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190 - 139

Record Number 3521

IN THE
Supreme Court of Appeals
of Virginia
AT RICHMOND

—o—
W. J. ADKINS, et al., Trading Etc.
PLAINTIFFS IN ERROR

Vs.

G. L. HASH, et al., Trading Etc.
DEFENDANTS IN ERROR

—o—
From the Circuit Court of Giles County, Virginia

—o—
RULE 14

¶ 5. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

¶ 6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

M. B. WATTS, Clerk

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

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RULE 14—BRIEFS

1. *Form and contents of appellant's brief.* The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with reference to the pages of the record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

(d) Argument in support of the position of appellant.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

2. *Form and contents of appellee's brief.* The brief for the appellee shall contain:

(a) A subject index and table of citation with cases alphabetically arranged. Citation of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or simplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate reference to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

3. *Reply brief.* The reply brief (if any) of the appellant shall contain all the authorities relied on by him, not referred to in his petition or opening brief. In other respects it shall conform to the requirements for appellee's brief.

4. *Time of filing.* (a) **CIVIL CASES.** The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

(b) **CRIMINAL CASES.** In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

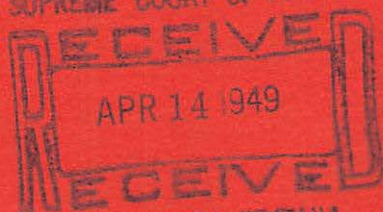
(c) **STIPULATION OF COUNSEL AS TO FILING.** Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

5. *Number of copies to be filed and delivered to opposing counsel.* Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

6. *Size and Type.* Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to eight and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

7. *Non-compliance, effect of.* The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief for the cause will not be heard. If one of the parties fails to file a proper brief he shall not be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.

CLERK
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

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P E T I T I O N

*To the Honorable Justices of the Supreme Court of Appeals of
Virginia:*

Your petitioners, W. J. Adkins, R. L. Clark, and I. H. Vassar, Jr., who are partners trading and doing business under the firm name and style of Eastern Electric Company, located at Lynchburg, Virginia, would respectfully show unto your honors that they are aggrieved by the final judgment of the Circuit Court of Giles County rendered on the 27th. day of September,

1948, in a certain attachment proceeding then therein pending wherein they were the plaintiffs and G. L. Hash and Rose Mary Hash partners trading and doing business under the firm name and style of Hash Furniture Company, located at Pearisburg, Virginia, was the defendant. The amount sued for was \$510.92 with interest thereon from March 5th., 1947, till paid, and was the price of goods, wares, and merchandise bought of the plaintiffs trading and doing business under the firm name and style of Eastern Electric Company by the said Hash Furniture Company for its store at Pearisburg, Giles County, Virginia.

THE CASE

The plaintiff had filed its petition for attachment in the Clerk's Office and order of publication was had and the said attachment levied by the Sheriff of Giles County on certain property in the Town of Pearisburg. The case was on the docket for the June Term of the Court at which time the defendants entered their appearance (R. p. 4) and were granted leave to file such plea and grounds of defense as they might be advised, and the case was continued till the September Term of the Court at which term it came to trial.

PROCEEDINGS

When the case came to trial, the defendants filed their plea under oath purporting to deny the partnership and perhaps also amounting to the general issue in an action of assumpsit, on which plea issue was joined.

A jury was empaneled and the plaintiffs proceeded to introduce their evidence. At the conclusion of which the defendants moved the Court to strike the evidence, which motion the Court overruled. The defendant, G. L. Hash, then testified and that closed the defendant's testimony. The defendants then again moved the Court to strike the evidence, which motion the Court sustained, and the plaintiffs excepted. The jury's verdict was, of course, for the defendants. Counsel for the plaintiffs made the superfluous motion to set it aside which was overruled.

THE FACTS

Seven or eight years prior to the time when the dealings between the plaintiffs and the defendant commenced, G. L. Hash

and Rose Mary Hash were partners in a furniture store in Pearisburg, Giles County, Virginia, which was managed by D. B. Webster. The fact that they were partners is definitely stated by G. L. Hash in his testimony, and also by D. B. Webster. On page 12 of the Record, Hash says: "Prior to April 30th., 1946, he was engaged in a partnership composed of himself and Rose Mary Hash, who is his wife, known as HASH FURNITURE COMPANY: that on April 30th., 1946, the business was incorporated under the laws of West Virginia, and that thereafter operated as a corporation."

