

1849-010

SOUTHAMPTON COUNTY
CHANCERY PAPERS

MOODY

VS. LUNDY etal

11/1849

other surnames: Westbrook,
Drewry, Burwell, Paxton,
Prince

22 20.

Moody

v. } Papers.

Gundy &c.

1829 November

Sampton County.

Moody

v. } Stat. Rules

Lundy &c

Letk. -

45.20

~~Stk.~~

Law.

16.66

4 21.86

John M Moody

v:

Byrd Lundy. Wmth Westbrook & John Drury

1847 Nov. 15th Sup^a issued.

" Decr. Sp^a Ret^a Executed. Bill filed

1848. Feby. Answ^r of Def^s. ^{Westbrook & Drury} Gen. Rep^s thereto - cause set for hearing as to Dft Lundy

" Apr. 1st Monday Cause set for hearing - as to Dfts. Westbrook & Drury.

" May 9. Continued

" Nov. " Continued

" Apr. 24. Sa fu ip^a to revise

" May 9. Continued.

" Nov. Decr. bill dismissed

Moody }
vs } Bill and
Landyd. } exhibits

Chambers & Johnson
attorneys for P & J

1847 December Rules

To His Honour Richard H Baker Judge of the Circuit
Court of Law & Chancery for the County of
your complainant Bro. M Moody

Humbly complaining shews unto your honour, that on
the 11th February 1839, he sold to a certain Byrd Smiddy
a tract of land lying in the County of Southampton for
the sum of five thousand dollars, and on the same
day the said Smiddy executed his bond for the acut.
with a condition thence annexed. a copy of which
bond & condition (the original being filed in a suit at law
which your compe^t instituted against S^d Smiddy in the
Circuit Superior Court of Law & Chancery for the County of
Greensville) is herewith filed ^(marked No 1) and prayed to be taken and
considered as a part of this bill. The bond mentioned
in the condition, was never collected by your compe^t, and
in 1845, he instituted suit against S^d Smiddy
in the Circuit Superior Court of Greensville, and ~~at the~~
~~to verdict~~ term 1847, the case coming on to be tried, a
verdict was rendered in your compe^t favor for the
sum of \$2461.75. with interest on \$2036.40 part
thereof from the 30 April 1847 till paid - for which
amount judgment was rendered & costs \$31.40 - and
afterwards to wit on the 4th Sept. 1847, the S^d Smiddy
having been surrendered by his bail in the suit afores^d
took the oath of an insolvent debtor - ^{he was duly discharged} a copy of the
judgment and discharge afores^d are herewith filed
marked (No 2) and prayed to be taken and consid-
- ered as a part of this bill. Your compe^t judgment
remains wholly unpaid.

Your compe^t further shews
that he executed unto the S^d Byrd Smiddy a deed
duly conveying the tract of land afores^d; a copy of
which marked (No 3) is herewith filed and prayed to
be taken and considered as part of this bill - But

your complot took no other security for the purchase money, than the bond above marked (No 1), and he is advised that he has a lien therefor upon the tract of land - and that he may subject the same to the payment of his judgment, in this court, sitting as a court of Equity.

Your complot further shews, that after the institution ^{of his suit of S^d Henry} to wit on the day of 1st 184, he (the 1st Henry) sold the 1st tract of land to Mr B. Westbrooke agent for John Drewry of Southampton - and on the same day conveyed the same by deed to the 1st Westbrooke a copy of 1st deed marked (No 4) is herewith filed, and prayer is taken and considered as a part of this bill - and on the day of 184, the 1st Westbrooke conveyed the 1st land to S^d John Drewry - a copy of the deed from 1st Westbrooke to 1st Drewry is also filed as a part of this bill and marked (No 5) - Your complot charges that the 1st Westbrooke made the purchase of the 1st land as the agent of the 1st John Drewry that Drewry paid for it, and was alone interested - that the 1st Drewry has admitted that the 1st Westbrooke was his agent in the transaction - And your complot further charges, that before the 1st Westbrooke had made the 1st purchase, he was distinctly informed and that more than once, that your complot held a lien on the land for the purchase money, and was advised for that reason, not to buy it - Yet with full knowledge of your complot's lien, he did make the purchase, and your complot is advised that the land in the hands of his principal, the 1st Drewry is as much subject to his demand, as if it were still held by the 1st Henry himself. The 1st Drewry is a purchaser with notice. The 1st Henry, Westbrooke and Henry refuse to pay your complot the amt.

of his judgment above; and the 1st Drewry retains the possession & enjoyment of the 1st tract of land: Your complot is therefore without remedy save in this court.

Under consideration of all which, and for as much as your complot is without remedy & to the end therefore, that justice may be done he prays that Byrd Henry, Mr B. Westbrooke and John Drewry may be made defendants to this bill & then answer make to the allegations thereof - that the 1st Drewry may answer, if the 1st Westbrooke was not his agent in the purchase of the land above, and did not pay for the same out of his money - that the 1st Westbrooke may answer, if he did not know at the time he made the purchase and before the purchase money was paid, of the existence of your complot's claim against the land; and if he was not advised against the purchase on that account - that your honour will decree a sale of the 1st tract of land for the purpose of satisfying your complot's judgment, unless the defendants or some one of them shall within a reasonable time discharge the same - And the premises considered, grant unto your complot such other and further relief as justice and equity may demand and the nature of the case require. And your complainant as in duty bound will forever pray &c. May it please your honour to Grant &c.

Wm M. Moody
Cham. Esq. of the
his Attorneys

Assum of
no Greary.

c Hardy

v }

Sunday 80

1818 February Rules

702 words

To the Honbl. R. H. Baker Judge & -

The Answer of Geo. Drury to Bill of Complaint
exhibited against him by Geo. M. Moody.

