

W. P. Kendall

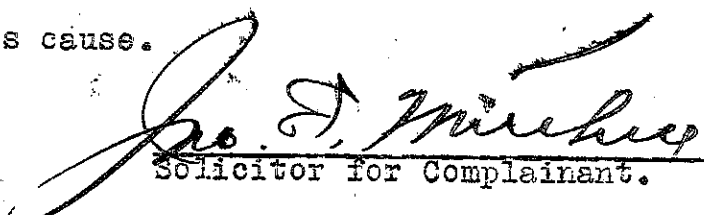
vs

Frederick Friskorn, et al

No. 21

In Equity.

Now comes plaintiff and moves for an order
of dismissal of this cause.


Solicitor for Complainant.

W P KENDALL

CORCUI COURT BALDWIN COUNTY. ALA

VS

IN EQUITY.

FREDERICK FRISHKORN

ARTHUR HOLK.

The Demurrer of ARTHUR HOLK to the bill of complaint exhibited against him by W P Kendall.

The said defendant demurs to the said bill of complaint and prays judgment of the court if he shall make further answer thereto and for grounds of demurrer assigns the following.

FIRST.

That complainants bill is multifarious in that distinct matters and causes are improperly united therein.

SECOND.

That complainants bill is multifarious in that several defendants therein joined have distinct matters and causes in which the other defendant is not concerned.

defendant prays that he be dismissed with his costs in this behalf sustained.

Arthur Holk
By Frank Stoull

His Solicitor.

x

DEMURRER

ARTHUR HOLK

FILED AUG. 20th. 1917

T. W. Reardon

Register.

and Arthur Holk, citing them to appear and demur, plead to or answer the allegations of this bill of complaint within the time required by law, and in accordance with the practice of this Honorable Court.

PRAYER FOR RELIEF

Complainant further prays that upon the final hearing of this cause, your Honor will enter a decree directing a sale of said real and personal property for division between the said Frederick Frishkorn and complainant, or if complainant is mistaken in his belief that the deed of February 26th, 1917, was executed in fraud of complainant's rights, then complainant prays for a sale for a division of said property between the said Arthur Holk and complainant.

Complainant further prays that your Honor will also direct a reference to be held by the Register of this Court, for the purpose of a partnership accounting between the said Frederick Frishkorn and complainant, directing the said Register to state said account, and to report to your Honor such amount as may be ascertained by said Register to be due by the said Frishkorn to complainant.

Complainant further prays that if your Honor shall decree said deed and bill of sale of February 26th, 1917, to be null and void as against complainant's rights, your Honor will establish a lien in favor of complainant against the said Frishkorn's share of the net proceeds to be derived by a said of said property, and direct that said net share of said Frishkorn, or so much thereof as may be necessary, be applied towards the payment of said indebtedness.

Complainant further prays that a reasonable fee to complainant's solicitor may be allowed out of the proceeds of sale of said property, for filing and prosecuting this suit.

Complainant prays for such other and further or different relief to which he may be entitled in equity and good conscience.

Jno. E. Mitchell
Solicitor for Complainant.

FOOT NOTE:-

Each of the defendants are required full, true and sufficient answers to make to the paragraphs of this bill of complaint, from first to eighth, inclusive, but answer under oath is waived.

Jno. E. Mitchell
Solicitor for Complainant.

Original Bill

Handwritten notes on the left margin, possibly including a name and date.

Filed 5/28, 1917
J. W. Newman
Register

June 6, 1917

\$ 25.00 deposited for Court

George Newman

also

complainant, who gave the said defendant Frishkorn, who is complainant's nephew, a one-third interest in said tract of land.

FIFTH. Complainant has invested large sums of money in and about the prosecution of said partnership business, and has advanced to the said Frishkorn, in connection with said business, considerable sums of money, and has also purchased, or caused the said Frishkorn to purchase, and has paid for, practically all of the farm implements, livestock and other personal property used on said farm and orchard, in connection with the prosecution of said partnership business, and the said Frishkorn is now indebted to complainant, on account of said advancements and purchases, to the extent of between \$1200.00 and \$1300.00, a detailed statement thereof not being at this moment available to complainant.

SIXTH. Complainant has not been able for some time to give his personal attention and supervision to said farm and orchard, and same has been under the personal direction of the Frishkorn said ~~Heik~~, who has mismanaged said business to such an extent as to cause complainant to sustain large financial losses in connection therewith, and in said business the said Frishkorn's management is both unsatisfactory and unprofitable.

SEVENTH. To the best of complainant's knowledge, information and belief, the aforesaid deed and bill of sale of February 26th, 1917, was executed without any consideration, and was made with intent to hinder, delay or defraud complainant as a creditor of the said Frishkorn.

EIGHTH. The tract of land above described can not be equitable divided or partitioned, inasmuch as not only the various parts of said land are of different values, but about forty acres thereof consists of an orchard, and also because valuable buildings and other improvements have been erected on a portion of said tract of land, while still another portion of said tract is wild and uncultivated land.

PRAYER FOR PROCESS

WHEREFORE, the premises considered, complainant prays that the State's writ of subpoena issue to the said Frederick Frishkorn

CIRCUIT COURT, BALDWIN COUNTY -- IN EQUITY

Hon. A. E. Gamble,

Judge of the Circuit Court in and for Baldwin County, Alabama:-

Your orator, W. P. Kendall, who is over the age of twenty-one years and a resident of the State of Illinois, humbly complaining against Frederick Frishkorn and Arthur Holk, both of whom are over the age of twenty-one years and residents of Baldwin County, Alabama, respectfully alleges and shows unto your Honor as follows:

FIRST. Complainant is the owner of an undivided two-thirds interest in and to that certain tract of land situated in Baldwin County, Alabama, and described as follows: The West half of the Northwest quarter of Section thirty one, Township seven South, Range four East, containing eighty acres, more or less, and is also the owner of an undivided two-thirds interest in all farm implements, livestock and other personal property situated on the above described tract of land.

SECOND. The defendant, Frederick Frishkorn, was, prior to the 26th day of February, 1917, the owner of the other one-third undivided interest in and to the above described real and personal property.

THIRD. On, to-wit, the 26th day of February, 1917, the said Frederick Frishkorn executed to the said Arthur Holk a warranty deed and bill of sale, on the recited consideration of one dollar and other considerations, to the above described real and personal property.

FOURTH. The property above described, both real and personal, constituted the assets of a joint or partnership venture entered into between complainant and the said Frederick Frishkorn, said partnership being for the purpose of cultivating and developing said land, and, in prosecution of said partnership, complainant and the said Frishkorn planted a large orchard on said property and erected valuable improvements on said land, and have otherwise developed said property, so as to make same a very valuable investment. The entire tract of land was originally owned by

W P KENDALL

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defendant prays that he be dismissed with his costs in this behalf sustained.

Frederick Frishkorn
By Frank Stouel

His Solicitor.

X

DEMURRER OF

FREDERICK FRISHKORN

Filed Aug. 20th. 1917

T. W. Richardson

Register.

W. P. Kendall

vs

Frederick Frishkorn, et al

No. 21,

In Equity.

This cause coming on to be heard on the motion of the complainant for a dismissal of the cause of the above entitled cause, it is hereby ordered that said cause be, and the same is, hereby dismissed.



Judge.

Filed 12/3-18
J. M. Williams
Register

Recorded in Minutes