That testimony of G. L. Hash definitely establishes the fact of the prior existence of the partnership. This fact is shown by the testimony of Webster also. And that fact is definitely established and undisputed.

It affirmatively appears from the evidence of D. B. Webster, (R. p. 10) that the employers of Webster never informed him of any change in the ownership of the store in Pearisburg, but that he first heard that the company was incorporated was from an employee of one of Hash's stores in Pulaski, and that this was sometime in August, 1946. It is thought to be obvious from the evidence that the former partners never informed Webster of any change in the character of the ownership if there ever was any change. Webster says unequivocally that there was no change in the name, location, or manner of doing business, after he was informed at Pulaski in August, 1946, of the incorporation.

It was proved that G. L. Hash made oath to an application for a license for this store as a partnership at Pearisburg on the 12th. day of January, 1946, and that there was no transfer of that license to anybody else during that year, nor was any request from any source that it be transferred. Chapman S. Hoge, the Commissioner of the Revenue introduced in the evidence this application and is certified as an exhibit in this 3* case. The license for 1947 was issued by *the said Commissioner of the Revenue to Hash Furniture Company of Pearisburg, Inc., a West Virginia Corporation.

Hash introduced with his evidence, and it is certified as an exhibit, the copy of the West Virginia Charter, which speaks for itself, and shows that the corporation was formed by the partners and one other person. There was no evidence that this corporation ever qualified to do business in Virginia; there is no evi-

dence that there ever was any kind of a transfer of the Pearisburg store to the corporation; there is no evidence of any compliance with the "Bulk Sale" statute; there was no evidence that these defendants, or their alleged corporation had complied with Sec. 4722 (1) of the Code by filing in the Clerk's Office of Giles County the certificate required by that section. The first paragraph of which reads in part: "where the corporation is a foreign corporation, the date of the certificate of authority to do business in Virginia issued to it by the State Corporation Commission" shall be recorded, etc.

I. H. Vassar, Jr. testified that "he assumed that it was a partnership from appearances and such information as they had at the time" and that "they knew it was a concern of long standing with a good credit". (R. p. 8). This testimony is amplified in the Certificate of exception beginning on Page 13 of the record and is carried over to Page 14. There it is certified that "they assumed that they were partners but that he could not then be certain what information they had on that subject, but that his present recollection was that they made the usual inquiries and investigations and probably relied on Dun & Bradstreet's Reports which the firm customarily used for that purpose; that they were concerned about the credit rating of the defendants which, upon whatever the source of their information may have been, was found to be satisfactory, and that upon the information which they had, which he thinks was Dun & Bradstreet's Reports, credit was extended and the goods shipped to the partnership at Pearisburg, and each bill was paid for until the bill of January 14th., 1947. It is further certified in that certificate (bottom page 13 R.) "When I. H. Vassar, Jr., one of the plaintiffs, was testifying, *he stated that his firm dealt with the defendants as partners doing business under the firm name and style of Hash Furniture Company.*" That is not contradicted by any witness, on the contrary it is corroborated by Poston and Webster.

4* *D. B. Webster testified (R. p. 10) "that he bought the several invoices of goods shown on the sheet filed by Mr. Vassar from Mr. Poston, the salesman for the plaintiffs for and in the name of Hash Furniture Company, and every item in it went into the defendant's store."