This Respondent saving to himself all benefit of
just exception that may hereafter arise, to the errors
and uncertainties, in the Complaint contained, for
answer thereto or unto so much thereof as he is advised
it is at all material to answer. For answer
says - That it is true as stated in the bill, that the Compt.
sold a tract of Land to Geo. Drury & executed to him a
bond conveying the title to the same. That Geo. Drury in
order to secure the payment of the purchase money,
dearly assigned to Geo. Moody in payment a bond executed
by D. W. Connolly & endorsed by H. W. Lewis & A. G. McNeill.
which bond was on deposit in the Com. & R. Road Bank, Vicks-
burg, Mississippi, and at the same time entered into a Covenant
binding himself, to make good the bond aforesaid should the
Geo. Moody fail to collect the same, And your Compt. is advised
that by an arrangement the lien of Geo. Moody was destroyed, he
having taken in payment the endorsed Vicksburg bond &
with the understanding that the assignor was to make
good any loss that Geo. Moody might sustain by reason
of his failure to collect the bond aforesaid, which
condition imposes no obligation other than that which the
law would have created, to wit. To bind the assignor for
a reasonable length of time to make good said bond -
your Compt. begs leave further to show that according
to the exhibits filed with the bill. Geo. Moody & wife
conveyed to the Geo. Drury five hundred & fifty one acres
of Land, bounded by the lands of Thos. Williamson, M. H.
Gilliam, S. A. Robinson & others. By deed from Drury to
Westbrook, two pieces of Land are conveyed one con-
taining 446 acres - the other piece containing 176 acres
which shows that the Land now in the possession of
your Respondent are not "the tract sold by Geo.
Moody & wife to the Geo. Drury" as will more fully
appear by reference to the deed filed as exhibits by the
Compt. - your Respondent begs leave further to show
that after a judgement was recovered in the Circuit Court
of Greenville against Geo. Drury - execution was sued
out by Geo. Moody & placed in the hands of the Sheriff of
Greenville County, which execution was never

Carried on the goods & chattels of J. D. Lundy, who at that time was a resident of Greenville and was in possession of property which was subject to levy, but J. D. execution was allowed to run out of date, & by that means the debt or a part thereof was not collected. and your ~~Respectful~~ contention that this act ought not to prejudice him, your Respondent begs leave further to show that he was a purchaser for valuable consideration and as he thinks without notice. it is true as alleged in the bill that Wm. B. Westbrook acted in the purchase of the land as the agent of your Respondent. It is further admitted that your Respondent was advised of the suit of J. D. Lundy in the Circuit Court of Greenville. But he here alleges that he was advised by Counsel that J. D. Moody had lost or had given up his right to resort to the land for the payment of his debt by the terms of his agreement with the J. D. Lundy, and your Respondent further shows that at the time of the purchase by J. D. Westbrook from J. D. Lundy - the J. D. Lundy was in possession of property more than sufficient to have paid off the debt then due to J. D. Moody. Thus having answered your Respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended -

Neddy & Goodwyn } For
J. H. Prime } Respond.

Southampton County to wit.

This day Jno Drenry personally appeared before me
a (J. P.) and made oath that the above answer
is true according to the best of his knowledge &
belief Given under my hand & seal this 5th Feb 1848

John Drenry J. P.

1043 with the
Answer

Moody

v }

Gm. dy. &c

1848 Feb'y Rules

195 words

The Answer of Wm B Westbrooke.

This Respondent saving to himself all
benefit of just-exception to the vice - For
answer says. that he did as the Agent
of Jno Drury purchase two parcels of
land from Bird Landy, took a deed for
the same & afterwards conveyed the same
to sd Drury - he was advised of the suit
of Elloody vs Landy in Circuit Supr Court
of Greenville, but did not know that
Elloody still retained a lien on sd Land
On the contrary he was expressly advised by
Counsel that no such lien existed - and
he now alleges that he having acted
under the advice of Counsel in whom he had
confidence, thinks that he ought to be
regarded as innocent ^{knowing as such} and entitled to the
protection of a Court of Equity - he ~~forays~~
to be ~~same~~ ^{dismissed} with his reasonable
costs by him in this behalf expended -

Nedley & Gooden { For
J. H. Triner } Resp.

Southampton County to wit.

This day Wm B Westbrooke personally appeared
before me a (J.P.) and made oath to the truth
of the above answer - Given under my hand &
seal this 5th Feb 1848 -

Wm B Drury J.P.

Moody

2 } Decme

Lundye &c

To be entered in

R. H. Baker

Nov. Co. '47

1849 November

Moody

i

Lundy &c



Deane

Nov: term 1849

This day this cause came on to be heard on the bill, exhibits filed, answers of the defendants, replications thereto and examinations of witnesses; And was argued by Counsel On consideration whereof the court doth adjudge, order & decree that the bill of the complainant be and is hereby dismissed and that said complainant pay the costs ~~incurred in the prosecution of this suit~~ to the defts. Then costs about then suit in this behalf expended.

636

Moody

to { Sp^l. Chy

Gundry & Co.

1847 December Rules

636

Executed

John Barker & Co.
Theriff

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of Southampton County, Greeting:

We command you that you summon

Byrd Lundy Wm. D. Westbrook & John Drury

to appear at the Clerk's Office of our Circuit Superior Court of Law and Chancery for the County of Southampton, at the Rules to be holden for the said Court on the first Monday in December next, to answer a Bill in Chancery exhibited against them in the said Court by

John M. Moody

And unless they shall answer the said Bill within ^{two} ~~four~~ months thereafter, the Court will take the same for confessed, and decree accordingly. And this they shall in no wise omit, under the penalty of £100. And have then there this writ. Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the Court-house, the 15th day of November 1847, in the 72nd year of the Commonwealth.

