

1869.14 - Southampton County Chancery

Darden, Richard J. vs Pope, Harrison P.

Injunction

others -

Pope - George C.

Myrick - Wm. G.

Pope, Benjamin E.

To the Hon Edward W. Hapenberg
Judge of the Hustings Court for the City of Portsmouth

Humbly complaining sheweth unto your
Honor, Your Orator Richard J. Darden a citizen and resi-
dent of the County of Southampton, state of Virginia, and respect-
fully represents as follows:

That, in the year 1866, your Orator executed a
Deed of Trust to which George B. Pope is Trustee for the
benefit of Benjamin E. Pope, Harrison P. Pope, James J.
Darden, William E. Myrick and ~~for~~ ^{and} others, whose said
Deed of Trust was duly admitted to record in the
Clerk's office of the County Court & the said County
of Southampton.

The object and legal effect of the
said Deed of Trust was to save from loss the prop-
ties before named as sureties for your orator to
certain bonds which he then owed to Thomas
Ridley and perhaps to others. And in the year
1868 your orator agreed with the said Benja-
min E. Pope

that if they, the said beneficiaries, would with-
hold from ordering the said Trustee to make
sale of a certain tract of land in the
said Deed mentioned and described, it being
the tract of land on which your Orator then
resided that your orator would pay to the said
Thomas Ridley the interest, for one year, on the
bonds due to the said Thomas Ridley, which, as well
as is remembered, was about the sum of five hun-
dred and fifty dollars. This sum your Orator
promised and agreed to pay in consideration of the

indulgence and delay thus to be obtained by him in the sale of the said Tract of Land, and was not promised and agreed to ^{be} paid in any legal sense meaning or effect as rent to the said beneficiaries for the use and occupation of the said Tract of Land — for your orator is advised and well believes that beneficiaries in a Deed of Trust conveying land are not entitled by virtue of such Deed of Trust, nor by virtue of any agreement made and entered into by the grantor with the beneficiaries for delay and indulgence in foreclosing such Deed of Trust, to treat and consider the amount promised, for such indulgence and delay as rent due from a tenant to a land lord — And your orator submits to your Honor that such beneficiaries have none of the remedies for collecting any sum so promised to be paid for delay that a land lord has for the collection of rent due.

Notwithstanding this and notwithstanding in the early part of this year the Trustee in the said Deed of Trust did actually foreclose the same by selling the property real and personal conveyed therein, the said beneficiaries or some of them, trust the said Harrison P. Pope have caused to be issued by a justice of the peace for the said County a Distress warrant against the personal property of your orator trust six stacks of fodder twenty seven hogs and one pair of oxen, claiming and alleging that the amount of \$530.00 cents before mentioned was due as rent, and the said Distress warrant has been levied on the personal property last —

of your orator

named by William G. Holmes, a Constable and Deputy Sheriff in the said County, who has advertised the said personal property for sale at auction at Jerusalem on Monday the fifteenth day of February A.D. 1869.

All of which atings and doings are contrary to equity and injurious to the rights of your orator, and as he is without remedy in the premises save in a Court of Chancery where such things are properly cognizable, your orator prays that your Honor would make the said Harrison P. Pope a ~~party~~ ^{party} defendant to this Bill and require him to answer its allegations specially —

that your Honor would grant an Order of Injunction against the said William G. Holmes and all others enjoining and restraining the said Holmes from proceeding to make sale of the said personal property upon which he has levied the said Distress warrant, —

And that your honor would grant such further and general relief as equity may dictate and the nature of the case may require — and, as in duty bound, your orator will ever pray, &c.
May it please the Court &c!

Resdred pg

State of Virginia }
County of Southampton } To wit

This day personally appeared before me a justice of the peace for said County, in my said County, Richard S. Darden and made oath that the statements and allegations contained in the foregoing Bill of Complaint are true to the best of his information and belief. Witness my hand this 15th of February 1869. Wm. N. Parker. 22

On motion of the Plaintiff, an order is granted to
injoin & restrain the Defs from appointing attorneys
from further proceeding to sell the property
in the bill mentioned until the further order
of the Court but this order is to be suspended
until the Plaintiff shall present and in the
Clerk's Office of the Circuit Court for the County
of Loudoun in the period of \$300.00
payable to the Commonwealth of Virginia
conditioned to pay all such costs and
damages as shall be incurred in this
enforcement to be taxed
Feb 15th 1869 - E. W. Moseley
Judge of the County of Hastings for
of Loudoun

Richard L. Mendenhall
Attorney at Law
Hastings

To the Clerk of the Circuit Court of the County of
Loudoun

1869. Feb. 15. 96

London

"

Pope



London

27

Nov. 2nd 1870

to the editor

Dear Sir

Richard I Darden

Y 3
Harrison P Pope

There appearing nothing
further necessary to be done in this case
the same is dismissed from the docket -
Subject to be restored thereto on the mo-
tion of ~~either~~ party, neither of whose interests
is to be prejudiced by this order -
Each party paying his own cost already
accrued.

To injure & restrain the Deft. their agents & attorneys from further
 proceeding to sell the property in the bill mentioned until the further order of
 the Court the plaintiff having given bond of Securities in the Clerk's Office
 of this Court in the sum of \$300 payable to the Commonwealth of Virginia
 Conditioned to pay all such costs & damages as shall be incurred in case the
 injunction be dissolved

Teste G. R. Edwards

Darden

123

Pope

Executed on H. P.
 Pope Feb. 15th 1869
 by reading the within
 to him.

P. Governor Deft
 for J. R. Kello Chff

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of the County of Southampton—GREETING :

We command you to summon

Harrison P. Pope

if *they* be found within your bailiwick, to appear at the Clerk's office of our court of Southampton County, at the Rules to be holden for the said court, on the first Monday in *March* next to answer a bill in *Chancery* exhibited against them by *Richard J. Darden* *Deceased*

And have then there this writ.

Witness, LITTLETON R. EDWARDS, Clerk of our said Court, at the courthouse, this *15* day of *February* A. D., 1869, in the *9th* year of the Commonwealth.

L. R. Edwards Clk

Know all men by these presents that we R. J. Darden &
Henry S. Howard

are held and firmly bound unto the Commonwealth of Virginia in the just and full
sum of three hundred dollars Dollars
good and lawful money of Virginia, to the payment whereof well and truly to be
made we bind ourselves our heirs executors and administrators jointly & severally
firmly by these. Sealed with our seals and dated this 15th day of February
A. D. 1869

The Condition of the above obligation is such that ^{whereas} the above bound
Richard J. Darden has obtained an Injunction from Judge E. W. Mapenburg to enjoin & restrain
Harrison P. Pope from further proceeding to sell the property in the bill mentioned until the
further order of the Court. Now if the said Richard J. Darden shall pay and satisfy all
such costs & damages as shall be incurred in case the said injunction be dissolved

~~shall faithfully discharge the duties of his said office or trust according to law~~
then the above obligation to be void or else to remain in full force and virtue.

Signed, Sealed and delivered
in the presence of the Court }

R. J. Darden (Seal)
Henry S. Howard (Seal)
(Seal)
(Seal)

Southampton Circuit Court Clerk's Office February 15. 1869

Richard J. Darden & Henry S. Howard the obligors to the above bond acknowledged
the same before me as clerk of the Court aforesaid to be their act & deed. And Henry S. Howard
their security, made oath that his estate after the payment of all his just debts is worth the sum of
three hundred dollars after the payment of all his just debts as he verily believes.
Given under my hand the day & year above written.

L. R. Edwards Clk