WHAT WAS PROVED

It was proved in this case that seven or eight years before

this account was started, G. L. Hash and Rose Mary Hash, his wife, operated a furniture store in the Town of Pearisburg, and that D. B. Webster was the manager from the start till late in March, 1947; that the business was operated as a partnership and that these defendants were the partners; it was proved that in January, 1946, the business was licensed to the partnership; it was proved that these plaintiffs dealt with the defendants as partners under the firm name of Hash Furniture; it was proved that the plaintiffs did not know that the business was incorporated; it was proved that the partners never even notified Webster that the business was incorporated; Webster got the information from another employee at Pulaski; there was no change in the name of the business, location, or manner of doing business after the alleged incorporation; there was no change or transfer of the license during the year 1946; there does not appear to have been any transfer of the partnership business to the corporation; it does not appear that the corporation ever qualified to do business in Virginia; it does not appear that any certificate of the corporation was ever filed in the Clerk's Office as required by Sec. 4722 (1) of the Code; it does not appear that there was any publication of the dissolution of the partnership or the transfer of its stock to the corporation as provided by Sec. 4359 (35) (11). And it does appear that the plaintiffs thought that G. L. Hash and Rose Mary Hash were partners doing business under the firm and style of Hash Furniture Company and that they dealt with them as such, and that the firm is due the plaintiffs the sum of \$510.92 with interest thereon from March 5th., 1947, till paid.

ASSIGNMENT OF ERROR

1st. The court erred in excluding the reference to Dun & Bradstreet's Reports. This book nor the reference to it was 5* not introduced to establish the *partnership but for the purpose of showing upon what information they acted. The fact is that the partnership is established beyond controversy by other evidence. It is established by G. L. Hash himself. It is shown in the certificate of exceptions that the point was made to the court.

It is submitted that the evidence was admissible for the law is stated in *Day v. Adkins*, W. Va. 164 S. E. 238 (239) as follows:

"If it is necessary to ascertain the motives which actuated a person's conduct, that information upon which he relied is important, and in substantiating the prudence, legality, or good faith in which he claims to have acted, he may introduce evidence of what advice or information he received. *Underhill On Evidence*. p. 67".

2nd. The court erred in striking the evidence in the case and directing the jury that there was no evidence to sustain the plaintiff's case and in entering judgment for the defendants.

ARGUMENT

The court was wrong in striking the evidence because the plaintiffs had proved a case which entitled them to recover a judgment against the defendants as partners.

As before stated the plaintiffs testimony was to the effect that this concern had been in business at the same stand for several years as partners. And had publicly proclaimed themselves as partners by taking out a mercantile license as such. What was the effect of that public proclamation? The question is answered by Sec. 4359 (16) paragraph (1) of the Code (Uniform Partnership Law); which reads as follows: Partner by estoppel:

"When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made, in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so *given* (giving) credit by or with the knowledge of the apparent partner making the representation or consenting to its being made".

6* *Even before the Uniform Partnership Law this was the declared law in Virginia, and perhaps everywhere, in the case of *Wood v. Jefferies*, 117 Va. 195 (195) in these words:

"The doctrine is thus stated by Professor John B. Minor; "a partnership is not ended, in respect to strangers, merely by an agreement between the several partners to dissolve it.

From existing debt and liabilities of the firm to third persons, the retiring partner is, of course, in no case exonerated by the dissolution, and even as to such as are contracted, afterwards he is responsible in cases of voluntary dissolution, unless he gives notice of the fact to the public by general advertisement in the newspapers or otherwise, and to the previous customers of the firm by special communication, as by circular or other similar mode", citing 3 minor Part II p 888 and cases".

And it seems to be well settled that when a firm has been doing business as a partnership later incorporates the business and continues on in the same place in the same way is liable to creditors who had no knowledge of the incorporation. 40 Am. Jur. p. 186, Sec. 81. See also *The Farmer's Bank Etc. v. Smith & Co. Etc.* 26 West Virginia, p. 541.

If the case at bar should have been tried in a jurisdiction where the verdict of the jury might be directed, the court would have directed a verdict for the plaintiffs, of course, there was no motion to strike the defendants' evidence and enter judgment for the plaintiffs because the defendants beat the plaintiffs to the draw. But upon the law and the evidence the plaintiff was entitled to recover.

CONCLUSION

The petitioners, therefore, pray that they may be awarded a writ of error and *supersedeas* to the said judgment, and that the record before this court may be caused to come, and that upon a hearing herein the said judgment may be annulled and set aside, and judgment entered for the plaintiffs in the sum of \$510.92 with interest thereon from March 5th., 1947, till paid and the costs, or if required so to do, reverse the same and

remand the case to the Circuit Court of Giles County for a new trial. And they will ever pray, etc.