R. Edwards Clk

[One Copy to be delivered each Defendant.]

Moody

C.S.C

to } Sec. Gen

Sunday

1829 May Term

Executed on

Saml. Drewry
Esq. & Turner Esq.
of Jephtha Parson Esq.

The Commonwealth of Virginia. To the Sheriff of Southampton County Greeting
Whereas in a certain suit in chancery lately depending in our Circuit Superior
Court of Law and Chancery for the said County between John M Moody
Plaintiff and Byrd Landy, Wm B Westbrooke and John Drewry Defendants
whereupon sundry proceedings have been had as appears from the records &
files of the said Court, but before a final decree could be pronounced in the
cause the said John Drewry departed this life and the plaintiff has ap-
plied for a scire facias against Samuel Drewry executor of the said John
Drewry. Therefore we command you that you make known to the said
Samuel Drewry executor as aforesaid that he be before the Judge of our
said Court at the Court house on the first day of the next term to shew cause
if any he can, why the said suit should not be proceeded in to a final decree
against him in his character aforesaid, and be in all things in the same
plight and condition as it was at the time of the decease of the said John
Drewry and further to do and receive what our said Court shall in
that part consider - And have then there this writ. Witness Littleton
R Edwards Clerk of our said Court at the Court house the 24th day of
April 1849 in the 7th year of the Commonwealth.

J R Edwards Clk

To the Clerk of Southampton Co. Sp. Court

Leicester
Va

Leaves to leave before Sept. 17th
1848.

W.R.D. co

of Weekly
to } Depositions
Sunday. 2nd

4
The deposition of Joseph H. Prince taken before me
James Johnson a Justice of the Peace for the
County of Greenville, at the Office of John R. Cham-
-bly in the town of Hicks Ford, on Monday the 10th
day of April 1848, to be read as evidence in a
suit depending in the Circuit Superior Court of Law
and Chancery for Southampton County, in which John
M. Moody is plaintiff and Byrd Lundy and others
are defendants.

Question by Plaintiff Counsel.

Have you or have you not
ever held any conversation with the purchaser of
a certain tract of land sold by Byrd Lundy to
Wm Westbrooke Agent for John Drennon? If so state
the purport of said conversation and when it occurred.
Answer. Not long before Wm B. Westbrooke made the
purchase of Byrd Lundy for the said tract of land,
the the said Westbrooke came to me at Jerusalem on
court day and asked me, if Mr. Moody had any
lien upon the land, I answered that I under-
stood he asserted a lien, but from what I
knew of the case, did not consider it worth
any thing, and if Byrd Lundy wished to
sell his land, I would be glad if he
would purchase it. I then told him to see
John R. Chambly ^{who} ~~whose~~ would give him
any information he might require. I saw
neither Lundy or Westbrooke any more until some
few days after the purchase was made.

And further this deponent saith not

Jos. H. Prince

Sworn to and subscribed before me

James Johnson (J.P.)

The taking of the depositions is continued ~~until~~ ^{until} Tuesday the
11th April Inst

James Johnson (J.P.)

April 11th 1848 The taking of the Deposition is postponed until Wednesday the 13th Inst.

Jas. Johnson J.P.

April 12th 1848. Continued to Thursday the 13th Inst. -

Jas. Johnson J.P.

Apr 13th 1848 Continued to Friday 14th Inst.

Jas. Johnson J.P.

April 14th 1848 Continued to Saturday the 15th Inst.

Thos F. Long J.P.

April 15th 1848 Resumed the taking of Deposition in the first above named suit.

J.R. Leachman being first duly sworn deposes and says That a short time before Wm. Westbrooke bought the tract of Land from Bird Lundy. He (Westbrooke) asked this Depoent whether Geo M Moody held a lien on Bird Lundy's Land - This affiant told him, That Moody claimed a lien and that a suit was then pending in Lawrence, for the recovery of the purchase money which had not been paid.

This Depoent was informed by John Drury that Westbrooke acted as his agent in the purchase of the said Land & further this Depoent saith not.

Subscribed &

sworn to before me.

J.R. Leachman

Robt W. Perkins J.P.

Free of 7.00
Paid By Masam
Bennett

The State of Mississippi

Warren County SS. (The Depositions of Witnesses taken before me Simon S George a Justice of the Peace in and for the County of Warren in the State of Mississippi in pursuance of the annexed Commission on Monday the First day of October in the year of our Lord one thousand eight hundred and forty nine between Sam Rice and Sam Set. aff. said day at the office of Messrs Mason and Burwell in the City of Vicksburg. County and State aforesaid. In a certain suit now depending in the Circuit Superior Court of Law and Chancery for the County of, Southampton State of Virginia in which John M Moody is Plaintiff and Bird Sundry and Samuel Drewry Executors of John Drewry deceased, are Defendants. Not being able to procure the attendance of the several Witnesses Alexander M Patton and Armistead Burwell this day I adjourned the taking of said Depositions until October the 2^d Second at the same place and between the same hours mentioned in the Caption hereof

Simon S George Jp
Pursuant to the adjournment as stated above I attended on the second day of October at the same place and between the same hours and not being able to procure the attendance of A M Patton and A T Burwell I adjourned the further taking of said Depositions until tomorrow October the Third at the same place and between the same hours mentioned in the Caption hereof

Simon S George Jp

Pursuant to The adjournment as above stated I attended on The Third day of October at The same place and between The same Hours and not being able to procure The attendance of A M Paxton and A Burwell I adjourned The further taking of Said Depositions until tomorrow October The Fourth at The same place and between The same Hours mentioned in The Caption hereof.

