

1878 - 29

Santhampton County - Chancery Garret, Francis D. vs. Prince, Joseph B. *Declarator*

"Injunction"

Restrain Joseph B Prince
from selling Mill & fixture

Joseph B Prince
Declarator

for

S. Lewis. -

127

Rowe

$\tau \frac{3}{3}$ Papers

Prinici re,

1878. Nov. Injon. Dissolved

To the Honorable George Blow judge
of the circuit Court of Southampton
County in chancery sitting

Humbly complaining your
Orator Francis D Rowe sheweth unto
your Honor that on the 22nd day of October
1877 he made a deed of trust by
which he conveyed to Jos B Prince
a tract of land containing 122 acres
of land lying in Southampton One
steam saw mill and fixtures, four
oxen, cary logs, and timber all the
logs and timber in the logs from S.
S Russell for Effie Holt and L. O.
Holt except the cord wood to secure
eight bonds for \$200 each due S Lewis
dated the 22nd October 1877 and payable
at four, five, six, seven, eight, nine
ten, and eleven months, And that
Joseph B Prince the trustee acting
under orders from the beneficiary
S Lewis, has advertised to sell
the steam saw mill and fixtures
in fact all the property conveyed by
the said deed of trust except the
tract of 122 acres of land at
Journals on the 16th of September
1878 that being county court
day

Your Orator makes the
following statement of facts in

* a copy of which is herewith filed marked
A and prays to be taken as a part of the
bill

Rowe

J B M &c

Prince & Lewis

order to a full understanding of his
case Mr S Lewis intending to establish
a saw mill on Mr & Mrs Russell
land in bought from J. S. Russell
and wife all the timber on
the down land of Mr Russell
and the timber on the land of
O. L. Holt and after he established
his mill he sold the said mill
and fixtures his timber contract
with Russell and wife and Holt
and order he for the sum of
\$1900 and that you paid the
said Lewis at the time some
\$300 and in order to save Lewis
trouble he executed the said eight
bonds of \$200 each and gave
a deed of trust on the said property
which he bought and 122 acres of
land besides

Your Orator was placed in
possession of the said mill, fixtures
he and went on to cutting
timber and continued to do so until
Mr Russell stopped him from
cutting on the said land where
your orator has been damaged to
the extent of four hundred
dollars

Your Orator states that
since the execution of the deed
of trust he has paid Mr S. Lewis

some \$840 ^{in all} and now owes on the
face of the bonds some ~~\$1040~~ ^{\$1040}
but when the \$400 comes to be
deducted which your orator has
been damaged by Lewis failure
to comply with contract and sale
he would really not owe more
than \$640 on his bonds and
interest

Your Orator states and shows
that if the Trustee Jos B Prince
should be permitted to sell this property
now he would be hopelessly damaged
and would have no day in court
to assert his legal rights

Your Orator is advised that if
Mr Lewis were forced to sue on
these bonds he could plead to the
consideration thereof and his
relief would be the damage and
injury he had sustained by Lewis
non compliance with his contract
of sale, these bonds having been
given for a consideration which
has failed in part if not in whole

In such consideration whereof
and inasmuch as your ^{orator} is without
relief at law and only entitled to
relief in a court of equity where
such matters are peculiarly
cognizable he therefore humbly
prays that Joseph B Prince trustee

as aforesaid and S. Lewis may be
made parties defendant to this bill
and that the court would compel
them as full and perfect answer
make the allegations therein
contained as if they had been affirmed
more fully and specially interrogated
and that your Honor would by an
injunction of this court restrain
Joseph B Prince from selling the
said mill and fixtures until
the said Lewis had instituted
suits at law and his bond
and so given your orator an
opportunity to defend his rights
and ascertain what he really
owns, And that the court would
grant such other and general relief
the premises considered as equity
may dictate and the nature of
his case may require and as in
duty bound your orator will
ever pray us

Shades p. 90

State of Virginia
Southampton County, 3 to wit

This day E. D. Rowe
personally appeared before me and made
oath that the facts set forth in the
above bill are true to the best of
his knowledge and belief given
under my hand this 10th of September
1878