7*

W. J. ADKINS, R. L. CLARK and I. H. VASSAR, JR., partners trading and doing business under the firm name of EASTERN ELECTRIC COMPANY.

By their Attorneys.

SAMUEL A. MARTIN
W. B. SNIDOW

Samuel A. Martin
and
W. B. Snidow
Pearisburg, Virginia

I, W. B. Snidow, an Attorney at Law, practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion, the judgment in the case of Eastern Electric Company against Hash Furniture Company, should be reviewed by the Supreme Court of Appeals of Virginia; and I do further certify that I have this day delivered a copy of this petition to J. L. Dillow, the attorney who represented the defendants in the trial of this case in the Circuit Court of Giles County, and then notified him that in case of writ of error be awarded that this petition would be used as the appellant's opening brief, in the argument of the case in said court, and that this petition was immediately being filed with the Clerk at Richmond, Va.

Given under my hand this the 11th day of December, 1948.

W. B. SNIDOW
Attorney for the Petitioner

Pearisburg, Virginia.

Received December 13, 1948.

M. B. WATTS, Clerk.

Received Dec. 29, 1948.

A. C. B.

Jan. 6, 1949, Writ of error awarded by the Court. Bond \$300.
M. B. W.

RECORD

Eastern Electric Company

vs

Attachment

Hash Furniture Co.

Pleas before the Circuit Court of Giles County, Virginia, at the Court House thereof, on the 27th day of September, 1948.

Be it remembered that heretofore, to-wit; in the Clerk's Office of said Court, on the 23rd day of April, 1948, came the Eastern Electric Company, and filed its Petition for an Attachment against the Hash Furniture Company, which Petition and all proceedings had thereon are as follows:

PETITION

To the Clerk of the Circuit Court of Giles County:

The petitioners, W. J. Adkins, R. L. Clark, and I. H. Vassar, Jr. who are partners trading and doing business under the firm name and style of EASTERN ELECTRIC COMPANY, whose principal place of business is at No. 315-17-19-21, Twelfth Street, Lynchburg, Virginia, and engaged in the business of wholesale dealers in electric supplies, allege that G. L. Hash and Rose Mary Hash, partners lately trading and doing business in the Town of Pearisburg, Giles County, Virginia, under the firm name and style of HASH FURNITURE COMPANY, are justly indebted to the petitioners trading and doing business under the firm name and style of EASTERN ELECTRIC COMPANY in the sum of FIVE HUNDRED AND TEN (\$510.92) page 2 } DOLLARS and NINETY TWO CENTS for goods, wares, and merchandise, sold and delivered to the said defendants by the petitioners, together with interest there-

on from the 5th. day of March, 1947; till paid, which said sum, at the least, the plaintiffs are entitled to recover; that no part thereof has been paid; that the said G. L. Hash and the said Rose Mary Hash, nor either of them, are residents of this State, but they each do have real estate situated in the Town of Pearisburg, Giles County, Virginia, and within the jurisdiction of the Circuit Court of Giles County, described as being Lot No. 62, as shown upon a Map or Plat of the said town of record in the Clerk's Office of Giles County in Deed Book "E" page 289, and containing one half acre, more or less, and is the same lot which was conveyed unto the defendants by Harvey G. Johnston, and others, by deed dated on the 1st day of December, 1939, and recorded in the said Clerk's Office in Deed Book No. 57, page 437, which said property is at the present time unoccupied.

Wherefore the said plaintiffs W. J. Adkins, R. L. Clark and I. H. Vassar, Jr., partners trading and doing business under the firm name and style of EASTERN ELECTRIC COMPANY, pray that they may have an attachment forthwith to issue against the said defendants G. L. Hash and Rose Mary Hash, late partners trading and doing business under the firm name and style of HASH FURNITURE COMPANY, and levied on that certain real estate hereinbefore described and being Lot No. 62 as shown on the Map of the said town of record in the said Clerk's Office in Deed Book "E" page 289, and that the same may be page 3 } returnable to the first day of the regular June Term (1948) of the Circuit Court of Giles County, and that they may have judgment against the said defendants for the said sum of \$510.92 together with interest thereon as herein above set forth and that such proceedings may be had as may be requisite to subject the said property of the said defendants to the payment of the debt herein sued for.