Simon S George JP

Pursuant to adjournment as above stated I attended on The Fourth day of October at The same place and between The same Hours and not being able to procure The attendance of A M Paxton and A Burwell I adjourned The further taking of Said Depositions until tomorrow October The Fifth at The same place and between The same hours mentioned in The Caption hereof

Simon S George JP.

Pursuant to adjournment as above stated I attended on The Fifth day of October at The same place and between The same Hours and not being able to procure The attendance of A M Paxton and A Burwell I adjourned The further taking of Said Depositions until tomorrow October The Sixth at The same place and between The same Hours mentioned in The Caption hereof

Simon S George JP

Persuant to the adjournment as above stated I attended on the ~~Sixth~~ day of October at The same place and between The same hours and not being able to procure The attendance of A. M. Pasitow and A. Burwell I adjourned The further taking of said Depositions untill Monday October the eighth at The same place and between The same hours mentioned in The caption hereof

Simon A. George JP

Persuant to adjournment as above stated I attended on The eighth day of October A. D. 1849. at The same place and between The same hours. and not being able to procure The attendance of A. M. Pasitow and A. Burwell I adjourned The further taking of said Depositions untill Tuesday October the ninth at The same place and between The same hours mentioned in The caption hereof

Simon A. George JP.

Persuant to adjournment as above stated I attended on The ninth day of October A. D. 1849 at The same place and between The same hours mentioned in The caption hereof I proceeded to take The Deposition of Amos Burwell, which is as follows, on The following pages — nos 4 & 5 and adjourned The taking of. A my next Depositions untill October the 10th

1849 at The place & between The same hours to which I adjourned as mentioned in The caption
Simon A. George

Armistead Burrum living sworn. The truth
and the whole truth to speak deposit
and says as follows

I once had in my possession the
receipt of W. H. & A. M. Paxton attorneys at law for a
note of D. W. Connelly, for the sum of five thousand
Dollars, which note was a negotiable note, and en-
dorsed by A. G. McKim and W. H. Sims. The above note
was settled by taking other paper, part of which has
been collected and part remains unpaid. The amounts
that remain unpaid and as I consider are not
collectable are two notes of A. G. McKim one for
\$1150 ⁸⁸/₁₀₀ due 18th March 1840 and one for \$272. ⁶⁸/₁₀₀
due 28th March 1840, which notes are in the hands
of Messrs Paxton attorneys. The settlement of the note
referred to in the receipt by taking other paper
was a good arrangement, and I think the best
that could have been made. The original note
of \$5000, was not in my opinion worth
any thing and even at the time the settlement
was made was not considered good paper.
The only party from whom there was any
hope of recovering any thing being A. G. McKim
and he was but endorser, and but for the ar-
rangement the whole amount would have
been lost. The other notes besides the two above
mentioned, were the notes of Ro: A. Buckner
D. W. Connelly & A. G. McKim, which were paid
by Buckner in State warrants worth I think
at the time in the market about 7/8 cents
to the Dollar and which were agreed to be taken
at 80 cents. The State warrants were appreciating
in the market, are now and have been for
some time at par. In 1839 D. W. Connelly, W. H.
Sims and A. G. McKim were insolvent.

Page 5

I was once called on by a gentleman who said he had in his possession the state warrants which Buckner paid, and whom I regarded as the agent of John W. Moody, in relation to an intended sale of them. I advised him that in my opinion the warrants would improve, but he thought it best to take the then selling price and I learned that he sold them to Brown & Johnston Brokers for 71 cents.

The note referred to in the above was receipt, was never paid; it was exchanged for other paper which was paid in part only as above stated. The arrangement for the exchange was I understood made by Miss Paxton about the last of 1839 or first of 1840.

Sworn to and Subscribed F. A. Burrows
before me this the 9th
day of October A D 1849

Simon A. George Esq.
Justice of the Peace

Continuation of 3 page

Persuant to adjournment I attended
on the tenth day of October A D 1849
at the same place and between the same
hours mentioned in the Caption and
proceeded to take the deposition of
Alexander M Paxton. which will
be found on the .. and .. pages —

Simon L George ^{Dea}
Justice of the Peace

Alexander M. Paxton, being duly Sworn The Truth and The Whole Truth to speak Hopedith and said as follows to wit. That The note of Five Thousand Dollars drawn by Dr Connolly endorsed by W H Linn and A G McNeill on Nov 30. 1838 date Nov 30th 1836 The drawer and first endorser on which note Connolly and Linn were then insolvent and McNeill was believed to be the only solvent one to the note and it was very doubtful whether he was liable as two thirds of the endorsers were discharged for want of notice by the Courts. We believed that if suit had been brought the debt would have been lost. which circumstances have since shown would certainly have been the case as all the parties to the original note by the time Judgment could have been recovered were and are still perfectly insolvent.

We objected to receiving McNeill's note as he is an uncle of ours and we did not wish to take paper on him by way of settlement. But it was made a condition Precedent by Mr Connolly that we should take McNeill's note for the amount for which it was received or bring suit and believing that by so doing we would lose the whole debt we consented to receive it. We believed

McNeill then to be solvent and we were as familiar with his business as our own in fact being his general agents and having in our possession all of his Books and papers and since that time, i.e. the maturity of the note we have become liable for large amounts of ~~his property~~ money for the payment of which large amounts of his property have been sold —

Amv Can

And we are still liable for him for some \$20,000 which remains unpaid — By the changing of this paper the parties secured a large portion of their debt, which would otherwise have been all or the less. in addition to the difficulty in relation to the protest and notice to the endorsers we were informed, that the note, was given for negroes introduced into this state in contravention of our Constitution and therefore void, and the parties threatened to defend any suit brought on this ground.

