

1873 - 10

Sanborn County Chancery

Johnson W. J.
vs

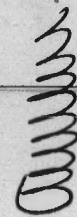
Gillette, Joseph's Adm

"Gillette vs Johnson"

W. J. Johnson, suor
by John Moore,
his next friend

Ben E. Warrick, Adm
Est Joseph E. Gillette
L. Q. Edwards, Trustee &
Wm B Shanks, Trustee

143
Johnson, by dr.

or  Bill Exhibit

Gilletts' Adm'r dr.

Copy

1873 April Rules

Received by Clerk Circuit

Court Aug. 13th 1873

To the Honorable Jos W. Wapshaw, Judge of the
County Court of Southampton. In Chancery.
Humbly Complaining, Sheweth unto your Honor,
your complainant, W. T. Johnson, who sues by
John Moore, his next friend as follows:-

That several years since John M. Gurly qualified
as his fdu with John Moore & others as his
sureties, as will appear from a copy of
the guardian bond filed herewith & proved to
be taken as a part of this bill. That on
the 21st day of May 1866, the said J. M. Gurly
made a deed of trust to L. R. Edwards, as
trustee, conveying among other things, a bond
he held against Wm Cobb for \$194.86 due
Debr 21. 1857. That the said bond was at that
time in suit and is so described in the deed;
~~and which~~ conveyed to the said trustee to save
harmless John Moore, who was one of his
sureties on his fdu bond - all of which will
more fully appear from a copy of the said
deed herewith filed marked (A) & proved to be
taken as a part of this bill - That the said
bond was delivered by the said Gurly to E. W.
Massenburg, who was at that time an attorney
at law in Southampton, to be collected by suit;
that the said Massenburg brought the suit, but
made a mistake in making the proper
parties plaintiffs, having brought the suit

Exhibit (A)

Exhibit (B).

in the name of John M. Gurly for the benefit of Joseph E. Gillette, and in such form a judgment was rendered against the said Wm Cobb, at the Nov Term 1866 of the Court of Southampton, as will be seen from a copy of the said judgment filed herewith marked (B) and prayed to be taken as part of this bill. That the said Massenburg declared in the presence of several witnesses that he had so made a mistake.

That on the 19th day of Decr 1870, the said Wm Cobb made a deed of trust to Wm B. Shand, trustee, conveying Real Estate to secure an execution in favor of Jos E. Gillette, now held by Geo Moore, Son of Taliaferro Johnson for \$194. 86, due Dec 21st 1857, as will be seen from a copy of said

Exhibit (C)

deed, herewith filed marked (C), and prayed to be taken as part of this bill. That the said Cobb inaccurately describes the owner of said bond, and wrongly makes John Moore the Son of Taliaferro Johnson, but the execution intended to be secured by said deed of trust was the same as the bond conveyed by Gurly to Edwards May 21st 1866. That by virtue of the judgment aforesaid and the deed of trust from Cobb to Shand of Dec 19. 1870, there are two liens upon the same property to different individuals

for the same debt. that only belongs to one--
that in consideration of this state of affairs,
it would be against good conscience for
both parties to enforce their liens--: That E. W.
Massenburg has died, and so has Jno M.
Gurley & Jor: E. Gillette & Ben E. Morrell
has qualified as the Adm. of Jor: E. Gillette.
Your complainant charges further that he
is entitled to the said bond, for as much
as there was a deed of trust which was
a lien, prior to the judgment in favor of
Jor: E. Gillette-- all the said deeds of trust
were duly recorded.. In consideration of which,
and as a Court of Equity is the proper Tribunal
to settle the Equities of this cause, and that
full justice may be done all the parties,
your complainant prays that Ben E. Morrell
Adm. of Jor: E. Gillette decd, L. R. Edwards,
Trustee, Wm Cobb, & Wm B. Shands, ^{Trustee} may be
made parties defendant to this bill & compelled
to answer the allegations thereof.. That your
Honor will instruct Wm B. Shands, ^{Trustee}
in what way & to whom the funds ^{to be} for which
Wm Cobb conveyed his real estate, shall be distributed,
and that your Honor will grant such other further
& general relief in the premises as to Equity may
seem meet & the nature of this cause may
require & as in duty bound.