W. J. ADKINS

R. L. CLARK

I. H. VASSAR, JR.

Partners trading and doing
business under the firm
name of Eastern Electric Company.

By Attorneys.

By I. H. Vassar, Jr.

Samuel A. Martin

W. B. Snidow p.q.

Commonwealth of Virginia,
City of Lynchburg,

To-Wit:

I, Virginia B. Hodges, a Notary Public, in and for the City and State aforesaid do hereby certify that I. H. Vassar, Jr., a member of the firm of EASTERN ELECTRIC COMPANY, and partner therein, this day personally appeared before me in my city aforesaid and made oath that the matters and things in the foregoing petition are true to the best of his knowledge and belief.

Given under my hand this the 21st day of April, 1948.

Virginia B. Hodges N. P.

My commission expires
8/7/49.

page 4 }

ORDER

And in said Court on June 16th, 1948.

This day came the parties by their Attorneys, and the action of the Plaintiff was duly docketed. Upon motion of the Defendants, by Counsel, they are granted leave to file such plea and grounds of defense as they may be advised, and by agreement of the parties the action is continued.

PLEA—filed Sept. 27, 1948.

Came now, G. L. Hash and Rose Mary Hash, and for special plea to the Attachment proceedings sued out against them alleging that they are indebted to the Plaintiffs, as a partnership, say:

That they contracted no debt with the Plaintiffs as a Partnership; that the Defendants were not such Partnership; that at the time the Plaintiffs allege said debt was created that neither of the Defendants were engaged in business under the name and style of Hash Furniture Company, a partnership; that neither of the Defendants are indebted to the Plaintiffs in any sum; and the Defendants deny the existence of the Partnership alleged in the Petition.

And this the Defendants are ready to verify.

G. L. Hash

State of Virginia,
County of Giles,

To-wit;

Subscribed and sworn to before me, J. L. Dillow, a
page 5 } Notary Public of Giles County, Virginia, by G. L. Hash,
on Sept. 27, 1948.

Given under my hand this 27th day of September, 1948.

J. L. Dillow, Notary Public

ORDER

And in said Court on September 27th, 1948.

This day came the parties by their Attorneys, and the defendants G. L. Hash and Rose Mary Hash appeared specially and tendered and asked leave to be permitted to file their plea denying the partnership alleged by the petition in this action and denying that they were indebted to the plaintiffs as such partnership and denying that they were indebted to the plaintiffs in any manner or for any amount, which plea was verified by oath, to the filing of which the plaintiffs, by counsel objected and was argued by Counsel.

Upon consideration whereof, the court is of opinion that the defendants are not entitled to appear specially by the said plea, and the court doth sustain the objection to that part of the said plea by which the defendants seek to plead specially, which part of the said plea the court doth strike out. To the ruling of the court in refusing said plea as originally tendered and in the striking out of any part of the said plea the defendants by counsel excepted. To the remainder of the said plea the plaintiffs joined issue.

Thereupon came a jury, to-wit; C. Cook Eaton, Lawrence Johnson, Fred A. Holcolm, J. Doak Lucas, Ira F. Williams, G. K.

Dick and M. E. Barton, who were impanelled and
page 6 } sworn in the manner prescribed by law. Upon the
completion of all the evidence of the Plaintiffs, the
defendants by Counsel moved to strike the evidence of the
plaintiff, which motion the court overruled and the defendants
by Counsel excepted. Upon the completion of all the evidence
on behalf of the plaintiffs and defendants, the defendants by
counsel renewed their motion to strike all the evidence, which
motion was argued by Counsel. Upon consideration whereof
the court is of opinion to and doth sustain the motion and doth

strike out all the evidence in this action. To the ruling of the court in sustaining said motion and in striking the evidence, the plaintiffs by counsel excepted.

Whereupon the jury retired to their room to consider of their verdict, and after awhile returned into court and rendered a verdict in the following form: "We the jury find for the defendants. J. Doak Lucas, Foreman".