By changing the paper we secured that portion of the of the debt which has been collected. Which was made as follows by receiving in payment of D W Connelley's note endorsed by W H Sims and A G Moseley for three thousand dollars due near 30th 1838, for the following notes D W Connelley R D Breckner & A G Moseley, Joint note for twenty seven hundred and one $8\frac{3}{100}$ dollars due near 1st 1839, and Joint note of the same parties for thirteen hundred and twenty eight $32\frac{1}{100}$ dollars due March 1st 1840 also A G Moseley two notes one for eleven hundred and fifty $58\frac{1}{100}$ dollars due March 1st 1840 the other for two hundred and seventy two $68\frac{1}{100}$ dollars due February 25th 1840 The balance of the five thousand dollar note I suppose was paid in cash all of which notes bear date 25th March 1839.

The time at which the settlement was made and the five thousand dollar note was given up. The new note was made payable to Byrd Lundy

Wm. Lundy

as to whether John Moody received the money I cannot say. ~~and I have no recollection~~ it was paid to Byrd Sundry assignee or agent I never saw Moody, all promissory notes, and by statute in Mississippi, made negotiable by Howard and Hutchins Code. Page 375 section 12

I have no distinct recollection in relation to the instructions given by Wilkins but as the settlement was made on the 23rd March 1839 and note handed us on the 11th January 39. We presume we acted according to understanding had with Wilkins the whole transaction being closed up. within a few months, I felt some hesitancy in giving my deposition in the above case and was unwilling that my evidence should have any bearing in a suit which ^{might} be used hereafter to fix or discharge W & A M parson from their liability as attys for B Sundry but have given it under process and finding my ~~opinion~~ corresponds with those of Dr Parham and A Burwell I have no objection to its being used for what it is worth

Sworn to and subscribed A M Parson
before me this 10th day
of October A D 1849

Samuel George Pease
Justice of the peace

quiter will produce a book which
and send their accounts to the Proprietors for payment.

BIRD LUNDY and Samuel Drewry, Ex'or of John
Drewry, dec'd.—

Take notice that I shall, on Monday, 1st day of Oc-
tober, 1849, (and continue from day to day, till com-
pleted,) proceed to take the depositions of W. H. and
A. M. Paxton and others, to be read as evidence in a
suit depending in the Circuit Superior Court of Law
and Chancery for the county of Southampton, State of
Virginia, in which I am Plaintiff, and you are defend-
ants.

The above depositions will be taken at the office of
Messrs. Masoi & Burwell, Attorneys at Law, Vicks-
burg, Mississippi,
at 25—w4w

JNO. M. MOODY.

VIRGINIA—IN CHANCERY.—Commissioner
Bernard's Office, Petersburg, September 3, 1849.

Moody
v } Com.
Lundy

The Commonwealth of Virginia: To any Justice of the Peace in the
~~The~~ County of Warren — State of Mississippi Greeting:

Know ye that we trusting in your fidelity and provident circumspection
in diligently examining whatsoever witnesses as well on behalf of the plaintiff
as on behalf of the Defendants in a suit in Chancery depending in our District
Superior Court of Law and Chancery for the County of Southampton in
the State of Virginia in which John M Moody is plaintiff and Byrd
Lundy & Samuel Drury executor of John Drury dec are defendants

command you, ~~on any two or more of you~~, that at such day and place as you
shall appoint, you ^{attend} ~~assemble yourselves~~, and the witness ~~is aforesaid~~ before you,
you call and cause to come, and diligently examine on the Holy Evangelist
of Almighty God, and ~~their~~ examination into our said Court dis-
tinctly and plainly without delay you send and certify enclosed returning also
this writ: Witness, ~~James Rochelle~~ ^{Samuel R Edwards}, Clerk of our said Court, at the
Courthouse this 14th — day of September — 1849
in the 74th year of the Commonwealth.

J R Edwards *ls*

For L. R. Edwards.

Copy of doc. Moody to Lundy. (marked No 3)
Copy of doc. Lundy to Westbrook. (marked No 4)
Copy of doc. Westbrook to Denny (marked No. 5)

Charge to Jm. Moody

John H. Lamb

Lunch
to } Bond
Moody }

A. Coffey

(No. 1.)

(18c)

Know all men by these presents that I, Byrd Lundy bind myself, my heirs, executors and assigns to pay a cause to be paid unto John M. Moody, his heirs or assigns the sum of Five Thousand Dollars lawful money of Virginia for value recd. Witness my hand and seal this 11th day of February 1839.

The condition of the above obligation is such that the above bound Byrd Lundy has purchased of Jno. M. Moody a tract of Land for the sum of Five Thousand Dollars and paid the sd. Moody the same in a bond, executed by D. M. Connolly, and endorsed by W. H. Davis and A. G. McQuinn dated 30th Nov. 1836 and due 24 months after date for Five Thousand Dollars - which bond is deposited in Court & R. Road Bank, Vicksburg Mississippi - and the sd. Lundy has transferred the title to said note to the said Moody. Now if the said Moody should fail to recover the amount of principle and interest of the above described note from the parties bound to pay the same; the above bound Lundy binds himself to pay the sd. Moody the sum of Five Thousand Dollars, with interest from this date - but if the sd. Moody should collect the above recited or described Mississippi Bond, then this obligation to be void, else to remain in full force and virtue.

Teste.

Byrd Lundy (seal)

J. R. Chambliss

L. W. Mason

The above is a copy of the bond filed in the suit of John M. Moody against Byrd Lundy lately depending in the Circuit Superior Court of Law & Chancery for Greenock County.

Teste - Jos. Turner C. C.

Moody

or

Lundy

Copies of Judgment, & extract
of discharge &c

(No. 2.)

At a Circuit Superior Court of Law & Chancery continued & held
for the County of Greenville at the Court House thereof on Friday
the 30th day of April 1847.

