit, that they could gain it.

Boling says that complainant was consulting Judge Brewer and Mr Leonard and they had agreed to defend the suit &c

(See Boling deposition Transcript Pages 49-50-51 52-53)

Read his deposition

Andrew Hatcher was the miller at or during the Lawsuit, and says that Newbert paid witness out of the mill, Employed by both Newbert & Cravelin to run the mill, And heard Complainant Say what they would do when they gained the Lawsuit, (See Hatcher Deposition transcript pages 60 - 61 - & 9 Ans to question 4-10-13)

So we find Complainant looking up Evidence, Employing Counsil, paying witness and advising defendant not to compromise with Davis and telling what we will do when we gain the Lawsuit, yet he tries to make the impression he had no interest in the Lawsuit,

If the consideration was only six hundred dollars and that had been paid before the track was made and the Judgment rendered, Why did defendant make a title bond and why did Complainant accept it! To make a deed on demand it simply shows that no deed was to be made until the suit was ended and Complainant should pay half the Expenses of the suit.

The damage suit was decided against Cravelin by this Court and the Judgment and costs amounted to about two thousand dollars. Had Cravelin

gained that suit. This suit would never have been brought. He that sent Complainant would have made a fine bargain.

After the answer of defendant was filed, Complainant virtually abandoned his first claim of Six hundred dollars and undertakes in his proof to establish his other claim of five hundred dollars, one half of which the mill property was sold for, and that to himself, claiming that after the judgment was rendered against Lewellen, that Lewellen promised to pay him one half of whatever the mill property sold for if he would surrend up the title bond,

On this claim, complainant gets himself mixed up and in his deposition contradicts the allegations of his Bill which is also sworn to.

One of the allegations of his bill is, that after the mill property of defendant was levied upon by the Sheriff to satisfy the Davis & wife judgment for damages, that said Davis & wife were about to bring a second damage suit for same cause and were talking about making complt a party, because of his interest in said mill. Now this allegation was true, as defendant says in his answer and his deposition. But Complainant on his cross ex denies and pretends that he did not know at the time

he gave up title bond. That Davis & Wife were talking of making him a party to a dismissed damage Suit.
(Ans to Ques 14 his deposition page 35 of transcript;

Complt says this or attempts to deny that he knew that there was any litigation pending about the Mill property with Davis & wife at the time he purchased a half interest in the property.
(See his deposition Ans to Question 7 on cross of transcript page 34)

But in answer to the next and a direct question, after Squirming around on his seat, he admits that "on reflection" that the Suit had been begun (See his deposition Ques 8 page 34 of transcript)
(Best read deposition)

Again in answer to question 14 of complainants Examination in his deposition, he says he delivered the title bond up to defendant before the rendition of the Davis Judgment

(See his deposition page 30-31)
He alleges in his Bill that the Judgment had been reversed and the Mill property levied upon by the Sheriff. and that Davis and wife were talking of making him a party

upon he gave up the title bond to Defendants. So that there is a plain contradiction between Complaints allegations in his Bill and his deposition both of which are sworn to, which Statement will the Court believe? In his Bill he states (Page 3 & 4) it as a fact, that Davis and wife were about to bring another suit and make him a party, In his deposition he says he didnt know anything about it, but that perhaps Defendant told him so. Which shows plainly how reckless and uncertain and unreliable his Complts, testimony is.

The facts are that after the judgment was rendered by this Court in Davis & wifes favor and the Mill property and all the other property of Defendants was levied upon by the Sheriff and every one knew that the property of Lumber would not pay the judgment & Costs and that Defendant was ruined financially, Davis & Wife were talking & bringing a second Suit and were going to make Complt a party, for at that time Complt had considerable property and Davis & wife thought they would get what property Complt had, by reason of his owning a half interest in the property, & Defendants Lumber having the interest of his Son in law and his daughter at heart, Knowing that he

was ruined and that it would break him up to pay out, And thinking it would be useless and needless to have the property of Complainant involved in a Discord damage Suit, went to Complt and told him that it would be better for him to deliver up the title Bond as it was not acknowledged or recorded and perhaps thereby prevent himself being made a party to the Suit, that if the mill property should sell for more than the Judgment & Costs, that Complt would get his part just the same, Neither party Expected the mill property to pay the Judgment & it did not by a thousand dollors, And that was the reason and the only reason in the world for Complt giving up the title bond, Defendant Swears that was the only reason and So does the Complt, When asked on Cross 4 if that was not the reason he answers that it was,

(Complt deposition Question 151 page 36 transcript)

Read it

Defendant never promised to pay him half of what the property sold for, Such a promise would seem preposterous and non Sense; The property was under levy, as well as all the other property of Defendant, and advertised

for sale. And Defendant could not have given complainant half of purchase price had he promised to and this the Complt well knew at the time, and he could not have been influenced by any such promise to give up the title bond. Complt is not a fool by any means,

Hie Complainant admits on cross X that all the property of Defendant was in the hands of the Sheriff at the time title bond was given up (transcript page 36 Lns 16)