Upon the discharge of the jury the plaintiffs by counsel moved the court to set aside the verdict of the jury as being contrary to the law and the evidence and stated to the court that Counsel for the plaintiffs did not wish to add anything to his objections heard by the Court upon the motion to strike the evidence or be further heard on the said motion. Upon consideration whereof, the court doth overrule the said motion, to which ruling of the court the plaintiffs by counsel excepted.

Upon consideration whereof and in conformity with page 7 } the verdict of the jury it is the judgment of the court that the plaintiffs take nothing by reason of their action and that the defendants have and recover of the plaintiffs their costs in this behalf expended.

Upon motion of the plaintiffs this judgment is suspended for 60 days, in order to give the plaintiffs an opportunity to apply to the Supreme Court of Appeals for a writ of error, and the plaintiffs will enter into suspending bond conditioned as provided by law in the penalty of \$50.00.

BILLS OF EXCEPTIONS.

Upon the trial of this case the evidence for the plaintiffs was as follows:

I. H. Vassar, Jr., testified that he was a partner in the firm of Eastern Electric Company along with W. J. Adkins and R. L. Clark. That his firm sold Hash Furniture Company various invoices of merchandise for which orders were taken by their salesman, C. W. Poston, and sent in to the house at Lynchburg, Virginia; that the account started August 14th., 1946, the statement of which account he files with his testimony and extends till March 5th., 1947; that the six last items mentioned on the said account had not been paid for and amounted to \$510.92, and that amount was then due and unpaid; that neither he nor his company made any inquiries of the de-

page 8 } fendants concerning Hash Furniture Company to ascertain whether it was a partnership or a corporation and that they did not know whether it was a partnership or a corporation, but he assumed that it was a partnership from appearances and such information as they had at the time, but he *doed* not remember that anybody told him so; that neither he or any member of his firm made any contact with the offices of Hash Furniture Company at Beckley, West Virginia, to ascertain what was the status of the Hash Furniture Company; that they just received the orders from their salesman and they knew it was a concern of long standing with a good credit standing and therefore shipped the goods bought from their salesman by express to Hash Furniture Company, Pearisburg, Virginia; every bill was regularly paid, till the one of Jan. 14th., 1947; on Cross-examination he said that his company may have received and accepted a number of the personal checks of D. B. Webster in payment of some of these invoices which his firm had shipped to Hash Furniture Company, Pearisburg, Virginia, upon the orders sent in by Poston, their salesman; that his company made no inquiry as to why invoices to Hash Furniture Company were being paid by the personal checks of D. B. Webster; that he did not know just how many of the personal checks of Webster was received and accepted by the Eastern Electric Company in payment of invoices for goods shipped to Hash Furniture Company; that *that* there were several of them and were received by his firm in the regular way in payment of specific invoices; that all
page 9 } invoices were mailed to the Hash Furniture Co. at Pearisburg. Va.; that he knew home office of the Company was Beckley, W. Va.

C. W. POSTON testified that he was travelling salesman for Eastern Electric Company, and made sales for his firm to Hash Furniture Company's store at Pearisburg, Virginia; that D. B. Webster was the manager in charge of the store and bought all of the goods; that there was a big sign in front of the store reading "HASH FURNITURE COMPANY"; that the word "incorporated" did not appear on the sign nor was there anything else to indicate that it was a corporation; that he first learned this morning that it was a corporation. On Cross-examination he testified that he made no inquiry of Webster or anybody else as to whether Hash Furniture Company was

a corporation or partnership, but that he thought that it was a partnership; that he did not know what inquiries were made by his employers; that he did not know who paid the bills which he sold to Hash Furniture Company. That he was the salesman who called on the trade and that he thought he was selling all of these goods to Hash Furniture Company and sent in the orders and it was up to the company to make any inquiries and investigations concerning credit; that he does not know whether Hash Furniture Company was ever notified of this debt, but he does testify that invoices and bills were sent to Hash Furniture Company, Pearisburg, Virginia; that there was no change in the name, location, or the manner of doing business from the time he first sold the bill on August 14th., 1946, till their dealings ceased on March 5th., 1947.