J. P. Krueger, Jr.

Johnson & Co

~~Harmon~~

as.

} Same in
Charing

Gilletti's Arms & Co

1873. April Rules Co. Ct.

"

Executed

W W Driggs Shff

The Commonwealth of Virginia

To the Sheriff of Southampton County--Greeting:

WE COMMAND YOU to summon *Benj E. Worne and Joseph E. Giddens decs.*
SR Edwards Trustee, Williams Coth & Wm B. Shand Trustee.

if *they* be found within your bailiwick, to appear at the Clerk's Office of our *County*
Court of Southampton county, at the Rules to be holden for the said Court on the first Monday in

April next to answer a Bill in Chancery exhibited against
them in said Court by John Johnson
Witness taken such by John Johnson his clerk friend.

And have then there this writ. Witness LITTLETON R. EDWARDS, Clerk of our said Court, at the
Court-house, this *24th* day of *March* A. D. 187*3*, in the *97th*
year of the Commonwealth.

SR Edwards Clk

The depositions of Geo. W. Lawrence
and others taken before me, James
R. Tyler, a Commissioner in
Chancery for the County Court of
Southampton pursuant to notice
hereto annexed, at the office of
J. B. Ruice, in the Village of Juma-
lem, on the 11th day of June 1873
between the hours of 6 A.M. & 6 P.M.
to be read as evidence on behalf
of W. F. Johnson, in a certain suit
in Equity depending in the County
Court of Southampton, wherein the
said W. F. Johnson, by John Moore, his
next friend is Plaintiff, and
Ben. V. Morrell, & deus of Jos. & Gillette
& others are defendants.

Recd. J. B. Ruice - atty for Plffs.

Geo W. Lawrence being duly sworn
in the Holy Evangelists of Almighty God
deposes the said oath as follows.

Question by said attorney. What is your
age - Answer - 43 years old

Do you know the parties to this suit -

Answer - I do.

Will you please state whether you
ever heard E. W. Mosenberg make
any declarations in regard to a

Bond he held in his possession
for J^{rs} M^{rs} Guley against W^m Cobb,
for \$14.86: Success. I have heard
him make some declarations
in regard to said bond.

What were those declarations?
Success. He told me to say to
Mr John Moore, not to make himself
uneasy about the judgment on said
bond being rendered in favor of
J^{rs} Gillello, that it was a mistake
of his, he having brought the suit
in the name of the wrong man. That
the money when collected would pass
through his hand and he would
see that every thing was made
right. That he knew the bond was
W^m Cobb properly belonged to the
relief of John Moore, as one of
the directors of J. M. Guley, on
his Guardian bond as given for
W. T. Johnson. He also stated that
having papers in his hands as
attorney, that belonged to J^{rs} Gillello's
estate, caused him to make the
mistake having got the papers
mixed. And further that defendant
said not. George W. Lawrence

John Moore being duly sworn on
the Holy Evangelists of Almighty God
deponeth Saith as follows.

Question by Plaintiff Counsel.

What is your age Answer 70 years old.
Do you know the parties to this suit.
I do.

Will you state, whether you ever
heard W. Massenburg make any
declaration about a bond he had
in his possession in favor of J. M. Guiley
vs Wm Cobb for \$194.16. I did.

What were those declarations?

He stated to me that Mr Jm M. Guiley
had given him a bond vs Wm Cobb
for \$194.16- to collect, and if I would
go over to Mr Guiley with him he
thought Mr Guiley would make a
deed of trust and include the said
bond in the deed, for my relief as
one of his parties as Gdn for W.T. Johnson.
I consented & Mr Massenburg came
to my house the next day and we
went together over to Guiley, and
upon telling our business, Guiley, at
once consented for said bond to
be included in a deed of trust for
my relief. Mr Massenburg himself

wrote the deed of trust, and I asked
Mr. Guiley if he was willing for 'Maj'
Edward to be the trustee. he said
he was, and he was made the
trustee. This was in 'May 1866. I also
heard Mr. Massenburg say that he
had some papers belonging to J. E.
Gillette and that through a mistake
on his part, he had brought the suit
on the bond as Wm. Cobb in the
name of Guiley for the benefit of
Gillette. He further said that
when the money was collected, it
would pass through his hands, and
he would see that it was paid to
my relief.