John M. Moody
against
Byrd Lundy

Plff. } In Covenant.
Def. }

This day came the parties by their attorneys, and the jury, sworn
to try the issue in this cause, appeared in Court according to their
adjournment, and the argument of counsel being concluded, were
sent out of Court to consult of their verdict, and after some time re-
turned into Court, and upon their oath do say "We of the jury find
for the plaintiff on the issues joined, and assess his damages by
reason of the breaches of the covenant in the declaration men-
tioned to Twenty Four hundred & sixty one dollars & 75 cents (\$2461.75)
with interest on \$2036.40 cents part of said damages from 30th April
1847 till paid". Therefore it is considered by the Court that the plaintiff
recover against the defendant his damages assessed as aforesaid with
interest to be computed after the rate of six per centum per annum
on Two Thousand & thirty six dollars & 40 cents part thereof from
the said 30th day of April 1847, till payment, and his costs by him
about his suit in this behalf expended. And the said defen-
dant in mercy &c

A. Coffey - Jester.

Jos. Turner C. C.

The following are copies of the warrant of Discharge, notice, and
Schedule of Byrd Lundy on taking the oath of Indulgence in the
case of Jno. Moody vs him lately depending in the Circuit Superi-
or Court of Law & Chancery for Greenville County, which are
filed in the papers of said Court.

" To the Sheriff of Greenville County.

Whereas Byrd Lundy has surrendered himself &
(is now in your custody) so as to discharge Jos. Turner his bail in
the case of John M. Moody vs him, lately depending in the Circuit
Superior Court of Law and Chancery for Greenville County & there
being no execution of any sort, with which he stands charged in

custody, & the said Lundy being desirous to discharge himself from
your custody as aforesaid by taking the oath of an Insolvent Debtor.
And whereas it is shown to me that the said Lundy gave the said
Moody reasonable notice of his intention to take the oath of an
Insolvent Debtor, at the Court House of this County, on this the 14th
day of September 1847, and served with the said notice a copy of
the Schedule he intended to offer; and the said Lundy upon
coming before me a Justice of the Peace for the County aforesaid,
at the said time and place, has subscribed and delivered in a
Schedule of his estate, and taken the oath prescribed by the thirty
first Section of the Act entitled "An Act to reduce into one act
the several acts concerning executions and for the relief of In-
solvent Debtors," and done all that the said Act requires to
entitle him to be discharged; There, are therefore to command
you, in the name of the Commonwealth, forthwith to discharge
the said Byrd Lundy, if he be detained in your custody for any other
cause, than as aforesaid. And for so doing this shall be your
warrant. Given under my hand & seal this 14th day of September
1847. Robt. M. Deakins J.P. Seal "

Notice, Schedule &c "To Mr. Jas. M. Moray.

Having surrendered myself to the
Sheriff of Greenville County, so as to discharge from his recog-
nizance, Jas. Turner, my bail, in your suit (action of covenant)
lately depending in the Circuit Superior Court of Law & Chancery
for Greenville County, against me, and desiring to be released from
my imprisonment, I now give you notice, that I intend, on this day,
at the Court House of the said County, to take the oath of an In-
solvent Debtor. Subjoined hereto is a copy of the schedule which
I mean to offer.

Septr: 14th 1847

Byrd Lundy.

A Schedule of my estate. I have no property, money or effects of any description
to deliver up.

Byrd Lundy.

Served to & subscribed before me a Justice of the Peace for Greenville
County this 14th September 1847.

Robt. M. Deakins J.P. "

On the foregoing notice is the following endorsement "Executed, Moody
acknowledging this as being reasonable notice.

John S. Turner & James M. Cook Stiffs

Teste — Jos. Turner C. C.

Southampton County. In the Clerks Office the 19th day of October
1846- This deed of bargain and sale from Wm^d. Westbrook to John
Drury was acknowledged by said Westbrook and admitted to record

Teste.

L. R. Edwards lck

Attest.

Teste, L. R. Edwards lck

Attest

Exhibit with will

Drury lck

No 345.

52448 lck

This Indenture made this the 11th day of February 1839.
between John M Moody and Martha W Moody his wife of Greens-
ville County Va of the one part and Byrd Lundy of the County of
Southampton Va of the other part. Witnesseth, that the said John
M Moody and Martha W his wife for and in consideration of the
sum of five thousand dollars to them in hand paid by the said
Byrd Lundy at or before the sealing of these presents, the receipt
whereof is hereby acknowledged, he the said John M Moody and
Martha W his wife have bargained sold and delivered & by
these presents do bargain sell and deliver unto the said Byrd
Lundy and his heirs forever a certain tract or parcel of land
lying and being in the County of Southampton & State of Virginia
containing five hundred and fifty one acres, be the same more or
less, and bounded by the lands of Thomas Williamson, Richard
William, Sampson & Robinson & others - To have and to hold the said
land and premises to him the said Byrd Lundy his heirs and assigns
forever - & the said John M Moody do for myself my heirs and
assigns warrant and will defend the right and title of said land
and premises against the claim or claims of any person or persons
whatsoever unto him the said Byrd Lundy his heirs or assigns.
As witness our hands and seals the day and date above written.

John M Moody (Seal)
Martha W Moody (Seal)

Greensville County to wit.

We W^m L Lundy and Rich^d R Moss
justices of the Peace in the County aforesaid and State of Virginia
do hereby certify that Martha W Moody the wife of John M Moody
parties to a certain deed bearing date the 11th day of February and
herewith annexed personally appeared before us in our County
aforesaid, being examined by us privily and apart from her
husband and having the deed aforesaid fully explained to her, she
the said Martha W Moody acknowledged the same to be her act and
deed and declared that she had willingly signed sealed and
delivered the same and that she wished not to retract it. Given under
our hands and seals this 11th day of February 1839.