page 10 } D. B. WEBSTER testified that he was living in Roanoke, Virginia, at the time he was testifying but had formerly lived at Pearisburg, Virginia; that he managed the store of Hash Furniture Company at Pearisburg, Virginia, seven or eight years, and that he was such manager during the year 1946 and continued to be such till late in March, 1947; that he bought the several invoices of goods shown on the sheet filed by Mr. Vassar from Mr. Posten, the salesman for the plaintiffs for and in the name of Hash Furniture Company, and every item of it went into the defendant's store; that as the manager of the store he did some buying but that most of the buying was done at the office of the defendant company at Beckley, West Virginia; that the Hash Furniture Company, when he commenced working for it, was a partnership composed of G. L. Hash and Rose Mary Hash, his wife; that he did the selling and collecting and made reports to the head office at Beckley, West Virginia; that he was first heard of the company being incorporated from an employee of one of the Hash stores at Pulaski in August, 1946, but that thereafter there was no change in the location, name, or manner of doing business in the store at Pearisburg, and he continued on as before till his services ended late in March, 1947. On Cross-examination he stated that he had sent some of his personal checks drawn on the Bank of Giles County at Pearisburg, Virginia, in payment for the goods he had bought in the name of Hash Furniture Company, sending his check for each invoice, and that he made no report of these transactions to the Beckley

page 11 } office; that he never brought it to the attention of Mr. Poston that the purchases were not for Hash Furniture Co.; that Mr. Poston nor any of the plaintiffs knew that he was doing this buying on his own initiative, because he bought all these goods in the regular course of business in the name of Hash Furniture Company in its place of business; that he would buy the goods, sell them, and pay for them with his personal checks.

CHAPMAN S. HOGE testified that he was the Commissioner of the Revenue for Giles County during the year 1946, and that he still is; that G. L. Hash and Rose Mary Hash *partners* trading and doing business under the firm name and style of HASH FURNITURE COMPANY applied to him for a mercantile license to conduct a retail store in Pearisburg, Giles County, Virginia, as of January 1st, 1946, which application was sworn to by G. L. Hash before a Notary Public for Raleigh County, West Virginia, on January 12th., 1946, which said application at the request of counsel for the plaintiffs he introduced in his evidence and that a license was issued to this firm for the year 1946 and was not during the year transferred or requested to be transferred to any other person, firm, or corporation; that as of January 1st, 1947 license was issued to Hash Furniture Company of Pearisburg, Inc. a West Virginia Corporation.

And the foregoing was all of the evidence for the plaintiffs.

page 12 } THE DEFENDANT'S EVIDENCE

The following was the evidence on behalf of the defendants;

G. L. HASH testified that he resided at Beckley, West Virginia, and was engaged in the furniture business in West Virginia and Virginia and operated many stores selling furniture; that prior to April 30th., 1946, he was engaged in a partnership composed of himself and Rose Mary Hash, who is his wife, known as HASH FURNITURE COMPANY; that on April 30th., 1946, the business was incorporated under the laws of West Virginia, and that thereafter operated as a corporation; that he filed with his evidence a certified copy of the charter as a corporation; that not to his knowledge did his company ever

have any dealings with the plaintiffs; that D. W. Webster was employed as the manager of the store of HASH FURNITURE COMPANY at Pearisburg, and had been with the firm for several years and that he did the selling, collecting and reporting sales to the home office of his company at Beckley, West Virginia, where all the buying for all the stores was carried on; that Webster had no authority to make purchases for the store; that he had no inquiries from the plaintiffs at any time and did not know the plaintiffs were dealing with Webster; that he had a sign on the Pearisburg store upon which was printed "HASH FURNITURE" similar to the signs on all of the company's stores; that Webster owned a truck which was used and operated with the sign printed thereon on both sides "HASH FURNITURE COMPANY", which fact was known to him; that

Webster worked both on salary and commission basis
page 13 } and furnished his own delivery truck; that he did not know the Eastern Electric Company; that he made application for license in Giles County for the partnership composed of himself and Rose Mary Hash, who was his wife, as of January 1st, 1946, at which time it was a partnership; that his application for the license stated that it was partnership under the name of HASH FURNITURE COMPANY, and that he and his said wife composed the firm. That his corporation, Hash Furniture Company was a solvent going concern and at the time of the trial was operating stores in Virginia and West Virginia, and that the corporation now has assets of three quarters of a million dollars; that the property in Pearisburg on which the attachment was levied was jointly owned by him and his wife, Rose Mary Hash; that he also owned other real estate in Giles County; that neither he or his wife Rose Mary Hash either as individuals or as partners were indebted to his knowledge, to the Eastern Electric Company.