L R Edwards Clerk &c

Rome

in 3

Prince Trustee

Assessor of

J. Lewis

The answer of S. Lewis to a bill of complaint exhibited in the Circuit Court of Southampton against himself & J. B. Prince trustee by F. D. Rome. This respondent for answer to said bill says. That it is true as alleged in the said bill that on the 22nd day of October 1877, F. D. Rome made a trust deed to J. B. Prince, trustee, conveying a tract of land containing 12¹/₂ acres of land, one steam saw mill, &c. ~~at~~ ⁱⁿ fee simple right bonds for \$200 each due respondent as described in the bill; and it is also true that said Rome held ^{in possession} pay in cash \$300. and was placed ^{in possession} of the said mill fixtures &c. and commenced operations. But your respondent utterly denies that the said Rome has ever been stopped legally by J. S. Russell or any one else from cutting all the lumber purchased by respondent & turned over to said Rome. on the contrary, respondent says & charges, that the said Rome has cut & sold all the lumber sold respondent by Russell, Swift & O. L. Holt that comes he reached, or utilized and has been desirous to purchase lumber in other localities.

and to remove the Sawmill fixtures,
Said Rome by respondent. If said Rome
stopped cutting this timber, merely
because objection was raised by
Russell, without any steps being
taken or threatened, to compel him
to stop, and in fact no such
steps have ever been taken, or
attempted, it was his fault, & not
respondent.

Respondent says that Rome has
paid him in all only \$160. and
has given him a conditional order
on G. Fred Johnson for \$100. which
Johnson agrees to pay. provided he
shows some Rome that amount
on final settlement. If any
injury has happened to said Rome
or any loss, it has not been occasion-
ed by respondent in the most
remote degree. Respondent
says that it is not true that if
said Rome was sued on his over-
due note, there could be any
successful defence to same
for failure of consideration, because
respondent positively charges that
the said Rome has cut & used

all the timber he bought of Russell
Swipe & S. Holt & which contract he
sold to said Rome. In fact Russell
does not even look to Rome for
any of the money for said timber,
but he has been paid the most of
said money by respondent, and
would have been paid all long
ago, if respondent could have gotten
such a receipt as he was advised
he ought to have. There can then
result no harm to said Rome
in compelling him to comply
with the terms of his trust deed.
The notes of said Rome now held by
respondent have been overdue
for several months, and the property
conveyed to secure the same, or a large
part of same is of a perishable nature,
deteriorating in value rapidly and
interest is accumulating on the
notes.

S. Lewis

Southampton County Court.

Personally appeared before me J. R. Tyles,
Com. in chancery for Circuit Court of Southampton
S. Lewis & made oath to the above business.
Given under my hand Nov: 7. 1878.

J. R. Tyles - Com. in chancery

Rome
or 3

Prince & S. Lewis

Notice to dissolve
injunction

"

Executed by delivering
to H. D. Rowe a copy
of this notice on the
25th day of October

1848

W. W. Briggs Shff

To Francis D. Rowe Esq.

Take notice that I shall move
the Judge of the Circuit Court of
Southampton on the 3rd day of November
next at Jerusalem to dissolve an
injunction awarded you in
vacation at Norfolk Sept 12. 1878, in
a chancery suit now pending in
the Circuit Court of Southampton
in which you are plaintiff and
Jos B. Prince & myself are defend-
ants.

Respectfully.

Oct 22. 1878.

To Staff of Southampton }
to execute. } S. Lewis.

This deed of Trust made this 22nd Oct.
1877, between F. A. Rowe of one part
and J. B. Prince Trustee of second part
witnesseth. That in consideration of five
dollars the said Rowe does hereby grant
& convey with general warranty to the said
Prince the following real & personal prop-
erty to wit, a certain parcel of land
in Southampton County containing 122 1/2
acres be the same more or less, bounded
by the lands of Matthew Harris, Wm
Snake, Pierce Turner & others, One
Steam Saw mill & its appurtenances
& fixtures, four oxen, Carriage, Chains
and all the logs & ^{timber} bought from
J. S. Russell for Effie Holt & from
S. O. Holt, Except the Good wood, In
Trust to secure Eight bonds due by
said Rowe to S. Lewis, Each for \$200,
due at four, five, six, seven, eight,
nine, ten & eleven months from date
dated Oct. 22nd 1877, And it is ag-
reed by the parties hereto that in
default of payment of either of said
bonds at maturity, the trustee upon
verbal notice from the said Lewis
shall sell the above property after
20 days notice for cash, or upon
such terms as the said Lewis may
desire & in such event, the trustee
shall be entitled to five per cent
Commissions on gross sales. Witness

following signature & seal,

F. D. Rowe (Seal)

Southampton County In the Clerk's Office
October 22nd 1877.

