

Plaloy  
25 June 69

Mr. Capt. Jumper

My dear Sir

In drawing a I desire to submit the enclosed case to you for consideration & treatment, so that we may procure a decision from the Supreme Court at this time as it is desirable to the parties that the affair should be ended.

It is a suit for contribution among masters to several bonds given by the Clerk & Master of Chatham (the said James Woodhall).

As Mr. & I agree that where a Clerk & Master gives, as the law requires, four successive annual bonds during any one term of his office (since then being formerly by law four years); if the Masters upon one bond are compelled to pay for a default of the principal, they have a right to enforce contribution against the Masters on all the

then bonds. Also that in

Such event the rule of contribution is as follows; A, the product of the amount of all the penalties of the bonds signed by the parties, multiplied by the number of sureties, is the whole amount paid; so is amount of the penalties of the bonds signed by any one surety to that part of such debt <sup>which</sup> ~~it~~ should have been paid by him.

Such is the principle of Jones v Blanton 6 Gr. Eq. 115 - and there are a half dozen cases in our Reports to the same effect.

Our difference is upon this point: It does not appear that in fact Mr Waddell ever was reappointed Clerk & deacon. He remained in office 12 years - i.e. three full terms of four years each. It is admitted by me that there is a contribution only between the sureties for the bonds of <sup>any</sup> one term: the principle being that all those who sign the different bonds in any one term are sureties for the same

official person; whereas an officer appointed for a second term, or a third, is a distinct official person from him-  
self at a former term.

Mr. Deamling says that after 1851, when Mr. W.'s first term expired, he continued in office (by virtue of the <sup>Rev.</sup> Code C. 77 s. 3) by a sort of a re-appointment from day to day, & was not in office for any term. So as to make sureties upon different bonds liable to contribution.

My view is that under the action of the Courts of Equity for Chatham Co. Mr. W. will be presumed to have been appointed for three different terms: that the judge who sat in Equity there at Full Term 1851 - by taking <sup>the usual</sup> a bond which resulted in the ~~presentable~~ <sup>an appointment</sup> ~~and~~ - did in effect re-appoint him: and so again the judge at Full Term 1855. That the inference of fact being left to your Honor in this case - such will be the natural presumption.

Omnia rite acta presumuntur.

"Formal reappointment" is not necessary. I speak of course only so far as is required for the purposes of this suit. Mr. Weddell after 1851 could not deny that he was in for a term that would expire in 1855, if it had been important for some third person to maintain that against him; nor could his Sinecure. He was bound to admit himself to be rightfully in office, & therefore appointed for a term. His Sinecure as against 3<sup>d</sup> persons, and also inter se are equally so. His Sinecure in 1855 by executing his bond enabled him to continue in office. In the eye of the Law they were liable prospectively for the whole 4 years; so time of 1856 for 3 years; those of 1857, for 2, and those of 1858, for 1. If that be so, my case is made out. For the Sinecure upon these various bonds were Sinecures for the same official person - for more or less of the same time, or term.

I did not mention that there is no difference of opinion as to the Op. of F. J. Hill, who signed the bond of 1858, being held for contribution equally with the parties who paid.

The difference is in regard to the other persons - who signed other bonds during what I call a term - viz the space of time from 1855 to 1859, inc.

Mr. Manning's point is a short one, & I believe that he intended to submit no brief - leaving it to my statement - but relying confidently upon it.

Upon the back of this I illustrate my views as to the amounts payable by the various parties to this suit.

With kindest respects

Your Obedt<sup>d</sup> Servant

Sam<sup>l</sup>. F. Phillips

Norfolk

25 June 69.

{ Duke's case camp<sup>d</sup>  
by self & Hill at 75000  
Melow's will not  
come up.

Back of 5.

Weaver Spring loan 1869 \$4084

Bond 1855 - \$10,000 with

4 sheets,

1856 \$15,000 with 4.

1857 \$15,000 with 3.

1858 \$15,000 with 4.

Bond of 1855 represents  $10,000 \times 4 = 40,000$

" " 1856 "  $15,000 \times 4 = 60,000$

" " 1857 "  $15,000 \times 3 = 45,000$

" " 1858 "  $15,000 \times 4 = 60,000$

Aggregate value 205,000

J. Hill is quality on bonds	$\left\{ \begin{array}{l} 1855 - \$10,000 \\ 1856 \quad 15,000 \\ 1857 \quad 15,000 \\ 1858 \quad 15,000 \end{array} \right\}$	
		<u>55,000</u>
Proportion of antithesis		
		55,000

Hampden the same — 55,000

F. J. Hill does 55,000

Hill is quality	$\left\{ \begin{array}{l} 1855 - \$10,000 \\ 1856 \quad 15,000 \end{array} \right\}$	
		<u>25,000</u>

above is quality	1858	15,000	$\left\{ \begin{array}{l} 15,000 \\ \hline 205,000 \end{array} \right\}$
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Aggregate 205,000

Then

205 : 4084 :: 55 is 15 J. Hill's share } \$1095.71

same for Hampden & F. J. Hill } \$1095.71

205 : 4084 :: 25 is 15 Hill's } \$498.104

205 : 4084 :: 15 is 15 above " } \$298.82

P.S.

I submit therefore that there should be a declaration stating that the <sup>Sureties</sup> parties to the various bonds above are liable & contribute into each other:

That the Executors of Thos Hill, the Executor of F. J. Hill and J. H. Humphreys are each liable in respect to the recovery of \$4084 in the case stated - & pay \$1095.71 with interest from May 11, 1869; that ~~J. H.~~ the Executor of James Hill, in like manner, is liable for \$498.04 with like interest; and that James Cheone is liable for \$298.82 with like interest.

That it appearing to the Court that the Executors of Thomas Hill and John H. Humphreys & James Cheone have already paid of their recovery \$1361.33 1/3 and that the other parties have paid nothing, it is ordered that the Executor of F. J. Hill pay into Court \$1095.71 with int. from May 11, 1869; and that the Executor of James Hill pay in

Back of 6.

like manner \$498.04 with like  
interest.

And that of this amount of  
\$1593.75 & int., shall be paid to  
James Moore \$1062.51, and int.;  
to J. W. Houghton \$265.62 and int.;  
and to the Ex. Ex. of J. Hill \$265.62 & int.

Please to give ready attention  
as perhaps, I have never been  
all this time.