Also Mrs Newbert wife of Complt, says in her deposition that all of Defendants property was under levy at the time and that the Judgment broke in pieces up - (See transcript page 47)

Now of what benefit could the title bond be to deft? Why should he want it; they all admit that there was no probability of the mill property paying the Judgment and it did not! So that the Defendant could have had no other motive in the world in wanting that title bond than to save his son in Law being made a party to a Second Damage Suit, for Davis's wife did bring a Second Suit which was compromised,

Complt gladly took that mode of getting rid of a lawsuit and was at the time

thankful for the favor. But he now seeks to take advantage of the Kindness of his old father in law,
This whole transaction was simply a family matter. the record shows by depositions of Hatcher - complt and defendant, that at the time the track for the half interest in mine property was made, that complt was living at the home of the defendant. that complt with his wife and child lived at defendants during the whole Harris & Coulton Litigation, at least for four or five years and that he never paid defendant a cent for their board during the whole time. So defts swears and no one contradicts him
(transcript page 71 lines 15)

The board alone would more than counter balance his five hundred dollar claim, This shows the interest and the reasonableness of defendants statement of the facts.
Complainant endeavors to swear in such a manner as to make the impression that defendant had afterward promised to pay him five hundred dollars, but when asked the direct question on cross Examination by defendant that promised to pay him he says, no, he never had,
(Complt deposition page 39 lines 32)
He evades any question about this

matter on cross Examination. although repeatedly questioned, but tries to make the impression, with out answering as positive as he can, that defendant had promised to pay.

This the defendant positively denies, Complt is finally forced to admit that defendant did claim that complt owed him on a fair Settlement.

After this Bill was filed defendant did make a proposition to pay or give his daughter Mrs Newbert Some ten acres of land rather than have the name of a family Lawsuit, and now Complt takes this to the advantage of that and say that defendant promised to pay him Some,

But that he might get a compromise and not have what defendant Said, was a disgrace, a family Lawsuit, he would give his daughter Something, But the defendant never did Say or admit that he owed Complt anything on the Mill property,

But I desire to Shew how low and contemptable this claim of Complt is, While the Mill property was under Levy, by an agreement with the Sheriff and ~~Complt~~ Plaintiffs, Davis & wife Defendant had contracted the Mill property to C.B. Davis for a Thousand dollars to be applied on on his Judgement for damages, Complt Newbert told defendant that ~~he knew~~ the Mill property was worth more than

a thousand when defendant told him that if he would pay a thousand dollars on the judgment to Davis & wife, that he could have the Mill property and that he would make him a deed for the same. That Davis said that was all the Mill would bring at public sale and would consent to that trade, So that Compton did pay a thousand dollars on the judgment of Davis & wife or on the Execution and defendant Compton made him a deed for the property. This is admitted by Compton in his deposition. transcript page 36,

Within two months and a below less than one month Compton members sold the same Mill property to Charles Hafely for fifteen hundred dollars, making a clean profit of five hundred dollars This is also admitted by Compton (transcript page 37,

Compton admits that at the time he purchased the Mill property, that, he did not say anything to defendant about one half of the amount belong to him, He made no claim whatever of defendant. (transcript page 37 ans 20)

But at the time he got the property for a thousand

dollars and paid the same upon the judgment. Complainant asked Defendant how the balance of the judgment was to be paid. First was still some thing over or about a thousand dollars more to pay. His Kind Lenited old father in Law again rises and assumes the burden and says, I have a little exempt property which I will sell and may be get some time from some citizens, but the Complt was not near paying his part, (See transcript page 73 Lines 20 Lenton deposition)

(Read it)

This is not contradicted by Complt. Nor did Complt ever mention any claim until two years or more after the sale of the property. Such a thing was not thought of at that time. Nor until the Complt was unfortunate and became insolvent and broken up himself. And is urged on by his creditors in this suit, they hoping to get some thing if he was successful.

Complainant made out of the property as much as he claims the consideration was, six hundred dollars, So he is or was not hurt in the least, he has already gotten his purchase money back. He got five hundred from Hapley and then as Barker the Miller says, got half the tolls for four

or five years, which would be for more than the ruining hundred dollars and what he paid out for lawyers & witnesses, besides four or five years board for him & his wife and child. It took many all the while his poor old father in law was literally broken up and ruined. At the same time Shielding his ungrateful son in law, instead of defendant beating an defrauding complt, it was a thorn between the past of complt to make some money off of defendant and was successful, and had they gained the lawsuit which they had every reason to believe they would do, complt would have made more than a thousand dollars out of his bargain. Hefly purchased both properties, Lawton and Davis, and it is now very valuable property, with the title Davis still out of the way; which of course would have been out of the way had Lawton gained the damage suit.

Defendant owes complainant nothing at all, but on a fair and full settlement complainant would owe defendant more than complainant claims

Brief of Flood.
Brown

J. G. Armbrust
vs
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