This Deed of Trust
from F. D. Rowe to J. B. Prince, trustee
for the benefit of S. Lewis was
this day received and acknowledged
by said Rowe to be his act & deed
and is sealed to record.

Teste, S. R. Edwards, C. C.

A Copy

Teste, R. Edwards, C. C.

To the Clerk of the Circuit-Court.
of Southampton County.
Present.

Portsmouth Va Sept: 16th 1878.

To the Clerk of the Circuit Court of Southampton
County.

At the request of W^m F Luke of Ports-
mouth Va. who desires to become surety for Francis
D. Rowe in an Injunction Bond I cheerfully
state that I regard Mr. Luke to be sufficient
Security for the sum of Five Hundred dollars.
He has a lot in Portsmouth of that value besides
other estate.

Yours truly
W F Cassell.

To join inhibit & restrain the defendant Jos. B.
Prince Trustee in a certain deed of trust of the 22nd Oct. 1897
his agents are employees from selling the steam saw mill
its appurtenances & its fixtures in the plaintiffs bill men-
tioned until the further order of the Court. The plain-
tiff having executed bond with sufficient security
according to law,

L. R. Edwards clerk,

The Commonwealth of Virginia:

To the Sheriff of Southampton County:---Greeting.

We command you to summon

Joseph B. Prince
and J. Lewis

if *They* be found within your bailiwick to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court on the first Monday in *October next* to answer *a bill of injunction exhibited against them in our said Court by Francis Lowe*

and have then and there this writ. Witness, **LITTLETON R. EDWARDS**, Clerk of our said Court at the Court House, this *16th* day of *Sept.* 187*8* in the *10th* year of the Commonwealth.

L. R. Edwards

To injoin, inhibit & restrain the defendant
Jos. B. Prince Trustee in a certain deed of trust
of the 22nd Oct: 1877, his agents are employed
from selling the Steam Saw mill its appur-
tenances & its fixtures in the plaintiff's
bill mentioned under ^{the} further order
of the Court. The plaintiff having
executed bond with sufficient security
according to law. S. P. Edwards & Co.

Executed by delivering
to Amos & Lewis each
a copy of this Summary
on the 16th day of September
1878
W. W. Briggs Siff

The Commonwealth of Virginia:

To the Sheriff of Southampton County:---Greeting.

We command you to summon

J. S. Lewis

if *They* be found within your bailiwick to appear at the Clerk's Office of our Circuit Court of Southampton County, at the Rules to be holden for the said Court on the first Monday in *October* to answer a bill of injunction exhibited against them in our said Court by *Francis Rowe*

and have then and there this writ. Witness, **LITTLETON R. EDWARDS**, Clerk of our said Court at the Court House, this *16* day of *Sept* 187*8* in the *10th* year of the Commonwealth.

L. R. Edwards

Row 2

2

Lewis & al.

order

Myus. chin

In Vacation Nupter Sept 12th 1878.

Francis Rowe.

vs

Geo B. Prince & In Chy

S. Lewis

Upon the prayer of the
Petitioner ^{Francis G. Rowe} ~~Francis G. Rowe~~. Verified by his Oath.
An Injunction is hereby awarded, to inhibit
and restrain the Defendant Geo. B. Prince
Trustee, in a certain deed of Trust of the 22^d of
October 1877. His Agents or Employees, from selling
The Steam Saw Mill, its Appurtenances and
fixtures, in the proceedings mentioned, until the
further order of this Court. But this order is
not to take effect until the said ^{Pliff Francis G. Rowe} ~~Defendant~~ ~~Pliff~~
or some one for him, shall enter into Bond with
good & sufficient security, before the Clerk of the
Circuit Court of So Hampton County; in the penalty
of \$500 - with waiver of Homestead and
Conditioned & payable according to Law.