And further this deponent
saith not. John Moore

State of Virginia. County of South-
ampton Court.

I, James R. Tyler, a Commissioner
in Chancery for the County Court of South
ampton for the said state, do hereby
certify that the foregoing depositions
were duly taken, sworn to & subscribed
before me, at the time & place
mentioned therein. Given under
my hand this 11th day of June
1873. James R. Tyler
Commissioner's fee 5.00 Commissioner in Chancery.

This deed made this 21st of May 1866, between John M. Gurley
of the first part and S. R. Edwards of the second part. Witnesseth that
the said John M. Gurley doth grant unto the said S. R. Edwards all the
real estate of which he is now possessed in the County of Southampton also all
his chattel estate of every kind and description including a suit now pending in
the Circuit Court for Southampton County against William Cobb subject to all
prior debts on said property: In trust to secure John Moore from all loss
as the security of the said Gurley for the faithful discharge of his duties as the
guardian of W^m J. Johnson a minor under the age of twenty and—

Witness the following signatures and seals.

J. M. Gurley (Seal)

Southampton County, In the Clerk's Office the 21st day of May 1866.

This deed of Trust from John M. Gurley to S. R. Edwards Trustee for the benefit
of John Moore was acknowledged by the said John M. Gurley to be his act and
deed and admitted to record a Stamp of the internal revenue of the United States
amounting to one dollar being affixed thereto—

Teste,

S. R. Edwards (Seal)

A Copy—

Teste,

S. R. Edwards (Seal)

Southampton Circuit Court: November the 8th 1866.

Ind: M. Purley who sues for the benefit of Joseph E. Gillette Plff.
against
William Cobb Defd

This day came the parties by their attorneys and thereupon came a jury to wit
John B. Higgins, James B. Tyler, Joshua Bryant, James Butler, Richard
W. Clayton, Richard M. Stephenson, Charles E. Bryant, Jm: F. Vick,
James Vaughan, Jm: Bircher, Walter S. Bishop and Daniel W. Cobb
who being duly sworn and sworn the truth to speak upon the issues joined upon
their oath returned a verdict in the following words to wit: "We the jury find
for the Plff. the sum of \$174. 86. with interest thereon from the 21st of
December 1857. until paid and one cent damages Therefore it is considered
by the Court that the Plaintiff recover against the Defendant the said sum
of One hundred and ninety four dollars and eighty six cents with legal interest
thereon from the 21st day of December 1857. till ^{paid} together with one cent
damages as aforesaid and his costs by him about his suit in this behalf
expended.

Attest

John L. R. Edwards Cl

B. E. Warrell

(Copy)

June 4th / 13 - I acknowledge legal
service of the within notice.

Benjamin Warrell

To Ben. C. Warrell Advers of Joseph
Chillette died.

Take notice that I shall
on the 11th day of June 1873 at
the Office of J. B. Pruned in the Village
of Jerusalem, between the hours of
6 A.M. & 6 P.M. of that day proceed
to take the depositions of Geo. Lawrence
others to be read as evidence in my
behalf in a certain suit in Equity
depending in the County Court of
Southampton, wherein you are
defendant & I am plaintiff, and
if, from any cause, the taking of
the said depositions be not commenced
on that day, or if commenced, be
not concluded on that day, the
taking of the same will be adjourned
and continued from day to day, or
from time to time, at the same place
and between the same hours until
the same shall be completed.

Respectfully yours,
W. T. Johnson -
by counsel -

June 3. 1873.