W^m L Lundy (Seal)
R R Moss (Seal)

Graunville County to wit:

We W^m L Lundy and Richard D R Moss
justices of the Peace in the County aforesaid in the State of Virginia do
hereby certify that John M Moody a party to a certain deed bearing
date on the 8th day of May 1838 and hereto annexed personally ap-
peared before us in our County aforesaid and acknowledged the same
to be his act and deed and desired us to certify the said acknowledgement
to the Clerk of the County of Graunville in order the said deed may be
recorded - Given under my hand and seal this day of March.
1839 -

W L Lundy (Seal)
R R Moss (Seal)

At a Court held for the County of Southampton on the 18 day of March
1839 - This deed of bargain and sale from John M Moody and Martha
his wife to Byrd Lundy together with the certificates thereto annexed was
returned and ordered to be recorded.

Teste. L R Edwards CC
Copy Teste. L R Edwards CC

This Indenture made the 16th day of October in the
year of our Lord one thousand eight hundred and forty six
between W^m Westbrook of the one part and John Drewry of the
other part Witnesseth, that the said W^m Westbrook in considera-
tion of the sum of twenty six hundred dollars lawful money of
this Commonwealth to him in hand paid by the S^r John Drewry
at or before the sealing and delivery of these presents (the rec^t
whereof is hereby acknowledged) have bargained and sold & by
these presents do grant bargain and sell unto the said John
Drewry his heirs and assigns certain tracts or parcel of lands, one
tract of which lying and being in the County of Southampton,
State of Virginia & adjoining the lands of Jos^s St Prince on the
West side & on the South side bounded by the Meherrin river and on
all other sides by the lands of Tho^s B Williamson & containing
four hundred & forty six acres more or less - The other tract lies a
part in the County of Graunville & the other part in the County of
Southampton Va & bounded as follows on the North by the lands
of Martha Tiller & on the South & West by the lands of Patrick
Morris & by the lands of Jos^s St Prince on the East & containing
One hundred & seventy six acres say more or less - (lands recently
purchased of Byrd Lundy) To have and to hold the S^r tracts
or parcel of lands with the tenements hereditaments and all and
singular other the premises herein before mentioned or intended
to be bargained & sold & every part and parcel thereof with all
of the right members & appurtenances unto the S^r John Drewry
his heirs and assigns forever to and for the only proper use and
 behoof of him the S^r John Drewry his heirs and assigns forever -
And the said W^m Westbrook for himself and his heirs the S^r
tracts or parcel of lands with all and singular the premises &
appurtenances before mentioned unto the S^r John Drewry his
heirs & assigns free from the claim or claims of him the S^r W^m
Westbrook or his heirs and of all and every person or persons what-
soever shall will and do warrant & forever defend by these presents
In Witness whereof this W^m Westbrook have herunto set his hand
and seal the day & year first above written.
Signed sealed & delivered
in the presence of
W^m Westbrook (Seal)

Moody

to } Exhibit with bill

Sundry &c

(No. 4)

58 cents.

This Indenture made the 26th day of September in the
year of our Lord one thousand eight hundred & forty six between
Byrd Lundy & Rebecca J Lundy his wife of the one part & W^m B
Westbrook of the other part Witnesses, that the said Byrd Lundy
and Rebecca J Lundy his wife in consideration of the sum of twenty
five hundred dollars lawful money of this Commonwealth to them in
hand paid by the said William B Westbrook at or before the
making & delivery of these presents (the receipt whereof is hereby
acknowledged) have bargained & sold & by these presents do each
of them do each of them doth bargain and sell unto the said
W^m B Westbrook his heirs and assigns a certain parcel of land one
tract ~~lying~~ ^{being} in the County of Southampton & adjoining
the lands of Co. St Prince on the West side and bounded by the
Meherrin river on the South & on all other sides by the lands of
Thos. B. Williamson & containing four hundred & forty six acres
more or less. The other tract lies a part in the County of Greenville
and the other part in the County of Southampton containing one
hundred & seventy six acres more or less and adjoining the lands
of Martha Tiller on the North & Patrick Tholp on the South &
West and the lands of Co. St Prince on the East. To have and to hold
the said tracts or parcel of lands with the tenements hereditaments
and all and singular other the premises herein before mentioned
or intended to be bargained and sold & every part and parcel
thereof with every of their rights members and appurtenances unto the
C. W^m B. Westbrook his heirs and assigns forever, to and for the only
proper use and behoof of him the said W^m B. Westbrook his heirs and
assigns forever. And the said Byrd Lundy and Rebecca J Lundy
his wife ~~or either of them~~ for themselves & their heirs the said tracts or
parcel of lands with all and singular the premises and appurte-
nances before mentioned unto the said W^m B. Westbrook his heirs & assigns
free from the claim or claims of them the said Byrd Lundy & Rebecca
J Lundy his wife or either of them or either of their heirs and of all
and every person or persons whatsoever shall will and do warrant &
forever defend by these presents. In Witness whereof the said
Byrd Lundy & Rebecca J Lundy his wife have hereunto set their

hands & seals the day and year first above written.

Signed Sealed & delivered
in the presence of

James Brown
Jas. R. Peters
et al. Seniors

Byrd Lundy Seal
Rebecca T. Lundy Seal

Southampton County Va.

We Tho^s Ridley and Francis T. Ridley Justices
of the peace of the County aforesaid & State of Va. do hereby certify that
Rebecca T. Lundy the wife of Byrd Lundy parties to a certain deed
bearing date 26th September 1846 and herunto annexed personally
appeared before us in our County aforesaid and being examined by us
privately and apart from her husband and hearing the deed aforesaid
fully explained to her she the said Rebecca T. Lundy acknowledged
the same to be her act and deed and declared that she had willingly
signed sealed and delivered the same and that she wished not to retract it.
Given under our hands this 26th September 1846.