To The Clerk of the Circuit
Court of the County of
Southampton

Geo B. Low,
Judge &c

Rore
v } Stat. Rules

Prince &c

In Southampton Circuit Court

Francis D Rowe

Plaintiff

against
Joseph B Prince and S Lewis

Defendants

1878 Sept. 12th Bill presented, Injunction granted &
" " 16 Bond Security given - Summons & Injunction issued
" Oct. R Sum. & Inj. returned Executed Decree nisi v. Defts
" Nov. " Bill taken for confessed & Cause set for hearing &
" " T Ans. Lewis. Inj. dissolved &c

Rowe

or { Deposition

Prince of

handed in by J. J. Dwyer 6th
November 1878 -

Rowe

vs 3

Lewis

~~judgment to notice and give~~ Deposition of F. D.
Rowe taken to be read in his
behalf in a certain suit in
chancery now pending in the
circuit Court of Southampton
in the case of F. D. Rowe vs
Lewis

This defendant having been
first sworn on the Holy Evangelist
of Almighty God deposes and says
as follows

I was present in the office of
C. W. Whitburn Co with Mr S Lewis
Mr C. W. Whitburn and J. H. Biggin
when Mr Lewis in my presence
made the following proposition to
Messrs Whitburn Co which was
accepted by them, that Whitburn Co
were to pay to Charles Rice or son
a certain sum of money to Duval
a certain sum of money and to
Thurmond a certain sum of money
the balance owing by me to Mr
S Lewis they to give their notes at
sight and ninety days and the said
of trust to be retained in the hands
of a third party for the benefit of
Whitburn Co until their notes
were paid and further this deponent
sath not

F. D. Rowe:

: sworn

Southampton County to wit

The above deposition was taken signed
and read the said F. D. Row made oath
that it is true to the best of his
knowledge and belief it was taken
in Jerusalem given under my
my hand this 6th of November 1878
John L. Sayer J. P.

S. Lewis Esq.

Take notice that I shall
in person on the 1st of Nov 1871
between the hours of 10 O'clock and
sunset proceed to take the deposition
of F. D. Rowe to be made as evidence
in my behalf in a certain suit in
chancery now pending in the circuit
court of Southampton wherein I am
plaintiff and you are defendant
F. D. Rowe

Power
of
Notice
Given

This day F. D. Rowe personally
appeared before me and made oath
that he delivered a true copy of
the within notice to S. Lewis
given under my hand this
1st of Nov 1848

John I. Dwyer J. P.

Rowe

5
J. R. Taylor - bond

Primer & Davis

Southampton Circuit Court, In the Clerk's
Office, September 16th 1878.

This bond was acknowledged by the obligors
thereto, and Wm. F. Luke

_____ the securities thereto made
_____ oaths before me that his
_____ estate after the payment
of all just debts and those for which he
is bound as surety for others, and expects
to have to pay, is worth the sum of Five
hundred dollars over & above all exemptions
allowed by law -

Given under my hand this day
& year above written.

J. R. Taylor C. C.

A Copy:

Teste: J. R. Edwards C. C.

Know all Men by these Presents, That we Francis Rowe
Wm F. Luke

are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of Five Hundred Dollars, 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. And we, the obligors herein, hereby waive the benefit of our Homestead Exemption as to this obligation.

Sealed with our seals, and dated this 16th day of September
A. D. 1878

The condition of the above obligation is such, that if ~~the above bound~~
whereas the above bound Francis Rowe has obtained
from the Hon. Geo. Blow Judge of the Circuit Court
of Southampton County an injunction to exhibit &
restrain Jos. B. Prince Trustee in a certain deed of
trust of the 22nd Octo. 1877, his agents are employees
from selling the Stearns Saw mill bits appertaining to his
trust in the plaintiff's bill mentioned, now if the said
Francis D. Rowe shall pay all damages sustained by the
defendant in said injunction in consequence of gra-
nting the said injunction,

~~shall faithfully discharge the duties of~~ ~~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 }
presence of the Court.

F. D. Rowe [SEAL.]
Wm F. Luke [SEAL.]

[SEAL.]

[SEAL.]

Rome
vs $\frac{4}{3}$ Decree.
Pruce-Hunter & Co.

Nov Term
1878

To be entered.

Geo. B. Snow.

Rowe

vs. $\frac{1}{3}$ Decree

Prince, Trustee &c

This day this cause came on to be again heard on the papers formerly read & the answer of S. Lewis filed during this term of the Court, and was argued by Counsel. On consideration whereof, the Court doth adjudge order & decree that the injunction heretofore awarded in this cause, restraining J. B. Prince, Trustee & the said S. Lewis from enforcing the trust deed executed by F. D. Rowe, to said Prince for benefit of said Lewis, be and the same is hereby dissolved; and that this cause be dismissed at the costs of F. D. Rowe - but leave is reserved the said Lewis to proceed upon the injunction bond of said Rowe, filed in the papers of this cause, should the said Rowe fail to pay the costs of this suit.