The foregoing was all of the evidence for the defendant.

Teste;

Vincent L. Sexton, Jr.

November 15th, 1948.

Judge

Upon the trial of this case and when I. H. Vassar, one of the plaintiffs, was testifying he stated that his firm dealt with the defendants as partners doing business under the firm name and style of HASH FURNITURE COMPANY; that

page 14 } they assumed that they were partners but that he could not then be certain what information they had on that subject but that his present recollection was that they made the usual inquiries and investigations and probably relied upon Dun & Bradstreet's Reports which the firm customarily used for that purpose; that they were concerned about the credit rating of the defendants which upon whatever the source of their information may have been found to be satisfactory and that upon the information which they had, which he thinks was Dun & Bradstreet's Reports, credit was extended and the goods shipped to the partnership and each bill was paid for until the bill of January 14th., 1947, leaving due and unpaid \$510.92; the reference to Dun & Bradstreet's Reports was objected to by counsel for the defendants and upon his motion the court excluded all of the reference by the witness to Dun & Bradstreet's Reports in which he stated that his firm may have relied on that source for their information as they customarily did in similar circumstances and the court sustained the motion and struck out from the evidence all reference by the witness to what they may have learned therefrom; to which ruling the plaintiff excepted and assigned the reason that the evidence of the witness was not to establish the partnership but was for the purpose of showing the information upon which his firm acted, and that the evidence was admissible for that purpose.

page 15 }

Vincent L. Sexton, Jr.

Teste;

Judge

November 15th, 1948.

Upon the trial of this case when the plaintiff's evidence was in the defendant by counsel moved the court to strike out the plaintiff's evidence which motion the court overruled; and the defendant by counsel excepted to the ruling of the court; at the end of all of the evidence the defendant again moved the court to strike out the evidence which motion was sustained over the objection of the plaintiffs, and the plaintiffs by counsel excepted to the ruling of the court in striking out the evidence upon the ground that upon all of the evidence a question of fact was presented to be determined by a jury.

Vincent L. Sexton, Jr.

Teste:

Judge

November 15th, 1948.

To the Clerk of the Circuit Court of Giles County:

You will certify as exhibits introduced in the evidence in the case of EASTERN ELECTRIC COMPANY, against HASH FURNITURE COMPANY the application for a mercantile license by Hash Furniture Company for the year 1946 introduced by Chapman S. Hoge, in his testimony and the charter for a corporation granted in the State of West Virginia to the page 16 } defendants and another and introduced in the testimony of G. L. Hash. And statement of account introduced by I. H. Vassar, Jr.

Vincent L. Sexton, Jr.

Teste:

Judge

Nov. 15th, 1948.

I have read the foregoing & waive notice of application.

J. L. Dillow, Attorney

11-10-48

page 17 } CLERK'S CERTIFICATE

Virginia, Giles County, to-wit;

I, F. E. Snidow, Clerk of the Circuit Court of the County aforesaid, in the State of Virginia, do hereby certify that the foregoing and annexed writing is a true and correct transcript of the record and proceedings in the Attachment proceedings lately pending in said Court, between Eastern Electric Company, plaintiffs, and Hash Furniture Company, Defendants, with all things touching the same, as fully and wholly as they now exist among the records of my said office.

I further certify that notice of transcript was waived by J. L. Dillow, of Counsel for defendants.

Supreme Court of Appeals of Virginia

Given under my hand this the 30th day of November, 1948.

F. E. SNIDOW,
Clerk.

A copy—Teste:

M. B. WATTS,
Clerk.

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