Tho^s Ridley Seal
F. T. Ridley Seal

Southampton County In the Clerk's Office the 10th day of October 1846
This deed of bargain and sale from Byrd Lundy and wife to William
W. Westbrook was acknowledged by said Byrd Lundy one of the parties
thereto and together with the certificate of the private examination and
acknowledgment of the wife admitted to record.

Teste. L. R. Edwards Secy

Attest
J. R. Edwards Secy

Monday

2
Sunday

note

Southampton

Moody or Lundy.

There is one question in the case, which may be regarded as the main point, to which I invite the attention of the Court. Upon examination it will be found, that an absolute conveyance of the land was made to Lundy by Moody. And that ^{ed} Lundy duly assigned to Moody a bond executed by D. W. Connolly, endorsed by W. H. Lewis & A. J. McKnight, and at the same ^{time} covenanted with Moody to pay him the amount of ^{ed} note if he failed to collect the same. ^{First.} Let Moody by the acceptance of this bond, give up, or release the lien on the land sold - I hold that he did. I understand the doctrine of Law to be, 1st That generally speaking, there is a lien ~~in~~ implied in favour of the vendor. 2nd. That Purchasers with notice, take subject to this lien - ~~ed~~ These rules are manifestly founded on a supposed conformity with the intentions of the parties, upon which the Law assumes an implied Contract. And therefore ceases to act, when the circumstances of the case do not justify such a conclusion; 3rd. That this lien is destroyed by taking distinct and independent security, either of other property or of the responsibility of third persons.

In this Case Moody certainly did take or rely in the first place on third persons for payment - In the language of Sir William Grant - Moody carried out his own security - he substituted the bond for the lien. And I hold this doctrine is not impaired by the covenant.

The undertaking of Lundy in the covenant - amounting to nothing more than an acknowledgement of his legal liability as assignor at Law - In support of these views - I respectfully refer the

Court to Story's Equity. Vol. 2^d pages - 472 - 3 - 4 + 5 -

+ 12th 450 + note
Notes & - See also 4 Kent's Comm. pp 151 to 153 - 1 Fonbl. Eq. B. 1 - Sec 3

5 + 8 + note -

Robt. Dwy

note

Mrs. W. L. Jones

10
160
4200
70
8/11,200
5
56,000
14,800
50,400
700

Moody

vs.

Lunday &c

In this case the pl^{ff}: is seeking to recover the amt. of a judgment of \$2461.75 rendered in the C. F. C. of Greenville at Term 18 upon the agreement of Lunday ^{to the pl^{ff}:}, a copy of which is filed in this cause marked (1) -

The pl^{ff}: sold to the defat: Lunday in the year 183 a tract of land in the county of Southampton for the sum of \$5000. "and paid the said Moody the same in a bond, executed by D. W. Connelly and endorsed by H. W. Lewis & A. G. McNutt dated 30th Nov; 1836 & due 24 months after date for five thousand dollars. which bond is deposited in the com^b. & Rail Road Bank Vicksburg, Mississippi."

In the year 1846 on 26 Sept: Lunday sold to Wm B. Westbrook agent for John Drury two tracts of land ~~and will~~ appear by reference to Deed Marked (4) for the sum of \$2500.

The deposition shows that Westbrook had notice that Moody asserted a lien upon the land, he had sold Lunday, for the unpaid purchase money. & Westbrook in his answer asserts that he was advised by counsel that Moody could not subject this land to payment of this money.

No fraud is charged in the bill or attempted to be proved.

The question presented is, what is the legal effect of the written agreement executed by Lundy 11th Feb 1839 to Moody, or does under the circumstances even Moody claim a Lien upon the land in the hands of Lundy, or if Witherbrook agent for Drury having purchased with notice of this pretended lien.

What is the consideration upon which the sale is made from the plaintiff Moody to Lundy. The consideration is fully expressed in the agreement above referred to.

That Lundy pays or transfers the title to the Mississippi bond to the plaintiff and binds himself if not paid by the obligors to pay it himself. This is clearly the legal effect of the agreement, and in fact

operates as Lundy as an assignment of this bond in Mississippi to Moody.

Had Moody taken Lundy's bond, or any instrument ^{whatsoever} involving the personal liability of the vendor, then the

lien would have been good ^{as Lundy & all others} ^{Macbeth v. Symmons 243 Law Library vol. 55} ^{claiming under him with notice} But are not

the liabilities of others involved. Could Moody have recovered one cent from Lundy until

the insolvency or no "effects found" ^{as D. W.} ^{Connely, H. W. Lewis & A. G. McKnight} or until

these parties were released ^{from the payment} of this Mississippi bond.

Now If this be true, there is clearly a waiver of the lien. If the written agreement between the plaintiff & defendant Lundy has the legal effect of an assignment then Lundy stands in the place of a surety that this is so Let us inquire first what is an assignment. A contract or agreement that to perform a certain thing if others fail. If A. executes his bond to B. B. assigns to C. B. undertakes to pay it provided A can not. What is the quantum of damages to which B. would be subjected. The deficit incurred from A. What were the damages claimed ^{& recovered} ^{as Lundy} by Moody upon this agreement. The deficit the amt. which he could not recover from these other parties (Connely, 1-1) If this construction be correct, then Moody's claim upon this land stood precisely as any other creditor of Lundy. In the case of Macbeth ^{vs. Symmons} ~~page~~ Law Library vol. 55 page 244 the doctrine is laid down that a negotiable note drawn by the vendor, & indorsed by a third person, or drawn by a third person & indorsed by the vendor will ripen the lien presumptively.

J. H. Prince