To Staff of Southampton
to execute

This deed of Trust made this 1st of December 1870 between William Cobb Grantor of the one part and W^m B. Shands Trustee of the other witnesses that the said William Cobb doth grant unto the said W^m B. Shands a certain tract of land lying in Southampton County containing two hundred and twenty acres (270) more or less bounded by the lands of John Meier James Devany, William Edwards, Ely Bryant and Mrs Bunch versus In Trust To secure an execution for \$194.86 cts with legal interest thereon from the 21st of December 1857 and \$18.09 cts and the whole amounting this 17th of December 1870 to \$381.21 cts the said execution being in favor of Joseph E. Gillette decd and now held by John Moore guardian of Valerine Johnson and it is hereby agreed and understood that the said W^m Cobb shall remain in quiet possession of the said property until a sale shall be ordered by the beneficiary in this deed that one third of the above sum shall be paid the 17th of December 1871 and third the 17th of December 1872 and one third the 17th of December 1873. the whole amount carrying interest from this date and upon default made in either of the said instalments of payments then upon request the trustee shall after twenty days notice sell the ~~above~~ said land at public auction on the premises for cash and after paying the above debt and costs of this trust including a commission of five per cent to the trustee pay the balance of the purchase money to W^m Cobb As witness the following signatures and seals -

W^m B. Shands
Trustee

W^m Cobb
Grantor

At @ Court held for the County of Southampton on the 17th day of Dec: 1870: This deed was acknowledged by William Cobb a party thereto and ordered to be recorded. A Stamp of the Inst. Rec. of the

U.S. to the amount of fifty Cents, being affixed thereto and duly
Cancelled.

Date,

Samuel R. Tyler M

Know all men by these presents, that we John M. Gurley
Samuel Kello and John Moore are held and firmly bound unto
the Commonwealth of Virginia in the just and full sum of one
thousand ^{dollars} current money of Virginia, to the payment whereof, well and truly
to be made, we bind ourselves, our heirs, Executors and administrators, jointly
and severally, firmly by these presents. Sealed with our seals and dated this
20th day of July A.D. 1857.

The condition of the ^{above} obligation is such, that if the above bound John M.
Gurley as guardian of William Johnson orphan of Taliaferro Johnson decd.
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 }

John M. Gurley Seal
Samuel Kello Seal
John Moore Seal

Southampton County Court July 20. 1857.
The Court doth assign John M. Gurley guardian to William Johnson orphan
of Taliaferro Johnson decd and thereupon he together with Samuel Kello and
John Moore his securities (who justified on oath as to their sufficiency) entered
into and acknowledged a bond in the penalty of One thousand dollars conditioned
as the law directs

Teste L. R. Edwards Clk

Attest

Teste L. R. Edwards Clk

W. T. Johnson by
vs 3. Dicee.

Jos. Shillett's Adm'r.

June Term 1873.

To be entered.
J. W. Magrath
Judge

Johnson or his attorney, take a
correct copy of the
of this cause.

W. J. Johnson by s^c

vs

3

decree -

Jos. E. Gillett, Admr^r

This day this cause came on to be heard on the complainant's bill which has been taken for confessed as to all the defendants, exhibit, filed, general replication thereto, the disposition of John Moore & Geo. W. Lawrence, filed June 11, 1873, and was argued by Counsel. On consideration whereof, the Court being of opinion from the evidence in this cause, that the judgment rendered in favor of Jos. E. Gillett vs W^m Cobb, was rendered by the mistake of E. W. Massenburg, attorney, and the Court being further of opinion that the bond due Mrs. M. Gurley by W^m Cobb, and which was alluded to in a deed of trust from the said Gurley to L. R. Edwards, Trustee, was intended to be conveyed & was conveyed for the relief of Mrs. Moore one of the daughters of J. M. Gurley, as Edm for W. J. Johnson, doth a quia order & decree that W. B. Shands, Trustee for W^m Cobb, collect the said bond, and when collected, after paying the costs of his trust and of this suit, including an attorney fee of Fifty dollars to J. B. Prince, pay the balance to W. J.

136. 126

W. J. Johnson by the

vs 3

for Phillis Adm. to

Depositions of
Geo. W. Lawrence
+
John Moore.

June 11th 1873

Handed in by J. R. Tyler Com
June 19 1873